

## OKLAHOMA'S STATUTORY CONSTITUTION

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The Oklahoma Constitution retains its original and historic character as a combination of constitutional and statutory provisions. This article traces the Constitution's evolution through the use of the initiative and referendum processes and sets that evolution in the context of the state's political culture. It concludes by considering efforts to reform the Constitution and the reasons why they have failed. In brief, the article finds that Oklahomans have not recognized the importance of the distinction between fundamental and statutory law. Constitutional reform has been stymied by a variety of political forces that prefer an accessible constitution and fragmented governmental authority to the efficiencies that might result from a streamlined constitutional order. From the early Progressives to modern conservatives, Oklahomans have distrusted government and their Constitution reflects that fact.

Until changed by the Legislature, the flash test provided for under the laws of Oklahoma Territory for all kerosene oil for illuminating purposes shall be 115 degrees Fahrenheit; and the specific gravity for all such oil shall be 40 degrees Baume.

Oklahoma Constitution, Article XX, Section 2

**This provision of the Oklahoma Constitution** is not as silly as it may first appear. During the territorial period unscrupulous vendors mixed gasoline with kerosene in order to make more money, and in the years leading up to statehood there had been unsuccessful attempts to strengthen the regulation of kerosene. In one instance, gasified kerosene had exploded, destroying a substantial part of the town of Orlando, Oklahoma (Goble 1980, p. 108). It is not surprising, then, that the drafters of the Oklahoma Constitution wanted to take out a little constitutional insurance to prevent such accidents and the skullduggery that led to it. But in this respect, the Oklahoma Constitution's notorious kerosene provision is emblematic of the Constitution itself. Among American state constitutions, Oklahoma's is now a remaining exemplar of the "statutory" constitution, one that blends structural and statutory provisions.

Oklahoma's statutory Constitution was initially the product of the state's progressive tradition, and has subsequently endured due to the political schisms that have defined state politics. Fundamental to its history is the role of the initiative and referendum as the sole means by which it has been (frequently) altered. In this chapter we describe the Constitution as it was originally drafted, discuss its evolution through the use of the initiative and referendum, consider why fundamental constitutional revision has not been attained in Oklahoma, and assess the Oklahoma Constitution in light of the fundamental purposes that constitutions serve.<sup>1</sup>

## THE ORIGINAL OKLAHOMA CONSTITUTION

During the territorial period, Oklahoma politics was dominated by the Republicans, who controlled such patronage as was available in the Oklahoma Territory due to the party's control of the national administration. The Democratic Party first took root in Indian Territory where, in 1905, a convention was held in Muskogee that produced a draft constitution for a new state that would encompass the Indian Territory and be called Sequoyah. The Roosevelt administration turned aside this step toward separate states, and in 1906 Congress passed the Enabling Act, which provided for a constitutional convention including delegates from the Indian Territory, the Oklahoma Territory, and the Osage Nation. In the elections for seats at the constitutional convention, the Republicans paid the price for their reliance on federal patronage rather than grass-roots organization. The Democrats, drawing on their

organizing experience at the Sequoyah Convention, elected 99 of 112 delegates, and were in a position to dictate the terms of the new constitution.

Inspiration for the Democrats came from many sources. Though heavily influenced by a letter to the convention by William Jennings Bryan and a state Democratic Platform, they took much of their direction from the “Shawnee Demands”. These demands came from the August 1906 meeting dubbed the Fourth Annual Convention of the Oklahoma State Federation of Labor. These sixteen Legislative Demands and eight Prohibitive Demands laid out a Progressive agenda for the convention with goals ranging from direct democracy to consumer and worker protection from corporations (Goble 1980, p. 218).

On November 20, 1906, the delegates met in Guthrie at the Brooks Opera House to convene the Oklahoma Constitutional Convention. After having swept the delegate elections, the Democrats were eager to use their super majority status. They were easily able to control the proceedings, and as a result the only major fight at the convention was over the designation of county lines and seats. The bulk of the document was written and adopted by a convention of delegates who were mostly Progressives. The result of this unanimity was a document rich with the protections Progressives sought to provide “the people” from their government and from industry. The Oklahoma Constitution created a legislature hamstrung by statutory constitutional provisions, a weak executive with little power over the executive establishment, an elected judiciary vulnerable to public opinion and equally the captive of constitutional specifications, and a far-flung array of independent boards and commissions destined to empower and reflect local areas and special interests.

The most obvious manifestation of the progressive mood lay in the provisions governing corporate activity. These restrictions are found in both Article 2 (The Bill of Rights) and Article 9 (Corporations) of the document. Article 9 was devoted entirely to corporate regulation and grants the enforcement powers to a Corporation Commission, created by Section 14. The powers granted to the commission are sweeping and often exact. Article 9 shows the Constitution’s framers thinking like the policy makers they were. They recognized that it was necessary for the railroads to cooperate in order to extend transportation routes throughout the state, but they did not trust the railroads and wanted to

make sure that they did not combine in restraint of trade. Thus, article 9 presented two contrary tendencies, one to insist upon cooperation, the other to prevent consolidation. The framers wanted to make sure that the national railroad companies (“foreign companies” in their parlance) would be subject to Oklahoma law and regulation. Action by both the legislature and the corporation commission was required before one company could acquire the assets of another, and all corporations doing business in the state were required to maintain offices in the state with open records.

In another famously statutory clause of the Constitution, Section 40 of Article 9 declares that, “no corporation organized or doing business in this State shall be permitted to influence election or official duty by contributions of money or anything of value.” Article 9, Section 47 of the Oklahoma Constitution grants the government the right to revoke the articles of corporation for any business, at any time it sees fit, so long as they do not deem their action injurious to any of the incorporators. Perhaps the most bizarre feature of the Constitution, when taken from the point of view of constitutionalism itself, is Article 9, Section 35, which granted to the legislature itself the power to “from time to time, alter, amend, revise, or repeal sections from eighteen to thirty-four, inclusive, of this article, or any of them, or any amendments thereof.” Drawing on this grant of power the legislature has itself amended the Constitution on several occasions, the legislative acts having been incorporated into the body of the Constitution itself. In this provision, as in the case of the kerosene provision, it is apparent that the Constitution’s framers were torn between the desire to do what they then thought right, and the recognition that some allowance had to be made for future contingencies. The distinction between constitutional and statute law was apparently blurred.

For all of this, it was the Bill of Rights, or Article 2, that represented the greatest triumph of the Progressives. The Oklahoma conception of rights extended to matters that elsewhere might be regarded as matters of policy. Here again, it is affirmed that corporate records must be open to the state (Section 28). In Section 31, the state threatens to go into business against corporations because the right “to engage in any occupation or business for public purposes shall not be denied or prohibited” (Section 31, agriculture excepted). Section 32 rails against monopolies. Section 25 restricts corporate access to injunctive relief

against labor strikes. Section 27 provides immunity for testimony against corporations.

Other articles of the original Oklahoma Constitution appear more “constitutional” even if somewhat convoluted due to the state’s entry into the Union and its prior territorial history. Article 1 lays out federal relations. Article 2, the Bill of Rights, offers the usual fare augmented by a number of curious provisions in addition to those affecting corporations. Article 3 provides for the initiative and referendum. Article 4 simply states the principle of separation of powers. Articles 5, 6, and 7 set out the three branches of government. Most noteworthy was the creation of the “long ballot” in Article 6, with its long list of secondary positions and constitutionally established agencies. Article 7’s provision for an elected judiciary would lead to a demand for judiciary reform a half-century later. Article 8 dealt with Impeachments and Removals from office, Article 9 with Corporations, Article 10 with Revenue and Taxation, Article 11 with State and School Lands, Article 12 with Homestead Exemptions, Article 13 with Education, Article 14 with Banks and Banking, Article 15 with Oath of Office, Article 16 with Public Roads and Highways, Article 17 with Counties, Article 18 with Municipal Corporations, Article 19 with Insurance, Article 20 with Manufacture and Commerce, Article 21 with Public Institutions, Article 22 with Alien and Corporate Ownership of Lands, and Article 23 with a variety of miscellaneous provisions that the convention wanted to ensure in fundamental law, such as child labor, convict labor, definition of races, and so forth. This constitutional potpourri includes elements that might obviously been left to legislative determination, but many others that the founders might reasonably have assumed to be their obligation. State governments are, after all, possessed of general sovereignty (unlike the enumerated powers given under the federal Constitution) and have an obligation to deal with fundamental questions like the structure of local and county government (Szymanski 2001).

The most important stamp the Progressives would leave on the Oklahoma Constitution centered on its future amendment, in Articles 5 and 24. In its most explicit provision, the Constitution called for a popular referendum every 20 years on the calling of a constitutional convention. As discussed below, this provision has never led to the calling of such a convention. Instead, except for the occasional legislative amendments, the Oklahoma Constitution has been amended only through the initiative

and referendum processes. At the time of the Oklahoma Convention the concepts of initiative and referendum were gaining favor across the country as the Progressive agenda spread. However, they were a relatively unknown quantity because of they had not as yet been implemented in many states or countries. Article 5 lays out the basic procedures of initiative and referendum, and provides in Section 1 that these processes can be used for the purpose of amending the Constitution. Article 24, Section 1 of the Oklahoma Constitution lays out the method by which the legislature is able to propose amendments to the Constitution via referendum. Measures proposed by the legislature as constitutional referenda are to be voted upon in the next general election unless a two-thirds majority in each house declares a special election necessary.

It is in Article 5, Section 2 of the Oklahoma Constitution that the people are empowered to amend the document using the popular initiative. If fifteen percent of the voters sign an initiative petition and the government certifies that number, the proposed amendment is placed before the voters. Initiatives petitions are by default placed on the general election ballot unless the governor declares a special election necessary. Both of these measures were considered highly progressive at the time of their inception into Oklahoma politics. As this article will detail, their use since statehood has dominated the landscape of Oklahoma Constitutional politics.

## REVISIONS TO THE OKLAHOMA CONSTITUTION

Revision of the Oklahoma Constitution has been undertaken entirely via the initiative or referendum processes, and often. Since 1908, when the first referendum proposing to alter the Constitution was proposed, Oklahoma voters have been asked to address 336 initiative or referendum proposals to alter the Constitution, and have approved 172. However, 5 of these amendments were struck down by federal or state courts, leaving applied to the Constitution 167 of 331 amendments, as **Table 1** indicates.

These statistics suggest that the number of state questions submitted and approved have been more numerous in more recent decades than during the first decades of statehood, when the progressive instinct was

TABLE 1

## Amendments to Oklahoma Constitution, 1910-2004

Decade	Rejected	Approved	Total	Percentage Approved
1910-1919	28	7/8	35	20.0
1920-1929	12	0/3	12	0.0
1930-1939	19	4/5	23	17.4
1940-1949	7	18	25	72.0
1950-1959	14	11	25	44.0
1960-1960	23	33	56	58.9
1970-1979	20	25	45	55.6
1980-1989	23	28	51	54.9
1990-1999	12	27	39	69.2
2000-	6	14	20	70.0
Total	164	167/172	331/336	50.5/51.2

Sources: Oklahoma Department of Libraries, *Directory of Oklahoma, 1992*; Oklahoma Department of Libraries, *Oklahoma Almanac, 2003-2004*; Oklahoma Secretary of State web site, List of State Questions [http://www.sos.state.ok.us/exec\\_legis/initListAll.asp](http://www.sos.state.ok.us/exec_legis/initListAll.asp). Table 1 indicates the 5 successful constitutional ballot initiatives between 1910 and 1936 that were subsequently invalidated by federal or state courts and did not become part of the Constitution by placing them to the left of the slash marks, and showing the total number of amendments and percentage approved accordingly.

predominant. The actual extent of Oklahoma voters' willingness to make changes in their Constitution is even greater than these statistics suggest.

Until changed by a constitutional amendment in 1974, the courts had held that ballot questions must receive a majority of the votes cast at that election, taking as the appropriate number the total votes cast for the office recording the highest vote total. Since many voters chose to vote for contested political offices but cast no vote on the ballot questions, such voters became in effect silent opponents of the ballot questions on which they chose not to vote. The "silent vote" led to the defeat of 31 constitutional amendments that received a majority of votes cast on the amendments themselves. This means that of the 336 constitutional

amendments considered by Oklahoma voters, 203 received a majority of votes cast, or 60.4 percent.<sup>2</sup>

Thus, Oklahomans have been quite willing to alter their Constitution. But behind these statistics lies a tale of two Oklahomas: one agrarian, the other industrial; one rural, the other urban; one progressive, the other corporatist; one Democrat, the other Republican. These schisms, which reflect Daniel Elazar's distinction between traditional and modernist cultures, have pervaded Oklahoma politics (Elazar 1984). This fundamental and overlapping set of cleavages has defined Oklahoma since statehood, and has shaped the path of its constitutional evolution. The interplay of these forces has produced a dynamic governing the process of constitutional change: since statehood, the people have not trusted the legislature, the legislature has not trusted the executive, the executive has not trusted subordinate state officials, and subordinate state officials have not trusted independent agencies. Oklahoma politics has been the politics of distrust, not in the Madisonian sense of distrusting human nature, but in the more specific sense of some Oklahomans not trusting others.

Efforts to amend the Oklahoma Constitution began before its ink was dry. During the state's first decade the battles were over the state's progressive, anti-corporatist provisions and over restrictions on the suffrage. Underlying these debates was a fight for political control of the state. One fight was between the Democrats and the odd coalition of Republicans and Socialists. The Democrats had sought to disenfranchise Blacks in the Constitution itself, but President Roosevelt would not allow it. As soon as the legislature organized under Democratic control, it proposed a constitutional amendment to impose a grandfather clause/literacy test for voting. Socialists opposed this provision out of principle. Republicans opposed it because most Blacks would vote the party of Lincoln. The amendment passed, but was later struck down by the United States Supreme Court. A subsequent amendment shorn of the grandfather clause but adhering to the literacy test survived judicial scrutiny. A second fight was between the Democrats and the railroad interests, also allied with the Republicans. Here the issue was whether the national railroads would be able to operate in Oklahoma at all under the Constitution's various restrictions. Local carriers shared this concern because they wanted to be able to sell unprofitable lines to the big companies, and the Constitution required both legislative and Corporation



Commission approval. A series of amendments sought to revise the manner in which the Constitution treated corporations, but the only change actually adopted removed the legislature from the process of approving corporate acquisitions, leaving that to the Corporation Commission. The original concern animating Title 9, railroads, diminished as the railroad system was nationalized under the supervision of the Interstate Commerce Commission. Thereafter, the Corporation Commission became a more significant power center in regulating corporate activities in Oklahoma, especially public utilities and energy interests.<sup>3</sup>

By 1940 only 16 amendments had been adopted, reflecting the fact that Oklahoma remained a rural state dominated by the Democratic Party. There was little incentive to change the Constitution in a largely agrarian state with little in the way of state governmental activity. After 1940, amendments and proposed amendments to the Constitution came much more frequently in response to three principal forces: the force of federal policy, including the New Deal's transformation of the relationship between the federal and state government; the need to raise revenue to meet the needs of an increasingly urban and industrial state; and scandal in state administration. With respect to federal policy, the state came into compliance with suffrage for women and 18 year old voters, desegregation of schools, and reapportionment. Confronted by the New Deal, the state resisted implementation of federal welfare programs through two gubernatorial administrations before finally amending the Constitution to create a state welfare department in 1936. Thereafter, ballot initiatives sought to enhance various pensions provided by the state.

With respect to revenue, a variety of revenue bonds, new sales taxes, enhanced sales taxes, and millage levies were submitted to popular vote, some making their way into the Constitution. In order to win voter approval, bond issues and tax increases were typically designated for particular purposes, most notoriously the earmarking of the 2 percent state sales tax for the welfare department in 1936. Each such earmarking made necessary new ballot initiatives to meet other needs (Scales and Goble 1982, p. 193-194; 246). Over time, state tax policy became deeply embedded in the Constitution, such that attempts to raise new revenues for schools, construction, welfare needs, or transportation, often required voter approval. One force driving this pattern of development was the

division between the rural and urban areas. After World War II urban areas sought to expand their municipal services in such areas as public libraries and health care, and were thwarted by the rural forces controlling the legislature. This dynamic applied to industrial development proposals as well. This resulted in ballot initiatives designed to enable urban majorities to override the legislature's truculence.<sup>4</sup> Of course, the initiative could be used to restrict as well as to expand the revenue power of government. The interface of revenue policy and the Constitution culminated in 1992 with the passage of State Question 640 which denied to the legislature the power to raise income tax rates or initiate new taxes without a super-majority vote or a vote of the people. This amendment differed from previous amendments in that it sought to restrict the state's capacity to tax. It was a Republican-inspired measure that reflected the modern GOP belief that economic development is better served by a low tax base than by the provision of public services or development incentives. The scope of constitutional preoccupation with revenue and finance issues is best indicated by a simple statistic. The original Oklahoma Constitution devoted 28 pages to Article 9, dealing with corporate regulation (essentially railroads and utilities). Article 10 of today's Oklahoma Constitution, labeled "Revenue and Taxation," runs to 62 pages.

Response to scandal and abuse of power occupies its own chapter in the ongoing evolution of the Oklahoma Constitution. Beginning in the 1940s, a series of constitutional amendments were enacted designed to clean up state government. Facing evidence that paroles were being purchased by political or monetary favors, a state Pardon and Parole Board was created in 1944. When governors Murray and Phillips intruded upon the independence of the state's colleges and universities, an independent higher education system with appointed but independent regential boards was established in 1944. Confronted with evidence of bribes and kickbacks in the purchasing of school textbooks, a State Textbook Commission was founded in 1946. In the 1960s, charges of bribery and corruption led to comprehensive reform of the state judiciary. A decade later, abuse of office by the state Labor Commissioner led that and several other subordinate state offices to become appointive rather than elective positions, thus shortening the Oklahoma ballot.<sup>5</sup>

Steps to make structural change in state government were only occasionally successful unless attached to scandal or initiated as the

result of the expansion of governmental responsibilities due to federal policy. The state legislature was affected by several constitutional provisions directed to the salaries of legislators, the legislative calendar, and legislative term limits. The large number of executive boards and commissions led to constitutional tinkering. Government regulatory policy shaped the state Corporation Commission's powers by constitutional amendment on occasion. State finance was a recurring focus of constitutional change.

### ATTEMPTS AT FUNDAMENTAL REVISION

Why have the people of Oklahoma remained wedded to their statutory Constitution? An answer to this question requires consideration of the several attempts to bring about fundamental reform. The Sooner state's first century witnessed several comprehensive studies each of which recommended fundamental reform. In the 1930s, Governor Marland commissioned (and paid for) a lengthy study by the Brookings Institution (Brookings Institution 1935). In the 1940s, the state League of Women Voter's chapter produced a study and pamphlet recommending basic changes (Galley 1946). In 1950, the University of Oklahoma's Bureau of Government Research published a detailed study and recommendation sponsored by the State Legislative Research Council (Oklahoma State Legislature). In the 1960s a legislatively commissioned state constitutional task force called for fundamental change (Thornton 1968). In the 1980s Governor Bellmon established a commission that conducted an in-depth study and brought forward three ballot initiatives (Goble 1991). In the 1990s, Governor Keating commissioned a study from a national accounting firm (Governor's Commission on Government Performance 1995). The Oklahoma Constitution stands firmly (if not proudly) in refutation of all this work; reports come and go, but the Oklahoma Constitution just keeps rolling on.

Several of these reports were undertaken in anticipation of possible calls for a state constitutional convention. As noted, the Constitution provides for a referendum every twenty years on a convention call. Referenda were in fact undertaken in 1926, 1950, and 1970. All were defeated. Governor Bellmon decided on a set of ballot initiatives in the

1980s rather than to launch a drive for a constitutional convention in 1990. Reluctance to call a constitutional convention derives from the fear of what such a meeting might produce. During most of the state's history, rural forces had every reason to resist changes in governmental structure that might empower their urban counterparts. After the New Deal, liberal defenders of the welfare state sought refuge in constitutional provisions that funded and empowered the state welfare department. Throughout the state, the political collaboration of state legislators and county courthouse rings was protected by a Constitution that limited executive power. Democrats feared the influence of the Republican urban press; Republicans feared the power of the Democratic courthouse rings. In Oklahoma, nobody has trusted anybody else. This mistrust has led to a general attitude best expressed by one observer as follows: "Having a convention would be like putting a patient on an operating table and opening him up when you don't know what you are going to find or what you are going to improve" (Szymanski 2001, p. 15).

Absent the sort of comprehensive reform that only a constitutional convention could rationally produce (assuming, that is, rationality on its part), Oklahoma has been forced to settle for incremental change. Aside from the numerous policy-oriented changes in the Oklahoma Constitution, some constitutional amendments have sought to improve the operation of state government in one way or another, as we have seen. The most fundamental reform issues, however, relate to the basic allocation of power by the Constitution between the legislature and the governor. The original Oklahoma Constitution set up a weak executive, and the major thrust of serious reform efforts have aimed to strengthen the executive branch. To some extent, these efforts have cut across party lines: the arch-conservative populist "Alfalfa Bill" Murray; the New Deal liberal, E.W. Marland; Democratic New Frontiersman J. Howard Edmundson; Republican moderate Henry Bellmon (in the 1960s and again in the 1980s); moderate Democrat David Boren; and conservative Republican Frank Keating – all of these governors have bent their oars attempting to strengthen the governor's office *viz-a-viz* the legislature and/or *viz-a-viz* the secondary state offices (Mager 1992). At the same time, abuses by governors such as Murray and Leon "Red" Phillips led governor Robert S. Kerr to support constitutional revisions reducing the Governor's power over pardons and paroles and the state's higher education system.

A major obstacle to comprehensive constitutional reform is the “one subject rule,” in which Constitution provides that constitutional amendments can address only a single topic (Article 24, Section 1, adopted in 1952). Although the language of section 1 would appear to provide that a single article of amendment might broach a general subject that deals comprehensively with, say, the executive branch, the state Supreme Court in 1989 ruled otherwise.

Since this episode appears to forebar any systematic constitutional change absent a convention, it is worth explicating. Governor Bellmon’s constitutional revision commission came to the same conclusions as all of its predecessors: the Oklahoma Constitution is too long, too cumbersome, too infused with statutory detail, and sets up a weak government in which executive power and efficiency is sacrificed to the inevitably more parochial interests of the legislature. While the commission recommended a variety of structural changes in the Constitution, as a strategic matter it was decided to focus on just two: reform of the executive branch (Article 6) and revision of Article 9 to modernize the state’s approach to corporate governance. These were the two most urgently needed reforms, in the commission’s view. However, at the last minute, it was decided to add a third measure creating a state Ethics Commission. The addition of the Ethics Commission as a new article to be attached to the Constitution, was largely strategic. In a state whose history was dotted by scandal and corruption, there was no scandal in the news in 1989. It was thought that the aura of reform would attach to all three proposals and thus enhance the prospects for voter approval of them all (Goble 1991).

The voters were not given the chance. In a surprising decision, the state Supreme Court ruled that the proposed revisions of Articles 6 and 9 violated the “one subject” rule of Article 24 and were thus unconstitutional. Since these proposed amendments sought to systematically revise entire articles of the Constitution embracing single broad topics, it is difficult to see how any fundamental constitutional revision can be attained by the amendment process, since comprehensive change of any article would perforce violate the one subject rule. Ironically, the judges let the Ethics Commission proposal go to the voters, and it was approved. Thus, the effort to tighten the Constitution led only to an extension of its length, and in the process the Court placed an

apparently insuperable obstacle to fundamental constitutional reform. Future reformers will have to amend Article 24, Section 1 (once again) before having a shot at other articles (Henry 1992).

The fact remains, however, that there is not now and has never been an appetite for serious and systematic constitutional reform. During the state's early decades, constitutional squabbles focused on the legacy of progressivism. During the state's middle decades, local interests sought advantage through the Constitution. In the last three decades, two-party competition has emerged, and the Constitution has been availed to advance partisan or policy objectives, as witness the term limit and tax limitation provisions. At each step along the way, concern for constitutionalism as such has been subordinated to partisan or other political objectives. Because the Oklahoma Constitution fuses statutory and constitutional functions, Oklahomans simply view it as an alternative (and often a preferred mechanism) for attaining political or policy goals. If one were to imagine that, at halftime of a University of Oklahoma football game, it would be possible to circulate an initiative petition among the crowd leading to a vote to change the rules for the second half – that would be constitutionalism, Oklahoma style.

Does Oklahoma's statutory Constitution matter? How important is revision of it? While the Constitution's statutory character is the usual focal point of criticism, in fact, the statutory features do not appear to matter much. If these provisions were shipped into statute, policy debate would be less constrained by the Constitution, but difficult decisions would still likely be sent to the people given the state's long reliance on initiative and referendum. It is the structural provisions of the Constitution that matter. Oklahoma's progressive founders distrusted government and distrusted executive power. The state's fragmented system of authority and its weak executive have led to an inefficient governmental system, one that often does not respond to the needs of the people. Constitutional revisions that would modernize and streamline state government would matter; unfortunately, many Oklahomans are indifferent or even hostile to a more efficient and effective government.

### **THE OKLAHOMA CONSTITUTION IN PERSPECTIVE**

On November 2, 2004, the good citizens of Oklahoma flexed their muscles at the polls and approved six amendments to their state

Constitution. These amendments dealt with issues as diverse as a state lottery, same-sex marriage, the constitutional “rainy day” fund, economic development, and property tax exemptions for elderly voters. Whether these various alterations to the state’s fundamental law will endure, or whether they will improve the quality of life for Oklahomans, cannot now be known. What can be known is that the Oklahoma Constitution is now, once again, longer than it was before.

As Donald Lutz has observed, constitutions serve many purposes, and an array of purposes is revealed in these emendations to the Oklahoma Constitution. Like other states, Oklahoma had to define its evolving relationship to the federal government, had to adapt to changing social and economic circumstances, had to overcome the legacy of Jim Crow, and had to cope with the legacy of the state’s progressive roots. Progressivism in Oklahoma is a dual-edged sword. On the one hand, the progressive traditions and institutional arrangements that have marked the state since its territorial days remain embedded in the Constitution, often, it seems, at the expense of effective and efficient government. On the other hand, the principal means for revising the Constitution has been by the initiative and referendum. So, Oklahomans have had to rely on progressive arrangements to address the defects of progressivism itself. The length and complexity of the Oklahoma Constitution testifies that reform has been only imperfectly achieved.

Constitutions do more than put in place institutional arrangements. They also serve to define values and express the sense of the community. Over the past half-century, Oklahoma has evolved from its progressive roots and Democratic tradition to become an increasingly conservative and Republican state. The name “Oklahoma” comes from the Choctaw, “Red People”(Debo 1987). In the old days, the University of Oklahoma’s mascot was a Native American character called “Little Red.” Little Red went away a long time ago, but in today’s parlance Oklahoma is a very red state. Oklahoma’s progressive Constitution has facilitated this transformation in political culture by enabling conservative majorities to define values, practices, and arrangements in the state’s fundamental law.

Thus, the Oklahoma Constitution, like an ancient and gnarled oak, continues to grow even as many of its older branches fall into desuetude. It stands today as an evolving expression of the character of the people of Oklahoma, and this is clearly what Constitutions are supposed to do. It is old and it is cumbersome; but it is ours.

## NOTES

<sup>1</sup>Our discussion will, of necessity, touch upon only major analytical points. One byproduct of Oklahoma's statutory Constitution is that it is not possible to tell the Constitution's story without recounting the entire political history of the state. Readers excessively stimulated by this discussion may consult the raw inventory of Oklahoma's constitutional development at [http://www.sos.state.ok.us/exec\\_legis/InitlistAll.asp](http://www.sos.state.ok.us/exec_legis/InitlistAll.asp).

<sup>2</sup>This figure includes the 5 amendments later disqualified by the courts.

<sup>3</sup>Has Title 9 proven a vehicle to extend the power of the courts over the Corporation Commission? The Constitution assigns original jurisdiction over the Corporation Commission to the state Supreme Court. A search of the court's case data base produces only 25 cases dealing with the Corporation Commission. The court has generally upheld the Corporation Commission's jurisdiction and decisions. While public utility, oil, and gas cases dominate the Corporation Commission's work today, it still occasionally takes up the railroads. As recently as 1983 the courts declined to override a decision of the Corporation Commission relating to railroad agents. See *Atchison, Topeka & Santa Fe Ry.Co. v. Corporation Commission* (658 P.2d 479).

<sup>4</sup>State questions addressing ad valorem questions prior to World War II generally sought to place limits on or provide for exemptions to ad valorem rates. Beginning in 1944, a series of ad valorem questions (e.g. SQs 314, 319, and 327) were approved by voters that generally increased millage levels or permitted local jurisdictions to increase millages by a limited amount. In 1959, voters approved two state questions. State Question 391 provided for the creation of industrial development authority. State Question 392 provided for funding for public libraries. Both were responsive to the needs of more urbanized areas. The impact of the Oklahoma Constitution on the state's economic development continues to be a matter of discussion. A recent discussion is found in Oklahoma 2000, "State Policy and Economic Development in Oklahoma:



2000 (Oklahoma 2000, Inc., Oklahoma City Oklahoma 73101-3200). This study concludes that the state's populist tradition, expressed through its Constitution, has placed severe constraints on the state's capacity for economic development.

<sup>5</sup>In the 1970s the offices of Labor and Insurance Commissioners were once again made elective. In 2004, the elected Insurance Commissioner resigned after being impeached and prior to a Senate vote on removal. And so it goes in Oklahoma.

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