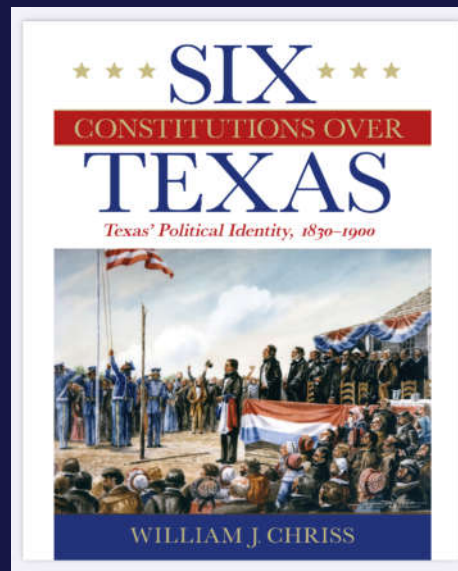


SIX CONSTITUTIONS OVER TEXAS

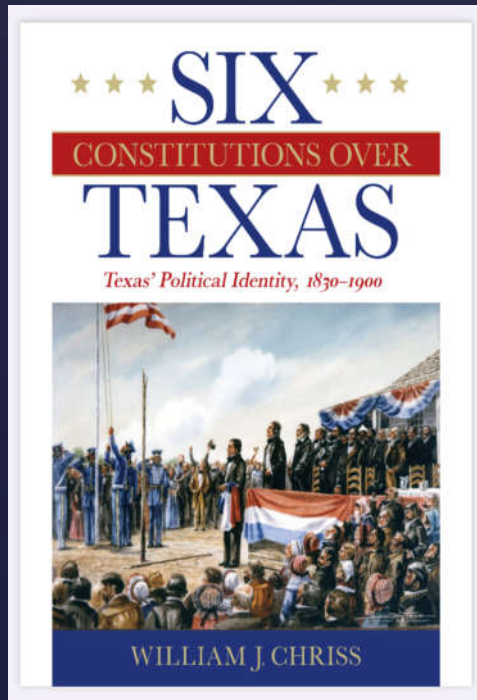


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William J. Chriss, J.D., Ph.D.
Corpus Christi

SIX CONSTITUTIONS OVER TEXAS

Where you can buy the book:



1. <https://www.tamupress.com/book/9781648431715/six-constitutions-over-texas/>
2. <https://www.amazon.com/Six-Constitutions-Over-Texas-Political/dp/1648431712>
3. <https://www.barnesandnoble.com/w/six-constitutions-over-texas-william-j-chriss/1143417162?ean=9781648431715>

The Immigration Problem: Rhyming



“an antipathy has emerged between... (our citizens)... and foreigners..., if timely measures are not taken, Texas will pull down the entire (country)...(Our citizens)...feel themselves pushed aside for the foreigners...(who) continue to arrive... Among the foreigners there are...fugitive criminals...,vagabonds and ne'erdo-wells..., etc. They all go about with their constitution in their pocket, demanding their rights...”

THEORIES ABOUT CONSTITUTIONAL ANALYSIS



1. **Constitutional Moments:** Bruce Ackerman, Yale, *We the People: Foundations* (Cambridge: Belknap Press, 1991).

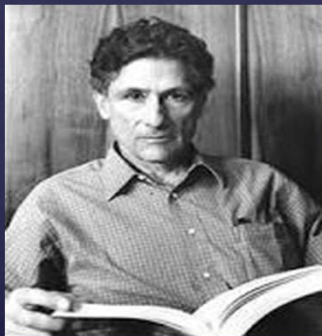


2. **Constitutional Identity:** Aristotle? and Gary Jacobsohn, U.T., *Constitutional Identity* (Cambridge: Harvard Univ. Press, 2010).

THEORIES ABOUT CULTURAL IDENTITY AND “THE OTHER”



- Michael Taussig, *Mimesis and Alterity* (N.Y.: Routledge, 1993); Paul Cartledge, *Greeks: A Portrait of Self and Others* (Oxford: Oxford Univ. Press, 2002);



- Edward Said, *Orientalism* (N.Y.: Knopf Publishing Group, 1979); Ibid, *Culture and Imperialism* (N.Y.: Knopf Publishing Group, 1994).

RELEVANCE of SIX CONSTITUTIONS TODAY



1. *Dobbs* and the new importance of *state* constitutions

2. *Othering*: domestic division and demonization of opponents



3. *Othering*: wars and rumors of wars over religion and ethnicity

4. The rise and fall of populism

SIX CONSTITUTIONS

1836



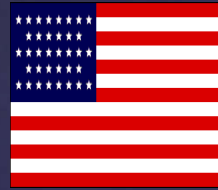
1845



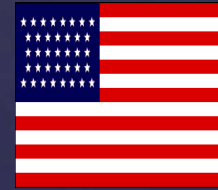
1861



1866



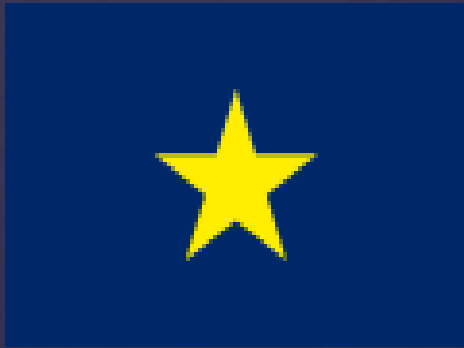
1868



1876



THE CONSTITUTION OF 1836: SLAVERY AND INDEPENDENCE



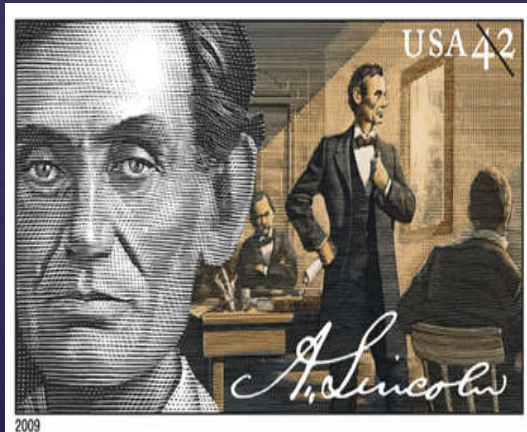
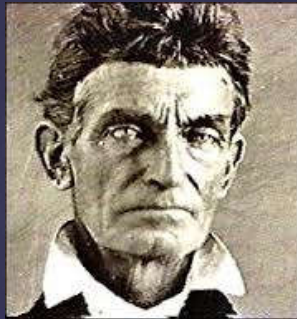
- Spanish and Mexican Abolitionism: 1822, 1823, 1824, 1827, 1829, 1830, 1832,
- Pro-slavery agitation: Travis and Anahuac: 1832
- “Congress shall make no law” against slavery

THE CONSTITUTION OF 1845: AN AXIS OF ENEMIES



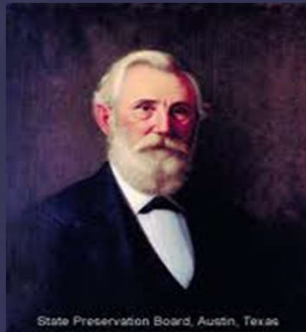
- Anything for U.S. military protection
- Indian raids, Mexican invasions
- Fear of slave rebellion: humane treatment laws
- Anti-commercial; anti-northern sentiment: no banks; limits on corporations; **homestead protection**

THE CONSTITUTION OF 1861: THE “BLACK” NORTH

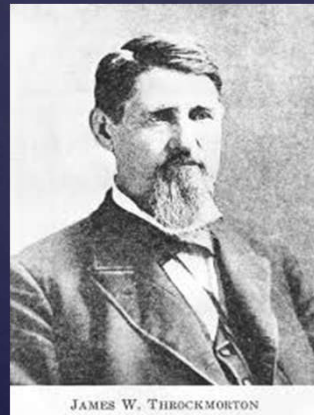


- Return to 1845:
“Conserving existing traditions.”
- Except regarding slavery:
Total Prohibition on any emancipation
- Loosening of fiscal constraints for war effort
-

THE 1866 CONSTITUTION: PRESIDENTIAL RECONSTRUCTION



State Preservation Board, Austin, Texas



JAMES W. THROCKMORTON

- Three factions
- Return to 1845: “The minimum required for reunion.”
- Slavery Article replaced with Article on “Freedmen.”

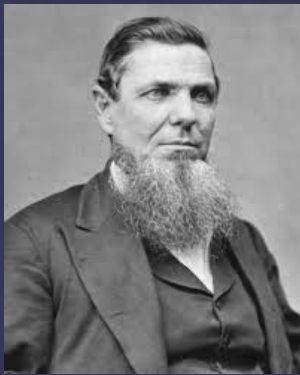
No vote

Segregation

No equal rights

- Subsidies for railroad building: bonds and liens.

THE CONSTITUTION OF 1869: RADICAL RECONSTRUCTION



- Two factions
- Exclusion of ex-confederates.
- Federal military support
- Freedmen:

The vote

Equal rights

- Capitalism and the yeoman ideal.
- Appointed Judiciary, Strong Governor;
Police Bill



THE CONSTITUTION OF 1876: REDEEMERS AND GRANGERS



- The Semicolon election and the return of O.M. Roberts. *Read*
- Granger Alliance?
- The conservative solution:
 - Elected judiciary
 - Short terms of office
 - Decentralized school system
 - Biennial legislature
 - RR land subsidies return
 - Homesteads and Usury Laws
 - Small poll tax
 - Segregation

THE CONSTITUTION OF 1876:



- The System we have today:
 - Weak governor
 - Biennial legislature
 - Permanent School Fund
 - Elected judges
-

TEXAS RIGHT TO PRIVACY: 1950s



- *U.S. Life Insurance Co. v. Hamilton*, 238 S.W. 2d 289 (Tex. Civ. App. – Waco, 1951):
“the courts of this state should and would, under appropriate circumstances, recognize damages as a proper remedy for the wrongful invasion” of a right to privacy.
- *Milner v. Red River Valley Publishing Company*, 249 S.W. 2d 227, 229 (Tex.Civ.App. – Dallas, 1952) opined that a Texas privacy right might be found:
under the common law, and in our statutes, under such classification as libel and slander, wrongful search and seizure, compulsory physical examinations, eavesdropping by others, property rights in one’s own literary works, wire-tapping, and other similar invasions into the private business and personal affairs of an individual in being.

TEXAS RIGHT TO PRIVACY: 1960s



- There is an “assumption ... implicit in the opinions of this court that a trial judge will discriminate in ordering discovery between information disclosed by income tax returns which is relevant and material to the matters in controversy and information which is not. **The protection of privacy is of fundamental – indeed, of constitutional importance.**” *Maresca v. Marks*, 362 S.W. 2d 299, 301 (Tex. 1962) (Steakley, j.).

In 1967, the Texas Supreme Court made explicit the elevation of privacy from a common law to a state constitutional matter. In *Texas State Employees Union v. Texas Department of Mental Health & Mental Retardation*, 746 S.W.2d 203 (Tex. 1987).

TEXAS RIGHT TO PRIVACY: 1970 onward



- *Griswold* (1965); *Roe* (1973); *Billings v. Atkinson*, 489 S.W. 2d 858 (Tex. 1973)
- *Texas State Employees Union v. Texas Department of Mental Health & Mental Retardation*, 746 S.W.2d 203 (Tex. 1987). At issue was a health agency's policy mandating that employees submit to a polygraph when suspected of abuse, criminal activity, or other acts "threatening the health and safety of others." The court found a constitutionally protected "zone of privacy" emanating from sections 6, 8, 9, 10, 19, and 25 of the Texas Bill of Rights. The court concluded that "a right of individual privacy is implicit among . . . principles of liberty and free government" that the state may only overcome in furtherance of a "compelling governmental objective" and by use of the least "intrusive, more reasonable means." *Id.* at 205

TEXAS RIGHT TO PRIVACY: 1970 onward



- In *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W. 2d 668 (Tex. 1976), the court cited with approval several commentators suggesting that the general right to privacy has a dual nature: (1) *personal autonomy* or freedom of choice with respect to undergoing certain experiences or performing certain acts; and (2) the right to control information, or *disclosural privacy*, which would protect the extent to which information about an individual is communicated to others.
- In those cases where they have been called upon to do so, Texas courts have uniformly repeated the binary *Industrial Foundation* formulation, insisted that Texas' constitutional right to privacy is not necessarily coextensive with the federal right, and then nonetheless relied upon interpretations of the federal right by federal courts in analyzing the Texas right.

TEXAS RIGHT TO DUE COURSE OF LAW



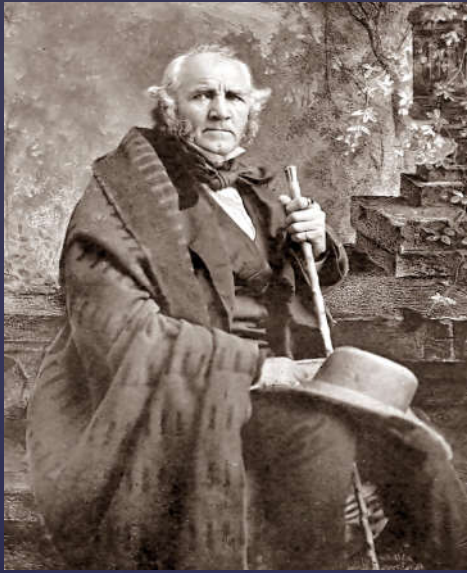
- Tex. Const., Article I, Section 13 provides that “No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the **due course of the law** of the land.”
- In *Turner v. Robinson*, 534 S.W.3d 115, 129 (Tex.App.-Houston [14th Dist.] 2017), the court of appeals held due course to be broader than federal due process and that it:
 - requires the government, at minimum, to provide notice that it is depriving a citizen of a liberty or property interest as well as "an opportunity [for the citizen] to be heard at a meaningful time and in a meaningful manner." *Univ. of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 929-930 (Tex. 1995). In the hearing, the citizen’s challenge to the deprivation **must be determined " according to law."** *Freeman v. Ortiz*, 106 Tex. 1, 153 S.W. 304, 304 (1913).

TEXAS RIGHT TO OPEN COURTS



- Tex. Const., Article I, Section 19 provides that “All **courts shall be open**,” and that “every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by **due course** of law.”
- The **Open Courts** provision prohibits legislative actions that restrict an established common law cause of action in an unreasonable or arbitrary way when balanced against the purpose and basis of the statute. *Sax v. Voteller*, 648 S.W.2d 661 (Tex. 1983); *Lucas v. United States*, 757 S.W.2d 687 (Tex. 1988). Examples include damage caps (*Lucas*) and limitations statutes without tolling provisions for the plaintiff’s incompetence (*Sax*).

TEXAS RIGHT TO JURY TRIAL



- Tex. Const., Article I, Section 15 provides that “The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.”
- Tex. Const., Article V, Section 10 provides that ““In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.”
- The Texas Supreme Court (in *General Motors Corp. v. Gayle*, 951 S.W.2d 469 (Tex. 1997)). has construed these provisions of our constitution and rules of procedure as follows:

The right to jury trial is one of our most precious rights, holding "a sacred place in English and American history." *White v. White*, 108 Tex. 570... Even where a party does not timely pay the jury fee, courts have held that a trial court should accord the right to jury trial if it can be done without interfering with the court's docket, delaying the trial, or injuring the opposing party.

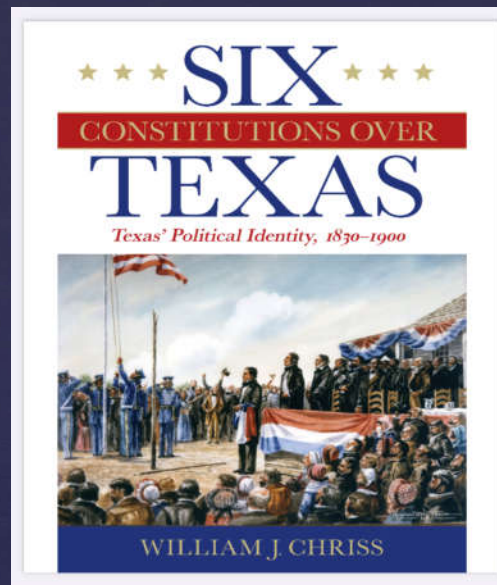
TEXAS RIGHT TO SEPARATION OF POWERS



- Tex. Const., Article II, § 1 provides that “The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy...”
- As the Houston 14th Court of Appeals observed in *Turner v. Robinson*, 534 S.W.3d 115, 129 (Tex.App.-Houston [14th Dist.] 2017, pet. denied) (Busby, j. concurring):

Our Texas Constitution also limits governmental power, and it goes even further than its federal counterpart by including " an explicit Separation of Powers provision to curb overreaching and to spur rival branches to guard their prerogatives." *In re State Bd. for Educator Certification*, [452 S.W.3d 802](#), 808 n.39 (Tex. 2014) (orig. proceeding) (citing Tex. Const. art. II, § 1). In addition, as noted above, the Texas Bill of Rights expressly recognizes the role of courts in providing due course of law. Tex. Const. art. I, § 19.

SIX CONSTITUTIONS OVER TEXAS



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William J. Chriss, J.D., Ph.D.
Corpus Christi