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Mauer, John Walker

SOUTHERN STATE CONSTITUTIONS IN THE 1870's: A CASE STUDY OF TEXAS

Rice University

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SOUTHERN STATE CONSTITUTIONS IN THE 1870's
A CASE STUDY OF TEXAS
by
JOHN WALKER MAUER

A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE
DOCTOR OF PHILOSOPHY

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HOUSTON, TEXAS
NOVEMBER, 1982
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Southern State Constitutions in the 1870s: A Case Study of Texas

By John Walker Mauer

Southern state constitutions of the 1870s are far more complex in their origins and contents than C. Vann Woodward credits them with being in his Origins of the New South 1877-1913. Woodward argues that the eight southern state constitutions written in the 1870s were only one of many products of the short-term political experience of reaction against Reconstruction. Moreover, Woodward claims these eight documents were essentially uniform in placing excessive controls on government. When the contents of all eleven southern state constitutions extant in 1879 are analyzed in terms of their restrictiveness, however, they appear diverse rather than homogeneous. Only five of these documents had the extreme restraints on government described by Woodward. Furthermore, even those southern states that did adopt restrictive constitutions in the 1870s, or at least the three states (Alabama, Louisiana, and Texas) examined in this study, created those documents for reasons that differed considerably from those cited by Woodward. Instead of being primarily the product of the short-term and regional phenomenon of reaction against Reconstruction, restrictive southern state constitutions of the 1870s were part of a nationwide and long-term change in American state constitutions. This shift in state constitution-making started in the North with the Illinois Constitution of 1870 and the Pennsylvania Constitution of 1873 and spread across the country.
The desire for a restrictive constitution evidenced by Alabama, Louisiana, and Texas in the 1870s was influenced by reaction against Reconstruction only to a limited degree. Reconstruction helped spark the initial interest in writing a new constitution after Democrats regained power, but it played only a limited role in shaping expectations about what type of constitution should be written. In postulating that reaction against Reconstruction shaped southern constitution-making in the 1870s, Woodward argues that the Democratic party in the South manipulated the genuine hostility felt by most whites against Republican rule. The Democratic leadership did this, Woodward further maintains, in order to keep their party artificially united despite "issues of economics and self-interest" which otherwise might have divided the dominant party. Whatever was the case for politics in general, the politics of state constitution-making was substantially different from that described by Woodward. Although the Democratic leadership of Alabama, Louisiana, and Texas attempted to use Reconstruction as a tool to maintain party unity, they failed because constitution-making of necessity entailed the substantive issues that led to divisiveness in the dominant party. Furthermore, the nature of the division that developed in the party was indicative of the limited role that reaction against Reconstruction played in the creation of southern state constitutions in the 1870s. In Alabama, Louisiana, and Texas, the Democratic party's leadership wanted a liberal constitution, or at least to keep the degree of restrictiveness of a new document to a minimum, while it also sought to impose con-
trolls on political rights of the whole electorate in order to strike against black voters. In contrast to its leadership, the party's rank and file provided the major impetus for a restrictive constitution, and it opposed attempts to inhibit black political participation out of concern for the effect that such an effort could have on white voters. Although the disposition of state debt in Alabama and Louisiana mitigated the final outcome in those two states, the creation of restrictive constitutions that did not contain statewide systems of political control in Alabama, Louisiana, and Texas was a victory for the Democratic rank and file over the party's leadership.
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Chapter I Introduction

C. Vann Woodward, in Origins of the New South 1877-1913, uses 1870s southern state constitutions as one example of his overall thesis that reaction against Reconstruction was the dominant force in southern politics after Democrats returned to power. According to Woodward, reaction against Reconstruction was a temporary phenomenon that shaped southern attitudes over a wide spectrum of beliefs and activities. Among the attitudes affected by reaction against Reconstruction was that toward government. "Under Radical control, state as well as Federal government exceeded all previous limits of interference with the property, habits, and life of the individual." And when Democrats regained control of the South, there occurred, as Woodward further states, a "reaction against these Radical intrusions [that] became [a] reaction against government interference of any kind." Woodward goes on to assert that this change in institutional perspective in the South, while unfortunate in its own right, was greatly accentuated by the impact it had on state constitutions:

This reaction was only natural and would have yielded in due time to the pressing needs for government services, regulation, and action had it not happened that at the height of the reaction many states adopted new constitutions that froze a passing mood into fundamental law for decades. Written shortly after Redemption, new constitutions were adopted by Alabama in 1875, Arkansas in 1874, Georgia in 1877, Louisiana in 1879, North Carolina in 1876, Tennessee in 1870, Texas in 1876, and Virginia in 1879. Almost all of the new instruments show the fears and prejudices of the times, though they are embodied in different degrees and ways.... Limitations on power over taxation and appropriations were often rigidly set, and minute provisions for procedure laid down. Besides reducing legislative prerogatives to a minimum, the tendency was to emasculate discretionary authority of civil servants, and in general to tie all the knots in the skein of the famous 'checks and balances.'"
Woodward's assessment of 1870s southern state constitutionalism rests upon three assumptions: first, the politics of state constitution-making is a direct extension of the general political environment; second, 1870s southern state constitutions can be explained almost exclusively by the regional and short term political phenomenon of reaction against Reconstruction, and finally, 1870s southern state constitutions uniformly took a negative approach to government. This study challenges all three of these assumptions. Since the politics of state constitution-making forms the heart of this study, the chapters that follow will inquire into such politics at length. This introductory chapter will examine the other two of Woodward's assumptions.

If the purely regional experience of reaction against Reconstruction was the predominant force that shaped southern state constitutions in the 1870s then those documents should have distinct differences from the constitutions written in other areas of the nation during the same period. Morton Keller in Affairs of State: Public Life in Late Nineteenth Century America has analyzed state constitutions of the 1870s as a part of his study of American political institutions on all (nation, state, and local) levels. And while he agrees with Woodward that state constitutions of the 1870s tended to be longer and place more controls on the legislature, he disagrees with Woodward that such characteristics of state constitutions were either regional or short term. Keller concludes from his study of southern state and local political institutions that while the South had a unique experience in Reconstruction and the reaction that followed, its state and
local political institutions fit into the larger pattern of such institutions in the nation as a whole:

For all its special tone and setting, the public experience of the postwar South did not differ fundamentally from that of the nation at large. True, the fact of defeat made possible a more dramatic application of the war-born legacies of active government and civil equality than was the case in the North. And there was a distinctive -- indeed, a tragic -- quality to the reimposition in the 1870s of policies that embodied the racism, localism, and hostility to government of the dominant white culture. Nevertheless, in a larger view southern Reconstruction and redemption is best seen as a sectional manifestation of an experience common to the postwar polity.

In terms of 1870s state constitutions this means that the alterations in those documents attributed by Woodward to exclusively southern conditions were instead part of a national trend in state constitution-making. Furthermore Keller also asserts that such changes in state constitutions were long term rather than short. His analysis of American state constitutions of the late nineteenth century shows that the "tendency...to crimp the lawmaking power of state legislatures" started in the 1870s and continued until after the turn of the century.2

The change described by Woodward and Keller of 1870s state constitutions becoming longer and having more controls on the legislature needs to be seen in terms of what had been the norm for American state constitutions. Traditionally American state constitutions had conformed to the standards of liberal constitutionalism defined by United States Chief Justice John Marshall in McCulloch vs. Maryland:

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the
public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

This concept of constitution as outline left open questions of scope and refinement. In the first century of American independence, state constitutions tended to grow progressively longer and more elaborate. Responding both to government's burgeoning responsibilities and to its all-too-frequent abuses of power, constitution-makers expanded their documents in ways that began, among other things, to blur the distinctions between constitution and statute. But despite the emergence of details that abridged the letter of Marshall's concept of a constitution, American state constitutions remained well within the spirit of that concept until the 1870s.

In the first full decade after the Civil War, however, American state constitutions began to break from their liberal roots and turn in the direction of restrictiveness. Replacing the concept of organic law as a set of principles to guide government's development was one of a constitution as a device to define the limits of government's discretion and growth. While the first indications of this trend appeared in the 1840s and a few moderately restrictive documents were approved in the 1850s and 1860s, the Illinois Constitution of 1870 was the watershed document that acted as both spur and model for a restrictive constitutional movement affecting all regions of the nation, but not all states writing new organic laws, in the 1870s. Moreover, once restrictive state constitutionalism gained national preeminence, it continued to dominate state constitution-writing until after
the turn of the century.\(^5\)

In the South only eight of the eleven states that had formed the Confederacy wrote constitutions in the 1870s. Woodward limited his analysis of post-Reconstruction southern state constitutions to the eight new documents. But since the entire South experienced reaction against Reconstruction, the relationship between that reaction and southern state constitutions should be examined in all eleven states. Florida, Mississippi, and South Carolina each delayed writing a new constitution for a number of years after Reconstruction ended. Woodward explains this slowness to act only for one state, Florida, and he attributes the tardiness of that state in writing a new organic law to the power that the Florida Constitution of 1868 gave to the governor to appoint local officeholders. In light of the experience of Alabama and Louisiana that will be examined in subsequent chapters, however, this explanation of Florida's delay in writing a constitution seems inadequate. Moreover, when the three constitutions written in the 1860s and used by Democrats in the 1870s are studied in conjunction with the eight state constitutions written in the 1870s, they appear as integral parts of post-Reconstruction southern state constitutions rather than as anomalies.

This study will assess all eleven southern state constitutions in force in 1879. The analysis of these eleven constitutions will consist of a systematic use of the impressionistic standards that Woodward (and Keller as well) uses. Specifically three types of differences in the 1870s southern state constitutions, one concerning size and two concerning controls on the legislature, will be analyzed.
First, size will provide an index of the differences among the constitutions. Size will be determined by the number of articles, total sections in the constitution, and sections in the legislative article. The longer the constitution the more likely it was to be restrictive. Second, the type of controls on the legislature that historically had been a part of state constitutions will be evaluated. Since legislatures had plenary powers, state constitutions had always contained directive controls that shaped and channeled the legislature's authority by defining procedures for it to use and by mandating actions for it to take. A restrictive constitution tended to have more directive controls and was also more likely to have directive controls affecting special and local laws. Finally, the controls vital to the creation of a restrictive state constitution were proscriptive controls. While a state constitution could have a few proscriptive controls and still leave the legislature wide discretionary authority, it was the presence of a large number of proscriptive controls that provided the tight rein on the legislature's discretion that was the hallmark of a restrictive document. This was the case because proscriptive controls set maximums on, or even prohibited altogether, specified types of legislative behaviour.

The South's eleven 1870s state constitutions break into two roughly even groups when analyzed by the above standards. Five of the constitutions were restrictive and six were liberal. Tables I and II give statistics about the size and directive controls of, respectively, the restrictive and liberal 1870s southern state constitutions. Table III and IV provide data about the proscriptive controls
Table I

Variations in Size and in Directive Controls on the Legislature in Restrictive Southern State Constitutions

<table>
<thead>
<tr>
<th>State</th>
<th>Total Articles</th>
<th>Total Sections</th>
<th>Total Sections in Legislative Article</th>
<th>Total Directive Controls</th>
<th>Total Directive Controls Affecting Special and Local Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>17</td>
<td>236</td>
<td>56</td>
<td>17</td>
<td>None, but General Law Required (GLR) where possible</td>
</tr>
<tr>
<td>Arkansas</td>
<td>19</td>
<td>282</td>
<td>36</td>
<td>16</td>
<td>4 + GLR</td>
</tr>
<tr>
<td>Georgia</td>
<td>13</td>
<td>250</td>
<td>30</td>
<td>20</td>
<td>none-GLR</td>
</tr>
<tr>
<td>Louisiana</td>
<td>--</td>
<td>270</td>
<td>42</td>
<td>21</td>
<td>21 + GLR</td>
</tr>
<tr>
<td>Texas</td>
<td>17</td>
<td>258</td>
<td>58</td>
<td>22</td>
<td>28 + GLR</td>
</tr>
<tr>
<td>Averages:</td>
<td>16.5</td>
<td>259.2</td>
<td>49.4</td>
<td>19.8</td>
<td></td>
</tr>
</tbody>
</table>
Table II

Variations in Size and in Directive Controls on the Legislature in Liberal Southern State Constitutions

<table>
<thead>
<tr>
<th>State</th>
<th>Total Articles</th>
<th>Total Sections</th>
<th>Total Sections in Legislative Article</th>
<th>Total Directive Controls</th>
<th>Total Directive Controls Affecting Special and Local Laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida</td>
<td>17</td>
<td>182</td>
<td>30</td>
<td>13</td>
<td>12 + GLR</td>
</tr>
<tr>
<td>Mississippi</td>
<td>13</td>
<td>185</td>
<td>39</td>
<td>10</td>
<td>None</td>
</tr>
<tr>
<td>North Carolina</td>
<td>14</td>
<td>191</td>
<td>28</td>
<td>14</td>
<td>None</td>
</tr>
<tr>
<td>South Carolina</td>
<td>15</td>
<td>208</td>
<td>33</td>
<td>12</td>
<td>None</td>
</tr>
<tr>
<td>Tennessee</td>
<td>11</td>
<td>148</td>
<td>33</td>
<td>11</td>
<td>none</td>
</tr>
<tr>
<td>Virginia</td>
<td>12</td>
<td>163</td>
<td>22</td>
<td>6</td>
<td>None</td>
</tr>
<tr>
<td>Averages:</td>
<td>13.7</td>
<td>180</td>
<td>30</td>
<td>11</td>
<td></td>
</tr>
</tbody>
</table>
### Table III

Proscriptive Controls on the Legislature Affecting State and Local Government in Restrictive Southern State Constitutions Extant in 1879

<table>
<thead>
<tr>
<th>State</th>
<th>Taxes Stated as Maximums</th>
<th>Limitations Placed on Public Debt[^2]</th>
<th>Prohibitions on Aid to Public Enterprise</th>
<th>Controls on the Use of Tax Revenue</th>
<th>Salaries Expressed as Maximums</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State Local</td>
<td>State Local</td>
<td>State Local</td>
<td>State Local</td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>Yes</td>
<td>Yes</td>
<td>$100,000</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Yes</td>
<td>Yes</td>
<td>*2</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Georgia</td>
<td>No</td>
<td>No</td>
<td>$200,000</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Yes</td>
<td>Yes</td>
<td>All</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Texas</td>
<td>Yes</td>
<td>Yes</td>
<td>$200,000</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

1. All of the constitutions which limited the creation of state debt uniformly included three exceptions to these restrictions: repel invasion, suppress insurrection, or defend in case of invasion.

2. Arkansas did not attempt to control debt directly, but it prohibited the state from issuing "any interest-bearing evidences of indebtedness."
### Table IV

Proscriptive Controls on the Legislature Affecting State and Local Government in Liberal Southern State Constitutions Extant in 1879

<table>
<thead>
<tr>
<th>State</th>
<th>Taxes Stated as Maximums</th>
<th>Limitations Placed on Public Debt</th>
<th>Prohibitions on Aid to Public Enterprise</th>
<th>Controls on the Use of Tax Revenue</th>
<th>Salaries Expressed as Maximums</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>State Local</td>
<td>State Local</td>
<td>State Local</td>
<td>State Local</td>
<td></td>
</tr>
<tr>
<td>Florida</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Mississippi</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>2/3 vote by people</td>
</tr>
<tr>
<td>North Carolina</td>
<td>No</td>
<td>No</td>
<td>*2</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>South Carolina</td>
<td>No</td>
<td>No</td>
<td>2/3 vote by people</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Tennessee</td>
<td>No</td>
<td>No</td>
<td>3/4 vote by legislature</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Virginia</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

1. see 1 in Table III.
2. North Carolina barred new state debt, except for "casual deficit" which had no limit, but only until the existing state bonds reached par value.
of these same two groups of state constitutions.

As tables I and II indicate, the South's five restrictive constitutions (Alabama, 1875; Arkansas, 1874; Georgia, 1877; Louisiana, 1879; and Texas 1876) and its six liberal constitutions (Florida, 1868; North Carolina, 1876; South Carolina, 1868; Tennessee, 1870; and Virginia, 1870) extant in 1879 had significant variations in size and in directive controls! The restrictive organic laws exceeded the liberal ones, on the average, by 2.8 or 20 percent in number of articles, by 79.2 or 44 percent in total number of sections, and by 19.4 or 65 percent in number of sections in the legislative article. In restrictive controls the differential between the restrictive and liberal constitutions was 8.8 or 80 percent. Moreover, in the type of directive control emphasized by both Woodward and Keller, that affecting special and local laws, the two categories of 1870s southern constitutions had sharp differences. Of the five restrictive documents, four had a broad requirement that legislatures should pass general laws rather than special and local ones whenever possible, and three of these four also listed subjects specifically prohibited from being enacted as special and local statutes. The pattern among the liberal constitutions was the reverse of the restrictive ones. Five made no mention of special and local legislation, while the sixth had both a general requirement and a list of prohibited subjects.

Tables III and IV show that as great as the differences in size and directive controls were in the restrictive and liberal 1870s southern state constitutions, the differential in their proscriptive controls was even more remarkable. These tables indicate whether state
and local governments came under limitations affecting their power to
tax (in terms of both amount and purpose), to create debt, to aid
private enterprise, or to adjust salaries. All the restrictive or-
ganic laws except Georgia's cited a specific ceiling for state and
local taxes, while Georgia stipulated the purposes for which both
state and local tax revenue could be used and Arkansas, Louisiana, and
Texas did the same for the state. Four out of five documents (Arkansas
excepted) also established a maximum for state debt. Three, Alabama,
Georgia (which was the only one to do so for local as well as state
government), and Texas allowed a small amount of general revenue obli-
gations, but Louisiana disallowed any funded deficits. Moreover, even
Arkansas attempted to restrain debt formation by prohibiting the state
from issuing "interest bearing treasury warrants or scrip" and the
counties and municipalities from issuing "any interest-bearing evi-
dences of indebtedness." Concerning assistance to the private sector,
all the restrictive organic laws barred such help on both state and
local levels.

Finally, these restrictive state constitutions also ex-
hibited their lack of faith in government by tightly controlling sa-
laries. Alabama reduced salaries by 25 percent for specified execu-
tive and judicial offices, but the general assembly could raise the
stipend of those affected by these provisions with a two-thirds major-
ity. The Yellowhammer State denied the assembly power to increase pay
for only one category of worker -- its own elected membership. Arkan-
sas reduced all salaries by 25 percent; allowed no major executive or
judicial officer to have more than the $4,000 given to the governor;
and made $5,000 the limit for all other state and local governmental jobs. Georgia had the most permissive provisions for salaries of the restrictive constitutions. It cited specific figures for various major state offices but authorized the legislature to change the amounts with a two-thirds vote. Louisiana controlled the pay only for offices where sums were mentioned, but its list of such stipulations was the longest of any southern organic law of the 1870s for it covered many local as well as state positions. Texas specified maximum salaries for the legislature and the major officers of the executive branch, but not for the judiciary or local officials. In short, while no one restrictive organic law had all these key economic limitations, each of them had a wide array of such controls.

In contrast, the six Southern states with liberal constitutions had few restraints on governmental finances. None limited the amount of either taxation or debt. North Carolina disallowed any new debt except for "casual" deficits until the state's bonds were "at par." South Carolina attempted to keep deficits from occurring by requiring that taxes match expenditures. If a deficiency occurred in one year, the legislature had to levy an additional tax the subsequent year to pay for the shortfall. Virginia allowed the legislature to create debt only "to meet casual deficits in revenue, [and] to redeem previous liability of the state," and it further commanded lawmakers to institute a sinking fund to repay the principal of all existing and future debt. Salaries were left relatively untouched by these six documents. Two states, North Carolina and Tennessee, had salary controls, and they both cited maximum figures solely for the legislature.
One area in which a majority of these six liberal organic laws restricted the state was governmental aid to private enterprise. Mississippi, North Carolina, Tennessee, and Virginia each forbade such assistance by the state, although North Carolina permitted help for railroads that were either in the process of construction or were a matter of "direct pecuniary interest" for the state. Three states also restrained local involvement in the private sector and each did so by requiring a vote of the people to approve such activity by their county or municipality. The size of the majority required however, in these referenda varied from state to state -- Mississippi, two-thirds; North Carolina, one-half; and Tennessee, three-fourths, but twenty-four counties needed only a simple majority for a decade after ratification of the 1870 constitution.

The fact that over half of the southern states had liberal instead of restrictive constitutions in the post-Reconstruction period limits reaction against Reconstruction as an explanation of southern state constitutions for that period. But the relationship between that reaction and the five restrictive organic laws remains an open question. Woodward's claim that reaction against Reconstruction caused restrictive state constitutionalism in the South rests upon his analysis of the overall political environment in that region. He argues that reaction was a formative force in southern politics both because it was a genuine response by white Democrats to Republican rule and because the dominant party's leadership cynically used it as a tool to keep their followers unified:
The loyalty and discipline that prevailed in the white man's party were inspired by the revolution that established it in power. After the two objects of that revolution were achieved -- the crushing of Negro power and the ousting of foreign control -- party discipline was still dependent upon keeping vividly alive the memories of these menaces. They were the only reliable bases for white solidarity. Almost any other issue ran the risk of dividing the whites and was hushed whenever possible. The Redeemers tried by invoking the past to avert the future. The politics of Redemption belonged therefore to the romantic school, emphasizing race and tradition and depreciating issues of economics and self-interest. 

In the chapters that follow Woodward's premise about southern politics will be examined within the specialized context of constitution-making. One chapter each will be devoted to Alabama Louisiana, and four chapters will be given to Texas. The analysis made in these chapters will show that the politics of writing a state constitution, however, did not conform to the general political environment described by Woodward. Since a state constitution was the fundamental charter under which state and local government operated, the creation of such a document by necessity involved a wide range of substantive issues. Further accentuating the difference between the politics of constitution-making and politics in general was the process by which a state usually wrote a new organic law. In most instances a constitutional convention drafted such a document, and such a convention sat one time, to do one job, and was considered by most people to be a less partisan endeavor than most political activities. And since the convention's job was to draft a constitution, the process of nominating and electing delegates to a constitutional convention and then holding that convention raised substantive issues and stirred public debate over those questions. Because it involved
"issues of economics and self-interest," the politics of constitution-making caused dissension among Democrats just as Woodward predicted would happen if such issues were interjected into southern politics.

Not only did the politics of constitution-making entail substantive issues, but in Alabama, Louisiana, and Texas it also resulted in the defeat of efforts to eliminate what was perhaps the single most important change caused by Reconstruction -- the participation in politics by blacks. In each of these three states the Democratic leadership, or in the case of Alabama elements of the leadership, expressed interest in undercutting the political power of Negroes by using suffrage restriction, extreme gerrymandering, and the restructuring of legislative and judicial districts. The Reconstruction Amendments to the United States Constitution had reduced extreme white supremacists to such indirect forms of political discrimination against the blacks. But the Democratic rank and file rejected these indirect forms of political discrimination. The attitude expressly stated in the Texas Constitutional Convention of 1875 apparently was typical of the conventions in Alabama and Louisiana as well. While openly anti-black the Texas delegates did not believe it worthwhile to harm the political rights of whites to strike against blacks. Thus, the conventions in all three states rejected most types of indirect political discrimination that affected voters. In Alabama and Louisiana, however, the constitutional conventions did give their legislatures a loophole to take selective action against Negroes. The constitutions written for these two states allowed the legislature to selectively alter local governments from elective to appointive, and the Alabama and
Louisiana legislature used this power against local governments in areas with black majorities. But despite this one major exception, the constitutions of Alabama, Louisiana, and Texas affirmed political rights in the aggregate that were in keeping with Jacksonian Democracy. That is, these states allowed all adult males without a special disability to vote and to elect virtually all their major state and local officials.

In summary, southern state constitutions in the 1870s cannot be assumed, as Woodward does, to be an extension of the general post-Reconstruction political environment in the South. The change to restrictive constitutionalism attributed by Woodward to the regional and short term political phenomenon of reaction against Reconstruction was neither regional nor short term. As Keller has shown the emergence of restrictive state constitutions in the 1870s occurred throughout the nation and lasted until after the turn of the century. Moreover, the case for reaction against Reconstruction having influenced 1870s southern state constitutions is further weakened when the content of the eleven state constitutions of that region in 1879 are analyzed. Rather than being uniformly restrictive as Woodward claims, only five were restrictive while six were liberal. In the chapters that follow, it will be shown that in three states, Alabama, Louisiana, and Texas, that wrote restrictive constitutions, the politics of creating these organic laws were specialized and quite different from the general post-Reconstruction political environment described by Woodward.
Chapter notes


5. The evolutionary way in which state constitutions grew in size, detail, and restrictiveness of necessity gives a degree of arbitrariness to the periodization of such change. As Schouler points out: "Distrust of the Legislature appeared in fundamental State provisions very soon after the new machinery of our Federal Union had been set in full motion." Moreover, Schouler also showed that the first modest efforts to restrain special and local laws appeared in the 1830s. Still, major accretions occurred in the changing patterns in state constitutional thought and practice. Not all commentators agree on the same precise dates, but their dating systems are relatively close. Moreover, many scholars have credited the Illinois Constitution of 1870 with being a stimulus for 1870s restrictive state constitutionalism. Schouler, Constitutional Studies, 249-266; Reed, "Constitutional Reform," 1-2; Hitchcock, American State Constitutions, 34-35; Hurst, Growth of American Law, 199-226; Arthur T. Hadley, Railroad Transportation, Its History and Its Laws (New York: G.P. Putnam's Sons, 1896), 134; John D. Hicks, "The Constitutions of the Northwest States," The University Studies of the University of Nebraska, XXIII (January-April, 1923), 34-35; Harold M. Hyman, Union and Confidence: The 1860s (New York: Thomas Y. Crowell Company, 1976), 224-229.

Chapter II The Alabama Constitution of 1874

In Alabama reaction against Reconstruction helped discredit the Constitution of 1868 to most white Democrats. But a common desire to replace the 1868 document did not mean agreement on what a new constitution should contain. The precise range of opinion about constitutional revision cannot be determined because one issue overshadowed virtually all others; Alabama had a massive debt that forced the Democratic leadership to seek a constitutional convention as part of their plan to resolve a problem the state had with its debt. That debt was so large that the state had no choice but to scale it down, but the Democratic establishment wanted to keep the reduction of the state's bonds as low as possible in order to minimize damage to the state's credit. To achieve its goal of preserving the state's credit the Democratic leadership used a two step strategy. First the general assembly would create an appointive debt commission. This commission would give the dominant party's leadership far more control over the debt adjustment process than would a popularly elected constitutional convention. Second, the general assembly would call a constitutional convention. The convention would make cuts in government spending in order to give the debt commission maximum latitude in adjusting the state's financial obligations. In order to unify its party behind a new constitution, the Democratic leadership sought to relieve the fears of its party's rank and file that a new constitution would revoke the democratic reforms implemented in the 1868 organic law. To assuage these doubts, the leadership promised that the democratic reform instituted in 1868
would be continued.

Since debt threatened Alabama with bankruptcy, the state's Democratic establishment created a strategy that differed significantly from the other restrictive constitutional Southern states. However, this discontinuity in approach did not affect the goal of retaining the option for active government that the Democratic leadership of Alabama shared with those of Louisiana and Texas.¹ Virtually equating the preservation of their state's credit with active government, the Democratic hierarchy of Alabama developed a two step approach that allowed it both to retain control of debt adjustment and to mobilize popular support for needed ancillary reforms. The first step entailed having an appointed commission resolve the problem of the state's financial obligations. This commission took the one issue on which the dominant party's leadership would not compromise (i.e., the debt) out of the arena of participatory politics and in so doing, opened the way for the second step of the plan to save the state's credit.²

A constitutional convention was the vehicle for this next, and more complicated, tactic. The level of bond reduction contemplated by the party fathers was sufficiently high to require major reductions in the cost of government, permitting an even higher rate of taxation in order to meet all the state's financial responsibilities. The wide array of reforms needed to achieve this retrenchment required a convention, rather than amendments or statutes. The Democratic establishment compromised on a variety of other measures with the party's rank and file in order to retain control of the debt adjustment process. The benefits gained by this compromise policy, however, went beyond the
debt adjustment process. Apparently, by offering their followers more in the beginning, the dominant party's leadership tended to receive more of what they wanted in the finished constitution. Thus, in addition to the debt commission getting the support it wanted from the Constitutional Convention of 1874, the convention also wrote a document that also placed the least controls on government of the five 1870s restrictive state constitutions in the South, and left the general assembly with the authority to intervene in the local governments in the black belt.  

Almost immediately after Alabama Democrats regained control of their state in 1874, the party initiated a drive to secure a new constitution. With Governor George S. Houston taking a particularly active role, the party's leadership and press sought to get both the popular support and the legislation needed to carry out the desired reforms. Resistance to a constitutional convention existed among Democrats in rural areas, the black belt, and the business sector, but the drive for a convention succeeded in organizing party support. Thus, the struggle that occurred over the issue was partisan. The Republicans attacked the plan for a new constitution, but they lacked the electoral strength to prevent its writing and ratification.  

As a minority, the Republicans could only hope to defeat the convention by creating a split in the Democratic party. Both parties recognized that the agrarian rank and file was the most vulnerable to such a tactic and acted accordingly. Despite sharing both an interest in maintaining the state's credit and a willingness to accept the high taxes that policy dictated, the Republican leadership used the
rhetoric of class conflict in an attempt to capitalize on what one contemporary claimed was the "strong opposition of the masses" to a new constitution. Since the Reconstruction Constitution of 1868 was the first organic law to break with Alabama's elitist constitutional tradition and to implement reforms often associated with Jacksonian Democracy, that document served as both the focus of debate between the parties and the justification for the Republican attack of the Democrats. Among the provisions of the 1868 organic law claimed to be in danger were the popular election of state officials, universal manhood suffrage, the exemption of a limited amount of property from court-ordered collection or repossessions, women's property rights, and free public schools.  

The Democratic hierarchy started to allay fears within its party and forge a consensus among its membership in favor of a convention even before the election campaign began. The convention's enabling act anticipated several of the criticisms that Republicans made during that campaign. This law sought to avoid past abuses by assuring voters that they could approve both the convention and the constitution and by forbidding the convention to issue ordinances as an adjunct to the constitution. Other provisions in the enabling act prohibited property or education limitations on suffrage and required that the convention provide for a system of common (not free) schools. Once the electioneering began the party supplemented these statutory assurances with a variety of informal promises. Two that later played a formidable role in shaping the convention's deliberations were popular election of state officials and a property tax exemption. Finally, Gover-
nor Houston and other prominent Democrats added to the general convention effort their personal pledges that they would work to defeat the constitution if it did not conform to the commitments made to the people. 6

The unified Democratic party won the convention election by a narrow margin which only slightly exceeded that in 1874. 7 But, as had occurred then the number of Democratic representatives elected produced a far greater convention majority than that in the popular vote. Republicans had their electoral power concentrated in the relatively small area of the black belt and suffered from an apportionment system that reflected geography in addition to population. For a variety of reasons the electoral discrimination against Republicans was greater in 1875 than it had been a year earlier. Thus, in electing eighty out of ninety-nine delegates, Alabama's Democrats achieved complete mastery of the constitutional convention. 8

Democratic control of the convention, however, did not ensure that the party's delegates to that body would share common goals. The promises made to the people during the election had turned the party's disharmony into a fragile unity, but the delegates accepted compromise policy only through necessity. The delegates still faced the difficult task of writing an acceptable document. Thus, once the convention began the potential for opposition came both from those who disagreed with the Democratic hierarchy and from those who shared the leadership's preference for the state's traditional constitutionalism and could not acquiesce to all the compromises that had been pledged to the public.
Once the constitutional convention convened, it quickly passed procedural rules that limited the ability of minorities to introduce or discuss divisive measures. The Republican delegation was too weak in any event to challenge Democratic hegemony in the convention. These rules also hampered dissident Democratic elements, which could (and at times did) threaten the compromise. The convention adopted the rules of the state's general assembly with two changes that had a particularly debilitating effect on minorities. One increased the number of votes needed to request a roll call vote and thereby reduced the opportunity for dissatisfied delegates to express their discontent and to make public the actions of the convention. The other change decreased the vote required to cut off debate from two-thirds to a simple majority.\(^9\)

The rule alterations played a less significant role in the convention's proceedings than the differences among the Democrats seemed to warrant. Democrats avoided disputes on the convention's floor that might have led to more forceful implementation of parliamentary rules because they used the party caucus to resolve internal differences and maintain party discipline. The Mobile Register observed:

> It may seem a little remarkable with what unanimity the convention acts upon most questions. This is not because there are not those who have different opinions from a majority of the convention, but all questions are first discussed fully in committee, and then each day from nine until one o'clock, a conference is had among the Democratic members and all propositions are discussed and the will of the majority is ascertained....\(^10\)

At times, the discipline of committee and caucus came dangerously close to failure. But with the rules acting as a stick and the compromise policy serving as a carrot, the Democrats overcame their centrifugal
tendencies and produced a constitution that adhered to the plans formulated by the party's leadership during the election. 11

With the need to cut governmental spending and the determination to keep party discipline, the Constitutional Convention of 1879 produced a document that was restrictive and, by the standards of Louisiana constitutions, democratic. The degree to which the Constitution of 1879 turned in the direction of restrictive constitutionalism appears when it is compared to the 1868 document and to other 1870s restrictive state constitutions in the South. Restrictions in the 1869 and 1874 Alabama constitutions as seen in terms of size and controls on the legislature generally increased significantly. The number of articles remained about the same (16 in 1868 and 17 in 1875), but the number of sections grew by 28 percent. The legislative article had approximately 50 percent more sections, and the number of those sections that placed restraints on the legislature's procedures grew by a corresponding amount. Moreover, of the two documents only that of 1875 had a section in the legislative article placing limits on special and local laws (although both organic laws had such a provision in the corporation article exclusively affecting private corporations). 12

The most significant difference in restrictiveness was in the many controls the 1875 organic law placed on the fiscal affairs of the state's various governmental units and in the virtual absence of such limitations in the 1868 document. The post-Reconstruction constitution cited specific maximums for state, county, and city taxation. It prohibited the state from creating any future debt and limited temporary loans to meet transitory treasury deficits to $100,000. Sala-
ries also came under the constitution's scrutiny. It specified that the general assembly had to cut certain executive and judicial stipends by 25 percent, and it also stated a relatively low pay for legislators (which meant that they had no statutory powers over their own salaries). Another provision had a major economizing effect, but was not written as a restraint. The 1868 constitution had required that one-fifth of all the state's revenues go to support public schools, while the 1875 instrument merely assured education of a minimum appropriation of $100,000.\textsuperscript{13}

When compared with other restrictive state constitutions the 1875 document appears as a more modest but still substantial example of this new style of organic law. The analysis of the five restrictive constitutional Southern states made in Chapter I shows that the Alabama organic law shared many characteristics with the other four constitutions, though remaining one of the least rigorous in its application of restraints on government. This can best be seen through juxtaposing that document with its four counterparts. In terms of size, the Constitution of 1875 had the smallest number of both sections and controls on the legislature's procedure, but, on the other hand, it was second in both the number of articles (tied with Texas in this category) and of sections in the legislative article. The Alabama organic law also did not list subjects prohibited as special and local as did all other restrictive constitutions except that of Georgia, and, in addition, the procedural requirements it placed on the general assembly's use of special and local statutes included exemptions for a variety of business pursuits.\textsuperscript{14}
In the provisions affecting government's financial affairs, Alabama differed from the other restrictive constitutional Southern states mainly in the provisions its 1875 organic law made for localities. That constitution compared favorably in its provisions for state government with the constitutions of the other four states in such matters as taxes, limitations on public debt, and the prohibition of aid to private enterprise. Yet in the same categories as applied to local government, the parallel between the constitutions of Alabama and the other restrictive states was far less complete. The Alabama constitution allowed two exceptions to its ceiling on county taxes that made the provision virtually meaningless, and it placed no constitutional restraint on local debt. Finally, this document took a permissive stance only matched by the Georgia Constitution of 1877 in two areas that were important but not crucial to an effective retrenchment policy. The Alabama and Georgia constitutions allowed the general assembly to raise salaries for all state officials except legislators, and neither set standards for the use of tax revenues.¹⁵

Just as the Alabama Constitutional Convention of 1875 reduced the severity of its organic law's restrictiveness, it also failed to impart to that document a full commitment to democracy. The Constitution of 1868 had brought to fruition a long-standing struggle to give the people access to and control over their government. Traditionally, many state executive and judiciary positions had either been elected by the general assembly or appointed by the governor. The 1868 document instituted reforms generally associated with Jacksonian Democracy by making all state officials popularly elected. The public so favored
this power that the Democratic leadership formulated the compromise policy assuring the people they could continue to select their state officers. This pledge, as already noted, reflected what the party leaders had to do to get the constitution they needed, rather than what they actually wanted.\textsuperscript{16}

In light of the public pressure for a democratic organic law the striking feature of the Constitution of 1875 was not the many officers that the people elected, but the several positions that either were not elected or were left to the general assembly to designate the method of selection. The 1875 document provided that all the executive and all but one of the judiciary offices, for which it made specific provision, be popularly elected. The one exception to this was the position of solicitor. The post-Reconstruction organic law made two changes in that office. It provided that the general assembly should choose one solicitor from each circuit court district; while in 1868 the citizens of each county elected a solicitor. Another break, but one of less importance, in the trend towards democracy in 1875 was giving the governor the power to appoint the board of trustees of the state universities. This measure stood in contrast to the Reconstruction document that had given that authority over both the public schools and the universities to a single, popularly elected institution, the Board of Education.\textsuperscript{17}

The only other feature of the Constitution of 1875 that did not support the people's right to choose their officials was an ambiguous phrase that hid a revolutionary and discriminatory intent. While the 1875 organic law guaranteed the public's right to elect all
judges ranging from the state supreme court to the county probate court, it did not ensure the people's right to choose judges of "inferior courts." Instead the general assembly got the right to determine the mode for selecting such judges. This was the same device employed by the North Carolina Constitutional Convention of 1875 to ensure that Democrats regained control of that state's black belt.\textsuperscript{18}

Alabama's assembly used its power over local government only in black belt counties that remained in Republican hands, and because Democrats quickly regained control of much of the black belt, the assembly passed laws centralizing the selection process of local governmental units in only seven counties.\textsuperscript{19} In all, four different institutions (no more than three local governmental units were affected in any one county) had their officers become appointive. This was the case for the two city courts that came under the assembly's purview. But the alterations that the assembly made in five county commissioners' courts were more complex. Composed of four commissioners and the county probate judge, only the four commissioners became appointive, and the county probate judge remained popularly elected. Along with this substantive revision, the assembly changed the name of the county commissioners' courts to the courts or boards of county revenues.\textsuperscript{20}

In two instances, gubernatorial appointment for local institutions came with the formation of new governmental units that did tasks traditionally performed by popularly chosen officials. Legislators created a single court of quarter sessions that had the powers of a circuit court, but the responsibility for only one, Perry,
county. In addition to his circuit court duties, the judge of the quarter sessions court had to approve the bonds of all the other county officials -- a job done by the probate court judge in all the other counties of the state.\textsuperscript{21} The other institution used exclusively in the black belt was the "commissioners to select jurors" that the assembly established in six counties, while in the rest of the state, a group of county officials worked collectively to name jurors.\textsuperscript{22}

Finally, the Constitution of 1875, like its contemporaries in the South, expressed reaction against Reconstruction, for the most part by excluding those portions of the 1868 constitution that reflected Republican ideology. According to Woodward, the two main objects of reaction were, as mentioned before, "the crushing of Negro power and the ousting of foreign control."\textsuperscript{23} In constitutional terms, this amounted to eliminating provisions that directly or indirectly benefited blacks, harmed whites, or unduly asserted the superiority of the national government. These provisions were lodged exclusively in the declaration of rights and the suffrage articles. The differences between the 1868 and 1875 declarations of rights articles tended to be subtle, except that the latter document scrapped the entire section prohibiting slavery.\textsuperscript{24} The claim that "all men are created equal," because "all men are equally free," and an absolute denunciation of secession waned into the "acceptance" of secession's demise as an "established fact."\textsuperscript{25} The suffrage article removed all mention of the "odious test oath" (as one contemporary newspaper expressed it).\textsuperscript{26} The only other feature of the Constitution of 1875 that directly expressed reaction was the re-
quirement that public schools be racially segregated.  

Assessing the impact of reaction against Reconstruction on state constitutionalism in Alabama is difficult. Even in one of the most profound changes wrought by the Republicans, black political participation, the actions taken in the Constitution of 1875 did far less to harm Negroes than could easily have been the case. But despite this, Alabama's organic law did more than most of its Southern contemporaries to curtail the access of blacks to the political system. It allowed, as stated earlier, the general assembly to deny the people of the black belt the right to elect the officials of various local governmental units. It also continued the Reconstruction innovation of voter registration. Finally, it gerrymandered the black belt. Yet, in another area, suffrage restriction, in which white supremacists commonly sought constitutional involvement, the 1875 organic law not only failed to institute such measures but prohibited all "educational and property qualifications" for the franchise.

Historians have attributed various changes in governmental structure to reaction against Reconstruction. Certainly, contemporary Democrats associated their desire to eliminate such positions as lieutenant governor, the board of education, and the commissioner of industrial resources with the Reconstruction origins of such institutions. But when it suited the dominant party, it kept many constitutional revisions made by the Republicans. Thus, the rhetoric of reaction must be viewed, at least in part, as one type of campaign strategy. Measures that had their genesis in the Constitution of 1868 did not benefit from reaction against Reconstruction, but on the other hand,
their Reconstruction origin did not necessarily doom them to obli-
vion. 31

The convention's Journal and other sources of information
about that body's decision-making confirm that the contradic-
tions apparent in the Constitution of 1876 were only the tip of a liberal
constitutional iceberg. The majority of the convention acted against
its real preferences when the compromise policy was at stake and ex-
pressed its true desires on issues not vital to either debt adjustment
or the successful ratification of the constitution.

Compromise did not always come easily. The persistence
of Alabama's liberal, elitist constitutional tradition in the 1875
convention had its clearest expression in the report of the committee
on exemptions. The committee stated:

In view of the great and general diversity of opinion on
this subject throughout the State, the committee have thought
it prudent and necessary to abstain from any action that might
tend to create a dividing issue among our people on the contest
for ratification. Our duty, in the premises and under the circum-
stances, seemed obvious and conclusive.

In our opinion, the matter of exemptions does not properly
belong to the articles of organic law, nor should they have been
originally incorporated into the constitution. Provisional, per-
sonal, and temporary in their nature, they pertain rather to
the policy than the principles of government, and should be regu-
lated by the legislature, at the time and under the circumstances,
controlled by the immediate necessities and interests of the
people. But inasmuch as exemptions have been fixed in the con-
stitution, and made, in a great degree, the basis of business
of the community, we hold it highly inexpedient, at this time, to
disturb them. 32

Behind the mild "words of this report was one of the stiffest challenges
compromise faced in the convention. One leading student of Alabama's
constitutional history notes: "It took the full power of the caucus
to keep the Democrats in line...on the subject." The power of the
caucus and committee, however, was such that the exemption article contained only one small indication of the dissatisfaction that almost brought that measure to disaster. The last section of the 1875 exemption article was substantially different from the 1868 article, and that section merely gave people the right voluntarily to waive their exemptions.\textsuperscript{33}

Another vital issue in which the uncertainty that existed among delegates became public knowledge was the mode of selecting judges. A majority of both the judiciary committee and the convention preferred a more traditional method for choosing officers of the courts. Yet the danger of having the entire constitution defeated had the same effect here that it did on all other measures for which the Democratic establishment had made promises -- necessity rather than preference guided the delegates' actions. Apparently without undue reliance on the caucus, the judiciary committee reported its article providing for the popular election of the judges.\textsuperscript{34}

Party discipline kept differences among Democrats over measures that had been promised to the people from intruding into the convention itself. On issues not so pledged or on which the commitment was ambiguous, however, the propensity of a majority of delegates for a liberal, elitist constitution emerged from committee and caucus. Whether originating in committee or on the convention floor proposals that enhanced governmental powers without undermining compromise were usually found in the constitution's final text.

Such adoptions did not always come easily. The struggle over solicitors was sufficiently spirited to cause that issue to
remain before the convention for three of the four days spent deliberating the entire judiciary article. As reported from committee the judiciary article provided for the traditional system of having the general assembly elect one solicitor for each circuit court district. Once the convention began considering the article, unfriendly amendments to the section on solicitors came from both those favoring and those opposing a democratic organic law. Three measures attacking the elitist features of this section failed. But when one leading member of the convention attempted to make solicitors even further removed from the people by proposing that their term of office be extended from three to six years, the delegates sent the section back to committee. When the solicitor section reemerged before the convention, it contained not only the six-year term, but also required that anyone holding the office "be learned in the law." Prodemocratic delegates offered further amendments with little success. As McMillan explains: "They argued that the adoption of the report which gave the election of solicitors to the legislature might defeat the new constitution. But, the Democratic party had not pledged itself in the campaign for the convention on this issue, and the report was adopted."35

Another section that caused more than usual parliamentary maneuvering was that reducing salaries. It came from committee with the pay of all state officers diminished by 25 percent and with the general assembly having the power to raise (or lower) those stipends by a two-thirds majority. Both those wanting entirely to eliminate or soften this measure and those wanting to stiffen it both offered amend-
ments. As with the section on solicitors, the liberal constitutional advocates proved the strongest. Though the effort to eliminate the salary reductions fell short, the revisions made in this section significantly minimized its impact. The amount of the reduction remained the same, but it affected only specified officials and a majority of the total number of legislators in each house could alter this provision.36

Despite resistance to the passage of a few measures that tempered the constitution's generally restrictive and democratic format, most such provisions provoked little conflict on the convention floor. Among those with little opposition were sections affecting the taxing power of the counties, the selection of inferior court judges, and the appointment of the board of trustees of the state universities.

Other liberal or elitist changes in the 1875 organic law also gained approval with relative ease. Delegates changed the legislative majority required to override a veto from the two-thirds as provided in committee to the traditional requirement of a majority of the total membership of each house.37 The assembly further benefited from the convention's willingness to make major exceptions to the restrictions placed on special and local laws. The relevant sections in both the legislative and private corporation articles each exempted certain business pursuits from controls.38 In the case of the private corporation article, the section on special and local legislation had come from committee in a slightly weaker form than the same section in the Constitution of 1868, and the convention accepted amendments that further diluted this provision.39
In addition to passing measures that reflected their preferences, the advocates of a liberal constitution showed their strength by defeating or watering down proposals with which they disagreed and that were not necessary to the compromise policy. The legislative article came from committee without one of the commonest features of restrictive constitutionalism -- a list of subjects prohibited as special and local laws. A section offered on the convention floor sought to impose this type of restraint with a relatively modest grouping of eleven topics, but the delegates tabled this amendment without a record vote.\(^{40}\) The convention also approved revisions that weakened the restrictions imposed by two sections reported from committee. Originally, these sections had required the general assembly first to send bills to committee in both houses and then to read them in their entirety on three separate days, but amendments simplified this procedure so that bills had to go to committee in only one house and to be read in their entirety only before final passage.\(^{41}\)

Further examples of the power used against restrictive constitutional measures occurred in the judiciary and private corporation articles. The convention tabled an amendment to the former article that proposed to limit the supreme court to three members.\(^{42}\) The private corporations committee had reported its article with a series of sections that specified a variety of controls on the rates and operating procedures of railroads, but the convention deleted the four sections that placed the most far-reaching regulations on this industry.\(^{43}\)

The Constitutional Convention of 1875 did not completely
follow the dictates of any one group. Proponents of restrictive, democratic constitutionalism proved victorious on a few items not directly associated with the compromise policy. One such success came after the longest struggle on the convention's floor. The attorney general remained among the ranks of the popularly elected officials only after the convention had initially denied such status to that office. The delegates first removed from the legislative article all mention of the people's right to choose their chief legal officer and then returned that prerogative to the public in the judiciary article as part of the same committee action that had made solicitors elective by the general assembly. The only other successful challenge against a provision that significantly enhanced government power reduced the term of governor and his cabinet from the four years provided in committee to two years, but the circumstances of this revision were such that it cannot be attributed to any single group.

Taken as a whole, the Constitution of 1875 was a triumph of compromise, but the goal of debt adjustment that inspired compromise almost came to grief. At issue were both the amount and the type of bonds to be paid. Railroad liabilities were the largest and most dubious claims. Moreover, most railroad debt originated during Reconstruction. Having a number of objectional features, the railroad obligations were the primary target, directly or indirectly, of those seeking a large reduction in the debt.

The convention never considered repudiating all the state's obligations. But it almost forced those liabilities to be scaled down to a greater degree than the debt commission had contemplated.
To complete its work the commission needed from the convention full discretion to negotiate with the state's creditors and sufficient funding for the settlement made with bondholders. Delegates opposed to the commission's proposed adjustment attempted to attack it on both points. The first sally of the anticommission delegates attempted to kill the railroad claims by prohibiting the use of any tax revenue to pay them, but the convention rejected that effort. 47

The next attempt against the bond adjustment employed a more indirect stratagem, and it worked -- at least temporarily. The debt commission had informed the convention that the state needed a minimum of a 3/4 percent ad valorem property tax rate to finance both the proposed bond adjustment and the government. Despite the fact that 3/4 percent represented the highest rate levied during Reconstruction, the tax committee complied with that request and cited the commission's figure as the maximum tax rate. The convention turned against the debt commission when it approved an amendment that required the state to reduce the ceiling on taxes to 1/2 percent after five years. This measure would have forced the debt commission to reduce the settlement it was in the process of negotiating. But, on the convention's next to last day, it granted the commission, and the Democratic establishment that created it, a reprieve by returning the tax rate to a flat 3/4 percent.

The Constitutional Convention of 1875 closed on a note that had not previously appeared in its Journal. Its concluding appeal "To the people of Alabama" raised the specter of reaction against Reconstruction for the first time. But juxtaposing a brief
summary of what it saw as the grievous flaws and ruinous extravagances of the Constitution of 1868 with a comprehensive survey of the restrictive features of the 1875 organic law, the convention sought to justify its work both as the solution to the excesses of Republican rule and as a good constitution in its own right. As might be expected in any self-congratulation, this assessment stressed what the people wanted to hear. Thus, while the delegates pointed with pride to the 1875 document's many restrictive features, they avoided discussing the loopholes that had been included. Among these were the exceptions to the ceiling on local taxation, the exemptions to the special and local law restrictions, and the legislative discretion to raise the salaries of state officials and to divert money from teachers' salaries.48

The campaign to ratify the Constitution of 1875 picked up where the election of delegates had left off. For Democrats the push for the people's approval began with the convention's final message and the dominant party's rhetoric focused on the faults of the Constitution of 1868 and the 1875 organic law's many restrictions on government's power and purse. Republicans returned to their rather contradictory attack on Democrats for both fostering class prejudice and repudiating the state's debt. But the minority party was no longer united in opposition to the proposed constitution, and the convention had substantially fulfilled the promises made by the majority party's leadership. In the ratification election, the only question was the margin of victory, and that proved overwhelming.49

Alabama joined the ranks of the restrictive constitutional states with its 1875 organic law, but it did so for complex, even
contradictory reasons. The major factor that first led to the call of
the constitutional convention and then shaped the document it wrote,
was the Democratic establishment's desire to preserve the option for
active government by maintaining the state's credit. This objective
required restrictive constitutionalism to provide the retrenchment
needed to ensure the state's ability to pay its adjusted debt, and
democracy to obtain popular support for the convention and its consti-
tution. Thus, economic need rather than reaction against Reconstruc-
tion was the primary factor that led Alabama into the restrictive
constitutional camp. The result was the retention of much that the
Republicans had wrought, including some of the dubious railroad bonds
and much of democracy.
Chapternotes


2. Access to capital was a crucial aspect of expansionary economic activity in both the public and private sectors. Thus, the motivation for wanting a generous debt adjustment was multifold. For as the Mobile Register observed: "Loss of state credit means loss of capital and vice versa." Going, *Bourbon Democracy in Alabama*, 67-68; Mobile Register, quoted in ibid., 68; Bond, *Negro Education in Alabama*, 60. For an outside commentator's confirmation of the relationship between maintenance of the state's credit on its existing liabilities and its ability to obtain capital in the future, see: Robert P. Porter, "State Debts and Repudiation," *The International Review*, IX (November, 1880) 579-580.


5. Ibid., 149-150, 177-188, 203; Mobile Tribune, quoted in Montgomery *Alabama State Journal*, quoted in ibid., 187 (quotation).


7. The Democrats had a majority of 13,190 out of 201,046 ballots cast in 1874, and of 17,835 out of 137,691 total votes in 1875. Walter L. Fleming, *Civil War and Reconstruction in Alabama* (Cleveland, Ohio: Arthus H. Clark Company, 1911), 795, 797.
8. In the 1874 general assembly Democrats had 84 out of 133 seats in both the house and senate, or a majority in the legislature of 64 percent, as opposed to a majority of 53 percent in the popular vote in the same election, while the party had 80 percent of the delegates to the constitutional convention in an election it won by only 56 percent of the popular vote. The greater disparity that occurred in 1875 between size of representative delegation and the proportion of victory at the ballot box was due to at least two major factors. Democrats had extended their control to a larger number of counties that had more black than white residents, and the assembly altered the method of selecting those sent to the convention. Traditionally, Alabama had apportioned its senate on a regional basis while using a mixed regional-population system to choose its representatives. Being relatively populous, the black belt fared better in the house than in the senate. The 1875 convention's enabling act forced the large Republican electoral minority to become a smaller minority of delegates than it otherwise would have been by having one member of the convention selected from each senatorial district and county with an additional one chosen by the city of Mobile, and through using geography alone to apportion the convention, the enabling act deprived the black belt (and all other populous counties) of the advantage of its greater population. The one exception to the single-delegate-per-county selection system for the convention was the additional delegate chosen by the city of Mobile. Ironically, the 1875 convention continued the state's traditional method of apportioning the state house of representatives according to population with each county guaranteed a minimum of one representative. Going, Bourbon Democracy in Alabama, 210-221. See also: John J. Ormond, Arthur P. Bagby, and George Goldthwaite, The Code of Alabama (Montgomery, Alabama: Button and DeWolf, 1852) 62-63; and A.J. Walker, The Revised Code of Alabama (Montgomery, Alabama: Reid and Screws, 1867), 98-99; Alabama Constitution of 1875, Art. IX, sec. 2, 3.


10. Mobile Register, September 19, 1875, quoted in ibid., 191.


12. Index of constitution size:

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13. See Table III in Chapter I. In both 1875 and 1868
education benefited from their permanent school fund and the poll tax as well as from funds appropriated from the state's general revenue.

14. See Table I in Chapter I.

15. See Table III in Chapter I.


17. Constitution of 1875, Art. VI, sec. 25, Art. XII, sec. 7, 9; Constitution of 1868, Art. VI, sec 17, Art. XI, sec. 1, 2, 8. That the governor appointed the board of trustees for the state's university was not a significant measure in itself. Rather, it was the change away from popular election that made it indicative of the intention of the convention's majority. Interestingly, the governor chose the 1875 organic law's board of trustees from the state's congressional districts just as the people had previously elected their joint board of education/regents from congressional districts.


19. For the growth of Democratic control over the black belt, see the maps in Going, Bourbon Democracy in Alabama, 218-227.

20. The seven counties were Autauga, Bullock, Dallas, Lowndes, Montgomery, Perry, and Wilcox. The two city courts were in Selma (Dallas County) and Montgomery (Montgomery County), while the five county commissioners' courts were in Autauga, Dallas, Lowndes, Montgomery and Wilcox counties. The assembly avoided potentially embarrassing complications of changing the names of these five so-called courts with a law that made any act affecting county commissioners' courts applicable to "all other county courts of like jurisdiction." Acts of the General Assembly, 1875-1876, 239, 379, 381, 383-384; ibid., 1876-1877, 156, 157-158, 162-163; ibid., 1878-1879, 248-251, 262, 418-419.


22. Autauga, Bullock, Dallas, Lowndes, Montgomery, and Perry had the commissioners to select jurors. Ibid., 1876-1877, 190-194.


25. Ibid., sec. 1, 37; Constitution of 1875, Art. I. sec. 1, 35.


29. Ibid., Art. VIII, sec. 5, Art. IX, sec. 6, 7; McMillan, Constitutional Development in Alabama, 201-202.

30. Constitution of 1875, Art. I, sec. 38. McMillan claims: "In 1875, the Bourbons dared not even contemplate a revision of the universal manhood suffrage provisions of the 1866 Constitution because of the fear of federal intervention." In support of this contention, he cites a statement by a leading Democratic delegate to the 1875 convention, William C. Oates, about the suffrage article. Concerning that article, Oates said in the Mobile Register of October 7, 1875: "It is the best that can be ratified under the circumstances that now surround us." McMillan's interpretation is mistaken. Other states both North and South had franchise limitations, and what slim chances of federal intervention that remained were not associated with suffrage devices that did not explicitly discriminate on the basis of race. Moreover, the statement made by Oates was similar to one he made about having a popularly elected judiciary rather than one selected by a traditional method. In both cases, Oates' frustration stemmed from Alabama's internal situation, but unlike with the judiciary article, he had tried to buck political reality on that article. Oates had proposed that the convention tie the poll tax to voting, but the convention's enabling act had guaranteed that that body would place no educational or property requirements on suffrage and the delegates refused to make the poll tax a franchise restriction. While McMillan ascribes a secondary role to the convention's commitment not to impose suffrage limitations, it was in fact the primary force that shaped the convention's deliberations on this subject. Suffrage, as with the compromise policy as a whole, represented the price that the Democratic establishment paid to gain the support of its rank and file for the Constitution of 1875; and for suffrage at least this was a result of the Reconstruction Amendment of the United States Constitution that prevented the South from discriminating on the basis of race at the ballot box. Journal of the Constitutional Convention of 1875, 78; McMillan, Constitutional Development in Alabama, 186-187, 201, 215 (quotations).

31. Ibid., 175-216; Going, Bourbon Democracy in Alabama, 22-26.

32. Journal of the Constitutional Convention of 1875, 144.

34. Ibid., 200; *Journal of the Constitutional Convention of 1875*, 121.

35. Ibid., 121-122, 128-129, 139-141; McMillan, *Constitutional Development in Alabama*, 200, 201 (quotation). The convention attached one mollifying amendment to the solicitor section. It stated: "The General Assembly may, when necessary, provide for the election or appointment of county solicitors." In the initial three assemblies that followed the Constitution of 1875, only Mobile County benefited from this measure, by having its own solicitor, and the assembly elected that official like all other solicitors. See: *Acts Of the General Assembly, 1878-1879*, 263-264.

36. The arguments against the reduction in salaries ranged from the classic liberal constitutional assertion that it was a statutory matter to the equally common pleas that officials could not live on this salary. McMillan, *Constitutional Development in Alabama*, 205; *Journal of the Constitutional Convention of 1875*, 114-116.

37. Ibid., 71, 96-97.

38. The legislative article's section on special and local laws required the general assembly to publish in the locality affected their intention to pass this type of statute at least twenty days prior to taking action on it. This section came from committee with the proviso "that special or local shall not apply to public or educational institutions of or in this State, nor to industrial, mining or manufacturing corporations or interests." To this list, the convention added "immigration." Ibid., 88-89.

39. The 1868 organic law denied the legislature the right to pass any special laws affecting private corporations, while the same section emerged from committee with special statutes allowed "in cases where, in the judgement of the legislature, the objects of the corporation can not be attained under the general laws." Given the legislature's propensity to exaggerate its powers in the nineteenth century, this was a major concession both to itself and to corporate influence, and amendments increased this generosity by exempting all municipal, manufacturing, mining, immigration, industrial, and educational corporations from this section's control. The Constitutional Convention of 1875 showed far more benevolence to private enterprise than Jonathan Wiener credits it with doing. Its record was far too mixed to be a support, as he claims it was, of his conclusion that there was an "absence of a hegemonic bourgeoisie, powerful enough to reshape southern society on the basis of a new culture and worldview." This is not to say that this conclusion as a whole is right or wrong, but only to indicate that Wiener's interpretation of state constitutionalism is seriously flawed. Basing his assessment on secondary sources, he develops an evolutionary argument which pictures the Constitution of 1868 as strongly pro-private corporation and the Constitution of 1875 the opposite. Unfortunately, Wiener bases his characterization of these documents, in part, on a misstatement of
of fact drawn from John Cadman's *The Corporation in New Jersey.* If read correctly, Cadman's work refutes Wiener's thesis rather than supports it. Properly citing Alabama's Reconstruction Constitution, a source not employed by Wiener, John Cadman shows that that document included a provision (first begun by the Constitution of 1819) which made stockholders liable for all debts of a corporation in proportion to the stock held, and that the 1875 instrument "forbade liability for more than the unpaid stock." Wiener mistakenly claimed that the 1868 document ended the provision of unlimited liability for corporate stockholders. He also ignores the many parts of the 1875 constitution beneficial to business, while dwelling on those that did negatively affect it. Moreover, he portrays the debt settlement as an anti-industrial action rather than as the qualified victory that preserved an item highly prized by private entrepreneurs -- the state's credit. Ibid., 134 (1st quotation), 135-146; Jonathan M. Wiener, *Social Origins of the New South: Alabama, 1860-1885* (Baton Rouge, La.: Louisiana State University Press, 1978), 221 (2nd quotation), 148-154, 155 (3rd quotation); John W. Cadman, Jr., *The Corporation in New Jersey: Business and Politics 1791-1875* (Cambridge, Mass.: Harvard University Press, 1949), 197; Constitution of 1868, Art. XIII, sec. 1, 3.


41. Ibid., 87.

42. Ibid., 121.

43. Ibid., 134-135, 138-139, 142.

44. Dissension within the executive committee over the four-year term of office was such that those in the committee who opposed the measure took a course of action not frequently used in the 1875 convention; they issued a minority report in favor on a two-year term. The chairman of the executive committee and the leader of the committee's minority were both conservative lawyers and political make-weights. Ibid., 69-55; McMillan, *Constitutional Development in Alabama,* 199; Thomas McAdory Owen, *History of Alabama and Dictionary of Alabama Biography* (Chicago: J.S. Clarke Publishing Co., 1921), III, 760, 803.


46. Both McMillan and Going have characterized opponents of the debt commission in the 1875 convention as repudiationist, but the *Journal* shows no action that attempted to bring total default. The question was one of degree with both sides favoring adjustment but
47. Contemporaries were quite willing to use Reconstruction as a scapegoat for decisions made by the 1875 convention of which they disapproved. For example, the Mobile Register revealed its liberal constitutional bias in criticizing the legislative article's restrictions on the general assembly as having "not the remotest relevancy to a State constitution," and putting the responsibility for those sections on reaction against Reconstruction. But a delegate to the convention underscored the importance of national trends in American state constitutionalism in influencing the Alabama convention when he objected to the controls put on railroads as another example of how the state had already "borrowed too much from the constitutions of Pennsylvania and Illinois." Mobile Register, October 3, 1875, quoted in McMillan, Constitutional Development in Alabama, 198; Alabama State Journal, October 7, 1875, quoted in ibid., 209.


49. The vote was 85,662 favoring and 29,217 opposing ratification of the Constitution of 1875. McMillan, Constitutional Development in Alabama, 211-216.
Chapter III The Louisiana Constitution of 1879

Although Louisiana initiated constitutional change in the late 1870s as one expression of Democratic reaction against Reconstruction, fundamental differences within the dominant party led to two separate attempts to alter the state's organic law. The initial effort to modify Louisiana's constitution came when the general assembly chose to use amendments in place of the constitutional convention demanded by the public. Realizing that the mode of revision would greatly influence the document produced, Democratic legislators who feared a convention collaborated with Republican colleagues to write amendments as a means of retaining the assembly's control of the revision process. The result was a disaster. The amendments offended public sentiment in three ways: they made only token retrenchments in government spending, they left most of the active government and liberal constitutional features of the 1869 organic law intact, and they failed to act on race. Disappointed, the public rejected all but one of the amendments. But those who opposed those measures had little in common beyond the desire for a constitutional convention. Thus, when a convention met, no single constitutional outlook predominated, and this diversity was reflected in the Constitution of 1879. It was far longer than any of Louisiana's previous organic laws, and though that length was the result of more than one factor, a major cause of its prolixity was its tendency to include many views rather than choose among them.

When the general assembly convened in early January 1878, constitutional revision rapidly changed from a goal that could be post-
poned to one that could not. The people, or at least the press, began to clamor for quick action. This press campaign came when, for the first time since Reconstruction began, Democrats had firm control of the executive as well as the legislative branch of government. The path to a new organic law was finally open.¹

Once freed of these external constraints, however, Democrats had to face their party's internal differences concerning constitutional revision. No element of the party opposed altering the organic law, but there were significant differences about what changes should be made. Initially, such disagreements tended to take two forms. Before the general assembly began deliberating revision, how the constitution should be altered largely overshadowed what that document should contain. Yet, because it determined who would modify the organic law, the method of revision correlated with the content of the constitutional changes. A convention meant the creation of a body with the sole responsibility of writing an entirely new organic law. The people elected the convention's membership after a campaign that focused on the issues of revision. In contrast, amendments constituted the selective replacement of parts of the Constitution of 1869, that otherwise would remain intact. Moreover, the assembly that drafted those amendments came to office after an election campaign that had not anticipated its role as a constitution-maker.²

The question of how to alter the constitution became an issue just before the general assembly began its 1878 session. A constitutional convention had tradition and public approval in its favor, but it was opposed by a large majority of the general assembly.
The first strong indication of legislative antipathy toward a convention came in interviews with senators and representatives published in early January 1878 in the New Orleans Democrat. Of twenty legislators queried by the Democrat, fourteen strongly opposed a convention, and none gave unqualified support.³

The Democrat's interviews had their greatest significance as stratagems to influence public opinion. Since the voters expected a convention, those opposed to one had both to discredit a convention and to promote an alternative method of revision. The reason for this opposition was fear. Legislators doubted that convention-made revisions would correspond to those implemented through a method not requiring the election of special delegates. As one senator candidly observed (paraphrased): "It was by no means an assured fact that the better element would control its [a convention's] action in framing a constitution." Since the Republicans had no realistic chance of gaining control of a constitutional convention, the threat to "the better element" had to come from within the Democratic party. The large majority of the assembly, the governor, and the New Orleans business community all favored the use of amendments. The group whose constitutional perspective diverged most from that of the anticonvention legislature was the party's rural rank and file.⁴

Legislators interviewed by the Democrat made a variety of charges that disparaged a convention; in part, they used vague but unfavorable characterizations. Among these were such labels as "impolitic," "inexpedient," and "inopportune." But their most convincing arguments against a convention was that it was not desired by the
people, it would cost several hundred thousand dollars, and it would provide the foes of Governor Francis Nicholls with a chance to shorten that official's term of office. Of these assertions, only the latter proved true, but it resulted from divisions within the state's political elite and not from a challenge by the agrarian advocates of a convention.5

Another complaint against a constitutional convention, its supposed capacity to interject race into the political process, had an unusual twist to it. The explanation of the nature of the problem differed according to the interviewee. Republicans feared that the campaign to elect delegates to a convention would heighten white antagonisms towards blacks. As one Negro senator of the minority party explained: "I believe that there is now in the state something of a race feeling, and to call [a] convention now would only make that feeling stronger — that is, the white race against the colored race."

White Democrats, on the other hand, objected to a convention because they wanted to avoid encouraging blacks to participate in politics. A Democratic senator observed with uncharacteristic bluntness: "As things now are -- the negro is fast growing apathetic to politics... an election would only serve to distract them from their pursuits."

In fact, the apprehensions expressed by both groups proved exaggerated.6

In their comments to the Democrat legislators mentioned two substitutes to a convention: appointive commission, and amendments to the Constitution. Of these, the committee approach received the least attention, and the general assembly never gave it formal consideration.
The voters' rejection of constitutions written by commissions in Michigan and New York, the states that pioneered this mode of revision, did not encourage this experiment.\footnote{7}

Amendments, then, were the preferred method for altering the organic law. This procedure got the most attention in the Democrat's interviews, and the assembly discussed no other system of revision in its 1878 session. In their statements to the Democrat legislators did not explore in detail the virtues of the amendment process, but their implicit message was that this method of changing the constitution avoided the problem ascribed to a convention. On representative summarized the prevailing attitude among the Democrat's interviewees: "I think that existing evils can be remedied without the calling of a convention, and much more economically." To bolster this contention, these assemblymen, in a tactic that ignored their fear of popular input, proclaimed that the public agreed with them, with one senator even asserting that "they [the people] would prefer that they [constitutional reforms] should be brought about by amendment proposed by the General Assembly rather than by a constitutional convention."\footnote{8}

Yet proamendment legislators pushed for constitutional goals, which could be quite different from those receiving the most popular support. This was particularly apparent in these comments made by a representative:

A constitutional convention...would open another political style, which the people do not desire and for which they are not ready. We want railroads, internal improvements, that are more of a necessity at present than a change in our constitution. The State credit wants to be established.... This Legislature, although under the present constitution it cannot curtail certain expenditures, out to leave as an heir-loom [sic] for its successors a law
that will reduce the expenses of the government in the matter of salaries, per diem, mileage, etc. This will be more direct [and] practical than a constitutional convention.

Thus, while the people often saw retrenchment as part of basic reforms that affected government's power over its purse, as well as its current expenditures, anticonvention assemblymen wanted economy in government as a means to a different end. They sought to preserve the state's active government, liberal constitutional status quo, but, because the government had financial responsibilities that exceeded its income, cuts in spending were a necessary prerequisite for any effort to avoid the changes in constitutional structure that were desired by much of the public.

Initially, the Democrat's interviews had a quieting effect on those advocating a constitutional convention. In contrast to the well-thought-out strategy of those favoring amendments, convention supporters appeared to base their position more on the reflex of tradition than on reflection about the current political situation. Some agitation on behalf of a convention occurred in the month that lapsed between the assembly's convening and the amendments coming out of committee, but not as much as before or after this period of hiatus. One example of the effectiveness of anticonvention tactics was their impact on the New Orleans Democrat. One of the more vocal and important critics of the assembly, the Democrat responded to the attacks on a convention by taking a "wait and see" attitude. The Democrat explained its viewpoint when it assessed a petition favoring amendments sent to the assembly by a group of leading New Orleans businessmen. "We are not disposed to dispute the superiority of their [the businessmen's]
plan of reform," the Democrat commented, "if they will give us any evidence that amendments of importance can obtain a two-thirds vote in both Houses of the present Legislature."  

When the joint committee on constitutional amendments supplied such "evidence" by reporting the amendments as a concurrent resolution in early February, 1878, the Democrat reacted in angry disapproval. "Upon the whole, the amendments presented are far from satisfactory," explained the New Orleans journal, "and if the report of the committee marks all that can be done, there is nothing left... but to write a determined movement for a constitutional convention." The changes desired by the New Orleans paper included moderate retrenchment within a liberal constitutional framework, the elimination of monopolies, suffrage restriction, and racial segregation in schools. But the Democrat also wanted the amount of revisions limited, and it cited the debt as one area in which the state should maintain the status quo.  

The state's press widely shared the Democrat's anger. Indeed, the rhetoric of some newspapers was even more forceful and threatening in its condemnation of the assembly. In this vein, the Marksville Bulletin issued a prophetic warning: "If the legislature imagines for a moment that it can adjourn without ordering a convention, and yet not provoke a storm...it is hugging a delusive dream to its bosom.... Not even the saving sop of the amendments will affect its decision. The same hand that smites the legislature will smite the amendments."  

Convention proponents, despite their common dislike of the
amendments, sought widely varying objectives. In contrast to the limited changes sought by the Democrat and others still loyal to liberal constitutionalism, some convention advocates, particularly rural papers, preferred the sweeping revision found in restrictive organic laws. For example, the Opelousas Courier left no doubt that it wanted the government's decision-making powers severely circumscribed: "The authority of the legislature, and especially the taxing power, must be restricted within narrow[ly] fixed limits...so that little room should be left for the exercise of doubtful discretionary power." That the proconvention forces had dissimilar goals was relatively unimportant, so long as the fight over amendments continued, but eventually those differences played a major role in shaping the document that the state ultimately ratified.  

The assembly's plan to amend the Constitution of 1869 had little support to counterbalance the chorus of criticism that swept the state. The negative environment created by a press overwhelmingly in favor of a constitutional convention was underscored by the failure of Governor Nicholls to speak out on the issue. Known to advocate amendments, Nicholls said nothing to aid this system of revision in his influential opening address to the assembly. Indeed, he avoided the entire subject of constitutional change, a remarkable fact given the importance of and popular agitation about altering the state's organic law.  

Despite widespread opposition and limited support, the general assembly plunged ahead in its consideration of the amendments with a speed and determination that usually accompanied a consensus.
In this case, however, speed meant desperation. The senate passed all the amendments on the same day -- February 8, 1878 -- that it had received them from the joint committee. All but two of the eighteen amendments had no opposition, and those two each received only one dissenting vote. Obviously, Democratic and Republican senators had previously reached an understanding about the amendments before approving those measures, and their vote merely formalized that pre-existing decision. Such unseemly haste on the part of the senate provoked the New Orleans Democrat into denouncing the upper chamber. Yet the newspaper also held out hope that the lower chamber would not repeat the error. It editorialized: "The constitutional amendments came up for debate in the House today. We sincerely hope they will not be railroaded through that body as they were through the Senate."

The house debate did air issues that had previously been without discussion. Closer to the voters, the lower chamber gave voice to the same types of complaints that the press had expressed. From the comments in the house, the New Orleans Democrat published extensive excerpts from statements by three members of the joint committee on constitutional amendments, who broke with that body. These breakaway members placed responsibility for what they saw as the amendments' shortcomings on the joint committee, saying that the procedures used by the committee left little room for competing ideas. In criticizing the committee, one of its unhappy members explained: "I found that in the impression of the committee, it was impossible to be able to submit to the General Assembly any proposition looking to the amendment of the constitution unless they met almost the unanimous approval
of the members...." The committee placed this severe restraint on the selection of amendments because the large Republican minority in the senate could block the passage of any amendment it disliked. Given a choice of this limitation on the amendment process or constitutional revision by a convention, the joint committee and a majority of Democratic legislators preferred the former. "A majority of the committee," complained the other critical committeeman, "are openly opposed to a convention, and intend, as I believe, to report as few amendments as possible...with the hope of securing passage and the consequent indefinite postponement of any constitutional convention." 16

The constitutional revisions sought by the three dissenters and blocked by the joint committee varied significantly. In having a common commitment to a convention but different objectives for altering the organic law, these committeemen presaged the constitutional convention movement that emerged after the general assembly adjourned its 1878 session. That movement acted with cohesion to defeat the amendments and to secure the call of a convention, but once the convention began its deliberations, its advocates lost their unity. The dissimilar goals of the Democratic party's major factions resulted in no single constitutional concept predominating and resulted in an organic law that was inconsistent and even contradictory.

Only one of the three dissident members of the joint committee justified his attack on the amendments by the standards of the new restrictive constitutionalism. This legislator made a minority report that the house refused to accept, but the Democrat printed. This representative outlined in his report a program of sweeping changes.
Among the most important were: (1) the lessening of the "extraordinary" powers of the executive and legislative branches, (2) limiting the "powers delegated to municipal authorities and police juries [i.e., the parish governing unit]," (3) "re-establishing the judiciary system of 1861," (4) prohibit[ing] monopolies and the abolishing of those now existing," and (5) "cancell[ing]...indebtedness fraudulently contracted."

The other two recusant committee members had more limited objectives. Neither objected to the joint committee's basic approach to constitutionalism but found the amendments insufficient in other respects. One of these representatives emphasized the failure of the committee to provide enough economy in government "to satisfy the people." His analysis focused on salaries, and none of the figures cited in the amendments pleased him. In one case, payment to general assemblymen, the amount allowed went up rather than down, and while the stipends stated for all the other offices did decrease, the reductions were generally small. As paraphrased in the *Democrat*, this legislator said:

He believed in paying liberal salaries otherwise the offices would be filled by dishonest or incompetent men.... But the salary as fixed is too much [for the governor]; it should not be more than $6000 at the outside. [Also,] the salaries of judges of the Supreme Court are entirely too high, and all others in proportion.

This committeeman retained a commitment to liberal constitutionalism despite his displeasure over the remuneration given state officials. 18

Finally, the third disaffected member of the joint commit-tee gave only one reason, the existence of integrated schools, for favoring a constitutional convention. In fact, this representative
expressly disassociated himself from two of the more controversial proposals, i.e., shortening the governor's term of office and debt repudiation, that were frequently associated with the proconvention position. Yet, because of the Republican stranglehold on the senate, any attempt to eliminate the provision of the Constitution of 1869 that required black and white children to attend the same schools had no chance of being approved, and as a result, the joint committee refused to act on behalf of segregated education. Because amendments rarely survived the difficult ratification process, the opposition to the 1878 amendments created by the integration issue meant that potential, and badly needed, friends of the 1878 amendments became enemies. 19

From the criticism in the press and in its debates, the house knew the dangers the amendments faced. The lower chamber did not substantially deviate from the course the upper one had set. Yet, as one of the proconvention members of the joint committee had mentioned, the reductions in pay were small and legislators received more money. 20 The alternatives proposed to the senate version of the amendments varied, but even the lowest amount suggested was generally above the remuneration granted by the Constitution of 1879. Despite the moderate nature of these challenges and public pressure in favor of retrenchment, the lower chamber held firm against all efforts to cut the stipends of state officials. Indeed, the house made only one change in the amendment affecting pay: it eliminated the amendment that lowered the compensation given the auditor and treasurer. 21

Other amendments affecting the state's fiscal affairs were inconsistent in their impact. This was apparent in two measures
that took contradictory stances. The house, following the example already set by the senate approved two constitutional changes as reported from committee. One amendment increased the cost of government by mandating an expansion of the district court system. These courts went from their current number of twenty-four to thirty, at a minimum, and forty-five, at a maximum. The other amendment cut expenditures by switching the general assembly from annual to biennial sessions. But because the legislative branch had traditionally convened once every two years, economics was not the sole motivation for changing to less frequent sessions.  

The sharpest turn in direction by any of the amendments was one initiated by the house that imposed a ceiling on state and local property taxes. This measure, unprecedented in Louisiana history, was the one step that the general assembly took unreservedly in the direction of restrictive constitutionalism. The limit placed on state and local government was 10 mills \textit{ad valorem}, while the rate for New Orleans was 15 mills \textit{ad valorem}. In comparison to existing tax rates, 13 mills for the state and even higher for many localities, those allowed by the amendment represented a major change in both constitutional philosophy and financial policy. But the action proposed by the 1878 assembly still fell short of the controls created by the Constitutional Convention of 1879. That body set tax maximums at 6 mills for the state and 10 mills for local governments.  

Further contradictions in the concurrent resolution appeared in three amendments that affected the private sector more than government. As with the other 1878 amendments, those working against re-
restrictive constitutionalism originated in the joint committee and then passed in both houses of the assembly. One of these measures took a definite active government stance: it granted a tax exemption benefit to business. "No license tax," this amendment asserted, "shall be imposed by the State, or any parish or municipal authority, on any mechanical trade, manufactory, or factory, except such as may require police regulations, in towns and cities." This exemption did not affect most economic pursuits that involved wage earners or small businessmen, but it did aid a broad category of large factories. Another amendment that tended to increase the scale of economic activity eliminated a provision of the Constitution of 1869 that restrained land speculation. The provision affected, Article 132, required that all court-ordered land sales be in parcels of 10 to 50 acres. Using a trick most often employed by those who feared public awareness, this 1878 amendment merely stated that it abrogated Article 132 without explaining that feature of the 1869 organic law.24 The third amendment concerned primarily with the public's welfare paralleled the democratic aspect of restrictive constitutionalism, and like the ceiling on taxes, this measure originated in the house. The people gained by having up to $500 worth of personal property exempted from state and local taxation. Although this type of beneficial exemption began in other states before the Civil War, Louisiana had not previously taken such constitutional action.25

In one vital instance the house altered the concurrent resolution to make it more restrictive. It imposed a ceiling on the property tax. In doing this, the house acted with a unanimity (the
vote was 104 yeas and 4 nays) that meant virtually all its factions believed that this measure was in their best interests. For those desiring a restrictive organic law, the tax ceiling was simply an expression of their constitutional philosophy. But for anticonvention representatives who favored a liberal constitution, this amendment had to be a tactic, and one obvious benefit they stood to gain was to stop public clamoring for economy in government. Although representatives supported it for varying reasons, their collective endorsement affirmed that this was an expression of legislative discipline rather than a challenge to it.26

When the house considered new amendments that did not win a consensus, those measures invariably did not pass. A proposal to do away with monopolies differed from other such efforts because it almost passed. The advocates of this amendment ranged from those wanting a restrictive organic law to those desiring moderate reform within a liberal constitutional framework. The member of the joint committee who had advocated restrictive constitutional principles introduced an amendment to end all existing monopolies and prohibit future ones. This attack on monopolies had strong backing (seventy-three representatives in favor and twenty-eight against), but since an amendment had to have an absolute two-thirds majority of seventy-eight or more votes for passage, the measure affecting monopolies failed.27

Other amendments initiated in the house showed the variety of interests not addressed by the concurrent resolution. One of these unsuccessful measures was restrictive in nature. "The General Assembly shall not create," asserted this amendment, "any new office except by a
vote of two-thirds the members elected." Another proposal sought to expand the minimum number of schools required in each parish from one to two. Finally, an amendment concerned with race also lost. Among the objectives sought by white supremacists was to have the poll tax made a suffrage requirement, and in a nonrecord vote such a measure failed.28

In the opinion of many newspaper editors, the state stood divided into the many (one editorial estimated that the figure was two-thirds of the people who opposed the amendments and favored a constitutional convention) and the few, who held the opposite view. The Lafayette Advertiser gave this summary of the groups that sought to thwart the popular will: "There is a strange and unaccountable opposition to this plan [i.e., a constitutional convention] which seems to come principally from the officeholders and politicians, and perhaps the monopolists and bondholders." The Natchitoches Vindicator made this blunt indictment of the amendments:

Instead of restricting powers, as is demanded, these amendments enlarge them. Instead of abrogating pernicious clauses [in the Constitution of 1869], these amendments do not touch them. Instead of destroying monopolies these amendments premanently fasten those that exist; and they are, in fact, as silent as a charnel-house on every point vital to the citizen and his interest. Public opinion here is even more hostile to the amendments than to the Radical constitution....

The discrepancy between the solutions offered in the amendments and what even moderate critics desired caused the ranks of convention proponents to expand. Thus some people and newspapers previously neutral, or even in favor of the amendments, came to support constitutional convention. This broadening of the opposition boded ill
for the amendments, but it also meant that the forces working to defeat those measures were a coalition and not a unified movement working on behalf of any specific constitutional viewpoint. Thus, amendments faced, in the vote to ratify, more a test of their limited responses to the public's desire for extensive constitutional change than of the active government principles upon which those amendments rested.\textsuperscript{30}

The diversity of thought among those favoring a constitutional convention extended beyond those who had initially opposed such a body and then changed their position. The New Orleans Democrat had consistently supported a convention over amendments, but its reason for doing so showed a profound misunderstanding of the politics of constitutional revision. Like other convention proponents, the Democrat opposed monopoly, particularly the Louisiana Lottery, and sought greater economy in government than that provided by the amendments. Yet, in quite a few other respects, the Democrat differed significantly from the restrictive constitutional forces that would be the biggest beneficiary of a convention. While the New Orleans journal wanted the cost of government reduced, it did not seek to eliminate the general assembly's discretionary authority; it remained committed to the liberal concept of constitution as a guide to government growth. Specifically this meant advocating salaries that were "just" [unchanged from 1869] and opposing the amendment that set the rate for state and local property taxes because a ceiling on those taxes denied government the flexibility it needed.\textsuperscript{31}

The most serious difference between the Democrat and its restrictive constitutional allies was its support of the state debt.
A highly controversial subject, full funding of the debt stood as the prime objective of active government advocates, and a partial scaling down of the state's obligations was only a slightly less intense goal of those seeking a restrictive constitution. The general assembly had taken sides obliquely in this dispute by doing nothing. This had the effect of continuing the policy of paying the debt initiated during the administration of Republican Governor Kellogg and continued under Democratic Governor Nicholls. The convention the Democrat had worked so hard to secure later came exceedingly close to scaling down the debt. Finally, another point at which the Democrat diverged from others who wanted a convention was in desiring suffrage limitation. The New Orleans newspaper favored restriction of the franchise, particularly by the poll tax, but the convention proved no more willing than the 1878 general assembly had in taking such action (this time, however, because of Democratic rather than Republican opposition).

The first hard evidence of the impending victory of the proconvention forces came in the summer of 1878 when they succeeded in having a plank placed in the Democratic party platform supporting the call of a constitutional convention. In the November elections, the various journalistic soothsayers of the amendments' doom proved correct when the only amendment approved was one returning the state capital to Baton Rouge. Moreover, in response to this overwhelming defeat, Governor Nicholls recanted his objections to a convention and called a special session of the general assembly to provide for one. \(^{32}\)

The assembly met in early January 1879. In his opening message to that body Nicholls pointed, with apparent reluctance, to a
convention as the only means left to implement the desired constitutional revision. But despite the governor's attitude, the assembly acted with alacrity in issuing its call for a convention. The house started its consideration of a convention resolution on the day after Nicholls presented his message and passed that measure only two days later. The senate took slightly longer, but the convention received final approval on January 23, 1879, a mere two weeks after it was first introduced.33

Convention opponents had lost their capacity to shape events, but they continued their struggle. The few newspapers that continued the attack used some of the same arguments employed in 1878 to make people fearful. These foes claimed that a convention would cost $400,000 rather than the $40,000 estimated by the assembly and that it "would mean an entire change in personnel of government." Distrustful of a convention such opponents of a constitutional convention as the Chamber of Commerce, the Cotton Exchange, the Stock Exchange, and other business organizations that "represent the great financial and commercial classes of New Orleans" once again voiced their objections to the assembly. But this agitation went for naught, as did the efforts by legislators to kill the convention by indirect means. A plan to delay the convention until November and allow the assembly to ratify the new constitution by a two-thirds vote never went beyond informal discussion.34

Besides ensuring the call of a constitutional convention the previous fall's general election had tilted the legislative balance away from those who had advocated amendments by creating new support for the elimination of monopolies. In 1878 those pushing for a conven-
tion had also wanted to prohibit monopolies and they came close to having the house approve an antimonopoly amendment (while the senate had taken no action whatsoever). A year later the assembly focused exclusively on the state's most hated monopoly, the Louisiana Lottery, by seeking to revoke its statutory authority rather than by constitutionally banning all monopolies or lotteries. This freedom from the two-thirds majority required of amendments gave the assembly the margin it needed to pass the lottery law. The house produced a large majority for this measure that still fell short of what an amendment needed, and the senate approved this bill by a scant two votes. The death of the lottery was brief, however, as a federal court blocked enforcement of the statute killing it.  

The general assembly adjourned on February 1, 1879, concluding its unprecedentedly short session. Anticipation of the constitutional convention, scheduled for April 21, caused the assembly to consider a minimum amount of legislation. But even though the anti-convention forces had lost their battle to avoid a comprehensive view of the state's organic law, the war to shape a new constitution had yet to begin.  

Democrats won a sweeping victory in the election of delegates to the Constitutional Convention of 1879. With 75 percent of the membership, the dominant party controlled the convention. But mastery over their Republican opposition did not mean unity among Democrats. Dissension still remained. Yet in several significant ways the environment that shaped attitudes about constitutional revision had changed, and as a result the constitutional convention conducted its
deliberations with a pragmatic unity among the Democratic delegates that obscured, but did not eliminate, the continuing diversity of opinion within the dominant party.\textsuperscript{37}

The 1878 amendments formed the maximum concession that legislative proponents of active government had wanted to make, and the defeat of those amendments meant that more extensive reforms had become unavoidable. Moreover, the calling of a constitutional convention aided those who favored restrictive constitutionalism. The Democratic rank-and-file was far more likely to favor controls on government than their party leadership, and the election heightened their participation in the constitutional revision process. The campaign to nominate and select convention delegates stimulated public interest, provided more information about the issues, and allowed the people to choose between candidates whose sole responsibility was writing a new constitution. Once elected the delegates had less susceptibility to political obligations than legislators who, unlike those attending the convention, often had to think in terms of election.

A convention, besides its effect on the dominant party's approach to constitutional change, also influenced the process of revision through its impact on the Republican party. The resurgent power of the Democrats meant that the minority party would command a smaller proportion of the convention's votes than it had in the 1878 legislature. Thus Republicans lost the capacity to block unfriendly changes in the constitution that they had enjoyed in the 1878 senate. Since the minority party favored an active government, their reduced presence in the convention hurt the cause of those seeking to minimize the
impact of restrictive constitutionalism.

While a convention changed the politics of writing a constitution to the benefit of restrictive constitutional advocates, it did not cause the shift in attitudes that created a virtual consensus in favor of most aspects of restrictive constitutionalism. The convention’s unity stemmed from the state’s having defaulted on the January 1879 payment of interest on its debt. Troubled with declining revenues, the state could no longer afford to meet both the cost of government and to service its bonds. Furthermore, the convention faced strong public pressure to reduce the rate of the property tax (the government’s major source of revenue). Given these circumstances, the convention’s dilemma was how, not whether, to retrench. Since those favoring active government gave particularly high priority to preserving the state’s credit through paying its debt, they embraced restrictive constitutionalism as the means to their end. Only by drastic reductions in government’s operating costs could the state fund the principal of its debt.38

The Constitutional Convention of 1879 demonstrated its acceptance of restrictive constitutionalism by the harmonious way it imposed controls on government and expressed its diversity through the protracted struggle that occurred on the debt and through its willingness, at times, to contradict the precepts of restrictive constitutionalism that it otherwise followed. The constitution’s restrictive format originated in committees and continued in the convention’s formal proceedings. All the ordinances (i.e., topical groupings of articles used as an organizational device) employed the principles of
restrictive constitutionalism, and when delegates challenged measures on the convention's floor their differences usually centered on the problems of how severely, and not whether, the constitution should limit government. Indeed, the convention often approved the committee version of articles (i.e., sections in most state constitutions) without any revisions. For example, the relatively non-controversial general provision ordinance had over half its articles passed as reported, while even the highly disputed revenue and taxation ordinance had almost one-third of its articles sanctioned without alteration.39

The degree to which the Constitution of 1879 turned in the direction of restrictive constitutionalism appears when contrasted with Louisiana's previous constitutions and with other 1870s restrictive southern state constitutions. The 1879 document broke with its predecessors in size, controls on the general assembly, and restrictions on government's fiscal functioning. The Constitutions of 1845, 1852, 1864, and 1869 had varied by only about 5 percent in total number of articles while that of 1879 had 70 percent more articles than the longest (1869) of these earlier documents.40 In these five documents, the length of the "Legislative Department" title (i.e., article in most state constitutions) did not follow the same pattern apparent in the overall length of the constitutions, but a parallel between these two categories of size did exist for the 1869 and 1879 documents. The legislative title grew by almost a third from the 1869 constitution to that of 1879.41 The bulk of this increase came as a result of new controls on the general assembly. The legislative title in 1869 had nine articles regulating the assembly's internal procedures, while that
in the 1879 document had twenty-one such regulations. Furthermore, this post-Reconstruction constitution had several articles that placed extensive controls on special and local legislation and among these was one that prohibited the assembly from passing such laws on twenty-one different subjects.\(^42\)

In the crucial area of restrictions on government's fiscal affairs the difference between the Constitutions of 1869 and 1879 was even greater than the differential in size and in limitations on the general assembly. The 1869 document had only one decidedly restrictive characteristic. It made the salaries of state officials, except judges, a matter of constitutional rather than statutory law, but the relatively large amount allowed for such stipends mitigated their impact. The Reconstruction constitution also included an article that required the assembly to provide a system for paying any debt over $100,000 but it did not restrict the amount borrowed.\(^43\)

In contrast to its predecessor, the 1879 constitution imposed extensive limitations on government's revenue and expenditures. It stated maximum rates for state and local property taxes and made those rates considerably lower than the amount currently imposed by the statute. The controls on expenditures included prohibiting the creation of new state debt, lowering salaries for state officials, stipulating the purposes for which the state could use its tax revenues, and barring aid to private enterprise for state and local government.\(^44\)

The changes made in the Louisiana Constitution of 1879 compared favorably with the other restrictive southern state constitutions. The 1879 document exceeded most of its contemporaries in size, controls
on subjects prohibited as species and local laws while the length of
the legislative title matched the norm for the comparable parts of the
other constitutions. In restraints on government's financial func-
tions, the Louisiana Constitution was among the most restrictive in its
provisions affecting state government, but it was relatively lax in its
treatment of local government.45

The Louisiana Constitutional Convention of 1879 pursued a
restrictive constitutional policy with a large degree of harmony mainly
because of the fears of active government advocates about the state de-
faulting on its debt. The unity forged between those who sought to
limit government for pragmatic reasons and those who favored such con-
trols out of principle could not endure when the convention considered
the debt ordinances. Indeed, that ordinance created the greatest con-
troversy and required the most time for resolution of any measure that
came before the convention.

Although historians have portrayed the 1879 debt ordinance
as a victory of the convention's rural, restrictive constitutional ele-
ment, it was instead a qualified victory for the convention's elite,
active government forces. Proponents of active government tended to
equate payment of the debt's whole principal with preserving the
state's credit, and on this point they won. Moreover, they also gained
another important objective, for the debt ordinance earmarked part of
the state's property tax to pay the debt. The only economically signi-
ficant concession given to the convention's rural element was a rela-
tively low interest rate on the debt, and active government advocates
had come to the convention expecting to compromise in this area (albeit
with hopes of getting a higher interest rate than that ultimately approved). 46

Louisiana's financial obligations originated in the rail-
road building that preceded the Civil War and the railroad and other
active government policies that followed it. The validity of various
claims from both these periods was questionable and a consolidation of
the debt carried out in the mid-1870s had irrevocably intermingled good
with dubious debts. This reorganization of the debt involved a complex
process of several steps, but its central legislative authority was the
Funding Act of 1874. While some doubtful claims were ultimately dis-
allowed, the state funded most of its obligations, including elements
of questionable origin, at 60 percent of face value. The government
accomplished this first by exchanging new consolidated bonds bearing
7 percent interest for the old securities and then by levying a special
5.5 mills property tax to pay for the new bonds. The state, in an ac-
tion that had much significance during the constitutional convention,
also destroyed all old securities turned in to it. 47

Once Democrats returned to power in the late 1870s, fear of
having the debt issue reopened stimulated much opposition to a con-
stitutional convention. When the state defaulted on its January 1879
interest payment, the debt became a problem that the state could no
longer avoid. As early as February 1879, the New Orleans Picayune, a
paper that favored funding the whole debt and had close ties to the
state's creditors, argued that changes in bonds were necessary and that
the holders of those securities were willing to have the interest rate
reduced. As the Picayune observed:
...there is a general opinion to the effect that, whether from one cause or another, the State cannot give full and practical effect to the 5.5 mill clause of the existing contract. There is also an opinion shared in, we believe, by the bondholders themselves, that a reduction in interest from seven percent to five percent would be advantageous to both parties. If the holders of State securities are willing to make this concession -- and some of them, we believe, are anxious for it -- the question of the process by which it shall be made efficient immediately presents itself.

The convention, in its deliberations on the state debt, proved the wisdom of those who had feared it. Even though the delegates finally funded the consolidated bonds at face value, this victory came only after a fight that lasted until the closing days of the convention and that nearly resulted in only a partial payment of the debt. The debt committee set the tone for the convention's deliberations when it sent out sharply conflicting majority and minority reports. The debt committee's majority leveled a harsh attack on the consolidated bonds in its report. It claimed that the bonds were invalid and that the people could not afford to pay their almost $12,000,000 face value and interest. With its report the majority also submitted an ordinance that provided for the debt problem. The ordinance cancelled the consolidated bonds and funded, at 4 percent interest, a few specific categories of the old debt that constituted only about one-third the obligations recognized in the consolidated bonds. The debt committee's minority issued a report that defended the validity of the bonds, attacked the plan to return to the old debt as a virtual impossibility, and asserted the need to protect the state's credit by paying the consolidated bonds at face value. Numerically weak within the Democratic delegation, the prodebtor forces sought to follow the tactics of delay and did not send the convention an ordinance.
An agent of northern holders of Louisiana bonds present at the convention gave a pessimistic assessment of the bonds' chances to his employers immediately after the debt committee reported, but the antidebt Democrats believed they held the upper hand. Possessing a majority within their party, the antidebt Democrats wanted the caucus to make the majority's debt ordinance a matter of party discipline. This effort started a parliamentary cat-and-mouse game frequently repeated throughout the convention. The debt's foes could muster a majority of the Democrats, but not a quorum of the party's caucus. The result was a rancorous stalemate that gave Republicans the ability to tilt the balance to benefit the prodebt forces when Democrats sought to bypass the deadlock in the caucus and have the convention settle the debt issue.50

For more than a month after the debt committee reported, the Democrats worked in caucus to resolve their differences. While the dominant party suffered from a wide diffusion in attitudes, the convention delegates fell into roughly four categories. The far ranges of opinion within the convention consisted of those pro- and antibond delegates who supported the minority (i.e., probond) and majority (i.e., antibond) reports of the debt committee. Each of these two groups had a corresponding moderate element (collectively known in the convention as "middlemen") that believed the positions taken in the minority and majority reports were excessive. But even the "middlemen" usually limited their efforts at compromise to issues tangential to the crucial problem of funding the consolidated bonds at face value for these moderates also tended to remain inflexible on the key question of how to
deal with the debt's principal.\textsuperscript{51}

As Democrats fought among themselves behind the scenes, the convention took what appeared to be decisively antidebt action on a separate, but closely related, part of the constitution. The property tax rate had a decided influence on the convention's decision about the consolidated bonds. Even with retrenchment in government's expenditures, a particularly low property tax could force the delegates to scale down the debt. No effective opposition existed in the convention to stating the property tax as a maximum, but what did stir controversy was the rate allowed.

The convention displayed far greater cohesion in passing a low property tax rate than it did when considering measures that directly affected the consolidated bonds. Rejecting even a compromise measure of 5.5 mills by a two to one margin, the convention voted by an overwhelming margin to set the property tax at 5 mills and this rate, it was widely believed, was a level sufficiently low to force the convention to reduce the debt.\textsuperscript{52}

The prodebt New Orleans \textit{Picayune} expressed dismay over what it saw as the potentially disastrous ramifications of a 5 mills tax, editorializing:

The action of the Convention yesterday [i.e., June 20, 1879] in passing an article of the ordinance of the Committee on Taxation, fixing the limitation of the State tax at five mills, was naturally the cause of great astonishment and considerable speculation. The first impression was that it was a notable triumph of the extreme repudiationists, and indicated that the supporters of the majority report [of the debt committee] were in a position to dictate the basis for the settlement of the debt question. A careful examination of the figures in the case will show that under the five mill tax only some $200,000 will remain to pay the interest on the debt after the expenses of the Government are provided for.
The $200,000 that the Picayune estimated the 5 mills tax would provide for the state's bonds fell far short of the $655,000 expended on the debt's interest in 1878. In response to a charge by opponents that the 5 mills tax meant repudiation, advocates of that measure gave another way of assessing its impact. "It was claimed on the other side [i.e., by proponents]," the New York Tribune reported, "that a 5 mills tax would produce sufficient revenue to support the State Government and pay 2 percent interest on the present debt, or 4 percent if the debt should be scaled 50 percent."53

Yet in the gloom over the 5 mills property tax, the Picayune saw a ray of hope. People voted for this low tax rate who might later change their position. A number of strongly prodebt delegates of both parties had a strong reason to switch, and the "middlemen" who had advocated a 5.5 mills tax might also favor a reconsideration of the property tax rate. "From all this," the Picayune concluded, "it may be seen that a large number of Democrats voted for it because there was no alternative offered, and with the supposition that the vote did not affect the debt question in reality....[thus] it is generally agreed that the vote will be reconsidered and the limit be fixed in accord with the settlement of the debt question."54

The vote on the 5 mills property tax came when the prodebt forces still had not formulated a policy on the consolidated bonds with which to counter the ordinance of the debt committee's majority. Since staunch prodebt Democrats were relatively few in number, they had to find a compromise measure that would attract sufficient support from among the "middlemen" to provide victory. The concession offered to
encourage cooperation was a lower interest rate on the debt.55

From the time the state had defaulted on the January 1879 interest payment until the convention finally approved the debt ordinance, the interest rate remained the key bargaining chip used by proponents of the consolidated bonds. The intransigence of the antidebt delegates had caused the bondholders to become increasingly flexible about what they believed was an acceptable interest rate. When the supporters of the minority report and the prodebt "middlemen" reached an agreement on June 22, 1879 (the day after the convention passed the 5 mills property tax), they did so with the understanding that the bondholders had approved the proposed interest rate. When presented to the convention a few days later, the ordinance of the debt committee's minority provided for 3 percent interest for 5 years and 4 percent until the state's bonds matured.56

On June 30, 1879, the constitutional convention began considering the majority and minority debt ordinances, and it promptly rejected both by wide margins. Statements published in the convention's Journal after the defeat of these two measures revealed that moderate pro- and antidebt delegates considered the debt committee's ordinances to be "extreme." The moderate opponents of the consolidated bonds had greater dissatisfaction with the majority ordinance than the prodebt "middlemen" had with the minority ordinance. The former believed that the majority's attempt to base a settlement on the old debt was unrealistic, and the amount funded was excessively parsimonious. Since the only certificates of indebtedness extant were the consolidated bonds, the reduction in principal desired by the moderate antidebt delegates
had to be based on those bonds. Moderate advocates of the bonds, on the other hand, disagreed with the minority report simply on the grounds that it cost too much and not with its fundamental approach. Virtually all the "middlemen" shared the belief that the standard for any settlement of the bond issue was "the ability of the State to pay the debt," but the willingness of most moderates did not extend to the key issue -- the debt's principal. Once the convention defeated the majority and minority reports, the functional differences between delegates became less who was moderate and extreme and more who was or was not willing to fund the consolidated bonds at face value.⁵⁷

After having rejected the debt committee's two ordinances, the convention began its search for a compromise solution. The delegates, immediately after defeating the minority ordinance, voted to reconsider that measure, and even as they began to amend it, they also started deliberating on a substitute ordinance that presented the new antidebt viewpoint. This substitute ordinance provided for the funding of the consolidated bonds at 7½ percent with 4 percent interest. The substitute came to a vote first, and it lost by a wide margin. By the time the convention decided the fate of the minority ordinance, it had changed drastically in all but its crucial provisions to pay the whole debt. Among the more important alterations made were the extension of the time for the state to pay 3 percent interest from five to fifteen years, and the elimination of a provision which mandated a 3 mills property tax to finance the debt.⁵⁸

Just as the convention's action setting a 5 mills ceiling on the property tax had been a victory more apparent than real for the
antidebt forces, so too was the passage of the minority debt ordinance a temporary success for the prodebt delegates. In both instances a sufficient number of those voting to approve the measure had reservations about their actions that it left open the possibility of change at a future time. The minority debt ordinance carried an additional burden for its margin of success, seven votes, had come from Republicans. A majority of Democrats had opposed the minority debt ordinance and only the almost uniform support given by Republicans to that measure saved it from defeat.

Any action taken by the convention would not be final until the Democrats had agreed to make debt settlement a test of party discipline. The convention's approval of the minority debt ordinance merely shifted the struggle over the consolidated bonds back to the Democratic caucus, and this was a return to the stalemate of June with the antidebt forces possessing a majority in the caucus but lacking the strength to command a quorum in it. Those opposed to the minority debt ordinance had a preliminary victory that had previously eluded them when the caucus approved a resolution making the "settlement of the debt question a caucus matter." About this resolution the New Orleans Picayune reported on July 9: "As a result of last night's meeting [of the caucus] the repudiators were jubilant, and confident of a settlement of the question to suit their own peculiar [i.e., antidebt] views. What they most congratulated themselves on was their success in entrapping a good number of middlemen into binding themselves into standing by the caucus." The joy of those opposed to the consolidated bonds was short-lived for they still could not obtain a quorum in the
caucus on any measure that entailed scaling down the debt's principal. Indeed, the Picayune characterized the deliberations of the caucus as "chaotic," and on July 14, the day before the convention resumed consideration of the minority debt ordinance, the New Orleans newspaper correctly predicted its defeat. 59

When the minority ordinance came up for its third reading (final passage), the convention decided to reopen debate on that measure. The antidebt forces displayed greater strength than when the debt ordinances first came before the convention. Those opposed to the consolidated bonds passed an amendment to the minority ordinance authorizing the people to vote on that measure separately from the rest of the constitution. This was, however, a rare victory at a time when neither side could command a majority in the convention. Yet the margin of defeat did differ significantly, and those opposed to the debt demonstrated their relative strength when a proposal to fund the consolidated bonds at 75 percent of face value failed by only one vote. 60

The narrow defeat of the 75 percent scaling measure acted like a time bomb on a convention grown weary of a dispute that seemingly had no end. If the convention failed to act, then the debt question would become the responsibility of the next general assembly, and delegates on both sides of the issue had reason to fear that eventuality. 61

The continued inability of the convention to pass a debt ordinance led to a dramatic shift in the balance of power among delegates. When one member of the convention moved to reconsider the 75 percent scaling amendment and justified his action on the grounds that this measure "had come the nearest [to] being adopted," the convention agreed with
him by a comfortable margin. A sufficient number of prodebt Democratic delegates had come to believe that it was "impossible" to pass an ordinance to their liking, and thus they, as one man expressed it, "would now compromise on 75 cents on the dollar."62

Unfortunately, final victory remained as elusive on the debt question as ever. Black Republican P.B.S. Pinckback blunted the rush to reduce the debt's principal with a deft piece of satire.63 With droll humor this prodebt delegate countered the 75 percent scaling proposal with his own amendment. "Mr. Pinchback arose," the New Orleans Picayune's version of the convention's "Proceedings" reported, "and stated that if any portion of the debt was to be repudiated, he thought that matters should not be minced, and he would be in favor of wiping out enough to give the State substantial relief." The measure introduced by Pinchback called for a "50 cents on the dollar" settlement for the consolidated bonds. But delegates apparently voted according to who introduced the resolution and not what it contained, and as a result Republicans and prodebt Democrats had to change their votes after the initial roll call. Pinchback attempted to alter the convention's tempo, and he succeeded. The push for the 75 percent scaling motion lost steam, and when it came up for final passage, the convention rejected it by almost a three to one margin.64

Yet, even before the defeat of the 75 percent scaling amendment, prodebt delegates had started to support a substitute debt ordinance that employed a compromise approach they had previously rejected. This measure funded the consolidated bonds at face value while lowering the interest rate so that it followed a three part schedule of
2 percent for five years, 3 percent for ten years and 4 percent thereafter. Another important feature of the substitute ordinance revived the property tax to pay the debt, a part of the original minority ordinance, but in its new form the tax consisted of two steps of 2.5 mills for five years and 3 mills thereafter rather than the flat rate of 3 mills as had been the case earlier. The convention approved the substitute ordinance, and on the next day, July 18, it was to vote on the final passage of that measure.65

The topsy-turvy struggle over the debt had one last significant twist. What happened to the new substitute debt ordinance was merely the usual -- it lost. The means of its rejection was a little unusual as it received a majority of those voting, but not, as the convention's rules required, an absolute majority of the whole membership. What marked this defeat as fundamentally different, however, was the complete turnabout by the Republicans. After having staunchly supported ordinances that funded the consolidated bonds at face value, the minority party deserted that effort just as the substitute ordinance stood on the brink of final victory.66

The change in the Republican position came as a surprise not only to Democrats but to most of their own delegates as well. After having supported the new substitute debt ordinance in the preliminary ballots on July 17, most members of the minority party voted for it on the crucial third reading. But four Republican leaders opposed the substitute ordinance, and as occurred with Pinchback's motion of the previous day, this unexpected turn of events led to a major upheaval in the convention as a whole. The New Orleans Picayune gave
this description of what occurred:

On the side of the Republicans, Messrs. Hough, Pardee, Stevenson and Pinchback voted in the negative when their names were called, and their followers, at the completion of the roll call, immediately commenced to change their votes to the negative. A number of repudiating Democrats sniffed something wrong in the sudden change of front on the part of the Republicans, and, to offset it, ordered their votes changed to the affirmative. The vote as finally corrected stood: Yeas 62, nays 52. The affirmative not having received a majority of votes of the members elected to the Convention, the ordinance was lost.

Mr. Robertson, in an excited speech, declared that the Republicans were striving to disrupt the Democratic party, and unless they were checked in their unholy design, there was every probability of their succeeding. He, therefore, moved that the Convention take a recess until evening, in order that a Democratic caucus might settle the debt among themselves, and thus thwart the scheme of the Republicans.

The motion to take a recess was carried with a hurra, and shortly afterwards Mr. Robertson called

The Democratic Caucus
to order. A very full attendance of members was noticed.67

The reason given by Republicans for their action differed greatly from the rumors that circulated in the convention. The minority party argued that it could only support a debt settlement that was acceptable to the state's creditors. "On [sic] yesterday they were assured and they believed," a statement published in the convention's Journal by the Republicans explained, "that the ordinance in question was acceptable. After adjournment they became satisfied that the proposed settlement was not satisfactory, would not be accepted, and was really the opening of a Pandora's box of litigation and trouble for the creditors and people, and they, therefore, changed their votes." The Picayune published an alternative view of the Republican's defection from the substitute ordinance, saying former Republican Governor Henry Warmoth had telegraphed from the North advising his party's delegates that the Louisiana constitutional convention could influence politics
above the Mason-Dixon line. The alleged plot centered on the idea that if Louisiana took unfavorable action on its consolidated bonds, then it "would be of immense service in the Ohio campaign, and would be a pow-
nerful weapon in the hands of the Northern Republicans to carry the next Presidential fight...." The minority party, of course, denied this im-
putation of wrongdoing, and the truth of the matter is undiscernible. Yet, the two explanations are not mutually exclusive, and the substit-
ute ordinance's defeat could only result in a less favorable settle-
ment.68

The weariness that had aided the antidebt delegates when the 75 percent scaling measure almost passed now began to work against them with a vengeance. A rumor of a pending quarantine added to the already existing desire to end the trouble that the debt issue had become. Many of those opposed to the consolidated bonds came from north Louisiana, and these delegates were planning to depart from the convention no matter what remained undone. "The cause for the exodus was said to be a fear that the country will quarantine them if they stay longer in this city," the Picayune explained, "and a residence of twenty days on the banks of the raging Red River, at a quarantine sta-
tion, does not possess any fascinating charms for the average rural delegate." Moreover, illness and a belief that the deadlock over the debt was unresolvable, robbed those opposed to the consolidated bonds of one of their main leaders, the chairman of the debt committee E.E. Kidd.69

Despite widespread doubt to the contrary, the conference committee did its work and for the first time the Democratic caucus
gave formal approval to a proposed debt ordinance. The committee's
debt ordinance was in form a compromise measure, but in substance it
was a qualified victory for the prodebt delegates. This final version
of the ordinance preserved the fiction of fairness by offering the
state's creditors a choice between the two main approaches to the debt
that the convention had long considered. The first option was basic-
ally prodebt and it allowed a trade of the consolidated bonds at face
value for new ones bearing interest of 2 percent for five years, 3 per-
cent for fifteen years and 4 percent thereafter. The second option was
essentially antidebt and permitted an exchange in which the replacement
securities would have 75 percent of the value of the old ones and
bear a flat 4 percent interest rate. This latter plan was a face-
saving device for those opposed to the debt because it made little eco-
monic sense for bondholders. The 75 percent scaling measure provided
a higher rate of income for the initial five year period, but this was
more than offset by its lower lifetime earnings in interest and in
principal. 70

The secondary characteristics of the conference committee's
debt ordinance allowed legitimate concessions to both sides, but even
so an imbalance remained in the importance of the changes instituted.
Those opposed to the consolidated bonds had wanted the people to vote
on the debt ordinance separately from the rest of the constitution,
and the conference committee renewed this plan. While in another ac-
tion that also benefited antidebt delegates, the committee altered the
property tax to pay the consolidated bonds from a constitutional man-
date to a matter of legislative discretion in which the general assembly
could set any rate sufficient to pay the bond's interest up to a maximum of 3 mills. These measures, however, had no practical impact on the fate of the consolidated bonds. In contrast, a provision beneficial to those bonds resolved a problem of vital importance that the convention had left in limbo after it had passed the tax ordinance several weeks earlier. That ordinance had set the state's overall property tax limits at 5 mills, a rate insufficient to fund the consolidated bonds at face value. The conference committee revised the property tax, to allow a maximum of 6 mills if the people ratified the debt ordinance or 5 mills if they rejected it.\textsuperscript{71}

The convention, on July 21, 1879, only two days before it adjourned, finally approved the conference committee's version of the debt ordinance. Aided by the caucus endorsement and hindered by the almost uniform opposition of the Republicans, the ordinance received three more votes than the minimum of sixty-eight required for passage. One day later the convention reaffirmed its action on the debt ordinance by amending the tax ordinance to conform with the new property tax limit. When ratified, the constitution and its debt ordinance allowed a maximum 6 mills for this tax.\textsuperscript{72}

No other part of the convention's deliberations was as dramatic as the debt ordinance, but other actions taken by the delegates had active governmental results. The tax ordinance set the ceiling for local government's property tax at the 10 mills desired by advocates of restrictive constitutionalism, but two major exceptions to this rule made it almost meaningless. Parishes and municipalities could increase taxes without limit for "the purpose of erecting and
constructing public buildings, bridges and works of public improve-
ment" if the property taxpayers voted to approve such endeavors. The
other loophole in this maximum for local property taxes was an article
that allowed, with taxpayer ratification, an additional tax of up to 5
mills and for a period not exceeding 10 years "in aid of public im-
provements or railway enterprises."\textsuperscript{73}

Private enterprise, a major focus of restrictive constitu-
tutional controls, gained from revisions that added to and deleted from
ordinances written in committee. The convention amended the tax ordi-
nance's article on tax exemptions so that the general assembly could
protect, for a period of up to ten years, factories that manufactured
fifteen different kinds of consumer goods and foodstuffs.\textsuperscript{74} The com-
mitee's version of the ordinance on corporations had a variety of
restrictive articles that were eliminated on the convention's floor.
Three of these were of particular importance. One article proclaimed
as a right and a "duty" the assembly's authority to revoke a private
corporation's charter for "any failure to comply with the conditions of
said charter, whenever in their opinion it may be injurious to the
general welfare...." The article further asserted that the assembly
could not "surrender or suspend" its authority to tax corporations.
The third article required insurance and banking corporations doing
business in Louisiana both to "deposit reasonable securities with the
Treasurer of this State, to secure the people against loss by said
companies," and to issue semiannual reports on their business activ-
ities.\textsuperscript{75}

The convention undermined its strong stand against mono-
policies (an issue that was second only to the debt in its power to generate controversy) by allowing the Louisiana Lottery to maintain its privileged position on a de facto basis. The convention explicitly banned all monopolies except for special rights granted to railroads. Yet it also gave constitutional stature to the law incorporating the state's most hated monopoly -- the Louisiana Lottery. The convention ended the Lottery's status as a monopoly, but since the 1879 general assembly had come close to killing the lottery, the loss of a legally exclusive standing that did not affect its operations was more than compensated by its greater protection from future assemblies.  

In the noneconomic sphere, the judiciary ordinance departed from the values of restrictive constitutionalism in a variety of ways. The committee version on this ordinance was more elitist than that ultimately passed by the convention, but even in its final form this ordinance made the judiciary the branch of the government least accessible to the people. The ordinance, as written in committee, returned to the state's original system of an appointed judiciary, and it also made the office of parish attorney a gubernatorial appointee. The convention revised this so that the people elected all but their two highest categories of judges. The selection of the supreme court remained the governor's prerogative, while the general assembly, in a feature novel to Louisiana, elected the court of appeal. 

The judiciary ordinance, besides allowing for appointed judges, had other provisions that made it less democratic. The supreme court's term of office was the unprecedentedly long period, for Louisiana at least, of twelve years. The traditional requirement of having
certain officeholders be practicing attorneys was expanded; it lengthened the time of such experience for offices already affected by this requirement, and it extended this prerequisite to new offices. Finally, the structure of the court system had important financial considerations. The creation of a court of appeals and a larger number of district courts counterbalanced pay cuts. The legislature got complete discretion in determining the number of district court judges. 78

Louisiana joined the national trend towards restrictive constitutionalism because its people and their elected representatives in the Constitutional Convention of 1879 acted on "issue of economics and self-interest." It was in the same spirit of self-interest that the convention also decided not to restrict the franchise. When confronted with a choice between white Democratic solidarity or free access to the ballot box for all poor people the convention chose the latter. 79

White supremacists in Louisiana sought franchise restrictions as one among a variety of responses to one of Reconstruction's most revolutionary results -- black political participation. Interest in suffrage limitations had played an important role in the defeat of the 1878 constitutional amendments. The general assembly, as noted earlier could not address the subject, or its related issue of racially integrated schools, because of the large number of Republicans in the Senate, and this in turn caused Democrats otherwise favorably disposed to the amendments to oppose them. Historian Henry E. Chambers, sympathetic to the white supremacists, has summarized conditions that
Democrats faced once they regained control of the state government:

The coming into power of a democratic (sic) state administration did not of itself assure white supremacy. Radical rule had left as a legacy a horde of ignorant black voters, wholly unfitted for the duties and obligations of intelligent citizenship. The cloud of a possible return to black domination was to hang threateningly over the people for a number of years to come. The negro vote in many of the parishes outnumbered the white, in some cases ten to one. If therefore local self-government in true accord with the fundamental principles of democracy were permitted to prevail, communities and parishes would be put under black rule, however white the state officials might be.

The overwhelming Democratic victory in the 1879 election of convention delegates appeared to open the way for suffrage limitation. One leading black delegate, Pinchback, stated after the Constitution of 1879 was complete that he had come to the constitutional convention expecting to make the poll tax a franchise requirement. In the convention the franchise committee reported a franchise ordinance that must have, initially at least, confirmed Pinchback's fears. The committee ordinance forced voters to pay all taxes due before the year of an election and their current poll tax as well. These limitations complied with the Reconstruction Amendments to the United States Constitution, but this was their undoing. In discriminating on ability to pay rather than race, the franchise ordinance threatened all of modest means, white and black. Felix Pouche, a white Democrat who was a vocal critic of the taxing measure and chairman of the franchise committee, warned of dire consequences if the ordinance passed:

The extreme poverty of thousands of white men throughout the State would make them revolt at this poll tax, and every effort would be made to defeat the constitution containing such a restriction. The speaker declared the result would be a coalition between poor whites and the colored people, which would eventually inaugurate a reign of communism and secret societies, attended by labor strikes and general disorganization of social system.
The convention rejected the taxpaying requirement for voters, but in its place the delegates raised voter registration from secondary to primary importance. The franchise committee had provided for voter registration to end in Louisiana, except for New Orleans, once the taxpaying requirement went into effect. The convention revised this article so that voter registration became mandatory in New Orleans and optional in the rest of the state. In practice, this meant that the voter registration begun by Republicans continued without interruption under the Democrats. 82

White supremacists sought their objective in ways other than suffrage. Indeed, Chambers gave the Constitution of 1879 much credit, he called it "eminently correctional as well as organic," for the success that white Democrats had against black Republicans. He attributed two forces as having the primary responsibility for the suppression of blacks: the growth of the governor's appointive power, and force. "The first of these," Chambers somewhat incorrectly notes, "was the constitutional provision which lodged in the hands of the chief executive of the state extraordinary appointive powers. The governor named all local and state officials whose election by popular suffrage was not specifically enjoined by the Constitution." 83

While Chambers assessed the governor's appointment powers correctly, he overestimated the role of the constitution. It reinforced but neither began nor guaranteed, in most instances, the continuance of those powers relating to local officials. 84 When Democrats regained full control of the state government in 1877, they took over an institutional structure in which the governor and other institutions of
the central government selected a variety, but not the most important, local officers. The 1877 and 1878 general assemblies continued what the Republicans had begun and expanded the central government's authority in areas previously left to local constituencies. In their new laws and revision of old ones, the Democratic-controlled assemblies emphasized the role of the governor in a way the Republicans had not, and by the time the Constitutional Convention of 1879 met the chief executive had most of the authority attributed to him by Chambers. The local officials that both Republicans and Democrats made subordinate to some form of central authority included voting registrars, tax assessors, tax collectors, and rural school boards. In the years just previous to the constitutional convention, the dominant party expanded the governor's authority to include police juries (the parish governing bodies), and for a two year span only, the mayors and councils of a number, but not all, of the state's municipalities.

When the convention did specify the mode of selecting officials, it did not live up to the role claimed for it by Chambers. The one area of local government extensively affected by the constitution was the judiciary. The judiciary committee had wanted the governor to appoint all judges in the state and parish attorneys (the state's prosecutors) as well. Local positions elected by the people included: district court clerks, sheriffs, coroners, constables, and the New Orleans registrars of conveyances. The convention rejected the judiciary committee's provisions for gubernatorial appointments in most instances. Except for the specialized courts in New Orleans, the governor retained the right to choose only the supreme court. But in
addition to this, the delegates reached a compromise on the court of civil appeals, and in doing so, they gave the general assembly the right to elect judges of that court.87

The 1879 convention proved more unsympathetic to the urban proletariat of New Orleans than to the state's blacks, so far as the judiciary was concerned. With the Crescent City firmly in Democratic hands, the convention denied the citizens of that municipality the right to elect judges for the two highest categories in its courts. The New Orleans appeals and district courts were special versions of the state civil appeals and district courts that had jurisdiction only in the city. In New Orleans the appeals court, like its state counterpart, had its judge elected by the general assembly, while the district court, unlike its state counterpart, had its judges appointed by the governor.

Education rivaled suffrage as an irritant to white supremacists. The Constitution of 1869 required integrated schools, and as already mentioned, the 1878 amendments' failure to address this question or that of suffrage helped cause their defeat. The Constitutional Convention of 1879 was certain to eliminate, as it did, the provision for integrated schools, but the issue of race affected the convention's deliberations on education in another, more indirect way.

The question whether or not the state should have a state superintendent of public education brought advocates of restrictive constitutionalism into conflict with those of white supremacy. To the former, the state superintendent was an unnecessary cost, while to the latter, he was an instrument of white domination. The New Orleans
Picayune pleaded the white supremacist's case in an unusually blunt editorial. Labeling the state superintendent a "necessity," the Picayune argued that "retrenchment should begin with the luxuries and not with the necessities of life." What made public schools and their state superintendent so important was the threat supposedly posed by blacks. According to the New Orleans journal, the situation was supposedly one of control or be controlled and it called on the convention to act on behalf of white people:

This state has fallen under the control of its better class, temporarily, at least. It is within the power of that better class to mold the minds and to shape the thoughts of the generations to come, through the instrumentality of the public schools. There lies before us a province of conquest in this direction, a power, a privilege and an opportunity which may be not widely abandoned. Name the teachers, select the textbooks of your schools, and you fix the convictions and purposes of those who are to succeed you in the State and national councils.

A hint to the wise should be sufficient. There is something distinctive about Southern civilization, its sense of personal honor and its instinct of progressive but cautious liberalism. These ennobling tendencies are in danger. If we do not educate our young, our enemies will. It is best to be plain about this, and to recognize the situation fully. We are brought face to face with a powerful and aggressive antagonism, which cannot be ignored....

Every practical politician in Louisiana knows that the lever of Radical power in the State and in the South has rested on the ignorance and prejudice of the negroes as upon a fulcrum. Every forethoughtful statesman, every earnest patriot among us knows that ignorance and that prejudice must be removed before the State and section can be at harmony within. The work is to be done by kindling the light of truth in the young mind, by teaching history from our point of view, by constraining the organic law of the land from our own standpoint. That is our task, and be we ever so poor, that, at least, we cannot neglect.

The question of the state superintendent of public education affected both the executive and education ordinances, but it did so in diametrically opposed ways. Many in the convention believed that the state had to eliminate either the secretary of state or the state
superintendent of public education. The convention considered the executive ordinance first and it reversed the action taken in committee concerning the state superintendent. The executive committee had chosen to keep that office instead of the secretary of state, but the convention decided to substitute the secretary of state for the state superintendent, despite the arguments of the white supremacists. When the education committee reported its ordinance, the convention provided only for a board of education to head the state school system, but the convention eliminated the board and reinstated the state superintendent in its place.  

The Constitution of 1879 was a compromise that pleased most people. Rank and file Democrats liked it because it was restrictive; the Democratic leadership favored it because it preserved the principal of the state debt; and Republicans, particularly blacks, approved of it because it provided for democratic suffrage. Yet the differences that had led to the long struggle over the convention continued to haunt the dominant party. "The Democratic machine," historian Garnie W. McGinty observes, "feared [that] the people of the country parishes would ignore party organization and discipline, and go into the approaching election divided into innumerable personal followings." For the moment these concerns proved unwarranted. The constitutional convention had a cathartic effect, and the 1879 election to select state officers and ratify the constitution produced large majorities for the Democratic candidates and the constitution. But such inequities as the gubernatorial appointment of local officials and the continuation of the Lottery boded ill for the state's political harmony in
the future. When the great wave of agrarian unrest that swept the populists into prominence in the 1890s hit Louisiana, dissatisfaction created by the Constitution of 1879 helped to exacerbate tensions between the Democratic establishment and dissidents within and without the dominant party.
Chapternotes


2. Ibid., 453-455; McGinty, Louisiana Redeemed, 151-155; a wide sampling of the attitudes expressed in the state's press appears in the New Orleans Daily Democrat, in particular see: January 9, February 3, 9, 13, 17, 27, 28 and March 8, 1878.

3. These interviews appeared in the New Orleans Democrat on January 5, 7, 1878.


5. New Orleans Democrat, January 5, 7, 1878.

6. Ibid.


8. New Orleans Democrat, January 5, 1878.

9. Ibid.

10. Both the editorial quoted and the petition to which editorial responded appeared in the New Orleans Democrat, February 3, 1878.

11. Ibid., February 7, 1878.

12. Marksville Bulletin, quoted in ibid., February 9, 1878. The Democrat provided commentary similar to that of the Bulletin from an extensive range of newspapers. For editorial quoted shortly after the committee reported its amendments to the assembly see: New Orleans Democrat, February 9, 13, 17.


14. Louisiana, Annual Message of His Excellency Governor
Francis T. Nicholls to the General Assembly of the State of Louisiana, 1878, 1-19.


16. Ibid., February 12, 1878 (both quotations).

17. Ibid.


21. Ibid.


24. Ibid., 119-125, 246 (quotation 125). The text of the amendments also appears in the New Orleans Democrat in the period just before the 1878 election, see August 11, 1878 for one example.


26. "Journal, House," February 12, 1878, quoted in New Orleans Democrat, February 15, 1878. The house took a second vote on the measure banning all monopolies, and after this second vote it also considered a proposal to abolish only the Louisiana Lottery. The anti-monopoly majority grew smaller with each vote.


28. Ibid.


34. McGinty, Louisiana Redeemed, 158 (1st quotation); New Orleans Daily Picayune, January 13, 1879 (2nd quotation).


37. For a list of those elected to the constitutional convention see: New Orleans Picayune, March 23, 1879.


40. The number of articles in the Constitutions of 1845, 1852, 1864, and 1869 were, respectively, 153, 155, 155, and 161, while the Constitution of 1879 had 270 articles. The Constitution of 1812 is not included in this comparison because it had the short length, 100 articles, of an earlier style of state constitution.

41. The Constitutions of 1869 and 1879 had, respectively, thirty-three and forty-two articles in their legislative titles (the constitutions prior to 1879 used that term in their text while that document provided titles like "Legislative Department" without using the term title). The legislative titles of the Constitutions of 1845, 1852 and 1864 contained, respectively, thirty-seven, thirty-two and thirty-eight titles. This is an example of the limitations of using size as an index of more substantive differences. The 1879 legislative title made a far greater change in the constitutional vision than its size indicated. One illustration of this was its use of the subtitle "Limitation of Legislative Powers." Louisiana copied this subtitle and a variety of restrictive constitutional articles from the Missouri Constitution of 1875. For a direct reference to the use of the Missouri
document by the constitutional convention see: New Orleans Picayune, May 10, 1879.

42. In all the Constitution of 1879 had three articles regulating special and local laws with article 65 listing the subjects prohibited and articles 47 and 48 providing more general restraints.

43. Judges had a floor placed under, rather than a ceiling placed over, their wages as the Constitution of 1869 decreed that they would not be paid less than $5,000 per year. The Constitution of 1864 placed the first limit on salaries, see articles 50, 51, and 65, but it affected only the executive branch. Constitution of 1869, art. 39, 56, 57, 71, 84, 92, 111.


45. For data on the differences in size see Tables I and II in Chapter I.

46. William Ivy Hair credits the debt issue, albeit a partial one, as one of the two major victories that the Democratic rank and file won in the Constitutional Convention of 1879. Hair, Bourbonism and Agrarian Protest, 99-100. See also: McGinty, Louisiana Redeemed, 163-164.


53. New Orleans Picayune, June 21, 1878, (1st quotation); New York Tribune, June 21, 1879 (2nd quotation). Commercial and Fi-
nancial Chronicle, 28 (June 28, 1879), 649.


55. Ibid., June 23, 1879.

56. The bondholders had responded to the default on the January interest by talking in terms of reducing the 7 percent interest of the consolidated bonds to 5 percent. Shortly after the debt committee majority report became public the New Orleans Chamber of Commerce (whose membership undoubtedly included many bondholders) passed a resolution recommending a rate "not exceeding four percent." The bondholders experienced a further shock when on June 20, they held a conference with the debt committee and had their 4 percent proposal rejected by the committee. It was not surprising, then, that the supporters of the minority report could offer the "middlemen" an escalating rate of 3 and 4 percent with the bondholders support. Ibid., June 6, 23, 26, 27, July 1, 1879.


58. Ibid., 219-226.

59. New Orleans Picayune, July 9, 11, 12, 15, 1879.


61. The 1878 general assembly had attempted to thwart the popular will on the debt, among many other things, with its amendments. The 1879 assembly had shown its susceptibility to public opinion when it voted to kill the Louisiana Lottery.


63. Pinckney Benton Stewart Pinchback was known by his initials, P.B.S. For Pinchback's biography see: Agnes Smith Grosz, "The Political Career of Pinckney Benton Stewart Pinchback," Louisiana Historical Quarterly, XXVII (April, 1944), 526-612.


65. Ibid.

66. Ibid., 296-300.

68. Official Journal of the Constitutional Convention, 1879, 296-300, 305-306 (1st quotation, 299); New Orleans Picayune, July 19, 1879 (2nd quotation); "Proceedings at the 77th Day's Session," quoted in ibid.


70. Ibid., Official Journal of the Constitutional Convention, 1879, 310-313, 320. The compromise reached by the convention was not the final episode in the saga of Louisiana's debt. The bondholders had threatened court action if the original majority ordinance passed, and they compromised on the interest as a means to avoid scaling down of the debt's principal that they feared most. When passed, the debt ordinance dissatisfied many bondholders despite its funding of the consolidated bonds at face value. In part the problem may have been that Louisiana bondholders participated in the compromise process in a way those out-of-state could not. In any event, the anger of those outside Louisiana was such that the States of New York and New Hampshire attempted to aid their citizens who held Louisiana bonds circumvent the prohibition of the Eleventh Amendment to the United States Constitution against people in one state suing the government of another state. These two Northern states assumed the claims of their citizens and then sued Louisiana in federal court themselves. The Supreme Court of the United States, however, rejected that suit as an evasion of the Eleventh Amendment. (In other cases the Supreme Court ruled that the debt ordinance violated the Funding Act of 1874, but it also held that no remedy existed to force Louisiana to comply with the funding act.) Yet even before their defeat in the courts, bondholders had sought relief from the Louisiana General Assembly, and this approach gained them a partial victory over the debt ordinance. The 1882 assembly passed a constitutional amendment which, in effect, eliminated the second stage in the debt ordinance's three step interest rate schedule. Instead of 2 percent for five years, 3 percent for fifteen years and 4 percent thereafter, the amendment set the interest rate at 2 percent for five years and 4 percent thereafter. The people ratified this amendment in May, 1884. William A. Scott, The Study of State Debts (New York: Thomas Y. Crowell, 1893), 117-119; Louisiana, Acts of the General Assembly, 1882, 96. Commercial and Financial Chronicle, 28 (May 31, 1879), 553.


73. Ibid.

74. Ibid., art. 207. The text of this article is as fol-
laws:

The following property shall be exempt from taxation, and
no other viz: All public property, places of religious worship
or burial, all charitable institutions, all buildings and pro-
erty used exclusively for colleges or other school purposes, the
real and personal estate of any public library and that of any
other literary association used by or connected with such li-
brary, all books and philosophical apparatus, and all paintings
and statuary of any company or association kept in a public hall;
provided, the property so exempted be not used or leased for pur-
poses of private or corporate profit or income. There shall also
be exempt from taxation household property to the value of five
hundred dollars. There shall also be exempt from taxation and li-
cense for a period of ten years from the adoption of this con-
stitution, the capital, machinery and other property employed in the
manufacture of textile fabrics, leather, shoes, harness, saddlery,
hats, flour, machinery, agricultural implements, and furniture and
other articles of wood, marble or stone; soap and stationery, ink
and paper, boat building and chocolate; provided, that not less
than five hands are employed in any one factory.

75. "Proceedings of the 72nd Day," quoted in the New Orleans
Picayune, July 12, 1879. The corporations and corporate rights ordi-
nance, like all ordinances reported from committee, had its own sepa-
rate numbering system until passed by the convention and integrated
into the finished constitution. The articles eliminated were: 8, 9
(1st quotation), and 22 (2nd quotation).

76. Alwes, "History of the Louisiana State Lottery Company,"
1015; Constitution of 1879, art. 167, 248, 258.

77. "Proceedings of the 74 Day and 75th Day," quoted in New
Orleans Picayune, respectively, July 16, 17, 1879; Official Journal of
the Constitutional Convention, 1879, 266, 284, 293-296.

78. The constitution had a strict limit on the number of dis-
tricts, thirty with twenty-six authorized initially, but the assembly
had the express right to increase the number of judges within each dis-
trict, Constitution of 1879, art. 107, 110. For a contemporary cri-
tique of the financial implications of the judiciary ordinance see:


80. Henry E. Chambers, A History of Louisiana (Chicago: American

81. One delegate, from the convention floor, offered a more ex-
treme course of action than that provided in the committee version of
the franchise ordinance. This delegate proposed that voters either
pass a literacy test in English or own property assessed for a minimum of three dollars in state property taxes. Although less harsh than the franchise restrictions imposed by the Constitution of 1898, the convention indicated how unresponsive even white Democrats to such controls on the electorate when only four delegates voted for this measure. Alma Louise Ford, "The Negro in Louisiana Politics," (unpublished M.A. thesis, University of Texas, 1933), 52-53; Official Journal of the Constitutional Convention, 1879, 212-213, 256, 258-260, 309-310; New Orleans Picayune, May 28, 1879; "Proceedings at the 59th Day, 70th Day and 71st Day (quotation) Sessions," quoted in ibid., June 28, July 11, 12, 1879.

82. Constitution of 1879, art. 185.


84. The constitution granted the governor power to appoint all officials named in the constitution for whom no system of selection was provided, but this had little meaning as most articles creating an office included a clause establishing the mode for choosing an incumbent. The constitution also made explicit a power the general assembly already possessed, and frequently used, when it proclaimed that "the General Assembly shall have the right to prescribe the mode of appointment or election to all offices created by it." Constitution of 1879, art. 69.

85. The governor during Reconstruction appointed: tax assessors and collectors (initially those in New Orleans were not included but the method of selection was made uniform in 1871), the parish voter registrar, and the commissioners of the Metropolitan Police. The state's chief executive affected other local officials only indirectly. The governor appointed a voter registrar for each parish and a board of education for the whole state, and the voter registrar named the three commissioners of election for his parish while the state board of education selected a board of school directors in each parish. The various Republican administrations refined the structure of state and local government first established in 1868 and 1869, but the basic constitutional outline created in those early laws generally remained intact. For a compendium of 1868 and 1869 statutes see: Louisiana, Statutes, The Revised Statute Laws, 1869, in particular pages 273, 442, 619, 632. The centralization of authority begun by the Republicans and continued by the Democrats stood in sharp contrast to antebellum institutional practices. See: Louisiana, Statutes, A Revised Statutes of Louisiana, 1856.

86. The governor received a one-time authorization to appoint: (1) up to five members of the parish police juries in addition to the five already elected to that body, (2) the mayor and city council of the towns of Colfax, Napoleonville, and Waterloo, and (3) the entire police jury of Bossier parish. Permanent changes in the state executive's appointment power included: (1) the assessors of
taxes, outside New Orleans, who continued to be selected by the governor, assumed the job of the parish voter registrars, (2) the boards of health for Shreveport and Baton Rouge, (3) the New Orleans Board of Jury Commissioners, and (4) any elected or appointed position whose incumbent failed to post his bond within thirty days of taking office. The use of the governor's appointment power as a temporary expedient to influence local institutions did not originate with the Democrats. In 1875 the general assembly had the chief executive choose the mayor and council of Natchitoches but only until the next general election. Finally, one aspect of the governor's appointment power intended to be temporary during the post-Reconstruction period continued to be renewed on an ad hoc basis until the Populist revolt of the 1890s. Acts of the General Assembly: 1875, 63, 1877, 87-88, 168, 1878, 43, 62, 94-95, 174, 249, 280-281, 1879, 36, 1882, 117, 1884, 30, 1894, 201.


90. McGinty, Louisiana Redeemed, 172-180 (quotation 172); Hair, Bourbonism and Agrarian Protest, 234-276.
Chapter IV: The Constitution of 1874

This is the first of four chapters which together provide a narrative of the post-Reconstruction drive for constitutional reform in Texas. A detailed study of the revision process makes it possible both to evaluate the way short term political factors influenced constitution-making and to correlate these with the broader and longer term forces of constitutional change already discussed.

The Texas constitutional revision effort occurred in four stages, and a chapter is devoted to each. The first lasted from the fall of 1872 to the spring of 1874. Interest in a new organic law, which began as a part of reaction against Reconstruction, became engulfed in a controversy over how to write a document that ended with the abortive Constitution of 1874. The second period began after the defeat of that document and concluded with a special session of the legislature calling a constitutional convention in the spring of 1875. The third period encompassed the election of delegates to the convention: the give and take of political campaigning during this election for the first time revealed the depth of disagreement among Democrats. Finally, the controversy reached its climax in the convention's deliberations and the March 1876 vote of ratification gave the Lone Star State the constitution for which it had long waited.

Faced with a four-year term for executive officers, Democrats had to accomplish their return to power in two steps: the legislative election of 1872 and the general election of 1873. This delay did not dampen the dominant party's appetite for overthrowing Reconstruction
at the first possible moment. Thus, as Democrats began to anticipate victory in the 1872 election, they made a new constitution one of many goals for the Thirteenth Legislature. The Paris North Texan advocated constitutional revision and called on the legislature "to promptly repeal nearly all [Governor Edmund J.] Davis' Administrative measures," and demanded that the governor and other officials be impeached.¹ After Democrats won the election, the Galveston News argued for a more cautious approach, noting that "Davis is almost powerless." The Galveston journal advised against impeachment because it threatened both federal intervention and an interruption of the flow of Northern capital into Texas railroads, but despite opposing impeachment the News strongly favored a constitutional convention.²

The Democratic desire for a new constitution did not stimulate much discussion about what revisions the dominant party should make in that document. The Galveston News, in one editorial advocating a new constitution, stated bluntly what most newspapers were practicing: "It is not possible, nor is it deemed necessary to point out and mention in this article the many defects and wanton wrongs in the constitution."³ This lack of public debate was further compounded by the absence of journalistic scrutiny into the actions of the legislature. Newspapers infrequently showed more than a superficial interest in the workings of the legislature, and this limited oversight was further restricted by much of the legislature's work being done in obscure committees, and by the many subjects other than constitutional revision that lawmakers had to consider. Only after the legislature finally called a constitutional convention in 1875 and the nomination
and election of delegates began to excite the interest of both voters and newspapers did the substantive issues of constitutional change start to become openly debated and analyzed.

Less information remains about the Thirteenth Legislature's efforts to provide a new organic law than any other part of the 1870s Texas constitutional revision movement. But the bare bones of this legislature's formal record left a skeleton similar to the body of discord that became apparent later. The residual power of Republicans, who controlled the executive and judicial branches and had a large minority in the senate, made a different political environment in 1873 than after the Democrats gained complete control of the government a year later. But Republican influence does not explain division among Democrats and the impact that that division had on the Thirteenth Legislature.⁴

The legislature was not interested in the substance of constitutional change. Its responsibility was to choose the method for effecting such revision. Traditionally, Texans used a popularly elected convention to draft new organic laws, but in 1873 both New York and Michigan had given that job to an appointed commission.⁵ The initial Texas legislation submitted to the house and senate in 1873 provided for a constitutional convention.⁶ In the house, however, Representative C.M. Winkler, chairman of the Democratic state central committee, presented a bill to create a commission to write a constitution. This commission bill gained favorable comments from the Austin Statesman and the Galveston News, which continued to advocate this approach to revision in the Fourteenth Legislature, but it never
provoked much interest in the house.\textsuperscript{7}

The committee on constitutional amendments of the house acted first. It reported a revised version of the joint resolution calling an election that required the people to approve a constitutional convention at the same election at which they selected delegates to it. One representative objected to the referendum about holding the convention, but his reason for doing so was not recorded. This amended resolution passed in the house by a large majority.\textsuperscript{8}

The senate assumed the role it would play throughout the legislative deliberations on constitutional revision, acting as the major barrier to a convention. Its committee on constitutional amendments recommended passage of its convention resolution which, like that of the house, was amended to include a popular referendum. A Republican senator, however, moved to table the resolution, and four Democrats joined all thirteen Republicans in the upper chamber to defeat the convention in a seventeen to eleven vote.\textsuperscript{9}

This defection by a small but crucial number of Democrats was never explained. The Austin \textit{Statesman} justified the negative vote of its district's senator, Democrat Nathan Shelley, with the cryptic statement: "He opposed it simply on the grounds of inexpediency." In this article defending Shelley the \textit{Statesman} further observed: "Though it seems absolutely necessary that a convention should be called to reform the present nature of our laws from their very root, there are many in the Democratic party who think the course a dangerous one." The unsettled circumstances of Texas as it emerged from Reconstruction prompted this concern, but ultimately the greater danger proved
to be differences among Democrats rather than the policies of Governor Davis or President Ulysses S. Grant.  

The failure of constitutional revision in the Thirteenth Legislature was the opening battle of what proved to be a long struggle. Democrats continued to think primarily in terms of a constitutional convention. The state nominating convention placed an unequivocal plank on this subject in its platform: "We favor the calling of a Constitutional Convention by our next legislature." This formal commitment to constitution by convention did not eliminate interest in a commission. The Galveston News argued that a commission was the most economical means for securing a new constitution.

The newly inaugurated Democratic Governor Richard Coke set the tone for constitutional deliberations during the 1874 session of the Fourteenth Legislature in his first message to that body. Assuming a neutral and statesmanlike posture in his January 26 address, he suggested two alternatives for drafting an organic law. One was a constitutional convention and the other a legislative committee. The latter was a new idea, and Coke described it in detail. Basing his concept on the legislature's amendment powers, Coke suggested that a joint committee composed of the house and senate committee's on constitutional amendments (or other qualified legislators) draft "extensive" amendments in the existing 1869 constitution that would make "a thorough change in many essential points." In concluding his remarks on constitutional change, the governor disclaimed interest in the legislature's choice: "If the desired changes are made in the Constitution, the mode in which the result is accomplished does not seem to be
material, except so far as the expense is concerned." But despite this claim of objectivity, the Galveston News saw Coke as taking a partisan position. Because the governor made cost a criterion for choosing the method of revision, the News concluded that he preferred amendment to the more expensive constitutional convention. Coke ultimately proved the News was right by working to block both the convention and commission (a matter left unmentioned in his message).

The Fourteenth Legislature took up where the Thirteenth had left off, but it did so with greater internal dissension, or at least with a greater propensity to publish its differences in its Journals. Ignoring the governor's suggestions concerning a joint committee, the legislature directed its attention towards both a convention and commission. The commission approach gathered far more interest and support in 1874 than it had a year earlier.

Presented only with joint resolutions for calling a constitutional convention, the senate and house committees returned to their respective chambers two competing pieces of legislation -- a convention resolution and a commission bill. In the senate, the committee's majority favored a convention and its minority wanted a commission. The house reversed these preferences. The committee reports began complex, unrelenting, and Byzantine legislative infighting.

The senate committee on constitutional amendments acted first, February 2, 1874; the house followed suit nine days later. Both committees had a consensus concerning the need for a new constitution, but the divisions about the proper method of revision were fundamental
in nature and rancorous in expression. The minority reports of the two committees best expressed the procommission (senate) and proconvention (house) positions. The senate minority report intimated that a convention was too expensive and then raised more serious objections. But like Governor Coke's January message, the minority report refused to state these other reasons, saying only that they were "not necessary to enumerate in this report."\(^{16}\)

The minority report of the house committee on constitutional amendments addressed the question of revision with a candor unmatched at any other time in the legislature's 1874 session. According to the house minority the choice in modes of revision affected the well-being of both democracy and Democrats. It claimed:

The very fact of the establishment of a commission is, in our opinion, anti-Democratic [sic]-it evidences centralization; a fear of the people; an unwillingness to trust them with the destinies of their State.

It is a reflection upon the intelligence of the people, and an egotistical assumption of the superior attainments, knowledge and qualifications of the Fourteenth Legislature.

We believe that a Constitution, to meet the varied and diverse interests of an empire state must necessarily be carved out of concession and compromise, and that delegates specially authorized to exercise their judgement in concessions and compromises only should undertake this grave duty. Should the precedent once be established that a body elected as a legislature to frame laws under an existing Constitution, are empowered to frame constitutions by commissions, with what hesitancy would the people elect their next legislative assembly?

In conclusion, the minority reminded the 1874 legislature that the "Democrats of Texas...have demanded in no uncertain voice a convention from the people," and further warned that the legislature would gain
the party's enmity and suffer its wrath if a convention was not called.\textsuperscript{18}

This threat was prophetic. The legislature wrote its own constitution (by means of a special joint committee and not a commission) and its efforts ended in failure. This in turn led to a popular outcry that forced even the most determined convention opponent into acquiescence if not agreement.

The senate acted on constitutional revision first, and once again became a convention-killer. Initially, the opposition in the senate appeared weak. Only seven voted against the convention resolution. This vote on February 21 began a series of parliamentary battles that lasted four days. With the foes of a convention consistently gathering strength, the struggle deadlocked on February 23 when Lieutenant Governor Richard Hubbard broke a thirteen to thirteen tie to prevent the commission resolution from being substituted for the convention one.\textsuperscript{19} On the next day, the convention resolution received the "kiss of death" when the senate approved an amendment that provided for a special tax. Ostensibly to pay for the convention, this high tax of one-eighth of one per cent \textit{ad valorem} greatly decreased chances of the peoples approving a convention while they also clamored for retrenchment.\textsuperscript{20} With the resolution disfigured by the tax amendment, several proponents of the convention joined its foes to kill the measure.\textsuperscript{21} The constitutional convention was dead -- for this session at least. The constitution prohibited consideration of legislation "containing the same substance" twice in the same session.\textsuperscript{22}
Undaunted by events in the senate, the house initiated action on its convention resolution February 25, 1874. First, the house agreed, by the slender margin of three votes, to consider this joint resolution instead of the commission bill (which ordinarily would have been its business by virtue of having been introduced by the majority of the committee on constitutional amendments). House opponents of a convention attempted to follow the lead of their senate compatriots and use unfriendly amendments to gain what a direct attack on the convention resolution could not. These consistently failed until on March 5 a motion passed "to re-commit the joint resolution and substitutes to a special committee of five, to be appointed by the Speaker." Speaker Guy M. Bryan opposed a convention, and he named three other foes to the special committee.  

When this committee reported the next day, it divided along the pro- and anticonvention lines of its membership. The majority report introduced a new stratagem by the convention's enemies -- delay. In a flanking movement, this report recommended a two-stage process for calling a constitutional convention. First, the people would vote on whether to have a convention at the next general election in November 1874, and the election of delegates would occur at another election at even a later date. The majority report justified this sly maneuver in high-minded terms by saying the two election process was necessary "in order to obtain the 'sober second thought' of the people." In the Fourteenth Legislature's second session, delay became one of the key tactics of those opposed to a convention.  

The house defeated the majority report by the narrow margin
of four votes. But it added a new section to the convention resolution which allowed the people to approve or reject the convention at the same May 1874 election already planned for the election of delegates. Finally, the house passed the joint resolution as amended by a substantial majority.  

Cheered by the victory, senate advocates of a convention renewed their efforts on its behalf, but opponents of this measure responded to their efforts by seeking to defeat it with a head-on attack. One foe used a tactic that operated in two stages. First, he moved to bypass the usual referral to committee and instead to have immediate action by the senate. When this passed, he proposed further to postpone the convention resolution indefinitely, but this failed. Then, another convention enemy changed to a different strategy and used a point of order to attack the house joint resolution as contravening the constitutional prohibition against reconsideration of a legislation already defeated. A convention proponent, however, presided over the senate as president pro tem at the time of this motion and ruled against the point of order. This decision was in turn appealed to the whole senate and the last hope of a convention in 1874 died when the upper chamber voted by a majority of two to overrule the chair. This left the legislature stalemated, for both houses had already killed their commission legislation.  

The stage was set for a bold initiative to break the legislature's deadlock and reenergize the vital issue of constitutional revision. Despite disagreement about method, all Democratic legislators wanted a new constitution. Governor Coke had a plan that remained
untried, and on March 16, 1874, he proposed in a formal message to the legislature that a special joint committee write a new constitution. But desire for a constitutional convention both in the legislature and among the Democratic rank and file remained strong, and the governor used most of his 2,500-word address to justify his precedent-breaking suggestion of revision by committee. 27

Coke, in the introduction to his message, assumed the posture of an Olympian who descended from the summit of leadership to break a legislative impass concerning constitutional revision. He evoked this image by saying:

Since it is understood that your honorable bodies have decided not to call a constitutional convention, I deem it not improper to break the silence I have purposely observed on this subject pending its consideration.

He went on to remind lawmakers of his January 26 recommendation for using a special joint committee to write a new organic law. Moreover, he complimented the legislature for acting "wisely" in defeating both convention and commission. 28

In the technical sense of not having publicly stated his position, the chief executive could claim "silence." But in his direct communications to and interreactions with the legislature he had played a distinctly partisan role, and the pose of impartiality was a ploy. Whatever impact his action had on the legislature, he did inform that body of his preferences and lobbied within it to secure those objectives.

After the senate defeated the convention resolution received on February 23, 1874, the governor also interjected himself into the legislative proceedings to kill the commission bill. Coke employed a
carrot and stick approach to further the cause of revision by committee. Giving a promise to use his prestige to secure voter ratification of a constitution written by his method, the governor also threatened to veto a commission bill. To what extent this promise and threat affected lawmakers is unclear, but the legislature smothered the commission bill in committee and agreed to form a special joint committee immediately after the governor formally proposed it.29

Coke's March 16 message read like a lawyer's brief in support of a client. The former Texas Supreme Court justice employed a variety of arguments designed to legitimize his committee plan and assert its superiority over a convention. First, he had to neutralize criticism that a committee was both undemocratic and an evasion of the Democratic party's promise to call a convention. The answer to these objections, the chief executive maintained, was the popular vote of ratification that occurred as part of the amendment process. This vote constituted "a remittitur of the whole question to the people," and thus "the result demanded in the [party's] platform is redeemed in substance and in spirit."30

Most of the March 16 message elaborated upon one dominant theme: revision by committee gained all the benefits of "tranquility and repose," while that by convention threatened all the dangers of "renewed political agitation."31 The specific difficulties faced by Texas as a part of this choice included, frequent amendment of the new constitution if poorly drafted, disruption of the sale of the state's bonds, and the access of Negroes to the ballot box. In each case, the chief executive believed that revision by committee offered
greater benefits than the hurly-burly of a constitutional convention and the election of delegates that preceded it.

The governor asserted that the overall quality of the constitution to be written was at stake in the method of revision. In making this argument he sought to turn one of the weaker points of the committee approach, its use of the time-consuming and difficult amendment procedure, into a strength. Asserting that "a constitution hastily gotten up, would soon have to be amended or superseded by a new one," Coke proclaimed the three step amendment system as the proper remedy for this problem. Having the legislature propose the amendment with a two-thirds majority, the people approve the amendment by a simple majority, and the next legislature confirm the public's vote by another two-thirds majority, provided, in his opinion, the "mature deliberation" the state needed. Amendment, because of its complexity, allowed for a "thorough discussion of these [i.e., constitutional revision] matters by the best minds of the country."  

Another danger in the "precipitate action" of calling a constitutional convention in 1874, Coke maintained, was the impediment it posed to the sale of $1,900,000 in bonds needed to fund the state debt. Faced with impatient creditors and an impoverished treasury, Texas had to rush its bonds into the nation's capital markets. Given this necessity, the chief executive conjured up a grim scenario: "If a convention had been called, the canvass preceding the election for delegates, would have been in progress with high party excitement, at the very time when our bonds will be in market...(thus) capital which is proverbially timid, would have shrunk from an investment in our
bonds, except at discounts we would be unwilling to submit to." Unlike an election, the legislature stimulated little public debate and a committee even less.\textsuperscript{33}

Finally, blacks also concerned Coke, but he did not tie this problem to specific constitutional suggestions. In such a delicate matter, implied opinions appeared to be sufficient recommendation for specific legislative action. About blacks the governor warned: "We have 40,000 unenlightened black voters, natural followers, in their simplicity and ignorance, of the unscrupulous trickster and demagogue, in some portions of Texas, largely outnumbering the whites, and having equal privileges with them at ballot box, and in the jury box."\textsuperscript{34}

A committee offered two advantages over a convention to the governor or anyone else emphasizing race as a major constitutional issue. First, it denied blacks any influence in the creation of an organic law. A convention required an election of delegates that involved Negro participation as both voters and as delegates. Second, the more controlled (and controllable) environment of a committee enhanced the chances that it would include the type of barriers to black political participation that "conservatives" wanted.\textsuperscript{35}

The chief executive concluded his message to the legislature with suggestions concerning the type of constitution that should be written. These recommendations made a strong appeal for the continuance of liberal constitutionalism.

In a summary of his arguments on this subject, the governor stated:
It will be found universally true that those State constitutions which contain the smallest number of provisions, which adhere most closely to fundamental declarations, and to fixing simply of boundaries, leaving the interior to be filled by the enactments of the legislatures, have been the wisest and most enduring. A law enacted at this session of the legislature, which proves on trial to be bad, may be repealed at the next, but put in the Constitution and it must be submitted to, possibly for years, and until the sovereignty of the State is aroused.

This classic statement of liberal constitutionalism reflected the type of organic law Texans had always written. But times were changing, and in the 1870s restrictive constitutionalism emerged as a challenge that generated divisiveness in the Lone Star and other states.

Coke presented his committee plan as a fair resolution of the common Democratic desire for a new organic law, while in fact he was taking sides on the one major issue he did not mention in his March 16 message. The division among Democrats was over the type (i.e., liberal or restrictive) of constitution they wanted. This split was hidden within the party's almost universal desire for a new organic law. The Constitutions of 1874 and 1876 were both the product of this conflict and the best expression of the objectives sought. The 1874 instrument adhered to liberal constitutionalism and imposed controls on the political process, while that of 1876 utilized restrictive constitutionalism and placed no broad restrictions on political participation.

Dissent within his party put the governor into a dilemma. What he believed to be good for the Democratic party differed from what was democratic. He chose the former but claimed both. A committee could and did provide Coke with the liberal constitution he
sought, but it could not and did not allow for the popular involvement in the decision-making process he promised. The committee was attractive because it excluded Republicans and dissident Democrats from influencing the constitution's content. Working in a quiet, even cloistered, fashion, the legislative committee neither indirectly stimulated nor directly sought public debate and advice. Furthermore, this small group of men was far easier for the Democratic party leadership to control than a large number of men caught up in the excitement of an election and a convention. Indeed, the leadership tried to maintain a tight grip on the nomination of delegates in 1875, but failed miserably.\textsuperscript{37}

Coke's predictions about the relative merits of a committee or a convention proved correct in all respects but one. The projected disruption in the sale of Texas bonds never occurred. The state's bonds retained their value throughout the election of convention delegates.

The legislature responded to the March 16 message with alacrity. The senate passed a concurrent resolution creating a special joint committee on the same day as the address, and the house approved that resolution on the following day. The composition of the committee conformed to a suggestion made by Coke on January 26, but not repeated on March 16; it comprised the house and senate committees on constitutional amendments.\textsuperscript{38} This joint committee labored for a month, and the only record that remains of its deliberations is the new and complete constitution it wrote. On April 18, 1874, the joint committee reported its organic law in the form of a joint
The special joint committee returned its work to the legislature in a distinctly different fashion than its component committees on constitutional amendments had done in the previous February. At that time, these two committees had presented their respective houses with majority and minority reports and with contending convention legislation. The joint committee, on the other hand, reported only its proposed constitution with no comment either supporting or opposing that document. Since neither the house nor senate recorded the roll call of the constitution resolution votes, the variance in the positions of the special joint committee's membership cannot be ascertained. Two senators of that committee, however, introduced hostile amendments to the joint resolution.

The document written by the special joint committee, the Constitution of 1874, had little that was entirely new and was largely a compendium from earlier organic laws. In style and substance, it closely resembled the Constitution of 1866, which had carried over most of the Constitution of 1845 verbatim while adding various provisions to enhance government's powers. Using the 1845 organic law as its core meant that the 1874 document placed few restrictions on government. The legislature had full power over salaries, taxes, allocation of revenue, aid to private enterprise by local governments, and a wide variety of specific subjects controlled or proscribed by the Constitution of 1876. One restriction that the committee-written organic law placed on the legislature was a list of subjects that could not be enacted as special or local laws. This provision was largely a copy of an 1873 amendment
to the Constitution of 1869, and it still fell short of the twenty-eight items to be specified in 1876. The 1874 instrument was less restrictive than that of 1845 on two important points. It did not prohibit banks, and it raised the limit on state debt from $100,000 to $1,000,000.

The Constitution of 1874 not only resembled that of 1866 in its active government measures, it contained many of the same provisions. In fact, all three postwar organic laws (1866, 1869, 1874) shared a variety of such provisions. These included a basic term of four years for state and local officials, salaries at rates significantly higher than in the Constitutions of 1845 and 1876, and a state system of free public schools. Common to the 1874 and 1869 documents, but not that of 1866, were sections establishing a state superintendent of public instruction and allowing that one-fourth of the state's general revenue (albeit that was a maximum in 1874, and it was a flat requirement in 1869) be set aside for public education.

The one area in which the Constitution of 1874 broke new ground was in responding to the one novel problem it faced -- Reconstruction. It did so by deleting the rhetoric of that era found in the Constitution of 1869, and by making substantive alterations in the political process. The 1874 organic law, like that of 1976, removed or revised provisions that aided blacks or proclaimed the sovereignty of the national government. The committee document eliminated two measures that sought to protect Negroes -- one outlawing "any system of peonage" and the other legitimizing marriages contracted in and the
children born during slavery. Moreover, that organic law reduced a third section by approximately two-thirds by retaining only this statement: "the equality of all persons before the law is herein recognized, and shall remain inviolate." Not carried over was wording that explicitly protected blacks. Statements about Texas' place in the federal system also changed drastically. The 1874 instrument purged references to "the heresies of nullification and secession," and replaced a section proclaiming the "subordination" of the state constitution to that of the nation with one simply acknowledging the United States Constitution as "the supreme law of the land."

Finally, the Constitution of 1874, as written by the special joint committee, included provisions that reduced popular access to the political system. These measures had no parallels in the Democratic-written organic laws, and while the Constitution of 1869 had at least two points in common with that of 1874, the intent of the two documents was quite different. First, both allowed voter registration. Republicans had employed such registration to ensure that disenfranchised former Confederates did not go to the ballot box, while Democrats wanted to use it to deny Negroes access to polling booths. Second, the 1869 and 1874 documents provided for the appointment of district judges. The appointment of judges had long had proponents in the state and the 1869 constitution had made judges of the supreme and district courts appointive. But by having only the district court judges appointed, the 1874 constitution was acting more from political expediency than from an alternative tradition. Republicans possessed local majorities in the black belt that could
elect district judges, and the appointment of these judges would ensure that only Democrats would hold that office. 49

A third measure in the Constitution of 1874 restricting political participation was unique in nineteenth century Texas constitutionalism — the poll tax as a franchise requirement. 50 This tax had long been used as a revenue measure but never as a suffrage limitation. 51 With the legislature's refusal to pass the constitution resolution, the connection between the poll tax and voting did not occur until a 1902 amendment to the Constitution of 1876. That document did not originally do this because the 1875 convention explicitly rejected such a suffrage requirement. 52

Five days after the special joint committee reported, April 23, 1874, the Senate began deliberations of the constitution resolution. Proponents of a constitutional convention attempted to block this joint resolution through stalling tactics, but these failed. While the senate was defeating hostile motions, it also considered various amendments. The upper chamber approved only one major change in that document; it made district court judges elective. On the same day that the senate began work on it, the convention resolution passed. 53

The following day, April 24, the house took up the resolution as approved in the senate. A motion to delay consideration of the convention resolution until the "next" (i.e., either special or regular) legislative session provoked an extensive debate in which "the gist of the argument seemed to be that... the [framers of the] joint resolution had assumed to themselves the prerogatives of framing
an entire new Constitution." Since Governor Coke had openly made this a goal of the special joint committee in his March 16 message, the house was once again evading the real issues concerning constitutional revision.\textsuperscript{54}

The one exception to this lack of candid communication in the Fourteenth Legislature was the February 11 minority report of the house committee on constitutional amendments. This report had argued that a constitutional convention was necessary and had disclaimed a commission as antidemocratic. In defeating the constitution resolution, "the House took the view," according to the Panola Watchman, "that the work of the committee smacked too strongly of a commission." Certainly the people never participated in the Constitution. Nor did they learn its contents. The only information ever published about it was a partial and not entirely correct summary that appeared in the Watchman.\textsuperscript{55}

The February 11 minority report had predicted a great public outcry if the legislature did not call a constitutional convention. The validity of this prophecy was soon to be clear.
1. The San Antonio Herald agreed with the North Texan and further
   demanded: 'Throw into the impeachment cauldron, the Supreme
   Court..." Paris North Texan, quoted in San Antonio Daily Herald,
   July 11, 1872.

2. Galveston Daily News, December 31, 1872 (quotation), January
   11, 19, 20, 1873.

3. Ibid., January 11, 1873.

4. Despite the limitations they faced in the 1873 legislature,
   Democrats accomplished a variety of their political objectives in that
   legislature. For a discussion of the Thirteenth Legislature's actions,
   see: W.C. Nunn, Texas Under the Carpetbaggers (Austin, Texas:
   University of Texas Press, 1962), 114-117; Ann Patton Baenziger,
   "The Texas State Police During Reconstruction: A Reexamination,"
   Southwestern Historical Quarterly, LXXII (April, 1969), 468-469;
   Ernest Wallace, Texas in Turmoil (Austin, Texas: Steck-Vaughn Co.,
   1965), 216-221.

   York Constitutional Revision Commission, 1873; Edward McPherson,
   A Hand-Book of Politics For 1874 (Washington, D.C.: Solomons and
   Chapman, 1874), 63-66.

6. Texas, House Journal, House of Representatives, Thirteenth
   Legislature, 1873, 276; Texas, Senate Journal, Senate, Thirteenth
   Legislature, 195; Texas, House Joint Resolution (H.J.R.) 312, Senate
   Joint Resolution (S.J.R.) 20, Thirteenth Legislature, Legislative
   Records, Archives Texas State Library.

7. House Bill (H.B.) 362, ibid.; House Journal, 13th Leg., 1873,
   298; Galveston News, April 2, 4, 1873; Austin Daily Democratic States-
   man, March 9, 1873; Ernest W. Winkler ed., Platforms of Political
   Parties in Texas (Austin, Texas: University of Texas Bulletin no. 53,
   1916), 147.

8. House Journal, 13th Leg., 1873, 680-1, 793-5; H.J.R. 312,
   13 Leg.

9. The amended version of the senate convention received a new
   number, S.J.R. 34, while the house kept its resolution under the same
   nomenclature, i.e., it remained H.J.R. 312 even after amendment.
   S.J.R. 34 is no longer extant. Senate Journal, 13th Leg., 1873, 628-9,
   658.

10. Austin Statesman, May 2, 1873.
11. Houston Telegraph, September 7, 1873.


15. Of the joint resolutions introduced at the time of Coke's January 26 message only that of the house, H.J.R. 8, is preserved, and it consists only of a title without text. The senate committee's commission resolution, S.J.R. 101, has not been preserved and its convention resolution, S.J.R. 88, is located in the committee reports, Committee Reports (C.R.) 3. The house committee's commission bill, H.B. 188 and convention resolution, are preserved in their proper sequential order, but another copy of H.J.R. 11 is misfiled as S.J.R. 11. See 14th Leg., reg. sess., Legislative Records; House Journal, 14th Leg., reg. sess., 107, 222, 230-234; Senate Journal, 14th Leg., reg. sess., 57-58, 177-178, 198.

16. Ibid., 177.

17. House Journal, 14th Leg., reg. sess., 233. The Dallas Herald had made the same warning as the minority report and had done so in the context of an article sharply critical of both the governor and the legislature: "The people are astonished at the tardiness of the Fourteenth Legislature in approaching this question, as well as the double shuffling of Governor Coke in his message, wherein he recommends constitutional amendments or a convention. This is not what was promised, Governor, by the Convention that nominated you - a square flat-footed convention was promised.... Refuse or postpone it, gentlemen, and ere long your political requiem will be sung by an outraged people." Dallas Herald, quoted in Austin Statesman, February 10, 1874.


19. Senate Journal, 14th Leg., reg. sess., 377. According to a newspaper report, Hubbard disclaimed taking sides on the convention issue with his vote. Rather, he told the upper chamber that he merely desired to have "this question remain before the Senate." Galveston News, February 24, 1874.

20. The state ad valorem tax was one half of a percent or four times the proposed special tax. The exact amount of revenue this state tax produced cannot be stated for the comptroller reports give only a composite figure reflecting receipts for all forms of taxation. Nonetheless, the property tax formed the great bulk of these total tax receipts figures. In the 1874 fiscal year, the state collected a
total of almost $1,250,000, and of this over $880,000 was for the 1873 assessment (i.e., the 1874 collection) with the difference in the two figures being delinquent taxes. In the period from September 1, 1874, to February 1, 1876, a further $180,000 was obtained from the 1873 assessment. In short, any additional tax threatened to anger voters, but the one-eighth percent tax was a ploy to turn opponents' overly inflated estimates of a convention's cost into a burden the people would reject. Convention foes estimated cost at figures ranging from $250,000 to $500,000 while its friends believed $50,000 would do. In 1875, the legislature appropriated $100,000 for a convention, and in 1876 the Comptroller reported that $62,000 had been disbursed for that body. Senate Journal, 14th Leg., reg. sess., 374-375; H.P.N. Gammel, Laws of Texas (Austin, Texas: The Gammel Book Company, 1898), 199; Comptroller of Public Accounts, Annual Reports, 1874, 1875, 1876; S.J.R. 452, 14th Leg., 2nd sess., Legislative Records; Austin Statesman, February 4, 27, 1874; Austin State Gazette, February 3, 1874, quoted in ibid., February 4, 1874; Galveston News, 6, 21, 1874; Panola Watchman (Carthage), March 11, 1874; for the manuscript version of the tax amendment to the convention resolution, see C.R. 3, 14th Leg., reg. sess., Legislative Records.


24. Ibid., 455 (quotation), 456-458.

25. Ibid., 458-461.


27. House Journal, 551-561. One representative had introduced a resolution for a committee on March 6, but the house immediately rejected it. See p. 457.

28. Ibid., 552.

29. Austin Statesman, February 27, 1874; Galveston News, March 6, 1874.


31. Ibid., 557.

32. Ibid., 553 (1st quotation), 555 (2nd quotation), 554 (3rd quotation).
33. Ibid., 555 (1st quotation), 556 (2nd quotation).

34. Ibid., 554-555.

35. This is Coke's term, and about it, he said: "When conservatism, which measures well the ground which it treads, and estimates closely the consequences before it acts, rules the hour, while the people of Texas may wish that speedier progress could be made, I have no fear but that they will have an abiding confidence in the wisdom and beneficence of ultimate results, through measures, which though slow, are surely conducive to the public weal," Ibid., 557.

36. Ibid., 559-560.

37. No information remains to indicate to what degree, or even at all, Coke or any other Democratic leader actually used the potential for control the committee offered. The committee, however, did provide precisely the type of constitution that the governor wanted. Moreover, the chairman of the house committee on constitutional amendments, W.B. Sayers, was a consistent supporter of a convention before the joint committee was created, but he became a firm foe of one while serving on it. For a study of the election of delegates to the Constitutional Convention of 1875 see: John Walker Mauer, ed., "William Alexander's Political Trick: The 'Secret Circular' of 1875," Southwestern Historical Quarterly LXXXI (January, 1978). 283-298.

38. Senate Journal, 14th Leg., reg. sess., 561; House Journal, 14th Leg., reg. sess., 571-2.

39. S.J.R. 452, 14th Leg., reg. sess., Three copies of this document are extant. Two are printed copies of the document written by the committee, and one of these also has separate slips of paper containing the proposed amendments in manuscript. The third is a handwritten version of the joint resolution as passed by the senate.

40. Senate Journal, 14th Leg., reg. sess., 693-4.


42. Ibid., Art. VIII, sec. 30; Constitution of 1876, Art. III, sec. 49.

43. Term of office: the constitutional maximum was the same in 1845, 1866, 1869 and 1874 -- four years, and in 1876 it was two years, but the term for offices individually defined was, house of representatives and judiciary excepted, two years in 1845 and 1876 and four years in the postwar organic laws. Salaries: the legislature went from $3 in 1845, to $8 in 1866 and 1869, and to $5 per day in 1876 (but only for the first sixty days when it became $2), while the
1874 document specified no figure; the supreme and district courts jumped from $2,000 and $1,755 per year respectively in 1845 to $4,500 and $3,500 in 1874 and 1876 and then fell in 1876 to $3,550 and $2,500. The pay for the attorney general and for district attorneys was not specified in 1845, but in 1866, 1869, and 1874, it was $3,000 and $1,000 per year respectively while in 1876 it was $2,000 and $500. Figures for the treasurer, comptroller, commissioner of the general land office and secretary of state appeared in 1869 and 1874 when they were all $3,000 per year and in 1875 when they were $2,500 except for the secretary of state which was $2,000. Finally the state superintendent of public instruction got $2,500 in 1869 and 1874, the only documents to cite a sum for this office.

44. Concerning education, the Constitution of 1869 went further than any other Texas organic law to ensure a system of schools by requiring attendance four months a year.

45. Constitution of 1845, Art. I, Sec 22 (quotation), Art. XII, 527.

46. Ibid., Art. I, sec. 21; Constitution of 1874, Art. I, sec. 3.


49. Ibid., Art. IV, sec. 6; Constitution of 1869, Art. V. sec. 2, 6. The limited, but still extant, voter strength of the Republicans after Reconstruction is apparent in the 1873 general and the 1875 constitutional convention elections. In the former the minority party elected one of ten senators and eight of ninety representatives, and in the latter they won fifteen of ninety delegates.

50. Constitution of 1874, Art. VIII, sec. 34.


53. Senate Journal, 14th Leg., reg. sess., 693-694.

54. House Journal, 14th Leg., reg. sess., 716-717.
55. *Panola Watchman* (Carthage), May 6, 13 (quotation), 1874. The *Watchman* is the only newspaper extant that published details about the content of the Constitution of 1874, and Seth Shepard McKay relied exclusively on the information printed in the *Watchman* in his discussion of the 1874 document. Seth Shepard McKay, *Seven Decades of the Texas Constitution of 1876* (Lubbock Texas: Texas Technological College Press, 1942), 57-58.
Chapter V The Call of a Constitutional Convention

Under the guidance of Governor Richard Coke, the 1874 session of the Fourteenth Legislature went against the Democratic rank and file's desire for a constitutional convention, and wrote a new constitution under its amendment powers. When the house killed the Constitution of 1874, a constitutional convention became inevitable, and the governor called a special session of the legislature for January 1875 to provide for a convention. Because of the overwhelming public pressure for a constitutional convention, legislators who opposed a convention could do little more than briefly delay the call of a convention. The Democratic leadership had long fought against a constitutional convention because they doubted they could control it. This doubt was well grounded. Under the Democrats state government continued to spend and to create deficits in much the same way as it had under the Republicans. Moreover, parallels existed between the administrations of Republican Edmund J. Davis and Democrat Richard Coke even in areas in which these two administrations had important differences in their spending. Although the Davis and Coke administrations funded law enforcement and frontier protection in sharply different amounts, they had much continuity in terms of the problems they faced and the solutions they considered.

Even the most diehard Democratic opponents of a convention had to accept its inevitability. An overwhelming majority of their party's rank and file wanted a convention. In the 1874 summer, Democrats met first in county and then in congressional district party con-
ventions to nominate their candidates for the fall election to the United States Congress. In many of the counties and all six congressional districts the Democratic party issued platforms supporting a constitutional convention. The platform of the First Congressional District expressed the intensity of feeling that the party's rank and file had on this subject: "We demand a Constitutional Convention at the earliest practical moment."¹

Foes of a constitutional convention correctly recognized that the public clamor for such a body had become irresistible. The press became almost unanimous in support of a convention.² When the venerable and influential Galveston News announced its switch to support of such a body, it concluded its editorial with this admonition to the state's politicians: "In short, a constitutional convention is demanded by the people, and it would be madness for the Legislature to ignore sentiment that is equally imperious and manifest. The first business of the next session should be to call the convention."² Politicians had come to the same conclusion. Senator John L. Camp, a leading opponent of a convention in the 1874 legislature, wrote Governor Coke a few days before the News editorial, advising him to call a special session of the legislature quickly in order to satisfy the popular desire. The governor made the call, and he scheduled the legislature to meet in early January 1875.³

Opponents of a constitutional convention did not end their objections. Governor Coke remained convinced that his points of opposition to a convention expressed in the 1874 legislature were correct.⁴ But once he publicly announced his support for a convention
he continued to work for it and its product despite any inner reservations he might have retained. Camp and other opposition legislators, however, neither gave up their struggle against a convention nor lost their preference for revision by amendments. Still, the popularity of a convention was so great that the opponents could no longer directly challenge it. Opposition in the 1875 legislature was in the form of a subtle parliamentary struggle.

Coke, in his January 12, 1875, message, set the stage for the 1875 legislature's deliberations on the constitutional convention. He justified not having called one earlier and gave specific recommendations about the convention. Ignoring earlier fears that a convention might exacerbate internal dissension among Democrats, the governor justified the convention's delay on external factors:

The causes which one year ago rendered it imprudent to call together a constitutional convention have ceased to exist, and the time and temper of the people are propitious for the work of constructing a new constitution.

We no longer fear Federal interference; we are not hampered with financial embarrassment; the popular mind is free from passion or excitement, and views the great questions to be solved, through no discolored medium and last but not least, for twelve months past, the thinking men of the state have been studying and investigating the subjects to be dealt with in framing a constitution and are now prepared to act.

Coke made several suggestions that became major points of contention in the legislature. The governor believed that the convention should be held no later than April and that it should have ninety members, with three delegates from each of the thirty state senatorial districts.

The senate initiated action on constitutional revision, and the recommendations in the governor's message provided guidelines for its deliberations. When the convention resolution emerged from
committee, the senate set a date in May, close to that recommended by the governor, but it significantly altered the governor's provision for the delegates. The senate committee version raised the convention's membership to 120, by choosing five delegates from each of the state's six congressional districts in addition to those from the state senatorial districts. Only one report accompanied the committee resolution, but this apparent unanimity stemmed more from senators' desire for speed than from agreement on the resolution.\(^5\)

The urgency in the committee affected the senate as well. The upper chamber took up the convention resolution on January 22, 1875, and passed that measure the same day. This speed resulted from a desire to satisfy the public's demand for quick action on a convention and not from unity about details. The senate, like its committee, differed on the specifics of holding a convention. On January 22 the senate defeated an effort to postpone the convention to September and reduced the membership to the ninety delegates recommended by Governor Coke. But the next day the senate agreed to a September convention and rejected motions to have additional delegates elected either from the congressional districts or from the state at large. The upper chamber also added three new features to the convention resolution: a popular referendum to approve the calling of the convention, a general election to be held simultaneously with the referendum and election of delegates, and an appropriation of $100,000 to pay for the convention.\(^6\)

The senate not only passed the convention resolution quickly, but it did so in a vote that had only three dissenters. Two of those
three recorded their reasons for doing so and they showed that the old antagonisms were hidden but not gone. One dissenter who favored a convention reminded his colleagues of the popular demand for a convention at "the earliest possible time," and then complained that "the effect of this bill [the convention resolution] will be to thwart the will of the people...and perhaps prevent the assembling of a convention at all." The anticonvention senator renewed his call for revision by amendment and used the old explanation of expense to justify his position.7

The speed with which the senate, the convention-killer in 1873 and 1874, approved the 1875 convention resolution sharply contrasted to the delay that occurred in the house. Initially the lower chamber's slower progress stemmed from the adamant position taken by the proconvention legislators. The details of the convention resolution that had provoked only limited disagreement in the senate caused a much more intense controversy in the house.

When the convention resolution came out of committee on January 26, the house faced a different situation than had the senate. The house committee sent majority and minority reports, that amended the convention resolution. The committee's majority generally supported the resolution as passed in the senate. The majority wanted to eliminate only one provision, the general election, and to add two other measures. The first of these amendments merged the fifteenth and eighteenth senatorial districts in order to elect six delegates collectively rather than three delegates separately. The fifteenth district had a small majority of blacks that would be overcome by the
larger white Democratic majority in the eighteenth district. This fusion of the districts, therefore, had clear racial implications. The other amendment set the delegate's salaries at the same rate paid legislators. Since one criticism made under the rubric of "retrenchment and reform" was that salaries were too high, this provision concerning stipends was sure to create negative feelings among the voters. 8

The minority of the house committee vigorously attacked the senate version of the convention resolution. The minority, like the only proconvention senator who recorded a protest, asserted that the resolution contravened the will of the people and, as a result, jeopardized the convention. They argued that scheduling the convention for September, having a popular referendum, and holding a general election posed similar threats of division in the Democratic party that would give the "balance of power" to the Republicans. If this happened, the minority contended, the convention would lose. To protect the convention the minority suggested two amendments: a May starting date and the elimination of the referendum (the minority did not mention the general election since the majority had already proposed killing it). 9

The house delayed taking any action on the convention resolution and the amendments proposed in committee for more than a week. On February 3 the house rejected the plan to merge state senatorial districts fifteen and eighteen. Three days later the representatives voted against the popular referendum. In these two votes a majority in the house demonstrated an affinity with the committee's minority,
but before the lower chamber could completely reveal its preferences events external to Texas temporarily gave anticonvention legislators the upper hand. 10

A message sent to Congress by President Grant on February 8, 1875, appeared to threaten federal intervention in the internal affairs of Arkansas. The perception of danger directed against one Southern state caused anxiety in the entire region. Shock over Arkansas was heightened by the action Grant had recently taken to help settle another disputed election in favor of Louisiana Republicans. The South reacted to the President's message by putting plans for constitutional conventions on hold. At least two southern states in addition to Texas were considering such conventions, and all of them delayed action on those conventions upon receiving word of Grant's message. 11

Although the Arkansas controversy had its origins in the disputed gubernatorial election of 1872, the chain of events that led to the February 1875 message grew most directly out of the so-called Brooks-Baxter War and the Arkansas Constitutional Convention of 1874. In the spring of 1874, Joseph Brooks, the unsuccessful gubernatorial candidate in 1872, precipitated the Brooks-Baxter War by trying to secure the governorship that he claimed incumbent Elisha Baxter had gained fraudulently. Both men were Republicans. Brooks was more closely tied to the national party, while Baxter had cooperated with the Democrats. The "war" between the two men ended when Grant formally recognized Baxter as governor and ordered Brooks's supporters to disband. 12
The federal government's interest in Arkansas did not end with the conflict between Brooks and Baxter. During the imbroglio the U.S. House of Representatives formed a select committee to investigate the situation in the Razorback State. The existence of this committee took on an added importance when Arkansas Democrats decided to use a constitutional convention to speed up their return to power. As he had in other ways, Baxter obliged Democrats by calling a convention in the summer of 1874, and that body, besides writing a new constitution, called a general election for the fall of 1874 -- two years before it was due under the 1868 Constitution.

Arkansas Democrats, by using a constitutional convention to advance their return to power, left themselves open to a charge of usurpation of power. Grant struck at them on exactly that point. But in the conclusion of his message -- the part largely ignored by southerners -- the President revealed that despite his harsh words concerning the Brooks-Baxter War and the Constitution of 1874 he would not press for intervention. "I earnestly ask that Congress will take definite action in this matter," Grant stated, "to relieve the executive from acting upon questions which should be decided by the legislative branch of Government." The House did not vote on the Arkansas question until March 2, but when it did, it confirmed the committee report which had elicited Grant's message in the first place. "The committee do not recommend," the report had asserted on February 6, "any action by Congress or by any other department of the General Government, in regard to the State government in Arkansas." ¹³

When word arrived in Texas about Grant's message, it had a
profound effect on the legislature. Proconvention representatives joined with their opponents to vote overwhelmingly in favor of postponing passage of the convention resolution. The fears that prompted the house to delay received strong support from the Austin Statesman, a staunch proponent of a convention. To help explain its position on postponement, the Statesman published an anonymous essay that portrayed a grim picture of what would happen if the state wrote a new constitution:

This message of Grant's is the entering wedge to new agitation in the South, and true statesmen, seeing the danger from afar, will shudder when a body of State government makers assemble in convention. Is it not madness to call a convention when the President holding the vast power given by the 'enforcement act,' in command of the army and navy, and backed by a desperate and fanatical party, utters such sentiment as his message of yesterday contained?...

We are expecting too much if we suppose that any convention can now make a Constitution for Texas, which will satisfy the people and be acceptable to Grant and the American Senate...A full answer to the argument 'that the people want a convention,' is found in the fact that Grant had not written his message on the Arkansas Constitution, nor overturned the Louisiana Legislature with the bayonet, when our people were last heard from."

Most of Texas' newspapers refused to be rattled by events outside the state and continued to favor a convention. These newspapers, like those supporting postponement of the convention resolution, condemned Grant's message, but they did not argue that the Arkansas situation justified killing or even delaying a constitutional convention. The Houston Age expressed this viewpoint with rhetoric that was unusual in its color but not in its intent:

The people of Texas are to-day presented with an exhibition of moral cowardice unparalleled in the history of their Commonwealth...

The Legislature, we are confident, are [sic] about to refuse the call for a convention. They are to rest upon the flimsy and
cowardly excuse that Grant -- 'Great Caesar of us all' -- has pronounced against the State of Arkansas...This case of the Republican Tyrant is tortured into a threat against all the States, and is made to do service in the interest of the anti-convention ring of Texas.\footnote{15}

The Austin Statesman returned to the fold of convention advocates on February 20, but the Arkansas affair had given opponents reason to set aside their reluctant support for the duration of the legislature's 1875 session.

The house, besides the widespread dissatisfaction expressed in the press, also faced internal opposition to its delay of the convention resolution. William Sayers, chairman of the committee on constitutional amendments, on February 18 chastised his colleagues in the house (paraphrased):

A just indignation was arising from them [the people], and he feared the consequences if the Legislature do not immediately provide a means for the assembling of a constitutional convention. The people, he charged, are getting restless and indignant, and he must acknowledge his dread of returning home without the Legislature making such a provision. It is already being charged that legislators are becoming the servants of placemen. It is known that the officeholders in this State are working against a convention, and this Legislature is occupying the mean position of being influenced by them.\footnote{16}

The house ignored Sayers and its other critics, and for the rest of February it refused to take any additional action on the convention resolution.

When, on March 2, the house finally chose to renew work on the convention resolution it did so with far more speed and vigor than had characterized its earlier deliberations. Once the rush to finish began it took only two days to pass the convention resolution, and the legislators added only one more amendment to the two already approved.
The new amendment provided for popular revision of the constitution after the convention wrote it, while the amendments previously approved eliminated the general election and the popular referendum which the senate had scheduled with the election of delegates.17

The senate divided sharply over the house amendments to the convention resolution. The senate committee on constitutional amendments presented on March 6 a majority and two minority reports. The majority objected only to the vote of ratification, while one minority report recommended concurrence on all three of the proposed changes. The other minority report, however, advised rejection of all three amendments and justified its recommendation with typical anticonvention rhetoric. "We believe," proclaimed the second minority report, "it a matter of serious doubt whether a majority of the people of the State are, under present circumstances, in favor of calling a constitutional convention at this time..." The second minority report went on to assert the right of the voters to choose whether they wanted constitutional revision by convention or amendment, and also to remind the legislature that a popular referendum would not "obstruct the holding of a convention if the people wanted one."18

When the senate voted on March 8 to reject all three amendments, it appeared to be at loggerheads with the house. But the lower chamber responded with an olive branch. It allowed the convention resolution to receive its final approval quickly. The house receded from two of its amendments and asked for a conference committee on the measure eliminating the general election. The conference committee recommended to drop all mention of a general election and
the senate so voted. Thus, on March 13, 1875 the long, torturous
tortuous journey toward a constitutional convention entered its final phase. 19

The 1875 legislature did not limit its efforts at constitu-
tional revision to the convention resolution. While work on that re-
solution proceeded the senate committee on constitutional amendments
had prepared amendments to the 1869 constitution as an alternative to a
constitutional convention. Since Democrats almost universally agreed on
the need for some constitutional change, chances for the defeat of a
convention would be enhanced, opponents hoped, if voters had amendments
to approve as well as the convention to reject. As early as January
26 proconvention legislators complained that amendments were part of
a plan to defeat the constitutional convention. Proponents of a con-
vention made the same objection after the house passed March 12 a
resolution offering constitutional amendments. "We vote no," explained
a group of six representatives, "because we believe that these amend-
ments are intended as a rider to defeat the call of a constitutional
convention...." 20

The legislature's struggle over the amendment resolution
reflected expectations more theoretical than real. Widespread popular
support for a convention made it unlikely that a referendum would
result in its defeat. The amendment resolution did little to increase
the chances of such a defeat. It offered only limited change at a time
when the public wanted extensive revisions in their constitution. The
popular phrase "retrenchment and reform" had yet to be defined, but
by any standard the amendment resolution offered limited reforms and
little retrenchment. This resolution did not follow the canons of
the new restrictive constitutionalism. The amendments proposed in
the resolution affected only three articles of the Constitution of
1869, and in two of these articles, judiciary and general provisions,
only four sections each were revised while the third article, education,
was entirely altered.\textsuperscript{21}

The changes in the judiciary article that the amendment re-
solution proposed paralleled those made in the Constitutions of 1874
and 1876. Since the 1874 document broke little new constitutional
ground, the similarity between it and the amendment resolution was
one measure of the conservative nature of that resolution.\textsuperscript{22} The
most significant revision made in the judiciary article by the amend-
ment resolution was the popular election of judges, but even this
change only appeared to be drastic. The Constitution of 1869 had
provided for the people to vote whether they wanted an elective ju-
diciary in 1876, which was earlier than the amendment resolution could
effect this alteration.\textsuperscript{23} The one change in the judiciary article
which was restrictive was that which fixed the salaries of supreme
court justices. But the pay provided, $4,500, was the same as that
allowed under the 1869 constitution and its enabling statutes.\textsuperscript{24}

Two changes in the judiciary articles were ambiguous. The
framers of the amendment resolution employed an institutional sleight-
of-hand trick to eliminate controversial parts of the 1869 judiciary
article without changing the existing court structure. The 1869 ju-
diciary article, like that of 1866, authorized, but did not require,
the creation of special criminal courts. These courts met an institu-
tional need but were controversial because of their expense.\textsuperscript{25} The
amendment resolution dropped from the judiciary article all mention of the criminal courts, but in doing so it gave the legislature new authority that kept the laws creating the criminal courts from being invalidated. In contrast to the criminal courts, the Constitution of 1869 had broken with tradition in its provision for probate. Historically the state had given county courts statutory jurisdiction over probate. But the 1869 constitution had required that district courts have such jurisdiction. The amendment resolution merely removed the word probate from the judiciary article, and this meant retention of the status quo until the legislature decided otherwise.

In the general provision article, the amendment resolution returned three of the four sections it affected to their pre-1869 constitutional forms. Once more the legislature would have wide discretion in matters affecting interest rates, the selection of grand and petit jurors, and the mode by which counties constructed and maintained their roads and bridges. Since the Constitution of 1869 had required changes in these three functional areas as means radically to alter the state's statutes, the renewal of the legislature's authority by the amendment resolution left the existing laws in force. In taking a liberal constitutional approach to these alterations in the general provision article, the amendment resolution took the same course of action as the Constitution of 1874, but this was not true of the Constitution of 1876. That document imposed controls on the legislature in two of these three categories. The 1876 constitution incorporated the language of the pre-1869 law concerning interest rates into its text, and it required that the legislature pass general laws
for the construction of roads and bridges and that "fines, forfeitures and convict labor" be used to accomplish such construction.\textsuperscript{28}

The fourth section of the general provision article included in the amendment resolution was new rather than a revision of an existing section. This additional section set a limit of $500,000 on state debt. The Constitution of 1874 had stipulated a debt of $1,000,000 while the Constitution of 1876 had placed its maximum at $200,000. All these figures exceeded the $100,000 limit allowed by the Constitutions of 1845 and 1866.\textsuperscript{29}

The amendment resolution broke entirely new ground in one area -- its revision of the education article. The proposed education article replaced all nine sections of the 1869 article with a single section. This section of the amendment resolution not only eliminated the many innovations of the 1869 education article, but it also did far less for public schools than any previous education article in the state's history including the Constitutions of 1874 and 1876. The legislature, under the amendment resolution's one education article did not need to alter the existing school system, but it did gain unprecedented powers for abuse. The amendment resolution's changes in the judiciary and general provision articles did little to inspire the support of those favoring a restrictive constitution, but its revision of the education article was certain to offend any supporter of the public schools whatever his constitutional philosophy.\textsuperscript{30}

Far more important to the fate of constitutional revision in Texas than the amendment resolution was the record that Democrats compiled during their administration of the state government. Their re-
turn to power began in 1873 when Democrats regained their majority in the legislature and became essentially complete when Richard Coke and his administration entered office in 1874. By the time the 1875 legislature called a constitutional convention, Democrats had set economic policy in three legislative sessions spanning over two years and had administered those policies in the executive branch for fifteen months.

Coke, in his first message to the legislature as governor in January 1874, had promised both active government and retrenchment, but since these were largely contradictory impulses only one could come true at a time. Based on the financial data from the state comptroller, Coke chose active government over retrenchment. In fact, Coke's administration, in its fiscal policies, had far more in common than differences with its Republican predecessor.31

Deficit spending plagued the Davis and Coke administrations. It was a difficulty that had bothered Texas since its annexation and even earlier. The state government, almost without exception, had spent more than it earned. As the comptrollers' Report for 1881-1882 explained:

Our financial history from 1846 to 1876 shows that generally the government rests for its support on no certain and stable basis, but relied greatly on shifting and temporary expedients. Enriched by accidental inheritances, regular systems for raising funds were not a necessity, and hence statesmanship did not look to ways and means necessary to render our annual income for support of the government fixed and certain, increasing only with the steady development of the country and with the necessity for increased expenditure.

It required a financial crisis in our State affairs to arouse activity on the part of our statesmen to make certain and permanent provision for our revenues. It was not until we had exhausted all our patrimony derived from the sale of territory
to the United States, and had borrowed and transferred back, to be used as State revenue for general expenses, all the funds with which in the first flush of generosity we had enriched the University and public school; not until we had been forced to place bonds on the market and borrow the means at ruinous discounts to conduct the government, while warrants on the treasury were hawked about by dependent servants and employees of the State, at ruinous losses to them, that the disease in our financial system was fully recognized, and the remedies applied by statesmanship which produced prompt reaction.

The use of bonds to fund the state's current expenses, the Civil War Era's repudiated securities excepted, did not begin until 1877 but continued until 1879. The state relied on bonds during the 1870s because it lacked the alternative sources of funding it had enjoyed in earlier years and because the size of its deficits became unprecedentedly large.

The comptroller's Reports for 1870-1876 provide extensive information (see Tables I-III and Appendix I) on the state's finances. But in at least one important respect this data is misleading: it understates the government's expenditures. But despite their shortcomings, these Reports are valuable. Although the full amount spent by the state cannot be determined, the figures for revenue and expenditures show that the use of deficit spending was but one example of the financial difficulties plaguing the Davis and Coke administrations.

When Texas completed its time in the purgatory of provisional government and returned to civilian control in 1870, it experienced a surge in the activity of its state government that lasted for at least a decade. This was apparent in each of the five main areas of the state's financial functioning: taxes levied, revenue generated, expenses incurred, services provided, and debt created.
In its first meeting since 1866, the legislature in 1870 raised the property tax, the main source of state revenue, from 15 to 33 cents for every $100 assessed value of property and increased the tax again in 1870 to 50 cents where it remained until 1879. The 1870 tax increase did not take effect until January 1871, and the inefficiency of the tax system was such that the state did not begin to realize significant revenue from its higher taxes until 1872.\footnote{33}

With the surge in spending coming almost immediately and the rise in tax revenue lagging one to two years behind, deficits were the almost inevitable result (see Table I) of the return to civilian government. The effect of this deficit was buffered in 1870 by a large surplus left by the provisional government. Without a surplus and with even greater spending, the deficit tripled in 1871, and by the last year (1873) of Davis's administration the state's spending continued to outstrip its revenue by a large amount. The 50 cent tax rate was not sufficient to fund the state's expenditures, and the future financial well-being of the state depended on the general economy growing faster than the government's expenses.

Quite the opposite happened. The deficit jumped by more than 70 per cent in 1874. The figures published by the comptroller in 1875 and 1876 indicated that the deficits for those years were closer to the shortages recorded by the Republicans, but the true deficits for 1875 and 1876 were much higher than the comptroller indicated. In 1875 the deficits probably equaled or surpassed that registered in 1874. The 1876 deficit, however, cannot be estimated, but it was quite likely larger than the amount accounted for by the
Table I

General Revenue Account: Net Income and Expenditures*¹

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1870</th>
<th>1871</th>
<th>1872</th>
<th>1873</th>
<th>1874</th>
<th>1875</th>
<th>1876</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net Income:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(all figures in thousands of dollars)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Tax Revenue</td>
<td>385</td>
<td>464</td>
<td>666</td>
<td>777</td>
<td>888</td>
<td>862</td>
<td>988</td>
</tr>
<tr>
<td>Balances from Previous Years</td>
<td>242</td>
<td>51</td>
<td>8</td>
<td>8</td>
<td>37</td>
<td>0</td>
<td>110</td>
</tr>
<tr>
<td>Other Earned Income</td>
<td>29</td>
<td>54</td>
<td>28</td>
<td>36</td>
<td>90</td>
<td>69</td>
<td>84</td>
</tr>
<tr>
<td>Total Earned Income</td>
<td>656</td>
<td>659</td>
<td>702</td>
<td>819</td>
<td>1015</td>
<td>931</td>
<td>1182</td>
</tr>
<tr>
<td><strong>Net Expenditures:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Warrants Drawn</td>
<td>590</td>
<td>955</td>
<td>1125</td>
<td>1067</td>
<td>1409</td>
<td>1293</td>
<td>1316</td>
</tr>
<tr>
<td>Warrants Undrawn</td>
<td>291</td>
<td>396</td>
<td>239</td>
<td>377</td>
<td>683</td>
<td>320</td>
<td>582</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>881</td>
<td>1351</td>
<td>1364</td>
<td>1444</td>
<td>2092</td>
<td>1623</td>
<td>1898</td>
</tr>
<tr>
<td><strong>Total Deficit</strong></td>
<td>(225)</td>
<td>(692)</td>
<td>(662)</td>
<td>(625)</td>
<td>(1077)</td>
<td>(692)</td>
<td>(716)</td>
</tr>
</tbody>
</table>

¹Based on the "Receipts" and "Warrants Drawn and Undrawn" portions of the "General Revenue Account" table in Reports of the Comptroller, 1870-1876.
The state government employed a variety of devices of an even more short-term nature than bonds to help ease its financial problems. Of the state's more temporary expedients, warrants were the most important. Warrants were a formal pledge made by the state to pay for benefits it received or obligations it incurred. The process for funding warrants was inherently slow and cumbersome, but in the 1870s the state, lacking cash, made reimbursements of warrants particularly dilatory. This delay in payment meant that warrants amounted to temporary interest-free loans to the state.  

The state, despite its tardiness, ultimately had to pay its warrants, and securing sufficient cash proved troublesome. The search for currency led the state to extralegal and even extraconstitutional actions. Texas possessed a variety of special funds committed by law, or, as in the case of the available school fund, by the constitution as well, to a specific purpose. The state took cash from these special funds on several occasions from 1871 to 1874 to meet the needs of general revenue obligation. Both Davis and Coke used this expedient, and the latter discussed this subject with a New York financial agent representing Texas. In his December 17, 1874 letter, Coke asserted determination to service the state's debt, and expressed a willingness to divert special funds if given no other recourse:

As to the interest on our bonds...By the eternal it shall be paid...If necessary I will use school money or any other fund we have to pay interest when due. We, however, do not have now to use any fund illegitimately for that purpose as we have enough of general revenue.
By December 1874 the state had eased its cash flow problems by the sale of additional bonds. Coke did not have to resort again to special funds.

Bonds provided a way out of Texas's financial crisis, but their effectiveness was restricted in the early 1870s by the state's poor credit rating. In the period 1870 to 1874 some revenue came from the hypothecation of bonds, i.e., money advanced by financial agents on the anticipated sale of those securities, but only a limited amount from the actual sale of the bonds. Coke made restoration of the state's credit a major objective of his administration, and he succeeded. Under his guidance the state sold (see Table II for a list of the bonds issued 1870 to 1876) not only a majority of the $1,418,000 in bonds issued during Davis's term but another $3,464,000 in bonds issued after Coke became governor. With these proceeds the state ceased the improper use of special funds, paid its warrants, and began, in 1876, to replace bonds issued at a higher rate of interest with securities at a lower rate.\(^{37}\)

The comptroller's Reports for 1870 to 1876 are too vague to allow a precise assessment of who was responsible for what part of the state's bonded debt. Even though the state sold most of its bonds during the Coke administration, the greater part of the proceeds from these sales went to pay obligations incurred during the Davis administration. But the state's financial problems were not exclusively of the Republicans making, and the use of bonds to cover the state's deficits continued after the Democrats came to power.

Republicans, like the Democrats, were ambivalent towards
Table II
Bonded Debt of Texas as of August 31, 1876*

<table>
<thead>
<tr>
<th>Purpose and Date of Issuing Law</th>
<th>Bonds Issued</th>
<th>Bonds Sold</th>
<th>Rate of Interest</th>
<th>Bonds Redeemed</th>
<th>Bonds Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding State Debt, November 9, 1866</td>
<td>$125,100</td>
<td>$125,100</td>
<td>6%</td>
<td>$100</td>
<td>$125,000</td>
</tr>
<tr>
<td>Frontier Defense, August 5, 1870</td>
<td>750,000</td>
<td>750,000</td>
<td>7%</td>
<td>53,000</td>
<td>697,000</td>
</tr>
<tr>
<td>Funding State Debt, May 2, 1871</td>
<td>100,000</td>
<td>79,000</td>
<td>6%</td>
<td>4,000</td>
<td>75,000</td>
</tr>
<tr>
<td>Revenue Deficiency, December 2, 1871</td>
<td>500,000</td>
<td>500,000</td>
<td>7%</td>
<td>___</td>
<td>500,000</td>
</tr>
<tr>
<td>Funding Warrants, May 30, 1873</td>
<td>500,000</td>
<td>89,800</td>
<td>10%</td>
<td>85,400</td>
<td>4,400</td>
</tr>
<tr>
<td>Funding Warrants, May 2, 1874</td>
<td>500,000</td>
<td>499,000</td>
<td>10%</td>
<td>___</td>
<td>499,000</td>
</tr>
<tr>
<td>Payment of Floating Debt, March 4, 1874</td>
<td>1,000,000</td>
<td>1,000,000</td>
<td>7%</td>
<td>___</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Pension Bonds, April 21, 1874</td>
<td>1,099,974</td>
<td>___</td>
<td>10%</td>
<td>___</td>
<td>1,099,974</td>
</tr>
<tr>
<td>Redemption of State Debt, July 6, 1876</td>
<td>1,675,000</td>
<td>875,000</td>
<td>6%</td>
<td>___</td>
<td>875,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>4,875,374</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Report of the Comptroller, 1876, 39.
deficit financing. But they pursued their objectives aggressively and generated more debt than they intended. The one area of governmental activity that the Republicans deliberately funded with bonds as a matter of policy was frontier defense. In 1870 the legislature authorized bonds to pay for frontier defense. But this system of financing was modeled after a similar scheme sanctioned, but never employed, by the Democratic-controlled legislature in 1866. The state, in contrast to its intentional use of bonds for frontier defense, generally issued other bonds only when insufficient income forced the use of such deficit financing. This was true of Democrats as well as Republicans. Two factors in particular prompted the state to employ bonds: deficiencies in the general revenue and meeting the salaries of teachers for which local taxation was insufficient. As already noted, the general revenue deficit was a continuing problem, but teachers' salaries were another matter. The state used bonds only for the pay due from 1870 to 1873, but the size and complexity of the problem was such that the effort to resolve it lasted well into the Coke administration.38

Assessment of the specific categories of spending in the general revenue account is difficult. The incomplete information provided by the comptroller's Reports concerning warrants drawn on the general revenue account does not allow precise interpretation of the data on the different categories of disbursements. Table III gives only the figures, drawn from the comptroller's Reports 1870-1876, that are available, but since this data is not complete, it is not necessarily an accurate expression of the true pattern of state spending.
Table III  
**Categories of Expenditures**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>1870</th>
<th>1871</th>
<th>1872</th>
<th>1873</th>
<th>1874</th>
<th>1875</th>
<th>1876</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive</td>
<td>147</td>
<td>205</td>
<td>233</td>
<td>278</td>
<td>374</td>
<td>250</td>
<td>220</td>
</tr>
<tr>
<td>Judiciary</td>
<td>96</td>
<td>212</td>
<td>262</td>
<td>278</td>
<td>379</td>
<td>293</td>
<td>270</td>
</tr>
<tr>
<td>Legislature</td>
<td>280</td>
<td>284</td>
<td>226</td>
<td>286</td>
<td>221</td>
<td>132</td>
<td>191</td>
</tr>
<tr>
<td>Penitentiary</td>
<td>32</td>
<td>39</td>
<td>11</td>
<td>35</td>
<td>55</td>
<td>39</td>
<td>83</td>
</tr>
<tr>
<td>State Police</td>
<td></td>
<td>130</td>
<td>243</td>
<td>123</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Militia &amp; Rangers</td>
<td>4</td>
<td>19</td>
<td>1</td>
<td>170</td>
<td>274</td>
<td>187</td>
<td></td>
</tr>
</tbody>
</table>

(all figures in thousands of dollars)

Rangers as per Frontier Fund Bonds* | [265] | [154] | [91] | [14] |
Interest Payments | | | 78 | 37 | 102 | 205 | 341 |
Miscellaneous | 35 | 81 | 53 | 29 | 108 | 100 | 24 |
Totals | 590 | 955 | 1125 | 1067 | 1409 | 1293 | 1316 |

*1 Based on "Warrants Drawn" portion of the "General Revenue Account" table of Reports of the Comptroller, 1870-1876.

*2 Includes warrants drawn for the Constitutional Convention of 1875.

*3 These figures are not included in the totals.
Yet, despite its limitations Table III provides a rough approximation of the broad changes in spending by the state government. Differences in the various categories of spending existed during the period 1870-1876, but they balanced each other out to produce the continuity of deficits already described.

The parallels between the Davis and Coke administrations, however, extend beyond their mutual reliance on deficit financing. Even in the area of their greatest differences in fiscal functioning, the state police, these two administrations had important similarities in their policies concerning law enforcement. Since the Democratic-controlled 1873 legislature killed the state police, the Davis administration spent heavily on its police force, while the Coke administration had no such expense. Although the demise of the state police eliminated it as an instrument of Republican rule, the problems of law enforcement that had been the major task of the state police remained. The state faced a major quandary during the 1870s as to which was more important: effective law enforcement or reduced spending. Seen in this light the differing decisions made by Davis and Coke about the state police were opposite sides of the same coin. The choice of which problem to contend with automatically determined which problem to ignore.

The state police was only one of several separate public protection institutions that operated under the command of the adjutant general. To understand the state police and the decisions made concerning it by Governors Davis and Coke, the problem of defense has to be studied as a whole. The Texas public protection institutions con-
sisted of the militia, the rangers, the minute-men, and the state police, and of these, all but the state police had their origins in the Republic. The militia, alone of these institutions, had constitutional status, but in the nineteenth century, it was never fully developed or widely used. The rangers, on the other hand, often played an important role in protecting the state. In contrast to the relatively immobile and expensive (when on active duty) militia, the rangers served only at the governor's pleasure, and rangers usually provided their own horses and arms. But while on duty the rangers served continuously, and as a result, they tended to cost more than the state wished to spend. Minute-men acted at a lower cost but were also a less effective alternative to the rangers. Organized like the rangers, minute-men went on duty only in response to actual danger; a law of 1871 emphasized their episodic character by limiting their service to a maximum of ten days per month. 39

From the time of the Republic until the creation of the state police in 1870, the almost exclusive responsibility of the state's public protection institutions was meeting threats from external sources. With Indians along the western and southern frontier regions and Mexicans situated on Texas's southern border, the historic mission of the state's public protection institutions had been countering these "alien" foes. In theory the militia served in time of "war, rebellion, insurrection, invasion, resistance of civil process, breach of peace or imminent danger thereof...," but after annexation the militia remained dormant, except for the Civil War, until Davis put it to limited use. The rangers and the minute-men had tra-
ditionally been used in frontier and border regions, but one indication of the change that occurred later was the use of rangers to quell the so-called Cart War of the 1850s.40

From the inception of his civilian administration in 1870, Governor Davis had assigned the dual roles of frontier protection and law enforcement to the state's defense institutions, with the rangers having the job of frontier protection and the newly created state police having that of law enforcement.41 Davis attempted to limit the impact of his ambitious defense effort on state finances by having different systems of funding for his two key defense institutions. Money for the rangers came from bonds, while funds for the state police came from the state's general revenue. The bonds for the rangers began to run low in 1871, and Davis chose to replace them with minute-men. In the closing months of his governorship, after the termination of the state police, Davis again activated the rangers and used them in conjunction with the minute-men who were already on duty.42

Coke came into office with rangers and minute-men deployed along the frontier and with no state police operating in the state's interior. Although the primary focus of the Democratic governor remained frontier protection, a new law passed in 1874 authorized a ranger force of sufficient men and jurisdiction to meet the state's need for both frontier protection and law enforcement. This single institution approach to the state's frontier protection and law enforcement needs, however, did not work any better than Davis' dual institution approach. The reason remained the same -- the state's
continuing deficits. The 1874 statute completely restructured the rangers by creating three types of ranger units. The largest of these units followed ranger tradition in having its members provide their own horses and guns and in being responsible for frontier protection. But it broke tradition in two ways. The companies of the large ranger unit were to operate in assigned counties, and the governor could not disband these companies before they completed their period of enlistment.

The second type of ranger unit established by the 1874 law was a hybrid organization known as the Frontier Battalion. In its structure, the Battalion was modeled after those authorized in the 1866 and 1870 laws. The governor retained full power over the Frontier Battalion to designate where it operated, to determine how many men served in it (within the manpower limit set by law), and to order it disbanded. What made the Frontier Battalion unique among ranger organizations was its responsibility for law enforcement. The Frontier Battalion, in effect, rolled the rangers and the state police into one unit. It soon became clear, however, that the Frontier Battalion was hard pressed to fulfill all its duties. Even at maximum strength, which amounted to six companies of seventy-five men each, the Frontier Battalion had fewer men than the combined forces of the rangers and state police authorized during the Davis administration.

The third type of ranger unit created in 1874 was an auxiliary to the Frontier Battalion. As such it was the minute-men cast in a new guise. Under the 1874 law, the minute-men had the same powers
and responsibilities as the Frontier Battalion, but had no limit on their manpower. In short, the minute-men provided the governor with a virtually unlimited force to supplement the Frontier Battalion.

Coke never had the economic resources to make full use of the 1874 ranger law. He never activated the largest of the ranger units, and the state's persistent financial difficulties greatly impeded the governor's use of the other types of ranger units. By late fall 1874 Coke had reduced the Frontier Battalion by half and had deactivated the minute-men entirely. Moreover, the remaining rangers concentrated on their primary job of frontier protection and as a result of this, they did virtually no law enforcement work outside the lightly settled regions in which they operated. 44

When Democrats took control of the state government's executive branch in 1874, they expected to resolve the state's problem of lawlessness. Experience soon taught them otherwise. Attorney General George Clark in his report for 1874 placed most of the blame for the state's difficulties with crime on Reconstruction. Clark had sanguine expectations for the future:

I think...[a] remedy [for crime] can only be found in a thorough re-education of the masses in the principles of self-government... A general system of military repression, or anything savoring of it, can only retard this education and add to the disorders and embarrassments under which the States now suffers. What is ... need[ed] is a strengthening of the hands of sheriffs and peace officers of counties, in order that arrests and punishment may follow certainly and quickly on the heels of crime; and these arrests should be made by the local officers of the people who are near to them and a part of them. The military arm of the government is constitutionally in the hands of the chief executive of the State, and should be called into exercise only when the local authorities find themselves powerless to execute the laws, and then only in strict subordination to such local authorities.
In his 1875 Report, Clark presented a more pessimistic assessment of crime than he had in the previous year. Comparing lawlessness to "the hydra of heathen mythology," the attorney general complained that "crime is on the increase with us, as it seems to be everywhere else." But despite this negative assessment of crime, Clark remained confident of the "final result" -- the effective control of those breaking the law.  

Adjutant General William Steele shared Clark's optimism, but since Clark had the primary responsibility for fighting crime he had a differing viewpoint. As commander of the state's defense institutions, Steele dealt with frontier protection as well as law enforcement. Since the rangers had both jobs, these tasks were closely interconnected. In 1875 the adjutant general gave an overview of the state's defense effort:

As a result of the civil war, which desolated the South during the last decade, there has been left a large number of young men, who, having become habituated to bloodshed and living upon the property of others, have continued their life of reprisals since the war ended; and as they have been driven from more populous counties, have frequently congregated in sufficient numbers to overawe the civil authorities on our extreme and sparsely populated frontier, from which they have an easy escape to Mexico whenever combinations are too strong for them.

The Frontier Battalion having the powers of peace officers, have been efficient in arresting and dispersing these outlaws. The frontier counties, from the mouth of the Rio Grande to the Red River, near Denison, may be considered as in a chronic state of invasion from Indians and these perambulating gangs of outlaws. The citizens of these counties, recognizing their inability to sustain the laws by the usual modes, are continually making application for assistance of a military character.

Governor Coke, in contrast to the attorney general and the adjutant general, had a more negative assessment of the state's law enforcement effort. Coke praised the rangers for their many accom-
plishments, but he also pointed out that they were too few in number to carry out even their primary objective of frontier protection. About the problem of frontier protection the governor explained:

...no force that the State can place on the frontier will prevent the incursions of raiding bands of Indians on the frontier of Texas. The line is so great in extent and the country so well known to the Indians, and so favorable to their predatory operations, that the utmost vigilance of four times the number of men that Texas could afford to station on it will not prevent their coming in occasionally and harassing the settlements. The value of the State troops consists more in the confidence given the people, which induces settlement and cultivation of the country, than in the actual protection given.\(^{48}\)

Whatever their limitations in fighting Indians, the rangers had even greater shortcomings in catching criminals. The need for improved law enforcement was a problem that gave Coke trouble during his entire tenure as governor. Since the rangers had too few men to protect the frontier effectively, they could not help local peace officers fight crime in the settled areas of the state.\(^{49}\)

Coke, in his opening message to the 1874 legislature, spoke at length on law enforcement to explain his position and to rebut his critics. The governor's arguments were complex, but two points were crucial to his effort to deflect blame from himself. First, he maintained that the state's chief executive had insufficient authority to carry out his constitutional responsibility of ensuring that "the laws be faithfully executed." Second, he asserted that the state's difficulty with law enforcement stemmed mainly from the failure of local peace officers to perform their duties effectively on the one hand and of the public sufficiently to support such officers on the other.\(^{50}\)
Coke's solution to this problem was eclectic. The most important element was a plan for a special sheriff's posse. This force, according to the governor, would use both state and local authority and resources. Initiative for creating this special posse rested with local officials who were to inform the governor when need for action existed, but the power to call up and to disband this force belonged exclusively to the governor. Once it was activated, the county paid the special posse, while the state provided its arms. This posse consisted of up to thirty men who served under the command of the local sheriff. Coke's other aids to law enforcement included permission to sheriffs to pursue criminals throughout the state, and to the governor to use a contingent fund for the hiring of detectives or the taking of other measures on behalf of law and order.

Coke concluded with a rejoinder to critics who wanted him to reestablish the state police. In justifying his opposition to the state police, the governor took the ground of principle:

I cannot concur in the opinion expressed by some that a regular police force should be organized and kept up. A body of State police under the command of the Governor, attached as they always would be to his interest, knowing no law but his will and ready to obey, is an engine of power which, under a free government, should be entrusted to no man. Such an institution would do violence to the genius of our government and the traditions of our people. In the hands of an honest, patriotic Executive, its operation would tend directly to weaken the reliance of the people on their local authorities and themselves, by causing them to look constantly to the Governor and his police to do that which should be done at home, thereby making this force more necessary every day to the tranquility of the State, and in the same proportion increasing and centralizing the powers of the government in the Executive while in the hands of an ambitious and unscrupulous Governor, in addition of these consequences, such force would be used in times of party excitement for partisan purposes and probably for the oppression of the people. The experience of Texas on this subject ought to be a sufficient
warning for all time. For the same reasons that I would approve an enactment on the general plan of the one suggested for furnishing an adjunct to the ordinary authorities for execution of the laws on extraordinary occasions. I would condemn the State police system.\textsuperscript{51}

The 1875 legislature acted on Coke's recommendation and passed a posse law similar to the plan the governor had suggested. This 1875 law provided for a special posse which had the extrajudicial power that Coke suggested, but differed in one major aspect from that proposal. The governor could only authorize the special posse; local peace officers had the right to choose its members.\textsuperscript{52}

The 1875 posse law pleased no one, and in his opening message to the 1876 legislature, Coke renewed his effort to deflect criticism of his administration concerning law enforcement. Characterizing the 1875 posse law as "wholly and utterly impracticable," the governor called for his 1875 posse plan to be enacted, but he did this without admitting that the 1875 posse statute was similar to his own 1875 plan.\textsuperscript{53}

Coke had other suggestions. The most important of these was a request that "the Governor should in Texas, as in other States, have authority to command the Sheriffs and Prosecuting Attorneys; and there should be a short, sharp and decisive mode of getting rid of these officers as show themselves ineffective or incompetent." The legislature did not follow this recommendation, and Coke did not explain how far he wanted the chief executive's authority expanded in this matter. But his advocacy of greater centralized authority concerning sheriffs and prosecuting attorneys contrasted sharply with the governor's rejection of such centralization in regard to a state
Coke resumed his attack on the state police in 1876. His 1876 message reiterated his objections on grounds of principle, but he also stressed cost as a major objection to the state police. "Viewing the matter from an economic standpoint, outside the principles involved, and the question of expediency," the governor asserted, "the cost of maintaining a force of State police in active service, which would be adequate to the demands of it, could not be less than half a million dollars annually, and would constantly increase, thus becoming a most onerous burden upon the country."\(^5\)

Legislators shared their governor's concern about law enforcement. They expressed this concern by considering a wide range of proposed laws that offered remedies. The image that the preamble to one bill portrayed of conditions in the state was even more grim than that given by Coke in his 1875 message:

> Whereas, in various counties of this State there are combinations of men which impede the execution of the laws, and also organized bands of lawless men who have committed murders, and robberies, and have intimidated the inhabitants to such an extent that they passively submit to acts of violence and rapine.

And, whereas, in Dimmit, Maverick, and some adjacent counties, there is an organized band of desperate men, mostly refugees from justice from other sections, numbering more than one hundred, who have murdered men in cold blood, kept women and children in constant dread of outrage; defied and overawed the civil authorities; and prevented the enforcement of the laws by threats against the lives of citizens should they aid in arresting and bringing them to justice; and so complete is the reign of violence and terror that those counties in a state approaching anarchy.\(^6\)

In short, both legislators and governor recognized that widespread violence and corruption existed. The question was what to do about it and how much to spend doing it.
Initially the legislature considered two bills with differing approaches to the problem of law enforcement. One bill sought to create "a State detective force." The term "detective force" was simply a polite way to describe a state police force without using the term that was sullied, in the eyes of Democrats, by its association with Reconstruction. Although allowing for fewer men than had served in Davis's state police, the 1876 detective bill was modeled on the 1870 state police law.\(^{57}\)

The legislature defeated the detective bill, but it approved another that sought to alleviate the state's crisis in law and order by enhancing the power of sheriffs and other local peace officers. This new sheriff bill reiterated the authority given in 1875 for local law officers to pursue criminals anywhere in the state, but changed the financing arrangements in the 1875 statute. The new proposal placed economic responsibility on the state rather than the counties, and allowed any local peace officer to "call any military company in the county to aid him..." In addition, the governor could order "any frontier company or military company of volunteers into a troubled county" if he deemed it necessary. The governor vetoed the bill. Although he objected to it on several points, he stressed the power given sheriffs to call on local militia companies for aid, and the cost of having the state pay for local officials pursuing criminals.\(^{58}\)

The legislature apparently anticipated the governor's veto, and started work on the law enforcement bill that ultimately became law. This replacement bill merely elaborated upon the existing insti-
tutional structure. It created a new, smaller company of rangers that
had the same powers as the Frontier Battalion, but with law enforcement
as its primary objective.59

This new ranger company underscored the basic paradox of
the law enforcement controversy: the state had a police force in its
Frontier Battalion, but this battalion was not able to act effectively
in its police capacity so long as its primary job was frontier defense.
The 1874 ranger law had already authorized what was needed to meet the
problem of crime. Despite the 1876 law's greater emphasis on law
enforcement, this new ranger company added little that was innovative.
After the special company of rangers had seen service for a relatively
brief period, it became simp'ly another element of the Frontier Bat-
talion.

Coke's protest against a state police may have saved face,
but the fact was he had a state police.60 Moreover, he used a com-
pany of the Frontier Battalion as a police force in an organized county
on at least one occasion, and successive governors used the Frontier
Battalion extensively as a police organization.61 The state's law-
and-order crisis was not eased by additional legislation, rather by
the disappearance of the Indian from the Texas frontier. In 1876,
shortly after Coke had become a United States senator, the rangers
ended their scouting of the frontier and turned to "the arresting
of criminals and fugitives from justice" as their primary responsi-
bility.62

In summary, the call of a constitutional convention marked
the end of the Democratic party leadership's effort to keep the consti-
tutional revision process from involving popular participation. The call of a constitutional convention opened the way for the public debate the leadership had long feared. The dominant party had governed the state for a sufficiently long time to establish a record of administration which the people could judge. The record of Democratic administration of the state had marked similarities with that of its Republican predecessors. Under both parties the state had followed an active government policy. This policy was almost certain to change with a new constitution. The national trend in state constitutions clearly favored restrictive documents, and Texans had already expressed a preference for less government. A constitutional convention was probably not going to write an unreservedly liberal constitution in 1874. What remained to be seen was how far Texas would follow the new restrictive trend in state constitutions.
Chapternotes

1. No systematic record remains of the proceedings by county conventions, but where the platforms of such conventions were mentioned in newspapers, they generally supported a constitutional convention. *Galveston Daily News*, July 31, August 4, 11, 13, 21, 22, 28, September 2, 4, 5, (quotation), 1874; *House Journal*, House of Representatives, Fourteenth Texas Legislature, second session, 1874; *San Antonio Daily Herald*, August 31, 1874; *Panola Watchman* (Carthage), August 19, 26, 1874. Note: since state elections were not scheduled until 1875 under the Constitution of 1869, the Congressional district was the highest level on which nominating conventions were held in 1874.

2. About the constitutional convention's popularity the *Galveston News* of August 13, 1874 gave this observation: "Judging from the declarations of county and district conventions, and from the local papers, there can be no doubt that a large majority of the people of Texas are in favor of a constitutional convention at the earliest practical date." See also: *Austin Daily Democratic Statesman*, August 13, 1874; *Waco Advance*, n.d., quoted in *Galveston News*, July 15, 1874; *Houston Daily Telegraph*, April 18, 1874; *Panola Watchman*, August 19, 26, 1874; *San Antonio Herald*, August 31, 1874. Before the legislature convened in its special session, the *San Antonio Herald* renewed its opposition to a constitutional convention. The *Herald* portrayed the convention as an East Texas plot against the western portion of the state, and renewed an old west Texas dream by calling for a division of the state. The *San Antonio Daily Express*, a Republican newspaper that had consistently opposed a constitutional convention, agreed with the *Herald*’s idea for dividing Texas. Ibid., December 10, 1874; *San Antonio Daily Express*, March 6, 1875.


5. Texas, *Senate Journal*, Senate, Fourteenth Legislature, Second Session, 133; Texas, *Senate Joint Resolution (S.J.R.) 452*, Fourteenth Texas Legislature, Second Session, Legislative Records, Archives, Texas State Library. Three versions of S.J.R. 452 are extant: a handwritten copy of that document as originally submitted, an imprint copy as reported from committee, and a handwritten copy as passed by the senate and prepared by the senate engrossing clerk.

6. Ibid., 150-151, 158-160. S.J.R. 452, 14th Leg., 2nd
sess. The internal evidence of the legislative record indicates that
the idea and wording for the $100,000 appropriation came from another
joint resolution, S.J.R. 500 which never got out of committee, but
did originate the plan for a $100,000 appropriation.

7. Senate Journal, 14th Leg., 2nd sess., 162.

8. House Journal, 14th Leg., 2nd sess., 197-199. Dis-
   trict fifteen was composed of Walker, Grimes, Madison, and San Jacinto
   counties, and its small majority of blacks had elected Republicans to
   represent them in the senate of the Fourteenth Legislature, and in the
   Constitutional Convention of 1875. District eighteen, on the other
   hand, consisted of Leon, Brazos, and Robertson counties, and had a
   Democratic majority sufficiently large to give the dominant party an
   electoral victory in a combined district. Texas, House Journal,
   Fourteenth Legislature, Second Session, 198-199. For an unsuccessful
   plan that sought to redistrict Texas completely for the election of
   delegates to the constitutional convention see: S.J.R. 500, 14th
   Leg., 2nd sess.


10. Ibid., 265, 284-286.

11. An anonymous correspondent of the Galveston News in
Washington D.C. reported that "Conservative Statesmen, representing
both North and South,...considered it highly unpoltic to call a
Constitutional Convention now." Senators from both Georgia and North
Carolina specifically recommended that these states drop plans to
 call constitutional conventions which they did. The Texas delegation
in Congress ducked the question of a constitutional convention saying
that "the [Texas] Legislature should take the entire responsibility of
settling the question..." But the News' Washington correspondent went
on to note that "one or two [Texas Congressmen] say that they can see
no reason why a convention should not be called." (North Carolina
ultimately called a convention in 1875 and it ran concurrently with
that of Texas. Georgia delayed its convention until 1877.) Galveston
News, February 16, 1875; U.S. Congress, Congressional Record, 43rd
Cong., 2nd sess., 1875, III, pt 2.2:1055; New York, Times, February
11, 1875; Joe Gray Taylor, Louisiana Reconstructed 1863-1877 (Baton
Rouge, La.,: Louisiana State University State, 1974), 300-309;
William Gillette, Retreat from Reconstruction 1869-1979 (Baton Rouge,
La.,: Louisiana State University Press, 1979), 104-135.

12. Ibid., 136-150; Garland Erastus Bayless, "Public
Affairs in Arkansas, 1874-1896," (unpublished Ph.D. dissertation,
University of Texas at Austin, 1972), 4-53; Thomas S. Staples, Re-
construction in Arkansas 1862-1874 (New York: Columbia University,
1923), 397-441; George H. Thompson, Arkansas and Reconstruction: The
Influence of Geography, Economics and Personality (Port Washington,
N.Y.: Kennikat Press, 1976), 108-169; U.S. Congress, House of Repre-


14. Austin Statesman, February 10, 1875; see also: February 14, 16, 19, 20, 1875. The only other major newspapers that supported the legislature's inaction were the Galveston News and the San Antonio Herald. Galveston News, February 11, 16, 1875; San Antonio Herald, February 11, 1875.

15. Houston Age, quoted in the Galveston News, February 16, 1875.


17. Ibid., 457-459, 471-474; S.J.R. 451, 14th Leg., 2nd sess. (The copy of S.J.R. 452 prepared by the senate engrossing clerk contains a manuscript copy of the house amendments).


19. Ibid., 548, 564, 566, 601; House Journal, 14th Leg., 2nd sess., 554-556, 580-581, 662; S.J.R. 452, 14th Leg., 2nd sess.


21. The convention resolution debated on the legislature's floor and ultimately passed by both houses was Senate Joint Resolution 658. But this resolution was a composite of various resolutions considered by the senate committee on constitutional amendments. S.J.R. 658, 14th Leg., 2nd sess.; see also: S.J.R. 549, S.J.R. 589 (located in House Committee Reports #1) S.J.R. 689, S.J.R. 694 (located in House Committee Reports #1), S.J.R. 756, 14th Leg., 2nd sess., H.P.N. Gammel, Laws of Texas 1822-1897 (Austin, Texas: Gammel Publishing Co., 1898) VIII, 568-570.

22. As already noted in the preceding chapter, the Constitution of 1874 was a revision of the Constitution of 1845 that retained most of that earlier document intact while making limited
changes to achieve its, for the most part, liberal constitutional purposes. Thus, the fact that the constitutional amendments proposed in 1875 largely paralleled changes already suggested in the defunct Constitution of 1874 was one indication of the conservative nature of these amendments.

23. A significant minority of the senate remained in favor of having the governor appoint district court judges. Among the nine senators who voted for this proposition when proposed as an amendment to S.J.R. 658 was John Ireland, chairman of the Democratic party’s state executive committee, who had advocated gubernatorial appointment of judges in the 1874 legislature. Senate Journal, 14th Leg., 2nd sess., 532; see also: S.J.R. 589 (located in House Committee Reports #11); Constitution of 1869, Art. V, sec. 6.

24. An effort to reduce the governor’s salary from $5,000 to $4,000 failed despite the fact that the legislature would have, under the proposed amendment to S.J.R. 658, retained its usual discretion to change the amount paid. Senate Journal, 14th Leg., 2nd sess., 551, Constitution of 1869, Art. IV, sec. 5.

25. A bill seeking to abolish the state’s criminal courts specifically reminded legislators of their promise to cut governmental costs in its preamble: "Whereas, the members of the Fourteenth Legislature were elected under pledges to retrench and reform the expenses of the state government; and Whereas, the finances of the State demand the most economy..." This bill did not pass despite a favorable recommendation by the senate finance committee, and the legislature even created two new criminal courts in 1875 to increase the state’s total to five. Senate Bill (S.B.) 699, 14th Leg., 2nd sess.; Gammel, Laws, 390-394, 417-419, 437-438, 446-447, 458-459.

26. The Constitution of 1866 had first provided for criminal courts and the Constitution of 1869 had carried over that earlier provision for criminal courts verbatim. Traditionally, Texas state constitutions had limited the legislature’s power to create new courts to “inferior courts.” If the 1875 amendment resolution had dropped the wording in the Constitution of 1869 concerning criminal courts without any change, the legislature would not only have lost its authority to create criminal courts, but the existing criminal courts would have become unconstitutional as well. The 1875 amendment resolution, like the Constitution of 1874 upon which it was modeled, removed the word “inferior” from the appropriate part of the 1869 constitution and by doing so gave the legislature unprecedented, as judged by the state’s ratified constitutions, discretionary authority to create courts including the existing laws on criminal courts. The Constitution of 1876 limited criminal courts to cities over 30,000 population (i.e., more than three times the size of the state’s largest city, Galveston, in 1875), while allowing one criminal court, that for Harris and Galveston Counties, to remain in operation. Texas, Constitution of 1845, Art. IV, sec. 1; Constitution of 1866, Art. IV,
sec. 1; Constitution of 1869, Art. V, sec. 1; Constitution of 1874, Art. IV, sec. 1; Constitution of 1876, Art. V, sec. 1; Senate Journal, 14th Leg., 2nd sess., 535.


32. Texas, Report of the Comptroller, 1881-1882, iv. The overview given in this Report was based on a summary of the state government's fiscal affairs made in the 1876 Report which in turn was taken from all previous reports of the state comptroller. The 1881-1882 Report presented, in part, such a critical assessment of the first three decades of the state's financial administration because in the 1881-1882 biennium the state government was operating in the black for the first time in history. The irony of this was the state quickly slipped back into deficit financing in the mid-1880s, and it took money paid by the Federal Government as reimbursement for earlier expenditures by Texas for frontier defense to keep the state from repeating the economic disasters of the 1870s. Ibid., 1876, 6-9. See also: ibid., 1846-1889; Edmund Thornton Miller, A Financial History of Texas (Austin, Texas: University of Texas Bulletin no. 37, 1916), 229-39, 264-265; R.S. Harrison, "History of Texas Finances," Texas Review, I, 332-338.


34. An anomaly in the Comptroller's Reports "Warrants Drawn" tables indicates that not all warrants issued for appropriations made in 1875 were paid from funds in the treasury. The "Warrants Drawn" table listed the warrants paid by the treasury according to the year of the appropriation. The warrants paid for the years from 1870 to 1878 followed a distinct pattern except for the 1875 appropriation. The warrants paid in 1875 and 1876 for the 1875 appropriation were far less than was usual and were far less than the legisla-
ture's appropriations in 1875. Data from the "Warrants Drawn" tables from the comptroller's Reports 1874-1876 illustrate the unusually small amount of warrants paid for the 1875 appropriation.

<table>
<thead>
<tr>
<th>Year of Appropriation</th>
<th>1874</th>
<th>1875</th>
<th>1876</th>
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<tr>
<td>Pre 1873</td>
<td>66</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>1873</td>
<td>159</td>
<td>38</td>
<td></td>
</tr>
<tr>
<td>1874</td>
<td>1,184</td>
<td>591</td>
<td>41</td>
</tr>
<tr>
<td>1875</td>
<td>661</td>
<td>86</td>
<td></td>
</tr>
<tr>
<td>1876</td>
<td></td>
<td></td>
<td>1,189</td>
</tr>
</tbody>
</table>

Total Paid 1,409 1,293 1,316

The state comptroller's Reports do not provide sufficient information to explain the anomalous nature of the warrants drawn on the 1875 appropriation, but the bonds issued by the state, particularly the $500,000 of bonds to redeem warrants authorized by the May 2, 1874 law, could have accounted for the unusually low amount of warrants drawn on the 1875 appropriation. Report of the Comptroller 1875, 1876; Gammel, Laws, VIII, 207-209; Texas, Journal of the Constitutional Convention, 1875, 580-604.


36. Richard Coke to W.L. Moody, December 17, 1876, Coke Papers, Executive Correspondence, Archives, Texas State Library (quotation); Report of the Comptroller, 1871-1875.

37. The Journal of the Constitutional Convention, 1875 on pages 574-579 lists the bonds distributed before the convention met and the amount received for those bonds sold. The amount realized from the bonds increased during Coke's term of office, but the simple fact that the state could sell its bonds was perhaps Coke's greatest victory. Report of the Comptroller, 1870-1876; Gammel, Laws, VIII, 18-20; Richard Coke to Williams and Grion, September 1, 1874, Richard Coke to W.L. Moody, September 2, 1874, Coke Papers.

38. Texas, Report of the Attorney General, 1872, 11; Gammel, Laws, V, 1035-1036, VI, 219-220. The total amount paid by the state in the years 1873-1876 for teachers, salaries due from the
period of the Davis administration was approximately $1,877,000. Report of the Comptroller, 1873-1876.


41. The state police, as with most issues associated with Reconstruction, has long been controversial, but more recent interpretations have stressed the importance of the state police as a legitimate and relatively successful law enforcement agency. In contrast to the importance ascribed to the state police by the various interpreters of it, the rangers have been almost entirely ignored, during the Davis administration. The most important historian of the rangers, Walter Prescott Webb, denied they existed during Reconstruction. "For nine years after the Civil War," Webb asserted, "the Texas Rangers were non-existent." William C. Nunn concurred with this assessment in his study of the Davis administration. But this rejection of the rangers in the early 1870s stems from the same antipathy to Reconstruction that makes Webb and Nunn reject the state police as a legitimate law enforcement agency. In a note published in his capacity as editor of the Southwestern Historical Quarterly, H. Bailey Carroll made this assessment of conditions on the frontier in the early 1870s: "...the years 1870-1871 were the most acute years of Indian hostility and depredation in northwest Texas." One of the two sources used by Carroll in making this observation was the autobiography of a ranger who served under Davis, A.J. Sowell. In short, the adjutant general's Reports for the years 1870-1871, and 1873 should be taken as reflecting legitimate ranger activity. Webb, The Texas Rangers, 219 (quotation), 220-229; William C. Nunn, Texas under the Carpetbaggers (Austin, Texas: University of Texas Press, 1962), 38, 43-75, 191-198; H. Bailey Carroll, "Texas Collection," Southwestern Historical Quarterly, 57 (July, 1946), 165; Andrew J. Sowell, Rangers and Pioneers of Texas (San Antonio, Texas, 1884), 232-409; Ann Patton Baenziger, "The Texas State Police During Reconstruction: A Reexamination," Southwestern Historical Quarterly, LXXII (April, 1969), 470-491; William T. Field Jr., "The Texas State Police, 1870-1873," Texas Military History, 5 (Fall, 1965), 131-141; Otis A. Singletary, "The Texas Militia During Reconstruction," Southwestern Historical Quarterly, LX (July, 1956), 23-35.

43. Ibid., 1874-1876; Governor's Messages, 14-16; Report of the Adjutant General, 1874, Supplement 1874, 1875, Supplement 1875, 1876, 1877-1878; Gammel, Laws, VIII, 86-91; Robert Lee Williams, "A Brief History of Company E of the Texas Frontier Battalion 1874-1879" (unpublished M.A. thesis, University of Texas at Austin, 1952), 97-102.

44. Ibid., 73-76, 84-85, 97; Report of the Adjutant General, 1874, Supplement 1874, 1875, Supplement 1875, 1876, 1877-1878; James B. Gillett, Six Years with the Texas Rangers (New Haven, Conn.: Yale University Press, 125), 69.

45. Report of the Attorney General, 1874, 12, 16 (quotation).

46. Ibid., 1875, 11 (1st quotation), 14 (2nd quotation).


50. Governor's Messages, 74-81, 76 (quotation).

51. Ibid., 80-81.


53. The only substantive difference between Coke's 1875 plan for a special posse and the law passed by the legislature was that the local peace officers named the posse. Coke had recommended and the 1875 statute had provided for those local officers to command any special posse called into service. If the governor seriously wanted to salvage his 1875 idea for a special posse, he needed to give specific recommendations about the changes needed to make such a scheme work. Perhaps he did not make such suggestions because the DeWitt County Feud of 1874 and the Mason County "War" of 1875 had shown that local peace officers and their posses were either not strong enough or too intimately involved in the local situation to resolve intracounty strife. Senate Journal, 15th Leg., reg. sess., 29 (quotation); Webb, The Texas Rangers, 233-238, 325-328.


55. Ibid., 31.
56. This preamble was an introduction to a bill creating a new ranger force, but while this ranger bill became law, the preamble was dropped before the passage of this law. S.B. 295, 15th Leg., reg. sess., Gammel, Laws, VIII, 891-892.

57. Interest in the problem of crime was such in the 1876 legislature that besides the major pieces of legislation that received extensive consideration, two other bill were also introduced. One bill proposed a complex plan for a large state constabulary force, while the other bill simply sought to have felons photographed with copies kept in Austin and in the locality where the photograph was taken. The house and senate each had their own version of the state detective force: H.B. 199, and S.B. 230, 15th Leg., reg. sess.; see also: H.B. 262, 296, 15th Leg., reg. sess.

58. Ibid., S.B. 103; Governor's Messages, 188-194.


60. In his autobiography James B. Gillett made this same point. Referring to the date when law enforcement became the prime responsibility of the Frontier Battalion, Gillett made this observation: "From the spring of 1877 onward the rangers were transformed into what might properly be called mounted state police...."

61. Coke had two alternatives with which to pursue law and order beyond that which local peace officers could provide -- the militia and the Frontier Battalion. The governor had, by 1876, already used both these methods of law enforcement. Coke had employed militia in DeWitt County in 1874 to suppress a feud. Just as twentieth century Texas governors would discover when they called up the militia for police purposes, the militia was expensive, and it took men away from their families and work. When the Mason County "War" broke out in 1875 he sent rangers to restore peace. Although separate institutions the close relationship of the militia and ranger functions is underscored by their overlapping usage in DeWitt and Mason counties. This close relationship was underscored by the fact that the militia company, commanded by Leander McNelly, used in the DeWitt County feud was transformed into the new ranger company created by the 1876 legislature. (Webb incorrectly identifies McNelly's company during its service in DeWitt County as a ranger unit, but the document quoted on page 241 of The Texas Rangers gives the proper identification of that unit for the period 1874-1876 -- "Company A, Volunteer Militia."). Webb, The Texas Rangers, 233-252, 325-328; Williams, "A Brief History of Company E," 97-102; Governor's Messages, 81-83, 193-194; Senate Journal, 15th Leg., reg. sess., 32; Report of the Adjutant General, 1874-1900; Harry Krenek, The Power Vested (Austin, Texas: Presidial Press, 1980), 1-3, 171-174.

Chapter VI The Election of Delegates to the Constitutional Convention

As long as constitutional revision remained in the cloistered chambers of the legislature little public debate occurred on substantive issues. The call for a constitutional convention by the 1875 legislature, however, thrust the subject of constitutional change into the public arena. As the state began the process of nominating and electing delegates to the convention, public discussion of constitutional revision issues increased. The airing of these issues and the selection of delegates set the stage for what later transpired in the constitutional convention, but the experience of choosing their delegates did not prepare Texans for the conflicts that occurred in the convention. Democrats were confident of their control of the state and proud of their constitutional heritage. They failed, for a variety of reasons, to recognize that differences within their ranks were not mere variations of shared values but rather divergences on fundamental concepts about politics and the proposed constitution. The die was cast for the confrontation that later occurred in the constitutional convention when Grangers emerged from the election as the largest bloc of delegates in the convention. But even as they elected delegates, the dominant party remained largely unaware of the storm that was about to break.

The lack of understanding that Democrats displayed about the serious divisions that existed in their party during the pre-convention period stemmed largely from the problems and limitations of nineteenth century journalism. Newspapers of the 1870s lacked
the resources and professionalism commonly found today. A century ago newspapers did not engage in investigative journalism, had less space for news and editorials, and tended to value advocacy over inquiry. These limitations restricted the amount of convention data collected and disseminated by the press. But despite this factor the information published in newspapers, when viewed from hindsight, was sufficient to give some effective appreciation of the types and depths of the problems faced by Democrats in the matter of constitutional revision.¹

But newspapers generally dealt with constitutional questions by arguing in favor of their own position or against the ideas of their adversaries. They rarely made systematic analyses of the problems under consideration. As the result of this lack of inquiry, Democratic newspapers generally held to their assumption that the party had a consensus despite the fact that much of the discussion of constitutional revision issues that appeared in the press were rebuttals to opposing viewpoints. In addition to these unanticipated problems in the distribution and evaluation of information about constitutional revision, a conscious element of screening existed as well. Democratic papers often did not publicize the inner workings of their party. Republican journals had done so from time to time, but even this episodic and often self-serving source was disappearing in the mid-1870s as the minority party's papers fell victim to the economic consequences of Democratic dominance. Republican papers either closed or came under Democratic management.²

In the confusion that preceded the constitutional convention,
perhaps the most significant of the groups and issues generally misunderstood was the Patrons of Husbandry and Texas State Grange, or more familiarly, the Grange. Established in 1868 in Washington, D.C., the national Grange began recruiting membership in Texas in 1873, and Texans formed the first subordinate Grange in Salado that same year. By January 1874, the Texas Patrons of Husbandry had 15,000 members, and by early 1875 the state Grange reached its historic high of 40,000 members.3

The Grange's successes caused Democratic newspapers to question whether Patrons of Husbandry would challenge the dominant party politically, and these papers warned the Grange against such activity. But the constitution of the Grange prohibited it from partisan political activity and the membership of the organization sought to reassure their fellow Democrats of their commitment to nothing more than good citizenship. Most of the state's press took the Grangers at their word and gave them editorial approval.4

The call of a constitutional convention gave the Grangers a unique opportunity for acceptable political involvement just when their popularity was at its peak. The convention was generally considered to be a nonpartisan affair. Since the Patrons of Husbandry stressed good citizenship, the concept of the convention as a special case opened the door for Grangers to participate directly as individuals in the constitutional revision process. The executive committee of the state Patrons of Husbandry went so far as to advise its membership to involve themselves in the selection of delegates to the constitutional convention: "We earnestly appeal to you as citizens and
Patrons of whatever class, trade or profession, in securing the election of men who are true and devoted to the best interests of our great state."^5

It is not possible to estimate precisely the number of Grangers that followed the advice of their executive committee, but in view of the large contingent of these agrarians who served in the constitutional convention, many Patrons of Husbandry must have participated in the nomination and election of delegates. The ultimate success of the Grangers not only in being selected as delegates but also in becoming the dominant force in the constitutional convention is clear, but exactly how this took place is not. What information there is about the entire pre-convention period is sketchy. But data about the Patrons of Husbandry is so lacking that it allows only for sporadic glimpses into the thinking and activity of these agrarians. These glimpses are too incomplete to permit any synthetic analysis. Contemporaries recognized that Grangers were a force of some importance in constitutional revision, but the full significance of the Patrons of Husbandry's participation in that effort was not appreciated by most Texans until the convention began.^6

The problem of insufficient data goes far beyond the Grangers to affect virtually every aspect of the pre-convention period. Newspapers provide virtually the only extant source of information about this period. Besides the limitations endemic to the press of the mid-1870s, the papers still in existence are not representative of the full range of editorial opinion that existed in the mid-1870s. Two factors, however, help to compensate for this lack of balance in jour-
nalistic coverage. First, newspapers of this era frequently printed
brief excerpts or summaries of the comments published in other papers
from around the state, and second, these journals often presented their
own editorial opinion as replies to arguments made by opposing news-
papers. 7

Available information newspapers published about constitu-
tional revision issues, however, reveals that Democrats disagreed about
major questions affecting the state constitution's structure and
functioning. Contending liberal and restrictive constitutional con-
cepts went to the very core of what a constitution should be. More-
over, opposing opinions concerning the need for controls on the par-
ticipation of the public in the political system touched upon an issue
so emotional that it had the power to shape attitudes about the entire
constitution. But even though the press reported the types of argu-
ments being made, it failed to perceive that the dissimilarity in con-
stitutional interpretations was a matter of substance rather than of
detail.

At least two important factors led newspapers to make this
crucial error. First, both liberal and restrictive constitutional
arguments tended to be couched in a common rhetoric which paid homage
to the state's constitutional heritage, and this tended to obscure the
differences in those arguments. Second, Texans had shared a common
constitutional philosophy for so long that Democrats of all constitu-
tional persuasions assumed that they were still a part of this heri-
tage. Even those who sought to propound a new system of constitutional
thought believed they were reformers rather than revolutionaries.
Those who genuinely wished to maintain constitutional continuity tended to stress liberal constitutional doctrine and to play down the post-war active government corollary to that doctrine. Since liberal constitutionalism was the common denominator shared by all of Texas' constitutions from 1836 to 1874, it had a legitimacy that long, continuous, and successful usage provides. Because of the historic dominance of the liberal constitutional perspective, its advocates responded to restrictive constitutional arguments with the perplexity of those who meet a substantive opposition they cannot explain because they conceive of themselves as part of an unquestioned consensus. In one of the better restatements of liberal constitutionalism in the pre-convention period, the Austin Statesman was almost incredulous that it needed to reiterate what the writer assumed everyone knew and agreed to;

> It is strange that newspapers still prate about injecting all sorts of acts of legislation into the Constitution. Laws are one thing; a Constitution is quite another, since it is the basis for laws. A Constitution creates the State; the Legislature makes the state's laws. Those creating a Constitution have achieved their mission when they have framed a government; law givers come after them to restrict and regulate society and individuals. Leave the Legislature plenary powers. Its members will be as wise as they who frame the Constitution. They have the advantage too, of learning each successive day and year new facts and new necessities, and should be restricted in nothing save that they must provide that a pure Republic be maintained.

Rarely did discussion of active government appear in the press during the pre-convention period. At a time of growing agitation for "retrenchment and reform" the expression of such ideas was potentially a political liability. Moreover, the deteriorating economic circumstances of the state government placed renewed pressure on even
those who favored active government to cut back on such constitutional measures in order to preserve the state's fiscal health. The relatively large degree of active government provisions in the 1874 constitution did not necessarily represent the thinking even of its proponents a year later. But despite the enhanced need for economy in government, support for such controversial government activities as state aid to railroads, and the state bureau of immigration continued to exist.9

The problem of insufficient information about the pre-convention period places particular restraints on the discussion of restrictive constitutional thought. Virtually all recoverable contemporary newspapers supported liberal constitutionalism. But the attention given restrictive constitutional ideas in these papers allows for a fairly wide sampling of the types of arguments made during the nomination and election of delegates. Moreover, since the most extensive statements of restrictive constitutional ideas usually were associated with a liberal constitutional critique of those ideas, the articles making such criticisms help to illustrate both sides.10

As the state began to gear up for the nomination and election of delegates in early April 1875 the Austin Statesman and the Galveston News aired both the liberal and restrictive constitutional positions. The Statesman made a particularly lengthy exposition of its position when it summarized a campaign speech by John Johnson of Collin County, who was seeking to become a delegate to the constitutional convention. Since Johnson not only proved successful in his effort to become a delegate, and also became a leader of the restrictive con-
stitutional forces in the convention, his speech and the Statesman's response to that speech were unusually important. According to the Statesman, the major constitutional changes advocated by Johnson were provisions: for a definition of usury, for salaries of state officials to be lowered to the amounts provided in 1861, for all fees and perquisites of officials to be given to the treasury, for a maximum sixty days per legislative session, for controls on railroad fares, for mandatory popular referendums to approve public debt, for restricting the sale of public land to actual settlers, and for the reduction of the number of district judges from forty to ten. The Statesman's reaction to Johnson's proposals illustrated the distance between the liberal and restrictive constitutional viewpoints:

All this [i.e., Johnson's catalog] is very well, but much of it would be excellent legislation that may be very bad constitutional law. Men surely never read a proper State constitution who would make it a STATUTORY CODE as well as the solid framework of a republican government... Either have no legislature, or leave it free to dispose of facts and necessities affecting the changeful fortunes of our progressive communities.

Left unmentioned by the Statesmen, and most likely unknown at the time, was the fact that Johnson was a Granger. Although the significance of Granger participation in constitutional revision was not well understood during the selection of delegates, actions by Grangers and their leaders, including John Johnson, on behalf of restrictive constitutional objectives caused the Statesman to turn against these agrarians.

The Galveston News published three long articles that focused on constitutional questions. Two articles give the restrictive constitutional viewpoint while the third made a liberal constitutional rejoinder to one of the other two. The article to which the News
made an editorial reply was a speech delivered before a local Grange in Williamson County and sent by that Grange with its formal endorsement and a request that the speech be published. The Galveston journal printed the entire text of the speech and placed its criticisms of the speech in a separate article.  

The Williamson County Grangers sought to place tight restrictions on state taxation and spending. Like John Johnson, the Williamson County Grangers argued that the re-adoption of the Constitution of 1845 would satisfy the state's need for "retrenchment and reform." About the 1845 document these Grangers explained: "Under it we lived once, and were a prosperous and happy people. Corruption in official position was seldom heard of, and repressive taxation was unknown...." This was a romantic view of the Constitution of 1845, and its underlying assumption was that the state could return to the levels of expenditure and taxation that had existed under Texas' first state constitution. That document, however, did not limit expenditures or mention tax rates at all. The Williamson County Grangers did not explain in detail their solution to the apparent contradiction between the Constitution of 1845 and their expectations for using it, but a comment made by these Grangers concerning salaries indicated the type of action they wished to take. "That [1845] Constitution generally fixed," the Williamson County Grangers explained, "only the minimum of the salaries. Ought not the maximum to be fixed also by the constitution." In short, these Grangers approved of the Constitution of 1845 only because of its antiquated financial provisions. They wished to transform that document from a liberal to a restric-
tive constitution by imposing explicit limits on the state's spending. A further indication of the degree to which the Williamson County Grangers were confused about the 1845 document appeared in their proposal to alter the timing of legislative sessions:

We then [i.e., under the Constitution of 1845] had sessions of the legislature one in two years, now we have one every year. If the old constitution should be changed at all, would it not be well to make some alterations on this subject.... Would not a session every four or six years be far preferable....

The Galveston News responded to the arguments made by the Williamson County Grange in a more conciliatory fashion than the Austin Statesman had to John Johnson. The News stressed that it concurred with the idea of re-adopting the Constitution. Depicting the 1845 document and the antebellum period of which it was a part in nostalgic terms, the News gave the impression that its differences with the Williamson County Grangers were far less important than their mutual admiration of the 1845 constitution. Ignoring the more controversial aspects of what those Grangers had to say, the News simply reaffirmed its commitment to the liberal constitutional principle of legislative discretion. But though affirming Texas' constitutional tradition, the Galveston journal offered a small concession to the Williamson County Grangers by suggesting that the wages of state officials be reduced: "The salaries specified by the constitution may be too high, but those received under the Constitution of 1845 would be too low for the present day, when the cost of living has greatly increased." The amount of money paid state officials, however, was but the tip of a restrictive constitutional iceberg that the News and other liberal, active government newspaper editors had
yet to recognize. 14

Perhaps the most wide-ranging expression of the restrictive constitutional viewpoint made in the pre-convention period came in the article to which the Galveston News did not respond. This article made one of the most comprehensive presentations of the restrictive constitutional position made prior to the constitutional convention. Entitled "Interview with a Representative man of Eastern Texas," this article summarized ideas espoused by William L. Crawford of Marion County, who ultimately served as a delegate to the constitutional convention.

A lawyer, Crawford placed particular emphasis on the state's judiciary. His most novel suggestion for reforming the court system was not directly associated with the restrictive constitutional position, but it presaged the most controversial and radical change made in the judiciary article by the constitutional convention. Crawford wanted two separate supreme courts. One was to have civil jurisdiction and the other criminal. Other proposals he made concerning the judiciary that were more typical of restrictive constitutional views included: lowering the salaries of all judges with such stipends stated as constitutional maximums, reducing the number of district courts to twenty-five, eliminating the criminal courts except the one serving Galveston and Houston, having district attorneys, county judges, and justices of the peace paid by their fees of office rather than by a predetermined salary.

Crawford saw retrenchment in the judiciary as part of a larger program of economy in government. He also advocated: lower
salaries for all state officials, a ceiling of one-fourth per cent on
state taxes, prohibition of all state debt except in extreme emergency,
creation of local debt only with the approval of a majority of the
landowning residents, a requirement that all state and local taxes be
collected solely in money, and a limit of two year terms for all state
executive officials.15

Like issues arising from liberal and restrictive constitu-
tional interpretations, questions stemming from efforts to limit po-
litical rights lacked adequate discussion and after the constitutional
convention began its deliberations, political rights questions also
created dissension and division among Democratic delegates. Interest
in restricting the public's involvement in politics grew out of the
desire of diehard white supremacists to eliminate, or at least curb,
blacks' political participation. Most white Texans, including an in-
determinate number of Republicans, believed in white supremacy. If
the state could have returned to its previous constitutional practice
of openly excluding blacks from the political process, most whites
would have done so. But the federal Reconstruction Amendments had for-
bidden open racism. Only by indirect means more closely associated
with class distinctions of wealth and education could white supremacists
achieve their goal of exclusion of the Negro. Such class-oriented
political control also affected the poor without regard to race. Thus,
it was the fate of poor whites that made plans to block black political
activity controversial.16

Advocates of political restraints proposed two categories of
control -- suffrage limitations and appointive rather than elective
judges. Among the franchise restrictions discussed were: retention of voter registration, literacy, and payment of the poll tax as the poll, the property tax, or even all taxes levied. Moreover, concern existed about how the Reconstruction Amendments would affect state-wide suffrage controls. Extreme white supremacists were interested in judges because judges could affect the lives of individual citizens more than other state officials. Strident white supremacists wanted appointive rather than popularly elected ones in order to circumvent the electoral strength possessed by Republicans in a few areas of the state. The Austin Statesman, one of the most vociferous advocates of controls on the political system, bluntly acknowledged the connection between such controls and whites' access to the ballot box:

The white man is unwilling to be governed directly or indirectly by the black. The feeling should be fostered rather than repressed, and to escape the injection of negro genius for tasks of government into the courts of the country, the white race may be more willing to forgo the pleasure of voting, and entrust the selection of judges to the governor and Legislature.  

The Statesman's confidence in white acquiescence to limitations on political rights was later disproved when the constitutional convention rejected restrictions on the political system specifically because of their effect on whites.  

Little information remains about those who opposed restraints on political participation. Republicans were more likely than Democrats to object to such measures. But some prominent members of the minority party publicly approved of at least limited controls on voting. Democrats who continued to uphold the state's tra-
dition of Jacksonian Democracy also rejected changes counter to that tradition. But since no known Democratic newspaper either opposed political restrictions or devoted much attention to those who did, information is scanty on arguments used against restraints on the political system.19

During the selection of delegates, one issue drew more interest and generated more debate than all the substantive questions about constitutional revision combined. This was a proclamation made on April 10, 1875 by Democratic state chairman John Ireland. Acting on behalf of the Democratic state central committee, Ireland recommended that local party organizations hold nominating conventions to prepare for the election of delegates to the constitutional convention. If these local party entities acted in accordance with Ireland's request, the result, in effect, would be two types of nominating conventions. First, counties would hold conventions to choose representatives to the state senatorial district nominating conventions, and then those district conventions would select the Democratic nominees for delegates to the constitutional convention.20

Most of the state's Democratic press disapproved Ireland's proclamation. These papers, like the Grangers, believed that the writing of the constitution should be a nonpartisan affair. Since Republicans were a minority incapable of threatening Democratic control of the state, the term nonpartisan meant open competition within the dominant party. "One might reasonably suppose," the Galveston News asserted, "that the people of Texas, Democratic by upwards of fifty-thousand majority, could be safely left to choose, spontaneously and
directly, from among their fellow citizens, delegates who would represent as far as proper and judicious the prevailing Democratic sentiment for the State in framing a new constitution." The danger that the News saw in nominating conventions was that they might aggravate Democratic factionalism: "It is premature to think of driving support from the [Democratic] party by arbitrary tests of party fealty." Further exacerbating the tensions produced by Ireland's call for nominating conventions was the belief that his proclamation was an intervention of the state party into local party affairs.  

Ireland counterattacked in a harsh message. Using the rhetoric of reaction against Reconstruction, the state chairman accused his critics of being in hearty accord with every Radical in Texas. Newspapers opposing Ireland responded to his characterization of them with personal attacks on him. The Dallas Herald went from a relatively neutral position to open hostility: "Mr. Ireland's manifesto was received by the people and press of the state as such self-conceited and uncalled for document should have been--with derision and contempt." The Austin Statesman threatened Ireland: "The Judge [Ireland] must toe the mark better or we will be placed under the painful necessity of reading him out of the party." The warfare between Ireland and his journalistic foes became so rancorous that Governor Coke had to intervene on behalf of the state chairman. After Coke gave his explicit approval to nominating conventions the attack on Ireland subsided.  

Despite the controversy over the Democratic state chairman's proclamation, the local party organizations had to decide for them-
selves whether to call nominating conventions. Feelings about such conventions were often mixed. The Dallas Herald gave its qualified approval of nominating conventions. It believed that such conventions were beneficial in areas possessing enough Republicans to take advantage of a Democratic vote divided among a multiplicity of candidates seeking to become delegates to the constitutional convention. But the Herald objected to a nominating convention in its own district or any area firmly under the control of the dominant party. The Herald's view of nominating conventions coincided with that of the Democratic leaders of Dallas County for they resisted the call to attend their state senatorial district convention. The other two counties, Tarrant and Ellis, in the twentieth district attended that district's nominating convention and selected two of the district's three delegate nominees. But in Dallas County Democrats chose the twentieth district's third delegate to the constitutional convention in the August general election.23

The decision concerning the holding of nominating conventions was not necessarily easy. The Sulphur Springs Gazette pointed out a potential danger in the convening of such conventions:

Should a nominating convention be called and the people do as they have heretofore done, they will not be represented, and we may look for a number of independent candidates who will carry the vote of all the discordant elements. We therefore hope the Chairman of the District will act with prudence.24

In at least one county, Panola, the local Democratic chairman acted imprudently. Panola had employed a nominating convention in the 1873 general election. In that election the county's Democrats differed on the advisability of using a convention. Only by the nar-
rowest of margins had the Democrats named a unified slate of local candidates. The Panola Watchman had justified the nominating convention by saying: "We support conventions not because we believe them always to be fair, but because they insure the perpetuation of a white man's government, they are absolutely a necessary evil." Critics of the nominating convention saw it in a different light as they felt it interfered in the fair competition among Democratic aspirants to office.25

In part because of the 1873 controversy, a nominating convention was not in contention in Panola County two years later. But the issue of the intervention of the local Democratic leader in selecting the party's candidates remained. The Democratic chairman of the state senatorial district of which Panola County was a part recommended that the counties of his district use primaries to select their choice for delegate to the constitutional convention and their representatives to the district nominating conventions. On the same day, May 5, 1875, that the district chairman's proposal for primary elections appeared in the Panola Watchman, the Panola County Democratic chairman ordered an election. But in addition to the primary, the county chairman also stipulated that he would appoint a three-man returning board to count the primary votes and certify the winners of that election.26

Since Panola County had a large minority of Republicans, the local Democratic rank and file generally approved of a primary election. But the returning board was another matter. Protests began to appear in the Panola Watchman against that board, and those expressing displeasure with the board usually identified themselves as farm-
ers. Moreover, the Watchman reported that the county Grange was taking sides on behalf of their fellow farmers: "It is whispered around, that at the Grange Council in this county...on the 3rd inst., a resolution was introduced in that body pledging the members there to vote for no man in this county except a farmer." The Watchman warned the Patrons of Husbandry against becoming involved in politics as an organization, but the dissident element of the local Democratic party continued to identify themselves as farmers without reference to membership in the Grange. 27

The ferment about the process for selecting Panola County's Democratic nominees appeared to move in the direction of an open schism when the farmers of the "fifth beat" [precinct] convened to call a countywide "Convention of farmers" to meet before the primary election in order to challenge the returning board. The fifth beat convention emphatically stated its position: "We deny the propriety of having a Returning Board, holding discretionary powers taking away the vested rights of the people..." The Watchman saw the proposed county convention as an attempt to "split the party." As a result it threatened to "fight to the bitter end...any attempt to disorganize the Democratic party..." When the Panola County farmers' convention met it proved to be a meeting of reconciliation rather than of disunity. The county Democratic chairman presided over the convention, and that body set policy for the upcoming primary election. The farmers' convention defused the issue of the returning board. It did so, first, by providing for each of the county's five precincts to elect two of Panola's representatives to the district convention. The convention's
second tactic was to have Panola's representatives to the district convention pledge their support to the man receiving the most votes in the Panola Democratic primary for the position of delegate to the constitutional convention.\textsuperscript{28}

As would happen in many parts of the state, the nonestablishment candidate won in Panola County. Thomas G. Allison secured the county's endorsement for the Democratic nomination as delegate to the constitutional convention. Allison had emerged as the "farmer's candidate" in early May. Since he was a Granger, his selection in the county primary helps to indicate the significance of the farmer's revolt against the Democratic leadership in Panola County.\textsuperscript{29}

The type of indirect role played by Grangers in the Panola County nominating convention was apparently typical of the Grangers throughout the state. Because the Grangers stayed in the background during the selection of delegates, newspapers gave them only limited attention. Yet during the controversy over Ireland's intemperate characterization of his Democratic critics as pro-Republicans, the Austin \textit{Statesman} had credited the Grangers with being one of the groups that had provoked the state chairman's wrath:

\begin{quote}
We are greatly afraid that our friend Judge Ireland will absolutely forget his dignity, and have all the blessed Grangers, and \textit{Examiner} [the official newspaper of the Patrons of Husbandry, published in Waco] and other Patrons, with that excellent gentleman [William] Lang, the high priest of the organization, all chucked entirely out of the Democratic party.\textsuperscript{20}
\end{quote}

By the time the election of delegates was over, the Patrons of Husbandry had received sufficient public criticism for political activity that Grand Master William Lang felt obliged to reaffirm the nonpartisan
image of his organization:

We are not, though, as an order, a political partizan [sic] organization...Being a patron does not mean that we should be any less a citizen, nor does it in the slightest degree control the course of our freedom of conscience, thought or action; but on the contrary our zeal, our energy and our consciousness should be used thereby. During the recent canvass for a constitutional convention, I have heard much of 'Grange candidates,' and the Grangers doing into politics. I have made diligent inquiry to ascertain if any Grange had proposed the name of any person or discussed the merits or qualifications of candidates to the convention and I have to report that not one scintilla of evidence has been furnished me to substantiate the charge that any Grange has done so.31

Grangers may well have acted only as concerned citizens. But fear of independent actions by large numbers of individuals inspired state chairman Ireland to make his controversial effort on behalf of nominating conventions. The dissatisfaction within the dominant party was greater than the state chairman had expected. As a result, even nominating conventions could not guarantee the Democratic leadership control of the delegate selection process.

Information is too scanty to justify more than a few details about these conventions. What happened to Ireland does suggest how dissatisfied rank and file Democrats defied their party's establishment even in the nominating convention. The state chairman sought nomination as a delegate in his district convention, but failed to receive his convention's approval after a fight that lasted eleven ballots. In a few districts discontent continued to plague Democrats even in the election of delegates. In early returns for the nineteenth district in northwest Texas, the Galveston News listed George B. Erath, an independent Democratic candidate, as being ahead of the dominant party's nominee, Andrew Graves, but Graves ultimately won. In the
thirtieth district encompassing south and far west Texas, independents Louis Cardis and John S. Ford won while party nominee Santos Benavides lost to J. B. Murphy, despite having been cited as ahead in early election returns. 32

The fact that Democrats openly expressed their internal disagreements and allowed independent candidates to challenge the party's nominees was a sign of their confidence in winning the election. Republicans had a majority in only four of the state's thirty state senatorial districts, although they had sufficiently large minorities in several other districts to worry the Democrats. Both parties recognized that Democratic control of the state made a constitutional convention inevitable, but Republicans continued to oppose a convention and to uphold the Constitution of 1869. Republicans said they feared a "partisan" constitution without specifying what partisan meant. Although Republicans had special concerns about what they feared Democrats might do to reduce the state's efforts on behalf of education, their objection to the convention was, for the most part, an expression of their distrust of Democrats in general. Fred Miner, a prominent north Texas Republican, observed: "While I believe the convention will be called, I am not prepared to admit that it is needed or will benefit the State...We have no good reason for supposing that the dominant party, if it controls the convention, will frame one better suited to our present condition." Republican newspaperman Anthony B. Norton continued to insist that any needed changes could be made by amending the existing constitution. The hopelessness of their party's cause led the
Republican state nominating convention to take the pragmatic position of advising the party's membership to vote against the constitutional convention in the referendum part of the election and in favor of Republican candidates in the election of delegates.  

Republicans hoped to make the best of a losing situation. They saw faint hope in the divisions of the Democratic party and sought to make what political gain they could out of it. When the Grange executive committee recommended in late April 1875 that its membership participate in the selection of delegates, it unmistakably criticized the current Democratic state administration. While the Grange executive committee placed much of the blame for the state's problems on the "defective" Constitution of 1869, it condemned the existing condition of the state government:

Partial legislation has well nigh ruined the country; a profligate waste of the people's money has well nigh bankrupted the State. A spirit of wasteful extravagance pervades the mind of all our people. The administration of the State has been heretofore in the hands of men who have proven themselves unable to appreciate the wants of the people, or have been unmindful of their real interests. They have held long and profligate sessions of the Legislature, in granting special privileges and peculiar rights to moneyed rings and railroad companies, not then content, but with the same reckless indifference, they have amused themselves, by creating and manufacturing an unnecessarily expensive judiciary by an almost merciless taxation wrung from an unwilling people... Notwithstanding the accumulated burdens we now bear, an attempt was made to fix a burden of millions upon you as a tribute to railroad corporations, establishing a dangerous precedent subversive of the private rights of the citizen.

The Houston Telegraph, long a foe of the Patrons of Husbandry, challenged the Grange to come completely into the open with its attack: "Who does the Worthy Master Land and his associate Committee mean when they say, 'They have held long and profligate sessions of the
Legislature...?" etc., etc. Who are 'they...?" Sensing a chance to exacerbate tension within the Democratic party, the Dallas Republican newspaper, Norton's Intelligencer, gleefully supplied the Telegraph with its answer:

The Executive Grange Committee draws a perfectly clear picture of the Democratic party of this State...Within two years the State debt has been increased one hundred per cent, doubled, by the Democratic party, and the people groan under heavy taxation imposed by the same party, and of this the Grangers rightfully complain.

Republicans wanted to collaborate with the dissident Democrats. At the May Republican state nominating convention, former governor Edmund J. Davis offered an olive branch to disgruntled Democrats when he invited "conservative citizens to cooperate with us [Republicans]...in making a nonpartisan convention." This offer of mutual aid presaged the fusion of Republicans and such agrarian protesters as Greenbackers and populists in the 1880s and 1890s. But despite the fears of the Democratic leadership about Granger intentions, the Patrons of Husbandry did not accept Davis's offer. Farmers had not yet reached the level of dissatisfaction which later led them into third-party challenges to the Democrats. Moreover, Grangers wanted extensive constitutional changes and had less in common with Republicans than did the Democratic leadership, who by and large favored the constitutional status quo.

As the state approached the last month before the election of delegates, one Republican, former attorney general William Alexander, used what amounted to a humorous Trojan Horse to confuse Democrats by exposing their internal conflicts. Acting anonymously, in late
June 1875 Alexander sent out what purported to be a secret circular issued by the "select committee" of the "inner circles" of the Democratic party. Adopting the pose of giving advice to local Democratic leaders, Alexander used his bogus circular to expose a variety of fears and weaknesses exhibited by Democrats. The most important of these fears were those posed by Granger involvement in politics and the bad condition of state finances under the Coke administration. Alexander's circular quickly caused the various contending elements of the Democratic party to blame one another for its authorship. By the middle of July, Democrats finally learned that they were the victim of a joke, but the quality of the jest was such that the former attorney general gained the respect rather than the enmity of those he lampooned. The Austin Statesman felt somewhat flattered that authorship of the circular had been attributed to it, and the Galveston News openly acknowledged the validity of the circular's political commentary:

> It is signed by no one, and if intended as a forged paper, to be regarded as the work of Democratic hands, is very weak, as well as infamous, but if intended as a satire on certain Democratic politicians, and on the tricks of wire-working political managers in all parties, is not without ingenuity and force...Taken simply as a burlesque on self-constituted political leaders and their "hocus-pocus juggling arts to cheat the crowd," it has a trenchant edge, and may be read by the candid and discriminating with appreciation and perhaps profit.

The election of delegates held on August 2, 1875 confirmed the Democratic establishment's worst fears. Democrats won the election overwhelmingly as expected, but the party's picked nominees lost. The Democrats received almost 60,000 out of the 90,000 votes cast, and swept seventy-five of the ninety delegate positions. But few incumbents above the local level or other persons of stature within
the state Democratic party became delegates. Moreover, thirty-seven Grangers plus many farmers not directly associated with the Patrons of Husbandry won election and gave the convention a strong nonestablishment representation. ³⁹

The Democratic leadership had tried to avoid calling a constitutional convention because it feared losing control of the revision process. Once a convention became inevitable, state chairman John Ireland, the Democratic state central committee, and Governor Coke attempted to increase the party leadership's control of the nominating procedure in order to forestall an internal revolt. Dissatisfaction in the party proved too strong to contain. The time bomb of rank and file discontent exploded with the election of many nonestablishment Democrats to the convention. But most of the state did not appreciate what happened in the election until later. Not until the convention began its deliberations did most Democrats finally discover, usually to their surprise and dismay, the great disharmony that existed in the constitutional thought of their party.
Chapternotes

1. An unusually candid statement of editorial policy was made by the Dallas Herald in a brief article entitled "Advice to Young Editors:" "When you wish to say anything unkind of your contemporaries which you fear might entail personal consequences, a good plan is to procure some one to write for you as a correspondent, or failing in that, write it yourself and publish it as a communication." Dallas Weekly Herald, August 7, 1875.

2. An example of the fate of Republican newspapers was what happened to two papers owned by James P. Newcomb. The Austin Daily Journal folded and the San Antonio Daily Express, still in print today, was sold. See the Dallas Weekly Herald, September 4, 1875.


4. Austin Daily Democratic Statesman, April 15, 23, 1874, May 1, 5, 1875; Galveston Daily News, July 17, 1874, May 4, 6, June 4, 1875; Houston Daily Telegraph, May 11, 1875.

5. Ibid., April 24, 1875.

6. Minutes of the Texas State Grange of the Patrons of Husbandry (Waco, 1874), 7-8; Proceedings of the First Annual Session of the Texas State Grange, (Waco, 1874), 3-8, 10-11; Proceedings of the Second Annual Session of the Texas State Grange, (Waco, 1875), 15-16, Consitution of the Texas State Grange, (Waco, 1875).

7. Galveston News, April 10, 1875; Austin Statesman, April 4, 7, 1875. The confusion about constitution-making was such that the Statesman praised the new constitutions of Pennsylvania and Illinois, the progenitors of restrictive constitutionalism, as being "the best" of the nation's state constitutions while fervently campaigning on behalf of a liberal, active government document for Texas. Ibid, July 13, 1875.

8. Ibid., April 4, 1875.

9. Ibid., April 7, 20, 1875; Galveston News, March 6, April 10, May 22, 1875; Marshall Tri Weekly Herald, April 24, May 4, June 10, 17,
10. As perhaps the most prestigious Texas newspaper of the period, the Galveston News tended to have an even more extensive sampling of other papers' views than was usual, and examples of restrictive constitutional arguments in the News are: Gatesville Sun (April 3, 1875), Lampasas Dispatch (April 6, June 8, 1875), Rockdale Messenger (April 23, 1875), Athens Courier (April 23, 1875), Henderson Courier (April 27, 1875).

11. Austin Statesman, April 7, 1875.


13. Ibid., (all quotations).

14. Ibid.

15. Ibid.

16. The debate conducted in the constitutional convention about suffrage restriction left no doubt that opposition to such control by Democrats resulted from fears about their effects on white voters. See: Seth Shepard McKay, Debates in the Texas Constitutional Convention of 1875 (Austin, Texas: University of Texas Press, 1930), 167-190.

17. Austin Statesman, April 20, 1875 (quotation).

18. Although the prime factor behind the drive for suffrage restriction was race, a distrust of the white urban proletariat also influenced advocates of such controls as a problem that existed in the East and might come to Texas. About this potential danger the Austin Statesman observed: "The Statesman will do them [blacks] justice to say that they have served Southern counties and towns no worse by setting up vulgar villains from all lands to rob and devastate and destroy, than the ignorant, depraved whiskey-guzzling red-mouthed white rabble of New York and Philadelphia." Ibid., March 10, 1875. For the comments of other newspapers favoring franchise limitations see: Galvston News, July 3, August 6, 1875; Dallas Herald, July 10, August 7, 17, 1875; Waco Examiner and Patron, August 14, 1874; and for papers quoted in the Austin Statesman also see: Georgetown Democrat (July 26, 1875), Sherman Courier, July 29, 1875.

19. The committee version of the Constitution of 1874, as discussed in Chapter Four, had also taken these two different approaches to restricting the public's political activity by providing for the governor to appoint district judges and by allowing the legislature to require voters to register and to pay their poll taxes. The appointment of judges, however, was too controversial and the senate amended
the 1874 document to provide for the election of district judges before passing that document and sending it to its doom in the house. Art. IV, sec. 6, Art. VIII, sec. 33, 34, Constitution of 1874.

20. Austin Daily State Gazette, April 21, 1875.

21. Galveston News, May 14, 1875 (first quotation); ibid., April 15, 1875 (second quotation). The LaGrange Record was so outraged by Ireland's proclamation that it refused to publish that message. LaGrange Record, quoted in Austin Statesman, May 2, 1875. See also: Austin Statesman, May 4, 1875 and papers quoted in the Galveston News, Dallas Herald (May 4, 1875), Athens Courier (April 23, 1875), Victoria Advocate (April 28, 1875), Belton Journal (May 4, 1875), Brenham Banner (May 4, 1875).

22. Dallas Herald, quoted in Galveston News May 4, 1875 (first quotation); Austin Statesman, May 4, 1875 (second quotation); ibid., May 20, 1875; Galveston News, May 22, 1875.

23. Dallas Herald, April 24, May 15, 29, June 19, 26, July 3, 10, 1875.


26. Several weeks before the announcement of primaries the Panola Watchman published a letter from a local Democrat that expressed popular distrust of nominating conventions in graphic terms: "We are all aware of the fact, that conventions not infrequently fail to reflect the views of the people, or fail to select the candidate who is the choice of the people...This [i.e., primary elections] in my opinion, will meet the approval of the farmers... This will drive out every thing of a tricky nature and leave the matter with the people." Panola Watchman, April 14 (quotation), May 5, 1875.

27. Ibid., May 19, 1875. Grangers responded to the Watchman's criticism of them by threatening to cancel their subscriptions to the paper and the Panola County journal reacted to this threat with a warning of its own: "Do they [i.e., Grangers] intend to force us to make war upon the organization against our inclination?" Ibid., June 16, 1875.

28. Ibid., May 19 (first quotation, June 2 (second quotation), 9, 1875.

29. Ibid., May 5, 12, 1875.

31. Waco Examiner, August 27, 1875.

32. Austin Statesman, June 23, 1875; Galveston News, August 7, 1875.

33. San Antonio Express, May 7, 17 (quotation), June 2, July 16, 1875; Norton's Intelligencer, May 29, July 24, 1875.

34. Houston Telegraph, April 24.

35. Ibid.

36. Norton's Intelligencer, quoted in ibid., May 11, 1875. The executive committee's remark about "an attempt...to fix a burden of millions upon you as a tribute to railroad corporations..." referred to the 1875 legislature's nearly successful effort to give the International Railroad several million dollars in state bonds.

37. San Antonio Express, June 2, 1875 (quotation). A letter written in Austin by some political observer respected by the Galveston News and published in that newspaper in late April indicated the concern that existed both about divisiveness in the Democratic party and about the potential, which was then unclear as to who would join whom, it had for political combinations:

It has been asserted that the [Coke] administration is secretly opposed to a constitutional convention...The Republicans...would no doubt be glad to form a coalition with the Grangers, or with the conservative wing of the Democracy; while it is probable that Governor Coke and his friends would, if they thought it necessary to carry certain points uppermost in their minds, jump at a chance to form a coalition with the Grangers, especially if the Republicans and some elements in the Democracy should in some way get harnessed together.

Galveston News, April 20, 1875.


39. Galveston News, August 7, 1875; Houston Telegraph, August 15, 1875; Nat Q. Henderson, Directory of the Officers and Members of
the Constitutional Convention of the State of Texas, A. D. 1875
Austin, Texas: Democratic Statesman Office, 1875).
Chapter VII The Constitutional Convention of 1875

The Constitutional Convention of 1875, having put aside the rancors of the election campaign, convened in Austin on September 6 with a harmony bred of a shared desire to create a good constitution. But the sense of fellowship with which the delegates came together was only a thin facade that hid a great division of opinion about the type of constitution the state should have. Although conflict occurred over early procedural questions, the differences of opinion among the delegates were slow to emerge on the convention's floor. The first two articles, legislative and executive, reported from committee caused little dissension in the convention as a whole despite taking a clear-cut restrictive constitutional stand. But the latent tensions among the delegates rose to the surface when the third article, suffrage, came out of committee. A majority of the delegates who believed that preserving white votes was more important than eliminating Negro votes turned a deaf ear to pleas by committed white supremacists for "relief" of the black belt and wrote a suffrage article that continued to allow full manhood suffrage. Much of the state's press turned from being skeptical about the convention because of the restrictive legislative and executive articles to being hostile because of the democratic suffrage article. Although no causal link can be established between the convention's internal controversy over the suffrage article and its subsequent deliberations, many of the articles that came after that of suffrage were hotly disputed. But despite the conflicts they experienced, the delegates persevered in their preference for a restrictive consti-
tution with only the judiciary article as a major exception. Thus, once the convention completed the Constitution of 1876, the state faced a choice of approving this restrictive document or rejecting it at the price of continuing to live under the reviled Constitution of 1869. Advocates of a liberal constitution split, with Governor Coke leading the group that decided to support the new constitution on the pragmatic ground that it was relatively easy to amend. But since the 1876 constitution clearly provided for the "retrenchment and reform" so long demanded, its victory was a foregone conclusion that the people confirmed in a landslide vote.¹

The delegates of the 1875 convention, despite the absence of such leading Democrats as John Ireland, James Throckmorton, and Ashbel Smith, who had unsuccessfully sought to come to the convention, included a solid core of men with legislative and other governmental experience. In fact, the overall quality of the delegates was such that they received not only the approbation of most their contemporaries but of most modern scholars as well. Certainly, the delegates collectively had sufficient expertise to do the job for which the people elected them. The only question was what type of constitution did a majority of the convention want.²

As the voting in the convention ultimately revealed both the delegates' occupations and their membership in the Grange had a strong bearing on the constitutional perspective of the delegates, but the information on the convention's membership is too sketchy and incomplete to make a definitive determination about the precise numbers of delegates in each job category or who belonged to the Grange. No one source
of information, contemporary or modern, nor all extant sources combined provide a completely flawless profile of the convention's membership. But one compilation of information does provide a data base for making an effective analysis of the delegate's voting in terms of their employment and membership in the Grange. Nat Q. Henderson, a secretary for the state senate and an unpaid helper of the convention, published a collection of facts about the delegates gained from interviewing them, and while his information was not complete, it reflected the way the delegates wished the public to know them. According to Henderson, seventy-nine of the ninety members of the convention had one, and eleven had two or more occupations. Delegates, when those with multiple employment are classified only by the first occupation listed by Henderson, consisted of thirty-eight farmers, thirty-three lawyers, and nineteen in various other occupations. Thirty-seven delegates identified themselves as Grangers, and thirty of these were solely or primarily farmers.

Grangers, both in reputation and in fact, dominated the convention, and among the occupational groups those who listed themselves as farmers paralleled the Grangers in their voting behavior. The large majority of Grangers and farmers supported the creation of a restrictive constitution, while laywers and those in the other nonfarming occupations tended to divide more or less evenly between liberal and restrictive constitutional proposals considered by the convention. But according to one contemporary observer, the convention had a distinct Granger-lawyer split. The delegates' voting patterns did not reflect this except in one respect. Even though lawyers as a group did not
show any clear constitutional preference, those lawyers who did vote for liberal constitutional provisions generally formed a large plurality favoring such measures.⁵

For much of September, committees worked on the constitution, and the convention as a whole dealt mainly with procedural matters. Two procedural issues in particular helped set the tone of much of the convention's deliberations on the constitution itself. The first of these procedural questions was the pay of the delegates. The committee appointed to confer on delegate salaries recognized that this issue had a significance that went beyond the amount of money given to the convention's membership. The entire committee agreed that the convention's stipend had to be less than that given the legislature, but this consensus of opinion did not extend to the amount of be cut. For example, the committee on delegate pay sent the convention a majority report, signed by all but three members of the committee, recommending a $3.00 reduction to $5.00 per day plus $5.00 for every 25 miles (i.e., 20 ¢ per mile) traveled, while the minority report recommended a $4.00 reduction to $4.00 per day and 15 ¢ per mile traveled.⁶

Two factors caused the committee to divide. First, the majority and minority of the committee had different interpretations as to just how much retrenchment the people expected. As one member of the minority explained to the convention: "The difference [within the committee] was not so much between them as their understanding of the opinions of the people they represented...." Second, the entire committee felt strongly about a one dollar a day difference in pay because
it saw the amount given to the delegates as a precedent for the salary that the constitution would allow legislators. While defending the position of the committee's minority to the whole convention, John Johnson of Collin County lampooned those members of the convention who feared that a low salary for delegates might adversely affect the salaries of legislators, and in his comments Johnson revealed the depth of hostility that many advocates of strong "retrenchment and reform" felt towards government: (paraphrased)

    With reference to the rate of pay at which gentlemen could afford to serve the people, as good men as he was could be hired in his neighborhood at $1 a day and board themselves. (Laughter.) His constituency did not propose to send men of the highest talent to represent them, because the people had had too much of talent. They were in favor of lower salaries and a lower order of talent. The officers did not get mileage. Besides the members were willing to work and expected to do so at lower pay.'

Johnson's sally against supporters of the majority report elicited a jocular rebuttal from a Republican delegate, Stillwell Russell. Attacking not just the minority report but the whole concept of low salaries, Russell used the ploy of reductio ad absurdum to chide Johnson: (paraphrased)

    The gentleman from Collin had said that good men could be obtained for $1 a day. It might turn out that compensation at $1, $2, or $3 a day might be very dear to the people. He thought the gentleman from Titus was pandering to popular clamor. He did not think that the people expected that the only compensation delegates were to receive was their board bills and their actual mileage. If that was the idea of retrenchment and reform they might as well resolve to serve the people gratuitously for the sake of patriotism. He felt that it should be the idea of the Convention to limit legislation and the cost of it. He did not think the services of a legislator for making laws under a Constitution were entitled to a higher compensation than that paid to the delegates who framed the Constitution itself. In conclusion he proposed as a substitute for the whole question 'that the delegates of this Convention do serve in this Convention without per diem pay or mileage.'
The convention resolved the delegate pay issue in a way that later became typical of conflicts between one measure that was well within restrictive constitutional standards and another proposal that was more extreme in its effect on government. The vote on the delegate salary issue was not recorded, but the stipend given in the majority report was lower than that currently given legislators. Moreover, the majority of the committee on delegate pay included Grangers strongly committed to a restrictive constitution, while only three diehard restrictive constitutional Grangers supported the minority report. In any event, the majority report passed, and the delegates received $5.00 per day for their service in the convention.9

The second procedural question that reflected attitudes prevalent among the delegates dealt with the question of the type and cost of the printing needed by the convention. The printing committee took a much freer approach to spending the convention's money than had the majority of the committee on delegate pay, and as a result the convention disapproved two important recommendations made by the printing committee. The first such rejection came in response to a preliminary report that the printing committee submitted to the convention. The preliminary report suggested that the convention order multiple copies of a newspaper that gave a stenographic report of the convention's daily proceedings for all the delegates. The convention gave the preliminary report a cold reception, and as one of the leading proponents of a restrictive constitution explained: (paraphrased) "He feared his colleagues [on the printing committee] would lead them back to the old rut they were trying to get out of." Apparently many delegates be-
lieved that buying newspapers was too costly because the convention rejected the preliminary report in a nonrecord vote.10

The printing committee sent a comprehensive report proposing four types of printing to the convention on September 13, three days after the delegates had considered and rejected the preliminary report. The categories of printing suggested in the comprehensive report included: the journal, the daily debates, miscellaneous working materials, and the finished constitution. The convention accepted all the above except the daily debates without controversy, but the plan for spending money to hire a stenographer to record the debates and then to print those commentaries provoked much opposition among the delegates.11

The convention's initial reaction to the plan for recording the debates was to reject it summarily, and the delegates did just that in a nonrecord vote. But recording the debates was an issue that would not die so easily. The Constitutional Convention of 1845 had set a precedent by publishing its debates, and the lawyers among those serving in the 1875 convention reminded their colleagues of how valuable the 1845 debates were to the courts in deciding constitutional law. Also proponents of recording the debates believed that the people had a basic right to know about the convention's proceedings and that to deny them this information amounted to "extreme retrenchment." Speaking on economy in government, Nicholas Darnell, the only member of the 1875 convention to have served in that of 1845, explained that (paraphrased) "he had come to Austin determined to do all in his power to bring retrenchment and reform into the Government and into the Convention."
But Darnell argued that the failure to hire a stenographer would be unfair to the convention's constituents. "Was it the intention of the Convention," he asked rhetorically (paraphrased), "not only to muzzle the press, but also to muzzle their own action and to deprive their constituents of a knowledge of their proceedings?" The only argument made by those who did not want the debates published was that they "opposed it on the ground of expense." 12

Many delegates found it difficult to make the choice of whether or not to publish the convention's debates. The day after the delegates defeated that measure, in a nonrecord vote, they reversed that decision, and approved a motion to hire a stenographer to record the debates. But another day later, September 16, the convention once again changed direction and agreed to reconsider the employment of a stenographer. At this point the conflict over publishing the debates became sufficiently intense that the convention began to record its decisions in roll call votes. By the narrow margins of one and two votes the convention defeated a compromise resolution on hiring a stenographer and a motion "to indefinitely postpone the whole subject matter." Finally, the delegates voted on the original proposal to employ a stenographer and publish the debates, and they defeated it by a large margin. The last three votes on the issue of publishing the debates fit the general pattern of restrictive constitutional issues except in one regard: a substantial majority of lawyers consistently supported the publication of the debates. Otherwise, a majority of Grangers and farmers favored the antipublication position, with those two groups achieving their greatest cohesion to provide the final large vote to
give the debate question its ultimate defeat.\textsuperscript{13}

The issue of publishing the debates brought the convention its first criticism from newspapers. Not all the state's press commented on this question, but those that did editorialize on it objected to what they viewed as the convention's excessive parsimony. The Dallas \textit{Herald} was a particularly vociferous critic of the convention's failure to record its deliberations, and in stating its complaints the \textit{Herald} stressed that it viewed the convention's action on the debate matter as a worrisome indication of excessive economizing:

\begin{quote}
The debate on the election of a stenographer in the convention indicates pretty clearly the animus of that body. The extreme 're-trenchment and reform' sometimes lead gentlemen, who are very sensible on all other subjects, into positions which in their lucid intervals they are heartily ashamed of..."

The extreme timidity of politicians, particularly of those who belong to the class of new men, when out of sight of their constituents is proverbial.... What they [the people] do desire is to know, in the clearest and most satisfactory manner, just what the Convention is doing, and the people are willing to pay for the information.\textsuperscript{14}
\end{quote}

Among the attacks that the \textit{Herald} made on the convention for defeating the plan to publish its debates was a reprint of an unfavorable editorial that had appeared in the Shreveport, Louisiana, \textit{Times}. The editor of the \textit{Times} had attended the convention in Austin and gave a prejudicial assessment (one that would reappear in other papers as the convention progressed) of the opposing groups of delegates on the publication of the debates. According to the \textit{Times} editor the split in the convention was between "the best men," who favored publishing the debates, and the "retrenchers," who opposed that measure. The judgment the Shreveport editor passed on the "retrenchers" was particularly harsh; he said they were "men of good intentions, but who
have absolutely no comprehension of the work entrusted to their wisdom."15

As the convention began to switch attention from procedural questions to the various articles of the constitution, it appeared to move beyond the controversies that had previously marred its deliberations. In its work on the first two articles to come out of committee (the legislative and the executive), the convention displayed a degree of agreement and harmony in marked contrast to the procedural issues that had come before and the other articles that would come later. But even though the legislative and executive articles were not typical in their relatively easy passage through the convention, their content was a harbinger of the constitution that was to come. Both these articles were distinctly restrictive in character, and by approving the legislative and executive articles the convention gave notice that Texas was joining the national drive for restrictive state constitutions.

The convention's deliberations on the legislative, executive, and all the constitution's other articles is best understood in terms of these articles as completed. Only by first comparing the various articles of the Constitution of 1876 with the articles of earlier Texas constitutions can the alternatives considered by the 1875 convention be put into perspective. As would be the case for all the articles in the 1876 document that had appeared in the state's earlier constitutions, the legislative article blended the old with the new in a way that kept much of the letter of the same article in earlier constitutions while abridging their liberal constitutional spirit. About
two-thirds of the sections in the legislative article had antecedents in at least one previous Texas constitution, and of these sections most were either partial or complete copies of sections in the 1845 legislative article. But in those sections that were expanded or otherwise revised by the convention, the change often constituted a dramatic reduction of the legislature's powers. Further enhancing the legislative articles' restrictiveness were most of the eighteen sections added to that article in 1875. Moreover, the influence of the restrictive constitutions recently ratified in other states was underscored by the fact that eleven of the new sections in the legislative article were taken, either wholly or in large part, as verbatim copies of sections in the Missouri Constitution of 1875.16

Historically, in Texas and the nation as a whole the legislative article had always posed a different set of problems for those writing state constitutions than had any other part of the organic law, and these differences also affected the measures taken in 1875 to make the legislative article restrictive. Unlike the other branches of government that had only those powers specifically granted to them, the legislature had plenary powers to which the constitution gave shape and definition by placing controls on how and what the legislature could do. As the noted jurist and legal scholar Thomas M. Cooley explained in his A Treatise of the Constitutional Limitations which rest upon the Legislative Power of the States of the American Union: "except where the constitution has imposed limits upon the legislative power, it must be considered as practically absolute...." But the type of limitations embodied in previous legislative articles were directive controls.
Such directive controls affected the legislature by defining procedures for it to use and by mandating actions for it to implement. Thus, the restraints in a liberal legislative article influenced the legislature mainly in terms of how and what decisions it made but only rarely in terms of whether it could make decisions.  

A restrictive legislative article differed from a liberal one both in terms of how many limitations it contained, and more importantly, in terms of the different types of restraints it imposed. A restrictive legislative article had directive controls in greater numbers and with wording that was narrower and more constrictive, but however debilitating such changes were, directive controls did not affect the legislature’s capacity to make decisions. The revisions in the legislative article that impacted on the legislature’s ability to reach decisions were proscriptive controls. These proscriptive controls were the heart of what made a legislative article restrictive. This was the case because proscriptive controls set maximums on, or even prohibited altogether, specified types of legislative behavior. Moreover, the most important of the activities affected by proscriptive controls in making an article restrictive were those affecting the state’s financial functioning. Finally, a third type of alteration common to, but not always present in, restrictive legislative articles was structural change.

The legislative article in the Constitution of 1876 contained all three of the above categories of revision, but in the case of structure, the changes were merely a return to the prewar status quo. The legislative article eliminated those active government fea-
tures that had been added to the 1866 and 1869 legislative articles, and by doing so it restored the same basic structure that had existed in the 1845 legislative article. In its major characteristics, this structure consisted of biennial sessions of the legislature, two and four terms for the house and senate, respectively, and a lieutenant governor, who had a two year term of office and served as the presiding officer of the senate.\(^{18}\)

The changes made in the descriptive controls of the 1876 legislative article were largely restrictive. Both through the addition of new descriptive controls and through the expansion of existing ones, the legislative article gained much of the length and detail that was typical of restrictive state constitutions. This expansion in the descriptive controls consisted of ten new sections and fifteen amended sections. While a few of these alterations enhanced rather than restrained government's discretionary authority, the vast majority of them were restrictive. But as was characteristic of descriptive controls, their growth in numbers and complexity did not substantially alter the capacity of the legislature to make decisions. Some of the new descriptive controls were trivial, but even the long lists of subjects prohibited as special legislation only affected the means by which the legislature could take action.\(^{19}\)

The proscriptive controls of the 1876 legislative article were fewer in number than the descriptive ones, but they constrained the legislature's power to make decisions either by setting maximum limits or by prohibiting specified activities altogether. The legislative article had nine proscriptive controls, eight of which were new,
and all these controls dealt with the legislature's authority over the state's fiscal affairs. The one proscriptive control that was not new to the 1876 legislative article placed a ceiling on state debt. While the 1845, 1866, and 1874 legislative articles had each had such a measure, the 1876 debt limit was slightly less stringent in restraining the legislature than at least two of the earlier debt limits had been. The 1876 debt limit was $200,000, while those of 1845 and 1866 were $100,000 (and that of 1874 was $1,000,000). Furthermore, the 1876 debt limit had allowed the legislature to create financial obligations by only a simply majority, while those of 1845, 1866, and 1874 had required a two-thirds majority.20

Of the new proscriptive controls, one was a revision of a preexisting descriptive control. All prior legislative articles had stipulated the salary for the legislature, but without affecting the legislature's ability to change its pay. The 1876 legislative article stated the legislative stipend as a constitutional maximum and lowered the $8 per day allowed in 1866, 1869, and 1874 to $5 per day for the initial sixty days of a legislative session and $2 per day thereafter.21

The other seven proscriptive controls new to the 1876 legislative article were all taken from the Missouri Constitution of 1875. The most important of these controls was one that denied the legislature "the right to levy taxes or impose burdens upon the people" except for eight categories of government activity. Three of these proscriptive controls dealt with the legislature's power to authorize the lending of credit and money by government on any level. These three controls prohibited the state from giving such aid to pri-
vate individuals and corporations and to local governments as well. In addition, local governments were also barred from providing such assistance to private individuals and corporations. Another restriction placed on local government paralleled a restraint that had long affected state government, it proscribed the legislature from granting "any extra compensation...to a public officer, agent, servant, or contractor after service had been rendered or a contract has been entered into in whole or in part...." The last two proscriptive controls denied the legislature the right to "release or alienate any lien held by the State upon any railroad" or any debt owed by any private individual or corporation to any governmental entity.²²

As completed, the legislative article did not differ greatly from its committee version. Indeed, the legislative article went from committee to final approval with a harmony that belied the fundamental differences which existed among the delegates. It was as if the delegates had forged a virtual consensus not to challenge the legislative article as passed in committee. With one major exception, all the revisions to the legislative article considered by the convention were only modifications that did not fundamentally change that article. The one challenge to a substantive feature of the legislative article that received more than a few votes was a motion to eliminate the office of lieutenant governor, and it lost by a margin of seven votes.²³

The convention's deliberations on the legislative article, aside from not involving substantive features of that article, fit no pattern in terms of what it passed or defeated. But a large proportion of the revisions it considered were proscriptive controls, and these
form the focus of the discussion that follows. The convention showed no preference in the changes it made in the legislative articles based on whether those alterations strengthened or lessened that article's controls on the legislature. For example, the convention considered three different revisions of the section setting the salary of legislators, with two of the proposed amendments raising and one lowering the amount paid, and all three of these proposals failed.²⁴

The convention approved two revisions in the section that limited the legislature's power to spend to eight types of activities, with one being less and the other being more restrictive. The change that made the spending section less restrictive dealt with that position of the section that authorized the legislature to provide for "the support of the public schools." The words "public schools" left the legislature with no authority to fund colleges and universities, and if passed as proposed in committee, the spending section threatened Texas A. and M. College, which was partially constructed, as well as all future institutions of higher learning. When presented with an amendment to allow the legislature to aid "colleges and universities under the control of the state," the convention rejected that change in the spending section in a nonrecord vote. Several days after this initial defeat the convention agreed to reconsider the issue of funding colleges and universities after an impassioned plea by the sponsor of that measure. Striking at the heart of the convention's doubts, this delegate sought to reassure his colleagues that state aid to higher education did not contravene restrictive constitutional principles:

We can effect retrenchment and reform but we should act the part
of statesmanship in doing it. We should seek reform in those subjects which in themselves are calculated to produce fraud and corruption in legislation. There are many sources of corruption, and we see these sources of corruption in private corporations, railroad charters, monopolies of every kind, and a hundred different subjects. And I will strike hands with any gentleman on this floor in striking out such sources of corruption.... [but] what is there on the subject of education calculated to corrupt the future Legislatures? Where are the parties who are to bribe legislators to establish schools and colleges? No, sir, let us not tie the hands of our future legislatures, but leave them untrammeled, to establish without restraint, in this empire state of ours, an educational system that will keep pace with the systems of other states. 25

The logic of this argument apparently convinced the majority of delegates, for when the convention resumed its deliberations on the colleges and universities issue, it first rejected a compromise motion to fund only Texas A. and M. and then adopted the proposal to support all state colleges and universities.

The revision that made the spending section more restrictive came as a result of a direct attack on the legislature's capacity properly to oversee the state's eleemosynary institutions. As reported from committee the spending section authorized the legislature to provide for "the support of the eleemosynary institutions of the state." Some delegates found the term "eleemosynary" too broad and wanted to limit the legislature's authority to three such institutions, the Blind, the Deaf and Dumb, and the Insane Asylums, currently operated by the state. Those opposed to denying the legislature this power protested that the elimination of the word eleemosynary (paraphrased) "might exclude other charitable institutions." To this, the author of the proposed amendment to the spending section replied (paraphrased) "that was the very object he had in view." Elaborating on his ob-
jection, this foe further explained that "eleemosynary was a big word and capable of being misinterpreted [by the legislature]." This appeal to the fear of the legislature worked, and the convention passed the proposed amendment to the spending section in a nonrecord vote.25

Finally, the convention's work on the section limiting state debt revealed the cautious tactics used by proponents of a liberal constitution to reduce the stringency of the constitution's controls on the legislature. As passed in committee, the debt section went far beyond the debt sections in earlier Texas documents or those recently adopted in other states. The committee version of the debt section prohibited the creation of any state financial obligations under ordinary circumstances and allowed the state to borrow a maximum of $500,000 "in cases of insurrection or invasion." But by a margin of two to one, the convention voted to substitute a verbatim copy of the 1845 debt section for that of the legislative committee. As soon as the convention approved this change in the debt section, John Reagan, a long-time officeholder and a leader of those favoring a liberal constitution, proposed a second alternative section. Reagan's debt section was an imaginative attempt to increase the legislature's authority over debt matters. Drawing on the prestige of the Pennsylvania Constitution of 1873 as a restrictive document, Reagan explained that his debt section (paraphrased) "was a liberal copy from the Constitution of Pennsylvania, except as to the amount, which was [in the Pennsylvania document] $1,000,000." Reagan raised the debt limit, for normal conditions from the $100,000 allowed in the 1845 debt section to $200,000 and completely eliminated the requirement of a two-thirds majority for the
legislature to create financial obligations. The convention passed Reagan's substitute debt section.27

The convention worked with so little friction over the legislative article that the delegates did not establish a clear pattern in its voting. In many instances, the delegates did not experience sufficient dissension to bother taking the roll call on votes, and even when the votes were recorded, they were often so lopsided that they failed to reveal much about the differences among delegates. One vote, however, did follow the pattern that was soon to emerge. Although it lost, the motion to eliminate the office of lieutenant governor still found favor among the majority of Grangers and farmers. By a larger majority than was to be common for them, lawyers provided the largest group of votes against ending that office, and all other occupations split almost evenly on that issue. All but one Republican voted to preserve the lieutenant-governorship.28

Since the executive branch had only those powers that the constitution gave it, and it administered rather than formulated the state's economic policy, the executive article required fewer changes in order to become restrictive than did the legislative articles. Most of the twenty-six sections in the executive articles had at least some small change in them, but only two were entirely new. The alterations made in the executive were largely, but not totally restrictive. In all, the two new sections plus twelve other sections that had substantial revision enhanced the controls on government, while five sections had changes that lessened control on government. But in quality as well as quantity, the changes in the executive article that made it
more restrictive had a far greater impact than those that made it less restrictive.  

The executive article had a number of structural alterations, but these changes were more a repudiation of the active government structures added to the postwar Constitutions of 1866, 1869, and 1874 that a shift to a new restrictive constitutional structure. In 1876 the executive branch consisted of the governor, lieutenant governor, attorney general, comptroller of public accounts, treasurer, commissioner of general land office, and secretary of state. All these officials returned to the pre-1866 status quo of serving two years terms and of being, except for the secretary of state, popularly elected. Another repudiation of postwar active government was the elimination of the superintendent of public instruction. One structural change, however, broke with all prior constitutions and with restrictive constitutional theory as well: the 1876 executive article placed no limitation on the governor's capacity to succeed himself.  

Descriptive controls played an unusually significant role in making the executive article restrictive. The most important controls in this regard were those that expanded the power of one element of the executive branch in order to restrain another part of government or even private corporations. These revisions illustrated the fact that the goal of those seeking a restrictive constitution was reducing the cost and growth of government and the illicit practices of big business rather than an indiscriminate attack on government's authority. At a time when Republican excesses had purportedly discredited the governor as well as government in general, the 1876 executive article
kept the item veto on appropriations and enhanced the chief executive's overall veto authority. The governor gained for the first time the right to delay announcing his veto for ten instead of the usual five days and the right to disapprove bills after the legislature had adjourned. In addition to having his authority over the legislature expanded, the governor also had his capacity to control the other executive officers increased. Although he did not obtain direct command of these officials, the governor had his usual prerogative of requiring "information in writing from officers of the Executive Department" enlarged in 1876. This added authority allowed the governor to demand a written report "upon any subject relating to the duties, condition, management and expenses" of the other executive offices and "to inspect their [i.e., the other offices] books, accounts, vouchers and public funds...." 31

The governor was not the sole beneficiary of the changes in power that occurred in the executive article and nor was he always the beneficiary of these revisions. For example, just as the governor gained purview over the other executive officers, so too did he have to report on the functioning of his office in greater detail to the legislature. Moreover, the attorney general also had his constitutionally mandated authority increased. For the first time, the executive article required the attorney general to intervene in certain specified illicit business practices by private corporations in addition to his statutory duties. 32

Proscriptive controls played a less important role in the executive article than they had in the legislative article. Most of
the proscriptive controls in the executive article consisted of stating the salaries of executive officers as constitutional maximums. Besides this change, the pay allowed was in all cases lower than in earlier postwar constitutions. Another proscriptive control was a more rigorous version of a section that had originated in 1845. Previously, the state's constitutions had forbidden the governor from holding any other government position, but the 1876 document enlarged this structure to prohibit the chief executive from holding any nongovernment job or receiving any external compensation.33

The executive article, in its final version, was more restrictive than that originally written in committee. The executive committee wrote an article containing an inconsistent mixture of constitutional features ranging from restrictive to active government. Among the more important of the active government elements of the executive article the committee approved and the convention removed were: the superintendent of public instruction, a $5,000 maximum salary for the governor, the attorney general being able to keep all fees paid to him, and a four-year term of office for the comptroller of public accounts, treasurer, and commissioner of the general land office. Conversely, one restrictive feature of the committee version of the executive article deleted by the convention was a limit on the governor's capacity to succeed himself.34

Initially the convention took a contradictory approach to the executive article that paralleled the work done in committee on that article. On the first day, October 4, that it debated the suffrage article, the convention showed a willingness to consider, and
even to approve, measures that were far different from the article that was finally approved. Moreover, despite the fact that the executive article provoked less dissension than most of the other articles, it still stirred more controversy than had the legislative article. On the morning of October 4, the convention approved two changes in the executive article. One revision was active government in character, and it expanded the governor's term of office to four years, while the other was restrictive in nature and eliminated the office of superintendent of public instruction. That same morning the convention also rejected two restrictive constitutional measures. The defeated proposals sought to make the office of secretary of state elective and, for the second time, to end the office of lieutenant governor. Further compounding the delegates' indecisiveness was their inability to stick to the decision they made. Each of the four measures on which the convention voted in the morning of October 4 were reconsidered at least one more time during the debate of the executive article.35

The convention devoted the afternoon of October 4 almost exclusively to the governor's pay. The delegates did not challenge having the chief executive's salary set as a maximum, but they fought over what the limit should be. Since the $5,000 allowed to the governor was the same amount paid under the earlier postwar constitutions, the advocates of a restrictive constitution challenged that figure as a repudiation of the promises made to the people in the previous summer's elections to reduce the salaries of state officials. In all, six different proposals cutting the governor's stipend came before the convention, and the last three of these suggested amendments inspired roll
call votes of relatively narrow outcome as the moderate and extreme proponents of a restrictive constitution fought over how much to reduce the governor's salary. With a large minority of twenty-eight delegates voting against all three of these hotly contested pay cuts, the moderate and extreme restrictive constitutional delegates blocked each others' salary measures of $4,000 and $3,500, respectively, before coalescing to pass a second motion to give $4,000 to the governor. As usual for restrictive constitutional propositions, a large majority of Grangers and farmers favored lowering the amount paid the chief executive, but the lawyers displayed a far larger than usual degree of cohesion in opposing the salary cuts by a large majority. 36

After the first day's work on the executive article, the advocates of a restrictive constitution began to assert themselves, and the convention responded by systematically removing the active government measures in the executive article. But in doing this, the convention also stood firm in opposing efforts to make the restrictive sections in that article harsher.

The convention's deliberations on the other executive officers stood in marked contrast to the contradictory debates on the governor's powers and pay. For example, the delegates refused to raise or lower the salary given the attorney general by the executive committee but they did alter the fees allowed the attorney general from an unlimited amount to a maximum of $2,000. Two other decisions affected the attorney general in opposite ways. In an action that brought the vote granting the governor a four year term of office into question, the convention defeated a bid to expand the attorney general's power by
also allowing him to serve four years. When a proponent of an active
government argued in favor of equalizing the attorney general's term
of office with that of the chief executive one foe of that proposal
warned that (paraphrased) "the increase of the governor's tenure had
not passed from control of the House, and he hoped some one would move
a reconsideration of the vote increasing it to four years, and put the
term down to two years, where it ought to be." In contrast to its
rejection of a longer incumbency for the attorney general, the con-
vention expanded that officer's constitutionally mandated authority
by approving a measure that required the attorney general to intervene
against various improper business activities by private corporations.37

The warning given about the governor's four year term of
office when the convention rejected a similar tenure for the attorney
general came true before the day was out. First, the convention reduced
the tenure of the comptroller, treasurer, and the commissioner of the
general land office from the four years allowed by the executive com-
mittee to two years, and then it returned the chief executive to a two
year incumbency as well. Associated with the question of how long the
governor should serve was the issue of whether he could succeed himself.
Although the convention's Journal has no record of the elimination of
the rule on succession, the convention treated that rule as though it
had been cut earlier when it prepared the executive article for its
final passage, and thus the limitation on gubernatorial succession did
not become a part of the 1876 executive article.38

Finally, the convention took much the same action on the
salaries of the comptroller, treasurer, commissioner of the general
land office, and secretary of state as it had with the attorney general. As with the state's chief lawyer, the executive committee had lowered the pay of these four officials from that allowed under the earlier postwar constitutions, and the convention defended the committee's salary figures from all efforts to raise or lower them. But one new issue was introduced during the deliberations over the remuneration of all these offices except the secretary of state. For the first time, the convention encountered an effort to eliminate the provision setting the pay of these officials as a constitutional maximum. Moreover, just before the convention gave final passage to the executive article, a similar attempt was made concerning the governor's salary. The convention defeated both these proposed changes, but it was a hint of future disagreements.39

The low salaries and other measures of strong retrenchment elicited protests from some of the newspapers that advocated a liberal constitution. A warning that appeared in the Galveston News in the middle of September presaged the complaints voiced after the convention had passed the legislative and executive articles:

Government without expense is the ideal economy to which the heroic retrenchers aspire. Their faith in it is really touching. We know of nothing comparable to it in simplicity and pathos.... Such retrenchment is not economy. It is essentially the worst kind of wastefulness.40

Although not as numerous as the critics of the convention and located almost exclusively in small towns, papers that advocated strict re- trenched and reform defended the convention's actions on behalf of a restrictive constitution, and they, like the delegates working to make the new constitution restrictive, justified their position by
claiming it was the public's will. "Our people," the Lampasas Dispatch argued, "have been clamorous for these curtailments."\(^{41}\)

Suffrage was the third article considered by the convention, and the controversy it provoked led to an open split among the delegates and to many newspapers becoming highly critical of and even opposed to the convention. Although it received more attention from being a separate article, suffrage was but one of a cluster of constitutional provisions affecting the people's access to their political system. The convention and the state as a whole were divided over whether to maintain Texas' Jacksonian tradition of full manhood suffrage or to abridge that tradition by imposing controls on the political system that affected men who were otherwise qualified to vote. The suffrage article reflected these contending points of view at different stages during the convention's deliberations over it. As reported from committee, that article contained a variety of franchise limitations, but as finally passed by the convention, it excluded the two key statewide suffrage restrictions provided by the committee. In addition to franchise restraints, the convention also rejected other types of controls on the political process that did not conform to the precepts of Jacksonian Democracy. Among these were plans to use multimember districts for the house of representatives and the district courts and to gerrymander legislative and judicial districts in ways that abridged population standards set for those districts by the legislative article.\(^{42}\)

The first skirmish in the convention's struggle over popular participation had occurred during the deliberations over the
legislative article. The extreme white supremacists had attempted to negate the power of local black minorities by having state representatives elected at large in state senatorial districts. In support of this measure, John Reagan made a forceful appeal on behalf of Democrats in counties with Negro majorities (paraphrased):

He said those poor downtrodden people were turning with anxious eyes to the Convention for relief. He appealed to the delegates to save them and give them representative government. Judge Reagan said that it was very distasteful to him to have to discuss the subject, but that it must be evident to all the delegates that a large portion of their countrymen were incapable of self-government. On general principles he favored local option, but the situation in the eastern counties of Texas was peculiar. There were twenty or more counties in the same condition as that described by Mr. McCormick, who had borne and suffered for Democratic principle. If the Convention did not help the people of those counties they would be compelled to remove with their families, or be tempted to coalesce with the Radicals. For the sake of humanity and the right of self-government he hoped the substitute would be adopted.

The convention turned a deaf ear to Reagan and those who agreed with him, and it kept single-member districts for state representatives.

But it was in considering the suffrage article that the convention fought its major battle about the public's access to the political system. Since it was devoted solely to the issue of popular political participation, the suffrage article allowed the delegates to focus on this question more extensively than at any other time during the deliberations. The position of extreme white supremacists on behalf of suffrage restriction and other forms of political controls on the electorate had long received wide public exposure through a press that was largely in favor of such measures. But what made the debate on the suffrage article different was that it led to an airing of the arguments against limiting the franchise. Although Republicans tended
to reaffirm their commitment to the Reconstruction goal of political rights for blacks, white Democrats who advocated a more open political system did so because they believed such an open system would advance the interest of their own party and race. The Reconstruction Amendments to the United States Constitution had left white supremacists with two basic choices: they could strike against blacks through indirect forms of political discrimination or they could accept black political participation as the price for preserving Jacksonian Democracy for whites. The arguments made by those delegates who favored full manhood suffrage left no doubt that they had taken the latter of the two options dictated by the Reconstruction Amendments. 44

Perhaps as a result of lingering fears of federal intervention, the topic of discrimination against Negroes about which the newspapers wrote in such graphic terms and John Reagan had mentioned, albeit reluctantly, in connection with legislative districts, went undiscussed by proponents of suffrage restriction. Rather than stress this sensitive issue that the delegates already know was the prime reason for limiting popular political participation, advocates of such political controls spoke about what this change would mean to whites and to the principle of American democracy. Delegates who favored suffrage restrictions made a variety of arguments that generally followed five major assertions: the poll tax was too cheap for it to hurt even poor people; it affected all equally without regard to wealth or race; all people should help support their government, and those who failed to contribute did not deserve to vote; suffrage was not a natural right but one based upon (paraphrased) "a compact between the State
and the citizen;" and a number of states, North and South, had poll taxes or other franchise restraints. One further assertion made by proponents of franchise limitations indirectly raised the specter of black participation in politics by speaking euphemistically of (paraphrased) "floating irresponsible population that controlled at elections...." 45

Democratic opponents of suffrage restriction refuted the claims made by its proponents. These foes of political controls saw franchise restraints as (paraphrased) "departure from the old landmarks of democracy...[that] would be a stepping stone toward aristocracy and imperialism," the poor would suffer from measures that drew "a monied circle around the ballot box" and this would result in the convention being defeated at the polls and unfettered franchise was a natural right that could not be abridged, and it did not matter if other states had suffrage restrictions for Texas would not "throttle free government." Those attacking franchise restraints openly discussed the subject of black voting that advocates of suffrage restrictions mentioned only indirectly, and rejected as irrelevant the contention that political controls "might deprive the colored man of the right of suffrage." The preservation of white votes rather than of white supremacy was the goal of those who favored full manhood suffrage.46

The suffrage article that came out of committee was an unqualified victory for those favoring franchise limitations. That article devoted all or part of three, out of a total of five, sections to franchise restraints. The suffrage article's second section stipulated that all voters had to pay their state and county poll taxes.
The third section placed additional controls on urban voters: in ordinary municipal elections the voter "had to have paid all taxes due said town or city that have accrued against him since the adoption of this constitution," and in elections to create debt he could cast a ballot only if they were a "freeholder." The fourth section took a more indirect approach to suffrage controls by granting the legislature the right to regulate elections without naming any specific mode for doing so. While this allowed for future inventiveness for legislative action against black voters, the most immediate result of such discretionary authority was to leave the state's laws on voter registration in force.47

The convention quickly demonstrated that the suffrage committee represented the minority of delegates. In the period of two brief, sharply contested days that began on October 6, the convention stripped most of the franchise limitations from the suffrage article. Refusing to compromise on the subject of suffrage restrictions the convention rejected all efforts to amend section two before passing a substitute for that section that contained no mention of a poll tax, and once having approved this substitute section, the delegates repulsed all efforts to reintroduce the poll tax in the second section two of the suffrage article or in any other section of the constitution. The convention approved a substitute for section three without any preliminary efforts at amendment, and this replacement section made no mention of tax paying or property owning requirements for urban voters. But despite the sweeping affirmation of democratic suffrage for the states' municipalities, there remained considerable fear of the urban
proletariat that Texas did not yet have but that did exist in other parts of the nation. Although no attempts were made to impose franchise restraints on city voters in general elections, the convention first considered amendments to the substitute section that involved debt elections in incorporated areas, and then passed a second replacement for section three that made tax paying a prerequisite for city elections "to determine the expenditure of money or the assumption of debt." Finally, the convention approved a substitute for section four that prohibited voter registration while otherwise leaving the legislature free to "preserve the purity of the ballot box...." 48

The convention's defeat of the restrictive provisions of the suffrage article produced a cry of disappointment and even of outrage from a large portion of the state's press. Newspapers that disagreed with the final version of the suffrage article generally experienced a marked lowering of their opinion of the convention, and some of these journals became flatly opposed both to that body and the constitution it was writing. At least one critic of the suffrage article believed that it alone was sufficient to defeat the constitution, but as the Gonzales Inquirer pointed out, most of the press saw the suffrage article as one element in a larger pattern of disappointments:

With a unanimity almost complete the Democratic press of the state condemned the action of the Convention in refusing to restrict suffrage to those who pay a poll tax. With equal unanimity, the press also condemns the course of the Convention in regard to public schools, railroads, the abolition of the Immigration Bureau, etc. In these condemnations, we believe nine-tenths of the Democrats of the State agree. 49

The few Democratic newspapers that approved the suffrage article were rarely quoted in the extant journals taking the opposing position. The
Cuero Star, a rare exception to this tendency, had given only a lukewarm endorsement of the suffrage article, but it unreservedly condemned the state's press for attacking the convention and stifling what it called "the voice of the people":

> The manner of habitually condemning the action of the present Constitutional Convention, a course, we regret to say, adopted by many of the papers, reflects a decided personal weakness rather than popular weight. The people who called the Convention will not so easily condemn a thing of their own making. They will ultimately endorse the action of the Convention.\(^5\)

Despite attacks on the suffrage article by the press, the convention remained committed to placing the interests of white voters over excluding blacks from the political system. Just as the convention had defeated a proposal to have representatives elected at large in state senate districts, so too did it reject a plan to divide the state into supreme court districts in which to choose district court judges. Although the extreme white supremacists had hoped and Republicans had feared otherwise, the convention further aided the individual voter by not gerrymandering the state in order to negate all local Republican majorities in legislative and judicial districts. Thus, even though it did not attempt to apportion the state according to what would be called "one man, one vote" in the twentieth century, the convention refused to subvert all sense of equity in its apportionment of legislative and judicial districts to the needs of white supremacy. Race did affect to some degree how the convention drew the boundaries of these districts, but in those relatively few instances that Republican majorities in the black belt were too large to be easily gerrymandered for the benefit of white Democrats, the convention established
districts for those majorities.\textsuperscript{57}

By the time the convention had passed the suffrage article on its second reading, the once amorphous term "retrenchment and reform" had taken on a definite meaning. A phrase that enjoyed almost universal support at the start of the convention, "retrenchment and reform" had become closely associated with the values of the delegates who advocated a restrictive constitution and a more democratic political system. The successes of these delegates in shaping the legislative, executive, and suffrage articles according to their values had imprinted their more stringent concept of "retrenchment and reform" on the convention, and once this dominance was established, it was virtually unshakable.

The convention, after having fashioned the legislative, executive, and suffrage articles, proceeded almost inexorably to produce a restrictive constitution, but this continued close adherence to restrictive constitutional principles caused greater conflict among the delegates. This dissension appeared most in the three articles that, with the three already drafted, formed the core of the constitution. The education, tax and revenue, and judiciary articles all produced controversy and discord in their respective committees as well as in the convention itself. But of these three articles, and of all the articles in the entire constitution, only that of the judiciary resulted in a significant departure from restrictive constitutional principles, and even the judiciary article produced only a partial deviation from those principles.

The education article was one of the hardest for the con-
vention to write as it involved not only the passions associated with restrictive constitutional issues but also those associated with the provision of free public education. Although some delegates took more extreme positions, the major debate in the convention was between those who wanted free public schools to be a low priority goal, as defined by governmental spending, to be accomplished at some later date, and those who believed that such schools were a responsibility that could not be postponed and required a constitution that allowed sufficient funding to maintain the existing system of education. Despite the obvious economies that would result from making free public schools a low priority item, the plan to retain the school system in use did not have to conflict with restrictive constitutional principles if the education article set a maximum on the funding allowed those schools.52

The convention considered six variants of the education articles, more than for any other article that came before it, and these six versions of the article covered virtually the full spectrum of opinion about public schools in the convention. Initially, the education committee issued a majority report that made free public schools a low priority goal and a minority report that made education free only for paupers. In addition to these reports, three other versions of the education articles were introduced from the floor of the convention. But the delegates rejected all five of the contending versions of the education article and created a select committee to write what proved to be the final preliminary draft of that article. The select committee provided that the current funding of free public schools of one-fourth of the state's total property tax should be a con-
stitutional maximum, and this became the basis for the completed education article. The vote passing the education article on its second reading demonstrated that it won the support of all delegates except those who took extreme positions for and against public free schools and in favor of strict economy in government. Large majorities of Grangers, farmers, and lawyers voted to approve the education articles, while all nonfarmers and lawyers split almost evenly on that subject. Republicans, who wished to maintain Reconstruction era guarantees of minimum funding for free public schools, voted overwhelmingly against the education articles.\(^{53}\)

Though not sparking as wide a range of opinion as had the education article, the taxation and revenue article did provoke differences among the delegates that took two weeks of intermittent debate to resolve. The tax and revenue committee sent both majority and minority reports to the convention, and neither of them closely resembled the tax article that was finally passed. The two reports of the tax committee agreed that the property tax, the state's more important source of revenue, should be set at a maximum rate equal to the current statutory rate of one-half of one percent. Otherwise, the final tax article was a mixture concocted on the floor of the convention that drew from the tax committee's two reports while adding much that was new as well. From the minority report, used by the convention as the basis for its deliberations on the tax article, the delegates took: a mixed system of property and occupation taxes; a requirement for all taxes to be levied and collected according to general laws; a prohibition on the legislature's surrendering the power
to tax corporations; a ban against landowners paying taxes on property located outside their county of residence; and a mandate for the forced sale of lands to collect overdue taxes. Significant elements of the majority report placed in the tax article included: a ceiling on the property taxes of local government; a rule that railroads pay property taxes in each county in which they owned land; and a mandate for the election of tax assessors. Although the convention made changes in the various provisions it drew from the tax committee's reports, several entirely new sections were added as well. Among these new sections were: a grant of power to cities to assess and collect taxes on railroads, a two-year limit on state appropriations, and prohibition on the legislature's borrowing or diverting special funds held by the state treasury. Once completed, the tax article was far more restrictive than either of the tax committee's two reports. The vote passing the tax article on its second reading followed the usual pattern of restrictive measures, with Grangers and farmers giving large majorities for the the article and lawyers providing a large majority against it. Republicans voted unanimously against the tax article.  

The convention departed from its systematically restrictive approach to writing the constitution only in the judiciary article, and even in this article, the results were mixed rather than a wholesale repudiation of restrictive constitutional principles. Texas had long suffered from an overburdened judicial system, and this problem consumed much of the energies that the convention put into the drafting of the judiciary article. But in matters closely associated with "retrenchment and reform," the convention deviated from its usual
commitment to restrictive constitutional values. The judiciary committee sent the convention a majority report and two minority reports, while a fourth variant of the judiciary article was introduced on the floor of the convention. Of these contending versions of the judiciary article, only that introduced on the convention's floor conformed to restrictive constitutional precepts, and it was rejected.55

The convention used the judiciary committee's majority report as the basis for their work on the judiciary article, but that majority report underwent extensive change before being finally passed. Four aspects of the judiciary article had particular importance for advocates of a restrictive constitution: salaries, the length of tenure for judges, the use of criminal district courts, and the number of district courts. The convention lowered the pay of all judges, but more significantly in terms of the judiciary article's deviating from restrictive constitutional theory, only the salaries given the supreme court judges were stated as maximums. The majority report had shortened the term of office for judges from that allowed in 1866 and 1869, but the convention reduced the tenure of judges even further. The convention imposed a stricter limit on the creation of criminal district courts than did the majority report. That report prohibited criminal district courts unless "the district included a city containing at least fifteen thousand inhabitants...," while the convention raised the minimum population to thirty thousand. In the matter of district courts, the majority report had left it to the convention to decide how many district courts the state should have, but in doing so, that report had given the legislature authority to alter the number of
district courts established by the constitution. The convention significantly reduced the number of district courts from those currently in service, but it retained the legislature's discretion in creating new district courts.  

The judiciary article passed its second reading by a large majority, but the vote was anomalous in one important respect. Although the judiciary was the only article to deviate from restrictive constitutional principles, the delegates voted in a way that was typical of restrictive constitutional measures. With a unanimity rarely achieved in the convention, all Democrats who were Grangers or farmers, with one exception, approved the judiciary article. This meant that lawyers, who voted with their usual but not overwhelming majority, and Republicans, who voted unanimously, approved the article. Apparently, the features of the judiciary article that conformed with restrictive constitutional principles were more important to the convention than those aspects that conflicted with those values. Moreover, the comment made by one delegate who voted for the article suggests that at least some members of the convention viewed the article by a different standard than they did the rest of the constitution (paraphrased):

He was in favor of a reduction of salaries in all departments of government except the judiciary.... But as the judiciary were [sic] charged with high and holy duties, and as their labors are so arduous, they should have liberal salaries.

The convention brought its work to a close on November 24, 1875, sixty-eight days after it had begun, and passed the new constitution by an overwhelming margin. But while the completion of the document was the realization of a long-standing Democratic goal, it was
not the end of the dominant party's inner conflict over constitutional reform. Democrats who opposed the type of restrictive document drafted by the convention faced a dilemma. They had to decide whether to ratify that document despite their objections or to defeat it and continue to live under the much disparaged Constitution of 1869.58

The large majority by which the convention approved the constitution was in part a sign that many who opposed a restrictive document had decided to accept the 1876 constitution as the lesser of two evils. "There are," explained the Rockdale Messenger, "a great many people in the State who are displeased with the unprogressive spirited manifest by the convention, but who will still vote for the new constitution as the only means of getting rid of the present one."

Critics of the new constitution found particular comfort in its relatively easy amendment procedure. Even before the convention ended, Governor Coke, for example, began to see amendment as a way to resolve his doubts about the constitution. In a letter to Chief Justice of the Texas Supreme Court Oran M. Roberts, Coke discussed his feelings about the constitution and its amendment article:

The constitution in many respects will be a great improvement on the old one, but will fit two [sic] tight for comfort, will have too much legislation in it and I fear will not make the Govt. sufficiently vigorous[.]. The provision for Amendment however makes it easily accessible for the purpose[,] 2/3 of the Legislature can propose amendments, and if necessary have them voted on at a Special election, and it is not necessary that they [be] ratified by the succeeding Legislature.59

After the convention adjourned, the constitution's potential for amendment became one of the major arguments made in favor of ratification by Coke and other leading Democrats who had doubts about that document.
The expectation that amendments would provide major changes in the constitution within a few years of its ratification proved largely unfounded. The voters were slow to approve amendments that made substantive revisions in the 1876 document. Ironically, however, amendments ultimately became the chief means by which Texas adapted their restrictive nineteenth century constitution to rapidly changing twentieth-century conditions.60

Democrats who could not accept the constitution posed a potentially wrenching problem for their party. As the moving force behind the writing of the constitution, the dominant party normally might have been expected to make that document a test of party loyalty, and even before the convention adjourned, some members of the party began to express fears that this might happen. The Democratic leadership, in sharp contrast to their insistence on party discipline during the nomination of delegates, quickly moved to reassure those dissenting on the constitution that the party would not formally endorse that document.61

Foes of the constitution remained much the same afterwards as they were before the convention ended. Low salaries, short terms of office, controls on legislative discretion, and other restrictive constitution features of the new organic law offended those who remained committed to the state's liberal constitutional tradition. Moreover, the relatively democratic political system provided by the constitution also continued to offend many people, but during the campaign to secure ratification of the constitution, extreme white supremacists expressed their fears of black political participation in a particularly inflam-
matory way. They charged that the new constitution would lead to the creation of "Senegambia" in the black belt, and by this they meant a Negro-rulled area that would cause the ruin of the whites that lived within it. 62

Republicans took a unified stand on the constitution that contrasted sharply with dissension of the Democrats; the minority party strongly opposed the document. The platform of the Republican state convention that met in January, 1876, expressly "denouce[d] the Constitution...as unfit to become the organic law of the state." On the surface at least, Republicans seemed natural allies of dissident Democrats, and in one county, opponents of the constitution in both parties held a special joint convention to protest that document. 63

Not all Democratic foes of the constitution, however, believed that Republican protests aided the fight against ratification. Before the minority party passed its platform, a correspondent of Chief Justice Roberts wrote expressing the opinion that if Republicans came out against the constitution, it would hinder rather than help the antiratification effort:

I am looking with some degree of anxiety for the result of the Radical Convention now in session -- If they oppose the instrument openly, as a party measure, it will give it strength before the people -- The opposition to be feared, must arise in the Democratic party and the nucleus of concentration of the opposition must be entirely Democratic -- And in that event, the constitution must be defeated -- In fact, I am not sure if it were defeated, if the result would not be for ultimate good, as a rebuke to that un-statesman-like pandering to popular error, which characterized that body of men, or rather a majority of them, that framed the instrument.

After the Republican party put its anticonvention plank in its platform, some Democratic newspapers that opposed the constitution accused
the minority party of being deceitful. Apparently fearing the situation described by Roberts' correspondent, these journals attacked the Republican platform as a trick to get Democrats to support the constitution.65

The Constitution of 1876 won ratification by a landslide margin of 136,000 votes to 56,652, and by this vote, the people of Texas gave their approval to a fundamental change in the state's constitutional experience. The new constitution not only eliminated such active government features of postwar constitutions as longer terms of office, higher salaries, and enhanced government powers; it broke with the liberal constitutional tradition of an organic law as a set of principles to guide the development of government. In making this shift in Texas' constitutional practice, the 1876 document joined a new restrictive trend in American state constitutions of an organic law as a device to define the limits of government's discretion and growth.66
Chapternotes

1. The interpretation made here uses information long known to historians to come to a distinctly different conclusion than that generally made by those scholars. Students of the Constitution of 1876 have long viewed that document as primarily a product of reaction against reconstruction, but they have also given credit to the Grangers as a major force in the creation of the document. Without directly analyzing the precise relationship between these two key themes of reaction against Reconstruction and Grangers, historians have presented them as complementary explanations of the 1876 document, and this has been the case despite evidence of conflict between leading Democrats and more ordinarily Grangers in the Constitutional Convention of 1875. But, as already discussed in the preceding chapters, Grangers acted in response to economic and other issues of self-interest rather than in anger at Republican rule, and as a result of this, these agrarians were as much critics of the Democratic administration of Governor Richard Coke as of the Republican administration of former Governor Edmund J. Davis. Seen in this light, Grangers appear as separate from and even conflicting with reaction against Reconstruction as an explanation of the 1876 constitution, and their victory in creating that document becomes the defeat of the Democratic leadership. Clarence R. Wharton, History of Texas, rev. ed. (Dallas, Texas: Turner Co., 1935), 327; Seth Shepard McKay, Seven Decades of the Texas Constitution of 1876 (Lubbock, Texas: Texas Tech College Press, 1942), 181; Alwyn Barr, Reconstruction to Reform: Texas Politics, 1876-1906 (Austin, Texas: University of Texas Press, 1971), 9-10, 21-23; Ben H. Procter, Not Without Honor: The Life of John H. Reagan (Austin, Texas: University of Texas Press, 1962), 208-211; Ernest Wallace, Charles De Morse, Pioneer Editor and Statesman (Lubbock, Texas: Texas Tech College Press, 1943), 172-207; Seymour V. Connor, Texas: A History (New York: Crowell, 1971), 225-228; Rupert Norval Richardson et al., Texas: The Lone Star State, 4th ed. (Englewood Cliffs, NJ: Prentice Hall, 1981), 268-275; S.D. Myers, Jr., "Mysticism, Realism, and the Texas Constitution of 1876," Southwestern Social Science Quarterly, 9 (September, 1928), 166-184; C. Vann Woodward, Origins of the New South, 1877-1913 (Baton Rouge, La: Louisiana State University Press, 1951), 65-66.

2. J.E. Ericson, "The Delegates to the Convention of 1875: A Reappraisal," Southwestern Historical Quarterly, LXVII (July, 1963), 21-27; Wallace, Charles De Morse, 176; McKay, Seven Decades, 76; Panola Watchman (Carthage), September 15, 1875; Dallas Daily Herald, September 19, 1875; Marshall Tri-Weekly Herald, September 3, 20, 1875; Alexander W. Terrell To Oran M. Roberts, September 10, 1875, O.M. Roberts Papers, Barker Texas History Center, University of Texas at Austin. Not all contemporary observers retained their high opinion of the delegates once the convention began making decisions that displeased the press. But even at the beginning of the convention, William Ballinger, a former member of the Texas Supreme Court, wrote a less
than complimentary assessment of his fellow delegates in his diary: "[My] impression of the delegates [is] generally favorable as to their disposition, but not very strong as to ability." Typescript of Diary, September 5, 1875, W.P. Ballinger Papers, Barker Texas History Center, University of Texas at Austin; see also San Antonio Daily Herald, September 6, 1875.


4. Ericson, the chief modern student of the convention's membership, added one name, E.S. Rugeley, to Henderson's list of Grangers, but extant newspaper accounts identify at least three more delegates who belonged to that organization: L.S. Ross, E.B. Pickett (Austin Statesman, October 8, November 17, 1875), and W.D.S. Cook (San Antonio Herald, October 26, 1875). Nat Q. Henderson, Directory of Officers and Members of the Constitutional Convention of Texas (Austin, Texas: Democratic Statesman Office, 1875), 1-4.

5. Alexander W. Terrell to Oran M. Roberts, October 28, 1875, O.M. Roberts papers.


7. Ibid., 7 (quotation), 9-10 (2nd quotation).

8. Ibid., 10.


10. Ibid., 36, 50, 64; McKay, Debates, 17 (quotation), 12-22.


12. Ibid., 100-101, 107-108; McKay, Debates, 26 (1st quotation), 40 (2nd quotation), 41 (3rd quotation), 23-28, 36-42.

13. Journal of the Constitutional Convention, 1875, 127 (quotation), 125-128. The tally on the final vote defeating the stenographer by groups was: Grangers, For (F)-9, Against (A)-27; farmers, F-6, A-32; lawyers, F-17, A-12; other occupations, F-9, A-9; Republicans, F-4, A-9.

14. Dallas Herald, September 23 (quotation), 28, 1875; Panola Watchman, September 15, 1875; Marshall Herald, September 30, 1875.

15. Shreveport, Louisiana Times, quoted in Dallas Herald,
September 28, 1875. Among the delegates listed by the Times as being the best men were: John Reagan, George Flournoy, Fletcher Stockdale, William Ballinger, Charles West, and John Henry Brown. Interestingly, Ballinger did not share the Times' assessment of Flournoy. When Ballinger first discovered in June, 1875, that Flournoy had decided to seek nomination as a delegate, he reacted in disgust: "I would scarcely accept nom[ination] in conjunction with Flournoy -- I look upon him as a corruptionist, who w[oul]d work much more for some money scheme than for a good constitution. -- He has the ability but is unprincipled." Typescript of Diary, June 30, 1875, Ballinger Papers.

16. Texas Constitution of 1876, Art. III, sec. 22, 23, 30, 37, 38, 39, 40, 42, 46, 48, 50, 51, 52, 53, 54, 55, 56, 57; Missouri, Constitution of 1875, Art., IV, sec. 25, 27, 43, 45, 46, 47, 48, 50, 51, 53, 54, 55. In addition to copying specific sections from the Missouri constitution, the Texas document also adopted the same format in its legislative article by using the same subheadings as the Missouri legislative articles of "Proceedings" and "Requirements and Limitations."


18. In the legislative article, most of the post-war structural changes were limited to the 1869 constitution. These included annual legislative sessions, six-year terms for state senators, and a four-year term for the lieutenant governor; in the 1866 document, the lieutenant governor also had a four-year term. In the less significant structural matter of qualification for office, the 1866 constitution had made sharp alterations by requiring legislators to have resided in the state for five instead of the usual three years. The only other constitution that had a five-year residency restriction was that of 1876, and it affected senators but not representatives. Constitution of 1845, Art. III, sec. 5, 6, 8, 11, Art. V, Sec. 12; Constitution of 1866, Art. III, sec. 4, 5, 7, 10, Art. V, sec. 12; Constitution of 1869, Art. III, sec. 4, 5, 7, 13, Art. IV, sec. 14; Constitution of 1874, Art. III, sec. 4, 5, 7, 9, Art. V, sec. 12; Constitution of 1876, Art. III, sec. 3, 5, 6, Art. IV, sec. 16.

19. Constitution of 1876, Art III, sec. (new) 22, 23, 30, 37, 38, 39, 40, 42, 46, 57, (revised) 2, 3, 6, 13, 18, 21, 25, 26, 28, 32, 36, 44, 45, 47, 56, 58.


23. McKay, Debates, 96; Journal of the Constitutional Convention, 1875, 208-209.

24. Ibid., 154-166, 210-212; McKay, Debates, 97.

25. Ibid., 149 (quotation), 144-151; Journal of the Constitutional Convention, 1875, 225, 283.

26. Ibid., 164 (1st quotation), 225, McKay, Debates, 113 (all other quotations).

27. Ibid., 115 (1st quotation), 114-116; Journal of the Constitutional Convention, 1875, 164 (2nd quotation), 225-227.


29. Constitution of 1876, Art. IV, sec. (new and more restrictive) 18, 25, (revised and more restrictive), 1, 3, 5, 6, 9, 10, 13, 21, 22, 23, 24, (less restrictive) 4, 7, 11, 12, 26.


32. Ibid., sec. 9, 22.

33. Ibid., sec. 5, 6, 22, 23.

34. Journal of the Constitutional Convention, 1875, 228-234.

35. Ibid., 284; McKay, Debates, 151-152.


38. Ibid., 295-298, 372-373; McKay, Debates, 163.

39. Ibid., 164-166, 258; Journal of the Constitutional Convention, 1875, 296-297, 303, 370, 373.

40. Galveston News, September 12, 1875 (quotation).

41. Lampases Dispatch, quoted in ibid., November 16, 1875 (quotation). See also Austin Statesman, September 29, 1875; Waco Weekly Examiner and Patron, September 17, 1875; Decatur Advance Guard, and Hillsboro Exposition, quote in Houston Telegraph, October 30, 1875.


43. Ibid., 213-217; McKay, Debates, 297-298 (quotation).

44. Perhaps the clearest and most forceful statement made about the relation between race and voting by a delegate opposed to suffrage restriction was this:

I believe in the supremacy of the Anglo-Saxon race above negroes, Indians, and heathen Chinese. I stand here and elsewhere, always ready to assert the supremacy of my race, but notwithstanding this, I believe that this restriction of suffrage strikes at the dearest boon of a freeman and a citizen; that it strikes at the highest privilege of a freeman, and I believe that the negroes, as Mr. Mills has said, will sell their hats, boots, and shoes to pay their tax and qualify themselves for the polls and will struggle to the last. Nay, I do not know but that some of them would even steal to get enough to pay their poll tax and vote.

McKay, Debates, 170 (quotation), 167-194.

45. Ibid., 168 (1st quotation), 169 (2nd quotation).

46. Ibid., 171 (1st and 3rd quotations), 178 (2nd quotation).

47. Journal of the Constitutional Convention, 1875, 237-238.

48. Ibid., 315 (1st quotation), 314 (2nd quotation), 304-315. The debate over the poll tax as a franchise requirement did not end with the completion of the suffrage article. This issue reappeared in the deliberations over the education article when efforts
were made to tie the poll tax as an economic support for education to
voting. This further attempt at suffrage restriction also failed,
but it had one unusual result: it was the only time that Republicans,
all of them white, broke ranks and voted for a franchise limitation
measure. Ibid., 329-330, 333; McKay, Debates, 212-213, 225.

49. Houston Telegraph, October 5, 10, 20, 1875; all the
following are quoted in the Telegraph: Gonzales Inquirer, November 3,
1875 (quotation); Tyler Democrat, Lampasas Dispatch, Texas New Era
(n.p.), October 19, 1875; Giddings Tribune, October 20, 1875; Giddings
Tribune, October 20, 1875; Belton Journal, Bryan Post, Texas Observer
(Rusk), October 21, 1875; Galveston News, October 19, 1875; all the
following are quoted in the News: Pittsburg Magnet, October 23, 1875;
Goliad Guard, November 5, 1875; Austin Statesman, October 15, 19, 21,
1875 (see also quotations from other newspapers), San Antonio Herald,
October 22, 1875.

50. Cuero Star, quoted in Houston Telegraph, October 21,
November 2 (quotation), 1875. See also: Waco Register, quoted in
Waco Examiner, October 10, 1875; San Antonio Daily Express, October
20, 1875.

51. Marshall Herald, October 9, 12, 23, 26, November 9,
1975; Henderson Times, quoted in ibid., October 9, 1875; Austin States-
man, September 8, 1875; Panola Watchman, October 27, November 10,
1875; Journal of the Constitutional Convention, 1875, 727-729, 765-767;


53. The vote passing the education article on its second
reading was: Grangers, F-25, A-8; farmers, F-23, A-11; lawyers, F-7,
A-6; other occupations, F-7, A-8; Republicans, F-2, A-9. Journal of
the Constitutional Convention, 1875, 243-247, 318-320, 325, 328-342,
395-401, 510-524, 609-616.

54. Ibid., 378-383, 404-405, 423-424, 451, 464-470, 485-
498, 508-510, 524-541; McKay, Debates, 295-325, 369-379, 440-442.

55. The one proposed judiciary article that included re-
strictive constitutional provisions apparently pleased few delegates as
only seven of them voted for it. Journal of the Constitutional Conven-


57. Ibid., 682; Austin Statesman, November 12, 1875 (quoto-
tion). The vote passing the judiciary article was: Grangers, F-21,
A-1; farmers, F-26, A-3; lawyers, F-17, A-12; other occupations, F-5,
A-5; Republicans, F-0, A-10.
58. The final vote on the constitution was fifty-three to eleven, and the eleven dissenters consisted of five Democrats (four lawyers and one Granger-farmer) and all six Republicans who voted on the final document. *Journal of the Constitutional Convention, 1875*, 818.

59. Rockdale Messenger, quoted in the Galveston News, December 4, 1875 (1st quotation); Richard Coke to Oran M. Roberts, November 8, 1875, O.M. Roberts Papers (2nd quotation).


61. In a letter Coke sent to Roberts after the convention ended, he explained his cautious approach to supporting the new constitution: "I intend to vote for and urge the adoption of the Constitution, but do not believe that a party test should be made on it. The instrument presents questions upon which orthodox Democrats /?/ and doubtless will differ, that no action be taken on the subject which will do violence to the views or feelings of any considerable number of Democrats." Richard Coke to Oran M. Roberts, November 26, 1875, O.M. Roberts papers (quotation). See also: Houston Telegraph, November 12, 14, 18, 24, 1875, and a discussion made by McKay of a speech given by Coke and printed in an article in the Austin Statesmen of November 30, 1875, that is no longer extant, McKay, *Seven Decades*, 151-155.

62. Marshall Herald, December 21, 1875; Austin Statesman, November 27, 30, December 7, 1875; San Antonio Herald, December 2, 1875; Dallas Herald, December 25, 28, 1875; Galveston News, November 30, 1875, January 28, 1876; Houston Age and Jefferson Leader, quoted in *ibid.*, December 3, 4, 1875; Houston Telegraph, January 30, 1876.

63. Ernest W. Winkler, *Platforms of Political Parties in Texas* (Austin, Texas: University of Texas Bulletin no. 53, 1916), 177; San Antonio Express, January 1, 7, 18, 19, 1876.

64. J.S. Camp to Oran M. Roberts, January 14, 1876, O.M. Roberts Papers.

65. Houston Telegraph, January 29, 1876; Sherman Register, quoted in *ibid*.

Chapter VIII Epilogue

Southern state constitutions of the 1870s show that greater diversity existed in these documents and the politics of making them than C. Van Woodward recognizes. Rather than the uniformly restrictive documents that Woodward argues they were, post-Reconstruction organic laws in the South spanned the constitutional spectrum from liberal to restrictive. Even in the southern states that had restrictive constitutions in the 1870s, the politics of creating those documents did not fit the mold that Woodward attributes to southern politics as a whole for the period. Instead of "loyalty and discipline" inspired by reaction against Reconstruction, white Democrats displayed disunity and disharmony. This was because constitution-making by necessity entailed the "issues of economics and self-interest" that Woodward postulates would have threatened Democratic solidarity. In each of the three states (Alabama, Louisiana, and Texas) examined in this study, the specific conditions of their constitution-making varied. The degree of conflict within each state depended on the willingness of its Democratic leadership to compromise on the making of a restrictive constitution. But in all three of these states it was not "Redeemers ... invoking the past to avert the future" that prevented outright schism in the Democratic party. Rather party unity was preserved because the Democratic leadership acquiesced to their need to preserve the states' credit (in the case of Alabama and Louisiana) and to the desire of the party's rank and file for a restrictive constitution.

In arguing that 1870s southern state constitutions were
restrictive Woodward makes an impressionistic assessment of the eight southern state constitutions written in the immediate post-Reconstruction era. Woodward bases his assessment of 1870s southern state constitutions on the constitutions' lengths and their controls of the legislature, but when these criteria are systematized and all eleven southern state constitutions in force in 1879 are analyzed, the result is far different from that claimed by Woodward. Only five (all written in the 1870s) post-Reconstruction southern state constitutions were restrictive. Six (three written in the 1870s and three written in the 1860s but used by the Democrats in the 1870s) were liberal. The restrictive constitutions were longer in number of articles, total sections, and sections in the legislative article.

The dissimilarities in length of the restrictive and liberal southern state constitutions paralleled differences in those documents that were more fundamental. The restrictive constitutions had, on average, almost double the number of directive controls on the legislature than did liberal documents. And in the crucial area of proscriptive controls on the legislature, the restrictive constitutions contained a wide array of such controls that affected both state and local decision-making processes. These proscriptive controls included: taxes stated as maximums, limitations placed on public debt, prohibitions on aid to private enterprise, restrictions on the use of tax revenue, and ceilings on salaries. The liberal constitutions, in contrast, contained few, if any, proscriptive controls.

Even though only five southern states wrote restrictive constitutions, it does not necessarily invalidate Woodward's explana-
tion of what caused those restrictive constitutions. Woodward saw constitution-making as but one facet of the overall political environment of the post-Reconstruction era. According to Woodward, reaction against Reconstruction was both a genuine response by southerners to Republican rule and a manipulative political tool that the Democratic leadership in the South used to keep its party united. However, an analysis based on the general political situation cannot be assumed, as Woodward does, to be applicable to the specialized political conditions associated with the writing of a constitution. Since people generally considered a constitution to be a less partisan matter than most political activities, and since constitutions were usually written by a convention that met only one time, the politics of constitution-making were specialized. This specialization served to accentuate the quality that differentiated the politics of constitution-making from more ordinary politics. The creation of a constitution by necessity entailed economic and other substantive issues, and the election of delegates to the convention and the deliberations of the convention made it virtually impossible to divert the voters' attention from these substantive issues.

Woodward theorized that if southern politics operated on "issues of economics and self-interest" it would threaten the unity of white Democrats. The politics of constitution-making in Alabama, Louisiana, and Texas did just that. The Democratic leadership of these three states averted an open rupture in their parties only by setting aside their own liberal constitutional preferences and making extensive concessions to the restrictive constitutional demands of their party's
rank and file. Dependent in large measure on the threat that the state's debt posed to its credit, the conditions under which concessions were made to demands for a restrictive constitution differed in each of the three states studied. The greater the threat to the state's credit, the more willing the Democratic leadership was to compromise on the writing of a restrictive constitution. A restrictive constitution offered several benefits to a leadership contending with an overburdensome debt. First, such a constitution was a means to reduce other governmental spending and increase funds to pay the debt. Second, a restrictive constitution eased public pressure to reduce or even to repudiate the debt as a way to solve the state's financial problems. Finally, a restrictive constitution was a political _quid pro quo_ to the party's rank and file to reward them for allowing the leadership to retain control of the state debt.

Alabama's debt was so large that the state government had no other choice than to reduce its financial obligations. In order to protect the state's credit, the Democratic leadership of Alabama wanted to make the smallest reduction in the state debt possible, but much popular sentiment existed in favor of a more substantial cut in that debt. To secure its objective of preserving the state's credit the dominant party's leadership devised a two pronged strategy. An appointed commission would adjust the state debt, and an elected convention would write a constitution. The commission was necessary because the Democratic establishment feared that it could not control a convention on the question of debt. But the convention was also needed for only a new constitution could make the cuts in government spending
that would free the funds to pay the adjusted debt. One major stumbling block stood in the way of a constitutional convention. The Democratic rank and file feared that a new organic law might eliminate the democratic reforms made in the Constitution of 1868. To quiet these concerns and unify the party behind a constitutional convention, the dominant party's establishment assured its followers that the reforms instituted in 1868 would be incorporated in the new constitution.

The Alabama Constitutional Convention of 1874 lived up to the promises made by the Democratic establishment. The convention wrote a restrictive document that maintained the democratic reforms of 1868. But the convention kept the pledges of the dominant party's leadership grudgingly and only with the imposition of strict discipline on Democratic delegates by the party's caucus. The 1874 constitution reflected what Democratic delegates believed had to be more than what they wanted. In matters not directly associated with preconvention promises, the convention frequently passed liberal and antidemocratic measures. But the desire for a different constitution than the one being written was true of restrictive as well as liberal constitutional advocates, and in the crucial issue of debt reduction those favoring a restrictive constitution came close to scoring a major victory. They got the convention to approve a significant reduction in the state's property tax rate, only to have the convention change its mind and restore the tax rate it had originally approved. If allowed to stand this property tax rate would have denied the debt commission the money it needed to fund the adjusted debt. In addition to securing a constitution that provided the means for the debt commission to
protect the state's credit, the Democratic leadership also benefited from the 1874 constitution in another way. Although the 1874 document provided for a relatively democratic political system, it nonetheless left a loophole for discrimination against the black belt. The constitution affirmed the general assembly's authority to make local governments in the black belt appointive.

Unlike Alabama, Louisiana did not face serious problems with its debt in 1878 when Democrats began to wrestle with the question of constitutional revision after regaining control of the state government. Fearing that a constitutional convention might scale down the debt and write a restrictive organic law, the Democratic leadership of Louisiana attempted to forestall a convention by having the general assembly prepare amendments to the Constitution of 1869. The assembly passed amendments that made only a limited revision in the 1869 constitution and those changes left many Democrats dissatisfied. Since the amendments made, with one exception, only token efforts at economy in government, Democrats who wanted a restrictive constitution considered them to be unacceptable. And since the amendments took no action against black political participation and integrated schools, Democrats who were extreme white supremacists also objected to them. When the people rejected all but one of the amendments a constitutional convention became inevitable, and the governor called a special session of the general assembly to provide for a convention.

In the shortest meeting of the assembly up to that time, the 1879 session of the general assembly quickly called a constitutional convention. But as the assembly deliberated on a convention,
Louisiana experienced a financial crisis that altered the Democratic leadership's attitude towards constitutional revision. That crisis was the state's failure to pay the interest on its debt, and this default on the January 1879 interest payment put the state's credit into jeopardy. Wanting to preserve the state's credit, the Democratic leadership began to see a new constitution as a means to cut government spending and free revenue to pay the debt.

The Louisiana Constitutional Convention of 1879 produced a document that was restrictive and relatively democratic, but the 1879 constitution contained many inconsistencies that were indicative of the diverse influences that affected the convention. The single most hotly debated issue in the constitutional convention was the debt. The Democratic establishment and holders of Louisiana bonds expected that the rate of interest of the bonds would be lowered, but they staunchly opposed any reduction in the debt's principal. The convention almost scaled down the principal of the bonds, but in the end it merely cut the interest rate. In matters of political rights, the convention continued democratic suffrage, but it also left the door open to gubernatorial appointment of local officials. In addition, the convention also gave constitutional recognition to the hated Louisiana Lottery.

Texas had a relatively small debt, and as a result its Democratic leadership never had the motivation to compromise on a restrictive constitution as did the party leadership of Alabama and Louisiana. Because of this intransigence on the part of the dominant party's hierarchy, Texas had a protracted struggle over constitutional revision. Although reaction against Reconstruction helped forge a
consensus among Texas Democrats in favor of a new constitution, it
did not create unity in the dominant party over what that document
should contain. The first effort to provide for a new constitution
came in 1873. With the Republicans possessing both control of the
executive branch and a large minority in the senate, Democratic
legislators had to maintain strict unity if they were to secure a new
constitution. This these legislators did not do, and when four Demo-
crats voted with their Republican colleagues in the senate, a joint
resolution providing for a constitutional convention died.

In 1874 the conditions for creating a new constitution
were much improved over the previous year. In their 1873 party con-
vention, Democrats had placed a plank in their platform supporting a
constitutional convention. And when the dominant party won control of
the executive branch and of a large majority in both houses in the fall
general election, the path to a new constitution seemed open. Governor
Richard Coke reinforced this perception in his January 1874 message to
the legislature when he made the writing of a constitution a major
goal of his administration. But just as soon as the legislature began
deliberating on changing the constitution, Democrats started dividing
over how to revise the organic law. The senate and house committees on
constitutioal amendments sent conflicting proposals to their respec-
tive bodies concerning the mode for revising the constitution. The
methods for altering the constitution suggested by the committees were
an elected convention and an appointed commission. The senate acted
on constitutional revision first, and as a result of the superior par-
liamentary tactics of those opposed to a convention, it defeated that
measure. Due to a provision in the constitution, the senate's vote defeating the convention resolution killed that measure for the rest of the legislature's 1874 session. But despite this constitutional prohibition, the house refused to accept the senate's action and passed its own resolution calling a constitutional convention. This futile action accomplished nothing and when the legislature also rejected revision by commission, the question of writing a new constitution reached an impasse.

Governor Coke broke the legislative logjam he had helped create by recommending that the legislature appoint a committee to write a new constitution. Although he had claimed to be objective, this was the way Coke had wanted the constitution revised in the first place, and in the absence of an alternative, lawmakers agreed. The legislature gave the job to a special joint committee that was composed of the house and senate committees on constitutional amendments. The Constitution of 1874 emerged from the special joint committee as a liberal document that contained both active government measures and controls on political participation. The senate passed the 1874 document, but the house rejected it, and in doing so made a constitutional convention inevitable.

Faced with a great popular outcry on behalf of a constitutional convention, Governor Coke and the leading anticonvention legislators switched their position from opposition to pragmatic support of a convention. Coke called a special session of the legislature for January 1875 to provide for a constitutional convention. Once the legislature convened the senate quickly passed a joint resolution calling
a convention. But when events in Arkansas gave convention foes an excuse to act, they caused the house to postpone approval of the convention resolution for a month. This delay was but one manifestation of the futile hope that anticonvention legislators continued to harbor of preventing the call of a constitutional convention.

The fight over whether to call a constitutional convention occurred in the context of a larger pattern of institutional activity by the state government. Governor Coke's administration had played a large role in dividing the Democratic party. By maintaining a policy of deficit spending that was quite similar to that of his Republican predecessor, Edmund J. Davis, Coke had done much to create dissension in his party. The continuity in administration between Davis and Coke existed even in the area of government activity in which there was the greatest difference in spending. Faced with a complex problem of public protection that ranged from law enforcement to frontier protection, both Davis and Coke believed the state treasury could not afford all the public protection services the people wanted. Davis funded law enforcement to the detriment of frontier protection, and Coke did the opposite. But this temporizing on public protection for economy's sake resulted in much public dissatisfaction with both governors.

Popular discontent with the Coke administration and the Democratic leadership in general began to play a direct role in the constitutional revision process after the legislature called the constitutional convention. The nomination and election of convention
delegates placed the revision process in the public arena for the first time. The Democratic establishment had long feared the popular involvement in constitution-making that a convention would entail. Enhancing the people's input into the creation of a constitution by giving voice and leadership to public opinion was the Grange, an agrarian organization that was reaching the peak of its popularity in 1875. Long before newspapers recognized the threat posed by the Grange, the Democratic state central committee attempted to inhibit the influences of members of that organization in the nomination of delegates to the constitutional convention. This strategy by the state central committee backfired because it threatened the autonomy of local party organizations and because Grangers were too numerous in many localities to be pushed aside. The state central committee's concern was validated, however, when Grangers emerged from the election of delegates with the largest single group in the constitutional convention.

The Constitutional Convention of 1875 proved uncontrollable just as the Democratic leadership had feared. With Grangers taking the lead, the convention wrote a restrictive document that systematically rejected the liberal constitutional values of the Democratic establishment. The convention evidenced its preference for rigid retrenchment throughout its deliberations, and only in the judiciary article did it partially deviate from its strict adherence to restrictive constitutional values. The convention also rejected virtually all efforts to limit the political rights of the people and in doing so preserved the state's commitment to Jacksonian Democracy. The completed constitution
met the expectations of much of the dominant party's rank and file, but the party's establishment was left with a quandary. Either it could ratify the new constitution with which it disagreed, or it could continue to live under a constitution it despised. While some prominent Democrats fought to defeat the new organic law, others followed the lead of Governor Coke and supported that document because it was relatively easy to amend. The people ratified the Constitution of 1876 by an overwhelming margin, and in the nineteenth century at least, that document proved harder to amend than Coke and other advocates of a liberal constitution had hoped.
Bibliographic Essay

Any study of the post-Reconstruction South must begin with C. Vann Woodward's *Origins of the New South 1877-1913*, but as this study shows, in the field of state constitutional study Woodward is a guide to the limitations of political history rather than a correct interpretation of southern state constitutions in the 1870s. Nonetheless, it is a tribute to the breadth of Woodward's historical vision that he incorporated state constitutions in his work. A better starting point for putting 1870s state constitutions into perspective is Morton Keller's *Affairs of State: Public Life in Nineteenth Century America*. But Keller's argument that state constitutions and political institutions in general in the 1870s were a return to the more "typical" pattern of nineteenth century American government is neither supported nor credible. A variety of nineteenth century commentators made observations about the emergence of restrictive state constitutions, and some of the most important of these are: Henry Hitchcock, *American State Constitutions: A Study of Their Growth*; James Schouler, *Constitutional Studies, State and Federal*; Henry Reed, "Some Late Efforts at Constitutional Reform," *North American Review*, 121 (July, 1875), 1-36; and Simeon E. Baldwin, "Recent Changes in Our State Constitutions," *Journal of Social Science* X (December, 1879), 136-151. Twentieth century works that also discuss the changes that occurred in state constitutions in the 1870s are James Willard Hurst, *The Growth of American Law: The Law Makers*; John D. Hicks, "The Constitutions of the Northwest States," *The University Studies of the University of Nebraska*, XXIII
(January–April, 1923); and Harold M. Hyman, Union and Confidence: The
1860s. Compilations of state constitutions are Benjamin P. Poore, The
Federal and State Constitutions; Francis N. Thorpe, The Federal and
State Constitutions; and William F. Swindler, Sources and Documents of
the United States Constitutions.

Alabama

Of the three states examined in this study, Alabama has
the best history of its state constitutions, but nonetheless, Malcolm
Cook McMillan's Constitutional Development in Alabama, 1798-1901 suf-
fers from examining state constitutions in terms of conventional po-
itical history. Other political and social histories of use are Allan
Johnston Going, Bourbon Democracy in Alabama 1874-1890; Horace Mann
Bond, Negro Education in Alabama: A Study in Cotton and Steel; Walter
L. Fleming, Civil War and Reconstruction in Alabama; Jonathan M. Weiner,

Primary sources vital to understanding the constitutional
and legal history of Alabama include Journal of the Constitutional
Convention of 1875; Acts of the General Assembly; John T. Ormond,
Arthur P. Bagby, and George Goldthwaite, The Code of Alabama; and A.J.

Louisiana

Major political histories of Louisiana are William Ivy
Hair, Bourbonism and Agrarian Protest: Louisiana Politics 1877-1900;
Garnie W. McGinty, Louisiana Redeemed: The Overthrow of Carpetbag
Rule, 1876-1880; Joe Gray Taylor, Louisiana Reconstructed 1863-1877; and Ella Lonn, Reconstruction in Louisiana after 1868. Primary sources important to interpreting Louisiana's constitutional and legal history include Official Journal of the Constitutional Convention, 1879; Acts of the General Assembly; Official Journal of the House; A Revised Statutes of Louisiana, 1856; and The Revised Statute Laws, 1869.

Texas

Long the standard work on the Texas Constitution of 1876, Seth Shepard McKay's Seven Decades of the Texas Constitution of 1876 suffers from is descriptive approach to state constitutionalism and its Dunning school political interpretations. Significant political histories include: Alwyn Barr, Reconstruction to Reform: Texas Politics, 1876-1906; Ben Procter, Not Without Honor: The Life of John H. Reagan; Ernest Wallace, Charles De Morse, Pioneer Editor and Statesman, Texas in Turmoil, 1849-1875; John Pressley Carrier, "A Political History of Texas During the Reconstruction, 1865-1874;" and William Curtis Nunn, Texas Under the Carpetbaggers. Information on law enforcement and frontier protection appears in Walter Prescott Webb, The Texas Rangers: A Century of Frontier Defense; Otis A. Singletary, Negro Militia and Reconstruction; and Ann Patton Baenziger, "The Texas State Police During Reconstruction, A Reexamination," Southwestern Historical Quarterly, LXXII (April, 1969), 470-491. The standard work on the finances of the Texas state government as a nation and a state is Edward Thornton Miller, A Financial History of Texas, but it leaves key questions about state finances in the 1870s unanswered and forces
its data into a Dunning school interpretation that such data contradicts. Primary sources are always vital to any history, but in the study of institutions and their functioning in Texas, such sources must serve as the starting point to break free of interpretations, both antiquated and current, of political history. The legal history of the Lone Star State requires an integrated, comparative use of such standard published sources as Hans P.N. Gammel, *The Laws of Texas* and *Journal of the House* and *Senate*, and the little used and greatly valuable manuscript records of the legislature. In constitutional history, the Constitution of 1874 is housed in the manuscript records of the legislature as a senate joint resolution, and the published primary sources for the Constitutional Convention of 1875 are the *Journal of the Constitutional Convention, 1875*; and Seth Shepard McKay's *Debates in the Texas Constitutional Convention of 1875*. The most significant primary sources for data on the state's fiscal affairs is the Comptroller's *Reports*, and for information on law enforcement and frontier protection, the Adjutant General and Attorney General *Reports*. The manuscript records of the governors, and of such leading men as Oran M. Roberts, John H. Reagan, William Pitt Ballinger, Ashbel Smith, and James P. Newcomb provide limited, but highly useful, information about the state's institutions.