



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Spring 2019 Vol. 8, No. 3 General Editor Lynne Liberato Executive Editor David Furlow

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Our Spring Board of Trustees meeting in San Felipe de Austin inspired a robust discussion of ambitious plans for the Society. [Read more...](#)



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Magna Carta

By Manuel González Oropeza

After the 1760-1808 reforms, Mexico's Internal Eastern Provinces included the New Kingdom of León, the Colonia de Nuevo Santander, Coahuila, and Texas. [Read more...](#)

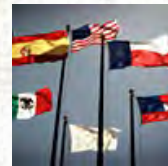


Flag of Coahuila and Texas

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The 1888-1959 Texas Supreme Court Courtroom

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The Spring Board Meeting at San Felipe de Austin Was a Runaway Success

Story and photos by David A. Furlow

Our Society went on the road to enjoy the Texas history on display at the San Felipe de Austin Museum and Visitors Center. [Read more...](#)



TSHA's 2019 Annual Meeting Panel: Texas Constitutionalism A to Z

By David A. Furlow

Our Society joined with TSHA to examine "The History of Texas's Constitutions, 1827 and Beyond" at TSHA's 123rd Annual Meeting. [Read more...](#)



Omni Corpus Christi, site of the Meeting

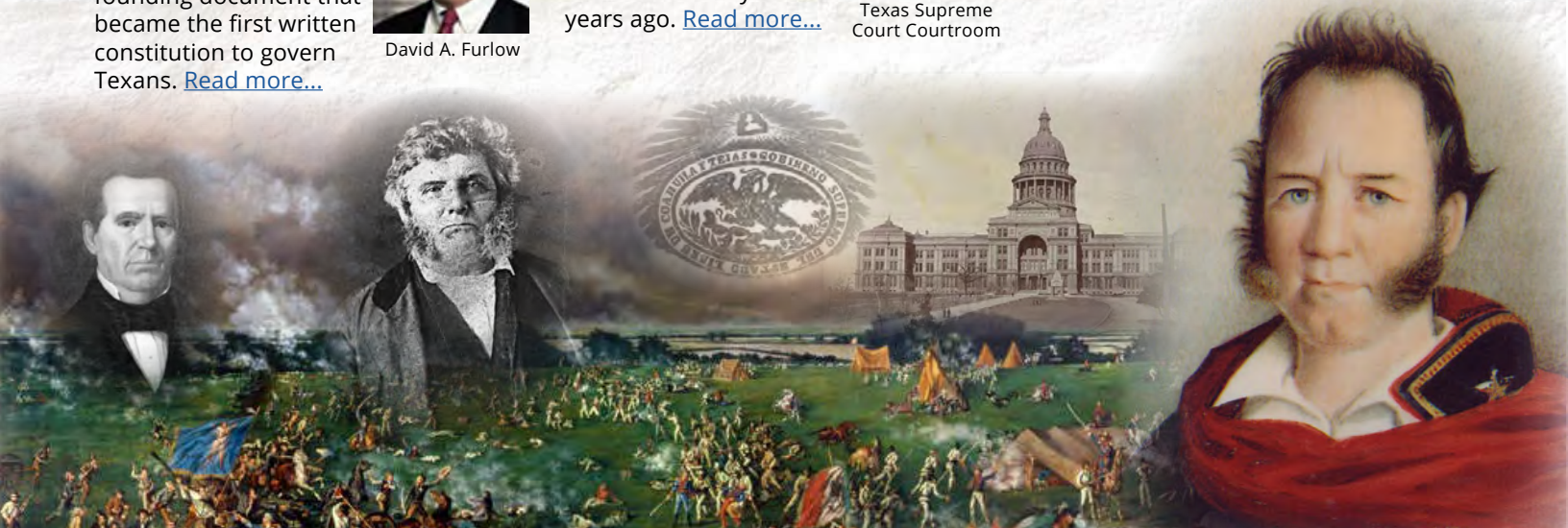
New Legal History Fellowship Will Honor Former TSCHS and TSHA President Larry McNeill

By Marilyn P. Duncan

The Society's Board of Trustees approved funding for a new fellowship in honor of one of TSHA's most esteemed leaders. [Read more...](#)



Larry McNeill



News & Announcements

[Society Trustee Justice Brett Busby Appointed to the Texas Supreme Court](#)

By Dylan O. Drummond

Sworn in March 20, Justice Busby is the first former United States Supreme Court clerk to serve as a Justice of the Texas Court.

[Read more...](#)



Justice Busby being sworn in

[Justice Jeff Brown and Former Supreme Court Clerk Brantley Starr Sit for Senate Judiciary Confirmation Hearing](#)

By Dylan O. Drummond

On April 10, Texas Supreme Court Justice Jeff Brown and former Supreme Court clerk Brantley Starr sat for their joint confirmation hearing to the federal bench.

[Read more...](#)



Justice Brown at the hearing

[Nominations Welcomed for the Texas Appellate Hall of Fame](#)

By Jackie Stroh

The Hall of Fame posthumously honors advocates and judges who made a lasting mark on appellate practice in the State of Texas. [Read more...](#)



[Manuel González Oropeza's Gift of Law to the Harris County Law Library](#)

By David A. Furlow

During the TSHA Annual Meeting in February, the Hon. Manuel González Oropeza gave our Society two important legal treatises.

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Magistrate Oropeza

[A Court First: Texas and Arkansas Supreme Courts Sit Jointly in Texarkana](#)

By Dylan O. Drummond

For the first time, the Texas and Arkansas Supreme Courts sat jointly in Texarkana, hearing oral argument before each court on successive days in late January. [Read more...](#)



At the border between the states

[Recent Honors and Awards](#)

We take note of honors bestowed recently on seven distinguished Texas justices, judges, and lawyers.

[Read more...](#)

[Third Texas Women Judges' Day at the Texas Capitol](#)

By Megan LaVoie, Office of Court Administration; and Dylan O. Drummond

On April 8, the Texas Senate honored and recognized the service of the more than 1,500 women judges throughout the state.

[Read more...](#)



Women judges at the Capitol

Membership & More

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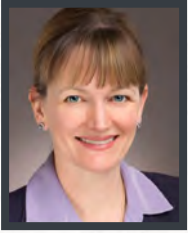
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FB: Texas Supreme Court Historical Society

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Marcy Hogan
Greer

Message from the *President*

Welcome to the Spring *Journal* (and my last letter as President!). For our Spring Board of Trustees' meeting, we took our show "on the road" to the San Felipe de Austin Historic Site, where Stephen F. Austin established a headquarters for his colony in Mexican Texas in 1823. The venue spawned some very creative ideas and inspired a robust discussion of ambitious plans for the Society. We also enjoyed a tour of the museum, and a real highlight was standing at the former location of William Barret Travis's office.

I am delighted to announce the Society's establishment of the Larry McNeill Research Fellowship in Legal History in honor of Larry's outstanding leadership as President and Trustee of the Society and President of the Texas State Historical Association. It is designed to encourage research and writing about Texas's long legal history among judges and justices, law students and lawyers, and established and aspiring historians.

Our amazing continuing educational programs continue. The Society presented a marvelous panel at the Texas State Historical Association's annual meeting in February. **Former Magistrate Manuel González Oropeza** of the Mexican Federal Election Court spoke about the 1827 Constitution of Coahuila y Tejas, **Bill Chriss** regaled the audience with his six constitutions of Texas from 1836 to 1876, and our Executive Director, **Sharon Sandle**, provided an insightful commentary on the history of women in the law in Texas. Thank you again to **David Furlow** for bringing together such a stellar panel.

On April 12, the Society held its biannual History of Texas Supreme Court Jurisprudence CLE program at the Texas Law Center. This year's program was a half-day event that featured a fascinating presentation by **Chad Baruch** on Texas Supreme Court briefing through the decades and a "views-from-the-front-lines" panel discussion on the history of school finance cases by **Chief Justice Nathan Hecht**, **Professor Albert Kauffman**, and attorneys **Richard Gray** and **David Thompson**. Thank you to **Lynne Liberato** and **Richard Orsinger** for organizing our flagship program again this year.

We continue to work closely with the *Texas Heritage Magazine*, and our Trustees **Judge Mark Davidson** and **David Furlow**, and our fabulous in-house editor, **Marilyn Duncan**, have submitted three articles for publication in that magazine at the end in May. Judge Davidson's

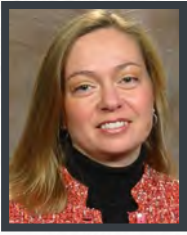
piece is about the drive to preserve deteriorating court records, and he includes as examples a number of cases that would have been lost without preservation efforts. One of those is the last appeal decided by the Republic of Texas Supreme Court, which involved two well-known Texans—Republic Presidents Sam Houston and Mirabeau B. Lamar. Houston sued Lamar to recover for the loss of his personal furniture and effects when Lamar’s inebriated supporters trashed the Texas White House in Houston while celebrating Lamar’s inauguration. David’s article is about the life of Hortense Sparks Ward, the champion of women’s rights who served as Special Chief Justice of the All-Woman Texas Supreme Court in 1925. Marilyn contributed an article about the Spanish roots of women’s rights in Texas, particularly in the area of property rights. The magazine will also include a feature on the Society’s Taming Texas books and classroom project.

Please mark your calendars for Friday, September 6, 2019, for the Society’s 24th Hemphill Dinner at the Four Seasons. We will be announcing our keynote speaker in the near future, and it is never too early to submit your sponsorships.

I invite you to take advantage of the educational and social opportunities available to you as a member of the Society and look forward to seeing you all soon.

MARCY HOGAN GREER *is a partner in the appellate boutique of Alexander Dubose Jefferson & Townsend in Austin, Texas.*

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Sharon Sandle

The Threads of Texas Legal History *Are Complex and Colorful*

This spring, the Society's Board of Trustees met at the San Felipe de Austin Historical Site for our spring Board meeting. For many of us, the highlight of our tour of San Felipe de Austin was standing on the site where William Barret Travis's law office once stood. It reminded me once again of the crucial role of lawyers in the history of Texas. Lawyers shaped Texas's history, but it's also true that the unique nature of Texas shaped our legal history as well.

The Society's panel at the Texas State Historical Association Annual Meeting this year in Corpus Christi featured papers by Dr. William J. Chriss and Judge Manuel González Oropeza tracing the history of the Texas Constitution from the 1824 Mexican Constitution through Texas's six constitutions as both a republic and a state. I was honored to serve as commentator for this panel, and as I read Dr. Chriss's and Judge Oropeza's exemplary discussions of the Mexican and Texas constitutions, it became clear to me that there are common threads that shaped Texas law and illustrate, for me, how Texas's unique characteristics shaped its legal history and how the Texas judicial system adapted.

For instance, one inescapable aspect of Texas's character is its sheer size. The challenge of imposing order on a territory the size of Texas was a challenge first to Spain, then to Mexico, and finally to the early Texans. By the early nineteenth century, Texas (also known as Tejas) was one of Spain's least populated provinces.¹ As Judge Oropeza notes in his paper, "Tejas had an almost non-existent Mexican/Spanish population; instead, it was filling up with scattered groups of Anglo-Saxon settlers. This stood in marked contrast with Coahuila, which had virtually no Anglo-Saxon settlers. During this period, Tejas settlers represented a small portion of [Coahuila y Tejas's] demography." Few trained lawyers and judges ventured into the Spanish communities north of the Rio Grande. No legally trained judges presided over trials or appeals inside the province of Tejas, and no university trained lawyers practiced law, or taught it, in Tejas.²

In the Spanish legal system, an *alcalde*, an official with administrative and judicial duties, administered the law locally. The *alcaldes* in provincial Tejas were not trained lawyers, nor were

¹ James L. Haley, *The Texas Supreme Court: A Narrative History, 1836-1986* (Austin: University of Texas Press, 2013), 8-9.

² Michael Ariens, *Lone Star Law* (Lubbock: Texas Tech University Press, 2011), 5.

they particularly well educated. And an appeal of the local *alcalde*'s decision would have to be made first to the provincial governor and then to the *audencia*, or royal appellate court, in Guadalajara. Although the Spanish system was a robust system that functioned effectively in other parts of the Spanish territories, in the early nineteenth century Texas frontier, few colonists had the resources to make use of the system.³

When Mexico gained independence from Spain, Stephen F. Austin obtained authority from the government in Mexico City to administer justice in his fledgling colony. Austin's first two *alcaldes*, Josiah Bell and John Tumlinson, were not trained in the law, nor could either speak Spanish, the only language in which Mexican law was printed.⁴ Appeals were handled by Austin himself until that task became too arduous, at which point Austin appointed a panel of *alcaldes* to take over the task. If a colonist wanted to take a case further than that, the case would be decided in Saltillo, hundreds of miles away. In 1834, Mexico attempted to assuage discontent in Texas by, among other concessions, establishing an appellate court in Texas. But by then, it was too late, and Texas was on the road to revolution.⁵

The Constitution of the Republic of Texas, adopted March 17, 1836, created the first Texas Supreme Court, and Congress established the Court by an act approved December 15, 1836. This Court consisted of the Chief Justice, elected jointly by both houses of Congress, and the elected judges of the district courts in the state. Although this gave Texas its first organized judicial system, in reality, the Republic had no permanent supreme court at all. All elected district judges served as *ex officio* Associate Judges of the Supreme Court automatically. The Republic Supreme Court was a temporary committee composed of the four district judges and presided over by the Chief Justice.⁶ Because these judges served dual constitutional roles as both district judges and Supreme Court Associate Judges, they had to split their time between their district and Supreme Court duties.

The first statutes of the Republic required Associate Judges to convene their district courts on various days in March, April, and October. As a result, Associate Judges would "ride the circuit" as a district judge during the spring and fall of the year to hold court throughout the counties within their district. That left the winter or summer for Associate Judges to meet and adjudicate appeals brought before the Supreme Court, the annual term of which was originally mandated by Congress to begin the first Monday of December. Between the two, Associate Judges spent much more time overseeing their districts than they did hearing appeals before the Republic Supreme Court. In fact, due to problems meeting quorums and other attendance issues, the Republic Supreme Court did not convene its first session until January 13, 1840—just over **three years** after it was created in December 1836.

Eventually, the pressure of a growing population replaced the problem of geographic size as a threat to the system. The Constitution of 1845 and subsequent Texas Constitutions established a more robust and complex court system consisting of a Supreme Court, district courts, county courts, and justice courts to deal with a flood of cases that threatened to overwhelm Texas's courts.

³ *Ibid.*

⁴ *Ibid.*, 7.

⁵ *Ibid.*, 12–13.

⁶ Haley, *Texas Supreme Court*, 18.

The system had periods of stability, but post-Reconstruction, Texas's population boomed, and the courts were once again overcrowded. By the end of the 1870s the Supreme Court had fallen nine hundred cases behind in its docket, and the Court of Appeals, which had been formed by the 1876 Constitution to handle the growing number of criminal appeals, was two hundred cases behind.⁷ The appellate courts were again reorganized by amendment in 1891, creating three courts of civil appeals and the Texas Court of Criminal Appeals to hear all appeals in criminal matters.⁸ Texas is one of only two states—the other is Oklahoma—with two courts of last resort: a Supreme Court and a separate court for criminal appeals. Today Texas has one of the most complex court systems in the nation.⁹

The issue of slavery provided yet another conflict that strained the early Texas court system. “The precarious contradiction inherent in maintaining a slave-holding republic” that Dr. William Chriss describes in his paper shaped Texas courts long after the Civil War ended.

There were three different forms of Reconstruction, and each had a separate and very different Supreme Court. Of the five justices elected to the short-lived “Presidential Reconstruction” Court, three had served in the Confederate Army and two had been judges during the Confederacy. Sitting in the aftermath of the Civil War, they had difficult decisions to make during a difficult time. One representative case was *Tippett v. Mize*, 30 Tex. 361 (1867). Mize sold a slave to Tippett in 1863. Tippett signed a note and deed of trust, using the slave as collateral. The slave escaped on May 1, 1865, six weeks before the “Juneteenth” emancipation. Tippett sued Mize on the note, since the collateral was both not findable and no longer eligible to be collateral. The Court disallowed the debt, finding that the changed legal position of the collateral prevented the debtor from paying the debt. This case, and others, reflected the prewar beliefs that the slaves were property, whose owners could dispose of them as property, subject to such common law defenses as failure of the consideration in defense to the enforcement of a note. Presidential Reconstruction was not to last. The anti-Southern wing of the national Republican Party concluded that progress toward Reconstruction could not be made when their former enemies were running the state and local governments and that freed slaves were being kept in a *de facto* if not *de jure* slavery.

To remedy the problem, Congress passed laws, adopted over President Andrew Johnson's veto, to create a governmental structure in which the Southerners had no voice, called “Congressional Reconstruction” by some and “Military Reconstruction” by others. General Philip Sheridan was given the power to appoint all public officials and to remove any official he found to be “an impediment to reconstruction.” This included removing all five members of the Supreme Court and appointing three new judges to take their place. The Military Court was not elected by the people nor authorized by the Texas Constitution. As a result, its opinions have historically not been accorded any precedential value.

The Constitution of 1869 created a three-member Supreme Court appointed by the

⁷ *Ibid.*, 92, 95.

⁸ Ariens, *Lone Star Law*, 203.

⁹ George D. Braden, et al., *The Constitution of the State of Texas*, Art. IV, Sec. 20–21, pp. 366–67; available online at <https://www.sll.texas.gov/library-resources/collections/bradens-annotated-texas-constitution/>.

Governor for nine-year terms. Republican Governor E. J. Davis appointed the justices (called judges in the new Constitution), and the Texas Senate confirmed them, in accordance with the Constitution. As Dr. Chriss notes in his paper, this Court is known for the much maligned “semicolon case,” and the Court has been referred to as the Semicolon Court, not a term used with either affection or respect. The scars of the opinion, even though it was ignored, continue to this day. Two Supreme Court justices, Justice Oran Roberts in 1878 and Judge James Norvell in 1959, wrote that by tradition, cases from the Semicolon Court should not be cited to the Court, since they are given no precedential value (which is actually not true). Even a man as erudite and scholarly as Chief Justice John Hill wrote in 1980 that “The justices were not necessarily unfair or incompetent, just unwanted.”

The Constitution of the Republic provided for election of Supreme Court justices by Congress. The Constitution of 1845 was amended in 1851 to provide for the popular election of justices. It’s not hard to imagine how resentment over the appointed Semicolon Court could manifest as a thirst for judicial reform. Dr. Chriss points out in his paper that “reforming the judiciary was high on the list of almost all the delegates at the 1875 constitutional convention, and the issue symbolized all that chafed about Reconstruction. In large part because of the semicolon decision, the 'platform' ballyhooed for weeks prior to the convention by the Democrat editors of the *Austin State Gazette* began with demands for 'The election of Supreme, District, and County Court Judges by the people... (and) reduction in the number of District Judges, as well as their salaries.'”

The partisan election of judges in Texas has come under a good deal of criticism. A recent editorial from the *Houston Chronicle* opined that “Politics is often about passion. It’s no tragedy when a population rises up and tosses one party or another out of office. But judges aren’t supposed to be political. They run their courtrooms according to strict canons of judicial ethics. We should insulate them from political pressures, not expose them to partisan politics every time they ask voters to stay or get on the bench.”¹⁰ But the election of judges in Texas is a product of tradition seasoned by resentment over a period when Texans believed they lost their voice in deciding who should serve on the judiciary.

On January 10, 2018, a special ceremony was held in the Supreme Court Courtroom to dedicate the portraits of two Supreme Court judges from Texas’s Reconstruction era—Chief Justice Wesley B. Ogden and Justice Colbert Coldwell. This event was a small step towards healing the wounds of that era. As Justice Ken Wise noted at our Spring board meeting in San Felipe de Austin, the dedication of the portraits of Chief Justice Ogden and Justice Coldwell may be the first true gesture of post-Civil War reconciliation in Texas history.

¹⁰ “Partisan judicial elections are wrong for Texas” [editorial], *Houston Chronicle*, April 27, 2019.

SHARON SANDLE, in addition to serving as the Society’s Executive Director, is Director of the State Bar’s Law Practice Resources Division and of TexasBarBooks.

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Fellows Column

By David J. Beck, Chair of the Fellows



Photo by Alexander's Fine Portrait Design-Houston

The 2019 Annual Fellows Dinner was another success. All the Justices from the Texas Supreme Court joined the Fellows in February at the Blanton Museum of Art in Austin for a wonderful evening of art, dinner, and conversation.

We appreciate Justice Green, the Court's liaison to the Society, for coordinating the scheduling of the dinner so that the other members of the Court could attend. This unique event is one of the benefits of being a Fellow. The attached photos will give you some sense of the evening's elegance, uniqueness, and fellowship.

Our acclaimed judicial civics and history books, *Taming Texas: How Law and Order Came to the Lone Star State* and *Law and the Texas Frontier*, continue to be taught in schools throughout Houston. In conjunction with the Houston Bar Association (HBA), this year we are teaching the Taming Texas program to over 5,300 seventh-grade students in the Houston area. We would like to thank the HBA for recruiting the judges and lawyers to serve as volunteers to teach this important curriculum. Because of the vast resources required to teach this number of students, we would not have been able to implement such a large-scale program without the HBA's support. We certainly could not have done it without the hard work of the HBA program chairs, Justice Ken Wise and Richard Whiteley, who made the classroom program a major success. Now in our fourth year of partnering with the HBA, we have presented Teach Texas to over 21,000 Houston-area students. This year we expanded the program to Dallas and we plan to add Austin next year.

As we near completion of the third book in the Taming Texas series, entitled *The Chief Justices of Texas*, we are beginning work on the fourth book on women in Texas law. Jim Haley and Marilyn Duncan are coauthors of the series and they already have done a great deal of work to develop these terrific books.

The Fellows are a critical part of the annual fundraising by the Society and allow the Society to undertake new projects to educate the bar and the public on the third branch of government and the history of our Supreme Court. We are in the process of nominating the Fellows Class of 2019. If you are not currently a Fellow, please consider joining the Fellows and helping us with this important work.

Finally, we are in the process of considering future projects. So please share with us any suggestions you may have. If you would like more information or want to join the Fellows, please contact the Society office or me.

FELLOWS OF THE SOCIETY

Hemphill Fellows

(\$5,000 or more annually)

David J. Beck, Chair*

Joseph D. Jamail, Jr.* (deceased)

Richard Warren Mithoff*

Greenhill Fellows

(\$2,500 or more annually)

Stacy and Douglas W. Alexander

Marianne M. Auld

S. Jack Balagia

Robert A. Black

Hon. Jane Bland and Doug Bland

E. Leon Carter

Kimberly H. and Dylan O. Drummond

David A. Furlow and Lisa Pennington

Harry L. Gillam, Jr.

Marcy and Sam Greer

William Fred Hagans

Lauren and Warren Harris*

Thomas F.A. Hetherington

Jennifer and Richard Hogan, Jr.

Dee J. Kelly, Jr.*

Hon. David E. Keltner*

Thomas S. Leatherbury

Lynne Liberato*

Mike McKool, Jr.*

Ben L. Mesches

Nick C. Nichols

Hon. Jeffrey L. Oldham

Hon. Harriet O'Neill and Kerry N. Cammack

Hon. Thomas R. Phillips

Hon. Jack Pope* (deceased)

Shannon H. Ratliff*

Harry M. Reasoner

Robert M. Roach, Jr.*

Leslie Robnett

Professor L. Wayne Scott*

Reagan W. Simpson*

Allison M. Stewart

Peter S. Wahby

Hon. Dale Wainwright

Charles R. Watson, Jr.

R. Paul Yetter*

*Charter Fellow

Highlights of the Annual Fellows Dinner

Blanton Museum of Art Austin, Texas February 20, 2019



Photos by Mark Matson



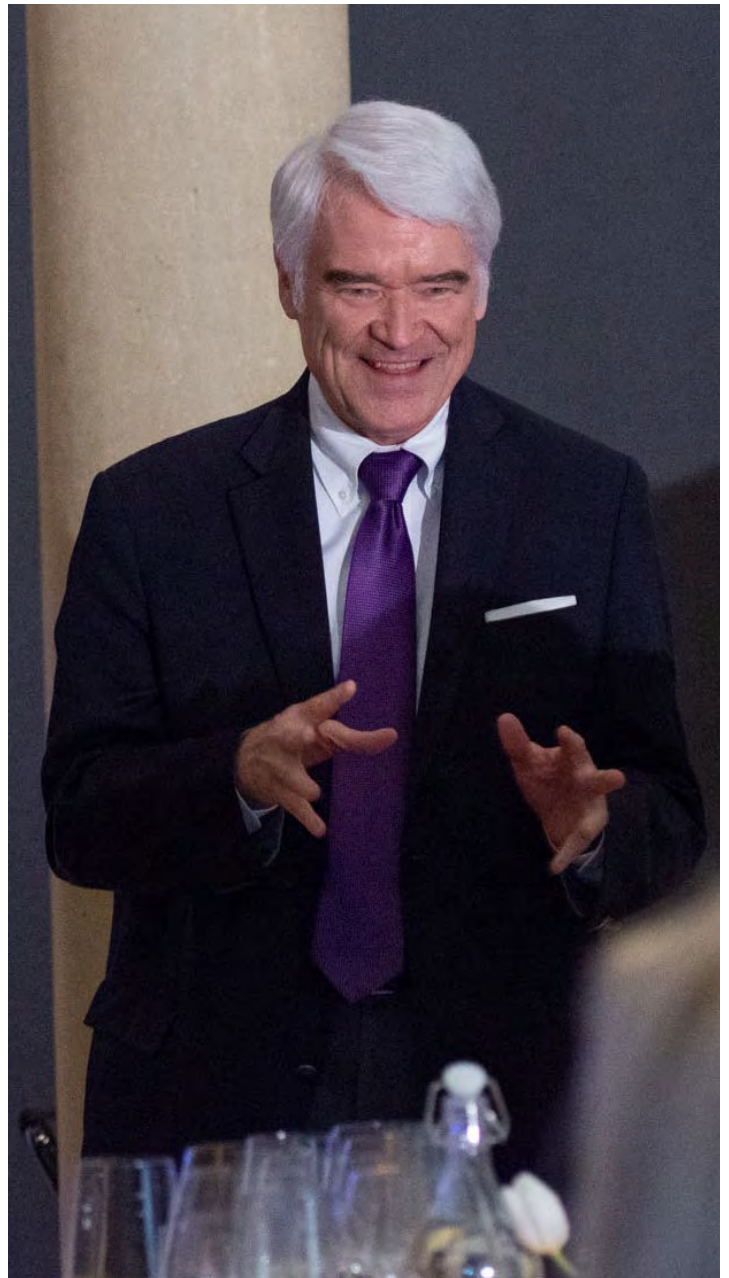


Top: David Beck, Warren Harris, Sharon Sandle
Bottom: David Beck, Justice Eva Guzman



Top: Hon. Harriet O'Neill, Justice Paul Green
Bottom: Justice Jeff Brown, Susannah Brown, Hon. Dale Wainwright

Justice Jeff Boyd



Chief Justice Nathan Hecht



Justice Debra Lehrmann, Judge Priscilla Owen, Hon. Harriet O'Neill



Top: Justice Jimmy Blacklock, Jessica Blacklock. Bottom: Justice John Devine, David Furlow



Lynne Liberato, James Flodine, Debbie Wainwright

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David A. Furlow

Commemorating Texas Constitutionalism

“I have listened to your wishes, and, as a tender father, have consented to that which my children think conclusive to their happiness. I have sworn to that constitution for which you are sighing, and I will ever be its firmest supporter...Spaniards, trust to your king, then, who addresses you...with a deep sense of the exalted duties imposed on him by Providence.”

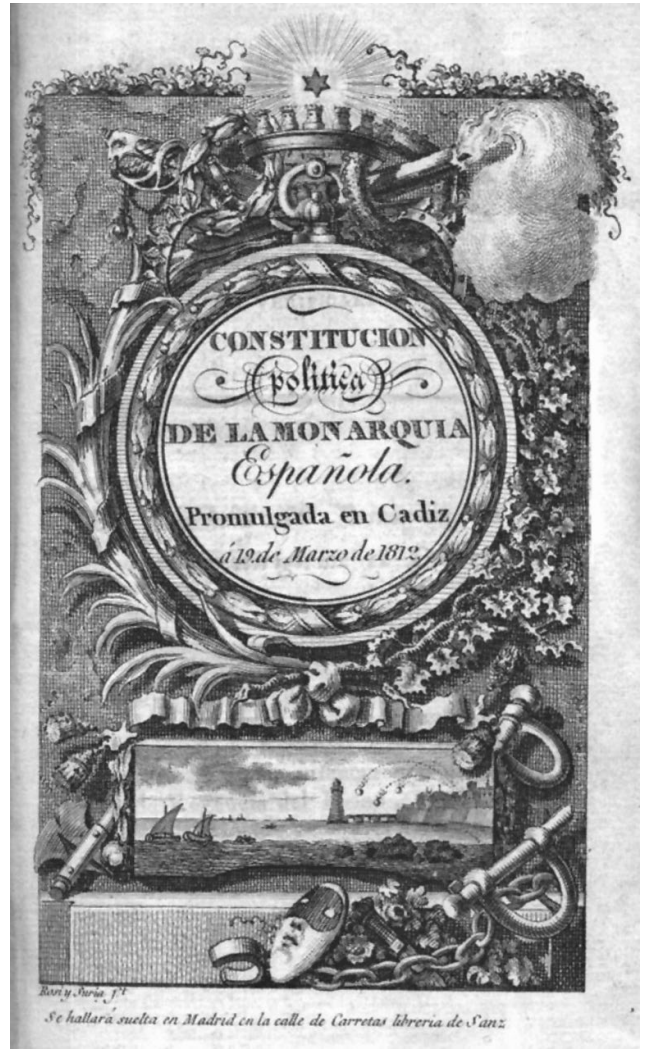
— King Ferdinand VII of Spain to his people, while restoring the Constitution of Cádiz (1812) in response to the demands of Major Rafael de Riego’s military junta in Madrid (March 10, 1820).¹

N*o one expects the Spanish Constitution.* At least, not in a column about the history of Texas constitutionalism. Nevertheless, it’s the place we begin this issue, and for a good reason. For a brief, shining moment between the collapse of Napoleonic power on the Iberian Peninsula in 1812 and a regal reassertion of Divine Right Rule by a tyrannous king in 1814, the Spanish promulgated and followed a liberal founding document that became the first written constitution to govern Texans.

A Spanish national *cortes*, often referred to as a General Court but in actuality a popularly elected parliament, promulgated the Political Constitution of the Spanish Monarchy (in Spanish, *Constitución Política de la Monarquía Española*), also known as the Constitution of Cádiz (in Spanish, *Constitución de Cádiz*), on March 19, 1812.² A liberal response to Napoleon’s invasion of Spain, the Cádiz Cortes, Spain’s national parliament, promulgated the Constitution of 1812 on St. Joseph’s Day to win popular support against the French puppet-king Napoleon Bonaparte imposed on Spain. The parliamentarians did so at a desperate time, while besieged

¹ Ferdinand VII, Proclamation (March 10, 1820), restoring the 1812 Constitution of Cádiz.

² “The Political Constitution of the Spanish Monarchy,” *Biblioteca Virtual “Miguel de Cervantes,”* online version of a partial translation originally published in *Cobbett’s Political Register*, Vol. 16 (July–December 1814).



Left: A plaza in St. Augustine contains the nation's only monument to Spain's Constitution of 1812, erected when St. Augustine was capital of Florida. The Cádiz Cortes's constitution governed Spain's colonies abroad, including Florida and Texas. Right: Frontispiece of a contemporary edition of that constitution, Wikiwand.

in a garrison town by Napoleon's troops.³

The liberal Peninsulares (Spaniards born in Iberia) and their overseas allies the Criolos (Creoles, men of Spanish blood born in the Empire) comprised a majority of the Cádiz Cortes's deputies, because representatives of the Spanish people at home and abroad had refused to obey the dictates of José I, Napoleon Bonaparte's older brother Joseph-Napoléon Bonaparte. They confronted not only the French but also their fellow Spaniards—the Church, large landowners, and an aristocracy whose members feared popular rule and representative government even more than they loathed foreign invaders. Fearing that the French would storm their defenses, the liberal Gaditano deputies who made up a majority of the Cádiz Cortes's 300 deputies drafted a liberal constitution and proclaimed the Spanish Empire to be a constitutional monarchy where ultimate power resided in a parliament.

³ See generally Nettie Lee Benson, ed., *Mexico and the Spanish Cortes* (Austin: University of Texas Press, 1966); Charles J. Esdaile, *Spain in the Liberal Age* (Oxford, Eng. and Malden, Mass.: Blackwell, 2000).

The Constitution of 1812 granted the common people rights to vote and to enjoy equality under the law, protected freedom of speech and the press, enshrined property rights, resurrected privileges commoners had not exercised before (or at least not for four centuries), reduced the Spanish monarchy's power, limited the privileges of the church, and encouraged free enterprise.⁴ It resulted in many cities and towns throughout the Spanish Empire adding a "Plaza de la Constitution" or an "Avenida de la Constitution" to their city grids and town plans. One of those cities was St. Augustine, Florida.⁵ The promise of a Spanish constitutional monarchy resulted in the erection of a monument that still survives in a downtown plaza in St. Augustine. The promise lasted only for a while. A very short while.

Spain's burst of constitutionalism offered its colonial subjects hope of a radically reformed empire based on law rather than a monarch's prerogatives, personal whims, and cruelty. It decreed that the government must create one *ayuntamiento*, or representative body, for every 1,000 people, in all Spanish lands. It granted voting rights to everyone who had an ancestor who had lived either in Spain or in the far-flung outposts of the Spanish Empire, everyone who had been naturalized, and every slave who had been emancipated.⁶ Over ten percent of the deputies present at the Cortes (37 out of 303) were born in Spanish territories abroad, including Peru, Cuba, Venezuela, Puerto Rico, and the Philippines.

Subsequent years revealed how an authoritarian ruler can snuff out a republic. Spain's constitutional monarchy ended six weeks after its exiled king, Ferdinand VII, returned to power in Spain in March 1814. Ferdinand declared the new constitution null and void because it interfered with his unrestrained exercise of absolute power. He refused to permit parliamentarians, as representatives of the people, to impose any restrictions on his sovereign power lest those limits reduce him to the status of "a clerk":

All the freedoms of the ancient monarchical constitution have been overturned, while all the revolutionary and democratic principles of the French Constitution of 1791 have been copied...Thus are promulgated not the fundamental laws of a limited monarchy, but those of a popular government presided over by a chief or magistrate, who is only a clerk, not a king...I declare their constitution and their decrees null and void now and forever.⁷


The Spanish lost their Constitution of 1812, but the people of St. Augustine did not lose the 18-foot obelisk liberal leaders erected in its honor during their empire's brief experiment

⁴ "History—La Pepa 1812: Spain's First Constitution," Andalusia website, <http://www.andalucia.com/history/la-pepa.htm>.

⁵ Kimeko McCoy, "Spanish Constitution links St. Augustine to Spanish heritage," <https://www.staugustine.com/st-augustine-450th/2015-04-12/spanish-constitution-links-st-augustine-spanish-heritage>.

⁶ The 1812 Constitution applied to Spaniards living in both Mexico and Texas. Articles 1, 5 and 10 decreed that the Empire consisted of the territory of Spain and defined the Empire's new citizens to include "freemen born and bred in the Spanish dominions," "foreigners who may have obtained letters of naturalization from the Cortes," or "[people] who, without [these letters] have resided ten years in any village of Spain, and acquired thereby a right of vicinity," as well as "slaves who receive their freedom in Spanish dominions." See "Political Constitution," *Biblioteca Virtual*.

⁷ James Harvey Robinson and Charles Austin Beard, *Readings in Modern European History* (Boston: Ginn & Company, 1909), vol. 2, 23, 25.




City of St. Augustine
 Nation's Oldest City
 Founded 1565

CONSTITUTION MONUMENT

Monumento a la Constitución

1813



On March 19, 1812, the Spanish Parliament in Cádiz wrote the first Spanish Constitution and issued a Royal Decree for all Spanish towns throughout the empire to build monuments and rename their main plazas La Plaza de la Constitución in commemoration of the new constitutional government in Spain. The Constitution Monument in St. Augustine, the capital of the Spanish colony of Florida, was constructed in 1813 in celebration of the newly formed government in Spain. On September 15, 1814, news arrived from Havana that the constitutional government in Spain had been overthrown and returned to the Monarchy. A second Royal Decree was issued to destroy all the constitution monuments throughout the Spanish empire worldwide. St. Augustine's officials resisted the order and refused to tear down what they had sacrificed much to build. It is believed that the Constitution Monument in St. Augustine is the only surviving, unaltered monument in the world from this campaign.

Spanish - Florida Foundation
 500 Years

Government
 of Spain

Colonial
 St. Augustine
 Foundation

Photo of Constitution Monument in St. Augustine, Florida, courtesy of a Tweet by the Spanish Embassy in the United States.

with constitutional monarchy. When King Ferdinand delivered a decree compelling the town council to remove the monument, his subjects in St. Augustine refused to obey. They waited for the day when their king, or a successor, would restore their first constitution.

The long-awaited day of liberation came on March 10, 1820. Less than a year earlier, King Ferdinand was busy raising ten battalions of *soldados* to defeat anti-Spanish rebels fighting for independence in Mexico and South America. The king gave Major Rafael del Riego command of his Asturian Battalion. When Riego arrived in Cádiz, home of the 1812 Constitution, he and other liberal officers took inspiration from stories of the Cádiz liberals.

Major Riego led his men into mutiny on January 1, 1820 and demanded the return of the 1812 Constitution. Riego led his soldiers through Andalusia's towns and cities to foster an anti-absolutist uprising, but discovered that most people there were indifferent to revolution's charms. The people of Galicia, long accustomed to challenging royal rule in Madrid, rose in revolt, and their fervor inspired a nationwide uprising. Meanwhile, General Francisco Ballesteros and his men surrounded the royal palace in Madrid on March 7, 1820. A military junta that included Major Riego and General Ballesteros confronted a monarch feared for his oppression

and loathed for his corruption. Crowds of furious protesters filled Madrid's massive Plaza Mayor shouted Trócala, perro! *Swallow it, dog!* In a reversal of roles, the major compelled his commander in chief, Ferdinand VII, to "swallow it," and to endure the humiliation of bending his haughty head before the people whose taxes paid for his palaces. On March 10, 1820, Major Riego's junta compelled King Ferdinand to restore the Constitution of 1812.

Rebels throughout the Americas welcomed Major Riego's revolt, but refused to welcome the return of troops who fought to defend Spain's empire. As José de San Martín announced in his September 1820 proclamation to the people of Lima, Peru, "The revolution in Spain is of the same nature as our own revolution. Both of these revolutions were caused by oppression: the object of both revolutions is to ensure liberty to the people. But Spanish America can view the liberal constitution of Spain as a fraudulent attempt to conserve a colonial system which can no longer be maintained by force."⁸

In Mexico, anti-Spanish rebels rejected any idea that Spain's Peninsulares should renew their rule, whether through royalist command or republican constitutionalism. In Mexico, a Dominican friar, Servando Teresa de Mier, expressed it well in his *Memoria* in 1821:

All these concessions are insults we suffer, not only on account of the rights of our mothers who were Indians, but also by reason of the pacts of our fathers, the conquistadors, who gained everything at their own cost and risk...America is ours because our fathers took it, thus creating a right; because it was of our mothers; and because we were born in it....God has separated us from Europe by an immense sea and our interests are distinct. Spain never had any right here.⁹

The Mexican Revolution of 1821 ended any uncertainty about the sway of Spain's 1812 Constitution in Texas. It did so even before King Louis XVIII's French intervention on behalf of the ultra-conservative Holy League ended constitutional government by restoring Ferdinand to full, absolutist power in 1823.

Yet for a short time between 1812 and 1814, Spain's Constitution of 1812 offered Tejano settlers an example of how a free people could free themselves from oppression and govern themselves afterwards. The Spanish example, along with the U.S. Constitution, inspired Mexicans to frame the liberal Constitution of 1824, which had a profound effect on Texas's liberty as well as its legal history.

This issue of the *Journal* takes up the tale where Spain's Constitution of 1812 ends: when liberal constitutionalism culminated in Lorenzo de Zavala's signing of the Mexican Federal

⁸ José de San Martín, proclamation to the people of Lima, Peru (September 1820), in the letters of W.S. Robertson, *et al.*, in Vincente Lecuna, *La Entrevista de Guayaquil: restablecimiento de la verdad histórica* (Caracas, Ven.: Academia Nacional de la Historia de Venezuela, 1948), 39, 193, 203.

⁹ Servando Teresa de Mier, *Memoria Político-Instructiva, Enviada Desde Filadelfia En Agosto de 1821, Á Los Gefes Independientes del Anáhuac, Llamado Por Los Españoles Nueva-España* (Mexico City: 1821), 124, in "José Servando Teresa de Mier Noriega y Guerra Papers, 1808-1823," Benson Latin American Collection, General Libraries, University of Texas at Austin, in D.A. Brading, *The First America: The Spanish Monarchy, Creole Patriots and the Liberal State 1492-1866* (Cambridge, Eng.: Cambridge University Press, 1821), 124.

Constitution of 1824. In the first of this issue's lead articles, "Genesis of the Constitution of Coahuila and Texas: Debates and Agreements in the Construction of Its Only Magna Carta," the Hon. Manuel González Oropeza, a Professor of Law at the National University of Mexico and, from 2006 to 2016, a Magistrate Judge of the Supreme Court for Elections in Mexico, analyzes Texas's first state constitution—the 1827 Constitution of the Mexican twin-state of Coahuila and Texas.

Magistrate Oropeza starts on November 17, 1821, when Mexico's Constitutional Congress adopted a law of convocation in which it recognized that all of its provinces were part of the new nation being formed. If you want to understand the history of how Texans across the centuries have striven to erect a framework of law to guide and restrain its governors, the place to begin is with the paper the Magistrate presented as part of the Texas Supreme Court Historical Society's panel program at the 2019 Texas State Historical Association's Annual Meeting this past February.

Historian, attorney, and author William J. "Bill" Chriss's lead article picks up our story in the Texas Revolution of 1835-36 and continues it to the present day with his TSHA 2019 Annual Meeting paper, "Six Constitutions over Texas, 1836-1876." Beginning with an examination of *altérité* (otherness) historical theory and competing explanations of conflicts among ethnic groups, he seeks to understand and explain the powerful unseen forces moving beneath the surface of the Lone Star State's centuries-long constitutional history.

Bill Chriss begins with the Republic of Texas's 1836 Constitution, moves on to cover the 1845 Constitution that governed the Lone Star State at its annexation to the United States, and then investigates the Confederate State Constitution the Secession Convention adopted when it led this state into the Civil War. He presents Anglo-American legal traditions that accord with William E. Gladstone's reverence for the British and American constitutions, "As the British Constitution is the most subtle organism which has proceeded from the womb and the long progression of progressive history, so the American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the mind and purpose of man."¹⁰ This fine paper then marches through three constitutions that echo the rise and fall of Reconstruction: those of 1866, 1869, and 1876, the date of our current state constitution.

Next comes Josiah Daniel. Recently retired from large law firm practice, he has fully engaged with the practice of legal history by presenting his article "The Number Nine: Why the Texas Supreme Court Has the Same Number of Justices as the United States Supreme Court." There's nothing mystic here. His scholarly article examines how Texas voters moved from their comfort with a three-justice Supreme Court of Texas to embrace, in 1945, a constitutional amendment that gave the Lone Star State a nine-justice court like that of the U.S. Supreme Court.

A photo-rich feature, the first of several stories I wrote, covers Magistrate Oropeza's and Bill Chriss's panel presentations, as well as those of the Society's President Marcy Hogan Greer's introduction and Society Executive Director Sharon Sandle's TSHA Commentator speech at this year's annual meeting. Read the article and you'll get a sense of what it's like to participate in one

¹⁰ William E. Gladstone, "Kin beyond the Sea," *The North American Review* (September-October 1878), 185.

of the panel programs through which our Society fulfills its mission of preserving court history and presenting it to the public.

It's one thing to address an audience of historians and history-lovers at a statewide conference, but another thing altogether to take a field trip to see where Texans made history. That's what this Society did on March 28, 2019, when we conducted our Spring 2019 Board of Trustees and Members Meeting at San Felipe de Austin, the capital of empresario Stephen F. Austin's Anglo-American colony from 1821 through 1836 within the Department of Victoria in the Mexican twin-state of Coahuila and Texas. In this article, you can watch your Society's Board make important decisions about the way it fulfills its historical mission. You can follow your colleagues, or retrace your own footsteps, through one of Texas's best history museums. Best of all, you can see where Alamo hero William B. Travis conducted his law practice—and you can even see the dominoes he left behind to be consumed by the fire that reduced a fine town to scorched earth in 1836.

Yet another feature shows how the Society fostered the study of Texas constitutionalism by contributing two fine, scholarly works—the Hon. Manuel González Oropeza and Jesús Francisco “Frank” de la Teja's *Actas del Congreso Constituyente de Coahuila y Texas de 1824 a 1827: Primera Constitución bilingüe, a/k/a, Proceedings of the Constituent Congress of Coahuila and Texas, 1824–1827: Mexico's Only Bilingual Constitution* (Mexico City: Tribunal Electoral del Poder Judicial de la Federación, 2016) and Magistrate Oropeza's *Digesto Constitucional Mexicano, Coahuila* (Mexico City: Suprema Corte de Justicia, 2015)—to the Harris County Law Library to foster historical studies of law in Coahuila and Texas from 1827 through 1836.

Finally, we present a series of recent announcements and news items that reflect the present reality of Texas constitutionalism—the appointment of judges and justices to high office, the first oral argument in Texarkana, and our Board's approval of an exciting new educational program, the establishment of the Larry P. McNeill Fellowship in Legal History—and much, much more. From the Cádiz Cortes's promulgation of the Political Constitution of the Spanish Monarchy in 1812 to the appointment of a Texas Supreme Court Justice in 2019, this issue presents outstanding Alpha to Omega coverage of Texas constitutionalism.

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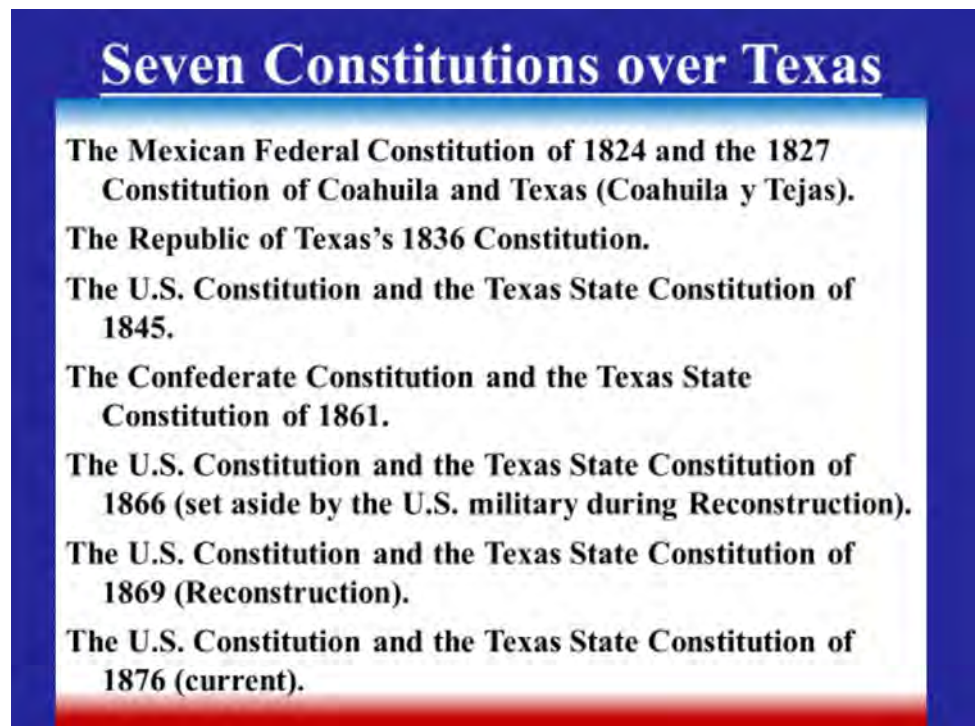
Genesis of the Constitution of Coahuila and Texas: Debates and Agreements in the Construction of Its Only Magna Carta

By Manuel González Oropeza

Background

Following the Spanish Bourbon dynasty's 1760–1808 reforms,¹ Mexico's Internal Eastern Provinces included four separate state governments: the New Kingdom of León, the Colonia de Nuevo Santander, Coahuila, and Texas.² On November 17, 1821, Mexico's Constitutional Congress adopted a law of convocation in which it recognized that all of those provinces were part of the new Mexican nation then being formed.

A few years later, on June 17, 1823, another convocation was issued for the second Mexican Constitutional Congress, where the Internal Eastern Provinces remained unchanged. Coahuila and Texas were still considered part of one nation, together with Nuevo León and Nuevo Santander, the latter of which became the state of Tamaulipas, as confirmed in the federal Constitutive Proclamation of November 1823.



The drafters of Mexico's 1824 Constitution³ deemed Nuevo León to be a single state and separated Coahuila and Texas from it.⁴ They united Coahuila and Texas as a single state

¹ Luis Jáuregui, "Las reformas borbónicas," *Nueva historia mínima de México ilustrada* (Mexico City: El Colegio de México, 2004), 199-201.

² In 1726, Fernando Pérez de Almazán separated Coahuila from Tejas (also known as *Techas* and *Texas*) administratively, establishing the town of Los Adaes, in what is now east Texas, as the first capital of Tejas, and Monclova as the capital of Coahuila. James L. McCorkle, Jr., "Los Adaes," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/>.

³ *Constitución federal de los Estados Unidos Mexicanos sancionada por el Congreso General Constituyente el 4 de Octubre de 1824* (Guadalajara: Poderes de Jalisco, 1973).

⁴ Edmundo O'Gorman, *Historia de las divisiones territoriales de México* (Mexico City: Porrúa [Sepan Cuántos 45],



Map of the States of Mexico, 1824. Wikimedia Commons.

for the duration of the federal constitution, comprising a territory of more than 800,000 square kilometers.⁵ This union of Coahuila and Texas became effective on the publication date of the new combined state's constitution, on March 11, 1827, when this new state became, at that time, the largest state in all of Mexico.⁶

A rivalry between two cities then began to emerge about which one should become the state capital of Coahuila and Texas. Monclova and Saltillo were the main contenders for acquiring the status of state capital, and that rivalry permeated the state's first years.⁷

This state incorporated the sparsely populated Spanish provinces of Texas and Coahuila. Although the combined state retained the same borders as in the colonial period, it excluded areas around El Paso. The deputy representative of Texas in the Constitutional Congress, Erasmo Seguín (1782–1857), proposed that Texas become a *federal territory* during the constitutional debates of 1823–1824.⁸ He worried about the inherent imbalance between the two parts of the state in population and resources.⁹

5th ed. 1979), 61; Manuel González Oropeza and Pedro Alfonso López Saucedo, "Coahuila and Texas, a Shared History of the Mexican Federation," 141–86, 143, in Manuel González Oropeza and Jesús Francisco "Frank" de la Teja, *Actas del Congreso Constituyente de Coahuila y Texas de 1824 a 1827: Primera Constitución bilingüe, a/k/a, Proceedings of the Constituent Congress of Coahuila and Texas, 1824–1827: Mexico's Only Bilingual Constitution* (Mexico City: Tribunal Electoral del Poder Judicial de la Federación, 2016) (hereinafter, "Actas"), volume I. See also "Coahuila and Texas," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/usc01>.

⁵ When the Federal Constitution of the United Mexican States (*Constitución federal de los Estados Unidos Mexicanos*) was signed on October 4, 1824, Article 5 established the state of "Coahuila y Tejas" as part of the Mexican nation. S.S. McKay, "Constitution of 1824," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/ngc>. This fundamental law recognized Alta California and Santa Fe of New Mexico, huge in size but smaller in population, not as states, but as *federal territories* instead.

⁶ S.S. McKay, "Constitution of Coahuila and Texas," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/ngc01>.

⁷ During 1827 and 1828, the rivalry between Monclova and Saltillo caused the seats of the powers to be divided, with the governor dispatching in Monclova and the Legislature in Saltillo. See Pablo M. Cuéllar Valdés, *History of the State of Coahuila* (Saltillo: Library of the Autonomous University of Coahuila, 1979), vol. 1, 115.

⁸ The concept of federal territory came from the U.S.A.'s experience with the Northwestern Territories (1787). See, e.g., Editors, History.com, "Congress enacts the Northwest Ordinance," <https://www.history.com/this-day-in-history/congress-enacts-the-northwest-ordinance>.

The renowned delegate-representative for Coahuila, José Miguel Ramos Arizpe,¹⁰ acknowledged the problematic consequences of an independent state. Ramos Arizpe was not willing to combine Coahuila with other surrounding states like Nuevo Leon or Tamaulipas, because he knew that Coahuila could not compete in either population or economy and, therefore, would become the weaker partner. Ramos Arizpe understood that the



The flag of Coahuila and Texas featured a star for each of the two former provinces. Wikimedia Commons.

most viable option was to accept Coahuila as a free and sovereign state, then combine the territory of Texas with it. In this way, Coahuila and Texas strengthened their statehood through unification, instead of weakening their polities by severing ties.

To convince Texans of the advantages of a state partnership with Coahuila, Ramos Arizpe wrote a letter to the municipality of Béxar (San Antonio), in which he warned its political leaders that the Mexican federal government would take control over the public lands if Texas

⁹ The long distance from Mexico City to Texas, and the constant danger along the roads on those journeys, were a constant preoccupation of the Mexican government during the 1820s. During the debates of the 1827 Constitution there were demands that authorities respond to and minimize raids by “barbarous” Indians (the Comanches, Tawakonis, Toavayas, Huecos, Cherokees, Lipan Apaches, etc.), as well as the abuses of some American settlers and adventurers; that is, the problems of a region such as Texas were different from those of Coahuila itself, despite sharing the status as a single state. See Oropeza and Saucedo, “Coahuila and Texas, a Shared History,” 143, in Oropeza and de la Teja, discussing *Actas*, vol. 2, 1826, Session of October 9, 1827.

¹⁰ Born on February 15, 1775 in Coahuila (San José de la Capellanía), Arizpe died in Puebla on April 28, 1843. See generally Alfonso Toro, *Don Miguel Ramos Arizpe, “Padre del Federalismo Mexicano”* (Saltillo, Mex.: Coordinación General de Extension Universitaria y Difusión Cultural 1992); Carlos González Salas, *Miguel Ramos Arizpe: Cumbre y Camino* (Mexico City: Porrúa 1978). The choice of Ramos Arizpe as a delegate to represent the Internal Provinces of the East in Spain’s Cortes of Cádiz in 1810 (Spain’s Parliament called in response to Napoleon’s invasion of France) is worthy of a novel, as is his incessant concern to present the demands of the inhabitants of New Spain (later, Mexico) before the Cortes of Cádiz. See Roberto R. Calderón, “Tejano Politics,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/wmtk>. On March 22, 1811, Ramos Arizpe took office as delegate before the Cortes of Cádiz and immediately proposed the representative government of the localities and the political decentralization of the government, through the future provincial councils, favoring national representation, since he defended the important novelty that the delegates should not exclusively represent their constituency, but should instead demonstrate their loyalty to the entire nation. Afterwards, Ramos Arizpe returned to Mexico and won election in Coahuila to serve in the Constitutional Congress that began on October 30, 1822. He promoted the federal and presidential systems in the formation of Mexico’s Federal Constitution of 1824. Many authors characterize Ramos Arizpe as the “Father of Federalism in Mexico.” This is clearly true, as almost two hundred years of Mexican history demonstrate. Beginning with his passionate defense of the freedom of the American provinces at the Cortes of Cádiz in 1811 and 1820, Ramos Arizpe’s arguments in the debates of the Mexican Constituent Congress of 1823 and 1824 have made him worthy of this august epithet. He served as Secretary of Justice of the Mexican nation from November 30, 1825 until March 7, 1828.

became a territory rather than a state. If Texas remained attached to Coahuila and formed a state partnership, on the other hand, public lands would be under state control rather than distant federal control. Therefore, the only opportunity for both entities to thrive was to remain united and form the joint state of Coahuila and Texas prior to the imminent promulgation of the Federal Constitution on October 4, 1824.¹¹

For various reasons, the state Constitution of 1827 proved to be an exceptional case in Mexico's constitutional history. The Coahuila and Texas Constitution of 1827 was the only bilingual state constitution in the history of the country, incorporating elements alien to the political-administrative system and judicial inheritance of Spain's Mexican colony. Additionally, this state constitution consecrated freedom as a fundamental value but tacitly tolerated slavery, despite its prohibition at the federal level. At the same time, it was an example of openness, respect, and toleration of other cultural institutions, such as the jury trial of the Anglo-Saxon system.¹² As a matter of fact, the *Coahuiltejano* constitution was the first constitution to adopt this jury trial model into the Mexican criminal justice system.

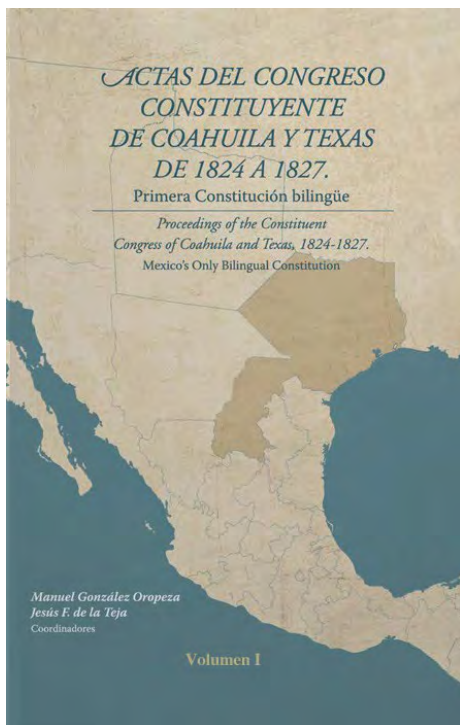


Painting of Dr. Miguel Ramos Arizpe, the Father of Mexican Federalism. Museo Nacional de las Intervenciones, Wikimedia Commons.

¹¹ On May 7, 1824, the state of Coahuila and Texas signed its incorporation into the Mexican Federation. Months later, on August 15, 1824, the State Constituent Congress adjourned in the city of Saltillo. See Joseph W. McKnight, "Introduction: Texas's Earliest Legislation and Its Publication," III-XXIV, IV, in J.P. Kimball (trans.), *Laws and Decrees of the State of Coahuila and Texas, in Spanish and English* (Clark, N.J.: Lawbook Exchange, Ltd., 2010).

¹² Thomas J. Chambers was appointed superior judge in three judicial districts in Mexican Texas in the mid-1830s. Born in Virginia in 1802, he moved to Veracruz in 1826, arrived in Mexico City and began to learn the intricacies of the Mexican legal system. In 1830 he obtained a license to practice law and naturalized himself as a Mexican citizen of Saltillo, Coahuila. Months later he resettled in Nacogdoches, Texas, where he dedicated himself to land speculation and worked to reform the judicial system to incorporate jury trials, although jury trials did not formally become part of the legal system in Coahuila until 1834. Margaret Swett Henson, "Chambers, Thomas Jefferson [1802-1865]," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fch08>.

During the first half of the 19th century, thanks to the influence of English reformer Jeremy Bentham and others, Mexico established jury trial as a judicial guarantee of individual rights.



Real Equality under the Law

Article 13 of that 1827 Constitution made it clear that Article 11's protections applied to "every" person in Article 12—expressly including African and African American slaves.

Article 13 stated that, "[f]rom and after the promulgation of the constitution in the capital of each district, no one shall be born a slave in the state, and after six months the introduction of slaves under any pretext shall not be permitted."

Another highlight of the State Constitution of 1827 was the undeniable generosity of the *Coahuiltejano* people in granting Mexican nationality to foreign settlers simply because they came to Coahuila and Texas—and gave them considerable land grants as well. Later, this generosity proved problematic to the federal government, which became one of the most important factors in the emancipation of Texas in 1836—and in 1848, when Mexico finally recognized Texas's separation through the Treaty of Guadalupe Hidalgo.¹³

On August 15, 1824, the Constitutional Congress of the State established Coahuila and Texas's first state capital, as a unified entity, in the city of Saltillo.¹⁴ Economically, Coahuila had far better-developed trade than did its partner, Texas. On the other hand, Texas had an almost non-existent Mexican/Spanish population; instead, it was filling up with scattered groups of Anglo-Saxon settlers. This stood in marked contrast with Coahuila, which had virtually no Anglo-Saxon settlers. During this period, Texas settlers represented a small portion of the twin-state's demography,¹⁵ and Texas could not really be considered as another state of the

¹³ David M. Pletcher, "Treaty of Guadalupe Hidalgo," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/nbt01>.

¹⁴ On November 15, 1827, the government of Coahuila changed the name of Saltillo to Leona Vicario under Decree Number 29, to honor a dignified Mexican insurgent who was the wife of Andrés Quintana Roo, who had risked his life and fortune for national independence. Saltillo returned as the capital city on March 4, 1834. Valdés, *History of the State of Coahuila*, 114. Currently the distance between Mexico City and Saltillo is 846 kilometers (526 miles) while the distance from Saltillo to Corpus Christi is 532 kilometers (334 miles).

¹⁵ This statement should be regarded with a grain of salt, because the census did not include the Anglo-Saxon settlers' slaves. Although they were allowed to enter the country as slaves, they did not count as part of the population; even when Texas promulgated its own Constitution it did not consider slaves (Africans, African Americans, and descendants of Africans) as individuals with rights, and therefore did not count them as people in the census, but only as property in the lists of possessions of their owners. A comprehensive census of Coahuila and Texas that includes slaves is difficult to calculate. Cf. Constitution of the Republic of Texas, 1836, General Provisions, articles 9 and 10. University of Texas at Austin Tarlton Law Library, "Constitution of the

Federation; it lacked markets, industries, businesses, and means of communication, since it had not yet designated the port of Galveston as an entrepôt for the rapidly developing area. For these reasons, the delegates of 1824 opted to include the two entities in one twin-state: Coahuila and Texas.¹⁶

The differences between Coahuila and Texas were not reflected in any particular form of dominance of one over the other. In other words, Coahuila did not exercise absolute power over Texas despite its preponderant population and economic resources. As a matter of fact, the creation of a unified state gave permanence and individuality to Texas. The official name of the entity then became: *Independent, Free and Sovereign State of Coahuila and Texas*.

The Mexican federal government foresaw the possibility of Texas becoming an independent state from Coahuila from the beginning of its constitutional life. If Texas had petitioned its emancipation from its partner, the General Congress would have approved it. With this support, Felipe Enrique Neri, the Baron de Bastrop, during the Session of January 11, 1825,¹⁷ asked the “Governor of the State”:

To appoint a Head of Department in Texas who, with the character[,] obligations and faculties formerly held by the Political Chiefs, and who does not oppose national independence or the system of government adopted, [will] perform in that district the political and economic powers exercised by political authorities.¹⁸

A week later, another debate occurred concerning the provisional appointment of the “Head of the Department of Texas”—a special distinction no other state enjoyed. The bill was approved on February 3, 1825. It stated that,

In the part of the State that was known before under the denomination of Province of Texas, a political authority with the name of Department Head of Texas will be established.¹⁹

Republic of Texas (1836),” <https://tarltonapps.law.utexas.edu/constitutions/texas1836>.

¹⁶ During the first sessions of the Mexican Congress, in particular on August 23, 1824, the County Council of Texas and its governor petitioned *not* to proceed with union of that province with Coahuila for formation of a single twinned-state. In the session of August 23, 1824, the Provincial Council of Texas submitted a resolution in which it stated that an official communication from the Governor of Texas stated that “the petition of the Honorable Provincial Deputation of Texas [is] not to proceed with the union of the province with that of Coahuila for the formation of the state until its appeal was answered.” *Actas*, vol. 1, Session of August 23, 1824, 289-291. As noted by the delegates, Béxar’s Provincial Council did not exist, its office was not yet organized, and as we will see later, Texas was incorporated as a Department, naming a Department Head, an appointment that fell to the person of José Antonio Saucedo. *Actas*, vol. 1, Session of February 8, 1825, 541-42.

¹⁷ Richard W. Moore, “Bastrop, Baron de,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/>.

¹⁸ The foundations were also read in which Bastrop supported his request, while it was agreed to transfer it to a special commission composed of delegates Ramos Viesca and Bastrop himself. *Actas*, vol. 1, Session of January 11, 1825, 511-13.

¹⁹ This is the only case that occurred in the state of Coahuila and Texas, as stated in the proceedings. The state of Coahuila and Texas was divided for its best administration in three departments: Béxar (Texas), Monclova (with the districts of Monclova and Rio Grande), and Saltillo (with the districts of Saltillo and Parras). The case of

A few days later, the decree regarding the creation of the Head of Department was circulated in Texas. The appointment of José Antonio Saucedo was carried out under this charge of authority.²⁰ A month after this measure, the Law of Colonization began to be debated. Stephen F. Austin, Haden Edwards, and others already owned settlements in the region. Land ownership was not the main issue, since, after all, the Constitution of 1827 permitted foreign settlers to own land and become Mexican nationals.



The Constitution of the Mexican State of Coahuila and Texas (Coahuila y Tejas), 1827

The introduction of slaves to Mexican soil was the key cause of tension between the federal government and foreign settlers in Texas, most of them Anglo-American. The existence of slavery at the state level represented a serious constitutional violation, despite the Mexican government's aforementioned toleration of Anglo-Saxon settlers and tacit acceptance of the slavery they brought with them. Consequently, tension started to grow between the foreign settlers and Mexico, especially since slaves were a fundamental part of the agricultural workforce for the newcomer settlers.²¹

The Executive

The Governing Council resulted from the discussion about the number of members of the federal Executive Power, and its creation was proposed by Ramos Arizpe as a conciliatory measure to break the deadlock between the single and the collegiate Executive. The council was intended to complement and limit the extraordinary powers of the Executive. This type of institution was known in the former English colonies that became the United States of America. It was an important check and balance within the Executive Branch at both the federal and state levels in Mexico. The twin-state of Coahuila and Texas was not an exception.

The delegates at the 1827 Coahuila and Texas constitutional convention, without the Head of the Department of Texas is eminently political-administrative, because with this his singularity was recognized with respect to the rest of the entity, based on the introduction of settlers, the tolerance of slavery, and other practices foreign to the country. *Actas*, vol. 1, Session of February 3, 1825, 532-38.

²⁰ It is noted that there was an indictment pending against Saucedo in the municipality of Béxar, for "disobedience to the decrees of this Legislative Assembly," for which, before taking the protest, the referred incident must be verified "to avoid claims about its nullity." *Proceedings*, vol. 1, Session of February 8, 1825, 541-42.

²¹ It should be noted that Bastrop belonged to the Colonization Commission both in his capacity of representing Texas as a delegate and in his role of granting immigrants express permission to settle in Texas.

existence of theoretical models at federal and local levels, had to develop their own institutions that responded to the needs of its inhabitants.²² To restrict any abuses of the power granted to a single holder of the Executive Branch, a companion Council would work to deter and correct any excesses that occurred during the exercise of his mandate. The Free State of Coahuila and Texas was the only Mexican state to be organized by English and Spanish speaking people, so it is no surprise that the people's delegates protected their language rights.

The Governing Council was an institution implemented at the federal level under the Constitution of 1824. The council exemplified the balance of powers and control of the political constitutionality at the same time. Its existence extended to all entities of Mexico.²³

The debate of the Governing Council took place in the Session of July 23, 1825. The discussion concerned the council's powers. Delegate José María Viesca, during his testimony, noted that the council could investigate infractions against the constitution, laws, and government decrees. This included accusations against the governor himself. Additionally, Congress could exercise the power to impeach the governor for those infractions. This council also proposed government measures to promote the increase and prosperity of the population, including agriculture, industry, commerce, public instruction, among other measures.²⁴ These notions were reflected in Decree No. 19, issued on November 25, 1825.

Members of this council were aware of the constant attacks from the *Indians or northern nations* particularly hostile to the people of Texas,²⁵ including kidnappings and murders, theft of



Felipe Enrique Neri, the Baron de Bastrop, participated in the proceedings of the Constituent Congress that approved the 1827 Constitution. Oil painting by Diana L. Hund; used by permission of the artist.

²² In the Session of November 2, 1824, delegate Rafael Ramos Valdés noted "that there being a Decree of the Supreme Executive Power so that the issues that respectively touch each State are passed to their Provincial Councils or Legislatures when these are adjourned, it seems that this has nothing to claim the fulfillment of said decree in the terms that the Commission says in its first preposition." *Actas*, vol. 1, Session of November 2, 1824, 401-11.

²³ Manuel González Oropeza, "El Consejo de Gobierno," *Boletín Mexicano de Derecho Comparado* (Mexico City: UNAM), New Series, Year XXI, No. 61 (January–April, 1988): 189–206.

²⁴ *Actas*, vol. 1, Session of July 28, 1825, 714-18.

cattle, and looting. The border populations remained in a constant state of alert, realizing the “[i]ndifference of the Secretary of War in the replies that he has given referents to the matter at hand [raids of the “barbarous” Indians] ‘to the Congress of the State of Coahuila and Texas.’”²⁶

Written in Spanish and English, it was Mexico’s only bilingual constitution

propias rentas y el Honorable Congreso tendrá la complacencia de no haber gravado á los Pueblos con contribuciones.

La tranquilidad pública que actualmente se disfruta es extensiva atodo el territorio del Estado. Los comanches y otras tribus de indios que habitan las fronteras del norte rompieron sus hostilidades en Julio de 1825. que han cesado hace pocos meses el Gobierno espera que el Ciudadano Comandante General de estos Estados ponga en movimiento las fuerzas militares que están ásus ordenes para obligar á estas tribus á hacer una paz duradera, la revolución que proyectaron en el ultimo Diciembre algunos extranjeros en Nacogdoches unidos á algunas parcialidades de indios tambien extranjeros, para apropiarse una considerable porción del Estado y de los limítrofes, fue cortada enteramente en sus principios á consecuencia del movimiento tan oportuno que hizo sobre

“The public tranquility that is at present enjoys extends throughout the state’s territory. The hostilities with the Comanches and other Indian tribes who inhabit the northern frontier that broke out in July 1825 have ceased a few months since, and the Executive hopes that the citizen commandant general of these states will put in motion the military forces at his orders to force these tribes to make a lasting peace. The revolution attempted last December by a few foreigners in Nacogdoches together with some groups of Indians (also foreign), in an attempt to appropriate for themselves a considerable portion of this state and the neighboring ones, was completely cut off at its roots as a result of the timely movement against them by the principal commander of Texas and the political chief of that department with the military force residing at Béxar and the national militia of Austin’s colony

The Governing Council had jurisdiction over the measures taken by the *presidios* of the region “in order to punish the Indians who show up at war on the borders of the State.” Measures included constructing walls to protect some missions (like San Antonio Valero), organizing frontier garrisons, issuing a *presidio* regulation, petitioning neighboring states for relief against Indian raids, and so on.²⁷

On the other hand, the Constitutional Congress debated different measures involving peace, like the allocation of money as compensation “for these aboriginal

communities”²⁸ or the exchange of Indian chiefs taken as prisoners, in order to convince others to make peace, as the Head of the Department of Texas had done in November 1825.

Indian-war issues posed a serious distraction during the framing of the Constitution. But there were also other political troubles in the formation of the state. The decision of where to locate the state capital took an ideological debate that split into factions. The founder Ramos Arizpe promoted the city of Saltillo, but Monclova had been the traditional site since colonial

²⁵ A notice was given to the Head of the Department of Texas about a “meeting of barbaric Indians that is being held to harass the border,” as well as another document where Stephen Austin warns that the chief of the Chiraquíes (Cherokees), “Ricardo Fiels is secretly taking with great effort all the necessary measures in order to reunite those tribes of Indians to destroy all the establishments of this State.” *Actas*, Session of October 15, 1825. In a subsequent communication it is announced that Ricardo Fiels, the chief of the Chiraquíes, announces to the mayor of Nacogdoches his submission to the Government of Mexico. *Actas*, vol. 1, Session of March 25, 1826, 532-38.

²⁶ *Actas*, vol. 1, Session of October 1, 1825, 780-83. In a communication from the governor of the state of Sonora, mention is made of the uprising of the Yaqui Indians in that entity, as well as of some barbaric Indians in the state of Nuevo Leon. *Actas*, vol. 1, Session of January 7, 1826, 871-74. The Session of February 25 of the same year notes the presence of more than two thousand Indians near “the colorado of Nachitoches” willing to harass the area. *Ibid.*

²⁷ In the Session of September 22, 1825, the governor requested of the commanding general of the state of Tamaulipas the help of 200 men to protect Texas from the incursions of the Indians. Two days later it was announced that the commander was unable to provide such assistance. *Actas*, vol. 1, Session of September 22, 1825, 314-17, and Session of September 24, 1825, 327-31.

²⁸ This communication is from 1824, prior to the establishment of the Governing Council. *Actas*, vol. 1, Session of September 14, 1824, 314-16.

times and was more inclined to conservative politics.

At the beginning of 1826, the city council of Monclova complained to the Constitutional Congress located in Saltillo. The city council demanded to declare Congress itself a convener body, accusing the Legislature of not having completed the work for which it was established. Furthermore, the Council of Monclova added that Congress had granted extraordinary powers to the governor.

The problem began when, on February 21, 1826, a delegate pointed out that Saltillo was about to be involved in anarchy because of various movements that called for disobedience and disrespect to the "Supreme Authorities of the State." Particularly, a Monclova manifesto exceeded the limits of moderation and due respect to Congress.²⁹

Manuel Carrillo, president of the Constitutional Congress, pointed out several well-founded reasons why Congress had not been able to complete its work. He gave additional reasons why Congress had not promulgated the Constitution and the laws that support the government system, as well as stating the need to grant extraordinary powers to the governor of the state. In the session of February 25, the following statement was given about these issues:

A representation made by 32 residents of Monclova, addressed, as it appears, to the ayuntamiento of this capital, asking it to revoke the powers it has granted to this Honorable Congress, leaving it only its convocation powers and only for a space of 20 days, stating [reserving] to the successor congress the fruit of its labors.³⁰

Days later, notices from the authorities and neighbors of the complaining communities announced their "repentance" and their desire to return to public tranquility.

By the end of April, Bastrop proposed that pardon be granted "to those who want to welcome him on everything that has relation with the events insulting the Supreme State authorities and the repeal of the decree on extraordinary powers." Indeed, in the Extraordinary Session of May 27, 1826, the draft Amnesty Decree was written warning that:

Article 4. Henceforth, [neither] this nor any other favor will be shown to those who directly or indirectly promote anarchy by attacking the supreme state authorities under any pretext whatsoever. To the contrary, they will be judged and punished with all the rigor and severity of the law. The same will be done with those who show disdain for the ample and generous amnesty granted by this decree, proceeding against them in full accordance with the said laws and with the energy and swiftness that their offenses demand, to which the Executive will carefully attend.³¹

²⁹ In the same session, writings from other town halls were read in which they criticized Monclova's attitude, for the lack of moderation in their statements and disapproval of their demands. *Actas*, vol. 2, Session of February 21, 1826, 917-22.

³⁰ *Actas*, vol. 2, Session of February 25, 1826, 922-27.

³¹ *Actas*, vol. 2, Special public session of May 27, 1826, at five in the afternoon, 1011-13.

Closely linked to this matter was the request of the suspended aldermen Vicente Valdez and Victoriano de Cárdenas. According to their defense lawyer, José María Letona, they were accused of “atrociously insulting Supreme authorities of the state. Additionally, they were extremely subversive against good order.” The judge never admitted Letona’s plea, let alone followed any procedure.³² On May 5 the vice governor asked to be informed about the situation of this case.

On May 13, the governor sent a letter to Congress asking him *not* to declare inadmissible the request of suspension of the aldermen nor “when they believe the said defense might contain something in their favor. The only reason he has for his opinion is in trying to present the interested parties in a positive light, his intention being not to deprive them of that benefit.”³³ Congress, animated by the same spirit of justice as the governor, pointed out that it was never interested “to deprive the aldermen Valdez and Cárdenas and everything that may lead to their defense.”³⁴ At that time, the declaration of amnesty was made to all those linked to the attacks on Congress. However, in the Session of June 15, 1826, a petition was filed that stated:

In one he [Vice President Mr. Ramos, presiding] having published and circulated decree number 23 regarding the amnesty and public officials having had their liberty and offices restored, with the exception of aldermen Don Vicente Valdez and Don Victoriano de Cárdenas, who although they said they cleaved to the amnesty, desired their cases to proceed. And, Lic. Don José María Letona having returned to this capital, in regard to the said decree, he has declared before the alcalde that he does not cleave to it, in consequence of which, action against him is to proceed as stipulated in the same decree.³⁵

Unfortunately, this is the last reference to the Valdez and Cárdenas case in the proceedings of the Congress, and therefore, its resolution remains unknown.

The confrontation between Monclova and Saltillo persisted until the Texas uprising.³⁶ In the 1835 rebellion in Zacatecas against the central government, Santa Anna punished this state with its liberal and federal tendencies by separating its western part and creating the new State of Aguascalientes. The dictator saw the opportunity to endorse the Monclova petition that endorsed his own centralist aspirations and apprehended the governor of the State of Coahuila and Texas, José María Viesca, who previously decided to move the state capital from Saltillo to San Antonio de Béxar.³⁷

³² *Actas*, vol. 2, Session of May 2, 1826, 986-88.

³³ *Actas*, vol. 2, Session of May 13, 1826, 995-1000.

³⁴ *Ibid.*

³⁵ *Actas*, vol. 2, Session of June 15, 1826, 1025-27.

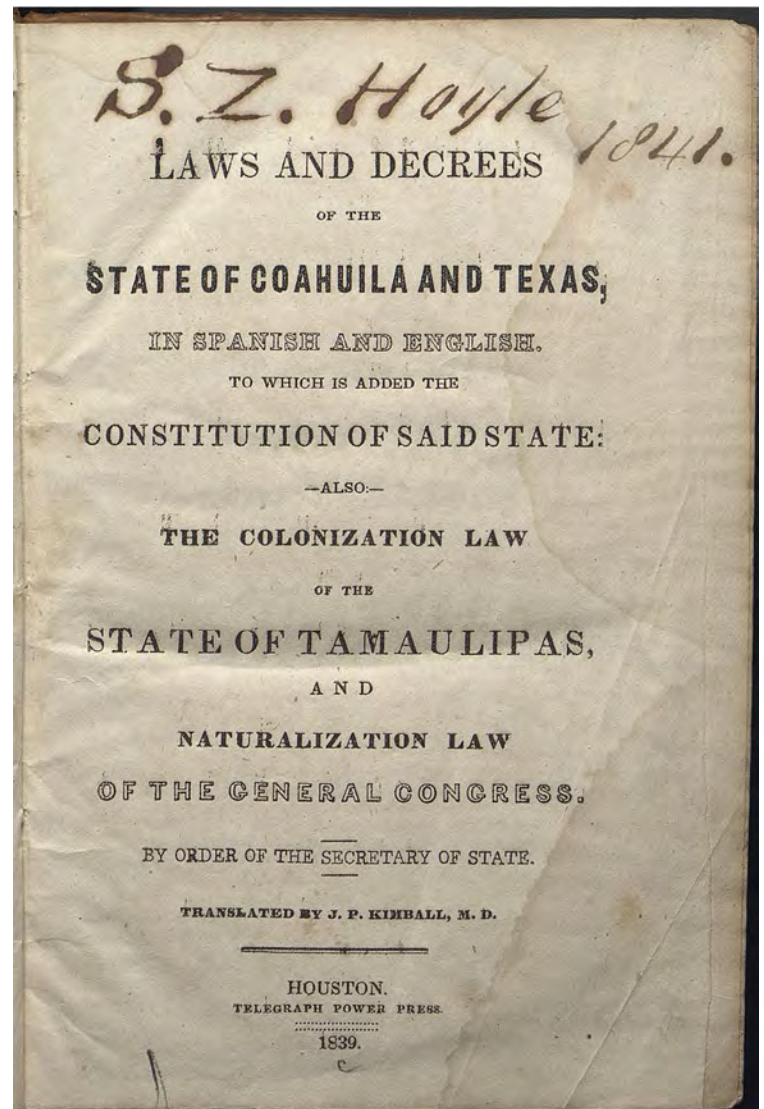
³⁶ See also “Coahuila and Texas,” *Handbook of Texas Online*.

³⁷ Manuel González Oropeza, *Digesto Constitucional Mexicano, Coahuila* (Mexico City: Suprema Corte de Justicia, 2015), 11.

The Electoral Question

Another issue present in the constitutional proceedings was the electoral environment. As a part of the federal union, the state of Coahuila and Texas received several calls to hold federal elections. This process would elect twelve members of the Supreme Court of Justice,³⁸ senators—Miguel Ramos Arizpe was a winner³⁹—and lastly, draft a call for the election of delegates to the House of Representatives to the General Congress.⁴⁰ It was approved that same day.

In the Proceedings there were some mentions on nullity of elections in various municipalities. There were doubts about the validity of the election of the delegate Baron de Bastrop of Texas,⁴¹ the nullity in the election of the mayor in Álamo de Parras,⁴² and perhaps, in the most notable case, the appointment as elector of Lieutenant Colonel Mariano Mondragón by the City Council of Saltillo. The latter case was exposed in public extraordinary sessions. Those dated on September 29 and 30, 1826 denote the importance of the issue; it was the only issue that arose during those days.⁴³



Constitution of the State of Coahuila and Texas.
University of Texas Tarlton Law Library.

In the first session, a communication from the government submitted a question to the Electoral Board of the State:

Whether the elector Lieutenant Colonel Mariano Mondragón appointed by this Capital needs the residence of one year as a prerequisite in the law of convocation of last July 28th or if the residence is dispensed according to article 45, or it is understood that residence is included, asking at the same time, summoning

³⁸ *Actas*, vol. 1, Session of October 30, 1824, 396-98.

³⁹ *Actas*, vol. 1, Extraordinary Public Session of March 27, 1825, 609-10.

⁴⁰ *Actas*, vol. 2, Session of July 28, 1826, 1048-50.

⁴¹ Although it was not annulled, the Congress discussed the irregularities of this election.

⁴² *Actas*, vol. 1, Session of December 24, 1825, 860-62.

⁴³ *Actas*, vol. 2, Special open session of September 29, 1826, 1165-67, and *ibid.*, vol. 2, Special open session of September 30, 1826, 1167-69.

Congress to extraordinary session to answer such a question, requiring a permanent session if this is necessary.⁴⁴

The President of Congress, delegate Juan Vicente Campos, was aware that such a Board did not remain in permanent session. Therefore, Campos requested to inform the governor that Congress was in extraordinary session. During this session, the issue discussed in the State Electoral Board was about the legality of Mondragón's appointment. Mondragón did not comply with the residence requirement, which was clearly cited in Article 44 of the Law of Convocation. Consequently, his votes were also in question.⁴⁵

Above all, Congress had the final decision regarding the matter. Therefore, regarding the aforementioned Board, "nothing should have been resolved on the subject and much less to dissolve its meeting having been in permanent session."⁴⁶ The vice governor, who was aware of the case, reported that the consultation and stay in extraordinary session were not agreements arising from the authority of the Board. Instead, they corresponded with "what process should be followed after the tie vote for not risking wrong in a decision of a matter of so much interest and that having ceased that by a necessary consequence the act was solved."⁴⁷ Afterwards, it was agreed to pass the matter to the Constitution Committee. The following day delegate Manuel Carrillo said:

Mr. Carrillo, a member of the committee, said that the Executive took the appropriate step with regard to the consultation that was made, because having doubts if the exemption from the residency requirement that applied to military men to be second level electors also applied to citizenship in the state, it is clear that only Congress could resolve the matter. However, from what the Governor said in yesterday's session, the electoral assembly has certainly taken upon itself powers that the law does not grant it, and which are expressly prohibited to it, for it is forbidden from settling doubts on points of law. It also committed an act of insubordination and lack of respect to this Legislature to which they should have reserved the decision.

The electoral assembly could not doubt if Citizen Lt. Col. Mariano Mondragón, elected elector for this capital did or did not have the required citizenship under the article because it is well known how long the 9th Regiment has been garrisoning this capital. Consequently, the question turned on whether or not on an exemption from the requirement. It concluded, lastly, on the following propositions, which it presented for Congress's deliberation...⁴⁸

⁴⁴ *Ibid.*, Special open session of September 29, 1826, 1165-67.

⁴⁵ In the debates of that day, "one of the electoral assembly members had changed his vote and sided with those who had voted against Mondragón, ending the tie and deciding the matter by a majority, bringing to a close the doubt that had obligated him to call the special session he asked for and consequently, he said that there was no longer a need to the session." *Ibid.* "Although this seemed to solve the problem, the congressional consultation was continued, since the matter" was proper to the knowledge of the Honorable Congress. *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Actas*, vol. 2, Extraordinary Public Session of September 30, 1826, 1167-69.

In conclusion, given the arguments of the Constitution Committee, Congress determined that indeed the Electoral Board exceeded its powers. Also, the vice governor did not have to intervene to request the consultation of Congress. Therefore, the resolution was "that the election of Citizen Lt. Col. Mariano Mondragón was done in the spirit of article 45 of the convocation degree and, consequently, that he is legally elected. It is also agreed that the said Vice Governor communicate this decision to the electoral assembly as well."⁴⁹ In this manner, the controversy was resolved in the election of 1826.

Besides all the political problems that arose in the Constitutional Convention of Coahuila and Texas, we cannot omit the important contributions to the constitutional doctrine of Mexico and Texas at the time. The first striking feature is to define the purpose of the state government: To "pursue happiness" (article 26), a romantic idea that entails pro-

found consequences for human rights. The California Appellate Court interpreted a provision like this in the decision of *Melvin v. Reid*, 112 Cal. App. 285, 297 (1931) more than one hundred years later, recognizing the "right to happiness" of people against encroachments from anyone attacking character, social standing, or reputation.

Perhaps the most enduring principle of the 1827 Constitution of Coahuila and Texas was to settle human rights as "imprescriptible" in relation to freedom and equality, which

⁴⁹ *Ibid.*

The Pursuit of Happiness

The 1827 Constitution defined the purpose of State government: to "pursue happiness." ARTICLE 26.

The California Court of Appeals interpreted a provision in *Melvin v. Reid*, 112 Cal. App. 285, 297 (1931) more than 100 years later when it recognized that the "right to happiness" of people against "encroachments" precluded a defendant from attacking character, social standing, or reputation.

Imprescriptability?

The most enduring principle of the 1827 Constitution of Coahuila and Texas was to deem human rights "imprescriptible" regarding freedom and equality. ARTICLE 17, SECTION 3.

"Imprescriptable" means universal and permanent, for all people, Mexican nationals and foreigners, residents and passers-by, regardless of the country of their origin.



Left to right: Texas State Library and Archives Director Mark Smith; *TSCHS Journal* Executive Editor David Furlow; General Land Office Deputy Director of Archives and Records Mark Lambert; Texas State Historical Association CEO Dr. Frank de la Teja; and the Hon. Manuel González Oropeza.
Photo by Jillian Beck.

means rights universal and permanent to all people, Mexican nationals and foreigners as well, residents or passersby, regardless of their language or the country of their origin.⁵⁰ To use an American phrase, the 1827 Constitution’s delegates sought to preserve, protect, and enshrine the “inalienable rights” of all *Coahuiltejanos*, Coahuilans and Texans alike.

⁵⁰ See Constitution of Coahuila and Texas, Article 17, Section 3.



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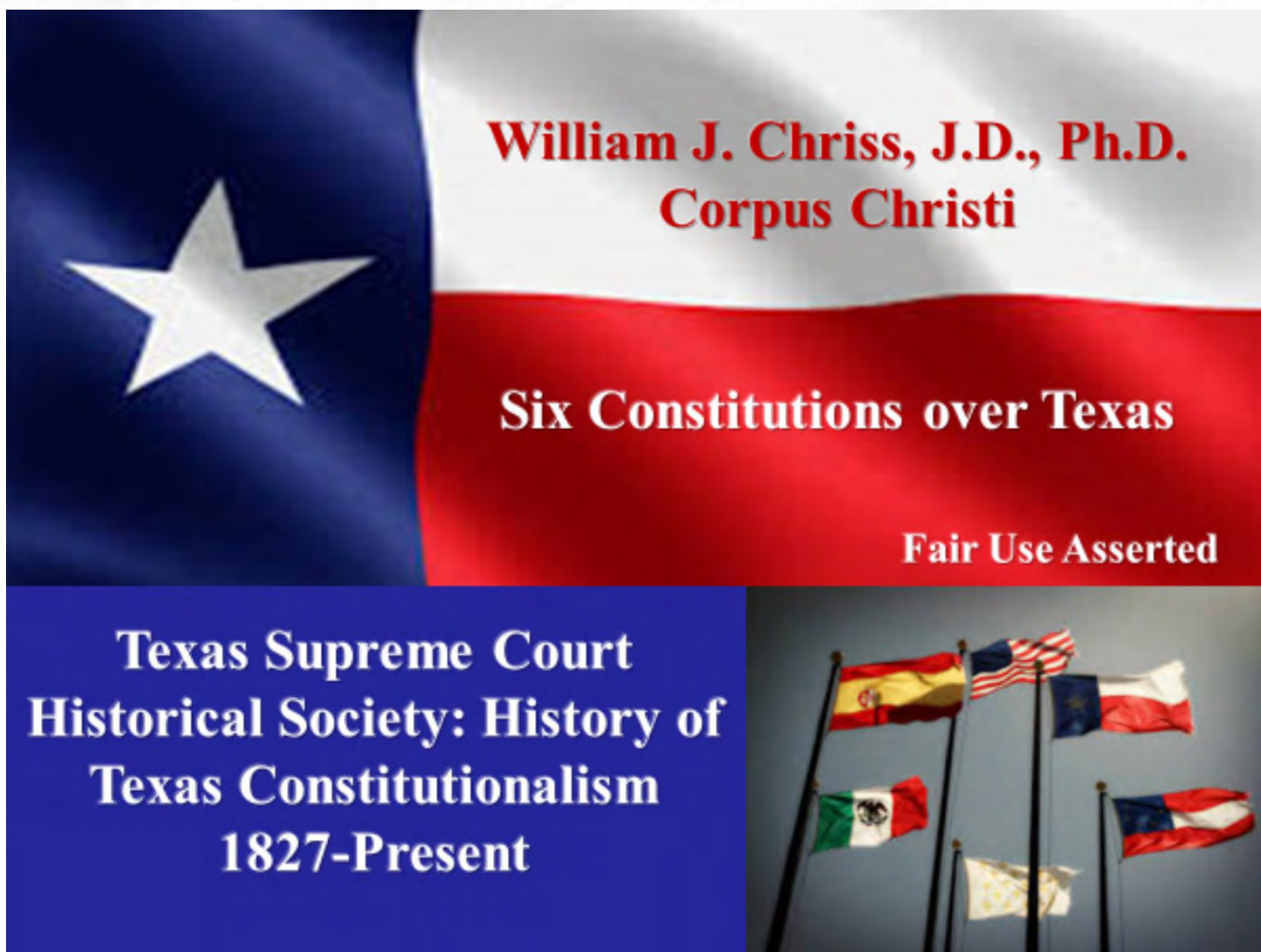
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Six Constitutions over Texas, 1836-1876*

By William J. Chriss

“History doesn’t repeat itself, but it rhymes.”

— Mark Twain¹



* This article, presented at the 2019 Annual Meeting of the Texas State Historical Association, is based upon a very small portion of my forthcoming book tentatively titled *Six Constitutions over Texas: Constructing Texas's Political Identity, 1830-1900*. Slides from my PowerPoint memorialize the presentation at TSHA's 2019 Annual Meeting.

¹ This quote is attributed to Twain but is likely a paraphrase of a passage Twain coauthored in 1874 with Charles Dudley Warner: "History never repeats itself, but the Kaleidoscopic combinations of the pictured present often seem to be constructed out of the broken fragments of antique legends." Mark Twain and Charles Dudley Warner, *The Gilded Age: A Tale of To-Day* (Hartford, Conn.: American Publishing Company, 1874), 430; quoted in "History Does Not Repeat Itself, But It Rhymes," *Quote Investigator*, <https://quoteinvestigator.com/2014/01/12/history-rhymes/#note-7980>.

The Immigration Problem



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

American history is full of ironies. Consider, for example, this demand for greater border security from a prominent government official:

an antipathy has emerged between ... (our citizens) ... and foreigners ..., if timely measures are not taken, Te(x)as will pull down the entire (country) ... (Our citizens) ... feel themselves pushed aside for the foreigners... Meanwhile,... new settlers continue to arrive... Among the foreigners there are all kinds: fugitive criminals, honorable farmers, vagabonds and ne'er do-wells, laborers, etc. They all go about with their constitution in their pocket, demanding their rights...²

This loosely translated quote is from Manuel Mier y Terán, a *Mexican* general writing in 1828 about *Anglos* emigrating into Texas *from the United States*. Historians may never know if his countrymen considered building a wall on the Sabine River to keep Americans out.

² Manuel de Mier y Terán, *Texas by Terán: The Diary Kept by General Manuel Mier y Terán on His 1828 Inspection of Texas*, ed. Jack Jackson, trans. John Wheat (Austin: University of Texas Press, 2000), 98-100; pdf e-book, accessed 16 November 2014, http://web.b.ebscohost.com.ezproxy.lib.utexas.edu/ehost/ebookviewer/ebook/bmxlYmtfXzEwOTkzNF9fQU41?sid=0c4e5294-25fa-4a91-84dd-dd64aa4ed4f0@sessionmgr113&vid=0&format=EB&lpid=lp_41&rid=0.

Another interesting irony is how Texans changed from ardent supporters of the United States into rebellious secessionists after only a few years. When Texas won independence from Mexico in 1836, voters supported joining the United States by an overwhelming popular vote of 3,277 to 91 (97.2%).³

On October 13, 1845, annexation carried again in Texas by a vote of 4,254 to 267 (94.1%), but this time the vote meant something. It approved a pact with the United States that united the two nations.⁴ Within fifteen years, however, Texans voted almost as overwhelmingly to reverse course and secede from the Union by a margin of 76% to 24%.⁵

So why did Texans nearly unanimously favor joining the United States in 1845 but reverse that sentiment so overwhelmingly just a few years later? My approach to these events amalgamates two schools of historical criticism: comparative constitutionalism and the theory of *altérité* (otherness). Radical political changes such as these are “constitutional moments,” to borrow a phrase from Bruce Ackerman. Constitutions shed light on the ideologies and identities of those who produced them. Identities mutate over time, and in explaining change and domination, one can look at how law, the ultimate tool of social control, “others” minorities in order to solidify the dominant cultural self-conception.⁶

Scholars of *altérité* examine in a number of other ways how societies create their collective identities by marginalizing others. In the early 19th century, slaves, Indians, and Mexicans were conflated as dangerously savage and interconnected enemies within Anglo-Texan consciousness.

³ Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford University Press, 2003), 161; Stanley Siegel, *A Political History of the Texas Republic, 1836–1845* (Baton Rouge: Louisiana State University Press, 1952), 76–91; Mary Bell Hart, “Preface,” *Journals of the Convention Assembled at the City of Austin on the 4th of July 1845 for the Purpose of Framing a Constitution for the State of Texas*, facsimile reproduction of 1845 ed. (Austin: Shoal Creek Publishers, 1974), ii. The same proceedings were published in 1846 by J.W. Cruger under the title “Debates of the Texas Convention,” but all citations to the proceedings will follow the 1974 reprint edition of the *Journals*. See also *Debates of the Texas Convention*, William F. Weeks, reporter (Houston: J.W. Cruger, 1846), <https://tarlton.law.utexas.edu/constitutions/texas1845/debates>. Further references to the convention journal will follow the format: *Journals of the Convention* (1845).

⁴ Campbell, *Gone to Texas*, 186–91.

⁵ The vote in the 1861 Secession election was 46,153 to 14,747 in favor of Secession, and the vote among the elected delegates to the Texas Secession Convention earlier that year was even more lopsided: 166 to 8 (95.4%) for Secession. *Journal of the Secession Convention of Texas 1861* (Austin: Austin Printing Co., 1912), pdf e-book, accessed 27 March 2018, <https://tarltonapps.law.utexas.edu/constitutions/texas1861/journals>, 68; Walter L. Buenger, “Secession,” *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/mgs02>; Dale Baum, *The Shattering of Texas Unionism* (Baton Rouge: Louisiana State University Press, 1998), 71–72, 74–79; James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 66–67.

⁶ Leading works on the sociology and anthropology of *altérité* include Emmanuel Levinas, *Entre Nous: Thinking of the Other*, trans. Michael B. Smith (New York: Columbia University Press, 2000); Emmanuel Levinas, *Totality and Being: An Essay on Exteriority*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1969); Michael Taussig, *Mimesis and Alterity* (N.Y.: Routledge, 1993); Edward Said, *Orientalism* (N.Y.: Knopf Publishing Group, 1979); Edward Said, *Culture and Imperialism* (N.Y.: Knopf Publishing Group, 1994). For “constitutional moments,” see Bruce Ackerman, *We the People: Foundations* (Cambridge: Belknap Press, 1991). A cultural self-conception is a necessary prerequisite to Benedict Anderson’s nation or *polis* as an “imagined community.” Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (N.Y.: W.W. Norton & Co., 1983). See also Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard Univ. Press, 1967).

THEORIES ABOUT HISTORY, LAW, and CULTURE



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



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

The nightmare scenario for Anglo Texans was a Mexican sponsored and Indian abetted slave revolt.⁷ But by 1860, political or military threats from native tribes or from south of the border waned, so northerners replaced Mexicans and Indians as the feared agitators of racial insurrection. This is the key to understanding the transformation of Texans from loyal annexationists to rebel secessionists: the precarious contradiction inherent in maintaining a slave-holding republic. This contradiction is enshrined in constitutional law.

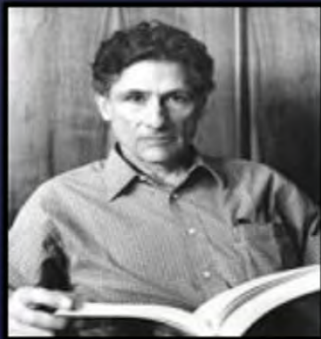
Texans adopted three constitutions leading up to Secession, each corresponding to a “constitutional moment”: the 1836 Constitution of independence from Mexico; the 1845 Constitution joining Texas to the U.S.; and the 1861 Constitution that removed Texas from the Union. After looking at these, I will consider Texas’s final three constitutions (1866, 1868, and 1876) and what they in turn tell us about their framers.

⁷ Recently, historians of colonial America have come to similar conclusions about fears of an axis of enemies composed of Native Americans and slaves, and the importance of using this anxiety to fuse together otherwise disparate factions into a political consensus. It now seems clear that exploiting fear of a British-inspired Indian/slave revolt was a crucial tool in unifying the American patriot movement. See Robert G. Parkinson, *The Common Cause: Creating Race and Nation in the American Revolution* (Chapel Hill: University of North Carolina Press, 2016).

CULTURAL IDENTITY BY REFERENCE TO "THE OTHER"



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



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

The 1836 Constitution

In 1836, most Anglo Texans were from the American South, and their new national constitution testified to this orientation. Its article on General Provisions was preoccupied with the institution of slavery. It provided that:

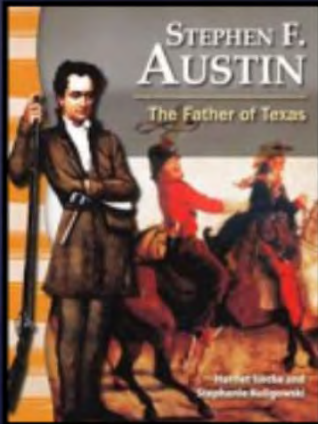
Congress shall pass no laws to prohibit emigrants from the United States of America from bringing their slaves into the Republic with them ...; nor shall Congress have power to emancipate slaves...

Freed slaves, with Mexican help, might foment a slave insurrection, so there would be none. And once inspired to revolt, slaves would have dangerous allies. The 1836 Declaration of Independence had already complained that the Mexican government had

through its emissaries, incited the merciless savage, with the tomahawk and scalping-knife, the (sic) massacre the inhabitants of our defenceless frontiers.⁸

⁸ Texas Declaration of Independence (1836) in William Carey Crane, *The Life and Select Literary Remains of Sam Houston of Texas* (Philadelphia: J.B. Lippincott and Co., 1885), 264-66 (any page citations are to the reprint

1830s TEXAS: A Clash of Five Cultures



- Mexicans
- Tejanos
- Native tribes
- Anglo settlers
- Black slaves

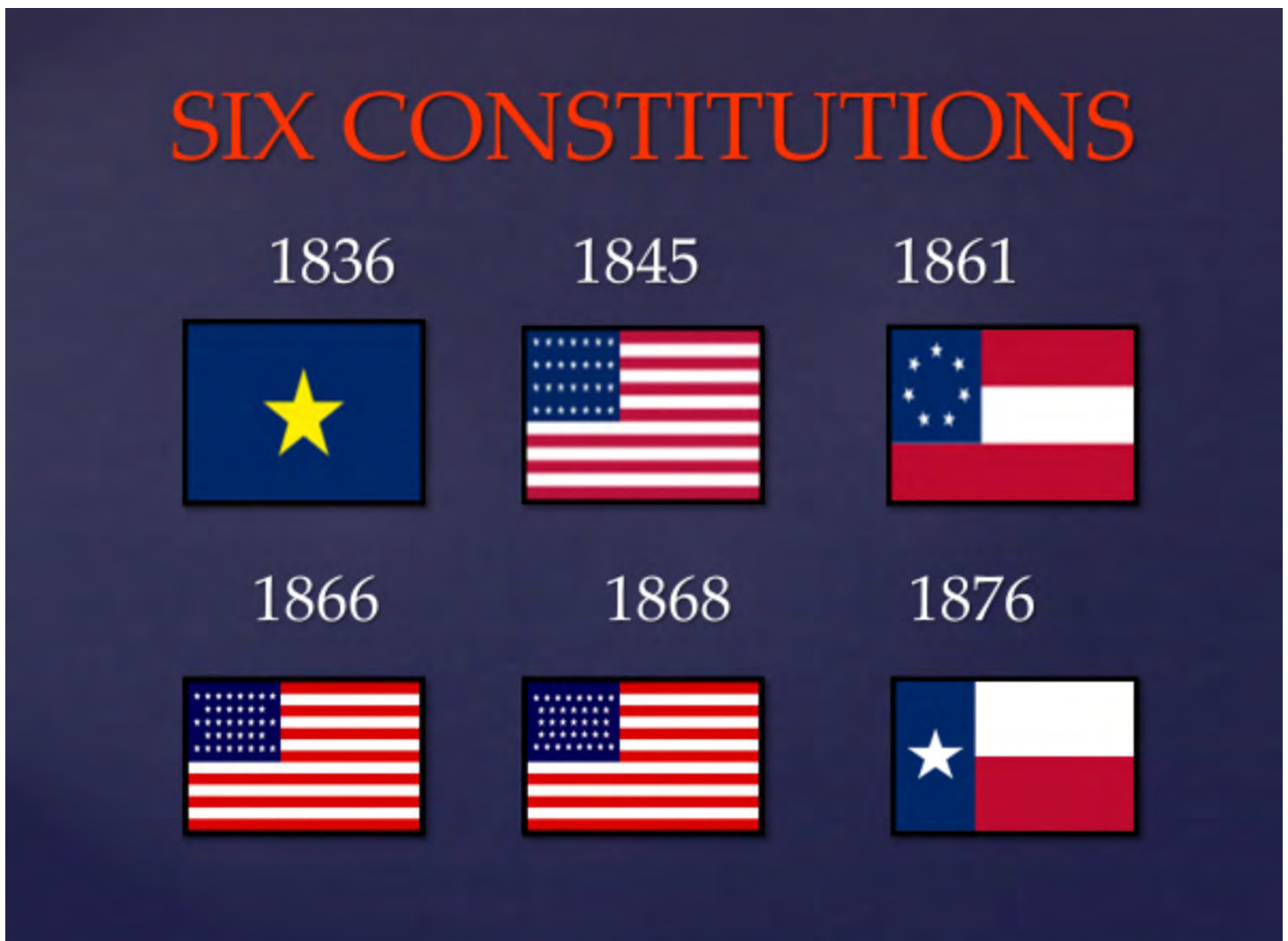
Texas slave-masters had reason for concern over a Mexican-inspired slave revolt because Mexico had long been abolitionist, and the direct threat from the Mexican Army was blunted only temporarily by independence.

Mexico invaded Texas repeatedly in the 1840s, and there was also domestic anti-slavery sentiment to worry about, especially among Tejanos and Germans. These worries dominated Anglo-Texan fears until the 1850s. For example, Frederick Law Olmsted recorded in the early 1850s, in *A Journey through Texas*, that there was danger “to slavery in the west by the fraternizing of the blacks with the Mexicans. They helped them in all their bad habits, married them, stole a living from them, and ran them off every day to Mexico.”⁹

edition). Crane’s book includes an appendix containing not only some of Houston’s writings, but also a copy of the Texas Declaration of Independence and other primary source material. Digital versions of the documents are available at *Texas Constitutions 1824–1876* (Tarlton Law Library, Jamail Center for Legal Research, University of Texas School of Law), <https://tarltonapps.law.utexas.edu/constitutions/doi1836>.

⁹ Frederick Law Olmsted, *A Journey through Texas: or A Saddle Trip on the Southwestern Frontier*, ed. James Howard (Austin: Von Boeckmann-Jones Press, 1962, original edition 1857), 18 (quote) (page references are to the 1962 Howard edition).

As the 1836 Constitution and Declaration of Independence also testify, there was an underground railroad in Texas, but it ran South to Mexico, not to the North. Mexico first abolished slavery during its war of independence from Spain. Father Miguel Hidalgo y Costilla, Mexico's initial revolutionary leader, publicly proclaimed abolition from the outset in 1810, as did his successor José María Morelos in 1813. Although neither of these proclamations became settled law, the Mexican government, in fits and starts, also repeatedly tried to actualize in law its abolitionist revolutionary heritage. As Professor Randolph B. Campbell relates, "Mexican independence raised questions about slavery because Mexican revolutionaries had always voiced strong opposition to the institution. Father Miguel Hidalgo, the first leader of the revolt against Spain, issued several decrees in late 1810 demanding immediate manumission of all slaves on pain of death. And José María Morelos's 'Sentimientos de la Nación' of September 14, 1813, proclaimed that 'slavery is forbidden forever.'"¹⁰ Andrew J. Torget, in *Seeds of Empire: Cotton, Slavery, and the Transformation of the Texas Borderlands, 1800-1850*, argues that Austin and the Anglo and Tejano leadership in Texas were uniform in wanting slavery perpetuated in Texas and in lobbying Mexican officials to allow it.¹¹



¹⁰ Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865* (Baton Rouge: Louisiana University Press, 1989), 14.

¹¹ (Chapel Hill: University of North Carolina Press, 2015).

The Mexican government legislated aspects of abolition first in 1823 and then again in 1829.¹² I have elsewhere argued that the perpetuation of slavery was a prime motivation for the Texas Revolution. The argument is too long and complex to reprise here, but suffice it to cite just one contemporary witness, Ol' Ben Milam, the Texas hero who led the spontaneous 1835 attack on San Antonio that expelled the Mexican garrison from there, including from the Alamo. Milam reckoned that Santa Anna's intentions were "to gain the friendship of the different tribes of Indians; and, if possible, to get the slaves to revolt."¹³

On the "othering" of Indians and their conflation with blacks, Texas historian T.R. Fehrenbach related that many Texans referred to Native Americans as "vermin" and as "red niggers."¹⁴ Texas's military weakness and vulnerable geopolitical position impregnated the Mexican image with a savagery magnified beyond even the Alamo mythology, while it simultaneously exaggerated the belligerence and organizational coherence of most of the Indian tribes on the frontier. It similarly barbarized the white perception of black slaves while reinforcing the view of Indians as subhuman.

When a prominent Nacogdoches Tejano named Vicente Cordova led a number of Tejano bandits and a few Indians against Texas President Lamar's newly created army in 1839, members of the Texas Senate concluded that this was additional evidence of the local Indian tribes being in league with Tejanos and Mexicans to overthrow the new Texas government. They may well have been right. Indeed, it appears that General Vicente Filisola of the Mexican Army had been conspiring with Cordova and his lieutenants to recruit Tejano and Indian allies for a forthcoming Mexican invasion.¹⁵

The Mexican Army actually invaded Texas twice in 1842, in one instance burning part of San Antonio, and Texans retaliated with attacks on Mexican territory.¹⁶ The Texas-Mexican underground railroad is described by Frederick Law Olmsted in *Journey through Texas*.¹⁷ Later in his travels, speaking with a black runaway in Mexico, Olmsted reported, largely in the man's own words, that:

Runaways were constantly arriving ... he could count 40 in the last three months ... being made so much of by these Mexican women that they spent all

¹² Campbell, *Empire for Slavery*, 15–17, 25–26; Eugene C. Barker, *The Life of Stephen F. Austin, Founder of Texas, 1793–1836* (Austin: Texas State Historical Association, 1949), 202–03, 213–14.

¹³ Ben Milam to Francis Johnson, July 5, 1835, in Eugene C. Barker, ed., *The Austin Papers, October 1834–January 1837* (Austin: University of Texas Press, 1926).

¹⁴ T.R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (N.Y.: Macmillan Co., 1968), 452.

¹⁵ Gary Clayton Anderson, *The Conquest of Texas: Ethnic Cleansing in the Promised Land, 1820–1875* (Norman: University of Oklahoma Press, 2005), 177; Campbell, *Gone to Texas*, 166–67; Joseph M. Nance, *After San Jacinto: The Texas-Mexican Frontier, 1836–1841* (Austin: University of Texas Press, 1963), 113–22.

¹⁶ Anderson, *Conquest of Texas*, 196–99; Richard Bruce Winders, *Crisis in the Southwest: The United States, Mexico, and the Struggle over Texas* (Wilmington: Scholarly Resources, Inc., 2002), 40–59; Sam W. Haynes, *Soldiers of Misfortune: The Somervell and Mier Expeditions* (Austin: University of Texas Press, 1990). William Campbell Binkley, "The Last Stage of Texan Military Operations against Mexico, 1843," *Southwestern Historical Quarterly* 22, no. 3 (January 1919): 260–71 gives a background summary of these events, including the 1843 Warfield and Snively expeditions into New Mexico and the Northwestern frontier.

¹⁷ Olmsted, *Journey through Texas*, 18.

they brought very soon... The Mexican government was very just to them; they could always have their rights protected as if they were Mexican born... Some of them had connected themselves by marriage with old Spanish families who thought as much of themselves as the best white people in Virginia. In fact, a colored man if he could behave himself decently had rather an advantage over a white American, he thought. The people generally liked them better. These Texas folks were too rough to suit them.¹⁸

The 1836 Constitution also declared that “perpetuities or monopolies are contrary to the genius of a free government, and shall not be allowed,” and this was a telling nod to Texas’s devotion to Jacksonianism.¹⁹

THE CONSTITUTION OF 1836: SLAVERY AND INDEPENDENCE



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

¹⁸ *Ibid.*, 200–01.

¹⁹ Constitution of the Republic of Texas (1836), Article II, Sec. 3, Declaration of Rights, Sec. 17; Constitution of the State of Texas (1845), Article VII, Sec. 30–31.

THE CONSTITUTION OF 1845: AN AXIS OF ENEMIES



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

The 1845 Constitution

The 1845 Constitution would deem this limitation insufficient. It specifically directed, in two new provisions, that Texas be made even more unfriendly to eastern commercial interests. Section 30 of Article VII specifically prohibited any “corporate body ... with banking or discounting privileges,” and Section 31 prohibited any corporate charter being issued at all except upon a two-thirds vote of both houses of the legislature.²⁰

But it was the Republic of Texas’s limited military and economic power that compelled it to continue seeking annexation to the United States. Texas President Anson Jones issued a proclamation calling for a state constitutional convention to begin on the auspicious date of July 4, 1845.²¹ The most pressing matters facing the delegates were the complex issues surrounding

²⁰ *Ibid.*

²¹ *Journals of the Convention (1845)*, i-iii. The Jones proclamation may be found at: Anson Jones, “Proclamation of President Anson Jones, May 8, 1845,” *National Register* (May 8, 1845), E.L.R. Wheelock, Jr. Collection, Archives and Information Services Division, Texas State Library and Archives Commission, https://www.tsl.texas.gov/exhibits/annexation/part5/anson_jones_may8_1845_proclamation.html.

land titles, but first, bearing witness to the importance placed upon the military protection of the United States, the convention passed an ordinance requesting that the United States “occupy without delay, the frontier of this Republic with such troops as may be necessary for its defense” for the reason that “there are many tribes of Indians, belonging to the United States of America, located within and adjacent to the territory of Texas...”²²

And the constitution adopted by this 1845 convention made interesting changes to the 1836 Constitution’s articles on slavery. During the Republic, the Texas Congress could not emancipate slaves, nor could owners unless they sent their slaves out of state. However, the 1845 Constitution limited the state legislature only if it attempted to emancipate slaves “without the consent of their owners,” and the legislature was authorized to “to pass laws to permit the owners of slaves to emancipate them...” Evidently, U.S. military protection was now thought sufficient protection against not only Indian attack but also any possibility of concerted action by a few free blacks.²³

The 1845 Constitution also granted the legislature “power to pass laws which will oblige the owners of slaves to treat them with humanity...”²⁴ While some of the Anglo elite may have been legitimately concerned about the mistreatment of African Americans, the primary purpose of these laws was, like slave codes in other states, to minimize the possibility of slave insurrection. The theory was that prior slave revolts had resulted from overly harsh treatment. Attitudes about slavery became more sophisticated, but they were no less oppressive. The new constitution expressly permitted masters to “maliciously dismember, or deprive a slave of life ... in case of insurrection by such slave.”²⁵

The Constitution of 1861

As the Mexican threat was eliminated by America’s victory in the Mexican War, the 1850s saw Anglo Texans shift their fears of a slave revolt from instigators south of the border to those to the north. By the Secession crisis of 1860, the Texan stereotype of Americans in the North had come to look much like the Mexican/Indian/African enemy of the 1830s and 1840s. The Mexican, Indian, and African villain was replaced with a new enemy, the northerner, whose strangeness became so palpable as to cause Texans to consistently refer to him as a “black” Republican. The dominant political identity enshrined in the Secession Constitution of 1861 defined the white

²² *Journals of the Convention* (1845), vii-ix, 12–13 (quote); Haley, *Texas Supreme Court*, 44–45.

²³ Constitution of the State of Texas (1845), Article XIII, Section 1.

²⁴ *Ibid.*, Article VIII, Sections 1–3. These sections also required that “laws shall be passed to inhibit the introduction into this State of slaves who have committed high crimes in other States or Territories,” and it contemplated that laws would be passed preventing “slaves from being brought into this State as merchandise only.” Taken together with the provision authorizing summary execution of any slave in case of rebellion, these sections support my thesis.

²⁵ *Ibid.*; Winthrop D. Jordan, *The White Man’s Burden, Historical Origins of Racism in the United States* (New York: Oxford University Press, 1974), 61–68, 79, 87; Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York: W.W. Norton & Co., 1974), 271–84, 308–30; John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford Univ. Press, 1972), 192–248. See generally Randolph B. Campbell, ed., *The Laws of Slavery in Texas: Historical Documents and Essays* (Austin: University of Texas Press, 2010).

Anglo establishment as Southern and the new enemy as the “black North.”²⁶

After the election of President Lincoln, the Texas Legislature followed other southern states and called a convention, which promptly passed a resolution seceding from the Union by a vote of 166 to 8. On February 2, 1861, the convention passed a resolution explaining the reasons for secession, chief among which was that the states of the North had become “a great sectional party” bent upon controlling Texas and the South “based upon the unnatural feeling of hostility to these Southern States and their beneficent and patriarchal system of negro slavery, proclaiming the debasing doctrine of the equality of all men irrespective of race or color...” Slavery was the one right among “states’ rights” that secessionists wanted most to protect. Like Vikings of old, the north-men, according to this declaration, had even “invaded Southern soil and murdered unoffending citizens” and like religious zealots, they from “a fanatical pulpit have bestowed praise upon the actors and assassins in these crimes.”²⁷

But this was not all. Other old enemies were included in the indictment of northern perfidy. The declaration’s complaints included that:

The federal government, while but partially under the control of these our unnatural and sectional enemies, has for years almost entirely failed to protect the lives and property of the people of Texas against the Indian savages on our border, and more recently against the murderous forays of banditti from the neighboring territory of Mexico.²⁸

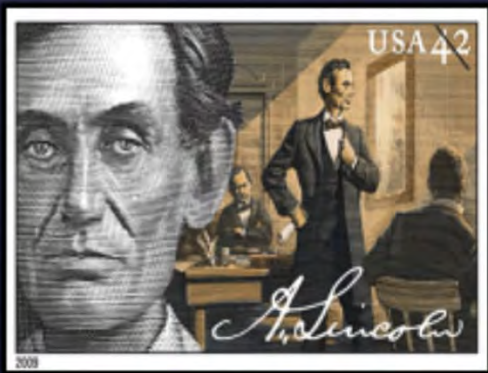
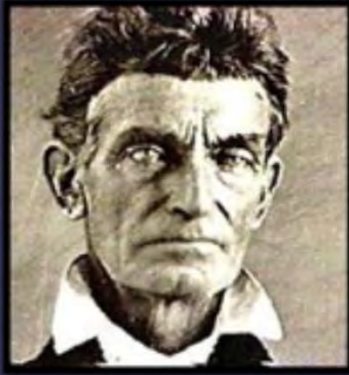
The vestigial appearance of Mexicans and Indians in the secessionists’ nightmare vision is

²⁶ I have omitted an account of the Mexican War and its immediate effects as unnecessary to the current argument. For this, see, e.g., Fehrenbach, *Lone Star*, 270–71. Two additional factors that lessened fears of Indians and Mexicans were: (1) the refusal of state authorities to create Indian reservations out of unoccupied public lands in West Texas; and (2) a new series of reassuring but undermanned army forts constructed during the Fillmore and Pierce administrations of the late 1840s and early 1850s. Robert Wooster, *Fort Davis: Outpost on the Texas Frontier* (Austin: Texas State Historical Association, 1994); Robert Wooster, *The Military and United States Indian Policy, 1865–1903* (New Haven: Yale University Press, 1988); Robert Wooster, “U.S. Army on the Western Frontier,” in “Texas Frontier Forts: Nineteenth Century Forts and the Clash of Cultures on the Texas Frontier,” *Texas Beyond History: The Virtual Museum of Texas Cultural History*, College of Liberal Arts of the University of Texas at Austin, website, accessed 20 December 2008, <http://www.texasbeyondhistory.net/forts/military.html>. For an interesting study of one way in which abolitionists took on “blackness” as a cultural characteristic, see John Stauffer, *The Black Hearts of Men: Radical Abolitionists and the Transformation of Race* (Cambridge: Harvard University Press, 2002).

²⁷ O.M. Roberts, “1860—The First Call Upon the People of Texas to Assemble in Convention,” O.M. Roberts Collection, Dolph Briscoe Center for American History, University of Texas at Austin. This document, handwritten by Roberts, is attached to his personal description of the events surrounding it. It was a slightly amended version written by George Flournoy that was printed and published in December 1860, according to Roberts’ notes. *Journal of the Secession Convention of Texas 1861* (Austin: Austin Printing Co., 1912), pdf e-book, accessed 27 March 28, 2018, <https://tarltonapps.law.utexas.edu/constitutions/texas1861/journals>, 24–26, 36–38, 46–48; hereafter cited as *Journal of the Secession Convention of Texas*. See also *Journal of the House of Representatives, 8th Legislature State of Texas*. The Secession vote is found at *Journal of the Secession Convention of Texas*, 48–49. The declaration of causes is at *ibid.*, 56–65. The quotes in the text are from *ibid.*, 63 (comity and great sectional party quotes), and *ibid.*, 64 (invasion and fanatical pulpits quotes). See also Donna Tobias, “The States’ Right Speaking of Oran Milo Roberts, 1850–1861: A Study in Agitational Rhetoric,” (Ph.D. diss., Louisiana State University and Agricultural and Mechanical College, 198; DAI 43(8) (1983): 2497-A, 213. O.M. Roberts was president of the convention and his rhetorical style can be seen in much of its work.

²⁸ *Journal of the Secession Convention of Texas*, 62.

THE CONSTITUTION OF 1861: THE "BLACK" NORTH



- Return to 1845: "Conserving existing traditions."
- Except regarding slavery: total prohibition on any emancipation
- Loosening of fiscal constraints for war effort

telling. It testifies to the way in which alienation proceeds incrementally and new enemies grow out of old ones.²⁹

On March 11, a resolution passed to keep as much of the 1845 Constitution as possible, contemplating only such changes as were made necessary by leaving the Union.³⁰ The most extensive amendments to the constitution were with respect to slavery. Gone were the 1845 provisions regulating the right of owners to emancipate their slaves should they wish to do so. In their place was inserted a total prohibition of any form of emancipation, gradual, public, private, compensated, uncompensated, or otherwise. No slave in Texas would ever be set free, not by the legislature, even with the master's consent, and not privately by any master so inclined. In other respects the slavery article remained essentially the same: discouraging inhumane treatment, but in addition to insurrection, the circumstances where a white might kill or dismember a slave with impunity now included rape or attempted rape "on a white female."³¹

²⁹ *Ibid.*, 64; Buenger, "Secession," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/mgs02>; Baum, *Shattering of Texas Unionism*, 71-72, 74-79.

³⁰ *Journal of the Secession Convention of Texas*, 133-34.

³¹ Walter L. Buenger, "Constitution of 1861," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/mhc04>; Constitution of the State of Texas (1861), Article VIII.

With Secession, a new Texan identity had emerged. Indians, pushed farther westward and out of the state, constituted only a receding and occasional threat, and Mexican power had been emasculated by the war of the 1840s. Now Texas slaves' most dangerous allies were the traitorous ethnic Unionist from within and the barbarian "black" northman from without, both susceptible to the religious zeal of a "fanatical pulpit."

THE 1866 CONSTITUTION: PRESIDENTIAL RECONSTRUCTION



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



- * No vote
- * Segregation
- * No equal rights
- Subsidies for railroad building: bonds and liens.

The Constitutions of 1866 and 1868

After the Confederacy's defeat, federal troops remained in the southern states to administer their readmission to the Union on terms acceptable to the national government. President Lincoln proposed a policy of accommodation that was followed by his successor Andrew Johnson. A loyalty oath was to be administered to all but the most prominent former rebels in exchange for amnesty, and their states, to rejoin the Union, were required only to ratify the Thirteenth Amendment abolishing slavery and to reconstitute their governments accordingly.

THE CONSTITUTION OF 1869: RADICAL RECONSTRUCTION



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



- * The vote
- * Equal rights
- Capitalism and the yeoman ideal.
- Appointed judiciary, strong governor, and police bill

Texas voters elected sixty-three delegates. They assembled on February 7 to accomplish this task.³² The convention was split between three factions: the liberal "Union Caucus" led by Governor Andrew Hamilton; conservative Democrat unionists led by James Throckmorton; and unreconstructed secessionist Democrats led by Oran Milo Roberts, who famously described this convention's mission as the formation of "a white man's...Gov[ernmen]t that will 'keep Sambo from the polls.'"³³ This convention's 1866 Constitution changed little. It simply replaced the

³² *Journal of the Texas State Convention: Assembled at Austin, Feb. 7, 1866. Adjourned April 2, 1866* (Austin: Southern Intelligencer, 1866), pdf book online at *Texas Constitutions 1824-1876*, accessed August 19, 2014, <http://tarlton.law.utexas.edu/constitutions/>, 3; Carl H. Moneyhon, *Republicanism in Reconstruction Texas* (College Station: Texas A&M University Press, 2001), 23, 32-33. Although Moneyhon says the proclamation was dated November 17th, the convention journal says the 15th. Further citations to the *1866 Journal* will be cited as *Journal of the 1866 Texas Convention*.

³³ Janice C. May, *The Texas State Constitution* (New York: Oxford University Press, 2011), 18; Moneyhon, *Republicanism in Reconstruction Texas*, 34. For the organization of the Union Caucus, see Moneyhon, 42-43. Although Moneyhon says that Throckmorton won the runoff election for chair of the convention by 44 to 24, the convention journal records the vote was 41 to 24 with another three votes cast for "scattering," perhaps an indication of a smattering of minor candidates. *Journal of the 1866 Texas Convention*, 6. Runnels' application for pardon is discussed at Moneyhon, 42. The ordinance on Houston's salary is found at "Ordinance 21," *The Constitution, as Amended, and*

slavery articles of older constitutions with a new article on “freedmen,” which abolished slavery but enshrined racial discrimination and segregation in its place.

Faced with a large population of free black citizens, the new constitution expressly declared “Africans” and their descendants unable to vote by reason of race alone, and it expressly required for the first time that representatives and senators must be “white.” The convention also roundly defeated attempts by frontier German delegates and other liberals to force the constitution to acknowledge equality before the law regardless of race.³⁴

Only Radical Reconstruction could reverse the balance of political power in Texas, requiring another constitutional convention in 1868. This convention penned Texas’s fifth constitution, empowering free blacks, hamstringing the old Democratic establishment, and even generating a proposed constitution for a partitioned liberal state of “West Texas” that was almost adopted, following the example set by West Virginia in the Civil War.³⁵

The Fourteenth Amendment requiring equal treatment of all persons regardless of race passed Congress only nine days after the election in which the 1866 Texas Constitution was approved and several unrepentant ex-Confederates were elected to statewide office. After these disastrous elections, liberal Texas unionists like Andrew Hamilton, E.M. Pease, and Edmund J. Davis fled to Washington to agitate for congressional action to eject the unreconstructed Democrats from control of Texas.³⁶

Meanwhile, the newly elected Texas Legislature passed laws segregating public transportation and prohibiting blacks from holding any office or serving on any jury. Perhaps most oppressive was the legislature’s enactment of new black labor laws that provided that workers could only be hired through the heads of their families, that workers could not leave their “place of employment” without their employer’s consent, and that “it is the duty of this class of laborers to be especially civil and polite to their employer, his family and guests.” African-American workers were to be “free” in name only.³⁷

Ordinances of the Convention of 1866, Together with the Proclamation of Governor Declaring the Ratification of the Amendments to the Constitution, and the General Laws of the Regular Session of the Eleventh Legislature of the State of Texas (Austin: Printed at the Gazette office, by Jo. Walker, state printer, 1866), pdf version online, accessed August 23, 2014, tarlton.law.utexas.edu/c.php?g=810765, 49. The last quotation in the paragraph is reported in many sources, the most recent of which is William C. Yancey, “The Old Alcalde: Texas’s Forgotten Fire-Eater” (Ph.D. diss., University of North Texas, 2016), 168. By implication, O.M. Roberts acknowledged taking President Johnson’s loyalty oath when describing his travails as a senator who would not be seated by the U.S. Congress. He does not mention the loyalty oath but says he could not take the “test oath” later prescribed by Congress (a version of which became known as the “ironclad oath”) swearing the affiant had not assisted in the rebellion. O.M. Roberts, “The Experiences of an Unrecognized Senator,” *Quarterly of the Texas State Historical Association* 12, no. 2 (Oct. 1908): 94–95.

³⁴ *Journal of the 1866 Texas Convention*, 51, 59 (Committee on the Legislative Department reports); Constitution of the State of Texas (1866), Article III, Sections 1-10, cf. Constitution of the State of Texas (1861), Article III, Sections 1-11.

³⁵ Moneyhon, *Republicanism in Reconstruction Texas*; Ronald Norman Gray, “The Abortive State of West Texas” (Master’s Thesis: Texas Technological College, 1969), online version, accessed November 19, 2013, <http://repositories.tdl.org/ttu-ir/bitstream/handle/2346/14201/31295004608377.pdf?sequence=1>.

³⁶ James Baggett, “The Rise and Fall of the Texas Radicals: 1867–1883” (Ph.D. Dissertation, North Texas State University, 1972), 56–57; Moneyhon, *Republicanism in Reconstruction Texas*, 51–57.

³⁷ Baggett, “Rise and Fall of the Texas Radicals,” 51–53 (Throckmorton election), 58–62 (anti-African legislation and

THE CONSTITUTION OF 1876: REDEEMERS AND GRANGERS



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

At the national level, the success of Radical Republicans in the congressional elections of November 1866 portended a reaction to these affronts and the demise of Presidential Reconstruction. In March 1867, the new Congress passed two Radical Reconstruction Acts over President Johnson's veto.³⁸ Ten Confederate states including Texas were placed under martial law until each state approved the Fourteenth Amendment and ratified a new state constitution approved by Congress and providing for adult black male suffrage. Only then would the rebel states be entitled to representation in Congress. Moreover, since the text of the Fourteenth Amendment disqualified from state or federal office any prior state or federal officials who "engaged in insurrection or rebellion," more ex-Confederates than ever before were disqualified from voting and from serving as convention delegates.³⁹

ratification of the Fourteenth Amendment); Moneyhon, *Republicanism in Reconstruction Texas*, 51–52; Baggett, "Rise and Fall of the Texas Radicals," 59, quoting H. Gammel, ed., *Laws of Texas*, vol. V, 995–97 (quotes); Michael Ariens, *Lone Star Law* (Lubbock: Texas Tech University Press, 2011), 39–40 (black codes); Carl H. Moneyhon, "Reconstruction," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/mzr01>.

³⁸ The new Congress was the 40th Congress, which took over from the 39th Congress on March 4, 1867. The First Reconstruction Act was passed March 2, so only the Second Act was passed by the new Congress, on March 23, 1867, but it is logical to assume that the Republicans in the 39th Congress were affected by the outcome of the 1866 elections where Johnson campaigned strenuously against the radicals and lost badly.

Congress also placed the determination of who was disqualified from voting by prior Confederate sympathies totally in the hands of the national army, which was also given control of all details of the election for convention delegates.⁴⁰ So, when another set of delegates assembled in Austin on June 1, 1868, the Republicans dictated the results of the process and a majority of them favored a strong governor and state government, government support for railroads, black suffrage, public education, and civil rights.⁴¹

The Radical Constitution of 1869 for the first time created a constitutional mechanic's lien for skilled workers and adopted a constitutional right to punitive damages against corporations and in favor of heirs of workers willfully injured. Both the 1866 and 1869 constitutions contained provisions authorizing the legislature to protect homesteads from forced sales for debt.⁴²

But while the 1866 Constitution embodied the wishes of a pro-business elite anxious to use government to encourage economic development, the Radical Constitution of 1869 reflected a desire to use the public lands to fund education and support the development of a farming middle class, while also encouraging the activities of mechanics and small businesses. Nevertheless, the Republicans of 1869 were certainly pro-capitalist and pro-development, as indicated by another unprecedented provision in the 1869 Constitution, this one forbidding any laws against usury or otherwise restraining the freedom of contract. The constitution also included two unprecedented deletions, the omission of the decades-old constitutional prohibition on corporate banks and of the requirement of a two-thirds legislative vote to create other corporations.⁴³

Most importantly for the Radical Republicans, the race-based restrictions on citizenship and voting in the 1866 Constitution were abolished in favor of a color-blind system of voter registration, which in the near term would be administered by the federal military. As long as the U.S. Army stayed in Texas, this system would exclude large numbers of white ex-Confederate voters and guarantee blacks the right to vote.⁴⁴

But Republican dominance was destined to be short-lived. While the 1869 Constitution was adopted and the Texas Legislature ratified the Fourteenth and Fifteenth Amendments, on March 30, 1870, President Grant readmitted Texas to the Union and military rule ended. There would be no Union Army to hold the Ku Klux Klan in check and prevent racial intimidation, voter

³⁹ Congress of the U.S., Chapter CLIII: An Act to Provide for the More Efficient Government of the Rebel States, in *Narrative History of Texas Secession and Readmission to the Union: Related Readmission Documents: Reconstruction Acts 1867* (Austin: Texas State Library and Archives Commission), webpage, accessed August 25, 2014, <https://www.tsl.texas.gov/ref/abouttx/secession/reconstruction.html>; U.S. Constitution, Amendment XIV, Section 3.

⁴⁰ Baggett, "Rise and Fall of the Texas Radicals," 62 (Sheridan); Congress of the U.S., Chap. VI. An Act Supplementary to an Act Entitled "An Act to Provide for the More Efficient Government of the Rebel States," passed March Second, Eighteen Hundred and Sixty-Seven, and to Facilitate Restoration, in *Narrative History of Texas Secession and Readmission to the Union: Related Readmission Documents: Reconstruction Acts 1867* (Austin: Texas State Library and Archives Commission), webpage, <https://www.tsl.texas.gov/ref/abouttx/secession/reconstruction.html>.

⁴¹ Moneyhon, *Republicanism in Reconstruction Texas*, 83–86, 248–49.

⁴² Constitution of the State of Texas (1866), Article VII, Section 22; Constitution of the State of Texas (1869), Article XII, Section 15.

⁴³ Constitution of the State of Texas (1869), Article X, Section 8; Article XII, Section 15; Article XII, Section 44.

⁴⁴ Constitution of the State of Texas (1869), Article III, Sections 1, 5, 13.

suppression, or election fraud. It would not take the Democrats long to regain control.⁴⁵

By 1872, Democrats had won preemptive margins in both houses of what would become the Thirteenth Legislature.⁴⁶ Hoping to complete their coup, the Democratic majority quickly repealed the state police law and scheduled the next general election, including for governor and all state offices, at the earliest possible date, December 2, 1873. Democrats in the House then proceeded to impeach twelve of the thirty-five judges appointed by Reconstruction Governor Edmund J. Davis. With Democrats impeaching Republican judges and intimidating voters at the polls, many black citizens did not turn out or their votes were not counted. Democrat Richard Coke defeated incumbent Governor Davis by a margin of two to one, and the Democrats again swept the legislative elections. The brief interlude of Texas liberalism was over.⁴⁷

Then, in a surprise move, the Texas Supreme Court invalidated the election, ruling on a point of grammar that it would have to be held again.⁴⁸ Democrats grew incensed, but Davis refused to leave office. The Democrats just ignored what they soon came to call “the Semicolon Case,” and the legislature convened in Austin a few days later as if nothing had happened, crowding into the capitol with a mob of armed supporters. They were able to climb into the second floor of the capitol over the protests of Davis and a few of his police and militia, some of whom were black, while Davis’s pleas to President Grant for help fell on deaf ears. Davis finally resigned, and the Texas House and Senate ratified the results of the election. The conservatives were firmly back in control, and Texans of African descent would wait another century for any semblance of equality before the law.⁴⁹

The Constitution of 1876

After this Democratic takeover, the period from 1875 to 1890 left white Texans preoccupied with developing a modern economy and undoing the policies of Republican liberals. Secession and Reconstruction had demanded new constitutions. Now another new political reality called for another constitution equal to the task of what would come to be called “reform and redemption.” Northerners continued to concern Texans, but as economic competitors, not politico-military threats. Texas’s last constitution, the Constitution of 1876, was the creature of “Redeemers” interested in protecting white privilege and establishing a pro-business environment. Their

⁴⁵ Moneyhon, “Reconstruction,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/mzr01>; Alwyn Barr, *Reconstruction to Reform: Texas Politics 1876–1906* (Austin: University of Texas Press, 1971), 8–9.

⁴⁶ Moneyhon, *Republicanism in Reconstruction Texas*, 145–51 (12th Legislature), 152–65 (congressional elections of 1871), 168–91 (elections of 1872 and 1873); James R. Norvell, “The Reconstruction Courts of Texas, 1867–1873,” *Southwestern Historical Quarterly* 62, no. 2 (October 1958): 148–50.

⁴⁷ Moneyhon, *Republicanism in Reconstruction Texas*, 145–51 (12th Legislature), 168–91 (elections of 1872 and 1873); Ariens, *Lone Star Law*, 45; John W. Payne, Jr., “Coke, Richard,” in *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fco15>; Norvell, “Reconstruction Courts of Texas,” 148–50.

⁴⁸ See Moneyhon, *Republicanism in Reconstruction Texas*, and Ariens, *Lone Star Law*; *Ex Parte Rodriguez*, 39 Tex. 705 (1874).

⁴⁹ Moneyhon, *Republicanism in Reconstruction Texas*, 192–96; Ariens, *Lone Star Law*, 44–47; George E. Shelley, “The Semicolon Court of Texas,” 449–68; Norvell, “Reconstruction Courts of Texas,” 150–55; Lance A. Cooper, “‘A Slobbering Lame Thing’: The Semicolon Case Reconsidered,” *Southwestern Historical Quarterly* 101, no. 3 (Jan. 1998): 321–39; T.B. Wheeler, “Reminiscences of Reconstruction in Texas,” *Quarterly of the Texas State Historical Association*, 11, no. 1 (July 1907): 56–63.

biggest challenge was to deal with a new class-based discontent among rural whites that began as Grange movements and ended as populism.

Redemption was inaugurated in Texas by the Democrats' 1873 electoral victory, and it came to fruition in the 1875 constitutional convention. One of the convention's principal tasks would be foiling attempts by the new Grange faction of the Democratic Party to regulate business while still reducing the power of the state, especially the judiciary. In fact, reforming the judiciary was high on the list of almost all the delegates at the 1875 constitutional convention, and the issue symbolized all that chafed about Reconstruction. In large part because of the semicolon decision, the "platform" ballyhooed for weeks prior to the convention by the Democrat editors of the *Austin State Gazette* began with demands for "The election of Supreme, District, and County Court Judges by the people ... (and) reduction in the number of District Judges, as well as their salaries."⁵⁰

THE CONSTITUTION OF 1876:



- The system of Texas government we have today:
 - Weak governor
 - Biennial legislature
 - Permanent School Fund
 - Elected judges

⁵⁰ Seth Shepard McKay, *Making the Texas Constitution of 1876* (Philadelphia: University of Pennsylvania Press, 1924), 68, quoting *State Gazette* (Austin), 24 August 1875; Frank M. Stewart and Joseph L. Clark, *The Constitution and Government of Texas* (Boston: D.C. Heath & Co., 1933), 15.

Other issues included the proper limitations to place on an executive branch that the Redeemers perceived as tyrannical and “pro-black.” In dealing with these issues, the conservative white majority had to learn to compromise with a faction of between thirty and forty Grange Democrats for the first time in a position to influence state politics. These Grangers were mainly farmers who more than anything wanted homestead protection, railroad regulation, and emasculation of the spendthrift Reconstruction government that had raised their taxes, worsened their lot, and diluted their political ability to protect themselves. So, at this early stage of the reform movement that would come to be known as populism, while many of the Grangers agreed with Republican protection of debtors and homesteaders, they also wanted much the same things the Democratic leadership wanted.⁵¹

This was because most Grangers mistakenly saw freedmen and Reconstruction as the biggest sources of their farm problems. They wanted lower taxes and a weak state government, goals the Redeemers shared. The result was a constitution that condemned Reconstruction and protected some of the interests of white laborers and small farmers at the expense of blacks. The one exception was a short-lived and ultimately unsuccessful alliance between Grangers and Republicans to fight the poll tax as a method of disenfranchising blacks and other poor voters.⁵²

In addition to reducing state government, the 1876 Constitution made other changes indicative of the new mood of the state. The mirage of vast public lands was relied upon to fund almost everything in an effort to avoid taxation while still promoting public education and economic development. The yeoman farmer-homestead ideal of Radical Reconstruction was continued, but the program of unrestrained commercial development Republicans had enacted was rolled back with new usury and worker protection laws and discouragement of any subsidization of business other than land donations to railroads that laid more track.

The legislature was specifically mandated to “regulate freights, tolls, wharfage or fares ... for the use of highways, landings, wharves, bridges and ferries, devoted to public use.”⁵³ In this way, “Granger laws” became part of Texas’s constitution. But it is an exaggeration to dub the new constitution a creature of either Grangers or populists. Rather, it represented a new *zeitgeist* synthesizing ex-Confederate Redeemerism with the concerns of unhappy white small farmers and those of lawyers and businessmen who saw the need for economic development. These groups each achieved a modicum of success by avoiding the demands of the most radical white reformers while freezing out blacks and Republicans, and the primary tool for accomplishing this feat was racism. Maverick white politicians that went too far quickly drew accusations of

⁵¹ Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* (New York: Oxford University Press, 1976), 45–49.

⁵² Joe E. Ericson and Ernest Wallace, “Constitution of 1876,” in *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/mhc07>; Seth Shepard McKay, *Making the Texas Constitution of 1876* (Philadelphia: University of Pennsylvania, 1924), 95–99; Patrick G. Williams, “Of Rutabagas and Redeemers: Rethinking the Texas Constitution of 1876,” *Southwestern Historical Quarterly* 106, no. 2 (Oct. 2002): 230–35. Williams studied Republican voting strength in these counties and concluded that “The key to voting on this issue seems not to have been Grange (or any other economic interest group) affiliation, but instead the size of the non-Democratic vote in delegates’ home districts. The greater tendency of Grange delegates to vote against suffrage restriction is most likely to be attributed to the greater tendency of Grangers to come from securely Democratic, white-majority counties.”

⁵³ Constitution of the State of Texas (1876), Article XII, Sections 3 and 4; Article X, Section 2.

being in league with Republicans and blacks.

The Constitution of 1876 cut back state government, eliminated the state police, drastically reduced the power of the governor, required an elected judiciary, and limited the legislature to meeting only once every two years except in emergencies.⁵⁴ The new constitution was ratified in the general election of February of 1876 by a margin of almost three to one, roughly the same margin by which Governor Coke won reelection over Republican nominee William Chambers. Compared to the 1873 election, 65,000 more Democratic votes were cast in 1876, returning a preemptive Democratic majority to both houses of the Fifteenth Legislature. Republicans showed only pockets of support in heavily black counties in North and East Texas and in the Hispanic and German strongholds in Southwest Texas around San Antonio and the hill country. A new white Democratic machine had resumed control of the state.⁵⁵

Texas's six constitutions accurately reflect the dominant political ethos of their times, each representing a "constitutional moment" in the development of the state. As an imagined community, Texas moved from nascent slave-holding republic to frontier slave state, to unsuccessful rebel, and then to a brief era of progress and repentance. Ultimately, and for almost a century thereafter, political orthodoxy in Texas was characterized by a conservative pro-business consensus enshrined in one-party Democratic rule.

⁵⁴ The direst threat posed to the Democrat establishment by the convention was that white Granger reformers would form a reform alliance with Republicans and blacks. Seth S. McKay concluded that "Perhaps the most talked about single argument against the proposed constitution was the one originated by the *Galveston News* ... that Texas would have a 'Senegambia' on the eastern coast (because of) ... the action of the convention in refusing to provide a poll tax prerequisite for voting, and in providing for an elected judiciary." He described the *Galveston News* as "the most widely circulated newspaper in the state" and "conservative and almost non-partisan, but professed to have a Democratic leaning." McKay, *Making the Texas Constitution of 1876*, 151, 169, 177-82; *Galveston News*, January 28, 1876; January 30, 1876.

⁵⁵ Barr, *Reconstruction to Reform*, 25-26.

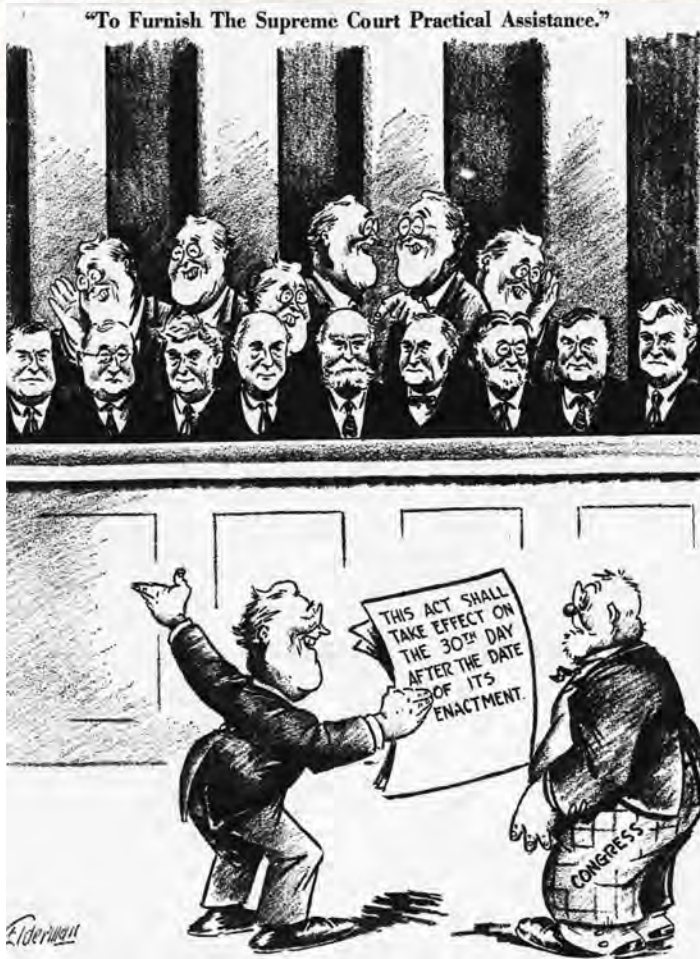


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The Number Nine: Why the Texas Supreme Court Has the Same Number of Justices as the United States Supreme Court¹

By Josiah M. Daniel, III



To Furnish the Supreme Court Practical Assistance.
Image courtesy of the University of Virginia.

As law students learn in constitutional law class, early in 1937 President Franklin D. Roosevelt proposed increasing the United States Supreme Court (the “SCOTUS”) from *nine* to *fifteen* justices in an attempt to overcome the Court’s hostile reception to significant portions of his New Deal legislative program as evidenced by a crescendo of adverse decisions from 1935 through 1936. After 168 days of bitter politics, Congress defeated the President’s proposal due not only to Justice Owen Roberts’ “switch in time that saved nine” but also in significant measure to the legislative efforts of the Dallas congressman Hatton W. Sumners.² One consequence of the 1937 episode is that, ever since, virtually all commentators, lawyers, and judges reflexively regard *nine* as the proper and immutable number of justices of the SCOTUS.

At first glance, the saga of that 1937 crisis surrounding the SCOTUS might seem irrelevant for a *state* supreme court, namely, our Texas Supreme Court (the “SCOTX”). But a comparison of the two courts shows that the number of *nine* seats³ is one of the fundamental ways in which

¹ This article originally appeared in *In Chambers* (Summer 2018): 25–29.

² This oft-quoted aphorism is the conventional wisdom—that Justice Roberts’ sudden change in the middle of the crisis from voting with the opponents of the New Deal to instead sustaining it was the primary cause for defeat of FDR’s plan—but Sumners’ solution to the crisis, which was to sponsor and enact the Retirement Act of 1937, under which SCOTUS justices could retire at full pay and continue to sit, if they wish, in the lower federal courts, was at least as important. See Josiah M. Daniel, III, *Hatton Sumners and the Retirement of Supreme Court Justices*, NOT EVEN PAST, available at <https://notevenpast.org/hatton-sumners-and-the-retirement-of-supreme-court-justices/> (2017) (hereinafter, Daniel, *Sumners and the Retirement of Supreme Court Justices*).

³ 28 U.S.C. § 1 (“The Supreme Court of the United States shall consist of a Chief Justice of the United States and

the two courts are alike. The other two similarities are that each is created in organic law—the constitution—of the respective government—federal or state—of which each is a component⁴ and that each is the court of last resort, or apex, of the judicial branch of its respective government and accompanying legal system.

Profound differences also obtain, of course. The SCOTUS is staffed by justices appointed by the President, and those justices enjoy lifetime tenure and protection against salary reduction during “good Behaviour.”⁵ SCOTUS justices exit the bench only by death, resignation, or—since 1937—retirement.⁶ In contrast, the SCOTX is composed of justices who have won statewide election⁷ to serve fixed terms of only six years, on a staggered basis.⁸ The Texas justices thus serve at the pleasure of any majority of voters in an ongoing series of elections.⁹ Moreover, SCOTX justices have an age limitation of, more or less, 75 years; and they are not protected against salary reductions by the Legislature.¹⁰

Moreover, while the number of *nine* justices is legislatively determined for the SCOTUS, it is constitutionally established for the SCOTX. To change the number of justices, an appropriate vote is required—by very different voters: by Members of Congress and Senators voting to revise the federal Judicial Code for the SCOTUS and by a statewide vote of Texas citizens in a constitutional-amendment election for the SCOTX. And while no SCOTUS justice has ever left the bench to run subsequently for office in the executive or legislative branches, the SCOTX is a springboard for election to such other offices.¹¹

With that comparison as background, consider now that first one of the three basic similarities of the two supreme courts—that is, both courts have the same number of justices, *nine*. The number of nine justices composing the SCOTUS has been fixed for a century and a half, since Congress enacted the Judiciary Act of 1869 in the aftermath of the Civil War¹²; as noted, that number is “carved in stone” as a result of the 1937 crisis. But the number of *nine* justices staffing the SCOTX is of much more recent vintage, dating from the adoption of a state constitutional amendment only 74 years ago, in 1945.

eight associate justices”); TEX. CONST. art. V, § 2(a) (“The [Texas] Supreme Court shall consist of the Chief Justice and eight Justices”).

⁴ See U.S. CONST. art. III, § 1; TEX. CONST. art. 5, § 1.

⁵ U.S. Const. art. III, § 1.

⁶ Daniel, *Sumners and the Retirement of Supreme Court Justices*, supra n. 2.

⁷ For complete accuracy, it should be noted that the Governor is authorized to appoint a SCOTX justice when one exits by death or resignation. TEX. CONST. art. IV, § 12.

⁸ “Said [SCOTX] Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years.” TEX. CONST. art. 5, § 1a(1).

⁹ SCOTX justices also may be removed pursuant to state constitutional provisions establishing the State Commission on Judicial Conduct. TEX. CONST. art. V, § 1-a(2)-(14).

¹⁰ TEX. CONST. art. 5, § 1a(1) provides that “the Legislature shall provide for the retirement and compensation of [SCOTX] Justices,” and § 2(c) provides that the Justices shall each “receive such compensation as shall be provided by law.”

¹¹ SCOTX alumni in elective offices today are the Governor, Greg Abbott; U.S. Senator John Cornyn; and U.S. Representative Lloyd Doggett.

¹² BERNARD SCHWARTZ, *A HISTORY OF THE SUPREME COURT* 157 (1993).



The three-member Texas Supreme Court at the turn of the 20th century.
Left to right: Justice Thomas J. Brown, Chief Justice Reuben R. Gaines, and Justice Frank A. Williams.
Photo courtesy of the Texas Supreme Court Archives.

So a pertinent question for Texas legal history is why and how did *nine* become the number of justices for Texas's highest civil court,¹³ the SCOTX, mirroring that of the SCOTUS? No easy or clear answer is found in the existing literature. Upon my research, I submit that the reason for the number of seats on the SCOTX becoming established at *nine* at mid-20th century was not only the needs of the "byzantine"¹⁴ structure of the courts of a geographically very large state,¹⁵ but also the inspiration of significant Texas law professors, lawyers, and judges of the first four decades of the twentieth century, expressed in articles addressed to the bar¹⁶ and acting through

¹³ The Texas Court of Criminal Appeals is also a *nine*-member court of last resort, but for simplicity I ignore that criminal appellate court and focus here on the two *supreme courts*.

¹⁴ Legal historian Mike Ariens has described the Texas judicial system as a "byzantine structure" with a "plethora of courts with varied, overlapping, and confusing jurisdictional boundaries" along with the SCOTX and the Court of Criminal Appeals. This predicament has resulted, he argues, from a history of legislative "penury" and has caused "a persistent backlog of cases, difficulty keeping judges on the bench, and occasional claims of corruption in the Texas courts." MICHAEL S. ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* at 200 (2011).

¹⁵ Only five states have nine justices; the vast majority have five or seven. *State Supreme Courts*, BALLOTPEDIA, https://ballotpedia.org/State_supreme_courts.

¹⁶ In every volume from its inception in 1922 through the late 1920s, the *Texas Law Review* carried articles by academics and practitioners under the broad heading "Suggestions for Improving Court Procedure in Texas." For instance, Professor Leon Green of the University of Texas Law School wrote: "Our court organization is

the professional organizations,¹⁷ by and with the federal court system and the associated federal judicial reforms that were occurring after World War I and into and through the New Deal and that culminated soon after the court-packing crisis. The SCOTUS was for these Texans the model of what the SCOTX could and should be.

The starting point is the state's Constitution of 1876 which had established the membership of the SCOTX at three justices. But consistent with the trend of all American states after the Civil War,¹⁸ Texas thereafter created intermediate appellate courts, as well as new trial courts, on an ad hoc, uncoordinated basis. Beginning in 1879 and until 1891, the Legislature not only created a steadily growing number of Courts of Civil Appeals but also provided by statute a three-member Commission of Appeals tasked to assist the SCOTX.

Attempts to reform and rationalize the system began in the new century. In 1913 the Texas Senate passed a resolution favoring an increase of the SCOTX justices to fifteen with abolition of all other appellate courts; and in 1919 the House voted a resolution that the Legislature should create and vacate any courts beneath the SCOTX to rationalize the system, just as Congress does with the federal courts.¹⁹ While nothing came of those efforts, it was obvious that the SCOTX had fallen far behind in its work, and in 1918, a progressive governor, William P. Hobby (1917–1921), persuaded the Legislature to enact a second Commission of Appeals, of six members this time, for the same purpose as before. The new Commission was an imperfect solution,²⁰ but “the sentiment for more fundamental judicial reform received a shot of energy” from the Legislature's action.²¹

Then during the 1920s, the two business-progressive²² governors, both lawyers, Pat Neff (1921-1925) and Dan Moody (1927-1931),²³ advocated for significant reform of the judicial

organically diseased, and, therefore, radical treatment will be required. . . . [C]ourt organization, therefore, must be seriously remodeled.” Leon Green, *Simplification of Civil Procedure*, 2 TEX. L. REV. 464-66 (1922).

¹⁷ Josiah M. Daniel, III, *Governor Dan Moody and Judicial Reform in Texas during the Late 1920s*, 2 J. TEX. SUP. CT. HIST. Soc., No. 2 at 2-4 (Winter 2012) (hereinafter, Daniel, *Moody and Judicial Reform*) (as of 1927, “the [Texas Bar] Association had been pointing up deficiencies of the state's legal system and proposing reforms for most of its 45 years”). And as explained later, the Texas Civil Judicial Council, from its inception in 1929, proved to be a strong proponent of a nine-justice SCOTX.

¹⁸ See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* at 336-37 (1973).

¹⁹ Charles T. McCormick, *Modernizing the Texas Judicial System*, 21 TEX. L. REV. 622-23 (1943) (hereinafter, McCormick, *Modernizing*).

²⁰ One shortcoming was the variable precedential value of its decisions, depending on whether the SCOTX justices (i) took no action on a Commission decision (in which event, its value was uncertain or low and it was published in the unofficial *South Western Reporter* only as a decision of the Commission); (ii) adopted the judgment or approved the holding of a Commission decision (which meant that the case was published only in the *South Western Reporter* but with a higher level of precedence; or (iii) adopted the entire opinion of the Commission (in which event the case was published as if it were a decision of the SCOTX in the official Reporter, *Texas Reports*, with full precedential authority). TEX. L. REV., *THE GREENBOOK: TEXAS RULES OF FORM* §§ 5.2-5.2.4 (12th ed. 2010). See also Spurgeon E. Bell, *A History of the Texas Courts*, in STATE BAR OF TEXAS, *CENTENNIAL HISTORY OF THE TEXAS BAR* at 201-02, 205-06 (1982); MARIAN BONER, *A REFERENCE GUIDE TO TEXAS LAW & LEGAL HISTORY: SOURCES AND DOCUMENTATION* at 30-33, 37 (1976).

²¹ JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836-1986* at 139, 161-62 (2013).

²² Historian George Brown Tindall coined this phrase to describe those New South politicians of the 1920s who sought reforms, among other things, to improve efficiency of state government including specifically the judiciary. GEORGE BROWN TINDALL, *THE EMERGENCE OF THE NEW SOUTH, 1913-1945* at 224-233 (1967).

²³ Daniel, *Moody and Judicial Reform*, supra n. 17, at 2-4 (“In Moody, the TBA had a member who shared the professional organization's . . . zeal to reform the [Texas] judicial system”).

department of state government. Moody took the matter the furthest, making constitutional enlargement of the SCOTX to *nine* full members a priority. Moody and his allies in the Texas Bar Association (the “TBA”)²⁴ wished to revise the judicial article of the Texas Constitution along the lines of Article III of the U.S. Constitution including increasing the SCOTX to the same number of justices as the SCOTUS, *nine*. “With a Supreme Court of *nine* members in Texas,” as Moody himself argued, “Texas ought to have as great a Supreme Court as exists on the North American continent.”²⁵

At Moody’s request, the Legislature twice submitted to Texas voters such an amendment to the state Constitution²⁶; but in tiny turnouts, both in 1927 and again in 1929, the electorate rejected each amendment.²⁷ So Moody and his allies in the Legislature turned to the alternative of reform through legislation; and, as I have written elsewhere, by simple measures they managed to improve judicial administration while maintaining the six-member Commission of Appeals to assist the three-member Supreme Court.²⁸ In fact in the 1930 Legislature, Moody and his allies obtained an enactment to enlarge the terms of the Commissioners to six years and to make them appointable, not by the Governor but by the SCOTX itself.

It was an iterative process over the 1930s and early 1940s to increase the SCOTX to nine justices. While initially the Commission of Appeals “wrote an opinion and the Court approved or disapproved,” the operating procedures gradually changed over two decades, with individual Commissioners called in for conference with the Justices, and later sections of the Commission constituted. By the time of the federal court-packing crisis, the Clerk of the Texas Supreme Court wrote in the *TEXAS BAR JOURNAL* that its three justices and the six Commissioners were always acting “en banc,”²⁹ that is, functioning as “a court of *nine* Judges.”³⁰

Another step along that pathway was to return civil procedural rule-making to the SCOTX, from which it had been taken by legislation back in 1891. After Moody left office, the work for

²⁴ For example, one Houston attorney active in the effort spoke at the TBA’s annual meeting, decrying “the divided, medieval and reactionary system” of Texas courts and pleading for reform along federal Article III lines. Samuel B. Dabney, *Judicial Reconstruction*, 6 *TEX. L. REV.* 302, 303 (1928) (hereinafter, Dabney, *Judicial Reconstruction*). A former judge, A.H. McKnight, was adamant about the need for judicial reform over the entire 1920s. See, e.g., A. H. McKnight, *Fortieth Legislature and Judicial Reform*, 5 *TEX. L. REV.* 360, 362 (1927).

²⁵ Address of Gov. Dan Moody, *Proceedings of the Annual Meeting of the Texas Bar Ass’n*, 5 *TEX. L. REV.* 68, 70 (1927) (emphasis added).

²⁶ Dabney, *Judicial Reconstruction*, *supra* n. 24, at 309 (1928).

²⁷ See *Bar Section*, 7 *TEX. L. REV.* 413, 414 (1929).

²⁸ Daniel, *Moody and Judicial Reform*, *supra* n. 17.

²⁹ S. A. Philquist, *The Supreme Court of Texas*, 1 *TEX. B.J.* 7, 8 (1938). See also Walter C. Woodward, *The President’s Address, Proceedings of the Texas Bar Ass’n*, 15 *TEX. L. REV.* 6, 9 (1937) (“Our Supreme Court as now constituted, is in reality a court of *nine* Judges.”) (emphasis added).

³⁰ After the success of the constitutional amendment in 1945, the *Texas Bar Journal* reflected back that the Commission and the Court sat en banc and the Commission’s opinions were adopted by the Court, until the system worked *as near a nine-judge operation as possible* under the Constitution, with the result that only the three Justices could vote although all nine of the judges heard the oral argument and participated in the consultation.

Texas Voters Adopt 9 Judge Supreme Court Amendment, 8 *TEX. B.J.* 448, 449 (1945) (emphasis added) (hereinafter, *Texas Voters Adopt 9 Judge Supreme Court*).



Before 1945, the three-member Texas Supreme Court and six-member Commission of Appeals often worked en banc. Pictured in this group photo from 1941-43 are (front row, left to right) Texas Supreme Court Justice John Sharp, Chief Justice James Alexander, and Justice Richard Critz; (back row, left to right) Commission of Appeals Judges John Hickman, J.D. Harvey, Few Brewster, William Taylor, Graham Smedley, and Charles Statton. Photo courtesy of the Texas Supreme Court Archives.

such reform centered in the TBA and in an innovative agency that Moody had persuaded the Legislature to create in 1927, the Texas Civil Judicial Council. It sought the modernization of Texas civil practice rules, which in fact occurred soon after the analogous work in Washington had borne fruit.³¹ The federal Rules Enabling Act of 1934 and the SCOTUS's adoption of the initial Federal Rules of Civil Procedure in 1938 strongly influenced Professor Roy W. McDonald of SMU Law School, and to varying and lesser degrees the other members appointed to a civil rules advisory committee, in the project of preparing new civil rules after the Texas Legislature in 1939 passed—along with the State Bar Act—the Texas Rules of Practice Act.³²

In 1943, presaging a new push to increase the SCOTX membership to nine, Charles T. McCormick, the Dean of the University of Texas School of Law, published an influential article reviewing the efforts of the prior three decades and finding all of those steps as part of a modernization process that was informed by the federal court system and its reforms during these decades.³³

³¹ See Stephen N. Subrin, *How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective*, 135 U. PA. L. REV. 909, 910 (1987) (“The 1938 Federal Rules were heralded as a phenomenal success. Approximately half of the states adopted almost identical rules, and procedural rules in the remainder of the states bear their influence.”).

³² William V. Dorsaneo III, *The History of Texas Civil Procedure*, 65 BAYLOR L. REV. 713, 734-37 (2013) (as adopted by the SCOTX in 1941, “[m]ost of the [822] rules were based on the procedural provisions of the Revised Civil Statutes of 1925 and . . . [o]thers were based on a slightly modified version of the 1938 federal rules.”).

³³ McCormick, *Modernizing*, supra n. 19, at 622-23, 684-85.

Improved Supreme Court Is Objective Of Proposed Constitutional Amendment

EDITOR'S NOTE: This is the first of three articles explaining the four constitutional amendments the voters will pass on at the election Aug. 23.

By S. J. BRAWNER
State Representative

A number of proposed constitutional amendments were submitted by the Legislature at its regular session this year for adoption or rejection by the qualified voters. Some of these are to be voted on Aug. 23, and others at the general election next year.

The citizens of a republic has no higher civic duty than to sincerely participate in the selection or rejection of proposed amendments to the fundamental law of the state or nation. It is the law made by the people to govern their officials, and when a proposition to amend the constitution is submitted to the people, each qualified voter owes it to himself or himself, and to the state, to understand the proposed amendment and to exercise his or her best judgment in his vote to adopt or reject the proposition.

Having been requested to prepare an analysis of the proposed amendments to be voted on this month, I shall endeavor to make the meaning of each one clear. In doing this, I may express some of my personal ideas as to whether or not an amendment should be adopted. The reader, however, should endeavor to understand the meaning of and the effect of each amendment submitted, and then vote for or against, according to his or her best judgment.

Supreme Court Amendment

S. J. B. No. 4, proposed to amend Section 2 of Article 2 of the Constitution, which provides the number of judges composing the Supreme Court. The present Section 2 of Article 2 provides the Supreme Court shall consist of a Chief Justice and two Associate Justices, provided their qualifications, and that they should be elected by the people and when there is a vacancy, same shall be filled by appointment of the Governor, the appointee to serve until the next general election.

The proposed amendment changes this article in only two particulars: first, the number of judges, and second, provides that the compensation shall be fixed by the Constitution to be such amount as shall be prescribed by statute. The important, in fact, the vital change made is in the number of judges. The proposed amendment provides that the Supreme Court shall consist of a Chief Justice and eight Associate Justices.

El Paso Herald-Post
Wednesday, Aug. 15, 1945

Supreme Court Amendment

A CONSTITUTIONAL amendment similar to that now before the voters—to increase the number of Supreme Court judges from three to nine—has been presented before, and debated.

The reason for the defeat was never clearly understood. Perhaps there was fear of increased expense. But the change in the court will mean little more burden on the taxpayers.

Texas now pays three Supreme Court judges and six commissioners appointed by the judges—nine persons. If the change is made there will be the same number of persons on the payroll, probably with increases in salaries for the commissioners, who will become the new judges.

At present the difference in salaries is only \$500 a year. But, even if there should be an increase in cost, it would be worthwhile. Now two judges can determine the law of Texas even though seven other members of the court—the six commissioners and one judge—disagree with them.

It should require more than the opinions of two men to control the meaning of Texas law.

Moreover, some of the large industries of Texas, particularly the huge oil firms, take an unhealthy interest in the State's Supreme Court. They raise hundreds of thousands of dollars for their favorite campaign funds. We think it would be considerably more difficult for them to elect a majority of five than a majority of two.

All any rate the proposal seems in promise improvement, and we hope the voters will give it a trial.

El Paso Herald-Post

...of a case, or the law governing the disposition of the case, and even be joined therein by one of the judges, the other two judges would decide the case, and the opinion would have to be written in accordance with their construction of the law, even though the seven others took an entirely different view.

Will These Equal Votes

If the amendment is adopted, then each of the nine will have equal voice in the disposition of a case. This, in the opinion of the writer, is as it should be. If the burden of deciding the case, hearing arguments, forming their conclusions and writing opinions is placed upon members of the Court, they should equally have the right to a final determination. Instances have arisen in the Court, it is said, where all six of the commissioners and one of the judges have agreed upon the disposition of a case, and yet the other two judges, disagreeing, and agreeing between themselves, make the decision and write the opinion.

Another change will be made by the adoption of this amendment. The present qualifications of a member of the Supreme Court is that he must have attained the age of 30 years, and have been a practicing lawyer or judge, or both, at least seven years. If the amendment is adopted, the qualification will be that he must have attained the age of 25 years, and shall have been a practicing lawyer, or judge of a court of record, or both, for at least 10 years.

The adoption of the amendment will result, but little additional work at the Court, because the salaries paid the present commissioners are practically the same as the salaries paid the judges.

Chungking Radio Urges Hirohito to Kill Self

By International News Service
SAN FRANCISCO, Aug. 15.—Chungking radio urged today for a broadcast that Emperor Hirohito...

PCC heard a Chungking broadcast in Canton to Chinese...

"It is rumored that His Majesty, the Japanese Emperor, is attempting here-today to commit suicide."

"If that is true he had better do it now. That is the best course to take."

Court Amendment

...by the Association last Friday amendment which provides court of nine elected grand jurists and members of bar in that position.

The constitution of 1876 court of three members, but

...by a leading jurist... the legislature... the supreme court in the district... Since that time Texas has had a six-member supreme court... member... but at the time they have no vote in the decision in the final disposition of a case.

In addition, therefore, to be voted on next Saturday to give existing judges compensation, there are amendments which should be done, perhaps being that it would more weight of supreme court on outcome of cases. Under present law of the three judges against the judgment of the six commissioners of appeal would abolish the commission members are appointed to establish a supreme court of justice and eight associate judges. It would not be the court of the court.

Most states have nine and only three besides Texas and Wyoming—have as few as the only state that has the

of majority of the judges the supreme court but legal final decision.

The amendment provides the time the amendment is done associate justices of the shall continue in office until the expiration of the term appointed, and until their term is expired, it makes no

of the present elected judges. The voters would do well to meet, which is a vote of four then and Saturday.

THE GALVESTON

AUGUST 15,

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Judge Brewster following your suggestion, last week I had our local paper use following on its front page.

Our Co. bar will meet next Monday and adopt resolution approving the amendment.

F A CAMP

October 19/45

RAMBLING

Amendment. There are four constitutional amendments to be voted on at the special election set for August 23... and one of them amends the supreme court... the amendment which provides the time the amendment is done associate justices of the shall continue in office until the expiration of the term appointed, and until their term is expired, it makes no

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Above, and on next page: Texas Supreme Court Justice Few Brewster devoted two pages of his scrapbook to the 1945 constitutional amendment campaign that asked voters to amend the Texas Constitution to increase the Supreme Court's size from three to nine. Brewster was one of the six Commissioners who automatically became Associate Justices when the amendment passed. Photos by David A. Furlow.

Vote for a NINE-MAN SUPREME COURT

August 25

(S. J. R. No. 8—Third Amendment on the Ballot)

because . . .

It will give a voice to all nine judges who now hear arguments and write opinions, but upon which only three are empowered to rule.

It will require a majority of five judges for court rulings, instead of two as at present. It will require five for a quorum instead of the present two.

It will prevent the possibility of two judges handing down an opinion which might be entirely different to that held by one of the present three judges and all six of the court-appointed appeals commissioners.

It will enable the people of Texas to choose all of the men who serve on this court, with election of three every two years for six-year terms. Today one judge is elected each two years, with two commissioners being appointed at the same time for six-year terms.

★ ★ ★

Lawyers are urging their clients and friends to vote for this amendment. Because we believe the people should have the added efficiency which the action would provide for the court, we, the undersigned lawyers, of Dallas recommend the adoption of this nine-man supreme court amendment.

T. W. HASSELL
FRONTICE WILSON
D. A. FRANK
LAWRENCE H. DEBA
O. O. TOUCHSTONE
E. L. WILKERSON
FLOYD B. FITTS
RAYMOND M. MYERS
J. W. HASSELL, JR.
E. MCGEE, JR.
CHAS. B. WALLACE
E. T. WILKINSON, JR.
MACK L. VICKREY
MARION B. SOLOMON
JOHN TOUCHSTONE
JOHN S. WITCHEE
G. W. SCHMUCKEY
W. L. LEEDS
ARTHUR J. BIGGS
KOLLO E. KIDWELL
FRANK C. BROOKS
O. D. MONTGOMERY
M. M. CRANE, JR.
W. C. GOWAN
E. R. STROUD
JOHN M. HACKLER
PRESTON A. WEATHERED
A. A. LANTZ
JAMES S. GRISHAM
HEN D. CLOWE
J. W. SEWELL
CURTIS F. HILL
ADAIR EMBERTT
JOHN E. VORHIES
PAUL CARINGTON
J. W. MADDEN, JR.
JEANNETTE E. WILLIAMS
GEO. E. GRIFFIN
M. C. CHURCH
W. F. BANE
GERALD C. MANN
HOLMAN JENKENS
D. K. MAHAN
FOWLER ROBERTS
HAROLD PRESSLEY, JR.
C. M. CRUMBAUGH
FRANK A. McCULLOUGH
ARTHUR HAMILTON
THOS. G. MURNAE
JOHN N. JACKSON
W. HUGHES KNIGHT
JULIAN B. MASTIN
EUGENE P. LOCKE
JOE UTAY
OTIS BOWER, JR.
MCGILLVRAJ MUSE
ROSSER J. COKE
HENRY C. COKE, JR.
W. D. WHITE
EARL A. FORSYTHE
STEPHEN MAYO
WILLIAM H. NEARY
DWIGHT L. SIMMONS
DANIEL R. ROGERS
W. D. MASTERTON
PINKNEY GRISSOM
S. W. WINSTEAD
H. R. HARRIS, JR.
J. P. JACKSON
SOL GOODSELL
HERBERT MARSHALL
W. D. BRUNDIDGE
O. A. FOUNTAIN

HAROLD A. BATEMAN
J. M. WILLIAMS
W. H. JACK
JOHN C. SANEER
KIMPI D. BAKER
DALLAS C. BIGGERS
D. B. BERRY
W. E. HARSELL
ALBERT B. MORRIS
JOHN C. HARRIS
TOM L. SESSIONS
ELLEN BADES
D. H. BADES
CHAS. ROMICK
HENRY SMITH
NATHANIEL JACKS
CHAS. S. McCOMBS
CARL MAYS
JEROME T. RAGDALE
ROBERT L. DILLARD, JR.
ROBERT W. SHERRILL
KENNETH SANDERS
HAROLD E. SANDERS
A. H. McHILLDOUGH
JULIUS R. RINGE
PHILIP E. PALMER
GEORGE WERRY
FRANK C. SCURLOCK
B. M. BATES
W. J. BOWEN
P. P. BALLOWE
KENT D. ALLEN
LEE SHOPTAW
J. E. GOLDEN
ROBERT D. ALLEN
ROBERT OGDEN
ALTO B. CERVIN
NEAL C. DASHAZO
ROGER LEWIS
HENRY D. AKIN
FRID PORTER
NETH L. LEACHMAN
L. L. LANCASTER, JR.
ORRIN MILLER
GEORGE GARDNER
JOE C. LUTHER
S. AUSTIN WIER
EMIL CORENBLETH
CHIEF ROBERTS
C. C. RENFRO
THOS. T. LEWIS
LEO R. TRESP
OWEN GEORGE
J. L. McNEES
ELY STRAUS
ALVIN H. LANE
CAREY G. KING
JOHN BUTERA
LESLIE SHULTS
LELAND M. JOHNSON
R. A. RITCHIE
H. G. GOGGANS
W. C. GRAVES
WILLIAM F. GOAR
GEORGE M. FIELD
LESLIE JACKSON
FRANKLIN E. SPAFFORD
HARRY I. FREEDMAN
EDRICK G. HAMLIN
ELGAR L. ROBERTSON
RAYMOND W. WEBER
WILLIAM M. BATES
J. GLENN TURNER

W. R. HAMILTON
NORMAN HAMILTON
J. CLEO THOMPSON
JOHN D. McCALL
WRIGHT DE SMITH
NELSON PHILLIPS, JR.
ROY C. COFFE
D. H. HARDY
GABE P. ALLEN
JOE CUNNINGHAM
JEROME CHAMBERLAIN
T. K. IRWIN
IVAN IRWIN
ROBERT C. BENAVIDES
W. B. BOST
LOUIS WILSON
EARL E. SHUP
NORMAN K. CROZIER, JR.
R. W. GRAY
JACK JENNINE DOUTHIT
DEXTER HAMILTON
ADAIR BYERS
HUGH S. GRADY
WALDO W. WASSELL
CLARENCE A. GUITTARD
SAM E. BURFORD
ROBERT B. HINCKS
J. M. BURFORD
E. M. RYBURN
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JOHN ASBRIARD
DWIGHT L. McCORMACK
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HOWARD WEDDINGTON
EDWIN TOBOLOWSKY
L. M. RICE
O. M. WROE
JACK A. SCHLEY
GRADY NIBLO
FELIX H. GARCIA
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H. M. OSTER
C. A. MOHRE
PERCY FETWELL
LEWIS B. LEFKOWITZ
GUY L. MANN

E. J. ELAM
BEN T. WARDER, JR.
TOM M. SHAW
W. L. CHAWFORD
HUDSON FRANCIS
CHAS. F. UMPHRESS
W. M. ALEXANDER
ROBERT PRICE
CHARLES GALLAGHER
BEN H. GALLAGHER
J. O. BEAN
L. GOGGANS
HIRAM F. LIVELY
EDWARD P. DOUGHERTY
F. H. ALEXANDER
MORRIS HARRELL
HENRY YEAGER
HUGH W. FERGUSON, JR.
THOS. B. LOVE
JOHN C. WALLVOORD, JR.
W. H. SHOOK
P. H. SHOOK
LOGAN FORD
W. H. WASSELL
CLARENCE A. GUITTARD
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Last Call

ON THE eve of the election many voters doubtless are still uninformed as to the provisions of the four State constitutional amendments to be voted on Saturday, or undecided how to vote on them.

This is one occasion when it is the people's business to understand measures and vote on them intelligently. For in the matter of constitutional amendments the voters themselves are the lawmakers, and the proposals on which the ballot are of real importance and concern to every Texan, because amendments adopted go into the organic law of the State. Once there they are hard to remove.

Heretofore The Post has stated its position on the four proposals. For the benefit of readers who may desire the information or guidance we now reiterate our views:

Common sense demands the adoption of the amendment to increase the supreme court membership from three to nine. Years ago the docket became so heavy that nine men were required to handle it. As an expedient, the Legislature by statute provided for the appointment of a six-member commission of appeals. The six assistant justices do the same work that the three constitutional justices themselves do—except that they lack the constitutional authority to vote on the official court decisions. The pending amendment would merely make all of them justices. It would simplify the work of the supreme court, eliminating duplication and confusion, and thus increase its efficiency. This amendment should be adopted.

THE HOUSTON POST: FRIDAY, AUGUST 24, 1945

Amendment 8 (increase of supreme court membership)

For 44,352, against 3,300.
EL PASO COUNTY
Fort 2889, against 598, total vote 3728.

Local Attorneys Favor SJR No. 8; Election Saturday

Most Reeves county attorneys are in favor of Senate Joint Resolution No. 8, which would increase the state supreme court to nine members. District Attorney James D. Willis believes.

Judge Willis came out strongly in favor of the amendment today. He pointed out that it is one of the four to be voted on at the election to be held in Texas next Saturday.

If the amendment is favored it would give Texas a nine-judge supreme court, with all its members elected by and responsible to the people of Texas; it would give the six judges who now sit with the three justices in the consideration of cases a vote in their final decision and disposition, and it would provide for a quorum of five to concur in a decision being made by the court.

—SHOP IN PECOS—

Ad paid for by State Bar Association committee on constitutional amendment for enlargement of supreme court. Gerald C. Mann, Pub. Chmn.

THE DALLAS MORNING NEWS, FRIDAY, AUGUST 24, 1945

Two years later, in 1945, the Legislature submitted and Texas voters adopted the constitutional amendment to increase the number of justices to *nine*,³⁴ where it has remained.

Although movements and efforts within the bar have periodically arisen, since World War II, urging that the selection of SCOTX justices be on the basis of merit or at least nonpartisan,³⁵ those advocates have assumed that the court's membership will continue to be *nine*. My research found no effort since 1945 to reduce the number of Texas justices from nine. Accordingly, the *number* of justices of the SCOTX will likely remain mirrored with that of the SCOTUS—at *nine*—for the indeterminate future.

Texas legal history is the story of its law, lawyers, and courts. I hope this short essay may not only illustrate that the *history* of Texas *courts* is an interesting and worthy component of Texas legal history generally but also encourage new research and articles. And who better to research and write such history than Texas judges and lawyers?

³⁴ The *Texas Bar Journal* reported:

[The amendment i]ncreas[ed] membership of the Supreme Court of Texas from three to nine and made the six judges now serving on the Commission of Appeals Associate Justices. The six who were changed from Commissioners to Justices by passage of the amendment are Few Brewster, A. J. Folley, J. E. Hickman, C. S. Slatton, G. B. Smedley, and W. M. Taylor. They were sworn into the Supreme Court of Texas, highest tribunal for civil litigation in Texas, on September 21 in an impressive ceremony. In an informing prologue Chief Justice James P. Alexander of the Court, paid tribute to past and present members of the Court and the Commission. He reminded the audience that the six judges have been three times approved, twice in their appointment by the Court, once by the people, August 25.

Texas Voters Adopt 9 Judge Supreme Court, supra n. 30, at 449.

³⁵ KYLE CHEEK & ANTHONY CHAMPAGNE, JUDICIAL POLITICS IN TEXAS: PARTISANSHIP, MONEY, AND POLITICS IN STATE COURTS 83-84 (2005).



JOSIAH M. DANIEL, III is a Retired Partner in Residence, Vinson & Elkins LLP, Dallas office.

[Return to Journal Index](#)

The Spring Board Meeting at San Felipe de Austin Was a Runaway Success

Story and photos by David A. Furlow

“Whenever American migrants arrived in Texas, they made their way to the empresario’s rough-hewn cabin—which was both his home and the colony’s land office—to claim their acreage and enter their names in [Stephen F.] Austin’s register. From San Felipe, Austin coordinated the complex business of settling Americans in Mexico, surveying tracts, issuing land titles, managing legal disputes, advertising in U.S. newspapers, and representing the interests of his settlers to Mexican authorities.”

— Andrew J. Torget, *Seeds of Empire: Cotton, Slavery, and the Transformation of the Texas Borderlands, 1800–1850*¹

Our Society went on the road in March—not in a Runaway Scrape from San Antonio traffic, Austin cedar fever, or Houston humidity but in the warm embrace of the Texas history on display at the San Felipe de Austin Museum and Visitors Center.

During the meeting, the Board made important decisions about the Society’s future. After hearing reports, the Board approved the creation and funding of the Larry McNeill Research Fellowship in Legal History (a separate story in this issue), reviewed the progress of the Society’s Taming Texas project, and evaluated initiatives, including work with the Texas Historical Commission to commemorate the 100th anniversary of World War I in Texas and a joint venture with the Texas Historical Foundation to devote a special issue of *Texas Heritage Magazine* to the Lone Star State’s legal history.

Dylan O. Drummond advanced to become the Society’s new President effective June 1, when Marcy Hogan Greer will transition to Immediate Past President. An election made Cynthia K. Timms President-Elect; William W. “Bill” Ogden, Vice-President-Elect; Tom S. Leatherbury, Treasurer; and Fourteenth Court of Appeals Justice Ken Wise, Secretary. The Society reelected eleven trustees and elected a new group of seven trustees to the Board: Texas Supreme Court Justice J. Brett Busby, U.S. Magistrate Andrew Edison, 470th District Court Judge Emily Miskel, and attorneys Alia Adkins-Derrick, John Browning, Lisa Hobbs, Kristen Vander-Plas, and Jasmine



¹ (Chapel Hill: University of North Carolina Press, 2015), 93.

S. Wynton. After the board and members' meetings, Historic Site Manager Bryan McAuley told stories about the people who lived in Spanish Texas, Mexico's twin-state of Coahuila and Texas, and the Republic of Texas.

Our board meeting took place in the museum gallery. Left to right: Hon. Tom Phillips, Bill Ogden, Hon. Jane Bland, and Hon. Ken Wise.



Left to right: Trustees Jay Jackson, Tom Leatherbury, Bob Black, Stephen Pate, Hon. Mark Davidson, and Hon. Tom Phillips.

Left to right: Hon. Ken Wise, Hon. Paul Green, Warren Harris, Executive Director Sharon Sandle, and President Marcy Hogan Greer.





Top: San Felipe de Austin and Goliad Historic Site Manager Bryan McAuley presented a lunch-time talk about the history of the San Felipe site. Seated are Trustee Jay Jackson, Administrator Mary Sue Miller, and Society guest Cecelia Ottenweller, volunteer curator working with the Printing Museum in Houston. Bottom: Members of the Society enjoy a barbecue lunch while listening to Bryan McAuley.

Society Administrator Mary Sue Miller arranged for everyone to enjoy a good barbecue lunch in the spirit of the Texas frontier. Barbecue has been on the menu in San Felipe since 1823, when empresario Stephen F. Austin established a headquarters for his colony in Mexican Texas, a department well known for its rancherías and vaqueros. Austin carefully selected a place on the Atascacito Road along the Brazos River, a route beloved by cattle drovers.

The Mexican Governor named the town for his own patron saint while Austin gave the place his own last name, calling it San Felipe de Austin. Ranching thrived there. José Enrique de la Peña, one of Santa Ana's staff officers, observed that the coastal plains west of San Felipe,

near the Brazos River, “appeared picturesque” in late March of 1836, so “one could see great numbers of cattle to both right and left.”² But the sight that left the greatest visual impression on young officer de la Peña was “that of a fine and beautiful dog next to a cat, both with a most mournful expression; no doubt they wept for the absence of their masters and lamented their loss.”³ By then, Austin’s settlers had burned their homesteads, leaving scorched earth rather than barbecue brisket for Santa Ana’s invading army.

In March of 1836, the settlers who lived in San Felipe—more than 600 people—watched Sam Houston’s agent, Captain Moseley Baker, burn the place to the ground, leaving Santa Ana’s advancing Mexican army silent chimneys and scorched timbers of a town that had once been. Captain Baker’s company of around 40 men were guarding the Brazos River crossing at San Felipe along the river bank opposite the town. As the Mexican army marched towards the area, the town was set ablaze. Soon, it was no more. Captain Baker, in fact, set fire to his own law office. Though San Felipe continued to exist after the revolution, it never returned to its preeminent place among the cities of Texas.

José Enrique de la Peña arrived at San Felipe de Austin after nightfall, but the next morning he walked the streets of Austin’s capital.

During today’s morning hours and before the incident with the steamboat, I visited the ruins hurriedly; since these had been frame buildings with chimneys of brick, a few of the latter remained, the ones we had identified some distance before our arrival. I could not estimate the exact number of houses that had been there, but it was my impression that there were fifty in all. Some these no doubt had been beautiful and comfortable, but one especially, located a hundred feet from the river, gave an idea of its magnificence; it had a cellar with brick walls of about thirty cubic feet. As in the town of Gonzales, there were numerous tools for different purposes, but principally for wagons and plows. There was also machinery, which had been destroyed, and a great assortment of nails and iron bars in the rough. In these latter ruins there were several peach orchards and vegetable gardens, some planted with sweet and Irish potatoes. In front of a pass, there was a house and evidence of a trench built by the enemy.

The great heaps of broken china indicated where its store rooms had been and also that the families must have possessed splendid table services. Let me say in conclusion, to be amplified later, that the fruits of so many years of hard work had been destroyed in one moment of madness...⁴

Those heaps of broken china and burnt chimneys remained untouched for a little less than two centuries before the Texas Historical Commission’s archaeologists and historians, our speakers, excavated them and placed them in San Felipe de Austin’s Museum and Visitors Center.

² José Enrique de la Peña (trans. Carmen Perry), *With Santa Ana in Texas: A Personal Narrative of the Revolution* (College Station: Texas A&M University Press, 1975), 105.

³ *Ibid.*

⁴ *Ibid.*, 106.



Top: Michael R. Moore held the Society's members spellbound with his stories of the place where Mexican, Tejano, and Anglo-American law blended together to lay the foundations of Texas jurisprudence. Below, left foreground: Executive Director Sharon Sandle, right foreground: President Marcy Hogan Greer. Background, left to right: Jay Jackson, Mary Sue Miller, Cecelia Ottenweller, Hon. Mark Davidson, Hon. Ken Wise, Dylan Drummond, Bill Ogden.



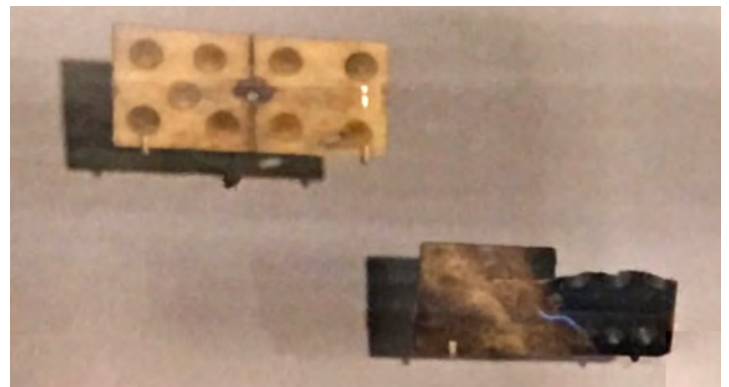
Above: The museum included legal forms and instruments settlers used to record land sales in Austin's colony. Below: Hon. Tom Phillips and Michael R. Moore.





Top: The San Felipe Museum contains artifacts and information about their importance. Photo by Hon. Ken Wise.

Right: One of the museum's exhibit cases includes the burnt dominoes found at the site of Alamo hero William B. Travis's law office when San Felipe de Austin was the capital of Stephen F. Austin's colony.



Below: Coded map of the streets of San Felipe de Austin in 1835.





Stephen F. Austin's desk shows where he, as the alcalde of San Felipe, administered justice.



Above left: Michael Moore shares stories about Travis with Trustees Bill Ogden and Jay Jackson. Above right: Lisa Pennington stands between Michael Moore and Society President-Elect Dylan Drummond on the spot where archaeologists excavated Travis's burnt dominoes. Below: A large signboard on the grounds north of the museum shows where William B. Travis operated his law office when San Felipe de Austin was his home.


LOT 50
TRAVIS LAW OFFICE | COTTEN PRINT SHOP

TRAVIS LAW OFFICE

WILLIAM BARRET TRAVIS IS REMEMBERED as a revolutionary patriot and martyr of the Alamo. Before he gave his life for Texas' independence, he was a young attorney in San Felipe who ran a law office located on lot 50.


Travis represented his neighbors in a variety of disputes and was even successfully "retained to defend Celia, a free woman of colour, in the matter of her freedom."

When conflict with Mexico erupted, Travis put himself on the frontlines. He was assigned to the defense of San Antonio and rode out to his post in late January 1836. Travis never saw San Felipe again. He perished when the Alamo fell on March 6, 1836.




"Took lease from Dr. Miller for 12 months for House, stable lot & c. Fence to be made & roof to be put on House -- Gave note for rent \$100, payable 12 mo's after date."


Entry in Travis' diary, noting his lease of a building in San Felipe for his law office, November 18, 1835



William Barret Travis



WILLIAM B. TRAVIS' DIARY, BEHIND JACO TO JACO 1834. Travis' law partner Franklin J. Store saved this diary from the burning of the town during the war. The only extant record of Travis' daily life, the diary details his finances, law practice, social life and even reading habits.



WILLIAM B. TRAVIS
Attorney at Law,
San Felipe de Austin,
November 18, 1835

LAW OFFICE
TRAVIS' SAN FELIPE LAW PRACTICE FLOURISHED. HE WAS ALSO CHOSEN SECRETARY OF THE TOWN COUNCIL, WHERE HE APPLIED HIS MANAGEMENT AND SPANISH-LANGUAGE SKILLS TO RECORDING, TRANSLATING AND ORGANIZING GOVERNMENT DOCUMENTS.

TRAVIS IN SAN FELIPE
As tensions with Mexico rose, Travis emerged as a strong voice for war and was an early enlister in the Texian army. With Mexican forces threatening to overrun the Alamo, Travis wrote back to San Felipe an impassioned call to arms, signing off with the iconic words: "Victory or Death."



Top left: Hon. Paul Green and Trustee Tom Leatherbury took in the entire museum, reading every signboard and examining each exhibit. Bottom left: An image depicts the night Captain Moseley Baker set fire to San Felipe de Austin, including his own law office, to keep the Mexican army from using the beams and boards in the settlement's houses to build boats capable of crossing the contested Brazos River. Right: A statue depicting the Runaway Scrape greeted our Board of Trustees and members at the San Felipe de Austin Museum.

Under Michael Moore's expert guidance, we all walked the grounds, saw where Three-Legged Willie administered alcalde justice, and learned about the printing press that provided Texians and Tejanos alike with news and government forms.

The Society's 2019 meeting at San Felipe was a success by any measure. Officers, trustees, staff, and members had a great time going on the road again to see a special place where lawyers, alcalde courts, business, revolution, and war shaped Texas legal history. To protect history, we must preserve it. But to fully understand it, we must first see the places where it happened.

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TSHA's 2019 Annual Meeting Panel: Texas Constitutionalism A to Z

By David A. Furlow

The Texas State Historical Association doesn't always tell tales of Texas legal history at its annual meetings, but when it does, it turns to this Society. During a spring season when bluebonnets delighted eyes along the roads from Houston and the Hill Country to Corpus Christi, our Society joined with TSHA to examine "The History of Texas's Constitutions, 1827 and Beyond." This TSHA/TSCHS panel program became one of highlights of TSHA's 123rd Annual Meeting at the end of February.

Preparation began on Wednesday night, the day before our early morning presentation, when all members of our team met to plan the progression of speeches, PowerPoint slides, and distribution of written handouts. Texas constitutional history specialist Bill Chriss acted as our local guide, hosting us at a favorite seafood restaurant and sharing stories of how much Corpus Christi had changed in recent years as we supped together. The Hon. Manuel G. Oropeza, former Magistrate of the Mexican Federal Election Court, regaled us with tales of visiting Veracruz and deciding election cases in Mexico City. Our Society's President, Marcy Hogan Greer, and our Executive Director, Sharon Sandle, discussed how their experience watching last year's panel presentations in San Marcos had shaped the way Marcy would introduce the panel and how Sharon would comment on the two presentations that preceded her.

When we returned to the Omni Corpus Christi Hotel that Wednesday evening, we found our room ready for the audience, a sign announcing our program outside, everything ready but the PowerPoint projectors, the flash-drives, and an eager audience.





Historians and lawyers, including TSHA C.E.O. Frank de la Teja's wife, attorney Magdalena H. de la Teja, Ph.D., showed up a quarter hour before the program began to take front row seats.

ARANSAS

Thursday 9:00am - 10:30am <i>Session 6</i>	Joint Session with the Texas Supreme Court Historical Society The History of Texas's Constitutions, 1827 and Beyond Sponsor: Texas Supreme Court Historical Society
10:30am - 12:00pm <i>Session 12</i>	Joint Session with the Society of Southwest Archivists Women's Archives: Documenting Women's History in Texas Sponsor: Texas State Library and Archives Commission
2:30pm - 4:00pm <i>Session 17</i>	Transatlantic Radical: A Roundtable Consideration of Red Tom Hickey
5pm - 6pm	Graduate Student Mixer Sponsor: Watson Arnold
Friday 9:00am - 10:30am <i>Session 20</i>	Marginalized Bodies: Race, Health, and Gender on the Borderlands, 1820-1960 Sponsor: University of Houston Department of History
10:30am - 12:00pm <i>Session 28</i>	Survival and Perseverance in Spanish Texas: Ranching, Water, and Contraband Trade Sponsor: Texas A&M University - San Antonio
2:30pm - 4:00pm <i>Session 31</i>	New Directions in Tejana/o History
Saturday 9:00am - 10:30am <i>Session 36</i>	Engaging Students with Opportunities in San Antonio and Texas History (Joint Session: Bexar County Historical Commission) Sponsor: Bexar County Historical Commission
10:30am - 12:00pm <i>Session 42</i>	Joint Session with the Texas Historical Records Board/Texas State Library Hidden in Plain Sight: Texas's Rich Research Collections and How to Find Them Sponsor: Texas State Library and Archives Commission



The next morning, we were all up early, meeting for coffee and a last-minute chance to review transitions from one speaker to the next. A special guest, Francisco Heredia, Curator of Harris County District Clerk Marilyn Burgess’s Historic Documents Room, attended our session in preparation for his work with our Society’s panel at next year’s TSHA annual meeting. Our former Executive Director, Pat Nester, attended the meeting to listen to the history programs he has come to love. Pat always pitches in to do whatever is needed. This time he assisted by practicing his skills as director of the Society’s next TSHA Annual Meeting YouTube video.



President Marcy Hogan Greer introduced our Society’s speakers.

Manuel González Oropeza began by presenting his paper, “The 1827 Constitution of Coahuila y Texas Blended Mexican and Anglo-American Constitutionalism.” A scholar at the Universidad Nacional Autónoma de México, and a former Magistrate of the Mexican Federal Election Court, Judge Oropeza based much of his discussion on the work he coauthored with Professor Jesús Francisco “Frank” de la Teja, *Actas del Congreso Constituyente de Coahuila y Texas de 1824 a 1827: Primera Constitución bilingüe, a/k/a, Proceedings of the Constituent Congress of Coahuila and Texas, 1824–1827: Mexico’s Only Bilingual Constitution* (Mexico City: Federal Election Court, 2016).

Magistrate Oropeza told the stories of Mexican Liberals who drafted the 1827 Constitution of the Mexican twin-state of Coahuila y Tejas. Idealists, those brave men sought to protect the individual rights and property of the twin-state’s citizens. They crafted the legal and administrative framework for a representative government unknown to the region during centuries of Spanish rule.

After the brutal dictatorship of Santa Ana and the birth of Texas amidst war and revolution, and after a series of governmental disturbances and the Mexican Revolution of



Top left: The Hon. Manuel González Oropeza. Photo by David A. Furlow. Top right: *Map of Coahuila y Tejas, 1824*, Wikimedia Commons. Bottom: Magistrate Oropeza brought the two-volume *Actas del Congreso* treatise about the 1827 Constitution of Coahuila y Tejas to the annual meeting. He gave it to us to re-gift to a local bar organization that fosters legal history. Our Society presented the two-volume set to the Harris County Law Library. Photo by Jillian Beck.

the early twentieth century, the ideals and insights of those Liberals returned to inspire a series of reforms that brought real change, and meaningful elections, to Mexico during the late twentieth and early twenty-first centuries. Magistrate Oropeza’s TSHA paper appears as the first lead article in this issue.

Our second speaker, William (“Bill”) J. Chriss, presented his paper, “Six Constitutions of Texas, 1836–1876 and Beyond.” His paper examined the origins of the Republic of Texas’s Constitution of 1836 and the ways later Texas constitutions evolved in response to political crises involving slavery, Reconstruction, and conflicts about the proper role of state government. A third-generation South Texan who speaks and writes on many matters, including legal ethics and history, Bill Chriss is a member of the American Law Institute, recipient of the 2016 Chief Justice Jack Pope Professionalism Award, and author of the State Bar of Texas book *The Noble Lawyer*. Dr. Chriss’s TSHA paper appears as the second lead article in this issue.



The Hon. Manuel G. Oropeza, left, listened as Bill Chriss spoke about the ways Texas constitutions memorialize critical moments in Texas history.



Bill Chriss described how delegates convened during the Convention at Washington-on-the-Brazos in 1836, where they drafted the Republic's 1836 Constitution.

Sharon Sandle, who also serves as Director of the State Bar's Law Practice Resources Division, served as commentator. She discussed each of the two papers, then put them in context as important parts of the story of how Texas courts evolved during the nineteenth, twentieth, and twenty-first centuries. Sharon fielded questions from the audience about the seven constitutions that have governed Texas.



The Hon. Manuel G. Oropeza listened while Executive Director Sharon Sandle discussed the evolution of Texas law during the Republic.

Historians in the audience commended the program's speakers for their expertise and praised the Society for having presented a comprehensive overview of the constitutionalism that began in the twin-state of Coahuila and Texas and continues, through the Constitution of 1876, to govern the operation of the Lone Star State to this very day.

Afterwards, during TSHA's Women's History Luncheon, we learned important stories about the passage of the Equal Rights Amendment in Texas and the struggle of Texas women to attain complete equality of the law. Then came an opportunity to work with archivists throughout the state during TSHA's archives committee meeting. After that, it was time to pack up and drive back through sun-drenched fields of exuberant wildflowers to our homes in the Hill Country and in Houston.

The next TSHA Annual Meeting will occur February 27-29, 2020 at the AT&T Executive Education and Conference Center at the University of Texas in Austin. Having submitted proposed speakers and a presentation focusing on the relationships among the three branches of Texas government across the centuries, we left Corpus Christi confident that this year's panel had provided history-loving Texans with a deeper understanding of the way seven constitutions had shaped the framework of life in this region from 1827 to the present. Our panel program complete, our plans underway for our Society's next panel presentation at next year's annual meeting in Austin, we all returned home through sunny fields of spring bluebonnets, Indian paintbrush, and other colorful wildflowers.

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New Legal History Fellowship Will Honor Former TSCHS and TSHA President Larry McNeill

By Marilyn P. Duncan

The Texas Supreme Court Historical Society is working with the Texas State Historical Association to establish a new fellowship in honor of one of the two organizations' most esteemed leaders—Larry McNeill.

The Society's Board of Trustees approved funding for the research fellowship during its spring 2019 meeting, and the Society and TSHA are currently negotiating the terms of the agreement. A formal announcement will be made this summer.

Larry McNeill served as president of the Texas State Historical Association in 2005–6. One of his major goals was to establish the office of State Historian of Texas. He not only succeeded in moving a bill through the Legislature that created a Governor-appointed Texas State Historian, but he ensured that the statute provided for the State Historian to be sworn in at the State Capitol, preferably by the Governor. In this way and many others, he raised the stature and visibility of Texas history on the state's agenda.

McNeill, then managing partner of Clark, Thomas & Winters PC in Austin, served as the Society's president in 2009–10. During his term in office, he led a phenomenally successful drive to fully fund the research, writing, and publication of the Society's narrative history of the Texas Supreme Court; initiated the Society's sponsorship of a legal history symposium (the genesis of the biannual Supreme Court Jurisprudence Symposium); presided over the Society's 20th anniversary celebration in the Supreme Court Courtroom in conjunction with the 170th anniversary of the Texas Supreme Court's first session; and in many other ways brought new energy to the Society's programming.

The Summer 2019 issue of this *Journal* will provide more details about the award. Stay tuned!



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Society Trustee Justice Brett Busby Appointed to the Texas Supreme Court

By Dylan O. Drummond

On February 21, 2019, Governor Greg Abbott, a former Texas Supreme Court Justice, nominated Brett Busby to take the Supreme Court seat vacated by Justice Phil Johnson's retirement, which was effective in December 2018.



Surrounded by his family, Brett Busby is sworn in as the Texas Supreme Court's newest Justice by Governor Greg Abbott.

Justice Busby served eight years on the Fourteenth Court of Appeals after first winning the seat in 2012. During that time, he chaired the Texas Bar Standing Committee on Pattern Jury Charges for the Business, Consumer, Insurance, and Employment volume. He also currently serves as Chair of the Texas Bar Appellate Section. He is board certified by the Texas Board of Legal Specialization in civil appellate law.

A former clerk to Justices Byron "Whizzer" White and John Paul Stevens,

Justice Busby is the first former United States Supreme Court clerk to serve as a Justice of the Texas Court. Indeed, he and his wife, Erin—who clerked for Justice Stephen Breyer—are one of four Texas couples who have each clerked for the High Court.

On March 20, 2019, the Texas Senate confirmed Justice Busby to the Court and he was sworn in later that day by Governor Abbott in the Supreme Court courtroom. He assumes the same seat, Place 8, that was formerly held by Fifth Circuit Judge Will Garwood and Supreme Court Chief Justice and Society co-founder Joe Greenhill. That same month, Justice Busby was elected as a Society Trustee.

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Justice Jeff Brown and Former Supreme Court Clerk Brantley Starr Sit for Senate Judiciary Confirmation Hearing

By Dylan O. Drummond

On April 10, 2019, Texas Supreme Court Justice Jeff Brown, who also serves as a Society Trustee, as well as former Supreme Court clerk Brantley Starr sat for their joint confirmation hearing to the federal bench before the United States Senate Judiciary Committee.

Justice Brown was nominated by the President in March 2019 to the Southern District of Texas. The same day, Starr was nominated to the Dallas Division of the Northern District of Texas.

Justice Brown has served on the Supreme Court for almost six years since his appointment by then-Governor Rick Perry in 2013. He has been elected to his seat twice, in 2014 and again in 2018. Prior to his service on the Supreme Court, Justice Brown served as a justice on the 14th District Court of Appeals in Houston, as well as judge of the 55th District Court in Harris County. Justice Brown is nominated to succeed Judge Melinda Harmon, who took senior status in March 2018.

Starr currently serves as the Deputy First Assistant Texas Attorney General. Prior to this post, he served as one of Fifth Circuit Judge Don Willett's first Supreme Court clerks, and later as staff attorney to Justice Eva Guzman. Starr is nominated to succeed longtime Northern District Judge Sidney Fitzwater, who took senior status in September 2018.

Their nominations now await to be reported out of the Senate Judiciary Committee to the full Senate for a confirmation vote.



Texas Supreme Court Justice and U.S. District Judge nominee Jeff Brown appeared before the Senate Judiciary Committee in April.

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Nominations Welcomed for the Texas Appellate Hall of Fame

By Jackie Stroh



HALL OF FAME

The Appellate Section of the State Bar of Texas is now accepting nominations for the Texas Appellate Hall of Fame. The Hall of Fame posthumously honors advocates and judges who made a lasting mark on appellate practice in the State of Texas.

Hall of Fame inductees will be honored at a luncheon presentation and ceremony held by the Appellate Section during the State Bar's Advanced Civil Appellate Practice course on Thursday, September 5, 2019. Nominations should be submitted in writing to halloffametxt@outlook.com no later than **Monday, July 15, 2019**.

Please note that an individual's nomination in a prior year will not necessarily carry over to this year. As a result, if you nominated someone previously and would like to ensure his/her consideration for induction this year, you should resubmit the nomination and nomination materials.

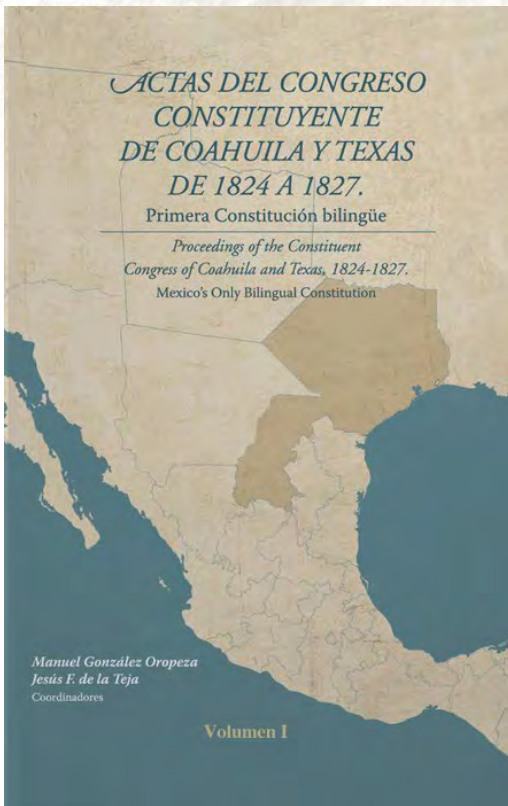
Nominations should include the nominator's contact information, the nominee's bio or CV, the nominee's photo if available, and all the reasons for the nomination (including the nominee's unique contributions to the practice of appellate law in the State). The more comprehensive the nomination materials, the better. All material included with any nomination will be forwarded to the voting trustees for their consideration in deciding whom to induct as part of this year's Hall of Fame class.

Nominations will be considered based upon some or all of the following criteria, among others: written and oral advocacy, professionalism, faithful service to the citizens of the State of Texas, mentorship of newer appellate attorneys, pro bono service, participation in appellate continuing legal education, and other indicia of excellence in the practice of appellate law in the State of Texas.

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Manuel González Oropeza's Gift of Law to the Harris County Law Library

By David A. Furlow



During the Texas State Historical Association's Annual Meeting in Corpus Christi this past February, the Hon. Manuel González Oropeza, former Magistrate of the Supreme Court for Elections in Mexico, gave our Society two important legal treatises. Magistrate Oropeza stated that he wanted the Society to ensure that these valuable, scholarly works would enable a local bar organization to share the history of Mexican constitutional law with scholars, lawyers, judges, and law students.

The first work, a two-volume treatise, is the most scholarly analysis published to date about the constitutional history of the 1827 Constitution of Coahuila and Texas, the largest state in the Mexican Union while it existed. The Hon. Manuel González Oropeza and Texas State University Professor Jesús Francisco "Frank" de la Teja labored for years to research, translate, and publish *Actas del Congreso Constituyente de Coahuila y Texas de 1824 a 1827: Primera Constitución bilingüe, a/k/a, Proceedings of the Constituent Congress of Coahuila and Texas, 1824-1827: Mexico's Only Bilingual Constitution* (Mexico City: Tribunal Electoral del Poder Judicial de la Federación, 2016).

Manuel González Oropeza wrote the second work, *Digesto Constitucional Mexicano* (Mexico City: Suprema Corte de Justicia, 2015), a comprehensive guide to Mexican federal constitutional history.

The Texas Supreme Court Historical Society awarded these fine books to a local bar organization, the Harris County Attorney's Office, based on its exemplary record of making law accessible to all citizens through the Harris County Law Library, which recently celebrated its centennial.



PROMOTING OPEN AND EQUAL
ACCESS TO JUSTICE FOR ALL



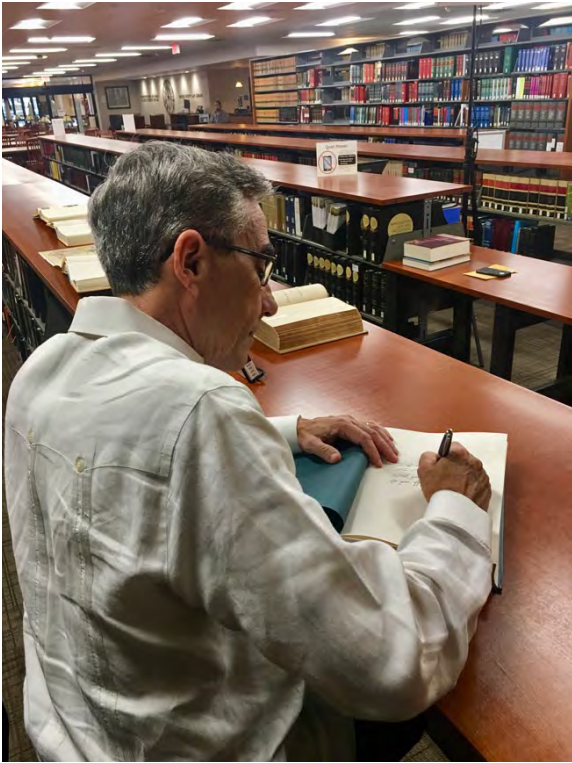
HARRIS COUNTY LAW LIBRARY

On April 22, 2019, our Society presented Magistrate Oropeza's gift of books to Harris County Attorney Vincent R. Ryan, Jr. and Harris County Law Librarian Mariann Sears. Those three new volumes became a part of the Law Library's Law of Coahuila and Texas collection of materials focused on the legal history of Southeast Texas and Northeast Mexico from Spanish colonization to statehood. This fulfilled Magistrate Oropeza's intent to give scholarly works about the history of Mexican constitutional law to an institution that would value that history and share it with the public.

The Library serves the legal information needs of self-represented litigants, legal professionals, the judiciary, and county and other governmental officials. Public access to legal information is a critical component of open and equal access to the justice system. Its mission is to provide all of its patrons access to relevant, current, accurate, and practical legal information in the most appropriate and cost-effective formats possible and to provide educational



Left to right: Harris County Attorney Vincent R. Ryan, Maggie de la Teja, Dr. Jesús Francisco "Frank" de la Teja; David Furlow; Harris County Law Library Director Mariann Sears; Harris County Law Library Deputy Director Joseph D. Lawson.



opportunities designed to enhance patrons' understanding of legal information and how it is accessed.

Harris County Attorney Vincent R. Ryan, Jr. has a long and unique relationship with Mexican law. He earned his Master's Degree in History at Rice University by researching and writing about the history of Mexican oil and gas law. He also published an article titled "The History of Mexican Oil and Gas Law from the Conquistadors' Conquest until 1914" in the Winter 2016 issue of this journal.

Furthermore, in his capacity as the County Attorney, he acts as a law enforcement officer in the governmental body that serves as the successor to Harrisburg, the home of the Republic of Texas's Vice President, Lorenzo de Zavala. Through his law librarian, Mariann Sears, County Attorney Vince Ryan has made the law and law's databases accessible to poor and rich, lawyer and non-lawyer alike.

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A Court First: Texas and Arkansas Supreme Courts Sit Jointly in Texarkana

By Dylan O. Drummond



For the first time in history, the Texas and Arkansas Supreme Courts sat jointly in Texarkana, hearing oral argument before each court on successive days in late January.

Arkansas Supreme Court justices heard argument Wednesday, January 30, 2019 at Arkansas High School located east of State Line Avenue, as part of that court's "Appeals on Wheels" outreach program. Texas justices heard argument the following day at Texas High School, west of the state line. The National Center for State Courts stated that this is the first known such occurrence of two state supreme courts holding sessions in a joint appearance.

The idea to hold the joint session between the courts was conceived of by Texarkana Court of Appeals Chief Justice Josh Morriss, Texas Supreme Court Justice Jeff Brown, and Arkansas Supreme Court Justice Shawn Womack.

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Recent Honors and Awards

Houston Bar Foundation Sales Pro Bono Leadership Award



Justice Eva Guzman

The Houston Bar Foundation presented its highest honor, the 2019 James B. Sales Pro Bono Leadership Award, to **Texas Supreme Court Justice Eva M. Guzman**. Justice Guzman was recognized for her outstanding lifetime leadership in ensuring access to equal justice for all Texans. Her efforts have included testifying before the Texas Legislature; advocating for increased funding for legal services; and traveling the state as a spokesperson for equal access issues.

TACTAS Judge of the Year Awards



Justice Brett Busby

Texas Supreme Court Justice Brett Busby and **333rd Judicial District Court Judge Daryl Moore** have been named the prestigious Appellate Judge of the Year Award and Trial Judge of the Year Award, respectively, from the Texas Association of Civil Trial and Appellate Specialists. TACTAS's leaders and members will honor Justice Busby and Judge Moore on Thursday, May 23, 2019, in Houston.



Judge Daryl Moore

Texas Bar Foundation Coleman Outstanding Appellate Lawyer Award

Haynes and Boone partner and *TSCHS Journal* General Editor **Lynne Liberato** has been awarded the 2019 Gregory S. Coleman Outstanding Appellate Lawyer Award by the Texas Bar Foundation. She will be honored during the Texas Bar Foundation's annual dinner June 14 at the JW Marriott in Austin. An appellate partner in Haynes and Boone's Houston office, Liberato has led teams in some of the most significant appeals in Texas. She also served as the first Chief Staff Attorney of the First Court of Appeals. Liberato was President of the Texas Supreme Court Historical Society in 2011-12.



Lynne Liberato

Center for American and International Law Achievement Award



David Beck

Beck Redden partner and Society Fellows Chair **David J. Beck** has been named the recipient of the Center for American and International Law's most significant honor, its Award for Achievement in the Pursuit of Justice for All. The award is given to an individual or group whose life and work embodies CAIL's commitment to the rule of law. CAIL, through its lawyer and law enforcement programs, addresses the needs of the justice system, and its prestigious award is intended for those whose work has most effectively promoted justice.

Houston Bar Association Eugene A. Cook Professionalism Award

Vinson & Elkins partner and TSCHS Fellow **Harry M. Reasoner** and Hagans Montgomery &



Harry Reasoner

Rustay partner **Fred Hagans** will receive the Houston Bar Association's prestigious Justice Eugene A. Cook Professionalism Award during the Houston Bar Association's Annual Dinner on May 16, 2019. The award was established in 2018 in honor of Justice Cook, the principal drafter of the Texas Lawyer's Creed. It recognizes individuals with longstanding records of exemplary service in the areas of professionalism, legal ethics, and legal excellence.



Fred Hagans

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Third Texas Women Judges' Day at the Texas Capitol

By Megan LaVoie, Office of Court Administration; and Dylan O. Drummond



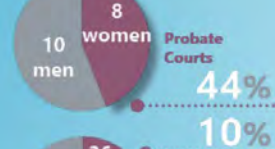
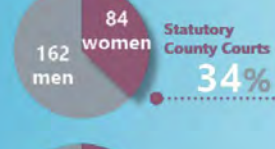
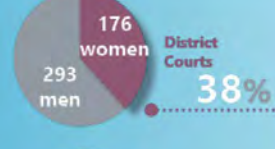
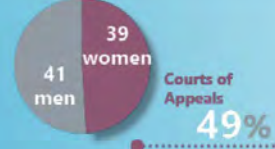
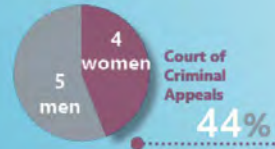
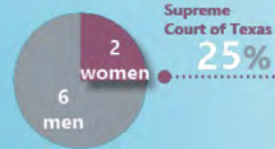
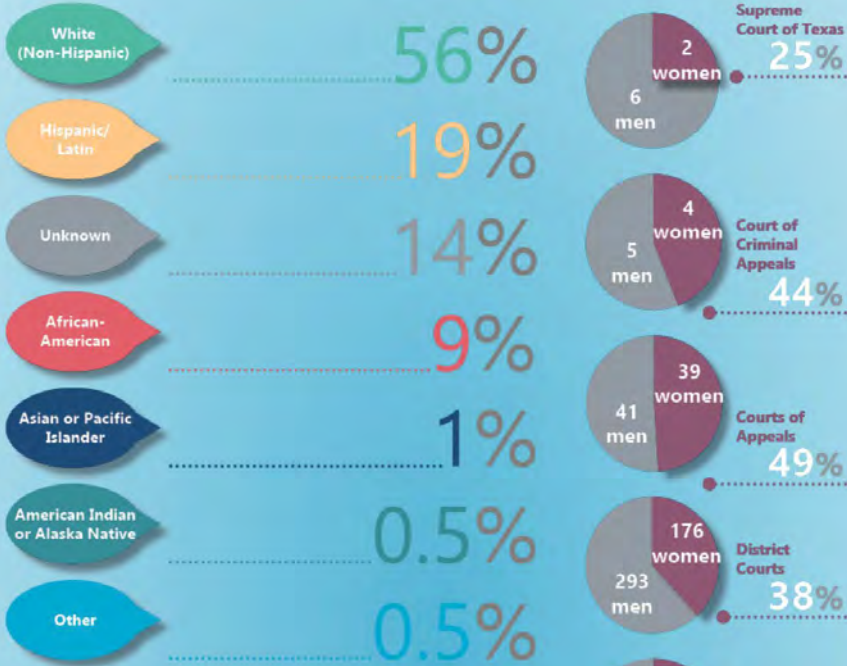
Members of the Texas Women Judges' Day Class of 2019 pose in front of the State Capitol.

The Texas Senate declared April 8, 2019 to be Texas Women Judges' Day at the State Capitol, honoring and recognizing the service of the more than 1,500 women judges throughout the state. This is the third time the Senate has hosted the day and attendance has almost doubled since 2015, with more than 150 women judges present this past April at the Capitol. The day is a coordinated effort between Senator Royce West, the Office of Court Administration, and the National Association of Women Judges.

On the next page, see the graphic from the Office of Court Administration for statistics on women judges in Texas.



WOMEN JUDGES in Texas



MEDIAN YEARS LICENSED AS TEXAS ATTORNEY



29yrs

23yrs

Appellate Judges

District and Statutory County Judges

Office of Court Administration | P.O. Box 12066 | Austin, TX 78711-2066 | www.txcourts.gov/oca



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Calendar of Events

Society-related events and other events of historical interest

Through
Summer 2019

The Bob Bullock Texas History Museum's "La Belle: The Ship That Changed History" exhibition continues in the Museum's first floor Texas History Gallery. The hull of the sunken *La Belle* is open for viewing. <http://www.thestoryoftexas.com/la-belle/the-exhibit>. The museum is located at 1800 Congress Ave., Austin, Texas 78701.

Through
August 11, 2019

The Bob Bullock Texas History Museum presents the exhibition "World War I America: Stories from a Turbulent Nation" in association with its partners the Minnesota Historical Society, the National Constitution Center, the National World War I Museum at Liberty Memorial, and the Oakland Museum of California. <https://www.thestoryoftexas.com/visit/exhibits/wwi-america>. The museum is located at 1800 Congress Ave., Austin, Texas 78701.

Throughout 2019

The Witte Museum in San Antonio presents "The Art of Texas: 250 Years." Artists range from 19th century Theodore Gentilz to 20th century Georgia O'Keeffe. The more than hundred art pieces include a mural by John Biggers, a sculpture by Jesús Moroles, and a painting by Julian Onderdonk, "Chili Queens at the Alamo," that once graced the Oval Office during President George W. Bush's time in the White House. Art will travel from museums and collectors from throughout the United States and in Texas, from El Paso to Houston and from Dallas to Corpus Christi. <https://www.wittemuseum.org/art-texas-250-years>.

Throughout 2019

The Bryan Museum's galleries offer artifacts and records from all periods of Texas and Southwestern history. J.P. Bryan, Jr., a descendant of Moses Austin and a former Texas State Historical Association President, founded this museum at 1315 21st Street, Galveston, Texas 77050, phone (409) 632-7685. Its 70,000 items span 12,000 years. <https://www.thebryanmuseum.org/>.

Throughout 2019

The Texas Historical Commission's new Museum and Visitor Center at San Felipe de Austin State Park's galleries present the story of the capital of Stephen Fuller Austin's colony in Texas. The San Felipe de Austin site is located at 15945 FM 1458, in San Felipe, Texas, about a mile north of I-10. For more information go to www.visitsanfelipedeaustin.com or call 979-885-2181.

June-July 2019

The Texas Historical Foundation publishes and distributes a special legal-history issue of *Texas Heritage Magazine* as a result of its joint-venture with the *Journal of the Texas Supreme Court Historical Society*.

June 12-14, 2019

The State Bar of Texas Annual Meeting will occur at the J.W. Marriott Hotel, 110 E. 2nd St., Austin, TX 78701 or call 844.473.3959. For registration and more information, email annualmeeting@texasbar.com or call 800.204.2222, ext. 1515.

June 14, 2019

The J.P. Bryan Texas History Museum in Galveston presents "Patchwork History: Texas-Themed Quilts from the Winedale Quilt Collection." <https://thebryanmuseum.org/exhibits/>. The collection is on loan from the UT Austin Dolph Briscoe Center for American History. The museum is located at 1315 21st Street, Galveston, TX 77050, phone 409-632-7685.

June 29, 2019

The Alamo offers its Educators' Workshop with its "Texas History and U.S. History" program from 9:00 a.m. to 4:00 p.m. All workshops are designed around TEKS curriculum standards and allow educators to earn CPE credit hours. Events occur at the Alamo, 300 Alamo Plaza, San Antonio, Texas 78205. See <https://www.thealamo.org/remember/education/workshops/index.html>, call Machaia McClenny at 210-225-1391 or send an email to education@thealamo.org.

August 3, 2019

The Alamo offers its Educators' Workshop with its "Mission to Shrine: 1519 to 1836" program from 9:00 a.m. to 4:00 p.m. All workshops are designed around TEKS curriculum standards and allow educators to earn CPE credit hours. Events occur at the Alamo, 300 Alamo Plaza, San Antonio, Texas 78205. Presented in conjunction with the San Antonio Missions National Historical Park. See <https://www.thealamo.org/remember/education/workshops/index.html>, call Machaia McClenny at 210-225-1391 or send an email to education@thealamo.org.

August 9, 2019

The Alamo offers its Educators' Workshop with its "The Alamo and the Archives" program from 9:00 a.m. to 4:00 p.m. All workshops are designed around TEKS curriculum standards and allow educators to earn 6 CPE credit hours. \$30.00 Presented at the Texas General Land Office Archives in Austin. See <https://www.thealamo.org/remember/education/workshops/index.html>, call Machaia McClenny at 210-225-1391 or send an email to education@thealamo.org.

September 6, 2019

The Society's Annual John Hemphill Dinner will take place at the Four Seasons Hotel in Austin. Marcy Hogan Greer, the Society's 2018-19 president, will preside over the evening program. More information will be announced later.

September 7, 2019

The Texas Supreme Court Annual BA Breakfast will take place at the Texas Law Center in Austin. More information will be announced later.

September 14-15, 2019

The Texas General Land Office presents its 10th Annual Save Texas History program in Austin: "X Marks the Spot: New Directions in Texas and Borderlands History." This program, cosponsored by the Texas Supreme Court Historical Society, will examine 500 years of the exploration and mapping of Texas, including Dr. Juliana Barr (Mapping Indian Sovereignty in Spanish Archives); Dr. Gene Smith (Expansion and the Adams-Onis Treaty and the impact on Texas); Dr. Andrew Torget (Stephen F. Austin's contributions to mapping Texas); Dr. Jay H. Buckley (Zebulon Pike's Journey through Texas and the Southwest); and Dr. Harriett Denise Joseph (Pineda's mapping of the Gulf Coast, a 500 year anniversary).

October 13, 2019

The Society's Fall 2019 Board of Trustees Meeting will take place in Room 101 of the Texas Law Center, 1414 Colorado St, Austin, TX 78701 in Austin. The noontime speaker will be Dr. Jeffrey S. Kerr, author of the novel *Lamar's Folly*, about the move of the Republic of Texas's capital from Houston to the hamlet of Waterloo and its transformation into the city of Austin, *Seat of Empire: The Embattled Birth of Austin, Texas*, and *The Republic of Austin*. Additional information about an Austin-area field trip will be announced later.

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DISCLAIMER

The Texas Supreme Court Historical Society (the "Society") is a nonprofit, nonpartisan, charitable, and educational corporation. The Society chronicles the history of the Texas Supreme Court, the Texas judiciary, and Texas law, while preserving and protecting judicial records and significant artifacts that reflect that history.

The *Journal of the Texas Supreme Court Historical Society* welcomes submissions, but the Editorial Board reserves the right to determine what will be published in every issue. The Board does not discriminate based on viewpoint, but does require that an article be scholarly and interesting to the *Journal's* readership. The *Journal* includes content concerning activities of public figures, including elected judges and justices, but that chronicling should never be construed as an endorsement of a candidate, a party to whom a candidate belongs, or an election initiative. Publication of an article or other item is neither the Society's nor the *Journal's* endorsement of the views expressed therein.

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2018-19 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2018, the beginning of the membership year.

GREENHILL FELLOW

Hon. Jane N. Bland and Doug Bland
Kimberly H. and Dylan O. Drummond

TRUSTEE

Hon. J. Brett Busby

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2018-19 New Member List

The Society has added 31 new members since June 1, 2018, the beginning of the membership year. Among them are 18 Law Clerks for the Court(*) who received a complimentary one-year membership during their clerkships.

GREENHILL FELLOW

Allison M. Stewart

CONTRIBUTING

Julie Flowers

Mary Jay Hancock

Michael Kawalek

Matthew Mitzner

REGULAR

Robert Abraham	Elin Isenhower*
Salam Abraham	Morgan Menchaca*
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Denise Drake	Kevin Simmons*
Michael Duncan	Mason Smith*
Hon. Andrew Edison	Henrik Strand*
Rachel Holland*	Jandi Wilson*

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Membership Benefits & Application

Hemphill Fellow \$5,000

- Autographed Complimentary Hardback Copy of Society Publications
- Complimentary Preferred Individual Seating & Recognition in Program at Annual Hemphill Dinner
- All Benefits of Greenhill Fellow

Greenhill Fellow \$2,500

- Complimentary Admission to Annual Fellows Reception
- Complimentary Hardback Copy of All Society Publications
- Preferred Individual Seating and Recognition in Program at Annual Hemphill Dinner
- Recognition in All Issues of Quarterly *Journal of the Texas Supreme Court Historical Society*
- All Benefits of Trustee Membership

Trustee Membership \$1,000

- Historic Court-related Photograph
- All Benefits of Patron Membership

Patron Membership \$500

- Discount on Society Books and Publications
- All Benefits of Contributing Membership

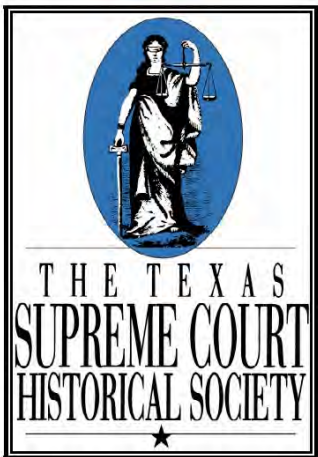
Contributing Membership \$100

- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Regular Membership \$50

- Receive Quarterly *Journal of the Texas Supreme Court Historical Society*
- Complimentary Commemorative Tasseled Bookmark
- Invitation to Annual Hemphill Dinner and Recognition as Society Member
- Invitation to Society Events and Notice of Society Programs

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Membership Application

The Texas Supreme Court Historical Society conserves the work and lives of the appellate courts of Texas through research, publication, preservation and education. Your membership dues support activities such as maintaining the judicial portrait collection, the ethics symposia, education outreach programs, the Judicial Oral History Project and the Texas Legal Studies Series.

Member benefits increase with each membership level. Annual dues are tax deductible to the fullest extent allowed by law.

Join online at <http://www.texascourthistory.org/Membership/>.

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