

CHAPTER 2

The Texas Constitution

PART I: LECTURE MATERIALS

Chapter Goals

1. Identify the main functions of state constitutions.
2. Describe the six Texas constitutions that preceded the current constitution.
3. Explain the circumstances that led to the Texas Constitution that is still in use today.
4. Analyze the major provisions of the Texas Constitution today.
5. Describe modern efforts to change the Texas Constitution.

<Tags: The Texas Constitution>

Chapter Themes and Focus Notes

The Texas Constitution has great impact on the lives of Texans. It provides the basic framework for all state and local government, including counties, cities, school boards, water districts, and hospital districts. This chapter first focuses on the role of state constitutions in the context of the American constitutional system. Then it describes the major features of six former Texas constitutions. Next, the chapter analyzes the current constitution to understand its underlying assumptions. The chapter concludes with a discussion of major attempts to amend the Texas Constitution.

John Locke and Thomas Hobbes are sometimes called the grandfather and great-grandfather of classic liberalism. Classic liberalism is a political philosophy that argues that the primary function of government is to protect liberty while maintaining basic public order. It started with the assumption that people are, by nature, free and equal. Therefore, in order for governments to legitimately rule, the governed must consent. This agreement between the governed and the government, whereby the former agrees to give up some power, independence, and freedom, and the latter agrees to maintain public order and preserve liberty, is called a social contract. Why would the governed agree to enter into such an agreement? Why would they agree to be ruled? They would agree because the alternative, according to Locke and Hobbes, is that they would die. As Hobbes famously wrote, without government to maintain order, life would be “solitary, poor, nasty, brutish, and short.”

Constitutions are reminiscent of social contracts. They are documents written by people or (more likely) their representatives that create and empower a set of political institutions. They define the legal structure of government. Moreover, they place limits on what that government may legitimately do. The U.S. Constitution and Texas’s current constitution create a very similar set of political institutions. Both create a Republican form of government, where the people are sovereign. Both create a separation of powers system, where power is divided among legislative, executive, and judicial branches, and each branch has the capacity to resist the others. Both include a bill of rights. Both create federal systems, where power is divided between a central authority and regional governments.

And yet, the U.S. Constitution and the 1876 Texas Constitution are quite different. If the U.S. Constitution is a simple black cocktail dress, the Texas Constitution is an elaborate Elizabethan gown. If the U.S. Constitution is a chassis, the Texas Constitution is a fully loaded Escalade. What is meant by these analogies is that the U.S. Constitution creates a very elegant framework. It is a brief document composed of a Preamble, seven articles, and twenty-seven amendments. The Texas Constitution is much longer and more complicated. It includes sixteen articles and has been amended over 450 times.

To understand this difference, you have to look to the circumstances under which the two constitutions were written. The framers of the U.S. Constitution had recently experienced tyrannical government at the hands of the king of Great Britain and weak, ineffective government under the Articles of Confederation. So when they met in Philadelphia, they were trying to balance two goals: creating a strong and effective government and preventing that government from threatening liberty and abusing its powers. The framers of the 1876 Texas Constitution weren't nearly as interested in creating a strong effective government because their most immediate experience was with a strong state government that, in their view, abused its considerable powers and had been dominated by the party of the Union—the Republicans. As a result, they were not looking to balance liberty and strong government. They came down decidedly on the liberty side of the equation.

Many of the articles of the Texas Constitution address a substantive policy issue, which means that changes in policy often have to be done by constitutional amendment. And, of course, amendments have to be ratified by the electorate. The legislature is part-time. Executive power is dispersed. Judges are elected. The state budget has to be balanced. These are all aspects of Texas government that are enshrined in the constitution with an eye toward limiting the government, enhancing popular control over government, ensuring fiscal responsibility, and promoting agrarian interests. A key point to take from this is that constitutions don't just emerge out of the ether. They are informed by a particular context in which ideas and interests compete. As a result, even two constitutions that are both republican can create very different political systems. To make this point to the students, it might be useful to start the discussion with Class Activity 1. Once students have an overview of the constitution and understand that it is informed by a specific context, it might be useful to consider how the context has changed. If the context has changed, major reform might be in order. Class Activities 2 and 3 may be a useful gateway into a discussion of reform.

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PART II: CLASS ACTIVITIES/DISCUSSION QUESTIONS

CLASS ACTIVITIES

Class Activity 1

The U.S. Constitution and the Texas Constitution have a great deal in common. For example, they both create separation of powers and bicameral legislatures, and both include a bill of rights. And yet, there are also important differences between these two documents. Divide the students into small groups and ask them to (1) brainstorm a list of the most important differences between these two constitutions, and (2) explain why these differences exist.

<Tags: The Texas Constitution, Article I: Bill of Rights, Article II: The Powers of Government, Article III: Legislative Department>

Class Activity 2

Once students have become better acquainted with the constitution in Class Activity 1, ask them to each take out a piece of paper and (anonymously) answer the following question: If you could make one amendment to the Texas Constitution, what would it be? Collect and shuffle the responses. Read them to the class and discuss their relative merits.

<Tags: The Texas Constitution>

Class Activity 3

Some have argued that the Texas Constitution is too cumbersome and desperately in need of reform. In this exercise divide the class into small working groups. Ask each group to read the constitution, or part of the constitution, and come up with proposals for reform. Encourage your students to consider the costs

and benefits of reform, and ask them to justify their proposals. This will more closely acquaint students with the constitution and help them think through what aspects of the current political context inform their reform ideas.

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Practicing Citizenship

1. Have the students find the most recently proposed amendments to the Texas Constitution. Ask students to research one of these amendments on the Internet, so that they understand it and can explain it in their own words. Then ask each student to present his or her amendment to the class. Each student should be able to explain what his or her amendment means, as well as give reasons to support and oppose it. (You could implement this assignment by assigning two students to each amendment, having one student argue in favor of the amendment and one student argue against it. Then, members of the class could vote on each amendment.)
2. Have students find their hometown charters on the Internet. Ask them to write a brief report describing the major characteristics of local government that are established in the charters. For example, here's a link to the charter for Burkburnett, Texas. <http://www.burkburnett.org/pdfs//BurkburnettCharter.pdf>.

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CLASSROOM DISCUSSIONS

Questions for Classroom Discussion

1. What aspects of the political context necessitated a sixth constitution?
2. Do you think the guiding principles for the 1876 Constitution effectively address today's political concerns? If so, how? If not, why not?
3. Do you think that the Texas Constitution should be changed? Why, or why not? How would you change it? Would you make a new one, or would you amend the old one?
4. The current Texas Constitution was designed to provide greater popular control over government. Thus, the people are given a direct say in the amendment process. Given the low levels of turnout in elections dealing with amendments, how much does this process *really* enhance democracy?
5. Texas's Constitution includes a bill of rights. Why is this necessary, given the Bill of Rights in the federal Constitution?
6. How does the Texas Constitution limit government power? Does it hamstring the Texas government to the point that the government cannot perform effectively?

<Tags: The Texas Constitution, Article I: Bill of Rights>

Who Are Texans? Discussion Questions

This unit of Who Are Texans? takes a look at voter turnout in elections to amend the Texas Constitution. Turnout for amending the Constitutions is always much lower than the turnout for U.S. Presidential Elections.

1. Do you think voters who choose to participate in elections to amend the Texas Constitution are different than voters who do not? Why? What kind of differences do you expect to see?
2. Amendments to the Texas Constitution are found at the end of the ballot. You can also find the ballot wording for the 2013 Texas Constitutional Amendment election at: <http://www.sos.state.tx.us/elections/voter/2013novballotlang.shtml>. Do you think the wording of an amendment can affect a voter's choice on that amendment? In what ways? Do you think placing

amendments at the end of a ballot can affect whether or not someone votes on the amendments? If so, how?

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Texas and the Nation Discussion Questions

This unit of Texas and the Nation compares the Texas Constitution to other state constitutions, both in terms of length and the number of amendments.

1. Consider the four states with the longest constitutions (Alabama, Texas, Louisiana, and Oregon). What might these states have in common? Is there any reason (or reasons) why these states might have the longest constitutions? What about the states with the most number of amendments?
2. One reason the Texas Constitution has so many amendments is that unlike in other states, where government actions are accomplished by legislatures, executive officials, and even local governments, in Texas these actions must be accomplished through constitutional amendment. Is this a good thing? Have students take both sides, defending the Texas system and criticizing it.

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You Decide Discussion Questions

This section of the text discusses the case of Proposition 2 in Texas. Proposition 2 amended the Texas Constitution in order to make gay marriage illegal. This You Decide discussion raises some key questions about the relationship between one state and another, particularly when the laws in one state are at odds with those in another state.

1. Should the full faith and credit clause be interpreted to mean that all states must recognize and honor ANY law made in another state?
2. Should a majority of voters in a state be allowed to pass statutes or constitutional amendments that may violate the rights of minority groups?
3. After the Supreme Court's 2013 ruling on the Defense of Marriage Act, the federal government now recognizes gay marriages. Should states like Texas follow suit in order to keep federal law and state law consistent? Or is it important for states like Texas to maintain their own policies under the federal system that was discussed in this chapter?

<Tags: The Texas Constitution, Article 17: Amending the Constitution>

PART III: ADDITIONAL RESOURCES

For Further Reading

"Analyses of Proposed Constitutional Amendments: November 5, 2013 Election." Texas Legislative Council. Can be accessed here: <http://www.tlc.state.tx.us/pubsconamend/analyses13/analyses13.pdf>.
Burka, Paul. "Carol Keeton Strayhorn Has Guts. Carol Keeton Strayhorn Is Nuts. Discuss." *Texas Monthly* (June 2005).

———. "The M Word." *Texas Monthly* (January 2006).

Chapa, Rebecca. "Texas Constitution Needs a Little Work." *San Antonio Express News*, October 21, 2007.

DVD/Film References

"Gay Rights, Marriage, and the Supreme Court" (Films for the Humanities, #BVL32660). This 2003 *ABC News* segment examines the landmark Supreme Court decision in *Lawrence v. Texas* as well as the

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recent legalization of gay marriage in Canada in order to shed light on the future of gay marriage in the United States.