

### Functions of a Constitution

- Establish the legitimacy of government
- Establish institutions and machinery of government
- Allocate powers to institutions
- Place limits on the use of power

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### Constitutional Philosophies

- **Rationalism**-sees man as a rational being, government as a logical extension, constitution as a basic instrument of the social compact (also called a liberal constitution)
- **Realism**- sees man as basically evil, government as a means of social control, and constitution as a means of controlling government (also called a statutory constitution)

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### Constitutions of Texas

- 1836-Republic of Texas
- 1845-First State Constitution
- 1861-Confederate Constitution
- 1866-Presidential Reconstruction Constitution
- 1869-Radical Republican Constitution
- 1876-Present Constitution

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### 1836-Republic of Texas

- Unitary Government
  - Bicameral Congress
  - Elected President
- Rationalistic framework
- Significant features
  - Clergy prohibited from governmental office
  - No state church
  - Slavery legal

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### 1845-First State Constitution

- Based on 1836 and other southern state constitutions (esp. Tennessee /Mississippi)
- Governmental structure
  - bicameral legislature
  - elected Governor/Lt. Governor. (amended in 1850 to establish a plural executive with elected Attorney General, Comptroller, and Treasurer.)
  - Appointed Supreme Court and District judges
- Significant provision-homestead protection, separate property for women, permanent school fund

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### 1861-Civil War Constitution

- Basic provision of 1845 adopted
- Provisions for Confederacy
  - public officials required to pledge support for Confederacy
  - protection of slavery insured
  - freeing of slaves prohibited

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### 1866-Presidential Reconstruction Constitution

- Convention called by Provisional Governor A.J. Hamilton
- Purpose: Rewrite of 1845 State Constitution
- Major provisions
  - outlawed slavery
  - allowed freed slaves to own property
  - limited legal rights of freed slaves in court and at ballot box
- After Radical Reconstruction imposed, this Constitution was rejected by the U.S. Congress

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### 1869-Radical Republican Constitution

- Convention of 90 men met in June, 1868, to draft a new constitution, but did not agree on final document
- Military authorities compiled the efforts and submitted to the document to the voters in July, 1869. Congress accepted it and in 1870 Texas was readmitted to Union.

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### 1869 Constitution Principle Features

- Strong Governor
  - power to appoint Att Gen and Sec of State & judges, other officials were elected
  - executive powers to enforce “edicts”
- Annual sessions of Legislature
- Compulsory school attendance/ free public schools

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### 1876- Present Constitution

- Gov. Richard Coke called on Legislature to rewrite constitution, effort failed to produce a new constitution
- Constitution Convention of 83 delegates elected, major faction were members of the “Grange” which placed emphasis on
  - restricting the size and scope of state government
  - controlling big business (especially railroads)

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### 1876 Constitution Major Features

- Popular sovereignty- plural executive, part-time legislature
- Separation of powers- between branches, within branches, and at local level
- Limited government- detailed grants of power, many restrictions on powers of government

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### Weaknesses of Present Constitution

- Fragmentation of authority
  - executive branch
  - local government
- Excessive restrictions of legislative and executive authority
- Excessive detail

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### Example of Detail

#### Art III, Section 49-b

"Said Veteran's Land Fund shall consist of any land heretofore or hereafter purchased by said board, until the sale price therefor, together with any interest and penalties due, have been received by said Board (although nothing herein shall be construed to prevent said Board from accepting full payment for a portion of any tract), and of the moneys attributable to any bonds heretofore or hereafter issued and sold by said Board which moneys so attributable shall include but shall not be limited to the proceeds from the issuance and sale of such bonds; the moneys received from the sale or resale of such lands, or rights therein, purchased with such proceeds; the moneys received from the sale or resale of any lands, or rights therein, purchased with other moneys attributable to such bonds; the interest and penalties received from the sale or resale of such lands, or rights therein; the bonuses, income, rents, royalties, and any other pecuniary benefit received by said Board, from any such lands; sums received by way of indemnity or forfeiture for the failure of any bidder for the purchase of any such bonds to comply with his bid and accept and pay for such bonds or for the failure of any bidder for the purchase of any lands comprising a part of said fund to comply with his bid and accept and pay for any such lands; and the interest received from investments of any such moneys."

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### Methods of Constitution Revision

- Constitution Commission
  - appointed body
  - submits work to legislative branch for revision
  - adopted by voters
- Constitutional Convention
  - elected body
  - submits work directly to voters
- Piecemeal Amendment

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### Amendment Process

- Submission
  - by 2/3 vote of each house of Texas Legislature
- Advertisement
- Election- adoption by majority of voters voting on the proposed amendment
- Proclamation- Governor or Secy. Of State

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### Constitutional Amendments Passed

- As of November, 2013, the Texas Legislature has proposed 665 amendments, 483 have been adopted by the voters, with 179 defeated. The last legislature proposed seven amendments to be voted on in November, 2015.

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### Constitutional Revision in Texas, 1971-1975

- 1971- SJR 67 submitted to voters
- 1972- amendment adopted
- 1973-37 member commission appointed
- 1974-Legislature met as a 181 member constitutional revision **convention**, fail to adopt proposed constitution
- 1975-8 amendment submitted, voters reject in special election of August, 1975

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### Necessary Elements for Constitutional Revision

- Favorable public opinion
- Unified political, economic, social, and media leadership
- Perceived crisis

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### Factors Leading to Failure of Convention

- 1. Legislature as Convention
- 2. 2/3's adoption rule
- 3. Right to Work Issue
- 4. Failure of Convention Leadership
- 5. Cockroaches and Revisionists

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### Factors Leading to Defeat of Proposed Amendment

- Method of selecting convention delegates
- Gov. Dolph Briscoe's opposition
- Special interest group pressure-especially real estate, timber, and oil/gas interests
- Public apathy and lack of supportive advertising

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### Recent Efforts

- 1999 – proposed new constitution resulting from Angelo State University Project, introduced by Sen. Bill Ratliff and Rep. Rob Junell
- 1999/2001- amendments to eliminate “deadwood” and duplicate sections, adopted by voters, Nov. 1999/2001

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