

Texas Constitution

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1 The Texas Constitutions: Past and Present

What is a Constitution

A constitution is the legal structure of a government. It has two purposes:

- Established power and authority for a government
- Limits this power

There are 5 ideals that link the Texas and US Constitution:

1. Political power is derived from the people (Locke and Hobbes social contract theory). People give up some of their rights in return for a well maintained society. The people reserve the right to take back their power if the government abuses them.
2. Separation of powers (Montesquieu). Government is split into distinct branches and give them separate but overlapping functions. Branches must work together to get things done. This is like one branch telling another branch “yes”.
3. Checks and balances. Branches can veto other branches actions. This is like one branch telling another branch “no”. Example: The governor (executive branch) can veto bills from the legislative branch, and the legislative branch can overrule that veto.
4. Government cannot violate the rights of the people. The people have rights (like speech, assembly, religion, etc.) which the government cannot violate.
5. Federalism, which is a system of government where power is divided by a constitution between central government and local government. Highest level of authority is the federal government and the state governments are subservient. Any powers not given to the federal government nor specifically forbidden are given to the state. States have all power except what is forbidden or explicitly given to the federal government. Comes from the 10th Amendment.
 - **Supremacy Clause** - Laws passed by the federal government are the supreme law of the land, and superior to all lesser governments. States are subservient to the federal government.
 - **Necessary and Proper Clause** - Gives Congress the authority to create all laws that are “necessary and proper” to carry out its enumerated powers.

Previous Texas Constitutions

There have been 7 previous Texas Constitutions. They were all made to rectify problems of the previous one.

1. Constitution of Coahuila y Tejas (1827)

Texas was a part of New Spain, belonging to Spain until the Mexican War of Independence. Texas operated until the Mexican Constitution, which was guided by the US Constitution.

The Constitution of Coahuila y Tejas was the first local constitution for Texas. It divided Tejas into 3 separate districts. Legislative power was given to one chamber, executive power was placed in a governor and vice governor, and judicial power was placed in state courts. Slavery is legal in this constitution.

Tejas offered protection from US debt collectors for immigrants into Tejas. US debt collectors could not seize someones land or property in Tejas. This helped to populate Tejas.

Husbands and wives had “communal property”, which is property that they shared. This meant that wives could inherit their husband’s property if they died, which was common cause of snakes and shit.

2. Constitution of 1836

Stephen F. Austin went to Mexico City to try and make some changes in Tejas. The Mexican government imprisoned him, and that lead to Texans declaring war and separating from Mexico. After the war was fought, the Constitution of 1836 was adopted.

Very brief and flexible constitution. Three branches, bicameral legislature, checks and balances and all that. Protects slavery.

3. Texas State Constitution of 1845

In 1845, the US was about to accept a non-slave state, so Texas came in to balance it out and Texas drafted a new constitution. Bicameral legislature, governor and lieutenant governor in the executive branch. Amending the constitution was difficult, it still had elements of Mexican government.

4. Constitution of 1861

Civil War has broken out, Texas joins the Confederacy because of slavery. This constitution basically replaced references to the US with references to the Confederacy of America.

5. Constitution of 1866

After the defeat of the Confederacy, those states had to write new constitutions. It’s basically the same except that Texas doesn’t have the right to secede, Texas had to repay it’s war debts, and slavery is illegal. It gave African Americans new rights, but they still couldn’t vote or hold office.

6. Constitution of 1869

Many northerners didn’t think the south was punished enough. This leads to the federal government passing the Congressional Reconstruction Acts of 1867, which outline additional requirements that the Texas Constitution needs to remain in the Union. New constitution is written by radical Republicans and African Americans. Certain features stand out:

- African American males are given the right to vote
- 3 branches of government were altered. Executive branch was given more power, the size of the supreme court is reduced.

Most (Democratic) Texans didn’t like this new constitution, so it was enacted under military order. Federal government sent a Republican E.J. Davis to be the governor. Democrats regain control in 1872. This leads to the next constitution.

7. Constitution of 1876 (Current)

Delegates were elected to write the new constitution. There weren’t many African Americans at the convention, so African Americans lost the right to vote. 4 main themes:

- Strong popular control of state government - public officials are elected by popular vote. This hurt African Americans because they couldn't vote anymore.
- Limited state government power - created a plural executive, which divides power previously held by the governor into more offices.
- Economy in government - restricted the extent to which the state government can tax. Compulsory education is eliminated, and education is decentralized.
- Promotion of Agrarian interest - reflects the interest of farmers at the constitutional convention. Regulates banks and railroads to put farmers on a more even footing.

This constitution was very detailed and put restrictions on the state government. It's pretty different from the US Constitution.

The Texas Constitution Today

The current Texas government was a reactionary document to the Reconstruction Acts. It was written to limit government authority without any thought to effective government. It contains 16 articles but it's very easy to amend. They planned to amend it. There have been almost 500 amendments to the current Texas Constitution.

The Articles

- **Preamble** - very brief, invokes the blessings of God.
- **Article I: Bill of Rights** - limits political power and its abuse
- **Article II: Power of Government** - divides government into branches
- **Article III: Legislative Department** - establishes a bicameral legislature; the Senate and the House of Representatives
- **Article IV: Executive Department** - creates the plural executive
- **Article V: Judicial Department** - creates Texas judiciary
- **Article VI: Suffrage** - determines who votes and how. Other than filling elected offices, Texans can only vote on 3 other matters: voting on amendments, voting on legislative salaries, and voting to impose a state income tax.
- **Article VII: Education** - creates state wide publicly funded school system. Says the legislature has an obligation to maintain an efficient system of public, free schools.
- **Article VIII: Taxation and Revenue** - grants the power to tax individual and business income.
- **Articles IX and XI: Local Government** - creates local governments like counties and cities.
- **Articles X, XII, XIII, and XIV** - more specific things like public lands, Mexican American land titles, railroads, etc.
- **Article XV: Impeachment** - removing an elected official. Gives the Senate the power to try elected officials.

- **Article XVI: General Provisions** - a catch-all article. Handles things that don't fit into other articles.
- **Article XVII: Amending the Constitution** - Amending the Texas Constitution is extremely easy.

Amending the Texas Constitution

There are 4 steps to amending the Texas Constitution:

1. Legislature proposes an amendment
2. The amendment must be approved by 2/3 of both chambers of congress
3. Once approved, it must be published in all major newspapers
4. The amendment must be voted upon by Texans

Recent Attempts to Rewrite the Texas Constitution

- In the early 1970s, a group of reform minded Democrats were elected into office, and passed an amendment that allowed them to draft a new constitution. They met in 1974, but were unable to get the 2/3 vote necessary to ratify it.
- In 1999, Ratliff and Junell proposed an amendment that would give the governor more power. It also does not pass.

Review

Key Terms

- **Separation of Powers**

Associated with Montesquieu. Government is split into branches with overlapping functions. “Like one branch telling the other ‘yes’”

- **Checks and Balances**

Branches can veto or override other branches. This keeps any one branch from having too much power.

- **Federalism**

A system where power is divided (by a constitution) between central and local government.

- **Supremacy Clause**

Laws passed by the federal government and the supreme law of the land. (Article VI of the US const, not sure about Texas)

Key Questions

- What is the purpose of a constitution?

To (1) establish power and authority for a government, and (2) limit the governments power.

- How many constitutions has Texas been governed under (from territory of Mexico on)? What were the years of the various constitutions? What were the changes from constitution to constitution

1. **Constitution of Coahuila y Tejas (1827)** - Tejas is part of Mexico. This divided Tejas into 3 districts, with 3 branches almost like now. Protects slavery.
2. **Constitution of 1836** - This is adopted after Texas separates from Mexico. Very brief and flexible. Protects slavery.
3. **Texas State Constitution of 1845** - This was adopted in order for Texas to be admitted to the Union. Still had elements of Mexican government. Protects slavery.
4. **Constitution of 1861** - Adopted when Texas joins the Confederacy.
5. **Constitution of 1866** - Adopted when the Confederacy was defeated and Texas was readmitted to the Union.
6. **Constitution of 1869** - Written by radical republicans and African Americans. Gave AA males the right to vote, executive branch was given more power. Most Texans didn't like this constitution.
7. **Constitution of 1876 (Current)** - Our current constitution. Provides for strong popular control of state government, limited state government power, restricted the extent to which the government could tax, decentralized education, and promoted agrarian interests.

- What was the purpose behind our current constitution?

The current Texas Constitution was a reactionary document to the Reconstruction Acts. it was written to limit government authority without any thought to effective government.

There are 4 main themes to our current constitution:

1. Strong popular control of state government
2. limited state government power
3. Restrict the extent to which the government can tax, compulsory education is eliminated.
4. Promotion of agrarian interests.

- Describe the attempts to rewrite the state constitution.

In the early 1970s, a group of Democrats passed an amendment that allowed them to draft a new constitution, but they failed to get the necessary 2/3 vote to ratify it.

In 1999, Ratliff and Junell proposed an amendment that would give the governor more power. It didn't pass.

- What is impeachment? Which article of the Texas constitution cover impeachment?

Article XV of the Texas Constitution covers impeachment. It gives the Senate the power to try elected officials.

- Which article of the Texas Constitution discusses education?

Article VII covers education. It creates a state wide publicly funded school system.