



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

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By Jasmine S. Wynton

Serving as president of the Society has been one of the great honors of my professional life. [Read more...](#)



Jasmine S. Wynton

President's Message

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It's no secret that the mission of the Society is to preserve the history and artifacts of the Texas Supreme Court and Texas appellate courts. [Read more...](#)



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The Society staged a reenactment of *Johnson v. Darr* at the State Bar Annual Meeting this June. For the first time, three sitting justices of the Texas Supreme Court portrayed the women who made history in 1925. [Read more...](#)



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The Taming Texas program continued its education of seventh graders in the Houston area about the rule of law and the Texas court system. [Read more...](#)



Warren W. Harris

Editor-in-Chief's Column

By Hon. John G. Browning

As I write this, everyone in the country (it seems) is caught up in the Semiquincentennial celebration of America's birth. [Read more...](#)



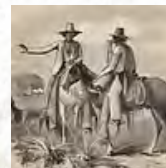
Hon. John G. Browning

Leads

"Hoped to Become Great by Duping the State": Tejanos Before the Court of Claims, 1856-1858

By Jesús F. de la Teja

In the course of the nineteenth century, the position of Tejanos (Texans of Mexican heritage) within Texas society steadily deteriorated. [Read more...](#)



Depiction of Tejano herdsmen (1859)

Texas Supreme Court History and the Modern Second Amendment

By Mark Anthony Frassetto

In the years after the Civil War, violence in Texas spiraled out of control. In response, Texas lawmakers enacted restrictions on the carrying of firearms in public. [Read more...](#)



Depiction of Freedmen's Bureau Agent

"Do Justice, Love Mercy, Walk Humbly" The Rule of Life—and Rule of Law—of Chief Justice Joe Greenhill

By Joe Greenhill V

I did not witness my grandfather's legal career, so I offer a portrait of him drawn from lesser-known writings and family memory. [Read more...](#)



Chief Justice Joe Greenhill

Constitutional Moments from the Mayflower Compact to Sam Houston's 1833 Texas Constitution - Part 2

Text and Photos by David A. Furlow

Constitutionalism, a way of thought, requires lawyers, judges, scholars, politicians, and citizens to think about the ways that laws structure societies. [Read more...](#)



Profile

William J. Durham, the Sherman Riot, and Civil-Rights Law in Texas

By Dr. Jody Edward Ginn

The life of William J. Durham stood at a pivotal intersection of local violence, racialized law, and constitutional transformation in twentieth-century Texas. [Read more...](#)



William J. Durham

News & Announcements

The 1876 Constitution: Justice Evan Young and Trustee Bill Chriss at the 2026 State Bar Annual Meeting

Story and photos by David A. Furlow

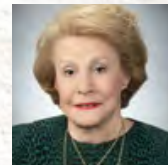
Texas Supreme Court Justice Evan Young and Society Trustee William J. Chriss examined the history and significance of the 1876 Constitution. [Read more...](#)



The panelists

Supreme Court of Texas Mourns the Passing and Honors the Life of Justice Ruby Kless Sondock

On July 22, the Justices expressed their sorrow at the passing of former Justice Ruby Kless Sondock, a pioneering jurist whose distinguished service to the people of Texas spanned many decades. [Read more...](#)



Justice Ruby Kless Sondock

The Society Re-Enacted the 1925 All-Woman Court at the State Bar of Texas 2026 Annual Meeting

By David A. Furlow

One hundred and one years after the All-Woman Court, our society reenacted *Johnson v. Darr* at the State Bar of Texas Annual Meeting in Houston. [Read more...](#)



The 1925 All-Women Court

Membership & More

Officers, Trustees & Court Liaison

2026-27 Member Upgrades

2026-27 New Member List

Join the Society



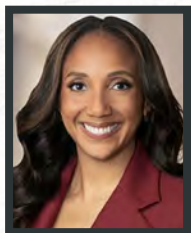
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FB: Texas Supreme Court Historical Society

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Jasmine S.
Wynton

Immediate **Past President's** *Message*

Serving as president of the Texas Supreme Court Historical Society has been one of the great honors of my professional life. Over the past year, I have seen firsthand how much the Society depends on people who care deeply about preserving the history of the Supreme Court of Texas—and just as importantly, making that history relevant and accessible to new audiences. I am deeply grateful to our officers, trustees, members, contributors, and friends for the time, energy, and judgment they have devoted to that work.

This Summer issue captures the impressive breadth of the Society's mission. The articles take us from the experiences of Tejanos before the Texas Court of Claims, to the work of civil-rights lawyer William J. Durham, to firearms regulation during Reconstruction, to the life and legacy of Chief Justice Joe Greenhill, and even to the constitutional traditions that connected Plymouth Colony to early Texas law. Read together, these pieces remind us that Texas legal history is not confined to courtrooms or judicial opinions. It is also the story of the people, institutions, and constitutional ideas that have shaped our state.

As I conclude my term, I am especially pleased to welcome Alia Adkins-Derrick as the Society's new president. Alia brings thoughtfulness, perspective, and a genuine commitment to the Society's work, and I am excited to see the organization continue to grow under her leadership. Transitions like this are a sign of a healthy organization—one that honors its history while welcoming new ideas and new energy.

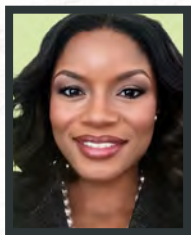
Looking ahead, one of the Society's signature events—the Hemphill Dinner—will take place on Thursday, September 10, 2026 at the Four Seasons Hotel in Austin, Texas. This year's keynote program, "The Enduring Importance of State Constitutions," is especially timely as Texas marks the 150th anniversary of its 1876 Constitution—a milestone that invites renewed attention to the continuing importance of state constitutional law. The program will bring together a distinguished panel of current and former state court justices: Chief Justice Beth Walker of the Supreme Court of Appeals of West Virginia, Justice Rhonda K. Wood of the Arkansas Supreme Court, and former Justice Eva Guzman of the Supreme Court of Texas, with Lynne Liberato serving as moderator.

The panel will offer a lively and practical discussion of why state constitutions remain an independent and vital source of law, how judges interpret constitutional provisions unique to their states, and how lawyers can make more effective use of state constitutional arguments. The conversation will also address how differences in constitutional text, history, and structure can lead to distinct legal outcomes and why lawyers should consider state constitutional issues early in a case rather than treating them as an afterthought.

The [Hemphill Dinner](#) has long been a chance for the Society to gather in support of Texas legal history while also connecting that history to the legal questions of the present day. This year's program should do both. I hope you will join us for what promises to be an engaging evening and a timely discussion for anyone interested in appellate advocacy, constitutional interpretation, or the role of state courts in our system of government.

As I step into the role of Immediate Past President, I do so with great appreciation for the Society's mission and for the many people who make its work possible. I look forward to supporting Alia, staying involved in the Society's work, and continuing our shared effort to deepen public understanding of Texas's rich legal history.

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Alia Adkins-
Derrick

Message from the *President*

On the heels of Jasmine Wynton's historical presidency, I am deeply grateful to follow in her footsteps as well as all of the Texas Supreme Court Historical Society presidents who came before. I am immensely appreciative to her, Justice Ken Wise, the trustees, and the members of the TSCHS for the trust you have placed in me as your President for the 2026-2027 term.

It's no secret that the mission of the Society is to preserve the history and artifacts of the Texas Supreme Court *and* Texas appellate courts. Each year, the Journal plays a significant role in enabling the Society to achieve this mission. The Journal's unwavering commitment to accurately highlighting historical accounts and lessons from yesteryear's Texas legal history affords readers, and all of us, the rare opportunity to use that truth in our lives today to help shape a better tomorrow.

As a history major and a former high school history teacher, I know that preserving history is a powerful tool that not only chronicles past events and showcases key historical people but that also highlights truth, honors the good, and hones priceless lessons learned from the bad. In this way, preserved history offers those willing to heed its lessons the opportunity to forge a wiser, more just, and beneficial future. This future is brighter because it's guided by informed decisions, freed from the repeated mistakes of the past, and dedicated to building a better society and a lasting legacy for generations yet to come.

Since its debut, the Society's award-winning Journal has featured articles that foster scholarly reflection on how the many chapters of our state's legal past collectively reveal an imperfect yet enduring pursuit of, and progression towards, fairness and justice for all Texans. This award-winning legacy was birthed, in large part, due to the numerous articles contributed by so many and curated by the likes of Justice John Browning, David Furlow, and Dylan Drummond. I know the Journal will continue to build on its award-winning legacy; therefore my goal for it, in the year ahead, is to ensure its future longevity. Only then will we be able to preserve our state's legal history in such a way that not only expands the Journal's reach but that also piques the interest of future generations and forges a brighter more unified future for all Texans.

The articles in this Summer issue continue the Journal's longstanding tradition of reminding us that legal history is, at its core, the story of people, institutions, and laws interacting across

time. Although these articles span multiple centuries ranging from the seventeenth century to the twentieth, each contribution demonstrates the law in a period of societal transition and represents moments in the Reconstruction era, the late antebellum era, Progressive Era, and the years leading up to the Civil Rights Movement when legal doctrine responded to political and social change. By employing biography, institutional history, constitutional history, and legal analysis, the articles in this issue collectively provide a glimpse of the evolution of Texas jurisprudence and explore the ways law has shaped—and has been shaped by—the Texas experience.

Our contributors explore a wide array of subjects that collectively deepen our understanding of the legal foundations of our state and the people whose lives were affected by them. In this Summer issue, Readers will encounter new scholarship that examines Tejano experiences before the late 1850s Texas Court of Claims. The Texas Court of Claims had been established by the Texas Legislature in 1856, in an attempt to resolve outstanding Republic-era land claims and to curb the fraud, abuses, and land speculation that threatened to dispossess and dislocate many, including Tejanos, of their land. Through the lens of historical figures and court dockets, this article examines the extent to which, if any, the Court of Claims succeeded (or failed) in its mission to run unscrupulous speculators out of business and “to do justice to all men” including the Republic of Texas’ Tejano claimants.

We then turn to a remarkable story of pioneering civil rights attorney William J. Durham—a contemporary of Thurgood Marshall who is best known for his role in the landmark Supreme Court decision *Sweatt v. Painter* (1950)—whose resilience and important contributions to Texas legal history deserve wider recognition. During the 1930 Sherman Riots, Durham witnessed firsthand the collapse of the rule of law and its catastrophic failure to protect Sherman, Texas’ Black citizens and their property from a violent white mob, despite the presence of the Texas Rangers Governor Dan Moody had previously deployed in an effort to preserve law and order. That mob burned down Durham’s law office and many other stores, offices, and professional establishments in the Black commercial district. Refusing to be defeated, Durham found purpose amidst this grave injustice that drove him to his life’s calling. This purpose fueled his rise from a small-town Texas attorney into one of the nation’s foremost civil rights lawyers, whose career was devoted to securing the legal protections that had been denied to him, his family, and his community.

Another article examines the law and politics of firearms regulation during Reconstruction, illustrating how today’s legal debates over public safety and constitutional rights to bear arms are hardly new. Notably, this article highlights how Texas’ Reconstruction Era laws and legal history in deciding major Second Amendment cases continue to play a major role in Second Amendment cases in the lower federal courts across the USA today.

This issue also features a personal reflection on the life and legacy of distinguished Texas Supreme Court Chief Justice Joe Greenhill, whose influence on Texas jurisprudence continues to be felt and demonstrates how earlier philosophical ideas and figures continue to shape Texas law. At its core, Justice Greenhill’s judicial philosophy could be summed up in the biblical charge to: “do justice, love mercy, and walk humbly with God.” To him, a deeply religious man, this meant that his duty as Chief Justice “was to the law. Not to the crowd” or even to advance causes he believed in that fell outside the scope, reach, or authority of the law to address. It also meant setting

aside self-importance to see the people impacted by the law, striving to ensure equal access to justice for all regardless of financial means, and balancing his compassion for the people with an unwavering commitment to the judiciary's proper role in administering the rule of law.

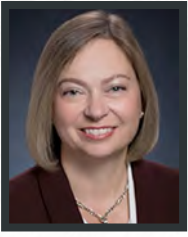
Finally, we are pleased to present the second installment of a compelling study tracing the pivotal but often overlooked role of the Plymouth Colony's indelible imprint on early Texas law, reminding us that the roots of Texas jurisprudence reach far beyond the state's own borders. Interestingly, rather than model Texas' constitution on one recently adopted by a southern state, Delegates to the 1833 Convention chose to model Texas' proposed constitution on a proven constitutional framework that had withstood more than five decades of experience: the Massachusetts Constitution of 1780. In so doing, they incorporated many core Anglo-American constitutional protections—including due process, trial by jury, habeas corpus, and freedom of the press—that later influenced the Republic's 1836 Constitution and ultimately the Texas Constitution of 1876 that still stands to this day.

By revisiting familiar figures, recovering overlooked voices, and examining pivotal moments of legal change, these articles enrich our understanding not only of where Texas has been, but also of the legal traditions that continue to reverberate throughout our Texas constitution and lone star state to this day. Taken together, these articles underscore the remarkable breadth of Texas legal history and remind us that the study of legal history is ultimately the study of justice, governance, and the continuing evolution of the rule of law.

On behalf of the Society, I extend my sincere appreciation to our authors, editors, and reviewers for their dedication to advancing the study of Texas legal history. Their scholarship ensures that the stories behind our laws—and the people who shaped them—remain accessible to future generations.

I hope you enjoy this issue and its outstanding collection of articles. Thank you for your continued support of our mission to preserve, promote, and share the rich legal history of Texas.

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Sharon Sandle

When History Walks into the Room: The Texas Supreme Court Historical Society and the Living Legacy of Texas Law

The Texas Supreme Court Historical Society has staged a reenactment of *Johnson v. Darr*, the 1925 Texas case that was heard by a specially appointed all-women Texas Supreme Court, before. But when the Society brought the story of Texas's all-woman supreme court to the State Bar Annual Meeting in Houston this past June, something happened that had never previously been possible: three sitting justices of the Texas Supreme Court, Senior Justice Debra Lehrmann, Justice Jane Bland, and Justice Rebeca Huddle, took the bench to portray the three women who made history in 1925. The reason it had never been done this way before is simple. Until recently, there had never been three women on the Texas Supreme Court at the same time.

The case they reenacted is, by any honest assessment, dull. It is a property dispute involving unrecorded trust instruments and creditors' liens. The story of how it came before an all-woman court is far more interesting. All three sitting justices of the Texas Supreme Court were members of the Woodmen of the World, a fraternal burial-insurance society and a party in the case. They were required to recuse themselves. Governor Pat Neff, empowered by the Texas Constitution to appoint special justices in disqualification cases, saw an opportunity to do something unprecedented: appoint an all-woman panel. After a first set of appointments fell through on constitutional grounds, Governor Neff appointed Special Chief Justice Hortense Sparks Ward of Houston, Special Justice Hattie Henenberg of Dallas, and Special Justice Ruth Brazzil of Galveston, the first all-woman state supreme court in American history.

Ward was the first woman licensed to practice law in Texas and had led the state's suffrage campaign to victory in 1919. Henenberg, the Court's first Jewish justice, was a graduate of SMU Law School. Brazzil had earned her law degree from the University of Texas and practiced insurance and business law. They were serious lawyers who took a serious oath when they took the bench as special Supreme Court justices, including, as required by the 1845 Texas Constitution, a sworn declaration that they had never fought a duel with deadly weapons.

Although our reenactment took place in a hotel ballroom rather than the historic courtroom in the Texas capital, we tried to honor the seriousness of that historic event. Before the program, the justices asked whether we had robes for them. We did not — but as moderator David Furlow pointed out, in 1925 Texas Supreme Court justices did not wear robes, a fact confirmed by the

historical photograph of the all-woman court. Justices Ward, Henenberg, and Brazzil are seated in their professional attire. Our reenactment was historically accurate in that regard, down to the pearls worn by Justice Lehrmann just as Hortense Sparks Ward had done a century before.

Watching Senior Justice Lehrmann, the longest-serving woman justice in Texas Supreme Court history, portray the first woman licensed to practice law in Texas made legal history feel immediate rather than distant. A century separates these two women, and yet they share a profession and a seat on Texas's highest court.

That arc of progress is also the story running through this issue of the Journal. Dr. Jody Edward Ginn's profile of civil rights lawyer W.J. Durham shows us a man who rebuilt his career after a racist mob burned his law office in Sherman and went on to help lay the groundwork for *Brown v. Board of Education*. Frank de la Teja's examination of Tejanos before the Court of Claims reveals how systematically the law failed to deliver on its own promises to an entire community. And Joe Greenhill V's portrait of Chief Justice Joe Greenhill captures a man who argued *Sweatt v. Painter* on behalf of Texas's segregated law school system while quietly working to desegregate his own church — a reminder that progress rarely moves in a straight line. Mark Frassetto's piece on Reconstruction-era gun laws and David Furlow's continuing work on the Plymouth Colony's influence on early Texas law round out an issue that takes seriously both how far the law has come and how much its history still has to teach us.

The second part of our Annual Meeting program brought that lesson into even sharper focus. Moderated by our Society's president, Alia Adkins-Derrick, and featuring Justice Evan Young and attorney and historian William Chriss, the discussion examined the Texas Constitution on its sesquicentennial birthday. Justice Young has written that the Constitution of 1876 is our state's "most important yet least understood legal document," and that this anniversary is an occasion for us to approach it with fresh eyes. It is a fitting companion to the reenactment. The story behind that document and how it has endured through the dramatic changes that have taken place in Texas over the last 150 years is a history worth preserving.

I'm proud that the Society was able to expand its programming to bring a celebration of the history of the Texas Supreme Court and the Texas Constitution to the State Bar of Texas Annual meeting. Through programs like this and initiatives like this journal we invite you to let our legal history help us understand the state we live in today.

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Fellows Column

By Warren W. Harris, Chair of the Fellows



The Taming Texas program had another successful year, continuing to build on its mission of educating seventh graders across the Houston area about the rule of law and the court system in Texas. Over the 2025-26 school year, Houston Bar Association (HBA) volunteers taught 34 classes, delivering 68 lessons at 7 schools and reaching more than 700 students. That represents a meaningful increase from recent years and reflects both growing interest from schools and the strong commitment of HBA volunteers. In total, 20 lawyers volunteered their time to help students better understand the legal system and the role of the rule of law in everyday life. Through interactive lessons and real-world examples, students are introduced to how the law affects their daily lives and future careers. Since its inception during the 2015-16 school year, the program has reached more than 28,000 Houston-area students and continues to expand its impact across the community.

"This program is one of the most meaningful ways we can connect the legal profession with our community," said Richard Whiteley, the HBA committee chair. "When lawyers step into the classroom, it makes the law more accessible and real for students and also provides them with positive role models. Many of the students we teach have had little exposure to the legal system, or a negative experience with the legal system, and it is important to give them a better understanding of how the law works and the positive aspects of our system. It also gives us a chance to emphasize the importance of civic engagement and respect for the rule of law." Whiteley continued, "The growth we've seen this year speaks to both the need for this kind of outreach and the dedication of our volunteers who make it possible, and we are excited to continue building on that momentum in the years ahead."

The HBA will again use our Taming Texas materials to teach students during the 2026-27 school year. We appreciate the HBA and its President, Greg Ulmer, partnering with us on Taming Texas again this year. It takes many volunteers to reach the hundreds of students we teach each year, and we could not implement this program without the HBA's support. Richard Whiteley will continue to serve as the HBA program chair to recruit volunteer attorneys and judges to teach the seventh-grade students in the upcoming school year. If you would like to participate in this important program, please contact the HBA or Whiteley.

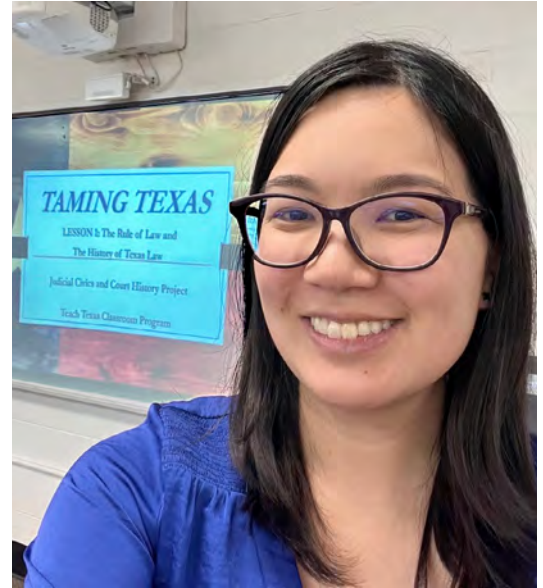
Photos from TAMING TEXAS



Lakshmi Achari (Shook, Hardy & Bacon) and Rahul Rao (Andrews Myers)



Kate MacGregor and Eston Jones (Bracewell) with Natalie McAfee (teacher at Annunciation Orthodox School)



Cindy Dinh (Sumitomo Corp.)



Eston Jones (Bracewell)

Taming Texas has also been taught at Covington Middle School in Austin and several Dallas-area schools. We also are working on an expansion in Austin and Dallas schools as well as adding San Antonio schools.

We are also pleased to welcome our newest Fellows, Randall Chapman and R. Russell Hollenbeck, who recently joined as Greenhill Fellows. We are excited to have them join us as Fellows and appreciate their generous support of our group.

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, such as our Taming Texas judicial civics program. 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*
Hon. Jeff Boyd
David E. Chamberlain
Lauren and Warren W. Harris*

Hon. Nathan L. Hecht and Hon. Priscilla Richman
Joseph D. Jamail, Jr.* (deceased)
Thomas S. Leatherbury
Richard Warren Mithoff*

Greenhill Fellows

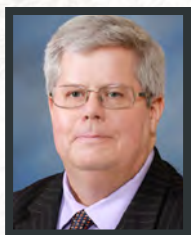
(\$2,500 or more annually)

Stacy and Douglas W. Alexander
Marianne M. Auld
Alex Bell
Hon. Jane Bland and Doug Bland
Hon. Christina Bryan and J. Hoke Peacock III
E. Leon Carter
Hon. John H. Cayce
Randall Chapman
Joshua and Mindy Davidson
David A. Furlow
Harry L. Gillam, Jr.
Joe Greenhill
Marcy and Sam Greer
William Fred Hagans
Mary T. Henderson
Thomas F. A. Hetherington
Jennifer and Richard Hogan, Jr.
R. Russell Hollenbeck
Dee J. Kelly, Jr.*

Hon. David E. Keltner*
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Hon. Thomas R. Phillips
Hon. Jack Pope* (deceased)
Russell S. Post
Shannon H. Ratliff*
Harry M. Reasoner
Robert M. (Randy) Roach, Jr.*
Professor L. Wayne Scott* (deceased)
Macey Reasoner Stokes
Tracy C. Temple
Cynthia K. Timms
Hon. Dale Wainwright
Charles R. "Skip" Watson, Jr.
R. Paul Yetter*

*Charter Fellow

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Hon. John G.
Browning

The Joys of *Hidden History*

As I write this, everyone in the country (it seems) is caught up in the Semiquincentennial celebration of America's birth. This "America at 250" party is particularly poignant for me, because I remember being a wide-eyed boy of twelve during America's Bicentennial in 1976, and getting to watch the Tall Ships in New York harbor with my family. Fifty years later, I have a different perspective on those vessels, thanks to the photos shared by my nephew Thomas—a soon-to-be graduate of the State University of New York (SUNY) Maritime Academy whose training ship had a front-row berth for the occasion. And, as luck would have it, our family's budding ship's engineer had watch duty during the Tall Ships' graceful entrance, resulting in some incredible photos.

But in between watching fireworks and chowing down on hot dogs, I paused to marvel at our nation's history—not the milestones and people recounted in history books, but the hidden history we are still discovering, or re-discovering. One of the stories that caught my eye on July 4th was about a recently-discovered rare copy of the Declaration of Independence. Printed in Exeter, New Hampshire just days after the Declaration was adopted on July 4, 1776, the document was intended to help spread the news to other colonies. Only eleven copies of this "Exeter printing" are known to have survived, and up until today, none had ever been found outside the United States. This copy of the Declaration had been found in May at Great Britain's National Archives among the papers of Royal Navy captains. A volunteer who was categorizing records stumbled across it, listed merely as "another paper" among a collection of papers seized by the Royal Navy after the December 1776 capture of an American privateer vessel, *the Dalton* (an eighteen-gun vessel taken by the sixty-four gun *HMS Raisonnable* off the coast of Portugal). The volunteer, retired insurance executive Michael Scurr, opened a report before realizing the historical significance of this previously unnoticed "another paper."

This discovery serves as an important reminder that physical archives and collections continue to yield important historical finds. A volunteer or professional archivist can uncover lost treasures that help reshape our understanding of an event or individual, or lend valuable new historical context. An example of this closer to home occurred in 2015, when former Smith County Assistant District Attorney Stan Springerley came across the original case files from the 1956 civil case, *State of Texas v. NAACP* in Tyler's 7th District Court. The case, which challenged

the NAACP's legal status in Texas at a crucial time in the state's civil rights history, was defended by future Supreme Court Justice Thurgood Marshall when he was acting legal counsel for the NAACP, along with Dallas attorney W.J. Durham. The original case file includes papers, pleadings, and correspondence prepared and signed by Marshall, and provides a glimpse at the important work done by Marshall before his rise to the highest court in the land. Smith County officials donated the historic papers to Texas Southern University's Thurgood Marshall School of Law after digitizing them. Springerley said his initial search for the records in the courthouse's storage area was motivated by his reading of a book that referenced the historic case, and said it was "exciting" to see Justice Marshall's original signature on letters found in the lost files.

I can identify with the former prosecutor's excitement. In the course of researching early Black lawyers, I've dug through multiple collections of rare documents in museums, archives, and courthouses. One of the greatest challenges has sometimes been to locate original photographs or other images of these individuals. One of the photos that I've included in countless presentations I've given about early Black lawyers is that of George Boyer Vachon, who in 1848 became the first Black lawyer in New York (and only the third Black lawyer in U.S. history). The photo depicts Vachon as an older man, however, not as a young lawyer. Recently, a Sotheby's specialist, Emily Bierman, went public with her solution of the mystery surrounding a recent auction acquisition of a 19th century daguerreotype. While the early photo bore a date from 1859, neither the seller nor the buyer at auction could identify either the subject or its photographer. Bieman's sleuthing identified Phillip Haas as the "P. Haas" etched into the frame; Haas was a prominent lithographer and early photographer who captured the likenesses of many historical luminaries, including John Quincy Adams, John C. Calhoun, Henry Clay, and James Polk. An inscription inside the framed photo reveals that it was taken in 1856. I recognized the photo immediately as George Boyer Vachon, but a considerably more youthful version. Bieman likewise identified the photo's subject of Vachon, who was not only one of the first Black attorneys in America but also a renowned abolitionist, poet, linguist, and professor who was a friend of Frederick Douglass. I was stunned to learn of this discovery, but it gave me renewed hope that similar "lost" or unknown photos will someday surface. One never knows what may be lurking in family attics or obscure collections, just waiting to be discovered.

We hope you enjoy discovering the varied offerings in our Summer issue. We are proud to bring you former TSHA president Frank de la Teja's article on Tejanos' experiences before the Court of Claims in the late 1850s, as well as 2026 Larry McNeill Fellowship winner Dr. Jody Edward Ginn's profile of early 20th century civil rights lawyer (and Thurgood Marshall contemporary) W.J. Durham. We are also honored to showcase independent historian Mark Frassetto's examination of the law and politics of firearms regulation in Reconstruction Texas, along with attorney Joe Greenhill's article on the life and legacy of his distinguished grandfather, Chief Justice Joe Greenhill. And, of course, we also feature Part II of Editor emeritus David Furlow's compelling work on the Plymouth Colony's impact on early Texas law. We hope you enjoy all these scholarly offerings, along with our recurring columns and news items.

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“Hoped to Become Great by Duping the State”: Tejanos Before the Court of Claims, 1856-1858¹

By Jesús F. de la Teja

In the course of the nineteenth century, the position of Tejanos (Texans of Mexican heritage) within Texas society steadily deteriorated. The works of Arnoldo De León and David Montejano, among others, have demonstrated the high degree of racial prejudice faced by Tejanos in most parts of the state.² Anglos “regarded Mexicans as a colored people, discerned the Indian ancestry in them, and identified them socially with blacks. In principle and fact, Mexicans were regarded not as a nationality related to whites, but as a race apart.”³ De jure the equals of Anglo Texans, Tejanos quickly became and remained well into the twentieth century de facto inferiors.⁴

Despite considerable research on nineteenth-century Tejanos in the past decade, particularly regarding social isolation, political disfranchisement, and economic marginalization, little has been written on Tejanos before the law. While Spanish-Mexican borrowings in the Texas and American legal systems have long been recognized, little effort has been made to examine how Tejanos themselves fared in nineteenth-century Texas legislatures. Neither the motives for seemingly “equitable”



Arnoldo De León



David Montejano

¹ An earlier version of this article appeared as “Los mexicotejanos frente la Comisión de Reclamaciones del estado de Texas, 1856-1858,” *Sillares. Revista de Estudios Históricos* 1, 1 (July-December 2021). [DOI: <https://doi.org/10.29105/sillares1.1-5>].

² Two indispensable works in Texas Mexican American historiography are Arnoldo De León, *The Tejano Community, 1836-1900* (Albuquerque: University of New Mexico Press, 1982), and David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987). The considerable historiography that has developed on Texas Mexican Americans since the 1980s is too broad to include here, but worthy of note among recent works are William D. Carrigan and Clive Webb, *Forgotten Dead: Mob Violence Against Mexicans in the United States, 1848-1928* (New York: Oxford University Press, 2013), and Omar Valerio Jiménez, *Remembering Conquest: Mexican Americans, Memory, and Citizenship* (Chapel Hill: University of North Carolina Press, 2024).

³ Arnoldo De León, *They Called Them Greasers: Anglo Attitudes Toward Mexicans in Texas, 1821-1900* (Austin: University of Texas Press, 1983), 104 (quote).

⁴ Various works have dealt with the issue of the legal “whiteness” of the Tejano population. Most recently, William Chriss brings it up at various points with regard to the constitutions of 1836 and 1845, and subsequent legal treatment in his *Six Constitutions Over Texas: Texas’ Political Identity, 1830-1900* (College Station: Texas A&M University Press, 2024), 30-33, 50-51, 199. The de facto segregation of Tejanos forms a central argument of Martha Menchaca’s *The Mexican American Experience in Texas: Citizenship, Segregation, and the Struggle for Equality* (Austin: University of Texas Press, 2022).

treatment nor for rank discrimination have been sufficiently studied.⁵

This article deals with a specific instance of legislative treatment of Tejanos, highlighting how despite their seeming equal legal status they in fact faced what amounted to systematic discrimination, as Tejanos became victims of legislators, public officials, and land speculators. I chose the subject, Mexican Texans before the state's court of land claims, because it builds on my previous research on antebellum land grants and speculation, particularly with regard to Mexican Texans.⁶ Additionally, it addresses questions of Anglo Texan ambivalence toward the legal and social status of Tejanos during that time. While the purpose and changing character of the court will be discussed, its five-year life span, changing jurisdiction, and variety of functions take much of its activities beyond the scope of the present article. Here I limit myself to discussing the first two years of the court. This period covers the court during the time when the majority of original claims were filed and when the legislature was most actively involved with it in adjudicating claims.

Tejanos and Land Speculation

The area in which the Mexican-Texan population suffered the most throughout the nineteenth century was in their decreasing access to land. As David Montejano has pointed out, "not only did the new American law fail to protect the Mexicans but it also was used as the major instrument of their dispossession."⁷ The most studied aspect of dispossession has been the loss of land grants in the area of the Tamaulipan cession, that is, below the Nueces River.⁸ As Galen Greaser and I make clear in our study of the 1850-1852 state commission charged with investigating Spanish and Mexican land claims in South Texas, the government had practical interests in respecting pre-Republic titles. Anglo lawyers, ranchers, and speculators had already acquired substantial rights

⁵ Studies of the application of the law to Tejanos include: Mark M Carroll, *Homesteads Ungovernable: Families, Sex, Race, and the Law in Frontier Texas, 1823-1860* (Austin: University of Texas Press, 2001); Jean Stuntz, *Hers, His, and Theirs: Community Property Law in Spain and Early Texas* (Lubbock: Texas Tech University Press, 2005). Studies on the importance of Spanish/Mexican legal culture on Texas law include: Hans W. Baade, "The Historical Background of Texas Water Law—A Tribute to Jack Pope," *St. Mary's Law Journal* vol. 18, no. 1 (1986): 1-98; Betty Eakle Dobkins, *The Spanish Element in Texas Water Law* (Austin: University of Texas Press, 1959); Wallace Hawkins, *El Sal del Rey* (Austin: Texas State Historical Association, 1947); Charles R Porter Jr., *Spanish Water, Anglo Water: Early Development in San Antonio* (College Station: Texas A&M University Press, 2009).

⁶ "'Only Fit for Raising Stock': Spanish and Mexican Land and Water Rights in the Tamaulipan Cession," in *Fluid Arguments: Five Centuries of Western Water Conflict*, ed. Char Miller (Tucson: University of Arizona Press, 2001); With Galen D. Greaser, "Quieting Title to Spanish and Mexican Land Grants in the Trans-Nueces: The Bourland and Miller Commission, 1850-1852," *Southwestern Historical Quarterly* 95, 4 (April 1992): 445-464; With Michael Q. Hooks, "The Texas General Land Office: Preserving East Texas Land Records," *East Texas Historical Journal* 27, 1 (1989): 55-62. Expert witness, Bright & Company, et al. v. Texas General Land Office. 200th Texas District Court for Travis County, 1995; Consultant, State of Texas v. City of Granjeno. District Court for Hidalgo County, 1994; Expert witness, Robert W. Heard, et al. v. John Cornelius Roos, et al. 156th Texas District Court for Bee County, 1992; Expert witness, The Port of Houston Authority v. Manchester Terminal Corporation. 269th Texas District Court for Harris County, 1992.

⁷ David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987), 52.

⁸ The first scholar to tackle the question of land dispossession in the area was Paul S. Taylor, *An American-Mexican Frontier: Nueces County, Texas* (1934, reprint, New York: Russell & Russell, 1971), 179-88. Since that time a number of studies, at least partially addressing the issue and almost all of them theses and dissertations, have appeared. Among these Armando C. Alonzo's *Tejano Legacy: Rancheros and Settlers in South Texas, 1734-1900* (Albuquerque: University of New Mexico Press, 1998), chronicles how Tejano landholding declined considerably in the second half of the 19th century for a varied set of factors, including in the decades following the Mexican War at the hands of "skilled 'land lawyers' [who] assisted Brownsville merchants and other capitalists in acquiring large tracts" (p.178-79).

to the large Mexican estates in the region and a blanket invalidation of these titles would have adversely affected Anglo-Texan buyers. The Texas government would have been faced not only with an insurrection by Mexican Texan landowners in the region but the wrath of numerous Anglo men of influence who had acquired economic interests in the region. Even so, for many years the legislature proved unwilling to admit the legitimacy of trans-Nueces titles issued between the Texas declaration of independence (1836) and the Treaty of Guadalupe Hidalgo (1848).⁹

South Texas was not the only region where Tejanos faced dispossession and dislocation. Much less studied has been the transfer of headrights from Tejano claimants to speculators in the late 1830s. In an effort to fulfill a wartime promise to honor the rights of all pro-Texas residents of the new Republic who had arrived before March 2, 1836, the Texas congress created boards of land commissioners in all counties. These local boards reviewed petitions for such grants, took testimony, and issued certificates. Speculators found willing victims among poverty-stricken Tejanos who had borne the brunt of the hostilities. Ignorant of their rights and tempted by hard cash, both those with and without rightful claims sold their entitlements. As Lancelott Smithers reported to the commissioner of the General Land Office:

The citizens of Laredo are (as good Texians) to be brought to Calvios [*sic*] Ranch and other hiding places in this neighborhood and make oath before a judge of their citizenship & other qualifications & to transfer their headright which the assignee is to shove thro' the board.

A great many claims already obtained are notoriously false. I have seen a Mexican receive money for having sworn before the Board & proving out a head right; and any man can see the like if he will open his eyes. A silversmith of this town, who was acting political chief under Santa Ana, and everybody knows it—recd. his lg & labor. I know many Mexicans (3 in one hour) who ran away as enemies, who have lately come back (leaving their families beyond the Rio Grande) and who have recd. certificates for the Lg & [labor.] I believe all of Santa Ana's soldiers have had certificates, those who had wives 1 Lg & 1 labor & in some instances the women have again proved that they were widows & got another Lg.¹⁰

Yet John Pitts, in a Master's thesis on the subject of speculation in these headright certificates, has documented the transfer of millions of acres of land from Tejano claimants to mostly Anglo speculators, 1,544,391 acres in 1837 alone.¹¹ In his conclusion, Pitts asserts that Texan land policy had been an experiment in Jeffersonian democracy, but one which had for economic and racial reasons quickly excluded Mexican Texans. They had "bargained away their stake in the Republic" by choice, according to Pitts, "aided by the impetus of economic necessity."¹² The willing and unwitting roles Tejanos played in these speculations did more, however. The headright episode in the San Antonio area also opened the door for Anglo-Texan distrust of Tejanos as participants in future legislative efforts to determine rights and entitlements.

⁹ Greaser and De la Teja, "Quieting Title to Spanish and Mexican Land Grants," 464.

¹⁰ Quoted in, Jesús F. de la Teja, ed., *A Revolution Remembered: The Memoirs and Selected Correspondence of Juan N. Seguín* (Austin: State House Press, 1991), 36.

¹¹ John Bost Pitts III, "Speculation in Headright Land Grants in San Antonio From 1837 to 1842" (M.A. thesis, Trinity University, 1966), 14.

¹² *Ibid.*, 51.

The southwestern portion of the state was not the only area rife with corruption, however. Even in East Texas, where few Tejanos lived, fraud and speculation had driven down the value of certificates and, consequently, of the public lands. Traffic in fraudulently obtained certificates rose to such alarming proportions that congress was forced to act. In 1840 it created two traveling boards of land commissioners to review all certificates for authenticity. Congress allowed district court judges to hear suits from those whose certificates had been rejected by the traveling boards and the Constitution of 1846 made July 1, 1847, the final date for filing such suits.

The headright system was not the only land entitlement program subject to abuse. During the Texas War of Independence volunteers from the United States had been attracted by promises of land. The revolutionary government paid soldiers at the rate of 320 acres per three-month enlistment in the Army of the Republic. Following the war, the abundance of land led to a generous donation of 640 acres to participants in one of the war's major engagements. Verification of war service proved difficult for the government, however. Many units of irregulars had participated in the struggle without filing muster rolls. Conflicts even existed among the records of regular army units. Aside from individuals filing groundless claims, there had arisen by the 1850s a small forged-certificate industry. An 1855 fire at the adjutant general's office, which burned almost all military records from the Republic period, was blamed on the forgers.¹³



Lorenzo de Zavala

In addition to the above, there were various land-related issues left over from the speculation that had taken place during the Mexican period, some of which had lasting repercussions lasting into the Republic period and beyond. For instance, Joseph Vehlein, Lorenzo de Zavala, and David G. Burnet sold their empresario contracts in New York City to a group of speculators calling itself the Galveston Bay and Texas Land Company. The company sold scrip to would-be settlers, which, along with having bought out the original



David G. Burnet

contractors, was illegal under the terms of the state colonization law. In the last years before the Revolution, the state government passed a handful of laws opening up public lands in Texas for sale, on top of the earlier provision in the colonization law of 1825 allowing the sale to Mexican nationals of up to eleven leagues (48,000 acres). Finally, there was the confusion that resulted from incomplete grants that had not been completed, which speculators and land barons took advantage of to dispossess occupants, some of whom had occupied the land for generations.¹⁴

¹³ Thomas Lloyd Miller, *The Public Lands of Texas, 1519-1970* (Norman: University of Oklahoma Press, 1972), 127.

¹⁴ "Law for Promoting Colonization in the State of Coahuila and Texas," Decree No. 16, March 24, 1825, H.P.N. Gammel, *The Laws of Texas* (Austin: The Gammel Book Company, 1898), 1: 99-106. Articles 12, 13, and 22 of the law made clear that the settlers were to pay the government for the land they received. The empresarios, or as the translation says "projector," received land in return for the service of recruiting settlers. Article 18 made the government or its representative, the commissioner, the sole authority to issue titles. Article 39 established that the government would determine the salary of the commissioner responsible for issuing titles, and he and the settlers would determine the surveying fees, both amounts to be paid by the settlers. Consequently, empresarios were not authorized to collect any fees from settlers, there was no authorization to transfer colonization contracts into the hands of third parties, and empresarios had to admit independent settlers within the bounds of their contracts who met government requirements. For those interested in how the land system operated during the

The Court of Claims

Fraud and speculation, then, were pervasive. The Republic's efforts to promote land settlement through a generous land policy created problems for which there were no easy fixes. Lawyers and land sharks intentionally muddied the waters, acquiring for themselves entitlements to tens-of-thousands of acres that they sold almost wholesale in competition with each other. For instance, the partnership of Hugh McLeod and Francois Giraud offered lands west, south, and east of San Antonio, including 5,665 acres "comprising the buildings of Fort Martin Scott, fronting one mile on the Pedernales. Baron's creek runs through the land, which lies adjoining to Fredericksburg." In the same issue of the *San Antonio Ledger*, Hanson Alsbury offered tracts of from 25 to 4,600 acres, proposing that "emigrants and others desirous to purchase on speculation, would do well to give the undersigned a call." And, in addition to the fraud and speculation, there was also the frustration and cost of legislating private relief bills, which one legislator estimated cost the state \$300,000.¹⁵ In an effort to bring to a close abuses, rampant speculation, and waste, the legislature settled on establishing a claims court in Austin that would be responsible for closing the books on all outstanding Republic era claims.

The Legislature established a Texas Court of Claims on August 1, 1856, and it did not take long for advertisements offering assistance before the court to appear. On August 16, the *Texas State Times* ran notice from B. P. Hollingsworth & Co, General Land Agents, Austin, Texas, offering to "attend to business in the Commissioners, Court of Claims, General Land Office," and offering to "Locate Certificates for an interest of money, buy and sell." Attorneys Henry W. Sublett and James P. Neal of Austin offered to "give special attention to all claims which may be placed in their hands, which may require recognition of the Court of Claims, recently established by the Texas Legislature. Mr. Sublett has been in Texas some twenty-two years and professes to be *somewhat familiar* with the character of most of the claims likely to come before the said Court." The firm of Bledsoe and Walton warned that "As there will be a great many claimants, persons having claims *would do well* to forward to us their evidence at an early day." Conveniently, they were prepared to help locate certificates obtained from the court, that is, find suitable land. While most advertisements for representation before the court appeared in Austin papers, by November at the least such notices had extended to Galveston, where A. F. James proposed to "attend to the



Hugh McLeod



Francois Giraud



Henry W. Sublett

Mexican period, see Galen D. Greaser, *That They May Possess the Land: The Spanish and Mexican Land Commissioners of Texas (1720-1836)* (Independently published (Amazon), 2023). Greaser's bibliography includes a list of reported cases from 1846 to 1944. The long, drawn out, fight over what came to be known as the Robertson's Colony, is the subject of the 19 volume *Papers Concerning Robertson's Colony in Texas* (19 vols., Arlington: University of Texas at Arlington Press, 1974-93), compiled and edited by Malcolm D. McLean. On the variety of speculation, see Eugene C. Barker, "Land Speculation as a Cause of the Texas Revolution," *The Quarterly of the Texas State Historical Association*, Vol. 10, No. 1 (July 1906): 76-95. One such case is the subject of Abel Rubio's *Stolen Heritage: A Mexican-American's Rediscovery of His Family's Lost Land Grant* (Austin: Eakin Press, 1986).

¹⁵ *The San Antonio Ledger*, Mar. 15, 1856; *The Galveston Weekly News*, Aug. 5, 1856.

prosecution of claims against the late Republic, before the Court of Claims at the city of Austin.”¹⁶

The law establishing the court, entitled “An Act to ascertain the legal claims for money and lands against the State,”¹⁷ called for a commissioner of claims, elected by a joint vote of both houses of the legislature, to complete the work by January 1, 1858. He and a clerk were to check the validity of all outstanding land certificates, accept applications for original land claims, and pass on the merits of applications for duplicate and unlocated balance certificates. The job proved so daunting that the legislature subsequently authorized additional clerks for the court and in January 1858 extended the term of the commissioner until September 1, 1859. Work had not been completed by the latter date (the state comptroller assumed the office of commissioner) and the legislature recreated the court on February 7, 1860, setting a final deadline of December 31, 1861, for all claims to be adjudicated.¹⁸

The more straight-forward part of the court’s work was approval or rejection of outstanding certificates. Certificates submitted for examination went through a series of checks against existing state records. Holders of headright certificates rejected by the commissioner could attempt to get them validated by bringing suit in the district courts of the counties where the certificates were issued. Limitations were also placed on the ability of assignees to validate certificates.¹⁹ An examination of how Tejanos fared in this part of the court’s activities is beyond the scope of this article.

The much thornier aspect of the commissioner of claims’ duties was his authority to accept applications for original certificates. The 1856 law required the commissioner to issue a certificate to anyone showing acceptable proof. Proof consisted of an affidavit from the claimant stating residence in Texas since before March 2, 1836, that he had not left the country during the war in order to avoid military service, that he had not assisted the enemy, and that he had previously not received land under the claim he was making.²⁰ Moreover, he had to present at least two credible witnesses to prove his residence qualification.²¹ In those cases where the commissioner determined the evidence not sufficient to issue a certificate, he was to forward the application, evidence, and his opinion to the legislature for its action. The January 1858 law made September 1, 1858, the final filing day for original claims and made the legislature responsible for passing on the evidence. By the February 1860 law, potential claimants were given until June 1, 1861, to file with the court, a board composed of the commissioner of the court, the commissioner of the General Land Office, the state comptroller, and the state treasurer passing judgement on the evidence.²²

¹⁶ First quote, *Texas State Times*, Aug. 16, 1856; second quote *State Gazette*, Aug. 23, 1856 (author’s emphasis); third quote *State Gazette*, Aug. 30, 1856 (author’s emphasis); fourth quote *Galveston Civilian and Gazette*, Nov. 18, 1856.

¹⁷ H.P.N. Gammel, *The Laws of Texas, 1822-1897* (Austin, Texas, 1898) 4:432-42.

¹⁸ Miller, *The Public Lands of Texas*, 128-29.

¹⁹ John and Henry Sayles, *A Treatise on the Laws of Texas Relating to Real Estate, and Actions to Try Title and for Possession of Lands and Tenements* (St. Louis, MO.: The Gilbert Book Company, 1890), 243-45.

²⁰ Under the land laws of Coahuila y Texas and the Republic women were not eligible for headrights or other land grants on their own. Only beginning in 1845, women were entitled to pre-emption and homestead grants on equal terms with men. Spanish and Mexican law did contain what is known as community property, so women did acquire rights to land grants their husbands acquired. See Mark M. Carroll, *Homesteads Ungovernable*, 3-4, 78-80.

²¹ *Ibid.*, 232.

²² *Ibid.*, 235-236.

Commissioners' complaints and legislative debates evince the unease and divisiveness occasioned by the investigation of such claims. After describing how he had evidence that applicants and witnesses were signing their names to blank instruments and that notarized instruments were being sold with the names of applicants and witness left blank, to be filled in by the purchaser, Commissioner James C. Wilson wrote in his June 1, 1857, report:

It will be gathered from the foregoing, that in my opinion, the power, now vested in this office, to grant original Headrights ought to be withdrawn. Such is my deliberate conviction. I feel confident that the number of just claimants remaining unsatisfied is extremely limited, and my reason will not assent to the proposition—that the indolence of a few persons, who through a long series of years, would not apply for a free gratuity on the part of the Government, which they could have, at any time realized, by showing their compliance with the law governing the gift, constitutes a reason sufficiently cogent to influence the legislation of the State, to the wasting of her Domain, and the demoralization of her citizens.²³

One member of the Texas House of Representatives commented during a debate regarding an act for the relief of Lazaro Garza that the Court of Claims had done nothing. “The law was drawn up with such strict guards against fraud, that an honest claimant cannot get relief.”²⁴ Thomas Lloyd Miller, historian of Texas public land policy, concludes the chapter on the Court of Claims in his book, *The Public Lands of Texas, 1519-1970*, with the following comment: “With extreme care, yet desiring to do justice to all men, the Texas court of claims ‘ascertained the legal claims of money and lands against the Republic and State of Texas.’”²⁵

Tejanos and the Court of Claims

There is abundant evidence, however, that the Court of Claims did not desire “to do justice to all men.” Even a cursory examination of the court’s records, of legislative proceedings, and of contemporary newspapers reveals that old patterns of discrimination and exploitation had again emerged. On the one hand, Tejanos faced tougher standards of proof before the court, while on the other, many fell into the hands of the very speculators the legislature was trying to run out of business.

The first commissioner of claims, James C. Wilson, a member of the ill-fated 1842 Mier Expedition and who had managed to escape from a Mexican prison in July 1843, set the pattern for discriminatory treatment of Tejano claims. According to the state’s constitution and the Treaty of Guadalupe Hidalgo Texans of Mexican descent were citizens of the United States. Consequently, neither the 1856 law creating the Court of Claims nor any of the earlier laws establishing the criteria for proving up claims distinguished between Anglo and Mexican Texans. Wilson issued his own rules for presenting and proving up evidence, including one that required that the veracity of “Mexican” witnesses be proved by the testimony of two “white” men.²⁶

²³ Commissioner of Claims, Report, June 1, 1857, Records of the Texas Court of Claims (1856-1861), Texas General Land Office, Austin, Texas [hereafter cited as CC:GLO], page 10.

²⁴ “Legislative Proceedings,” *Austin State Gazette*, Nov. 30, 1857.

²⁵ Miller, *Public Lands of Texas*, 136.

Further evidence of Wilson's attitude toward Tejano claimants is found in his report of June 1, 1857. Although Tejanos made only a small percentage of the total number of applicants for original certificates, eight of the ten examples he gives of problematical claims came from Mexican Texans. Wilson intended to use one more example, although he crossed it out of his draft report: "Again, in the case of the Heirs of Antonio Chapa, one of the witnesses was unknown to the Commissioner and no proof of his credibility was offered."²⁷ Not surprisingly, of the more than 100 cases Wilson referred to the Committee on Private Land Claims, none carried his recommendation for approval. In only two of these cases did the committee report favorably for the claimant. Wilson did not approve a single original Tejano claim that came before him, and issued only one duplicate certificate to replace a lost one. Hundreds of cases remained open at the time he stepped down from the court in July 1857.²⁸



James C. Wilson

On November 30, 1857, Angel Navarro, representative from Bexar County to the Texas House, made public Wilson's arbitrary interpretation of the law. What brought the matter to light was the unwillingness of Lazaro Garza to submit to the commissioner's rule that white men establish the truthfulness of Tejano witnesses. According to Navarro, the eighty-year-old Garza had stated



Angel Navarro

that before he would submit to the indignity of having his character, or the character of his witnesses proved up by the testimony of other men, whom he considered his equals under the laws, he would willingly lose every cent of money and every inch of land to which he might justly be entitled.²⁹

Garza took his case directly to the legislature, which referred the matter to the same committee overseeing the Court of Claims' activities. Navarro, one of the committee members, made it clear that he knew of Wilson's rule from one of the clerks of the Court of Claims, James O. Illingworth, who was now serving as acting commissioner. The Tejano legislator then went on to blast the provision as arbitrary and "unwarranted by law . . . an unjust and unwise distinction, an insidious discrimination, where no classes are proscribed by our laws."³⁰ On December 19, 1857, Lazaro Garza received relief from the legislature in the form of one league and one labor (4,605.5 acres) of land, the standard headright to a head of household.³¹

²⁶ "Legislative Proceedings," *Austin State Gazette*, Nov. 30, 1857. Wilson's approach directly contradicted the final resolution of the debate over "whiteness" in the state constitutional convention, where after considerable debate the word "white" had been struck from the definition of citizenship. See Chriss, *Six Constitutions*, 30-31, 50-51.

²⁷ Commissioner of Claims, Report, June 1, 1857, CC:GLO. Much of the work of the commissioner of claims remains veiled in mystery for, although law required all the papers of the Court of Claims to be deposited in the General Land Office, neither the minutes of the court nor internal communications are to be found in the archives of that agency.

²⁸ Information gathered from Old Docket, 1857-1860, CC:GLO.

²⁹ "Legislative Proceedings," *Austin State Gazette*, Nov. 30, 1857.

³⁰ *Ibid.*

³¹ "An Act for the Relief of Lazaro Garza," Gammel's *Laws of Texas* vol. 4, pt. 3, (p. 1189).

The Court of Claims was to conclude its business by January 1, 1858, and James Illingworth, Wilson's successor, had the unenviable task of closing out the thousands of cases that remained open. The work of the court, because it included review of outstanding certificates, was not close to being finished by the deadline, so the legislature extended the court's duration until January 1, 1859. The extension did not come without bitter debate in the House, where various members argued that all the court had done was "given new opportunities to persons desirous of speculating upon the country, which they never would have thought of had not that office been created."³² One legislator was even more blunt, calling the court "a swindle upon the rights of the people."³³ In order to partially satisfy this and other complaints, the new law closed the opportunity for filing original claims on September 1, 1858.³⁴

What had become abundantly clear by this time was that most of the Tezano cases were fraudulent and the result of speculation, never to be proven up properly. Although the legislators did not address the issue in ethnic terms during the debates on the new law, the acting commissioner had continued to document the kinds of practices ascribed to speculators. For instance, G. H. Nelson, attorney for fifteen Tezano applicants for headrights, presented no evidence in any of the cases that Illingworth could find legal. Aside from the initial "No legal evidence" note beside each name in the docket, all the cases are listed as "dismissed" for one of three reasons. Aside from not presenting legal evidence, Juana Sanches Martines showed "no proof that she was the head of a family." Four applicants were all accused of making their affidavits "in blank." The commissioner found the "Evidence all in blank" in eight other cases. The claims of Enatugre [sic] Ochoa and María Victoriana Villarreal were the most serious, however. In these cases "the affidavits are in blank, as to the name of the applicant, yet solemnly sworn to by two witnesses and authenticated by a Not. Pub. under his hand and seal."³⁵

Two cases stand out for sheer magnitude. Antony Superviele, a Frenchman who served as senator from Bexar County to the Sixth Legislature, also represented over 120 Tezano claimants for original certificates. In not one case did the commissioner or legislature act in favor of his clients. Notes stating that the proof was incomplete or that no evidence had been offered abound. Another Frenchman, Xavier B. De Bray, who had settled in San Antonio in 1848, took advantage of his background to become attorney for sixty-five Tejanos. Until 1856 he worked as an interpreter and translator and operated the Spanish-language newspaper *El Bejareño*. He then moved to Austin where he became Spanish translator at the General Land Office before opening an academy which flourished until he closed it to enlist in the Confederate army.³⁶ His connections did not help him obtain special treatment from either the court or the legislature. Not a single one of the claims he filed was approved, including twenty-two that he filed without any evidence on August 30, 1858, two days before the filing deadline.³⁷ It is impossible, at this stage to distinguish between those agents for Tejanos who were speculating by buying claims and those who were profiting from taking fees for claims that had no chance of being approved.

³² Mr. McKinney of Travis, Legislative Proceedings, *Austin State Gazette*, Jan. 4, 1858, .

³³ Mr. Chilton, *ibid*.

³⁴ Sayles, *Treatise on the Laws*, 236.

³⁵ Entries 336-345, Old Docket, 1857-1860, CC:GLO.

³⁶ "De Bray, Xavier Blanchard," *Handbook of Texas* (Austin: Texas State Historical Association, 1952, 1976), I: 477.

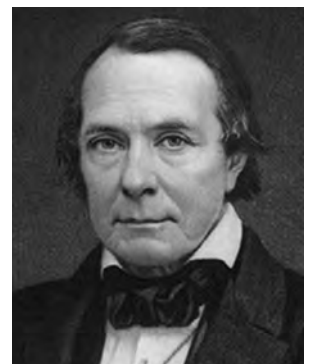
³⁷ Passim, including nos. 2038-2059, Old Docket, 1857-1860, CC:GLO.

The final numbers from this first period of the court are disastrous as far as Tejanos are concerned. Of the 404 Hispanic names appearing in the court's docket, approximately 228 received no action because no evidence was received. The commissioner dismissed 100 cases, mostly for one of the reasons stated above, and the legislature rejected 57 cases referred to it for action. According to the docket, twelve duplicate certificates were granted during this period and three original certificates issued.³⁸ The disaster was not that spurious claims were rejected but that they further tinged the reputation of Tejanos as a group as unreliable claimants for entitlements.

The conclusion that a bias existed against Tejano claimants is not solely based on an examination of the court's docket. In early 1858 a joint select committee, named to review the claims forwarded by the commissioner of claims to the legislature, reported a bill to grant certificates in a manner deemed discriminatory by members of the House. On February 6, 1858,³⁹ Angel Navarro reiterated the charges he had made the previous November regarding the actions of the commissioner and added new accusations of bias on the part of the legislature. He called the report of the joint committee "a most palpable and flagrant injustice upon a certain class of individuals." He then declared that since the founding of the Court of Claims Mexican Texans had been the objects of a "great injustice." He attributed this to a "doubtless honest, but nevertheless ill-founded, prejudice against this class of individuals."

Navarro then outlined the unfairness with which the court had treated Tejanos. He did not argue that fraud had not been committed, but that it should not cloud good claims. As far as the first two commissioners, they had acted arbitrarily and in a manner "unauthorized by law, having made certain distinctions of classes where none are known to our constitution and laws." And even when the extra proof was provided through the testimony of two respectable white men, "not a single original headright certificate was recommended by the Commissioner."

The Tejano legislator then took on the joint committee. Navarro could not understand what rules the committee could have adopted that would lead to its recommending only two Mexican Texan claims. "It would seem," he argued, "as if the committee, having discovered some palpably fraudulent claims, were disgusted with this class of applicants and concluded to reject the whole batch, *en masse*." This despite the fact that some Tejano witnesses had been vouched for by the likes of Mirabeau B. Lamar and Judge Lee, the chair of the joint committee. Perhaps most galling of all for Navarro was his finding that



Mirabeau B. Lamar

By looking over the list of the claims which this committee have rejected, I observe that in many of them, the reasoning that influenced the committee in rejecting are distinctly set forth in each particular claim; but as to the claims presented by citizens of Mexican origin, a different course seems to have been pursued. In these cases, sir, it seems to me that the committee have not taken up each claim and acted upon it, on its own individual merits, but that all that smacked of Mexican have been rejected for the only reason that there being some bad claims among them, the committee say they cannot discriminate.

³⁸ Passim, *ibid*. The time-consuming task of verifying all docket entries against case files and other records in the General Land Office has not yet been possible.

³⁹ The debate is found in "Legislative proceedings," *Austin State Gazette*, February 5-6, 1858.

Jack Latham, another representative with a large Tejano constituency, seconded Navarro's complaints and added two of his own. He objected that Tejanos should only be considered citizens when voting and paying taxes, "But when they ask for equal rights under our laws, they are denied; although they were born, and many are living yet in Texas." There was no reason to deny the claims of a group of people who had complied with the law in the same manner as other claimants and undertaken the same heavy expenses in coming to Austin to file their claims.

Already the previous day Hamilton P. Bee, representing Laredo, had spoken of yet another form of discrimination against Tejanos. He objected that although all the claims from his district had been properly proved, with himself and E. J. Davis, judge of the twelfth judicial district, vouching for the credibility of the witnesses, none had received a recommendation from the commissioner.



Hamilton P. Bee

Moreover, the joint committee had seen fit to grant headrights for claims from the eastern part of Texas while it rejected all claims from west of the San Antonio River.

Bee found it ridiculous that the committee should argue that "there may be a few just claims amongst them, but it is impossible for the committee to discriminate," and claimed discrimination on two counts. First, that the committee was attempting to exclude Mexican Texans from receiving a rightful entitlement by erroneously arguing that Texas had no jurisdiction in Laredo, when it had claimed such consistently since December of 1835. Second, that because the citizens of the Rio Grande were citizens of Texas as of March 2, 1836, if they could make the proofs required by law, they were "as much entitled to their lands as any other citizens of the Republic of Texas, unless this Legislature shall make a distinction between citizens, which it has never done nor can do under the constitution."⁴⁰



Jacob Waelder

Based on the above arguments Jacob Waelder, Navarro's colleague from Bexar, moved that the bill be returned to the committee "with instructions to amend the same in such a manner as to place all claimants on an equal footing." Such was not to be the case, however. Joseph Barnard, the Goliad representative and a survivor of the Fannin massacre, brought up the issue which had been carefully avoided up to that point. He could not see how the House could be asked not to recognize a distinction of races when it had done so "upon the numerous bills for the relief of free negroes; in its action upon the able and voluminous reports of your committees on the Kansas and slavery questions. This House has emphatically recognized a distinction of races." He concluded his comments by adding, "Shall there be a distinction of races in . . . East [Texas] and none in . . . West [Texas]? I hope gentlemen will see the full bearing of this point before they admit it." The motion was defeated and the committee report was overwhelmingly approved by the House.



Joseph Barnard

It did not take long for word of the legislature's actions to reach San

⁴⁰ Mr. Bee, "Legislative Proceedings," *Austin State Gazette*, February 5, 1858.

Antonio. The *San Antonio Texan* commented favorably on the legislature's action, spelling out in more colorful language the speculative character of many of the claims. Not one in twenty would have been received by the original claimant, the editor argued, for the claims had "been bought up for a mere song, by persons who will obtain a living by any means rather than by labor." In verse he added these speculators "Hoped to become great / By duping the State." He concluded by blaming the speculators for the legislature losing confidence in all claims, thus depriving many deserving persons "of their lawful dues."⁴¹

The *San Antonio Ledger*, which carried the *Texan* article, defended the applicants, arguing that most had been honest, many of them widows and orphans. The majority of claims were still in the hand of the original claimants "and the exceptions were only purchased at a fair price, after the Commissioner had declared that he was perfectly satisfied, not only with the proof, but with the justness of the claims." This, of course was an exaggeration, since we have already seen that the commissioners of the court had, in fact, refused to recommend Tejanos claims.

Conclusion

This essay has far from exhausted the records related to the various mechanisms the Republic and later the State of Texas employed to adjudicate land grants, particularly as they shed light on the place of Mexican Texans within the evolving Texas legal system. Nevertheless, some tentative conclusions can be proffered. First, the activities surrounding the Court of Claims reinforced stereotypes and gave Anglo-supremacists ammunition with which to further downgrade the status of Tejanos. The racialized society that was Texas meant that many whites viewed Tejanos as the Blacks of west Texas, no matter what the laws might say. Just like Blacks, Tejanos as a group were untrustworthy and willing to participate in the rankest fraud. This judgement was handed down despite considerable evidence of rampant fraud in the predominantly Anglo-American portions of the state. Consequently, despite the constitutional equality between Anglo Texans and Tejanos, it proved permissible for the officers of the state to impose an extra burden of proof upon the latter, and often ignore it when provided.

Second, Tejanos citizenship itself was of questionable value. Although Texas law and the Treaty of Guadalupe Hidalgo made citizens of Mexicans living north of the new border, that citizenship was subject to arbitrary interpretation. The majority of legislators had no difficulty changing the date on which the trans-Nueces was incorporated into Texas and when Mexicans became citizens, in order to deny them entitlements being granted to Anglo Texans. In the case of those holding Mexican land titles issued after March 2, 1836, use of that date proved a convenient way of denying them their rights to the land. In the case of applicants before the Court of Claims, what suited Anglo Texans was December 1845, a date beyond which the Mexican Texans from the Rio Grande Valley would have been entitled to land under Republic programs.

Third, speculators, scrupulous and unscrupulous, took advantage of Tejanos and contributed to the deterioration of their rights. By filing false or misleading claims and doing it in a careless and obvious manner, they made it easy for the legislature to argue that Tejanos applications, as a group, were tainted. More despicable still is the fact that some of them used their positions of

⁴¹ *San Antonio Ledger*, February 27, 1858, p.2 c. 2.

trust within the community to carry out their plans. Ignorant of the language and Anglo-American legal system, many Tejanos apparently became unwitting partners in a land fraud scheme against the state.

Tejanos were still capable of receiving individual justice and they had representatives, both Mexican Texans and Anglo Texans, who forcefully represented their interests. Yet it is obvious that those cases and such men constituted a small minority. Clearly, the constitution and laws of the state were not absolutes. As in the economy and social relations, race and culture determined one's legal place in Texas society. To a considerable degree, the victimization of Tejanos in the land entitlement process deepened Anglo Texans' distrust of them and contributed to the process of segregation and discrimination that would continue to unfold until the second half of the twentieth century.



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Texas Supreme Court History and the Modern Second Amendment

By Mark Anthony Frassetto¹



The Freedmen's Bureau as depicted by Harper's Weekly, July 25, 1868

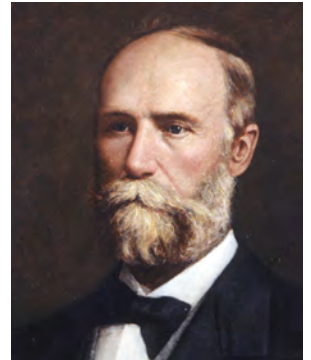
I. Introduction

In the years after the Civil War, violence in Texas spiraled out of control. White supremacist groups committed acts of violence at unprecedented levels against Freedmen and their Republican supporters. In response to this racist violence, the Texas State Legislature and Republican Governor Edmund Davis enacted a series of restrictions on the carrying of firearms in public.

¹ Deputy Direct, Second Amendment History and Scholarship, Everytown for Gun Safety. The views expressed in this article are solely those of the author and do not necessarily represent those of Everytown for Gun Safety.

These restrictions were challenged as violations of both the Second Amendment and Texas's state constitution analogue. They were upheld first by a Texas Supreme Court made up entirely of Republican appointees and then, after the end of Reconstruction, by a completely new Texas Supreme Court made up entirely of Democrats. These cases served as a kind of natural experiment to show the broad range of understandings of the right to bear arms in Reconstruction Era America. In both cases, the state Supreme Court upheld the laws as valid under both the Second Amendment and Texas State Constitution.

This history has played an unusually prominent role in modern Second Amendment litigation. Federal courts adjudicating Second Amendment challenges frequently cite nineteenth century Texas case law and statutes. The Supreme Court in *District of Columbia v. Heller*,² *McDonald v. City of Chicago*,³ and most prominently in *New York State Rifle & Pistol Association v. Bruen*,⁴ addressed Texas Reconstruction Era history in deciding major Second Amendment cases. And Texas Reconstruction laws continue to play a major role in Second Amendment cases in the lower federal courts across the country today.



Gov. Edmund Davis



Gov. Greg Abbott

Texas Reconstruction Era history was significant enough in the *Bruen* case that it was discussed in both parties' briefs, as well as in amicus briefs from the United States, ACLU, NAACP LDF, Second Amendment Foundation, and eighteen U.S. states. Texas Governor Greg Abbott filed a brief in *Bruen* specifically on Texas history. Texas laws are also at the core of one of the most significant methodological debates in originalism, the proper time period for the originalist historical analysis. Texas's Reconstruction Era gun laws and the two major Texas Supreme Court cases came within a decade of the ratification of the Fourteenth Amendment in 1868. Under core originalist principles, the meaning of constitutional text is fixed at the time of enactment. Thus, this evidence should play a core role in understanding the meaning of the right to keep and bear arms as incorporated against the states by the Fourteenth Amendment. However, courts have been split on the issue.

This article will first discuss Texas's Reconstruction Era history of weapons regulation and then discuss Texas history's continued role at the center of the Second Amendment debate.

II. Gun Regulation in Reconstruction Texas

A. Violence in Reconstruction Texas

Texas was a uniquely violent place, both before and after the Civil War.⁵ While violence in every southern state far exceeded violence in the North, Texas's levels of violence stood out

² 554 U.S. 570, 581, 627.

³ 561 U.S. 742, 936 (Stevens, J. Dissenting).

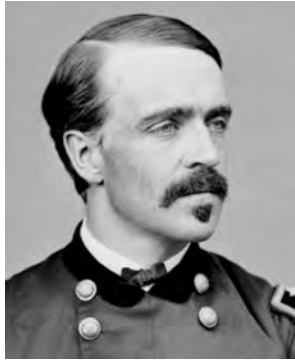
⁴ 597 U.S. 1, 6.

⁵ Part II of this article is adopted in part from Mark Anthony Frassetto, *The Law and Politics of Firearms Regulations in Reconstruction Texas*, 4 Texas A&M Law Review 95 (2016).

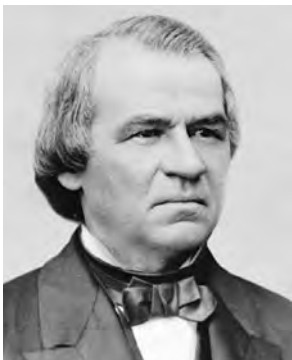
even in the South.⁶ In 1845, when Texas joined the Union, the homicide rate in South Texas was an outrageous 100 per 100,000 and at least 50 per 100,000 in the slaveholding portion of East Texas.⁷ For context, the 2025 U.S. homicide rate was 4.0 per 100,000.⁸ A report commissioned by the 1868-69 Constitutional Convention found that violence further increased in the period after



Andrew J. Hamilton



General W.E. Strong



President Andrew Johnson



Major General Joseph J. Reynolds

the end of the Civil War. Homicides had increased from a reported 98 in 1865 to 347 in 1867.⁹ While the investigators admitted these numbers “came far short of representing the actual number,” they did show the trend of increasing violence in Texas, much of it political.¹⁰ The Convention Report authors wrote they doubted “such a record of blood can be exhibited in any Christian or civilized State in the world in a time of peace.”¹¹

This violence fell disproportionately on the state’s Freedmen. Provisional military governor Andrew J. Hamilton in a letter to President Johnson described reports of “shooting and hanging of Negroes by the half dozen at a time, for the crime of leaving their former masters.”¹² General W.E. Strong described Freedmen being treated “unmercifully and shot down like wild beasts, without any provocation.”¹³ And fifth military district Commander Major General Joseph J. Reynolds reported “murder of negroes is so common as to render it impossible to keep an accurate account of them.”¹⁴

Given the hostility toward Freedmen and Republicans at the time, the investigation and prosecution of these crimes was abysmal. One report found that of the roughly 1,000 homicides reported in Texas between 1865-69, there were only 279 indictments, five convictions, and one

⁶ See generally Horace V. Redfield, *Homicide, North and South: Being a Comparative View of Crime Against the Person in Several Parts of the United States* (Philadelphia: J.B. Lippincott & Co., 1880).

⁷ Randolph Roth, *American Homicide* (Cambridge, MA: Belknap Press, 2009).

⁸ Ernesto Lopez, *Crime Trends in U.S. Cities: Year-End 2025 Update* (Washington, DC: Council on Criminal Justice, January 2026), <https://counciloncj.org/crime-trends-in-u-s-cities-year-end-2025-update/> (“When nationwide data for jurisdictions of all sizes is reported by the FBI later this year, there is a strong possibility that homicides in 2025 will drop to about 4.0 per 100,000 residents. That would be the lowest rate ever recorded in law enforcement or public health data going back to 1900, and would mark the largest single-year percentage drop in the homicide rate on record.”)

⁹ Ann Patton Baenziger, “The Texas State Police during Reconstruction: A Reexamination,” *Southwestern Historical Quarterly* 72 (April 1969).

¹⁰ Barry Crouch & Donaly Brice, *The Governor’s Hounds: The Texas State Police 1870-1873* 20 (Univ. Tex. Press 2011).

¹¹ *Ibid.*, 20

¹² *Ibid.*, 11-12.

¹³ *Ibid.*, 12.

¹⁴ *Ibid.*, 21.

execution (a Freedman).¹⁵ Even when a conviction for a violent crime was secured, justice was often illusory. In one case, a white man who had attacked and nearly beat to death a Freedman was arrested by a Freedman's Bureau agent, turned over to civil authorities, and convicted; the punishment was a fine of one cent.¹⁶ In 1870, a reported 702 murderers and 413 attempted murderers were on the loose in Texas.¹⁷ Crime, especially directed toward Freedmen and Unionists, was out of control.

1. The Davis Administration: 1870-1872

In the midst of this chaos, Edmund Davis was elected governor of Texas. Prior to the Civil War, Davis served as a judge in south Texas and was a close political ally of Texas Revolution hero and Unionist, Sam Houston.¹⁸ Davis opposed secession, refused to swear a loyalty oath to the Confederacy, and was removed from his judgeship.¹⁹ Davis fled Texas and served as an officer in the Union army, rising to the rank of Brigadier General by the end of the War.²⁰ Riding momentum from his deft handling of Texas's 1868 constitutional convention, in 1869 Davis was elected Governor by less than 800 votes in an election marred by violence against Freedmen.²¹

That summer, the state legislature passed a law forbidding the carrying of any "bowie-knife, dirk or butcher-knife, or fire-arms whether known as a six shooter, gun or pistol of any kind" at "any church or religious assembly, any school room or other place where persons are assembled for educational, literary or scientific purposes, or into a ball room, social party, or other social gathering composed of ladies and gentlemen, or to any election precinct on the day or days of any election. . . or to any other place where people may be assembled to muster or to perform any other public duty, or any other public assembly."²² The fine for violating the new law was a fairly substantial \$50 to \$500 (the modern equivalent of \$1,000 to \$10,000).²³

In a letter to the 1871 session of the state legislature, Governor Davis stated the law was "a very partial remedy" and went on to say "instances of personal violence occur almost daily" and "are within the experience of everybody."²⁴ Davis called for a broad prohibition on carrying weapons in public, which would be "a great preventative of violence and bloodshed."²⁵

¹⁵ Baenziger, "The Texas State Police," 473.

¹⁶ Texas Constitutional Convention (1868-1869), *Journal of the Reconstruction Convention: Which Met at Austin, Texas, June 1, A.D., 1868* (Austin, TX: Tracy, Siemering & Co., 1870), 199.

¹⁷ Baenziger, "The Texas State Police," 473.

¹⁸ Carl H. Moneyhon, "Edmund Jackson Davis," *Handbook of Texas Online*, <http://bit.ly/1XT3kLm>.

¹⁹ Moneyhon, "Edmund J. Davis," 40-41.

²⁰ *Ibid.*, 59-72.

²¹ *Ibid.*

²² 1870 Tex. Gen. Acts 63, *An Act Regulating the Right to Keep and Bear Arms*; Crouch and Brice, *The Governor's Hounds*, 26.

²³ Calculated using inflation calculator at <http://www.westegg.com/inflation/>, which is based on consumer price index statistics going back to 1800.

²⁴ Journal of the House of Representatives of the Twelfth Legislature, Part First (1871), at 57.

²⁵ *Ibid.*

In response, the Texas Legislature drafted a bill that prohibited the carrying of any “pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife or any other kind of knife” “without reasonable grounds for fearing an unlawful attack on his person, and that such ground of attack shall be immediate and pressing.”²⁶ The bill punished first offenses with confiscation of the weapon and a fine of between \$25 and \$100 (approximately \$500 to \$2000 with inflation) and up to sixty days in prison for a second offense.²⁷ The penalties for the 1870 Act were also amended to provide for confiscation of the weapon and imprisonment for up to ninety days for subsequent offenses.²⁸

Republican Frederick Grothaus introduced the bill on January 24, 1871.²⁹ The House passed the bill 60-12 on March 9.³⁰ All twelve Black representatives voted in favor.³¹ On March 29, the Senate passed the bill by a 20-4 margin with support from both of the state’s Black Senators.³² In both chambers, opposition to the law primarily came from Democrats and conservative Republicans who had served in the Confederate Army.³³ Governor Davis signed the bill on April 12, 1871.³⁴

The new prohibition on public carry was widely enforced by both the Texas State Police—a Reconstruction Era integrated state police force—and local law enforcement.³⁵ Some efforts to enforce the law turned violent, including in Lampasas, Texas in 1873, when four state police officers were murdered by members of a local cattle-rustling gang when they attempted to arrest a gang member who was violating the carry ban.³⁶

²⁶ 1871 Tex. Gen Acts 25, § 1, *An Act to Regulate the Keeping and Bearing of Deadly Weapons*.

²⁷ *Ibid.*

²⁸ *Ibid.*, § 3.

²⁹ Journal of the House of Representatives of the Twelfth Legislature, Pt. 1st 95 (January 21, 1871); Britney Jeffrey, “Frederick Edward Grothaus,” *Handbook of Texas Online*, <http://bit.ly/1Llq64O> (Germans in Texas tended to oppose secession and support Republicans after the war).

³⁰ Texas House Journal 523-32 (March 9, 1871).

³¹ *Ibid.* (The Black representatives who supported the measure were Richard Allen, D.W. Burley, Silas Cotton, Goldstein Dupree, Jeremiah J. Hamilton, Mitchell Kendall, David Medlock, John Mitchell, Henry Moore, Sheppard Mullens, Benjamin Franklin Williams, and Richard Williams.)

³² Senate Journal, 538 (March 29, 1871); G.T. Ruby and freedman Matthew Gaines were the two Black senators who supported the Amendment.

³³ Members of the House voting Nay: Abbot (Democrat, Confederate Officer); English (Unknown Party, Confederate Officer); M.A. Gaston (Democrat); Hawkins (Conservative); F. Kyle (Democrat, Confederate Officer); J.W. Lane (Democrat); Jas. A. Miller (Democrat); W.C. Pierson (Radical/Democrat*); Robb (Democrat, Confederate Officer); E. Ross (Democrat); Self (Unknown); G.H. Slaughter (Radical Republican) *There is some dispute as to the political affiliation of W.C. Pierson he is listed as a Radical Republican in the Texas State Almanac from 1870, but his obituary states he was one of the few Democrats who served in the Texas House of Representatives During Reconstruction. Members of the Senate Voting Nay: Bowers (Conservative, Confederate Officer); Cole (Democrat); Dillard (Democrat, Confederate Officer); Picket (Conservative). See Texas House Journal 523-32 (March 9, 1871); Texas Senate Journal 538 (March 29, 1871); Party affiliation drawn from TEXAS ALMANAC (1870); Biographical Information drawn when Available from Texas State Historical Association Handbook Online, available at <https://www.tshaonline.org/handbook>.

³⁴ 1871 Tex. Gen. Laws 25, § 3.

³⁵ See generally, Jenkins v State, 36 Tex. 638 (1872); Waddell v. State, 37 Tex. 354 (1873); “An Acting Officer Murdered,” *Dallas Herald* (Dallas, Tex.) Sept. 21, 1871, 4; *The Weekly Democratic Statesman* (Austin, Tex.) Sept. 21, 1871, 4.

³⁶ *Ibid.*, 150-156.

III. Legal Challenges and Interpretation of the 1871 Prohibition on Public Carry

In the three years following enactment of the 1871 prohibition on public carry, two major legal challenges reached the Texas Supreme Court. The first was heard by a court made up entirely of Davis appointees sympathetic to Reconstruction. The second challenge came in 1874, after the Democratic legislature removed the entire bench from office and appointed a new Democratic slate of judges.³⁷ These two cases created a kind of natural experiment that isolated the contemporaneous legal views on firearms rights of Republican Unionists and Southern Democrats. Ultimately, both courts ruled that the general prohibition on carrying firearms in public was constitutional, but they relied on divergent reasoning in doing so.

A. The Texas Supreme Court, 1867-1874

During the Reconstruction period, the Texas Supreme Court underwent dramatic upheaval. As a result of changes in federal policy and state political control between 1866 and 1874, Texas went through four distinct Supreme Courts.³⁸ During Presidential Reconstruction, in the immediate aftermath of the Civil War, Texas Democrats adopted a Constitution meant to change as little as possible without bringing federal retribution. Under the terms of that Constitution, a slate of five Democratic Justices were elected, four of whom had served as officers in the Confederate army.³⁹ With the advent of Congressional Reconstruction, the federally appointed military governor of Texas appointed a new Court more sympathetic to the Union.⁴⁰ This Court sat until the ratification of the Republican-drafted Constitution of 1869 and the inauguration of Edmund J. Davis as governor in 1870.

In 1870, Davis filled the now three-member state Supreme Court. The Court's first three justices were Lemuel Evans, Wesley Ogden, and Moses B. Walker, all of whom had unionist sentiments and close ties to the North.⁴¹ Evans was a Tennessee-born conservative Republican who was forced to flee Texas during the Civil War after opposing secession.⁴² Ogden was also forced to flee Texas after opposing secession, but returned after the War, serving in several judicial positions prior to being appointed to the Court.⁴³ Walker was the only member of the Court without antebellum Texas ties. Prior to the War, Walker was a Yale-educated Ohio attorney who rose to the rank of brevet brigadier general during the War. Walker remained in the military after the War and was assigned to Texas, where he was appointed to the military Supreme Court.⁴⁴

³⁷ Carl H. Moneyhon, "Semicolon Court," *Handbook of Texas Online*, <http://bit.ly/1KQIYzG>.

³⁸ Hans W. Baade, *Chapters in the History of the Supreme Court of Texas: Reconstruction and "Redemption" (1866-1882)*.

³⁹ *Ibid.*

⁴⁰ *Ibid.*, 50.

⁴¹ In 1873 Justice Evans was replaced with John David McAdoo. A unionist before the war, upon secession McAdoo chose Texas over the Union and served in the Confederate military, rising to the rank of Brigadier General. See Bruce Allardice, "John David McAdoo: Civil War General and Texas Supreme Court Justice," *Handbook of Texas Online*, <https://www.tshaonline.org/handbook/entries/mcadoo-john-david>.

⁴² Baade, *Chapters in the History*, 81.

⁴³ *Ibid.*, 481.

⁴⁴ Randolph B. (Mike) Campbell, "Moses B. Walker: Life and Legacy of a Supreme Court Justice," *Handbook of Texas Online*, <https://www.tshaonline.org/handbook/entries/walker-moses-b>.

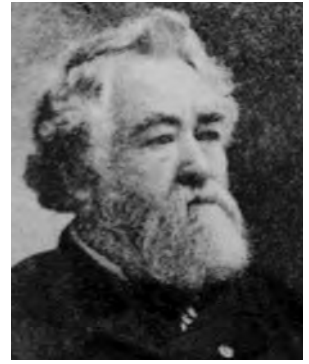
The 1873 election that unseated Davis also included a referendum on a state constitutional amendment to disband the State Supreme Court and replace it with a new Court made up of five Justices.⁴⁵ The newly elected Governor Coke appointed three justices who had previously served on the Confederate Texas Supreme Court and one justice who had served on the court when Democrats controlled it during Presidential Reconstruction. Two of the Justices had been representatives at the Texas Secession convention. Thomas J. Devine, one of the associate justices appointed by Governor Coke, had been one of only three people tried for treason after the Civil War.⁴⁶



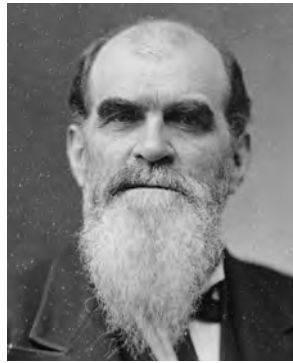
Justice Lemuel Evans



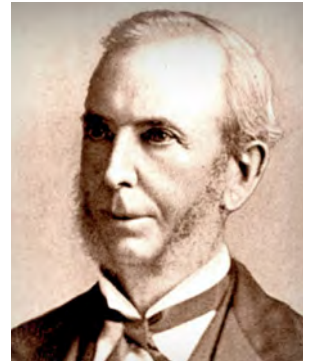
Justice Wesley Ogden



Justice Moses B. Walker



Governor Richard Coke



Justice Thomas Devine

B. The Davis Court Cases

The Davis Court's major case concerning firearms, *English v. State*, challenged both the 1871 general prohibition on carrying firearms in public as well as the specific restriction on carrying in enumerated public places originally enacted in 1870 under both the federal Second Amendment and Texas's right to keep and bear arms.⁴⁷

Justice Walker wrote the opinion for a unanimous court. The Court first looked at whether the federal Second Amendment prevented Texas from prohibiting the carrying of firearms. The Court found that unlike other rights enumerated in the Bill of Rights, the Second Amendment, standing alone, applied equally to both state and federal governments.⁴⁸ The Court adopted a militia-based view of the Second Amendment, finding that the only weapons protected were those used during service in the militia because "such only are properly known by the name of 'arms,' and such only are adapted to promote the security of a free state."⁴⁹ The Court found that in the Second Amendment "'bear' arms refers merely to the military way of using them, not their use in bravado and affray."⁵⁰ The Court then went on to uphold the law under the Second Amendment,

⁴⁵ Although the Davis Court invalidated the election, the Democrats convened the legislature anyway, passing the Amendment by the required two-thirds vote in each chamber. Baade, 121.

⁴⁶ *Ibid.*, 123.

⁴⁷ *English, v State*, 35 Tex. 473 (1872).

⁴⁸ *Ibid.*, 475; Citing to JOEL PRENTISS BISHOP, COMMENTARIES ON THE LAW OF STATUTORY CRIMES: EMBRACING THE GENERAL PRINCIPLES OF INTERPRETATION OF STATUTES, PARTICULAR PRINCIPLES APPLICABLE IN CRIMINAL CASES, LEADING DOCTRINES OF THE COMMON LAW OF CRIMES, AND DISCUSSIONS OF THE SPECIFIC STATUTORY OFFENSES, AS TO BOTH LAW AND PROCEDURE Chapter XXXVI Carrying Weapons (Boston, 1873) *Available at* The Making of Modern Law.

⁴⁹ *English*, 475; Bishop, 497.

⁵⁰ *English*, 475.

saying: “The act referred to makes all necessary exceptions and points out the place, the time and the manner in which certain deadly weapons may be carried as means of self-defense, and these exceptional cases, in our judgment, fully cover the wants of society.”⁵¹

Next, the Court turned to consider the challenge under Texas’s Second Amendment analogue, which read: “Every person shall have the right to keep and bear arms, in the lawful defence of himself or the State, under such regulations as the Legislature may prescribe.”⁵² The Court decided that the term “arms” as used in the Texas State Constitution had the same meaning as in the Second Amendment and was limited to militia weapons.⁵³ It noted that the “under such regulations as the Legislature may prescribe” provision of Texas’s Second Amendment analogue allowed for the prohibition on publicly carrying firearms except in limited circumstances. However, the Court also made clear that even in absence of the provision allowing regulation, the prohibition on public carry would be valid.⁵⁴

Justice Walker noted: “This law is not peculiar to our own State, nor is the necessity which justifies the enactment (whatever may be said of us to the contrary) peculiar to Texas.”⁵⁵ Justice Walker’s opinion then shifted from legal analysis to a discussion of the relationship between individuals, their community, and government, stating in reference to the 1871 Act that, “[i]t will doubtless work a great improvement in the moral and social condition of men, when every man shall come fully to understand that, in the great social compact under and by which States and communities are bound and held together, each individual has compromised the right to avenge his own wrongs, and must look to the State for redress.”⁵⁶

The Court also rejected the challenge to the original 1870 law that prohibited carrying weapons at public gatherings. Justice Walker wrote for the Court: “We confess it appears to us little short of ridiculous, that any one should claim the right to carry upon his person any of the mischievous devices inhibited by the statute into peaceable public assembly, as, for instance, into a church, a lecture room, a ball room, or any other place where ladies and gentlemen are congregated together.”⁵⁷

C. The Democratic Court Cases

When Democrats took over the governorship, they reconstituted the Supreme Court and appointed Democratic judges to replace the Davis Court.⁵⁸ While the Democrats repealed most of the Davis administration’s accomplishments, they left in place the prohibition on public carry.⁵⁹

⁵¹ *Ibid.*, 477.

⁵² Tex. Const. of 1869, art. I, § 13.

⁵³ English, 478.

⁵⁴ *Ibid.*, 478-79 (“But we do not intend to be understood as admitting for one moment, that the abuses prohibited are in any way protected either under the State or Federal Constitution.”).

⁵⁵ *Ibid.*, 479.

⁵⁶ *Ibid.*, 477-78.

⁵⁷ *Ibid.*, 478.

⁵⁸ Baade, 121.

⁵⁹ For examples on enforcement see, *The Weekly Democratic Statesman* (Austin, Tex.) March 26, 1874, 3; “Row on Sunday,”

The newly constituted Court heard a major challenge to the 1871 Firearms Act during its first year, upholding the law, although applying markedly different methodology.

State v. Duke was an appeal by the state after the district court had found an indictment under the 1871 law deficient on constitutional grounds.⁶⁰ The new Democratic Court upheld the law as the Davis Court had, although with very different reasoning.⁶¹ The first difference arose out of the applicability of the Second Amendment. The Democratic Court found the Second Amendment did not apply to the states, citing *Barron v. Baltimore* and the Slaughterhouse Cases.⁶² This decision was fully supported by contemporary case law, and anticipated the next year's decision of the United States Supreme Court in *United States v. Cruikshank*.⁶³ It was also consistent with the Democratic desire to minimize the role of the federal government and the reach of federal constitutional law within the state.

The Court then considered the statute under the Texas Constitution. The Court disagreed with the Davis Court's militia-based reading of Texas's provision, noting that the Texas right excluded the Second Amendment's recitation of the well-regulated militia language, and instead stated:

The arms which every person is secured the right to keep and bear (in defense of himself or the State, subject to legislative regulation), must be such arms as are commonly kept, according to the customs of the people, and are appropriate to open and manly use in self-defense, as well as are proper for defense of the State. If this does not include the double-barreled shot-gun, the huntsman's rifle, and such pistols at least as are not adapted to being carried concealed, then the only arms which the great mass of the people of the State have, are not under constitutional protection.⁶⁴

The court then stated: "Regarding, then, some kinds of pistols as within the meaning of the word, we are of the opinion that the Act in question is nothing more than a legitimate and highly proper regulation of their use. . . It undertakes to regulate the place where, and the circumstances under which, a pistol may be carried; and in doing so, it appears to have respected the right to carry a pistol openly when needed for self-defense or in the public service, and the right to have one at the home or place of business."⁶⁵

However, the Court then went on to uphold the lower court's dismissal of the indictment on the grounds that the state failed to plead that the exceptions in the Act did not apply to the defendant's conduct.⁶⁶

The Waco Daily Examiner (Waco, Tex.) June 9, 1874, 3; *The Dallas Daily Herald* (Dallas, Tex.) March 31, 1875, 4; "Mayor's Court," *The Dallas Daily Herald* (Dallas, Tex.) April 14, 1875, 4; *The Weekly Democratic Statesman* (Austin, Tex.) May 6, 1875, 2; *The Dallas Daily Herald* (Dallas, Tex.) May 12, 1875, 4; "Judge Burford's Court," *The Dallas Daily Herald* (Dallas, Tex.), 4; *The Dallas Daily Herald* (Dallas, Tex.) Aug. 8, 1875, 4; *The Weekly Democratic Statesman* (Austin, Tex.) Aug. 26, 1875, 2.

⁶⁰ *State v. Duke*, 42 Tex. 455 (1874).

⁶¹ *Ibid.*

⁶² *Duke*, 457 (citing *Barron v. Baltimore*, 32 U.S. (7 Pet.) 243 (1833) and *The Slaughterhouse Cases*, 83 U.S. 36 (1873).

⁶³ 92 U.S. 542 (1875).

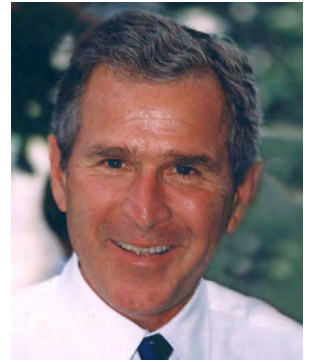
⁶⁴ *Duke*, 458-59.

⁶⁵ *Duke*, 459 (the conviction was then reversed because the prosecution had failed to assert that the defendant did not fall into the statutory exceptions).

⁶⁶ *Duke*, 461.

D. Aftermath

In 1876, Texas revised its right to keep and bear arms slightly to state: “Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.”⁶⁷ While this new constitution was arguably more restrictive of gun regulations, Texas’s 1871 law was never found unconstitutional by either the Texas Supreme Court or any Federal Court. It would remain in effect until 1995, when it was repealed during the Governorship of future President George W. Bush.⁶⁸



George W. Bush as Governor, 1999

One study of the 1871 law’s enforcement in the years after Reconstruction found that in the 1870s and 1880s enforcement occurred in a fairly race-neutral manner. However, when Black voting power and political representation entirely collapsed during the 1890s, enforcement shifted to disproportionately impact Texas’s Black and Latino residents.⁶⁹

The question of the law’s constitutionality actually reached the United States Supreme Court in 1894 in the case of *Miller v. Texas*.⁷⁰ In *Miller*, a criminal defendant brought a claim that Texas’s public carry law “was in conflict with the Second [] amendment[] to the Constitution of the United States, [] which provides that the right of the people to keep and bear arms shall not be infringed.”⁷¹ The Court decisively rejected the claim both substantively and under the (as of 2012) incorrect view that the right to keep and bear arms is not incorporated against the states, saying:

We have examined the record in vain, however, to find where the defendant was denied the benefit of any of these provisions, and, even if he were, it is well settled that the restrictions of these amendments operate only upon the federal power, and have no reference whatever to proceedings in state courts.⁷²

The Court would have a different view 128 years later when the question of the constitutionality of need-based public carry licensing laws reached the Court again.

III. Texas Reconstruction Era Gun Regulation in Modern Second Amendment Litigation

Texas history has played a key role in the Supreme Court’s recent Second Amendment case law. The Court’s turn to an originalist mode of interpretation has made historical regulations an essential tool for courts and advocates, and Texas’s history presents a uniquely relevant

⁶⁷ Texas Const. of 1876, Art. 22 (Feb. 15, 1876).

⁶⁸ “Texas Gov. Bush Signs Law on Concealed Guns,” *Los Angeles Times* (May 28, 1994), available at <https://www.latimes.com/archives/la-xpm-1995-05-28-mn-7034-story.html>.

⁶⁹ Brennan Gardner Rivas, “Enforcement of Public Carry Restrictions: Texas as a Case Study,” *U.C. Davis Law Review* 55, no. 5 (June 2022): 2617–19. (“believe this turning point is directly related to the collapse of Black voting rights in Texas during that decade, and the resulting erosion of Black political power locally.”)

⁷⁰ 153 U.S. 535.

⁷¹ *Ibid.*, 538.

⁷² *Ibid.*, 538.

body of sources. The ongoing relevance of Texas history also raises one of the most significant methodological questions in originalist constitutional interpretation—the proper time period for assessing the constitutionality of state laws.

A. Texas History in Modern Second Amendment Litigation

Texas history played a small role in the Court’s first modern Second Amendment decisions. In *District of Columbia v. Heller*, the Supreme Court case which first found that the Second Amendment protects an individual right, the Court cited both the English and Duke decisions, although not addressing either in detail.⁷³ In *McDonald v City of Chicago*, which incorporated the right to keep and bear arms against the states through the Fourteenth Amendment, *English v. State* was cited twice in Justice Stevens’s dissenting opinion.⁷⁴

Texas history played a much more significant role in *New York State Rifle & Pistol Association v. Bruen*, a case challenging New York’s requirement that applicants for a permit to carry a concealed firearm show a need to carry for self-defense greater than that of the general public.⁷⁵ Texas’s history was central to the argument for upholding the constitutionality of New York’s law, because the challenged law so closely matched Texas’s 1871 public carry prohibition. The Texas cases were discussed in briefs by the Plaintiffs⁷⁶ and New York,⁷⁷ as well as amicus briefs by the NAACP LDF,⁷⁸ ACLU,⁷⁹ Second Amendment Foundation,⁸⁰ seventeen U.S. States and the District of Columbia,⁸¹ and the United States.⁸²

Texas Governor Greg Abbott filed an amicus brief specifically addressing Texas history.⁸³ Governor Abbot’s brief, somewhat



⁷³ *Heller*, 581, 627.

⁷⁴ 561 U.S. 742, 936 (Stevens, J. Dissenting).

⁷⁵ 597 U.S. 1 (2022).

⁷⁶ N.Y. St. Rifle & Pistol Assoc. v. Bruen, Brief for Petitioners (July 13, 2021) available at <https://perma.cc/LW4T-4NVJ>.

⁷⁷ Bruen, Brief for Respondents (Sept. 2021) available at <https://perma.cc/6BDH-Q4Z8> (“Texas’s reasonable-cause law, which passed in 1871 with the unanimous support of that State’s Black legislators, helped to suppress the Ku Klux Klan and otherwise protect freedmen against racial violence”)

⁷⁸ Bruen, Brief of the NAACP Legal Defense and Educational Fund, Inc., and the National Urban League as Amicus Curiae in Support of Respondents (Sept. 21, 2021), available at <https://perma.cc/C53U-VRYP>.

⁷⁹ Bruen, Brief of the American Civil Liberties Union and the New York Civil Liberties Union as Amici Curiae in Support of Respondent (Sept. 21, 2021) available at <https://perma.cc/ALR2-RSGD>.

⁸⁰ Bruen, Brief of Amici Curiae Second Amendment Foundation et. Al. in Support of Petitioners and Reversal, available at <https://perma.cc/J85M-ARLU>.

⁸¹ Bruen, Brief for the States of California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and Wisconsin, and the District of Columbia as Amici Curiae in Support of Respondents available at <https://perma.cc/TJS2-GU7H>.

⁸² Bruen, Brief for the United States as Amicus Curiae Supporting Respondents, available at <https://perma.cc/4A9H-F35A>.

⁸³ Bruen, “Brief for the Governor of Texas as Amicus Curiae in Support of Petitioners” (July 20, 2021) available at <https://perma.cc/H2WR-5ATV>.

ironically given his political party, disparages Texas's Republican Reconstruction Era. It describes the 1869 Texas Constitution as "the product of military occupation."⁸⁴ and "the work of military outsiders."⁸⁵ It complains that the Texas Supreme Court in its English opinion supported "[R]econstruction's mission of civilizing purportedly backward Southerners, who were deemed unfit to vote or bear arms,"⁸⁶ and cites a law review article published in 1959 rejecting the Reconstruction Era Texas Courts as illegitimate.⁸⁷

In *Bruen*, the Court adopted a new history focused Second Amendment test, and found that New York's law is inconsistent with the Second Amendment.⁸⁸ In the majority decision, written by Justice Thomas, the Court spent two paragraphs discussing the Reconstruction Era Texas carry law and the English and Duke decisions.⁸⁹ The *Bruen* majority rejected the relevance of the decisions, claiming that "the Texas statute, and the rationales set forth in English and Duke, are outliers."⁹⁰ Justice Thomas then said that the Court would not "give disproportionate weight to a single state statute and a pair of state-court decisions."⁹¹ Although confusingly, Justice Thomas also acknowledged that West Virginia had adopted a nearly identical law that was upheld by the West Virginia Supreme Court.



Justice Clarence Thomas

While Texas history was not decisive in *Bruen*, it continues to play a substantial role in Second Amendment litigation today. *Duke* and *English* have been cited at least three dozen times in federal Second Amendment decisions since *Bruen*. Texas's 1870 and 1871 laws have been cited in more than two dozen federal Second Amendment cases. Texas history has played an even bigger role in Second Amendment advocacy. *English* has been cited in more than 200 briefs or expert reports since *Bruen*, and *Duke* has been cited in more than 75.⁹²

Advocates supporting prohibitions on guns in sensitive locations continue to look to Texas's 1870 and 1871 laws, as well as English's admonition that it is "little short of ridiculous" to suggest the right to keep and bear arms includes a right to carry in a "peaceable public assembly, as, for instance, into a church, a lecture room, a ball room, or any other place where ladies and gentlemen are congregated together."⁹³ Conversely, those supporting broad rights to possess firearms look to

⁸⁴ Governor of Texas Brief, at 4 (quoting *Masters v. State*, 653 S.W.2d 944, 947 (Tex. App.—Austin 1983) (Powers, J., concurring.))

⁸⁵ *Ibid.*, 5 (quoting Jane O'Connell, A Guide to Researching Texas Primary Law, 58 S. Tex. L. Rev. 67, 71 (2016)).

⁸⁶ *Ibid.*, 8, Citing Stephen Halbrook, The Right to Bear Arms in Texas: The Intent of the Framers of the Bills of Rights, 41 Baylor L. Rev. 629, 661 (1989).

⁸⁷ *Ibid.*, 8 (citing James R. Norvell, Oran M. Roberts and the Semicolon Court, 37 Tex. L. Rev. 279, 288 (1959) (noting that "no Texas lawyer likes to cit[e]" this so-called Semicolon Court [The Davis Court], whose opinions are "tabooed by the common consent of the legal profession").

⁸⁸ *Bruen*, 19.

⁸⁹ *Bruen*, 65.

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

⁹² The Author conducted a search for citations to the English case on Court Listener the results of which are available here (and may have larger numbers at the time you are reading this) https://www.courtlistener.com/?q=%2235%20Tex.%20473%22&type=r&order_by=score%20desc&filed_after=07%2F01%2F2022; Court Listener search for the Duke case available here https://www.courtlistener.com/?q=%2242%20Tex.%20455%22&type=r&order_by=score%20desc&filed_after=07%2F01%2F2022.

Duke's holding that the right to bear arms protects "such arms as are commonly kept, according to the customs of the people, and are appropriate to open and manly use in self-defense, as well as are proper for defense of the State."⁹⁴ The significant role of Texas history in Second Amendment litigation is unlikely to change.

B. Texas History and the Proper Time Period for the Originalist Analysis

The Reconstruction Era Texas history also brings to the fore one of the most important methodological issues in modern originalism: what is the most relevant time period when interpreting the meaning of incorporated rights?

The core principles of originalism are the concepts of fixation and constraint.⁹⁵ The meaning of the Constitution is fixed at the time of its ratification, and that fixed meaning constrains judges in interpreting and constructing a constitutional provision.⁹⁶ The Second Amendment was ratified by the states in 1791.⁹⁷ The Fourteenth Amendment was ratified in 1868 and has been found to incorporate the right protected by the Second Amendment.⁹⁸

Under a straightforward originalist approach, the scope of the rights incorporated against the states by the Fourteenth Amendment should be fixed at the 1868 understanding of those rights, while the scope of the rights applied against the federal government should be fixed at the 1791 understanding. Under this straightforward approach to originalism, the Reconstruction Era Texas history discussed above would be highly relevant for establishing the meaning of the right to keep and bear arms as applied against the states by the Fourteenth Amendment.⁹⁹ All the events discussed above occurred in the decade immediately following ratification of the Fourteenth Amendment, and the 1870 and 1871 laws were both passed by members of the same Republican Party that had ratified it. The English and *Duke* cases also present the range of views existing during the Reconstruction period on the right to keep and bear arms and should bracket the range of plausible interpretations of the right in 1868.

Many originalist scholars hold this view.¹⁰⁰ Supreme Court Justices have sometimes

⁹³ *Lafave v. County of Fairfax*, 24-1886, Brief of Amicus Curiae City of Richmond in Support of Appellees and Affirmance (4th Cir. Dec 20, 2024); *Wolford v. Lopez*, 1:23-cv-00265, Declaration of Dr. Brennan Gardner Rivas (D. Haw. Jul 14, 2023).

⁹⁴ *Granata v. Campbell*, 25-1918, Brief for the United States as Amicus Curiae (1st Cir. Jan 28, 2026); *O'Neil v. Neronha*, 25-1814, Reply of Plaintiffs-Appellants (1st Cir. Jan 23, 2026), (oddly citing in support of a broad right to open carry); *United States v. Peterson*, 24-30043, Brief of Amici Curiae of Gun Owners of America, Inc. et. al (5th Cir. Mar 13, 2025).

⁹⁵ Lawrence Solum, *Originalism and Constitutional Construction*, 82 *Fordham L. Rev.* 452, 459-61 (2013).

⁹⁶ *Ibid.*; see also Randy E. Barnett and Evan D. Bernick, "The Letter and the Spirit: A Unified Theory of Originalism," *Georgetown Law Journal* 107, no. 1 (October 2018): 3-4, 10-3 (discussing the principles of originalism and the interpretation-construction distinction within originalism).

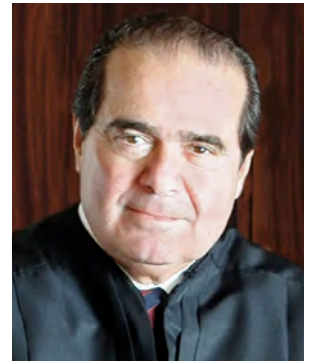
⁹⁷ *Bruen*, 597 U.S. 4 ("The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates or postdates either time may not illuminate the scope of the right").

⁹⁸ See generally *McDonald v. City of Chicago*, 561 U.S. 742 (2010) (holding that the Second Amendment right recognized in *Heller* is incorporated against the States through the Fourteenth Amendment).

⁹⁹ Even when looking to 1791 or 1868, historical materials from the other period would still be evidence of historical meaning.

¹⁰⁰ Mark Anthony Frassetto, "Firearms in Sensitive Places and the Military Appropriations Crisis of 1879," *Gonzaga Law Review* 61, no. 1 (2026): 101, 122-23 (2026).

expressed support for looking to 1868 in state cases as well. For example, in a dissenting opinion in *McIntyre v. Ohio Election Commission*,¹⁰¹ a case challenging an Ohio prohibition on anonymous pamphleteering, Justice Scalia acknowledged a Founding Era tradition of anonymous political speech, but stated, “I would, however, want further evidence of common practice in 1868, since I doubt that the Fourteenth Amendment time-warped the post-Civil War States back to the Revolution.”¹⁰² That said, in its mostly pre-originalist case law, the Supreme Court has consistently interpreted rights incorporated against the states to have the same meaning as against the federal government and have oftentimes preferred the 1791 meaning.¹⁰³



Justice Antonin Scalia

Since its shift to originalism, the Court has avoided deciding the 1791 versus 1868 question. In *Bruen*, the Court “acknowledge[d] that there is an ongoing scholarly debate,” but that “[w]e need not address this issue today because, as we explain below, the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry.”¹⁰⁴ The Court has done so primarily by looking to history broadly around both 1791 and 1868 to determine the scope of a constitutional right in cases against both the state and federal governments.¹⁰⁵ For example, in *Heller*, a case narrowly focused on the application of the Second Amendment to the federal government, Justice Scalia looked at history ranging from before the Glorious Revolution to the end of the nineteenth century.¹⁰⁶ Justice Scalia described the post-ratification sources as relevant for determining “the public understanding of a legal text in the period after its enactment or ratification [which is] a critical tool of constitutional interpretation.”¹⁰⁷ Similarly, in *Bruen*, Justice Thomas looked to history from the periods surrounding both 1791 and 1868.¹⁰⁸ Thomas described both dates as the relevant historical period: “The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates either date may not illuminate the scope of the right if linguistic or legal conventions changed in the intervening years.”¹⁰⁹



In any case, Reconstruction Era Texas history will continue to play an important role in Second Amendment litigation going forward, and the continued study of state constitutional law history in publications like the Texas Supreme Court Historical Society Journal will remain relevant for deciding important constitutional questions.

¹⁰¹ 514 US 334 (1995).

¹⁰² *Ibid.*, 373–75 (Scalia, J., dissenting).

¹⁰³ See *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019).

¹⁰⁴ *Bruen*, 38; see also *United States v. Hemani*, No. 24-1234 (2026) (same), available at https://www.supremecourt.gov/opinions/25pdf/24-1234_new_6k47.pdf.

¹⁰⁵ See e.g., *District of Columbia v. Heller*, 554 U.S. 570, 614 (2008).

¹⁰⁶ See *ibid.* 592–93, 606–19.

¹⁰⁷ *Ibid.* 605.

¹⁰⁸ See *Bruen*, 2133 (2022).

¹⁰⁹ *Ibid.* 2136; see also *ibid.* at 2132 (“The regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868.”).



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“Do Justice, Love Mercy, Walk Humbly”

The Rule of Life—and Rule of Law—of Chief Justice Joe Greenhill

By Joe Greenhill V

*“He has told you, O man, what is good. And what does the Lord require of you?
To do justice, and to love mercy, and to walk humbly with your God.”*

— Micah 6:8

I. Introduction



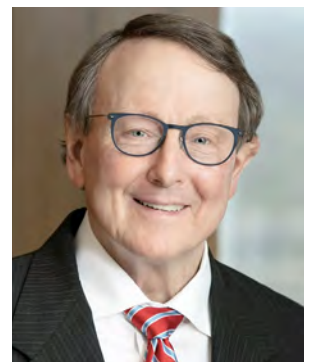
Chief Justice Joe Greenhill

On the morning my grandfather became a justice on the Texas Supreme Court, he first went to church. It was October 1, 1957. He was forty-three years old—the same age I am now—and about to be sworn in as the youngest Associate Justice in the Court’s history. But before the oath, friends, lawyers, judges, and state officials gathered in the pews of St. David’s Episcopal Church in Austin for a communion.

The lesson that day was from Micah: “He has told you, O man, what is good; and what does the Lord require of you but to do justice, to love kindness, and to walk humbly with your God.”

It was there at the end, too. More than fifty years later, at his memorial service in 2011, the exact same lesson was read in the exact same church. My father, Bill Greenhill, also a lawyer, delivered the eulogy. “Dad never explicitly told me his Rule of Life,” he said. “But I believe that rule can be summed up in the 8th verse of the reading from Micah.” Then he added: “This is what Joe Greenhill stood for. This is his lasting legacy.”

This article tells the story of how my grandfather, who his four grandchildren called “Papu,” lived those words—in the law, in the church, at war, and at home.



Bill Greenhill

He was born in Houston in 1914; his father died when he was three. His mother, Violet Stanuelli, raised him at Trinity Episcopal Church—he sang in the boys’ choir, became an acolyte, and spent summers at Camp Allen. There was a legal inheritance: his maternal great-grandfather,

Henry Ormsby, had been Attorney General of Ireland and a Justice on the Irish High Court.¹ But there was also a Texas inheritance. His maternal grandfather graduated from Trinity College Dublin and came to Texas to play polo; he liked it so much that he returned to Ireland, married, and brought his bride back to buy a ranch in Uvalde.

Papu earned three degrees from the University of Texas, graduating Phi Beta Kappa and Order of the Coif. After law school, he became a briefing attorney for the Texas Supreme Court, then served four years on a minesweeper in the Pacific during World War II. He returned to serve as First Assistant Attorney General under Price Daniel, then entered private practice in Austin. In 1957, he joined the Texas Supreme Court; in 1972, he became Chief Justice, serving until 1982. After that, he was of counsel at Baker Botts until his death in 2011.



Price Daniel

That is his public resume. This article is an attempt to talk about what held it all together.

As his grandson—and as a Texas appellate lawyer who followed him into the profession—I want to offer something different from what has already been written about his landmark opinions and judicial reforms. But I should be honest about my limits. My grandfather retired from the bench the year before I was born. I did not witness his legal career; I only know what others have written or told me. So instead, I offer a portrait drawn from lesser-known writings and family memory.

These writings tell that story in his own voice. A wartime letter to his rector. A war memoir written for his family. A paper on school prayer. A speech at Thurgood Marshall's law school. And—if you can believe it—a legal analysis of the trial of Jesus.

Read together, they reveal the same man: intellectually honest, morally serious, humble before God, and devoted to justice. The war, especially, shaped everything that followed—and so it will recur throughout this article.

Faith formed his conscience. The rule of law disciplined his power. Those two forces did not always point the same way. Again and again—in war, in church, and on the bench—he had to decide what fidelity required when conscience, mercy, duty, and law pulled in different directions.

II. Do Justice

For a man who spent twenty-five years on Texas's highest civil court, this was not abstract theology—it was the daily work of decision.

For my grandfather, “doing justice” meant applying the law. Not rewriting it. Not bending it to reach the sympathetic result. Applying it—faithfully, even when the result was hard.

¹ Henry Ormsby's portrait hung for years in the dining room of Papu's house on Bridle Path Lane, where it reportedly terrified my father and uncle as children. It now hangs in my office in Fort Worth.

That conviction showed up clearly in a paper he wrote on the United States Supreme Court's school-prayer decisions.² He was a deeply religious man—someone who conducted shipboard services for sailors during the war, taught Sunday school for decades, and believed in the power of prayer. Yet he also believed the Supreme Court had a job to do. So he walked readers through *Engel v. Vitale* and *Abington v. Schempp*—the two decisions that held mandatory school prayer in public schools violated the Constitution—even though many Christians disliked the result. He wrote that the Justices were “not like Pontius Pilate, however, who would give just a popular decision.”³ A judge's duty was to the law. Not to the crowd. Here was the tension at the heart of his philosophy: faith formed his conscience, but the rule of law disciplined his power. He would not use the bench to advance even causes he believed in.

That sounds simple. In practice, it was not. The war had taught him this lesson early. As a young naval officer, he wrestled with whether killing in combat violated Jesus's commandments—and concluded that he would “willfully stay on that course until the war is over,” throwing himself on God's mercy. He learned then what he would practice on the bench: sometimes duty requires acting even when conscience pulls elsewhere. The discipline of following orders in wartime became the discipline of following law in peacetime.

This sometimes meant ruling against the sympathetic party. In *Humble Oil & Refining Co. v. Williams*,⁴ a landowner sued an oil company for cutting down his pine trees, making ruts in his pasture, and building a road that interfered with his grazing. Your heart went out to him. But the law placed the burden of proof on him to show the company used more land than “reasonably necessary”—and he hadn't carried it. My grandfather applied the rule faithfully, even when it meant ruling against the little guy.

That same fidelity shaped his encounter with *Sweatt v. Painter*. In 1947, as First Assistant Attorney General, he defended Texas's segregated law-school system against Thurgood Marshall—not because he believed in segregation, but because he understood his duty to defend the law as it then stood. Yet even while representing the University, he was working on the other side of history at church. Bishop John Hines was “very opposed to segregation,” and “as soon as we could, the vestry decided that St. David's would not be segregated.”⁵ Their instructions as ushers were that if a Black person came, they were to be welcomed and asked where they would like to sit.



Thurgood Marshall

Although Papu and Judge Marshall opposed each other in the trial, the Court of Appeals, and ultimately the U.S. Supreme Court in *Sweatt v. Painter*, they became close friends. Papu was instrumental in obtaining the funding necessary for the establishment of Texas Southern Law School



Bishop John Hines

² Joe R. Greenhill, *The Prayer Decision of the United States Supreme Court* (unpublished, March 2000).

³ *Ibid.*, 15-16.

⁴ 420 S.W.2d 133 (Tex. 1967).

⁵ Joe R. Greenhill, *Interview by Mary Ann Dougherty for St. David's Episcopal Church Oral History Project* (unpublished, Oct. 11, 1984), 5.

and ultimately in persuading Judge Marshall to have the law school named for him. Nearly thirty years after the case, Papu stood before Marshall and the crowd gathered at the dedication of the Thurgood Marshall School of Law.⁶ “It was easy for us to be friendly with Justice Marshall and his co-counsel,” he said, “but it is a credit to him that he could be cordial when, as I recall, there was no hotel, restaurant, or restroom open to him on the main street of Austin. Looking back it is incredible that there should have been such inhumanity to man.”⁷ The law school later dedicated an entire law-review volume in his honor.

He wrote hundreds of opinions. One law professor observed that “non-lawyers can understand most of his legal principles” and called him “a master of plain language.”⁸ Another, analyzing his contracts opinions, found “little economic or social bias” and noted that “the result is reached solely on the basis of legal principles impartially applied.”⁹ Two opinions—and one dissent—reveal the man behind the judge.

The first is *Fisher v. Carrousel Motor Hotel, Inc.*¹⁰ Emmitt Fisher was a Black mathematician employed by NASA. He attended a business luncheon at a Houston hotel. As he reached the buffet line, the manager snatched the plate from his hand and announced that “he, a Negro, could not be served in the club.”¹¹ Fisher was not touched. But he was humiliated.

The lower courts said no battery. My grandfather disagreed. “Personal indignity is the essence of an action for battery,” he wrote.¹² That sentence says a great deal. The law protects bodies. But it also protects dignity.



Emmitt Fisher

The second is lesser known but perhaps more telling. When someone asked him late in his career which opinion he was most proud of, he didn’t name any of the famous ones. He pointed to *Halepeska v. Callihan Interests, Inc.*,¹³ an obscure case that laid the groundwork for protecting injured workers decades later.

The case involved a gas well explosion that killed two men. The well had been improperly equipped—no calibrated choke, inadequate staking, a T-head merely screwed on instead of bolted. When the valves were opened, the equipment came apart violently. One man was found dead across a slush pit, his clothes blown off. There was one fresh footprint in the mud—his left foot—three or four feet from where he lay. The two-inch valve that killed him was in the same pit.

⁶ Joe R. Greenhill, “Address at the Texas Southern University School of Law Dedication,” 4 *Texas Southern University Law Review*, (1976): 177.

⁷ *Ibid.*, 180.

⁸ John Mixon, “Jurisprudence and Chief Justice Joe Greenhill—The Influence of the Chief Justice on Texas Real Property,” 8 *Thurgood Marshall Law Review*. (Fall 1982): 337, 347.

⁹ Robert W. Hamilton, “Mr. Justice Greenhill and the Law of Contracts,” 8 *Thurgood Marshall Law Review*. (Fall 1982): 331, 332.

¹⁰ 424 S.W.2d 627 (Tex. 1967).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ 371 S.W.2d 368 (Tex. 1963).

The widow and children sued. The company argued it owed “no duty” because the danger was “open and obvious,” and that the geologist had exposed himself to a risk he “should have known” about. The Court of Civil Appeals agreed. Papu reversed.

His holding was precise: to bar recovery under the “no duty” or “volenti” doctrines, the plaintiff must *actually* know and appreciate the danger. A jury finding that he merely “should have known” was not enough.¹⁴ The jury found that Halepeska did not actually know how the well was equipped and did not appreciate the danger. That should have ended the case. One law review later observed that *Halepeska* was “a first step in laying the groundwork for the court’s ultimate abolition of the assumption of the risk doctrine.”¹⁵ That was Papu: taking pride not in the headline, but in the foundation.

That same fidelity to law appeared in dissent. In *Texas Bank & Trust Co. v. Moore*,¹⁶ the Court majority treated a nephew who helped his elderly aunt as a fiduciary as a matter of law—and therefore presumptively suspect. Papu dissented, seeing the danger immediately.

“Many friends and relatives are called upon to assist people of advanced years or who face major medical problems. Sometimes the action is one of kindness and at the request of the person in need of help, and is purely for the purpose of accommodation.”¹⁷

He saw the trap. The caregiver had to explain himself. But because the aunt had died, the Dead Man’s Statute could bar him from doing so. “So he must, as a matter of law, explain; but he cannot explain.”¹⁸ That was bad law because it ignored real life.

Every elderly Texan helped by a niece, a neighbor, or a church friend was on his mind. He lost that case. But the dissent still matters because the principle is simple: questions about trust and caregiving belong to a jury, not a presumption. Already, the man of justice was revealing the man of compassion. His judicial philosophy did not require him to ignore human reality—it required him to honor it. He saw law not as an abstraction but as a system that must account for how people actually live: the daughter who moves in with her aging mother, the nephew who drives his uncle to doctor’s appointments, the church friend who helps manage bills. When law creates presumptions that trap the faithful, the law has failed its purpose. That is why he dissented.

III. Love Mercy

“Do justice” was only the first command. The second—“love mercy”—required something more: seeing the people behind the cases.

The law deals in rules. But its subjects are people. My grandfather never forgot that.

¹⁴ *Ibid.*, 380-84.

¹⁵ Charles P. Bubany, “Chief Justice Greenhill and the Judicial Process,” 8 *Thurgood Marshall Law Review* (Fall 1982): 305, 310.

¹⁶ 595 S.W.2d 502 (Tex. 1980) (Greenhill, C.J., dissenting).

¹⁷ *Ibid.*, 511.

¹⁸ *Ibid.*

A law professor noted that he “consistently revealed a concern for the ‘little people’ and the protection of their rights.”¹⁹ Yet that concern “could not override his deep philosophical commitment to the appropriate role of the courts.”²⁰ In practical terms, this meant attention to access: he “noted the unfairness of the existing system of de novo appeals” by which “persons with financial means are able to avoid conviction while the less affluent cannot,” and he “strongly supported the concept of neighborhood dispute centers which provide a method of resolving disputes to persons who cannot afford litigation.”²¹ The powerful had plenty of advocates; he wanted the law to serve everyone.

That was true before he joined the Court. On July 4, 1943—my uncle Joe Greenhill, Jr.’s first birthday²²—waiting to ship out to the Pacific, he wrote his rector about the moral burden of war. He did not hate the enemy. He would not let himself. If he had to kill, he wrote, it would be “murder without malice.”²³ His war memoir reveals just how dangerous that service was. At Kossol Passage in the Palau Islands, his minesweeper was assigned to identify incoming ships while its engines were down for overhaul and all its guns were disassembled for cleaning. This is, of course, the ideal moment for enemy contact. And so it was: four Japanese suicide submarines came by on the surface, close enough to wave at. “All we could do was wave at them,” he wrote. The submarines slipped past and sank two merchant ships inside the anchorage. “Sleep was not easy.”²⁴

Another time, a typhoon caught his ship in the same waters as a major task force. Three destroyers, low on fuel and riding high in the water, requested permission to change course so they could put their bows into the waves. Permission was denied. All three capsized. “All were drowned except three men.”²⁵ His minesweeper survived because it didn’t need permission. “We put our bow into the huge waves and survived.”²⁶

The 1945 letter opens with a striking scene. He had just returned from a military church service at Treasure Island, near San Francisco. “Each man, you know, is there because, though it is the only day he has off and the pleasures of San Francisco are but three miles away by trolley car—he genuinely wants to be there.” During the service, “two distinct long blasts were heard, indicating two ships leaving the harbor and headed out.” Men were returning from and going to mortal combat. “Here was the strongest of emotions—yet the feeling inside was one of the most restful calm.”²⁷

When he finally got back to Texas, the war still marked him. In Dallas, he and my grandmother (we called her GG—an acronym for Grandmother Greenhill) went to the Baker Hotel to get a room. He was still in khakis with officer’s insignia and ribbons. The clerk looked at him and said:

¹⁹ Bubany, *Thurgood Marshall Law Review*, 307.

²⁰ *Ibid.*

²¹ *Ibid.*, 307 n.8.

²² We call my uncle “Cracker”—short for “firecracker”—because he was born on the Fourth of July.

²³ Letter from Joe R. Greenhill to Rev. Gray Blandy (unpublished, July 4, 1945).

²⁴ Joe R. Greenhill, *The War Years* (unpublished, July 1997), 36.

²⁵ *The War Years*, 40.

²⁶ *Ibid.*

²⁷ *Letter from Greenhill to Blandy*.



GG and Papu

"A room? Don't you know there's a war on?" In his memoir, he wrote: "I felt like jumping over the counter and wringing his neck."²⁸ He didn't. But he remembered. The war changed him—not into someone harder, but into someone who knew what mattered.

He took law clerks seriously. One of them, Gwendolyn Bookman, later became Assistant Dean at the Thurgood Marshall School of Law. She remembered him as "a very warm and generous man" whose "sincerity and caring" were deeply felt by the law school family.²⁹ He treated clerks like future lawyers, not temporary employees. He challenged them. He trusted them. And he cared about what they became.

His compassion did not stop at the courthouse. He belonged to St.



Gwendolyn Bookman

²⁸ *The War Years*, 48.

²⁹ Gwendolyn M. Bookman, "A Tribute to Chief Justice Joe R. Greenhill," 8 *Thurgood Marshall Law Review* (1983).



Justice Greenhil relaxing with the younger generation

David's Episcopal Church in Austin, taught Sunday school, and served the parish for decades. He gave his legal skills to the church without fee. When neighbors sued to block construction of the Seminary of the Southwest's library, he represented the seminary pro bono and won. His "fee" was a briefcase from Bishop Hines, the Bishop of the Episcopal Diocese of Texas.³⁰

At one point, a majority of the Texas Supreme Court—five of nine justices—were members of St. David's, worshipping in the same pews.³¹

He retired from the bench the year before I was born, so I do not remember the judge at work. I remember the man at home. But because I was so young, I remember only glimpses: guayabera shirts, unlit cigars he chewed instead of smoked, and a reserve that could be mistaken for silence. He did not speak much. But when he spoke, he said something. When he was excited, he had one phrase: "Mm boy."

I remember fishing trips in the Gulf of Mexico, where I mostly remember getting seasick. In his war memoir, my grandfather wrote that seasickness "is not a result of any mental state" and "does not come from any lack of courage."³² He noted that it affects "Martha and our grandson,

³⁰ *Interview*, 4.

³¹ In this article is a picture of four Texas Supreme Court Justices and Rev. Charles Sumners, taken at the church service at St. David's Episcopal Church in Austin on the day Papu was inaugurated as an Associate Justice of the Texas Supreme Court. The Justices are the Honorables Will Garwood, Joe Greenhill, Jim Norvell, and Meade Griffin.

³² *The War Years*, 41.



Justice Greenhill at his swearing-in

Joe”—meaning me. “Off-shore fishing for them is no fun. It’s not a frame of mind.”³³ Somehow, knowing he understood makes the memory fonder. It also means there is now a permanent written record, prepared by a Chief Justice of Texas, establishing that my weak stomach is not my fault.

And I remember his favorite poem: “One strange thing about a pelican / Is that its beak holds more than its belly can; / With one big swish, it gobbles up fish, / And I don’t see how the hell it can.” Maybe that is a small thing. But small things are how grandchildren remember. Also, it is a great poem.

Other memories come from family lore. Papu and my grandmother happened to be in the Supreme Court on May 17, 1954, when Chief Justice Warren delivered *Brown v. Board of Education*. As they left, Thurgood Marshall—so overjoyed—picked up their younger son Bill (my dad), then eight years old, and carried him on his shoulders down the corridor. Papu later said that my dad “is one of the few lawyers anywhere who has been taken for a piggy-back ride on the shoulders of a Justice of the Supreme Court.”³⁴



Chief Justice Warren

³³ *The War Years*, 41.

³⁴ Greenhill, “Address,” 4 *Texas Southern University Law Review*, 180-81.



The Justice's sense of humor was evident on his desk.

He answered his own telephone. Anxious law-school graduates would call the Chief Justice's office hoping to learn their bar-exam grade, and sometimes the voice on the line was the Chief Justice's—and he would look it up. He told jokes on himself, too: when he was an Associate Justice, inmates sometimes addressed mail to "Ass Justice Greenhill"—with no period after "Ass."³⁵

He wrote opinions by hand at the breakfast table, often with a Honduran cigar in his mouth. When my father was in high school, Papu gave him drafts to read. His audience was not professors. It was lawyers who had to live with the holding. "You may not have agreed with his opinions," my dad said, "but you understood them."

At church, he made funny faces at his sons during the service when they served as acolytes and folded the bulletin into paper boats to entertain them during sermons. "That was Dad," my father recalled. "No pretense allowed."

His main passion was family. And above all, his Martha. GG was "the love of his life and best friend for over 70 years." As far back as I can remember, on a counter in their kitchen was a larger-than-life Valentine poster he had given her: "So you won't forget, I love you, Valentine." She was his rock. And he knew the cost she had paid. In his war memoir, he wrote: "The war years had a dramatic, if not traumatic effect on Martha and me. It was a difficult time for Martha to have her home uprooted and to have had almost total responsibility for Joe. She had no close friends during the time in Long Beach. There was really nothing entertaining for her to do."³⁶ He never forgot that.



Martha Greenhill

Even when he gave his oral history at St. David's, he insisted it was really a joint story: "for Martha and Joe Greenhill."³⁷

When Governor Daniel called in 1957 to offer him a seat on the Texas Supreme Court, the first thing he did was ask GG if it was all right.³⁸ Even though they knew the appointment would mean financial sacrifices—he was building a successful practice at Graves, Dougherty & Greenhill—he accepted without hesitation. He had never had any ambition but to be a justice on

³⁵ Joe R. Greenhill, *The Constitutional Amendment Giving Criminal Jurisdiction to the Courts of Civil Appeals and Recognizing the Inherent Power of the Supreme Court* (unpublished), 21.

³⁶ *The War Years*, 55.

³⁷ *Interview*, 6.

³⁸ *The War Years*, 56-57



The Greenhill court in 1972

the Supreme Court of Texas. In his war memoir, Papu explained why he could make that choice: “Reading the New Testament, over and over, a lot made a difference... the meaning and value of the New Testament teachings and values took on new and deeper meaning.”³⁹ The war taught him that “money was not all that important.” So when he “quit approximately \$50,000 a year to make \$20,000 on the Supreme Court,” he wrote, “it worked out well.”⁴⁰

Years later, he was offered a seat on the Fifth Circuit. Again, he asked GG. This time she said no. It would mean too much time away from home. He agreed. Family came first.

IV. Walk Humbly

The final command in Micah’s verse is perhaps the most demanding: “walk humbly with your God.” Justice requires principle; mercy requires compassion. But humility requires something harder still—setting aside the self. For a man who held the highest judicial office in Texas, this was the ultimate test of character.

³⁹ *The War Years*, 56.

⁴⁰ *The War Years*, 57.

The Chief Justice of Texas has power. He wore it lightly. He did not chase attention. He did not collect honors. The office was a trust, not a trophy—and he lived that conviction daily.

When the 1980 constitutional amendment was being drafted, the Senate version included a provision changing the name of his office, “Chief Justice of the Supreme Court,” to “Chief Justice of Texas.” He asked that the change be removed. “I did not want the amendment criticized because of some alleged ego trip,” he later wrote.⁴¹ “It would have been good for the office, but it wasn’t worth the risk of helping to defeat the amendment.” A sitting Chief Justice personally requested that the Legislature not elevate his title.

The amendment itself—what became Article V, Section 6 of the Texas Constitution—was his most lasting reform. It gave the intermediate courts of appeal criminal jurisdiction for the first time. The problem had been staggering: over 4,000 cases were backlogged in the Court of Criminal Appeals, and a criminal defendant could wait three years just to have an appeal heard.⁴² If either side requested oral argument, the case would not even be heard for seventeen to eighteen months.⁴³ He led the campaign quietly—lobbying Governor Clements, preparing packets for newspaper editors at his own expense, refusing public debates that might give opponents “equal time.”⁴⁴ “The more the new constitution was debated, the worse it got,” he later wrote.⁴⁵ “It was plain to me that at least the judicial article got debated to death. I did not want that to happen again.”⁴⁶ The amendment passed the Senate 25 to 1 and squeaked through the House with slightly more than the 100 votes necessary. Within a few years, the average criminal appeal was resolved in under a year. It remains the framework in use today.⁴⁷

He performed weddings for friends. One was for state legislator Ben Grant, in the Capitol rotunda at night, under the dome. Papu refused payment. Grant later gave him a round rug bearing the Seal of Texas. It sat in his office for years. Whether this constitutes adequate compensation for officiating a wedding is a matter of personal judgment, but Papu seemed content.

A Texas Tech professor once described him this way: “Reserved but warm, dignified without pretense, understated rather than overstated.”⁴⁸ That is exactly right. Why did he travel to Lubbock for the law-school event? The professor had the answer: “The main reason he came was that he was asked.”⁴⁹ That was Papu.



Gov. William
Clements Jr.



Ben Grant

⁴¹ *The Constitutional Amendment*, 21.

⁴² *The Constitutional Amendment*, 1, 15.

⁴³ *Ibid.*, 15.

⁴⁴ *Ibid.*, 20-24.

⁴⁵ *Ibid.*, 9-10.

⁴⁶ *Ibid.*, 10.

⁴⁷ For a fuller account of the amendment’s structural impact on Texas’s bifurcated appellate system, see Ben L. Mesches, “Two High Courts: History, Debate, and Reform,” *Journal of the Texas Supreme Court Historical Society*, Spring 2026.

⁴⁸ Bubany, 8 *Thurgood Marshall Law Review*, 305.

⁴⁹ *Ibid.*



He also knew when to lose gracefully. In the 1960s, he went before the Women's Guild at St. David's to advocate for women serving on the vestry. "I saw no reason why women shouldn't do anything in the church that a man can do," he later recalled.⁵⁰ But the women voted him down—not because they opposed equality, but because they figured the men ought to do the vestry work.⁵¹ "If men didn't work on the vestry, they didn't do anything, generally speaking."⁵² He got four or five votes and abandoned the idea. That was Papu too: ahead of his time, but humble enough to accept the judgment of the people he was trying to help.

One story says it all. As Chief Justice, he was asked whether law clerks could use the Court's coffee room for a Christian prayer and Bible-study group. He believed in prayer—he "encouraged such groups," he later wrote, and "attended a regular breakfast group at a cafeteria which had an adjacent private room."⁵³ But he said no.⁵⁴ "I told the law clerks that I did not consider it wise for a room of the Court to be used for a

Christian prayer group," he explained.⁵⁵ "One reason given was that the Court itself might be called on to determine the constitutionality of such groups on public facilities, or similar questions. The appearance of propriety could be put in issue and a question of disqualification could arise. If the Court itself authorized the practice, could it impartially judge others?"⁵⁶ The clerks accepted his reasoning and met elsewhere.

His integrity extended to his own prior rulings. In one case, he wrote the majority opinion publicly overruling part of his own earlier concurrence. "That part of the opinion is overruled," he wrote—referring to his own prior reasoning.⁵⁷ It takes a particular kind of humility for a Chief Justice to correct himself in print. He did it because the law required it.

⁵⁰ *Interview*, 6.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Joe R. Greenhill, *The Prayer Decision of the United States Supreme Court* (unpublished, March 2000), 16.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *Reed v. Wylie*, 597 S.W.2d 743, 746-47 (Tex. 1980) (overruling in part *Reed v. Wylie*, 554 S.W.2d 169, 173 (Tex. 1977) (Greenhill, C.J., concurring)).

It was not private sentiment, either. On October 4, 1972, the morning he became Chief Justice, St. David's held a prayer breakfast for him. The prayer asked God to "hold before them the high ideal of their vocation, that they may do justly and love mercy and walk humbly with their God."⁵⁸ The same verse. The same morning. The church prayed Micah over him as he took the office.

His faith was formed early. In his 1945 letter to his rector, he named those who shaped him: "the religion which has been given me by the church, my mother, Bishop Gain, Camp Allen, and you—and other ministers, in and out of vestments." Camp Allen, an Episcopal camp on the Texas coast, held special meaning: "At night in my bunk I look at the water and it reminds me of the nights I used to spend sitting on the cliff at Camp Allen after taps, looking across to Texas City and at the stars, trying to understand."⁵⁹

That same instinct—to understand, to wrestle with hard questions—showed up in his legal writing about faith. At some point, he wrote a paper analyzing the trial of Jesus as a lawyer would.⁶⁰ That sounds odd until you read it. He applied Hebrew and Roman procedure to the Gospel accounts and concluded that Jesus had been denied every protection the law provided. Tried at night even though capital cases were required to be held in the daytime. Convicted on his own uncorroborated confession, when the law required the testimony of two witnesses. Executed after verdicts of acquittal by both Pilate and Herod. His conclusion was unsparing: "The trial of Jesus Christ, from the legal standpoint, will forever remain a terrible miscarriage of justice."⁶¹ Pilate's failure, he wrote, was that "that Court did not have the courage to follow its judgment."⁶²

And then, in a postscript about a modern effort to retry Jesus, Papu added the kind of line only a lawyer of faith could write: "The case is irreparably moot."⁶³

My dad traced that faith to the war. My grandfather was Executive Officer on a minesweeper—and, with no chaplain aboard, he conducted services for the sailors himself, using the only two books he had: the Bible and the Book of Common Prayer. The enlisted men "felt a need for prayer and divine guidance," he recalled, and approached him as executive officer.⁶⁴ The captain said, "Okay, Joe, you're now the Chaplain. Set up the services."⁶⁵ So he did. "The services were not pretty," he later wrote, "but they filled a need."⁶⁶ In his war memoir, he recalled: "I read some part of the New Testament almost every night, over and over."⁶⁷ Those long nights at sea, in dangerous waters, deepened a faith that never left him.

⁵⁸ St. David's Episcopal Church Prayer Breakfast Program (Oct. 4, 1972).

⁵⁹ Letter from Joe R. Greenhill to Rev. Gray Blandy (July 4, 1945).

⁶⁰ Joe R. Greenhill, *The Trial of Jesus Christ from the Legal Standpoint* (unpublished paper).

⁶¹ *The Trial of Jesus Christ*, 26.

⁶² *Ibid.*, 25.

⁶³ *Ibid.*, 26.

⁶⁴ *The War Years*, 32.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, 31.

That young man gazing at the stars, trying to understand, never stopped seeking. Decades later, he was still teaching Sunday school at St. David's, still wrestling with questions of faith and justice, still walking humbly.

Perhaps the most remarkable passage in his 1945 letter is his unflinching moral honesty about the burden of war. Having wrestled with Christ's commandments—love your neighbor, turn the other cheek, forgive seventy times seven—he reached this conclusion:

And so I have reached a wall — I am off the course the Great Navigator has set to be the true course. At least this is what I believe in my own mind. And I will willfully stay on that course until the war is over. And may God have mercy on me — though He must truly be divine to do so.⁶⁸

That is not casual belief. It is conviction taken seriously enough to refuse easy comfort. He would not pretend war fit neatly with the Sermon on the Mount. But he accepted his duty and threw himself on God's mercy. That is walking humbly.

He wanted to be remembered as someone who did his duty faithfully, treated others fairly, and never forgot that the purpose of the law is to serve the people.

His closing words in the 1945 letter capture his spirit perfectly: "I know darn well I need it [prayer], sincerely."⁶⁹ Even in his final years, he never believed he had arrived—never stopped seeking to be a better servant of others.

⁶⁸ Letter from Joe R. Greenhill to Rev. Gray Blandy.

⁶⁹ *Ibid.*



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Constitutional Moments from the Mayflower Compact to Sam Houston's 1833 Texas Constitution

• Part 2 •

Text and Photos by David A. Furlow

This article traces the life of Anglo-American constitutionalism as it arose in a series of constitutional moments. Those moments connect together by linking *Magna Carta* (1215) with the *Mayflower Compact* (1620), Plymouth Colony's *General Fundamentals of the Jurisdiction of New-Plymouth* (1636), John Adams' *Massachusetts Constitution* (1780), and Sam Houston's *draft constitution for an independent Mexican state of Texas* (1833). Part 1 can be found in the Spring 2026 issue of the *Texas Supreme Court Historical Society Journal* and can be accessed [here](#):

The General Fundamentals of 1636 fulfilled the Compact's promise of constitutionalism

The Plymouth Combination and the patents issued to Plymouth's Pilgrims remained the touchstones of Plymouth's constitutional order for they created a legal framework supplemented by later laws and ordinances. On December 23, 1623, Plymouth Colony's Governor William Bradford and First Assistant Governor Isaac Allerton enacted a law granting residents right to a jury trial, which Plymouth's voters approved.¹ Plymouth's General Court enacted other laws in 1626 and 1627 to avoid shortages of timber, regulate professions, limit exports of corn and peas in times of scarcity, and allocate lands.²

In January 1630, the colony's First Assistant Governor, Isaac Allerton, returned to Plymouth bearing the Warwick/Bradford Patent dated January 13, 1629/30, Old Style. It expressly recognized the Pilgrims' settlement in Plymouth Colony and augmented their territory with fur-rich lands along the Kennebec River in Maine. Plymouth's third patent (a land-grant deed), it honored the Earl of Warwick and expanded Governor William Bradford's power to administer the colony. In addition, that patent expressly authorized Plymouth to procure the colony's long-sought royal charter and patent under England's Great Seal.³

The Pilgrims were on the cusp of their dream of securing a royal charter's express authorization to govern themselves like an English borough (town), a goal that had evaded them when they first sought it in 1617-1618. Then politics polarized the colony, dividing Governor William Bradford from his First Assistant Governor Isaac Allerton. This political conflict foreshadowed later

¹ Eugene Aubrey Stratton, *Plymouth Colony: Its History and People, 1620-1691* (Salt Lake City: Ancestry Pub., 1986), 14; David Pulsifer (ed.), *Records of the Colony of New Plymouth in New England: Laws 1623-1682* (Boston, Mass.: Printer to the Commonwealth, 1861), Part I, 3 (Law of Dec. 17, 1623).

² Pulsifer, *Records of New Plymouth*, 3-5 (laws of March 29, 1626 and Jan. 3, 1627); Stratton, *Plymouth Colony*, 142-144.

³ John D. Cushing, (ed.), *The Laws of the Pilgrims: A Facsimile Edition of The Book of the General Laws of the Jurisdiction of New-Plymouth. 1672 & 1685* (Wilmington: M. Glazier, Inc. and the Pilgrim Society, 1977); Anonymous, *Mourt's Relation*, 43.

rivalries between President John Adams and Vice President Thomas Jefferson or President Donald Trump and his Vice President Mike Pence. Governor Bradford refused to send First Assistant Allerton back to England to secure the charter, rejected payment of the attorneys' fees needed to draft and enroll a charter, and declined to reimburse the expenses that First Assistant Allerton had already incurred to obtain that patent in London.⁴

Beginning in 1631, deep disagreements about Plymouth's identity and future, the growth of the colony's debt, accounting for beaver-sales and debts, and the purchase of two fishing-vessels divided Governor Bradford from First Assistant Allerton. Governor Bradford fired First Assistant Governor Allerton as the colony's agent in the Maine fur trade. Bradford's decision not to secure and enroll a charter denied the colony a charter it could have used to protect its lands from the encroachments of the chartered colony next door, the Massachusetts Bay Colony. Political turmoil ensued. After electing Bradford as Governor in annual elections for a decade, Plymouth's voters elected Edward Winslow as Governor and returned Isaac Allerton to office as an Assistant Governor in 1633, then elected Thomas Prence as Governor in 1634. William Bradford returned to office again in 1635, only to be replaced by Edward Winslow in the election of 1636. One result of this political polarization was a second constitutional moment that arose when Edward Winslow won election as Governor in 1636.⁵

Under Edward Winslow, the Pilgrims remedied the Mayflower Compact's deficiencies by enacting into law their first true constitution, bill of rights, and law code—the *General Fundamentals of the Jurisdiction of New-Plimouth*—in 1636. The Pilgrims knew that the Compact was the origin and essence of their colony's constitutionalism—and the repository of their Magna Carta rights as freeborn subjects of England. In October 1636 Governor Winslow appointed eight representatives—four from the colony's capital at Plymouth, two from the town of Duxbury, and two from the town of Scituate—to review and revise the colony's laws. On November 15, 1636, that committee met at the Plymouth Meetinghouse and Fort to begin its deliberations by reading aloud “the Compact made at [Cape] Cod the 11th of November 1620, “which they hailed as “solemn and binding...” Members of that committee then read the “letters Patent confirmed by the Honorable Council his said Majesty [Charles I] established and [granted] the 13th of January 1629,” that is, the Warwick/Bradford Patent that authorized them to settle in Plymouth Colony.⁶ The *General Fundamentals* launched American constitutionalism, yet they usually do not appear in histories of New England and American law.⁷

⁴ David A. Furlow, “The Enigmatic Isaac Allerton: A Mariner, Merchant, Burgher, Attorney and Diplomat of New Netherland,” in Margriet Lacy; Charles Gehring, and Jenneke Oosterhoff, eds., *From De Halve Maen to KLM: 400 Years of Dutch-American Exchange* (Münster: Am. Assn. of Netherlandish Studies, Nodus Publikationen, 2008), 105-118 at 107-108; Robert C. Anderson, *The Mayflower Migration: Immigrants to Plymouth, 1620* (Boston: New England Historic Genealogical Society, 2020), 24-25 (elections of Isaac Allerton), 35-36 (elections of William Bradford), 188-89 (elections of Edward Winslow); Cynthia J. van Zandt, *Brothers across Nations: The Pursuit of Intercultural Alliances in Early America, 1580-1660* (New York: Oxford Univ. Press, 2008), 96-106; Bradford, Minkema, ed., *Of Plymouth Plantation, 400th Anniversary Edition*, 324-71; Stratton, *Plymouth Colony*, 141-150 (elections in Plymouth in the 1620s and 1630s).

⁵ Bradford, Minkema, ed., *Of Plymouth Plantation, 400th Anniversary Edition*, 360-443; Stratton, *Plymouth Colony*, 149-152.

⁶ Jeremy Dupertuis Bangs, *Pilgrim Edward Winslow: New England's First International Diplomat* (Boston, Ma.: New England Historical & Genealogical Society, 2004), 162-63; “Today in History -- October 4 // The Plymouth Colony,” Library of Congress website, <https://www.loc.gov/item/today-in-history/october-04/#:~:text=The%20General%20Court%20of%20the,the%20freemen%20of%20the%20colony>.

⁷ See, e.g., Mark A. Graber and Howard Gillman, *The Complete American Constitutionalism, Volume 1: Introduction and the Colonial Era* (New York: Oxford Univ. Press, 2015); Daniel R. Coquillette, ed, *Law in Colonial Massachusetts, 1630-1800* (Boston: Colonial Society of Massachusetts, 1984); David M. Rabban, *Law's History: American Legal Thought and*



Governor Edward Winslow and members of his review committee drafted the *General Fundamentals* in Plymouth's Meetinghouse and Fort in November 1636.

The 1636 version of the *General Fundamentals* began by declaring that Plymouth's founders came to Cape Cod as "free born subjects of the Kingdom of England endowed with all and singular the privileges belonging to such..." Once in Plymouth, the settlers enjoyed "the free Liberties of the free borne people of England." Those words encompassed the rights guaranteed in England by the first statute in the statute-books of England—*Magna Carta Libertatum*, anglicized as the *Great Charter of Liberties*, better known as *Magna Carta*. The *General Fundamentals* established a church in Plymouth and provided for its ministers. It outlawed blasphemy, treason, witchcraft, murder, and bestiality and made them punishable by death. It authorized a General Court, a body that combined legislative, executive, and judicial authority; and created a Court of Assistants. It structured government, created offices, specified oaths of office, detailed civil and criminal procedure, and regulated trade. It regulated marriages, wills, and estates, liberalizing English law to take care of widows and orphans. And it provided for the education of children.⁸

the Transatlantic Turn to History (New York: Cambridge Univ. Press, 2013); Akhil Reed Amar, *The Bill of Rights: Creation and Reconstruction* (New Haven, CT: Yale Univ. Press, 1998).

⁸ Pulsifer, *Records of New Plymouth*, 6-24; Bangs, *Pilgrim Edward Winslow*, 162-63; Stratton, *Plymouth Colony*, 144-45; Cushing, *Laws of the Pilgrims*, xiii-xiv.

Plymouth's colonists repeatedly amended the *General Fundamentals* throughout the colony's history. Plymouth Colony's *General Fundamentals* showed how a free people could draft their own constitution. The leaders of neighboring colonies took notice. A statutory committee in the Bay Colony organized to "frame a body of grounds of laws, in resemblance to a Magna Carta" and drafted the Bay Colony's *Body of Liberties* in 1641. Roger Williams, a religious leader in Plymouth Colony in 1631 and 1632, followed Plymouth's lead and enshrined Magna Carta rights in the Charter of Rhode Island and Providence Plantation, which the English Parliament approved and enacted in 1644.

The 1672 version of the *General Fundamentals* represents a fully realized version of early American constitutionalism. It began as follows:

We the Associates of New-Plimouth, *coming hither as free-born Subjects of the State of England, endowed with all and singular the Privileges belonging to such: Being Assembled...*

[1] Do Enact, Ordain and Constitute; that no Act Imposition, Law or Ordinance be made or imposed upon us, at present or to come, bur such as shall be made or imposed by consent of the body of Freemen or Associates, or their Representatives legally Assembled; which is according to the free Liberties of the free born People of England....

2. And for the well Governing this Corporation: It is also Resolved and Ordered, that there be a free Election Annually, of Governor, and Assistants, by the Vote of the Freemen of this Corporation; and that none shall presume to impose themselves or any other upon us, but such as are for choice, according to the privileged granted by Charter.⁹

Plymouth's elected leaders preserved, protected, and expanded the "free liberties of the free born People of England." They took office, and enacted laws, statutes, and amended versions of the *General Fundamentals*, by taking office through "consent of the body of Freemen or Associates, or their Representatives legally assembled..." They organized Plymouth's General Court to represent the colony's people. They exercised legislative, executive, and judicial power. They conducted annual, democratic elections to choose their leaders and empower them to act.¹⁰

Clause 3 of the *General Fundamentals* guaranteed colonists a right to legal equality and impartial justice: "That Justice and Right be equally and impartially Administered unto all, not sold, denied or causelessly deferred unto any..."¹¹ That provision echoed Chapter 40 of Magna Carta (1215): "To no one will we sell, to no one deny or delay right or justice."¹²

⁹ See generally. Cushing, *Laws of the Pilgrims*, 25, reprinting Green, *Book of the General Laws of the Inhabitants of the Jurisdiction of New-Plimouth Colony, Revised and Published by Order of the General Court, in June 1671*. See also Bangs, *Strangers and Pilgrims*, 610-611.

¹⁰ Cushing, *Laws of the Pilgrims*, 1-2, at B.

¹¹ Cushing, *Laws of the Pilgrims*, 1-2, reprinting Green, *Book of the General Laws of the Inhabitants of the Jurisdiction of New-Plimouth* (1672), 1, Chap. 1; "The General Fundamentals of New Plimouth," *Plymouth Colony Archive Project, University of Illinois Urbana-Champaign*, <http://www.histarch.illinois.edu/plymouth/fund.html#:~:text=In%20the%20period%20from%201636,and%20individual%20rights%20in%20the>. See also Bangs, *Strangers and Pilgrims*, 610-611.

¹² Nicholas Vincent, ed., *Magna Carta: The Foundation of Freedom, 1215-2015* (London: Third Millennium Pub., 2014), 185 (Magna Carta, 1215 text).

Clause 4 of Plymouth's 1672 *General Fundamentals* required due process of law for everyone. Due process requires that people can obtain justice in courthouses, legislatures, and in administrative agencies:

It is also Enacted, that no person in this Government shall suffer or be indamaged [sic], in respect of Life, Limb, Liberty, Good Name or Estate, under colour of Law, or countenance of Authority, but by Virtue or Equity of some express Law of the General Court of this Colony, or the good and equitable Laws of our Nation, suitable for us, in matters which are of a civil nature...wherein we have no particular Law of our own. And that noire shall suffer as aforesaid, without being brought to answer by due course and process of Law.¹³

Clause 4 of Plymouth's *General Fundamentals* of 1672 preserved the tradition that began with Chapter 39 of Magna Carta in 1215 and continued as Chapter 29 in the amended Magna Carta of 1225. Those Magna Carta provisions declared that "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."¹⁴

Clauses 3 and 4 of the 1672 version of the Plymouth's *General Fundamentals* tracked Magna Carta. In 1225, ten years after King John I issued the original version, John's son the boy-king Henry III issued an amended Magna Carta that combined Chapters 39 and 40 into a streamlined Chapter 29 in 1225. Henry III's revised, 1225 version of Magna Carta entered English law-books and history as the first law of England's Statutes at Large textbooks.

Clause 5 of the 1672 *General Fundamentals* guaranteed Plymouth's residents the right to a jury trial "according to the commendable custom of England":

And that all Cases, whither Capital, Criminal, or between man and man, be Tried by a Jury of twelve good and lawful men, according to the Commendable custom of England, except where some express Law doth reserve it to the judgment of some other Judge or Inferior Court where Jury is not...And it shall be in the liberty of any person, that is to be tried by a Jury to challenge any of the Jurors, and if the challenge be found just and reasonable by the Bench, it shall be allowed, and others without just exception shall be empaneled in their room: And if it be in case of Life and Death, the Prisoner shall have liberty (according to the Law of England) to except against twenty of the Jury without giving any reason for the same.

Clause 5 codified the first law enacted at Plymouth on December 17, 1623.¹⁵ It echoed Magna Carta's Chapter 22, which declared that "[e]arls and barons will not be amerced [fined] except by their peers and only in accordance with the degree of the offense." And Magna Carta Chapter

¹³ Cushing, *Laws of the Pilgrims*, at B-1.

¹⁴ Vincent, *Magna Carta*, 185 (Magna Carta, 1215 text).

¹⁵ *Registrar of Deed Records, "Right to Trial by Jury" historic signboard, County of Plymouth Register of Deeds* (2021) ("The Colonists brought with them the old English law of trial by jury. With the landing at Plymouth Rock, the right to a trial before a jury of one's peers has been guaranteed throughout the history of Massachusetts and the United States.").

39, which precluded the government from punishing a man without “the lawful judgment of his peers.” Like Magna Carta, the General Fundamentals protected life, liberty, and property.

Clause 6 of Plymouth’s 1672 *General Fundamentals* imposed a minimum evidentiary requirement essential to ensure that trials produced just results:

That no Person shall be Cast, Condemned or Sentenced in any Case Capital, Civil or Criminal without the testimony of two sufficient Witnesses, or other sufficient Evidence, or Circumstances equivalent thereunto, unless in any particular Case the Law hath otherwise provided.¹⁶

A requirement that specific evidence support a criminal prosecution or a civil lawsuit traced its origins to Magna Carta Chapter 38: “In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.”

The drafters of Plymouth’s 1672 version of the *General Fundamentals* included a savings provision, Clause 9, that preserved all of the preceding rights in perpetuity:

And finally, It is Ordered and Declared by this Court and the Authority thereof, that all these foregoing Orders and Constitutions are so Fundamentally Essential to the just Rights, Liberties, Common Good, and Special End of this Colony, as that they shall and ought to be inviolably preserved.¹⁷

It echoes Magna Carta Chapter 60: “All these aforesaid customs and liberties...will be observed by all men of our realm, both clerks and lay, as far as pertains to them toward their own men.”

In addition, Clause 9 of the 1672 version of the *General Fundamentals* preserved Plymouth’s gathered churches from governmental encroachment and abuse. It reverberated with memories of Magna Carta Chapter 63, where King John enshrined the independence of the English Church and reaffirmed the rights granted by Magna Carta:

IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

The Pilgrims wrote the Compact in plain English so they could understand and enforce their rights.

The dean of American historians, Samuel Eliot Morison, properly hailed Plymouth’s 1636 Law Code as “the first bill of rights in America.”¹⁸ Plymouth’s General Court reissued the *General Fundamentals* in 1658, 1671, and 1685, then recorded them in Plymouth’s *Book of the General Laws*.

¹⁶ Cushing, *Laws of the Pilgrims*, B-2.

¹⁷ *Ibid.*

¹⁸ Samuel Eliot Morison, “New Light Wanted on the Old Colony,” *William & Mary Quarterly*, 3rd Series, 15 (1958): 359-64, at 361, quoted in Bangs, *New Light on the Old Colony*, 18-25.

Those provisions remained in effect until King William, Queen Mary, and the English Parliament merged Plymouth into the Massachusetts Bay Colony in 1692.¹⁹

Anyone interested in seeing how Plymouthans administered justice under the *General Fundamentals* of 1636 can watch a new, 15-minute YouTube video, “The Arthur Peach Trial of 1638.” Lisa H. Pennington, a retired Texas trial lawyer and former managing partner of Baker Hostetler’s Houston Office who now serves as Governor General of the General Society of Mayflower Descendants, narrates that video in which I portrayed Plymouth Colony Governor Thomas Prence, the “Terror to the Wicked.”²⁰

That video, filmed in the second-floor courtroom of Plymouth’s 1749 Courthouse, shows how Governor Prence and his predecessor Governor William Bradford presided over the 1638 trial of Arthur Peach and three other indentured servants who murdered a young Nipmuc Native, Penowyanquis, near Plymouth. At a time when many English colonists viewed Native Americans as outside the protections of English law, Governor Prence insisted that the English defendants receive a fair trial before an impartial jury while also ensuring that justice was extended equally to the Native victim. Governor Prence and his predecessor Governor Bradford understood that the outcome of the trial would shape relations between Plymouth Colony and its Native neighbors.



In 1621, the Pilgrims had entered into an alliance with the Pokonoket Natives. One of the provisions was that each group would punish their own wrongdoers. This murder would be a serious test of that promise. Bradford had to carefully select jurors who would judge the evidence honestly rather than allowing prejudice or political pressure amongst “the rude and ignorant sort” to determine the verdict. Both the English colonists and the Native tribes had to have faith in the jury’s judgment. Bradford traveled all over the colony and selected respected men as far away as Scituate to serve on the jury. They would be asked to weigh the testimony of English colonists against the dying declaration of the murdered man and two Narraganset men who swore oaths to their tribal Gods to tell the truth. Ultimately, the jury believed the Native testimony over the Peach Gang’s denials and convicted Peach and his three accomplices of murder.

The importance of Bradford’s jury selection lies not only in the verdict but also in the principle it affirmed: that English common law should apply equally, regardless of the victim’s background. This decision helped maintain the colony’s alliance with the Wampanoag people, who closely watched the proceedings to see whether justice would be served. By demonstrating that an Englishman could be held accountable for the murder of a Native, Plymouth strengthened its reputation for fairness and reinforced the rule of law. As a result, Massasoit was satisfied with the

¹⁹ “General Fundamentals of New Plimouth,” *Plymouth Colony Archive Project*. See also Bangs, *Strangers and Pilgrims*, 610-611.

²⁰ “The Arthur Peach Trial of 1638,” *The General Society of Mayflower Descendants* (YouTube video), <https://www.youtube.com/watch?v=k-Fd4t93-88>.

verdict and ratified the 1621 treaty the next year. Peace didn't last forever, but William Bradford's foresight ensured that the two communities would have peace for another generation.

The Arthur Peach trial, held at the Pilgrims' Meetinghouse, was the first time in American history where the principle of equal justice under the law was enforced, and it remains an early milestone in American legal history. Bradford's insistence on an impartial jury reflected his belief that justice required integrity, fairness, and accountability. His actions helped establish the expectation that courts should be guided by evidence rather than bias, a principle that would become fundamental to the American legal tradition.

The constitutionalism that began in Plymouth Colony continued through the tumultuous years that led to the American Revolution. John Adams, a Patriot leader during the American Revolutionary War, and later the second president of the United States, drafted the State of Massachusetts' 1780 Constitution. Massachusetts' 1780 Constitution reflected the spirit of the times, including John Adams and Thomas Jefferson's collaborative drafting of America's Declaration of Independence in Philadelphia on July 2, 1776.²¹

Massachusetts' 1780 Constitution and Sam Houston's 1833 Texas constitution

Fast-forward to Texas during the Convention of reform-minded Texians and Tejanos that met at San Felipe on April 1, 1833. Tejano residents of San Antonio and Victoria who had refused to send delegates to the previous assembly participated after empresario Stephen F. Austin went to San Antonio to solicit Tejano cooperation. Revolutionary and secessionist ideas were sweeping through the Texas part of Mexico's twin-state of Coahuila y Texas. "War Party" leaders such as Wharton called for a new convention. They did so on the day that General Antonio Lòpez de Santa Anna, then a leader of Mexico's Liberal Party, took control of the Mexican government.²²

Delegates elected William H. Wharton, rather than the more accommodating Austin, to preside over their convention. They designated a special committee to draw up a proposed Constitution for the State of Texas²³ that would divide the Mexican twin-state of Coahuila y Texas into its two component parts, resulting in Texas independence.²⁴ The Convention chose Sam Houston to chair that committee.²⁵

²¹ Tony Williams, "The Massachusetts Constitution of 1780: John Adams & the Fundamental Liberties of the People," *Constituting America* website, <https://constitutingamerica.org/massachusetts-constitution-1780-john-adams-fundamental-liberties-of-the-people-guest-essayist-tony-williams/>. The printer published the Declaration two days after its July 2 signing, on the Fourth of July. The Massachusetts Historical Society commemorates the signing every year on July 2 in a forlorn quest for accuracy.

²² *Constitution or Form of Government of The State of Texas: Made in General Convention, in the Town of San Felipe de Austin, in the Month of April, 1833* (New Orleans: Office of the Commercial Bulletin, 1833), in "Constitutions of Texas, 1824-1876," University of Texas Law School at Austin Tarlton Law Library website, 1, <https://tarlton.law.utexas.edu/c.php?g=819103&p=5845633>.

²³ *Constitution or Form of Government of The State of Texas: Made in General Convention, in the Town of San Felipe de Austin, in the Month of April, 1833* (New Orleans: Office of the Commercial Bulletin, 1833), in "Constitutions of Texas, 1824-1876," University of Texas Law School at Austin Tarlton Law Library website, 1, <https://tarlton.law.utexas.edu/c.php?g=819103&p=5845633>.

²⁴ Ralph W. Steen, "Convention of 1833," *Handbook of Texas Online* (1952, updated Aug. 5, 2020), <http://www.tshaonline.org/handbook/online/articles/mjc10>.

During Texas' 1833 Convention, Massachusetts constitutionalism began to play an important but overlooked role in Texas constitutional history—one that reverberates to this day. Delegates to the 1833 Convention voted in favor of Texas separating from Coahuila and voted in favor of a state constitution to take the place of the 1827 Constitution of Coahuila y Texas. Those delegates modelled their constitution on the Massachusetts Constitution of 1780, "which happened to be on hand," according to Texas scholar Jodella Dorothea Kite.²⁶ Historian S.S. McKay placed special emphasis on the New England origin of Texas's first constitution: "The proposed constitution was typically Anglo-American, being modeled on the Massachusetts Constitution of 1780, which happened to be available."²⁷

Texas historian J.E. Ericson recognized that delegates to the 1833 Convention based their Texas constitution not on a recent one from a southern state but, instead, on a Massachusetts constitution already fifty-three years old:

A comparison of the [Texas] Constitution of 1833 with the existing state constitutions of the time shows that it was closely modeled upon the Massachusetts Constitution of 1780, with "now and then an indication, however, that some clauses were inserted and some principles retained to please the Mexican ear," especially in the preamble and in the sections dealing with citizenship.

The segment of this constitution which marked it indelibly as an Anglo-American instrument was its opening Bill of Rights of twenty-seven articles of which most can be traced directly either to the Massachusetts Constitution of 1780 or the United States Constitution. The right of trial by jury, the writ of habeas corpus, the right of petition, the freedom of the press, the freedom and equality of the suffrage, the right to "due process of law," and many other typically Anglo-American civil rights were included. As a gesture to the Mexican government, the traditional right to freedom of religion was conspicuously absent.²⁸

New England constitutionalism, which President John Quincy Adams traced back to the Mayflower Compact,²⁹ came to Texas in 1833.

That Massachusetts Constitution of 1780 served as a template of Texas's current Constitution of 1876. "Through the medium of the Declaration of Rights of the 1833 Constitution of the Republic of Texas and the Republic's Constitution of 1836," Ericson continued, "many of these same articles found their way into the Bill of Rights of the Constitution of 1876. At least nine of the twenty-nine articles of the [current] Constitution of 1876 can be traced directly to almost exactly similar

²⁵ Michael Rugeley Moore, *San Felipe de Austin, state historic site* (Austin: Texas Historical Commission, 2018), 52-53; Gregg Cantrell, *Stephen F. Austin: Empresario of Texas* (Austin: Texas State Historical Association, 2nd edition, 2016), 263-66.

²⁶ Jodella Dorothea Kite, "The War and Peace Parties of Pre-Revolutionary Texas, 1832-1835," Master's Thesis in History, Texas Tech University (1986), 16, <https://ttu-ir.tdl.org/bitstream/handle/2346/12776/31295004914171.pdf?sequence=1>.

²⁷ S. S. McKay, "Constitution Proposed in 1833," *Handbook of Texas Online* (1952, updated Aug. 5, 2020), <http://www.tshaonline.org/handbook/online/articles/mhc09>.

²⁸ J.E. Ericson, "An Inquiry into the Sources of the Texas Constitution," Ph.D. Thesis in Philosophy (1957), Texas Tech University; Henderson King Yoakum, *History of Texas from its First Settlement in 1685* (New York City: Redfield, 1855), vol. I, 311.

²⁹ Bangs, "Mayflower Compact—A Dissenting View, Part One," *New England Ancestors*, 54.

provisions in the Constitution of 1833.”³⁰ Although Texans never presented it to the Mexican National Congress, the proposed 1833 constitution for the State of Texas exerted “a significant and lasting influence on Texas constitutional development...”³¹

John Adams’ Massachusetts Constitution of 1780 could inspire Sam Houston’s drafting of the first constitution for an independent Texas because someone brought it with him to San Felipe de Austin in 1833.³² Americans (Norteamericanos) who came to Texas carried constitutions with them, both state and federal. When Mexican General Mier y Terán returned to Mexico City from an inspection of the new colonies in Texas, he warned Mexico’s President that American immigrants “travel with their political constitution in their pockets, demanding the privileges, authority, and offices which such a constitution guarantees.”³³

So whose Massachusetts constitution inspired Sam Houston’s drafting of a Texas constitution in 1833? Whose timely loan of an East Coast constitution to Sam Houston inspired every constitution in Texas since 1833? Did Sam bring it with him from St. Augustine, Texas? That seems unlikely. If the new Texas constitution mirrored those of Tennessee or Virginia, such an idea might make sense. But the Virginia-born former governor of Tennessee had no reason to tote a Massachusetts constitution in his saddlebags when he crossed the Red River into Texas in December 1832 or when he rode west from Nacogdoches to San Felipe in 1833.³⁴

Asa Brigham, one of the first New Englanders to come to Texas, was the most likely candidate to lend Sam Houston a 1780 Massachusetts constitution. Born in Marlborough, Massachusetts in 1788, he grew up in Massachusetts in the early Federal Era, when leaders in Philadelphia, New York, Boston, and Williamsburg were writing, ratifying, and reveling in their new Constitution of 1789 and its Bill of Rights. The Constitution of 1780 governed Massachusetts when Asa Brigham grew up.³⁵ In April 1830, Asa Brigham and his wife Elizabeth crossed into Coahuila y Texas and started over in Brazoria, Texas.³⁶ That town began in 1829, when another entrepreneurial Yankee, Connecticut-born John P. Austin, recognized that a town along the Brazos River could make money.³⁷

³⁰ Ericson, “Sources of the Texas Constitution,” 32 n. 61.

³¹ *Ibid.*, 33.

³² Gambrell, *Last President*, 35 (“The [1833] convention, against Austin’s advice, adopted a state constitution submitted by General Houston and instructed Mr. Austin to present it to Santa Anna.”).

³³ Alleine Howren, “Causes and Origin of the Decree of April 6, 1830,” *Southwestern Historical Quarterly*, XVI (1913), 395-98, University of Houston Digital History website, http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=551. See also Margaret Swett Henson, “Mier y Terán, Manuel de,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fmi02>.

³⁴ Thomas H. Kreneck, “Houston, Sam,” *Handbook of Texas Online* (1952, updated, Nov. 9, 2020), <http://www.tshaonline.org/handbook/online/articles/fho73>.

³⁵ L. W. Kemp, “Brigham, Asa,” *Handbook of Texas Online* (1952, updated Sept. 8 2020), <http://www.tshaonline.org/handbook/online/articles/fbr49>.

³⁶ L. W. Kemp, “Brigham, Asa,” *Handbook of Texas*; “Asa Bingham, 1788-1844,” *WikiTree Genealogy*.

³⁷ L. W. Kemp, “Brigham, Asa,” *Handbook of Texas*; “Asa Bingham, 1788-1844,” *WikiTree Genealogy*; Texas State Historical Association, “Austin, John,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fau09>; Herbert Gambrell, *Anson Jones: The Last President of Texas* (Austin: University of Texas Press, 2nd ed., 1964), 37-38; Texas House of Representatives, *Biographical Directory of the Texan Conventions and Congresses, 1832-1845* (Austin: Book Exchange, 1941), 46; Lester G. Bugbee, “The Old Three Hundred,” *Southwest Historical Quarterly*, I (1897), 110.

Three years after his 1831 arrival in Texas, it seems likely that Asa would still have a copy of his native state's constitution to guide him in his legal work. By 1833, he was an important man in San Felipe de Austin, a city attorney in Brazoria since 1830, a commissary, a member of a local board of health, a merchant, land-speculator, and plantation-owner. He signed a June 20, 1832 petition declaring his willingness to fight for his rights. It's reasonable to believe that Asa Brigham loaned his Massachusetts constitution to Sam Houston. Two years later, during war jitters in 1835, his fellow colonists elected him to serve as an *alcalde* judge in San Felipe de Austin.³⁸

There's another New Englander who might have offered Houston that Massachusetts constitution—John Austin, the Connecticut Yankee who founded Brazoria.³⁹ A filibustering soldier in the Long Expedition of 1819 and a survivor of Mexican captivity afterwards, John Austin had reason to hope that Texas could better itself by breaking free of Coahuila—and Mexico. Between 1831 and 1832, he became *alcalde* of Brazoria Municipality, signed the Turtle Bayou Resolutions objecting to Mexican military abuses, participated in the Anahuac Disturbances, commanded Texas military forces at the Battle of Velasco, and won an election to serve as Brigadier General of Austin's militia.⁴⁰ But it's unlikely that James Austin, a man from the Nutmeg State, would bring a Massachusetts constitution to Texas—and if he had, it's likely he surrendered it when taken prisoner during the 1819 Mier Expedition.

Did Dr. Anson Jones carry a copy of the Massachusetts constitution with him to San Felipe in time for Sam Houston to read it, copy its provisions, and sign the resulting Constitution of 1833 on April 13, 1833? No, Dr. Jones did not reach Velasco, at the mouth of the Sabine, until he disembarked from Captain Jeremiah Brown's schooner *Sabine* in mid-October of 1833.⁴¹

William H. Wharton, the President of the 1833 Convention, could have taken the Massachusetts constitution out of his own library.⁴² Virginia-born Wharton, an orator and leader in the Texas Revolution, matriculated at the University of Nashville, passed the bar in 1826, and arrived in Texas by December 1827. Wharton led other colonists in agitating for a more aggressive policy toward Mexico, so he shared Sam Houston's vision of a Texas independent of Mexico. But Houston relied on a Massachusetts constitution, not one from Virginia or Tennessee, so he likely borrowed the constitution from a Massachusetts man. And the likeliest candidate is Asa Brigham.

The constitution Sam Houston drafted at the Convention of 1833 was significant for another reason. Austin's delivery of it to Mexico's President and Vice President set Texas on the path to independence. The Convention's delegates elected Stephen F. Austin, the diplomat, rather than the hot-headed William H. Wharton, to deliver the 1833 constitution and petition for independence

³⁸ See generally Jason Boatright, "Alcaldes in Austin's Colony, 1821-1835," *Journal of the Texas Supreme Court Historical Society*, vol. 7, no. 3 (Spring 2018): 26-50, <http://600commerce.com/wp-content/uploads/2019/11/TSCHS-Journal-Spring-2018.pdf>, (discussing the history of alcaldes in the Spanish Empire, Mexico, and San Felipe de Austin).

³⁹ "Austin, John," *Handbook of Texas Online*.

⁴⁰ *Ibid.*

⁴¹ Anson Jones, *Memoranda and Official Correspondence Relating to the Republic of Texas, Its History and Annexation, 1836-1846, with my Endorsements and Notes at the Time* (New York: D. Appleton & Co., 1859; reprint, Chicago: Rio Grande Press, 1966) ("Jones, *Republic of Texas*"), 8-9; Gambrell, *Last President*, 1.

⁴² Merle Weir, "Wharton, William Harris," *Handbook of Texas Online* (1952, updated, May 4, 2016), <https://www.tshaonline.org/handbook/entries/wharton-william-harris>.

CONSTITUTION OF TEXAS.

In the name of God, Omnipotent Author, and Supreme Legislator of the Universe! We, the People of Texas, being capable of figuring as a State in the manner contemplated in the second article of the Decree of the General Congress of the Nation, of the 7th of May, 1824, Do ORDAIN THE FOLLOWING CONSTITUTION, and do mutually agree with each other, to form ourselves into a Free and Independent State of the Mexican Confederacy, by the name of the STATE OF TEXAS.

GENERAL PROVISIONS.

ARTICLE 1. All power is inherent in the people; and all free governments are founded on their authority, and established for their peace, safety, and happiness: for the advancement of these ends, they have at all times an undeniable right to alter, reform, or abolish the government, in such manner as they may think proper

Art. 2. Government being instituted for the protection and common benefit of all persons, the slavish doctrine of non-resistance against arbitrary power and oppression is discarded, as destructive of the happiness of mankind, and as insulting to the rights, and subversive of the liberties of any people.

Art. 3. All elections shall be free and equal.

Art. 4. The right of trial by jury, and the privilege of the *Writ of Habeas Corpus* shall be established by law, and shall remain inviolable.

Art. 5. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable searches and seizures: and general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person, or persons, not named, whose offences are not particularly described, and supported by evidence, are dangerous to liberty, and *shall not be granted*.

Art. 6. No citizen shall be taken, or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner distrained, or deprived of his life, liberty, or property, but by the law of the land.

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Sam Houston modeled the first proposed constitution for an independent state of Mexican Texas on the Massachusetts Constitution of 1780. Photo of 1833 Constitution. Public domain, Tarlton Law Library.

to federal authorities in Mexico City.⁴³ Mexican authorities' subsequent imprisonment of Stephen F. Austin in Perote Prison led to the Texas Revolution, the Texas Declaration of Independence, and another constitutional moment, culminating in the signing of the Republic of Texas's Constitution in March 1836.⁴⁴

After becoming the Republic's first elected president, Sam Houston named Asa Brigham as the Republic's first Treasurer on December 20, 1836.⁴⁵ Things went well for the former New Englander. In an 1837 letter to his New England relatives, he wrote "Emigration [sic] flows in rapidly, the country is improving beyond account."⁴⁶ Asa Brigham enjoyed the fellowship of Dr. Anson Jones, Sam Houston, and other Brazoria County friends when he became a charter member of the Masonic Grand Lodge of Texas in Houston on December 20, 1837.⁴⁷ After being promoted to the rank of Major in the military, he moved to Austin when the Republic's second president, Mirabeau B. Lamar, relocated the capital there.⁴⁸ He continued a lively correspondence with fellow New Englander Anson Jones focusing on politics, the presidency, and congress.⁴⁹

Mirabeau B. Lamar, the Republic's second president, reappointed Brigham as Treasurer in January 1839. Brigham hedged his bets on his future by becoming a City of Houston alderman on February 16, 1839, while continuing to serve as the Republic's treasurer at the new capital in Austin.⁵⁰ In that same month, May 1839, Lamar recalled Anson Jones, Houston's Texas Minister of State to the United States, who was serving in Washington, D.C.⁵¹ His old friend Anson Jones, who had signed Brigham's \$50,000 bond to serve as treasurer in 1836, came to Austin and, while there, learned that voters had elected him to the Republic's Congress to finish William H. Wharton's unexpired term in the Senate. The two New Englanders, Brigham and Jones, friends with similar values, remained in close contact.⁵²

When Thomas Rusk presided as Chief Justice over the first session of the Supreme Court of Texas on January 13, 1840, he convened it in Austin at the house "belonging to Maj. A. Brigham, in the lower part of the city," at what is now the southwest corner of Congress Avenue and Second Street.⁵³ Rusk was the third Chief Justice, and the first to convene the Court, after his election by

⁴³ Cantrell, *Stephen F. Austin: Empresario*, 263-65.

⁴⁴ Chriss, *Six Constitutions over Texas*, 1-17 (Prologue: Mexican Texas and Its Constitutions, 1821-1836), 18-33 (the Revolutionary Constitution of 1836).

⁴⁵ Kemp, "Brigham, Asa," *Handbook of Texas Online*.

⁴⁶ Eric R. Schlereth, "Voluntary Mexicans: Allegiance and the Origins of the Texas Revolution," in Sam W. Haynes and Gerald D. Saxon, editors, *Contested Empire: Rethinking the Texas Revolution* (College Station: Texas A&M University Press, 2015), 11.

⁴⁷ *Ibid.*

⁴⁸ Letter from Garl Borden, Jr., Customs Collector in Galveston, to Anson Jones, March 11, 1843, published in Jones, *Republic of Texas*, 203-204.

⁴⁹ Jones, *Republic of Texas*, 140-141.

⁵⁰ Kemp, "Brigham, Asa," *Handbook of Texas Online*.

⁵¹ Gambrell, "Jones, Anson," *Handbook of Texas Online*.

⁵² *Ibid.*; Texas House of Representatives, *Biographical Directory of the Texan Conventions and Congresses, 1832-1845* (Austin: Book Exchange, 1941).

⁵³ Drummond, "San Jacinto Justice," *Texas Supreme Court Historical Society Journal*, 55; Dylan O. Drummond, "San Jacinto Justice: The Republic Supreme Court Jurists Who Won Texas Independence," *The Appellate Advocate*, 29, no.

a joint ballot of Congress on December 2, 1838.⁵⁴ Because he was in the field leading campaigns against Native tribes at that time, he did not actually learn of his election until January 21, 1839—a week after the deadline to convene a January 1839 session.⁵⁵ After convening the Court, Chief Justice Rusk issued its first five opinions.⁵⁶ Did the Court convene its first session in Asa Brigham's home in recognition of his role in the creation of Court and Constitution?

Asa Brigham left the Treasury on April 12, 1840. Soon after, he faced charges for misappropriating government money for public purposes, but a presentation of the facts cleared those charges soon thereafter. Once Sam Houston won election to serve a second term as President, he reappointed Brigham as Treasurer in December 13, 1841.⁵⁷ Since coming to Texas, Asa Brigham had lived his life in a series of constitutional moments that paved the way forward for the Lone Star State, linking Texas with Massachusetts, and Massachusetts with Plymouth Colony, the Mayflower Compact, and the *General Fundamentals of New-Plimouth*.

3 (Spring 2017): 320-75, 330, <https://www.grayreed.com/portalresource/lookup/wosid/cp-base-4-89705/media.name=/SCOTX%20Justice%20-%20App%20Advoc.pdf>; James L. Haley, *A Narrative History of the Texas Supreme Court, 1836 to 1986* (Austin: University of Texas Press, 2013), 20, 258 n.13; Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Texas Tech University Press, 2011), 19; James W. Paulsen, "A Sesquicentennial Celebration: The Establishment of a Unique Texas Institution," 53 *Texas Bar Journal* 43, 43 (Jan. 1990); Gambrell, *Last President*, 204.

⁵⁴ Drummond, "San Jacinto Justice," *Appellate Advocate*, 320-75, 346-47; Paulsen, "Judges of the Supreme Court," 306, 316.

⁵⁵ Drummond, "San Jacinto Justice," 3 *Appellate Advocate*, 47; Haley, *Texas Supreme Court*, 258 n.13; Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Texas Tech Univ. Press, 2011), 19.

⁵⁶ *Whiteman v. Garrett*, No. XVI, Dallam 374 (Tex. 1840); *Board of Land Commissioners of Milam County v. Bell*, No. XI, Dallam 366 (1840); *Goode v. Cheshire*, No. VII, Dallam 362 (Tex. 1840); *Yeamans v. Tone*, No. VI, Dallam 362 (Tex. 1840); *Republic of Texas v. McCulloch*, No. I, Dallam 357 (Tex. 1840).

⁵⁷ Kemp, "Brigham, Asa," *Handbook of Texas Online*.



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William J. Durham, the Sherman Riot, and Civil-Rights Law in Texas

By Dr. Jody Edward Ginn



William J. Durham

The life of William J. Durham stood at a pivotal intersection of local violence, racialized law, and constitutional transformation in twentieth-century Texas. Born in 1896 to a Black sharecropping family near Sulphur Springs in Hopkins County, Durham grew up within the agricultural economy of northeast Texas under the rigid constraints of Jim Crow. An early visit to the courthouse with his father left him impressed by a white attorney's authority in that space and determined to pursue law himself — a remarkable ambition for a Black child in rural Texas at the turn of the century. That early impression shaped a career that would connect personal trauma to landmark civil-rights litigation, linking the violence of Sherman in 1930 to the national legal trajectory that culminated in *Brown v. Board of Education*.

Durham briefly attended Emporia State College in Kansas before serving in the United States Army in France during World War I. After the war he settled in Sherman, where he studied law in the office of Ben F. Gafford, a white attorney, under the apprenticeship model still permitted in Texas at the time. He passed the bar in 1926 and opened his own practice while also serving as counsel for an insurance company — an arrangement that provided the financial stability necessary to pursue civil-rights cases that were seldom economically rewarding. By the late 1920s he had established himself as part of Sherman's small but significant Black professional class, a cohort that white supremacy kept visible enough to resent.

The Sherman Courthouse Riot and the Lynching of George Hughes

As was all too common in early 20th century America, the Sherman riot of May 1930 began with a criminal accusation and escalated into one of the most notorious episodes of racial violence in Texas history. On May 3, George Hughes — a Black farm laborer described in contemporary accounts as mentally unstable — was accused of assaulting a white woman during a wage dispute with his white employers. During the confrontation and attempted arrest, Hughes reportedly fired on law officers, intensifying white anger and raising the prospect of mob violence.

Because local officials feared a lynching if Hughes were tried in Sherman without extraordinary protection, Governor Dan Moody dispatched Texas Rangers to the town. On May 9, Hughes was brought to the Grayson County Courthouse for trial as a crowd numbering in the thousands — which had been incited by a local lynch mob — gathered outside and demanded that he be surrendered. Authorities attempted to protect Hughes by placing him inside a steel records vault within the courthouse, a measure that depended entirely on the building remaining intact.

After a failed attempt to force their way into the courthouse that they abandoned after famed Texas Ranger Captain Frank Hamer shot at least one rioter in the foot, the crowd soon overwhelmed that calculation. Rioters' broke windows and set the courthouse on fire by throwing gasoline into the building. Firefighters who arrived to contain the blaze were obstructed and their hoses cut. Later that night the mob forced open the vault, removed the still-breathing Hughes and dragged him — chained to a car — through town to



George Hughes being led in chains

the Black business district on Mulberry Street, where he was hanged from a tree, mutilated, and burned with materials taken from Black-owned properties nearby.



Frank Hamer

The violence did not end with Hughes's death. White rioters systematically looted and burned much of the Black commercial district, destroying stores, offices, and professional establishments. Immediately upon being notified by Captain Hamer of the courthouse burning, Governor Moody declared martial law, sent in National Guard troops, and placed Sherman under military control. Moody also dispatched additional Texas Rangers to investigate that series of unconscionable events. Although dozens of residents were detained and a smaller number indicted, accountability remained narrow and incomplete — a pattern familiar across the Jim Crow South, where the spectacle of racial terror was public and immediate while legal consequences were virtually nonexistent.

Durham's Experience During the Riot

Durham's experience of the riot was direct, personal, and materially consequential. His law office stood in the very district targeted by the mob, and it was burned along with other Black-owned properties as rioters moved to erase the visible signs of Black advancement in Sherman. The destruction meant more than the loss of a workspace; it represented the loss of records, professional capital, and the tangible evidence of a career carefully built under hostile conditions. In symbolic terms, it was an assault on Black legal agency itself — the mob targeting not just buildings, but the institutions through which Black residents exercised any claim on the law.

11

Must be returned to Pat Dougherty

✓ 103
Rept. of Capt. F. H. Hamer
Sherman affair

TEXAS RANGER FORCE
ADJUTANT GENERAL'S DEPARTMENT
AUSTIN, TEXAS

FAH:ljm

File

May 13, 1930.

Hon. Dan Moody,
Governor, State of Texas.

In compliance with your request, I am herewith furnishing you with a statement in regards to the trouble at Sherman, as per your order: On May 7th, Sgt. Wheatley, Rangers J. E. McCoy, J. W. Aldrich and myself left Austin at 4:25 P. M., for Sherman, Texas to report to the District Judge for duty, to be on hand in District Court in which George Hughes, negro, was to be tried for assault on a white woman in Grayson County, a few days before. On the morning of the 9th of May the negro was brought into the court room, the jury was empanelled, the trial proceeded to get under way. It was while the first State witness was on the stand testifying, that the crowd made a rush on the District Court room to get the prisoner and in their attempt to do so, two double doors opening into a hallway near the District Court room were broken down. The District Judge ordered the prisoner locked up in the District Attorney's vault and then we immediately proceeded to disperse the mob which we did by the use of our guns, without firing, and tear gas bombs. The District Judge and other officials then decided that a change of venue should be ordered in the case. The crowd made two other attempts to rush the court room on the second floor and was beaten back each time.

I instructed my men that the next time they rushed the court-house that I would fire on the mob, but for them to hold their fire until I gave orders to shoot. In a few minutes the mob attempted to rush the court room again, coming up the stairway and I fired a shotgun loaded with buckshot, wounding two men, so it was reported to us, this stopped the mob. I had heard a number of them say prior to the time that I fired on them, that "you can't shoot us". It never occurred to me what they meant until a newspaper man came up stairs and showed me a message that he said he had received over the A. P. wires reading as from the Governor, "protect the negro if possible, but do not shoot anybody". I informed him that I had received no such message, however, at this time, this report seemed to have been well circulated among the crowd.

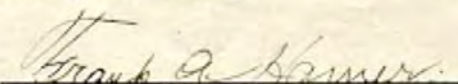
I saw the District Judge and told him about the report and informed him that I didn't believe the Governor would issue such orders, because we probably could not hold the prisoner if such order was issued. One of the agitators walked to the foot of the stairway and asked me if I was going to give the prisoner up to them, I told him we were not, he says "well we are coming up and get him", I said "any time you feel lucky, come on, but when you start up the stairway once more, there is going to be many funerals in Sherman". For twenty or thirty minutes, things were quiet.

They started brakeing out windows down stairs, the sheriff and deputies had previously gone down stairs, leaving myself and men to guard the negro and the stairways, then all at once the flames from the lower story of the courthouse swept up the stairways and on up to the ceiling over our heads to the second floor and myself and men barely escaped the burning building. The flames cut us off from the vault and we could not have opened the vault if we could have gotten to it, as we did not know the combination, so we came out and down into the crowd. Flames from the burning building was pushing everybody off the square.

Among the crowd were many women and children. We stood around a few minutes. I thought it necessary for me to communicate with you, as I heard the troops were on their way. Not caring to discuss this with you from Sherman, we were talking to a man and I asked him if he had a car, he said he did, I asked him to drive us to Howe, from which point I called you. While waiting there for a second message from you, I heard the operator say to someone over the phone, "I am glad they burned the courthouse". Thinking probably that you might have something to say over the phone, not for the public, we drove down to McKinney and waited there for further communication. At no time did I tell anyone that I had received a message from you ordering me not to shoot anybody and when I fired on the crowd in their last attempt to rush the courtroom, we had them whipped off and they could not have taken the prisoner from us in any way only by burning the courthouse as they did and we never dreamed of the gang doing that until the building was enveloped in flames.

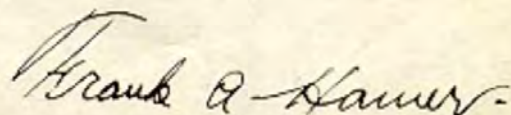
The man that advised me as to the message coming over the wires, I do not know his name but it will be no trouble to learn his identity.

Respectfully submitted,


Captain, State Rangers.

I am attaching hereto telegram received by me from the Associated Press from Dallas.

I did not receive, while at Sherman, any order from you, nor have I ever at any time received an order from you, not to shoot in the protection of any prisoner from mob violence. Only one shot was fired which was all that was necessary to stop them from rushing the courtroom where the prisoner was held.



Later accounts indicate that Durham witnessed the destruction of the district and, according to at least one public history narrative, succeeded in saving his home by personally confronting members of the mob. Whether approached through local memory or broader civil-rights history, the essential point is the same: Durham learned in Sherman what many Black professionals across the South already understood. The ordinary protections of law could dissolve when white collective violence asserted itself. George Hughes could not be protected in the courthouse despite the presence of Texas Rangers and other law enforcement officials, and Durham's own property could not be protected in the business district despite those same state and local forces.

The riot appears to have marked a decisive turning point in Durham's sense of professional mission. Rather than discouraging him from legal practice, the destruction of his office intensified his determination to use the courts as instruments against segregation and racial discrimination. In that respect, the Sherman riot was not merely a traumatic episode in his biography; it was one of the formative experiences that transformed a small-town Black attorney into one of the leading civil-rights lawyers in the United States.

NAACP Counsel and Statewide Litigation

In the years following 1930, Durham increasingly devoted himself to civil-rights litigation while relying on insurance and other legal work for financial support. His growing reputation for careful preparation and strategic motion practice drew him into school equalization suits, public accommodations disputes, and voting-rights matters across the state. As his stature rose, he became resident counsel for the Texas NAACP, placing him at the center of a coordinated effort to dismantle the Jim Crow order through litigation.

Durham later moved his practice from Sherman to Dallas during World War II, a shift that expanded his opportunities and positioned him within a larger Black urban community from which statewide and national legal campaigns could be mounted more effectively. From Dallas he collaborated with civil-rights leaders and activists across Texas, including figures engaged in desegregation campaigns and voting-rights work. His litigation portfolio extended across multiple fronts: equal pay for Black teachers, school desegregation, access to public facilities, and challenges to discriminatory voter registration practices.

What distinguishes Durham from a local practitioner handling isolated cases is the function he performed within the larger movement. He served as one of the legal strategists through whom the NAACP translated broad constitutional principles into carefully selected Texas and national test cases, and he absorbed — in material terms — the violence that the movement ultimately sought to contest in court. His career illustrates how regional attorneys formed the indispensable connective tissue between Black communities confronting discrimination on the ground and the national litigation strategy being developed in New York and Washington.

Sweatt v. Painter and the Road to Brown

Durham's most historically significant contribution came in higher education desegregation litigation, above all in *Sweatt v. Painter*. The case arose when Herman Marion Sweatt was denied admission to the University of Texas School of Law on the basis of his race. Durham worked



(Left to right:) Harry Bellinger, William J. Durham, Heman Sweatt, and Crawford B. Bunkley, Jr. in the Travis County Courthouse during the Sweatt v. Painter hearing.

alongside Thurgood Marshall and other NAACP attorneys to challenge the constitutionality of Texas's separate legal education scheme. The legal strategy attacked not only the tangible inequalities between the white law school and the hastily assembled Black alternative, but also the intangible factors — professional reputation, alumni networks, standing in the legal community — that no segregated institution could replicate.

In 1950 the United States Supreme Court agreed that the separate facility established for Black students could not provide an education substantially equal to that available at the University of Texas. The decision significantly weakened the legal logic of separate but equal and became one of the major precedents leading to *Brown v. Board of Education* four years later. That connection draws a direct line from the destruction of a Black law office on Mulberry Street in Sherman to one of the central legal developments in the history of American civil rights.

Legacy and Historical Significance

While it was Durham who researched and wrote many (most?) of the legal briefs which Thurgood Marshall so eloquently argued in courts across the country and all the way to the Supreme Court of the United States, he has predominantly appeared as barely more than a footnote — if, at all — in most of the Civil Rights era scholarship to date. This is because the historiography of that era has tended to focus on a limited set of highly visible national figures and metropolitan episodes, an emphasis that obscures the role of local Black attorneys who navigated both the daily racism of the courthouse and the developing strategies of the NAACP.

Durham's career complicates any simple narrative that presents Black Texans as either passive victims of Jim Crow or actors only when summoned by national organizations. He functioned instead as a local broker of law and power whose work both responded to and helped reshape the racial and legal order in which he operated on the local, state, and national levels.



Thurgood Marshall and William Durham conferring in a Dallas Federal Court on July 30, 1959.

Durham never achieved the same level of popular recognition as figures such as Thurgood Marshall, but that disparity itself reveals something important about how civil-rights history has been told. Regional lawyers who absorbed local violence, rebuilt after personal loss, and carried carefully prepared cases into state and federal courts were essential to the success of the broader movement.

Durham's life demonstrates that the burning of a Black law office in Sherman and the lynching of George Hughes were not isolated episodes of local tragedy. They were also part of the historical chain of events that produced

a more sustained legal assault on segregation in Texas and the nation, and any serious accounting of twentieth-century Texas and U.S. civil-rights history should place William J. Durham near the center of that story. A forthcoming monograph on the Texas Civil Rights era—built upon heretofore untapped primary source materials—will provide a significant first step in that direction through an in-depth examination of Durham's contributions to that history.

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The 1876 Constitution: Justice Evan Young and Trustee Bill Chriss at the 2026 State Bar Annual Meeting

Story and photos by David A. Furlow



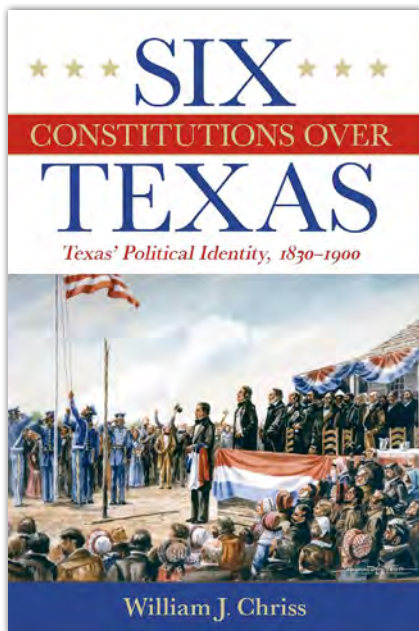
Alia Adkins-Derrick, Bill Chriss, and Justice Evan Young

One hundred fifty years after the ratification of the 1876 Constitution, Texas Supreme Court Justice Evan Young and Society Trustee William J. “Bill” Chriss examined its history and historical significance at the 2026 State Bar Annual Meeting. Alia Adkins-Derrick, in her capacity as the Society’s President-Elect, opened the program by introducing the Society, Bill Chriss, and Justice Young. Ratified on February 15, 1876, the 1876 Constitution remains the governing legal framework of Texas to this day.

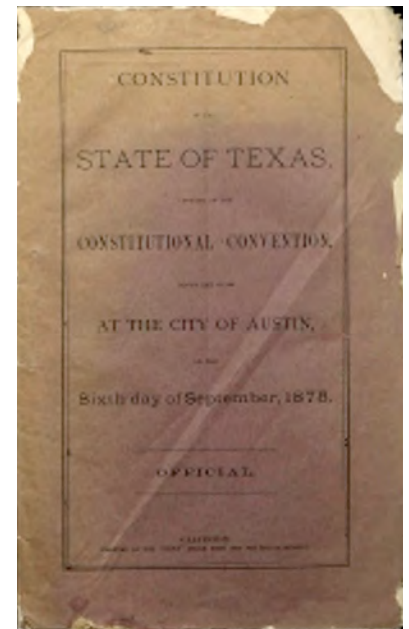
Bill Chriss described how Texas’s “Redeemers” conducted the constitutional convention that resulted in the drafting of the 1876 Constitution. Bill is a Corpus Christi attorney, a Ph.D. historian mentored by University of Texas History Professor William “Bill” Brands, and the author of *Six Constitutions over Texas* (College Station: Texas A&M University Press, 2025). Bill discussed Texas’s 1876 Constitution, which has provided the framework of Texas government for 150 years and governs the Lone Star State today:

The convention that took place in 1875 was the result of what Texas historians refer to as the “Redemption.” And so the Constitution is often referred to as the Constitution of the Redeemers. The Redeemers were people who considered themselves to be those who redeemed Texas from Reconstruction. So they were on the anti-Reconstruction side of Texas politics. The pro-Reconstruction side of Texas politics were those people who championed the rights of the freemen and freewomen who had been previously slaves as well as the nascent Republican Party.

That constitution’s four components include a “weak” governor, a biennial legislature, elected judges, and a Permanent School Fund, Dr. Chriss observed.



Justice Evan A. Young is a Justice of the Texas Supreme Court and also serves as a trustee of this Society. Appointed to the Supreme Court of Texas in November 2021 by Governor Greg Abbott, Justice Young won election in November 2022 to a term that expires December 31, 2028. Before joining the Texas Supreme Court, Justice Young clerked for U.S. Supreme Court Justice Antonin Scalia and served as Counsel to the Attorney General at the U.S. Department of Justice. He spent nearly a year based at the U.S. Embassy in Baghdad, Iraq, helping lead the U.S. Government’s Rule of



Law mission, and then worked at the Baker Botts Law Firm. Justice Young’s opinions about the 1876 Constitution reflects his decades-long scrutiny of American constitutionalism.

During the panel discussion, Justice Young described the unique nature of the 1876 Constitution:

The suspicion, and skepticism, and distrust of government that he [Bill Chriss] describes...led to a constitution that is very stingy...The people of Texas gave us something a little different [from the U.S. Constitution Chief Justice Marshall described in *McCulloch v. Maryland*]...The people of Texas in 1875, 1876, in the Convention, the Ratification, were very cranky, very stingy, very dubious about the government—but they were not fools.

They did not think that this very long and detailed document—22,000 words to really hem in the government in 1876 as opposed to, in Chief Justice Marshall’s time, the U.S. Constitution and its first twelve amendments, about only 5,000 words—the people of Texas were not fools. They knew that it would be enough for ever.

Two things: One, there’s no reason that they necessarily would have thought that it [would] be the constitution that would endure forever. It’s now our 150th year,



our sesquicentennial year, our Texquicentennial year. We had them in 1836, 1845, 1869, in 1827 when we were still part of Mexico. In 1876, it would not have been crazy to say, let's do this, because we'll probably have another one in 1884, or 1893, or 1907, or all of those. Instead, we have the one that has endured.

But the reason it could endure is because they understood that there would be new challenges. And instead of having the government have to dissolve and get a new constitution they created a mechanism by which, when the government needed something new, we wouldn't just do what we did in the American example, the people of Texas said...you will want more power, there are things that we have not allowed you to do that you are going to need to do. Experiences and opportunities and problems will emerge and you're going to need stuff that we have not given you. So here's how we're going to handle it.

You tell us what you think you're going to need which we have not given you yet and we [the people of Texas] will decide. And that's why this document, which started already four times as long as the U.S. Constitution, now clocks in at 110,000 words. That's half the length of *Moby Dick*.

A lively question and answer session commenced as soon as the panelists finished. The program was a great success and an example of this Society's continuing mission to educate lawyers, justices, and the people of Texas about the history of the Texas Supreme Court, the appellate judiciary, and Texas law.

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The Society Re-Enacted the 1925 All-Woman Court at the State Bar of Texas 2026 Annual Meeting

By David A. Furlow



“[A]ll records were shattered,” proclaimed the *Dallas Morning News* on January 2, 1925, after Texas Governor Pat Neff provided a “healthy New Year gift of recognition to the woman barrister of today.”¹ Governor Neff made U.S., Texas, and judicial history by appointing three women to a special panel of the Supreme Court of Texas in *Johnson v. Darr*, 114 Tex. 516, 272 S.W. 1098 (1925), the “All-Woman Court” of 1925. It is still cited today in cases concerning burial insurance, property law, and recordation of instruments.² One hundred and one years after the All-Woman Court, our society reenacted it at the State Bar of Texas Annual Meeting in Houston.

Matthew Kolodoski, in his role as our Society’s Secretary, suggested that the Society present a re-enactment to carry out our Society’s mission of educating the public about the history of the Texas Supreme Court, the appellate judiciary, and Texas law. Executive Director Sharon Sandle

secured the State Bar's cooperation. The re-enactment was extraordinary: three female Justices of the Texas Supreme Court portrayed the 1925 All-Woman Court's three Special Justices. SCOTX Senior Justice Debra Lehrmann acted as Special Chief Justice Hortense Sparks Ward. SCOTX Justice Jane Bland played Special Justice Hattie Henenberg of Dallas. And SCOTX Justice Rebeca A. Huddle portrayed Special Justice Ruth Virginia Brazzil of Galveston.

Kent Rutter, a Trustee of the Society, evoked the memory of J. W. Morrow, of Neill, Armstrong & Morrow El Paso, for Plaintiffs in Error, W.F. Johnson, *et. al.* Our Society's President-Elect, Mark Trachtenberg, represented Volney Brown, of Goggin, Hunter & Brown El Paso, who presented oral argument for Defendants in error J. M. Darr and Woodmen of the World, Trustees. Acting as Texas Supreme Court Clerk Fred Connerly, I presented a PowerPoint that placed the panel in its historical context. Then-President Jasmine S. Wynton and then-President-Elect Alia Adkins-Derrick presided over the program.

The Society based the program on court records from an El Paso County District Court, the El Paso Court of Civil Appeals, and original pleadings, motions, and correspondence among the Texas Supreme Court Clerk's Office, as well as unpublished archival documents and original photos, we crafted a script that reflected an oral argument that went un-transcribed in 1925. To prepare for oral argument, Justices Lehrman, Bland and Huddle, and appellate advocates Kent Rutter and Mark Trachtenburg, studied the decisions in the case, as well as original case records preserved at the Texas State Library and Archives Commission in Austin.

The case before the court concerned whether trustees of the Woodmen of the World owned two tracts of land in El Paso or only one. In 1922, the 41st Judicial District Court of El Paso County granted the Woodmen trustees clear title to one of the two tracts following a bench trial based on an agreed statement of facts. The trial judge memorialized his decision in findings of fact and conclusions of law. W.T. Johnson, *et al.*, acting as one of the Woodmen's trustees, appealed to the El Paso Court of Civil Appeals to recover the other tract of land. J. W. Morrow, of Neill, Armstrong & Morrow El Paso, represented the Plaintiffs in Error, W.F. Johnson, *et. Al.* Volney Brown, of Goggin, Hunter & Brown El Paso, presented oral argument for Defendants in error J. M. Darr and the Woodmen. Because of the agreed record, questions of law predominated.³

The appeals court reversed the trial court. Then Plaintiffs in Error J.M. Darr, *et al.*, brought the case to the three-man Texas Supreme Court on February 18, 1924.⁴ The case languished for almost a year because it presented a problem to the male Supreme Court justices. Woodmen of the World was a fraternal organization and mutual insurance company whose membership included many prominent and politically powerful men.

In 1924, that large group of men with Woodmen burial policies included all three of the Texas Supreme Court's then-sitting Justices. Recognizing that they could not properly adjudicate a case that affected their own financial interests, all three Justices of the 1924 Texas Supreme Court recused themselves on March 8, 1924. That recusal decision raised an important question: who would decide the El Paso case that raised important issues about burial policies, property rights, and recordation statutes.

Hortense Sparks Ward drafted and lobbied for the Hortense Ward Act, also known as the

Married Woman's Property Law when passed by the Legislature in 1913. She demonstrated keen political acumen.⁵ On the day her bill came up for consideration in the Texas Senate, Ward and her friends delivered red carnations to each senator, causing some of the men to change their votes.⁶ She then led a successful campaign for women's suffrage.⁷

By 1925, a small group of women attorneys were licensed to practice law in Texas, making it possible for a governor to appoint some of them to the highest court in Texas. Hortense Sparks Ward, the first woman to be licensed as an attorney in Texas, had by then become a leader of the suffrage movement. Her strong leadership and name recognition helped propel the suffrage issue to the forefront in Houston.

After Governor Jim "Pa" Ferguson vetoed a bill allowing women the right to vote, Hortense drafted a 1917 bill that permitted women to vote only in Texas primaries. Hortense brought her talents to bear in the campaign for the vote. Her strong leadership propelled suffrage to the forefront in Houston. During the 1918 primary elections, Hortense urged the registration of female voters by writing newspaper articles and a pamphlet that was distributed statewide to inform women that they had only seventeen days to register to vote for the primary elections, the only voting right women were then accorded under Texas law.⁸ Other women followed Hortense Sparks Ward's lead by attending law schools, supporting enactment of statutes and the ratification of constitutional amendments extending suffrage, and registering to vote.

Governor Pat Neff decided that the time had come to appoint women



The Woodmen of the World provided burial policies to men, including all three members of the Cureton Court.



On March 8, 1924, Chief Justice Calvin M. Cureton, Justice William Pierson, and Justice Thomas B. Greenwood recused themselves in *Johnson v. Darr*, an appeal from a 1923 El Paso Court of Civil Appeals decision.

The panel reflected the rise of women's rights. Hortense Sparks Ward, the first licensed woman attorney in Texas, won the suffrage campaign in 1919, earning the Suffragettes' Loving Cup. Beside it is her *Johnson v. Darr* gavel.



to serve on a special panel of the Texas Supreme Court. He announced his selection of three women to serve on a special recusal panel. Unfortunately, Governor Neff's staff failed to ask two of the appointees—Nellie Robertson of Granbury and Edith Wilmans of Dallas—whether they had gained seven years of legal experience before agreeing to serve as Special Supreme Court Justices. The Texas Constitution required seven years' prior experience as attorneys to serve on the Court. It soon became apparent that two of the Special Justices Governor Neff first appointed could not legally preside over proceedings in *Johnson v. Darr*.

Governor Neff returned to the drawing-board and commenced to select a new panel of women who satisfied the Texas Constitution's legal requirement to serve as Special Justices. He did not start from scratch, however, because he had made a good choice with Hortense Sparks Ward of Houston. In 1910, Ward had become the first woman to pass the Texas bar exam.⁹ As former Texas Supreme Court Chief Justice Jack Pope observed during a Friends of the State Library ceremony in Austin: "The first of her great achievements was to study and become the first woman in Texas to pass the bar exam. A second accomplishment was her enrollment as the first lady member of the State Bar of Texas, back when it was a voluntary bar."¹⁰

At the time of Neff's appointments in 1925, fewer than ten women in Texas had the seven years of experience necessary to serve on the Texas Supreme Court. After Robertson and Wilmans withdrew their names, Neff made substitute appointments to serve as associate justices: Ruth V. Brazzil of Galveston and Hattie L. Henenberg of Dallas. Ward became special chief justice and her colleagues became special associate justices. A trailblazer, Henenberg had the added distinction of

Governor Pat Neff, a Progressive who had appointed women to state boards, decided to appoint America's first all woman state supreme court.



Governor Neff's first panel included Special Chief Justice Nellie Robertson, Special Justice Edith E. Wilmans, and Special Justice Hortense Ward.



From left: Hattie Henenberg, Hortense Ward, and Ruth Brazzil comprised the Texas Supreme Court's All-Woman Texas Court in 1925.

being the first Jewish member of the Texas Supreme Court. Admitted to the State Bar in 1916, she ran the Dallas Bar Association's Free Legal Aid Bureau in 1924-1925. Brazzil played a prominent role in leading South Texas women into social reform movements. Admitted to the bar in 1912, she familiarized herself with Texas property law as the assistant treasurer and assistant general manager of the American National Life Insurance Company in Galveston.

The three special justices first decided to hear *Johnson v. Darr*, granted writ, and then listened to oral argument. On May 23, 1925, the all-woman court affirmed the decision of the El Paso Court of Civil Appeals.¹¹ Ward wrote the opinion, while her colleagues Brazzil and Henenberg wrote concurring opinions.¹² In June 1925, the court overruled a motion for rehearing. The story of the All-Woman Court appears in many publications, including many articles in this *Journal*. The Society re-enacts this historic courtroom drama because of its importance to the history of the Texas Supreme Court's jurisprudence, Texas law, and women's rights.¹³

The Society brought those facts to life by dramatizing the All-Woman Court on June 12, 2026. The genesis of that program was the development of a script based on the briefs and the legal issues that special panel decided in 1925. Next came the preparation of a PowerPoint that showcased the background and procedural history of the case. But the most important development came when Senior Justice Debra Lehrmann, Justice Jane Bland, and Justice Rebeca A. Huddle agreed to represent the All-Woman Court's Justices at the State Bar Annual Meeting.

For twenty minutes Mark Trachtenberg and Kent Rutter presented oral argument on the



From left: Texas Supreme Court Justice Jane Bland, Senior Justice Debra Lehrmann, and Justice Rebeca A. Huddle began the program by representing the three Special Justices of the All-Woman Court.



Mark Trachtenberg (left) and Kent Rutter



Kent Rutter presents oral argument to Texas Supreme Court Justice Jane Bland, Senior Justice Debra Lehrmann, and Justice Rebeca A. Huddle.

key issues of the case. Justice Bland, Senior Justice Lehrmann, and Justice Huddle questioned the oral advocates about the key questions the three All-Woman Court panelists addressed in 1925. Afterwards, each Justice announced her own decision, reading from the separate decisions the three Special Justices wrote in 1925.

"I'd like to thank this Society for doing this," Senior Justice Lehrmann declared while referring to her colleagues Justice Bland and Justice Huddle. "Women have come so far since this [1925] decision. The honor of working with these two people is just more than I can say. They're brilliant, they're hard-working, they're studious, they're thoughtful. When we do disagree on the law, and it's really not that frequently, it's always done in a very respectful manner, in a way that I think you would be very proud of what goes on in that conference room. I just want to take this point of privilege to thank my two colleagues for being such wonderful people to be able to have this opportunity to work together as we do on these important cases affecting the people of this state."

The three Justices, and other participants in the program, then took questions from the audience, which was substantial. Before the end of the meeting, Matthew Kolodoski unveiled the new Texas Supreme Court Historical Society banner that will appear in the Society's future Texas State Historical Association annual meetings and State Bar programs.

The Society recorded the event, which will appear in the future on the Society's John Hemphill YouTube channel.



Matthew Kolodowski

Endnotes

- ¹ A previous version of this article appeared in 2016 as a preview to the Texas Supreme Court Historical Society's reenactment of the All-Woman Court at the State Bar of Texas's 2016 Annual Meeting. See David A. Furlow and Lynne Liberato, "History Revisited: The 1925 all-woman court will be reenacted at the State Bar of Texas Annual Meeting," *Texas Bar Journal*, 79, No. 5 (May 2016): 357-59.
- ² James L. Haley, *The Texas Supreme Court: A Narrative History* (Univ. of Tex. Press 2013), 168.
- ³ Brief for Plaintiffs in Error, *J.M. Darr, et al., Trustees, etc.*, filed August 8, 1923, in the 8th Court of Civil Appeals in El Paso, p. 1 (Statement of the Nature and Result of the Case).
- ⁴ Cover, *J.M. Darr, et al., Trustees, etc.*, case file from the Clerk's Office, 8th Court of Civil Appeals, El Paso, available at the Lorenzo de Zavala State Archives and Library Building in Austin.
- ⁵ Michael Arians, "The Legal Status of Women in Texas, 1900-25," paper presented at the Texas State Historical Association Annual Meeting (Austin 2004); Haley, *Texas Supreme Court*, 146, 278.
- ⁶ Barbara Karkabi, "Judge O'Connor's nomination reminds us: Once Texas had an all-woman Supreme Court!" *Houston Chronicle* (July 13, 1981), Sec. 4, at 6.
- ⁷ Debbie Mauldin Cottrell, "All-Woman Supreme Court," *Handbook of Texas Online* (June 9, 2010), accessed July 30, 2026, <https://www.tshaonline.org/handbook/entries/all-woman-supreme-court>.
- ⁸ "25,000 Women March for the Right to Vote," *Univ. of Houston Digital Lib'y*; Janelle D. Scott, "Local Leadership in the Woman Suffrage Movement: Houston's Campaign for the Vote 1917-1918," 12 *Houston Law Review*. 1, 10-13 (1990).
- ⁹ Haley, *Texas Supreme Court*, 146; Betty T. Chapman, *Houston Women: Invisible Threads in the Tapestry* (Houston: Donning Co. Pubs. 2000), 93-94.
- ¹⁰ Texas Supreme Court Justice Jack Pope, *Chief Justice Hortense Sparks Ward*, Chair Presentation Ceremony at the Friends of the State Law Library (Nov. 16, 2000), 1.
- ¹¹ *Johnson v. Darr*, 114 Tex. at 527, 272 S.W. at 1102 (1925); Haley, *Texas Supreme Court*, 167-68.
- ¹² *Johnson*, 114 Tex. at 527-28, 272 S.W. at 1102-03 (Judge Brazzil's Concurrence); 114 Tex. at 528, 272 S.W. at 1103 (Judge Henneberg's Concurrence).
- ¹³ See, e.g., Linda C. Hunsaker, "Family Remembrances and the Legacy of Chief Justice Hortense Sparks Ward," *Journal of the Texas Supreme Court Historical Society*, Vol 4, No. 4 (Summer 2015): 51-61; Linda Bray Chanow, "Hortense Sparks Ward's Spirit Shines on Through the University of Texas Center for Women in Law," *Journal of the Texas Supreme Court Historical Society*, Vol 4, No. 4 (Summer 2015): 97-102; Justice Eva Guzman and Kent Rutter, "Women and the Texas Supreme Court," *The History of Texas Supreme Court Jurisprudence* (Austin: State Bar of Texas CLE, April 11, 2013); David A. Furlow, "Taking the Law into their Own Hands: Hortense Sparks Ward, Alice S. Tiernan, and the Struggle for Women's Rights in the 1910 Harris County Courthouse," *Houston Bar Ass'n Appellate Lawyer* (Sept. 2013).

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Supreme Court of Texas Mourns the Passing and Honors the Life of Justice Ruby Kless Sondock

On July 22, 2026 the Justices of the Supreme Court of Texas expressed their sorrow at the passing of former Justice Ruby Kless Sondock, a pioneering jurist whose distinguished service to the people of Texas spanned many decades.

Justice Sondock, who was honored by the Court earlier this year on her 100th birthday, passed from this life on July 21, 2026. Appointed in 1982 by Governor William P. Clements, she was the first woman in Texas history to serve on the Supreme Court of Texas in regular service.



Justice Sondock devoted her life to the law and to the fair and equal administration of justice. Her courage, intellect, and unwavering commitment to excellence inspired generations of Texas lawyers and judges. Her legacy lives on in the countless Texans she inspired and in the judiciary she helped shape.

Justice Sondock's historic legal career began before she graduated as valedictorian of the University of Houston Law Center's 1962 class. She initially pursued a legal education with the aim of becoming a secretary, but she passed the bar exam before graduation and began practicing law with a prestigious Houston law firm even before she finished her degree. She argued a case before the Supreme Court of Texas during her first year of practice.

Throughout her career, Justice Sondock achieved a series of historic firsts. After serving as judge of the Harris County Domestic Relations Court, she became the first female district judge in Harris County when Governor Dolph Briscoe appointed her to the newly created 234th District Court. In 1982, Governor William P. Clements, Jr. appointed her to the Supreme Court of Texas, making her the first woman ever to serve on the Supreme Court of Texas in regular service. She later returned to the 234th District Court, where she served with distinction until her retirement from the bench in 1988.

Justice Sondock's influence extended far beyond her judicial service. She remained active in the legal community for decades, mentoring young lawyers and judges, participating in continuing legal education programs, and supporting organizations dedicated to improving the administration

of justice. She was a familiar and welcome presence at Supreme Court events, where her wisdom, warmth, and graciousness inspired all who had the privilege of knowing her. Earlier this year, the Supreme Court proclaimed April 26, 2026, as “Justice Ruby Kless Sondock Day” in celebration of her 100th birthday and in recognition of her extraordinary contributions to the law and the State of Texas.

“The Court mourns Justice Sondock’s passing and honors her extraordinary life of service,” Chief Justice Jimmy Blacklock said. “We extend our condolences to her family, her friends, and the many Texas lawyers and judges who mourn her passing and celebrate the life she devoted to the pursuit of justice under the law for every Texan.”

A moving feature article from the Fall 2022 Issue of this Journal, “Justice Ruby Sondock: Our Mentor, Colleague, and Friend” by Steven Selsberg, Esq., and Chief Judge Lee H. Rosenthal can be found [here](#).

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2026-27 Membership Upgrades

The following Society members have moved to a higher Membership category since June 1, 2026.

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Hon. Jeff Boyd

GREENHILL FELLOW

Randall Chapman

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2026-27 New Member List

The Society has added 34 new members since June 1, 2026. Among them are 21 Law Clerks for the Court (*) who will receive a complimentary one-year membership during their clerkship.

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