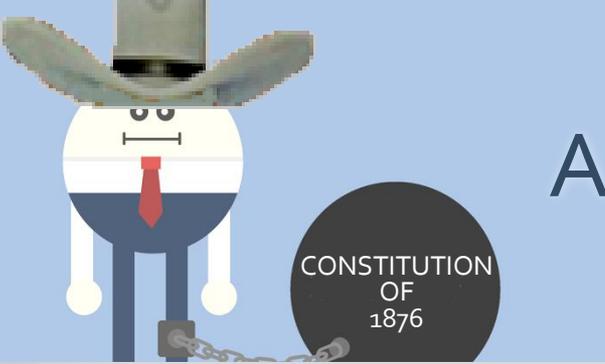


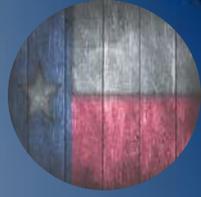
THE TEXAS CONSTITUTION PART I

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



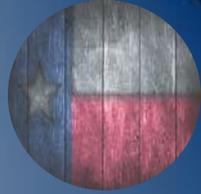
A Texas Tragedy



The Texas Constitution, adopted in 1876 and amended many times since, is so restrictive that many scholars and politicians believe it is counterproductive to effective, modern governance. They believe the document, which is bogged down with statutory detail, is a textbook example of what a constitution should *not* be.

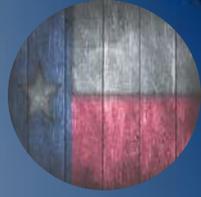
State government functions despite its constitutional shackles: an institutionally weak chief executive; an outdated, part-time legislature; a poorly organized judiciary; and dedicated funds that limit the state's budgetary options. But a total rewrite of the constitution has been elusive, thanks to numerous special interests that find security in the present document and from those who hold obsolete public offices in Texas and those who benefit from dedicated funds. Public ignorance and indifference to the problems created by the restrictive constitutional provisions also thwart an overhaul of the document.

What is a constitution?



- constitution
 - the fundamental law by which a state or nation is organized and governed
 - establishes the framework of government, assigns the powers and duties of governmental bodies, and defines the relationship between the people and their government
 - reflects fundamental political, economic and power relationships as determined by the culture, values and interests of the people who create it and the events of the period in which it was written
- The US Constitution is the fundamental law of the United States, and a state constitution is the fundamental law of the state. Together, they provide the total framework for government within the US.

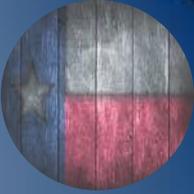
The Functions of a Constitution



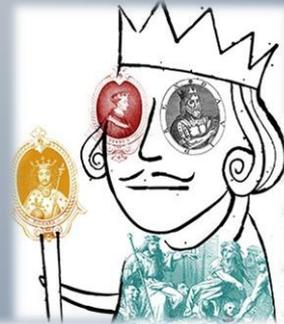
- define the principles of a society
- state the political objectives of a society
- define the relationship between the government and the governed
- set limits on what each group can do
- structure conflict through institutional arrangements



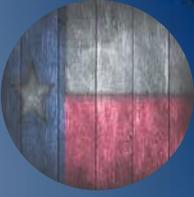
The Purposes of a Constitution



- legitimacy
- organizing government
- providing power
- limiting governmental power



The Purposes of a Constitution: Legitimacy

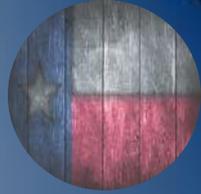


- Giving legitimacy to the government is the most abstract and ambiguous purpose served by constitutions.
- A government has legitimacy when its citizens *accept its actions as moral, fair and just*.
- The requirements for governmental legitimacy vary according to what citizens are willing to accept based on their history and political culture.



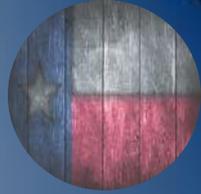
- The traditionalistic/individualistic political culture is more dedicated to limiting government than the moralistic political culture.

The Purposes of a Constitution: Organizing Government



- Organizing government involves clarifying who the major officials are, how they are selected and what the relationship is between those charged with basic governmental functions.
- Although the organizational provisions of state constitutions vary widely, they generally follow the model provided by the US constitution by incorporating separation of powers with a system of checks and balances.
- Each state establishes an elected chief executive, a bicameral legislature (except in Nebraska), and a judicial system with some type of supreme court.
- In Texas, the traditionalistic and individualistic political cultures have dominated the constitutional process.

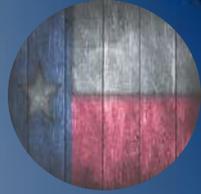
The Purposes of a Constitution: Providing Power



- The Texas constitution provides power for the state government subject to the US constitution's division of powers between the national government and state governments.
- Although states retain primary control over many types of activity, the power of state officials has been reduced by a combination of factors, including the expansion of the national government's role in various areas.



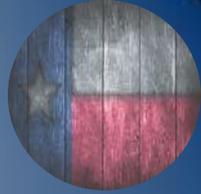
The Purposes of a Constitution: Limiting Governmental Power



- Americans' history and national character support the belief in limited government that has produced bills of rights in both the US and Texas constitutions and other constitutional protections against arbitrary governmental action.
- Reflecting popular dissatisfaction with Reconstruction rule, the Texas constitution limits government by being very specific in its content.

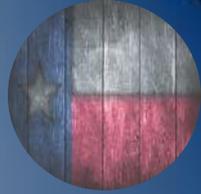


Differences between the US Constitution and State Constitutions

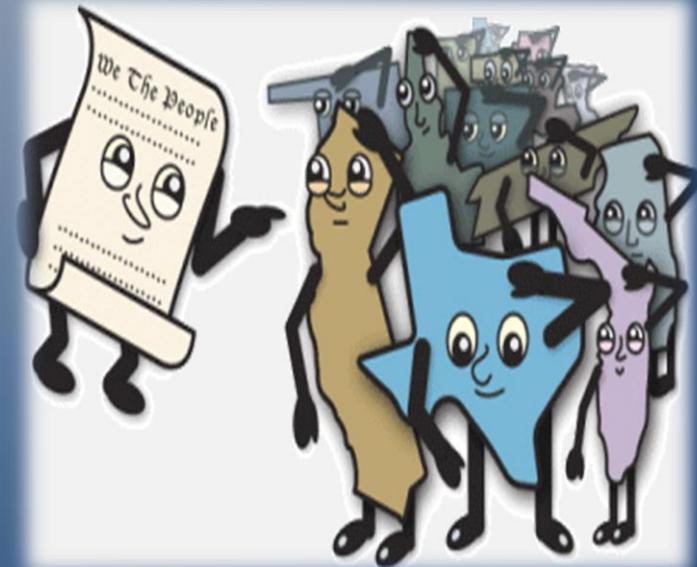


- The US constitution creates a strong **executive**, while most state constitutions give their governor few official powers.
- The constitution of Texas weakens the governor's powers through means of the **plural executive** (the division of executive power among several elected officials).
- The US constitution provides for the appointment of **judges**, while most state constitutions provide for the election of judges.

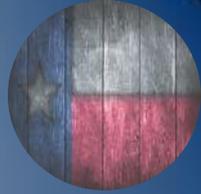
Differences between the US Constitution and State Constitutions



- The US constitution creates a representative democracy while some state constitutions contain elements of direct democracy (the initiative process).
- The US constitution has a sense of permanence with few added amendments, while most state constitutions possess a quality of impermanence with a considerable number of amendments added.
- 25% of state constitutions were adopted after WWII.
- The average state has had 3 constitutions. Louisiana with 11 and Georgia with 10 top the list.

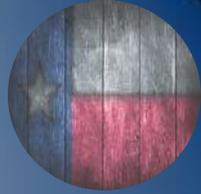


Differences between the US Constitution and State Constitutions

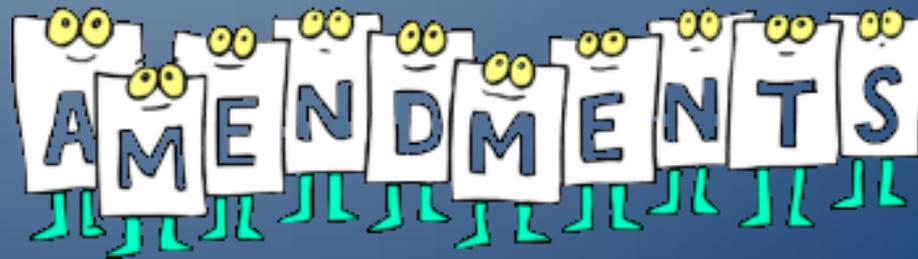


- The US is based on constitutional law (law that involves the interpretation and application of the constitution), while state constitutions are generally based on statutory law (law made by the legislature).
- The US constitution is more general, while state constitutions are much more specific.
- When the document on which a government is based contains a lot of specificity, it reduces the flexibility by which the document may be interpreted.

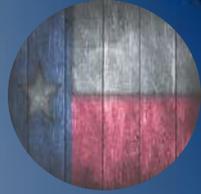
Differences between the US Constitution and State Constitutions



- Compared to the US constitution, state constitutions are easy to amend.
- Every state allows for the convening of a constitutional convention and each has a process for the legislature to pass an amendment.
 - usually by supermajority ... submit to voters for approval through a referendum
- implication: frequent changes and longer documents



The Texas Constitution

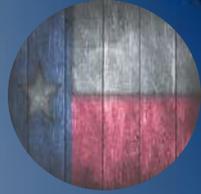


A constitution should be flexible, concise and dedicated to the fundamental principles of government.

- The Texas constitution fails all three tests:
 - State Politics: *an ill-organized, forbiddingly written document*
 - Kim Quaile Hill and David Mladenka: *As bedside reading, it would be a Texas-sized sleeping pill.*
 - Leon Blevins: *Having to read the Texas constitution is 'cruel and unusual punishment.'*



The Texas Constitution

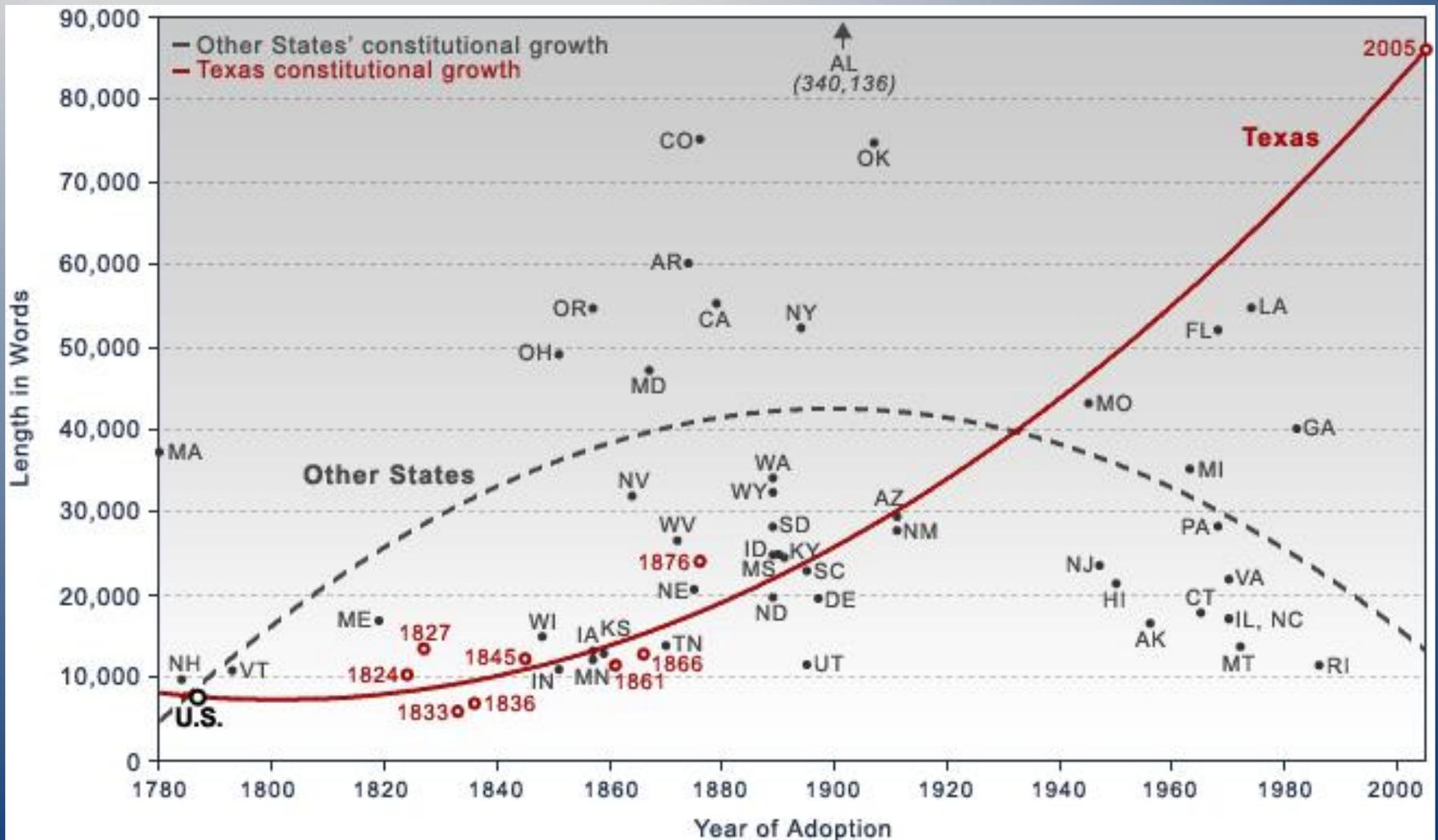
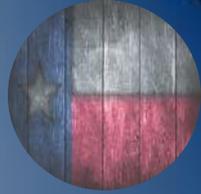


A constitution should be short and obscure.

-Napoleon Bonaparte, 1803

- If Napoleon's statement about constitutions is to be taken at face value, then those persons responsible for drafting the present Texas constitution failed miserably.
- The 23,500 word document (not including amendments) is neither brief nor obscure.
- The legislature has proposed 673 amendments and 491 have been approved by the voters making the Texas constitution over 90,000 words in length. (The average state constitution is 36,000 words long. Alabama is the longest with 172,000.)

Growth of Length of the US and State Constitutions

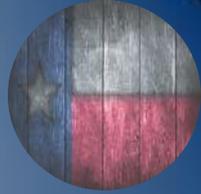


What does a well-constructed constitution look like?

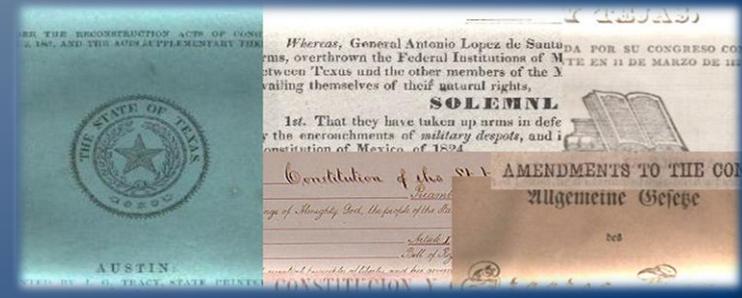


- brief: 7,400 words (US) vs. 90,000 words (Texas)
- Provides general principles rather than specific legislative provisions.
- Creates a basic government framework.
- Grants authority to specific institutions.
- Provides for orderly change.
 - The US constitution has 27 amendments.
 - The Texas constitution has 491.
- National Municipal League's Model State Constitution

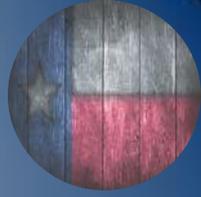
Texas Constitutional History



- Texas is currently governed by its 7th constitution.
- Between 1827 and 1876, Texans drafted and ratified seven constitutions, each reflecting the politics of the period and the history of the state.
- The existence of 6 constitutions in the 50 years prior to 1876 is evidence of the political turbulence in Texas during the period.
- [Texas Constitutions 1824-1876](#) (Click on the *Browse Texas Constitutions* link for full list.)



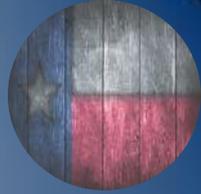
Texas Constitutional History



- Coahuila y Tejas Constitution (1827)
- Constitution of the Republic (1836)
- Statehood Constitution (1845)
- Constitution of the Confederacy (1861)
- Reconstruction Constitution (1866)
- Radical Reconstruction Constitution (1869)
- The Constitution of 1876



Texas Constitutional History: Texas Under Spain (1519-1821)

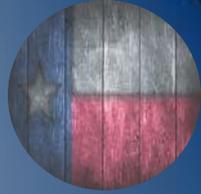


- Spain established the first European claim to what is now Texas in 1519 when Cortez came to Mexico.
- The first Spanish settlement in Texas, the Ysleta Mission near present-day El Paso, was not established until 1681.
- Until Mexican independence in 1821, other Spanish missions, forts and civil settlements gradually followed.



Spanish flag for use in the colonies

Texas Constitutional History: Texas Under France (1685-1690)

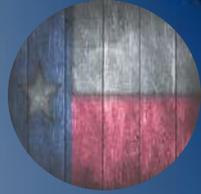


- In an attempt to expand west of Louisiana, France in 1685, laid claim to eastern Texas near the Gulf Coast.
- Though claimed by Spain, the nearest Spanish settlements were hundreds of miles away.
- A French nobleman founded a colony called Fort St. Louis, but by 1690 shipwreck, disease, famine and hostile Indians doomed the colony and France's claim.



Standard of the French
royal family prior to 1789

Texas Constitutional History: Coahuila y Tejas (1827-1836)



- Texas lobbied for their own state within the Mexican federation, but their requests were denied.
- Mexico was rightfully concerned that an independent Texas state within Mexico would soon want annexation to the US.

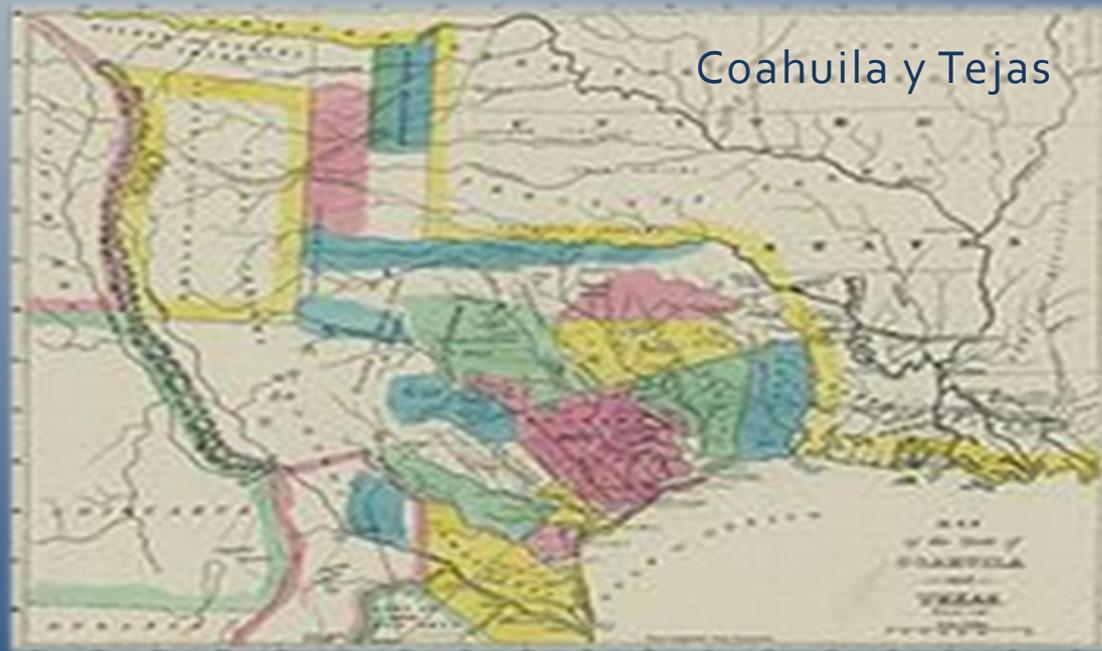


Flag of the Mexican Republic

Texas Constitutional History: Coahuila y Tejas (1827-1836)



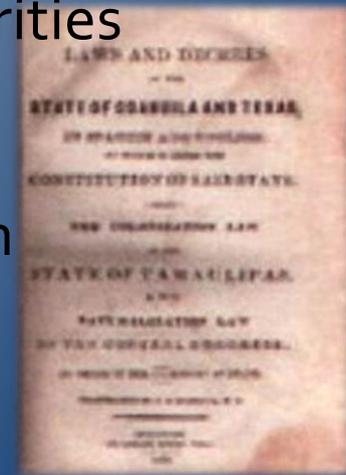
- The first constitution that governed Texas was while it was part of the Mexican federation.
- Texas was joined to Coahuila as one state, and Coahuilan representatives dominated the legislature.



Texas Constitutional History: Coahuila y Tejas Constitution (1827-1836)



- The Coahuila y Tejas constitution featured:
 - a community property system
 - a homestead exemption from bankruptcy
 - promotion of education concept of local control over school development was firmly established
 - separate executive, legislative and judicial authorities
 - a unicameral (one chamber) legislature
 - establishment of Catholicism as the state religion
 - water laws and water rights



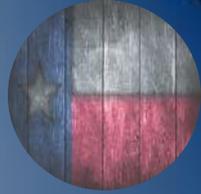
Texas Constitutional History: Coahuila y Tejas (1827-1836)



- The election of Santa Anna as president of Mexico in 1834 was initially viewed by Texans as a positive event as they believed that he supported their autonomy within a loose federal state.
- However, Santa Anna soon sought to consolidate power by centralizing control over all of Mexico, including Texas.



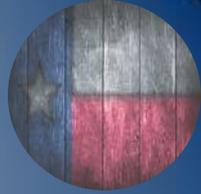
Texas Constitutional History: Republic of Texas (1836-1845)



- On March 2, 1836, at Washington-on-the-Brazos, and after 131 years of Spanish rule and 15 years of Mexican rule, Texans declared their independence and formed an interim government.
- David Burnet was selected as interim president.



Texas Constitutional History: Republic of Texas (1836-1845)

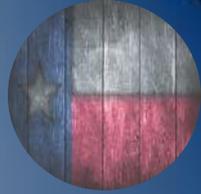


- By early 1836 Santa Anna had crossed the Rio Grande at the head of a large army:
 - The Alamo (3/6/36)
 - Goliad (3/27/36)
- Sam Houston's army retreated eastward.



Alamo flag: The 1824 represents a return to the liberal Mexican Constitution of 1824.

Texas Constitutional History: Republic of Texas (1836-1845)



- Confident of victory, Santa Anna divided his forces.
 - One column was sent to capture the provisional government of Texas.
 - One column was sent to find and destroy the Texas army.
 - One column was sent to drive fleeing civilians out of Texas.
- Santa Anna pursued Houston's army, but was outmaneuvered, caught napping and routed in the Battle of San Jacinto (4/21/36).
- Santa Anna was captured and forced to sign the Treaty of Velasco which recognized Texas independence.

Texas Constitutional History: Constitution of the Republic (1836-1845)



- The Constitution of the Republic of Texas was drafted in less than 3 weeks soon after independence was declared, and was ratified in September 1836.
- The constitution was brief and flexible.
- Most of the delegates were from the South and the document reflected the American influence.
- Its major features paralleled those of the US constitution, but the document also guaranteed the continuation of slavery.

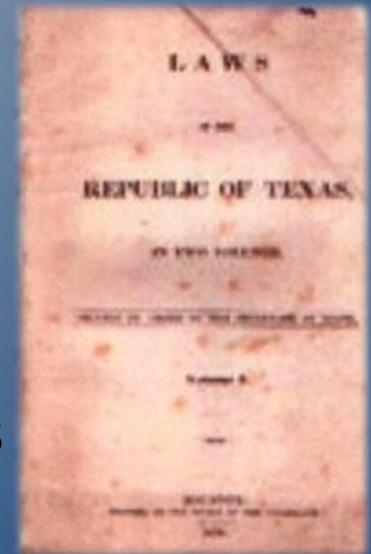


flag of the Republic of Texas

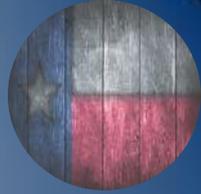
Texas Constitutional History: Constitution of the Republic (1836-1845)



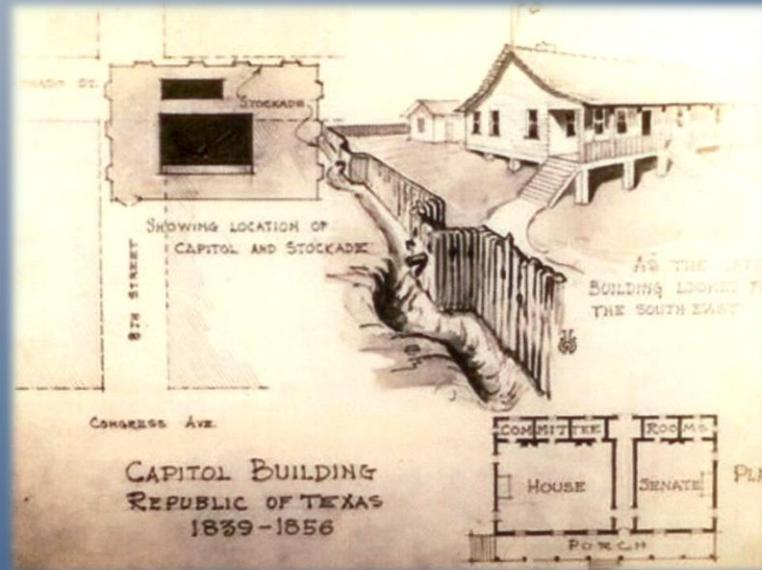
- The constitution featured:
 - no official, state-preferred religion
 - members of clergy prohibited from serving as president or in Congress
 - separation of powers into three branches
 - a bicameral (two chambers) legislature
 - elected president
 - checks and balances
 - a bill of rights
 - democratic selection of government officials
 - slavery legal but slaves imported from US



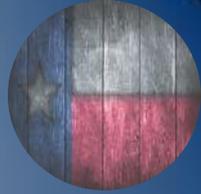
Texas Constitutional History: Republic of Texas (1836-1845)



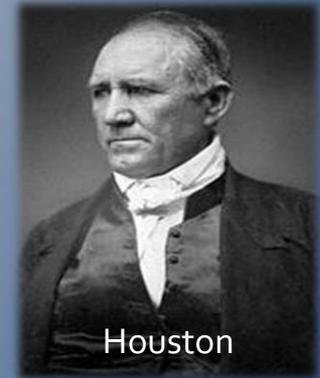
- From 1836 to 1839 the government of the Republic of Texas met in temporary quarters first at Washington-on-the-Brazos, then in Columbia and then in Houston.
- In 1839, Edwin Waller was charged with making Austin the capitol city of the Republic.



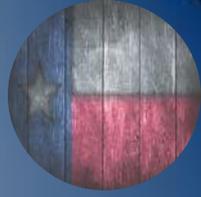
Texas Constitutional History: Republic of Texas (1836-1845)



- The leading figures in the new nation were experienced politicians.
- **Sam Houston**: elected president, had served in the US Congress, former Governor of Tennessee
- **Mirabeau Lamar**: elected vice president, had served in the state legislature of Georgia



Texas Constitutional History: Republic of Texas (1836-1845)



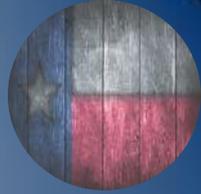
- Texans overwhelmingly approved a referendum calling for annexation to the US but the US was not ready for Texas.
- It would come in as a slave state and Jackson feared a hostile Northern reaction.

- General Santa Anna repudiated the Treaty of Velasco, which meant Mexico still claimed Texas. The US risked war with Mexico and was not prepared for war.
- Texas was to remain an independent republic until 1845.



1836 Republic of Texas

Texas Constitutional History: Annexation (1845)

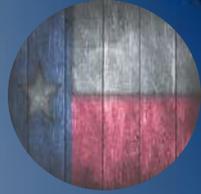


- By the 1840s, annexation became more acceptable to the people of the US, who believed that the future of the nation was tied to westward expansion.
- James K. Polk was elected president with a platform of Manifest Destiny (the inevitable expansion of the US to the Pacific).
- A joint resolution of Congress passed both houses and on March 3, 1845, Texas became the 28th state.



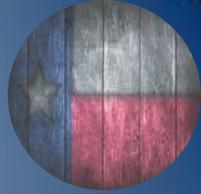
US flag

Texas Constitutional History: Annexation (1845)

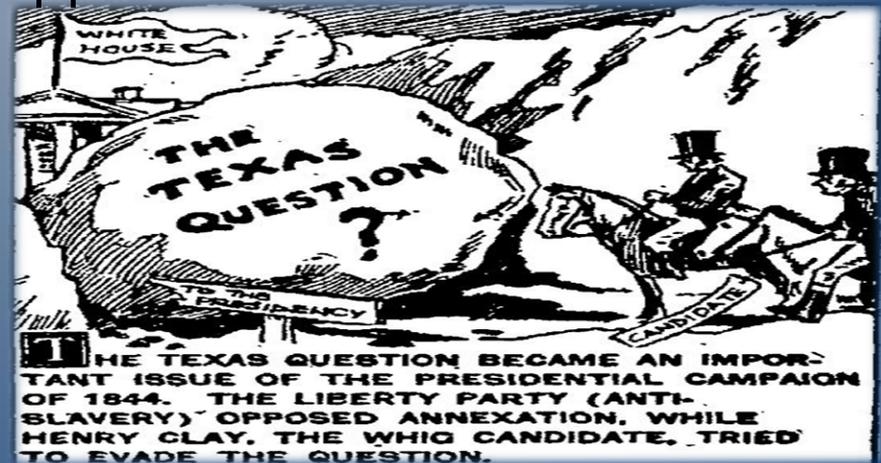


- Mexico had threatened to declare war on the US if it annexed Texas. It did not follow through on this threat but relations remained tense.
- Texas claimed that its southern border was the Rio Grande River, while the Mexican government claimed that Texas' southern border was the Nueces River.
- President Polk ordered the commander of US forces in Texas (Zachary Taylor) to move his forces into the disputed territory.

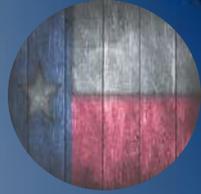
Texas Constitutional History: Annexation (1845)



- Polk sent Congressman James Slidell to Mexico to negotiate the purchase of the disputed territory.
- Slidell's mission failed.
- General Taylor sent troops to the Rio Grande (territory claimed by Mexico) and shots were fired.
- Polk received Congressional approval for a declaration of war against Mexico.



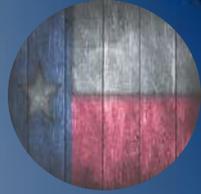
Texas Constitutional History: Annexation (1845)



Mexico City was captured in September of 1847 and the Treaty of Guadalupe-Hidalgo was signed in 1848 which ceded the area between the Nueces River and the Rio Grande, as well as modern day California and New Mexico, to the US.



Texas Constitutional History: Annexation (1845)



- The annexation agreement between Texas and the US contained some unusual provisions:
 - Texas could divide itself in to as many as five states.
 - The Texas flag could fly at the same height as the US flag.
 - Texas was responsible for paying off its foreign debt.
 - Texas would retain title to its public lands (unclaimed land primarily in western Texas). This land could be sold to pay off the debt.

continued in The Texas Constitution Part II

