

The Texas Constitution

Texas Constitutional History

As the basic law outlining the primary structure and functions of a government, constitutions invariably reflect history and culture, and state constitutions are no exception. In Texas, history is reflected not only in the content of the constitution, but in the number of constitutions under which the state has been governed. Texas was first governed by Spain, and then Mexico before becoming the independent Republic of Texas. After nine years as a nation, Texas became part of the United States, joining the Union as the 28th state. When the Civil War broke out, Texas seceded from the Union, joining other southern states to form the Confederate States of America. After the war was ended and confederate states were permitted to rejoin the Union, Texas once again became part of the United States. With each of these changes, Texas adopted a new constitution.

Constitution of Coahuila y Tejas, 1827

Prior to its independence, Texas was governed as a part of Mexico under the Mexican Constitution of 1824. Established as a federal republic, each state could write its own constitution. Combined as a single state, Texas and Coahuila established a constitution in 1827. Under this constitution, legislative power was delegated to a unicameral legislature composed of twelve deputies, including two elected from Texas by popular vote. The legislature met annually from January through April and could be called into special session. Executive power was vested in a governor and vice-governor, elected to four-year terms by popular vote. The governor could recommend legislation, grant pardons, lead the state militia, and see that the laws were obeyed. Judicial authority was vested in state courts that oversaw minor criminal trials and civil cases. The courts could not interpret the law, and misdemeanor cases were tried by a judge without a jury. Texans ignored two provisions, one that required Catholicism as the state religion and the other that did not recognize slavery.

The Republic of Texas Constitution, 1836

Because of escalating tensions between Texas and Mexico, Texas declared its independence in 1836, established the Republic of Texas, and adopted a new constitution. The Texas Constitution of 1836 lifted major portions from the U.S. Constitution. The new charter was brief, composed of less than 6,500 words. Its features included separation of powers into three branches—legislative, executive, and judicial—with a system of checks and balances. It created a bicameral legislature, with a House of Representatives and a Senate. Representatives and Senators served terms of one and three years, respectively. The executive resembled the American president who was elected by popular vote. The judiciary was four-tiered, with justice, county, district, and supreme courts. The constitution also recognized slavery, provided for male suffrage, contained a bill of rights, and excluded citizenship to African Americans and Native Americans. Although the document did contain an amendment process, it was so complex that none were ever adopted.

The State Constitution of 1845

When Texas ceased to be an independent republic and joined the United States, a new constitution was necessary. The U.S. Congress accepted the state's charter on December 29, 1845, and Texas became the twenty-eighth state to join the Union. The Texas Constitution of 1845 was a document of broad, general principles that allowed state government the flexibility to solve policy problems as they arose. It continued the tradition of a bicameral legislature, now meeting once every two years (biennially). Representatives served two-year terms while Senators were elected for four years. Legislators' pay was set at three dollars for each day of attendance. The governor's term was two years, limited to serving no more than four years in any six-year period. The attorney general and secretary of state were appointed by the governor and confirmed by the Senate. The governor could convene the legislature, was the commander-in-chief of the state militia, granted pardons and reprieves, and could veto legislation, which could be overridden by a two-thirds vote of both houses. The judiciary consisted of a Supreme Court, district courts, and additional courts created by the legislature. Judges to the supreme and district courts were appointed by the governor. Amendments required proposal by a two-thirds vote of both houses of the legislature and ratification by a majority popular vote. Only one amendment was approved by Texans. The Texas Constitution of 1845 also created a public school system and established the Permanent School Fund.

The Constitution of 1845 was also heavily influenced by Jacksonian Democracy, a political philosophy named for the democratization policies implemented by President Andrew Jackson during the 1830s to 1850s. Jackson attacked a ruling class which, he argued, dominated an activist government, concentrating financial and political power to the benefit of a relatively small number of elites. Jackson sought to increase popular participation in government and one of his key policies for breaking the elitist hold on government was to extend voting rights and expand the number of political officials subject to popular election. The long ballots with which Texas voters still contend are a direct legacy of Jacksonian Democracy and the Constitution of 1845.

The Confederate Constitution of 1861

When Texas seceded from the United States at the beginning of the Civil War in February 1861, a new constitution was drafted by delegates to the Secession Convention. In most instances, the wording of the Texas Constitution of 1845 was kept intact, but the words “United States of America” were replaced with “Confederate States of America.” Most laws not in conflict with the Confederacy remained valid. A clause permitting the emancipation of slaves in the 1845 constitution was eliminated and the freeing of slaves was declared illegal. The structure of the legislative, executive, and judicial branches remained the same as the 1845 version. Overall, it was a conservative document, without many of the radical changes suggested by secessionist leaders.

The Post-Civil War Constitution of 1866

With the end of the Civil War came yet another document, which provided for the constitutional laws necessary to rejoin the Union, namely the abolition of slavery and declaring secession illegal. In addition, the delegates to the Constitutional Convention of 1866 made other modifications to the document. The powers and structure of the bicameral legislature remained fundamentally the same as the Texas Constitution of 1845, but salaries were increased to eight dollars a day. Legislators were also now required to be white men with a prior residence of five years in Texas. The governor’s term was increased to four years, but the governor could not serve more than eight years in any twelve-year period. For the first time, the governor was given the line item veto on appropriations bills. The state Supreme Court was increased from three to five judges with a ten-year term of office. District judges were now elected by popular vote for

eight-year terms. The process of constitutional amendment was revised to require a three-fourths majority of both houses of the legislature and approval of the governor to call a convention to propose changes.

The Reconstruction Constitution of 1869

The Constitution of 1866 was invalidated after Radical Republicans took control of the U.S. Congress and imposed military governments on the former Confederate states. As a condition to reentering the Union, states had to draft new constitutions acceptable under the Reconstruction Acts. However, the Texas Constitutional Convention of 1869 dissolved over factional differences without drafting a final document. Military officers gathered the available materials and published the Texas Constitution of 1869. The new document declared the U.S. Constitution the supreme law of the land. Slavery was abolished and equality of the law was extended to all persons. Legislative changes included extending terms of Texas Senators to six years and legislative sessions would now be held every year. In the executive branch, the attorney general and secretary of state were now appointed by the governor, with all other officials elected by popular vote. The number of Supreme Court justices was reduced to three with the terms shortened to nine years. All judicial offices were now appointive. The amendment procedure was unchanged from the Texas Constitution of 1866. The constitution also included a compulsory school attendance law and provided for state supervision of education. The Radical Republican Constitution was able to garner public support needed for approval only because those with Confederate sympathies, the majority Anglo agrarians, were barred from voting.

The Texas Constitution of 1876

When Democrats regained control of state government in 1873 from Radical Republican Governor Edmund J. Davis, their first priority was to draft a new constitution for Texas. In 1875, when delegates gathered in Austin at the constitutional convention, a group of white, southern agricultural elites, known as the Grange, sought to restrict the size and scope of state government. As a result, they abandoned the pattern established in the Texas Constitution of 1845 of a document phrased in broad terms, choosing instead to draft a restrictive constitution of great length and detail. The convention effectively limited the authority of every branch of Texas government. The legislative sessions were reduced to 140 days, every other year.

Salaries were reduced and a balanced-budget was mandated. They restricted the governor's appointment powers by creating the plural executive, which divided power among several elected officials, including the lieutenant governor, attorney general, comptroller, treasurer, and land commissioner. To limit the power of the judicial branch, they divided the courts into two systems, one for criminal trials and the other for civil cases. All judges would be elected by popular vote with relatively brief terms. In early 1876, Texas voters approved the new constitution by a margin of two to one. Although amended over 450 times, the Texas Constitution of 1876 remains the current charter for the state.

Roots of the Texas Constitution

From 1827 to 1876, seven constitutions were drafted and ratified in Texas. Each one attempted to correct the perceived deficiencies of the previous political order and address the challenges of its time. But each successive constitution also retained elements of its predecessors, building a cumulative constitutional tradition. This activity explores the historical origins of the current Texas Constitution.

Interactive Activity: Roots of the Texas Constitution

Describes the seven Texas Constitutions drafted and ratified from 1827 to 1876. Explains how each successive constitution retained elements of its predecessors. Highlights key constitutional provisions such as line item veto, separation of powers, congressional term limits, short legislative sessions, and more.

Additional Resources

Websites

[The Texas Constitutions Digitization Project](http://tarlton.law.utexas.edu/constitutions/)

<http://tarlton.law.utexas.edu/constitutions/>

This website, hosted by the University of Texas School of Law, showcases digital scans of all the original Texas Constitutions from 1824 to 1875. Also included are searchable text versions of each constitution, as well as 5,000 pages of journals, reports, and transcripts detailing the

history of the state's constitutional conventions.

[Texas Constitution and Statutes](http://www.statutes.legis.state.tx.us/)

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Since its initial adoption in 1876, the Texas Constitution has been amended over 460 times, making it one of the longest state constitutions in the United States. This site contains the complete searchable document as well as up-to-date information on recent legislation.