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GEORGE W. PASCHAL
TEXAS UNIONIST AND SCALAWAG JURISPRUDENT

by

Jane Lynn Scarborough

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF

Doctor of Philosophy

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Houston, Texas

J.L.S.
CONTENTS

PREFACE

Chapter One
LAW AND THE JACKSONIAN .................. 1

Chapter Two
"THE OLD LANDMARKS": THE SECESSION CRISIS. ... 39

Chapter Three
THE WAR YEARS AND PASCAL'S DIGEST ........ 69

Chapter Four
LAW AND REUNION: TEXAS v. WHITE ........... 95

Chapter Five
GEORGE W. PASCAL: SCALAWAG JURISPRUDENT. .... 137

CONCLUSION

BIBLIOGRAPHY
The Civil War was first and lastly a constitutional crisis. Secession represented the final, irrevocable step to preserve the law as southern states' rights men interpreted it. Likewise, successful reconstruction of the Union was accomplished not through military force or Republican hegemony, but by a permanent, if "deferred," commitment to equality under the law as embodied in the constitutional amendments. Yet despite the nature of this central concern and the myriad works that have been published on this period, there has been a paucity of legal studies. The few ventures into the constitutional implications of the war have too often been merely "law office history," as Howard J. Graham called it. Recently, however, as a result of contemporary awareness of the possibilities of "social craftsmanship in the application of law," there has been a renaissance of interest toward the interaction of law and society.

No period in American history lends itself more readily to such considerations than the mid-nineteenth
century, for if the Civil War was fought over constitutional issues, if it was primarily a legal crisis, then it is essential to understand it through the eyes of the lawyer. This study is an attempt to demonstrate, by investigating the career of one such man, the pervasiveness of legal and constitutional questions throughout the antebellum period and to suggest the implications of this background for the character and shape that both war and reunion would take.

George W. Paschal is an ideal subject for such a study as his career spanned the major part of the nineteenth century and was truly national in scope. Born in the old South, Paschal made a name for himself in the legal profession on the frontiers of Arkansas and Texas. Ultimately, after the war, he moved north and gained national prominence practicing law in New York City and Washington, D. C. Beginning his career in the 1830s, the Texas lawyer evinced strong Jacksonian overtones in all of his political and legal views, which were undoubtedly reinforced by his own successes. As one of the leaders in the early state Democratic party organization and as editor of the *Southern Intelligencer,*
Paschal was a militant spokesman for the South and its peculiar institution in the early 1850s. But his lawyer's commitment to the rule of law and his Jacksonian belief that "all men are safer with the vote than without it," would eventually lead him to support the Republican party and Negro suffrage. This is the story of that conversion.
CHAPTER ONE

LAW AND THE JACKSONIAN

The illiterate, trifling lawyer
is a contemptible man; the eminent
lawyer an honor to the world.
George Paschal, Sr. 1

On July 25, 1832, a young lawyer appeared before a
bar examination committee of the Superior Court of Wilkes
County, Georgia. The questions of the distinguished panel,
which included Judges A. B. Longstreet and William H. Craw-
ford, were answered by the eager aspirant "in Latin whenever
the authors allowed it." Such a display of pedantry became
the trademark of George W. Paschal in later life, and was
undoubtedly the result of being reared in a home where
education was the only family treasure.

The fifth son of George and Agnes Brewer Paschal was born
on November 23, 1812, at Skull Shoals in Greene County, Georgia.
The child's official name was listed in the family bible as
Lorenzo Columbus George Washington Paschal. In later years,
Paschal explained the unwieldy appellation as owing to his
father's desire to exhaust his stock of celebrated names upon
what he believed would be his last son. "As soon as I could write," the son confessed, "I dropped the incongruous patronymics of the erratic Methodist preacher [Lorenzo Dow] and the discoverer of America, and signed George W." This latter name, chosen in honor of the hero of the Revolutionary War under whom the elder Paschal had served, was shortened still further by Paschal's schoolmates, who dubbed him simply "the General."

Paschal's earliest education was received in his father's classroom, where the youngster excelled in mathematics, but was "hampered by slate and the awkward rules of authors." Of French Huguenot ancestry, George Paschal, Sr., was an educated man and a diligent provider. But he apparently lacked a head for business--a trait he passed on to his son--and during his lifetime suffered numerous financial setbacks. Despite his family's economic circumstances, however, the senior Paschal was well respected in the community for his integrity and intellect. As a result, his son later wrote, "we felt none of the fancied distinction between the 'poor whites' and the more opulent planters."

The father's love of learning was carried into the home by Paschal's mother. "Indeed, to her the whole world was a
school," he subsequently wrote, "where useful lessons were constantly being taught." Anxious to aid her sons' education, Agnes Paschal enjoyed sharing new books and ideas with her family. A Scots-Irish woman who reached the remarkable age of ninety-four, she had encouraged the teaching of spelling and reading to Negroes until the laws of Georgia prohibited it. She was known throughout the Georgia hills for her spiritual and physical healing powers, and for her willingness to minister to those less fortunate. This unselfish and generous nature was part of her legacy to her son. A constant source of strength to her children and husband, Agnes Paschal encouraged her son's interest in law, assuring him that he had "the confidence and the gab to succeed." To her, he later acknowledged, "I owe the resolution not to fail."

As a child, Paschal was an avid reader and quickly went through every book in the house, including several legal treatises belonging to his father. Before the age of fourteen, the lad was determined to become a great lawyer. In spite of the lack of family funds, young George managed to pay for some formal education at the state academy in Athens by keeping account books for his landlord. He was later to recall those days: "My board cost me one dollar a week, and a course of Latin and Greek only thirty-two
dollars per annum. . . . When my mother learned that I was winning honors over those who had been at school all their lives, she wept tears of joy. As to my father, although then seventy years of age, when I went home in vacation, . . . he was so interested with my readings, that he actually took up the Latin and Greek authors, and read no little of them."

Raised in a large family, Paschal was taught that honest labor was a virtue in any social class. As a result, he disdained the dilettantism he saw displayed by many of the planters, and grew up with little reverence for wealth or power--an attitude he later claimed was a handicap to his political advancement. Although he intended this satirically, it is true that Paschal's independent course was marked by principle rather than expediency. The son of parents who were self-reliant and self-taught, he was representative of that native American individualism identified by his contemporary, Alexis de Tocqueville. Of such individuals the Frenchman wrote: "They owe nothing to any man, they expect nothing from any man; they acquire the habit of always considering themselves as standing alone, and they are apt to imagine that their whole destiny is in their own hands." This brand of self-determination was admirably suited to the Texas frontier where Paschal's future would ultimately be molded.
In 1832, Paschal went to Lexington, Georgia, to read law under Colonel Joseph Henry Lumpkin, who later became the first chief justice of the state's supreme court. An honors graduate of Princeton, Lumpkin was noted for his oratory and his insistence that a case be decided upon its merits rather than on legal technicalities. In the words of his student, Lumpkin "was eloquent beyond any country orator I have ever heard. His voice was musical, and better adapted to win upon a jury than any man of his time. He was sound upon the elements of the law, and later in life he became learned. He was a zealous Christian gentleman, and an earnest supporter of every reform." An outspoken opponent of slavery during the debates of the 1830s, the Georgia jurist was also one of the early advocates of industrialization for the South. In his own later career, Paschal's legal and economic views would closely parallel those of his teacher, reflecting the extent of Lumpkin's influence on his apprentice.

Studying up to eighteen hours a day, young Paschal read Coke, Blackstone, Chitty, Starkie, the Constitution of the United States, and the Georgia statutes—all from Lumpkin's library. After passing his bar examination, he returned home anxious to show off his success and new license to his proud parents. Upon reading the oath in which his son had pledged
to support the Constitution, Paschal's father, who was gravely ill at the time, exhorted him to "always remember that this [oath] is no idle form. That Constitution is the charter of our liberties; the Union its palladium." The lesson was not lost on the young lawyer.

Because of the presence of so many able and well-established lawyers, Paschal did not stay in Lexington, but rather chose to begin his law career in Auraria, which was located in newly organized Lumpkin County. The site was ideal for a neophyte to the profession. Northwestern Georgia was the scene of a recent gold rush, along with a great deal of speculation in newly acquired Cherokee lands. Through Lumpkin's influence, Paschal had a busy practice from the first, making his "debut as a lawyer in the argument of some exciting causes."

In late 1833, circumstances involving the Georgia land lottery promised even more clients. The result of this peculiar "wheel of fortune" as Paschal described the lottery, was a nineteenth century equivalent to "ambulance chasing." Since all of the larger gold mines had been located prior to the drawing, companies organized in Milledgeville took a great interest in the outcome. As names were announced, company runners on trained horses competed with each other to get to the "fortunate drawer" first in order to purchase his valuable
land. The disappointed company agent who arrived too late proceeded to convince the "deluded victim" that he had been cheated out of a fortune, offering the services of company lawyers "to sue out injunctions" and restrain their competition. Despite the rather spurious nature of the whole affair, it offered Paschal invaluable experience in land title cases, similar to the type which would occupy the major part of his early practice in Arkansas and Texas.

As a consequence of burgeoning business in the new community, Paschal persuaded his mother to give up the family farm in Oglethorpe and move to Auraria to run a hotel he had purchased. Boom turned to bust, however, when the lot upon which the Auraria courthouse rested was returned to the lottery pool due to a "fraudulent draw," and the county seat was moved to Dahlonega. As Auraria became a ghost town, customers for both the hotel and the law practice vanished, and young Paschal experienced his first—though by no means his last—financial embarrassment.

In other ways Paschal's early days in Georgia were more fruitful. Although only in his twenties, he quickly became active in local politics and was privy to such prominent men as John C. Calhoun and Governor Wilson Lumpkin, the older brother of Paschal's mentor. Calhoun, who had interests
in the Dahlonega mines, frequently visited Auraria and stayed at the Paschals' boarding house. "I used to mark well," Paschal recalled, "how fascinating Calhoun was to the young men." But Paschal, as well as most of the local citizenry who were mountaineers from North Carolina and Georgia, did not receive Calhoun's political doctrines with equal enthusiasm: "On election days Charles H. Nelson, my brother [Frank L.], Stephen D. Crane, Milton H. Gothright, G. K. Cessna, myself, and a few others only needed to hoist hickory bushes, arm the gold diggers with the same emblems, and march to the polls to defeat the best laid plans of the nullification party."

Like his father before him, Paschal was a member of the Georgia political faction known as the "Clarke party." Composed chiefly of frontiersmen and non-slaveholding farmers, the group was strongly pro-Jackson and primarily interested in removing the Indian title to Georgia lands, thus opening the door for redistribution among white settlers. By Georgia law the Paschal family was entitled to "eleven chances [in the lottery] for gold mines of fabulous value, and the fine houses and ferries of the [Indians] . . . ." Under the circumstances, Paschal later asked, "Is it surprising that our own, and every family in Georgia, should be in favor of the Georgia land lottery and not very nice about the moral aspect
In 1836, however, two events occurred which were to lead Paschal away from his native state. The first of these was the signing of the New Echota treaty in which the Indians officially traded their Georgia land for an equal amount in the West. Shortly, Texas declared her independence. For the young lawyer, the "flush times" in Georgia were over.

After the signing at New Echota, the Georgia countryside was filled with rumors of Cherokee uprisings in opposition to the treaty. "A fancy volunteer company" to which Paschal belonged was sent there to enforce the removal of the Indians. It was while serving in this capacity that Paschal met the darkly beautiful Sarah Ridge, daughter of the Cherokee chieftain, Major Ridge. College-educated and finely dressed, the Indian princess was said to have been wooed by many white men. But the young lieutenant won her hand and in the summer of 1837, Paschal joined his bride and her people along the "trail of tears" to Arkansas. There he resumed his law practice in the town of Van Buren.

Paschal quickly gained notoriety in his newly adopted state by successfully defending a white man accused of forging a free pass for a runaway slave. The case brought the young Georgian into contact with a number of promising members of the bar including Royal T. Wheeler and Williamson S. Oldham, whose paths Paschal would cross many times in Arkansas and
later in Texas. "Immediately after these trials," a contemporary remarked, "Paschal found himself in possession of an extensive practice as a lawyer."

Remembering the ephemeral nature of past successes, Paschal continued to apply himself diligently to his profession. His efforts were rewarded when at the age of thirty, he was elected by the legislature to the Arkansas Supreme Court. Paschal undoubtedly chafed under the nineteenth century strait jacket which bound appellate courts to routine questions of procedure and jurisdiction, for he voluntarily resigned his position on the bench after only eight months. During his short tenure, however, Paschal was characteristically conscientious in his duties, writing opinions in more than half of the cases reported that term. There is little in these parsimonious decisions to reveal Paschal's jurisprudential philosophy (assuming that he had one), and none of the kind of constitutional arrogance that was to typify his later writings. Displaying an impatience similar to that of his old law professor, however, Paschal often lectured the profession on its own legal carelessness which bogged down the appellate courts in petty technicalities. This term on Arkansas's highest tribunal was the only judgeship Paschal ever held. It must have been a great source of disappointment to the jurist in later years that his service on the bench preceded
the period of great constitutional issues.

After his resignation, and perhaps in a spirit of penance for his part in the Indians' earlier removal, Paschal took charge of the Cherokee legal claims which had been in abeyance since the signing of the New Echota treaty. He had a personal as well as a pecuniary interest in the settlement of the Indian affairs, since his wife's father, brother, and cousin had all been murdered in 1839 during the internal dispute between the Ridges (or Treaty party) and the Ross faction of the Cherokee nation. His efforts culminated in 1846 with the signing of a treaty of amnesty with the United States in which over two million dollars in indemnities were paid to the Indians and their families. In commenting on Paschal's success in the case, Henry S. Foote stated that Paschal "wrote much and ably on this much controverted subject, and greatly extended his reputation . . . especially among the friends of the long-suffering Indians."

The following year, Paschal "became possessed of the Texas fever," as he had once diagnosed his brother, and along with his family and slaves emigrated to the Union's newest state. The move to Texas was "doubtless a fortunate circumstance" in Paschal's career, as a contemporary remarked, for there he embarked "upon a field of professional exertion so different in many respects from that which he had previously
occupied."

Texas offered a unique opportunity for the young lawyer. Many years later in the introduction to his *Digest of Decisions*, Paschal would reflect that "no country ever presented such vast fields for the philosophic student of law as Texas." As a man who had then devoted a majority of his professional life to compiling and digesting the laws of Texas, Paschal understood as well as anyone the complexities and idiosyncrasies of a system of law born out of a blending of the Spanish civil codes and the English common law. By taking the best from two worlds of law and formulating a system of jurisprudence that was both original and malleable, Texas jurists assumed a commanding role in the subsequent development of the new state. But lawyers like Paschal who had come to Texas in the early days of settlement were products of the Jacksonian experience, making them unusually responsive to this situation.

In his classic work, *Democracy in America*, that omniscient observer of the American scene, Alexis de Tocqueville, accurately identified the schizophrenic nature of the legal profession in the nineteenth century: "Lawyers belong to the people by birth and interest, and to the aristocracy by habit and taste." As the closest thing to an American aristocracy, lawyers, on the one hand, were the
coping in the balance wheel of democracy—"the most powerful existing security against [its] excesses." From their special study of the law, they derived a penchant for order, "a taste for formalities, and a kind of instinctive regard for the regular connection of ideas." As a result, lawyers were basically conservative and anti-democratic in their views. On the other hand, members of the legal profession had as much of a stake in the government as any class, maybe more, and therefore, were allied with the democracy by their interests if not by their ideology. How this split personality was accommodated is central to an understanding of the emergence of the legal profession in the mid-nineteenth century.

Tocqueville described the process as a kind of Jacksonian seduction in reverse: "The lawyers of the United States form a party . . . which adapts itself with great flexibility to the exigencies of the time . . . and without resistance to all the movements of the social body . . . but [which] finally fashions it to suit its own purposes." But though Tocqueville's contemporary analysis was perceptive, subsequent events suggest that the would-be aggressor became the victim. Democratization had its levelling effects on the legal profession as well as other phases of Jacksonian life. The call for popularly elected judges was only one manifestation
of the ascendancy of Natty Bumppo over Blackstone. The extent of these democratic tendencies and the lawyer's response to them, however, is not clear.

One of the complicating factors is that so-called Jacksonian anti-elitism altogether predated the Age of Jackson. Perry Miller, in *The Life of the Mind*, stated that the majority of Americans in 1800 "hated the law as an artificial imposition on their native intelligence . . . [and] a gigantic conspiracy of the learned against their helpless integrity." For Miller this indigenous hostility toward a legal elite coupled with the vulgarities of Jacksonian democracy explained the fantastic rise of the profession in the antebellum period, for the bar responded to the challenge with a massive campaign to create a self-image and philosophical base of law uniquely American, a formulation which Miller labeled "a mental adventure of heroic proportions."

In Maxwell Bloomfield's recent provocative article, however, he suggests that the emergence of legal professionalism had a utilitarian dimension which gave it an importance beyond the moral and philosophical ruminations of Miller's legal minds. For the majority of lawyers, Bloomfield asserts, "legal practice was a bread-and-butter concern, a daily business in which intellectual refinements found little place."
Granting that publicists may have consciously created a collective personality resulting in a form of legal mythology, the article concludes that for rank and file members of the profession, the matter of self-image was a serious effort at reconciling certain persistent legal attitudes with the political realities of the Jacksonian period. While offering a necessary corrective to Miller's thesis, Bloomfield's study does little to bring into focus what the lawyer's perception of that reality was.

The democratization process seemed to have opened Pandora's box. The Jacksonian believed the law should belong to everyman, and yet it was becoming increasingly obscure and inaccessible, not through any successful insulation by the profession, but by the sheer weight of its own momentum: "At a single bound the profession emerged from a condition in which it had to rely on 'uncertain or obscure traditionary information' into what seemed a dazzling wealth of documentation." Add to this the increase in court cases and decisions experienced in the normal growth of the nation and Justice Joseph Story's fear "of being buried alive . . . [by] the labyrinths of the law" does not seem unfounded.

If it was to be a positive force in the realization of the American leviathan, as the Jacksonian firmly believed,
the law had to be put into a usable form. "The task for the lawyers," stated Miller, "was to find a method, not of obstructing Utopia, but for making the historic wisdom of the law serve this uniquely American opportunity." The problem was especially acute in frontier regions like Texas where the incompetency of judges was notorious. Here, according to Miller, was where "the long, heroic struggle to impress upon the democracy the infinite difference between the learned, competent lawyer and the pettifogger would . . . all be lost."

Contrary to the stereotype "lawless" image, however, the frontier lent itself admirably to creative uses of the law. In Texas, the Spanish system of justice had been favorable to colonization from the first. Records preserved in the Bexar County archives substantiate Paschal's later assessment that "the laws of Castile were administered in Texas with surprising regularity." Liberal Spanish-Mexican policies granted "a league and a labor of land" to early settlers--an allotment equivalent to more than 4600 acres--and afforded more protection to debtors than the laws of either the United States or England. But even in the days of Spanish and Mexican colonization, the Texas legal system was characterized by improvisation. Although the basis for the Spanish civil codes and subsequently the
Mexican laws was the thirteenth century Castilian codification, Las Siete Partidas, special treatment was accorded the Texans with respect to Spanish religious and anti-slavery regulations. In addition, the 1827 Constitution of Coahuila and Texas made provision for the common law guarantee of trial by jury in criminal cases and eventually in civil cases.

When Texas declared her independence from Mexico in 1836, the hybridization process continued. The Constitution of the Republic of Texas adopted the Anglo-Saxon system of criminal law, patternning the procedural code on that of Louisiana. By statutory law of 1840, the English common law was also accepted as the "rule of decision" in civil cases. But the Republic's congress was quick to enact legislative modifications which in effect perpetuated much of the influence of the Spanish codes. Specifically retained was the Spanish system of pleading by petition and answer, which effectively abolished any distinction between law and equity. Such a system undoubtedly appealed to the Jacksonian taste for simplicity and was better suited to the nescience of the local judges than the formalities of the common law pleas. In the words of one historian, the resulting flexibility, and at times confusion of this system of pleading "had the effect of freeing the Texas courts largely from the
restraints of rigid classifications and reasonings of the remote past and lifting them into a clearer atmosphere of a living law." Here was the frontier application of the Jacksonian concept of an organic law uniquely responsive to the American situation.

Though innovative, this view of law was not as open-ended or as revolutionary as Whig propagandists would have had us believe. Like the American colonists at the time of the Revolution, the newly independent Texans realized that land was virtually their only form of wealth. In spite of his Jacksonian indulgences, the frontier lawyer had been brought up on a diet of Blackstone. For all of its liberalizing tendencies, the selective incorporation of Spanish laws and the resulting modifications in the Texas system were expressions of concern for the stability of property. While the nation struggled to balance slave and free states in 1850, Texans focused their attention on the question of what was to become of the vast public lands.

No issue in the state was at once so vital and yet so confused as that of land titles. With various means of acquiring property including empresario grants, purchase titles, and homestead preemptive rights, it was practically impossible for a white settler to remain landless. In commenting on this availability of land in Texas, Paschal
observed that "almost every system of parting with the soil has been tried except the Georgia lottery system." The succession of governments further complicated the issue, for with the successful completion of the Texas revolution, original land titles acquired under Spanish or Mexican rule now resided in foreign archives. The result was a rash of land speculation and overlapping private claims which threatened to destroy the public domain. The enterprising lawyer who could untie this Gordian knot would have indeed mastered the emerging Texas law.

Taking up this challenge, Paschal began his new career in Galveston where he built the first two-story house on the island. The coastal community was a barrister's dream for it was not only the largest city in Texas, with the usual amount of trade, but also the site of state, federal district, and Texas Supreme Court sessions. On December 28, 1847, Paschal was admitted to practice before the state's highest tribunal. Several months later he formed a partnership with his older brother, I. A. Paschal, already an established lawyer at the bars of Louisiana and Texas. The association was a profitable one from the beginning with offices in both San Antonio and Galveston.

The young Georgian had no special training to equip him for the task before him. His mastery of Latin which he had
so arrogantly displayed at his bar examination was of little value in interpreting Las Siete Partidas. But in the words of his daughter, Paschal "had chosen the profession of all others best suited to him. He loved the law, he had a prodigious memory . . . [along with] an innate love of bringing order out of chaos, and a bull-dog tenacity of never letting go when he had once taken hold that was unparalleled." On the trail from Arkansas, Paschal studied Spanish and in six weeks could read, write, and speak the language. This was the beginning of a lifetime of study into the Spanish laws and their effect on the lands acquired through the Mexican Cession. In later years appearing before the United States Senate Committee on Private Land Claims, the Texas lawyer would boast: "If I shall leave any reputation to my children it will be the reputation of having studied these Mexican land laws more than any man in America."

Knowledge of the Spanish antecedents was as essential to the lawyer on the southwestern frontier as knowledge of the common law was to the northeastern jurist. Paschal greatly admired the state supreme court's first chief justice, John Hemphill, whom he described as the "ablest Spanish civilian [i.e. civil lawyer] who has yet lived on this continent," for his learned opinions embracing the two systems of law. But there were many lawyers in the early
days of statehood who, out of ignorance or collusion, distorted the Spanish legal codes. For these men Paschal had only scorn.

In the spring of 1849, Paschal wrote a series of letters to the Galveston Daily News, publicly challenging what he believed to be erroneous interpretations of the Spanish law by Colonel Volney E. Howard. Howard had written a number of articles in the Victoria Advocate criticizing recent decisions by the Texas Supreme Court. He represented, in Paschal's words, "that class of lawyers, who contend for the 'old Mexican grants' against those derived from the Government of Texas." Scoring Howard for forcing a bad translation to a crucial contract clause, Paschal playfully warned: "To the scholar, who has no language but his English, and a little law Latin [sic], this rendering [of the Spanish phrase] will appear plausible. But the readers of the exploits of the Knight of Salamancha, in the pure Castilian, will say that your tilt is as unfortunate as that renowned hero's against the wind-mill. . . . Texas is not the country to determine important rights by mistranslating a word."

Paschal and Howard represented two conflicting legal viewpoints which were to be argued in Texas courts throughout the nineteenth century. At the heart of the controversy
was the question of whether or not the members of the Consultation, meeting at Washington-on-the-Brazos in 1835, had implicitly recognized the validity of Mexican and Spanish land grants and thus continued in effect the colonization laws of Coahuila and Texas. Howard maintained that they had. Since many of the large empresario grants had remained vacant, and were then preempted by homesteaders, surveyed, and recorded under the new government, he felt that court decisions supporting these claims were now robbing loyal Texas revolutionaries of the land for which they had fought.

In arguing for the acceptance of both perfect and inchoate Mexican titles, Howard charged that any subsequent legislative requirements relating to recording of the deeds or proof of titles were retrospective and thus constituted an impairment of contract. He further maintained that under the Treaty of Guadalupe Hidalgo, the new Texas government was bound by international law to recognize pre-existing property rights. In other words, what Howard was arguing for was a permanent freeze on the colonization laws of Coahuila and Texas to be applied by the courts in all litigation involving pre-1836 grants.

Paschal was unwilling to force the courts into such a blanket acceptance of titles, many of which undoubtedly were
fraudulent and void to begin with. To him the implications of such a policy were clearly disastrous: "For once establish the principle, that every contract is not subject to the [present] law, and is to be interpreted or enforced as the law of the time and place obliged or prohibited, and there is an end to all hope of honest titles being sustained in the country." He accurately pointed out that Article XIV of the Consultation's plan had in fact suspended all empresario grants until future legislative determination. With the successful completion of the revolution, the Republic of Texas inherited the public domain, "subject to perfect legal titles previously vested in individuals, and leaving equitable inchoate titles to the decision of the body politic." It was left to the courts, Paschal later insisted, to "determine in what manner have the different governments, which have exercised dominion over the soil, legally parted with final title to it; by what incipient steps; to what lawful grantees; upon what essential conditions; and where and what are the evidences of ownership."

For the answer to the first four questions, Paschal turned to the Spanish laws themselves. There were, he noted, two distinct types of grants made under the old regimes. In the first instance, grants were made to empresarios (sometimes called pobladores) expressly for the purpose of introducing
alien colonists into the Texas territory. These empresario grants were basically political and carried with them certain conditions which must be met before title could be perfected. One such condition was that the land be cultivated within six years, during which time the colonist could not part with the land except by forfeiture. On the other hand, purchase grants not to exceed eleven leagues were offered to Mexican citizens, either as heads of households or as single persons. These were clear titles and carried no limitations with regard to settlement, cultivation, or alienation. The two revolutions of 1836 and 1845, in Paschal's view, swept away the political or empresario grants along with any that had been made in violation of the national colonization laws of Mexico. The grants to colonists that had been perfected under the empresario grants and the Mexican purchase grants, however, represented vested rights of which the state courts were bound to take cognizance.

With regard to the question of evidence, Paschal demonstrated the potential flexibility of the emerging Texas jurisprudence, for "whatever rule should be adopted as to the rights of property, the sovereign power of the new State alone could prescribe the rules of evidence" for use in determining those rights. Under the Spanish law, the original deed, or protocol, always remained in the government
archive, while the copy of the original, or testimonio, was the colonist's only legal proof of ownership. With the statutory introduction of the common law in 1840, the Texas courts could greatly enlarge the remedies by which presumption of ownership might be asserted over the claims of fraudulent land holders.

The ultimate test of Paschal's theories came in the courtroom. At the same time he was writing letters to the Daily News, Paschal was representing a land merchant, Jacob de Cordova, in a suit against the city of Galveston. Although Cordova lost, his lawyer found in the court's opinion, the highest jurisprudential approval for his own interpretations of the law. Two years later in 1851, Howard and Paschal resumed their debate in a series of cases before the Texas Supreme Court. Though the outcome of the suits was mixed, Paschal's views were eminently successful in terms of dicta. Paschal had succeeded in cutting through the twists and turns of the Spanish law.

During his apprenticeship under Lumpkin, Paschal "had lived in a kind of uneasiness, lest all the law-suits should be settled before I should receive my license." It was now clear to him that his fears were groundless, for he had more clients than he could accept. Having appeared before the state supreme court only three times prior to 1851, the
Texas lawyer argued no less than nineteen cases that year during the Austin session alone. No doubt he prospered financially from this litigation—in many cases accepting land for fees—though he denied that he was amassing fortunes in real estate. But Paschal's commitment to the Texas land title question went beyond pecuniary greed.

It has been said of the Massachusetts lawyer, Robert Rantoul, Jr., that "if the highest reach of his code [of ethics] does not transcend interest, the lowest does not escape morality." The same could be said of Paschal. In the world of the Jacksonian, a man's desire for property was, after all, positive evidence of his moral and social worth. Landholding was not only a symbol of independence, but an outward sign of a healthy acquisitiveness. Men like Paschal felt the law should harmonize with this world view. Implicit in his appeals for a pliable system of jurisprudence in Texas was a Jacksonian concern for equal opportunity in the courts. This called for a law based on principles not formalities, a law to serve the people not land monopolies. By cutting through "the iron bars which separate the jurisdiction of courts of common law and the courts of chancery," the Texas courts were formulating such a system. "Our battles," Paschal maintained, "are all fought upon principle. No ammunition is wanted in taking the outposts. And if a
citadel be not well guarded it surrenders to the assailant, who has the better right, regardless of the manner of the attack." The only consolation Paschal could offer to those defenders who fell, was his firm belief "that even successful revolutions overthrow many dear private rights." The political events of the next decade were to impress indelibly that lesson upon both Paschal and the South.

In these early days of his Texas career, Paschal's success as a lawyer was marred by the failure of his marriage. Sometime in 1852, Paschal and Sarah Ridge were divorced. Undoubtedly, the young lawyer's marriage to a full-blooded Cherokee was viewed much differently on the Texas frontier than in her native Georgia or among her own people in Arkansas. For whatever reasons, Paschal left his wife and three children in Galveston and moved to Austin. The break with the past was as significant professionally as it was personally, for it marked Paschal's entrance into the political arena.
NOTES

1 George W. Paschal, Ninety-Four Years: Agnes Paschal (Washington, D.C.: privately published, 1871), p. 199. Paschal's biography of his mother contains a great deal of autobiographical information and is the only source for his own early years. The only major secondary source on Paschal's life is an article by former Associate Justice of the Texas Supreme Court, James P. Hart, in the Texas Law Review, XXVIII (November, 1949), pp. 23-42. Hart also relies heavily on Ninety-Four Years.

2 Ibid., pp. 197-98. Crawford, who had served as a United States Senator, Secretary of War and Secretary of the Treasury under Madison and Monroe, and presidential nominee in the election of 1824, was by this time an old and crippled man. He was, however, a longtime friend of George Paschal, Sr., and as such, took special pride in the younger Paschal's performance on his bar examination. Longstreet was a noted Georgia jurist who gained additional fame in the fields of literature and higher education. Other members of the panel were Francis Cone and Daniel Chandler.

3 George and Agnes Paschal had ten children in all, including a set of triplets who died at birth. George was the sixth and final son born to the couple. From a facsimile reproduction of the family bible in Ninety-Four Years, n.p.

4 Ibid., p. 97.

5 Ibid., pp. 122, 137.

6 Ibid., pp. 270, 61, 173-74.

7 Ibid., pp. 188-89.


11 Auraria, also known as Nuckollsville, was six miles from Dahlonega in northwestern Georgia. George White, Historical Collections of Georgia (New York: Pudney & Russell, 1854), p. 542.


13 Paschal, Ninety-Four Years, pp. 233-35. Agnes Paschal remained in Auraria until her death in 1869 and is buried there.

14 As chief spokesman for a Dahlonega delegation, Paschal was instrumental in securing the establishment of a branch of the United States mint in the gold mining town. Paschal to Governor Wilson Lumpkin, January 25, 1835, Georgia State Archives; Ninety-Four Years, p. 272.

15 Ibid., p. 238.

16 Ibid., pp. 229-31.

18 Henry S. Foote, *The Bench and Bar of the South and Southwest* (St. Louis: Soule, Thomas & Wentworth, 1876), pp. 231-32. Paschal's Arkansas reputation is further attested to by William F. Pope who included him in a list of names to illustrate what an unusual "array of legal and oratorical talent and ability" Arkansas had for a new state. *Early Days in Arkansas, Being for the Most Part the Personal Recollections of an Old Settler* (Little Rock: Frederick W. Allsopp, 1895), p. 217.

19 At this time the Arkansas Supreme Court consisted of three justices. In the January term, the only term Paschal was to serve, the chief justice was Daniel Ringo, while the other associate justice was Thomas J. Lacy. Paschal served from January, 1843, until his resignation on August 1, 1843. On October 3rd, William K. Sebastian was appointed to replace him. The opinions of this court are reported in the 5th volume of the *Arkansas Reports*.

20 Writing in *Field v. Pope*, Paschal said: "And we may accidentally add, as a caution to the profession, that the verdict of the jury is for [but] a fraction more than the sum demanded. De minimus non curat lex ["the law does not concern itself with small matters"], is a maxim of the law; nevertheless, strict care, on the part of the counsel, would save many difficulties to the Court, as well as expense to suitors." 5 Ark. 66, 72. See also Martin & Van Horn v. Webb, 5 Ark. 72.

22  *Bench and Bar*, p. 232.

23  Ibid., p. 233.


26  For another example see the discussion on codification in Chapter Three, pp. 78-79.


A "league" of land was equal to 4,428.4 acres, while a "labor" was 177.14 acres. Typically, the larger acreage
was only suitable for cattle ranching, while the small section had access to water. In the vast arid sections of Mexico and Texas, water was obviously at a premium, and although both the Spanish and English "laws of flowing waters" had a common origin in Roman law, the Spanish code held that an owner's right to water, when accessible, was an integral part of the title to his land. Ashford, "Jacksonian Liberalism," pp. 10-11; McKnight, "The Spanish Legacy," p. 234n.

McKnight, "The Spanish Legacy," p. 224. The Consultation had introduced the common law under Article VI of the "Plan and Powers of the Provisional Government of Texas," dated November 13, 1835. The provisional judges were granted "jurisdiction over all crimes and misdemeanors recognized and known to the common law of England: he shall have power to grant writs of habeas corpus in all cases known and practised to and under the same laws; he shall have power to grant writs of sequestration, attachment, or arrest, in all cases established by the 'Civil Code' and 'Code of Practice' of the State of Louisiana." Article IV, Section 13 of the Constitution of the Republic of Texas only affirmed this earlier decision. Paschal, A Digest of the Laws of Texas, I (Washington, D. C.: W. H. & O. H. Morrison, 1866), p. 26, n. 123 and p. 34, n. 138. Subsequent volumes of Paschal's Digest were in actuality only revisions of the original edition. To avoid confusion, pagination and annotations were numbered consecutively throughout the five editions. Hereafter Paschal's Digest will be cited as P. D., followed by the page and/or note reference.

Ibid., pp. 254-55, n. 418-19. The act of January 20, 1840, read: "That the common law of England (so far as it is not inconsistent with the constitution or the acts of congress now in force) shall, together with such acts, be the rule of decision in this republic, and shall continue in force until altered or repealed by congress." An act of February 5, 1840, further clarified the earlier adoption of common law: "The adoption of common law shall not be construed to adopt the common law system of pleading, but the proceedings in all civil suits shall, as heretofore, be conducted by petition and answer . . . ." According to Paschal this second section was adopted "not to prescribe the rules, but to designate the system of pleading." He went on to list principles of the common law "not discarded as pertaining to the pleadings, as those governing the forum, the parties to the
action, and the proceedings of the petition and answers." In addition to the form of civil pleadings, the areas of Texas civil laws most obviously affected by the Spanish legacy were community marital property rights and land policies. Spanish units of measure are still the basis for determining metes and bounds in Texas. Butte, "Law and Equity in Texas," pp. 701-702.

35


36

P.D., p. 680. The different types of grants are explained later in the chapter (see pp. 23-24). A contemporary description of the various types of grants is in J. de Cordova's Texas: Her Resources and Her Public Men (Philadelphia: Ernest Crozet, 1858), pp. 6-10.

37

Located on the corner of Avenue H and 14th Street, the house was pre-fabricated and shipped to Galveston on a schooner from Bangor, Maine. It is still standing. McNeir, Forest McNeir, pp. 19-20; De Lono, Galveston Directory for 1856-57 (Rosenberg Library, Galveston).

38

Richardson's Galveston Directory boasted at least fifty lawyers in the Galveston vicinity by 1856. For these figures as well as a general description of the legal atmosphere in the port city, see Earl Wesley Fornell's The Galveston Era: The Texas Crescent on the Eve of Secession (Austin: University of Texas Press, 1961), p. 36.

39

Isaiah Addison Paschal had settled in San Antonio in 1846, where he became a distinguished member of the bar in his own right until his death in 1869. For many years a state senator, I. A. Paschal was described by a contemporary as "able, eloquent, genial and given to the protection of the poor and necessitous; withal a man of superior personal presence." Chabot, With the Makers of San Antonio, p. 317.


Ibid., p. 17.

Howard was a formidable legal opponent whom Paschal was to face many times in court. A member of the constitutional convention of 1845, Howard was subsequently elected state legislator, attorney-general and congressman from Texas.

Paschal, An Answer to the "Review of the Decisions of the Supreme Court of Texas, by Volney E. Howard, Esq." in a Series of Letters (Galveston: W. Richardson, 1849), No. 1 and 2, pp. 3, 6. Hereafter cited as Answer to Review.

Historians have often made the same mistaken assumption (See Ashford, "Jacksonian Liberalism," pp. 20-21). Article XV of the Plan for the Provisional Government was the probable source for such interpretations. It read: "All persons now in Texas, and performing the duties of citizens, who have not acquired their quantum of land, shall be entitled to the benefit of the laws of colonization under which they emigrated; and all persons who may emigrate to Texas during her conflict for constitutional liberty, and perform the duties of citizens, shall also receive the benefits of the law under which they emigrated" (P.D., p. 27). Taken together with Article XIV, however, it seems clear that Paschal was correct in asserting that the consultation was only referring to the inchoate titles of the colonists themselves, not to include the empresario grants. See note 46.

Answer to Review, No. 1, p. 5, No. 8, p. 25; P.D., p. 231, n. 392. Article XIV read in part: "That all land
commissioners, empressarios [sic], surveyors, or persons in anywise concerned in the location of land, be ordered, forthwith, to cease their operations during the agitated and unsettled state of the country, and continue to desist from further locations, until the land offices can be properly systematized by the competent authorities which may be hereafter established..." (P. D., p. 27).

47
P. D., p. 680, n. 946.

48
Ibid., pp. 208-209, n. 348; McGarrahahn brief, pp. 5-16. In 1844, during the congressional debates over annexation, Texas's offer to the United States of 140,000,000 acres of public domain in exchange for payment of her $7,000,000 public debt, was rejected according to Paschal, "by the assertion that these empresario political arrangements were grants of land in full property." McGarrahahn brief, p. 15.

49
Answer to Review, No. 8, p. 25.

50
Ibid., No. 10, pp. 29-32.

51
De Cordova v. City of Galveston, 4 Tex. 470. Paschal had numerous business dealings with Cordova, who was a very successful land speculator. See James M. Day, Jacob de Cordova, Land Merchant of Texas (Waco: Texian Press, 1962), pp. 31-32, 58.

52
Lewis v. San Antonio, 7 Tex. 288; Herndon v. Casiano, 7 Tex. 322; Paul v. Perez, 7 Tex. 338; Paschal v. Perez, 7 Tex. 348; Edwards v. James, 7 Tex. 372. The two most important cases were Lewis v. San Antonio and Paschal v. Perez. In the first instance, Paschal successfully defended a grant of land to the city of San Antonio without any paper evidence of title by arguing the common law rule that uninterrupted possession of land establishes a presumption of title. In Paschal v. Perez, Hemphill embraced fully Paschal's position with regard to rules of evidence. His statement, which became the standard citation on the subject, read in part: "If testimonios or copies are admitted without restrictions, a wide door is opened for the admission of fraudulent
or forged titles. . . . We must be controlled by the common law rules of evidence. . . . These rules affect the remedy, the procedure; and the Legislature may modify them at pleasure, provided that such changes come not within the constitutional inhibition against laws impairing the obligation of contracts . . . Laws affecting the remedy are generally not within the scope of this inhibition, but they may become so by impairing or destroying a right." 7 Tex. 348, 364-65. Cf. Hemphill's statement with Paschal's brief in Lewis v. San Antonio, 7 Tex. 288, 296.

53 Ninety-Four Years, p. 198.

54 Southern Intelligencer, March 10, 1858. Paschal entered into at least one colonization venture with Cordova. See Day, Cordova, Land Merchant, p. 37.

55 Meyers, Jacksonian Persuasion, p. 211.

56 In this way the Texas land title question offers a perfect example of what James Willard Hurst means by the positive uses of the law for the "release of energy" and the "control of environment" as discussed in his book, Law and the Conditions of Freedom. See also Harold Hoffman's article, "Texas Land Titles and Vested Rights," Texas Law Review, XXV (May, 1947), pp. 508-29.


58 Paschal, Address to the People of Texas (Washington City: M'Gill & Witherow, 1869), p. 3.

59 Paschal's grandson later recalled that prejudice against "a little Injun" was strong enough to keep his mother, Emily Agnes Paschal, from going to school in Galveston, even though her father sent her the $300 tuition from Austin. Sarah Ridge subsequently married a nineteen year old Englishman, Charles S. Pix. She was forty-one at the time, but as McNeir suggested, "that two-story house and all those slaves must have looked pretty good for a start." Forest McNeir, pp. 20-23;
Wilkins, *Cherokee Tragedy*, p. 328; Dale and Litton, *Cherokee Cavaliers*, appendix, n.p.; Mrs. E. M. Pease to sister [Augusta], October 18, 1857, Graham-Pease Collection, Austin Public Library.

60

In 1850, Paschal did make a premature venture into politics by running for the office of state attorney-general. Ebenezer Allen won over a field that included A. J. Hamilton as well as Paschal. Hart, "Paschal," p. 28.
CHAPTER TWO

"THE OLD LANDMARKS"; THE SECESSION CRISIS

[The lawyer] cannot here, more than in religion serve two masters; he cannot serve mammon and the profession at the same time.

These sentiments appearing in an 1871 law journal suggest the repugnance with which many nineteenth century lawyers viewed political involvement. The article went on to state that only by a total separation of the two pursuits could the legal profession "ever maintain its character and influence in a free country." While Paschal basically shared this belief, politics on the antebellum Texas frontier often directly threatened that very independence and influence which he and others cherished. Likewise, true to Tocqueville's characterization, lawyers were aristocratic enough not fully to entrust the great democratic experiment to the masses. Given his own talents and temperament, Paschal's ascendancy in Texas politics was a foregone conclusion once he took up residence in Austin. His arrival came at a propitious time, for political
party organization was just beginning to emerge from the confusion of annexation.

Prior to 1856, party politics revolved around the personalities of the heroes of Texas's struggle for independence. This meant politically that the state was divided into two camps: those who supported General Sam Houston and who considered themselves the true heirs of Jacksonian Democracy, and the anti-Houston forces or Calhoun Democrats, as they were called. By the mid-1850s, however, the old provincial patterns of party alignments were feeling the pull of a national reweaving. Houston's opposition in the Senate to the Kansas-Nebraska bill in 1854 evoked harsh criticism and censure from the Calhoun branch, intensifying the factionalism that already existed within the party. But it was the external threat posed by the growing popularity of the American or Know-Nothing party that occasioned the emergence of the first real Democratic party organization in Texas.

Though generally despised by the public and railed at by the press, the American party had achieved some local successes in Texas, notably in Galveston and San Antonio, two of the largest cities. In June of 1855, the party announced a slate of state officers. Included among their members were many of the later prominent Unionists, such as John
Hancock, Lemuel D. Evans, Ben H. Epperson, and, for a short time, A. J. Hamilton. By the end of August, a number of newspapers carried accounts of Houston's public avowal of membership, and the name "Sam" became synonymous with Know-Nothingism in Texas.

Paschal was one of the few Unionists to play an important role in Texas reconstruction who avoided the Know-Nothing heresy in this early period. On January 15, 1856, the day before the Democratic state convention was to meet, he attended a caucus in Austin to insure that control of the party would remain in proper hands. In the convention that followed Paschal took an active part, serving on both the platform committee and the state central committee. The result of their efforts was the adoption of an obviously anti-Houston plank which stated unequivocally its opposition "to all secret political societies whether called Americans, Know-Nothings, or any other delusive name."

By the 1856 presidential election, Paschal had begun to edit the Southern Intelligencer, a weekly newspaper in Austin. With Buchanan's landslide over Fillmore, the editor happily announced, under the heading "Who Killed Cock Robin?" that "Know-Nothingism is dead . . . dead in the United States and dead in Texas." In commenting further on the
election outcome, however, Paschal indicated that his sympathies were clearly of the Jacksonian persuasion even if Houston was temporarily a political exile: "Never was the question more fairly put, can the people govern themselves--never was there a more triumphant vindication of the assertion, that they are not only capable of self-government but of wise self-government."

With the advent of sectional politics on the national scene, however, a subtle polarization began to take place in the state party structure which would eventually lead Paschal and other old-line Jacksonians into an alliance with Houston. A comparison of the platform committees in 1856 and 1857 reveals that while Paschal's name no longer appears on the list, there is a noticeable increase in the number of state rights men, including W.B. Ochiltree and Louis T. Wigfall, perhaps the most rabid secessionist in Texas. Further reflecting these changes, the Democratic platform of 1857 mentioned the Kentucky and Virginia Resolutions for the first time as a thinly veiled nullificationist threat. But if Paschal was on the verge of falling out of political grace within the party, he seemed unaware of it. The Intelligencer still carried on its banner that "in politics, this paper will stand squarely upon the great principle of National Democracy."
In the spring of 1857, the names of both George and I. A. Paschal were nominated for Congress from the Western district of Texas. Referring to such a match, the Austin editor quipped that to his older brother he yielded age, weight, experience, and popularity. "But for George," the article continued, "we claim: That he is . . . less of an old fogy; The Ladies being judges, he was always a handsomer man; . . . He can make longer speeches and write better poetry; [and] He has always been a better Democrat, I. A. having once voted for a Whig . . . ." Others took Paschal's candidacy more seriously. His support of M. T. Johnson for the gubernatorial spot over the "Austin clique's" Hardin Runnels had not been popular among party leaders, and efforts were made to dissuade the independent-minded Paschal from accepting the congressional nomination. At the Waco convention, when he did withdraw his name, his short speech brought down thundering approval. "We think the fact that we declined the contest," he later admitted, "and not the speech elicited the applause." Perhaps in a conciliatory gesture, Paschal was asked by party officials to inform Guy M. Bryan that he was the convention's candidate for Congress.

Paschal not only yielded to the party's choice of Bryan and Runnels, but in an apparent show of unity, he
offered a stringent resolution pledging delegate support to "no person . . . unless fully satisfied by his acts and declarations . . . that he is fully united with the Democratic party." The resolution, unanimously adopted, was primarily aimed at Houston, who responded by declaring himself an independent in the gubernatorial race. Subsequently at the Travis County Democratic convention, Paschal showed such "earnestness" in his opposition to party bolters, that F. R. Lubbock later wrote in his memoirs, "I had great confidence in his Democracy at the time."

A list of the committees and delegates at the 1858 state Democratic convention, however, did not include Paschal's name, a glaring omission considering his prominence at past conventions. Earlier that year, he was removed by now-Governor Runnels from the trusteeship of the state school for the blind, an appointment Paschal had accepted from Governor E. M. Pease as a personal favor. Runnels undoubtedly remembered Paschal's previous opposition to his candidacy, but even more important was his current hostility to Runnels's aggressive Kansas policies. In commenting upon the reasons for his removal, Paschal showed clear signs of disenchantment with the administration:
The Governor . . . no doubt, would prefer that we should have full opportunity to attend his disunion Quixotteism, . . . to watch closely his "constitutional prerogatives"; in a word, to guard the "seeing children," rather than the unfortunate blind. Well, we cheerfully take our position, and possibly we may open even the Governor's eyes to the fact, that the Executive has other duties besides dealing with Kansas, and the Deaf, Lunatic and Blind Asylums. If he will give to the latter one-half the money which he has caused to be expended and proposes to expend upon the former, there may yet be Asylums for some defunct politicians.11

By May of that year Paschal's political presence was so conspicuously absent that the Dallas Herald commented on the "Reading Out of the Party" of the Austin editor.

Paschal's newspaper venture was at least partly responsible for this political demise within the Democratic ranks. A prolific writer and frequent espouser of new causes, Paschal was to be a regular contributor to journals throughout his active life. Upon moving to Austin, he served as a correspondent for the Austin State Times, then owned by John S. ("Rip") Ford and Captain Joe Walker. When the Times was sold, Paschal took over much of its equipment and established his own tabloid with the lofty Shakespearean motto, "Nothing extenuate, nor set down aught in malice." For a subscription price of $2.50 a year, the Southern Intelligencer promised "the earliest local and general
intelligence to every class of its readers, whether their tastes and pursuits be Agricultural, Mechanical, Professional or Literary."

Despite this claim of a wide appeal, Paschal's newspaper reflected largely his own interests. The small concessions to the literary world consisted for the most part of bad poetry written by Southern gentlemen who, like Paschal, considered it an essential ornament of their culture. By far the largest portion of the paper's columns, however, was devoted to items of interest to a lawyer only—court dockets and long lists of cases and opinions decided at current sessions of the state supreme court. Since official court reports were published only sporadically, if at all, the Intelligencer performed an invaluable service. One appreciative reader wrote, "It is the only paper in Texas worth a copper to the lawyer." Despite his success as an editor, Paschal's loyalties remained with the legal profession. "Writing editorials is a pastime," he explained, "and whatever facility we have acquired in that way, has been in writing our briefs, and about our business as a lawyer, which is our 'profession.'"

Avocation or not, the Intelligencer prospered under Paschal's lively pen. By the summer of 1857, printing demands were so great that a power press was installed.
In less than a year, the Austin paper had gone from a weekly edition to a tri-weekly boasting "a larger circulation than any secular paper in the State ever had during the first four years." Plaudits came from all sides including fellow editor, E. H. Cushing of the Houston Telegraph, who considered Paschal's newspaper "as standing at the head of the Texas press, in point of ability displayed in its editorials."

But events of the next two years were to make political enemies of the two editors. Never known for their timidity, Paschal's editorials were often impolitic and always controversial. "It will be our aim to avoid all bitter rancor and personalities," the paper's prospectus promised, "but, at the same time, to discuss men and measures with spirit and independence." In keeping with the latter if not the former goal, Paschal launched an editorial attack on the public printing policies of Austin's leading newspaper, the State Gazette.

Owned and edited by John Marshall, the Gazette had held the printing contract ever since the establishment of a state printer in 1853. Since Marshall was also the chairman of the state Democratic party, his paper was considered the official party organ. Paschal understandably suspected favoritism in the awarding of the contract and
was bitter over his own overlooked bids. In September, 1858, the *Intelligencer*'s editor published a tract in which he charged that the *Gazette*'s editor had illegally taken more than $15,000 from the state treasury. Marshall, who had always been hostile towards his competitor, took this latest attack personally and there was talk of a duel. According to one account, "Paschal and his son and their antagonists appeared on Congress Avenue, armed with double-barreled shotguns." But no duel occurred, both men seeming to prefer pen to pistol. Paschal's controversy with Marshall over the printing patronage was only symptomatic of his growing restiveness with the party organization. The formal break came as a result of what Paschal considered a political challenge to the sanctity of the courts.

The popular election of judges had been a cherished principle in Texas since the days of the Republic. The nominating procedure normally involved a draft or petition endorsed by a number of locally prominent lawyers. At the 1857 convention, however, party chairman Marshall urged that in the future all candidates for state office be nominated by the convention method. This included nominations for judicial posts, and in the spring of 1858, the Democratic convention put forward the name of District Judge C. W. Buckley to replace John Hemphill who had been
elected to the United States Senate. This departure from precedent created a great deal of excitement among the lawyers of the state.

Through the pages of the *Intelligencer*, Paschal led the opposition to Buckley's nomination and was instrumental in persuading Judge James H. Bell of the First Judicial District to run independently. Finding Buckley personally and professionally distasteful—an opinion shared by other prominent members of the bar—Paschal believed him clearly unfit to fill Hemphill's shoes. A. J. Hamilton who "like Editor Paschal, . . . was convinced that Supreme Court justices should be free from partisan influence," also broke with the Democratic party organization over this issue of judicial nominations. Even William Pitt Ballinger, whose party credentials remained impeccable throughout the war years, found his sense of professionalism outraged. In writing to Paschal of the Buckley nomination, the Galveston lawyer asked, "If integrity of character isn't fundamental and primary in a judge—What is?" He concluded the letter with a plea, "Can a lawyer do a better work than to preserve the purity of his highest courts: For God's sake Paschal, strike one thundering blow with your good battle axe."
The Houston Telegraph accused Paschal and the other lawyers who called for Bell's election of a personal vendetta against Buckley at the expense of party harmony. But in a letter addressed to Editor Cushing of the Telegraph and signed "Justice," the author (presumably Paschal) defended his opposition to the party's action: "There are a great many others like myself, whose personal friendship for Judge Bell, and personal dislike for Judge Buckley are not strong enough as to lead us 'astray,' and whose 'stubbornness' would certainly give way for the interest of the party . . . [but] the whole matter is simply this, that a new principle or policy has been sprung upon the Democratic party in Texas, which as yet has never been fully, fairly, and plainly discussed before the people." To Paschal the Buckley nomination represented the political and moral bankruptcy which inevitably followed Marshall's brand of bossism. Events of the next year, however, were to transform the alliance between Paschal and Hamilton into more than just a defense of legal standards.

In 1859 the Southern Intelligencer's new masthead reflected the editor's disillusionment with party organization, declaring "The world is too much governed." Growing national tensions over the issue of slavery were mirrored in the increasingly aggressive position taken by the state
party. As talk of secession grew, Paschal was forced to admit that "whatever may be Houston's sins, disunion sentiments are not among them." In fact the Austin editor had found much to praise in "Old Sam" of late, particularly in his stand against Federal Judge John C. Watroux of Texas's Eastern Judicial District. Houston, who had condemned Watroux for corrupt practices as early as 1851, now led a move in the United States Senate to impeach him. The specific charges against Watroux involved a judicial conspiracy to take advantage of the complicated land litigation by defrauding legitimate holders of hard-to-prove titles. Although falling short of impeachment, Houston's efforts in the Watroux case drew recognition and approval from many unaccustomed quarters. But no one was more laudatory than Paschal, one of several lawyers summoned to appear as expert witnesses before the Senate Judiciary Committee investigating the charges.

Paschal and Houston were becoming more compatible in other ways. Both had grown disenchanted with political conventions as accurate barometers of popular will. Both were disturbed by elements of the state party who advocated reopening the African slave trade. In April, 1859, Paschal warned Congressman John H. Reagan of attempts to incorporate such a proposal into the Democratic platform at the upcoming
state convention. He concluded that conventions had been abused and should be abolished. But Paschal was unsuccessful in his attempt to enlist Reagan as a maverick, for he replied that he "must act with the democratic party while there is such a party. This thing of going out of the party to correct its supposed errors has always been fatal to all who have tried it."

Despite Reagan's warnings, Paschal was convinced that the May convention held no future for moderates, for "the Democratic organization became almost undisguisedly a disunion party." As result, he began to urge Houston's election over the certain candidacy of incumbent Runnels, who was "a secessionist and a propagandist of disunion sentiments." Paschal's efforts were joined by Hamilton who on May 21st announced his own independent candidacy for Congress. In doing so he too denounced the renomination of Runnels and the proposal to reopen the slave trade as violations of the national party's pledge not to renew agitation and concluded his speech by calling for the election of Houston. One week later Paschal made an unsuccessful effort to solicit support from the influential physician, Ashbel Smith. "The time for a glorious revolution in the cause of national Democracy has come," he wrote, "a time to serve your old and devoted friend General Houston."
The constitution, the union . . . demand his services." 24

The old hero of San Jacinto was more responsive to the Intelligencer's entreaties. On June 3rd, Houston addressed his famous "thine truly" letter to editor Paschal formally announcing his candidacy. In it he stated the platform upon which he would base his campaign and upon which Paschal would stake his political future: "The Constitution and the Union embrace the principles by which I will be governed if elected. They comprehend all the old Jacksonian National Democracy I ever professed or officially practised." The Southern Intelligencer happily declared Houston's resurrection in bold-face type: "The Agony Over-- 25 SAM HOUSTON IN THE FIELD."

In the ensuing campaign, Paschal canvassed vigorously for Houston through the voice of his now strongly pro-Union newspaper. Houston himself made only one speech, but Paschal felt "it was among the best of his life." Doubtless echoing Paschal's own feelings, Houston said, "I am a Democrat of the Old School . . . . But I am told I cannot be a democrat, because I am standing in the face of organization. . . . If Conventions be democracy, how was it that democracy existed before Conventions? . . . When they represent the people they will do very well, but when they misrepresent the people, I am opposed to them." The essence of the
speech, however, was a reiteration of the theme of Houston's basic platform, "the Constitution and the Union," invoking the phrase no less than a half dozen times in the course of the oration. Recalling the famous toast of his old friend Andrew Jackson, Houston declared that the Union must be preserved, for it is "our only ark of safety." But if the Union was the ark, the Constitution was the embodiment of Deuteronomy, for "the law" was the key to its preservation. "I am opposed to resistance to the laws," he stated unequivocally, "whether it be against the African Slave Trade Law, the Fugitive Slave Law, or the Dred Scott Decision. When the laws are no longer regarded, regulated liberty is at an end." To men like Houston and Paschal, resistance to lawfully constituted authority was the thread that was unraveling the Union.

Houston's subsequent defeat of Runnels and the state party organization, along with Jack Hamilton's election, appeared to have vindicated the Unionists' position, and Paschal attended a victory dinner in Austin. But the celebration was premature and the success deceptive, for Houston's victory was more local and personal than ideological. The newly-elected legislature quickly demonstrated its hostility towards moderate appeals by electing the fire-eater Wigfall to the United States Senate.
As the all-important 1860 presidential election approached, Unionists in Texas viewed with understandable alarm the split in the national Democratic party, "while the great Sectional party of the North comes up in solid phalanx to the support of Mr. Lincoln." Calling for the formation of a Union Electoral ticket, Unionist leaders explained their strategy in an open letter to the Southern Intelligencer:

Regarding Mr. Bell and Mr. Douglas, as National men, we believe their views on Union topics are of less importance than the permancy [sic] of the government, and that to preserve it for posterity, we can well afford to bury political animosities [sic], until the common danger has passed. Believing that Mr. Breckinridge has no chance whatever, of election, we think it would be folly and madness in such a case to throw away the vote of Texas upon him; but that the defeat of Sectionalism being the great object, it should be given to either of the candidates who shall have the greatest strength to defeat Mr. Lincoln.

Ending with an appeal to Paschal to serve as a Union ticket elector, the letter was signed by more than eighty of the state's leading Unionists, including Pease and Hamilton.

Paschal's reply, appearing in the same issue, revealed the persistent attitudes which had led to his break with the Democratic party. Reaffirming his distaste for public office, he stated, "I have never ceased, however, to take
a deep interest in the political welfare of the country. But I have believed, that we are sadly in want of a larger class of independent citizens, who study the theory and best interests of the Government, who discuss every issue before the people and who yet have no ambition for the preferment and emoluments of office." Reviewing the theory and history behind the electoral method of presidential selection, he blamed the national convention system for destroying the conservative check smaller states were to exercise over the larger ones, and for absorbing "all the elements of affinity and diversity of opinion" resulting in the abandonment of the practical issues upon which divisions had once formed. Truly great national issues such as the construction of the federal constitution and the economy of administering the government had dissolved into purely sectional ones "of far more exciting and dangerous character."

Now, Paschal stated, the only hope for salvation from "Black Republicanism" was a return to the most basic national issues--the Constitution and the Union--with a bipartisan coalition of Union supporters. To the claim that Breckinridge was the only Southern candidate, Paschal answered, "I hold no principle in Texas, which I would not own anywhere in the union. . . . If it be true that he is
purely a Southern, sectional candidate, then he has no higher claims than Lincoln, because bigotry founded upon geographic divisions is as dangerous in one end of the union as another." While accepting the responsibility of elector, Paschal refused to commit himself to either Bell or Douglas. Rather he promised to work towards harmony and even unanimity among the electoral colleges, "rather than to risk the result in the House of Representatives where it would be unsafe." In conclusion, Paschal reaffirmed the only political ideology that had consistently governed his stormy Texas career:

With those who believe that no union is necessary, because they prefer the "CRISIS," I have no sympathy. I am not prepared for a dissolution of this great and glorious Government. Civil war will have to precede disunion. And whatever battles I may fight will be for the preservation of the Constitution and the Union, not for the destruction of the latter because the former has been violated. That has several times occurred; and "the virtue, intelligence, and discriminating justice of the American people," applied the Constitutional remedy and repealed the obnoxious laws through their representatives. My confidence in this axiom is unshaken, nor would the loss of a single election, caused by divisions upon abstractions and useless dogmas, shake that confidence.29

Privately Paschal was less sanguine about the chances for averting a crisis in the event of Lincoln's election,
for it was the subject of correspondence between himself and Reagan. In such an event, Reagan advocated calling a general convention of delegates from the southern states "to settle forever the question . . . of the rights of the slave States and of the owners of slave property."

As an alternative to secession, Paschal favored the suggestion and passed it on to Houston. In November after Lincoln's election, Houston did make an appeal to southern governors for such a convention. But the demands for a special session of the legislature, called for the purpose of passing an ordinance of secession, were already so great that Rip Ford called Houston's effort "laughable . . . if one could have felt like being amused, at such a time."

Despite the efforts of Houston and his "hothouse friends," as Marshall called the Unionists who now flocked to his side, the Constitutional Union ticket received less than one-fourth of the total Texas vote. Houston at first resisted the pressure to call for either a secession convention or a special legislative session. In desperation, he asked Wheeler and Bell of the state supreme court to prepare legal arguments with which he could counter the growing agitation for secession. When it finally became apparent that Houston would not cooperate, a proclamation was issued
from the office of the state attorney-general, calling for the election of delegates to a secession convention.
Faced with the reality of the convention meeting in Austin with or without his approval, Houston chose to summon the legislature in hope of persuading it not to recognize the extra-legal secession convention. It was a vain hope which Paschal later labeled a mistake, for the legislature promptly voted recognition to the secessionists, stipulating only that any action taken must be submitted to the people for final approval.

In the referendum that followed the results were overwhelmingly in favor of secession. But a measure of the limited success of Paschal and other Unionists was shown in the fact that Travis County and the nine surrounding counties voted against the ordinance. The Southern Intelligencer charged that in the election of delegates to the secession convention, only a third of the qualified voters had cast a ballot. However, in a letter to the National Intelligencer, Paschal later conceded that there could be no doubt the majority of Texans favored secession. On March 16th, when Houston refused to take the oath of allegiance to the Confederacy, he was replaced by Edward Clark, a man who, in Paschal's words, "had rode into the office of Lieutenant-Governor on the tail of Houston's
coat." In later years, Paschal would reflect bitterly that "the people, who were so anxious to be annexed to the Union, followed the general madness, and undertook the work of dismemberment."

Not a man to be dealt out easily, Houston had one last ace up his sleeve. On approximately March 28, 1861, a confidential letter from President Lincoln was delivered to Houston by George Giddings, a federal mail contractor. In the message, Lincoln offered 50,000 troops to the deposed governor to aid him in keeping Texas in the Union. Houston summoned several of his "few confidential Union adherents," including Paschal, to the executive mansion for advice. The collective opinion was against accepting an offer which would insure bringing the war to Texas soil. The stakes were too high; the septuagenarian reluctantly folded. Commenting on Lincoln's tendered assistance, Paschal passed over it "as one of those State secrets which resulted in nothing, but behind which Houston might have saved himself." The offer, he added, came too late.

For Paschal, once described as "a staunch and faithful Democrat, a strict adherer to the 'old landmarks,'" the rising tide of southern nationalism had obscured political boundaries. He had believed in the great principles of the Democratic party as they had evolved historically; his
own political philosophy could best be described as a Jeffersonian faith in popular government coupled with an optimistic Jacksonian nationalism. When, in the crisis of secession, the Democrats abandoned these principles, Paschal abandoned the party.
NOTES

1  Isaac F. Redfield, "The Responsibilities and Duties of the Legal Profession," American Law Register, X (September, 1871), pp. 547-48. The role of the lawyer in American politics is an interesting subject which deserves closer study. According to Maxwell Bloomfield in his recent article, "The divorce of law from politics was the most significant contribution which publicists of the Jacksonian era made to legal mythology... Political posts now went to party men--third or fourth-rate lawyers who acknowledged no higher principle than self-interest" ("Self-Image of the American Bar," pp. 314-15). The Civil War, as a consequence of these politicos, however, caused the profession to reconsider its political aloofness. Lecturing to Harvard law students in 1864 on "The Duty of the Profession to the Times," Emory Washburn said: "I look to our own profession in the country, more than any other class of men, to take the lead in the great moral and political revolution through which the nation is to pass..." (The Monthly Law Reporter, XXVI [July, 1864], p. 482). Redfield's statement in 1871 evinces the general belief that the crisis had passed.


4  Southern Intelligencer, November 19, December 3, 1856.
Winkler, Platforms in Texas, pp. 65, 72-3.

George Paschal's name was placed in nomination by both Williamson and Burnet counties. Paschal probably supported Johnson over Runnels because Johnson was less extreme on the Kansas question and was a railroad supporter who, like Paschal, opposed the so-called "State System" of railroad building. The Dallas Herald editor, J.W. Latimer, was among those who tried to persuade Paschal not to run: "We hope the Judge will seriously consider the dignity of the editorial profession before he accepts the nomination." Paschal replied: "The legal profession is more dignified and lucrative than either, friend Latimer. We only consented to occupy the tripod until our publishers could find a better editor; so . . . our friends in Williamson and Burnett [sic] . . . could only get our services until they could procure an abler Representative. The difference is that there are many willing to take the honors of going to Congress, but few ready to submit to the drudgery of editorial life." Southern Intelligencer, March 25, April 1, April 8, 1857.

Southern Intelligencer, May 13, 1857; Paschal et al. to Bryan, May 7, 1857, Guy M. Bryan Papers, Barker Library, University of Texas.

Lubbock, Six Decades in Texas, pp. 209, 213.

Ibid., pp. 231-35; Winkler, Platforms in Texas, pp. 75-77.

Authorized on August 16, 1856, the Blind Institute served Austin for a century. Other members of the board of trustees included John Caldwell, Rev. John W. Phillips, R. J. Townes, and S. M. Swenson, with Dr. S. W. Baker as superintendent of the school. Mary Starr Barkley, History of Travis County and Austin, 1839-1899 (Waco: Texian Press, 1963), p. 163; De Cordova, Texas: Her Resources and Men, p. 259.

Southern Intelligencer, February 24, March 3, March 10, March 24, 1858. That events were beginning to move very
rapidly is evinced by the fact that only two months earlier Paschal had written a strongly pro-slavery Kansas editorial (Southern Intelligencer, December 10, 1856). Now he saw the Kansas issue being distorted by southern extremists like Runnels and Marshall, and he began to plead for moderation.

12
The Herald article attested to Paschal's party faithfulness and was reprinted in the Southern Intelligencer, May 5, 1858.

13

14
Southern Intelligencer, October 14, November 11, 1857, February 10, 1858. Willis L. Robards was responsible for the condensed opinions as reported in the Intelligencer, although Paschal often added his own comments. On October 14, 1857, the Intelligencer carried an announcement that the 17th volume of the Texas Reports would appear shortly: "At present the profession is indebted to the Intelligencer and the Tyler Reporter for all that is known of the decisions for two years after they are made."

15
Southern Intelligencer, March 25, August 26, 1857.

16
"The Public Printing and Public Printer," Southern Intelligencer Extra, September 13, 1858 (Graham-Fease Collection, Austin Public Library); Some Facts and Figures Relative to the Public Printing: Also, Some References to the Laws of Other States (Austin: Southern Intelligencer Office, 1859).

17
18 Article IV of the Constitution of the Republic of Texas had provided for the election of judges. The state constitution subsequently provided for the governor to appoint judges of the supreme court and district courts with the advice and consent of two-thirds of the Senate. This was quickly amended in 1850 to again provide for popularly elected judges. So strong was sentiment in favor of this form of judicial selection that an amendment which would have provided for even the temporary filling of vacancies by the governor failed. P.D., p. 33, n. 133, p. 56, n. 178.


20 Waller, Colossal Hamilton, pp. 15-16; Ballinger to Paschal, July 15, 1858, William Pitt Ballinger Papers, Barker Library, University of Texas.

21 Southern Intelligencer, March 31, 1858.

22 Ibid., September 1, April 28, 1858; Llerena B. Friend, Sam Houston, The Great Designer (Austin: University of Texas Press, 1969), pp. 216, 264-67. Even the anti-Houston Herald granted that the general had "earned the thanks of an outraged people" (As quoted in Friend, p. 265). Subsequently, the Intelligencer printed Houston's entire exposé of the federal judge in a series of installments. For a pro-Watrous account see Wallace Hawkins, The Case of John C. Watrous, United States Judge for Texas (Dallas: University Press, 1950).


24 Paschal, "The Last Years of Sam Houston," Harper's New Monthly Magazine, XXXII (April, 1866), p. 632; Waller, Colossal Hamilton, pp. 17-18; Paschal to Smith, May 27, 1859,
Ashbel Smith Papers, Barker Library, University of Texas. Paschal's name had been mentioned as a possible independent candidate for Congress before Hamilton announced his candidacy (Hart, "Paschal," p. 28).


26 The entire text of the speech can be found in Writings of Sam Houston, VII, pp. 345-68 (quotes on pp. 344-52, 362-65); Waller, Colossal Hamilton, pp. 17-18; Friend, Sam Houston, pp. 323-24.


28 Southern Intelligencer, September 5, 1860. Other electors were John H. Robson of Colorado County, William Stedman of Rusk County and Ben H. Epperson of Red River County (Smyrl, "Unionism," pp. 15-16).

29 Southern Intelligencer, September 5, 1860.


31 Maher, "Secession in Texas," p. 107; Smyrl, "Unionism," pp. 18-20; Barkley, History of Travis County, p. 83. F. S. Stockdale writing to Guy Bryan accurately predicted the Unionists' defeat: "Old Sam, and Paschal and Pease and Hamilton et id & etc. may take the stump and shed tears like a crocodile and harp upon the Union, these tricks are stale and no longer win." Stockdale to Bryan, October 16, 1860, Guy M. Bryan Papers, Barker Library, University of Texas Archives.
Chief Justice Wheeler, who initially thought the Court members should remain detached, was in actuality sympathetic toward secession. Justice Bell could find nothing against the right of secession, but opposed it on grounds of expediency. Maher, "Secession in Texas," pp. 110-13; Friend, Sam Houston, p. 331.


Paschal, "Last Years of Houston," p. 633; Paschal, Digest of Decisions, I, p. x.

Charles A. Culberson, "General Sam Houston and Secession," Scribner's Magazine, XXXIX (May, 1906), pp. 586-87; A. W. Terrell, "Recollections of Houston," pp. 134-35; Friend, Sam Houston, pp. 345-46; Maher, "Secession in Texas," p. 193. The two principal descriptions of this meeting are found in the articles by Terrell and Culberson, both based on reminiscences. Culberson lists those present "who are now recalled," as James W. Throckmorton, George W. Paschal, B. H. Epperson, and David B. Culberson (the author's father). According to this account, Epperson, the youngest present, urged acceptance of Lincoln's offer, while Culberson's opposite view "finally obtained with the majority of the conference." Terrell's list of participants differs in that he does not include Paschal, but rather names "Colonel Rogers," a cousin to Ben Epperson, as the fourth person. Likewise, with respect to their advice, Terrell says, "Though all were at that time opposed to secession, they each advised against resistance . . . ." Paschal's knowledge of the Lincoln-Houston exchange, as well as his accessibility as an advisor to the former governor, lend credence to Culberson's memory of Paschal's presence at the meeting.
36 Paschal, "Last Years of Houston," p. 633.

37 Irving Root who published the Southern Intelligencer along with Baker, made the following announcement upon selling his part of the paper: "The editorial department will still be conducted by George W. Paschal; a gentleman who has no superior as a writer, and a staunch and faithful Democrat, a strict adherer to the 'old landmarks.'" Southern Intelligencer, October 27, 1858.
CHAPTER THREE

THE WAR YEARS AND PASCHAL'S DIGEST

Time and experience can alone dig out the depths of the Pandora's box--which are deeper than Milton's Hell.
Paschal to Ballinger
(April 23, 1863)

Though the state of Texas was in many ways untouched by the horrors of the Civil War, individuals felt its devastating results nonetheless. Particularly was this true for the Unionists. Many of those who had fought secession in Texas so unsuccessfully, now accepted the inevitable and joined the Confederate cause. Many more simply left the state, migrating to Mexico or north toward the Union lines. For those few, who like Paschal, chose to remain in what was now an alien country, the war years involved them in personal, often daily, confrontations.

Austin in the 1860s was a different world for George Paschal than that to which he had come so optimistically in the last decade. Since his arrival in Travis County, the Texas lawyer had played a prominent role in the growth
and development of the state capital during its "era of elegance." Paschal's second marriage to Marcia Duval, daughter of a former governor of Florida, gave him an immediate entrée to town society. Dutifully he had taken his civic place on the board of directors of the Austin Literary and Library Association, the state Blind Institute, and as a volunteer member of the city's first firefighting company. As a much sought after speaker, Paschal never failed to respond to a crowd, be it temperance meeting or political barbecue. Those were the halcyon days when the object of his indulgences was a baby daughter, Betty, who "rode on the big fat pommel of the Mexican saddle," in front of her father, down rows of Austin's fine, new homes.

Secession had changed all of that. Gone were the May Balls and the invitations to speak. No longer could Paschal laugh openly as he once had at his child's "terrible secret" admission that she was an abolitionist. Forgotten too were the days when Paschal found "a degree of good breeding" in the Texas press which proved that "editors are what editors should always be, gentlemen." When in 1860 he sold the Southern Intelligencer to A. B. Norton, the Matagorda Gazette denounced the Unionist, stating that "No editor ever retired with a greater load of odium and contempt than Paschal." By the winter of 1862 attacks on the pro-
Unionist attitudes of Paschal's old paper reached a fever pitch, and Norton was forced to close down the Intelligencer office. Some of the Austin Unionists reacted to the increased threats and intimidation by organizing a home guard and defiantly drilling outside of Hancock's store. But Paschal prudently chose to devote himself fully to the law.

Paschal's law practice had flourished in the 1850s and no doubt had been aided by his political and journalistic notoriety. Recognized as an expert on land questions, the Travis County lawyer was in frequent attendance during the Austin sessions of the state supreme court, and at one time complained that he had a seven-year backlog of cases on the court's busy docket. He also devoted much of his legal talent to representing and promoting the San Antonio and Mexican Gulf Railroad, in which his brother, I. A., had invested heavily. By the time of secession, he was an acknowledged leader of the Texas bar.

But even his professional position appeared to be threatened by the war. In November, 1861, the state legislature passed a bill requiring all practicing attorneys to take an oath to support the Confederate Constitution. Apparently the law was not enforced, however, for Paschal continued to practice before the supreme court throughout
the war years, though it seems safe to assume that he never took the prescribed oath.

Much of Paschal's success in the courtroom was a result of the same personality traits that had proven to be liabilities in politics. Although not always logical, every opinion for him was a passionate conviction. Once in defending a Negro accused of murdering his wife, Paschal waxed so eloquent that local papers assumed the man was an old family slave with a claim of long service to the lawyer. But every client made claim upon Paschal as surely as every cause in which he believed. A deeply compassionate man, he possessed a concern for the less fortunate that was reminiscent of his mother and an uncommon ability to "get into the skin" of others. For a man of this temperament, the spiritual alienation and estrangement of old friends and neighbors was felt as deeply as the physical losses of war. It is perhaps for these reasons that Paschal lacked any inclination to participate actively in the fight against his native state.

As a citizen and lawyer, however, Paschal had no compunctions about battling the despotic rule to which he believed the South was now being subjected. When in the spring of 1862, the Confederate Congress passed the first national conscription law in American history, Paschal
appeared in the chambers of Chief Justice Royal Wheeler "to test the constitutionality of this declaration of military power over a state." Representing a twenty-one year old draftee, Frank Coupland, Paschal applied for a writ of habeas corpus for the release of his client who he claimed was being "illegally restrained of his liberty." Since Coupland had been arrested and charged with disloyalty prior to his enrollment in the army, Paschal took this occasion to denounce intemperately the martial law that had been imposed on Texas by the controversial Confederate commander, General Paul Octave Hebert. A rather heated exchange ensued resulting in Wheeler's refusal to hear Paschal's arguments, purportedly stating, "My mind is made up as to the constitutionality of martial law."

Getting no satisfaction from Wheeler, Paschal appealed the case to the state supreme court. In delivering the opinion for the court, Justice George F. Moore noted the "magnitude and importance, in respect both to public interest and private rights," of the constitutional questions raised by the Coupland case. Citing Vattel's *Law of Nations*, he upheld the conscript law, stating that a grant of power to make war carried with it the "necessary implication, unless expressly withheld, of the right to demand compulsory military services from the citizens."
In a fiery thirty-page dissent, Justice Bell took exception to Wheeler's statement in the original hearing which implied that martial law as it then existed in Travis County was constitutional: "That it may not be supposed that I entertain a similar opinion, I take leave to say, that nothing, in my judgment, could be a more palpable violation of the constitution and of the rights of citizens." As for conscription, since it was admitted by all that it was not expressly granted in the Confederate Constitution, Bell stated it must be proven to be necessary. Since past history and experience has shown that it is not, he concluded that conscription and the unnecessary enforcement of martial law violated the spirit of the constitution: "It was not the purpose of the people in its [government's] establishment to foster a military spirit, or to tempt their rulers to undertake those enterprises so attractive to vulgar ambition, by furnishing the means for their easy accomplishment."

In a letter to William Pitt Ballinger, Paschal rejected the argument that necessity ever justified so-called "war powers." If conscription be allowed, he wrote, "it may be exercised in peace as well as in war, under the power to raise armies and navies. And . . . the plea of necessity will be far more potent in peace than in war." Although
agreeing with his fellow Unionist in substance, Paschal felt Bell neglected the real issue, namely the inviolability of civil liberties. "The record in the Coupland case," he concluded, "does not present one tenth of the truth of the enormity perpetrated by the Chief Justice [Wheeler] in abdicating the civil authority in favor of martial law."

Evidently, Wheeler had second thoughts about the implications of his initial ruling in the conscript case. After altering the draft of the opinion three times, he announced to Bell his intention to withdraw it altogether. Subsequently Paschal learned from the Court Clerk that Wheeler had literally cut the leaves from the record book containing the original statement. In disbelief, Paschal asked Ballinger, who was reading the proofs of the pamphlet editions of Coupland, to secure a copy, "not for present use . . . [but] as a matter of history . . . to preserve the facts which prove what our records were before they were estreated." Wheeler eventually filed a second opinion in which he defended his earlier action. Citing Luther v. Borden, he explained that "as a single judge in vacation, I did not think it proper to pronounce against the authority of congress to declare or authorize . . . martial law."
Denying that he ever intended to exalt the military above civil authority, he said the difficulty lay in defining martial law.

By the time the supreme court considered the Coupland case, Paschal had himself been arrested by the Travis County provost-marshal and charged with disloyalty. In the subsequent military commission trial, all that could be proved against the Austin Unionist was culpable neglect to render his property for assessment and consequent failure to pay the Confederate war tax. For this he suffered the penalty of the law which required forced sale of the property and the imposition of a double tax. The judge-advocate recorded privately that the nature of Paschal's disloyalty was "so peculiarly and completely within the province of the civil authorities," that there was no case for the action of the military tribunal. In later years Paschal commented on his seizure in relation to the Court's stand in Coupland: "I deplored, not my own danger before a military commission so much as the fact that I could not invoke the head of the judiciary in behalf of civil liberty."

It was not the last time that Paschal would be hauled before a military court or would argue against the conscript laws before the state supreme court. But his confrontation
with Wheeler over the Coupland case, followed by his own arrest several days later, left a deep impression on Paschal, who became more convinced than ever of the disastrous course upon which all were embarked:

The whole "policy" seems to be to declare that every free man belongs body, soul, and blood to the Confederate Corporation (our sensitive South Carolina school will not allow that it is a government) or to the magistrates in power; to entail upon us a countless debt; to impress; suspend the Habeas Corpus, and all civil authority . . . . The revolution . . . is an "accomplished act." The people who have no choice as to whether they shall be soldiers or not, who shall be their officers, . . . or for or against what cause they shall fight; who may be arrested any day by martial law; whose property may be taken by any corporal and without law . . . have already lost the great cardinal principles of civil liberty and worse subjugation could only exist in name, not in fact. The subordinate rights were all lost when the halls of justice were closed.20

Despite his growing melancholy, Paschal never abandoned his faith that the rule of law would prevail. From the earliest days of the war, he had expressed concern over the chaotic legal conditions. Not only were the civil courts closed, but publication of all court reports had ceased: "It was hard enough to keep the Court within bounds when the decisions were reported. What we shall have when they are dependent upon memorys [sic] and upon
records, subject to be expunged, Heaven knows." Confident, however, that sanity would return he began to digest and arrange the laws of Texas "so that they might be ready for those with whom the laws were silent amidst arms, when the madness of the hour should have spent itself."

The need for codification, or a systemization of the law, had been from colonial days a philosophical as well as a practical issue in American legal history. At the ideological heart of the controversy was, in Miller's words, "a dispute over the identity of the nation . . . a contest between nationalism and cosmopolitanism." On the one hand, supporters of the common law viewed it as the legitimate antecedent to free government--an essential link with European civilization despite its uniquely American application. Evolving out of actual experience, customary law, they argued, was founded upon a pure reason and natural justice that could not be reduced to legislative formulas. Opponents of the Anglo-American system, however, were hostile to its English origins and skeptical of the justice of judge-made law. Common law defenders were condemned as elitists, and legal reformers like Robert Rantoul demanded that "all American law must be statute law," passed by legislatures who "speak the public voice."
The rise of Jacksonian democracy added new dimensions to the debates over codification. Now the bastions of aristocracy were attacked from within as egalitarianism permeated the legal profession. With the popular election of judges and the lowering of bar admission standards, the philosophical implications of who was going to interpret the law became all the more important for the Whig remnants of Federalistic influences. But the majority of lawyers were concerned with the practical problems of standardizing complicated procedures and simply mastering the fantastic proliferation of printed sources of the law. As a result, codification "arrived through the back door" by legislative revision and consolidation of the common law rather than by adoption of a uniform code.

Among Texas lawyers there was little controversy, for without some form of systemization, the courts of law were hopelessly muddled. As Paschal described it,

Here was a country, the rights of whose inhabitants had grown up under the great system of the civil laws of Spain, as modified by Mexico; the revolutionists had engrafted upon this some of the modifications of the same system by Louisiana, which are largely copied from the Code Napoleon: mixed with these were now the common law, as to criminal jurisprudence and evidence. To administer these grand systems judges were appointed, with
original jurisdiction over every manner of controversy, and an appellate jurisdiction, based upon the ideas of the Court of King's Bench. 24

The complexity of the problem had been recognized from the start. The state constitutions of 1836 and 1845 both included provisions for the establishment of a penal code and for the subsequent revision, digestion, and arrangement of all civil and criminal laws. But though the general statutes were compiled and digested in 1845 and again in 1850, it wasn't until 1857 that the state fulfilled the constitutional requirement for a penal code and code of criminal procedure. Two years later, Williamson Oldham and George W. White published an authorized digest of the general statute laws of Texas, and under contract, the state purchased 5,000 copies. The political developments of the following months, however, soon relegated the work to the level of "rubbish," for with secession, Texas underwent the fourth and most significant revolution in its brief history.

The idea of compiling and digesting the laws of Texas had occurred to Paschal long before anyone could have fully comprehended the constitutional implications of the war. Through the pages of the Intelligencer, he had long advocated the need for codification, as well as his
willingness to undertake such a project. In December, 1861, a memorial relating to a state contract for the publishing of Paschal's proposed digest was referred to the senate judiciary committee. The following month the committee reported that though they were "much pleased with the plan and arrangement . . . and [had] great confidence in [Paschal's] fitness for the work," they could not recommend the contract to the state, feeling "it more proper to leave the matter open for laudable competition," meaning no doubt better Confederates.

Although he continued to hope for eventual adoption, Paschal proceeded with the digest on his own. The war years offered him the necessary leisure to undertake such a task, since his law practice suffered from his publicly-avowed Unionism. But Paschal was also motivated by the belief that past efforts at digesting the laws were not adequate to the lawyers' needs.

The first true compilation or digest of the general laws of Texas had been published in 1850 by a Galveston lawyer, Oliver C. Hartley. According to the preface in Paschal's later digest, it was shortly after the appearance of this edition that he recognized the need for a different arrangement. In an attempt to bring order
to the then undigested Texas laws, Hartley had presented each section of the laws as a separate article, numbering them consecutively. It became accepted practice among lawyers and reporters to cite Hartley's arbitrary article number when quoting statutes, rather than the date and section of the original act. While crediting Hartley with "a convenient arrangement, which foreshadowed a much needed codification," Paschal immediately saw the future danger in such a system. Once the work was out of print, Paschal noted, "the Reports were often consulted in vain, for information as to what particular section of law had been construed by the court." Furthermore, Hartley's volume contained few cross-references and made no distinction between repealed laws and laws in force, except in case of statutory repeal, and even that might be located hundreds of articles from the original statute.

Ironically (or predictably) the one digest of this early period to receive official state support was the poorest edition. Oldham and White's work of 1859 omitted entirely the descriptive captions of the acts and references to the session volumes and page numbers, substituting its own internal numbering system. "Confusion was thus growing worse confounded," stated Paschal, "even while our laws were being administered, and our Reports yearly
published." Following a common practice among lawyers in the nineteenth century, Paschal had Hartley's *Digest* rebound in interleaved volumes allowing him space to note repeals, amendments, and new laws. These annotations, along with records he had kept while editing the *Intelligencer*, provided the basis for his own digest.

The first volume of Paschal's *Digest* appeared in October, 1866, and was an accomplishment of massive proportions. The digest's plan was advertised by the publisher to be "unlike any law book ever printed in America." Paschal proposed to place the law in force, the repealed law, and any notes concerning changes in judicial construction side by side. "The object has been at all times," he stated, "to give the old law, the mischief, and the remedy, in the same view." Beginning with an annotated United States Constitution (whose notes admittedly were taken mostly from Brightley's edition), Paschal also appended annotated versions of the Constitution of the Republic of Texas, the Articles of Annexation, the Constitution of 1845, the Ordinances of Secession, and both the provisional and permanent Confederate Constitutions. To this he added the recently adopted state ordinances and constitution of the convention of 1866. All of this before he even began the digest of statutes!
In the digest itself, Paschal gave particular attention to the land title laws that had been the subject of such fierce litigation. In addition to including the Colonization Laws of 1823, the Laws of Coahuila and Texas, and Tamaulipas, and the Laws of the Republic, Paschal described the boundaries, old and new, of every county and former colony in the state. Further to enhance its usefulness to the profession, the digest had a complete index as well as numerous marginal notes "intended to be a constantly speaking Index." Consistent with Paschal's object of unification, page references to Hartley and Oldham and White's earlier digests were given wherever applicable. Another indication of the depth of Paschal's work is the fact that approximately 5000 cases were included in the table of cases.

In short, Paschal's Digest was a remarkable achievement in codification, whose usefulness was eagerly anticipated by the profession. In a letter to Provisional Governor Hamilton, a year before the book's release, F. S. Stockdale, a bitter political enemy of Paschal, urged state adoption of the digest. Subsequently, Hamilton issued an official statement, which was included in the digest's frontispiece, granting his approval to Paschal's
work. Though he declined to usurp the legislature's right of subscription, Hamilton promised to recommend it, stating, "I doubt not but the work will commend itself to the public, so as to insure a liberal subscription and appropriation by the State." Although Hamilton was true to his promise, the state legislature continued to disappoint Paschal financially.

The failure of the lawmakers to act on these numerous requests was partially, if not wholly, attributable to political developments. By the time of the digest's release, presidential reconstruction was under way in Texas, and the Paschal-Hamilton faction was out of power. The apparent ingratitude on the part of his native state was only the first in a long line of political and professional disappointments which would cause an embittered Paschal to join ranks with the radicals. Writing to former Governor E. M. Pease, Paschal related that though Governor Throckmorton recommended the work for subscription, a political confidant informed him that success was doubtful. Paschal added, pessimistically, "I believe it is more than doubtful. I expect not my reward in this generation. The work will be needed half a century hence. Perhaps then, the author will stand better than now. 'tis consoling to know that I have done my work well."
National response to Paschal's publication attested to the truth of the author's statement. The American Law Review, whose book notices were characterized by another law journal as "fearless and impartial," gave the first volume of the digest an extremely favorable review. Stating that the book was "evidently the result of great labor," the editor found it to be of great value "to those anywhere desirous of learning the law of Texas." The review closed with what was by now a swelling chorus of pleas, "that Judge Paschal . . . be remunerated for the faithful labor bestowed on this book." With the release of the second edition in 1868, Washington's leading law book publisher, W. H. & O. H. Morrison, listed Paschal's work as "universally admitted to be the best arranged and most exhaustive Digest in the United States." By 1875, the digest had been through five editions, each containing the necessary revisions to cover the military acts, Reconstruction Acts, and the new Constitutional amendments. When the Constitutional Convention of 1875 met to draw up our present state constitution, the members were furnished with a copy of Paschal's Digest. As late as 1949, an associate justice of the Texas Supreme Court described the result of Paschal's labors as "a first-rate,
scientifically arranged, indexed and annotated compilation of Texas statutes."

The codification of the Texas laws meant a new era in which the "pettifogger" was replaced by the practitioner. "The old lawyers may not realize," Paschal wrote, "that a large number of young gentlemen are growing familiar with this system and no other; that the very legal minds of the country are becoming stereotyped by fixed pages and numbers, until what was chaos in many minds, has become digested science in hundreds of others." Ironically, Paschal had succeeded in bringing order to Texas laws during the period of greatest disruption. But in a deeper sense, it was a tribute to his commitment to the rule of law. "The long, heroic struggle" of Marshall and Story would not be lost on the Texas frontier.
NOTES

1 Prominent among those Unionists who cooperated with the Confederate government was J. W. Throckmorton, later conservative Reconstruction governor. A. J. Hamilton and E. J. Davis were among those who left and joined Union forces. In addition to Paschal and his brother, I. A., former governor E. M. Pease, James H. Bell, Swante Palm, and the Hancock brothers (John and George) were other leading Unionists who remained in Texas throughout the war years. James Newcomb, editor of San Antonio's pro-Union Alamo Express was one who left the state for California but returned at the end of the war. Dale A. Somers, "James P. Newcomb: The Making of a Radical," Southwestern Historical Quarterly, LXXII (April, 1969), p. 460; Lubbock, Six Decades in Texas, p. 314; Elliott, "Union Sentiment," pp. 450-52; Felgar, "Texas in the War," p. 326; Hart, "Paschal," p. 29.

2 Marcia Duval's father was William P. Duval. The Duvals were an old aristocratic family from Virginia. Paschal's daughter later wrote that the fact that George Paschal, Sr. had been a shopkeeper "was considered a terrible blot on the family escutcheon. No Duval had ever even scented trade. . . . Consequently, at an early age I was taught that I must combat the plebian blood which came to me from my father's side of the family." Not only did Betty Paschal inherit "the Paschal freckles," "large, plebian ears," and "the Paschal foot," but "at an early age . . . evinced certain democratic tendencies that had to be combated with might and main." O'Connor, I Myself, pp. 6-7, 48, 51; Helen Beall Houston Memoirs, Barker Library, University of Texas Archives, pp. 44-45; Hart, "Paschal," p. 24n.

3 Betty Paschal, who later married the Irish writer-politician, T. P. O'Connor, wrote in her memoirs that by the time she was five years old, her father had spent three thousand dollars on toys for her (I Myself, pp. 36-37). Southern Intelligencer, April 22, 1857; Barkley, History of Travis County, pp. 67, 163, 231-32.
Southern Intelligencer, April 15, April 22, 1857; O'Connor, I Myself, pp. 16-17.

Felgar, "Texas in the War," pp. 40-43; Gazette as quoted in Maher, "Secession in Texas," pp. 85-86; Barkley, History of Travis County, p. 211. A. B. Norton was as staunch a Unionist as Paschal. The Southern Intelligencer was condemned by the Texas Republican (Marshall) as an abolitionist paper. The Marshall paper asked, "Ought such treasonable, mendacious sheets as the Austin Intelligencer be allowed to exist in our State?" (As quoted in Smyrl, "Unionism," p. 101). Norton resumed printing the paper in 1866 until selling it to A. H. Longley and Morgan C. Hamilton in 1867. As the Austin Republican, it was the leading newspaper for the state's radical Republicans until it was discontinued in 1871. Paul Casdorph, A History of the Republican Party in Texas, 1865-1965 (Austin: Pemberton Press, 1965), p. 6.

Among those reported as members were Judges James H. Bell and Thomas H. Duval, A. J. and Morgan Hamilton, and E. M. Pease. Hartley, History of Travis County, p. 88.

Southern Intelligencer, April 1, 1857. Volumes of the Texas Reports for these years abound with litigants represented by "T. A. & Geo. W. Paschal."

Southern Intelligencer, February 18, 1857.

Numerous instances reported in the Intelligencer attest to Paschal's prominence in bar affairs. The following two examples are representative. After the tragic death of Senator Thomas Rusk in 1857, Paschal chaired a meeting of the Texas bar to pass appropriate resolutions. Likewise, he was a frequent member of the examination committee for admission to supreme court practice. Southern Intelligencer, November 19, 1856, October 28, 1857.
10 Senate Bill 4 (approved November 27, 1861) entitled, "A bill to require practicing lawyers to take an oath to support the constitution of Texas and of the Confederate States." Gammel's Laws of Texas, V, pp. 447-48; P. D., p. 136, n. 271. The assumption that Paschal didn't take the oath is based on the available records and his own intransigence with regard to secession. His brother, I. A., also refused to take the oath. In a letter to Colonel Henry McCulloch, W. T. Mechling of San Antonio described the following incident: "We had quite an excitement here yesterday swearing in the lawyers. Paschal swore he would wade in blood first." Mechling to McCulloch, April 7, 1861, Edward Clark Correspondence, Governors' Papers, Texas State Archives.

11 O'Connor, I Myself, pp. 11-15, 63. According to his daughter's memoirs, this was the only murder case Paschal ever lost. But this writer found no record of any criminal cases defended by Paschal during his Texas career.

12 Paschal was designated collector of direct taxes for the United States government in 1862, but it was obviously only a titular appointment (From the Journal of the Executive Proceedings of the Senate of the U. S. as noted in the Andrew Forest Muir Papers, Box 21, Rice University Archives). His oldest son, George W. Paschal, Jr., escaped from Galveston to the Union forces that were blockading the port in 1862. He then served as a Lt. Colonel in the 2nd Texas Cavalry [Union]. Francis B. Heitman, Historical Register and Dictionary of the United States Army, II (Washington: Government Printing Office, 1903), p. 135; McNeir, Forest McNeir, pp. 22-23; War of the Rebellion Official Records, Series II, vol. IV, p. 890.

to 28th volume of *Texas Reports*, p. vi.

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26 Tex. 406, 424; P. D., pp. 88-89, n. 217. With regard to Bell's dissent, Ballinger recorded the following entry in his diary: "Wheeler says Bell dissented in an opinion over 40 pages on the [un]constitutionality of the law of conscription. Says he counsels with Paschal & feels bitterly. I have been & continue strongly attached to Bell, but do not believe he has the proper feelings of a patriot. He has indulged in personal considerations and resentments until they have clouded his judgment and swayed his feelings." *Ballinger Diary, January 17, 1863*, Barker Library, University of Texas Archives.

17

Paschal to Ballinger, April 23, May 1, 1863, *Ballinger Papers*, Barker Library, University of Texas Archives.

18

Paschal to Ballinger, April 23, 1863; 26 Tex. 430-35.

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Paschal to Ballinger, May 1, 1863.

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Paschal to Ballinger, May 4, 1863; Paschal, Address to the People of Texas, p. 7.

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Maxwell Bloomfield, "William Sampson and the Codifiers: The Roots of American Legal Reform," American Journal of Legal History, XI (July, 1967), pp. 249-52; Charles M. Haar, ed., The Golden Age of American Law (New York: George Braziller, 1965), p. 209. Achievements made in this direction have traditionally been viewed as an effort to stem the tide of democratization in the legal profession, placing great emphasis on the legal writings of Story and Kent as instrumental in saving the common law (See Aumann, Changing American Legal System, passim; Pound, The Formative Era, passim; Miller, Life of the Mind, passim). But as I have suggested previously, it is more likely that the democratization process was not only causal, but had an immense effect in its own right (See Chapter One, pp. 13-16).

24

Paschal, Digest of Decisions, I, p. viii.

25

John and Henry Sayles, Revised Civil Statutes and Laws Passed by the 16th, 17th, 18th, 19th, & 20th Legislatures of the State of Texas (St. Louis: Gilbert Book Co., 1888), p. v. In 1870, in his report to incoming Governor E. J. Davis, Secretary of State James P. Newcomb subtitled one section, "Oldham and White's Digest and other rubbish." Under this heading he described how he had found large quantities of the digest along with other printed matter of a "worthless character," and suggested "the propriety of calling the early attention of the Legislature to the necessity of appointing a committee to examine this mass of rubbish," for purposes of disposal. Inaugural Address and Message of Governor Edmund J.
Davis, to the Legislature, State of Texas, with Accompanying Documents (Austin: Tracy, Siemering & Co., 1870).


27 P. D., I, p. iii. An earlier work by James Dallam was an invaluable, indeed the only, source for the period of the Republic, but it was more in the form of reports, containing the opinions of the Supreme Court of Texas. A digest normally combines the material of several sources and groups the information under various titles or headings. It is distinguished from an abridgement, which normally is a shortened version of a single source of law, or an index, which merely lists various sources for information. Today a digest is also assumed to have its own internal system of classification and arrangement.

28 Ibid.

29 Ibid., p. iv.

30 Baker, Voorhis, & Co. advertisement, Graham-Pease Collection, Austin Public Library; P. D., I, p. iv; Southern Intelligencer, July 5, 1865.

31 F. S. Stockdale to A. J. Hamilton, August 11, 1865, Hamilton Papers, Texas State Archives; P. D., I, p. ii. In a memorial to the Legislature dated August 6, 1866, Paschal proposed to sell 5,000 copies to the state for $30,000. But as he predicted in a letter to Pease it did not pass. Hart,"Paschal," p. 32n. In his biography of Hamilton, Waller reported that Hamilton subsequently "sponsored, and spent considerable time in working for . . . a proposal that the convention authorize the purchase of 3,500 copies" of the digest. Waller, Colossal Hamilton, p. 117.
32

Paschal to E. M. Pease, October 11, 1866, Graham-Pease Collection, Austin Public Library.

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P. D., II, p. v.
CHAPTER FOUR

LAW AND REUNION: TEXAS v. WHITE

The issue of state sovereignty had been festering on the body politic since the constitutional debates of 1787. Not restricted to a particular section or party, the philosophy properly belonged to an entire age, a legacy of "the lost world of Thomas Jefferson." The failure of secession expurgated this "pregnant source of confusion" from the mind of mid-nineteenth century America. But the posture of sovereignty remained, for Lincoln admittedly had fought the war to preserve a union of states. In the post-war years as the executive and legislative branches of the federal government struggled with various theories of reconstruction, the old rhetoric threatened once more to invade the national thinking.

With the passage of the Reconstruction amendments, the country's nationalistic urge seemed spent, and there was increasing sentiment to embrace the conservative doctrine of "the Constitution as it is, the Union as it
was." But in a nation committed to the rule of law, reunion was more than a mere political problem. Ultimately, as Tocqueville had predicted, it would fall on the judiciary to put the American "Humpty-Dumpty" back together again. After several abortive attempts, the Supreme Court found an opportunity in Texas v. White to affirm in law what had been decided militarily, namely that the Union was indestructible. George Paschal, more than any other man, was the architect of the Court's landmark decision. Devoting more than a decade of his life to the famous Texas indemnity bond case, Paschal argued for the vindication of a theory of the Union upon which he and countless others had staked their political and professional lives. A spectator for the duration of the war, he now won the final victory on the only battlefield he knew or acknowledged, a court of law.

At the conclusion of the war, A. J. Hamilton was appointed provisional governor of Texas by President Andrew Johnson. His instructions were to restore a loyal civilian government to the state by the calling of a constitutional convention as soon as possible. Returning to Texas in August of 1865, Hamilton found the state's financial situation chaotic and ordered ex-Governor E. M.
Pease and Swante Palm to report on the condition of the state treasury. Their investigation revealed that a large number of United States indemnity bonds were missing from the state school fund. The bonds had originally been part of the $10,000,000 paid to Texas by the United States as provided in the Compromise of 1850. In return for the funds, Texas had relinquished certain territorial claims to the Mexican Cession. In 1854, the Texas legislature set aside two million dollars of the bonds "for the support and maintenance of public schools." Two years later an act was passed creating an *ex officio* board of commissioners, consisting of the governor, comptroller, and attorney-general, and granting it authority to invest the bonds from the special fund into state chartered railroad companies. As a result of a rather liberal lending policy, the fund contained only about $800,000 when the war broke out.

Confederate Secretary of the Treasury Judah P. Benjamin was one of the first to recognize the potential of the Texas indemnity bonds for the southern cause. In December, 1861, he suggested to Governor F. R. Lubbock an exchange of the school funds for eight percent Confederate bonds, and on January 13, 1862, a representative of the Davis
administration received 100 of the Texas bonds. Perhaps anticipating legal complications regarding negotiability, Benjamin had a change of heart shortly thereafter, and returned the bonds stating that he had no authority to make the exchange. But he did promise to purchase any military supplies which Texas might procure through their sale.

The group ultimately responsible for the removal of the bonds from the school fund was the Texas Military Board, created by the state legislature in response to Benjamin's proposal. By the end of the war, the Board had disposed of $634,000 in bonds and $132,700 in coupons. One of their last transactions involved the transfer of 135 of the bonds to George W. White and John Chiles in return for the delivery of 25,000 cotton cards and some medicines. It was in an effort to recover these bonds that, on August 30, 1865, Hamilton appointed Paschal to act as agent for the state and ordered him to Washington at once to institute proceedings against the present bondholders.

Paschal was a logical choice for the assignment since his wartime activities did not bar him from taking the iron-clad oath. In addition to his close political
association with Jack Hamilton, he had already shown an interest in protecting the school fund even while the war was still in progress. Writing to Secretary of the Treasury Salmon Chase in February, 1862, Paschal had warned of Confederate attempts to expropriate the bonds to aid in financing the war. He further pointed out that should the illegally seized bonds be presented for collection, they could be recognized by the absence of the governor's endorsement. Acting on Paschal's advice, the Secretary did temporarily suspend payment on the indemnity bonds.

Arriving in Washington in mid-September, 1865, Paschal recognized the need for quick action in pressing Texas's case. Explaining the situation as he found it, Paschal wrote to Hamilton: "The order of Mr. Chase not to pay had been rescinded; and a rule established, that where an innocent purchaser had received the bonds through the hands of a loyal citizen, and the holder was also loyal, the bonds would be paid. Under this order a great deal has been paid." Paschal went on to say that as a result of this policy, White's brother, John P. White, had already drawn $10,000 in gold upon a portion of the bonds. Even more alarming to the Texas lawyer was the fact that George White, himself, had reportedly been granted a presi-
dential pardon on the day of Paschal's arrival. The Second Confiscation Act of 1862 had provided for the seizure of enemy property, but did Johnson's pardon now expunge White's record of Confederate complicity? Of even greater significance to the success of Paschal's case, however, was the question of the effect of the war upon the state's ability to sue White in a federal court for the recovery of the bonds.

The issue of Texas's standing in court was part of the larger legal debate over the nature of the war itself. Since Lincoln would maintain throughout the war that secession was not constitutionally possible, he was careful initially to avoid acts which in terms of international law would grant recognition to the Confederates. Ultimately, military and diplomatic considerations forced him to abandon his theory in practice. His dualistic approach received support from the Supreme Court when, in the Prize cases, the majority opinion held that what had begun as an insurrection had reached sufficient proportions as to constitute war. In sustaining Lincoln's use of war powers, however, the Court was forced to recognize the Davis administration as a belligerent, which implied the existence of at least a de facto government. But the Court
made it clear that this admission was one of fact, not legitimacy. Columbia professor Francis Lieber was careful to make a similar dichotomy when he was commissioned to write a military field code for the Union forces.

In the resulting General Orders No. 100, commanders were encouraged to distinguish loyal from disloyal citizens in occupied territory, even though the code stated that natives of the seceded states were to be regarded in the general class of "enemy." Thus the legal and practical views on the nature of the hostilities remained somewhat antithetical, while the exigencies of war pushed aside theoretical considerations.

At the conclusion of the war, the debates resumed as President Johnson and Congress wrestled with the problem of reconstruction. Angered by signs of southern recalcitrance, Congress rejected Johnson's presidential plan whereby loyal governments under provisional heads were to be restored quickly to full constitutional privileges, and instead, began to invoke much of the same logic which led to an expansion of the executive war powers, to support its own reconstruction plan. The two basic theories were advanced by Charles Sumner in the Senate and Thaddeus Stevens in the House of Representatives. While the Massachusetts senator argued that the southern states had
committed political suicide by the act of secession, Stevens simply pointed to the conduct of the war to support his own view that the former states were merely conquered provinces.

The net effect of the two theories was the same—the seceded states had no legal standing until Congress should determine the grounds for their readmission. In the end, congressional authority prevailed, though a moderate "forfeited-rights" theory actually governed the subsequent Reconstruction Acts. The constitutionality of these acts was unsuccessfully challenged by two southern states before the Supreme Court, in Texas v. White, would declare itself in harmony with the dominate Republican policy.

Congressional and presidential rivalry, however, was just beginning to take shape at the time of Paschal's arrival in the fall of 1865. He nevertheless demonstrated an early awareness of the sensitive political questions involved in the Texas case. When he filed an initial protest with the Treasury Department against its redemption of the bonds, Paschal was careful to request suspension of payment in the name of Hamilton's provisional government rather than the state.
For the time being the disposition of the matter rested with the Comptroller of the United States Treasury, R. W. Tayler, who had already issued a detailed statement in connection with an earlier Texas bond case referred to his department. The carefully reasoned report was allegedly supported by Attorney General James Speed and was responsible for the reversal of departmental policy alluded to by Paschal in his letter to Hamilton. In this respect, Tayler's assessment, covering much of the same constitutional ground as Paschal's pilgrimage three years later in the Texas v. White briefs, established important precedents with regard to the Texas bonds.

Tayler's report declared that the Texas statute requiring the endorsement of the governor and the subsequent act by the Confederate state legislature repealing this requirement, "had no legal effect upon the [original] character of the bonds, and in nowise impaired or restricted their negotiability," with or without the signature. The Comptroller's statement further recognized the de facto legitimacy of the Confederate authorities in "the regular discharge of local powers, not directly connected with the rebellion . . . ." Foreshadowing the later decision by the Supreme Court, Tayler described the effect
of the rebellion upon the status of a state within the Union. Pointing out that all congressional enactments concerning the war had dealt with "persons" or "rebels," rather than States, Tayler concluded that "By the treason of her officers, a State did not lose its identity or cease to be a State."

If endorsement was not required and the Confederate state government could lawfully pass title, there was only one avenue of recovery left—confiscation. But Tayler effectively blocked this line of reasoning by construing narrowly the term "property" under the Confiscation Act of 1862 to include "only visible, tangible property, and not moneys . . . ." In concluding his recommendation for payment of the bonds, Tayler stated that if the provisional government or any subsequent government of Texas sought to confiscate the bonds, the burden of proof would rest with that government. "But I presume no intention to confiscate them is entertained," he predicted, for "the confiscation of its own indebtedness by a Government is without precedent, and would be of doubtful policy at best." Paschal's appearance in Washington, however, belied this assumption.

Paschal was aware of the Comptroller's opinion and
indeed found much of it in accord with his own views. The unofficial support which the report gave to the theory that all acts of the Confederate state government not in conflict with the Constitution of the United States were valid, was of particular significance since the Hamilton provisional government had been acting in accordance with this as yet unsettled principle. In an open letter to the *Southern Intelligencer*, Paschal called Tayler's statement to the attention of the people of Texas: "The opinion is supported by very high authorities, and I doubt not but the judicial will follow the political action; and this will become the settled law upon the subject."

In other ways the Treasury Department's policy was not as devastating to Texas's pending cause as it might appear. The specific case which had elicited Tayler's opinion involved bonds which had been loaned to the Southern Pacific Railroad *after* secession, but based on a contract made *before* the ordinances were adopted. As a result, there was little doubt that the parties acted in good faith, nor was there any question of aid to the rebellion. Taking his cue from the Comptroller's report, Paschal set out to establish the falsity of White and Chiles's claim to the school fund bonds.
In a long letter to Tayler, Paschal enumerated the salient facts in reference to Texas's request that the Treasury stop payments on the bonds. Beginning with the Texas statute requiring endorsement of the bonds, Paschal argued that "no dealer could fairly complain of ignorance of that act, because the bonds being payable to a political corporation, every prudent man, would inquire by what authority the State parted with its possession . . . . To say the very least, . . . such laws put the purchasers upon notice." To demonstrate additional fraud on the part of White and Chiles, Paschal stated that nothing had ever been delivered or returned upon the receipt from the Military Board dated March 12, 1865, in the amount of $156,287.50. Thus White as an agent for the state acted in bad faith and could not legally pass title to the bonds.

After accounting for additional bonds believed to be held by illegal parties, Paschal made an impassioned plea for "equity in the matter in favor of those who could not have offended." Recalling the purposes for which the indemnity bonds had originally been intended, he described the indigent--and now by virtue of the war, fatherless--children who "find that the means of their education has been diverted by conspirators against the liberal Government which gave it [the fund] to Texas, and placed in the
hands of speculators and faithless agents, who have appropriated it, or hypothecated it, to their own use." In conclusion, Paschal shrewdly linked the recovery of the bonds with the support of the loyal Hamilton government in Texas.

Though there can be little doubt of the ardor of Paschal's efforts to recover the bonds, Governor Hamilton's loyalties in this whole affair seem ambiguous and on the surface, downright fraudulent. In the subsequent litigation both White and Chiles charged that Hamilton had accepted a retainer of $10,750 to aid them in the collection of $135,000 worth of the bonds at the U. S. Treasury. To support this allegation, they produced a letter signed by Hamilton giving his assurance that the bonds were good and would be redeemed. The letter was addressed to a friend of Hamilton's, J. R. Barret, to whom Chiles was offering the bonds as collateral for a loan. Postmarked New York, and dated June 25, 1865, the letter read: "In reply to your question about Texas indemnity bonds issued by the U. S., I can assure you that they are perfectly good, and the gov't will certainly pay them to the holders." Not only was the letter sufficient evidence to secure the loan for Chiles, but at his request, Barret passed Hamilton's endorsement on to the firm of Birch, Murray &
Company for purposes of securing a second loan for Chiles.

In his report to the Comptroller, Paschal defended the governor's premature action, stating that at the time Hamilton expressed this opinion there was no way he could have been apprised of the circumstances surrounding White and Chiles's possession of the bonds. Paschal, however, was taking no chance that such an erroneous impression might jeopardize the case he was building. On October 10th an advertisement under the heading of "Caution to the Public," appeared in the New York Tribune's financial section, warning that the Texas bonds had been illegally seized and that payment would be contested. Although the advertisement was ostensibly signed by "A. J. Hamilton, Provisional Governor of Texas," Paschal was responsible for its appearance.

On the same day, Paschal made a hasty direct appeal to Secretary of the Treasury Hugh McCulloch, explaining that "a severe family affliction calls me immediately home." Reiterating the points he had discussed with Tayler, Paschal concluded with the following request: "Through you I respectfully ask the President that Geo. W. White and Jno. Chiles may be brought before you and made to surrender the bonds, many of which are doubtless
under their control, or else that they be arrested and sent to Texas." No action, however, was taken on the petition.

Political events in Texas temporarily interrupted Paschal's involvement in the case at this point. By mid-November, 1865, a majority of Texas voters had qualified and registered under the terms of presidential reconstruction, and a constitutional convention was called for early February, 1866. The convention subsequently passed a general ordinance concerning the recovery of the bonds in connection with other state indebtedness and authorized the provisional state government comptroller, Robert H. Taylor, to proceed to Washington to deal with related matters. The issue of the Texas bonds was still pending when in October the state legislature authorized newly-elected Governor J. W. Throckmorton to appoint an agent for the state. During Throckmorton's brief administration, conservative-Unionist Ben H. Epperson and state attorney-general William M. Walton, served as official legal representatives in the bond case. Paschal's appointment as agent was renewed, however, when under congressional reconstruction, Texas was made part of the fifth military district, and E. M. Pease was appointed governor by General Philip Sheridan in July, 1867.
By the winter of 1867, the issue of the Texas bonds had been in abeyance for almost two years. Under pressure from the bondholders, Comptroller Tayler issued a statement on January 29th recommending that the bonds be paid unless the Texas agents took proper legal steps within the week. On February 15th, Paschal filed a petition styled "Texas v. White et al.," as an original bill in equity before the Supreme Court. Several days later, Throckmorton's agents instituted a personal suit against Secretary McCulloch to halt collection on the bonds, but this case was promptly dismissed. It was apparently at this juncture that a number of the bonds were redeemed, including those belonging to John Hardenberg. Nevertheless, McCulloch and his department were still hesitant about the ultimate legal outcome. As a result, the Secretary made an agreement with Hardenberg whereby a number of U. S. "seven-thirties," equivalent to the amount in the Texas bonds, would be placed in trust for McCulloch should the Court hold him or the Treasury Department accountable for the redemption.

Swamped with a backlog of cases, however, the Supreme Court did not get around to hearing the Texas case until the December term of 1868. In a lengthy brief for the
state of Texas, Paschal rested his plea for an injunction to halt payment of the bonds on four basic assumptions: 1) That the bonds were seized by an illegal government having no right of title to the bonds; 2) that the bonds were confiscated in contravention to the original purpose of the funds as established by the state legislature, and sold in pursuance of armed rebellion against the United States; 3) that the contract between the illegal government and White and Chiles was further void in that the agreed upon cotton cards and medicines were never delivered; 4) that none of the subsequent purchasers held any better legal title than the original possessors of the bonds. Carefully avoiding the major political pitfalls which had befallen Georgia v. Stanton and Mississippi v. Johnson, the Texas lawyer offered a variety of technical "hooks" upon which the Court might hang the provisional government's claim.

The question of the provisional government's legal standing and concomitant right to bring suit in the Supreme Court came dangerously close to involving the justices in the kind of political questions they had refused to tackle in the Georgia and Mississippi cases. According to the Reconstruction Acts, no legal government existed in Texas.
By allowing the Hamilton government to bring suit, the judicial branch would appear to be contradicting the legislative assessment of conditions in the southern states. Recognizing the potential threat to his case, Paschal adroitly bypassed the political question:

I need not pause to consider whether a provisional government is, or is not, under the circumstances, consistent with the corporate relations of the State to the Union. As I understand it, Texas remained a State of the Union all the time, and Congress possesses the power to pass all necessary legislation to protect every inhabitant in the United States in all his rights of citizenship in Texas. And, this being a power, Congress must judge of the most appropriate means to guard and protect the powers committed to the Union. But whether the reconstruction laws be constitutional or not, is wholly immaterial to this argument; for, if we take them away, then Texas is a corporate State under the constitution of 1866, which for all practical purposes, is now the basis of the State government; and, should we take away that constitution, then we fall back to the constitution of 1845, and the act of annexation, and Texas remains a State of the Union.29

In his argument, Paschal repeatedly maintained that Texas had never left the Union. Recounting the history of Texas's struggle for independence and eventual annexation, he unequivocally advanced a constitutional theory "at war with the notion, that the State of Texas could resume what
the people of the republic of Texas had surrendered."
Rather, the state retained its corporate existence and
as such remained "the mere trustee of the fund, which
was held for the use and benefit of the poor children of
the State. . . . The rights of the cestui que trust, born
and unborn, could not be defeated by the treason of the
assumed administrators of the powers of the trustee."

Whether the acts of the rebel legislature be declared
void ab initio, as desired by the radicals in Texas, or
whether they be accepted as the result of a de facto or
de jure government was, in Paschal's view, inconsequential
to the state's case. All authorities, including the
supreme courts of the seceded states themselves, were in
agreement, he stated, that acts in aid of the rebellion
were void. Texas law required that "every law enacted by
the legislature shall embrace but one object, and that shall
be expressed in the title." The statute which established
the Military Board clearly, according to the state's counsel,
had only one purpose as set out in its title--"to provide
arms and ammunition and for the manufacture of arms and
ordnance for the military defense of the state." Any
contract negotiated with that board was for illegal pur-
poses and thus not binding. Summing up an essentially
apolitical argument, Paschal pointed out: "It is enough
that the military board, its object, ends, and aim, and the contract with White & Chiles, would have been nullities if enacted at the same time, for the same objects, by loyal Massachusetts."

Finally, Paschal argued that the title of Hardenberg and others, who had purchased bonds from White and Chiles, was as defective as that of the original holders. Referring to the absence of endorsement, as well as to the public financial notices, the state's defense contended that these buyers were aware of the questionable disposition of the bonds and were thus answerable to the same prior claim of legal ownership as were the two Texas sutlers. As additional proof of the speculative nature of these transactions, Paschal showed that the indemnity bonds were purchased well after their maturity date and "at a price which showed a knowledge of the fact that payment was disputed."

The individuals named in the suit were defended by various lawyers, but by far their most influential spokes-

man was Albert Pike. A massive man with a long-flowing, white mane, he undoubtedly made an impressive figure standing before the Chase Court. Parlaying a number of Paschal's lesser points of law, he skillfully cast out a good deal of legal camouflage: Paschal and Merrick had not shown sufficient evidence of their right to represent Texas; the
cotton and medicines that White and Chiles contracted to deliver were for humane purposes rather than for military use; the bonds were negotiable without endorsement; and, a newspaper notice was not sufficient evidence of the alleged questionable nature of the securities, nor was the fact that the bonds had matured on their face. The bulk of the ninety-three page brief, however, was a closely reasoned discourse on the two substantive issues—the right of Texas to sue in the Supreme Court, and the validity of the contract, if the case be allowed.

Turning to the jurisdictional question, Pike asked, "Is Texas a State in the Union?" The answer was "no" according to the Reconstruction Act of March 25, 1867, which declared it to be one of the "rebel States." Describing the military governors as "proconsuls," Pike expressed no opinion as to the justice or injustice of the system, but merely stated, "There can be union only among equal States." Aware of congressional sensitivity to recent Court actions, Pike reminded the Court that judicial power was not unlimited: "The courts are not competent to declare that Texas is in law a State in the Union, when the legislative power has declared that it is not so in fact."
Should the Court find Texas competent to sue, they must then consider the validity of the contract between White and Chiles and the Military Board. Recalling the historical development of the constitutional issue of sovereignty, Pike concluded that whether or not the southern states had a right to secede, they did in fact accomplish secession. In this act, he stated, the will of the people cannot be separated from that of the corporate state as the Texas lawyers had argued:

The act of the people of Texas was the act of the State. The fiction cannot be allowed, that it was not so, because the State had no right to withdraw . . . neither can resort be had to the fiction of law, that the corporation is a being in law distinct from the corporators. To do so would be to relieve a people of the consequences of their most solemn acts.

This was the very heart of Pike's argument: Texas having lost the war was now trying to disavow moral and financial responsibility for her actions. Citing the Court's own decision in the Prize cases, as well as the actions of the Congress in pursuing the war, which recognized the hostile action as that of the States, rather than individuals, he continued: "This rule . . . the judicial tribunals must obey, unless they would humiliate the political organs of the public will."
Having established the *de facto* existence of the Confederate state government, Pike's basic defense now rested upon his contention that the contract between his client and the Military Board was legal and binding. He pointed out that the Texas petition never impugned the loyalty of White or Chiles, but rather argued from the standpoint of the board's lack of authority to transfer title to the bonds. In summary, Pike restated his answer to that argument: "The people of Texas are now presented here in the humiliating attitude of repudiating a contract entered into by their chosen and trusted officers . . . . It is not a fiction of law, that the people of a State are not the State, . . . but a mere fiction without law." Just as Paschal's brief had avoided the controversial political issues, Pike's brilliant defense was based almost entirely on the political status of the defeated southern states.

In a final statement on behalf of Texas, Richard T. Merrick attempted to counter Pike's arguments. Quoting at length from Luther v. Borden, he reiterated Paschal's earlier position, namely that the constitutionality of the Texas governments formed under either presidential or congressional reconstruction, was a question properly
belonging to the political rather than the judicial
department. The Texas lawyers conceded that a de facto
state government existed during the war, but asked "does
it acquire rights of property by reason of its overthrow of
the government de jure?" Acknowledging no revolutionary
effect on property, Merrick answered, "The right of a
de facto government is, in any event, only a naked posses-
sory right."

The opinion of the Court was read by Chief Justice
Chase on April 15, 1869, the same day as the McCordle
decision. After stating a brief history of the case
and disposing of the minor question of Paschal's power
of attorney, Chase took up the jurisdictional issue of the
legal standing of the state of Texas. Expounding at great
length on various constitutional and legal definitions of
the rather ambiguous term "State," the Chief Justice agreed
with Paschal that the principal usage referred to "a people
or a political community, as distinguished from a government."
Significantly he found this to be the constitutional meaning
in the clause guaranteeing to a state a republican form of
government.

Having established this working definition, the Court
found it possible for a change in governmental relations
to occur without a concomitant alteration in the basic
federal-state relationship. In a passage one historian has labeled "an adornment to legal literature," and in a style reminiscent of Chief Justice John Marshall, Chase made the definitive statement on the permanence of the Union:

The Union of the States never was a purely artificial and arbitrary relation . . . when these Articles [of Confederation] were found to be inadequate to the exigencies of the country, the constitution was ordained "to form a more perfect union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. . . . But the perpetuity and indissolubility of the Union by no means implies the loss of . . . the right of self-government, by the States. . . . The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.39

The Chase opinion, considered by the Chief Justice to be his most important, placed the nation and the state upon equal footing, resulting in "the greatest security to the State and to the Union."40

This theoretical permanence of the Union, however, in no way denied the political interruption of normal relations between the State and its citizens and the national government. Again accepting the argument of the Texas lawyers, Chase granted tacit judicial sanction to the
congressional reconstruction program. Citing the Luther v. Borden precedent with regard to strictly political questions, the opinion asserted that "Nothing in the case before us requires the court to pronounce judgment upon the constitutionality of any particular provisions of these acts. . . . It suffices to say, that the terms of the [Reconstruction] acts necessarily imply recognition of actually existing governments, and that, in point of fact, the governments thus recognized, in some important respects, still exist." The constitutionality of the Reconstruction Acts remained unchallenged.

Having found Texas eligible to bring suit, Chase ruled that a de facto government did exist in the state during the rebellion. Furthermore, any official acts of that government "which would be valid if emanating from a lawful government," were to be considered legitimate. In Chase's opinion, however, White and Chiles's contract was in aid of the rebellion and thus, clearly illegal. Likewise, he held that Hardenberg and other purchasers, who knowingly "took the risk of a bad title," held no title at all to the disputed bonds.

Although agreeing with the majority opinion on the merits of the case, Justices Noah Swayne and Samuel F.
Miller dissented on the grounds that Texas could not in her present condition file suit in the Supreme Court. Justice Robert Grier, however, dissented with the Chase opinion on every major point, denying any disposition on his part "to join in an essay of judicial subtlety." A Democrat from Pennsylvania, Grier was an outspoken critic of the Reconstruction Acts. Prior to the Texas bond case he had been twice thwarted in his desire to see the Supreme Court review the congressional program. Now in his dissent, Grier's bitterness overflowed. Stating that Texas v. White should "be decided as a political fact, not as a legal fiction," he said the Court was bound to take notice of the nation's history for the past eight years. Such had been the logic that led Grier to sustain Lincoln's war powers in the Prize cases. Accepting the jurisdictional test established by Chief Justice Marshall, which defined a State in terms of its representation in Congress, Grier found Texas singularly lacking in qualifications. He concluded that "having relied upon one judicial fiction, namely that she is a State in the Union, she now relies upon a second one . . . that she was not a State at all during the five years she was in rebellion. She now sets up the plea of insanity, and asks the court to treat all her acts made during the disease as void."
The decree as finally ordered by the Court held the contract between White and Chiles and the Military Board to be null and void, and further ordered that the various defendants "be perpetually enjoined from asserting any right or claim" to the Texas bonds. Although the disposition of the bonds already redeemed by the Treasury Department was left to future litigation, the victory appeared to be total. Understandably, Paschal was pleased with the decision, feeling it "broad enough to cover all [bonds] which are not indorsed." This included some three hundred bonds in the hands of the English firm, George Peabody & Company. Offering his services to Governor Pease to recover these bonds, Paschal now pledged to continue his efforts on Texas's behalf. The following month Paschal wrote a detailed account of his actions to Pease and repeated his request for instructions as to the bonds in England, urging "that the State pursue its every remedy in regard to this lost school fund."

Clearly he was devoting almost all of his time to the recovery of the indemnity bonds.

Once again, however, political events in Texas were to frustrate Paschal's efforts. The moderate Pease-Hamilton faction, having fallen out of grace with the Grant administra-
tion and commanding general, J. J. Reynolds, was turned out by the radicals in the first election under the new state constitution of 1868. Writing a month before the November ballot, Paschal added this prophetic postscript to what was to be his last official letter to Governor Pease: "I cannot close without a word of politics. [L. D.] Evans tells me that you will be removed, and so of the whole prov. govt. . . . . When such men [as the Texas radicals] can run the [Grant] administration there is no telling. Well, I did my duty." The Texas lawyer had indeed done his duty. According to the case's only chronicler, "the influence of Paschal was strong, if not predominant," throughout all of the efforts to recover the Texas bonds, bringing him national prominence. The Supreme Court's decision in Texas v. White marked the climax of Paschal's legal career.

For the nation as a whole, Texas v. White climaxed a decade of constitutional re-evaluation. By rejecting the extreme "state suicide" and "conquered province" theories of reconstruction and endorsing the more moderate "forfeited-rights" theory, Chase's opinion was unquestionably in line with the general mood of the newly-elected Grant administration. But it was also consistent with
views the Chief Justice had expressed as early as 1861. Because the Court adopted this "orthodox view," the case has often been considered "the high-water mark of respectability for the Radical program and the ultimate in judicial quiescence." As Stanley Kutler has pointed out, however, it would be a mistake to view the Texas case simply in these terms: "Chase refused to discuss the constitutionality of the military program and congressional power . . . [because] there was no such challenge in the case."

In the end it would appear that the Court had come full circle in an attempt to preserve the continuity of legal development, for though the question of sovereignty was "settled forever," the integrity of the state within the Union was intact. Subsequently in the Slaughterhouse and Civil Rights cases, this interpretation was reinforced when the Court refused to exercise federal authority over the allegedly arbitrary actions of the state. In actuality, however, the Texas v. White decision was one more example of the Court's skill in practicing "judicial escapism." By both exercising and refusing to exercise its authority, the Court was able not only to sustain its power, but also to greatly expand it during this period of purported congressional ascendancy.
NOTES

1 Pease and Palm's report is printed in its entirety as note 1163 in Paschal's Digest of the Laws of Texas. The report is an invaluable source for the history and subsequent dispursement of the bonds.

2 The five percent bonds had a face value of $1000 each and carried with them coupons in the amount of $25 for a designated number of semi-annual interest payments. The bonds matured December 31, 1864. P.D., note 1162.


5 William Whatley Pierson, Jr., Texas VERSUS White: A Study in Legal History (Durham, North Carolina: Seeman Printery, 1916), p. 15. Pierson's study was done as a doctoral dissertation under William A. Dunning at Columbia and is the only major secondary work on the case.

6 Ibid., p. 17; E. T. Miller, "The State Finances of Texas During the Civil War," Southwestern Historical Quarterly, XIV (July, 1910), pp. 3-5.

7 Act of January 11, 1862, P.D., Art. 4833-4837. The original board consisted of the governor, F. R. Lubbock, the comptroller, C. R. Johns, and the treasurer, C. H. Randolph. This "old board," as it came to be called, served until November 7, 1863. This board was then reorganized by a legislative act of December 16, 1863. The "new board" was composed of the then governor, Pendleton Murrah, as an ex officio member, and two of his appointees, N. B. Pearce and James S. Holman. It was this latter board that made the contract with White and Chiles. For a full account of the various contracts entered into by the board
see Palm and Pease's report in P.D., n. 1163. Also Pierson, Texas VERSUS White, pp. 19-19n and Miller, "State Finances," p. 3.

8 Simultaneously, the provisional governor's brother, Morgan C. Hamilton, was sent to England in the hope of recovering three hundred of the bonds which were in the hands of several English banking firms. His mission, however, was unsuccessful and Paschal eventually took over these matters also. Waller, Colossal Hamilton, pp. 67-81; Texas Senate Journal of 1866, p. 23; P. D., n. 1163.

9 25 Supp. Tex. Rep. 472. An act of December 16, 1852, passed by the Texas legislature required the governor's endorsement on the bonds before they were negotiable. The original contract, however, was between the United States and Texas, or the holder of the bonds, and provided only for payment to bearer. Thus the subsequent stipulation added by the legislature constituted an impairment of contract and as such had no legal standing. Paschal understood this and never claimed that the lack of endorsement invalidated the bonds, but only that the absence of any signature was peculiar to those bonds dispersed during the war, thus distinguishing them for any would-be purchaser or for the federal government. Unfortunately, the antebellum policy of endorsement had not been consistent. As a result, the Treasury Department lacked this convenient guide in making decisions towards payment of the bonds. See Comptroller R. W. Tayler's report in P. D., n. 1162; Pierson, Texas VERSUS White, pp. 13-14; 7 Wall. 706.

10 Paschal to Hamilton, September 21, 1865, Governors' Papers, Texas State Archives. Several days later in an interview with Attorney General Speed, Paschal learned that White had not in fact been pardoned and that his case had been suspended (Paschal to Hamilton, September 23, 1865). In the earlier letter to Hamilton, Paschal wrote: "The subject [of White's alleged fraud] is doubtless an unpleasant one to the President. White had been pardoned by order of the President to Attorney General Speed and against that officer's wish. Seeing the force of this I asked in writing that the warrants of White and
E. B. Nichols [another holder of Texas's bonds], if not too far gone might be recalled. The President said he had ordered this as to Nichols, but said nothing of the kind as to White" (Paschal to Hamilton, September 21, 1865). According to Pierson's article, Paschal later "complained that White 'seemed to be one of the influential men at the White House, having access at all times.'" Pierson further cited a statement by Judge A. W. Terrell [a contemporary of White] to Professor Charles Ramsdell, that White was not only an old Tennessee friend of Johnson's, but that he actually resided for a time in the White House (Texas VERSUS White, pp. 30-30n).


12 See John C. Hurd, "Theories of Reconstruction," American Law Review, I (January, 1867), pp. 238-64. The two cases were Georgia v. Stanton (6 Wall. 73) and Mississippi v. Johnson (4 Wall. 475). In the Mississippi case, the state had sought a permanent injunction against President Johnson and the district military commander to halt enforcement of the Reconstruction Acts. The Court denied jurisdiction on the grounds that it was a political question. Similarly, the Georgia suit was filed against Secretary of War Stanton, General U. S. Grant, and General John Pope, Commander of the Third Military District. In deciding Georgia v. Stanton, the Court again declined the opportunity to consider the validity of the Reconstruction
Acts, but intimated that it would be more inclined to discuss such substantive questions if linked with essentially a property, rather than a political, issue. Texas v. White provided that opportunity. For a detailed discussion of the Georgia and Mississippi cases, see Stanley Kutler's *Judicial Power and Reconstruction Politics* (Chicago: University of Chicago Press, 1968), pp. 95-99.

13 Although Chase was now Chief Justice of the Supreme Court, he was undoubtedly aware of the reasons behind the Treasury Department's change in his former policy. A complete copy of Tayler's report, dated August 15, 1865, is in the Governors' Papers, at the Texas State Archives. It also appears in printed form as note 1162 in Paschal's *Digest of the Laws of Texas*. The following paragraphs are based on that account, except where other works are cited.

14 Chief Justice Chase was saying the same thing in his circuit court decisions long before the Supreme Court finally settled Texas v. White. In Shortridge & Co. v. Macon (District of North Carolina, June Term, 1867), Chase stated: "On no occasion, however, and by no act, have the United States ever renounced their constitutional jurisdiction over the whole territory or over all the citizens of the republic, or conceded to citizens in arms against their country the character of alien enemies, or admitted the existence of any government de facto, hostile to itself within the boundaries of the Union." Bradley T. Johnson, *Reports of Cases Decided by Chief Justice Chase in the Circuit Court of the United States for the Fourth Circuit* (New York: Diossy & Company, 1876), p. 142.

15 This theory would later become the basis for the "ab initio" controversy which split the Texas Republican party at the 1866 and 1868 constitutional conventions.

16 *Southern Intelligencer*, October 26, 1865.
Pease and Palm found the receipt in the scattered papers of the hastily departed Military Board. They conveyed this discovery to Hamilton in a letter dated August 29, 1865 (Governors' Papers, Texas State Archives). In a conversation with Paschal, White claimed that $12,000 of the funds was used to purchase brandies and liquor for the state, but that after Governor Pendleton Murrah refused to accept them, White sold the liquor privately. He also claimed to have purchased the promised cotton cards which were subsequently "jayhawked at the break-up" of General Kirby Smith's troops. No evidence, however, was ever brought forward to support this assertion (Paschal to Tayler, September 26, 1865, Governors' Papers). In the original contract the Military Board provided that in the event of failure to deliver the supplies, White and Chiles could pay for the bonds with seven or eight percent state bonds or with state treasury warrants. At one point an attorney representing White and Chiles tendered such an offer to provisional governor Hamilton. However, the bonds offered in place of the indemnity bonds had been issued by the Confederate state legislature specifically for military purposes and were subsequently repudiated by the 14th Amendment. In addition, to accept would have recognized the validity of the contract between White and Chiles and the Military Board. The offer was refused. F. W. Chandler to A. J. Hamilton, March [n.d.], 1866, Governors' Papers; 25 Supp. Tex. Rep. 581-83.

Paschal to Tayler, September 26, 1865, Governors' Papers.


Paschal to Tayler, September 26, 1865. Paschal was probably correct in this assumption since Hamilton had been away from Texas for the major part of the war and had been actively involved in military matters rather than political or legal ones. Granting his initial innocence, however, there is still the matter of the sum in excess of $10,000 which White and Chiles claimed to have paid him and which in light of subsequent events raises at least a question
of ethics. Waller in his biography of Hamilton is curiously silent on this charge despite a rather lengthy discussion of the Texas v. White case.

21

This announcement later became *prima facie* evidence to the fact that John Hardenberg and other subsequent purchasers of the bonds had been given sufficient notice that title to the bonds was in question (7 Wall. 706, 735; 25 Supp. Tex. Rep. 472-73). The ad read in part: "I think [it] proper to give the public notice that said bonds were delivered to said White and Chiles by irresponsible parties, without any legitimate authority, and in violation of a statute of the State, which requires said bonds to be endorsed by the Governor of the State before they shall be available in the hands of any holder; that they were so delivered under a pretended contract, which bears upon its face indisputable evidence of fraud . . . that these facts have been made known to the Secretary of the Treasury of the United States, and protest filed with him against the payment of said bonds and coupons, unless presented for payment by proper authority of the State of Texas." Exhibit A, Affidavit of George W. Paschal to the Supreme Court in the case of the State of Texas v. George W. White, et al., January 17, 1868, Graham-Pease Collection, Austin Public Library.

22

The "severe family affliction" was the illness of Paschal's wife, Marcia Duval, who died of "heart disease" October 2, 1865, before Paschal could reach Texas. According to his daughter's account, Paschal received the news of his wife's death from a newspaper as he was crossing the Gulf of Mexico between New Orleans and Galveston: "He told me afterwards that his first impulse was to throw himself into the sea, he felt life would be so valueless without her. Then he remembered his little girl, suddenly left motherless, and the impulse passed, leaving only a paralysing sense of loss." *I Myself*, p. 46; Brown, *Annals of Travis County*, Texas State Archives, Ch. XXIV, pp. 58-59. An obituary appeared in the *Southern Intelligencer*, October 6, 1865, and a funeral notice may be found in the Paschal biographical collection at the Austin Public Library.

23

Paschal to McCulloch, October 10, 1865, Governors' Papers.


27 25 Supp. Tex. Rep. 480-81; Pierson, Texas VERSUS White, pp. 30-31; 7 Wall. 714. "Seven-thirties" were a three year currency loan convertible into a 6% gold bearing stock. The term "seven-thirties" came from the yearly rate of interest which was seven dollars and thirty cents per $100. The Hardenberg trust was subsequently converted into "five-twenties" which were also 6% bonds but bore a lower yearly interest yield (Southern Intelligencer, June 21, 1866).

28 R. T. Merrick appeared with Paschal to argue the state's case. They were assisted by R. J. Brent and George Taylor.


30 Ibid., pp. 488-89, 500, 505; P. D., n. 1380-82.
Citing Swift v. Tyson (16 Pet. 1) and numerous state decisions, Paschal elaborated that: "The rule of possessor in good faith had not been extended to commercial paper overdue or otherwise branded with suspicion. These are yet regarded as chattels." 25 Supp. Tex. Rep. 490, 506-509.

Appearing for Chiles in addition to Pike, were Robert W. Johnson and James Hughes. Philip Phillips represented White, while J. M. Carlisle presented Hardenberg's case, and James W. Moore, that of Birch, Murry & Co. Pierson, Texas versus White, p. 32; 25 Supp. Tex. Rep. 510, 554, 561.

No stranger to Paschal, Pike practiced before the Arkansas bar while Paschal sat on that state's supreme court. Originally from Massachusetts, his career in many ways paralleled that of Paschal. In the early thirties Pike moved west and eventually settled in Arkansas. For a time he was the owner and editor of the Arkansas Advocate and was a vigorous supporter of a southern route for the transcontinental railroad. Although no friend to secession, Pike went with the Confederacy and served as a brigadier-general, most notably in the battle of Pea Ridge. Famed for his poetry as well as for his legal treatises, Pike moved to Washington, D. C. shortly before the Texas bond case. See Harris Elwood Starr's entry on Pike in the Dictionary of American Biography, VII, pp. 593-95; 25 Supp. Tex. Rep. 500.

Pike's argument is found in an abridged form in 25 Supp. Tex. Rep. 510-54. The following paragraphs are taken from that account.

Ibid., pp. 510-14, 516-31, 542-46.

Ibid., pp. 551-54. Again in an effort to avoid political controversy, Paschal probably omitted the issue of White and Chile's loyalty due to his uncertainty about the status of their presidential pardons.
37 Ibid., pp. 568-91. Paschal's initial petition also cited the Dorr rebellion case in passing, stating: "Behind these political recognitions [by Congress] this court cannot go" (Ibid., p. 502).

38 Chief Justice Chase was joined in his decision by Associate Justices Samuel Nelson, Nathan Clifford, David Davis, and Stephen J. Field.


41 25 Supp. Tex. Rep. 601-606; 7 Wall. 726-31. In reconciling the Reconstruction Acts with the Court's finding, Chase was not guilty of mere legal chicanery as often assumed. In actuality, Congress did recognize certain elements of prior state governments. For example, the military commanders were instructed to cooperate wherever possible with "local civil tribunals." See Gammel's Laws of Texas, 1822-1897, VI, pp. 3-10.


43 Swayne and Miller, both Lincoln appointees, were according to Miller's biographer "least out of sympathy with the course of Congressional reconstruction" (Charles Fairman, Mr Justice Miller and the Supreme Court, 1862-1890 [Cambridge, Massachusetts: Harvard University Press, 1939], p. 124). This is further evidence belying the fact that Texas v. White was decided strictly on political grounds.
After Justice Nelson had hinted in the Georgia v. Stanton decision that the Court might have considered the bill if it had been based on property considerations, the Mississippi lawyers filed to amend their pending suit accordingly. In Grier's absence, the Supreme Court rejected the amendment on a four-four split decision. When the Court had another chance to pass on the constitutionality of the Reconstruction Acts in McCordle, Grier was unsuccessful in his attempt to get the Court to rule in the matter before Johnson could sign the bill removing the Court's appellate jurisdiction in habeas corpus cases. See Kutler, Judicial Power, pp. 99-104.

Hepburn & Dundass v. Ellxey, 2 Cranch 452.


The full decree is reprinted in 25 Supp. Tex. Rep. 617-21. The immediate case to grow out of the Texas v. White decision was Texas v. Hardenberg, decided in the December term, 1869. Paschal and Merrick again represented Texas, arguing successfully on the merits of the Court's decision in the original bond case. As a result of this action, Paschal recovered thirty-four bonds from Hardenberg. Other later cases after Paschal's removal as agent for Texas included Huntington v. Texas (16 Wall. 402), and In re Chiles (22 Wall.157). See Pierson, Texas VERSUS White, pp. 86-100.

Paschal to Pease, April 30, 1869, Graham-Pease Collection, Austin Public Library. In Huntington v. Texas, the Supreme Court held that lack of endorsement did not affect the title of a bona fide holder. See Pierson, Texas VERSUS White, pp. 94-96.

Paschal to Pease, May 27, 1869, Graham-Pease Collection.
Paschal to Pease, September 28, 1869, Graham-Pease Collection. After the Grant administration endorsed Davis and the radicals in the approaching election, there were rumors of a widespread purge. Some Hamilton appointees were removed at the federal level before the election, but Pease himself remained in office until his resignation on December 11, 1869. See Ramsdell, Reconstruction in Texas, pp. 261-87.

In a diary entry dated December 11, 1861, Chase stated: "... I gave my views in brief as to the relations of the insurrectionary States to the Union; that no State nor any portion of the people could withdraw from the Union or absolve themselves from allegiance to it ..." (David Donald, ed., Inside Lincoln's Cabinet: The Civil War Diaries of Salmon P. Chase [New York: Longmans, Green and Co., 1954], pp. 50-51). To support the consistency of Chase's viewpoint, Eric McKitrick also cites a Chase letter which appeared in the Cincinnati Commercial in 1865 (Andrew Johnson and Reconstruction [Chicago: University of Chicago Press, 1960], p. 115). Chase's circuit court opinions later reflect the same consistency (See Bradley Johnson's edition as cited earlier).


53

The term "judicial escapism" was first applied to the Chase court by David Hughes in his excellent dissertation, "Salmon P. Chase: Chief Justice," (Princeton University, 1963).
CHAPTER FIVE

GEORGE W. PASCHAL: SCALAWAG JURISPRUDENT

"In the demonology of Reconstruction no reputation is blacker than that of the native white Republican... ["Scalawag"] became a synonym for scamp, loafer, or rascal, whence it found its way into the lexicon of Reconstruction politics." With these words, Allen Trelease summarized an opinion reinforced by nearly a century of scholarship. In contrast to the old Dunning school shibboleths, Trelease's conclusions in his seminal article, "Who Were the Scalawags?" are consistent with recent revisions in Reconstruction historiography. His interest in identifying the scalawags stems from his belief that those native white southerners who supported so-called Radical Reconstruction, did so out of sincere motives. Finding a high correlation between antebellum Unionist sentiment and postwar Republican affiliation, Trelease concluded that an understanding of the nature of southern support required an analysis of local political alliances and issues. But the generalizations drawn from such
studies by Trelease, David Donald, Thomas Alexander, and others, have not proved applicable to the trans-Mississippi area.

Thus the question "Who were the scalawags?" joins a growing list of unknowns in trying to solve the problem of Reconstruction "geometry" in Texas. What is becoming increasingly clear is that Reconstruction had as many forms and shapes as there were southern states. But due to its size and geographic isolation, Texas appears to represent more of an anomaly than any other state in the Confederacy. Who did support Congressional Reconstruction in Texas? What were their party affiliations? What were their motives? One approach to an eventual resolution of these questions is to examine Paschal's career as illustrative of one of the more prominent Texas scalawags.

When in the winter of 1861 Texas voted to join the Confederacy, Paschal's loyalties rested with the South by reason of birth, family, and politics--indeed, by everything sacred to a gentleman. His falling out with the Democratic party chairman, Marshall, and the "Austin clique," had been more personal than political, and although he had always been somewhat of a maverick with-
in the party, there is little evidence in Paschal's antebellum politics to suggest his eventual conversion to "scalawag." Writing in 1868, however, Paschal recalled clearly his priorities at the time of secession:

"From my Southern stand-point, I was compelled to examine the doctrines with all the prejudices . . . in favor of the Southern view . . . [which] inclined all ardent young men to embrace the doctrines of the . . . inviting school of 'States Rights.' But . . . I was obliged to take my position as a lawyer . . . with those who held that the Constitution had created . . . a government having all the inherent powers necessary to protect, defend, and perpetuate the Union."  

Paschal's "position as a lawyer" is crucial to an understanding of his political metamorphosis from Democrat to "scalawag," for the one element of consistency in this otherwise highly complex and at times, paradoxical, personality was a strict adherence to a view of the Union which was both legalistic and conservative in nature. When secession threatened the Constitution in 1860, it was this lawyer's respect for traditional institutions which led Paschal to oppose the Democrats and ultimately to support the Republican party and Congressional
Reconstruction in an effort to preserve the Union and restore the rule of law. This legalistic conservatism can be illustrated by considering Paschal's views on three key constitutional issues--state sovereignty, slavery, and secession.

In its strictest sense, the term "state sovereignty" relates to the problem of the locus of power within the federal system. By definition federalism implies a certain equilibrium between nation and state. Under the Constitution, however, the balance of that power rested clearly with the federal government. Within such a system, could the states still retain their respective sovereignty? The question was raised in the constitutional debates of 1787. Madison salvaged the doctrine of state sovereignty when, in arguing for ratification, he explained how the apparent hostility between state and national power could be resolved by concurrent spheres of authority. Within this dualistic framework of federalism, state sovereignty, as it evolved historically, was invoked as the classical defense for local autonomy against the encroachments of the federal government.

This was Paschal's understanding of the term. He was fond of using Texas in illustrating his views on the
nature of the relationship between the states and the federal government. As a Republic, Texas had existed as an independent State, possessing a national flag and seal, and all such powers as are inherent in a truly sovereign government. When Texas was annexed to the United States in 1845, her citizens voluntarily, in Paschal's words, "surrendered or merged every vestige of nationality."

Andrew Jackson had expressed an identical view during the nullification crisis in 1832: "The States severally have not retained their entire sovereignty. It has been shown that in becoming parts of a nation, not members of a league, they surrendered many of their essential parts of sovereignty." The "Jacksonian persuasion" had a strong influence on Paschal's legal and political philosophy, and was undoubtedly reinforced through his close association with Sam Houston in those dark days before secession. In later eulogizing the hero of San Jacinto, Paschal reminisced: "Whatever confusion of mind other statesmen may have had about the sovereignty which the States had surrendered, Houston was never in doubt as to what powers Texas had lost, what protection had been gained, and what obligations
the people, as citizens of the United States, had assumed." To the Jacksonian, then, "state sovereignty" was an essentially negative doctrine, calling for a minimum of national authority in order to keep democracy in the hands of the people. Where Paschal parted ways with his southern brethren was when state sovereignty became an aggressive political policy calling for federal intervention in areas of traditional state supremacy.

Slavery was the issue which precipitated this shift in emphasis. Fearful of losing political hegemony, the South increasingly demanded national protection for its peculiar institution, resulting in what Harold Hyman calls "sectional blackmail." The compromises of 1820 and 1850, as well as Crittenden's unamendable proslavery amendment of 1861, were perpetrated in the name of southern state sovereignty at the expense of both northern and prospective states' rights. Paschal understood the rhetorical seesaw upon which the southern demands rested and was fearful of the consequences. When in the fall of 1857, a Democratic Texas newspaper complained that black suffrage in some northern states was in contravention to Chief Justice Roger Taney's decision in the Dred Scott case, Paschal was quick to point out the dangerous tendencies.
inherent in such reasoning: "The mistake of the [Galveston] News is in supposing that none but citizens may vote—an opinion at war with the practice of every State . . . . The Union can as effectively be destroyed by consolidation as nullification; and those who surrender the right of suffrage to, or make it dependent upon, the federal government are the worst of consolidationists."

When the crisis in Kansas threatened to split the Democratic party and the Union as well, Paschal rejected intervention, whether in the form of Douglas's squatter's sovereignty or Beecher's "Bibles," and pleaded with the citizens of Texas to "pause over this matter. Look at it as lawyers reason—soberly. The Union need not hinge on it." A slaveholder himself, Paschal's sympathies were naturally with the proslavery elements. "We shall boldly do our duty," promised the Austin editor, "and stand by the rights of the States. . . . The Constitutional guaranties [sic] must be maintained, and the rights of the South defended." But the Constitution guaranteed only one right with regard to protecting slavery, and that was embodied in the fugitive slave law. Beyond this the strict constructionist would not go.
The fact that personal liberty laws in some of the northern states obstructed the return of runaway slaves, did not justify compounding the sin. "Law is law, whether we like it or not," cautioned Paschal, "and obedience to law is a Christian, moral and political duty." Here was the legalist's answer to the abolitionist's appeal to a "higher law." The use of moralistic arguments, whether by abolitionists or secessionists, to defend the overthrow of existing institutions, was viewed by conservative legal thinkers like Paschal as "the ultimate democratic heresy." Writing to William Pitt Ballinger during the war, Paschal admitted with typical candor: "For revolution, higher law or resistance to constituted authority, I have never been prepared. I believe there is none of the principle in my nature. So fixed is my belief that established order should not be disturbed for light causes, that I doubt if I ever had a proper appreciation of great causes."

Certainly Paschal lacked sympathy for the "Lost Cause," for the ordinances of secession were, in his opinion, clearly revolutionary. The perversion of the theory of state sovereignty as practiced by the secessionists had, he believed, planted the seeds of destruction in the Confederate
government from the outset and "the results were but the legitimate fruits of a wrong cause." Having nationalized the institution of slavery in their new constitution in the name of state sovereignty, Jefferson Davis and his administration were then forced to abandon their precious doctrine as the exigencies of fighting a war became apparent in Richmond as well as in Washington.

Ironically, the tendencies toward centralization increased in the South more rapidly than in the North. The writ of habeas corpus was suspended in 1862, a full year before any such national move by Lincoln, and conscription laws were passed the same year. Paschal decried this downward trend in democracy, for unlike his northern counterpart, Francis Lieber, the Texas lawyer would never concede the maxim "inter arma silent leges" (in time of war, the laws are silent). To do so would have been contrary to his fundamental premise that the rule of law was synonymous with an indestructible Union as embodied in the Constitution. This same premise which led him to the Republican party and formed the basis for his defense in Texas v. White, also would govern Paschal's career as a scalawag.
At the conclusion of the war, Paschal rejoiced at President Johnson's appointment of his old ally, A. J. Hamilton, to the provisional governorship. Heading an Austin welcoming committee, Paschal wired the new governor to "give us 24 hours notice and we will give you the grandest reception ever given in this State." Paschal was true to his promise for an enthusiastic crowd of Unionists came out to greet the returning Hamilton on August 2nd. Events of the next few months, however, were to reveal a serious schism among state Republican recruits over the direction Reconstruction was to take in Texas. As a result, the provisional governor was forced to postpone the call for a constitutional convention until November 15, 1865.

Paschal, who had gone to Washington in mid-September, took the occasion to write an open letter to the people of Texas in which he instructed the delegates on the duty that lay before them. "It is not only the better part of wisdom 'to accept the situation,'" he began, "but to prefer it to that which we have endured for the last five years. . . . The terms offered [by the North] are not the hardest ever proposed to conquered rebels; but they are, perhaps, the mildest." He went on to say that the Convention must
first ratify the 13th Amendment and recognize the rights of the Negro as a free man. By this Paschal obviously meant legal rights only, for he added, "let none understand me as meaning that he [the Negro] is thereby entitled to social equality and political equality at the polls."

Secondly, the letter continued, the Convention must declare the acts of the Secession Convention a nullity, as "every candid, sound thinking, discriminating lawyer now knows that the secession ordinance was void from the beginning."

This would require repudiating the war debt, he admitted, but everyone knew payment was dependent upon success.

Paschal urged the delegates to avoid "clogging" up these necessary measures with any general constitutional reform at this time. Calling for a "spontaneous selection" of the best men without electioneering or campaigning, he ended his letter with a prophetic note of caution: "The efforts to reinstate our State and people, with all their rights, in the Union, are 'experiments,' and that as much depends upon the moral force [i.e. proper attitude] of the workmen, as upon the work itself. . . . I tell you candidly, that those who are to judge of your work do attach a great deal of importance to the character of instruments whom the people select to consummate it."
When the first session of the Thirty-ninth Congress convened in December, the wisdom of Paschal's advice began to grow apparent. Congressional opposition to Johnson's reconstruction program coalesced in the form of the Joint Committee of Fifteen on Reconstruction. Writing to Pease in early January, Paschal accurately foresaw the coming storm: "From the course pursued in our Supreme Court cases, by the Congress, and from many other sources, I infer that the South has a good deal to do yet—and that the President is very nervous and anxious."

Showing clear signs of disenchantment with the Johnson administration which he saw being inundated with rebel sympathizers, Paschal was convinced that the moderate Republicans had blundered in not opposing presidential reconstruction sooner. "I have distinctly stated to them and to the Cabinet," he wrote, "that their course has been to crush out the union element, to elevate Secessionists, and reward treason." The moderates greatest error, he insisted, was in continuing to ignore southern Union men.

Likewise, events back home gave Paschal little cause for cheer. The constitutional convention which met in February, split over the *ab initio* question of whether the secession acts had been void from the beginning or as
a result of the war. Conservatives finally pushed through an ambiguous measure which avoided the question altogether. Furthermore, the convention failed to explicitly recognize the Thirteenth Amendment, though it now had been ratified by the requisite number of states. In evaluating the convention's effect on the deterioration of presidential reconstruction, Paschal wrote, "The truth is that the action of that [state] Convention did much towards passing the Civil Rights bill and weakening the President."

His disappointment in the outcome was apparent and belies the subsequent charge by conservatives that he and Pease were secretly working with the Radicals against Johnson. Paschal had expressed, in fact, a consistent desire to see home rule restored, but the state, he insisted, must take the initiative. "Seward, Sumner, Phillips, Trumbull, and Ben Wade are not going to become the scapegoats to bear away the sins of secession," he wrote. "We must commence our reformation at home. . . . It may be unpalatable, so are cholera medicines and the surgeon's knife. I do not like any of the doctors. But for the wrong physic [cure] I hold my own family physician responsible." The patient's condition worsened, however, for
in the fall of 1866, the conservative J. W. Throckmorton was elected governor over Pease and recommended that the state legislature reject the 14th Amendment also. Consoling Pease, Paschal wrote, "If Texas were worth redeeming, I should not despair of the task. But it is not." 

Paschal's cynicism with regard to Texas was symptomatic of his deeper misgivings about the state of the country in general. In September he had attended the Philadelphia Convention of "Northern and Southern Loyalists." Although the meeting was billed in some papers as the "First Grand National Convention of Negro Worshippers," party leaders scrupulously avoided an open discussion of black suffrage. Complaining of the convention's inaction, Paschal later said, "We all felt that the leaders were not up to the people upon the subject [of Negro suffrage]. The result of the [fall Congressional] canvass conclusively proved it. No man who was called 'radical' had any trouble being re-elected."

The Jacksonian lawyer's faith in the people was firm, even though once again he found party conventions unreliable. It was inevitable that this belief in popular democracy would eventually carry over to the new
freedmen. In a long letter to the New York Times, Paschal revealed the depth of his political disillusionment and the extent of his new commitment: "The men who made the war and governed the rebellion have been restored back to the very offices which they held before and during the fratricidal struggle. The failure of the President's miserable, short-sighted, Executive usurpation policy shows the danger of temporary expedients and mere opiate remedies. The disease is deep-seated, it is chronic, it threatens the very life of the body politic. It cannot, it will not be cured by the mere knavery, cowardice and treachery of the political quacks of the country. . . . The diagnosis is plain--the remedy clear. It is equal rights [for the Negro]. But how, when and by whom shall the remedy be applied, is the question."

If political extremists had once again pushed the southern lawyer into an alien camp, he arrived by familiar ideological routes. In support of the 14th Amendment, Paschal emphasized that under the present proposal suffrage qualifications remained state controlled. While he admitted the unlikelihood of a state forfeiting Congressional representation, the locus of that decision-making power was important. In concluding his letter, Paschal again pointed
to the fall elections as evidence of the nation's determination not to stop short of the Constitutional amendment. "If it be blindly rejected by the South," he cautioned, "the people are prepared to go much beyond it in the direction of universal liberty." But again Texas ignored the pleas of her expatriate son, and refused to ratify the Fourteenth Amendment.

When in March, 1867, Congress finally passed the Reconstruction Act, Paschal described it as "a tremendous measure." In a letter to fellow Texas Unionist, S. M. Swenson, he was optimistic for the first time in a year. "It does one thing, not hitherto done," he wrote. "It presents to the South an ultimatum . . . . It is one of war or peace. If the President accepts it, and works faithfully under it, we may restore the nation without more bloodshed." Paschal concluded by pleading with Swenson and Pease to come to Washington, "as a new element among us," and join the other "Southern sufferers of character" in urging Johnson to sign the bill. A defender of civilian government all of his life, he now was willing to support a military regime which would endeavor to restore the southern states to loyal men. The conversion to "scalawag" was complete.
As a "scalawag," however, George Paschal does not fit the historical image, whether of the apologists' school or the revisionists. The only thing he shared in common with the Whigs was an enthusiasm for the railroads, and in this respect he was not unlike most westerners. Since he held no major office in the Reconstruction government, he can hardly be classified as a political opportunist. And although admittedly of the Jacksonian mold, Paschal was not one of the antebellum "have-nots" with grievances against the planter class, nor did he appear to suffer from "status anxieties."

Paschal became a scalawag because of his legalistic conservatism, or unswerving commitment to the Union and the rule of law. It had strong overtones of the frontiersman's idealistic faith in popular government, tempered with the lawyer's conviction that the purpose of the law was not to enforce freedom, but to protect property. It is significant that Paschal devoted the major portion of his postwar career to recovering the Texas indemnity bonds. For the jurisprudent, the war was fought, not to abolish slavery, but in the words of Perry Miller, "as a vindication of the Common Law thesis that no party to a compact
solemnly entered into can thereafter wantonly withdraw from it." For Paschal the revolution had occurred with secession, not Reconstruction. "Pharoah was an instrument in the hands of God," he later wrote. "So the secessionists will go down to history as the mad authors of emancipation, black citizenship and universal suffrage."

In sustaining the military provisions of the Reconstruction Act, Paschal never compromised his belief in the supremacy of civil authority. Writing to President Grant in 1870, on behalf of citizens still in prison by order of military commissions, Paschal stated: "We may admit the constitutionality of the reconstruction laws so far as they confer power to re-create States and confer suffrage and authority upon those who would restore the government and adopt the amendments, and at the same time deny the constitutionality of this criminal jurisdiction [by military commissions], and its exercise over citizens in a manner expressly forbidden." As a last resort military rule was a necessary move to restore to Texas a republican form of government as guaranteed in the Constitution. In the final analysis, Paschal supported the Congressional program because as conservative lawyers,
like himself, the Radical Republicans chose to operate within the existing legal institutions.

The Texas scalawag worked hard for the passage of the Civil War amendments, which he felt were necessary to put "every man upon an equality before the law and at the polls." Once this was accomplished, state sovereignty, slavery, and secession were in his opinion no longer threats to the Union. Convinced that Reconstruction was complete, Paschal turned away from the Radicals. Joining the Liberal Republican bolt of 1872, the old jurisprudent identified a new enemy: "Official corruption [in the Grant administration], which no one can honestly deny, must be arrested, or the Republic cannot survive." 29

From human rights to dishonest bookkeepers, what an anticlimax to the Texan's turbulent career! But Paschal's world was one of limited vision. Slavery had been abolished in law, if not in fact, and the Republicans were content for the Negro to once again become the "invisible [freed]man." Within this myopia lies the real tragedy of Reconstruction.
NOTES


2 David Donald, "The Scalawag in Mississippi Reconstruction," Journal of Southern History, X (November, 1944), pp. 447-60; Thomas B. Alexander, "Persistent Whiggery in the Confederate South," Journal of Southern History, XXVII (August, 1961), pp. 305-29. Trelease is critical of the Whig-Repub- lican political alignment stressed by Donald and Alexander. Central to his thesis is the belief that the majority of Republican support in the South came from the hill-country farmers--old Jacksonian Demo- crats--rather than planter aristocracy. But in attempt- ing to demonstrate this quantitatively, Trelease exempts Texas from his positive statistical results (see p. 460). Likewise, in illustrating the resurgence of prewar Whigs in the elections of 1865, Alexander is forced to admit that "the full impact of the Whig victory can better be observed by omitting Texas and South Carolina, where Whig party organization had not existed for years" (see p. 311). Donald's much earlier study, though specifically applied to Mississippi, traced a similar Whig-Republican development, and therefore would be equally inappropriate for Texas.


5  Annotated Constitution, pp. ix-x.


7  Paschal, "Last Years of Sam Houston," p. 631.


9  Southern Intelligencer, October 21, 1857.

10  Southern Intelligencer, September 9, August 26, 1857.


12  Paschal to Ballinger, May 1, 1863, Ballinger Papers, University of Texas Archives.

13  Paschal, Address to the People of Texas, Discussing the Political Situation of the Country, and Declaring Himself a Candidate for the United States Senate [1869], Graham-Pease Collection, p. 7.

14  Paschal to Hamilton, July 29, 1865, Governors' Papers, Texas State Archives; Waller, Colossal Hamilton, p. 62; Ramsdell, Reconstruction in Texas, p. 58; Southern Intelligencer, July 21, 1865.
15

The only major secondary work for any student of Texas reconstruction is Ramsdell's book, although as this study of Paschal demonstrates his view of the Unionists and Radical Republicans is sadly in need of revision. It is not within the scope of this dissertation, however, to review all of the primary material on Texas reconstruction. Rather I am concerned with an analysis of Paschal's role within the general framework. For this reason I have omitted repeated references to the general literature on both state and national reconstruction except where directly relevant to interpreting Paschal's own views.

16

On December 1, 1865, President Johnson sent a telegram to Hamilton congratulating him on the calling of the constitutional convention in Texas and urging him to a speedy success in his "efforts to restore law and order and all the constitutional relations of the state to the federal union at an early day." Governors' Papers, Texas State Archives.

17

"Letter to the People of Texas," Southern Intelligencer, November 16, 1865. Privately Paschal wrote to Pease, concerning the delegates to the convention: "When men are forced to do a disagreeable thing, the men who forced that thing upon us ought to be the ones to do it." Paschal to Pease, January 3, 1866, Graham-Pease Collection.

18

Paschal to Pease, January 14, 1866, Graham-Pease Collection.

19

Paschal to Pease, February 26, 1866, March 9, 1866.

20

Southern Intelligencer, May 17, 1866. With regard to the status of the freedmen, Ramsdell makes the following statement: "On the whole, Texas had granted the freedmen more civil rights than had any other southern state, though she had not gone as far as it was understood that President Johnson desired" (Reconstruction in Texas, p. 101). For
a recent article suggesting that blacks received liberal treatment by the Texas courts before the war, see A. E. Keir Nash, "Texas Justice in the Age of Slavery: Appeals Concerning Blacks and the Antebellum State Supreme Court," Houston Law Review, VIII (January, 1971), pp. 438-56. Compare these views with those expressed before the Joint Committee on Reconstruction. When asked about the treatment of Negroes in Texas, Brigadier General W. E. Strong testified on January 1, 1866, that "It is the same old story of cruelty only there is more of it in Texas than any other southern State that I have visited." Similarly, Major General David S. Stanley stated before the Committee: "I consider Texas in a worse condition than any other State, for the reason that they never were whipped [by Union forces] there." Report of the Joint Committee on Reconstruction, at the First Session Thirty-Ninth Congress (Washington, D. C.: Government Printing Office, 1866), pp. 36-40.

21
Southern Intelligencer, May 17, 1866. The theme of a conspiracy between Paschal, Pease, and other Unionists with the Washington Radicals runs throughout Ramsdale's account. In Paschal's case, at least, it is blatantly false.

22
Paschal to Pease, October 11, 1866, Graham-Pease Collection.

23

24
New York Times, November 24, 1866, as reprinted in the Southern Intelligencer, December 10, 1866. In printing the Times article in full, Paschal's old newspaper carried the following editorial comment: "If our unreconstructed friends are not pleased with the Judge's arguments, we suggest that they should remember it is not the first time that he has been right and they wrong."
Southern Intelligencer, December 10, 1866.

Paschal to S. M. Swenson, February 21, 1867, Graham-Pease Collection. At the same time Paschal wrote another appeal to the people of Texas defending the necessity for the Reconstruction Act: "Peace has to be made with the conquerers, not the conquered." The Fourteenth Amendment, he reiterated, was "liberal and just towards those who forfeited their rights." He closed by imploring "editors, lawyers, preachers, and all others who undertake to lead the public mind to cease to deal in generalities and words of passion. State fairly the premises." Southern Intelligencer, March 7, 1867.

Miller, Life of the Mind, p. 116; Southern Intelligencer, April 11, 1867.


CONCLUSION

In the postwar years, Paschal found himself as out of step with the direction of Texas politics as he had been in the previous decade. After the triumph of the Texas radicals in 1869, one of the first acts of the Davis administration had been to revoke Hamilton and Pease's appointment of Paschal as agent for the state in the indemnity bond cases. Obviously political in motivation, Paschal's removal resulted in a bitter controversy over payment of his fees which, ironically, also ended in the Supreme Court. Once again Texas had spurned the efforts of her devoted son. The bitterness of this final rejection was too great, for Paschal never returned to Texas.

Paschal found life in the north, however, as personally and professionally rewarding as life in Texas had been frustrating. It was here that he met and married a wealthy Washington widow, Mrs. Mary Scoville Harper, who miraculously--Paschal was now in his sixties--presented him with a child. After a brief attempt at establish-
ing practice in New York City, Paschal opened law offices in Washington with his two sons, George, Jr. and Ridge.

Having been instrumental in the founding of the law school at Georgetown University, Paschal spent the last few years of his life as a lecturer and vice-president on that school's faculty. He died on February 16, 1878 and was buried in Rock Creek Cemetery. In delivering a memorial before the Washington Bar, Albert Galletin Riddle said of Paschal:

He was a man of the highest character, the frankest manners, of warm impulses and temperament, full of a tender sensibility, a true, noble child of the South, illustrating in character and life what is best of her generous products. Nature endowed him liberally: a life of pure morality, abstemious habits, a rare power and will for persistent labour, these and his many years, made him that rare thing after all, a very able and most accomplished lawyer. . . . This is about the highest praise lawyers ever do or can award the leading men of their ranks. . . . [But] he was something more than a mere lawyer. . . . Judge Paschal was a man of wide, liberal, enlightened views—the views of a Statesman. . . . An exile from a home and country in ruins . . . [to him nevertheless] was given a clear steady hope of the future; he died with its glow on the opening pinions of his spirit. . . . His career was completed.
Indeed at the time of Paschal's death, the country's future did look hopeful. The Union had been saved, the rule of law preserved, and the southern states restored to their full relations within the federal system. The Texas Unionist had lived to see his political and legal views vindicated, and in this respect, "his career was completed."

It was also the close of an era, for the nineteenth century lawyer's concern for the inviolability of contract, was no longer adequate to the exigencies of the postwar years. Having "released" the energy of Jacksonian America, the law now had to be made to serve as a check on unbridled industrial growth. The Supreme Court's decision in Munn v. Illinois, in the last year of Paschal's life, was a tacit, if premature, acceptance of this new role. Though there is no record of his reaction and despite his lifelong support of railroads, one imagines the old jurisprudent was pleased with the Munn decision, for he recognized the positive aspects of this revolution in law much more clearly than most of his contemporaries. The Court's ruling, sustaining the operation of state police power upon existing agreements in the public interest, was not, after all, unlike the right, which Paschal had so successfully
defended, of the Texas legislature to control the
disposal of its public domain in the land title cases.

In a deeper sense, however, the revolution in law
that was to take place was only a reflection of a more
dramatic shift in the values of society. "The change
has been accomplished," Paschal said, "as the logical
result of the war of ideas upon the great subject of
human slavery." Delivering a lecture to the American
Union Academy of Literature, Science, and Art, on March
7, 1870, Paschal demonstrated his clear understanding
of what the new constitutional priorities must be.

Directing his remarks in particular to an explana-
tion of the Thirteenth, Fourteenth, and Fifteenth Amend-
ments, the aging lawyer explained how taken together,
these amendments "radically change the original theory
of government," by emphasizing the rights of "life and
liberty," rather than property. No longer would it be
necessary, Paschal said, for the words "people," "per-
sons," and "citizens," to be "twisted and tortured in
every place where they described a free man," for con-
temporaneous history leaves no doubt of what was intended" under the Civil War amendments. The Constitution now
provided for a national citizenship which encompassed
not only the freed blacks, but naturalized aliens as well. To guarantee this citizenship, the Fourteenth Amendment repeated the "privileges and immunities clause" from Article IV of the Constitution, but as the speaker pointed out, with vast new implications: "How few lawyers even have contemplated the full scope of this declaration! Life, liberty, and property embrace the whole range of civil rights. The simple phrase 'no State shall pass any law impairing the obligation of contracts,' has brought almost every imaginable contract into review before the Supreme Court of the United States."

Though the states had lost many rights, Paschal approved of the gain of new securities for the liberty of the masses: "Suffrage has been engrafted as a privilege and immunity which a State can no more infract than it can any other absolute or subordinate right. Those who complain that there is tyranny in this, forget that liberty to every citizen has gained a higher stand and a securer foundation." These liberties, however, were dependent upon the support of the agencies of the people. "Legislators have not yet risen to the emergency," Paschal admitted. "The transition has been so sudden that the people are hardly yet awake to the wonderful reality."
Likewise, executive veto had rarely been exercised in defense of liberties, and on such occasions, he stated, "the people have generally decided at the polls in favor of right."

Thus, the ultimate guarantee of these enlarged principles of republican government, Paschal told his audience, would come from the Supreme Court—not because of the inherent wisdom of its justices, but because of an enlightened legal profession:

In no nation in the world has there ever been such an array of legal minds, or such modes of constant judicial enlightenment. In a complex government, where there are thirty-eight, and soon must be fifty, appellate expounders of the Constitution, besides the hosts of publicists, reviewers, and barristers necessary to carry on such a machinery, absurd and untenable precedents can maintain no permanent hold. Courts may not bow to the popular will; but they can never withstand the just criticism of a nation of lawyers.

It was to be almost a century before the Supreme Court fulfilled the potential that Paschal saw in the post-Appomattox amendments. But the revolution in law was not the only revolution brought about by the Civil War. In the final analysis, the failure to realize fully the promise of Reconstruction was a failure of the Industrial Age. But lawyers like Paschal, who in the
nineteenth century, recognized and implemented innovative uses of the law, did much to establish the basis for the twentieth century's "second revolution" in American law.
NOTES

1 In re Paschal (10 Wall. 483-97). Having collected the sum of $47,325 in gold from the earlier bond cases, Paschal refused to turn this amount over to the state treasurer until Texas settled its account with him. He presented a bill which included $13,355.98 in disbursements (carefully accounted for), $20,000 for legal services (to which he claimed he was entitled based on the promised 20-25% contingent fee), $17,577 for the "publishing, binding, and delivering of 400 copies each of the five volumes of Texas Reports" (for which he was reporter), and finally $1000 past due legal fees from two earlier cases. When the state of Texas sued Paschal for the recovery of the proceeds from the indemnity bond cases, the United States Supreme Court took jurisdiction because of the charge of alleged misconduct against Paschal, one of its officers. Subsequently the Court completely exonerated Paschal by finding "no reason to suppose that he is not acting in good faith." The profession applauded Paschal for his stand, the Legal Gazette stating, "Our Don Pasquale had not lived half his life in the region of bowie knives to be 'scared by varmints,'" (Vol. IV, February 9, 1872, p. 44). In 1874, the Texas legislature finally authorized the governor to settle with Paschal (Gammel's Laws of Texas, VIII, pp. 243-44).


3 As quoted in I Myself, pp. 89-90. Obituaries appeared in the Washington Law Reporter, VI (February

4 Paschal, Lecture Delivered to the American Union Academy of Literature, Science, and Art [at its special meeting called for the purpose, March 7, 1870] (Washington: W. H. & O. H. Morrison, 1870). Pamphlet found in the Paschal biographical collection in the Austin Public Library.
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