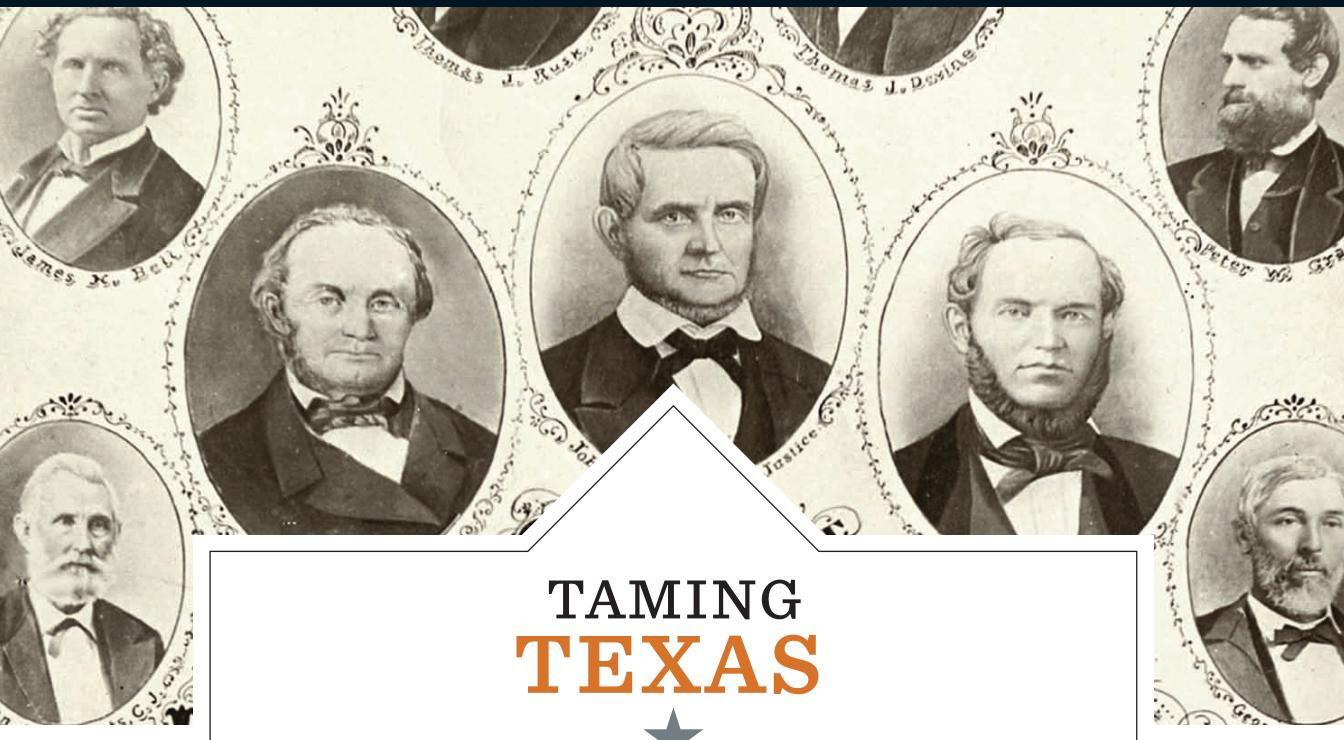
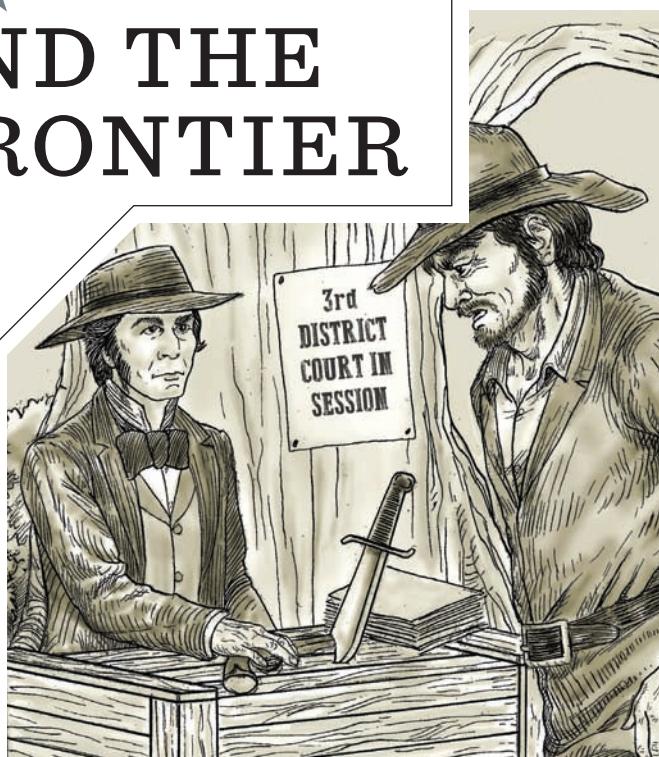


JAMES L. HALEY & MARILYN P. DUNCAN

FOREWORD BY CHIEF JUSTICE NATHAN L. HECHT



TAMING  
**TEXAS**  
★  
LAW AND THE  
TEXAS FRONTIER



TEXAS SUPREME COURT HISTORICAL SOCIETY



TAMING  
**TEXAS**

LAW AND THE  
TEXAS FRONTIER



BY JAMES L. HALEY  
& MARILYN P. DUNCAN

TEXAS SUPREME COURT HISTORICAL SOCIETY

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The Texas Supreme Court Historical Society—a nonpartisan, nonprofit organization—gathers and preserves the history and work of the Texas Supreme Court and the state's appellate courts. Through research and scholarship, the Society educates the public about the judicial branch and its role in the development of Texas.

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# Contents

|  |     |
|--|-----|
| FOREWORD by Chief Justice Nathan L. Hecht            | vii |
| PREFACE AND ACKNOWLEDGMENTS                          | ix  |
| INTRODUCTION. Taming the Texas Frontier              | 2   |
| PROLOGUE. Setting the Stage                          | 6   |
| <b>1.</b> Confusion at the Edge of the World         | 9   |
| <b>2.</b> Filibusters                                | 15  |
| <b>3.</b> The Law of Austin                          | 21  |
| <b>4.</b> Establishing the Texas Legal System        | 27  |
| <b>5.</b> Dangers to the Courts                      | 33  |
| <b>6.</b> The Need for More People                   | 39  |
| <b>7.</b> Frontier Defense                           | 47  |
| <b>8.</b> The Decisions of Statehood                 | 53  |
| <b>9.</b> Frontier Vigilantes                        | 59  |
| <b>10.</b> Range Wars                                | 69  |
| <b>11.</b> The Law and Cultural Conflict             | 73  |
| <b>12.</b> Closing the Frontier                      | 81  |
| EPILOGUE. Beyond the Frontier                        | 85  |
|  |     |
| <b>Frontier Spotlights</b>                           |     |
| <i>Houston vs. Lamar: A Case of Broken Furniture</i> | 44  |
| Indian Warriors in a Texas Criminal Court            | 64  |
| The Buffalo Soldiers                                 | 66  |
| The Earliest Cowboys: Los Vaqueros                   | 78  |
|  |     |
| GLOSSARY   | 87  |
| INDEX  | 93  |
| ABOUT THE AUTHORS                                    | 96  |
| PHOTO AND ILLUSTRATION CREDITS                       | 97  |



# Foreword

I once watched a horse whisperer tame a young, wild mare. Foaled on the open range, she had run free until it came time to train her. Now she stood in a small holding stall. Bam! She furiously kicked the side. Yards away, safe behind a fence, I jumped back. Bam! She kicked again. And again. The gate flew open, and she came charging into the arena, all bucking and snorting, back arching, fiery-eyed, shaking her head, striding around the ring, stomping the ground, brimming with chaotic energy, daring anyone to approach.

The trainer stood in the center, a solitary, calm, commanding, two-legged stranger. She stared, turned and bolted, then stopped and stared again. Quietly, he laid a rope across the ground as she looked on curiously. In a few minutes, he taught her not to cross it, to stay on one side. Then he showed her the rope, stroking it over her side and legs, touching it to her face, overcoming her fear. Warily, slowly, her spirit calmed, she accepted a halter, she began to follow him.

She was more suspicious of a saddle, but after sniffing it and feeling it against her side, she allowed it to be laid on her back. And there she stood, head high, eyes bright, proud and still, now in control of the great spirit that had controlled her.

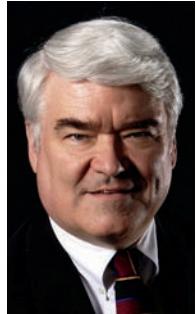
I thought of this experience reading this second book in Jim Haley and Marilyn Duncan's Taming Texas series. They tell of pioneers drawn to the Texas frontier by her offers of freedom and independence and the opportunities to own and settle the land, vast, open, and fertile. But Texas was also an empty wilderness, daring would-be settlers and civilization with Indian wars, conflicts with Mexico, harsh weather, difficult travel, and the constant threat of disease.

And Texas was lawless. Pioneers coming from states with

English and French legal systems confronted various Indian traditions, laws imported by early Spanish explorers, and laws Mexico was trying to impose on the resistant newcomers. All these inconsistent laws meant that Texas had no real law at all until independence and statehood.

Haley and Duncan write: "For law and order to take hold in any new country, it is essential that people accept it." As Texas law began to develop, Texas courts played a key role in securing the people's acceptance. Sheep herders and cattle ranchers warred. Claims arose over land, among businesses and customers, and against the railroads bringing their own problems along with the benefits of travel and commerce. Texas courts had to resolve these disputes and many others in ways that seemed fair, enforcing laws that seemed good. And courts had to assert their independence to protect the rights and liberties the pioneers treasured.

Law tamed the Texas frontier. This book tells how that happened, and how the courts helped.



**Nathan L. Hecht, Chief Justice**

*The Supreme Court of Texas*

# Preface and Acknowledgments

This second book in the Taming Texas series is an exciting addition to the Texas Supreme Court Historical Society's Judicial Civics and Court History Project. The first book, *Taming Texas: How Law and Order Came to the Lone Star State*, was published in January 2016 and became the centerpiece of the judicial civics curriculum presented to almost 10,000 seventh-grade Texas history students in the Houston area that spring. The Houston rollout of the Taming Texas project took 32 judges and 134 attorneys into classrooms in eight school districts. The response by teachers and students was extremely positive, and we intend to continue expanding the program in the coming years.

Many people and organizations have played a part in making the books and classroom program a success. Chief Justice Nathan L. Hecht of the Supreme Court of Texas wrote the forewords for both books in the series. His insights on Texas law and history capture the spirit and purpose of the books and of the Taming Texas project. Justice Paul W. Green, the Supreme Court's liaison to the Society, has offered his support in many ways over the course of the project. Justice Jeff Brown made several classroom presentations and introduced the project to the media during the pilot rollout in Houston. The Supreme Court's interest and support are greatly appreciated.

The Law-Related Education Department at the State Bar of Texas, represented by LRE Director Jan Miller, was an early partner in the Taming Texas project, and we continue to depend on her expertise. We also greatly appreciate the assistance of the State Bar and its Executive Director, Michelle Hunter.

The Houston Bar Association, under the leadership of 2015-16 President Laura Gibson and 2016-17 President Neil Kelly, was

instrumental in implementing the pilot classroom project in Houston. The HBA's Teach Texas Committee, co-chaired by Justice Brett Busby, Judge Debra Ibarra Mayfield, and David Furlow, and the hundreds of volunteer judges and attorneys from the HBA, are continuing to present the curriculum throughout the Houston area. We are especially appreciative of the efforts and leadership of Justice Busby in developing the Houston program and piloting the classroom presentations. Because of these efforts, the HBA received a Star of Achievement award from the State Bar for the Teach Texas project. We are asking other local bar associations around the state to provide similar support as the project expands over the next several years.

As the Texas Supreme Court Historical Society's History Education Committee Chair, I want to extend special thanks to the book's coauthors, Jim Haley and Marilyn Duncan. Jim and Marilyn have again captured the exciting history of Texas and the development of its laws in this latest book for seventh-grade students. Marilyn has been so helpful on every aspect of this project that we could not have done it without her.

The Taming Texas project would not be possible without the generous support of the Fellows of the Texas Supreme Court Historical Society. The Fellows, under the leadership of Fellows Chair David J. Beck, have provided the funding for these books. Their continuing interest and support are vital to the Society's mission of sharing the state's rich judicial history with Texans of all ages.

**Warren W. Harris**  
Past President and Charter Fellow,  
Texas Supreme Court Historical Society  
Bracewell LLP, Houston, Texas

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### **PREFACE AND ACKNOWLEDGMENTS**





TAMING  
**TEXAS**

LAW AND THE  
TEXAS FRONTIER



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# Introduction

## *Taming the Texas Frontier*

In the first book in the Taming Texas series, we painted a broad picture of the ways law and order evolved in Texas from the time of Spanish colonization to the present day. In *Law and the Texas Frontier*, we take a closer look at one part of that picture: the taming of the Texas frontier.

The word “frontier” refers to any part of a country or region that lies beyond the limits of a settled or civilized area. The early frontier of Texas was not really “unsettled,” since many different groups of Native American Indians lived there long before Spain claimed it. But in the eyes of the Spanish explorers and soldiers and missionaries who came to Texas, the Indians were definitely not “civilized.” Spain believed it was entitled to claim not only the land but also the lives of the uncivilized people who lived there. Catholic missionaries were sent to convert them from their traditional beliefs and lifestyles to a more European way of life. Natives who resisted were killed or driven away, even as European diseases, to which the Indians had no resistance, killed thousands of them. The long saga of how the Native Indian population was treated by immigrants from various countries—including eventually the United States—is one of the most tragic stories in Texas history.

The frontier of Texas kept changing over time. In the beginning it spanned the entire length of what today are Texas and New Mexico. As people settled in colonies, the spaces between them were parts of the frontier inhabited by Native Indian tribes. The southern area around the Rio Grande Valley and lower Gulf Coast became populated by Spanish and then Mexican colonists who built ranches, some of which grew to be huge. As United States

colonists began immigrating to east Texas in the 1820s, areas to the north and west remained a vast frontier that took many years to settle, both in the sense of settling differences through war and negotiation and in the sense of having people settle there. But the boundaries of the frontier changed as each new outpost pushed back its edge.



As we will see in this book, the desire to own and settle land was a driving force behind the growth of Texas from a frontier wilderness to a modern state. First Spain, then Mexico, then the Republic of Texas, and finally the State of Texas gave away huge amounts of land in order to attract settlers. The people who moved to Texas in the early years were a tough sort, willing to trade comfort and safety for land of their own and the freedom to manage it the way they wanted to. They were fiercely independent, but even independent-minded people needed laws to keep themselves and their families safe and to protect their property when disputes arose. It is no surprise that the laws that they came up with—and the way

## INTRODUCTION

they chose to enforce them—were their own blend of traditional laws and frontier-style justice.

In the first book in this series, we traced the roots of Texas laws and courts back to Spain and its legal system. Spanish civil law was in many ways better suited to frontier life and conditions than English common law, and those who made the laws in Texas recognized that fact very early on. One reason Spanish law worked better was that it helped early settlers keep their land. When husbands died—and many of them did because they were either soldiers or farmers defending their land from Indian attacks—their wives were able to keep the family's property and continue living on and working the land. Under the law of England and the United States, the property would go to the oldest son or to the deceased husband's oldest brother, not to his widow. Both the Republic and State of Texas chose to keep many of the property laws that Texans had enjoyed under Spanish and Mexican rule. On the frontier, women needed to be as tough and independent as men to survive, and Texas laws continued to help them be more equal partners.

Unfortunately, one area of Spanish law that did not carry over into early Texas law was the prohibition of slavery. Spain and then Mexico did not allow people to own other people as property. The Mexican government made an exception for Stephen F. Austin because its officials were desperate to have that part of their territory settled by someone other than the French. Slavery was legal in the Republic of Texas and then in the State of Texas up until the end of the Civil War. As we discover in this book, slaves and those who dared to speak out against slavery and secession during the Civil War were not protected from those who took the law into their own hands. The violence was especially bad in the more remote parts of central Texas, including the frontier areas populated by German Texans.

Between the end of the Civil War and the end of the nineteenth century—a period of only thirty-five years—the frontiers of Texas became settled and “civilized.” The Texas Rangers and U.S. Army

cleared the state of the Indian populations that had competed with Anglo and Tejano settlers for land. Thousands of new immigrants flocked to Texas, and many of their farms and businesses thrived, especially when new railroads opened up markets throughout the state and the rest of the country. The laws that governed this changing society were a mixture of those that had stood the test of time and those that were created as new kinds of crimes and disputes arose.

By the close of the 1800s, Texas was no longer a frontier state, but the legacy of living, working, and maintaining law and order on that vast frontier became an important part of Texas history and culture.



*This 1892 photo shows the new State Capitol rising above the rural landscape, a symbol of Texas progress.*

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# Prologue

## *Setting the Stage*

**A**s we learned in the first book of this series, the first Europeans to arrive in Texas had a very hard time just trying to survive. Early in the morning of November 6, 1528, eighty Spanish explorers washed ashore from a shipwreck, but eventually only four would survive to reach civilization again. One of the four, Alvar Nuñez Cabeza de Vaca, wrote a book describing their horrific experiences. It was the first book about Texas, and was published in 1542.

By then, other Spanish explorers were making their entradas (that is, journeys of exploration) into Texas: Coronado in the northwest in 1540, Alvarado in the northeast in 1542. In 1598 Don Juan de Oñate reached the site of El Paso after terrible hardship crossing the desert, and ordered a feast of Thanksgiving (twenty-three years before the Pilgrims' Thanksgiving in Massachusetts!).

When he reached the Rio Grande, Oñate thrust his sword into the sand and claimed the entire river basin for the king of Spain. Oñate realized, though, that just shouting their claim into the empty wilderness did not make it theirs in a meaningful way. Ownership that others would recognize required settling people onto the land, and with people would come law, and order, and an ongoing presence that other countries would respect. To that end, Oñate brought 400 men who would stay there and live, including 130 who brought their families and 7,000 stock animals to begin ranching.

Instead of entering the land that would become Texas, Oñate's colonizers continued north up the Rio Grande and settled what would become New Mexico. Texas was largely left to the Indians.



*Cabeza de Vaca's La Relación tells the story of his adventures among the Karankawa Indians.*

Spain claimed the vast territory, and more explorers poked into Texas with the twin goals of searching for gold and converting the natives to Christianity. Finding no gold, however, they lost interest in the Indians, and no real effort was made to settle the country, or even maintain a presence, for nearly a century.

Spain forgot that what really made a country theirs was to place their civilization on it. Without law and order, there is chaos, and a claim can be lost to someone stronger who does bring order. Spain learned this lesson in a big way with the arrival of competition in 1685.



*Don Juan de Oñate*

#### PROLOGUE



SANTA FE

NEW MEXICO

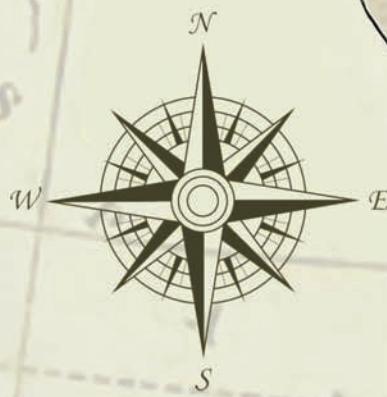
DON JUAN DE OÑATE  
EL PASO THANKSGIVING  
1598



CAPT. ALONSO DE LEON  
MISSION SAN FRANCISCO  
DE LOS TEJAS  
1690

CANARY ISLANDERS  
PRESIDIO DE SAN  
ANTONIO DE BEXAR  
1731

LA SALLE  
FORT ST. LOUIS  
1685

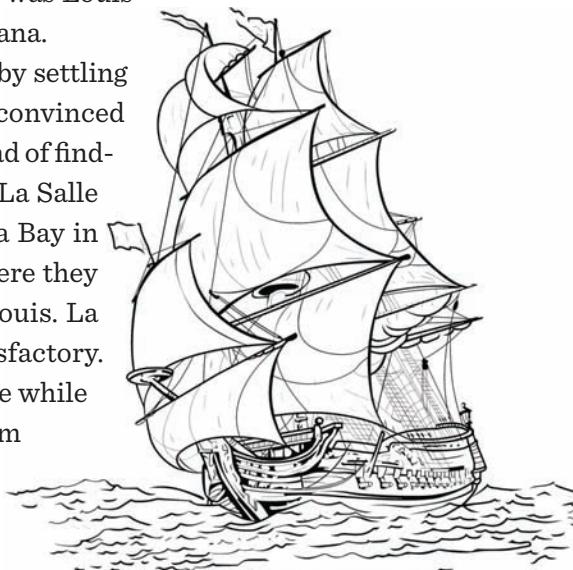


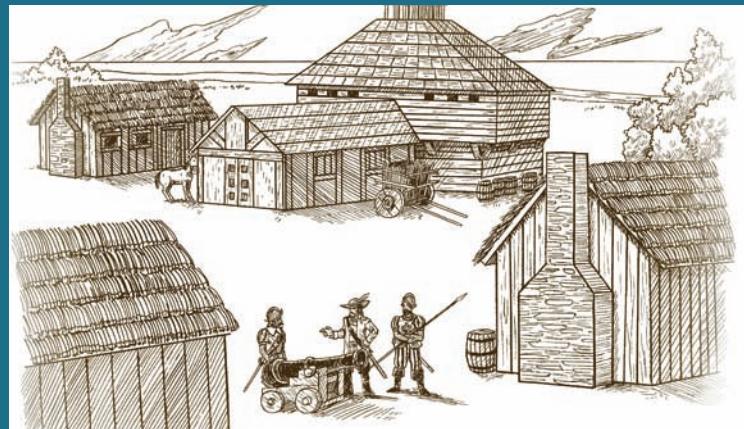
# Confusion at the Edge of the World

*The Spanish New World was so remote from its central government in Spain that those who settled there had to find their own way through the maze of conflicting cultures and laws.*

**D**uring all those years that Spain was establishing itself in the New World, Europe's other powers were busy establishing their own empires—England on the east coast of North America, the French in Canada, the Dutch on the Hudson River in what became New York. One French explorer was René Robert Cavelier, whose noble title was the Sieur de La Salle. After discovering the Ohio River, he floated down the Mississippi River from the Great Lakes all the way to the Gulf of Mexico. Similarly to the Spanish on the Rio Grande, he claimed all the land drained by the Mississippi for the king of France, who was Louis XIV, for whom the new land was named Louisiana.

Recognizing that a claim was strengthened by settling people on it, La Salle returned to France and convinced the king to give him a small fleet of ships. Instead of finding the mouth of the Mississippi River again, La Salle and his crew mistakenly landed in Matagorda Bay in 1685 on what is now the Texas Gulf Coast. There they made a settlement that they called Fort St. Louis. La Salle's "settlers," however, were far from satisfactory. Some of the men had been kidnapped in France while drunk in bars, and most of the women were from the lowest class, with little future in France and nothing to lose by going somewhere else. Settlement was not La Salle's highest priority; he was more interested in raiding New Spain and





*La Salle's doomed colony, Fort St. Louis*

taking over their silver mines. Far from being a man to establish law and order, La Salle treated his colonists so terribly that some deserted him and returned to France. Some of those who stayed eventually murdered him before themselves dying of disease or being killed by Karankawa Indians, who overran and destroyed their fort.

The Spanish did learn that the French had established an outpost in Texas, but eleven different expeditions failed to find the intruders. Then in 1689 Captain Alonso De León discovered a few French children living as Indian captives, and he found the ruins of Fort St. Louis and buried the bodies of the settlers who had died there.

The Spanish were shocked, and they developed a unique way to spread their civilization into Texas: by establishing religious missions to convert the native Indians. In 1690, De León returned, marching east from Mexico to establish the first of twenty-seven missions, San Francisco de los Tejas, near the Neches River in East Texas. There were four priests, led by Father Damián Masanet, and they were guarded by about a hundred soldiers.

The establishment of Spanish civilization in Texas began with

conflict, for the soldiers and the priests did not get along. Father Massanet found the local Indians so friendly that, “from the very first they welcomed us with so much affection and good will, that they could hardly do enough to please us.” However, the soldiers were a rough lot, given to bullying the natives. Massanet called the captain of his guard, Nicolás Prietto, “an incapable and undeserving old man,” and demanded that most of the soldiers be removed.

The mission failed when the Indians turned hostile, largely over their suffering



from diseases that the Spanish brought, to which they had no immunity. The natives believed that their sickness was caused by the baptismal waters, and the Indians forced the priests to leave on foot. They walked all the way back to Mexico, but they were lucky to escape with their lives.

The Spanish also now recognized the importance of settling civilians in the new province, but the government was not able to convince many of its citizens to move there. The Spanish had been in Mexico for nearly two hundred years, and they had built up a thriving civilization there. People were simply not interested in relocating to the outer wilderness, where they could starve or be killed by Indians. The Spanish had to recruit other settlers to come to Texas from another of their colonies, the Canary Islands off the west coast of Africa. In 1731, fifty-six Canary Islanders from fifteen families settled around the presidio of San Fernando de Béxar, and became the nucleus of what we now know as the city of San Antonio.

As we read in the first book of the Taming Texas series, the Canary Islanders often quarreled among themselves, but the legal system that they established finally gave the Spanish a permanent



*This replica of the Mission San Francisco de los Tejas stands near its original site in Houston County.*

presence in Texas. It also started the tradition in Texas law of placing common sense ahead of impractical rules and outdated customs.

In 1714 the French showed up again, in the person of Louis Juchereau de St. Denis (pronounced SAHN DeNee), a French-Canadian trader and explorer who had crossed the breadth of Texas from French Louisiana to San Juan Bautista, the main Mexican settlement on the Rio Grande, with goods to sell. Unknown to St. Denis, the Spanish had placed an embargo on (that is, outlawed) foreign trade, and he was placed under house arrest until they could decide what to do with him.

St. Denis was rather a charmer, and he helped himself during his captivity by courting, and later marrying, the granddaughter of the military commandant at San Juan Bautista, Captain Diego Ramón. By the time St. Denis was sent to Mexico City to explain himself, he was able to prove his good intentions. He was not only released but went into Spanish service, leading the expedition that founded six more missions in Texas. With the prospect now of becoming a wealthy trader, St. Denis went east again, and returned with a larger stock of merchandise. Unknown to him, however, France and Spain had gone to war while he was on the road, and as a Frenchman he was illegal again. He was arrested and sent back to Mexico City, but this time he escaped and fled to Louisiana to avoid prison.

Events in Texas were so chaotic that whoever was the first to receive news from Europe had a big advantage over new enemies. With this new war between France and Spain (known in Europe as the War of the Quadruple Alliance), the best informed man on the local scene was French Lieutenant Philippe Blondel, who commanded seven soldiers at the French outpost of Natchitoches, Louisiana. With this small force he captured the San Miguel de Linares mission at Los Adaes, which was the

*Louis Juchereau  
de St. Denis*



new Spanish provincial capital. The Spaniards had located it that far east to deliberately provoke the French. Blondel captured the mission's one soldier and one friar, and then decided to take their chickens as well.

As he tied the chickens to his saddle, their squawking and flapping spooked his horse, which threw him to the ground. In the confusion the Spanish friar escaped into the woods to spread the alarm to the other missions. Fearing a full invasion by the French, the Spanish withdrew from their other missions in East Texas and headed to San Antonio. While it seems ridiculous today, the outcome of the "Chicken War" was far from funny, for it prompted Spain to abandon its ambition to extend its territory into French Louisiana.



CONFUSION AT THE EDGE OF THE WORLD

CONSTITUCION  
*(política)*  
DE LA MONARQUIA  
*Española.*  
Promulgada en Cadiz  
á 19 de Marzo de 1812.



# Filibusters

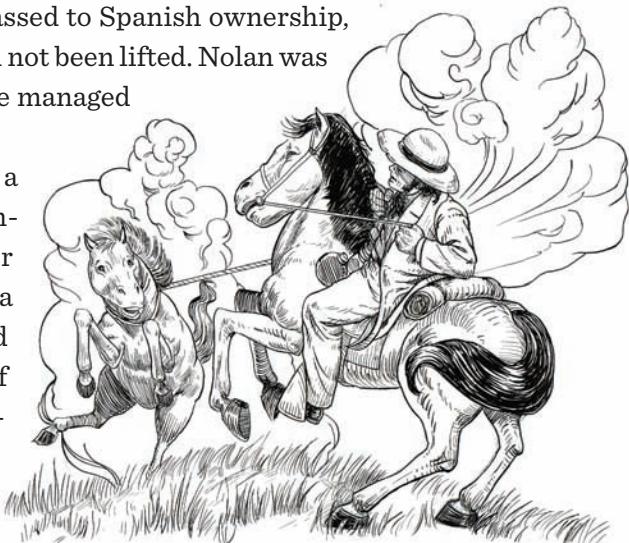
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*American businessmen try to split Texas off from the rest of New Spain, but Spanish officials' loyalty to their constitution allows Moses Austin to establish a colony of Anglo settlers in Texas.*

With the close of the 1700s, the stability of New Spain was complicated by the ambitions of certain businessmen in the United States. They were aware that the Spanish empire was in decline, and they began looking at Texas—vast, fertile, mostly empty, and poorly defended—as a place where they could carve out private little empires for themselves.

One such adventurer was Aaron Burr, who had been vice president of the United States. In league with a discontented army general named James Wilkinson, he began laying plans for a personal conquest of Texas. Wilkinson arranged a passport for his clerk and bookkeeper, Philip Nolan, to enter Texas, supposedly as a trader and to capture wild horses to sell in Louisiana. His real purpose was to scout the frontier with a view to invading it. It was 1791, and Louisiana had (briefly) passed to Spanish ownership, but the former trade restrictions had not been lifted. Nolan was arrested and his goods seized, but he managed to return with twenty-five horses.

On a second try, Nolan made a friendly call on the Spanish provincial governor and won approval for his “mustanging” operation. After a third foray, the Spanish were alerted that Nolan was preparing a map of Texas and consulting with an American boundary official. Still, Nolan





*Another filibuster was Peter Ellis Bean, who came to Texas with Philip Nolan's last expedition and spent the rest of his life moving between Texas, Mexico, and the United States.*

tried his luck on a fourth expedition. In March of 1801, Spanish troops from Nacogdoches found him and a well-armed force of men operating out of a fort they had built deep in central Texas, somewhere near where the town of Hillsboro is now. Nolan was killed in a firefight, and his followers spent years in a Mexican prison.

These Americans were called “filibusters,” a word that originally came from the Dutch word for “freebooters,” or pirates. The filibusters were men who tried to take control of land in a country that was not their own. Most of them came to a bad end, and they greatly increased Spain’s suspicion of American intentions. Another filibuster was James Long, who happened to be married to the niece of the mysterious General Wilkinson. His invasion was more direct and military in nature, but he was captured and also packed off to prison.

Spain’s weakness in the New World was complicated still further by violent changes in Spain itself. Napoleon Bonaparte’s conquests had plunged all of Europe into war, and his invasion of Spain forced King Ferdinand VII from his throne. Napoleon replaced him with his own brother, Joseph Bonaparte. Ferdinand was so widely hated that the Spanish nobility accepted the new Bonaparte king, but the people did not. To complicate matters further, the Spanish colonies felt the colonial grip from home weaken, and began a widespread movement for independence. The educated class in the Spanish New World had admired the spirit behind the American Revolution of 1776 and the French Revolution of 1789, and with the Spanish empire in decay, they began to envision their own democracies in the Western hemisphere. One example of this was the first attempt at a Mexican revolution in 1810, led by Padre Miguel Hidalgo y Costilla. Part of this revolt in Texas was known as the “Green Flag” Rebellion, which we’ll read more about later in this chapter.

With British help, Napoleon was driven from Spain in 1813 and

Ferdinand VII was restored, but he had to agree to a liberal constitution that limited his powers, which had once been absolute. Ferdinand despised the new constitution, but its effect in the Americas was to make Spanish rule more acceptable. Royalist armies stamped out the independence movements for the time being, including those in Mexico and Texas.

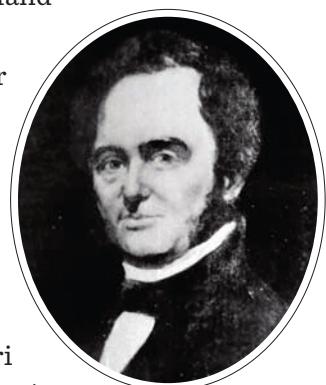
In 1817 a tough, highly decorated Spanish soldier, Antonio María Martínez, was appointed governor of Texas. Late in 1820 an older American businessman presented himself to Martínez in San Antonio—without an invitation, which in that culture was very rude—with a scheme to settle American colonists on vacant land in Texas.

This brash American was Moses Austin, originally from Connecticut, then Virginia and finally Missouri, an entrepreneur who had made and lost two fortunes. Most recently he was ruined in the financial Panic of 1819; he was fifty-nine years old and broke. He knew that the Spanish government had never been able to convince people to move from the Mexican interior into the wilds of Texas, and he thought up a plan to bring Americans to populate the wilderness. He planned to be paid with a vast tract of land from which he could make a new fortune.

Martínez thought that Austin was just another filibuster looking to get a foothold in Texas, and ordered him to get out of town. Deep in shock, his plan refused and his hopes blasted, Austin walked the plazas in San Antonio, trying to come up with a new idea. In one of the wildest coincidences in Texas history, Austin ran into an old friend, a Dutch adventurer (actually, an accused thief), Felipe Enrique Neri, who now went under the name of the “Baron” de Bastrop. (Actually, Neri wasn’t his real name either—it was Bögel, pronounced BURGLE.) They had not seen each other in nearly twenty years, but they still

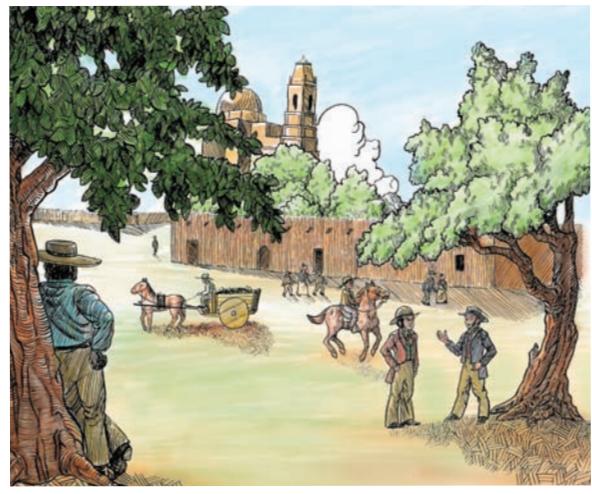


*King Ferdinand VII returned to the Spanish throne in 1813 under a new Constitution that limited his powers.*



*Moses Austin*

#### FILIBUSTERS



recognized one another. Bastrop had worked and charmed his way into the best society in the city, and he agreed to help Austin win permission for his colony.

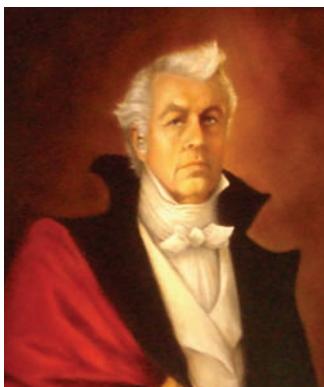
Bastrop knew that under Spain's new constitution, people who had once been Spanish subjects were given the right to resettle. Years before, Austin had developed a lead mine in Missouri, which was part of the Louisiana Territory when that land was briefly owned by Spain.

Bastrop wrote a formal petition on Austin's behalf to set up his American colony, pointing out that returning to New Spain was his constitutional right.

In the isolation of Texas, Governor Martínez could still easily have frustrated Austin's ambition, had he chosen to do so. But such was his respect for the law that he agreed to send Austin's petition up the chain of command for approval. Texas's military commander was another Spaniard (as opposed to native-born

Mexican), Joaquín de Arredondo. He was a crusty old soldier who in 1813 had crushed Texas's first attempt at independence, the Green Flag Rebellion (named that because the rebels carried a green flag). The army under his command killed more than a thousand rebels at the Battle of Medina River, and after that he executed hundreds more people he suspected of being involved in it, or were even just sympathetic. In fact he executed so many people that government offices in Texas could no longer be filled.

Arredondo, however, also recognized that Austin had, indeed, managed to squeeze into a loophole in Spain's new constitution. Austin had proven himself a loyal Spanish citizen during his time in Missouri, and his lead mine there



*Baron de Bastrop*

had helped develop the country. Martínez and Arredondo both had their doubts about Austin, and the Spanish constitution may not have envisioned a case like his ever coming up. However, both officers recognized—as the saying went—*la ley es la ley*, the law is the law, and they approved Austin’s plan.

As we will see, Mexico would soon win its independence from Spain, and Governor Martínez would surrender his powers to the first Mexican governor of Texas, Félix Trespalacios. He had been a conspirator in the Green Flag Rebellion but escaped the vengeance of General Arredondo. He later returned and restored himself to favor with the new government. He did, however, still have some tracks to cover. He had also conspired to conquer Texas with James Long, who now had been arrested and taken to Mexico City to plead his case. On April 8, 1822, before he could implicate the new Texas governor, Long was gunned down, many believe by a guard on Trespalacios’s payroll. Texas, it seemed, needed law and order more than ever.



# **TRANSLATION**

OF THE

LAWs, ORDERS, AND CONTRACTS,

## **COLONIZATION,**

FROM JANUARY, 1821, UP TO THIS TIME,

IN VIRTUE OF WHICH

**COL. STEPHEN F. AUSTIN**

ALL EXTRACTED AND SETTLED FOREIGN CHARTERS

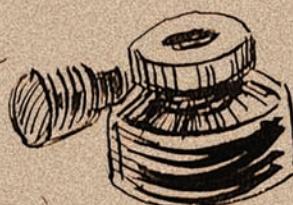
## **TEXAS,**

WITH AN  
EXPLANATORY INTRODUCTION

BY ANTONIO FILIPE DE AUSTIN, TIT.

PRINTED BY GODWIN & CO.,

Houston, 1829.



# The Law of Austin

# 3

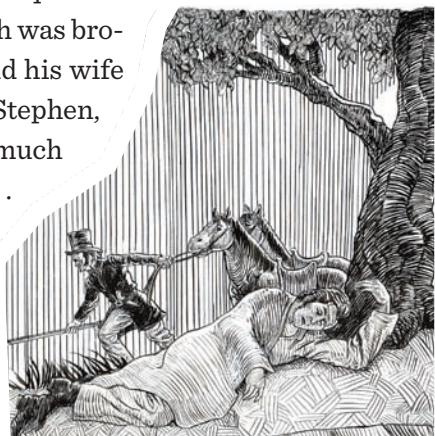
*The Mexican government gave Stephen F. Austin the authority not only to write the rules and regulations for his new colony but to enforce them.*

Moses Austin was overjoyed at the prospect of restoring the fortune he lost in the American recession, and he prepared to return home and start rounding up colonists. One aspect of Texas's vast distances and lawlessness was that travel was dangerous. People often rode in groups to have safety in numbers from Indians and bandits. Sometimes, however, bandits posed as fellow travelers. Austin selected a traveling companion who was also heading east, but once they were away from town, the man took everything he had, including his horse, food, gun, and ammunition, and left him in the wilderness in the dead of winter.

Moses Austin reached Natchitoches, which was the town in Louisiana that was the usual "jumping off" point for Texas. It took more than a week of travel on foot, and he was more dead than alive. Back home in Missouri, rather than rest he plunged into the effort to recruit colonists after he got word that his request had been approved by the Spanish government. His health was broken, however. Within weeks he was a dying man, and his wife recorded his last wishes in a letter to their older son, Stephen, in June 1821: "He called me to his bedside and with much distress . . . begged me to tell you to take his place . . . to go on with the business in the same way he would have done."

Stephen Austin was twenty-seven, and he had just fought through terrible times to find a decent job. Ever since he was a small child, however, his

*Moses Austin is robbed during the night on his way home to Missouri.*



*Stephen F. Austin*



father had always worn him down with his high expectations, and once again, Stephen obeyed. As he entered Texas, he was met at the border by a delegation of some of San Antonio's most important citizens, and it seemed like it might go well. But upon reaching San Antonio, he met with disaster. He learned that the Spanish government had been overthrown, and his contract for the colony was no good. Governor Martínez, who had not yet left office, was impressed by the younger Austin's sincerity and polite manners, and urged him to go to Mexico City and try to rescue the project.

Austin did not even speak Spanish at that time, but he quickly taught himself while on the road—being robbed by Indians on the way. Once in the Mexican capital, he began lobbying (that is, meeting with important people to win their support) for approval for his colony. Mexico City was in turmoil, however, as different factions struggled for power. Strongmen rose and fell, congresses met and then dissolved, and Austin had to start over again and again. He did win wide respect, at one point even submitting a draft of a Mexican constitution to stabilize the confusion.

Ultimately, Austin succeeded beyond what he had even dreamed. While he was horrified by the confusion he saw in Mexico City, the government knew very well that they were too busy trying to settle their own affairs, so they gave Austin almost complete authority over his colony. This meant that, legally, Austin was starting from scratch. Settlers had already begun streaming into his colony from the United States, so as soon as he returned he published thirty articles of civil regulations and twenty-six articles of criminal regulations.

*Whereas Stephen F. Austin was the first empresario from the U.S. to found a colony in Texas, Martín de León was the first and only Mexican empresario to do so.*



Austin was not concerned about keeping power himself—in fact he was somewhat careless in his regulations about how to even refer to himself. What mattered to him was sensible government.

Page 2 Stephen F. Austin

**BY STEPHEN F. AUSTIN,**

Civil Commandant of the Colony forming on the Colorado and Brassos Rivers, in the Province of Texas:—

Permission is hereby granted to

to emigrate and settle in the Colony forming by me, under the authority and protection of the government of New Spain, at the points above stated.

Said

required to comply with the general regulations hereunto annexed:

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*General Regulations relative to the Colony.*

1. No person will be admitted as a settler, who does not produce satisfactory evidence of having supported the character of a moral, sober, and industrious citizen.
2. Each settler must, when called on by the Governor of said Province, take the oath of allegiance to the government exercising the sovereignty of the country.
3. Six hundred and forty acres of land will be granted to the head of each family, and in addition to that, three hundred and twenty acres to a man's wife, one hundred and sixty acres for each child, and eighty acres for each slave; which land will be laid off in two equal tracts, one on the river in an oblong, the other is to be located so as not to interfere with the river lands; one of said tracts must be actually inhabited and cultivated by the person and family who has permission to settle it, within one year from the first of January 1822.—Twelve cents and ahalf per acre, must be paid me for said land, one half on receipt of title, the other half in one year after, which will be in full for surveying fees and all other charges—each settler will chose his own tracts of land within the limits designated by said Austin.
4. Mechanics and men of capital, will receive additional privileges in proportion to their capacity to be useful.
5. Each settler is required to report himself to me, or the officer who has charge of the Colony, immediately on his arrival, and to furnish a list of the number of his family, giving the names of his children and their ages, the number of negroes, designating those under twelve years of age, those over twelve and under twenty-one, those over twenty-one, and whether male or female; and if any of the family are mechanics to state what kind.

*In addition to his civil and criminal regulations, Stephen F. Austin wrote a set of general regulations for those who wished to settle in his colony.*

He created three districts, each governed by an *alcalde*, which was sort of a combination of mayor and justice of the peace. The *alcalde* could hear and judge local disputes, but the loser could appeal to Austin if the amount in question was more than \$25. Disputes of more than \$200 would go straight to him. Austin kept the Spanish model of trying to settle cases out of court. The presiding judge would first attempt to make a compromise, and then if he could not, either party could request arbitration by somebody else. Actual trials should be a last resort.

Austin's criminal regulations were similarly mild. Drunkenness and cursing were misdemeanors punishable by fines of one to ten dollars. Stealing was punishable by repaying three times the amount taken, whether money, goods, or stock. Several articles related to slaves and slavery.

Having to come up with his own published regulations was only

the beginning Austin's difficulties, for he had to find ways to finesse and tiptoe around a number of issues which were handled differently in Mexico than they were in the United States. Finding himself in the

middle of an empty frontier, he had to show some initiative.

Slavery was not legal in Mexico, and most of Austin's colonists were cotton planters who could not function without the labor of slaves. So, he worked a deal with the state legislature to consider slaves as bondsmen (servants who work without pay) for an extended period of service. Therefore, while his regulations referred to slaves, the higher government could read "indentured servant." Austin knew that Mexican law did not provide for juries, and juries were vital to the American concept of justice. That meant that as far as higher authority was concerned, it was Austin who pronounced verdicts, but Austin also allowed local trials to be tried by juries, and then he pronounced the verdict.

#### *A Few of Austin's Colony Criminal Regulations*

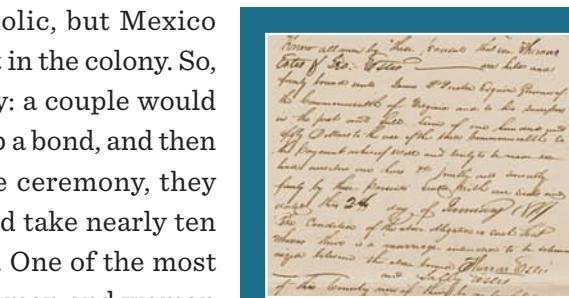
|  |  |
|--|--|
| <i>Crime: Swearing and drunkenness</i> | <i>Penalty: \$1-\$10</i>                     |
| <i>Crime: Stealing</i>                 | <i>Penalty: 3 x amt. taken, + hard labor</i> |
| <i>Crime: Gambling</i>                 | <i>Penalty: \$20-\$200</i>                   |

To own land, one had to become a Catholic, but Mexico made no provision for a priest to ever set foot in the colony. So, bond marriages became the order of the day: a couple would announce their intention to marry and put up a bond, and then when a priest was available to perform the ceremony, they would get their money back. In fact, it would take nearly ten years before a priest was assigned to Texas. One of the most severe of Austin's regulations was against a man and woman living together without being married, which carried a fine of up to five hundred dollars and a term at hard labor. However, since there was no priest, the law would not take effect until sixty days after marriage became available!

Mexican leaders, distracted as they were with their own crises, were generally satisfied with Austin's government. Austin proved his loyalty and won the trust of the Mexican government in various ways. An important one was when he raised a local militia to help quash a rebellion in the East Texas town of Nacogdoches in 1826.

Austin continued to believe that the disputes between Texas and Mexico could be worked out peacefully, but the divisions were too deep. The colonists were frustrated with a system of government that changed from a hopeful young Mexican democracy to a dictatorship under Antonio López de Santa Anna. Texas declared war on Mexico in March 1836 and won its independence in April.

Indeed, Austin fell in popular esteem because he remained too loyal to Mexico for too long. This made him sad and bitter; he died of pneumonia in December 1836, only eight months after the Republic of Texas was established.



*In Austin's Colony, couples signed a bond in the presence of the alcalde to make their marriage legal until a priest could give his blessing.*

*Stephen F. Austin's original grave in Brazoria County. His remains were later removed to the State Cemetery.*



CONSTITUTION  
OF THE  
REPUBLIC OF TEXAS

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*We, the People of Texas, in order to form a Government, establish justice, ensure domestic tranquility, provide for the common defence and general welfare; and to secure the blessings of liberty to ourselves, and our posterity, do ordain and establish this Constitution.*

...

ARTICLE IV.

*SEC. 1. The Judicial powers of the Government shall be vested in one Supreme Court, and such inferior courts as the Congress may, from time to time, ordain and establish.*

...

*SEC. 4. The judges, by virtue of their offices, shall be conservators of the peace, throughout the Republic. The style of all process shall be, "The Republic of Texas"; and all prosecutions shall be carried on in the name and by the authority of the same, and conclude, "Against the peace and dignity of the Republic."*

...

*SEC. 13. The Congress shall, as early as practicable, introduce, by statute, the common law of England, with such modifications as our circumstances, in their judgment, may require; and in all criminal cases the common law shall be the rule of decision.*

# Establishing the Texas Legal System

*Like many good intentions, the Republic's simple system of courts looked good on paper but did not always work the way it was supposed to.*

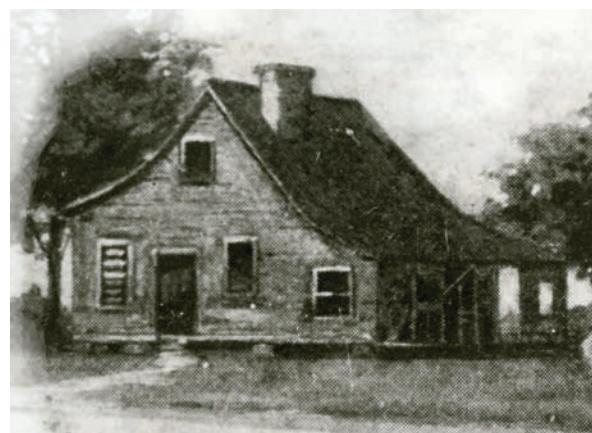
One of the most important jobs for any new country to tackle is to set up a justice system of laws and courts. With the success of the revolution, Texas leaders had to make many decisions about how that would happen in Texas.

The Republic's Constitution was written at the Convention of 1836. They were meeting even as Santa Anna invaded Texas, besieged and stormed the Alamo, and prepared to carry the war farther east. Therefore the Constitution was written in a hurry, so the delegates could get away before they could be surrounded and attacked. So, this document outlined the government that a free Texas would have, in only the shortest and most general way.

After independence was won at the Battle of San Jacinto, Texas leaders established their capital nearby, at the little town of Columbia. During his invasion, Santa Anna had burned the towns he passed through, but he had bypassed Columbia, so there were some buildings there that the government could rent for official business.

Almost everyone believed that Texas would join itself to the United States right away, so they intended to simply adopt that American system of courts and justice. They were shocked when the United States decided not to annex Texas. (Power in the U.S. Senate had

*The first Capitol building in Texas was a rented clapboard house in Columbia. It was there that the Republic Congress passed the laws to make the government run, including the court system.*



been equally divided between slave states and free states for many years, and to annex Texas as a slave state would have upset that balance.) Instead, the United States recognized the independence of the Republic of Texas. Usually this would have been great news, but what it meant was, the United States was not going to annex them any time soon, and Texas would have to take all the steps necessary to become an ongoing, independent nation.

To get courts set up, the Texas Congress passed a Judiciary Act in October 1836. The Republic's twenty-three counties were organized into four judicial districts, each of which had a presiding judge who would ride a "circuit"—that is, he would move his court regularly among the towns in his district. There would be a single chief justice who did not ride a circuit, and when he met with the four district judges to hear appeals and interpret laws, all of them together would be the Supreme Court and their decisions would be final.

*On the early Texas frontier, it was safer for judges and lawyers to travel together to the different towns where they held court.*

This sounded fine in theory, but in practice, the lawmakers did not take into account the vast distances of travel involved, the difficulties of transportation and weather, or the health of the judges when travel meant exposure to typhus, yellow fever, smallpox, and

other diseases. In fact, it took just over three years for the Texas Supreme Court to have its first real meeting, and by then the Court was on its third chief justice!

Traveling the roads and trails in Texas could be dangerous, so when it came time for the judges to actually ride their circuit and head to the next town, the whole court, including attorneys who had cases pending, would travel together for safety. One of those lawyers was Oran M. Roberts,

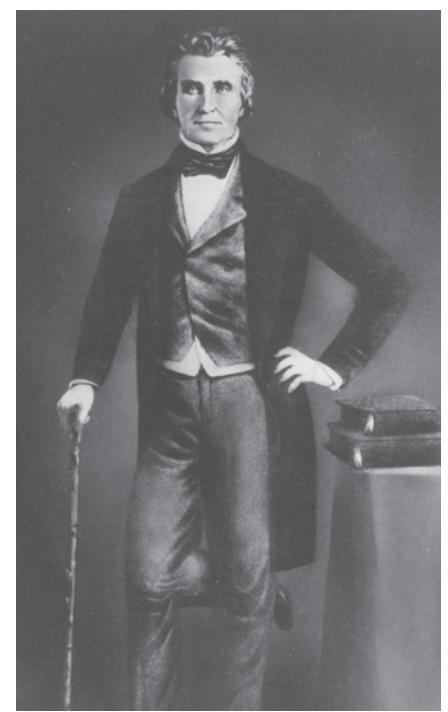


who later became a very important chief justice on the Texas Supreme Court.

Remembering those early days, he wrote that “it was not unusual to see a dozen or more lawyers and the judge mount their horses, with saddle-bags, blankets, and tie ropes, and . . . start on their journey around the district. As some of them would drop out of the company at different points others would fill their places, so that about an equal number of traveling lawyers . . . would be found in attendance at nearly every court.” This was how things worked throughout the years of the Republic and in fact continued until after the Civil War.

Not all parts of Texas were prepared to accept law and order, however, especially in the strip of land along the Louisiana border, between the Sabine and Neches Rivers. Because of an old boundary dispute between Spain and the United States, neither country enforced its laws in this area, and it became known as the Neutral Ground. It came to be settled by fugitives and lawbreakers of every kind. At the time of independence, many men there made their living by selling fake land titles, which resulted in a bloody feud known as the Regulator-Moderator War.

This lawless area became part of Texas’s Third Judicial District, and the judge elected to serve there was Robert McAlpin Williamson. He was a remarkable man. As a teenager in Georgia he was confined to bed for two years with what might have been polio, and from then on his right leg was bent back at the knee. He walked by means of an artificial limb attached to his knee, for which he got the nickname “Three-Legged Willie.” He refused to think of himself as handicapped. He used his time in bed to master languages, and he became a celebrated musician—and dancer. After he came to Texas he became a newspaper editor;

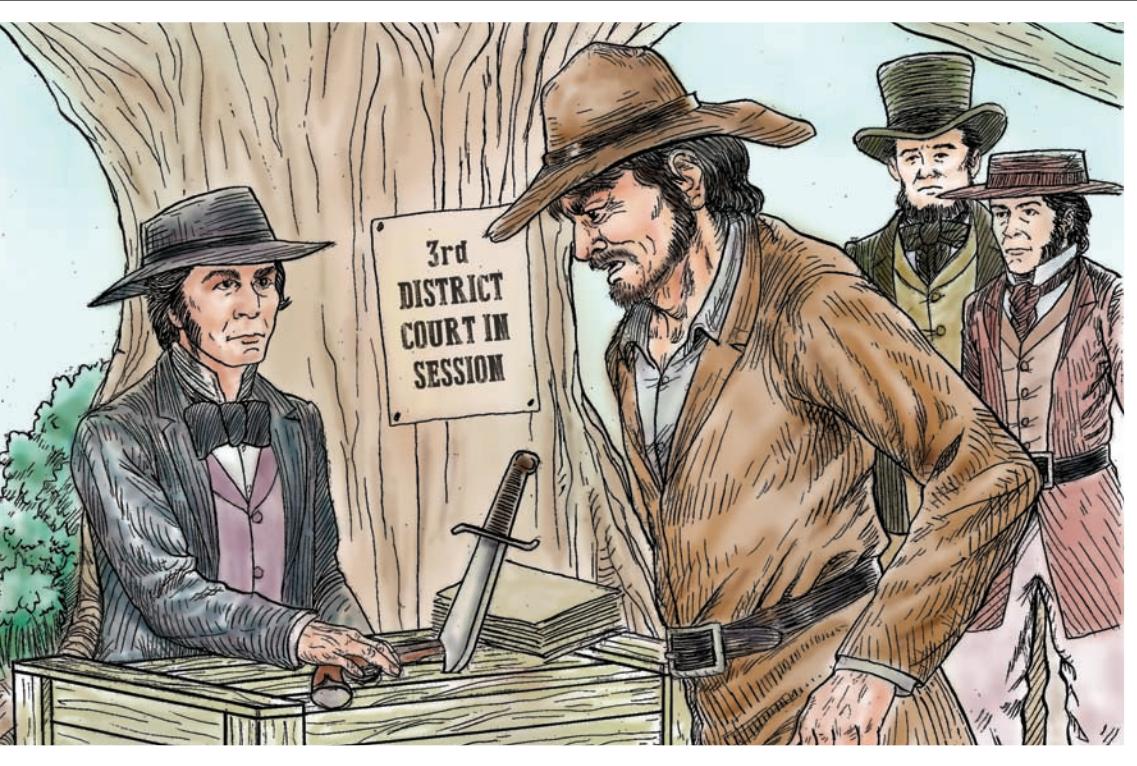


Judge Robert M.  
“Three-Legged Willie”  
Williamson

he was one of the first to call for independence from Mexico, and—wooden leg or no—he fought at the Battle of San Jacinto. He was pretty well afraid of nothing.

There was a famous story that when Judge Williamson set up the first court in the Third District behind a crate “bench” under an oak tree (the courthouse had burned down), his first case involved Regulators and Moderators. Doubting the ability of a court to actually give justice, one man thumped his Bowie knife into Williamson’s bench and said, “This, sir, is the law of Shelby County!”

Williamson calmly drew his pistol, laid it on the bench next to the knife, and said, “Then this, sir, is the constitution that overrules your law.” The case then proceeded without further disruption.





# UNDER CONSTRUCTION



# Dangers to the Courts

5

*Those who ran the new Republic's courts faced hardships at every turn as they tried to do their job on an increasingly dangerous frontier.*

For law and order to take hold in any new country, it is essential that people accept it. The feudists and fugitives in the Neutral Ground had been living by their own wits and weapons for so long, they did not believe at first that laws could be enforced. "Three-Legged Willie" Williamson made a start. A few years later, the Regular-Moderator War flared up again, and when ten of the leaders of each side were arrested, they were more convinced of the law's power. (Interestingly, their differences were settled in the old Spanish way, with peaceful negotiations.)

Early in the life of the Republic, an even greater danger was posed by its own army. Before fighting ever began in the Texas Revolution, Sam Houston and others had issued calls for volunteers to come from the United States, with a promise of free land for those who came to help Texas win its freedom. Thousands answered the call, but as it happened the revolution ended so quickly, many were caught on the road, or on ships, or were just arriving. Their blood was up and they were full of fight, but they had missed the war. Plus, some of these volunteer units were led by officers who had big ambitions for themselves, which they could not reach if there were no more fighting. One hot-headed officer in particular, Felix Huston, even wanted to lead an expedition against Mexico!

*This poster advertised that men who moved to Texas to fight in the war for independence from Mexico would receive large amounts of land for their service. Unfortunately, it was posted two days after the war ended!*



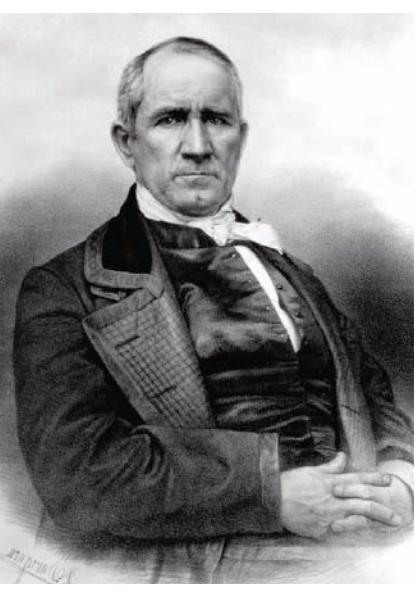
Emigrants who are desirous of assisting Texas at this important crisis of her affairs may have a free passage and equipments, by applying at the  
NEW-YORK and PHILADELPHIA HOTEL,

On the Old Levee, near the Blue Stores.

Now is the time to ensure a fortune in Land:  
To all who remain in Texas during the War will be allowed 1280 Acres.

To all who remain Six Months, 640 Acres.  
To all who remain Three Months, 320 Acres.  
And as Colonists, 4600 Acres for a family and 1470 Acres for a Single Man.

New Orleans, April 23d, 1836.



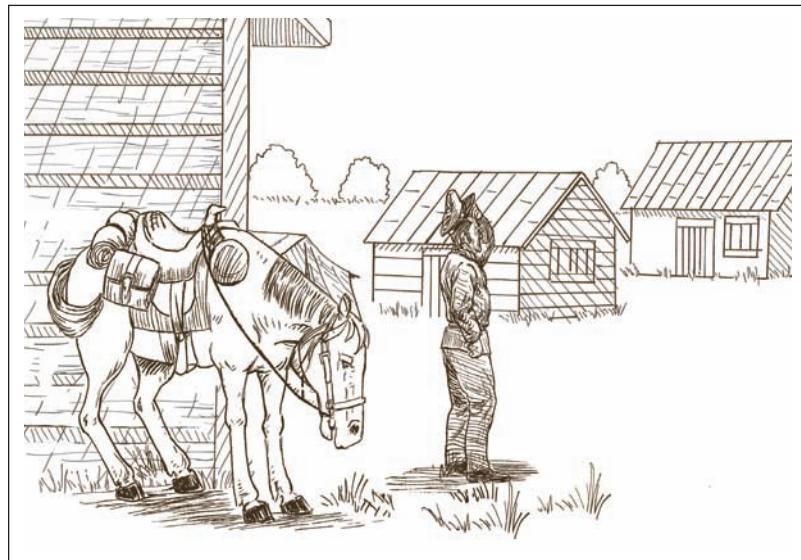
*President Sam Houston was a master problem solver.*

The situation was bad enough that the army refused to obey the temporary president, David G. Burnet. They were furious with him for refusing to hang Santa Anna, and elected their own officers instead of obeying those that Burnet sent. Things grew so bad that Burnet resigned two months early and turned the presidency over to Sam Houston, who was the first elected president.

The soldiers respected Houston for having won at San Jacinto. He ended the trouble by calling the most troublesome officer, Felix Huston, to the capital for a conference, and while he was in town, sent out the Secretary of War with secret orders to give immediate furloughs (that is, leaves of absence) to hundreds of soldiers and give them transportation back to the United States. By the time Huston got back to his base, there were hardly any soldiers left for him to lead. Thus, law and order, and probably the country itself, were saved by the new president's playing what was basically a dirty trick on the ambitious general!

Other dangers to the legal system were posed by the country's

*Republic Army officer and troublemaker Felix Huston was outfoxed by President Houston when most of his soldiers mysteriously left his camp to return to the United States.*



poverty. Then as now, it was possible for lawyers to make more money in private practice than in serving as judges, so it was hard to keep the best judges on the bench. At first, their salary was set at \$3,000 a year (about \$60,000 in today's money), which was quite generous. However, the president who followed Sam Houston, Mirabeau B. Lamar, spent the country into such debt that its money was almost worthless. After Lamar, Houston became president again, and he had to cut expenses to the bone. Judges' salaries were reduced to only \$1,750 a year, but often, they could not collect even that because there was no money in the treasury. One judge who quit went into private practice and made \$10,000 a year.

Other dangers to the judges were much more direct. San Antonio anchored the Fourth Judicial District, which took in most of West Texas, the area with the largest Hispanic population. The Congress selected John Hemphill, originally from South Carolina, to be the district judge. He was a brilliant choice, because as soon as he arrived in Texas he recognized the importance of Spanish law. He learned the language, mastered the Spanish civil law, and assembled a large library of Spanish law books, which made him unique among Texas judges.

Frontier danger came upon him in a surprising way. In March 1840, a large group of Comanche Indians came into San Antonio for the purpose of negotiating peace. A dozen chiefs filed into the Council House, which was where the court was located. The chiefs had promised to bring in all the white children they held as captives, but instead only brought in one, a girl named Matilda Lockhart who had been savagely abused. Matilda informed the Texas councilors that the Comanche held about fifteen more captives, but she had heard them say they were going to bring them in one at a time to get the best price for them.

The chiefs were told they were under arrest until all the white captives were brought in. A terrible fight broke out in which all

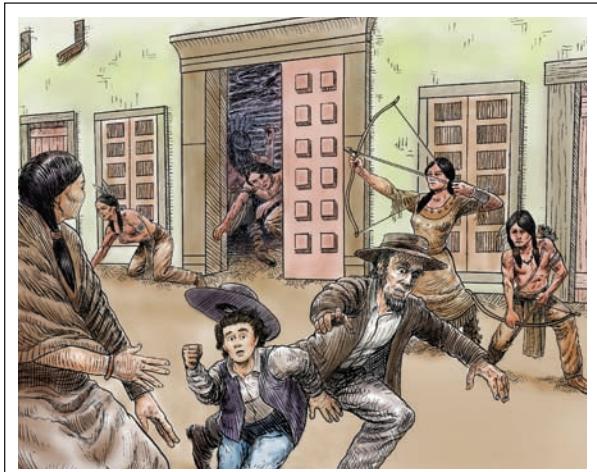
*District Judge (and future Chief Justice) John Hemphill was both well educated and well prepared for the dangers he faced in the frontier courts.*



the chiefs were killed—one at the hand of Judge Hemphill, who stabbed him with his Bowie knife. Hemphill was wounded, and distraught—he had no intention of killing anyone, but had struck only in defense of his own life.

Soon after, Hemphill was made chief justice of the Supreme Court, a post he held for eighteen years. The Fourth District judgeship was passed to Anderson Hutchinson, who was almost as highly qualified, having practiced law in Tennessee, Alabama, and Mississippi. Judge Hutchinson later had an escape even more desperate than Hemphill's.

After the Battle of San Jacinto, Santa Anna signed the Treaties of Velasco, which ended active warfare, but Mexico had never recognized Texas independence. During the three years (1839–41) of Mirabeau Lamar's

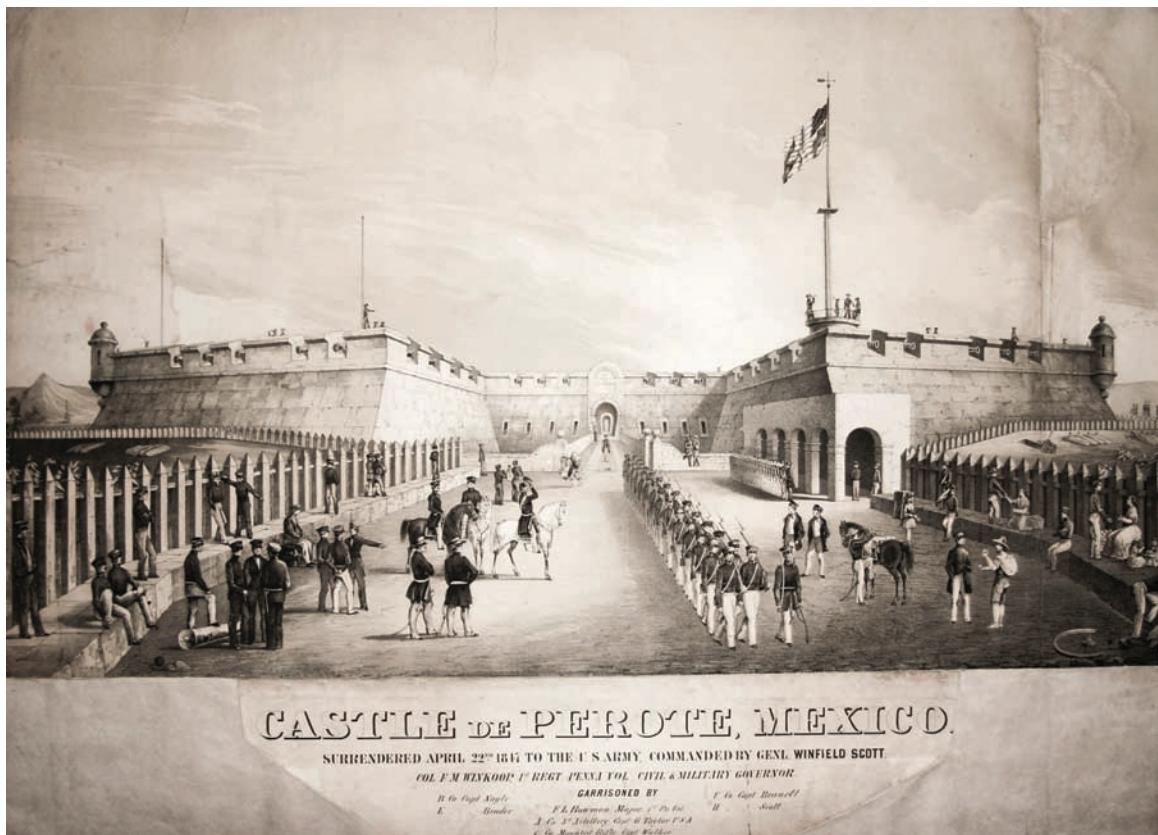


*The tragic Council House Fight took place in part because of the differences between Comanche and Anglo ways of negotiating agreements.*

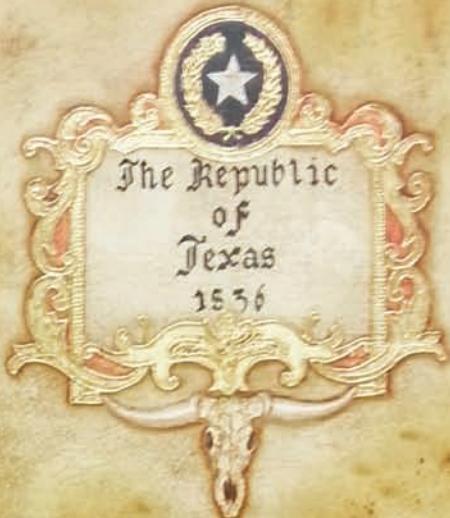
presidency, he provoked Mexico by renting the Texas Navy to rebels in Yucatán and trying to annex Santa Fé into Texas. In response to this, and also to keep up its claim to Texas, Mexico invaded Texas twice in 1842, once in March for just a few days, and again in September.

On September 11, a Mexican force under General Adrián Woll surrounded and captured San Antonio. Judge Hutchinson's court was in session when Mexican soldiers stormed in and took everybody hostage—judge, jury, witnesses, lawyers, everybody. They were marched all the way to Mexico City and thrown into the dungeons of the Perote Castle in Vera Cruz, where they stayed until American diplomats got them out about six months later.

All ways around, being a judge in early Texas was not for the faint of heart!



*Perote Castle, where Republic Judge Anderson Hutchinson and members of his court were held prisoner in 1842–43, was occupied by the U.S. Army several years later during the U.S.-Mexican War. This 1850 lithograph was based on an original sketch by a young volunteer soldier who arrived at Perote Castle soon after it was captured in 1847.*



# INDIAN TERRITORY

MEXICO  
TERRITORIO DE NUEVO

Wyoming  
Colorado

ARKANSAS

LOUISIANA



# The Need for More People

# 6

*Filling in the huge frontier spaces in Texas with new settlers meant giving them free land, and that meant making new laws governing the land grants.*

**A**t the time of independence from Mexico in 1836, the population of Texas was estimated to be about 30,000 Anglos, 3,500 Hispanics, 14,000 Native Indians, and 5,000 African Americans, most of whom were slaves but some of whom had been given their freedom or else arrived in Texas as free persons of color. This was not nearly enough people to sustain an economy large enough for Texas to take its place in the family of nations. The United States at that time had a population of 15 million, and the country had been building its economy for over fifty years.

So ironically, the new Texas government faced the same difficulty that the Spanish government and then the Mexican government had faced: how to fill the country up with a productive population. The government had no cash with which to reward people for coming to settle, and there was little in the way of a business economy to attract them. In fact, it sometimes happened that Americans who were interested in Texas came, got off the ship in Galveston or one of the other landing points, looked around and saw “nothing doing,” so they got back on the boat and went home!

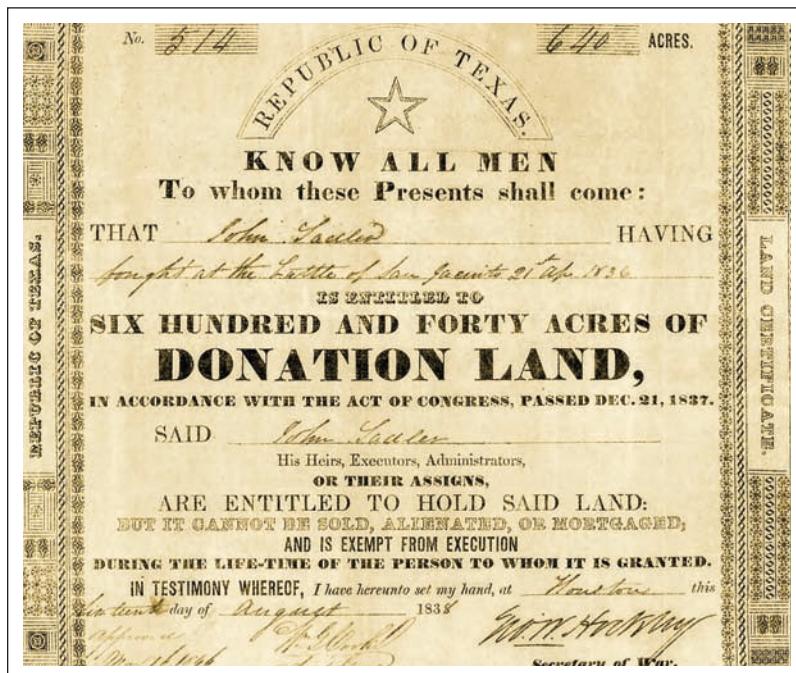
The only resource that the new Republic possessed was its land—hundreds and hundreds of miles of empty land. Those in power decided, as had Spain and Mexico before them, that it was worth it to give land away to

*(opposite page) This map shows how far north the border of the Republic of Texas extended.*

**REPUBLIC OF  
TEXAS, 1836  
POP: 38,500\***  
**\*Not counting  
Native Indians**

get people to live here. The government first turned its attention to paying the soldiers who had fought for Texas's freedom; there was no cash, so they were paid in land. The Texas Congress passed a law on December 21, 1837, giving every soldier and volunteer who fought at the Battle of San Jacinto a "donation" grant of 640 acres, or one square mile. Then, "bounty" grants of 640 acres were given to those who fought in the other battles of the revolution. For the six hundred or so who had been killed at the Alamo, or Goliad, bounty grants were awarded to their heirs.

Among those who came to Texas to claim their land was Elizabeth Patton Crockett, widow of David Crockett. She came with



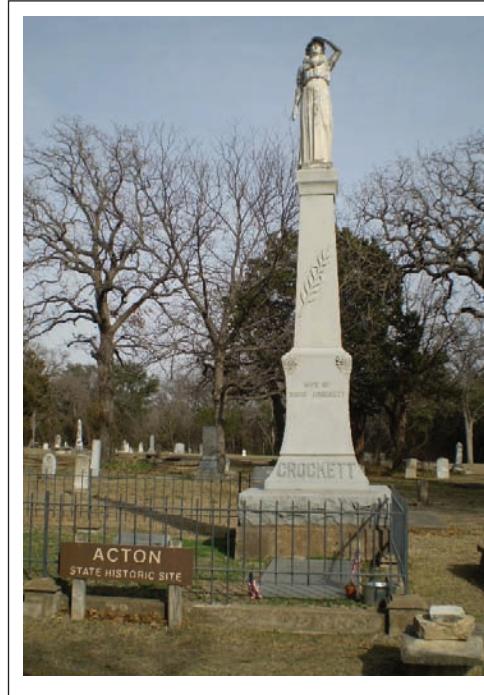
her grown children and their families, and settled on land near the town site of Granbury—thus realizing Davy Crockett's dream of resettling his family in Texas. With these and later laws passed in 1879 and 1881 (covering Texas Confederate veterans), Texas

gave away more than three million acres to its soldiers and their families.

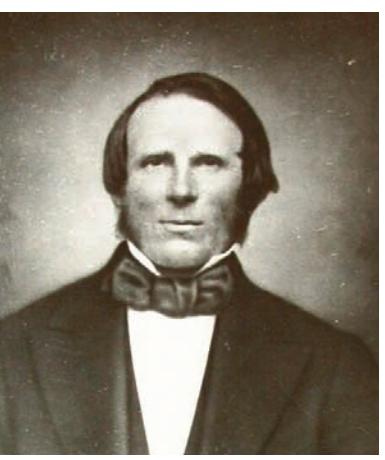
Then there was the matter of getting people to move here, or stay here. Under the Constitution of the Republic, every non-African, non-Native Indian head of a family who was here as of the Declaration of Independence was given a league and a labor of land—the very same terms that had been granted Stephen F. Austin's original colonists. A league was an old Spanish measure of land amounting to 4,428 acres, and a labor was 177 acres. The smaller unit was to be fertile land for farming, the larger was drier land for ranching. Single men without a family were given one third this amount. These were called "headright" grants.

As the better land began to get filled up, settlers who moved to Texas later also got free land, but less. A new law granted "second class" headrights to immigrants who came between March 4, 1836, and October 1, 1837. They received 1,280 acres for a family and 640 acres for a single man; the condition was they had to remain in Texas for three years. After this, "third class" headrights with half as much land were granted to settlers who came after October 1, 1837, but before January 1, 1840. When that expired, a new law granted "fourth class" headrights for the same amount of land for settlers arriving before January 1, 1842. By the end of the program, Texas had given away nearly 37 million acres in headright grants.

On top of all this, the Texas government also passed laws adopting the Mexican system of granting "empresario" contracts to men who would organize whole colonies of immigrants and take responsibility for getting them settled. The most important of these was the Fisher-Miller land grant, to settle thousands of European immigrants on more than three million acres in the Hill



*Alamo hero Davy Crockett's widow, Elizabeth Patton Crockett, received a Republic of Texas bounty grant of 1,280 acres in North Texas. She is buried in Acton Cemetery near her homesite.*



*Henry Francis Fisher*

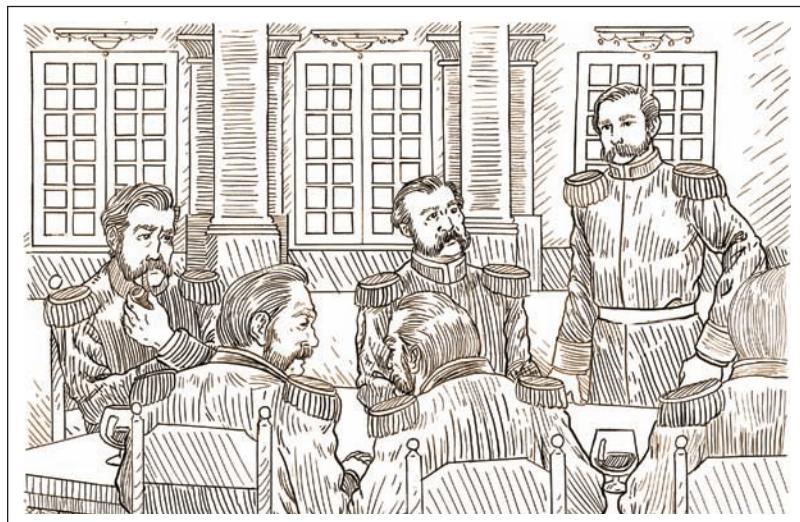
Country west of Austin. Henry Francis Fisher was named Texas consul to the German city of Bremen, from where he promoted the scheme. Germany was not yet a united country, but a collection of hundreds of tiny kingdoms, duchies, and principalities.

As it happened, times in Germany were terrible. There was high unemployment, and many of the dukes and princes ruled with a heavy hand. Political dissent was not tolerated, students and democratic thinkers were arrested, and after a failed revolution in 1848 many of them were hanged. One very smart nobleman, Duke Adolf of Nassau, saw an opportunity in Texas that we would call a “win-win” proposition.

If he and other dukes and princes took charge of the Texas plan, Texas would get the settlers it needed, German nobles would get the students and troublemakers out of their hair by sending them there, and best of all, Germany would have the beginnings of an overseas empire like England or France.

Two dozen princes and dukes met at Adolf’s palace in Wiesbaden in 1842 and signed an agreement to fund the “Adelsverein,” or the Society for the Protection of German Immigrants in Texas.

*Meeting in a duke's castle in Germany in 1842, a group of princes and dukes signed an agreement to send thousands of German settlers to Texas.*



Seven thousand of them came in the first wave alone, and after many hardships these immigrants founded such important Texas towns as Fredericksburg and New Braunfels, which was named after the Adelsverein's director, Prince Carl of Solms-Braunfels. Many thousands more followed, adding a very important German flavor to the Anglo-Hispanic Texas culture.

Other important empresario contracts were for the Peters Colony and the Mercer Colony under which North Texas, including the Dallas area, began to be settled. Those colonies bogged down in legal battles that lasted for years, even after the system of using empresario colonies became unpopular, and was ended.

Texas's mission, however, was accomplished. From a population at the time of the revolution of about 38,500 (excluding the Indian population), the total had more than tripled to about 130,000 by the time of statehood in 1845. The first U.S. Census in Texas in 1850 showed a total population of 212,000, and ten years later this had tripled again to more than 600,000.



*This replica of the Peters Colony land office shows where the colony's land grants were handled. Although the colony failed as a business venture because of lawsuits, it did bring 2,200 families to Texas to settle on almost 880,000 acres of land.*

#### THE NEED FOR MORE PEOPLE

## FRONTIER SPOTLIGHT

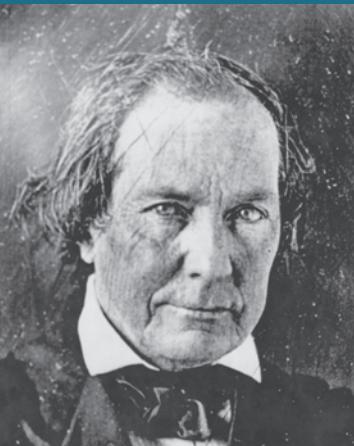
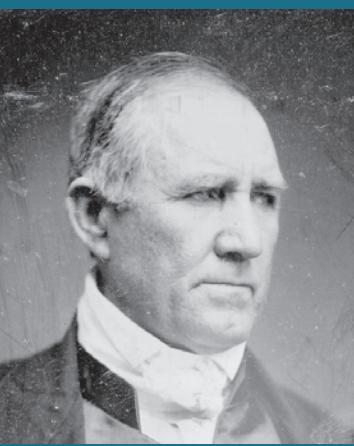
### *Sam Houston vs. Mirabeau B. Lamar: A Case of Broken Furniture*

Texas's first elected president Sam Houston, and his successor Mirabeau Lamar, were so different they would never have liked each other even in good circumstances. Houston wanted to annex Texas to the United States; Lamar wanted to see Texas remain an independent country. Houston had a deep respect for Native Indians and had lived with them for six years; Lamar despised them and wanted to see them eliminated.

On one matter, though, Houston decided to cooperate with Lamar. Houston spent most of his two-year term living in a squalid two-room house. During the construction of a real presidential residence, Houston ordered about \$2,000 in fine furniture for it—a fortune in those days. He enjoyed the house and furniture for only a few weeks in 1838 before his term was over; he offered Lamar use of the furniture, who agreed to buy all of it. Lamar used it and then changed his mind about paying for it, returning the furniture so beat up that Houston sued him for the value of it.

Because it was hard to find witnesses and get an accurate appraisal of the furniture's value, the trial was delayed several times over four years. Lamar's main witness was killed in a duel; Houston's main witness had carried messages between the two presidents, was familiar with the furniture and its value, and estimated its damage at about half of its value, which is what the jury awarded to Houston.

But that was not the end of it. Lamar asked for a new trial, which was denied, and then he delayed paying for so long that Houston tried to seize enough of his assets to cover the amount. Lamar had no money, though. Finally Houston assigned his judgment to a man he owed money to (that is, saying the man could keep it if he could collect it). After eight years, Lamar finally had to pay the debt, a little in cash and mostly in land.



How strange that this animosity between Houston and Lamar occupied the Texas court system through almost the entire life of the Republic, and several years into statehood. It shows how hard it was for courts to get accurate and timely information from those involved in lawsuits. And it demonstrates one more thing that is very interesting. Once Texas had a court system up and functioning, people made use of it—a lot! One study revealed that on the jury that tried the case between Houston and Lamar, most had themselves sued someone, or been sued, often appealing all the way to the Supreme Court if they lost.

*President Houston lived in this small “mansion” while he waited for the real one to be built.*





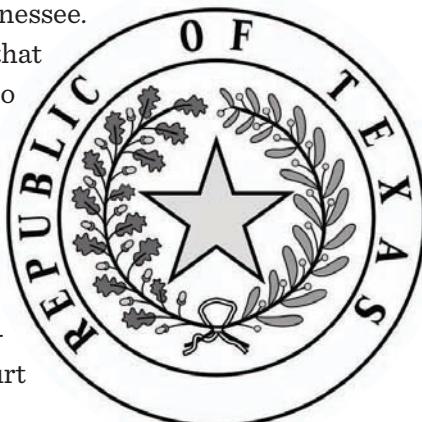
# Frontier Defense

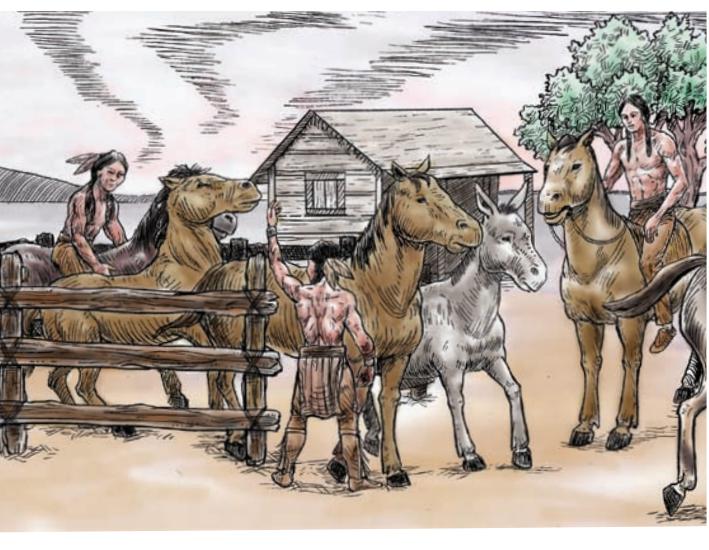
*The biggest challenge to law and order on the Republic's frontier was to find ways to deal with the Indians who shared the same territory.*

After his defeat at San Jacinto, Santa Anna signed the Treaties of Velasco, which recognized Texas independence. They created a boundary between Texas and Mexico at the Rio Grande, from its mouth at the Gulf of Mexico all the way up to its highest headwaters, which lie in today's Wyoming. As soon as Santa Anna was safely home, however, Mexico repudiated (that is, denied the validity of) the treaties, and began threatening to invade again. In fact they did so, twice, in 1842 and caused great disruption.

The greater day-to-day threat, though, was from Indians. In the United States, Indian tribes were recognized by both the Congress and the Supreme Court as independent nations with whom peace treaties could be made to quiet the country's frontier. Things in Texas were going to be different.

President Houston was sympathetic to the natives' attitudes. In fact, he had lived with the Cherokee for three years as a teenager, and for another three years after he left Tennessee. He went to great lengths to keep peace and see that they were fairly treated. Mirabeau Lamar, who was president in between Houston's two terms, was his polar opposite. He drove the Cherokee out of Texas up into the Indian Territory, and spent huge sums of money on wars against the Plains Indians. In Texas, the majority of citizens favored Lamar's view, and to sweep any legal difficulties out of the way, the Texas Supreme Court





decided a case that gave him a free hand.

In May 1842 some Indians—probably not Comanche but Brazos Valley tribes such as Keechi or Anadarko—stole several horses and mules from P. W. Herbert near Bastrop. They were taken back in a fight two days later, and a man named Thomas Moore lost his own horse in the skirmish, and replaced it with one of Herbert's mules. He claimed this was all right because of an ancient law of warfare that private property

lost in a war for more than a day belonged to whoever found it. Herbert sued him to get the mule back, and the Supreme Court gave it to him, on the reason that Indian fights could not be a “war” because Indians were not a recognized “nation” that Texas could be at war with, they were just savage thieves!

The Supreme Court justice who wrote the opinion was William J. Jones. “Shall we apply [law of war] to Pirates on land, or Indian robbers? Or will it be contended that Indians rank higher than Pirates?” He went on to accuse that Texas Indians had suffered no wrongs from Anglo settlers, which was not the case. Further, he quoted a very important U.S. Supreme Court decision that he claimed said that Indians were not recognized as nations, when in fact that decision said the very opposite. Of course, Jones had been Lamar’s campaign manager, so it was a safe bet they would be on the same side.

Texas had nowhere near the money to keep a standing army large enough to deal with hostile Indians. So, Lamar asked the Texas Congress for authority to create companies of mounted

men, stationed in well-placed camps from which they could ride out and chase Indians after a raid. They became one of the most famous institutions in Texas history: the Texas Rangers.

Stephen F. Austin is usually credited with creating the idea of the Texas Rangers, when he formed a similar unit back in 1823. However, that credit may equally belong to Félix Trespalacios, the first Mexican governor of Texas after Mexican independence from Spain. Frontier Mexican communities had organized mounted groups of militia before, known as *compañías volantes* (“flying companies”). Trespalacios had commanded one, and he gave Austin instructions on how such units could be used effectively.

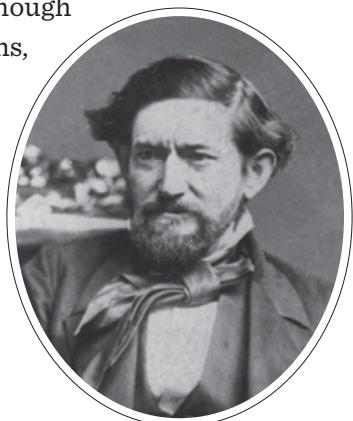
The Texas Congress passed a law allowing Lamar to recruit fifty-six Rangers, and also eight more companies of “mounted volunteers,” but all of them became known as Texas Rangers. (This was simply a nickname, however. The first Texas law that specifically designated “Texas Rangers” came more than thirty years later.) There was no shortage of volunteers, even though they had to supply their own horses, clothing, supplies, guns, and ammunition.

The Rangers began fighting pitched battles with Indian raiders, under such famous captains as John Coffee Hays. The Comanche often came off the better in these encounters, because the Anglos’ firearms had to be reloaded after every shot, and an Indian warrior could advance and shoot five or six arrows before they could



*The Texas Rangers defended the Texas frontier throughout the 1800s. This photo shows the Rangers' Frontier Battalion at a campsite in the 1880s.*

*Texas Ranger Captain Jack Coffee Hays*



reload. This changed dramatically in 1844, with the arrival of pistols with revolving cylinders that could fire five shots before having to reload.



*The new Colt revolver gave the Texas Rangers an advantage over Indian warriors.*

In June of that year, up to two hundred Comanche under Chief Yellow Wolf staged raids near San Antonio and were hotly pursued by Hays and his Rangers. He overtook them near the Pedernales River. In the Battle of Walker's Creek, the warriors waited for the Rangers to fire and then charged them while they thought the Rangers were reloading, as they were used to doing. Instead, they were met with continuous deadly fire from Hays and his men. At least two dozen of them, including Yellow Wolf, were killed. This and a couple of similar encounters broke Comanche power in that area.

The ways law and order came about on the frontier were not always fair. Today, we understand that the Native Indians had a right to their land and way of life, but at that time, the government was more concerned with protecting the lives and property of its settlers than with protecting those it considered its enemies. As we will see in a later chapter, "frontier justice" eventually came to mean something even more unjust.

*The Battle of Walker's Creek was the beginning of the end for Comanche tribes in Texas.*







# The Decisions of Statehood

# 8

*To appoint or elect judges? To rule for or against allowing jurors to be served whiskey? There were decisions of all kinds to be made relating to the new state courts.*

We will recall that when Texas first won its freedom, Texans expected to be annexed to the United States, and were bitterly disappointed when that did not happen. In the two years of his first term, Sam Houston was not able to make any progress on it. Mirabeau Lamar's term was for three years, and he envisioned Texas as a great inland empire and did not pursue annexation. By the time Houston returned as president late in 1841, he had an idea how to accomplish it. He would play up to Great Britain, and let the United States believe that Texas was negotiating to become a British territory.

His trick worked. The United States was so alarmed at the thought of Texas going British that Texas became the twenty-eighth state at the end of 1845. U.S. law then would be established, and Texans would have to find a way to adapt their way of doing things to be consistent with the U.S. Constitution.

During this time back in the United States, people were experiencing a great political upheaval. The American Revolution of 1776–83 had been led by educated statesmen from New England and eastern Virginia. Since then, the country had expanded far to the west, and a

(opposite page) Map of Texas in 1845.

This 1844 political cartoon shows that annexing Texas was not popular with everyone. The leaders of the U.S. and the Republic of Texas won the tug-of-war with those who opposed annexation.





A black and white portrait of Thomas Jefferson Rusk, a man with dark hair, wearing a suit and bow tie.

whole new class of frontier people had emerged, vigorous and self-reliant, but uneducated and often crude. They were politically strong enough to elect one of their own, Andrew Jackson of Tennessee, president in 1828.

This group believed that common people, even uneducated people, had the common sense to make the right decisions for the country. Traditional Americans in the Eastern United States looked on this as something like mob rule, and the “Jacksonians” thought the Easterners were upper-class snobs. In Texas, this great political divide was reflected in the debate over whether judges should be appointed to office, or elected by the people.

In 1845, Texas had to write a state constitution in order to enter the Union. Texas Jacksonians wanted judges to be elected, and thus could be yanked from office if they departed from majority approval. In the early Texas days, Stephen F. Austin called such people his “Leatherstockings,” after a famous character in a novel of the day, and he distrusted their judgment. Many educated people believed that a judge might not have the courage to make a correct ruling if it was unpopular and he could be defeated at the next election.

Chief Justice Hemphill believed strongly that judges should be appointed. In this he was supported by a former chief justice, Thomas Jefferson Rusk, who had been a hero of the revolution and was president of the Convention.

Hemphill and Rusk believed that judges’ solemn responsibilities to be fair and impartial was not consistent with their having to defend their rulings in an election. Rusk argued, “If we have a judiciary which is swayed by popular clamors, you are on a sea without a compass; your rights of person are not safe; your property is not safe... all is anarchy and confusion.”

After hot debate, the convention that drew up Texas’s state constitution agreed with Hemphill and Rusk, and they put in the

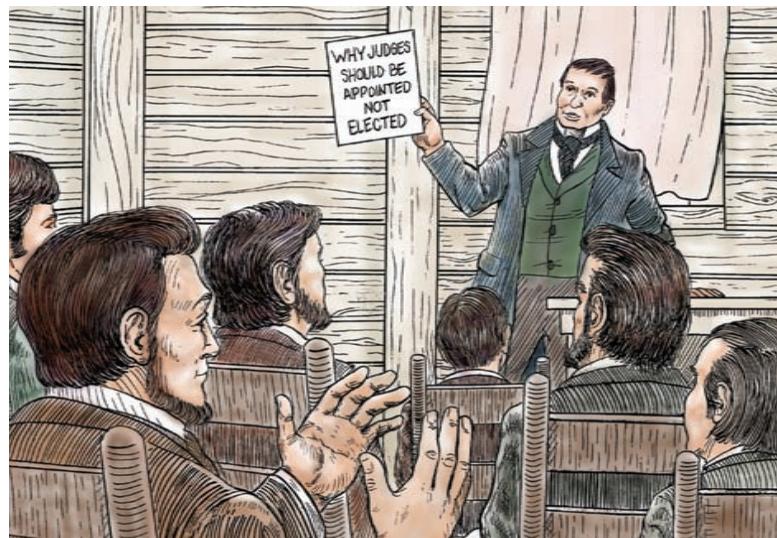
Thomas J. Rusk

constitution that judges should be appointed. The frontier element did not go away, however. They were strong enough in the legislature to pass an amendment reversing this part of the constitution, and starting in 1851 Texans began electing their judges.

The last Chief Justice under the Republic, John Hemphill, was retained to be the first Chief Justice of the state Supreme Court. He had very strong ideas about keeping key protections that people enjoyed under Spanish law and would lose if Texas switched completely to American law. He had many chances to do this.

In any new country or state, cases which raise questions of law that have never been considered there before are called “cases of first impression.” Since Texas was a new state, and was able to pick and choose which law, Spanish or American, would work best for its people, there were many, many cases that raised issues of first impression, over several years, on a wide variety of topics.

For one example, there was the case of a man named George Jones, who was convicted of murder in Madison County. Jones appealed his conviction on the grounds that he had produced more witnesses than the prosecution. The issue of how much importance to give the number of witnesses that appeared on one’s behalf had never been considered. In this case the Supreme Court decided that the number of witnesses you had would not matter. What mattered was what the witnesses said, and whether they were trustworthy.



*Former Supreme Court Chief Justice Thomas J. Rusk convinces the Constitutional Convention that appointing judges is better than electing them.*

However, the Court did overturn Jones's conviction anyway. It turned out that while the jury was deliberating (that is, considering their verdict), the court bailiff had served them whiskey. The Court noted that individuals' ability to hold their liquor varied widely from man to man, and it was not possible to know how much, or how little, alcohol would impair one's judgment. So just to be safe, Texas was not going to allow whiskey to be served to juries, and Jones would get a new trial!







1. Hospital  
2. Commanding & quartermaster stores.  
3. Company quarters  
4. Officers' quarters  
5. General quarters  
6. Quarantine house

### Phantom hill.

7. Adjutant's office  
8. Post office  
9. Magazine  
10. Artillery shop  
11. Soldier store  
12. Carpenter shop

J. B. MILLER

# Frontier Vigilantes

9

*Many Texans who stayed home during the Civil War faced perils, not only from Indians, but from Confederate vigilantes who took the law into their own hands.*

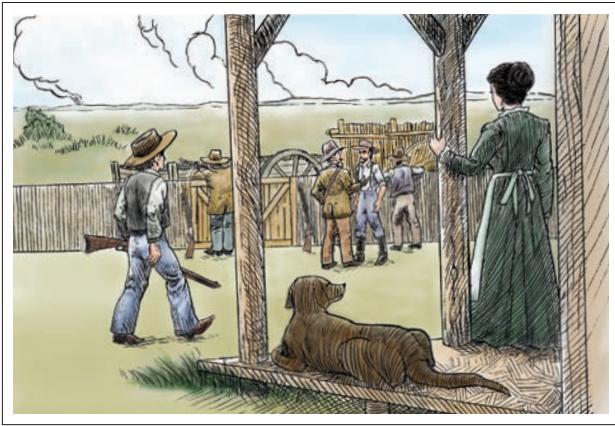
The Indians who lived along the edge of American settlement, especially the Comanche and Kiowa, were quick to notice when Anglo soldiers abandoned frontier military posts and marched east to fight each other in the Civil War. They increased the intensity of their raids, and in the four years of the war were able to throw the line of settlement back to the southeast over a hundred miles.

Texas's government established units of "Home Guards" to protect frontier settlers from Indian raids, but they were not very effective. One reason men joined the Home Guard was that it gave them an exemption from being drafted into the Confederate Army and being sent east to fight in the horrific battles of the Civil War. They were, therefore, not the best of soldiers, but for pioneers who did not want to abandon their homesteads, the Home Guard was the only law and order they had.

Without effective government protection, frontier families gathered in what they called "home forts" for protection. These citizen posts had names like Fort Spunk, Owl's Head, and Picketville, as well as family names such as Fort Davis (not the present-day army post) and Fort Murrah. Occasionally the families had to fight their own battles with Indians. One of the worst was the Elm Creek Raid. In October 1864 several hundred Comanche swept through Young County, killing local citizens and stealing cattle, and it was only the defense put up by a home fort that sent them

*(opposite page)Fort Phantom Hill was abandoned before the Civil War and then used again by the Texas Rangers as a base of operations during the war. Its ruins are located near Abilene.*





*Frontier families band together in a home fort for protection during the Civil War.*

*At a funeral held after the Civil War, German Texans mourn the deaths of those who were killed in the bloody Battle of the Nueces.*



back north to Indian Territory, taking with them eleven Anglo women and children as captives. A unit of Home Guard arrived in time to give chase, but the Indians lured them into an ambush and killed five of them.

Home forts were a bit different in the Hill Country west of Austin. Many of those settlers were German, who came to Texas for freedom of their own.

They hated the idea of slavery, and while they knew better than to oppose the war, they just wanted to be left alone. The Confederate authorities found this threatening, and irregular militias (that is, troops not part of the regular army) were formed to maintain a presence in these western areas to intimidate the settlers and enforce loyalty. When they began trying to enforce the Confederate draft law, though, the Germans organized the Union Loyal League to protect themselves from Confederate rebels and Indians alike.

In August 1862, several dozen German Texans set off for Mexico, some aiming to eventually find their way north to join the Union Army. Confederate vigilantes tracked them, and ambushed them in the “Battle” of the Nueces. It was not much of a “battle.” Nineteen of the Germans were killed, and nine who were wounded, were captured and murdered. The rest fled, and eight more were killed before they reached the border.

Law and order sank even lower in north Texas. Those counties had voted not to secede from the Union, and they became something of a haven for draft dodgers from elsewhere in Texas. The Confederate militia general in charge, William Hudson, had a simple solution. From his base in Gainesville, he put out a call for volunteers to round up the disloyal—and then arrested every man who did not volunteer! For their trials, he made his own law that guilty verdicts did not need to be unanimous, a simple majority would do. By the time he was finished, forty men in Gainesville were executed in the “Great Hanging,” five more were put to death in Decatur and five in Sherman, including the editor of the Sherman newspaper, who was suspected of being a Unionist.

Northeast Texas had been settled since the early days of the Republic, but farther up the Red River, toward Gainesville, there were still large tracts of unpopulated frontier. As the war lengthened and went badly, taxes were doubled, and a wider range of men were subjected to the draft. Many of them, probably several hundred, hid out in the thick woods and brush of the Red River bottoms. To flush them out, the Confederate Army employed the services of volunteer “raiders” led by William Clarke Quantrill, a brutal psychopath who was wanted for the murder of hundreds of people in Kansas he’d had killed on suspicion of disloyalty.

Instead of capturing them and forcing them into the rebel army, Quantrill’s men shot down so many draft dodgers in cold blood that the authorities decided not to use him anymore. His behavior repulsed most Confederate officers, who prided themselves on



*This memorial pays tribute to those who died in the 1862 Gainesville Hanging.*

being gentlemen, and regular troops eventually chased Quantrill and his raiders into the Indian Territory.

The Civil War in Texas provided a horrifying example of what happens when thugs and hooligans organize and claim to be providing law and order, when really all they are administering is terror.

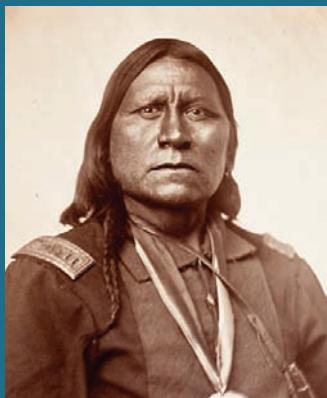


*William Clarke Quantrill*

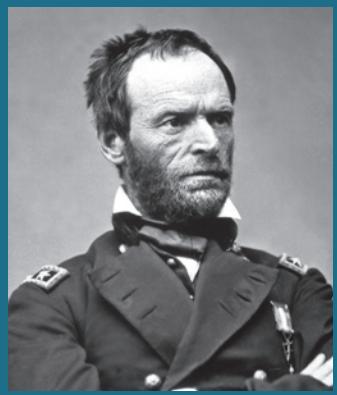


## FRONTIER SPOTLIGHT

### *Indian Warriors in a Texas Criminal Court*



*Chief Satanta*



*General William  
Tecumseh Sherman*

The Civil War years gave the Comanche and Kiowa warriors time to perfect their raiding techniques. In fact, some of the worst raids took place after the U.S. Army returned to their old frontier forts. The most famous was the Warren Wagon Train Massacre on May 18, 1871. This was a freight train, not a passenger train, and the Kiowa war party killed and horrifically mutilated seven teamsters. More importantly, they narrowly missed killing the top army general, William T. Sherman, who had come over that road only hours before.

Furious, General Sherman had three Kiowa ringleaders arrested and held for trial in Texas—the first case of Indian raiders being tried in a Texas criminal court. One chief, Satank, refused to be dishonored and committed suicide. The other two, Satanta and Big Tree, were taken to Jacksboro, near the site of the massacre, and put on trial on July 5, 1871.

The prosecuting attorney for the trial was Samuel W. T. Lanham, a frontier lawyer who had turned twenty-five the day before. The chiefs were convicted of murder, sentenced to hang, and taken to prison in Huntsville. A group of Indian “reformers,”—that is, people who believed that the Native Indians were being unfairly treated—convinced Texas Governor E. J. Davis to change their sentences to life in prison. He did, and then later paroled them to return to their people, on the condition that peace be maintained.

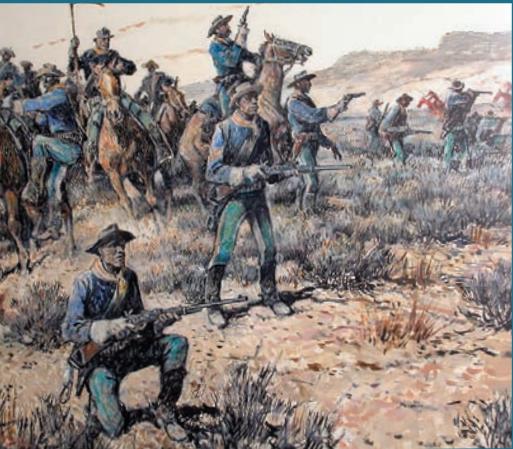
Satanta returned to the war path in the Red River War in 1874. After the Indians lost that war, Satanta was returned to prison as was provided in the terms of his parole. He killed himself in 1878 by jumping out a second-story window. Young Sam Lanham later became a U.S. Congressman, and then in 1903 became Governor of Texas.



*Satanta was imprisoned in the Huntsville Penitentiary at the time this photo was taken in the 1870s.*

## FRONTIER SPOTLIGHT

### *The Buffalo Soldiers*



The Southern Plains Indians who used to roam northwest Texas—the Comanche and Kiowa, and also some Cheyenne and Arapaho—had agreed years before to move onto reservations in the Indian Territory. They lived mostly on the vast herds of buffalo, from which they obtained food, shelter, tools—almost everything they needed. After 1871, however, professional buffalo hunters from Dodge City, Kansas, began shooting those herds and taking their hides to make leather. The buffalo were nearly exterminated, leaving the Indians to starve. Hunger and desperation drove the Indians into a final war for freedom from white domination. It was called the Red River War, it lasted a year, from summer 1874 to summer 1875, and it ended in disaster for the tribes.

To fight them, the U.S. government deployed the greatest number of troops ever used against Indians, and many of them were African American. Black troops were first recruited during the Civil War, and they fought so well that after the war, even though the army was severely reduced in size, they reserved four regiments for black soldiers—the 24<sup>th</sup> and 25<sup>th</sup> Infantry, and the 9<sup>th</sup> and 10<sup>th</sup> Cavalry.

Because of the racism that remained in the army high command, these soldiers were ordered to serve in the hottest, most isolated and dangerous forts in the West. However, the black troops worked harder, fought better, and caused fewer disciplinary problems than white regiments. The Indians quickly gained respect for them as fighters. Many had never seen African Americans before, and began calling them “buffalo soldiers” because their hair texture reminded the natives of the woolly hair on the buffalos’ heads.

The nickname also suited these soldiers because it symbolized their strength and determination. From 1866 to the early 1890s, the Buffalo

Soldiers served at several military posts in Texas and other parts of the Southwest. They were an important part of the frontier defense—in fact, it was a regiment of Buffalo Soldiers that arrested Satanta for General Sherman—and eventually won the respect of other units of the army as well as the communities where they were posted.



*Buffalo Soldier  
Memorial at the  
entrance to Fort  
Bliss, Texas.*



# Range Wars

*Fences brought the end of the open range in Texas, but they also caused problems that even the law couldn't solve.*

# 10

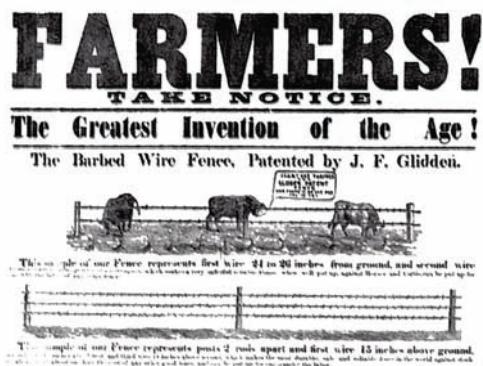
**O**n the South Texas Plains, after the Comanche and Kiowa were defeated in the Red River War and sent to a reservation in Indian Territory in 1875, it took only a few years for ambitious ranchers to fill up that portion of the state. In the days of the open range, cattle roamed free and a stock man could make a good living for himself if he worked hard. It seemed like there was enough land for everybody. Once it got crowded, though, ranching became competitive and cutthroat.

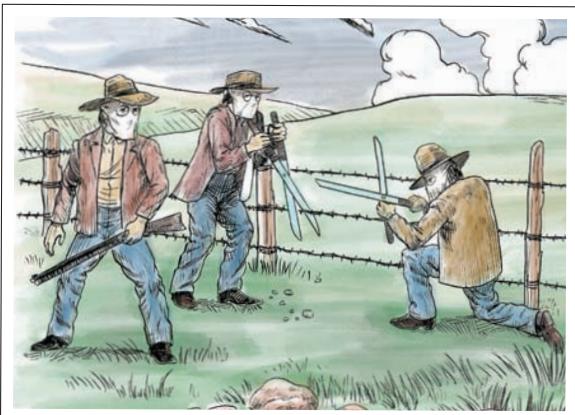
What brought the conflict to a boil was the introduction of barbed wire to Texas. In 1876, an ambitious businessman named John "Bet-a-Million" Gates thrilled San Antonio with a demonstration; he fenced a herd of longhorns in Military Plaza in San Antonio, which skeptics said the powerful cattle would burst right through, but they didn't. He suddenly took more orders for barbed wire than his factory could produce.

With barbed wire, cattle could be segregated into pastures to control breeding and improve the quality of the stock. More to the point, a rancher could fence off water and gain an advantage by keeping his neighbors' cattle away from it. Ranchers had plenty of reason to do this, because the price of beef up north increased from \$7 a head in 1880 to \$25 only three years later.

Big operators who had plenty of money fenced their lands, and then small operators who had depended on the open range began

*This 1870s ad in a Texas newspaper helped sell barbed wire to farmers and ranchers.*





*Cutting barbed wire fences to keep the range open was a crime that was hard to control.*

*Governor John Ireland, a former member of the Texas Legislature and the Texas Supreme Court, supported the laws that ended the Fence-Cutting War of 1883-84.*



fencing huge areas they did not even own. Roads were blocked, and sometimes whole towns were enclosed with no way out. Also, an increasing number of farmers were able to fence off their fields to keep cattle out, which ranchers considered a waste of good range, and they had no sympathy for it.

All of this fence building led some of those who wanted to keep the ranges open to take drastic measures. Hooded riders went out by night and cut fences—

a huge expense for the stockmen to have to repair.

The stockmen then hired armed riders to go out and hunt down fence cutters. Thousands of cattle perished in a drought because they were fenced away from water, and the next year thousands more froze to death, trapped by fences that kept them exposed during a blizzard. By autumn 1883, some \$20 million worth of fencing had been cut, and the cost of lost livestock was huge.

Interestingly, the whole issue had outrun the law. There was little the courts could do. In this instance, it was the governor, John Ireland, and the legislature who provided the legal guidance. In January 1884, Ireland called a special session of the legislature to craft a law to end the violence.

After loud debate, they reached a compromise. Fence cutting was made a felony, but it also became illegal to block roads with fences, which had to have a well-kept gate every three miles. With this came a recognition that there was no more open range, the frontier was gone. The only way to raise cattle was to own or lease the land.

Whichever side of the fence war a cattleman found himself on, all cattlemen were united in one feeling, and that was revulsion, mindless hatred, for sheep

ranching. The main reason was that the sheep, unlike cows, grazed grass all the way down to the ground, ruining the land for cattle, and even then their sharp hooves cut the roots and left nothing but dusty ground in their wake. Sheep also carried disease, but probably the biggest reason for the cattlemen's hatred was that most shepherds were foreigners.



After independence, Texas continued to encourage immigration from anywhere they could get people. Texas became home to thousands of Germans and central Europeans, who were quite content to raise sheep. Cattle raising had become its own culture, and despite the fact that sheep could graze on land that was too poor to support cattle, and that grazing a thousand head of sheep could bring a profit of nearly \$2,000 a year, they lost money because thousands of head of sheep every year were killed by cattlemen.

A few ranchers, such as Charles Goodnight, recognized that not all of the range was suitable for grazing cattle, and that sheep could make that land productive. Most ranchers, though, felt such a cultural prejudice against raising sheep that they were willing to go to almost any length to keep them off the range.

Sadly, this was a problem that the law could do little to help. The slaughter of stock took place on isolated ranges, guilt could seldom be proved, and often the sheep ranchers were intimidated into silence. It just took time for the culture to change, and for cattlemen to recognize that the range was more profitable with both.



*Charles Goodnight was a famous cattle rancher in the Texas Panhandle in the late 1800s.*



# The Law and Cultural Conflict

*The closing of the Texas frontier brought about new clashes with people of different cultures.*

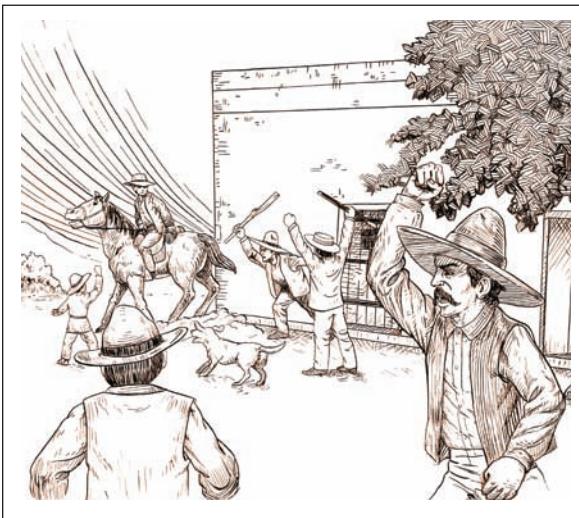
After the final defeat of the Comanche and Kiowa in 1875, the northern and northwestern Texas plains were rapidly divided up into the great ranches for which the area became famous. Far west Texas, however, remained largely Hispanic in character. As Anglos tried to impose their laws and values on the local population, conflicts erupted. Perhaps the worst was the Salt War of 1877. It is important because it shows what can happen when newcomers try to take advantage of people by forcing new laws on them that are foreign to their long-held customs.

Tejanos and Mexican citizens in El Paso and nearby San Elizario were accustomed to driving carts to the foot of the Guadalupe Mountains and mining salt. It was there and free for the taking, and considered a public resource. El Paso had a famously corrupt city government, and two political leaders had their eyes on owning the rights to the salt mines. One was Charles Howard, who became the district judge, and the other was Luís Cardís, who was not Mexican but Italian, although he had come to be recognized as a leader in the Hispanic community.

It is often said that there is no honor among thieves. Howard and Cardís became enemies, and when Howard filed claim on the Guadalupe Mountain land himself and tried to charge the locals for the salt, Cardís took revenge. He inflamed the Hispanic community against Howard, and a mob (many of whom had come from across the border) forced Howard to sign a \$12,000 bond and leave for New Mexico. Howard also, however,

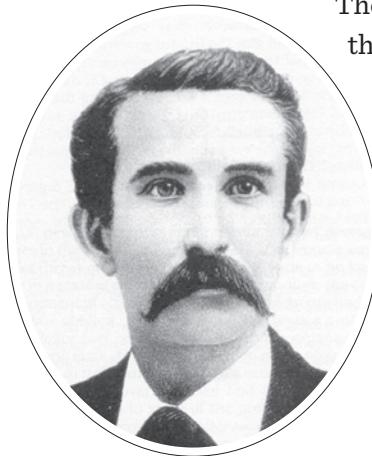
*Charles Howard*





*Angry residents of San Elizario force the unscrupulous Judge Howard to leave town.*

*Texas Rangers Major John B. Jones*



telegraphed Austin that a Mexican mob had invaded from across the river.

Interestingly, the incident marked a difference in the function of Texas Rangers. The Frontier Battalion, which had just been engaged in fighting Indians in the Red River War, was now called on to perform a law enforcement function, and restore order. El Paso was too far for the whole unit to go there, so their commander, Major John B. Jones, went and recruited new Rangers locally.

Major Jones was able to keep the peace—at least until Judge Howard returned from New Mexico, shot Cardís dead with his shotgun, and moved to seize control of “his” salt beds. This time when a mob descended, they trapped Major Jones and his Rangers along with Howard, his agent, and his bondsmen, for five days. Threatened with a massacre, Howard gave away his possessions and gave himself to the mob. He and his men were shot and thrown down a well; Jones and his Rangers were allowed to leave in peace.

The San Elizario Salt War was not just about ownership of the salt beds. It was also about forcing a new way of life on a group of people, and about the chaos that can result when an officer of the law, in this case Judge Howard, abuses his position.

Culture was also changing in the Texas Panhandle, and Texas cowboys found their way of life under threat. When ranches began to be enclosed with barbed wire, it suddenly required huge investments of money to go into the cattle business. Gone were the days when a cowboy could stake out his own

spread on the open range, work hard, and start his own empire. In fact, the golden era of the cowboy only lasted about fifteen years. Groups of investors now had to come together to start a major ranch—many were from back East, or even from Europe. They often hired managers to run their ranches who knew little of, and had little sympathy for, the young cowboys who were looking to make their way up in the world. With a need now for ranch managers to show a profit to stockholders, cowboys were reduced to being something like minimum wage workers.

Unlike what people see in the movies, cowboys working on corporate ranches could lose their jobs if they got caught drinking or gambling. Fighting was also forbidden, and on cattle drives they were not even permitted to carry guns, because one thoughtless shot could start a stampede. These conditions, plus the extremely low wages, meant that cowboying was not nearly as much fun as many thought it would be.

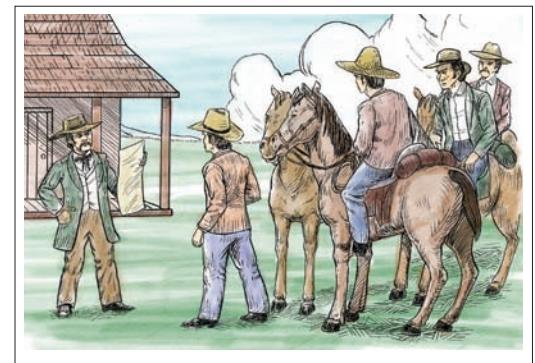
Out on these vast ranges, the cowboys were at the mercy of the managers. In fact, the law could not help them in any case, for there were no laws back then protecting workers from abusive conditions. The cowboys were on their own to do for themselves.

In early spring 1883 a fed-up cowhand named Tom Harris drafted a demand for the owners of the LS Ranch, in the far northwest corner of the Panhandle, to increase the cowboys' wages, or they would stop work. The idea caught on at neighboring ranches until maybe three hundred cowboys, without even coordinating their demands with each other, were demanding a raise, or they would strike.



*Texas cowboys on the range in 1880.*

*A group of cowboys confront a rancher to demand higher pay for their work.*



In this time, a labor strike was considered a subversive, dangerous, un-American thing to attempt, and Texas newspapers reacted with alarm. What the striking cowboys had not counted on was that there were plenty more cowboys ready to take their jobs when they got fired, and they all did get fired. They were replaced, or some of those who said they were sorry got their jobs back, in time for the May roundup.

Around the United States, people think of early labor strikes and they think of railroad workers in Chicago or coal miners in Kentucky. They are not aware of the labor protest made by cowboys on the vast Texas frontier. While it was not itself successful, the Cowboy Strike of 1883 was an early part of a groundswell of resentment against corporate high-handedness and poor labor conditions that brought on the Populist Movement that changed Texas politics and law in the 1890s.

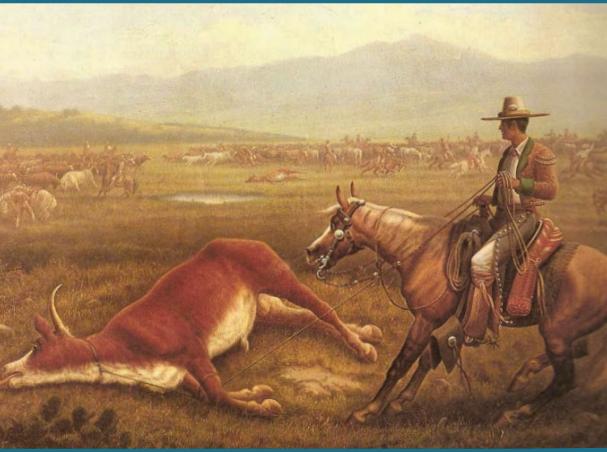
*Jim Hogg, first as Attorney General and then as Governor, succeeded in getting laws passed to curb the powers of big business in Texas.*





# FRONTIER SPOTLIGHT

## *The Earliest Cowboys: Los Vaqueros*



Ranching had been important to the Mexican economy ever since the Spanish arrived in 1519. They built *ranchos* (ranches) and *haciendas* (large ranching estates) and stocked them with cattle and horses imported from Spain.

When the first Spanish explorers entered the land that would become Texas, they brought with them Andalusian cattle which they turned out into the wilderness to start wild herds. These tough, hardy animals quickly established themselves, later becoming known as Texas Longhorns, and over time the herds grew huge.

As South Texas was settled, Spanish *vaqueros* worked new ranches there long before the arrival of Anglo immigrants from the United States. The term *vaquero* (from the Spanish word *vaca*, for cow) originally developed in Spain, where using horses to herd cattle became a fine art. The name traveled with Spanish immigrants to Mexico, and it was the Mexican *vaqueros* who brought the idea of “cowboys” to Texas.

In the late 1700s, Spanish *vaqueros* drove an estimated 15,000 cattle on their way south and east along the La Bahia road that stretched from Laredo to Louisiana. This was the first cattle drive in Texas history. The cattle helped feed the Spanish soldiers who were fighting the British in Louisiana and Florida during the American Revolution. The Spanish army defeated the British in an important series of battles, so in a very real sense, the Spanish ranchers and *vaqueros* helped the United States win its independence from England.

On the wide open ranges of South Texas, *vaqueros* had to develop special ways to handle the thousands of wild Longhorns. These cattle could reach a weight of 1,800 pounds, with an average horn span of four feet, though widths could reach up to nine feet. Their huge size and sharp horns made them especially dangerous to handle.

To manage them, *vaqueros* became masters of the art of roping, using braided rawhide *reatas*. “*La reata*” became “lariat” in English—another of the many Spanish terms that were adopted by the Anglo cowboys.

Early Anglos adopted the cattle-herding techniques of *vaqueros* as well as their equipment, including the lariat, spurs, and chaps. What eventually became known all over the world as the Texas cowboy was a special blend of *vaquero* and cowboy cultures.



*The State of Texas honored the legacy of los vaqueros with this statue by the State Capitol in Austin.*



# Closing the Frontier

# 12

*The railroads helped close the Texas frontier as they opened new opportunities for travel and commerce. They also created new challenges for Texas courts.*

When Texas Ranger Major Jones journeyed to San Elizario to try to quell the Salt War, he had to recruit a new Ranger company from among local residents, because once he let the state government know how dangerous the situation was, there was not enough time for more Rangers to spend days or perhaps weeks getting there.

Texas is such a huge state that up until the later years of the 1800s, people had a hard time getting from one place to another. There were horses and wagons, but those were slow and the roads were poor—especially in bad weather. One writer for a Houston newspaper wrote that he took a trip by stagecoach from Houston to Hockley in 1854 after ten days of rain.

The thirty-five-mile trip took a full day and a half and included an overnight stop. Neither this man nor anyone else would plan a trip across Texas unless he had several weeks and a good reason for going! Without a better transportation system, Texas would have remained a state with a widely scattered population and no way to build a healthy economy.

The arrival of railroads was the beginning of a solution to the state's transportation problem. Three years after the Houston writer took his long trip, he was able to take a train, and the same trip took one hour and forty minutes. It wasn't until after the Civil

*(opposite page) A busy railroad depot in Texas, 1880s.*

*An 1870s stagecoach mired in mud.*



War that railroads began expanding their operations in Texas, but the state was ready for them.



When Reconstruction ended in 1870, Texas had just 500 miles of rail lines. By 1889, less than twenty years later, there were more than 8,000 miles of railroad track in Texas!

Railroads opened up transportation between parts of Texas and connected them with places outside Texas. Not only could people travel more easily and more cheaply, but their products—cattle, cotton, lumber—could be transported more efficiently as well.

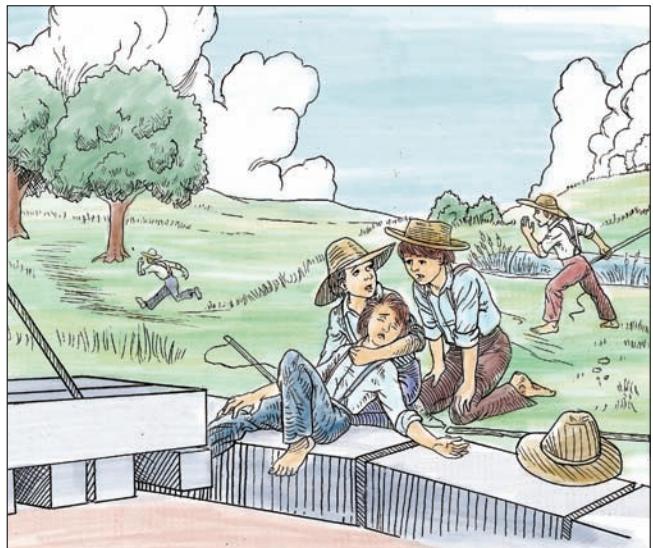
This gave the state a huge economic boost, but it also created conflicts. A whole new area of Texas law grew up around the regulation of railroads. Many of the cases that wound up in court had to do with disputes regarding land, but an increasing number also dealt with accusations of different kinds of abuses by railroad companies, which had become one of the largest and richest businesses in the United States.

One case that came before the Texas Supreme Court in 1883 involved a ten-year-old boy named S. P. Simpson, who lived near Denison. He and his friends were used to fishing and playing in a field near their home. The field lay next to a railroad yard that contained a "turntable," which was a heavy machine that turned train engines around on their tracks and sent them in different directions. Curious, Simpson and his friends began playing on the turntable. Suddenly it began to move, pinning Simpson and crushing his leg. His family sued for damages, but the railroad company claimed they were not liable because the boys were

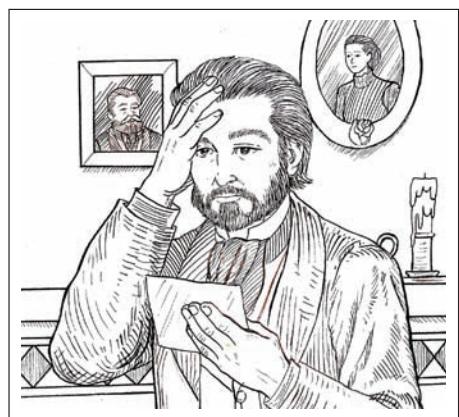
trespassing (that is, they were on the railroad's land without permission).

The Texas Supreme Court ruled that the railroad company should have predicted that the turntable would be attractive to children, and they should have fenced the rail yard and made the turntable more secure. The Court said that every person has the responsibility to protect children from dangerous machines or other hazards on their property. This came to be called the "attractive nuisance doctrine." The Simpson family received \$3,500 in damages for the boy's injury. In this and other decisions, the Supreme Court let it be known that Texas would hold railroads and other large companies accountable not only for damage to property, but also for damage to human beings.

The potential to cause harm also applied to causing severe emotional suffering, and the courts began recognizing this in their decisions. Just as railroads were the main transportation industry at that time, telegraph companies were the main telecommunications industry. If a business lost money because a telegram failed to get to them, they could sue in court for damages. In the early 1880s, judges began allowing people to sue for damages that resulted when telegrams they paid for were not actually sent, and those damages did not even have to be business losses. Austin businessman C. O. So Relle missed his mother's funeral in Giddings because the telegram letting him know she had



*Mr. So Relle sued the telegraph company for causing him to miss his mother's funeral—and won.*



died and asking him to come lay in the Western Union Telegraph office for days. He sued over the grief and suffering this caused him, and in 1881 the case was decided in his favor.

Most interestingly, Texas courts in some of these cases acted in what they called "equity." This meant that they ruled on the basis of what was the right thing to do, because the state legislature had not passed any laws on the subject to guide them.

Although frontier conditions still existed in the 1880s, Texas could no longer be called a frontier state. The last of the Plains Indian tribes were moved to Indian Territory after the Red River

War of 1874-75, and the last of the hostile Apaches were run out of West Texas in 1880. New towns quickly sprang up across the state, especially around the growing number of railroad depots.

The Texas government had from the beginning given away large amounts of its public lands to encourage people to build homesteads and form communities, and even when the gov-

This 1880 land scrip was one of the last to give the railroad companies free public land before a law was passed to stop the practice.

ernment gave millions of acres to the railroads in exchange for building tracks, it tied those grants to support for public schools. By 1882, the state had begun to run out of free public land, so the legislature passed a law to stop giving it away to railroads. Land grants could still be made to homesteaders, however. The laws governing land ownership were very complicated, and the Texas courts were kept busy for many years sorting through the cases.

In 1898, the Texas Supreme Court ruled that the state had no more public domain that was not dedicated just to public schools. The land grant policy that had started with the Republic in 1836 and continued for sixty-two years was officially over.

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# Epilogue

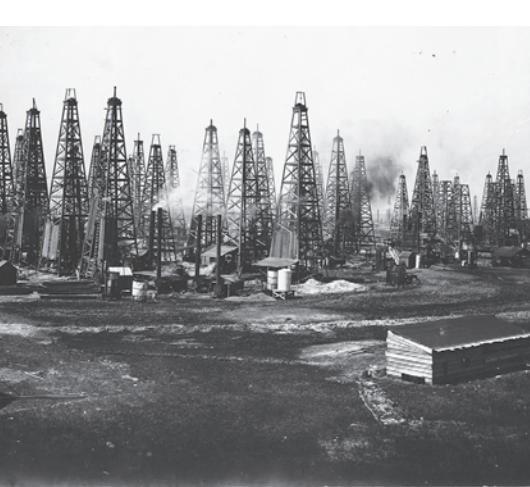
*Beyond the Frontier*

**A**s the clock struck midnight on December 31, 1899, Texas was poised to move forward into the new century with a rapidly growing population and a solid system of law and courts. The stories in this book told about how early Texas lawmakers and judges preserved the parts of Spanish law that helped frontier families thrive. Because Texas had been its own country before it became a state, Texans were used to doing things their own way, and this independent spirit was reflected in their laws and court system. Between the time they adopted their Republic Constitution in 1836 and the time they moved into the twentieth century, they had lived under the laws of six different constitutions. When they adopted the Constitution of 1876 after Reconstruction, they were determined that it would be the last, and it was. From then on, if Texans wanted to change any part of their constitution, they would pass an amendment. By the end of the 1800s, they had already amended the constitution 17 times. (By the year 2015, this number would amount to an astounding 491 times! By comparison, the U.S. Constitution that was adopted in 1787 has been amended only 27 times.)

The framers of the Republic Constitution and first State Constitution could not have imagined that within a few decades, not only would the vast frontier be crisscrossed by railroads, but those railroads would be owned by huge businesses outside Texas. Nor could they have foreseen the rise of huge banking and insurance industries and the tangle of legal problems they would bring. Those who created new laws had to protect the rights and well-being of individual Texans while also allowing businesses—even huge ones—to grow. The cases that reached the Texas Supreme

Court from the lower courts were often very complicated, and the justices sometimes had few or no cases from the past to base their decisions on.

Fortunately, from the very beginning, the men who were appointed or elected to the Supreme Court were highly intelligent and fair-minded as well as resourceful. In many ways they were pioneers on the frontier of Texas law. Unlike the frontier that closed when the state's free land ran out, there were no boundaries in sight on the legal frontier. Just as the courts were beginning to get a grip on handling the railroads and other big businesses, they were faced with new challenges. In 1901, oil and gas literally exploded on the scene at Spindletop. This opened up a whole new area of law—the regulation of the oil industry. Oil and gas law had many tangents, some of them tied to the old Spanish laws governing land ownership and mineral rights, and others that were entirely new. It was up to the courts to sift through the laws and come up with fair decisions.



*Spindletop instantly changed the landscape, economy, and future of Texas in 1901.*

As we read in the first book in the Taming Texas series, *How Law and Order Came to the Lone Star State*, the laws and courts of the twentieth century would continue to change as Texas changed. Some parts of the frontier heritage would remain intact, especially within the Texas Constitution and in the continued election of judges. Other parts, such as the frontier traditions that placed social and legal restrictions on women and minorities, would eventually fade as state and federal laws were put in place and upheld by the courts.

In the next books in the series, we will meet the chief justices of the Texas Supreme Court who helped bring about these changes, and also explore the changing roles of women and minorities as Texas made its way from the frontier to the modern world.

# Glossary

**Adelsverein** — an organization established in Germany in 1842 to send large numbers of German immigrants to Texas to create a German colony; its full name was *Verein zum Schutze Deutscher Einwanderer in Texas*, or Society for the Protection of German Immigrants in Texas

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

**amendment** — a change in a document; a change to a constitution

**annex** — to incorporate one territory into a larger one

**appeal** — (verb) to ask a higher court to review and reverse the opinion of a lower court; (noun) the process in which a case is reviewed by a higher court

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

**bondsman** — another name for a slave; the name suggests that the person worked under a bond agreement, but it actually meant he was held in bondage

**bounty land grants** — grants of land by the Republic of Texas government to soldiers who served in the Republic of Texas army during the revolution and the year afterward, as well as those who guarded the frontier between 1838 and 1842

**Buffalo Soldiers** — the nickname given to the African-American soldiers in four U.S. Army regiments after the Civil War; they were known for their bravery and hard work on the Texas frontier

## GLOSSARY

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

**circuit** — a route that moves in a roughly circular path; a circuit judge travels to different locations in a judicial district to hold trials

**civil law** — (1) a legal system developed in Ancient Rome and used in early Spain, based on written laws; (2) in the English common law, non-criminal legal cases (lawsuits dealing with property, contracts, and so on)

**common law** — a legal system developed in England and the English-speaking world, based on decisions from previous cases (precedents)

**compañías volantes** (“flying companies”) — early Spanish cavalry units that patrolled the frontier regions of New Spain in the 1700s and early 1800s; they were the predecessors of the Texas Rangers

**constitution** — the fundamental law of a government that gives its officials the authority to act; it is voted on and amended (changed) by the people

**culture** — the beliefs, values, and behaviors of a particular group

**donation grants** — land grants from the Republic of Texas government for soldiers who fought in certain battles of the Texas Revolution

**draft** — forced service in a country’s military; a draft dodger is someone who refuses to be drafted

**embargo** — a legal prohibition or restriction on trade

**empresario** — a person who was granted a contract by Spain and then Mexico to settle foreign colonists in Texas; that person was in charge of managing the settlement, and had a financial interest in the project

**entrada** — a Spanish term for an expedition or journey into unexplored territory; the word means “entry” or “entrance” in Spanish

**expedition** — a journey or voyage to a land by a group of people with a particular purpose, especially to explore or conquer

**filibuster** — someone who went into a country that was not his own and tried to take control of land; the word originally came from the Dutch word for “freebooter,” or pirate

**frontier** — an area beyond the settled area of a country or region

**Frontier Battalion** — a unit of the Texas Rangers created by the Texas government in 1874 to protect the frontier from outlaws and Indian attacks; the battalion served until the end of the nineteenth century

**Green Flag Rebellion** — a name given to the 1813 Battle of Medina, part of an unsuccessful attempt by a group of Spanish revolutionaries and U.S. filibusters to establish a State of Texas under a Republic of Mexico, several years before Mexico declared its independence from Spain; the rebels’ banner was a green flag

**headright land grants** — grants of various amounts of land by the Republic of Texas government for heads of families and single men; the amount of land was based on when an immigrant arrived in Texas

**home forts** — non-military forts built by communities of frontier families during the Civil War to defend themselves from Indian attacks and other threats

**Home Guard** — military units formed by the Confederate government in Texas during the Civil War to protect frontier settlers from Indian raids

**homestead** — a person’s residence, including both a house and the adjoining land, that is exempted by law from being seized or sold for debt

## GLOSSARY

**immigrant** — a person who moves from one country or region to another to settle

**indentured servant** — a person who is under contract to work for another person for little or no pay for a certain amount of time in exchange for free passage to a new country

**Indian Territory** — land set aside by the United States government for the relocation of Native American Indian tribes from their original territories in Texas and other states; most of the land was in what is now the state of Oklahoma

**judiciary** — the branch of government that is responsible for interpreting laws and administering justice; the word also refers to the judges in a court system

**labor of land** — an early Spanish land unit that measured 177 acres

**land grant** — a gift of government-owned land to settlers or organizations

**league of land** (in Spanish, *sitio de ganado mayor*) — an early Spanish land unit that measured 4,428.4 acres

**Leatherstocking** — a nickname for a frontier character named Natty Bumppo in James Fenimore Cooper's *Leatherstocking Tales* book series, published in the early 1800s

**lobby** —(verb) to meet with important people to win their support

**militia** — a temporary armed force of private citizens

**mission** — a frontier religious outpost built by the early Spanish government and Catholic church to convert native people to the Catholic religion and the Spanish way of life

**Neutral Ground** — strip of land along the Texas-Louisiana border in the early 1800s that was not governed by either the United States or Spain because of unclear boundaries; fugitives from the law could go there and not worry about being arrested by either side

**Populist movement** — a revolt by farmers of the South and Midwest against the Democratic and Republican parties, which they thought did not protect their interests

**presidio** — a fortified base established by the Spanish in areas under their control; the word is from the Spanish *presidir*, which means “to preside” or “to oversee”

**prosecuting attorney** — a lawyer who works for the state and tries to prove in court that a suspect is guilty of the crime he or she is accused of committing

**public domain** — land that belongs to the public and is protected and regulated by the government

**recession** — a period when the economy slows down significantly, sometimes because of a financial crisis

**Red River War** — a military campaign by the U.S. Army in 1874–75 to forcibly remove certain Native American Indian tribes from the plains of Texas to reservations in Indian Territory

**secede** — the act of one part of a state or country ending its connection with the rest and setting up a new government

**standing army** — a military force that is permanent rather than temporary

**Supreme Court of Texas** — originally the highest court in Texas for appeals of both criminal cases and civil cases; since 1892, the state’s highest court for civil appeals

## GLOSSARY

**Tejano** — in Spanish and Mexican Texas, a person of Spanish origin (from Spain and then New Spain) who settled in the region that became Texas; in the Republic and then State of Texas, a Texan of Mexican heritage

**Texas Rangers** — a mounted force of men organized by the Republic and then the State of Texas to defend the frontier

**Unionist** — before and during the Civil War, a person who believed in preserving the United States (the “Union”), and who was therefore against secession and the Confederacy

**vaquero** — a horseman and cow handler, from the Spanish *vaca*, or cow; *vaqueros* were the original cowboys in Texas

**vigilantes** — gangs of armed people who bully and threaten others into supporting their point of view, and punish those who do not; they are not part of any government law enforcement group

# Index

## A

- Adelsverein, 42–43  
alcalde, 24, 25  
Arredondo, Joaquín de, 18–19  
Austin, Moses, 17, 17 (illust.), 18 (illust.), 19, 21, 21 (illust.)  
Austin, Stephen F., 20 (illust.), 21–25, 22 (illust.), 49, 54  
Austin's Colony, 22–25

## B

- Baron de Bastrop, 17–18, 18 (illust.)  
Bean, Peter Ellis, 16 (illust.)  
Béxar, San Fernando de, 11  
Blondel, Philippe, 12–13, 13 (illust.)  
bounty land grants, 40  
Buffalo Soldiers, 66–67; 66 (illust.); 67 (illust.)  
Burnet, David G., 34

## C

- Cabeza de Vaca, Alvar Nuñez de, 6, 6 (illust.)  
Canary Islanders, 11–12  
Cardís, Luís, 73–74  
Cherokee Indians, 47  
Chicken War, 13, 13 (illust.)  
Civil War, 4, 59–62, 64, 66  
Columbia, 27  
Comanche Indians, 35–36, 49–50, 59, 69, 73  
*compañías volantes*, 49  
Constitution, Republic of Texas, 26 (illust.), 27, 41

Constitution, Spanish, 14 (illust.), 17, 18, 19

Constitution, State of Texas, 54, 85

Constitution, U.S., 53, 85  
Constitutional Convention, Texas, 54–55; 55 (illust.)

Council House Fight, 36, 36 (illust.)

cowboys, 74–76, 75 (illust.), 78–79, 78 (illust.), 79 (illust.)

Cowboy Strike of 1883, 75–76, 75 (illust.)

Crockett, Elizabeth Patton, 40, 41 (illust.)

## D

- Davis, E. J., 64  
De León, Alonzo, 10  
de León, Martin, 22 (illust.)  
donation land grants, 40, 40 (illust.)

## E

- Elm Creek Raid, 59–60  
El Paso, 6, 73–74  
empresario land grants, 22, 41  
English common law, 4

## F

- Fence-Cutting War of 1883–84, 70, 70 (illust.)  
Ferdinand VII, King (of France), 16, 17 (illust.)  
filibusters, 15–16

Fisher, Henry Francis, 42, 42  
(illust.)  
Fisher-Miller land grant, 41–42  
France, 9–10, 12–13  
Fort St. Louis, 9–10

## G

Gainesville, 61  
Gates, John “Bet-a-Million,” 69  
German Texans, 42–43, 60, 71  
Goodnight, Charles, 71, 71 (illust.)  
“Great Hanging” (Gainesville  
Hanging), 61, 61 (illust.)  
Green Flag Rebellion, 16, 19

## H

Hays, Jack Coffee, 49–50, 49  
(illust.)  
headright land grants, 41  
Hemphill, John, 35, 35 (illust.), 54  
Hidalgo y Costilla, Padre Miguel,  
16  
Hogg, Jim, 76, 76 (illust.)  
Home Guard, 59–60  
Houston, Sam, 34, 34 (illust.), 35,  
44–45, 44 (illust.), 47, 53  
Howard, Charles, 73, 73 (illust.)  
Hudson, William, 61  
Huston, Felix, 33, 34, 34 (illust.)  
Hutchinson, Judge Anderson, 36,  
37

## I

Indians—see Native American  
Indians  
Indian Territory, 47, 60, 62, 66,  
69, 84  
Ireland, John, 70, 70 (illust.)

## J

Jones, Texas Rangers Major John  
B., 74, 74 (illust.), 81  
juries, 24, 55–56, 56 (illust.)

## K

Karankawa Indians, 10  
Kiowa Indians, 64, 69, 73

## L

Lamar, Mirabeau B., 35, 36,  
44–45, 44 (illust.), 47, 48–49,  
53  
land grants 3, 39–41, 84  
Lanham, Sam, 64  
La Salle, Sieur de (René Robert  
Cavalier), 9–10  
Louis XIV, 9  
Louisiana, 9, 13, 15, 18, 21, 29

## M

Martínez, Antonio María, 17, 18,  
19  
Massanet, Father Damián, 10–11  
Medina River, Battle of, 18  
Mercer Colony, 43

## N

Nacogdoches, 16, 25  
Napoleon Bonaparte, 16  
Native American Indians, 2, 11,  
39, 44, 47–50, 64 (illust.),  
64–65, 66  
Neri, Felipe Enrique (Baron de  
Bastrop), 17–18, 18 (illust.)  
Neutral Ground, 29, 33  
Nolan, Philip, 15 (illus.), 15–16,  
Nueces, Battle of the, 60, 60  
(illust.)

- O**
- Öñate, Don Juan de, 6–7, 7 (illust.)
- P**
- Peters Colony, 43, 43 (illust.)
- Perote Castle, 36, 37 (illust.)
- Phantom Hill, Fort, 58 (illust.)
- Prietto, Nicolás, 11
- Q**
- Quantrill, William Clarke, 61–62, 62 (illust.)
- R**
- railroads, 81–84, 85
- Rangers, Texas, 49–50, 49 (illust.), 59 (illust.), 74, 81
- Red River War, 64, 69, 84
- Regulator-Moderator War, 29, 33
- Republic of Texas Supreme Court, 28–29, 36, 44–45, 47, 48
- Roberts, Oran, 28–29
- Rusk, Thomas J., 54–55, 54 (illust.), 55 (illust.)
- S**
- Salt War of 1877, 72 (illust.), 73–74
- San Elizario, 73–74, 81
- San Fernando de Béxar, 11
- San Francisco de los Tejas, 10–11, 11 (illust.)
- San Jacinto, Battle of, 36, 40, 47
- San Miguel de Linares mission, 13
- Satanta, Chief, 64, 64 (illust.), 65 (illust.), 67
- Santa Anna, Antonio López de, 25, 34, 36, 47
- Sherman, General William Tecumseh, 64, 64 (illust.), 67
- slavery, 4, 24, 28, 60
- Spain, 2, 3, 4, 6–7, 9–11, 15–17, 18–19, 29, 78
- Spanish law, 4, 16, 35, 55, 85
- St. Denis, Louis Juchereau de, 12, 12 (illust.)
- Supreme Court, Republic of Texas, 28–29, 36, 44–45, 47, 48
- Supreme Court, Texas (state), 54–55, 82–83, 84, 85
- Supreme Court, U.S., 48
- T**
- “Three-Legged Willie” Williamson, 29–30, 29 (illust.), 30 (illust.)
- Trespalacios, Félix, 19, 49
- V**
- Vaca, Cabeza de, 6
- vaqueros*, 78–79, 78 (illust.), 79 (illust.)
- Velasco, Treaties of, 36, 47
- W**
- Walker’s Creek, Battle of, 50, 50 (illust.)
- Warren Wagon Train Massacre, 64
- Williamson, Judge Robert McAlpin, (“Three-Legged Willie”), 29–30, 29 (illust.), 30 (illust.)
- Woll, Adrián, 36
- Y**
- Yellow Wolf, Chief, 50

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