

POLS 207

State & Local Government

State Constitutions (Chpt 4B)

Dr. Roblyer, Ph.D.

Fall 2018



Purposes of Constitutions

- Legitimacy (origin of power)
- Organizing government
- Allocating power in government
- Limiting governmental power
 - Establishes boundaries, both internal and external

(Same purpose at both state and federal levels)

U.S. State Constitutions – Similarities & Differences

- We should expect key similarities with U.S. Constitution
 - Delegates to Constitutional Conventions brought state examples
 - Much-lauded federal system was not original—first appeared in 1780 state constitution of Massachusetts
- Separation of powers at state level same as federal approach
 - Executive, legislative, judicial
- Many checks and balances between powers also similar to federal, but there are key differences in quantities
 - Post Colonial Period: States' approaches often shifted toward making governors weaker
 - Post Civil War: States' residents (that could vote) wanted to reserve even more power, so to keep progressive governments in check

U.S. State Constitutions – Similarities & Differences

- Desire of any state to carefully **control** its government will often be reflected in the **length** of its constitution
 - U.S. Constitution is about 9000 words long

How many words does the longest state constitution contain?

5000 (0.5x the length of the federal document)

50,000 (5.5x...)

100,000 (11x...)

350,000 (40x...)

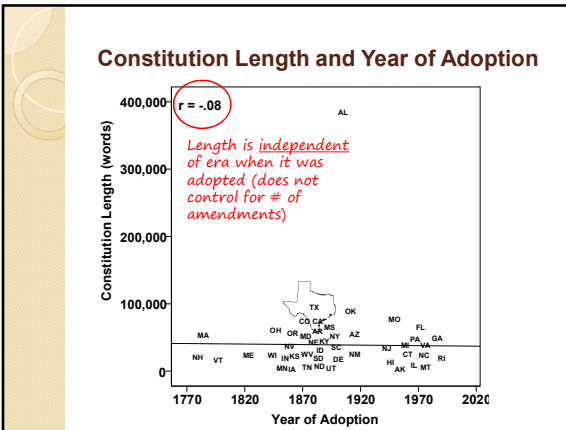
625,000 (70x...)

Start the presentation to activate live content

If you see this message in presentation mode, install the add-in or get help at Polliv.com/app

U.S. State Constitutions – Similarities & Differences

- Desire of any state to carefully control its government will often be reflected in the length of its constitution
 - U.S. Constitution is about 9000 words long
 - Shortest state constitution (NH) is about the same length
 - Longest state constitution (AL) is 365,000 words—40 times longer than federal ...and Texas has the 2nd longest!
- Long constitutions contain **many detailed restrictions** on governmental power, and **preserve** those restrictions by making them **difficult to alter** or revoke
 - Change requires constitutional **amendment**
 - All but one state (DE) requires **electorate to ratify** the change
 - Proposal comes from legislature, except in 18 states where public can initiate
 - Few voters reach bottom of ballot where proposed amendments appear
 - 66% of all amendments are ratified
 - Allows **winning groups** in each state to safeguard their **interests**



U.S. State Constitutions – Similarities & Differences

- **Subjection of local governments to state**
 - Similar *hierarchy* to that at federal level:
 1. Constitution
 2. State statutes
 3. Local government ordinances
 - **But no federalism** in relationships between states and their localities
 - Remember **Dillon's Rule**? States tell local governments what they can and can't do
 - Local governments have **no** specified or inherent powers drawn from their **respective state constitution**

U.S. State Constitutions - Similarities

- **Bill of Rights**
 - **Existence of these in state constitutions** was original justification for absence of a bill of rights in main body of U.S. Constitution (since added as amendments)
 - **No state may deny a right** given in the U.S. Constitution, due to that document's supremacy clause
 - However, **states may specify additional rights** that are not included in the U.S. Constitution
 - Example: Adding "disability" as a protected category in addition to gender and race. This category appears in federal law, but not in the U.S. Constitution.

Texas Constitution – Bill of Rights

- **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**
 - Purpose clear in opening line: *That the general, great and essential principles of liberty and free government may be recognized and established, we declare...*
 - 29 Sections – each a separate right or grouping of rights
 - **Section 1. FREEDOM AND SOVEREIGNTY OF STATE.** *Texas is a free and independent State, subject only to the Constitution of the United States...*
 - **Section 4. RELIGIOUS TESTS.** *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.*
 - **Section 20. OUTLAWRY OR TRANSPORTATION FOR OFFENSE.** *No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same.*
 - **Section 26. PERPETUITIES AND MONOPOLIES.** *...monopolies are contrary to the genius of free government, and shall never be allowed*

Why have Texas & southern states had so many different constitutions?

- **1861 – Secession**
 - Did a global find-and-replace of “Confederate” for “United” in front of “States of America”
 - **1864-1865 – Lost the “VVar Against the States”**
 - Reversed the changes made in 1861
 - **1867-1868 – Reconstruction enforced**
 - Enact new documents required by Congress in post-slavery, Union-dominated post-war era
 - **1874-1902 – White Power Returns**
 - North has lost interest in safeguarding rights in post-slavery South
 - Whites reshuffle their constitutional decks to return them to their positions of power and prestige and keep them there
- Texas is on its 8th constitution, ratified in 1876*

Texas Constitution

- **Very long, very poorly organized document**
 - 2nd longest in US; difficult to read/interpret
 - Contains many details of policy and governmental organization
 - Objectives: 1) avoid abuse of governmental powers, and 2) protect various private interests
- **Reflects the times when it was written**
 - Strongly conservative
 - Agrarian in interest
 - Reaction to carpetbag rule

What does the term "deadwood" refer to about the Texas State Constitution?

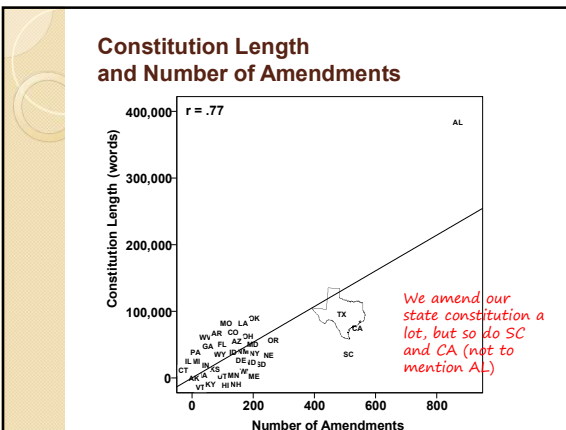
- Archaic provisions that no one understands any more
- Provisions that are inconsistent with other provisions
- Unenforceable provisions that violate federal law
- Provisions that sound nice, but don't do anything

Start the presentation to activate live content

If you see this message in presentation mode, install the add-in or get help at Pollivy.com/app

Texas Constitution

- Very long, very poorly organized document
 - 2nd longest in US; difficult to read/interpret
 - Contains many details of policy and governmental organization
 - Objectives: 1) avoid abuse of governmental powers, and 2) protect various private interests
- Reflects the times when it was written
 - Strongly conservative
 - Agrarian in interest
 - Reaction to carpetbag rule
- Contains a lot of "deadwood"
 - Unenforceable provisions that conflict with U.S. Constitution (...remember the "no religious test as long as you believe in God" article in the Texas Bill of Rights?)
- Is frequently amended (next chart)



Amendments are inserted into the body, not appended to the end, like in the US Constitution.

Article	Section	Provision of Section	Interaction With Other Sections
VII	17	Provides a 2% tax for benefit of Confederate pensions and State Building Fund	The 2% tax is a <u>substitute for</u> the 7% tax previously levied in art. III, sec. 51, for Confederate pensions; 2% tax <u>abolished</u> by art. VIII, sec. 1-e
VII	17	<u>Establishes a 1% tax for higher education</u>	None
VII	17	<u>Reduces to 3% the maximum tax for general state purposes</u>	Art. VIII, sec. 9, <u>establishes the maximum at 3%</u> ; art. VIII, secs. 1-a and 1-e <u>override</u>
VII	3	Establishes a maximum of 3% tax for benefit of public schools	Art. VIII, sec. 1-e, <u>abolishes</u>
VIII	1-a	<u>Prohibits any state tax for general purposes after January 1901</u>	<u>Overrides</u> art. VII, sec. 17, and art. VIII, sec. 9
VIII	9	<u>Establishes maximum of 3% tax for general state purposes</u>	Modified by art. VII, sec. 17; <u>overridden</u> by art. VIII, secs. 1-a and 1-e
VIII	1-e	<u>Prohibits all state ad valorem taxation after 1970 other than the 1% tax for higher education</u>	<u>Overrides</u> art. VII, secs. 3 and 17, and art. VIII, sec. 9 ...confused yet?

Texas & U.S. Constitutions

- **Similar in structure**
 - Each sets up executive, legislative, and judicial branches
 - Both are separation-of-power systems
 - Both include provisions against unequal or arbitrary government action
- **Differ in how they provide power to government.**
 - U.S. Constitution is much more flexible in allowing government to act
 - Said another way, the Texas Constitution is much more restrictive of government power
 - How those restrictions work will be covered when we discuss the three state branches

Supreme Law of the (State) Land?

- At the national level, the U.S. Constitution is rarely changed and widely accepted as "supreme"—even as it is used by one party as a bludgeon to demand surrender from the other
- Does your state constitution enjoy the same status?
 - Does it make your state distinctive?
 - Is it a touchstone for your state's values?
 - Are its directives broader in scope than state statutes?
 - Is it a document that is infrequently edited, but often cited?
- Your answers may indicate that constitutions at state levels operate in a different way than our national one
 - Who benefits from state constitutions?
 - Who is protected by them?

...Who wins and who doesn't?

207-4

This marks the end of the lecture.

All slides beyond this placeholder are "parked" there for the instructor's benefit, not for student use or study.
