The year was 1874, and unusual events marked the end of the darkest chapter in Texas history—the Reconstruction era and the military occupation that followed the Civil War. Texans, still smarting from some of the most oppressive laws ever imposed on U.S. citizens, had overwhelmingly voted their governor out of office, but he refused to leave the Capitol and hand over his duties to his elected successor. For several tense days, the city of Austin was divided into two armed camps—those supporting the deposed governor, Edmund J. Davis, and those supporting the man who defeated him at the polls, Richard Coke. Davis finally gave up only after the Texas militia turned against him and marched on the Capitol.

That long-ago period bears little resemblance to modern Texas, but the experience still casts a long shadow over state government. The state constitution, written by Texans at the close of Reconstruction, was designed to put strong restraints on government to guard against future abuses, and most of those restraints remain in place today. The Texas Constitution, adopted in

Humbly invoking the blessings of Almighty God, the people of the State of Texas do ordain and establish this Constitution.

—Preamble to the Constitution of Texas 1876

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed, and in the next place oblige it to control itself.

—James Madison, Federalist No. 51
THE PEOPLE OF TEXAS DO NOW CONSTITUTE A FREE SOVEREIGN AND INDEPENDENT REPUBLIC, AND ... WE FEARLESSLY AND CONFIDENTLY COMMIT THE ISSUE TO THE DECISION OF ARBITER OF THE DESTINY.
1876 and amended many times since, is so restrictive that many scholars and politicians believe it is counterproductive to effective, modern governance. They believe the document, which is bogged down with statutory detail, is a textbook example of what a constitution should not be. State government functions despite its constitutional shackles: an institutionally weak chief executive; an outdated, part-time legislature; a poorly organized judiciary; and dedicated funds that limit the state’s budgetary options. But a total rewrite of the constitution has been elusive, thanks to numerous special interests that find security in the present document and from those who hold obsolete public offices in Texas and those who benefit from dedicated funds. Public ignorance and indifference to the problems created by the restrictive constitutional provisions also thwart an overhaul of the document.

It is our position, shared by others who study state governments, that one cannot develop a clear understanding of Texas government or its politics without some familiarity with the Texas Constitution. Constitutions are more than the formal frameworks that define the structure, authority, and responsibilities of governmental institutions. They also reflect fundamental political, economic, and power relationships as determined by the culture, values, and interests of the people who create them and the events of the period in which they were written.

The constitution of Texas is not easy to read, and many of its details may make little sense to casual readers. But a careful study of the document can provide insight into the distribution of power among competing groups and regions within the state. The constitution outlines the powers of and defines the limits imposed on state and local governments. From the perspective of political economy, the constitution also speaks to "the relation of the state to economic activity, including both the extent of direct governmental support for enterprise and the appropriate balance between promotion and regulation of economic development."

Texas has had seven constitutions, and understanding that legacy is critical to understanding contemporary Texas politics and public policy (see Table 2–1). The first constitution was adopted in 1827, when the state was still part of Mexico. The second was drafted when Texas declared its independence from Mexico in 1836 and became a republic. The third was adopted in 1845 when the state joined the Union. The fourth constitution was written when Texas joined the Confederacy in 1861, and the fifth was adopted when the state rejoined the Union in 1866. The sixth constitution was adopted in 1869 to satisfy the Radical Reconstructionists’ opposition to the 1866 constitution, and the seventh constitution was adopted in 1876 after the termination of Reconstruction policies.

**Table 2–1 The Seven Texas Constitutions**

<table>
<thead>
<tr>
<th>Year</th>
<th>Constitution of Coahuila y Tejas</th>
</tr>
</thead>
<tbody>
<tr>
<td>1827</td>
<td>Adopted in 1827 while Texas was still part of Mexico, this constitution recognized Texas as a Mexican state with Coahuila.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Constitution of the Republic</th>
</tr>
</thead>
<tbody>
<tr>
<td>1836</td>
<td>The constitution of March 16, 1836, declared independence from Mexico and constituted Texas as an independent republic.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Constitution of 1845</th>
</tr>
</thead>
<tbody>
<tr>
<td>1845</td>
<td>Texas was admitted to the Union under this constitution.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Civil War Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1861</td>
<td>After the state seceded from the Union and joined the Confederacy in 1861, Texans adopted this constitution.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Constitution of 1866</th>
</tr>
</thead>
<tbody>
<tr>
<td>1866</td>
<td>This was a short-lived constitution under which Texas sought to be readmitted to the Union after the Civil War and before the Radical Reconstructionists took control of the U.S. Congress.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Reconstruction Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1869</td>
<td>Power was centralized in the state government, and local governments were significantly weakened under this constitution, which reflected the sentiments of Radical Reconstructionists, not of most Texans.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>Texas Constitution</th>
</tr>
</thead>
<tbody>
<tr>
<td>1876</td>
<td>Adopted at the end of Reconstruction and amended 47 times since, this is the constitution under which Texas currently functions. Highly restrictive and antigovernment; this constitution places strict limitations on the powers of the governor, the legislature, and other state officials.</td>
</tr>
</tbody>
</table>
Constitutionalism

2.1 Identify the functions of a constitution and place the Texas Constitution in a national comparative context.

A constitution defines the principles of a society and suggests the political objectives that society is attempting to achieve. It outlines the specific institutions that the people will use to achieve their objectives, and it defines who can participate in collective decisions and who can hold public office. It also defines the relationship between those people who govern and those who are governed and sets limits on what each group can and cannot do. Because of the stability of the American political system and a general commitment to the rule of law, we often overlook the fact that a constitution also reflects the way a society structures conflict through its institutional arrangements.

Constitutions do not lend themselves to easy reading. The formal, legal language often obscures the general objectives of the document and its relevance to contemporary issues of political power and public policy. Scholars believe, first, that constitutions should be brief and should include general principles rather than specific legislative provisions. In other words, constitutions should provide a basic framework for government and leave the details to be defined in statutory law. Second, experts say, constitutions should grant authority to specific institutions, so as to increase the responsiveness and the accountability of individuals elected or appointed to public office. Scholars also believe that constitutions should provide for orderly change but should not be written in such a restrictive fashion that they require continual modifications to meet contemporary needs.

Amended only twenty-seven times since its adoption in 1789, the U.S. Constitution is a concise, 7,000-word document that outlines broad, basic principles of authority and governance. No one would argue that the government of the twenty-first century is comparable to that of the 1790s, yet the flexibility of the U.S. Constitution makes it as relevant now as it was in the eighteenth century. It is often spoken of as “a living constitution” that does not have to be continually amended to meet society’s ever-changing needs and conditions. Its reinterpretations by the courts, the Congress, and the president have produced an expansion of powers and responsibilities within the framework of the original language of the document.

By contrast, the Texas Constitution—like those of many other states—is an unwieldy, restrictive document. With more than 87,000 words, it has been on a life-support system—the piecemeal amendment process—for most of its lifetime (see Figure 2–1). It is less a set of basic governmental principles than a compilation of detailed statutory language, often referred to as “constitutional legislation,” reflecting the distrust of government that was widespread in Texas when it was written and the fact that the national Constitution says so very little about state government. In effect, it attempts to diffuse political power among many different institutions. As drafted in 1875, it also included restrictions on elections and civil rights that were later invalidated by the U.S. Supreme Court. Those early provisions were efforts to limit the power of minority groups to fully participate in state government.

The historical constitutional experiences of Texas parallel those of many southern states that have had multiple constitutions in the post–Civil War era. The former Confederate states, Texas included, are the only states whose constitutions formally acknowledge the supremacy of the U.S. Constitution, a provision required for readmission to the Union.
Each of Texas’s seven constitutions was written in a distinct historical setting. There are significant differences—as well as similarities—among these documents, and each contributed to the state and local governments that we know today.

The Constitutional Legacy

Describe the historical influences, similarities, and differences of each of Texas’s seven constitutions.

The Constitution of Coahuila y Tejas (1827)

Texas was part of Mexico when Mexico secured its independence from Spain in 1821, about the time that Stephen F. Austin began to bring Anglo colonists to the sparsely populated Texas region. In 1824, the new Republic of Mexico adopted a constitution for a federal system of government that recognized Texas (Tejas) as a single state with Coahuila, which adjoined Texas across the Rio Grande. Saltillo, Mexico, was the state capital.

The constitution of Coahuila y Tejas, completed in 1827, provided for a unicameral congress of twelve deputies, including two from Texas, elected by the people. Most of the members of congress were from the more populous and Spanish-speaking Coahuila, and the state’s laws were published in Spanish, which few Anglo colonists in Texas understood. The executive department included a governor and a vice governor. The governor enforced the law, led the state militia, and granted pardons. Catholicism was the state religion, but that provision was not enforced among Texas’s Anglo
settlements. Anglo Texans also were not subject to military service, taxes, or custom duties. Texas primarily served as a buffer between Mexico and various Native American tribes—and the United States.

But as Anglo immigration increased, Mexico began to fear the possibility of U.S. expansion and soon started trying to exercise more control over Texas. This development reinforced cultural differences and soon led to revolution by Anglo Texans.

This formative period, nevertheless, produced contributions to the Texas constitutional tradition that still exist, including some property and land laws, water laws and water rights, and community property laws. One justification for the Texas revolution of 1836 was the Mexican government's failure to sufficiently fund public education. But even though there were expectations of funding by the central government, a "concept of local control over school development was firmly established" during that era. Issues of local control and adequate funding of public schools persist today.

The Constitution of the Republic of Texas (1836)

During the late 1820s and the early 1830s, increased immigration into Texas from the United States heightened tensions between the Anglo settlers and the Mexican government. Mexico's efforts to enforce its laws within Texas produced conflicts between cultures, legal traditions, and economic interests that sparked open rebellion by the colonists.

At the same time, Mexico was embroiled in its own internal dissension, which resulted in the seizure of power by the popular general Antonio Lopez de Santa Anna Perez de Lebron. Santa Anna began to suspend the powers of the Mexican Congress and local governments, and, in October 1835, the national Constitution of 1824 was voided. Mexico adopted a new constitution providing for a unitary system with power centralized in the national congress and the presidency. It repealed the principle of federalism, which had divided power between the national government and the Mexican states. This major change intensified conflict between the national government and the states; although Texas was eventually successful in establishing its autonomy, several other Mexican states were subjected to harsh military retaliation.

As the new Mexican government tried to enforce control over Texas, colonists who initially supported the national government and others who were ambivalent began to support the independence movement. Stephen Austin had initially supported the position that Texas was a Mexican state, and he represented a large part of the Texas Anglo population. But when Mexican troops marched into Texas in the fall of 1835, he called for resistance.

Fifty-nine male colonists convened in the small Texas settlement of Washington-on-the-Brazos to declare Texas's independence from Mexico on March 2, 1836, and to adopt a constitution for the new republic two weeks later. They had two overriding interests: the preservation of their fledgling nation and the preservation of their own lives. By the time they had finished their work, the Alamo—only 150 miles away—had fallen to a large Mexican army under Santa Anna, and a second Mexican force had crossed the Rio Grande into Texas. So, the frontier constitution writers wasted little time making speeches.

Consequently, the Constitution of the Republic, adopted on March 16, 1836, was not cluttered with the details that weaken the present Texas Constitution. It drew heavily from the U.S. Constitution and from the constitutions of several southern states, from which most of the delegates had immigrated to Texas. The new constitution created an elected bicameral legislature and provided for an elected president. There was no official, state-preferred religion, and members of the clergy were prohibited from serving as president or in Congress. Slavery was legal under the new document, but it prohibited the importation of slaves from any country other than the United States.

On April 21, 1836, approximately six weeks after the Texans' defeat at the Alamo, the Texas army, under the command of Sam Houston, defeated Santa Anna's army at the

unitary system
A system in which ultimate power is vested in a central or national government and local governments have only those powers granted to them by the central government. This principle describes the relationship between the state and local governments in Texas.

federalism
A system that balances the power and sovereignty of state governments with that of the national government. Both the states and the national government derive their authority directly from the people, and the states have considerable autonomy within their areas of responsibility.

bicameral legislature
A lawmaking body, such as the Texas legislature, that includes two chambers.
Battle of San Jacinto. The war for independence had been relatively short and had limited casualties, but the problems of creating a stable, new political system in the sparsely populated, wilderness republic were seemingly formidable. There was no viable government in place, no money to pay for a government, and no party system. In addition, although defeated, Mexico did not relinquish its claims to Texas and remained a threat to try to regain its lost territory. Nevertheless, the “transition from colony to constitutional republic was accomplished quickly and with a minimum of disorganization.”

The experience of national autonomy from 1836 to 1845 contributed significantly to the development of a sense of historical uniqueness among Texans. Although the effects on the state's political psyche may be difficult to measure, the “Lone Star” experience has been kept alive through school history texts, the celebration of key events, and the development of a mythology of the independence period.

The Constitution of 1845

During the independence movement and immediately thereafter, some Texans made overtures to the United States for annexation. That possibility initially was blocked by the slavery issue and its relationship to economic and regional influence in U.S. politics. But increased immigration to Texas in the late 1830s and early 1840s, more interest among Texans in joining the Union, and expansionist policies of the U.S. government stepped up the pressure for annexation. It was a major issue in the U.S. presidential campaign of 1844, and James K. Polk's election to the White House accelerated Texas's admission to the United States in 1845 because he campaigned for it.

The annexation bill approved by the U.S. Congress included a compromise that allowed slavery to continue in Texas. Racial issues emerging from this period continue to affect politics and public policy in the state. Texas still struggles with voting rights issues, inequities in education funding, and the maldistribution of economic resources affecting the quality of life of many minority group members.

The state constitution drafted to allow Texas's annexation was about twice as long as the Constitution of 1836. It borrowed from its predecessor and from the constitutions of other southern states, particularly Louisiana.

The Constitution of 1845 created an elected legislature that included a House of Representatives and Senate, which met biennially. It provided for an elected governor and an elected lieutenant governor, and it empowered the governor to appoint
a secretary of state, attorney general, and state judges, subject to Senate confirmation. The legislature appointed a comptroller, treasurer, and land commissioner. In 1850, however, Texas voters amended the constitution to make most state offices elective, following a national pattern of fragmenting the powers of the executive branch of state government. Texas still has a plural executive under which practically all statewide officeholders are elected independently of the governor, a system that contrasts sharply with the appointive cabinet system of executive government headed by the president of the United States.

The 1845 constitution established a permanent fund for the support of public schools, protected homesteads from foreclosure, and guaranteed separate property rights for married women—provisions still found in the present constitution. The 1845 charter also recognized slavery, prohibited state-chartered banks, and barred anyone who had ever participated in a duel from holding public office. This constitution “worked so well that after several intervening constitutions, the people of Texas recopied it almost in toto as the Constitution of 1876.”

The Civil War Constitution (1861)

When Texas seceded from the Union in 1861, just before the outbreak of the Civil War, the state constitution was again revised. Most of the provisions of the 1845 document were retained, but significant changes were made in line with Texas’s new membership in the Confederacy. The constitution required public officials to pledge their support of the Confederate constitution, gave greater protection to slavery, and prohibited the freeing of slaves.

Slavery and secession destroyed any semblance of a two-party system in Texas. Personalities, factions, and war-related issues dominated state politics. Factionalism within the Democratic Party persisted for more than 100 years, until the emergence of a two-party system in the 1980s.

The Civil War era also contributed to a legacy of states’ rights, which persisted well into the next century and sparked an extended struggle for desegregation. The southern states contended that the national government was a confederacy, from which a state could withdraw, or secede. Although the northern victory dispelled this interpretation, Texas and other southern states found ways to thwart national policy through the 1960s. Their efforts were based, in part, on their continued arguments for states’ rights.

The Constitution of 1866

After the Civil War, Texas government returned to national control, first through a military government and then through a provisional government headed by A. J. Hamilton, a former U.S. congressman who had remained loyal to the Union. These were dark days for Texans. Although relatively few battles had been fought in Texas and the state had not suffered from the scorched-earth tactics used by Union generals elsewhere, the economy was in disarray. Many Texas families had lost loved ones, and many surviving Confederate veterans had been wounded physically or psychologically. New policies adopted by the federal government to assist newly freed slaves were never fully funded and were halfheartedly—and often dishonestly—carried out. The presence of an occupation army also heightened tensions and shaped subsequent political attitudes.

The Reconstruction plan initiated by President Abraham Lincoln but never fully carried out envisioned a rapid return to civilian government for the southern states and their quick reintegration as equals in the U.S. political system. Requirements were few: the abolition of slavery, the repudiation of the Secession Ordinance of 1861, and the repudiation of all debts and obligations incurred under the Confederacy.

Texas voters revived the Constitution of 1845 and amended it to include the new Union requirements. The new constitution formally eliminated slavery and gave former slaves the right to own property and legal rights before a jury. But African Americans were prohibited from testifying in court against whites. And African Americans were
Radical Reconstructionists
The group of Republicans who took control of Congress in 1866 and imposed hated military governments on the former Confederate states after the Civil War.

Edmund J. Davis
Republican governor (1870–1874) whose highly unpopular policies contributed to the decisions of the Constitutional Convention of 1875 to limit and fragment the powers of the governor.

denied the right to vote.\textsuperscript{15} The new constitution was adopted in June 1866; a new government was elected; and on August 20, 1866, President Andrew Johnson, who had become president after Lincoln’s assassination, “declared the rebellion in Texas at an end.”\textsuperscript{16}

Very soon, however, Radical Reconstructionists, who had captured control of the U.S. Congress in 1866, replaced Johnson’s mild Reconstruction policies with more severe ones. Congress invalidated the new Texas Constitution. It also passed, over the president’s veto, the Reconstruction Acts, which established military governments throughout the South. The civilian government initiated by the state’s Constitution of 1866 was short lived, and Texas functioned for two years under a reinstituted military government.

This period had an enduring impact on Texas constitutional law and politics. It prolonged the full reintegration of Texas into the national political system, and it transformed Texas’s constitutional tradition into one of hostility and suspicion toward government.

The Constitution of Reconstruction (1869)
The Reconstruction Acts required a Texas Constitution that would grant African Americans the right to vote and include other provisions acceptable to Congress. A Republican Party slate of delegates to a new constitutional convention drafted a new charter in 1869. It did not reflect the majority of Texans’ sentiments of the time, but it conformed to Republican wishes. Centralizing more powers in state government while weakening local government, the charter gave the governor a four-year term and the power to appoint other top state officials, including members of the judiciary. It gave African Americans the right to vote; provided for annual legislative sessions; and, for the first time in Texas, established a centralized, statewide system of public schools. Texans were unhappy with their new constitution and outraged by the widespread abuses that followed under the oppressive and corrupt administration of Radical Republican Governor Edmund J. Davis.

In the 1869 election, the first under the new constitution, large numbers of former slaves voted, whereas Anglos who had fought for the Confederacy were not allowed to cast ballots as retribution for taking up arms against the United States. Radical supporters of Davis, a former Union Army officer, supervised the election process. The military governor certified that Davis beat Conservative Republican A. J. Hamilton by 39,901 to 39,092 votes, despite widespread, flagrant incidents of voter fraud, which also were ignored by President Ulysses S. Grant and Congress. A Radical majority in the new Texas legislature then approved a series of authoritarian—and, in some respects, unconstitutional—laws proposed by Davis. They gave the governor the power to declare martial law and suspend the laws in any county and created a state police force under the governor’s control that could deprive citizens of constitutional protections. The governor also was empowered to appoint mayors, district attorneys, and hundreds of other local officials. Another law designating newspapers as official printers of state documents in effect put much of the press under government control.

Davis exercised some of the most repressive actions ever imposed on U.S. citizens. And Texans struck back. In 1872, they elected a Democratic majority to the legislature, which abolished the state police and repealed other oppressive laws. Then, in 1873, they elected a Confederate veteran, Democrat Richard Coke, governor by more than a two-to-one margin over Davis. Like the Radical Republicans in the previous gubernatorial election, the Democrats also abused the democratic process. Voting fraud again was widespread. “Democrat politicos bluntly indicated that power would be won depending on who outfraud on whom. No practice was ignored. There was terror, intimidation, and some murders on both sides,” wrote historian T. R. Fehrenbach.\textsuperscript{17}

As noted at the start of the chapter, Davis initially refused to leave office and appealed to President Grant for federal troops to help him retain power. Grant refused, however, and the Texas militia turned against him and marched on the Capitol in January 1874. Davis eventually gave up, preventing additional bloodshed. Reconstruction was ending, and the Constitution of 1869 was doomed.
The Constitution of 1876: Retrenchment and Reform

The restored Democratic majority promptly took steps to assemble a new constitutional convention, which convened in Austin on September 6, 1875. The delegates were all men. Most were products of a rural and frontier South, and still smarting from Reconstruction abuses, they considered government a necessary evil that had to be heavily restricted. Many, however, had previous governmental experience. Initially, seventy-five Democrats and fifteen Republicans were elected delegates, but one Republican resigned after only limited service and was replaced by a Democrat.18

The vast majority of the delegates were white, and some disagreement remains over how many African Americans served in the convention. Some historians say there were six. According to one account, however, six African Americans were elected but one resigned after only one day of service and was replaced in a special election by a white delegate. All of the African American delegates were Republicans.19

Only four of the delegates were native Texans. Most had immigrated to Texas from other southern states, including nineteen—the largest single group—from Tennessee. Their average age was forty-five. The oldest was sixty-eight; the youngest was twenty-three.20 Eleven of the delegates had been members of previous constitutional conventions in Texas, but there is disagreement over whether any had participated in drafting the Reconstruction Constitution of 1869. In any event, the influences of the 1869 constitution were negative, not positive.

At least thirty delegates had served in the Texas legislature, two had served in the Tennessee and Mississippi legislatures, two had represented Texas in the U.S. Congress, and two had represented Texas in the Confederate Congress. Delegates also
included a former Texas attorney general, a former lieutenant governor, and a former secretary of state of Texas, and at least eight delegates had been judges. Many had been high-ranking Confederate military officers. One, John H. Reagan, had been postmaster general of the Confederacy. Reagan later would become a U.S. senator from Texas and the first chairman of the Texas Railroad Commission.

Another delegate who epitomized the independent, frontier spirit of the time was John S. “Rip” Ford, a native of South Carolina who had come to Texas in 1836 as a physician. He later became a lawyer, journalist, state senator, mayor of Austin, and Texas Ranger captain. In 1874, he was a leader of the militia that marched on the Capitol and forced Edmund J. Davis to relinquish the governor’s office to his elected successor. Ford had been a secessionist delegate to the 1861 convention and, during the Civil War, had commanded a makeshift cavalry regiment that fought Union soldiers along the Texas-Mexico border.

According to one account, delegates to the 1875 convention included thirty-three lawyers, twenty-eight farmers, three physicians, three merchants, two teachers, two editors, and one minister. At least eleven other delegates were part-time farmers who also pursued other occupations. Other historians have suggested slightly different breakdowns, but all agree that agricultural interests substantially influenced the writing of the new Texas charter.

About half the delegates were members of the Society of the Patrons of Husbandry, or the Grange, an organization formed to improve the lot of farmers. The Grange became politically active in the wake of national scandals involving abuses by big business and government. It started organizing in Texas in 1873, and it influenced constitutional provisions that limited taxes and governmental expenditures and restricted banks, railroads, and other corporations.

The delegates did not try to produce a document that would be lauded as a model of constitutional perfection or mistaken for a literary classic. They faced the reality of addressing serious, pressing problems—an immediate crisis that did not encourage debate over the finer points of academic or political theory or produce any prophetic visions of the next century.

The Civil War and Reconstruction had ruined the state economically and driven state government deeply into debt, even though Texas citizens, particularly property owners, had been heavily taxed. Land prices had plummeted, a disaster for what was then an agricultural state. Pervasive governmental corruption and Governor Davis’s oppressive administration left deep scars and resentments among Texans.

In an effort to restore economic stability and governmental control to the people, the framers of the Texas Constitution of 1876 drafted what was essentially an antigovernment charter. They replaced centralization with more local control; strictly limited taxation; and put short leashes on the legislature, the courts, and the governor. Agricultural interests, which had been called upon to finance industrial development and new public services during Reconstruction, were again protected from onerous governmental intrusion and taxation. The retrenchment and reform embodied in the new constitution would later hamper the state’s commercial and economic development. But the post-Reconstruction Texans liked all the restrictions placed on government. They ratified the new constitution in February 1876 by a vote of 136,606 to 56,052.

General Principles of the Texas Constitution

The underlying principle of the Texas Constitution of 1876 is expressed in a relatively short preamble and the first two sections of a Bill of Rights (see Table 2–2). It is a social compact, formed by free men (no women participated in its drafting), in which “all political power is inherent in the...
people...founded on their authority, and instituted for their benefit.” These sections are based on the principles of popular sovereignty and social contract theory, both part of a legacy of constitutional law in the United States. But the declarations of a free and just society were limited in scope and application. Women and minorities were initially denied full citizenship rights. Women would not gain the right to vote until 1920, and it would take much longer for African Americans and Hispanics to receive full constitutional protections.

Another major principle of the Texas Constitution is limited government. The Bill of Rights and other provisions throughout the constitution place limits on governmental power and spell out traditional citizens rights, including religious freedom and procedural due process of law.

A final major principle embodied in the constitution is separation of powers. Unlike the U.S. Constitution, in which this principle emerges through powers defined in the three articles related to Congress, the president, and the judiciary, Article 2 of the Texas Constitution specifically provides for a separation of powers.

The Constitution of 1876 created three branches of government—legislative, executive, and judicial—and provided for a system of checks and balances to assure that no branch would dominate the others. This principle originated with the U.S. Constitution, whose drafters were concerned about the so-called mischief of factions. They feared that special interest groups would be able to capture control of governmental institutions and pursue policies harmful to the national interest. To guard against that potential problem, they fragmented institutional power. In some respects, this was an issue of even greater concern to the framers of the Texas Constitution. Reacting to the highly centralized authority and abuses of the Davis administration, they took the separation of powers principle to its extreme.

Lawmaking authority in Texas is assigned to an elected legislature that includes a 150-member House of Representatives and a 31-member Senate. It meets in regular sessions in odd-numbered years and in special sessions of limited scope and duration.

### TABLE 2–2 COMPARISON OF THE TEXAS CONSTITUTION AND THE U.S. CONSTITUTION

<table>
<thead>
<tr>
<th></th>
<th>U.S. Constitution</th>
<th>Texas Constitution</th>
</tr>
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<tr>
<td>General principles</td>
<td>Popular sovereignty</td>
<td>Popular sovereignty</td>
</tr>
<tr>
<td></td>
<td>Limited government</td>
<td>Limited government</td>
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<tr>
<td></td>
<td>Representative government</td>
<td>Representative government</td>
</tr>
<tr>
<td></td>
<td>Social contract theory</td>
<td>Social contract theory</td>
</tr>
<tr>
<td></td>
<td>Separation of powers</td>
<td>Separation of powers</td>
</tr>
<tr>
<td>Context of adoption</td>
<td>Reaction to weakness of Articles of Confederation—strengthened national powers significantly</td>
<td>Post-Reconstruction—designed to limit powers of government</td>
</tr>
<tr>
<td>Style</td>
<td>General principles stated in broad terms</td>
<td>Detailed provisions</td>
</tr>
<tr>
<td>Length</td>
<td>7,000 words</td>
<td>87,000-plus words</td>
</tr>
<tr>
<td>Date of implementation</td>
<td>1789</td>
<td>1876</td>
</tr>
<tr>
<td>Amendments</td>
<td>27</td>
<td>47</td>
</tr>
<tr>
<td>Amendment process</td>
<td>Difficult</td>
<td>Relatively easy</td>
</tr>
<tr>
<td>Bill of Rights</td>
<td>Amendments to the Constitution—adopted in 1791</td>
<td>Article 1 of the Constitution of 1876</td>
</tr>
<tr>
<td>Structure of government</td>
<td>Separation of powers, with a unified executive based on provisions of Articles 1, 2, 3</td>
<td>Separation of powers with plural executive defined by Article 2</td>
</tr>
<tr>
<td>Legislature</td>
<td>Bicameral</td>
<td>Bicameral</td>
</tr>
<tr>
<td>Judiciary</td>
<td>Creation of one Supreme Court and other courts to be created by the Congress</td>
<td>Detailed provisions creating two appellate courts and other state courts</td>
</tr>
<tr>
<td>Distribution of powers</td>
<td>Federal</td>
<td>Unitary</td>
</tr>
<tr>
<td>Public policy</td>
<td>Little reference to policy</td>
<td>Detailed policy provisions</td>
</tr>
</tbody>
</table>

**popular sovereignty**
The constitutional principle of self-government; the belief that the people control their government and governments are subject to limitations and constraints.

**social contract**
The view that governments originated from the general agreement among and consent of members of the public to address common interests and needs.

**limited government**
The constitutional principle restricting governmental authority and spelling out personal rights.

**separation of powers**
The division of authority among three distinct branches of government—the legislative, the executive, and the judicial—which serve as checks and balances on one another’s power.
when called by the governor. The sixty-five sections of Article 3 spell out in detail the powers granted and the restrictions imposed on the legislature.

An elected governor shares authority over the executive branch with several other independently elected, statewide officeholders. The governor can veto bills approved by the legislature, and a veto can be overridden only by a two-thirds vote of the House and the Senate.

Also elected are members of the judiciary—from justices of the peace, with limited jurisdiction at the county level, to the highest statewide appellate courts. This provision reflects the strong sentiment of post-Reconstruction Texans for an independent judiciary and is a major difference from the federal government, in which the president appoints judges to lifetime terms. Also unlike the federal system, in which the U.S. Supreme Court is the court of last resort in both civil and criminal appeals, Texas has two courts of last resort. The Texas Supreme Court has jurisdiction over civil matters, and the Texas Court of Criminal Appeals has final review of criminal cases.

Weaknesses and Criticisms of the Constitution of 1876

The Texas Constitution of 1876 has been criticized for inherent weaknesses built into the document. Experts point to the excessive fragmentation of government authority with respect to the executive, a poorly paid and part-time legislature, and a decentralized judiciary. They also have identified an inequitable public education system, budgeting and finances that cannot be easily altered to meet changing state needs, past restrictions on individual rights for African Americans and other groups, an unnecessary level of confusing statutory detail, and an amendment process that requires excessive amendments to enable the state government to adapt to changes.

Executive Branch

Many experts believe that the Texas Constitution excessively fragments governmental authority and responsibility, particularly in the executive branch. Although the public may expect the governor to establish policy priorities, the governor does not have control over other elected state executives but, instead, shares both authority and responsibility for policy with them. This restriction can create problems. Former Republican Governor Bill Clements, for example, shared executive responsibilities with Democrats who sharply disagreed with his priorities. Even when the governor and other elected officials are of the same party, differences in personality, political philosophy, and policy objectives can produce tension and sometimes deadlock. This divisiveness became particularly strident in 2006, when Comptroller Carole Keeton Strayhorn, a Republican, repeatedly questioned Republican Governor Rick Perry’s policies and then became an independent candidate to unsuccessfully challenge his reelection.

The governor’s power has been further diffused by the creation over the years of numerous boards and commissions that set policy for executive agencies not headed by elected officials. Although the governor appoints most of these board members, they serve staggered six-year terms that are longer than a governor’s term. And a newly elected governor—who cannot fire a predecessor’s appointees—usually has to wait through most of his or her first term to gain a majority of appointees to most boards.

Fragmented authority also is a characteristic of county governments, which the constitution created as administrative agents of the state. Various elected county officials often clash over public policy, producing inefficiencies or failing to meet public
needs. And just as voters have to fill out a long ballot for statewide offices, they also
must choose among a long, often confusing list of county officers. A long ballot dis-
courages many people from voting, and this obstacle reduces public accountability, an
end result that the framers of the Constitution of 1876 certainly never intended.

 Legislative Branch

The constitution created a low-paid, part-time legislature to ensure the election of
citizen-lawmakers who would be sensitive to the needs of their constituents, not those
of professional politicians who would live off the taxpayers. Unwittingly, however, the
constitution writers also produced a lawmaking body easily influenced by special inter-
est groups. And the strict limitations placed on the legislature’s operations and powers
slow its ability to meet the increasingly complex needs of a growing, modern Texas.

In 1972, voters approved a constitutional amendment to lengthen the terms of
the governor and other executive officeholders from two to four years. This change
gave the governor more time to develop public policies with the prospect of seeing
them implemented. But voters repeatedly have rejected proposals to provide for an-
nual legislative sessions, and legislative pay remains among the lowest in the country.

 Judicial Branch

The Texas Constitution also created numerous locally elected judicial offices, includ-
ing justices of the peace and county and district courts. Although there are appeal
procedures, these judges derive a great deal of autonomy, power, and influence through
their local constituencies.

 Public Education

Another example of decentralization is the public school system. The centralized
school system authorized under the Constitution of 1869 was abolished, and local
officials were given the primary responsibility of supervising public education. The
concept of “local control” over their schools is important to many Texans, but decen-
tralization and wide disparities in local tax bases have produced an inequitable public
education system.

 Budgeting and Finances

The Texas Constitution, including amendments adopted after 1876, requires a bal-
canced state budget and heavily restricts the legislature’s choices over spending. It
also dedicates large amounts of revenue to specific purposes, making it increasingly
difficult for lawmakers to address changing state needs.

 Individual Rights

Although declaring a general commitment to democracy and individual rights, the
constitution was used for many years to slow democratic development in Texas.27 Like
many other southern states, Texas had restrictive laws on voter participation. It levied
a poll tax, which reduced voting by minorities and poor whites until 1966, when an
amendment to the U.S. Constitution and a U.S. Supreme Court decision outlawed
poll taxes. Federal courts also struck down a Texas election system that excluded Afri-
can Americans from voting in the Democratic primary, which decided elections when
Texas was a one-party Democratic state. The elimination of significant numbers of
people from participating in elections helped perpetuate the one-party political sys-
tem for approximately 100 years.28
Excessive Details

The Texas Constitution also is burdened with excessive detail. Although few individuals have ever read the entire 87,000-plus-word document, a person casually perusing it can find language, for example, governing the operation of hospital districts in specific counties. Another provision deals with expenditures for relocating or replacing sanitation sewer lines on private property. And, if one rural county wants to abolish an outdated constitutional office, the legislature and voters throughout the state have to approve the necessary constitutional amendment. Whereas the 7,000-word U.S. Constitution leaves the details for implementation to congressional legislation, the Texas Constitution often spells out the authority and power of a governmental agency in specific detail. Most experts would argue that many constitutional articles are of a legislative nature and have no business being in a constitution. The excessive detail limits the adaptability of the constitution to changing circumstances and places undue restrictions on state and local governments.

Consequently, obsolete and contradictory provisions in the constitution create confusion in its interpretation and application. Constitutional amendments have been periodically approved to “clean up” such deadwood, but the problem persists.

The Amendment Process

Another important criticism of the Texas Constitution focuses on amendments and the amendment process. Alabama has had more constitutional amendments than any other state (see Figure 2–2), but Texas ranked fourth, behind Alabama, California and South Carolina with 474 amendments from 1876 through 2011. In contrast, the U.S. Constitution has been amended only twenty-seven times since 1789, and ten of those amendments were adopted as the Bill of Rights immediately after the government organized. The numerous restrictions and prohibitions in the Texas Constitution require excessive amendments to enable state government to adapt to social, economic, and political changes.
Although they loaded the constitution with numerous restrictive provisions, the nineteenth century drafters also provided a relatively easy method of amending it. Over the years, this piecemeal amendment process has enabled the state government to meet some changing needs, but it also has added thousands of words to the document.

**Amendments**

Proposed constitutional amendments can be submitted to Texas voters only by the legislature (see *Talking Texas: Should Constitutional Amendments be Submitted to the Voters in Special Elections*?). Approval by two-thirds of the House and the Senate puts them on the ballot; adoption requires a majority vote. Although voters had approved 474 amendments through 2012, they had rejected 178 others. The first amendment was adopted on September 2, 1879. Each regular legislative session normally approves several amendments for the voters to approve or reject. A record twenty-five amendments were placed on the November 3, 1987 ballot. Seventeen were adopted, and eight were defeated.

Some amendments are of major statewide importance, but many have affected only a single county or a handful of counties or have been offered simply to rid the

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**Talking Texas: Should Constitutional Amendments Be Submitted to the Voters in Special Elections?**

*Proposition 12,* The constitutional amendment covering civil lawsuits against doctors and health care providers, and other action, authorizing the legislature to determine limitations on noneconomic damages. (SPECIAL CONSTITUTIONAL AMENDMENTS ELECTION, SEPTEMBER 2003)

Supporters said Proposition 12 was a cure for high medical malpractice insurance premiums that were forcing some doctors, particularly in rural areas, to close their practices. Opponents argued that medical malpractice coverage was high because state regulators were not effectively clamping down on bad doctors, and they warned that Proposition 12 was instead an effort by business and insurance interests to further restrict access to the courts for injured or aggrieved consumers.

Texas voters narrowly approved the constitutional amendment in 2003 after a multimillion-dollar advertising war. Doctors, hospitals, nursing homes, and other business interests primarily financed the campaign promoting the amendment. Plaintiffs’ lawyers—who make their living suing doctors, hospitals, and businesses on behalf of injured consumers—picked up most of the tab for the media campaign against it, although numerous consumer advocacy groups also opposed the proposal.

The amendment did two things. First, it ratified a 2003 law enacted by the legislature to put new limits on noneconomic damages—money awarded for such things as pain, suffering, and disfigurement—in medical malpractice suits. Such damages, which are in addition to medical costs and other actual economic losses that could be awarded a patient who suffered from a botched medical procedure, were capped at $750,000 for each case. Of that amount, only $250,000 could be recovered from physicians or other medical personnel. The remainder would come from hospitals, nursing homes, or other health care facilities that might have been involved. Additionally—and potentially more far-reaching—Proposition 12 included language clearing the
way for future sessions of the legislature to enact new limits on damages in other civil lawsuits. Opponents of Proposition 12 accused legislative sponsors of trying to sneak the proposal past the voters by scheduling the constitutional amendments election for September 13, rather than November 4, the general election date on which constitutional amendments were traditionally set for voter review. Supporters of the amendment said it was important to win voter approval earlier than normal to remove any legal uncertainty over the new malpractice limits. However, opponents argued that the early election, with no other issues to attract voters, was designed to avoid the higher voter turnout that would be generated by a hotly contested mayoral race in Houston on November 4. Voters in Houston, the state’s largest city, usually are a major factor in determining statewide elections, and a high voter turnout there could prove to be pivotal in determining the fate of Proposition 12. According to this argument, the higher the voter turnout in Houston, the higher the likelihood that the amendment would be defeated, because Democrats and plaintiffs’ lawyers still had some clout over elections in that city. Opponents of Proposition 12, as it turned out, had reason to fear the early election date. The proposal narrowly passed statewide, but 58 percent of Houston voters—turning out in far fewer numbers than would vote two months later in the mayor’s race—cast ballots against it.

### Critical Thinking Questions

1. Does the ballot language for Proposition 12 make it clear that the amendment puts caps on monetary awards for medical malpractice? Explain your answer.

2. Did supporters of Proposition 12 “cheat” by scheduling the election on a date when they knew the voter turnout among likely opponents would be lower? Why or why not?

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**initiative**
A petition and election process whereby voters propose laws or constitutional amendments for adoption by a popular vote.

**referendum**
An election, usually initiated by a petition of voters, whereby an action of a legislative body is submitted for approval or rejection by the voters.

**Constitutional Convention of 1974**
The last major attempt to write a new Texas Constitution. Members of the legislature served as delegates and failed to overcome political differences and the influence of special interests.

The constitution also provides for revision by constitutional convention, which the legislature can call with the approval of the voters. Delegates to such a convention have to be elected, and proposed changes adopted by a constitutional convention also must be approved by voters. Voters overwhelmingly rejected a proposal for a constitutional convention in 1919. Subsequent efforts, including an attempt by Governor John Connally in 1967, to hold conventions also were defeated. Connally’s efforts, however, resulted in adoption of a “cleanup” amendment in 1969 that removed many obsolete provisions from the constitution, and it laid the groundwork for a constitutional convention in 1974.

**The Constitutional Reform Efforts of 1971 to 1975**
The Constitutional Convention of 1974 has been the only one ever held under the present constitution, and it ended in failure. Its delegates were the 181 members of the legislature. The idea originated in 1971, when state Representative Nelson Wolff of San Antonio and several other first-term legislators won the leadership’s backing for a full-scale revision effort, and the legislature submitted a constitutional amendment for...
A convention to the voters. In 1972, voters approved the amendment, which provided that the delegates would be the state senators and house members elected that year.

In 1973, the legislature created a thirty-seven-member Constitutional Revision Commission to hold public hearings throughout the state and make recommendations to the convention. The constitutional convention, or “con–con,” as it came to be called by legislators and members of the media, convened on January 8, 1974. House Speaker Price Daniel Jr. was elected president, and Lieutenant Governor Bill Hobby, in an address to delegates, offered a prophetic warning: “The special interests of today will be replaced by new and different special interests tomorrow, and any attempt to draft a constitution to serve such interests would be futile and also dishonorable.”

Hobby’s plea was ignored. Special interests dominated the convention, which adjourned in failure on July 30, failing by three votes to get the two-thirds vote necessary to send a new constitution to Texas voters for ratification.

The crucial fight was over a business-backed attempt to lock the state’s right-to-work law into the constitution. The right-to-work law prohibits union membership as a condition of employment, so organized labor bitterly fought the effort. Then as now, business was politically stronger than labor in Texas, but the two-thirds vote necessary to put a new constitution on the ballot was too great an obstacle.

Governor Dolph Briscoe’s refusal to exercise leadership for a new constitution also hurt the revision effort. Except for opposing proposals that he thought would further weaken the governor’s authority, Briscoe provided little input to the convention. Louisiana voters approved a new state constitution that same year, and Governor Edwin Edwards’s strong support had been considered instrumental. Gubernatorial leadership in other states also appears to have been critical to successful constitutional conventions.

Another major obstacle was the convention’s makeup. The 181 members of the legislature were the delegates; soon after the convention began its work, many of them faced reelection campaigns in the party primaries, which diverted their attention and, in some cases, affected their willingness to vote for significant constitutional changes.

Additionally, a minority of legislators—dubbed “cockroaches” by President Daniel—did not want a new constitution and attempted to delay or obstruct the convention’s work at every opportunity. Most legislators, even those who wanted a...
new constitution, were susceptible to the influence of special interests, far more sus-
ceptible than most private-citizen delegates likely would have been. And special in-
terests were legion at the convention. In addition to various business and professional
groups and organized labor, many county officeholders whose jobs—protected by the
Constitution of 1876—were suddenly in jeopardy put pressure on the delegates.

During its next regular session in 1975, the legislature tried to resurrect the consti-
tutional revision effort. Lawmakers voted to present to Texans—as eight separate con-
stitutional amendments—the basic document that the convention had barely rejected
the previous summer. The first three articles dealing with the separation of powers
and the legislative and executive branches were combined into one ballot proposi-
tion. Each of the remaining seven propositions was a separate article, each to be in-
dependently approved or rejected by the voters. The most controversial issues that the
1974 convention had debated, such as right-to-work, were excluded. The streamlined
amendments would have considerably shortened the constitution and provided major
changes, including annual legislative sessions, a unified judicial system, and more flex-
ibility in county government. But voters rejected all eight propositions on November
4, 1975, some by margins of more than two to one.

A stock fraud scandal in the legislature in 1971 and the Watergate scandal that
forced the resignation of President Richard Nixon in 1974 had raised Texans’ distrust
of government, and the proposed new constitution had been drafted by state officials,
not by private citizens.

Nelson Wolff, who years later would be elected mayor of San Antonio and then
county judge of Bexar County, also noted a general lack of citizen interest in the work
of the constitutional convention. In his book, Challenge of Change, he wrote:

The constitutional revision effort in Texas had attempted to use every means
known to get citizen participation in the process. A toll-free telephone had been
set up for the convention. Committees of the convention met at night and on
weekends to provide working people an opportunity to testify. We provided to the
best of our ability optimum conditions for testimony. Yet many people avoided
participation in the revision process.34
Most people know little about the details of constitutions and constitutional revisions, and many voters distrust governmental institutions. Voter distrust and apathy played into the hands of numerous special interests, who did not want a new constitution because they did not want to give up the protections that the old constitution afforded them.

The comprehensive constitutional amendments also were thwarted, again, by Governor Dolph Briscoe. Although he had never taken an active role in the revision effort, three weeks before the 1975 election, he openly opposed the eight propositions and suggested that the existing constitution had served the state well and would continue to be adequate for the future.

Further Piecemeal Reforms

The legislature then returned to its pattern of piecemeal constitutional changes. Between 1975 and 2012, Texas voters approved 255 amendments, and 42 were rejected. Amendments that were adopted during this period included the creation of the state lottery in 1991, the 1993 amendment to ban a personal income tax without voter approval, and a series of propositions authorizing $3 billion in tax-backed bonds for a huge prison expansion program. In 1985, voters approved an amendment to give the governor and legislative leaders limited authority to deal with budgetary emergencies between legislative sessions, and in 1995, they approved an amendment to abolish the state treasurer’s office and transfer its duties to the comptroller. In 1999, the legislature rejected another proposal to rewrite the constitution but approved an amendment, which voters also approved, to remove more obsolete language from the document. In 2003, in a major dispute between doctors and trial lawyers, voters narrowly approved Proposition 12, which ratified new limits on monetary damages in medical malpractice lawsuits. (See Talking Texas: Should Constitutional Amendments Be Submitted to the Voters in Special Elections?)

Tackling another controversial issue, voters overwhelmingly approved a constitutional amendment in 2005 to ban same-sex marriages in Texas (see Talking Texas: Protecting Marriage or Promoting Discrimination?). In 2007, voters—encouraged by Governor Rick Perry and cycling champion Lance Armstrong, a cancer survivor—approved $3 billion in bonds to boost state funding for cancer research.

Constitutional Provisions, Interest Groups, and Elites

Only a small percentage of registered voters—often fewer than 10 percent—participate in elections when constitutional amendments are the only issues on the ballot (Table 2–3). Turnout is higher when the legislature submits amendments to voters in gubernatorial or presidential election years. But in many instances, a

<table>
<thead>
<tr>
<th>Type of Election</th>
<th>Number of Elections</th>
<th>Percentage of Registered Voters</th>
<th>Percentage of Voting Age Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special*</td>
<td>19</td>
<td>12.1</td>
<td>8.3</td>
</tr>
<tr>
<td>General (Gubernatorial)</td>
<td>11</td>
<td>42.3</td>
<td>28.1</td>
</tr>
<tr>
<td>General (Presidential)</td>
<td>10</td>
<td>62.8</td>
<td>45.3</td>
</tr>
</tbody>
</table>

*Only constitutional amendments on the ballot.

SOURCE: Texas Secretary of State, Elections Division.
Texas became the eighteenth state to add a ban on same-sex marriage to its constitution when voters overwhelmingly approved Proposition 2 in 2005. The amendment had the strong support of Governor Rick Perry and many church leaders, who argued that it was necessary to guard against any legal challenges to an already existing state law that defined marriage as a union of one man and one woman. Opponents, however, contended the measure was unnecessary and, intentionally or not, promoted hostility toward homosexuals, a minority group.

“I’m not sure the right to desegregate schools, the freedom to marry another race or even access to contraception in many states would exist if those issues were put up for a vote,” said Matt Foreman, executive director of the National Gay and Lesbian Task Force.  

But Garrett Booth, pastor of Grace Community Church in Clear Lake and a supporter of the amendment, had a different viewpoint. “It’s important we do not sit idly by and let an extreme minority set aside what God has set in place. We are living in a day when the things that you and I hold precious are being redefined,” Booth said. The proposition, one of nine amendments on the ballot, was approved by a three-to-one margin.

CRITICAL THINKING QUESTIONS

1. Do restrictions on marriage, such as those enacted in Proposition 2, belong in a state constitution? Why or why not?
2. Does a ban on same-sex marriage violate any rights provided in the U.S. Constitution? Why or why not?

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Talking Texas

Protecting Marriage or Promoting Discrimination?

![Talking Texas](image)
repeatedly turned to the Texas state government for tax breaks and other economic incentives and has found receptive ears in the legislature and the governor’s office.

It has been argued that the Texas Constitution serves the interests of a small number of elites—individuals who control businesses and other dominant institutions in the state. According to this argument, the constraints built into the constitution limit the policy options of state government and have historically thwarted efforts to restructure or improve the tax system, education, social services, health care, and other policies that would benefit low- and middle-income people. Power is so fragmented that public interest advocates have repeatedly had to turn to the courts to force change. This same argument also has been made often about the U.S. Constitution.

If this interpretation is accurate, it is ironic that the original writers of the Texas Constitution of 1876 directed much of their wrath against railroads, banks, and other institutions that are today considered elitist. The tumultuous last quarter of the nineteenth century witnessed much class and economic conflict with the emergence of the Greenback and the Populist political parties, which promoted the interests of the lower income groups. But moneyed business interests eventually used the state constitution and subsequent legislation to reestablish their dominance over Texas government. Although the elite structure of the state has changed since 1876, some scholars argue that there has been a gradual transfer of power and control to new elites, who continue to exercise enormous influence over public policy.

**Change Through Court Interpretation**

Some recent legal decisions indicate that Texas courts have become more active in interpreting the constitution in cases involving major state policies. In 1989, the Texas Supreme Court invalidated the system of funding public education and ordered the legislature to provide more equity in tax resources among the state’s 1,000-plus school districts. The court ruled that wide disparities in spending on students between rich and poor districts—the result of wide disparities in local property values—violated the state constitution’s requirement for an “efficient” system of public schools. The decision prompted a succession of changes to the school funding system and subsequent lawsuits.

More recently, in February 2012, the Texas Supreme Court, in a major water rights case, ruled in favor of two farmers who had challenged governmental restrictions on how much water they could pump from a well on their own land. The ruling was viewed as a major victory for landowners. But environmentalists, who feared it would curtail state water conservation efforts at a time when the state’s water resources were being rapidly depleted due to continued population growth, greeted it with concern.38

**Prospects for Future Change**

Experts can point out the many flaws of the Texas Constitution, but attempts at wholesale revision have not been successful. Prospects for an overhaul, at least in the near future, are unlikely.

For generations, most Texans have been suspicious of government. They are more concerned about governmental abuses and excesses than they are about restrictions on government’s ability to respond quickly and efficiently to public needs. In the popular vernacular, “If it ain’t broke, don’t fix it.” And the average layperson, if he or she thinks much about the state constitution at all, does not consider it to be “broke.” Besides, if something really needs fixing, adding another constitutional amendment could do it.

Also, many special interests benefit from the existing constitution, and they resist efforts to change it. Most Texans, though, know little about the document and how it can or does affect their lives. Enormous educational problems must be overcome if citizens are to be motivated to press for constitutional revision. It would take an exceptional statewide effort by reform advocates to mobilize the necessary political resources and develop a successful strategy to produce a constitutional overhaul.39
On MyPoliSciLab

**Constitutionalism**

2.1 Identify the functions of a constitution and place the Texas Constitution in a national comparative context, p. 35.

In addition to defining the formal institutional structure of governments, constitutions reflect the primary values and political objectives of a state. A constitution defines the relationships between those who govern and the general population and ultimately structures political power. A constitution limits the power and authority of government and provides basic protection for citizens from excesses and abuses of those who hold power. Whereas the U.S. Constitution is a concise, 7,000-word document that outlines broad, basic principles of authority and governance, the Texas Constitution, like those of many states, is an unwieldy and restrictive document with more than 90,000 words.

**The Constitutional Legacy**

2.2 Describe the historical influences, similarities, and differences of each of Texas’s seven constitutions, p. 36.

Texas (similar to many other states) has functioned under a series of constitutions: the Constitution of Coahuila y Tejas (1827), the Constitution of the Republic of Texas (1836), the Constitution of 1845, the Civil War Constitution (1861), the Constitution of 1866, the Constitution of Reconstruction (1869), and the Constitution of 1876. Each is appropriately understood from the perspective of the period in which it was adopted. There are general similarities in the seven constitutions, but careful attention to each reveals a progression of changes that have occurred over the state’s constitutional history. Some of these changes improved the institutions of state government; others served to constrain state’s constitutional history. Some of these changes improved the institutions of state government; others served to constrain the institutions of state government.

**General Principles of the Texas Constitution**

2.3 Explain the major features and general principles of the current Texas Constitution, p. 42.

Texas currently operates under a constitution that was adopted following the Civil War and the Radical Reconstruction era. Events of that period left an enduring legacy of suspicion of government, limited government, and fragmented governmental institutions. The 1876 constitution was predicated on the theory that governmental excesses could be minimized by carefully defining what governments could or could not do. The major guiding principles of the current Texas Constitution are popular sovereignty, limited government, representative government, social contract theory, and separation of powers.

**Weaknesses and Criticisms of the Constitution of 1876**

2.4 Outline the weaknesses and criticisms of the current Texas Constitution, particularly as they pertain to how the framers failed to anticipate economic and social changes in the state, p. 44.

What the delegates to the Constitutional Convention of 1875 regarded as the strengths of the constitution—fragmented authority, detailed limitations on the power of governmental institutions, and decentralization—have served to limit the ability of state and local governments to adapt effectively to economic and demographic changes. The perceived solutions to so many of the problems of 1875 have compounded the problems of state and local governments today. The framers failed to anticipate that the limitations they imposed on governmental institutions would ultimately allow major economic interests within the state to dominate the policymaking process, often to the detriment of the lower socioeconomic groups.

**Constitutional Change and Adaptation**

2.5 Contrast the ease and frequency of the constitutional amendment process with the difficulty of enacting more fundamental change through the constitutional convention process, p. 47.

Efforts to overhaul the Texas Constitution have failed. Consequently, the state has been forced to amend the document continually on a piecemeal basis. This process has produced some success in modernizing the charter, but many structural problems of state government require major institutional changes that cannot be resolved through this amendment process.

Over the years, numerous groups have attempted to protect their interests through constitutional amendments. But the same groups usually oppose any proposed changes that threaten their influence, power, or benefits. Therefore, the interests of small segments of the state’s population often prevail over the interests of the majority.

In many ways, the Texas Constitution reflects the values of the state’s conservative political culture, which continues to be suspicious of far-reaching constitutional changes. Moreover, constitutions and the debates that surround them are complex, and most people pay little attention to these issues. Consequently, it is much easier to mobilize public opinion against rather than for wholesale change.
Learn the Terms

- constitution, p. 35
- statutory law, p. 35
- unicameral, p. 36
- unitary system, p. 37
- federalism, p. 37
- bicameral legislature, p. 37
- plural executive, p. 39
- confederacy, p. 39
- Radical Reconstructionists, p. 40
- Edmund J. Davis, p. 40
- Grange, p. 42
- popular sovereignty, p. 43
- social contract, p. 43
- limited government, p. 43
- separation of powers, p. 43
- initiative, p. 48
- referendum, p. 48
- Constitutional Convention of 1974, p. 48
- right-to-work law, p. 49

Test Yourself

1. In contrast to the U.S. Constitution, the Texas Constitution
   a. is much shorter in length.
   b. has the quality of statutory law.
   c. has been amended only twenty-seven times in its history.
   d. was written to provide for maximum flexibility to meet new problems.
   e. was drafted in 1865 in response to the Civil War.

2. What is one feature of the Constitution of Coahuila y Tejas that continues to influence Texas today?
   a. existence of a unicameral legislature
   b. protection of Catholicism as the state religion
   c. division of the executive branch into three officials
   d. local control over public education
   e. publication of laws in English and Spanish

3. All of the following influenced the move for an independent republic EXCEPT the
   a. enforcement of the principle of federalism by the central government in Mexico City.
   b. suspension of the Mexican Constitution of 1824.
   c. repudiation of the principle of federalism by Santa Anna.
   d. stationing of Mexican army troops on Texas soil.
   e. rising tensions between Anglo settlers and Mexican officials.

4. What did the Constitution of the Republic of Texas do?
   a. It created a unicameral legislature.
   b. It retained Catholicism as the official state religion.
   c. It prohibited clergy from serving in the legislature or as president.
   d. It abolished the institution of slavery.
   e. It lasted for thirty years.

5. The one feature of the Constitution of the Republic that is not found in the current state constitution is
   a. an elected governor and lieutenant governor.
   b. a bicameral legislature.
   c. a plural executive.
   d. property rights for married women.
   e. annual legislative sessions.

6. Texas drafted and ratified the Constitution of 1845 because it
   a. became a state in the United States of America.
   b. became a state in the Confederate States of America.
   c. became a state in the Republic of Mexico.
   d. became the Lone Star Republic.
   e. reentered the Union after the Civil War.

7. Under the Civil War Constitution
   a. the two-party system was made stronger.
   b. the Southern Baptist Church became the official state church.
   c. the basic structure of governmental institutions changed significantly.
   d. slave owners were prohibited from freeing their slaves.
   e. the Texas government was subject to national control.

8. What happened after the Civil War?
   a. The Constitution of 1866 gave freed slaves the right to vote.
   b. The federal government imposed a military government on the state.
   c. The Constitution of Reconstruction enjoyed widespread popular support.
   d. The Constitution of Reconstruction returned to biennial legislative sessions.
   e. The Constitution of Reconstruction strengthened local government.

9. All of the following can be said about the drafting and ratification of the Constitution of 1876 EXCEPT that
   a. most of the delegates to the constitutional convention were white.
   b. the constitution was heavily influenced by agricultural interests.
   c. convention delegates reacted against the abuse of power under the Reconstruction government.
   d. it enjoyed widespread popular support.
   e. it favored centralization of state power at the expense of local control.
10. What does the current constitution call for?
   a. a bicameral legislature that appoints the governor
   b. a bicameral legislature that meets annually
   c. a judicial branch that is popularly elected
   d. a veto power that can be overridden by a simple majority vote of the legislature
   e. a very weak system of separation of powers

11. All of the following are weaknesses of the Constitution of 1876 EXCEPT that
   a. the governor has little control over executive branch agencies.
   b. the legislative branch is part time.
   c. centralization of public schools leads to lack of accountability to local populations.
   d. excessive detail makes it difficult for the government to adapt to changing circumstances.
   e. amending the constitution is the only way to enable the government to adapt to changing circumstances.

12. The Constitution of 1876
   a. gives the governor tremendous power over his or her cabinet.
   b. gives low-paid legislators immunity from the influence of interest groups.
   c. expands voter participation with the use of a poll tax.
   d. has been amended more than 470 times.
   e. is one of the most concise of all state constitutions.

13. Which of the following is true about an amendment to the Texas Constitution?
   a. It must be proposed by the legislature.
   b. It can be recommended by citizen initiative.
   c. It requires a simple majority vote in both houses of the legislature.
   d. It requires a two-thirds vote of the public to become effective.
   e. It may address only statewide issues.

14. All of the following are reasons the Constitutional Convention of 1974 failed EXCEPT that
   a. a right-to-work provision was opposed by organized labor.
   b. the governor's strong leadership of the effort was resisted by the legislature.
   c. the members of the convention were also members of the legislature.
   d. several legislators opposed to the effort obstructed the convention's work.
   e. the convention could not get two-thirds support to put the new constitution on the ballot.

15. What can be said about the modern amendment process?
   a. More voters participate in constitutional amendment elections than in presidential elections.
   b. Interest groups have a minor influence in the process.
   c. Texas voters are typically very interested in constitutional amendments.
   d. Constitutional amendments never deal with controversial social issues.
   e. The process tends to serve the interests of small, organized elites.

Explore Further


Lutz, Donald S., Principles of Constitutional Design. New York: Cambridge University Press, 2006. The author works from a comparative perspective to introduce the theoretical foundations of constitutionalism, principles of constitutional design, and constitutionalism and democratic theory.


in Texas and the South, arguing that the constitutional framers of 1875 were reacting not only to Republican Reconstruction but also to the recently elected Democratic administration.


Wolff, Nelson, *Challenge of Change*. San Antonio, TX: The Naylor Co., 1975. Written by a delegate to the 1974 Constitutional Convention, the author discusses the divisive issues that eventually led to the convention’s failure and provides an abbreviated history of the convention proceedings.