



# The Constitution of the Republic of Texas

## PART 1 OF 2

*David P. Currie*

HAVING WRITTEN ABOUT the constitutions of the United States and of the short-lived Confederate States of America,<sup>1</sup> I recalled that – Native American communities to one side – for a brief period there was a third nation within the territory now occupied by the forty-eight contiguous states: the Republic of Texas, which existed from 1836 until 1845. That Republic, I said to myself, must have had a constitution of its own; I wonder what it was like.

A few hours' digging revealed that the Republic of Texas had had not only a constitution but also a modest number of Supreme Court decisions construing it, and the present project was begun.

Texas declared its independence from Mexico on March 2, 1836. "When a government has ceased to protect the lives, liberty and property of the people ... [and] becomes an instrument in the hands of evil rulers for

their oppression," the Declaration recites, "the first law of nature, the right of self-preservation[,] enjoins the people "to abolish such government and create another, in its stead ... ." There follows, as in the declaration adopted six decades earlier by the United States, a detailed list of specific grievances, ranging from the denial of trial by jury and freedom of conscience to military despotism and the failure to establish a system of public schools. The bottom line:

We, therefore, the delegates ... of the people of Texas, in solemn convention assembled, do hereby resolve and declare that our political connection with the Mexican nation has forever ended; and that the people of Texas do now constitute a free, sovereign and independent republic, and are fully invested with all the rights and attributes which properly belong to independent nations ... .<sup>2</sup>

Within a week a committee of the con-

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1 E.g., David P. Currie, *The Constitution in the Supreme Court: The First Hundred Years, 1789–1888* (Chicago, 1985); *Through the Looking-Glass: The Confederate Constitution in Congress, 1861–1865*, 90 Va L Rev 1257 (2004).

2 *Laws of the Republic of Texas* 3–7 [hereafter cited as *Laws Rep Tex*], 1 Tex Laws 1063–67.



A "Sketch of Texas, with the Boundaries of Mexican States, as shown on Gen'l Austin's Map of Texas, Published by H. S. Tanner. 1839." Library of Congress.

vention presented a draft constitution, which the convention itself approved with amendments on March 17. The constitution was ratified by the people in early September “by a practically unanimous vote.”<sup>3</sup>

## The Text

“The constitution as adopted followed the general lines of that of the United States,” except that “the federalistic features were eliminated because the new republic was a unit, and not divided into states.”<sup>4</sup> Beginning with a preamble that looks very much like our own, the constitution contains six Articles, a “Schedule,” a set of “General Provisions,” and a Declaration of Rights.

Article I begins with a separation-of-powers provision that is at best implicit in the U.S. Constitution:

The powers of this government shall be divided into three departments, viz: legislative, executive and judicial, which shall remain forever separate and distinct.

Further sections of this article define the legislative branch, for the most part following the U.S. pattern. Legislative power was vested in a bicameral congress (§ 2). Members of the House of Representatives were to be elected annually (§ 3), Senators every three years – the latter from “districts, as nearly

equal in free population (free negroes and Indians excepted,) as practicable ...” (§ 8). Most of the provisions in the first seven sections of the U.S. Article I were copied essentially verbatim; I note only departures from the U.S. model. Nothing is said about apportionment of seats in the House of Representatives, but not because there were no states among which to apportion them; the initial draft contained a provision, omitted through apparent inadvertence, apportioning them among counties “according to the respective numbers of their citizens.”<sup>5</sup> The contempt power of Congress, implicit in the United States, was made express: “Each house may punish, by imprisonment, during the session, any person not a member, who shall be guilty of any disrespect to the house, by any disorderly conduct in their presence” (§ 16).<sup>6</sup> The so-called Twenty-seventh Amendment, proposed in the United States in 1789 and allegedly ratified two centuries later,<sup>7</sup> was incorporated with minor alterations into Article I, § 15:

Senators and Representatives shall receive a compensation for their services, to be fixed by law, but no increase of compensation, or diminution, shall take effect during the session at which such increase or diminution shall have been made.

Except “in cases of emergency” certified by

3 Laws Rep Tex 9–25, 1 Tex Laws 1069–85; see Louis J. Wortham, 5 *A History of Texas: From Wilderness to Commonwealth* 224, 363 (Wortham-Molyneaux, 1924). The original draft of the constitution appears in the Journals of the Convention of the Free, Sovereign and Independent People of Texas, in General Convention Assembled 39–53, 1 Tex Laws 859–73 [hereafter cited as *Convention Proceedings*].

4 Wortham, 5 *History of Texas* at 225 (cited in note 3). See also Rupert N. Richardson, *Framing the Constitution of the Republic of Texas*, 31 *SW Hist Q* 191, 209 (1928), calling the constitution “a composite structure of portions of the constitution[] of the United States and of several of the state constitutions in effect at that time.”

5 Draft Const, Art I, § 4, *Convention Proceedings* at 40, 1 Tex Laws at 860.

6 Cf *Anderson v Dunn*, 19 US 204 (1821).

7 But see *Dillon v Gloss*, 256 US 368, 375 (1921), finding in Article V “a fair implication that ratification must be sufficiently contemporaneous ... to reflect the will of the people in all sections at relatively the same period.”

a two-thirds vote, bills were required to be “read on three several days in each house” (§ 20); if a bill was rejected, “no bill containing the same substance” could be adopted during the same session (§ 21); no holder or collector of public monies could be elected to Congress until he “acquitted himself of all responsibility” (§ 24); “[m]embers of either house m[ight] protest against any act or resolution, and ... have such protest entered on the journals ...” (id).

Article II embraces an enumeration of congressional powers remarkably reminiscent of the corresponding U.S. provisions. Nothing is said, however, of bankruptcy, naturalization,<sup>8</sup> counterfeiting, piracy, offenses on the high seas or against the law of nations, or the seat of government.<sup>9</sup> The commerce power was generalized, as befitted a unitary state: Congress was authorized simply “[t]o regulate commerce,” with no limitation to that which was foreign, interstate, or Indian (§ 2).<sup>10</sup> The clause respecting coinage was supplemented by the admonition that “nothing but gold and silver shall be made a lawful tender” (id),<sup>11</sup> the clause dealing with patents and copyrights by express authority to grant “charters of incorporation” too (§ 3).<sup>12</sup> The

provision respecting organization of the militia, trimmed of its federalistic features, was transplanted to the Declaration of Rights (¶ Fifteenth). The taxing power differed subtly from that of the United States: Rather than “taxes, duties, imposts and excises,” the Texan Congress was authorized to levy and collect “taxes and imposts, excise and tonnage duties” (§ 1); whether any substantive change was intended is unclear.<sup>13</sup> There was no rule of apportionment for direct taxes, no ban on export duties, and no express requirement that duties, imposts, and excises be “uniform.” Finally, a poorly drafted clause appears to have subjected the power to borrow, as well as the power to tax, to the condition that it be exercised only “to pay the debts and to provide for the common defence and general welfare ...” (id).

It was only after I had carefully compared this enumeration with its U.S. counterpart that it occurred to me to wonder what it was doing there in the first place. In the United States, powers not enumerated are reserved to the individual states; in Texas there were no states to which they could be reserved. Could the Texan fathers have been such free spirits that they intended that unenumer-

8 Naturalization was dealt with in part by a separate provision of the constitution itself specifying how citizenship was to be obtained. See text accompanying notes 25–26.

9 Commissions were thrice established by statute to locate a seat of government (Laws Rep Tex, 2d Cong 4 (Oct 19, 1837), 1 Tex Laws 1346; Laws Rep Tex, 2d Cong 60 (Dec 14, 1837), 1 Tex Laws 1402; Laws Rep Tex, 3d Cong 161 (Jan 14, 1839), 2 Tex Laws 161), but apparently without satisfactory result; a later statute provided for a popular election to determine the seat of government. Texas being a unitary state, there was no need to say anything about exclusive jurisdiction. See Laws Rep Tex, 9th Cong 22 (Jan 20, 1845), 2 Tex Laws 1068. For the efforts of the three commissions see Clarence R. Wharton, *The Republic of Texas* 169–73 (Young, 1922).

10 The initial draft, in contrast, spoke only of “commerce with foreign nations and with the Indian tribes.” Draft Const, Art II, § 2, Convention Proceedings at 42, 1 Tex Laws at 862.

11 Congress at one point authorized the issuance of “Exchequer Bills ... receivable in payment of all public dues,” but the public was not required to accept them, and the authorization was later repealed. See Laws Rep Tex, 6th Cong 55, § 3 (Jan 19, 1842), 2 Tex Laws 727; Laws Rep Tex, 9th Cong 94 (Feb 3, 1845), 2 Tex Laws 1140.

12 This entire clause was omitted from the original draft. Draft Const, Art II, § 3, Convention Proceedings at 42, 1 Tex Laws at 862.

13 The original draft had copied the U.S. provision. Draft Const, Art II, § 1, Convention Proceedings at 42, 1 Tex Laws at 862.





In the late 1830s, the Republic of Texas issued notes popularly known as “red-backs,” which were replaced in 1842 under the exchequer bill legislation.

ated powers not be exercised at all?<sup>14</sup>

The answer, if there is one, may lie in two provisions found in later articles of the constitution. The first, located in the final section of the judiciary article, enjoined it upon Congress, “as early as practicable,” to

introduce, by statute, the common law of England, with such modifications as our circumstances, in their judgment,

may require; and in all criminal cases, the common law shall be the rule of decision (Art IV, § 13).<sup>15</sup>

The second, tucked away among the “General Provisions” near the end of the document, required the adoption of a penal code as well as a general codification and revision of the laws.<sup>16</sup> If “modifications” and “revisions” included statutes on topics previously

14 See Richardson, *supra* note 4, at 211–12, concluding that “[i]t might have been more logical to have given congress a general grant of legislative power and then to have applied such limitations as seemed to be expedient.”

15 See Laws Rep Tex, 4th Cong 3–4, § 1 (Jan 20, 1840), 2 Tex Laws 177–78, making “the Common Law of England (so far as it is not inconsistent with the Constitution or the Acts of Congress now in force) ... the rule of decision in this republic.” Later sections of the same statute modified the common law respecting husband and wife in several particulars, notably by prescribing a system of community property. Laws Rep Tex, 4th Cong 4, § 4, 2 Tex Laws 178.

16 Const Rep Tex, General Provisions, § 7. It was 1845 before the legislature took steps to implement this provision, directing the Attorney General “to prepare a criminal code, and to revise, digest and arrange

unknown to the applicable law, then these provisions may have been the equivalent of the general grant of legislative authority one would expect to find in the constitution of a unitary state. Indeed it was not very long before the Texan Congress, possibly on the basis of these inauspicious clauses, enacted a bankruptcy code despite the absence of any reference to that subject in the enumeration of legislative powers.<sup>17</sup> The mystery remains: If Congress was to have plenary powers, as the common-law and revision provisions arguably suggest, then what was the point of the enumeration?

Article III vested the executive authority in a popularly elected President serving for three years (two in the case of the first incumbent) and unable to succeed himself directly (§§ 1–2). Other provisions respecting the President, most of them quite familiar to the U.S. observer, are found in Article VI. Departures from the model include the following. If the Senate rejected a recess appointee, “the president shall not re-nominate the same individual to the same office” (§ 6). Heads of departments, appointed by the President with Senate approval, “shall remain in office during the term of service of the president, unless sooner removed by the president, with the advice and consent of the senate” (§ 10).<sup>18</sup>

The provision for presidential succession (§ 15) differs in several particulars from that of the United States. It applies not only in cases of removal, death, or resignation of the President, but also when he is impeached or absent from the country; it omits the U.S. reference to incapacity. It resolves an ambiguity in the U.S. version: in the cases specified the vice president “shall exercise the powers and discharge the duties of the president until a successor be duly qualified, or until the president, who may be absent or impeached, shall return or be acquitted.”<sup>19</sup>

Article IV, familiarly enough, vested the judicial power “in one supreme court, and such inferior courts as the congress may, from time to time, ordain and establish” (§ 1). There, however, the resemblance ends. The Texan Congress was *required* to divide the Republic into districts and to establish a court in each of them (§ 2). The Supreme Court was to consist of a chief justice and associate judges, but “the district judges shall compose the associate judges” (§ 7). Judges of both the supreme and district courts were to be elected “by joint ballot of both houses of congress,” to serve four-year terms, and to be eligible for re-election (§§ 9, 1).<sup>20</sup> Their compensation was “not to be increased or diminished” during their term (§ 1). There was

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... the General Laws of the Republic, both civil and criminal, as required by the seventh section, in the General Provisions of the Constitution.” Laws Rep Tex, 9th Cong 127–28 (Feb 3, 1845), 2 Tex Laws 1173–74.

17 Laws Rep Tex, 5th Sess 38 (Jan 19, 1841), 2 Tex Laws 502. In one respect, however, the Bankruptcy Act appears to have offended the constitution, for it contained no provision limiting its operation to debts incurred after its passage. See Const Rep Tex, Declaration of Rights, ¶ Sixteenth: “No retrospective or ex-post facto law, or laws impairing the obligation of contracts, shall be made”; *Sturges v Crowninshield*, 17 US 122 (1819).

18 See the celebrated debate over removal of Cabinet officers in the first U.S. Congress, discussed in David P. Currie, *The Constitution in Congress: The Federalist Period, 1789–1801* 36–41 (Chicago, 1997).

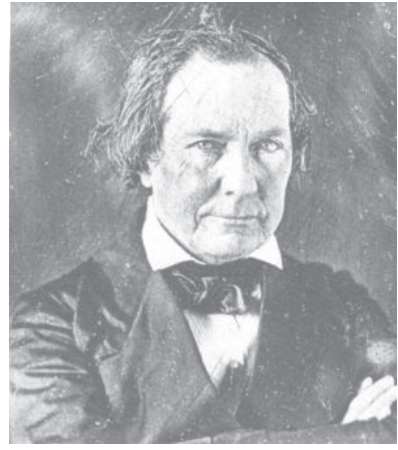
19 See David P. Currie, *His Accidency*, 5 *Green Bag* 2d 151 (2002), discussing the case of President [?] Tyler. The implication that the Vice-President was not to *become* President of the Republic was strengthened by passage of a law specifying that he should be paid the President’s salary “so long as he performs the duties of President.” Laws Rep Tex, 5th Cong 32 (Jan 18, 1841), 2 Tex Laws 496.

20 The original draft of the constitution also contained a provision permitting Congress to remove a judge by a two-thirds vote in each House, apparently for any reason. Draft Const, Art VI, § 3, Convention Proceedings at 46, 1 Tex Laws at 866.

## *The Constitution of the Republic of Texas*



Sam Houston (left) was the first and third elected President of the Republic of Texas (1836–1838 and 1841–1844). Mirabeau Lamar (right) was Vice President during Sam Houston's first term, and was elected to succeed him as President from 1838 to 1841.



also to be a set of county courts, together with “such justices’ courts as the congress may, from time to time, establish” (§ 10).

The district courts were to have exclusive original jurisdiction “[i]n all admiralty and maritime cases, in all cases affecting ambassadors, public ministers or consuls, and in all capital cases,” as well as original jurisdiction “in all civil cases when the matter in controversy amounts to one hundred dollars” (§ 3).<sup>21</sup> Presumably this meant that cases within the “original” jurisdiction could be brought in county courts or before justices of

the peace as well, along with those civil and criminal proceedings excluded from the district courts entirely.<sup>22</sup> The supreme court was to have “appellate jurisdiction only,” with the proviso (necessitated by the presence of district judges on the supreme bench) that “no judge shall sit in a case in the supreme court tried by him in the court below” (§ 8).<sup>23</sup>

The “Schedule” consists of provisions respecting the transition from the old regime to the new constitution. The only ones of interest made provisional apportionments of House and Senate seats “until the first

21 The statute establishing the district courts appeared to fall short of the constitutional standard in giving those courts jurisdiction of “all suits, of whatsoever nature or description, when the matter in controversy shall be one hundred dollars or upwards, and which are not expressly cognizable in some other court established by law”; it appeared to exceed the constitutional standard in giving them jurisdiction of “all prosecutions ... by indictment, information, or presentment for treason, murder and other felonies, crimes and misdemeanors ... except such as may be cognizable ... in some other court ...” Laws Rep Tex, 1st Cong 198, 200, § 4 (Dec 22, 1836), 1 Tex Laws 1258, 1260. A later statute added jurisdiction over divorce cases, with no mention of a jurisdictional amount. Laws Rep Tex, 2d Cong 94, 95 § 2 (Dec 18, 1837), 1 Tex Laws 143, 1437.

22 But see the statute establishing the county courts, Laws Rep Tex, 1st Sess 148, 149–50, § 6 (Dec 20, 1836), 1 Tex Laws 1208, 1209–10, apparently giving the county courts jurisdiction only over actions on written contracts and accounts in which the demand exceeded \$100, and that “concurrent with the district courts.” See also § 24 of the same statute, Laws Rep Tex, 1st Cong at 153, 1 Tex Laws at 1213, making the chief justices of the county courts “judges of probate” as well. Smaller contract cases could be tried by justices of the peace. Laws Rep Tex, 1st Cong 141, 143 § 9 (Dec 20, 1836), 1 Tex Laws 1201, 1203. Most of the jurisdiction of the county courts was later taken away. Section 6 of the 1836 Act was repealed, and the chief justices were thenceforth to exercise only “the powers of Probate Judges, conservators of the peace, commissioners of roads and revenues, and notaries public.” Laws Rep Tex, 3d Cong 91, § 1 (Jan 26, 1839), 2 Tex Laws 91.

23 See § 3 of the Act establishing the Supreme Court, Laws Rep Tex, 1st Cong 79 (Dec 15, 1836), providing that the Supreme Court should have jurisdiction to review final judgments “which may be brought before it from any court in this republic, ... and which shall be cognizable ... according to the constitution and laws ...”



enumeration shall be made, as directed [or described] by this constitution" (§§ 6–7). Unfortunately, in their haste the framers managed to omit the original provision for a census;<sup>24</sup> no enumeration was either "directed" or "described."

The "General Provisions" are a grab bag of clauses that, among other things, made it the duty of Congress to disqualify persons convicted of "bribery, perjury, or other high crimes and misdemeanors" from public office, from voting, and from sitting on juries (§ 1); required the legislature, "as soon as circumstances will permit, to provide by law, a general system of education" (§ 5);<sup>25</sup> offered citizenship to white immigrants after six months' residence upon swearing allegiance to Texas (§ 6); required (as already noted<sup>26</sup>) the adoption of "a penal code formed on principles of reformation, and not of vindictive justice"<sup>27</sup> as well as a general codification and revision of the laws (§ 7); protected existing slavery and the right to import additional slaves from the United States while forbidding free blacks to reside in Texas without the consent of Congress (§ 9);<sup>28</sup> made detailed provision for the distribution of land (§ 10);<sup>29</sup> and provided that the constitution itself might be amended by passage of a

proposal by two successive legislatures (the second by a two-thirds vote in each house), followed by ratification by a simple "majority of the electors qualified to vote for members of congress voting thereon" (§ 11).

The Declaration of Rights combines elements of Article I, § 9 and Article III, § 3 of the U.S. Constitution with those of its Bill of Rights, with some significant variations. The first paragraph, which speaks of the "equal rights" of those who form a social compact, adds in cryptic terms that "no men or set of men are entitled to exclusive public privileges or emoluments from the community"; the second proclaims the "inalienable right" of the people "to alter their government." The third is either a paraphrase or a revision of our religion clauses:

No preference shall be given by law to any religious denomination or mode of worship over another, but every person shall be permitted to worship God according to the dictates of his own conscience.<sup>30</sup>

The fourth expands upon the freedom of expression:

Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse

24 See Draft Const, Art I, § 4, Convention Proceedings at 40, 1 Tex Laws at 860.

25 This provision was in direct response to one of the grievances listed in the Declaration of Independence. See text accompanying note 2. See also Laws Rep Tex, 3d Cong 134–35, §§ 1, 4 (Jan 26, 1839), 2 Tex Laws 134–35, setting aside three leagues of land in each county "for the purpose of establishing a primary school or academy" and fifty leagues for two colleges as well.

26 See text accompanying note 16.

27 See Laws Rep Tex, 6th Cong 23 (Jan 4, 1842), 2 Tex Laws 695, providing for the erection of a penitentiary – in attempted fulfillment, one surmises, of the idealistic constitutional obligation in question.

28 See Laws Rep Tex, 4th Cong 151, 152, § 8 (Feb 5, 1840), 2 Tex Laws 325, 326, giving free blacks two months in which to leave Texas or be sold into slavery.

29 The original version provided that "[t]he public lands being the only resource and wealth of the republic, congress shall have no power to give or grant them away, except for a price to be fixed by law." Draft Const, General Provisions, § 12, Convention Proceedings at 51, 1 Tex Laws at 871. For an explanation of the background of the land provisions see Richardson, *supra* note 4, at 198–207.

30 The phrasing of this provision was another response to the list of grievances in the Declaration of Independence. See 1 Tex Laws at 1065. For a legislative interpretation of the first clause see Laws Rep Tex, 1st Cong 211 (Dec 22, 1836), 1 Tex Laws 1271, granting a per diem allowance to "the chaplains of the two houses of congress."



of that privilege. No law shall ever be passed to curtail the liberty of speech or of the press; and in all prosecutions for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and fact, under the directions of the court.

Amendments IV through VIII to the U.S. Constitution were reproduced almost word for word, except that the takings clause applied to the appropriation of services as well as property (¶ Thirteenth), and that there appears to have been no provision for juries in civil cases.<sup>31</sup> The Second Amendment was modified in a way that seemed to resolve the controversial ambiguity of the original: "Every citizen shall have the right to bear arms in defence of himself and the republic" (¶ Fourteenth). The Third, which deals with the quartering of troops, was dropped entirely – as was the Ninth with its assurance that "[t]he enumeration ... of certain rights shall not be construed to deny or disparage others retained by the people." The Tenth, reserving nondelegated powers to the states, was omitted as unnecessary. The guarantee of habeas corpus was preserved intact (¶ Tenth), but there is no reference to bills of attainder; the relevant clause provides that "[n]o retrospective or ex-post facto law, or laws impairing the obligation of contracts, shall be made" (¶ Sixteenth). The definition of treason is unchanged, but ancillary provisions respecting proof and punishment were

omitted (id).

In addition to the first two paragraphs, the Declaration contains several other clauses unknown to the U.S. model. Imprisonment for debt was abolished (¶ Twelfth). The Declaration attempted to make a reality of Chief Justice Marshall's famous dictum that for every wrong there is a remedy: "All courts shall be open, and every man for any injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law" (¶ Eleventh).<sup>32</sup> Perpetuities, monopolies, entailments, and the law of primogeniture were forbidden (¶ Seventeenth); the military was expressly subordinated to "the civil power" (¶ Fourteenth). Article V, § 1 embodies a disqualification equally foreign to the U.S. Constitution:

Ministers of the gospel being, by their profession, dedicated to God and the care of souls, ought not to be diverted from the great duties of their functions; therefore, no minister of the gospel, or priest of any denomination whatever, shall be eligible to the office of the executive of the republic, nor to a seat in either branch of the congress of the same.<sup>33</sup>

These last two provisions, like numerous other novelties in the Texas constitution, were direct responses to grievances asserted in the Declaration of Independence.<sup>34</sup>

The provisions of Article I, § 10 and Article

31 There are two jury-trial provisions (¶¶ Sixth and Ninth), suggesting that one of them must have been intended for civil cases; yet both appear in the context of other criminal provisions. There are two criminal-jury provisions in the U.S. Constitution as well. US Const, Art III, § 2 and amend 6.

32 Cf *Marbury v Madison*, 5 US 37, 163 (1803).

33 Contrast *McDaniel v Paty*, 435 US 618 (1978), holding the exclusion of ministers from political office an abridgement of the free exercise of religion in the United States.

34 See 1 *Tex Laws* at 1063, 1065: "a consolidated military despotism, in which every interest is disregarded but that of the army and the priesthood, both the eternal enemies of civil liberty, the ever ready minions of power, and the usual instruments of tyrants";

The Mexican government ... has suffered the military commandants ... to exercise arbitrary acts of oppression and tyranny, thus trampling upon the most sacred rights of the citizen, and rendering the military superior to the civil power.

IV of the U.S. Constitution, being concerned essentially with the constituent states, were omitted altogether.

Two attempts were made to amend the Texas constitution during the nine years it was in force. The first object was to alter the awkward provisions respecting the Supreme Court, which as the joint resolution recited had proved unworkable:

Whereas, owing to the great increase of business in the Supreme Court of the Republic, and under the present organization of our Judiciary System, it is wholly impossible that our Judges can have sufficient time and opportunity to investigate the important questions that they will be called upon to decide. ...

The remedy was to create "a separate and independent Supreme Court": "[T]he Supreme Court shall consist of a Chief Justice, and two Associate Judges," elected for six

years "by joint ballot of both Houses."<sup>35</sup>

This proposition, passed by the Eighth Congress in 1844, was proposed once again in abbreviated form in early 1845, together with a proposition to amend § 6 of the General Provisions "to give to Congress the power to pass naturalization laws."<sup>36</sup> Passage of the bankruptcy law, as I have noted, lends strength to the hypothesis that the common-law and codification provisions of the constitution gave the Texas Congress plenary legislative authority.<sup>37</sup> The proposed naturalization amendment cuts the other way: If Congress already had plenary powers, there would be no need for such an amendment.

These proposals were overtaken by events: Before they could surmount the hurdles of approval by the next legislature and ratification by the people, Texas had become part of the United States.<sup>38</sup> *GP*

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35 Laws Rep Tex, 8th Cong 59 (Feb 1, 1844), 2 Tex Laws 971.

36 Laws Rep Tex, 9th Cong 125 (Feb 3, 1845), 2 Tex Laws 1170.

37 See text accompanying note 17.

38 9 Stat (US) 108, § 1 (Dec 29, 1845).