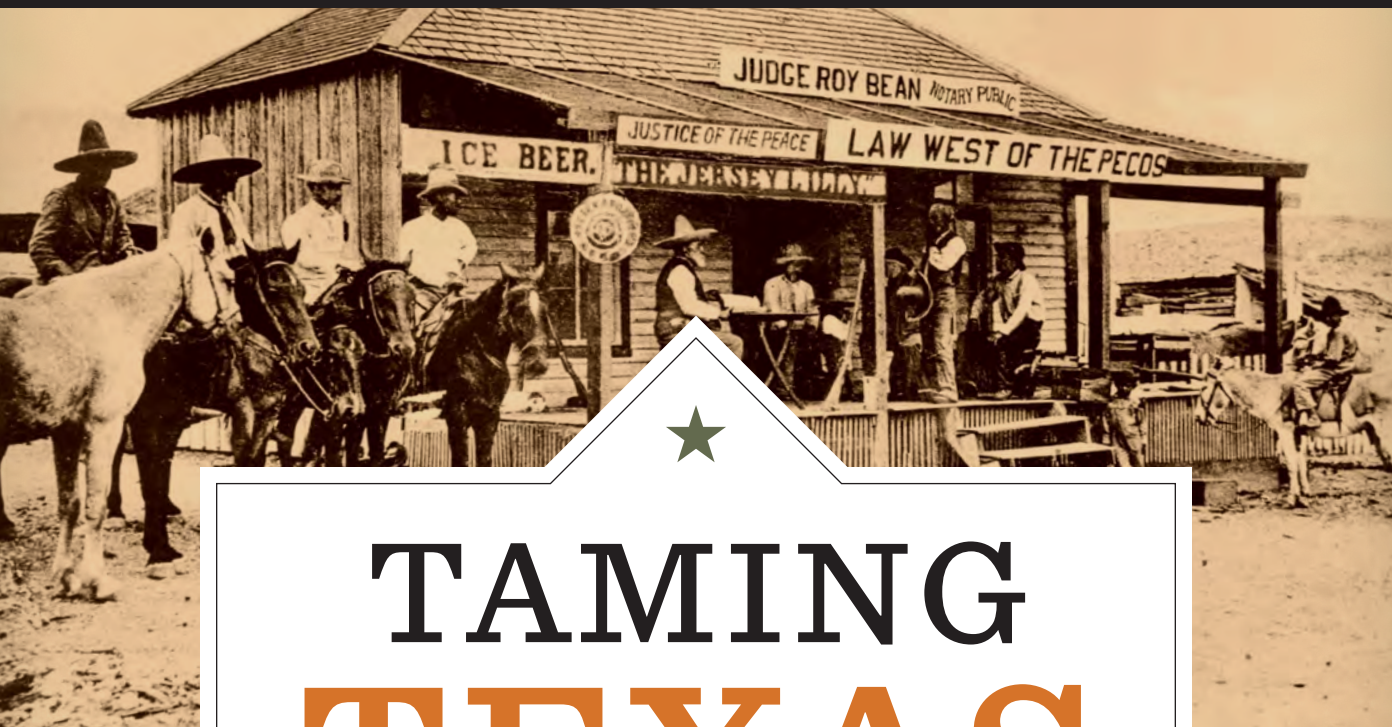
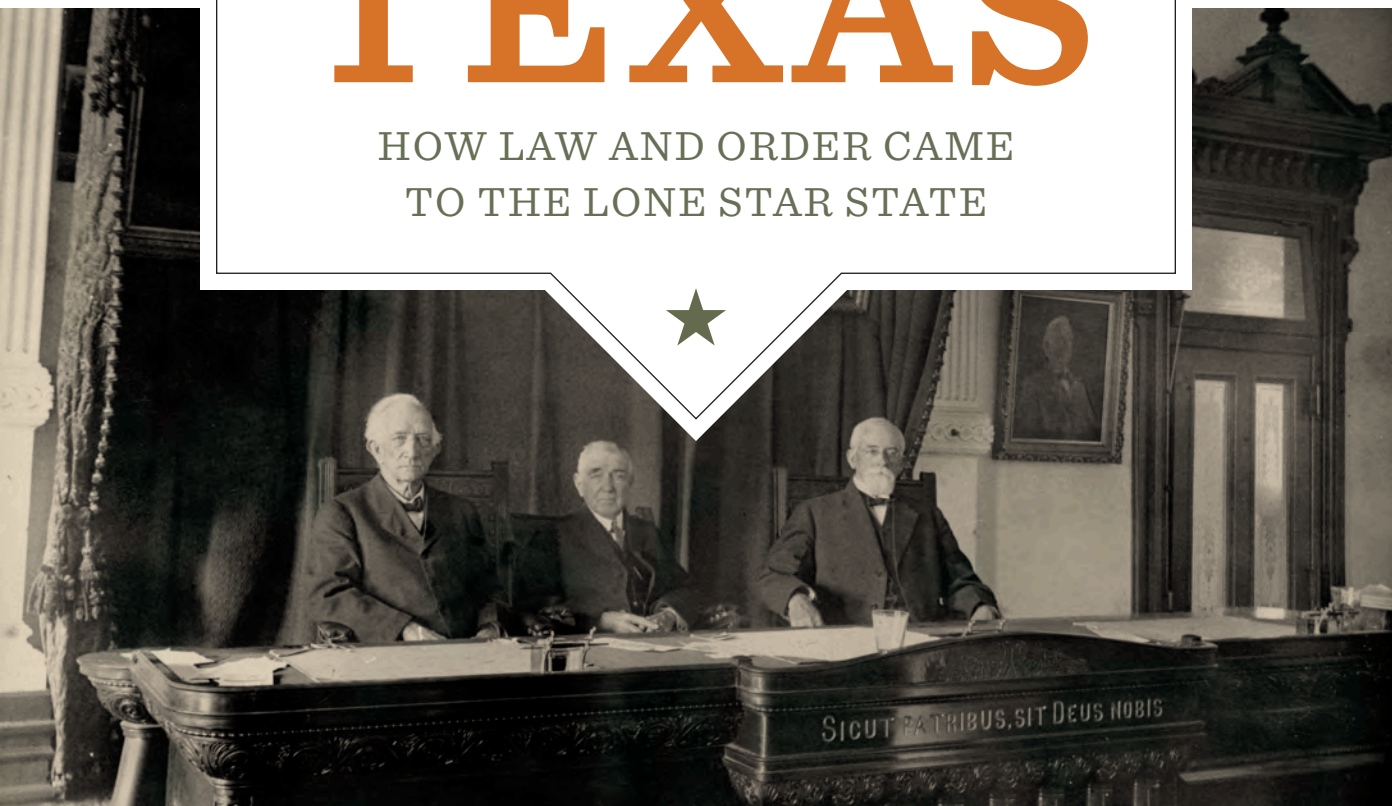


JAMES L. HALEY & MARILYN P. DUNCAN



TAMING TEXAS

HOW LAW AND ORDER CAME
TO THE LONE STAR STATE



TEXAS SUPREME COURT HISTORICAL SOCIETY





TAMING TEXAS





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HOW LAW AND ORDER CAME
TO THE LONE STAR STATE



BY JAMES L. HALEY
& MARILYN P. DUNCAN

TEXAS SUPREME COURT HISTORICAL SOCIETY

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Texas Supreme Court Historical Society
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tschs@sbcglobal.net

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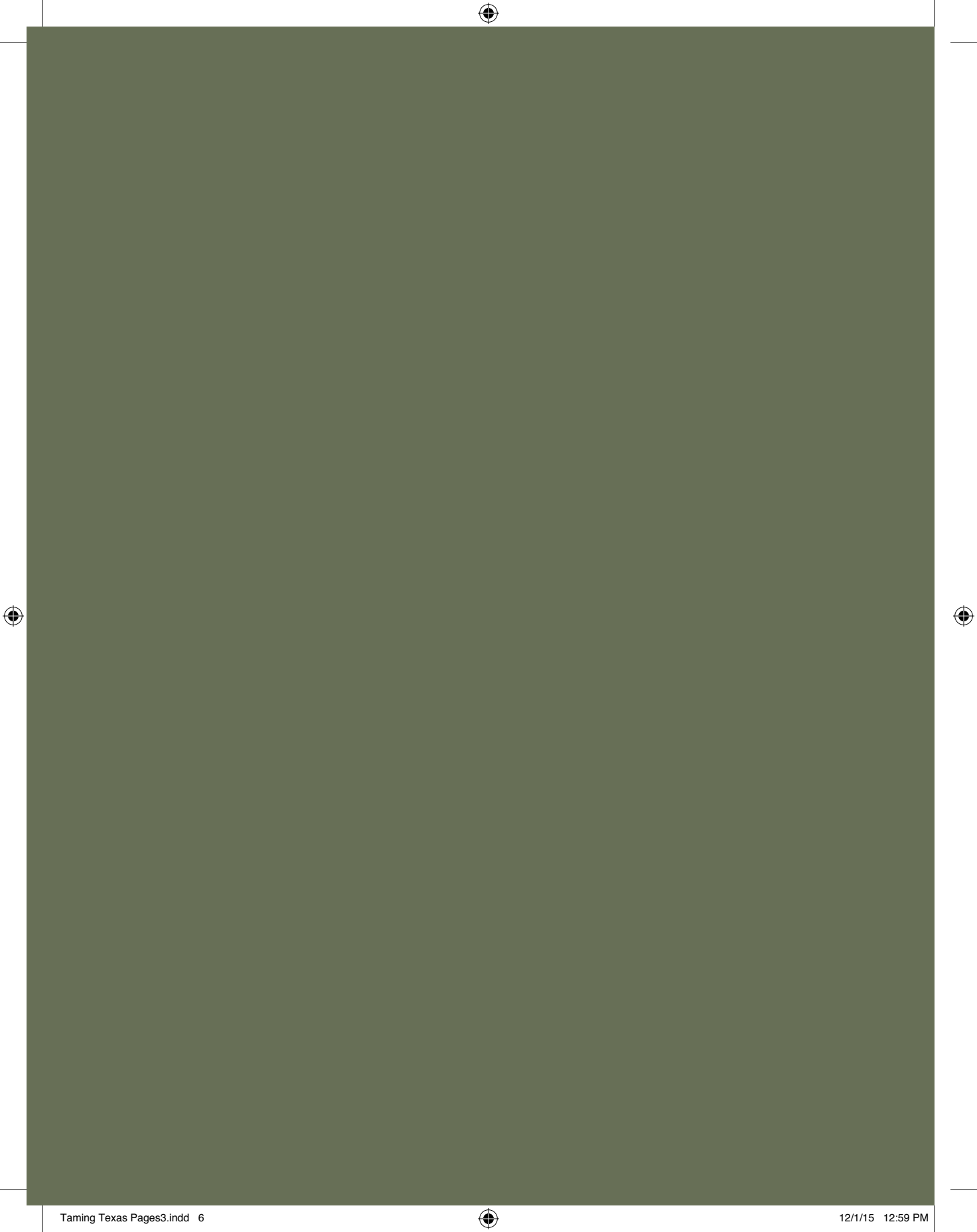
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The Texas Supreme Court Historical Society is a nonpartisan, nonprofit organization dedicated to the collection and preservation of papers, photographs, and significant artifacts relating to the Supreme Court of Texas, the appellate courts, and Texas judicial history. The Society also sponsors a variety of programs and publications designed to increase public awareness and appreciation of the state's judicial heritage.

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Foreword

The laws people choose for themselves describe the society they live in. Does it protect individual liberty? Respect property rights? Limit government? Treat people equally? Try to provide justice to the rich and poor, the strong and weak, alike? To us, the answers may seem simple. But over the years, judges and lawmakers have fought against power and prejudice to produce the society we enjoy today.

This book is about how that happened in Texas. Settlers from Spain and Mexico brought with them a civil law tradition that had its origins in Roman law two thousand years ago. At the same time, other pioneers from the United States believed in a common law system borrowed from England. Coming together in this wild frontier, people from very different cultures and backgrounds had to find new ways to settle their disputes and establish order. They recognized women's rights, protected homesteads, tamed the railroads, and fostered the independent spirit that had brought them here in the first place.

Many early lawmakers are well-known heroes of early Texas history—like Stephen F. Austin, Sam Houston, and Lorenzo de

Zavala. Others' names are not as familiar—Francisco de Arocha, John Hemphill, Robert “Three-Legged Willie” Williamson (yes, he was a Justice on the Texas Supreme Court!)—yet they, too, played important roles in the early court system. Together they created a legal system, tamed the frontier, and made Texas a safe place to live and work. This book tells some of their stories.

Over the years, as people have changed, Texas laws and courts have changed with them. Today the Texas court system is one of the largest in the country, with more than 3,000 judges deciding more than 10 million cases every year. Courts' decisions affect all of us. As we look to the future, we must not forget the past that led us here.

I have spent most of my life as a judge. Serving the people of Texas has been a great honor. Reading this book may inspire you to learn more about the third branch of government and to become a lawyer or judge. I hope so.



Nathan L. Hecht, Chief Justice
Supreme Court of Texas

Preface and Acknowledgments

This book is part of an exciting project on Texas judicial civics sponsored by the Texas Supreme Court Historical Society. The purpose of the project is to help seventh-grade students understand how the Texas court system works and how the history of the courts is intertwined with the rest of Texas history. By combining classroom visits by judges and lawyers with the stories told in the *Taming Texas* book, we hope to inspire students to learn more about the state's important third branch of government.

Many people and organizations have played a part in making the book and the classroom project a reality. We first extend our appreciation to the Supreme Court of Texas for its support. Chief Justice Nathan L. Hecht has written the foreword for the book. Justice Paul W. Green, the Court's liaison to the Society, has been of great assistance at every step of this project. They, along with other members of the Texas Supreme Court, will participate in the classroom visits that will take the story of the Texas courts into schools throughout the state. The Court's interest and continuing support are greatly appreciated.

The Law-Related Education Department at the State Bar of Texas is already involved in some great programs that teach students of all ages about Texas law, so LRE was the perfect partner in our effort to move the project forward into classrooms. We are especially grateful to LRE Director Jan Miller for her essential support.

Another important partner in the pilot stage of the project is the Houston Bar Association. Under the leadership of President Laura Gibson, the association has created a Teach Texas Committee to organize volunteers in the Houston legal community. The Tarrant County Bar Association is also a partner in the project's pilot, taking the project into the schools in the Fort Worth area. Association President David Keltner is leading that effort. Other local bar associations around the state will provide similar support as the project expands over the next several years.

As the Texas Supreme Court Historical Society's History Education Committee Chair and Fellows' representative on the Taming Texas Judicial Civics Project planning team, I want to extend special thanks to the other members of the team. In addition to LRE Director Jan Miller, they include the Society's Executive Director, Pat Nester, as well as the coauthors of this book, Jim Haley and Marilyn Duncan. This project grew out of the wonderful history book on the Court that Jim wrote for the Society in 2013. Jim and Marilyn have done a great job of capturing the exciting history of the Court in this new book for seventh-grade students. And Marilyn has been so helpful on myriad aspects of this project. The Society owes her a special debt of gratitude.

This book and project would not be possible without the generous support of the Fellows of the Texas Supreme Court Historical Society. The Fellows, under the leadership of Fellows Chair David J. Beck, have provided the funding necessary to plan and publish the book and to put the project in classrooms. Their interest and

TAMING TEXAS

x

support are vital to the Society's continued efforts to educate Texans of all ages about their state's rich judicial history.

Warren W. Harris

Past President and Charter Fellow,
Texas Supreme Court Historical Society
Partner, Bracewell & Giuliani LLP, Houston, Texas

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TAMING TEXAS



TAMING TEXAS

Introduction

Taming Texas: What is Law?

Just as families have rules to keep everyone safe and the family operating smoothly, all societies have laws to provide for the common good and help achieve certain social goals. Whatever form of government there is—monarchy, dictatorship, democracy—there are always laws. When they work well, they achieve the greatest amount of justice for the greatest number of people.

Texas has a very complicated history. Indian peoples governed all of what is now Texas before Europeans arrived. As Spain, Mexico, the Republic of Texas, and then the State of Texas, the Confederate State of Texas, and once again the State of Texas extended their rule, Indian societies passed from the scene. Because of this checkerboard history, and especially with the change from Spanish-Mexican law to American law, the law in Texas is different from anywhere else in the country. As you read this book, you may be surprised to discover that when we became independent from Mexico, we decided that many of their laws actually worked better for us than American laws on the same subject, and we kept them!

Many people think of “law,” and “breaking the law” in regard to committing crimes and being punished for them. This is called “criminal law,” and it is an important part of the overall picture. However, “civil law” is equally important. These are the laws governing how to buy land, how to make contracts for business, how to get married and when you can get divorced, how and when the government can make you pay taxes, and many other things.

Today the U.S. government maintains a system of federal courts in Texas to handle federal matters. But Texas, like the other states, has its own constitution, its own legislature, and its own system of courts to hear state criminal and civil cases. It also has its own story of how the people of Texas took charge of taming the land—and themselves—by creating and enforcing these laws. This book tells the story of how that happened and why it matters.

INTRODUCTION



1564 map of New Spain

Law Comes to the New World

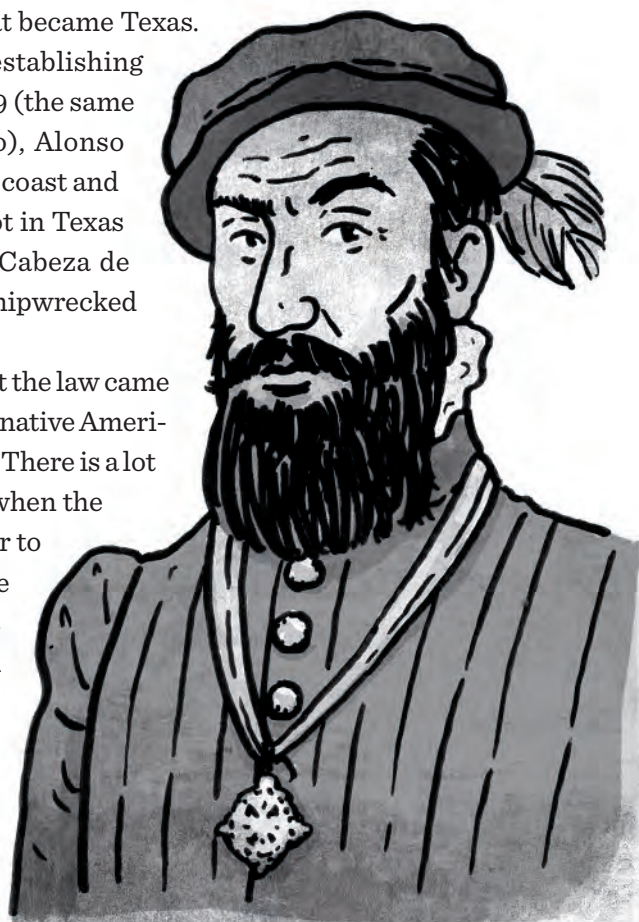
After an early lesson in justice from the Karankawa Indians, Spanish explorers, missionaries, and colonists planted the seeds of law and order in Texas.

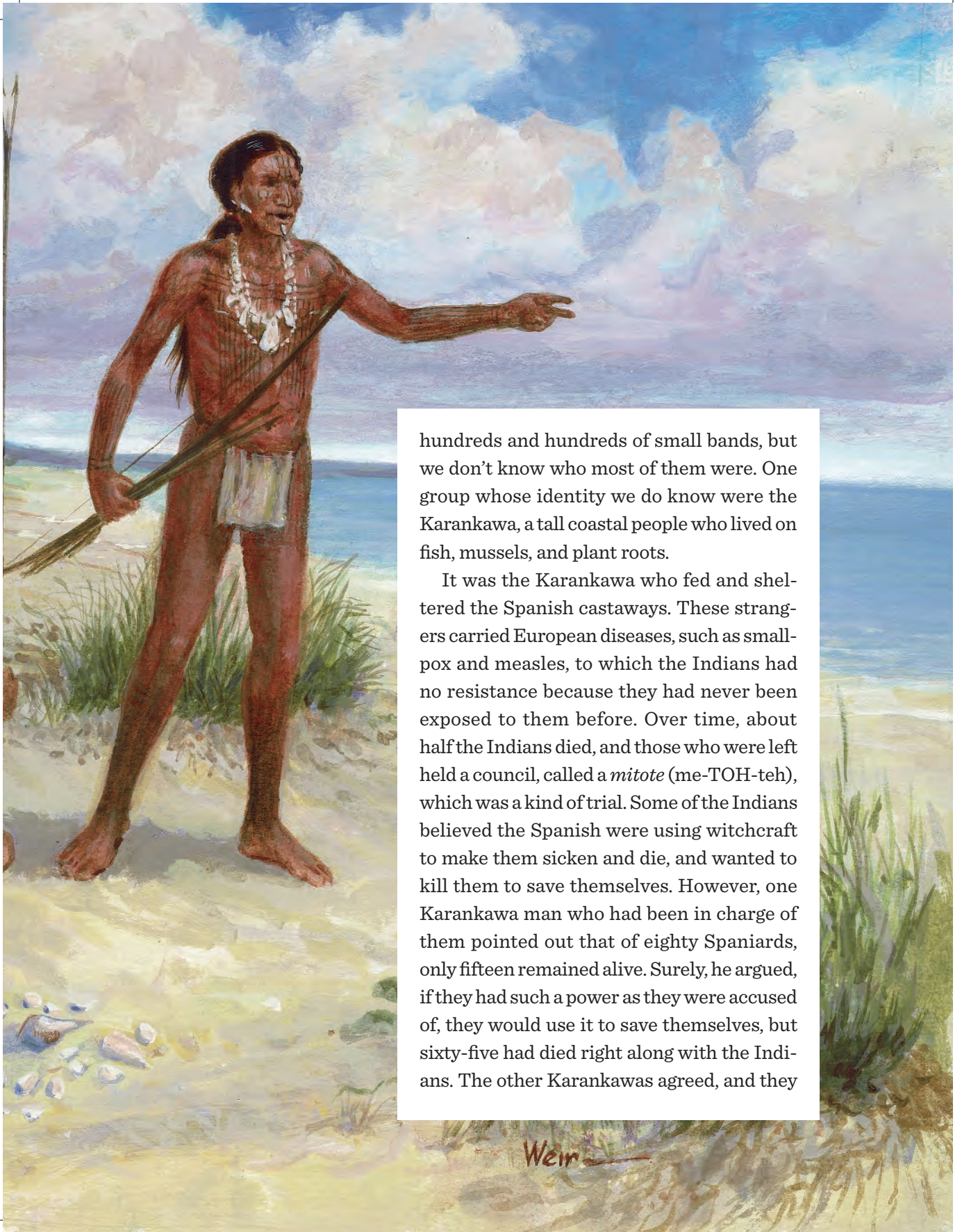
From the time Christopher Columbus arrived in the New World in 1492 it took another twenty-seven years for the Spanish to explore the coast of what became Texas.

In that time, they made a strong start at establishing an empire on the Caribbean islands. In 1519 (the same year that Hernán Cortés invaded Mexico), Alonso Álvarez de Pineda traveled along the Texas coast and mapped it, but no Spaniard actually set foot in Texas until 1528. That was when Álvar Nuñez Cabeza de Vaca and several dozen companions were shipwrecked and washed ashore.

In a way, it is not quite accurate to say that the law came to the New World with the Spanish, because native American Indians had forms of “law” of their own. There is a lot of confusion over what Indians lived here when the Spanish arrived. The tribes that are familiar to us today either had not yet arrived, or were called by different names, and some tribes were still forming. The Spanish named

Cabeza de Vaca





hundreds and hundreds of small bands, but we don't know who most of them were. One group whose identity we do know were the Karankawa, a tall coastal people who lived on fish, mussels, and plant roots.

It was the Karankawa who fed and sheltered the Spanish castaways. These strangers carried European diseases, such as smallpox and measles, to which the Indians had no resistance because they had never been exposed to them before. Over time, about half the Indians died, and those who were left held a council, called a *mitote* (me-TOH-teh), which was a kind of trial. Some of the Indians believed the Spanish were using witchcraft to make them sicken and die, and wanted to kill them to save themselves. However, one Karankawa man who had been in charge of them pointed out that of eighty Spaniards, only fifteen remained alive. Surely, he argued, if they had such a power as they were accused of, they would use it to save themselves, but sixty-five had died right along with the Indians. The other Karankawas agreed, and they

Wein

spared the lives of Cabeza de Vaca and the others. The name of this Indian man was lost long ago, but whoever he was, by standing up and arguing to save the Europeans' lives, he has a claim to being Texas's first lawyer.

In the end, only four of the Spaniards survived to reach civilization again. Cabeza de Vaca was one of them, and he wrote a book describing his adventures. Over time, other Spaniards explored different parts of Texas. Francisco Vázquez de Coronado traveled across the northern plains in 1540, Luís Moscoso de Alvarado explored the northeast in 1542, and many others followed later.

As these explorers moved across Texas, they came across many other native Indian peoples. Some of these, including the Caddo, had been inhabitants of East Texas for many centuries and had very complex systems of self-government and trade. The French and Spanish formed alliances with the Caddo leaders, not only to trade European goods for deer hides and horses, but also to use the Caddo as diplomats in keeping peace with the other Indian groups in the area.

By the time Father Damián Massanet established the first Spanish mission deep in East Texas in 1690, a thriving Spanish civilization had grown up in Mexico, but frontier living conditions were still very hard. The Spanish government in New Spain



Mission San Francisco de la Espada was built in 1731 in what is now San Antonio.

LAW COMES TO THE NEW WORLD

(the land that later became Mexico) tried to get some of its people to move to Texas and settle there, but Texas was hundreds of miles from Spanish civilization, the Indians there were often dangerous, and people refused to move. Then in 1714 a French trader, Louis Juchereau de St. Denis, showed up in Mexico having crossed Texas from French Louisiana. The Spanish were shocked, and it became urgent to get Spanish civilians living in Texas to preserve their claim to it.

In 1718 a mission and future provincial capital was established at Villa San Fernando de Bexar, which we now know as the city of San Antonio. With the safety provided by a town, a few citizens from Mexico were willing to go, but not many. The Spanish therefore recruited people from another of their colonies, the Canary Islands off the west coast of Africa. The crown offered to pay their moving expenses, and raised the heads of each family to the social rank of *hidalgo*, or gentleman. In Texas they would become landowners, which they thought meant they would not have to work. Fifteen families, which included fifty-six people, arrived in San Antonio in 1731.

The growing civilian population was governed by the civil law, not military or church law. Gradually, a system evolved called the *derecho vulgar* (the law for common people). It was a combination of the Spanish legal code set down in the Middle Ages, royal decrees, and law developed independently in the New World—all modified by what seemed most fair to people in the isolation of the frontier.

When the Canary Islanders came and saw the conditions they would have to live in, angry disputes arose and they began to sue each other, only there were no trained judges or lawyers to handle their cases. None of the settlers were well educated, so they turned to the town secretary, Francisco de Arocha, to come up with a plan. (The story was that he got the job because he had the best handwriting, but in truth at least a few others could also write legibly.)

Arocha used a simple set of *pleadings*, that is, a document to get



9

QVI MORES HOMINVM
VIDIT ET VRES

LEXICON IVRIS CIVILIS ET CANONICI:

SIVE POTIVS,
COMMENTARIVS DE VERBORVM
*quæ ad vtrumq; ius pertinent significatione, Antiquita-
tum Romanarum elementis, & legum Pop.
Rom. copiosissimo indice, adauctus.*

Olim quidem Pardulphi Præteij diligentia informatus: nunc
verò denuo doctiss. aliquot virorum industria ita constru-
ctus, & suprâ omnes omnium editiones tam multis
& præclaris & hætenus non explicatis dictio-
nibus illustratus, vt ad eius eximium
splendorem nihil desi-
derari possit.

Quid præterea in hac tertia editione
præstitum sit, epistola
ad Lectorem
docebit.

LVGDVNI,
APVD GVLIELMV
ROVILLVM.

1580.

Cum Privilegio Regis.

Law in Spanish Texas

CHAPTER

2

The early Spanish settlements in Texas used the laws of Spain to settle disputes and punish criminals. These laws were different from English laws in important ways.

The biggest problem with law in early Spanish Texas was that the real center of authority and justice was hundreds of miles away, in Mexico City. Local administrators and even provincial governors often abused their authority, knowing that it was hard to do anything about it. If anyone protested, help was months away and it cost a lot of money to seek it, and even then, the government would likely uphold the governor and he could make their lives even worse.

One of the most notorious was Jacinto de Barrios, who was governor of Spanish Texas from 1751 to 1759. He had a record as an Indian fighter, but he still made a fortune collecting furs from Indians and selling them to the French. Governors were supposed to protect their provinces from this kind of practice, not be the ringleaders. His assistant, Manuel Antonio de Soto, found him too unpleasant to work for, but when he tried to quit his job, Barrios refused him permission to leave. When Soto escaped to French Louisiana, Barrios charged him with desertion, even though Soto was a civilian (only someone in the army could be a deserter). The charges dogged Soto for many years before he was able to clear his name.

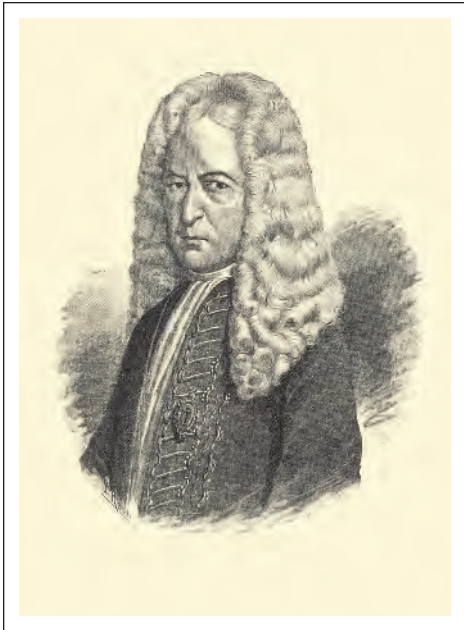
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*Early Spanish civil
law dictionary*

Juan Leal Goráz, who had led the Canary Islanders to Texas, became San Antonio's first *alcalde*, and he was also a very hard man to deal with. He once got three other local officials out of his way by jailing them on a charge of not fencing their fields by the terms of the local ordinance. They asked to be released on bail while they appealed their convictions, but Goráz denied them. Eventually, it took an order from the viceroy (the king's personal representative in Mexico City) to free them. Later on, this kind of

abuse was avoided by making a rule that people could not be locked up without the agreement of a second city official.

Goráz was able to act as he did because of the way Spain's criminal law was set up. In England (and later in the United States) the system was *adversarial*. A prosecutor would charge a person with a crime, and the accused person would be tried before a judge and jury, examine witnesses against him, and produce witnesses in his own favor. The jury would decide on his guilt or innocence, and the judge was there to keep things fair, not taking one side or the other. The Spanish model was vastly different. It was *inquisitorial*. The judge, which in a small Texas town meant the *alcalde*, was both the fact finder and the decider.

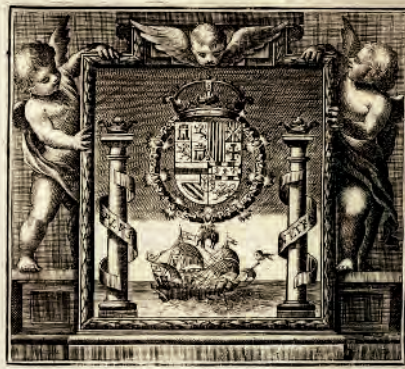


Juan de Acuña y Bejarano, viceroy of New Spain in 1731, could overrule decisions made by Juan Leal Goráz and other alcaldes in Spanish Texas.

The first part of a criminal proceeding was called the *sumaria*. The judge built a case against the defendant, who was allowed no part in determining the facts. Then came the *confesión*, where the defendant could either admit his guilt or demand a hearing, the *plenario*. At this hearing the judge (who had already decided the defendant was probably guilty or he wouldn't be there) could strike out any questions or witnesses that he wished. A person was presumed guilty unless he could prove himself innocent. There were no juries. (In later years this caused enormous trouble

RECOPILACION DE LEYES DE LOS REYNOS DE LAS INDIAS.

CON EL INDICE GENERAL.
TOMO QVARTO.



EN MADRID:

POR IULIAN DE PARDES, Año
dc 1681.

RECOPILACION DE LAS LEYES DE LAS INDIAS. LIBRO TERCERO. TITVLO PRIMERO.

DE EL DOMINIO Y IVRISDICCION
Real de las Indias.

Ley primera. Que las Indias Occidentales estén siempre unidas á la Corona de Castilla, y no se puedan enagenar.

Rea Donacion de la Santa Sede Apostolica, y otros juicios y legítimos títulos, somos Señor de las Indias Occidentales, Islas y Tierra firme del mar Oceano, descubiertas, y por descubrir, y están incorporadas en nuestra Real Corona de Castilla. Y porque es nuestra voluntad, y lo hemos prometido y jurado, que siempre permanezcan unidas para su mayor perpetuidad y firmeza, prohibimos la enagenacion de ellas. Y mandamos, que en ningun tiempo puedan ser separadas de nuestra Real Corona de Castilla, desunidas, ni

divididas en todo, ó en parte, ni las Ciudades, Villas, ni Poblaciones, por ningun calo, ni en favor de ninguna persona. Y considerando la fidelidad de nuestros vasallos, y los trabajos, que los descubridores y pobladores pasaron en su descubrimiento y poblacion, para que tengan mayor certeza y confianza de que siempre estarán y permanecerán unidas á nuestra Real Corona, prometemos, y damos nuestra fee y palabra Real por Nos, y los Reyes nuestros sucesores, de que para siempre jamas no serán enagenadas, ni apartadas en todo, ó en parte, ni sus Ciudades, ni Poblaciones por ninguna causa, ó razon, ó en favor de ninguna persona, y si Nos, ó nuestros sucesores hizieremos alguna donacion, ó enagenacion contra lo susodicho, sea nula, y por tal la declaramos.

A Ley

Tomo 2.

with American settlers, to whom juries were the greatest guarantee against the kind of abuse that Goráz committed.)

If convicted, there was the *sentencia*, where the criminal would learn his fate. Most settlements in Spanish Texas did not have a prison, so common punishments included community service or fines, or sometimes banishment to get the offender out of the community. If the court felt that a convict was not a thoroughly bad person, he might merely be shamed in the hope that he would improve his behavior. Death sentences were rare, and were automatically appealed to a higher authority.

The Recopilación de Leyes de Los Reynos de las Indias (Compilation of Laws of the Indian Kingdoms) was a book of laws issued by the Spanish monarchy in 1681 to govern Spain's colonies in the Americas. These were the laws used by early alcaldes in Texas.

With civil suits—that is, disputes between people that wind up in court—Spanish Texas developed a tradition of trying to settle the cases, in a friendly way if possible, before going to the time and expense of a trial. This was because an appeal of the result was hundreds of miles and months of time away, and not tying up officials' time in hearing cases was considered beneficial. Juan

Leal Goráz, who was always quick to file a suit, once sued a man over ownership of a mule. Finding that both men had facts in their favor, the court persuaded them to auction the mule in question and donate the money to the church.

There were many other ways in which Spanish laws, and in fact the whole Spanish legal system, were hugely different from the law that developed in the English-speaking world. In England, and then in the United States, their system was called the *common law*, which developed over centuries with great respect for past traditions, and where cases were decided based on how similar cases had been decided before. Spain and the Latin-speaking world were rooted in the *civil law*, which dated



*Trial or auction?
In one early
Spanish Texas case,
the auction won.*

back to the Roman empire. It was based on compilations of statutes that tried to foresee all the circumstances that might arise. As we have seen, criminal law was treated very differently in the Spanish world than in the English world. But also, the laws concerning land ownership and water rights, the position of women before the law, the rights of people in debt, the degree to which the government could control people's property and religion—civil

laws— were all radically different from law in the United States, which lay right next door.

After 1800, when more and more Americans began showing up in Spanish and then Mexican Texas, these differences led to conflict and eventually revolution.



Americans Come to Mexican Texas

Colonists from the United States, led by Stephen F. Austin, blended the laws they knew with the laws of Spain and Mexico to help bring order to the untamed frontier of Texas.

During the latter 1700s the Spanish empire weakened dramatically, and leaders in Latin America looked with admiration on the American revolution that began in 1776 and the French revolution of 1789. They began to envision democratic governments of their own. Napoleon invaded Spain in 1808 and replaced King Ferdinand VII with his own brother, Joseph Napoleon, and that loosened Spain's grip on the New World even more. Revolutions for independence broke out all over Latin America starting in 1810.

In Mexico that year an activist priest, Padre Miguel Hidalgo y Costilla, started a revolution on behalf of the poor against the Spanish upper classes. Spain still had not been able to convince many people from the Mexican interior to move to Texas, and the uprising there, which was known as the Green Flag Rebellion, was crushed by a royalist army in August 1813 at the Battle of the Medina River. More than a thousand rebels were killed, and after the mass executions that followed, Texas had fewer actual inhabitants than in previous years.

In December of 1820 an American citizen named Moses Austin

(opposite page)
Stephen F. Austin's
1835 map of Texas

traveled to San Antonio to propose a solution to the population problem. He offered to bring American settlers into Texas. They would become Catholic, swear loyalty to Spain, and develop the land as the government needed. At first he was refused, but in time his plan was approved. Moses Austin died before he could begin colonizing Texas, so his son, Stephen F. Austin, took his place. Because Mexico had won its independence from Spain after the grant was approved, the younger Austin had to apply to the new Mexican government for approval. It took several months, but he succeeded, and beginning in 1822, three hundred Anglo families moved to Texas on a large land grant centered about the lower Brazos River.

Stephen F. Austin was given sweeping authority to govern his colony on his own. He was even granted permission to bring slaves into the colony, even though Mexico (and

New Spain before that) strongly disapproved of slavery. Partly this was because Texas

was so remote from centers of authority. More importantly, Mexico was

so torn by coups and revolutions at home, they did not have time to pay

attention to affairs in Texas. Austin drew up a legal code of thirty

articles on the Spanish model, dealing with contracts, property,

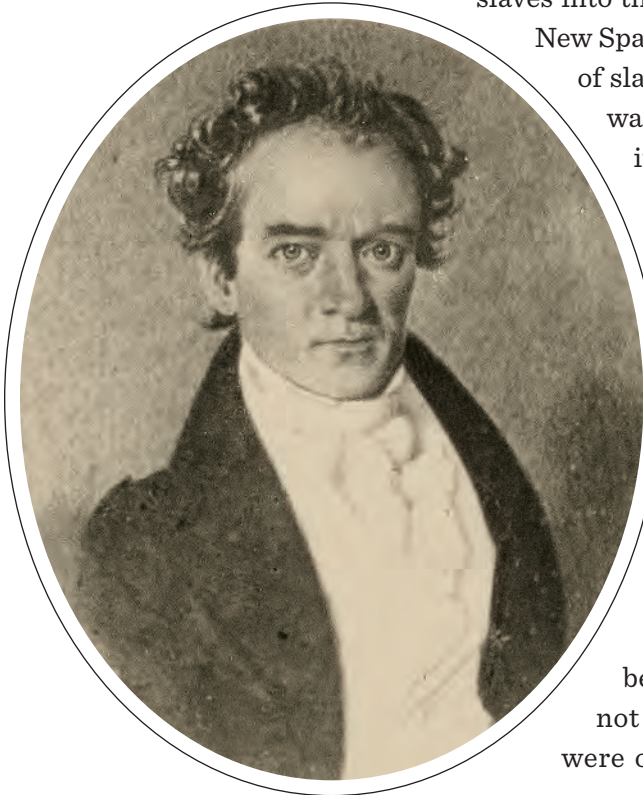
and how hearings would be conducted. Just as the early Spanish

magistrates in Texas had modified the Spanish code to suit local

conditions, Austin did for the new colony. He required that complaints

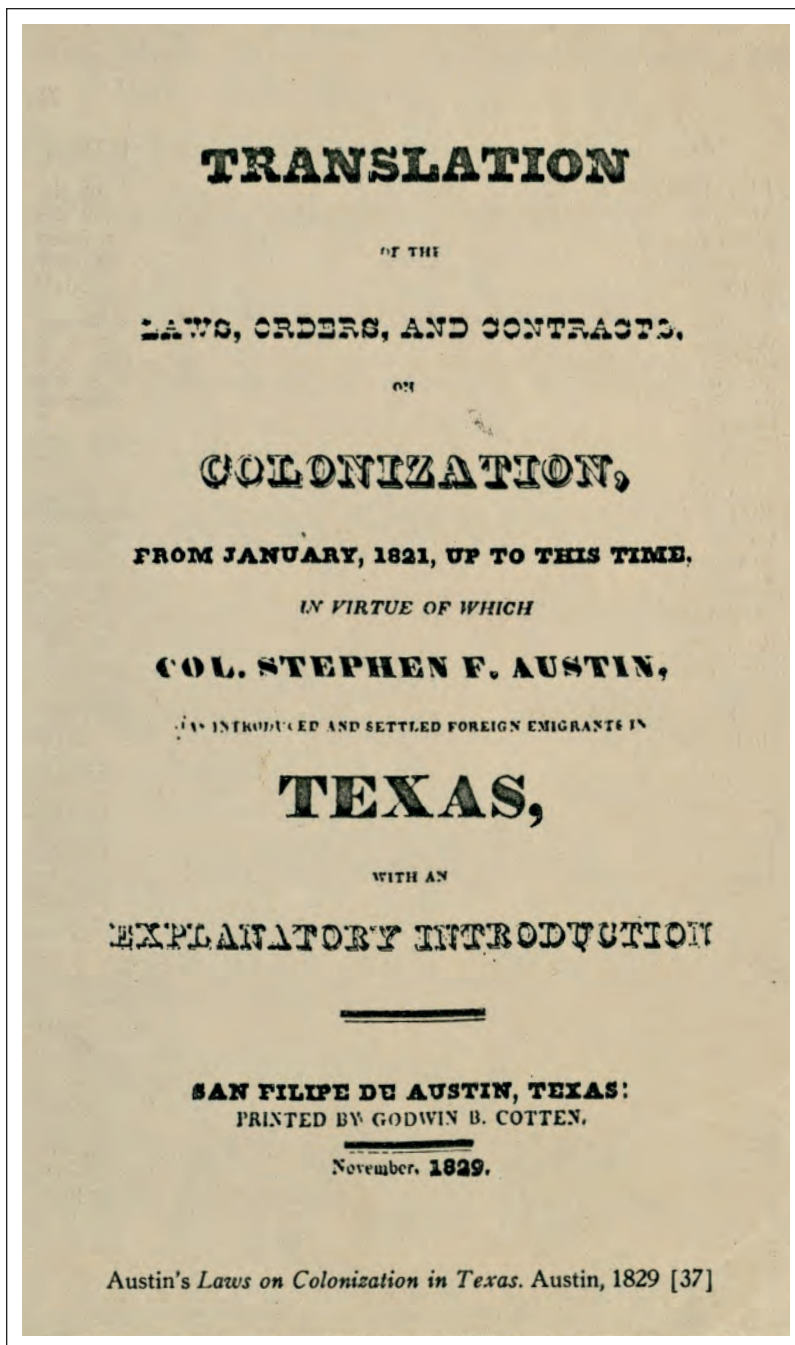
be read to those involved who could not read, and knowing that colonists

were often away from home, hunting or



Stephen F. Austin

TAMING TEXAS



This 1830 book by Stephen F. Austin on the laws of colonization was the first book published in Texas.

AMERICANS COME TO MEXICAN TEXAS

tending to other business, he allowed a summons to a hearing to be left with other members of his family.

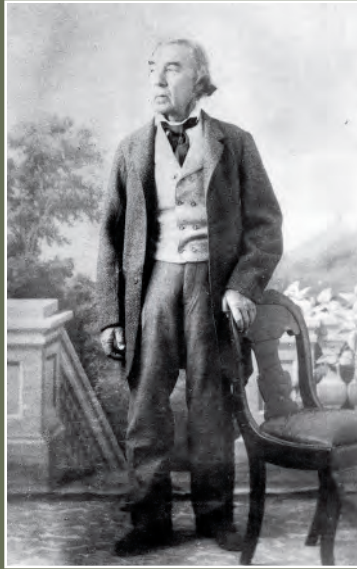
The *alcaldes* of the various towns would hear minor cases, but the losing side could appeal to Austin himself if the judgment was for more than \$25. He would hear the case from the beginning if

the amount in dispute was more than \$200. Austin did require people to post a high bond if they wanted to appeal to a higher Mexican court, to encourage a quick end to suits.

Austin also followed the Spanish model in trying to get people to settle their differences before going to court. He did push the limit of his authority in one way, however. He agreed with his colonists that the existing criminal justice system was unfair, and he provided for juries of six men to try criminal cases, which was against Mexican law. At first people were satisfied with Austin's mix and match of Spanish and American methods, but as the population grew, things got more complicated.

Austin's system of bringing American settlers into Mexican Texas succeeded beyond what anyone dreamed. After filling his first contract to bring three hundred Anglo families into Texas, he eventually received three more contracts to populate new colonies. He was the first *empresario*—the name given to those who had permission from Mexico to build colonies in Texas. More than twenty others received similar contracts, so that the map of Texas was almost

completely covered with colonial land grants. In addition, thousands of other people came illegally, sneaking into Texas without being part of any colony. They "squatted," or settled illegally, on any vacant land where they would not be noticed. In ten years, Texas went from having no Anglo residents to more than twenty thousand. This far outnumbered the native Tejano population.



José Antonio Navarro was a close friend of Stephen F. Austin and helped Austin obtain contracts to bring settlers to Texas. He later served in the Republic of Texas Congress and the State of Texas Senate.

By the mid-1820s, these American Texans were pushing for a political and legal system more like what they had known at home. At the same time, the new Mexican government began to take stronger measures to protect its territory from the flood of unruly American immigrants. When a Nacogdoches empresario named Haden Edwards broke the terms of his colonization contract, Mexico took the contract away. Edwards and some of his settlers then tried to secede from Mexico in what became known as the Fredonian Rebellion, but they were stopped by the Mexican army with the help of a militia of Americans led by Stephen F. Austin. The next year, Mexico sent its most capable general, Manuel de Mier y Terán, on a trip through Texas to investigate and make a report.

What Terán wrote was remarkable. He approved of most of the Americans' conduct. "They are for the most part industrious and honest," he wrote, "and appreciate this country." He also admitted that native Tejano officials had discriminated against them. He said they were "deliberately setting nets" to keep Americans from voting or getting their land titles. Just as it had been on the early Spanish frontier, legal oversight was hundreds of miles away, now in Saltillo, the capital of Coahuila. (Because of its small population, Texas was considered a province of the state of Coahuila, which went by the dual name of *Coahuila y Texas*). But the Americans, he continued, for their part were often shrewd and unruly, carried "their political constitutions in their pockets," knew their rights, and wanted reforms. In East Texas, he wrote, the Americans now outnumbered the Tejanos by ten to one, and if action were not taken, the colonists would probably rebel, and the province would be lost.

The Law of April 6, 1830, was the government's response to General Terán's report, and it was amazing. Rather than fix things in Texas, it canceled further settlement contracts, closed the border with the United States, and outlawed any further immigration. The American settlers were frightened and lost

AMERICANS COME TO MEXICAN TEXAS

confidence in the Mexican government. Austin worked hard to get the law revoked, and he eventually succeeded, but the damage had been done.

Many things then happened at about the same time. Texans believed that their future in Mexico would be happier if they

*Antonio López de
Santa Anna*



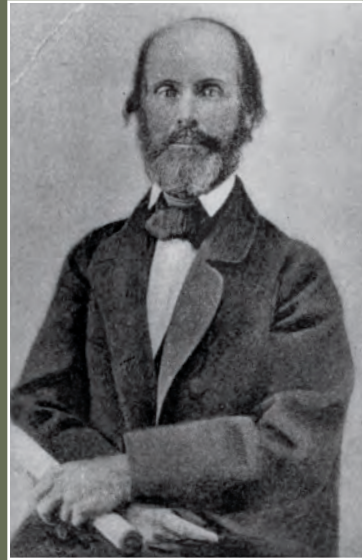
TAMING TEXAS

became their own state, rather than a minor province attached to Coahuila. They drafted a new state constitution in 1833 and sent Austin to Mexico City to try to get it accepted. Mexico also had a new president, Antonio López de Santa Anna. He had been elected as a “federalist,” that is, promising to share power with the states, but after taking office he took power in his own hands and ruled as a dictator. When he refused to accept the separation of Texas from Coahuila, Austin wrote a letter home, advising his people to go ahead and form a new state government. The letter was intercepted, and Austin was arrested and jailed for a year and a half, although he had not committed a crime and no court would take his case. Texans were furious.

Meanwhile, the state government in Saltillo passed a law giving Texas its own regular judicial circuit, which was one of the colonists’ key demands. They appointed an Anglo, Thomas Jefferson Chambers, to be its judge. Before sending Austin back to Texas, Santa Anna also accepted several other of the Anglos’ demands. But by then it was too late, and the Texas Revolution was already in motion.

From the first conflict, at the Battle of Gonzales on October 2, 1835, through the fall of the Alamo on March 6, 1836 and the Goliad Massacre three weeks later, the Texas Revolution lasted six and a half months before Santa Anna was defeated and captured at the Battle of San Jacinto on April 21, and Texas independence was won.

Texans were joyful at being free of Mexico, but as they set up a new government under a new constitution for the Republic of Texas, they realized something that surprised them: not everything about Mexican law was bad.



Judge Thomas Jefferson Chambers played an important role in reforming the judicial system of Coahuila and Texas before the Texas Revolution. One of the changes was the Chambers Jury Law, which officially introduced juries into the Texas legal system for the first time. The change carried over into the Republic and state systems.

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Twelve months after date

REPUBLIC OF

promises to pay FIFTY

TREASURY DEPARTMENT

Receivable for all

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Hatch & Edson, New Orleans.

Whose Law Will Rule?

In the new Republic of Texas, lawmakers kept the parts of Spanish law they liked best, including those that benefited women, those that related to people in debt, and those that dealt with land and water rights.

In January 1840, the Congress of the Republic of Texas passed an act directing the courts to begin using the English common law as the basis for their decisions, *so far as it was consistent* with the laws and constitution then in force. This last part was a very important condition. Sometimes, clever lawmakers will pass an act whose intent is the opposite of what it sounds like.

This law, while it sounded like it was only intended to establish the English common law as the rule, was also intended to preserve certain protections that citizens in Texas had enjoyed under Spanish law, but would lose under the common law practiced in the United States. This was especially important for women. In England, and therefore in English colonies and then in the United States, women usually could not own or inherit property. When young, they virtually “belonged” to their fathers, and then when they married, everything they had became the property of their husbands. It placed women under a terrible legal disability.

This was not the case under the Spanish civil law. Women under this system had always had more rights, dating back to the Roman Empire, but in Spain their standing was improved by Queen



Queen Isabella of Spain put women's property rights into Spanish law that later helped women in Texas.

Isabella in the fifteenth century. She was a very strong woman. She had refused to marry the man her father chose for her, and when she married Ferdinand, she made him sign a prenuptial agreement, and made him further agree that they would be equal co-rulers. Women in the Spanish empire could own and inherit property, go into business, and were close to the equal of men before the law. If a couple separated, the woman left the marriage with the property she brought to it, plus half of the property they had accumulated together. In Mexico, some women had done very well by this. Rosa María Hinojosa de Ballí inherited land from her father, inherited more land when her husband died, and actively managed and expanded her properties, which included Padre Island. By the time she died, she owned more than a million acres in South Texas.

These were the rules in effect when Stephen F. Austin began bringing American colonists into Texas. Some women came as heads of families and made good lives for themselves. Obedience Fort Smith, for instance, was sixty-five years old when she came to Texas. She was the widow of an American Revolutionary War veteran, the mother of eleven grown children, and came to Texas to start over. She took her land grant exactly where downtown Houston now stands, and lived for another twenty comfortable years.

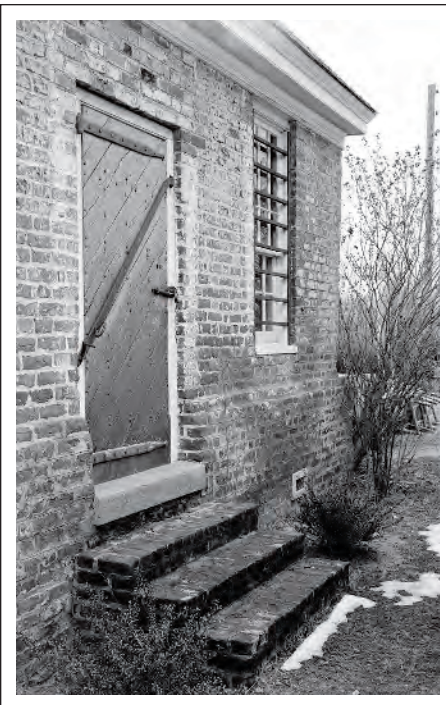
The lives and circumstances of such Texas women would have been ruined by switching to the common law, and Texas wisely chose to keep the civil law in certain areas—including the provision for community property. In fact, when Texas joined the United States in 1845, its women had more rights under the law than women in any other state.

Two weeks after passing the 1840 law, the Texas Congress also passed an act keeping the Spanish system of “pleadings,” that is, the rules of how to get a case into court. Over the centuries, the

English and then American common law developed a hugely complex procedure to begin, or respond to, a lawsuit. A mistake made along the way could cause the suit to be thrown out or even lost. The Texas Congress saw no advantage to giving up the simple pleadings in Texas that went all the back to Francisco de Arocha in early San Antonio: who are you, what happened to you, who did it, what remedy do you want? For years, clever American lawyers came to Texas thinking they would continue their practice of finding mistakes in the other side's pleadings, and win their cases without ever going to court. Not so—not only did the cases make it to court, but the Texas Supreme Court repeatedly affirmed that it would not change a system of pleadings that worked very well.

Yet another important area of law where Texas chose to follow the Spanish civil law was in the realm of debtors and creditors. The English common law took a very strict view of debt: if you owed someone money and did not pay it back, your creditor could come take everything you had, and if that was not enough, you would be jailed—and perhaps allowed out only to work—until you found a way to pay. In the late 1400s in Spain, Ferdinand and Isabella published a decree that took a much more reasonable path. Debts must be paid, but creditors could not deprive you of your means of making a living, such as your tools. The English colonies that became the United States adopted the common law, including the use of debtors' prisons. There was no bankruptcy protection. Texas from its first independence decided to follow the civil law, and treat debtors more humanely.

In doing so, the Texas government was not just being philosophical. Many, many Texans had moved to the Republic from the United States in order to escape debts they would have to pay



Early debtors' prison in Virginia. Unlike in Texas, that state's laws did not protect people who could not pay their debts from being held in prison.

if they stayed there. When Moses Austin first came in 1820 with his colonization plan, it was because he was ruined in the financial Panic of 1819. Texas independence came in 1836, and the following year another financial panic in the U.S. sent thousands of emigrants to Texas to escape debt that they couldn't pay. The U.S. closed its federal debtors' prisons in 1833, but some other Southern states (where most Texas immigrants came from) did still have them. Many people, had they not loaded up their remaining possessions and come to Texas, would have been locked up.

This became so common that throughout the South, it was said that whenever the initials "G.T.T." were found scratched on the door of an abandoned cabin, it meant "Gone To Texas." The Texas Congress believed that such people helped build up the country by moving here, and when American creditors followed them to Texas and tried to seize their property, Texas courts turned them away, reminding them that they were in a different country with different laws.



In 1839 and 1840, Republic President Mirabeau B. Lamar's government tried to reduce the debt by issuing paper money, but the money lost almost all its value—down to as low as two cents on the dollar. The debt made it hard to keep things running smoothly, including the courts.

TAMING TEXAS



"Gone To Texas"

In fact, Texas law went even further in protecting debtors than Spanish law had done. The constitution provided that one's entire homestead, either a town lot with small house, or five hundred acres in the country, could not be seized for debt, nor could one's horse, tools, and farm stock up to twenty hogs, five milk cows, and an ox. Creditors tried repeatedly to crack this "homestead exemption," but the Texas Supreme Court turned them down time after time.

Of all areas of law after the revolution, land law was maybe the most complicated. Under Mexico, there were federal land laws as well as the state land laws of Coahuila and Texas. The two sets of laws sometimes conflicted, because the state Congress of Coahuila and Texas adopted a more liberal land policy in 1825 and later used the income to finance their opposition to Santa Anna after he made himself dictator.

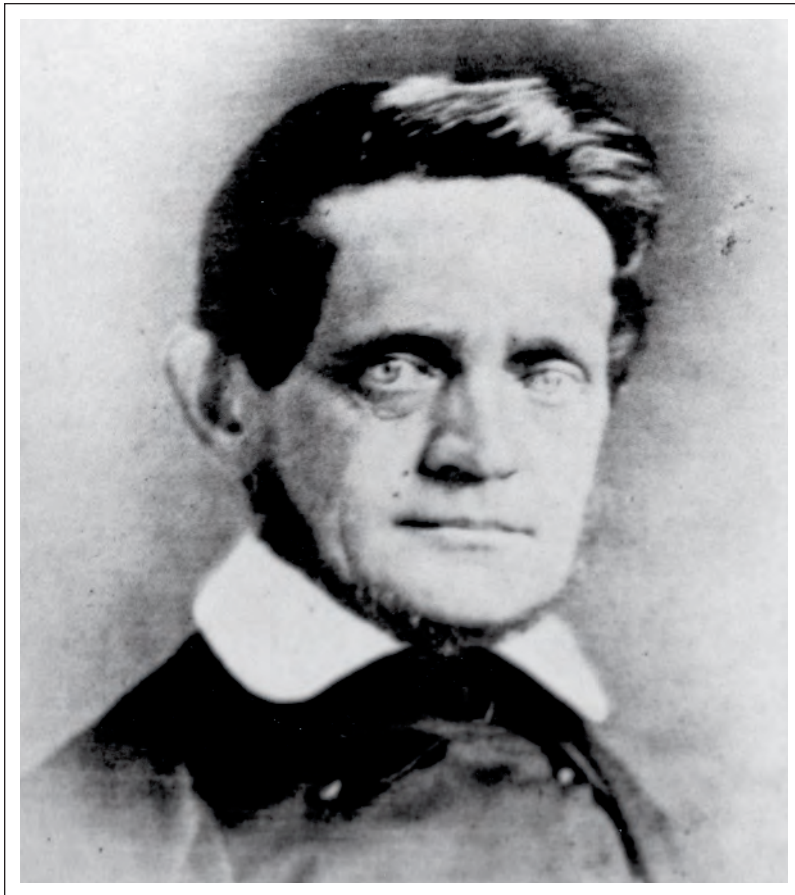
Santa Anna's cruelty during his invasion of Texas made many Anglo Texans want to throw out Mexican laws in Texas, including all the land grants that came from Mexico, and start over. Some others, particularly some who were rich and powerful and used to getting their own way, felt like they could take whatever land they wanted, regardless of who had claimed it before. In one case, a major landowner in Brazoria County, Warren D. C. Hall, waited for his neighbor James Phelps to leave on a visit to the United States. Once he was gone, Hall invaded Phelps's land grant with armed riders, took a thousand acres of it, and later forced Phelps to agree to the "sale" in order to get the rest of his land back. It took several years, but Texas courts expressed their outrage and restored all of Phelps's land to him.

In the face of such chaos, Texas courts recognized that generations of Texans had bought, sold, and been granted land under Spanish and Mexican law, and those terms should continue to prevail.

One area in which Texas did rapidly embrace the American model over the Spanish was criminal law. Americans first came

to Texas having grown up with the right to a jury trial, the right to confront accusers, and the numerous other guarantees of both the federal and state constitutions. These they considered essential to a fair criminal process, and the Spanish inquisitorial system was a major sore spot that helped bring about the revolution.

Thus Texans, rather than feeling bound by one legal system or the other, picked and chose elements of each, depending on what they believed was more fair, and what made the most sense for Texas. Those elements remained intact throughout the Republic and into statehood ten years later.



Chief Justice John Hemphill, who served on the Texas Supreme Court from 1840 to 1858, believed that Texas needed both Spanish law and English law in order to be fair to all citizens.

WHOSE LAW WILL RULE?

AN ACT TO AUTHORIZE WYLIE MARTIN TO
EMANCIPATE HIS SLAVE PETER, JANUARY 3, 1840

Section 1. Be it enacted by the Senate and house of Representatives of the Republic of Texas in Congress assembled: That from and after the passage of this Act that Wiley Martin is hereby authorized to Manumit and set free his Negro Slave *Peter*.

The said slave has resided in texas about sixteen years, the most part of which time he has transacted business on his own account by Consent of his master, and during that period has universally sustained a good character, and his deportment at all times has been that of an Industrious, Humble & useful subject.

TEXAS SUPREME COURT JUSTICE JAMES BELL,
CALVIN V. STATE (1860)

The law of the case is precisely the same as if the accused were a free white man, and we cannot strain the law even "in the estimation of a hair," because the defendant is a slave.

The Law of Slave and Free

Although slavery in all cultures is wrong, it was a reality in early Texas. The laws mostly protected the interests of slaveholders, but the Supreme Court also tried to protect the rights of slaves and free African Americans.

Slavery was brought to Texas with Stephen F. Austin and his colonists, despite the fact that the practice was disapproved of in Mexico at the time. The Mexican government tried several times to prevent the spread of slavery in Texas by passing laws prohibiting the further importation of slaves and even freeing any slaves born in Texas. The colonists were able to get around these laws in various ways, but one major reason they revolted against the Mexican government was to have a country where slavery was legal and fully protected.

Although most African Americans in early Texas were slaves, there were also several hundred “free persons of color” who either came to Texas from other states as free blacks, had been given their freedom by their masters, or had been freed from slavery by the Mexican laws. Several free blacks fought in the Texas Revolution—in fact, the first man wounded in the fight for freedom, Samuel McCulloch, Jr., was black.

During Texas’s ten years as an independent country, its economy was very like that of the American South. It depended on raising cotton, so laws were passed encouraging people to buy or

(opposite page)

Excerpts from a law passed by the Republic Congress in 1840 shortly before the government tightened restrictions on freeing slaves, and from a decision by the Texas Supreme Court in 1860, several months before Texas seceded from the Union.

bring slaves. At the time of independence in 1836, about one in seven Texans were slaves, but this increased rapidly. After statehood, about one in four were slaves, and by 1860 it was nearly one in three.

The institution of slavery, which today is condemned as cruel and abusive in all ways, was at that time accepted by many people as a necessary part of making a good living for themselves and their families. Cotton plantations in Texas could not be profitable without slave labor, and the planter class became the wealthiest and most powerful men in the state. They were determined to protect their interests, and the laws, the constitution, and the Republic Congress backed them up.

African Americans did enjoy some legal protections. The law required masters to treat their slaves “with humanity.” They could not be killed or mutilated. However, blacks could not testify in court against whites, so cruel owners got away with a lot of abuse. A slave was expensive, though. They cost four hundred dollars on average (which today would be more than \$11,000), with strong workers costing much more. So, owners had reason to take good care of their property. Cruel masters were not respected in their community. An abused slave could not testify against his master, but sometimes a white neighbor would step in and testify for him, and the courts recognized this relationship by calling such a neighbor his “next friend.”

Texas did recognize the disadvantages that slaves had before the law, and their lack of resources. Therefore, slaves who were accused of serious crimes were provided an attorney free of charge.

Texas law did not recognize marriage between slaves, but decent masters tried to keep black families together. When Sam Houston bought Jeff Hamilton, the young slave appeared to be about eight years old, and was frightened and crying at being separated from his mother. Houston bought him from a notorious driver named Moreland, on the condition that he be allowed



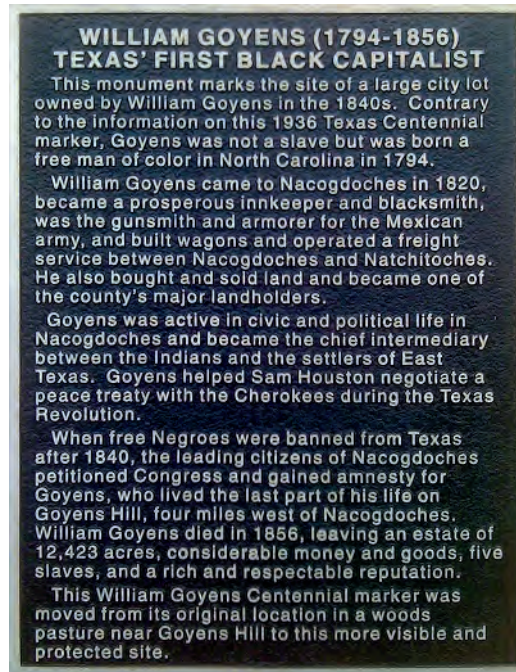
to buy the mother as well. Jeff's previous owner went back on his word and sold the mother elsewhere, and the family were separated for many years. The cruel reality of slavery was that people held as slaves were almost completely at the mercy of their owners, and usually had no legal way to gain their freedom.

On February 5, 1840, the Texas Congress under President Mirabeau Lamar acted to make sure that all blacks in Texas were slaves. They passed a law that free blacks trying to enter Texas be arrested at the border and be sold into slavery. Free blacks already living in Texas were given two years to get out of the country, or be seized and sold into slavery.

This law actually proved to be unpopular. Many white Texans who had free black neighbors began signing petitions, asking the Congress to let them stay. By the end of the year, Congress began passing acts allowing this or that individual black family to remain in Texas. This was especially the case with William Ashworth, who was the son of a white Texas colonist and a black woman.

Like the plantations they worked in, slaves were considered property under Texas law.

THE LAW OF SLAVE AND FREE



One African American who lived in early Texas as a “free person of color” (the term used in the laws) was William Goyens. The plaque pictured here is in Nacogdoches, where he lived from 1820 until his death in 1856.

He owned land and operated a ferry near Beaumont, where white neighbors respected him and his large extended family of nearly forty relatives. In response to their neighbors’ petitions, the Texas Congress passed the Ashworth Act, allowing free blacks to stay who were living in Texas when independence was declared.

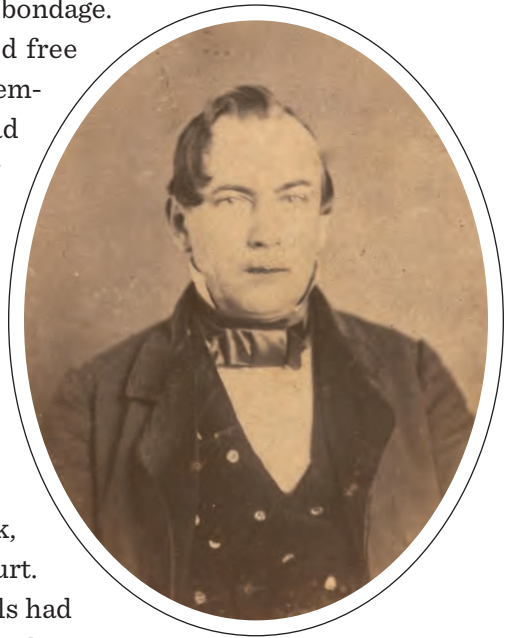
However, that left several hundred other free blacks in danger of being forced out of the country. When Sam Houston became president again in 1841, he let it be known that there was no point in enforcing the law of February 5, 1840, because he intended to pardon free blacks for violating the law if they chose to stay. He made this more formal with a proclamation on December 21, 1842.

African-American Texans had fewer rights under the law than whites did, but Texas courts often took a more lenient view, hearing their cases and deciding cases in their favor. Sometimes, slaves even sued their masters for their freedom—and won! One case involved Frank Lubbock, who later became Texas governor. His

uncle, Adam Smith, came to Texas with a slave named Margaret, with whom he had a daughter. Smith gave Margaret her freedom, but when he died, Lubbock sued to keep her and the child (who was his cousin) in slavery. He claimed that the document giving them their freedom did not have enough witnesses. The law required five witness signatures, and there was only one. The case went all the way to the Texas Supreme Court. They decided it was clear that Smith had intended to free Margaret, and that a defect in the procedure was not enough to keep her in bondage.

Before 1858, Texas had no law that allowed free African Americans who needed money to sell themselves into slavery. Knowing that masters had many ways to cheat slaves out of ever actually getting the money, when the legislature passed such a law it included numerous protections. Before the law was passed, a free black worker named Lewis Red Rolls sold himself into slavery to a family named Westbrook that he worked for near Fort Worth. After the law was passed, he ran away and sold himself again, this time to a man who owned the mother of his two children. Westbrook sued to get Red Rolls back, and it went all the way to the Texas Supreme Court. They decided that since the first time Red Rolls had sold himself, it was illegal, then Westbrook had never owned him. When he sold himself the second time, it was legal, so the Court let him stay with the owner he chose.

In deciding these and many other cases, the pre-Civil War Texas Supreme Court went beyond what the law actually required in protecting slaves and free blacks. Whatever they thought about the institution of slavery, the men who sat on the Court at that time viewed the slaves themselves as people with basic human rights. Unfortunately, the Confederacy and its aftermath would take the law in the opposite direction.



Francis "Frank" Lubbock, who later became governor of Confederate Texas, was a slave owner who lost his case before the Texas Supreme Court.

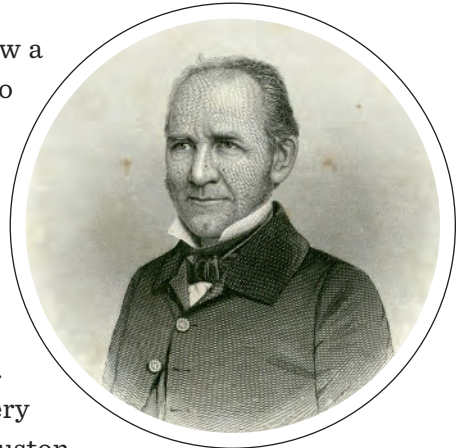


Texas During the Civil War: The Law Breaks Down

Few Civil War battles took place on Texas soil, but there were many conflicts between those who supported the Confederacy and those who were against it. Even the Supreme Court could not protect the rights or safety of those who were against slavery and the war.

During the 1840s, and even more during the 1850s, the North and South areas of the United States grew more distant and hostile over the issue of slavery. Many Southern leaders claimed that the North was preparing to deprive them of their slaves, although there was little evidence of this. In fact, both the Congress and the U.S. Supreme Court had protected the South's reliance on slaves.

Texas revolutionary hero Sam Houston was now a senior U.S. senator in Washington, and he tried to calm the situation. In the North, he told people that the states had the power to regulate slavery, not the federal government, and the South could have slaves if they wished. In the South, however, he tried to convince people that slavery was wrong, and unprofitable, and should be ended. At that time, the state legislatures appointed U.S. senators. The Texas legislature was controlled by pro-slavery representatives, and they were so angry with Houston that they forced him into retirement from the senate.



Sam Houston

In Texas, three out of four families did not own even a single slave. Most white Texans saw nothing wrong with it, but there was still strong support for the federal Union. Sam Houston was never one to back down from a fight, and after he was forced out of the Senate, he returned home to Texas and ran for governor in 1859. He campaigned as a Unionist, and he was elected by a large majority.

Supporters of slavery turned increasingly to violence to intimidate people. Both the Constitution of the Republic of Texas and the state constitution guaranteed people the freedom of speech, but as tempers grew hotter it became dangerous to say anything against slavery, or in support of the federal government. Armed men formed gangs of “vigilantes,” people who took the law into their own hands and punished people they regarded as their enemies. Unionists faced the chance of having their homes or businesses burned, or even of being killed. Vigilantes always claimed to be acting to protect law and order and serving the public interest, but in fact, law in Texas broke down as the Civil War approached.

Abraham Lincoln was elected president of the United States on

Southerners who were against Secession and the Confederacy were not always protected under the law, and they faced arrest and even death if they were not careful.





(left) Supreme Court Justice and Secessionist Oran Roberts



(right) Supreme Court Justice and Unionist James Hall Bell

November 6, 1860, and Southern states began “seceding” from the Union, that is, ending their association with it, and they moved to form a new country, the Confederate States of America. Less than a month after Lincoln’s election, on December 3, Texas newspapers published a call to create a Secession Convention to pull Texas out of the Union. Only the legislature could have had this power, so the convention was outside the law, although the prime mover of the effort was Oran Milo Roberts, a justice of the Texas Supreme Court—and an avid Secessionist.

The convention met in Austin on January 28, 1861, and four days later they voted to withdraw Texas from the United States. One hundred sixty-six members voted in favor; only seven dared vote against it, and defiantly had their photograph taken together. A referendum—that is, a vote by all the people to approve or disapprove an action—was set for February 23, but the vote was rigged to be sure of approval. James Hall Bell, another justice of the Texas Supreme Court and a Unionist, went home to vote in Brazoria County and discovered that the ballots had been pre-printed, “FOR SECESSION.” One witness said that Justice Bell asked for a pen, “with which he thoroughly blotted out the word FOR, and in

TEXAS DURING THE CIVIL WAR: THE LAW BREAKS DOWN



Against ~~FOR~~ Secession

script that was beautifully distinct, he wrote the word ‘Against.’” It was not a secret ballot, either. Seeing the vote, the presiding judge told Bell he would regret it.

Bell, who was the first person born in Texas to sit on its Supreme Court, and was also the first one to have been to Harvard Law School, refused to back down. His brother did the same thing, and theirs were the only two votes against secession in their county. Statewide, secession was approved by a vote of 46,153 to 14,757—a surprising level of opposition, considering the courage that it required.

In Austin, the Secession Convention met again, declared itself a provisional state government, joined Texas to the Confederacy, made it illegal for anyone to free his slaves, and passed an oath of allegiance for every state official to swear to. Sam Houston, famously, refused the oath on March 16, 1861, and was deposed as governor. Back in private life, Confederate marshals hounded him, questioned his neighbors and even his children about his opinions, hoping to catch him being disloyal. Eventually he complained to Governor Frank Lubbock, asking to be left alone.

The Civil War began on April 14 at Fort Sumter, South Carolina. Despite some early victories, the South soon realized that the North was willing to fight a bitter war to preserve the Union. Finding themselves short of volunteers, the Confederate Congress passed a Conscription Act on April 16, 1862, making all white men

(including Mexican Americans) between eighteen and thirty-five (later raised to forty-five) subject to being drafted into the army. It was the first law of its kind in American history. It was not popular in Texas, and Confederate General P. O. Hebert declared martial law in Texas to see that it was enforced. This resulted in the most famous legal case of the war years.

A draftee named F. H. Coupland refused to serve, and was arrested as a deserter. His lawyer, a famous attorney named George W. Paschal, filed a writ of habeas corpus. (That is Latin for “you have the body.” It is an accusation that someone is being held illegally, and such cases are heard right away.) The proceedings became bizarre. Paschal argued so forcefully against the draft that he was arrested for disloyalty to the Confederacy. Coupland disappeared after he was released, and the Texas Supreme Court upheld the draft law—barely. Two of the three Supreme Court justices voted that the law was constitutional, but only because of the emergency of the war. Justice James Bell (the same one who voted against secession) wrote an angry dissent and all but dared the rebel authorities to arrest him, too. He agreed that the constitution gave the government power to raise an army, but nowhere did it give the government the power to draft men and force them to serve. The United States, he pointed out, had won the Revolution and the War of 1812 with volunteers.

Soon after, the Confederate army reached further. A new commanding general in Texas, J. Bankhead Magruder, suspended the writ of habeas corpus without legal grounds to do so, in order to arrest people who spoke out against the Confederacy. During 1863, Houston lawyer J. D. Baldwin and Hempstead doctor R. R. Peebles had written a pamphlet urging an end to the war. They and printer O. F. Zinke were arrested for conspiracy and treason, and whisked off to military prison before the civilian authorities could get involved. Because of what happened to Paschal, it was hard to find a lawyer to take their case. The Texas Supreme Court, and especially Justice George Fleming Moore, who had written

the opinion upholding the draft law, were deeply offended that the army claimed the right to suspend habeas corpus. The Court, wrote Moore, did not exist just to uphold the orders of the military authorities. They took steps to charge General Magruder and his officers with breaking the law.

For more than six months Baldwin, Peebles, and Zinke were yanked between the military authorities and the civilian authorities. Eventually the Supreme Court justices realized that they were powerless to force their decisions on the Confederate army. To preserve what authority they had left, the justices did not punish the officers involved, and the prisoners were handed over to the military. They were moved from place to place for several more months, always in danger of being lynched by angry mobs, and eventually taken to Mexico and released outside of Confederate territory.

The Civil War was hard on justice in Texas. James Hall Bell, being a Unionist, was defeated when he ran for a second term on the Supreme Court. Chief Justice Royall Wheeler, who supported the South, killed himself once he realized the war was lost. General Magruder, like many high-ranking rebel officers in Texas, fled to Mexico before the Union occupation began, and Texas law itself would have to undergo a thorough cleansing before the state would be allowed back in the Union.



Confederate General John Bankhead Magruder, nicknamed "Prince John" because of his elegant manners, won a battle with the Texas Supreme Court over his use of military law.

CONSTITUTION
OF THE
STATE OF TEXAS,

ADOPTED BY THE
CONSTITUTIONAL CONVENTION

CONVENED UNDER THE RECONSTRUCTION ACTS OF CONGRESS
PASSED MARCH 2, 1867, AND THE ACTS
SUPPLEMENTARY THERETO;

BE SUBMITTED FOR RATIFICATION OR REJECTION
AT AN ELECTION TO TAKE PLACE ON THE
FIRST MONDAY OF JULY, 1869.

Texas Law Under Reconstruction

The Reconstruction period in Texas was difficult for those who had supported the Confederacy. Not only could they not vote, but the new laws protecting the rights of freed slaves were mostly enforced by outsiders.

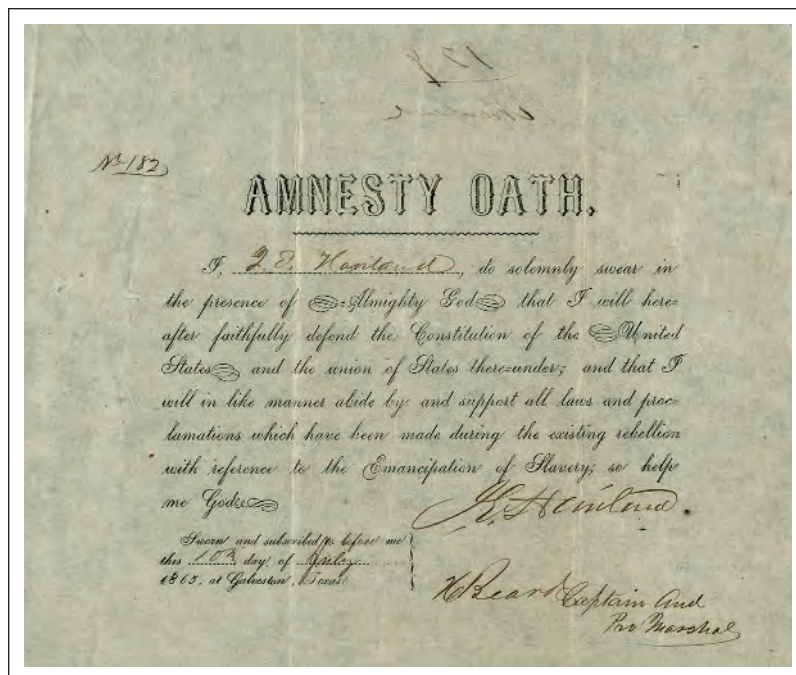
After the Civil War, Texas was governed by Northern military occupation, while its fate as a state, along with the rest of the defeated Confederacy, was yet to be decided because of a long political battle in Washington D.C.

Before his assassination, President Abraham Lincoln wanted to readmit Southern states as quickly and painlessly as possible. His argument was that their leaving the Union had never been legal, therefore they were still states, and he should manage reintegrating them back into the Union. This was called “Presidential Reconstruction.” Congress, however, was controlled by “Radical” Republicans, who wanted to punish and humiliate the South for as long as possible. The longer they could keep the South out of Congress, the safer their power. They argued that the South actually had left the Union, and only Congress could admit new states. This was called “Congressional Reconstruction.” (Keep in mind that at that time, the Republican Party was the more politically liberal party: it was against slavery, and many were for legal rights for blacks; the Democratic Party in Texas supported the Confederacy, slavery, and continued repression of blacks’ rights.)

(opposite page)

The Reconstruction Constitution of 1869 gave the governor more power than any constitution before or since, including control over state law enforcement and appointment of Supreme Court judges.

In order to become full U.S. citizens after the Civil War, Texans had to sign an oath that said they supported all the laws of the United States, including the emancipation of slaves.



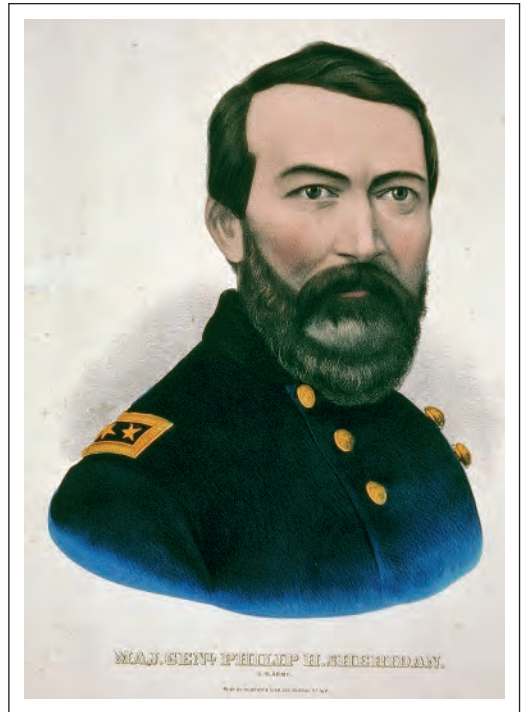
When Lincoln was killed, his vice president, Andrew Johnson, was sworn in as president. Johnson followed Lincoln's policy, and all states had to do to re-enter the Union was swear their loyalty and present new state constitutions that had no provisions contrary to the federal constitution, especially slavery. Texas took advantage of these generous terms by drawing up the Constitution of 1866, which on its face was good enough. African Americans in Texas could own land, make contracts and wills, inherit property, and hold other legal rights. But then Texas passed what were known as the "Black Codes," laws that limited their freedom: they could not vote, attend public schools, testify against whites in court, hold office, or serve on juries. Vagrancy laws kept them from moving into towns, and there was even an "apprenticeship" law that pretty much allowed forced labor of their children in the name of education. To read the Black Codes, one would think Texas actually *won* the Civil War. President Johnson certified

the rebellion in Texas to be over, and people thought that was the end of it.

Texans were only fooling themselves, however. In Washington, Congressional radicals turned against President Johnson, passed new laws over his vetoes, and sent the army back into the South to occupy Texas under Congressional Reconstruction. The South was divided into military districts, with General Philip Sheridan over Texas and Louisiana. State officials from the governor and Supreme Court justices on down were deposed and replaced with more like-minded appointed people. Some Northerners moved down to Texas to take these jobs. The popular image was that they came with their belongings packed in suitcases made of carpet fabric—for which they became known as “carpetbaggers” and were widely hated in the South.

The new regime began in the summer of 1867. In 1868, Texans were required to adopt a new constitution that ratified (that is, approved) the Fourteenth Amendment of the U.S. Constitution. That provision defined citizens as all persons born or naturalized in the United States, and forbade states to deprive any citizens of their privileges and immunities without due process. In other words, freed slaves were citizens who had a right to vote, and if Southern states wanted to end the occupation and resume their places in the Union, they would have to acknowledge that.

With their voting rights made even clearer by yet another amendment (the Fifteenth) and enforced by occupation troops, nearly 90 percent of eligible freedmen registered to vote in Texas, as opposed to only 50 percent of eligible white men. Now, in addition, whites who had supported the Confederacy were barred

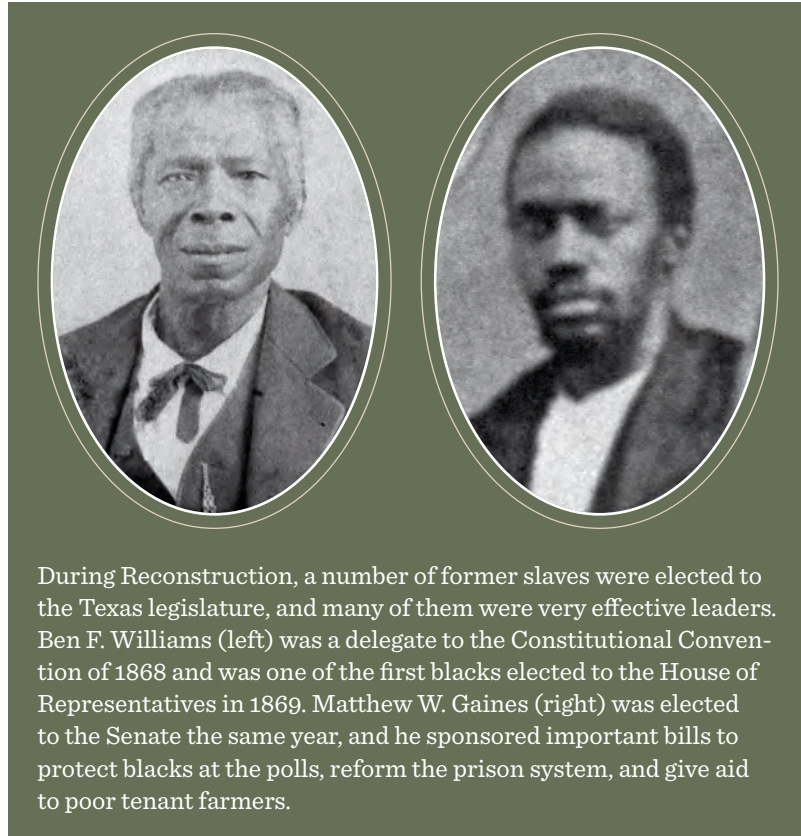


U.S. General Philip Sheridan removed all justices of the Texas Supreme Court in 1866 because they were “impediments to Reconstruction.”

TEXAS LAW UNDER RECONSTRUCTION

from voting, by what was called the “Ironclad Oath.” With the electorate arranged in such a way, Texas adopted a new constitution in 1869 that met the federal constitutional demands, and military rule ended in 1870—although the exclusion of a majority of white Democrats kept Texas in line with federal expectations. Despite frequent violence against blacks and their organizers, several African Americans were elected to the state legislature in 1869. Edmund J. Davis, a former judge and Union officer, was elected governor.

Many of the occupation troops were African American, which created a great deal of anger among whites. A U.S. government organization called the Freedmen’s Bureau added further to the



During Reconstruction, a number of former slaves were elected to the Texas legislature, and many of them were very effective leaders. Ben F. Williams (left) was a delegate to the Constitutional Convention of 1868 and was one of the first blacks elected to the House of Representatives in 1869. Matthew W. Gaines (right) was elected to the Senate the same year, and he sponsored important bills to protect blacks at the polls, reform the prison system, and give aid to poor tenant farmers.

resentment. Directed by the Union army general governing Texas, it operated schools for former slaves, and at times had more than fifty agents traveling the state, advising them on how to adjust to life as free people. The agents also had power to cancel freedmen's contracts when they felt the terms were unfair. When blacks were involved in court cases, the agents had the power to remove the cases from state courts to military courts if they thought the freedmen were more likely to win.

For a former slave-holding society, this was too much to accept. Black schools were burned and teachers beaten, three agents were assassinated and three more wounded. The Freedmen's Bureau closed in 1870, but the violence and lawlessness continued. To keep order, and with the Texas Rangers having been disbanded, Governor Davis created the State Police Force. Many of its nearly two hundred officers were African American, and Anglo Texans did not believe that they acted fairly. Some of Davis's actions also increased danger on the Indian frontier. For all these things, most white Texans held Governor Davis responsible and they passionately hated him, although in fact his administration was not as bad as they believed.

In the election of 1873, Davis ran for reelection. By now, however, the "Ironclad Oath" had been lifted, and men who had supported the Confederacy could vote again. Davis was defeated badly, more than two to one, by Richard Coke, who had fought for the South. The Reconstruction government had been in power for eight years, and its officials did not go quietly. They challenged the election in court in a very tricky legal case. Joseph Rodríguez of Harris County was in jail, charged with having voted more than once in the election. Suddenly, leading



Edmund G. Davis was a judge in Texas before he became a Brigadier General in the Union Army during the Civil War. He was elected Governor of Texas during Reconstruction.

Republicans stepped in, hired him the smartest lawyers, and paid their fees for him.

They did not deny that Rodríguez was guilty. Their aim was to get the election thrown out. If the election was not valid, no crime was committed. More to the point, Reconstructionists would remain in power until a new election was held. They argued that the election was held on only one day, whereas the constitution required a four-day voting period. The justices of the Texas Supreme Court had all been appointed by the Reconstruction government. They ruled that because the four-day voting requirement in the constitution was separated from the rest of its sentence by a semicolon, and not just a comma, the four-day rule was absolute and could not be changed by the legislature. Therefore, the election was invalid and would have to be replayed. In the meantime, the newly elected governor and other officials could not take office.

The “Semicolon Court,” as it was later called, was scorned from one end of Texas to the other, as people refused to accept its decision. Democrats were outraged. Armed militias gathered on the grounds of the Capitol building. Governor Davis barricaded himself in his office on the second floor, and he telegraphed President Ulysses S. Grant to send help to keep him in office. But Grant, who had been the commanding general of the Union armies, decided it was time to let go of the war, and Reconstruction. He telegraphed Davis that no help would be coming.

Technically, the Court probably reached the correct decision, but for the only time in American history, a Supreme Court decision was overturned by a mob. Richard Coke was sworn in as Texas governor, and within a couple of years, Texas had yet another constitution—the one still in effect today.



The so-called "Semicolon Court" was made up of judges appointed by the governor rather than elected by the people. The members of the court were (seated, left to right) Judge Moses B. Walker, Presiding Judge Wesley Ogden, and Judge J. D. McAdoo. Standing behind them are the court's reporter and clerk, E. M. Wheelock and W. F. De Mormandie.

Taming the Plains

Maintaining law and order on the newly opened western frontier of Texas was a rough business, and some interesting characters rose up to do the job. Meanwhile, the Supreme Court continued to uphold Texans' property rights, including those of women.

Texas acquired its present boundaries, and shape, when the state sold its claims to the upper Rio Grande to the federal government in the Compromise of 1850. As a practical matter, however, few Texans lived north or west of Fort Worth because the rolling plains and Panhandle were still the home of Comanche and Kiowa Indians. Apache Indians controlled large areas of West Texas. The Indians' hold on the area was strengthened during the Civil War.

The Comanche and Kiowa were defeated in the Red River War of 1874–75 and were sent to a reservation in the Indian Territory (now Oklahoma) in 1875. The Apache were run out of West Texas in 1880, so vast areas of Texas—about half of its present area—were opened to settlement for the first time. With so few people living in such a large space, law and order were hard to establish. To do it, the state turned to the Texas Rangers.

This mounted militia (a kind of temporary, state-run armed force) had been disbanded during the Civil War. Once the Reconstruction government was brought down, the Rangers were reorganized to protect the frontier from Indian raids. Once the Indians

*(opposite page)
1846 map of Texas
showing Indian
Territory*



By the 1880s, the Texas Rangers' main job was to protect citizens from gangs of outlaws, lynch mobs, and cattle rustlers. Pictured here are members of the Rangers' Frontier Battalion.

were defeated, the Rangers turned their attention to bringing law to the outlying areas of Texas.

In such isolation, criminal rings could become very established and difficult to root out. One operation was run by a wild young man named King Fisher. Already arrested for horse theft, house-breaking, and other crimes, King settled down on a ranch near the Rio Grande by the time he was twenty-two. He allowed cattle rustlers (that is, thieves) from within Texas to use his ranch as a stopover to take stolen cattle into Mexico to be sold. On June 4, 1876, Rangers under their famous Captain Leander McNelly raided Fisher's ranch, arrested nine men, rounded up witnesses, and took them all to the sheriff in Eagle Pass. Fisher was let go—in fact McNelly and his Rangers encountered them on their way home—because the witnesses were too frightened to testify

against him. McNelly kept after him, arrested him again, and then again, until Fisher switched sides and decided to become a lawyer. He was appointed deputy sheriff of Uvalde County in 1881.

One of the main threats to order was not individual crime but feuds between large groups of people. In Texas these were often rival political groups. During and after Reconstruction they reflected the old Civil War divisions: the once-powerful white, Democratic power structure fighting to regain power from African Americans, carpetbaggers, and Republicans. One of these was called the Jaybird-Woodpecker War, which ended in a street battle before the county courthouse in Richmond in 1889. The trouble subsided after Texas Ranger sergeant Ira Aten was appointed sheriff.

The worst feud in Texas was the ten-year Sutton-Taylor feud, and it centered around DeWitt County, southeast of San Antonio. There were numerous killings between the large Taylor clan, some of whose men killed black occupation soldiers, and the Suttons, who had ties to Governor Davis's State Police and Reconstruction government.

As legal process slowly became established in the outlying areas of Texas, the man who served after McNelly as Ranger captain, J. Lee Hall, became more comfortable with obtaining and serving warrants. It was Hall and his Rangers who ended the Sutton-Taylor feud. When the feudists did not want to obey their court summons and threatened to resist, Hall said, "Now, gentlemen, you can go to killing Rangers; but if you don't surrender, the Rangers will go to killing you." The Rangers filled the courthouse during the trial to protect the district judge, Henry Clay Pleasants. Judge Pleasants, just to be sure of his safety, held a shotgun in his lap as he gave the guilty verdict. That was the end of the trouble. Actually, people usually resorted to feuds only when there was no law to appeal to. Once some authority asserted itself, the reason for feuds died out.

With so few people living in West Texas, now and then it

happened that some pretty strange characters became lawmen. When a railroad was built from San Antonio west to El Paso, a workmen's camp was established about fifty miles upriver from Eagle Pass. It was called Vinegaroon, after a kind of desert scorpion. A shady San Antonio business man went west to sell whiskey to the workers. His name was Roy Bean. He was in his late fifties, and had been in trouble so many times he knew what court talk was supposed to sound like.



Judge Roy Bean

Trouble along the Rio Grande was constant; in fact there was a saying that there was no law west of the Pecos River. When Rangers arrested people, they had to take them to the nearest sheriff and jail, which was in Fort Stockton, two hundred miles away. Roy Bean sounded like he knew court procedure, so the Rangers got him appointed Justice of the Peace.

Judge Roy Bean stories were famous. Once a man fell to his death from the high bridge over the Pecos. A pistol and forty dollars were found in his pockets. Not one to let anything go to waste, Bean impounded the gun and fined the dead body forty dollars for carrying a concealed weapon! Bean held court in the saloon he owned, the Jersey Lilly. He regularly cheated his customers,

but he was "The Law West of the Pecos" for nearly twenty years.

The city of Austin, faced with growing crime, decided it made sense to fight fire with fire, and they hired the most violent gunman in town to be the city marshal. Ben Thompson was a drunk, a professional gambler, and a killer. However, his reputation for running a clean house at the Iron Front Saloon, which he owned, made people think he could do the same thing for the city. And he did. Once he was elected city marshal, criminals began leaving



town rather than risk dealing with him. In March of 1884, Thompson was assassinated in San Antonio (along with his friend, King Fisher), probably by friends of a man he had killed over a card game.

As Texas groped its way toward social order, another interesting battle was brewing in the courts. We will recall that Texas began its statehood with a mixture of Spanish and American law, depending on what people thought worked best for them. Now that the Civil War had come and gone, Texas was a state again, and some people thought that Texas should change its ways to be more in line with states who came only out of the common law. In other words, attempts were made to strip people in debt of the protections they had long enjoyed, and to take rights away from women that they had enjoyed ever since Spanish days.

Among those that began trying to seize people's homes to collect debts were Texas's own local governments. The "Homestead Exemption" had never protected people from having to pay back taxes, and city governments could take people's homes and sell

Judge Roy Bean had his own style of frontier justice. He is shown here sitting on the porch of his courtroom/saloon, the Jersey Lilly, in the 1890s.



Ben Thompson as Austin City Marshall

TAMING THE PLAINS



The early 20th-century Supreme Court composed of (left to right) Justice Thomas J. Brown, Chief Justice Reuben Gaines, and Justice Frank A. Williams disagreed with each other so rarely that they were labeled the “Consensus Court.”

them to collect. So, some cities began expanding the definition of “taxes” to force people to pay special fees and assessments. When the city of Beaumont required property owners to construct sidewalks along their lots or else pay a fee to the city to do it, a family named Higgins refused. The city seized their lot, which was worth \$600, and sold it for \$35 to pay the \$20 fee. The Texas Supreme Court would have none of that. They not only slapped down the city and restored the property to the Higgins family. They also noted that for sixty years, Texas had moved in the direction of greater protection for people’s homesteads, not less.

There was no shortage of people trying to chip away at the legal protections Texas women had come to rely on. We will recall that

Texas was the first “community property” state, one in which a woman was allowed to reclaim her personal property if her marriage was dissolved. But while she was married, her husband controlled all their property. So, as Texas’s population grew and public domain lands started to become scarce, some argued that a married woman could not buy land in her own name, although a single woman could. The Texas courts declared that married women had rights “as absolute as their husbands” to buy and own land.

In many cases, it was husbands abusing their control of family property who forced the courts to act. For twenty-six years, a shiftless husband named Dority lived well off his wife’s property, but did not support her, and although she was sick, she had to work her own dairy for money. When she finally tried to divorce him, the trial court found no grounds for divorce and denied her petition. The Texas Supreme Court looked for laws or previous decisions to help her out and reverse the decision, but found none. Therefore they declared that as a matter of “equity,” or fairness, when husbands control their wives’ property, they also have a duty to care for and support her. Mrs. Dority got her divorce, and she got her property back.

The Supreme Court admitted that it occasionally took some creative thinking to do it, but in general they interpreted the laws in a way that continued the legal advantages that women had enjoyed under Spanish law.



THE
CENTRAL ROUTE

THROUGH

TEXAS



5,000,000
ACRES
H. T. C. R. R. Co.
LANDS FOR
IMMIGRANTS



Taming the Giants: Railroads and Ranches

New laws had to be created to keep the huge railroad companies and cattle ranchers from taking advantage of average citizens. The courts—and eventually the legislature—did their part in putting limits on big businesses.

During the 1870s, the business climate in the United States was unregulated, and lent itself to making gigantic fortunes for the few men who owned huge corporations. Shrewd and unscrupulous business men became fabulously wealthy by forming monopolies through which they controlled whole segments of the economy and strangled off competition. Workers' wages, at the same time, flattened out at ten cents an hour. Hours were long, work was dangerous, and workers who were injured on the job had no safety net. If they could no longer work, they had to be taken in by relatives, and without charity they were doomed to end their days in terrible poverty.

This time of extreme difference between the rich and the poor in the late nineteenth century has been called the Gilded Age. Eventually, a reaction built up against it. Farmers formed marketing co-ops, workers began to form unions, and then they formed political parties. When they gained enough strength, the Progressive Era began, and Texas, with its large number of farmers and small businesses, was one of its leaders. Nationally, the Congress was hesitant to try to regulate the powerful corporations, and in



The first train line to go from Houston to New Orleans left Houston on August 30, 1880. In 1882 the Texas and New Orleans Railroad reported earning \$1.5 million (that's \$34.9 million in today's dollars!).

Texas, the legislature also pulled back. Remarkably, it was the state Supreme Court that began the reforms.

Railroad companies became especially powerful. They charged whatever rates they wanted: less on some routes to drive their competitors out of business, more on those routes where people had to pay whatever was required. They felt little obligation to operate their railroads in a safe manner, because they had teams of lawyers who were smart enough to defeat any jury verdicts. The Texas Court wrote in one of its opinions that the growing power of the corporations “has created alarm and excited the liveliest interest in the public mind.” While courts interpret the law, the justices also knew that they had the power to act in “equity,” that is, to render a fair judgment even when there was no law to guide them. And they were not afraid to do it.

In one case in the early 1880s, a passenger was seriously and permanently injured when the railroad car he was riding in jumped the rails and rolled down a steep embankment. The railroad argued that the defect in the track could not reasonably have been discovered, but the Supreme Court ruled that if the railroad was operating in a dangerous manner, a jury could find it responsible for injuries to its passengers. The lawyers who worked for the railroads sometimes made arguments that seem incredible today, but at the time there was no settled law.

In another case from around that time, a family named Ormond rode on a train that carried a large shipment of furniture for their home in Jacksonville, Texas. When the train stopped, Mr. Ormond got off to supervise unloading the furniture from the baggage car, but the train suddenly lurched forward and killed him. Mrs. Ormond sued the railroad, but they argued that as soon as he stepped to the ground, he stopped being their passenger, and they owed him no more care for his safety. They even said that since he was helping to unload the furniture, he was acting as their servant, so they owed him even less care because of that. Finally, on top of everything else, the railroad said he was killed because of his own carelessness! The Texas Supreme Court would have none of it, and decided the case in favor of Mrs. Ormond.

In these and many other cases, the Texas Supreme Court established “precedents,” that is, they laid down principles to be followed in future cases. In that way they made new laws, in effect.

The conditions that favored the creation of huge corporations in the national economy made itself felt in a big way in Texas in the cattle industry. For a decade or so after the Civil War, cowboys could start a small operation on the open range and do well for themselves. The arrival of barbed wire, however, changed everything. Now it was possible for ranchers to claim range for themselves, and more importantly, fence off water and keep competitors’ cattle out. The same ruthless practices that took over national industry began taking place on the Texas plains.

The XIT Ranch was built on three million acres of public land in the Texas Panhandle that the state government sold to an investment company in 1882 to finance the building of a new State Capitol building.

Suddenly, cattlemen had to raise huge amounts of money from investors (most of whom knew nothing about raising cattle), and formed vast, company-owned ranches while cowboys were reduced to being minimum wage workers.

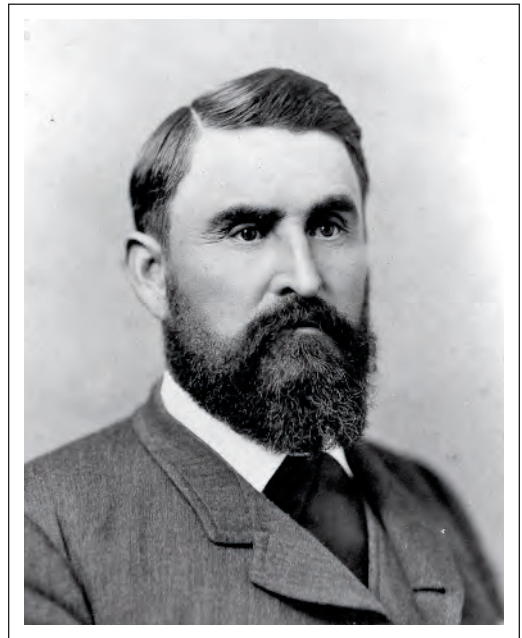
Unlike with business, here the legislature did step in. In its long history of granting free land, Texas had always favored people who actually settled on the land. Speculators, that is people who acquired land only in the hope of selling it at a profit, had always been frowned on. Most of the public domain had now been given away, and the legislature set aside half of what was left to be rented or sold to support public schools. They also tried to help small operators by limiting the amount of land one could purchase from



TAMING TEXAS

the school lands to one square mile—640 acres. Right away the huge corporate ranches began probing for loopholes. One of them, the Wichita Land and Cattle Company, put three of its cowboys up to buying public domain land. Once they got it, they all transferred it to the ranch they worked for, which already spread over several thousand acres. When the state got wind of the scam, it sued the ranch to return the land. The case went up to the Texas Supreme Court, which ruled the purchases fraudulent and returned the land to the state.

An even bigger scam involved the famous rancher Charles Goodnight, who managed the JA Ranch in the Panhandle for a wealthy British investor. Those lands had been the domain of the Comanche and Kiowa Indians only a few years before. When the big operators in the Panhandle saw the end of open range coming, they spent fortunes fencing in huge tracts of public land that they did not own—Goodnight alone fenced off more than half a million acres. The State Land Board meant to lease that land, and let competing ranchers bid on it, starting at four cents per acre. The ranchers, however, got together and each one only bid on land he had already fenced, so the state could never make more than that four cents per acre. Once they realized the scheme, the state sued to have the illegal fences removed. Goodnight and the other Panhandle ranchers fought it for years in what became known as the “Grass Lease Fight.” In fact, they won at trial, because no jury in the Panhandle was willing to cross the powerful Goodnight. When the state appealed it to the Texas Supreme Court, however, Goodnight and his allies lost entirely, despite their most clever arguments. Then the land began to be leased on a basis that was more fair to everyone.



*Rancher Charles
Goodnight*

It was unusual, especially in Texas, for the court system to step in and impose justice when the legislature was not willing to. But early in the Progressive Era, the courts recognized how out of balance things had become, and that if no one did anything, the public would lose confidence in the government. It was Governor James Stephen Hogg, elected in 1890, who finally realized that the mainstream political parties had better agree to some of the people's demands, because the People's Party had been winning more votes with every election. It was Hogg who, as attorney general, won the Grass Lease Fight, and then as governor formed the Railroad Commission to bring the worst of the railroads' abuses to a halt.




Early Spanish land grants continued to be sold for many years, but sometimes the owners did not settle the land and “squatters” built houses there illegally. In 1856 the Texas Supreme Court upheld a ruling against twelve squatters on the Tomás de la Vega land grant along the Brazos River, by then owned by Thomas League. In 1876 the land was divided into the plots shown on this map.











THE
OLD COURT
1846

JUSTICES OF THE SUPREME COURT.









THE
PRESENT COURT
1896









COLLECTED & ARRANGED BY CHAS. S. MORSE, CLERK
AUSTIN, TEXAS.

Texas Gets Two “Supreme” Courts

In the last years of the nineteenth century, the Texas court system underwent a major overhaul to help it keep up with all the cases—both criminal and non-criminal—produced by the state’s growing population.

As the Texas population grew from 212,000 in 1850 to more than 1.5 million in 1880, the Texas Supreme Court became hopelessly bogged down with cases. When people or businesses lost their cases in county or district courts, many of them tried to get the verdicts changed by appealing them to the Supreme Court. It had been the highest court in Texas since the days of the Republic, taking appeals of both criminal cases and civil cases from trial courts located all over the state. In the early days, the justices could keep up with the demand, but that had changed. It was taking longer and longer to get a case through the court system, and people were complaining.

The Constitution of 1876 tried to fix the problem by creating a separate Court of Appeals to hear criminal cases and some kinds of civil cases. That only created confusion, since many lawyers had a hard time knowing whether their case should be appealed to the Court of Appeals or to the Supreme Court—the new structure was very complicated. Meanwhile, the Supreme Court still had too many cases because of the growing number of disputes involving land, railroads, contracts, family law, and other important matters.

By 1890, the situation had gone from bad to worse, and the population had grown even larger, to 2.2 million. In desperation, Texas voters passed a constitutional amendment in 1891 that they hoped would make the court system simpler and lighten the Supreme Court's caseload. The amendment created a whole new level of civil appeals courts throughout the state. Those courts would hear appeals from the local courts, and only the cases that couldn't be resolved there would move up to the Supreme Court.

The same constitutional amendment changed the Court of Appeals to the Court of Criminal Appeals and gave it full responsibility for all appeals of criminal cases from trial courts. From then on, Texas had two highest courts, the Supreme Court for civil cases and the Court of Criminal Appeals for criminal cases. Texas was the first state in the U.S. to have this two-headed court system—Oklahoma followed its lead when it became a state in 1907. To this day, Texas and Oklahoma are still the only states with two “supreme” courts.





Politics, Prohibition, and the Supreme Court

One problem with electing judges became clear in the early 1900s, and it slowed down the work of the Texas Supreme Court for many years.

At the time Texas joined the United States, there was a heated argument over how the state's judges would be chosen, whether they would be elected by the people, or be appointed by the governor and agreed to by the senate. Many Texas settlers had been followers of Andrew Jackson, who was the first American president from the West, and who expanded the democratic process to include people from the backwoods and lower classes. They believed that all aspects of government should be subjected to popular vote, and that some broad common sense would guide the people to vote the right way. Others, including the most educated, believed that candidates would say anything to get elected, and that judges needed to be independent of electoral passions.

When the state constitution was being drawn up in 1845, the revolutionary hero Thomas Jefferson Rusk, who had served as the Republic's third chief justice, argued forcefully for appointing judges. If they were subject to being voted out of office, he said, "you are on a sea without a compass." He said that judgeships would go to little men "with no merit beyond that of office

(opposite page)

Four months after the end of Prohibition in 1933, taxicabs with new beer ads lined the street in front of the State Capitol.



Saloons were popular with Texas men in the 1800s and early 1900s, but stricter laws eventually shut them down.

seekers, who, if they cannot secure an important office will take a small one.” In this position he was strongly supported by the sitting chief justice, John Hemphill, who would go on to serve for another thirteen years. Their combined influence persuaded the others at the convention to write into the constitution that state judges were to be appointed by the governor. Those who favored elected judges did not go away, however. In 1851 they were able to get the constitution amended to provide for electing judges. Texas saw huge changes after that: Civil War, Reconstruction, and Redemption (when the new constitution was written), and although the people experimented with appointing judges, electing them became the norm. Despite all the earlier concerns about electing judges, judicial elections were calmer and more dignified than contests for other offices.

However, there was a development that no one foresaw, and which threatened to wreck the whole court system. That was the coming of the “single-issue” candidate. Sometimes in society a group of people come to believe in something so strongly, that if there are enough of them, they can elect candidates who promise

to support their issue, and they don't worry much over how badly that candidate might be suited to the job in every other way. In the late 1800s, that single issue was the drinking of alcohol.

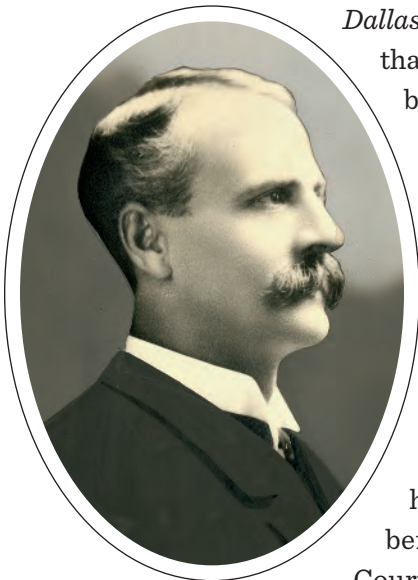
Drinking had been the reality in early Texas. In most early towns, there were saloons before there were churches. So many men drank too much that the legislature eventually passed a law allowing the wife of an alcoholic to force a bar to stop serving her husband, or be closed down. In reaction to these conditions, a very strong social force arose, called the Prohibition Movement, because they wanted to prohibit (that is, forbid) the sale or consumption of whiskey, wine, and even beer—to anyone, at any time.

Many churches, especially Protestant churches such as the Baptists and Methodists, supported the movement, and the Women's Christian Temperance Movement (WCTU) was formed. By 1887 they were able to convince the legislature to place a constitutional amendment on the ballot that would make Prohibition the law across the entire state. Most Texans were not interested in being told they couldn't have a drink, and the amendment was crushed by more than ninety thousand votes (women couldn't vote at that time). The Prohibitionists were not discouraged, however. They were expert organizers at the local level, and they began enacting "local option" prohibition, outlawing alcohol in individual counties and even local precincts, one at a time. They were so good at it that by 1910, no county north of Austin was completely "wet." Texas became a confusing mess of "wet" and "dry" counties and precincts, so that



having a drink in one spot was perfectly legal, but the same drink across the street in a different precinct could get you arrested.

In 1912, the Prohibitionists were able to get one of their supporters elected to the Texas Supreme Court. He was William E. Hawkins. He was fifty years old, a preacher's son from Louisiana. He had never been a judge, but he was a good campaigner, and he looked so distinguished with his big straight nose and square chin that he just looked like a judge, and he promised to cleanse Texas of alcohol. This was the first time that anyone had ever run for the Supreme Court in such a way. One important newspaper, the *Dallas Morning News*, wrote that this was a bad development, that no one who ran for such an important job just to push being wet or dry deserved to win.



*Justice William
Hawkins*

Hawkins did win, but once he was seated on the Supreme Court he discovered that almost no cases reached them that had anything to do with alcohol (most of those went to the Court of Criminal Appeals instead). He lost interest in the Supreme Court almost entirely. Where the other justices might write thirty or forty opinions each term, he would write two or three. He dissented from many cases (that is, he disagreed with the decision) but hardly ever filed his reasons. All three justices had to file their opinions before a case could be decided, so the Texas Supreme Court almost ground to a halt. Before Hawkins arrived on the Court, they would reach a decision, on average, in six months. With Hawkins, it took over five years! The legislature stepped in and created a "Commission of Appeals" to help with their case load, but Hawkins remained on the Court for eight years, until Prohibition became national law in 1920. Then, feeling his work done, he retired to private life.

Nationally, Prohibition was a failure, and illegal bootlegging was controlled by underworld gangs in New York, Chicago and other cities. In Texas, Galveston was the center of illegal

smuggling of alcohol. Foreign ships would slow down, outside U.S. territorial waters, waiting for bootleggers to motor out in speedboats, buy whiskey, and then try to outrun the Coast Guard to get the booze ashore. On land the Texas Rangers were kept busy for years breaking up illegal stills. In 1922, the legendary Ranger Frank Hamer raided a private club near Mexia called the Winter Garden, where he wrecked twenty-seven stills, destroyed nine thousand quarts of whiskey, seized gambling equipment and narcotics, and recovered some fifty stolen cars. Clearly, Prohibition was not having its intended effect.

The federal government ended Prohibition in 1933, admitting the mistake of trying to outlaw something that most people simply wanted to do.



Law enforcement agents were kept busy destroying illegal beer and whiskey barrels, but there were always more where those came from.

POLITICS, PROHIBITION, AND THE SUPREME COURT



The 1920s: Women and Water

During the Roaring Twenties, Texas women made great strides in the law and on the Supreme Court. The state's water laws also saw some changes, not all them good.

By the 1920s, Texas's twentieth century legal identity was pretty well established. The discovery of oil in 1901 brought great wealth into the state, and a flood of business opportunities. But otherwise Texas remained a state of the Old South in its reliance on agriculture, especially cotton, and of the Old West, with its huge cattle industry. The so-called "Jim Crow" system had segregated African-Americans and deprived them of many of their civil rights. Some of the same laws and attitudes also discriminated against the state's growing Hispanic population. Anglo voters associated Republicans with the insults of Reconstruction, and conservative Democrats were overwhelmingly elected to public offices.

A string of Texas governors—Richard Coke, Richard Hubbard, Jim Hogg—had created a stereotype of Texas politicians as loud mouthed "bosses" who were not very polished in society. Others, such as Senator Joe Bailey and Governor Jim Ferguson, established a reputation for corruption. The Texas Supreme Court rose above these expectations. With the exception of William Hawkins, the justices were well educated, fair minded, and hard working.

(opposite page)

In 1925, Texas became the first state to have an All-Woman Supreme Court.

In 1920, a rather colorful chief justice retired from the Texas Supreme Court. His name was Nelson Phillips. He was born and raised in Hillsboro, but acquired a taste for the fine things in life. He raised Great Danes, wore clothes tailored in England, played tennis, rode thoroughbred horses, and in many other ways broke the Texas mold. To replace him Governor Pat Neff chose someone very different, the attorney general, Calvin Cureton. He came from a ranch in Bosque County, went to a country school, and his

family could only afford to send him to college for one year. He taught himself enough law to pass the bar exam, fought in the Spanish-American War in 1898, and came home to enter politics.

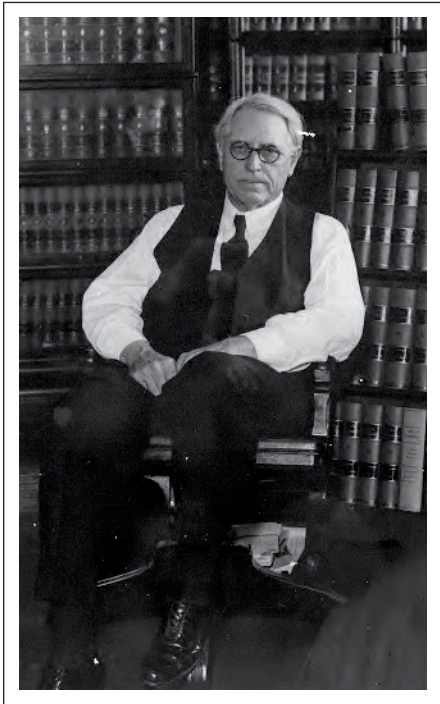
Cureton could be humble about his beginnings, but he was very proud of having taught himself law, and he also could be quite conceited about it. When Governor Neff offered him a seat on the Supreme Court (to fill a vacancy between elections), Cureton replied that he would accept the post of chief justice, but not a regular justice! Governor Neff agreed, and Chief Justice Cureton led the Court for the next twenty years.

Two cases arose in the 1920s that were of lasting significance to law in Texas. One had to do with the status of women, the other the status of water.

In 1925, only six years after women in the United States were given the right to vote, Texas courts reached a milestone that no other state in

the country had done. In that year, the state Supreme Court met in a special session to hear a case, and all three of the sitting justices were women. Here is the story of how and why that happened.

In the early 1920s, business in Texas was booming as it was around the country. In Texas, there was the additional huge impact of the petroleum industry. Since oil was discovered at Spindletop in 1901, one fabulous discovery followed another, and



*Chief Justice
Calvin Cureton*

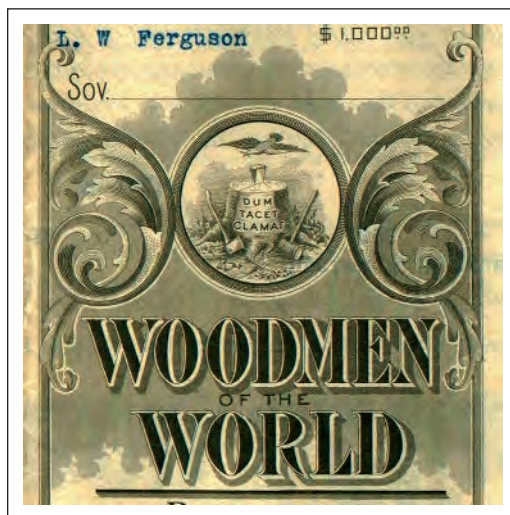
oil prosperity spun off into related construction, drilling equipment, refining, and other industries.

In this lively business climate, one important way for an ambitious man to get ahead was to belong to a variety of social and civic lodges and secret societies. At these meetings men could discuss their plans and ambitions, scout new opportunities, and find out what other men were up to—we would call it “networking” today. Of these secret societies, the Masons had been a main fixture in Texas since early in the frontier, but since then many other groups had come onto the scene. A well-connected man belonged to several. For example, one former justice of the Supreme Court and Court of Criminal Appeals, William Ramsey, belonged to the Masons, the Elks, the Knights of Pythias, the Red Men of the Improved Order, and very importantly, the International Woodmen of the World.

The Woodmen’s primary function was to provide life insurance and other financial services for its members, and it also raised money for disaster relief. It was founded in Omaha, Nebraska in 1890 and quickly became one of the most important lodges in the country. Throughout America, visitors to old cemeteries can see tombstones in the shape of sawed-off tree trunks that were provided to members of the Woodmen (also known as the W.O.W.).

Being a nationwide financial entity, the Woodmen occasionally found themselves in court, suing or being sued. Since nearly the entire legal community were members, it could be hard to find judges to hear a case because, as members, they had to recuse themselves, that is, step aside in the interest of fairness.

In El Paso in 1922, a man named Johnson sued a man named Darr to collect a debt. He won his case, so he moved to seize a lot



Most lawyers and judges in Texas were members of the W.O.W. fraternity in the 1920s. The W.O.W. sold life insurance policies to its members.

in town that Darr owned. Darr, however, did not actually own the lot himself, he only held it as a “trustee,” that is, a caretaker, for the Woodmen of the World. The Woodmen stepped in and sued Johnson to keep him from taking their lot.

The whole thing reached the Texas Supreme Court in March of 1924, and Chief Justice Cureton had to notify Governor Neff that all the justices (including himself) were members of the Woodmen, and could not hear the case. In that event, the constitution required the governor to act “immediately” to name new justices to a special term of the Supreme Court to hear the case. Neff, however, did nothing for over nine months, and when he did name the members of the special court the following January, they were all women.

One was Hortense Sparks Ward, who was the first woman licensed to practice law in Texas, and was the author of a law that finally gave married women control over their property during their marriage. The other two were Hattie Leah Henenberg and Ruth Virginia Brazzil, also attorneys. They heard the case and decided in favor of the Woodmen, and then they stepped down, but the nationwide shock wave of having women sit on a supreme court pretty much drowned out the issues in the case.

Later, the story was that Governor Neff had to appoint women to the Supreme Court’s special term because all the male possibilities were members of the Woodmen and ineligible to serve. That was not quite true, however. In fact there had been times in the past when male lawyers had been found to hear similar cases, who were not members of the Woodmen.

However, Governor Neff was a supporter of women’s rights, and here was a way to give them a big boost in a state where it was still a controversial subject. Sometimes, politicians who support a progressive cause, but know it could cost them popularity, find ways to support it without actually admitting that is what they’re doing.

The other important case from the 1920s had to do with water



Hortense Sparks Ward was the first woman lawyer in Texas and served as chief justice of the All-Woman Texas Supreme Court in 1925.

THE 1920S: WOMEN AND WATER



The land around a small dam on the Tickle Ranch near the South Concho River was parched by drought in the 1920s and again in the 1950s.

rights. Under the common law of England and then the United States, when a person bought a piece of land, it was assumed that its water—its lake or ponds, wells, streams flowing past it or through it—came with the purchase. England has a rainy climate and no one ever supposed otherwise. Under the Spanish civil law, things were very different. Much of Spain is nearly a desert, so in Spain, and then in the Spanish New World including Texas, if one bought a parcel of land all its possible water did *not* come with the purchase unless it was specifically included in the contract. For two hundred years under Spain and Mexico, people in Texas

were granted land, and bought and sold land, knowing that it did not automatically come with water rights.

As a nation and then a state, this notion had always caused some confusion in Texas, but the Supreme Court had never been called upon to make a definite ruling. Drought, of course, and the competition for water, sharpened the issue, and in the 1920s Texas was afflicted with a horrific drought. In Tom Green County near San Angelo, two neighbors sued each other over what little water was left in the South Concho River. The upstream neighbor wanted to draw water out to irrigate his crops, which would prevent the downstream neighbor from getting any.

Picking his way through the thicket of Texas water law, Chief Justice Cureton did not recognize that the roots of the case were in Spanish law rather than English common law. He issued a sweeping opinion that Texas was now an American state, the United States followed English common law as it regarded water, and Texas would do the same. Cureton, who was the self-taught justice, made a ghastly mistake, throwing two centuries of making and relying on Spanish land contracts on its head, and it took thirty years for another Texas court to correct it.



Women and Water in the Courts, Part Two

Women's involvement and influence in the state's court system continued to grow, fulfilling the promises of early Spanish law. Spanish law also came into play in correcting serious mistakes in Texas water law.

As Texas continued to move through the twentieth century, its people and courts had to change with the times. The drought of the 1920s hurt the state's agriculture and cattle industries, and then the Great Depression of the 1930s threw a wrench into the rest of the state's economy, including its new oil industry. As is always the case when the economy is hurting, crimes and disputes of all kinds increased during those years. The Texas Supreme Court and the Court of Criminal Appeals became even more overloaded with cases than before, and the state could not afford to give them much help.

Strangely enough, it took a war to make the Texas economy strong again. The Japanese bombed Pearl Harbor, Hawaii, on December 7, 1941, plunging the United States into World War II. Texas found itself suddenly in the forefront of the war effort: oil production increased massively to provide fuel, shipyards and aircraft plants were opened, air bases were established to train pilots, and camps were built to house German and Japanese prisoners of war. The war also had one effect that no one foresaw: women proved themselves of immense value. Whether riveting

(opposite page)

Clockwise from top left: District Judge Sarah T. Hughes; Texas Supreme Court briefing attorneys Virginia Grubbs, Mary Kate Parker, and Ione Stumberg

bombers together in Fort Worth or training as WASP pilots in Sweetwater, thousands of Texas women hung up their kitchen aprons and put on uniforms or overalls.

The day after Pearl Harbor, every briefing attorney on the Texas Supreme Court resigned to volunteer for the armed forces. This was a disaster for the Court, because the briefing attorneys not only researched the law about cases before the Court, they also held mock debates so the justices could clearly see the issues and arguments involved. For this job the Court searched out the brightest young lawyers in the state, and now there were virtually none to replace them.



One of the male briefing attorneys who went to war, and was replaced by women, was Joe Greenhill, who later became one of the Supreme Court's most respected chief justices.

Then Chief Justice James P. Alexander had a novel idea. He knew of a young woman, Ione Stumberg, who had graduated with highest honors from the University of Texas Law School, and he hired her as a briefing attorney. She was followed by three other female attorneys named Virginia Grubbs, Mary Kate Parker, and Beth O'Neil, and they all did excellent work. They were hired with the understanding that it was only for the duration of the war, and that the men would get their jobs back when they came home.

Nevertheless, the hiring of women for the Supreme Court staff was a step forward from which there was no turning back.

Actually, between the time of the All-Woman Texas Supreme Court in 1925 and the arrival of women on the Court as briefing attorneys during the War, one woman had broken through the all-male court system and stayed there. Sarah Tilghman Hughes, a Dallas attorney, had served as judge of the Fourteenth District Court since 1935. She earned a reputation as a fair and hardworking judge with a special emphasis on human rights. Women's rights were included in that category, and one of Judge Hughes's



victories was to help get a constitutional amendment passed in 1954 that finally allowed women to sit on juries in Texas. (She had commented at the time of her appointment that she would not be able to serve as a juror on her own court!) Judge Hughes barely missed becoming the first woman to be elected to the Texas Supreme Court, losing the election to Justice Joe Greenhill by only a few votes in 1958. She wasn't disappointed for long, though. Three years later she was appointed judge of the federal district court in Dallas by President John F. Kennedy, and she held that position for many years.

As a federal district judge in Texas, Sarah T. Hughes (standing, bottom left) gave Vice President Lyndon B. Johnson the oath of office as president on Air Force One soon after President John F. Kennedy was assassinated in Dallas in 1963.

WOMEN AND WATER IN THE COURTS, PART TWO

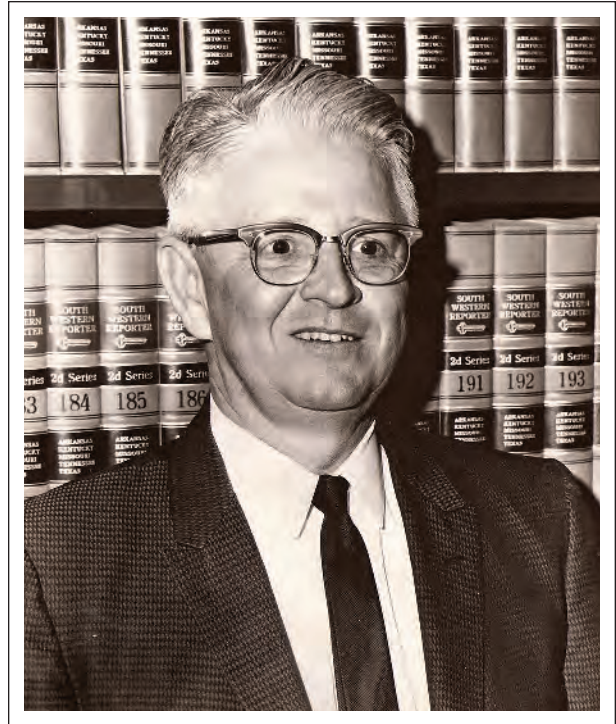
Another momentous change to Texas law came during this period. During the 1950s Texas suffered a drought as devastating as the one in the 1920s that had caused the Cureton Court to declare that English water law would apply statewide. Now, several farmers along the Rio Grande sued the state, wanting to be confirmed in their right to siphon irrigation water out of the river. They won at trial, but the Appeals Court in San Antonio reversed the trial court's ruling. This was amazing, because the trial court



Texas laws and courts continued to honor early Spanish land grants even after Texas became a Republic and then a state. The McAllen Ranch in South Texas was part of the Santa Anita land grant dating back to 1791. In this photo taken at the McAllen Ranch in the 1940s, a rancher checks the flow of a well used to water livestock.

had followed Cureton's law, and an Appeals Court has no power to overrule the Supreme Court. The author of this daring ruling was Justice Andrew Jackson ("Jack") Pope, who had a reputation as one of Texas's ablest judges. In his written opinion he showed clearly that because early Texas land grants had roots in Spanish law, the farms along the Rio Grande did not have the right to use the water, as they would have had under English law. The farmers, not liking this verdict at all, appealed the case to the Texas Supreme Court.

This gave the Supreme Court justices a thorny problem. They knew that Cureton's old decision was a bad one, but it had been quoted as authority for a generation. Justice Pope's argument from the Appeals Court was so strong, however, that they not only upheld his decision, they did not even write a new one. The Supreme Court adopted his words as their own—almost the only time that has ever happened. Thus Jack Pope set Texas water law on the same footing as land law, and corrected the mistake that had confused the ownership of water rights for thirty-five years. Pope soon ran for and won a seat on the Texas Supreme Court; by the time he retired in 1985, he had become Chief Justice and had written more opinions than any other Supreme Court justice in Texas history.



Justice Jack Pope helped change Texas water law by tracing its roots back to early Spanish law in a case called State v. Valmont Plantations.



Civil Rights in Texas

CHAPTER

14

Texas law has not always protected all of its citizens. Gaining equal rights under the law has been a long process for some groups, especially those who are racial and ethnic minorities.

Women are not the only group that did not always have full rights and privileges under the law in Texas. African Americans, Mexican Americans, and American Indians struggled for many years against the barriers put in place by the majority white population to protect their own interests. The reasons behind this discrimination were different for each group.

As we saw earlier in this book, Texas was originally inhabited by hundreds of Indian tribes that had their own systems of governing themselves. These native peoples were unable to withstand the flood of settlers from Europe and then the United States, who brought devastating diseases and took over the land that had sustained the Indians for centuries.

During the Republic of Texas era, different presidents had radically different policies toward the Indians. Sam Houston, who lived for several years among the Cherokee before he came to Texas, was given the power through a law passed by the Republic Congress to deal peacefully with the friendly tribes and provide military protection against the hostile tribes. The next president, Mirabeau B.



Quanah Parker, last chief of the Quahada Comanche Indians, left Texas when the Comanche tribes were moved to reservations in Oklahoma in the 1870s. He served as a judge on the tribal court and helped his fellow tribesmen improve their living conditions through education and smart business practices.

Lamar, was determined to get rid of the Indians by either killing them or driving them out of Texas. The Republic Congress supported his policy by passing laws to strengthen the Texas army and militias.

When Texas became part of the United States, the laws and policies governing Indian tribes were taken over by the federal government, since the U.S. Supreme Court had ruled earlier that under Article 1 of the U.S. Constitution the states could not have that responsibility. Because Texas kept control of its own public lands when it became a state, the U.S. government could not set aside land in Texas for Indian reservations. Many Indians from Texas were moved to other states, and by 1900, only 470 remained in Texas.

During the twentieth century, American Indians in Texas, as in other states, faced many obstacles in recovering their rights to self-governance as tribes and in gaining their rights as individual U.S. citizens. That story is too long to tell here, but the good news is that much progress has been made. In 1975 the U.S. Congress passed a law allowing tribes to manage themselves more fully. Three reservations are located in Texas (all on land set aside by the state legislature): the Alabama-Coushatta, the Kickapoo, and the Ysleta del Sur Pueblo (for the Tigua people). Each tribe has its own laws and tribal court.

It is important to remember that although large numbers of Indians in early Texas died from disease or violence, some of those who survived—particularly in the peaceful tribes—eventually intermarried with the European settlers. In addition, millions of Indians in Mexico survived and became part of mainstream Mexican society. Many present-day Texans of Mexican heritage are blood relatives of these indigenous groups.

As we have seen in earlier chapters of this book, the Mexican influence on the laws and culture of Texas is very strong. But despite the many contributions of Tejanos and Mexican Americans, those of Mexican descent living in Texas have had to fight for fair and equal treatment under the law.

When the United States won the war against Mexico in 1848, the Treaty of Guadalupe Hidalgo gave the U.S. a large amount of Mexican territory, including some along the Rio Grande border. As part of the treaty, the Mexican-descent people who lived on those lands were offered American citizenship. They were also supposed to keep any land they owned, but they lost much of it over time because the laws were unclear and those who were supposed to enforce the laws (mostly Anglos) did not protect the rights of these citizens. This treatment was also true of the other Mexican Americans in the state who were already citizens. Without land and other valuable property, many became caught in the vicious cycle of poverty. Large numbers of others who migrated from Mexico to live and work in Texas as U.S. citizens were also poor, and there were few opportunities to improve their lives. Like the other minority groups in the state—especially African Americans—they faced discrimination in jobs, housing, education,

Camp for migrant workers from Mexico, in Weslaco, Texas, 1939



CIVIL RIGHTS IN TEXAS

voting, and other areas that should have been protected under the United States Constitution.

The Fourteenth Amendment to the Constitution, passed after the Civil War, was mainly directed at giving citizenship and legal protection to freed slaves. It also applied to all other citizens, including people of Mexican descent who were born in the United States or were naturalized citizens. Under the laws of Texas, there were two races—black and white—and people of Mexican descent were considered white. This should have meant that they were treated the same as Anglos in the courts and by cities and counties and school districts, but they weren't.

Even when laws exist on the books, people don't always follow them in practice. The attitudes and prejudices of the majority population—Anglos, in this country—toward those who look different or speak a different language can lead to a kind of practice called “de facto discrimination.” That is, members of particular groups are treated as inferiors and second-class citizens by custom and in practice rather than by law. The reasons for the discrimination are based on prejudice, not facts. For Mexican Americans in Texas from 1848 onward, this meant that their children were often not allowed to go to school with Anglos because their English-language skills were not considered to be good enough. Sometimes they could not use the same public restrooms or railroad cars or buses as Anglos because they weren't considered to be clean enough. They were not chosen to serve on juries because they were not considered to be smart enough.

These and other kinds of discrimination continued until Mexican Americans were finally able to start winning cases in court. In 1930, Mexican-American parents in Del Rio took the school district to court because they wanted their children to attend the better schools for whites instead of the ones set aside for Mexican Americans. The Texas District Court of Val Verde County ruled that the school district could not segregate Mexican-American students on the basis of race because, according to Texas law, they



Attorney Gus Garcia won an important victory for Mexican Americans in Hernandez v. State of Texas, 1954.

were members of the white race. Unfortunately, the Texas Court of Civil Appeals overturned the verdict because they decided that these students were not separated on the basis of their race but because they had special language needs. This was a setback, but the case helped set the stage for future cases that did succeed.

The next important case was *Delgado v. Bastrop Independent School District* (1948), which ruled that school boards could not set aside specific buildings for Mexican-American children, since these children were legally white. Then, in 1954, the U.S. Supreme Court said in *Hernandez v. State of Texas* that Mexican Americans were in a class that was neither black nor white. This meant that they were entitled to the same special protection under the Fourteenth Amendment as African Americans were. Although this case was related to the right to serve on juries, it gave Mexican Americans a stronger legal position in other areas as well. Under President Lyndon Johnson, the federal government passed a series of civil rights laws in the 1960s that broke down many of the barriers to equal opportunity and to equal treatment under the law.

In 1967, the Mexican American Legal Defense and Educational Fund (MALDEF) was founded in San Antonio to represent Mexican Americans in civil rights lawsuits. Although MALDEF is a national organization, some of its most successful cases have

CIVIL RIGHTS IN TEXAS

taken place in Texas. In 1989 MALDEF lawyers won a historic victory in *Edgewood ISD v. Kirby*. In that case, all nine members of the Texas Supreme Court agreed that the state's system of funding public education was unconstitutional and discriminated against children in low-income school districts. The court then ordered the legislature to change it. This was important because the Edgewood school district in San Antonio, like many other school districts in South Texas, had a large number of Mexican-American students.

A third group of people who have had to fight discrimination in Texas are African Americans. Members of this group mostly began their lives in Texas as slaves or descendants of slaves. This meant not only that after the Civil War they continued to be viewed as inferiors by the majority population (Anglos), but they had no property or other inherited wealth to build on. Even though the Fourteenth Amendment made blacks full citizens and the Fifteenth Amendment gave black men the right to vote, it was one hundred years after the end of the Civil War before they made any real progress in being treated as equal citizens under the law.

We saw earlier in this book that after Reconstruction ended in 1874, those in Texas who had supported the Confederacy did whatever they could to keep blacks "in their place." The Texas Constitution of 1876 created an education system that by law separated black students from whites, based entirely on their race. Not only public schools but also public colleges and universities had separate funding from the legislature for white schools and black schools. The public schools that were built for blacks were inferior to those for whites in every way. The U.S. Supreme Court upheld state laws that segregated the races in a famous case called *Plessy v. Ferguson* (1896). Even though schools and other public facilities were supposed to be "separate but equal" according to this court ruling, this was not enforced. It was illegal for blacks to use facilities intended for whites only, and these laws *were* enforced. As with the Mexican Americans, the result of this

segregation was to keep blacks poor and uneducated as a group, and the Texas courts were of little help to them.

Although black men had the right to vote after the Civil War, most were prevented from voting in several ways. For many years they were kept from the polls mostly through threats of violence or actual acts of violence. When they did manage to get to the polls, their votes were often thrown out and didn't count. Then, in 1902, Texas voters found a new way to keep poor people from voting. They approved an amendment to the state constitution that required everyone who wanted to vote to pay a poll tax. The \$1.50 to \$1.75 tax was a lot of money in those days, and most blacks (and

In 1945, the U.S. Supreme Court upheld the use of poll taxes to vote in Texas and other states. Poll taxes were not banned in Texas until 1966, during the Civil Rights years.



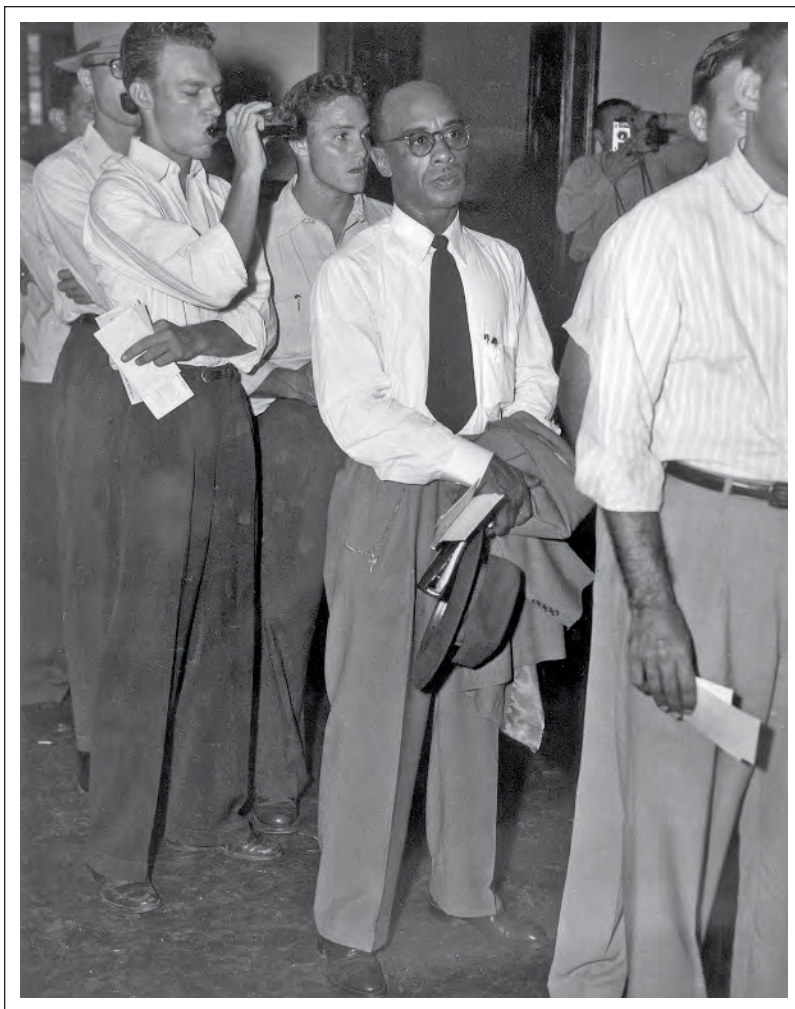
CIVIL RIGHTS IN TEXAS

Mexican Americans and poor whites as well) could not afford to pay it. If they couldn't vote, they couldn't elect people who would help their causes. This way of keeping political power in the hands of white voters worked well for more than sixty years. The poll tax law for state elections in Texas was not abolished until 1966, two years after the Twenty-fourth Amendment to the U.S. Constitution did away with the poll tax for federal elections.

Another way the majority white population in Texas kept blacks from voting was through holding white-only primary elections. Because Texas was a one-party (Democratic) state for many years, anyone who won the Democratic primary election in the spring or summer was practically guaranteed to win the general election in the fall. In 1923, Texas passed a law preventing blacks from voting in Democratic primaries. When a black doctor from El Paso challenged the law several years later, the U.S. Supreme Court ruled in his favor. Texas repealed the law, but then the Democratic Party itself—which was not part of the state government—started running the primary elections, and the courts decided that it was legal for a private organization to exclude blacks from voting. It took more than twenty years for blacks to get the U.S. Supreme Court to get rid of the white primaries altogether. In *Smith v. Allwright* (1944), the Court decided that several Texas laws made the Democratic primary an essential part of the election process. Therefore, blacks could not constitutionally be prohibited from voting in the primaries.

The fight against segregated schools was another long and difficult one for blacks in Texas. Because by state law they were not allowed to go to public schools and universities reserved for whites only, they either had to make do with what they were given or work to change the laws. Like the Mexican Americans, they chose to go through the court system, even if it took going above the Texas courts all the way to the U.S. Supreme Court.

The black cause in Texas was greatly helped by the efforts of the National Association for the Advancement of Colored People



Heman Sweatt (center) won the right to enroll in the University of Texas Law School in 1950 when the U.S. Supreme Court said that the separate law school for blacks was not equal to the one for whites.

(NAACP). The state's first chapter of the NAACP was organized in El Paso in 1915, but it was not until after World War II that it was able to gain enough members to make a difference in the courts. One important case came up in 1946 that eventually made a big dent in the the Texas "separate but equal" laws.

In February 1946, a black man named Heman Marion Sweatt applied for law school at the University of Texas. He was qualified in every way except for his race. When he was not accepted,

CIVIL RIGHTS IN TEXAS

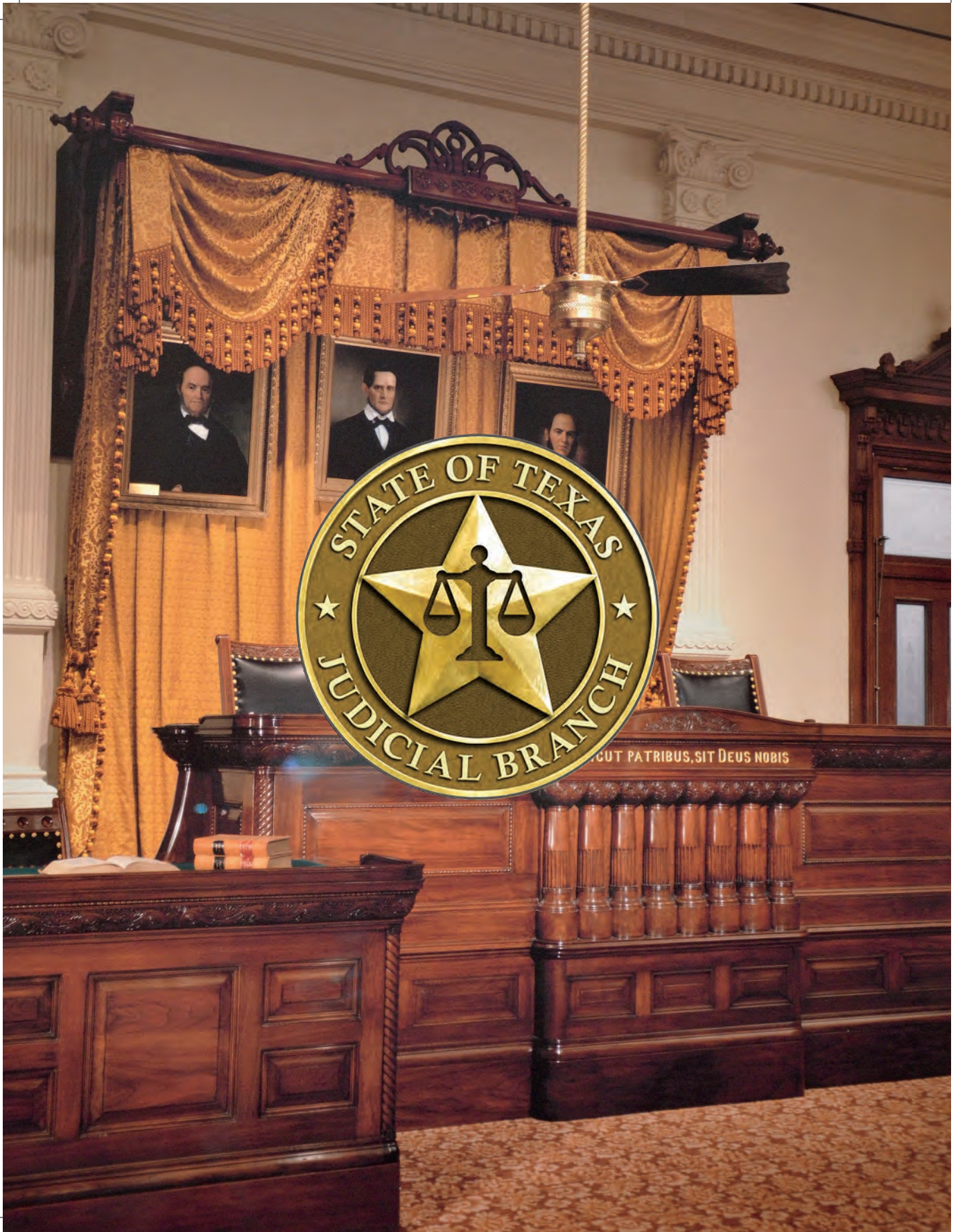
*A lawyer with the
NAACP named
Thurgood Marshall
represented Heman
Sweatt in court.
Marshall later
became the first
African-American
justice on the U.S.
Supreme Court.*



TAMING TEXAS

he filed a lawsuit against the university's president, Theophilus Painter. Because the University of Texas is funded by the state government, lawyers from the Texas Attorney General's Office went to court for President Painter. The trial judge told the state's lawyers that he would wait to rule on the case until they had a chance to open a separate law school for blacks (there was not one at that time). Although the state did take steps to open a law school at all-black Prairie View A&M University, Sweatt and his lawyers from the NAACP decided to challenge the state court's ruling that the new school would give him an education as good as the one he could get at the University of Texas Law School. Led by a dynamic NAACP lawyer named Thurgood Marshall (who would later become the first black Supreme Court Justice), the case eventually went to the U.S. Supreme Court. In June of 1950, the Court ruled that Sweatt could not receive an equal education at an all-black law school, and that the University of Texas must admit him. The ruling in *Sweatt v. Painter* was the first step in getting rid of the school segregation laws in Texas and in the rest of the country. Four years later, the U.S. Supreme Court ended legal segregation in *Brown v. Board of Education*, a case that began in Kansas. "Separate but equal" was declared to be "separate and unequal" under the Fourteenth Amendment, and all states, including Texas, had to change their laws.

The story of how the civil rights laws of the 1960s affected African Americans is one that must be told in another book. In Texas, blacks—like the other minority groups—have made much progress. They now hold high positions in government, business, universities, school districts, and the courts. Many are lawyers and judges. As we will see in the next chapter, the modern courts in Texas are more racially diverse than they've ever been before. However, even as the laws and the opinions of many Texans have changed, racial bias remains a part of society.



A Final Look at Texas Courts

CHAPTER

15

The courts have been part of Texas history from the very beginning. They have grown and changed with the times, but their history makes them uniquely Texan.

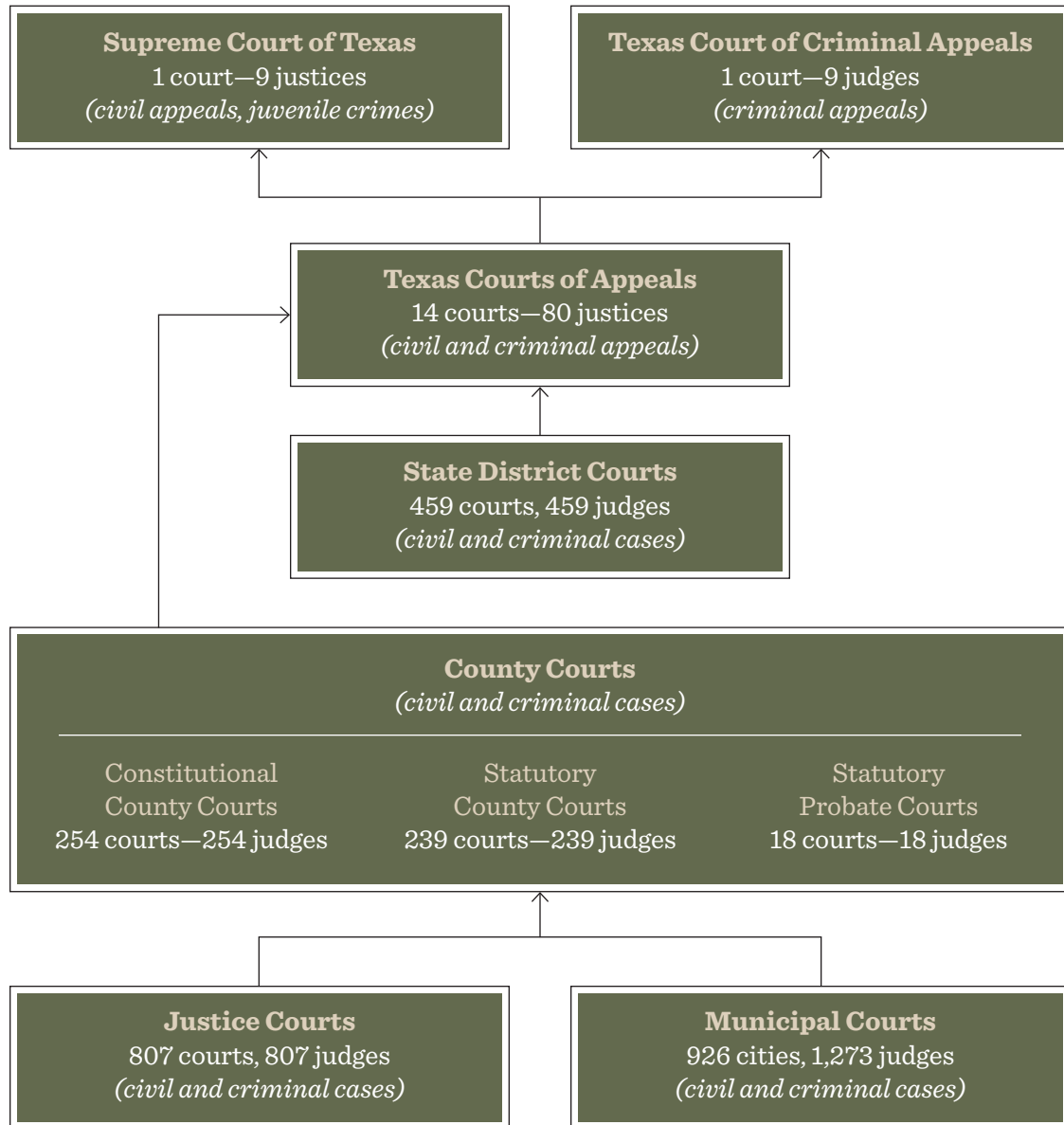
Texans take a lot of pride in living in the biggest state in the lower continental United States. Texas also has one of the largest court systems in the country. As we have seen, taming the frontier required one kind of court system, and taming a modern state has required more and different kinds of courts.

During the last year of World War II, the voters of Texas passed a constitutional amendment increasing the number of justices on the Supreme Court from three to nine. The Court had consisted of three justices since the adoption of the Constitution of 1876, when the Texas population was just about one and a half million people. By 1945 there were right at seven million, so it was no wonder that the Supreme Court was overwhelmed by its case load. Tripling the number of justices allowed for much faster and more efficient work, and this is the number of justices still working today.

Meanwhile, the Court of Criminal Appeals continued to get by with only three judges from the time it was created in 1892 until 1967, when a constitutional amendment was passed to increase it to five. That still didn't take care of the overload of criminal cases, so eleven years after that, in 1978, another amendment added four more judges.

STATE COURT STRUCTURE

(as of January 1, 2015)



TAMING TEXAS

The Texas State Court System Today

Like the other forty-nine states in the United States, Texas has its own court system that is different from the U.S. court system. Texas courts make decisions on cases that involve Texas laws; U.S. courts handle cases that mostly involve federal laws. This book is about Texas laws and courts.

The two highest **state appellate courts** in Texas—the **Texas Supreme Court** and the **Court of Criminal Appeals**—hear cases that have already been decided by the lower courts. These appellate courts do not try cases, have juries, or hear witnesses. Instead, they review decisions of the lower courts on questions of law or charges that a procedural error was made.

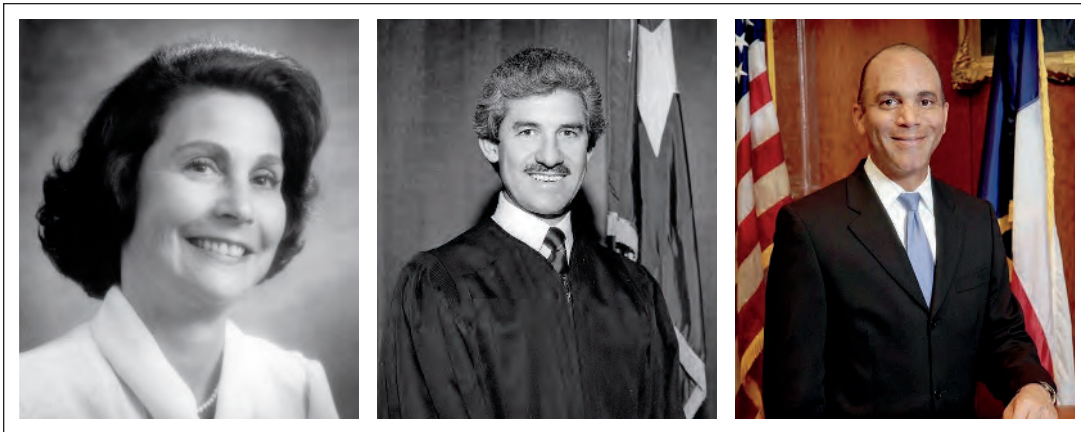
The losing side can ask for a new hearing if the person or organization believes the original decision was wrong. Some of these cases move up from the *local level* (**Justice of the Peace** and **Municipal Courts**), to the *county level* (**County Courts**) to the *intermediate state level* (**Courts of Appeals**) to the *highest state level* (**Texas Supreme Court** or **Court of Criminal Appeals**, depending on whether it is a civil case or a criminal case).

Other kinds of cases begin at the district level (**State District Courts**, one or more counties together) and move up to the **Courts of Appeals** and then to one of the two high courts.

Civil cases involve *private disputes* between persons or organizations. One sues another in court to get a certain amount of money for damages over injuries in a car wreck, for example, or when someone claims a contract was broken. Governments may also sue private citizens—or even other governments.

Criminal cases involve crimes for which people may go to jail or prison. Criminal cases are considered *acts against the community or state*. A person accused of a harmful act is taken to court by the community or state, tried by a jury, and found either guilty or not guilty.

Constitutional courts are those created by the Texas Constitution. The Constitution allows the Texas Legislature to create other courts if needed, and those are called **statutory courts**.



In 1982, District Judge Ruby Sondock became the first woman to serve as a full member of the Texas Supreme Court when Governor Bill Clements appointed her to fill a vacancy.

Raul A. Gonzalez, Jr., the child of migrant farm workers from Mexico, became the first Hispanic justice of the Texas Supreme Court in 1984 and served on the court until he retired in 1998.

In 2001, Wallace B. Jefferson became the first African American to serve on the Texas Supreme Court. In 2004, he made history again when he became the first African-American chief justice, a position he held until 2013.

The two highest appeals courts are just the top layer of the Texas court system, though. When our constitution went into effect in 1876, there was one Supreme Court, one Court of Appeals (which later became the Court of Criminal Appeals), and 26 district courts, plus city and county courts. By 2015 there were two highest courts, 14 appeals courts, 459 district courts, plus 2,244 city and county courts! And that doesn't even include the United States courts that operate in Texas. It takes that many courts to sort through all the cases that come up in a state as big as ours.

The number of courts wasn't the only change. For many years, only white men were judges. As we saw in the last chapter, Sarah T. Hughes tried to become the first woman to be elected to the Supreme Court (that was in 1958, more than a century after Texas became a state), but the voters weren't ready to elect a woman



until 1992. That was when Rose Spector won election to the Court. (Another woman, Ruby Kless Sondock, had been appointed to the Court to fill a vacancy in 1982, but she didn't run for election.) Since then, several women have served on the Supreme Court, but so far, no woman has been elected chief justice. On the Court of Criminal Appeals, however, a woman named Sharon Keller has served as presiding judge (the same as chief justice) since 2000.

It also took many years for Mexican Americans and African Americans to reach the highest level of the Texas courts. The first Hispanic on the Supreme Court was Court of Appeals Judge Raul A. Gonzalez, the son of migrant farm workers who was appointed to the Court in 1984 and served for fourteen years.

The Supreme Court of Texas in 2015. Front row, from left: Justice Paul W. Green, Chief Justice Nathan L. Hecht, Justice Phil Johnson. Back row, from left: Justice John Phillip Devine, Justice Debra Lehrmann, Justice Don R. Willett, Justice Eva Guzman, Justice Jeffrey S. Boyd, Justice Jeff Brown.

A FINAL LOOK AT TEXAS COURTS



The Texas Court of Criminal Appeals in 2015. Front row, from left: Judge Michael Keasler, Judge Lawrence E. Meyers, Presiding Judge Sharon Keller, Judge Cheryl Johnson, Judge Barbara Hervey. Back row, from left: Judge Kevin Yeary, Judge Elsa Alcala, Judge Bert Richardson, Judge David Newell

The first African American to serve on the Supreme Court was Wallace B. Jefferson, who was appointed in 2001 and became the first African-American chief justice of the Court three years later. The year after Jefferson became a member of the Court, another African American, Dale Wainwright, won election as a justice. Like Texas itself, the court system has become more and more ethnically diverse over the years.

This, then, is what the court system looks like in today's Texas. Many of the laws that the courts use to make decisions about what is legal and what is not legal, what is fair and what is not fair, who should pay and who should not pay, are as old as Texas itself. Circling back around to the beginning, we can see that our ancestors—Spaniards, Tejanos, Anglo colonizers, African-American slaves and freemen, and many others—all played a part in taming our state.

Glossary

adversarial court system criminal court system under the English common law, in which the prosecution and the defense present their cases to a jury and impartial judge

alcalde in Spanish Texas, a town's highest official, combining the functions of mayor and justice of the peace

bankruptcy the state of not having enough money to pay all of one's debts

Black Codes laws passed by Texas soon after the Civil War that severely restricted the rights of African Americans

bond a written agreement to perform a certain legal responsibility, like appearing in court or paying a debt

carpetbaggers a name some people from the South called officials of the Northern occupation government after the Civil War, so named because they moved to the South with their belongings packed in suitcases made of carpet fabric

centralist in Mexican politics, one who believed that power should be concentrated in a central national government

chief justice the highest-ranking member of certain courts, including the U.S. Supreme Court and the Texas Supreme Court

civil law (1) a legal system developed in Ancient Rome and used in early Spain, based on written statutes; (2) in the English common law, non-criminal legal cases

civil rights the personal rights and privileges that belong to every citizen, upheld by law

common law a legal system developed in England and the English-speaking world, based on precedents decided in previous cases

community property property that is acquired by a husband and wife together during the course of their marriage, as opposed to the property that belonged to each of them before they got married

confesión that part of a Spanish criminal trial in which the accused either confesses his guilt, or demands a hearing

conscription a legal requirement forcing certain people into military service; draft

constitution the fundamental law of a government that gives its officials the authority to act

Court of Criminal Appeals the highest court in Texas for appeals of criminal cases

creditor a person to whom a debt is legally owed

debtor a person who owes a debt that is legally enforceable

debtors prisons under the English common law, prisons to which debtors were sentenced when they could not pay what they owed

derecho vulgar early Spanish legal concept that allowed governments in the colonies to adapt their rules and regulations to the needs of the local population

discrimination the act of treating people of one group differently than those of another group, depriving them of equal access to jobs, housing, education, voting, and so on

empresario a person who was granted a contract by Spain and then Mexico to settle foreign colonists in Texas; more generally, a manager who has a financial stake in the enterprise that he directs

equity a legal principle that allows courts to administer justice in a case without following the strict rules of law or precedent

federalist in Mexican politics, one who believed that power should be shared among the various states of the Mexican federal republic

freedmen former slaves liberated by the Civil War

Freedmen's Bureau an organization of the federal government that helped African Americans liberated by the Civil War adjust to life in freedom

GLOSSARY

Gilded Age in American history, a period in the mid to late nineteenth century marked by unregulated business and huge inequality of wealth and income

“Grass Lease Fight” late 1800s Texas court case in which large landowners sought to defraud the state of leasing rights on state-owned land

habeas corpus (pronounced (hay-bee-us core-puss)) a legal order that requires that a person held in jail or prison must appear before a judge or court before he or she can be forced to stay there; in Latin it means “you have the body”

hidalgo a gentleman; a member of the lower nobility in Spain

homestead exemption under Texas law, legal protection of a person’s home from being seized to pay his debts

immigration the act of people moving into one country or region from another

inquisitorial court system criminal court system under the Spanish civil law, in which the judge is both the fact finder and the decider

“Ironclad Oath” after the Civil War, an oath that had to be sworn before being allowed to vote, that the voter had not supported the Confederacy

militia a temporary armed force of private citizens

mitote a council held among the Karankawa Indians as part of their ritual festival

pleadings documents filed with a court to begin a legal action

plenario that part of a Spanish criminal trial in which the accused attempts to prove his innocence

precedents decisions reached in earlier court cases that provide the basis for deciding a present case

presiding judge the highest-ranking member of the Texas Court of Criminal Appeals

Prohibition a period in American and Texas history (1920–1933) in which all sale and consumption of alcohol was illegal (prohibited)

public domain land that belongs to the public and is protected by its government

Reconstruction the period after the Civil War when the U.S.

GLOSSARY

government imposed its own form of law and order on the former Confederate states (including Texas) until those states complied with federal requirements

referendum a vote of all the people for or against a government action

secession the act of one part of a state or country ending its connection with the rest and setting up its own new government

secessionist one who supported the secession of the Southern states from the United States

segregation the enforced separation of certain categories of people from those who belong to a more privileged group

sentencia that part of a Spanish criminal trial in which the accused learns his fate

slave a person who is owned as property by another person

squatter a person who occupies a tract of land illegally

State Police a statewide police force that operated in Reconstruction Texas from 1870 to 1873 to enforce criminal laws; a significant number of the State Police were freedmen

statute a written law passed by a legislative body

sumaria that part of a Spanish criminal trial in which the judge builds the case against the accused

Texas Supreme Court until 1892, the highest court in Texas for appeals of both civil and criminal cases; since 1892, the state's highest court for civil appeals

Unionist before the Civil War, a person who believed in preserving the Union of American states

vagrancy laws laws that prohibit people from being idle, homeless, or wandering about with no visible means of support

viceroys the king's personal representative in a colonial government

vigilantes gangs of armed people who bully and threaten others into supporting their point of view, and punish those who do not

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About the Authors

James L. Haley is the author of sixteen books, including several on Texas history. They include *The Texas Supreme Court: A Narrative History, 1836–1986*; *Passionate Nation: The Epic History of Texas*; *Sam Houston*; and a seventh-grade biography, *Stephen F. Austin and the Founding of Texas*. Haley, who lives in Austin, Texas, is the recipient of many prestigious book awards, including two Spur Awards from the Western Writers of America and two T. R. Fehrenbach Book Awards from the Texas Historical Commission. His latest book, *The Shores of Tripoli*, is the first of a series of adventure novels set in the U.S. sailing navy during the early 1800s. It will be published in 2016 by G. P. Putnam's Sons.

Marilyn P. Duncan is an Austin-based writer, editor, and publications consultant. Among the books she has developed and edited for the Texas Supreme Court Historical Society are *The Laws of Slavery in Texas*, *The Texas Supreme Court: A Narrative History, 1836–1986*, and *Common Law Judge: Selected Writings of Chief Justice Jack Pope of Texas*. She is also the managing editor of the quarterly *Journal of the Texas Supreme Court Historical*

Society. As the Publications Director for the University of Texas Lyndon B. Johnson School of Public Affairs for many years, she led a variety of publishing programs, including the multi-year Guide to Texas State Agencies project and several public policy reports series.

ABOUT THE AUTHORS

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