

The Texas Constitution

Lessons Overview

Learning Objectives

1. Define federalism.
2. Compare and contrast earlier versions of the Texas Constitution with the current version.
3. Discuss the historical and ideological origins of Texas' current constitution.
4. Explain the basic organization of government under the Texas Constitution, comparing and contrasting its distribution of power with that of the United States Constitution.
5. Evaluate criticisms of the Texas Constitution.
6. Review past attempts and current proposals to revise the Texas Constitution.

Video: The Texas Constitution

The Texas Constitution reflects a remarkable historical link to its 19th century origins. Based on a strong skepticism of big government, it purposely fragments and limits state governmental power. Despite its massive page count and numerous amendments, all attempts to rewrite the Texas Constitution have failed. This video demonstrates how the theme of limited government permeates the Texas Constitution, as it identifies factors that have prevented constitutional reform.

Video Focus Points

Look for answers to these questions when watching the video:

- How did the authors of the Texas Constitution create a weak government?
- Why have attempts to reform The Texas Constitution failed?

Video script:

Music introduction

Narrator: Since 1789, the Constitution of the United States of America has served as a model for the establishment of governments all over the world. It outlines the structure of the government, enumerates its powers, and guarantees individual freedoms, all in a concise 7,000 words. The constitution of the state of Texas performs the same functions as its national counterpart, but lacks its elegance and economy.

David Prindle, Professor of Government, University of Texas at Austin: The last time I counted the words in the Texas Constitution, it was more than 93,000 words and getting longer every year. The people who wrote the constitution made a long, detailed constitution with many specific prohibitions as to what the government could not do, or regulations as to how the government could do something.

Narrator: Texas adopted its current constitution in 1876 as a condition to rejoining the Union after the Civil War. Its length and complexity reflected the political culture and values of the people who created it.

David Prindle: The Northern troops, after the Civil War, had just left the state and the Southern white farmers were convinced that the reconstruction government had been oppressive. So they decided that they were going to design a government that could never oppress them or anybody else ever again.

Jessica Lavariega Monforti, Assistant Professor of Political Science, University of Texas–Pan American: I think what we end up with is very much so a document that speaks to the individualistic culture in Texas, of course leading back to that, and also that leaves us with mistrust of government, so we have weak institutions across the board.

Narrator: To this day, the Texas Constitution reflects the saying – "That government is best that governs least." It establishes a limited government where power is purposely fragmented.

David Prindle: The Texas preference, the anti-government conservative preference, is reflected very strongly in the structure of the constitution. One way they designed a weak government was to divide the government against itself, especially at the executive level.

Jessica Lavariega Montforti: In the United States Constitution, we know who's in charge and that's the president. In Texas, it doesn't quite work in that way. First of all, we have the plural executive and that is sort of an interesting and unique feature to Texas.

Gov. Rick Perry: I, Rick Perry, do solemnly swear...

David Prindle: The Texas governor is notoriously weak. He's weak because the executive powers of the state are divided up among the governor and several other executives. The lieutenant governor presides over the senate. The attorney general has many legal powers that governors have in other states. The land commissioner has power over the way the state's lands are disposed. So that the Texas governor, which the Southern white farmers in 1875 feared, was shackled by having to cooperate with other people who wouldn't necessarily cooperate with him or her.

Narrator: The Texas Constitution also fragments judicial power by creating a dual court system – one for criminal trials, the other for civil matters.

Bailiff: God save the state of Texas and this honorable court.

Judge: Thank you. Be seated.

David Prindle: Texas has two Supreme Courts. One, the Civil Track Supreme Court is actually named the Supreme Court.

Bailiff: All please rise.

David Prindle: The second one, the Criminal Track Supreme Court, is called the Texas Court of Criminal Appeals. Furthermore, at the lower levels, it's not clear at all times what the jurisdiction of some courts is. They have overlapping jurisdictions. Ordinary citizens who have to appear in courts can be quite confused about what's going on, and when.

Jessica Lavariega Monforti: We've divided our court systems and we've divided our executive branch. So we have division across the board and really an attempt to stop government from becoming the most powerful force in the state. And what we are left with is huge ways in which business can sort of roam freely in the legislative process.

Narrator: The Texas Legislature, like the U.S. Congress, has two chambers – a Senate and a House of Representatives. But all Texas legislators are, by definition, part-timers.

David Prindle: The Constitution restricts legislators to meeting for 140 days every two years. It also restricts their salary to 7,200 dollars a year. The consequence is that they do not have enough time to give to being full-time analysts of public policy and that means that lobbyists

have a great deal of influence over them.

Narrator: Unlike many other states, the Texas Constitution does not allow for citizens to propose legislation or constitutional amendments, directly.

Jessica Lavariega Monforti: The big question I think that we ask is, given the populist history of Texas, why don't we have a progressive reform like the initiative process? The initiative process basically begins with an idea of an average citizen, and then that person going out and convincing other people to sign a petition on their behalf saying that some change needs to happen in the law. With the initiative process, you can literally have homegrown grassroots politics coming directly from the people that does not necessarily need to go through a legislative body in order to pass. I think in many ways, the argument was that a person can be rational, but groups of people working together can be irrational and can potentially ruin the system.

Demonstrator: You support wickedness and ungodliness!

Jessica Monforti: So in a way it's the idea of protecting us from ourselves, from reactionary politics... to build a more stable Texas government.

Narrator: Although the Texas Constitution has endured into the twenty-first century, it has been amended more than four hundred times. In contrast, the U.S. Constitution has seen only twenty-seven amendments in its entire history.

David Prindle: The U.S. Constitution contains what is known as the necessary and proper clause. It's a sort of a catch-all grant of power that says to the federal government that you may do, more or less, what needs to be done to govern. The Texas Constitution contains no necessary and proper clause. It, in effect, says to legislators and governors and everybody else in government, any time you try to do anything new, you must amend the constitution. And that, of course, is time consuming and expensive.

Narrator: There have been numerous attempts to update or streamline the Texas Constitution. The boldest was the Constitutional Convention of 1974, affectionately known as the "Con-Con." One hundred eighty-one members of the Texas legislature convened at the capitol to modernize the state's antiquated blueprint.

Hon. Bill Meier, Former State Senator (1973-1983), Fort Worth, TX: The time was right and ripe

for attempting to rewrite the Texas Constitution and that was the result of the vote that was taken by the people to have a constitutional call in '74 – let's get it fixed to where we can go to a modern position where there is a broader provisions, a stronger governor, a legislature that's more a full-time representative government.

Narrator: But after seven months' work, the convention adjourned, failing by three votes to send a new constitution to Texas voters for ratification.

Hon. Bill Meier: The lobby interests and the special interests were very comfortable with the current structure of the constitution because it was very helpful to a special interest group to have a limited government and a limited legislative session and a limited functioning of the executive.

Narrator: Since 1974, the parade of constitutional amendments has continued, while attempts at revision have died on the vine. Why does it seem Texans are stuck with an archaic charter?

Hon. Bill Meier: People in Texas are very independent people and people believe that less government is better than more government. When you have those principles that are embedded in your institutional attitudes about state government, those are hard to change.

Jessica Monforti: The question is, who is the constitution working for and how loudly are those interests lobbying to keep what we have in place?

David Prindle: Basically, people benefit from the Texas Constitution who don't want government to do much for other people. So people in Texas who say they're anti-government actually aren't anti-government when it comes to certain kinds of benefits, especially for business. They're anti-government when it comes to helping the less well off in society.

Narrator: But the question remains – is a constitution rooted in the 19th century ideals of less government adequate for the varied and complex challenges of the 21st century... challenges including increased provision of social services to the elderly and poor, quality education for a global economy, improved urban infrastructure, and the management of natural resources? In the interim, it appears the only change to the Texas Constitution will be its increasing page count.

End of video.

Study Questions

Look for answers to these questions throughout the lesson:

1. Briefly summarize features of the Texas Constitutions of 1836, 1845 and 1861. What major features did they have in common? What were the important differences?
2. Why did Texas change constitutions three times between 1866 and 1876?
3. Describe how the Constitution of 1876 addressed certain features of the 1869 Constitution.
4. What were the major motivations behind the design of the Constitution of 1876? How were the interests of those who wrote it reflected in the document?
5. What does it mean to say that the Texas Constitution is a statutory constitution? What are the consequences of such a constitution?
6. Compare and contrast the Texas Constitution with its United States counterpart. Putting aside the issue of foreign policy, which government has greater powers?
7. How does the Texas Constitution limit the taxing and spending powers of state government?
8. Discuss the importance of Article 7 in the Texas Constitution.
9. Describe the steps required to amend the Texas Constitution. Give two examples of recent constitutional amendments.
10. What are referenda and initiatives? Does the Texas Constitution provide for either of these? Name a state that does.
11. Explain major scholarly criticisms of the Texas Constitution.
12. The Constitutional Convention of 1974 started with what seemed like a reasonable prospect of success. Why did it fail?
13. How did the proposed constitutional amendments of 1975 alter political institutions?
14. What were the key components of Representative Rob Junell and Senator Bill Ratliff's 1999 proposed constitutional revision? Do you think the proposal was a good one?
15. What opportunities, if any, does Texas provide for direct democracy (e.g., referenda, initiatives) by citizens?