

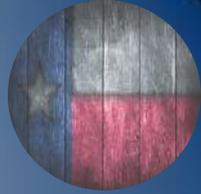
# THE TEXAS CONSTITUTION

## PART III

Half the ballot items are ridiculous because they deal with doing away with a constable's position in Erath County or somewhere and the other half no one can understand because they involve bond financing or some arcane part of the Constitution that has to be fixed.

Former Texas Senator Bill Ratliff

# The Constitution of 1876



## PREAMBLE – TEXAS CONSTITUTION

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



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

*Article I*  
*Bill of Rights*  
That the general, great and essential principles of liberty and free government may be recognized and established, we declare:  
Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perfect liberty depend upon the preservation of the right of local self-government, unimpaired to all the States.

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish government in such manner as they may think expedient.

All persons, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive emolument, public offices, or honors, but in consideration of public services.

No religious test shall ever be required as a qualification to any office, or public trust, in this State, nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

No person shall be disqualified to give evidence on any of the courts of this State on account of his religious opinions, or for the avowal of any religious belief, or opinions, or shall be admissible in the mode most favorable upon the conscience, and shall be taken subject to the pains and penalties of perjury.

All men have a natural and indispensable right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled 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 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.

No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary, or any institution, or property belonging to the State, be appropriated for any such purpose.

Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege, and no law shall be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers, or men in public capacity, or for the publication of papers for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the facts, write the direction of the court, or in other cases.

The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any person or thing shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both, shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor, and shall not be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment in the penitentiary, or in cases arising in the army or navy, or in the militia, when on actual service in time of war, or in rebellion.

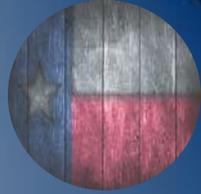
All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident, but this provision shall not be so construed as to withhold the right of bail in cases where the indictment found upon examination of the evidence, in such manner as may be prescribed by law.

The writ of Habeas Corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person injured in his lands, goods, person or reputation, shall have remedy by due course of law.

No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense after

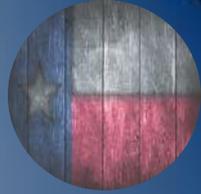
# The Constitution of 1876: Overview



- contains a preamble and 17 articles
- a long and poorly organized document
- many details of policy and governmental organization to avoid abuse of governmental powers and to protect various private interests
- reflects the time of its writing, an era of strong conservative, agrarian interests and reaction to carpetbag rule
- deadwood: unenforceable provisions ... conflict with the US constitution
- hundreds of amendments necessary due to its restrictive character ... amendments have produced a constitution that is poorly organized, difficult to read and interpret, and the second longest constitution in the nation

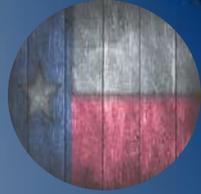


# The Constitution of 1876: Comparing Constitutions



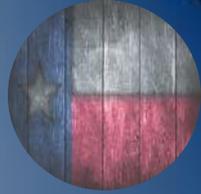
- similar in many ways to US constitution
  - executive, legislative and judicial branches
  - separation of powers system
  - checks and balances so that public officials limit the authority of one another
  - provisions against unequal or arbitrary government action
  - Bill of Rights guaranteeing individual rights and liberties
- different from US constitution with regard to providing power to government
  - US constitution much more flexible in allowing government to act
  - provisions that involve policy matters - voter qualifications, elections, local government, railroad regulation, education, welfare - not found in US constitution

# The Constitution of 1876: Comparing Constitutions



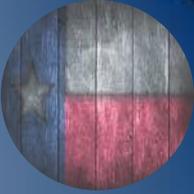
	US Constitution	Texas Constitution
key principles	popular sovereignty limited government representative democracy social contract theory separation of powers	popular sovereignty limited government representative democracy social contract theory separation of powers
context of adoption	reaction to weakness of Articles of Confederation: strengthened national powers significantly	post-Reconstruction: designed to limit powers of government
style	general principles in broad terms	detailed provisions
length	2,000 words	87,000+ words
date	1789	1876
amendment process	difficult	relatively easy

# The Constitution of 1876: Comparing Constitutions



	US Constitution	Texas Constitution
adaptation to change	moderately easy through interpretation	difficult, often requires amendments
bill of rights	amendments to Constitution, adopted in 1791	Article 1
structure of government	separation of powers with a unified executive based on Articles 1-3	separation of powers with a plural executive defined by Article 2
legislature	bicameral	bicameral
judiciary	created 1 supreme court other courts to be created by Congress	detailed provisions created 2 supreme courts and all state courts
distribution of powers	federal	unitary
public policy	little reference to policy	detailed policy provisions

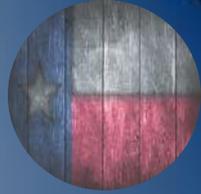
# The Constitution of 1876: Key Principles



- popular sovereignty: power of government comes from the people ... the people (not a king, president, etc) are sovereign
- limited government (scope of government): governing powers restricted by limitations prescribed in laws / a constitution
- representative democracy: democratically elected officials represent a group of people and act as decision makers for the group, as opposed to direct democracy

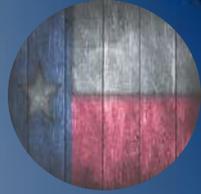


# The Constitution of 1876: Key Principles



- social contract theory: [from the Declaration of Independence] *To secure these rights (life, liberty and the pursuit of happiness), governments are instituted among men, deriving their just powers from the consent of the governed. Whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it ...* the people have a contract with government and give it certain powers as long as it provides certain protections
- separation of powers (three branches): the legislative, executive and judicial powers and responsibilities of government are divided among separate bodies ... works in conjunction with checks and balances: each branch has the ability to limit the other two so that no one branch is able to control too much power

# The Constitution of 1876: Articles



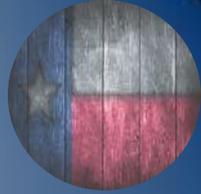
## Preamble

Article	1	Bill of Rights
Article	2	The Powers of Government
Article	3	Legislative Department
Article	4	Executive Department
Article	5	Judicial Department
Article	6	Suffrage
Article	7	Education
Article	8	Taxation and Revenue
Article	9	Counties
Article	10	Railroads
Article	11	Municipal Corporations
Article	12	Private Corporations
Article	13	Spanish and Mexican Land (repealed August 5, 1969)
Article	14	Public Lands and Land Office
Article	15	Impeachment
Article	16	General Provisions
Article	17	Mode of Amending the Constitution of This State

Texas Constitution and Statutes

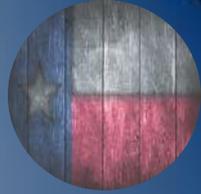
Amendments to the Texas Constitution Since 1876

# The Constitution of 1876: Bill of Rights



- Article I of the Texas constitution provided for equality under the law, religious freedom, due process, and freedom of speech and press.
- Required that office holders *acknowledge the existence of a Supreme Being*. (Violated 1st amendment of US constitution.)
- It also protected the mentally incompetent.
- After Reconstruction, Texans wanted to make certain that individual liberties (at least of the white majority) would never again be trampled.
- 30 detailed and lengthy amendments: could not be imprisoned for debt, no monopolies allowed, could not use state money for religious purposes, could not deport a citizen from the state for any offense committed in Texas

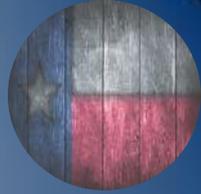
# The Constitution of 1876: Bill of Rights



- The Texas constitution did more than merely restate guarantees found in the US constitution ... it phrased the protection of rights positively rather than negatively (*People have the right to...* rather than *Government will not limit...*) and gave justifications for the importance of those rights.
- The Texas constitution also included features not found in the US constitution ... example: guarantees of equal rights (Texas Equal Rights Amendments).
- The provisions of Article I are broadly supported by the state's citizens and have been left intact during modern constitutional revision efforts.

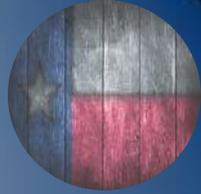


# The Constitution of 1876: Bill of Rights



- Over the past 50 years, state courts have increasingly become a forum for disputes over individual rights lawsuits filed under the provisions of state constitutions.
- Since 1970, state courts have issued hundreds of rulings providing broader rights than those recognized by the US Supreme Court.
- In Texas, state courts have relied on the Texas constitution to expand individual rights in several policy areas involving equal protection of the law (the legal principle that state laws may not arbitrarily discriminate against persons).
- Areas in which Texas courts have been most active are in the state's system of financing public education and the state's homosexual conduct laws.

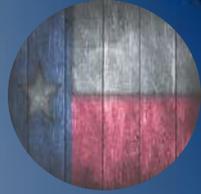
# The Constitution of 1876: Powers of Government



- Article II established legislative, executive and judicial branches.
- explicitly prohibited the exercise of powers of more than one branch by a single individual
- separation of powers
  - reinforced by checks and balances, many of which were the same as those found in US constitution
  - Because the concept of checks and balances involves assigning functions identified with one branch to another, powers are actually overlapping and shared rather than being truly separated. (example: Executive power to implement law means little without legislative power to budget, and vice versa.)

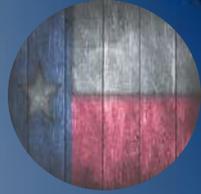


# The Constitution of 1876: Legislative Branch



- Article III established a bicameral legislative body ... set House at 150 members and Senate at 31.
- Rather than emphasizing the positive powers of the legislature, the article spelled out those specific actions that the legislature could *not* take.
- The constitution's framers limited the power of the legislature by restricting the scope of its policy making authority ... many normally legislative issues were included in the constitution and so could not be dealt with legislatively (example: detailed sections on education, finance, railroad regulation).
- forced state government to resort to constitutional amendment process on those issues

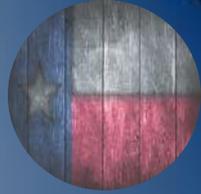
# The Constitution of 1876: Legislative Branch



- Article III also spelled out a number of constitutional limitations on legislative powers, including the following.
  - regular legislative sessions once every two years
  - specified number of days allotted to particular tasks
  - described legislators' salaries and per diem, which could only be changed by constitutional amendment
  - prohibited state borrowing, thus requiring balanced budgets regardless of economic conditions
  - included provisions for municipal employees to participate in social security programs



# The Constitution of 1876: Legislative Branch



- constitutional limitations on legislative powers
  - listed items for which legislature could raise money through taxation
  - listed permissible spending items
  - prohibited granting public monies to individuals but exceptions were made for Confederate soldiers, sailors and their widows
- Similar idiosyncratic provisions and limitations on legislative actions appeared throughout the constitution.
- Although detailed restrictions in this rigid document tied the hands of legislators, the legislature is nonetheless the dominant institution in the state.

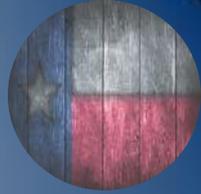
# The Constitution of 1876: Executive Branch



- Like the legislative article, the executive article was overly specific, making it difficult for the governor to act.
- Article IV created a plural executive with the result that the executive branch was fragmented and the governor had little or no control over other executive officials.
- constitutional limits on executive power
  - executive branch consisted of 7 persons, all elected
  - reduced the term of office from four to two years

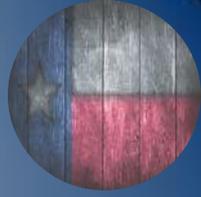


# The Constitution of 1876: Executive Branch

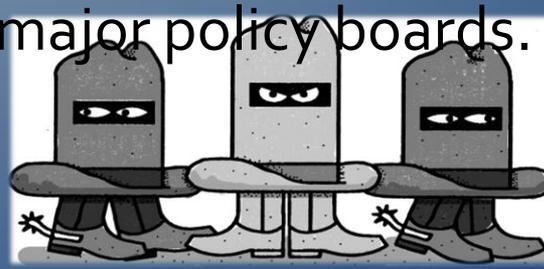


- constitutional limits on executive power
  - required state-wide election of lieutenant governor, comptroller of public accounts, commissioner of the General Land Office, attorney general, members of the Texas Railroad Commission
  - Statutory laws required election of agriculture commissioner and members of State Board of Education.
  - governor given responsibility to execute laws but not power to do so

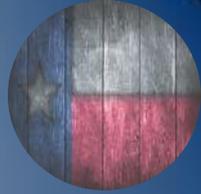
# The Constitution of 1876: Executive Branch



- constitutional limits on executive power
  - cut governor's salary
  - governor could appoint minor officials but not remove them
- The governor did, however, possess significant legislative powers through control of special sessions and the veto.
- In recent years, the governor has been strengthened by amendments to lengthen the term of office to four years and provide powers of removal, and by legislation to provide greater control over major policy boards.

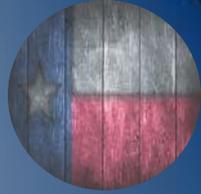


# The Constitution of 1876: Judicial Branch



- The judicial article (Article V) was overly specific and included such features as the requirement that each county have an elected sheriff.
- The judicial article had three distinctive features.
  - It created 6 types of courts and separate supreme courts for civil and criminal matters.
  - Different trial court levels were given concurrent jurisdiction, but some courts at the same level had different jurisdictions depending on whether they were constitutional or statutory courts.

# The Constitution of 1876: Judicial Branch

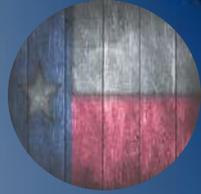


- The judicial article had three distinctive features.
- Judges' qualifications might be compromised because those with no legal training might be eligible for a trial court bench and judges were elected, not appointed.



- Constitution gave detailed specifications for three types of local courts: County Courts, Commissioners' Courts and Courts of Justices of the Peace. Because of sparse settlement in much of the state at the time, these courts effectively constituted the local government for many counties and localities.

# The Constitution of 1876: Judicial Branch



- constitutional limits on judicial power
  - The judicial article provided for the election of all judges to relatively brief terms
  - The court system was divided into two segments (civil and criminal) thereby limiting the types of cases individual courts could hear.
  - By writing a long and detailed constitution they left little room for judicial interpretation.

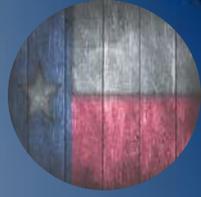
# The Constitution of 1876: Suffrage



- Many of the provisions in the constitution on voting and legislative apportionment (Article VI) conflicted with national law, such as provisions with respect to minimum voting age and property ownership as a requirement for voting in bond elections.
- The consequence of these conflicts was frequent amendments and a constitution filled with *temporary transition provisions* to bridge the gap between state and national law.
- A proposed bill for women's suffrage was ignored during the convention.

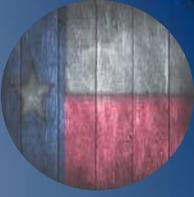


# The Constitution of 1876: Education



- Article VII dealt extensively with educational issues (broadly defined).
- All lands and the proceeds from those lands that had been previously reserved for the state system of public education would be reserved under the new constitution.
- Formally established the University of Texas (although its location was left to the legislature) and created permanent funds for both UT and for previously established asylums for *the lunatic, blind, deaf and dumb, and orphaned*.
- Provided for separate schools for African Americans.

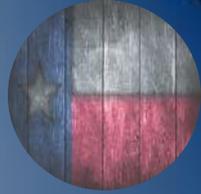
# The Constitution of 1876: Education



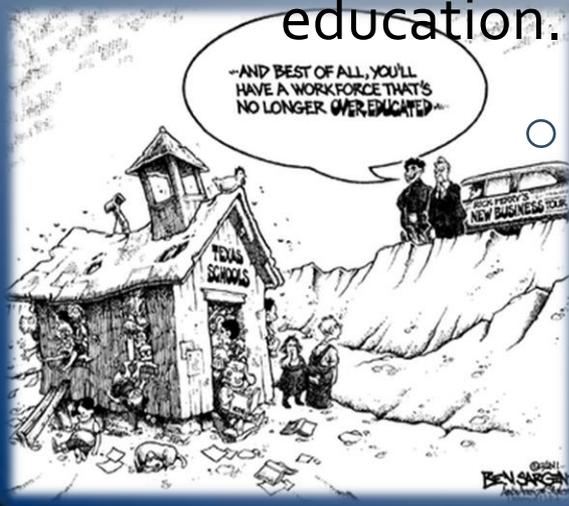
- Set aside half of Texas' remaining public lands to establish a Permanent School Fund (PSF), to help finance public schools.
- Some important changes weakened statewide public education.
- Created State Board of Education composed of governor, comptroller and Secretary of State and charged it with managing public funds and overseeing state schools.
- Abolished compulsory school attendance.
- Sought to limit spending on public education.



# The Constitution of 1876: Education

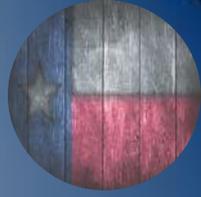


- Some important changes weakened statewide public education.
- Restricted spending on public schools to no more than one-fourth of the state's general revenue but protected existing funding sources for public education by prohibiting their use for any purpose other than education.



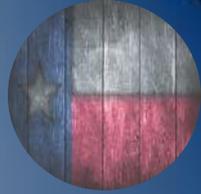
- The practice of dedicating funds - whether for schools, roads or other purposes - is a prominent feature of Texas governance today.

# The Constitution of 1876: Taxation



- Provided broad grants of authority to the legislature to impose taxes on property and incomes, as well as on voting.
- *Taxation shall be equal and uniform.*
- Article VIII constituted a list of specifications that resembled a detailed and restrictive tax code that reached down to the county and municipal levels.
  - *Persons engaged in mechanical or agricultural pursuits shall never be required to pay an occupation tax.*
  - *Two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this state, shall be exempt from taxation.*

# The Constitution of 1876: Local Government



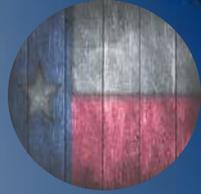
- The constitution gave units of local government (counties, municipalities, special districts) **varying degrees of flexibility**.
- **Counties**, the administrative and judicial arms of the state, were the most restricted as they were saddled by the constitution with a commission form of government.
- **Cities** had greater flexibility as those with populations over 5,000 were permitted to adopt home-rule charters.
- **Special districts**, of which school districts are the best known type, continued to proliferate because they provided a way around tax and debt limits imposed on cities and counties.

- Local Government in the Texas Constitution

Constitution's treatment of local government allows state legislature to preempt local control in many areas.

 Sanctuary cities	 Ride-hailing	 Texting while driving	 Linkage fees
 Small cell tower expansion	 Property tax cap	 Bathroom bill	 Annexation rights

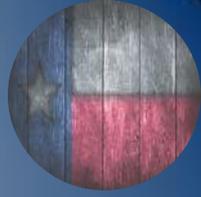
# The Constitution of 1876: General Provisions



- Article XVI contains miscellaneous provisions, including limits on interest rates, civil penalties for murder and the punishment for bribery.
- Many settlers came to Texas to escape debts ... prohibited family homestead (legal residence) from being taken away in payment of debt except for delinquent taxes and mortgage payments on a loan taken out to purchase the home itself.
- Even in bankruptcy, homestead and personal property up to \$60,000 for married couples and \$30,000 for singles was protected.
- Retirement accounts (IRAs, 401k, 403b, and educational IRAs) were protected.



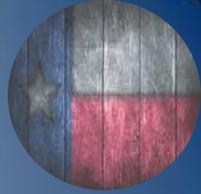
# The Constitution of 1876: General Provisions



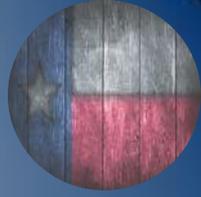
- Provided for **community property** between married couples.
  - Property acquired before marriage or after marriage by gift or inheritance remained separate, but all property acquired in marriage was held in common.
- Texans enjoyed a general protection against **garnishments** (seizure of wages to pay debts).
  - Exceptions included spousal and child support, repayment of federal student loans and payments to the IRS.
- The delegates controlled the **excesses of big business** by prohibiting branch banking (the business practice whereby a single, large bank conducted business from several locations).

# The Constitution of 1876: General Provisions

- The 1876 Constitution included a provision for financing a new capitol building.
- In one of the largest barter transactions of recorded history, the builders of the 1888 (and current) state capitol were paid with more than 3 million acres of public land covering portions of 10 counties in the Texas Panhandle.
- This tract later became the largest cattle ranch in the world, XIT Ranch, which operated from 1885 to 1912.



# The Constitution of 1876: General Provisions

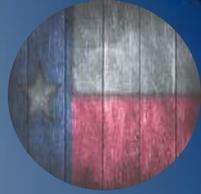


- The value of the land, combined with expenses, added to a total cost of \$3.7 million for the original building.
- It was constructed largely by convicts or migrant workers, as many as a thousand at a time, and using red granite donated by the owners of Granite Mountain in Burnet County.

Statue of the Goddess of Liberty on the capitol grounds prior to installation on top of the rotunda as construction is completed in 1888.



Convict Labor at Granite Mountain (circa 1882)



# continued in The Texas Constitution Part IV

