

Texas Politics - The Constitution

[« go back](#)

1. Introduction
 - 1.1 Looking Ahead
2. Constitutions in Texas History
 - 2.1 The State of Coahuila y Tejas, Estados Unidos Mexicanos
 - 2.2 The Republic of Texas
 - 2.3 The State Constitution of 1845
 - 2.4 The Confederate Constitution of 1861
 - 2.5 The Constitution of 1866
 - 2.6 The Radical Republican Constitution of 1869
 - 2.7 The Draft Constitution of 1874 and the Convention of 1875
3. The Texas Constitution Today
 - 3.1 State Constitutions
 - 3.2 General Characteristics of the Texas Constitution
4. Articles of the Texas Constitution
 - 4.1 The Preamble
 - 4.2 Bill of Rights (Article I)
 - 4.3 Powers and Organization of Government (Articles II - V)
 - 4.4 Education, Taxation, and Revenue (Articles VII and VIII)
 - 4.5 Mode of Amendment (Article XVII)
 - 4.6 Remaining Articles
5. The Constitution and Local Government
 - 5.1 Existing and New Counties
 - 5.2 County and Municipal Government
6. Modern Attempts at Constitutional Revision
 - 6.1 Constitutional Revision, 1971-1975
 - 6.2 Recent Attempts at Constitutional Revision
7. Conclusion

1. Introduction

A constitution is a charter or plan of government that represents, in essence, a pact between the government and the governed. Like any pact or contract it identifies mutually agreed powers, duties, obligations and limitations on contracting parties, and establishes procedures for action, including law-making and citizen-voter participation. In performing these functions, constitutions also provide the fundamental law on which legal systems are established. They are usually set forth in written documents, although the English Constitution is not, depending instead on traditional precedents.

Since constitutions are the primary source of democratic governance and political "rules of the game," they tend to be reflexively revered by the general population and pragmatically respected by political professionals. Constitutions enjoy an exalted position among citizens, an almost heaven-sent symbol of who we are, that politicians are careful to celebrate. References to "constitutional authority" or "the sanctity of the constitution" sometimes carry the connotation of powers beyond the reach of mere mortals.

Yet constitutions are created within a particular configuration of history, culture, interests, and inherited rules that make them as much expressions of powerful, competing interests as of abstract ideals or disembodied tradition. Like most constitutions, the current Texas Constitution was the product of tumultuous times. Its organization and emphasis on specific concerns reflect the tumult of *Reconstruction*, and the struggle over the economic and political development of Texas.

The experiences of the post-Civil War period led to the complex, arcane, restrictive and, in the end, contradictory founding document with which Texas continues to be saddled today. These complexities and contradictions have only deepened as the state moves farther and farther from the political, economic, and social conditions of the time when the original document was developed. Its current form bears 130 years worth of stitches, scars, patches and excisions, each one reflecting the specific period in which Texans tried, both successfully and unsuccessfully, to

alter it.

Like other state constitutions, the Texas Constitution borrows generously from the national system of government, reproducing the constitutional principles of *separation of powers* and democratic governance, both of which are expressions of republican government guaranteed in the U.S. Constitution. This chapter's feature *Federalism and the Distribution of Power in the U.S. Constitution* explores how the U.S. Constitution both shapes state governments and incorporates them into the national system of governance. The U.S. Constitution imposes several requirements upon the states, as the feature *A Constitution's Constitution* makes clear.

1.1 Looking Ahead

This chapter begins by reviewing the constitutional history of Texas, from the days when it was part of Mexico to the present. Central to this discussion are the twin dynamics - the yin and yang - of fundamental constitutional revision and the accumulation of piecemeal changes. Attempts at constitutional revision usually occur during extraordinary times, when the nature of the existing political system is thrown into doubt. Despite the tumult that inspires their work during such times, constitutional designers never completely rewrite the constitution with which they start. Fundamental and piecemeal changes as well as carry-over from previous constitutions are clearly evident in the seven constitutions under which Texas has been governed.

Next, we review the structure and content of the current Texas constitution. Of special concern here is the length, detail and overall organization (or disorganization, as some critics might have it) of the fundamental plan of state government and cornerstone of state law. We then turn attention to what the constitution says about local governments (counties and municipalities). The framers of the constitution had a lot to say about these local governments, and the way they specified their organization and function directly affects the communities we call home.

The chapter wraps up with detailed coverage of the ambitious revision effort in the 1970s and more recent attempts at constitutional change. In general these revision efforts have failed, but they did lead to some important, if incremental, reforms. Learning why and how they failed provides a better understanding of the prospects for future constitutional revision.

2. Constitutions in Texas History

Texas has been governed by several nations since Spain claimed the territory in the 1500s. These included Spain, France, then Spain again, and Mexico - all before the decisive battle of San Jacinto when Sam Houston defeated General Santa Anna to seal the rebellious territory's status as an independent republic.

Over the fifty year period from 1827 to 1876, seven constitutions were formulated and implemented for Texas. Each one exhibits both continuity with and departures from its predecessors. Each constitution in specific ways attempted to correct the perceived deficiencies of the previous political order and address the challenges of its times. But each successive constitution also retained elements of its predecessors, building a cumulative constitutional tradition. Still, as attempts to revise previous documents, constitutions tend to reflect the era in which they were created. They are not simply the expressions of lofty, timeless ideals, democratic aspirations, and the political culture of the community. They also address the often gritty issues of the time when they are written.

Constitutions are repositories of ideas and of history that bring elements of the past into the present. Successive constitutions like those that have governed Texas tend to reproduce basic values, ideals, norms and policies. For example, Texas constitutions since Texas was part of the Mexican state of Coahuila y Tejas have asserted the value of representative institutions and popular control of government through competitive elections. Each Texas constitution has also divided governmental powers among three branches of government, each with some countervailing influence on the other two - what we have come to recognize as *separation of powers* and *checks and balances*. Even the Confederate Constitution of 1861, despite its rejection of other elements of the U.S. Constitution, retained these principles.

The durability of basic ideals and institutional arrangements in Texas derives from two main sources, one national and the other regional/local.

The first mainspring of these arrangements is *federalism*. The various Texas constitutions reflect the political necessity to conform to a national constitution, whether of independent Mexico, the United States, or the Confederacy. Each nation mandated democratic institutions, leaving (to varying degrees) the precise form to the people of Texas and their representatives.

The second mainspring of the ideals and institutions found in the constitutions of Texas is the diffuse but definite effect of local norms and values. Texas constitutions each reflected an effort to preserve local autonomy and "home rule" within a framework of both state and national authority.

Elements that do not necessarily define the political system, but which reflect (and reinforce) deeply engrained views of the relationships among members of society and other interests also persist across these constitutions. Constitutional provisions covering matters such as community property, protection of the homestead against creditors, and limits on private corporations (especially banks and railroads) both reflect and reinforce the political culture of Texas.

Over the past two centuries, as a result of its tumultuous history, Texas has been governed under seven state-level constitutions (under Spanish and Mexican rule it was part of the much larger state of Coahuila y Tejas). In addition to the seven conventions that produced these constitutions, two additional conventions and one legislative committee whose proposed constitutions failed also met. Several other attempts to fundamentally alter the Texas Constitution have been made as well. None succeeded.

2.1 The State of Coahuila y Tejas, Estados Unidos Mexicanos

The constitutional tradition in Texas began under the Mexican Constitution of 1824. The Constitution was patterned after the Constitution of the United States (the document was formally titled the *Constitución Federal de los Estados Unidos Mexicanos*), notably in the tripartite division of governmental powers among the executive, legislative, and judicial branches. But it more closely resembles the Spanish Constitution of 1812 in its content, including things like the establishment of Catholicism as the official state religion.

Texans had some influence in the formation of the Mexican Constitution of 1824, but not its ratification. Stephen F. Austin, an Anglo, was consulted by its framers. Also, Juan José Erasmo Seguin (now a familiar place name in Texas) was sent as the Texas representative and supported by the farmers of Austin's colony, who contributed hundreds of bushels of corn to pay for Seguin's expenses. [1]

Under the 1824 Mexican Constitution, the Spanish province of Texas was combined with the state of Coahuila forming the new state of Coahuila y Tejas. As under the U.S. Constitution, each state was to develop its own constitution. The new state legislature in Saltillo finally published a state constitution on March 11, 1827 - more than two years after it first convened. [2]

The Mexican Constitution required that each state constitution separate executive, legislative, and judicial authority. The state legislature was unicameral in design, with only twelve deputies (*diputados*) elected by popular vote. The territory of Texas constituted one of the three districts (officially, the district of Bexar) into which the new state was divided and was apportioned two of the twelve seats in the legislature.

Like its parent federal constitution, the new state constitution contained elements that were clearly derived from the Spanish tradition. Catholicism was established as the state religion, and members of the Church and the military were constitutionally subject to the rules of those organizations, creating semi-independent authorities. Consistent with the continental legal tradition, the judiciary could try cases but not interpret the law.

Spanish law also gave Texans two important traditions concerning the disposition of private property: the community property system and the homestead exemption from bankruptcy.

Under Spanish - or Castilian - law, two types of property are identified for married couples: separate property owned solely by one spouse and usually acquired before marriage, and community property owned equally by both spouses and acquired or earned by either or both spouses during the time of they were married. This system worked well for a frontier society like Texas in the nineteenth century. Because of the arduous and dangerous conditions, life was often

precarious and short. Since either spouse could claim possession of all property acquired or earned while married, an untimely death would not destabilize the rest of the family. [3]

The homestead protection against bankruptcy also had the effect of stabilizing frontier families living in precarious conditions. Its specific origins in Texas can be traced to Anglo settlers who fled debt in other states like Tennessee. Stephen F. Austin recommended to the state legislature of Coahuila y Tejas that a moratorium be placed on the collection of the Anglo colonists' debt to foreign creditors (mostly creditors in the United States). The legislature responded with Decree Number 70 in 1829 exempting from creditor claims all lands received from the Spanish sovereign and some movable property. The decree was repealed in 1831, but the principle came back as a statute during the state's independent period in 1839 and later was enshrined in the Texas Constitution of 1845 and all subsequent state constitutions. [4] Though the original decree came in response to the populist, anti-bank appeals of Anglos, the Castilian legal tradition provided a favorable environment for such an appeal.

The Constitution of Coahuila y Tejas also instructed the Legislature to promote education, a specific piece of policy written directly into the fundamental governing document of the state. Though a statewide school system was never established, it would be the subject of intense interest in subsequent constitutional conventions in the Texas, not to mention a recurring problem for several contemporary legislatures.

Though combining important elements of the Spanish and Anglo constitutional traditions, while simultaneously addressing some of the most important needs of the day, the Constitution of 1827 was soon challenged. Wide discontent with misgovernment in Texas and political unrest in Mexico led a new convention in 1833 that drew up a constitution for Texas as a state independent from Coahuila. When Stephen F. Austin delivered this to Mexico City, he was imprisoned - a key milestone in the growing tensions between Texas and the Mexican government. [5]

2.2 The Republic of Texas

The first constitution for Texas as a distinct entity came during the ten-year period when it was the territory formed as the independent Republic of Texas (1836-1845). The delegates to the constitutional convention met for fifteen days beginning on March 1, 1836. This occurred while the two-week battle for the Alamo (which ended on March 6 of that year) was still raging.

Because of the urgency of the times the conventioners adopted whole portions from the U.S. Constitution and the constitutions of several of the existing states. Consequently, the Constitution of the Republic of Texas shared important characteristics with these other documents. It was quite brief, a result in part of the hurried nature of the convention. The conventioners also were likely influenced by the brevity of the U.S. Constitution, with its approximately 4,500 words.

The first Texas constitution had other familiar features, including:

- a brief preamble
- separation of governmental powers into three branches: legislative, executive and judicial
- a bicameral legislature
- *checks and balances* on the powers of each branch
- a bill of rights
- democratic selection of government office holders (restricted to free, non-aboriginal males)

This constitution also included provisions adopted from Spanish and Mexican law, including community property, homestead exemptions and protections, and debtor relief. These last provisions dovetailed with populist (and anti-bank) ideals imported from Tennessee (fourteen of the fifty-nine convention delegates were from that state) and other frontier states.

2.3 The State Constitution of 1845

Texas adopted yet another new constitution when it became the twenty-eighth state to join the Union. The Constitution of 1845, according to *The Handbook of Texas Online*, has been the most respected of Texas's constitutions because of its simplicity and directness. Even Massachusetts Senator Daniel Webster, an opponent of statehood for Texas, commented that this Texas constitution was the best of the state constitutions.

The framers of the 1845 Constitution - which measured approximately twice the length of the Texas Republic's constitution - reportedly drew heavily from the newly adopted Louisiana constitution, as well as from the constitution drawn up by the Texas Constitutional Convention of 1833. Like these, and the Constitution of the Republic of Texas before it, the new Constitution featured *separation of powers* into three branches, a bicameral legislature, a democratic form of government, elected executive and legislative positions, and appointed judicial positions.

This constitution preserved the homestead and community property provisions embodied in the previous constitution. It gained length from the General Provisions article (the longest of the document's articles), most of the thirty-seven of which placed restrictions on legislative powers. Some of these - like forbidding the legislature to authorize individuals to issue bills, checks, promissory notes, or other paper to circulate as money - were changes necessary to join the Union and comply with the U.S. Constitution. Still others seemed to reflect the fabled frontier aversion to activist government and the populist concern for the working man. The total accumulated state debt was limited to \$100,000, except in case of war, insurrection, or invasion. Equal and uniform taxation was required, but income and occupation taxes might be levied. Additionally, each family was allowed an exemption of \$250 on household goods.

The Constitution also granted the Governor appointment powers similar to those exercised by the President on the national level. The Governor could appoint the Attorney General, Secretary of State, and Supreme and District court judges, subject to confirmation by the state Senate. However, the Comptroller of Public Accounts and the Treasurer were elected every two years by a joint session of the Legislature.

2.4 The Confederate Constitution of 1861

The Texas Secession Convention reconvened after voters ratified its proposal for secession from the United States, this time to manage the state's transition from the United States of America to the newly formed Confederate States of America.

This transition required adapting the existing Constitution of 1845 to the new situation. Time limitations as well as the power of example from the existing document, meant that most of the existing text was preserved intact. The Secession Convention mainly replaced references to the United States of America, emphasized the constitutionality of slavery, and asserted states' rights.

This rebel constitution was conservative in the sense that it did not make extensive changes to the existing constitution or body of laws and that it stepped back from a radical slavery agenda. While it eliminated the existing clause providing for the emancipation of slaves, it did not provide for the resumption of the African slave trade. Additionally, it retained all laws passed under the previous constitution that did not directly contradict the limited changes made under the new Confederate constitution.

2.5 The Constitution of 1866

The Constitutional Convention of 1866 was called to make the state's Confederate Constitution conform once again to the Constitution and laws of the United States. Additionally, the convention made substantial - but limited - changes to the institutions of government. The work of the convention amounted to a series of amendments that together with the existing Constitution of 1861 became known as the Constitution of 1866.

Most notably it increased the Governor's term to four years, changed the method of selection of the Comptroller and Treasurer to popular election, and specified in detail the jurisdictions of the various courts in the state.

The beginning of the trend toward constitutional establishment of specific public policies - as opposed to broad descriptions of public authority - can be seen in the work of this Convention. The new Constitution contained "elaborate plans" for a system of public improvements and for a state public education system directed by a superintendent of public instruction.

Like the Convention of 1861, this convention aimed for relatively modest changes to the existing document, which traced its origins to the constitution of 1845. Nevertheless, a significant disagreement unfolded regarding the legitimacy of the laws adopted during the five year period under the Confederate constitution.

On the one hand, Radical Republicans led by Morgan C. Hamilton argued that all laws adopted since secession in 1861 were null and void, because secession was null and void *ab initio* (from the start). This interpretation came to be known as the *ab initio* view.

Moderates led by Andrew J. Hamilton argued that secession was nullified as a result of the war. Adherents to this view preferred the more pragmatic approach of accepting all laws that did not conflict with the laws and the Constitution of the United States. This view is supported by the "basic rule of international law that holds that when sovereignty changes, general law does not change until specifically altered by the new sovereign." [6]

This debate posed very real concerns for economic and political stability, as contracts, agreements, and government policy made over five years would need to be redone. In the end, the *ab initio* view was rejected by the convention, the Republican state committee, and even the occupying military. [7]

2.6 The Radical Republican Constitution of 1869

The Constitutional Convention of 1868-69 was called under pressure from Washington to comply with the Congressional Reconstruction Acts of 1867. Though Republican Party members dominated, they did not present a united front against the former slave-holding interests among the Democratic minority present.

The Republicans were divided into four groups of interests based on geographic region and their degree of support for policies promoting economic development and rights for blacks. The Democrats allied themselves with the four groups of Republicans by turns according to the subject under discussion.

Because of considerable disarray, requiring two sessions that lasted a total of 150 days, the convention failed to produce a complete constitution. Only forty-nine of the ninety delegates signed the long and detailed, yet uncompleted, document. This was published under orders of the military as the Constitution of 1869, and subsequently ratified by popular vote in July of that year. The Constitutional Convention of 1868-69 involved itself in a wide range of policy details, as well as in the usual constitutional concerns related to the organization of government authority. The conventioners tinkered with the terms and method of selection of judicial and executive branch offices, as did constitutional conventions before them.

The Constitution of 1869 included specifications for a broad range of activist public policies. Schools were a high priority. The existing school fund was to be financed by receipts from a new poll tax, plus one-fourth of annual taxes, plus income from lands set aside to support schools. The position of the state superintendent of public instruction was maintained, and school attendance was made compulsory.

The Constitution of 1869 also included policy and administrative provisions that:

- established an immigration bureau
- established no-fee granting of homesteads to settlers
- assigned mineral rights to landowners
- authorized the Legislature to prohibit the sale of liquor near colleges (except in county seats)
- forbade the Legislature to authorize lotteries or grant divorces

The Constitution of 1869 was criticized for the lengthy and incomplete process that produced it, as well as for its considerable detail and general unwieldiness. Perhaps more importantly at the time, it was criticized because it reflected the ideals of the newly dominant Republican Party, which sought to enfranchise blacks both politically and economically, and to invest in the human and physical infrastructure to make the state economically diverse and dynamic.

These are admirable goals, but they were difficult for the economic elite to accept, for several reasons. In particular, many leading citizens were barred from holding public office because of their participation in the Confederacy. Furthermore, the post-war surge in public investment in schools, roads, and bridges was paid for by much higher taxes and large government deficits.

Not surprisingly, there was considerable public opposition in Texas to the Constitution of 1869. It

was created under pressure from Washington and the Radical wing of the Republican party. It centralized political power and strengthened public institutions. And it promoted an activist social agenda supported by higher taxes and public debt.

It was also incomplete - little more than a collection of pieces that had been approved by a bare majority of the convention delegates. Aesthetically and functionally, it was overly long, complex and cumbersome.

As with earlier Texas constitutions, we see again in the Constitution of 1869 the twin tendencies of revision and accumulation. It attempted to address the perceived deficiencies of the 1866 document by changing existing provisions and adding some new ones. The essence of the previous document - itself a "hand-me-down" of sorts - remained: a bicameral legislature, *separation of powers*, a state court system and an executive branch with a mix of appointed and elected positions. New provisions continued to accumulate, while existing provisions remained, though in somewhat altered condition.

Traditional interpretations of *Reconstruction* era have held that inexperienced and often corrupt "carpetbaggers" (northerners who came to the South) and "scalawags" (white southerners who joined or cooperated with southern Reconstruction governments) imposed overly aggressive and disruptive policies on states of the former Confederacy. However, scholarship in the 1960s and 1970s showed that such views were often exaggerated, opening the way to reinterpretation of the Constitution of 1869 and the Reconstruction experience in Texas. [8]

2.7 The Draft Constitution of 1874 and the Convention of 1875

Though historians today have come to view Reconstruction and the Constitution of 1869 less negatively, the political elite who returned to power in Texas as Reconstruction ended did not take a measured approach to recent experiences. Hostility toward the Constitution of 1869 and the activist administration of Radical Republican Governor Edmund J. Davis (1869-1873) spurred opponents to write a new constitution within only six years.

When the Democratic Party regained control of Texas government in 1873, Democratic leaders sought to replace the constitution. However, they disagreed on exactly how this should be done. Some elected officials (particularly Democratic Governor Richard Coke and the state Senate) wanted the drafting work to be done through special committees in the legislature. Others, mainly in the state House of Representatives, felt that voters should have a more direct role in determining the fundamental law of the state.

The Governor and the majority in the Senate won this battle. A legislative committee redrafted the Constitution. But they lost the next battle when a majority in the House defeated the final bill.

Ultimately, both sides got what they wanted. The public, dismayed by the defeat of the draft constitution, clamored for a convention. Governor Coke convened a special session of the Legislature in the summer of 1875 to consider calling yet another constitutional convention for Texas. The Legislature did exactly that, calling an election to allow voters to approve the convention and select three delegates from each of the state's thirty senatorial districts.

The new Constitutional Convention met in Austin from September 6 to November 24, 1875. The vast majority of the conventioners were Democrats. Although a fair number had participated in previous conventions, not one had participated in the 1868-1869 Convention.

Traditional agricultural interests dominated the 1875 Convention, unlike the more business and development oriented interests that dominated the 1868-1869 convention. Unsurprisingly, the 1875 Convention sought to undo much of the work of its predecessor, rolling back ambitious state programs, decentralizing government, reducing taxes, reducing state government salaries, placing restrictions on expenditures, taxes, and the state debt, and limiting the terms of many public offices.

The Democrats also took aim at signature Republican provisions like the state education system, which they weakened considerably under the new Constitution. And in classic *Jacksonian* fashion - many of U.S. President Andrew Jackson's fellow Tennesseans had come to Texas in the middle of the century - they abolished state banks and limited the activities of corporations and railroads.

Once the Convention finished its work, the new Constitution was submitted to the public for ratification. It was adopted on February 15, 1876 by a large popular majority.

3. The Texas Constitution Today

The Texas Constitution of 1876 remains the foundation of state government. This constitution has enjoyed remarkable staying power, despite having been written as an extreme reaction to the deficiencies of the Constitution of 1869 and to the real and perceived abuses of brief but deeply despised Radical Republican rule. It has also endured despite subsequent strong and widespread dissatisfaction with the document, as the several attempts to rewrite it testify.

In their strong rejection of the Radical Republicans, the delegates to the Convention of 1875 produced a plan of government that created a weak, decentralized, uncoordinated, and under-funded set of public institutions. As the state has grown in population and economic power, the limitations and inadequacies of these state institutions in carrying out the tasks of governing have become more apparent. As the following section illustrates, Texas is not alone in confronting a seemingly perpetual need to modify its constitution.

3.1 State Constitutions

State constitutions tend to change more often than the U.S. Constitution. The numerous constitutions adopted by Texas and other states over the past two centuries demonstrate the point.

Today only six states operate under Constitutions drafted before 1850. One fourth of today's state constitutions were adopted after World War II. Each of the fifty states has averaged three constitutions. Though some have had as few as one or two constitutions for their entire existence, many have had four or more. Louisiana with eleven constitutions, and Georgia with ten top the list.

In contrast to the U.S. Constitution, state constitutions tend to be long and very detailed, with numerous amendments. Alabama's is the longest state constitution by far. Today it includes more than 766 amendments, some 70 percent of which are so-called local amendments (applicable only to the localities that ratified them in popular elections). The Texas Constitution has the fourth highest number of amendments behind Alabama, California, and South Carolina.

State constitutions average about 36,000 words in length, which is approximately four times the length of the Constitution of the United States, whose total length counting amendments is about 7,400 words.

The relative impermanence of state constitutions is also evident in their frequent amendment. The average state constitution has been amended approximately 100 times. Only six of fifty state constitutions have been amended fewer than twenty-seven times - the number of amendments to the U.S. Constitution.

Length and number of amendments seem to be related, because great length usually means greater specificity of detail, which in turn reduces flexibility. When the foundational document upon which government is based contains a lot of policy details, it takes nothing short of a constitutional amendment to change those details.

Amendments also beget still more amendments. Every time an amendment is added, more details are added to the basic plan of governance. When the need is felt to change these new details, newer amendments often need to be proposed.

You might think that constitutional amendments are proposed only for matters of great policy or institutional importance. Not necessarily. The Voting, Campaigns and Elections chapter mentions several typical Texas examples. In the 2003 special election, voters were asked about donating surplus fire equipment, in particular whether a constitutional amendment should be adopted to authorize municipalities to donate surplus fire-fighting equipment or supplies for the benefit of rural volunteer fire departments. Earlier amendments dealing with the subject apparently did not cover all instances of donating surplus fire equipment. In the 2007 election voters were asked about abolishing the office of inspector of hides and animals and exemption of judges from the mandatory state retirement age if they are already serving on the bench. Matters such as these

might more easily and effectively be dealt with through legislative, executive, or even local administrative authority. But because the Texas Constitution addresses such policy details, only the voters through a special statewide election can make needed changes.

Of course, some amendments deal with important issues and fundamental principles. It is generally easier to propose and ratify these more substantial and potentially controversial amendments on the state level than on the federal level. Policy advocates of all stripes often seek to shape national policy by first working to shape state constitutions.

Beyond these structural characteristics (length, detail, and number of amendments), state constitutions tend to have a philosophical approach to the democratic process that differs significantly from the U.S. Constitution. While the national constitution certainly expresses a concern to divide and check governmental powers, the states as a group tend to carry this concern a step further by decentralizing their executive branches and exposing their state judiciaries to popular election.

Consistent with this philosophical view of government is a greater emphasis among state constitutions on processes of *direct democracy* as opposed to the emphasis in the U.S. Constitution on *representative democracy*.

Generally, the framers of the U.S. Constitution believed that the relationship between citizens and their government should be mediated by representatives. These elected or appointed officials would promote the public interest, but one step removed from the passions of direct self-interest or the public mood of the moment. Many of the framers were concerned to blunt or deflect the sharpest edges of temperamental and sometimes transitory majorities. For instance, as originally required by the U.S. Constitution, each state's members in the U.S. Senate were elected by that state's legislature. The 17th Amendment, which specified direct popular election of the U.S. Senate, reduced this double-layered system of representation to a single layer. The U.S. Constitution also created a relatively unified executive branch under the direct control of the President, the representative of all citizens of the United States.

Many state constitutions provide mechanisms for much more direct representation in government. In many states, multiple offices within the executive branch are elected directly. In all but eleven states, members of the judiciary are subject to election at some point in their tenure (see the section on judicial selection in the chapter on the Justice System). [9]

Twenty-seven states have initiative and/or referendum provisions that allow voters and interest groups to put policy proposals on the ballot or to vote on legislation proposed by their state legislatures. Eighteen states have recall provisions that allow voters to remove an elected official from office.

These provisions give voters more opportunities to vote for a broad range of offices, go around their elected representatives, and even threaten to remove them. But busy election calendars, long ballots with lots of elected offices, and direct democracy provisions also reduce the ability of the government and elected representatives in government to make and implement public policy. Popular influence thus comes at the expense of government efficiency and clear accountability.

Texas is not alone in its periodic attempts to amend, revise, or even overhaul its Constitution. As the *Thinking Comparatively* chart *Living Documents: Trends in Constitutional Change by Decade* shows, states have used a variety of means in recent decades to attempt to modernize or otherwise alter their constitutions. The National Municipal League also provides a model state constitution for states that might be looking to start over.

3.2 General Characteristics of the Texas Constitution

The Texas Constitution is like other state constitutions in key respects, only bigger, you might say. These characteristics of the Texas Constitution can be outlined with a few brief terms:

- overly long
- extremely detailed
- confusing in organization
- poorly written

The Texas Constitution had approximately 23,500 words in 1876 before any amendments. With amendments, it is today the second longest of the fifty state constitutions, as the chart *Size Matters* illustrates.

The level of detail can be excruciating. For example, coverage of *ad valorem* taxes in the original constitution and its numerous amendments span fourteen subsections and several pages of text. Other details cover administration of water boards, water bond sales, parks administration, municipal retirement systems, road construction, interest rates on bonds, elections for sheriff, the sale of school lands, creation of hospital districts, operation of railroads, seawalls, and dueling.

The high level of detail is accompanied by confusing organization. Coverage of individual subject areas, like local government, is found in several different parts of the Constitution. Also, in its current form the Constitution contains gaps where whole sections have been repealed. Indeed, an entire article (Article XIII - Spanish and Mexican Land Titles) was repealed in 1969, leaving only the title but no text. Five of the seven original sections in Article XII covering "Private Corporations" have been repealed, as have seven of the eight sections in Article XIV on "Public Lands and the General Land Office."

The large number of amendments has made it more practical to add to or delete from the relevant article or section, rather than simply accumulating all the amendments at the end, as with the U.S. Constitution. Amendments aimed at undoing a provision of the Texas Constitution simply specify that section's removal. The result looks like a patchwork of original provisions, combined with later additions and deletions. Contributing to the confusion, there are several pairs of subsections with the same number, like the two subsections in Article VIII labeled "1-n."

The confusing organization in turn is compounded by prose that is difficult to understand. The original framers worked very quickly and refused to hire a stenographer, reportedly because of their unwillingness to spend public money. No doubt the document could have used some professional editing and transcription.

From a contemporary vantage, the language used in the 1870s can seem arcane and unclear. This problem is compounded in the U.S. Constitution, written as it was some ninety years earlier. But perhaps the dated locutions of Texas conventioners come through more forcefully because of the sheer volume of text they produced, a direct result of the greater detail with which they grappled. When writing new amendments, legislators find that the existing level of detail and disorganization makes it more difficult for modern writers to produce straight-forward prose.

4. Articles of the Texas Constitution

Much can be understood about a constitution by its organization and coverage, specifically the order and placement of articles and sections, and the space devoted to specific areas and provisions.

As one might expect, the framers of the Texas Constitution were focused on the task of outlining the powers and organization of the government. They were also concerned to emphasize the popular roots of governmental authority by devoting the very first article to the Bill of Rights.

However, the framers also devoted considerable time and space to the minute specification of numerous policy areas, including extensive areas of public policy normally under local jurisdiction. This reflects the frontier populist orientation of the conventioners, who supported regulation of economic and social relationships, but deeply feared potential abuse of authority by holders of public office. As a result of these tendencies, the Texas Constitution grants extensive powers to government, but these powers are carefully and restrictively specified.

The Texas Constitution begins with a preamble, followed by seventeen articles running from the Bill of Rights (Article I) to the mode of amendment (Article XVII). The articles in between cover both the essential features of government and governing - powers and institutions of government - as well as what might be regarded as inessential features, including railroads (Article X) and private corporations (Article XII).

4.1 The Preamble

In the preamble to the Texas Constitution the framers used just twenty words to introduce the

approximately 23,500 remaining words (today with amendments more than 85,000 words). Compare that to the fifty-two words that the framers of the U.S. Constitution expended in their preamble.

4.2 Bill of Rights (Article I)

In contrast to the U.S. Constitution which included its *Bill of Rights* only as an addendum in the first ten amendments, the Texas Constitution puts the Bill of Rights at the beginning in Article I.

Originally spanning 29 sections, the Texas Bill of Rights would at first glance seem to be much more extensive than its counterpart on the national level. But, closer examination reveals considerable overlap of coverage, only reordered. Freedom of religion is enshrined in specific ways in several early sections (4 through 7).

Freedom of speech and the press is protected in section 8. Peaceful public assembly, the last of the U.S. 1st Amendment rights, appears in section 27. Protection against unwarranted searches and seizures is assured in section 9.

The rights of the accused in criminal prosecutions are specified in sections 10 through 21, including:

- a right to a speedy trial
- not having to provide evidence against oneself
- a right to bail
- the obligation of the state to provide its own evidence to support charges
- protection against double jeopardy (being tried a second time for an offense for which one has been acquitted)
- a right to a trial by jury
- no *ex post facto* laws
- no imprisonment for debts
- requirement of due process of law

There are some notable differences between the two bills of rights, beyond the order of appearance of familiar civil liberties and protections. Notably, the Texas Bill of Rights has a declaratory tone, justifying the specific protections set forth with a number of sweeping generalizations aimed at the perceived political dangers of the time. These dangers included:

- the threat of national government - "the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired to all the States." [Article I, Section 1]
- the threat of state government - "[the people of Texas] have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient" [Article I, Section 2]
- the threat of government favoritism - "All free men, when they form a social compact, have equal rights and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." [Article I, Section 3]

The conventioners were expressing a reaction to the perceived abuses of both the national government and the state government under the Radical Republicans. Section 1 intimates a threat of secession, while Section 2 reads like a justification of the conventioners' actions in drafting the new constitution. Section 3 seems like an explicit criticism of the perceived corruption of the administration of Governor E. J. Davis.

Other rights, specifically the basic right to vote and qualifications for voting, critical to a functioning democracy, are specified separately in Article VI on suffrage.

4.3 Powers and Organization of Government (Articles II - V)

The members of the 1875 convention placed the powers and organization of government next in the Constitution, providing first a general overview of the division of governmental authority into three branches (Article II), followed by three articles each dedicated to one of the three branches (Articles III - V).

The framers dedicated an entire article to the concept of *separation of powers* among three

branches of government. Article II succinctly establishes legislative, executive, and judicial branches, and then explicitly prohibits the exercise of powers of more than one branch by a single individual:

The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy; to wit: Those which are legislative to one, those which are executive to another, and those which are judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

In this way, the Texas framers established more explicitly than the framers of the U.S. Constitution the separation of powers. They were no doubt aided by almost ninety years of experience with the national plan of government, the particular genius of which was not fully and immediately evident at the time of its writing.

The first and longest of the three articles dealing with the branches of government focuses on the legislative branch, reflecting the primacy given that branch in the U.S. Constitution. This article originally spanned fifty-eight sections. It now has sixty-five sections, with numerous added subsections, but with a number of original sections that have been repealed.

Like the U.S. and other states' constitutions, the legislative article is composed of three main areas of coverage:

1. organization, apportionment of seats and qualifications for office (Sections 1 - 28)
2. proceedings (Sections 29 - 41)
3. powers, requirements, and restrictions on powers (Sections 42 - 58)

The sections on the organization, apportionment and qualifications are largely unremarkable. They include such reasonable and expected provisions as the specification of a bicameral legislature, the number of seats in each chamber, terms of office, duration and frequency of the legislative session, and more.

The same holds true for the sections on proceedings. These require that no law can be passed which is not first a formal bill that goes through the processes for proposal, deliberation and approval specified by the Constitution.

Section 37 explicitly requires that proposed bills be referred to a committee and reported on by that committee before being considered by the general membership. While the Texas Constitution does not specify how committees should be structured, it is still notable that it requires such internal legislative structures at all.

Other noteworthy sections of Article II are related to powers, requirements, and restrictions on legislative powers. Here we see the framers penchant for dwelling on details. For instance, Section 46 states: "The Legislature shall, at its first session after the adoption of this Constitution, enact effective vagrant laws."

Perhaps more important to governance, Article 48 specified a list of items for which the Legislature may raise money through taxation. Repealed in 1969, this section listed permissible spending items like erection of public buildings and protection of the frontier. Also related to fiscal policy is the limitation on total public debt, originally capped at only \$200,000, in Section 49. This section has needed to be amended twenty-one times since.

On matters concerning local authority in counties and municipalities, the conventioners provided a considerable list of areas in which the Legislature was prohibited from passing laws. These included regulating the affairs of local government, locating or changing county seats, and specifying the location of elections. These restrictions may seem at odds with the Constitution's extensive regulation of counties and municipalities. However, they are consistent with a broader distrust of elected representatives at all levels.

Article IV on the Executive Department is notable for its careful outlining of seven executive offices, all but one of which were to be filled through popular election. The very first section (Section 1) reads:

The executive department of the State shall consist of a governor, who shall be the chief executive officer of the State, a lieutenant-governor, secretary of State, comptroller of public accounts, treasurer, commissioner of the general land office and attorney general.

Most of Article IV (Sections 4-16) is devoted to the powers and duties of the governor. Many of the remaining sections briefly cover the other six executive offices. By making six of these senior executive authorities separately elected (the Secretary of State is appointed by the Governor), the framers consciously divided and dispersed this branch's authority - and, hence, its ability to govern actively. In essence, it created six points of possible obstruction and checks to the activities, programs, or plans of each of the executive department officials. (The office of Treasurer was abolished in 1996, reducing to five the number of elected executive offices.)

The article on the Judicial Department (Article V) also created a more extensive structure than just the highest state court. It created six levels or types of courts:

The judicial power of this State shall be vested in one Supreme Court, in a Court of Appeals, in District Courts, in County Courts, in Commissioners' Courts, in Courts of Justices of the Peace, and in such other courts as may be established by law [Section 1].

The courts listed in Section 1 are referred to as constitutional courts because of the source of their authority. Other courts not listed here (see the chapter on the Justice System) are sometimes referred to as statutory courts because they were created by legislative statutes.

The twenty-seven sections that follow specify the mode of selection (popular election for all courts), the terms of office, and jurisdictions of each of the courts. These sections include detailed specification of three types of local courts: County Courts, Commissioners' Courts, and Courts of Justice of the Peace. Because of sparse settlement in much of the state at the time, these courts effectively constituted the local government for many counties and localities.

4.4 Education, Taxation, and Revenue (Articles VII and VIII)

Education and fiscal policy had been contentious issues since the end of the Civil War in 1865. The tradition of including public education in the state Constitution was established in 1827, when Texas was part of the Mexican state of Coahuila y Tejas. The mandate to create a state system of public education under that first constitution was never fulfilled, and was eventually removed.

Later Texas constitutions reintroduced the mandate. Statewide public education received extra attention in the Constitution of 1866, immediately following the Civil War. This Constitution outlined new initiatives for public schools, including the creation of the office of the state superintendent for public instruction, an office that was maintained in the Constitution of 1869.

The Constitution of 1876 reaffirmed some of the education funding provisions inherited from previous constitutions. Article VII, for example, specified that all lands and the proceeds from those lands that had been previously reserved for the state system of public education would be reserved under the new Constitution. This occurred despite conflict in the decade before the 1875 Convention over spending on public schools - conflict that was shot through with concerns about taxation and the accumulating state public debt.

Some important changes weakened statewide public education. The single office of the state superintendent for public instruction was replaced in the Constitution of 1876 by a State Board of Education composed of the Governor, Comptroller and Secretary of State charged with managing public funds and overseeing state schools (Section 8). The conventioners also abolished compulsory school attendance and sought to limit spending on public education.

The main innovation in Article VII was the restriction that no more than one-fourth of the state's general revenue could be spent on public schools. The framers also were careful to protect existing funding sources for public education by prohibiting their use for any purpose other than education. This practice of dedicating funds - whether for schools, roads, or other purposes - is a prominent feature of Texas governance today.

The Constitution also formally established the University of Texas (although its location was left to the Legislature), and it created "permanent" funds for both this new university and for previously established asylums for "the lunatic, blind, deaf and dumb, and orphaned." Like the two preceding constitutions, it provided for separate schools for African Americans.

In its provisions for fiscal authority generally, the Constitution sets limits on taxation and spending like those imposed on the state's public schools. On the one hand, Article VIII (Taxation and Revenue) begins by providing broad grants of authority to the Legislature to impose taxes on property and incomes, as well as on voting (established in previous constitutions to support schools). The main general restriction which is provided in the article's short first sentence apparently limits the Legislature's ability to classify objects for purposes of taxation: "Taxation shall be equal and uniform."

Altogether, the numerous sections of Article VIII constitute a list of specifications that resemble a detailed and restrictive tax code that reaches down to the county and municipal levels. Other important restrictions on fiscal authority appear elsewhere in the Constitution, notably the prohibition in Article III, section 49 of debt financing of state government. This list in Article VIII includes:

- exemptions
- tax rates
- restrictions on appropriation of funds
- procedural requirements

Section 1, for example, provides the following constitutional exemptions:

- "persons engaged in mechanical or agricultural pursuits shall never be required to pay an occupation tax"
- "two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State, shall be exempt from taxation"

Section 2 prohibits taxation of public property used for public purposes, as well as religious places of worship, non-profit burial places, schools, and institutions of public charity.

Finally, Article VIII specifies procedural and institutional requirements related to property assessment and tax collection. Property is assessed and taxes collected in each county where the property is located or, in the case of "unorganized" counties, in the county to which that county is attached for judicial purposes.

4.5 Mode of Amendment (Article XVII)

To be adopted, constitutional amendments generally must clear a higher hurdle of support than ordinary statutory laws. Article XVII of the Texas Constitution requires a two-step process:

1. Proposal - to be proposed, an amendment must receive the support of two-thirds of all members elected to each chamber of the Legislature
2. Ratification - to be ratified, a proposed amendment must receive the support of a simple majority of citizens voting in a popular election, the date of which is specified by the Legislature.

Although the standard for support of constitutional amendments is much higher than that required for ordinary legislation (which requires approval by simple majorities of both houses of the Legislature and approval of the Governor), hundreds of amendments have been both proposed and ratified.

Some 632 amendments to the Texas Constitution had been proposed by 2007, only 131 years after that document was adopted. Of these, 456 had been ratified by popular vote. That averages to more than 9 amendments proposed and 6 amendments ratified for each two-year legislative session since 1876. This chapter's feature *Patching the Ship of State* provides a graphic view of when and how many amendments have been adopted.

Piling all these amendments on top of an already overly long core document leads to what might be referred to as "amendment chaining," or the need to pass still more amendments in response to earlier amendments. This is the same notion embodied in the now common observation that "amendments beget amendments."

But sometimes amendments fail to be begotten. There are missed opportunities to enact important public policy because of the additional burden and delay in seeking a constitutional

amendment. The need for amendments to enable relatively simple public policies can immobilize elected officials in the face of complex problems.

The requirement that voters sort through and decide upon numerous proposed amendments during each biennial special constitutional election also causes a fair degree of public confusion, uncertainty, and even cynicism. The numerous amendments on the ballot require considerable education on the issues, which, in modern media-centered political campaigning, opens the door for powerful interests to wield considerable influence in shaping public opinion. Voters can feel simultaneously overwhelmed and uninformed. The result is chronically low voter turnout, as this chapter's feature *Turn-Off?* illustrates.

4.6 Remaining Articles

The other articles of the Constitution of 1876 cover a range of items many of which would seem more appropriately covered in legislative statutes than in the organic legal document of the state's democratic government.

These articles can be grouped into three categories:

- Essential features of any constitution - disposition of property under previous legal systems (Spanish and Mexican Land Titles) and impeachment of public officers
- Detailed organizational and policy specifications - articles on Education, Taxation and Revenue, Counties, Municipal Corporations, Railroads, Private Corporations, and Public Lands and Land Office
- General provisions - a laundry list of items all contained in Article XVI (General Provisions) dealing with the Legislature, personal debts, fences, competitive bidding on state contracts, and more.

The articles detailing organizational and policy specifications, to be sure, include some important provisions. However, they also include minutiae like permitting the legislature to aid Gulf Coast counties in the construction of sea walls! The many "General Provisions" listed in Article XVI (spanning fifty-seven subsections, many of which have been repealed) almost seem like afterthoughts that should have been included in the other articles of the Constitution.

Even here though, the framers did in fact include some historically important provisions, like the protection against homestead foreclosure (Sections 49-51) and provision for community property between married couples (Section 52).

Homestead and community property provisions may properly be placed in an article containing residual provisions not easily categorized. But the General Provisions article also contains important provisions that really should have been included elsewhere.

Section 44, amazingly, requires the Legislature to define the duties and provide for the election of a County Treasurer and County Surveyor for all counties in the state. This seems an odd placement, given the existence of a whole article on counties, and a separate provision for county tax assessors and tax collectors in the article on Taxation and Revenue.

5. The Constitution and Local Government

In addition to various pieces in the Constitution that touch on local government, there are two articles exclusively dedicated to the subject.

One of these, Article IX, is dedicated to the creation of new counties and the minimal specifications of existing counties. The other, Article XI, though ostensibly dedicated to "municipal corporations," addresses a number of issues related to taxation in both municipal and county government.

The following subsections discuss the creation of new counties and the relationship between county and municipal authorities. For a more detailed account of the roles assigned counties in the Texas Constitution, see this chapter's feature *Focus on Counties*.

5.1 Existing and New Counties

Article IX is quite narrowly focused on the formation of counties, an important matter for a

frontier state like Texas in the nineteenth century. After granting the Legislature the power to create counties "for the convenience of the people," this article lists a series of restrictions. New counties created outside the counties that already existed had to be no smaller than 900 square miles and "shaped in a square form." The framers understood that this may not be possible in border areas, and allowed that, in such cases, the area could be less.

The framers also recognized that geographically large counties may seek to split into smaller counties. New counties created from existing counties could be no smaller than 700 square miles. However, they also must not be "nearer than twelve miles of the county seat" of any county from which the new county's territory is taken.

This article provides additional details on the location and removal of county seats - the main concern being that the county seat should be roughly in the geographic center of the county (within five miles of it).

5.2 County and Municipal Government

Curiously, Article XI is titled "Municipal Corporations," yet a good number of its provisions deal with county government. Indeed, it begins by recognizing the counties as "legal subdivisions of the State."

After describing the types of legislative actions required for incorporating cities and towns, this article devotes considerable ink to the issues of taxation and public debts. Cities and towns are authorized to lay and collect annual taxes according to the following schedule:

- 10,000 residents or fewer - no more than one-quarter of 1 percent
- more than 10,000 residents - no more than 2 per cent

This article continues by authorizing counties, cities, and towns to lay and collect taxes to pay for outstanding debts (presumably left over from the Radical era). Counties on the Gulf coast are authorized to use public revenues to build sea walls and breakwaters, with the state Legislature authorized to provide financial and other assistance.

Article XI exempts county, city, and town property from forced sale for non-payment of debts. It also authorizes the state Legislature to create independent school districts in cities and towns. Cities and towns, in turn, are authorized to collect taxes in support of those independent school districts, provided that two-thirds of citizens vote in support of those taxes.

The overall treatment of county and municipal government in the Constitution is quite uneven. Specifications for the organization of local government, including for county and local judges, tax assessor, tax collector, treasurer, and surveyor, are scattered throughout the various articles. The two articles primarily dedicated to counties and municipalities are focused on the geographic size and shape of counties and on issues of taxation and spending.

The seeming slapdash treatment of local government results, no doubt, from several dynamics in the 1875 Constitutional Convention. First, the Convention sought to accomplish its work in only a short time. Second, the framers were insistent in restricting the taxation and spending authority of government at all levels, including the local level. Finally, it seems evident that the framers frequently could not resist the impulse to detail even minute aspects of governance and policy.

6. Modern Attempts at Constitutional Revisio

The Constitution of 1876 was the last in the series of new, updated and revised constitutions in Texas, but it was not the last attempt to rewrite the organic law of Texas.

Several attempts were made since the current Texas Constitution was adopted, but the closest anyone came was the multi-year effort about a century later, in the 1970s. Another attempt was made in the late 1980s, but this one did not progress nearly as far.

6.1 Constitutional Revision, 1971-1975

Pressure to update and streamline the Texas Constitution began to build in the late 1960s. In 1969, fifty-six outdated and obsolete provisions were repealed, including one entire article (Article XIII on Spanish and Mexican Land Titles).

Nevertheless, pressure for a more fundamental overhaul and restructuring of the Constitution persisted. A protracted and circuitous process of constitutional revision began in earnest in 1971, only to end in total defeat in the special elections of November 1975.

In 1971, the 62nd Texas Legislature passed a resolution calling for the establishment of a Constitutional Revision Commission, and for convening the members of the next Legislature (the 63rd) as a constitutional convention in January 1974 (the year after the Legislature's regular biennial session). The resolution was put on the ballot as proposed amendment Number 4 in the special election in November 1972. It was approved by more than 63 percent of the voters and became Section 2 of Article XVII of the constitution.

The Commission was intended to investigate the need for constitutional revision and make recommendations to the Legislature by November 1, 1973. Its members were appointed by a committee of the chief officials of the executive, legislative and judicial branches, including: Governor Dolph Briscoe, Lieutenant Governor Bill Hobby, Attorney General John Hill, Speaker of the House Price Daniel, Chief Justice of the Supreme Court Joe Greenhill, and Presiding Justice of the Court of Criminal Appeals John Onion.

The Commission counted among its thirty-seven members numerous respected former public officials and private citizens from across the state. Beginning in March 1973, the Commission held nineteen public meetings across the state before presenting its recommendations to the Legislature on November 1.

Despite its independence, the sterling reputations of its members, its commitment to a streamlined and efficient constitution, and a relatively open process, the Commission was still the target of a number of special interests seeking special treatment in the Commission's recommendations.

Some areas under discussion provoked considerable contention which resulted in compromise. The effect of these compromises, even the ones that were more philosophically based, was to limit the extent to which the Commission's recommendations actually streamlined the Constitution and strengthened government institutions.

Attempts by some members of the Commission to allow urban areas to cut through their multiple, conflicting political jurisdictions by increasing the authority of city governments were blunted by conservatives seeking to preserve county government in the state's largest metropolitan areas. [10] Advocates sought to allow urban areas to consolidate overlapping city and county jurisdictions into a single "Metroplan" type of government. But opponents worried about giving too much power to a single, metro-wide government. Though county government in urban areas was preserved in the Commission's recommendations, considerable progress had been made in at least bringing together the myriad constitutional provisions for local government in a single article in the proposed new constitution.

The Commission's recommendations were taken up on January 8, 1974, when both houses of the 63rd Legislature met as a single body.

Early warning that the convention would involve a protracted struggle among special interests came when the legislators voted to extend the ninety day convention by sixty days, from May 31, 1974 to July 30. Issues like so-called "right-to-work" provisions that banned "union shops" at private companies were quite contentious. Other distractions, like the May 1974 state primary elections, also slowed the convention's progress. By the time it closed on July 30, the convention had failed by only three votes to support submitting a document to voters for ratification.

The 64th Legislature, meeting in 1975, did approve submitting eight amendments, which together constituted a new constitution, to voters. In the special election in November 1975 - almost exactly 100 years after the ratification of the current Texas Constitution - all eight amendments were overwhelmingly defeated. In 250 of Texas's 254 counties, not a single proposition passed. All eight amendments were passed in two of the remaining four counties - Duval and Webb - both in south Texas.

With only 23 percent of the 5.9 million registered voters casting ballots, many citizens confessed ignorance of the issues at stake. The revision effort also was not helped by Governor Briscoe's warning that adoption would result in passage of a state income tax, increased cost of state

government, an overly powerful Legislature, and adoption of a Missouri Plan form of judicial selection (see chapter on Justice System). After the defeat in the November 1975 special election, Lieutenant Governor Bill Hobby declared that constitutional revision in Texas was "dead for the foreseeable future."

6.2 Recent Attempts at Constitutional Revision

Despite Lieutenant Governor Hobby's prediction, the collapse of the 1975 constitutional revision effort did not end attempts to modify or more fundamentally change the Constitution.

Just four years later, in 1979, the 66th Legislature submitted to voters six amendments that would implement some of the provisions from the 1974 convention. Voters ratified three of them, including:

- creating in each county a single property tax appraisal district
- giving criminal appellate jurisdiction to the state's fourteen courts of appeals, which until then exercised only civil jurisdiction
- granting the Governor limited authority to remove appointed statewide officials

Of course this new degree of empowerment of state and local government did little to streamline the Constitution. Continuing dissatisfaction led to two other major attempts at fundamental revision, both in the 1990s.

In 1995 Senator John Montford (D-Lubbock) drew up a streamlined constitution similar to the one produced in the revision effort of the early 1970s. However, Montford resigned his position in the state Senate in 1996 to become chancellor of the Texas Tech University System and his initiative to revise the Constitution died.

Shortly thereafter, in 1998, Senator Bill Ratliff (R-Mt. Pleasant) and Representative Rob Junell (D-San Angelo) produced a completely rewritten version of the 1876 Constitution, with the help of Angelo State University students. In the 76th Legislature, the two legislators introduced for consideration a second draft of their streamlined constitution. The proposed legislation did not receive enough support in committee, and consequently was never considered on the floor by the full membership of either chamber. Meanwhile, the parade of constitutional amendments, both technical and far reaching, continued over the years. For the text of the Junell constitution and discussion of some of the proposed amendments that have followed its failure to pass the legislature, see this chapter's feature *A Constitution for the New Millennium?*

7. Conclusion

Constitutions must perform multiple functions in democratic political systems, and their adequacy to these tasks can be evaluated accordingly.

First and foremost, they are expressions of popular sovereignty, compacts between government and the governed. They specify the powers and limits to power of the government, as well as the rights, privileges and immunities of the citizens that cannot be taken away by the government. Additionally, they specify how citizens may participate in democratic decision making processes that determine public policy.

Constitutions also outline a plan of government, the structure and functioning of the institutions of government. Finally, they serve as a kind of repository of accumulated cultural traditions. Sometimes constitutions involve the settlement of specific public policy issues.

In some ways, the Texas Constitution performs these functions well. It provides the general structure of our democratic government. By separating powers into three branches and creating a system of *checks and balances* between the branches, it continues a long tradition in American democracy. Also, through a process of accumulation, it has become a repository of important constitutional protections and legal traditions, like the Bill of Rights, homestead protection, and community property.

Unfortunately, the Texas Constitution falls short of the flexibility, empowerment of government institutions, and overall coherence needed for a large, modern, diverse state such as Texas in the 21st century. More unfortunate still is that the prospects for fundamental change seem as remote today as at any time in the state's history.

The Texas population and economy will continue to grow at a fast rate and become even more diverse. Will we reach a point where constitutional revision again seems a dire necessity? If so, will entrenched interests impede any attempt to fundamentally alter the institutions through which they have built their power and wealth? Will the citizens of Texas be able overcome the inertia and information costs necessary to carry forward such an enterprise?

Future efforts to overhaul the Constitution are not out of the question. Many states have revised their constitutions. But change will require extraordinary circumstances, such as one of the crises or watershed events that precipitated each of the previous constitutions in Texas. In the interim, we can expect the same unwieldy accumulation of incremental change.

[Texas Politics](#): 19 Jan 2013

© 2009, [Liberal Arts Instructional Technology Services](#)

[University of Texas at Austin](#)

3rd Edition - Revision 18

[◀ go back](#)



SEARCH:

- 1 [Introduction](#)
 1. [Looking Ahead](#)
 - 2 [Constitutions in Texas History](#)
 1. [Coahuila y Tejas](#)
 2. [Republic of Texas](#)
 3. [Constitution of 1845](#)
 4. [Confederate Constitution](#)
 5. [Constitution of 1866](#)
 6. [Constitution of 1869](#)
 7. [Convention of 1875](#)
 - 3 [The Texas Constitution Today](#)
 1. [State Constitutions](#)
 2. [General Characteristics](#)
 - 4 [Articles of the Constitution](#)
 1. [The Preamble](#)
 2. [Bill of Rights](#)
 3. [Powers and Organization](#)
 4. [Education, Taxation, Revenue](#)
 5. [Amendment](#)
 6. [Other Articles](#)
 - 5 [Constitution and Local Govt.](#)
 1. [Existing and New Counties](#)
 2. [Local Government](#)
 - 6 [Attempts at Revision](#)
 1. [Attempts at Revision](#)
 2. [Recent Attempts](#)
 - 7 [Conclusion](#)
- Appendices**
1. [Print-friendly format](#)
 2. [Key words and phrases](#)
 3. [Multimedia resources](#)

Key Words and Phrases

Bill of Rights

A list of limits on the powers of government respecting its treatment of citizens. The U.S. Bill of Rights comprises the first ten amendments to the U.S. Constitution. It includes guarantees such as freedom of speech, a free press, and free practice of religious beliefs as well as rights for those accused of crimes such as a right to counsel, a right to a jury trial, and a right to reasonable bail and punishment. The bill of rights in the Texas constitution covers much the same ground as the U.S. Bill of Rights but constitutes article one of the state's constitution.

checks and balances

Given a division of government offices and personnel--that is, a system of separation of powers--a system of checks and balances gives each branch of government some degree of oversight and control over the actions of other branches.

direct democracy

A system of democratic governance in which the citizens of a political jurisdiction discuss policy questions and then by majority rule or a similar method of collective choice themselves decide on a policy or course of action.

federalism

A system of government in which political authorities at different geographic levels of government separately derive their authority from the people within that geographic area. In the U.S. system of federalism, Texas is a sovereign state within the sovereign United States. Texas government is accountable to Texas citizens. U.S. government is accountable to U.S. citizens. Neither government may dissolve the other as a government though the operations of both overlap.

homestead exemption

A homestead is the primary residence owned and lived in by a person or a family. A homestead exemption protects at least part of the value of the homestead from creditors. In Texas, the full value of a homestead is protected. No creditors except a mortgage holder, a taxing authority, or the holder of a note for a home improvement loan may force the sale of a family home to satisfy nonpayment of debt.

Jacksonian Democrats

The Democratic Party behind General Andrew Jackson ascended to national dominance beginning in 1828 marking the start of America's Second Party System. Competitive two-party politics dates from this period as well as development of the apparatus of modern mass-based political parties.

Reconstruction

The Civil War was followed by a decade-long period attempting to reverse its physical and political ravages. Between 1865 and 1877 the nation ratified the 13th, 14th, and 15th amendments ending slavery and extended citizenship and voting rights to former slaves. Former Confederate states, occupied by Union troops, rewrote their constitutions and were re-admitted to the Union. By 1876, the fever of Reconstruction had run its course and, in settlement of the disputed presidential election of that year, remaining occupying troops were withdrawn, southern politics was given over to southerners (and Democrats) once again, and the regional and racial divisions of war were institutionalized politically for a century.

representative democracy

A system of democratic governance in which the citizens of a political jurisdiction choose individuals through regular elections--representatives--whose task it is to meet regularly to discuss policy questions and make policy on the behalf of the citizenry.

separation of powers

A functional division of governmental offices and personnel used in U.S. national government and state governments, including that of Texas. Typical of the U.S. model, legislative power in Texas is in the hands of a legislature composed of two parts, a house and a senate. Executive power is in the hands of a governor and other offices including a lieutenant governor, an attorney general, an a comptroller, an agriculture commissioner, and a land commissioner. Judicial power is in the hands of judges elected statewide or from regional and local jurisdictions. A scheme of separation of powers is designed to ensure that those who serve in different branches of government are selected by and accountable to different constituencies.

Texas Politics: 19 Jan 2013

© 2009, Liberal Arts Instructional Technology Services

University of Texas at Austin

3rd Edition - Revision 18