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City, County, State:
Intergovernmental Relations in Texas, 1835-1860

by

Edward Berry Weisel

A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
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Doctor of Philosophy

Thesis Director's Signature:

Houston, Texas

May, 1975
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I PROLOGUE: BREAKING THE JEFFERSON BARRIER; OR, THE URBAN HISTORY EXPLOSION

"'... The mobs of great cities add just so much to the support of pure government as sores do to the strength of the human body.'"¹ Thomas Jefferson's ringing denunciation of city life often has been cited to demonstrate anti-urban dimensions in American thought. In the United States, cherished beliefs in the ennobling qualities of agrarian existence have coincided with negative feelings about cities; similar beliefs and feelings have pervaded letters and laws, penology and politics. Anti-urban attitudes invaded urban places, influencing architecture, planning, expansion, and development. Intellectuals and common folk erected suburban monuments to bucolic solitude, choosing to be of the city but not in it.²

During the first six decades of the twentieth century, writings by American historians often reflected anti-urban biases. Students of the past ended to be doubly exposed: to the superficially rural preferences of contemporary culture; and to the unabashed agrarianism of history. Writers depicted American cities as the haunt of corruptions and criminals, depraved and exploited European immigrants; in distant, sinful urban centers, merciless entrepreneurs clandestinely manipulated railroad rates and mortgage paper to rob honest agriculturalists.³ For eminent modern commentators like Lewis Mumford, sinister cities remain the most
frightening aspect of twentieth-century existence. Urban life, Mumford claimed, destroys "man's relations to air, water, soil, and all his organic partners . . ."; it denies the opportunity "to touch and feel and cultivate the earth. . . ." Bearing the seeds of its own destruction, Mumford prophesied, "metropolitan civilization . . . would only carry the present forces at work in Megalopolis to their ultimate goal—total human annihilation."4

Most commonly, cities received little attention from historians. Perhaps, scholars' apathy toward urban history was an expression of their aversion to modern urban development. In the late 1930's, Gerald M. Capers admitted feeling "apologetic" for "selecting so base a subject" as Memphis, Tennessee, for his dissertation research.5 A few years later, Bayrd Still felt it necessary to remind a professional readership that settlers in the "Mississippi Valley in the middle of the nineteenth century built cities as well as cultivated farms."6 Not quite fifteen years ago, Eric Lampard lamented the "minutiae of urban biography," the paucity of "professional" urban history, and the dreadful pedagogy burdening students with "superficial generalizations . . . based neither on the piecemeal monographic work of urban historians nor upon any study of urbanization."7

Even as Lampard decried the inadequacies of urban historiography, increasing numbers of scholars were turning their attention to this long-neglected field of study. Many
historians in the 1950's had become increasingly dissatisfied with continuing professional attention to frontier experiences and interpretations. Other writers sought more satisfactory explanations of American expansion by studying the role of cities, towns, settlements, and communities as an integral part of westward migrations. In the process, researchers discovered that towns had served as focal points for promoting land speculations, regional agricultural settlement, commercial exploitation, construction and utilization of viable transportation networks, and finally industrial growth.\(^8\)

Spurred also by the gnawing nationwide concern over contemporary city problems, historians actively began seeking a more comprehensive understanding of the urban past. The writers of the 1950's provided important transitions in emphasis for urban historical literature. In some respects these writers remained true to older interests of frontier and agrarian life.\(^9\) In other instances work was based in the traditions of local history.\(^10\) City and local histories continued to pay close attention to the transition from completely unsettled "frontier" conditions, to involvement in the Indian fur trade, to development of rural and nonrural settlements.\(^11\) By concentrating on communities, villages, towns, and young brawling cities of the Ohio and Mississippi Valleys, the writers also departed permanently from traditional discussions of antebellum frontier history and post-
Civil War urban development and agrarian life. Unlike Professor Still's earlier attempts to alter scholars' urban history time frame, writers of the 1950's had a significant impact. A few years later, Zane Miller would refer to the "urban explosion" of 1820-1860 as the "most severe" in the history of the United States.\(^{12}\) If historians were not obeying Frederick Jackson Turner's 1925 injunction for "an urban reinterpretation of our history . . . ," they were, at last, attending to urban dimensions in American life.\(^{13}\)

An urban history explosion in the 1960's and 1970's has replaced the void that existed during earlier decades. During the past fifteen years scholars have examined carefully, numerous elements of urbanization; and they have sketched in, with prodigious detail, previously ill-defined contours of American town and city development. Using very different approaches, Lewis Mumford and Blake Mcklevey attempted to collect, summarize, and interpret existing knowledge pertaining to cities.\(^{14}\) As previously mentioned, Mumford emphasized the modern city's technological tyranny and capacity for denying basic human needs. "Naive apostles of progress," Mumford prophesied, would support continued urbanization, bringing "sterility to the countryside and ultimately death to the city."\(^{15}\) Mckelvery, a veteran urban biographer and participant in the urban history renaissance of the 1950's, gave particular attention to post-Civil War development in the United States. He examined demographic
changes, development and reform of municipal political and social welfare institutions, local promotion of transport and industrial enterprise, and the evolution of cities' cultural role in American society. While McKelvey, on occasion, was a severe critic of United States urban conditions, his main concern was to describe the growth and functions of cities in modern American society.  

McKelvey and scores of other participants in the urban history explosion have succeeded in breaking the Jefferson barrier of Arcadian idealism and agrarianism. They have rediscovered in municipal records, local newspapers, and booster literature what Morton and Lucia White described briefly as a pragmatic approach to American urbanization. Even most nineteenth-century Americans viewed towns and cities as necessary or even desirable elements for the advancement of civilization and commerce. Even more to the point, non-rural developments served highly acquisitive men as extraordinary generators of personal fortunes.

Urban history literature has developed along separate, but often intersecting avenues. Despite their questionable value in the eyes of some commentators, the decade of the 1960's witnessed a substantial proliferation of urban biography. Cities great and small have received historians' attentions. Conspicuous failures and notable successes have been recorded in townsite speculation, transportation and industrial development, political and social reform, and
creation of cultural and recreational amenities.\textsuperscript{18} But this literature has been criticized as too diverse in emphasis and detail to permit reliable general conclusions about causes for urban success or failure.\textsuperscript{19}

Another group of writers has provided detailed examination of specific urban problems, functions, or experiences. "Piecemeal monographic works" have examined such diverse topics as urban relationships to transportation and communication technologies, social mobility, and welfare.\textsuperscript{20} Municipal functions such as tax collection and finance, regulation of public health, and law enforcement administration have received thorough considerations.\textsuperscript{21} The evolution of local governing elites, and the arrival and adaptation of immigrant and native American ethnic groups to city life have been carefully scrutinized.\textsuperscript{22} Most recently, United States colonial and southern historians have attempted to recreate the nonrural dimensions of their subjects. After many years, the student wishing to investigate the pre-industrial American city finds secondary resources other than the works of Carl Bridenbaugh and studies of New England towns.\textsuperscript{23} Researchers also have undertaken numerous studies to examine the ideology and practice of antebellum and post-emancipation southern urban life.\textsuperscript{24}

Commentators generally have noted with satisfaction the rise of urban history over the past two decades. Indeed, the new "famine-to-feast" development of urban historiography has
elicited new complaints that the field has grown too broad and inclusive. It is no longer appropriate, argue Roy Lubove and Eric Lampard, to accept or classify as urban history, everything that ever happened in a town or city. Lampard proposed that urbanization be studied primarily as a demographic phenomenon, charting the flow of population into high-density areas, and then appraising the effects of these human migrations.\textsuperscript{25} Lubove offered a somewhat broader definition of urbanization as "the process of city building over time."\textsuperscript{26} While cautioning against "environmental determinism," both writers have advocated a strongly materialistic approach to urban history. A city is viewed as an aggregation of people and places, organized for efficient performance of a host of specific functions, and requiring special and specialized services. To use Lubove's words the city is viewed primarily as an "artifact" or a "physical container."\textsuperscript{27} Under the rubric of "social organization" and its attending "civic polity and culture," the writers examine rearrangements in human relationships caused by urbanization. Taking the final results of human experience and breaking them into component parts, the writers fit social, cultural, and political developments into proposed materialistic modes.\textsuperscript{28} Society responds to the economic and technological stimuli of the urban environment much more than it acts to direct or control them. And such questions as how historical participants perceived the urban process--as opposed to the
objective reality of city life—apparently have only minor significance; perhaps, they are not urban history.

Houston, Texas, was founded in 1837 to exploit existing transportation technology and geographic advantages. In that sense the Bayou City was no different than thousands of extinct villages, ghost towns, and modern-day sleepy country hamlets. Houston had access (just barely) to steamboat traffic on Buffalo Bayou. The town also required land access to hinterlands along the Brazos and Colorado River bottoms in order to exploit advantageous water-borne transportation. Houstonians, therefore, needed to build a system of roads, bridges, and ferries across formidable, low-lying swamp and marshlands surrounding their city. Even railroads, during the earliest days of the Texas Republic, received attention from town promoters. Urbanization in Texas involved a process of acquisition of economic and commercial advantages through community action, rather than automatic exploitation of existing resources.

Settlers and promoters of Houston, Galveston, and San Antonio perceived, correctly, that efficient local political organizations were an absolute requisite, and perhaps the single most important factor in community survival. Political organization allowed Texas frontier settlements to obtain maximum developmental leverage from the community's modest resources. During the earliest years of growth and expansion, the towns utilized politics, not so much for
"ratification of favors and the imposition of sanctions," but for exploitation of local populations in the interest of community improvement. The young Texas towns obtained desired citizen cooperation because local leaders succeeded in narrowing differences between public and private interests. The confluence of personal and community needs provided bedrock support for local governments. 31

Creation and availability of local legal institutions also constituted an important landmark in mid-nineteenth century Texas town development. Court sessions had both practical and symbolic significance. Erection of a courthouse and jail promised settlers and potential settlers easy access to forums for conducting land transfers and other legal business. Proximity to a county seat also guaranteed reasonable proximity to law enforcement, a highly-valued service in frontier areas. Presence of a county sheriff, and periodic appearance of a district judge, were considered indications of a community's serious commitment to protection of lives and property. Assurances in "law and order" matters attracted solid citizens; permanent, productive settlers whose presence was a necessary ingredient for sustained community development. Legal institutions thus were considered important town assets, and were prominently and conspicuously displayed for the purpose of attracting newcomers and reassuring recent arrivals. 32

Politics and law provided the dual dynamics for Texas
towns' internal institutional development; and for evolution and regulation of "external relations."

33 How one local government interacted with another, or with state officers or legislators, has been one of the most confusing aspects of antebellum constitutional history. Difficulties have emanated from several historical and historiographical sources. Researchers find substantial mid-nineteenth century commentary, describing the extraordinary autonomy of American localities; and they find also, a broad-based support for philosophical and constitutional "local self-government" ideas. 34 On the other hand, juridical literature positioned the state at the center of the American federal system. Judges argued that towns, counties, cities, and other local units operated as states' local agents, their functions and even their existence subject at all times to state government control. 35 This picture is further clouded by sensational episodes of state involvement in cities' affairs. Whether state lawmakers were reformers or intermeddlers generally depended upon the beholder's point of view. The resulting battles caused Progressive Era reformers and recent historians to view the issues in terms of conflict between cities and rural legislators. 36

In Texas, the apparent contradiction between municipal independence and state supremacy was resolved through litigation and politics. Given elected representatives' orientations and loyalties in favor of their own constit-
uents, it is not surprising that the statehouse often became one of many staging grounds for intense local and regional rivalries. But when "intrastate sectionalism" was not a factor, state-local intergovernmental relations were amicable. The state used its "supreme" legal powers to enlarge the functional autonomy and influence of towns and counties. State policy-makers generally favored maintenance of powerful municipal institutions. In line with this policy, antebellum Texas legislators regularly expanded local prerogatives and authority. In the few instances where state officers attempted direct interference in town or county affairs, local leaders proved willing to resist the incursions in ways bordering on insurrection. Successful state restraints upon local initiative were usually negative in character--refusals to allow new or expanded town or county activities, rather than direct state intervention.

With varying degrees of conflict and success, Texas town and county officials also became political partners, and cooperated in delivering a broad range of local administrative services. Through formal and informal arrangements, city councilmen and county commissioners shared the total local government work load, and avoided needless wastage of physical and economic resources. Creation of separate town and county governments in unsettled areas of the Texas Republic deprived both institutions of adequate resources. Cooperation rationalized local administrative efforts,
hastened development, and strengthened community cohesiveness. 39

Constitutional and legal relationships among Texas governing institutions were most often derived from towns' and counties' commercial needs or economic desires. Local officers willingly exercised their powers for the benefit of local entrepreneurs. With franchises and licences, local governments promoted, regulated, and derived support from private enterprise. In other cases, particularly land and transportation development, local governments subsidized business and commerce through direct monetary grants or support of favorable legislation. 40 Like Spanish moss around a live oak, the threads of economic development and government action intertwined. Town, county, and commercial institutions gained support and sustenance from mutual consultation and cooperation.

In dealing with the "microcosmic evidence" of antebellum Texas town development, the student is confronted with certain unique characteristics. The state continues to be a point of impact between Spanish and Anglo-American cultures. The fact of former Spanish and Mexican territorial control invites local government comparisons, and appraisals of remaining influences. Despite repudiation of the Mexican system during the Texas revolution of 1836, local institutions retained numerous characteristics not imported from the United States. The actual change from the Mexican system of unitary local
administration to fully separated towns and counties proceeded slowly, hindered by Texas local governments' shortages of physical and fiscal resources. Differences over appropriate uses or disposition of municipally owned lands created bitter, divisive controversies between Mexican and Anglo-American citizens. Legal controversies generated over municipal real estate continued for decades in Texas courts before they were satisfactorily resolved. 41

Mexican and Anglo-American settlers brought government practices and customs to their new homes, that blended into evolving Texas institutions. Local promoters and settlers, however, continually tested and re-examined this constitutional baggage in search of new ways to enhance settlement, safety, and personal and public economic development. Through this testing process Texans established viable operational spheres for individual initiative, and state and local governments; and they erected institutions to service their essentially pre-industrial antebellum society and commerce. Legal and political relationships between state, town, and county could help or hinder local communities' achievements of primary economic or social goals. Strict adherence to institutional divisions, with duplication of effort and competition over patronage, could easily lessen local government viability. Effective intergovernmental cooperation--avoidance of conflict and lowering of institutional barriers--could facilitate greatly, the establishment
of community stability and prosperity. Advantages to cooperation were small but significant, and with such advantages urban beginnings were made.
NOTES


6 Bayrd Still, "Patterns of Mid-Nineteenth Century Urbanization in the Middle West," Mississippi Valley Historical Review (September, 1941), 187-206.


8 Stanley Elkins and Eric McKitrick, "A Meaning for Turner's Frontier," Political Science Quarterly, LXIX (September, December, 1954), 321-353, 565-602, recognized the town as a northern phenomenon, and viewed the south as being oriented almost exclusively toward agriculture; Richard Wade, The Urban Frontier, Pioneer Life in Early Pittsburgh, Cincinnati, Lexington, Louisville, and St.Louis

Curti, The Making of an American Community, Ch. II-IV.

Lewis Atherton, Main Street on the Middle Border (Bloomington, Indiana: Indiana University Press, 1954).


Zane Miller, The Urbanization of Modern America (New York: Harcourt Brace Jovanovich, 1973), 25-26; Wade, The Urban Frontier, Ch. X.


Mumford, The City in History, passim; Mc Kelvey, The Urbanization of America, passim.


Mc Kelvey, The Urbanization of America, Ch. 6.


Urban biography literature is so extensive that only minute samplings are possible here. Perhaps the best approach to take to this problem, is to note the numerous studies of various aspects of Southeast Texas Gulf Coast


23Carl Bridenbaugh, Cities in the Wilderness (New York:


25 Lampard, "The Dimensions of Urban History: A Footnote to the 'Urban Crisis,'" passim; in the early 1960's Lampard argued for expansion of urban historiography to encompass


27Lubove, "The Urbanization Process: An Approach to Historical Research," 33-39; the writer seems more amenable than Lampard to dealing with nonenvironmental factors and "subjective, attitudinal variables." To accomplish this goals, Lubove would co-opt the techniques of "social psychology, cultural anthropology, interpersonal psychiatry, or interactionist sociology. . . ." Just how far the "city-building" definition of urban history removes the discipline from the "the variety store level of conceptualization"--decried by both Lubove and Lampard--is unclear.

28Lampard, "The Dimensions of Urban History: A Footnote to the 'Urban Crisis,'" 272-275.

29Navigation on the Bayou above Harrisburg--a competing townsite near Houston--was hazardous enough to raise doubts among contemporaries as to Houston's claim to location at the headwaters. Even water-borne advantages, therefore, were not there for the town's taking: they required clearing of obstructions to navigation, and continuing salvage and maintenance efforts. Cf., Ch. III of this dissertation; and see, Anon., "Houston and Galveston in the Years 1837-1838" (Reprint [from the Hesperian or Western Magazine, 1838] ed.; Houston, Texas: Union National Bank, 1926); Sibley, The Port of Houston, 33-41; Andrew Forest Muir, "The Destiny of Buffalo Bayou," Southwestern Historical Quarterly, XLVII (October, 1943), 91-106.


31Lampard, "The Dimensions of Urban History: A Footnote to the 'Urban Crisis,'" 273; and cf., Ch. III of this dissertation.

32Cf., Ch. IV of this dissertation.
Lampard, "The Dimensions of Urban History: A Footnote to the 'Urban Crisis,'" 273; and cf., Ch. V of this dissertation.


Howard L. McBain, The Law and the Practice of Municipal Home Rule (New York: Columbia University Press, 1916); Bloomfield, "Law v. Politics: The Self Image of the American Bar," passim; but see, Daniel Elazar, "Urban Problems and the Federal Government: A Historical Inquiry," Political Science Quarterly, LXXXII (December, 1967), 505-525; Elazar, the foremost proponent of "cooperative federalism" hypothesized that most urban centers in the nineteenth century, were not large enough or advanced enough to make extraordinary demands upon the state or national governments. While intrastate federalism in nineteenth-century Texas generally fit cooperative modes first proposed by Elazar, local demands upon state legislatures were substantial and unrelenting.

Cf., Ch. V of this dissertation; and see, Harry Scheiber, "Urban Rivalry and Internal Improvements in the Old Northwest, 1820-1860," in Callow, American Urban History, 135-146; Curti, The Making of an American Community, Ch. II.

Cf., Ch. V of this dissertation.

Cf., Ch. IV of this dissertation.

41 Cf., Ch. II of this dissertation; Jane Lynn Scarborough, "George W. Paschal, Texas Unionist and Scalawag Jurisprudent," (unpublished Ph.D dissertation, Rice University, 1972), Ch. I.
II EXECUTIVE POWERS AND LOCAL INITIATIVE: THE LIMITS OF INSTITUTIONAL VIABILITY IN TEXAS, 1822-1845

The most important local government institutions in the Mexican provinces of the Spanish empire, and in the Mexican Republic after it achieved independence in 1821, were municipalities. In structure and in many functions Mexican municipal units resembled local governments in the United States of America. In theory and in law, Hispanic municipalities contrasted sharply to institutions in English-speaking North America.

Much more than a system of political organization, Mexican municipalities were unitary administrative entities for both rural and nonrural places. Local governments owned woodlands, pasture, farmlands for leasing or common cultivation, town property, water rights, and other perquisites on a communal basis. Municipal ownership emphasized the interconnections and community of interests between the villages of New Spain and the surrounding countryside. The United States practice of separating town from county government, and even promoting competition between them, often obscured the closeness and importance of urban-rural connections.

The Spanish New World empire in which the municipality developed and functioned, was considered private property of the Spanish king. From 1521, when the king authorized deputies to supervise land distribution in New Spain, until the middle of the eighteenth century, cautious
property holders continued having their titles confirmed in the court at Madrid. The king could make grants outright, but most often attached numerous conditions to land ownership. Disposing of his possessions as he saw fit, the monarch granted "'property in New Spain . . . upon conditions which limited its free use and exploitation and rendered it liable to cancellation.'"  

At the beginning of the nineteenth century, most of Texas still lay beyond the pale of Spanish settlement. Four hundred years of Spanish domination had produced a few missions, presidios, and isolated civilian settlements. Notable Spanish colonization existed at San Fernando de Bexar (San Antonio), along the Rio Grande River, at La Bahia del Espiritu Santu (Goliad), and deep in East Texas at Nacogdoches. Provincial administration operated along a military chain-of-command, except at Bexar where nonmilitary government existed.  

Individuals such as Moses Austin who sought permission to colonize Texas with settlers from the United States, encountered a governmental system where reliance upon local authorities could create numerous difficulties. Austin brought his colonization plans to officials in San Fernando de Bexar who had been fighting American adventurers and filibusters for more than a decade. Americans had not endeared themselves by stealing horses from the Mexican army, fomenting rebellion and conniving with Comanche to attack military outposts and settlements. At first the
Bexar governor did not even bother to examine Austin's papers or proposals; he simply ordered the American out of the province. When the governor reconsidered his decision, his consultation went no further than the local ayuntamiento (municipal council) and the provincial military authority at Monterrey. Relying upon assurances from the provincial governor, Austin prepared to colonize three hundred North American families on Texas soil in Spring, 1821.

The fluid situation in Mexican politics, coupled with Moses Austin's death, almost ended Anglo-American colonization efforts. With assurances from the Bexar governor that he inherited his father's contract Stephen F. Austin proceeded with efforts to promote emigration. News that the Mexican government would admit English-speaking settlers prompted substantial numbers of persons to start for Texas. By early 1822, immigrants and squatters were in the territory of Austin's putative land grant, occupying and claiming choice lands along the Colorado and Brazos Rivers.

Settlement was well under way when Mexican authorities informed the younger Austin that he would not be permitted to colonize under his father's contract. Officials of the newly-independent Mexican nation sensed danger in heavy foreign immigration into their border provinces from a neighboring country. The Mexican government began considering ways in which it might protect Texas and California from possible foreign conquest, by promoting settlement and by
increasing the Spanish populations there. The change in policy sent Austin on a year-long sojourn to Mexico City to repair his interests. Not until spring of 1823 was he assured that the lives and fortunes invested in his Texas settlement had been secured.

Austin's trip to Mexico City in 1822 resembled in purpose and function, earlier efforts to obtain royal approval of land grants in New Spain. The empresario received approval from highest Mexican authority for his Texas project, and could guarantee good title to his settlers. Austin's pecuniary success was conditioned upon fulfilling numerous, stringent, legal requirements set by Mexican authorities. After the first immigrants had erected an effective barrier against marauding Indians, arrivals from the United States would settle near centers of Spanish population. The empresario guaranteed the good moral character of his colonists and their allegiance to the Catholic church. Austin was charged with administering justice and organizing a militia. Finally, the Mexican government limited slavery in Texas. Settlers could bring their slaves into Texas, but purchase or sale of slave property was expressly forbidden. The provisions were similar to, but somewhat stricter than the gradual emancipation statutes of several United States jurisdictions. Mexican law stipulated that children of slaves born in Texas be manumitted at age fourteen.
Austin's role as land promoter may not have differed greatly from other entrepreneurs on the North American frontier. But the agreement with the Spanish government giving him virtually incontestible political control within his province probably could not have existed elsewhere on the North American frontier. Austin's grant--confirmed by both national and provincial Mexican officials--also reflected the geographic and political isolation of American settlements. Austin commanded the local militia and possessed full authority to wage war on the Indians. Mexican officers required only occasional reports on the state of the colony, and the right of final determination in capital criminal prosecutions. Mexican laws pertaining to the colony had not been published, leaving colonists to improvise as they wished.

Eugene C. Barker, Austin's biographer, has depicted him as a benevolent and conscientious autocrat. The empresario appointed minor judicial officials in the several regions of his colony, who functioned as justices of the peace, election judges (in militia elections), and notaries public. In 1824, Austin also promulgated rudimentary penal and civil codes, while maintaining his prerogative to decide appeals from local officers. Barker contended that Austin was especially careful in selecting his first immigrants for Texas. Persons either furnished evidence of good morals and character, or removed to colonies where proprietors were
not so selective in choosing settlers. "Drunkards, gamblers, profane swearers, idlers," and even hardy frontiersmen who had "'no other occupation than that of hunter'" could expect an armed escort out of Austin's colony. The deportees' property could be confiscated to pay for providing his escort. Single men were encouraged to matrimony by discriminatory land distribution policies.

Barker also recorded one instance where Mexican officials interceded in the administration of the Texas colony. Under terms originally set by Moses Austin, settlers agreed to pay Austin $12.50 per hundred acres of land. Austin surveyed and marked boundaries, paid recording fees, purchased stamped paper, and provided any other services necessary to guarantee unimpeachable title. The elder Austin broadcast these terms throughout the United States, and his son demanded that colonists uphold their end of the bargain. Settlers succeeded in obtaining relief from the Bexar government by spring of 1824. Austin protested vigorously the Mexican interference in private contracts between himself and individual colonists. Reduction in the cost of obtaining land titles by about two-thirds demonstrated the temporary commitment of Mexican officials to rapid settlement of Texas by Americans.

Between 1821 and 1827, Mexican political institutions were too disorganized to regulate or control effectively Anglo-American immigration into Texas. The newly independent
nation had cast aside some of its centralized governance in favor of a federal system. Representatives to the state government of Coahuila and Texas were, until 1827, engaged in drafting a constitution, and had not concerned themselves with North Americans' affairs. By 1827, however, constitutional government was becoming a reality in northern Mexico.

Austin's settlers were familiar with the process of organizing local governments. The Coahuilan state constitution required that a municipality and ayuntamiento be established when a town and its environs exceeded one thousand population. Mexican municipal officers had analogues in towns and counties of the United States. Austin chose provisional authorities to conduct the first election, and in February, 1828, the ayuntamiento of San Felipe de Austin began operation.

Mexican law classified the ayuntamiento as a local arm of the state executive. These local governments exercised broad powers, including suppression of vagrancy and "public scandal," protection of trees and fruit cultivation, establishment and regulation of public education, licensing of physicians and apothecaries, and appointment of health boards. Municipal law also emphasized protection for communally-owned property. The ayuntamiento was ordered to "take care that the woods and timber belonging to the commons be preserved . . ."; no "useful tree" on municipal lands
could be destroyed, "without planting three of the same kind in its place. . . ." 19

Once established, the ayuntamiento of San Felipe enacted an elaborate system of by-laws, and submitted them to the state legislature for ratification. Known as the "municipal ordinance," this local code was much more specific and complete than any county organization statute or city charter extant in the Republic or State of Texas prior to the Civil War. In most instances the San Felipe municipal ordinance supplemented or expanded upon provisions of the general municipal law. At other times the ayuntamiento exercised special, plenary powers. Municipal control extended to roads, bridges, ferries, schools, police, and public health, and assumed a vital role in land distribution. Ayuntamiento members also were authorized to "watch over the conduct of the officers of the national government within their jurisdiction" and file reports of wrongdoing whenever necessary. The process of amending the municipal ordinance originated within the local government. The ayuntamiento initiated a petition which passed through the hands of state executive officials to the State Legislature. 21

No Mexican official act could have planted the seeds of revolution in Texas more successfully than the magnanimous gesture of granting local self-government to settlers from the United States. English-speaking colonists quickly
demonstrated their insensitivity to the governmental customs and political aspirations of their adopted country and its people. San Felipe municipality had not been in operation two months before the ayuntamiento petitioned the state congress at Saltillo demanding protection for contracts between North American settlers and their "servants and hirelings." Many of these "agreements" were ninety-nine year contracts of servitude made between masters and slaves in the southern United States. The contracts evinced a clear, simple purpose: to evade Mexican limitations placed upon slavery and slave property in Texas. The ayuntamiento's purpose was equally clear. The local government at San Felipe had requested that Mexican officials condone evasion of Mexican laws.

The ayuntamiento of 1828 proceeded from their petition to legalize slavery to overt neglect of official duties. Austin inherited the embarrassing task of explaining local leaders' misconduct to Mexican authorities. "I have actually exhausted all the stock of reasonable excuses that I could devise," Austin wrote in a letter to his friend Josiah Bell, "and have drawn so largely upon shadows and frivolous apologies that I am ashamed to interfere any more." Austin did dissuade Mexican authorities from levying fines against his colonists for neglect of duty.

The belief that the Mexican government could allow continued immigration from the United States eroded quickly
after municipal governments were established and operating in the North American colonies. Problems in financing the local governments figured prominently in changing Mexican opinion. From the outset, San Felipe municipality was all but devoid of fiscal resources. State law and the municipal ordinance had set real and personal property taxes, and license fees for various trades and professions; the revenues, if collected, were calculated to pay the local government's expenses, and help build a much-needed courthouse and jail. The municipality lacked even the resources to guard, feed, and work its occasional prisoners, let alone construct a building to house them. The national colonization law exempted most colonists from the land taxes which the ayuntamiento sought to collect. Although some money was realized from fines and licenses, the ayuntamiento resorted to activating the militia to guard lawbreakers. From 1828 to 1832, the ayuntamiento never succeeded in paying its secretary his agreed salary.

The lack of faith in the municipality's credit caused concern in Austin's settlement, but not enough to cause the ayuntamiento to perform its legal duty of collecting taxes. Anglo-Americans viewed any impost as an unnecessary and unwanted hindrance to settlement. A memorial to the Congress of Coahuila and Texas attempted to explain local nondiligence in tax matters. The ayuntamiento recognized that controlling state law, and the San Felipe municipal ordinance "authorizes and requires" the collection of taxes.
"But this body," continued the local council, "having taken into consideration the circumstances of the inhabitants of the jurisdiction, have, pending the investigation of public opinion on the subject, delayed the execution of this chapter of the decree." The inhabitants of San Felipe, the memorialists pleaded, "were not able" to meet their public obligations, "in view of the newness of the settlements, the scant crops of previous years, the expense of equipping their farms and stocking them with horses and large and small cattle--in short, laying the foundation of agricultural and pastoral industry. . . ."

The North Americans found a partial solution to fiscal problems, at the expense of worsening relations with the Mexican government. San Felipe municipality raised money for operating expenses and settling debts by selling or bartering communally-owned lands. In East Texas, around Nacogdoches, land sales included municipal property held inviolable and inalienable under laws and customs descended from Old Spain. Sale of municipal lands provided Mexican officials with further evidence that their policy of admitting settlers into Texas from the United States had been a grave mistake. North Americans simply refused accommodation to Mexican institutions. Mexican attempts to persuade, educate, or include Texas colonists in the political life of their new country had been evaded, disregarded, or openly disobeyed. Moreover, new arrivals crossed the Sabine or embarked by
steamboat from New Orleans at a rate that precluded successful dilution and assimilation of Texas' English-speaking settlers by a Spanish population.

Despite exacerbated relations between North American settlers and Mexican officials, San Felipe's local government functioned well enough to deliver basic governmental services. Successful governmental activity drew strength from voluntary action, close relationships between private pecuniary gain and public good, or unusual opportunities to gather monetary resources for government without jeopardizing the quest for new settlers. The municipality's fiscal travails usually hampered more ambitious local initiatives.

Police functions appeared more as political than judicial matters. Although serious crime was not a common problem, it taxed municipal resources when it arose. The ayuntamiento took numerous occasions, however, to address the people on "the subject of drunkards and vagrants," who, "corrupt the morals of youth and present disgraceful spectables to society." The ayuntamiento denounced wrongdoers in its minutes, and informed them of their liability to prosecution under the vagrancy laws. Then the ayuntamiento ominously warned other citizens who were "coming to be in the same class" of vagabonds, that they must reform their evil ways or expect punishment.

Discrepancies in enforcement of vagrancy laws suggest that early Texas settlers may have considered wrongdoers
more akin to paupers than criminals. In May, 1830, the municipality punished two men under the vagrancy laws. The ayuntamiento voted Charles Smith a vagrant, ordered him placed in irons and under guard, and "fed by a proper person at the expense of the municipality. . . ." John Montgomery was "convicted" of the same wrongdoing, and ordered out of the province. Montgomery was banished because he was not a San Felipe citizen; the ayuntamiento put him on the road to save the trouble and expense of detention.

Voluntary local citizen cooperation often made possible, performance of municipal duties that, otherwise, could not have been undertaken. In 1829, the ayuntamiento noted with great pleasure, subscriptions of eight hundred dollars, placed in the hands of the government for school construction. The 1830 ayuntamiento was pleased with the benevolence of three men who dug a well on the San Felipe town square. Local officials christened the project "an act of Public Utility," and the well became municipal property. Doctors contributed their time as volunteers on the Board of Physicians, to oversee the licensing of new practitioners and police apothecaries for the protection of the public. Even the wheels of justice gathered a little momentum from the gentle push of volunteer lawyers, who "signified . . . their willingness to devote part of their time and labour for the public welfare . . . by serving gratis in a regular routine, as Attorneys for the prosecution of crimes committed
against the laws of this state. . . ."

Local institutions succeeded best where public needs intertwined with private pecuniary interests. San Felipe's municipal ordinance vested the ayuntamiento with control over public ferries within its jurisdiction. The local government liberally issued licenses to private individuals who found convenient or promising river crossings and wanted to try their luck. The license agreements placed the municipality in an enviable position. Upon obtaining a franchise, boatmen posted bond guaranteeing faithful performance of their public duty. When operations were profitable, the private individual increased his fortune, while the public obtained valuable services. In instances where the licensee could not make expenses, the municipality could seize his assets and seek further recourse against his sureties. In 1830, the ayuntamiento enacted a general ordinance regulating ferriage rates.

As the need for basic services fostered marriages of convenience between public and private interest, so the need for local revenues fostered a sense of righteousness among members of San Felipe's ayuntamiento. Fines against lawbreakers assumed an importance far greater than in later years when local tax resources were much more secure. The Board of Physicians, mentioned previously, was instrumental in ferreting out several practitioners operating without licenses. In each instance the guilty party was assessed
the maximum penalty allowed by law. Merchants, not entitled to the tax exemptions afforded farmers under the colonization statutes, also were vulnerable to stiff fines. Nathaniel Lynch, an early and well-known settler near Harrisburg, learned in sudden, dramatic, and costly fashion that ferry boat operators who sold groceries were expected to purchase a grocer's license. Another enterprising merchant received a hard lesson after conducting business with a second-hand license. The ayuntamiento decided, for that case as well as for the future, that licenses were non-transferable. In another instance, local officials informed San Felipe inhabitants that its licensing powers extended to business on board ships and boats within the municipality.

Though local in nature and protective of provincial interests, municipalities such as San Felipe de Austin encompassed large expanses of territory. In order to have a quorum available to conduct government business, ayuntamiento officers usually resided in or near the municipal town. Outlying areas were underrepresented, or received no representation at all. Regions within the municipality tended to develop their own special interests centering around remote agricultural colonies or townsite speculations.

Promoters and entrepreneurs of privately owned Texas towns invariably attempted to exploit "breaks in transportation" such as ferry crossings or river junctions.
And, invariably the towns struggled for survival. Population growth during the 1820's was slow, and development proceeded in small steps. Modest investments designed to generate regionally-needed supplies or services helped to establish particular towns as desirable market places. Local trading centers could generate small amounts of capital from commerce, for reinvestment in community growth. Totally lacking in separate governmental powers, the outlying settlements relied largely upon private investments in order to "go forward." In this respect, private towns presented a marked contrast to municipal towns where commerce and industry often received government subsidies. Private towns could, however, hope to boost their fortunes with government patronage. An ayuntamiento's decision to mark out a road was helpful. Designation of a particular town as an election site was especially important, for men utilized election day as an opportunity to transact business, purchase supplies, consume liquor, and even satisfy "bestial desires," if such services were available.

For all its financial tribulations, the municipality of San Felipe de Austin provided settlers from the United States with institutions that held potential for substantial local autonomy and authority. From neglectful beginnings in 1828, through 1832, the ayuntamiento gradually expanded its activities, undertaking many local prerogatives allowed by law. At the same time, sale of municipal property signified settlers' rejection of many important communal
functions believed by Mexicans to be intimately related to the stability of their political and social institutions. Mexican laws which cast the ayuntamiento as a local representative of a controlling state executive power, did not reflect the functional reality of San Felipe. Colonists from the United States probably could not conceive, much less accept local officers as representatives of superior governmental authority. Insensitivity to Mexican concepts of municipality had been born in the intense, habitual localism common throughout English-speaking North America. Utilizing the structural and functional similarities between Mexican and United States local institutions, the Americans altered the intent of their municipality. After the fashion in the United States, local government had become primarily the representative and promoter of local interests in strange and increasingly hostile political surroundings.

By the end of the 1820's decade the Mexican government had begun responding to North Americans' mistreatment of Hispanic laws and customs. A preliminary skirmish occurred in 1829 over slave emancipation. Concerted attempts to stem the tide of Anglo-American immigration into Texas began in earnest with passage on April 6, 1830, of a new national colonization law. Implementation of this law, and the determination to bring North American settlements under Mexican government control, greatly increased the probabil-
ities of open conflict. Mexican troop strength was increased at San Antonio, Goliad, and Nacogdoches, while new garrisons were established on Galveston Bay, the lower Brazos River, and along the Nacogdoches-San Antonio Road. The Mexican government also reiterated its disapproval of slavery and the slave trade, and demanded that local officers enforce the laws guaranteeing gradual emancipation.

The greatest threat to Texas colonists lay in Mexican efforts to interfere with orderly settlement of new territory, and with the "filling up" of empty spaces with farms, homes, plantations, towns, and other institutions of secure and orderly life. Repudiation of uncompleted colonization contracts between empresarios and the Mexican government had disastrous effects, especially upon thinly-populated areas. To make matters worse, Austin and other proprietors connived with local Mexican officials to evade the national prohibitions on new immigration. Utilizing conflicting provisions within the colonization law, Austin continued settling immigrants from the United States. This time, however, the government refused to tolerate evasion of Mexican laws. By the end of 1831, numerous squatters resided within the most established American settlements, with little prospect of receiving title to their lands. In plaintive petitions, the ayuntamiento of San Felipe sought appointment of government commissioners with authority to issue land patents. Local authorities' requests were ignored.
For final measure, the Mexican government provided Texas with an onerous tariff enforced by equally onerous revenue officers. Anahuac on Galveston Bay possessed the dubious distinction of being the only port in all Mexico where the tariff was enforced. Customs officials refused local officers' requests to examine tariff laws or the commissions of men appointed to enforce them. Municipal officers thus were prevented from reporting upon the actions of national officers, as required by Mexican law.

Texans clearly understood the hostile implications of the Mexican government's new revenue policy. Closing the borders halted new immigration, while the tariff threatened thin veils of physical safety and economic security that stretched over established Texas settlements. The import taxes made North Americans unwilling participants in their own lawlessness and the lawlessness of others. Honest men concerned with enforcement of the laws suddenly found themselves in league with smugglers operating back and forth across the Sabine River. The Mexican government could not send the numbers of troops needed to shut off this illegal trade.

The revenue laws, in conjunction with immigration prohibitions, thus precipitated the first collective response in Texas against Mexican government policies. Petitioners in Texas protest meetings prophesied dire consequences for the province, if no change in Mexican
policy were forthcoming. Colonists bluntly warned the national government that "the commerce of the country will be completely prostrated, . . . immigration to the country will be checked, and the prospects of the present inhabitants at once blasted."\(^{54}\)

However foreign to the North Americans, Mexican political theory and custom sanctioned the attempt to regulate Texas local institutions. Moreover, any independent nation would have claimed authority to regulate alien immigration, or to impose excise taxes upon imported foreign goods. The Mexican government, after April 6, 1830, adopted apparently reasonable measures, the better to regulate local institutions and insure that Texas would not be wrested away by revolution or conquest. Yet those measures destroyed the expectations of colonists already living in Mexico, threatening their lands, safety, and highly-valued local autonomy. Mexico's liberal immigration policies of the 1820's had generated those expectations, and constituted an important precondition to Americans' decisions to make their homes and fortunes in Texas. Willful, significant lessening of local autonomy and lowering of economic horizons provoked first resistance and then outright rebellion. By summer, 1835, agreement existed among most Texans, including those who had been most committed in their loyalty to Mexico, that there must be an end to Mexican rule.
As the people of Texas separated their province from Mexico and established a new nation, they attempted to maintain a degree of continuity and order in local government institutions. Ordinances and decrees of the Republic of Texas provisional government retained alcaldes and other Mexican officials, modifying their powers and authority to fit political and judicial structures coming into existence. The alcalde's maximum civil jurisdiction was lessened from one hundred to fifty dollars; at the same time, he was fitted with "the same jurisdiction in arresting and committing offenders against the laws as Justices of the Peace under the common laws of England." The Texas constitution of 1836 specifically required that municipal and provisional officers remain at their posts until new governments were organized and replacements chosen. Disparities between Mexican and new Texan institutions developed, but local government personnel often remained the same. Officials filled jobs and fulfilled functions after establishment of the Republic of Texas, similar to those they had performed before independence. Mexican municipalities became the first Texas counties under the constitution of the Republic of Texas. Later, as justices of the peace assumed duties as county "commissioners of roads and revenues" under the laws of the republic, Texans completed an easy transition from local Mexican institutions to types familiar in the United States. By 1837, county officers in Texas
exercised a combination of judicial, legislative, and political duties similar to those filled by local officers under the Mexican governmental system.

Within many municipalities, however, centrifugal forces of localism were also at work. Isolated settlements, long denied the leverage of governmental power in promoting local development, utilized the revolution to gain recognition of their interests. In early November, 1835, representatives from twelve local governments, the "Consultation of the Chosen Delegates of all Texans," began deliberating questions of future relations with Mexico. During late 1835 and early 1836, six new "municipalities" requested recognition and sent delegates to participate in the Consultation. This process of creating, reorganizing, dividing, and realigning civil jurisdictions was never seriously questioned. Texans could risk no alienation of potential allies as they dealt with the problems of establishing a national government and repelling a Mexican invasion. Although acting governor Henry Smith wondered where a provisional government received its authority to create new local units, the decisions were essentially political rather than legal. Texas' declaration of independence was signed by delegates from twenty-three different localities. The constitution of the republic retained a staunch local orientation in the matter of establishing new counties. The Texas Congress could not
create new governments unless it received "the petition of one hundred free male inhabitants of the territory sought to be laid off and established."

Each locality experienced differently the changeover from Mexican institutions to a constitution more congenial to immigrants from the United States. In San Antonio, where Spanish-speaking settlers had lived for over a century, local officials found the meager statutes provided them by the Texas Congress inadequate to meet community needs. San Antonio officials responded by turning to Mexican state laws as a basis for action. In October, 1837, for example, an inadequate city charter left San Antonio without guidelines or limitations in local taxation matters. The city council levied property taxes using as its guide an 1832 law of the former Mexican state of Coahuila and Texas. As late as 1841, San Antonio aldermen set tax rates based upon Mexican revenue laws.

Officials of the newly-incorporated city of San Antonio moved quickly to insure that property of the former Mexican municipality remained under public control. Local officers occupied the "Consistory," a building which had served as police station and meeting place during the Spanish and Mexican periods. The city also assumed jurisdiction over the community slaughterhouse, important for its ability to generate revenue, and for eliminating the nuisance and filth caused by butchers practicing their gory trade on
street corners.

The question of continued municipal ownership of the extensive landholdings of the former San Fernando de Bexar municipality generated much more controversy. The matter started off innocently enough. On December 14, 1837, the Second Congress of the republic promulgated a charter, confirming in the city the ownership of all property controlled by Mexican local government prior to the revolution. The Texas statute did not, however, specify the corporation's exact limits. Local officials assumed the task of consulting Spanish laws, charters, and land grants to determine the city's proper boundaries. On March 19, 1838, the council retained the services of the county surveyor to map out the boundaries of the town. A committee consisting of Mayor William Henry Daingerfield and Alderman Antonio Menchaca was appointed to supervise the survey. The city also retained Mayor Daingerfield "in his capacity of lawyer, to collect and examine such documents and verbal testimony as may serve to establish the ancient limits" of the city.

When the council met on April 2, considerable controversy arose as to appropriate town boundaries. Mayor Daingerfield reported to the alderman that "so much discrepancy and difference of opinion existed on the question," that the city should rest its claims upon an 1829 Mexican statute. In this proposal, Daingerfield was supported by William E. Howth, the only other English-surnamed member in
the city government. Latin members of the city council had
other ideas as to appropriate town boundaries.

The dispute involved an extra two "leagues," or fourteen
square miles of land. Mexican council members believed this
property belonged to the city. On May 25, 1838, Alderman
Howth again proposed basing the town limits upon the 1829
Mexican statute. Again the proposal was soundly defeated.
Howth cast the only vote in favor of the ordinance; alder-
men Rodriguez, Zambrano, Lombrano, and Garza opposed the
measure. The Mexican members of the council then passed a
substitute ordinance claiming larger boundaries for the
city. The smaller town limits desired by the North Amer-
ican members of the city council encompassed nearly fourteen
square miles of territory; the limits set by the Mexican
majority comprised a handsome twenty-eight square miles. The
land was valuable; it was directly accessible to the city,
and probably had improvements stemming from prior use as
communal property. Shrewd men holding Texas republic land
certificates or bounty warrants undoubtedly saw the poten-
tial for a neat windfall by taking possession of this
property.

The city ordinance did not bring the issue to a
quiet or peaceful end. Apparently, Alderman Howth resigned
from the council in protest against the city's action.
Some time later, Mayor Daingerfield also resigned, leaving
only Spanish-surnamed officials in city government office.
Moreover, the Bexar County surveyor continued to honor
certificates for lands within the four league tract claimed by the city. When attacked by the city council, the surveyor responded, that by his understanding, the law limited the town tract to two leagues. The county officer finally agreed, "that in compliance with the desire of the Corporation he would suspend further surveys within the four leagues claimed by the city, and retain field notes of those already made until the action of some competent authority on the subject." 67

On July 19, 1838, the city council again appointed a committee to oversee a survey of the city limits. By July 30, aldermen had completed their survey, and adopted another ordinance which declared null and void, all private claims for land within the town. From the same meeting, city councilmen dispatched a messenger to the Commissioner of the Texas General Land Office. The county surveyor, aldermen complained, respected "neither the private property of individuals nor that of the corporation, having made and continuing to make surveys upon both." 69

Municipal land questions involved basic differences between Mexicans and North Americans, as to proper functions of local governments and appropriate limits of public land ownership. By summer, 1838, United States residents of Bexar County had indicated that they considered the city an improper forum for resolution of the boundary question. Yet the Texas Congress also avoided dealing with the issue. Despite the fact that the Congress amended or revised the
San Antonio city charter three times between 1838 and 1842, no effort was made to mediate the boundaries question or set the town's limits in law. Texas legislators seemed satisfied to have the question settled on the local level, or in the courts, and made no move to interfere with city council decisions.

Texans expressed their commitment to local government initiative through numerous congressional policies and local activities. Clearly, one of the most important tasks facing the infant republic was promotion of settlement. Increased population meant increased protection from Indian incursions and greater assurance that local forces would withstand Mexican attempts to recapture and subdue a rebellious province. The land distribution policies of the republic thus took on special significance, and their relationship to general fiscal policies assumed critical importance. Texas' greatest possessions were her public lands. Two hundred and fifty million acres were claimed by the Texas Republic. The country needed revenues from land sales to meet government expenses, and to service the small debt incurred during the revolution.

The Texas government attempted to sell its public lands, while at the same time providing free land for all settlers. The treasurer issued various forms of paper currency including promissory notes, audited claims that could be used to pay taxes or other dues owed the republic,
and "land script," with a face value of fifty cents per acre, that conveyed to its holder the right to claim vacant public lands as private property. The republic transferred these land certificates to agents in New Orleans and Mobile, with the hope of obtaining money and attracting immigrants. At the same time, the Texas Congress provided handsome land grants for all settlers. A series of laws provided free land in amounts ranging from 320 to 4,600 acres, depending upon the claimant's date of arrival in Texas, his marital status, and the extent and nature of his participation in the Texas revolution. Soldiers and families of soldiers who fought in the war of independence were also granted certificates for bounty lands, given in lieu of pay, for serving in the Texas armed forces.

With the credit of the republic dependent upon its land policies, the Texas Congress proceeded to turn land distribution machinery over to local government officials. The bill to open the land office, passed in 1837 over Samuel Houston's presidential veto, established boards of land commissioners in each county. For a short time, these local officials were chosen by the Texas Congress. In 1839, however, the law was changed; the county judge, two associate judges, and the county clerk became a local board of land commissioners. The results of this land distribution system were predictable. Thomas Lloyd Miller, in his recent study on public lands in Texas, bluntly concluded that "the words 'land' and 'fraud' were almost
synonymous in Texas. . . . The members of the county boards were dealing with their friends and neighbors, and they found it hard to reject their claims."  

By 1842, county land officers viewed attempts by the Texas Congress to control their activities or alter their judgments as illegal and unwarranted infringements upon local prerogatives. Aware that millions of acres were being taken fraudulently from the public domain, the Texas Congress, in 1840, had established travelling review boards within the General Land Office. To prevent the commonwealth of the republic from being squandered, these commissioners proposed to visit county seats, inspect records, and disallow fraudulent land claims. The "travelling land commissioners" were empowered to hear evidence and approve or disapprove each headright or bounty certificate accepted by local officers. If the commissioners rejected a claim, the Commissioner of the General Land Office was prohibited from issuing a patent. The settler could not receive clear title to his land.  

Reaction to the land office road-show ranged from highly unfavorable to downright hostile. The potential for hardship under this type of audit was very great. Men stood to lose investments of several years' labor and capital improvement, if their land titles were disallowed. Attracting settlers was difficult enough, given the Texas government's near bankruptcy, and its inability to
protect western frontiers from either Commanches or Mexicans. Land in United States territories looked even more inviting when prospective settlers had cause to doubt the validity of titles and security of Texas land ownership.

Despite valiant and honorable efforts, attempts to protect Lone Star public lands against fraudulent claims were doomed. After the travelling commissioners visited a particular county, enforcement of their decisions rested upon the not-so-good faith of local land officers and unsympathetic local juries. Enforcement of the travelling commissioners' decisions is illustrated in the saga of Benjamin Page. Allegedly a settler in the Harris County area prior to March 2, 1836, Page found that local institutions would protect his real property from the Texas government. Page was in possession of one league and one labor (4,605.5 acres) under a Harris County land office certificate. According to the petition in district court records, travelling commissioners "disallowed and condemned" Page's certificate "as an illegal claim against the government." Page sued to protect his lands, seeking to prevent local officers who had first validated his claim, from giving possessory rights in this property to another settler. A Harris County jury rendered a verdict for Page on December 14, 1841, and execution on the judgment was made, October 24, 1842. No return of the proceedings was made to the general land office until October 5, 1844,
long after Texas officials could contemplate legal action to reopen the judgment. No evidence of an appeal appears in the local case records. Although an appeal bond might have been lost or destroyed, local land commissioners probably preferred not to carry the case to a higher court. Page thus secured title when county land commissioners allowed a local court's decision to become final. 79

The issues presented in the local courts by Benjamin Page gained added significance when a putative landowner directly sued the commissioner of the Texas land office to secure court-ordered issuance of his title. Legal questions of land ownership became complicated by the issues of amenability of executive officers to the processes of local civil courts. Constitutional relationships in the country were still in their earliest stages of formulation. The quantity of litigation, including mandamus actions, and injunctions levied against local land boards and surveyors, prompted Texas Attorney General John Birdsall to submit a lengthy legal memorandum to President Houston. Birdsall's main concern was that the Commissioner of the General Land Office became "a formal party" to a lawsuit in Brazoria County, "requiring his appearance and answer to the plaintiff's petition in that County." 81

Birdsall first denied, as a matter of principle, the power of all courts over executive officers of the Texas Republic. "It is quite clear to my mind," the attorney
general asserted, "that the coordinate relations established by the Constitution between the judicial, Executive, and legislative departments of the Government are violated when either assumes to become the arbiter and director of the functions and duties of the other. . . . To concede such a power to the Judiciary makes it the paramount and supreme authority of the Government, instead of a coordinate power, and leaves the Executive and Legislative only secondary and subordinate." Birdsall believed that each branch of the government shared equally in the "independence and immunities" of "sovereign powers." Each branch of the government, argued the attorney general, was independent of the other two branches, and "answerable only to the people."  

Birdsall did not elaborate on how "the people" would seek redress for wrongs committed by executive officers of the government. He was much more concerned with relieving the executive branch from court interference. The Government, he argued, could not be sued by an individual without his express consent. Departments of government were:

merely subdivisions of the Executive power, adopted for the more convenient dispatch of business. They represent the executive in their respective departments, and are supposed always to act in accordance with his decisions. The same principle that would place these departments under the control of the courts, would subject the executive himself to their action.  

Birdsall's strongest arguments against the Brazoria County lawsuit were practical rather than theoretical.
The attorney general foresaw lawsuits in every county of the republic and executive officers in the "additional labour . . . and expense" of appearing and defending in all of them. The officers of the Texas government, he concluded, "must either suffer the Courts to proceed in their own way and render judgments in their absence, or quit the duties of their Departments and attend the Courts." 84

If Birdsall really believed that executive immunity extended to local commissioners, or even to the Commissioner of the General Land Office, the Texas Congress quickly disabused him of the notion. Without doubt, executive officers were subject to local judicial proceedings. The 1837 law opening the land offices specifically provided for appeals from local land boards to Texas district courts, in the county where the land was located. The county district attorney was authorized to "represent the interest of the republic." 85

Texans were too accustomed to local government control of such vital functions and services as land distribution to admit broad executive immunity from local courts. The 1840 statute creating travelling land commissioners further illustrated how citizens of the young republic felt about nonlocal governance. Lone Star inhabitants accepted with greatest reluctance, general government review of county land distribution practices. The Congress of the republic threatened executive officers with stiff fines for
issuing land patents not approved by the travelling commissioners. Then, lawmakers waived all penal sanctions, provided the landholder obtained a decree from a district court, "from which no appeal was taken within the time prescribed by law. . . ." The escape clause was as broad as a million-acre ranch. Framers of the statute invited landholders to contest decisions of the travelling boards in district courts. And the language of the law implied rather strongly that district attorneys should not appeal decrees that were adverse to the government. Local land commissioners and surveyors appeared in local courts before local juries and supported the claims they had originally honored for friends and neighbors. Local officers did not appeal rulings adverse to the republic, or permit others to locate and claim the same land. The Texas Congress had created special agencies for land control, and then demolished them as effective instruments of policy implementation. Settlers like Benjamin Page maintained control of their property in a locally protected adverse possession; after the prescribed time they presented their district court judgment to the general land office and received their patent.

Local imperatives of settlement, safety, and growth dictated action that defeated Texas Republic land distribution policies. In numerous other respects these same local imperatives took precedence over the needs and policies of the new nation. Not even the threat of foreign
invasion could alter the priorities set by local officials and promoters.

Texans were very much responsible for the troubles that descended upon them in 1842 from south of the Rio Grande. Dreaming of Pacific empire, Texas President Mirabeau Lamar had, one year earlier, outfitted a filibustering expedition that set out from Austin to "occupy" Santa Fe and claim New Mexico as Texas territory. The affair was a fiasco from start to finish, and threats and rumors abounded of Mexican reprisals.

The people of West Texas were not disappointed in their expectations. In March, 1842, a small Mexican force raided Goliad, Refugio, and San Antonio, and then returned across Rio Grande. For a short time, Texans believed the intruders to be the vanguard of a large invasion designed to re-establish Mexican control over Texas. Although this belief later proved erroneous, the raids created widespread panic in North American settlements. Sam Houston, re-elected to the Texas Presidency at the expiration of Lamar's term, declared a state of emergency, and ordered the national capital transferred from the city of Austin eastward to the city of Houston. Subsequently, in September, 1842, General Adrian Woll crossed into Texas with about 1,300 soldiers, captured San Antonio, and returned south with a number of the Alamo City's leading Anglo-American citizens as prisoners of war.
The Mexicande March raid precipitated a series of
events known in Texas history as the "Archives War."
Government leaders from the city of Austin and from
Travis and Bastrop counties, with the cooperation of local
militia, forcibly prevented the execution of Sam Houston's
order removing government documents from West Texas to the
relative protection of the Gulf Coast. The comic nature
of the entire affair tends to mask the serious threat to
Texas civil government and independence.

Houston may not have based his decision to remove the
capital solely upon exigencies of war or reasons of state.
The President of the republic practiced law in the city
that bore his name, and was mightily interested in its
progress. Presidential desires for a successful name-
sake city carried over to a vindictiveness against the
city of Austin. The Texas Republic's chief executive
boasted that he would make the struggling western town a
safe place only for buffalo and savages.

Reasonable men also could have concluded that govern-
ment records were in great danger from invasion. Texas'
Secretary of War and Navy, George W. Hockley, conveyed to
Houston the impression that the city of Austin was the
center of a theater of war. Hockley's dispatches from the
"front" fearfully prophesied coming attacks and widespread
ruin of the country.

During the earliest days of the "invasion," West
Texans managed a substantial degree of cooperation with
their central government. On March 6, 1842, a mayor-appointed citizens' "Committee of Vigilance" in Austin recommended that "all the families in the city and vicinity . . . leave as soon as possible for a safer section of the country." The committee also urged Hockley, as executive officer and national government representative, to declare martial law. On the same day, Hockley wrote to Houston vowing to defend the archives "to the knife." On March 7, the secretary informed Houston that he was "burying the archives under the different offices so that if they [the offices] or we burn the valuable papers will be comparatively safe." Hockley also took the advice of the vigilance committee and proclaimed martial law.

Three days later President Houston ordered Hockley to transfer the capital to the city of Houston.

Austin residents and supporters greeted Houston's executive order with an outburst of indignation. Enraged citizens sent a letter of protest to Hockley, attributing precipitous presidential action to a dearth of reliable factual information. Gone were the panicky martial law activities that had prevailed a few days earlier. Suddenly, local citizens realized that Mexican forces had posed no real threat. Austinites took to reminding Houston "of the immense injury that will result to the country by the impression that a marauding party of Mexicans, not exceeding five hundred in number, were capable of producing a panic
to an extent sufficient to break up the seat of government. . . ." Hockley received assurances that the people of Travis County would perform their patriotic duty in defending government records. They "respectfully requested" that the secretary not begin removing the archives until President Houston had a chance to reconsider his decision. Hockley, however, was not interested in suspending a military order from the President of the republic.

Austin's citizens were convinced that the presidential removal order was "an unnecessary, arbitrary, and uncalled-for violation of the law" establishing Austin as the Texas capital. Local backers of the western city would "not stand tamely by and see so palpable a violation of the laws of the land. . . ." The residents of Travis County threw down the gauntlet and invited the government of Texas to pick it up. ". . . If any attempt be made to take off the Archives of the Government, contrary to law," they vowed, "the citizens of the country will return them to their proper places of deposit, and protect them there against attacks from any quarter." Two days later, on March 18, 1842, local militia were ordered to search all wagons attempting to leave the Travis County area.

The government of the republic was pitifully weak when faced with disobedience of constituted local authorities. Texans had no regular army, but relied for defense upon the very militia that was in open defiance of the president.
Nor did the republic possess the stores of munitions necessary to arm frontier counties against a concerted Mexican attack. Secretary Hockley informed Austin citizens, that although Congress had formulated elaborate plans for frontier defense, it had neglected to appropriate money to pay the costs. "In consequence of the excitement and state of public feeling" in West Texas, together with the fact that the republic had "no military force to carry out its measures," Hockley found it "expedient" to halt the wagons that were en route to Austin to retrieve the government's papers.

Houston, outraged, alternately thundered insurrection and attempted to reason with and cajole the West Texans. The people of Travis, he suggested sarcastically, would finally agree to removal of the capital once the archives had been captured and totally destroyed; the city of Austin was more exposed and less defensible than Bexar; those "who fly in the face of the laws . . . should be punished in a proper manner." 102

The archives controversy centered around a Texas constitutional provision requiring that "presidents and heads of departments," should "keep their offices at the seat of government, unless removed by the permission of the congress, or unless, in cases of emergency in time of war, the public interest may require their removal." 103 Texas Congressmen had neither adopted a formal declaration of war, nor given permission to have the capital moved.
With the advantage of self-interested retrospect, Austin supporters were quick to deny that any danger or "emergency" had existed. And certainly, they argued, the disappearance of the Mexican troops after a few days destroyed any pretext for moving the capital. Within ten days Houston had ample evidence to rescind his transfer order.

The President of the Republic of Texas adamantly asserted that he was "the sole judge of the emergency which may require the removal of the offices." The people of West Texas were equally determined; they prefaced their counterarguments with a simple and direct statement of the economic stakes in the outcome of the struggle over the capital. As settlers, they had moved to the seat of government and "invested all they possessed in real estate in, or near the city. . . ." As entrepreneurs they had relied "upon the solemn pledge of the Government faith . . ." to make Austin the permanent Texas capital. The people of Travis expected the republic to keep its promises rather than abandon them at the first opportunity. The settlers boasted that they, with their families, had remained in their homes throughout the invasion scare; and, they solemnly vowed they would protect the archives at all costs from Mexicans, Indians, and other Texans if necessary.

Austin leaders also made strong legal arguments against Houston's supposed power to move the capital by executive
order. The Congressional commission that selected Austin operated under a statute providing "for the permanent location of the Seat of Government." The President, Austinites contended, continued to rely upon misinformation about conditions in West Texas during the Mexican attack, to overturn a law of Congress by executive order. For the people of Travis County, the President's declaration that he alone had authority to make such a momentous decision was "startling to minds accustomed to the untrammelled operations of law, . . . and . . . subversive of the principles of republican government." The westerners constantly reminded Houston of his oath to support the constitution and laws of the land. "How much more safe," they asked, "would they [the archives] have been had the Government done its duty, and sustained us with its presence, and the means appropriated for frontier defence; instead of applying the funds designed by Congress, for the protection of the frontier, to the dismantling of it."

The wily President of the Texas Republic also had compelling arguments for his side of the archives question. Destruction of the government's records was recognized by all as an "irremediable [sic.] injury upon the whole people of Texas." Leaving those records exposed to potential destruction entailed for the President the neglect of his constitutional duty. Moreover, Houston argued that his "admiration" for the Travis men in their resolve to protect the archives with their lives did not permit him the luxury
of allowing them to redeem their pledges. "Mere possession of the archives at Austin" was too small a price for the loss of many lives that would inevitably result from fighting the Mexicans there.

Houston appealed to the westerners to consider the welfare of the entire country. It was wrong, he argued, "that the very liberties of Texas . . . be sacrificed [sic.] to the interests or wishes of less than one tenth of the nation." The great catastrophes that had befallen Texas—the Goliad massacre and the Alamo—happened because local military commanders refused to obey orders from constituted authorities.

Perhaps most important, Houston argued that foreign nations, particularly the United States, would leave Texas to a terrible fate if the people of the republic continued to manifest a "seditious or insurrectionary" spirit. Volunteers and settlers would "not remain in Texas to unite their efforts or destiny" with a people who disregarded their constitution and thereby showed themselves incapable of self government:

If our friends in the United States find that the orders of government are to be disregarded and every man is to become a leader or dictator, "on his own hook" our hopes will be short-lived; and even those who have rushed to aid us, by the first impulse, will soon withdraw from a cause which is not sustained by reason and law, and whose foundation is not order, subordination, and civil rule.][112

From 1842 to 1845, the Congress of the Texas Republic met in Houston or Washington-on-the-Brazos. The people
of Austin persistently refused to part with their precious archives. One small detachment of troops attempted a night raid to retrieve the papers, but they were discovered and intercepted by local residents. Houston almost made good his vow to return the city of Austin to the Indians. Until the land office was re-established there in 1844, the place was almost a ghost town. The city of Austin became permanent capital of the state of Texas, when the republic was annexed to the United States.

The Republic of Texas reached an impasse on the question of a capital, which could not be resolved through available government institutions. The archives war, like land office questions, and the sale of municipal lands under Mexican rule, resulted in local interests negating national laws. These and numerous other incidents fostered habits of local initiative, expectations that government would operate at the town or county level, a sullen jealous suspicion of nonlocal governmental activity, zealous protection for local prerogatives, and a callous if not calculated disregard for nonlocal needs. Texas statesmen succeeded when they harnessed local and personal dynamism to general policies, and accepted provincial institutions as the vehicles for carrying out those policies. Government decisions that thwarted local action or threatened local interests easily provoked evasion, if not open insurrection.

Texas civil government was still a fragile commodity in 1842—a fact recognized more clearly by Sam Houston
than by his Archive War antagonists in Travis and Bastrop counties. Texas had the forms of a written constitution and the forum of a Congress to develop policy and enact laws. But the issue of whether or not there would be a Texas was decided in scores of local councils, and beside thousands of fireplaces across the land. Lacking the resources and perhaps the desire to compel adherence to its policies by force, the Texas Republic governments needed reason, moral suasion, a firm commitment to obey the laws, and shrewdness that linked local and private interests to wider concerns.

To some extent during these early years of trial, local governments could operate effectively where the Texas Republic had failed. The relatively smooth transition from Mexican municipal government to counties and towns after independence softened the shock of revolution and avoided political disorganization. Rather than representing distant and untried and sometimes threatening government, local officials were familiar to the people. And local officers, as aggressive protectors and promoters of local interests, were likely to operate in harmony with their constituents. By allowing government functions to gravitate toward towns and counties, the Congress utilized that harmony and the creative energies which gave animation and support to local initiative.
NOTES

1 Cf., Seymour V. Connor, "The Evolution of County Government in the Republic of Texas," Southwestern Historical Quarterly, LV (October, 1951), 163-200, 165; Dick Smith, "The Development of Local Government Units in Texas" (unpublished Ph.D. dissertation, Harvard University, 1936), 4-9; Eugene C. Barker, "The Government of Austin's Colony, 1821-1831," Southwestern Historical Quarterly, XXI (January, 1918), 242-252, passim. Although writers generally conclude that the municipality was the most important local institution in early nineteenth century Mexico, little attempt has been made to compare them to other local and regional government bodies. The "political chief," for example, a nonmunicipal officer, seemed to enter constantly into municipal affairs.


6 Richardson, Wallace and Anderson, Texas the Lone Star State, 35-39; and see, Mattie Austin Hatcher, tr., "Joaquin de Arrendondo's Report of the Battle of the Medina, August 18,
1813," Quarterly of the Texas State Historical Association, XI (January, 1908), 220-236, passim. The first American settlements in the Southwest capitalized on prior good relations with the Indians—especially the Comanche—to keep them from attacking. At first, the Indians welcomed English-speaking Americans as allies to drive away the hated Spaniards. See, Webb, The Great Plains, 160-165; cf., Dee Brown, Bury My Heart at Wounded Knee (New York: Bantam, 1972), 187-192; Brown argues that the Apache Indians experienced the same initial reaction to Anglo-Americans.

7Stephen Fuller Austin, "Introduction to], Laws, Orders, and Contracts for Austin's Colony," in The Laws of Texas, 1822-1897, comp. by H.P.N. Gammel (Austin, Texas: Gammel Book Co., 1898), I, [Hereafter referred to as Gammel, Laws of Texas. This compilation contains two sets of page numbers. I refer to the consecutive numbering at the bottom of the page.]


9Barker, The Life of Stephen F. Austin, Ch. IV.

10Moses Austin and his son were Roman Catholics, and one wonders if existence of anti-Catholic feelings in the United States prompted Spanish-Mexican officials to change their policies regarding foreign immigration. Certainly, an immigration of oppressed Catholics from the United States would have posed much less threat to Mexican interests in Texas than an influx of predominantly Protestant settlers. The religious restrictions of the Mexican government were evaded from the outset.


Barker, The Life of Stephen F. Austin, 150-152. Austin exercised this power to order people away on several occasion, and boasted of the industry and sobriety in his settlements. But one wonders just how effective his exclusionary policies were, given the Mexican view of Texas settlers. See, Note 32, loc. cit. Austin probably used banishment for the real incorrigibles who threatened the peace and safety of the colony.

Barker, "The Government of Austin's Colony, 1821-1831," 237; Barker, The Life of Stephen F. Austin, 134-139. Unmarried men could augment their lands by marrying, from one quarter league (1,100 acres) to a full league (4,428 acres). Americans who married Mexican women were given a bonus of an extra quarter league.


Coahuila and Texas, Constitution (1827), Sec. VII, Art. 156, in Gammel, Laws of Texas, I, 445.

Barker, "Minutes of San Felipe," XXI, 311, Note "a."


Under Mexican Militia Laws," Southwestern Historical Quarterly, LXV (July, 1961), 61-71; Barton finds further potential for declining relations between Texas colonists and Mexicans in the Mexican attempt to organize a militia.


Art. 24. During the first six years from the date of the concession, the colonists shall not pay tithes, duties on their produce, nor any contribution under whatever name it may be called.

Art. 25. The next six years from the same date, they shall pay half tithes, and the half of the contributions, whether direct or indirect, that are paid by the other citizens of the empire. After this time, they shall in all matters relating to taxes and to contributions, be placed on the same footing with other citizens.


28 Barker, "Minutes of San Felipe," January 24, 1829, Southwestern Historical Quarterly, XXI (April, 1918), 395. Samuel M. Williams--one of the few men in the colony who could write and converse in Spanish and English was retained as secretary of the ayuntamiento at $100 per month. At the end of the year, Williams presented a bill for only eight months' salary plus miscellaneous commissions gained in selling the public property of the municipality. Of the $850 owed Williams, he received compensation in land, worth $95. See also, "Minutes of San Felipe," December 31, 1829, Southwestern Historical Quarterly, XXI (April, 1918), 420-423.

29 Barker, "Minutes of San Felipe," July 5, 1830, Southwestern Historical Quarterly, XXII (July, 1918), 92.

30 Barker, "Minutes of San Felipe," September 6, 1830, Southwestern Historical Quarterly, XXII (October, 1918), 92.

31 Barker, "Minutes of San Felipe," December 21, 1829, Southwestern Historical Quarterly, XXI (April, 1918), 418-419; "Minutes of San Felipe," March 6, 1830, Southwestern Historical Quarterly, XXII (July, 1918), 81-84. The sale of community lands was a prominent cause of complaint in another episode of early Texas history known as the Fredonian
rebellion. Involved was an empresario named Haden Edwards and a group of Spanish settlers who had settled in the Nacogdoches area of East Texas in the eighteenth century. Edwards who was granted the contract to colonize East Texas during the early 1820's, immediately began issuing headright certificates for the lands settled upon and improved by the Spanish inhabitants. Few of these old residents had perfected title to their lands, but the injustice of Edwards' actions, his autocratic way of administering his colonies, and his belligerence in dealings with Spanish officials offended the sensibilities of both Mexicans and North Americans. Edwards' attempt at secession, and forming the "Republic of Fredonia" was put down by a few Mexican soldiers with help from militia of Austin's colony. Cf., Barker, The Life of Stephen F. Austin, Ch. VII.

32 Barker, The Life of Stephen F. Austin, Ch. X. General Manuel de Mier y Terán wrote to Mexican President Victoria in 1828 after observing for a time the conditions in Texas. He bluntly described the reasons for Mexican concern over their distant province:

The whole population here is a mixture of strange and incoherent parts without parallel in our federation; numerous tribes of Indians now at peace, but armed and at any moment ready for war, whose steps toward civilization should be taken under a strong and intelligent government; colonists of another people, more aggressive and better informed than the Mexican inhabitants, but also more shrewd and unruly; among these foreigners are fugitives from justice, honest laborers, vagabonds and criminals, but honorable and dishonorable alike travel with their political constitution in their pockets, demanding the privileges, authority, and officers which such a constitution guarantees.

Barker also emphasized the international atmosphere surrounding the influx of North American immigration. The United States during this period made repeated attempts to persuade the Mexican government to recognize the Rio Grande as the permanent boundary between the two nations. Although the United States continued to recognize the Sabine-Red River boundary between the two nations, the question was kept alive by constant negotiation on the subject and by periodic attempts to purchase Texas for bargain-basement prices. In 1827, the second Adams' secretary of state, Henry Clay, instructed Joel R. Poinsett, American minister to Mexico, to offer one million dollars for recognition of the Rio Grande border; one-half million if the Colorado River were accepted as the boundary. Andrew Jackson increased the offer to five million dollars, and sent Col.
Anthony Butler to negotiate with the Mexicans. Butler's intrigues convinced the Mexicans that the United States was determined upon conquest. Cf., Eugene C. Barker, Mexico and Texas, 1821-1835 (Dallas, Texas: P.L. Turner, 1928), Ch. II; see also, Gene Brack, "Mexican Opinion and the Texas Revolution," Southwestern Historical Quarterly, LXXII (October, 1968), 170-182.

33 Barker, "Minutes of San Felipe," March 2, 1829, Southwestern Historical Quarterly, XXI (April, 1918), 406.

34 Barker, "Minutes of San Felipe," May 26, 1830, Southwestern Historical Quarterly, XXII (July, 1918), 89-90.

35 Barker, "Minutes of San Felipe," March 2, 1829, Southwestern Historical Quarterly, XXI (April, 1918), 405-406.

36 Barker, "Minutes of San Felipe," August 4, 1830, Southwestern Historical Quarterly, XXII (October, 1918), 185.


38 Barker, "Minutes of San Felipe," September 13, 1830, Southwestern Historical Quarterly, XXII (October, 1918), 193.

39 Coahuila and Texas, Laws, Decree No. 100, "Municipal Ordinances for the Government and Regulations of the Ayuntamiento of Austin," (1829), Ch. IV, Art. 28 (5); in Barker, "Minutes of San Felipe," Southwestern Historical Quarterly, XXI (January, 1918), 317.

40 Barker, "Minutes of San Felipe," October 21, 1829, August 4, 1830, Southwestern Historical Quarterly, XXI (April, 1918), 413; XXII (October, 1918), 184.

41 Barker, "Minutes of San Felipe," December 6, 1830, Southwestern Historical Quarterly, XXIII (October, 1919), 141-142.

42 Barker, "Minutes of San Felipe," March 2, 1829, July 5, 1830, July 4, 1831, Southwestern Historical Quarterly, XXI (April, 1918), 406; XXII (July, 1918), 92-93; XXIV (October, 1920), 154-156.


46 Barker, "The Government of Austin's Colony, 1821-1831," 247-248. Barker uses the San Felipe minutes as an example of "the Anglo-American adapting himself to Spanish local institutions." Although Austin may, at this point, have been committed unequivocally to his Mexican citizenship, other inhabitants seemed to manifest different feelings. North American abuse of Mexican laws demonstrates little in the way of adaptation.

47 Harrisburg, at the confluence of Bray's Bayou and Buffalo Bayou, was believed the head of navigation on Buffalo Bayou. San Felipe was established at the "lower Atascosito crossing of the Brazos River." Lynch's ferry and the settlement of Lynchburg operated at the junction of the San Jacinto River and Buffalo Bayou. Galveston served as the major port on the Gulf Coast and as a transshipment point between ocean vessels and the shallow draft boats and barges needed to operate on Texas rivers. Founders envisaged Austin as a junction of land and inland water routes. Locations for the older Spanish presidial settlements were chosen for different reasons. Cf., Adele B. Looscan, Harris County, 1822-1845 (reprint ed.; Austin, Texas: Texas State Historical Association, N.D.), Ch. I [this pamphlet is a reprint of four articles from Vol. XVIII and XIX of the Southwestern Historical Quarterly]; Barker, The Life of Stephen F. Austin, 131; Kenneth W. Wheeler, To Wear a City's Crown, The Beginnings of Urban Growth in Texas, 1836-1865 (Cambridge, Massachusetts: Harvard University Press, 1968), 2-6; Dobkins, The Spanish Element in Texas Water Law, 86-87.

48 The construction of a steam sawmill was of great importance and benefit for Harrisburg. This town stood to become an important trading center, but was burned by the Mexicans just prior to the battle of San Jacinto, in 1836. At that time the land of the Harrisburg townsite was tied up in protracted estate litigation. The difficulties experienced by the town caused it to forfeit dominance in the area to the city of Houston. Cf., Looscan, Harris County, 1822-1845, 6-7. By contrast, the ayuntamiento aided fledgling commercial and industrial ventures with land grants. Barker, "Minutes of San Felipe," February 1, 1830, Southwestern Historical Quarterly, XXII (July, 1918), 78-81.

49 Cf., Barker, "Minutes of San Felipe," November 27, 1829, February 1, 1830, Southwestern Historical Quarterly, XXI (April, 1918), 415; XXII (July, 1918), 78-81.
This interpretation differs somewhat from that of Barker. In his emphasis on Stephen Austin's strong commitment to Mexico as an adopted country, Barker did not notice the differences between the empresario and other colonists in their attitudes toward Mexican institutions. Even Austin was not so totally committed to upholding Mexican laws that he zealously followed their every command or regarded their every injunction. In particular, the requirement that Texas settlers be Catholics was largely evaded. One writer has even argued that a degree of anti-Catholic, nativist sentiment existed in Texas by the end of the 1820's. Although anti-Catholic rhetoric was used in the Texas Declaration of Independence, evidence of widespread religious intolerance is very scanty. Cf., Sr. Paul of the Cross McGrath, Political Nativism in Texas, 1825-1860 unpublished Ph.D. dissertation, Catholic University of America, 1930), 32-38.

Barker, The Life of Stephen F. Austin, Ch. X, passim; and see, Texas, Proceedings of the General Convention of the Delegates Representing the Citizens and Inhabitants of Texas (1832), "Memorial for repeal of the National Colonization Law of April 6, 1830," in Gammel, Laws of Texas, I, 486-490. [Hereafter, Proceedings of the General Convention of . . . 1832.] In their petition to the Mexican National congress for repeal of the law, the colonists made their arguments on a very personal basis. Denial of further immigration from the United States cut off settlers from friends, families, and loved ones; and incidentally, from the only population capable of self-government in the Texas wilderness. The law of April 6, 1830, the convention decided had been born out of undeserved suspicions as to the loyalty of North American settlers.

The present secondary literature does not take account of the increasing instability in land ownership after April 6, 1830. The pleas from Austin's colonists for title to their lands became increasingly frequent in the minutes of the ayuntamiento after this date. The problems remained despite Austin's reassurances. Cf., Barker, "Minutes of San Felipe," May 3, 1830, November 1, 1830, December 15, 1830, Southwestern Historical Quarterly, XXII (July, 1918, April, 1919), 86-87, 355-356; XXIII (October, 1919), 144-149; Texas, Proceedings of the General Convention of . . . 1832, "Memorial for the appointment of a Commissioner to issue land titles," in Gammel, Laws of Texas, I, 486-490, 501-502.

Reuben McKitrick, The Public Land System of Texas, 1823-1910 (Madison, Wisconsin: Bulletin of the University of Wisconsin No. 905, 1918), 39; Barker, The Life of Stephen
F. Austin, 318, 471-472; Richardson, Wallace, and Anderson, *Texas the Lone Star State*, 79-81.


55Texas, *Ordinances and Decrees of the Provisional Government*, "An Ordinance and Decree for opening the several Courts of Justice, appointing Clerks, Prosecuting Attorneys, and defining their duties, &c.," January 16, 1836, Sec. 14, in Gammel, *Laws of Texas*, I, 1043. Under the Mexican system the alcalde occupied the position of greatest authority within the municipality. He served both as a primary judge as well as presiding officer of the ayuntamiento. He was the court of original jurisdiction in cases where the amount in litigation ranged from $10 to $100. The alcalde was the court of last resort for the matters under $10. The alcalde also served as correspondent with the state and national authorities. Cf., Barker, "The Government of Austin's Colony, 1821-1831," 245-246.


58Connor, "The Evolution of County Government in the Republic of Texas," 176-181. The other five municipalities were not present at the beginning of provisional government deliberations, but cast their lots with the revolutionaries at a later time.

59Republic of Texas, *Constitution (1836)*, Art. IV, Sec. 11, in Thorpe, *American Charters*, V, 3536. The explicit limitation upon the Texas Congress in creating new counties carried also implied limitations against localities. In a new county the requirement of a petition with one hundred signatures required that local citizens wait until at least a pretense of actual settlement existed before civil government was organized. Organization of a county meant much in terms of land speculation, and just plain conven-
ience when such matters as attending court or voting were involved.

60 Austin, Texas, University of Texas Archives MSS, Box 2Q245, Vol. 815, Minutes of the City Council of San Antonio, Texas, October 7, 1837, March 18, 1841 (Works Progress Administration Typescript, Project No. 65-1-66-83), Book "A," pp. 11-13, 79. [Hereafter cited as San Antonio City Council, Minutes.]

61 Previous writers dealing with this transition from Mexican institutions to those of the Texas Republic have failed to note the differences that arose in specific localities. The San Antonio experience departs noticeably from Connor's analysis of an easy, smooth transition to North American institutions. Comparative studies utilizing archives in other localities should also prove useful. Cf., Barker, "Evolution of County Government in the Republic of Texas," passim.

Early histories of San Antonio and Los Angeles contain numerous parallels. Both cities were part of Mexican municipalities, and both dealt with the problems caused by semi-arid climates, water shortages, and the dysfunctions attending the change from Spanish to United States institutions. Vestiges of Hispanic heritage survived in both cities, in the form of large farming areas within the city limits. (Los Angeles regulated irrigation until the early years of the twentieth century.) Apparently, California avoided the concerted efforts to remove Spanish people from their lands by illegal means as was done in Texas, even though the nature of California land tenure altered radically with the North American arrival in the 1850's. Cf., Robert M. Fogelson, The Fragmented Metropolis, Los Angeles, 1850-1930 (Cambridge, Massachusetts: Harvard University Press, 1967), Ch. 2.

62 Gammel, Laws of Texas, I, 1397, Sec. 2 (December 14, 1837). The wording of the statute was extremely vague, confirming to the city, "all that tract of land originally granted to and composing said city, with its precincts."

63 San Antonio City Council, Minutes, March 19, 1838, p. 21.

64 San Antonio City Council, Minutes, April 2, 1838, pp. 22-23.


66 San Antonio City Council, Minutes, 1838, passim. Howth ceased attending council meetings immediately after the incident with the city boundaries.
San Antonio City Council, Minutes, June 12, 1838, p. 25.
San Antonio City Council, Minutes, July 19, 1838, p. 29.
San Antonio City Council, Minutes, July 30, 1838, pp. 30-31.
Gammel, Laws of Texas, I, 1499-1500 (May 24, 1838); II, 118-119 (January 26, 1839); II, 704-707 (January 14, 1842).
Thomas Lloyd Miller, The Public Lands of Texas, 1519-1970 (Norman: University of Oklahoma Press, 1971), 29-32; Gouge, Fiscal History of Texas, 27-28, 56, 64, 75-76, 280-281; Richardson, Wallace, and Anderson, Texas the Lone Star State, 112-113. The practice of providing free land for all comers did little to enhance the value of Texas land certificates. Texas government agents found themselves in competition with speculators who bought soldiers' land certificates and sold them at large profits for twenty-five to thirty cents per acre. Although the republic persuaded some creditors to accept land warrants in place of money, government scrip proved unsalable when offered to the public. Texas land agents in the United States succeeded only in provoking much criticism when they pursued "the unwarrantable course of selling the scrip at one, two, and three years credit..." The promissory notes and audited claims against the government fared even worse; they depreciated rapidly and after a short time were discounted to fifteen cents on the dollar.

The Texans who expanded public debt at enormous discounts had political reasons for their actions as well as monetary ones. A national debt of some magnitude would help the infant republic gain the international recognition needed for survival. A select committee of the first congress of the republic noted that "the pecuniary interests of our crédoitres will excite for us the sympathies and protection of mankind." The logic, that "public debt is a public blessing..." scandalized Gouge who was a devout hard-money advocate.

Gammel, Laws of Texas, I, 1404-1418, Sec. 11. Under the law, the county surveyor was also the direct nominee of the Congress of the republic. The Congress, however, appointed surveyors recommended by local groups.
The Supreme Court of the Texas Republic did attempt
to deal with the most flagrant land law violations. In a
series of cases the court attempted to define the residency
requirements necessary to receive free land from the repub-
lic. See, Board of Land Commissioners of Milam County v.
Bell, Dallam 366 (Republic of Texas, 1840); Republic of
Texas v. Young, Dallam 464 (1842); Republic of Texas v.
Skidmore, Dallam 581 (1844). The court also displayed sub-
stantial antagonism toward land speculation. James Reily,
a real estate speculator and promoter had purchased large
quantities of bounty land certificates, and claimed large
amounts of land in Nacogdoches County. The land board denied
Reily's claims and he appealed to the district court. The
district attorney entered into an agreement with Reily,
stipulating for the record that Reily had purchased the more
than seventy land certificates involved, or that he acted
with legitimate power of attorney for the owners of the
certificates. Then, in a separate agreement, the plaintiff
and district attorney agreed that procedures for validating
the certificates was essentially the same, and that both
parties agreed to be bound by the outcome on the trial
pertaining to one certificate. The jury found for Reily,
and the district court ordered local commissioners to
validate his land surveys.

The supreme court of the republic reversed the judg-
ment, and ruled that Reily had the burden of proving that
each original grantee of the land certificates he had pur-
chased was entitled by law to receive free land from the
government. Reily thus had the enormous task of finding
each of the seventy persons from whom he had bought land
certificates, and proving, either by testimony or by docu-
mentation that they were soldiers in the Texas Revolution or
settlers in the republic. To complicate matters even more,
such things as "good moral character" and other ancillary
matters had to be definitely proved. Reily v. Board of Land
Commissioners of Nacogdoches County, Dallam 366 (Republic
of Texas, 1840).
Houston, Harris County, Texas, Clerk of Texas State District Court MSS, 11th District of the State of Texas, File No. 845, Benjamin Page v. Republic of Texas. The exact nature of the relief sought was not clear, but seemed to be for a combination of injunctive relief against the travelling land commissioners and a "quiet title" action against local land officers.

A serious question arises, just how far the matter of Texas as a separate nation should be carried. The issue of annexation to the United States existed even before Texas had gained independence from Mexico. Gouge, to take one contemporary observer, believed that: "Texas, though it, from 1835 to 1845, formed no part of the American Union, was yet an American State. It was a State without the Union. The people were Americans by birth, thought, habits, feeling." Cf., Gouge, Fiscal History of Texas, viii. (Italics in original.) As regards much of its internal organization the republic was hardly distinguishable from a state within the United States. That Texans conducted a foreign policy and maintained armed forces was much more a matter of extreme necessity than one of preference; nor were these functions performed by Texas officials with any great distinction or efficiency.

San Jacinto Monument, Texas, San Jacinto Museum of History Association MSS, Briscoe-Harris-Looscan Collection, Memorandum, John Birdsall, to Sam Houston [hereafter cited as Birdsall-Houston Memorandum], N.D. (Italics in original.) [Birdsall served in Houston's first cabinet, 1836-1839.]

San Jacinto Monument, Texas, San Jacinto Museum of History Association MSS, Birdsall-Houston Memorandum.

San Jacinto Monument, Texas, San Jacinto Museum of History Association MSS, Birdsall-Houston Memorandum. Ironically, after Birdsall made his impassioned plea for independence of the three branches of government, his suggested solution of the matter was that Houston submit the entire question to the Congress for a declaratory statute.

San Jacinto Monument, Texas, San Jacinto Museum of History Association MSS, Birdsall-Houston Memorandum. Gammel, Laws of Texas, I, 1410, Sec. 16 (December 14, 1837).

Gammel, Laws of Texas, II, 315, Sec. 5 (January 28, 1840). In a subsequent memorandum, Birdsall argued that courts could not issue writs of mandamus against county land boards, because their decisions were "discretionary" rather than mandatory under the statutes, and because the
national law stipulated "appeal" as the appropriate remedy to the district courts. The Texas courts rejected this doctrine, and judges impaneled juries to determine "appeals" cases involving land claims. Given current appraisals of administrative law history in the United States, this 1838 memorandum is surprising. Birdsall came very near arguing that the factual determinations of county land boards should be binding upon Texas courts, a doctrine very much at home in modern administrative law, but seemingly out of place in the Texas Republic. Cf., San Jacinto Monument, Texas, San Jacinto Museum of History Association MSS, Briscoe-Harris-Loocan Collection, Memorandum, John Birdsall to Sam Houston, April 30, 1838; and see, Board of Land Commissioners of Milam County v. Bell, Dallam 366 (Republic of Texas, 1840).

87 Reports differ, as to just how much damage was done in these raids. Richardson, Wallace, and Anderson conclude that little damage was done; contemporary reports tell of San Antonio being plundered by the raiding party. Cf., Richardson, Wallace, and Anderson, Texas the Lone Star State, 125-129; Austin, Texas, State Library Archives MSS, Records of the Legislature, Sixth Congress of the Republic of Texas, Box 2-8/21, File 2620, President's Message with Documents in reference to the Archives War, July 9, 1842, p. 35. [Hereafter referred to as the Archives War File].

88 Gailey, "Sam Houston and the Texas War Fever, March-August, 1842," 34-41. Rena Maverick Green, ed., Samuel Maverick, Texan: 1803-1870 (San Antonio, Texas: by the editor, 1952), 150-173; Archives War File, p. 31; Arrangements entered into by the Citizens of Austin with reference to the approach of the Mexicans, March 6, 1842, Archives War File, p. 3.


90 Wheeler, To Wear a City's Crown, 28. Professor Wheeler treated the Austin activities as vigilante activity. In a legalistic sense, the ultra vires action of the Travis and Bastrop County locals was vigilantism. The expropriation of institutions of the State by Austinites in the process, however, seems to warrant treatment of the Archives War as more than mere mob action.
Broadside, Arrangements entered into by the citizens of Austin with reference to the Approach of the Mexicans, March 6, 1842, Archives War File, p. 3.

92 Hockley to Houston, March 6, 1842, Archives War File, p. 6.

93 Hockley to Houston, March 6, 1842, Archives War File, p. 8.

94 Hockley, Declaration of Martial Law, March 7, 1842, Archives War File, p. 9. This is a curious, revealing document; it proclaims martial law "for the preservation of the Archives of the Government and for the safety of the Citizens of Austin and their property." The order then stipulated, in addition to military precautions being taken, that all "Retailers of Spirituous liquor" were to close and remain closed. Of other civilian business there is no mention.

95 Houston to Hockley, March 10, 1842, Archives War File, p. 11.

96 Austin, Texas, Public Meeting, March 16, 1842, Archives War File, pp. 15-17, for a discussion of military aspects of the Archive War, Cf., Dorman H. Winfrey, "The Texas Archive War of 1842," Southwestern Historical Quarterly, LXIV (October, 1960), 171-184, passim.

97 Hockley to Henry Jones, Sam Whiting, James Webb [leaders of the Austin citizens], March 16, 1842, Archives War File, pp. 17-19.

98 Austin, Texas, Public Meeting, March 16, 1842, Archives War File, p. 21.


100 Hockley to [Henry] Jones, et. al., March 18, 1842, Archives War File, p. 29.

101 Hockley to Col. William Pettus, March 17, 1842, Archives War File, p. 23.

102 Houston to Hockley, March 22, 1842, Archives War File, pp. 33-34.

103 Republic of Texas, Constitution (1836), General Provisions, Sec. 3, in Thorpe, American Charters, V, 3539.
104 Austin, Texas, Public Meeting, March 17, 1842, Archives War File, p. 25.

105 Houston to Hockley, March 22, 1842, Archives War File, p. 34.

106 Texas, State Library Archives MSS, Records of the Legislature, Sixth Congress of the Republic, Box 2-8/21, Misc., Memorial of Citizens of Travis and Bastrop Counties to the Sixth Congress, N.D. [Spring, 1842]. The response of West Texans to removal of the capital was probably conditioned in part by their economic problems. Evidence indicates that the Travis-Bastrop areas were experiencing difficulties, even with the help provided by the capital boom. Memorials to the Texas Congress in January of 1842 bewailed hard times in the area and requested that extensions be given on deadlines for debts owed to the Republic. Cf., Lena Sarah Williams, "A Calendar of the Memorials and Petitions to the Congress of Texas" (unpublished Master's thesis, University of Texas at Austin, 1934), 217-218.

107 Texas, State Library Archives MSS, Records of the Legislature, Sixth Congress of the Republic, Box 2-8/21, Misc., Memorial of Citizens of Travis and Bastrop Counties to the Congress of the Republic, N.D. [Spring, 1842].

108 Austin, Texas, Public Meeting, April 11, 1842, Archives War File, pp. 53-55. Travis County supporters made no bones about Houston's personal interest and vanity as a factor in the archives crisis. Houston's "great efforts" to secure the removal of the capital to the city of Houston had failed, "although aided with all the lures of executive patronage and the promises of official employment." The President's dealings with the people of the West had simply been designed "to foster you [Houston] in your favorite measure of removing the archives from a place which, unfortunately, had never met your favor, to another, which, from its name, and various other personal considerations, it has long been known you were determined to foster with all the patronage of the Government."

109 Texas, State Library Archives MSS, Records of the Legislature, Sixth Congress of the Republic, Box 2-8/21, Misc., Memorial of Citizens of Travis and Bastrop Counties to the Sixth Congress, N.D. [Spring, 1842]; and see, Austin, Texas, Public Meeting, April 11, 1842, Archives War File, p. 52. "Had the President been at his post, where the constitution and laws required him to be, he would have received the necessary information long before it could have been conveyed to him on the seaboard. . . ."
110 Houston to A.D. Coombs and N.H. Watrous [leaders of the Austin insurgents], March 24, 1842, Archives War File, p. 36; Houston always preferred to leave himself with the option of strategic retreat as a military tactic. He preferred to fight where his own lines of supply were shortest and that of the enemy longest. He also wished to be in the more settled regions along the Gulf Coast.

111 Houston to Hockley, March 22, 1842, Archives War File, pp. 33-34. Houston decided almost immediately that he would not use troops to retrieve the archives; to "have it added, that the substance of the farmers was consumed to sustain the troops called out by order of the President."

112 Houston to [vice-president] Edward Burleson, March 24, 1842, Archives War File, pp. 45-49.

113 Wheeler, To Wear a City's Crown, 28-29.

114 Another example found in the standard textbooks is the special relationship between Galveston and the Texas Navy. The four ships became a casualty of the austerity programs of the Sixth Congress of the Republic, and the commander was discharged and declared a pirate by President Houston. But the citizens of Galveston, by force, prevented the auction of the vessels after they had been ordered sold by Congress. Cf., Richardson, Wallace, and Anderson, Texas the Lone Star State, 114.
CHAPTER III--THIS "CLEANLY AND TASTY CORPORATION":
Local Responses to Government Problems in Antebellum Texas

The problems and glory of building a civilization in antebellum Texas belonged, in largest part, to county leaders and to the officers of municipal corporations. For most local officials, government service meant many problems and very little glory. Texas towns and counties faced numerous difficulties stemming from faulty institutions, inefficiency and dishonesty of local officers, and especially from lack of resources for delivery of needed services. Under these trying conditions, county, town, and village leaders assumed the tasks of building streets and roads, providing for the sick and destitute, establishing schools, distributing lands, erecting courthouses and jails, and tending to scores of other duties.

During the earliest years of the Texas Republic, local administration was further complicated by rejection of the Mexican system of unitary local administration and establishment of separate town and county governments. Ambiguities in legislation and existence of two governments within the same geographic area occasionally generated vituperative conflicts among local politicians. In resolving those arguments, local officials explored once again the outer limits of government institutional viability.

Local officers recognized that their most important responsibility to their constituents lay in careful attention
to ordinary local administrative activities. At the same time, voluntary citizen support remained a vital ingredient in many successful governmental endeavors. Town and county officials guarded carefully against outside threats to community interests, and unhesitatingly called for concerted local action to protect lives or livelihoods. Amateur volunteers inevitably created problems and inefficiencies; but their efforts also attested to the merger of public and private interests that imparted vitality to local institutions. Militia organizations throughout Texas provided an obvious example of government and citizen response to the need for protection of lives and property.

Community cohesion became an important consideration in determining both local government viability, and the success of numerous private economic ventures. Safety and settlement imperatives often brought Texas' new towns and villages into direct and sometimes bitter competition. In the "Archive War" of 1842, proponents of the cities of Austin and Houston sought important commercial and financial advantages. More frequently, neighboring towns engaged in intense competition for supremacy as local marketing and political centers. Generally, periods of competition were short, and one town emerged as a dominant local center. Other settlements began losing population and commerce, and either continued to exist as tiny hamlets or disappeared entirely. Efforts to maintain continued growth required
town promoters' and leaders' constant attentions. As Daniel Boorstin has so aptly stated: "Citizens young and old of each upstart town saw themselves in a race against all others, and their competitive spirit left its mark on American life.

I. Local Government Problems.

"The new town of Houston," wrote Colonel James Morgan to Harrisburg County Chief Justice Andrew Briscoe in September 1836, "cuts a considerable swell in the [news]paper." Both men had cause for alarm when plans were announced for a new town on Buffalo Bayou, the Texas watercourse most amenable to use as an interior transportation route. Briscoe was proprietor for the competing settlement of Harrisburg, six miles overland from Houston, or twelve miles downstream. Morgan--with financial backing from New York speculator Samuel Swartwout--was resident promoter of the town of New Washington on upper Galveston Bay. "It will injure Harrisburg greatly," Morgan prophesied:

when it gets into successful operation. Property must begin to depreciate there already. As for New Washington and Lynchburg, Scottsburg and all the other burgs, not forgetting Powhatan, all must go down now. Houstonburg must go ahead in the newspaper at least. 3

Real estate speculators and townsite proprietors like Briscoe, Morgan, and Houston city founders Augustus and John K. Allen vied to have the towns they plotted and platted transformed into streets, homes, businesses, and flesh and
blood. At the same time they recognized the undesirability of competing at close range. Neighboring towns could squander their resources in extravagant and wasteful competition, inhibit the rise of property values engendered by successful urban growth, and prevent rapid development of the broad range of municipal and commercial services that made a town desirable as a trading and marketing center.

Fortuitous circumstances contributed handsomely to the fulfillment of Morgan's prophecy and the emergence of "Houstonburg" as an important Texas town. Historians have generally agreed that Houston Promoters "exaggerated" a little in locating Buffalo Bayou's head of navigation at the city's Main Street wharves. But Harrisburg and New Washington--with leads over Houston in both population and monetary support--were burned to the ground in 1836 by Mexican armies. And the better situated Harrisburg townsite was tied up in estate litigation when the moment for establishing a flourishing settlement appeared, and passed.

The location of the Harrisburg County seat, and the temporary establishment, at Houston, of the capital of the Texas Republic, seemed to provide the necessary impetus to make the Bayou City's local dominance irreversible. As if conceding to reality, Judge Briscoe, in 1837, built a new house and made plans to move his
family to the Houston as soon as the "sickly season" ended. The competing towns disappeared; Colonel Morgan's passing comments comprise one of the few artifacts that they ever had existed. New Washington was never rebuilt. And despite fitful attempts to overtake Houston, Harrisburg remained an unincorporated hamlet until after the Civil War, and a small village for many years thereafter. Lynchburg's remains include two Harris County ferry boats operating at the ancient crossing where Daniel Lynch established his trading post in the 1820's, and where the backwaters of Galveston Bay meet the San Jacinto River.

Texans alleviated only the first of many problems when they established clear domination of one town in local affairs. Basing its action upon the 1836 Texas constitution, the First Congress of the republic quickly enacted laws changing Mexican local institutions to towns and counties familiar to immigrants from the United States. Translating congressional intent into practice proved much more difficult. County enabling statutes and city charters were so vague that officers of neither government could be sure of their responsibilities. Indeed, legislative craftsmanship was so poor that the Texas Congress failed for several years to act on such important matters as municipal taxation. San Antonio's city council, without definite
statutory guidelines, utilized the revenue laws of Coahuila and Texas as a basis for local tax collections. Aldermen promised corporation residents a deduction from future local taxes, after the Texas Congress had enacted appropriate legislation.

As officials attempted to meet the pressing needs of new settlements and resolve ambiguities in vague statutes, misunderstandings and conflicts of authority were bound to arise. During the Spring of 1838, factious local politicians joined in bitter disputes that tested the viability of newly established local institutions. Intergovernmental acrimony spilled into local courtrooms as boards of aldermen and commissioners sought legal vindication for their side of the arguments, and then ignored the jury's verdict if it went against them. Such a dispute developed between Harris County and the city of Houston over the location and condition of the county jail.

After the Texas Congress designated Houston as the Harrisburg County seat in December, 1836, County Commissioners had expended substantial sums of money to construct a decent courthouse and a notoriously inadequate jail. Houston city fathers, perceiving a threat to local peace and tranquility, requested that the building be torn down and moved away from the center of town. The aldermen subsequently underscored their feelings
about the jail by suing in Texas district court to have the building declared a public nuisance. Judge James W. Robinson granted Houston's petition, and ordered the county to remove the structure within thirty days, or allow the city to execute its judgment.

County Judge Briscoe vented his anger over the nuisance case in a report to the commissioners of roads and revenues. Houston officials, Briscoe charged, had remained silent while the county spent large sums of money, appearing only after the jail was virtually completed to demand its destruction. Although the jail was overcrowded, and "temporary in . . . structure and dimensions," Briscoe vouched that it was "sufficiently strong for the purposes of the County. . . ." The judge then proposed to relieve Houstonians of the irritations caused by having county government conducted within the limits of their city. Surely, Briscoe reasoned, a jail that was such a problem on the courthouse square "would be a much greater nuisance in any other place within the limits of [this] cleanly and tasty corporation." The courthouse, Briscoe added, was a "handsome edifice" [sic.] and would, if sold, fetch a handsome price. The county seat could then be removed to "some place where the people are not so refined in their ideas."
Despite Briscoe's staunch defense, county commissioners had tenuous grounds for resisting the nuisance abatement order. Within a year after the district court's decision, the Harris County grand jury issued a report severely criticizing both the construction and administration of the jail. According to jury foreman Ashbel Smith, the county jail was a pest hole where unfortunate debtors were "compelled to associate with criminals who have committed deeds from which human nature recoils with horror." In jail, Smith alleged, the "Juvenile [sic.] delinquent is prepared and trained for crime and misdemeanors, by a forced intercourse with the hardened and shameless villain"; and the "other sex," for lack of space confined in the narrow anteroom between the jail's two cells, suffered "mortification of their delicacy by being exposed continually to the view of the inmates . . . , their eyes as well as their ears . . . saluted continuously with all that is obscene, course, rude[,] indelicate and shocking. . . ."

To make matters worse, Physician Smith and his fellow grand jurors found the Sheriff's improper administration of the jail exceeded, poor accommodations as a cause for scandal. Smith considered the place a health hazard, given the best upkeep. With Harrisburg County maintenance, particularly attendants' repeated failures to empty "night tubs," the jail threatened inmates,
Houston residents, lawyers, physicians, and grand jurors with "jail fever" and other "malignant disease." The grand jurors recommended that the jail be removed from the courthouse square to a less populated area of the city.

More common than prisoners as sources of local hostility were land and money. San Antonio fought protracted legal battles to protect its town tract from repeated attempts by the Bexar County surveyor, to establish adverse claims to the property; city officers needed the better part of two decades to resolve litigation spawned by this county officer. Fiscal shortages that ultimately prompted development of a wide assortment of cooperative programs, were also responsible for unstatesmanlike court battles where city and county officers contested for control over local revenues.

The legal battles were devastating and self-defeating, often causing the litigants to seek short term satisfaction without regard to long range implications of the judge's decision. In 1840, Harris County and the city of Houston were again in court, this time to decide the merits of county license taxes levied against city residents. The county license, argued Mayor Charles Bigelow as petitioner for the city, violated Houstonians' constitutional right to "equal and uniform" taxation. The county, Bigelow charged, instead of
collecting legally sanctioned property taxes, had chosen to issue licenses knowing that all but a few of the licensees resided within "the limits of the [Houston city] Corporation." The "certain consequence" of the county's action, complained Bigelow, placed "the whole weight of supporting the County . . . on the City of Houston." The city Bigelow noted, had assumed the "usual and customary . . . responsibilities of maintaining . . . a well ordered city"; it had supported numerous "poor and indigent persons" assigned by law to the county's care. Under the circumstances, Bigelow maintained, the people of the city "ought to be exempt if not from the entire county tax, at least from all such taxes as attend the making and laying out [of] roads[,] and building bridges and maintaining the paupers of the County."

Mayor Bigelow seemed most infuriated by the county's five hundred dollars per year license tax upon brothels and houses of assignation. "Such a proceeding," the mayor fumed, "opened the door for houses of that character the receptacles of all that tends to degrade and adulterate the sentiments and habits of a people. . . . That such an act is contrary to all law and highly detrimental to public interest there can be no doubt."

Bigelow and his fellow Houstonians perceived the taxes levied by the county board of commissioners as a
threat to their city's future. By issuing licenses, Bigelow argued, county government deprived the citizen of "the fruits of his industry," and deprived governments of the people's respect and support. Every citizen, the mayor conceded, had "the duty to yield to and sustain the government." But with illegal county taxes added to oppressive municipal levies, men lost the incentive and ability "to look forward for improvement." Unable to find advantages or advancement, a man would either "resist the faithful execution of the law and connive at resistance in others"; or, he would leave the country "to which he may have come . . . under the empty promise of freedom and law. . . ." 

Perhaps the most surprising aspect of the brothel litigation was Judge A. B. Shelby's granting of a temporary injunction preventing the county from collecting license taxes within Houston's city limits. The city's legal position in the case was much weaker than in the jailhouse public nuisance litigation. Only the most restrictive interpretation of the revenue statutes of the Republic of Texas prevented counties from issuing business and professional licenses. By the time they settled the lawsuit, Houston officers probably realized that broad and restrictive judicial supervision over local taxation might not serve the interests of the city. Aldermen, if they chose, possessed ample police
power to rid the city of the bordello's "unhallowed influence." But precipitous action against the brothels would also have produced the undesirable effect of lessening business generally; and, it probably would have lightened considerably the city treasury. In fact, "vice taxes" levied against bowling alleys, billiard parlors, saloons, and the brothels, were one of the few reliable sources of government revenue during the early Texas Republic years. Mayor Bigelow maintained that "ordinances of the city" guarded and kept dens of iniquity "within a proper sphere," and that county taxation interfered with municipal regulation. City councilmen probably realized that excessive taxes might cause the ladies of the night to move down the road to a nearby, competing town. In a milieu where slight advantages promoted town development, city boosters were bound to resist the loss of valuable municipal resources.

Judge Shelby's injunction brought Harris County commissioners to open defiance of the Texas courts. As attorneys for the city sought and received successive delays in court proceedings, they lengthened the time that the county was without an important part of its tax support. Shelby had crippled commissioners' efforts to meet county government obligations and expenses. Once again, Texans had reached the outer limits of
institutional viability. Commissioners informed the district court and the city that the injunction "depriving the County of a large portion of her revenue" made compliance with court orders "inexpedient." Although the county was prevented from collecting taxes from city residents, the commissioners' announcement intimated clearly the lack of wisdom in continuing the policy, or in bringing to fruition the judgment ordering the county jail's destruction. "The embarrassed state of County finances" permitted citizens a choice between the present jail, or no jail at all. 22

Under the circumstances neither Judge Shelby nor the city had effective responses to county commissioners' defiance. Shelby had left the matter of nuisance abatement to the municipal corporation, if the county failed to tear down the jail voluntarily. Although aldermen could, under the court's decree, charge the costs of nuisance abatement to the board of commissioners, hopes of actual recovery of damages were negligible. The sorry state of the county treasury--caused in large part by the tax injunction--precluded recovery. Town dwellers perceived quickly that their best interests were served by having criminals incarcerated in the existing jail, rather than having them on the loose amidst law-abiding citizens. The jail remained; and as Houstonians became aware that crippling the county
also affected their city's development, representatives of both governments began searching for amicable settlements encompassing taxation, brothels, the jail, and other matters of city-county contention.

Local governments suffered from numerous other problems during the Texas Republic years. The Congress of 1837 saddled Texas counties with an unwieldy institutional structure that made consistent policy formulation difficult, and continuity of administration almost impossible. The law authorized four regular meetings of the county board of commissioners per year. Texas counties, patterned closely after local institutions in the southern United States, had justices of the peace serving extra duty as commissioners of roads and revenues. Two justices were elected for one year terms in each "militia captain's beat." The numbers of local commissioners thus depended upon administrative divisions made for military purposes, and varied from year to year.

If Harris County was indicative of affairs elsewhere in the Texas Republic, then lack of attendance at county commissioners' meetings was a near-unmanageable problem. Although Texans never were blessed with the prodigious numbers of justices of the peace appointed in other North American jurisdictions, twenty-five, and sometimes thirty to thirty-five men held office at one
time in a single county. Unlike other jurisdictions, Texas county boards could not conduct official business without a majority of its members present. By 1839, county Chief Justice Humphreys resorted to summonses and threats of substantial fines in order to raise a quorum. During county commissioners' July sessions Humphreys secured a large attendance by levying stiff twenty-five dollar fines "nisi" against absentees. Thereafter, the resort to summonses and fines became a regular part of county government routine, even though it failed in procuring good attendance. Fines were invariably remitted on any reasonable excuse.

Difficulties that attended travelling even short distances in the Texas Gulf Coast region, probably provided commissioners with numerous valid and many convenient alibis for nonattendance at county board meetings. Other reasons, the "sickly season" perhaps, may have kept prudent men away from the city of Houston during the late summer and early autumn. Meetings during months of August through October were very poorly attended. In October, 1839, Judge Humphreys waited four days to convene the Harrisburg County Commissioners of Roads and Revenues. Once again the judge issued summonses and levied fines. Commissioners still counted fifteen absentees when, finally, Humphreys gavelled the meeting to order. The following year,
attendance was so bad that three commissioners actually were fined, and the sheriff dispatched with arrest warrants to search for "defaulting members" of the board. Apparently, the sheriff failed to cajole or coerce the justices into attending to their duties. At the next commissioners' meeting only four members of the board were present; there were thirty-two absentees. Deputy court clerk Daniel Culp commented upon the lax attendance procedures of Harris County's government. The "gentlemen members of this Board," Culp noted sarcastically, "rendered their Several Excuses for being absent at the October [1840] Term of the Board at which time a fine of 50$ Ni Si was entered against them which Said Excuses were received and the fines remitted. . . ."

Both counties and cities suffered occasionally from inability either to elect or hire capable, honest men to handle government money. During the 1840's and 50's both Houston and Harris County suffered at the hands of embezzlers. San Antonio's government struggled with financial officers either unwilling or incapable of doing the minor bookkeeping necessary to keep track of sparse government revenues. San Antonio seemed particularly vulnerable to fiscal maladies. For sixteen months, from September 1837, until January, 1839, the corporation operated without by-laws regulating city funds. When city councilmen learned that total taxes
collected during the previous year amounted to two hundred and sixty-four dollars, they quickly approved an ordinance requiring the city treasurer to keep a set of books, and disburse money only upon a signed authorization from the mayor. These simple but helpful regulations were re-enacted from time to time, and in 1842, were further "refined" by requiring the mayor to recite to the treasurer his specific authority from the city council for issuing a draft against corporation funds. Nevertheless, the city council controlled only the last disbursement stages of San Antonio's fiscal operations. The process of gathering the money for the city treasury remained unregulated, with the market commissioner, water commissioner, city marshal, tax collector, and mayor as authorized recipients. An 1840 by-law requiring the city tax collector to "keep an account of the moneys paid to him," and "render a statement thereof to the Corporation," was not enforced. In 1841, aldermen discovered that tax officers had neglected for six years to collect bills due from neighboring ranchers, for use of the city's water rights in the San Antonio River. An attempt to collect the entire six years' amount meeting stiff resistance, the corporation settled for two years' rent, and waived payment for the balance. As late as 1845, city councilmen deputized to audit the books of the corporation
reported that no procedures existed to go beneath the
surface of the treasurer's accounts. The city's tax
gatherers simply paid funds into the treasury on a
monthly basis; no record survived that allowed elected
officials to supervise or evaluate the collection
process.

Cupidity, rather than inefficiency, generated most
personnel problems for the city of Houston and Harris
County. Throughout the antebellum period, individuals
transgressed the elusive line separating public from
personal interest; they reaped puny financial rewards
and enormous embarrassment. For the most part, the
plunderers were government financial officers who could
not keep their hands away from public money. Once they
had aroused the suspicions of other local officers,
however, these rogues suddenly became very protective
of the tax records entrusted to them. George Lively,
Harris County treasurer in 1841, refused an order to
turn over his records on the grounds that commissioners
wishing to examine them lacked a quorum to conduct
business. The rump session of the county board immedi-
ately removed Lively from office, and elected a new
treasurer to take his place. Subsequently, at a
meeting of the commissioners where a quorum was present,
Lively was summarily convicted of contempt, fined five
hundred dollars for his impudence, and imprisoned until
he produced his books. In a similar incident, Houston city marshal and tax collector Daniel Busby resigned from his post after a shortage of three hundred and twenty dollars in his accounts became a matter of city council contention. Busby also refused to relinquish government's records, an action which caused aldermen to notify his sureties that legal action against the erstwhile city officer was imminent.

Harris County also had its share of wild frontier characters, talented in their own right, but unable to meet the standards of public conduct demanded by other elected officials. Augustus M. Tomkins, first district attorney for Harrisburg and Brazoria counties, had a good reputation as a prosecutor, when he was not in jail for drunk and disorderly conduct, or assault and battery. Tomkins' behavior caused County Chief Justice Briscoe to denounce him for his "debauchery" and seek his removal from office. Solomon Childs became one of the most effective members of Harris County's ineffective Board of Commissioners of Roads and Revenues--before he was fined one hundred dollars and expelled from office for public drunkenness, and for "failure to suppress a duel." In the opinion of other commissioners, Childs' activities had "rendered" him "incapable of holding the office of Justice of the Peace."
By far the most vexing problems facing Texas local governments during the pre-Civil War period stemmed from lack of availability of fiscal resources. Counties, and to a lesser degree towns and cities, often failed in obtaining funds for their most pressing needs. To be sure, the Congress of the republic, and later the Texas State Legislature, recognized localities' authority to levy and collect taxes. Counties and cities possessed rights of first lien on tax-delinquent property, and the coercive power to seize and sell private property for failure to pay taxes. But government's coercive powers in the tax area were intimately related to the value of land. A man who stood to lose his homestead or plantation for failure to pay a few dollars in taxes made sure that he settled accounts with the county treasurer. Thus, the most important revenue producer in a country devoted to "agricultural and pastoral industry," should have been the ad valorem property tax, rather than license fees, or money gained from control and regulation of commercial enterprise. In Harris County in 1844, however, land seized for taxes was almost worthless, and this reality greatly hindered government operations.

County commissioners learned the uselessness of enforcing ad valorem tax statutes when condemned lands were sold at sheriffs' auctions. Because the original
owner could, for a period of years, reclaim his property by paying back taxes and compensation to the holder of a sheriff's deed, properties sold at auction probably were depressed well below the market values of unencumbered land. With so much land available, few settlers were willing to improve and develop property with a tax sale title impediment. The fact that sheriffs' sales were made for specie or "par funds" rather than for inflated Texas currency or county scrip, also increased the difficulties of selling for a good price. Thus, a section of Harris County land sold at auction for three cents per acre, and brought the princely sum of nineteen dollars and twenty cents. The money received from selling farmland for taxes, did not cover court costs and expense of sale, let alone back taxes. For town lots in Houston, the selling price on tax sales as late as 1845 ranged from ten cents to two dollars, plus costs. By foreclosing a tax lien, the government only dispossessed a settler and potential taxpayer from his land, and liquidated all claims to future compensation. Under the circumstances the worst thing county government officers could do, was convince settlers that they would receive easier treatment in another county or another state where tax collections were less efficient or less honest. For the moment, human settlement was more important than taxes, and government officials
behaved accordingly. At autumn harvest time ominous resolutions appeared in the minutes of the county commissioners. "NOTICE TO DELINQUENT TAXPAYERS! . . . Settle [your bill with the county assessor-collector] or coercive measures will be resorted to. . . ." The tax sale was an all-around losing proposition that promised to depopulate the country and stall much-desired development.

II. Responses to Problems in Local Government

Local government response to money shortages took numerous forms, designed mostly to provide basic government services with an absolute minimum of institutionalization and expenditure. County and municipal officers nurtured symbiotic relationships between public needs and private capitalism. Various local officers discovered that intimate linkages had been forged between their livelihoods and their efficiency in carrying out government policy. And finally, town and county officials had recourse to coercive police powers, an inexpensive mode of promoting safety and settlement.

The first resort for aldermen and commissioners in seeking to lighten government debts and deficits, was to cut services to the public and default on payment of salaries to hired local officials. Local officers
and employees grumbled constantly over inadequate pay, and sometimes no pay at all. In 1843, the street committee of the Houston city council recommended "suspending all further improvements" of the town's thoroughfares. The committee believed that taxes and debt were "already too burthensome, . . ." and that "all the revenue of the city should be applied to the redemption . . . City . . . liabilities now outstanding." Aldermen believed that "the Credit of the City" was "of paramount importance." The only exception to the street committee's austerity program was for one "cart & horse and one laborer" to remove garbage and filth.

Later in the same year, the city reported an unfunded debt of over five thousand dollars, with money still due the city treasury from unpaid taxes at just less than half that amount.

The denial of needed services and beggaring of hired officials failing to balance their books, local politicians turned to the Texas government for financial help. Harrisburg County commissioners of roads and revenues discovered that designation of Houston city as the Texas capitol had disadvantages to accompany dividends of growth and commerce. County government was inundated with the expense of "Keeping, trying, and punishing one half of the rogues in Texas. . . ." The fines collected for violation of Texas law went into the treasury of
the republic. County Judge Briscoe hoped that the Texas Congress might remit those fines to the county, "to compensate us for the expense . . ." of hosting the national capitol.

Petitions to the Texas Legislature for financial aid during the 1840's held about as much prospect for success as a sheriff's tax auction. The Harris County Court periodically memorialized state government for relief from the "burden of Paying jury fees," or the "burden of supporting criminals." In 1845, commissioners actually cited "the heavy Expence of Petit and Grand Jury's [sic.]" as a major cause of the embarrassed situation of the County. Until 1848, the Legislature had no money to give. Deeply in debt and unwilling to establish precedents that would promise similar treatment for needy local governments in the future, the Texas Congress, and then the State Legislature, refused to remit fines or general taxes to localities.

Although cities and counties could not obtain aid from the Texas government, local officers learned well the lessons of how to use credit and print money. Local governments circulated numerous types of paper currency, most commonly corporation "change notes," or "audited claims" or "drafts." This paper evidenced the issuing government's debt to the recipient for goods delivered or services rendered, and promised payment at
some time in the indefinite future when municipal funds became available. The holder of local scrip could demand money from the government treasurer, or he would return the paper to the government, in lieu of paying taxes with hard currency. Failing in these two methods of ridding himself of the local scrip, the citizen also could break the law; county or city paper was receivable in payment of fines levied for violation of local ordinances, at an exchange rate of twenty-five cents on the dollar. The paper money was usually discounted to a small fraction of its face value. People of the community negotiated the scrip at its discount price, counting upon the issuing government to accept it for taxes at "par."

Although the city of Houston redeemed its change notes and was operating with a surplus in the municipal treasury by 1846, holders of Harris County securities experienced a sadder fate. Local officers had placed large quantities of unfunded debt in circulation. County commissioners faced regular expenses for jury fees and jail upkeep that could not be postponed or ignored, as the city of Houston had proposed for its street grading and repair. The method of financing first used by county commissioners was to issue scrip, allow it to depreciate, and then force citizens to exchange their paper for new "funded stock" certificates.
valued at par. The government promised to pay twenty-five percent of the principal of this money to holders of stock certificates, every third year for twelve years. In the meantime, the stock gathered twelve percent interest which could be used as set offs against county taxes and fines. The arrangement had two fundamental flaws. First, the county set aside no special fund or tax to pay for this "funded" debt. Officers simply relied upon increased revenues to provide the necessary resources. Second, while the county may have received more money, until the mid-1850's, government expenses exceeded receipts. To cover the deficits the county was forced to issue more scrip. With both unfunded long term debt and unfunded scrip in circulation, depreciation in value of all local currency began once again, until both were relatively worthless.

By January of 1844, the Harris County Commissioners of Roads and Revenues had decided to default on debt payments in order to meet current expenditures. The board enacted an ordinance prohibiting individuals from paying more than one-half their local property and license taxes with county certificates. One year later, commissioners amended the ordinance, accepting audited claims against the county for taxes, "only from those in whose names the Drafts . . ." were originally issued. With this new requirement, county scrip
suddenly became nontransferable, and its utility as money abruptly ceased. At the same instant, commissioners effectively repudiated all county indebtedness where certificates already had been negotiated to second parties, prior to enactment of the ordinance and amendments. Subsequently, in October, 1845, a reorganized Harris County Court made the final step, and forbade acceptance of all "claims against the county as set-offs against dues owed to the county. . . ." The people who had accepted county drafts as money waited nearly ten years before their elected officials proposed indemnification, and then for a fraction of the certificates' face value.

When local officials could not collect taxes to pay government expenses, or obtain a handout from the Texas Legislature, they turned to their constituents and sought charitable contributions. The practice of "soliciting gratuitous subscriptions" was generally reserved for such important capital investments as courthouse or jail construction, or grading of important thoroughfares within town or city limits. City officers commonly sought contributions from property owners whose homes or businesses fronted on the proposed improvement. Often, local officers solicited money where they had authority to compel payment under special assessment type powers.
Throughout the 1840's the practice of soliciting citizens' money for public projects was improved and refined. Public spirited donors of cash or services to the government often expected a quid pro quo in the improvements they sponsored, and government officials were more than willing to tailor their appeals accordingly. Harris County Commissioners' 1846 fund raising aimed at both the civic spirit and enlightened self-interest of Houston residents. The county court offered to remove its jail from the courthouse square, if city people donated money in support of the project. Although townpeople had long considered the jail's location dangerous and objectionable, there is no indication of commissioners' success in the solicitations.

Official appeals to voluntarism were a quaint, inefficient, and dreadfully uncertain means of providing money for local government. As government financial capabilities improved, and local residents manifested a willingness to pay extra taxes for special projects, the practice of soliciting voluntary donations gradually disappeared. Attempting a timid first step into specially-funded government indebtedness, Harris County Court hoped to issue low interest, five-year government bonds for courthouse construction. To pay the debt, voters,
on August 23, 1849, approved a special one-fourth percent property tax by the narrow majority of two hundred and thirty-five to two hundred and fourteen. Given the three percent interest rate on the securities, county officials probably counted upon generous local support in order to have the bonds fully subscribed. Government financing thus evolved from attempted reliance upon nonrefundable donations, to acceptance of an obligation to repay what amounted to interest-free loans. The arrangement was a halfway-house between voluntarism and complete government commitment to specially-funded government financing. When Harris County made its courthouse and jail improvements in 1850 and 1851, commissioners obtained both the statutory authority and voter approval necessary to levy additional taxes. The contractor in charge of the renovations was paid directly in negotiable, ten percent county bonds.

Solicitation of voluntary financial support was only one of many ways Texans sought to generate needed capital, and thereby strengthen government institutions. An extensive, haphazard collection of franchises, commissions, rewards, and outright monetary entrepreneurial incentives also welded local private interests to public improvements. Continuing a practice established under Mexican rule, the First Congress of the Texas Republic authorized commissioners of roads and revenues
to establish and regulate privately-owned ferries and toll bridges within their respective counties. The policy facilitated transportation, promising Texans a means other than swimming, for crossing the many rivers, streams and bayous in the Gulf Coast watershed. County governments lacked the resources to provide large numbers of free bridges, or even public projects that could be paid for on a self-liquidating basis from tolls or other charges.

Texas statutes required franchised proprietors of boats or bridges to post bond for a minimum of one thousand dollars. Sureties guaranteed safe and prompt performance of boatmens' duties, or upkeep and repair on toll bridges. Franchisees were liable for the full amount of injury or damage caused to passengers, freight, or livestock; securities were liable for the full amount of the posted bond, and had no right to cancel indemnity contracts "upon first recovery." Texas counties did not retain from Mexican law, the express authority to revoke franchises and confiscate boats and equipment, for nonperformance of statutory requirements or local stipulations. Ferry licenses were renewable every year. County commissioners could utilize this renewal provision, and an impressive array of fines and civil damages, to maintain minimal standards of public transportation safety and assure the collection of
government license fees and taxes. Many fines and forfeitures were enforceable by summary process in justice of the peace courts.

Despite their utility, toll bridges and ferries were never very popular in antebellum Texas. City merchants and professional men demanded transportation facilities that lowered travel costs and allowed farmers and freight haulers easy and cheap access to their settlements. Houston city councilmen made very clear where they stood on this question when Harris County commissioners licensed a toll bridge across Buffalo and White Oak Bayous near the Main Street town wharves. A few months later the county returned the license fees and cancelled the bond. The city had hurriedly constructed a free bridge across Buffalo Bayou, and were "about to erect one across White Oak. . . ." After this incident, the county made only a few efforts to license toll bridges or otherwise encourage their construction.

Rates of ferriage and toll were rigidly controlled by the county, and price gouging brought serious repercussions. In 1855, a Harris County ordinance prohibited ferry or bridge proprietors from blocking the use of natural river crossings. Persons who preferred getting wet to paying tolls were protected in their right to do so. In addition, citizens often petitioned county commissioners to purchase recently completed projects,
and do away with their travel costs. By the late 1850's, county officials usually offered to advance one-half the purchase price of toll bridges, and causeways. Citizens interested in buying the property were expected to provide the remainder of the money.

The Texas government, along with city and county units, resorted to systems of commissions and fees to pay local government officers and employees. County clerks, district court clerks, sheriffs, treasurers, tax assessors and collectors, city marshals, constables, and numerous other local functionaries took as salaries a percentage of the money handled for the government; or they charged fees to users of government services that covered their expenses and provided them with income. From the earliest years of the Texas Republic, almost all fees and commissions for county and judicial officers were set by general law. If a government officer such as the assessor-collector of taxes performed both state and local duties, state law determined the fees for performance of state functions; county commissioners determined the extra compensation paid for services to the local government. In the municipal corporations, common councils determined the compensation of officers and employees, generally without guidelines or supervision from the state. Invariably, local officials who handled tax money posted bond guaranteeing
faithful and honest performance of their work.

In many ways the use of fees or commissions to compensate government officers, suited mid-nineteenth century Texans. Citizens saw neither conflict of interest nor corruption in such arrangements, and even recognized the necessity for public office to provide a combination of honor, trust, and "profit." The money, drawn from incoming taxes or fines, did not appear as extravagant expenditures for salaries upon the government's books. And the system utilized officeholders' personal interests as a public safeguard. An assessor-collector could expect feast or famine, depending upon his diligence in collecting money for state and county treasuries. The government's interests in a full and fair assessment of property for tax purposes worked in harmony with the local officer's interest in maximizing commissions. Likewise, the private income of San Antonio's market commissioner or Houston's wharfmaster was directly proportional to his zeal and efficiency in enforcing municipal regulations, and collecting the various dues for himself and for the city.

Local officers also were involved in the delicate task of balancing their own interests and reputations against the pressing needs for government revenue and the continuing desire for new settlement. Francis R.
Lubbock, Harris County District Court Clerk during the 1840's, recorded in his memoirs the effects of his decision "never[to] shave or speculate in a witness' or juror's certificate . . . and . . . never[to] sell property" for his fees. Lubbock's decision allowed men access to the courts, who otherwise might have sought more violent remedies for their grievances. ". . . While the fees [of office] where quite liberal," Lubbock recounted, "money was very scarce, so that in 1846 there was due the clerk's office a large amount. Upon presentation of their costs bill the farmers and stock-raisers would tender cows, ponies, hogs, and sheep in payment. . . ." The district clerk ended up a moderately wealthy rancher as a direct result of his public duties; he had not expected to enter the occupation when elected to office.

Incentives to private entrepreneurs were not used exclusively for encouragement of transportation or enrichment of local government officers. The Texas Congress, county boards, and city councils learned during the early years of Texas independence, that personal interests could provide needed support for both general laws and local police regulations. "Informers" who reported to county officials, persons engaged in a business, trade, or profession without appropriate state and local licenses, received a reward of one-half
the fines imposed by law. The most stringent provisions in Texas laws regulating ferries provided rewards and extensive civil damages to persons who apprehended boatmen operating for profit without the necessary license or bond. The law also required that unlicensed boatmen compensate duly franchised competitors. A person caught operating a ferry illegally could expect to pay damages "to every other person having a licensed ferry on the same water course, stream, lake or bay, in the same county. . . ." The assessment against the illegal operator was five dollars "for every person so ferried and the same sum for every wagon or other article so transported, . . . to be sued for and recovered before any Justice of the Peace [sic.] of the county. . . ." Adding insult to injury, the county also collected a fine equal in amount to the money collected by each legal franchisee in the lawsuit.

City councilmen also found that municipal health, safety, welfare, and morals were noticeably improved when concern for law and order was appropriately rewarded. Public officials and private citizens were invited to share in corporation fines assessed for infractions of ordinances regulating such diverse matters as stray hogs, unlicensed dogs, street cleaning, "lascivious [sic.]" books, and nude swimming during daylight hours in the San Antonio River. Each ordinance had a beneficent
self-supporting quality. Townpeople in San Antonio who failed in their duty to sweep the streets in front of their habitations or places of business, were summarily fined by the city constable, the money going "for the use of the Constable." Estray, pornography, and anti-swimming ordinances provided that one-fourth to one-half the fines levied should be paid to the informer, constable, or "party procuring the conviction." Remaining money was paid into the city treasury. In Galveston persons confronted by an animal on the loose could, in addition to collecting reward money, "kill or cause to be killed, or . . . seize, take and dispose" of the animal for "his or their own use . . . ." San Antonio aldermen placed bounties of twenty-five to fifty cents upon stray dogs in the city. Pet owners paid these bounties by purchasing licenses for their animals. Money for laborers to haul away dead animals also was provided from the city's "Dog Fund."

Relationships between local police powers and private activity did not always originate in citizens' expectations of personal reward. County Courts and municipal corporation councils possessed statutory authority to compel individuals' willing or unwilling participation in community development projects. From the earliest days of the Texas Republic, able-bodied men--free and slave--could be enlisted to contribute as
many as ten days labor per year on county roads. A few Texas municipalities experimented with analogous charter provisions requiring work on the streets. With the exception of modest street cleaning chores demanded by the city of San Antonio, this practice failed to achieve widespread citizen acceptance. Labor in the town or city did not release the citizen from his duty to work on county roads.

Like so many statutes during this period, the law requiring road work was designed to be self-policing. "Defaulters," who ignored the road overseer's summons were liable for five dollar penalties for each day they missed working on the road. Fines were paid into a special county treasury "Road Fund" and utilized to hire more dependable workers. An overseer's neglect of roads and bridges under his jurisdiction, or failure to compel attendance of all persons assigned to work his section of road, entailed substantial fines and civil penalties. Any person "liable to work on [the] roads" could sue his overseer, and recover damages equal in amount to the fines that the overseer should have assessed against defaulting workmen. The "prosecutor" of such a lawsuit recovered one-half of the money for his own use; the remainder was placed in the county road fund.

In addition to county road work, townspeople
expected to contribute money or labor for the improvement and maintenance of streets, sidewalks, and public works. The legal basis for demanding either dues or services from local populations differed from city to city. Houston's 1839 charter included, among its police powers, the authority "to determine the completion and dimensions, the maintenance and repair" of city streets, "at the cost of the proprietors of houses, lands or neighboring lots. . . ." A similar police provision in the Galveston charter of 1840 authorized the city council to build, repair, and maintain sidewalks at the expense of adjoining property owners. By contrast the drafters of San Antonio's charter approached the same question as a tax problem as well as a matter of police regulation. The city's 1837 and 1842 charters enabled aldermen to exempt the "poorest class of citizens" from paying taxes. Persons who did not possess adequate means to pay their municipal obligations in money were "obliged to contribute by their manual labor towards all works of public utility . . ." undertaken by the city.

During the early 1840's, the San Antonio city council utilized numerous police regulations to exact service from citizens. In addition to street-sweeping ordinances, aldermen ordered citizens to tether or fence farm animals, and clean regularly those places
where animals were kept. The council levied a fine of fifty cents for violation of the ordinance, with the money "applyed [sic.] to the purpose neglected."

Strangers and transients in San Antonio, along with seasonally employed agricultural workers, were probably more vulnerable than established local residents for impressment into public service. The city council quickly discovered that wanderers, derelicts, or unfortunate persons temporarily without work could be converted from community problems to welcome assets, exploitable for local development projects. Through a series of vagrancy ordinances San Antonio city fathers made extensive use of these valuable resources to improve public buildings or enrich the local treasury.

The first San Antonio vagrancy ordinance, enacted shortly after the city received its charter of incorporation from the Texas Republic, took the relatively enlightened view that undesirables might simply be ordered out of town. The immediate problem involved wounded soldiers and deserters from Santa Anna's invasion army. The need for labor, however, soon outweighed humanitarian considerations, and the city council devised other methods for dealing with its vagrancy problems.

Enforcement of San Antonio's vagrancy ordinances was related closely to labor shortages. A dearth of
workmen was probably the deciding factor in the city council's decision to assume responsibility for housing, guarding, and feeding vagabonds. Thus, in August, 1840, the mayor was "authorized by this corporation to put into practice the law of vagrants, and to use their labor on the repairing of the jail, each one to be paid [a daily wage] of one and a half reals." The following year, the city resorted to the same practices. The mayor, taking note of the ruinous state of the town's bridges, ordered committees of aldermen into each ward of the city "to raise a notice of all Vagrants or men whose employment is unknown. . . ." After the lists were presented to the mayor, negotiations proceeded with skilled workmen capable of superintending the city's bridge repairs. Aldermenic intent could not be mistaken; unemployed males within the city limits either found suitable employment, or faced the prospect of being "hired" as construction workers for the city.

When the city had no use for vagrant labor, the men could be hired out to private citizens. An ordinance passed in June, 1842, regularized procedures for obtaining workmen, although prior entries in city records indicate that the practice was in vogue before that date. Under the ordinance, a citizen applied to the mayor for the particular vagrant or vagrants he wanted, and obtained an order for their next day's services. The employer
paid twenty-five cents to the corporation, with one-half that amount remitted to the worker.

Measured by standards of deterrence, the San Antonio vagrancy ordinances must have been successful. Of thirteen men on the list compiled by city council in 1841, nine men were soon gainfully employed. Just six days after the list was printed in the minutes of the corporation, the mayor laconically reported that three men had left town; of the remaining ten, six found work or were hired out by the city, one became a farmer, another "left for the ranches," and yet another became a soldier in the Texas army. The final nominee on the aldermen's lists had acquired property, was building a house, and probably had been accused unjustly in the first instance.

The city of San Antonio thus utilized local police powers as an instrument of social control, and as a means of acquiring certain basic necessities of civilization. Law enforcement was designed to attract new settlers and expedite community growth. But security and settlement did not comprise the total dividend paid to the city through careful and efficient use of its police power. The corporation's ordinances and regulations also served to promote community solidarity and lessen the cultural gap that existed between the city's Spanish and Anglo-American populations. Finishing the Commerce
Street bridge during the summer of 1842 was an event of such great importance that council decided not to leave the matter solely in the hands of vagrants and the poor. Aldermen ordered all able-bodied men to contribute two days labor toward completion of the bridge. To sweeten the municipal burden, the council allowed everyone to deduct fifty cents from next year's city taxes for each day's labor performed. Considering the inefficacy with which taxes were collected, city fathers probably made a shrewd decision in passing this ordinance.

Police regulations also provided the medium used by San Antonio's Mexican population to teach North American settlers the techniques for preserving water as a precious resource. The English-speaking population of the 1840's arrived at the Eastern fringe of dry southern plains areas from well-watered regions of the Eastern United States, East Texas, and Gulf Coast. North Americans' experience with water was generally one of overabundance rather than scarcity; they migrated into a region where times when water was plentiful alternated with periods of drought. Mexicans living in San Antonio had long experience with water management. Aldermen utilized corporation police ordinances to protect water supplies from men accustomed to its free availability and exploitation.
Numerous San Antonio ordinances resulted directly or indirectly from the need to protect local streams and acequias (irrigation canals and ditches) from contamination. Specific locations for animal slaughtering were, in part, set aside to prevent wastes from washing into the city's water supply. Prohibitions upon washing of clothes in the city's drinking water obviously were motivated by a desire to preserve its potability. Somewhat less clear are the reasons why mid-nineteenth century West Texans considered watering horses a "defiling" of the acequias.

The informal methods that characterized most municipal action in Texas frontier communities proved inadequate for proper regulation and management of San Antonio's water supply. An 1838 ordinance requiring riparian property owners to clean the canals or pay the city for doing it, proved of little value. By 1840, aldermen admitted failure in their efforts to protect the water supply using what may have been an adaptation of common law nuisance abatement remedies. The corporation council replaced the 1838 ordinance with an elaborate series of regulations for protection of the city's water. The ordinance utilized many voluntary policing procedures. But in addition, the council designated new, noncharter municipal officers to oversee repair work on the canals and protect the
city's financial interests. Citizens who controlled water and irrigation rights in a particular acequia elected a water commissioner to oversee ditch cleaning and water apportionment. Residents who failed to maintain their assigned sections of the acequia could expect the corporation to perform the work and charge them for the expense. Persons who refused to pay for ditch cleaning forfeited their water rights to the city for twelve months.

Other regulations protected the unimpeded flow of water in the irrigation canals and guarded against the improper taking of water. Water in the ditches was available to city residents only by virtue of natural gravitational flow. It was illegal for a property owner to obstruct the canals and divert more water into his home or fields. Likewise, city council prohibited a person from opening his water gates at a time reserved other residents. Violation of these regulations could bring fines of up to fifty dollars plus costs, or imprisonment and labor on the public works at fifty cents per day. Wrongdoers also were required to pay civil damages to persons whose water was "unlawfully detained." Informers or city officers who prosecuted violations of the city's ordinance received one-half the fine as compensation.

Houston and Galveston city officials seemed
somewhat more restrained than their contemporaries in San Antonio about exacting involuntary labor from free white citizens. No reference appeared in city records dating from the antebellum period, to indicate that vagrants were put to work on public development projects; nor were residents in the Gulf Coast cities responsible for continuing maintenance of streets adjoining their property.

Galveston's city council did utilize charter police powers relating to sidewalk improvement and maintenance. Aldermen asserted their authority with an 1854 ordinance allowing property owners ninety days to build sidewalks according to city specifications. Although they had not declared outright that continued absence of sidewalks constituted a public nuisance, Galveston city officers conducted what was tantamount to an abatement proceeding. The council ordered property owners to perform specific duties at their own expense, and threatened to impose a five dollar per day fine upon persons who failed to complete the work on time.

In enacting this ordinance, Galveston aldermen overruled their own street committee which had recommended milder treatment for property owners who failed to construct the sidewalk. The committee had favored installing the walk and then charging the cost to the property holder.

Houston councilmen utilized a street development
provision in their city's charter to charge the expense of building sidewalks against proprietors of adjoining property. Unlike councilmen in the seaport town fifty miles away, Houston aldermen adopted procedures providing notice to the property owners when sidewalk construction was being considered. As early as 1840, Houston city council considered an ordinance requiring that property owners construct twelve-foot sidewalks along Main Street. The resolution was tabled a few days later, however, and the matter was dropped temporarily. Subsequent efforts to utilize city police authority were more successful. In May, 1846, on motion of Alderman Thomas League, the city council ordered that brick sidewalks, twelve feet wide, be constructed at property owners' expense along several city thoroughfares. Alderman League's proposal was coupled with a statement that he had announced his intention to introduce the paving ordinance at a prior council meeting. Apparently this prior notice was required, or at least customary, before the city demanded private funds for completion of public projects.

Hampered by institutional defects, a dearth of government fiscal resources, worthless paper money, and a revenue system where the most important local taxes often could not be collected, officials in antebellum Texas created numerous ingenious devices and procedures
to guarantee delivery of basic government services. Admittedly, the lowering of local officers' salaries and the issuance of town and county scrip were stopgap measures—necessary reactions to frontier hardships. Other practices, such as use of franchises and levying of extra charges for city street and sidewalk paving, set precedents utilized again and again by Texas local governments throughout the nineteenth century. Yet local officials who could afford neither inefficiency nor extravagance with public resources, contended with government organization that had resulted in animosity and confusion. Town and county officials still needed to adjust their system of dual local institutions. Commissioners and aldermen still needed clarification of responsibilities in areas where statutes created overlapping or ambiguous jurisdiction; and they required elimination of costly duplication of effort that complicated local administration.
The interrelationships between local government and private entrepreneurs and promoters is a facet of nineteenth-century American life that has often been commented upon by historians. Although they considered the decimation more germane town and county development in the "Old Northwest," cf., Stanley Elkins and Eric McKitrick, "A New Meaning for Turner's Frontier," Political Science Quarterly, LXIX (September, 1954), 341-353; merchant-government connections and land speculator-government connections as part of the American experience are also discussed in Lewis Atherton, Main Street on the Middle Border (Bloomington, Indiana: Indiana University Press, 1954), Ch. I; perhaps the most important recent contribution in this area is Robert R. Dykstra, The Cattle Towns (New York: Alfred A. Knopf, 1968), passim; Dykstra examines in great detail, the intimate relationships between merchants and local politics during the years of the great Texas-to-Kansas cattle drives, and the effects of those relationships in all areas of town life. The merchants' influence was felt in every facet of life in the cattle towns, including efficiency of law enforcement, public health, morality, and the viability of political and judicial processes. And see, Oscar and Mary Handlin Commonwealth, A Study of the Role of Government in the American Economy: Massachusetts, 1774-1861 (Revised ed.; Cambridge, Massachusetts: Harvard-Belknap, 1969), Ch. III-V. passim; although the Handlins concentrated on the American state in its interaction with private enterprise, many of the conclusions are germane to relationships between local governments and entrepreneurs. James Willard Hurst, Law and the Conditions of Freedom in the Nineteenth Century United States (Madison, University of Wisconsin Press, 1967), explored the roles of judges and legal institutions in fostering individual creative enterprise, but does not emphasize as strongly, the other side of the sword: individual support for local institutions. Mark E. Nackman, "The Making of the Texas Citizen Soldier, 1835-1860," Southwestern Historical Quarterly, LXXVIII (January 1975), 231-253; this author confuses the status of the militiaman and volunteer and completely ignores militia laws and institutions.

a great deal of attention to competition between rival towns that occurred at a later period to town growth and development. Early growth and local domination created stiffer competition as towns attempted to establish economic dominance on a regional basis. Richard Wade's descriptions of the inter-city rivalries between Pittsburgh and Wheeling, and between Cincinnati and Louisville were examples of inter-urban competition at a somewhat later stage of urban growth. Cf., Richard Wade, The Urban Frontier, Pioneer Life in Early Pittsburgh, Cincinnati, Lexington, Louisville, and St. Louis (Chicago: University of Chicago-Phoenix Press, 1964, 322-342; see also, Robert M. Fogelson, The Fragmented Metropolis, Los Angeles, 1850-1930 (Cambridge, Massachusetts: Harvard University Press, 1967, Ch. III; Kenneth W. Wheeler, To Wear a City's Crown: The Beginnings of Urban Growth in Texas, 1836-1875 (Cambridge, Massachusetts: Harvard University Press, 1968), Ch. IV; Marilyn McAdams Sibley, The Port of Houston (Austin: University of Texas Press, 1968), Ch. IV-VI, provides a useful analysis of the commercial rivalry between the cities of Houston and Galveston throughout the second half of the nineteenth century; see also, David G. McComb, Houston, The Bayou City (Austin: University of Texas Press, 1968), Ch. I-II; and see, Dykstra, The Cattle Towns, Ch. I, in which the author examines thoroughly the competition between competing small hamlets on the Kansas frontier.


4Looscan, "Harris County, 1822-1845," 6-7; McComb, Houston, The Bayou City, 42-43; Sibley, The Port of Houston, 33-41; Professor Sibley is a little more charitable to Houston's claims than other writers, referring to Francis W. Moore's contemporary comment that Houston was at "the very crown of the 'head of navigation of Buffalo Bayou. '" Sibley also points out, that by the year 1845, over eleven thousand bales of cotton were shipped from Houston city wharves, a figure that speaks well to the question of the city's credentials as an inland port.
Looscan, "Harris County, 1822-1845," 6-7; Hogan, The Texas Republic, 82.

Deer Park, Texas, San Jacinto Museum of History Association MSS, Briscoe-Harris-Looscan Collection, Letter Fragment, sent from Harrisburg in October, 1837, sender and recipient not identified, but almost assuredly correspondence of female members of the Briscoe or Harris families.

Hogan, The Texas Republic, 90; Frederick Law Olmsted, A Trip Through Texas, or A Saddle-Trip on the Southwestern Frontier (New York; Dix, Edwards, 1857), 366:

Leaving Houston, we followed a well marked road, as far as a Bayou [Bray's Bayou], beyond which we entered a settlement of half-a-dozen houses, that, to our surprise, proved to be the town of Harrisburg, a rival (at some distance) of Houston. It is the starting point of the only railroad yet completed in Texas, extending to Richmond on the Brazos, and has a depth of water in the bayou sufficient for a large class of boats from Galveston. Houston, however, having ten or fifteen years, and odd millions of dollars, the start, will not be easily overridden. [Olmsted, writing in the 1850's, was not aware that Harrisburg was founded prior to Houston.]

Sibley, The Port of Houston, 129-130; Harrisburg was incorporated for a short time during the late 1860's and early 1870's, under Texas' general incorporation statute of 1858; Cf., Houston, Harris County, Texas Clerk of County Commissioners' Court MSS, Minutes of the Commissioners' Court of Harris County, Book "C," April 2, 1866, p. 15. [Cited hereafter as Harris County Commissioners' Court, Minutes].

Gammel, Laws of Texas, I, 1206, Sec. 24-30 (December 20, 1836); 1217-1223 (December 20, 1836); 1298-1299 (June 5, 1837).

Austin, Texas, University of Texas Archives MSS, Box 2Q245, No. 815 (W. P. A. typescript, project No. 65-1-66-83), Minutes of the City Council of the City of San Antonio, Book "A." (1837-1849), October 7, 1837, pp. 11-13 [Cited hereafter as San Antonio City Council, Minutes], and see Ch. II, p. 45 of this dissertation.

Gammel, Laws of Texas, I, 1284-1285 (December 22, 1836); 1474-1475 (May 9, 1838); although the Texas Congress often designated specific towns as county seats, a general statute enacted May 9, 1838, established procedures by which referendum could be held on the question of moving the seat of justice to another location. I have found no evidence enabling me to ascertain whether a pre-Civil War town, that has enabled me to ascertain whether a town specifically designated as a county seat by special act of the Legislature could be altered by local referendum, without further consideration by the State Legislature. That Texans did not move
county seats established by special laws, would seem to indicate that those laws were considered binding. But judicial rules applied to interpretation of statutes, generally assert the primacy of general laws over special or private legislation. Such a statutory interpretation should have permitted local referenda on county seat matters, even though the present location was specified by a special act of the Legislature. The question is significant as regards the extent to which state laws could be used as instruments of control over county governments.

11Harris County Commissioners' Court, Minutes, Book "A," April 7, 1838, pp. 15a-17a.

12Surgeon General of the Texas army during Sam Houston's first administration--1837-1838, Smith was already well known along the Gulf Coast at the time he served on the Harris County grand jury. Smith later gained a wide reputation as eminent physician, legislator, diplomat (for the Texas Republic and the United States), Confederate officer, author of scientific and historical treatises, and patron of education in Texas until his death in 1886. Cf., The Handbook of Texas, ed. by Walter Prescott Webb et. al. (2 vols.; Austin: Texas State Historical Association, 1952), II, 620-621.

13Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Minutes of the Eleventh District Court of the State of Texas, Book "B," 170-173, Grand Jury Report, Spring Term, 1839; "jail fever" is typhus.

14Lewis v. San Antonio, 7 Tx. 288 (1851); for a discussion of the problems between San Antonio and Bexar County during the early years of Texas independence, please Cf., Ch. II, pp. 45-49 of this dissertation; for a discussion of cooperative local government actions, Cf., Ch. IV of this dissertation; see also, Jane Lynn Scarbrough, "George W. Paschal: Texas Unionist and Scalawag Jurisprudent" (unpublished Ph.D. dissertation: Rice University, 1972), Ch. I.

15Although the 1845 Texas constitution had a provision for equal and uniform taxation, Mayor Bigelow's demand antedated it by several years. The constitution of the Texas Republic granted a straightforward blanket power to the Congress to levy and collect taxes. Bigelow, therefore, could claim no constitutional rights under Texas law at the time of the litigation. Cf., Republic of Texas, Constitution (1836), Art. II, Sec. 1, in The Federal and State Constitutions, Colonial Charters, and other Organic Laws of the States, Territories and Colonies... Forming the United States of America, ed. by Francis Newton Thorpe (7 vols.; Washington, D. C.: Government Printing Office, 1909), VI, 3534 [cited hereafter as Thorpe, American Charters, Constitutions and Organic Laws].
16 Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Minutes of the Eleventh District Court of the State of Texas, Book "B," 147, and case file No. 375, Mayor, Aldermen of the City of Houston v. Board of Commissioners of Roads and Revenue of Harris County (1841). [The minute books of the district court contain docket entries and other small amounts of information about the particular case. The case file, kept separately in the warehouse of the district court clerk, contains pleadings, appeals bonds, and other documents pertinent to the litigation. The latter records are the most useful.]

17 Harris County Commissioners' Court, Minutes, 1840, Book "A," pp. 55a-56a.

18 Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Minutes of the Eleventh District Court of the State of Texas, Book "B," 147, and case file No. 375, Mayor, Aldermen of the City of Houston v. Board of Commissioners of Harris County (1841).

19 Carmel, Laws of Texas, I, 1206, Sec. 30 (December 20, 1836); II, 200 Sec. 31 (January 16, 1840); the first county tax authority, enacted late in 1836, empowered local officers to collect enough revenue to "discharge the demands on their respective counties." No specifics were provided for local officers, as to types of taxes to levy or permissible amounts. Under the more comprehensive statute of 1840, counties were authorized to collect one-half the amounts levied for the Texas Republic. The language of the 1840 statute allowed local licensing, at a charge of one-half the license tax levied by the republic; however, since brothels were not taxed by the Texas Congress, they also should have been free from local taxes.

20 The city already had acted to regulate the brothel; Cf., Houston, Texas, Office of City Secretary, Minutes of the City Council of the City of Houston, Book "A," (1840-47), July 22, 1840, p. 36; amended, June 23, 1841.

21 Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Minutes of the Eleventh District Court of the State of Texas, Book "B," 147, and case file No. 375, Mayor, Aldermen & inhabitants of the City of Houston v. Board of Commissioners of Roads and Revenues (1841); use of the "liquor-vice" economy as a community resource is not uncommon in United States History; Cf., Dykstra, The Cattle Towns, 100-106, 121-131; and see Herman R. Lantz, A Community in Search of Itself: a case history of Cairo, Illinois (Carbondale: Southern Illinois University Press, 1972), 68-87; John C. Burnham, "The Social Evil Ordinance - A Social Experiment in 19th Century St. Louis," Bulletin of the Missouri Historical Society, XXVII (April 1971), 203-217.
22 Harris County Commissioners' Court, Minutes, Book "A," September 10, 1840, p. 64a.

23 Gammel, Laws of Texas, I, 1206, Sec. 24-30 (December 20, 1836); 1217-1223 (December 20, 1836); 1298-1299 (June 5, 1837); and cf. Charles S. Sydnor, The Development of Southern Sectionalism, 1819-1848, A History of the South, Vol. V ([Baton Rouge]: Louisiana State University Press/Littlefield Fund . . . of the University of Texas, 1948), 33-43; unlike other states of the antebellum South, Texas never had a self-perpetuating or legislatively appointed county court system. For a short time, county chief justices were elected by the Texas Congress. Cf., Gammel, Laws of Texas, I, 1208, Sec. 1 (December 20, 1836).

24 Harris County Commissioners' Court, Minutes, Book "A," July 19, October 24-27, 1839; April, 1840, pp. 40a-46a.

25 Harris County Commissioners' Court, Minutes, Book "A," July 19, 1839, pp. 38a-39a; Sydnor noted that the same lack of attendance characterized county government in other antebellum southern states, the difference being that Texas law required the presence of a majority of the commissioners in order to conduct business.

26 Harris County Commissioners' Court, Minutes, Book "A," April 29, 1841, p. 46a.

27 Harris County Commissioners' Court, Minutes, Book "A," October 24-27, 1839, pp. 42a-45a; the effects of epidemic disease upon all types of activity along the Texas Gulf Coast during the late summer and early fall months of the year, are discussed in a recently completed dissertation; cf., James Brooks Speer, Jr. "Contagion and the Constitution: Public Health in the Texas Coastal Region, 1836-1909" (Unpublished Ph.D. dissertation: Rice University, 1974), passim.

28 Harris County Commissioners' Court, Minutes, Book "A," September 15, 18, October 22, 1840, pp. 66a-67a.

29 Harris County Commissioners' Court, Minutes, Book "A," June 22, 1841, p. 71a.

30 San Antonio City Council, Minutes, January 18, 1839, p. 39.

31 San Antonio City Council, Minutes, June 21, 1842, p. 113.

32 San Antonio City Council, Minutes, April 23, 1840, pp. 72-73.
San Antonio City Council, Minutes, December 29, 1841, p. 105.

San Antonio City Council, Minutes, January 11, 1845, pp. 144-145.

Harris County Commissioners' Court, Minutes, Book "A," June 2, 1841, pp. 68a-69a.

Harris County Commissioners' Court, Minutes, Book "A," June 29, 1841, p. 74a.

Houston, Texas, Office of the City Secretary MSS, Minutes of the City Council, Book "A," (January 1840-January 1847), May 10, 1843, pp. 218-227; [Cited hereafter as Houston City Council, Minutes].

Andrew Forrest Muir, "Augustus M. Tomkins, Frontier Prosecutor," Southwestern Historical Quarterly, LIV (January, 1951), 316-323; William R. Hogan claimed that after his "term [of office] expired, Tomkins was indicted several times for gambling, and in 1840 for allegedly aiding his brother in killing a well-known local official in a riot in Galveston." Cf., Hogan, The Texas Republic, p. 250.

Harris County Commissioners' Court, Book "A," June 21, 1841, pp. 70a-71a.

Gammel, Laws of Texas, II, 183-202, Sec. 12, 24 (January 16, 1840); 1452-1455, Sec. 5 (April 28, 1846); 1653-1664, Sec. 18 (May 13, 1846); Sec. 18 (laws of 1846); the statute allowed the clerk of the district to "issue execution" against the property of delinquent taxpayers, based upon the lists of property drawn up by the assessor. Tax sales were treated as final levy and execution of a court judgment. Whether injunctive relief was available to the taxpayer is unclear. The Congressional intent to provide summary collections is unmistakable.

Gammel, Laws of Texas, II, 183-202 (January 16, 1840); 1653-1664 (May 13, 1846); (laws of 1846); the most complete discussion of nineteenth century tax law and tax titles is found in Howard J. Graham, Everyman's Constitution: Essays on the Fourteenth Amendment, the "Conspiracy Theory," and American Constitutionalism (Madison, Wisconsin; Wisconsin State Historical Society, 1968), Ch. 11.

Gammel, Laws of Texas, II, 183-202, Sec. 12 (laws of 1840); (January 16, 1840), 1653-1664, sec. 18-19 (May 13, 1846).
Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Minutes of the Eleventh District Court of the State of Texas, Book "D," p. 390, case file No. 1305, Mayor, Aldermen and Inhabitants of the City of Houston v. James M. McGee (1844); this case raises interesting questions beyond the routine seizure of land for taxes. The lawsuit involved a promissory note for back taxes, executed by the defendant McGee in an amount just over forty dollars. When the litigation was filed, McGee raised the illegality of the tax as a defense, alleging that the city had not adopted its revenue ordinance according to procedures stipulated in its charter. Attorneys for the city argued, successfully, that the "statute of frauds" barred McGee from raising the potential illegality of the tax as a defense. The contract between the defendant and the city was binding, even though the original city tax may have been illegal. (The statute of frauds requires that contracts in excess of a certain amount of money be reduced to writing. The city attorney seemed to be arguing that the statutes of the Texas Republic and official acts of the city council were inadmissible once two parties had reduced an agreement to writing.) That the city could legitimize illegal acts by executing a contract seems an unusual result.

Harris County Commissioners' Court, Minutes, Book "A," October 22, 1841, January 21, 1842, pp. 87a, 91a; and see, Hogan, The Texas Republic, 94, who reports that in 1845, lots in Houston sold for taxes fetched ten cents to two dollars plus costs.

Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Minutes of the Eleventh District Court of the State of Texas, Book "C," pp. 66, 336, 338, and case file Nos. 878, 895, Bergen v. Mayor, Aldermen and inhabitants of the City of Houston (1842); Book "D," p. 248, case file No. 753, Cone v. City of Houston (1843); in the latter case the plaintiff sought back pay for services rendered as city physician; and see, Houston City Council, Minutes, December 25, 1843, p. 250, discussing the "burthensome duties" and "small recompense" of the city marshal.

Houston City Council, Minutes, March 27, 1843, pp. 212-213.

Houston City Council, Minutes, August 7, 1843, p. 233.

Harris County Commissioners' Court, Minutes, Book "A," April 7, 1838, pp. 17a-18a.

Harris County Commissioners' Court, Minutes, Book "A," April 7, 1838, July 6, 1843, July, 1847, pp. 17a-18a, 102a, 46b-47b.
Harris County Commissioners' Court, Minutes, Book 

Houston City Council, Minutes, March 15, 1841, pp. 
81-82; Harris County Commissioners' Court, Minutes, Book 
"A," January 19, 1844, January 9, 1845, July 13, 1847, 
pp. 114a, 122a-123a, 94b-95b; the tactics utilized by 
county government in this situation were precisely the 
same as those used by the government of the Texas Republic 
one or two years earlier. The Texas Congress employed 
especially the same devices to remove much of its worthless 
currency from circulation. Cf., Hogan, The Texas Republic, 
98-103.

Houston City Council, Minutes, May 4, 1846, p. 323-1/2; 
the city council minutes for this date consist of a news 
cutting from the Houston Morning Star, pinned into the 
minute book.

Harris County Commissioners' Court, Minutes, Book 
"A," April 7, 1838, January 1845, pp. 17a-18a, 123a; Houston 
City Council, Minutes, March 27, 1843, pp. 212-213.

Harris County Commissioners' Court, Minutes, Book 
"A," January 21, 1842, January 7, 1845, February 16, 1856, 
pp. 91a, 94a-96a, 114a, 122a-123a, 158b.

Harris County Commissioners' Court, Minutes, Book 
"A," January 19, 1844, January 7, 1845, 114a, 122a-123a.

Harris County Commissioners' Court, Minutes, Book 
"A," October 7, 1845, p. 4b.

Harris County Commissioners' Court, Minutes, Book 
"A," November 17, 1856, February 16, 1857, pp. 153b-154b, 
158b; and see, "An Act Supplementary to the several Acts 
relative to Direct Taxation," Sec. 5 (February, 1845), in 
Gammel, Laws of Texas, II, 1142 (February 3, 1845); the 
problems experienced by Harris County were probably widespread 
in Texas during this period. The pertinent portions of the 
statute cited above required:

that the county taxes hereafter levied, shall be payable 
in gold, silver, or exchequer bills only, or such 
county liabilities of the respective counties as the 
county or commissioners' court may direct; such county 
or commissioners' court shall have the privilege of 
giving a preference to one species of claims that may 
hereafter accrue over another; and if the counties are 
so heavily involved as to render it impossible to pay 
its current "Expenditures", and its existing debt, the 
latter may be postponed at the discretion of the county
or commissioners' court. Drafts issued by the [Texas] Government, receivable for direct taxes, shall not be receivable for county taxes. [My italics.]

The Texas Congress felt no inhibitions about placing the needs of local communities above private property rights or the sanctity of contract. Even more important, Harris County Court went further than merely declaring a statutorily-authorized moratorium on payment of local debts. The Texas law only permitted postponement, without consideration, of county debt payments. The local ordinances, which suddenly made county scrip non-transferable, worked a confiscation upon those who had accepted the paper as legal tender. In this action the county acted without statutory authority. The a statute permitting postponement of debt payments was adopted by the Texas Congress one month after the repudiation ordinance was passed by the Harris County commissioners.

58 Harris County Commissioners' Court, Minutes, Book "A," January 11, 1847, October 6, 1849, pp. 38b, 81b.

59 Houston City Council, Minutes, November 23, 1840, pp. 44-45.

60 Harris County Commissioners' Court, Minutes, Book "A," August 8, 1846, p. 25b.

61 Harris County Commissioners' Court, Minutes, Book "A," August 23, December 21, 1849, pp. 80b, 84b.

62 The bond issue as originally proposed by the County Court failed to gain approval in the Texas Legislature, Harris Court Commissioners' Court, Book "A," December 21, 1849, p. 84b.

63 Harris County Commissioners' Court, Minutes, Book "A," October 15, 1851, p. 108b.

64 Gammel, Laws of Texas, I, 1220-1221, Sec. 14-16 (December 20, 1836); 1306-1307 (June 5, 1837); the 1836 act gave the powers of commissioners of roads and revenues to the county court by mistake. The error was corrected in a special resolution passed June 7, 1837, by the Texas Congress.

65 Gammel, Laws of Texas, I, 1220-1221, Sec. 14-16 (December 20, 1836); III, 506-508, Sec. 7, 16 (January 23, 1850).

66 This authority was, however, reinstituted on a limited basis in 1854; cf., Gammel, Laws of Texas, III, 1449-1450, Sec. 5 (January 5, 1854).
Gammel, Laws of Texas, I, 1221, sec. 15-16 December 20, 1836); III, 507-508, Sec. 9-10 (January 23, 1850).

Harris County Commissioners' Court, Minutes, Book "A," July 19, October 20, 1838, pp. 23a-24a, 27a; the county did license toll bridges when a private entrepreneur built it on his own lands and then applied for permission to charge tolls.

Gammel, Laws of Texas, I, 1221, Sec. 16 (December 20, 1836); III, 507, Sec. 9-10 (January 23, 1850).

Harris County Commissioners' Court, Minutes, Book "A," February 20, 1855, pp. 135b-136b.

Harris County Commissioners' Court, Minutes, Book "A," November 16, 1857, May, 1858, pp. 181b-182b, 193b-194b.


"An Act to raise a Public Revenue by Direct Taxation," in Gammel, Laws of Texas, II, 199-200, Sec. 30-31 (January 16, 1840); Harris County Commissioners' Court, Minutes, Book "A," June 22, 1841, p. 72a.

San Antonio City Council, Minutes, April 23, 1840, pp. 69-72 (ordinances for control of the local slaughterhouse and city collector of taxes); Houston City Council, Minutes, May 10, December 25, 1843, pp. 218-227, 250 (debate over salary of city marshal); Galveston, Texas, Office of the City Secretary MSS, Minutes of the City Council of Galveston, Texas, Book "A," (1849-1855), March 8, 1850 (attempt by members of the city's Board of Aldermen to lower the mayor's salary); [cited hereafter as Galveston City Council, Minutes] these manuscripts have no page numbers, and the researcher must refer to them by date.

Gammel, Laws of Texas, II, 194-195, Sec. 18 (January 16, 1840).

Gammel, Laws of Texas, II, 199, Sec. 29 (January 16, 1840).

Gammel, Laws of Texas, II, 199, Sec. 30 (January 16, 1840); 1662, Sec. 26 (May 13, 1846).

San Antonio City Council, Minutes, April 23, 1840 pp. 69-72; Houston City Council, Minutes, June 6, 14, 1841, pp. 106-107; May 4, 1846, p. 323-1/2; money collected from
wharfage fees was, by far, the largest portion of Houston's income in 1846, amounting to about four thousand, five hundred dollars during that year. In 1857, three years before Houstonians repealed the wharfage tax, it netted the city over twenty thousand dollars--one third of the total city budget, and five thousand dollars more than revenues generated by ad valorem property taxes.


Gammel, *Laws of Texas*, II, 197, Sec. 20 (January 16, 1840).

Gammel, *Laws of Texas*, III, 508, Sec. 14 (January 23, 1850); one senses here a crude forerunner to the "private attorney general" doctrine; call it the "private state's attorney" authority.

San Antonio City Council, Minutes, February 15, 1840, pp. 56-58.

San Antonio City Council, Minutes, February 15, 1840, pp. 57-58; June 25, 1842, pp. 116-117; Galveston City Council, Minutes, June 9, 1854.

San Antonio City Council, Minutes, April 2, 1840, pp. 66-68.

San Antonio City Council, Minutes, April 23, 1840, p. 74.

Gammel, *Laws of Texas*, I, 1218, Sec. 3 (December 20, 1836).


Gammel, *Laws of Texas*, II, 434 (February 5, 1840); this act exempted residents of the city of Houston from road work, the only exception to a provision that "no person whatever shall be exonerated from rendering service on the roads in consequence of living or residing within . . . incorporated towns."

Gammel, *Laws of Texas*, II, 434 (February 5, 1840); III, 99-100, Sec. 7 (March 15, 1848); the amount of fines levied against absentees varied from statute to statute; two dollars in 1836; five dollars in 1840; one dollar, twenty-five cents in 1848.
The Legislature, in each case, stipulated that damages assessed against "defaulters" were to be collected by a justice of the peace, "in the same manner as in cases of debt..." Thus the action by the county court was neither an exercise of police power nor a utilization of taxing authority. The obvious reason to avoid referring to the default on road work as a misdemeanor, was to eliminate potentially costly and time consuming jury trials. The summary method of collection was somewhat analogous to the procedures for collecting delinquent taxes; however, using the government's tax authority would probably have raised objections among Texans.

A third category suggested by the nineteenth century law lexicons was that of "civil obligation." --a civil law creation loosely defined as a duty "which binds in law, and which may be enforced in a court of justice." Cf., Bouvier's Law Dictionary and Concise Encyclopedia, comp. by Francis Rawle (8th ed.; Kansas City, Missouri: Vernon Law Book Company, 1914), I, 448; this particular civil law remedy did not, however, enter Texas laws from Spanish sources. Of the few compliments Texans had for life under Mexican rule during the 1820's and early 1830's, they especially appreciated not being impressed for road labor. Modern regulatory statutes utilizing "civil penalties" as part of their enforcement machinery appear to adopt a system similar in concept to the imposition of noncriminal fines and forfeitures of the forfeitures of the mid-nineteenth century.

90Gammel, Laws of Texas, I, 1219, Sec. 10 (December 20, 1836); III, 100, Sec. 8 (March 15, 1848); the provision rewarding persons who sued a road overseer was deleted from the statute in 1848.

91Gammel, Laws of Texas, II, 95, Sec. 4 (January 28, 1839).

92Gammel, Laws of Texas, II, 446, Sec. 17 (February 5, 1840).

93Gammel, Laws of Texas, I, 1380, Sec. 6 (June 5, 1837); II, 705, Sec. 6 (January 14, 1842).

94San Antonio City Council, Minutes, May 18, 1844, p. 140.

95San Antonio City Council, Minutes, October 7, 24, 1837, pp. 11-14.

96San Antonio City Council, Minutes, August 27, 1840, p. 75.
San Antonio City Council, Minutes, September 7, 1841, pp. 91-92.

San Antonio City Council, Minutes, October 8, 1841, pp. 94-95.

San Antonio City Council, Minutes, June 21, 1842, pp. 114-115.

San Antonio City Council, Minutes, October 14, 1841, p. 97.

San Antonio City Council, Minutes, August 13, 1841, p. 131; men were expected to furnish their own tools for the work, and persons with carts were required to place their vehicles at the service of the city. For the cart and team, the city resident received an extra fifty cents compensation.

According to Betty Eakle Dobkins, who has provided the most complete overview of Spanish and Mexican water administration, the Spanish settled in dry areas of the state where farming by irrigation was feasible. (The primary exception to this conclusion was Nacogdoches.) Most of the Iberian peninsula being arid or semi-arid, Spanish settlers in New Spain sought similar climates in New Spain where they could practice the forms of irrigation agriculture familiar to them in the old country. (Dobkins also maintains that the Spaniards, finding areas where Indian tribes maintained well-developed water management systems, allowed those customs and practices to remain in effect.) There can be little doubt that the Spanish often chose their settlements on the basis of irrigability. San Antonio's water supply system was developed around the San Antonio River, San Pedro Creek and the artesian springs that fed it, and several acequias or irrigation canals that drew water from the aforementioned natural sources. Farmers and homeowners built small ditches from the main streams or canals to their property. By opening flood gates separating the private ditch from the main canal, local residents allowed water to flow onto their property. During periods of dry weather and low stream flow, the San Antonio mayor ordered all members of the corporation placed on "shares," allowed property owners to open their gates and draw water only at specified times of the day or night. Depriving a neighbor of his water was severely punished. And the city, which owned one-fifth of the water supply, found a valuable asset for its treasury during times of drought. Cf., San Antonio City Council, Minutes, March 26, 1840, p. 64; Betty Eakle Dobkins, The Spanish Element in Texas Water Law (Austin, Texas: University of Texas Press, 1959), Ch. IV, especially pp. 108-122; and see, Fogelson, The Fragmented
Metropolis, 29; Los Angeles, another city originally settled by the Spanish, exercised water management functions similar to those of San Antonio. Until the early twentieth century, the California city was involved in irrigation regulation.

103 San Antonio City Council, Minutes, March 14, 1838, April 23, 1840, pp. 19, 69.

104 San Antonio City Council, Minutes, April 20, 1844, p. 135.

105 San Antonio City Council, Minutes, March 14, 1838, January 25, 1839, pp. 19, 41; the city council made desultory attempts to enforce local ordinances which, apparently, were not very successful.

106 San Antonio City Council, Minutes, January 17, 1840, pp. 47-53.

107 Galveston City Council, Minutes, May 1, 1854; but see, Galveston City Council, Minutes, October 7, 1852. In the second instance the council acted on a petition from property owners who wanted the sidewalks. No evidence suggests, however, that such a petition was required.

108 Galveston City Council, Minutes, March 15, 1854, report of the Street Committee.

109 No specific charter authority existed, allowing Houston to charge sidewalk improvements to adjoining property owners. A strict judicial interpretation of the city charter would have made the action ultra vires [without legal authority] and void. Assuming, however, that local residents were foolish enough to litigate the question, there was no stopping the city from forcing a resident to pay for street paving, if he decided not to pay for the sidewalks.

110 Houston City Council, Minutes, December 29, 1840, January 2, 1841, pp. 50-51.

111 Houston City Council, Minutes, May 4, 1846, p. 323-1/2.

IV--THE TOWN AND THE SOUTHWESTERN FRONTIER

The institutional interrelationships that facilitated development in the southwestern--and probably southern--United States, have never been fully discussed by historians. Until recently, hundreds of antebellum market towns and political centers such as Houston, Galveston, and San Antonio, never seemed very important to scholars studying a society of self-sufficient planters and independent yeoman farmers. Historians also have failed to examine the many close connections existing between rural dwellers, and people living in those "spawling groups of cabins and shacks," recognized as towns by mid-nineteenth century Texans. Men involved in the "town mad" speculations of the Texas independence period also facilitated agricultural settlement in Brazos River bottomlands and the East Texas Black Belt. Successful nonrural enterprises increased the viability of Texas local government institutions. Townsite promoters helped weave political, economic, social, and human resources into the fabric of a cohesive society. On the other hand, planters and farmers also were important to continued survival and growth of future Philadelphiases on the Gulf Coast.

Even in the South, long portrayed as overwhelmingly rural, vigorous government and local prosperity depended in large measure upon establishing and maintaining mixed populations of agriculturalists and citified settlers. Nonrural
development benefited not only the successful townsite promoter, but the entire surrounding area. County governments were strengthened by the existence of a flourishing town. Without the appearance of modest urban growth within territories they administered, county commissioners struggled to perform their most basic tasks. Town development was closely linked to government stability and efficiency, and the easing of fiscal difficulties that had plagued Texas local institutions since the earliest days of the republic.

Texas city and county officials recognized this urban-rural interdependence by settling differences, and instituting beneficial programs for cooperative government administration. By the early 1840's, local officials were ready to stop their disruptive feuding, and replace embarrassing litigation and scandal with numerous and effective joint government projects. Commissioners and aldermen negotiated and then carefully allocated responsibility for delivering specific government services, either to the county or municipality. Intergovernmental cooperation allowed local officers to concentrate on fewer administrative tasks. Through division of labor, town and county officials hoped to avoid costly and inefficient duplication of effort. Rational organization improved mobilization and disposition of frontier communities' government resources. Town-county administrative cooperation became an extremely useful tool for development during the years of Texas independence and antebellum statehood.
Joint government efforts often resulted directly from economic competition among frontier towns. Ambitious municipal authorities sought to establish advantageous lines of communication and transportation into rural areas. Helping to build a bridge here and a road there, town promoters and settlers grasped for control of local and regional commerce. Perhaps, the economic power generated by trade would provide the capital to finance more auspicious projects in the future. Town leaders of the 1840's organized and supported these tentative excursions into the hinterlands surrounding new communities; even as they labored for modest goals they dreamed of mounting iron horses and riding them in conquest of vast commercial empires.

Houston city aldermen and Harris County commissioners responded to divisions in local authority and to the needs for public services, with numerous arrangements for intergovernmental cooperation. Joint efforts included provision for regular communication and consultation, utilization of the same personnel and facilities, building of roads and bridges, law enforcement, incarceration of prisoners, public health, and supervision of the poor.

Even as Houston aldermen proposed to pay city debts by delaying construction of badly-needed street improvements, they actively supported projects to build roads and bridges into the county. In November, 1842, the city council designated a three man committee to confer with county commissioners concerning roads and bridges leading into the
city. Aldermen recommended "that a subscription be raised" to pay for building the bridges. The roads, it was hoped, would then be marked out and maintained by the county, "according to law." The following month, the Houston city council voted money for construction of five bridges outside the city limits. And, at the January, 1843 meeting of Harris County commissioners, a committee was authorized to inquire "into the feasibility of contracting with the city of Houston for making bridges over the streams on the approach to the city. . . ."  

Free bridges were an important link for frontier towns that harbored ambitions of improving their accessibility and expanding their influence in the countryside. Harris County, more embarrassed financially than the city of Houston during the mid-1840's, took advantage of entrepreneurial demand for easier travel. By January, 1844, the cooperative efforts of the previous year apparently had proved their worth. County officers unabashedly solicited the city's aid for rural road and bridge construction, a responsibility expressly assigned by statute to the commissioners of roads and revenues. In a resolution urging cooperation, county officials emphasized common interests in road improvement. "The City of Houston," the commissioners iterated, "is particularly interested in the good state of the routs [sic.] leading to the City, without which there is danger for said City of losing [sic.] its trade altogether. . . ." Failure to improve the roads,
county officials prophesied, would oblige "the inhabitants of the Brazos and other points of the County to look for other channels of exportation and other markets. . . ."
The best way to eliminate this threat to Houston's commerce was city-county cooperation in road improvement projects. "By joining the efforts of this Board to those of the Corporation of Houston," the commissioners urged, "greater means can be provided and better basis given for a solid, and permanent work. . . ." The Harris County board appointed a four man committee, headed by former Houston alderman E. S. Perkins, to confer with members of the city council "whenever and as often as they think proper." Commissioners wanted a report of the joint committee's deliberations and recommendations, and proposed that the county chief justice call a special meeting of the board of commissioners as soon as the report was prepared. At that time Harris County government officers hoped "to meet in Common Council with the City Council of the City of Houston and deliberate on said report and pass resolutions in Common."

Roadbuilding in Harris County received added impetus from Houston city treasury surpluses. On May 4, 1846, aldermen on the council's finance committee proudly reported "that the city for the first time since its incorporation" was "free from debt. . . ." With extra money becoming available later that year, the committeemen considered "improving the most important roads leading from the city" as a matter
of "first importance." Road construction, in the aldermen's opinion, would help the city retain commercial advantages, and "would be liberally aided by the owners of real estate, and the merchants in general." Improved transportation, "to facilitate the intercourse between the planter, the merchant, and the mechanic," needed only the efforts of the council and citizens of the city; alternatives were unacceptable.

By 1847, at least two city road building projects were under way. The county court officially acquiesced in construction, by the city, of one road toward Spring Creek and another toward "Washington." Commissioners emphasized each time that the city would bear the entire expense of the ventures. David G. McComb, in his recent Houston study indicated that until 1850, city road improvement attempts continued. Spurred by loss of trade to the town of Lavaca, Houstonians held mass meetings favoring road construction, and even devised a primitive ox-driven grader composed of wooden wedges, which swept mounds of prairie into the road-bed and left shallow ditches on each side for drainage. During the pre-Civil War decade, when most city development resources were drawn into railroad development, occasional city-county cooperative efforts still aimed toward improving local roads and bridges. Although no evidence exists that the span was built, in 1858, Harris County commissioners appropriated one thousand dollars to aid the city in building a suspension bridge across Buffalo Bayou.
For all the effort and rhetoric, however, travellers in antebellum Texas generally described the roads as worse than terrible. "Execrable" was Frederick Law Olmsted's epithet for Gulf Coast roads in the mid-1850's. Throughout the pre-Civil War period men cursed the rains that turned highways into endless bogs intersected by flood-swollen streams and rivers; or they cursed the dust that choked man and beast and made travelling a nightmare. By the late 1850's, however, Houston could boast one of the best developed road networks in Texas. Contemporary maps attest Harris County's persistence and enterprise in road construction.

Buffalo Bayou navigation between Houston and Galveston formed another part of local transportation and communication facilities, as important as county roads and bridges. No other aspect of local government service was of greater interest or possessed greater potential value to planters and townspeople, than maintenance of this narrow waterway linking inland settlements to outside markets. Both city councilmen and county commissioners provided more than resolutions and joint committees to keep the channel open; they provided money—handsome appropriations in terms of the small, struggling nature of Texas local government during the early 1840's.

As was true with bridges and highways, Houstonians assumed a leadership role in protecting bayou navigation. Resolutions appearing in the city council minutes reflected
aldermanic exasperation with boat owners who did not quickly remove wrecks or grounded vessels from the channel. In April, 1840, Houston Mayor Charles Bigelow and Alderman Ferdinand Gerlach were appointed a committee, presented with a thousand dollar budget, and authorized to take "whatever steps they think best" to "remove the obstructions to the navigation of the Bayou. . . ." Town fathers "requested[ed] the concurrence of the Commissioners of Roads and Revenues and the citizens generally" in any action taken by the committee in removing the sunken steamers. One week later county commissioners instructed its committee on roads and highways to cooperate with the city council committee "in removing the obstructions of the Buffalo Bayou. . . ." The county appropriated five hundred dollars for the project. Again in 1841, the city of Houston sought county approval and support in freeing navigation along the bayou.

Houstonians perceived vividly the hazards to community development posed by inadequate protection for Buffalo Bayou navigation; they perceived also, the legal hazards arising from interference with private property, despite a present threat to town prosperity. Houston aldermen sought, and the Texas Congress quickly granted, statutory authority to protect navigation, without fear of liability to shippers or boat owners. Subsequent efforts at removal or salvage in the bayou between Houston and Harrisburg,
were supported by a wharfage tax of "two and a half cents per tonnage" upon all vessels docking in the Bayou City. The city government also counted upon assistance from the townspeople in removing hazards to navigation. Historian William Ransom Hogan recounted one occasion where over one hundred men from the town turned out to free the steamboat General Houston after it had grounded along one of the narrow curves in the channel between Harrisburg and the city's wharves at Allen's Landing.

That both the city of Houston and Harris County were served by the same personnel undoubtedly facilitated local government cooperation. It was common for a citizen to serve one term of office on the city council, and then move the following year to the board of county commissioners. George Fisher served as Harris County commissioner and as Houston City recorder, while Justin Castainie simultaneously occupied both offices during 1845. E. E. Perkins, John Vivien, Michael De Chaumes, John Carlos, Benjamin A. Shepherd, Thomas Stanbery, and probably numerous others served as aldermen, and, during different years, as members of the commissioners court. John W. Moore and James B. Hogan served as Harris County sheriffs, and also as Houston aldermen. Mayors and county judges often appointed to joint city-county committees, men who had either experience in the other government, or family relations in positions of influence.

Joint occupancy, or at least mutual availability of
city and county public property also helped minimize inefficiency created by two local governments with overlapping jurisdiction and similar functions. Along the Gulf Coast, cities and counties maintained separate public buildings. But public facilities were shared when needed, and officials of one government did what they could for the others' benefit and convenience.

As a first step, proprietors of the city of Houston donated land to Harrisburg County for a courthouse. A committee from the county's board of commissioners called upon officials of the corporation for "title to the square of ground appropriated by them for County Buildings." For a town that, in 1837, was hoping to continue its boom and desired the added business of county seat court days, the action was not unusual. Yet, as Stanley Elkins and Eric McKitrick pointed out many years ago, county governments in the southern United States were at times forced to go into debt purchasing land for a courthouse site. The Houston promoters who made a gift of their real estate to the county, were neither so generous nor farsighted in their disposition of property set aside for the national capital of the Texas Republic.

Other petty courtesies cemented local interrelationships in ways beneficial to both Houston and Harris County. A portion of the courthouse square, ideal for its central location, was donated to the city's volunteer fire department for construction of a station house. During the con-
struction of a new county courthouse and jail over a two year period from 1849 to 1851, aldermen made rent-free rooms available in the city hall for temporary use by commissioners and local judicial courts.

In San Antonio and Bexar County, government officials did not immediately adopt the United States practice of constructing separate city and county facilities. Common sense, and a century of Spanish and Mexican rule under unitary local government, spoke against the practice. Local officials compromised with United States customs by making extra sets of keys for public buildings instead of extra public buildings. Thus, in 1848, when San Antonio aldermen received a request from the county for cooperation in building a new jail, response was immediate and favorable. By the time city council had finished with the county's proposal, it had burgeoned into a much more ambitious project for a combined courthouse, city hall, and local jail. To match the county's generous commitment of funds for the new building, the aldermen provided a centrally-located site near the city market, rock and other building material made available by demolition of old public facilities, services of the city surveyor, and commitment for sale of valuable property belonging to the corporation. Proceeds from sale of city real estate would help to defray construction costs. A joint committee of aldermen and county commissioners was appointed to oversee planning and construction.
As city and county officials willingly shared the burden of projects to increase real estate values and improve commerce, they sought a *modus vivendi* for the less desirable tasks of incarcerating incorrigibles, and caring for and treating the sick and destitute. In all probability commissioners and aldermen would have preferred saddling the other with full responsibility for hospitals and jails. The halt, lame, poor, and other flotsam of frontier society were not influential constituents. And while local officials and community leaders had no strong desire to provide welfare assistance, pretensions to civilization required attention to indigents and criminals.

The law of the Texas Republic placed the responsibility of providing "for the support of indigent, lame, and blind persons" upon county commissioners of roads and revenues. Aldermen and commissioners sought common solutions for the ever-present problems of vice, disease, and poverty, but not before county officers had attempted to deal with them on their own. The job of caring for paupers was, in 1839, made the responsibility of local justices of the peace. Within their respective precincts, each justice "designate[d] a time and place to let out to the lowest bidder, all paupers" who resided there. The justice then certified his proceedings to the board of county commissioners, allowing the person recording the lowest bid to be paid for pauper support from the public treasury. Despite statutory
regulation to the contrary, indigents "within the Chartered 
jurisdiction of the City of Houston" were excluded as vic-
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tims of the county's largesse.

Whether this arrangement of farming out the poor 
failed from an inadequate population of paupers, or from 
lack of bidders, or both, is unclear. Within a year, 
commissioners were beginning to look toward cooperative 
efforts with the city as a means of spreading the burden 
of indigent care. Commissioners appointed a three man 
"standing committee . . . styled the directors of the Poor 
for the County of Harris to cooperate with the Common 
Council of Houston . . . in the support of the poor. . . ." 
These directors possessed authority, delegated from the 
full board of commissioners, to "make provisions" for the 
support of indigents; they could operate under rules 
formulated by a joint city-county committee; and they had 
prior authority to enter into contracts binding upon the 
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county.

Throughout the remainder of 1840 and early 1841, 
Houston city councilmen proved unresponsive to commissioners' 
appeals for indigent assistance. Texas statutes explicitly 
assigned to county governments, responsibility for care of 
the poor. Moreover, other intergovernmental difficulties 
temporarily stood in the way, of effective cooperation. 
Commissioners persisted in defiance of court decrees 
condemning the county jail as a public nuisance and ordering
it removed from Courthouse Square in the center of the city. Houstonians, for their part, had succeeded in enjoining commissioners from collecting taxes within the city limits, effectively crippling the county treasury.

The board of county commissioners then added to everyone's exasperation by imposing a charge of five dollars for every city prisoner incarcerated more than one day in the condemned jail.

In June, 1841, after several years of bickering, commissioners and councilmen apparently resolved to reconcile their differences and rationalize their policies. On June 22, the county board again appointed a three man committee "to confer with a like committee from the Board of Aldermen, and to ascertain what arrangements can be made in relation to the Hospital & Poor and . . . the injunction sued out by the city against the County. . . ." The city council responded the following day. The municipal committee on hospitals and paupers was mandated to negotiate an agreement with the commissioners encompassing the poor, the sick, and the city hospital.

The final city-county agreement--a formal contract entered upon the board of commissioners' minutes--dealt with the poor, the sick, the hospital, the county jail, and the outstanding injunction preventing county tax collections. Houston aldermen agreed to dismiss their anti-tax injunction and provide rent-free hospital facilities for county
residents. County commissioners assumed responsibility for keeping "all paupers within the limits of the Corporation at the Expense of the County." Commissioners also allowed the city to use the county jail, provided the aldermen paid "the turnkeys fees & the Sheriff for feeding all such prisoners."

Frontier county and town governments made marriages of convenience. Local government officers had created de facto unitary local administration, resembling in many respects, Mexican municipal institutions mid-nineteenth century Texans vehemently professed to despise. In numerous utterances, local government officers and leaders recognized the invaluable if not indispensable nature of these inter-relationships for both rural and nonrural interests. Strict adherence to the inefficient separation between county and town governments required more settlement and greater prosperity than existed in mid-nineteenth century Texas.

Responses to local government difficulties in ante-bellum Texas thus depended upon voluntary group action, mildly coercive governmental arrangements that encouraged citizen participation in civil affairs, active assertion of local police powers, and a broadly implemented inter-governmental cooperation between cities and counties. With all their frenetic activity, men involved in building Texas frontier settlements recognized and acted upon certain basic understandings about their relationship to society.
Personal financial and physical well-being was so inter-twined with the well-being of the locality that the two were almost inseparable. Planters', merchants', and mechanics' realizations of the relationship between private and public welfare generated forces that, better than any coercion, demanded obedience to local regulations, fulfillment of civic responsibilities, and the careful, cooperative husbanding of local resources in furtherance of local development. Houston's road-building projects generated strong public support. A threat to the city as well as to individual entrepreneurs roused Houston and Harris County residents to remove sunken steamboats that interfered with Buffalo Bayou navigation. Coupled to this desire for local development was an endemic suspicion of outside persons, individually and collectively engaged in similar efforts. Nonlocal competitors who threatened personal and public prospects were to be impeded if possible, by any available legal means.

Communities of sorts had developed in these frontier towns and counties— to use Daniel Boorstin's term, "competitive communities" based upon boosterism and local development goals. Ad hoc collections of individuals seeking to make their fortunes, sank roots and very quickly committed themselves to promoting local growth and prosperity. Where individuals failed to appreciate this need for civic participation, local government institutions and regulations provided an explicit catalogue of public
expectations. Personal acquisition was, of necessity, tempered by a sensitivity to community needs; and in turn local governments nourished personal acquisition and the release of individual creativity.

Cooperation enabled town and county officers to mobilize community support for worthwhile projects, utilize more effectively police and tax powers, improve local facilities, and increase public services. Gradually, local leaders administered newly-established modes of institutional cooperation, reaching partial solutions to government problems created by poor organization or inadequate budget. Each time local officials responded effectively to community needs, they reduced constraints imposed upon safety and settlement by contemporary Texas conditions. Progressively and cumulatively, Texas local officers laid the foundations and provided brick and mortar for the ediface of established society.

For Texas local governments, arriving at the promised land of economic self-sufficiency was a task not easily accomplished. Emergence of one town as a commercial and political center within a given local area helped to quiet financial instability and promote the settlement and advancement of society. Frontier towns throughout Texas possessed advantages not available to counties. City councils obtained access to fiscal resources, independent of unreliable ad valorem property taxes and inade-
quate licensing fees. In addition to tax revenues, town aldermen could rely upon a municipal corporation's "privileges and franchises" for additional money. Texas maritime municipalities were authorized to levy special taxes upon interstate and international commerce and transport. In Houston, city councilmen elevated wharfage fees authorized by the Republic of Texas Congress from a common tax to a hallowed institution. Houstonians frankly acknowledged in 1846, that wharfage, specially earmarked by statute for Buffalo Bayou maintenance, was a main support of the city's general budget. With the extra money, aldermen retired city debts and expanded important, but unauthorized construction of county roads. Galvestonians collected special "harbor dues" and controversial passenger head taxes. San Antonio controlled a large portion of the water supply for the city and surrounding rural areas. Most city governments rented booths or issued daily vending permits for local market places and slaughterhouses. Although the markets generated revenue, they were not as renumerative as towns' other special privileges and franchises.

Many Texas towns and counties also owned tracts of land for subdivision and sale. Unlike property condemned for taxes, government-owned land usually could be obtained with clear title, and commanded fair prices when sold at auction. Statutes organizing new Texas counties usually authorized local commissioners to obtain title to a townsite
and surrounding real estate. Officers located the county seat on this property, subdividing the land, selling lots, and establishing a town. Texas statutes often specified that proceeds from sales of county property be utilized for courthouse, jail, or school construction. County commissioners also were entitled to claim eighteen thousand acres of land for local school support.

Chartered cities and towns also obtained title to vacant lands within the limits of the corporation. The geographic size of some Texas towns indicates that aldermen either enclosed surrounding territory to establish municipal ownership, or included rural areas within city limits for tax purposes. Texas towns generally were much larger geographically than incorporated municipalities of comparable population and maturity in other parts of the United States. City of Houston boundaries encompassed nine square miles after 1840 charter amendments became law. San Antonio, Victoria, Goliad, and other settlements founded while Texas was under Spanish or Mexican control, claimed absolute legal ownership to even larger landholdings. San Antonio and Goliad, with handsome four league tracts, were among the largest municipal landlords in Texas.

Emergence of a successful town often worked in many ways to end the drought of fiscal resources that plagued local governments during their earliest years of Texas independence. Both the municipality and surrounding county benefited from a more stable and mature economy.
Growth of business activity and economic opportunity attracted merchants and artisans, and promised greater regularity in collection of municipal and county business license fees. Towns also tended to increase land values in surrounding rural areas. Developers and speculators formulated elaborate, generous schemes to obtain the privilege of donating a portion of their lands for establishment of county seats. Providing prospective settlers with social amenities, and convenience for obtaining supplies, conducting business, and marketing produce, towns increased the value of nearby rural property retained by the developer. Convenience and rising property values encouraged farmers, ranchers, and planters to remain on the land, rather than moving or being driven to another homestead. The rural dweller's decision to remain and make his home entailed road work, tax payments, and perhaps assumption of other civil responsibilities. A prosperous town thus increased leverage for the county assessor-collector in his annual bouts with the citizens. With that leverage came stronger and more viable local institutions.

Texans recognized that new towns were important elements in local government administration. County commissioners met regularly only four times per year. State district courts, with requisite mandamus and injunction jurisdiction to protect or supervise local government, convened once every six months at each location on its
circuit. With the time lag between sessions, and the ease of obtaining continuances, court intervention was more likely to inconvenience local government officers rather than provide effective oversight. Justice-of-the-peace courts operated on a regular basis, but with limited jurisdiction. Until reforms were effected in county organization in 1845, boards of commissioners of roads and revenues remained in disarray, meeting sporadically and with great difficulty. Special commissioners' meetings were next to impossible. City councils or boards of aldermen were the only elective political agencies in Texas that attempted even a pretense of ongoing supervision over government administration. Although city councils could be negligent about their duty to hold regular weekly meetings, proximity within town limits also facilitated special sessions when the press of business became too great, or when emergencies required frequent aldermanic attention.

Texas townspeople were not bashful in impressing upon planters and farmers the important connections between urban settlement and government institutional viability. Municipal leaders emphasized the need for nonrural development as a basis for legitimating requests or demands placed before county officials or Texas Congresses. Galvestonians, for example, seized numerous opportunities to remind legislators of their city's critical importance to the welfare of the Texas Republic. Barely five years old,
property values in "Galveston City and Suburbs" already had increased "to the amount of several millions of dollars." Island City residents memorialized the Texas Congress for improved coastal defense, punctuating petitions with reminders that "the Government of Texas . . . has been mainly supported by the duties collected at this port." Community needs, once perceived, took precedence over all other governmental activity. Citizens expressed outrage that the government of the republic persisted in "the prodigal and unavailing formality of fitting out diplomatic personages" while the Port of Galveston was left defenseless. Townspeople decried discriminatory taxation, resulting from general government inability to prevent evasion of Texas revenue laws at other locations on the Gulf Coast, and along the border with the United States. Galveston, and the interior served through the city's port, thus supported the Texas government, "whilst other portions of the Republic, comprizing [sic.] together a population of greater magnitude . . . , are exempt from bearing a just share of the public burdens."

Recognizing the value and utility of Texas' towns and cities, state lawmakers encouraged formation of new municipal corporations. According to William F. Evans, chairman of the Fourth Legislature's House Committee on Privileges and Elections, the alternative of depending solely upon county government as they operated in antebellum Texas was not acceptable. Evans' committee, considering
memorials and remonstrances on the subject of incorporation of the town of Dallas, ruled unanimously in favor of granting a charter. Evans echoed prevailing beliefs "that much benefit results in point of morals, order and improvement, from well regulated corporations. . . ."  

In intangible ways also, the town served rural folk who sought relief from bucolic loneliness at dance halls, saloons, theaters, brothels, churches, or simply with good company. For every man who sought solitude, numerous others cultivated human society at every available opportunity. Francis R. Lubbock paid a premium price for his ranch, so he could commute easily to Houston, and continue serving effectively as Texas District Court clerk. The young rancher found other amenities in his Simms Bayou location. Lubbock considered accessibility to a circle of friends in the nearby village of Harrisburg a special blessing. Equally valuable was the location of his homestead along a well-travelled route, promising numerous visitors and good "conversation" at home. In more remote reaches of the Lone Star domain, appearance of travellers and requests for lodging usually evoked great satisfaction and show of hospitality.

Lewis Birdsall, by 1838 a moderately prosperous Harris County farmer, communicated in typical fashion, the town's importance for country folk. In a letter to his grandson, Birdsall expressed great satisfaction with his Texas accomplishments. He had "builted a small framed house,"
was harvesting good crops, and would "soon have plenty of pigs and chickens." Yet Birdsall seemed to derive from his location, as much satisfaction as he received from his husbandry. The farm was situated on Buffalo Bayou, a very short distance from Harrisburg, and only "a few hours sail from the City of Galveston or Houston." Accessibility to town guaranteed the farmer "not only all the necessaries of life but the luxuries" as well. Birdsall also was delighted that each day brought human commerce past his farm; he greatly appreciated the "fair prospect of boats passing frequently 3 or 4 in a day . . . ," and took comfort in the human promimity provided by Buffalo Bayou transportation. Yet for all of Nature's bounty, Birdsall lamented the loneliness of country life. "I feel as if I had a home," he closed his letter, "nothing lacking to complete our happiness but good company."

Municipal corporations and county seat towns were important symbols in the establishment of Texas government institutions. Organization of local government, selection of a county seat, sale of town lots, construction of courthouse and jail, election of officers, and especially the opening and operation of the courts, were events that marked important initial successes in settling new lands. Promoters, speculators, and ordinary citizens recognized the advantages provided by government organization and utilized the new institutions at their disposal to advertise for more newcomers. With Texas courts promising valuable
protection for life and property, courtrooms became publicity centers to boost local development. Local residents shrewdly transformed grand jury reports into grandiloquent commercials for local settlement. Utilization of the grand jury as a publicity medium at once demonstrated that courts were open and accessible, and that local citizens were committed to orderly civil government. Harris County grand jurors extolled the benefits to be gained by settlement in the city of Houston or the surrounding area. District Judge James W. Robinson received highest commendations for his "urbanity and kindness," and for the "impartial manner in which he . . . discharged his duties on the Bench [] enforcing the Laws with moderation but Certainty and blending Mercy with Justice. . . ."

All participants in the Harris County courts received recognition and praise from the grand jury. District Attorney A. M. Tomkins was complimented for the "energetic and satisfactory manner in which he . . . conducted his prosecutions for the Republic." Members of the bar received accolades for their "Elevated Character," and were recognized for "the social feeling[.] the dignified deportment and the enlightened ability with which they discharged their duty to their clients."

With a view to attracting as many immigrants as possible, grand jurors reserved their highest praise for people settling Texas and for Texas itself. In the opinion of the grand jury of 1838, a society as richly
endowed as Harris County was absolutely certain to increase further in wealth and greatness. Glossing quickly over its own work of issuing indictments and investigating wrongdoing, the grand jury expressed "great pride" at the "rapid diminution of crime and the improving condition of society. . . ." The decline in vice and crime, the jury concluded, could only be "attributed to the recent and still increasing emigration into Texas of an industrious and enterprising people[,] bringing with them Wealth, talents and moral worth." The jurors prophesied that Texas would soon be at the pinnacle of nations:

Happy in our present Condition with brighter Prospects still ahead it is with no ordinary satisfaction that we Contemplate the day as nigh at Hand when our republic shall rank in Religion[, ] Education and Talents with [the] proudest governments on the Globe as She is now equal if not superior in all the advantages of and the various Capabilities of valuable production.63

Subsequent grand juries continued the litany of self-congratulation. By 1841, the jury was exhorting Harris County residents to embark upon a "great work of moral reformation." The jurors--an august group including Houston city proprietor Augustus Chapman Allen and many local government representatives--installed themselves as the leading edge of the great crusade. With Allen as their foreman, the jury summoned all citizens to help in improving the police and in eradicating "duelling, gaming, and intemperance; three of the most pernicious vices that ever befell
the human family. . . ." Grand jurors attributed duelling's disrepute, not to punitive laws, but to the "kindly and happy influence, exerted by the female part of [the] community. . . ." Even more important, jurors exulted that Houston retained "not one fourth the number of drinking establishments there were formerly." Houstonians had transformed saloons into "large commercial houses." Industrious businessmen and cotton traders replaced the "drunkards and loafers" who formerly lounged in the street. Prospective Texas settlers and homebuilders were assured there would be no turning aside from the "deep and mighty current" of reform. The grand jurors would not accept alternatives to "good order and the proper administering of the laws. . . ." Allen and his associates envisaged an imminent future, when "Texas shall be as preeminent for morality and good order as she is now for Chivalry and patriotism." 64

Texans had some justification for pride over their success in cultivating a "proper sense of moral obligation." 65 The vigorous activities of the grand juries evidenced a strong desire among influential citizens to lessen violence and perhaps vice. The crowded, shameful condition of the Harris County jail yielded further indication that local officers persisted in their efforts to enforce the laws and ordinances. A strong anti-duelling statute, enacted in 1840 by the Congress of the republic, greatly lessened, although
it did not obliterate, a barbaric practice. One foreign observer visiting Houston in 1839, became so carried away that he described Texans as "disposed to enforce the law with all their might," and "rehabilitate themselves in the eyes of other nations," from an undeserved reputation for "violence and murder." Other Europeans, however, considered Texas a place of refuge for the "human 'scum that waves of advancing civilization bore before them. . . ." In all probability, the deportment of most Lone Star inhabitants fell somewhere between the extremes described by the foreign travellers. But there was no mistaking frontier society's support for legal institutions as instruments of social order, and as indispensable contributors to the painstaking processes of growth, settlement, and development.

By the late 1840's and early 1850's, Texas governments' investments of money, ingenuity, cooperative statesmanship, and voluntary action were beginning to reap dividends of stability and self-sufficiency for local institutions. Town and county governments regularized legislative and administrative operations, balanced budgets, settled outstanding debts, and provided such necessary services as law enforcement, court protection, land distribution, and political and commercial intercourse. During the decade following Texas' annexation by the United States, local institutions supported extraordinary movement,
expansion, and growth.

In most instances, Texas towns and counties could not generate from taxes and contributions, the fiscal resources needed for ongoing government administration. City government officials continued to rely heavily upon municipal privileges and franchises: Houston and Galveston relied upon wharfage fees or harbor dues; San Antonio utilized revenues from water rents and land sales. As the decade of the 1840's came to an end, municipal governments had begun or were about to begin a second surge of activity to broaden commercial interests and influence. By 1850, the city of Galveston was investing heavily in canal projects. Leaders of all three cities were actively considering railroads as transportation alternatives.

For Texas counties, reorganization statutes enacted in 1845 and 1846 by the Ninth Congress of the Texas Republic, and the First Texas State Legislature, contributed greatly to establishment and maintenance of institutional stability. Under the new laws, justices of the peace were stripped of power as county commissioners, retaining only their judicial functions. Texas legislators replaced unwieldy boards of commissioners of roads and revenues with smaller, more reliable, and more democratic five-member county commissioners' courts. Increased responsibility for each commissioner placed added pressures upon him for conscientious performance of official duties. Reorganization alleviated substantially
the problems of securing attendance of a quorum for regular county government meetings, and facilitated emergency sessions whenever commissioners deemed them necessary.

County fiscal stability in Texas proved to be a more complex and long range achievement. Lacking the privileges and franchises available to the towns, counties continued to benefit from municipal revenues utilized in cooperative local development projects. Throughout the late 1840's and early 1850's commissioners combined voter-approved extra taxation, improved collection of regular \textit{ad valorem} levies, and generous state aid in attempts to balance local budgets and cover current expenses. In 1848, the Texas Legislature remitted to the counties a long-coveted source of local revenue. State lawmakers permitted fines and forfeitures taken for violation of Texas statutes to remain in county treasuries. County commissioners also applied to the Legislature for authority to levy special taxes for capital improvements. Texas lawmakers customarily conditioned their approval of extra taxes with the requirement that levies be accepted on referendum by local residents. During the mid 1850's, legislators' largesse reached new heights, as they voted to remit to the counties nine-tenths of the state's \textit{ad valorem} property taxes.

Despite the beneficence of the Texas Legislature, the performance of county governments in financial matters was, at best, uneven. In relatively wealthy and settled Harris
County, commissioners were able, by 1853 or 1854, to put their finances in order. Until the outbreak of the Civil War, the Harris County treasury contained a budget surplus that increased gradually from year to year. Commissioners were even permitted the luxury of settling old debts with the holders of county paper that had been repudiated a decade earlier and never repaid.

The many promoters and settlers who entered Texas from east of the Sabine during the three decades after 1822, had established local governments upon solid legal, political, and economic foundations. They had indeed arrived "with their constitution in their pocket," transforming the Spanish institutions they encountered to fit local government images learned in the United States. Self-consciously, Texans had revolted against Mexican institutions; and contemptuously they had rejected Mexican culture. Yet necessity forced the citizens of the Texas Republic to retain many of the institutions they professed to despise. Despite unavoidable lapses into acrimony, city-county cooperation during the antebellum period vindicated the Mexican unitary local government practices. Reasonable men acknowledged that towns and counties would best be served by asserting common interests and objectives through joint efforts. Even San Antonio's land ownership, so resolutely opposed by early North American settlers and county
officers, ultimately received broad community support as a basis for the growth so eagerly sought by all antebellum Texas towns.

Growth and change in human living experiences ordinarily and logically connote an unsettled, transient existence. Paradoxically, in the new Texas towns, the opposite of this truism seemed to be the case. Galveston, Houston, and San Antonio required continuing, dynamic urban and nonurban expansion, development, and change in order to establish and maintain municipal stability. This phenomenon was much more than a simple matter of safety in numbers. Towns provided the earliest financial undergirding for both county and municipal government; and they were closely related to court openings, and fulfillment of the promise of liberty under law. The challenges and problems of an expanding community demanded utilization of local institutions: enactment and enforcement of ordinances; and continuing supervision of governmental activities. When towns foundered, the lives of their institutions became haphazard. City councils and county commissioners' courts disappeared entirely for months or years at a time. Judicial courts convened at other towns in other counties, scores or even hundreds of miles away. When elected officials failed to supervise local affairs, they deprived communities of the resource-expanding ingenuity associated with active administration. Texas promoters and settlers perceived this link
between growth and order, and sought dynamic stability for themselves and their communities with every legal means at their disposal.

The dynamism which fostered growth developed and maintained a momentum that gradually but inexorably carried initiatives for local development beyond local jurisdictions. In order to accommodate towns' expansionary needs, Texans required a forum beyond local control and not subject to specific local loyalties. As they contested for control of political and economic spheres of influence, town and county officers needed institutions that would promote settlement of disputes and solutions to problems, with an appraisal of their impact beyond the local community. In this context, the constitutional-legal relations between local governing institutions and the Texas Republic and the State of Texas must be considered.
NOTES

1 Historians have long accepted the appraisal, made by Charles Sydnor a quarter-century ago, that citizens of the United States ante-bellum South came to "regard the county as having much and perhaps paramount importance among the governments to which he is subject." Southern local government was viewed as a county court, serving an overwhelmingly rural constituency. County seats were torpid, somnolent places that suddenly were transformed into beehives of activity on "court days," when gentlemen gathered to conduct their own and the public's business. Consider Randolph B. Campbell, "Planters and Plain Folk: Harrison County, Texas, as a Test Case, 1850-1860," Journal of Southern History, XL (August, 1974), 369-398. Professor Campbell explored the question whether the ante-bellum South was "a land of relative economic opportunity . . . or . . . a section marked by important inequities in the distribution of agricultural wealth. . . " Campbell has reached the conclusion that "wealthy planters dominated the economy and provided leadership on all important public matters. . . ." While this conclusion may be correct, Campbell seems to ignore his own data in one very important respect. While studying "a single large agricultural population," Campbell failed to note that exactly fifty percent of all the men he has listed as "leaders" in the county gave nonrural occupations (lawyer, merchant, bricklayer) as their primary profession. Moreover, the city folk owned significantly less land and significantly fewer slaves than did their farmer counterparts on Campbell's Harrison County leadership list. An interesting question is presented here: did the small southern towns add a democratizing influence to southern society before the Civil War? Did a cadre of leadership tend to develop in these unimportant villages that offset, to some extent, the planter power?

Commenting recently upon historians' concern with southern rurality, Leonard P. Curry concluded that: "so thoroughly has the myth of the plantation (or at least rural) Old South been embedded in historical consciousness that there is an overwhelming tendency to dismiss . . . urban considerations as at best peripheral and atypical, if not insignificant." Until recently, inquiries into the urban dimension of ante-bellum southern life have been relatively few. Study of small towns and trading centers in the political, economic, and intellectual life of the pre-Civil War South is virtually non-existent. Professor
Curry's article represents a marked departure from previous historical inquiry on the subject. Although questions might be raised over classifying St. Louis as a southern city, the materials presented may provide a basis for better understanding the relationships between southern towns and southern society. Cf., Leonard P. Curry, "Urbanization and the Old South: A Comparative View," Journal of Southern History, XL (February, 1974), 43-60; for a brief survey of the historical literature on southern urban development, see, Blaine A. Brownell, "Urbanization in the South: A Unique Experience?" Mississippi Quarterly, XXVI (Spring, 1973), 105-120; and see, Rudolf Heberle, "The Mainsprings of Southern Urbanization," in The Urban South, ed. by Rupert B. Vance and Nicholas J. Demerath (Chapel Hill: University of North Carolina Press, 1954), Ch. I; Charles S. Sydnor, The Development of Southern Sectionalism, A History of the South, Vol. V, ed. by Wendell Stephenson and E. Merton Coulter ([Baton Rouge]: Louisiana State University Press/Littlefield Fund for Southern History of the University of Texas, 1948), 33; for further bibliographical information please see, Ch. I of this dissertation, N. 18, 20, 24.


3 The hinterlands serviced by a particular town were constantly changing, rather than fixed. The extent of a frontier town's service area depended upon aggressiveness of municipal leadership, competition from other towns, accessibility to lines of trade, transportation facilities, availability of nonlocal political support, and a host of other factors, including luck. In antebellum Texas, the county usually formed the service area for the towns. County seat and county boundary disputes were two common media for local intercity competition. In Harris County, however, town promoters and proprietors realized that the stakes were much greater. Town promoters realized that one community in the eastern part of the county had a chance to become a major transshipment point between the Gulf Coast and the Texas interior. Students of local development in Texas have generally concluded that important inter-city rivalries were still a decade in the future. During the 1840's towns such as Galveston and Houston shared the commerce in the area instead of competing for it. Transportation technology did not make competitors of the two towns until the railroad speculation of the 1850's began in earnest. Cf., Marilyn McAdams Sibley, The Port of Houston, A History (Austin: University of Texas Press, 1968), 57; Kenneth W. Wheeler, To Wear a City's Crown: The Beginnings of Urban
For a discussion of local intergovernmental problems, please cf., Ch. II, pp. 45-49, Ch. III, pp. 88 ff. of this dissertation.

Houston, Texas, Office of the City Secretary MSS, Minutes of the City Council, Book "A" (January, 1840-January, 1847), November 7, 1842, p. 188. [Cited hereafter as Houston City Council, Minutes.]

Houston City Council, Minutes, December 1, 1842, p. 190.

Houston, Harris County, Texas, Clerk of County Commissioners' Court MSS, Minutes of the Commissioners' Court of Harris County, Book "A" (April, 1837-April, 1861), January 21, 1843, p. 99a. [Cited hereafter as Harris County Commissioners' Court, Minutes.]

Please refer to Ch. III, pp. 112-115, of this dissertation; although personal comfort was also a consideration, the desire for good roads stemmed, in most part, from the hardships of land freight transport. Lacking the broad, deep rivers necessary for an extensive water transportation system, Texans were forced to rely upon ox-drawn wagons and carts to move agricultural produce—mainly cotton—to market. The mode of travel was slow with drovers making eight to ten miles on a good day. The larger wagons employed in this freighting business were pulled by eight to ten teams of oxen, and carried upwards of five cotton bales, each weighing four hundred pounds. Carts pulled by one or two animals carried one bale. In wet years cotton from East Texas was shipped by wagon to the Sabine River, and then floated to the Gulf. In years of drought the cotton went hundreds of miles to Natchitoches, Louisiana, the head of navigation on the Red River. From the Brazos River bottoms, goods were freighted a mere twenty-five miles overland to Houston, transshipped to Galveston, and thence to New Orleans, New York, or European ports. Cf., Hogan, The Texas Republic, Ch. III; Frederick Law Olmsted, A Trip Through Texas, or a Saddle-Trip on the Southwestern Frontier (New York: Dix, Edwards, 1857), 59-60, 238-240; Wheeler, To Wear a City's Crown, 80-83; Sibley, The Port of Houston, 60-65; Andrew Forest Muir, "The Destiny of Buffalo Bayou," Southwestern Historical Quarterly, XLVII (October, 1943), 91-106.

Harris County Commissioners' Court, Minutes, Book "A," January 19, 1844, pp. 116a-117a.
10 Houston City Council, Minutes, May 4, 1846, p. 323½.

11 Harris County Commissioners' Court, Minutes, Book "A," January 19, 1844, pp. 116a-117a; whether the road went to New Washington, Washington-on-the-Brazos, or Washington County, is unclear.

12 David G. McComb, Houston, The Bayou City (Austin, Texas: University of Texas Press, 1969), 30-33; relying mainly upon newspaper sources, McComb has concluded that city road and bridge building made little progress before 1849. Official records--of both the city council and county commissioners' court--indicate that some work was in progress by 1847, with sporadic efforts being made as early as 1842-1843.

13 Harris County Commissioners' Court, Minutes, Book "A," July 21, 1858, p. 204b.


15 McComb, Houston, the Bayou City, 30-33; although I have accepted here the prevailing view that the roads remained uniformly bad during the antebellum period, I feel the entire question merits careful scrutiny. The testimony of individuals as to roads at a specific time and place provide a momentary glimpse at conditions. We have no idea as to the general road conditions over time. Newspaper editors, as watchdogs for the public and critics of local government, must be taken at arms length. For example, the authors who assert that the roads were terrible also report that stage service operated regularly between Austin, Houston, and numerous other destinations.


17 Houston City Council, Minutes, April 3, 1840, p. 26.

18 Harris County Commissioners' Court, Minutes, Book "A," p. 52a.

19 Houston City Council, Minutes, March 1, 1841, p. 61.


21 Hogan, The Texas Republic, 73, citing New Orleans Daily Delta, November 28, 1845.
Harris County Commissioners' Court, Minutes, Book "A," April 10, 1840, January 19, 1844, pp. 52a-53a, 116a-117a; of the four county appointees for the joint committee, three—Perkins, Castainie, and Bergen—had served in city government. Israel Bigelow, probably a relation of Houston mayor Charles Bigelow, also was appointed to several joint committees.

A strong tendency to return incumbents to local office helped the respective governments maintain policies of cooperation. The concept of "rotation in office" received much wider acceptance in theory than in practice in Texas towns and counties. With the exception of the office of sheriff, where re-election was limited by the state constitution, men who performed their duties satisfactorily as clerk, or treasurer, or secretary, or assessor often were returned to office year after year. Administrative officials also served with commissioners or aldermen on the joint city-county committees.

Harris County Commissioners' Court, Minutes, Book "A," p. 6a.

Stanley Elkins and Eric McKittrick, "A Meaning for Turner's Frontier," Political Science Quarterly, LXIX (September, December 1954), 321-353, 565-602, at 343; the description of the antebellum South given by these authors has come increasingly under fire by writers exploring urban dimensions of southern life.


Harris County Commissioners' Court, Minutes, Book "A," October 20, 1838, p. 32a.

Harris County Commissioners' Court, Minutes, Book "A," May 15, 1849, p. 70b.

Austin, Texas, University of Texas Archives MSS, Box 2Q245, No. 815 (W. P. A. typescript: project No. 65-1-66-83), Minutes of the City Council of the City of San Antonio, Book "A," (1837-1849), November 22, 24, 1848, pp. 192-196. [Cited hereafter as San Antonio City Council, Minutes.]

Gammel, Laws of Texas, I, 1201-1206, Sec. 25, 29 (December 20, 1836).
Harris County Commissioners' Court, Minutes, Book "A," July 19, 1839, p. 40a.

Harris County Commissioners' Court, Minutes, Book "A," April 10, 1840, pp. 51a-52a.

Houston, Harris County, Texas, Clerk of Texas State District Courts MSS, Eleventh District of the State of Texas, File No. 375, Mayor Aldermen and Citizens of the City of Houston v. Board of Commissioners of Roads and Revenues of Harris County (1841); for a full discussion of these cases please refer to Ch. III, pp. 89-97, of this dissertation.

Harris County Commissioners' Court, Minutes, Book "A," September 10, 1840, p. 65a.

Harris County Commissioners' Court, Minutes, Book "A," June 22, 1841, p. 72a.

Houston City Council, Minutes, June 23, 1841, p. 111.

Harris County Commissioners' Court, Minutes, Book "A," July 24, 1841, pp. 80a-81a.

For a discussion of the changeover from Mexican to United States type local institutions, please see Ch. II, pp. 43-48, of this dissertation.


Cf., Ch. III of this dissertation, passim.

Houston City Council, Minutes, February 9, 1846, p. 311; there can be little doubt that Houston aldermen considered the wharfage a tax, as opposed to some sort of storage fee or rent. Upon annexation of Texas to the United States, those portions of the Houston local ordinance that imposed wharfage upon exports were repealed. The aldermen acted to bring local regulations in line with the prohibition on export taxes in the constitution of the United States.

Houston City Council, Minutes, May 4, 1846, p. 323½.

Galveston, Texas, Office of the City Secretary MSS, Minutes of the City Council of the City of Galveston, Book "A," August 4, 1854 [cited hereafter as Galveston City Council, Minutes]; Fornell, The Galveston Era, 35, 59; the author, in commenting upon fees collected for the
officers of the port, does not mention the harbor dues collected for the city.

43 I have discussed San Antonio water rights in Ch. III, pp. 124-127, of this dissertation.

44 San Antonio City Council, Minutes, October 29, 1840, pp. 76-77; Fornell, The Galveston Era, 35-46.

45 For a discussion of tax problems during the early years of Texas independence, please cf., Ch. III, pp. 92-105, of this dissertation.

46 Gammel, Laws of Texas, I, 1298-1299, Sec. 7 (June 5, 1837); 1379-1381, Sec. 8 (December 14, 1837).

47 Gammel, Laws Of Texas, III, 24-25 (February 12, 1848); town of Corsicana received one-third of a league--1,500 acres--of land; III, 361-362 (town of Montgomery owned one square mile); III, 399-402 (March 16, 1848; town of Goliad owned a four-league tract--eighteen thousand acres); other towns were incorporated with smaller municipal limits depending upon the generosity of its proprietor or the needs of the particular community. The founders of Coryell County in central Texas were offered three sites for their county seat--two with one hundred acre donations of raw land, and a third offering a courthouse square, five extra acres, and two thousand dollars cash. The voters chose the third alternative. Cf., Zelma Scott, A History of Coryell County, Texas, Texas County and Local History Series, Austin: Texas State Historical Association, 1965), 36-37; in other states, the practice was to require that a town's corporate limits bear some resemblance to the actual extent of urban settlement. Thus, towns were established upon small parcels of land. Cf., Robert R. Dykstra, The Cattle Towns (New York: Alfred Knopf, 1968), Ch. I.

48 Gammel, Laws of Texas, II, 411-413, Sec. 1 (February 5, 1840).

49 Gammel, Laws of Texas, III, 399-402 (March 16, 1848); San Antonio City Council, Minutes, April-July, 1838, pp. 22-32; Carland Elaine Crook, "San Antonio, Texas, 1846-1861" (Unpublished M. A. thesis, Rice University, 1964), Ch. VI.

50 Clarence R. Wharton, A History of Fort Bend County San Antonio, Texas: Naylor, 1939), Ch. VIII; Scott, History of Coryell County, Texas, 36-67; Nellie Murphree, A History of De Witt County, ed. by Robert W. Shook (publisher and copyright date not available; "Forward,"
dated 1962), 4-7; Baker v. Chisolm, 3 Tex. 157 (1848); Arberry v. Beavers, 6 Tex. 457 (1851); one or two historians of Harris County have commented that the proprietors of the city of Houston, Augustus C. and John K. Allen, utilized the influence and immense vanity of Sam Houston to have not only the Harris County seat, but the capital of the Texas Republic located in the city that bore his name; cf., Wheeler, To Wear a City's Crown: The Beginnings of Urban Growth in Texas, 1836-1865, 25-28; Sibley, The Port of Houston, 33; and cf., Ch. II, p. 58, of this dissertation.

51 "An Act Establishing the jurisdiction and powers of the District Courts," in Gammel, Laws of Texas, I, 1258-1271 (December 22, 1836); on the matter of continuances, see, Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Eleventh District Court of the State of Texas, Minutes, Book "B," passim; and cf., Hogan, The Texas Republic, Ch. X.

52 Gammel, Laws of Texas, II, 1156-1157 (February 3, 1845).

53 During the beginning of the great yellow fever epidemic of 1853, the Galveston city council met several times per week, slaking off somewhat during September and October. So great was the emergency that the city council issued bonds, without obtaining statutory authority for the action, and pledged all future income of the city for their retirement; cf., Galveston City Council, Minutes, August 13, 1853--November 5, 1853, passim. Equally interesting were city government efforts during this emergency, in cooperation with national government officers. Officers and equipment of the United States Customs Services were placed at the disposal of the Galveston city officials and Port of Galveston health authorities.

54 Austin, Texas, State Library Archives MSS, Records of the Legislature, Petitions and Memorials to the Congress of the Republic of Texas, Box 2-7L/95, Old File Box No. 36, File No. 211, Petition from Citizens of Galveston to the Texas Congress for keeping field artillery in the city, N. D. [1843 or 1844]. [Cited hereafter as Petitions and Memorials to the Congress of the Republic of Texas.]

55 Petitions and Memorials to the Congress of the Republic of Texas, Box 2-7L/95, Old File Box No. 36, File No. 239, December 31, [no year], Memorial from citizens of Galveston praying for use of money collected in the port for improvement of navigation.

56 Petitions and Memorials to the Congress of the Republic of Texas, Box 2-7L/95, Old File Box No. 36, File No. 242,
November 21, 1844, Petition from citizens of Galveston County protesting maintenance of a diplomatic corps.

57. Petitions and Memorials to the Congress of the Republic of Texas, Box 2-9/113, File No. 258, January, 1845, Memorial from "Merchants, Planters, and Citizens" of Galveston and Houston, praying for fairness in collection of taxes.


59. Francis Richard Lubbock, Six Decades in Texas or Memoirs, ed. by C. W. Raines (Austin, Texas: Ben C. Jones, 1900), 123.

60. Olmsted, Journey Through Texas, 241-244.


62. Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Eleventh District Court of the State of Texas, Minutes, Book "A," 88-89, Grand Jury Report, March 23, 1838; travellers' accounts paint a somewhat different picture of the session of the district that garnered such high praise from the grand jury. One observer reported that sessions of the district court were very irregular and that "the bar 'gave a Supper to the Grand Jury--high meeting, some gloriously drunk.'"; cf., J. H. Herndon Diary, cited in Hogan, The Texas Republic, 256; for a different opinion of District Attorney Tomkins, cf., Ch. III, p. 102, of this dissertation.


64. Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Eleventh District Court of the State of Texas, Minutes, Book "C," 152-155, Grand Jury Report, December 4, 1841.

65. Houston, Harris County, Texas, Clerk of Texas State District Court MSS, Eleventh District Court of the State of Texas, Book "C," 154, Grand Jury Report, December 4, 1841; in order to strengthen their arguments in favor of continuing moral reform, the grand jurors invited local
residents to contemplate the sorry state of society in Mexico. The jurors provided an interesting picture of how mid-nineteenth century Texans perceived their southern neighbors and former rulers:

When gambling and intemperance exist to any extent, morality and good order cannot. Look at our neighbor, that poor miserable, and distracted country, Mexico; a nation of bigots and gamblers. It is a notorious fact, that from the very highest order of society to the lowest dregs, without distinction of age or sex, they are gamblers. Under this state of things, what else can be expected but Civil Commotions, assassinations, robberies, bribery and corruption.

66Gammel, Laws of Texas, II, 332-334 (January 28, 1840); Hogan, The Texas Republic, Ch. XI.


68 Charles Hooten, St. Louis' Isle or Texiana, 15-16; cited in Hogan, The Texas Republic, 266.

69 For many years, historians who studied the great westward migrations in the nineteenth century United States, have been impressed with the complex system of group affiliations and private and government institutions that the pioneers carried with them into the wilderness. A recent commentator referred to Henry Ward Beecher's description of American pioneers as men who drove "'schools along with them as . . . flocks. They drive herds of churches, academies, lyceums; and their religious and educational institutions go lowing along the western plains as Jacob's herds lowed along the Syrian hills.'" The political and governmental institutions established in the West "were copies of those" settlers "had known in the East." Cf., Phillip S. Paludan, "The American Civil War Considered as a Crisis in Law and Order," American Historical Review, LXXVII (October, 1972), 1013-1034, at 1022.

Curiously historians of both the antebellum South and the antebellum North ascribed this phenomenon of institutional migration primarily to regions above Mason and Dixon's line, and north of thirty-six, thirty. By contrast the South is still painted by historians as infested with "rampant individualism"; the pre-Civil War South was where
men had recourse to "private over public law codes," while white plantation owners became "a law unto themselves." Cf., Sydnor, Development of Southern Sectionalism, 77; Hogan, The Texas Republic, Ch. XI.

It would be foolhardy to disregard the "code duello" as a factor in southern life. Yet over-emphasis upon the individualistic nature of antebellum southerners has, perhaps, led to underestimation of the importance of local political and judicial institutions. Contemplating the evidence presented in these pages about Houston, Galveston, and San Antonio, the differences between North and South in terms of local institutional development appear narrowed to those of degree rather than kind. Cf., Leonard P. Curry, "Urbanization and the Old South: A Comparative View," Journal of Southern History, XL (February, 1974), 43-60.

70 Forneil, The Galveston Era, Ch. 5; McComb, Houston, The Bayou City, 34-42; Wheeler, To Wear a City's Crown, 35-46, III-IV; Wheeler's assertion that San Antonio did not show "marked progress" until the 1850's is not warranted by the evidence. Increases in voting population during the years 1846 through 1848 indicate a substantial boom on progress at the time, sparked by the Mexican War effort. Increases in city budget also indicate growth of commerce and tax base during the late 1840's. Also, while San Antonio may have been the "poorest" of Texas cities in terms of merchant wealth, the author fails to consider the extensive landholdings of the city, or availability of hard money arising in the city's status as a service center for United States troops protecting the frontier against the Indians. Cf., San Antonio City Council, Minutes, for the years 1846-1848, pp. 165ff; Garland Elaine Crook, "San Antonio, Texas, 1846-1861" (Unpublished M. A. thesis, Rice University, 1964), Ch. II.

71 Gammel, Laws of Texas, II, 1380-1382 (April 11, 1846).


73 For examples, cf., Gammel, Laws of Texas, III, 51 (March 2, 1848); III, 52-53 (March 6, 1848).

74 Rupert N. Richardson, Ernest Wallace, Adrian N. Anderson, Texas, the Lone Star State (3d ed.; Englewood Cliffs, New Jersey: Prentice-Hall, 1970), 142: 'The constitution required that the remaining tenth be applied to the use of the schools.'
75 Harris County Commissioners' Court, Minutes, Book "A," November 17, 1856, February 16, 1857, pp. 153b-154b.

76 Taken from a letter written by General Manuel de Mier y Terán to Mexican President Victoria in 1828, during an inspection tour of Texas; cited in Eugene C. Barker, The Life of Stephen F. Austin (Nashville, Tennessee: Cokesbury Press, 1925), Ch. X.

77 The conclusion I have presented must, of necessity, be limited to the three Texas frontier towns covered by this study. As a hypothesis, the idea that growth and stability are linked in an urban setting perhaps merits development of comparative data for other regions of the country, for other time periods, and for cities of varying sizes and development. It seems possible that such basic concepts as stability require re-examination and redefinition for the nonrural experience. A few variables that are immediately apparent in considering growth and stability would be total population and extent of permanent residence versus transients; industrial development; crime and divorce rates; rates of employment; land values and residential patterns. And, if it proves to be the case that urban growth and stability are linked, is it possible that a maximum size might be reached, where the relationship no longer is valid? Are certain rates of growth more desirable than others? Does growth which is too rapid lessen its stabilizing effects upon a community?
CHAPTER V. "BY YOUR HONORABLE BODIES": STATE-LOCAL
GOVERNMENT RELATIONS IN TEXAS, 1837-1860

As delegates to the First Congress of the Republic of
Texas labored toward adjournment in late May and early June,
1837, a bill destined to become the nation's first municipal
charter was in the legislative process and being moved
toward enactment. The charter for the East Texas town of
Nacogdoches gained adherents as it proceeded from Senate
committee to floor debate and again into committee in the
House of Representatives. Congressmen from other parts of
the Texas Republic seized the opportunity to provide
numerous fledgling villages with municipal organization. As
the Nacogdoches charter was signed into law, eighteen towns
and "cities" were incorporated under its provisions.

As a municipal document this first Texas town charter
was remarkable only for its brevity. Nacogdoches representa-
tives proposed that municipal officials assume respon-
sibility for fire protection, street improvement, education,
and maintenance of the public peace.¹ Legislators offered
no amendments designed to alter the town government organi-
ization. Nor did Texas lawmakers attempt to restrict, enlarge,
or elaborate upon the political and administrative authority
sought by local officers. The Texas Congress found the
charter deficient in only one particular. Senate committe-
men added a section to the charter legislation, stipulating
that "rules and ordinances" of local governments should "not
be contrary to the constitution and laws" of the Texas Republic.²

With this assertion of supremacy of Texas laws, the Congress of the Republic laid immediately to rest any assertion that a municipal charter conveyed vested contractual rights to inhabitants of local corporations.³ Though not yet a part of the United States, the Lone Star had been fixed firmly in the constellation of American state-centered constitutional governments.⁴ In theory, the Texas Congress carefully subordinated local institutions to the general government. General and special statutes could be altered at the whim or will of the Legislature. So long as Texas representatives obeyed constitutional dictates, their power was supreme.

But the legal principle of state supremacy in Texas' intrastate constitutional relations bore little resemblance to actual configurations of power and responsibility. Towns and counties often proved powerful enough to make outright defiance of constituted authorities a viable, albeit undesirable, alternative in the conduct of local affairs.⁵ Even more common than flouting the law, local officers had the habit of acting first, and later seeking approval from state policy-makers. Problems of antebellum Texas governance precluded strict adherence to administrative procedures that supported legalistic concepts of legislative supremacy. Texas Congresses and Legislatures experimented with numerous procedures and tactics, hoping to influence local policy
through state law, and encourage implementation of state-wide policies within local communities.

Efforts by the state to control and regulate local governments achieved varied results. Ironically, the Legislature's most powerful check upon local authority was non-action. Throughout the Texas Republic period and first fifteen years of statehood, the legislative process functioned as a cemetery for scores of schemes cooked up by county politicians or town promoters. Texas lawmakers seemed to apply rough tests of appropriateness for local development statutes. Favorable action by the Legislature depended upon amounts of state money required for the project, the strength of support for the program within the locality applying for legal or monetary aid, and the acumen of local entrepreneurs in harmonizing their own plans with the aspirations of other towns and counties.

When the Legislature did act, statutes that supported local initiative and development, or at least did not incite municipal suspicion or hostility, provided state lawmakers with their wisest course of action. State legislators and local officers shared in common a belief that town councils and county commissioners' courts were the most desirable agencies for government administration. With a few notable exceptions, legislators avoided statutes that created a potential for conflict between local "self-government" advocates and state officers. Instead of state-local confrontation, legal guarantees against abuse of town and county
autonomy were grounded upon a broad system of personal liability for official misconduct. Statutes provided internal policing mechanisms, implemented by local citizens against wayward local officials, rather than by "outsider" state officers or representatives.

From the earliest days of the republic, the process of enacting laws, or refusing to enact them operated as a moderating influence upon local governments and private citizens. State officials had few available alternatives short of military intervention when town or county officers, with support from the neighborhood population, wilfully flouted Texas statutes. But Texas legislators also were besieged at every session with a multitude of petitions and memorials from the localities. Promoters and entrepreneurs sought special favors or authority viewed as necessary or beneficial for town and county development.

Mid-nineteenth century Texans relied upon their right of petition as a mainstay in the dialogue between local officers and general government representatives. Numerous varieties of legislation supportive of community and private enterprise emerged from this interinstitutional mode of conversation. At the same time, when the Legislature often refused to act, local boosters found their hopes, plans, and financial expectations "indefinitely postponed" somewhere in the cavernous recesses of the legislative process. Special statutes provided the general government with powerful
leverage, as local groups labored for repeal or "passage of a law by your Honorable bodies," the Texas Senate and House of Representatives. 6

State lawmakers invariably rejected petitions for statutes that institutionalized local insubordination, or called into question the government's capacity or authority to conduct public affairs. In an 1838 proposal to create a chamber of commerce, Houston merchants challenged the efficiency and adequacy of the Texas judicial system and sought to establish private control over access to courts of law in a broad class of cases and controversies. While seeking the usual authority for private commercial service organizations, Houston businessmen also wanted to establish private commercial courts. Under its charter the Houston Chamber of Commerce proposed to assume jurisdiction over "all commercial Litigations submitted to their arbitration." Merchants' arbitration decisions were binding upon the parties unless appealed to appropriate Texas courts, "within the period specified by the By-laws, Rules, and Regulations" of the chamber of commerce. 7

The legislation contained two fatal flaws that placed nonlocal litigants at great disadvantage. First, Houston merchants were empowered to act as judge and jury for their own cause, rather than providing for outside impartial arbitrators. Second, chamber of commerce by-laws and not Texas statutes controlled appeals from arbitrators' decisions to the courts of the Texas Republic. Theoretically, Chamber
of Commerce rules could be drafted to work forfeitures of all litigation rights.

That this bill almost became law was indicative, in part, of Texas Republic institutional weaknesses. Stephen H. Everitt, prominent East Texas merchant and chairman of Texas' House Judiciary Committee, stressed in his report to Congress the need for commercial "stability." Chamber of commerce arbitration, argued Everitt, would "prevent infinite litigation in the Courts of Justice, whereby Jurors, Witnesses, and other attendance are required at the expense of the Public Treasury. . . ." The savings in time and expense, Everitt contended, was a boon to both local residents and litigants. The community averted, "in many instances . . . useless Costs of Suits in cases where more economical & expeditious modes of adjusting their differences can be obtained. . . ."8

Businessmen's disenchantment with the court system of the Texas Republic was unmistakable. The House of Representatives adopted the judiciary committee report, and approved the chamber of commerce legislation. The Senate also advanced the bill to its third reading before it was "indefinitely postponed."8 In 1840, two years after the Everitt legislation was defeated, the fourth Texas Congress chartered chambers of commerce in the towns of Matagorda and Houston. It appears that the organizations maintained arbitration machinery for use on a contractual or voluntary basis. Objectionable charter clauses binding nonlocal merchants and
shippers to arbitration of commercial disputes had been deleted. Likewise, provisions that the chamber of commerce by-laws control access to judicial courts were not enacted into Texas statutes.9

With adequate statutory safeguards for property rights, the Legislature and people of Texas found the idea of arbitrating private disputes more appealing. The new state constitution of 1845 contained a provision making it the "duty of the Legislature, to pass such laws as may be necessary and proper, to decide differences by arbitration, when the parties shall elect that method of trial."10 In 1845, and again in 1846, Texas lawmakers enacted statutes regulating private arbitration.11

By choosing not to act, the Texas Congress prevented Houston entrepreneurs from attaching a veneer of legality to an expression of no confidence in the judicial institutions of the young republic. Without statutory authority, any attempt to force arbitration without the consent of interested parties, was blatantly illegal and possibly criminal interference with private property. Rejection of Houston merchants' request required no intrusion by republic officials into local politics or private business transactions. Texas congressmen avoided direct intervention, relying upon existing institutions, and upon individuals' concerns for safety of personal property.

Examples of direct intervention by antebellum Texas legislatures in towns or county affairs were rare. In at
least three instances, however, the government of the republic became involved in townsite speculations similar to those undertaken by private entrepreneurs. Many legislators viewed town development as a partial solution to the Texas government's chronic money shortages. Many citizens believed the government should receive fair value for land taken for private ownership from the public domain. By the early 1840's, Congress already had given away some of Texas' most prized possessions. The eastern end of Galveston Island sold for the bargain price of fifty thousand dollars, eliciting strong criticism from residents who long had recognized its potential as the best Gulf port between New Orleans and Vera Cruz.

The "seat of government" was an extremely valuable prize, guaranteeing a prosperous town and improved land values. In selecting a "permanent" Texas capital, congressmen generated handsome land sale profits for the public treasury. The fact that a site could be chosen upon public domain, or upon cheaply purchased land, must have been in the minds of members of the First Texas Congress as they endured the city of Houston's inhospitable climate, and inadequate accommodations. To make matters worse, Houston city proprietors Augustus and John Allen demanded rental on government buildings of five thousand dollars per year. Congressional consensus in favor of removing the Texas capital from Houston overwhelmed backers of the Bayou City. But finding a new location satisfactory to all competitors vying for the honor proved
an impossible legislative task. The issue of relocating the capital became so controversial, that the Texas Congress created a special commission with discretionary authority to select the final location. Historian Ernest William Winkler, writing nearly seven decades ago, noted the commission's "extraordinary powers," and the unorthodox delegation of legislative authority in settling a "perplexing public question."  

To protect the public's profit and prevent interference from private land speculators, commissioners elected by the Texas Congress to choose the new capital swore to keep their work secret, and guaranteed confidentiality by posting bonds of one hundred thousand dollars. Although the Congress preferred that the new capital be located on public domain, it authorized commissioners to pay as much as three dollars per acre for the ideal site. Congress then instructed Texas President Mirabeau Lamar to appoint an agent to survey the town, set aside land for public buildings, and take charge of auctioning lots. Lamar also was ordered to promote the new town with advertising in Texas and New Orleans newspapers. The partial sale of lots, conducted in Austin during early August, 1839, netted the Texas government almost three hundred and fifty thousand dollars in cash and promissory notes. John W. Eldridge, Houston Morning Star editor and leader of the anti-removal forces, acknowledged the impressive results of the sale while grumbling that the entire project would end in disaster. During the following year,
the Fourth Texas Congress ordered the Treasury Secretary of the republic to oversee the sale of remaining lots in the new capital. 17

Other land promotions by the Texas Congress were not assured the instant success of the Austin venture. Hoping to quiet the criticism caused by the great Port of Galveston giveaway, legislators attempted to auction off the remainder of the island in ten to forty acre tracts. To develop unsettled areas along the Gulf Coast, the town of Calhoun, at the eastern end of Matagorda Island, was ordered surveyed and sold by the Treasury Secretary of the republic. In 1841, the fifth Texas Congress attempted to boost Calhoun by ordering customs houses closed at other settlements, and declaring it the sole port of entry for Matagorda Bay. The Congress also appropriated money to construct customs buildings at Port Calhoun.18 Most localities desirous of opening a port were expected to provide necessary quarters and pay the salaries of customs officers.

Despite patronage from the Texas government, the Port Calhoun settlement failed. In 1844, the customs office was transferred to "Port Caballo" on the mainland.19 Within a few years, Indianola emerged as the predominant seaport town of the middle Texas Coast.20 The Calhoun experiment also marked the Texas Legislature's departure from townsite speculation. Thereafter, state lawmakers sought government revenues from more reliable and conventional sources. Through speculative activities, Texas lawmakers established
weak precedents for general government supervision over local development. In fact, the Legislature's impact upon patterns and habits of town and county government autonomy was very slight. Within two years, Austin residents would engage in armed resistance against Texas authorities because the "permanent" capital of the republic was, once again, being moved to a different location.21

In cases, however, where two or more local factions prevailed upon the Legislature to mediate in political disputes, the bases for intervention were firmly established in petitions of contending parties; and the final verdict rendered by state lawmakers generally was accepted. In this regard, the issue of right to vote frequently engendered controversy, becoming a focal point in local disputes, and creating pressures for enactment of special state legislation. Municipalities, in particular, frequently required property ownership for participation in Texas town elections; and to serve as a municipal officer, substantial holdings of town real estate were mandatory. Texas municipal corporations existed in a Jacksonian milieu where free white men demanded the franchise as their birthright. Petitions favoring both sides of franchise issues arrived in Austin, with Texas lawmakers shouldering the responsibility of deciding whether property ownership or residency requirements were appropriate prerequisites for voting in local elections.

Protracted and vitriolic local suffrage disputes impart a feeling for the value placed upon voting by mid-nineteenth
century Texans, and demonstrate local constituents' pressures upon state legislators. Houstonians, whose charter provided for annual municipal elections, found themselves embroiled in controversy concerning replacement of officers unable to complete their full year's service. In late 1840 and early 1841, the Texas Congress approved Houston charter amendments, setting aside requirements that each vacancy in municipal government be filled by special election. The Congress authorized aldermen to appoint temporary personnel to serve until the next regular voter canvass. In many respects the new statute represented a sensible reaction to the fiscal difficulties facing Texas governments in the early 1840's. Houston city was still several years away from financing its ordinary and necessary administrative expenses. The appointment provision eliminated extravagant special elections for numerous vacancies that opened each year. The people also retained regular and frequent opportunities to express their views on municipal affairs.

The new law triggered an outburst of indignation. Petitioners from the Bayou City decried policies that deprived free men of their "most dear and sacred ... right of franchise." The city council, regardless of its brief tenure of office, suddenly achieved the power "to perpetuate ... its own existence." With a "self-evident evil" to be corrected, the question of city council's new appointive powers remained alive over the next three years. In 1844, laws requiring special elections to fill vacant city offices were reinstated.
Again in 1852, the Texas Legislature stipulated that all Houston and Galveston municipal officers should "be elected by the voters within the limits of said cities."25

The Congress of the republic usually responded more promptly to constituents than was the case in the Houston suffrage controversy. Lawmakers amended the municipal charter of Victoria, Texas, three times within a two-year period in an effort to reach an equitable settlement between contending factions in a local suffrage dispute. Franchise qualifications imposed upon Victoria citizens in 1837 included town residency for six months, a requirement that persons be "either a householder or owner of real estate," and a stipulation that the voter had "paid up his city taxes."26 Six months later, in May, 1838, the Texas Congress tightened significantly voting qualifications in Victoria's city charter. While retaining other restrictions, legislators amended the "householder" provision of the 1837 statute, limiting the franchise to persons "actually paying rent within the incorporated limits of said town." The Congress also ordered a special canvass to replace officers chosen at the town's first municipal election.27

The franchise limitation to renters and owners of real property touched off a movement to establish universal manhood suffrage in Victoria city elections. By mid-June, 1838, the first of three petitions on the matter had been presented to the Texas Congress. Memorialists protested vigorously the passage of charter amendments "through the instrumentality
of those actuated by interested motives. . . ." Restricted suffrage, the petitioners alleged, would "retard the settlement of Victoria by throwing such obstacles in the way as must inevitably postpone for the present all further proceedings." Implied in the statement to the Congress was a threat: that supporters of the original government would not permit installation of officers under the amended charter. Apparently, until April, 1839, the petitioners prevented organization of a Victoria city government.

As the Fourth Congress of the Texas Republic convened in late 1839, Victoria residents presented two more petitions on the question of restricted versus liberal suffrage. The first, which bore eighteen signatures, included city government officers, and influential citizens who had come to the area before the Texas revolution. In their own words, the signers were "bonafide owners of property or paying rent. . . ." They argued against any extension of the franchise to persons who "neither own property[. . .] pay rent or [sic.] contribute to the well being of the Inhabitants other than by ill conduct or disorderly habits." Universal suffrage, the petitioners argued, was an "indiscriminate mode of voting" that would ruin "the peace and quiet of our Town and . . . most probably Elect persons . . . that would not want any authorities whatever suitable for a well regulated community. . . ."

The petitioners who favored a limited local franchise were not satisfied solely with an opportunity to present
their case to the Texas Congress. They attacked the fifty-seven men who favored wider suffrage as a demagogue-led rabble that "did not know what they were signing. . . . " Misdirected individuals, restricted suffrage proponents charged, had got up a petition to Congress . . . not caring wether [sic.] [they were] right or wrong" in pressing their cause. 31 The franchise needed protection from such unintelligent and uninformed persons; anti-suffrage petitioners felt confident that the Congress would protect them from the common people.

Supporters of more liberal suffrage laws proposed that the local franchise be granted to all freemen who resided on the Victoria town tract, and were qualified to vote in Texas congressional elections. Numerous legal voters, the reformers claimed, were barred from municipal elections because of chaos in Texas land titles, and a resulting temporary inability to furnish adequate proof of ownership. Moreover, restricted suffrage had created greater abuses of electoral processes than was possible under a more democratic system. Candidates for office, the petitioners alleged, sought to insure victory by "placing in the hands of their friends fictitious titles and leases by virtue of which they were enabled to pass their votes." Justice demanded that municipal officers be responsible to the people, and perform their duties "with legal cards and not with those of their own manufacture." 32

The Texas Congress adopted a compromise provision for
the Victoria town charter, liberalizing but not eliminating property franchise requirements. By repealing the charter amendments of 1838, Texas legislators deleted the "actually paying rent" provisions for voting eligibility, and revived the "householder" criterion of the original incorporation statute. The six month residency requirement was retained, in all probability to prevent importation of new, but temporary, local citizens at election time. This formula, re-enacted in December, 1839, also became the basic suffrage provision for Victoria's revised town charter, approved by the Texas Congress a few months later.

While providing needed services for local communities in settling political disputes, the Texas Congress also was adding the sinew of precedent to bare-bones legal principles of state supremacy in local-state constitutional relationships. State supremacy was inchoate, rather than firmly established, and gained legitimacy through the exercise of general government powers in aid of towns and counties. Thus, Texas legislators served their constituents and catered to local initiative, all the while establishing precedent that supported experientially the axioms of American political economy.

Direct state controls or limitations upon antebellum Texas local governments were unusual. With an entirely different sort of franchise--government grants of public ferrying privileges to private entrepreneurs--the Texas Legislature, during the decade of the 1840's, began delimit-
ing a few boundaries of permissible local activity, and imposing modest restraints upon discretionary authority of town and county officers. For the most part, ante-bellum Texas county governments retained control over development and regulation of road and ferry transportation. During the first seven years of independence, legislation consisted of enabling statutes. County commissioners of roads and revenues accepted or rejected petitions for establishment of ferry operations, according to local views of public interest.\(^{35}\) Prior to 1848, the general policy of local government control over ferry franchises was not seriously challenged; during that year, the Second Legislature of the State of Texas reaffirmed, unequivocally, commissioners' "general control and superintendence over all roads, highways, bridges, and ferries. . . ."\(^{36}\) Precedents for altering Texas' internal transportation policies developed contemporaneously and co-existed with established practices of county control and administration. Occasionally, Texas lawmakers chartered private entrepreneurial transportation ventures. Schemes ranged in magnitude from modest toll bridges, to grandiose land transportation systems linking the Red River to the Rio Grande.\(^{37}\) Each time the Texas Congress granted a corporate charter for transport development, it bypassed established county supervision and control procedures.

The most noticeable break by Texas lawmakers with local control policies occurred in 1844 during the Eighth Congress
of the republic. Legislators inaugurated the first attempt in Texas to finance internal improvements with public lands. Although the plan to establish a "national road" failed, the practice of purchasing public improvements with government land continued throughout the nineteenth century. The Eighth Congress also utilized its patronage powers as Port Calhoun town proprietor to launch the first Texas chartered ferry. Lawmakers granted Sylvanus Dunham a ten-year franchise to carry freight and passengers between the mainland and the Texas Republic's Matagorda Island townsite. The congressional franchise differed markedly from local licensing procedures. In only one previous instance had a multi-year ferry contract been authorized, and then under close supervision of Galveston County commissioners. Local governments licensed all other ferries on a year-to-year basis, conditioned upon the boatman's "good and faithful performance" of his duties, and the regular payment of license taxes. In granting the Dunham franchise, the Texas Congress failed to protect one of the few reliable sources of local revenue. The only safeguard retained by the Congress was the requirement that Dunham post a performance bond of one thousand dollars—the same amount required from locally licensed boatmen.

Involvement in the Port Calhoun townsite speculation brought the Texas Congress to direct chartering of local ferries. The new franchise issued by the Texas Congress offered entrepreneurs numerous advantages over county government licenses. Multi-year agreements enticed boat owners
with the prospect of safer long-term investments, while freedom from local taxes promised greater profits. Serving the interests of the ferry operators, legislators changed Texas transportation policies, and proposed new alternatives to county "superintendence and control."

The Legislature's belated 1848 reaffirmation of county government authority over ferrying operations no longer would deter boat owners from seeking greater profit and security for their investments. A few days after enactment of the county control statute, Texas lawmakers added corporate charters to the list of state government favors available to local boatmen. Corporate status shielded entrepreneurs from personal liability for injury or damage to persons or property, done in the course of business. Thus protected, corporate officers were invited to ignore county ordinances fixing rates of "ferriage, freight, and tonnage..."41

The Legislature had set aside a decade's effort by county officers, to prevent price gouging by government approved monopolies at locally important breaks in transportation.

In promoting development of internal transportation, the Texas Legislature gradually narrowed county government's discretionary power in the granting of ferry franchises. During the 1840's, however, those changes were haphazard, taking place in random individual franchises or corporate charters. Legislative experience also prepared the way for a systematic reformulation of principles--a statutory restatement of the respective roles of the State Legislature,
county governments, and private entrepreneurs in administration and supervision of transportation facilities. In 1850, the Third Texas Legislature re-examined established statutory policies of discretionary local control, and found them unrealistic and inadequate. Under new laws, owners of land fronting upon navigable waters within the state, were "entitled to the privilege of keeping a public ferry. . . . ." Persons owning riparian land on both sides of navigable water could, without prior consent from county commissioners, become "sole and exclusive" proprietors of a boating operation. Owners of land on one side of a river, lake, or bay had the option of seeking private agreements with property owners on the opposite shore; or they could petition the county commissioners' court for establishment of a public road.42

With enactment of the 1850 statute, county officials no longer could prevent establishment of ferries by failing or refusing to issue licenses. At the same time, the Legislature strengthened local finances by re-establishing county commissioners' power to levy and collect license taxes from boat owners. State legislators also reaffirmed local authority to regulate rates of ferriage, and supervise the bond guaranteeing safe boats and docking facilities.43 The policies underlying post-1850 licensing provisions were notably different than their precursors. The right of private individuals to establish and operate ferries depended only upon riparian land ownership, and the ability to pay taxes
and post bond. Discretionary local power to establish exclusive franchises was replaced in most instances by ministerial licensing duties. County officers no longer retained authority to impede competition. Given the few extra requirements imposed common carriers, ferry licenses were granted in the same manner that licenses issued to operate a grocery, hotel, or any other legitimate business.

In 1854, and again in 1858, Texas Legislatures made minor changes in the laws regulating public ferries. The 1854 statute authorized county commissioners to reduce ferriage rates upon petition by twenty or more local residents. If the boat owner believed that new tolls were unfair, county officers had the option of finding a different licensee. The party receiving the new license was obliged to purchase the existing boat and equipment from its owner, under arbitration procedures established by statute. The 1858 law established a sort of "homestead" exemption for boatmen, reserving one boat and equipment worth five hundred dollars "free and independent . . . of forced sale. . . ." the exemption did not apply to judgments levied against ferry operators for "negligence or other improper conduct" of their business.44

New statutes regulating privately owned public ferries did not confront directly the issue of state control over local governments. Intergovernmental relations questions were tangential to the primary purposes of the new regulations. Implicitly, the principle that a State Legislature
might supervise and regulate the powers and prerogatives of towns and counties, had been supported and advanced significantly in Texas law. Supremacy doctrine, however, remained sheltered quietly between the lines of the ferry legislation, as lawmakers haggled over state statutory guidelines for inclines on approaches to local river crossings.

The Texas Legislature's stewardship over town and county governments often seemed to develop more by accident than design. In several important and ironic instances, statutes designed to increase local autonomy had exactly the opposite effect. The desire to remove from the Texas Congress questions better decided locally, inadvertently established Texas lawmakers as arbiters of local feuds, and turned Austin's legislative halls into a battleground where local supremacies were established or maintained. One such statute provided machinery for provincial populations to change the location of their county seat. Local residents, the Second Texas Congress decreed, were to relocate county governments by popular referendum, with an eye toward convenience for as many citizens as possible. Legislators provided that a proposed county seat, situated within five miles of a county's geographic center, could be established by local residents' majority vote; outside the five-mile zone, county seat relocation required a two-thirds majority.45

Insofar as the removal statute allowed local citizens to choose their county seat sites, it fulfilled the purpose
intended by the Texas Congress. But the law also involved municipal corporations and townsite speculators in a deadly competition for economic survival, that reached beyond local electoral processes to the State Legislature. Despite their concessions to local independence in choosing a county seat, Texas lawmakers did not relinquish their authority to draw or adjust county boundaries. Whether or not boundary lines were drawn in such a way as to place a new town or townsite within the five-mile zone at a county's center, often spelled the difference between success or failure; between a thriving county seat town and hollow echoes in the empty, decaying buildings of an abandoned hamlet.46

At every session local developers and town promoters importuned the Legislature for protection and support. Charles A. Russell, a Goliad County justice of the peace and leading proponent for incorporating Karnes County, was probably a typical speculator of his day. By affidavit, Russell informed state legislators that the petitions submitted in support of the new county had been "drawn and principally circulated by myself. . . ." Russell left very little to chance. He submitted two petitions, the first outlining metes and bounds of the new county,47 and a second requesting that the town of Helena be established as seat of justice. Russell pointed out to state legislators numerous considerations that made Helena attractive as a county seat. Outer boundaries of the county had been carefully drawn so the town came within five miles of its geographic center. Russell
also attacked as undesirable the practices most often followed for choosing a new county seat in pre-Civil War Texas. Under this system a special board of commissioners selected several eligible locations for the seat of justice, with regard for both geography and donations of land and money to the newly-incorporated government. County residents then chose the final location by referendum. The local commissioners, Russell argued, "Often disagree and thereby the people are put to great inconvenience." The town of Helena, Russell reassured state politicians, was "a flourishing Village with a population of One Hundred and Twenty-five persons and improving very fast." 48

The Texas Legislature granted Justice Russell's petitions for establishment of Karnes County and designation of Helena as a county seat town. 49 State lawmakers did not accede, however, to Russell's proposals for raiding the territory of a neighboring county. The promoters and organizers of the new local government had looked north-eastward into DeWitt County and concluded abruptly that the jurisdiction was too large. It was "evident by inspection," argued Russell and his compatriots, that DeWitt extended "too far to the south west for the convenience of any citizens that it may eventually contain." 50 The apparently uninhabited southwestern portion of DeWitt was a tempting prize for Karnes County's founders. As settlement proceeded, the area promised a larger property tax base for a new government and a greater volume of business for Helena
merchants. Farmers and ranchers who settled the area would conduct legal and mercantile affairs at the Karnes County seat, rather than at Clinton, then the seat of justice for DeWitt.

Coupled with establishment of county boundaries, the question of territorial control and county size formed an important element of local-state government relations. Two countervailing political forces affected the formation of new jurisdictions, and the size and wealth of territory to be controlled. Townsite speculation, coupled with intense competition for recognition as county seat towns, created pressures in the Legislature for small geographic divisions. Texas' 1836 and 1845 constitutions prohibited legislators from establishing counties smaller than nine hundred square miles. In the 1836 charter the size limitation was absolute; the 1845 state constitution provided the Legislature with an escape clause that permitted organization of numerous tiny counties--most of them in the northeastern part of the state.51

The opposite side of the county territorial control question was the desire of frontier communities to service as much of surrounding area as possible. Karnes County organizers were thus interested in capturing uninhabited DeWitt County land. In its work of supervising establishment of new counties and changes in boundaries and jurisdiction, the Legislature often witnessed life and death struggles for municipal prosperity. Local settlers and promoters deluged lawmakers with petitions as towns competed against one
another, seeking to maintain control over the widest possible areas.

For varying reasons, both Harris and Bexar counties were vulnerable to having large portions of territory annexed into the jurisdictions of newly-organized county governments. Citizens living in northern and northwestern portions of Harris could travel up to fifty miles and pay numerous ferry tolls to reach the city of Houston.\textsuperscript{52} San Antonio's years long isolation beyond the pale of protected Texas settlement, resulted in the Alamo City's establishment as an administrative center for large, unsettled, territories in the Texas interior. As West Texas regions were settled, creation of new county governments in the "Bexar Land District" was both natural and necessary. However, as the Legislature proposed county boundary adjustments close to home, merchants and settlers from San Antonio objected vehemently to portended losses of business for their city.

During the mid-1850's the boundary between Bexar County and neighboring Medina County became the source of a bitter annexation dispute. Difficulties started in 1853 when a group of residents from the northwest corner of Bexar County petitioned the Texas Legislature to have their property attached to Medina. The stated reasons for requesting the changes were simple and reasonable. The settlers lived directly across the Medina River from Castroville, at that time the statutorily-established seat of justice of the Medina County.\textsuperscript{53} The petitioners stated that they farmed
on the east bank of the river, lived twenty-five to forty miles from San Antonio, had immigrated only recently to Texas, spoke little English, and desired closer association with other German communities in Medina County. The new arrivals lamented their "many and vexatious . . . inconveniences and annoyances by reason of their great distance from the city of San Antonio." Furthermore, the actual quantity of land involved in the boundary change was small, "and would take from Bexar, a County even yet Colossal, but a very trifling amount of unsettled [] territory."\(^{54}\)

Bexar County and San Antonio proponents responded forcefully to the threat posed by unfavorable boundary adjustments. Other residents and landowners from the area affected by annexation hastily submitted a counter-petition to the Texas Legislature opposing the jurisdictional change. The citizens objected strongly to being "thrown" into Medina County, an action that would "most seriously affect their interests."\(^{55}\) But the most strenuous objections to the boundary changes did not come from residents in the contested province; they came from other Bexar County citizens including influential San Antonio civic and business leaders. In their petition to the Legislature, Bexar County boosters rejected totally the idea of boundary adjustments. They argued that expenses of government administration in Bexar County, "economically administered," were very large. Reduction in county size, would not bring a proportional reduction in the county budget.
San Antonio backers also protested the "attempt . . . to dismember this [Bexar] county by cutting off a large and valuable portion . . . without consulting the wishes of the citizens. . . ." Alamo City backers were particularly incensed by the source of this threat to their future prosperity. The petitioners claimed to be informed:

and believe that the effort proceeds almost exclusively from the citizens of Castroville. Castroville is the County seat of Medina County, but is situated upon its eastern boundary, and the citizens fearing a removal of the County seat to a more central location, seek to strengthen their position by removing the boundary line from their town several miles into the present limits of Bexar County—that is, to advance their private interests at the expense of Bexar County. 56

An Antonio supporters thus decried the "private interests" that threatened the well-being of their city. County and state governments had been drawn into the town rivalry between San Antonio and Castroville, while the rhetoric of the dispute assumed the tone and vocabulary of imperial warfare and diplomacy. San Antonio supporters appealed to legislators' sense of fair play to avert the impending partition of their county. "Bexar," they argued:

is the mother of Counties, has yielded territory after territory to new organizations, and she protests against a further mutilation of her fair proportions against her consent. . . . The present western boundary of Bexar is the Medina river [sic.] a fine natural boundary, always preferable to an imaginary or artificial line. 57

Apparently Bexar County proponents were more convincing than their rivals to the Texas Legislature. The reasons for
changing the county boundary were not compelling enough to cause an antebellum Legislature to move the county line east of the Medina River. As late as 1863, no change in the county line had been approved. 58

To facilitate their speculation, county and county seat town promoters attempted to obtain approval or acquiescence from nearby governments affected by new incorporations. In Harris, as in Bexar County, commissioners attempted, with inadequate financing and poor roads, to administer large territories a substantial distance from the seat of justice. Settlers and speculators in the northern and northwestern parts of the county attempted, on occasion, to establish a new government on lands in Harris, Montgomery, Washington, Grimes, and Austin counties. In 1842, the Texas Congress established the "judicial county" of Spring Creek in this area, but this government was subsequently disbanded. 59 Again in 1860, promoters of the town of Hockley made a determined effort to have a new government established encompassing territory from northwest Harris and several adjacent counties. In their petition to the Legislature, Hockley boosters also sought support from Harris County commissioners. The new town of Hockley, petitioners argued, was located primarily upon Harris County school lands, which would be "greatly enhanced in value" if Hockley County were organized. Harris residents thus had much to gain from establishment of the new government. In the same petition, Hockley supporters expressed concern and displeasure over
machinations of a rival group of promoters--the Hempstead Town Company. Hempstead residents also needed a county seat, and relocation of a coveted railroad depot from Hockley to their community. Hockley boosters warned Texas legislators that the Hempstead townsite was too close to the western edge of the proposed new jurisdiction to serve conveniently as a seat of justice. The Legislature's duty was clear; Hockley proponents demanded "that the Rail Road depot be fixed and legalised [sic.] at said Town of Hockley, . . . thereby protecting the School Lands as well as your memorialists in their rights as citizens."^60

Antebellum Texas legislators deserved substantial credit for avoiding exploitation of county seat and boundary disputes. Amenable to manipulation for political or pecuniary purposes, state lawmakers' arbitrary power to draw or adjust county lines might easily have been abused. Instead, the committee on counties and county boundaries of the Texas House of Representatives paid very strict attention to the wants of local individuals and groups--especially to landowners and residents directly affected by jurisdictional changes.61 State legislators proved unwilling to create new counties which radically changed geographic configurations in adjacent jurisdictions; they resisted boundary alterations that placed established county seat towns outside important five-mile center zones.62 Perhaps, the Texas Legislature provided the quality governance in county boundary adjust-
ments, that elicited Frederick Law Olmsted's compliment that he had "seldom been more impressed with respect for the working of Democratic institutions." 63

Although Texas legislators granted petitions for establishment of particular towns as county seats, they and their constituents usually preferred to have permanent sites chosen by local commissioners or popular referendum. In the two years following annexation by the United States, the Texas Legislature enacted fifty-six statutes dealing, at least in part, with establishment of county seat towns; in thirty-seven of these laws, the permanent seat of justice was selected by popular election or local commission. In fifteen cases, state lawmakers specified county seat status for established communities. 64 However, as Castroville residents learned from sad experience, action by the Legislature did not foreclose citizens from seeking to change a county seat by referendum. 65

The Texas Legislature's disposition of special laws for counties and towns provided excellent illustrations of the political and legal position of state government in mid-nineteenth century local-state constitutional relations. In the county seat removal statute of 1839, the Texas Congress manifested a desire to have such questions resolved locally. Through consistent and unquestioned control over the size and boundaries of local jurisdictions, antebellum legislators confirmed state supremacy principles. Yet state government regulatory powers weighed lightly upon county and town
officers. Recognizing Texans' propensities toward selective evasion or disobedience of laws perceived as inimical to local development, the Legislature utilized "sovereign" powers to encourage and support community initiatives. Approximately fifty-five documents survive from the Fourth Texas Legislature of 1851-1853, dealing with requests for special county or municipal legislation. In only four instances did lawmakers' committees report adversely to local government requests. Legislators dispensed a variety of favors to towns and counties: state tax rebates to local governments; special tax authority; county organization and county seat legislation; creation of new district land offices; post facto legalization of unauthorized acts performed by local officials; chartering of municipal governments; and authority for county officials to build toll bridges with tax dollars. Nor may the inference be drawn from adverse committee reports, that state legislators reacted unfavorably to local petitions. If lawmakers were considering general legislation, special bills were held in abeyance. Carelessness and inefficiency on the part of sponsoring representatives accounted for the demise of more private bills than did adverse state committee reactions. John M. Crockett, chairman of the Fourth Legislature's Committee on Counties and County Boundaries, expressed dismay and exasperation with legislators who introduced special bills for their constituents, and then neglected repeatedly to appear as sponsor during committee deliber-
Antebellum Texas state legislators left little evidence to indicate they applied objective standards in denying or approving requests for special laws. However, tantalizing bits of information support an inference that lawmakers inquired into unusual conditions that warranted passage of private legislation. House and Senate committees refused action on private bills if authority for local action existed under general state laws. Special legislation was appropriate, argued B. E. Tarver, chairman of the Fourth Legislature's House Judiciary Committee, when "the case presented . . . strongly demands equitable inter-position on the part of the legislature. . . ." Chairman Tarver's language suggests that he considered special legislation analogous to equitable relief in the courts. Where common law remedies were inadequate, the nineteenth century litigant sought special injunctive relief from chancery. Tarver viewed special legislation as a "remedy" for situations where general laws were inappropriate, inadequate, or actually worked injustice upon particular local groups.

The doctrine of state supremacy was, with but few exceptions, utilized in antebellum Texas to reinforce local government viability and autonomy. Local government officials and representatives from areas affected by private legislation were consulted prior to enactment. Committee approval for special bills required local representatives' support, and recitals in final legislative committee reports
evidenced sensitivity to local opinion when dealing with questions of local concern. County seat questions, for example, were settled by the Legislature after consideration of "several petitions of the citizens of said County together with the statements of their delegation." 76 A decision to authorize construction of a mill along the West Fork of the Trinity River hinged upon "learning from the representatives from that section of the country, that the building . . . at that place will not for many years, if ever, interfere with Navigation. . . ." 77

When local needs required, town and county officers continued to manifest their independence by participating in illegal or unauthorized activities. Many instances occurred where local officers operated without statutory authorization, relying upon the Texas Legislature for post facto legalization of ultra vires actions. Statutes during the late 1840's and early 1850's, to legalize the acts of county commissioners were common. 78 Town governments were more than willing to conduct activities without specific legislative authorization. Thus in 1848, the city of Houston applied for, and received statutory authority to utilize its revenues, "emanating from whatever source," for improvement of roads "without the limits of the corporation. . . ." 79 Since 1842, Houston aldermen had been engaged in road and bridge improvement beyond their city's limits. 80 The legislative "grant" of authority was six years after the fact; and if state lawmakers had refused approval of the statute,
in all probability Houstonians would have continued ultra
wires their local internal improvements program.\textsuperscript{81} Local
officers also demonstrated continued willingness to issue
unsecured scrip or bonds, thus mortgaging future tax revenues
to meet current needs. In cases where citizens did not
accept special taxes to pay for bond issues, and where the
Legislature granted no authority for town or county indebted-
ness the likelihood of default or repudiation increased
greatly.\textsuperscript{82}

Nowhere was the reality of local autonomy more vividly
illustrated than in areas of legislation where state inter-
est were strongest. Although honest men differed about the
best way to administer the legacy, the Texas government's
interest in disposition of the state's public domain was
beyond question. The idea of the Legislature's maintaining
any semblance of control over land distribution was out of
the question.\textsuperscript{83} Strong local biases in land office adminis-
tration, inaugurated by the Texas Congress in 1839, remained
substantially intact throughout the pre-Civil War period.
Throughout two decades preceding secession, the Texas
Congress, and then the State Legislature tinkered with, but
never reformed, the administrative structure of local land
offices. Under an 1846 statute, for example, lawmakers
established "land districts" in each of thirty-six organized
Texas counties, and forbade further proliferation of land
offices when new counties were incorporated. As new govern-
m ents were created, therefore, several counties would ulti-
mately be served by a single land office, with a surveyor elected district-wide, and assistant surveyors working in local areas.84

Achievements of the revised land district statute were ephemeral. New counties ardently desired control over local land distribution, independent of potential interference from officials of a neighboring government. Settlers in new county seat towns wanted land offices as boons to business, and simply as conveniences that would save many miles of travelling.85 At its 1848 session, the Legislature backed away once again from general government control of land distribution. A local option statute permitted new counties to open separate land offices, or remain in multi-government organizations.86 Apparently, a few multi-county land districts remained in operation until 1858, when the Seventh Texas Legislature decreed that each county establish and maintain separate land distribution administration.87

Given the strength of local governments in antebellum Texas, it is understandable that problems in local-state relations facing pre-Civil War Texas legislators did not arise from state intermeddling in town or county affairs. Tensions arose between local and state governments from the didactic postures assumed by town and county officials when petitioning the Legislature. Intergovernmental problems stemmed from attempts by local promoters and settlers to interfere in matters appropriately handled by the Legislature or the courts. Houstonians' proposal to give judicial
functions to their own privately controlled chamber of commerce arbitration system, was a prominent example of this type of local arrogance. Increased criticism, during the 1850's, of Texas lawmakers' handling of legislative power, did not emanate from careful or arbitrary state supervision of local institutional practices. Rather, men were beginning to realize the need for re-examining established practices of granting towns and counties whatever legal authority they requested.

Local developers' imaginations with regard to state support were as large as the Texas treasury. Especially after 1850, promoters seemed to have an endless series of ideas for beneficial local uses of state funds. The House Committee on Public Debt of the Fourth Texas Legislature thus confronted proposals to retire the debt of the "late Republic of Texas" by establishing courts of claims in every county across the state. Once organized, local tribunals would examine all demands brought forward by residents of the neighborhood, deciding which of the claimants merited payment.

For its lack of subtlety, this proposal to raid the state treasury was remarkable. The committee considering the legislation rejected it unanimously and with some consternation. "It is easy to see," exclaimed James W. Scott, Harris County representative and Public Debts committee chairman, "that a debt would be created VS \[sic.\] the state which would absorb her entire revenue and admit claims which they are satisfied \[neither\] this nor any succeeding Legis-


lature would do."\textsuperscript{89}

Other local business found its way into state legislative processes as ultimatums rather than proposals. With any regard for the courtesies and deference usually accorded state lawmakers, a new municipal charter for the town of Palestine, in all probability, would have become law. Local residents had considered the charter carefully before submitting it, in January, 1858, to the Seventh Texas Legislature. In a public meeting, town citizens had determined upon a new charter and elected a local committee to prepare the document. The task of drafting a municipal statute had then devolved upon A. G. Cantley, a local attorney who subsequently became the town's correspondent in dealings with the Legislature. Portions of the proposal, Cantley "selected from other City Charters"; other sections were adapted to the special needs of Palestine residents. The charter was then approved, Cantley informed state lawmakers, "by an \textsuperscript{sic.} unanimous vote of the Citizens of our Town, in public meeting assembled. \ldots" The local agent also submitted to Texas lawmakers a petition, bearing the names of sixty citizens who favored enactment of the special legislation for the city.

In the opinion of Palestine citizens, there was little legislative work remaining on the new charter. Town residents expressed the "hope" that Texas lawmakers would "take it [i.e., the charter] in hand immediately and have it passed." Cantley reminded legislators of the public meeting
and support for the municipal statute, and informed lawmakers that townspeople wanted "this charter or none." If the Legislature voted to withhold approval of the incorporation law submitted by Palestine citizens, then the petitioners demanded "repeal [of] the 'old one'" and disincorporation of the town.  

It was typical procedure for mid-nineteenth century Texans to draft municipal charters or charter amendments locally, and then present them to the State Legislature for ratification. In preparation by town residents, and in content, the proposed Palestine municipal charter of 1858 was barely distinguishable from numerous incorporations placed on the statute books during the same legislative session.  

But presentation of the Palestine charter to the Legislature on a "take it or leave it" basis denied the power of state lawmakers to supervise municipal subdivisions, and denied, in part, lawmakers' power over their own legislation. In effect, the townspeople of Palestine sought to limit the state supremacy doctrine in local-state constitutional relations, even though the Legislature's authority had been used primarily for insertion of stylistic amendments, or for last minute additions and deletions proposed by local representatives. Texas legislators were becoming increasingly alarmed over excessive state delegations of authority to local governments. Chances for enactment of a new municipal charter were not improved by the incorporators' suggestion that it be accepted without critical examination. The terms
on which Palestine residents petitioned the Legislature were unacceptable, and they received neither their new charter, nor repeal of the "'old one.'" 92

Local officers' and agents' practices and pressures in the state capital finally provoked Texas lawmakers to sharp criticism of existing intrastate intergovernmental relationships. During the second half of the 1850's decade, a small but vocal minority in the Legislature began attacking the intense localism of many Texas statutes. Drawing attention to abuses and inefficiency in county and town governments, these lawmakers suggested a reappraisal of state policies and careful scrutiny of further delegations of power.

Opening broadsides in the battle for stricter state control of local governments occurred during July, 1856, at the adjourned session of the Sixth Texas Legislature. Local promoters had dreamed up a proposal to take approximately three and one-half million dollars in state revenues and assets appropriated for elementary education, divide it pro rata among the counties "according to white population," and allow county commissioners to "loan the same on mortgages of real estate." 93  Proponents of the measure argued that counties would receive much needed currency, and that interest on mortgage payments would handsomely support local school systems.

The proposal to have county commissioners' courts established in the banking business seemed no more nor less mendacious than a score of other plans to lighten the Texas
treasury. The response, a minority report from two of the five state senators impanelled as a special committee to consider the mortgage proposal, presented cogent arguments against distribution of the permanent school fund. State Senators E. A. Palmer and R. H. Guinn argued that the money could be better administered by one Texas treasurer than by one hundred and fifteen county officers. The lawmakers pointed to successful state-administered school fund investment programs in "nearly every State in the Union." By contrast, the only experiment in county administration of endowment monies had ended in disaster. "Arkansas," argued the minority senators, "is, to-day [sic.] without one mile of railroad or one dollar's school fund in her Treasury—a fit commentary upon the policy of trusting to county legislation to develop the resources of a State."

The senators then launched an appraisal of Texas county government operations, concluding that they had no need to leave "our own State to find examples of the evils" arising from county government execution of state policy:

Although the several counties of the State have been left to regulate their own municipal affairs, such as roads, ferries, bridges, public buildings &c, and though the State has extended to them every facility by legislating in their behalf, and releasing to them the State taxes for a number of years; it is a notorious fact that more than one-half of them have never erected good and sufficient public buildings, and a great many are involved in debt to the extent of thousands, while the county funds are wasted and squandered by the county officers who are responsible only to themselves. 84

As for the new-found local government concern with
support for public schooling, Senators Guinn and Palmer hastened to remind fellow legislators that since 1839, each Texas county had the privilege of claiming for that purpose four leagues of land (eighteen thousand acres) from the public domain. Only forty-one of the ninety-nine counties organized prior to the Sixth Legislature had claimed all the school property to which they were entitled; thirty-eight counties—including nineteen governments organized by the Congress of the Texas Republic—had claimed no land whatsoever. Local governments organized prior to 1854 had outstanding claims for public lands totalling nearly eight hundred thousand acres. Senators Guinn and Palmer, echoing sentiments expressed by Governor Elisha M. Pease, sadly concluded that: "'it is reasonable to expect that those who have neglected for so long a period to avail themselves of these liberal grants of land, will not, hereafter, manage them with that care and attention that will be required to realize their full value. . . ."95

Governor Pease, and Guinn and Palmer urged that land held captive by county commissioners be converted to a general fund for the whole state, with the income being paid each year to county commissioners for school support.96 The school lands, however, remained under local control. The two senators did dissuade their colleagues from disseminating the principal of the school fund into county treasuries. The entirety of the school moneys was converted to United States five percent government bonds. Income from the bonds was
utilized for support of Texas public education. Local developers desiring mortgage money would seek their funds elsewhere.  

By the time the Seventh Legislature convened in Austin in November, 1857, permissive attitudes toward local government were undergoing significant changes. While enacting into law seventy-one pieces of county legislation and six municipal charters, lawmakers appeared to take a much sterner and more critical position toward existing practices and local abuses. Local officers seeking new prerogatives found state lawmakers uncooperative, if not thoroughly irascible. Special bills received much closer scrutiny from legislative committees. As residents of Palestine were rebuffed in their "petition" for a municipal charter, Montgomery County officials received the dismaying news that the Legislature had repudiated the practice of ratifying unlawful acts committed by local officers. "To legalize the void acts of any County Court ..." reasoned members of the House Judiciary Committee, "would be dangerous and especially so as precedent." 

The Committee on Counties and County Boundaries also turned over a new leaf. Rejecting numerous petitions for new counties that were smaller than the constitutionally required nine hundred square miles, committee members railed against the more permissive practices of earlier legislatures. It was time, argued chairman John Henry Brown for a unanimous committee, to stop "creating counties to suit individual
interests, in running lines in any conceivable form in order to throw some particular tract of land in[to] the centre of the county." Brown favored a system of creating square counties, in advance of settlement, to avoid burdening the Legislature with unseemly and time consuming boundary battles.99

In the area of county and municipal finance, Texas lawmakers also began drawing a few outer boundaries around laissez faire practices of earlier years. Continuing previous policies of enacting local option statutes, state legislators authorized, upon approval by the electorate in general referenda, increases of town or county ad valorem property taxes.100 But the Finance Committee of the Texas House of Representatives steadfastly refused to permit arbitrary tax increases upon specific classes of property. A proposal to allow towns and cities discretionary power in raising license fees for billiard tables and "ten pin" alleys, met resolute committee opposition. Existing state, county, and municipal licenses, the legislators argued, already taxed such "amusements" to the limit of their ability to pay. If the object of the tax increase was to put the billiard parlors and bowling alleys out of business, the Finance Committee members were "of the opinion it should be done in a direct way by a law prohibiting, the same with fines and penalties attached."101 Confiscatory taxes were hypocritical and unacceptable. The Seventh Legislature's Finance Committee also opposed resolutely, a petition from
county treasurers for commissions to compensate them for handling school funds. Lawmakers decided that money for education was a "charity fund," administered "without charge for services. . . ." Committeemen consoled county officers with a reminder that they took office knowing there would be "onerous and responsible duties to perform without any corresponding remuneration. . . .",102

The actions taken by the Seventh Texas Legislature marked subtle but important changes in state-local constitutional relationships. In one sense, lawmakers' change of attitude and approach occurred because the policies of earlier legislatures had worked well. Permissive policies prevalent until the early 1850's had fostered development of strong local institutions in a society where governmental viability and availability at any level was a pressing concern. Lawmakers' increasing intransigence toward poor county fiscal management, ultra vires action by local officers, or abuse of state legislative processes in local or interurban rivalries, evidenced growing concern with quality in municipal administration. State senators and representatives increasingly desired to rid local governments of that independent but careless pragmatism that was necessary for isolated frontier settlements and unacceptable in more established societies.

The principle of state supremacy in local-state relations derived its meaning and form from accumulation of precedent;
from the utilization of authority to draw or adjust county boundaries; from contitional grants of fiscal patronage to needy local governments; from mediation of disputes between contending town or county groups; from having the legislative process operate as a cemetery for ill-considered legislation; and from a score of incidental regulations, which, one by one, created an atmosphere that precluded such alternatives as an Archives War, or Harris County commissioners' open disregard of Texas court orders. 103

At the same time, it should be emphasized and remembered that changes taking place in Texas Legislatures were those of degree. State lawmakers were not prepared to impose startling new obligations upon local officers, or indulge in broad state-centered municipal supervision that drastically altered the basic island community configurations of ante-bellum Texas politics. 104 Indeed, the Legislature maintained and strengthened elaborate statutory systems, imposing personal liability for wrongful acts upon local officers and their sureties. Definite, unequivocal standards of private responsibility completed local communities' self-policing mechanisms, and protected against official misconduct. 105 Beyond this insurance for reasonably-administered local autonomy, legislators maintained the classic postures of providing negative responses to private or local government proposals, albeit with greater intensity and frequency than had been the case before mid-century. Texans would thus face impending crises of secession and civil war with very
little experience in administering general, statewide policies or programs. The State of Texas remained a congeries of local units, each with special projects and interests. State government in Austin in 1860 remained a clearinghouse for town and county development projects, requiring outside aid or support.
NOTES


2Austin, Texas, State Library Archives MSS. Records of the Legislature, First Congress of the Republic of Texas, Box 2-8/1, File No. 624, 652, 622, "An Act to incorporate the Town of Nacogdoches." Texas Congressmen were consistent and careful about inclusion of such clauses in municipal charters. Representatives from Galveston attempted to place the city's charter of 1840 on an equal basis with general laws. The original wording of the bill sought authority for the city to "ordain and establish such acts, laws, ordinances, and regulations not inconsistent with the Constitution of the Republic. . . ." The congressional committee considering the legislation amended the bill to include the words "and laws" after the word "constitution" in the original. The intent of the Congress was unmistakable: municipal charters gave way before the constitution and the general laws of the state. Cf., Austin, Texas, State Library Archives MSS, Records of the Legislature, Fourth Congress of the Republic of Texas, Box 2-8/8, File 1414, "An Act . . . for the incorporation of the City of Galveston." [Texas legislative records are hereafter cited as, Records of the ______ Congress of the State (Republic) of Texas.]

3Texans' insistence upon insertion of the phrase "subject to the constitution and laws of the Republic," in municipal charters, probably stemmed from controversies in the United States over the nature of municipal law in intra-state constitutionalism. In general terms, questions went to the fundamental nature of state constitutions, asking whether those documents imposed limits upon plenary state powers, or whether they granted power--and were a source of government authority, as was the United States Constitution. More specifically, advocates who believed in an "inherent right of local self-government" could not accept the idea that the states' constitutions were the sole and all-encompassing recipient of governmental authority from the people. This doctrine relegated local governments to mere subdivisions of the state, operating with delegated authority, and subject to continuous supervision by the Legislature. In this context, New England towns claimed the power to nullify state
acts; later, inherent self-rule advocates claimed that purely local matters should be free of state control, while general questions were amenable to state legislation.

By the 1830's, the doctrine of inherent right to local self-rule, like the doctrine of "vested rights," was under attack, but by no means dead and buried. Persons who argued for the state's legal supremacy over local governments found the whole question muddled by the permissiveness of Legislatures in most dealings with local governing units. Even more confusing were the numerous examples of successful local recalcitrance (rebellion?) that seemed to disprove state supremacy principles. Such was the strength of local governments that state Legislatures had to be satisfied with principles, while awaiting more propitious moments of their implementation. Cf., James and Marilyn Blawie, "Town vs. State: Interposition and Secession in New England," Journal of Public Law, V (1956), 90-109.

A second source of contention regarding local governments stemmed from corporate law and the apparent contractual nature of certain aspects of municipal charters. While the doctrine of inherent right to self-rule was in decline, the idea that municipalities had certain vested rights, not subject to removal by the Legislature, was alive in the mid-1830's and being asserted with great vigor by famous legal scholars. New York Chancellor James Kent, in his treatise on the charter of the city of New York, argued unequivocally that protection of these "privileges and franchises" had roots in Magna Charta provisions that "the city of London and all other cities should have all their liberties and free customs; and that no freeman should be dispossessed of his freehold, or liberties, or free customs, but by lawful judgment of his peers or by the law of the land." [Italics in original.] Municipal franchises, Kent argued, were "founded on grants which are contracts," and thus could not legally be impaired under the United States Constitution. Kent made no differentiation between private and municipal corporations, insofar as franchise rights under the law were concerned. Both were considered individuals and entitled to the same consideration.

Kent considered the municipal franchise to be a "freehold right," which was "as much beyond the reach of a gratuitous legislative resumption, as any other franchise or property held by grant or charter." Grants of "political power," however, had no "private interest or property or revenue connected with it." Most of these powers had "always continued with the Common Council, under free and active exercise." The public powers, however, were "subject . . . at all times to legislative interference and discretion." These powers, not in the nature of grants of private property, were neither "exclusive in the Corporation nor irrevocable. . . ." Kent took great pains to point out that legislative discretion was utilized in most instances to
give the municipality "additional, specific, and subsidiary relief." The State Legislature frequently honored requests from the city to provide specific authority for local acts, although general grants of charter power were adequate for the job. Cf., James Kent, The Charter of the City of New York With Notes Thereon. Also a Treatise on the Powers and Duties of the Mayor, Aldermen, and Assistant Aldermen, and the Journal of the City Convention (New York: Childs and Devoe, 1836), 109-113, 132-145, passim; the Texas supreme court did not repudiate the concept of "privileges and franchises" in municipal law until 1854. Cf., Bass v. Fontleroy, 11 Tx. 698 (1854); and please refer to Ch. VI, note 6 of this dissertation; see also, Jon Teaford, "City versus State: The Struggle for Legal Ascendancy," American Journal of Legal History, XVII (January, 1973), 51-65.

Added to the controversy surrounding "inherent right" principles, leading authorities appeared to place municipal privileges and franchises squarely under the protection of Chief Justice Marshall's ruling in the Dartmouth College Case. The express provision making Texas municipal charters subject to the constitution and laws of the land, preserved the power of the Legislature to cancel or repeal all forms of local government authority or privilege. General laws clearly took precedence; and the language operated in the same way as the reserved right to revoke or change private corporate charters. Making municipal authority subject to the constitution and laws of the state preserved the right of the Texas Congress to alter local statutes, preserved the legal principle of state supremacy over local governments, and permitted gradual expansion of state supervision over localities as permitted by political power realities.

4The influence of American law and politics upon the law and politics of the Texas Republic was closely examined by contemporaries. Political economist William M. Gouge considered the Texas Republic a "State without the Union." Cf., William M. Gouge, The Fiscal History of Texas . . . with Remarks on American Debts (Philadelphia: Lippincott, Grambo, 1852), viii; from its inception, the Texas Republic was embroiled in various aspects of United States politics. Consider, for example, the petition of two "Texian" agents, S. B. Dickinson and J. M. Wolfe, who petitioned for reimbursement for services rendered as propagandists for the Texas cause during the 1836 revolution. The two men had "proceeded to the western part of New York and thence to other states allaying prejudice gotten up by the fanatics of the nonslave holding states, inimical to southern interest. . . ." Cf., Petition of S. B. Dickinson and J. M. Wolfe to the First Congress of the Republic of Texas, in "A Calendar of the Memorials and Petitions to the Congress of Texas," comp. and ed. by Lena Sara Williams (unpublished M.A. thesis, University of Texas, 1934) 16-17; and see, "Joint Resolution for

5Cf., Ch. II, pp. 49-65, Ch. III, pp. 90-97, of this dissertation, for a discussion of local resistance to state authority.

6Austin, Texas, State Library Archives MSS, Records of the Legislature, Memorials and Petitions to the Congress of the Republic of Texas, Box 2-9/114, File No. 47, "Petition from Citizens of Houston protesting charter changes . . . .", December 12, 1840.

7Records of the Third Congress of the Republic of Texas, Box 2-8/4, File No. 1159, "An Act establishing a Chamber of Commerce in the City of Houston."

8Records of the Third Congress of the Republic of Texas, Box 2-8/4, File No. 1097, report of the [House of Representatives] Judiciary Committee on the Petition establishing a Chamber of Commerce in the city of Houston, December 27, 1838; while the original bills introduced in the Texas Legislature were filed separately, and can easily be located, most committee reports were lumped together in several large folders. It is often impossible to ascertain definitely whether legislation became law; the original bills often bore little resemblance to final statutes; and often the names were changed, making it all the more difficult for the researcher to find the legislative history. There is no easy access to the committee reports of the Texas Legislature I have cited in this chapter. The document is probably commingled with sixty or seventy similar reports, and each one must be studied to locate the desired manuscript. I have provided as complete a description of the document as possible.


15 Gammel, Laws of Texas, II, 161-165 (January 14, 1839); an anonymous correspondent for the Hesperian, a contemporary magazine of western affairs accused the Allen brothers of being "impolitic" in their handling of the question of locating a permanent Texas capital. Rental charges on the capital building were certainly a factor: "that it [removal of the Texas capital from Houston] is agitated at all, is much owing to the course of the proprietors themselves." Cf., anon., "Houston and Galveston In the Years, 1837-1838" (reprint [from the Hesperian or Western Magazine, 1838] ed.; Houston, Texas: Union National Bank, 1926), 20-21; the Allen brothers also were promoting a new townsite on the Brazos River, and the possibility exists that they wished to remove the capital to their new speculative enterprise, in order to achieve initial successes there, they had achieved in Houston. The situation with the capital is analogous to the problems faced by Ohio legislators in apportioning the benefits of state canal construction; cf., Harry Scheiber, "Urban Rivalry and Internal Improvements in the Old Northwest, 1820-1860," in American Urban History, an Interpretive Reader with Commentaries (2d ed.; New York: Oxford University Press, 1973), 135-146.

16 Houston Morning Star, August 13, 1839, p. 2, Col. 1.

17 Gammel, Laws of Texas, II, 377-378 (January 5, 1840).

18 Gammel, Laws of Texas, I, 1327-1328 (June 12, 1837); II, 511-513 (January 21, 1841).

19 Records of the Second Congress of the Republic of Texas, Box 2-8/3, File No. 802, "An Act Establishing a Port of Entry at the West End of Galveston [Island]," November 23, 1837; and see, "Joint Resolution Moving the Custom-house of the District of Calhoun from Port Calhoun to Port Caballo," in Gammel, Laws of Texas, II, 976 (February 2, 1844).

20 Roy Grimes, ed., 300 Years in Victoria County (Victoria, Texas: By the Author, and the Victoria Advocate, 1968). 237-241; of Port Calhoun, little information seems to have survived, after removal of the port of entry in 1844. The local historian records the existence of a Matagorda
Island settlement called Saluria, which may have been the
descendant from the townsite speculation of the Texas Con-
gress. Proprietor of the Saluria enterprise was the
empresario, James Powers, and two associates, Alexander
Somervell and Milford P. Norton.

21 For a discussion of the constitutional issues raised
by the Archives War, please see Ch. II, pp. 56-65 of this dis-
sertation; for a discussion of other aspects of the resist-
ance in Austin, Cf., Dorman H. Winfrey, "The Texan Archive
War of 1842," Southwestern Historical Quarterly, LXIV
(October, 1960), 171-184.

22 Gammel, Laws of Texas, II, 592, sec. 2 (November 17,
1840); II, 479 (January 4, 1841).

23 Austin, Texas State Library Archives MSS, Records of
the Legislature, Petitions and Memorial to the Congress of
the Republic of Texas, Box 2-9/114, File No. 47, petition
from citizens of Houston protesting a change in the city
charter, December 12, 1840. [Cited hereafter as Petitions
and Memorial to the Texas Legislature (Congress).]

24 Gammel, Laws of Texas, II, 993-994 (February 3, 1844).

25 Gammel, Laws of Texas, III, 962-963 (February 11,
1852).

26 Cf., "An Act Incorporating the city of San Antonio and
other towns therein named," Sec. 5, 11, in Gammel, Laws of
Texas, I, 1379-1381 (December 14, 1837).

27 "An Act To amend an Act incorporating the City of San
Antonio and other Towns," Sec. 4, in Gammel, Laws of Texas,
II, 1499 (May 24, 1838).

28 Memorials and Petitions to the Texas Congress, Box
2-7L/97, Old File Box No. 93, File No. 3, June 17, 1838,
petition of Citizens of Victoria, to void city elections.

29 Tom E. Fite, "Looking Back: 140 Years of City
Government," in Grimes, 300 Years in Victoria County, 448.

30 Memorials and Petitions to the Texas Congress,
Box 2-7L/97, Old File Box No. 93, No. 5, petition from
Victoria citizens not to permit universal suffrage,
November 12, 1839.

31 Petitions and Memorials to the Texas Congress, Box
2-7L/97, Old File Box No. 93, File No. 5, petition from
Victoria citizens not to permit universal suffrage,
November 12, 1839.
Petitions and Memorials to the Texas Congress, Box 2-7L/97, Old File Box No. 93, File No. 29, petition of Victoria citizens for liberalization of local voting requirement, November 14, 1839.

"An Act To repeal in part, an act . . . Incorporating the City of San Antonio, and other towns. Approved May 24, 1838." In Gammel, Laws of Texas, II, 424 (December 17, 1839).

Gammel, Laws of Texas, II, 450-453 (February 5, 1840).

I have discussed local control over roads, bridges, and ferries in Ch. III of this dissertation, pp. 112-115, 124-125.

Gammel, Laws of Texas, III, 113-120, Sec. 3 (March 16, 1848).

Petitions and Memorials to the Texas Congress, petition of Branch Tanner Archer and James Collinsworth for a charter to connect the Rio Grande with the Sabine by internal waterway and railroad, December 9, 1836, cited in Williams, "A Calendar of the Memorials and Petitions to the Congress of Texas," 22-23; and cf., Record of the Fourth Congress of the Republic of Texas, Box 2-8/6, File No. 1311, "An Act to authorize Varian Richeson to construct a bridge across the Guadalupe River at or near Victoria," January 10, 1840; and see, Gammel, Laws of Texas, II, 374-375 (January 18, 1840).

Gammel, Laws of Texas, II, 1013-1016 (February 5, 1844).

Gammel, Laws of Texas, II, 839 (January 14, 1843).

Gammel, Laws of Texas, II, 963-964 (February 1, 1844); great must have been the chagrin and anger of ferry proprietor Dunham when, one day after he received his charter, Texas lawmakers abandoned their Matagorda Island speculation, closed the customs offices, and ordered the entire revenue operation to "Port Caballo" on the mainland. Cf., Gammel, Laws of Texas, II, 976 (February 2, 1844). Literally overnight, a franchise that promised handsome profits became a much less promising enterprise, with the ferry proprietor bound and bonded to perform for ten long years. The situation which proprietor Dunham faced suddenly in 1844, seems closely parallel to the predicament of the owners of the Charles River Bridge, as described in Stanley I. Kutler, Privilege and Creative Destruction: The Charles River Bridge Case (Philadelphia: J. B. Lippincott, 1971), passim.

Gammel, Laws of Texas, III, 426-428 (March 20, 1848).
42Hartley, Digest of Texas Laws, 437-444, Art. 1394-1413 (March 23, 1850); it is unclear both from the statute and from appellate cases whether county commissioners' courts retained discretion to refuse ferry licenses, or refuse petitions to open public highways when private entrepreneurs demanded a road. Although I have not found cases on this specific point, the language of the statute probably would have been supported by court issuance of mandamus or mandatory injunction writs, insofar as the granting of licenses were concerned. That Texas counts would order county commissioners to open public roads, and whether commissioners would have obeyed if so ordered seems, at best, doubtful.


44Williamson S. Oldham and George W. White, A Digest of the General Statute Laws of the State of Texas . . . (Austin, Texas: John Marshall & Co., 1859), p. 218, Art. 913 (January 5, 1854). [Cited hereafter as Oldham and White, Digest of Texas Laws.] It should also be noted, that protection for privately-owned ferries did not extend beyond the operator's property lines. Where established highways existed, county commissioners probably were not greatly impeded in their control or discretion, except for the requirement that former boat owners be compensated, if a new licensee were placed in charge of the boating operation.

45Gammel, Laws of Texas, II, 1474-1475 (May 9, 1838).

46A substantial proportion of the petitions and memorials presented to the State Legislature from 1846-1860 involved county boundaries, amalgamation of counties, or creation of new political units. Cf., Lula Belle Huckeba, "A Calendar of the Memorials and Petitions to the Legislature of Texas, 1846-1860" (unpublished M.A. Thesis, University of Texas, 1935), passim.

47Prior to the time when land was platted and accurately located by survey, property lines and other boundaries were described by metes and bounds. County boundary statutes also were written as follows: "from the southwest corner of Joseph Martin's claim East three quarters of a mile to Plum Creek, thence up Plum Creek with its meanders to the clump of six oak trees. . . ."
Petitions and Memorials to the Texas Legislature, Box 2-9/101, File No. 55, petition praying for creation of a new [Karnes] County from territory in Goliad and Bexar counties, November 7, 1853.

Gammel, Laws of Texas, III, 1488-1489 (February 4, 1854).

Petitions and Memorials to the Texas Legislature, Box 2-9/101, File No. 55, creation of Karnes County, November 7, 1853; my italics.

Texas Constitution (1836), Art. IV, Sec. 10; Constitution (1845), Art. VII, Sec. 34, in Thorpe, American Charters, Constitutions and Organic Laws, VI, 3536, 3562.

Petitions and Memorials to the Texas Congress, Box 2-9/114, File No. 44, petition for citizens of Harris County and Montgomery County for Creation of Spring Creek County, November 11, 1840.

Medina County was established in 1848; cf., Gammel, Laws of Texas, III, 27-28 (February 12, 1848).

Petitions and Memorials to the Texas Legislature, Box 2-7L/93, Old File Box No. 8, File No. 162, November, 1853, petition for adjusting the Medina-Bexar County Line.

Petitions and Memorials to the Texas Legislature, Box 2-7L/93, Old File Box No. 8, File No. 162, November, 1853, remonstrance of Bexar County residents against change in county boundaries.

Petitions and Memorials to the Texas Legislature, Box 2-9/101, File No. 163, December 13, 1853, remonstrance against enlarging Medina County at expense of Bexar County.

Petitions and Memorials to the Texas Legislature, Box 2-9/101, File No. 163, December 13, 1853, remonstrance against enlarging Medina County at the expense of Bexar County; Merle Curti commented that intercounty communications on the Wisconsin frontier also resembled diplomatic correspondence; cf., Curti, The Making of an American Community, A Case Study of Democracy in a Frontier County (Stanford, California: Stanford University Press, 1959), 47.

The boundary change was ultimately made, but not prior to the Civil War. The Medina County seat was removed from Castroville to Hondo, also after the Civil War.

The Supreme Court of the Republic of Texas ruled the judicial counties an evasion of constitutional requirements

60 Petitions and Memorials to the Texas Legislature, Box 2-9/115, No. 239, December, 1859-January 1860, petitions for creation of Hockley County and naming town of Hockley as county seat.

61 Numerous indications survive indicating that private individuals or groups could influence county line and jurisdictional decisions: the Bexar County-Medina County boundary fight; a ten mile "jog" in the Fort Bend County line because one landowner wanted to do business in Brazoria; state legislators attacked such practices during the later years of the 1850's. Cf., Clarence R. Wharton, A History of Fort Bend County (San Antonio, Texas: Naylor, 1939), 87-88; see also, p.56 and note 99 of this chapter.

62 Records of the Seventh Legislature of the State of Texas, Box 2-8/67, File No. 135, January, 1858, report of the Committee on Counties and County Boundaries on a petition from residents of Cherokee and Smith counties for creation of a new county, and a remonstrance against the same; substantial research has been completed in recent years on county seat wars in the American West; cf., James A. Schellenberg, "County Seat Wars: A preliminary analysis," Journal of Conflict Resolution, XIV (September, 1970), 345-352; Schellenberg, "Courthouse Coups D'Etat, County Seat Wars in the Old West," American West, X (March, 1973), 33-37, 62-63; Calvin F. Schwartzkopf, "The Rush County Seat War," Kansas Historical Quarterly, XXXVI (Spring, 1970), 40-61; and see, Stanley Elkins and Eric McKitrick, "A Meaning for Turner's Frontier," Political Science Quarterly, LXIX (September, 1954), 345.

### County Organization and County Seat Statutes Enacted By The Texas Legislature 1846-1848.

<table>
<thead>
<tr>
<th>Name of County</th>
<th>Statute Citation for Gammel, Laws of Texas</th>
<th>Mode of County Seat Selection</th>
<th>Size and Means of Obtaining Townsite</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Anderson</td>
<td>II, 1326-1327 (March 24, 1846)</td>
<td>Elected commissioners choose permanent site</td>
<td>Donation, N.L.* or purchase, 100 a.</td>
</tr>
<tr>
<td>3. Austin</td>
<td>II, 1328-1330 (March 25, 1846)</td>
<td>Public referendum**</td>
<td></td>
</tr>
<tr>
<td>4. Burleson</td>
<td>II, 1322-1324 (March 24, 1846)</td>
<td>Named by statute--town of Caldwell</td>
<td></td>
</tr>
<tr>
<td>5. Comal</td>
<td>II, 1319-1320 (March 24, 1846)</td>
<td>Named by statute--New Braunfels</td>
<td></td>
</tr>
<tr>
<td>8. Cherokee</td>
<td>II, 1369-1371 (April 11, 1846)</td>
<td>Commissioners choose permanent site</td>
<td>Donation, 300 a. or purchase, 100 a.</td>
</tr>
<tr>
<td>Name of County</td>
<td>Statute Citation for Gammel, \nLaw of Texas</td>
<td>Mode of County Seat Selection</td>
<td>Size and Means of Obtaining Townsite</td>
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<tr>
<td>11. Dallas</td>
<td>II, 1399 (April 18, 1846)</td>
<td>Named by Statuette-town of Dallas</td>
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<tr>
<td>12. Denton</td>
<td>II, 1363-1364 (April 11, 1846)</td>
<td>Commissioners and referendum</td>
<td>Donation, N.L.</td>
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<tr>
<td>14. Grayson</td>
<td>II, 1313-1314 (March 17, 1846)</td>
<td>Commissioners and referendum</td>
<td>Donation, N.L.</td>
</tr>
<tr>
<td>15. Grimes</td>
<td>II, 1431-1432 (April 25, 1846)</td>
<td>Referendum**</td>
<td>Donation, N.L.</td>
</tr>
<tr>
<td>16. Hopkins</td>
<td>II, 1330-1331 (March 25, 1846)</td>
<td>Commissioners and referendum</td>
<td>Donation, N.L.</td>
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<tr>
<td>17. Hunt</td>
<td>II, 1364-1365 (April 11, 1846)</td>
<td>Commissioners and referendum</td>
<td>Donation, N.L.</td>
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<tr>
<td>Name of County</td>
<td>Statute Citation for Gammel, Laws of Texas</td>
<td>Mode of County Seat Selection</td>
<td>Size and Means of Obtaining Townsite</td>
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<tr>
<td>21. Limestone</td>
<td>II, 1398 (April 18, 1846)</td>
<td>Names by statute--Town of Springfield</td>
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<tr>
<td>23. Nueces</td>
<td>II, 1396 (April 18, 1846)</td>
<td>Names by statute--Town of Corpus Christi</td>
<td></td>
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<tr>
<td>25. Polk</td>
<td>II, 1333-1335 (March 30, 1846)</td>
<td>Commissioners and referendum</td>
<td>Purchase, or donation, N.L.</td>
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<tr>
<td>27. Smith</td>
<td>II, 1361-1363 (April 11, 1846)</td>
<td>Commissioners choose permanent site</td>
<td>Donation, 300 a. or purchase, 100 a.</td>
</tr>
<tr>
<td>28. Tyler</td>
<td>II, 1348-1350 (April 3, 1846)</td>
<td>Commissioners and referendum</td>
<td>Donation, N.L. or purchase, N.L.</td>
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<tr>
<td>29. Titus</td>
<td>II, 1504-1505 (May 11, 1846)</td>
<td>Commissioners and referendum</td>
<td>Donation, N.L.</td>
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<tr>
<td>No.</td>
<td>Name of County</td>
<td>Statute Citation for Gammel, Laws of Texas</td>
<td>Mode of County Seat Selection</td>
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<tr>
<td>32</td>
<td>Walker</td>
<td>II, 1357-1358 (April 6, 1846)</td>
<td>Town of Huntsville to donate land for county facilities</td>
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<tr>
<td>33</td>
<td>Austin</td>
<td>II, 8-9 (January 7, 1848)</td>
<td>Election</td>
</tr>
<tr>
<td>34</td>
<td>Collin</td>
<td>III, 10-11 (January 12, 1848)</td>
<td>Commissioners and referendum</td>
</tr>
<tr>
<td>35</td>
<td>Grayson</td>
<td>III, 11-12 (January 13, 1848)</td>
<td>Commissioners and referendum</td>
</tr>
<tr>
<td>36</td>
<td>Upshur, No. 30</td>
<td>III, 14-15 (January 26, 1848)</td>
<td>Commissioners and referendum</td>
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<tr>
<td>37</td>
<td>Newton</td>
<td>III, 23-24 (February 10, 1848)</td>
<td>Named by statute due to failure of commissioners to hold elections. Town--Parkerville</td>
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<tr>
<td>38</td>
<td>Starr</td>
<td>III, 24 (February 10, 1848)</td>
<td>Named by statute--town of Rio Grande</td>
</tr>
<tr>
<td>40</td>
<td>Cameron</td>
<td>III, 27 (February 12, 1848)</td>
<td>Named by statute--town of Santa Rita</td>
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<tr>
<td>Name of County</td>
<td>Statute Citation for Gammel, Laws of Texas</td>
<td>Mode of County Seat Selection</td>
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<tr>
<td>41. Medina</td>
<td>III, 27-28 (February 12, 1848)</td>
<td>Named by statute-town of Castroville</td>
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<tr>
<td>42. Gillespie</td>
<td>III, 35-36 (February 23, 1848)</td>
<td>Named by statute-town of Fredericksburg</td>
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<tr>
<td>43. Denton</td>
<td>III, 36-37 (February 24, 1848)</td>
<td>Named by statute--Section one, Township No. 4, Range No. three west in Peters Colony</td>
<td>Purchase or Donation at least 40 a.</td>
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<tr>
<td>44. Grimes</td>
<td>III, 37-38 (February 26, 1848)</td>
<td>Referendum</td>
<td>Donation, N.L.</td>
</tr>
<tr>
<td>see also, #15</td>
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<tr>
<td>45. Kaufman</td>
<td>III, 40-43 (February 26, 1848)</td>
<td>Commissioners and referendum</td>
<td>500 a. from public domain</td>
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<tr>
<td>46. Hays</td>
<td>III, 48-49 (March 1, 1848)</td>
<td>Named by statute-town of San Marcos</td>
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<tr>
<td>47. Caldwell</td>
<td>III, 53-54 (March 6, 1848)</td>
<td>Named by statute-town of Lockhart</td>
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</tr>
<tr>
<td>48. Cass</td>
<td>III, 54-56 (March 7, 1848)</td>
<td>Referendum</td>
<td>Donation, N.L.</td>
</tr>
<tr>
<td>see also, #9</td>
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<tr>
<td>49. DeWitt</td>
<td>III, 63-65 (March 9, 1848)</td>
<td>Referendum</td>
<td>Donation, 640 a.</td>
</tr>
<tr>
<td>see also, #10</td>
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<tr>
<td>Name of County</td>
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<tr>
<td>51. Henderson</td>
<td>III, 86-88 (March 14, 1848)</td>
<td>Commissioners and referendum</td>
<td>Donation, land or money</td>
</tr>
<tr>
<td>see also, #18</td>
<td></td>
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<td></td>
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<tr>
<td>52. Panola</td>
<td>III, 92-93 (March 15, 1848)</td>
<td>County commissioners and referendum</td>
<td>Donation, N.L. purchase. 160 a.</td>
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<tr>
<td>see also, #26</td>
<td></td>
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</tr>
<tr>
<td>53. Van Zandt</td>
<td>III, 149 (March 20, 1848)</td>
<td>Named by statute-- &quot;Jordan's Saline&quot; until otherwise provided by law</td>
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</tr>
<tr>
<td>54. Dallas</td>
<td>III, 181-183 (March 20, 1848)</td>
<td>Referendum</td>
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</tr>
<tr>
<td>see also, #11</td>
<td></td>
<td></td>
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<tr>
<td>55. Cooke</td>
<td>III, 183-184 (March 20, 1848)</td>
<td>Named in statute-- (temporary) Aaron Hill's residence</td>
<td></td>
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<tr>
<td>56. Webb</td>
<td>III, 18 (January 23, 1848)</td>
<td>Named by statute-- town of Laredo</td>
<td></td>
</tr>
</tbody>
</table>

*Unless specified, commissioners to choose county seats were named in the statutes.

*N.L.: "no limit" on acreage receivable

**on bids submitted by local contestants.
65 Please refer to pp. 216-19 of this dissertation.

66 Records of the Fourth Legislature of the State of Texas, Box 2-8/50, File No. 46, 47, 48, 49; Box 2-8/53, File No. 30½, committee reports, passim.

67 Gammel, Laws of Texas, III, 971-973 (February 13, 1852); III, 883 (November 24, 1851); III, 884 (November 14, 1851); Records of the Fourth Legislature of the State of Texas, Box 2-8/50, File No. 46, report of Senate Finance Committee, favorable to allowing Cameron County to levy special taxes; report of House Committee on Counties and County Boundaries favorable to allowing Smith County to levy special taxes for construction of public buildings.

68 Gammel, Laws of Texas, III, 910-911 (January 24, 1852).

69 Gammel, Laws of Texas, III, 1012-1013 (February 16, 1852).

70 Gammel, Laws of Texas, III, 888 (December 8, 1851).

71 Gammel, Laws of Texas, III, 1056-1058 (December 8, 1851).

72 Gammel, Laws of Texas, III, 934-935 (February 9, 1852).

73 Records of the Fourth Legislature of the State of Texas, Box 2-8/50, File No. 49, N.D. [1851-2], report of Committee on County and County Boundaries, to be discharged from further consideration of bills where the person who introduced them postponed them many times in committee.

74 Records of the Fourth Legislature of the State of Texas, Box 2-8/46, File No. 46, November 15, 1851, report of House of Representatives Judiciary Committee on special aid for Grimes County Commissioners due to a court house fire.


76 Records of the Fourth Legislature of the State of Texas, Box 2-8/50, File No. 47, December 10, 1851, report of Committee on Counties and County Boundaries on a "Bill to locate permanently the County Seat of Justice for the County of Lavaca."
Records of the Fourth Legislature of the State of Texas, Box 2-8/50, File No. 48, January 14, 1852, report of Committee on State Affairs, bill authorizing Preston and Wade Witt to erect a mill on the West Fork of the Trinity River.

Gammel, Laws of Texas, III, 37-38 (February 26, 1848); III, 128-129 (March 16, 1848); III, 831 (November 25, 1850); III, 888 (December 8, 1851); III, 881-882 (November 24, 1851).

Gammel, Laws of Texas, III, 371-374 (March 11, 1848).

Houston, Texas, Office of City Secretary MSS, Minutes of the City Council of the City of Houston, Book "A," December 1, 1842, p. 190.


Galveston, Texas, Office of City Secretary MSS, Minutes of the City Council of City of Galveston, Book "A," August-November, 1853, passim; consider the response of Galveston officials to the yellow fever epidemic of 1853. One of the niceties dispensed with by town officers was state authority to incur debt and pledge municipal income as payment; see also, Ch. III, pp.108-10 on debt repudiation.


Hartley, Digest of Texas Laws, 668-670, Art. 2172-2183 (May 12, 1846).

In addition to the boundary battle with Medina County, Bexar County residents had to contend with an attempt by Gillespie County and town of Fredericksburg residents to establish a local land office that would service settlements in Fisher and Miller's colony. Each side in the argument held advantages and disadvantages. Gillespie County was closer and more accessible to the disputed area between the Colorado and Llano Rivers. Much of the surveying in the colony had been done through the San Antonio land office, with four thousand surveys filed, one thousand recorded, and local surveyors holding field notes for many more. The cost of transferring this business to Fredericksburg involved substantial expenses for transcribing and moving records. Apparently, San Antonio backers won this battle--no legislation approving the change being found in the statutes.
Cf., Petitions and Memorials to the Texas Legislature, Box 2-9/101, File No. 163, December 13, 1853, remonstrance of citizens of Bexar County against transferring the land office business of Fisher and Miller's Colony from Bexar to the Gillespie County Land District.

86Hartley, Digest of Texas Laws, 674-676, Art. 2199 (March 20, 1848).

87Oldham and White, Digest of Texas Laws, 275-277, Art. 1184-1191 (January 26, 1858);. the Texas Legislature's occasional attempts to reduce the pace of land distribution, were an indication of widely divergent views on the appropriate methods for disposing of Texas' vast public domain. A small but growing group of Texans argued that the public land--fertile, and rich in mineral resources--had a certain "intrinsic value" and should not be sold for a lower price. Receipts from land sales could then be used to defray government expenses, reduce the taxes of established citizens, and enrich the state's permanent education fund. A second group argues that the land was near worthless, unless settled and cultivated, or otherwise used to productive purposes. Accepting small benefits from land sales, they argues, meant continually increasing dividends of settlement, commerce, and taxation. Long-term benefits of settlement and growth more than compensated for momentary losses in the sale of public lands. Cf., Records of the Seventh Legislature of the State of Texas, Box 2-8/67, File No. 134, December 9, 1857, Report of the House of Representatives Committee on Public Lands favoring land distribution at fifty cents per acre.

During most of the twenty-five years from 1836 to 1861, Texans favored policies of rapid land distribution. The Legislature maintained generous policies designed to promote settlement, and protect the property of farmers and homeowners. Homestead exemptions, by 1845 part of the state's constitution, were coupled with enticing promises of free or cheap land. Although the consensus for cheap land eroded significantly during the 1850's, the base price for General Land Office scrip remained at one dollar per acre, twenty percent below the price charged for public lands sold by the United States government. Cf., Hartley, Digest of Texas Laws, 546-550, 656-658, Art. 2130-2136 (January 22, 1845); Miller, The Public Lands of Texas, 1519-1970, Ch. III-IV, passim; Texas, Constitution (1845), Art. VII, Sec. 22, in Hartley, Digest of Texas Law, 72.

88The history of Texas' role in the Compromise of 1850, is well known. In return for ten million dollars in United States government bonds, Texas gave up claims to sixty-seven million acres of land in what is now New Mexico, Oklahoma, and Colorado. Later this amount was sweetened with another
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UNIVERSITY MICROFILMS
CHAPTER VI. THE JUDICIAL LEGACY FOR TEXAS INTER-GOVERNMENTAL RELATIONS

Connections and interactions between state courts and local governments in nineteenth-century Texas comprised an important element of local-state constitutional relations. Courts were among the primary state institutions capable of regulating local government administration. Judges could, if so inclined, impart some degree of uniformity to interpretation, if not administration of local government law. With petitions to the Legislature, or the unlikely event of federal litigation, appeals of local cases to the state supreme court provided one of three practical ways local officers' decisions could be challenged outside their own territory. Judicial attitudes thus played an important role in the total panorama of local government law.

Antebellum Texas judges had little trouble with the two basic premises in state-local relationships, the legal principle of state supremacy and supervision over towns and counties; and the functional local autonomy which infected Lone Star governance, and which was statutorily supported by numerous Republic of Texas Congresses and State of Texas Legislatures. Judicial adherence to the belief that the state was all-powerful in regulating local units was unflinching and categorically absolute. But sincere respect for the doctrine of state supremacy also required support for local government autonomy and viability, as established by a
plethora of post-1836 statutes, customs, and usages. Antebellum Texas jurisprudence reflected cautious concern for
local autonomy, coupled to a healthy desire to avoid divisive and controversial areas of local politics.

By the second half of the 1850's decade, however, the Supreme Court of Texas was beginning to assume a more active role in regulation and oversight of local governments. In part, changes in judicial approach to municipal government cases reflected changes in court personnel. The growing number of cases decided against towns or counties also paralleled growing criticism, in the Texas Legislature, of local governments' unsupervised autonomy.¹ Judges' increasingly negative responses to unrestricted local action seemed very much in harmony with colleagues in the State Legislature. Oftentimes both the legislative and judicial branches of government dealt with the same issues from different perspectives.

During the fifteen-year period before the Civil War, Texas courts emphasized the legitimacy and autonomy of local institutions in two distinct types of cases. One set of precedents dealt mainly with contested elections. In these cases, judges denied court jurisdiction, leaving local officials to settle their own destinies through political channels. In a second broader class of litigation, the courts assumed jurisdiction, and then approved decisions made, or actions taken by elected local officials.
The case of Titus v. Latimer,² illustrated the first type of litigation, a sort of jurisdictional obstructionism that prevented local officers from having their decisions challenged in court. The controversy originally was tried by a justice of the peace, and subsequently brought on appeal before a state district judge. Texas statutes provided that district tribunals adjudicate appeals from justice and county judicial courts. The district court, however, dismissed the case for want of jurisdiction; the Supreme Court of Texas affirmed the dismissal.

The Titus case hinged upon interpretation of the judicial article in Texas' 1845 constitution. The state charter stipulated that district courts would exercise original jurisdiction in certain cases, and "general superintendence and control over inferior jurisdictions [ justices of the peace and county judicial courts ]." Duties of the supreme and district courts were set out in detail within the constitution; the Legislature defined lower court functions by statute.³

Justice Abner Lipscomb, speaking for a majority of the Texas supreme court, emphasized that important differences existed between the "constitutional courts" and "statutory courts" of the state. The supreme and district courts, Lipscomb maintained, derived their jurisdiction from the constitution only; official functions under the state charter could neither be increased nor infringed upon by the Legislature. Lipscomb believed that the statute challenged in the
Titus case created appeals procedures beyond the "general superintendence and control" required for district court performance of supervisory functions under the 1846 Texas constitution. With "writs of certiorari, mandamus, quo warranto, injunction, and prohibition . . ." available as alternatives under the constitution's general superintendence and control clause, district courts were barred from adjudicating statutory appeals. The law was void and afforded no access to district and supreme courts.4

Judge Lipscomb's major concern in Titus v. Latimer was separation of powers between Texas' "constitutional" judiciary and the Legislature. Indeed, the decision seems to ignore constitutional provisions vesting Texas district courts with original and appellate jurisdiction "over . . . inferior tribunals."5 The decision also placed Texas courts in firm control of their jurisdictions and dockets. Denial of jurisdiction became a convenient tool, when courts wished to avoid deciding controversial local government cases. When invoked, the jurisdictional hiatus left local officers very much on their own, with a sort of local autonomy by judicial default.

Municipal autonomy in antebellum Texas local government law also was grounded upon legal principle of absolute, total primacy for the State Legislature over counties and municipalities. Local governments, or "public corporations" as they were called, owed both existence and governing authority to state lawmakers. For the Supreme Court of Texas, the
notion of irrevocable grants of power to localities was "a doctrine that cannot be tolerated for a moment."6 State primacy over localities was axiomatic in mid-nineteenth century American constitutional theory--a part of the catechism of United States political belief.7 Texas judges adhered to the faith and were willing to be its priests; at the same time, jurists had absolutely no desire to become its army. Justice Lipscomb, speaking for the Texas supreme court, left no doubt that most state supervisory authority over localities, rested squarely with the Legislature at Austin, and not in courts of law. Texas counties existed as the "legislative will" allowed; municipalities exercised their powers at the "pleasure" of the Legislature.8 The potential power of state lawmakers over local affairs was unlimited.

The principles of state supremacy and supervision over towns and counties existed in an anomalous situation. Courts, with administrative and official personnel to exert some influence upon local officers, placed the entire burden of such regulation upon the Texas Legislature. The Legislature, which met once every two years, had no institutional basis for effectively exercising supervisory authority. Texas state legislators supported an operational system with extensive local autonomy. Once the Legislature provided local government officers with desired authority, courts usually were loathe to intervene in municipal administration. Judges reverted instead to the expedient of finding jurisdictional objections that prevented litigation. In numerous cases
involving elected local officials, jurists closed their eyes to practices that were arbitrary if not blatantly illegal.

The Texas supreme court gave an especially wide berth to litigation arising from efforts to locate or relocate county seat towns. Given the politics and land speculation economics that accompanied Texas county seat and boundary disputes, it is not surprising that local elections on this question were fraudulent. Nor is it unusual that disappointed settlers and promoters attempted to redress their grievances in the courts.

In 1848, DeWitt County, Texas, suffered through a contested election, with "at least three land owners interested in securing a [county seat] location favorable to their interests." The selection of Cameron, Texas, as "permanent" county seat, and construction of a courthouse and jail there by Spring, 1847, did not lessen intra-county rivalries. The town of Clinton, growing up around a Guadalupe River ferry boat operation belonging to Richard H. Chisolm, had succeeded in outdistancing Cameron in population and influence. An election to choose between the two towns was ordered for November, 1848, and county Chief Justice James M. Baker announced that Cameron would remain the seat of justice. Disappointed Clinton residents immediately contested the election before the DeWitt County commissioners' court. Justice Royall Wheeler of the Texas supreme court noted that "the county court took cognizance of the controversy between
the friends of the two places... " and decided that Clinton and not Cameron had been "legally elected the seat of the county of DeWitt... " 12

The Supreme Court of Texas affirmed the district court dismissal of an appeal taken from the county commissioners' decision. Although commissioners were authorized to hear contested elections for county offices, Wheeler emphatically denied they could interfere with elections for locating a county seat. The county court's election review, Wheeler maintained, was a nullity; appeal attempts to higher state courts were equally fruitless. Where the "court a quo did not possess" jurisdiction to decide the issues, then appeals also failed for lack of jurisdiction. 13

Although Wheeler followed the unusual course of deciding the law in this case and then dismissing it for lack of jurisdiction, the judge left little doubt of the county chief justice's power when presiding over county seat elections:

The authority conferred upon the chief justice of the county by this statute was special, and restricted to one express object. No mode is provided for revising his decision, either by the special statute which conferred the authority or by any general law. His exercise of the authority conferred was definitive and final. 14

The rulings in the DeWitt litigation meant that the county judge had first and final say over the location of the county seat: he alone counted the votes and declared the results of the election. Even when blatant errors in tabulation or other irregularities marred an election, no judicial
writ or remedy existed to require this Texas local official to reconsider or alter his decision.

The Texas supreme court aimed toward keeping the judiciary totally removed from county seat politics. Justice Wheeler's ruling that election results as announced by the county judge were "definitive and final" seemed plain beyond the chance of possible misunderstanding. Yet Wheeler's opinion did not stop Texas lawyers from providing the court numerous opportunities to reconsider its decision. *Titus v. Latimer*, decided the following year (1849), seemed to suggest a successful route into higher courts. By initiating a *de novo* district court proceeding for one of the special writs such as *mandamus*, attorneys hoped to overcome objections to appeals taken in both the *Titus* and the DeWitt County proceedings.

In 1852, county seat litigation appeared from Cass County. When the county chief justice audited the election returns, he counted ballots from only two of eight voting precincts; he then declared the county seat located in Jefferson, rather than in rival town Linden. The Texas supreme court reversed and dismissed the district court's decision to issue a *mandamus* writ. The court lacked jurisdiction to order a county chief justice to tabulate the votes cast in the election. The court avoided direct intervention in local politics with a ruling that *mandamus* could only compel performance of "purely ministerial functions." Obviously, in these elections the county judge exercised
wide discretion over which votes he would count and which votes he chose to ignore. The town of Jefferson's career as seat of justice in Cass County was short-lived. The following year found the rival communities back in court, this time with the town of Jefferson seeking an injunction against a newly-elected county judge, to prevent him from removing the county seat to Lindon. The courts were evidently as loath to interfere with local officers by writs of injunction or mandamus, as they were to consider statutory appeals.

The county seat issue reappeared in various guises in Texas throughout the late 1840's and the decade of the 1850's. Although non-interference was the paramount consideration, judges also were concerned with the adequacy of local institutions to solve problems of government that did arise. Texas jurists favored liberal interpretation of statutory grants of authority to towns or counties. Court decisions affirmed substantial autonomy for elected officials, and insulated local governments from nonlocal or private interference. Litigants who promoted personal pecuniary interests by advocating restrictive interpretations of local governments' statutory authority found the courts unresponsive. When presented with an appropriate opportunity, the courts supported town or county initiative with florid rhetoric about inviolability of the democratic will. The judges refused to become party to "public policy that would restrain the will of the majority"; neither would judges construe an "Act of
the Legislature to mean such was intended. ..."18

The courts also refused petitions that allowed the Texas Legislature's poor statutory draftsmanship, to defeat the rights of county residents to hold a county seat relocation referendum.19 Nonvoting citizens were not permitted to become a determining factor in county seat elections. Removal of a county seat was determined upon the number of votes cast in the election on the question, and not upon the total number of registered voters in the county.20

Even sacred rights of private property posed no barrier to county government relocation. A decision to move the county seat could not be enjoined by property owners near the old site because they faced pecuniary injury from the change.21 Town promoters who donated land to county governments upon condition that the jail and courthouse be built upon it, created no "vested rights" by their philanthropic act; donors of the property did not regain title upon county seat relocation. The board of commissioners was permitted to sell the property or convert it without restraint to other uses.22

Elections of local officers were administered under a different statute and slightly different procedures than existed for a canvass on county seat removal. Although the county chief justice administered the elections and audited returns, disappointed candidates were entitled to contest the election before the board of county commissioners. Failing with the county board, the "injured" party could seek, and on rare occasions obtain, mandamus in the state district court
to alter election results. Yet even where philosophical and juridical principles permitted state courts to act, circumstance did not favor judicial intervention. In the words of Justice Wheeler, terms of county officers were so short, and litigation "through successive appeals" potentially so protracted, "that in many cases the terms would expire before the right could be finally determined. . . ." Infrequent state district court sessions left the possibility that decision of an election contest could be "delayed by continuances from term to term for years. . . ." County commissioners thus provided an appropriate forum to determine election contests, and would be overturned only under the most unusual or compelling circumstances.

Judicial obligations in election contests were fulfilled once the court had ascertained that local officials had complied with state law election procedures. Candidates were given ten days to file protests and contest an election. The county board was the sole agency authorized to try election contests. If the county commissioners were unable, or refused, to hear a candidate's complaint within the allotted time, no further recourse existed. Likewise, mysterious reappearance after twenty days of ballot boxes from an entire county was not viewed by the Texas supreme court as adequate grounds to waive this statute of limitations. Convinced of the bona fide nature of the newly found ballots, county commissioners had waived the ten-day provision and ordered a second election. The Texas supreme court, ruling that the
county board had no basis for jurisdiction in the matter after the ten-day deadline expired, and ordered a writ of mandamus to issue, confirming in office the "winner" of the first election.26

Outside the arena of election politics, Texas courts shed their policies of nonintervention to support local development. Local governments benefited from numerous decisions which protected their treasuries and properties, provided liberal interpretations of police powers, or supported community decisions and actions whenever they conflicted with the rights claimed by private individuals. In each case, judges were primarily concerned with the ability of local institutions to deliver basic services needed by Texas society.

With towns and counties holding large tracts of land for school support or municipal development, conflicting land claims between local governments and individuals were unavoidable. Private parties were under substantial disadvantage when opposed by a town or county in land litigation. In many instances the local government was able to present proof of its land grant in the form of a statute.27 The private party, to establish his title, had to prove a complex history of transactions including numerous verifications of land grant certificates, a survey of his lands by appropriate county or local officers, approval of the survey by a second surveyor, issuance of a land patent by the state general land office, possession of the property, and finally a written record that
substantiated the entirety of the transaction. Even when a private party had occupied land long enough to establish ownership by adverse possession, the right could not be asserted against a local government. The courts ruled that statutes of limitations did not bar local government land claims.

Although individual claimants were entitled to their day in court, private litigants rarely succeeded in establishing title, superior to that of a rival local government. Texas courts made very clear that the slightest question about a private claim allowed the government or political authority to establish control over contested property. The only relief afforded an injured private party who suffered the loss of improvements, or expenses of resettlement, came from "an application to the liberality of the government for compensation."

Texas courts gave numerous indications during the 1850's that they would favor local government claims in land questions. If private landowners allowed public use of a particular area or parcel of his land for a short period of time, courts presumed they had dedicated an easement. Exercise of the slightest form of public ownership also created a presumption that land had in fact been granted by the Texas Legislature to a local government, even where a private person was in possession of the property and had strong color of title.

Control over municipal property remained discretionary
with local officials. Town or county authority over the land could be restricted only by the state in granting the property. A person who had been induced to settle in the town of Victoria because the corporation owned large areas of accessible public timberland, could not enjoin municipal authorities from selling the timber and using the money for other legitimate community purposes. 34

Zealously, antebellum Texas courts guarded pecuniary interests of local governments against claims advanced by private parties. Government treasuries required protection against such spurious expenses as the cost of sequestering juries. Jurors were expected to pay for their own food and lodging. The sheriff of Panola County who paid expenses for a sequestered jury with the expectation of reimbursement from the government, found himself out-of-pocket for the cost of the trial. "A charge against a county, for the board and lodging of juries," prophesied the Texas supreme court in 1854, "might easily be magnified into a burthen quite too grievous to be endured." 35 Individuals who voluntarily cared for the indigent because Upshur County officials neglected their duty, were not permitted later to demand reimbursement from the government. A local Texas judge, who mistakenly granted recovery to a Good Samaritan who paid medical expenses for an injured pauper, had, in the opinion of the state supreme court, "erred . . . on the side of generous humanity." 36

Texas judges assured towns and counties that the courts would protect their properties and treasuries. Individuals
suffering pecuniary injury from arbitrary exercise of local official authority found no sympathy in the Texas courts and even less relief. Law abiding residents suffered, while arbitrary, inefficient, or discriminatory local administration carried little fear of judicial reprisal.

The city of Austin's regulation of butchers, for example, was arbitrary in the extreme. Municipal ordinances required slaughterers and sellers of fresh meat within the city to purchase a vending license or face stiff fines. Butcher Peck complied with all regulations, paid his occupation taxes, and added further to the local treasury by renting a stall in the city market. For his obedience Austin city threatened Butcher Peck with substantial economic hardship. Despite strong enforcement provisions, municipal officers ignored municipal ordinances, permitting unlicensed butchers to vend throughout the city. Peck, by obeying the city's regulations and substantially increasing his operating expenses, faced unlicensed and unregulated competitors in the market place. After numerous complaints about illegal competition to city officials, the exasperated butcher suspended payments to the city treasury. Town officers sued to compel Peck's payment of license and rental fees. The Texas supreme court, in affirming judgment for the city, abruptly informed the butcher that his lease and the local ordinance did not operate as a contract to secure him against unlicensed competition. Justice Oran M. Roberts delivered Peck a biting lecture on public responsibilities: "Non feasance or malfeasance of
officers, to whom is intrusted the duty of punishing . . . violators of our rights," said the judge, "cannot be recognized in a court of law as absolving us from the duties of citizenship."37

In reaching this conclusion, Roberts examined the nature of local governments in Texas law:

The City of Austin is a municipal government, whose powers are defined and limited by the terms of its charter of incorporation. The exertion of its powers, by its constituted authorities, in prescribing rules of police, and imposing and inflicting penalties for their infraction, is but a mode of exerting the power of the government of the State, within the limits of the city. It is a government within a government. Still they are the same, --the one being the execution of the will of the other, within certain established boundaries of power, and in a certain locality.38

The Austin city government was thus unmistakably an element of the state's authority within a given geographic region.

The Supreme Court of Texas could not be persuaded to intervene, even though local officers were highly capricious in exercising state authority. Application of state power--or non-application as was the case with Butcher Peck's complaint--was left in the hands of municipal corporation officials.

Despite his acquiescence in arbitrary local action, Judge Robert's opinion in Peck v. City of Austin reflected important shifts of emphasis in legal theory relating to local government. Four years earlier, Abner Lipscomb had conceded the separate corporate existence of localities, albeit subject at any time to the Texas Legislature's control
or supervision. Roberts rejected the idea that towns and counties were separate entities from the state, and argued that the Legislature, county commissioners' courts, and city councils were "the same"--integral parts of one large governing entity. Roberts denied the capacity for autonomous local action, holding that counties and towns were agents of the Legislature, "the one being the execution of the will of the other."40

Roberts' new approach to local government law probably did not affect basic divisions of power between the Texas Legislature, counties, and towns. For the most part, state-local relations of this nature were still determined through political processes. The new legal theory did, however, provide a basis during the late 1850's for greater judicial regulation and supervision of local governments. Moreover, the Texas supreme court's increased willingness to intervene in local affairs corresponded with growing criticism in the Legislature of municipal administration.41

Prior to 1857 the Texas supreme court had chosen to interfere directly in municipal affairs in three specific areas. As shown before, citizens were entitled to their day in court, if they claimed ownership of local government land, or if his own land was condemned. Also, the courts tended to be quite solicitous of private rights in contract cases involving local governments. Private parties were not obliged to make sure that all the niceties of municipal procedure had
been followed before entering into contractual agreements with local officials. A county or municipal officer who bargained for services "within the scope of the legitimate purposes" of the government he represented, created "express promises of the corporation." The contract, like good title to municipally claimed land, had to be amenable to definite proof.\footnote{42} Finally, the court struck down as unconstitutional certain prosecutorial provisions that existed in numerous Texas municipal charters. From the early days of independence from Mexico, Texas mayors had been granted the authority to try misdemeanors and violations of municipal ordinances "in the most summary manner," with punishments up to one hundred dollars in fines and sixty days in jail. The Texas supreme court ruled, that grants of mayoral power without ancillary authority to impanel a jury, was a violation of the defendant's right to "have a speedy public trial by an impartial jury."\footnote{43}

Post-1856 changes in judicial policies were closely related to changes in supreme court personnel. The death of Abner Lipscomb, in 1856, and the resignation two years later of Chief Justice John Hemphill to become United States senator, elevated to the state's supreme bench the first new judges since annexation. Oran Milo Roberts and James H. Bell filled these vacancies, and it was Roberts in particular whose jurisprudence altered relationships between state courts and local governments.

The first hints that judicial policies were beginning to
change came with *Peck v. City of Austin* in 1858, and again in 1859 with adjudication of riparian property rights between Michael B. Menard and the City of Galveston. At issue in the latter case was an area of shallow water in Galveston Bay between the ship channel and the island known as "the flats." Menard, a well-known Texas merchant and entrepreneur, claimed the inundated areas as private property for the building of his wharf; the city desired to drain and fill the land, to further municipal development and improve public health. Common law doctrine existed that sustained the city's claim to ownership. Justice Roberts chose instead to interpret Menard's deed using extrinsic evidence pertaining to the location of the property near the city's waterfront. Although the city was not permitted to fill in the flats as desired, the decision on the whole was not particularly favorable to Menard's interests. The significance of the case arises in its even-handed disposition of the issues, in light of past tendencies for Texas courts to favor local governments in land litigation.

Further indication that the courts were beginning to alter established policies appeared in a Nueces County contested election for district judge. In approving the state district court's acceptance of jurisdiction in the case, Roberts refused to adhere to older Texas decisions favoring speedy local adjudication of contested elections. Roberts also ignored Texas statutes calling for trial of these election contests in district courts. The Texas supreme
court based jurisdiction strictly upon judges' constitutional power "to embrace 'all suits, complaints, and pleas whatever, ... when the matter in controversy shall be valued at or amount to one hundred dollars. ... '"47

Insistence upon a constitutional basis for district court acceptance of jurisdiction was a familiar one in Texas jurisprudence,48 and continued to be a characteristic of Roberts' decisions. The permissiveness with which the jurisdiction was invoked during the late 1850's, ran contrary to former Texas judicial policy of settling election disputes out of court. Where the State Legislature of the 1850's provided statutory procedures to re-examine election results, the courts demurred, insisting only that local governments adhere strictly to statutes. Failure to follow statutory forms precisely did not create a cause of action in the courts. The Nueces County decision provided new options for prospective litigants in contested elections. If the office was worth more than one hundred dollars, disappointed candidates could seek a forum in state district courts.49

The decision most restrictive of local alternatives during the pre-Civil War period resulted from a bold municipal thrust against the sin and degradation of the saloon. In 1858, the city of Marshall, Texas, decided to levy an occupation tax upon tavern-keepers of five hundred dollars per year. The levy against the whiskey houses was steep—compared to a mere thirty dollars tax per year for billiard tables and fifteen dollars for eating houses. "Is it not
just and right," argued the attorney for the city, "that the terms upon which the retailer shall vend his poison, shall be fixed by the community which is compelled to suffer its demoralizing effects? Can the retailer claim that his occupation shall stand upon the ad valorem principle with property, and with other occupations which are necessary to the administration and support of society, and which strengthen and adorn it?"\(^{50}\)

The plea for "the municipal and social well being of the citizens of Marshall" went unheeded. Judge Roberts affirmed an order that the city refund a portion of the tax paid by saloon-owners. The city's charter required that occupation taxes levied by municipal government be "'apportioned in the same manner as the state tax.'"\(^{51}\) It would not "readily be supposed," wrote Roberts, that the Legislature

would leave the city council with unlimited powers in levying and apportioning taxes on occupations. It[the city] might prescribe the public policy of the country within the city, at discretion, in building up one occupation by exemption, and in banishing another by the imposition of burthens in the shape of tax.\(^{52}\)

For the first time in the saloon tax decision, the Texas courts interposed their own understanding of state legislative policy to regulate local police and tax powers. Breaking new ground in terms of judicial restraints upon local action, Justice Roberts remained satisfied with a nongorporate theory of local government law. Roberts continued to view city and state as integral parts of a single entity, in
which the locality was responsible for "execution of the will" of the general government. The court attempted to determine what the State Legislature had meant by the tax provisions in the Marshall city charter. Once that meaning was discovered, the court expected city officials to adhere to their responsibilities. Roberts recognized no judicial supervision of local governments independent of the express will of the Legislature.

The separation of functional and theoretical power in the law of public corporations was well suited to handling many government problems in antebellum Texas. Adhering to this separation, courts both facilitated and promoted adaptability of local government forms to rapidly changing conditions within the state. Municipal and county governments served island communities possessed of substantial administrative, legislative, and de facto legal autonomy. In demographic terms, also, Texas communities were removed from other localities in distance and time, and especially far from the fount of political authority in Austin. To have expected local governments to wait for authority to act, upon a biennial session of the State Legislature, would have been unrealistic if not disastrous. Texas judges realized that protecting local autonomy also affirmed the power of the state itself.

The doctrine of legislative supremacy was valuable as a check upon potential abuse of municipal authority. In a subtler fashion, supremacy theory also operated to promote
adaptability in local institutions. By postulating absolute legislative control, the courts permitted no quarter to entrenched local authority. Existing local governments would not be allowed to stand in the way of creating new forms designed to cope with changing conditions, or with the needs and aspirations of the people.\textsuperscript{53} The state courts thus had attempted to provide for two worlds: by protecting local autonomy they had tried to aid in delivering viable, credible government to the Texas of the 1850's; with legislative supremacy the judges had insured the capacity for future development in local institutions.

By the time of the 1850's decade, however, Texas judges were coming slowly to the realization that they, in addition to the biennial Legislature, had an appropriate role in oversight and supervision of towns and counties. Growing disillusionment throughout Texas with municipal operations opened the way for more active judicial regulation, and complemented legislative trends toward closer scrutiny of local government activity. The tentative changes in judicial attitude marked out by Justice Roberts before secession, became a permanent feature of the law during the years after the Civil War.
NOTES

1For a description of state legislative criticism of municipal operations please see Ch. V, pp. 231-236, of this dissertation.

25 Tx. 433 (1849).


4Titus v. Latimer, 5 Tx. 433 (1849); cited in John C. Townes, "Sketch of the Development of the Judicial System of Texas," Southwestern Historical Quarterly, II (Oct., 1898), 134-151. Townes refers to the Titus case as strong precedent establishing "strict construction of the constitutional grants of power to the several courts. . . ."

5Texas, Constitution (1845), Art. IV, Sec. 15, in Thorpe, American Charters, VI, 3556. The case becomes even more amazing in light of this section, which provides, in part, that "district courts shall have original and appellate jurisdiction over . . . inferior tribunals and original jurisdiction and control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law." [my italics.]

6Bass v. Fonteleroy, 11 Tx. 698 (1854). This case involved jail and school lands donated by the state to the city of Brownsville. For a short time, in 1852 and 1853, the city charter was repealed, leaving the area unincorporated. The district attorney for Cameron County petitioned the court for appointment of a trustee to administer the property of the former corporation. Bass and Hord, claiming private ownership of part of the land grant of the former city, petitioned to intervene in the proceedings, but were denied a hearing by the judge of the lower court. Ex parte judgment was rendered on the motion of the district attorney.

The Texas supreme court's reversal of the case was based primarily upon the grounds that Bass and his associates had not been permitted to litigate their claim to the land. Before reaching the decisive point, however, the court let it be known how displeased it was with the trusteeship idea of the Cameron County district attorney. That the temporary trust for the people of the former corporation, was unacceptable in Texas law:

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The appointment of the trustee, and vesting in him the fee of the land, are based upon the hypothesis, that the grant for a jail and court-house created a vested right to the application of the fund to that purpose; that the Legislature had no power to divest the grant or control it. The consequences resulting from this doctrine, would be, that a grant by the Legislature, for these public edifices, would forever preclude the Legislature from abolishing or changing the county seat, a doctrine that cannot be tolerated for a moment. If the Legislature cannot change county boundaries, and the seats of justice in the counties, or abolish a county and attach the territory comprehended in it to another county, it would be to establish a rotten borough system, where the corporation would be sustained although the inhabitants may mostly have disappeared. But corporations of this character are conceded by all jurists to be under the control of the Legislature, to alter or abolish at is pleasure. They are public corporations, distinguished from private. The latter alone are regarded as being founded upon and creating that kind of contract that the Legislature has no right to violate. If a private corporation has forfeited its chartered rights and privileges, the forfeiture and abolition of its charter can only be inquired into by a resort to a judicial decision. Not so, however, with a public corporation. It lives only at the legislative will. This doctrine is well established by eminent jurists; and we need not go further, however, for its support, than to the case of Dartmouth College v. Woodward, and to the principles discussed and decided in 3 How. 534. Bass v. Fontleroy, 11 Tx. 698, 704.

In using the term "public corporations" Judge Lipscomb referred to both the city of Brownsville, and to Texas county governments. Texas judges refused, during the 1850's, to recognize the distinction used in other states, between towns and cities established under a state charter, and those local governments called "quasi corporations" that operated under general state statutes. Quasi corporations, in the law of states that recognized them, were "towns and other municipal societies . . . with precise duties which may be enforced, and privileges which may be maintained . . ."; but, they possessed only "limited powers, coextensive with the duties imposed upon them by statute or usage. . . ." The public corporation concept used by Lipscomb, was "significan
of a community clothed with extensive civil authority . . . , when it has for its object the government of a portion of the state . . . ." Cf., Joseph K. Angell and Samuel Ames, Treatise on the Law of Private Corporations Aggregate, ed. by John Lathrop (8th ed.; Boston, Mass.: Little, Brown, 1866), 6-15. The Texas constitution of 1876 also refused to differentiate between chartered and non-chartered governments. All were recognized as "municipal corporations" under the 1876 charter. Cf., Texas, Constitution, Art. XI in Thorpe, American Charters, VI, 3650-3652.

7Cf., Angell and Ames, Treatise on the Law of Private Corporations, 21: "The main distinction between public and private corporations is, that over the former, the legislature, as trustee or guardian of the public interests, has the exclusive and unrestrained control; and acting as such, as it may create, so it may modify or destroy, as public exigency requires or recommends, or the public interest will be best subserved."

8Bass v. Fontleroy, 11 Tx. 698, 705-706.

9Please refer to Chapter V, pp.212-20 of this dissertation.


11The five member court of county commissioners--the primary administrative agency for county government in Texas from 1845 to the present day (except for a few years after the Civil War)--heard election contests in Texas during the 1850's. It was referred to at that time as the "county court" although it exercised no judicial functions. Probate, guardian and ward, and other judicial matters were handled by the chief justice of the county. To confuse matters the chief justice's tribunal also was known as the "county court." Unless otherwise indicated, the term county court refers to the administrative body, or "board of county commissioners."

12Baker v. Chisolm, 3 Tx. 157 (1848).

13Baker v. Chisolm, 3 Tx. 157, 158 (1848); "court a quo" is a court "from which a cause has been removed." Cf., Black's Law Dictionary (4th ed.; St. Paul, Minnesota: West Publishing, 1957), 7.

14Baker v. Chisolm, 3 Tx. 157-158 (1848).

15Arberry v. Beavers, 6 Tx. 457 (1851); Minutes of the Commissioners' Court of Harris County, Vol. "A," April 7, 1838, pp. 15a-17a.
A rather tenuous distinction exists in law between the "ministerial" and "discretionary" functions exercised by government officials. Although the function of the county judge seemed to be only the mechanical--i.e., ministerial--process of counting the votes, the justices thought differently. As election judges, they evaluated the honesty of the canvass in a particular precinct, and disallowed votes when they believed the ballot boxes had been stuffed. The Texas Supreme Court utilized this distinction in Glasscock v. Land Commissioner, 3 Tx. 51 (1848).

Alley v. Denson, 8 Tx. 197 (1852); the problems of the competition between the two towns of Linden and Jefferson were finally solved when Cass County was divided, and Jefferson became the seat of justice of the newly formed county of Marion. Linden remains the county seat of Cass County.


Fowler v. Brown, 5 Tx. 407 (1849); the state legislature, in organizing Leon County, had specified that "Moses Taylor's house" was the temporary seat of justice. The law also stipulated that an election be held to establish "the permanent Seat of Justice of said county." The unfortunate use of the word "permanent" by the Legislature was intended only in contradistinction to the temporary county seat mentioned in the statute, and did not preclude relocation of the seat of justice under the 1838 general statute. The county seat removal statute is found in H.P.N. Gammel, The Laws of Texas 1822-1897 (10 vols.; Austin, Texas: Gammel Book Co., 1898) I, 1474-1475 (May 9, 1838); for a full discussion of the effects of this law please see Ch. V, pp.212-220 of this dissertation.

Alley v. Denson, 8 Tx. 197, 201 (1852). The appellants argued that the electoral "majority" required by the county seat relocation statute of 1838 was of all registered voters in the county, and not of votes cast in the election on the question. The interpretation would have made every person who had not voted the equivalent of a "no" vote, by increasing the amount of votes required for a majority.

Walker v. Tarrant County 20 Tx. 16 (1857). Injunction to prevent the county commissioners of Tarrant County from moving the seat of justice from Birdville to Fort Worth. Texas county governments were deeply implicated in the destruction of people's lives and investments. The county board owned the land, platted the town, and then by virtue of an ordinance declaring that the location was the "permanent" seat of justice, induced private investors to purchase lots directly from the government. Then that same county
government acted directly to move to a new location destroying much of the basis for the individual's investment. Although the differences are of degree more than of kind, the Texas counties seemed somehow more directly and actively involved in destroying economic potential and livelihood than the government which issued a charter and franchise to the Warren Bridge Company of Boston. Cf., Stanley I. Kutler, Privilege and Creative Destruction: The Charles River Bridge Case (Philadelphia: J. B. Lippincott, 1971), passim.


23O'Docherty v. Archer, 9 Tex. 195 (1852).

24Trueheart v. Addicks, 1 Tex. 217 (1847). The courts did act to prevent alterations in the statutory patterns mandated for conduct of local elections. When officials deviated from those patterns mandamus would lie to compel issuance of a certificate of election, by the local court, to the injured office seeker. Chief justices of the counties were required to certify election results within three days after voting day. If a justice was incapacitated or absent from the county, statute allowed the county commissioners to certify the election results in his place. In 1847, county commissioners, after waiting for two days of the three-day statutory period for the appearance of the county chief justice, proceeded to count election returns, and declare one of the litigants elected as county clerk. The county judge appeared, however, on the third day, recounted the votes and declared the election a tie. The second election resulted in a victory for the party who had benefitted from the recount. The supreme court held that the actions of the county commissioners had been voided by the appearance of the judge, and affirmed the lower court's decision to issue the writ of mandamus compelling the county commissioners and the two candidates to accept the results of the second election.

25Fitzugh v. Custer, 4 Tex. 391 (1849).

26Lindsey v. Luckett, 20 Tex. 515 (1857).

27Odin v. City of San Antonio, 15 Tex. 539 (1855); the city in this case tried to establish ownership of the Alamo and failed; the Catholic Church established title by proof of a direct grant of the property to the Church from the Congress of the Republic of Texas in 1842.


29City of Galveston v. Menard, 23 Tx. 349 (1859). At common law a person who occupied land by "adverse possession," without title, for a period of twenty years was protected from any subsequent attempt by the true owner, to recover his property. Even when the property had previously belonged to another person, failure to assert a claim to the property during the twenty-year period forever barred the original owner from recovering the property. In American states the period of possession required to establish title was often shortened to ten, seven, or even three to five years. A "statute of limitations" set limits on the amount of time allowed in starting a lawsuit. The rationale behind the laws is that a person with a right to sue another, ought to do so within a reasonable time. The defending party had a right to be secure from perpetual worry about such a lawsuit if not started within the time permitted.

30Bass v. Fontleroy, 11 Tx. 698 (1854).

31Kemper v. Corporation of Victoria, 3 Tx. 135 (1848).

32Lewis v. City of San Antonio, 7 Tx. 288 (1851); City of San Antonio v. Lewis, 15 Tx. 388 (1855); Oswald v. Grenet, 22 Tx. 94 (1858). The last of these cases is instructive. The private party had owned the property with full title. In subdividing the area, this owner filed a map and plat. The specific ground in question was in the map, but there was no lot number or other indication of how the land would be used. The purchasers of the subdivided lots alleged that the original owner had promised the unmarked area for a well and for public use generally. Less than five years had elapsed since the plat and map had been made and recorded. The court ruled that use by the public for that time period created a presumption that the land had been donated to public use.

33Grimes v. Bastrop, 26 Tx. 310 (1862). The private party in this case had strong color of title including possession and a partial survey of the land--but not a recorded land patent. The court ruled that the city needed no proof of continuous administration or other acts to establish its ownership. The city needed only to show its jurisdiction in a very casual and occasional way to prove its title.

34Wright v. Town of Victoria, 4 Tx. 375 (1849).
White v. Panola County, 12 Tex. 175 (1854); by contrast, Harris County paid its jurors. The county treasurer was authorized to redeem for special "jury scrip" issued by Francis R. Lubbock, clerk of the district court for Harris County. The scrip became one of the numerous locally-issued media of commercial exchange, especially as the financial status of the county improved during the 1850's.

Upshur County v. Yeury, 19 Tex. 126 (1857).

Peck v. City of Austin, 22 Tex. 261, (1858).

Peck v. City of Austin, 22 Tex. 261, 263-264 (1858).

Bass v. Fontleroy, 11 Tex. 698 (1854); and see, note 6 of this chapter.

Peck v. City of Austin, 22 Tex. 261 (1858).

For a discussion of legislative criticism of local autonomy, please see Ch. V, pp. 231-36 of this dissertation.

San Antonio v. Lewis, 9 Tex. 69 (1852).

Burns v. La Grange, 17 Tex. 416 (1856); but see, Smith v. San Antonio, 17 Tex. 644 (1856). Although the courts had thrown out the statute as unconstitutional, they refused recovery of fines and penalties assessed under summary proceedings and paid under protest.

City of Galveston v. Menard, 23 Tex. 349 (1859).

City of Galveston v. Menard, 23 Tex. 349, 392 (1859). At common law the King of England held all rights in navigable waters "as trustee for the public..." The King could make no valid grant of waters. It was held, however, that the Parliament could make such a grant. The Congress of the Republic of Texas had the same power. Although the Texas Republic did not expressly grant Menard the contested property, Roberts inferred the transfer from the location of the land.

Menard had built warehouses in areas platted as streets and was presented with an order to remove them to private property. The statute of limitations for title by adverse possession to the territory of the streets did not run against the city.

Texas, Constitution (1845), Art. IV, Sec. 10, in Thorpe, American Charters, VI, 3555.

Titus v. Latimer, 5 Tex. 433 (1849).
49 McKinney v. O'Connor, 26 Tx. 5 (1860).


51 City of Marshall v. Snediker, 25 Tx. 460, 473 (1860); the state tax on saloons was only $250, compared to $50 for billiards and $16 for restaurants. The city argued that the charter provision included only ad valorem property taxes.


53 Although the courts affirmed legislative supremacy in absolute terms, they never seemed to stop with destruction of existing institutions. The judges always talked about abolishing old governments and creating new ones. Kutler's analysis of "creative destruction" thus seems to have an analogy in the realm of institutional forms. Cf., Stanley I. Kutler, Privilege and Creative Destruction, passim.
VII EPILOGUE: CONSTITUTIONAL PROVINCIALISM AND SECESSION

In her recent appraisal of Civil War Texas legislatures, Nancy Head Bowen has painted a rather gloomy picture of faction-riddled government institutions. Casting aside O. M. Roberts' eighty-year-old romantic notions of a secessionist state united in the face of Yankee adversities, Bowen describes the fruitless efforts of a few politicians to promote southern, and, later, trans-Mississippi unity. Texas lawmakers, Bowen concluded, wasted the early years of the war "haggling about local issues"; and the highest accomplishment of a more statesmanlike Tenth Legislature, was that it was "not inclined in the winter of 1863 to launch the state on a collision course" with Confederate authorities. As late as Autumn, 1864, Texas state legislators were still struggling to systematize distribution of cloth, manufactured in state facilities at the Huntsville penitentiary.

The local emphasis of antebellum Texas constitutionalism probably prevented adequate state responses to the Secession Crisis and Civil War. Incoming Governor Francis R. Lubbock learned quickly in 1862 that it was unrealistic, to expect Texas' competitive island communities voluntarily to set aside local goals and rivalries. Town and county desires for economic development and population growth could not be sublimated in a matter of hours, days, or even months, to the first calls for statewide or Confederate unity. Indeed,
it might reasonably be asked, whether the executive branch of Texas' government possessed either the organizational or administrative skills necessary to create and maintain an effective, united war effort. Antebellum Texas governments functioned primarily on town or county levels. Local officers assumed responsibility for delivering needed government services and "advancing" local interests. In 1860, appropriations for regular operation of the Texas executive and judicial government branches remained under one hundred and fifty thousand dollars per year.² For all its "sovereign" legal power, pre-Civil War Texas government remained a slumbering giant. State authority in intrastate affairs remained inchoate, although faint stirrings of criticism against abuses of local autonomy were beginning to be heard.

Local configurations of antebellum Texas politics inhibited effective implementation of statewide programs. This factor assured that counties and towns, rather than the state, would perform important Civil War functions. Texas local government contributions to the Confederate cause were important and generous. But antebellum municipal autonomy had forged ineradicably parochial attitudes and orientations among town and county officials. Local governments persistently attempted to shape southern priorities, rather than being shaped by them. In his recent study of the trans-Mississippi South, Robert L. Kerby noted
Confederate authorities' travails in dealing with "the anarchic Texas county court system of local government."\(^3\)

If Texas intrastate constitutionalism were unique, the researcher would be justified in proposing antebellum local autonomy as a partial explanation for Confederate misfortunes. But, local autonomy political traditions were a problem faced by southern and northern Civil War state governments. Although extensive comparative data are not available, it can be noted that other American states manifested local biases in intrastate intergovernmental relationships. Recently-completed studies of constitutional-legal relations existing between Wisconsin and the city of Milwaukee, reveal striking similarities to local-state arrangements in Texas. Like the Lone Star towns examined in this study, intense Wisconsin local rivalries quickly gave way to political cooperation. Rival townsite promoters and land speculators recognized the advantages of local political unity, and sought to maximize developmental efforts. \(^4\) Local governments and courts manipulated Texas' land distribution policies to promote settlement; a well-organized claimants' union protected Milwaukee County settlers from "foreign" speculators. \(^5\) Houston, Galveston, San Antonio, and Wisconsin's "Great Western Emporium" aggressively pursued internal improvements, including roads, canals, plank roads, and finally railroads. \(^6\)

Finally, and perhaps to a greater degree than Texas towns,
the city of Milwaukee controlled its affairs in the Wisconsin Legislature. "By 1848," writes Daniel R. Madden "Even the vital authority to issue bonds for internal improvements had transferred from the state legislature to the city council." Even during the 1850's, following appearance of a strong Republican Party in outstate rural areas, the Wisconsin Legislature chose not to interfere in Milwaukee's Democratically-controlled municipal government. On the eve of the Civil War, northern jurisdictions manifested the same "anarchic" tendencies that prevailed in Texas.

Local autonomy became a significant source of southern Civil War weakness, only when placed in the Confederate constitution's national context. The "reformers" who, early in 1861, convened in Montgomery, Alabama, to purify American republicanism, erected legal monuments to slavery and "state sovereignty." As Lincoln assumed the reins of government in the North and began plumbing the "reservoirs" of Untied States emergency constitutional powers, he found the means, and opportunities to develop the methods for wringing national policy from innumerable petty governments. The Confederacy was designed from the outset to "thwart . . . accretions of almost any power at all by the national government. . . ." In Confederate nation-state relationships, southerners accepted the operational implications of state sovereignty: the foibles, vicissitudes, hopes, suspicions, and eco omic imperatives of a multitude of competitive island communities.

The local orientations of intrastate constitutionalism
island communities.

The local orientations of intrastate constitutionalism help clarify antebellum state sovereignty concepts. Although active participants in historical events were not necessarily able to perceive the truth of their existence, they did not discuss or write about public affairs in a vacuum. Nineteenth-century Americans who discussed or wrote about state sovereignty could base their opinions upon much more than misty theoretical notions. State sovereignty in antebellum Texas or Wisconsin had definite operational dimensions; and it seems highly unreasonable to disassociate the idea of state sovereignty from the governmental system under which Americans lived, when that system supposedly incorporated state sovereignty principles into existing institutions. In company with the Legislature, supreme court, and other state agencies, extensive municipal autonomy fit into American perceptions of intrastate government. Given pre-Civil War primacy of local needs and goals, effective separation of state sovereignty theory from local operational bases probably would have made the ideas unpalatable, if not unacceptable to most Americans.

Like recognition of local dimensions in state sovereignty, Americans' pre-Civil War perceptions of future urban potential, merit careful examination. In 1860, Houston and Milwaukee could not prophesy that their towns had futures as
great cities. While the urban beginnings of Texas towns and Milwaukee were similar, they also had much in common with the modern day rural hamlet of Trempealeau Village, Wisconsin, and the decaying municipality of Cairo, Illinois. Trempealeau received attention from speculators and settlers, who recognized its potential to become a "thriving river town"; county supervisors took charge of local bridges, roads and ferries, using many of the same administrative procedures practiced by Texas county commissioners; and local officers controlled and paid for the building of state arterial highways. Trempealeau's building boomlet was strong enough to carry through the 1857 panic, and people looked ahead to continued development and growth.

Cairo, situated at the confluence of the Ohio and Mississippi Rivers, remains a prime example of a river town, which, by all the logic of geography, could have been a great city. So convinced were Cairo promoters and settlers of a prospering future, that nineteenth-century railroad and internal improvement bonds were still being refinanced in the middle of the twentieth century. During the 1850's, Cairo was prospering; and along with the respective supporters of Houston, Galveston, San Antonio, Milwaukee and Trempealeau, Cairo backers looked forward to further substantial future development. Existing artifacts of these metropolises and communities obscure common
experiences and outlooks prevalent during the early years of settlement and development.

Texas' competitive island communities of 1860 stood at the edge of precipitous change. In 1860, the bulk of the state's railroad system spread, claw-like, up to one hundred miles from a Houston hub. In little more than a decade after the Secession Crisis, rail connections would link the Texas Gulf Coast with St. Louis, Missouri. Economic forces and interests not subject to local influence or growth and development imperatives, would begin to affect Texas towns. 13

Local autonomy configurations of Texas law and politics also would change radically during the decade after Appomattox. Texas jurists during the post-Civil War period increasingly cast aside old preferences for local government support, in favor of active judicial supervision of towns and counties. Influential authors of legal treatises on municipal corporations and American constitutionalism encouraged greater judicial oversight of local governments. The writings of Thomas Cooley and John Forrest Dillon increasingly pre-empted prior Texas precedent favoring protection and support of local autonomy. 14 Texas jurist O. M. Roberts remained a proponent of the new judicial activism, expanding policies first formulated during his antebellum tenure on the state supreme court. 15

In other respects, post-Civil War local practices and experiences would not be altered appreciably by the
Secession Crisis and Civil War. With development of gas lighting, public transportation, public health improvement, street paving, road and bridge development, and a score of other municipal services, Texas towns and county officers continued their quests for elusive population and economic growth. But much of the early community spirit was gone; and with its passing, bedrock support for local autonomy intrastate constitutionalism began to weaken. Men entering a new age of energy, industry, and professional organizations would remake constitutional government to meet new regional and national and political needs.
NOTES


2 H.P.N. Gammel, comp. and ed., The Laws of Texas, 1822-1897 (10 vols.; Austin, Texas: Gammel Book Co., 1898), IV, 1464-1468 (February 11, 1860); [hereafter cited as Gammel, Laws of Texas]; total government expenses, including frontier defense, penitentiary, deficiency appropriations, etc., amounted to $866,000; cf., Gammel, Laws of Texas, IV, 1365-1507, passim (8th Legislature, 1860).

3 Robert L. Kerby, Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-1865 (New York: Columbia University Press, 1972), 267; Edward B. Weisel, "Texas Local Government During the Civil War: The Harris County Experience" (paper presented at the meeting of the Texas State Historical Association, Austin, Tx., March 8, 1975), passim.


5 Madden, "City-State Relations in Wisconsin," 12-13.

6 Madden, "City-State Relations in Wisconsin," Introduction, Ch. I-III, passim.

7 Madden, "City-State Relations in Wisconsin," 291.

8 Madden, "City-State Relations in Wisconsin," 291-292; Ch. III-IV; in other jurisdictions, courts and legislatures had become more aggressive in supervising local government operations. In New England, courts had, for many years been conducting a running battle with town governments over permissible levels of state control. And in New York, where mid-1850's partisan political divisions had resulted in a New York City Democratic machine and outstate rural Republicanism, the Legislature was experimenting with governor-appointed commissions to operate New York City government. And in some jurisdictions in the South,
county governments apparently lacked the functional auto-
nomy exercised by county commissioners in Texas. Cf.,
James and Marilyn Blawie, "Town vs. State: Interposition
and Secession in New England," Journal of Public Law, V
(1956), 90-109; Maxwell Bloomfield, "Law v. Politics:
The Self Image of the American Bar, 1830-1860," American
Journal of Legal History, XII (October, 1968), 305-323;
Edward B. Weisel, "City, Law, and Commonwealth: The
Decline of Governmental Cooperation and the Dissolution of
Internal Unity in New York City Government, 1846-1860
(paper presented at the meeting of the American Society
for Legal History, Williamsburg, Va., November, 1972);
Charles S. Sydnor, The Development of Southern Section-
by Wendell Holmes Stephenson and E. Merton Coulter
(Reprint [of 1948] ed.; [Baton Rouge]: Louisiana State
University Press/Littlefield Fund for Southern History
of the University of Texas, 1968), Ch. II.

9 Harold M. Hyman, A More Perfect Union: The Impact
of the Civil War and Reconstruction on the Constitution
(New York: Knopf, 1973), Ch. VIII; and, Hyman, Union and
Confidence--the 1860's (to be published, Thomas Y. Crowell,
1975), Ch. III.

10 Phillip S. Paludan, in a recent article, has discussed
the decision in the North to fight the Civil War on the
basis of perceived local threats to law and stability.
Concern for preservation of the Union stemmed from fears
that national weaknesses resulting from secession would
mean local dangers to state, locality, and home, resulting
from invasion, petty warfare, and Balkanization of the
American continent. Cf., Phillip S. Paludan, "The American
Civil War Considered as a Crisis of Law and Order,"
American Historical Review, LXXVI (October, 1972), 1013-
1034; where American state powers were used to interfere
in local administration, those localities most directly
affected by the change did, indeed find the experience
unpalatable; cf., Bloomfield, "Law v. Politics: The Self-

11 Merle Curti, The Making of an American Community:
A Case Study of Democracy in a Frontier Community (Stanford,
California: Stanford University Press, 1959), Ch. II-III,
passim.

12 Herman R. Lantz, A Community in Search of Itself:
A Case Study of Cairo, Illinois (Carbondale: Southern
Illinois University Press, 1972), passim.


15 For an example of changes in judicial policy, cf., Williams v. Davidson, 43 Tex. 1 (1875).

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