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Last month on January 13th, the Texas Supreme Court Historical Society celebrated its 30th anniversary. On the Sesquicentennial of the Texas Supreme Court's first session in 1840, three legendary Chief Justices—Hon. Robert Calvert, Hon. Joe Greenhill, and Hon. Jack Pope—established the Society in 1990. From its founding, the Society has worked hard to fulfill its mission to educate the public about the history and development of the Texas judicial branch, as well as to conserve the history and work of the Texas Supreme Court and the state's appellate courts.

The first of the Society's eighteen presidents (so far), Justice Jack Hightower, set the Society on the ambitious path it was to blaze in the coming years. He has been followed in that office by four other Justices, including Chief Justice Greenhill and Justices James Baker, Craig Enoch, and Dale Wainwright.

Over its 30 years, the Society has made scholarship highlighting the history of the Texas judiciary central to its educational charge. It has published six books, including the most complete history of the Court in nearly a century. It has also published the collected works of one of the Court's most celebrated Justices, former Chief Justice Jack Pope. The first book the Society published was a comprehensive collection chronicling the legal struggles African-Americans faced in Republic-era and confederate Texas. Most recently, the Society and its Fellows have been proud to publish three 7th-grade history textbooks in the *Taming Texas* series. The Society owes a debt of gratitude to the incomparable Marilyn Duncan who has either edited or authored each of these books.

In 2011, the Society also founded its quarterly journal, which has served as the main conduit for the publication of scholarly historical research on the Court and the Texas judiciary. From its founding by General Editor Lynne Liberato, Executive Editor David Furlow, and Managing Editor Marilyn Duncan, the *Journal* has grown to one of the most prominent historical publications in the country. Its stature was confirmed this past year when the American Association of State and Local History recognized the *Journal* with its Award of Excellence in History.

The year following the *Journal*'s founding, then-Society President and Charter Fellow Warren Harris alongside Charter Fellow David Beck established the Society's Fellows program. The Fellows
have made possible numerous programs that have become staples of the Society, including: (1) the Society’s Taming Texas textbook series and classroom judicial civics program; (2) the History of Texas & Supreme Court Jurisprudence TexasBarCLE course that has been held biennially since 2013; and (3) the reenactments of notable Texas appellate cases including Sweatt v. Painter, 339 U.S. 629 (1950), Johnson v. Darr, 272 S.W. 1098 (1925), and Texas v. White, 74 U.S.700 (1868).

The Society also owns and maintains the Court's judicial-portrait collection, and coordinates with the Court to host new portrait “hanging” ceremonies for retired Justices. In 2018, the Society and Court held a historic ceremony to dedicate the portraits of two Supreme Court judges from Texas’s Reconstruction era—Chief Justice Wesley B. Ogden and Justice Colbert Coldwell.

Since 2015, the Society President has presented an award recognizing outstanding service to the Society. Notably, the only person to be awarded this honor twice is David Furlow, who has been indispensable in so many of the Society's initiatives—chief among which has been his tireless editorship of the Journal.

Beginning the following year, the Society stepped in to alleviate the burden on Court personnel to plan and host the annual BA Breakfast reunion of current and former Justices, briefing and staff attorneys, and judicial staff.

For the past eight years since 2011, the Society has worked with the Texas Bar Appellate Section to create and maintain the Texas Appellate Hall of Fame. Each year, the Society's President, along with the Section's Chair, appoint a slate of Hall of Fame Trustees who elect that year's honorees. Descendants of the enshrinees are invited to attend the investiture ceremony at the Texas Bar Advanced Appellate Course in the fall. Thus far, Texas Supreme Court enshrinees have included Chief Justices James Alexander, Robert Calvert, Joe Greenhill, John Hemphill, John Hill, Jack Pope, Thomas Rusk, and Hortense Ward, along with Justices James Baker and Will Garwood.

The Society’s capstone event is the John Hemphill Dinner held each year in Austin. The dinner has been held annually for the past 24 years. Notable keynote speakers have included sitting and retired U.S. Supreme Court Justices, Chief Judges of the U.S. Circuit Courts of Appeals, U.S. Attorney Generals, U.S. Senators, White House Counsels, and Chief Justices of other states.

The one constant over the Society's first 30 years has been the steadfast and amazing dedication, enthusiasm, creativity, and support of our members, staff, Trustees, Fellows, and officers. On behalf of the Society, I extend our thanks to everyone over the past three decades who have worked so tirelessly to make the Society what it is today.

DYLAN DRUMMOND is an appellate litigator resident in the Dallas office of Gray Reed & McGraw LLP.
The appointment of the first judicial commission in the Republic of Texas was a hasty affair. On April 3, 1836, the Texas warship *Invincible* seized the American ship *Pocket* near the mouth of the Rio Grande. The vessel was taken as a prize to Galveston, and the *Invincible* sailed to New Orleans, where the crew was arrested for piracy. The fledgling Texas government had not officially declared a blockade and had no court with jurisdiction to hear the matter. The Texas government quickly created a special judicial district, the “District of Brazos” with jurisdiction over admiralty cases, and before June 15, 1836, the Republic of Texas’s provisional president, David G. Burnet, appointed Benjamin Cromwell Franklin, a San Jacinto veteran, as its first judge to preside over the *Pocket* case.

Franklin was not Burnet’s first choice for the appointment. He first asked James Collinsworth to serve, but Collinsworth declined. And the legality of the appointment was doubtful. The constitution of the Republic specified that judges be elected by “joint ballot of both Houses of Congress.” Nevertheless, Franklin heard the *Pocket* case and ruled that the vessel was, indeed, taken as a lawful prize. Shortly after, Congress elected Franklin as a district judge, which also made him an *ex officio* member of Texas’s first Supreme Court.¹

From these chaotic beginnings, the Texas courts have matured into one of the largest court systems in the nation. Texas has 3,210 judges, more than any other state, and Texas judges handle more than 8 million cases a year.² Unlike the hasty appointment of Benjamin Cromwell Franklin, the Texas Supreme Court welcomed its newest justice, Jane Bland, to the Court in a formal investiture held at the Texas Capitol on November 9, 2019. It was the second investiture of 2019, as just a month earlier, Justice Brett Busby’s investiture took place in the Capitol on September 6.


² Chief Justice Nathan L. Hecht, “The State of the Judiciary in Texas,” address to the 86th Texas Legislature, February 6, 2019, Austin, Texas.
This year marks an important anniversary for the Texas Supreme Court Historical Society. It was just thirty years ago that the Society began its work. Established in January 1990 on the Sesquicentennial of the first session of the Supreme Court of the Republic of Texas, the Society's incorporation papers were filed with the Secretary of State by three former Chief Justices: Robert W. Calvert, Joe R. Greenhill, and Jack Pope. The founding president, Judge Jack Hightower, then serving as Justice on the Texas Supreme Court, enlisted the support of the Court for creating the Society and procured the cooperation and assistance of the State Bar of Texas. Since its inception, the Society has pursued its mission to raise public awareness about the judicial branch of government through a variety of initiatives, including the Judicial Oral History Project, the Taming Texas series of books, reenactments of notable Texas cases, and serving as conservator for the Court's judicial portrait collection.

This year the Society will undertake a new initiative. The Society will honor one of its past presidents, Larry McNeill, by awarding a fellowship in his name at the Texas State Historical Association Annual Meeting. McNeill contributed to the preservation of Texas history first as president of the Texas State Historical Association in 2005–06 and then as president of the Texas Supreme Court Historical Society in 2009–10. Among other accomplishments, McNeill's leadership led to the publication of The Texas Supreme Court: A Narrative History, 1836–1986. McNeill epitomizes the dedication of the men and women who volunteer their time and expertise to the Society, and the fellowship named after him will foster research and scholarship about the Texas courts and Texas legal history.

This issue of the Journal also marks a changing of the guard for the Journal staff. Executive Editor David Furlow has been at the helm of the Journal since 2011, but this marks his last issue as Executive Editor before moving on to other projects. His passionate interest in history and inexhaustible enthusiasm for developing new topics for the Journal has raised the stature of the publication and set a high bar for the future.

Just as important to the success of the Journal has been the work of Managing Editor Marilyn Duncan, who will also be retiring from the Journal staff with this issue. Marilyn has also been a crucial member of the Journal staff since 2011. Her work for the Journal often has no byline, but everyone associated with the Journal knows that her influence permeates the publication from beginning to end.

On behalf of the Society, I'd like to thank David and Marilyn for their exceptional work on the Journal, and on my own behalf I'd like to say that I'm so glad to have had the chance to work with them as colleagues and as friends.

SHARON SANDLE, in addition to serving as the Society's Executive Director, is Director of the State Bar's Law Practice Resources Division and of TexasBarBooks.
I am pleased to report that our third Taming Texas book, entitled *The Chief Justices of Texas*, has been published and will be available in this Spring. This latest book contains interesting stories about the twenty-seven Chief Justices of the Supreme Court of Texas, and will educate seventh-grade readers about the era in which each Chief Justice served and why their work at the time was so important to the Court.

Jim Haley and Marilyn Duncan, the authors of the three Taming Texas books, have already begun work on the fourth book in the series. The next book will be entitled *Women in the Law* and will feature stories about some of the important women in Texas legal history. We would like to thank both Jim and Marilyn for their exceptional work on these great books.

As mentioned previously, the Taming Texas project is now expanding to additional cities. Fellow Ben Mesches is working with Dallas Bar Association President Robert Tobey to further expand our program in the Dallas schools. On December 6, 2019, Ben led a group of judges and lawyers in presenting Taming Texas to six classes at Robert T. Hill Middle School in the Dallas ISD. Ben reports that the program was a success: “The unique opportunity to reach history and journalism students at Hill Middle School was enriching for our members, but, most importantly, gave the students important practical insights into the history and structure of our legal system from local judges and practicing lawyers.” The State Bar Judicial Section partnered with us to provide judges for our program and the Dallas Bar Association provided volunteer attorneys. A special thanks to Judge Andy Hathcock for coordinating the judges who participated. If you would like to volunteer to teach upcoming sessions in the Dallas-area schools, please contact Melissa Garcia at mgarcia@dallasbar.org.

Additionally, Fellow Marcy Greer is working with Austin Bar Association President Todd Smith to implement the program in Austin schools. For the past four years, we have partnered with the Houston Bar Association to take the Taming Texas project into Houston-area schools, and we have now reached over 21,000 seventh graders. Taming Texas kicks off again in Houston in March 2020. Justice Ken Wise and Richard Whiteley lead the effort in Houston. Justice Brett Busby and Fellow Warren Harris are coordinating our Taming Texas statewide efforts and our expansion to other Texas cities.

The Fellows are a critical part of the annual fundraising by the Society, and allow the Society to undertake Taming Texas and other projects to educate the public on issues important
to Texas legal history. In addition to supporting our educational projects, Fellows are invited to the annual Fellows Dinner. We are finalizing plans now for this year’s event. The dinner will be held on February 26, 2020 at a special venue in Austin. Further details will be sent directly to all Fellows.

Finally, we are in the process of considering future projects. Please share with us any suggestions you may have.

If you would like more information or want to join the Fellows, please contact the Society office or me.

**DAVID J. BECK** is a founding partner of Beck Redden LLP.

**FELLOWS OF THE SOCIETY**

**Hemphill Fellows**
($5,000 or more annually)

- David J. Beck*
- Joseph D. Jamail, Jr.* (deceased)
- Richard Warren Mithoff*

**Greenhill Fellows**
($2,500 or more annually)

- Stacy and Douglas W. Alexander
- Marianne M. Auld
- S. Jack Balagia
- Robert A. Black
- Hon. Jane Bland and Doug Bland
- E. Leon Carter
- Kimberly H. and Dylan O. Drummond
- Michael Easton
- Harry L. Gillam, Jr.
- Marcy and Sam Greer
- William Fred Hagans
- Lauren and Warren W. Harris*
- Thomas F.A. Hetherington
- Jennifer and Richard Hogan, Jr.
- Dee J. Kelly, Jr.*
- Hon. David E. Keltner*
- Thomas S. Leatherbury
- Lynne Liberato*
- Mike McKool, Jr.*
- Ben L. Mesches
- Nick C. Nichols
- Jeffrey L. Oldham
- Hon. Harriet O’Neill and Kerry N. Cammack
- Hon. Thomas R. Phillips
- Hon. Jack Pope* (deceased)
- Shannon H. Ratliff*
- Harry M. Reasoner
- Robert M. Roach, Jr.*
- Leslie Robnett
- Professor L. Wayne Scott*
- Reagan W. Simpson*
- Allison Stewart
- Kristen Vander-Plas
- Peter S. Wahby
- Hon. Dale Wainwright
- Charles R. Watson, Jr.
- R. Paul Yetter*

*Charter Fellow
To every thing there is a season,  
and a time to every purpose under the heaven:  
A time to be born, and a time to die;  
a time to plant, and a time to pluck up that which is planted;  
A time to kill, and a time to heal;  
a time to break down, and a time to build up...  
— Ecclesiastes 3 (King James Version)

This is a time of change. In this issue of the Journal, we embrace change. We do so because the time and season for change has come.

Our society’s standard of fairness in the legal system has changed over time. Sam Houston State University Professor John C. Domino’s lead article, “The History of Judicial Disqualification and Recusal in Texas: Part 1,” addresses some of the most important issues any historian of law can face: how attorneys can ensure that their clients receive a fair trial—not a perfect trial, just a fair trial. Professor Domino examines the history of judicial disqualification from the Republic of Texas to the present day, analyzing Texas constitutional provisions, common law cases, and the evolution of recusal based on bias over time.

My two-part article, “New England Roots Run Deep in Texas: A 400th Anniversary Salute,” examines changes over time as people cross borders and transcend limitations. Sometimes the change is geographic, for example, when the Puritans crossed the Atlantic from Old England to New England, and when a handful of immigrants brought New England energy, ideas, and institutions to Mexican Texas, then stayed to create the Republic of Texas and then the Lone Star State. We’ll examine how the Mayflower Compact, John Adams’s Massachusetts Constitution of 1780, and a small but extraordinarily influential group of New Englanders shaped Texas society, law, and history between 1820 and 1870.

This issue represents another kind of change—a changing of the guard. This is the last issue in which I will serve as the Journal’s Executive Editor and Lynne Liberato as General Editor, as reflected in the masthead. Marilyn Duncan is also stepping down as Managing Editor.

It’s time for change to come—to offer you new faces, new ideas, and new imagery. Not all at once, but incrementally, because this transition has been underway for many months. Our Executive Director Sharon Sandle, our President Dylan Drummond, and Production Editor David Kroll will continue navigating this ship into the future, ensuring smooth sailing as we transition from one Journal crew to the next one. Sharon, Dylan, and David will play important roles in a new Editorial Board, as will I, that will publish the Journal going forward.
Speaking of change, it's time to introduce two new members of the *Journal*’s Editorial Board: Editor-in-Chief John Browning and Executive Articles Editor Stephen Pate. As a partner in Spencer Fane LLP in Dallas and as the author of many articles and several books on social media’s impact on the law, John is frequently sought out by national and international media. He’s as media savvy as anyone at the *Journal* could hope to find on the subject. An original thinker and a scholarly writer, he has authored or coauthored some of this *Journal*’s finest articles in recent years. In addition, John has appeared on television, radio, and podcasts discussing social networking and the law, and has been quoted in such publications as *The New York Times, The Wall Street Journal, TIME magazine, Law360, the National Law Journal*, and the *ABA Journal*. John will make an excellent Editor-in-Chief.

Readers will recognize Stephen Pate from the many fine articles he has published about Texas state and federal legal history in past issues of the *Journal*. These include an examination of the career of Texas Governor and U.S. Judge Jimmy Allred and a multi-part series about the search for a new federal judge to serve in Galveston during the tumultuous aftermath of the Civil War. A member of the Cozen & O’Connor law firm in Houston, a fellow of the American College of Coverage and Extracontractual Counsel, and a member of the American Board of Trial Advocates, the American Law Institute, the Federation of Defense & Corporate Counsel, and Law360’s Insurance Editorial Advisory Board, Stephen brings an extraordinary depth and breadth of experience to his role as the *Journal*’s new Executive Articles Editor.

It has been eight-and-a-half years since our Society’s then-President Lynne Liberato and I organized this *Journal* with the invaluable assistance of then-Executive Director Bill Pugsley during the summer of 2011. Managing Editor Marilyn Duncan, Deputy Executive Editor Dylan Drummond, and Production Editor David Kroll joined the team soon thereafter.

Over the years, we've worked with Society Executive Directors Pat Nester and Sharon Sandle, two energetic and innovative representatives of the State Bar of Texas who have made publishing this *Journal* a pleasure. We've enjoyed exploring the visions and accomplishing the goals of nine presidents of the Society. We've worked with dozens of authors and coauthors who have submitted innovative and informative stories and news items year after year after year.

It's been an extraordinary honor and privilege to work with every member of an exemplary team. We've worked long, hard hours together and had fun together.

We've exchanged and changed ideas, images, and insights together, always exploring ways to tell stories of law, courts, judges, justices, and attorneys, to provide readers with easy access to the unfolding legal history of Texas.

Thank you all for making it possible for this *Journal* to earn an Excellence in History Award from the American Association for State and Local History at its 2019 Annual Meeting in Philadelphia.

Now, let the adventure continue...

**DAVID A. FURLOW** is an attorney, historian, and archeologist.
Judicial recusal—a judge's withdrawal from a legal case because of personal bias or prejudice—is a modern development in the history of Texas jurisprudence. A judge's decision to recuse from a case is based on a complex set of norms, codes, and procedures intended to promote impartiality. For most of the state's history, however, the sole ground for the removal of a judge from a case was not recusal for bias but disqualification according to the conditions set out in the Texas Constitution.

Although the terms “disqualification” and “recusal” are often used interchangeably in Texas, the two concepts must be differentiated because the legal authority and grounds for each are fundamentally different. If disqualified from a case on constitutional grounds, a judge does not have jurisdiction in the case and any ruling or decree made has no effect. Recusal from a case, on the other hand, occurs voluntarily if the judge's impartiality might reasonably be questioned. Refusal to recuse often results in the transfer of the case to another court or assignment of another judge to the case.

This two-part article examines the foundations and emergence of the modern concept of judicial recusal in Texas. Part I begins with a historical examination of disqualification rulings of the Texas Supreme Court and lower appellate courts, in order to clarify early foundational thinking about the circumstances under which a judge should not hear a case. My primary purpose here, however, is to discuss the emergence of the body of rules and norms of behavior governing judicial recusal that arose in the late twentieth century. I hope to illustrate a shift from rigid constitutional grounds to a more fluid modern approach based on judicial interpretation of a code of conduct. Of course, the body of case law dealing with disqualification as well as recusal is substantial. A complete treatment is beyond the scope of a single article. The focus here will be on those rulings that have had a major precedential impact on the origins and development of the modern concept of recusal.

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1 This is a revised version of an article by the author titled “The Origins and Development of Judicial Recusal in Texas,” British Journal of American Legal Studies 5 (2016).
3 Tex. R. Civ. P. 18a (Recusal and Disqualification of Judges).
Constitutional and Common Law Origins

In 19th century Texas the grounds for the removal of a judge from a case were pecuniary interest and consanguinity,\(^5\) based on the Texas Constitution and the common law. The 1836 Constitution adopted by the Republic of Texas reflected the old English common law rule that the only basis for disqualification of a judge was direct pecuniary interest—that is, financial interest in the outcome of the case.\(^6\) There is no historical evidence that judicial bias as a ground for mandatory or self-disqualification was adopted by any court or governing body at that time. The standard of the time followed Sir Edward Coke’s axiom that “no man shall be a judge in his own case,”\(^7\) but it rejected the idea that “bias” as a state of mind in contrast to pecuniary interest would disqualify a judge.

Also controlling was William Blackstone’s belief that a judge cannot be challenged or disqualified for the possibility of bias, only “interest.”\(^8\) The pecuniary interest standard applied

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\(^5\) The degree of affinity to parties in a lawsuit.


not only where the outcome of a case directly affected the judge’s purse, but also where a judge might collect a monetary fine that he had the power to impose, or might benefit from indirectly, for example as a taxpayer. Of course the problem then was that if a judge could potentially be disqualified on the grounds of being a taxpayer, many lawsuits could not be decided, especially where there were few judges (or only one) in a sparsely populated area. Judicial disqualification in the Republic of Texas, however, was straightforward: judges were disqualified for financial interest but not for bias.

When Texas became a state in 1845, a new Constitution stated: “No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or where he shall have been counsel in the cause.”9 This language also appeared in the Constitutions of 1861, 1866, and 1869, and is repeated in the present Constitution, which was adopted in 1876. For over a century Texas courts held that the state’s Constitution provided the only necessary guidance for removing a judge from a case. The few appellate court opinions from this period show that any attempt to diverge from this rule and thus remove or disqualify a judge for any other reason was generally rejected, and the language of the Constitution on this matter was interpreted narrowly.

In *Taylor v. Williams* (1863),10 the Texas Supreme Court rejected efforts to remove a judge solely on the grounds that before becoming a sitting judge he had been counsel in the case. The case arose when a disputed title to land was litigated before a judge who had appeared as counsel in similar cases dealing with the same title some years earlier. The Court recognized as settled under the common law that the slightest pecuniary interest in a cause would result in the judge’s disqualification. However, nothing in the common law prevented a judge from hearing an appeal of a decision made while sitting as a trial judge or even serving as counsel.11 The judge’s “professional connection” with the case, by virtue of the fact that he was “counsel in the cause,” would only apply if the judge stood to gain financially. *Taylor* is important because it rejected the attempt to “creat[e] in the mind of the judge a bias, prejudice or partiality” as a ground for disqualification unrelated to that found in the Constitution.12 In a classic statement of judicial restraint the Texas Supreme Court wrote:

> [W]e cannot undertake to say that his professional connection with a similar cause or one involving the same questions shall have that effect. If we depart from the plain language of the constitution [as grounds for disqualification], we shall be left without a rule for our guidance, and shall countenance a laxity of construction that may prove both dangerous and inconvenient. 13

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9 Tex. Const § 19 (1845).
10 26 Tex. 583 (1863).
11 Ibid., 586.
12 Ibid.
13 Ibid., 586-87. Emphasis in original.
In Slaven v. Wheeler (1882),\(^{14}\) the Texas Supreme Court ruled that Texas Constitution's provision that no judge shall sit in any case where he has been counsel included instances where the judge, acting as an attorney, gave advice about an issue in a dispute more than ten years before it ripened into a lawsuit, even though as attorney he had not charged his client for the advice. The fact that he had once been consulted professionally as counsel barred him from sitting. The case originated when Elizabeth Slaven sued her husband for selling their property without her knowledge. During the trial, Mrs. Slaven sought to disqualify the presiding judge on the grounds that he had served as her counsel in the case ten years earlier. On appeal, the Texas Supreme Court held that even though a decade had passed, the attorney-client relationship had continued, since Mrs. Slaven had never attempted to terminate the relationship. For this reason the judge was disqualified under the Texas Constitution and the judgment of the lower court was reversed. The Court ruled that the conclusion in Slaven was not at variance with Taylor v. Williams because in the latter case the judge had not been professionally connected as counsel with the parties to the suit.\(^{15}\)

The Texas Supreme Court even refused to disqualify a judge whose property had been stolen by the defendant who was tried before him. Ross Davis was indicted in 1875 for stealing ten fence posts from Judge Daniel Claiborne. The value of the fence posts was two dollars and fifty cents. Counsel for the defendant petitioned to disqualify Judge Claiborne from sitting in the case. Both parties agreed, and the district attorney selected a local lawyer to be sworn in as a special judge.

The trial proceeded and Davis was convicted. Davis then appealed on the grounds that the special judge did not have authority to try the case. In Davis v. State (1876),\(^{16}\) the Texas Supreme Court ruled against Davis, stating that the Texas Constitution prescribed for the selection of a special judge when a presiding judge was disqualified.\(^{17}\) The Court concluded, however, that there was no need to disqualify Judge Claiborne in the first place. The judge might well have been furious with Davis for stealing his fence posts, and may have wanted to see him punished, but he was not constitutionally disqualified. It had not been shown that the judge was “interested,” since he was neither a party in the lawsuit nor liable to suffer a loss or gain a profit from the outcome.\(^{18}\)

In Dailey v. State (1900),\(^{19}\) the Texas Supreme Court refused to disqualify a judge from hearing a lawsuit against a woman for keeping a “disorderly house,” or brothel, even though the same judge belonged to an organization of local judges who met regularly to discuss strategies for closing down disorderly houses where prostitution and gaming took place.

In 1918, the Court of Criminal Appeals relied on Davis v. State when it ruled that evidence of a judge’s overt prejudice toward bootleggers and persons who peddle whiskey did not constitute

\(^{14}\) 58 Tex. 23 (1882).
\(^{15}\) Ibid., 26.
\(^{16}\) 44 Tex. 523 (1876).
\(^{17}\) Tex. Const. art. V, § 11 (1869).
\(^{18}\) Davis, 44 Tex. at 524.
\(^{19}\) 55 S.W. 821 (Tex. Crim. App. 1900).
grounds for disqualification. In Berry v. State\textsuperscript{20} the court rejected an effort to remove a judge because “he ... had expressed his prejudice against the appellant” in an appeal from a conviction for the unlawful sale of liquor. The court argued that the state Constitution alone set out the circumstances under which a judge should be disqualified. While the Court of Criminal Appeals recognized that a few states had adopted statutes requiring disqualification on the ground of prejudice, it strictly adhered to the view that “[o]ur laws appear to proceed on the theory that prejudice against an accused does not disqualify the judge from trying the case....”\textsuperscript{21} The logic was that any prejudice that the judge might have had toward the defendant was offset by the fact that defendant was still fully protected by the constitutional right to trial by an impartial jury and the right to appeal—a view that still influences judicial thinking on recusal to this day. The justices in Berry again rejected any considerations or evidence set out in a motion for disqualification beyond those specific and exclusive conditions covered by the constitutional provisions for removal.

\textsuperscript{20} 203 S.W. 901, 902-03 (Tex. Crim. App. 1918).
\textsuperscript{21} Ibid., 903.
That is not to say that early efforts to disqualify a judge were entirely without success. In *Nalle v. City of Austin* (1893), the Supreme Court ruled that a judge who presided in a lawsuit seeking an injunction to block an assessment of property taxes in the City of Austin was properly disqualified because the judge was a taxpayer in Austin and therefore had a direct pecuniary interest in the outcome of the case. This ruling deviated from instances where the common law rule of “necessity” required the judge to sit in a case involving a taxpayers suit, even though the judge as a taxpayer would stand to benefit financially from the court’s ruling. If a taxpaying judge could potentially be disqualified on the grounds of pecuniary interest, then many lawsuits could never be decided. The rule of necessity holds that when no substitute judge is available, the sitting judge is duty bound to hear a case. This rule was often invoked in rural areas where no substitute judge could be found. Even if the judge wished to be disqualified, appellate courts often ruled that the judge was required to sit in the case despite a potential bias or conflict of interest.

Under the Texas Constitution, the doctrines of consanguinity and affinity, as they applied to disqualification, refer to the degree of relationship between the judge and a party in a suit. The degree of consanguinity is based on the number of generations by which people are separated. Parents and children are related to each other in the first degree. A grandparent and grandchildren are related in the second degree. A husband and wife are (in most cases) related to each other not by consanguinity but by affinity in the first degree. So, for example, an attorney may not be involved in a case over which a judge is presiding if the attorney is related to the judge by one degree of consanguinity or affinity.

In 1943, in *Postal Mutual Indemnity Co. v. Ellis*, the Texas Supreme Court relied on earlier precedent to disqualify a judge whose son was an attorney for the plaintiff in a worker's compensation suit over which the judge presided. The Court applied the Texas Constitution and a civil statute to disqualify the judge because the attorney son met the definition of “party” under both. The Court broadly construed the statute, reasoning that the word “party” was not restricted to litigants but to all persons who were interested in the outcome of the case. *Ellis* extended application of the 1909 case of *Duncan v. Herder*, where the trial judge, the Hon. L.W. Moore, was disqualified by reason of his relationship by affinity (within the third degree) to one of the parties in a dizzyingly complex probate case. Judge Moore’s daughter-in-law stood to gain

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22 S.W. 668 (Tex. 1893).
24 The rule of necessity is said to have originated in England in the 15th century. The United States Supreme Court recognized the rule in *Evans v. Gore*, 253 U.S. 245, 248 (1920).
25 Tex. Const. § 19 (1845).
27 169 S.W.2d 482 (Tex. 1943).
28 Ibid., 484-85.
as one of the heirs of the decedent, a Mr. Lenert. So even though Mrs. Moore was not named as a party to the suit, she was a party within the meaning of the term as used in the Constitution and statute.

In the 1920s and 1930s, no codes or rules were available to address ethical quandaries faced by sitting judges who were actively campaigning for office. Guidance on these matters would not exist until the first codes of judicial conduct were promulgated in the 1970s. In Love v. Wilcox (1930) a candidate for governor sought a writ of mandamus from the Texas Supreme Court to compel the State Democratic Committee to put his name on the ballot in the primary election. The party officials refused his request because the aspiring gubernatorial candidate had once supported Republicans and worked against Democrats. The sitting Chief Justice of the Texas Supreme Court, Calvin Cureton, believed that he was disqualified to hear the case on appeal because he was a candidate for the Democratic Party's nomination for Chief Justice that same year. In a bold departure from precedent, he based his conclusion to self-disqualify not on Texas law, but rather on a holding of the Supreme Court of Colorado that addressed the question of whether a judge who was a candidate in a primary election was qualified by his direct interest in the primary to participate in a case related to the primary.31

Neither Texas case law nor statute provided guidance, but the Supreme Court ruled that under the Texas Constitution the Chief Justice was not only qualified but duty bound to sit in the case. The majority argued that the Colorado decisions had no bearing on the matters of disqualification of a Texas judge. In Texas, only the Constitution specified the grounds for disqualification. The Court held:

> Under the Texas Constitution, it is the duty of the judge to sit save “in any case wherein he may be interested, or where either of the parties may be connected with him by affinity, or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case.”34

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30 28 S.W.2d 515 (Tex. 1930).
31 Ibid., 517.
32 Ibid., 518.
33 Ibid.
34 Ibid.
For forty more years after *Love v. Wilcox*, the Texas courts continued to maintain this view. In 1972, rejecting the entire notion of recusal for bias, the 7th Court of Civil Appeals–Amarillo ruled in *Maxey v. Citizens National Bank of Lubbock*\(^{35}\) that

[w]hile delicate discretion might indicate a judge's withdrawal from a case in a contentious situation, there is no compulsion to step aside when the judge is not legally disqualified; indeed, unless legally disqualified, it is the duty of the judge to preside….Because the constitutional and statutory grounds are inclusive and exclusive, mere prejudice and bias are excluded as a disablin factor.\(^ {36}\)

Today, it would be hard to imagine a judge publicly admitting that “mere prejudice and bias” are not grounds to consider disqualification.\(^ {37}\) But it would not be until *Shapley v. Texas Department of Human Resources*\(^ {38}\) in 1979 that a Texas appellate court recognized bias as a ground for judicial disqualification, and that the Code of Judicial Conduct expanded the grounds for disqualification beyond the constitutional grounds.

**The Emergence of Recusal for Bias in Texas**

In 1974 the Supreme Court of Texas acted upon the recommendation of the American Bar Association and adopted the ABA Code of Judicial Conduct, Canon 3C(1), promulgated in 1972.\(^ {39}\) The idea of a code of ethics for judges was not new. The Canons of Judicial Ethics had been in existence since 1924, when an ABA committee led by the Chief Justice of the United States, William Howard Taft, drafted them as ethical guidance for judges. The Canons were eventually replaced by the 1972 ABA Code.

In 1977, three years after the ABA Code went into effect in Texas, a motion was filed to disqualify a trial judge in a case involving the termination of a parent-child relationship. The trial judge, seeing evidence of child abuse, overruled the district attorney's office and ordered the investigation of the parent for possible criminal prosecution. The judge then went on to discuss the details of the case with the press, making statements to reporters about facts that were not

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\(^{36}\) Ibid. Emphasis in original.

\(^{37}\) In 1973, in *Williams v. State*, 492 S.W.2d 522 (Tex. Crim. App. 1973), the Court of Criminal Appeals reiterated the century-old rule that “Article V, Section 11, of the Constitution of Texas, provides for the circumstances under which a judge is disqualified….The constitutional grounds of disqualification are exclusive; that is, they specify all the circumstances that forbid a judge to sit.”


\(^{39}\) ABA CODE OF JUDICIAL CONDUCT, Canon 3C(1), states that: “A Judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including, but not limited to, instances where:

a) he has a personal bias at prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

b) he served as a lawyer in the matter of controversy, or as a lawyer with whom he previously practiced law, served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it…;

c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter controversy or in a party to title proceeding, or any other interest that could be substantially affected by the outcome of the proceeding….“
reflected by evidence in the case, including the allegation that the child had been tortured.\textsuperscript{40} Numerous newspaper articles reported the judge's allegations, which indicated animus toward the parents. The mother filed to disqualify the judge on two grounds: (1) under Article V, Section 11 of the Texas Constitution the judge's statements “put himself in the position of counsel...”; and (2) the judge had a personal bias that precluded a fair trial under the 1974 Judicial Code. The trial judge refused to disqualify himself.

However, on appeal in \textit{Shapley v. Texas Department of Human Resources} (1979), the 8th Court of Civil Appeals–El Paso ruled that the trial judge acted unethically by ignoring the Code of Judicial Conduct in publicly stating his bias and prejudice to the media during an ongoing trial. Following the judge's public statements, the parties in the case no longer believed they would be treated fairly and impartially.\textsuperscript{41} The court wrote:

> Now under the Code, the subject of disqualification has been broadened and the direction has been made that a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned.\textsuperscript{42}

\textit{Shapley} represented a precedential shift of great magnitude. For the first time a Texas appellate court recognized: (1) bias as a grounds for judicial disqualification, and (2) that the Code expanded the grounds for disqualification beyond the constitutional grounds. Prior to the effective date of the Code, the grounds for disqualification enumerated by the Constitution were held to be both inclusive and exclusive. Mere bias and prejudice were not disabling factors.

The Court of Civil Appeals further explained that the ethical problem was not the comments made by the trial judge in court, but those he made to the media outside the courtroom during the course of a trial that was still ongoing. This was contrary to Canon 3A(6), which provided that a judge should abstain from making public comments about a pending or impending proceeding.\textsuperscript{43} However, under the old “independent grounds” standard, the judge would not have needed to recuse himself after he reacted publicly to the evidence during trial because he developed this bias from information gleaned during the trial.\textsuperscript{44}

Lastly, the court pointed out that the trial judge in refusing to disqualify himself had ignored Article 200a, Section 6, Tex. Rev. Civ. Stat. Ann. (Supp. 1978-1979), which outlined the procedure for the referral of a motion for disqualification to another judge or court.\textsuperscript{45} Since the mother did

\textsuperscript{40} \textit{Shapley v. Texas Department of Human Resources}, 581 S.W.2d 250.

\textsuperscript{41} \textit{Ibid.}, 253.


\textsuperscript{43} Canon 3A(6) stated: “A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.”

\textsuperscript{44} \textit{Shapley}, 581 S.W.2d 253.

\textsuperscript{45} \textit{Ibid.}
not raise this latter point, the court addressed the merits of her challenge to the district court’s parental termination judgment. Prior to Article 200a, Section 6, if a judge’s impartiality was challenged he or she made the call. If it was an incorrect decision, it could be reversed on appeal. Shapley was a transitional case bridging the old and new standard for disqualification. It was also the first substantive and authoritative interpretation of the new norms for recusal by a Texas court. The concept of judicial recusal had now emerged 143 years after the founding of the Texas Republic.

In 1981 the Texas Supreme Court adopted Rule 18a, thus giving more specificity to recusal and disqualification rules by adding procedures and time limits. The rule was amended a number of times, first in 1984, clarifying that it applied only to trial judges and not appellate courts of civil jurisdiction. A 1986 amendment to 18a excluded the Texas Court of Criminal Appeals. So three rules now established the terms guiding the disqualification of judges: (1) Rule 18a, (2) Article 200a, and (3) Canon 3C of the Code of Judicial Conduct. The concept of judicial recusal had now emerged 143 years after the founding of the Texas Republic.

In 1985 the Legislature repealed Article 200a, leaving only Rule 18a and the Code of Judicial Conduct. However, in 1988 the Legislature adopted Rule 18b, which provided specific grounds for disqualification and recusal. Judges were now guided by ethical canons, statutory requirements, and rules articulated by the courts responding to motions for recusal and disqualification based on “any disability of the judge.” Yet many trial judges, as well as appellate justices, still fought against the concept of recusal, maintaining that recusal and disqualification are two different concepts and that the only legitimate grounds for disqualification were those found in the Constitution.

One of the most important and frequently cited Texas Supreme Court rulings in recusal jurisprudence is In re Union Pacific Resources Co., handed down in 1998. The case originated when plaintiffs sued the Union Pacific Resources Company for personal injury damages. They moved to recuse the trial judge (Judge Max Bennett) on the grounds that the attorney for the law firm representing Union Pacific was also currently representing Judge Bennett in an ongoing recusal hearing. Judge Bennett refused to recuse himself, and pursuant to Texas Rule of Civil Procedure 18a(d) forwarded the motion to recuse to the presiding judge for the administrative district.

The presiding judge then appointed Judge Robert Blackmon, a district judge, who held a hearing at which Judge Bennett testified. Judge Blackmon granted the recusal motion, but then

46 18a (as a rule of civil procedure) became effective in 1982 and was rewritten in 2011. See Tex. R. Civ. P. 18a (Recusal and Disqualification of Judges).
47 See Tex. R. App. P. 16 (Disqualification or Recusal of Appellate Judges).
48 Union Pacific is cited by three subsequent Texas Supreme Court opinions, two Texas Court Criminal of Appeals opinions, and 118 Court of Appeals opinions (Westlaw and Lexis-Nexis searches, 8/22/19).
49 969 S.W.2d 427 (Tex. 1998).
after Judge Bennett wrote to Judge Blackmon requesting a rehearing on the recusal matter, Judge Blackmon reversed himself. Now frustrated, the plaintiffs suing Union Pacific sought a writ of mandamus from the 13th Court of Appeals–Corpus Christi to reverse Judge Blackmon. Union Pacific raised a unique question: is recusal required of a trial judge when an attorney for a party (representing Union Pacific) in the judge's court concurrently represents the same judge in recusal proceedings? Plaintiffs argued that the active participation by a challenged judge in a recusal proceeding must lead to the judge's recusal. The Court of Appeals conditionally issued a writ of mandamus ordering the trial court to vacate its order denying the recusal motion.

In recusal jurisprudence, mandamus is used in extraordinary circumstances to require a trial court to act in a particular way, in this case to compel a judge to recuse. To seek a writ of mandamus is not to seek an appeal, but to initiate an original proceeding against a judge or court demonstrating that there is a clear abuse of discretion on the part of the judge for which there is no legal or constitutional remedy. The party must show that there is real danger of permanently losing substantive rights. Thus, a court will not issue a writ of mandamus absent “compelling circumstances.”

On appeal in Union Pacific, the Texas Supreme Court reversed the Court of Appeals’ decision to issue the writ of mandamus because the plaintiffs had “adequate remedy by appeal” and the appeals court abused its discretion by issuing the writ. Chief Justice Thomas Phillips set out the following rule: judges may be removed from a case because they are disqualified under the Constitution or by statute, or are recused by rules promulgated by the Texas Supreme Court.

However, in Union Pacific, the erroneous denial of a recusal motion by the presiding judge did not nullify the judge’s actions. A judgment rendered in such circumstances may of course be reversed on appeal, but not by writ of mandamus. If the appellate court determines that the

51 Ibid., 538.
52 Ibid.
54 Canadian Helicopters, Ltd. v. Wittig, 876 S.W.2d 304, 306 (Tex.1994).
57 Tex. Gov’t Code §74.053(d).
58 Tex. R. Civ. P. 18a, 18b.
59 § 74.053 (d).
judge presiding over the recusal hearing abused his or her discretion in denying the motion and the trial judge should have recused, then the appellate court can reverse the trial court’s judgment and remand for a new trial with a new judge. In extraordinary instances, for example where a judge flagrantly refuses to follow procedural rules governing recusal, the writ of mandamus is appropriate.60

Justice Nathan Hecht, concurring in Union Pacific, made three very important points: “[j]udges should not inject themselves too far into recusal hearings,” “a hearing on a motion to recuse is not a trial of the judge’s character and should not be treated as such,” and it may be necessary for the judge to testify about the facts contained in the motion to recuse but the judge should not testify on the issue of perceived impartiality or bias.61 Judge Bennett had called himself as a witness, presented evidence, and given oral argument.62 Justice Hecht concluded, “The less involved a judge is involved in recusal proceedings, voluntarily or involuntarily, the better.”63

Would demonstrating a clear bias toward litigants or counsel be grounds for recusal? According to precedent, behavior that prompts the motion for recusal must be based on an “extrajudicial source.”64 This is a somewhat nebulous concept. Behavior or statements on the part of the judge made outside the courtroom prior to a case or made in another case that show that the judge is prejudiced or biased against one party in a pendant case might be grounds. The motion would need to show that the judge developed an opinion about the case or parties based on information other than that which the judge learned from participation in the case. The ruling in Grider stated: “[T]o require recusal, a judge's bias must be extrajudicial and not based on in-court rulings...”65 Rulings or decrees by judges based on information gleaned during the course of a proceeding are not grounds for removal.66

Federal precedent supports this rule, as well. Responding to the question of whether during the course of a proceeding the trial judge’s “impatience, disregard for the defense and animosity” are grounds for recusal, the United States Supreme Court ruled in Liteky v. U.S. that “judicial rulings alone almost never constitute valid basis for a bias or partiality motion....”67 The Liteky rule was adopted in In re M.C.M.,68 where the 1st Court of Appeals–Houston ruled that recusal is warranted only if it is shown that the bias arises from “an extrajudicial source and not from actions during the pendency of the trial court proceedings, unless these actions during proceedings indicate a high degree of favoritism or antagonism....”69

This sounds very straightforward, but is far from being so. In Norton v. State (1988),70 for

60 In re Union Pacific Resource Co., 969 S.W.2d 427, 428-29 (Tex. 1998).
61 Ibid., 428.
62 Monroe v. Blackmon, 946 S.W.2d 533, 544.
63 In re Union Pacific, 429.
65 Ibid., 346.
66 Ibid.
69 Ibid.
70 755 S.W.2d 522 (Tex. App.—Houston 1988), rehearing denied.
instance, a trial judge made a statement in a fit of pique prior to going to trial, proclaiming that regardless of the State’s argument or the jury’s verdict, he would make his own decision regarding the defendant’s punishment for credit card fraud.\textsuperscript{71} When the judge was asked by counsel if he would accept a plea bargain of deferred adjudication he replied, “No, and if the jury gives her probation I’ll give her jail time.”\textsuperscript{72} The Court of Appeals reversed the defendant’s conviction and ordered a new trial stating that the trial judge’s statement was an “arbitrary refusal to consider the entire range of punishment and constituted a denial of due process.”\textsuperscript{73} Thus, in \textit{Norton} the court ruled that the judge should have recused, not because of extrajudicial information that caused him to be biased against the defendant, but because of a statement he made in anger even before the case went to trial.\textsuperscript{74}

The question of whether a judge should explain the reasoning underlying a decision to recuse or disqualify himself or herself has generated debate. In \textit{Thomas v. Walker} (1993)\textsuperscript{75} the 10\textsuperscript{th} Court of Appeals–Waco explained that the “mental processes rule” protects judges from being subjected to explaining their reasoning underlying a recusal decision, except in the “most extreme and extraordinary circumstances.”\textsuperscript{76} “[A]n inquiry into his or her mental processes [however messy] in arriving at his decision would be improper and would threaten the foundation of an honorable and independent judiciary.”\textsuperscript{77} For most of Texas legal history, courts had resisted the urge to look inside the judge’s mind for signs of favoritism or signs of bias toward litigants or counsel, but by the end of the 20th century, courts were prepared to go “where no one had gone before.”

Texas disqualification and recusal jurisprudence evolved incrementally since 1836 and can best be characterized as conservative and restrained. It is based on a narrow judicial interpretation of state constitutional provisions, statutes, and codes of conduct that are intended to promote impartiality and accountability, without creating a net loss to judicial discretion and the stability of the judicial process. At a minimum, it ensures that a judge’s actions should not give rise to reasonable grounds to question the neutral and objective character of the judge’s rulings or findings.

\textit{Part 2 of this article will appear in the Spring 2020 issue of the TSCHS Journal.}

\textsuperscript{71} Ibid., 523.
\textsuperscript{72} Ibid.
\textsuperscript{73} Ibid., 524.
\textsuperscript{74} Ibid.
\textsuperscript{75} 860 S.W.2d 579 (Tex. App. – Waco 1993).
\textsuperscript{76} Ibid.
\textsuperscript{77} Tate v. State, 834 S.W.2d 566, 569 (Tex. App. – Houston 1992).

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In his history Of Plimmoth Plantation, William Bradford, governor of the first successful English colony in New England, bestowed a now-familiar name on a group of religious dissidents who immigrated to America in 1620 aboard a ship called Mayflower: “So they left that goodly and pleasant city which had been their resting place near 12 years; but they knew they were pilgrims, and looked not so much on those things, but lift their eyes to the heavens, their dearest country, and quieted their spirits.”¹ This year marks the 400th anniversaries of the Pilgrims’ Mayflower voyage and the founding of Plymouth Colony in 1620.

This is the time to salute New Englanders who brought their ideas, institutions, and experience to Texas, including the seeds of self-government, regularly-conducted elections, constitutionalism, the rule of law, and revolution against tyrannical authority. They first planted those seeds in Stephen F. Austin's colony in the 1820s and 1830s, when Texas was still the junior partner in the Mexican twin-state of Coahuila and Texas. Those seeds came to fruition during the Texas Revolution, the Republic of Texas, and the Lone Star State.

Let’s explore the deep New England roots of Texas law, legal history, and courts. The first part of this article examines ideas, institutions, and experience that led New Englanders to begin their lives anew in Texas. The second part reveals how a few important New Englanders shaped and reshaped Texas.

**New England’s seeds of self-government, constitutionalism, and law.** What ideas, institutions, or experiences enabled these New Englanders to confront so many challenges and accomplish so much? To answer that question, we must, as social commentator Malcolm Gladwell declared, “go back into the past—and not just one or two generations...[but] two or three hundred years, to a country on the other side of the ocean, and look closely at what exactly the people in a very specific geographic area...did for a living.”² We must explore the intertwined history of Old England, New England, and Texas.

As Pilgrim scholar Jeremy Dupertuis Bangs has observed, the Pilgrims packed the ideas,

ideals, and experience of self-government, regularly-conducted elections, constitutionalism, law, and resistance against tyranny in the intellectual baggage they carried with them to America aboard the *Mayflower*.³ Plymouth Colony’s leaders fostered their spread and development as 20,000 Puritan English settlers poured into New England during the Great Migration from 1630 to 1641. New England’s constitutional, legal, and military institutions matured in the seventeenth, eighteenth, and nineteenth centuries. When New Englanders carried those ideas, institutions, and experience to Texas, they came into conflict and competition with other religions, forms of government, and ways of life native to Texas Indians, or introduced by Spanish, Mexican, Tejano, Chesapeake, and Scots-Irish immigrants already in Texas.

The seed theory of culture and *Albion’s Seed*. Herbert Baxter Adams of Shutesbury, Massachusetts nurtured the seed theory of cultural change in the majestic groves of academe. A descendant of East Anglian Puritan and Bay Colony immigrant Thomas Hastings who crossed the Atlantic to come to the Bay Colony in 1634, Adams traced Anglo-American jurisprudence back to the tiny acorns of customary law, tribal self-government, and neighboring-farmer jury trials in the sylvan glades of Saxony, then argued that Anglo-Saxon invaders carried those saplings across the North Sea to the British Isles and from there across the Atlantic to transplant them in America.⁵

In 1989, Brandeis University Professor David Hackett Fischer published *Albion’s Seed: Four British Folkways in America*. It examined how four English-speaking cultures⁶ crossed the Atlantic between 1629 and 1775 and grew into four cultural traditions in America:

1. a Puritan exodus who left eastern England (Essex, Suffolk, Norfolk, Lincolnshire, and Cambridgeshire) to settle New England from 1629 to 1641;

2. a Royalist cavalier elite and large numbers of their indentured servants from southern and western England who populated the Chesapeake from 1642 to 1675;

3. a Quaker-dominated influx from England’s northern Midlands and Wales that combined with Dutch, Swedish, and German settlers to fill the Delaware River Valley between 1675 and 1725; and

4. successive waves of Scots-Irish immigrants from the English, Scottish, and Irish border county who settled in America’s Southern back country between 1723 and 1773.⁷

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All four British immigrant groups spoke English, worshipped in Protestant churches, and defended distinctly different understandings of Britain’s law, liberty, and mission in America.

From 1820 until 1870, immigrants who represented each of Fischer’s four cultures entered Texas and interacted with residents who preserved long-standing Spanish, Mexican, and Tejano traditions. Stephen F. Austin, Sam Houston, and John Hemphill introduced Chesapeake and Scots-Irish back-country culture to Texas during the 1820s, 1830s, and 1840s. New Englanders brought their traditions, too, including knowledge of the Mayflower Compact, the Battles of Lexington and Concord, and John Adams's Massachusetts Constitution of 1780.

Re-envisioning the Mayflower Compact’s signing. To assess the Compact’s impact and inspiration, let’s travel back in time to November 11, 1620 and the lee side of Cape Cod, where sandy bluffs and stands of wind-bent pines encompass a small, overcrowded vessel in a calm bay. The ship has sailed across the Atlantic Ocean carrying Captain Christopher Jones, a crew of 15, and 102 passengers. It rocks gently in a “good harbor and pleasant bay, circled round, except in the entrance...about four miles over from land to land, compassed about to the very sea with oaks, pines, juniper, sassafras, and other sweet wood...wherein 1,000 sail of ships may safely ride.”

The bay looks idyllic, yet offers no safe haven. In the distance, passengers and crew behold

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a “hideous and desolate wilderness, full of wild beasts, and wild men....”9 Their spirits lowered by skies as grey as slate, their bodies reeking of old sweat, unwashed for months by anything but salt spray and rainstorms, the passengers thank their Lord, and Captain Jones, for bringing them across the ocean. But some grumbled about what they had endured since boarding the Mayflower. Crowded below decks between dirty sheets dividing family groups, all endured wretchedness.10 Thirsty for fresh spring water, they long for land. But their leaders refuse to let anyone off the boat until they resolve their differences.

In his history of the colony Of Plimmoth Plantation, their later governor William Bradford described how the Mayflower’s arrival outside of their (allegedly) intended destination, the Hudson River, resulted in the rise of a potentially rebellious faction aboard ship. “Occasioned partly by the discontented and mutinous speeches that some of the Strangers amongst them, had let fall from them in the ship: that when they came ashore they would use their own liberty; for none had power to command them, the patent they had being for Virginia, and not for New England, which belonged to another government with which the Virginia Company had nothing to do.”11

Those “mutinous” Strangers were no fools. When they said that “none would have the power to command them,” they began New England history with a legal argument. Some discontented passengers were arguing that their arrival in New England, rather than in Virginia, meant that their Separatist leaders were engaging in ultra vires (Latin for “beyond the powers of” those in command) actions “[u]nauthorized” by the patent granted for the Pilgrims’ settlement and, thus, “beyond the scope of power allowed or granted by a corporate charter or law.”12

Before leaving their refuge, the Pilgrims’ leaders in Leiden and the Adventurers (seventy London investors, merchants, and craftsmen who funded the Mayflower’s voyage) obtained a land-patent for a colony in the New World. But that instrument, the first Pierce Patent, only authorized them to found a colony in northern Virginia, in the northern part of the vast realm England claimed in North America. Their patent enabled them to settle as far north as the Hudson River—as far north as modern New York City—but no farther. Blown off course by autumn storms, Captain Jones dropped anchor off Cape Cod rather than where they intended. Once in New England, the Mayflower and her passengers were outside their legal bounds.13

Most passengers hoped to build a town where they could practice a simple Christian faith without surplices (rich vestments Anglican ministers wore in England) and centuries of church traditions they despised as papist superstition. Most were Puritan “Separatists” who separated

9 Bradford, Of Plymouth Plantation, 112.
11 Bradford, Of Plymouth Plantation, 112.
from Henry VIII’s Anglican Church because it included Catholic traditions that could never be purified; that was what distinguished them from the Puritans who sought to reform England’s churches from within. Yet there were also “Strangers” among the passengers who did not share their views. Some were Dutch. Some came only because their expertise or skills could prove valuable. Some were there because their money paid for the voyage.

As excited as they were to reach land, the passengers worried. Despite their deep faith in providence, Captain Jones had missed their intended destination by hundreds of miles. Since Cape Cod fell far outside the patent, some thought they no longer owed any duty to the wealthy Londoners who ventured mere money, but not their lives, for the colony. Perhaps they should cast aside their covenants, throw off their indentures, and proclaim their rights as Englishmen.

Or could they? On a desolate, wind-slashed coast without shelter, on the eve of winter, confronting armed attack by Indians who lived there, and with many passengers beginning to sicken, what would a small company of 102 passengers do if they did not cleave together? And they knew that their creditors, the Adventurers in London, would refuse to send resupply ships to colonists who had broken faith with them. Matthew 12:22-28 warned them: “But Jesus knew their thoughts, and said to them, ‘Every Kingdom divided against itself is brought to nought, and every citie or house divided against itself shall not stande.’”

Time was short. Division and dissent were luxuries neither the Pilgrim Separatists nor the Strangers among them could afford on the eve of a bleak New England winter. If they divided into camps, there would not be enough men and arms to protect either group. If they fell to fighting, the colony might collapse into starvation, murder, and even cannibalism, as happened during the Jamestowne colony’s first years. While the passengers began falling into factions, their leaders crafted a compromise based on mutual consent and shared values. They balanced competing ideas and contending interests to create a congregational commonwealth.

The Separatists and the Strangers had to live together, so they memorialized a bond that had arisen since Pastor John Robinson joined them together in a shared life based on faith. By 1620, the threat of a Spanish Catholic attack on the Protestant Netherlands, fear that their children were becoming Dutch while forgetting English ways, and dread of Dutch moral laxity convinced the Pilgrims to sail to the New World. They left the fortified city of Delftshaven aboard the Speedwell and Mayflower. After the Speedwell leaked too much to cross the ocean, they turned back to England, returned to sea only in the Mayflower, and sailed sixty-six days before reaching

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14 Stratton, Plymouth Colony, 19 (the Strangers were those “not of their faith with whom they had to travel to in order to get [financial] support for their venture.”); Bangs, Strangers and Pilgrims, 615–16 (it is “possible that when Bradford explained the origins of the Mayflower Compact he referred to Dutch or Walloon passengers on the Mayflower. Francis Cooke (Franchoys Coucke) was there. Conceivably some of the people who joined the group under [Christopher] Martin’s leadership, while coming from Essex or London, were in fact strangers in the sense of refugees.”).


16 Ibid.

Cape Cod on November 11, 1620.\textsuperscript{18}

The Pilgrims recalled how Pastor John Robinson told them they should “knit [themselves] together as a Body, in most strict and sacred Bond and Covenant of the Lord, of the violation whereof we make great conscience, and by virtue whereof, we hold ourselves strictly tied to all care of each other’s goods, and of the whole.”\textsuperscript{19} Robinson told them to become a “body politic” by crafting a civil compact to govern themselves in America:

Lastly, whereas you are become a body politic, using amongst yourselves civil government, and are not furnished with any persons of special eminence above the rest, to be chosen by you into office of government; let your wisdom and godliness

\begin{footnotesize}
\textsuperscript{18} The Pilgrims used the traditional Julian Calendar adopted during Julius Caesar’s rule of Rome. Pope Gregory replaced that calendar with his Gregorian Calendar, which added ten days, during the sixteenth century. The English and their New England descendants did not adopt the Gregorian Calendar until the mid-eighteenth century.

\textsuperscript{19} Jacob Bailey Moore, \textit{Lives of the Governors of New Plymouth, and Massachusetts Bay, from the Landing of the Pilgrims at Plymouth in 1620, to the Union of the Two Colonies in 1692} (Boston: C.D. Strong Pub., 1851), 24 n.5. See also Nathaniel Philbrick, \textit{Mayflower: A Story of Courage, Community, and War} (New York: Viking/Penguin 2006), 41 (“Written with crystalline brevity, the Compact bears the unmistakable signs of Robinson’s influence...”).
\end{footnotesize}
appear, not only in choosing such persons as do entirely love and will promote the common good, but also in yielding unto them all due honour and obedience in their lawful administrations.\textsuperscript{20}

The sea-going members of Robinson’s Leiden congregation joined the worldly people who boarded the \textit{Mayflower} in London, elected a governor, organized a framework of law, and created a society based on consent rather than royal prerogative, grounded in civil law rather than theocratic command.\textsuperscript{21} They read the freshly quilled words aloud:

\begin{quote}
\textbf{“IN THE NAME OF GOD, AMEN.”} We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King \textit{James}, by the Grace of God, of \textit{Great Britain, France, and Ireland}, King, \textit{Defender of the Faith, &c.}

\textquotedblleft Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of \textit{Virginia}; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience.

\textbf{“IN WITNESS” whereof we have hereunto subscribed our names at Cape-Cod the eleventh of November, in the Reign of our Sovereign Lord King \textit{James}, of \textit{England, France, and Ireland}, the eighteenth, and of \textit{Scotland} the fifty-fourth, \textit{Anno Domini}; 1620.”\textsuperscript{22}
\end{quote}

Edward Winslow, one of their leaders, “thought good there should be an association and agreement, that we should combine together in one body, and to submit to such government and governors as we should by common consent agree to make and choose.”\textsuperscript{23}

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\textbf{Is a painting a mirror?} Many paintings, prints, and posters depict the signing of the
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\textsuperscript{21} Philbrick, \textit{Mayflower}, 41 (“In his farewell letter, Robinson had anticipated the need to create a government based on civil consent rather than divine decree. With so many Strangers in their midst, there was no other way. They must become a ‘body politic, using amongst yourselves civil government,’ i.e., they must all agree to submit to the laws drafted by their duly elected officials...a civil covenant would provide the basis for a secular government in America.”); Nick Bunker, \textit{Making Haste from Babylon: The Mayflower Pilgrims and Their World, A New History} (New York: Alfred A. Knopf, 2010), 286.


\end{flushleft}
Compact, but all are fictional, composed centuries after the event. One of the best, Edward Percy Moran's *Signing of the Compact in the Cabin of the Mayflower*, dramatizes the moment the passengers began to sign their charter of self-government. On display at Pilgrim Hall in Plymouth, the painting combines a romantic, nineteenth-century imagination with seventeenth-century realities. Edward Moran's iconic image shows a cabin just after a nine-week journey across heaving waves, slashing lightning, and glowering storms. Lamps swing from the ceiling. Signers have begun affixing their names. A strict hierarchy governs the order of signing. Some have distinguished ancestors, but none is an aristocrat and none holds office under King James.

John Carver, the man wearing the broad-brimmed leather hat, sits at a wooden table stroking his chin. A merchant of renown in his fifties, he is accustomed to balancing pros, cons, and costs. Entrusted by Pastor Robinson in Leiden to negotiate with King James's Council for Virginia, he has paid the Pilgrims' debts for three years. Addressed as “Master John Carver” and praised as a “godly and well approved amongst them,” he is about to be elected Plymouth's first governor.

The Pilgrims' spiritual leader William Brewster presides over the signing. Loose-leaved volumes of law and literature lie on the cabin floor. The books belong to Brewster, a “gentleman of paper and wax” in an Elizabethan meritocracy clasping the lowest rung of England’s social ladder. The son of an archbishop's bailiff, Brewster attended Cambridge University. He worked for Queen Elizabeth’s Secretary of State during England's intervention in Holland against Spain. Later, he secured an office and salary as Postmaster of Scrooby Manor, in Nottingham. A man of humble origin, Brewster had made himself a learned man.

Carver watches as William Bradford quills his name to the Compact. Thirty-six years old, an earnest middle-aged man born in rural Yorkshire, Bradford wears a cape that cloaks him

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24 William Bradford (Caleb Johnson, ed.), *Of Plymouth Plantation: Along with the full text of Pilgrims' journals for their first year at Plymouth* (Bloomington, Indiana: Xlibris Corp., 2006), 125.


26 Ibid., 169; letter, November 12, 1617, from Sir Edwyn Sandys, Virginia Company, to John Robinson and William Brewster.


against the bone-chilling cold of the Little Ice Age, a time of global cooling. A scabbarded sword hangs at his waist. Bradford, a strong leader utterly sure of himself and his salvation, will exercise executive power as a governor elected by the people. Plymouth’s Militia Captain Myles Standish wears his steel soldier’s helmet while observing the birth of civilian self-government.

Dr. Jeremy Dupertuis Bangs, director of the Pilgrim American Leiden Museum and the leading expert on the Pilgrims’ lives in Leiden, questions the accuracy of Moran’s painting:

Why should anyone be wearing so much armor in a ship at anchor in a peaceful harbor? Why are the books strewn on the floor?...What’s that fellow thinking about, resting his chin on his hand as if he had just escaped from a painting by Frans Hals? Moran imagines for us a major event in the ancient origins of the modern American empire, combining touching domesticity on the right with a group of impressive

32 Geoffrey Parker, *Global Crisis: War, Climate Change and Catastrophe in the Seventeenth Century* (New Haven, Ct.: Yale University Press, 2014).
Jeremy, a friend, offered those droll observations on the night I introduced him to speak about the Pilgrims during a Pilgrim Hall fundraiser to restore that very painting in Pilgrim Hall.

**The Compact’s four-part structure.** The elegance and power of Dr. Bangs’s analysis, the result of nearly four decades of research, writing, and publication in the Netherlands and in New England, merit *verbatim* quotation:

*First*, it identified the signers as loyal subjects of King James, thus binding the foreigners to follow English law, while the English-born acknowledged their natural duty to show loyalty to their king.

*Second*, it described the purpose of their voyage and intended colony as an undertaking for the glory of God, the advancement of the Christian religion, and the honor of king and country.

*Third*, the signers stated that they “solemnly and mutualy in ye presence of God, and one of another, [to] covenant and combine our selves togeather in a civill body politick…”

*Fourth*, the signers agreed “by vertue hereof to enacte lawes, ordinances, acts constitutions, & offices, from time to time, as shall be thought most meet and convenient for ye generall good of ye Colonie…”

Plymouth governor William Bradford referred to this instrument as an “association and agreement.” By 1793 it came to be known by its modern name, the “Mayflower Compact,” the name this article will use.

**How significant was the Compact?** If we wish to understand the roles New Englanders and their ideas, ideals, and institutions played in nineteenth century Texas, we should ask some open-ended questions. Did the Compact memorialize a group of religious dissidents’ creation of a new nation? Was it a stopgap to address a short-term absence of authority beyond the legal limits of a patent? Or was it something bold, the result of ordinary people taking law into their own hands? Did later generations transform an expedient into an exemplar of democracy? Nearly four centuries after the Compact’s signing, reasonable minds still disagree about it.

While preparing a presentation about the Compact for the Back Roads of the South Shore Symposium in Plymouth’s Spire Center, I asked two of Plymouth’s most respected and beloved

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historians, James W. “Jim” Baker and his wife Peggy MacLachlan Baker, to share their insights about the Compact’s history. Jim is the Plymouth-born former director of research at Plimoth Plantation and, later, curator of the Alden House Historic Site. Jim’s Mayflower ancestors, of which there are many, arrived in Plymouth nearly 400 years ago and never left. His encyclopedic knowledge encompasses Plymouth’s art, architecture, archives, and oral traditions.

Although not born in Plymouth, Peggy Baker is a researcher for the General Society of Mayflower Descendants Silver Books Project, an Honorary Life Member of the Massachusetts Society of Mayflower Descendants, and Director Emerita of both the Pilgrim Society and Pilgrim Hall Museum. Both shared important ideas and insights about the Compact, including assessments of evidence that will soon appear in a forthcoming book many plan to buy, the General Society of Mayflower Descendants’ history of Plymouth Colony, Made In America.

Was the Compact an emergency stopgap measure of no lasting significance? “The insignificance of the Plymouth Colony in the colonial era is one [issue] upon which almost all historians are agreed,” wrote Samuel Eliot Morison, a Harvard University professor of American history for forty years. “[T]he unpleasant tribe of professional historians refuses to find in the Compact anything more than what Bradford says it was, ‘a combination made by them before they came ashore […] occasioned partly by the discontented and mutinous speeches that some of the strangers amongst them had let fall….” Morison won Pulitzer prizes for a biography of Christopher Columbus, Admiral of the Ocean Sea, and for John Paul Jones: A Sailor’s Biography, as well as Bancroft Prizes, and the Presidential Medal of Freedom.

“I believe the Compact had no perceptible influence on American polity until after its rediscovery in the Revolutionary era,” Jim Baker told me, “and then only as retrospective inspiration, not as an active agent for change.” The Compact supplemented a limited grant of authority King James bestowed on the colony by approving the Great Patent of New England, which authorized the Council of New England to organize colonies. Essentially, the Compact arose from a patent

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41 In pertinent part, the patent's operative language reads: “And further, of our especial grace, certain knowledge, and mere motion, for us, our heirs, and successors, we [King James] do, by these presents, give and grant full power and authority to the said council, and their successors, that the said council...may, from time to time, nominate,
in the same way that King James granted limited self-government to Virginia’s planters to organize a legislature, the General Assembly, and elect representatives in 1619.\(^{42}\)

Jim Baker rejects hagiographic celebration of Plymouth’s founders to insist on gathering the facts, plain and simple. “I have long seen the ‘Compact’ as just a stop-gap measure intended primarily to sustain the agreement made between the adventurers and the passengers; that they would abide by their contract (and not wander hither and thither on their own) both to insure survival and not renege on their responsibility to their partners, both the other passengers and the merchant adventurers, nor endanger the financial support without which the colony would certainly fail.”\(^{43}\)

If you want to see the long-term legal foundations of Plymouth Colony, Jim Baker advises, look not to the Compact but to Plymouth’s patents. “The Compact remained (and remains) an inspiration and perpetual reminder of the political unity Plymouth colonists initially achieved,” he explained, “but it was the patents with their apparent assignment of limited colonial self-governing rights (there have been debates whether the Council of New England could legally delegate their rights of governance to individual plantations, although they did so anyhow on the ‘particular plantation’ principle...) that were considered the basis for Plymouth Colony’s political legitimacy.”

The “particular plantation” strategy, Baker explains, arose from an effort by the Virginia Company of London to populate its Virginia colony by organizing semi-independent “plantation” estates exemplified by the Martin’s Hundred, Berkeley, and Flowerdew settlements in Virginia. Virginia Company leaders voted in favor of colonists’ autonomy on February 2, 1619, before Captain Jones set sail on the \textit{Mayflower}, so there was a legal basis for the Pilgrims to believe that they enjoyed the right to organize their own little government.\(^{44}\)

“When the Plymouth Colony laws were first published by William Brigham in 1836,” Baker noted, “the introductory documents were the Great Patent of New England (November 3, 1620), make, constitute, ordain, and confirm, by such name or names, style or styles, as to them shall seem good, and, likewise, to revoke and discharge, change and alter...governors, officers, and ministers, which hereafter shall be by them thought fit and needful to be made or used, as well to attend the business of the said company here, as for the government of the said colony and plantation.” William Brigham. \textit{The Compact with the Charter and Laws of the Colony of New Plymouth} (Boston: Dutton and Wentworth, 1836), 8 (emphasis supplied). King James authorized the Council of New England to conduct and supervise colonial elections. It permitted colonists to enact laws for themselves, because it took two to three months to travel from England to America. \textit{Ibid.}

\(^{42}\) Virginia’s General Assembly was America’s first legislature. David Furlow, “The Old Dominion’s New Domain—Texas,” \textit{Journal of the Texas Supreme Court Hist. Soc.}, vol. 9, no. 1 (Fall 2019): 51–71, \url{https://www.texascourthistory.org/Content/Newsletters//TSCHS%20Journal%20Fall%202019%20final.pdf}. The Virginia House of Burgesses’ home-rule authority remained limited because colonists did not elect a governor chosen by Virginia Company leaders in London; the Burgesses’ enactments and resolutions also required approval in London to become law. \textit{Ibid.}


\(^{44}\) Susan Myra Kingsbury, ed., \textit{The Records of the Virginia Company of London} (Washington, D.C.: Library of Congress, 1906), vol. I, 303 (“Itt was ordered also by generall Consent that such Captaines or lead[ers] of Perticulerr Plantacons that shall goe there to inhabite by vertue of their Graunts and Plant themselves...in Virginia, shall have liberty till a forme of Gourment be settled for them, Associating vnto them divers of the gravest & discreete of their Companies, to make Orders, Ordinances and Constitucons for the better orderinge and dyrectinge of their Servants and business[,] Prouided [those laws] be not Repugntnt to the Lawes of England.”).
the Compact and the Bradford/Warwick Patent (January 13, 1629/30)—and not the Pierce Patent of 1621, as it was the Great Patent and the Warwick Patent that had actual legal standing."\(^{45}\)

Jim Baker ends his assessment by quoting his college professor at Boston University, Dr. Robert Moody. “The Mayflower Compact was not a constitution or a framework of government,” Moody wrote. “It was not an ingenious invention of shrewd men trained in politics. It had no great influence upon the course of American governmental development. It was a straightforward practical solution on an immediate problem which confronted the founders of the Plymouth Colony—how to prevent factionalism and to promote the common welfare....Though they abhorred the idea of democracy, which to them meant chaos, there was within this simple plantation the seed of the idea of self-government.\(^{46}\)

Baker’s vision of the Compact is simple, persuasive, and in depth. But, as is often the case in New England, other scholars see this protean instrument differently.

**An important milestone or an instrument of religious oppression?** George Willison, author of *Saints and Strangers*, hailed the Compact as “an extraordinary document, a remarkable statement of revolutionary new principles, an important milestone in our long, hard, and often bloody ascent from feudalism, from that degrading ‘aristocratic’ system of power and privilege for the few which had held Europe in irons for centuries, vestiges of which still remain to plague us.” Willison first compliments the Compact, then condemns it. “It is also the fashion, as every school child knows, to hail the compact in the most extravagant terms as the very cornerstone of American democracy, which it most certainly was not.”\(^{47}\)

According to Willison, Leiden’s Separatists, the sad, sour, self-styled “Saints,”\(^{48}\) crafted the Compact to control the sensual, secular Strangers, the largely irreligious Elizabethan rabble who boarded the *Mayflower* in London to make money and acquire land in the New World.\(^{49}\) “The covenant was first signed by those who had the right or assumed the privilege of using the title of ‘Mr.’—then pronounced ‘master,’ and often written so. Relatively the aristocrats of the company, there were twelve of this group, with Saints and Strangers equally represented.”\(^{50}\)

Willison then offered a Hegelian story of colonial class conflict: with a Separatist thesis-group of Calvinist congregationalist protagonists, a Mammon-chasing antithesis of Stranger antagonists, and a synthesis that merged monotheism and materialism in Plymouth Colony. Willison’s Pilgrims resolved their conflict by creating a cash-based congregational community through force, duplicity, and sham democracy.\(^{51}\) “As the circumstances of its birth reveal, [the

\(^{45}\) *Ibid.*


\(^{50}\) *Ibid.*, 152.

Compact] was conceived as an instrument to maintain the status quo on the *Mayflower*, to show inferiors in general and servants in particular their place and keep them where they belonged—*i.e.*, under the thumbs of their masters.\(^{52}\)

Jeremy Bangs argues that recent research in the Netherlands and England has shown that a slight majority of the *Mayflower* passengers were members of Leiden’s Separatist congregation and that Christopher Martin, the leader of the group from England who had not lived in Leiden, shared the Separatist views of Pastor Robinson’s Congregation.\(^{53}\) If so, the Compact did not reflect a fanatical minority’s suppression of a grumbling Stranger majority.\(^{54}\)

Second, according to Dr. Bangs, the word “stranger” did not connote a London rabble of non-Leiden, non-Separatist Englishmen, but, instead, meant “foreigners,” and referred to a few Dutch people who sailed aboard the *Mayflower*.\(^{55}\) This may or may not have been the case. As George Willison points out, similar “mutinous speeches” almost led to *Mayflower* Pilgrim Stephen Hopkins’ execution in Bermuda eleven years earlier, when the crash of the *Sea Venture* on Bermuda’s shore led to a brief rebellion based on that ship’s arrival outside of its patent.\(^{56}\)

Third, writes Dr. Bangs, Willison’s class-conflict analysis bore little relationship to the realities of Cape Cod on the eve of winter during the Little Ice Age. Separatist Saints could neither co-opt nor coerce the Strangers when everyone’s survival was at stake. Necessity compelled them to work together.\(^{57}\)

**Underlying precedent, borough democracy, and revolution?** Other researchers hail the Compact as a democratic reform that made a real and lasting difference for Plymouth’s settlers. In *Making Haste from Babylon: The Mayflower Pilgrims and Their World, A New History*, London financial reporter Nick Bunker, a trans-Atlantic colleague who has shared research and PowerPoints about Virginia and the Compact, suggested that William Brewster based the Compact on democratically-inclined experiments in the recent municipal charters of towns the Pilgrims knew well: Harwich, Essex; Doncaster, Yorkshire; and Blyth and Retford, Nottinghamshire.\(^{58}\)

In 1594, the *Town Book of Blyth* reveals that the aldermen of this Northumberland County town three miles from William Brewster’s Scrooby Manor, were chosen “by the consent of all the inhabitants...” The number of males who could vote widened from 11 voters in the 1570s to 92 in 1590s. But that was still only 30 percent of the adult male population.\(^{59}\) In contrast, the


\(^{55}\) Ibid., 11.

\(^{56}\) Willison, *Saints and Strangers*, 148-152.

\(^{57}\) Ibid., 1-13.


\(^{59}\) Ibid., 285; *Town Book of Blyth, 1560-1694*, Clifton Papers, CL M 62, in University of Trent, Nottinghamshire Special Collections.
Compact enabled 90 percent of the adult males to vote. Charters of towns such as Blyth set precedent for the Pilgrims through recent expansions of the voting franchise, institutionalization of annual elections, and creation of frameworks of self-government based on law. If their fellow Englishmen could experiment with empowering voters in existing English townships, the Pilgrims could do so when creating their own little town in New England.

In addition, Queen Elizabeth's Bond of Association offered the Pilgrims' Elder, William Brewster, an example of how Englishmen could associate together for mutual defense. Mary Queen of Scots' claim to the throne threatened Elizabeth and her Protestant religious settlement; the Throckmorton Plot against her in 1583 and a Catholic fanatic's assassination of William of Orange in 1584 revealed that the Pope was using violent regime-change to restore realms to Roman Catholicism. Lord Burghley and Francis Walsingham responded by drafting Elizabeth's Bond of Association, a covenant thousands of Englishmen signed in 1584 to insist that only a Protestant should ascend England's throne. Pilgrim leader William Brewster witnessed the birth of this agreement to preserve a Protestant realm through a quasi-republican covenanted agreement in the 1580s, providing him with inspiration for drafting the Compact in 1620.60

A few of the Pilgrims recognized, early on, that taking power into their own hands could even lead them into revolution against the crown. William Brewster's library contained four books by David Pareus, a Calvinist Professor of Theology at the University of Heidelberg. Those books reinterpreted Scripture in a revolutionary way important for New England and America. As Bunker explains, "In a famous passage [in the New Testament's Book of Romans], Saint Paul told Christians to obey their rulers, the powers that be, because they were divinely ordained. Pareus re-read this to mean that Christians had a duty to overthrow a tyrant, especially an irreligious one, because such a man was an enemy of God."61

"Obedience hath certaine limits," Pareus wrote. "When tyrants go about to force their subjects to manifest idolatry, or to some wickednesse, against the express word of God; in this case the scripture commands us, that in no wayes we obey such tyrannical Edicts, but that every man, according to the condition of his calling, make resistance." 62 King James's Archbishop of Canterbury deemed Dr. Pareus's ideas "seditious, scandalous, and contrary to the Scriptures" and ordered his books burnt.63 But no fire could extinguish Dr. Pareus's fiery message. Its embers remained to reignite during the English Civil War—and later, at Lexington and Concord.

As Nick Bunker observed, "[t]he Pilgrims drew up the [Compact] in a new location, at the moment of creation of a new colony. They did so in terms that, two decades later, could be used as a rationale for outright resistance to the Crown. This, the right of disobedience, existed within the language of the Mayflower Compact from the very start. Most radically of all, they produced a document that nearly every man signed, including those who in England were only laborers. This was all very new indeed, as new and different as a school of pilot whales [the Pilgrims saw in

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60 Bunker, Making Haste from Babylon, 286.
61 Ibid., 283–84 and 453 n.8; British National Archives at Kew, SP 14/130/106; David Pareus, “In divinam ad Romanos S. Pauli apostoli Epistolam,” in Theological Miscellanies of David Pareus, translation (London: James Young, 1645), 735.
62 Bunker, Making Haste from Babylon, 284.
63 Ibid., 283.
the waters off Cape Cod].”

**Canons of subsequent contractual construction.** Let’s take the Compact’s story forward from 1620 until the colony’s merger with the Massachusetts Bay Colony in 1692. In *Making Haste from Babylon*, Nick Bunker rejected Samuel Eliot Morison’s, Robert Moody’s, and Jim Baker’s opinions that the Compact was “no more than a short-term, temporary measure, drawn up in a hurry, containing nothing new and nothing original….If it had simply been a short-term fix, the compact would have ceased to matter in 1630, when Plymouth Colony obtained a definitive new patent from the Earl of Warwick, as president of the Council of New England. Instead, [Governor William] Bradford and [Pilgrim leader Edward] Winslow made it plain that the Compact remained very much alive.”

As Jeremy Bangs emphasizes, Leiden’s Separatist Pilgrims did not begin their experiment in participatory democracy by writing the Compact but, instead, by organizing a congregational church in Leiden where the faithful elected their ministers. Since the Bible permitted them to elect their ministers, they reasoned, they could also elect godly Christian leaders as governors in the New World. After extensive discussion of the pros, cons, costs, and alternatives, the Separatist Pilgrims voted to leave Leiden and move to America: “After many other particular things answered, and alleged on both sides,” William Bradford wrote, “it was fully concluded by the major part [majority vote] to put this [voyage to America] design to execution; and to prosecute it by the best means they could.”

The Separatists’ and Strangers’ election of John Carver as Plymouth’s first governor at Cape Cod on November 11, 1620 resulted from a vote among all freemen, Separatist and Stranger alike (as well as three servants, but no women or children). It was the first time that the governed elected a governor in colonial North America. “[T]hey chose, or rather confirmed, Mr. John Carver (a man godly and well approved among them) their governor for that year [1620]….As time would admit they met and consulted of laws, and orders, both for their civil, and military governments, as the necessity of their condition did require, still adding thereto as urgent occasion in several times, and as cases did require.”

The Pilgrims published the Compact in the first book they sent back to England, *Mourt’s Relation*, in 1622. Annual elections and general courts—both legislative assemblies and judicial bodies—evolved over time into New England town-hall government, statutory codification, the rule of law, and democracy. Instead of treating the Compact as a superseded stopgap, English kings, Pilgrims, and London creditors treated it like a charter.

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64 Ibid., 282.
65 Ibid.
66 Ibid., 18–19.
The Pilgrims’ Second Pierce Patent of 1621 augmented and ratified the Compact. Nine years later, Pilgrims, their creditors and Charles I enlarged that grant in the January 13, 1630 Warwick Patent. It was also known as the Bradford Patent because the Earl of Warwick issued it to “William Bradford, his heirs, associates and assigns” through the Council of New England “in the county of Devon for the planting, ruling, ordering, and governing of New England in America.”

It affirmed that Pilgrim leaders could act “with liberty to them and their successors from time to time to frame, and make orders ordinances and constitutions as well for the better governmente of their affairs here and the receavinge or admittinge any to his or their society, as also for the better government of his or their people and affair in New England...” Each new patent erected new legal structures atop the Compact’s sturdy foundation and ratified its importance as the Colony’s fundamental law.

When Governor Bradford and Plymouth’s leaders codified the colony’s rules into a new Book of Laws in 1636, they memorialized the Compact as “a solemne & binding combinacon,” treating it and the 1630 Warwick Patent as the colony’s legal foundations. “If one or the other could claim seniority, then it was the Compact, not the patent. This was because the Compact depended on the vote of the governed, while [Robert Rich, the Earl of] Warwick issued his patent under authority delegated from King Charles.” Their 1636 Book of Laws reflected the Pilgrims’ contemporaneous construction of the Compact, as did an additional paragraph that specified that they created their colony “as freeborne subjects of the state of England,” who could not be compelled to accept any “imposicon[,] law or ordnance,” including any tax, except “by consent according to the free liberties of the state & Kingdome of Engl. & no otherwise.”

When they enacted their Book of Laws in 1636, it was still necessary for the Pilgrims to swear fealty to their sovereign, Charles I. Their law specified that every man who sought freeman status to participate in elections and hold office must not only pledge “to advance the growth & good of the severall plantations” but also to swear to be “truly loyall to our Sovereign Lord King Charles.” That would change a few years later, during the English Civil War, when Charles I made war on Parliament, Puritanism and the people. An anonymous Plymouth Colony leader neatly crossed out the pledge of fealty to the king, essentially making Plymouth into a self-governing congregational commonwealth.

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72 Bangs, New Light on the Old Colony, 20. The Warwick/Bradford Patent of 1630 expressly incorporated the Compact’s terms, albeit without sign-boarding that source of authority: “Also it shall be lawful and free for the said William Bradford his associates his heires and assigns at all times hereafter to incorporate by some usual or fit name or title, him or themselves or the people there inhabiting under him or them with liberty to them and their successors from time to time to frame, and make orders ordinances and constitutions as well for the beter [sic] government of his or their people or affairs in New England or of his and their people at sea in going thither, or returning from thence, and the same to be put in execution or cause to be put in execution by such officers and ministers as he and they shall authorize and depute: Provided that the said laws and orders be not repugnant to the laws of England, or the frame of government by the said president and council hereafter to be established.” Bradford, Of Plymouth Plantation,551-56 at 554 (emphasis supplied). Unfortunately, another widely available version of this important patent, Yale University Law School’s Charter of the Colony of New Plymouth Granted to William Bradford and His Associates (1629), https://avalon.law.yale.edu/17th_century/mass02.asp, does not include the quoted language as a result of some accident or inadvertence.
73 Ibid., 282-83.
74 Ibid., 283.
The preambles of Plymouth’s statutory codifications of 1633, 1634, 1658, and 1685 referred to the Compact and the patents that memorialized and incorporated it, treating it as a *de facto* constitution.75

**Differing views but persuasive precedent.** “Everyone does indeed have differing viewpoints on the Compact,” Peggy MacLachlan Baker noted late last year. She emphasizes practical considerations that resulted in the signing of the Compact. “The large percentage of men in Plymouth Colony who signed the Compact might have been due less to democratic principles than to the practical imperative of getting everyone to buy in—in a community of that small size and in those dire circumstances, they couldn’t afford to have any dissidents if they were to survive.”76

Like Jim, Peggy views the Compact as a signpost along the road to democracy. “[T]he Compact incorporates some guiding democratic principles that eventually—but only after the Enlightenment and its extraordinary influence in changing men’s ideas about rights, etc.—were incorporated into the Constitution….The Compact’s power is not that it was the ‘first’ or that it originated or invented democracy (springing full-fledged out of nowhere in the Pilgrims’ minds). Its power is that it expresses, in a concise and simple and relatable way, certain basic democratic principles held by the Pilgrims that still resonate today.”77 I could not put it better.

**A Puritan ethic, educational values, and constant commerce.** During the late sixteenth century, England and its Protestant allies in Germany and the Low Countries sought to stop the advance of the Catholic Counter-Reformation in the Netherlands, in Germany, in the Americas, and at sea. Both Puritanism and its Separatist Pilgrim offshoot arose from fear of a Roman Catholic revival in England. For over a century, Protestants and printing shops made John Foxe’s *Actes and Monuments, or Foxe’s Book of Martyrs*, the second most popular book in England after the Bible.78

Puritanism rejected Catholic and Anglican traditions in favor of Jean Calvin’s ideas. Calvin advocated rule by magistrates, as opposed to the Pope; vernacular services in English, Dutch, German, etc. in contrast to Latin; plain churches in place of ornate ones; an absence of iconic images and saintly statues; long sermons based on the Bible rather than lengthy masses; direct knowledge of God through reading the Bible as opposed to relying on Catholic priests; and beliefs in predestination, the salvation of the “elect,” and justification by grace (faith) alone.79 Like the Pilgrims, the Puritans who founded Massachusetts Bay Colony, New Haven Colony, and Connecticut Colony rejected the King James Version and used the Geneva Bible.80

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75 Bangs, *Pilgrim Edward Winslow*, 133.
76 Peggy Baker, personal communication, November 6, 2019.
77 Ibid.
78 John Foxe offered readers woodcut-illustrated stories of how Queen Mary Tudor, “Bloody Mary,” fought their faith with fire and fury, driving eight hundred Protestants to the Continent and another three hundred to the stake. See John Foxe, *Actes and Monumentes of these latter and perilous dayes, touching matters of the Church, wherein are comprehended and described the great persecution and horrible troubles that have bene wrought and practised by the Romishe Prelates, specially in this Realme of England and Scotlande...etc.* (London: George Virtue, 1851, 3 vols., reprinting the 1583 ed.); Gordon Blackwood, *Tudor & Stuart Suffolk* (Lancaster: Carnegie Pub., 2001), 317–19.
79 Fischer, *Albion’s Seed*, 46–48. Presbyterians, Baptists, and Congregationalists brought similar Calvinist faiths to Texas, renewing centuries-old conflicts between Catholics and Protestants.
80 David A. Furlow, “Isaac Allerton, His Book: The Allerton/Brewster Bible in the Massachusetts Historical Society,”
Torn and tattered, Isaac Allerton’s Geneva Bible may have traveled to America aboard the *Mayflower*. It includes marginal notes that pointed toward a republican form of government. Its translators, who worked in Jean Calvin’s Geneva republic, referred to kings as “tyrants.” King James hated it because it challenged his notion of hierarchical, top-down, divine-right rule and used the word “tyrant” to describe kings of Israel and Judah. When his scholars created the King James Version, they deleted “tyrant” in favor of “king” and excised the marginal notes as “very partial, untrue, seditious, and savoring too much of dangerous and traitorous conceits.”

A faith whose adherents read the Bible and cross-referenced passages requires literacy, generates scholarship, and opens colleges. On November 13, 1637, the Bay Colony’s General Court approved construction of a college outside of Boston, at “Newtowne,” soon renamed Cambridge. The Bay Colony paid the lion’s share of establishing Harvard College, but Plymouth, Connecticut, and the New Haven Colony contributed funds for “Schollers.” The result was Harvard College (later, University).

In 1647, Isaac Allerton, a Pilgrim leader, sent his youngest son Isaac Allerton, Jr. to Harvard. To earn a spot in that institution, young Isaac, Jr. first had to master the classics under the tutelage of his grandfather, Plymouth’s Elder, William Brewster. Harvard’s standards were rigorous:

> When any Schollar is able to understand *Tully* [Cicero], or such like classickal Latine Authore *extempore*, and make and speake true Latine in Verse and Prose, *suo ut aiunt Marte* [“as they say, by his own ability”]. And decline perfectly the Paradigm’s of *Nounes* and *Verbes* in the Greek tongue. Let him then and not before be capable of admission into the Colledge.

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81 Editor, “Quart[erly] [Meeting],” *Proceedings of the Massachusetts Historical Society*, vol. 1 (Jan. 1798): 113 and 113 fn.

82 Adam Nicholson, *God’s Secretaries: The Making of the King James Bible* (New York: Perennial/Harper Collins, 2004), 58 (“The word ‘tyrant,’ for example, which is not to be found in the King James Bible, occurs over 400 times in the Geneva text.”).

83 At the January 14, 1604 conference he called to consider the “Millenary Petition” of Puritan ministers and scholars, King James emphasized the importance of bishops: “I approve the calling and use of bishops in the church and it is my aphorism, ‘No bishop, no king’; nor intend I to take confirmation from the bishops.” See G. P. V. Akrigg, *Jacobean Pageant: The Court of King James I* (Boston: Harvard University Press, 1962), 305 and 414, citing Thomas Fuller, *The Church History of Britain* (Oxford: Oxford University Press, 1845), vol. V, 280.

84 The word “tyrant” is found three times in one edition of the King James Version, in *Apocrypha*. See, e.g., King James Version, Wisdom 12:14; 2 Maccabees 4:25; and 2 Maccabees 7:27.


Isaac Allerton paid his son’s tuition, room, board, tutors’ fees, and commencement costs with silver coin and sack wine at a cost of 10 English pounds, 16 shillings, and 8 pence per year. Plymouth historian Peggy Baker estimates the comparative cost of sending a son to Harvard. “In 1645, the cost of an average horse was about £3. Today, an average mid-sized car (according to Kelly’s Blue Book) costs about $25,000. Using that as the basis of conversion, [Josiah Winslow’s] Harvard education cost his father about $90,000 per year. Today, Harvard tuition, room, and board costs about $100,000 per year.”

In 1650, Isaac Allerton, Jr. became one of the first English-speaking, native-born students to

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graduate. Instead of entering the ministry, as 73 percent of Harvard’s graduates did, or going to Europe to study medicine, as another 12 percent did, Isaac, Jr. became a merchant, bought land from Machodoc Indians in Virginia, opened a tobacco plantation, and joined neighbors Augustine Washington and Richard Lee to become a “Lord of the Potomac.” He earned an officer’s rank, won election as a justice of the peace, entered the Virginia House of Burgesses, and joined Charles II’s Royal Council of Virginia. From 1650 through Barack Obama’s presidency, Harvard graduates have litigated, legislated, reformed, interpreted, and enforced the law. Both Isaac Allerton, Jr. the son and Barack Obama the President exemplify New England’s status as a place settled by people of the book.

A student at Harvard during the 1640s would read Homer’s Iliad and might pay for tuition with sack (prosecco) white wine. Above left: Homer’s Iliad, 1559 edition, Catawiki; Above center, “Veritas,” Wikimedia; Above right, “Sack” wine bottle, Bayou Bend Museum, Houston. photo by David A. Furlow; Bottom: “Old Harvard College from the Yard,” Order of the Founders and Patriots of America website.

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92 Ibid., 9.
“As early as 1642,” historian David Hackett Fischer observed, “the Massachusetts Bay Colony required that all children should be trained to read by their parents or masters.” Puritan colonies followed the Bay Colony’s lead. “Before the War of American Independence they founded four colleges—nearly as many as all of the other mainland colonies combined.... New England...was unique in its strong support for both common schools and higher learning.” Bostonians built schools, colleges, and universities. Some of the young men who embraced education in New England brought their love of learning, books, and schools to Texas.

**Plymouth colonists pioneered mediation and arbitration.** Conciliation, mediation, and arbitration resolved legal disputes in the seventeenth-century Spanish, Dutch, and English empires. Leaders often cited passages from the Bible, especially 1 Corinthians 6:1-8, to promote brotherly dispute resolution. They fostered an extraordinarily strong faith in the rule of law. Arbitration came on the *Mayflower* and grew stronger as John Winthrop led the Great Migration of twenty thousand Puritans to New England.

More than two centuries later, during the Texas Constitutional Convention of July 1845, the Committee on General Provisions recommended arbitration whenever possible. Additionally, the delegates drafted a constitutional provision stating that, “[i]t shall be the duty of the Legislature, to pass such laws as may be necessary and proper, to decide differences by arbitration, when the parties shall elect that method of trial.” Texas's first state legislature authorized conciliation and arbitration in 1846.

**A shining city on a hill?** Massachusetts Bay Colony Governor John Winthrop introduced the communitarian concept to American law. Aboard the flagship of his fleet, *Arbella*, between the Isle of Wight in the English Channel and his arrival at the mouth of the River Charles in the Bay Colony, Winthrop described the society he sought to create in New England. Known as the *Model of Christian Charity*, Winthrop’s sermon was a Puritan lawyer’s concept of a Christian commonwealth. Winthrop believed that there was only one way to avoid a shipwreck of pride in the Bay Colony. He urged colonists to “follow the counsel of Micah: to do justly, to love mercy, to walk humbly with our God.”

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95 Fischer, *Albion’s Seed*, 132.
96 *Ibid*.
99 See 1 Corinthians 6:1-6, quoted in *ibid*., 96–97.
103 Tex. Const. of 1845, art. VII, § 15.
For this end, we must be knit together in this work as one man, we must entertain each other in brotherly affection, we must be willing to abridge ourselves of our superfluities, for the supply of others’ necessities, we must uphold a familiar commerce together in all meekness, gentleness, patience and liberality, we must delight in each other, make others’ conditions our own, rejoice together, mourn together, labor and suffer together, always having before our eyes our commission and community in the work, our community as members of the same body....

*For we must consider that we shall be as a city upon a hill:* the eyes of all people are upon us, so that if we shall deal falsely with our God in his work we have undertaken, and so cause him to withdraw his present help from us, we shall be made a story and a by-word through the world....

One hundred and fifty years later, Winthrop's ideal echoed in the U.S. Constitution's Preamble:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Winthrop's sermon continues to influence America. John F. Kennedy stated that “I have been guided by the standard John Winthrop set...that ‘we shall be as a city upon a hill.’” Ronald Reagan referred to America as a “shining city on a hill” in his second inaugural address. Sandra Day O’Connor quoted Winthrop’s image at Reagan's funeral in 2004.

**John Adams’s Massachusetts Constitution of 1780.** Soon after the French and Indian War, parliamentary and royal encroachments on American rights resulted in the Stamp Act Crisis of 1765. Resentment at taxation without representation escalated the estrangement. The Boston Tea Party led to Parliament’s Intolerable Acts. New Englanders reinterpreted Magna Carta to mean that no man, no king, and no parliament was above the law. They organized committees of public safety, trained Minute Men militias, and convened continental congresses to complain about violations of colonial rights. Escalating fear, military miscalculations, and anger led to bloodshed at Lexington, Concord, and Bunker Hill, the Declaration of American

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Independence, and the American Revolutionary War. 113

John Adams joined John Hancock, Roger Sherman, Robert Livingston, Benjamin Franklin, Thomas Jefferson, and other Patriots at Independence Hall in Philadelphia to sign the Declaration of Independence on July 2, 1776.114 The Second Continental Congress encouraged citizens to begin writing constitutions for their states, so John Adams did that for Massachusetts.115 The Massachusetts Constitution of 1780 inspired others, including Sam Houston’s 1833 constitution for an independent state of Texas.116 We’ll explore the surprisingly strong connections between New England and Texas in the next issue of the Journal.

Part 2 of this article will appear in the Spring 2020 issue of the Journal.


114 Thomson, Declaration of Independence. Although signed on July 2, the commemoration came to be known afterwards as the Fourth of July because of its publication date two days after the signing.


In July of 2015, San Felipe de Austin State Historic Site project historian Michael Moore spent a week at Yale University researching San Felipe resources in its archival collections. Surprisingly, some of the best early Texas history archives outside of Texas are in the Western Americana collections of Yale University's Beinecke Library. Yale's prominence as an archival home for Texana can be traced to two East Coast collectors and bibliographers.

Henry Raup Wagner graduated from Yale Law School in 1886. His professional life, however, shifted from law to mining, which brought him to Mexico and the American Southwest. He developed a passion for collecting books and manuscripts about American westward expansion and the Spanish borderlands, and published a bibliography on western topics. Wagner died in 1957. Yale University’s Beinecke Library has some of his collections related to Texas and Mexico, with a particular focus on land grants during the Mexican era of Texas history.

Thomas W. Streeter graduated from Harvard Law School rather than Yale, but like Wagner also veered from law to business. His chairmanship of an oil company in the 1920s brought him frequently to Texas, and ignited a passion for collecting Texas history items. Streeter retired to his New Jersey home in 1939 to devote himself fulltime to collecting books and manuscripts, amassing the largest private Texana collection ever assembled. Not just content to collect private treasures, Streeter researched his holdings to understand them better, and ultimately shared his expertise in a five-volume Bibliography of Texas, 1795-1845 published between 1955 and 1960. His Bibliography remains the authoritative work in the field.

Streeter donated a collection of Stephen F. Austin family papers to the University of Texas in 1944, but felt that the Texas libraries had not expressed sufficient interest in his other collections, and he sold them to Yale University in the 1950s. In addition to extensive manuscript documents, Streeter’s collection includes many hundreds of printed documents that came off the two printing presses at San Felipe, including almost all of the surviving copies of the Texas Gazette and Mexican Citizen newspapers.

When Streeter acquired his collection of Austin papers from Beauregard Bryan, he also acquired a desk that had belonged to Stephen F. Austin. Although Streeter donated the Austin papers to the University of Texas in 1944, he kept the desk for some years until donating it to the Stephen F. Austin Park Association (now Friends of the San Felipe de Austin State Historic Site) in 1960. As part of the San Felipe de Austin visitor center project, the desk was conserved and

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1 A version of this article was originally featured on the Texas Historical Commission blog in 2015; it has been updated for this publication. Explore similar stories by visiting https://www.thc.texas.gov/blog.
then loaned to the Bullock State History Museum in Austin until the new facilities at San Felipe de Austin were ready for installation. It has been a centerpiece of the new Visitors Center since it was opened by the Texas Historical Commission in 2018.

Michael wanted to do research in the Yale collections for many years in support of ongoing book projects on the history of San Felipe, the printing offices in the town, and a more general work on Austin’s Colony. When this opportunity to visit New Haven presented itself, he jumped at the chance. Michael had made use of some of Yale’s resources in his 2011 report for the Texas Historical Commission on the printing shops of San Felipe, but he had never personally reviewed Streeter’s collections until this trip.

Anticipating the needs for exhibit support for the San Felipe Visitors Center, Michael volunteered while on his research trip to identify and request digital scans of documents that would be important to sharing these stories with visitors. The Friends of the San Felipe de Austin State Historic Site generously appropriated several thousand dollars in scanning fees to stockpile digital images from Yale in support of the exhibit design process. These digital images from documents actually printed in San Felipe’s printing shops by Godwin Cotten, R. M. Williamson, and Gail Borden are now featured prominently in the new exhibits.

Because the Streeter and Wagner collections are so far from Texas, they have not been as extensively utilized in exhibits as the resources from archives in the state. The Yale collections of documents written and printed in San Felipe de Austin are proving very critical to the understanding of the town’s history, and—thanks to this research effort—now feature prominently in the exhibits and programs of the new Visitors Center at the State Historic Site. The center is open from 9:00 a.m. to 5:00 p.m. every day (except major holidays) at the San Felipe de Austin State Historic Site. For more information go to www.visitsanfelipedeaustin.com or call 979-885-2181.
Left: Michael reviews an engraving of Stephen F. Austin based on a pencil sketch Austin made of himself while in Mexico in 1833.

Below: During Michael’s visit in 2015 to Yale’s Beinecke Library, the iconic modern 1963 building that houses the Western Americana collections was under renovation. Michael conducted his research in a temporary reading room in the Gothic-Revival Sterling Memorial Library, which looks more like a medieval cathedral than a library building. Photo by Michael Moore.
Top left: Seal of the Juzgado (Court) of Austin that Stephen F. Austin had sent to San Felipe from Mexico in 1831. Michael had previously found documents stamped with this seal in colonial records in Texas.

Top right: Michael’s research indicated that Austin also sent another seal for the Ayuntamiento (Town Council) of San Felipe at the same time, but he had not found any examples of documents with that stamp. In the Wagner Collection, however, he found a couple of documents that were stamped with the seal of the council on a report of the Ayuntamiento to the Political Chief in Bexar in 1834.

Bottom: These reports that bear the Ayuntamiento stamp were written by the Council’s secretary, William Barret Travis, who must have also been the custodian of the Council’s seal.

Images courtesy of Yale University Beinecke Rare Book and Manuscript Library.
Galveston was recently the site of several events well attended by Texas Supreme Court Historical Society members. First, on January 10, the historic city saw the formal investiture of Society Trustee and former Texas Supreme Court Justice Jeff Brown as the Federal District Judge for the Galveston Division. On January 16, in what Trustee Justice Ken Wise described as a “History-palooza,” six judges, both state and federal, along with some twenty others, toured the 1937 Federal Courthouse, listened to a speech from Trustee Judge Andrew Edison, toured the historic 1861 Federal Courthouse, and concluded the day with a special tour of the Bryan Museum.
Judge Brown received his commission as a United States District Judge for the Southern District of Texas on September 4, 2019. His investiture served as the formal ceremony marking his taking the bench and introducing him to the legal community as a Federal Judge. The event was held in the Music Room in the historic 1911 Galvez Hotel.

Several current and former Trustees of the Society were present. Besides Judge Brown himself, Judge Andrew Edison, Justice Jane Bland (who succeeded Brown on the Texas Supreme Court), Justice Brett Busby, former Chief Justice Tom Phillips, Justice Ken Wise, former Society Presidents Warren Harris and Macey Stokes, and Trustee Stephen Pate were all part of the crowd.

Almost every judge on the Southern District Bench was at the investiture, including judges from Corpus Christi and Laredo. Both Texas Senators John Cornyn and Ted Cruz were present and spoke, with Senator Cruz remarking that the minute Judge Brown assumed the bench, he was neither a Republican nor Democratic judge—but simply a judge.

Justice Ken Wise, a longtime friend of Judge Brown’s, was one of the two people who introduced Judge Brown, and spoke warmly of Judge Brown’s service as an Eagle Scout as well as their shared love of Texas history.

Judge Brown was then “enrobed” by his wife Susannah Brown, and gave a short speech thanking his friends and relatives for attending. He noted that though he was not BOI—born on the Island—he and his wife had been warmly welcomed by the Galveston community, and were both committed to Galveston.

The following week, Judge Brown, along with new Eastern District Federal Judge Michael Truncale, Southern District U.S. Magistrates Andrew Edison and Christina Bryant, Texas Court of Appeals Justices Ken Wise and Russell Lloyd, Society President Dylan Drummond, Journal Executive Editor David Furlow, and many others, spent a busy day exploring history. Judge Edison and Judge Brown conducted a tour of the 1937 Art Deco Federal Courthouse and Post Office. Judge Brown showed the group the courtroom, graced with portraits of some of the Federal Judges who served there—Thomas Kennerly, James V Allred, James Noel, and Finis Cowan.

The group then toured the now vacant Post Office area, and saw a remarkable scene. Postal theft was a major problem when the building was constructed in the 1930s—and according to the Judges on the tour—it still is. To curb the problem, the Galveston Postmaster at the time constructed a wrap-around gallery above the main floor of the postal facilities where he and the supervisors could “spy” on the postal employees below through small slit-like windows. While not always manned, the thought that someone might be in the gallery looking down was enough to keep the employees on the straight and narrow. Several group members said the setup reminded them of “the eye in the sky” at Las Vegas casinos.

The tour members then repaired to the San Luis Resort (not historic, but built over a World War II gun emplacement) to join the Galveston County Bar Association at a luncheon. The honored guest and speaker was Judge Edison, who gave a presentation on “The Galveston Seven,” the story of the two-year struggle to confirm a new United States District Judge for the Eastern District, sitting in Galveston, that occurred during Reconstruction.
Judge Edison based his presentation on a series of articles by Stephen Pate that appeared in the *Texas Supreme Court Historical Society Journal*. Judge Edison spoke of the seven actual nominees and many others who sought the judgeship in that troubled time. They included Bird W. Gray, who was actually confirmed for the position before his confirmation was revoked by the U.S. Senate; John Appleton, Union war hero from Maine who died before he could take the bench; and the hapless J.C.C. Winch, who served as judge for four months under a recess appointment before the Senate rejected him for a lifetime appointment. Most of the Galveston Bar members in attendance had never heard of the nominees or of Amos Morrill, the nominee who was eventually confirmed.

Next up was a tour of the historic 1861 Federal Courthouse and Post Office, the oldest federal building in Texas. This tour was given by Stephen Pate, who has studied the building’s history for many years. Pate was joined by Steve Mataro of DSW Homes, the entity that currently owns the building, and has lovingly restored it.

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Pate’s recent research on the building revealed some new facts. For example, the original 1857 contract for the building was signed by Secretary of the Treasury Howell Cobb—great-grandfather of former Eastern District Judge Howell Cobb, former law partner of Judge Truncale. There has been much debate over whether the Federal Courthouse or Galveston’s Ashton Villa was where the Emancipation Proclamation was first read in Texas on June 19, 1865. Pate, in consultation with other historians, now believes the Proclamation was never read at all, but was promulgated in a circular distributed from Union Army Headquarters located a few blocks from the Courthouse.

Pate also believes he knows the origin of the story about a cannonball embedding itself in the building during the Battle of Galveston. Neither Pate nor Mataro have found evidence of that cannonball. However, Pate has now found a November 1865 letter from an inspector who examined the building after the war and reported that shot and shell had damaged the roof. Pate also told of how the Courthouse served as a refuge during the 1900 Galveston Storm, though the roof was torn off and the storm waters reached eight feet inside.

The Courthouse was built in 119 days, using prefabricated wrought iron manufactured in New York and shipped to Galveston. Much of the wrought iron present today is original, and
the group viewed the magnificent iron “stairs.” The Courthouse was remodeled in 1917, and the second floor turned into a courtroom and judges’ chambers. The group visited the high-ceilinged old chambers, and went out to the balcony for a still remarkable view of old Galveston.

Finally, the group moved on to the Bryan Museum, established by famed Texas oilman J.P. Bryan, descendant of Moses Austin and 19th century Congressman Guy Bryan. The museum is
housed in the 1895 Galveston Orphans Home (this was the Protestant Orphanage; the Catholic Orphanage was the one that was so tragically destroyed during the 1900 storm).

The Bryan Museum contains a collection of 70,000 documents, artifacts, maps, and works of art pertaining to the history of Texas and the American West, all collected by J.P. Bryan over a lifetime. This tour was conducted by Justice Wise, who serves (along with Steve Mataro) as a “Delagado” for the museum, or in other words a member of the Museum’s Advisory Board.

Justice Wise led the group through the collection, which is organized in chronological order from the history of Spain in the region up until the 1930s. He spoke about the more than 250 antique firearms, some magnificent western saddles, and such items as John Wesley Hardin’s business card, touting Hardin’s skill as a lawyer. The group was able to study the wonderful diorama of the Battle of San Jacinto, made up of figures hand-crafted by famed British toy soldier maker King and Country. Justice Wise also pointed out the three Andy Warhol portraits of Western figures that now adorn the collection.
Moreover, the group learned that the Orphanage remained open until the 1980s, and there are still former residents who return to the museum from time to time to revisit the place where they grew up. Even if the collection were not there, this 125-year-old building would be a historic landmark in itself.

The day’s activities ended only as the sun was going down and most returned either to the bench or to the mundane task of billing hours. As people left, there were vows that they would return next year.

**STEPHEN PATE** is a member of the Cozen O’Connor law firm in Houston.
Come See the Society’s 2020 TSHA Program
Courting Trouble: Hard Cases, Historic Consequences

By David A. Furlow

You’re invited to attend the Society’s special legal history program, “Courting Trouble: Hard Cases, Historic Consequences,” at the 124th Texas State Historical Association Annual Meeting on Friday, February 28, at 2:00 p.m. in Austin. Our panel session will take place at the AT&T Executive Education and Conference Center on the University of Texas campus.

Society President Dylan Drummond will open the session and introduce our distinguished panel of speakers.

The Hon. Ken Wise, Justice of the Texas Court of Appeals for the 14th District in Houston, a trustee of the Society, and the creator of the “Wise about Texas” history podcast, will speak on the topic “District of Brazos: The Republic’s Secret Court.” As background, in April 1836 the Texian Navy captured the Pocket, an American ship bound for Mexico. The U.S. demanded her return. After San Jacinto, the Republic’s Interim President David Burnet had to act, but how? Texas had neither law nor courts. Burnet took matters into his own hands and created the Court of the District of Brazos through an executive order. He appointed a San Jacinto veteran and Georgia lawyer as judge. But this court did much more than adjudicate the emergency admiralty case. Justice Wise will examine the records that remain and will analyze the jurisprudence of the Court of the District of Brazos.

The Hon. Mark Davidson, Multi-District Litigation Judge, a trustee of the Society, and a judicial historian, will present “Who Will Be Governor? The Texas Supreme Court Decides.” Judge Davidson will examine three important cases—Ferguson v. Maddox (1924), Sterling v. Ferguson (1930), and Looney v. Baum (1972)—in which the Supreme Court of Texas determined the outcome of a gubernatorial race. These three cases reveal the interaction of the judicial and executive branches and ways Texas’s highest court has evolved over time in its handling of high-profile election cases.

Francisco Heredia, Team Leader and Curator of the Harris County District Clerk’s Office Historical Documents Room, will serve as commentator. He will discuss how Harris County preserves courthouse legal history and how archival records enable historians to reconstruct the history of Texas courts from the Republic to the present.

This year the Texas State Historical Association will confer the Society-funded Larry McNeill Research Fellowship in Legal History during TSHA’s Annual Fellows Luncheon and Awards Presentation. The luncheon program begins at noon and ends at 1:30 p.m. on Friday, February
28, immediately prior to the Society’s 2:00 p.m. panel session. Anyone wishing to attend must pre-register for a ticket. Seating fills quickly.

The Society presents scholarly programs at TSHA annual meetings as part of its mission to gather and preserve the history of the Texas Supreme Court and the state’s appellate courts as well as to educate the public. We urge members to attend the three-day historical conference, as well as special events and sessions, which are listed at: https://www.tshasecurepay.com/annual-meeting/2020-events-sessions/.

Registration for the full conference is available online at https://tsha.events/annual-meeting/. Those who wish to attend only the Society’s Friday afternoon session can register on-site on the day of the session.

Hotel reservations for the AT&T Conference Center are available on the web at https://book.passkey.com/gt/217544719?gtid=d44d032ff8052009db6a39913b739de4. The AT&T Center provides valet parking and public lots are available nearby.
By Dylan O. Drummond

Justice Jane Bland Formally Sworn-in to Texas Supreme Court in November

This past November, the newest member of the Texas Supreme Court, Justice Jane Bland, was formally sworn-in to the bench by former Texas Supreme Court Justice and current 5th Circuit Chief Judge Priscilla R. Owen.

Prior to her elevation to the Court, Justice Bland served for fifteen years on the 1st District Court of Appeals, and for over six years on the 281st District Court in Harris County. After law school, she clerked for Fifth Circuit Judge Thomas Gibbs Gee. A member of the American Law Institute, Justice Bland also chairs the Oversight Committee for the Texas Pattern Jury Charges.

Justice Bland was appointed to succeed Justice Jeff Brown, now Judge of the Southern District of Texas, who was “sworn out” at the same ceremony by Chief Justice Nathan Hecht. Notably, both Justice Bland and Justice Brown succeeded the Chief Justice in Place 6, which he held for a quarter century.

Southern District of Texas Judge Jeff Brown Invested in Galveston in January

Former Texas Supreme Court Justice Jeff Brown’s formal investiture as Southern District of Texas Judge was held January 10 at the Hotel Galvez in Galveston, Texas.

Judge Brown was sworn-in to preside over the oldest federal court in Texas, the first session of which was held on June 1, 1846. The court was originally the only federal district court in Texas, then later the Eastern District of Texas court, then finally the first court in the Southern District of Texas. The seat is now the only Southern District of Texas court located in Galveston.

Southern District of Texas Chief Judge Lee Rosenthal presided over the ceremony. Judge Brown was introduced by Fourteenth Court of Appeals Justice Ken Wise and former Harris County District Judge Grant Dorfman. He was sworn-in on the famed Sam Houston Bible (courtesy of
Chief Justice Nathan Hecht) by Fifth Circuit Judge Gregg Costa. (See related story on page x of this issue of the Journal.)

Before being elevated to the federal bench, Judge Brown served on the Texas Supreme Court for six years from 2013 to 2019. Prior to that, he served as a Justice on the 14th District Court of Appeals in Houston and, before that, as a judge on the 55th District Court in Harris County. Judge Brown is also one of only four former Texas Supreme Court clerks who went on to serve as a Justice on the Court. Judge Brown clerked both for the inaugural president of the Society, Jack Hightower, as well as current Governor Greg Abbott when he was on the Court.
This past December, several Dallas judges and attorneys took time away from their busy schedules and dockets to present the Society’s Taming Texas curriculum to seventh graders at Robert T. Hill Middle School.

Former Society President and current Fellow and Trustee Ben Mesches organized the program, which featured sitting judges, justices, and practicing attorneys teaching history and civics to nearly 300 middle schoolers. Helping to spread the word to recruit speakers was the Chair of the State Bar Judicial Section, Travis County Associate Judge Andy Hathcock.
The Society was honored to have several current and former Justices from the Dallas Court of Appeals present, including Justices Lana Myers, Erin Nowell, Cory Carlyle, and Society Trustee Jason Boatright. Dallas County trial judges Audrey Moorehead and Mike Jones, Jr. taught as well. Among the private attorneys to teach were Society Trustee Alia Adkins-Derrick and President, Fellow, and Trustee Dylan Drummond.

Among others who taught the Taming Texas curriculum were (left to right) Dylan Drummond, Alia Adkins-Derrick, Justice Lana Meyers, and former Justice Jason Boatright. Photo courtesy of Dylan O. Drummond
Calendar of Events

**Society-related events and other events of historical interest**

### Winter/Spring 2020

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

### Through March 2020

The Witte Museum in San Antonio presents **“How the West was Fun! Circus, Saddles and the Silver Screen.”** Wild West Shows and their performers led large international audiences to the silver screen, where old, new, dishonest and true stories of the West are still told today. [https://www.wittemuseum.org/how-the-west-was-fun/](https://www.wittemuseum.org/how-the-west-was-fun/).

### Throughout 2020

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

### Throughout 2020

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

### February 15-16, 2020

The Texas Archaeological Society will conduct its annual Geoarchaeology Academy at Victoria College in conjunction with the Museum of the Coastal Bend. **Recognizing and Evaluating the Archeological Potential of the Landscape: An Introduction to Geoarcheology** is a two-day Texas Archeology Academy that explores how geological and soil formation processes affect archeological sites, and how investigators use this information to reconstruct both the human and natural histories of an area. Museum of the Coastal Bend, 2200 E Red River St., Victoria, Texas 77901. Registration information is available at [https://www.txarch.org/academy01](https://www.txarch.org/academy01).
February 25, 2020
The Alamo presents a “Weapons of the Alamo” tour from 11:30 a.m. to 12:30 p.m. at 300 Alamo Plaza, San Antonio, Texas 78205. For more information, call 210-225-1391. Registration is required. [https://www.facebook.com/events/2786978291358986/](https://www.facebook.com/events/2786978291358986/).

February 26, 2020
The Fellows of the Texas Supreme Court Historical Society will hold their annual dinner at a special venue in Austin. Further details will be sent directly to all Fellows.

February 27-29, 2020
The Texas State Historical Association conducts its Society-sponsored Annual Meeting at the AT&T Center, 1900 University Avenue, Austin, Texas 78705. Members can register by contacting Angel Baldree, TSHA Annual Meeting Event Coordinator, at (512) 471-2600 or angel.baldree@tshaonline.org. Registration is also available online at [https://tsha.events/annual-meeting/](https://tsha.events/annual-meeting/).

February 28, 2020
The Texas State Historical Association (TSHA) presents the first Larry McNeill Research Fellowship in Texas Legal History from noon to 1:30 p.m. at the AT&T Center in Austin. The presentation will take place during the Fellows Luncheon and Awards Presentation at the Texas State Historical Association Annual Meeting at the AT&T Conference Center, 1900 University Avenue, Austin, Texas 78705.

February 28, 2020
The Society presents its panel in Session 29 at the Annual Meeting of the Texas State Historical Association (TSHA) at the AT&T Center in Austin from 2:00 to 3:30 PM. The panel consists of Society President Dylan Drummond, Special Court Judge Mark Davidson, Fourteenth Court of Appeals Justice Ken Wise, and Harris County Clerk’s Office Historic Documents Room Custodian Francisco Heredia. The session will take place at the AT&T Conference Center, 1900 University Avenue, Austin, Texas 78705. [https://www.tshasecurepay.com/annual-meeting/2020-events-sessions/](https://www.tshasecurepay.com/annual-meeting/2020-events-sessions/).

March 1, 2020
The Alamo presents “The Immortal 32 Arrive” to commemorate volunteers from Gonzales who joined the defenders of the Alamo on March 1, 1836. The event lasts from 11:00 a.m. until noon at the Alamo, 300 Alamo Plaza, San Antonio, Texas 78205. For more information, call 210-225-1391. [https://www.facebook.com/events/522351068404178/](https://www.facebook.com/events/522351068404178/).

March 2, 2020
The Alamo presents “Texas Independence Day” to celebrate the Declaration of Texas Independence on March 2, 1836. The event lasts from 11:00 a.m. until noon at the Alamo, 300 Alamo Plaza, San Antonio, Texas 78205. For more information, call 210-225-1391. [https://www.facebook.com/events/1519766881503836/](https://www.facebook.com/events/1519766881503836/).
March 6, 2020

The Alamo presents “Dawn at the Alamo” to commemorate the 1836 battle. The event lasts from 6:00 a.m. to 7:00 a.m. at the Alamo, 300 Alamo Plaza, San Antonio, Texas 78205. For more information, call 210-225-1391. [https://www.facebook.com/events/522351068404178/].

March 23, 2020

The Texas Historical Commission History at Night 2020 series presents “Wise about Texas” at San Felipe de Austin Museum and Visitor’s Center. Society Trustee Ken Wise, Justice of the Texas Court of Appeals for the 14th District in Houston and organizer of “Wise about Texas” podcasts, will present a program about the history of San Felipe de Austin. The event, from 7:00 to 9:00 p.m., will occur at the San Felipe de Austin Historic Site, 220 Second Street, San Felipe de Austin, Texas, 77473, 979-885-2181, one mile north of I-10. [https://www.thc.texas.gov/historic-sites/san-felipe-de-austin-state-historic-site].

March 28, 2020

The Backroads of the South Shore Conference will examine the history of the many towns along the South Shore of Massachusetts. Backroads is a collaboration of historical organizations operating important historic sites in many towns along the South Shore of Massachusetts. Society Trustee David Furlow will examine the role of the Mayflower Compact in the history of Plymouth Colony, the New Netherland Colony, and early America at the Spire Center for Performing Arts at 25 1/2 Court St, Plymouth, MA 02360. For more information, contact the Spire Center at 508-746-4488.

April 4, 2020

The Texas State Historical Association conducts its annual San Jacinto Symposium. This year’s theme is “Myths, Mysteries, and Misunderstandings of San Jacinto.” The symposium will take place from 8:15 a.m. (registration) until 3:30 p.m. (adjournment) at the University of Houston Downtown, One N. Main St., Houston, Texas 77002. A schedule of presentations is available, [https://tshaonline.org/sanjacintosymposium/program], as is a list of speakers, [https://tshaonline.org/sanjacintosymposium/speakers]. Registration is required: [https://tshaonline.org/san-jacinto-symposium/event-registration.php].

April 17, 2020

The Society’s Board of Trustees gathers for the Society’s Spring 2020 Board Meeting at the Alamo in San Antonio, Texas at 10:00 a.m. The Members’ Meeting begins at 11:50 a.m. Lunch will be served from noon until 1:00 p.m. A guided tour of the Alamo will occur from 1:30 p.m. until 2:30 p.m., 300 Alamo Plaza, San Antonio, Texas 78205.
The annual reenactment of the Battle of San Jacinto will occur at the San Jacinto Festival and Battlefield Reenactment from 10:00 a.m. to 5:00 p.m. at the San Jacinto Battlefield and Monument, 1 Monument Cir., La Porte, TX 77571. https://www.sanjacintomuseum.org/About_Us/News_and_Events/Upcoming_Events/2020_Festival_and_Reenactment/.

The Texas Historical Commission’s History at Night 2020 series presents Dr. Bruce Winders at San Felipe de Austin Museum and Visitor’s Center. Dr. Winders, author of a history about the 1836 siege and battle at the Alamo, and the Alamo’s curator for many years, speaks about the Texas Revolution. The event, from 7:00 to 9:00 p.m., will occur at the San Felipe de Austin Historic Site, 220 Second Street, San Felipe de Austin, Texas, 77473, 979-885-2181, one mile north of I-10. https://www.facebook.com/SanFelipedeAustin/photos/gm.3289253554480651/3636105023073800/?type=3&theater.

The Texas Historical Commission’s History at Night 2020 series presents Dan Utley and the “History of the Green.” Dan Utley is a historian of the Texas Rangers. The event, from 7:00 to 9:00 p.m., will take place at the San Felipe de Austin Historic Site, 220 Second Street, San Felipe de Austin, Texas, 77473, 979-885-2181, one mile north of I-10. https://www.facebook.com/events/975393962844023/.

The State Bar of Texas will conduct its annual meeting at the Hilton Anatole Hotel in Dallas, Texas. https://www.texasbar.com/Content/NavigationMenu/Events/AnnualMeeting/Future_Dates/default.htm.
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The Legendary Life and Tumultuous Times of Chief Justice John Hemphill
By David A. Furlow
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By Bill Pugsley, Executive Director
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Winter 2011, Vol. 1, No. 2
“The Separation of Texas from the Republic of Mexico Was the Division of an Empire”: The Continuing Influence of Castilian Law on Texas and the Texas Supreme Court; Part I: Spanish Texas, 1541–1821
By David A. Furlow
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Executive Director’s Page: Looking Forward: The Mission of the Texas Supreme Court Historical Society, Part 2
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Hubert W.: The Beginning of a Green Family Tradition
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South Western Reporter Factoids
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The Mystery of the Sam Houston Bible
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Justice Guzman Speaks at Tejano Monument Dedication
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Portrait Ceremony Will Honor Justice Harriet O’Neill
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The Continuing Influence of Castilian Law on Texas and the Texas Supreme Court, Part III: 1845 to the Present—The Castilian Law Heritage Today
By David A. Furlow
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The Tragic Case of Justice William Pierson: Justices in the State Cemetery, Part 2
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Texas Historical Foundation to Assist in Preserving Republic and Early Statehood-Era Supreme Court Case Files
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Jackson's Waterloo: The Fight for Padre Island and the Texas Supreme Court Intersects, Part 2–The Case Unfolds
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The Journal of the Texas Supreme Court Historical Society welcomes submissions, but the Editorial Board reserves the right to determine what will be published in every issue. The Board does not discriminate based on viewpoint, but does require that an article be scholarly and interesting to the Journal’s readership. The Journal includes content concerning activities of public figures, including elected judges and justices, but that chronicling should never be construed as an endorsement of a candidate, a party to whom a candidate belongs, or an election initiative. Publication of an article or other item is neither the Society’s nor the Journal’s endorsement of the views expressed therein.

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The following Society member has moved to a higher dues category since June 1, 2019, the beginning of the membership year.

GREENHILL FELLOW
Kristen Vander-Plas
The Society has added 40 new members since June 1, 2019, the beginning of the new membership year. Among them are 17 Law Clerks for the Court (*) who receive a complimentary one-year membership during their clerkship.

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