
THE CONSTITUTION OF THE STATE OF TEXAS:

**An Annotated and
Comparative Analysis**

THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS

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Constitutional Convention of 1974

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Our constitution is the basic contract between the people of Texas and their government; it is essential that we all understand the terms of that contract.

W. Page Keeton
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FOREWORD

Initial research on this study began in 1972. The purpose was to provide information to aid the constitutional revision process that was started by a vote of the people of Texas in that year. The results of that research are preserved in this two-volume document entitled *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, referred to hereafter as the *Annotation*. (The text of the constitution contained in these volumes is current through the constitutional amendment election of April 22, 1975.)

The *Annotation* consists of two types of information. First, there is a factual presentation of the origins, historical development, and contemporary meaning of each section of the Texas Constitution. This explanatory material is of continuing value to legal scholars or anyone else interested in understanding more about any part of the constitution. Making this information available to the public is the principal reason for publication of the *Annotation*.

The *Annotation* also contains interpretive comments on each section by the authors, who were extended the freedom of expression necessary to comment on the utility of each provision so long as these judgments were expressed in a separate paragraph clearly labeled "Author's Comment." The authors' comments were included in this publication to preserve the historical integrity of the draft versions of the *Annotation* used during the revision process. The "Author's Comment" sections are the views of the individual authors alone, and they do not in any way represent positions of the participating organizations.

George D. Braden is the primary author and also the editor-in-chief of this annotated presentation of the Texas Constitution. A former Associate Professor of Law at Yale University and a distinguished legal scholar, Mr. Braden is recognized nationally as an authority on constitutional law. His *The Illinois Constitution: An Annotated and Comparative Analysis*, coauthored by Rubin G. Cohn, has been acclaimed a unique contribution to the understanding of state constitutions.

To assist in this endeavor, Mr. Braden assembled a most competent group of coauthors. The team of authors takes the reader through an article-by-article review of the constitution in a style that is appropriate to its purposes of assisting the legal scholar and enlightening the interested citizen or governmental practitioner. To their credit, the authors enliven the text with bits of the wit and humor that occasionally adorn the political process.

Management of the finances and work flow of the project and responsibility for maintaining the good spirits of the authors through five years of labor have rested with Katherine Bennett. She was assisted first by Steve Bickerstaff, then John Potter of the Texas Legislative Council and by Glen Provost of the University of Houston. Others who assisted with various phases of the management of the project include Philip Barnes, Lorraine Camp, Brenda Lee, and Louise Winecup. John Bebout, formerly of the University of Houston, was first to recognize the value of the work and was inspirational in his continuous support of the project.

The participating organizations are pleased to make this information available to the people of Texas.

Austin, Texas
August 1977

James F. Ray
Texas Advisory Commission on
Intergovernmental Relations

PREFACE

I began work on this project in January 1972. Now, over five years later, the project is finished. This requires a bit of explanation. The original assumption was that the *Annotation* could be completed and published in time to provide copies to the delegates to the 1974 Constitutional Convention when it convened in January of that year. (I even thought I could do it all myself; that pipe dream went the way of six, now seven, coauthors.) When the convention convened, we were able to provide the delegates with a loose-leaf computer printout of a draft of the *Annotation*. After the convention ended, work began on revision and final editing. Unfortunately, there was now no absolute deadline and the work slowed. (Procrastination is an occupational hazard of lawyers; strict deadlines are a must.) Moreover, enough time kept passing to require significant rewriting and updating.

This project, an annotated and comparative analysis of the Texas Constitution, was designed to be a research tool for the delegates to the Constitutional Convention. There were, therefore, certain ground rules to be followed. First, every effort was made to make the *Annotation* understandable to the layman. Second, in addition to the normal purpose of an annotation—to explain the meaning of the constitution as it has evolved—the authors were charged with providing an appropriate historical background for each section, with comparing the section with provisions in other state constitutions, and with providing any general comments that the author thought might be useful to the delegates. Third, the *Annotation* was not to be the exhaustive, comprehensive coverage of all possible constitutional issues with all relevant citations that a practicing lawyer might expect. As revised, these volumes remain what they were originally designed to be—a research tool for a layman or lawyer who wants a general, albeit accurate, understanding of a particular constitutional provision.

Had the constitutional revision effort succeeded, this *Annotation* would be of little more than historical interest. As it is, the authors are confident that the layman will find the *Annotation* a useful explication of the fundamental charter of Texas and that the practicing lawyer will find the *Annotation* an adequate first source for whatever research is called for concerning a Texas constitutional question.

For the benefit of my coauthors and myself, I must include a caveat to protect us from the inevitable “nit-pickers”: There is no uniform cut-off date for the “Explanation” of the sections annotated. The several authors finished their revisions at different times. Thus, in some instances a court case handed down in the middle of 1976 may be cited while in other instances nothing that occurred after 1974 is discussed. This is particularly a problem with the Bill of Rights because the United States Supreme Court tends to say something new every hour on the hour. (It is not true that we authors planned it this way so that we would have a perfect alibi if someone spotted a failure to discuss a recent case.) In general, the *Annotation* is complete through 1973. For developments after that date, the reader is given no more guarantee than any author writing about a fast-moving legal subject can give his reader as of the day the presses begin to roll.

I should also point out that it was decided that we would not include new material related to the constitutional revision effort itself. In general, the only updating is concerned with the judicial or other gloss on the several constitutional provisions. (There are exceptions, of course. Section 67 of Article XVI, for example, is a new section added in 1975. Likewise, Section 24 of Article III was amended in 1975.) The point is that the authors resisted the temptation to comment on what the revisionists did; the authors’ comments are based on what was in 1973, not also on what might have been. (There is one exception. In commenting on Section 67 of Article XVI, the section added in 1975, I do

comment on what might have been.)

At this point I have to stop prefacing things. There are eight authors of this *Annotation*; obviously, we would have had a terrible time trying to produce a collegiate preface. Therefore, two things that normally appear in a preface are set forth separately. One is a table specifying who wrote and revised what. The other is a table of acknowledgements by each author of those who assisted, consoled, or otherwise enabled him to finish the job. Having just written this, I must make an exception and set forth those acknowledgements that are common to all authors: To John E. Bebout, formerly with the Institute for Urban Studies of the University of Houston, who conceived, nurtured, and pushed this project until there was enough momentum to carry it along; to James F. Ray, who added to John's momentum whatever was needed to keep the project from faltering; to Katherine S. Bennett, who patiently and carefully directed the momentum; to Louise H. Winecup, who joined Katherine toward the end in directing the momentum from manuscript to printed page; to Lorraine Camp who assisted with technical editing in the effort to give the work of eight authors some degree of stylistic consistency; to William P. Braden and Stephen T. Scott, who checked the citations, the most thankless job in the preparation of a legal publication; and to Susan Reid, who prepared the index, the most thankless job in the preparation of any publication.

George D. Braden

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