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RICE UNIVERSITY

Urban Public Services and Private Enterprise:
Aspects of the Legal and Economic History
of Houston, Texas, 1865-1905

by

Harold Lawrence Platt

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

Doctor of Philosophy

Thesis Director's Signature:

Houston, Texas

May, 1974
ACKNOWLEDGEMENTS

In four years of life and work in Houston, I have accumulated a large debt to others for their support and aid. I can repay them here in only a token manner. I feel the deepest gratitude towards my dissertation advisor, Harold M. Hyman. Since I first encountered him at the University of Illinois in 1966, he has provided me with a very humane model of a devoted, professional historian and scholar. He has served me in innumerable ways, but I am most appreciative of him as a teacher without parallel.

Of all the schools that I have attended, Rice University is the only institution that has personalized higher education. It has supplied a rewarding academic milieu of individual freedom by minimizing bureaucracy. The Department of History under Mrs. Katherine Drew's leadership has been more than generous with financial and other kinds of support. While all members of the Department deserve mention, I am especially thankful for friendship and intellectual freedom from Tom Haskell, Al Van Helden, Joseph DiCorsia, Gale Stokes and Don Neiman.

Libraries and their staffs have made this study possible. For the historical investigator, librarians made the difference between exercises in frustration and pleasurable pursuits of knowledge. I am most grateful to the personnel at Rice University's Fondren Library. Their computer efficiency was more than matched by warm relationships and interested attention. I also owe thanks to Mrs. Orgain at the University of Houston Archives. Clerical assistance was supplied by Carole Speranza. A different kind of aid, a Mary Ellen Goodman Fellowship, from the
Southwest Center for Urban Research helped me complete this research project.

Finally but foremost is Janet Platt. My appreciation for her understanding, compassion and endurance of me is beyond my abilities of expression. Abbey Platt, who has suffered with a part-time father for her entire life, deserves my apology.

To my parents, whose support and faith has never ceased, I will always be grateful.

Houston, Texas.

H.L.P.
# TABLE OF CONTENTS

### ACKNOWLEDGEMENTS

#### PAGE

i

### LIST OF TABLES

iv

### LIST OF ILLUSTRATIONS

v

### I. PAYING FOR PROGRESS: RECONSTRUCTION AND PUBLIC FINANCE, 1865-1880

1

### II. URBAN SERVICES ON THE FRONTIER: PATTERNS OF TECHNOLOGICAL DIFFUSION, 1865-1885

30

### III. "THE SPIRIT OF PROGRESSIVE MUNICIPAL LEGISLATION", 1880-1890

55

### IV. "THE THIN EDGE OF THE WEDGE": PRIVATE ENTERPRISE VS. PUBLIC OWNERSHIP, 1886-1893

81

### V. AT THE CROSSROADS: RESOURCE ALLOCATION IN A PROGRESSIVE CITY, 1892-1896

109

### VI. CITIES, COURTS AND CORPORATIONS: ADJUSTMENTS TO MODERNIZATION, 1896-1902

133

### VII. THE COMMISSION GOVERNMENT MOVEMENT, 1900-1906

167

### ABBREVIATIONS USED IN THE FOOTNOTES

198

### FOOTNOTES

200

### BIBLIOGRAPHY

277
LIST OF TABLES

<table>
<thead>
<tr>
<th>TABLE</th>
<th>Description</th>
<th>FOLLOWING PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Population and Number of Places in Urban and Rural Territory, 1800-1880</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>Growth of State and Municipal Debt, 1840-1902</td>
<td>3</td>
</tr>
<tr>
<td>3.</td>
<td>Houston Bond Issues, 1866-1890</td>
<td>16</td>
</tr>
<tr>
<td>4.</td>
<td>Allocation of Public Revenues, 1877-1892</td>
<td>56</td>
</tr>
<tr>
<td>5.</td>
<td>Allocation of Public Revenues, 1897-1912</td>
<td>116</td>
</tr>
</tbody>
</table>
## List of Illustrations

<table>
<thead>
<tr>
<th></th>
<th>Illustration Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bonds Issued Annually by State and Municipal Governments, 1860-1880</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>Trading Prices of Houston 6% Bonds, 1875-1895</td>
<td>19</td>
</tr>
<tr>
<td>3</td>
<td>Houston Property Valuations, 1870-1908</td>
<td>20</td>
</tr>
<tr>
<td>4</td>
<td>Map of Houston, 1873</td>
<td>39</td>
</tr>
<tr>
<td>5</td>
<td>Map of Houston, 1891</td>
<td>84</td>
</tr>
</tbody>
</table>
PAYING FOR PROGRESS: RECONSTRUCTION
AND PUBLIC FINANCING, 1865-1880

Between 1850 and 1885, the financing of public improvements became the
focus of concerns about America's growing cities. Finding answers for the problems
of who decided which projects to undertake and how the consequent tax burden
should be distributed absorbed most other current issues. The viability of democracy
in cities and their proper organizational structure, for example, assumed secondary
importance compared to impending bankruptcy of local governments across the
country.¹ A variety of changing conditions and attitudes were responsible for
making municipal finance the first nationally pervasive urban problem. Without
attempting to catalog all of these forces, a few dimensions warrant definition.

At base, of course, was the strong toward movement of rural Americans
and influx of immigrants into the cities. (See Table 1.) As a result of this rapid
population growth, thresholds of necessity for an enlarging array of public services
and facilities were surpassed in more and more places. City governments, conse-
quently, were called upon to provide institutional solutions to many problems which
were formerly handled through informal, volunteeristic arrangements.²

As towns became cities, their self-images were also transformed. The
urbanization process, according to Michael Frish's perceptive study, involved not
only numerical increases but, additionally, a "dynamics of conceptual change".
The community's growing complexity forced its members to form more abstract
notions of themselves and their environment. In effect, new attitudes towards the
public interest were forged, which produced enlarged demands for city governmental
activity.³ For the middle classes, fundamental improvements in their standards of
### TABLE ONE

**POPULATION AND NUMBER OF PLACES IN URBAN AND RURAL TERRITORY: 1800-1880**

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of Places</th>
<th>Population</th>
<th>Percentage Increase</th>
<th>Population</th>
<th>Percentage Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>1800</td>
<td>33</td>
<td>322,371</td>
<td>--</td>
<td>4,987,112</td>
<td>--</td>
</tr>
<tr>
<td>1810</td>
<td>46</td>
<td>525,459</td>
<td>63</td>
<td>6,714,422</td>
<td>31</td>
</tr>
<tr>
<td>1820</td>
<td>61</td>
<td>693,255</td>
<td>32</td>
<td>8,945,198</td>
<td>33</td>
</tr>
<tr>
<td>1830</td>
<td>90</td>
<td>1,127,247</td>
<td>63</td>
<td>11,738,773</td>
<td>31</td>
</tr>
<tr>
<td>1840</td>
<td>131</td>
<td>1,845,055</td>
<td>63</td>
<td>15,224,398</td>
<td>30</td>
</tr>
<tr>
<td>1850</td>
<td>236</td>
<td>3,543,716</td>
<td>92</td>
<td>19,684,160</td>
<td>29</td>
</tr>
<tr>
<td>1860</td>
<td>392</td>
<td>6,216,518</td>
<td>75</td>
<td>25,226,803</td>
<td>28</td>
</tr>
<tr>
<td>1870</td>
<td>663</td>
<td>9,902,361</td>
<td>59</td>
<td>28,656,010</td>
<td>14</td>
</tr>
<tr>
<td>1880</td>
<td>939</td>
<td>14,129,735</td>
<td>42</td>
<td>36,026,048</td>
<td>26</td>
</tr>
</tbody>
</table>

---


b. An urban place is one with at least 2500 persons.

c. Percentage increase in population over preceding decade.
living were also becoming possible. In the larger cities, the 1850's marked a water-
shed for the diffusion of peculiarly urban amenities into the home. During this
decade, for example, gas-lighting and indoor plumbing were installed in thousands
of households.  

The Civil War seemed to act as an accelerator or catalyst on all of the above
processes. To historian John B. Jackson, Americans' relationship to their environ-
ment was noticeably different in the postbellum period. From somewhat overwhelmed
inhabitants, they began to assume the posture of possessors and controllers of the land.
There was little hesitation to transform natural landscapes into man-made environ-
ments in order to achieve greater productivity.  Other historians have been
equally impressed with the magnitude of change after the civil conflict. Howard
Mumford Jones, for instance, characterized the era as an "age of energy", while
William Hurst found the "release of energy" to be the primary value embodied in the
period's legal system.  

A substantial portion of this activity was directed towards building cities
which would encompass the advantages of both the rural and urban milieu. Con-
temporary writers were almost unanimous in their visualization of progress as a
march toward urban civilization; not a backstep to rural nature. Most of the early
commentators called for moral regeneration to achieve this transformation. However,
an increasingly influential minority advocated environmental manipulations to affect
social order in the city.  

The Civil War accelerated other tendencies as well. The extra burdens
falling upon state and local tax machinery to help finance the war hastened their
breakdown. Industrial modernization was responsible for basic alterations in what
constituted wealth and value. However, contemporary recognition of these changes, especially among rural dominated legislatures, lagged far behind. While most of the new forms of intangible, corporate wealth remained invisible to tax collectors, legislatures redoubled efforts to squeeze revenues out of urban property holders. The resulting gross inequality in the incident of taxation produced massive evasions which only further compounded the system's inequities. The failure of the governments' "money machines" occurred just at a time when municipal expenditures were soaring to meet their communities' needs and aspirations. 8

A large part of the gap between expenditures and revenues was filled through the sale of negotiable municipal bonds. The size of this debt swelled enormously. In the twenty years after 1860, the total bonded debt of American cities increased from $51 to $820 million. (See Table 2 and Chart 1.) This kind of data, however, only reveals the tip of an important iceberg. How individual cities coped with financial strangulation, what effects these problems had on the course of urban growth, and the role of the judiciary in directing public policy deserve careful scrutiny. Houston's fiscal policies were, in many respects, typical of many towns where virtual bankruptcy resulted by 1874. 9 A close examination of Houston public finance during this period provides many new insights on these problems.

Appomattox allowed Houstonians to pursue new levels of progress. The Texas community of about 6800 suffered no physical destruction during the war. Large fortunes were accumulated through cotton smuggling operations and the town's population was swelled by hundreds of Galvestonians fleeing their island in fear of a Union invasion. The experiences of the decade before Fort Sumter fed this optimism. In the fierce commercial rivalry among Gulf Coast towns to capture
TABLE TWO

GROWTH OF STATE AND MUNICIPAL DEBT:
1840-1902\textsuperscript{a}

<table>
<thead>
<tr>
<th>Year</th>
<th>State (Millions of Dollars)</th>
<th>Local</th>
<th>Totals (Millions of Dollars)</th>
<th>State &amp; Local</th>
<th>State</th>
<th>Local</th>
</tr>
</thead>
<tbody>
<tr>
<td>1840</td>
<td>$175</td>
<td>$ 25</td>
<td>$11.42</td>
<td>$10.25</td>
<td>$ 1.17</td>
<td></td>
</tr>
<tr>
<td>1850</td>
<td>190</td>
<td>-----</td>
<td>-----</td>
<td>8.19</td>
<td>-----</td>
<td></td>
</tr>
<tr>
<td>1860</td>
<td>257</td>
<td>200</td>
<td>14.53</td>
<td>9.15</td>
<td>6.36</td>
<td></td>
</tr>
<tr>
<td>1870</td>
<td>353</td>
<td>516</td>
<td>22.53</td>
<td>5.48</td>
<td>13.38</td>
<td></td>
</tr>
<tr>
<td>1880</td>
<td>275</td>
<td>821</td>
<td>21.85</td>
<td>3.37</td>
<td>16.37</td>
<td></td>
</tr>
<tr>
<td>1890</td>
<td>211</td>
<td>926</td>
<td>18.16</td>
<td>3.03</td>
<td>14.79</td>
<td></td>
</tr>
<tr>
<td>1902</td>
<td>239</td>
<td>1630</td>
<td>23.77</td>
<td>3.57</td>
<td>20.74</td>
<td></td>
</tr>
</tbody>
</table>

FIG. ONE --- BONDS ISSUED ANNUALLY BY STATE AND MUNICIPAL GOVERNMENTS, 1860-1880
interior markets, Houston was already firmly established as the rail center of the state. With three quarters of Texas' 740 miles of track radiating from the town, Houstonians had at least partially offset Galveston's geographic advantages in ocean shipping and permanently overshadowed its most immediate rival, Harrisburg.

Houston in 1865 consisted of few hundred buildings clustered around the west side of a bayou. The town offered a few public amenities. None of its streets were paved; drainage and sewerage systems, educational, lighting, water and intracity transportation services did not exist. Each of the city's three public institutions provided important revenues to the municipal treasury. Until 1860, wharfage fees were Houston's primary source of income, but they were eliminated in order to improve the city's commercial position. A central market building was the second institution which was publicly owned and regulated while the Houston Tap Railroad comprised the final major asset of the municipal corporation.

This rather bare environment became considerably cluttered in the next few years as community leaders undertook a sustained effort at local, self-reconstruction. From the reconstitution of the city council in October 1865 until the implications of a business slump became manifest in the summer of 1874, public funds financed a wide range of improvements. The funded or bonded debt, however, multiplied over ten times in only eight years. The size of the debt, $1,500,000, may not seem large. But when its annual interest maintenance of $100,000 is compared with the city's maximum ad valorum tax revenues of $140,000, the problem facing city fathers comes into focus. If the general economic depression and deflation of the money supply are considered, the weight of the debt can be sensed.

The origins of this crippling situation warrants careful examination. Recon-
struction historiography, as well as local legend in Houston, abounds with accusations of radical Republican corruption and spendthrift policies. Typical was redeemer Mayor James D. T. Wilson's charge in September 1874 that, "heavy debt, an empty treasury and a confused condition of city affairs, constituted the legacy of embarrassment handed down by the late radical administration...." Wilson correctly pointed out that 83% of the city's debt was contracted during the mayorship of Republican Thomas H. Scanlan (1870-1874).

A different interpretation emerges when attention is directed to the continuity of financial policies in the decade after 1865. The reins of government were held by the Democratic party until the initiation of military removals in December 1867. But not until August 1868 was either the mayor's office or a majority of the aldermanic seats occupied by Republicans. During this three year period, Democratic leaders initiated a dual, interconnected policy. Large spending for local improvements was to be paid for by long term bonds, while the major burden of taxation was shifted from occupations to property. In February 1866, the city council's finance committee outlined this program in two reports. In their first message, the aldermen stressed the need for improved police, bayou navigation, street paving and a new market house-city hall. They were equally concerned with the inadequacy of the existing sources of income and therefore recommended that a new property valuation be undertaken. Prompted by a "large and respectable portion of our citizens", who did not perceive the requirement for new taxes, the committee issued a second, more far reaching report three weeks later. In order to accomplish the improvements which all agreed were essential, the aldermen now argued that two new policies were "absolutely necessary!": These were the use of long term municipal bonds where possible and
charter amendments to increase the ad valorem tax rate from the existing 1/2% limit. 16

Implementation of these proposals progressed quickly. In October, a new city charter was ratified by the state legislature allowing levies on all property at a 2% rate. Over the next two years, this form of taxation became the municipal treasury's main source of revenue, which jumped significantly by almost 50% to $128,000 in 1868. The council moved even faster in making expenditures. In June 1866, finance committee chairman M. Reichman was dispatched to New York with $500,000 in 8%, 25 year bonds to negotiate with contractors for an iron market house. Reichman wired in September that he was in contact with a firm who would supply the iron structure for $100,000 in bonds and $50,000 in cash. 17

Although the inauguration of the construction and financing of the market house-city hall was delayed until 1871, many other projects were launched, or at least authorized. In comparison with later practices, financing of these early improvements proceeded in an almost casual manner. Bond issue amounts and terms varied as widely as the purposes for which they were used. For example, in August 1867, $14,000 in 10%, six year bonds were given to Mary Duer in exchange for a parcel of land upon which a city hospital was to be built, while two months later, $75,000 in 12% bayou navigation improvement bonds were sold to local subscribers. By August 1868, when the traditional Democratic leadership was removed by General J. J. Reynolds, the funded debt had already more than doubled its $94,000 level of 1866. More important still for future developments were the planting of the seeds for such large scale projects as a ship channel, market house and various railroad subsidies which blossomed during the early '70's. 18
The council's active spending program did not go unnoticed by the people, or at least the community's leading citizens. On the eve of Republican party ascendancy to power, an appeal to Houston's taxpayers for a public meeting was issued by 35 men, among whom were six out of the next seven mayors. As expressed by the prominent attorney and staunch Democrat George Goldwaite, their complaint was not directed against the creation of too much funded debt, but the opposite. He found Houston's financial condition "deplorable" because "the city has made itself a machine to grind out [scrip] paper to be shaved at enormous rates. This is all wrong. This is the great evil...."19 Scrip was essentially an IOU bearing neither interest nor legal obligation of redemption. Goldwaite argued that funded bonds, which carried a contractual obligation to pay principal and interest, besides explicitly providing for the source of their redemption or funding, were a superior alternative means of financing public institutions.

With scrip worth only 40¢ on the dollar, the lawyer believed that saving the city's credit should be given top priority. The only remedy was through a funding of this floating debt. As long as bond interest was promptly paid, he argued, there was no limit to Houston's borrowing potential. Glued to a vision of expansive uplift, Houston's best men were unable to conceive of a protracted economic contraction. Nor were their attentions drawn to the need for efficient tax machinery to ensure a stable source of income.

In terms of eliciting mass response, the meeting was a failure and no further sessions are recorded. Its importance lies in the fact that many of these same men were soon elevated into positions of power. They quickly set about to pursue the Goldwaite formula. Within a few months the scrip problem was brought under control
while over the course of the next four years, a million dollars in bonds were successfully sold on the New York securities market. 21

Besides the consensus among city leaders on both the means and goals of Houston public finance, two other considerations mitigate against blaming the Republicans for reckless extravagance. The first is the hearty approval of Republican administration practices given by the staunchly Democratic editor of the Houston Telegraph. In January 1871, the daily proudly noticed that city scrip was now valued at 80% of par. "Whatever else may be said of those now at the helm of city government," the Telegraph continued, "its officers certainly include some competent financiers." 22 Even as partisan tempers flared in 1873 and accusations of financial mismanagement flew, there was no hint of potential disaster around the corner. 23 The Republicans can be blamed only for effectively materializing the community's desire for progress.

This conclusion gains even more force when the policies of the redeemers during their first year in office are examined. Although the new officials expected to find a plundered treasury and financial chaos, they also sold $175,000 in new issues and pledged the city to another $100,000 bond exchange with a railroad venture. At the same time, the Democratic council shrunk the tax base through the unprecedented exemption of manufacturing concerns. 24 The impending crisis in city finance became visible to contemporaries slowly. This halting recognition is understandable though, in the context of the optimistic boom time that built its own momentum into activity of every sort. In the public sector, the augmented level of activity could not easily be wound down, even by conservative men bent on retrenchment.
The postwar economic boom created a favorable atmosphere for the spending of current and future revenues. Not only were towns like Houston eager to improve their surroundings and commercial position, but investors also saw profitable opportunities in aiding growing frontier communities. Mayor Scanlan, upon returning from conferences with east coast bond dealers in 1871, remarked that "some New York capitalists have Texas 'on the brain'". Houston's faithful payment of interest, according to the mayor, was the key that unlocked creditors' savings accounts.  

A number of contemporary analysts agreed that a speculative psychology largely fueled the burst of municipal debt expansion after the Civil War. Responsibility for this mass phenomenon, according to William Minot, Jr., rested with the national government's wartime greenback policy. Speaking before the American Social Science Association in 1877, Minot explained that the inflationary repercussions of an enlarged money supply created an illusion of doubling the value of existing wealth. Consequently, credit expanded wildly as both lenders and borrowers believed that their enhanced resources should be profitably exploited. "It is not difficult to see", Minot concluded, "how even honest and responsible persons... became proportionately liberal in expenditures, public and private." While this inflationary bubble "excited an extreme energy and spirit of enterprise", it also produced an "enormous pressure...[for] reckless public extravagance".  

With few institutional checkreins or market restraints, Houston and many other cities vigorously pursued the materialization of community goals. The distribution of funds by local governments are a good indication of their leaderships' social commitments and priorities. Spending of current revenues, for instance, greatly determined the ordering of day to day public services. Often the expendi-
ture of future revenues through the issuance of bonds also reflected immediately felt needs for such public facilities as schools and roads. But long term obligations especially revealed municipal decision makers' efforts to manipulate the accelerators of urban growth. Debts contracted in the present, which hastened population and wealth accumulation, essentially paid for themselves as the community's tax base expanded.

Efforts to speed up the bayou city's transformation into the "Chicago of the South" proceeded along three avenues. The first approach, subsidizing transportation ventures, was actually a continuation of a well established state and local antebellum policy. Houston's earliest postwar bonded liabilities were incurred to pay for outstanding debts from the 1856 construction of the Houston Tap Railroad. This short feeder line was built to negate Harrisburg's advantages as the terminal for a longer route through southeastern sugar plantations. In the three years after 1866, three separate bond issues, totaling $84,000 were authorized to liquidate this obligation.

During this period, Houston also became involved in a new project to improve its water transportation links to outside markets. In October 1867, the city began to dredge a path in the bayou to the gulf. To finance the operation, the council solidified local investors to subscribe to $75,000 worth of 12% bonds. However, this public initiative was quickly altered into a mixed enterprise with private interests in command. A special aldermanic committee's June 1868 recommendations were adopted for the formation of a privately managed, publicly financed corporation. Over the next four years, the city exchanged $230,000 of its negotiable securities for similar quantities of Buffalo Bayou Ship Channel Company bonds. In addition, the city ceded its wharfage fee privileges for fifty years to the venture.
Aid for transportation projects had shifted after the mid-1830's from state to local governmental units. In reaction to state financial disasters caused by these subsidies, most legislatures were constitutionally forbidden from making loans to private corporations. However, judicial rulings exempted local units from these provisions. By 1880, about one-sixth of total urban indebtedness derived from transportation promotions. Concern about this variety of municipal bond obligation; especially among the legal fraternity, assumed far greater importance than the statistics indicated. The virtual flood of cases involving local railroad aid defaults, which swept into courthouses in the '60's, touched off strident reactions by a small but influential group of the bench and bar. To jurist-text writers such as Thomas Cooley and John Dillon, as well as a majority of the Supreme Court, bonded debt defaults and repudiations threatened to weaken the entire moral fabric of the nation. Cooley, for example, explained that creditor pressures to enforce their just demands for payment were successfully pushing national judges to "amplify their jurisdictions" to the limits of their power. The trend of these decisions posed a real threat of "judicial despotism". To Cooley, the government's chief bulwark, the monied class, was stirred to "revolutionary tendencies" towards strengthening the central authority whenever judicial remedies failed. On the other hand, enforcement of debts which were contracted through shady deals, produced even worse repercussions on local communities. The honest, hard working taxpayer, according to Cooley, became demoralized, his spirit of industry slackened and his "sense of public honor" dissolved. In this manner, respect for the law decayed; the community became ripe for conversion to communism. In addition, Cooley recognized that excessive debt burdens crippled the ability of city governments to maintain minimum service levels
and uphold the value of their initial improvement investments. 35

Cooley and other commentators attributed reckless and extravagant local
public spending largely to intense competition between cities. Consider Samuel
Bowles' 1878 analysis of intergovernmental relationships within a federal system. He
contended that the decentralization of state authority had created a "real imperial-
ism" among its cities in which "each [was] in a sort of rivalry or race with all its
neighbors for outward renown...." City rivalry in a time of inflation, Bowles
argued, stimulated the attempt

to outfit every large town or city, within the
period of a single generation, with all the con-
veniences and comforts and luxuries that else-
where have required centuries to accumulate. 36

Although Houston's railroad and canal subsidies were partially motivated by
rivalry with Galveston, they should not be classified as luxury expenditures. For a
city based economically on commerce in cotton, cheap transportation to world
markets was vital. The competition presented by the better situated Galveston
dictated, moreover, that marginal transportation costs could determine the long
range winner of this city rivalry. The municipal corporation's total investments of
$414,000 in water and rail improvements, while directly benefitting merchants the
most, indirectly sustained the entire community's raison d'etre. 37

The facilitation of communication within the town became a second major
investment concern of official decision makers. Again, Houston's site proved to be
an unfortunate and costly liability. Located on sandy soil with a high water table
and poor natural drainage, local thoroughfares were easily churned into either seas
of mud, or clouds of dust. This condition was journalistically portrayed in the late
'60's by such typically caustic remarks as
The streets as well as the crossings, are in such a horrible condition [that] one absolutely wades from one end of them to another. Houston can boast of having the dirtiest, stinkiest [street] gutters in the state....

To overcome these environmental handicaps, the construction of sewers, paved streets and bridges to unite the divided city, consumed a large portion of the public revenue.

In addition to forming the biggest single category in annual budgets, street improvements were financed through the sale of municipal bonds. By 1874, an approximately $500,000 debt was accumulated. While some of these securities were paid directly to contractors, most were sold in New York. Since road improvement projects created neither revenues nor collateral structures, the city was forced to offer extraordinary incentives to investors. Consequently, most of these bonds provided 10% annual interest over 30 years and were sold for 70-80 cents on the dollar.

Intra-urban street improvements, like transportation projects radiating from the town, were motivated by a mixture of immediate necessities and future oriented aspirations. Convenience plus commercial requirements for quick and easy communications within Houston focused public attention on this special environmental problem. Paved roads and sidewalks also enhanced property values as well as presenting an attractive urban appearance to prospective settlers. Unfortunately, all the effort and money expended on these goals provided only temporary benefits. The constant action of the elements and the municipal corporation's financial inability after 1874 to maintain its public works caused them to quickly erode and wash away. Street improvements remained one of the most intractable and expensive problems faced by the community.
Most urban commentators, while shocked and alarmed at the size of municipal debt in the 1870's, were willing to admit the legitimacy of bonded obligations incurred for local permanent improvements. One of the leading young economists of the day, Henry Carter Adams, concluded that

[It seems, then, that the legitimate needs of a young city extend at a more rapid rate than the [population] growth itself. A developing society must of necessity make continually larger demands upon government, for the principle of common property under public management extends to new objects and embraces new purposes as a community grows in numbers or riches.]

Other writers defended city borrowing for specific "new purposes". On penman, for example, argued that municipal water works should not be regarded as a luxury, but as a "necessity of modern civilized life". Even legal practitioners, who received an unbalanced picture of local fiscal policies from the preponderance of adjudications involving railroad aid bonds, qualified their harsh condemnations of urban mismanagement in these areas.

Of all the projects in which local governments invested during the decade after the Civil War, articulate contemporaries were most favorably disposed towards those which produced revenues for city treasuries. Houston's third major effort to accelerate its growth involved this type of scheme. The market house—city hall, built at a cost of over $300,000 was supposed to pay for itself. Expected revenues from rents on stalls for food retailing and surplus office space for businesses were believed sufficient to retire the bonds issued for the building's construction. There is little doubt, though, from the grandiose scale of the structure that Houstonians were also creating a monument to their own civic pride. Whether considered an
extravagance or expression of self-confidence in the town's future prospects, the market house supplied an important public meeting place for community interactions. Civic pride and optimism, however, could not be transformed into the dollars needed to meet semi-annual interest payments. After the beginning of a depression in 1873, Houston municipal officials were left with the overwhelming task of wrestling with the debt burden. Historical focus properly belongs on the council between 1874 and 1884, because its priorities, negotiation efforts with creditors and responses to judicial orders played a pivotal role in adjusting interests. In the '80's, the debts generated during the boom continued to restrict policy options. However, the general economic recovery and the institutional reforms effected in the depression '70's allowed city officials to pursue other concerns.

Possibly the best way to give some sense of the dilemmas confronting Houston's decision makers in 1874, is through the revealing message of Mayor James D. T. Wilson after nine months in office. Wilson, a bank president and large private investor, disclosed that upon entering his position in January he "felt in common with you all [the council], a personal pride in our city and its credit, and was possessed with the desire to do everything to preserve its good faith and credit...." Clearly, paying the $50,000 semi-annual interest due in July had been the council's prime objective. All incoming U. S. currency was set aside at the cost of reissuing large amounts of scrip. When tax funds proved insufficient, the unsold $75,000 bond issue authorized by the Republicans was marketed for what it could get, i.e., about 60¢ on the dollar.

The July payment was met but in the process a significant shift of viewpoint occurred. Wilson calculated that with a debt of around 1-1/2 million dollars,
(see Table 3), the city owed its creditors about $100,000 annually. At the same time, current operational expenses for such essential services as street repair, police and sanitation, cost $90,000 plus per year. On the other hand, revenues from all sources, including an optimistic projection of the city's ability to collect back taxes, would amount to only $110,000. Given then, a situation where obligations more than doubled assets, a choice of priorities was demanded. The mayor chose current expenditures. "These," Wilson noted,

...constitute the machinery of city government, organized for the purpose of preserving the good order of society, the safety of the lives and property of the people, the general sanitary condition and welfare of all, in fact the very life and existence of the city, which must be preserved at all hazards, and rightfully and properly deserve the first consideration, at our hands, as essential to self-preservation.48

The importance of this change in policy cannot be overstated. It marks the abandonment of the orientation towards city finance formulated by the 1868 taxpayer protestors of maintaining a solid credit rating. It also formed the basis of action for the next 15 years. Once perceived, the outlines of possible policy alternatives were quickly drawn. Wilson, his illusions of an expansive uplift shattered, prophetically surmised that Houston's wealth would not grow as fast as her debts compounded interest. His proposed solution, therefore, centered on achieving a compromise with the bond holders. He hoped to consolidate the entire debt into a new bond issue that would bear a lowered, more manageable interest rate. 49

The council's finance committee, on the other hand, pursued a mirage of rising real estate values. In a companion report, the aldermen argued that the
# TABLE THREE

HOUSTON BOND ISSUES: 1866–1890

<table>
<thead>
<tr>
<th>Date</th>
<th>Name of Issue</th>
<th>Amount</th>
<th>Interest Rate</th>
<th>Tenure (Years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb. 14, 1867</td>
<td>J. A. Stevens [Tap Railroad]</td>
<td>$        44,000</td>
<td>8%</td>
<td>25</td>
</tr>
<tr>
<td>Mar. 28, 1867</td>
<td>J. H. Bower [Tap Railroad]</td>
<td>10,000</td>
<td>8%</td>
<td>10</td>
</tr>
<tr>
<td>Jan. 28, 1869</td>
<td>M. Reichmann</td>
<td>1,000</td>
<td>8%</td>
<td>10</td>
</tr>
<tr>
<td>Mar. 25, 1869</td>
<td>Ship Channel - 1st Series</td>
<td>130,000</td>
<td>8%</td>
<td>25</td>
</tr>
<tr>
<td>Apr. 22, 1869</td>
<td>H. Tap &amp; Brazoria Railroad</td>
<td>30,000</td>
<td>8%</td>
<td>25</td>
</tr>
<tr>
<td>Mar. 3, 1870</td>
<td>Ship Channel - New Series</td>
<td>100,000</td>
<td>8%</td>
<td>25</td>
</tr>
<tr>
<td>May 20, 1871</td>
<td>Market House</td>
<td>100,000</td>
<td>8%</td>
<td>30</td>
</tr>
<tr>
<td>June 5, 1871</td>
<td>Road &amp; Improvement</td>
<td>100,000</td>
<td>10%</td>
<td>30</td>
</tr>
<tr>
<td>Nov. 7, 1871</td>
<td>Market House</td>
<td>150,000</td>
<td>8%</td>
<td>30</td>
</tr>
<tr>
<td>Jan. 27, 1872</td>
<td>Road &amp; Improvement</td>
<td>200,000</td>
<td>10%</td>
<td>30</td>
</tr>
<tr>
<td>May 24, 1873</td>
<td>Matured Indebtedness - 2nd Series</td>
<td>100,000</td>
<td>10%</td>
<td>30</td>
</tr>
<tr>
<td>Aug. 16, 1873</td>
<td>Road &amp; Improvement - 2nd Series</td>
<td>150,000</td>
<td>10%</td>
<td>30</td>
</tr>
<tr>
<td>Jan. 17, 1874</td>
<td>Funding</td>
<td>75,000</td>
<td>10%</td>
<td>25</td>
</tr>
<tr>
<td>July 25, 1874</td>
<td>Funding</td>
<td>100,000</td>
<td>8%</td>
<td>25</td>
</tr>
<tr>
<td>Oct. 10, 1874</td>
<td>Western Narrow Gauge R. R.</td>
<td>100,000</td>
<td>7%</td>
<td>30</td>
</tr>
<tr>
<td>Dec. 10, 1875</td>
<td>Consolidation [Refunding]</td>
<td>1,000,000</td>
<td>6%</td>
<td>30</td>
</tr>
<tr>
<td>Dec. 12, 1881</td>
<td>Scaling [Refunding]</td>
<td>1,000,000</td>
<td>6%</td>
<td>30</td>
</tr>
<tr>
<td>June 2, 1888</td>
<td>Compromise [Refunding]</td>
<td>500,000</td>
<td>6%</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td></td>
<td>600,000</td>
<td>5%</td>
<td>30</td>
</tr>
</tbody>
</table>

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a. Compiled from the Minutes, Books B-G (1867–1889), passim.
b. From January 1882–January 1887, a 4% interest rate was stipulated.
current property assessment of $7.5 million was far below a true value of at least $30 million. In contrast to the mayor, their recommendations were based on increasing the efficiency of the taxing apparatus. The committee suggested that the tax rate be increased to its limit of 2% ad valorem, while new sources be tapped through vehicle and poll taxes. At the same time, a board of appraisement should be instituted to insure a fair and complete levy. The burden of street improvement costs, the report continued, ought to be shifted onto the adjoining property owners rather than being paid from general funds. Finally, the city needed to be put onto a cash basis to break the cycle of shrunken purchasing power caused by a large floating debt. 50

With varying degrees of success, both avenues of adjustment were pursued. Three compromise plans were finally brought to fruition—in December 1875, December 1881 and June 1888. The first settlement established a pattern of negotiation, which was repeated without significant deviation during the latter two compromises. The municipal corporation’s interest in exchanging old bonds for new was unmistakably clear. In each instance, city officers initiated negotiations with the aim of reducing the debt’s interest rate and/or principal. Considering the bondholders’ almost invincible legal right to payment, their willingness to make concessions involved more complex strategies. As will be shown shortly, a legal right did not always mean that a remedy could be immediately effected. Some creditors were therefore willing to settle for less in the long run when a smaller but steady income in the present seemed assured. Others, especially large speculative dealers, made concessions in order to profit from the difference between the depreciated securities’ original cost and their anticipated rise in price which a satisfactory settlement
would produce.

Efforts to enter negotiations with Houston's creditors began five months after Irwin C. Lord's narrow victory over Wilson in January 1875. The new mayor and the council's finance committee calculated that a one-third or $100,000 gap existed between annual income and outflow. To eliminate this deficit, city officials proposed to refund most of the bonds at a lower, 5% interest rate. In a carefully worded "circular" sent to bondholders, the aldermen pointed out that the previous policy of paying interest through the sale of more bonds, instead of the "legitimate resources of the city", was "suicidal and disastrous". If the creditors accepted a lower rate of return, the council promised to faithfully collect taxes in U. S. currency. Further incentives were presented in vague promises to increase property assessment and collect over $120,000 in unpaid, back taxes.

While the city's agent, J. F. Crosby, attempted to organize a meeting of bondholders in New York, the council's tactics centered on creating an image of fiscal integrity and frugality. The tax exemption for manufacturers was repealed, new corporate taxes imposed and a resolution passed, which directed the assessor-collector to discontinue accepting scrip. At the same time, an ordinance was introduced to cut current expenses in half. Houston's leading journal, the Telegraph, also tried to influence the negotiations through an editorial campaign designed to frighten the bondholders into a settlement. Using the town's great need for street improvement as justification for repudiation, the daily declared that

\[\text{[It [the debt] is no reason why we should go into general dilapidation...if the creditors insist upon their pound of flesh, let them have the case tried and see what the decision will be....the taxes collected and being collected} \]
belong to the improvement of the city, so to speak. Our motto is to pay debts, but to do so we are not called upon to forget our immediate necessities. 54

In August 1875, the council instructed Crosby of its position in the bondholder's meeting scheduled for a month later. The aldermen desired to exchange existing securities for a new 30 year, 5%, "consolidated bond" issue. In addition, the city wanted to convert interest coupons into principal until July 1876 in order to delay the beginning of new payments. 55

Since the outcome of any settlement offered security manipulators opportunities for large gains, council deliberations were held behind closed doors. This discreet secrecy, however, inevitably surrounded the negotiations with a web of suspicion. A "taxpayer", for example, alleged that a "New York-Houston ring" was working against an immediate settlement. Failure to reach a compromise would discredit the Lord administration and thereby insure the return of the Wilson faction. The "taxpayer" also believed that the "ring" hoped to further depreciate Houston's bonds in order to buy them at 25 cents on the dollar before an exchange was arranged. 56

Nevertheless, a majority interest among the creditors offered to accept a refunding, but at a 7% interest level. Council response was divided. Nine of the ten aldermen initially refused consideration of any settlement except on a 5% basis. As local pressures mounted for a definitive conclusion, however, the dissenting councilman's 6% compromise plan became more and more attractive. By the end of November, both city and creditors approved the compromise. 57

The consolidation bonds failed completely to restore Houston's fiscal liquidity. The city's bonds remained far below par value. (See chart 2.) To a certain extent, the reason for negligible results lay in the unrealistic settlement reached by the
negotiators. The council's calculations were based on the most optimistic projections of its ability to collect taxes and keep down expenditures. The council also consciously distorted the size of the tax base for negotiating purposes. While the assessed value of taxable wealth rose in 1875 from $7.2 million to $8.4 million, it plunged to $5.8 million by 1878. (See chart 3.) Local miscalculations were compounded by bondholders, who refused to make the bond exchange. With at least one quarter of the 10% bonds outstanding, the amount of interest due annually was almost double the compromisers' expectations.  

A far more important reason for the city's continuing insolvency was community resistance to paying taxes and an interconnected unwillingness of local officials to collect them. During this period, the city government was responsible for the maintenance of a fairly ingenious system of evasion.  The key element in the system was the floating debt, especially scrip paper. Theoretically, control of this debt could be exerted at two points; the gate keeper of both points was the council. First, the aldermen could stop issuing the notes and second, they could dictate the conditions under which the scrip would be acceptable for taxes. Under the charter as amended in 1876, the council was delegated "full power" to define the manner of tax collections. They could direct the collector, for example, not to accept scrip after a certain date or to allow only a percentage of the total dues to be paid in it.  

Whether or not to place the city on a "cash basis" was probably the most divisive issue of the period since the outcome of almost all interests revolved around its resolution. During the '70's, the taxpayer was favored at the expense of both the bondholder and the community's public sector. As long as sufficient amounts of dis-
counted, tax receivable scrip continued in circulation, the citizens continued to pay their dues at a considerable saving. In large measure, Houstonians were giving themselves a subsidy. Leaving aside the questions of unpaid taxes, which by 1879 amounted to almost $200,000, and outright evasions, the scrip system of taxation was the most the community was willing to bear during the depression years. Under the council's supervision, between 1875 and 1881, a mere 12% of tax revenues were collected in U. S. currency. Again Mayor Wilson's reflections are revealing of his contemporary's feelings:

With all of them [the taxpayers] there is a decided dissatisfaction and unwillingness to pay taxes to provide interest on a heavy debt for which they know they have received very trifling equivalent, probably in the aggregate, not as much as twenty cents on the dollar....61

A major drawback of these arrangements was an impoverished public sector. The financial base necessary for even the maintenance of the environmental status quo required the elimination of a large volume of scrip backed by small currency reserves in the city treasury. Suppliers refused to accept payment in city paper unless it was receivable for all municipal taxes at face value. Since Houston's IOU's were far below par value, suppliers forced the city to give them, for example, $2 in scrip for $1 (U.S. currency) worth of service. The city's vendors sold the scrip to taxpayers who could turn it in at face value. The municipality suffered the losses from this circular path of transactions.

Consequently, the municipal government's fiscal policies coincided with a deterioration of the physical surroundings and retrogression of services. Streets, previously paved with the best the city could afford—shells and gravel—again be-
came trails of mud or dust. Sewers and drains eroded while wooden bridges collapsed and were not replaced. The police force was reduced; the volunteer fire department went without new equipment or an adequate water supply. Although the scrip system permitted city government to function at a greatly reduced level, payment of interest to bondholders was completely precluded. Many of the creditors sought to force a change in the council's policy through actions instituted in the courts. The discussion must now turn to the impacts of the judiciary on Houston's finances.

The basic legal rights involved in Houston's debt troubles were never in dispute. Unlike the leading case of *Gelpche v. Dubuque* neither the city nor the state courts repudiated the legitimacy of the bond issues. As a species of contract, the obligation of the courts to uphold the valid claims of the unpaid bondholders was settled doctrine by the end of the Civil War.

In situations like Houston's, there were two substantive questions requiring adjudication. To what extent did the state constitution and laws afford a remedy to the creditor? For example, beginning with Houston's 1874 charter, the city's property could not be sold to satisfy a debt judgement, nor were its funds liable for garnishment. By this state act, the courts were constrained from executing these types of proceedings on the city. The second question was how far the courts would directly intervene in administering the finances and tax machinery of local government in order to enforce the city's contractual obligations.

A case decided by the Court in December 1866 had an important bearing on the subsequent course of Houston's financial history. Between 1851 and 1857, Quincy, Illinois sold its bonds in order to subscribe to railroad stock. Under the
statute authorizing the bond issue, provision was required for a "sufficient tax" levy to cover annual interest payments. However, in 1863, the state legislature enacted another statute which placed a .5% ad valorem rate limit on municipalities for current expenses and debt maintenance. In consequence, Von Hoffman became an unpaid bondholder. He pleaded in U. S. Circuit Court for a writ of mandamus to compel Quincy city officials to collect a tax sufficient to cover the debts owed him. The city replied that the state's tax power was a part of its sovereignty which did not impair contract obligations through changes of remedy.

Von Hoffman, who entered the national courts because of diversity of citizenship, was denied the writ and appealed to the high court. Justice Swayne reserved the decision by holding that the '63 act did in fact impair Quincy's obligations. He ruled that the powers granted the city at the time of the bond issue could not be withdrawn until full payment was completed. The state could alter the remedy, i.e., the means of collecting interest for the debt, as long as no substantial right secured in the contract was thereby impaired. But a right without a remedy was a nullity. Swayne therefore voided the statute and ordered the lower court to issue the mandamus writ. 65

Coming at a time prior to the initiation of large scale urban borrowing, the Supreme Court in these cases offered the judiciary the opportunity to play an active role in the management of municipal debt. 66 Curiously though, at first the courts on all levels involved in Houston's problems plotted a fairly independent pattern of rulings. Compared to the high Court, they were more responsive to existing conditions, which seemed to call for a lenient policy. In the middle '80's, however, the bench asserted a position closely resembling the Von Hoffman ruling.
Houston bondholders sought judicial intervention at all available levels. The Harris County, the state district and the U. S. Circuit courts received a voluminous number of petitions beginning in 1877 and continuing into the '90's. While only a few state district and appellate decisions are examined here, the city's bond troubles actually occupied a large place on court dockets. Furthermore, state and national levels, although independent of each other, followed closely parallel rulings. To a limited extent, the reasons for this judicial agreement can be found in the evolving pattern of creditor petitions. Unfortunately, I was unable to determine whether or not the bondholders pursued a coordinated strategy of pressures.67

In 1876, three years after the Wilson administration decided to default on interest payments, the first wave of petitions for mandamus writs were filed in the state district court situated at Houston. Texas' four year statute of limitations on debts required unpaid creditors to institute proceedings in order to maintain the validity of their claims.68 Robert W. Ingersoll, a citizen of Maine, petitioned the bench in October 1876 for a writ to compel city officials to pay him out of existing bond funds the $300 due him on coupons unpaid since July 1874. According to the creditor, a writ of mandamus was the only available remedy since the city refused to pay him, even though it had over $20,000 in various bond funds.

The attorneys for the city replied that earnest efforts to uphold Houston's obligations were being undertaken. They set out in considerable detail that over $160,000 was past due the creditors and therefore, only a pro rata share should be given to Ingersoll. Under the statutes authorizing municipalities to create indebtedness, a special separate fund had to be created for each bond issue. Thus, Ingersoll's petition should be denied, according to the city's attorneys, because there was no
money in the account set aside for his particular bonds. To compel payment from other accounts would impair the city's obligation of contract to other bondholders.

Judge James Masterson was unimpressed by the city's arguments. He issued a writ compelling full payment to Ingersoll out of any available bond fund. This case was typical of the courts' first reactions to the situation. Existing bond funds were tapped irrespective of the council's efforts to earmark them for favored accounts. It seems likely that the council was attempting to pressure creditors to exchange old issues into the 1875 compromise consolidation bonds through these tactics.

After the city's cash reserves were quickly depleted by writs similar to Ingersoll's, the courts initiated a second pattern of decisions between 1879 and 1882. An example of the court's new disposition is the case of Luther Voorheis v. Mayor. Filed in June 1881, Voorheis presented unpaid coupons from "Market House Bonds" totalling over $8,000. He asked for a mandamus writ to compel full payment out of the existing $12,000 market house fund, and further charged city officials with misappropriation of market receipts. Therefore, Voorheis concluded, the court should appoint a receiver to administer these revenues. City attorneys repeated their argument for the propriety of pro rata payment, averring in this instance to the $77,000 now due market house bondholders.

Masterson conceded to the city's pleas. The municipality was ordered to pay Voorheis only his proportional share of $1,600. The accumulating numbers of judgements and petitions for mandamus writs compelled the abandonment of the court's initial policy. Whether in response to this limited success or for other reasons, bondholders between 1882 and 1885 stopped requesting mandamus writs. Instead they were satisfied with decrees which maintained the validity of their coupons as required
by the statute of limitations. 71

For a full decade after Houston defaulted on its obligations, the court's influence in determining the course of Houston public finance was effective but limited. As long as the city collected only small amounts of U.S. currency, the judiciary could do little without major intervention in the administration of Houston's entire tax apparatus. The judges did not take this step. The courts' willingness to enforce bondholder claims when conditions permitted, however, meant that the city's range of fiscal options remained highly restricted until a final settlement was achieved.

In a more general sense, the nation's judicial system was largely responsible for turning municipal bonds into one of the safest investments traded in the securities market. During the troubled depression of the '70's, alarmists like judge Dillon believed that the "coercion" of the high bench alone saved the "public faith" in democratic institutions, "The Supreme Court of the United States", Dillon accurately stated, "has upheld the rights of the holders of municipal securities with a strong hand and has set a face of flint against repudiation...." 72 By the 1880's, the court's unyielding attitudes towards cities' inviolable obligations had produced favorable results for them. A noted investment lawyer, for example, commented that the justices' early display of "firm moral fibre" created a "feeling of confidence[...] that constituted these [municipal] bonds in the true sense of the word 'securities'...." 73 Until the great depression of the 1930's, the safety attached to this form of investment greatly enlarged the range of policy options available to local government. 74

Constitutional and legislative reform also contributed towards strengthening the financial status of urban public institutions. The repercussions of the '73 crisis
pushed between $100-150 million, or 1/5 of the nation's municipal debts into de-
fault. While no section or state was immune, developing communities behind the
frontier in the southern and central northern regions were particularly hard hit. On
the other hand, the breakdown of state and local revenue collecting machinery seems
to have been a general phenomenon. Consequently, placing constitutional limits on
the power of localities to borrow funds and legislative reforms of tax law and admin-
istration were of central concern everywhere. 75

In Texas, meaningful reforms of municipal finance began in the 1875 con-
stitutional convention. Absolute limitations on the power of cities to borrow money,
in addition to checkreins tying local legislators to referendums were embodied in the
state's new organic act. 76 With the general economic recovery of the late '70's,
Houstonians also initiated changes to restore their municipal corporation's ability to
claim a full share of community resources. A new consensus seems to have been
achieved in 1880 with the election of William R. Baker as mayor. Baker, who would
serve for an unprecedented six years, was a conservative but aggressive business
leader. President of the City Bank, the Houston Insurance Company and manager of
the McIlhenny wholesale operation in the Texas area, Baker was joined by an
equally prestigious board of alderman. The successful men of the generation, such
as T. W. House, Jr., Alexander McGowen and Waldo Cleveland, were chosen to
occupy the positions of official responsibility. 77

Top priority was given to arranging the final terms of a second bond compro-
mise. The courts' limited influence on Houston's tax evasion system undoubtedly
helped prod the city's creditors into another reduction of the debt. Beginning with
a circular to bondholders in April 1878 through final ratification of a settlement in
July 1882, city leaders argued that only a scaling of the principal could reestablish municipal liquidity. Creditors holding about one-half of Houston's debt, which approached two million dollars because of unpaid interest, accepted an exchange on a two to one basis. This refunding, like the first, failed to restore city credit. Again responsibility rests with bondholders who declined to accept the exchange and local officials who responded to this intransigence by refusing to pay interest on old issues. The resulting irreconcilable impasse prevented the marketing of any new bond issues.

Only the tenacity of Houston's bond problems was untypical of the fiscal strangulation confronted by local officials throughout the country. Tax reform was basic to any reinvigoration of city government. The Baker administration's pursuit of this goal resulted in the transformation of the city charter into its modern form. Up until the '80's, the basic statute of Houston municipal government most resembled a constitution in the sense of containing few words but broad powers. While theoretically sufficient, the judicial practice of construing corporate charters narrowly produced continual setbacks and uncertainties in the exercise of public authority. The amendments forged by the Baker administration resemble a detailed administrative code, particularly in those areas of troublesome litigation, such as street control, public improvements, and taxing procedures. In the process, substantive changes occurred as well. For example, the '81 amendment of the taxing provision added a 10% interest charge on unpaid taxes. Two years later, the burden of responsibility to render a full statement of wealth and to pay the dues on it was clearly shifted onto the taxpayer. Teeth were put into the enforcement of this proviso by giving the city the authority to summarily seize and sell personal property for any unpaid dues.
The accomplishments from these reforms were substantial. During 1880, the receipt of scrip for taxes was reduced drastically. Over the next six years, cash revenues rose from $7600 to $180,000. Concurrent progress was made in increasing the amount of wealth assessed for taxes. Property valuations, which had slipped to $5 million in 1878, were doubled by 1886. Although the delinquent tax problem was not eliminated, the city was placed on a solid financial footing.

By the time Baker left the mayor's office in 1886, the city was again in a position to undertake improvement projects requiring large capital investments. Even the organs of perennial booster optimism could afford to reflect on Houston's dim prospects in the preceding decade. The City Directory admitted that there have occurred periods in its [Houston's] history when internal improvements seemed to be at a stand and its pulse as a city presenting urban facilities and advantages of life beat with a very feeble stroke. The shadow of its great debt darkened its future and enforced a current of economy which was painfully real-ized in darkness and mud. But that point of depression is happily past forever....The boom of a great population is in the air, and the whir of machinery, the shrieks of locomotives and the din of workshops tell the story of a progress and prosperity.
URBAN SERVICES ON THE FRONTIER: PATTERNS OF TECHNOLOGICAL DIFFUSION, 1865-1885

In antebellum cities, private decision makers collectively determined the shape, and to a significant degree, the quality of the urban environment. Public utility men were primarily motivated by opportunities for monopoly profit. There was little recognition of either mass consumption economics or an obligation to supply services to the general public. Nevertheless, in the context of municipal government's similarly narrow responsibilities for the community, the contributions of private institutions were substantial. In the absence of a developed urban concept of the public welfare, the dividing line between public and private functions remained poorly defined.

Continued urban growth and rising standards of living during and after the Civil War brought increasing attention to the provision of public services and amenities. The crisis in municipal finance reflected a greater responsiveness of local governments to collective needs. Established utility companies, too, were adjusting to new expectations and expanding markets. While historical focus has centered on these processes in the largest cities, the diffusion of utility services to the nation's smaller cities and towns deserves equal consideration. Before new electrical technologies upset the entire utilities industry in the mid-80's, exploitation of proven techniques by thousands of new companies assumes first importance. In addition, the contrast of managerial practices in the smaller and largest cities provides insight into the response of private institutions to rapid urbanization.

The first effort to supply Houston with a utility service began in 1858. The editor of the city's leading newspaper, the Telegraph, began agitation for the
establishment of a gas works. Based on correspondence with an unnamed promoter, the *Telegraph* asserted that the project could be launched for $40,000, of which only half had to be raised by local subscription.¹

The editor’s promotional efforts reveal some basic reasons why small towns desired urban services. Foremost was the improved standard of living gas-lighting would bring to the home. The paper declared:

> Now here is a chance for comfort, convenience, economy and progress, all in one operation. Persons who have ever used gas-lights know how much superior they are in every respect to any other light known. They are a saving in expense, a saving in trouble, and an advantage to the eyes...in a word, just the thing for lighting a house.²

Economic considerations were also advanced by the *Telegraph*. A gas works would bring profit for the investor and savings for the consumer. Based on "close calculations", the profitability of the enterprise was estimated at a minimum of 10% per year. On the other hand, consumers would save one-half the cost of using candles while enjoying 2–3 times as much light. Finally, the editor played on the competitive sensibilities of Houstonians towards their sister city. "We are not apt to allow that any other town has more public spirit than we have;" the editor chided, "and yet a company with $120,000 was formed in Galveston without the least difficulty."³

Before the outbreak of war, however, the problems of starting a gas light enterprise proved insurmountable. The *Telegraph*'s apparent correspondent, C. C. Bier of New Orleans, failed to attract investor support. A second effort by Houston promoters, the Houston Gas Company, was also unable to produce material results.⁴
After the conflict ended, the company's continuing default to exploit its opportunities finally aroused a third group of businessmen to take the initiative. In September 1866, the Houston Gas Light Company was chartered. This pattern was repeated in other utility ventures. When innovative enterprises could not develop fully a potential market, other promoters successfully captured it in whole, or at least in part.

The new company was composed of men with wealth and wide entrepreneurial experience. Even in an ex-Confederate frontier town, the accumulation of wealth was considerable. For merchants such as T. W. House and William Rice, whose fortunes were tied to the success of the city, investing some of their capital in utility ventures was logical. In an era before a market existed for utility securities, growing funds of local wealth offer a partial explanation for the rapid diffusion of urban services to smaller cities. With the financial backing of Houston's business leaders, a gas-light enterprise seemed assured of success.

In addition, their corporate charter substantially reduced investment risks. The charter, which became a model for Texas gas companies, attempted to define at the state level all the rights and duties of the enterprise. By establishing in state law the corporation's privileges and limitations, its promoters sought to guarantee the security of their investment from unfavorable local acts. This strategy should not imply that the incorporators believed that municipal authorities were antagonistic to their scheme. But, since contracts for street lighting would make the city one of the company's largest customers, the potential for trouble was real.

Unlike the earlier two gas light promotions, the city council imposed no restrictions or conditions on the Houston Gas Light Company. In December 1866, the
city merely gave the company its "consent...[and] confirmation...to immediately proceed to erect their works, and lay their pipe within the city in accordance with the provisions of their act of incorporation." The enterprise stood on a stronger footing than its predecessors. The new company's franchise contained no obligation to private consumers, no mention of rates was made, nor could penalties be imposed for a shutdown caused by an inadequate coal supply.9

The precise stipulations of state corporation charters and municipal franchises were vitally important to all interests. Utility ventures' special use of the streets to distribute their services afforded public authorities opportunities to impose regulations, which otherwise would not have been possible. Such concessions from private corporations as pecuniary donations to municipal treasuries and public checks reins on their relations with consumers often hinged solely upon government's control of the streets. On the other hand, this same control allowed entrepreneurs to possess monopolies that were legally created and protected. The promise of monopoly profits for the promoter of an urban service enterprise probably accelerated the flow of local investment capital into this sector.

The origins of Houston street railway corporations and franchises illustrate some of the different variations in the legal status of city utilities. While gas light concerns were able to obtain street use privileges directly from the state, horse railway franchises followed a different path. The reason for this diversity was the state's antebellum experience with another special user of the public highways, steam railroads. Problems of effectively controlling them in the cities had produced a shift in the locus of regulatory power from the legislature to the municipal corporation. The obvious analogy between steam and horse drawn railroads prompted Houstonians to
possess authority "exclusively to control and regulate every thing [sic] connected with city railroads...." Consequentaly, intra-urban transportation promoters could obtain rights of way in the streets only from the city council.

Intense competition among several groups for advantageous franchises also created policy dynamics unique from gas lighting. Between 1866 and 1869, the council received eight petitions for right of way privileges. Four different franchise policies were formulated. Each successively limited public controls and enlarged the sphere of unrestrained entrepreneurial freedom. The final result of this increasingly liberal policy was consolidation of all interested groups under the most favorable grant.

Only the first petition for a street railway franchise in May 1866 provoked any significant debate among city officials. A special aldermanic study committee favored a grant to Robert Lockart and John Garey because "such an enterprise properly carried out, would be highly beneficial to the city at large...." However, the committee also recommended that the grant should contain stipulations to protect the public and benefit the municipal corporation. Specifically, the aldermen proposed that grantees keep the streets unobstructed and in repair at their own expense, while the city would determine routes, "rates" (i.e. speed), and a maximum fare of ten cents. In addition, Lockart and Garey were obligated to build a mile of track within a year and subsequently, at least one mile annually. Finally, they had to pay the city a $1000 bonus for the franchise. In return, Lockart and Garey would receive an exclusive privilege for 25 years and the city's protection against obstructions along their right of way.

Objections to the proposal were lodged by both the city attorney and mayor
H. D. Taylor, who vetoed it. City attorney James Masterson, uneasy with the exclusive privilege clause, argued that "the creating of huge monopolies is not to be encouraged even by the Legislative Department". Instead, he proposed to offer franchises on the basis of sealed bids, limiting them to 10 years and 4 streets per person, while requiring annually at least a one mile extension. Masterson reasoned that the value of such franchises was directly related to general city growth and prosperity. A denial now would produce larger returns to the municipal corporation later. 13

The mayor concurred with the city attorney's opinion. Arguing that additional time to make further comparisons with other cities would be highly beneficial, Taylor believed that the city's regulatory powers were too vaguely defined. The mayor also looked to the future, with an eye on the present:

"The city of Houston is, as it were, in her infancy. A system of street railroads, might, under proper conditions, be of advantage in hastening her immediate growth."

The council was unpersuaded; the mayor's study plans would delay development intolerably. "Getting the job done" was given top priority as the council passed the measure over the mayor's veto. 14

Lockart and Garey were also unpersuaded to commit their capital on the basis of the council formulated franchise. Over the next two years, three additional plans had to be forged before entrepreneurs were satisfied. 15 The grant to Frances Allepiz which became the legal foundation for the Houston City Street Railway Company, retained almost none of the earlier reservations of power or concessions to the city. The 25 year monopoly franchise contained a generous maximum fare restriction, but no obligations to the municipal coffers. 16
From 1866 to 1869, the council'syielding policies attempted to provide sufficient incentives to get the job done. In both artificial illumination and intra-urban transportation services, the prior necessity of establishing legal relationships with the city produced a variety of experimental forms. In gas lighting, after two failures by government and entrepreneurs to obtain material results, a third group of local business leaders took and held the initiative. Basing their enterprise on state authority, the Houston Gas Light Company was able to proceed smoothly in the construction of its facilities. Street railway developments followed a different course.

Entrepreneurs chose between four different franchise variations. Whether by shrewdness or accident, the businessmen combined their interests under the most advantageous, Frances Allen, grant. While the exact sequence of mergers cannot be pinpointed, by the end of 1868, only one company remained.

Both of these services were operating at least marginally, by April 1868.

To contemporaries, Houston's environment was noticeably changed for the better. A visiting Brownsville reporter described the utilities' impacts on the frontier town's landscape:

Two months ago, you might plod your way home, through the dark and mud, to the great danger of being knocked down, or being garroteed at every corner, or else hire a hack at heavy expense to obviate the difficulty and danger, but now the streets are illuminated with gas, making the night perambulations rather a pleasure than a terror; and now two of the principle [sic] streets of the city are traversed with street railroad cars, which offer cheap facilities for those who would travel from necessity, or pleasure...

The enhanced ease and safety of city life provided by these services was
temporary, however. If the journalist returned to Houston two years later, he would have had to walk through darkened streets again. Obtaining franchises and beginning urban service companies proved simple in comparison to the problems of managing a profitable concern. The firms' responses to the difficulties encountered in creating remunerative markets for their services largely repeated the business practices of antebellum utility managers. The advantages of being imitators were employed though, in a few important instances.

The early history of street railways in Houston exemplifies the tenuous position of urban service enterprises in smaller towns. Throughout the nineteenth century, land use in Houston was basically undifferentiated between businesses and residences. Walking to work or market from nearby homes in a town of only 3 miles square remained a viable means of transportation. Houston street railways had to provide more than small marginal increases in convenience and saving in travel time.

The initial efforts in 1868 to provide this enhanced level of rapid transit failed. Only three months after horse car service was begun on the Tap Railroad tracks in March 1868, it was abandoned. While the line was only two blocks from Main Street, the newspaper explained that it suffered a lack of patronage because "it was much too far off the line of travel to succeed". Even before the Houston City company began regular service, reasons for its demise were being advanced. Pessimistically viewing the company's plan to run only one car over its eight block route up Main Street from the bayou, the Telegraph perceptively argued that

[a]ll experience in street railroad matters has demonstrated that success is only achieved by rendering momentary accommodation to pedestrians...No person will wait 20 minutes to ride even 10 blocks. The oftener the cars run
the more travel will be stimulated.19

For about a year after July 1868, the Houston City company tried to provide this "momentary accommodation". Attracting only 800-1000 riders per month, however, the effort was abandoned. Transit service soon became bitterly regarded as a local "myth".20 These initial failures demonstrated some of the street railway business' basic problems. Traffic managers had to find a balance between service frequent enough to induce walkers to become riders and operating too many nonremunerative cars. Service had to be provided along a sufficient number of major pathways but without overextending the system into uneconomical areas. On the other hand, the technical aspects of construction and operation were minimal in the horse car era. Houston's first street railways, for instance, were built entirely from local materials, except for the wheels.21

The selection of routes was the most important decision made by street railway managers. Building roadbeds and laying rails was the most expensive aspect of the business. While precise figures are unavailable, Galveston's railway was built for $20,000 per mile during this period.22 The relative shortage of venture capital in Houston dictated that only the most promising routes be developed. Thus, much of the franchise seekers' activity was aimed at securing monopoly rights of way on these central transportation arteries. Route selection was vitally important from a broader perspective also. As Warner, Dyos and others have shown, street railway routes were primary determinants of urban land use and value.23 The horsecar entrepreneur's decisions could largely shape the city's growth pattern.

In 1870, the second major attempt to build an urban transit system began. Newly incorporated and franchised, the Houston City Street Railway Company
finally began construction three years later. Between April and July 1874, the company began operation of four routes along 3 miles of single line track. All of the lines (see map) terminated at the city center near the market house. Two of the lines connected the city's steam railroad depots, while a third extended to the Houston Central car shops. The final and longest route of 20 blocks went to the "state fair grounds" where an annual fair and weekly park festivities were held.

These initial routes were selected to exploit existing traffic pathways. They were chosen with the expectation of attracting special groups to the convenience and speed of a ride between two fixed points for a 5 cents fare. Two of the routes hoped to gain the patronage of travelers moving between railroad terminals and the central hotel and business district. A considerable business from picking up and discharging passengers along the line was probably anticipated only on the fairgrounds route. Paralleling the city's main axis at a one block distance, this line offered service to a wide range of users such as weekend picnickers and weekday commuters and shoppers. None of these four initial lines significantly changed Houston's special form.

The Houston City company's system remained basically unaltered until the threat of competition arose in 1881. Unlike the gas light business, which had to overcome widespread consumer resistance, street railways were immediately accepted improvements. Comparing these differences in 1877, the City Directory declared that "the different lines of street railway have been extensively patronized since the beginning, much to the chagrin of the croakers of the 'bull whip' old fogies". As early as 1875, the company reported over $12,000 profit from its Congress Street-Union Depot line alone. Real estate speculation also enhanced the earnings of the
enterprise. Intra-urban transit service became a quickly established success as soon as sufficient capital was invested in the construction of routes along the town’s primary pathways.

In contrast, the investment of equal or greater sums in Houston’s gas-light enterprise did not bring quick success. The company was plagued particularly with technical and economic hardships. Consequently, petroleum oils continued to capture most of the artificial illumination market. In 1882, after fourteen years of operation, the company had attracted only 300 private customers in a population of over 17,000. The price of gas was cut in half during this period, which substantially helped to triple consumption. Nevertheless, the company’s gross income grew at an average annual rate of less than 2.7%, or from $16,000 in the first year to only $22,000 in 1882.

This meager record was the result of a complex of interacting difficulties. They occurred first in the pioneering cities and were probably duplicated in hundreds of smaller towns across the nation. Of crucial importance was the lack of trained engineers who could wisely procure equipment and efficiently manage the complicated manufacturing processes. Poor equipment choices were reflected in a product of inferior quality.

These technical problems were further compounded by poor business practices towards its largest customer, the city, and the public in general. Between 1868 and 1873, the company cut off the street lights twice for about a year in each case. While the city’s indisposition to pay its bills must bear major blame, the corporation’s shoddy service largely contributed to the council’s recalcitrant attitude. These kinds of defiant acts by the company built up considerable community resistance which the
struggling enterprise could ill afford. 30

One problem peculiar to Houston and Texas gas companies in general throughout the nineteenth century, was an inability to secure high grade coal at a reasonable price. Since the gas was burned as an open flame in Bunsen Burner type devices, the brilliance of the flame depended on the light qualities of the coal. In the early days of coastal shipping, local coal suppliers were sometimes completely exhausted, causing a shutdown of the works. In 1873, a journalist noticed that the gas company's coal was

finer than that which could find sale in the North, even to blacksmiths, and such as was in respect unfit for gas purposes....good gas, in large quantities, cannot be made from such slack.31

After the '70's, the control of Texas railroads by Huntington and Gould, and their interests in coal mines resulted in high prices for inferior materials. 32

Actually, few people were given the opportunity during this period to choose between gas and other illuminates. The Houston Gas Light Company followed the traditional, antebellum practice of supplying only the most lucrative areas. In a town with 200 miles of streets, a mere 5% (10 miles of mains, see map) were supplied with service in 1881. Prices also remained on a level that only commercial enterprises and the rich could afford. While Houston's gas rates were similar to other Texas cities, they were about twice the national average in 1882.33 The company's tripled output during this period primarily represented increased consumption among the same group rather than an enlarging market of gas light users.

Public utility service in Houston during the '70's primarily repeated the history of similar efforts in the larger antebellum cities. In this respect, Robert
Wiebe's characterization of American towns as a disconnected collection of "island communities" is an accurate description. 34 A few leading citizens traveled widely and were able to advantageously exploit their knowledge of advanced metropolitan conditions. Nevertheless, town life in smaller places such as Houston, remained basically isolated and self-contained.

The repercussions from poor communications were especially evident in businesses, which required technical expertise. In addition, the persistence of traditional business practices in Houston clashed against the novel attitudes being forged among utility industry leaders. This changing self-image of the role of public service enterprises in urban life merits attention. The American Gas-Light Association, founded in 1873, created an important forum for frank discussions of mutual concern and information dissemination. The fact that an organization of utility executives was formed was itself an important indication of a new level of maturity in privately owned, urban public services. 35

The value of an institutionalized association of gas-light managers was stressed at the first annual meeting. William H. Price, one of the prime movers for organization, related how most gas men came "accidentally" into the industry, rather than through training or education. Each firm operated without the benefit of others' experiences. Most of the papers presented to the meetings were, therefore, devoted to the kinds of technical problems faced by the Houston Gas Light Company. Moreover, equipment and appliance salesmen were provided a convenient stage to display their products. Price believed better intercommunication among company managers would ultimately result in better gas light at lower prices for America's urbanites. 36
A theme quietly advanced in the early meetings and greatly amplified during the '80's was the advantage of creating a mass consumption market. Charles Roame, of the relatively large Manhattan Gas Company, explained in 1874 how such a business policy created accumulating benefits for both producer and consumers. The association's second president reasoned that even small rate reductions greatly stimulated a company's volume of sales, which in turn produced larger profits. This extra profit pool could then generate further rate cuts. Roame's hypothesis represented a fundamental revolution in utility business practices. A decade later, the notion that the greatest profits derived from the lowest rates was considered by industry spokesmen as "universally recognized". 37

That Roame, rather than an executive from a small company, first advocated a mass consumption economics seems logical. As early as 1862, New York City's 2 gas-light companies were supplying 41,000 customers over $4,000,000 worth of artificial illumination. A quarter century later, the city's gas light business grossed $75,000,000. This superlative increment sprung from a single mechanism, according to Roame. "From a mere article of luxury, or at least convenience," he said, "gas lighting has become a matter of prime necessity." Roame and his colleagues were willing to admit that petroleum oils were cheaper. But they also recognized that most people who used coal gas would not give it up because oil was not as clean, reliable or controllable. 38 The perspective gained by Roame foreshadowed similar perceptions by utility executives in smaller towns across the country.

By far the most important concern of gas-light managers during the 1870's and '80's was public support for the introduction of competition against established firms. Oscar G. Steele's expression of the industry's bitter consternation at the
public's hostility was typical. The Buffalo (N. Y.) Gas Light Company executive declared that

In no other department, except possibly taxes, is there such constant and universal complaint. Every town where it [a gas light company] was first introduced, felt it [the town] had made a great stride in providing for public wants and conveniences. But success in a financial way, by the companies, was not so agreeable to consumers. 39

Between 1873 and 1882, during hard times and before widespread introduction of electric lighting, industry spokesmen considered their greatest enemies to be cheap light oil and franchise grants to competing gas companies. Toward the former enemy, their counterattack centered on lowering rates by increasing operational efficiencies and the quality of their product. 40 Towards the latter threat, gas men began ending their "defensive policy" towards the public. In 1879, for example, New Haven's F. C. Sherman argued that "[t]he future safety of our investments in gas manufacturing lies in taking the public into our confidence". Exhorbitant profits had to be eliminated, liberal policies towards extensions established and disputes with consumers and officials avoided. 41

To Steele and other association participants, rival companies not only hurt the established firm, but were also detrimental to the public interest. The utility executives' reasoning paralleled railroad experts' theories on the failure of market mechanisms in their industry. Both groups argued that competition inevitably produced ruinous rate wars which ultimately led to overcapitalized consolidations. The public were the final victims of the cycle because they had to pay for inflated capital charges. In support of their analysis, the gas light men argued that econo-
mies of scale could operate only when a single company supplied a community's total demand. To these industry spokesmen, competition meant a long series of harmful and costly results. 42

Many public service businesses had found legal measures to be one of the most effective means to thwart potential competitors. Grants of exclusive privileges in city streets from state legislatures and municipal councils seemed to shield local monopoly positions from public or private attack. 43 During the 1870's however, the legal avenues toward judicially recognized vested rights in monopoly franchises began to narrow significantly. Although urban utility executives were unaware, their companies at the same time were becoming subject to similar kinds of controls that regulated municipal corporations.

State provisions prohibiting special charters for private companies blocked a major route to legalized monopoly. General incorporation acts conferred corporate status but no extraordinary rights or privileges. After Texas' new constitution was ratified in 1876, for example, local utility companies could no longer acquire street use rights from the legislature. Subsequently, permission had to be obtained from local governmental authorities. 44

In the '70's, the legitimacy and strength of municipal franchises remained basically uncontested. But changing attitudes within the legal profession pointed unmistakably towards a much closer scrutiny in the future. Abuses of public power perceived by such influential jurisprudents as Thomas Cooley and John Dillon convinced them that the courts must exercise an active role in restraining legislative bodies. Municipal charters and local laws enacted under their authority, the text writers advised, should be narrowly construed against the existence of any power not
The Cooley-Dillon attitude was rapidly assimilated into Texas law. In 1875, the state supreme court was asked to affirm an injunction against a toll bridge owner, who operated under a municipal franchise. Quincy Davidson, the bridge owner, argued that the city's police power was ample authority for the grant. Chief Justice Oran Roberts forcefully denied any municipal right to confer monopoly privileges without an express delegation of power from the legislature. The chief justice quoted Cooley's and Dillon's argument that the judiciary must intervene to curb abuses resulting from sloppy legislative craftsmanship. To allow the creation of a private monopoly under a general grant of power, Roberts asserted, "would be certain to introduce into city government the wiles and struggles for power and influence, to be used for private aggrandizement under pretense of advancing the public good".46

While possibilities of securing special advantages through law became more limited, the judiciary was responding favorably to state efforts to regulate public service industries. What would crystallize as a public utility concept in the '80's and '90's, remained amorphous in the '70's. Yet, a process of blending traditional legal doctrines with current perception, to form a new category of semi-public corporations was underway.47 The benchmark opinions in the Slaughter House cases exposed some important elements of the embryonic public utilities configuration. A majority upheld a statute exercising police powers by defending a state's right to create monopolies. Justice Samuel Miller responded, in part, that since an exclusive privilege to operate slaughter houses was unquestionably constitutional when conferred upon municipal corporations, then similar grants to private companies were also legitimate.48
Looking behind the wording of the Louisiana act, both dissenting justices, Joseph Bradley and Stephen Field, argued that the real intent of the bill was to erect a monopoly, not improve urban sanitation. Still, they did not controvert Miller's analogy between special franchise grants to public and private institutions. Bradley admitted agreement as far as (private) establishments of a public kind" were concerned. "But even these exclusive privileges are becoming more and more odious, and are getting to be more and more regarded wrong in principle and inimical to the just rights and great good of the people", he added. Field also allowed that public duties could be delegated at the legislature's discretion. He strove, however, to distinguish this limited group of social functions from the mass of "ordinary trades, or callings of life". This latter group, Field reasoned, was beyond legislative monopoly prerogatives.

Questions about use of the tax power provided the high court with other opportunities to mark out a borderline between permissible and illegitimate governmental interventions in the economy. Railroad aid bond frauds persuaded many jurisprudents, including Dillon and Cooley, to campaign against permitting any public support to private business. During the same 1872-1873 winter term that the Slaughter House decision was handed down, the Supreme Court decided the controversial issue in an opposite manner. Justice William Strong tied eminent domain principles to tax power practices. Both could be employed to further public purposes irrespective of the status of the recipient. As "public highways", railroads could receive tax generated funds because "the purpose and use of a work determine its character", not ownership. In the tradition of Marshall's Dartmouth ruling, the court chose to leave the borderline between public and private interests ambiguously
In 1877, the Supreme Court ruled that gas light companies were included in the group of private businesses devoted to public use. Municipal bonds issued to aid such a venture were therefore a legitimate exercise of the tax power. The quickly evolving public use doctrine was immediately beneficial for public service companies. But it also opened the door to extraordinary regulatory controls in the future. The Munn decision illustrated, moreover, that the category of businesses subject to special restrictions could be flexibly expanded to accommodate changing circumstances. State and national courts offered municipal franchise holders only uncertain protections for their privileged positions. On the other hand, impositions of novel state checkreins on their freedom of action received positive confirmation.

While public service enterprises began to be excluded from some of the law's protective shielding of vested rights, judicial activism was augmenting their legal responsibilities. These trends were visible most clearly in such common law areas as negligence where legislation seldom intruded. Jurists were consequently called upon to adjust public policies to account for the growing hazards to life and limb in an industrializing nation. Texas courts, for instance, greatly widened the tort liabilities of steam and street railroads. In a series of decisions between 1878 and 1881, the state's supreme court held these transportation companies to the strictest accountability for injuries to passengers and pedestrians. In one case, justice Robert Gould explained the highest degree of care was imposed upon railroads because they were

invested by law with extraordinary power to traversing the country with huge cars, whose progress everywhere is necessarily attended with danger. They who place such dangerous machines in motion, should, we think, be required to take
precautions against their injuring anyone who may happen to be in their pathway....53

The changing course of the law did not seem to worry urban service executives in the '70s. Only a few decisions affected their interests directly, while most judicial diversions from tradition were barely noticeable. Utility men's attention was focused on economic, not legal problems. The strident tone of gas-light association papers revealed that the major worry was competition. The reason was simple. At least in Houston, the gas-light men's theory of the baneful effects of competition proved just the opposite. In the bayou city, even the threat of entrepreneurial rivalry stimulated vigorous responses by the established firms to maintain control of their markets. Assessing the impacts of these contests upon the community, Houstonians concluded that competition brought beneficial results.

The advantages for both city and consumers of maintaining the operation of market mechanisms was dramatically demonstrated in each utility service. In street lighting, for example, the 1877 termination of the gas company's contract permitted rival promoters to bid for the city government's patronage. Patented oil lamp companies proposed to supply service anywhere in the city for $4 or less, for each lamp per month. In contrast, the coal gas company served only a few areas and charged $7.54.

Armed with financially attractive alternatives, the city council was able to extract a series of concessions from the established firm. Actually, the aldermen never seemed to have considered seriously taking a retrograde step from gas to oil. By entertaining the oil lamp proposals, however, the city was able to assume the initiative. The gas-light company, confronted with losing 1/3 to 1/2 of its total
sales, capitulated to a city formulated contract. For the first time, a number of enforceable obligations were imposed on the utility. The municipality and private consumers also benefited from a 28% rate reduction.  

Competition for a franchise to supply the town with a waterworks also proved of profit to the community. Between 1871 and 1875, municipal financial stringency forced officials to turn down various offers. In June 1876, however, the council began exploring practical ways of attracting private investment into a waterworks project. The aldermen proceeded slowly through correspondence with other cities and engineering studies of local needs. A policy of caution and comparison astutely attempted to exploit the advantages of not being an innovator in a fairly complex technology.  

After a locally formed company's bid for the franchise was rejected because of unfavorably expensive and monopolistic terms, the council delayed further action. Finally, in November 1878, a special session of the council quickly and unanimously awarded James M. Loweree with a franchise contract. The New Yorker was characterized by the council as an experienced technician in providing cities across the country with water systems.  

In contrast to the origins of Houston's gas lighting, the waterworks was established by outside experts, who later sold the operational utility to local interests. Loweree's methods reflect significantly on the changing pattern of technological diffusion.  

The water franchise was by far the most detailed grant adopted by Houston's municipal authorities. The council's familiarity with water supplier offers helped produce an agreement, which adequately protected municipal and community interests. One of the most important provisions, for instance, concerned the first
comprehensive regulation of services offered to private consumers. The water company agreed to provide water at set rates based on the size of the home (e.g., 3 rooms @ $.50/month). In addition, the sanitary inspector could order free service for indigent poor.  

Competition over an extended period for the waterworks privilege played a central role in the attainment by city officials of a new level of sophistication in granting franchises to public service companies.

Rivals for street railway business brought Houston improved public services in a different, but no less beneficial manner. With only four miles of track in 1881, the Houston City Street Railway Company allowed a potentially large market to remain undeveloped. Three different groups successively intervened within the next three years. The result was the creation of a unified transit system and a 200% expansion of routes.

The formation of the People's Line City Railway Company in early July 1881 propelled the Houston City line into a frantic day and night construction drive to capture a bridge, which offered the best route into the eastern portion of the city. Since neither company was authorized to use the bridge, both appealed to the city council for permission. The aldermen's improved understanding of the value and importance of franchises was mirrored in their responses. In addition, the competition between private interests again allowed city policy to be reformulated in the public's favor. After cautious consideration, the ordinance committee reported in October that

Other municipalities throughout the country, mindful of the vast benefits accruing to the street railway companies through the use of occupancy of the streets have derived great pecuniary aid from the sale of the right for
a specified time. In the light of surrounding circumstances, it is reasonable to believe that this city, increasing in size and population, will be able in a very few years to support 3 or 4 horse car companies and it is no less reasonable to suppose in view of such demand that there will be no lack of application for such privileges by capital seeking investment and willing to compensate the city for such rights for a term of years.

The committee recommended "leasing" the bridge privilege to the "highest and best bidder". 61

Although the People's Line became another streetcar "myth", the original opportunities recognized by its promoters still remained. The council's revocation of the established firm's franchise, moreover, expanded the prospects of success for a new rival. 62 A new group of local businessmen quickly organized to exploit this favorable situation. After obtaining a franchise in August 1882, they immediately started constructing a line parallel to the existing concern's most lucrative route to the Union depot. The Houston City company did not respond to the challenge and appeared demoralized by the entire course of events. 63

The unstable state of street railway affairs created by competition was soon resolved by consolidation. William Sinclair, who owned Galveston's 16 mile intra-urban transit system, bought both Houston companies during 1883. Sinclair not only acceded to the council's demands for greater regulatory and administrative controls, but also tripled services by the end of 1884 (see map). 64

Considering the entrepreneurial contests between 1876 and 1883 as a whole, Houstonians and their government must be judged the winners. Rivalry among businessmen greatly enhanced the city council's bargaining position and produced sub-
stancial material improvements in services to the community. The only losers were the established firms, which indicates the reason why competition was the central worry of the Gas Light Association's members. Consequently, during the remainder of the century, much of the urban utility men's energies were focused on erecting barriers against easy entry into their industry.

As Houston's utility developments suggest, though, urban service enterprise was still fluid in the '80's. In hundreds of smaller towns like Houston, entrepreneurial opportunities to introduce services or compete with established firms remained open. In the largest cities, too, where water, light and street railways were recognized necessities, competition was often encouraged. In this unrestrained atmosphere, the electrical innovators began installing their new technologies. In a decade, these innovations upset the entire pattern of providing urban public services which had been slowly established over the course of 85 years.

Novel relationships between science-technology and market management accounted primarily for the revolutionary impacts of electrical innovations on urban utility industries. Most of the theoretical properties of electricity were well understood before 1840. Commercial applications were delayed, however, until this knowledge was utilized by such engineers as Charles Brush and Thomas Edison who also possessed entrepreneurial talents. Edison, for instance, spent over $500,000 on research and development before offering his incandescent lights to the public in 1882. These "engineer-entrepreneurs" subsequently maintained close ties to local licensees in order to exploit the full market potential of the innovations. As a result, the channels of communication opened between consumers, local utility companies, and manufacturers promoted rapid improvements in electrical systems.
An accelerated diffusion of electrical technologies to American cities also contained far reaching implications. In contrast to previous patterns, large and small urban places installed these innovations almost simultaneously. Houston, for example, had arc lighting only three years after the first central station was opened in 1879. About a year separated Edison's introduction of incandescent lights to New York from similar accomplishments in the bayou city. Urbanites everywhere shared the experience of observing the new artificial illuminates' brilliance, which a Houstonian believed could be compared only to "a perfect burst of sunlight".66 Another local reporter summarized concisely the symbolic meaning of electricity for city life. "Old things are passing away," he wrote, "all things are becoming new."67
"THE SPIRIT OF PROGRESSIVE MUNICIPAL LEGISLATION", 1880-1890

In 1886, a Methodist minister arrived in Houston to assume new duties. Reverend John Green’s first impressions offer an important commentary on the most striking characteristics of the bayou city. "We were carried...in a little mule street car," Green reported,

which was Houston’s only reliable means of transportation, slow but sure....The big, muddy town reminded me of an overgrown, burly boy having a good time wading in the mire and rejoicing in his rapid growth and his 'great expectations'....All South [of Main Street] was deep mud, in which danger signals were displayed to keep folk out of a bottomless pit.¹

Other local observers realized that Houston "had a unique reputation for cotton, hospitality and mud".² Town boosters proudly promoted belief in the first two images. Efforts to erase the final one occupied a central position in public affairs throughout the nineteenth century.

Like hundreds of smaller cities during the '80's, Houston became increasingly tied into a national web of interdependence. Rail connection to the North in 1873 and completion of an East-West route six years later helped maintain the economic primacy of cotton mercantilism in the Gulf Coast city. Growing prosperity, however, created a diversity of new interests. For example, the opening of the Southern Pacific’s regional headquarters brought large numbers of organized, skilled workers to Houston and linked local businesses to Colis P. Huntington’s fortunes.³

Broadening economic and social interests in Houston were accompanied by an expansion in the role and importance of local government and public service companies.
The municipality's controversy with its bondholders restricted policy options. Yet, reconstruction of the tax machinery and a general appreciation in assessment rolls allowed public institutions to reassert a strong influence on the community's environment. Private corporations serving the public were becoming better equipped to respond to Houstonians' growing wealth and rising expectations. Clashes between different groups with enhanced abilities but incompatible ambitions frequently resulted in litigation.

During the 1880's, institutional and legal responses to changing patterns of public and private relationships greatly influenced the subsequent course of Progressive reform. Other concurrent varieties of reaction to the impacts of industrial-urbanization were also fundamental. Nevertheless, legislative and judicial adjustments in the constitutional position of municipal and public service corporations significantly shaped the configurations of political debate in the '90's. The major focus for conflicts on interest between citizens, local government and utility companies was use and control of city streets. The settlement of these contests resulted in a basic clarification of each parties' rights and responsibilities in an emerging urban society.

Measured by city council activity and allocation of public revenues, the major municipal concern until the 1900's was street improvements (see Table 4). Managing past bonded debt obligations, which were largely contracted to finance road building, was the only subject receiving similar consideration. During the '80's, public officials were involved primarily in fashioning institutional means to expedite the construction of paved roads.

Houston's priorities were common ones after the Civil War. While the Gulf


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<tr>
<th>YEAR</th>
<th>POPULATION</th>
<th>1877</th>
<th>1880</th>
<th>1887</th>
<th>1892</th>
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<tr>
<td></td>
<td></td>
<td>14,000</td>
<td>16,000</td>
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1. **INTEREST**
   A. Amount
   B. Percentage of Total
   C. Per Capita Expenditure

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<td>B.</td>
<td>12.5</td>
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<tr>
<td>C.</td>
<td>$.84</td>
<td>$1.57</td>
<td>$4.48</td>
<td>$3.64</td>
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2. **GENERAL EXPENSES**
   A. Amount
   B. Percentage of Total
   C. Per Capita Expenditure

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<tr>
<td>A.</td>
<td>$24,600</td>
<td>$18,500</td>
<td>$24,400</td>
<td>$30,000</td>
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<tr>
<td>B.</td>
<td>26.2</td>
<td>22.0</td>
<td>12.8</td>
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<tr>
<td>C.</td>
<td>$1.76</td>
<td>$1.05</td>
<td>$.98</td>
<td>$1.00</td>
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3. **PUBLIC SAFETY**
   A. Amount
   B. Percentage of Total
   C. Per Capita Expenditure

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<tbody>
<tr>
<td>A.</td>
<td>$26,600</td>
<td>$5,600</td>
<td>$27,800</td>
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<tr>
<td>B.</td>
<td>28.3</td>
<td>6.7</td>
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<td>12.8</td>
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<tr>
<td>C.</td>
<td>$1.90</td>
<td>$.35</td>
<td>$1.11</td>
<td>$1.23</td>
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4. **HEALTH**
   A. Amount
   B. Percentage of Total
   C. Per Capita Expenditure

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<td>A.</td>
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<tr>
<td>B.</td>
<td>8.3</td>
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<tr>
<td>C.</td>
<td>$.56</td>
<td>$.23</td>
<td>$.33</td>
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<td>ROADS &amp; BRIDGESc</td>
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<td></td>
<td>Amount</td>
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</tr>
<tr>
<td>B.</td>
<td>Percentage of Total</td>
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<td>26.2</td>
<td>13.3</td>
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<tr>
<td>C.</td>
<td>Per Capita Expenditure</td>
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<td>$1.37</td>
<td>$1.20</td>
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<td></td>
<td>UTILITY SERVICES</td>
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<tr>
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<td>d</td>
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<tr>
<td>B.</td>
<td>Percentage of Total</td>
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<td>11.8</td>
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<tr>
<td>A.</td>
<td>Amount</td>
<td>d</td>
<td>d</td>
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</tr>
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<td>10.4</td>
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<tr>
<td>C.</td>
<td>Per Capita Expenditure</td>
<td>$0.11</td>
<td>$1.00</td>
<td></td>
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<td></td>
<td>TOTALS</td>
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<tr>
<td>A.</td>
<td>Amount</td>
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<td>$84,000</td>
<td>$225,000</td>
</tr>
<tr>
<td>B.</td>
<td>Percentage of Total</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
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<tr>
<td>C.</td>
<td>Per Capita Expenditure</td>
<td>$6.71</td>
<td>5.25</td>
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b. No funds reported in this category

c. Includes only current budgetary appropriations

d. None
Coast community faced unusually difficult topographical and climatic problems, city street systems directly affected almost every urbanite. Professor Seymour Mandelbaum, for example, has recently called attention to the importance of communication networks in determining a city's level and organization of socio-economic intercourse. Inefficient transit pathways, in effect, created isolated "island-communities" within city boundaries.\(^5\) In addition, changing spacial perceptions contributed to a focus on arteries of movement during this period. One student of these patterns found a "growing tendency in [urban] America to interpret every civic improvement in terms of linear design, in terms of more and better streets".\(^6\)

The central emphasis given to streets in nineteenth century urban environments was reflected also in a different, but not less significant manner. With the exception of waterworks, public utility technologies were designed specifically to enhance the flow of people, goods and information. Gas lighting, omnibuses and horse railways were early devices to aid intra-urban movement. Later, the first commercial applications of electricity, such as telephones, arc lights and streetcars, were almost exclusively devoted to similar goals. By keeping streets clean and sewers unobstructed, even waterworks were employed in the task of augmenting the level of movement within cities.

Houston's resource allocation priorities were neither unique, nor difficult to understand. Almost every public and private interest benefitted from improved avenues of transportation. But building urban street networks frequently brought these diverse groups into conflict because large spending and individual property rights were involved. Since the Anglo-American legal tradition held the highways in public trust, financial control of paving projects was located, at least nominally,
under government supervision. Revenues for these expensive capital improvements could be raised through two methods. The first, a general *ad valorem* property tax, was concisely defined by Progressive Era tax expert, E. R. A. Seligman, as a "compulsory contribution from the person to government to defray the expenses incurred in the common interest of all, without reference to special benefit conferred".

The second, special assessments, were "levied in proportion to the special benefits derived, to defray the cost of a specific improvement to property undertaken in the public interest". The choice was whether to place the cost incidence on the general community or on the property owners whose land fronted the improved roadway. The existence of the latter alternative contributed to early confusion about urban street paving as a responsibility of local government and at the same time, an improvement which primarily enhanced private property values. This traditional ambiguity between public and private interests was brought into sharp relief by practical needs to coordinate the city's road building efforts.

In Houston after 1875, expediency dictated that special assessments be used if roads were to be constructed. The specific administrative procedures defined in the 1879 city charter for levying these charges indicated a vague distinction between the public welfare and private advantage. According to the charter, initiation of paving projects required petition from 75% of the affected property owners; city government acted merely in a ministerial capacity. In December 1880, the council's resolution approving the first road construction effort in over seven years confirmed the essentially private nature of such improvements. To the aldermen, "the commercial interests of the City of Houston imperatively demands that at least one road be graded and made passable from Main Street to the [two] different rail-
road depots..."  

Over the next three years, charter amendments shifted discretionary controls to the public authority. Under the 1883 charter, for instance, only the council could determine which streets could be paved, while maximum levy restrictions upon property owners were removed. Neither public debate nor official attitudes pointed towards the emergence of a broadened public welfare concept. Instead, needs to establish procedural order and administrative regularity promoted these types of centralizing alterations.

In addition, amendments were required by fiscal problems which quickly became apparent. In most cities, local government acted as the financial agent between building contractors and property owners. The city usually collected special assessment taxes over an extended period while paying the paver immediately after completion of the work through various bond issuing plans. Because of Houston's lack of credit, "Street Improvement Certificates" were given directly to the road builder. He was left with the unpleasant task of collecting the assessments, but received substantial compensation in the form of interest charges. In this manner, the city council authorized large, capital expenditures without further complicating the municipal corporation's bonded debt troubles.

Allegations by taxpayers, especially large property owners, of apportionment abuses and inequities frequently threatened to destroy the efficacy of special assessment taxation. Their attorneys raised a host of constitutional objections to this method of financing public improvements. Moreover, they asked unprecedented questions about the impact of the fourteenth amendment's due process clause on federalism. State and national appellate courts during the 1870's and '80's generally
did not sustain the taxpayers. Instead, jurists upheld a traditional self-restraint towards legislative exercises of the tax power. 13 Three important cases decided between 1883 and 1889 illustrate the issues before the bench and its attitudes towards public allocations of privately earned resources.

Houston's coastal rival, Galveston, had used special assessment taxes since the early '70's to finance street and sidewalk construction. When a property owner refused to pay his tax, the city sue l to collect by attaching a foreclosable lien upon the property. In 1883, the Texas Supreme Court heard the arguments of A. P. Lufkin, which claimed that homesteads were exempt from forced sale for nonpayment of special assessments. Under the state constitution, homesteaders' land was exempt from enforcement of most civil obligations. In urban areas, this protection applied to plots of up to $5000 value at the time of purchase. Homesteads were not exempt, however, from lien foreclosures for "taxes due thereon". 15

Lufkin's attorneys pointed out that the court in previous opinions considered paving assessments a tax, but at the same time, an exception to the constitution's limitations concerning "taxes". Homesteads were liable to tax collectors, according to counsel for Lufkin, only for those general burdens of the State which were essential to its existence. Since special assessments were based on an idea of special benefit, not necessity, the letter and spirit of the Constitution would be violated if Lufkin's home was subject to forced sale. To the contrary, justice Charles West ruled that without an explicit distinction in the organic act between a special and general taxes, homesteads were liable for any lawful levy. The court believed the government's ample protections of homesteads imposed an obligation on owners to bear their share of the costs. 16
Dissatisfied urban property owners continued to search for a constitutional objection to special assessment apportionment of public improvement burdens, which the courts would sustain. In 1885, an appeal to the Texas high court attempted to restrain Galveston's tax collector from enforcing the sale of land for overdue assessments. C. F. Adams and others now admitted that the legislature could authorize municipal corporations to levy special assessments. The property owners attack shifted to two interrelated issues which aimed at the heart of this tax method. First, if there was no provision for a hearing before the assessment was levied (as under the Galveston charter), then no determination of benefits could be ascertained. Since special benefits were the basic justification of the tax, to deny a hearing on the issue was a denial of due process. Second, the rule of front footage apportionment was arbitrary if measured against benefit. In effect, property was being confiscated and taken without just compensation. For these reasons, argued the property owners, the courts should intervene.\(^\text{17}\)

To confirm the appeal made by Adams would constitute a double violation of the judicial power, according to Justice John Stayton. He allowed that the benefits issue had provoked great controversy; "[t]he conflict of [judicial] authority elsewhere..., of itself is strong evidence of the fact that the question, to say the least, is one of great doubt". However, to overrule Texas' consistent line of precedents as well as declare a tax act of the legislature unconstitutional was beyond judicial propriety. The unsettled nature of the law elsewhere signaled the bench to assume the conservative posture of caution and restraint. To upset the status quo now, the justice believed, "would be transcending the proper limits of judicial action...."\(^\text{18}\)

Similar state judicial attitudes elsewhere prompted taxpayers' attorneys to
carry the controversy over the relationship between assessments and benefits into
the national arena. Their clients' property was being confiscated by state agencies,
because self-imposed, procedural safeguards were inadequate. They asked the
Supreme Court to employ the federal judiciary as supervisors over state tax power
practices. The lawyers argued that authority to tie these national checkreins on to
the states was found in the fourteenth amendment's due process clause. 19

The Supreme Court's view of the judiciary's role in the federal system paral-
leled Texas jurists' self-restrained position. In 1877, legal practitioners tested the
Court's willingness to extend due process clause protections to property owners over
locally imposed special assessment taxes. Justice Samuel Miller rejected their
suggestions, and remarked that "there exists some strange misconception of the scope
of this provision...." 20

Eleven years later, attorneys still were undeterred from the hope of creating
a watch dog role for the national judiciary over state tax procedures. In Spencer v.
Merchant, the high Court tried conclusively to dispel this notion. Justice Horace
Gray's opinion forcefully denied review powers over how legislatures decided the
amount or mode of taxes levied for public purposes. Although the apportionment of
burdens among parcels of land was liable to inequities and injustices in relation to
benefits, Gray continued, the courts could not intervene. Due process of law only
required notice of the assessment, and an opportunity for a hearing at some stage of
the proceedings. 21

The high bench's perception of its role in city-property owner relationships
contrasted sharply with its activism in city-creditor disputes. The Supreme Court
refused to arbitrate special assessment equities. Since the mid-'60's, on the other
hand, the Court strongly asserted a judicial duty to intervene in urban tax collection practices in order to uphold bondholder’s legitimate claims. Nevertheless, lower national and state courts having jurisdiction over Houston had pursued an independent course during the ’70’s and early ’80’s, which provided more limited remedies to the city’s unpaid creditors. These courts had emptied the municipal treasury of all funds collected for bond purposes, but they were unwilling to order additional tax levies. 22 Under these circumstances, most Houston bondholders after 1882 merely renewed the validity of their claims as required by the statute of limitations. Judicial policy allowed the city to proceed smoothly in the reconstruction of the tax machinery. 23

In 1885, however, the Texas supreme court offered urban creditors a new opportunity to obtain mandamus writs directing tax levies above statutory or constitutional limitations. Lufkin v. Galveston involved a question of whether the legislature by a special act could authorize a city to exceed its charter’s maximum ad valorem rate. To answer the dispute, the bench gave its interpretation of the constitutional limitations on municipal corporation taxation. Chief justice Asa Willie reasoned that general rules were inapplicable wherever qualified by special exceptions. Pointing to the organic act’s provisions for places of ten thousand or more persons, Willie argued that the framers intended, "larger cities to make improvements on an extensive scale, and to expend money for a great many public purposes unknown to towns or cities of smaller size". According to the opinion, even the constitutions 2–1/2% municipal tax limit for large cities, had many exceptions. The effect of the ruling was to remove all tax rate restrictions for both debts and current expenses if the legislature so provided. 24
Shortly after this decision, Houston's bondholders radically changed their previously passive position. Other considerations, besides the court's expansive interpretation of municipal tax powers, also accounted for the strategy reversal. By 1886, the bulk of the debt was controlled by a handful of security dealers. The Baker administration had attempted unsuccessfully to pressure these large bondholders to accept a debt scaling exchange by paying interest only on the 1881 compromise issue. Instead, the security dealers chose to rely on the judicial power to enforce the city's obligation to fully honor its bonded liabilities.

The new phase of creditor legal maneuvers began towards the end of 1886. New Yorker John Van Nostrand, for example, applied for a mandamus writ in the U. S. Circuit Court at Galveston, to compel Houston officials to levy a "sufficient tax" to completely remunerate his $1700 in unpaid coupons. Van Nostrand's attorneys could point to the state constitutional provision which guaranteed payment of all municipal debts contracted before the act's ratification by "sufficient" tax levies. Houston's counsel argued to the contrary that the municipal charter's 2% limit precluded immediate payment of the $250,000 in overdue interest owed to many equally meritorious claimants. Although similar petitions to Van Nostrand's had received no recognition only three years before, District Judge Chauncy Sabin ordered the city to levy a "special tax" adequate to satisfy the petitioner's claims. In November 1886, a large holder of 1875 consolidation bonds, Elizabeth Voorheis, entered a similar petition in the state district court. Judge James Masterson, however, denied the petition and simply ordered pro rata payment. Unlike previous cases, Voorheis now appealed to the Texas supreme court, which delivered its opinion in March 1888. Chief Justice John Stayton basically reiterated
the Lufkin ruling but distinguished between debts contracted before and after the constitution's ratification. To the jurist, the framers' intent was clear. They sought to impose an absolute maximum tax levy for all municipal purposes contracted after 1876. For all pre-'76 obligations, Stayton concluded that the court's duty was to compel city officials to levy the taxes necessary to compensate creditors. Masterson's ruling was reversed and he was ordered to issue the writ prayed for.  

The state appellate court's attitude during the 1880's towards municipal tax powers was consistent. Its decisions on special assessments and the Lufkin ruling on general property taxes reflected a self-restrained posture. In the Voorheis case, a specific constitutional directive and the U. S. Supreme Court's firm position on the issue led the Texas jurists to a conclusion offered by Noah Swayne twenty-two years before. Nevertheless, the state bench generally refused to erect legal barriers in the path of urbanites who were attempting to finance local government through a variety of taxing methods. The policies of the national courts, on the other hand, are difficult to reconcile. The high court's philosophy on the judicial role in municipal bond litigation directly contradicted its doctrines on special assessments. In addition, the lower appellate courts examined followed an independent and inconsistent course in a matter definitively settled at the highest level. For over twenty years, the practical operation of federalism produced uncertainty in the administration of the law affecting city-creditor relationships.

In comparison, the law of special assessments in Texas and national judicial forums seemed harmoniously settled on all fundamental issues. In addition to an unbroken line of precedents, jurists consistently refused to intervene between property owners and local authorities in the determination of tax burden equities. The courts
offered taxpayers protection only from administrative deviations of legislatively defined procedures. The judicial posture helped create a stable and useful method of financing public improvements.

Although litigation protesting special assessment levies continued throughout the '80s, the law's basic stability allowed Houstonians to execute their road building objectives. By 1886, the year Reverend Green arrived, about four miles of wood, gravel and stone pavements were laid. Seventy-eight per cent of the $167,000 cost of these improvements was raised through special assessments.28

The implications of court decisions pointed to a need for the institutionalization of carefully defined taxing procedures. The solution for practical administrative problems, encountered in planning road building projects, also were embodied in charter provisions. Both tended to centralize decision-making power in the city council. The inauguration of street paving stimulated other reorientations in the government of Houston. Council attentions were drawn especially to utility company activities in the city's thoroughfares. Every franchise grant of street privileges contained an obligation to maintain rights of way or pipe line routes in good condition.29 Before preservation of the large public investment in paving became a central concern to local officials, however, enforcement of these duties was minimal.30

Moreover, the opportunity to place a large portion of paving expenses on streetcar corporations suggested that many reservoirs of municipal power over private enterprises had been untapped. Houston initiated a policy, common in other cities. Unable to extract direct pecuniary bonuses from the generally profitable mass transit ventures, city authorities often could transform repair obligations into an indirect
form of special taxation. Houston's charter after 1881, besides subsequent franchise grants, imposed upon transit corporations between one-fourth and one-half the total cost of street paving.

The city council's desire to maintain surfaced roads at minimum expense influenced their attitudes generally towards utility company operations. During the mid-'80's, policies were fashioned to achieve more effective regulatory control over their activities in the streets. Public officers' duties and company responsibilities were enumerated meticulously in order to ensure both enforcement and compliance. Consider for example, an 1884 ordinance which contained the first comprehensive regulation of water mains and gas pipes. The ordinance required utilities to obtain a permit before work commenced, placed company employees under the supervision of the City Engineer and detailed procedures for legal actions against violations. The cumulative effect of these regulations was analogous to the reforms wrought in the city's tax machinery. They acted to centralize authority in municipal government, while restricting private interests' freedom of action.

Street paving alone was not responsible for the reorientations of public authority over the environment. The tendency of institutional reforms in local government towards an expansion of control under central direction paralleled changes in the physical and social composition of the city. During the '80's, Houston's spacial features grew outward; but at the same time, communications became more tightly knit together. Extensions of street railway service throughout the community, for example, evenly dispersed different racial and economic groups. Simultaneously, neighborhood prices and rents were equalized. Social intercourse also was becoming more formalized as the decades 255% increase in organizations
reflected. Contemporaries noted that their city never experienced a disruptive period of "mushroom growth". Nevertheless, Houston's constantly enlarging size and diversity were important stimuli in the process of institutionalizing public and private relationships.

Municipal decision-makers drew upon other resources to fashion instruments of power, which would insure that environmental alterations occurred in an ordered manner. Useful employment of past experiences, for instance, was mirrored in the evolution of franchise grants. Houstonians also kept abreast of conditions and practices in cities across the country. During the mid-’80's an extraordinary series of decisions from state and national courts proved extremely influential on the future course of local legislation. At least in such vital areas of concern as municipal finance, police powers and utility corporation franchises, the judiciary largely shaped the contours of permissible public policy.

The importance of the judicial decisions lies in their clarification of previously ill-defined roles of public and private institutions providing urban services. Neither Texas nor U. S. courts propounded any startling new doctrines. Instead, the judiciary applied traditional principles for the first time to specific city problems of local government and its relationship to corporations operating under special privilege grants. Judges' attitudes towards the power of municipalities to levy special assessment taxes reflected the bench's general orientations. The cornerstone of the Waite court, state centered federalism, was not undermined by controversies involving municipal control of economic enterprises. The Texas judiciary's self-restraint also continued unaltered towards most legislative expressions of public power. In the process of finally answering many long unsettled urban questions, how-
ever, some disturbing new issues quickly emerged. 37

In 1884-1885, the U. S. Supreme Court delivered opinions on municipal franchises, which taken together defined an urban public utility concept. Using the contract clause to gain national jurisdiction, three New Orleans corporations sought to protect their monopoly grants against competitors who operated under subsequent local ordinances. In the first case, the Court ruled that the Crescent City Live Stock Company’s exclusive privilege, which had been sustained in the 1873 Slaughterhouse Cases, was no longer a valid contract obligation of the state. The apparent contradiction was rectified, according to Justice Samuel Miller, by an 1874 state constitutional provision delegating exclusive authority over slaughtering to municipal corporations. To Miller, the Court was bound in each case to uphold the “latest expression of the legislative will” in the exercise of police powers for the public welfare. The majority opinion asserted that no contract could circumscribe the state government’s powers to protect the public health, morals and safety. 38

Further insight on the benches’ attempt to balance private vested rights against government’s right to regulate in the public interest was contained in Justice Joseph Bradley’s concurring opinion. Bradley sharply distinguished between ordinary businesses such as brewing and butchering whose dangerous natures created a need for police power controls, and occupations specifically advancing the “public utility”. Exclusive privileges granted to the former were “odious and against common rights”. But similar grants to the latter were not “real monopolies” because “as part of the public duty is farmed out to those willing to undertake the burden for the profits arising from it”. 39

A year later, the Court applied Bradley’s dual classification to controversies
similar to the butcher's case involving urban gas-light and water companies. In *New Orleans Gas Company v. Louisiana Light Company*, the bench unanimously sustained the Gas Company's monopoly franchise as a binding contract obligation upon the state. Justice John Harland pointed out that street lighting was not only a "public necessity" but also required extraordinary rights to use the streets. These two qualities gave gas lighting the character of a "business of a public nature". Harlan concluded that the state possessed full discretion in the choice of means to provide this type of essential service. The state could supply gas lighting or delegate the responsibility to such parties as municipal corporations and private companies. A monopoly grant to these corporations, moreover, did not surrender any police power authority over them. 40

The Supreme Court explicitly placed urban utility companies using the streets to distribute their services into a separate legal category. The bench propounded essentially an agency theory to describe the special relationship between the state and franchised, private corporations. The resulting status attached to these public service enterprises in many respects was analogous to the constitutional position of municipal corporations. Both were considered state agencies, which could hold exclusive privileges; and both were subject to continuous supervision. The analogy, however, cannot be drawn too far. The right of the legislature to control its political subdivisions seemed unbounded. 41 On the other hand, the limits of governmental regulation of urban utility companies were only vaguely perceptible in the mid-'80's. In 1885, for example, the Supreme Court upheld California's right to transfer water rate making authority from a balanced arbitration board of public and private representatives to municipal officers. Yet, the central question of final
review in the determination of "reasonable" rates was left unanswered. 42

Also undiscussed by the nation's highest court were a number of important issues surrounding municipal corporations' powers to regulate utility companies, which held franchise grants from the city. Texas jurists spoke to these concerns during the same period that the U. S. Supreme Court was declaring the constitutional status of urban public service corporations. The state's appellate bench contributed substantially to the process of precisely defining municipal franchises. Two leading decisions illustrate the direction of Texas law towards legitimizing city government's supervisory authority over its utility enterprises.

The first case, decided in 1886, involved a dispute between two Galveston streetcar companies. Three years earlier, the established franchise holder, the Galveston Company had responded to the initiation of competition for choice undeveloped routes by attempting to build its tracks first on these streets. The newly franchised firm, the Gulf Company, obtained an injunction in state district court against the older enterprise's interference with its construction operations. The Galveston Company's appeal contended that the city's first franchise formed an "irrevocable grant" of a contract nature, which was being impaired by the competitor. 43

To the Texas supreme court, the central issue in the case was the extent to which right of way privileges conferred an unmolested right to use the streets. Since neither franchise expressly granted "exclusive privileges" chief justice Asa Willie chose to avoid inquiry into a city's power to create monopolies. Willie interpreted the rights of the companies very narrowly, especially in relation to the municipality's continuous superior authority. "The city retained all the control it formerly possessed over these streets, subject only to the right of using the portion covered by its
[the company's] track, which was vested in the railway company," the chief
justice announced. The court concluded that each company possessed a right to use
the disputed streets, but neither could interfere with the other. 44

The following year, the privileges granted to urban service enterprises were
restricted further by the Texas Court's first comprehensive ruling on the nature of
public utility franchises. The landmark case, City of Brenham v. Brenham Water
Company, originated in 1884 when the city council granted a franchise, which in-
cluded a 25 year contract for public water supplies. After a new city administration
refused to pay the first installment of its bill, the company sued for compensation.
The city argued that the franchise constituted an invalid bartering away of its
legislative powers and an unconstitutional monopoly. Nevertheless, the district
court upheld the grant as a legally binding contract. 45

In 1887, Brenham's appeal to the Supreme Court stimulated a far reaching
opinion on the meaning of municipal franchises, monopoly and public utilities.
Justice John Stayton reasoned that a franchise-contract which obligated a city for
a long term to pay a private company for services irrespective of use, was equivalent
to a grant of an "exclusive privilege". This conclusion represented an important
step by the court as only a year earlier the jurists refused to look beyond the termin-
ology of franchises. Now the bench proceeded to inquire into its effects. Reviewing
the conflicting decisions in other states, Stayton sided with those ruling against any
implied city charter authority to enter contracts with utility companies for long
periods. Moreover, he held such obligations to be invalid delegations of municipal
legislative responsibility to provide for the public welfare. 46

Justice Stayton found additional cause to sustain Brenham's noncompliance
in the state constitution's prohibition of legislatively created monopolies. According to the jurist, a monopoly was an "exclusive right" granted to a party to buy and sell an item. To Stayton, if this right injured a single community, then a monopoly existed, even though the grant did not extend to all places and for a perpetual period. Again he allowed that other courts, including the U. S. Supreme Court in the New Orleans Gas Company case, considered franchises containing exclusive privileges not monopolies when they involved special use of the streets. Stayton argued,

When such use, however, is but a means to the exercise of an exclusive right to sell water, and to compel a city or its inhabitants to buy it, it will be found difficult to separate the means from the ends intended to be accomplished. 47

Publicly owned, utility monopolies were justified, the Texas court contended, because the people possessed a remedy at the polls for mismanagement. On the other hand, privately owned utilities required constant public regulation to check their inherently oppressive natures. 48

In the Brenham opinion, as well as other state and national decisions during the mid-'80s, the judiciary strongly confirmed the primacy of the public welfare over private interests. The courts' rulings on disputes involving use of the streets tended to shift the balance of power to the city at the expense of entrepreneurial vested rights which were increasingly circumscribed. 49 Special assessment tax litigation resulted in the subordination of real estate owners' use of property under municipal determinations to improve the environment. In these areas of the law, a notion of laissez faire constitutionalism was not only absent, but an opposite attitude
prevailed. Although the law of municipal bonds imposed important restrictions on cities, Texas jurists otherwise were able to define general urban property tax powers in an expansive fashion. The process of upholding the public authority, moreover, clarified the legal positions of urban utility companies, citizens, creditors and local government in relation to each other. 50

The repercussions from the judiciary’s closer involvement in urban affairs were substantial. The most immediate and visible impacts on Houston were in the area of municipal finance. The mandamus writs ordering city officials to fully pay bondholders’ accumulated interest through the imposition of special tax levies threatened to completely disrupt the local government’s programs to provide more services and permanent improvements. Houstonians also believed that a high tax rate would retard city growth by discouraging new settlers and business investments. 51 Beginning in 1886, judicial assaults on the municipal treasury created heavy pressures on local officials to abandon efforts to force creditors to accept a scaling of the debt. Between March and November of that year alone, for instance, over $65,000 in judgements were paid, as compared to only $27,000 in the previous four years. 52

The immediate reactions of the community to the Van Nostrand decision ranged from ingenious counter-thrusts to near hysteria. "This seemingly arbitrary ruling of a Federal judge", according to the Post, "has caused considerable feeling among our people, setting the precedent, as it does, for unlimited taxation at the sweet will of a United States Court." This kind of fear prompted a few aldermen and leading citizens to propose the abandonment of the city charter. Plans to place the city in a receivership status similar to Memphis gained currency for a brief period. 53
More astute leaders, however, led by Mayor Dan C. Smith, acted to comply with the courts, while simultaneously avoiding additional tax burdens. The Smith administration shrewdly employed a variety of legal, delay tactics to circumvent the necessity of collecting special tax levies. At the same time, the city's relatively efficient tax machinery produced enough revenues to meet each specific court order.\(^5^4\)

Official counter-measures centered on affecting a permanent settlement with the few large bondholders which would restore municipal credit. The city offered three kinds of incentives to induce its creditors to abandon litigation and accept a refunding. In March 1887, a state statute providing for the creation of "Boards of Liquidation" to supervise enforcement of bond compromises was enacted on the initiative of Houston's local government. Forming the cornerstone of the city's strategy, the commission device represented a significant departure from past orientations towards institutional solutions.\(^5^5\) A second measure during 1887, employed the city council's tax powers to lower the amount of wealth on the assessment rolls. Undertaken before the Voorhees decision in the state supreme court, the council probably was attempting to shake the confidence of the security dealers in the court's ability to enforce their claims.\(^5^6\)

The final step in the city plan offered to refund the debt in thirty years, three and four per cent bonds. An August 1887 circular proposed to guarantee the security of the new issue through the institution of the liquidation board; and to lower the interest burden to an amount that the municipality could realistically handle. Anticipating creditor suspicions of poor faith, the council's "plain business proposition" argued that previous assessment rolls were inflated with "purely fictitious property and values" to enhance the city's image.\(^5^7\) Negotiations were
conducted by a joint committee of aldermen and prominent citizens. In March 1888, an agreement was obtained with the largest bondholder, Fazendi and Seixas of New Orleans, which resulted in a refunding of the debt at five and six per cent.\footnote{58}

The bond settlement allowed the community to reevaluate its system of financing public works projects. Restoration of the municipal corporation's full financial powers meant that Houston's ability to improve the environment was greatly expanded. In addition, street paving, drainage, sanitary sewage and water supply were increasingly becoming viewed as interdependent aspects of the public health and welfare.\footnote{59} In January 1889, the council charter committee proposed some basic amendments to the constitutionally secure system of special assessment taxation. Besides adding new authority for the creation of sewerage districts, the principle substantive alteration suggested was the interposition of the city as financial agent between contractors the property owners. In order to facilitate this objective, up to $200,000 in bonds could be issued annually, funded by city collected assessments on improved real estate.\footnote{60} While a general consensus favored continuation of taxation by special assessments, a sizeable minority in the community opposed the new bond plan. Led by state representative and prominent attorney, E. P. Hamblen the dissenters argued that the city's debt could be increased only at grave dangers to taxpayers. The issue was quickly compromised by retaining the certificate mechanism. Their higher interest rates raised public improvement costs considerably above comparable bond interest charges. However, the certificates posed no potential threats to the municipality's financial integrity.\footnote{61}

The special assessment provisions in the '89 charter and its amended form of 1891 revealed Houstonians' astute appreciation of the judiciary's definition of the
law. Property owners, for instance, were granted rights of petition and hearing before assessment rolls could be approved. In addition, a "board of public works", composed of three citizens appointed by the mayor, was established to advise the council on all proposed improvement projects. Houston's charter framers meticulously embodied in state law the limits of procedural remedies available to taxpayers and the legal status of assessment certificates in the courts. Unsatisfied property owners who failed to petition the council and seek an injunction within five days of its determinations were forever estopped from further redress from the law. Reflecting Houstonians' understanding of the judicial decisions, the charter amendments attempted to create an invincible legal claim for the contractor-certificate holder against the assessed property and its owner. 62

The impacts of the courts on urban policy orientations were also evident in more subtle varieties of change. After 1885, Houstonians began exhibiting more confidence in their ability to use public powers to effectively control the direction and quality of city life. Many other influences besides the law were acting to produce similar perceptions about the strength of municipal institutions. Nevertheless, the series of pronouncements made by jurists favorably disposed towards governmental exertions for the general welfare marked a watershed, which reinforced current attitudes and added a separate momentum of its own.

The growing propensity of Houstonians to look to their public institutions for solutions to urban problems was evident especially in the municipality's changing posture towards its utility enterprises. In 1886, for example, fire destroyed an important cottonseed mill while firemen stood helpless because the hydrants were dry. A citizens' committee quickly formed to demand the city council's leadership
of a thorough investigation of the entire water supply system. The committee reminded the aldermen that

[(t)here is no principle better established in law or equity, than that the holders of any franchise, granted by a government shall be responsible to that government for a faithful performance of the obligations...assumed with said franchise....]^{63}

The council responded by ordering the Water Company to demonstrate its ability to fulfill franchise specifications. In addition, new ways were explored to ensure that future water supply needs would be adequately met. Although the company proved an ability to comply with the contract, the council passed a comprehensive reform measure to tighten its control over the utility.^{64}

The contrast in aldermanic belief in the efficacy of the public authority between the early and late 1880's was dramatic. In 1881, public officials' respect for the streetcar company's property interests completely inhibited legal actions against the utility's numerous violations of street repair ordinances. The councilmen believed, according to Alderman William Shaw, that enforcement of the law was "bad policy" because it would "clog the investment".^{65} Six years later, alderman willfully wielded the city's police powers to pressure the same enterprise to comply with policies only remotely related to regulation of the streets. After the company removed its tracks along a principal trunk line to allow paving of the street, the council hurriedly enacted a new regulation. The ordinance required the company to pay its pro rata share of the paving improvement before replacing its equipment.^{66}

In the following month, January 1888, a confrontation was precipitated by the city marshal's arrest of the company's workmen, who were attempting to re-lay
track on the finished avenue. The utility immediately petitioned the state district court for an injunction restraining the city from interfering with its workers and enforcing the "prevented ordinance". Street railway lawyers argued that the corporation was being denied a vested right by an "illegal and void" act, which was a disguised maneuver to force payment of paving certificates. Besides contesting the court's jurisdiction, the city reply contended that the ordinance was a reasonable, police power regulation. Judge James Masterson granted the company's petition. 67

Similar clashes between local government and public service corporations were duplicated many times after the mid-'80s. However, the above sequence of events, ending in a judicial arbitration of the dispute, sufficiently outlines the implications of the law's altered configurations for urban institutional relationships. In affirming the superior claims of municipal corporations to regulate their franchised enterprises, the bench, in effect, thrust upon themselves the opportunity to monitor the reasonableness of subsequent public controls. 68 During the '90s, the courts exerted a growing judicial responsibility to interpose restraints on city government's dealings with its franchise holders.

In a larger context, the judiciary occupied a supportive role in comparison to legislative prerogatives to initiate public policy. The reforms in Houston's charter, for instance, pointed towards an enlarged central authority playing an active part in managing community resources in order to direct the course of environmental change. The increasing attention given to regulating public utilities was one important aspect of a general concern with mechanisms which could uplift the quality of urban life.

By the late 1880's, many Houstonians had come to believe that "the public
improvements of a city are a very good index to the character of the inhabitants for thrift and enterprise. An identification of street paving with a service ethic was strengthened further by similar equations between good roads and the traditional goal of constructing a booming metropolis. "There is potent reason for assuming that street paving means growth," the Post argued, for example. The daily noted that outside investors would reject "slow-growing, slovenly looking towns" for those displaying an enthusiastic "spirit of progress." A combination of practical necessity with urban growth and civic pride provided a powerful incentive to collective action. The institutional and legal variations wrought over the decade substantially sharpened this focus of the community's aspirations.
"THE THIN EDGE OF THE WEDGE": PRIVATE ENTERPRISE VS. PUBLIC OWNERSHIP, 1886-1893

Twenty years after the conclusion of the Civil War, Houston was no longer a bare frontier community of five thousand. The Allen brothers' promise that a "commercial emporium" would arise at the headwaters of Galveston Bay was largely fulfilled. With about twenty-five thousand inhabitants, the environment had undergone great alteration to facilitate the mercantile transactions which formed the basis of the town's economy. In addition, all the modern urban amenities provided by current technology were available to those who could afford them. The material advances wrought within a single generation offered contemporaries striking proof that progress depended upon man's conscious efforts.  

Other changes than environmental improvements also were becoming characteristic by the mid-1880's. The community's social activities were channeled increasingly into associational frameworks. The growth of Houston's population and diversity allowed the establishment of special interest organizations. The unplanned sprawl of home construction which dispersed different social, racial, and ethnic groups over an enlarging area, moreover, produced new needs for more formal centers of interaction. A dual pattern of organizational structure was developing. Neighborhood and special interest groups proliferated at the same time that such coordinating associations as the Women's Exchange and the Commercial Club were being founded on a city-wide basis.  

The crystallization of Houston society into a multitude of self-conscious organizations had curious impacts on local politics. The first visible sign that this process would have a larger significance occurred in the 1886 mayoralty contest.
Two months before the April election, supporters of Dan C. Smith captured the Democratic party machinery from the incumbent William R. Baker. The two men personified the changing nature of both socioeconomic and political alignments within the community. An early pioneer, Baker's considerable fortune was accumulated in commerce, railroad building and banking. Besides already serving an unprecedented six years as mayor, the incumbent also held a controlling interest in the city's leading newspaper, the Post. In contrast, Smith was raised on an Ohio farm and apprenticed as a locomotive engineer in nearby Cincinnati. Immigrating to Houston in 1858, the twenty-two year old machinist quickly rose to the rank of master mechanic and worked in a number of railroad shops and foundries.

Neither Smith nor his active supporters, however, represented a proletariat revolt against capitalism. Instead, the mechanic's insurgency was spearheaded by members of the Knights of Labor, a number of prominent attorneys and a new newspaper, the Evening Herald. Houston's Knights were highly skilled, white workers who were mostly connected with the railroads, but also included other employments such as typographers and carpenters. In Southern communities especially, these groups composed a respected, middle layer of society on a par with small entrepreneurs. The true proletariat positions were occupied exclusively and permanently by the blacks. Smith's support from an impressive group of staunchly Democratic lawyers stemmed primarily from their conclusion that Baker had failed the test of achieving a satisfactory debt settlement. In addition, their forward looking orientations were important. Many of these lawyers as well as the Herald would soon be promoting the gubernatorial bid of the conservative reformer, James S. Hogg.
Baker's inconclusive bond strategy probably accounted for his very narrow defeat after a hard fought campaign. Chronicler Benajah Carroll recalled

[T]hey [the people] had seen that the great financiers could do nothing so they went to the other extreme and turned the affairs over to what was facetiously called 'the short hair' element...the city had been turned over to the labor element.7

Indeed, a practical compromise, which conceded to the creditors far more than Baker was willing to permit, was the benchmark of Smith's four years in office. A second major goal of encouraging manufacturers to locate in Houston was indicative of the new administration's attitudes towards the free enterprise system. In 1874, the Democratic redeemers instituted a tax exemption plan for industrial investments but they were forced to repeal the measure after the prospect of municipal bankruptcy became clear.8 Twelve years later, the mayor's faction in the city council proposed similar public subsidies because "it is the duty of Houston to invite capital and encourage manufacturing industries in our city." The ordinance gave a wide range of productive enterprises of over twenty-five thousand dollars value a ten year exemption from local taxation.9

The Smith administration's posture towards public service companies also reflected traditional values and understandings about political economy. The responses pursued under the mayor's leadership to public utility developments is summarized best as a policy of regulated competition. In 1886, each utility corporation was enjoying an uncontested monopoly. Under these conditions, services were extended at a slow pace and rates remained above levels that most could afford. Gas lighting and telephones, for example, were used by less than 500 non-commercial customers, while electric lights were absent completely from
private homes. Even with municipal directives to expand facilities, the water company still supplied fewer than 1000 persons. Only the street railway network, which had tripled its mileage during the two years of competition from 1881 to 1883, proved of benefit to large numbers of Houstonians. (See map.) After Smith entered office, however, a combination of governmental stimulants and entrepreneurial opportunities upset the established firms' comfortably secure positions.

Widespread dissatisfaction with the price and quality of street lighting provided by the Houston Electric Light and Power Company was voiced almost immediately after initiation of service in 1883. Several suggestions during the next three years to negotiate or annul the five year contract for 50 lamps were filed because legal advisors predicted an adverse outcome in the courts. In 1886, the locally managed company went into receivership after failing to find trained electricians to improve the poor performance of the technically complex equipment. When a new corporation was formed the following year, the council seized the opportunity to gain better rates and more control over the quality of service. Declaring the existing contracts to be no longer binding on the city, the alderman decided to solicit sealed bids for a new contract which was a model of carefully detailed specifications.

In November 1887, the light company used its monopoly position to pressure the municipality to abandon plans for a competitive contest. Threatening to turn off the lights, the utility's managers demanded consideration of its offer before other bids were requested. Although the company's proposal of $280 annually for each arc light differed little from past prices, only the mayor's deciding vote in an equally divided council saved the original scheme. As the
local utility enforced a blackout, the city received three bids which significantly undercut the first. The lowest offer of $150 by the Fort Wayne 'Jenny' Electric Light Company afforded a 46% savings and meant that Houston would be paying only 15% more than the national average rate. Shortly after the Fort Wayne proposal was accepted, the Houston company offered to restore service at a reduced cost of $182 per lamp. 13

Competition achieved a sizeable savings in the city's electric bill and a new level of safeguards to protect the public interest. Governmental encouragements to other entrepreneurs promised to effect similar results. In January 1888, a road contractor, William Boyd, petitioned the council for a franchise to construct a second street railway system. The municipal corporation's controversy with the Houston City Company over street paving expenses, which currently was before the courts, probably influenced some alderman to favor the grant. 14 Yet, the transit company's request to confer with a special committee was honored. The council unanimously rejected the utility's claim that the city was obligated to shield the enterprise from competition. To the contrary, the councilmen affirmed an unrestricted discretion to grant special privileges regardless of the economic impacts on established concerns. The special committee report also warned that no "sweeping rights of way" should be given away. Boyd was granted a franchise containing detailed reservations of public authority and bonus payments for the municipal treasury. 15

During Smith's first two year term, competition was restored in artificial lighting and mass transit services. Council policy was founded on a belief that the public and the corporate interests of the municipality were advanced most by
ending utility monopolies. New checkreins were being forged, moreover, to insure a commanding public authority over private uses of the streets. But no official or organized group within Houston suggested direct actions to undermine any legitimate private vested rights. The manufacturers' tax exemption mirrored a community consensus in favor of encouraging corporate forms of enterprise. After the mid-80’s, however, more rural Texans were beginning a concerted offensive against corporations generally, and public utilities in particular. The revolt among farmers and ranchers in the western frontier areas of the state also threatened the supremacy of the Democratic party and the white man over the black. 16

The 1887 ascent of James Hogg to the Attorney General's office marked the initiation of active reform in the state's relationships with business corporations. Elected with the support of Farmers' Alliance, Hogg moved quickly to fulfill promises to take action against railroad pooling and insurance company frauds. Hogg was involved in writing an effective anti-trust act and enforcing state tax laws on foreign companies. While more radical programs advocating public ownership were being circulated, the Attorney General was proceeding in court to dismember the Texas Traffic Association. By 1888, demands from the rural majority for a railroad commission had over-shadowed other issues. 17

The dissident ferment in Texas was only part of a larger storm brewing across the countryside. Whether considered as practical radicalism or reactionary hysteria, the Populist movement refocused the nation's attention on traditional concerns about the legitimacy of the business corporation. As rural Americans also worried about life in the sin filled cities, many urbanites expressed a growing anxiety over their franchised companies. Young academics joined older reformers
in calling for a reinvigoration of civic spirit in order to root out the influence of special interests in city government.

Many urban utility executives appreciated the implications of the growing hostility towards any corporation which held grants of privilege from the government. In addition, they were aware of the emerging judicial doctrine of a public utility concept. Both contributed significantly to a reorientation of attitudes and policies within the industry. Even before the Supreme Court’s benchmark decisions on urban utilities, some spokesmen in the industry’s most perceptive and organized sector, the American Gas Light Association, anticipated that their businesses would receive a constitutional status analogous to common carriers.

Local companies essentially possessed an "exclusive monopoly", according to John C. Pratt’s 1882 analysis, for example. A movement to regulate gas rates could be expected since the Court had firmly upheld state authority to set railroad price structures. The Jamaica Plains, Massachusetts, executive called for a "radical change" of business attitudes in anticipation of public controls and an increase in competition for the lighting market. Pratt believed that the industry’s future depended upon an active program to establish close relations with consumers, besides voluntarily setting low rates in order to fulfill corporate obligations to the public.

Gas executives’ future oriented spirit of self-reform stemmed mainly from the industry’s inability to control competitive economic forces. Beginning in the 1870’s, market forces first jarred these utility managers out of a complacency based on their previously undisturbed monopolies. Gas lighting was unique among public utility enterprises. It had to cope with serious contenders for its market
from substitute sources such as cheaper petroleum products and superior electric technologies. In addition, established firms periodically faced formations of new gas companies, which often were encouraged by popular sentiment and public policy. Competition acted as a powerful stimulus on gas men not only to strive for greater efficiency, but also to vigorously promote alternative applications of the fuel in cooking and heating.

Although the above economic and technical challenges were substantial, gas light spokesmen detected a novel threat to their already besieged positions. In 1885, the association's president, Eugene Vanderpool, argued that overcapitilizations "forced upon us by unscrupulous speculators" who were uninterested in managerial problems might become the worst trial confronted by the industry. To overburden corporate finances with watered securities, the Newark utility executive reasoned, would make competition with alternative systems impossible. At an early point, Vanderpool and other association leaders recognized a growing trend towards the nationalization of trading in urban utility securities that traditionally commanded only local markets. In the early '80's, investors apparently found gas companies particularly attractive because their securities slumped in reaction to panic selling after the appearance of commercially feasible electric light systems. During the last two decades of the century, however, all the urban utilities holding special privilege franchises became subject to the nationwide search for investment opportunities for America's growing funds of surplus capital.

The gas manager's feeling of being relentlessly squeezed between financial manipulators from above and entrepreneurial competitors aided by a hostile public from below, provoked the formulation of a counterattack strategy. "There seems
to be but one complete remedy for these evils", president Vanderpool announced,

and that is placing our affairs under legal control
[of a state commission], so that the public will know
that it has a representative compelling the company
to furnish the best service at reasonable rates, and
the company will know that, as a consideration for
these services, it will receive a fair return on its
capital and enjoy a permanent and secure franchise
not subject to attack from speculators or adventurers." 23

Most other association speakers over the next few years amplified similar themes
calling for positive united actions to disarm the industry’s enemies. By 1885, a
general consensus seems to have emerged on the need for setting rates to allow only
a reasonable return, the elimination of watered securities, and an effective public
relations campaign. The cornerstone in the gas light leadership’s program, however,
continued to be the establishment of state utility commissions. 24 The reason for this
priority in the protective barrier these entrepreneurs were attempting to erect was
indicated by Massachusetts members who successfully obtained the creation of such
an institution in 1884. According to Boston’s M.S. Greenough, "[t]he business of
competition in Massachusetts has been knocked on the head by the appointment of
this commission." 25

The desire of urban utility businessmen to replace uncontrollable market
mechanisms with more manageable institutions of government has important corre-
lations to efforts in other regulated industries. During this same period, a parallel
strategy aimed at legitimizing and protecting privileged monopolies through the
establishment of public administrative agencies was pursued by railroad leaders.
They, as well as gaslight corporation spokesmen, argued that the technical natures
of their businesses prevented Adam Smith’s invisible hand from working normally.
Only ruinous competition resulting inevitably in consolidations could occur. Both industries, moreover, attempted to escape the police power authority of local agencies by means of jurisdictional leaps in the federal structure. Other regulated businesses such as insurance and banking also looked to state and national government to eliminate more local forms of control. While all of these corporate interests hoped that public institutions would act as a buffer to pacify public resentment, the major goal was to establish regulated monopolies.26

Utility monopoly and industrial trust issues were hotly debated during the 1880's. Many of the most influential opinion makers were members of the newly founded American Economic Association. Organized in 1885 by such European trained expert-activists as Richard T. Ely and Henry Carter Adams, the association immediately began to publicize its understanding of the emerging industrial society. The young professionals were especially concerned with demonstrating the fallacies of the laissez-faire paradigm in order to reorient American political economy along more socially cooperative, State centered lines.27

To these social scientists, an obvious anomaly in the classical theory was the inability of competition to automatically regulate essential service sectors of the economy. Certain businesses, according to Adams, Ely and Edmund T. James, operated at optimal efficiency only when economies of scale were reached. In these areas, "natural monopolies" resulted from the inevitable and ultimately beneficial failure of market mechanisms. As might be expected, the experts pointed to transportation and urban utility ventures to illustrate the logic of their analysis. In 1887, for example, Ely reasoned that there was "no accident that we have never secured permanent competition in gas supply in Baltimore, with all our attempts."
We never can secure it, should we try a thousand times. So it is with all natural monopolies."^{28}

The proposition that public service enterprises were immune from market forces was based on no empirical investigations. Instead, the young social scientists actually were promoting a social ethic under a guise of economic fact. Although critical of their predecessors for formalistic, deductive methodology, the new generation of experts also reasoned backwards from desirable conclusions to untested theories about real conditions. In 1888, the association's first report on urban utilities admitted, "[y]our committee have been somewhat discouraged in their endeavor to gather facts sufficiently comprehensive and reliable for safe generalization;..." Unless vast academic resources were mobilized, "its [the committee on public finance] so called reports will be nothing more than the theorizing of individual members...", H. C. Adams acknowledged.^{29} More than a decade passed before even the most rudimentary statistical survey was conducted.^{30} Yet a belief in the existence of natural monopolies became an extremely influential and central tenet in campaigns favoring the abandonment of competition in public service industries.^{31}

The academic experts' opinions about municipal utility monopolies closely paralleled similar attitudes among gas-light industry spokesmen. However, the two groups advanced diametrically opposed conclusions on the most desirable course of public policy. For an interrelated series of objectives, the utility association wanted state regulatory agencies to act as substitutes for market mechanisms. On the other hand, public ownership of essential services was advocated by social scientists in pursuit of an equally complex set of goals. Favorably impressed with
Germany's efficiently administered urban centers, they hoped to duplicate this example in American cities by eliminating the socially divisive and politically corrupting influence of private corporations. Europe's successful experiments in municipal socialism seemed to indicate that an harmoniously ordered society could be instrumentally achieved by enlarging the functions of government. In addition, public ownership inspired civic spirit, according to many in the new generation of experts, and reduced taxpayer and consumer bills. Empirical verification of the logically consistent natural monopoly theory assumed minor importance compared to broadcasting the new social gospel. 32

Between 1888 and 1891, every urban utility industry became sensitive to academic and grass roots demands for the governmental expropriation of their businesses. The gaslight association president for 1890 warned, "from this direction, danger to the lighting industry looms up portentously." At a similar meeting of waterworks executives, Quincy, Illinois' William B. Bull reasoned that their interests were a prime target of socialistic, anti-corporate sentiment because of the large masses of people served. A year later, the waterworks fraternity's new president reported an unfortunate growth of popular hostilities. "[A] general consensus of public opinion...favors extreme municipal control [i.e. ownership] and regulation of the waterworks business, and other undertakings of a semi-public character, when they are under corporate or private ownership." president J. M. Diven announced. 33 Spokesmen in other public utilities also recorded a groundswell of opposition rising against existing institutional arrangements. 34

Point by point replies to the arguments of municipal ownership advocates were constructed to prove the advantages of private corporations. Although no
effort was made to present a concerted inter-industry response, a common dogma quickly emerged. The veneer thinness of the experts' statistics of economic savings under public management was easily exposed. Besides pointing out that politicians were more vulnerable to labor pressures for higher wages and less work, corporate leaders exhibited calculations to demonstrate larger rate reductions in privately owned utility sectors. Gas men, for instance, proudly compared the substantial drops in prices for their product with the negligible rate decline in water supply services which were operated by local governments. Utility executives also contrasted the benefits of free enterprise in promoting the rapid diffusion of electrical technologies against Europe's slow progress. Moreover, they denied that foreign administrators, who were men of high quality and social standing, could be equated with their American counterparts. 35

Appeals to such traditional values as the right of individual self-assertion and the fear of giant bureaucracies also were employed to combat the preachers of the new social gospel. The 1894 address of Walton Clark to fellow gaslight managers was typical of the entrepreneurial perspective. The Philadelphia utility magnate considered the young economists to be "conscientious socialists" whose advocacy of the public ownership of admittedly natural monopolies was only the first step in a long range plan. To Clark, city operated utilities represented "the thin edge of the wedge...to split our industrial system." On the other hand, municipal corporations were formed exclusively to foster and protect the full expression of individual talents. For government to assume any functions that could be performed by private enterprise, according to Clark, would constitute an "interference with the natural order." 36
The utility men's view of the proper role of government in a capitalist system contained some important auxiliary implications. For example, some spokesmen willingly allowed that municipal bond interest rates were lower than corporate issues. But they argued that responsibility for this inferior investment status rested solely upon the uncertainties produced by growing numbers of obnoxious tax and regulatory measures. In an analogous manner to these utility businessmen's belief that state agencies should protect their interests from competition and dissatisfied customers, they also held that local governments ought to grant "untaxed, unlimited, exclusive, unrestricted franchises."\(^{37}\) After the mid-'80's, the public service industry as well as many groups with entirely different objections increasingly sought the State's active assistance against pressures which otherwise were uncontrollable. The special franchises granted to urban utilities helped their managers to be among the first businessmen to recognize that order and security was achieved best through governmental legitimization of their vested interests.\(^{38}\)

Between 1888-1894, a tightening focus of critical attention on the economic and political power of urban service corporations prompted every utility industry to develop public relations campaigns. Basically, each utility adopted a program similar to the gaslight association's formula for successful image-making.\(^ {39}\) Detroit's F. H. Whipple, for example, advised electric light executives to clasp hands with the well-meaning and observant public servant and see to it that while fair profits are returned for the service rendered, a union of interests is formed, cordial in nature, though commercial in its results, and there will then be no occasion for public sentiment manifesting itself in the municipal ownership of electric light plants.

Industry leaders acknowledged a duty to provide customers with optimal services at
the lowest rates compatible with a reasonable profit for the company.

Repercussions from the quickening pace of technological innovation further enhanced utility corporations' ability to blunt hostile attacks. The gas industry, which felt besieged from all directions in the early 1890's, probably received the greatest benefits from inventions and their social impacts. Although the appearance of brilliant 2000 candlepower arc lights seemed initially to strike a fatal blow at gas manufacturers' futures, the opposite resulted. The gas-light fraternity's president for 1888, for example, reported that recent leaps in product demand were due largely to electric lights' effect of "almost compelling people to have more light." Four years later, New York's William H. White agreed that arc lamps "have taught the everyday people of our times that a good volume of artificial light in their shops and homes was a necessity, not a luxury...."

Consumers' rising standards of expectation were fulfilled by gas companies through the introduction of their own revolutionary innovation, the incandescent gas mantle. Discovered accidentally by an Austrian chemist, the "Welsbach mantle" meant a complete shift in the production of gas qualities from light bearing to heat generating properties. This innovation was coupled with other existing but previously little used techniques to multiply the heat content per unit of gas. Consequently, company managers were supplied with an increasingly inexpensive product which was suited equally for heating, lighting or cooking. In addition, rate reductions were made possible because the new energy fuel allowed manufacturers to employ their capital investments on a full time basis.

The gas industry's rapid transformation reflected another lesson its executives learned from the electrical innovators. The encouragement of scientific approaches
to technical problems was becoming essential for sustained business success. The growing complexity of urban utilities pointed, moreover, towards a commensurate increase in the difficulty of entering the field without first amassing technical expertise and financial support. Entrepreneurs who could meet these requirements, however, might be precluded still from competing against established firms holding exclusive rights to use inventions protected by patents. The central influence of patents in restricting competition and stimulating consolidations was particularly evident in the electrical manufacturing industry. Consider that the 1892 merger of the already conglomerated Thompson-Houston interests with the Edison companies to form the General Electric Corporation left only Westinghouse as a competitor. Four years later, a patent-pooling agreement essentially ended even this remaining contest.43

Inventive progress helped utility enterprises escape market forces in a second important way. The high financial cost of supplying modern facilities using new technologies was illustrated best by the application of electricity to mass transit services. Beginning in the early 1870's, street railway men's dissatisfaction with horses, which were costly, slow and liable to such disasters as epidemics and stable fires, stimulated a wide ranging search for mechanical substitutes. Cable car systems offered one practical alternative, but their 8-10 times greater cost of construction persuaded most companies to wait for further developments.44

During the '80's, the various experiments being conducted in smaller cities with electric traction were followed closely by transit managers. Frank J. Sprague's Richmond, Virginia success in 1887-1888 convinced most of the industry that electric trolley systems represented a true breakthrough in motive power.45 Conversion of
intra-urban railways to electric traction proceeded at a remarkable pace. The rush
to inaugurate rapid transit service was fueled mainly by prospects of cutting operating
expenses in half. In addition, immediate development was stimulated by opportunities
to exploit or purchase franchises whose values were greatly enhanced by the potentials
of the new technology. Only four years after the Richmond experiment, horse power
already was a secondary use compared to the 6000 miles of operational trolley lines. 46

However, the costs of this virtual overnight conversion were high in terms of
capital investments and the resulting restructuring of the industry's finances. Besides
new plant and equipment needs, the heavier, faster cars required that roadbeds be
entirely rebuilt. Between 1888 and 1894 alone, $125,000,000 were pumped into
street railway ventures. This amount increased the total investment in the industry
by one-fourth; its gross mortgaged indebtedness doubled. Almost all of the new
funds were supplied by East Coast brokers, who held on to sizeable portions of the
securities for speculative gains. Consequently, the control of many local firms was
transferred to a relatively small group of security dealers. The immense costs of
materializing new technologies accelerated significantly a decline of local owner-
ship and the rise of nationwide utility holding companies. Increasing capital require-
ments acted, moreover, to enlarge the risks involved in starting a company to com-

pete against an established firm. 47

The concentration of ownership was advancing also under the direction of
local entrepreneurs. The growth of a market for urban utility securities facilitated
purchases of competitors which otherwise would have been beyond the financial
resources of smaller firms. Traditional merger practices were expanded in novel ways
to combine companies providing different services or using alternative technologies.
Gas and electric services, for instance, often were consolidated under unified control in smaller cities. During the late '80's, members of the gas association from smaller places frankly related how the introduction of electric lights was proving economically disastrous for both utilities. Jacksonville, Illinois' E. K. King and other executives justified these new forms of organization by generalizing the nature of their businesses from gas to lighting. King's rationalization unintentionally revealed an important relationship between technology, public utilities and government economic policy. The opportunities opened for free enterprise by technical innovations narrowed as the boundaries of permissible corporate franchises expanded.

After 1886, urban utility executives became increasingly worried about two major threats to their interests. The origins of both inimical pressures were rooted in the emergence of a developed industrial economy and the social reactions against its implications. Under the leadership of investment bankers, the financiers of local corporations were tied into a national securities market. The general dynamics of corporate finance were accelerated greatly in the utility sector by needs for large amounts of capital to implement new technologies. Utility managers believed that speculative overcapitlizations would produce excessive interest burdens which would prove disastrous for their businesses. In large part, this prediction was based on perceptions of a growing storm of popular antipathy directed against business corporations. Urban utility enterprises again faced an accelerated reaction, because of the widely influential programs advocated by the new economists. To many spokesmen for the industry, the only escape from these pressures from above and below was a willing acceptance of public controls. In exchange for placing their companies' affairs under governmental supervision, utility men hoped to achieve legitimacy as
a regulated monopoly.

Contemporary perceptions of crisis, however, do not always correspond with conditions as defined in retrospective analysis. Historical interpretations of the Progressive Era especially are plagued with misjudgements derived from an uncritical acceptance of the period's own misconceptions. The viewpoints of corporate spokesmen offer important indications of entrepreneurial attitudes and reactions. Nevertheless, a close inspection of events in many cities and states is required before generalization can be credibly presented. 49

A comparative context to weigh the assessments made by utility executives and social scientists can be constructed from an examination of the cities in a single state. The economic distress suffered by smaller gas firms from the introduction of electric lights, for example, was clearly evident in Texas. In 1888, this problem was severe enough to stimulate the first regional organization of utility managers. Initiated by Texas gas manufacturers, the Southwestern Gas Association's early meetings dealt almost exclusively with the electric light threat. Galveston's F. Beck, who served as president for two years, strongly advocated corporate mergers to eliminate the novel technological competitor. But Beck also stressed a need to promote consumption in order to decrease the prevailing high gas rates in Texas cities. By 1892, 10 of the state's 16 gas companies were engaged in the electric business. 50

In Houston, gas and electric continued to compete, while the encouragement of additional inter-firm contests became a public policy. In April 1889, after a costly delay caused by gas company threats of litigation, the Fort Wayne Electric Company began service. Since the aldermen were elected by wards, an equitable
division of 70 lamps throughout the city resulted in almost 50 miles of wiring. The response of the gas corporation to this challenge was significant. Rates for large customers were cut immediately by 50% and cooking stoves were offered at cost. Over the next five years, gas main extensions doubled to about 55 miles. The new electric enterprise proved a powerful stimulant on gas company practices. On the other hand, the original electric firm sold its assets to the renamed Citizens’ Electric Light and Power Company.

The catalytic effects of market mechanisms on Houston’s lighting utilities were even greater on the street railway business where the pecuniary interests were much higher. With 14 miles of track in 1888, the horsecar company grossed $80,000 and made $25,000 profit carrying 1.5 million riders. In comparison, the next largest utility, the water company, earned approximately $10,000 on about $50,000 worth of business. Sprague’s solution of electric traction problems during the summer of the same year meant that the profitability of mass transit ventures could be increased enormously. When Boyd applied for a franchise in March 1888, he had planned to build a battery powered system. However, the rapid advances in technology and a rainy winter delayed initiation of construction into the following spring.

Before clear indications appeared that Boyd would act on his franchise, investors from Chicago persuaded the owners of the Houston City Company to sell their firm. The new owners, headed by C. B. Holmes of the Chicago City Railway Company, made the purchase in anticipation of developing a rapid transit network as a monopoly. The Holmes investment group also was proceeding to buy street railway concerns in other cities such as Indianapolis, St. Louis, Rock Island and
Los Angeles. Considering the large returns promised from installing electric traction, they probably paid a commensurable price for the local companies' franchises. In Houston, the shock waves produced by the surprised new owners after Boyd began construction opened deep fissures between the community's political leadership.55

On March 13, 1889, Boyd marshalled a large work crew into the streets in an effort to meet his franchise deadline which required an operational system within four weeks. Five days later, the Houston City Company reacted by directing its workers to build parallel lines and its attorneys to obtain injunctive relief against the competitor. As the two ventures were furiously tearing up the strategic pathway, Congress Street, the sheriff arrived with court orders for both to stop. State district judge James R. Masterson had given temporary approval to the established firm's complaint of "irreparable injury and damage" from Boyd's imminent crossing of the company's tracks. Houston City lawyers contended, moreover, that Boyd possessed no valid franchise as against their right to an "exclusive use" of the streets.56 On the request of the city government, Masterson also had issued a preliminary injunction against the company's construction activities. Without a construction permit, City Attorney Henry F. Ring had argued, the transit concern's use of the streets constituted an unlawful obstruction.57

Spectators filled Judge Masterson's courtroom on the following day, March 19, to hear the pleading of the city and the two transit concerns. To Ring, the central issue was whether local government could exercise a continuous authority over its franchised utilities. The competitors, however, attempted to persuade Masterson to rule on the merits of free enterprise. The Houston City Company complained that Boyd's efforts were a great "embarrassment" and threatened
to impede plans for further extensions. To the contrary, Boyd argued that the established firm had "no exclusive right to maintain or operate lines of street railway... to the suppression or stifling of competition." As the judge took the testimony under advisement, the controversy quickly shifted back to the proper forum, the council chambers. Texas law unmistakeably placed this later question before the legislative branch; by April, the court's presence essentially was withdrawn. 58

The ensuing council sessions exposed more than the aldermen's predominant faith in a market economy. At the first opportunity, a corrupting influence from the unprecedented interests at stake in transit franchises became evident. On March 25, the councilmen debated a citizen's petition protesting against any further utility company disruptions on Congress Street. Alderman Henry Freund maintained that as the peoples' representative, he supported their request to revoke Boyd's right of way on the central artery. A year before, he had been elected with public knowledge of his occupation as the Houston City Company's superintendent. According to Alderman George Underwood, Freund was a hypocrit, because he was in charge of tearing up the street for the established firm. Underwood had been a painter but was now a manager in Boyd's enterprise and a leading advocate of the principle that "competition is the life of trade". A key test vote on the new venture's strength in the council resulted in a 5-5 split, which allowed mayor Smith to reject the citizen's petition. 59

A continuing close division between the aldermen prompted entrepreneurs to transfer their pressures on to the mayor. In May, for example, he vetoed a liberal grant for a 12-14 mile right of way to the Houston City Company. As Smith accurately pointed out, the franchise represented a backward step in city policy and
required substantial amendment to protect the public interests. However, the mayor soon received a letter from Holmes which insinuated that the veto would cost the city over $500,000 in new capital investments, besides millions in indirect benefits. The Chicago businessman especially was irritated about the administration's promotion of competition rather than fulfilling his expectation of a cooperative spirit of support. Holmes also strongly implied that his investment partners were going to sell the transit venture. Our suspicions have been confirmed, the utility executive reported, that Houstonians despise outsiders and plan to "seize and destroy" their property.

Holmes' attempt to intimidate mayor Smith was a visible episode in a larger campaign mounted by utility executives to direct the policies of local legislators. The continuous nature of the municipal corporation's tax, franchise and regulatory authority over public service enterprises created a corresponding source of uncertainty for their managers. With the central question of privileges to use electric traction still undecided as the April 1890 elections approached, rapid transit promoters labored to ensure the selection of friendly candidates. Unless Democratic unity broke down, the party's nominating convention would choose the next administration. Smith's leadership in settling the city debt, forwarding public works projects and effecting improved utility services were large accomplishments. The Democrats, however, picked his previously defeated opponent Henry Scherffius, who was a sales agent for Northern machinery manufacturers.

Although the new mayor cannot be tied directly to utility interests, he helped gain quick approval for the established transit companies' use of electric power before other new ventures received consideration.
the last half of 1890, both the Houston City and Boyd companies were sold to 
Oscar M. Carter. The president of the Omaha and South Texas Land Company 
purchased the lines as a vital link in a plan to promote his suburban development, 
the Houston Heights. The street railway business in Houston always had subsidiary 
land sale goals, but Carter reversed the priorities. With a 35 year rapid transit 
franchise, the promoter's grand strategy seemed to be moving towards success. In 
May 1891, mayor Scherffius furthered Carter's scheme when he vetoed a grant to a 
newly formed railway venture. The mayor claimed that the projected Houston Rapid 
Transit Company would "seriously cripple" the established firm, which had been pro-
viding "efficient service". Nevertheless, the council passed the measure over 
Scherffius' objections. The following month, the reorganized Houston City Company 
 began electric service, while the feared competition never materialized. 65

By the end of 1891, each utility sector had restored a stabilized, monopoly 
position. The corporate and social benefits produced under four years of competitive 
conditions need to be balanced against corresponding costs. The most obvious bene-
fit for the community was a large increment in services at reduced prices. The 
substitution of the experienced, Fort Wayne Electric Light Company for the 
floundering local effort had the effect of allowing more and more Houstonians to 
enjoy better artificial illuminates. Although electric lighting still had not penetrated 
the mass consumption market, the gas company was encouraged to expand its services 
into the home. In the decade after the brilliant arc lamps first lit the streets, the 
demand for gas increased almost 450%. Direct competition in the street railway 
business resulted in track extensions of over 125% (see map) and insured an early
introduction of electric technology. Contemporaries noted, moreover, that the rapid
enlargement of the transit network

vastly expedited both urban and suburban growth. It has been the first cause of the enhancement in
real estate values generally...and the tendency is, while this street railway extension continues
evenly in all parts of the city, to equalize both rents and realty valuations. 66

The claims of urban utility company leaders and some social scientists that
market mechanisms were undesirable in the public service sector were disputed by
Houston developments. Inter-firm contests and confrontations between alternative
technologies were powerful agents in upgrading the amenities available to the com-
community. In comparison, a complete monopoly in the telephone business, during the
same 1888-1892 period, produced only a 40% increase in consumers whose total
rose to a mere 450. 67 A similar monopoly enjoyed by the water company is more
difficult to evaluate. Water mains were extended significantly from 28 to 40 miles,
but the city government’s fire hydrant and sewer programs primarily were responsible
for this improvement. On the other hand, the utility’s quality of service remained
far below any other. Such interrelated practices as the continued use of polluted
supplies and a refusal to install meters provided the community with an expensive
service of dubious value. Moreover, the company’s niggardly attitude towards re-
placing obsolete distributive networks meant that fire-fighters remained deprived of
an adequate water supply. 68

The city’s competitive franchise policies were both unviable and costly.
Local government seemed incapable of sustaining inter-firm contests. Instead,
Houston’s policy was successful only when a large market or technological innovation
went unexploited. No entrepreneur otherwise entered the field, while mergers among competitors followed the elimination of these two conditions. Unless new franchise stipulations prohibiting corporate consolidations could be instituted, the maintenance of market mechanisms was beyond public control. The natural monopoly hypothesis was unproven; yet, a definite pattern of privately directed mergers was shown.

Houston's efforts to reverse general economic trends towards larger, integrated units produced two major, negative results. Utility executive fears that competition would multiply opportunities for corporate overcapitalizations were realized. Under the Carter reorganization, for example, the Houston City Company's total liabilities jumped from $22,000 to over $71,000 per mile of track. Of course, some of this increment represented new tangible assets from conversion to electric traction and the increased value of franchises. But compared to the calculations of the industry's foremost financial analyst, the corporation was burdened with a minimum of $28,000 per mile in watered liabilities. A similar leap occurred in the capitalization of the electric light enterprise, although the city's expanding gas and water utilities experienced no commensurate increases. To encourage competition in essential public services without also regulating corporate securities was an open invitation for harmful financial manipulations.

Another large price paid for the city's franchise policies was an intensification of corporate influence in local politics. Conflicts of interest had been a normal practice in a government run by citizens who served on a part time basis. However, the improprieties caused by the traditional dual occupations of municipal officers differed greatly from the novel types of outside pressures exerted by utility
managers. Their attempts to predetermine the outcome of elections as well as other corrupt acts mainly resulted from an increasing sense of uncertainty in their companies' relationship to the public sector. In addition to the insecurities produced by the city's encouragement of competitor ventures, the growth of more vigilant watchdog functions over franchise holder businesses was an important source of anxiety. The continuous nature of the municipality's controls created a permanent reciprocal interest in shaping official decisions.

In the early '90s, Houston utility company influences in local politics remained below the surface of popular awareness. Community attentions were focused on the state political arena where the role of steam railroad companies in determining public policy had become the major issue. In 1890, the elevation of Attorney General Hogg to the governorship and the overwhelming ratification of a constitutional amendment which authorized a railroad commission were the first steps in a major re-adjustment of the state government's relationship to corporate institutions. To the new governor, the 1890's represented the people's last opportunity before the dawn of a "corporate era" to erect safeguards against a private hegemony of power. Hogg visualized the problems of directing the transition from a rural to an urban-industrial society in terms of curbing abuse of power by municipal and private corporations. His proposals centered on creating state regulatory agencies to control the finances of both. At the same time, he tailored his reform programs to isolate Democratic reactionaries as well as Populist radicals.

By 1894, Texas politics and government were realigned largely along the lines Hogg advocated. The 1891 bolt of farmers in the depressed Western areas from the Democratic party shifted political power from rural domination to a coalition of
industrial agriculturalists and city based, financial leaders. Early and continuing support for Hogg from such influential Houstonians as Edward M. House, Joseph Hutchinson and E. P. Hill, for example, gave the city a new importance within the party. Under the governor's leadership, the revitalization of state institutions was accomplished by restricting entrepreneurial freedoms without destroying vested rights. Railroads and their finançes were placed under the control of a commission, new corporate taxes were imposed, and municipal bond issues were regulated.  

Texas' legislative activism, however, did little that affected urban utility companies. Although Hogg Democrats were acutely aware of railroad overcapitalizations and securities manipulators, no analogies were drawn to public service enterprises in the cities. On the other hand, the changes wrought in urban utilities' financial and organizational structures, and the impacts of their electrical technologies on community life began to assume greater importance in local politics. Even Mayor Scherffius, at the end of 1891, called for the municipalization of electric lighting and water supply services. The mayor was alarmed at these utilities' drain on the city treasury. As the depression of 1893 unfolded, many others quickly found additional reasons to support Scherffius' position.
AT THE CROSSROADS: RESOURCE ALLOCATION IN A PROGRESSIVE CITY, 1892-1896

In 1893, Chicago's Columbia Exposition symbolized the United States' attainment of leadership in industrial progress. Among the millions who visited the displays of modern science and invention was Henry Adams. To the student of technology's impacts on society, the White City asked "for the first time whether the American people knew where they were driving. Adams answered for one, that he did not know but would try to find out." Adams was not alone in the search to create order out of the national metamorphosis wrought within a single generation.

The process of reexamining traditional practices and goals was accelerated by the severe business contraction which followed the Wall Street panic of June 1893. During the next four depression years, Americans moved through the crossroads between their lost rural past and their promising urban future. Rapid social reorganization was paralleled by the formation of novel institutions for government, industry and public utilities. After this period of confusion and reorientation, change proceeded along clearly marked paths for the next two decades. The principles and policy alternatives forged during the depression offer a key to the outcome of Progressive reforms.

In rural areas, the business collapse acted to further amplify social-political tensions. As the Populist revolt against economic injustice gained momentum, however, its energies became funneled into crusades for silver and white supremacy. On the other hand, more and more urbanites also began to question their local and state governments' fiscal policies. Big taxpayers had long worried over the plundering of city treasuries by franchise holders, machine politicians and masses of ignorant,
immigrant voters. In the '90s, society's best men were joined by a widening spectrum of the growing middle classes. Both called for an accounting of municipal and utility corporation finances. In an atmosphere of increasing doubt about the future, many normally optimistic groups turned to social scientists and gospellers for expert guidance.

By 1893, municipal reformers had outlined a program to correct American democracy's "most conspicuous failure". A basic consensus existed between the older generation of gentle elitists and the younger academic-activists. Both agreed that the major task consisted of realigning the institutional structures which defined the loci of political power and administrative responsibility. An earlier emphasis on morality was discarded in order to bring novel scientific techniques to bear on chronic urban ills. Frank Prichard, a Philadelphia lawyer and editor, explained

municipal government is a science in itself....
This would seem almost self-evident, yet there
has been in the past a general tendency to ignore
this truth and to assume that all our difficulties of
administration come from dishonesty in our offi-
cials....It is time that we realized many of the
difficulties and mistakes are due as much to
ignorance as to corruption....

To most political analysts, first priority had to be directed towards eliminating detrimental state interventions into local affairs. Unless state officials were stripped of their jurisdiction over the quasi-private aspects of the municipality, other essential reforms would be futile. In 1891, for example, the former mayor of Brooklyn, Seth Low, argued that local legislatures could never be transformed into efficient equivalents of corporate boards of directors until home rule for cities was established. Even though the New York Brahmin believed urbanites unworthy of
this trust, he also recognized that a businesslike administration required centralized lines of responsibility. To Low and other structural reformers, economy in the public sector could be attained only by placing large but limited powers under the control of a very few elected officers.  

A program advocating municipal home rule depended upon finding a rational basis to separate the legitimate concerns of the city from the state. The problem of dividing the currently intermixed jurisdictional spheres was solved mainly by Frank Goodnow, a European trained professor at Columbia University's avante garde, Department of Public Law. Goodnow desired to blend Europe's centralized State system, which allowed cities a wide range of discretion over local affairs, with America's decentralized government. He proposed to shift responsibility for general public matters to a streamlined state bureaucracy, while placing urban concerns of a "quasi-private character" under the complete control of municipal officials. Goodnow's division of state from local jurisdictions corresponded closely to a functional separation of governmental from corporate duties. Functions requiring a uniform administration such as police, highways and health would be located at the state level. On the other hand, city street improvements, utility franchises and other "internal affairs" would be freed from the capital's legislative meddling.

Viewed within a context of a functional analysis, public ownership of utility services became a question of fiscal expediency. Institutional reorganizers asked whether larger tax reductions would result from profitable municipal facilities or from franchise policies aimed at maximizing pecuniary returns to the city treasury. Depression hardships helped these reformers to focus taxpayers' attention on this definition of the issue. Of course, other benefits were pointed out. The corrupting
influence of utility corporations in local politics, for instance, would be eliminated. The concurrent problem of increasing numbers of patronage jobs only emphasized the need for a civil service system.

In this manner, structural change often promoted the destruction of partisan politics on the local level. The failure of city reform movements in the past to defeat party machines reinforced prejudices against the urban masses' capacity for democracy. Consequently, there was a natural tendency to combine questionable electoral manipulations with needed administrative adjustments. To institutional reformers, home rule did not mean more political discretion for the voters, but rather concentrating power to produce greater economy and efficiency in the business of urban government. 10

The municipal program advocated by social scientists during the early '90's, primarily reflected perceptions of problems in big metropolitan areas in the North. Reform movements usually percolated from local to state levels. 11 Throughout the more rural South, political responses to industrialism were shaped by different experiences. In Texas, for example, a one party system and a tradition of local autonomy had largely precluded state interferences in municipal government. Home rule from Austin had been of small concern to Texas cities. However, the turmoil in the countryside during the late '80's, upset most political relationships, especially those between the state and its corporate creations.

James Hogg's rise in Texas politics was built on an active battle against railroads. As governor from 1890-1894, Hogg pursued a campaign to gain state supremacy over all corporations, private and public. Significant constitutional limitations on city government's power to incur debt and to levy taxes existed, but Hogg felt
that additional administrative checkreins were needed. In 1891, the governor
brought public attention to this issue by making an example out of Austin's attempt
to construct and finance a hydroelectric dam. The project originated in the town's
lack of growth during the late '80's. Austin's economic stagnation convinced prom-
inent local businessmen that the limits of progress as a university-capital city had
been reached. To diversify its economy, town boosters proposed to attract manu-
factoring and commerce by providing a cheap supply of electrical energy. After
failing to attract capital from private investors, Austin's citizens overwhelmingly
endorsed a $1.4 million bond issue, which enabled the municipality to assume re-
ponsibility for the improvement.

To undertake the financing, construction and management of a million
dollar hydroelectric dam, the city's 1873 charter required substantial amendment.
In 1891, the legislature almost unanimously approved a new charter, which created
a supervisory water and light board. The opposition of former governor and chief
justice of the state supreme court, Oran M. Roberts, however, helped persuade
Hogg to veto the act. Roberts, who was currently a University of Texas law pro-
fessor, found two major constitutional objections to the dam scheme. Pointing out
that a private utility company was already supplying the city, Roberts correctly
asserted that the project's goal "was not cheaper water and lights, but to get a
boom by factories...."

Since over 85% of the energy generated was to be sold to private consumers,
Roberts argued that the scheme constituted an unlawful use of public funds for
private purposes. To Roberts, the dam's large surplus capacity fully exposed the
secret "subterfuge" hidden in the charter. In addition, the law professor believed
that the supervisory board's powers were dangerously unlimited. Hogg freely incorporated Robert's exposition into the veto message. The governor stated that the board represented

a double form of government [which will] become burdened with officers and expenses beyond endurance...It is clearly apparent to me that it [Austin] does not intend to practice economy, but to indulge an extravagance.

The legislature repassed the charter after striking the board provision, and Hogg permitted the city to build the dam. Nevertheless, his anti-urban bias became translated into a platform plank during the 1892 election. By lumping municipal bond issues together with railroad securities abuses, Hogg obtained passage of acts regulating the fiscal practices of both types of corporation.

Most Texas urbanites opposed Hogg's brand of reform. Instead of rural fears of corporations, urban based leaders were more concerned about the construction of a New South. Austin, for example, promoted industrial diversification by providing inexpensive energy supplies. Houston sought similar ends as an agricultural processing and commercial center through the encouragement of rice planting, timber harvesting and a new ship channel. These goals could be achieved only with the help of investment capital from the North. To attract this support, Texas and other Southern cities attempted to establish financially sound local governments, low tax rates and social-political stability.

In Houston, municipal ownership as a policy issue originated in an effort to reduce the costs of providing public services. Mayor Scherffius, in the 1891 annual message, suggested that city government become engaged in the electric light and the water supply business. To him, the savings accruing from ending the annual
payment of $30,000 to private companies would more than offset the cost of purchasing the utilities. Property taxes and consumer bills could be reduced, the mayor believed, while constant regulatory hassles would disappear. 22

Scherffius was no radical; his proposal was founded in an appreciation of the difficulties of financing the municipal corporation of a growing community with expanding expectations. With over 27,000 inhabitants in the early 1890's, Houston was experiencing an economic boom. Yet, the 1888 debt settlement and the successful employment of special assessment taxes had not alleviated a strained city treasury. To the contrary, pressures from previously neglected wards for an equitable share of current expenditures, plus demands from the entire community for improved public services produced an enlarging deficit. Between 1888-1892, new bond issues of $120,000 had been used to build schools, and $370,000 had been assessed against property holders for roads and sewers. Nevertheless, the Scherffius administration had spent $26,000 more than its $145,000 budget in 1890, and $60,000 above a similar budget the following year. To the mayor, the public ownership of utilities promised a practical fiscal solution for a growing city's problems. 23

For Scherffius, an advocacy of municipal ownership as the answer to budgetary deficits came too late. In 1892, local Democrats passed him over for another successful businessman, John T. Browne. The 47 year old Irishman had immigrated to Houston in 1852. He had worked his way up from a brick carrier job to become the proprietor of a large grocery business. Uninterested in politics until serving as the council's finance chairman between 1888-1890, Browne was chosen by a united party leadership because he could restore a balanced budget. The only notable events in an otherwise dull election were the introduction of the secret
ballot and a ward redistricting. 24

The new administration faced the difficult task of balancing limited resources against immediate community needs which were expanding faster than the tax base. Allocation problems were magnified by novel perceptions about living within an urban environment. A decade earlier, for example, an ample water supply was considered necessary only for the protection of property against fires. Now a pure source of water was universally regarded as a basic prerequisite for public health and sanitation. 25 Houston's population and industrial growth compounded the costs of providing services on a wider scale. Urban expansion brought commensurate increases in the pollution of such traditional resources as the bayous and underground cisterns. A dependence upon the water company's artesian wells resulted in the settled areas as well as in new real estate developments. 26 Similar changes were occurring in other public sectors such as street lighting, schools, and paved roads. (See Table 5) Each ward, moreover, expected its aldermen to secure a full share of each service extension.

Urban growth also imposed needs for new levels of technological and organizational sophistication. In 1893 for instance, an electrical fire alarm system replaced the market house bell because the city had grown too large for watchtower type of arrangements. At the same time, insurance underwriters began to pressure the city to professionalize the volunteer force under a centralized administration. In addition, they insisted that larger water mains and hydrants be installed in order to offset pressure losses caused by continual extensions of the distributive network. 27 Although the city had expanded at a fairly consistent rate, by the early '90's, a turning point had been reached in the scale of operations required to supply most
<table>
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<tr>
<th>YEAR POPULATION</th>
<th>1897</th>
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<th>1905</th>
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<td>46,000</td>
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**1. INTEREST**

| A. Amount | $ 88,000 | $170,000 | $320,100 | $ 493,300 |
| B. Percentage of Total | 23.8 | 29.4 | 33.5 | 24.2 |
| C. Per Capita Expenditure | $2.20 | $3.70 | $5.72 | $5.50 |

**2. GENERAL EXPENSES**

| A. Amount | $ 33,500 | $ 58,600 | $ 86,900 | $ 197,300 |
| B. Percentage of Total | 9.5 | 10.1 | 9.5 | 9.7 |
| C. Per Capita Expenditure | $ .84 | $ 1.28 | $ 1.55 | $ 2.19 |

**3. PUBLIC SAFETY**

| A. Amount | $ 82,000 | $108,600 | $150,730 | $ 351,900 |
| B. Percentage of Total | 22.2 | 18.7 | 15.7 | 17.2 |
| C. Per Capita Expenditure | $2.05 | $ 2.36 | $ 2.70 | $ 3.91 |

**4. HEALTH**

| A. Amount | $ 22,700 | $ 32,800 | $ 12,390 | $ 39,100 |
| B. Percentage of Total | 6.1 | 3.9 | 1.3 | 1.9 |
| C. Per Capita Expenditure | $ .57 | $ .50 | $ .22 | $ .43 |

**5. ROADS & BRIDGES**

| A. Amount | $ 52,000 | $ 60,800 | $ 97,710 | $ 273,900 |
| B. Percentage of Total | 14.0 | 10.5 | 10.2 | 13.4 |
| C. Per Capita Expenditure | $1.30 | $ 1.32 | $ 1.75 | $ 3.04 |
### TABLE FIVE -- Continued

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a. Calculated from: Houston, City Council Minutes, Books J-P (Houston: City Secretary's office, 1897-1907); Houston, Annual Message (Houston: Coyle, 1913), 70-96; and U.S. Bureau of Census statistics as listed in Texas Almanac (Dallas: Dallas Morning Star, 1972), 63.

b. Includes only current budgetary appropriations

c. None
public services.

In some respects, this evolutionary development created questions similar to those raised twenty-five years earlier. After the Civil War, Houstonians' attempts to accelerate the transformation of their frontier settlement into a modern town had produced debts far beyond local government's immediate ability to pay. The resulting deficits had been funded by taxing the future with a heavy burden of bonded indebtedness. The painful lessons learned from this experience were still fresh; yet, contemporaries never lost a sense of pressing urgency about possessing all the amenities available in the largest metropolis. For the city's growing catalog of politically articulate interest groups, public improvements remained the yardstick for measuring each administration's success in advancing progress.

Safeguards surrounding municipal bond issues, however, narrowly limited one fiscal option which had been largely relied upon to close the gap between current revenues and expenditures. The "pay-as-you-go" philosophy of the 1870's depression era had been translated into constitutional law in most states by the mid-80's. On the other hand, concurrent alterations in local tax machinery insured a steady flow of income from increasingly wealthy communities. Consider that Houston's property valuation of $16.4 million in 1892 was double the amount assessed a decade before and it doubled again in another ten years. 

Reconstruction officials possessed an unrestrained spending authority and an uncertain ability to collect revenues. Administrators in the '90's mainly faced decisions on how to allocate insufficient but predictable amounts of income.

Mayor Browne and the new council acted quickly to gain control of the city's finances. The first measure passed by the administration prohibited all departmental
purchases above budgetary appropriations. In 1892, expenditures were held near the $203,000 figure of the previous year, while revenues were boosted by over $40,000. But additional floating debts of $25,000 also were accumulated. In December, Browne's budget proposal for 1893 simply maintained departmental spending at existing levels. Yet, the mayor reported that funds were needed for a number of important new projects. Specifically, the city should provide a professional fire fighting service, a garbage incinerator and a vault for vital public records. All of these worthwhile programs, according to the mayor, would have to be postponed until property values increased significantly.

Browne believed that large savings could be effected in only one area: the city's utility bills. He argued that the top priority ought to be the building of a publicly owned supply of water and electric lighting. Repeating Scherffius' conclusions almost exactly, Browne reasoned that instead of paying $35,000 per year for these services, a lesser amount could be more wisely invested to finance permanent municipal assets. An inability to balance inflexible tax revenues against rising departmental expenditures directed both mayors' attention to the idea of municipal ownership.

During the following year, the council began serious inquiry into the ways and means of building a water works and an electric light plant. Spearheaded by alderman Jules Hirsch, a resolution authorizing a $500,000 bond election for the construction of these facilities was sent to the board of public works. The board was established in 1889, to aid the council in determining the specifications and the financing of improvement projects. From the inception of the three man board, mayors generally appointed members from the city's large taxpayers. The board's
October 1893 report centered on the inexpediency of creating additional indebtedness, which already amounted to 10% of assessed valuations. It recommended that the purchase of the existing utility companies, in any case, should be investigated first. Acting upon these proposals through a special committee, the aldermen learned that the tasks of appraising the companies' value and the community's needs were beyond their capacities. With the approval of the public works board, the council began looking for experts who could estimate the utility services required by a city of 75,000.  

The aldermen's explorations into the problems of obtaining utility facilities demonstrated that their initial expectations of large savings at small cost were optimistic. Even councilman Hirsch, the strongest municipal ownership advocate, revised his estimate of purchase costs from $500,000 to $900,000 within a single year. To enlarge the city's indebtedness by 50% during a depression involved considerable risks which would be reflected in unfavorable terms for the bonds' sale. On the other hand, the Browne administration had successfully held down expenses, while increasing tax revenues. After two years in office, the mayor accomplished his major goal of balancing the budget. These conditions undoubtedly diminished support for uncertain experiments and probably accounts for Browne's quiet reelection in April 1894. 

The alternatives to city ownership, regulated competition and regulated monopoly presented a different set of difficult problems. Houston's attempts to establish competition resulted in only temporary success and ultimate failure. The consolidation of the street railway companies, for instance, left miles of abandoned track to obstruct travel. The council repeatedly ordered the transit firm to remove
its unused tracks, but compliance was frustratingly slow. Serious doubts about the feasibility of public ownership and the efficacy of competition produced regulatory policies which often worked at cross purposes.

The city’s contracts for light and water services provided the council with an important lever of control over these utilities. As the termination of the Citizens’ Electric Company’s contract approached during 1894, it offered to reduce public and consumer rates in exchange for a 10 year renewal. At the same time, a new venture petitioned for a franchise. While a special committee considered these proposals, some aldermen continued to press for a municipally operated facility. After the public works board again opposed floating a large bond issue, Hirsch argued for a maximum 2 year contract to keep this option viable. "[Since] new invention, science and progress are daily advancing," the councilman stated, major cost breakthroughs were highly probable.

To the contrary, alderman Henry Freund supported the established firm’s plain business proposition," which stated that its ability to improve services depended upon secure and stable relationships. Freund, who retired from transit management after Omaha interests purchased Houston’s lines, believed that local utilities should be given preference. In June, a majority of the council agreed with the alderman, and approved the offer of the Citizens' company. Arc light rates were cut by 20% and the price of incandescent bulbs by 30%. For the city, the new contract meant an immediate savings of $4000 annually, or 33 extra street lamps without added expense. However, the quality of light furnished by the utility remained poor. A growing dissatisfaction was manifest in intermittent resolutions calling for an investigation or the hiring of a city electrician. But in 1894, no effective regulatory
mechanism was found.\textsuperscript{41}

The limits of local government's power to insure that utility companies fulfilled their legal obligations were tragically illustrated during the same year. The city's 1878 franchise grant to the Houston Water Company contained more specific protections of the public welfare than any other. With over 60 miles of mains supplying 4-1/2 million gallons daily, and a contract lasting until 1903, the corporation's position also seemed secure.\textsuperscript{42} Nevertheless, when William J. Buck applied for a waterworks franchise in June, the established firm asked for a contract renewal. Thomas M. Scanlan, the company's president and a former mayor, convinced the aldermen to reaffirm the original rate structure without modification. Moreover, a special committee reported its opposition to a new venture. The two councilmen in the majority argued that a second waterworks would begin by tearing up the streets and end by selling out to the Houston company. Maverick journalist and minority committeeman, William H. Baily, pointed out that a new grant could prohibit abuses and mergers, besides setting rates at lowered levels. His appeal, "competition is the life of trade," however, did not persuade the council, which voted against Buck's petition.\textsuperscript{43}

Two months later, a fire consumed a residential block and St. Joseph's Infirmary; two nuns died in the blaze. Again, as the past had consistently demonstrated, hydrant pressure was wholly inadequate. An outraged community was little appeased by Scanlan's accurate explanation that compliance with the pressure levels defined in the franchise was impossible at most points along the greatly expanded distributive network. Many mains simply were too small.\textsuperscript{44} Official reaction to the tragedy was hurriedly organized at a special council session on October 6.
Calling for municipal ownership, Alderman Baily characterized the city's indulgence in the company's franchise violations as a "shameful indifference" to the rights of citizens. The council launched a full investigation, which included unprecedented public hearings to assemble consumer complaints. 45

In large measure, Baily's accusation was correct. A year earlier, a Texas civil appeals court dismissed a Houstonian's tort action against the waterworks for a similar pressure failure during a fire. 46 According to Henry House, the utility corporation's "quasi-public nature" meant that its franchise obligations extended to all inhabitants of the municipality. In the state's first appellate ruling on this issue, the bench observed that House was neither a party to the contract, nor its direct beneficiary. He could not sue the utility for breach of contract, because the waterworks was liable to the city alone. 47 To the court, the responsibility for enforcing the duties imposed upon the corporation rested solely with local government.

The council's investigation committee heard testimony during October from three interested groups: consumers, corporate officials and fire insurance underwriters. The 93 citizens who appeared before the aldermen unanimously complained about overcharges. The utility based its rates on the number of rooms and taps in each household. Only a few heavy users such as hotels and livery stables could afford the high rental fees for meters. Admitting that their definition of a "room" was imprecise, company officials liberally redrew the rate schedule to produce substantial reductions. For consumers, the public hearings brought order to a confused relationship and a welcomed savings for their pocketbooks. 48

The water company's defense was based on a recital of recent projects to improve services. Corporate attorney and director, James A. Baker, Jr., reported
that over $250,000 or 42% of the current total investment in the waterworks had been spent within the last 3 years. Superintendent Francis J. Smith displayed plans for supplementing undersized mains, digging more wells and installing a new pump to double the plant's capacity. The utility executives presented considerable proof that neglect was not among their major faults. President Scanlan, moreover, offered to sell the facility to the city for a price to be determined by an arbitration board. 49

Local insurance men and members of their state executive committee provided the most complete analysis and scathing criticism of Houston's water supply system. They also pointed to a need for upgrading the distributive network to correspond to the community's enlarging scale and consumption. But the insurance men concentrated on outlining reforms which local government should institute. Their principal recommendations were a fully paid fire department, a rapid expansion of the alarm system and a stiffer building code. Unless these changes were made, the underwriters promised to impose a special tariff on fire insurance premiums. 50

In November, council attentions focused on applying the public authority against the water company. Following the investigation committee's suggestion, payments to the utility were suspended temporarily. 51 Over the next 8 months, however, the insurance men exerted a predominant influence. Their reform proposals were enacted because the onus of extraordinary premiums placed Houston in an inferior category compared to other cities. 52 The hearings also spurred other groups to intervene into the management of the community's water supply. In June 1895, the Houston District Medical Association reported that the company's water was "detrimental to the public health", and advised consumers to use alternative
sources. Armed with scientific procedures to analyze microscopic organisms, the physicians found the utility’s bayou reservoir dangerously contaminated. The aldermen confirmed the allegation through an independent study by the state geologist. Yet, the council preferred to rely upon Scanlan’s promise to circumvent the pollution hazard by digging more artesian wells, rather than assuming additional regulatory responsibility. 53

Major improvements were achieved in the city’s water and fire protection services. However, the aldermen’s belief was seriously shaken that under their supervision, secure private monopolies would best promote a rising level of services. Not only had the waterworks broken its franchise obligations, but the councilmen were equally helpless to enforce the terms of the electric light contract. Throughout 1894, moreover, the transit corporation successfully evaded city directives to remove track obstructions and to repair the streets. By December, council frustrations reached a point where the marshal was ordered to arrest the firm’s manager. The legislators also passed an ultimatum, which gave the railway four months to comply or suffer a forfeiture of its privileges. 54

Four months later, the city council’s unsure programs to enhance urban services through a fruitful mix of public and private means were completely upset by a surprising decision from the state supreme court. In Higgins v. Bordages, the Texas bench held that special assessment tax liens were unenforceable against homes. The decision was wholly unexpected because neither litigant rose this issue, which had been settled conclusively twelve years earlier. 55 By overruling Lufkin v. Galveston, the court essentially ended the efficacy of assessment taxation. Financing street and sewer improvements with special levies was unmanageable without the
power to force every abutting owner to pay or face certain loss of his property.

The reason for the reversal was rooted in an unusual personnel changeover on the 3 member bench. Supreme court justices normally were elected for 6 year terms, and they were renominated customarily by the Democratic Party. During 1894-1895, however, the retirement of justice John L. Henry and the death of chief justice John W. Stayton allowed governor Hogg to appoint their replacements. The governor chose two close political lieutenants: Leroy G. Denman and Thomas J. Brown. Both men, especially Brown, had been instrumental in creating new institutions to strengthen and invigorate state government. Their ruling on homesteads, as well as other areas of the law, demonstrated their intention to continue an activist role from the high bench.

In Houston, where special assessments had been vital to public works finance, a reporter surveyed immediate reactions to the Higgins case:

the decision this morning fell upon the community like a clap of thunder from a clear sky, and today the whole situation, which was yesterday so serene, is all turmoil and commotion.

The correspondent noted that no further payments would be made by property owners, while the city's major road builder, Richard Storrie and other contractors, stopped all work in progress. Some Houstonians were pleased that improvements would now have to be funded from general taxes, but others considered the decision a "public calamity."

Official response to the implications of the case for future improvement projects was delayed until a rehearing on the ruling was completed. At stake was $300,000 in unpaid assessments; plus the possibility that the $586,000 collected
since 1881, also might be declared invalid tax levies. On the other hand, the council quickly dropped the purchase or duplication of urban service facilities which were already supplied by private enterprise, as an allocation priority. With potential competition from the public sector no longer a viable threat, and effective regulatory mechanisms elusive, the aldermen abandoned their policy of controlled monopolies. From April - July 1895, franchises were granted to 3 different utilities, while the Houston City Railway Company lost its right to build additional extensions. Besides grants to new telephone and rapid transit ventures, the councilmen authorized an expansion of Houston Height's light company into the city.  

On June 29th, the Texas Supreme court denied a petition for a rehearing of the Higgins case. Justice Brown acknowledged the "impropriety" of unsettling established legal relationships. But he asserted that even greater "evil consequences" for homesteaders would follow if the Lufkin rule was reinstated. In Houston, the final disposition of this issue sparked a thorough re-examination of the basic goals of city government. Over the next few months, divisive debate over the best use of available and future revenues splintered the Democratic party into 3 organized factions. Although an independent party movement proved temporary, the development of community attention on the ordering of urban service priorities produced lasting effects on public policy and local politics.

The Browne administration moved rapidly during July to reassess the municipality's financial position. Balancing the bonded debt and its annual interest against current property values and a maximum tax rate, city officials calculated that $1,000,000 in new bonds could be issued over a 5 year period. These funds, according to the mayor and the council's finance committee, should be used ex-
clusively for paving and sewer projects. Their report argued that

five years of assured activity in improvement
and development of the city will not only tend
to inspire confidence and stimulate activity at
home, but will invite capital and enterprise
from abroad.

Since any bond issue over $100,000 needed approval from a two-thirds majority of
voting taxpayers, the report concluded by placing the proposal in the form of a
resolution.

A basic objection to the allocation plan was its exclusion of any contingency
for municipal ownership. Alderman James McAughan, a blacksmith from the in-
dustrialized fifth ward, felt that the people ought to be given an opportunity to vote
on this alternative. McAughan was reinforced by the Labor Council and its ad hoc
citizens' committee, which gathered additional support from the community. The
Labor Council had been strongly influenced by the infirmary fire investigation and
the doctors' conclusion that the water supply was unfit to drink. To Houston's
skilled workers, the purchase of the existing waterworks and light plant was more
important than new improvement projects. Their organization began an educational
program to inform members about municipal finance, franchises and public utility
corporations.

Towards the end of July, Labor Council leaders conferred with city officials
to change their list of priorities. Although the aldermen listened, they continued
to believe that road and sewer construction was most urgently needed. Even alder-
man Hirsch, who had been a principal municipal ownership advocate less than 1
year before, now argued for postponement until the utility company contracts ex-
pired in 1903-1904. The mayor, however, was persuaded to limit the scope of
public works planning to $400,000 over a 3 year period. Browne doubted whether present policy makers could ethically commit future administrations. Without the experience of tomorrow, he stated, a short term "experiment" was a better course of action. 66

While city officials disagreed about important matters of the plan's scope and timetable, their attitudes basically coincided. Paved streets were considered a primary engine of urban growth and community expansion was equated with progress. In contrast, organized workers seemed more concerned with the quality, rather than the size of their environment. The council's determination to proceed with the larger bond resolution was halted by the mayor's veto. Instead, a compromise proposition of $500,000, which was to be issued over 3-4 years, was presented to the taxpayers near the end of September. Voters were extremely sparse on election day; the resolution was defeated by a majority, 525 to 497. 67

In the days following, various reasons were advanced to explain the failure of the public works plan. The Houston Post, which had favored the measure, characterized the majority as opponents of progress, or "mossbacks". Suburbanites also were blamed for the defeat because they allegedly believed that no improvements would be constructed in their peripheral areas. 68 The Galveston Daily News provided a more balanced analysis. It pointed to a small but resolute group of property owners, who had paid special assessments and opposed being taxed to pay others' streets. A handbill circulated by these taxpayers before the election, moreover; asked who would have to pay the $300,000 in uncollected assessments, which were thrown into legal limbo by the Higgins decision. 69

This pertinent question as well as many others remained unanswered by city
administrators and probably helped account for their plan's negligible voter appeal. The aldermen, for instance, intended to shift funds from current expenses to interest maintenance. But they offered no explanation on how or which public services would be affected. The council's calculations were curiously skewed to demonstrate that Houston could easily afford sizeable new debts without tax increases. However, the depression and such groups as the Labor Council and property owners raised informed doubts. The resulting confusion surrounding the bond proposition signaled most eligible voters to stay at home.

The small response to the allocation plan disguised the fact that powerful sentiments about the administration's policies were brewing just under the surface. With the approach of the municipal elections in April 1896, these feelings of discontent emerged as 2 independent political movements aimed at removing the traditional Democratic leadership. The first indications that Houstonians perceived a basic incapacity in their regular party machinery to accommodate their needs appeared at the organizational meeting of a Good Government League. In December 1895, 75 men approved a constitution, which required members to pledge to vote only for League endorsed candidates. Normal Kittrell, a lawyer and Democratic loyalist since the 1870's, was elected president, while Benjamin P. Bailey, a bookstore owner, was chosen secretary. 70

The Good Government League was a political vehicle for a portion of Houston's middle class. A collective occupational profile of the organization's founders reveals that they were mainly professionals, managers-clerks and retail proprietors. 71 The particular concerns of the association were expressed in an early report:
The laws of God are immutable. Cities like individuals are under the law of right and wrong.... It [the city] must be self-restraining, law-abiding and inviting as a home for legitimate business operations and for the family circle alike.

The leaguers found the administration’s failure to enforce laws on lotteries, saloons and gambling halls almost criminal. Licentiousness had to be suppressed, according to the report, or American liberty might be lost. 72

The Good Government group’s strident moralism was balanced by a platform of institutional reforms. Specifically, the League outlined new methods for assessing property values more equitably, charter amendments to permit a vigorous public works program, and a system of fixed salaries to end paying officials with self-collected fees. In addition, their platform advocated the eventual municipal ownership of the waterworks, and demanded rate reductions for street lighting. 73 In January, the League decided to name a separate ticket on a non-partisan basis, rather than merely endorse selected Democratic candidates. A truly independent party, however, was too radical for most Houstonians. The continuing strength of the Democracy was illustrated by the resignation of president Kittrell, who refused to support any Republican. 74

The stillbirth of a nonpartisan party contrasted sharply with the growing vitality of a splinter movement within the Democratic organization. Led by Henry Brashear, a rich land speculator, and the clerk of the criminal district court, the dissidents included aldermen Heinze, Hirsch and Bailey. While differing opinions on the proper course of city government probably were important, the Brashear faction’s central issue became the lack of democracy within the party.
They complained that previous primary elections had been a fraud because a small
group of insiders had manipulated candidate selections and had controlled the
polling machinery. By March 1896, debate about the Browne administration's
policies was submerged under a dispute on loyalty to the directives of the local ex-
ecutive committee. 75

Failure to resolve this controversy produced two separate primaries and slates
of candidates. The Brashear faction conducted their primary during daylight hours
to emphasize a need for fair and open elections. The regulars, led by H. Baldwin
Rice and 5 incumbent aldermen, held a traditional night primary, which was
followed by a ratifying convention. 76 Unlike the 1886 displacement of banker
William Baker by workingman Dan C. Smith, both tickets were headed by the off-
spring of successful urban pioneers. Brashear and Rice were native Houstonians, who
belonged to families of great wealth, social prestige and political influence. 77
Their contest focused less on policy issues than party organization and leadership.
Although Brashear polled 2800 votes, the Rice ticket swept the April elections with
over 3600 supporters. The Good Government League's candidates polled only 300
votes. 78

The election returns revealed that a substantial portion of the voters objected
to a continuation of the political status quo. However, the blending of policy and
infra-party issues during the campaign precluded a positive mandate on either from
emerging at the polls. The question of organizational loyalty seems to have deter-
mined the outcome. In 1896, the process of defining a set of policy alternatives,
especially those concerning allocation priorities, was still unfinished. The Rice
administration's first year was characterized chiefly by a lack of decision on such
basic problems as public service standards, improvement finances and utility franchises. 79 Henry Adams' query about the future direction of American society remained unsolved in Houston. But over the next few years, clear choices were formulated which allowed the community to embark on a path towards the good life in an urban setting.

Elsewhere, most city dwellers were as confused and dissatisfied as Houstonians. Only a few dynamic leaders such as Detroit's mayor, Hazen Pingree, possessed a compelling vision of the coming city. While Pingree was engaged in a battle to extend modern services to the entire community, many urban officials were still trying to mobilize their chain of command, budgets and legal departments. 80 This organizational effort, or the institution of "sound business methods" was often a prerequisite for further reform. S. M. Lindsay, for example, warned the American Social Science Association in 1896, to recognize that structural change was just the beginning, not the final solution for America's municipal problems. The University of Pennsylvania professor pointed approvingly to the mayor of Boston's declaration that "municipal corporations are organized not to make money but to spend it; their object is government, not profit." 81
CITIES, COURTS AND CORPORATIONS:
ADJUSTMENTS TO MODERNIZATION, 1896-1902

Houston's disjointed public policies during the mid-1890's exposed many of the increasingly complicated problems involved in governing a city. The depression's impacts helped direct official attentions to a need for defining allocation priorities. The elections in 1895-1896 demonstrated, however, that the ordering of these priorities could cause sharp conflicts between administrators and citizens as well as among the Democratic party leadership. The process of decision making about day to day services and long term investments was becoming more difficult in proportion to the number and sensitivity of organized interest groups within the community. The resulting delays, compromises and policy defaults were intolerable to some Houstonians, who believed that public improvements were essential to continued progress and prosperity. Over the next decade, their efforts to curtail meaningful interactions between local government and its constituents emerged as a crucial new dimension in local politics.

The growing complexity of policy formation was related closely to a tightening web of interdependence between the municipal corporation and its franchised utility companies. Each sector's current finances, capital investment planning and quality of urban services became inflexibly linked to the decisions of the other. The success of the city's sanitation programs, for example, was contingent upon the purity of the water supply. In a parallel manner, the financial integrity of the rapid transit firm, which had to pay for expensive street paving improvements, depended on public works planning. The city government's and the utility companies' determined pursuit of their respective interests resulted in the judicial arbitration of
many irreconcilable differences. The courts' changing interpretation of its role in adjusting these interests assumed major importance in directing the course of franchise relationships.

Houston's public and private institutions also were becoming more and more subject to powerful state and national influences. In 1895, the intimate connection between local utility enterprises and outside financial currents was illustrated when the City Railway company's Boston creditors placed the firm into receivership. ¹ Since 1890, O. M. Carter and his American Loan and Trust Company of Omaha had controlled the intra-urban transit concern. Carter had purchased the railway network to insure that his suburban development, Houston Heights, would be linked by rapid transit to the city. ² Under his direction, the financial structure of the horse car enterprise had been reorganized to gain the capital needed for modernization. The company's capital stock of $200,000 and bonded indebtedness of $184,000 were expanded immediately to $1,250,000 each. Only one-third of the new mortgage bonds' proceeds were used to pay for the conversion to electric traction. Yet these basic improvements helped boost the venture's gross earnings sufficiently to cover bond interest payments during the next three years. ³

In 1894, however, bondholders began to worry about the security of their investments because the corporation defaulted on its interest obligations. Led by Albert N. Parlan, a Boston furnace manufacturer, creditor suspicions of mismanagement grew large after learning that Carter was draining off transit company assets to save his real estate and banking pyramid from falling into bankruptcy. The Omaha financier had built a 6 mile extension to Houston Heights with City Railway company funds. Carter sold the line for promissory notes to other corporations, which he also
owned. The extension route was then leased back to the original firm for $8,000 annually. In July 1895, Parlan's agents petitioned United States District Court judge, David Bryant, to appoint John Kirby as receiver of the City railway company. President Carter, whose Trust Company was already in receivership, offered no objections after being paid $5000 to resign.

Contemporaries agreed that over-bonding was most responsible for the railway's insolvency. In 1893, bond interest alone accounted for 37% of the company's $200,000 gross earnings. According to street railway experts, an efficient enterprise would use about 75% of its total income for normal operating expenses. Overburdened with maintaining fixed obligations, the Houston firm abandoned service on a number of lines, neglected track and street repair duties and defaulted on its special assessment taxes. During the one year receivership, Parlan and Kirby reorganized the firm's finances to give bondholders considerably less interest in the future. In exchange, the creditors also became the company's owners.

The origins and development of the Houston street car case was fairly representative of nineteenth century receiverships. Unpaid mortgage bondholders initiated equity court proceedings in order to restructure finances and to gain ownership control of the company. Before the 1890's, however, overcapitalizations in the local public utility sector were a minor phenomenon in comparison to steam railroads. They were plagued with funded debt defaults during every depression of the post Civil War period. Urban service corporation managers' dire predictions of crippling fixed charges being imposed on their companies materialized with the growth of a national market for public utility securities. Consider that in July 1897, 58 street railway concerns with funded debts of over $50,000,000 were in the hands of receivers.
Significantly, the only other Houston utility to have similar difficulties was the Citizens' Electric company, which was also formed by outside capitalists from two competing firms in the early '90s. In both the transit and light business, loss of local ownership brought infusions of investment capital and advanced technologies, but the community paid a substantial price in poor services for over a decade.¹⁰

Uninterrupted private control of a monopoly position did not guarantee that good service would be provided voluntarily at a reasonable price. In 1896, the Houston Gas Company, the city's oldest utility, had no bonded debts and was still mainly owned by its original promoters. Since the introduction of electric arc lighting in 1883, the company installed cost-saving innovations in the manufacturing process, extended the distributive network from 12 to over 50 miles, and produced 5 times as much gas. Yet, no rate reductions from the $3 per thousand cubic feet (MCF) were offered in 13 years, although the national average price was less than $1.50 MCF. Instead, the stockholders enjoyed a $24,000 profit on $90,000 worth of business.¹¹

The authority of a municipal corporation to order a franchised monopoly to lower its prices had never been tested in Houston or Texas. The city's ability to effect general rate decreases for water and electric lighting stemmed from its bargaining power with the utilities for public contracts. Local government could not exert this type of leverage over the gas and street railway companies. As in the past, however, the council could threaten to grant a franchise to a competitor in order to win concessions from an established firm. In October 1896, this opportunity was offered to the Rice administration by the Hall Chemical Company, which offered to sell gas for between $.50 and $1.00 MCF. Using a patented process, the Hall
Company was producing gas at equivalent prices in other cities. 12

A majority of the council strongly opposed granting a franchise to the new venture. Alderman Robert Adair, who was also serving as the rapid transit company's superintendent, objected to any proposal which would encourage competition in the utility sector. Mayor H. B. Rice argued that "radical changes in [too] short a time" should be avoided, especially since the long established enterprise could be expected to compromise on the rate question. The opposition was led by councilman Thomas Cronan who believed that the cheap gas promised by novel technologies would revolutionize the use of energy in Houston. Unable to obtain a franchise for the Hall Company, Cronan successfully initiated investigations into the status of the Houston firm's privileges and the terms other gas concerns were willing to bid for a grant. 13

In December 1896, city attorney James S. Stewart reported that the municipality did grant the local gas company a right of way in the streets during the tenure of its state charter. But the utility currently possessed no special privileges, Stewart concluded, because the original corporate charter expired in 1891. 14 Four months after the city attorney's revelation, the Houston Gas Company applied for a franchise renewal. Thomas W. House, Jr., who succeeded his father as the utility's president, offered to supply gas at $2.00 MCF for the next 50 years. Hall company agents counter-proposed rates of $.30–$.80 MCF for a franchise which could be held in trust to guarantee faithful performance. However, 5 of the 6 councilmen chosen to review the petitions desired to give the local firm a 15 year franchise containing a $1.50 rate maximum and providing free heating and lighting in most public buildings. 15
The lone dissident committeeman, Cronan, displayed detailed economic calculations to show that even greater concessions would still produce a reasonable profit. Anticipating attack from city boosters, Cronan asserted that the public authority should not be employed to harass private enterprise. "The principle should be," the alderman stated, "...to invite capital and [to] encourage investment, but in the present instance capital has been invited and the consumers have built it to its present proportions."¹⁶ A number of citizens and the Houston Post agreed that a large, immediate rate cut was justified. The Post, moreover, argued that urban utilities ought to pay a reasonable compensation to the city treasury for use of public streets.⁷ The conservative daily noted.

we often talk of capital and its quickness to see its own interests, [but] the control of pub-
lic [utility] plants by private individuals shows directly the opposite of good business sense....
Reckless gouging, indifferent service and dis-
regard of popular protests are the rule rather than the exception.¹⁸

Nevertheless, the administration's top negotiator, alderman Gustavus Street, persuaded Houston Gas Company officers to accept the city's compromise. Their private discussions also produced agreements to empower local government to mediate service extension and meter disputes between consumers and the utility. In May 1897, two-thirds of the Council supported passage of a franchise ordinance embodying these provisions; the entire matter seemed closed.¹⁹ At a meeting of the gas corporation's stockholders the following month, however, the franchise was rejected and the original $2.00 rate proposal reiterated. Surprised city officials responded by demanding a judicial ruling on the regulatory authority of municipal governments in respect to established utility enterprises. Alderman Street and a few
other compromisers joined Cronan’s minority in approving a resolution to hire special legal advisors to prosecute the gas company for unlawful use of the streets. 20

The council’s questions were also being asked in other cities where franchise reform and municipal ownership movements were gaining strength. During the 1890’s and early twentieth century, the boundaries of public regulatory control over public utility enterprises were explored vigorously in state and national judicial forums. 21 In Texas, for example, Galveston revoked the franchise of a steam railroad company which failed to fulfill its agreement to build a bridge across the bay within 5 years of the 1889 grant. In 1896, state district and civil appeals courts declared the railroad’s privileges forfeit and ordered the company to remove its tracks. Chief judge C. C. Garrett of the appeals court held that cities could attach "lawful and proper terms" to right of way franchises. Although the privileges acquired by the enterprise immediately became vested rights, nonperformance of conditional duties could result in complete forfeiture. Garrett denied the railroad’s proposition that right of way privileges could be repealed only for non-occupied portions. 22

In February 1897, the state supreme court delivered its opinion on the franchise dispute. To Justice Thomas J. Brown, the issue was whether or not municipal corporations could impose special duties and conditions precedent on transit companies in exchange for right of way grants. The appeals court ruling, according to Brown, was based on an erroneous doctrine created by the text writer-jurist, John F. Dillon. Justice Brown found his colleague’s use of precedent in decisions allowing cities to impose "lawful and proper terms" upon railroads not only incorrect, but also "directly antagonistic" to another Dillon inspired rule. Brown correctly main-
tained that the text writer had been influential in persuading the bench to limit municipalities' exercise of power to explicit grants of authority in their charters. Since Galveston had no jurisdiction beyond its corporate limits, the Texas court ruled, the bridge building duty was _ultra vires_, and the case was dismissed. 23

A second decision handed down during the same term further narrowed the meaning of franchises as an instrument of municipal control over public service companies. The case originated when San Antonio's transit firm discontinued service to a new suburban development, which was located within the city limits. The company complained that it had operated the one mile route for three years at a $25,000 loss, and had abandoned the extension line to prevent bankruptcy. Nevertheless, Elmendorf and other suburban property owners petitioned the state district court for a writ of mandamus to compel the corporation to restore passenger service. The street railway's franchise from the city, Elmendorf claimed, imposed a public obligation to maintain service along all constructed routes. Even if right of way privileges were construed as merely permissive grants, the railway's active acceptance of the franchisé created a duty of continuous performance. 24

The appeals court agreed with the suburbanites' position and affirmed the district judge's decision to issue a preliminary writ. Civil appeals judge H. H. Neill ruled that public franchises were granted to intra-urban railway concerns primarily to provide citizens with an "improved mode of travel". After the company built and operated the line, its continued operation became a public duty beyond the discretion of private interests. The corporation had asserted that the proper remedy was not a mandamus writ but a repeal by the city of the firm's right of way privileges along the abandoned route. Judge Neill replied
The appellant [i.e. the company] is in no attitude to dictate to the city what remedy it shall pursue. If [the company] assumed the duties of a public servant, for which purpose it was created, and if able, should discharge them as a servant, without undertaking to command its creator and master.25

The state's high bench, however, again found reasons to reverse the lower courts. Chief justice Reuben R. Gaines considered the precedents which supported the appeals level decision, to be obscurely based and generally unclear. He also rejected the notion of some jurists that corporations providing a "public service" formed a special category in respect to enforcing performance of permissive rights and privileges. "When, therefore, a corporation, whether quasi-public or purely private, is granted a privilege of doing an act...we do not see upon what sound principle the duty can be imposed", the Chief Justice concluded. The San Antonio railway company's construction, operation and subsequent abandonment of a suburban line made no difference, according to Gaines, because a permissive privilege to build did not create an obligation to maintain service.26

In 1897, the Texas supreme court denied cities any authority to impose conditional obligations on utility companies beyond those powers explicitly defined in municipal charters. The court, moreover, interpreted urban franchises as permissive rights, not obligatory duties. In both cases the bench noted that cities were not constitutionally barred from exercising the powers claimed; they were held by the state legislature. General statutes or municipal charter amendments could significantly expand public controls over franchised corporations, although the immediate effect of the rulings was to narrow the authority of local government. The following year, the Texas court delivered an opinion which also limited the
rights of urban service companies. The decision clarified the state jurists' understanding of the franchise's functions in the legal relationships between city government and private enterprise.  

The city of Palestine sought an intervention similar to Galveston's litigation to obtain a franchise forfeiture and court order to remove company property from the streets. In this case, the city repealed the privileges of the Palestine Water company which was obligated to supply "clear and wholesome water for all domestic and other purposes". Instead, the utility provided inadequate amounts from its badly polluted ponds for over 2 years without attempting to improve the water supply. The corporation's defense relied upon the Galveston railroad decision, but justice Brown considered it inapplicable. Waterworks were entirely local concerns, Brown reasoned, while railroad corporations were created for state purposes and they derived street use rights from state laws. These two distinctions allowed the bench to conclude that urban utility company privileges could be forfeited for "gross failure" to perform "vital duties" imposed in franchise grants. Quoting extensively from a U.S. Supreme Court ruling on an almost identical situation, Brown agreed that the common law provided the only efficient remedy for the city.  

The Texas court's decision on urban franchises were consistent with the general trend of Hogg Democratic reforms toward expanding the authority of state government over public and private corporations. Other states during the 1890's also were readjusting their relationships with public service companies. Private enterprise, however, was increasingly successful in convincing national jurists that their intervention was needed to curb state legislative abuses. Corporate attorneys repeatedly challenged acts regulating railroad rates as violations of the equal
protection and due process of law guaranteed by the Fourteenth Amendment. The U. S. Supreme Court declared some of these measures unconstitutional, but the high bench continually reaffirmed government's police power authority over public utility industries. In the early '90s, the Court even broadened the scope of the Munn decision beyond Justice Joseph Bradley's "virtual monopoly" interpretation of a business affected with a public interest. 30

The Court's insistence that regulated rates be "reasonable" and produce a "just compensation" for the company almost inevitably led to a general uncertainty about what these purposely vague concepts meant. As the judiciary assumed the role of final arbiter in rate determinations, it also had to set guidelines for lower level decision makers or face the prospect of an intolerable expansion of court dockets. Without a firm notion of what constituted a "just compensation", for example, legislators and administrators would be unable to create orderly procedures for weighing all the economic factors needed to satisfy constitutional requirements. Until the mid-'90s, the highest Court refused to define guidelines and thereby restrict its own options to settle disputes through a process of inclusion and exclusion. But in 1896, the Supreme Court drew some boundaries around the public's maximum pecuniary obligations to utility corporations. 31

Justice John Harlan's opinion in Covington and Lexington Turnpike Road Company v. Sanford concentrated on the need to balance the respective rights of the user and the public service company in setting rate schedules. Harlan agreed with the turnpike's lawyers that enough evidence existed to require judicial inquiry into the validity of Kentucky's regulatory act. Yet, he denied that states were legally bound to guarantee public utilities a profit. Justice Harlan announced
It cannot be said a corporation is entitled, as a right, and without reference to the interests of the public, to realize a given per cent upon its capital stock. When the question arises whether the legislature has exceeded its constitutional power in prescribing rates to be charged by a corporation controlling a public highway, stockholders are not the only persons whose rights or interests are to be considered....The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends. 32

Less than two years later, the Court attempted to define some basic criteria for calculating a regulated company's rates to allow a just compensation. The benchmark case, Smyth v. Ames, tested the constitutionality of Nebraska's 1893 railroad regulation act. The statute created a board of transportation and empowered it to set "maximum reasonable rates". Union Pacific stockholders obtained an injunction in a U. S. Circuit court to prevent Smyth and other board members from enforcing the act. Smyth's appeal spurred both parties to educate the high bench on the economic factors which should be considered in fixing a rate schedule. Justice Harlan, for the Court, admitted that finding correct procedures and methods would remain an "embarrassing question", and one more easily settled by economic experts. Nevertheless, the judiciary had a fundamental duty, Harlan believed, "to see to it that no right secured by our supreme law of the land is impaired or destroyed by legislation." 33

To insure that utility company assets were not confiscated through rate schedules, Harlan declared that these businesses must receive a "fair return" upon a "fair value" of their property. The Justice listed a number of considerations which should be weighed in measuring a corporation's value such as original con-
struction costs, permanent improvements and operating expenses. After evaluating the evidence in the Nebraska rate dispute, the high bench sustained the circuit court decision. Unfortunately, the Smyth v. Ames formula proved worse than useless in practice because it was based on a circular fallacy. Forty years passed before the Supreme Court acknowledged the "value" of a going concern depended upon its earning power which in turn was determined by the prices it could charge. In 1898, however, Harlan seemed to be supplying flexible guidelines for balancing public and private rights.

During the 1890's state and national courts responded to needs for more clearly marked boundaries of public control over private enterprise. Since the 1877 Munn case, the judiciary had been developing a public utility concept to uphold the right of states and their local subdivisions to regulate industries providing essential services. While widening the scope of the police power over these business sectors, the bench also was expanding its jurisdiction to protect private interests from governmental abuses. A logical culmination of this process was the Nebraska railroad decision. After Smyth v. Ames, debate gradually shifted to problems involving the fairness of different formulas for calculating utility corporations' rate base or "value".

The opinions advanced from the bench during the '90's, moreover, had immediate impacts on the quality and price of urban services. In 1897, for example, the Galveston franchise case and an U. S. District Court injunction broke the impass in Houston's gas rate controversy. Complaining that the city council threatened to tear up their company's gas mains, New York stockholders obtained an order restraining the municipality from interfering with the utility's use of the streets.
The New Yorkers probably acted in concert with the Houston owners to secure a more favorable forum than local courts to rule on the dispute's pivotal issue. The utility's 1866 charter of incorporation contained a state grant of street use privileges. The company argued that amending the charter's tenure had no effect on the validity of these franchises. 36

Two months later, in August, the special legal counsel retained by the city administration arrived at an opposite conclusion. The attorneys reported that the statute allowing corporations to amend their charters was never intended to perpetuate extraordinary grants, especially since existing law required urban service companies to obtain franchises from local officials. 37 Although the city possessed ample authority over the utility's use of the streets, the special counsel could find no municipal power to control the rates charged members of the community. Pointing to the Galveston franchise case, the attorneys explained that city government could not enforce a consumer rate agreement unless the gas company also signed a contract. 38 The legal opinion provided the aldermen with an accurate analysis of Texas public utility law.

Gas company officials made a similar assessment because at the conclusion of the report they introduced a franchise-contract binding the city for 30 years to a $1.80 MCF rate. Managed by councilman William J. Aubertin, the new franchise proposal was actually the rejected grant of a few months earlier with the contractual rate proviso attached. The Post quickly reacted to the gas company's bold strategy by suggesting that the utility had "evidently been taking lessons from the Chicago street car company." 39 At the next council session, the franchise passed 6 to 4 but a parliamentary coup by alderman Street empowered him as acting mayor to veto the
measure. The corporations' supporters realized that an attempt to muster a two-thirds vote would be futile. Withdrawing the proposal, Aubertin admitted, "a good trick and well-played". Nevertheless, a defeat for the gas company marked a positive step towards promoting the public interest.

Street's successful parliamentary maneuvers in the franchise issue were offset by a failure to get affirmative council action on his plan for a municipal electric plant. Introduced in July, the $100,000 bond election resolution was tabled in order to give the Citizen's company an opportunity to submit a new contract. At the end of September, the electric firm agreed to reduce arc light rates from $120 to $100 annually, if the city would increase its supply of street lamps. The utility's second offer to cut prices within a 3 year period appeared generous. However, city attorney Stewart pointed out that the current contract did not obligate the municipal corporation to any set number of lamps, but the new one committed the city to pay for a minimum of 233 lights for the next 7 years. The Citizen's company realized that passage of its proposition would effectively forestall competition from the public sector.

Opponents of the new contract criticized the chronically poor performance of the private firm and argued for the right of the people to decide the lighting issue by voting on municipal ownership. At a special council session, they attempted to table the utility's proposal but their motion was defeated, 5-6. Mayor Rice's intervention, however, prevented final passage of the Citizen's company offer. Rice prevailed upon the aldermen to approve the election resolution rather than bind the city to a 7 year contract. The mayor also proposed the creation of a "board of light commissioners" if the referendum succeeded to remove politics from the manage-
ment of the municipal plant. By the November 1897 election, most Houstonians already had an opinion about public ownership. Consider that neither side mounted a vigorous campaign, although 3 months earlier a massive petition had been readily collected in favor of a city electric plant. Over 1200 taxpayers, or twice the number participating in the 1895 allocation plan election, appeared at the polls to express their views. With strong support from the affluent third ward, the issue was approved.

The Rice administration's public utility policies were formulated in response to the established firms' efforts to secure advantageous contracts. Recent court decisions largely shaped entrepreneur's objectives. The bench suggested that state legislatures could delegate extensive regulatory authority to city governments, including power to control consumer rates. A growing appreciation of franchises' pecuniary value and legal subtleties among some Houston officials, however, sparked a successful resistance to the most obnoxious features of the company's proposals. In March 1898, for example, the gas company agreed to a maximum $1.80 MCF rate and dropped any further attempt to restrict city control over future price reductions. The financially stable enterprise suffered little from losing the franchise contest because the utility maintained its monopoly position and consumer demand for gas remained strong. On the other hand, the Citizens' Electric company's contract strategy resulted in disaster. Shortly after competition from the public sector became a real possibility, the corporation's bondholders who had gone unpaid since September 1896, placed the insolvent enterprise into receivership.

In January 1898, as the electric utility's management was being replaced, city administrators also were subjected to sharp attack for their belated initiatives
on franchises and other public policies. The challenge to Rice's leadership was led
by Samuel H. Brashear, a nephew of the mayor's previous opponent and a state
district judge. Brashear called for an end to campaigns based on factional
loyalties and an open debate on vital public issues. Houston's Democratic executive
committee supported the candidate's appeal for party unity. Over the next two
months, the committee instituted reforms aimed at insuring complete Democratic
control over the primary and general elections. The March primary between Rice
and Brashear slates was held during daylight, while black voters were excluded. 49

The campaign centered on Rice's lack of accomplishment in advancing
public improvements and city employee working conditions. Left without special
assessments taxes to finance street paving, Rice had secured a charter amendment,
which permitted the city council to issue $250,000 in improvement bonds. Yet, the
delays involved in implementing the plan and the mayor's severe budget cuts in road
project appropriations resulted in an almost total absence of material progress during
his two year term. 50 The administration also pursued retrenchment goals by issuing
scrip to city workers instead of negotiating short term loans with banks to pay in cash.
Even though municipal employees' wages dropped from selling their scrip at a 25%
discount, Rice contended, men's bellies were filled. In addition, the mayor pointed
to the $1.75 per day minimum wage ordinance passed under his guidance. Brashear
demonstrated, however, that the Labor Council's measure had received no official
support until after his campaign began. 51

Nine days before the March 24th primary, the candidates' attitudes towards
labor suddenly became the exclusive issue when street railway workers struck for
higher wages, shorter hours and a closed shop. Endorsed by the Labor Council, the
strike of the Amalgamated Association of Street Railway Employees was Houston's first experience with union actions which upset the daily routines of the entire community. On the 19th, the transit firm attempted to restore operations with a substitute work force but large mobs violently repulsed the car drivers into the company's shed. Although Mayor Rice voiced sympathy with the strikers' demands, he pledged to request state and national troops to protect the corporation's property if local police could not disperse the angry crowds. In the midst of an extremely tense situation, which cast most Houstonians including the police force against the transit company and the legal authority, Democrats voted in the primary election.

Mayor Rice was defeated by more than a 3 to 2 margin, while only 3 of 8 incumbent candidates for the city council received a majority vote. The administration's posture towards working men and public utility companies as symbolized by the street railway strike probably determined the outcome. Three days after the primary, riot and armed violence against the transit firm illustrated the emotion packed nature of these issues. During the previous night, an accidental explosion in the boiler room of the Citizen's Electric Company killed 4 workers. Throwing the city into darkness, the tragic incident seems to have provoked the community's extreme reactions. Rice called for help from the state militia and deputized a posse of dependable citizens. As troops guarded street railway property, a committee of Houston's best men achieved a compromise settlement between the company and the union. Tensions were dissipated also by the imminent transfer of official authority to a new city administration elected with strong labor support.

In contrast to Rice's efforts to slow down the expensive pace of public works and service programs, Brashear aggressively pursued many new directions to expand
local government's role in promoting the community's welfare. During his first year in office, for example, the council cooperated with the mayor to establish a gas inspector, a city electrician and a permanent waterworks committee to monitor consumer complaints. Brashear, moreover, withheld half of the payments due the water and the light companies because of their failure to fulfill contract duties. Dynamic approaches to regulating established utilities was paralleled by policies, which used competition as a tool to enhance public services. Franchises were granted to a telegraph venture and a new telephone company. Both utilities were not only built but established firms also lowered their rates to the amounts set in the new grants.

Brashear vigorously attempted to construct a municipal light plant because he believed the public ownership referendum represented an "imperative command" to government officials. City attorney Stewart replied that the election did not legally obligate the council to issue bonds. The board of light commissioners appointed by Rice agreed with Stewart's philosophy and refused to take any action. Nevertheless, the mayor and the council proceeded to purchase a suitable location for the facility. However, first priority in the allocation of municipal resources was given to the creation of a sewerage system. This ordering of priorities was dictated mainly by the U. S. Army Corps of Engineers. Before national funds were appropriated for a Houston ship channel, they insisted that city wastes fed into Buffalo Bayou receive treatment to eliminate pollution.

In February 1899, the mayor hired a sanitary engineer, Alexander Potter, from New York to prepare plans for a municipal sewerage treatment plant. Potter proposed to present a unified study of Houston's water supply, sewer distribution and
electrical power needs. The council responded enthusiastically to the engineer's preliminary suggestions because public health would be advanced and most existing pipes could be tied into larger systems. Potter's unified plan was innovative in combining provisions for such urban services as a power plant and electrical pumps for water or sewerage as well as disposing of garbage at the same location. To finance the 3 year project, the council passed a $300,000 bond election resolution, which the taxpayers overwhelmingly approved in July. The Brashear administration also issued $200,000 worth of bonds for asphalt street paving, besides spending the $250,000 authorized for road building during 1897.

Houston's municipal securities consistently were sold at a premium to bond dealers from the Midwest. However, the city's bonded indebtedness, which reached $2,500,000 in 1899, had not been offset since 1894 by increments in property assessments. Consequently, interest payments consumed a growing percentage of the city's total tax revenues. (See Table 5.) Houston officials were cognizant of the hardships suffered by property owners during the depression and the nationwide movement to tap the wealth of corporations, especially those enjoying special governmental privileges. Rather than increasing the burdens on real estate, public officers were encouraged to place new taxes on franchised utilities.

In 1899, a primary source of influence in the Brashear administration's decision to tax the franchises of urban service companies and railroads entering the city came from the U. S. Supreme Court. Two years before, in the Adams Express case, the high bench deliberated as a panel of economic experts on the meaning of "value". Involving a Fourteenth Amendment controversy similar to the rate regulation cases, the Court had to determine whether Ohio's tax on such intangibles as
franchises and good will was a valid levy or an unequal and arbitrary confiscation of corporate property. An 1893 statute directed state assessors to calculate the property value of communication companies on the basis of the market value of their capital stock and securities. For example, by using this "unit rule" of assessment instead of taxing only physical equipment, the value of the Adams company jumped from $50,000 to $500,000. Attorneys for the firm denied that the large difference represented actual value as opposed to stock speculators' predictions of corporate success.

In a 5-4 decision, the Supreme Court upheld the Ohio statute. Chief Justice Melville W. Fuller agreed that a unit rule of assessment measured "use and management" of company property, not just ownership. The market value of corporate securities, Fuller believed, was a good indication of a firm's actual value. To the court majority, franchises, managerial skill and other intangibles directly enhanced the worth of company property. As Justice Brewer explained in a rehearing opinion, property in a "complex civilization" consisted of anything that had currency in the market place. The ruling of the Court reflected a willingness to accommodate economic change, which had created many new forms of wealth as the nation was transformed from an agricultural to an industrial society.

In September 1899, the Supreme Court's approval of the unit rule provided Houston's assessor-collector, Julius Hirsch, with a method of levying new taxes on local utility company franchises. Admitting that any particular assessment was arbitrary, Hirsch felt legally bound by state law to exempt no "property" from the tax rolls. Every franchised company, whose properties were now revalued at between $250,000 and $500,000, questioned the validity of Hirsch's levies before the
board of appraisement. Corporation attorneys threatened protracted and expensive court challenges to prevent the municipality from adding the value of local franchises to their companies' tax burden. City attorney Stewart, however, informed the board of the Adams Express decision and argued that the city's use of the unit rule would ultimately be sustained. While board members refused to speak to the legality of the new assessments, they accepted the companies' offer to pay the tax increase if each was reassessed at $250,000. The city immediately gained $34,000 in additional revenues besides establishing an important precedent. 69

The judiciary helped widen the tax liability of franchised corporations, but it also cut off Houston's major source of special tax revenues, street paving and sewer assessments. After 1895, the city's bonded debt grew rapidly because of the Texas supreme court's turnabout in the Higgins case. This ruling exempted homesteads from special tax liens and created uncertainty about many other related issues of continuing importance. Revenue from the street railway company, for instance, was especially crucial to the city's road building program. 70 Changing attitudes among bench and bar, however, offered the transit firm hope that the entire special tax method would be declared unconstitutional. The electric traction company as well as some property owners refused to pay their paving certificates in order to force the holder of these tax bills, contractor Richard Storrie, into the courts.

In June 1898, the state supreme court ruled on Storrie's suit to foreclose a lien against the Houston City Railway Company for $20,000 worth of paving certificates. The district and civil appeals courts had upheld the contractor's tax claim but they disagreed about the origins of the company's liability. 71 The high bench agreed with the district judge in finding the city's power to tax the company flowed
from state legislative authority which had been delegated in municipal charter provisions. Justice Thomas J. Brown reversed the appeals court's ruling that the railway's liability stemmed from franchise stipulations. These conclusions allowed Brown to deny the transit firm's contention that additional paving burdens contained in city charter amendments impaired the railway's earlier mortgage contract obligations. The authority of the state over corporations, the Justice asserted, could be continuously exercised in the public interest.\(^72\)

Five months later, the constitutionality of special assessment taxation was confirmed again by a civil appeals court. Judge H. Clay Pleasants overruled every point in a long list of objections raised by Joseph C. Hutchison, an influential corporate attorney and a former U. S. Congressman.\(^73\) The test case on the validity of paving assessments levied against the lawyer's dairy farm resulted in a restatement of Texas decisions, which held that the determination of special benefits was a legislative, not a judicial question. Pleasants argued that neither the state nor national constitution directed the judiciary to review the apportionment of improvement costs in order to insure due process of law. To require a judicial hearing before each assessment was levied, Pleasants added, would essentially deprive cities from using a legitimate tax power.\(^74\)

Less than a month later, the U. S. Supreme Court reached different conclusions. Village of Norwood v. Baker seemed to reverse a long tradition of judicial self-restraint in special assessment controversies. Justice Harlan, speaking for 6 members of the bench, explained that the bench's intervention was vital for the "protection of private property against the arbitrary action of government."\(^75\) The provocative case began when the Ohio town condemned a strip of land through
Baker’s property to connect 2 dead end streets and paid him $2000 compensation.

Using the front foot rule to apportion the costs of the land and the proceedings against abutting owners, Norwood levied a $2218 assessment on Baker. He obtained an injunction in a U. S. Circuit Court to restrain the town from collecting the tax and thereby violating his state and national rights.

While a front foot rule was theoretically valid, Harlan announced, Baker had been assessed in "substantial excess" of the accruing benefits. This excess amount of a "material character" was a taking of property without just compensation. The justice believed equity relief was justified because the taxing method excluded consideration of special benefit. Specifically denying that the ruling conflicted with precedent, Harlan also stated that Norwood could still levy a new assessment. Nevertheless, Justice Brewer, in dissent, correctly observed that the effect of the decision was to shift the burden of proof of special assessment legality from taxpayers to cities and legislatures. Noting that the road improvements could appreciate Baker’s property 10 times the amount taxes, Brown felt that the task of balancing costs against benefits should be left solely to the legislative branch. 76

In 1901, Brewer’s traditional viewpoint won acceptance among 3 members of the Norwood majority and the Court drew back to the status quo ante. The new 6 man majority limited Harlan’s ruling to the extent that the case became a unique departure from a consistent line of decisions. Yet, the short term impacts of the case were deeply felt across the urban landscape. 77 In June 1899, Texas’ highest bench, making the final judgement in Hutchison v. Storrie, interpreted Harlan’s opinion as overturning all relevant state and national precedents. Justice Brown gratefully embraced Norwood as a timely check and "just announcement of the superiority of a
constitutional guarantee over a rule of law established by the courts."  

The justice took an equally expansive and strained position towards the meaning of Houston's charter which carefully detailed procedures to remedy unfair assessments. It provided property owners with opportunities before improvement taxes were levied to seek redress from the city council as well as the district court for objections to "any such acts and proceedings". To Brown, the city's effort to combine administrative certainty with individual justice failed to permit review of the benefits accruing to land owners. By voiding the entire assessment, the Texas court acknowledged that Storrie would lose a substantial amount. "But the guarantee of the state and federal constitutions", Brown argued, "must not be subordinated to questions of finance nor sentiments of justice. Justice will best be preserved by upholding the limitations against the exercise of arbitrary power."  

In contrast to the nation's highest court, the Texas supreme court did not further clarify the boundaries imposed on legislative bodies to satisfy due process requirements. Over the next 20 years, confusion in the law continued as civil appeals courts slowly narrowed the Hutchison decision and even circumvented the Higgins case.  

In 1899, however, Texans generally accepted the state and the national judiciary's verdict that special assessments levied on real estate had been unconstitutional. Storrie, for example, was able to convince a jury that Houston should reimburse him because the taxing method had been defective from its conception. Mayor Brashear and the council also believed that the courts' conclusions warranted a refund to property owners who had paid special assessments. Although a complex of novel legal problems developed, the administration felt morally bound to begin paying back the $800,000 collected between 1883 and 1895.
Rapid change in the law of special assessments left only Houston's street railway company liable to the city for this form of taxation. The electric traction concern, however, devised a series of new tactics to avoid payment. The company's paving obligations were absorbing an increasing share of its total revenues as the city accelerated construction of costly asphalt roads. For a transit firm to subsidize street improvements, president Parlan added, was self-defeating because travelers were being provided with attractive transportation alternatives. In September 1899, the company announced that plans to build extensions would be discarded unless the city postponed collecting additional assessments. Residents along the proposed routes helped convince their aldermen to capitulate to the utility's demands for a 10 year deferral of payments. But Mayor Brashear vetoed the grant; he argued that any surrender to ultimatums would irreparably cripple Houston's ability to "exercise governmental functions." Brashear followed the city attorney's advice to institute a suit against the traction company for collection of unpaid assessment debts which accumulated to $130,000 by 1903. The mayor's aggressive posture towards franchised utility's tax and contract obligations reinforced his efforts to expand consumer services through employments of the police power. In December 1899, for instance, the council acted on Brashear's suggestion to require the street railway to issue free transfers. The city's unique rail system of 12 belt lines which all joined a central loop around the business district forced many commuters to pay at least 4 fares daily. A liberal transfer policy, according to transit industry leaders, boosted total receipts by encouraging marginal users to become habitual riders. Nevertheless, Houston's firm opposed the reform and obtained a temporary restraining order against its implementation. Vice-president and general manager, H. F. MacGregor
believed that his company would be bankrupted from revenue losses and expensive capital outlays to adjust from a belt system to a cross town network. 86

MacGregor exaggerated the costs of giving free transfers. Yet, he correctly perceived that the financial viability of the transit firm had become dependent upon local governmental policy. Throughout 1900, Houston railway company executives tried to persuade the administration to accept a settlement which would permanently end special assessments. Arriving from Boston in February, Parlan offered to pay the city 2-1/2% of the corporation's gross income annually besides absorbing the entire cost of paving some streets to cancel outstanding debts. The council, however, was committed to assessment levies even though long delays in collecting the taxes seemed certain. In August and December, the company presented more attractive proposals but the aldermen remained unconvinced about changing existing arrangements. 87

In August 1900, rumors began to circulate that explained the traction manager's anxious pursuit of an accommodation which would terminate pending litigation with the local government. Parlan telegraphed Houston newspapers to deny stories that his firm was insolvent or had been sold to other Boston capitalists. MacGregor, however, admitted that financial reorganization was being discussed in order to decrease bond interest payments. But establishing credit, the officer also confessed, was almost impossible while the city persisted in suing the company for road paving debts. 88 Although the corporation's default on its bonds the following month was kept secret, the court action placing the mass transit concern into receivership in May 1901 quickly became public information. 89

The railway's second receivership supplied a convenient forum for conducting
a previously arranged transfer of ownership rather than providing a haven for re-
structuring an insolvent company. Since 1896, the firm had operated at a small
profit after meeting its $48,000 annual bond interest and refusing to pay its paving
assessments. But the corporation needed either a smaller bonded debt burden or a
large new infusion of funds to liquidate outstanding taxes and to finance capital
expenditures. The railway's owners chose to sell their interests to other Boston in-
vestors who were willing to provide the extra money. With former mayor Rice as
receiver, the court supervised sale proceeded smoothly to complete the transfer
within 7 months. By 1902, Houston's electric traction concern was reorganized
financially on a broader base which allowed greater managerial flexibility in opera-
ating and improving an already profitable enterprise.

During the street railway's 2 receiverships, the judiciary's role was limited
simply to prescribing the priority of claims against the corporation and to monitoring
the sale procedures. In both cases, essentially friendly litigants selected mutually
trusted receivers and other special court officers to conduct reorganizations within
a relatively brief period. This type of minimal judicial function contrasted with
similar mortgage foreclosure suits involving the bench in the long term supervision
of common carriers and public utilities. The court's intimate management of private
enterprises provoked alarmed censure from contemporaries who exposed numerous ex-
amples of abuses resulting from this curious legal process. Critics complained par-
ticularly about judges authorizing the issuance of "receiver certificates" which were
superior claims over other corporate liabilities, to finance repairs and new improve-
ments. Consequently, creditors were helpless to prevent their investments from
becoming worthless as accumulating amounts of certificates replaced pre-receiver
securities in the ordering of refund priorities. 92

The receivership of the Citizens' Electric Company illustrates the full extent to which the judiciary could become responsible for the administration of an urban service enterprise. Less than 3 months after the January 1898 suit in a U. S. District court began, the company's generating plant was leveled by a boiler explosion and fire. Rather than liquidate the few remaining assets among the firm's creditors, Judge Bryant approved a request of the receiver (and the bondholders) to issue $120,000 in certificates to finance the construction of a new facility. Two years later, the electric plant became operational at an approximate cost of $200,000, but the receivership continued 2 years longer. 93 During this period, Bryant granted petitions permitting the creation of an additional $150,000 worth of liabilities in certificates and receiver sanctioned debts. The national court, moreover, was involved in various managerial problems such as settling a strike of unionized linemen and instituting suit against the city for partial nonpayment of its street lighting bill.

In December 1901, the court's superintendence of the electric company's complete reconstruction ended with the sale of the firm to a creditor's representative. The buyer, the United Electric Securities Company, controlled almost all of the receiver related securities and two-thirds of the $150,000 in first mortgage bonds. In this instance, the judiciary's extended role created few inequities because a single large bondholder was able to finance the entire process. 94 More complex receiverships, especially railroad cases, provided greater opportunity for groups with superior claims to prolong suits in order to squeeze out other creditors. But for the reincorporated Houston Lighting and Power Company, the court acted as a guardian
while new facilities were built to capture the growing market for energy. Improved
generators were connected to a meter system to produce 24 hour services and con-
fidence in users who now paid only for the precise amounts of energy consumed. 95

The modernization of the electric company also eliminated a pressing need
for a city owned alternative. In comparison to the public sector, private enterprise
responded rapidly to supply demands for electrical energy. In November 1899,
Houstonians reconfirmed the 1897 referendum on public ownership after a recently
enacted state law restricted the suffrage in municipal bond elections from "taxpayers"
to "property taxpayers". 96 Nevertheless, the light commissioners, who were still
Rice appointees, refused to expedite the construction of a facility at the selected
site. The following January, Brashear demanded council action against the light
board to remove intransigent members. The mayor argued

that municipal ownership of public necessities
is a cure for the usual troubles arising with
private corporations...can no longer be ques-
tioned by reasonable, disinterested people.

The aldermen unanimously terminated the positions of the commissioners, which
permitted Brashear to select a more agreeable board. 97

The timing of the commissioner's removal reflected an astute political
sensitivity to the central importance that the city electric plant had assumed by
1900. The administration's actions coincided with the start of the campaign for
local offices. Municipal ownership clubs, for example, were organizing on a ward
level to promote candidates who professed the proper viewpoint. 98 To be sure,
traditional issues such as public works achievements, tax collection policy and
labor legislation continued to play a prominent role in the campaign. But no office
seeker denied support for the principles of public ownership even though post-
election events would demonstrate that some officials were fundamentally opposed to
this concept.

Brashear's opponent, former mayor John T. Browne (1892-1896) advocated
purchasing electric and water supply facilities if the existing "spoils or factional
system" of appointments was eliminated first. Browne, moreover, charged the
incumbent with pursuing a destructive course of harassing private corporations
operating within the city. Instead, Browne pledged to encourage capital into
Houston by giving fair and equal treatment to all businesses. Brashear, who une-
quivocally supported municipal ownership, counter-charged that the challenger was
a tool of the street railway interests. 99 By the end of March, the bitter duel
between the 2 candidates caused another breakdown of the local Democratic party.
Walking out after a dispute over the selection of primary poll judges, the Browne
faction shifted the crucial voting to the general elections. 100

The balloting on April 3rd was narrowly divided; Brashear edged Browne by
241 votes out of a record 8094 total. The results were equally close in the contests
for the city council but the challenger's slate won only 2 of the 12 positions in the
at-large election. 101 Brashear's dynamic leadership and especially his belief in
municipal ownership received the approval of the community. In May, when 5 ad-
ministration aldermen joined the 2 Browne supporters to form a solid opposition,
however, the mayor's victory at the polls appeared worthless. Decision-making
became impossible as Brashear vetoed council majority initiatives and they refused
to pass his programs. By January 1901, the stalemate in city government persuaded
the mayor to resign rather than face another year of frustration and disappointed
ambition. 102

The mayor's determination to construct a municipal electric plant was the pivotal issue in the deadlocked controversy between his faction and the council majority. The 7 anti-Brashear aldermen insisted that a $100,000 facility should not be built but they disagreed about the reasons. Only 2 aldermen confessed an ideological opposition to public sector competition against urban utility corporations. The other 5 maintained a position which theoretically supported municipal ownership and simultaneously found Brashear's plans unpractical. The council leader, Louis Sonnen, explained that the proposed small plant would be inadequate even for Houston's present street lighting needs. On the other hand, Brashear's defenders reasonably argued that most urban service facilities had developed organically in response to population growth and rising standards of living. Although Sonnen and other aldermen expressed their desire for a $250,000 lighting system, they never took any steps in this direction. To the contrary, the council abolished the light board shortly after the mayor's resignation. 103

Brashear's defeat in the electric plant dispute was a minor loss compared to the much larger body of durable achievements effected during his administration's 3 years in office. The mayor occupied a strategic position to set the community's future course as Houston moved through a major watershed in its growth from a town into a city. This significant transition period resulted partially from Brashear's decisive handling of problems which had been accumulating without solution under previous administrations' confused leadership. However, the emphasis given above to the role of decision-makers should not overshadow the importance of more impersonal forces and chance events. During the 1890's, the complex processes of
interdependence finally locked the city into the mainstream of regional and national developments. In large measure, Houston's quickened pace of adjustment was promoted by such increasingly pervasive influences as business cycles, social and political reform currents and technological innovations.

Two fortuitous occurrences deserve mention because they also altered the city's future in fundamental ways. In January 1901, the greatest petroleum reserves in the country were discovered near Houston. The ensuing rush for black gold brought a tremendous surge of people and capital into the community. The whole region, moreover, was supplied for the first time with a cheap source of energy. In Houston, for instance, the street railway and the electric companies quickly converted their generators from coal to oil, while city boosters invited other industries to take advantage of the inexpensive fuel. Four months earlier, a hurricane had ripped through the center of Galveston. The devastating storm convinced petroleum industry investors to locate their offices and refineries inland. Until the 1900's, Houston was unable to surpass its coastal rival, but the close conjunction of chance events determined the permanent winner.

Houston's rapid growth in size and wealth created opportunity for men in positions of power to shape the course of change. Mayor Brashear took the initiative in forging a new balance between private and public interests. Under his leadership, city government assumed an augmented level of responsibility for the community's welfare. The functions and scope of the public sector were expanded significantly in order to achieve more direct control over the environment and the private enterprises which supplied essential services. By 1901, the mayor's innovative uses of power and expenditures of money caused a political crisis. Re-
trenchment and restoration of the council's authority became the watchwords of his opponents. But the momentum built into the enlarged administrative machinery effectively resisted any sharp curtailment in public commitment to enhancing municipal services. 106

City governments' novel interventions into the private sector were frequently challenged in the courts as violations of constitutionally protected rights. These controversies gave the judicial a central role in adjusting relations and redefining the law to modernize its usefulness in an urban-industrial society. The bench generally legitimized legislative exertions of authority over private interests; "quasi-public" corporations especially were brought within the widening scope of police power controls. In the process of settling disputes, the courts continued to expand their review powers in order to maintain the judiciary's traditional function as the final interpreter of the Constitution. Whether the bench's attitudes during the 1890's are labeled conservative or radical, its responses paralleled the closer management of the economy's social impacts by local and state government. 107
THE COMMISSION GOVERNMENT
MOVEMENT, 1900-1906

The rise of big city governments alarmed contemporaries throughout the
nineteenth century. Reformers attempted to cure such chronic municipal ills as
corruption, fiscal extravagance and bossism with a variety of remedies. Promising
rearrangements of public and political institutions mixed with independent party
movements which occasionally ousted incumbent administrations. Americans'
traditional vacillation between law and moral uplift contributed to a widespread
application of a new solution, the commission. By the mid-1890's, small boards of
experts as well as many other experiments in improving troublesome municipal depart-
ments had been tested and evaluated.¹ Experience pointed urbanites towards
valuable conclusions about the best means to enhance public services at least
expense. Yet each city was unique and provincial bias often clouded a community's
perception.

Rapid urbanization frequently provoked feelings of bewilderment and impo-
tence among local leaders. To them, unaccountable expansions in the public
sector proved the inadequacy of institutionalized restraints and a need to elect more
competent officials. In 1901, for example, influential Houstonians reacted to their
city's enlarging administrative machinery and expenditures by forcing an able mayor,
Samuel H. Brashear, out of office.² A sense of political crisis continued to permeate
municipal affairs until a commission form of government was instituted during 1905.
A few precedents existed for the fusion of executive and legislative functions but only
in cities where unusual or emergency situations prevailed.³ The origins of Houston's
radical departure from American constitutional theory, which held the separation of
powers to be an essential ingredient of democracy, deserves close attention. An analysis of the role of utility corporations in effecting this political innovation, moreover, provides insight into private sector responses to new levels of public control.

Brashear's opposition gained strength mainly from aldermen who believed they had lost their grip on the levers of power. The council majority's successful campaign against Brashear's electric plant scheme did not dispel fears that the mayor wielded tyrannical authority. After the special March election of mayor John Woolford, who had been an aldermanic supporter of the administration, city officials and taxpayers agreed about long term allocation priorities. In 1901, the issuance of the largest amount of bonds since the Reconstruction period reflected a community consensus on improvement goals. However, the local legislature's struggle with the executive for control of current expenditures and appointments continued unabated. In November, some aldermen directly confronted Woolford with an impeachment resolution but the mayor rebuffed the threat.

Elected officials' paradoxical positions towards immediate administrative decisions and planning priorities helps explain the basis of their controversy. By the early 1900's, the municipal corporation had become a big business. With annual budgetary appropriations of approximately $500,000, besides spending large amounts for permanent improvements, the city's influence in the local economy was substantial. (See Table 5.) Far more important to most citizens was the level and quality of services provided to their neighborhoods and places of work. Houstonians' well being and property values were dependent on such public sector operations as schools, police and fire protection, street lighting, sewer systems and
garbage disposal. One of Brashear's major accomplishments had been to extend significantly these services, which were increasingly regarded as necessities, more widely throughout all sections of the city. Each alderman, moreover, carefully guarded the interests of his ward in the distribution of funds and personnel. 7

Houston administrators' abilities to expand local government's involvements in the community's welfare, however, were greater than their commensurate skills in retarding or reversing these patterns. As the bureaucratic machinery grew larger, the location and workings of its control mechanisms seemed to become more and more elusive. Once a particular level of service had been established, subsequent cutbacks to achieve fiscal savings were either unacceptable to all concerned or inequitable to affected wards and their aldermen. Consequently, retrenchment objectives usually failed even though the council made earnest efforts. During 1900 and 1901, the resulting frustrations were directed mainly against the mayors. 8 But as the April 1902 elections approached, every official was subjected to angry denunciation for incompetence and corruption.

The Democratic primary campaign exposed Houstonian's perceptions about urban government and the dynamics of local leadership. Nationally prominent citizens intervened to influence the outcome. In January, Oran T. Holt, a former Southern Pacific Railroad attorney and frequent delegate to national Democratic conventions, announced his candidacy for mayor. 9 A fellow member of the legal profession, John Kirby, and his lieutenants managed the campaign. Kirby, who had been the receiver of the city's street railway, was now the head of the state's biggest oil and timber land corporation. The charming organizer of Eastern money and Texas resources was an archetype of the progressive businessman and a major
promoter of Houston's economic dominance over the region. However, the success of his financially unstable venture depended upon the continuing confidence of East Coast capitalists in the project. Kirby probably entered the local political arena to end the disorder and uncertainty in city government.

Kirby and Holt personally selected an aldermanic ticket which was composed of a typical group of skilled workers and small proprietors, but only one incumbent councilman. The regular local party leaders' first mayoral candidate, district judge W. H. Wilson, dropped out a day after Holt entered the race. In February, a former city attorney John S. Steward agreed to head a ticket including the eight other councilmen who were seeking re-election. The Holt organization and both principal newspapers characterized the contest as a small scale equivalent of Seth Low's recent battles against New York City's Tammany Hall. Rather than discuss institutional or organizational deficiencies arising from rapid expansions in public sector responsibilities, the dailies conceptualized current problems in terms of officials' political crimes. The Brashear-Rice-Steward "ring" represented the forces of graft, fiscal scandal and moral degradation, while Holt personified the honest, civic-minded businessman. Steward was especially criticized for helping to give away utility franchises and failing to prosecute rich delinquent taxpayers.

By April, the well orchestrated Holt campaign had persuaded two out of every three voters to repudiate the men who had been governing the city; the second ward alone re-elected its aldermen. Most citizens apparently agreed with the journalists' analysis that good men would restore economy and efficiency in municipal administration. Significantly, Houstonians believed that attorneys, who were familiar with big business, possessed the best qualifications to manage
their local government. Legal professionals such as Kirby, Holt and the new mayor's successor, replaced the mercantilist as the preferred director of public policy. Parallel shifts were occurring in the leadership of utility companies. In large degree, these patterns accurately reflected the changing nature of public and private corporations' problems as each sector became firmly rooted in an urban economy. Financial and promotional difficulties decreased, while needs for organizational and legal adjustments grew.

One of Mayor Holt's first objectives was to install advanced business techniques of fiscal control. Since the 1860's, the modernization of urban government's accounting methods had been a major goal of middle class reformers across the country. The creation of municipal budgets, according to a recent student of local finance, marked the "epitome of purposeful restrictiveness". In 1889, Houston initiated annual budget practices which were updated in 1895 and placed under the direction of an auditor in 1898. Only four years later, however, an influential citizen complained that "the financial department has been shrouded in mystery... beyond even the faintest knowledge of those who pay taxes". The mayor and Kirby convinced the council to employ the nationally respected firm of Haskins and Sells, instead of cheaper local experts. Kirby promised to pay the New Yorkers' fees if even greater savings were not gained from the accountants' reforms. By February 1903, a unified system of fiscal checkreins was tied securely to the city's burgeoning bureaucracy.

Holt also applied business type approaches to settle municipal disputes with public utility companies. Brashear's more ideological policies had resulted in numerous suits between the city government and its franchised corporations. To
seek the court's arbitration largely reflected the public and private sectors' unwillingness to compromise. The judicial process promised to resolve these stalemates, but it was slow, expensive and ultimately unpredictable. Moreover, each sector's growing dependence on the other for the successful pursuit of their respective interests promoted renewed negotiations to reach mutually beneficial agreements. The efforts of the Holt administration and the transit firm to solve existing problems illustrate that the community had the most to gain from a quick termination of litigation.

When the new public officials entered their offices during April 1902, three cases were pending in state district courts between the city and the street railway. In September 1899, the municipal corporation had initiated the first suit to force the electric railway to pay its special assessment taxes. Four months later, the transit concern had retaliated by securing a temporary injunction against enforcement of the free transfer ordinance. In January 1901, the company had begun another court action to obtain a writ of mandamus which would order the city to include the firm in any refund for paving assessments levied before 1895. These legal disputes encouraged railway managers to ignore subsequent regulations that required the installation of car vestibules to protect motormen from the elements and the use of grooved rails to prevent street pavement from rapid deterioration. Current issues such as the company's extension policies, street repair duties and franchise tax payments further complicated the already complex controversy.

The almost complete changeover of elected officials as well as transit company officers created opportunities for both sides to reappraise the situation with a fresh perspective. The new owners of the Houston Electric Railway Company
anxiously desired to renovate, improve and expand their investment. To insure an efficient operation, for example, they placed managerial responsibilities into the hands of the innovative engineering and traction securities firm of Stone and Webster. By specializing in street railway administration and technology, the Boston consultants brought a new level of expertise to the industry. The railway's investors also employed Houston's most respected corporation law partnership, Baker, Botts, Baker and Lovett, to negotiate with the city council. The company was prepared to make several major concessions because pending litigation effectively precluded additional route extension grants and might result in a franchise forfeiture. Rapid transit officers seemed to acknowledge, moreover, that a cooperative spirit was essential for establishing certainty and stability in public utility relationships with local government.

The Holt administration also was committed to a policy of compromise. Fulfillment of its campaign pledges depended on achieving settlements with the utilities outside of the courtroom. Holt's platform, for example, promised to secure substantial compensations from all franchisees if municipal ownership proved impractical. Another important goal was the implementation of a crosstown transfer system. Since the city lacked specific authority to enforce such a regulation, neither Brashear nor Holt contested the injunction. The administration sought to correct this and other police power deficiencies through charter amendments, but direct negotiations offered a shorter route to success.

In May 1902, holdover alderman Louis E. Miller, introduced an omnibus compromise proposal written by transit counsel R. S. Lovett. The company agreed to pay some outstanding paving taxes which amounted to over $120,000, issue free
transfers, install vestibules and construct additional routes. In exchange, the railway wanted a 10 year franchise extension to 1933, and the privilege of contesting all special assessment liability except for the space between the tracks. After two months of deliberation, a special council committee reported an amended version which also provided for a 1% gross income tax, extra paving burdens for reinforced railway foundations, and a stiff franchise forfeiture clause for any breach of the ordinance-contract.

City attorney Thomas H. Stone presented the most cogent criticisms of the settlement plan. In a carefully reasoned report, Stone warned the aldermen that the proposal was "pregnant with future disputes." The city attorney pointed out, for example, that the income tax proviso included neither permission to inspect company accounts nor enough flexibility to levy new forms of taxation. Considering the package deal a "strictly business proposition", he advised further bartering to close existing loopholes. On the other hand, Lovett strongly objected to the sweeping forfeiture clause but he would accept similar conditions on the 10 year extension privileges. In a close 6-5 vote, the council decided to reject the entire plan and to renew the court battle on the company's paving liability.

Nevertheless, both parties continued negotiations to find a satisfactory compromise formula. In August, however, the intervention of groups ranging from the Labor Council to the Manufacturer's Association and legal fraternity delayed a settlement. The organizations' opposed franchise grants without the prior approval of the voters. Alderman Edgar Watkins, who was also an attorney, supported the appeals for a referendum but most of his colleagues refused to add new complications. After a two month respite, the company again initiated discussions by
conceding special tax liability for most future paving obligations, besides $60,000 worth of unpaid assessments. In December, an agreement was finally reached that paid the municipal treasury over $80,000 and insured quick action on a free transfer policy and other reform measures.\textsuperscript{27}

The compromise marked a major victory for the public welfare. The terms of the settlement were neither innovative nor extraordinary compared to mass transit franchises elsewhere.\textsuperscript{28} Yet, large groups of Houstonians such as commuters and taxpayers received substantial benefits. Consider that during each month of 1903, about 175,000 riders or 25\% of the total enjoyed free transfer privileges instead of paying double fares. The reforms produced no significant change in the railway's rate of growth, while threats to its franchises and credit status were eliminated.\textsuperscript{29}

Moreover, the cooperative spirit displayed between the Hold administration and traction officials helped establish similar patterns in local government's relationships with other urban utilities. In January 1903, the gas company voluntarily lowered rates after the council sent the firm informal requests. A month later, the aldermen accepted an electric power company proposal to scale the city's $85,000 worth of unpaid bills by one third and to reduce future charges by an equal percentage.\textsuperscript{30}

The detente effected between the public authority and these private companies reflected a general recognition that the established firms would remain Houston's exclusive suppliers of their respective essential services. Except for the municipal ownership alternative, competition against the existing utility companies was highly improbable. By the early 1900's, entrepreneurial and investor opportunities had shifted mainly to exploiting completely undeveloped markets and to
purchasing going concerns. From 1900-1906, the council received petitions for franchises only from promoters of interurban electric railroads and oil pipelines.\textsuperscript{31} During the same period, outside capitalists bought the independent telephone company and the gas works, or two of the three utility ventures still under local control at the turn of the century.\textsuperscript{32}

The single exception to the transfer of local ownership, the Water Company, also maintained a unique posture towards municipal government. The development of their irreconcilable dispute illustrates the enlarging role of state institutions in arbitrating intransigent urban problems. An estrangement of waterworks executives from city officials had grown steadily after Brashear decided in April 1898, to pay only half of the company's bills. After two years, the firm retaliated by refusing to lay additional water mains and maneuvering to obtain a new franchise-contract which would end obligations to provide high pressure during fires.\textsuperscript{33} In the following year, the company officers persuaded a council majority to approve the grant. But in July 1901, the complete destruction of the city hall-market place because of inadequate water pressure convinced mayor Woolford to veto any alteration of the original franchise. However, the mayor also opposed plans to sue the utility for breach of contract even through public protests reversed most aldermen's pro-company positions.\textsuperscript{34}

The Holt ticket's principal campaign pledge was to own and operate a public waterworks.\textsuperscript{35} In April 1902, the new administration immediately began investigations into the optimal legal and economic strategy to accomplish this goal. Before a special committee concluded its studies, the utility initiated suit in the state district court for a writ of mandamus which would order the city to pay its debts
of $56,000. 36 During the next four months, the administration outlined a policy aimed at breaking the deadlock. The aldermen agreed that the best course was to exercise the municipality's option in the 1878 contract to buy the waterworks in 1903. To independently build a separate facility, the study committee believed, would entail a long and troublesome legal controversy while the private firm allowed its services to deteriorate. In September, the council sent the company official notice of an intention to purchase it and entered a countersuit for $116,000 in damages from the city hall fire. 37

Funding the $700,000 waterworks project plus needed improvements, the council realized, posed a major roadblock. Since the bonded indebtedness already equaled the maximum amount permissible, the aldermen recommended that the city's three mile-square boundaries be expanded to increase the tax base. In October, a special committee was empowered to draft this and other reform ideas into a new municipal charter. 38 Annexation proposals had been circulating without success for the past few years. In 1900, for instance, the Post complained

Selfishness, mossbackism, want of local pride, absence of ambition and metropolitan spirit, reinforced by political and moral cowardice in the legislature, have prevented the success of every effort that has been made to extend our limits and compel thousands who have used the city to contribute somewhat to its support and prestige. 39

Two years later, influential organizations such as the Business League and Manufacturer's Association actively supported the charter revision committee's modest plan to create a larger, five mile square city. On the other hand, suburbanites argued that their outlying neighborhoods would be taxed for the exclusive
benefit of the central districts. They pointed to the lack of public services within Houston's peripheral areas as proof of their contentions. The reform charter also threatened to raise divisive opposition from many intra-city interests. The draft's authors disclaimed originality and innovation; they drew heavily from the National Municipal League's model charter. Yet, the Post believed the proposal marked a "radical departure" from previous governmental forms and powers in Houston.

Besides the annexation provision, the new charter embodied four basic reform objectives. "Home rule" was pursued through extensive additions to the municipality's authority over such concerns as utility rates, public welfare and educational institutions, and city employee pensions. Primary elections came under systematic regulations to safeguard the ballot box against fraud. A third group of amendments were designed to separate legislative from executive functions more completely. A concentration of administrative power and responsibility in the mayor's office was accomplished mainly by transforming elective into appointive positions. 41

By February 1903, a concerted opposition had been organized to contest the annexation and the appointive provisos in the state legislature. The leader of this lobby effort was Joseph C. Hutchison, the legal counsel and a director of the waterworks. Two months earlier, the council had accepted the company's offer to allow a 3 man board determine the sale price of the utility. As board members were being chosen, however, Hutchison and alderman Miller campaigned in Austin to defeat the Holt administration's plan for financing the purchase. To be sure, outlying property owners and the mayor's political foes also protested against the amendments, but the waterworks mounted the most serious challenge to the charter. In March, the
legislature compromised the city boundary at 4 miles square and eliminated the
appointive provisions. Nevertheless, the final act represented a major victory for
Houston reformers. 42

Houstonian's resort to state level arbitration of their controversies became
a common reaction of Texas urbanites after the late 1890's. During that decade,
the state supreme court had been highly instrumental in shifting the locus of public
authority from city government to the legislature. In the process, the jurisdiction
of the bench also had expanded significantly in local disputes between public and
private interests. Consequently, municipal reformers found advantage in framing
general statutes to achieve their goals. In 1903, for example, Texas street railways
were required to issue half-fare tickets to children and students. 43 The legislature's
delegation of new police power controls to Houston over utility company rates indi-
cates, however, that local autonomy remained a viable tradition in a largely rural,
geographically diverse state. 44

When the new charter took effect in July, the Holt administration would be
provided with the legal tools needed for the fulfillment of all its platform promises
except municipal ownership of the waterworks. Although the city had sued the
enterprise for breach of contract, the utility's exclusive franchise rights were not
contested. The council had purposely limited the court action in order to weaken
the company's position without closing opportunities for a negotiated purchase
settlement. 45 During April and May, the appraisement board heard testimony on
the worth of the private corporation. Based on current costs of reproduction, minus
actual depreciation, the June report placed a $1.1 million price tag on the utility.
This amount was $400,000 less than company figures but a large portion of the
difference resulted from the board's refusal to include "going concern" value.\textsuperscript{46}

To the aldermen, the report's conclusion substantially overestimated the waterwork's true worth. Instead, they offered $750,000 which company president Thomas H. Scanlan promptly declined. The failure of the administration's first strategy set its contingency plan into motion. Resolutions were passed to hold an $800,000 bond election for the construction of a new facility and to begin judicial proceedings for the forfeiture of the utility's franchises.\textsuperscript{47} In August, however, about 600 voting taxpayers defeated the bond issue by a 5 to 1 margin. Commentators pointed to the common belief that a separate municipal plant would cost at least double the amount projected. Rather than a repudiation of public ownership, they reasoned, the election affirmed Houstonians' greater preference for street and drainage improvements. The council seems to have anticipated the outcome; an ordinance authorizing a large bond issue for road paving was immediately introduced and passed.\textsuperscript{48}

The taxpayers' and their representatives lack of enthusiasm for building a completely new water supply reflected the community's basic satisfaction with the company's performance. Except during fires when the polluted bayou reservoir was tapped to help increase hydrant pressure levels, consumers received ample amounts of pure artesian water. Moreover, the utility and some fire department officials maintained that the 70 mile long distributive network dictated a change from a direct pressure system to the use of steamers.\textsuperscript{49} After more than a year of negotiations, the Holt administration essentially returned the controversy to the status quo. The city's insistence on the company's full compliance with outmoded contract stipulations and equally unrealistic posture towards the economics of municipal
ownership narrowed public policy alternatives to a single course. The council could only follow through the legal steps leading to a repeal of the established firm's franchises.

From August to November 1903, the administration prepared for a final resolution of the dispute in the state courts. The company's privileges in the streets were repealed, while its use of bayou water was prohibited. The council also filed suit for a judicial forfeiture of the utility's franchises, initiated hearings on rates and solicited bids from outside investors who would assume the costly task of constructing another facility. 50 On November 3, however, the city received a sweeping injunction from a national district judge. Waterworks counsel Hutcheson had seized the opportunity presented by the anti-bayou ordinances to obtain national jurisdiction on an obligation of contract issue. The pleased attorney confessed delight about the city council's blunder which permitted removal of the controversy from the state arena to a more favorable judicial forum. 51

District judge Walter T. Burn's rulings on the preliminary court order gave neither side a predominant victory. In December 1903, Burns continued the injunction which prevented the city from enforcing any rate cuts or the franchise repeal ordinance. In addition, municipal authorities were ordered to stop pollutants from entering the bayou. Two months later, the jurist denied the company's contention that the franchise forfeiture dispute should be decided in a national court. This suit was remanded back to state jurisdiction. Moreover, the waterworks was ordered to end use of the bayou within 6 months. Judge Burns placed public health above the contestants' economic and political interests. 52 Although the basic stalemate remained unbroken, the court's arbitration arranged an interim settlement
that protected both parties' rights and promoted the community's welfare.\textsuperscript{53}

The contrast was virtually complete between local government's relations with the water company and the city's other public utilities. The Holt administration's reform goals were satisfactorily achieved through compromise solutions. In December 1903, for instance, every urban service enterprise accepted the council's decision to set consumer prices. The resulting regulations created public rate schedules and remedies for overcharged patrons, but current charges were unaltered.\textsuperscript{54} The predictable order long desired by utility industry spokesmen in their dealing with government officials now prevailed in Houston. Yet, consumers' immediate interests also were advanced in the process of institutionalizing these close bonds.\textsuperscript{55}

However, one novel public utility regulation restricted the black community's freedoms and severely strained the cooperative partnership between government and private enterprise. In July 1903, alderman Robert L. Jones introduced a Jim Crow ordinance modeled on New Orleans' year old act. Transit motormen were empowered and required to enforce a segregation of whites and blacks into separately designated compartments on each car. The proposal touched off several violent incidents as Negroes refused to vacate their seats for white women. By the end of August, racial tension throughout the city threatened to erupt into riot.\textsuperscript{56}

The councilmen were wholly responsible for the Jim Crow proposal and its harmful repercussions. Neither citizen nor traction company petitions initiated the move towards segregated streetcars. Many blacks were workers who depended on public transportation for commuter services. Nevertheless, most of their leaders promised to boycott the transit company unless entirely separate cars with Negro
conductors were provided. The Labor Council and a few aldermen supported this solution but a council majority was determined to enact the original ordinance. The railway company's strong opposition to any form of racial segregation only delayed final passage until October. 57

The promised boycott of the mass transit system quickly developed into an effective protest. The railway lost 15% of its patrons to a makeshift hackney service which was organized by black churches and fraternal associations. Non-participating members were threatened with expulsion, while violence confronted those seen riding the streetcars. In November, Stone and Webster's local manager, H. K. Payne, complained bitterly about the company's loss of revenue and hinted that its tactics in dealing with the city government might change drastically. 58

But the utility's helplessness to amend the Jim Crow ordinance was shown the following March. The council refused even to consider Payne's proposal for a different system of segregating white and black riders. To local observers, the aldermen's visceral reactions amounted to "a remarkable display of the intensity of race prejudice [in Houston]." 59

Elected officials could impudently deny civil rights to one third of the community because blacks were completely disenfranchised. The local white primary rule of 1898 had been the first step towards excluding Negroes from political power; the 1903 state poll tax act completed the process. Between 1900-1904, Houston's registration rolls were reduced drastically from 76% to 32% of eligible voters. Politicians no longer needed to weight the concerns of blacks and poorer whites against other groups' interests in deciding public policy. 60

Suffrage restriction was one of several political responses that mirrored a
fundamental transformation in urban leadership. Since the Texas petroleum discoveries and the Galveston disaster, the accelerated influx of people and capital into Houston was having important impacts on older patterns of social perception. In 1901, for instance, a local commentator noticed that the city was "filled with strangers". Only a few years before, he continued, outsiders attracted curious attention, but now they seemed a normal part of daily interactions. Subtle adjustments as well as more obvious influences contributed to the emergence of a novel "metropolitan" perspective among Houston's traditional elites.

At base, according to a recent scholar, urbanization involved a "dynamics of conceptual change". Journalist Reme M. Johnson's views were representative of the broadened outlook on local issues and their relation to more national events. The powerful Democratic editor of the Post also was a prime mover in the Business League. Organized in 1895, the League became the central coordinating vehicle for promoting the city's economic growth. "Houston is no longer a town", Johnson asserted, "to be operated along lines that prevailed 10 or 20 years ago. It is a city now, the metropolis of a great state". Possessing an holistic image of urban development, the editor and like-minded men became increasingly intolerant of those with narrower viewpoints extending no further than their immediate surroundings. A growing divergence in the community's perceptions about the purposes of municipal government help explain many leaders' efforts to eliminate minority and parochial interests from the political process.

Elections frequently exposed most clearly the attitudes and workings of Houston's power structure. For example, the 1902 campaign can be characterized as a successful revolt against ward-centered politicians by the city's professional
and business elite. The Holt administration, however, only partially accomplished its endeavor to end what Johnson called "the pernicious influence of the striker and the heeler, the peanut politician and the boss....". Well intentioned businessmen who entered municipal office, the journalist also recognized, often became as partisan as the displaced boss.64 Thus, receipts from the 1903 bond issues were carefully divided on a ward basis. In a similar manner, a council report on the distribution of street lights led to an 100 lamp increase; the aldermen insisted on equalizing the proportion of public services in their districts.65

Elected officials' inability to divorce politics from the business of the municipal corporation largely shaped the configuration of the 1904 elections. The Holt administration's achievements were widely regarded as proof that good men established economy and efficiency in local government. Actually, current expenditures continued to exceed budgetary appropriations, but fiscal facts played a negligible role in the selection of candidates.66 Instead, the Holt forces joined with the discredited Brashear and Browne "rings" to name a relatively unknown railroad attorney, Andrew L. Jackson, for mayor. After 2 years in office, the reformers were willing to reconvile their differences with important politicians in order to prearrange certain victory at the polls.67

Alderman Miller's backers, organized labor and the Chroncile formed on opposing coalition. However, only tenuous bonds were forged between them because each objected to Jackson's mayoral bid for different reasons. The newspaper found little wrong with either the candidate or his promise to follow existing policy. The Post's competitor urged Miller's election mainly to protest against the unprincipled fusion strategy of the city's business leaders.68 Although Miller's
ambitions were not revealed, his connections with the waterworks and the transit company were undeniably close. Comprising a major issue throughout the primary contest, the alderman's record on public utility matters forced his supporters into uncomfortably defensive postures.69

Nevertheless, most labor union spokesmen campaigned diligently to elect Miller. They feared that Brashear's unexpected move into the camp of his former opponents signaled a concerted attempt to curtail organized workers' political power. With the number of interests represented by the electorate narrowed significantly, existing social conflicts among the remaining groups were sharply heightened. During the week before the March 5th primary, both sides agreed that the Miller-Jackson contest had developed into a test of strength between labor and business. Warning that workers would cast their votes as a unit, the Post appealed to the "heads of commercial, mercantile and financial houses and all their employees...[and] the professional men and their associates" to effect a similar consensus.70

The primary returns indicated that most voters favored a continuation of the present party and governmental leadership. Jackson accumulated a 10% lead over Miller, while 5 of the 8 aldermen seeking re-election were victorious. The 3 defeated incumbants were replaced by the men they had beaten 2 years earlier. In addition, the city's utility companies suffered a double reduction of influence within the council from the loss of their able spokesmen and the voters' overwhelming approval of an institutional reform proposition which added a referendum procedure to all franchise grants.71 Organized workers' supporters among elected officials also were diminished as political predominance gravitated further towards a
relatively small group of civic activists.

A much more serious challenge to the strength and integrity of Houston's labor movement began developing shortly after the outcome of the primary was known. The electric traction company fired 21 unionized conductors for allegedly giving away unauthorized transfers. Union officials argued that the enterprise was plotting to destroy their organization. During April and May the company repeatedly denied the truth of this allegation, but it also started importing trained strike breakers. Confronted with a sharp decline in revenues from the black's boycott, transfers and half-fares for school children as well as rising material prices and no possibility of a rate increase, the transit firm decided to cut labor costs. On June 1, 1904, the company's preparations were completed for a final battle with the union whose local president was provocatively discharged.72

The Labor Council endorsed the resulting strike, collected funds for the creation of an alternative omnibus service, helped prevent violence and attempted to mediate the dispute. At first, the community also supported the union cause by refusing to ride on the heavily guarded streetcars. However, commuter needs combined with negative reactions against several dynamitings of company property to erode the boycott's effectiveness. Unlike the similar confrontation in 1898, a close identity of interest between skilled workers and other occupational groups no longer prevailed, while popular antipathy towards the mass transit firm had largely dissipated. By the end of August, even the Labor Council began searching for an honorable way to terminate its costly and increasingly divisive position on the strike.73

After another month of declining support for the boycott, the Labor Council
was willing to admit defeat. Assuming the railway union's debts, the Council officially withdrew its strike endorsement and ended the bitter contest. Consequently, Houston's skilled workers struggled for the next 4-6 years to recover from the burdens of failure, according to a recent assessment. Organized labor's economic and political eclipse during 1904, allowed the Business League to enjoy a growing reputation as the representative voice of the entire community. The League's virtually undisputed assertion to know best what the city needed, which was a commission form of government, seriously undermined the legitimacy of existing municipal institutions.

The city commission idea had been circulating in Houston and other Texas urban centers for a long period. As early as 1887, for example, some opponents of mayor Dan C. Smith's debt settlement plan urged the adoption of an appointive board modeled after Memphis' 1880 bankruptcy reorganization. Houston's successful financial recovery quenched enthusiasm for radical experiments for over a decade, but the patterns set in neighboring cities revived interest. In 1899, Dallas inaugurated a hybrid system of municipal government which created a supervisory board with extensive administrative duties and final authority over council actions on finance and franchises. In addition to the mayor, the board was composed of a fire and a police commissioner, who were appointed by the governor.

A year later, Galveston businessmen spearheaded a drive to initiate a full-fledged commission government in the hurricane stricken city. A local observer recalled that earlier institutional reforms had failed because "the city's greatest trouble... [was the] boards of aldermen, their political juggling, their caucuses and speechmaking". In the weeks following the destructive storm, crisis in public
finance stimulated proposals for placing the municipal corporation into a receiver-
ship similar to the Memphis example. Members of the elite Deepwater Committee,
a small self-perpetuating group of wealthy merchant-entrepreneurs, translated the
attractive idea into a city charter which the legislature approved in March 1901. 79
Two men were elected at-large and three others were appointed by the governor to
serve on a council-like board with each exercising a single vote; none possessed a
veto power. A complete merger of legislative and executive functions was accom-
plished by making each member the head of a different administrative department.
The elimination of political factionalism was of equal importance to civic leaders
as the creation of an efficient, centralized system of local government. 80

In Houston, the Dallas and Galveston experiments became models of the
municipal ideal, to contrast against perceived failures at home. To city boosters
like Johnson, who conceptualized urban development in terms of a broad metro-
politan vision, the commission's appointive feature seemed to solve most problems.
The editor believed the impenetrable apathy of the "decent people" fundamentally
causd governmental corruption and extravagance. The selection of "seasoned
businessmen" by the governor, Johnson argued, was the only mechanism that
supplied a "check or restraint or veto power in some form removed from immediate
responsibility to corrupt voters and yet responsive to decent public opinion." 81
During 1902-1903, the journalist strongly supported Mayor Holt's election and
administration, but at the same time, he continued to call for an end to local self-
government. "For the sake of economy and efficiency", an editorial stated,

it [the Post] will be quite willing to waive
some of its privileges now enjoyed, for
between privilege which brings abuse and
a limited liberty which brings universal success and comfort, the wiseman will not hesitate to choose that which makes for his prosperity and comfort. \(^{82}\)

To some Galvestonians, however, even a partial abrogation of the electoral process constituted a denial of basic democratic rights. Throughout the second half of the nineteenth century, the institution of appointive municipal boards had frequently provoked constitutional controversies over whether or not an inherent right to local self-government existed. By the early 1900's, almost all jurisdictions and legal commentators had decided that the state was completely responsible for its subdivisions' origins, forms and powers. \(^{83}\) Yet, in March 1903, Texas' highest appellate court for criminal matters voided the appointive provisions in the Galveston charter. Traditions of local autonomy would be sustained, the jurists held, until constitutional amendment explicitly empowered the legislature to deprive urbanites of their right to vote for city officials. \(^{84}\) The state supreme court was the civil jurisdiction analogue to the criminal appeals bench. It reached an opposite conclusion three months later, but acknowledged that the question was a "dead letter". Thus, the election of public officials was fully restored in Galveston and would become necessarily an integral part of any other Texas city's commission government plan. \(^{85}\)

Houston advocates of the institutional reform easily absorbed and incorporated the impact of the judicial decisions into their arguments. In March 1904, for example, the Post reflected on the recent victory at the polls of the entire original board of "pre-eminent men" in Galveston. The newspaper reasoned that the expanded electoral provisions in the coastal city's charter promoted the attainment of an "ideal system" of commission government because public confidence in its officials was
strengthened through the act of voting. Even though a "capable businessman", Jackson, also was successful in winning the highest office under Houston's reform charter, sentiment for radical change continued to grow.

In May, the publication of a mayor's report on the city's financial condition raised new doubts about the ability of good men to effect economy and efficiency in local government. The statement revealed that the Holt administration had not reduced the approximately $300,000 floating debt, while an additional deficit of $150,000 was predicted for the current year. The council responded by ordering city attorney Stone to file suit against delinquent taxpayers, who collectively owed about $450,000. Almost all of these dues had accumulated during Holt's term, since Brashear's vigorous prosecution policy had largely eliminated outstanding taxes owed to the municipal treasury. Moreover, the aldermen created a special study committee to frame charter amendments that would take advantage of recent court rulings on special assessments.

However, neither the Charter committee nor the city attorney followed the council's directives. Instead, in July, committee member John Z. Gaston introduced a resolution which called for a joint citizen-council group to investigate the feasibility of adopting a commission. In the first test of support for the reform, the aldermen defeated the proposal 7-5. Nevertheless, Gaston pledged to renew the question; he believed Houston's financial problems were caused by the system, not the individuals in charge of it. If politics within government were eliminated, the councilman asserted, then a business administration quickly would liquidate the city's debts.

At the end of July, Stone, who also was a League member, admitted that
he had filed no tax suits during the present administration. According to the attorney, a single judicial setback would probably lead to the defeat of all the city's claims. The council rebuked Stone and again ordered him to take immediate action. Demanding more "horse sense" and less theory, the finance committee charged that only the rich were avoiding payment of their taxes by hiding behind legal technicalities. The alderman's accusations were based on solid fact. Consider that in September, a group of 4 wealthy landowners attempted to persuade the council to accept 40% of the $29,000 assessed against their property for the previous two years as full payment. The petitioners contended that the difference represented illegal revaluation increases, but the council refused to change its decision to prosecute all tax delinquents.

The close interconnection between large taxpayers' resistance and budgetary deficits generated no alterations in commission government advocates' analysis of city problems. Confident that most voters supported their position, Gaston introduced a referendum resolution on the reform issue in October. During the following week, Houston's major newspapers and many prominent civic leaders campaigned to convince the public that their existing municipal institutions encouraged financially ruinous political manipulations. On the other hand, "a commission, freed from the local political environment, directly chargeable with the conduct of the city's affairs, would in a very short time be able to discharge the indebtedness, inaugurate needed improvements and give employment to double the number of labourers now utilized", Gaston stated. However, a narrow council majority rejected the resolution after various redistricting substitutes also failed to gain approval.

Council majority leader Halver M. Halveron explained his reasons for
opposing the commission idea. The alderman, who was also a small proprietor, feared that a municipal system with only five elected officials would squeeze out the little man and result in government by the rich. He emphasized that the city's administrators set spending levels and allocation priorities, not the institutional frameworks they worked in. Gaston's insinuation that the council had lost control over the public purse, Halverton pointed out, was contradicted by the reformer's voting record in favor of bond issues and other expenditures. Moreover, the majority leader disputed the validity of the frequent comparisons drawn between Galveston's efficiency and Houston's extravagance. Halverton stressed that the quality of services provided to the community was more important than strict economy.  

Nevertheless, many Houston opinion-makers were outraged at the defeat of the referendum proposal. Editor Johnson and Business League President Henry H. Dickinson immediately announced plans for the organization of a citizens' committee to take the issue directly to the state legislature. On November 2, the heads of all the city's central economic interest associations, except for the Labor Council, responded to the call for independent action.  

Halverton also attended the meeting and was apparently convinced to permit the voters to decide the commission government question. A week later, Gaston's resolution on whether or not Houston should be administered by an elected mayor and four at-large aldermen was resubmitted to the council and passed by a 9-2 vote.  

The reformers' successful tactics were greeted with little, if any, enthusiasm from the community. As the December election drew near, Johnson confessed that "so far as the Post can judge from appearance, the apathy of the people is almost
impenetrable". Similar predictions of general disinterest in the issue were fulfilled when only 2100 persons or about one third of the number registered participated in the referendum. Yet, the measure was approved by a sizeable margin. During the next 2 months, two significantly different city charters emerged, although both incorporated large sections of the 1903 municipal act without amendment. Gaston's special committee joined with twelve citizens, including 6 Business Leaguers to create the pro-commission government proposal. The council majority subsequently forged a highly modified version.

The work of the charter drafters centered on the organization of power and responsibility among the commissioners. The major innovation in the citizen's plan, which was composed mainly by Gaston, was the concentration of authority and responsibility in the mayor's office. In contrast to Galveston's government by committee, Houstonians gave their chief executive a veto over board actions and exclusive power over all municipal employees. Another novel feature in the citizens' draft was the provision for full time officers who would receive commensurately larger salaries. In addition, the reformers disregarded the common assumption that the commission system would begin after the current administration's term expired in April 1906. They specified that the charter would become immediately effective upon ratification.

In February 1905, many of the innovations in the plan submitted to the full council were restricted or amended to create a stronger balance of power between the mayor, the board and the community. Moreover, eight of the twelve aldermen insisted that they be allowed to complete their terms. Needs for the commissioners' consent curbed the mayor's authority to hire and fire city workers but the veto
proviso was retained. The council also added sections that dispersed power in order to protect the public from governmental abuses. For example, the commission lost control over school finance and primary elections, while elected officials were subjected to recall by 20% of the voters. 100

Unwilling to accept the council's modifications, the citizens' charter supporters shifted the battle to the state capital. Jackson, Johnson, Stone and H. B. Rice spearheaded the strong mayor plan's cause which was reinforced by a large group of fellow Business Leaguers. Against this formidable block of local luminaries, the seven aldermen who lobbied for their alternative proposal appeared to represent no one but themselves. Only the citizens' charter was reported out of committee to the legislature; final passage was quickly accomplished. 101

By the middle of March, the triumph of the Business League was complete, except for the election of the appropriate men to inaugurate the new system of government. 102 Initial speculation on the best choice for mayor soon narrowed to Stone and Rice. Both declined the opportunity but a petition campaign on Rice's behalf persuaded him to seek the important office. Since the former mayor's 1898 retirement from public service, he had become a director of the street railway company and a vice president of a national bank, a Kirby lumber concern, a brewery and a cotton processing firm. 103 Many League members, however, objected to Rice because of his various conflicts of interest and his active political life. The previously united organization divided into two factions as another member, A. Franklin Settig, announced his candidacy a week before the May 29th primary. 104

Although the breakdown of harmony among Houston businessmen revealed
some of their different preferences, the League's undisputed domination of city politics was far more important. In the decisively important contest for mayor, Settig's belated campaign merely concentrated on exposing the opponent's tainted career. Citizens were not offered a significantly different platform or analysis of public sector priorities. Representatives of alternative viewpoints and interests such as Miller and alderman Wharton Bates limited their efforts to winning secondary positions on the board. Against Rice's unified "commission ticket", however, independent candidates waged an uphill battle in an at-large election. A narrow majority of voters selected Rice and his entire slate to implement the commission charter. The victory marked the final step in the fulfillment of Business Leaguers' and other metropolitans' search for control over local politics and public policy.

The successful conclusion to three years of reform agitation simultaneously meant the beginning of a novel experiment in urban government. Unlike previous ventures into city administration by commission, Mayor Rice had to cope with neither natural calamity nor overwhelming economic problems. Although reformers had often voiced a rhetoric of imminent fiscal disaster, Houston commanded a solid credit position in the bond market. Moreover, spending and tax levels generally were equal to other urban places of comparable size. After the late '90's, civic leaders reversed their traditional acceptance of an expanding diversity of interests in the political process, but they maintained commitments to improving the quality of life throughout the community.

During 1905-1906, the Rice administration's labor and public utility policies illustrated the double edged nature of reform attitudes toward the promotion of the
general welfare. Among the commissioners’ first acts was the repeal of ordinances which provided economic protections for unskilled municipal workers and employees of public contractors. Equivalent union scale regulations for skilled mechanics also were revoked. "The labor question has been eliminated...", a pro-commission publicist reported, "[t]he only point insisted on is that the laborer shall understand that the city of Houston comes first and his organization second, when he works for the city." 107 Recently gained governmental support of the labor movement was lost, but workingmen and most other Houstonians benefitted from Mayor Rice’s settlement of the water supply controversy. With taxpayer approval, the administration purchased the established firm for approximately one million dollars. Over the next few years, the city spent large amounts to improve the distributive network and to install a meter system. 108

The adoption of city commission forms facilitated major reorientations in public administration and governmental relationships with private interests. The Houston and Galveston examples also signaled the beginning of a nationwide trend towards innovative experiments with municipal institutions. Urban reformers from across the country came to study the "Texas idea" in operation. Observers were particularly impressed by the efficient concentration of decision-making authority. To a McClure’s reporter, the commission system meant "a revolution in local government in America; for it is organized on entirely new lines—the lines of a business corporation". 109
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16. Minutes

 Houston, City Council Minutes
 (Houston: City's Secretary's Office)

17. Post

 Houston Daily Post

18. SRJ

 Street Railway Journal

19. Telegraph

 Houston Daily Telegraph

20. no. 11th DC
 (filing date)

 suit no. Eleventh Judicial
 District Court of Texas (Houston:
 Harris County Civil Court House)

21. 11th DIMB (no.)

 (Book no.) Eleventh Judicial
 District Index and Minute Book
 (Houston: Harris County Civil
 Court House)

22. no. USCC
 (filing date)

 U. S. Circuit Court, East District
 of Texas at Galveston (Fort Worth:
 Federal Records Depository)

23. USIMB (no.)

 U. S. Circuit Court, East District
 of Texas at Galveston, Index and
 Minute Book (Galveston: U. S.
 Custom House)
CHAPTER 1 - FOOTNOTES


8 Yearley, Money Machines, 37-95.


McComb, Houston, 40-73; Sibley, Port of Houston, 62-76.

Minutes C (September 9, 1874), 405-413. A general ad valorem property tax was concisely defined by Progressive Era tax expert, E. R. A. Seligman in Essays in Taxation (New York: MacMillan, 1895), 304, as a "compulsory contribution form the person to government to defray the expenses incurred without reference to special benefit conferred." Thus, taxes were apportioned as a uniform percentage of the value, or ad valorem, on all the property in the community. The resulting revenues were used to pay for both current operational expenses and interest.

Two particular useful historiographic surveys of Reconstruction literature are Harold M. Hyman (ed.), The Radical Republicans and Reconstruction 1861-1870 (New York: Bobbs-Merrill, 1967), vii-lxxxvi; and Bernard Weisberger, "The Dark and Bloody Ground of Reconstruction Historiography", JSH, XXV (1957), 427-447. The legend of Republican extravagance in Houston can be found in Benajah Carroll, Standard History of Houston, Texas (Knoxville, Tenn.: Crew, 1912), 93-95. The legend was perpetuated by city officials and the press. For example, see mayor Henry Scherffius' remarks that the debt was "improvidently, if not fraudulently saddled upon us" in Minutes H (December 28, 1891), 12; and "A Scrap of History", Houston Post, April 5, 1890.

Minutes C (September 9, 1874), 408.


Minutes B (February 1866), 2-28, 114, 119.
17Ibid., B (September 9, 1866), 166-170. For the authorization of bonds and Reichman’s trip see ibid., B (May-September 1866), 138, 142-144, 160-168. Indicative of the small town nature of these transactions was the council’s direct concern with the purchase of various supplies ranging from 2000 barrels of cement to a thousand feet of fire hose.

18Ibid., B (June 1867-June 1868), 283-288, 309, 319-330, 390-399. An exact accounting of all bonds issued during the period is impossible because many were issued to construction contractors without official notice in the records. Interestingly, $84,000 of the funded debt was created by judgements against the city for prewar construction on their tap line road. See ibid., B (February-March 1867), 235, 256, and ibid., B (April 22, 1869), 470-471.


20Ibid., August 30, 1868; also see "Our City Finances" ibid., September 1, 1868 by letterwriter "R". Revealing of business attitudes of the time, "R" explains that "capital is confidence". He outlined a three step plan for confidence which would allow the city to borrow up to one million dollars: conform expenses to income sources, faithfully discharge liabilities and create no liabilities that cannot be provided for.

21Minutes B (August-December 1868), 414, 425, 435, 441. The finance committee, charged with finding a solution to the floating debt problem did so by forbidding its reception for taxes after December 15, 1868. All incoming paper was destroyed and no new issues were permitted. Unfortunately, no complete official record of the various bond issues exists. In addition, the council minutes between April 1869 and April 1872 were destroyed. The available records are to be found in Minutes B (March-May 1869), 467-468; Ibid., C (May-September 1873), 146, 187-188. Most of the bonds were 30 year, 10% annual interest issues.

22"Our Finances", Telegraph, January 17, 1871. Also see "Our City Finances", ibid., February 11, 1871 for similar views. An analysis of Houston’s editorial positions is conducted in A. C. Gray, "History of the Texas Press" in Dudley G. Wooten (ed.), History of Texas 1865-1897 (Dallas: Scarff, 1898), 398-411.

23See for example "Tax Summary", Telegraph, February 11, 1873; "City Council", ibid., April 13, 1873; and "City Finances", ibid., April 19, 1873.

24Minutes C (January-October 1874), 263-266, 280-281, 321-323, 403-422, 432-438. Also see H. P. N. Gammel (comp.), Laws of Texas, 1822-1897 (10 vols.; Austin: Gammel Book Co., 1898) VIII, 237-238, where the redeemer
state legislature, as one of their first acts, passed a joint resolution forbidding Scanlan and the aldermen from creating any more indebtedness. Their powers were "suspended". The tax base was decreased further by reducing the city limits from 25 to 9 square miles.

25.Telegraph, September 1, 1871.

26.William Minot, Jr., "Local Taxation and Public Extravagance", a paper read before the meeting of the American Social Science Association (Saratoga, New York, 1877), as reported in the JSS, IX (1878), 67-77. For similar views, see Samuel Bowles' companion address, "The Relations of State and Municipal Government and the Reform of the Latter", in ibid., 140-146; Charles Hale, "Municipal Indebtedness", Atlantic Monthly, XXXVIII (1876), 661-673; and Thomas M. Cooley, "Evils of Municipal Indebtedness", one of six lectures in the series, "Evils in Local Government", read at Johns Hopkins University, May 1879, MS (microfilm copy) in the Michigan Historical Collection. Two excellent bibliographies of contemporary printed sources on municipal problems have been collected. Refer to Yearley, Money Machines, 336-364; and White, "The Self-Conscious City", passim.

27.Supra, n. 10. The large body of literature on this topic can be fruitfully pursued through the topicalized reviews. See Robert A. Lively, "The American System: A Review Article", BHR, XXIX (1955), 81-96; and Harry N. Scheiber, "Government and the Economy: Studies of the 'Commonwealth' policy in nineteenth century America", Journal of Interdisciplinary History, III (1972), 135-151. The term "Chicago of the South" was coined by Mayor Scanlan.

28.Reed, Texas Railroads, 53-87, 179-186; Sibly, Port of Houston, 62-76. The form of legal authority under which municipal corporation undertook this project reflected the blurred distinctions between public and private corporations, and their respective functions. The city's authority to build a tap line was embodied in the incorporating act of the privately owned Buffalo Bayou, Brazos and Colorado Railroad Company. See Gammel, Laws, III (February 1850), 632-636 and ibid., IV (September 1856), 808-816.

29.Minutes B (July 1866-April 1869), 151-152, 235, 256, 470-471. Two issues were for 25 years and the third for 10 years. All carried an 8% interest rate.


31.Ibid., B (March 25, 1869), 467-468; ibid., C (November 9, 1872), 81; Sibly, Port of Houston, 88-97. For the charter of the channel company, see Gammel, Laws, IV (January 1869-July 1870), 116-119, 557-562.


36. Bowles, JSS, IX (1878), 140-141. For similar views, consider Cooley, "Municipal Indebtedness", 38-40; and Henry Carter Adams, "The Financial Standing of States", a paper read before the American Social Science Association (Saratoga: New York, 1884), as reported in the JSS, XIX (1884), 27-46.

37. Besides the tap railroad and ship channel, the city also traded $50,000 in 7%, 30 year bonds, for an equal amount of stock in the ill fated, Western Narrow Gauge Railroad. This measure was approved 877-75 by the voters. See Minutes C (August-October 1874), 375, 414, 424-438; and ibid., D (July 1875-November 1876), 19-31, 280-297, 352-355. On this last date, the city sold its stock in the depression stricken venture for 33 cents on the dollar. A year later, T. W. House purchased the company at auction sale for a mere $1,130. See Henry Cushing Grover, "The Dissolution of T. W. House and Company" (unpublished Master's Thesis, Department of History, University of Houston, 1962), 27-42. In contrast, the ship channel bonds were re-exchanged at parity in 1878. See Minutes D (January-July 1878), 559, 621-623.

38. Telegraph, March 27, 1868.


40. While budget statements were not compiled until the mid '80's, informal annual expenditure records show the prominent position of street improvements. Examine, for example, the City Directory for 1867, 108 and Minutes C (September 12, 1874), 403-405. The following three "Road and Bridge Improvement Bond" Issues (RBIB) constituted most of the debt incurred for this purpose: "RBIB" issue of June 5, 1871 for $100,000, "RBIB" issue of January 27, 1872 for $200,000, and "RBIB second series" issue of August 16, 1873 for $150,000. See ibid., E (January 3, 1879), 109-113. Further detail can be found in Reynolds v. City of Houston, no. 10346, 11th DC (October 17, 1878). Bond negotiations during 1872 are reported in the Telegraph, July 4-14, 1872. Bond buyers bid $.75 on the dollar for the January "RBIB" while the city asked $.85.
"The City Debt and Paving the Streets", Telegraph, September 14, 1875; "Our Sidewalks and Streets", ibid., September 17, 1875; "Sidewalks and Streets", ibid., September 24, 1875; "Prospects of Houston", City Directory for 1884, 60.


Hale, Atlantic Monthly, XXXVIII (1876), 667-670; Dillon, Municipal Bonds, 7-9; Cooley "Municipal Indebtedness", 11-28-1/2. Of course, these same writers pointed to potential abuses in contracting debts for local improvements. They especially pointed to real estate speculator inspired road building. The plight of Elizabeth, New Jersey was a favorable example. See Hillhouse, Municipal Bonds, 67-87.

Two 8%, 30 year "Market House Bond" issues for a total of $250,000 were authorized in 1871. See Minutes C (September 19, 1874), 420-422. However, additional funds were used. See for example, ibid., C (January 26, 1874), 266, where $24,000 was paid to contractor William Brady; and "That Ordinance", Telegraph, October 13, 1875 where alderman James G. Tracy admitted use of RBIB receipts for the building.

For a similar exercise in civic pride, see Asa Briggs, Victorian Cities (London: Odham, 1963), 139-175. Briggs relates how Leeds in 1852 began construction of a city hall for 39,000 pounds. By 1858, the uncompleted but considerably embellished structure was opened at a cost of 122,000 pounds.

Minutes C (September 12, 1874), 408. Wilson's occupations are listed in the City Directory for 1877, passim.

Minutes C (January-July 1874), 255-256, 280-288, 348. In a resolution to the taxpayers, the alderman stated "that it is the sense of the council and we do so declare, that the fair fame, and good faith and credit of the city of Houston in regard to the just and legitimate liabilities of said city are of paramount importance and must be preserved...." The resolution is found in ibid., C (January 26, 1874), 264-265.

Ibid., C (September 12, 1874), 411.

Ibid., 412-413.

Ibid., C (September 19, 1874), 419-422.

Ibid., C (January 14, 1875), 504. Lord won by 64 votes in a total poll of 2100.

Ibid., C (February-June 1875), 526, 542-543, 589, 630-632. The market house and ship channel bonds were never seriously considered in the negotiations by either side because both issues were tied to revenue producing projects.
53 Ibid., C (March-June 1875), 571-572, 579, 638; and D (June-September), 5, 18, 38-39, 83-84.

54 "Streets and Sidewalks", Telegraph, September 24, 1875. The Democratic newspaper also justified repudiation on the grounds that the city was "robbed" by the "Radicals". See "Our Sidewalks and Streets", ibid., September 17, 1875.


56 Telegraph, September 14, 1875. The paper's editor also advanced these allegations. See "The City Debt and Paving the Streets", ibid.

57 Minutes D (October 1875-January 1876), 87-88, 96, 108-110, 121-124, 134-139; Telegraph, October 8-November 17, 1875. A state statute ratifying the compromise was additionally secured. See Gammel, Laws, VIII (May 30, 1876), 1187-1188.

58 Minutes D (June 1, 1877), 462. Mayor Wilson admitted that the 1875 assessment was "forced for a purpose".

59 Support for this interpretation comes mainly from an analysis of the internal evidence to be examined below. Obviously, this kind of policy was rarely discussed in public. However, two such disclosures were found. The first was made at an 1899 taxpayers' meeting, which was debating proposed charter amendments. The resolution published by the citizens charged that the city "by actual design and purpose" did not collect bond taxes for many years. See "Tax Payers Meeting", Post, May 18, 1899. Local chronicler Carroll makes a similar statement in Standard History of Houston, 94-96. Another important element in the evasion of paying creditors, which cannot be detailed here, was the use of special assessment taxes to finance street improvements. The Houston system avoided the creation of funded debt by giving the paving contractor certificates, which empowered him to collect directly from property owners. For a fuller description of this system, see infra, chap. iii. The purposes of the system received judicial acknowledgement in Hutchison v. Storrie, 92 Texas 685 (1899).

60 Gammel, Laws, VIII (January 23, 1874), 270-288; and Ibid., VIII (August 4, 1876), 1229-1234. In addition, the informal "assessment committee" was institutionalized as the Board of Appraism. The board was chosen by and from the council. Thus, the council possessed ultimate control of the size of the assessment and the manner of its collection. For figures on the amounts of scrip versus cash received for taxes, examine the monthly reports of the assessor-collector to the city council in the Minutes C-E (1875-1880), passim.

61 Minutes D (June 1, 1877), 462-463. For statistics on unpaid taxes see Ibid., E (March-July 1879), 157-158, 233.

62 For the general deterioration of conditions see the Council Minutes and
newspapers of this period. Even with the possibility of paying taxes in scrip, many citizens were still hard pressed to meet their obligations. In 1878, the tax sale list extended for fifteen closely printed columns in the newspaper. See the *Telegraph*, June 21, 1878.


65 Von Hoffman *v. City of Quincy*, 4 Wall 535 (1866). Also see two other decisions handed down by Swayne during the same term. In the first, Supervisors of Rock Island County *v. The State Bank*, 4 Wall 435 (1866), the justice ruled that a discretionary tax power had to be exercised affirmatively whenever the public interest or individual rights required. In *City of Galena v. Amy*, 4 Wall 705 (1866), Swayne upheld a mandamus writ compelling a discretionary tax to be levied as in the supervisors case. The city argued that even so, Amy should only set his pro rata share since full taxation would still be insufficient to cover all claims. Swayne, to the contrary, ruled that when other creditors complained through proper proceedings, then the time would be at hand to consider the question. *Dillon’s Municipal Corporations* (2nd ed.), 776-785, covers these points in a perfunctory fashion. Unfortunately, little interpretive insight is offered.

66 There were limits to the extent of judicial administration of essentially legislative functions. The high court refused to accept repeated efforts to establish an equity jurisdiction in these matters. To allow this type of role for the bench when civil remedies failed would have led to placing city governments under the control of court appointed receivers. This drastic situation occurred briefly in Nashville under state judicial orders in 1869. Interestingly, Judge Edwin H. East justified his decision on the basis that municipalities were essentially private business corporations and only secondarily, agencies of the state. An account of these affairs is provided by Lucius S. Merriam, "The Appointment of a Receiver for the City of Nashville", *ALR*, XXV (1891), 393-399. In 1879, a similar intervention in the affairs of Memphis was approved on a U. S. Circuit Court level but overturned by the high court. See *Meriwether v. Garrett*, 102 US 472 (1880). Also consider Justice Miller’s review of the limits of judicial power in this matter in *Thompson v. Allen County*, 115 US 550 (1885). As Miller pointed out, the benchmark case was *Walkley v. City of Muscatine*, 6 Wallace 481 (1868). For a consideration of this case and the question generally, see *Dillon, Municipal Bonds*, 54-63; and *Burhaus, Municipal Bonds*, 53-60.

67 A complete survey of cases was made of the state district, state appellate and U. S. Circuit Court levels. Fifty-eight actions were instituted between 1876
and 1890 at the state trial level. See 11th DIMB, R-W (1876-1890). On the U.S. Circuit Court level, 49 cases are reported in USIMB. No study of the county courts was conducted. The jurisdictional limit of this court was $500.

68Texas, Revised Civil Statutes (Sayles, 1888), arts. 3356 and 3358.

69Ingersoll v. City of Houston, no. 10 328, 11th DC (October 10, 1873); and 11th DIMB R, 380. The council, after appeals were overruled, complied with the order. See Minutes E (December 6, 1878), 98.

70Luther C. Voorheis v. Mayor et al., no. 10 783, 11th DC (June 29, 1881); and 11th DIMB S, 225.

71See for example, Elizabeth Voorheis v. Mayor et al., no 10 781, 11th DC (June 29, 1881); and 11th DIMB S, 210.

72Dillon, Municipal Bonds, 2-7. Also see Cooley, "Evils of Municipal Indebtedness", 1–53; and Burhaus, Municipal Bonds, 2-3.

73Frank W. Hackett, "A Recent Decision of the Supreme Court upon Municipal Bonds", HLR, V (1891), 158–159. Chicago investment lawyer J. A. Burhaus, Municipal Bonds, 3, in 1889 agreed that "[i]t is especially to the Supreme Court of the U.S. that is due the present importance, stability and value of the municipal bond as an investment security."


75Ibid., 37-46; Hillhouse, Municipal Defaults, passim., provides a fairly complete catalogue; Burhaus, Municipal Bonds, 62-286, provides a listing of state constitutional and statutory provisions on this topic. Also see Yearley, Money Machines; H. C. Adams, Public Debt; Richard T. Ely, Taxation in American States and Cities (New York: Crowell, 1888); and Frank J. Goodnow, Municipal Problems (New York: Columbia University Press, 1897).

76Texas, Constitution (1876), art. 6, sec. 3; art. 11, secs. 5-8.

77City Directory of 1880, passim. The House family was probably the wealthiest in Houston. Included in its many interests were a large commission merchant operation, a private bank, the Houston Gas Light Co., and part ownership of the Houston East and West Texas Railroad. Waldo Cleveland was also involved in the McIlhenny Co. besides presiding over the Houston Cotton Exchange. McGowen was the owner of the Bayou City Iron Works, one of the city's largest manufacturing concerns.

78Minutes D (April 19, 1878), 608-610; ibid., E (January 1879–December 1881), 109-113, 135-136, 187-189, 227-278, 297-301, 389, 396-415, 564-566; ibid., F (May–July 1882), 38-44, 54. Also see the Houston inspired state enabling
statute in Gammel, Laws, VIII (March 25, 1879) 2031.

79 Compare in this regard the 1879 charter with its amended versions of 1881, 1883, 1889 and 1891. All in Gammel, Laws, IX, 15-26, 241-244, 500-508, 1324-1335; and ibid., X, 305-321. On the tendency of the courts to give a narrow construction to municipal charters see the influential treatises of Dillon, Municipal Corporations (2nd ed.), passim; and Thomas M. Cooley, Treatise on the Constitutional Limitations which rest upon the Legislative Power of the States of the American Union (2nd ed.; Boston: Little and Brown, 1871), passim.

80 Minutes F (August 23, 1887), 580-584.

81 City Directory for 1884, 60.
CHAPTER II - FOOTNOTES

1 "Gas in Houston", Telegraph, April 9, 1858.

2 Ibid.

3 Ibid., September 8, 1858.

4 Bier's promotion can be traced through "An Ordinance in Relation to Gas Works for the City of Houston", as reported in ibid., October 6, 1858. The ordinance was dated September 23, 1858. Also see ibid., September 29, 1858, and October 4, 1858. The second attempt can be found in "An Act to Incorporate the Houston Gas Company", in H. P. N. Gammel (ed.), Laws of Texas, 1822-1897 (10 vols.; Austin: Gammel, 1898), V (February 11, 1860), 240-241; and the Telegraph, July 28, 1860.

5 Minutes B (October 19, 1865-June 18, 1866), 99, 137-138, 143; "An Act to Incorporate the Houston Gas Light Company", in Gammel, Laws, V (September 8, 1866), 1226-1229.

6 "Houston Gas Light Company", in Gammel, Laws, V (September 8, 1856), 1226-1229. House, for example, during the war accumulated over $300,000 in gold through cotton smuggling operations. See Rupert Norval Richardson, Colonel Edward M. House-The Texas Years, 1858-1912 (Abilene: Hardin-Simmons University, 1964), 1-7.


8 Minutes B (November-December 1866), 181, 185, 188. Only the right to locate the gasometer was demanded by the city.

9 Telegraph, June 8, 1867; Minutes B (June 6, 1867), 286-287. For the date of first production, March 8, 1868, see the fascinating description of "Our Gas Works", Telegraph, January 26, 1871. The first notice that streets were being lit is found in ibid., April 25, 1868.

10 "An act Supplementary to the Railroad Regulation Acts...." in Gammel, Laws, IV (February 1860), 1422-1433; "an act...incorporating the City of Houston ....." in ibid., V (October 1860), 1391-1392. Also consider the first Texas incorporation of a street railway venture, the Galveston City Railroad Company. This 1866 charter clearly recognized the city's exclusive discretion to designate which streets the railway could use. The act is found in ibid., V (October 1866), 1319.
Minutes B (May 1866-November 1868), 130-429; "an ordinance granting the Right of Way...to the Houston City Street Railway Company", in Houston, Charter and Revised Code of Ordinances (1874), 89-91.

Minutes B (May 17, 1866), 132-133.

Ibid., B (May 17, 1866), 134-135.


The Lockart-Garey negotiations are found in Minutes B (August 23, 1866-February 28, 1867), 156, 159, 232-242. The second plan was offered to four separate promoters. See Ibid., B (February 24, 1867-March 28, 1867), 236-242, 252-253; Garey immediately declined to accept the franchise. The other three, William Allen, Richard Love, and E. W. Caves accepted. The council additionally granted a franchise to the Texas Transportation Company. This venture was formed to transport freight and passengers between the city and Buffalo Bayou at the point where water navigation ended. See Ibid., B (July 17, 1867), 305; and Gammel, Laws, V (September 25, 1866), 1259-1261. For the third plan, see infra, n. 16. The final offer is found in Minutes B (March 12-19, 1868), V, 363-369.

Minutes B (August 1-9, 1867), 309-310, 315. Due to the dissolution of state government in Texas, business enterprises had difficulty in forming corporations. Armed with their franchise, Frances Allen's group obtained their original incorporation from the 1868 Constitutional Convention. The declaration of the convention explained that "[t]he object of this act being to confine [i.e., confirm] the contract heretofore granted by the city of Houston to the corporators therein named." See Gammel, Laws, VI (August 10, 1868), 34-36. The stockholders, however, voted to reject the convention's incorporation declaration. Because the Republican dominated convention inserted five extra directors, including two blacks, the stockholders protested the "outrage upon [their] rights..." See the Houston Daily Times, September 16, 1868. The Houston City Railway Company finally achieved corporate status two years later. See Gammel, Laws, VI (August 6, 1870), 613-614.

Telegraph, May 17, 1868. Actually the first horsecar service was provided by none of the franchise holders. A horsecar was placed on the Houston Tap Railroad tracks on March 25, 1868. See Ibid., March 25, 1868.

"Discontinued", Ibid., July 1, 1868; Initiation of the service is recorded in Ibid., March 25, 1868.

Ibid., June 4, 1868. Building of this line is detailed in Ibid., April 4 and May 24, 1868.
20 Houston City Street Railway Company service began on July 19, 1868 and was abandoned sometime in 1869. See ibid., July 19, 1868; July 1 and November 4, 1870. For revenue-passenger figures see the Houston Daily Times, September 22, 1868.

21 Telegraph, July 19, 1868.

22 Houston Daily Times, November 12, 1868. Also see Jonathan Harris v. Houston City Street Railway Company, no. 9296, 11th DC (March 1875). This contract dispute includes a wealth of information on the material and labor costs involved in construction of a street railway.


24 "An act to incorporate the Houston City Street Railway Company", in Gammel, Laws (August 6, 1870), 613-614; "Ordinance granting Right of Way...to the Houston City Street Railway Company", in Houston, Revised Code of Ordinances (1874), 89-91; Telegraph, June 25-27, 1871. The new company's directors included Mayor Scanlan; alderman and subsequently tax collector, Jacob Binz; alderman and state Republican leader J. G. Tracy; and aldermen Eugene Pillot, J. W. McDonald, and R. P. Love. For construction of the railway, see ibid., August 23, 1873; and Houston Daily Age, April 24, 1874. After the railway was built, the directorship of the company reverted to traditional merchant leadership. Until 1883, the company was headed by the House family. See Telegraph, January 23, 1875; Minutes F (October 15, 1883), 181.

25 Telegraph, April 30, 1874; Houston Daily Age, April 30, May 19, 1874.

26 Most of the improvements made by the company between 1874 and 1881 were devoted to small extensions of existing routes and to auxiliary facilities such as stables and track planking. See Telegraph, June 6, July 24, August 24, 1875; April 27, July 16, September 14, 1876. The only significant addition was a new route to the Houston Central railroad depot in the fifth ward, along Preston Street to Washington Street. See ibid., May 10, 1878; Minutes D (August 17-December 21, 1877), 486, 496-501, 523-524, 538-540.

27 City Directory for 1877, 18; Telegraph, August 20, 1875; Benajah Harvey Carroll, Standard History of Houston, Texas (Knoxville, Tenn.: Crew, 1912), 92.

28 William S. Speers and John Henry Brown (eds.), The Encyclopedia of the

29"Street Gas", Houston Daily Times, September 22, 1868; Telegraph, April 2, 1872; "City Gas Company", Directory for 1873, 7. As late as August 16, 1876, the Telegraph complained that "the gas furnished now is about as miserable an apology for gas as anyone was ever afflicted with".

30Telegaph, March 29, 1870; March 11, 1871, August 11, 1871, November 15, 1871, April 4, 1872, May 17, 1872; Minutes C (March 23, 1872), 12.

31"City Gas Company", City Directory for 1873, 7.

32"Briefly Told", AGLJ, LII (March 10, 1890); William Enfield, "Gas Coals of the Southwest", a paper read at the Fourth Annual Meeting of the Southwest Gas Association, as reported in the AGLJ, LIV (April 20, 1891), 558-567. Mr. Enfield reported that "We are permitted to use certain kinds of coal as it suits the [railroad] monopolists in control of all of us."

33Speers, Encyclopedia, 492-495; Directory for 1884, 52, for gas main statistics. Gas prices in Houston declined from $8 per MCF in 1868, to $7 in February 1870, to $5 in November 1871, to $4 in December 1871. See Telegraph, January 19, 1870, November 5, 1876, December 12, 1878. The national average price in 1882 was calculated by Goodwin as $2.41 per MCF. This figure is reported in AGLA, Proceedings (1895), XI, no. 3, 247-252. Also see Wilcox, Franchises, I, 533-534, where he estimates the average rate as $2 per MCF in 1879. While Houston's gas rate remained high, the gap between it and the national average was considerably closed during this period. The following table from Goodwin, Directory (4th ed., 1882), 187-190, provides a comparison of Texas gas companies:
<table>
<thead>
<tr>
<th>Company</th>
<th>Price (per MCF)</th>
<th>Output (millions cubic feet)</th>
<th>1880 pop.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dallas City Gas Light Co.</td>
<td>$3.30-3.90</td>
<td>10.0</td>
<td>10,358</td>
</tr>
<tr>
<td>Waco Gas Light Co.</td>
<td>$3.50</td>
<td>5.5</td>
<td>7,295</td>
</tr>
<tr>
<td>Dennison Gas and Coal Co.</td>
<td>$3.50</td>
<td>5.0</td>
<td>3,975</td>
</tr>
<tr>
<td>Sherman Gas Co.</td>
<td>$3.50</td>
<td>---</td>
<td>6,093</td>
</tr>
<tr>
<td>Paris Gas Light Co.</td>
<td>$3.50</td>
<td>---</td>
<td>3,980</td>
</tr>
<tr>
<td>Houston Gas Light Co.</td>
<td>$4.00</td>
<td>5.5</td>
<td>16,513</td>
</tr>
<tr>
<td>Ft. Worth Gas Light and Coke Co.</td>
<td>$4.00</td>
<td>4.0</td>
<td>6,663</td>
</tr>
<tr>
<td>San Antonio Gas Company</td>
<td>$5.00</td>
<td>9.1</td>
<td>20,550</td>
</tr>
</tbody>
</table>

1 Census Data from *Texas Almanac* (Dallas: Dallas Morning News, 1972), 161–165.

2 Unknown

3 Less than 30% if paid within 10 days


36 AGLA, Proceedings, I (1873), 11-21. The first meeting was attended by gas men from 32 cities from 11 states and the District of Columbia. Twenty years later 428 members were enrolled. See ibid., XI (1893), 261.

37 Charles Roame, "President's Address", ibid., I (1874), 123-126; Eugene Vanderpool, "Inaugural Address", ibid., VII (1885), 13-21. Also consider J. C. Pratt, "The Future of the Gas Industry", ibid., IV (1882), 156-165; A. C. Wood, "President's Address", ibid., VII (1886), 183-196; and Alpheus B. Slater, "President's Address", ibid., IX (1889), 16-33. The economic principle of mass consumption was recognized by Charles Francis Adams, Jr., in 1869. Adams came to the conclusion through a study of Belgium's state owned railroads. Between 1856 and 1864, the government lowered its freight rates by 28% and at the same time, increased its net return. Adams concluded that mass consumption produced the greatest revenues. See Adams, "The Transportation Tax", in Charles F. Adams, Jr. and Henry Adams, Chapters of Erie and Other Essays (Boston: Osgood, 1871), 355-380.

38 Charles Roame, "President's Address", AGLA, Proceedings, II (1876), 155-159; William H. Price, "President's Address", ibid., II (1879), ?; Pratt, ibid., IV (1882), 156-165. Statistics from Myers, MA, I (1900), 94-105.


41 F. C. Sherman, "The Relations of Municipalities to Gas Companies", ibid., III (1879), 60-63; and supra, n. 37. The efforts of the gas men to eliminate the possibility of competition through the creation of legalized monopolies will be considered in detail, infra, chap. iv.

42 Forstall, ibid., III (1877), 24-30; and supra, n. 39. The literature of railroad history is voluminous. Three sources which center on economics and regulation during the second half of the 19th century are Lee Benson, Merchants, Farmers and Railroads: Railroad Regulation and New York Politics, 1850-1887 (Cambridge: Harvard University Press, 1955); Gabriel Kolko, Railroads and Regulation: (Princeton: Princeton University Press, 1965); and George H. Miller, Railroads and the Granger Laws (Madison: University of Wisconsin Press, 1971).


44 Texas, Constitution (1876), Art. 7, secs. 1-2; Hurst, Business Corporations,
131-139.


46 Williams v. Davidson, 43 Texas 1 (1875). Cf., Hudson v. Cuero Land and Emigration Company, 47 Texas 56 (1877), where a state granted toll bridge monopoly was upheld. In Ladd v. Southern Cotton Press Manufacturing Company, 53 Texas 172 (1880), the court refused to interfere with a privately created monopoly in the absence of legislative directives.


48 Slaughter House Cases, 16 Wallace 36 (1873).

49 Ibid., Bradley and Nathan Clifford concurred in Field's dissent. Strangely, Field used Norwich Gas Light Company v. Norwich City Gas Company 25 Conn. 19 (1856), to support his contention that ordinary trade could not be made into monopoles by the legislature. While the case was often cited to support an anti-monopoly philosophy, it was very seldom used to determine the legal status of gas companies.

50 Olcott v. Supervisors, 16 Wall. 678 (1873); Cooley, Constitutional Limitations, 607-612; John Dillon, The Law of Municipal Bonds (St. Louis: Jones, 1876), 7-9. Writing after the Olcott decision, Dillon's crusade against railroad aid bonds ended. He admitted that "it [the battle] has been fought and lost. All that is left is the contemplation and construct of what might have been and what is." In ibid., n. 2. While Dillon, et al., lost the battle, they won the war. See Loan Assn. v. Topeka, 20 Wall. 655 (1875).

51 New Orleans v. Clark, 95 US 644 (1877).


53 Railway Company v. Sympkins, 54 Texas 615 (1881). Also consider Railway Company v. Hallowen, 53 Texas 46 (1880); and City Railway Company v. Nolan,
53 Texas 139 (1880).

54 Minutes D (May 26–June 16, 1876), 249-259.

55 Ibid., D (June 1876-May 1877), 259-269, 433-443. The most important contract stipulations included the following: standards for coal gas quality and quantity per burner under the continuous inspection of the council, a faithful performance bond, city discretion to increase or decrease the number of lamps at any time, and an option held by the city to terminate the contract for non-compliance with its terms. No provision was made for city authority to order service extensions. Also see Telegraph, November 5, 1876. Two years later, a further $1 (MCF) reduction was affected. See ibid., December 12, 1878.

56 Marion Merseburger, "A Political History of Houston, Texas During the Reconstruction Period as Recorded by the Press, 1868-1873", (unpublished Master's thesis, Department of History, Rice Institute, 1950), 131; Minutes C (May 8, 1875), 609-615; and ibid., D (June 3–October 13, 1876), 252-253, 269, 271, 340.

57 For rejection of the local company bid, see Minutes D (July 21–November 10, 1876), 281-283, 327, 339-355. The Lowerre negotiations and contract are found in Minutes E (November 30, 1878), 89-90. Also see Telegraph, December 10, 1878; and J. James R. Croes, "The History and Statistics of American Water-Works - No. CCCLIX, Houston", Engineering News, IX (1882), 251.

58 Minutes E (November 30, 1878), 89-90.

59 Post, July 6-8, 1881. Actually the People's line stopped construction of its rival for a short period through the rather shrewd maneuver of swearing out a warrant against the old company for violation of the city sanitary regulations. (Thinking that turning over the earth contributed to epidemics, the city forbade any digging up of the ground during the hot summer months.) The City Marshall arrested the entire work force but the mayor's court dismissed the case the following day. The health officer testified that the construction did not pose a health threat. The mayor ruled that while the company had violated the "letter of the law", it had not soiled its spirit. In effect, the mayor, acting as a judicial officer, refused to upset the status quo.

60 "City Council", Telegraph, July 9, 1881; ibid., July 9-14, 1881; Minutes E (July 8, 1881), 508-507.

61 Minutes E (July 8–October 3, 1881), 507-508, 514-515, 535, 536.

62 Post, February 23, 1882. While the reason for the People's Line's demise cannot be pinpointed, two very expensive clauses in their franchise appear to be the cause. Besides the bridge maintenance proviso, the enterprise was obligated to pay for two feet of paving on each side of their rails along every route. This conclusion seems supported by the absence of a two foot paving obligation in the succeeding
grant to the Bayou City Company. Compare Minutes E (September 5, 1881), 523-524; and ibid., F (August 21, 1882), 66.

63 Post, July 28, August 22, 1881; Houston Daily Sun, November 2, 15, 30, 1882. Evidence of the Houston City company's discouragement appeared from its abandonment of railway service into the fifth ward. In September 1882, the company's directors turned to the omnibus rather than share the expense of a new bridge on its Preston Street route. See Post, September 28, 1882; January 3, 1883; Houston Daily Sun, December 28-29, 1882.

64 "A Railway Bought", Post, March 14, 1883; Minutes F (November 5, 1883), 185-189; Directory for 1884, 49-50. For a short history of Galveston's Street Railway developments up to the mid-'80's, see Morrison and Fourmey (eds.), Morrison and Fourmey's General Directory of the City of Galveston (Galveston: Morrison and Fourmey, 1883), 42-44.


66 Passer, Electrical Manufacturers, passim; Post, December 9-16, 1882; Houston Daily Sun, November 12-December 27, 1882, for the introduction of arc lighting. Post, September 29, December 22, 1883, covers the installation of incandescent lighting at the Howard oil mills. The quotation is a part of a reporter's observations from a tour of the electrical company facilities. See Post, March 1, 1883.

67 "Electric Light", Post, April 22, 1883. The editorial predicted that electricity will "revolutionize Houston".
CHAPTER III - FOOTNOTES

1Reverend John E. Green, John E. Green and His Forty Years in Houston (Houston: Dealy-Odey-Elgin, 1928), 65-68.


4See infra, chaps. iv and v.


8 For an interesting comparison, see Michael H. Frisch, Town into City - Springfield, Massachusetts, and the Meaning of Community, 1840-1880 (Cambridge: Harvard University Press, 1972), 104-110.

9 Minutes E (December 20, 1880), 465 [italics in the original document]; "An Act Amendatory of...several acts incorporating the City of Houston...." in H. P. N. Gammel (comp.), Laws of Texas 1822-1897 (10 vols.; Austin: Gammel, 1898), IX, 13-24.

10 Ibid., 241-244, 500-508. The hypothesis that administrative needs, rather than an expanded concept of the public welfare accounts for the charter amendments is based on a number of interrelated facts. The 1881 amendments, for instance, were passed as emergency legislation to provide "for the efficient management, control and improvement of the streets...[which are] in a dreadful condition..." See Ibid., 244. In addition, the Baker administration (1880-1886) expanded street improvement expenditures at the cost of reducing other traditional public functions. The police force, for example, was greatly reduced, while the powers of police were delegated to private detective agencies. See Minutes F (July 9, 1883) 158; and Post, August 7, 1883. Finally, the composition of the council during these years from the community's business leadership and largest taxpayers suggests an identity of public and private interests. Biographical material can be found in the City Directory of 1884, passim; Houston Cotton Exchange and Board of Trade, and County Court, Description of Harris County, Texas (Houston: Coyle, 1886), passim; and History of Texas - together with a Biographical History of the Cities of Houston and Galveston (Chicago: Lewis, 1895), passim.

11 Rosewater, Special Assessments, passim; Hamilton, Law of Special Assessments, passim.

12 "An act to amend...an act incorporating the City of Houston...", in Gammel, Laws, IX, 500-503. The contractor received 8% on unpaid principle and 10% on matured debts.

13 An excellent exposition on this doctrine by John Marshall is found in McCulloch v. Maryland, 4 Wheat. 428 (1819), and Providence Bank v. Billings, 4 Pet. 514 (1830). Also consider Cooley, Law of Taxation, 416-446; and Dillon, Municipal Corporation (2nd ed.; 1873), 694-704. In Texas, various substantive and procedural objections to special assessments were decided against taxpayers in Roundtree v. Galveston, 42 Texas 612 (1875); Allen v. Galveston, 51 Texas 320 (1880); Galveston v. Heard, 54 Texas 420 (1881); Galveston v. Loonie, 54 Texas 517 (1881); and Highland v. Galveston 54 Texas 527 (1881).

14 Leonard A. Jones, A Treatise on the Law of Liens - Common Law Statutory, Equitable and Maritime (2nd ed.; Indianapolis: Bowen-Merrill, 1894), 3, defines a lien as "an obligation or claim annexed to or attaching upon property, without satisfying such property cannot be demanded by its owner. Lien in its proper sense, is a right the law gives...; a lien at law is an implied obligation whereby property,
is bound for the discharge of some debt or engagement". If a lien can be "foreclosed" under statutory provision, the land can be sold at public auction with legal title transferring to the purchaser.

15Lufkin v. Galveston, 58 Texas 545 (1883); Texas, Constitution (1876), art. 16, sec. 50-51, for a brief history of Texas homestead law, see H. Teichmueller, "Homestead Laws", Proceedings of the Texas Bar Association, (1893), 63-68.

16Lufkin v. Galveston, 58 Texas 545.

17Adams et al. v. Fisher, 63 Texas 651 (1885). The court was willing to insist that legislatively determined procedures be followed. The case was consequently reversed and remanded to the district level because the tax collector did not notify each property owner thirty days before attempting to collect the assessments. For a similar ruling holding local authorities to the procedures defined in their municipal charters, see Texas Transportation Company v. Boyd et al., 67 Texas 153 (1886). Houston's certificate scheme was declared a legitimate delegation of power in Taylor v. Boyd et al., 63 Texas 533 (1885).

18Adams et al. v. Fischer, 63 Texas 651. Also consider ibid., 75 Texas 657 (1888). Justice Stayton agreed with the principle that the assessment system rested upon special benefit. However, municipal corporations were not required to demonstrate an 'actual enhancement' in the value of each piece of property assessed.

19See Davidson v. New Orleans, 96 US 97 (1877); and Spencer v. Merchant, 125 US 345 (1888).


21Spencer v. Merchant, 125 US 345.

22Thompson v. Allen County, 115 US 550 (1885); US ex rel. Homes v. City of Houston et al., no. 1229, USCC (November 28, 1882); and supra, chap. i.

23See for example, US ex rel. Coler v. City of Houston et al., no. 1224, USCC (October 30, 1883); US ex rel. Mower v. City of Houston et al., no. 1316, USCC (February 19, 1885); Emeroy's Sons v. Mayor et al., no. 10, 998, 11th DC (December 19, 1882), and 11th DMB, 5, 429; Foley v. Mayor et al., no. 11, 824, 11th DC (October 9, 1885), and 11th DMB, T, 531. Also consider, Minutes F (March 15, 1886), 403-405. The debt report revealed that between 1882 and 1886, only $28,000 in judgments had been paid, in contrast to $250,000 still pending in the courts.

24Lufkin v. City of Galveston et al., 63 Texas 437 (1885). For unknown reasons, the court did not refer to earlier supportive precedents. See Texas and Pacific Railway Company v. Harrison County et al., 54 Texas 119 (1880); and Dean v. Lufkin et al., 54 Texas 265 (1881).
25 Minutes F (March 15, 1886), 403-405; Post, December 21, 1886.

26 US ex rel Van Nastrand v. City of Houston, no. 1408, USSC (October 20, 1886). Similar rulings quickly followed. See for example, US ex rel Fazende and Seixas v. City of Houston, no. 1420, USCC (November 6, 1886); and US ex rel Forsyth v. City of Houston, no. 1435, USCC (February 19, 1887).

27 E. Voorheis v. Mayor et al., no. 12,085, 11th DC (November 10, 1886), and 11th DMB, U, 453; and ibid., 70 Texas 331 (1888). Also see L. Voorheis v. Mayor et al., 70 Texas 356 (1888).

28 City Directory for 1884, 45; Post, April 8, 1886.

29 Supra, chap. ii.

30 The lack of enforcement of street repair and lighting duties is difficult to substantiate. However, the pattern of regulatory measures passed by the council suggests that city officers assigned to this task did little. See Minutes C (February 27, 1875), 540; ibid., D (July 7, 1876), 271; ibid., E (May 1879-March 1880), 204-205, 382. Ironically, the only relevant district court action reported during the '70s involved an attempt by the gas company to restrain the municipal corporation from grading a street along which the company's largest pipe line was laid. See Houston Gas Light Company v. Mayor et al., no. 7741, 11th DC (March 1873); and 11th DMB, O, 291, 315, 382, 448.


32 "An act to amend...the several acts incorporating the city of Houston", in Gammel, Laws, IX, 242; Minutes F (August 21, 1882), 66. For debate on the meaning of street railway paving obligations, see ibid., F (June 1-15, 1885), 338, 343-345. Additional information is contained in the case, William Boyd v. Houston City Railway Company, no. 12029, 11th DC (February 19, 1866). As will be discussed in subsequent chapters, this heavy burden largely contributed to the bankruptcy of Houston's mass transit company in 1895 and again in 1901.

33 Minutes F (February 4, 1884), 204-206. Similar ordinances or franchise provisions regulated street railroads [ibid., F (November 5, 1883), 187-189], steam railroads [ibid., F (July 21, 1884), 272-274] and electric light appliances [ibid., F (December 12, 1887), 627-630]. In addition, see the greatly amplified version of the water and gas main regulations in ibid., F (April 25, 1887), 547-548. The charter amendments of 1883 also reflect the growth of comprehensive powers over the environment in the city government. The amendments are found in Gammel, Laws, IX, 501-507.

34 The impacts of street railways on local price structures can be explored
in the Post, September 13-16, 1884; "Street Railways", Ibid., August 19, 1886; and Andrew Morrison, The City of Houston (n.p.: n.n., 1891), 19-20. For demographic information, see U.S., Bureau of the Census, Eleventh Census of the United States: 1890, Compendium, 738-739.

35 City Directory for 1890, 54-70. The statistic is based on the organizational growth of the following classifications from 1880-1890: unions from 1 to 11, religious organizations from 7 to 26, beneficent-social clubs from 21 to 58, local business corporations from 5 to 28, and fraternal institutions from 4 to 13. Some of the political repercussions of the organizational movement will be discussed in the following chapters.

36 Description of Harris County, 6; The Industries of Houston - Her Relations as a Centre of Trade, Business Houses and Manufacturing Establishments (Houston: Eltner, 1887), 12-15.

37 Probably the best introduction to the U.S. Supreme Court during this period is C. Peter Magrath, Morrison R. Waite - The Triumph of Character (New York: MacMillan, 1963), 172-227, passim. Unfortunately, no similar survey presently exists for the Texas court. Biographical material on the justices, which indirectly reflects on their attitudes towards the law, can be pursued in James D. Lynch, The Bench and Bar of Texas (St. Louis: Nixon-Jones, 1885), 295-301, 315-322, passim.

38 Butchers Union...Company v. Crescent City...Company, 111 US 746 (1884). The case was remanded with instructions to dismiss the injunction.

39 Ibid., Also consider Justice Field's concurrence. To a large extent, both Bradley and Field's opinions restated their dissenting positions in the Slaughterhouse Cases, 16 Wall 36 (1873).

40 New Orleans Gas Company v. Louisiana Light Company, 115 US 650 (1885). Also see the companion cases, Louisville Gas Company v. Citizens' Gas Company 115 US 683 (1885); and New Orleans Water-Works Company v. Rivers, 115 US 674 (1885). In the latter case, a similar public utility status was placed on water works. In Gibbs v. Consolidated Gas Company of Baltimore, 130 US 396 (1889), Chief Justice Fuller significantly termed special street use privileges as "the exercise of the equivalent of the power of eminent domain..." The importance of eminent domain law in the emergence of a legal doctrine justifying public regulation of private enterprise is carefully examined in Harry N. Scheiber, "The Road to Munn: Eminent Domain and the Concept of Public Purpose in the United States", Perspectives in American History, V (1971), 329-404.

41 See for example, Barnes v. District of Columbia, 91 US 540 (1875); and Meriwether v. Garrett, 102 US 472 (1880).

Justice Field's dissent astutely pointed out that the value of utility companies was intimately tied to rate structures. Field asked rhetorically whether municipal authorities could be trusted to allow the water company fair compensation for the public use of its property. The conflict of interests, according to the justice, between the city as rate maker and consumer indicated that the answer would be no. Field suggested, on the basis of eminent domain practices, that a special commission be appointed. For parallel developments in rate regulation law of railroads, consider Magrath, Waite, 172-227; Howard Jay Graham, Everyman's Constitution: Historical Essays on the Fourteenth Amendment, the 'Conspiracy Theory' and American Constitutionalism (Madison: State Historical Society of Wisconsin, 1868), 367-493; and George H. Miller, Railroads and the Granger Laws (Madison: University of Wisconsin Press, 1971), passim.

43 Galveston City Railway Company v. Gulf City Street Railway Company, 63 Texas 529 (1885) [Commission of Appeals]; Gulf...Company v. Galveston...Company, 65 Texas 502 (1886). The Gulf City Company also appealed the commission's ruling in order to obtain a perpetual injunction on additional streets. Since many of these cases involved bills or writs of injunction in equity, a simple explanation of the procedure will be helpful. In order to obtain such a writ, the plaintiff-petitioner had to show two things: first, that irreparable damage and injury would follow unless the writ was issued; and second, that remedy through regular civil actions, such as a damage suit, was impossible. If the judge or commissioner, as he was usually called, was convinced, he would issue a temporary injunction against the offending party with an order to return the writ to the court at a certain date. At this point, a full hearing would ensue and the judge would then make the injunction permanent, revise it or dissolve it completely.

44 Ibid., 65 Texas 502. In a similar injunction suit between two Fort Worth street railway companies, a year later, the court strongly emphasized city government's discretionary authority over street uses by private enterprise. The bench stated, "This power, given to it [the city] to be exercised for the public welfare, it may and must freely exercise, and its determination is conclusive of the question." See Ft. Worth Street Railway Company v. Rosedale Street Railway Company, 68 Texas 169 (1887).


46 Ibid., 67 Texas 542. Stayton allowed that cities could make contracts for extended periods as long as they reserved the right to exercise all their police powers from time to time. U.S. Circuit Court decisions during this same period were confirming the proposition that municipal corporations could not grant exclusive street use of public service privileges. Two cases became especially important precedents during the '90's. cf. Jackson County Horse Railway Company v. Interstate Rapid Transit Company, 24 Fed 529 (1886); and Saginaw Gas-Light Company v. City of Saginaw, 28 Fed 529 (1886).

47 Brenham v. Brenham Water Co., 67 Texas 542. For an elaborately argued
attempt by utility company interests to reverse the Brenham decision, consider
Altgelt v. City of San Antonio and San Antonio Waterworks Company, 81 Texas 436
(1891).


49 Also consider, Benjamin Wright, The Contract Clause of the Constitution

50 Judicial decisions on the liability of municipal and private corporations
for negligent maintenance of the streets also helped clarify mutual duties and re-
 sponsibilities. In Texas, during the 1880's, municipal corporation liability for
persons injured in the streets was expounded in Galveston v. Posnainsky 62 Texas
118 (1884); Klein v. Dallas, 71 Texas 280 (1888); and Austin v. Ritz, 72 Texas
391 (1888). Street railway duties are defined in Galveston City Railway Co. v.
Hewlitt, 67 Texas 473 (1887); and Hays v. Gainesville Street Railway Co., 70
Texas 602 (1888). Also consider Houston City Railway Co. v. Delesdenier, 84
Texas 82 (1892), where the court distinguished company from city liability in regard
to negligently maintained railway tracks.

51 "United Vigilance", Post, May 14, 1886; "Houston's Values", ibid.,
December 25, 1889; I. J. Isaacs (ed.), The Industrial Advantage of Houston, Texas
and Environs.... (Houston: Alchurst, 1894), 10-12, 33.

52 Minutes F (March-November 1886), 403-405, 472.

53 "What They Think", Post, December 21, 1886, "Local Law-Makers",
ibid., January 11, 1887; Minutes F (January 10-February 28, 1887), 491-516.

54 Minutes F (December 1886-December 1887), 488, 545-547, 552, 566,
633-634; ibid., G (February 13, 1888), 17-19.

55 "An act to authorize any city...to compromise existing indebtedness....",
in Gammel, Laws, IX (March 1887), 848-851; Minutes F (August 23, 1887), 580-
582. According to the statute, the board consisted of one member appointed by the
mayor, city council, district judge, governor and bondholders respectively. Two
earlier state acts relating to urban bond compromises, which were enacted con-
currently with Houston's efforts to achieve refundings, contain no institutional
creations. See Gammel, Laws, VIII (May 1876), 1187-1188; and ibid., VIII
(March-April 1879).

56 Minutes F (December 1886-August 1887), 485, 580. The motion to reduce
valuations by 20% resulted in a 15% cut from $10.48 million to $9.15 million.

57 Minutes F (August 8-23, 1887), 578, 580-584.

58 ibid., F (December 12, 1887), 627; ibid., G (March 28-June 2, 1888),
52-61, 89-85; Galveston Daily News, March 29-30, 1888. A board of liquidation
was set up in August. See Minutes G (August 27, 1888), 125; and ibid., G (June 23, 1890), 429, for its first report.


60Minutes G (October 1888–February 1889), 147, 161, 183.

61Post, January 8, 22–30, February 1–2, 1889. The newspaper's account contained considerable information on different opinions within the city and the processes of compromise. The charter amendments are found in Gammel, Laws, IX (March 1889), 1324–1335.

62Ibid., IX (March 1889), 1324–1335; and ibid., X (April 1891), 305–321.

63Minutes F (September 2, 1886), 455–457. Interestingly, the citizens group suggested that an expert, hydraulic engineer, be employed to undertake a study of city water main needs. They also suggested statutory reforms, in order to create additional regulation of hydrant water pressure.

64Ibid., F (September 13–16, 1886), 461–462; "The Water Test", Post, September 15, 1886; Minutes F (April 25, 1887), 547–548.

65Post, July 9, 1881.

66Minutes F (December 12, 1887), 626. The ordinance also required the company to obtain the written consent of the mayor before tracks could be replaced.

67Houston City Street Railway Company v. Mayor et al., no. 12644, 11th DC (January 12, 1888); and 11th DIMB, P, 322.

68Consider for example, Mayor et al. v. Houston City Street Railway Company, no. 13199, 11th DC (March 22, 1889), and 11th DIMB, W, 78, 434, and Y, 247; Houston City...Co., v. Mayor et al. no. 13689, 11th DC (July 29, 1890), and 11th DIMB, X, 102, 151–152; ibid., 83 Texas 548 (1892); The Mayor v. Houston Belt and Magnolia Park Railway Company, 84 Texas 581 (1892).

69"Municipal Improvements", Post, December 14, 1888.

70"Paving and Progress", Post, September 15, 1895; "Paving and Progress", ibid., December 13, 1888; "Street Numbering", ibid., June 7, 1889; and George Porter, "Internal Improvements", as reported in ibid., June 16, 1889.
CHAPTER IV – FOOTNOTES


2Cf., City Directory for 1884, 337-352, and City Directory for 1890, 49-72.


7Benajah Harvey Carroll, Standard History of Houston, Texas (Knoxville: Crew, 1912), 95; Galveston Daily News, April 6, 1886; Minutes F (April 10, 1886), 412. Baker carried three of five wards but lost by 4 votes out of 4492. The Smith wards, the first and fifth, contained relatively more workers.

8Supra, chaps. i and iii.

9Minutes F (June 1886-December 1887), 432, 591-593, 620-623.
For a general survey of Houston utilities in the mid-'80's, see the special edition on the city in the Post, September 19, 1886. More detail on the waterworks can be found in M. N. Baker, The Manual of American Water-Works - Compiled from Special Returns (1st annual issue; New York: Engineering News, 1888), 484. Some information on the Houston Gas-Light Company is contained in E. C. Brown (compiler), Brown's Directory of American Gas Companies (New York: Progressive Age, 1892), 112-114. The above two companies were owned and directed by the same men. See City Directory for 1884, 350. For data on the telephone, see ibid., 55; and "Telephone Talk", Post, January 3, 1889. Street railway statistics are found in Henry V. Poor (ed.), Poor's Manual of Railroads (New York: Poor, 1889), appendix, 58-59.

The manual noted that in 1888, the Houston system carried over 1.5 million passengers. Rate comparisons are difficult to make without more data. On the basis of the above sources, Houston seems to have been paying about the national average rate for water service, but about 50% above the average in the Southwest. Street railway fares of five cents were universal throughout the nation. The highest price paid in the city in comparison to elsewhere was for electric arc lights. Houston paid $292 annually for each lamp in contrast to an average rate of only $130 in 1887. See F. H. Whipple, "Municipal Lighting", a paper read before the Ninth Meeting of the National Electric Light Association (Chicago, 1889), as reported in Electric World, XIII (1889), 130. Finally, gas rates in Houston appear to have been about 50% higher, or $3 per thousand cubic feet, than most other places in Texas or elsewhere.

Minutes F (July 1884-May 1885), 265-275, 304-306, 316, 334.

Ibid., F (September 28-December 12, 1887), 597, 603-610, 627-630; Houston Light and Power Company, Origins and History of Houston Lighting and Power Company (Houston: n.p., 1940), 7-13; "Increased Magnitude", Post, December 5, 1889.

Minutes F (November 8-11, 1887), 614-617; Ibid., G (January 9-February 13, 1888), 1, 3, 8-9, 16; for a history of the Fort Wayne Company, see Harold C. Passer, The Electrical Manufacturers, 1875-1900... (Cambridge: Harvard University Press, 1953); 53-56.

Minutes G (January 9, 1888), 1; supra, chap. iii.

Minutes G (March 2-April 9, 1888), 32, 65-71. The final vote on the grant to Boyd ended in a 4-4 deadlock. Mayor Smith's vote passed the measure. A copy of the franchise is found in Houston, Charter and Revised Code of Ordinances (1904), 537-540.


19 J. C. Pratt, "The Future of the Gas Industry", AGLA, Proceedings, IV (1882), 156-165. For a similar earlier analysis, see F. C. Sherman, "The Relations of Municipalities to Gas Companies", ibid., III (1879) 60-63. In a remarkable prediction of the utility industry's public policy, Sherman stated, "The future safety of our investments in gas manufacturing lies in taking the public into our confidence. From its nature, it is necessary that the business should be a monopoly, but enlightened self-interest demands that it become regulated by law." Also consider A. Hickenlooper, "President's Address", ibid., IV (1882), 139-150; and supra, chap. ii.

20 Supra, chap. ii. In 1882, for example, Cleveland's William H. Price called for rapid market exploitation of the "vast capabilities" of gas. "I believe that it will be largely the fuel of the future", Price announced. See Price, "President's Address" AGLA, Proceedings, IV (1882), 10-13.


22 M. S. Greenough, "President's Address", ibid., VIII (1887), 17-30; Delos F. Wilcox, Municipal Franchises....(2 vols.; New York: Magraw Hill, 1910), 114-119. Other urban utilities were also undergoing transfers in their ownership from local to national investors. For prominent examples in street railway affairs see, Gustavus Myers, "The History of New York Franchises", MA, IV (1900), 164-181; and Burton J. Hendrick, "Great American Fortunes and their Making - Street Railway Financiers", McClure's Magazine XXX (1907), 33-48, 236-250, 323-338; Edward E. Higgins, "The Intrinsic Value of Street Railway Investments", SRJ, X (1894), 18-25, passim. The development of a securities market for urban public


24 John C. Pratt, "Present State of the Gas Interest", ibid., VII (1885), 89-97; G. G. Ramsdell, "Gas Commissions", ibid., VII (1886), 218-225. Ramsdell noted that the Western Gas Association favored the formation of state utility commissions. Also see the endorsements of A. C. Wood, "President's Address", ibid., VII (1886), 183-196; Emerson McMillin, "President's Address", ibid., IX (1890), 230-246; and William H. White, "President's Address", ibid., X (1892), 30-42.

25 Greenough, as reported in ibid., VII (1886), 225; Pratt, "Gas Interest", ibid., VII (1885), 80-97. For a description of the Massachusetts gas and electric commission, consider Joseph B. Eastman, "The Public Utilities Commissions of Massachusetts", in Clyde Lyndon King (ed.), The Regulation of Municipal Utilities (New York: Appleton, 1912), 276-295. Eastman, an advocate of the commission, agreed that it had kept "unwise competition" out with an "iron hand". Also consider the excellent and critical evaluation of commissions in the symposium held by the American Association of Political and Social Sciences, "State Regulation of Public Utilities", Annals, LIII (May 1914), passim.


The validity of the natural monopoly theory has been seriously questioned for some time. For early criticism and a review of the theory's influence, see Irwin Rosenbaum, "The Common Carrier - Public Utility Concept; A Legal-Industrial View", Journal of Land and Public Utility Economics, VII (1931), 155-168; Horace Gray, "The Passing of the Public Utility Concept", ibid., XVI (1940), 8-20; and Walter...


34. For street railway company perceptions, examine the industry's leading trade organ, the Street Railway Journal. See in particular "Preying upon Street Railways", SRJ, IV (1888), 183; ibid., V (1889), 62; and ibid., VII (1891), 255-266. Electric light executives also felt pressures for public ownership of their industry. Consider, F. W. Hipple "Municipal Lighting", a paper read before the ninth meeting of the National Electric Light Association (NELA) (Chicago, 1889), as reported in Electric World, XIII (1889), 130-131; the companion paper by A. R. Foote, "Municipal Ownership of Commercial Monopolies", in ibid., XIII (1889), 130-131; and C. R. Huntley, "President's Address", a paper read before the fourteenth convention of the NELA (Buffalo, New York, 1891), as reported in ibid., XVIII (1899), 199. David Thelen, The New Citizenship: Origins of Progressivism in Wisconsin, 1885-1900 (Columbia, Missouri: University of Missouri Press, 1972), 55-130, 223-290, proposes that the hardship resulting from the depression of 1893 was the central mechanism which inspired a political consensus against privately owned public services. The earlier evidence of utility association alarms strongly suggests that the municipal ownership movement was formed before 1893. Thelen is undoubtedly correct in pointing to the depression as a catalyst for sharpening attention on this issue of common concern. The historian deserves praise for a large contribution towards a better understanding of the Progressive Era. In addition, Thelen has followed his own excellent historiographical analysis [Thelen, "Social Tension and the Origins of Progressivism", JAH, LVI (1969), 323-341], which asserted that the search for social group origins should be set aside in preference to defining politically unifying issues. Also see infra, chap. v.

35. Emerson McMillan, "President's Address", AGLA, Proceedings, IX (1890),
Walton Clark, "Public Ownership of Gas Properties", ibid., XI (1894), 67-77; William H. Pearson, "President's Address", ibid., XI (1894), 247-252. Clark's paper is especially useful because he attempts to answer each proposition advanced by James and Bemis. See supra, n. 28. Also see the editorials in the SRJ, VII (1891), 255-256; ibid., VIII (1892), 96; and ibid., X (1894), 35, 502-503. Similar arguments were advanced by several waterworks executives in reply to a paper suggesting municipal ownership. See the discussion following J. Nelson Tubbs, "Particulars in which Municipal Officers should Protect the Municipal Corporation in Granting Water Work Franchises to Private Companies", AWWA, Proceedings, (1892), 37-41. Electric light industry replies to municipal ownership were largely formulated by Allan R. Foote, "Municipal Ownership", Electric World, XIII (1889), 130-131; Foote, Economic Value of Electric Light and Power (Cincinnati: Clarke, 1889), v-viii, 127-141; and Foote and Charles E. Everett, The Law of Incorporated Companies Operating Under Municipal Franchises,...(3 vols.; Cincinnati: Clarke, 1892-1893), 1-66, 88-104. Significantly, Foote was also a leading publicist in the campaign to reform and restrict municipal tax powers. His important role in this regard is considered by Clifton K. Yearley, The Money Machines - The Breakdown and Reform of Governmental and Party Finance in the North, 1860-1920 (Albany: State University of New York Press, 1970), 175-191, passim.

36 Clark, "Public Ownership", AGLA, Proceedings, XI (1894), 67-72; supra, n. 35.

37 SRJ, VII (1891), 255-256. To the trade journal, the alternatives were clear. "If this clamor for taxation continues, private capital will be driven from the field, and the whole business (of mass transit) will be relegated to municipal ownership, a policy we believe is incompatible with our principles of government, and should be condemned because it tends to increase governmental interference with individual action", the editor reasoned. Also see in particular, Foote, Corporations under Municipal Franchises, 66-104; and Clark "Public Ownership", AGLA, Proceedings, XI (1894), 72-77. Both electric light promoter Foote and the SRJ VIII (1892), 96, agreed with gas men on the advantages of state regulatory commissions.


39 Supra, chap. ii, and n. 24.
Whipple, "Municipal Lighting", Electric World, XIII (1899), 131. Also see Huntley "President's Address", ibid., XVIII (1891), 199; and E. Z. Armstrong, "Morals of Corporations", a paper read at the Sixteenth meeting of the NELA (St. Louis, 1893), as reported in ibid., XXI (1893), 187-188. Street railway and waterworks managers were given similar messages. Consider SRJ, VII (1891), 88-89; ibid., VIII (1892), 425; and Bull, "President's Address", AWWA, Proceedings, (1890), 7-10.

Thomas Turner, "President's Address", AGLA, Proceedings, VIII (1888), 201-208; White, "President's Address", ibid., X (1892), 30-35. Also see Bemis, "Municipal Ownership", Publications of the A.E.A., VI, no. 4 (1891), 60. Bemis concurred with this evaluation and asserted further that the impact had become the "universal experience". This important technological side-effect was missed, unfortunately, in the benchmark study by Passer, Electrical Manufacturers, 195-203.

Greenough, "President's Address", AGLA, Proceedings, VIII (1887), 20-30; Frederick H. Shelton, "Illuminating Water Gas - Past and Present", ibid., IX (1889), 154-199. Shelton noted that over 50% of the total gas produced and 30% of the American cities used the water gas technique. Also consider a personal account of managerial acceptance of the innovation by Hartford's John P. Harbison, "President's Address", ibid., IX (1891), 569. In addition, consider a progress report in this area by William H. Pearson, "President's Address", ibid., XI (1895), 252-261; besides more scholarly assessments by Alton D. Abrams, "Gas or Electricity for Heating, Lighting and Power?", Gassier's Magazine XVII (1900), 513-517; and Harold Baron, "Incandescent Gas Mantles", ibid., XXXII (1907), 201-208.

Passer, Electrical Manufacturers, 41-57, 321-334; W. Paul Strassman, Risk and Technological Innovation: American Manufacturing Methods During the Nineteenth Century (Ithaca: Cornell University Press, 1956), 170-183; Delos F. Wilcox, Municipal Franchises.... (2 vols.; New York: McGraw Hill, 1910), 135-140. The monopoly control of the entire telephone business from 1878-1894 by the Bell Companies because of patents is a stronger case in point. See ibid., I, 217-242, for a brief history and statistical summary of these developments. Both the telephone and the electric light and power manufacturers helped curtail competition on the local level through a system of licenses. For an examination of the early evolution of this intra-industry franchise device, see the astute remarks of a Bell Company attorney, M. F. Tyler, "The Legal History of the Telephone", CSS, XVIII (1884), 163-177.

William D. Middleton, The Time of the Trolley (Milwaukee: Kalmbach, 1967), 27-49; "Mechanical Traction upon Tramways", SRJ, II (1886), 434-436; and ibid., I-II (1885-1886), passim.

"Electricity for Street Railways", ibid., IV (1888), 329; "Electric Railways", ibid., V (1889), 54.

46

The transformation of the industry in statistical terms can be followed in "Some Facts", ibid., IV (1888), 156; ibid., VIII (1891), 213; ibid., X (1894), 33. Charles Hoffman notes that street railways were the only major industrial sector to attract large investment inputs during the depression. See his article, "The Depression of the Nineties", Journal of Economic History, XVI (1956), 141-145. For reductions in operating costs, see "The Richmond Union Passenger Railway", ibid., IV (1888), 142-148; Passer, Electrical Manufacturers, 254-255; and Edward E. Higgins, "The Intrinsic Value of Street Railway Investments", SRJ, X (1894), 18-25, 104-105, 165-168, 226-230. Higgins significantly noted that expectations of great savings were largely offset by the "sudden and amazing increase in traffic", which required substantial increments in cars and services. See ibid., 18-19.

47


48

C. J. King, "Advantages of Gas Companies Engaging in the Electric Light Business", AGLA, Proceedings, VIII (1887), 130-133; and the discussion which followed at ibid., 133-140.

49

50. "Organization of the Southwestern Gas Association", AGLJ, XLIX (1888), 73-74; "President Beck's Inaugural Address", ibid., 183; "Second Annual Meeting of the Southwestern Gas Association", ibid., L (1889), 470-471. By 1893, the association seems to have virtually disappeared. For a list of association members and Texas gas companies in the electric field, see Brown, Brown's Directory, (1892), 112-114, 152.

51. According to its contract with the city, the Fort Wayne Company was penalized $15 per day for not having an operational plant by August 1888. Consequently, the company had to pay the city about $3850 after having lost the contract entirely. See "The Electric Lights", Post, November 17, 1888; "Local Legislature", ibid., November 27, 1888; ibid., December 8, 1888; "This Means Business", ibid., January 10, 1889; "New Light Company", ibid., March 29, 1889; Minutes G (November 1888-March 1889), 156, 177-179, 183, 193. During this period, rumors frequently circulated about other new utility ventures. For example, see Post, December 8, 1888; and "Water and Light", ibid., June 16, 1889.


54. Boyd's initial plan and later delay is reported in SRJ, IV (1888), 55, 80; and Post, March 9, 1889. Also see supra, n. 45.

55. The course of events outlined became public information slowly. First reports of a sale were revealed by the original majority owner, William Sinclair of Galveston, to the Post, March 16, 1889. Also see Sinclair's interview, "In and about Houston", ibid., July 28, 1889; and the revelations contained in Holmes' letters to Mayor Smith as reported in "Street Railway Lines", ibid., August 1, 1889. For more information on Holmes', see "Three Years Progress in Mechanical Traction", SRJ, IV (1888), 250-252.

56. Post, March 14-20, 1889; Houston City Street Railway Company v. William Boyd et al., no. 13198, 11th D.C. (March 18, 1889), and 11th DIMB, W, 77-78.

57. Mayor et al v. Houston City Street Railway Company, no. 13199, 11th D.C. (March 18, 1889), and 11th DIMB, W, 78.

58. "Street Railroad Fight", Post, March 20, 1889; Houston City Street Railway Company v. Bayou City Street Railway Company, no. 13205, 11th D.C. (March 30, 1889), and 11th DIMB, V, 165. The Houston City's petition was refused except for commanding the Boyd company to use care in crossing the other's tracks.

60. Ibid., G (March 25-June 10, 1889), 194-196, 203-207, 219-231; Post, April 9-10, 1889.

61. Letter from C. B. Holmes to D. Smith, as reported in "Street Railway Lines", ibid., August 1, 1889. Also consider similar remarks by the former owner, William Sinclair, after his return from conferences with Holmes. See "In and About Houston", ibid., July 28, 1889. The franchise was finally passed with the amendments Smith demanded. See Minutes G (July 22-August 2, 1889), 256, 262-263. An indication of who Holmes' partners were is given in "Street Railway Men", Post, January 24, 1890.

62. The election can be traced in the Post, January 23, February 11, 16, 26, and March 7-18, 1890; Galveston Daily News, March 19-20, 1890; Minutes G (April 12, 1898), 404-405. For a biographical sketch of Scherffius, see The Industries of Houston... (Houston: Elstner, 1887), 81.

63. Minutes G (May 12-October 23, 1890), 414, 452, 461.

64. Sister M. Agatha, The History of Houston Heights - From its Foundation in 1891 to its Annexation in 1918 (Houston: Premier, 1956), 15-20, 115-118. Carter also was the president of 6 Omaha centered banks, besides the American Loan and Trust Company of Omaha. In 1887, he purchased the 1765 acre site for $80,000. For a description of the development six years later, see ibid., 27-30. The Heights was not the only suburban development dependent upon electric traction. An earlier, less ambitious project was Magnolia Park, which was southeast of the city. See Minutes G (May 27-June 24, 1889), 219, 241-242, "Magnolia Park", Post, February 23, 1891. For similar practices in other cities, cf. Foleton, The Fragmented Metropolis, 85-107; and Sam Bass Warner, Jr., Streetcar Suburbs: The Progress and Growth in Boston (Cambridge: Harvard University Press, 1962), passim.

65. Minutes G (April 27-May 25, 1891), 526-530, 536-545. Also consider the reports on the new company in SRJ, VII (1891), 326, 492, 526. The Houston City Company again tried unsuccessfully to thwart its competition by means of equity court actions. See Houston City Street Railway Company v. Houston Rapid Transit Company, no. 14254, 11th D.C. (October 13, 1891), and 11th DMB, Y, 70. The initiation of electric traction is reported in "Freeing the Mule", Post, June 13, 1891.


67. "Houston's Telephones", ibid., September 18, 1892; supra, n. 10.

68. Morrison, City of Houston, 15-16; City Directory for 1894, 3-4; supra, n. 17. The relationship between excessive wastes of water and lack of an efficient meter system was established in early '80's, at the latest. See for example, John C.
Kelly, "The Benefits of the Meter System as Shown by Practical Results", AWWA, Proceedings, I (1882), 38-43; Edwin Darling, "Water Meters", ibid., I (1884), 166-170; and "Water Meters", Fire and Water, I (1887), 241-242. For an analysis of Houston's water supply for fire-fighting purposes, see ibid., IX (1891), 275. Also see infra, chap. V.

69. For statistics on the Houston City Company reorganization, examine, Poor (ed.), Poor's Manual of Railroads (New York: Poor, 1895), appendix, 1128-1129; and Parlin v. Houston City Street Railroad Company, no. 302 (equity), USCC (June 27, 1895). This receivership case will be considered, infra, chap. VI. For comparison to national developments, see Higgins, SRJ, I (1894), 101-105, 165-168.


71. Of the 70 positions for mayor and alderman between 1874 and 1888, 21 were filled by men connected to a franchised corporation. (These categories include railroad managers.) Consult the corresponding City Directory, passim.

72. Cotner, Hogg, 189-273; Barr, Reconstruction to Reform, 111-175.

73. Cotner, Hogg, 248-353; Winkler, Platforms, 310-344; E. T. Miller, "The Historical Development of the Texas State Tax System", Southwest Historical Quarterly, LV (1951), 1-29. For the governor's analysis of the need for municipal and private corporation financial controls, see Hogg, "Message to the Twenty-Second Legislature in Special Session", in Cotner, (ed.), Addresses and State Papers of James Stephen Hogg (Austin: University of Texas Press, 1951), 169-172. Unfortunately, the freedoms and rights of blacks were not only restricted but also destroyed. See Barr, Reconstruction to Reform, 179-208; and Gould, Progressives and Prohibitionists, 3-28.

74. Minutes H (December 28, 1891), 12-15.
CHAPTER V - FOOTNOTES


3For a general survey which stresses the objectives of new middle class elites, see Robert H. Wiebe, The Search for Order, 1877-1920 (New York: Hill and Wang, 1967), 76-195, also see infra n.5.


7 Seth Low, "The Government of Cities in the United States", Century Illustrated Monthly Magazine, XLII (1891), 730-736. Also see for example, William M. Ivins "Municipal Government", Political Science Quarterly, II (1887), 291-312; Francis Newton Thorpe "Recent Constitution Making in the United States", Annals, II (1891) 145-201; Ellis Paxton Oberholtzer, "Home Rule for American Cities" ibid., III (1893), 736-763; and Edwin L. Godkin, "The Problems of Municipal Government" ibid., IV (1894), 857-882. For a more complete listing of contemporary commentary on the home rule issue and other reforms, see Robert C. Brooks, "A Bibliography of Municipal Administration and City Conditions", MA, I (1897), 1-224; and William Bennett Munro, A Bibliography of Municipal Government in the United States (Cambridge: Harvard University Press, 1915). For a favorable assessment of Low, see L. E. Fredman, "Seth Low: Theorist of Municipal Reform", Journal of American Studies, VI (1972), 19-39. Low’s type of reformism has received sharp attack from Melvin G. Holli, Reform in Detroit: Hazen S. Pingree and Urban Politics (New York: Oxford University Press, 1969), 157-181. In contrasting Pingree’s social reformism with structural reformers, Holli concludes that the latter “deceived themselves and helped to mislead a generation of reformers into thinking that they were dealing with the fundamental problems of the city, when in reality they were retooling the machinery of urban government to fit the needs of the business world.” Ibid., 180. While Holli’s analysis is useful and filled with insight, his dialectic between social and institutional reform is overdrawn. The modernization of city governments’ administrative machinery was potentially as useful to community minded leaders as elites. Budgets, for example, could further purposeful expenditures on social programs as well as restrict and control spending. Holli correctly points out, however, that many institutional changes acted to limit popular participation in the political process. For an examination of some of these types of reforms, see Hays "Political Reform", Pacific Northwest Quarterly LV (1964), 157-169; James Weinstein "Organized Business and the City Commission and Manager Movements", JSH (1962), 166-182; and infra, chap. vii.

8 Goodnow was probably the most influential political scientist-legislative reformer of the Progressive Era. Unfortunately, no complete study of his many sided career exists. For an introductory but incomplete history of his work in municipal reform, see Lurton W. Blassingame, "Frank Goodnow and the American City" (unpublished Ph.D. dissertation, Department of History, New York University, 1968). Also consider J. Austin Ranney "Goodnow’s Theory of Politics", Southwestern Social

10 Supra, nn. 5 and 7.


12 Texas, Constitution (1876), art. 11, secs. 4-5; supra, chaps. i-iv; Robert C. Cotner, James Stephen Hogg - A Biography (Austin: University of Texas Press, 1959), 168-220, 333-338.


14 Oran M. Roberts, "An Exposition of the Proposed New Charter of Incorporation of the City of Austin, Texas", Miscellaneous File MS, Oran M. Roberts Papers, Box 2F 477, University of Texas; Suhler, "History of Austin", 410-423; Cotner, Hogg, 333-338.

15 Roberts, "Exposition", Roberts Papers, Box 2F 477.


17 H. P. N. Gammel (compiler), Laws of Texas, 1822-1897 (10 vols.; Austin; Gammel, 1898), X (April 1891), 327-352. Further opposition to the project resulted in an important state court decision: Naile v. City of Austin, 85 Texas 520 (1893). The Texas high bench ruled that the city government and the legislature, but not the judiciary, could determine the expediency of public works projects.


22 Minutes H (December 28, 1891), 12-15.


24 History of Texas - Together with a Biographical History of the Cities of Houston and Galveston (Chicago: Lewis, 1895), 384-386; Post, March 2-April 5, 1892; Galveston Daily News, March 1-April 6, 1892; Minutes H (April 9, 1892), 55.


26 For statistics of the Houston Water Company's expansion from 28 miles of mains and 185 hydrants to over 60 miles and 555 hydrants, cf., M. N. Baker (ed.), The Manual of American Water Works - Compiled from Special Returns (1st Annual issue: New York: Engineering News, 1888), 484; and ibid. (4th issue, 1897), 518. Contemporary perceptions of the role of the water supply in urban life were extensively discussed in an 1894 investigation. A history of these developments will be discussed below.

27 For the introduction of the "Gamewell" fire alarm system, see, Minutes H (December 1891-August 1893), 11, 143. The first drive to professionalize the
fire fighters is detailed in ibid., H (December 1892-February 1893), 97-98, 103, 448, 466.

28. Supra, chaps. i and iii. Also consider the debate between Mayor Scherffius and the council on the 1892 budget, Minutes H (January 18, 1892), 19-21.

29. See ibid., F (August 23, 1887), 580-582; ibid., H (September 19, 1892), 89; and ibid., M (August 4, 1902), 128. Houston property was assessed for approximately 50% of its market value. See Minute Book of Ordinances (Houston: City Secretary's Office), I, (1892-1903), 102-103 [Hereinafter cited as Ordinance Book], City Directory for 1895, 3; Post, April 4, 1897.

30. Minutes H (April 12, 1892), 64. In addition, a committee of accounts and records was created to audit and to modernize the city's accounting system. See ibid., H (October 1893-May 1895), 151, 534-536.

31. Ibid., H (December 30, 1892), 101-102.

32. Ibid.

33. Ibid., H (May 22-October 9, 1893), 126-129, 149-151.

34. Gammel, Laws, IX (1889), 1324-1335; Minutes H (April 10, 1893), 118. In 1893, the board members were T. W. House, August Bering and Eugene Pillot. Each was a business leader and large holder of urban real estate. For figures on their property, see "The Story of a Live City", Post, June 9, 1893; and "Heavy Taxpayers", ibid., September 15, 1897.


36. See Minutes H (May 1893-May 1894), 126, 207. Austin's large bond issue finally was sold under par value. See the taxpayer's suit contesting this transaction, Nalle v. City of Austin, 21 SW 375 (1893) and ibid., 85 Texas 520 (1893).

37. Minutes H (January 29, 1894), 176-177; Post, March 6-April 3, 1894. Brown won by an almost 2 to 1 margin over his closest competitor, Henry Scherffius.

38. See for example, Minutes H (June 1893-July 1894), 128, 182, 199, 256-262. State supreme court rulings in the early '90s upheld Houston's police power authority, but restricted its employment to protect the vested rights of franchised utilities. See Mayor v. Houston City Street Railway Company, 83 Texas 548 (1892); and Mayor v. Houston Belt and Magnolia Park Railway Company, 84 Texas 581 (1892). In the later case, the city finally received judicial confirmation of its contention that prior written permission was necessary before transit firms could build tracks in the streets.
39 Minutes H (April 23–June 11, 1894), 200-201, 211, 223; "Houston City Council", Post, May 29, 1894.

40 Ibid.; Minutes H (June 11, 1894), 222-223. At this time, Houston had about 135 street lamps. See "Water and Light", Post, October 23, 1893.

41 See Minutes H (July 16–August 13), 256, 269, 275-276, 283.

42 Supra, n. 26, and chap. ii.

43 Minutes H (May 14–July 30, 1894), 207, 223-225, 246, 266-267; "Houston City Council", Post, June 12, 1894. Only Baily and Hirsch voted to grant the franchise.

44 See Charles O. Green, Fire Fighters of Houston, 1838-1915 (Houston: Dealy-Adey, 1915), 115-117; and Minutes H (October 1, 1894), 335.


47 Ibid., The civil appeals decision was confirmed by the state supreme court. See ibid., 88 Texas 233 (1895). Cf. Lenzen v. City of New Braunfels 35 SW 341 (1896), where a different civil appeals court held a municipality which owned its waterworks, to be liable to citizens. However, this precedent was not followed in subsequent adjudication. Consider Butterfield v. City of Henrietta, 61 SW 975 (1901).

48 A detailed account of the proceedings was recorded in "Houston City Council", Post, November 6, 1894. Extra charges for a bathroom or keeping a cow, for example, were dropped. A three room house, under the new schedule, could have 3 taps instead of 1 for the same charge of $.50 per month.

49 Ibid.; Minutes H (November 5, 1894), 367-368. The company worked hard to fulfill its pledge. See "The City's Water Supply", Post, October 26, 1895; and City Directory for 1895, 4-5.

50 Ibid.; Minutes H (November 6, 1894). An extra $.50 per $100 valuation was charged shortly after the investigation. See Minutes H (February 4-25, 1895), 448, 466.

51 Ibid., H (November 1894–January 1895), 370-371, 422.

52 For the council's continuing negotiations with the underwriters, and consequent reform legislations, see Minutes H (December 1894–June 1895), 408, 422, 448, 466, 542. Normal insurance rates were restored in 1897. See "Houston is Restored", Post, July 8, 1897.
53. The doctors' report is contained in "Houston's Water Supply", Fire and Water, XVII (June 29, 1895), 289. The council commissioned study is found in Minutes H (October 21-December 9, 1895), 641, 669, 681.

54. Ibid., H (November 12-December 10, 1894), 372, 379, 393, 402.

55. Higgins v. Bordages, 88 Texas 458 (1895). The overturned precedent was Lufkin v. Galveston, 58 Texas 545 (1883). See supra chap. iii. A series of important cases on the meaning of the decision for special assessments levied before 1895 will be discussed infra, chap. vi. The Texas court decision was delivered on the same day that the U. S. Supreme Court was handing down its famous opinions in the income tax case. See Pollack v. Farmers' Loan and Trust Company, 157 US 429 (1895).

56. Texas, Constitution (1876), art. 5, sec. 2; E. W. Winkler (ed.), Platforms of Political Parties in Texas (Austin: University of Texas Press, 1916), passim, lists nominees for the bench. Biographical information on Chief Justice Stayton can be found in James A. Lynch, The Bench and Bar of Texas (St. Louis: Nixon-Jones, 1895), 315-322; and 87 Texas Reports, v-xviii.


59. Ibid.; ibid, April 12, 1895; Post, April 11-13, 1895.

60. See Minutes L (April 1, 1901), 6; and Storrie v. City of Houston, no. 1779, USCC (November 20, 1895). The contractor's suits against the city and others will be discussed infra, chap. vi. About 11 miles of paved roads and 40 miles of sewer lines were constructed with special assessments. See City Directory for 1895, 3.


62. Higgins v. Bordages, 88 Texas 464 (1895). The rehearing effort attracted some of the state's most prominent law firms, such as Willie and Balinger from Galveston and Ewing and Ring from Houston. The infusion of legal talent on behalf
special assessments in Higgins and subsequent cases reflected the vital importance of this taxing method for Texas cities.

63. Minutes H (July 1-15, 1895), 566-575. Houston had a bonded debt of $1,843,000, which required approximately $100,000 per year in interest maintenance. In 1894, assessed property values stood at $22,863,000; a tax of 2% ad valorem was collected. Paving a mile of roadway 35 feet wide cost from $30,000 for gravel to $47,000 for 2 layers of brick on a 6 inch gravel base.

64. Ibid.; Texas, Constitution (1876), art. 6, sec. 3; Houston, City Charter, (1893), sec. 59, in Gammel, Laws, X (1893), 701-702.


66. Minutes H (August 26-September 9, 1895), 602-604, 616. Both the mayor's and the council's plan placed a $200,000 limit on bond issues in any single year.

67. Ibid., H (September 9-23, 1895), 617, 622; "The Bond Issue Defeated", Post, September 22, 1895. The resolution was supported by a plurality only in the third and fourth wards. About 20% of the taxpayers participated. For voter registration statistics, see ibid, March 26, 1896, and November 30, 1897. For a clear exposition on the relationship between public improvements and progress, consider the editorial, "Paving and Progress", ibid., September 15, 1895. In a later column, the daily explained, "People can find so many progressive towns in which to live that there must be a bid for population by supplying those comforts and conveniences of city life without which now the more desirable kinds and accessions of population cannot be secured. The city must not only present advantages, but comforts, modern improvements of every description, indicating a care for health and easy transactions of business and betraying a broad public spirit." See "Public Spirit Once More Awake", ibid., December 1, 1896.

68. "The Bond Issue Defeated", Post, September 22, 1895; and ibid., September 23, 1895.

69. "The Day at Houston", Galveston Daily News, September 21-22, 1895. In November, the taxpayers' inquiry was answered by contractor Storrie, who sued the city for the entire amount. See "Houston's Big Law Suit", Post, November 24, 1895; and supra, n. 60.


71. Ibid.; "Good Government Club", ibid., December 17, 1895. Sixteen leaders were listed by the daily; none were workers. See City Directory for 1895,
passim. The reformers and their progress suggest a closer identity to Hofstadter's traditional middle class [Age of Reform, 131-173], and Thelen's mugwumps [The New Citizenship, 5-55] than Wiebe's new elites [Search for Order, 111-176].

72 "Good Government Club", Post, December 17, 1895. The combination of morality and politics was not unique to Houston during this period. For example, see William D. Miller, Memphis During the Progressive Age, 1900-1917 (Memphis: Stat Memphis State University Press, 1957), vii-x, 64-128; and the sources listed, supra, n. 5.

73 "Good Government Club", Post, February 21, 1896. The League became an early member of the National Municipal League (ibid., January 20, 1896), which proposed many of the same structural reforms. See supra, n. 11.

74 "They'll [sic] Name a Ticket", Post, January 28, 1890; "A Very Warm Debate", ibid., January 31, 1896; and "Good Government League", ibid., February 25, 1896. The latter source listed the League's ticket, which included Republicans. The central importance of loyalty to the Democracy in Southern politics is examined in Woodward, Origins of the New South, 244-249, passim.


77 For a biography of the Brashear family, consider History of Texas - together with a Biographical History of the Cities of Houston and Galveston (Chicago: Lewis, 1895), 470-472; and City Directory for 1895, 124. A biography of H. B. Rice can be found in Dermot H. Hardy and Ingham S. Roberts, Historical Review of Southeast Texas... (2 vols.; Chicago: Lewis, 1910), II, 411-412.

78 Minutes J (April 11, 1896), 62-63; "It's a Democratic Victory", Post, March 7-8, 1896. Brashear carried the fifth and the newly created sixth wards.

79 See Minutes J (April 1896-January 1897), 77-205. Rice's policies will be considered in greater detail infra, chap. vi.

80 For Pingree's efforts between 1890 and 1895, see Holli, Reform in Detroit, 35-124. In general see Hofstadter, Age of Reform, 164-186; Yearley, Money Machines, 167-224; Hays, "Politics of Reform", Pacific Northwest Quarterly, LV (1964), 157-169.

81 S. M. Lindsay, "Growth and Significance of Municipal Enterprises for Profit", JSS, XXXVI (1896), 154-161. Lindsay's quote was from Nathan Matthews, Jr., The City Government of Boston (Boston: Rockwell and Churchill, 1895), 180.
CHAPTER VI - FOOTNOTES

1 Parlan et al v. Houston City Railway Company, no. 302 (Equity) USCC (June 27, 1895), and USIMB, VIII, 380.

2 Supra, chap. iv.

3 Parlan v. Houston Company, no. 302 (Equity); and USIMB, VIII, 380; and ibid., IX, 14-32, also see Henry V. Poor, Poor's Manual of Railroads (New York: Poor, 1891), 1233; and ibid., (1895), 1129.

4 Parlan v Houston Company, no. 302 (Equity); more detail on Carter's securities manipulations are contained in the Kirby Papers, University of Houston, Houston, Texas, Box 174 ("inventory list"; Box 184 "new list"), Carter to Parlen, July 24, 29, 1895, and Parlan to Kirby, August 5, 9, 14, 1895. Carter attempted to force Parlan to buy the 6 mile Houston Heights line for $60,000 by threatening to tear up an important section of track which connected two Houston city routes. Parlan wrote to Kirby, "My opinion is that Carter, notwithstanding his protestations of friendship, etc., would not hesitate to clean me out of every cent I have been foolish enough to put in his hands, if thereby he could gain any personal advantage." Ibid., Parlan to Kirby, August 9, 1895.

5 Ibid., Parlan to Kirby, August 14, 1895; Parlan v. Houston Company, no. 302 (Equity), and USIMB, VIII, 382-384.


7 Supra, chap. v.

8 Parlan v. Houston Company, no. 302 (Equity) and USIMB, IX, 78-81, 124-125; Poor, Poor's Manual, (1896), 1232. The renamed Houston Electric Street Railway Company was supposed to have $500,000 in 5% first mortgage bonds and equal amounts of 6% income bonds. Old bonds would be exchanged into equal portions of each new bond. But Ibid., (1897), 1031, reports that $775,000 in each bond type was issued. For more information on the reorganization process, see "Street Railway Affairs", Post, October 11, 1895; "Receiver Kirby's Plans", ibid., January 17, 1896; "Order of Sale Granted", ibid., March 16, 1896; "Our Street Car System", ibid., April 4, 1897; and Kirby Papers, Box 174 ("inventory list"), Parlan to Kirby, January 1, 1896, and May 1, 12, 1896.

Association, III, no. 2 (1898), 53-101; also see Edwin Lawrence Godkin, "The Courts as Railroad Managers", Albany Law Journal, XXXII (1885), 45-47; and D. H. Chamberlain, "New Fashioned Receiverships", HLR, X (1896), 139-149. Some of the abuses associated with railroad receiverships are explored in Charles Fairman, Mr. Justice Miller and the Supreme Court, 1862-1890 (New York: Russell and Russell, 1939), 237-249. For a listing of street railway receiverships, see "Finance", SRJ, XIII (1897), 398. Also see Supra, chap. iv.

10. Massachusetts Loan and Trust Company v. Citizens Electric Light and Power Company, nos. 343 and 369 (Equity), USCC (January 8, 1898). This case and the quality of service provided by the company will be discussed below.


12. See ibid., for a history of the water gas process. For events in Houston, see Minutes J (October 26-November 16, 1896), 159-167; "Meeting of the City Council", Post, November 17, 1896; and "The Council Get Weary", ibid., December 29, 1897. The Hall company invited city representatives to visit their operations in Kalamazoo, Michigan; the offer was accepted. See ibid., J (July 26, 1897), 313; and "Cheap Gas Problem", Post, September 29, 1897.


14. Minutes J (December 14, 1896), 182-183. Also see the discussion below.

15. Ibid., J (April 5-19, 1897), 244-245, 255-256; "The Gas Franchise", Post, May 5, 1897; City Directory for 1895; 61, lists the company's directors. House, T. H. Scanlan and James A. Baker, Jr., also directed the Houston Water Company, while Baker further served as president of the Citizen's Electric Light and Power Company. See ibid., 60-61.

17 See "Guarding the Public's Franchises", Post, April 15, 1897; "Municipal Authority Over Franchise", and "Must Have Cheaper Gas", ibid., April 20, 1897; "The Too Generous Public", ibid., May 9, 1897. Editor Johnson, in the above articles, kept franchise politics in front of the public by informing it of struggles with utility companies in other cities such as New York and Indianapolis.

18 "The Public and Public Plants", ibid., May 12, 1897. These conditions the editorial concluded, explained the growing sentiment for public ownership.

19 Minutes J (May 11–May 17, 1897), 267, 273; "The Gas Conference", Post, May 14, 1897; ibid., May 18, 1897.

20 For a complete statement of the utility's reasons for rejecting the franchise, see Minutes J (June 7, 1897), 286. For council reactions, see ibid., J (June 7–28, 1897), 286, 294, 298–301; "Now Well Under Way", Post, June 22, 1897; and "Council's Night Session", ibid., June 29, 1897.

21 For a general review of contemporary evaluations of franchise disputes between government and utilities, see Henry Winslow Williams, "The Validity of Contracts and Franchises Held by Quasi-Public Municipal Corporations", ALR, XXVI (1892), 675–687; Lionel Norman "Legal Restraints on Modern Industrial Combinations and Monopolies in the United States", ibid., XXXIII (1899), 499–513; and Oscar Lewis Pond, Municipal Control of Public Utilities ("Columbia University Studies in the Social Sciences" no. 65; New York: AMS, 1906), passim. More specific references will be cited below.

22 Galveston and Western Railroad Company v. Galveston, 37 SW 27 (1896).

23 Ibid., 90 Texas 398 (1897).

24 See State ex rel Elmendorp v. San Antonio Street Railway Company, 30 SW 266 (1895); Railway Company v. Elmendorp, 38 SW 54 (1896); and ibid., 90 Texas 520 (1897).

25 Railway Company v. Elmendorp, 36 SW 54 (1896). At first, the court considered that if a public service company could show that bankruptcy would result from operating a part of its system, then no mandamus writ should issue. Neill allowed the company to prove that its total revenues were less than its combined operating expenses and debt payments. On rehearing, however, the court considered this portion of its ruling a mistake. See Ibid.

26 Ibid., 90 Texas 520 (1897). Earlier, the court expressed similar beliefs about the lack of differences between private individuals and common carriers in an important tort ruling. See Gulf, Colorado and Sante Fe Railway Company v. Smith, 87 Texas 348 (1894).

27 Palestine Water and Power Company v. City of Palestine, 91 Texas 540 (1898).
ibid., The U.S. case was Farmers' Loan and Trust Company v. City of Galesburg, 133 US 156 (1890).

supra, chaps. iv and v.


Ibid., Harlan used an example of transport innovations causing a great reduction in toll road revenues. The few remaining users, Harlan argued, could not be charged exhorbitant rates. The court in the 1890's, as 60 years beforehand, was willing to give "creative destruction" preference to vested rights. See Stanley L. Kutler, Privilege and Creative Destruction: The Charles River Bridge Case (New York: Lippincott, 1971).


Ibid.


Union Trust Company of New York v. City of Houston, no. 344 (Equity) USCC (June 29, 1896) and USIMB, IX, 358. The stockholders' bill of complaint specifically denied that the suit was a collusive one. However, their explanation was thinly disguised; local directors ignored minority stockholder concerns about the safety of the company. Houston's special legal counsel quickly exposed the collusive nature of the suit. See Minutes J (August 23, 1897), 324-325.
Ibid. The statutes, which were enacted in 1874, can be found in Texas, Civil Statutes, Annotated (Sayles, 1897), Title 21. Houston's special counsel could also have referred to the Kentucky Turnpike case (164 US 578 (1896)) to support the proposition that only the powers necessary for corporate existence are carried forward in the rechartering process.

Minutes J (August 23-30, 1897), 324-325, 330.

Post, August 27, 1897; "A Proposed Compromise", ibid., August 24, 1897; "City Briefs", ibid., August 25, 1897; "The Gas Ordinance", and "New Gas Contract", ibid., August 26, 1897; and Minutes J (August 23, 1897), 324.

The Street Veto", Post, September 1, 1897; "The Acting Mayor", ibid., August 31, 1897; and Minutes J (August 30, 1897), 330.

Ibid., J (July 26-August 16, 1897), 317-321.

Ibid., J (September 20-October 4, 1897), 342-343, 350-351; "City Council", Post, September 21, 1897.

Minutes J (October 4, 1897), 350-351; "To be Submitted to a Vote", Post, October 5, 1897.

For a copy of the petition and the story of its collection, see "A Mammoth Petition", ibid., August 27, 1897; and "The Acting Mayor", ibid., August 31, 1897. Rice's light board recommendation was implemented shortly after the election. See "Why Municipal Ownership", ibid., November 18, 1897; and Minutes J (December 1897-January 1898), 378, 380, 393.

Bond Issue Carries", Post, November 30, 1897; and Minutes J (December 6, 1897), 374. The final vote was 704-529. Since the bond plan was not more than $100,000, only a majority vote was needed. A majority approved. Curiously, the traditional workers' wards, the first and the fifth, opposed the proposition. The Houston Post favored the idea. See "Why Municipal Ownership", Post, November 18, 1897; "The Lighting Question Again", ibid., November 30, 1897; and "A Profitable City Plant", ibid., January 8, 1898, where the editor reasoned "strict business management is all that is required to make public control as profitable as private control in all such cases, while cheapening the service to the people."

See Minutes J (February 28-March 14, 1897), 412, 417-418. A copy of the 30 year franchise can be found in Houston, Revised Code of Ordinances (1904), 554-586.

See Trust Company v. Citizens' Electric Company, nos. 343 and 369 (Equity), USCC (January 7, 1898); and "Receiver Appointed", Post, January 8, 1898.

For biographical information on Samuel Brashear, see "Who They Are", 
49 "The Municipal Campaign", Post, January 7, 1898; "To Hold Day Primaries", ibid., January 15, 1898; "Only One Ticket", ibid., February 11, 1898; "The Day Primaries", ibid., February 26, 1898. Of the 9448 registered voters in 1898, 2026 were blacks. For a ward-by-ward breakdown of voter statistics, see "Registration Facts", ibid., March 24, 1898.

50 For the improvement bond plan, see Houston, City Charter (1897) sec. 41 in H.P.N. Gammel, Laws of Texas, 1822-1897 (10 vols.; Austin: Gammel, 1898), X (1897), 1419-1420; Minutes J (January 1897-January 1898), 202-205, 273-275, 289-290, 395. For Rice's budgets, see ibid., 273-275, 395. For Brashear's attack, see "Mr. Brashear's Views", Post, March 15, 1898.


52 Generally, see ibid. Efforts to organize street railway workers in Houston began a year earlier. A short strike allowed the men to join a union. See "Under Discussion", Post, July 4, 1897; "The Street Car Strike", ibid., July 5, 1897; and "The Strike is Ended", ibid., July 6, 1897. In 1898, the union demanded $.18 per hour and a 9 hour day instead of $.16 and 12-1/2 hours. Besides the union drive for a closed shop, the reinstatement of all the strikers and their seniority became an issue immediately after the strike was initiated. See "Reduction in Time Demanded", ibid., March 10, 1898; "Houston Labor Council", ibid., March 14, 1898; "Not a Wheel was Turned", ibid., March 16, 1898; "No Cars were Run", ibid., March 22, 1898.


54 See "The Official Figures", Post, March 26, 1898. Significantly, Rice carried only the third ward (900-852), which contained the largest concentration of white middle class voters. However, even in this ward, Rice's aldermanic supporters were defeated by the Brashear ticket. See ibid., and "The Bond Issue Carries", ibid., November 30, 1897.

55 "A Fatal Boiler Explosion", ibid., March 27, 1898; "Riot and Disorder", ibid., March 28, 1898; "Nearly a $150,000 Loss", ibid.; "Two More Victims", ibid., March 29, 1898; and "Street Car Strike Settled", ibid., March 31, 1898.
The transit workers won a pay raise from $.12 to $.17 per hour and a 9 hour day. In addition, most union men returned to work without a loss in seniority. See ibid. However, some Houstonians continued to seek revenge against the company. See "Dynamiting the Cars", ibid., April 24, 1898.

56 See Mayor Brashear's remarks on utility companies in Minutes J (February 20, 1899), 617-623. The legislative process of creating new administrative officers can be traced in ibid., J (September 1898–June 1899), 833, 554, 579, 646, 651. In addition, a city auditor position was established. See ibid., 586.

57 Ibid., J (May 1898–April 1899), 452, 462, 627-628, 636, 640, 645; Post, July 13, 1898; "The City Council", ibid., March 13, 1899; and "Cash Guarantee Deposited", ibid., March 18, 1899. Copies of the franchises can be found in Houston, Revised Ordinances (1904), 574-576 and 579-583. Both the Postal-Cable Telegraph Company and the Citizens' Telephone Company were operating in Houston by 1900. See "New Phone Company", Post, June 22, 1899; City Directory for 1900, passim.

58 For development in the municipal light plant controversy until March 1899, see Minutes J (May 1898–March 1899), 456-457, 462, 473, 544-545, 607, 617-624, 628.


60 For biographical information on Potter, see "Expert Sanitation Engineer", Post, February 17, 1899. His plans and the city council's reactions are considered in Minutes J (January 23–May 15, 1899), 602, 603, 625-626, 631, 685-686; Post, February 21, 1899. Houston's innovative use of a garbage crematory was discussed at the League of American Municipalities, Proceedings of the Third Annual Convention (Syracuse, New York, 1899), 26. For a broader perspective on sanitary reform in the U.S., see Martin V. Melosi, "'Out of Sight, Out of Mind'—The Environment and Disposal of Municipal Refuge, 1860–1920", Historian, XXXV (1973), 621-640.

61 Minutes J (July 1898–July 1899), 487, 590, 626-627, 685-686, 696-698; ibid., K (June 19–July 17, 1899), 5, 17. The sewerage bond resolution passed 799 to 141. Due to state legislative changes in the suffrage, which limited bond elections from "taxpayers" to "property taxpayers", the sewer resolution as well as the light plant resolution were voted on again. See Minutes K (October 16–November 13, 1899), 86-91, 106-107; Post, October 17, 1899, ibid., November 9-10, 1899. For information on paving, cf. "Houston in a Nutshell", ibid., May 30, 1897; "About Houston Paving", ibid., January 28, 1899; and City Directory for 1900, 5.
Minutes H (July 11, 1892), 79; ibid., J (January 18, 1897), 199; "Sale of City Bonds", Post, February 1898; and "The Best Sale Yet", ibid., August 21, 1898.

Cf. the annual statements by the mayor and the secretary-treasurer in Minutes H–J (1894–1899), passim. Assessments reached $22.8 million in 1894 and remained at this level until 1897.

In 1896, for example, Rice noted that the tax sale of real estate should be postponed because the depression imposed an intolerable burden on home owners. See Minutes J (October 2, 1896), 147–148. State and local tax reform is explored in Clifton K. Yearley, The Money Machines — The Breakdown and Reform of Government and Party Finance in the North, 1860–1920 (Albany: State University of New York Press, 1970), 137–250. Also see Yearley's excellent bibliography of contemporary opinion, ibid., 336–364.

Infra, nn. 68 and 69.


Adams Express Company v. Ohio State Auditor, 165 US 194 (1897); ibid., 166 US 185 (1897).

Post, September 9, 1899. The daily worried that Hirsch's decision would stop Northern capital from being invested in Houston. See "The Taxing of Franchises", ibid., September 10, 1899; and "Discriminatory Assessments", ibid., September 26, 1899. The 1876 statute Hirsch referred to was vague. See Texas, Civil Statutes, Annotated (Sayles, 1897), arts. 5061–5062; and infra, n. 69.

See Post, September 19–29, 1899; and Minutes K (September 1899–October 1900), 55, 365. The validity of franchise taxation was upheld by the state supreme court. See State v. Austin and Northwest Railroad Company, 60 SW 886 (1901); ibid., 94 Texas 530 (1901); and Dallas v. Dallas Consolidated Street Railway Company, 95 Texas 268 (1902).

See supra, chap. v; and the council's confession that the financing of street improvements was dependent upon transit company contributions in Minutes J (March 13, 1899), 646–647. The economics of paying will be discussed below.

Storrie v. Houston City Street Railway Company, no. 16851, (October 23, 1894); ibid., 44 SW 693 (1898); ibid., 92 Texas 129 (1898).
72 Ibid.

73 Storrie v. Hutchison, 48 SW 785 (1898); supra, chap. iii. Some information on Hutchison can be found in Andrew Morrison, The City of Houston (n.p.: n.n., 1891), 61-62; and City Directory for 1895, 202.

74 Storrie v. Hutchison, 48 SW 785 (1898). Also see "A Street Paving Case", Post, November 26, 1898; and a companion case, Storrie v. Wolssner, 47 SW 837 (1898) which reconfirmed the right of the legislature to delegate special assessment tax powers to cities.

75 Village of Norwood v. Baker, 172 US 269 (1898). The opinion and dissent contain a good review of past decisions. Also see supra, chap. iii.

76 Village of Norwood v. Baker, 172 US 269 (1898). Brewer was joined by Justices Horace Grey and George Shiras.

As the above cases indicate, the Norwood case sparked test cases in many states including Missouri, the District of Columbia, Illinois, New York, Washington, Indiana, Texas, and Massachusetts. The Supreme Court's 1901 retreat was not upset by later rulings. For a review of later developments, see Wagner v. Baltimore, 239 US 207 (1915). In Houston, the Post remarked that the Norwood case was "probably the most important decision yet rendered in the matter of paying improvements." See "An Important Decision", Post, January 27, 1899.

78 Hutchison v. Storrie, 92 Texas 685 (1899).


80 See Kettle v. Dallas, 80 SW 874 (1904); Beaumont v. Russell, 91 SW 950 (1908), Texas Bitulithic Company v. Abilene Street Railway Company 166 SW 433 (1914); and Tyler v. Cain, 204 SW 473 (1918). In each case, the supreme court denied writs of error appealing the lower court rulings.

81 Storrie v. Houston, no. 1779, USCC (November 20, 1895). Storrie was awarded $127,000 and his lawyers lost another $200,000 for filing the original petition a few days after the 4 year statute of limitations applied. The city appealed but later accepted a compromise plan to pay Storrie $100,000. See ibid.; Post, November 1, 1899; "Storrie v. Houston", ibid., May 11, 1900; Minutes K (April 23-November 26, 1900), 213, 393-394, 429.

82 Ibid., K (January 1900-February 1901), 155-161, 380, 435, 471-472.
The final amount paid back is reported in ibid., L (April 1, 1901), 62. Insight into the legal aspects of refunding can be pursued in an important test case, Houston v. Stewart, 99 Texas 67 (1905).

83 "Undergoing a Settlement", Post, March 15, 1900; infra, n. 84.

84 Minutes K (September 6-18, 1899), 47-51; Post, September 19, 1899; Houston v. Houston City Street Railway Company, no. 24864, 11th DC (September 1899). The suit disclosed that the company paid $36,000 in special assessments under the certificate system. From 1895 to October 1902, a total of $156,500 was levied against the company which paid only $26,700. See infra, chmp. 7.

85 See J. N. Beckley, "Report of the Committee on 'Transfers on Street Railways'", A Report to the Thirteenth Annual Convention of the American Street Railway Association (Detroit, 1894), as reported in SRJ, X (1894), 680-681; "Houston", ibid., 312-315; Minutes J (February 20, 1899), 620-621; and ibid., K (November 2-December 19, 1899), 99, 123, 124. The City Directory for 1900, xi-xiv, supplies a street guide to the firm's routes.

86 Houston Electric Street Railway Company v. Houston, no. 28686, 11th DC (January 19, 1900); "An Injunction Suit Is Filed", Post, January 20, 1900. MacGregor's statement is quoted in ibid., November 4, 1899.

87 Minutes K (March 1900-February 1901), 189-190, 318, 477; "City Council", Post, February 13, 1900; ibid., February 16, 1900; "Undergoing a Settlement", ibid., March 15, 1900; "The Electric Railway", ibid., August 21, 1900.

88 "The Statement Denied", ibid., August 9, 1900; "The Electric Railway", ibid., August 21, 1900.


90 Supra, n. 89; Poor, Poor's Manual (1896), 1232; ibid., (1898), 1118; ibid., (1899), 1116; ibid., (1900), 1033; ibid., (1901), 1065; ibid., (1902), 1065.


92 Supra, n. 9.

93 Trust Company v. Citizen's Electric Company, nos. 343 and 369 (Equity);
supra, n. 55; "Contract Awarded", Post, September 18, 1898; "In a State of Transition", ibid., May 2, 1900.

94 Trust Company v. Citizens Electric Company, n. 343 (Equity); USIMB, X (March 1900), 619-637; ibid., XI (November 1901-March 1902), 184-190, 425-428, 495-498. The strike by company workers can be followed in Post, June 13-19, 1899. The court allowed a pay raise but refused to recognize a closed shop idea. For the suit against the city, see Blake Dupree (Receiver) v. City of Houston, no. 1949, USCC (October 5, 1900); "Suing the City", Post, October 6, 1900. In 1906, the new firm, the Houston Lighting and Power Company, was made a part of a holding company, the American Cities Railway and Light Company which was owned by New Orleans interests. See Moody, Moody's Manual (1910), 1310-1312; and Houston Lighting and Power Company, Origins and History of the Houston Lighting and Power Company (Houston: n.n., 1940), 13-17.

95 Cf. "In a State of Transition", Post, May 2, 1900; "The Electric Company", ibid., August 3, 1902; "Another Municipal Achievement", ibid., February 24, 1903; and "Rate Question", ibid., October 25, 1903. I think that the meter was the key to rapid growth for most urban utility services. As the above stories indicate, private users consumed very little energy until meters were installed. In 1897, for example, fifteen years after the introduction of electric lighting, only 400 homes had incandescent lamps. In comparison, 6000 Houstonians used 82,000 lights in 1908. See City Directory for 1908, 9. The importance given to the meter by the gas and water industries has already been noted in previous chapters.

96 Texas, Civil Statutes, Supplement (Herron, 1903). Title 25, chap. 3; Minutes K (October 16-November 13, 1899), 86-87, 106-109. The result was 607-407, with only the first and sixth wards voting against the referendum.

97 Ibid., K (January 11-29, 1900), 141-161; "City's Electric Light Board", Post, January 25, 1900; and "New Electric Light Board", ibid., January 20, 1900.

98 See for example, "Brashear Answers Browne", Post, February 28, 1900 and infra, n. 99.

99 "Honorable John T. Browne", Post, January 16, 1900; "Big Browne Rally", ibid., February 27, 1900; "Brashear Answers Browne", ibid., February 28, 1900; "John T. Brown's Platform", ibid., March 11, 1900.

100 "Rules for the Primaries", ibid., March 13, 1900; "City Executive Committee", ibid., March 22, 1900; "The Daily Houston Budget", Galveston Daily News, March 23, 1900; "The Browne Ticket", Post, March 25, 1900; "The Brashear Ticket", ibid., March 30, 1900; and "The Brashear Roundup", ibid., April 1, 1900. Most influential Democrats on the local executive committee and such previous members of the Rice faction as O. T. Holt and Gus Street supported Brashear. The Post favored Browne while the Houston Chronicle backed the mayor. The collapse of party unity meant that blacks and Republicans could determine the outcome. These
two groups registered in record numbers after Browne's refusal to participate in the primary. See "The Daily Houston Budget", Galveston Daily News, March 27-30, 1900.

101 For the official returns, see Minutes K (April 7, 1900), 199-201.

102 See ibid., K (May 1900-February 1901), 241, 331-340, 375, 403, 417, 472, 479; "It Meets with Opposition", Post, August 8, 1900; "Will There be Light?", ibid., August 20, 1900; "The Fight is now Fairly on", ibid., October 2, 1900; "Local Political Talk", ibid., January 26, 1901.

103 See "The Electric Light Question", Post, August 19, 1900; "Will There be Light?", ibid., August 20, 1900; "Petition Received and Filed", ibid., August 21, 1900; "More Light on the Subject", ibid., September 4, 1900; Minutes K (January 14-February 4, 1901), 472; 492; and ibid., L (March 18, 1901), 36-37, 47.


106 See "Proposed Amendments", Post, February 8, 1901; "City Charter Amendments", ibid., February 9, 1901; "The City's Financial Conditions", ibid., February 13, 1901; "Tomorrow's Primary", ibid., February 17, 1901; "John D. Wooldard", ibid., February 19, 1901; "To Curtail Expenses", ibid., March 6, 1901; "Meeting of City Council", ibid., May 14, 1901; Minutes L (February 1901-March 1902), passim; and infra, chap. viii.

107 Supra, n. 30.
CHAPTER VII - FOOTNOTES


ibid., February 13, 1901.


4 Minutes L (February 11-August 15, 1901), 5, 27, 48-49, 76-77, 155, 164-166, 193-197, 223-225. The following four issues totalling $450,000 were made: $240,000 for street paving, $60,000 for sewers, $50,000 for school construction, and $100,000 for public buildings. Two taxpayers elections were held to approve the first three issues. The vote in the April election was 276-159, while the July proposition was passed 338-161. Also see "City Bonds were Rejected", Post, June 21, 1901; "How We Will Rebuild", ibid., June 27, 1901; and "The Bond Election Tomorrow", ibid., July 24, 1901. The Post reflected the confusion of the early 1900's. It demanded retrenchment at the same time that it called for large expenditures. The Post argued, "Public buildings and public improvements of all kinds indicate the importance, the public spirit and the wealth and prosperity of a city. Let us not look like a country town, or a bankrupt community, when measured by our public buildings." See "Houston's Public Building Problem", ibid., June 28, 1901.

5 Minutes L (March 11-November 6, 1901), 38-39, 49, 356; "Threat of Impeachment", Post, November 26, 1901; and "What the Aldermen Say", ibid., November 27, 1901.

6 For auditors' statements on city finance during 1900-1903, see Minutes K (February 4, 1901), 492-493; ibid., L (February 3, 1902), 456-457; and ibid., M (January 26, 1903), 50-58. City revenues during these years grew from $563,000 to $759,000.

7 The council received reports on improvements which were divided on a ward by ward basis. For example, see ibid., L (March 18-April 8, 1901), 46, 62, 67, for the distribution of street lights and funds for sewers and paving.

8 Supra, nn. 5 and 6.

10. "To Select Aldermanic Ticket", Post, January 24, 1902; "Speech of John Kirby”; ibid., March 14, 1902; John Oziase King, "The Early History of the Houston Oil Company of Texas, 1901-1908", (unpublished M.A. Thesis, Department of History, University of Houston, 1958), 1-130; In 1904, the capital short corporation was put into receivership which led to a four year legal battle. In 1956, the company was dissolved and its major holdings became the base for the Atlantic-Richfield Company. See ibid., 130-155.


12. The Post and the Houston Chronicle and Herald gave extensive coverage to the primary campaign. See generally, Post, January 21-April 5, 1902; and Chronicle, March 3-April 3, 1902. For election returns see "The Victory was Complete", Post, April 3, 1902; and Minutes L (April 8, 1902), 537-538. By 1902, the Houston Herald’s pro-labor and pro-Brashear editor, W. H. Bailey, had sold out to more conservative interests. The Post’s managing editor, Marcellus Foster, became the Chronicle’s editor. See City Directory for 1903, 54-55.


14. John M. Coleman quoted in the Chronicle, March 17, 1902. Coleman was an attorney and active supporter of Holt’s mayoral bid. See City Directory for 1902, 110; and Post, March 14, 1902. For the development of Houston’s accounting system consider Minutes G (December 23, 1889), 338-341; ibid., H (May 13, 1895), 534-536; and ibid., J (December 26, 1898), 586.

15. Ibid., L (May 5, 1902), 577-578; ibid., M (May 1902-March 1903), 7, 318, 350-355, 374-375; Post, May 13, 20, 28, 1902. Kirby was deeply impressed with Haskins-Sells' techniques from their work on his large ventures. See King,

City of Houston v. Houston City Street Railway Company, no. 24 864, 11th DC (September 1899); Houston Electric Street Railway Company v. City of Houston, no. 28 686, 11th DC (January 1900); and ibid., no. 30 319, 55th DC (January 1901). In May 1901, the company agreed to pay $20,000 in assessments if all suits were continued for a year. See Minutes L (May 13, 1901), 109. A few days later, the company was placed into receivership. See "Suit for Receivership", Post, May 28, 1901 and supra, chap. vi. For a summary of the litigation, see "Street Railway Suits", Post, October 25, 1902.

See Minutes L (May 1901-May 1902), 102-103, 110, 150-151, 163, 180, 221, 276, 293, 308, 373, 392-393, 418, 446-447, 523; "Important Council Meeting" Post, October 8, 1901; "Grooved Rail or T-Rail, Which?", Chronicle, November 15, 1901; "Grooved Rail vs. the Tee Rail", ibid., November 25, 1901; "Street Car Kick", ibid., November 27, 1901; "Will Make No Concessions", ibid., November 30, 1901; "Meeting of City Council", Post, December 24, 1901; "That Paving Matter", ibid., April 18, 1902; "Refused to Pay Tax", ibid., May 14, 1902.

The new owners immediately pumped about $250,000 into capital improvements. For details, see "The Electric Railway", Post, August 21, 1902; "The Houston Electric Company", ibid., November 16, 1902; and City Directory for 1903, 5-6.

The consolidation of the ownership and the management of urban transit systems had been progressing since the introduction of electric traction in the late 1880's. For example, see "Centralization", SRTJ, VIII (1892), 94 and supra, chap. iv. For a history of Stone and Webster and a listing of their extensive involvements in Texas street railways, see Russel Robb, "Early History of the Firm", Stone and Webster Public Service Journal, I (1907), 4-5; and ibid., 48, 233-235.

Throughout 1902, for example, the company's efforts to use a new city bridge were frustrated because no general compromise was effected. After a settlement was reached, the right of way grant was quickly obtained. See Minutes M (May 1902-February 1903), 5, 80-82, 149, 166, 202, 371. Even local utility company executives whose attitudes lagged far behind the industries' leaders, preached cooperation with city governments by the early 1900's. See Southwestern Gas, Electric and Street Railroad Association, Proceedings of the Third Annual Meeting, (Houston, 1901), as reported in the Southern Industrial and Lumber Review, VII (1901), 19-29.

"The Platform", Post, February 16, 1902; and "Mayor Holt's Position", ibid., November 2, 1902.
22. See "Story of an Ordinance", ibid., December 10, 1902. A test case on the legality of the transfer ordinance was provoked by former alderman and assessor-collector Julius Hirsch. However, the city attorney dropped the corporation court complaint. He believed a criminal proceeding was ill advised. Later, Hirsch tried again to obtain a transfer but was ejected from the car. See "Brought a Test Case", ibid., August 10, 1902; "The Transfer Case", ibid., August 27, 1902; and "Demanded a Transfer", ibid., September 12, 1902.


25. "Points of Differences", ibid., July 26, 1902; "Franchise Proposition" ibid., July 28, 1902; Minutes M (July 27, 1902), 115. In October, Stone amended the city's complaint against the company to raise the city's claims from $24,000 to $230,000. See Houston v. Railway Company, no. 24 864, 11th DC.

26. Minutes M (August 4-11, 1902), 127-135; "Ordinance will be Repealed", Post, August 5, 1902; "Citizens Take a Hand", ibid., August 8, 1902; "City Government Notes", ibid., August 13, 1902. In December, Watkins unsuccessfully attempted again to attach a referendum rider to the compromise. See Minutes M (December 15, 1902), 278-284.

27. Ibid., M (October 20-December 15, 1902), 205, 206, 213-216, 244, 266-267, 278-284; "Council Accepts Proposition", Post, October 28, 1902; "Mayor Holt's Position", ibid., November 2, 1902; "Street Railway Settlement", ibid., November 26, 1902; "A Settlement is in Sight", ibid., December 7, 1902. A copy of the settlement can be found in Houston, Charter and Revised Code of Ordinances (1904), 557-562.


November 5, 1903; and supra, n. 16. In February all litigation was dropped.

30 For the change in gas rates, see Minutes M (July 14–August 18, 1902), 85-86, 88, 141; "Will Discuss Rates", Post, January 16, 1903; "Gas Rates Reduced", ibid., January 16, 1903. The city electric company compromise is found in Minutes M (February 23, 1903), 397-400; "Will not Reduce Rates", Post, January 9, 1903; and "Another Municipal Achievement", ibid., February 24, 1903; and "Suit Against City Dismissed", ibid., March 21, 1903. As the above sources indicate, the cheap price of petroleum played a central role in effecting the rate reductions.

31 The competition for franchises in new types of public service businesses was considerable. For a list of six grants to pipeline ventures, see Houston, Revised Code of Ordinances (1904), 606-614; and Houston, Ordinance Book (Houston: City Secretary's Office, 1910), 11, 158-159, 183-184, 213-215. For the interurban franchise, see Houston, Revised Code of Ordinances (1904), 565-574. For an account of this Stone and Webster venture, see George W. Hilton and John F. Due, The Electric Interurban Railway in America (Stanford: Stanford University Press, 1960), 378-379.


33 Supra, chap. vi; Minutes K (June 18-25, 1900), 254-258; "Impure Water Supply", Post, June 8, 1900; "City Council Meeting", and "Water and Fire Report", ibid., June 19, 1900.

34 Minutes L (May 6–December 23, 1901), 109-110, 146, 154-156, 179-188, 198, 387-388, 417-418; "A New Contract", Post, May 7, 1901; "Meeting of the City Council", ibid., June 18, 1901; "Inman Press Destroyed", ibid., June 22, 1901; "Houston Big Market Succumbs to the Flames", ibid., June 25, 1901; and "The New Contract", ibid., July 17-20, 1901. Woolford's second veto was predicated on the belief that the city hall's insurers were influencing council policy. The intervention of insurance companies into the legal aspects of the dispute will be discussed below.

35 The entire Holt political effort was organized under the title of the "Central Municipal Ownership Club". See "To Select Aldermanic Ticket", Post, January 24, 1902; "The Platform", ibid., February 16, 1902; and supra, n. 12.

36 The new council's attitude was expressed in a resolution passed at its first meeting. See Minutes L (April 14, 1902), 544-545. Also see Houston Water Company v. City of Houston, no. 32 098, 11th DC (May 22, 1902).

37 Minutes M (June 16–September 15, 1902), 52-57, 67, 163-165, 174-176; City of Houston v. Houston Water Company, no. 32 445 (September 19, 1902); "The City Enters Suit", Post, September 20, 21, 1902. Also consider the city engineer's detailed analysis, which was filled with current theories of public utility
economics in ibid., September 11, 1902. Unfortunately, precise figures and estimates of the waterwork's value were stricken from the public report but see infra, n. 46.

38Minutes M (June 16-October 20, 1902), 52-57, 207-208. In January 1903, the municipal corporation's bonded debt was $3 million, while its assessed valuations stood at $31.3 million. See ibid., M (January 26, 1903), 350-358.

39"Houston's Population", Post, September 28, 1900; and "Our Suburbs and Public Improvements", ibid., May 17, 1901. In 1900, the city's population was 44,600 while about 20,000 others lived in the county. See the U.S. Census figures compiled in Texas Almanac (Dallas: Dallas Morning News, 1972), 159, 163. For a comparative historical analysis of urban annexations in the United States which includes Houston's rapid growth during the twentieth century, see Kenneth T. Jackson, "Metropolitan Government Versus Political Autonomy: Politics on the Crabgrass Frontier", in Jackson and Schultz, (eds.), Cities in American History, 442-463.


41These goals are outlined in Minutes M (October 20, 1902), 207-208. A complete text of the charter proposal is found in Post, November 9, 1902. The offices which would become appointive included the assessor-collector, street commissioner, chief of police, health officer and city attorney.


43Texas, Civil Statutes, Supplement (Herron, 1903), Title 94, c. 15 b. The same statute ordered urban transit companies to install vestibules for the protection of motormen. In general, see supra, chaps. v and vi, and the discussion below on commission forms of municipal government. For insight into the preferences of Texas utility executives for state regulations rather than local controls, see Southwestern Gas, Electric and Street Railway Association, Proceedings of Third Annual
Meeting, (Houston, 1901), as reported in the Southern Industrial and Lumber Review, VIII (1901), 19-29; and "Municipal Ownership", ibid., XII (1905), 12.


45supra, n. 36.

46"Board of Appraiser Fixes Value", Post, June 6, 1903, reports the complete text of the report. The article also included the city's engineer's earlier calculations which set a value of $800,000. The engineer, however, basically agreed with the board's findings after more information became available. For an account of the board's activities, see ibid., April 4-May 8, 1903.

47Minutes M (June 8-July 1, 1903), 559, 569-570, 578-591; Houston, Ordinance Book, I, 768-769; "About the Water Plant", Post, June 17, 1903.

48"Bond Election Tomorrow", ibid., August 3, 1903; "Light Vote was Polled", ibid., August 5, 1903; "The List is Now Complete", Chronicle, July 31, 1903; "All Ready for Election", ibid., August 3, 1903; and "Municipal Ownership", ibid., August 5, 1903. Actually, several allocation proposals were put forward but the city's debt limit quickly narrowed the alternatives. See Minutes N (August 3-31, 1903), 39-41, 47, 56, 76-79.

49"Water and Fire Report", Post, June 19, 1900; "Meeting of City Council", ibid., June 18, 1901; "City Engineer's Report", ibid., September 11, 1902; and "Board of Appraiser", ibid., June 6, 1903.

50Minutes N (August 10-October 26, 1903), 50, 104-105, 141-144, 169, 178; Houston, Ordinance Book, II, 27-28, 36-37; and City of Houston v. Houston Water Company, no. 33680, 11th DC (October 7, 1903). The tentative probes of two different groups for a water supply franchise never seem to have developed into serious negotiations. See "Belated Bid Arrives", Post, September 25, 1903; "City Will Grant Water Franchise", Chronicle, November 3, 1903; and "Meeting of the Council", ibid.

51Houston Water Company v. City of Houston, no. 50 or 56? (Equity), USCC, Southern District of Texas (November 2, 1903). Unfortunately, the records of this case could not be located. Local newspapers, however, provided extensive coverage of the proceedings. See "Drink Bayou Water Orders the Court", Post, November 3, 1903; and "Water Company Acts", Chronicle, November 4, 1903. City attorney Stone admitted the error in prohibiting the company's use of bayou since the 1878 contract-franchise specifically empowered the utility to do so. The ordinances were hastily repealed. See Minutes N (November 9, 1903), 198-199. In December, the company also was able to remove the city's franchise forfeiture suit to the national

52 See "Argument Begun", Post, December 1, 1903; "City is Tied Up", ibid., December 2, 1903; "City's Answer", ibid., February 9, 1904; "Resulted in a Dog Fall", Chronicle; March 29, 1904; "Now Under Bond to Keep out of Bayou", ibid., March 24, 1904; and "A Victory for the City", Post, March 24, 1904. In September 1904, the company was given an extension until March 1905, after showing earnest efforts to comply with the court decree. See "Water Status", ibid., September 9, 1904; "More Bayou Water", ibid., September 27, 1904; and "Water Company at Work", ibid., October 2, 1904.

53 The water company initiated a new effort to negotiate a compromise which would result in a new franchise. All issues were settled except the rate question, which prevented a final resolution of the dispute. See Minutes N (November 1903-April 1904), 220, 321, 426-427; "Pure Water", Post, January 31, 1904; "Hydrant Rent", ibid., February 4, 1904; "Agree on Pressure", ibid., February 5, 1905; "Understanding Reached", ibid., March 29, 1904; "Still Far Apart", ibid., March 31, 1904; and "Made a Final Offer", ibid., April 6, 1904.

54 Minutes N (August 31-December 28, 1903), 80-81, 114-117, 141-142, 210-214, 241-247; Houston Ordinance Book, II, 68-81; "Objects to Reduction", Post, October 29, 1903; "Electric Light Rates", ibid., October 31, 1904; and "Public Utility Rates Fixed", ibid., November 30, 1903. The rate ordinances were enforced. An effort by the gas company to charge consumers at the old prices was taken to court. The company decided to submit to the regulation. See "Pending Gas Case", Post, June 17, 1904; and "Gas Case Off", ibid., June 18, 1904.

55 Supra, chaps. ii, iv, and n. 20; and "Rate Question", Post, October 25, 1903. The article compared utility rates in Texas cities. Houston prices were lower or equal to other rates in the region.


57 Minutes N (August 24-October 1, 1903), 61, 70, 75-76, 91, 108, 122, 129-130; "Now Preparing for General Paving", Post, September 1, 1903; "The Compartment Cars", ibid., September 9, 1903; "Now for an Interurban Line", ibid., September 9, 1903; and "Council Again Defers Action", ibid., September 22, 1903. Only Aldermen Thompson and Kolhauff finally supported the separate car idea, although Miller and Puls voted for it earlier. The company was able to persuade the council to amend the motormen's police functions from a duty to a dis-
cretionary role. See Minutes N (October 12, 1903), 157; Houston, Ordnance Book, II, 33-34; and "In Two Votes", Post, October 13, 1903.

58 Consider "Police on Cars", ibid., November 2, 1903; "Negroes Still Refuse to Ride", Chronicle, November 2, 1903; "Policing the Cars", Post, November 2, 1903; "Policy Changed", Post, November 5, 1903; "Negro Women Strike", Chronicle, November 5, 1902; and infra, n. 59.

59 "Race Division", Post, March 8, 1904; Minutes N (March 7-28, 1904), 382, 412-418; Letter from H. K. Payne to the Post, March 15, 1904. Payne wanted to seat blacks from the back of the car forward and whites in a reverse order.

60 The Day Primaries", Post, February 26, 1898; "Registration Facts", ibid., March 24, 1898; ibid., March 29, 1900; "Some Election Records", ibid., April 5, 1902; Texas, Revised Civil Statutes, Supplement (Herron, 1903), Title 36, c. 9; Houston, Revised Ordinances (1904), 456-470; "County, 8947; City 5721", Chronicle, February 7, 1904; and U. S., Bureau of the Census, Statistical Abstract of the United States: 1910, 650. For a history of Texas suffrage legislation, see Alwyn Barr, Reconstruction to Reform - Texas Politics, 1876-1906 (Austin: University of Texas Press, 1971), 193-208. Local records and census data show that 10,500 of 13,800 eligible voters were registered in 1900, which only 5,700 of 17,300 could vote four years later. In 1904, Houston's total population was approximately 54,500.

61 "Crowded with Strangers", Post, November 11, 1901.

62 Michael H. Frisch, Town into City - Springfield, Massachusetts, and the Meaning of Community, 1840-1880 (Cambridge: Harvard University Press, 1972), 249, 238-250. In this seminal contribution to urban history, Frisch argues that social conflict was an unessential element for changing local elites' conceptions about the city and the public welfare. In Springfield, he concludes these alterations were rooted "in the step-by-step responses of those governing the rapidly changing city", ibid., 174. In Houston, the processes Frisch describes occurred partially during the 1880's. See supra, chap. iii. Twenty years later, however, social, racial and political antagonisms pushed these developments to completion in Houston and many other places. Consider Samuel P. Hays "The Politics of Reform in Municipal Government in the Progressive Era", Pacific Northwest Quarterly, LV (1964), 157-169; Weinstein, "The City Commission", JSH, XXVIII (1962), 166-182; and Wiebe, Search for Order, 133-180.

62 "Mayor Holt's Message", Post, January 27, 1904. For similar views, see "For a Greater Houston", ibid., December 30, 1900; "Our Suburbs", ibid., May 17, 1901; H. B. Rice et al. "To Make a Greater Houston", ibid., January 4-9, 1901; "Let it Grow", ibid., February 16, 1902; and J. J. Pastoriza, "The Ideal City", ibid., September 25-26, 1903. A sketch of Johnson and his role in the Business League is provided in B. H. Carroll, Jr., Standard History of Houston, Texas (Knoxville, Tenn.: Crew, 1912), 217, 323-325. For a complete roster of League members, see City Directory for 1905, 8-10.) In 1904, Johnson was a

64 "The Municipal Problem", Post, May 16, 1900; and "The Houston Charter", ibid., February 17, 1903. The quote in the latter source was made in reference to Johnson's advocacy of strong appointive powers for the mayor.

65 Minutes M (March 23-April 13, 1903), 435, 466-467; and ibid., N (August 3-31, 1903), 39-41, 47-48, 76-79.

66 Cf. "Mayor Holt's Message", Post, January 27, 1904; "The Municipal Campaign", Chronicle, February 23, 1904; and "No Jobbing Permitted", ibid., February 24, 1904; to "Statement of City's Government", Post, January 26, 1904. In 1903, for example, the $623,000 budget was exceeded by almost $75,000. In addition, the 1904 budget was increased to $745,000 to provide "more modern and efficient service", according to Mayor Holt. See ibid.

67 The important fusion meeting was held at the Opera House where Jackson's candidacy was announced. For an account of the proceedings and Jackson's platform, see "Factions Meet", Post, February 16, 1904; and "Jackson as the New Star", Chronicle, February 16, 1904. In previous weeks, Holt supporter and council president Herman T. Keller was the chosen mayoral successor, while Jackson entered politics for the first time in the fourth ward's aldermanic race. However, Keller was sacrificed to effect the new harmony. See "Mayoral Race", Post, January 31, 1904; "Jackson for Alderman", ibid., February 3, 1904; "A. L. Jackson for Mayor", ibid., February 10, 1904; and "Mr. Keller's Statement", February 11, 1904. After Mayor Holt lost a primary election for the U. S. Congress, he decided to retire from office. See ibid., August 1-10, 1903.


69 The attempt to exonerate Miller from charges that he was a tool of the utility companies was intensive. For example, see "Miller's Record and Mayoralty", Chronicle, February 11, 1904; "First Miller Rally was an Ovation", ibid., February 23, 1904; "What the Record Shows", ibid., February 29, 1904; and "Mr. Jackson is Set Right", ibid., March 3, 1904. For contrary opinion, consider the accusations made daily in the Post, February 16-March 5, 1904.

70 "A Word to Businessmen", Post, March 2, 1904; and "Labor Interests Laughing", Chronicle, March 2, 1904. Labor support for Miller was constant throughout the campaign. For a list of his active union backers see "First Miller Rally, ibid., February 23, 1904; and "Voters Flock to Miller", ibid., March 1, 1904.

71 "Primary Election Returns", ibid., March 6, 1904. Miller carried the first,
second and sixth wards but Jackson's almost 2:1 lead in the large third and fourth wards determined the winner. The referendum measure was approved, 1247 to 390. See "Vote Not So Small!", Post, April 5, 1904; and Minutes N (April 5, 1904), 422.

72"Men Discharged", Post, March 23, 1904; "Men Are Muttering", ibid., April 2, 1904; "Decision Given", ibid., April 9, 1904; "Employees are Restive", ibid., May 15, 1904; "Not Settled", ibid., May 23, 1904; "Strike Talk", May 28, 1904; "Strike May be Averted", ibid., May 30, 1904; and "Declare Strike", ibid., June 2, 1904. The previous November, the street railway workers agreed to a new contract without a pay raise because of the economic impacts of the Negro boycott on the company. See "New Contract", ibid., November 12, 1903; and "There will be no Strike", ibid., November 21, 1903. Robert E. Ziegler, "The Workingman in Houston, Texas, 1865–1914" (unpublished Ph.D. dissertation, Department of History, Texas Technological University, 1972), 144–153, 203–226, also found the strike to have central importance for the city's labor movement.

73During the first two weeks of the strike, mob action threatened the company but it continued to operate with armed guards and scab labor. The Labor Council supported the suppression of violence. See "Strike in On", Post, June 3, 1904; "Strike Gets Hot", ibid., June 4, 1904; "Houston Guards on Cars", ibid., June 6, 1904; and "Day of Trouble", ibid., June 7, 1904. Between mid-June and September, both sides settled down for a long struggle, although some attempted to end the controversy through violence. See "Big Explosion Under Car", ibid., June 13, 1904; "Two Cars Were Dynamited", ibid., July 7, 1904; "Dynamite Used", ibid., July 8, 1904; "Fiends at Work", ibid., July 24, 1904; and "No Settlement", ibid., July 31, 1904. The decline in the Labor Council's support is reported in "Street Car Strike", ibid., August 26, 1904; and "Big Move On", ibid., August 30, 1904. The community's changing attitudes towards labor were symbolized by the formation of a Citizen's Alliance which was pledged to preserve law and order between labor and capital. See "The Citizen's Alliance", ibid., July 17, 1904; ibid., July 20, 1904; and the City Directory for 1905, 50. The last source lists the organization's highly placed officers, including R. B. Baer, J. S. Rice, F. A. Heitman and Johnathan Lane.

74"Big Move in Car Strike", Post, September 21, 1904; "Car Strike Declared Off", ibid., October 12, 1904; and Ziegler, "Workingman in Houston", 144–153.

75In large part, the League's ascendency in Houston public affairs was fostered by the city's two major daily newspapers, which were both League members. In addition, many important municipal officers during 1902–1905 (including mayors Holt and Jackson, as well as aldermen Gaston, Keller, Watkins, Street, Buckley) also were members who reinforced the organization's image as the progressive force of reform. The total membership included 134 firms and 417 individuals. See City Directory for 1905, 8–10.

76See "What they Think", Post, December 21, 1886; "Local Law Makers",
ibid., January 11, 1887; Minutes F (January 10-February 28, 1887), 451, 516; supra, chap. iii; and supra, n. 1.

77 A history of the act's origins and a copy of the relevant municipal charter provisions is provided in "The Dallas City Commission", Post, September 14, 1902. Also see a parallel account in the Chronicle, November 6, 1904.

78 E. R. Cheesborough, Galveston's Commission Form of City Government - Its History, Details and Practical Workings (Galveston: Deepwater Committee, 1910), n.p. Cheesborough provides the best contemporary account of the commission's origins in Galveston.

79 Ibid., passim; "Thoughts on Rehabilitation", Galveston Daily News, September 16, 1900; "Development of Municipal Reform", ibid., September 24, 1900; ibid., September 25, 1900; "The City's Predicament - There is a Remedy", ibid., September 29, 1900; "Deliver us from Politics", ibid., October 18, 1900; and "The Fort Worth Convention", ibid., December 1-2, 1900. In the October 18th editorial the newspaper argued, "What Galveston needs is a business administration, conducted by active businessmen on business principles. No matter what question comes up, it should be looked at from a business standpoint".


82 "The City Commission Idea", ibid., October 5, 1902.


84 Ex Parte Lewis, 45 Texas Criminal Appeals 1, 73 SW 811, (1903). The court majority drew heavily on the reasoning of Thomas M. Cooley and his brethren on the Michigan Supreme Court in their famous opinions in People v. Hurlbut, 24 Michigan 44 (1871). Also see supra, n. 83; and editor Johnson's unhappy reaction in "The Galveston Decision", Post, March 27, 1903.
Brown v. City of Galveston, 97 Texas 1 (1903); and Commissioners' Court of Nolan County v. Beall, 98 Texas 104 (1909). Appointive police commissioner provisions were sustained by the criminal appeals court because police protection was considered a state function. See Ex parte Anderson, 46 Texas Criminal Appeals 372, 81 SW 973 (1904); and Ex parte Levine, 46 Texas Criminal Appeals 364, 81 SW 1207 (1904). For a description of Texas' dual court system, consider Leila Clark Wynn, "A History of the Civil Courts in Texas", Southwest Historical Quarterly, LX (1956), 1-22.

"Municipal Government by Commission", Post, March 12, 1904. Also consider an earlier editorial favoring inclusion of elections in a commission system, "Board Control of Municipal Affairs", ibid., October 16, 1903.

Minutes N (May 9-23, 1904), 499, 530-533; "City Bankrupt", Post, May 2, 1904.

Minutes N (June 6, 1904), 550; ibid., O (July 25-August 1, 1904), 12-13, 21-22; "Important Council Work", Post, June 14, 1904; "How to Get Sidewalks in Sight", ibid., June 15, 25, 1904. The important case (Kettle v. City of Dallas, 80 SW 874 (1904)) established that special ad valorem tax districts were constitutional and applied to homesteads.

Minutes N (July 11, 1904), 593-594; "Gaston on the Commission", Post, July 14, 1904; and "Acting Mayor Gaston Urges Commission Form in Houston", ibid., August 28, 1904. For the similar views of former alderman Watkins, who became first vice president of the League and president of the school board, see "Watkins on Commission", ibid., September 11, 1904. For biographical information on the two men, see "Holt Almanac Ticket", ibid., March 31, 1902; and City Directory for 1905, 8-10, passim.

Minutes O (July 25-August 1, 1904), 12-13, 21-22.

"City Tax Problem", Post, September 17, 1904; "That Tax Problem", ibid., September 20, 1904; ibid., October 4, 1904. Stone apparently delayed further a vigorous prosecution policy because of pending litigation. In March 1905, the council requested the U. S. Circuit Court to advance important test cases on the dockets in order to expedite other litigation. The court considered the request unnecessary and inappropriate. See Minutes O (March 6-13, 1905), 318-321. For a list of this group's and other large property owners' assessments, consult "Large Real Estate Owners", Post, November 22, 1903. The list contains 163 persons and corporations that were assessed for $20,000 or more worth of real property. According to the U. S. Census Bureau, Houston's real property was assessed at 50% of true value. See U. S., Bureau of the Census, Special Reports: Statistics of Cities Having A Population of Over 30,000: 1905, 282-284.

"Gaston on His Resolution", Post, October 27, 1904; Minutes O (October 24, 1904), 155-156; "Council Ready for Election", Chronicle, October 27, 1904;
"Vote of the People", ibid., October 28, 1904. Two articles are especially revealing on the commission government supporters: "Commission up to the People", ibid., October 24, 1904; and "Gaston's Move Discussed", Post, October 27, 1904. Among the endorsers of the reform were Holt, H. B. Rice, J. C. Bering, T. W. House, "Judge" S. Taliaferro and E. P. Hamblen. Almost all of these men were large taxpayers and also members of the Business League. Cf. ibid.; "Real Estate Owners", Post, November 22, 1903; and City Directory for 1905, 8-10.

93 Minutes O (October 31, 1904), 166-167. The substitute plan which gained momentary ascendancy proposed to create 10 wards with one alderman from each, besides adding four alderman who would be elected at large.

94 "Amendments Did Business", Chronicle, November 1, 1904; "Says Taking Responsibility", ibid., November 2, 1904; "Gaston's Plan Was Rejected", Post, November 1, 1904. In addition, Halverton and the other majority councilmen denied that they opposed submitting issues to the public. Also consider the anti-commission government reasoning of attorney E. H. Hughes, reported in the Chronicle, December 6-7, 1904.

95 "Gaston's Plan", Post, November 1, 1904; "Metropolitan Houston", Chronicle, November 1, 1904; ibid., November 2-3, 1904; "Business League to Act", Post, November 2, 1904. The meeting produced a special committee composed of Dickinson (Business League), W. S. McNeal (Manufacturer's Association), W. D. Cleveland (Cotton Exchange), F. A. Heitmann (Commercial Bureau), W. W. Wilson (Builder's Exchange) and Chairman R. E. Baer (Citizen's Alliance). The inclusion of the latter organization, which was formed in reaction against the street railway strike violence, suggests why the Labor Council was absent. See supra, n. 73.

96 Minutes O (October 9-14, 1904), 177-178, 184; and "Commission to Be Voted On", Post, November 10, 1904.

97 "Don't Forget the Charter Amendments", Post, December 6, 1904; "Of Great Importance to Houston", and "Commission Campaign Near End", ibid., December 4, 1904; "Commission Victorious", ibid., December 11, 1904; "Issue Not Forgotten", Chronicle, November 21, 1904; ibid., December 10, 1904; and Minutes O (December 12, 1904), 214-215. For the views of Houston's state representatives on the election results, see "New City Plan", Post, December 13, 1904.

98 The mayor appointed two citizens from each ward. His choices included such prominent leaders as Kirby, J. S. Rice, state district judge E. P. Hamblen and former mayor J. T. Browne. See "The Two Charters Compared", Post, February 12, 1905; and Minutes O (January 3, 1905), 238. To follow the process of charter drafting, see "Proposed Tax District Law", Post, December 25, 1904; and "Charter is Taking Shape", ibid., December 30, 1904. A full text is provided in ibid., January 20, 1905.

99 Supra, n. 97; "Commission Victorious", Post, December 12, 1904;
"Election Talk", ibid., December 12, 1904; "Mayor Jackson Willing to Retire", ibid., January 10, 1905; "No Good Reason for Delay", ibid., February 6, 1905; and "Charter is Before Council", ibid., February 7, 1904.

100 "Council Tackles Charter", ibid., February 8, 1905; "Council Takes Bit Between its Teeth", ibid., February 11, 1905; "Council Finishes Charter" and "Charters Compared", ibid., February 12, 1905; "Council Finishes Work on Charter", Chronicle, February 17, 1904; and Minutes O (February 6-15, 1905), 284-291. In addition, the council strengthened the section on conflicts of interest and added an anti-nepotism proviso.


102 On March 23, Alderman Bates attempted to secure an injunction in state district court against his imminent removal from office. The constitutional prohibition against state deprivations of property without due process, Bates contended, protected his continuation in office which had long been held to be property. Judge Hamblen issued a temporary restraining order against the planned election, but he later dismissed the suit for lack of jurisdiction. See Bates v. Jackson, no. 35 702, 55th DC (March 22, 1905); "Wilson Enjoins Mayor", Post, March 23, 1905; "Judge Hamblen's Decision", April 2, 1905; "Houston's Humiliation", Chronicle, April 3, 1905; "End of Injunction", ibid., May 7, 1905.

103 Generally, see the Post, March 19-27, 1905, for the names of the many men suggested for the position. The injunction suit (see supra, n. 102) brought politics to a standstill until it was dismissed. For Rice's entry into the campaign and his supporters' identity, see ibid., May 14-29, 1905. For Rice's business connections, see City Directory for 1905, 334.

104 "Sitting Workers are Now Busy", and "Progress of the Campaign", Chronicle May 25, 1905; "The Political Meetings Open", ibid., May 25, 1905; and "The Candidate of Greater Houston", ibid., March 28, 1905. Sittig was an owner of a printing company and a vice president of an insurance concern. See City Directory for 1905, 363. His supporters included Dickinson, Holt, Watkins and Sid Westheimer.

105 "Men Who Will Rule Houston", Chronicle, May 30, 1905. Rice won by only 125 votes out of about 3000, while his ticket's lowest winner, J. A. Thompson, won by even less, 29 votes. The other three commissioners were Gaston, James A. Appleby and James B. Marmion. For biographical information, see the Post, May 28, 1905.

106 In November 1904, for example, a $100,000 bond issue was sold for a
$6800 bonus. The city's 5% interest rate was about average for municipal bonds marketed during the period. See "The Bond Issue", Post, November 6, 1904; and Commercial and Financial Chronicle, LXXXI-LXXXII (1905-1906), passim. For a comparison of Houston public service, tax and debt levels with other American cities, see U.S., Bureau of the Census, Special Report: Statistics of Cities Having a Population of over 30,000: 1906, 57-89, 255-257, 281-284, passim. The most striking feature of the report was that Houston maintained a per capita bonded debt of double the national average for cities of the same size. At the same time, it also provided services only slightly below the average ($10.30 v. $10.96 per capita). Houston's per capita tax burden of $13.93 was $2.50 above similar sized cities but a $1.00 below the national average. The statistics indicate that Houston taxpayers were willing to accept the costs of building an improved public sector.

107 Carroll, Standard History of Houston, 101; Houston, Revised Code of Ordinances (1904), sec. 877-891; and Houston, Ordinance Book, II, 221.

108 For a brief history and a detailed statistical account of the city's venture into municipal ownership, see Houston, Annual Report (1912), 18-43. The implementation of a meter system led to a reduction of per capita daily consumption from a wasteful 141 gallons in 1907 to a more reasonable 48 gallons in 1912. While the city and the company desired to discontinue their legal controversies, the city hall insurers' intervention brought the cases to conclusion. In 1909 the Texas supreme court ruled that the original contract-franchise created an unconstitutional monopoly. See Houston v. Houston Water Company, no. 32446, 11th DC; and Hartford Fire Insurance Company v. Houston, 102 Texas 273 (1909).

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