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DEMOCRACY ON THE FRONTIER:
STATEHOUSE AND COURTHOUSE IN
ANTE-BELLUM TEXAS

by RALPH A. WOOSTER

In 1860, on the eve of the American Civil War, the frontier state of Texas had one of the most democratic structures of government in the United States. Both the Constitutions of 1836 and 1845 provided for direct election of the governor, members of the legislature, and county officials. Judges and other executive officers became elective officials through constitutional amendments in 1850. No property or militia restrictions for voting or officeholding existed and residency requirements were simple. Reapportionment of the legislature was regularly undertaken and basically fair. From the statehouse to the local courthouse the people were represented by public officials responsive to their needs and wishes.

The Constitution of 1845, under which Texans were governed in the pre-Civil War decade, was “well designed and well written.” Modeled largely upon the constitution of the Republic (1836) but influenced also by the newly completed Louisiana constitution, the 1845 Texas constitution ideally suited the spirit of nineteenth century Texans. In it there was a buoyant optimism and exuberant confidence in the common man, along with a simplicity soon to pass with the growing complexity of society. Much was said in the 1845 document about the rights of man; comparatively little was said about banking, incorporation, and property rights. Voting and officeholding requirements were simple. All free, adult males who were citizens of the United States or the Republic of Texas and who resided in the state one year and in the county six months prior to election were entitled to vote. Indians not taxed and Africans and their descendants were specifically excluded from voting. As in other states military personnel of the Federal government were ineligible to vote. Qualifications for office were basically the same as for voting although some offices had special requirements in respect to age and residency. Ministers of the gospel were specifically barred from serving in the legislature and duelists were excluded from all public offices.

As in the twentieth century, ante-bellum Texas governors held office for two years. Unlike today, however, ante-bellum governors were ineligible to serve more than four years in any six year period. Under the Constitution of 1845 the governor was required to be thirty years of age, a citizen of the United States, and a resident of the state three years prior to election. His powers were similar to those of other southern executives. He was the “chief magistrate,” the commander of the state’s armed forces, and could inform, advise, and recommend to the legislature. He had the power to veto legislation and such a veto could be overridden only by a two-thirds vote. Originally he held vast appointive power and could name all judges, the secretary of state, and the attorney general, but he lost the power to appoint judges and the attorney general under a constitutional amendment in 1850. As in other states much of the power exercised by the governor depended upon the personality of the man.

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occupying the chief executive’s chair. A strong personality did not necessarily mean a strong governor because his powers were too limited, but a strong personality could mean a governor with considerable influence.7

The first governor of the state was the courtly lawyer-diplomat J. Pinckney Henderson. North Carolina-born Henderson had served as soldier, attorney general, secretary of state, minister to England and France, envoy to the United States, and member of the convention of 1845 prior to his election as governor. His administration had just begun when the War with Mexico began. Henderson asked for and received permission from the legislature to command Texas troops in the field. Thus, he was out of the state for six months, during which time the lieutenant governor, Albert C. Horton, a wealthy planter and veteran legislator, presided over affairs of state.8 Henderson did not seek reelection and was succeeded by George T. Wood in December, 1847.

Governor Wood, like his predecessor, had served in the Mexican War. A large plantation owner in Liberty county, Wood had had previous legislative experience in Georgia before coming to Texas. He had served in the Texas Congress, the convention of 1845, and the state senate prior to his election as governor.9 He was opposed in his bid for reelection in 1849 by another Mexican War veteran, Peter H. Bell, and in a bitter contest marked by personal vindictiveness on both sides Wood was defeated.

Peter H. Bell, elected in 1849 and reelected in 1851, was the first governor of the state to serve two terms. A veteran of San Jacinto and Buena Vista, Bell was a staunch states-righter and advocated an aggressive policy in asserting Texas’ claim to the area around Santa Fe in his first term of office.10 His re-election over four opponents in 1851 was considered a triumph for the more militant, pro-southern faction in the state. Bell was followed in office, however, by the more moderate Elisha M. Pease, Connecticut-born lawyer, elected in 1853.11

The administrations of Governor Pease are noteworthy for the acceleration of political activity in the state and the formulation of political party organizations. Prior to Pease’s term politics in the state had been mainly on a personal basis with much attention focusing on the hero of San Jacinto, first President and United States Senator Sam Houston. For a decade Texans had been “pro-Houston” or “anti-Houston” and little else mattered. Most Texans considered themselves Democrats but party organization had been virtually non-existent. A few planters and merchants espoused the principles of the Whig party but its strength was small. In 1851 Ben H. Epperson of Red River county ran for governor with Whig support against Bell but was decisively defeated. In 1853, however, the Whigs made their best showing in an all-out effort to capture the chief executive’s chair with the candidacy of the popular and able jurist William B. Ochiltree.12 At first the Democrats had three candidates in the field, but when it became apparent that such division might be costly, two of them withdrew and threw their support to the third, Elisha M. Pease, who defeated Ochiltree.

Pease’s victory over Ochiltree momentarily unified the Democrats but with the decline of the Whigs, interest in political organization once again lapsed. The Democratic state convention of 1855 drew delegates from only twelve counties. These delegates contented themselves with endorsing the objectives of
the national party and the candidacies of Governor Pease and Lieutenant Gov­
er David C. Dickson for reelection, and then went home. But soon there­
after the emergence of a new political force changed the complexion of Texas politics and Texas Democrats were forced to end their lethargy.

This new force which emerged in the mid-fifties was the American, or Know Nothing, party. In 1854 this party, which originated in the East but made deep inroads in the South, capitalized on resentment to the increasing number of foreigners in the state and won local elections in San Antonio. These were followed by the election of an American as mayor of Galveston in the spring of 1855. With this growing strength party leaders met at Washington-on-the­Brazos in June and announced their party's slate of candidates for the coming state elections. Heading the party ticket as candidate for governor was Lieu­tenant Governor David C. Dickson, who had previously been given the blessings of the state Democrats in his bid for reelection. The Democrats hastily called another meeting for Austin, where they reaffirmed their support for Governor Pease, denounced Dickson and secret political factions, and nominated Hardin R. Runnels for lieutenant governor. The Democratic counterattack was so effective that some Know Nothing candidates, including Stephen F. Crosby, Commissioner of the General Land Office, who was running for reelection and had earlier accepted Know Nothing support, deserted the new party and returned to the Democratic fold. Although the Know Nothings managed to elect over a dozen legislators, their ticket as a whole, including gubernatorial candidate Dickson, was soundly defeated.

Many predicted the Know Nothing movement would continue to grow and the 1856 party convention, thrown open to the public and held in the hall of representatives in Austin, attracted a good crowd. But the party disintegrated rather steadily both nationally and locally and by 1857 had virtually disappeared in Texas. In that year remnants of the old party generally supported Sam Houston, who was running for governor as an independent opposed to the regular Democratic nominee Hardin R. Runnels.

The contest between Houston, who had been censured by the state legisla­ture for his opposition to the Kansas-Nebraska bill in the United States Senate, and Runnels, who had served as lieutenant governor under Pease, was a fierce one. Although Houston campaigned valiantly on his record as a Jackson Demo­crat, the full forces of the regular party organization, now dominated by southern radicals, moved against him and in support of Mississippi-born Runnels. Much criticism in the campaign was leveled against Houston's actions in the Senate, actions which in the eyes of extremists constituted a betrayal of the interest of Texas. The result was the defeat of Houston and the election of Runnels as governor of the state. Two years later in an equally bitter contest fought on much the same issues, Houston reversed the verdict by defeating Runnels. Houston's victory over Runnels was not only a personal one but also a triumph for the forces of moderation.

Thus six men—Henderson, Wood, Bell, Pease, Runnels, and Houston—served as governor of Texas in the fifteen years between annexation and seces­sion. All but one, Pease, had been born in the South and even he was considered an "old Texan." All but one, Runnels, had seen military service of some type and all were either lawyers or planters, sometimes both. All were slaveholders,
but only Wood owned a large plantation. In age they ranged from Runnels, who was only thirty-seven at the time of his election, to Houston, who was sixty-six when chosen governor. Two, Henderson and Bell, were in their late thirties; one, Pease, was in his early forties; and another, Wood, was in his mid-fifties. Only two of them, Henderson and Pease, had much formal tutoring, but they all had been well educated in the school of experience. With the exception of Bell all of them had had legislative experience prior to becoming governor. Three of them, Henderson, Runnels, and Houston, had had prior executive service. By personal characteristics, by practical experience, and by station in life all six were well qualified to serve as governor of the state.

Under the Constitution of 1845 as originally adopted the governor and the lieutenant governor were the only executive officers chosen by popular election. The attorney general, secretary of state, and commissioner of the general land office were appointed by the governor; the comptroller of public accounts and state treasurer were chosen by the legislature. This was changed by constitutional amendment in 1850; henceforth all executive officers except the secretary of state were chosen by the people.

There was considerable rotation of personnel in most of the executive offices, both under the appointive and elective systems. Seven individuals served as lieutenant governor in the period 1846-1861. Only one, lieutenant governor John A. Greer, 1847-1851, held office more than one term. There were also seven secretaries of state for the period with only one, Edward Clark, 1853-1856, serving two terms. There were nine attorneys general; only one, Thomas J. Jennings, 1852-1854, held office more than one term. There were only five commissioners of the land office as two of them, Stephen Crosby, 1851-1856, and Francis M. White, 1857-1861, served more than one term. The greatest continuity was in the treasurer's and comptroller's offices; in each case two men, James H. Raymond, 1846-1856, and C. H. Randolph, 1856-1861, as treasurer, and James B. Shaw, 1846-1856, and C. R. Johns, 1857-1861, as comptroller, served the entire period.

The center of governmental activity in pre-Civil War Texas was the state legislature. Here rotation in office was even more pronounced than in the executive branch. In the lower house, for example, 440 men served in the decade prior to the Civil War but only sixty of these individuals, or 13.9 per cent, served in more than one legislature. Forty-nine of these sixty served only two terms; nine served three terms; one, N. B. Charlton, served four terms; and one, Hamilton P. Bee, served five terms. The turnover in personnel was not quite so rapid in the senate and the fact that only half of its members were chosen every two years meant there would be more experienced members present than in the house, but even here there were always many new faces. In the eighth legislature chosen in 1859, for example, fully half of the senators had had no previous senate service, and this was a legislature with more experienced members than most. And of those who had had previous senate experience only eight, or about one-fourth of the total body, had previously served more than one full term.

A survey of personal characteristics of members of two Texas legislative bodies, those of 1849-1850 and 1859-1860, shows that most members were in their thirties and forties in years of age. The members of the 1850 legislature
were quite young: the median of thirty-five years is lower than that in any other state in the lower South for that same year."

Only six members of that body were fifty years of age or older. Only one of these, Jesse Grimes, was in his sixties. Members of the 1860 legislature were slightly older, with nearly one-fourth of the members aged fifty years or more. Median age for the 1860 body was 42 years. In both legislatures senators, median 38 years in 1850 and 42 years in 1860, were older than representatives, median 35 years and 41 years, respectively.

Although most members of the two legislatures were born in the slave-holding states, a greater portion of them came from the states of the upper South than from states of the lower South. Thirty-nine legislators in 1850, or 58.2 per cent, and fifty-five in 1860, or 50.0 per cent, were born in states of the upper South. Nineteen legislators in 1850, or 28.4 per cent, and thirty-eight in 1860, or 34.2 per cent, were born in the lower South. Seven legislators in 1850 and thirteen in 1860 were born in the North and two in 1850 and five in 1860 were born outside the United States. Tennessee, birthplace of more immigrants to Texas in the whole population than any other state, was the leading place of birth for legislators in both 1850 and 1860. There were no Alabamians in the 1850 body and only eight in the 1860 assembly, even though that state ranked second as a birthplace for immigrants to Texas. North Carolina, on the other hand, which ranked seventh as a place of birth for Texans, furnished seventeen legislators, and Virginia, which ranked eleventh as place of birth, furnished twenty legislators for the same period. There were no native-born Texans in the 1850 legislature but there were five in the 1860 body.

Thirty-two members in 1850, or 50.0 per cent, and fifty-two members in 1860, or 46.0 per cent, were listed in the federal census as farmers or planters. Sixteen members in 1850, or 25.0 per cent, and thirty members in 1860, or 26.6 per cent, were listed as lawyers. Thus approximately one-half of the legislators in the two groups were farmers or planters and approximately one-fourth were lawyers. The other one-fourth of the members were merchants, physicians, stockmen, and tradesmen. One legislator, B. F. Ross of Tyler, was also the sheriff of the county in spite of a constitutional prohibition against holding these two offices at the same time. Forbes Britton of Nueces listed his occupation as “soldier,” and Jefferson Hall of Travis listed his occupation as “sportsman.”

Fifty-five of the sixty-four members of the 1850 legislature whose enumerations could be located in the federal census, or 85.9 per cent, were holders of real property. The percentage of real property holders in the legislature was slightly higher in 1860 as 102 of the 113 members whose enumerations could be located in the census, or 90.3 per cent, were holders of real property. These holdings were relatively small, the median for the whole legislature $2,500 in 1850 and $6,228 in 1860. Senators, median $4,154 in 1850 and $10,000 in 1860, were as might be expected wealthier than house members, median $2,000 in 1850 and $8,600 in 1860. Largest individual holders of real property in the two legislative bodies were C. W. Buckley of Ft. Bend ($200,000), C. C. Herbert of Colorado ($346,082), Haden H. Edwards of Nacogdoches ($150,000), Samuel A. Maverick of Bexar ($171,000), and Robert J. Townes ($100,000) and Eggleston D. Townes ($120,000) both of Travis.

Personal property figures are not available for the 1850 legislature" but
have been examined for holdings of members of the 1860 body. In that year 106 legislators, or 96.4 per cent of those located in the census, were listed as holders of personal property. Senators, with a median of $15,000, were wealthier in personal property than house members, median $10,000. Median for the whole legislature in personal property was $11,000. Largest individual holders of personal property were C. W. Buckley of Ft. Bend ($125,000) and Robert J. Townes of Travis ($150,000).

If the two legislatures studied are indicative of the period, the percentage of slaveholders serving in Texas state government was increasing in the late ante-bellum period. There were only 31 slaveholders, or 38.8 per cent of the whole body, in the 1850 legislature, compared to 75 slaveholders, or 54.1 per cent of the whole body, in the 1860 body. The percentage of planters (i.e., those holding 20 or more slaves), while small in both legislatures, was also increasing. There were only five planters, or 6.2 per cent of the 1850 legislature and there were twenty-five, or 18.1 per cent, in the 1860 legislature. As the number of non-slaveholders was so high in 1850, the median holding for that year was less than one slave. In 1860 the median for the whole legislature was two slaves, with the median for representatives, three, higher than that for senators, one. The only legislator in the two bodies studied who held 100 or more slaves was C. W. Buckley of Ft. Bend, owner of 108 slaves in 1860.

Comparison of county data and individual slaveholding indicates that non-slaveholding legislators tended to come from counties with very small percentages of slaves in the total population and that slaveholding legislators tended to come from counties with at least 25 per cent slaves in the total population. Sixty of the non-slaveholding legislators, for example, represented Texas counties with less than 25 per cent slaves, forty-four represented counties with from 25 to 50 per cent slaves, seven from 50-75 per cent slaves, and one a county with over 75 per cent slaves. Only twenty-three slaveholding legislators, on the other hand, represented counties with less than 25 per cent slave population, and only two of these, T. R. Cocke and J. W. Rose of Victoria, were planters. Sixty-eight slaveholding legislators came from counties with 25 to 50 per cent slaves and fifteen came from counties with over 50 per cent slaves.

The vast majority of legislators for the period were members of the Democratic party. The Know Nothing party made some inroads in the mid-fifties and elected over a dozen representatives and several senators in 1855 but the bulk of legislators were Democrats. This of course did not mean complete harmony as there were various shades of opinion among Democrats, many supporting the regular party organization in its struggle against Houston in the late fifties, others joining Houston in the independent Democratic movement and forming the so-called “Opposition” faction in the legislature. Some legislators, such as Ben H. Epperson of Red River who ran for governor as a Whig in 1851, served as an elector for the Know Nothings in 1855, and was elected to the legislature in 1859 as a member of the Opposition, moved from one faction to another but remained constantly at odds with the controlling political party. Even with the increased emphasis upon party organization in the late fifties there was never anything like party discipline in the pre-Civil War Texas legislature and the rapid turnover in legislative personnel made passage of any party “program” an almost impossible feat.

Compared with the turnover of membership in the legislative branch the
Texas supreme court showed amazing stability in personnel in the late ante-bellum period, for in the fifteen years of statehood prior to the Civil War only five men served on this the highest state court. Under the Constitution of 1836 members of the court, all but one of whom were also district judges, had been chosen for a four year term by the legislature, but in 1845 this was changed to provide for a three man body, one chief justice and two associates, who had no other judicial duties and who were appointed by the governor for six years.11

Under this proviso Governor Henderson appointed John Hemphill, the distinguished jurist who had been presiding over the supreme court of the Republic, as the first chief justice of the state supreme court. A soft-spoken South Carolinian, Hemphill served as head of the state's highest court for the next twelve years and by the time of his retirement from the bench to accept appointment to the United States Senate was known as the "John Marshall of Texas."32 As associates of Hemphill, Governor Henderson appointed Royal T. Wheeler and Abner S. Lipscomb. The two proved stable choices; Lipscomb served until his death in 1856 and Wheeler continued to serve on the court through the Civil War, becoming chief justice when Hemphill resigned.33

All judgeships became elective by a constitutional amendment in 1850 but this did not disturb the make-up of the supreme court for Hemphill, Wheeler, and Lipscomb were all chosen by the voters. In 1856 when the state legislature increased the salary of all judges the three resigned but were promptly reelected by the voters. With Lipscomb's death in late 1856 the first change in the composition of the court occurred. District judge and future governor of the state Oran M. Roberts was appointed to succeed Lipscomb and in February, 1857, assumed his place on the high state tribunal. He was joined in August, 1858, by James H. Bell, another district judge, who was chosen to replace Hemphill, and who had resigned to accept service in the United States Senate. At the same time Royal Wheeler became presiding judge of the court.34

As noted above members of the supreme court usually came from the state's district courts. The judges of these courts were chosen in the same manner as those on the high court and here, too, there was considerable stability as to membership. A survey of names of district judges in the period reveals some of the state's most distinguished leaders: William B. Ochiltree, R. E. B. Baylor, John Hancock, John H. Reagan, and Robert J. Townes, to mention a few.35 The judges of these courts had original jurisdiction in all criminal cases and in all civil cases involving one hundred dollars or more.36 The constitution placed no limitation upon the number of such courts and as the needs of the state grew so did the number of district courts. Rarely did a session of the legislature pass in the pre-war decade without the establishment of a new district court. There were twelve such courts in 1850, sixteen by 1855, and twenty by 1860.37

The Constitution of 1845 also provided for the creation of inferior courts in all the counties to grant letters testamentary, settle accounts of executors, administrators, and guardians, and transact business pertaining to estates. The functions of these courts were shifted to the chief justice of the county court in 1848.38 Henceforth, he was not only the presiding officer over the governing body of the county but was probate judge as well. Along with the justice of peace, whose courts heard civil cases involving no more than $100 and criminal cases where the fine did not exceed $100,39 the probate judge handled thousands of cases that directly affected or touched the plain people of the state.
The county court, made up of the chief justice and four commissioners, all popularly elected for a two year term, was as in the other southern states the center of county government. The structure and role of the court had not changed much since the days of the Republic. Among the many functions of the court were supervising elections, establishing ferries, laying out roads, building bridges, appointing patrols for the county, caring for the poor, maintaining public buildings, licensing liquor retailers, and establishing quarantine regulations. The court had the power to levy and collect a county tax and to appropriate funds for the payment of all county bills. It also examined the accounts of the county treasurer and published an annual financial report on the condition of the county. And, finally, the court constituted a board of school commissioners empowered to create school districts within the county.

In personal characteristics, the membership of the county court in antebellum Texas was much like that of the state legislature. A study of personal data for chief justices and county commissioners for 1860 shows a median age of forty years, only two years different from that of legislators for that year. Approximately half of the county court members were born in the upper South, 51.2 per cent of the justices and 46.5 per cent of the commissioners listed in the census born in the upper tier of slaveholding states, a ratio comparable to that of legislators for 1860. Twenty-eight justices, or 31.2 per cent, were born in the lower South, eight in the North, and eight outside the United States. One hundred and forty-four commissioners, or 39.9 per cent, were born in the lower South, twenty-two were born in the North, and twenty-seven born outside the United States. As in the case of the legislature, there were more justices, seventeen, and commissioners, sixty-eight, born in Tennessee than in any other state.

A majority of county court members in the pre-war decade were engaged in agriculture. Only 40 of the 92 chief justices whose occupations were listed in the census, or 43.5 per cent, gave their occupations as farmer, but 259 of the 322 commissioners, or 80.4 per cent, were farmers. Too, the percentage of farmers among chief justices rises if the fifteen individuals who simply listed their occupation as "chief justice," or "judge," or "commissioner" are eliminated. Lawyers, sixteen in number, or 17.4 per cent, were the second largest group among the chief justices, whereas stock raisers, thirty-eight in number, or 11.8 per cent, were the second largest group among commissioners. In contrast there were only three stock raisers among the chief justices and two lawyers among the commissioners. The wide variety of occupations listed for members of the court makes impractical a complete listing here but among the more numerous were merchants, millers, masons, and carpenters. Some of the commissioners listed another public office as their occupation—one, for example, gave his occupation as county treasurer. And several supplemented their incomes by serving as justices of the peace as well; in at least seven counties commissioners were serving as justices of the peace at the same time they held positions on the county court. One commissioner, W. H. Harrison of Upshur, was also a state legislator.

Most chief justices and county commissioners were small property holders. Eighty-three of the 91 justices, or 91.2 per cent, and 309 of the 364 commissioners, or 82.1 per cent, were listed in the federal census as holders of real property. The justices, median $3,000, held slightly more real property than the commissioners, median $2,000, but the difference was not great. Eighty-seven justices, or 95.6 per cent, and 354 commissioners, or 97.3 per cent, held personal property.
Here the commissioners, median $3,500, were ahead of the chief justices, median $3,000. None of the over 450 county court members studied had over $100,000 in either real or personal property and only four, all commissioners, held over $100,000 in combined property.\(^5\)

The majority of chief justices and county commissioners in the late ante-bellum period were non-slaveholders or small slaveholders. Forty-one of 99 chief justices, or 41.4 per cent, and 166 of 423 commissioners, or 39.3 per cent, were slaveholders. Of these only thirty, or 14.5 per cent of the slaveholders, held twenty or more slaves and would be classified as planters. Only seven of these held fifty or more slaves and no one on the court held one hundred slaves. Over sixty per cent of the slaveholders on the court held less than ten slaves.\(^6\) Together with the non-slaveholders they constituted 85.4 per cent of the county court membership.

Rotation in office for members of the county court was almost as high as that for state legislators. In the period 1854-1861, 1,397 individuals served as county commissioners, and of this number only 231, or 16.5 per cent, held office more than one term. One hundred and eighty-nine commissioners served two terms during the period, 37 served three terms, and 4 served four terms. There was not quite such a turnover among the chief justices, but even here three of every four judges held office for only two years. Of the 294 chief justices chosen during the period, 215 served only one term, 59 served two terms, and 6 served four terms.\(^7\) Whatever the reason, be it a belief in the democratic concept of rotating governmental personnel or simply a desire to escape the time-consuming and little rewarding burden of public service, this rapid turnover in personnel meant that large numbers of Texans had an opportunity to serve on the ante-bellum county court.

In addition to members of the county court there were numerous other officials who served their communities in some official capacity. Each county was divided into several justices' precincts and in each of these there were two justices of the peace elected by the voters every two years. There was no uniformity as to the number of justice precincts but examination of election registers indicates the typical county elected ten to fifteen justices in the pre-Civil War years. Here again there was much rotation in office: in forty-one counties studied 1,390 individuals served as justice of the peace in the period 1854-1861 and only 172 of these, or 13.4 per cent, held office longer than one term. Only 46 of these served more than two terms.\(^8\)

Then as now the sheriff was the principal law enforcement officer within the county. Popularly elected for a two year term, he was ineligible under the constitution to serve more than four years out of six.\(^9\) In most cases, however, he served only the one term: of 314 elected during the period 1854-1861 only 74 individuals, or 20.4 per cent, served a second term.\(^10\) Although he was the conservator of the peace and upholder of the law, much of his time and also that of the county constables (one for each justice precinct), was spent in serving processes and other legal papers. Originally, the sheriff also had the duty of assessing and collecting taxes, but under the Constitution of 1845 a new officer, the assessor and collector of taxes, was given these duties.\(^11\) Working closely with the sheriff and the assessor-collector were the other county officials, the treasurer, coroner, surveyor, and county clerk. Like other county officers they, too, were chosen by the voters for a two year term.
From the standpoint of the adult, white male, Texas county government in the pre-Civil War decade period was democratic. True, there was as in the other southern states, considerable interference from the legislature in purely local affairs, and this interference was growing rather than diminishing. But the legislature itself was basically democratic and susceptible to the wishes of the populace. There were some instances where one family played a predominate role in county affairs—sometimes through political influence and other times through domination of the county governmental machinery, but these cases were the exception to the general rule. The fact that there were no property qualifications for voting and that all county offices were elective meant that the plain people of Texas had an opportunity to participate directly in county affairs. For good or bad the constant shifting of personnel meant that new faces were directing the governmental machinery, sitting on the county courts, serving the legal papers, keeping the peace, and auditing the books. Here was nineteenth century democracy in action.
NOTES

1The term "democratic" is used here in the nineteenth century sense, i.e., adult, white, male suffrage.

2There were reapportionment laws passed in 1848, 1853, and 1860. H. P. N. Gammel, The Laws of Texas, 1822-1897 (10 vols., Austin, 1898), III, 311-16; IV, 1289-94, 1402-08. The decision to base apportionment in the upper house upon qualified electors rather than the total white population was a concession to the frontier areas of the state where there were fewer children and women. See also Francis N. Thorpe (comp.), The Federal and State Constitutions, Colonial Charters, and Other Organic Laws (7 vols., Washington, 1909), VI, 3547-68; Frederic L. Paxson, "The Constitution of Texas, 1845," Southwestern Historical Quarterly, XVIII (April, 1915), 386-98; and Annie Laura Middleton "The Formation of the Texas Constitution of 1845," (M.A. thesis, University of Texas, 1920), for constitutional provisions.

3Rupert N. Richardson, Ernest Wallace, Adrian Anderson, Texas, the Lone Star State (Englewood Cliffs, New Jersey, 1970), 135.

4Paxson, "The Constitution of Texas, 1845," Southwestern Historical Quarterly, XVIII, 392, points out that an early draft of the Constitution of 1845 had provided that "free white males" were eligible to vote but objection was raised to this because of doubt prevailing among some Texans as to the color of Mexicans. So the word "white" was struck out and a phrase was added barring Indians and Negroes.

5Thorpe, Federal and State Constitutions, VI, 3549-52, 3560.

6For the governor's role in Texas prior to the Civil War see Fred Gantt, Jr., The Chief Executive in Texas (Austin, 1964), 15-27.


The exact strength of the Know Nothing party in the 1855 elections is difficult to measure as some candidates ran as avowed Americans, others as independents but with some American support, and some with American support although they disclaimed any party affiliation. See Crews, "The Know Nothing Party in Texas," 105. The elections of 1855 are also covered in Ben H. Procter, *Not Without Honor: The Life of John H. Reagan* (Austin, 1962), 90-93; *Texas State Gazette*, August 11, 18, 1855; *Texas State Times*, August 11, 18, 1855.


Thorpe, *Federal and State Constitutions*, VI, 3555-59. See also Frances

Based upon a study of the manuscript "Register State, County Officers, 1846 to 1854," and the manuscript "Election Register, 1854-1861," in the Texas State Archives, Austin, Texas.

Based upon a study of names given in Tommy Yett, (comp.), Members of the Legislature of the State of Texas from 1846 to 1939 (Austin, 1939).

Fourteen senators had served in the lower house of the legislature but several of these, M. M. Potter and E. E. Lott for example, also had previous senate service and are included among that group.

Ralph A. Wooster, The People in Power: Courthouse and Statehouse in the Lower South, 1850-1860 (Knoxville, 1969), 29. Personal characteristics of the legislators are taken from the manuscript returns of the United States census, 1850 and 1860; The Handbook of Texas; and Biographical Directory of the Texan Conventions and Congresses.

There were slightly more Texans in the total population born in the states of the upper South than in the lower South if native-born Texans are not included. If the 153,043 native-born Texans are included, however, there are one and one-half times as many Texas residents of 1860 born in the lower South as in the upper South. Eighth Census of the United States, vol. I, Population (Washington, 1864), 490.

If only those holding real property are included the Senate median was $5,000 in 1850 and $8,600 in 1860; house median for real property holders only was $3,500 in 1850 and $8,000 in 1860. A breakdown of the holdings of Texas legislators is given in Wooster, The People in Power, 152.

The federal census returns for 1850 did not include personal property. For a description of the census schedules see Barnes F. Lathrop, "History from the Census Returns," Southwestern Historical Quarterly, LI (April, 1948), 293-312.

The writer was unable to locate any slaves for Senator George Quinan of Wharton, the only county with over 75 per cent slaves in the total population.


Crews, "Know Nothing Party in Texas," 105, notes the difficulty of ascertaining affiliation of legislative members in Texas. In writing of the election of 1855 she comments "uncertainty as to the party affiliation of candidates elected to the state senate and legislature was general." The Galveston Weekly News, August 16, August 30, September 6, 1850 labels twenty-three members of the 1859-60 body "Democrats" and sixty members "Opposition."


Governor Henderson’s appointments are in the manuscript volume I, "Records of Department of State, 1846," p. 4, in the Texas State Archives, Austin, Texas. For biographical data on Wheeler and Lipscomb see Davenport, History of the Supreme Court of Texas, 22-23, 30-31; and sketches by Charles Shirley Potts in Dictionary of American Biography, XI, 289-90; XX, 53.

Davenport, History of the Supreme Court of Texas, 49-50, 54-57; and the manuscript "Election Register, 1854-1861," in the Texas State Archives, Austin, Texas. For a recent article highly complimentary of the work of the Texas Supreme Court see A. E. Kier Nash, "The Texas Supreme Court and Trial Rights of Blacks, 1845-1860," Journal of American History, LVIII (December, 1971), 622-642.

Manuscript "Register State, County Officers, 1846 to 1854," in the Texas State Archives, Austin, Texas.

Under the Constitution of 1836 Texas courts did not distinguish between equity and law but handled all cases. Thorpe, Federal and State Constitutions, VI, 3555; Leila Clark Wynn, "A History of the Civil Courts in Texas," Southwestern Historical Quarterly, LX (July, 1956), 4. See also John C. Townes, Pleading in the District and County Courts of Texas (Austin, 1901), 70-79.

Gammel, Laws of Texas, 1822-1897, IV, 1378-79.


Gammel, Laws of Texas, 1822-1897, II, 1604-14; III, 163-81.

Wallace C. Murphy, County Government and Administration in Texas (Austin: University of Texas Bulletin No. 3324, 1933), 9-12; Herman G. James, County Government in Texas (Austin: University of Texas Bulletin No. 2525, revised ed. by Irvin Stewart, 1925), 9-12. See also E. A. Stevens, County Commissioners and the Powers and Duties of Commissioner's Courts (Austin, 1923); James A. Hankerson, Jr., "The Office of the County Judge in Texas" (M.A. thesis, University of Texas, 1952), 13-17; and Seymour Connor, "The Evolution of County Government in the Republic of Texas," Southwestern Historical Quarterly, LV (October, 1951), 163-200.

Many of the published inventories of county records have good descriptions of the county court and its functions. See especially Texas Historical Records Survey, Inventory of the County Archives, No. 94, Guadalupe County (San Antonio, 1939), 105-13, and No. 202, Sabine County (San Antonio, 1939), 50-58. See also Gammel, Laws of Texas, 1822-1897, II, 1639-44; III, 113-26; IV, 204; Key, "History of Texas County Government," 44-47; Smith, "Development of Local Government Units in Texas," 30-31.

Names of chief justices and county commissioners taken from manuscript
“Election Register, 1854-1861,” in the Texas State Archives, Austin, Texas. Personal data taken from the manuscript returns of the United States Census, 1860.

"Forty-five Alabamians were among the 361 commissioners whose place of birth was determined; a much higher ratio of Alabamians than found in the legislature.

"These counties were Brazos, Burleson, Collin, Hamilton, Hidalgo, Grayson, and Guadalupe. "Election Register, 1854-1861."

"Three of these four, R. M. Collins, Joseph Bates, and John Adriance, were from Brazoria county. George J. Bowie from neighboring Matagorda county was the fourth.

"Median for slaveholders among the chief justices was six slaves; among the commissioners seven slaves.

"Based upon the manuscript "Election Register, 1854-1861."

"Ibid.

"Thorpe, Federal and State Constitutions, VI, 3555.

"Based upon the manuscript "Election Register, 1854-1861."

"Gammel, Laws of Texas, 1822-1897, II, 1653-64; III, 196, 647.

"Key, "History of Texas County Government," 51-52; and Smith, "Development of Local Government Units," 34-35.

"In Bastrop county, for example, a different Billingsly served as county commissioner, justice of the peace, and treasurer all at the same time. "Election Register, 1854-1861."