Instructor’s Manual

# Chapter 2: Texas Constitutions

## Chapter Objectives

* Explain the purpose of a constitution.
* Define federalism and discuss the difficulties in sharing power between the state and national government.
* Describe the evolution of Texas’s previous constitutions and the historical events that influenced them.
* Explain how Texas’s current constitution reflects the preferences of Texans today.
* Identify problems with the current Texas Constitution.

## Chapter Summary

Throughout the many constitutions created in the state of Texas between 1836 and 1876, distrust of government and individual freedom has been a constant theme. These areas of focus are likely a response to political conflicts with Mexico and the difficult process of military occupation following the end of the American Civil War. Texas exists as one state in a federal system. This chapter further explores issues related to vertical and horizontal federalism with a focus on how state behavior is shaped both by the national constitution (i.e., implied, enumerated, reserved powers, and the supremacy clause) and fiscal policy (e.g., block and categorical grants).

The current Texas constitution divides the government into the typical legislative, executive, and judicial branches but with some unique characteristics. The executive is plural, splitting power among multiple elected offices in the bureaucracy. Many critics believe this inhibits swift and effective executive action. Legislators are mandated to receive low pay, which many critics feel shuts low-income Texans out of the possibility of holding elected office. Critics argue that the judicial system, designed to prevent corruption through election rather than appointment of judges, opens the door for special interests to dominate through campaign contribution. In the end, Texas government is business friendly at the cost of reduced trust in government, low voter turnout, and limited responsiveness to popular concerns.

Texas Core Objectives: CT, PR, SR

## Chapter Outline

1. Constitutional Government
   1. Written document that outlines the structure of the government, limiting government power and protecting individual rights
   2. Popular sovereignty--identifies the people as the source of governance
   3. Weak government intentionally created
   4. Texas constitution is long and detailed, requiring frequent amendment
2. The Federal System of the United States
3. Sharing of power between levels of government
4. Different systems of government
5. Federalism--the sharing of powers between two levels of government
   * 1. Confederal system--lower level units (e.g., states) retain the majority of the decision-making power while the national level is meant to serve their dictates
     2. Unitary system--power is primarily in the hands of a centralized authority
6. United States adopted a federal system, intending to prevent tyranny
7. Enumerated powers--from Article 1, Section 8, Clauses 1–17, powers given to the national government in the constitution
8. Implied powers--from Article 1, Section 8, Clause 18, broad discretionary powers considered necessary and proper to execute the enumerated powers
9. Concurrent powers--shared by the states and the national government
10. Taxation
11. Establish Courts
12. Charter Banks
13. Vertical Federalism--the relationship between the states and the national government
14. Supremacy clause--gives the national government supreme authority in conflicts with state laws and state constitutions
15. Reserved powers--created by the Tenth Amendment, which declares that all powers not explicitly attributed to the national government revert to the state or the people
16. Horizontal Federalism--relationship between states
17. Privileges and immunities--must treat citizens of other states the same as their own citizens, with some exceptions
18. Full faith and credit clause--court judgments and contracts must be honored by all states, again, with some exceptions
19. Extradition--suspects and those convicted of crimes must be delivered back to state in which they committed the offense
20. The Evolving Idea of Federalism
21. Dual federalism--state and national powers are separate and distinct
22. Cooperative federalism--states and national government cooperate in various policy areas
23. Proponents of devolution prefer local control and advocate passing decision-making power to the states whenever possible, on the basis that national government has accumulated too much power
24. Fiscal federalism refers to the use of grants to encourage states to adopt national policies
25. Categorical grant--national money given for specific activities
26. Medicaid
27. Block grant--national funds given for a broad purpose with fewer restrictions
28. Coercive use of federal grants
29. Drinking age
30. Unfunded mandates--national government imposing requirements on state and local governments without funding to execute the policy
31. Public facility access for disabled persons
32. Clean air
33. Debate over proper role of state and national governments
34. Stimulus package
35. Affordable Care Act
36. Same-sex marriage
37. Texas Constitutions
38. Mexican constitution of 1827 (Coahuila y Tejas)
39. Engendered resentment among Texans
    * + 1. Underrepresentation
        2. Official language and religion
40. Immigration concerns
41. Constitution of 1836--Republic of Texas
42. Unitary rather than fully federal
43. Texans eventually supported joining the United States of America
44. Manifest Destiny became a popular idea, encouraging Texans to join the United States
45. Constitution of 1845
46. Statehood in the United States
47. Constitution basically modeled on the federal U.S. Constitution
48. Slavery protected
49. Many Texans were in debt and suspicious of creditors
50. Stephen F. Austin had come to Texas fleeing creditors
51. Constitution of 1861
52. Texas joins the Confederate States of America
53. Constitution largely just revised 1845 statehood constitution, replacing United States with Confederate States of America
54. The emancipation of slaves by either the state legislature or slave owners was prohibited
55. Constitution of 1866: Provision allowing property owners to gain mineral rights
56. Constitution of 1869
    * 1. Drafted by unionist Republicans
      2. Did not reflect Texas’s traditional governing philosophy
      3. The creation of new taxes
57. Road tax
58. Bridge building tax
    * 1. Adult males guaranteed the right to vote
      2. Slavery and peonage outlawed
59. The Current System: The Constitution of 1876
60. Current system
61. Restored pre-1869 governing philosophy, except even more provisions limiting centralized power
62. Important motivation was protecting individual freedom
63. Distrust of government partly reflected in the long ballot
64. Long ballot
65. Structure of government:
66. Legislative Branch
67. Short biennial sessions
68. Minimal pay
69. Explicitly states the taxes that can and cannot be collected (e.g., exclusion of state property tax and limits on local property taxes)
70. Executive Branch
71. Plural Executive splits powers among several officers, ensuring it is an institutionally weak office
72. Governor
73. Lieutenant Governor
74. Secretary of State
75. Comptroller
76. Land Commissioner
77. Attorney General
78. Judicial Branch
79. Elected judges
80. Civil Rights in Texas
81. Laws were used to keep African Americans and Hispanics in virtual slavery
82. Real voting rights not extended to African Americans
83. Ended compulsory education and instituted segregation (compulsory education was not reinstated until 1915)
84. NAACP and LULAC were active in working for minority rights
85. In 1972, the constitution was amended to guarantee equality regardless of “sex, race, color, creed, or national origin”
86. LGBT rights have dominated attention of the legislature since 2000
87. Criticisms of the Current Constitution
88. Constitution written for cowboys and cattle drives is inadequate to respond to the demographics, economics, and technology of today
89. Lengthy specificity of the constitution makes it unwieldy and inefficient
90. Limited legislative sessions make it difficult to respond to current needs
91. Low legislative pay (originally mandated by the constitution, now enforced by Texas Ethics Commission) may prevent many Texans from seeking office
92. Election of judges opens the judicial system up to the influence of business and special interests through campaign contributions
93. Amending the Constitution
94. Two thirds vote of both houses, followed by majority popular vote
95. Most proposed amendments pass
96. Very low turnout
97. Constitutional Revision
98. Many attempts over the years
99. Incremental change has been preferred by change-averse Texans
100. No constitutional provision for initiative and referendum
101. Winners and Losers
102. Big business can dominate all three branches of government through campaign contributions and influence
103. Overwhelmed voters increasingly opt out of elections
104. Ironic, because primary goal of drafters of the Texas Constitution was protecting individual rights and limiting power of big business and railroads

## Discussion Questions

1. What were Texas’s reasons for seceding from the Union?

Texas Core Curriculum: CT

Learning Objective 2-2: Define federalism and discuss the difficulties in sharing power between the state and national government.

1. What are the advantages and disadvantages of Unitary, Confederal, and Federal systems of government? Is our Federal system actually the best choice to protect American states’ rights and those of its citizens?

Texas Core Curriculum: CT, PR, SR

Learning Objective 2-2: Define federalism and discuss the difficulties in sharing power between the state and national government.

1. Describe the tension between the Tenth Amendment and the Supremacy Clause, and discuss how Texas politicians have viewed this debate in recent years.

Texas Core Curriculum: CT

Learning Objective 2-2: Define federalism and discuss the difficulties in sharing power between the state and national government.

1. What was the attitude of early Texans toward immigration, and how did the immigration issue contribute to the push for Texas independence?

Texas Core Curriculum: CT

Learning Objective 2-3: Describe the evolution of Texas’s previous constitutions and the historical events that influenced them.

1. Discuss how Governor E. J. Davis was instrumental in producing the conditions that led to the adoption of the 1876 Texas Constitution. What provisions of the constitution were adopted in response?

Texas Core Curriculum: CT, PR, SR, COMM

Learning Objective 2-3: Describe the evolution of Texas’s previous constitutions and the historical events that influenced them.

1. How did the 1876 Constitution protect and deny Texas citizens’ civil rights?

Texas Core Curriculum: CT, PR, SR

Learning Objective 2-4: Explain how Texas’s current constitution reflects the preferences of Texans today.

1. What are some criticisms of the Texas Constitution, and what efforts have been made to improve the constitution in response?

Texas Core Curriculum: CT, PR, SR, COMM

Learning Objective 2-5: Identify problems with the current Texas Constitution.

1. The current constitution was crafted by framers who distrusted government. What measures help prevent governmental corruption? What measures have they put in place that allow for government to be corrupted by special interests?

Texas Core Curriculum: CT, PR, SR, COMM

Learning Objective 2-1: Explain the purpose of a constitution.

1. Discuss the complex relationship between the implied, enumerated, reserved, and concurrent powers. What are some circumstances in which conflicts might arise?

Texas Core Curriculum: CT, PR, SR, COMM

Learning Objective 2-2: Define federalism and discuss the difficulties in sharing power between the state and national government.