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TEXAS CONSTITUTION

LEARNING OUTCOMES

- 2.1 Compare and contrast state constitutions with the U.S. Constitution.
- 2.2 Trace the history of Texas constitutions.
- 2.3 Describe the 1876 Texas Constitution.
- 2.4 Analyze the Texas Bill of Rights.
- 2.5 Describe the ways the constitution changes, both through the amendment process and outside that process.

Today we take for granted that women have certain legal rights, but that has not always been the case. In 1957 a female attorney from Dallas, Hermine D. Tobolowsky, testified before the Texas State Senate committee on State Affairs in favor of two laws that would allow married women to obtain control over their property, separately from their husbands. Ms. Tobolowsky was one of the first three women in Texas admitted to the bar. In 1957 she represented the Texas Federation of Business and Professional Women and worked to identify Texas statutes that discriminated against women. The all-male senate committee listened to Ms. Tobolowsky's testimony with ridicule and condescension. According to Ms. Tobolowsky, the chair of the committee, Wardlow Lane, stated "women don't understand the bill they are sponsoring" (Tobolowsky, 1957). After the bill failed to pass out of committee in its original form, Ms. Tobolowsky sent a letter to Senator George Parklane stating, "we know what we want and are going to get it even if we have to change the membership of the Senate to get it" (Tobolowsky, 1957). She then launched a campaign for an equal rights amendment to the state constitution, guaranteeing women equal rights under the law. Though the amendment would not be ratified until 1972, many other laws were passed to increase married women's control over their property, the most significant of which was the Matrimonial Property Act of 1967. This act was part of a package of bills proposed by the Texas Bar Association for the purpose of silencing the growing call for an equal rights amendment. The bill equalized spousal rights pertaining to the management and control of community property. The act also gave married women the right to enter into contracts and conduct business without their husband's consent (Valadez & Walters, 2021).

The need for such laws may seem surreal or outlandish by today's standards. Women, both married and single, can open bank accounts, have credit cards, enter contracts, own businesses, and have sole control over their earnings. The idea that a married woman would need written permission from her husband before withdrawing money out of a joint bank account seems absurd. Yet, until Texas and other states passed such acts, married women had few rights under the law. The need for such laws in Texas appears even more incredible when one becomes familiar

with the various Texas constitutions. Unlike their married counterparts in 41 of the 50 states, married women in Texas have always enjoyed a certain degree of property rights.

The legal principle that held that a woman's legal identity was suspended during marriage comes from the English common law doctrine known as coverture. Upon marriage a woman's legal rights and obligations were absorbed by her husband. This meant that although a single woman could own property, make contracts in her own name, and acquire wealth, a married woman's property was controlled by her husband. She also could not enter into contracts or engage in business separate from her husband.

Despite this, all five of the constitutions Texas has had since joining the United States in 1845 have contained a version of the following statement:

All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property. (Sec. 19, Texas Constitution, 1845)

Texas, after all, was not an English colony and inherited much of its legal structure from Spain and Mexico. This idea, contained in the Texas constitution, that women did not automatically hand over control of the property acquired before marriage or gifted to them after marriage originated in Spanish civil law. Coupled with this was the legal concept of community property, also passed down from Spain, under which all property acquired during a marriage belongs equally to both spouses. Even bank accounts in the name of one spouse belong to both spouses. In the United States, there are currently nine states that recognize community property. The remaining 41 states rely on separate property law, which asserts that each spouse owns and controls all property that he or she acquired during the marriage solely. However, because the law of coverture stated that a woman's ownership of property transferred to her husband when married, and married women could not conduct business or enter contracts, married women in separate property states had no way of holding on to property acquired before marriage or acquiring new property after marriage, leaving them completely dependent on their husbands. By contrast, in community property states, all property and assets acquired during marriage belong to each spouse equally. A reading of the Texas constitutions demonstrates a long history of protections afforded to women's property rights not held in the majority of the other states.

Yet even with these constitutional protections, until the passage of the Marital Property Act in 1967 and other related acts passed in the 1950s, most married women in Texas had little, if any, control over their community property. Even though the Spanish and Mexican heritage found in the Texas constitutions afforded married women some property rights, the majority Anglo culture of Texas was still heavily influenced by English settlers and English common law.

The two legal systems were often in conflict. Despite the protections laid out in the constitution, Texas judges still relied on the common law practice of coverture when deciding cases concerning women's property rights. So the constitution became subordinate to tradition and cultural views. Constitutions are influenced by the prevailing culture of the time in which they are written; they often, therefore, come into direct conflict with the customs and traditions of changing demographics and times. In this chapter you will learn more about how each Texas constitution reflects the times in which it was written and how the current constitution, written in 1876, has adapted to or been resistant to changes in the social and political culture of Texas.

WHAT IS A CONSTITUTION?

A **constitution** is a legal document that sets out the rules and principles of governance. There are two necessary components of every constitution: it creates the political institutions that will govern its citizens and it allocates power to those institutions.

A state or country's constitution outlines the rules of the political game, and as such the political institutions and rules will reflect the culture and preferences of the authors who drafted it. The founders of the United States were influenced by classical liberalism, which viewed the government as subordinate to the will of the people. They sought to build checks and balances into the system to prevent tyranny and authoritarianism and to establish a government subordinate to the rule of law. As a result, the U.S. Constitution created three political institutions—a legislature, an executive, and a judiciary—each with checks and balances. The Constitution grants each of those political institutions specific powers: the legislative branch makes the laws, the executive branch enforces the laws, and the judiciary interprets the laws.

Though the United States was the first nation to outline this principle in a written document, the concept of separation of power was not new. Some scholars trace the idea as far back as the Renaissance. The British government also had a type of separation of powers; Parliament served as the legislative branch and the King served as the executive. The Declaration of Independence was addressed to King George III because he was the chief executive of Britain, but the laws that the colonists protested at the Boston Tea Party were passed by the British Parliament. In addition, the British had set up governments in each of the colonies consisting of a separate legislature and executive, headed by a governor appointed by the Crown. Therefore, when the constitutions of the various states and the new nation were drafted, they were not creating completely new political institutions, but merely copying familiar ones—though having a separate judiciary was new to the colonies. Even many of the protections contained in the Bill of Rights, such as the right to due process, trial by a jury of one's peers, and the right to a speedy trial, were first outlined in the English Magna Carta of 1215.

The actual principles by which a state or country is ruled may or may not coincide with the actual written constitution, however. For example, the current Texas Constitution limits the governor's executive and legislative powers, making the office of the governor fairly weak. Despite this, as you will learn in Chapter 9, Texas governors have enjoyed a tremendous amount of influence on the legislative agenda when one party controls all branches of the government, giving them more power than is described in the text of the Constitution. Therefore, on paper, Texas has a weak governor system, but the reality of his or her strength depends on which party controls the legislature and the remainder of the executive branch, as well as how that power is exercised by the person in office.

A constitution serves as the basic law of the land. It establishes the framework for how the government will be organized and the responsibilities of the government, and it dictates the basic relationship between the government and the people. Whereas the U.S. Constitution defines these relationships between the national government and all citizens of the United States, each state also has a constitution to define these relationships for its residents.

Civil Liberties and Civil Rights

Though a guarantee of certain rights to citizens is not a necessary requirement for a constitution, they are found in many democratic constitutions. We have both **civil liberties** and **civil rights**. Civil liberties are our freedoms from tyranny by the government and are protected in the Bill of

Rights, which makes up the first 10 amendments to the U.S. Constitution. Civil liberties include the right to free speech, the right to privacy, freedom of religion, the right to remain silent in a police interrogation, the right to a fair trial in court, the right to marry, and the right to vote.

Civil rights, on the other hand, are guarantees that the government will protect us from discrimination. Certain civil rights are guaranteed under the constitution, federal and state laws, and executive actions.

Thus, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution ensures equal treatment under the law. The Civil Rights Act of 1964 prohibits discrimination based on race or sex. Similarly, the Nineteenth Amendment expanded voting rights to women.

Each state, including Texas, has its own constitution and its own listing of rights, and some define civil rights more broadly than other states or than the federal government. For example, the Texas Constitution has an Equal Rights Amendment prohibiting discrimination based on gender; the U.S. Constitution does not. Often, it takes many years for rights to be expanded, as we will discuss throughout this book. The Supreme Court has changed its interpretation of the Constitution based on changing conditions, so it has modified, restricted, or expanded rights based on the composition of the Court and its members' interpretation of the Constitution and legal precedent.

How State Constitutions Differ From the U.S. Constitution

State constitutions differ from the U.S. Constitution in many aspects. Some of these differences reflect the different political values of the framers of the U.S. Constitution and those who drafted their state constitutions. In 1776, in the midst of the American Revolution, the Continental Congress directed all 13 colonies to draft constitutions creating political institutions based on **popular sovereignty**, the idea that the power of the state rested with the people. Each of these constitutions essentially created a sovereign, self-ruling nation. The next year the Second Continental Congress drafted the Articles of Confederation, the first constitution of the United States. Though the Articles of Confederation wasn't ratified until 1781, under that constitution, each state retained sovereignty. It also prevented the new government from enacting taxation or regulating commerce. The country, at that time, was an assembly of sovereign states. One of the struggles faced by the framers of the U.S. Constitution, drafted in 1787, was to convince these 13 newly formed nations to surrender a portion of their sovereignty and assign it to a strong centralized government. One way to achieve this was to create a system of power-sharing known as federalism, which we will discuss in Chapter 3; in service of this, the framers drafted a document that outlined the powers of the federal government in broad terms, leaving most policy decisions to the individual states. Consequently, one of the main differences between state constitutions and the U.S. Constitution is length. The U.S. Constitution is 7,591 words, including amendments. The average state constitution is four times longer. Alabama has the longest constitution at more than 400,000 words. Texas has the second-longest constitution with more than 85,936 words.

The U.S. Constitution outlines broad enumerated powers of the three branches, most state constitutions contain specific policies. Many of these provisions resemble the laws passed by legislatures, but for historical or political reasons they have been upgraded to constitutional law. For example, the current Texas Constitution contains sections on education, property rights, bankruptcy, and even rules governing the creation of some special districts. For instance, in 1959 the constitution had to be amended to allow Hidalgo County to create a hospital district. These constitutional policies found in state constitutions have resulted in the need for multiple amendments. When the special hospital district in Hidalgo was no longer needed, that amendment was repealed by an additional amendment. The current Texas Constitution has been amended 507

times in 145 years. In contrast, the U.S. Constitution has been amended only 27 times in more than 230 years, and the first 10 of those amendments, the Bill of Rights, were added just 4 years after the initial ratification of the Constitution in 1787.

An additional important difference between state constitutions and the U.S. Constitution is the quality of impermanence. The current U.S. Constitution was adopted in 1787 and only amended 27 times. States, however, have had multiple constitutions and only six states currently have constitutions drafted before 1850. The average state constitution lasts roughly 70 years (Hammons, 1999). Georgia, for example, has had 10 constitutions, Louisiana has had 11, and Texas is on its fifth constitution since becoming a state and had two more before joining the United States. The most recent effort to draft a new constitution for Texas was in 1972, but that effort failed.

Constitutions as a Reflection of Political Culture

States are often forced to draft new constitutions due to outside political pressure or necessity. All member states of the Confederacy rewrote their constitutions upon secession from the United States. These constitutions transferred statehood from the United States to the Confederate States and included sections on slavery. For example, the entirety of Article VIII of the Texas Constitution of 1861 was dedicated to slavery. Section 1 prohibited the legislature from passing laws emancipating slaves, and section 2 put in place prohibitions on citizens emancipating their own slaves. When the Civil War ended, former Confederate states were required to rewrite their constitutions again before being allowed re-entry into the Union. After the end of the Reconstruction Period, Texas once again drafted a new constitution.

Political culture is defined as the overall set of values and beliefs widely shared within society at any given time. It includes citizens' orientations toward three elements of the political system: the political institutions, the policymaking process, and policy outcomes.

Citizens' Orientation Toward Political Institutions

Orientation toward political institutions is measured by whether citizens view the institutions as legitimate. Do they accept the laws passed by the legislature and rulings of the courts, or do they take to the streets in protest? When a group of people stormed the U.S. Capitol on January 6, 2021, to interfere with the certification of the 2020 presidential election results, that was an indication that some no longer viewed the political institutions in the United States as legitimate. If a majority of citizens no longer view the institutions as legitimate this can lead to revolution and the creation of new institutions.

Citizens and the Policymaking Process

When categorizing the level of involvement of citizens in the policymaking process, Almond and Verba (1963) listed three political cultures: participant, subject, and parochial.

In states with a dominant **participant culture**, most people will believe citizens should take an active role in the policymaking process. Voter turnout in elections will be high and citizens may also engage in other activities such as lobbying the legislature, contacting their representatives, and protests. The state constitution may even contain an element of direct democracy known as a **public referendum**. A public referendum allows voters to circumvent the legislature and vote directly for policy changes. Currently, 22 states plus Washington, D.C. allow public referenda. Texas does not.

Subject political cultures are characterized by citizens who passively obey the law and have little to no political participation. One way this is demonstrated is through low voter turnout. Texas may or may not be a "subject political culture"; however, Texas ranks 44th out of 50 states in terms of voter turnout.

In those societies with **parochial political culture**, citizens may have little awareness of the central government or its policies. There have been times in U.S. history when different groups have set themselves apart, often due to religious beliefs, and established their own enclaves with their own practices, customs, and laws. However, over time these groups have been fully incorporated into U.S. society and are subject to the laws of the state in which they reside and to the laws of the federal government. There are few, if any, purely parochial states today, although countries with authoritarian regimes stifle dissent, suppress free speech and freedom of the press, and attempt to control the news and information their citizens receive through regulated internet and official news sources, leaving citizens unaware of what their government is doing. These tactics create subjects, not parochial political cultures.

Citizens' Orientation Toward Policy Outcomes

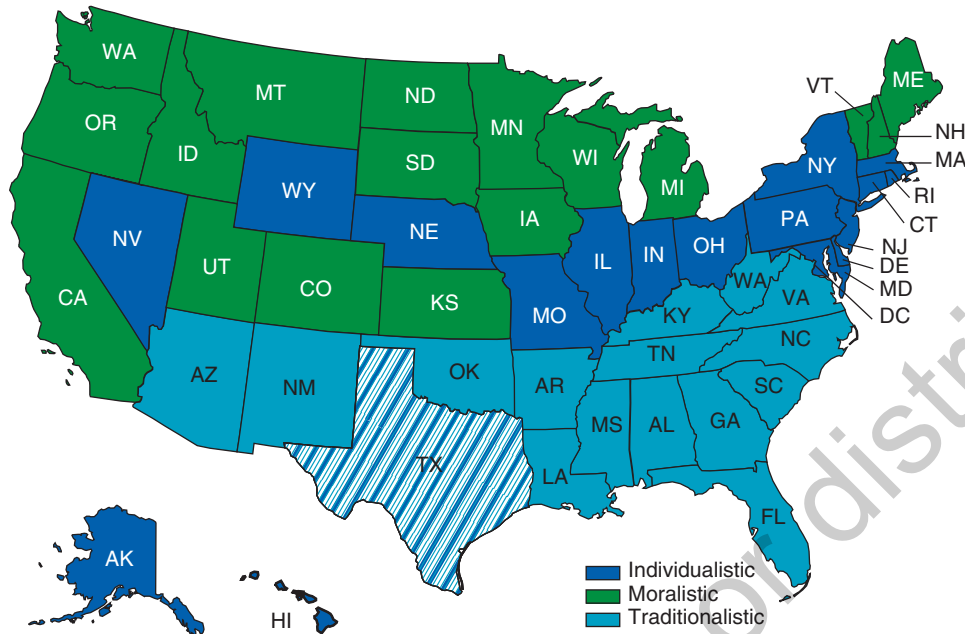
Citizens' orientation toward policy outcomes can be thought of as citizens' beliefs regarding what constitutes a good society and how to best achieve it. How involved should the government be in managing the economy or maintaining moral values? When discussing this aspect of political culture, Daniel Elazar's typology of political culture in the United States may be more helpful than Almond and Verba's global typology of political culture. Elazar (1966) argues that there are three dominant political cultures in the United States: individualistic, moralistic, and traditionalistic. Citizens in an **individualistic culture** view government and policy as a means to help them pursue individual goals. They expect the government to only provide goods and services that are essential in helping them achieve private goals, rather than solve the greater interests of society. One would expect states with a dominant individualistic culture to offer few social programs and rely on tax breaks to stimulate the economy. Citizens in an individualistic culture will only participate if they believe they will receive a direct benefit.

Citizens in a **moralistic culture** view government and policy as means to better society and promote the general welfare. Hence, they support an expanded role for government and policies that support the poor and marginalized citizens. States with a dominant moralistic culture will have generous social programs as well as extensive voting rights.

The **traditionalistic culture** is found predominantly in the South, which has a strong religious tradition and a large fundamentalist Christian population. The traditionalistic culture holds the belief that government and policy are necessary to maintain the existing social order. States with long histories of racial hierarchies enforced by law worked hard to preserve those systems. In traditionalistic cultures, new policies are advanced only if they reinforce the status quo and the beliefs of those in political power. One would expect these states, like individualistic ones, to have few social programs. In addition, states with this dominant culture would be highly resistant to the expansion of voting rights, as it undermines those in power and traditional culture and hierarchies.

Elazar, himself a native Texan, argued that Texas was a combination of individualistic and traditionalistic cultures. As discussed in Chapter 1, many of the myths surrounding Texas reflect the "rugged individual"—the "lone ranger" who stands up to the "bad guys." There have been many criticisms of Elazar's theories of political culture since he published them in 1966. Mainly, his theories were based on patterns of migration, and those patterns no longer hold true today. However, we can see components of both the individualistic and traditionalistic cultures not only in the current policies and politics of Texas but also in the rights or exclusions embedded in the Texas Constitution.

MAP 2.1 ■ Elazar's Cultural Classification by State

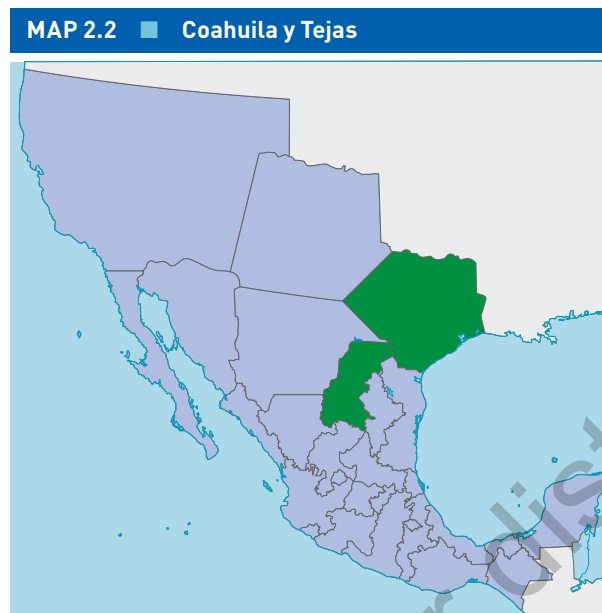


THE HISTORICAL CONSTITUTIONS OF TEXAS

As discussed in Chapter 1, Texas has a diverse and unique past. Texas has been a part of six different sovereign nations and is the only state in the United States that at one time was its own republic. Between 1824 and 1876 Texas was a state of Mexico, its own sovereign nation, a state of the United States, a state of the Confederate States, and then a state of the United States for a second time. Each of these realities corresponds to a different constitution, and each of these constitutions reflects the history and culture of the times.

The Constitution of the State of Coahuila and Texas 1827

Texas's first constitution was as a state under the Mexican Constitution of 1824, *Constitución Federal de los Estados Unidos Mexicanos*. Mexico's constitution was influenced by both the U.S. Constitution and the Spanish Constitution of 1812. From the United States the Mexican Constitution borrowed the separation of powers as well as a federalist system. Though the basic political structures created by the Mexican Constitution of 1824 resembled the United States, there were also some substantial differences. First, there was no separation of church and state, as Catholicism was named the official religion. Also taken from the Spanish Constitution of 1812 were protections for homestead property against bankruptcy (meaning a person's legal residence could not be taken for payment of debts other than delinquent property taxes or debt against the property), community property rights for married women, and a direction to the Congress to "promote education." For settlers living in Texas at the time, the most significant aspect of the new constitution was the merging of the province of Texas with the state of Coahuila for the creation of the new state, Coahuila y Tejas. The Mexican government also directed each state to draft a constitution.



The state of Coahuila y Tejas finally adopted a state constitution in 1827. This would be the first written constitution of Texas. As directed by Mexico, the constitution created three separate branches of government: executive, legislative, and judicial. Though the basic political structure mirrored that of the United States, the constitution was more deeply influenced by Mexico. This Spanish and Mexican influence would present some stark differences from the U.S. model. First, where there was a separation of church and state in the U.S. and citizens enjoyed freedom of religion, the first Texas constitution affirmed the Mexico Constitution's establishment of Catholicism as the official religion, directing the government to financially support the church, and the practice of any religion other than Catholicism was prohibited. Second, it required schools to be established in all towns. The U.S. Constitution contained no mention of education. The judiciary was able to try cases but was not allowed to interpret the law, removing one of the checks on power. Most important, and to the chagrin of settlers in Texas from the United States.

Slave-owning Texans found a creative and devious circumvention of the state's prohibition on slavery. Slaves were forced to sign contracts with their owners granting them freedom, but in exchange for the "freedom", they and their children would be indentured servants for life.

There were other reasons for Texans to be unsatisfied with the constitution, however. The constitution of Coahuila y Tejas divided the states into three districts. All of Texas comprised one district, Bexar. In the 12-person unicameral state legislature created by the constitution, Texas (the Bexar district) was only allotted two seats. The remaining 10 seats were allotted to the other two districts both located in Coahuila. The state of Coahuila y Tejas had a total of 11 governors during this time. All 11 were elected from the Coahuila region as well. Residents in Texas were so unhappy that in 1833 they drew up a new constitution as a separate state from Coahuila. When Stephen F. Austin attempted to deliver the new constitution to the capital in Mexico City, however, he was arrested. This fueled anger among the Texas settlers and fueled their desire for independence.

The Constitution of the Republic of Texas 1836

In October 1835 Mexico replaced its constitution with a new one known as the Seven Laws (*Las Siete Leyes*). The Seven Laws changed Mexico from a federalist system to a unitary one, with immense powers for the chief executive. Under the sixth law of the new constitution, state legislatures and governors would now be appointed by the president of Mexico, Santa Anna. Other provisions also strengthened the powers of the president, allowing him to dissolve Congress and the Supreme Court. In addition, the president would now be chosen by the lower chamber of Congress. The states in the Federal States of a United Mexico suddenly saw their independence and quasi-sovereignty threatened, and many rebelled, including Texas. As discussed in Chapter 1, while Santa Anna's troops marched on the Alamo, the provisional government of Texas met and declared their independence from Mexico. Within days a constitution had been drafted and approved. This would be the second constitution of Texas, the Constitution of the Republic of Texas.

The Constitution of the Republic of Texas was quickly drafted during the Texas Revolution from Mexico in the shadows of the Mexican army's Goliad campaign. The document the revolutionaries produced bore a close resemblance to the U.S. Constitution but did leave some components of Mexican law intact, such as community property laws, homestead property rights, and a provision directing Congress to provide a system of education, as well as prohibitions against the governor serving a second term. Though the political institutions of a separate executive, legislative, and judiciary branch resembled the United States, these institutions were also present under Mexico and therefore did not represent a change.

Components of the Constitution of the Republic of Texas that were not present under the previous Mexican constitution, however, do reflect the delegates' close affinity with the United States. Whereas the previous constitution declared Catholicism the official religion of the state and prohibited the practice of any other religion, the new constitution guaranteed the freedom of religious practice as well as a separation of church and state, "No preference shall be given by law to any religious denomination or mode of worship over another, but every person shall be permitted to worship God according to the dictates of his own conscience" (Declaration of Rights, Constitution of the Republic of Texas, 1836).

Another component, though not found in the U.S. Constitution, did resolve one of the main areas of contention between Mexico and the American settlers in Texas: slavery. The new constitution spelled out exactly where the American settlers stood on their commitment to retaining slavery, stating that "all persons of color who were slaves for life previous to their emigration to Texas, and who are now held in bondage, shall remain in the like state of servitude" and "Congress shall pass no laws to prohibit emigrants from the United States of America from bringing their slaves" nor "shall Congress have power to emancipate slaves." Individuals were even prohibited from emancipating their own slaves without the consent of Congress, and free persons of African descent were not permitted to live in Texas without the consent of Congress. The constitution did provide for elections, but women, enslaved people, and Native American men were excluded from the right to participate.

The Constitution of 1845

Texas officially gained its independence from Mexico in April of 1836 after the Battle of San Jacinto, and the constitution was ratified in September of the same year. However, as discussed

in Chapter 1, Texas only remained an independent nation for nine years, formally entering the United States in December 1845. The annexation of Texas by the United States required Texas to draft and adopt a new constitution before annexation took place.

The framers of the 1845 constitution drew from many sources, including the U.S. Constitution, the Constitution of the Republic of Texas, and even the failed Texas Constitution of 1833 that Austin had attempted to deliver. From Spanish and Mexican law, the constitution drew protections for homestead property from bankruptcy and, as discussed in the introduction to this chapter, provision for the protection of sole and community property of married women. As in the previous constitutions, there was also a stated commitment to education; however, instead of merely directing the legislature to promote education, a Permanent Education Fund was set up for the purpose. Ten percent of all tax revenue was to be set aside for the fund, and the legislature was ordered to establish free schools throughout the state.

The constitution created political institutions that mirrored the institutions of the United States. A bicameral legislature was established, with members of the lower chamber serving 2-year terms and members of the upper chamber serving 4-year terms, with half the chamber up for reelection every 2 years. This is remarkably similar to the U.S. Senate where members serve 6-year terms and 1/3 are up for reelection every 2 years. The governor would serve 2-year terms but would be ineligible to serve more than 4 years in any 6-year period. The U.S. Constitution did not limit the number of terms served by the president until the passage of the Twenty-second Amendment in 1951. The Mexico Constitution, however, still limits their presidents to one 6-year term.

There were other ways in which the Texas Constitution differed from the United States. Though the governor did have the power to appoint members of the Supreme Court, those members would only serve 6-year terms rather than for life. The governor, unlike the U.S. president, also had the power to remove district court judges and other judges. The idea that judges should be held accountable was further expanded by a constitutional amendment in 1850 that provided for the direct election of all judges.

Like the Constitution of the Republic of Texas, the constitution of 1845 also kept the practice of slavery in place. Once again, the constitution prohibited the legislature from emancipating slaves; however, it did allow the legislature to pass laws permitting slave owners to do so. It also allowed laws to be passed prohibiting the mistreatment of slaves, though there is no evidence that any such laws were adopted. The constitution also continued to exclude women, African Americans, and Native Americans from participating in elections.

At the time of its adoption, the 1845 constitution was widely popular, both in Texas and in Washington. Though he had argued against the annexation of Texas while in the Senate, Senator Daniel Webster stated at the time of its ratification that the Texas Constitution was the “best of all state constitutions.” He and others praised its straightforward and simple style. However, like those that preceded it, this constitution of Texas would not last.

Constitutions of the Confederacy and Reconstruction Period

Fewer than 16 years after becoming the 28th state in the United States, Texas announced its secession from the Union in February 1861. Texas would officially join the Confederate States of America the following month and would then amend its state constitution to reflect the change.

The Texas Constitution of 1861 is often referred to as the fourth constitution of Texas, but it was not wholly or even mostly new. Instead, it was an amended version of the constitution

of 1845 with minor revisions to reflect the change in allegiance from the United States to the Confederate States. All references to the United States were replaced with “the Confederate States of America” and current office holders were required to take an oath to the Confederacy. The laws regulating slavery, however, were amended from the 1845 version. Whereas the previous constitution allowed slave owners to emancipate their slaves, the new Confederate Texas Constitution expressly prohibited such action stating, “No citizen, or other person residing in this State, shall have power by deed, or will, to take effect in this State, or out of it, in any manner whatsoever, directly or indirectly, to emancipate his slave or slaves” (Article VII, Section 2, Constitution of Texas, 1861). Hence, the Texas Constitution would demonstrate an even stronger commitment to the institution of slavery than before.

The Civil War officially ended four years later in May of 1866. President Andrew Johnson required all former Confederate States to draft new constitutions before being readmitted into the Union. Delegates to the Texas constitutional convention, however, only managed to pass the bare minimum required for readmission. The 1866 Constitution repealed secession, repudiated the debt the state had incurred in the war effort, recognized the supremacy of the U.S. Constitution, and abolished slavery. Though the new constitution did grant freed male slaves some rights, such as the right to enter into contracts and own property, it failed to grant them the right to vote or hold public office. In addition, the newly elected Texas Legislature refused to ratify the Thirteenth Amendment to the U.S. Constitution abolishing slavery or the Fourteenth Amendment granting citizenship to African Americans, whether former slaves or free. After the election of 1866, the Republican Party (which fought for abolition and supported Reconstruction) gained an overwhelming majority in Congress and passed the Reconstruction Acts of 1867, which among other provisions, required ex-Confederate states to write new, more satisfactory constitutions.

In 1868–1869 Texas convened yet another constitutional convention in the hopes of drafting a document that would allow them to be accepted back into the United States. During the convention, Republican delegates proposed breaking Texas in half, creating a new state to be known as the State of West Texas. Texas had seceded from the United States during the Civil War, and Republicans now wanted to secede from Texas in the hope of being accepted back into the Union more quickly. The Constitution of West Texas granted full voting rights to former male slaves, but it denied voting rights to ex-Confederate rebels, members of the Klu Klux Klan, and newspaper editors and ministers who had supported the Confederacy. Though the Constitution of West Texas was never accepted, neither was any other constitution produced at the convention. Therefore, under orders of federal military officers, work from the convention was edited and published as the 1869 Constitution.

The 1869 Constitution went beyond the bare minimum required to rejoin the Union. Though it kept many provisions of the previous constitutions, it did create a more active state government. The legislature was to meet annually, and the governor would once again have the power to appoint judges, as well as most of those in executive branch offices. The Constitution created a new state agency, the Bureau of Immigration, “to promote and protect” immigration in the state. It also placed the supervision of education under the state and imposed compulsory school attendance laws. But Texans no longer trusted the state government to control education—or anything else—mostly because ex-confederates were prohibited from seeking or holding political office during Reconstruction and therefore would not be in control of the legislature. The Constitution of 1869 was never fully accepted as legitimate by pro-Confederate Texans, who were hostile to the federal government and laws adopted during Reconstruction.

CONSTITUTION OF 1876: “RETRENCHMENT AND REFORM”

By 1874 Democrats had regained control of the Texas Legislature and the governor’s office. Democrats in Texas and the South, at that time, were staunchly opposed to Republican policies, which they saw as diminishing white rule in the South. Early in the 1874 legislative session, a joint committee proposed an entirely new constitution as an amendment to the Constitution of 1869. Because the new constitution had not been drafted by convention and they feared it would antagonize the federal government, the amendment was rejected by the legislature. The following year, Texans voted on the question of holding a constitutional convention. In August of 1875, the referendum on a constitutional convention was approved and delegates convened in Austin in September 1875.

The 90-member delegation to the constitutional convention consisted of only 15 Republicans, 6 of whom were Black, though before the convention ended one of the Black Republican members resigned and was replaced by a white Democrat. The Democrat delegation consisted mainly of ex-Confederate officers, lawyers, and farmers. The largest organized group of delegates were farmers who were members of the Patrons of Husbandry (the Grange), a militant farmers’ organization established after the Panic of 1873. Their motto was “Retrenchment and Reform”. With 40 members they were able to dictate much of the new constitution. In reaction to the powerful centralized government created under Reconstruction, the new constitution greatly weakened the powers of all state government branches, particularly the power of the governor. In reaction to the Panic of 1873, which had caused the collapse of many banks and started a global economic recession, the Grange ensured that the constitution controlled the excesses of big business, mainly banks. The final result was a constitution that, like all previous ones with the exception of those written under duress in 1866 and 1869, reflected the dominant political culture of the times in which it was written.

Government Structures and Power of the 1876 Constitution

Several aspects of the 1876 constitution greatly weakened the power and authority of the state government. The governor’s office was weakened by reducing the term of office from 4 years to 2 and removing the power to appoint judges and other executive branch officials. Instead, all members of the executive branch would be elected by the voters, separately from the governor, creating what is known as the plural executive. This meant the governor of Texas could no longer direct policy by controlling the executive agencies in charge of its implementation.

The constitution also diluted the power of the Texas legislature. Legislative sessions were changed from annual to biannual (held every other year). The legislature would only meet in odd-numbered years and sessions would last a mere 140 days, and it could not call itself back into session, meaning any state business not concluded within the 140 days of the regular session would have to wait 18 months before being addressed. They would have to rely on the governor to call a special session of the legislature to complete their work as well as to respond to emergencies. The constitution also prohibited the legislature from running a deficit, unless 4/5 of both chambers agreed to authorize deficit spending. Legislative salaries were slashed as well. Today, Texas still has one of the lowest-paid legislatures, at \$7,200 a year.

To further weaken the legislature, the constitution set out long, detailed sections on public policy, taxation, railroads, and even private corporations. Like previous versions, the constitution of 1876 directed the legislature to support and maintain a free public school system and earmarked money for the Permanent Education Fund. However, whereas the 1845 constitution stated that “no less than 1/10” of general revenue was to be set aside for education, the 1876

constitution directed that “no more than 1/4” of funds from general revenue and poll taxes shall be set aside for education. The former set a minimum amount to be spent on education, allowing the legislature more discretion in educational funding, while the latter prevented them from spending more than the maximum amount on public education. In addition, the constitution replaced the state superintendent’s office with a board of education composed of the governor, comptroller, and the secretary of state. It abolished state compulsory school attendance laws and ordered the racial segregation of public schools. It also limited the ability of local districts to raise their own funds. These long, detailed sections on public policy prevent the legislature from enacting policy changes through legislation and instead require changes to be made through constitutional amendments, which is a more difficult and onerous process.

The constitution limited local government control as well. It restricted local authorities’ ability to levy taxes, dictating the amount and type of taxes they could levy. It hindered their ability to run deficits or issue bonds for special projects. It even dictated counties’ government structures, resulting in the least populated county, Loving (population 64 in the 2020 Census), having the same number of county commissioners as the state’s most populated county, Harris (population 4.7 million).

How the Constitution Controlled Businesses and Protected Property

The 1876 constitution contained several provisions to protect individual property from banks, some of which were carried over from previous constitutions that were influenced by Spain and Mexico. Once again, citizens were offered homestead protections. Several state constitutions at the time included general provisions against corporations, but the Texas Constitution went a step further and prohibited branch banking. In practical terms, this meant that each bank had to be locally owned and could only have one location. This provision forced owners of banks to live in the same communities as their clients. As the state grew in population, however, this provision became unworkable. Even ATMs were constitutionally prohibited in Texas until a constitutional amendment in 1986 removed the prohibition against branch banking.

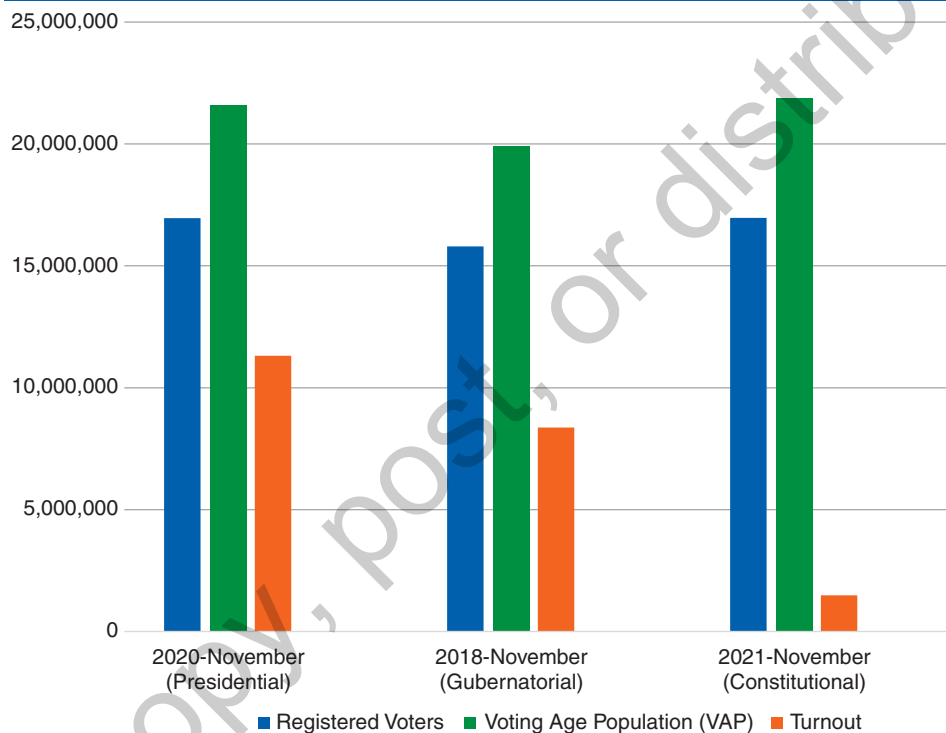
The Constitution and Voting Rights

Because of the passage of the Fifteenth Amendment to the U.S. Constitution, the delegates at the Texas constitutional convention of 1876 were unable to avoid extending voting rights to Black men. However, they did find other ways to restrict voting in the constitution. In the section on suffrage, the document states the following people are not allowed to vote: persons under the age of 21, “idiots and lunatics,” indigents who are supported by the county, convicted felons, and “all soldiers, marines and seamen, employed in the service of the army or navy of the United States” (Article VII, Section 1, Texas Constitution, 1876). The term “idiots and lunatics” was the medical definition used at the time for people who were mentally incompetent and under the care of the state mental hospital. The voter disqualification for members of the military is odd by today’s standards. However, remember that under the Reconstruction Acts, soldiers in the Confederacy were prohibited from running or holding political office. Stripping Union soldiers of their suffrage rights may have been a form of payback, as those in the armed forces might also be likely to vote for reforms and elect politicians who would extend voting rights for African Americans.

The constitution also provided for precinct voting and a poll tax. Precinct voting requires citizens to vote at a specific polling place based on where they live, rather than anywhere in their home county. In larger townships a tax assessor–collector was to be chosen to collect the poll tax; in smaller communities, the sheriff would collect it. Though the constitution set forth a purpose

for the poll tax—it was supposed to fund education—and a means to collect it, paying the tax of one dollar was not required to vote, according to the text of the constitution. Oddly enough, the constitution also prohibited any registration of voters. However, voter registration requirements and the requirement to pay a poll tax to register would be set by the legislature, in the Texas Statute. Local officials would use both the poll tax and voter registration rules to prevent minorities from voting. You will read more about the struggle for suffrage among minorities in Chapter 5.

FIGURE 2.1 ■ Texas Voter Turnout in Presidential, Gubernatorial, and Constitutional Elections



The Complexity of the Texas Constitution

Whereas the 1845 Constitution had been praised for its straightforward and succinct form, the Constitution of 1876 is long and overly complicated. At the time of its passage, it contained 17 Articles and 289 sections. Since its adoption 223 new sections have been added; 66 of the original sections have been removed as well as 52 of the added sections. Currently, there are 394 sections in the Texas Constitution, which makes it difficult to be familiar with all its provisions. In 2019, Bill McCleod, who had just been elected County Court Judge in Harris County, unintentionally resigned from his post when he filed paperwork stating his intention of running for chief justice of the Texas Supreme Court in the next election. In doing so he triggered Article XVI, Section 65 of the constitution, which states that anyone holding certain county positions, including judgeships, automatically resigns from their position when they announce their candidacy for a different office (Powell, 2019). Article XVI of the Texas Constitution has 73 sections and is 26 pages long.

THE TEXAS BILL OF RIGHTS

Though not a necessary component of a constitution, most democratic constitutions contain a list of guarantees to their citizens collectively known as a **bill of rights**. These guarantees in the U.S. Constitution were first proposed as 12 amendments during the first session of Congress in 1789. Of the 12 proposals, 10 were ratified in 1791 and are now referred to as “the Bill of Rights.” All 50 state constitutions also include a bill of rights, but unlike the U.S. Constitution where they are included as amendments, they usually appear at the beginning of the document. In the Texas Constitution of 1876, they appear in Article I. Originally there were 29 sections in the Bill of Rights, but since 1876 Texans have added five additional rights and amended others.

The Texas Bill of Rights contains many of the same guarantees found in the national Bill of Rights, such as freedom of speech, freedom of religion, right to a trial by jury, right to bear arms, and protections against unreasonable searches and seizures. However, there is an important difference in the way the rights are stated. The U.S. Constitution’s Bill of Rights limits actions taken by the government; for instance, the First Amendment prohibits the government from making any law that abridges the freedom of speech. The Texas Constitution’s Bill of Rights, on the other hand, lists rights the government must protect, which will be discussed in more detail below.

The protection of those rights is also given more attention and detail. The rights around religion are a good example. The U.S. Constitution states “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” This appears in the First Amendment, along with several other rights (freedom of speech, freedom of the press, right to assemble, and right to petition the government). The Texas Bill of Rights contains four sections on religion alone. One of these sections states,

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship. (Article I, Section 6, Texas Constitution, 1876)

The phrase “no human authority ought...to control or interfere with the rights of conscience in the matters of religion” is a much stronger statement than, “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” As a result, parents have been able to claim a religious “right of conscience” to circumvent vaccination requirements for children attending school.

The Texas Bill of Rights also includes several provisions and rights not found in the U.S. Constitution. The Sixth Amendment to the U.S. Constitution guarantees a trial by jury for all federal criminal prosecutions, while in Texas citizens enjoy a trial by jury for both civil and criminal trials. For example, one can request a trial by jury for a speeding ticket or even for a divorce hearing. There are also two guarantees of equal rights explicitly stated that are not present in the U.S. Constitution. Section 3 declares, “All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.” In 1972, citizens added an amendment to this clause, “Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.”

Since the constitution's adoption, other rights have been added to the document as well. Section 30, adopted in 1989, outlines the rights of victims of crimes, including the right to notification of criminal proceedings, convictions, sentences, and imprisonment. Such victims also have the right to "be treated with fairness and respect throughout the criminal justice process" and a right to receive restitution. The restitution is paid out of the victims' fund set up by the legislature. After the prosecution, defendants are often ordered to pay into the fund as a part of their sentence. In 1997, Section 31 of the Bill of Rights was adopted to ensure the proper management of this fund. Other additional rights guaranteed to all Texans include the right to public access and use of public beaches (Section 33) and a right to hunt and fish (Section 34).

CONSTITUTIONAL CHANGE

The Texas Constitution has changed continually over the century and a half of its existence. Those changes have come through the formal process of amending the text but also through less formal means.

Constitutional Change Through Amendment

As of 2022 the Texas Constitution has been amended 517 times. A **constitutional amendment** is a formal, written modification to the governing document. Most of these amendments were intended to help the government operate more efficiently and responsively. Though initially the constitution was amended infrequently, the pace has steadily increased. Texas now averages nine proposed amendments and six adoptions every 2-year legislative cycle. Very few sections of the document have remained unchanged by amendment.

For an amendment to be ratified, it must first gain the support of 2/3 of each chamber in the legislature in the form of a joint resolution. This requires 100 house members and 21 members of the senate to vote in favor of the amendment. Once the proposed amendment is passed by the legislature, it is submitted to voters; if a simple majority vote in favor, the amendment is approved. It generally takes at least 2 years from the time of the initial proposal to the approval or rejection of the amendment.

Amendments Often Adopted by Few Voters

One might think that because voters must approve each constitutional amendment, the changes must represent the will of the people. Indeed, most amendments pass with at least 60% support of the voters, some with as much as 80%. This appearance of overwhelming support hides an important fact, however. Votes on constitutional amendments usually occur during a **special election**, which is an election called for a specific purpose and which therefore is not necessarily held on Election Day in November. For example, in 2022 the legislature scheduled a special election on constitutional amendments for a Saturday in May. This has the effect of depressing voter turnout. The number of voters participating in special elections is considerably lower than during presidential or even midterm congressional elections. In Texas, the voter turnout during special elections averages around 8.5% of registered voters. When an amendment passes with 60% approval, that works out to just over 5% of registered voters marking a ballot in favor of the change. And voters who participate in these special elections differ demographically and ideologically from voters in regular elections. They are older, more likely to be white, and more conservative than the general population, all registered voters, and even those who vote in major elections.

Constitutional Change Through Practice

Amendments are not the only way the constitution has changed since its ratification. Constitutions can change a great deal through practice, as well. The framers of the U.S. Constitution gave Congress alone the authority to declare war, for instance, yet Congress has only declared war five times throughout the history of the United States. In most cases we have entered wars and military intervention by executive action. Each time a president acts outside of their stated constitutional authority, and Congress does nothing in response, presidential power is expanded—without a constitutional amendment.

Because the Texas Constitution is highly detailed and specific, there is less room for change through practice than in the U.S. Constitution, but it does occur. The office of lieutenant governor of Texas and the vice president of the United States are given remarkably similar powers in the Texas and U.S. Constitutions. For example, each has the responsibility of serving as president of the Senate. In the United States Senate, however, this has meant the vice president presides only over certain functions, such as the certification of the electoral college vote or casting the decisive vote in a tie. The day-to-day business of the Senate is presided over by the Senate majority leader, who is elected by the sitting senators. In Texas, however, the role of the lieutenant governor looks much more like that of the U.S. Senate majority leader. The lieutenant governor determines committee assignments and controls the legislative calendar, effectively deciding which bills receive a vote. Many have argued that this important legislative role makes the lieutenant governor the most powerful elected office in Texas. Vice presidents of the United States, by contrast, are often viewed as weak, lacking any real role in policymaking. This difference has resulted not from constitutional amendment but from years of tradition and practice.



Lt. Governor Dan Patrick presides over the Texas Senate. Unlike the vice president of the United States, whose role as president of the Senate is limited to breaking tie votes and presiding over the counting of electoral college votes, lieutenant governors use their role as president of Senate to control the chamber's legislative agenda.

Tamir Kalifa/Stringer/Getty Images

Constitutional Change Through Judicial Interpretation

Constitutional change through judicial interpretation is quite familiar at the national level. The U.S. Supreme Court has used its role as the interpreter of the Constitution to overturn state school segregation laws, expand voting rights, expand the rights of marriage, expand rights of privacy, and grant rights to the accused in criminal cases, to name a few. Because of the long and detailed sections on policy in the Texas Constitution, however, the Texas Courts have less discretion in interpreting the law and have a diminished role as policy actors when compared to the U.S. Supreme Court (see Chapter 9). Just recently the Texas court ruled that the constitution did not give them standing to decide whether ERCOT, the Electricity Reliability Council of Texas, which controls the Texas power grid, enjoys sovereign immunity and therefore cannot not be sued (*ERCOT v Panda Power*, 2021). This non-decision decision has garnered great interest as ERCOT currently faces several wrongful death lawsuits after the statewide blackout during the freeze in February 2021.

There have been instances, however, especially in education finance, when Texas Courts have taken an active role. Article VII, Section 1 of the Texas Constitution states, “it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and



Students and parents of Edgewood School District in San Antonio protests for equal education. Their efforts resulted in changes to the state's educational finance system.

Tom Lankes/Associated Press

court ordered the legislature to develop a new education finance system to ensure that school districts with roughly the same tax rate would be guaranteed roughly the same amount of revenue. The legislature responded with a plan that forces wealthier school districts to send money to the state for redistribution to the poorer districts. This set off a cascade of lawsuits that we will discuss at length in Chapter 11. Ultimately, however, through the interpretation of the courts, the constitutional directive of an “an efficient system of public schools” has come to mean a more “equitable” system of public schools.

Constitutional Change Through Federal Government Intervention

Though the authority of Texas courts is restrained by the Texas Constitution, the federal government is not similarly limited in its authority or scope. The U.S Constitution is the “supreme law of the land,” and hence, parts of the Texas Constitution have been nullified by U.S. Supreme Court decisions. For example, Section 32 of the Texas Bill of Rights states, “Marriage in this state

shall consist only of the union of one man and one woman.” This amendment was ratified in 2005 with 76% of the vote in favor and with a near 18% voter turnout—unusually high for a special election for a constitutional amendment. Though the provision still appears in the Texas Constitution, it was nullified by the 2015 Supreme Court decision in *Obergefell v Hodges*. In that landmark civil rights case, the court ruled that “the fundamental right to marry is guaranteed to same-sex couples by both the due process clause and the equal protection clause of the fourteenth amendment to the U.S. Constitution (*Obergefell v Hodges*, 576 U.S. 644, 2015). Thus, despite the constitutional amendment in the Texas Constitution banning such unions, same-sex couples have had a right to marry in Texas since the summer of 2015.



Advocates for marriage equality celebrate the landmark Supreme Court decision legalizing same-sex marriage, a ruling that overturned the Texas Constitution's ban on such union.

Jack Plunkett/Associated Press

CONCLUSION

We began this chapter by discussing the testimony of Hermine D. Tobolowsky to the Senate. She was laughed at by the all-male Texas Senate committee because she dared to believe that women should be able to own and control property separate from their husbands. Despite the Texas Constitution's protection of women's rights in this area, judges in Texas denied married women control of their money and property. It was an example of constitutional change through judicial interpretation. Left unsatisfied by the Texas legislature, Ms. Tobolowsky spearheaded a movement to add an Equal Rights Amendment for women to the constitution. Once the amendment was ratified by Texas voters, women finally had sole control over their individual property and an equal share of control over their community property, thus bringing the constitution in line with the culture of the day.

Yet, if the constitution already granted women property rights, why was the amendment necessary? As discussed in the chapter, constitutions create the political institutions and set down the rules by which a people are governed. They also reflect the culture and times in which they were written and borrow from previous governing documents. The current constitution of Texas, originally written in 1876, reflected the fear of big government and big business that followed the end of the Civil War and Reconstruction and the first major stock market crash in the United States. But it also borrowed from the earlier constitution of Texas when it was still a state of Mexico. Women's property rights came from the Spanish and Mexican tradition, not the English tradition of common law. Thus, those non-English components of the constitution were mainly ignored by judges and businesses in Texas.

One could argue that other sections of the Texas Bill of Rights are ignored as well. For example, one of the original rights states that “no preference shall ever be given by law to any religious society”, yet some argue that the Texas legislature did just that when they passed strict anti-abortion laws, placing religious preferences of some over the rights of women. When Texas added an amendment to the Constitution in 2005 banning same-sex marriage, were they not in violation of the original freedom of religion clause by codifying a religious preference belief into the constitution? If not for the Supreme Court decision in *Obergefell*, Texas would have required an additional constitutional amendment before marriage equality in Texas was achieved.

WHAT CAN YOU DO?

- Be sure to vote in Constitutional amendment special elections. Remember these elections are usually held when there are no candidates on the ballot and voter turnout is always far below turnout in a gubernatorial or presidential election.
- Write to your legislative representative and suggest amendments to the constitution. Remember, amendments must be passed by the legislature before they go to the public for ratification.
- Familiarize yourself with the Texas Bill of Rights and hold your representatives and the courts accountable for its enforcement. You may have rights you are unaware of. Like the women in our opener, you may have constitutional rights that are being ignored.
- Join a group of likeminded individuals and challenge the constitution in federal court. If it had not been for the challenge by *Obergefell* and the Supreme Court's decision in the case, Texas would likely still bar same-sex marriage.

AN EXERCISE IN DEVELOPING YOUR OWN CONSTITUTION

In his book *The Principles of Constitutional Design*, political scientist and theorist Donald Lutz (2006) outlines eight principles of sound constitutional design. The eighth principle reads, “A Constitution Rests not only on the History and Present Circumstances of a People but also on Probable Future Developments.” The preceding sections of this chapter have demonstrated the link between the constitutions of Texas and the people’s incorporation of history, culture, and reactions to changing circumstances. It cannot be said, however, that the constitution of 1876 considered the ability to adapt to future peoples and demands.

What would you do differently? If you were given the opportunity to draft a new constitution for Texas, what changes would you make? Using some of Lutz’s eight principles of constitutional design for guidance, these are the things you might consider.

1. **Match the constitution to the people.** How will ensure that your constitution represents the view of those previously left out? Should there be a public initiative option that allows citizens a direct method of changing the constitution or public policy?
2. **The ideal political system will not work on earth.** It is important to design political institutions that will work for the most people possible, while realizing it will never work for everyone. It is generally good to start with existing political institutions and make changes rather than creating totally new ones. For example, the United States has a long tradition of separation of political branches of government, unlike most European countries that rely on parliamentary systems with no separation of powers.
3. **Political power is an unavoidable danger that must be understood and faced if the design is to succeed.** What will you do to protect against political corruption? Is a separation of power alone enough to protect against political abuse? The current Texas Constitution has multiple provisions to protect against corruption—short terms, separation of power, and rules of conduct once in office—and yet, Attorney General Ken Paxton has been under indictment for years, with no repercussions. Should the constitution contain a provision making it easier to oust corrupt officials from office? If so, how should such a measure be framed? What about term limits (which limit the number of terms an elected official can serve)? Should they be pursued?
4. **Distribution of power.** How will power be distributed between the different branches of government? What type of limits should be placed on the governmental power in Austin? How will power be shared between the state and local governments? Should counties and municipalities be able to make their own regulations to suit the needs of their constituents? Should there be local control in certain policy areas, such as environmental policy or in the case of a health or weather emergency?
5. **A constitution must be easily adaptable for future developments.** How will you ensure that the constitution is easy to change or even be replaced in the future? What does the amendment process look like? What about a way to call for a constitutional convention? Is there a way to give the courts more ability to change policy through interpretation?

There is no need for your constitution to be long or overly detailed. The United States has the longest surviving written constitution in the world. At just over 7,000 words, it is so brief that you can carry a copy of it in your pocket. It is important, however, that the constitution considers all the various groups of people that it will represent, so you want to make your institutions

as inclusive as possible. A good place to start your constitutional project is to study other constitutions. You can find constitutions from around the world at <https://www.constituteproject.org/>. Remember, no one writes a constitution completely from scratch. The framers of the U.S. Constitution relied on existing political institutions from the colonies. Texas has copied components of other constitutions in each of theirs.

If you believe a new amendment is in order. Meet with your local legislator and discuss the issue. If it is an important issue, there may already be a group advocating for such an amendment. If so, join that group and increase your influence statewide.

Finally, when elections are held on constitutional amendments study the issues, decide whether or not you think the measure will benefit the people of Texas, and vote on the measures accordingly. Your voice matters. So tell your friends, send them information about the election and the amendments and urge them to vote, as well. Use social media to reach a broader audience. Remember, very few people vote in special elections. Your vote can make a difference, especially, if you get others to join you in voting for or against the measure.

DISCUSSION QUESTIONS

1. In what ways do you think the current Texas constitution reflects the culture of those who wrote it in 1876?
2. What are the main differences and similarities between all seven Texas constitutions?
3. In what ways did the 1876 constitution try to restrict voting?
4. Looking over the freedom of religion section in the Texas Bill of Rights, do you think it provides more or less protection for religions than the United States Bill of Rights? Why?
5. What impact does low voter turnout have on constitutional amendment elections? Do you think it matters who votes in these elections?
6. Why do you think attempts to replace the current Texas Constitution have failed?

KEY TERMS

Bill of Rights (p. 41)

civil liberties (p. 29)

civil rights (p. 29)

constitutional amendment (p. 42)

constitution (p. 29)

individualistic culture (p. 32)

moralistic culture (p. 32)

participant culture (p. 31)

parochial political culture (p. 32)

popular sovereignty (p. 30)

public referendum (p. 31)

special election (p. 42)

subject political culture (p. 31)

traditionalistic culture (p. 32)

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