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WILLIAM PITT BALLINGER: PUBLIC SERVANT, PRIVATE PRAGMATIST

by

JOHN A. MORETTA

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

DOCTOR OF PHILOSOPHY

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ABSTRACT

WILLIAM PIT T BALLINGER: PUBLIC SERVANT, PRIVATE PRAGMATIST

John A. Moretta

This dissertation is an in-depth examination of the personal and professional life of Galvestonian William Pitt Ballinger (1825-1888), one of Texas' foremost nineteenth-century jurists. From the day he took his attorney's oath to the time of his death, Ballinger pursued his legal career with a tenacity that often drove him to physical and mental exhaustion. Proclaimed by the legal community long before his death as "the Nestor of the Texas Bar," Ballinger, ironically, was uncomfortable with such praise, and throughout adult life questioned his potential. At times equivocal, even arbitrary when crucial political issues were involved, Ballinger was determined to do what was most honorable and just, regardless of consequence.

Foremost to Ballinger was the security of his family and practice, but he nevertheless devoted himself to the aggrandizement and enrichment of his beloved Galveston. Minimizing his involvement in political controversy, Ballinger never actively sought political office but seldom ignored the popular demand for his participation in civic affairs. An elitist, Ballinger's sense of privilege was tempered by an equally strong sentiment of social
responsibility. He believed that there was a certain accountability incumbent upon men of professional status: individuals had careers but gentlemen of substance had communal obligations as well.

Despite an avowed apoliticism, by the late 1850's, Ballinger had thrown off his restraint and invested his reputation in saving the nation from dissolution. When that failed, he offered his talents and allegiance to his new country—the Confederate States of America. Whatever the cause, once committed, Ballinger's undertakings often became personal obsessions.

Ballinger's contributions to Texas history were perhaps not as dramatic nor monumental as those of an Austin or a Houston, but were nevertheless significant: few Texans had ever done more to promote a given profession or a community's sense of welfare than Ballinger. While his services and devotion have secured his place in Texas history, Ballinger was above all a nineteenth-century man who shared the same experiences, disappointments and tribulations as his contemporaries. For the majority of nineteenth-century Americans, physical survival rather than the performance of romantic and grandiose deeds, was the principal concern. Ballinger distinguished himself in that he persevered beyond the challenges of everyday life to reckon with the crises of his times.
ACKNOWLEDGEMENTS

Rarely does one earn the distinction of a doctoral degree without the invaluable support of friends, relatives and mentors. This student is especially indebted to Professor S.W. Higginbotham of the Rice History Department whose guidance, patience and historical counsel far exceeded what one would expect from his principal advisor. I also owe a great deal of thanks to my mother-in-law, Ms. Gail Tycer, whose seminars on effective written communication proved indispensable to the actual writing of this thesis. Ms. Tycer was also one of Ballinger’s most interested readers who always took the time on her business trips to Houston to not only inquire about “the old fellow,” but also to offer some very valuable insights into his personality. Of all the encouragement I received to complete this undertaking, no one was more reassuring and confident in my ability to do so than my wife Chris, to whom I dedicate this dissertation. To her patience with my frustrating stops and starts to her understanding of weekends away from home for research to her reading of every paragraph, she was always there, never hesitating to help in whatever way she could. No written tribute could ever express my deep appreciation for all she has contributed to this project. Finally, I would like to thank Ms. Mary Patterson who not only took time away from her
family and career to type this paper, but who also along with her husband Jim, provided some very useful analyses of Ballinger's character.
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CHAPTER I -- Early Years

I, William Pitt Ballinger, do solemnly swear that I will faithfully and impartially discharge and perform all the duties incumbent on me as an attorney and counselor at law for the district and interior courts of the state of Texas according to the best of my skill and ability, agreeable to the Constitution and laws of the United States and of this state. And I do further solemnly swear, that, since the adoption of this constitution by the Congress of the United States, I being a citizen of this State, have not fought a duel with deadly weapons within this state or out of it; nor have I sent or accepted a challenge to fight a duel with a deadly weapon; nor have I acted as second in carrying a challenge, or aided, advised, or assisted any person thus offending--so help me God.

William Pitt Ballinger
Ballinger Papers.

On Friday, November 13, 1846, after a three-hour oral examination in his uncle's court, twenty-one-year-old William Pitt Ballinger passed his bar. From the day he took his oath to the time of his death, Ballinger upheld the sanctity of his pledge and pursued his legal career with a determination bordering on obsession to become a respected jurist. By the 1870's Ballinger was reputed to have been one of the country's most sought after corporation lawyers. Though recognized long before his death as "the Nestor of the Texas Bar," Ballinger was uncomfortable with such appellatives and throughout his adult life questioned his potential. His concern was not for greatness or fame, but for whether his
efforts reflected a determination to do what was most honorable and just, regardless of consequences.

A perfectionist who demanded excellence in whatever he undertook, Ballinger often drove himself to the point of mental and physical exhaustion until he achieved his purpose. Even after herculean efforts brought triumph and recognition, Ballinger was dissatisfied: feeling he had not put forth all that he was capable of, the accomplishment was only half a victory. If, preoccupied with other interests, he had been dilatory or neglectful of his family and practice, Ballinger chastised himself and pledged to be more attentive and productive.

Though compulsive about his profession's success, Ballinger did not shirk civic and political responsibilities, believing there were certain duties incumbent on men of professional status: individuals had careers, but gentlemen of substance had communal obligations as well. Always ready to promote the aggrandizement and enrichment of his beloved Galveston, Ballinger was nonetheless cautious when it came to political participation and endorsement. He had personal antipathy for partisan politics and crusades reflecting more enthusiasm than substance. Despite his apoliticism, by the late 1850's Ballinger invested his reputation in saving the Union. When that failed, he offered his services and devotion to his new country—the Confederate States of
America. Whatever the cause, once committed, Ballinger approached his projects with such tenacity that they often became fixations.

Perhaps the impetus enabling Ballinger to accomplish so much was his compulsiveness and penchant for self-deprecation. Though he may have been animated by "motivational complexes" that debilitated his self-worth, to his family, friends, and peers, Ballinger was a bastion of security and stability, a leader who did not allow personal anxieties to encroach upon legal, parental, and civic responsibilities. Those close to Ballinger admired and emulated his vigor and perseverance, and many individuals, particularly among his younger proteges, developed filial attachments.

There is little doubt that Ballinger's legal and political contributions to Texas were invaluable. However, it must be remembered that above all else, Ballinger was a human being, sharing the same experiences, frustrations, and bewilderment of his nineteenth-century contemporaries. Too often we look back at nineteenth-century America through a romantic lens that makes the people and time look more exciting and robust than they were. We overlook the fact that day-to-day physical survival, particularly on the Texas frontier, was the most immediate concern. Even for Ballinger, living in one of Texas' most civilized and
developed cities, there was the constant fear that at any moment a yellow fever epidemic or hurricane could completely erase his life and accomplishments. The biographer, if he is to present the most historically accurate portrayal of his subject, must focus not only on the individual’s achievements, but also on the way that individual endured the crises of his times and was thus able to accomplish more than the ordinary.

With the struggles of the Revolutionary War over, Americans again looked westward for opportunities. Soldiers returning from campaigns in the western portions of Virginia and North Carolina gave glowing accounts of the limitless possibilities that awaited the venturesome and ambitious. With the lure of fertile soil, virgin forests, and plentiful game, a great migration began. Hearty Scotch-Irish, Welsh, and German immigrants, farmers, veterans, land speculators, restless merchants, and fur traders poured across the Blue Ridge Mountains, through the Cumberland Gap, to the "blue grass" of Kentucky.4

For several decades after the Revolution, the heart of the American West was Kentucky. In its heyday Kentucky had become the symbol of the new nation—a country that was fast leaving behind its English colonial past and developing an identity rooted in the ideals and creeds of the American frontier. Few states seemed to have contributed more to the
shaping of the antebellum national character than Kentucky. From Daniel Boone to Henry Clay to Abraham Lincoln, Kentucky's native sons seemed to be in the forefront of national leadership. Kentuckians were conscious of their state's importance and their many contributions to the nation's development. As one enthusiastic citizen proclaimed, "Right here, in the very center of the Mississippi Valley, lying like a crouching lion, stretched east and west, is Kentucky, the thoroughfare of the continent."

Among the thousands of pioneers who pushed into the unexploited wilderness of Kentucky was Colonel Richard Ballinger, William's paternal grandfather. Richard Ballinger migrated to Kentucky shortly after the Revolutionary War, forsaking a prominent position within the Virginia gentry as a successful planter and slaveowner. He had inherited such pre-eminence from his father, Joseph Ballinger. Though Joseph's estate was the result of his own efforts, he had initial help from William's great-great-grandfather, Thomas Ballinger, the patriarch of the clan. Thomas Ballinger migrated from England sometime in the 1720's and settled in New Jersey. There he prospered as a merchant and upon his death left a tidy sum to his four sons. Joseph, the youngest of the four, took his share of the inheritance and moved to Amherst County in western Virginia. By the time of his death
in 1805 at the age of 72, Joseph had an established plantation maintained by a retinue of twenty slaves.\footnote{3}

Apparently young Richard found his new life as a Kentucky yeoman farmer as unappealing as the security of the Virginia gentry. No sooner had Richard settled in Knox County, than he was off again, engaging in what was to become a family fondness for military adventure. During the Indian wars of the early 1790's, "Colonel Dick" served as aide-de-camp to Arthur St. Clair, governor of the Northwest Territory.\footnote{4} St. Clair was given the responsibility by the Washington Administration of putting down a British-incited uprising of the Northern Indians. General St. Clair marched against the tribes in the autumn of 1791, and on November 4, 1791, the Indians surprised St. Clair's camp and quickly turned the battle into a melee, in which over 900 men were killed or wounded. Colonel Ballinger was one of the few officers who survived one of the costliest defeats of the campaign.\footnote{5}

After the war, Colonel Ballinger returned to Kentucky and became the first clerk of the courts of Knox County. He was later elected to the state senate and by the time of his death at 75, Colonel Ballinger had become one of the most respected and influential citizens of the county.\footnote{6}

His son, James Franklin Ballinger, William's father, carried on the public-spirited and political tradition of the family. James also displayed the Ballinger taste for
military adventure, enlisting in the War of 1812 at the age of seventeen. Unfortunately, James did not escape a disastrous American defeat by the Indians as easily as his father. James was one of 866 Kentuckians under Colonel William Dudley who was ordered by William Henry Harrison to break the British siege of Fort Meigs on the Wabash River in northern Ohio. On their way to the fort, Dudley's Kentuckians were ambushed by Tecumseh's Indians, and 630 of the relievers were killed, wounded, or captured. James was taken prisoner and kept his scalp by successfully "running the gauntlet."*

After the war, James returned to Barbourville, the Knox County seat, and assumed his father's position as clerk of the courts. James won the confidence of his compatriots as much by his physical prowess at county games as by his professional talents. With many friends but few profitable enterprises, he earned his living from the fees of his official duties as clerk of the courts. Like his father, James was interested in state politics. In 1837 he was elected to the Kentucky legislature; in 1840 he was elector on the national Whig ticket. James remained in Barbourville until 1860. There, as a young widower, he raised two daughters and three sons, the eldest of whom he named after the famous English statesman, William Pitt.*
Unfortunately, very little information has been preserved or verified concerning William's mother, Olivia Adams and her family. In his "Family Notes," Ballinger had difficulty authenticating much of the family history given to him by his senile grandmother, Sarah Herndon. Due to the dubious nature of his source, Ballinger accepted only information that could be confirmed by other relatives. Though his maternal heritage is sketchy at best, Ballinger was able to establish that John Adams, patriarch of the clan, migrated from England sometime in the 1730's, settling in Maryland. According to Grandmother Herndon, the Adams were related to the "great Lord Baltimore." Ballinger, however, had serious reservations about the claim, believing "such a tradition has been probably confounded by the old lady."

Despite his grandmother's pretensions, the Adamses prospered, becoming wealthy planters after migrating to Virginia in the 1740's. John Adams' son, Thomas Randolph, migrated to Kentucky sometime after the Revolution. Ballinger's mother's father was Randolph Adams, Thomas' first born. Sometime in the 1790's Randolph went back to Henry County, Virginia, working there as a clerk of the courts. He met and married Sarah Herndon there in 1805. Two years later they moved to Knox County, Kentucky, where Ballinger's mother Olivia was born in 1807. Randolph Adams eventually became a lay judge of the circuit court of Kentucky and died in 1865.
Olivia Adams married James Ballinger in 1824 and died three years later giving birth to William's sister Lucy.11

William also had two uncles by marriage of whom he was very fond and who greatly influenced his life. One was Joseph Eve, who was appointed a circuit judge in Kentucky for many years, and was appointed in 1837 United States minister to the Republic of Texas. The other was James Love, or "Uncle Jimmy," as William affectionately referred to him. Love was a prominent Kentucky politico, serving his state as a Congressman for two terms before moving to Texas. There he fought in the revolution against Mexico and was later a member of the 1845 constitutional convention and subsequently elected district judge.12

So it was into this background of relatives and friends, well-bred and informed, that William Pitt Ballinger was born on September 25, 1825. It was Ballinger's good fortune that his early years were spent in Barbourville rather than in the more remote areas of Kentucky. The grandiloquence of his name was in keeping with the cultural pretensions of the town. Although it numbered fewer than 200 inhabitants in the 1830's and 1840's, Barbourville boasted a vigorous intellectual atmosphere, later being described somewhat expansively as "the Athens of the Kentucky Highlands." Despite the exaggerated claims of its inhabitants, Barbourville was nonetheless one of the more enlightened
western communities. For example, in 1837, the Barbourville intelligentsia organized a debating society, and its members "would meet every Saturday evening at early candle light, and a dozen or so young men of the town would meet at the court house and debate some question of current interest."

Two of the more enthusiastic debaters were Joseph Eve and Justice Samuel F. Miller—two men who greatly influenced young Will Ballinger.

The members wasted little time at their weekly meeting discussing mundane or esoteric topics. Instead they addressed current political issues such as: "Is it constitutional and expedient for the United States in their federative capacity to make internal improvements?" Or: "Would it be politick to admit Texas as a member of this confederacy, provided she establishes her independence?" On October 28, 1837, a Dr. U.S. Williams read "an instructive essay on the Science of Phrenology," which was followed by debate on the question: "Have the acts of Andrew Jackson been of more benefit than injury to the United States?"

The final answers were never in doubt, for Knox County was overwhelmingly Whig in its politics and (with fewer than 700 slaves in a total population of 7,000 inhabitants) largely antislavery as well. Few important public issues went unexplored by the debaters, and for the Society's more avid and impressionable spectators like Will Ballinger,
the evening courthouse speeches were not only exciting but also provided the foundation upon which Ballinger subsequently constructed his own political philosophy.

In 1840, at the age of 15, William went to Bardstown, Kentucky, where he studied for two years at St. Mary's Catholic College. At St. Mary's Ballinger acquired what became in later life an insatiable desire for books and a deep appreciation for literature. Ballinger was an avid reader and never limited his reading to legal works. In fact, throughout his diary, he repeatedly chastised himself for not having read more professional literature and for buying more books than he could afford. He spent entire days "arranging books --putting them up--haven't arranged them yet." Even on the Sabbath, much to his wife's chagrin, Ballinger would skip church for the purpose of "rearranging the books at the office."

Ballinger found his books both edifying and a great comfort and solace in times of crisis. For example, shortly after Lincoln's election in November, 1860, Ballinger believed an economic crisis was impending and wrote: "My books are a great comfort to me--I have the most I need badly."

Despite his constant resolve not to spend any more money on books, nor read when he should be doing something else, Ballinger's bibliomania was incurable. Perhaps this excerpt
from his diary best sums up the views of one of Texas' leading bibliophiles:

Thought I would make an end of buying books & exam'd at the diff' book stores for such as I wished to get--couldn't trade with Allen & Armstrong's clerk not in. I have almost a Bibliomania which I must get rid of, or at least not permit to interfere with my duties.**

However, not until a week later, after spending another $182.75 for books, did Ballinger carry out his above-mentioned promise: "I shall now stop--no more good books here (Galveston) to be gotten."^^

Ballinger's bibliomania represented an interesting departure from the preferences of most of his antebellum contemporaries, who were noted for their exclusive literary interests. The South's discriminating reading habits, overwhelmingly influenced by nineteenth-century romanticism, led to the creation of a distinct, indigenous Southern culture and mentality. Though the romantic impulse found its most receptive audience among the gentry, many urban Southerners shared similar sentiments.^^ However, not all Southerners experienced this enchantment with romanticism.

Particularly less influenced by the movement were individuals like Ballinger, who left Kentucky and its unique romantic melange to settle in Texas in 1843. Though
Ballinger lived on the periphery of Southern plantation culture, he was not uninformed, nor did his environment reflect the uncertainty and hazards of frontier existence -- quite the contrary. The Galveston of Ballinger's time was a sophisticated, cosmopolitan city, devoid of the frontier's evangelical-revival religion, of flamboyant folklore, and of the raw, violent version of the chivalric cult.

Galvestonians took great pride in their city's refinement, disdaining such crass affectations as the "code duello." If Galveston, locked in competition with New Orleans to become the Gulf's leading entrepot, emulated any romantic pretensions, they were not those of the frontier.

Ballinger's literary and intellectual interests were a reflection not only of his own atypical "Southeranism," but that of many of his compatriots as well. Ballinger did not limit his reading to Scott's Waverly Novels, or to those of any other romantics, and in fact found romantic novels to be "tedious," "impractical," and "delusive." Beginning in 1857 he made references in his diary to his eclectic reading.

For example, he noted that he had recently read Edward Lytton Bulwer's Harold, Henry Fielding's The History of Tom Jones, and Nathaniel Hawthorne's The Marble Faun. He was especially impressed by the "passions and tragedy" of Charles Dickens' A Tale of Two Cities, and Washington Irving's "balance of history and romance" in The Chronicles
of the Conquest of Granada. Despite his broad
and impressive reading list, Ballinger displayed a preference
for historical and biographical subjects, particularly during
times of personal or national crises. While his small son
lay gravely ill in October, 1862, Ballinger found solace in
the first volume of John Lothrop Motley's The Rise of the
Dutch Republic. Since only the first nine volumes were
available, Ballinger then read Randall's Jefferson and
Irving's Life of Washington.

With the coming in early 1863 of relative calm on the
Confederate battle fronts, Ballinger relaxed, and his reading
interests took a new direction. In February he began Roger's
Essay on Genius & Writing of Pascal, and Cousin's Essay
on His Skepticism. However, by the spring of that year
as the fighting intensified, Ballinger was again preoccupied
with a historical theme, Buckle's History of
Civilization. He later turned his attention to Alison's
Wellington's First Peninsula Campaign and borrowed
Colton's Atlas "to understand the Geography of the
country." He found the atlas such an aid that he wrote:
"ought to have had an Atlas in all my previous readings of
Bonaparte's Campaigns as I could have understood them far
better." By the middle of May, 1863, Ballinger had
finished the eighth and last volume of Alison's Europe,
"a book containing vast information--written in a partisan
spirit abounding in inconsistencies—neither mature in
judgement nor accurate in style."

So consumed was Ballinger by the people and events in his
readings that he often found it difficult to divorce himself
from the past. His compulsive historical reading exacerbated
his sense of imminent Confederate defeat, and he came to
believe Southern independence had been an illusion from the
beginning.

Despite the Confederacy's severe setbacks all along the
Western theater in 1863, Ballinger overcame his anxiety and
found great comfort in reading The Vicar of Wakefield to
his children.30

After attending St. Mary's, Ballinger went to work for
his father as deputy clerk. As such, Ballinger had the
opportunity to study law, and he daily immersed himself in
the works of great jurists like Blackstone. Perhaps more
important, his job provided him with practical legal
experience, letting him learn first hand the routine business
of the courts. James Ballinger was an able teacher, at least
in his son's eyes: "He was no doubt the best clerk in
Kentucky --knew the form of every judg[... and order to
common law and Equity practice."31

Had he remained in Bardstown, William would probably have
followed family precedent, spending most of his life dealing
in writs and warrants. However, William, like so many young
Americans in the 1840's, was restless and wanted adventure. He was grateful to his father for giving him the opportunity to learn law and court procedure, but he wanted more than just a peripheral knowledge of the nation's legal system. He wanted to become a lawyer. Chance, in the form of ill health, opened that door for Ballinger. He had never been very strong physically, having suffered from asthma since childhood, and in 1843 he was invited by his uncle, James Love, to come to Texas—more particularly, Galveston—and continue his legal training under Love's auspices.  

Uncle Jimmy had moved to Texas in 1837 and soon emerged as a man of many talents, not all of which were related to his legal practice. He was a successful cotton planter and slaveowner, whose plantation on the Brazos added a tidy sum to his legal fees. He was also an intensely partisan politician, a devout Whig, whose rather palatial home served as a "base of operations" for the opponents of Sam Houston.  

There he welcomed his eighteen-year-old nephew, and for more than two years, Will Ballinger learned many things not found in his law books.  

The young man who had set out to conquer a new world was not disappointed in Texas, nor in the Gulf Coast. At that time Galveston was fast becoming the future state's leading city. Dr. Ferdinand Roemer, one of many European travelers
in the Texas Republic, described Galveston as it appeared in 1845:

Galveston resembles other North American cities of similar size and age, especially does it have the architecture and straight street crossing at right angles in common with other American cities. The houses themselves, including the churches and public buildings, are all of frame construction, and the city can boast of only one brick house. This impresses the European as being only a temporary affair, as for example, for the duration of a fair. The light frame construction, however, does not in any wise preclude the presence of cozy, comfortable homes. Considering the mildness of the climate, a more solid, substantial structure is not necessary. The streets are unpaved, but this does not cause any discomfort since the soil is sandy and does not become muddy after a heavy rain.

The city has experienced such rapid growth because its location has proven itself to be a very healthful in comparison with other cities lying on the Gulf of Mexico. . . . the climate of the island is exceedingly mild and pleasant. Extreme changes in the temperature as they are found in other parts of the state do not occur here owing to the tempering influence of the sea. . . .

This was the Galveston William found. It was here he was to build a home and career and spend the rest of his life.

William had almost completed his legal apprenticeship when the United States declared war on Mexico in the spring of 1846. One of the major causes of the war was the annexation of the Texas Republic by the United States.
Regarded by Mexico as a province in revolt, the Lone Star Republic had led a precarious existence since declaring its independence in 1836. Mexican officials constantly threatened war if the American eagle should gather the fledgling republic under its protective wing. Vastly outnumbered by their Mexican foe, and forced to maintain a costly military establishment, Texas was driven to open negotiations with England and France, hoping to secure the defensive shield of a protectorate. In 1839 and 1840 Texas concluded treaties with France, Holland, and Belgium.²²

Britain was intensely interested in an independent Texas to check the southward surge of the American colossus, a constant threat to nearby British possessions. British abolitionists pressed for a foothold in Texas, and British merchants regarded Texas as a potentially important free-trade area—an offset to the tariff-walled United States. British manufacturers likewise perceived that Texas' vast plains were potentially the greatest cotton-producing area in the United States. An independent Texas would relieve British looms of their dependence on American fiber—a supply which might be cut off in a time of crisis by embargo or war.²² However, foreign dreams of an independent Texas were shattered in 1845. After a spirited Congressional debate
throughout most of 1844, Texas was finally formally invited in early 1845 to become the twenty-eighth state of the Union.

Bloodshed began in dispute over the boundary of Texas. Mexico held that the Nueces River was the boundary; the United States pressed the Texas claim for the Rio Grande. President James Polk, who was prepared to offer money in exchange for a favorable boundary settlement, was insulted and alarmed when Mexico refused to meet with his emissary, John Slidell. On Polk's orders, General Zachary Taylor moved a small body of regulars to the Rio Grande, and ignoring Mexican orders to withdraw, threw up field fortifications opposite the city of Matamoros and called for volunteers to strengthen his position. On April 25, 1846, the attack and capture of a small body of American dragoons brought tensions to a head: the war with Mexico was on. Like so many Texans, Ballinger was eager to participate in the conflict. At the home of his uncle, James Love, he restlessly listened to reports of military activities along the Rio Grande and watched the departure of volunteers from all over southeast and east Texas, as they responded to Taylor's April 26th call for the creation of three volunteer Texas regiments to be mustered into regular service for a three-month period.

The outbreak of the Mexican War had stirred Will Ballinger's romantic spirit: it would only be a matter of
time before the family penchant for military adventure would consume yet another Ballinger. Despite his uncle’s solicitations, on Saturday, May 16, 1846, twenty-one-year-old Will Ballinger, along with seventy-two other Galvestonians, enlisted in a volunteer company under the command of Captain Ephraim W. McLean.39

Unable to get passage by sea, Ballinger and his compatriots set forth by horse on a three-hundred-mile journey to Fort Polk, the name given to the installation at Point Isabel. They were joined en route by others with the same destination, for a scarcity of shipping forced hundreds of volunteers to literally have to walk to the battlefront. Finally, after twenty-eight days of travel, Ballinger’s outfit arrived at Point Isabel.40

At Point Isabel, on the Gulf of Mexico, Ballinger found an abundance of sand, heat, and confusion. The center of activities was Fort Polk, a hastily erected earthwork located on a thirty-foot bluff overlooking the sea. Encamped in the open around the fort were the volunteers. Those from Texas were still arriving daily in parties similar to the one that Ballinger had accompanied. Governor J. Pinckney Henderson, commander of the Texas contingent, had not arrived and, thus, the Texans were still pretty much on their own. Much to the governor’s chagrin, the Legislature required that officers be elected by the troops, not appointed by him. Not until June
18 did Henderson arrive and the regimental organization occur. At that time, Ballinger and his fellow Galvestonians were combined with two other Texas companies (one from Houston, and the other from Nacogdoches) and mustered into the regular army for three month's service as Company D of the First Regiment of Texas Foot Soldiers. Albert Sidney Johnston, an intimate of Uncle Jimmy's whom Ballinger had also befriended, was unanimously elected colonel of the regiment, and Ballinger along with Oliver C. Harty were elected first and second lieutenants respectively. However, Ballinger remained a first lieutenant for only one month, for in July, Johnston appointed him his adjutant, and together, they prepared for the Battle of Monterrey.\textsuperscript{42}

For more than a month Ballinger and his compatriots remained at Point Isabel. The battles of Palo Alto and Resaca de la Palma had occurred before his arrival there, and the defeated Mexican army already had retreated deeper into Mexico. Occupying Matamoros, Taylor prepared to strike into the interior of Mexico as soon as he could collect troops, equipment, and transportation for such a campaign.\textsuperscript{42}

In late July, Taylor began moving up the Rio Grande for a blow at the Mexican army, concentrating at Monterrey. Taylor's army of above six thousand troops comprised two divisions of regulars and one of volunteers. Under Brigadier General William O. Butler, commanding the volunteers,
Ballinger and a portion of his regiment embarked on August 5 on a steamboat up the Rio Grande for Camargo, the site of Taylor's advance base. For more than three hundred miles the transport wound its way up the river, and Ballinger had ample time to observe and reflect upon the country and people he saw. In letters to friends and relatives Ballinger praised the serenity of the Mexican countryside. However, his admiration for the fertility of the Mexican soil was equaled by his contempt for the people who worked it. "As a race the inhabitants are inferior," he wrote, "resembling in color the Indians of the U. States & not much superior to some of them in civilization."

The racism revealed in Ballinger's observations of Mexican culture was not atypical. His perceptions were similar to those held by numerous other Americans caught up in the fervor of national expansionism and the turgid rhetoric of "manifest destiny," which has since become a label for the whole complex of attitudes, concepts, and actions that swept American dominion to the shores of the Pacific Ocean. At the heart of manifest destiny was an exuberant faith in the democratic creed: Americans were a chosen race, and their appointed mission was to extend the area of freedom. Thus, young Will Ballinger, animated by his own feelings of Anglo-Saxon superiority and righteousness was
prepared to help relieve Mexico of a large measure of her
national domain.

Disappointment awaited Ballinger in Camargo. Arriving
in mid-August, he found a scene of sickness, death, and
demoralization. The town lay on the San Juan River a few
miles above the point where this stream flows into the Rio
Grande. Sweating in the unbearable heat, plagued with
myriads of insects, and supplied with impure water, the raw
recruits died daily from climate and conditions. Years
later, in a letter to Guy Bryan, Ballinger recalled his
experience at Camargo, which he believed was similar to the
conditions afflicting the Confederate army by 1864.

Few comprehend the ravages & perils of war.
They are not to be found in the reports of
the battle field; (these) account for but a
small portion of the waste of life. . . .
Privations without number, hard marches,
under a vertical sun or in the chilly hours
of the night . . . make up a bill of
mortality, treble that of fiercest warfare.
. . . This has been particularly so with
our forces in this war.44

At this moment of misery, Ballinger’s regiment was further
decimated by the end of the enlistment period of most of the
Texas volunteers. Out of a regiment of over 500 men, 318
volunteers, including an entire company of German-Americans
who had suffered much sickness, left for home. Ballinger was
one of the remaining 224 who were assigned to other commands.
Ballinger was fortunate in that he was able to retain his rank as adjutant and continued to serve in that capacity under Albert Sidney Johnston, whom Taylor had appointed inspector general on the staff of General Butler. After this reorganization took place, the army was ready to leave Camargo, and in late August began the march toward Monterrey.

The Mexican commander of the north, General Pedro Ampudia, was resolved to fight for Monterrey. Protected by hills and by the Santa Catarina River on the west and south, Monterrey occupied favorable defensive terrain, and Mexican ingenuity had augmented the city's natural defenses. To the north of the city stood the Citadel, a powerful fort constructed upon the masonry of an unfinished cathedral. On a slope at the southeastern tip of the city lay Fort El Diablo, a strong earthwork armed with cannon. North of El Diablo was a stone tannery building protected by an earthen redoubt and cannon. At the northern end of the small stream that ran through the city was a bridgehead supported by cannon. Streets were barricaded, and the city's stone houses converted into strongholds; the cathedral in the heart of the city served as general magazine. Ampudia's army outnumbered the Americans by perhaps one thousand men. Monterrey would test the invader's mettle.

After studying the defenses, Taylor met with his subordinates and planned the assault. General Worth, with his
division of regulars, was to march across the plain north of
the city and seize the Saltillo road on the west; he was then
to attack Monterrey from that direction. If successful, this
movement would sever Ampudia's line of communications with
Saltillo and southern Mexico, and would force him to divert
his forces to the city's west end. Meantime, Taylor, with the
remainder of his force, was to assault from the east.  

On the morning of September 21, 1846, while Worth was
advancing on El Soldado, Taylor ordered the remainder of the
army to attack from the east. A division of regulars under
David Twiggs, moved first. It engaged the Teneria redoubt and
Fort El Diablo, only to be stopped by heavy enemy fire.
Seeing this assault momentarily halted, Taylor sent Butler's
division of volunteers to support it.  

The volunteers advanced under severe bombardment from the
Citadel. Ballinger, accompanying Johnston and Butler, joined
their forces (mostly Texans) with those of Brigadier General
Thomas L. Hamer, commanding another volunteer regiment, the
First Ohio Volunteers. Their object was to take Fort El
Diablo. Resistance everywhere was fierce. Every street was
barricaded and reinforced by artillery and musketry; concealed
on the flat roofs of the stone houses were enemy troops firing
point-blank into the Americans. Butler tried breaking through
the walls from house to house in order to escape the Mexicans' fire. The attempt, however, failed, and the volunteers had to
endure intense enemy fire. The heaviest American losses of
the Battle of Monterrey occurred here; in the two hours of
fighting the combined division of Ohio and Texas volunteers
lost one-fourth of its soldiers.^^

According to Ephraim McClain who was a member of
Ballinger’s regiment, “All was noise, smoke, and confusion.
Remaining in his saddle, he (Ballinger) was a perfect target
for enemy marksmen, and though his horse was struck three
times, he remained unscathed. He and the other officers moved
from position to position, shouting orders amid the uproar in
an effort to keep the assault moving.”^^ All was in vain. At
about five o’clock in the afternoon, Taylor reluctantly
ordered a withdrawal.^^

As the Americans retreated from the edge of the city, a
column of Mexican mounted lancers counterattacked what was
left of the Ohio-Texas regiment. The lancers were reputed to
be the most formidable of Mexican soldiers. Sweeping across
the plain and killing stragglers as they came, they spread
panic among the retreating volunteers. Many of the Americans
threw aside their arms and fled through a nearby
cornfield.^^

Separated from his commander during the confusion,
Ballinger rode among the frightened troops, urging them to
turn and form a line against their pursuers. Apparently his
courage and air of command provided his cohorts with the
encouragement they needed. They took positions behind a fence and opened fire on the lancers, killing a good number of them and sending the remainder in retreat.  

In a letter to James Love, Albert Sidney Johnston, who was with Ballinger throughout much of the day at Monterrey, wrote of Ballinger’s gallantry during the skirmish: "It was through (his) agency, mainly, that many of our men were saved from a cruel slaughter. . . . The coolness and courageous presence (that he) displayed on this field . . . left an impression on my mind that I will not forget. . . . You should be proud of his bravery & the honor he has bestowed upon your family."  

After three days of intense fighting, the Mexicans had had enough. Cut off from reinforcements and supplies, pounded by American artillery, and pressed by American infantry charges, General Ampudia decided to surrender on the morning of September 24, 1846. Taylor at first demanded unconditional surrender, but when Ampudia refused, Taylor agreed to negotiate through a joint commission. General Worth and Colonels Jefferson Davis and J. Pinckney Henderson were appointed to discuss the terms of surrender with three Mexican officers. No sooner did the discussions begin than the Americans became exasperated with the Mexican’s equivocation and delay. The Americans ultimately forced the issue by threatening to resume hostilities. According to the terms
finally agreed upon, Monterrey would be surrendered to the Americans and all Mexican troops were to remove beyond Rinconada Pass. An armistice of eight weeks was to be observed by both sides. Considering the weakened and exhausted condition of the American army, and the near depletion of its materiel, Taylor wisely accepted the conditions. Victory at Monterrey made heroes of Worth and Taylor. Worth was now the "high-cumb cock" of the Army; Taylor was on his way to the White House, and William Pitt Ballinger had proved himself equal to crisis on the battlefield.

After the storming of Monterrey, Ballinger's term of enlistment expired, and he returned to Galveston to resume his legal studies. After a few more months of intense preparation, Ballinger was finally ready to take his bar examinations. On November 12, 1846, after an examination in open court by a committee of three established lawyers, William Pitt Ballinger, 22, was pronounced "possessed of sufficient skill and learning in the science of law to entitle him to a license," which was issued the following day by his uncle, Judge James Love, of the First Judicial District.

After passing his bar, Ballinger tried to go at it alone, opening an independent practice. He quickly realized that legal success was as much based on peer recognition as it was
on client confidence. He knew that his task required hard work, careful preparation, and constant additional study. His determination to become a partner in a leading law firm came to fruition in late 1847. In that year, he was invited to become a member of Jones and Butler, a well-established firm, reputed to have the most extensive practice in Galveston. This was a rare opportunity for a young lawyer with little experience. Ballinger wasted no time in accepting the membership.

Although little information on the firm of Jones and Butler survives, documentation of one case in which the firm appears lists Ballinger and his associates as the defense for a lengthy appellate case finally decided by the Texas Supreme Court in 1848. In the case, *Borden v. Houston*, Ballinger's firm unsuccessfully defended their client, the appellant, Gail Borden. The decision against Borden had serious personal repercussions, leading to the abrupt end of Borden's career as a public servant for Texas.  

The case began long before Ballinger joined the prestigious firm. According to court records and other sources, suit was brought against Borden in 1843 by the Republic of Texas for violation of the laws governing his position as customs collector for the port of Galveston. While Borden's efforts had, in fact, made Galveston customs collection a major source of revenue for the Republic, he
apparently became overzealous in his role as collector, deciding, contrary to law, that he, not the Republic, knew how to operate an efficient and equitable customs system.  

The law called for all collectors to receive duty payments in unsecured Republic paper money at market value, which at the time was about thirty cents on the dollar. Believing the act discouraged trade and handicapped importers, Borden credited government paper at nearly full value: eighty cents on the dollar at minimum.

Borden's contempt for the law had serious ramifications. Although the law was not his to interpret, Borden's perception was inflexible, and he refused to change his position even though it contravened Texas law. By his arbitrary manipulation of the exchequer bills, Borden not only caused widespread speculation and general market havoc, but also deprived the government of fifty cents on the dollar's worth of revenue.

In addition to challenging the 1842 exchequer law, Borden decided that his salary, which had been reduced to $1,200 annually, was an insult to the "invaluable" services he had performed as collector. He believed that he should have the right to pocket the fees collected from ships and permits, which amounted to approximately another $1,200 a year, to bring his salary up to an acceptable standard. To say the
least, the government was not too keen on Borden’s
"compensation program."  

By late March, 1843, Borden had grown weary of his
constant struggle with the government over the exchequer issue
and had offered to resign his post. President Houston,
equally exasperated with Borden’s defiance and obduracy,
accepted his resignation and promptly appointed a more pliable
collector.  

Borden, however, seemed destined not to leave his job
without further controversy. For unknown reasons, other than
"a nervous excitability," Borden decided to keep the
customhouse funds he had collected before resigning.

It was at this juncture in 1843 that the law firm of Jones and
Butler was first called upon to defend Borden’s withholding of
government funds.

There were two reasons for Borden’s retention of the
customhouse revenue. Texas merchants threatened to sue him
for the difference between the face value of the exchequer and
the amount they had received from Borden even though his
exchequer rate had been higher. Borden feared that a rash of
suits against him would lead to a constitutional questioning
of the exchequer law which then might force him to have to pay
the disparity between the two values. Borden believed that
the best way to protect himself and his securities, Galveston
financiers Thomas F. McKinney and Samuel May Williams from
bankruptcy, was to simply hold onto the funds until a compromise could be worked out with the parties involved. **

The second reason, though less significant, was nonetheless inexcusable. Borden maintained that the government owed him at least $2,000 for his services in other official capacities. He reasoned that if he kept the government's money for awhile, the Treasury Department might be forced to pay Borden his "just compensation." No matter what might have been his motivation, in the eyes of Texas officials, Borden's actions were illegal.**

The Republic's prosecuting attorney, Ephraim Allen, apparently condoned Borden's market manipulation of the exchequer bills and did not seek an indictment on this issue. However, Allen would not countenance Borden's withholding of government funds and brought suit by interpreting Borden's retention of the money as a "breach of covenant":

The breach of covenant assigned is that he (the collector) has not truly and lawfully discharged the duties of his office according to the law, and has broken his covenant and obligation in this, that on the 13th day of April, 1843, there remained in his hands, as collector, $2,052.62 in par funds, which sum he has refused to pay over to the proper officer of the government. . . . It is the failure to perform this particular duty which is the subject in this action.**
Allen further observed that Borden had no legal right whatsoever to this money because:

It was not his money, but that of the government, temporarily confided to his custody and care, solely for safe keeping until it could be placed in the treasury. It was, when in his hands, in the legal possession of the government, and was no more subject to his control for any other than this well defined and single object than is the money in the treasury subject to the control and disposition of the Treasurer for any other than the purposes specified and defined by law. . . . It was then the duty of the collector—a duty which admitted of no substitute or equivalent—thus to pay over to the government, whose agent he was, for this express purpose, his specific collections. In his failure to perform this duty consisted the breach of his obligation complained of in this case.*

Though Messrs. Jones and Butler's 1843 defense was lucid, it lacked the cogency and depth of the prosecution's argument. For much of their legal substance they relied heavily upon Borden's "Invaluable service" to the Republic and his "forthright character." On a more juridically sophisticated level, Jones and Butler attempted to defend Borden's withholding of the government's funds by arguing that the law regulating the collection of customs, and that of the office of the collector, was "imprecise," particularly when it came to the type of funds the collector was to honor as dues.
According to the defense:

If the collector had received the dues in gold and silver (or "par funds") as it was always lawful for him to do (and in fact he did in part), no one will question that it would have been his duty to have paid into the treasury that species and in case of his failure to do so would have been a breach of covenant. Can it not alter the case that he received by permission of the government, expressed by law, a part of the amount which he thus failed to pay into the treasury in exchequer bills? It was not his duty to pay over these bills, for they were no longer constituted revenue.**

Despite Jones and Butler's attempt to find loopholes in the laws governing the duties and liabilities of a customs collector, the court decided for the Republic of Texas. Borden had no legal right to his customhouse funds and was ordered to send the $27,000 in government money in his possession to an impoverished Texas treasury.***

Though a resolution was finally at hand, there was one problem: Borden no longer had the money. He had turned over to his securities, McKinney and Williams, almost the entire sum, and now, though Borden was willing to give the money back to the Republic, his securities refused to do so. Apparently McKinney and Williams believed that they were entitled to the money for having assumed Borden's legal expenses.***
Borden had relinquished the money to McKinney and Williams in 1844. However, it took nearly three years for the controversy to be settled, and when it was, the law firm of Jones and Butler was again involved. Not only would McKinney and Williams have the expertise of Jones and Butler at their disposal, but more important, that of their new partner as well: William Pitt Ballinger.\(^1\)

The next documented reference to the "Borden legacy" appeared in a petition from Thomas F. McKinney, written by Ballinger, to the Texas state legislature. It stated that the $15,000 McKinney received from Borden had "been appropriated to his individual purpose" and could not be returned. Would the government allow McKinney to settle by using the money to clear the Republic's account with him? Apparently the Republic was indebted to McKinney in the form of audited claims, and McKinney was willing to forget the debt if a compromise could be reached concerning the $15,000. To strengthen McKinney's position, it was "remembered" by government officials that in the early, uncertain days of Texas independence, McKinney and Williams had loaned to the Republic $150,000 which the government had temporarily overlooked. Apparently the loan was substantial enough to have helped secure Texas independence. So, a special joint committee of the state legislature decided that because of McKinney and Williams' invaluable contribution to Texas,
there was no longer a need to pursue the issue. The case was closed.  

Thus, William Pitt Ballinger was successful in one of his first legal challenges. Though his role may have been peripheral, it was nevertheless valuable in helping his mentors retain the confidence of their two most important clients. Perhaps more important, the Borden case gave Ballinger much needed exposure to the more "personal" intricacies of the legal profession. It is doubtful that Ballinger would have learned as quickly the importance of client "status" had he remained on his own. As will be seen, Ballinger not only continually refined his legal skills but also shrewdly developed client relationships that would later prove to be extremely beneficial.

By 1850 Ballinger had become a Texan, deciding to make Galveston his permanent home. It was also an auspicious year for the young lawyer. In the spring, upon the recommendation of the Texas Supreme Court, the state legislature, and prominent Texans, Ballinger was appointed United States District Attorney for the Galveston District.

There is little doubt that Ballinger's appointment was political, the successful result of personal lobbying by James Love to secure for his nephew the vacated position. Had it not been for Love's prestige and influence among conspicuous Texas politicos, Ballinger might not have
received this distinction. The majority of the letters recommending Ballinger were, in fact, from leading Texas Whigs who were intimates of Love. In their letters Ballinger was presented as "a warm and zealous friend of the Administration," and as a "young man of uniform devotion to Whig principles." In his prefaces, the assistant to the Secretary of the Interior, J.L. Bates, described the Texans sanctioning Ballinger as "devout Whigs," "gentlemen of high standing in Texas," and as "warm and decided supporters of the Administration."

Ballinger received few nonpartisan recommendations. One of those few came from his most important client, Thomas F. McKinney of Galveston. Not only was McKinney's testimonial apolitical, but perhaps the most professionally trustworthy as well. What better individual to comment on Ballinger's legal acumen than his principal client. McKinney observed the following about his young attorney as well as revealing his own disinterest in party politics:

... I must cheerfully say that I regard him (Ballinger) as a young man of decidedly more professional promise than any I know in the State, combining a high order of natural intellect, fine legal attainments, devoted service, great application to business, and in possession of moral character and habits unsurpassed by any gentleman. ... I do not believe there would be a solitary objection to his appointment to any office ... I am no Whig or Democrat either & I presume any
recommendation from me would be of little value to anyone. I however cheerfully give it for what it is worth.\(\text{**}\)

Another professional certification was given by an A.F. Burnley of New Orleans. It seemed that Burnley, an attorney, had Galveston clients whom he represented and had opposed Ballinger in court. Burnley noted:

\begin{quote}
I practice in all the Courts (Galveston) which Messrs. Ballinger attends and have every opportunity to judge his qualifications. He is serious in his profession and pursues it with great assiduity and his attainments are fully commensurate to his industry. He practices with great success for he never fails to prepare his cases with care, or to manage them with ability or alertness. . . .\(\text{**}\)
\end{quote}

To note that Ballinger's appointment was political, owing much to his uncle's influence, is not to say he was undeserving, or that there were more qualified individuals. The recommendations from McKinney and Burnley attest that Ballinger was a competent and knowledgeable young attorney, respected by both his clients and peers. Nonetheless, despite his professional credentials, Ballinger received the position as a result of party affiliation. Though it is doubtful that he was as enthusiastic a supporter of the Whig party as he was presented, his referees, nevertheless,
convinced the Taylor Administration that their man was a devoted Whig.

It must be remembered that at this time the majority of federal appointments—such as United States District Attorney—were the result of the "spoils system." Both Democrats and Whigs rewarded loyal party supporters with political office, ranging from Secretary of State to assistant clerk in the Patent Office. In the heyday of Jacksonian Democracy rotation in office was just one of the ways continued party allegiance was maintained.

If young Ballinger had any remaining tendencies toward wanderlust and adventure, they were soon eclipsed by his romance with "the belle of the Brazos," Hally Jack. In a society where personal contacts were invaluable, Ballinger had been fortunate in his family connections. Uncle Jimmy had helped him secure his position in the firm of Jones and Butler as well as his appointment as United States Attorney. His prospects brightened still more with his marriage on April 30, 1850, to Miss Jack. Hally brought to her ambitious young husband the support of one of the most influential families in the state. The Jacks had been prominent in Texas public life since the late 1820's. Patriots (William Jack, Hally's father, was a veteran of San Jacinto), politicians, lawyers, entrepreneurs—their exploits were known throughout the state. Along with their equally prodigious Harrison kin,
they represented one of the most powerfully connected
Southern families. Their network ranged from central Texas
to Louisiana, Mississippi, and Alabama.**

After only seven years in Texas, Ballinger had achieved
much. He had studied law, fought in a national war, returned
and become a respected lawyer, and married into one of the
state's leading families. Like so many other Americans
during the Jacksonian era, Ballinger had found opportunity on
the Western frontier. The Galveston of Ballinger's young
adulthood was far from a typical Texas frontier settlement,
plagued by disorder and fear. Though he migrated to Texas
when it was still a raw, violent society, he never
experienced the hazards and uncertainty of frontier
existence. Always sheltered by Uncle Jimmy and his friends,
as well as by his wife's family, Ballinger never resembled
the legendary, dusty, circuit-riding frontier lawyer. Quite
the contrary. By 1850 Ballinger was a thorough urbanite,
who, like so many other Galvestonians and east Texans, had
detached himself from the problems of the rest of the state.
Indian depredations and lawlessness on the western frontier
were of little concern to Galvestonians like Ballinger.
Thus, as will be seen, during the decade of the 1850's,
Ballinger devoted himself to his family, to his profession,
and to making his city "the Queen of the Gulf Coast."
CHAPTER II -- Lawyer and Leader

Accuracy and diligence are much more necessary to a lawyer than great comprehension of mind, or brillancy of talent. His business is to refine, define, split hairs, look into authorities, and compare cases. A man can never gallop over the fields of law on Pegasus, nor fly across them on the wings of oratory. If he would stand on terra firma, he must descend. If he would be a great lawyer, he must first consent to become a great drudge.

Daniel Webster
Ballinger Diary
March 21, 1856.

The issue of slavery and the crises it engendered were only part of the essence of American history in the eighteen-fifties. The long crescendo of sectional conflict was bound up with a greater drama: less spectacular, less sharply focused, but with larger meaning for the nation's future.

During these years incredible amounts of energy were spent outside the realm of sectional discord. In all except that one tragic chapter it was a period of achievement, optimism, and material progress.

William Pitt Ballinger was one of the young and ambitious individuals who comprehended the nation's transformation and reaped the opportunities of the decade. The eighteen-fifties were auspicious and lucrative years for Will Ballinger, both professionally and personally. Thanks largely to his legal
acumen and effort, his law practice burgeoned into one of the
most successful and respected in Texas. Through family
connections and encouragement Ballinger substantially
augmented his professional income, investing in property and
in the various mercantile and commercial enterprises which
sustained the vitality of Galveston's economy during the
eighteen-fifties.

Though Ballinger's principal concern throughout adult
life was the security of his family and practice, he
nevertheless devoted himself with equal intensity to the
aggrandizement and enrichment of his beloved Galveston. By
the end of the decade Ballinger's individual and legal
acclaim had won him a permanent place within Galveston's
ruling oligarchy. From that position, Ballinger, along with
other civic leaders, succeeded in making Galveston one of the
most cosmopolitan and pre-eminent ports in the antebellum
South.

Though Ballinger attained significant professional and
financial success during the eighteen-fifties, the first four
years of the decade were disheartening. Between 1850 and
1854 Ballinger found himself overwhelmed by the duties and
rigors of his job as United States District Attorney; not
until he resigned his position did he begin to realize the
potential of that era.
Remarkably soon after being appointed United States District Attorney Ballinger had begun having second thoughts about his role and responsibilities as a federal attorney. From the beginning of Uncle Jimmy’s lobbying to secure the position for him Ballinger had had reservations, and likely accepted the office more to placate the politically ambitious Love than to enhance his own legal career.

In retrospect Ballinger appreciated his uncle’s solicitude and the exposure his job gave him to another facet of the nation’s legal system. However, at the time the experience seemed only lonesome, tedious, and unexpectedly political; the long weary rides to Houston to represent cases often trite and copious; and the weeks away from his wife and child (Ballinger’s first child, a daughter named Lucy, was born in 1851) exhausted and disillusioned him. In letters to Hally, Ballinger expressed his anxiety and the physical and mental fatigue that were part and parcel of his job.

It has been a cold bad day—and a severe norther is now blowing. I feel fatigued and weary—chilled to the bone. Bowels are troubling me. Have not eaten properly the last few days. . . . I find myself thoroughly sick and disgusted with the case (Jackson v. Lamphire). Last night I slept poorly. . . . Have never felt so oppressed by a case. . . . Have spent weeks preparing and now find myself so tired and anxious I only wish a decision to be made. . . . It is not worth being away from you and little Lucy for such long periods. . . .
More distressing to Ballinger than being away from his family was the unexpected politicking his appointment implicitly required. Despite his professional credentials at the time of his selection, Ballinger received the position as a result of party affiliation; his most fervid sponsor being his intensely partisan uncle who saw the opportunity to enhance his nephew's legal career as well as his political future.

James Love and many others considered the practice of law to be a stepping-stone to politics. This is what Love envisioned for his nephew when he lobbied for Ballinger's appointment. Love was a devoted Whig, whose reputation as an artful manipulator was well known within party circles; since coming to Texas in the late 1830's Love had been one of the most outspoken, vitriolic critics of the Democratic party and its stalwart Sam Houston.*

Now that the Whigs were in power in Washington as a result of the election of 1852 Love saw his chance to expand the party's presence in Texas by securing key federal appointments for fellow Whigs. What better place to start than rewarding his nephew with an opportunity to show off his legal talents while simultaneously promoting his political career. Love was confident that within a few years his seasoned nephew would be ready to assume more visible and significant appointments.
However, to his uncle's chagrin, it developed that Ballinger had little interest in a political career. In fact, Ballinger loathed the politicking he was often requested to do while representing cases. Feeling that such activity impinged upon his responsibilities as a federal attorney, making his job that much more burdensome, Ballinger became even more exasperated when called upon to endorse candidates and platforms with which he personally disagreed.

In the Texas gubernatorial race of 1853 Ballinger was asked to support William B. Ochiltree—an avowed Whig and intimate of James Love and his Galveston coterie of anti-Houston forces.3

But Ballinger, unfortunately, was more in accord with the platform of Ochiltree's Democratic opponent, the Connecticut-born Elisha M. Pease. Pease's platform, more Whig than Democrat, called for the founding of a public school system, internal improvements, and the removal of the Indians from Texas. What appealed to Ballinger most was Pease's staunch unionism and the belief that the assertion of states' rights and the promotion of an independent Southern nation—which had been articulated in the South since 1850—was divisive to both Texas and the country.4

Ochiltree and his Whig cohorts meanwhile spent most of their energy hurling personal invectives at Pease, accusing him of antislavery and anti-Southern
sentiments. Actually, the Whig platform mirrored that of the
Democrats, advocating the same policies while championing
Southernism and slavery.\

Though Ballinger reluctantly supported Ochiltree's
candidacy, he privately criticized his party's choice as well
as its platform. Ballinger was pessimistic about the
election results, believing that any chance the Whigs did
have had been undermined by internal dissension and lack of
qualified leadership. In a letter to his brother-in-law,
Thomas Jack, Ballinger revealed his feelings about the
election and his role in it.

I think our chances of victory are poor. I
spend a large part of my time defending a
position I disagree with & find Ochiltree a
personally distasteful fellow. I know
Uncle Jimmy and others are optimistic and
see Ochiltree's candidacy favorably. I
think a thorough defeat is imminent. . . .
Pease is popular and the Democrats have
united resolutely behind him. I find him
(Pease) a charming man--capable and believe
he will be an honorable governor. . . . We
spend too much effort discussing issues
that are disruptive. I find such talk
alarming and hope in the future we can
devote ourselves to more important matters.
. . . *

Ballinger's forecast was correct. Pease soundly defeated
Ochiltree, and as a result, within a year the Whig party in
Texas disintegrated. Though many prominent Texans were Whigs
the party never posed a serious threat to the Democratic
hegemony of Texas politics. After Ochiltree's defeat and the party's demise a fair number of former Whigs gravitated toward the Know-Nothing party. Inspired by intense nativism (particularly resented were Irish Catholics) on the Atlantic seaboard, the movement's initial organization was in the form of secret societies that eventually evolved into the American, or Know-Nothing party. The new party was opposed to foreigners holding office and was decidedly anti-Catholic and pro-Union. Though Sam Houston publicly expressed sympathy with the aims of the organization, which had some success at the local level, it soon went the way of its Whig predecessor. By 1856--two years after it appeared in Texas--the party had passed out of existence, and once again many Texas Whigs found themselves without political organization and purpose.  

So dissatisfied was Ballinger by the 1853 election that he decided to abstain from any further political participation, vowing never to seek political office. While many of his former Whig associates found temporary solace in the Know-Nothing party, Ballinger believed any attempt to organize a new party in hopes of preserving Whiggism was "futile and delusive." Ballinger was convinced that
... the party of the Great Clay is no more--torn asunder by men unable to understand the importance of leadership & principles. ... All attempts to resurrect the party--build it upon some other edifice would be a foolish endeavor & I doubt capable of much success. Perhaps we are better off without any organization-- I don't know ... for now I shall devote my energies to my family and practice and leave politics to those who better comprehend its confounding nature ... politics and office seeking require skills I neither possess nor have an interest in possessing. ..."

For the next seven years Ballinger upheld his pledge, refusing numerous behests to run for political office. Ballinger was so determined to refrain from all political activity that he spurned even lucrative offers for his political commentary. Prominent Galveston and Houston newspaper editors repeatedly approached Ballinger to write their editorials, which were often forums for political discussion. Ballinger rejected these overtures, believing his "opinions would be distorted for partisan purposes which would never be my intention in discussing any issue. I cannot allow my innermost thoughts to be violated in such a divisive fashion." 10

So determined was Ballinger to remain apolitical in a decade consumed by intense sectional partisanship that even his personal diary and correspondence contain little political commentary. Only occasionally would Ballinger remark on an
election, whether national or local, or on the events and
issues moving the nation toward civil war. Though such
indifference seems unfitting for a man of Ballinger's status
and education, it would be unfair to conclude that his
apopolisim was the result of disinterest or aloofness from
the nation's crises. Quite the contrary. At times he
personally affected by events such as John Brown's raid on the
federal arsenal at Harpers Ferry, Virginia, that he found
himself

Unable to go to the office today. I know I
must but cannot bring myself to do any work.
Horribly distressed by news of fanatic
Brown's assault on federal property and
inciting the negroes to brutality. I pray
others not inspired by this dreadful event--
there is enough bitterness and anger in the
country."

Though Ballinger was stirred by such events as John Brown's
raid, he was determined "to keep them in perspective & not
allow my passions to encroach upon my duties." He
was determined to the point of fixation to prevent other
interests or pursuits, regardless of their significance, to
obtrude upon his career. Ballinger was aware of how
attracted he was "to the excitement of political debate" and
how he had "to keep a vigilant eye on this disruptive
passion." He was convinced that the only way to avoid "the
temptations of political discourse" was to
immerse himself in his legal career that any inclinations
would not jeopardize what was paramount in his life. Not a year passed—beginning in 1854 when he first began his diary—that Ballinger did not pledge this would be the year in which he would "not allow other distractions to take me from what is most dear—my family and my practice. I therefore commence the year with the resolve to discharge faithfully all my duties—to do each day what I ought to do—and leave undone nothing which ought to be done—as far as I can—and to improve every day to the best advantage. I intend to deal candidly with myself—and to strive to avoid reproach of my own conscience—and live up to my ideal."  

Not until 1860 would Ballinger break his silence and publicly denounce secession and champion the cause of unionism. In that year Ballinger realized that if the Union was to be preserved and Texas to remain part of that compact, it was time for individuals like himself, who had remained calm during the crises of the eighteen-fifties, to come forth and the challenge "the cabal of fire-eaters who for their own selfish designs seek to destroy the Union." As will be seen, Ballinger not only condemned the secession movement, but committed himself to doing all that was necessary to prevent the dissolution of the Union.

The first four years of the decade were filled with frustration and disappointment for Ballinger. Deciding that it was time to return to private practice, in the spring of
1854 Ballinger resigned from his position as United States Attorney and resumed his partnership with the firm of Jones and Butler. However, Ballinger’s tenure with his old associates was to be brief. His brother-in-law Thomas Jack, a recent Yale graduate, had been reading law under Ballinger’s direction and was now ready for his bar exams. It was while studying under Ballinger that Jack expressed the hope that upon passing his bar "Will and I could set up our own practice. . . . I so admire Wm. He is devoted to his profession and his knowledge of the law surpasses most I have encountered. I am confident we will enjoy a successful and lasting relationship. . . ."  

Apparently, Ballinger was equally impressed with Jack’s personal and legal credentials. In the fall of 1854, after Jack had passed his bar, Ballinger severed his connection with Jones and Butler and formed a new partnership with his brother-in-law. The combination of the high-spirited Jack and the careful, scholarly Ballinger proved highly rewarding. Although the two men seldom agreed in their politics they remained close friends and legal associates. Despite their political differences, which often erupted into heated arguments and harsh words, Ballinger was devoted to Jack: "I love Tom dearly. He is generous, sincere, and true. I hope our interests will always be identical." Their loyalty and confidence in one another withstood the strains
of secession and civil war, and their partnership lasted for twenty-six years. By the time of Jack’s death in 1880 the firm was recognized as one of the South’s most reputable legal establishments.

In the formative antebellum years of his practice Ballinger handled everything from assault cases to divorce suits. Most of his cases, however, seemed to focus upon land claims. The continuing validity of Spanish and Mexican grants, compounded by the intricacies of Anglo-Saxon jurisprudence, such as community and private property concepts, created a morass of legal problems for businessmen, legatees, and the general public. Though Ballinger was willing to represent a variety of cases and clients, he and Jack soon discovered that their firm’s reputation would be greatly enhanced if they limited the scope of their practice. By the time Ballinger and Jack had established their practice the Galveston bar was “crowded to overflowing,” as Royall T. Wheeler, an Associate Judge of the Texas Supreme Court stated in the spring of 1855. Wheeler further observed:

It has more than doubled during the past year—and has become a very strong bar. It includes Mr. McQueen, former Atty. Gen. of N. Car.—Johnson former Atty. Gen. of Penn. A Mr. Sherwood from N.Y. our late Atty. Gen. & Sec. of State Allen (inferior as a lawyer to none of them) Judge Roysden of La. & others too tedious to mention who may be ranked as above mediocrity, lately settled
here, besides the old bar which included some men of
talents--& a host of others old and new settlers of
indifferent claims to consideration--the profession
vastly overdone here. . . .

Indeed by the mid-eighteen-fifties the Galveston bar
comprised forty members serving the legal needs of a
population of slightly more than four thousand persons, a
ratio of one lawyer for every one hundred potential clients.
A general practice was the order of the day. The majority of
Ballinger's fellow attorneys handled a broad range of matters
from divorces and debt collections to criminal prosecutions
and land litigation. Thus it became clear to Ballinger and
Jack that competition for clients would be keen and that the
best way to ensure success would be to specialize in matters
other Galveston attorneys shied away from or lacked the legal
expertise to handle. With this objective in mind, Ballinger
and Jack set about establishing themselves as specialists in
Texas real estate law, making the handling of land claims and
related matters their firm's priority.

No sooner had Ballinger and Jack reoriented their firm's
approach than their expertise was put to rigorous test. In
late 1854 the newest and youngest (Ballinger was 29 and Jack
24) partnership was asked to represent the most powerful
combination of city merchants and businessmen in what became
one of the longest civil litigation cases in Texas history.
It was Ballinger's adroit handling of the "Wharf Case" (The
Mayor, Aldermen and Inhabitants of Galveston v. Michael B. Menard) that earned for him not only the respect of Galveston's ruling mercantile elite but also proved to be one of his most outstanding legal triumphs.

It was the property and warehouse interests of the Galveston Wharf and Cotton Press Company that Ballinger defended in 1854. In that year the City of Galveston brought suit against the Wharf Company in a vigorous attempt to break the company's stranglehold on port facilities. The city hoped to prove that the Wharf Company had violated its charter by usurping privileges and property along Galveston's waterfront area known as the "flats." No sooner had the corporation been formed than city officials realized that a port monopoly in private hands had been created. Prior to 1854 Galveston's waterfront properties had been in the hands of several warehouse owners and shippers. However, in February, 1854, a group of Galveston entrepreneurs, led by the founder of Galveston, Michel B. Menard, merged and acquired control over the wharf area of the port. The new company was chartered as "a semi-public company possessing a capital stock estimated to be one million dollars." By various transactions the new consortium united all the several wharf companies of Galveston into one corporation. 31

One-third of the company's stock was owned by the city, the remaining two-thirds by the corporation's members. As a
semi-public enterprise it could not be taxed, and the city's partial ownership gave it legal and actual control over the entire waterfront area. The city in effect granted to a group of its "leading citizens" a monopoly of a public facility."

For the next fifteen years the city of Galveston challenged the right of the Wharf Company to dominate the flats. Public officials decried the merger as an illegal entity despoiling the city of valuable public property. The city of Galveston not only sought the company's dissolution and its port monopoly, but in the process attempted to acquire complete control over the entire waterfront area. Thus it was Ballinger's task to prevent the municipal acquisition of his client's property. Ballinger not only prevented the city's taking possession of the flats but proved as well that the Wharf Company had not violated the conditions of its charter--nor any of its entitlements--and thus had the right to continue as a legal corporation.

Though the struggle between the city of Galveston and the Wharf Company began in 1854, the question of hegemony over the flats did not reach a climax until 1859. In that year, after five years of bitter litigation and repeated attempts by the city to overturn lower court decisions, the issue was brought before the State Supreme Court. Though the case was
not finally resolved for another ten years, the crux of the
dispute was settled in 1859.\textsuperscript{33}

It was while presenting his case before the Texas Supreme
Court that Ballinger displayed a legal acumen and demeanor
that became the hallmarks of his career. It was the first
time he had argued before the state's highest tribunal, and
now, before such an exalted audience, he was defending the
property and prestige of some of Texas' most powerful
individuals. Despite his inexperience and the pressure of
courtroom debate, Ballinger conducted himself with the
confidence and equanimity of a veteran trial lawyer. With
equal determination and skill Ballinger evinced a cogency of
argument that earned for him the respect and acclaim of both
clients and peers.

The city's attorneys hoped to secure the flats by proving
that the Wharf Company had usurped public property, divesting
the city of land needed for its future growth and welfare.
The prosecution focused its efforts on invalidating a large
portion of the original land grant given to Michel B. Menard
by the Republic of Texas in 1838 for the purposes of
establishing the city of Galveston. The city contended that
the flats or "the shore of the island" was not part of
Menard's grant. The Wharf Company, by taking control of the
flats, had encroached upon public property and thus must
relinquish to the city its title to the land.\textsuperscript{34}
Galveston's attorneys further contended that when Menard incorporated the city of Galveston in 1841, he transferred to the city all personal property within what was to become the city limits of Galveston. The city insisted that implicit in the charter of incorporation was the cession of the flats.

As the prosecution maintained:

No particular form, or ceremony is necessary to the dedication of land to the public use; nor is it essential to the validity of a dedication that the land should be in the actual use, or occupation, of the public; nor that the property claimed to be dedicated had ever been so used; or was in a condition so to be used. . . . But when the town is incorporated, the corporation represents the public, or inhabitants of the town; and the rights of the public in such common property are vested in the corporation.

Thus, according to public officials, the flats had always been public property.

To further substantiate the Wharf Company's expropriation of public property, Galveston's attorneys resurrected the city's original plan, arguing that the layout clearly considered the flats municipal property. The prosecution asserted that "It is not necessary that a plan of a town, laying down lots and streets, etc., shall specify by words, what are the parts dedicated to the public use; it is sufficient if they are represented as streets, etc." The city's attorneys further contended that:
Upon examination of the plan of the city of Galveston, which has been put in evidence, it will be seen, that the streets running north and south, by the plan, extend into the waters of Galveston bay, an arm of the sea, and a public highway; and there is nothing tending to show any limitation of the right to extend them by natural accretion, or artificial means, to the channel of the bay, which is the limit on the northern side of the tract described in the patent, so as to preserve always the communication with navigable waters thereof.**

To bolster still further the city's title to the flats, Galveston's attorneys referred to an act of the state legislature which, in December, 1851, granted to "the corporation of the city of Galveston, the power and privilege of opening all the streets, running north and south, on the bay of said city, to the channel; and also grants the power and right to erect wharves at the ends of such streets as they may deem proper."**

In summing up their position, the prosecution reaffirmed the city's title to the flats. The city reiterated that Menard renounced all rights to the waterfront property when he incorporated Galveston. Any attempt by Menard or his agent--The Wharf Company--to reclaim the flats for private use would be an encroachment upon public property and a detriment to the city's general welfare.**

Ballinger's objective in the case was to establish that the Wharf Company's claim to the flats was valid. He realized that his clients' title to the property could be
secured only if he successfully challenged the city's attempt to nullify the Menard grant. Ballinger thus focused his efforts on countering the prosecution's charge that the flats were public, not private property. This would be no easy task: Ballinger was dealing with established attorneys whose combined legal acuity and experience presented him with one of his greatest courtroom challenges. Despite his opposition's acclaim, Ballinger was confident that he could prove that the flats were part of the original Menard grant and that any attempt by the city to acquire the area would be a violation of the sanctity of private property.

Ballinger believed that the best way to establish that the flats were private property belonging to Menard was to examine the transaction in which Menard originally obtained the property from the Republic in 1836. Ballinger maintained there was never any doubt the flats were included in the "league and labor of land" given to Menard "for the purpose of laying off, and establishing a city." According to Ballinger's interpretation of the agreement:

What was the character of this transaction? Col. Menard wished to purchase the present site of the city of Galveston, for the purpose of laying off, and establishing a city. He applied to the legislature, then in session, for a league and labor of land, on and including the east end of Galveston island for this purpose. The government in effect, said: "We are in the extremest need of funds; all of our resources, the
islands, etc., are to be made available for our present exigencies." "Our object is, to realize the largest possible amount for the city site, which we deem of great value. We will sell it to you for $50,000. For this price we relinquish all the right, title, and interest of the state of Texas, in the premises, except alone a reservation of fifteen acres, on the extreme east end of the island, and a single block in the city, for a custom-house, and other public purposes. . . . Keeping in view this leading object, both of the grantor and grantee, the building of a commercial city, can any doubt arise as to the real intention and proper construction of this purchase? . . . The legislature said "Go and build your town on the east end of Galveston island." That the shallow flats, often bare, their occupation absolutely essential to reach the channel; their use necessary to protect the entire property (as the petition shows) were valuable, important and essential to this object, was self-evident. . . .

After establishing that the waterfront property or the "shore" was included in Menard's grant, Ballinger challenged the city's assertion that whatever title Menard had had to the flats, he conveyed to the city when he incorporated Galveston. Ballinger contended that:

There was no proof of dedication of streets, or of the flats in front of the town; that the map on its face, shows a reservation to the proprietors, of the front of the actual survey; that it was so declared in all the deeds made for lots sold; and that such reservation was further confirmed by the continuous user, by the proprietors and their alienees, without objection by the corporation, or the citizens. . . . Even if there was any
dedication of the flats, the possession and use have been adverse to it for more than ten years before the institution of this suit. . . . We say then, that there is not one article of any such proof as is averred in the petition; not the first fact in evidence of any such user, as they allege. They cannot be permitted to turn round upon us with this map, and say that it proves a mode of dedication. The whole argument and case of the plaintiffs on this head, is evidently an after-thought.30

After proving that Menard had not relinquished his claim to the flats when he incorporated Galveston, Ballinger addressed the December, 1851, act of the state legislature, which gave the city title to the property. It was at this juncture in the case that Ballinger established what became the tenor of his argument: the sanctity of contracts and the protection of private property rights. Ballinger argued that the 1851 legislative act was "in violation of the constitution of the United States, being in contravention of that clause, which denies to a state the power of passing any law impairing the obligation of contracts, because of a previous grant, made by the Republic of Texas, to M.B. Menard, of the locus in quo. The grant to the corporation of Galveston, of December 8, 1851, not only impairs the obligation of contract with Menard, but authorizes the corporation of Galveston to take private property without the consent of the owner, and without adequate compensation being made therefor."31
In summing up his position Ballinger reaffirmed the Wharf Company's title to the flats. He reiterated that "the patent to M.B. Menard, and his associates, expressly included land to the channel (the flats), and of course, conveyed title there to. . . ." Ballinger contended that any attempt by the city or the state to deprive Menard or the Wharf Company of legally acquired property would be an encroachment upon an individual's right to dispose of his personal property as he desired. Ballinger further maintained that the only way the Wharf Company could be divested of its property was if the city proved that Menard's grant was the result of fraud in obtaining it, or want of authority in the officer issuing it.

In concluding his defense, Ballinger maintained that further efforts by city officials to acquire the flats by invalidating Menard's grant would be in vain, for "the onus would be upon them to prove that the president of the Republic was not authorized by the legislature to issue the patent." According to Ballinger's argument the city could claim title to the flats only if its attorneys could establish that neither the Republic nor any of its branches of government had the power to authorize land grants.

All hopes city officials may have had for procuring the flats were dashed when the State Supreme Court decided in favor of the Wharf Company. According to Chief Justice Oran
M. Roberts' opinion, the company's title to the flats was valid because "the republic of Texas had the power through its legislative department, to grant that part of the Galveston bay, which lies south of the channel, usually covered with salt water, which constitute what is called "the flats" and thereby vest an exclusive right in Menard to the soil thereof, and to the full ownership of the same, just as if it had been dry land."

Ballinger's victory in the "Flats Case" proved to be one of his greatest legal triumphs. The case was pivotal in his professional career, launching him into the limelight of the Texas bar. Being called upon to defend the interests of Galveston's ruling mercantile elite augured well for his own security and prestige. Prior to this case, Ballinger's legal reputation had been confined largely to the Galveston area, where he was considered by many still to be "up and coming." However, with the "Flats Case" and the opportunity to plead before the state's highest court Ballinger displayed the confidence and efficacy of a veteran trial lawyer, worthy of the respect of his most seasoned peers. The exposure and notoriety he gained as a result of his success enabled Ballinger to expand his practice significantly beyond Galveston. By 1860 the firm of Ballinger and Jack was known state-wide for its expertise in realty law and was reputed to have as its clients some of the most prominent men in Texas.
Perhaps most important, Ballinger's victory propelled him to the forefront of the Texas bar, earning him the distinction of being one of Texas' premier trial lawyers.

In 1857 Ballinger was employed in another land grant case which he referred to in his diary as the "Christy Case." (William Christy, Piff. in Err., v. Wiley W. Pridgeon). Though perhaps professionally it was less important than the Flats case, the Christy Case affected Ballinger more. He felt intense anxiety at this first opportunity to demonstrate in open court his knowledge of realty law. Prior to this case, Ballinger and Jack had settled the majority of their cases out of court; their expertise had yet to be put to rigorous test.

The case was originally tried in 1857 in the federal court for the District of Eastern Texas. However, the case was not finally resolved until 1866, when the United States Supreme Court upheld the decision of the lower court, ruling in favor of Ballinger's client, the defendant Wiley W. Pridgeon, and his claim to the disputed property.

The controversy focused on the validity of a land grant given to an Anglo-Texan, William Christy, by the Republic of Mexico. Christy was one of many Anglo-Americans receiving such grants from the Mexican government prior to Texas' independence. The question was whether Christy's grant was
still valid after Texas had separated from Mexico and joined the Union.

Christy received his grant in 1835. His property, located in northeast Texas near Natchitoches, Louisiana, consisted of "a league and labor of Land," which was the equivalent of about 4,600 acres. However, in December, 1846, the state of Texas sequestered Christy's property. State officials maintained that Christy's grant was invalid because it had not been issued through the appropriate legal channels and that the location of his property violated the 1824 Mexican Colonization Law forbidding the granting of any land to an individual that was within "twenty frontier leagues of the border of the United States." The state then sold Christy's property at public auction to Ballinger's client, Wiley W. Pridgeon.

For the next eleven years Christy tried to reclaim his property through the Texas courts. However, the state courts repeatedly denied Christy title to his property, declaring that his grant violated the 1824 colonization law. The courts also nullified Christy's grant on the basis that it had not been approved by the appropriate Mexican official. After numerous appeals Christy's case finally reached the federal court, where his attorney was confident that he could prove that the Texas courts had erred in their interpretation of the colonization law. Christy's attorney believed he
could demonstrate that the Texas court's rendering of the law was imprecise and that the federal court, seeing the omission, would overturn the Texas decisions, validate Christy's Mexican grant, and allow him to reclaim his property.³⁰

Robert Hughes, Christy's attorney, maintained that though his client's grant violated the 1824 colonization law, Christy was unaware of the decree's stipulations. Hughes argued that Christy did not realize that the extent of his grant contravened the 1824 provision. According to Hughes, "Neither did the petition nor the concession show whether the land would be within the border leagues. . . ."³¹

Hughes further asserted that even if the grant violated the 1824 law Christy was still entitled to his land because his grant had been sanctioned by the governor of Coahuila-Texas, who, according to Hughes, had the authority to confer individual land grants. When Christy's property was confiscated in 1846 it was established that only those Mexican grants having "the assent of the Supreme Executive of Mexico" would be honored.³² Since Christy's grant had not been approved by the Supreme Executive he was divested of his property. Hughes, however, contended that due to the "chaotic and unstable nature of the Mexican government" it was often impossible for citizens to have their grants authorized by the president of Mexico.³³ Hughes
observed that it was the custom "of the states and territories of Mexico, while the nationalization law was in force, to sell Mexican land in the border leagues without the assent of the National Executive. . . ."\(^{43}\) Hughes further noted that the law "was never interpreted by the national, state, or territorial authorities, to impose a condition of national assent on such sales to Mexican citizens."\(^{43}\)

Hughes concluded his argument by denouncing the lower courts' decisions that deprived Christy of his property as "erroneous and unconstitutional."\(^{44}\) Hughes maintained that the state of Texas, assuming it had the right to confiscate Christy's property, had set itself above the constitution, violating its most sacrosanct provisions: the protection of private property and the sanctity of contracts. Hughes not only decried the state of Texas for its defilement of the Constitution but also denounced the Texas courts for their complicity in this grievous "usurpation of private property."

When the first of those erroneous decisions was made, Texas was a state of the Union, bound by the Constitution, and could not, even by law, solemnly enacted, impair the validity of this contract, much less by a decision of its courts, or a series of decisions, annul the title of the plaintiff, or impair the validity of his contract. The logical conclusion is inevitable. If the plaintiff had a valid title before the earliest of these decisions, he has it still impaired by them.\(^{45}\)
To strengthen further his final appeal Hughes noted the Arguello and Cervantes cases brought before the federal court in California two years earlier. The decisions of the California courts, which had also nullified Mexican grants on the same criteria, were reversed by the federal court. Hughes called for a following of California precedent to rescind the Texas judgments on the Christy case.

If the interpretations in the Arguello and Cervantes cases are to be adhered to in deciding on title in the states and territories acquired from Mexico, it cannot be abandoned in titles in Texas: for if a grant within a border league in California be not impaired by want of assent of the Mexican government, a like grant in Texas cannot be without conceding to the Texas courts the power of establishing by a train of decisions, a rule of property which destroys the obligation of contracts.44

Hughes concluded his plea by calling upon the federal court to "fulfill its Constitutional obligation" and reverse the decisions of the Texas courts that upheld Ballinger's client's title to the disputed property.

Ballinger argued that the federal court should follow the previous decision of the Texas Supreme Court, nullifying "firmly and repeatedly" all Mexican grants violating the border league provision of the 1824 law. However, Ballinger pointed out that the court had not abrogated all grants issued "within the eleven coast and twenty border leagues of the United States." Only those grants such as Christy's
which did not have "the assent of the Supreme Executive of Mexico affirmatively shown" were declared null and void. In fact, Ballinger conceded that though Christy's grant contravened the colonization law, it would have been recognized had Christy received the approval of the appropriate Mexican official.

The power of the governor of Coahuila and Texas to make the grant was derived from the Mexican colonization law August 18, 1824, and the legislation of the state, which that law authorized. The object of that law was to induce the settlement of the vacant lands of the Republic. To this end the several states were empowered, under certain restrictions, to provide for the colonization of the lands within their limits. Their legislation, was, of course, subject to the provisions of the 4th article of the law mentioned, which declares that "those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the seacoast, cannot be colonized without the previous approval of the supreme executive power." 47

Since Christy's grant lacked the requisites for validation, the Texas Supreme Court "impartially and lawfully" annulled his title. Citing similar cases to reinforce his argument, Ballinger concluded his defense by calling upon the federal court to observe the Texas decisions which "had for years been acquiesced in by the bar and the people, and constituted as the law." Ballinger further
maintained that the Texas Supreme Court in consistently
nullifying Mexican grants such as Christy's had established
"a judicious and essential precedent until it is not possible
to conceive a more fixed and settled course of decisions and
rule of property than the nullity of this class of titles."**

Despite the forcefulness and cogency of Hughes' argument,
the federal court ruled in favor of Ballinger's client,
sustaining the Texas decisions regarding the validity of
Mexican grants.

... the interpretation, therefore,
placed upon it by the highest court of the
state must, according to the established
principles of this court, be accepted as
the true interpretation, so far as it
applies to titles of lands in that state,
whatever may be our opinion of its original
soundness. Nor does it matter that in the
courts of other states, carved out
territory since acquired from Mexico, a
different interpretation may have been
adopted. If such be the case, the courts
of the United States will, in conformity
with the same principles, following the
different ruling so far as it affects
titles in those states. ...**

From Ballinger's diary entries it is clear that the
Christy case was more than just another land grant
controversy: in Ballinger's mind the case assumed a personal
dimension greatly affecting his professional demeanor. His
uneasiness throughout most of the trial revealed a facet of
Ballinger's personality hitherto concealed behind a veneer of
steadfast self-assurance. Perhaps this rare display of anxiety was rooted in his own doubts about the moral legitimacy of his defense.

Ballinger considered himself to be a principled and sincere man who placed a high premium on legal ethicality. However, he was no naive, high-minded crusader eschewing opportunity for fear of outraging his moral sensibilities. Ballinger was ambitious, and at times opportunistic, desiring esteem and success equal to that of his more acquisitive colleagues. Ballinger operated in a competitive professional milieu, often forcing him to compromise his own sense of ethics for the sake of stability and recognition.

Though Ballinger at times succumbed to his material appetites, such concessions were rare and, as in the Christy case, painful. However, in this instance, Ballinger was willing to pay the price of an uneasy conscience. Whatever initial qualms may have undermined his usual confidence and equanimity disappeared as the case progressed. Apparently, Ballinger’s reward for victory was too lucrative to be shunned, regardless of the personal disquietude. Though Ballinger never mentioned his fee for the case in his diary, a letter from his client Wiley Pridgeon revealed how remunerative the case was. After thanking Ballinger profusely for his “ingenious & determined effort,” and he said he believed Ballinger to be “the most knowledgeable &
trusted attorney in all of Galveston," Pridgeon confirmed that Ballinger was to receive "for services rendered, fifty acres of land to be located in Sabine County, near the La. border." The acreage Ballinger received was originally part of Christy's grant that Pridgeon was now dismembering to pay off debts and other obligations.  

Perhaps what distressed Ballinger the most was his feeling of turpitude—that he had contrived a defense to protect a claim to property of dubious legitimacy. In his heart Ballinger must have known that Christy's grant was valid and that to deprive him of his property would be unethical. Ballinger was aware of his questionable behavior, but for whatever reasons—fame, fortune, or both—he subdued his self-reproach and represented his client's interests to the best of his abilities. Though Ballinger's motives were ignoble, he was first and foremost a lawyer, entrusted with the responsibility of defending the concerns of his client regardless of the justice of the claim. Though Ballinger overcame his anxiety and triumphed, the Christy case was definitely one of his more personally compromising courtroom experiences.

During the first two weeks of the trial (which lasted from January 30 to February 24, 1857) Ballinger frequently remarked that he "hadn't progressed much in preparation for Christy—I am full of it (the case) to overflowing, but cant
get hold of distinct particulars." At the end of a
day's session Ballinger reflected that he had been only
somewhat effective in his argument because he "took up more
time than we enable me to go through with the other points in
full--didn't finish them off very well--on the whole I didn't
make as thorough a speech as I should." 

After two full weeks of intense courtroom debate
Ballinger was still uncertain, having yet to present his
argument with the force and confidence required to win. He
remarked in his diary that his ineffectiveness was due to
exhaustion and anxiety: "Last night I didn't sleep a wink.
Haven't slept well since the trial began--I made my argument
today on the Border league question but again I failed to
finish conclusively--Have never felt the oppressiveness of a
case--the impotency of argument & right." 

Ballinger's perception of his own inadequacy frustrated
him to the point of despair and obsession. As his absorption
with the case grew so did his belief that defeat was
imminent: "I am thoroughly sick and disgusted with the case
& if he (the judge) decides the law against us I shall wish
him and old H. (Hughes) at the Devil. They possess me--Can't
do anything or think about anything else--I am not fit for
anything until it is over." 

Ballinger's personal anxiety was compounded by his
opponent's notoriety and experience. Robert Hughes was an
accomplished trial lawyer whose knowledge of realty law was recognized throughout the state. Ballinger confided to his diary that he had great respect for his adversary, readily acknowledging Hughes' legal acumen. Ballinger often referred to Hughes as "clever," "formidable," "forceful," and "ingenious." In fact, Ballinger was so impressed by Hughes that he wondered whether he was a match for this "exceedingly clever and amiable fellow who displays more force and clearness than I have ever heard."

As the trial entered its third week, Ballinger began to overcome his trepidation and self-doubt. He regained his momentum and, according to his diary, his arguments reflected his renewed self-assurance and temperament: "Had a hard fight this morning over the field notes of the other surveys--I made the objection powerfully! I know I was conclusive--Hughes refused to speak and is greatly exercised. I am in fine spirits." Ballinger's confidence and optimism seemed boundless as the trial neared its conclusion. In fact, Ballinger was so certain that he had overcome his initial inquietude and ineffectiveness that he predicted a favorable decision: "Hughes finished today. I think his showing a very feeble one, and have increasing confidence in success. Made my argument in conclusion today and I think with force--Hughes was uncomfortable--writhed a good deal & interrupted me petulantly. The judge's instincts are clearly in my favor."
Ballinger’s forecast was correct. On February 24, 1857, the case was decided in his favor. Ballinger was elated; and to his diary he confided, "I never felt so relieved in my life. It seems to gratify everybody about the court except Hughes, who is perfectly rabid."

Though Ballinger became one of Texas’ foremost real estate attorneys, he was equally knowledgeable in other areas. As mentioned earlier, during the formative years of his career Ballinger handled a wide variety of cases ranging from cattle rustling to divorce suits. He was also involved in debt collection, which provided him with an important secondary source of revenue. However, in this field Ballinger encountered keen competition from both local commission merchants and other attorneys who processed a good number of routine claims, particularly for Northern creditors.

In the summer of 1854 Ballinger made a vigorous trip north hoping to obtain a larger share of this interstate business. Over a two-and-one-half month period he visited numerous businessmen in Boston, New York, and Philadelphia, offering to handle all their Texas accounts for a small commission. In some instances he even supplied his potential clients with lists of other possible Texas customers. Ballinger called upon a variety of Northern firms, whose
activities ranged from shipbuilding and shoemaking to bookselling and the dispensing of pharmaceuticals.**

His interviews were not always encouraging. Some firms did little or no business in Texas, while others "preferred to retain their existing Galveston (collection) agents." A few were even openly hostile toward the Texas attorney, such as S. Cochran of S. Cochran & Company, who told Ballinger that "Texas lawyers charge too much--Don't like lawyers--rather keep out of their hands."** On the whole, however, Ballinger concluded that his venture had been successful. In a special diary he recorded the name and address of every prospect he called upon along with comments for future reference. Endorsements from prominent Texas politicians and businessmen paved the way for meetings with such notable Northern capitalists as Alexander T. Stewart of New York, who employed "257 persons in a dry goods business with assets over $200,000."** Stewart escorted Ballinger on a personal tour of his establishment before giving the Galvestonian several claims for collection. Equally responsive was the "great abolition house" of Bowen McNamee & Company of Boston, which gave Ballinger all their Texas accounts.** Elderly soap magnate Samuel Colgate provided Ballinger not only with accounts and other contacts, but several bars of soap as well. For Colgate's account, Ballinger had to also endure a lengthy lecture on the more
esoteric passages of scripture. Though Ballinger undoubtedly was bored to tears by Colgate's rambling, he nevertheless thanked the old man for his business and the perfumed soaps which Hally will enjoy. He is a very kind old fellow but I think a bit senile."

Ballinger's contracts varied from client to client, but a representative offer was that made to Wolf & Gillespie, a New York hardware firm: "I told Mr. Wolfe I w'd collect at maturity for 1% and do his gen'l collections by suit for 5."

Whether he was able to negotiate an arrangement or not, Ballinger made sure he left one of his business cards on the premises as a reminder of his availability. He also advertised in the newspapers of each city he visited, and continued to do so on his homeward journey through Mobile and New Orleans. No sooner did Ballinger return to Galveston than he began receiving collection notices from his new out-of-state clients. Though the records of Ballinger & Jack contain a substantial number of out-of-state receipts, not until 1862, however, can the full extent of Ballinger's "Northern connections" be seen. In July of that year, in compliance with the Confederate Sequestration law, Ballinger disclosed all debts owed by Texans to "alien enemies." He reported that his firm handled the debt collection for seventy-nine business concerns in New York, thirty-eight in Philadelphia, and fifteen in Boston."
Ballinger's vigorous trip to the Northeast revealed an interesting facet of Southern antebellum lifestyles and attitudes. In the four decades before the Civil War large numbers of well-to-do and influential Southerners trekked northward for a variety of both personal and professional reasons. Many Southerners went north to escape the oppressive heat and fever-bearing mosquitoes for which Southern summers were notorious. Those living along the Southern coast or near the river banks were especially vulnerable to the supposed "Miasma or disease breeding fog given off by the marshes after sundown which spelled fever and possible death for white men." Others, like Ballinger, travelled north to improve their professional and financial status by extending their business interests beyond the limited resources of their own section. Southern entrepreneurs realized that a trip to the north was necessary if they were to become successful businessmen. However, the majority of Southerners, particularly those belonging to the planter class, went north to escape—to avoid not only the hot and unhealthy summer weather but also to get away from the tedium of their provincial existence. To these Southerners the trip became a "Grand Tour," as they traveled all through the North absorbing every amenity northern cities had to offer.
Whatever their objectives or purposes, touring the North became a favorite Southern pastime, especially for the wealthy. They went as early in the year and as frequently as their financial means would allow. This affluence allowed them the luxury of staying in the North for as long as they wished.

The South was essentially a rural section, tenaciously resisting the dynamics and complexities of urbanization that Jefferson and his contemporaries had long since decried. Economically, too, the South demonstrated its allegiance to the Jeffersonian legacy by remaining principally agricultural. Its economic sustenance and survival depended upon the production of a few staple crops, notably cotton, cultivated by black slave labor on vast plantation estates. The South’s economic system, maintained by its "peculiar institution" of black chattels, spawned an intensely stratified society. Dominating Southern society to the point that all other classes were obedient was the planter oligarchy. This small but powerful squirearchy ruled the South so completely that at times their control rivaled that of the most celebrated members of Europe’s feudal aristocracy. The planters, using their own lifestyles and perceptions as a foundation, created a distinct, indigenous Southern culture and mentality that was believed to be the very essence of Southern virtue, dignity, and above all,
stability. However, one did not have to look much beyond the facade of the plantation and the "big house" to see that life was not as charming and serene as one was led to believe; all was not "moonlight and magnolias." In fact, life in the South, despite the grandiloquence of its most fervid propagators, was simple and uninspiring even on the most magnificent of estates. The plainness of Southern life owed much to the Southerner's stubborn resistance to change which had become a creed by which most Southerners lived.

By the 1830's Southerners had become convinced that their social order was perfect. They feared that even the slightest tampering with the sensitive mechanism holding their society together would cause the hierarchy's complete destruction. Southerners not only resented internal change, but were equally suspicious of the dynamics of change which were rearranging Northern society.

While Southern society became increasingly static, the North was becoming more diversified in both its economic activities and physical complexion. With every passing year the contrast became more pronounced. The North was fast becoming an industrial and commercial economy sustained by an increasing European immigrant labor force. The North's cities, whether old or new, were far more developed and sophisticated than their Southern counterparts. Regardless of their vice, pollution, and congestion, Northern cities
were "the wave of the future," places where one could find and enjoy all of the urban amenities the South woefully lacked."

William Pitt Ballinger was one of these Southern men of affairs travelling through the North during the antebellum years. Though the objective of his trip was to expand his professional connections, Ballinger found the time for sightseeing and enjoying the cities he visited. Of the North's three most populous and developed urban centers--New York, Philadelphia, and Boston--Ballinger found New York to be the most progressive and business-conscious. In fact, he had his greatest success in cultivating new clients and contacts in that city.

Though nothing in the South compared with New York, Ballinger was not as captivated by the city as were most of his Southern compatriots, who found it to be the most dazzling and enchanting of cities. Less rhapsodic in his appraisal, Ballinger in fact, found New York to be a "very noisy and dirty city... People never seem to repose here. At all hours of the day one can see people everywhere--all night long the streets resound with the rattle of carriages and people's voices. It makes sleeping difficult... I have never witnessed such squalor--the wretchedness of the city's poor exceeded anything I have ever imagined--it made me ill."
Ballinger overcame his aversion to the seamy side of New York life and enjoyed the city's sights and pleasantries. He stayed at the Astor House, "that most elegant of New York establishments"; visited Broadway, city hall, the Stock Exchange, "where members paid $400 per year for the privilege of buying and selling stocks." The numerous retail shops and ladies' boutiques especially impressed Ballinger: "The extraordinarily fine quality & variety of products and prices charged exceeds anything we have in Galveston. The clothing is of exceptional quality—I must buy Hally a dress." Ballinger not only bought his wife a silk dress for $40, which "would cost three times that amount in Galveston," but also a breast pin "of exquisite craftsmanship made from the finest combination of emeralds and sapphire," for which he paid $200.

After visiting New York Ballinger traveled to Boston. Though Boston proved less professionally promising than New York, of the three cities he visited he found Boston to be the most enchanting and enjoyable. He was especially impressed by the way Bostonians had preserved their city's rich history while simultaneously transforming Boston into the nation's leading industrial center. Though he commented that he felt uncomfortable around "these shrewd Yankee businessmen" and was irritated by "the open acceptance of abolitionism and the denigration of Southern principles," he
nevertheless found most Bostonians to be "a charming and sincere people who take great pride in their city's traditions. . . . I am pleasantly surprised at their cordiality and acceptance of Southern gentlemen."**

Ballinger had been told by many before leaving Texas that Bostonians--Yankees in general--were a "cold and reserved people." But Ballinger found the opposite to be true and remarked that "one only feels estranged if one visits the city and leaves without remaining sufficiently long to become known."**

If there was a moment on his trip when Ballinger lost his sense of purpose it was while in Boston. There, his trip momentarily took on some of the characteristics of a "Grand Tour," as he visited every known landmark and historical sight: The Commons, the Navy Yard, the State House, Bunker Hill, Harvard College, and of course Faneuil Hall. Overcome by the city's sense of history in its patriotic monuments and institutions, Ballinger spent more time sightseeing and relishing the splendor of Boston than he did soliciting new clients. As he visited the historical sights around Boston, Ballinger reconstructed in his own mind the scene of the "massacre" of 1770 and the "tea party" three years later. He was so moved by the sight of Faneuil Hall Market with its impressive surroundings that he wrote:
No sight was more inspiring than that which I enjoyed standing near the State House as I looked down from Beacon Street over Boston Common. It was a magnificent view of the water and the beautiful city in the distance. . . . There was not a place I visited that did not arouse in me a feeling of patriotism and pride in our nation's glorious past. . . . This city is truly the "Athens of our Republic." I know of no other place where education and literature command a greater respect and patronage. . . ."

The last city on Ballinger's agenda was Philadelphia, and there, too, he took time out from his work to appreciate the history and charm of the "City of Brotherly Love." Though his sojourn in Philadelphia was professionally disappointing, Ballinger was not at all displeased with the city's diversions and its people, whom he found to be "intelligent and accomplished." Like Boston, Philadelphia had a rich and inspiring past, and Ballinger, like so many of his fellow Southerners, made the pilgrimage to see the sights associated with the nation's early history. The Mint, the Old State House (Independence Hall), the Liberty bell, the historical paintings—all claimed his attention. Feeling a sense of being in the presence of some of the nation's most revered relics, Ballinger was once again overwhelmed and wrote: "When I struck the old cracked bell that brought our ancestors to arms in defence of our rights, and when I saw Independence Hall and thought about the great men who were
there and the document they composed to liberate us from tyranny, I felt my patriotism grow warmer and heart beat faster. . . ."**

Though Ballinger lived in a fairly cultivated and progressive urban environment, Galveston's amenities were few and meager compared to those of New York, Philadelphia, and Boston. Returning from his trip invigorated and optimistic, Ballinger, like so many of his Southern contemporaries, found northern cities novel and even educational. It would not be long before the purpose of his trip would come to fruition, substantially augmenting his professional and financial status. But more important to Ballinger than the tangible rewards, was the opportunity to experience a way of life and mentality very different from his own familiar Southern background. In fact, so stimulated was Ballinger by new vistas and insights that he confessed in a letter to his wife that "for a while in Boston I could not bear to think of returning to Galveston, and were you not there I am not sure I should ever go back. . . ."** Though Ballinger returned to Galveston he never forgot the people and places he visited while traveling in the North. In a letter to his uncle three years later Ballinger reminisced about his experiences, recalling his trip's most memorable moment: "I remember standing in front of Independence Hall and I felt apprehensive to step in lest I trod on sacred ground. I
could not believe I was about to enter the place where the
history of this country first began, and where some of the
most noblest and courageous of our ancestors risked all to
establish this most free and wonderful of countries. . . . I
have yet to feel such passions as those which overcame me
while visiting the birthplace of our nation. . . .

Ballinger's three-month trek to the North was the first
time he had traveled out of the South. Though Texas was on
the periphery of Southern culture, often displaying its own
unique, indigenous frontier spirit, it was nevertheless
overwhelmingly Southern in attitude and tradition. Texans
shared with their Southern brethren common creeds and habits
and were thus similarly affected by experiences outside their
parochial existence. In fact, because of their frontier
environment Texans were probably more bewildered by a
northern adventure than were many of their more established
Southern counterparts. But regardless of their background or
the occasion for their excursion, a trip to the North, that
strange and distant land, provided Southerners with
opportunities to experience a way of life that was in most
respects totally antithetical to their own reality. Once in
the North, Southerners quickly realized the tediousness and
isolation of their own existences. They wanted excitement
and diversions; and went north seeking it avidly, and in one
way or another most of them found it.
Though Ballinger's principal concern throughout adult life was the steadiness of his family and practice, he nevertheless devoted himself with equal passion to the enrichment of his beloved Galveston. By 1860 Ballinger's individual and professional esteem had won him a permanent place within Galveston's ruling oligarchy. From that position, Ballinger along with other civic leaders succeeded in making Galveston one of the most cosmopolitan and preeminent ports in the antebellum South.

The "Galveston Era" is an interesting and often forgotten chapter of Texas history. From roughly 1845 to 1860 Galveston reigned as the "Queen City" the commercial, financial, and cultural center of antebellum Texas. Throughout the eighteen-fifties the city's most prominent merchants, bankers, lawyers, and journalists were constantly engaged in enterprises and schemes to ensure Galveston's place as the state's undisputed financial and mercantile center. Despite challenges from Houston's equally powerful and determined coterie of businessmen to make their city the state's principal entrepot, Galveston emerged the ephemeral winner in Texas' first intrastate struggle for city dominance. Despite Galveston's "stranglehold" on all Texas trade, her future decline from such an exalted yet precarious position was inevitable.
The Galveston Wharf Company, once secure in its monopoly of the port of Galveston, took advantage of its position: port fees charged by the company antagonized shippers and mainland Texans. Galveston entrepreneurs, particularly the owners of the Wharf Company, used their combine to increase their own fortunes rather than as a means to develop the island into a major seaport city. It seemed that Galvestonians were more interested in personal accrual and security rather than promoting their city’s economic and political pre-eminence.44

Regardless of how enterprising Galvestonians may have been, their shortsightedness was compounded by an inability to control nature: Galveston’s existence was constantly threatened by grave risks from ocean storms. In a matter of hours a hurricane could devastate the city, washing away the entire mercantile and commercial matrix that sustained Galveston’s economic vitality during the eighteen-fifties. By following brash policies during the eighteen-fifties the Islanders had forced the Mainlanders to take measures that eventually deprived Galveston of its greatest natural heritage. However, Galveston had lost its economic primacy long before the advent of the Houston ship channel.

Compounding the pell-mell business attitudes of the Wharf Company was the internal political dissension wracking the city’s ruling oligarchy throughout the eighteen-fifties. No
matter how much the city's elite desired to make Galveston the commercial and cultural mecca of the Gulf, their efforts were undermined by their inability to reach a viable consensus on the more critical issues of the period: railroad construction, slavery, and secession; and their related economic and political manifestations. This conflict, together with careless financial practices was destined to bring the downfall of the "Queen City." Secession and Civil War completed Galveston's eclipse as Texas's premier city.

During the war, Galveston was abandoned by most of its population, occupied temporarily by Federal troops, and militarily relegated to secondary importance. It was at this time that Houston, having earlier enhanced its position with railroad construction, began its steady ascent to supremacy as Texas's number one commercial city. Thus, Galveston, torn by internal discord and weakened by heedless economic planning, had only fleeting importance as a mercantile and financial center.

As Ballinger's legal reputation expanded so did his presence within Galveston's ruling establishment. Rarely in Texas history had there existed a more powerful combination of business and professional interests than the local elite administering Galveston during the eighteen-fifties. Galveston's aristocracy consisted of a small number of native
American families drawing their incomes from various professional and commercial enterprises, as well as from extensive mainland cotton plantations. Regardless of occupation, these individuals were by far the wealthiest, most ambitious, and self-serving members of Galveston society. These men and their families led a cosmopolitan sophisticated life, and rarely associated with others outside of their small circle. They were bound together not only by professional and personal interests, but by a shared sense of noblesse oblige as well.++

The leading families often flaunted their wealth, but they were careful to cultivate the loyalty of the lower classes. These small traders, clerks, mechanics, laborers, and seamen constituted the majority of the island's population. They served the needs of the elite, and they also displayed unwitting confidence in the oligarchy's ability to govern the island in the best interests of all its inhabitants. The relationship between the elite and the working classes was quite unusual in Texas during the eighteen-fifties. More than likely this relationship developed as a result of the island's unprecedented prosperity as the state's principal entrepot.++

Galveston's commercial primacy allowed the elite to create a tax structure that relieved both them and the lower classes of taxation. The cost of maintaining the city was
levied upon transients and the city's commerce. Thus, local
groups had a vested interest in maintaining Galveston's
commercial pre-eminence. As long as Galveston retained its
monopoly on all Texas trade, the Islanders enjoyed the
benefits of their city's supremacy and thus had no occasion
to quarrel among themselves. Since the leading families were
relieved of "customary taxation," they could "display a
largesse" toward the less fortunate. Prosperity eased class
tensions and promoted cohesion in a city sharply divided by
socioeconomic and racial strata.**

Ballinger's acceptance within Galveston's elite was
largely the result of professional achievements that earned
him the respect of the clique's older members. However,
before he was welcomed into their exclusive circle, Ballinger
had to prove himself worthy of their esteem. What better way
to gain their confidence than to represent their legal
interests: to this end Ballinger devoted his practice. At
first he had difficulty soliciting this business due to his
inexperience in banking, shipping, and other related
mercantile interests. In these areas the elite relied upon
the more established attorneys to represent them. Despite
the competition from the older firms, Ballinger was
determined to attain the patronage of the leading merchants
and bankers. Though at times his quest seemed frustrating
and pointless, Ballinger nevertheless had an edge over his
rivals. Thanks largely to the influence of Uncle Jimmy and his wife's family's connections, Ballinger was almost destined to receive the consortium's business. Whether or not Ballinger was able to rise to the occasion, of course, depended upon his own abilities. However, Ballinger disappointed no one, least of all the elite, as he proved himself a shrewd, capable attorney in the pivotal Flats Case. Grateful members were so impressed by Ballinger's triumph that he rapidly became their principal attorney, handling the majority of their Texas as well as interstate commercial interests.

Ballinger immersed himself in the professional and personal issues and concerns affecting the oligarchy and their administering of Galveston. Ballinger never ceased cultivating and extending relationships with his compatriots, doing all possible to augment the position of the elite, which he believed essential for the aggrandizement of Galveston.

An elitist, Ballinger believed that the well-bred and educated should govern. However, his sense of privilege was tempered by an equally strong sentiment of communal responsibility. Rarely did he display the penchant for self-indulgence so pervasive at times among the Galveston gentility. That is not to say that Ballinger lived an austere, spartan existence, sacrificing all for the
commonweal. Though yielding to his material desires, he nevertheless maintained an uncompromising sense of civic duty often transcending the fulfillment of his personal ambitions. Certain duties were incumbent on men of professional status: individuals had careers, but gentlemen of substance had public obligations as well.

Though Ballinger was one of the younger, less partisan members of the oligarchy, he was nevertheless singularly devoted to the economic and cultural enrichment of Galveston, his interests ranging from the aesthetic to the practical, as he participated in a wide variety of schemes and enterprises to promote Galveston's ascendancy. Of utmost concern to Ballinger and his more progressive colleagues was the retention of Galveston's commercial supremacy. If Galveston was to continue its "stranglehold" on all Texas trade, city fathers must keep a vigilant eye upon potential challengers, defeating their usurpations by ambitious expansion. It became apparent that the key to Galveston's continued hegemony was railroad construction.

Ballinger was uneasy with the Queen City's dependency on the port for economic sustenance, believing such reliance "foolish and delusive." Throughout the eighteen-fifties he constantly urged civic leaders to look beyond their parochial interests and explore "other prudent enterprises by which our city will continue to prosper &
secure all Galvestonians for generations to come." 

Ballinger would not be content, nor Galveston invulnerable, until the city had complete control of all intrastate trade, as the transportation terminus for all of Texas. It was time for Galveston to extend its tentacles into a rapidly developing interior via the railroad.

Thus, throughout the eighteen-fifties Ballinger and his cohorts plunged themselves into intense, acrimonious rivalry with Houston to dominate Texas' railway system. Although all Texans were agreed that the need for railroads was never in question, a great political struggle erupted during the decade: where were the railroads to run; and would they favor Houston or Galveston? Were the lines to be privately owned or state owned? This became an important ideological matter to the individuals involved.

This struggle reached a climax in 1856 when three varying points of view emerged in three different proposals for railroad construction: the State Plan, the Galveston Plan and the Corporate or State Loan Plan. Interestingly enough, all three plans were in some form or another the inspiration of leading Galvestonians. Lawyer-politico Lorenzo Sherwood advocated the State Plan, which proposed that the state build and own the railroads. He believed that they should converge on the Gulf at Galveston. Much to the chagrin of hardcore Galvestonians like Ballinger, his primary interest was the.
promotion of state-built railroads, not the predominance of
Galveston. As will be seen, Sherwood's lack of enthusiasm
for promoting Galveston resulted both in the defeat of his
plan and political demise as well, in which Ballinger played
an intergral role.

Journalist Willard Richardson was the leading promotor of
the Galveston Plan. He maintained "that the logic of
geography dictated that all Texas rail lines must lead 'fan-
like' to Galveston," whether built by public or private
funds. He further argued that Texans should be wary of
connecting their lines with any sort of transcontinental
system which would result in the state's "vassalage" to
either New Orleans or St. Louis.

The Corporate or State-Loan Plan was favored by railroad
developers throughout the state, with the most determined
efforts to promote the scheme emanating from Houston. There,
entrepreneurs, led by William Marsh Rice, Thomas William
House, and Henry Sampson, saw railroad construction as their
long-awaited opportunity to dethrone the Queen City and make
Houston the state's leading entrepot. Houstonians, along
with the other advocates of the plan, wanted the system to be
built by private funds. In order to attract necessary
capital to finance a private system, the Corporate men
suggested that land grants and loans be offered to those
undertaking the risk of building the railway system."
Ironically, even though the Galveston and State Plans favored Galveston, it was the Corporate Plan that appealed to the majority of Galveston's businessmen. It was obvious to all Texans that regardless of which plan was adopted it would either be Houston or Galveston money that financed and controlled the system. However, much to the joy of Houstonians, Galveston's ruling elite did not have any real desire to control the network nor even to have a system that benefitted Galveston. They were content with their port monopoly, and despite the urgings of their more progressive members like Ballinger, they let a golden opportunity to strengthen their economic stranglehold on Texas slip through their fingers. Once again, self-interest rather than public interest prevailed among Galveston's elite, who saw in the Corporate Plan another means of securing their personal fortunes. With self-aggrandizement as their principal concern, Galvestonians foolishly allied with the plungers of Houston to promote the Corporate Plan. With such a formidable coalition behind it, the Corporate Plan was destined to win out over the other alternatives. However, lamentably for Galveston, the zeal with which city fathers supported the plan not only made Houston the railroad focus of Texas and the center of a Southern transcontinental system but relegated Galveston to a mere satellite.***
Ballinger too, seeing the futility of supporting the other plans (despite their being more beneficial to Galveston), decided that the Corporate Plan was better than no plan at all and worked assiduously to promote it. He nevertheless had private reservations, suspecting that Houston would benefit more by its adoption than Galveston. In a letter to his close friend and fellow Galvestonian, Guy M. Bryan, Ballinger revealed his doubts:

It seems there is no stopping Messrs. Rice & House and the others from persuading Galvestonians that internal improvements within the state will best be secured if left in the hands of trustworthy & responsible citizens. Though I do not impugn the honor of these men, I cannot help but wonder whether their claims are not exaggerated & if they are, what will be the fate of our town? I dread to think that our wonderful city may soon find itself cast adrift from the rest of the state because we have failed to examine more closely the designs of the proposed railway projects. Perhaps some other choice would be more beneficial to our town. Too late for that now—we must support that plan which at least safeguards private enterprise.

Despite his inner qualms, Ballinger was more intent on defeating Sherwood and the State Plan which he believed to be "...socialistic and divisive. ... If old Sherwood has his way, there is little doubt from any quarter, that fraud and corruption will reign freely in the state. He must be stopped!" Although Sherwood was barely fifty years
old during the decade of the fifties, he was known on the Island as "Old Sherwood." Ballinger, who had to compete with the New Yorker in cases being tried before the Galveston courts, was particularly annoyed by Sherwood, who frequently won litigations against his merchant-banker clients. "Sherwood is a rather mean old fellow to get along with," wrote Ballinger in his diary, "He doesn't act like a gentleman."

So determined was Ballinger to thwart Sherwood's State Plan that he became one of the leading members of a group operating "sub rosa" within the Corporate faction. Ballinger along with the other members of the Corporate group unleashed a war of vituperation in the press, as well as actively campaigning throughout Texas to stop Sherwood's proposal from being enacted by the state legislature. Though Ballinger and his coterie of anti-Sherwood forces lambasted the State Plan in the press and public forums, the project remained popular with most Galvestonians and among mainland Texans who were suspicious of "promoters," or who were more interested in getting the lines operating than in securing a profit or advantage from their construction.

Efforts to "win over" Sherwood, a man of conviction and personal pride, were unsuccessful. It was also obvious that Sherwood's ideas could not be effectively opposed in public debate.
However, there was an "area where Sherwood was vulnerable -- he was not "sound" on the question of slavery." A native New Yorker, he "had stated publicly that, although slavery could be condoned as a temporary labor system . . . it was unacceptable as a permanent labor system." For this, as well as for moral reasons, "he opposed any attempt to reopen the African slave trade," which a good number of Galveston's elite favored. On the question of secession, Sherwood too opposed the position taken by most "Southern men." Thus, "Old Sherwood" was "unsound" on issues on which the majority of Galveston's oligarchy maintained strong "Southern" convictions.¹⁰⁰

When the Corporate men found their scheme frustrated by Sherwood's "arguements" they decided to challenge him in the political arena where he was weak. Opposition newspapers accused the New Yorker of being a "Negro-loving" abolitionist and "a low, cunning political viper," who could "tell lies with statistics." However valid his economic counsel, "no Texan ought to listen to a man who failed to take a sound Southern tone on the subject of slavery."¹⁰¹

Ironically, Ballinger was politically more in accord with Sherwood on some of the key issues of the decade than he was with his colleagues within the Corporate contingent. Ballinger too could have been labeled "unsound," particularly on the question of secession and the African slave trade.
Ballinger was a staunch unionist, opposed to even the slightest utterance of the dissolution of the Union. He was, in fact, at times so exercised by his associates' discussion of secession that he felt "very depressed & unable to discuss other topics when they arise. It grieves me to think that my friends have so little regard for this nation & seek its demise. I pray our other concerns will force them to abandon such divisive talk."

Ballinger also opposed the reopening of the slave trade, believing its rejuvenation would "so divide the inhabitants of the Island that a permanent & irreconcilable division would occur, the likes of which has yet to be witnessed in our city. The subject must be silenced here & now, and forever!"

Though Ballinger agreed with Sherwood on the more crucial issues of the decade, he nevertheless was compelled by both personal and philosophical reasons to defeat Sherwood's railroad plan. As the struggle climaxed Ballinger immersed himself in the battle, doing all possible to discredit Sherwood. The Corporate supporters realized that the only way to defeat the State Plan and pass their own was to force Sherwood from the state legislature and somehow intimidate his disciples into abandoning their vigorous pro-State support. They decided to use the accusation of abolitionism
as a means of forcing Sherwood’s resignation from the legislature.\textsuperscript{104}

As Sherwood rose to the occasion, dramatically and cogently defending his position in public forums, the more he denounced as an abolitionist and socialist. However, Sherwood refused to capitulate, successfully deflecting every invective hurled at him by his critics. As the railroad crisis reached a climax the opposition concluded that the only effective way of silencing Sherwood was to make sure that henceforth the New Yorker’s opportunities to speak at public gatherings would be restricted.\textsuperscript{105}

A public meeting was convened on the morning of July 7, 1856, for the ultimate purpose of censoring Lorenzo Sherwood. After explaining why the meeting had been called, Ballinger read a letter he had drafted to Sherwood, which, with the people’s approval, he would deliver to “this intruder from New York.” The letter demanded Sherwood’s resignation from the legislature.\textsuperscript{106}

Ballinger warned Sherwood "that ‘neither you, nor anyone entertaining your views, will be permitted to appear before the community in a public manner. . . .’" Ballinger further warned Sherwood that he could not address the subject of slavery "either directly or indirectly, by way of explanation or otherwise under the pretext of personal right of self-defense." Sherwood should also refrain from irritating the
people's "patience" on the question of slavery. Ballinger recognized that Sherwood had "some supporters in this community" but if Sherwood attempted to test the situation "by trying to discuss slavery before a Galveston audience," the citizens "will make this evening the occasion for the definite and final settlement of that issue. . . ." Ballinger concluded his letter by reminding Sherwood that any statements pertaining to slavery would be "the prompt signal for consequences to which we need not allude."\(^{107}\)

"Faced with either capitulation or violence, Sherwood decided not to fight" and resigned "from his position as a delegate from Galveston to the State Legislature." By using the slavery issue the Corporate Bill supporters succeeded in destroying their ablest antagonist. A month after Sherwood's resignation forced by Ballinger and the Corporate faction, the Corporate plan passed both houses of the legislature. Thus, Texas railroads were to be built by private enterprise, generously aided by the state.\(^{108}\)

Ballinger's support of the Corporate Plan stemmed from his personal and professional relationships with the proposal's strongest advocates. The overwhelming majority of Galveston's ruling mercantile elite endorsed the plan, placing Ballinger in an awkward, dissenting position if he did not approve of the project. However, Ballinger was no mere conformist, acquiescing to peer pressure and fearing
group disapproval if he did not. Ballinger was a prudent and ambitious man, who realized the futility of promoting a minority opinion that undermined what was most important to him and, he hoped, to his fellow Galvestonians: railroad construction. To Ballinger the Corporate Plan was better than no plan at all, and for once Galveston's elite reached a viable consensus on a major issue instead of being racked by internal strife. Too often Ballinger witnessed his associates engage in prolonged, time-wasting disputes over matters that deprived Galveston of the aggrandizements of concerted effort. Ballinger would not let the railroad momentum slip through the Queen City's grasp, allowing Houston to take advantage of the Islanders' provincialism and dissension. Thus, Ballinger was willing to sacrifice personal preference for the sake of unanimity of purpose by which he hoped all would benefit.

As far as Ballinger's believing in the concept of the Corporate Plan, it is doubtful he was as enthusiastic a supporter as he appeared. He accepted the project more out of a desire to crush Sherwood's "socialism" than out of any real attachment to the idea. One cannot help but wonder whether Ballinger's personal as well as ideological animus toward Sherwood tainted his perception of the State Plan. Of all three proposals, the Corporate Plan provided the least direct advantage to Galveston beyond immediate financial
remuneration for Galveston entrepreneurs involved in the actual construction. The plan offered no guarantee that Galveston would be the axis of a Texas railway network. In fact, if Galveston did not aggressively assert herself to become the system's hub, she would find herself on the periphery, being so far south on an island. At least with the State Plan there would have been the strong possibility that Galveston would be the state's railroad center. Though making Galveston the core of the network was not Sherwood's principal objective, there is little doubt that if he had had the support of leading Galvestonians he would have asserted Galveston's claim as the logical geographical terminus for Texas's transportation system.

Perhaps Ballinger sought the State Plan's defeat because he felt threatened by its champion, "Old Sherwood." Sherwood was a shrewd, capable attorney, who was one of Ballinger's more challenging and exasperating courtroom adversaries. Sherwood not only humbled Ballinger professionally, but perhaps more important, he affronted Ballinger's powerful merchant-clients. Thus, to protect better his own reputation and credibility, as well as his colleague's interests, Ballinger decided to join the crusade to censure Sherwood and in the process to eliminate a menace to his career.

Despite his many civic and professional activities, Ballinger managed to devote both time and attention to his
home, family, and friends. In late 1858 Ballinger moved into a new home that he had built a year earlier. His new residence was called "The Oaks," and here Ballinger was to live the remainder of his life. By 1860 his family consisted of five children, four girls and a recently born son, Thomas Jack, named after his brother-in-law-partner. Ballinger's four daughters--Lucy, Sarah, Olivia, and Betty--ranged in age from nine to three years. With an ever-increasing family and with the constant stream of guests and relatives who often visited the Ballingers for weeks at a time, a large, spacious home was essential.

The Galveston Daily News described the estate as "the elegant Ballinger residence, where many a wonderful evening can be spent enjoying the fine gardens, beautifully furnished rooms, and of course, the warm and gracious company of Messrs. and Madame Ballinger."^{107}

Though Ballinger's home was set in an urban context, its design and ambiance reflected that of a traditional Southern plantation. In fact, the majority of Galveston's aristocracy constructed and fashioned their homes in this style. "The Oaks" was a white, pillared, two-story, high-ceilinged structure with wide opening doors, high windows, broad veranda doors opening from upstairs rooms, and wide stairways, all designed for the greatest possible ventilation. Homes such as Ballinger's on an island that
enjoys the cooling breezes off the Gulf, were remarkably cool even during the summer months.

Ballinger's home sat far back from the street--Avenue O at Twenty-ninth Street--completely surrounded by large shade trees. At the rear of the house was a walled garden with luxurious hedges of oleander shrubs, poinsettias, bougainvillaea, palm trees and other tropical trees, bushes, and plants. The Ballinger "park" was reputed to have been "one of the most exotic and plush displays of botanical beauty in all of Texas, if not the entire South."

Ballinger's estate was impressive, particularly when one considers that he was able to enjoy such opulence at the age of thirty-two. "The Oaks" not only reflected Ballinger's professional success but also his other ventures which were at times more lucrative than his law practice. Thanks largely to his wife's family's influence Ballinger augmented his professional income by dabbling in land speculation. "Uncle Tommy (Harrison) has made a sale of all our lands below Waco--at a profit of a little over $7000 on the purchase--to be divided between the three of us," he reported in March, 1857. "The news made me feel almost rich, as it will be the first money I have ever made outside of my profession. I trust though, when I get a little more to operate with, as our town is improving rapidly, that it will not be the last."
Like the posh homes, entertainment in Galveston tended to be lavish. At times the Ballinger residence was a scene of continuous pleasantry. Almost every day Ballinger found the time to host afternoon tea, which was customary among Galveston’s gentility. One of Ballinger’s favorite tea-time companions was the powerful merchant-banker-client, Robert Mills, whom Ballinger enjoyed because of the “fine talk of homes, books, and trade,” as well as “the playing of dominoes” until dinner and even on into the late evening.112

During the winter season it was customary for leading families to give an occasional ball honoring the city’s “military.” Ballinger hosted one of these events in the Tremont Hotel in January, 1857. The affair represented a tribute by the sponsor to the officers and men who made up the various militia units. Ballinger was celebrating the former Mexican War contingent of volunteers in which he had served as adjutant. At such functions all classes of citizens joined in the festivities, consisting of “fine food, speeches, and dancing.”113

The Ballingers also hosted large, formal parties in their home that were reputed to have been among the more notable social events in Galveston. When entertaining at home Ballinger was by no means a perfunctory host, casually assuming his wife would make all the arrangements and make
sure that everything went off well during the evening. On the contrary, Ballinger was attentive, making every effort to help his wife make their parties a success. This interested attitude is revealed by his diary entries, one of which reads: "Our party went off well last night as handsomely as we could have desired. Just enough people—music good—supper superb. We are all delighted." Ballinger also attended the several theatrical productions presented on the Island during the "fifty-seven-fifty-eighth season," and wrote a series of reviews for the Galveston Civilian. On March 30, 1858, he submitted a general assessment of the plays and other attractions Galvestonians "had been subjected to the past months. We should all be thankful that the year's productions are through. During the last three months the performances at this resort (Galveston Theatre) have been a libel on the town and an insult to intelligent people. . . . The only legitimate drama we have had was Donnetti's Acting Monkeys, and God knows they were bad enough. It is time for us to frown upon these clap-trap clowns, and cease patronizing every humbug accounced in flaming handbills. . . ."

By the end of the decade Ballinger had transformed his once miscellaneous practice into one almost exclusively devoted to corporate problems. In 1859 he successfully secured the right of the powerful mercantile firm of R. & D.
G. Mills to engage in banking, despite the specific
prohibitions of the Texas Constitution; and on the eve of the
Civil War he was involved in a suit to exempt the Wharton
Railroad from a special tax that had been levied upon it by
the state. Each spring and fall he traveled several hundred
miles to attend the sessions of the district court at
Brazoria and Matagorda, as well as the State Supreme Court in
Austin. While he sometimes had to endure the privations of
the Texas frontier, Ballinger was no itinerant country lawyer
who followed a judge from one town to another, picking up
clients wherever he could. From the moment he "hung out his
shingle" Ballinger's practice had been urban-oriented, and
his trips were not intended to attract new clients but were
attempts to expand the scope of his principal Galveston
practice.\textsuperscript{116}

By 1860 Ballinger's annual income usually ranged between
six and ten thousand dollars. However, only part of his
yearly total was actually cash received for services
rendered. Several of his settlements were similar to the one
he recorded in his diary after winning an inheritance suit:
"The property was valued at $21,000--our part being one-third--
$7,000--We took Martin & Beall's indebtedness $3700; and the
1/2 block north of Atchinson's for which Potter is offered
$3150--and $150 to be made up otherwise--That will do for a
good fee."\textsuperscript{117} The final amount Ballinger received
depended upon his ability to secure favorable judgments from the court. Like most of his colleagues, Ballinger, too, found it more lucrative to negotiate on a contingent fee basis. For example, for his services during the Flats Case, the Wharf Company in 1860 agreed to pay Ballinger "$2,000 -- to be paid in four installments over the next 18 mos. & $4000 contingent on success."**

Immersed in an expanding law practice and in regular contact with northern clients, Ballinger's financial interests, like his political Whiggism, made him an ardent unionist. By 1860, however, Ballinger could no longer remain detached from the sectional crisis. Daily the issues seemed more ominous and personal. No other question perplexed Ballinger more than slavery, and ultimately it would force him to choose between a nation he cherished and a heritage he could not forsake.
CHAPTER III -- Years of Decision

Thos. Harrison wrote me that the children of those not in front of the present secessionists wd. be ashamed of their fathers. I am willing to bide the tests of time on that subject... Secession is Revolution--I submit to it in preference to Civil War--and shall do the part of a loyal citizen to the State--But my line of duty more than ever is in a strict & diligent devotion to my profession.

Diary of William Pitt Ballinger
December 31, 1860.

In 1846 the United States attacked a weak neighbor, Mexico, won an easy military victory, and stripped her of her northern provinces. Fifteen years later, largely as a result of political conflicts aggravated by those acquisitions, the nation went to war again. Only this time it was American against American, Confederate against Unionist, Rebel against Yankee. The American people have the oldest written Constitution in the world, and have repeatedly displayed a talent for papering over major disagreements and making deals that few people like, but all can live with. The only question that proved too vexing for the politicians to dispose of in the customary compromising fashion was slavery. The passions it aroused shattered the second party system and consensus politics, inflamed sectional fears and hates, and
climax of a violent struggle that destroyed slavery and killed 600,000 men.

The political crises of the 1850's had an especially peculiar effect upon Texas. Standing on the verge of a boom period of cotton production, Texas planters defended slave labor with even more boldness than their counterparts to the east. Yet Texans were also acutely aware of the benefits of continued union. They heartily supported national railroads and other internal improvements which enhanced their connections with the Atlantic Coast, and though chagrined, Texans acknowledged their dependence on the Northeast for capital and culture. Well-traveled Southerners who visited the North regularly were especially aware of the South's dependency and the havoc the Southern economy would experience without the Northern connection. Southern professionals, particularly lawyers, like William Pitt Ballinger, who were in regular contact with their Northern clients, believed the secessionist threat of the Southern extremists was merely another facet of the decade's "spectacular" politics. Only reluctantly was Ballinger—like so many of his compatriots—caught up in the frenzy of political emotionalism that forced him ultimately to choose between the South and the Union.

As a scholarly and pragmatic attorney, Ballinger possessed a deep, passionate attachment to the strength of
institutional ties, whether political, social, or religious. Like his favorite philosopher Edmund Burke, he regarded law as subservient to popular custom and believed in the force of informed public opinion to bring about meaningful social change. Any other course he feared might destroy the traditional behavior patterns protecting the commonweal from the excesses of individualism. Despite being an educated and cultured individual, Ballinger possessed a pessimistic outlook, believing that individuals were inherently depraved and motivated by self-interest. If such passions were not constantly restrained by the appropriate institutions, rampant particularism would prevail, and the entire society would be plunged into the abyss of violence and anarchy.²

After careful examination of Burke’s essays on the French Revolution, Ballinger concluded that "it was the most remarkable event in human history." To Ballinger the event was not only a graphic testimony to "human barbarity, selfishness & profligacy," but also what happens when a society loses "all respect for the laws and traditions which govern it and protect the public from the vileness of others. What a tragic & senseless event. The French may never recover from such a horrifying spectacle!"³

After reading Burke, Hamilton, and Hume, Ballinger was convinced that only the power of popularly sanctioned institutions, administered by an informed and vigilant elite,
could "restrain the selfishness & wanton disregard for others that seems to be the predominant trait among men. We are so vulnerable—we so easily fall victim to desires that disgrace us—that cause us to lose all sense of honor & duty. Our societies are so fragile & only by associations can we hope to maintain order & virtue."*

Although not a practicing Christian, Ballinger strongly supported churches as agencies of social control: "they are organizations for virtue. They put one publicly before the world on his responsibilities of a strict line of conduct, & by associations institutions &c they continually aid to hold him to the course of duty, & stimulate his growth in grace. Men need all the restraint and assistance possible to their acts."*

Such attitudes when applied to the "peculiar institution" left little purpose for reform efforts, except perhaps at the personal level, where Ballinger's involvement was comparatively slight. He owned only eight slaves according to the tax records of 1860. Some were his own household servants while others he hired out to local businessmen or to mainland planters. Whatever their ultimate fate, Ballinger possessed a rather atypical concern for their welfare. He not only used his legal talents to protect the rights of other slaves who came under his care through the liquidation
of estates, but was also willing to defend the rights of free blacks which often aroused local prejudices.

When death or financial collapse caused the occasional demise of a Southern household, or when wills sometimes granted slaves their freedom, the executor often became the guardian of the "household" or "merchant-employed" slaves, protecting their rights as stipulated by the will. The "legal rights" of slaves were frequently more desirable than the "legal rights" of free blacks, which were very few, and the free black's status could be so untenable that he sometimes chose voluntarily to reenter slavery.#

Ballinger often acted as a trustee for an estate and often personally purchased "trustworthy" slaves who wanted to remain on the island. These "estate negroes" were usually sold to mainland planters upon their owner's death. Thus, to avoid the auction block, island slaves frequently approached compassionate slaveowners such as Ballinger. As Ballinger realized, a display of kindness in such instances could lead to a wise investment. A reliable slave could be hired out for "$250 - 300 per year plus keep." Ballinger calculated that within five years the hired out slave would have paid for himself.##

Though Ballinger sanctioned the institution, he frequently used his legal talents to free black families whom he believed were legally entitled to such a status. For
example, in the 1857 "Major Murrows Case," the owner of a
slave family, a J.S. Murrow, had freed the family contrary to
the law by stipulating in their "freedom papers" that this
privilege could be "revoked, at any time, henceforth, if said
Negroes were unable to find suitable employment on the
Island." Apparently Murrow could no longer afford to
maintain the family so he freed them out of financial
necessity. However, he was confident that in the near future
his economic outlook would change for the better, and at that
time, he would want his property back."

The family wasted little time in seeking Ballinger's
counsel. Ballinger was so impressed by the family's
"sincerity & stability" that he accepted the case. He wrote
in his diary that "they are a fine family, devoted to one
another, & I intend to secure their freedom if I can."¹⁰
Though the original suit was filed by Ballinger in 1857, the
District Court of Galveston did not rule on the case until
1859. In that two-year interval, Ballinger himself either
"employed" the family as house servants or found them odd
jobs in the city. Ballinger's efforts were to prove that the
family was "capable of obtaining, & receive for services
rendered, wages commensurate with their employment. The fact
that for the past two years the family has been steadily
employed in various capacities, should demonstrate beyond any
doubt, that said family is entitled to the rights &
privileges granted to a free people." Apparently the court agreed with Ballinger's assessment, granting the family their complete freedom on January 6, 1859.

In another instance, Ballinger gave his legal aid to the slave Harriet Ladd who had purchased her freedom in 1859 from her owner Frank Rownels, but was subsequently "detained" by the infamous slave-trader Captain Thomas Chubb, who operated a Galveston-based kidnapping ring which abducted free blacks and whites and sold them into slavery. Harriet tried to assert her rights, telling Chubb and the local sheriff that she had been a free woman since 1859. Chubb and the authorities refused to recognize Harriet's claim of being a free woman, and told her that as far as they were concerned she was still a slave and would remain so until the end of the war.

Aware of Ballinger's reputation for fairness with slaves, Harriet appealed to him, "writing him in her own hand," she asked him if he would help her regain the freedom she had legally purchased. "I have lawfully purchased my freedom, and now come to you, a kind & gentle man, to deliver me from such an awful wrong doing. . . . I eagerly await your reply."

Apparently Ballinger had more difficulty with Harriet's situation than he had had with the black family in the Murrow Case. Though he wanted to come to Harriet's rescue, the war
and the new duties he was called upon to perform because of it prevented him from helping Harriet. Ballinger was upset that he could not aid Harriet and wrote in his diary that he "wished" he could "come to aid of this poor woman who is suffering this most grievous and wretched condition placed upon her. I will endeavor to do all I can, but I must continue to be diligent in my other duties as well." Ballinger consoled Harriet in a series of letters, telling her to "be patient & calm" and that he was doing "all that is humanly and legally possible to obtain your release. But you must remember that we are at war & that I have other duties to perform. . . . Perhaps it would be better to await the end of the present conflict. At that time I assure you on my honor that I shall do all in my power to see that you receive justice."  

Ballinger kept his promise to Harriet. After the war, in August of 1865, he helped Harriet file suit against Chubb and his cohorts for "kidnapping and the violation of the rights of a free person." One year later Ballinger notified Harriet that she had been awarded by the District Court of Galveston "a sum of $2500 to be paid to you for compensation & the disgraceful injustice done to you by that scoundrel Chubb." Ballinger's most celebrated antebellum case involved Betsy Webster, a slave whose deceased master, David Webster, had left a will in which he not only freed her but bequeathed
to her the bulk of his large estate. According to the will, Betsy was to receive "all the real and personal and mixed estate belonging to me in the city of Galveston and state aforesaid as well with all the horses, household furniture, effects and appurtenances appertaining to the same. . . ."

Webster's estate was to be held in a trust for Betsy to be administered by a Mrs. E. J. Hardin of Columbus, Georgia. Though the inheritance was placed in the custody of Mrs. Hardin, Webster made it perfectly clear that "said property is to be disposed of at the pleasure and request of Betsy, it being understood that the trustee (Mrs. Hardin) is herein empowered to carry out the true intent of this will." On May 12, 1856, four days after he had made his will, David Webster died.

Not long after the will had been admitted to probate in the Galveston County Court, it was contested by one of Webster's relatives living in New York. In April of 1857, a Martha Greenwood, claiming to be a cousin and sole heir of Webster's estate, instituted suit in the Galveston District Court to "contest the validity of the will and have it set aside, so far at least as the request of freedom and property of Betsy were concerned." Betsy quickly responded to the suit by seeking Ballinger's counsel. Ballinger apparently believed that Betsy's rights were being usurped and agreed to defend her. Betsy apparently was so grateful that such a
reputable attorney as Ballinger would take her case, that for
his efforts Ballinger was to receive "one-third of the
property and estate which she should succeed in holding under
the will." Of particular interest to Ballinger was the
city property Webster had left Betsy, seven lots with an
estimated value of $22,000. Ballinger had little need for
"more furniture & other household items--we have more than
ample now." So Ballinger decided that one-third of the
$22,000 worth of city property would do nicely as a fee for
his services. Betsy agreed, and upon the sale of the lots
she gave Ballinger $7,000 for his efforts.**

Apparently it was the value of the city lots that her
"beloved cousin" had left in the will that had interested
Mrs. Greenwood, and when Betsy sold the lots to help pay her
legal fees, Mrs. Greenwood "became most exercised."
Greenwood's attorneys not only accused Betsy but Ballinger as
well of "base fraud and forgery," perpetrated against
Greenwood "by certain parties in conjunction with the
defendant, for the purpose of fraudulently swindling Mrs.
Greenwood out of her just, lawful and equitable rights and
property."**

It was obvious to everyone, especially Ballinger, that
Mrs. Greenwood's attorneys were attempting to nullify the
will on the basis that Betsy was not a free person, despite
her lawful manumission by the the document. If Betsy were
not a free woman she had no rights, particularly the right to own property, and thus, she was not entitled to the estate. Greenwood's attorneys argued that in order for Betsy to be recognized by the law as a free person "she must have been removed from the state of Texas; that until then her status remained that of a slave, possessing no legal rights whatsoever; neither she nor her trustee had any power of disposition of any part of this property." 33

It must be remembered that one of the most volatile legal issues of the period, especially for compassionate lawyers, was the status of emancipated blacks who continued to reside in a slave state. Though they had been lawfully manumitted by their ex-masters, rarely did ex-slaves attempt any legal recourse for the injustices done to them in their supposed free condition. They were painfully aware that they had no rights--legal, civil, or political--and that any effort to secure even the slightest privilege would be folly. The stigma of being an ex-slave was impossible to erase. When blacks attempted to protect their purported rights as a free people, their actions only further inflamed local white prejudices toward them. 34

Greenwood's attorneys hoped to intimidate Ballinger by playing upon the outcry raised by a number of prominent Galvestonians when they learned that "one of their own" was defending "a Negress." They tried to discredit Ballinger by
insidiously portraying him as a "nigger lover." The attempted defamation even went as far as to insinuate that Ballinger had made Betsy his concubine."

Needless to say Ballinger was distressed by the attempted slander, and though most people knew the accusations were completely unfounded, Ballinger himself wondered if he had been "selfish and prideful in accepting the case. . . . Was I so ambitious to not have realized the irreparable disgrace I may have inflicted upon my family & honor and friends? This Webster case despairs me as few others have. I know I am right and that Betsy is a free woman—-the will clearly attests to that. Providence willing, once this is over, I will be vindicated. . . ."

Though Ballinger had such doubts and was probably somewhat subdued by his peers' reaction, he overcame his trepidation and typically rose to the challenge. He was determined to uphold the sanctity of the law and secure Betsy's rights under it. In fact, the more local bigotry attempted to vilify Ballinger and his client, the more intent he became in pursuing victory. He confided to his diary that he "would not permit the wretched thoughts & malevolent deeds of petty and dishonorable people deter me from what I believe to be a just and noble cause. I will triumph!"

Juridically, Ballinger focused his defense of Betsy on the legitimacy of the document by which she was entitled to
both her freedom and inheritance: Webster's will. According to Ballinger:

It is emphatically the will of the person who makes it, and is defined to be the legal disposition of a man's intentions, which he wills to be performed after his death. His intentions are to be collected from his words, and must be carried into effect. To stop short of this would be an infringement upon that liberty of disposition of a man's own property, which is the most powerful incentive to honest industry and a free commercial country. To disregard rules of interpretation sanctioned by a succession of ages and the decisions of the most enlightened judges... would not only prostrate the great landmarks of property, but would introduce a latitude of construction boundless in its range and pernicious in its consequences. ... The intention of David Webster is clearly and distinctly expressed in his will and not controverted. ...[1]  

Ballinger then challenged his opposition's contention that Betsy, despite her emancipation by Webster's will, was still a slave because slavery was legal in Texas, and thus, Webster's manumission of Betsy was null and void. Ballinger asserted that the will which was a perfectly legal and valid document, was Betsy's title to freedom, regardless of her residence.
Suppose David Webster had manumitted Betsy and willed to Mrs. Hardin $1,000 to remove her to Ohio? Suppose the administrators had paid over to Mrs. Hardin the $1,000 to carry out this will, but instead of removing her to Ohio Mrs. Hardin had pocketed the money, and left Betsy penniless and shiftless on our streets. Would any court have said that on this ground she continued, or again became a slave? No court ever did, or could have said so. Her status of slavery ceased by the will, her title to her freedom was perfect. . . . It is therefore utterly unfounded to assume that her nonremoval from the state continued her in the status and under all the disabilities of legal slavery.26

Ballinger concluded his defense of Betsy with what was undoubtedly one of his most impassioned and humane arguments. Ballinger's powerful courtroom polemics won for Betsy both her freedom and legacy.

Upon this record, in the face of my brethren, with their jealous sense of all that concerns the integrity and honor of our profession, in the presence of this high and honorable court, I can most conscientiously declare that there is no case with which, in a professional experience, now pretty well matured, I was ever connected in which I have greater reason for an honest self-satisfaction than the proceedings which secured her freedom and her property to Betsy Webster. I look back to the day when it was almost the general professional opinion that she was not entitled to freedom or property, but was under the doom of slavery forever, to the day, when to maintain the contrary required one to face the prejudices of this entire community.
I remember how studiously, how earnestly, how faithfully I devoted myself to her cause, and to win and secure for her what I believed were her rights.  

After Ballinger's final plea, there was no doubt that the court would rule in favor of his client. According to presiding Judge C.J. Morrill: "By the will of Webster the slave Betsy was made a free woman. Being a free woman she was so in toto, and was legally vested with the property devised to her, to use it as she pleased, unless she was an infant, insane, or a married woman--neither of which is pretended... Being a free woman, and not being under any disabilities requiring a guardian, neither her former master nor the court has any right to divest her of her person or property."  

The purchasing of house servants was perhaps a Galveston slaveowner's greatest concern. The decision to do so not only represented a major investment, but more important, the slave had to be accepted by the family as loyal and trustworthy. By 1860 Ballinger was "in the market" for a young black woman whose principal function was to be "helping Hally out and making sure the children were properly looked after." Ballinger found what he thought would be a good choice, a young woman that was for sale for $1800. However, Ballinger wanted to make sure his wife approved of his selection before spending his money. Ballinger arranged with
the woman's owner for a "trial period" of two weeks to see if Hally and the servant were compatible. "Hally took her out home to try her," and at first she seemed to like the young woman. After the first week, however, Hally became concerned about her servant's "lack of manners and rough way with the children." Ballinger, wanting to please his wife, decided not to purchase the woman and returned her to her owner.\textsuperscript{33}

After weeks of searching for a house servant, Ballinger finally found a suitable prospect. He arranged with a Dr. Nelson to "try out" a young black girl the doctor had for sale. This time Hally was pleased with her husband's choice; she particularly "liked her face." However, "Agnes"--who was only "fourteen or fifteen years old," was already in "a family way." When Hally found this out she would not pay the $1200 asked for Agnes, and Dr. Nelson agreed to lower his price to $1050. Hally felt this was a fair price and instructed Ballinger to purchase Agnes. Though Ballinger too was pleased with the deal, he was nevertheless "uncomfortable with Agnes' condition."\textsuperscript{33}

Agnes remained in the Ballinger household until 1862 when Union troops threatened the Island. Ballinger insisted that his wife take the children and servants to her relatives in Waco. There Agnes was first hired out and then sold with her child for $2000 in 1863 to Aaron Coffee, a wealthy planter. While this arrangement may have been convenient for
the Ballinger's, it was disquieting to Agnes. She was apparently fond of the Ballingers, especially the children whom she looked after "as if they were her own & they were always affectionate to Agnes and enjoyed playing with her." Though it was difficult for Ballinger to sell Agnes, he had no choice. Aaron Coffee told Ballinger that Agnes was "most unwilling for me to buy her--saws she can't work in the fields--she is a house servant--and wants to stay in town with Mrs. B. and the children." Agnes asked Coffee to tell Ballinger that if she had to be sold she wanted to be purchased by a city family as "kind and affectionate as Master and Mrs. Ballinger." Agnes further told Coffee that "she was surprised that Master William would sell her after she had proven to be a worthy and loyal servant."34

Unfortunately Agnes did not understand the wartime conditions that denied Ballinger the prerogative of maintaining his customary solicitude.

Though Ballinger was forced to hire out most of his slaves, he was able to keep a few with him when he finally brought his family back from Waco and set up a temporary household outside of Houston. One of the house slaves Ballinger retained was a "boy" named Dave who proved to be "Master William's" greatest annoyance.

Before leaving Waco, Ballinger had temporarily placed Dave with Aaron Coffee on Coffee's plantation at Haleyon
until more suitable employment could be found. Dave was subsequently placed as a servant for the military at "Camp Fort Bates." Dave's career with the Confederate army however, was brief. He was caught stealing by a group of soldiers who whipped him for the offense. Dave reacted to this insult by running away. Coffee eventually found Dave and felt sorry for him. He wrote Ballinger that "Dave has become a favorite boy with me," and "I would like to use him as a carriage boy." Ballinger too felt Dave had probably been treated unfairly by the soldiers and agreed to hire out Dave to Coffee as a carriage boy.

Dave, however, hated his new job and life on the plantation and as soon as Coffee "turned his back" his new carriage boy had run away to Houston. Coffee, of course went after him, and returned him to the plantation. No sooner was Dave back than he ran away again. Each time he was returned from Houston, Dave had sold his new work clothes, explaining that "he didn't care a damn for such common field nigger clothing as Master William and Master Tom Jack would give him city clothing." Despite Coffee's reprimands, Dave continued to run away. Coffee, exasperated, had no choice but to tell Ballinger that henceforth he would flog Dave if he persisted in running away.

Dave unfortunately continued running away, and Coffee, totally perplexed, wrote Ballinger "under the circumstances
to please hire him off to someone else. I can no longer tolerate his running away. He sets a bad example for my own Negroes. If ever a man tried to take care of your Negroes I have. But your boy says he will not work on any plantation and will not live out of the city. I regret that I have no choice but to return him. . . ." 37 It seemed that life on the Island with the Ballingers had spoiled Dave and that he would continue to be unruly as long as he was away from that environment.

In another letter to Ballinger, Coffee commented that it was "truly unpleasant" for him to suggest that perhaps Dave was "no longer the same boy you affectionately regarded. My own Negroes told me that Dave boasted about how clever he was --that 'Massa Coffee didn't know nothing about what I been doin' in Houston--won't he be surprised.'" Coffee, concerned for Ballinger's sake, suggested that perhaps "the only solution was for you and Mrs. B. to dispose of him." 38

Despite the planter's advice, Ballinger believed he could redeem Dave from whatever influences may have "caused him to run away & show disrespect to Coffee." 39 Ballinger took the boy into his home again and occasionally hired him out in the city for a few days at a time. Ballinger should have listened to Coffee, for the "cleverness" Dave crowed about was his recently acquired habit of stealing. As time progressed, the question of how to deal with Dave's "stealing
and petty thievery" grew even more perplexing to Ballinger. He noted in his diary "caught Dave stealing again--specie from Hally's chest--third time in two weeks I have caught him. Haven't mentioned it to Hally--she would be most upset--she likes the boy as do the children--don't know what to do--must consider selling him." But as Ballinger remarked, Hally and the children liked Dave, and being unaware of his thievery, they would not hear of selling him. He realized that as far as Dave was concerned, he would have to placate his wife and keep the boy for awhile longer.  

Ballinger frequently hired Dave out to a man named Ferguson "who paid well" for the boy's services. However, Ballinger was unaware that Ferguson was a cohort of the infamous Nicaragua Smith who had pillaged several vacated Galveston homes during the Island's occupation. One day Ballinger noticed that several of his valuables were missing from the locked chest in his bedroom. He was certain that Dave was the thief. In order to catch him Ballinger cleverly hid his specie in several pairs of socks and sewed the open ends together with a "thread so fine that it would not be noticed, but anyone tampering with the specie would be forced to break the thread." A few days later Ballinger discovered that some of his money was missing from the socks he had locked in his trunk. There was no doubt in Ballinger's mind who the culprit was.  

I called him (Dave)
in and charged him," Ballinger wrote in his diary.

At first he denied it. I tied his hands and stripped him, and was about to commence on him when he said he would tell all. He confessed to opening the trunk four times. Took sums of 50 (cents), $2.50, and $2.25 in specie. He used pieces of wire to take off the hinges which served as well as if he had possessed a key.**

Though Dave admitted he had broken into Ballinger's trunk, he nevertheless told Ballinger that he had been an "honest boy" until he had fallen in with Nicaragua Smith and his gang. According to Dave it was Ferguson "who had taught him to pick locks" and commit other acts of thievery. Even though Dave had told "a very heroic narrative" and that he was afraid that Smith would now kill him for his confession, Ballinger realized that he had no choice but to sell Dave.***

Realizing that Ballinger was going to have to sell him, Dave decided to run away. He stole "Tom's pistol, Hally's jewelry, and specie and tried to escape via the cars to Henderson." Apparently Dave's behavior on the train convinced the local sheriff that he was a runaway. Dave was apprehended and returned to Houston.**** But after a brief "rest," Dave "broke out of jail and was on the run for a few days, but was caught and is now going to the penitentiary."*****
Before he sent Dave off to prison however, Ballinger requested that while confined, Dave be taught a trade. After an attempted escape, Dave was placed in the prison foundry where he not only "received the treatment of a regular convict," but learned a skill as well. Ballinger did not want "his boy to have to steal for a living when he returns to society."**

Ballinger did not see Dave again until 1867. In that year he ran across his ex-slave in Houston--Dave's favorite haunt. However, Dave, unlike many freedmen, was no vagrant, wandering Houston's streets searching for work. Dave was employed as a blacksmith's apprentice, a skill he had learned while confined at Huntsville. Ballinger was pleased that Dave was doing well and that his earlier ministrations had helped in Dave's reformation. After seeing Dave, Ballinger noted in his diary that though he had "with grave reluctance and sadness sent Dave to the penitentiary," he could now feel assured that he "had made the right decision--Dave looked content--Hally was pleased when she heard the news."**

Ballinger's genteel attitudes and solicitous gestures toward Galveston's slaves were the responses of a humane man to immediate circumstances. His actions implied no indictment of slavery itself as a legal or ethical system. Though Ballinger was a compassionate and generous master, never physically punishing any of his own slaves, he could
empathize with those slave owners who found it necessary as a last resort. Ballinger’s experience with Dave had almost pushed him to the point of having to use physical coercion.

The majority of Galveston’s slave owners were humane men who took great pride that “their Negroes” were the envy of most mainland planters. They attributed their slaves’ tractability to their enlightened treatment and exhorted their interior brethren to adopt “the Galveston approach.” Thus it was only fitting that a Galveston slaveowner such as Ballinger would disapprove of the use of the whip and would chastise those owners who used it regularly.

Though Ballinger benignly treated his slaves with an unusual degree of respect, there was never a moment when he would admit that slavery was morally or ethically wrong. Though at times he privately conceded that he had personal or ideological reservations about the institution, he was steadfast in his commitment to protect it. To Ballinger, slavery was the cornerstone of Southern society, essential not only to his section’s prosperity but stability as well.

On the eve of secession, Ballinger confessed that:

Slavery has its evils & I am not prepared to say that I consider the best social state of slavery preferable to the best social state of free institutions--But it has also its blessings--its "ennobling" influences to use Mr. Mason's well considered expression on the White case--& it is far better for the slave. It is in
fact the only relation that can exist where the African is in any considerable number, and it seems to me if the hand of Providence be visible in anything in this world it is in the American slavery—necessary I believe, in the first place to the development of this country—"elevating" to the African race & promising their redemption hereafter.

Ballinger's roseate perception of slavery probably resulted from his exposure to the interesting manifestations the institution assumed on the island. As one study has shown, Galveston's fifteen-hundred slaves enjoyed a privileged existence not shared by their mainland counterparts. The majority of the city's slaves were employed in the households of merchants and professional men who often competed with one another to maintain "their Negroes" in a style befitting their master's status. Since Galvestonians frowned upon conspicuous consumption, the elite indulged their acquisitiveness by pampering their slaves with all manner of cast-off finery. On Sundays and holidays Galveston's black community displayed their owner's frippery with such flair that the spirit resembled a Mardi Gras celebration. James A. Freemantle, an Englishman visiting the Island in 1863, could not get over seeing "innumerable Negroes and Negresses parading about the streets in the most outrageously grand costumes—silks, satins, crinolines, hats with feathers, lace mantles, &c., forming an absurd contrast.
to the simple dresses of their mistresses. Many were driving about in their master's carriages, or riding horses which are often lent to them on Sunday afternoons. All seemed intensely happy and satisfied with themselves."

Ballinger's conception of slavery was a result of his daily subjection to this unusual group of slaves, whose theatrical image of the white man's ways reaffirmed his faith in the "civilizing" influences of the system.

Ballinger's identification with the slaveholding classes cannot be explained in purely economic terms or by his personal and professional relationship with the local gentry. Though he shared many of the same concerns of Texas planters, Ballinger, even more than most of the squirearchy, defended Southern paternalism to the degree that he advocated the arming of the slaves for military service during the Civil War. Ballinger maintained that such a drastic measure was essential if the South hoped to stave off a humiliating military defeat and eventual Northern subjugation. Perhaps more important, Ballinger believed that such action would dramatically demonstrate the South's sublime trust in the "ennobling" effects of their peculiar institution. As Ballinger observed in a letter to fellow Confederate and friend Guy M. Bryan, there was "no sounder and more resolute way for us to prove to the civilized world the ennobling and redemptive nature of Southern slavery. . . . By putting our
Negroes in uniform—with muskets in their hands—we can silence forever those who have condemned our institutions as vile. We must show unquestionable certainty that our institutions are worth preserving by employing even the most extreme measures..."**

As early as August, 1863, Ballinger urged his proposal upon Confederate officials. In letters, editorials, and public addresses, Ballinger pleaded to "let the slaves be equipped with muskets," and send them "to the battlefields to defend a way of life that is as beneficial for them as it is for us."**

Although Confederate authorities rejected the idea as too dangerous, Ballinger agitated for black troops down to the closing days of the war. In his final editorial plea of March 29, 1865, Ballinger told his readers that "We have blundered in this matter. If slavery is what we believe it to be—the best form of society—it is not only fitted for peace, but for the extreme exigencies of war. It is capable of fighting for the defence of society, and not alone for its destruction. ... We have not shown sufficient faith and trust in the institution."**

Despite his commitment to slavery, Ballinger never became a secessionist in his prewar politics. True to form he refused to publicly express any opinion regarding the mounting crisis in North-South relations. Privately,
however, Ballinger contended that sectionalism was a
"constitutional problem, to be resolved within the framework
of the existing Union."  

Ballinger's belief in the Constitution and its "inherent
quality to bind men's differences" in a forum in which
meaningful compromise could result, reflected his Whig
upbringing. Reared in a staunchly Whig environment (in both
Kentucky and Texas), Ballinger, despite his apoliticism, was
a rather partisan supporter of the party's main principles.
He was especially attached to the notion that the Whig party,
much more than the Democracy, had always championed national
rather than regional interests, and that the welfare and
preservation of the Union had always been foremost in the
hearts and minds of Whig leaders. Thus, to a devoted Whig
like Ballinger, it was no surprise that by the late 1850's
the Democracy had degenerated into a "cabal of reckless
secessionist demagogues who seek political office so they can
pervert the Constitution for their own selfish interests &
bring about the destruction of the Union."  

Despite his allegiance to the more fundamental tenets of
Whiggery, the party's collapse in the early 1850's,
secession, and the formation of the Confederacy caused
Ballinger to reexamine his faith in Whig doctrine. In an
1863 letter to fellow Unionist George Paschal, Ballinger
reassessed the long-range implications of his exposure to
Whiggish principles. He concluded that the unionism he
extolled had never been his own, but rather the partisan hyperbole of his father's political generation. Now, in the midst of a civil war, Ballinger recognized the uncharacteristic superficiality of his beliefs, and abandoned his traditional perception of the Union. He had, however, been too chagrined to admit it. Ballinger's seven-page-never-completed letter was written as an apologia and reflected a serious effort to analyze the motives that had led him to support the Confederacy.

Education & association made me a Whig--a Unionist--a "Native American" in politics. . . . I was raised up to consider the Whig party the party of gentlemen, the Democrats that of rowdies. . . . I thought Satan not more than the Archfiend of wickedness, the foe of peace, harmony & good order in Heaven, than was John C. Calhoun on earth. . . . For the principle of Union, of order, of stability, I had a sincere, a religious veneration. But for the Government--for any Department of it, such was not the case. I can look back now, and understand that my father and his friends--the Old Whig elite of Kentucky--had the very lowest amount of respect for or confidence in the govt.--not in the original structure, but in its practical workings to secure the blessings for which it was designed. They didn't believe that Jackson, or Van Buren, or Tyler, or Polk, or any Democratic Congress, had any more real respect for or was more bound by the Constitution of the United States in their administration of Govt. than if no such cons. had been in existence. They believed the Supreme Court of the U.S. as much a mere political machine as the President's cabinet. In short, I can reflect now, that in every circumstance which can constitute the
failure of a govt. to secure the ends of its creation, they considered the govt. of the U.S. a Failure. True, they attributed it all to Democratic ascendency— but it is not less true that they considered it an existing fact.40

As sectional tensions mounted, Ballinger became more familiar with the writings of Southern nationalists. His reading selection ranged from the "plantation romances" of William Gilmore Simms to the seminal pro-slavery tracts of George Fitzhugh. Despite their "penchant for exaggeration & inconsistencies," Ballinger was surprised to find himself in agreement with many of their observations, and was particularly amenable to the economic notions of the moderate commercial faction led by such men as William Gregg of South Carolina. Since the late 1830's, Gregg and other Southern capitalists had been agitating for the diversification of the region's economy by championing manufacturing and trade. Southern businessmen believed that as long as their section was bounded by the "degrading shackles of commercial dependence" upon the North, all desires for the creation of an independent Southern nation would remain illusory. Only through economic modification and self-sufficiency could the South ever hope to gain viable independence.41

Though Ballinger questioned "the wisdom" of Gregg's advocacy of "using Negroes for the purpose of labor in Southern mills," he believed in the call for the South to industrialize. As Ballinger noted in his diary, "Mr. Gregg
is accurate in his assessment of the Southern economy. We need to build factories & decrease our dependence upon the North for our finished products."

Ballinger was especially affected by his belated acquaintance with the works of John C. Calhoun, the theoretical and spiritual genius of the Southern nationalist movement. Beginning with his anonymous 1828 publication of *The South Carolina Exposition and Protest*, challenging the legality of the 1828 federal tariff, Calhoun had become the most vitriolic and militant champion of states' rights and Southernism. In his *Exposition* Calhoun refined the theory of state nullification first expounded by Jefferson and Madison during the Sedition Act crisis of the late 1790's. According to Calhoun, the ultimate appeal, in any dispute between federal and state interests, must be directed to a state convention, the same power originally enabling a state to ratify the Constitution. Otherwise, a national majority, controlling both the federal courts and Congress, would have unlimited power. The tyranny of the majority could be curbed only if each state retained the right to nullify, within its own jurisdiction, the national majority's decisions. Calhoun carefully distinguished nullification from secession. He looked for means by which states might exercise a genuine, though limited, sovereignty while remaining within the Union.
After reading the *Exposition*, as well as Calhoun's later treatises—*Disquisition on Government* and *Discourse on the Constitution and Government of the United States*, Ballinger was convinced that the South's interest—those of a minority—were ill protected against the excesses of Northern majority rule. So swayed by Calhoun's polemics, Ballinger believed that "a Constitutional amendment should be put forth immediately to effect Mr. Calhoun's plan of concurrent executives—one of whom will represent the South as a distinct, geographical entity. If this Union is to endure, the South's interests must be guaranteed. We must be granted a stronger voice in the federal system."

The result, Ballinger believed, would enforce compromise & ensure harmony between North and South.

Though Ballinger agreed with the "logic & force" of Calhoun's thesis, he refused to follow the "South Carolina metaphysician" to the end of his argument. "I cannot and will not accept Calhoun's dangerous & illegal approbation of the right of a state to nullify federal law. Nor can I tolerate his destructive advocacy of secession." In Ballinger's view, which he described as "Whiggish even unto federalism," no state had a right to secede from the Union or to interpose its authority to vitiate an act of Congress.

Though Ballinger did not comment on all the literature he read by Southern writers, it was apparent from his remarks
that he was beginning to question his own once implacable sense of nationalism. Ballinger like many Southern Whig expatriates, had been without a formal political identity since the early 1850's when their party had disintegrated. Now, in the midst of an impending national crisis, Ballinger was without the support of a national political association that would help him reclaim his fledgling unionism. Ballinger found himself adrift in a sea of political and emotional uncertainty, causing him unprecedented anguish. All his most cherished assumptions regarding the sanctity of the Union were now being questioned by sentiments he believed himself incapable of possessing. A nascent parochialism was beginning to affect Ballinger, and from his reading he hoped to find affirmation for his own emerging sense of Southernism.

As the critical decade of the 1860's began, Ballinger and other pro-Union Galvestonians began to play a more active role in local politics. Their efforts focused on searching for an honorable compromise upon which secessionists and unionists could agree, thus preserving the Union, and most important, Texas' status in it. Prior to that fateful year, Ballinger and other moderates tended to view the "spectacular" politics and issues of the late 1850's as nothing more than an amusing though disturbing aspect of the passing scene. They dismissed the secessionists as "rabble-
rousers" and "popular agitators engaged in demagoguery for the purpose of obtaining political office." They were confident that Texas was "secure in the Union" and that if called upon to decide the grave issue of secession, "Texans would rise up, and with an indignation never before witnessed, firmly and forever silence the secessionists, and pledge themselves to the preservation of the Union." However, by 1860, it was apparent that the moderates had underestimated the secessionist momentum, and now, the "talk" of the fifties had fastened upon Texas a perilous crisis.

Galvestonian Unionists began to realize the repercussions of their quiescence in April of 1860, when the Democratic State Convention met on the Island and wrote a secessionist platform. Convention delegates resolved that Texas possessed the "full right, as a sovereign State to annul the compact and to resume her former place among the powers of the earth," and that "the people of Texas," ought to cooperate with their sister states to "secure their mutual rights." The platform made it clear that the secessionists now controlled the Texas Democratic Party.

The news of the Democratic platform greatly concerned Ballinger. He began to realize that his detachment from the issues of the 1850's had allowed the secessionist impulse to gain momentum. He believed that had he and other "responsible citizens" come forth and vigorously opposed the
fire-eaters, the present calamity might have been avoided.

At this juncture, Ballinger realized that if the Union was to be saved, he must throw off his customary reserve and take to the hustings locally to help defeat the secessionist movement before it was too late. Beginning in April of 1860, Ballinger's diary entries started to reflect his growing concern about the "impending crisis." On April 14, after reading Stephen Douglas' recent speech on the "Protection of the States From Invasion," Ballinger remarked that he "hadn't any faith in Douglas--never had. I think him a bold, restless, and ambitious Democrat, but I believe he is the truest prominent Democrat north of the Mason-Dixon line on the slavery question, and that the Democrats war on him is supremely foolish and suicidal."71

Ballinger's observation of Douglas reflected the attitude of both Democratic and Whig moderates toward the "Little Giant." Though many moderates like Ballinger had a personal distaste for Douglas, they respected his political acuity and believed him to be the sanest man in the Democratic party. They maintained a fleeting hope that Douglas, a staunch Unionist, could capture his party's presidential nomination and silence the secessionist drive within it. However, they failed to realize that Douglas' pre-eminence within the Democracy had been in eclipse since 1854, when he committed political suicide by promoting the divisive Kansas-Nebraska
Act. The bill destroyed nearly four years of relative sectional peace that Douglas had helped secure with his vigorous support of the Compromise of 1850. Confident that the Compromise had resolved the sectional controversy, Douglas believed the Kansas-Nebraska Act would have little effect upon the fragile sectional coalitions he had rallied to support the accord. In fact, the act led to the rapid dissolution of the shared understandings and political restraints which had held the moderates together in their support of the Compromise. Now, for the first time, antislavery and proslavery moderates began to perceive each other as more dangerous than the extremists. Largely as a result of the Kansas-Nebraska Act, Douglas had been repudiated by 1860 by both the Northern and Southern wings of his party. Thus, there was little chance that Douglas would become the Democratic "savior" of the Union."

In May, 1860, news of the formation of the Constitutional Union Party and the "Bell-Everett ticket" reached Galveston. Though the combination aroused little local enthusiasm, it at least gave Ballinger and other Unionists a ticket they could rally to and use to defeat the secessionist Democrats. The new party picked up even more momentum among the moderates when it was confirmed that the "Black Republican" Lincoln had been nominated for the presidency by his party. In August, after "wasting mornings all summer long in political
discussion which amounted to nothing," Ballinger and his
Unionist compatriots officially organized the Bell and
Everett Club of the Constitutional Union Party. At their
regular weekly meetings, it was decided that the party's
strategy would be "to unite all reasonable men" in both the
North and South on one ticket to defeat Lincoln.
Unfortunately, as Ballinger observed, the party meetings were
"rather slim affairs" at which the members struggled to
display "a good deal of enthusiasm." 23

However, on August 23, 1860, the attendance was large,
for Galvestonians gathered to hear William Pitt Ballinger
deliver one of the most sophisticated and impassioned public
addresses of the antebellum era. Ballinger's "Secession
Speech," not only reflected the moderate, pro-Union sentiment
of his party, but more important, the oration revealed the
innermost thoughts of an individual who had remained
steadfast in his commitment to refrain from partisan politics
for almost a decade. Now, at the eleventh hour, when all
that he believed regarding the Union, its people, and
institutions were about to convulse in a bloody civil war,
Ballinger could no longer restrain himself. He realized that
the time had come to divest himself of his reserve, and
regardless of the personal consequence, to challenge head-on
those seeking to destroy the sanctity of the Union.
Even before Ballinger publicly stated his position, he had concluded that "every disunionist was in fact a revolutionary," and revolution "was the most dangerous of all expedients," to be pursued only after every legal remedy had failed." With that as his premise, Ballinger opened his speech with a huzza for his party's platform: "The Constitution, the Union, and the Enforcement of the Laws." Then with a cogency and thoroughness that had become the hallmarks of his career, Ballinger prepared his case against the secessionists. Ever the consummate attorney, Ballinger presented his defense of the Union in his best courtroom demeanor. "Let us not err here," he warned, "We should be satisfied beyond reasonable doubt that our ills as the Secessionists contend, are owing to the Union --& that they are of such magnitude as to justify Disunion--and that Disunion will be their remedy."*

Ballinger charged that on all three counts the secessionist Democrats had failed to establish their position. Like the "designing reckless politicians" dominating the Republican party, the Southern fire-eaters had "senselessly perpetrated a crisis" for their own selfish designs. Led by such individuals as "Wm. Lowndes Yancey of S.C., and other intemperate men," the secessionists had exaggerated sectional grievances to the point that Southerners believed they "had reached an inevitable crisis in their relations with the North." Ballinger maintained,
however, that such was not the case, that Northerners were
"not so totally unlike us—they are not degenerate from our
national character—nor do they seek—the great mass of them—
to do us fatal mischief and evils."??

Ballinger attributed the extremists’ rise to power to
their ability to "so inflame and madden the public mind" that
the majority of Southerners could not see that the
insurgent’s claims "of oppression were unnecessary, false,
and delusive." By making such assertions, the secessionists
"had demonstrated their little faith in the intelligence,
patriotism, and discriminating justice of the American
people." Their "arrogance" had reached the point where "they
believed they could easily deceive us, and lead us down the
path of disunion and war."??

Ballinger then warned that an "elect few" were now
controlling the course of American democracy and were seeking
to provoke a crisis "that would surely bring ruin upon this
great nation." If they failed at the polls, these "hot
enthusiasts" were resolved "to sever all connection with the
Union, as if allegiance implied no more than an ordinary
business relationship—just the same in legal effect as
between a planter and his commission merchant, between a
client and his lawyer."??

Ballinger then went on to question the ties of race and
history and the emotional attachment all Americans shared
"whenever one thinks of the government of his forefathers--of the great workmanship of Hamilton, Madison, and Washington that we cannot let be destroyed by the likes of Yancey, Jeff Davis, and Barnwell Rhett." Ballinger maintained that subconscious loyalties had created an indestructible bond between Northerners and Southerners that could not be broken by the sophistries of "designing and arrogant politicians." Even if Lincoln were elected, Ballinger was confident the Southern people would not be panicked into revolution by these "artful manipulators." Southerners, mindful of their "national responsibilities" would secure constitutional guarantees for slavery's lasting protection.**

Though his speech was a success--"the Unionists all seemed delighted"--Ballinger worried about the impression he had made. He confided to his diary that he knew that the position he had taken would likely be "injurious" to his practice and "reputation in the community." Despite his forebodings, Ballinger was proud that he had committed himself to the "cause of the Union," and of alerting the Southern people "to the vile chicanery of the Secessionists."**

At the time Ballinger sincerely believed that if secession became a reality, "the Southern people would rise up in a whirlwind of public wrath heretofore unwitnessed in the history of this nation, & repudiate all those who had so
grievously deceived them. . . ."#2 Unfortunately, however, Ballinger had deluded himself as events would soon prove.

Throughout the fall of 1860, Ballinger was optimistic that there was still enough moderate strength in the South to defeat the secessionist Democratic nominee John C. Breckinridge of Kentucky. It was Lincoln's strength that worried him the most because it was still "undetermined." He hoped, however, that his party's candidate, John Bell of Tennessee, could muster enough votes among "responsible citizens" to win the election. Ballinger believed that Bell's election was essential if the Union was to be saved from "the awful spectre of secession and war." By October, however, Ballinger's confidence had dissipated. He was now certain that Lincoln would win, and with a Republican victory would come the dissolution of the Union.

Pennsylvania, Ohio and Indiana have all given large majorities for the Republicans. This makes Lincoln's election almost certain--I am very apprehensive of the consequences. If S.C. goes out of the Union either the Union must be acknowledged so feeble as to be of no value or the effort to coerce her will lead to a gen'l disruption. We have troublous times ahead.#

The news of Lincoln's election reached Galveston on November 8, 1860, producing a "deep sensation in the city--many wise and good men are calling for immediate
dissolution," Ballinger wrote. Within a week, local
insurgents called for an emergency meeting to mobilize public
support for a secession convention. Ballinger remarked in
his diary, "A public meeting is called for tomorrow night by
the disunionists. The plan is to memorialize the Govt. to
assemble the Legislature and for the Leg. to call a
convention to declare Texas out of the Union. All sorts of
efforts are being used to commit men to this cause." **

Ballinger attended the gathering held on November 14 and
found it the largest assemblage of Galvestonians he had ever
seen. The secessionists commanded the meeting from the
start; several moderates made speeches, but as Ballinger
lamented, it was clear from the crowd's responses that
Galvestonians had lost "their sensibilities" and were no
longer "reasonable in their attitudes toward the Union." At
one point, Ballinger pushed toward the platform, intending to
make one final plea for reconciliation, but the congestion of
people and their hostility discouraged him, and he returned
to the crowd.

The largest public meeting was held tonight
I have ever seen . . . the disunionists had
it pretty much their own way--appointing
their own officers, committees, etc. . . .
Conservative speeches were made by Colonel
Love and Parrish, Potter took the half way
ground. I should have spoken, if called
upon, but could not get near the stand.
Those who will act with the disunionists are
a much larger majority than I supposed." **
When Ballinger reached his home that night he could not sleep. He felt ashamed that his courage had failed him at that crucial moment during the public debate. In his diary he wrote:

I cannot disguise from myself the deep apprehension, if not the possible conviction that our Govt. will be overthrown and the Union dissolved. Several of the Southern states will secede. We are going to have hard times and I think it right to prepare for them in advance. Intend to put our establishment on the most rigid economy that we can.

That evening, Ballinger typically turned to his books, finding comfort and affirmation for his premonitions in Burke's *Reflections on the French Revolution*.

In the weeks that followed, Ballinger was overcome by doubts and menacing premonitions that caused him unprecedented anxiety. Three years later, in a letter to fellow Unionist George Paschal, Ballinger reflected upon those disquieting moments before the outbreak of war.

Sadder, gloomier days--of deeper, truer reflection and self-communing than those, I have never passed. The prospect of the destruction of our National Government caused me an anguish that no event has ever done, or I supposed could do. . . . Oh, for one quiet hour for men to have reasoned & felt, truthfully, why are we on the brink of Revolution--to have searched not for the immediate occasions thereof, a remedy, not in patching & healing for the day, or
assuming that force was to decide; but in providing a full sense of security not only for the apprehensions of the minority, then, but for future minorities.

By December, 1860, there was no doubt that Texas would secede. The only question was the manner in which the state would divorce itself from the Union. The majority of Texans were "cooperationists"—Southerners favoring a united withdrawal of the Southern states from the Union, and the establishment of a Confederacy. However, many Texans, including Governor Sam Houston, believed that if secession was inevitable, Texas should restore her separate independence and stand alone against both the Union and the Confederacy. This position became known as the "Lone Star" movement. The crusade not only attracted many Unionists, but also had the support of extremist groups like the Secret Order of the Knights of the Golden Circle, one of the more significant filibustering organizations that emerged in the South in the late 1850's. The "Knights'" purpose, (like Sam Houston's), in promoting the revival of the Lone Star Republic, was to unite secessionists, unionists, and filibusters into a new expansionist movement which had designs on Mexican territory. They planned to conquer Mexico and create a Texas empire from the lands taken from that poor, beleaguered nation. As Sam Houston eloquently observed, Texas had "views of expansion not common to many of her sister States. Although an empire within herself, she feels that there is an empire beyond, essential to her security. She will not be content to have her destiny
clogged. The same spirit of enterprise that founded a
Republic here, will carry her institutions Southward and
Westward."**

By playing upon Texans' pride in their Lone Star heritage
and on Texas' manifest destiny, Houston and others hoped to
prevent Texas from aligning herself with a temporary Southern
Confederacy. The Lone Star faction believed that if the Union
were dissolved and civil war ensued, "Texas could 'tread the
wine press alone.'"***

Under the leadership of Oscar Farish, several Galvestonian
moderates organized their own "Lone Star Association."
Ballinger, however, refused to join the movement because his
"supreme desire" was still the "preservation of the Union" if
it could be saved; if not, he was for "the largest possible
confederacy that could be formed. I am no Lone Star man," he
wrote, "I think it a chimera."**

As the year 1860 moved through its last fateful days,
those who had championed the old Union were resigned to its
approaching demise. "This Govt. will be overthrown and the
Union destroyed," wrote Ballinger. "I hope for the best but I
have strong fears to the contrary, and my best judgment is
that we are doing an unwise and fatal thing. I have no heart
in the cause. Its responsibility and its glory I leave to
others."** Former Unionist and friend Thomas Harrison wrote
Ballinger that "the children of those not in the front of the
present secessionists would be ashamed of their fathers."
Ballinger rather testily remarked that he was "willing to
bide the test of time on that subject."††

Ballinger believed that the disruption of the Union was
"treason to humanity" because every effort had not been
exhausted to avert the disaster. He was most fearful of the
future; these were "evil times." Again he expressed regret
that he had not had the courage at the public meeting on
November 14 to give "strong testimony to my Union
sentiments," and his opposition to "the recklessness by which
we are presently being guided." Ballinger felt himself "more
than ever excommunicated from public affairs and politics,"
and hoped to find the mettle hereafter to continue "to think"
for himself and to "speak frankly, but not factiously." One
had to face the fact that "Secession is Revolution. I submit
to it in preference to civil war, and shall do the part of a
loyal citizen of the state. I put these words here on the
record," he concluded, "for the eyes of my children in after
times."‡‡

As the new year began, Ballinger became convinced that
the time for compromise and conciliation had passed. As the
news of the Southern states' secessionist conventions began
to reach Galveston, one simple fact impressed Ballinger above
all others: a "very large portion of the Southern people so
distrusted & feared the Federal Govt," that they were
"willing to risk the uncertainties of war," rather than submit to the incoming Lincoln administration. Despite Republican promises and guarantees that slavery was safe where it presently existed, Southerners had "lost all confidence that their rights as slaveholders would be protected." As Ballinger searched for the causes of the South's alienation, he soon realized that the crisis was far too complex for simplistic explanations. Ballinger nevertheless was determined to find the origin of American sectionalism.

Ballinger believed that the true cause of the sectional crisis lay in the breakdown of those institutional checks devised by the Founding Fathers to protect slave property. Those guarantees, however, no longer existed. The American people had failed to reform and maintain those safeguards protecting society from the excesses of particularism. Ballinger found it ironic that Americans had from the beginning framed their political and legal system to accommodate the changing interests and attitudes of the people. Yet, Ballinger lamented, none would accept that the Constitution was imperfect, that "it was a mere experiment & never intended to be a fixed and permanent document. . . . Had they (the Founding Fathers) admitted to the people that the document was imperfect and in need of constant revision, perhaps we would not be confronted with the present
crisis."** According to Ballinger, the people's sublime faith in the Constitution was "a superstition & an absurdity," that not only made disunion inevitable, but war a certainty as well, for the South would not be allowed to withdraw peacefully.**

Yet the use of force to maintain the Union affected Ballinger as being repugnant to "the spirit of our Govt." He believed the use of coercion was more fatuous than secession itself. When it was announced in March, 1861, that Texans had overwhelmingly voted in favor of secession, Ballinger resolved to share the fate of his fellow Southerners, even though that might prove to be a condition of "degradation worse than that of any people of the globe":

The union can never be what it is. The silver cord is loosed--the golden bowl is broken. . . . The national govt may be re-established--The political union may be perpetuated--but if so, it will be by force and we will be practically a conquered vassal people--Men may become involved in an error--but in that may be embarked all their manliness--all their honor, all their virtue--and then to be chastised & whipped back crushes out their spirit forever.**

Though he believed that the secession movement was headed for disaster, and that the Southern people would pay a horrible price for their folly, Ballinger nonetheless devoted himself to the cause of Southern independence.
CHAPTER IV -- The War Years

The year leaves me with a heavy heart, and a deep distrust of the future. I am not religious, but still I have an instinctive reliance on a Superior and over-ruling Providence, that out of darkness light will come; and that all may be for the best, but with my weak judgment the signs of the times are evil, and there are great dangers before us.

Diary of William Pitt Ballinger
December 31, 1860.

While Ballinger contemplated his role in the forthcoming crisis, Texas' secession convention had reassembled, and on March 5, 1861, it declared Texas independent of the Union. This had been the principal objective of the fire-eaters since the convention's opening session in January. In February Texans had overwhelmingly approved the state's withdrawal from the Union by a vote of 46,129 to 14,697. So confident were the secessionists that Texans would popularly endorse separation that two weeks before the referendum was held, they sent seven delegates to Montgomery, Alabama, to participate in the proceedings for the formation of the Confederate States of America.¹

After receiving the anticipated popular mandate, the insurgents, now firmly in control of the state government, approved the provisional government of the Confederate States, thus binding Texas' fate with that of the newly formed nation. Despite the rebukes of Governor Sam Houston,
the convention then modified the state constitution to
conform with that of the Confederacy's and called upon state
officials to take an oath of allegiance to the Confederate
States of America on March 15, 1861.²

On Confederacy Day, March 16, 1861, most Texans accepted
the mere declaration of the new nation as confirmation of its
formation. They expected the North to fight, but no one
thought it would be a serious war: the Confederacy would be
sustained. The vast surge of patriotism that engulfed the
state blinded Texans to the fatal flaws of this belief. Few
Texans listened to the counsel of moderate leaders who warned
them not to underestimate the will and determination of the
American North to preserve the Union. Abraham Lincoln's
superb ability to raise the concept of the Union to the
"sublimity of religious mysticism" in the North was not
anticipated, nor was the President's resolve to prosecute the
perpetuation of the nation ruthlessly, regardless of ultimate
cost. The great majority of Southerners, including Texans,
believed their own rhetoric.³

On April 12, 1861, Confederates in South Carolina fired
upon the United States garrison at Fort Sumter. Blood was
shed, and three days later President Lincoln called for
volunteers to preserve the Union. This precipitated war, and
each state and each individual American now had to choose
sides; and only a few were able to remain neutral.
Though Texas had seceded, not all Texans were willing to submit to the new Confederate regime. There were still many Texans with strong Union sentiment who chose not to rally to the Stars and Bars, particularly in north and central-west Texas where pockets of Northern and European immigrants (principally Germans) had settled. The majority of these citizens either resisted allegiance to the Confederacy, or, more commonly, remained neutral. Yet this reaction was hardly universal. Large numbers of prominent merchants, planters, and professional men born in New York, Pennsylvania, and other Northern states were now devoted Rebels, choosing their neighbors over broken or forgotten ties. To these Texans, many of whom were former Unionists, the switching of allegiance was fairly easy: they simply altered their political notions and former associations to conform with their immediate socioeconomic environment. In these instances, social pressures convinced many ex-Unionists that resistance was not only unpopular but could be personally harmful as well.  

However, to many Union expatriates, the transfer of loyalty resulted only after they had endured an agonizing emotional and intellectual readjustment of their traditional perceptions of the nation. To these Confederate converts, ideology rather than peer persuasion was the principal motivation for supporting the separatist cause. Such
was the case for William Pitt Ballinger. Though he had loved the old Union it was no more. To continue to sustain the Union's purpose would be futile, even seditious. The people of Texas had resoundingly demonstrated their disaffection with the Union, and thus it was the duty of all prominent men to support the state. The time had come for Ballinger to reaffirm his own Southernism, which was rapidly crystallizing into a fervid loyalty to the Confederacy. He believed that if the South and Texas were to survive inevitable civil war, it was imperative that they have the steadfast devotion of every citizen. Regardless of personal misgivings concerning the South's future, Ballinger knew he had to display publicly an implacable faith in the cause of Southern nationalism.

To many a former Unionist, support of the South's war effort implied no belated endorsement of the principle of state rights. Even before the firing on Fort Sumter Ballinger had declared that "If the Union must be broken up," he was for "the largest confederacy that can be formed." Throughout the war Ballinger remained a loyal Confederate, ready to defend the Richmond authorities against the constant encroachments of local politicians.

Ballinger believed that popular support for the Confederate government was not only militarily imperative if the South hoped to win the war but was also essential to maintain Southern morale and unanimity of purpose. In the
antebellum years Ballinger had witnessed the divisive effects of Southern provincialism that left the South backward and dependent. Continued attachment to such sentiments would be disastrous for the South, confronted as it was by the exigencies of war. Southerners "had no choice," Ballinger maintained, but to divest themselves of their "preference for their individual states." He believed that if Southern particularism rather than nationalism prevailed, then "the defeat and disgrace of the Southern people" were inevitable. Only by "giving all that each of us must give to the cause for independence," and by placing "complete trust in the wisdom of the men we have chosen to govern us," Ballinger concluded, could the Confederacy survive.

Ballinger was introduced early to the Confederate high command and to the logistical problems hampering their strategy from the beginning. In late July 1861 Ballinger, accompanied by fellow Texans Henry Potter, William Ochiltree, and John Sydnor, undertook a special mission to Richmond: "bearing a requisition" from General Earl Van Dorn, Ballinger had been commissioned "to get 6 10" Columbiads and 6/32 pounders & their equipments (and) projectiles" for the defense of Galveston from certain Union attacks." He and his companions arrived in Richmond on August 4 and reported immediately to the Confederate War Office. Although Secretary LeRoy Pope Walker seemed "polite," he did not
impress Ballinger "favorably as to capacity for his position" and "did not understand and wd. be technical." After three days of vexing delays at the War Department Ballinger was finally permitted to obtain the guns from the Ordnance Bureau. The Bureau was under the direction of the "pleasant and affable" Josiah Gorgas, whom Ballinger believed to be "the most capable & sincere" member of the Davis Administration. Secretary Walker also promised Ballinger an engineer to help prepare Galveston’s defenses, and from Secretary of the Navy, Stephen Mallory, he was assured "a good naval officer and several gunners."

In spite of their assurances, Ballinger’s frustration at continuous "paper shuffling" by Confederate officials was compounded by the fact that the guns he received were of a smaller caliber than those he had requested. As Ballinger remarked, "They put it in our heads to get some rifled guns which are not nearly as good as 10" guns." In addition, Ballinger could only get half his order filled in Richmond. He had to obtain the thirty-two pounders from the arsenal at Baton Rouge, along with the gun carriages, "which also must be made in New Orleans--and being a work of some difficulty will detain us there at least two weeks."

Ballinger received "4 10" Columbiads and 2 8" rifled guns and our shot and shell" on August 15, and he made preparations immediately for the return to Galveston."
However, Ballinger was dismayed to find that the bureaucratic bumblings of Confederate officials were minor problems compared to the technological hazards of the homeward trip. Despite military guarantees that his cargo would be shipped straight through to New Orleans, it took almost a week to transport the guns by rail from Richmond to Bristol on the Virginia-Tennessee border. Engines had a way of disappearing from lonely sidings without making scheduled connections; and Ballinger heard numerous reports of derailments and collisions during daylight runs. Exhausted from worry that the cannon would be either lost or destroyed, Ballinger finally reached New Orleans on September 1, 1861, unable to believe his good fortune to find his cargo still intact. The journey from Bristol to New Orleans, normally a three-day trip, had consumed twelve days and concluded the rail portion of his return, for no lines ran west to the Texas border.  

Ballinger had witnessed three derailments and two collisions, the worst catastrophe being a derailment just outside Knoxville, Tennessee. "The engine and all the cars ran off the tracks. It was reported that most of the supplies were destroyed & many of the soldiers were seriously injured and a good number have died. I am told it will take several days before a freight train can come up. The agent tells me there will be two soldiers trains here soon & that my guns will go down on them."
Relieved that his cannon had made it to New Orleans, Ballinger was confident that their transport the rest of the way would go smoother. However, he was soon disappointed. Once again in New Orleans he experienced the bureaucratic snarls that seemed endemic throughout the Confederate system. This time Ballinger had difficulty persuading the quartermaster in charge to allow him to move his cargo on. After enduring another week's delay Ballinger was allowed to continue, but only after he had exchanged "harsh words and serious talk with the Qu'Mr to pay attention to the urgency of transporting our guns." 

It was September, and the rainy season was fast setting in. From the beginning of his mission Ballinger had hoped to have his cannon safely in Galveston by the fall, avoiding the torrential downpours that made the roads from New Orleans to the Texas border impassable quagmires. But now, due to administrative incompetence, he had to contend with what became the most serious obstacle of his entire mission as the weather could easily reduce all his efforts to a complete fiasco.

To add to his frustration, the gun carriages, unavailable in Richmond, were not to be procured in New Orleans either. Ballinger could not delay the delivery of his cannon by the several additional weeks required to wait for New Orleans manufacturers to complete the carriages. At first he opted
for sending the guns by water, but blockading Union gunboats ruled out that possibility. In desperation, he resolved to push on overland, taking part of the material with him in wagons and leaving his fellow agent Henry Potter in New Orleans to follow with the rest as soon as the carriages were ready.17

The drive from New Orleans to Alexandria went smoothly, but from Alexandria to the Sabine River he faced increasing difficulties as he tried to cross the marshy bayou country of southwestern Louisiana. The predicted torrential downpours slowed his progress from day to day, but Ballinger persevered, managing to reach his destination—Niblett’s Bluff on the Sabine River—on October 3, 1861.20

Ballinger probably would have never made it to that point had it not been for the help he received all along the way from the local population. In town after town the people turned out to help. Assistance ranged from “pulling oxen out of the mud” to providing “Negro teamsters to drive our wagons.”21

In the small Cajun hamlet of Calcasieu the citizens helped Ballinger construct a makeshift bridge across a neighboring creek. As Ballinger remarked upon the bridge’s completion, “a good day’s work was gratuitously done by the people. I bought liquor and treated all.”22

While Ballinger proceeded successfully, his compatriot Potter had fared less well, sending word to Ballinger on
October 10 that his cannon were "bogged down--chains all broken & unable to get further--& he is utterly hopeless of getting thro. This is horrible!" Since further land movement was impossible, Ballinger had to appeal to military authorities in Galveston for men and transport to convey the guns down river on the last lap of what was beginning to seem an interminable ordeal.

At this juncture Ballinger decided to send Potter on to Galveston, leaving to himself the responsibility of transporting Potter's guns the rest of the way. Potter was to report their situation to the new Confederate commander of Texas, Paul O. Hebert, who had replaced Van Dorn. Meanwhile with the help of "loyal Louisianans" Ballinger managed to get Potter's cargo to Niblett's Bluff, and there he awaited help to "either cut out the river or bring the guns along by main force as may be deemed best by good mechanical men."

What continued to worry Ballinger the most was the incessant rain, which he feared would soon make all land travel impossible. Finally on October 13 help arrived from Galveston. A Major T.S. Moise, quartermaster to General Hebert, headed the rescue mission, and once again Ballinger was unimpressed with this latest representative of Confederate officialdom: "He (Moise) talked freely but wouldn't advise us of what should be done--had no
understanding of our situation—an extremely uninspiring fellow."

According to Moise, Hebert had apparently ordered two Confederate gunboats, the Jeff Davis and Belle Sulphur, to steam up the Sabine and rescue Ballinger and his cannon, transporting the guns by water rather than overland. However, both vessels ran aground about halfway up the river, leaving Ballinger and his cargo still stranded at Niblett's Bluff. Ballinger, now "extremely distressed," realized that if he hoped to see his guns delivered to Galveston, he would have to transport them himself by boat. He had no alternative: what few roads existed had now become impassable bogs. He also concluded that it would be some time before any vessels would successfully make it up the Sabine to rescue him. Ballinger thus decided that he would build his own flatboats there on the bluff to carry the guns down river.

To supervise the barge's construction, Ballinger contracted with a local carpenter named Wintz who had been "engaged in Railroad building &c for years. I employed him to construct two or three boats & test them." As Wintz began building the boats, Ballinger became less anxious, believing he would be able to "bring everything through yet. Have much confidence in Wintz. Seems to be a practical energetic man with strong self-reliance. I shall
test him thoroughly." Finally on October 22 Wintz completed the transports, and after successfully testing their durability, Ballinger loaded his guns on them. Though one of the Confederate officials from Galveston "questioned the boats length," Ballinger refused to let one more bureaucrat delay him. Ballinger brusquely informed the Confederate agent Haviland that "the guns were going aboard the boats," and that he would "not tolerate any further delay." Apparently Ballinger convinced Haviland that the boats "were sufficient for transport," for on October 23 Ballinger watched his cannon float down the Sabine on their way to Galveston. That same day Ballinger boarded the Jeff Davis, which had finally made its way to Niblett's Bluff. Ballinger remained on the Jeff Davis until it reached Galveston on October 24 at four o'clock in the morning.

Three days later Ballinger's cargo arrived. All six cannon as well as their shells and shot were completely intact; Ballinger was relieved. In a letter to his brother-in-law Tom Jack, who had recently enlisted in the Confederate army as "a private in John Wharton's Co.," Ballinger told of his ordeal and how pleased he was that his cannon had made it through.
While I waited at Niblett's Bluff for word from Potter, I doubted I would get the guns safely to Galveston. Since leaving N.O. I had feelings of impending disaster—the weather was most troublesome—rain never ceased & the mud bogged our wagons down. . . . Now that I am safely home, I am satisfied with our effort & that all went thro well. . . . When the guns were taken off the boats, many of our citizens were there & shouts of "Hurray" went up. I am afraid we will need the use of the guns soon.  

Unfortunately, as will be seen, Ballinger's valiant effort to secure the defense of his city was never effectively appreciated by the Confederate command in Texas. Though Ballinger overcame extraordinary logistical and bureaucratic obstacles while transporting his guns, his experience confirmed what he had suspected from the beginning: the Confederacy's economic and technological disadvantages were so great that a Union victory was almost a certainty.

Our supplies I fear will prove our real difficulty, the Nos. of the enemy are so superior—their advantages of every kind so much greater that if their endurance will only continue it would seem that they must crush us by their greater bulk.

On a later occasion Ballinger observed that unlike Napoleon who could not bring the English "body to body," the North, "with their facilities by water and railroad, are able to do this—and I cannot but fear for the result."
More disturbing to Ballinger than the South's industrial impotency was the woeful lack of administrative expertise among most of the Confederate officials he encountered. He found the bureaucracy to be not only haphazardly structured but alarmingly inefficient as well, causing endless paper shuffling, delays, and broken promises. The war would tax the Southern economy beyond all reasonable limits, and the Confederate government could ill afford to waste what few human and natural resources it had. To lose essential material and men due to mismanagement was tragically debilitating and raised doubts in Ballinger's mind whether the Confederacy could endure the Union onslaught. He concluded that only with "the more productive and careful use of our men and supplies can we hope to stave off defeat by the U.S. If we continue to recklessly squander the few precious facilities for war we have, then our defeat & subjugation is inevitable."34

Despite his unfavorable assessment of the Confederate high command, Ballinger kept his qualms to himself, reasoning that only the most single-minded collective effort could save the South from defeat. Through the worst days of the war, he never wavered in his public support of Confederate policies. Like many of his compatriots, Ballinger believed the South's struggle for independence was fundamentally the same political conflict his ancestors had fought in 1776 against
the tyranny of the British Empire. Only the players had changed by 1861. This time it was Abraham Lincoln and his Black Republicans who were conspiring to destroy the essentials of Southern life. Similar problems called for similar solutions—secession and independence—justified by the Lockean theory of revolution. 

In his quest for historical validation of the South's struggle to free itself from Northern oppression, Ballinger found encouragement in the idea that Southerners were fighting a sort of "popular front" war of "national liberation." From his reading he was inspired by the various wars of independence that occurred in Europe and elsewhere in the aftermath of Napoleon. Ballinger was especially heartened by the Greek patriots of the 1820's and their successful struggle for national self-determination against the overwhelming forces of the Ottoman Empire.

But despite this constant display of resolute public support for the Confederacy, Ballinger had moments when his enthusiasm was less than sanguine. He often privately criticized the Richmond government's conduct of the war and accused both local and national authorities of being "dilatory" or "neglectful" of their responsibilities and of appointing individuals who were "uninspiring" and "unqualified as to capacity for their positions." Ballinger became particularly exercised when his rabid
secessionist relatives and friends would accuse him of being a Unionist because he had the "audacity" to point out the Confederacy's many shortcomings. After a rather heated discussion one evening with his brothers-in-law, Tom Jack and Guy Bryan, both of whom he reproached for being "naive and petulant," Ballinger remarked in his diary that he had told "the bold & restless young lions" that "secession had been unnecessary and revolutionary, and that it was a knell to Republican institutions--and it did not promise stability, security, or prosperity to the South. I mourn bitterly the day that ever secession was resolved upon. Events have proved not its wisdom, but the full measure of evils. . ."40 Though Ballinger was angered by "the wild talk" of his kin and that he had had "to deal with them in the strictest candor," he could not bring himself to sever their relationship. He was their mentor and "loved them deeply. I think they are noble fellows, and perhaps the most gifted in our family."41

Ballinger was also surprisingly interested in what Sam Houston had to say about the war. Though Ballinger disagreed with Houston's "Democratic principles," he had always admired and respected the "old General" and "his sincere devotion to the Union and the people of Texas."42 Like Ballinger, Houston was less than laudatory in his appraisals of Confederate policies and bureaucrats, and he was especially
critical of the South's military leadership. In public interviews which he gave from his home in Huntsville, Houston assailed the Confederate high command, finding fault with practically every one of its commanders. Despite the public scorn he received for his candid assessments, Houston, according to Ballinger, seemed "determined to show the Southern people" that "secession had been folly all along and that our forces are not the equal and never have been, of the U.S." As far as Southern generals were concerned, Houston believed that:

Pillow and Price are our best generals. He has a good opinion of Gen'l Lee who has yet had no chance. He takes a gloomy view of affairs--says Johnston, in this case A.S. Johnston has no moral firmness, no strategy or enterprise, and is nearly always influenced by others, etc.--a good mechanical soldier only. . . .

In another interview Houston apparently declared that:

(Southern) misfortunes all come from bad generalship. Dislikes Davis extremely. Says he is a man of respectable abilities--but controlled by his passions--selfish, arbitrary, jealous, petulant, vindictive, and oppressive. Says Johnston has all the high qualities of a gentleman but not one of a general. Couldn't really fathom what the old fellow would like to be at. . .
With his romantic spirit and earlier elan for military adventure, one might have expected Ballinger to enlist in the Confederate army. However, he chose to serve his country behind the lines in a less conspicuous capacity. Since he announced at the beginning of hostilities that he would "leave the glory to others," Ballinger decided that he would serve the Confederacy less dramatically by accepting an appointment by the Confederate District Court for Galveston and Houston as receiver of alien enemy property in October, 1861."

Ballinger's position was an important one, although its occupants were likely to become rather unpopular. Two months before Ballinger received his commission the Confederate Congress had passed a sequestration act which called for the confiscation of all enemy-held property in the South. The measure had apparently been under consideration by the Confederate government for quite some time, but the passage of similar legislation by the United States Congress a month earlier (July, 1861), enabled Southern lawmakers to justify their bill as an act of reprisal. According to Confederate authorities the proposal was adopted to "indemnify our own citizens for their losses, and restrain the wanton excess of our enemies." Proceeds from the sale of expropriated property were to be collected in a special Treasury fund,
which officials believed would eventually total $250 million.47

Enforcement of the decree centered in the Galveston courts, whose judges were empowered to appoint receivers to search out and confiscate all locally held enemy assets. The law required all citizens to report such property, and if they failed to comply, they could be fined and imprisoned. Receivers had at their disposal a variety of legal controls by which they could obtain additional information regarding alien holdings. Two of the more common methods employed by receivers were grand jury probes and the "encouragement" of private denunciations. After the appropriate information was obtained, the receivers could close in. They could serve writs of garnishment on uncooperative suspects, ex parte sequestration judgments, and the sale by court order of perishable goods and other impounded property.48

Though Ballinger was initially apprehensive about his new position, believing there would "be odium attached to the office," he could not resist the annual salary of $5,000—"A Godsend during war times."49 Ballinger's receivership encompassed the counties of Galveston, Liberty, Harris, and Chambers. In an announcement he prepared the day he took his oath of office—October 28, 1861—Ballinger reminded all Texans of their "duties under the law" and pledged that he would "enforce its provisions with justice and moderation."50
Ballinger was particularly concerned about the reaction of Texas businessmen to the law, and being from Galveston, he was especially wary of the responses of the powerful mercantile interests there. In his letter, however, Ballinger reassured all merchants that "all disclosures of personal business transactions, regardless of their nature and locale, would be kept in the strictest confidence by the receiving official."

Ballinger quickly overcame his initial trepidation as local Texans responded favorably to his call for cooperation. Within a few weeks all sorts of items began pouring in upon him, ranging from cattle and slaves to railroad iron, sawmill machinery, and even a fire engine, the Lone Star, "complete with 25 ft. of hose, 30 ft. of ladder, 6 axes &c, and a variety of other items which I am confident would be useful in such emergencies." By December 1861 Ballinger found it necessary to rent "a large warehouse in Houston" for the storage and sale of these acquisitions, most of which were either auctioned off—"fetching good prices"—or were "donated" to the Confederate cause.

From Ballinger's account it seemed that money would soon be pouring into Confederate coffers at a steady rate. However, such was not to be the case. Initially Ballinger benefited from the patriotic euphoria that swept across the South in the first year of the war. Such sentiment generated
a desire to contribute to the cause, enabling Ballinger and other Confederate receivers to take in substantial amounts of alien property. However, rarely did the confiscated items "fetch a good price" at auction. The proceeds received at public sales seldom totaled the anticipated worth of the merchandise, thus leaving many receivers short even of operating funds. As the war progressed Texans began to lose their original fervor for the cause and began to either "run out" of property to report or decided to keep it for themselves. Hoarding became endemic throughout the Confederacy, and Texas was no exception. In fact, Texans, cut off by 1863 from the rest of the Confederacy, were probably more inclined to violate the law because their isolation caused greater privations.

By 1863 Ballinger's earlier confidence began to give way to increasing pessimism about his job. He began to complain about Texans' "lack of cooperation" and their "selfishness which will lead to more drastic measures to enforce the law," and some even had the "effrontery to publicly denounce the Sequestration Laws & impugn my authority as to its failure." As receipts began to fall off, Ballinger became even more distressed, wondering whether there "wd. be enough collected to pay the fee on the Houston warehouse."

The most promising source of revenue for the Confederacy came from another direction: confiscation of the substantial
indebtedness owed by Southerners to Northern "alien enemies." However, Confederate authorities had to be cautious in their approach toward this objective. Southern businessmen, already antagonized by the general Sequestration Act, were unwilling to sanction any further directives aimed at the confiscation of their property or financial resources. Confederate administrators, increasingly desperate for revenue, had no choice but to try to enforce the measure regardless of public ire. No sooner was the announcement made of the law's enactment than the predicted outcries were heard. Receivers in particular were aware of the business communities' denunciations, and as Ballinger soon discovered, most merchants refused even to report their Northern debts. "A large no. of the city's (Galveston) population is opposed & genly distrustful of the recent laws. Talked to Mills, Hewitt, McMahen Rice and McKinney—all have outstanding debts in U.S.—and say they will not acknowledge the debts. Fearful such attitudes will affect entire state."  

Although the Sequestration Act was designed to include the collection of pre-war debts, Confederate congressmen did not contemplate the popular opposition their measure would receive. So overwhelming was merchant protest that an official change of policy was enacted on February 15, 1862. The amended law exempted from collection the principal on
debts owed to alien enemies until "one year after peace should be secured." This moratorium on the principal remained in effect until the end of the war, leaving only interest payments to be made in the meantime. Though the new policy cut significantly into anticipated revenue, it made Confederate regulations more compatible with the more liberal laws enacted by the individual states.\footnote{44} Prior to the passage of the new decree, many district judges and receivers had refused to enforce the provision of the original law, fearing their actions would only further antagonize an already hostile business community. Though Ballinger did not fall into this category, his friend Judge William Peter Hill did. According to Ballinger, Hill had told Galveston merchants long before the new law had been passed that "he would require only the payment of interest on confiscated debts." Hill's leniency did not stop there; he also "opposed the sale of most sequestered property except for an occasional item or two that fetched no more than 1/2 of the worth of the merchandise."\footnote{45}

To Ballinger such a display of moderation was annoying. He could not understand how an individual like Hill, who had sworn to uphold the law in its entirety, could now be so cavalier in his attitude. The Confederacy was desperate for funds, and for officials to undermine the government's efforts to raise badly needed revenue was inexcusable.
Moreover, Ballinger believed that the majority of his fellow receivers had become so concerned with the possibility of alienating local businessmen that they were "fearful of even reporting confiscated enemy property. The law has become such an odium in the eyes of our leading merchants that it will not be enforced." Thus, to avoid the wrath of the local business community, it was easier for receivers and judges to simply "bend" the law a bit to placate them.

By the fall of 1863 Ballinger had become so disillusioned with the entire confiscation program that he believed a massive revamping was in order.

My opinion has always been that the Sequestration laws were impolitic. Practically, they will do us no good in carrying on the war. The funds derived are a mere drop in the bucket. If, by peace, the northern merchants could recover their debts no doubt they wd. be for peace, & it wd. be a most powerful & probably controlling influence--Now the merchants look to the subjugation of the South as their only chance of recovering their debts--If there were no such laws, they wd. look to peace as re-establishing their rights. The money influence on Legislation is notorious at the North. A line of steamships, or Railroad can carry any project. What, then, cd. not the mercantile influence--interested in the hundreds of millions of Southern debt accomplish?*

Much to Ballinger's disappointment, Northern businessmen had already been alienated, and no degree of revision could
remedy the laws' effects in that quarter. Yet the laws had to be enforced if the Confederacy was to be sustained. But how to accomplish that without continually antagonizing Southern businessmen? On this issue Ballinger had a very specific and clear resolve. He believed that immediate payment out of Sequestration funds "of all debts owed by our enemies to Confederate citizens," as well the sale of all sequestered property, to Southerners, "would make more people interested in the success of our government. This wd. increase the liberality of many & make Patriots, otherwise indifferent."**

Ballinger's proposals were incorporated into a bill that Texas representative Peter W. Gray tried to push through the Confederate Congress in 1863. Though Gray was unsuccessful, a majority of the House Judiciary Committee approved the measure.*** Richmond's rejection, however, was offset by a modest victory on the homefront. Due to Ballinger's constant agitation, Judge Hill finally agreed in October 1863 to allow the sale of confiscated property whenever his receivers believed it essential.****

Historians have had difficulty assessing the total amount of revenue collected under the sequestration laws. Although reliable figures only cover about half the duration of the act from start to finish, the program with all its flaws probably brought in well over $12 million.** Ballinger
estimated that by June 1864, "at least $2 million" had passed through his receivership. Ballinger's figure not only included his own collections but those of the other four receivers from the Eastern District of Texas as well. Since he acted as depository for the entire district, he was responsible for keeping the accounts as accurate as possible. The scattered receipts found among his papers testified to the substantial sums he transferred irregularly to James Sorley, chief depositor for the state of Texas. Sorley continued to receive payment from Ballinger until early May 1865.47

During the war years Ballinger's legal practice was largely confined to his duties as receiver; his official position providing by far the lion's share of his income. In addition to his regular salary, he received an annual commission of several hundred dollars for his responsibilities as depository. Though Ballinger's income seemed impressive on paper, the constant devaluation of Confederate currency compounded by increasing family expenses made most of his gains deceptive.48 Though his duties as receiver consumed most of his energy, Ballinger did find time to devote to his private practice. The majority of his cases involved war-related issues ranging from the defense of clients accused of desertion, mutiny, and assaulting a superior officer to securing the discharge of a client from
military service. In October 1864 he defended a family friend who was facing a court-martial,\textsuperscript{74} while in March 1865 he successfully quashed an indictment returned against a client charged with receiving bribes while serving as a military enrolling officer.\textsuperscript{75} Earlier in 1865 he had argued on behalf of two brothers entitled to be discharged from service under a Confederate statute exempting slaveholders owning more than 20 Negroes from military duty.\textsuperscript{76} An occasional civil problem also came his way. On December 24, 1864, he was retained by an R.C. Kyle who sought Ballinger's counsel regarding the estate of a late Confederate colonel,\textsuperscript{77} and on March 3, 1865, he received $400 for mediating a land dispute.\textsuperscript{78}

In addition to these professional duties and government service, Ballinger found time to write for the press. Journalism had always been appealing, and privately he agreed with his friends who had told him that by becoming a lawyer he had "spoiled a good editor."\textsuperscript{79} Before the war he had written occasional editorials on political or cultural matters for both the Galveston News and the Civilian. However, no sooner would he submit his feature than he was visited by feelings of guilt for having strayed beyond the confines of legal professionalism. He would feel especially contrite if his piece was interpreted as political commentary from which he had vowed to refrain. Though Ballinger had
made his pledge as early as 1854, he knew his penchant for writing must eventually force him to abandon his abstention from political criticism. The wartime crisis provided the perfect rationalization, enabling Ballinger finally to reconcile private affinity with public duty. As a community leader devoted to the security and welfare of the commonweal he found the role of propagandist a complement to his sense of civic responsibility. In the early years of the war he wrote without pay for both the Galveston News and the Houston Telegraph. However, by the fall of 1864, Ballinger's financial straits forced him into a less disinterested arrangement. On September 29, Edward H. Cushing, the Telegraph's editor, agreed to pay Ballinger "$12.50 per week in specie for regular editorial contributions."* Ballinger supplied the Houston paper with three editorials each week down to the closing days of the war.

Ballinger focused his propaganda on defending Confederate policy at all levels--from the suspension of the writ of habeas corpus by Congress to the imposition of unpopular economic sanctions by local military commanders. However, much to Ballinger's dismay, not everyone was swayed by his editorials to uphold Confederate policies. Local politicians, led by Governor Pendleton Murrah, were especially obstreperous and annoying to Ballinger, both from his
standpoint as a propagandist and his position of Confederate authority. Murrah, a state-rights advocate elected in 1863, not only undermined Ballinger’s editorial efforts to raise morale and popular support for the Confederacy, but more important, he openly interfered with the financial and military programs of the Confederacy in Texas as well.**

The Confederacy was structured with strong powers reserved to the states, and Murrah was determined to protect these privileges from usurpation, war or not. Murrah charged that both the people’s rights and those of the state were being violated in the name of the war effort. To a large degree, the governor was correct; the Confederacy, desperately staving off defeat and oblivion, showed increasing disregard for legality. Murrah charged the Richmond government of “national encroachment” upon Texas, and urged Texans to be wary of subsequent Confederate policies designed to further subjugate the state. The two major disagreements between Murrah and Confederate authorities centered around conscription and the cotton trade.***

In 1863 the Confederate government announced what soon became one of its most unpopular initiatives: the induction of state militias and other forms of state troops into its regular armies. No sooner did the announcement of the new mandate reach Texas than its newly elected governor,
Pendleton Murrah, responded. He hurriedly pushed through the state legislature a frontier defense act that exempted all Texans serving against the Indians in western local defense units from regular conscription.  

Murrah's frontier defense act was a classic case of state-federal juxtaposition as Texas interposed its own military laws between its citizens and Confederate law. Murrah's rationale for enacting the defense measure was simple: Richmond authorities could not require Texas to enforce laws that jeopardized the security and welfare of the state or were at variance with the desires of its own citizens. Murrah was a strict constructionist and was determined to defend the Texas position even if it meant the contravention of national sovereignty. Needless to say, Murrah's stand caused great irritation in Richmond, where President Jefferson Davis, beset with a multitude of problems, had little patience for constitutional niceties.  

To further antagonize Confederate officialdom, Murrah claimed a concurrent jurisdiction over all Texas conscripts and refused to turn them over to Confederate authorities for service outside the state. In 1864 General Edmund Kirby-Smith, commander of the Trans-Mississippi Military Department, was in desperate need of men to fight Union movements in Louisiana. He demanded the dispatch of Texas state forces to Louisiana, but Murrah quickly countermanded
Kirby-Smith by ordering the state units not to cross the Sabine River. Murrah equivocated on technicalities until the crisis passed; the Texas forces never did reach the front. At this juncture a bitter showdown seemed imminent. However, luckily for both sides, a confrontation was averted only by a shift in Northern strategy that suddenly transferred the principal theater of war from the Southwest to the East.

The second great irritant Murrah stirred up involved the cotton trade. To raise needed state funds the governor set up his own organization in competition with the Confederate Cotton Bureau for the acquisition of cotton upon whose sale abroad depended the provisioning of Southern forces. Murrah's "state plan" was a response to a new law enacted by the Confederate Congress that organized a new Cotton Bureau at Shreveport, Louisiana. The new bureau was created in reaction to the tightening Federal blockade, which had become almost impregnable by 1863. Since blockade runners were unable to get through, the Confederacy renewed its earlier interest in the Texas border as an outlet for its precious staple.

The bureau, empowered to impress cotton, was to haul bales to Mexico under government supervision, there to be sold for war material only. Needless to say, Texas planters objected to impressment and were even more angry when they
were paid in worthless Confederate bonds for one-half their cotton.**

The flaws of the Confederate system were obvious, especially to Murrah, who set up his own "system." He allowed the Texas Military Board, responsible for the state government's war procurement since its creation in 1862, to go into the "cotton business." The board was empowered to also buy up one-half the production of individual planters for state bonds—but under Murrah's scheme, the board transported all the contracting planter's cotton to Matamoros. There the planter, or other holder, could do with his half as he pleased, selling it for gold or for trade goods. The planter or speculator could make enormous profits at no risk. The state plan soon drove the Confederate Cotton Bureau out of business.**

By 1864 it seemed that Murrah's anti-Richmond policies had succeeded in their purpose of vindicating the cause of state rights. So pleased were many Texans with Murrah's crusade against the "Richmond usurpers" that Confederate nationalists such as Ballinger had difficulty challenging the governor's Lone Star policies. Much to Ballinger's chagrin, Murrah's position had strong support from many of his friends and relatives.

Murrah knew the moment he became governor that his policies would undoubtedly generate public opposition. He
was also aware that Ballinger would probably emerge as his most vociferous critic. No sooner did Murrah assume office than he attempted to obliquely silence his potential carper by cleverly appointing him to a cabinet position. As Ballinger noted in his diary, "in a manner gratifying to my pride the Govr. offered me the office of Secy. of State."

Needless to say, Ballinger was shocked by the offer, and in his diary he rambled at some length in an attempt to disguise not only his astonishment, but his feelings of guilt as well for having recently lambasted the governor in a series of editorials.

... I told him that if I was so situated as to be free to follow my inclination I felt that the office was important and that I could be useful in it in this crisis, and would accept; but I was already employed usefully, and was so situated with reference to persons and matters dependent on me that I could not leave here with propriety. The Gov. was very urgent on the subject--and his language was agreeable on the subject, tho I suppose the matter originates from elsewhere.

Thereafter Ballinger devoted most of his articles to a sustained and often vituperative attack upon the "Governor's policies & attitudes." So successful was Ballinger's assault that by June 1864 he had succeeded in converting both the News and Telegraph into anti-Murrah papers. He also
bombarded Murrah with what he called "frank letters" in which he rather tartly denounced the governor’s course. But despite Ballinger’s personal crusade to vilify Murrah, the governor remained calm and determined to pursue his own initiatives. In his correspondence with Ballinger, Murrah cleverly disarmed his opponent by dissembling his own animosity with bland politeness. In one of his replies Murrah defused Ballinger’s antagonism by praising Ballinger’s "unselfish devotion to the People of Texas" and his "forthright and prudent understanding of the problems presently affecting our State. . . . If all intelligent citizens would deal with equal candor it would be better for the public interest. . . ."

Unable to control Murrah in any other way, the Confederate Congress in February 1864 passed a new decree prohibiting the export of all cotton except under the express direction of the President. Needless to say, Murrah and most Texas planters were outraged at this latest invasion of states’ rights. The Texas governor held a conference with Kirby-Smith in July, and apparently the general impressed upon Murrah Congress’ determination to uphold Confederate control. From July 1864 until the end of the war Murrah abandoned all further attempts to pursue a separate Texas policy and cooperated fully with Confederate authorities."
Though Ballinger publicly defended Richmond policies throughout the war, there were instances when he privately questioned the wisdom and conduct of Confederate administrators. Ballinger was especially disturbed by the decisions of Confederate military authorities in Texas, whom he believed displayed "inferior leadership & planning—if only we could receive a Forrest (Nathan Bedford) or a Johnston (Albert Sydney) here in Texas. Instead we have to contend with men whose strategy is weak while other districts are commanded by men possessing superior knowledge. I pray the enemy does not see this advantage." Perhaps at no other time during the war was Ballinger more distressed by the Texas high command than when it was decided in October 1862, to abandon Galveston to the Yankees as an undefendable outpost. If there was a moment when Ballinger lost his faith in the Confederacy, it was that "black day in our history." 

Even before the Island officially fell, Galvestonians had been expecting a Federal attack. Beginning in early 1862, Union forces began a drive to capture all Confederate Gulf ports. Thus, it would only be logical that New Orleans and Galveston would be the two key targets of the offensive. When New Orleans was captured in April 1862 Galvestonians became even more anxious, knowing that their city was one of the only major ports the Confederacy still retained. The majority of Galvestonians believed that the fortification of
their city was imperative. If the Island fell the Union controlled the entire western Gulf and could easily cut off the Confederacy’s last principal point of contact with the outside world.

Beginning in May 1862 Galvestonian’s worst fears became reality. Yankee gunboats began appearing regularly around the port area, firing a few, taunting rounds, then withdrawing. Little damage was done however, and Confederate shore batteries returned the fire. But as the weeks passed Union gunboat commanders became more daring and their fire upon the harbor more menacing. The captain of one Federal gunboat, the Santee, had the audacity to steam close enough to Confederate forces for them to hear his demand for the city’s surrender. Naturally, the Confederate commander, General Paul O. Hebert, refused and opened fire on the Santee, which took a shot at her bow and quickly retreated.

However, much to the chagrin of Galvestonians, Hebert’s display of bravado against the Santee was to be short-lived. As the weeks passed and increasing numbers of Union gunboats appeared in the bay, Hebert became more apprehensive. It was obvious to Galvestonians and Confederate officials that the Yankees intended to blockade the island, closing off the city’s trade with the outside world. At this juncture Hebert decided to make Houston
rather than Galveston his command stronghold. On June 1, 1862, Hebert placed Galveston under martial law and ordered its inhabitants to vacate the island as quickly as possible. Hard-core Galvestonians, however, led by Ballinger were incensed and refused to comply with Hebert's decree. Ballinger and other loyal Galvestonians remained on the island only to watch their "Queen City" deteriorate under the duress of martial law. As Ballinger had warned Hebert in a letter sent soon after martial law had been declared, ". . . . The measure is wholly unnecessary and will result in the worst conditions imaginable. Most seriously effected by your decision will be the City's poor, who, if not provided for, will become most desperate and inclined to all manners of criminal activity. Robbery & sabotage will become commonplace, and order will only be restored when the people are allowed to return. . . ."

Despite Ballinger's remonstration, Hebert refused to retract his decree. As Ballinger predicted, no sooner did the evacuation begin than the collapse of law and order ensued. As citizens fled to the interior, their homes and businesses were ransacked by bands of brigands terrorizing city streets with impunity. Vandalism and robbery were equally widespread as port riff-raff and other "poor people" joined in the melee. It was even rumored that Confederate officials were secretly supporting the plundering and
encouraging sabotage to keep vital material from falling into enemy hands. To add to the injury, Hebert insisted that the Island City should be razed and its water wells filled with ashes as a gesture of hostility to the Yankees. However, thanks largely to the strenuous protest of Ballinger, Hebert rescinded his order to burn the city. But the damage had been done. The Queen City was dying the slow death of abandonment and desertion and many Galvestonians such as Ballinger blamed Confederate authorities for their city’s demise.

Ballinger was further disheartened when Galveston finally fell to Union forces in October 1862 after months of harassment. To Ballinger the seizure of his beloved city represented one of the most unnecessary and dishonorable Confederate debacles of the entire war. Galveston should never have fallen into enemy hands, but as Ballinger observed on the day of the city’s capture, “For many months there has been a foregone conclusion not to defend the place. Batteries were built and the guns removed, and they are now up here in the streets. I have never approved the policy. I think all ought to have been done that was possible to make good our defense with the material we had. If insufficient—well and good—But not take it for granted that it would be so. With the guns we had the present fleet could have been driven away. A better stand could have been made at
Galveston than anywhere else.\textsuperscript{100}

Ballinger blamed the Confederate high command for the Union occupation of Galveston. He believed their policy for Galveston’s defense had been "vacillating and weak. There was no plan--no decision--Galveston goes dishonored into the hands of the enemy to remain during this war. I feel deeply grieved and humiliated."\textsuperscript{101}

Ballinger’s projection that Galveston would remain in enemy hands for the duration proved somewhat premature. The city’s surrender to an insignificant Federal force unleashed political repercussions in Richmond, where authorities decided to remove Hebert from his Texas command. Apparently, Hebert had been more obsessed with enforcing martial law than fighting Yankees. Hebert’s replacement, General John Bankhead Magruder, seeking to vindicate his military reputation, which had been tarnished in recent campaigns in northern Virginia, decided to retake Galveston. No sooner did he receive his new command than Magruder began his secret operation to reclaim the Queen City.\textsuperscript{102}

First Magruder sequestered two steamboats, the \textit{Neptune} and \textit{Bayou City} and converted them into Confederate "cottonclads" by placing breastworks of cotton bales around their gunwales and decks. On these two vessels Magruder placed about 300 men, veterans who had just returned from campaigns in the West. Supporting the cottonclads were
two smaller ships that Magruder also filled with riflemen. While preparing his "naval" force, Magruder also concentrated a land contingent of about 400 men at Virginia Point on the mainland just across from the island. Magruder's strategy was simple: a joint assault by land and sea.\(^3\)

During the early morning hours of December 31, 1862, Magruder's troops at Virginia Point waded across into Galveston town. At dawn the Confederates attacked and drove the surprised Federal garrison to the north side of the island. Meanwhile the cottonclads steamed in against a flotilla of four Union ships in the harbor—a steamer, brig, gunboat, and transport.\(^3\)

Federal gunfire sank the Neptune as she steamed in, but the Bayou City was able to run in close while its "marines" raked the Union vessels with deadly fire. After a vicious, close-in firefight in which all Union officers were reported killed, the U.S. steamship Harriet Lane surrendered. The brig Westfield trying to maneuver out of the way, ran aground and was scuttled by her crew. The gunboat and transport, realizing they were no match for the cotton- armored Bayou City, fled the scene of battle and were able to escape to the open Gulf. Seeing their only chance of retreat steam into the Gulf, the Yankee garrison on the island decided continued resistance would be futile and surrendered. Magruder took over 300 prisoners and was
commended by President Davis for recovering the Queen City for the Confederacy.\textsuperscript{108}

Needless to say Galvestonians were ecstatic that their city had been liberated. Ballinger was one of the first to applaud Magruder’s "valiant effort to restore the honor of the Confederacy,"\textsuperscript{109} even though he had earlier believed that Galveston had gone "dishonored into the hands of the enemy." But now Ballinger and his fellow Galvestonians had had their "pride and interest in the place rekindled by this most recent display of courage and loyalty."\textsuperscript{109}

Even though the Queen City had been reclaimed and its citizens could now return, it remained vulnerable to Federal attack. Although Magruder augmented the island's fortifications, he was nevertheless unwilling to defend the city with his best troops and artillery. Like his predecessor, Magruder too made Houston rather than Galveston his command center. Thus at any time during the remaining war years a serious Yankee offensive could have easily recaptured the island. Though Galvestonians were pleased to be back in their homes and businesses, they were aware that their city had been relegated to secondary importance by the military.\textsuperscript{109}

The first two years of the war convinced many Galvestonians that they had been abandoned not only by the Confederacy but by Texas mainlanders as well. Though
beleaguered, the Islanders remained loyal to both Texas and the Southern cause. Galvestonians were determined to survive the war and more than ever realized their sustenance depended upon their own initiative. In this situation, led by such individuals as Ballinger, the citizens began to recover their former sociopolitical cohesion that had been shattered by the secession crisis. Though Galveston never regained its antebellum pre-eminence, its citizens were determined to try.137

Galveston's recapture was one of the Confederacy's last victories in the Western theater. Militarily the first two years of the war had gone fairly well for the South, especially in the East where Lee and other Rebel generals had successfully defended Richmond against Union offensives.138 West of the Appalachians, however, the war went better from a Union perspective, but the advances made there were far from decisive. The 1862 campaigns in the West, spearheaded by one of the Union's most aggressive yet still obscure fighting generals, Ulysses S. Grant, forced the Confederacy to surrender significant chunks of territory. The offensives, however, had little effect upon the South's determination and capacity to resist. In fact, the only encouraging news Lincoln received in 1862 was the capture of New Orleans and the subsequent taking of Galveston. The seizure of New Orleans, the South's largest city, closed the Mississippi
River to Southern trade for the rest of the war. This opened the way for the eventual Yankee conquest of the entire Mississippi Valley, splitting the Confederacy in two by cutting off communications between Arkansas, Louisiana, and Texas and the eight rebel states east of the river.¹¹¹

Though the Confederacy had sustained itself in the first two years of the war, by early 1863 its economy was in shambles and its "King Cotton diplomacy" (thanks largely to the Union blockade and Lincoln's saber-rattling) had failed to create European allies.¹¹² Despite great efforts to stimulate manufacturing at home, the Confederacy remained dependent on its vessels’ success in running the Union blockade for its supplies. Perhaps worst was the desperate shortage of manpower. Although both sides resorted to conscription, the South drafted boys as young as 17 and men as old as 50. Even when men were found to put on the grey, it was difficult to feed them as well as the rest of the Southern population because of the increasingly grave shortage of food. The economic strangulation of the Confederacy affected civilians, too, and their suffering sapped troop morale as desertion became endemic.¹¹³

By the summer of 1863 the military initiative had passed to the North. By that time Grant had completed the Union subjugation of the Mississippi Valley with his triumph at Vicksburg; in July the South lost the most decisive battle of
the Eastern theater at Gettysburg. By the spring of 1865 the Union offensives had so weakened the Confederacy that further resistance seemed senseless. The Confederacy was simply collapsing.

Even Texans, far from the bloody battlefields, were aware that the war's climax was fast approaching. Daily it seemed local newspapers had nothing to report but the latest Union victory in the East and the terrible price in loss of property and life Southerners were paying for their independence. "We are over-matched—and not skillfully commanded," Ballinger lamented. "God help us—All looks dark." Despite impending defeat, Ballinger continued to write spirited patriotic editorials. Despite the news of Lee's surrender in early April 1865, Ballinger believed there was still hope for the Confederacy. No sooner had the army of Northern Virginia capitulated than the news of Lincoln's assassination reached the Gulf Coast. Upon hearing the news of Lincoln's assassination, Ballinger, however, declared that he had "never felt a greater sense of exaltation."

Apparently this was the "miracle" he had long hoped for that would save the Confederacy. Ballinger believed that with Lincoln gone Northerners would lose their "present passion for the war, lay down their arms, and return to their homes to mourn the loss of their leader." While the North grieved, the Confederacy would regain its earlier momentum and drive
the "Yankee invaders from the South forever." In what was his most impassioned editorial of the war, Ballinger reflected upon the President's death, inviting readers to share in his perverse joy. Ballinger conceded that Lincoln had not only been a great leader but "a kindly, genial man," as well whose "original disposition was not to do the Southern people any wrong." Yet, according to Ballinger, "once fully embarked in the war," Lincoln allowed "ambition and fanaticism to obtain control of him." Such passion transformed Lincoln into "the grimmest monster history has ever produced." Ballinger maintained that Lincoln then became obsessed with "one great and supreme object--the complete and unrestricted reestablishment of the power of the United States government by the arms of the Northern people, and by the arms of foreign mercenaries from every land, and even by the arms of our own domestic slaves over the people of the Southern states." Ballinger concluded his editorial by calling upon the Southern people to rejoice, to allow themselves to "feel the thrill electric, divine at this sudden fall in his own blood of the chief of our oppressors. . . ."
Whoever would impose the fate of servitude and slavery on these Confederate states, whatever fatal Providence of God shall lay him low, we say, and say it gladly, God's will be done. These are the feelings for which we are ready to stand at His judgment bar. Our prayer to Him, like that of the great French patriot is, "Whoever may perish, may our country be free."

But the time for heroism had passed, and with it the dream of Southern independence. No matter how many emotion-charged broadsides Ballinger wrote, they could no longer sustain the Southern people. Even as he wrote, Confederate armies east of the Mississippi were surrendering, leaving only Westerners under Edmund Kirby-Smith to oppose the Yankees.
CHAPTER V -- Coping With Defeat

I have labored in good faith with untiring & undivided energy and with all the earnestness & intensity of which I was capable to secure self-gov. & freedom to the Southern people from the power of the North. To have effected these—to effect them now, my life w. at any moment have been, it w. now, be laid down freely and gladly—My wife & my children should have been swept from the earth.

Diary of William Pitt Ballinger
May 13, 1865.

As Ballinger contemplated the Confederacy's defeat, he feared that he would soon face many potentially crippling difficulties. His greatest fear was that he would be prosecuted for treason for his activities as Confederate receiver, or at least have to contend with a barrage of civil suits that would ruin him financially. Even if neither of these two possibilities occurred, he was uncertain whether he could secure a presidential pardon which would restore his civil rights. Ballinger was equally concerned whether he would be able to resurrect his profitable antebellum "Northern connection," or whether the strains of war and his position as receiver had alienated those individuals as well. However, over the next nine years Ballinger successfully surmounted or avoided these and other obstacles to both his personal and professional life.
Though the rebuilding of his practice was his principal concern, Ballinger nonetheless found that he could not resist the allure of Reconstruction politics. As a conservative he hoped that his efforts would help protect Texas from the excesses of radicalism. Beginning in late May 1865, with his trip to New Orleans to negotiate Texas' surrender to the victorious Union generals, through the advent and demise of Radical rule, Ballinger looked for ways to overcome the trauma of Reconstruction. Even if he was not always successful in his political aims, either visibly or surreptitiously he helped Texas to regain "home rule." Above all else perhaps, Ballinger's Reconstruction activities demonstrated his almost uncanny ability to cope with the shock of defeat.

"Not with a bang but a whimper," wrote the poet T.S. Eliot in his epic The Waste Land, in which he referred allegorically to the end of the world. The phrase is also an apt description of the end of the Confederacy. During the spring of 1865 bands of war-weary Rebel soldiers began heading home, usually on foot and often without discharge papers. They knew that the cause was lost without having to be told.

Hungry, broke, and disgusted, many of these men resorted to lawlessness, apparently feeling that the taking of Confederate property was just compensation to any veteran for
his contribution to the "Lost Cause." Confederate governors called on local sheriffs to protect both state and national property, but they were helpless to do so. The breakdown of law and order created chaotic conditions throughout the Confederacy for which there was no immediate relief.¹

Texas, isolated from the Confederacy since 1863, never endured the same wartime sufferings as her sister states to the east. However, with Lee's surrender and the capitulation of her former Confederate associates, it would only be a matter of time before Texas too would experience the ordeal of federal occupation. Civil government in Texas collapsed totally between May and June 1865. Although after Lee's surrender in April Generals Edmund Kirby-Smith and John Bankhead Magruder, backed by Governor Pendleton Murrah, pleaded with Texans to continue the war in the West, their entreaties fell on deaf ears.² Texans knew the war was over, and everyone but the diehards were desperately thankful it was.

One such grateful Texan was William Pitt Ballinger. From the beginning Ballinger had suspected the capacity of the Southern people to endure the hardships of a protracted, devastating war. The "mass of the people without property have never felt the evils were such as to affect their condition," Ballinger observed in May, 1863. They had "no sufficient stake in the cause which will sustain them against
the extremity of suffering and resistance." Ballinger believed that only "as long as the war promises success the spirit of the people will be equal to it." But in the same breath, Ballinger also feared that "the day it becomes apparent that the strength of the North can overrun us," then the lower classes would rise up in "a reaction against the leaders of the Revolution and slaveholders. This is neither a high nor a hopeful view to take. I devoutly hope the crisis may never be reached and that we are of nobler and stern stuff." Though subsequent events failed to confirm his suspicions, such forebodings nevertheless distracted Ballinger throughout the war.

By May 1865 Ballinger, like the majority of his fellow Texans, was convinced that further military resistance would be both futile and dangerous. Texas troops were thoroughly demoralized; feeling "hopeless and useless; and if a campaign is attempted they will throw down their arms." To continue fighting under such conditions would inflict "useless suffering on our people and soldiers." Ballinger believed that Southerners must now face the fact that "the military cause is lost" and that "the political situation dictates that there shd be no further protraction of the war."

What moved Ballinger the most was the long-term psychological effects guerrilla warfare might have upon the people. He felt certain that Texas would be "overrun and the
outrages committed on her peoples and property incident thereto, both by our soldiers and the enemy's, my belief is that it will do ten times as much to turn the hearts of the people and the soldiers against the cause—to create discord & strife among us—and to strengthen Northern arguments and designs and agents with auxiliaries (sic) from among our own people, than all that has preceded." Thus, Ballinger concluded that if Southern leaders hoped to maintain the people's "sense of patriotism with the Revolution" it was imperative for policy makers to seek an immediate termination of hostilities to prevent the masses' "sense of justice and right becoming outraged by its future conduct."

Despite Governor Murrah's initial attempt to continue the war in Texas after Lee's surrender, by mid-May he and other state officials had reached much the same conclusion as Ballinger. On May 17, 1865, Murrah sent for Ballinger to discuss the feasibility of appointing a special civilian peace mission to negotiate with the triumphant Union commanders in New Orleans. Needless to say, Ballinger, as well as many of Murrah's states'-rights colleagues, were surprised that the governor would call upon his old nemesis for advice. Murrah was not only "very anxious" to see Ballinger, requesting him "to come up (to Austin) as soon as was possible," but also intended for Ballinger to be one of the peace commissioners. Apparently Murrah no longer felt
any antipathy toward Ballinger for his earlier denunciations of his administration. In fact, according to Ballinger, "the Gov. was most affable--he showed no signs of bearing any animosity toward me for our former differences." Ballinger, however, was apparently still smarting from his clash with Murrah. Although he found their views to be "very much in accord on the subject of surrender" and that Murrah had told him that "if he sent any one to N.O. he wished me to go," Ballinger was nonetheless reluctant to accept the appointment. Despite Ballinger's coolness toward the idea of going to New Orleans as one of the commissioners, Murrah was determined to convince him that he was the best candidate for the job. Murrah was apparently aware of Ballinger's regard for civic responsibility and how he could thus persuade Ballinger by appealing to such sensibilities. Ballinger finally gave in, admitting he had no choice but to accept the assignment when "the Gov. insisted on it as a matter of public duty."

Ballinger insisted that there should be two Texas emissaries to New Orleans. Murrah agreed and allowed Ballinger to choose whomever he felt would be "a reputable & judicious selection." For his companion Ballinger requested the veteran Texas diplomat Colonel Ashbel Smith, whom he believed to be "one of the most sincere & practical men I know. I think Col. Smith & I will get along together very
well. I shall defer to him as his experience & reputation render proper."

Although Ballinger approved of Murrah's peace plan and agreed to be a negotiator for it, he nevertheless remained uncertain about the practicality of his assignment. He was especially dubious about the political terms he could extract from the Union generals. Before leaving he warned Murrah that although federal authorities were empowered to treat for the disbandment of the Confederate military organization, which they recognized as a fact, they were unlikely to show any similar consideration when negotiating with representatives of the secession governments they deemed illegitimate. As Ballinger confided to his diary before he embarked for New Orleans, Texans had few options open to them if they wished to return to the Union. "Their demand is inflexible—lay down arms. Return to the Union, come under the Constitution—submit to the laws. We have to take the laws present and future with all the contingencies. If unconstitutional we test that by the courts. If Const. they must be obeyed. I do not pretend to disguise how hard, oppressive, cruel this may be. But if as an inexorable fate, it can not be averted, then, it is best to submit to it, and not inflame it with bitterer passions, with increased pretexts for their exercise, and with unheeded sacrifices of our own."
Despite his personal reservations, Ballinger believed that an impromptu attempt at mediation might do some good, if only by convincing the generals of Texans' good will. Ballinger hoped that he could at least extract a promise that Texas would not be invaded, and if he was especially effective, he might succeed in preventing the military occupation of the state. Impressed by these considerations, Ballinger and Ashbel Smith—carrying letters of authorization from Murrah and General Magruder—sailed for New Orleans aboard the U.S. gunboat Antona on May 27, 1865.¹¹

Even before he arrived at New Orleans, Ballinger witnessed some of the changes the war had brought. "I notice that Ft. Jackson is occupied altogether by negro troops," Ballinger observed. "They looked well dressed & seemed to move well. There are a good many negro sailors aboard this ship."¹² Other events of a far-reaching political nature upset Ballinger even more. As the Antona was docking on May 29 Ballinger received word that General Kirby-Smith had already surrendered the Trans-Mississippi District, leaving the emissaries little to say to their Yankee hosts.¹³

Despite the disheartening news of Kirby-Smith's capitulation, Ballinger and Smith were determined "to get the best & all the terms we can mainly to prevent any invasion or occupation of Texas as by U.S. troops—or appointment of military gov't. As to any political terms I am perfectly
certain they are impossible. Altho' we will not fail to urge
them."19 In his best courtroom demeanor, Ballinger tried to
convince the generals a military occupation of Texas was now
unnecessary since "Texans had laid down their arms and gone
home in peace." Let the normal legal process take its
course, he pleaded. Regular elections were scheduled to take
place on "the 1st Monday in August next in pursuance of the
constitution & laws of Texas." Ballinger emphasized that
this procedure was automatic and that "no action of any
official is essential. The election therefore is in no
degree dependent upon those who at present exercise state
authority." By stressing that the August elections were "self-
directed," Ballinger hoped to demonstrate to Union officials
that secessionist influence was dead in Texas. Ballinger
pointed out that "the people of Texas are ready, in sincere
faith to return to their relations to the gov't of the U.S."
He also noted that Texans were willing "to submit to proper
tests of allegiance & fidelity" to prove that they were
"ready to obey the U.S. Gov't."19 Ballinger also assured the
generals that Texans would comply with any loyalty test they
might administer to voters to ensure that only those who had
remained loyal to the Union participated in the election.
Ballinger guaranteed that Texans "would elect a governor and
legislature pledged to enforce the policy of the United
States government and fully be able to do so" since "the
machinery of Civil Gov't of the State is complete--its authority intact--it possesses all the means of preserving civil order."

Ballinger's diplomatic mission had two goals: not only to keep Federal troops out of the state but also to allow white Texans to retain close control of black labor. As Ballinger pointed out to his hosts, "immense evils would result from any circumstances which should at once cause a dislocation of the labor of this state." He further informed the generals that since "more cotton is planted in Texas than in all other states," the loss of only a few weeks' labor would cause "the irrecoverable loss of the crop." Ballinger maintained that until "the status of the negro population is fixed, and regulations for their government completely enforced" Union officials should keep blacks from leaving their plantations." This, Ballinger urged, was the only alternative the new regime had if they hoped to prevent the failure of the current cotton crop and thus the economic ruin of Texas.

Although General Edward R.S. Canby, Ballinger's principal Union contact, was a "very fine looking man possessing a plain, honest, sensible face," made "no assumptions," and listened "politely," he, along with General Philip H. Sheridan, Canby's superior (whom Ballinger had been told "was not nearly so terrible in appearance as his reputation led
him to expect!"), turned down practically all of Ballinger's proposals. The generals told Ballinger and Smith that the sending of troops to Texas "was unavoidable." But they assured the Texans that they were not being ordered there "for any hostile or unfriendly purpose but to secure order." Ballinger was probably more than a bit incredulous when Canby further stated that he "was certain that the people would prefer the presence of the troops." In fact, according to Canby, "in Miss. & Ala. the people had requested garrisons at places where they were not stationed." Since Canby "expressed very positively" that troops would be quartered in Texas, Ballinger concluded that it would be futile to pursue that issue any further. Thus so far, he and Smith had failed to achieve the principal objective of their mission. Ballinger, however, was not totally disheartened. He was able to extract from Canby and Sheridan a promise that the occupying army would do its best in limiting black mobility. Ballinger was also assured that the army would assist white employers in promoting and maintaining labor contracts, thereby ensuring a secure black work force on Texas plantations and farms. Canby was especially amenable to Ballinger's entreaties to help preserve Texas' economic stability, reassuring Ballinger that although there might be "commotion a little while," he was
certain that "the negroes wd. not be permitted to follow the Army or be idle." 22

Ballinger and Smith probably would have received even fewer concessions had it not been for their good fortune to have acquired a valuable ally and intermediary in John Hancock. Hancock was a conservative Texas Unionist who had fled to New Orleans during the war. In his frequent consultations with Hancock, Ballinger was dismayed to find the "Judge" to be as adamant as the generals regarding the stationing of troops in Texas. Hancock told Ballinger that he urged the sending of troops to Texas "so that citizens would feel secure against Unionists of revengeful disposition and disbanded soldiers of irregular habits & needy circumstances." Miffed at Hancock's "fanatical Unionist sentiment," Ballinger spoke "frankly" and told Hancock that the troops' presence would only cause "violence and resentment, and would force the people into submission to abolitionism & negro suffrage." 23 After regular meetings with Hancock Ballinger realized that the Judge would not support his position and that further "serious talk" might alienate a much-needed consort. On June 1, 1865, thanks to the mediative efforts of Hancock, Ballinger was able to reassure Governor Murrah:
. . . General Canby's conversation on this point was very satisfactory, except that it is quite apparent that he regards emancipation as an accomplished fact already & that the negro is now free but a subject for Government regulation. He said he had already compelled the negroes in Alabama to remain on the plantations. . . . Shortly before his departure for Mobile he took occasion to express himself again orally on that part of our letter, and we believe his exact language was that the negroes would be advised & required to remain at their homes until their condition was finally settled.

In his negotiations with the generals Ballinger was advised that if Texans hoped to receive "any promises regarding the political situation in the state," it would be necessary for the emissaries to go to Washington and present their case to President Andrew Johnson. According to Sheridan and Canby only the president could grant political concessions. However, they warned that even if Johnson were receptive to their proposals, congressional Radicals, already antagonized by Johnson's leniency, were in no mood to yield any further allowances. Ballinger was already aware of the Radicals' power and their attempt to "usurp Presidential authority." Nevertheless he was receptive to the generals' suggestion. As long as the "Moderates" were in charge of reconstruction policies Texans might be able to extract some political compromises. Many Moderates considered Texas to have been only a marginal member of the Confederacy and thus
should not be treated as harshly as its more ultraist associates. In the eyes of the Radicals, however, Texas was a rebel state, no different from South Carolina or Georgia, and should be punished accordingly for its insurrection.**

After carefully weighing his prospects for success in Washington, Ballinger decided that he alone should go. Ashbel Smith should return to Texas, for his military record as a Confederate officer "would prejudice the officials in Washington."** No sooner had Ballinger made his arrangements, however, than he was notified by Canby that he could not obtain "the necessary letters accrediting me to Washington." Despite daily assurances that Ballinger's credentials were on their way, Canby finally admitted that he could not secure the appropriate papers. Canby confessed to Ballinger that he was being pressured by "Radical Texas Unionists" who had "taken alarm" at Ballinger's trip to Washington because "it portended evil--& that they were opposing me representing Texas for I had been engaged in confiscating their property whilst they were fighting for the Union."**

After hearing Canby's admission Ballinger had no choice but to postpone his mission to Washington. Canby apparently felt bad about deceiving Ballinger and offered him a pass "to any destination, in spite of the fact that his action would cause him to lose prestige with the Unionists." Canby was
even willing to give Ballinger authorization to go to Washington if he believed he still "could affect policy regarding Texas." Ballinger, ever the empathetic gentleman, refused "to place Canby in such a position; and simply asked the general for a pass home." On June 14, 1865, Ballinger arrived in Galveston aboard the United States gunboat Albatross.

Shortly before Ballinger's arrival John Hancock and other Unionists had begun filtering back into the state. Much to everyone's surprise, including Ballinger's, a group of former Secessionists, led by Peter W. Gray, nominated Hancock for governor. Apparently Gray and other Secessionists hoped that if they took the initiative and elected a Unionist governor, their show of good faith might convince federal officials that the appointment of a military governor was unnecessary. They were especially concerned when they heard that the provisional governor was to be the Radical Andrew Jackson Hamilton, whom even a temperate man like Ballinger described as being "dissipated, unprincipled & revengeful." Apparently most Texans perceived the former United States congressman as a traitor who defected in 1862 after having failed to thwart the Secessionist movement in Texas. Hamilton exiled himself to the North, joined the Union army, and rapidly advanced to the rank of brigadier general. As early as 1863 Lincoln, believing Texas would
soon be conquered, appointed Hamilton provisional governor of
the state. Hamilton went to New Orleans to await the
occupation of Texas by federal armies.33 He had a long time
to wait, however, for Texas was never subdued.

Though Ballinger was just as opposed to Hamilton's
appointment as the Secessionists, he nevertheless took the
opposite view of Hancock's nomination. Even though Hancock
was a moderate Unionist and would definitely be more amenable
to Conservatives than a Radical, Ballinger advised against
Hancock's selection. He told both Hancock and the insurgents
that though Hancock was a Loyalist, the fact that he had been
"put up by Secessionists would injure rather than aid him or
the Texas position."34 The Secessionists, he urged, should
"keep back seats," for their presence in the forthcoming
election "would only develop more extreme views on the other
side." Ballinger told Hancock specifically that "the leading
Unionists ought to consult together--& agree on a plan of
action. All should concur in it--the responsibility was on
them." Ballinger assured Hancock that if the Secessionists
hoped to escape Radical reprisals they too "would recognize a
Unionist plan; they have no choice in the matter." Above all
else, Ballinger warned, "avoid conflict--unite all interests--
instead of warring against Hamilton, & having Hamilton rouse
the subterranean elements of the State, compromise with him &
concede him a high place--a U.S. Senator for instance & thus
eliminate him from state politics. According to Ballinger, Hancock "seemed struck with my course of reasoning" and concluded that Ballinger's strategy was sound. Hancock agreed to withdraw from the gubernatorial race and to consult with moderate Unionists and persuade them to endorse Ballinger's call for unity and compromise.

Ballinger's advice to Hancock reflected the hope of many ex-Unionist conservatives who had served the Confederacy that their admission of defeat and desire to restore their relations with the federal government would be an ample demonstration of their acceptance and loyalty to the new regime. They trusted that such a display would prevent the establishment of Radical rule in Texas and thus allow Conservatives and Moderates to maintain control of the state. Ballinger and others feared that even their slightest association with former Secessionists would give the Radicals the incentive to move on the state. They could claim that Texas was still in the hands of rebels and thus required further "reconstruction." Even though he had become, finally, a devout Confederate, once he realized that Southern independence would never become a reality, Ballinger admitted his delusion, renounced secession, and was ready to "repent" of his rebellion. In fact, Ballinger was relieved that the war was over and that the notion of states' rights had been vanquished and the Union restored. However, though he was
comforted by the Union's redemption, he was still apprehensive about its political future. Ballinger and other conservatives were especially alarmed by the Radical agitation for revenge upon the South. Equally disturbing was their demand for black suffrage and equality although the latter was never as vehemently promoted as the issue of black enfranchisement. Despite the efforts of Ballinger and others to avert a Loyalist takeover of the state, conditions and events throughout the South made radical rule inevitable in Texas.

On June 19, 1865, five days after Ballinger's return to Texas, General Gordon Granger arrived in Galveston with 800 men to begin the federal occupation of Texas. On that day Granger read Lincoln's Emancipation Proclamation, and since that moment "June teenth" has been regularly celebrated by Texas blacks as if it were a national holiday. However, no sooner had the General read the proclamation, expressing the desire for absolute equality, than he immediately advised the new freedmen to remain with their masters and work for their wages. Granger, whom Ballinger described as a "rough fellow with strong horse sense," warned blacks they would not be allowed to congregate at army posts nor would they receive government support. The general backed his order by treating idle and footloose blacks as vagrants subject to arrest. Upon hearing Granger's decree, Ballinger was relieved that
General Canby’s earlier assurances concerning black labor were not illusive.\(^\text{41}\) However, Granger’s stringent attitude toward itinerancy in no way indicated a lack of determination to protect the freedmen from white reprisals.

One study has estimated that by December, 1865, 90 percent of rural Texas freedmen had entered into labor contracts with their former masters. The policy was reinforced by a May 1866 Texas Freedmen’s Bureau circular that stated that any black laborer breaking a labor contract would be fined up to twenty-five dollars.\(^\text{42}\) Even after the Radicals gained control of the state in 1868, fundamental labor relations remained unchanged. Texas Republicans battled to secure full political rights for the black male, but they never seriously attempted to alter his status.

Though Ballinger was pleased with Granger’s dictum and federal authorities’ execution of labor contracts, he was nevertheless dissatisfied that the federal government, via the Freedmen’s Bureau, remained the ultimate enforcement agency in Texas. In a letter to John Hancock, Ballinger proposed that the state try to supersede the Bureau by creating "some system to give protection & secure their rights to the freed people."\(^\text{43}\) Though Ballinger approved the Bureau’s efforts to enforce both white and black contractual rights, he nevertheless resented the supposed attempt by many
of its officials "to mortify, degrade, and humiliate the whites & not merely to protect the negroes."  

Although the Freedmen's Bureau could intercede in cases involving freedmen, 22 in only one of Ballinger's cases during 1866 and 1867 was the Bureau involved. In a suit between three brothers over the activities of one as a plantation overseer, and his subsequent claim for wages, the Bureau placed a lien against the plantation crops and sold a sufficient quantity to pay the wages of about sixty black farm workers laboring under a Bureau-sponsored contract. Although Ballinger, representing the manager, disapproved the Bureau agent's actions, the official did have the right to establish a lien upon the plantation. Under state law the laborers would have had the right to a crop lien up "to the value of half the crops as security for their wages." 23 The workers, however, might not have enforced their right as speedily or effectively had there not been the Bureau to appeal to for legal assistance. Had they not turned to the Bureau for help, a shrewd, experienced attorney such as Ballinger would have undoubtedly triumphed. However, as long as the Freedmen's Bureau existed, and its officials were willing to ensure the freedmen's legal rights, not even the cleverest of lawyers was likely to vindicate white supremacy.

No sooner did Granger's force land in Galveston than one of its detachments, the Seventy-sixth Illinois Regiment,
established its camp along the northern fence line of
Ballinger's property. "They get water from our cistern,"
Ballinger grumbled, and "steal our chickens & are a very
troublesome lot. They distract the ladies by their
depredations & interfere with the negro women." Apparently
Ballinger remonstrated with the venturesome troopers, for
within a few weeks he commented that "all seemed calmer with
the soldiers. Recently they are less offensive, tho' their
neighborhood is still very disagreeable." Ballinger,
however, ignored these irritations to devote his full
energies to securing pardon for himself and his friends.
Former Texas Confederates were anxious to be pardoned for
several reasons. It seemed that Washington's program for the
reconstruction of Southern governments depended upon the
acceptance of federal war aims expressed in the May 29th
amnesty oath--the nature of the Union under the Constitution,
and the new status of the freedmen." Wealthy Galvestonians
such as Ballinger not only wished to participate in and
direct the restoration of political activity under the
president's reconstruction plan, but amnesty would also help
secure their future professional and commercial enterprises.

For Ballinger, a presidential pardon was an immediate
necessity. Although President Johnson had already issued a
general amnesty absolving most Confederates for their illegal
activities during the war, unfortunately, Ballinger fell
within an exception. There were several classes of ex-
Confederates to whom Johnson had forbidden a general pardon
through means of a provision excluding individuals whose
taxable property was worth more than $20,000. Only upon
direct petition to the president could former insurgents in
this category receive a pardon. Southern businessmen,
planters, and professionals were the target of this
requirement, which was intended not only to reform Southern
society but also to enhance presidential authority.\textsuperscript{50}

Since Ballinger owned more than $20,000 worth of property
he had to have his amnesty application approved by the
president. Until he obtained his pardon he remained subject
to criminal charges under the 1862 treason act for his
activities as a receiver for alien enemy property. Under the
same law, his real estate, cash assets, and stocks could be
confiscated, and he could neither purchase nor sell property--
a crippling restriction for a lawyer who was heavily involved
in real estate transactions and who frequently accepted
property as payment for his professional services.\textsuperscript{51}

Ballinger was painfully aware of his circumstances, and
on the eve of his departure from Galveston he observed that
he felt he had "no rights and was not my own master until I
get my own pardon. Success for the others will enable me to
realize something considerable & most acceptable at this low
ebb in my fortunes. I have the greatest solicitude for
promptness & success in the business." Ballinger was fortunate that his antebellum Unionism was still remembered, especially by provisional governor Andrew J. Hamilton who promptly reviewed his case. Apparently Hamilton was unaware of Ballinger's earlier denunciations, for he recommended his pardon "very kindly & promptly and in strong terms." No sooner did Ballinger receive Hamilton's endorsement than he was inundated by petitions from local businessmen who wanted to retain him to carry their petitions, along with his own, to the nation's capital for presidential approval. Before he left Galveston Ballinger had "the papers" of "Uncle Jimmy, Uncle Tommy, T.R. McMahan, Allen Lewis, R.J. Hutchings & T.W. House. The Gov. also recommended Ball & Sealy—and they agreed to pay my expenses for coming on to attend to their cases." Even before he left Galveston, Ballinger's mission seemed destined for success. Throughout his life he had been fortunate in his family connections, and once again such ties proved invaluable.

Hamilton had not only given Ballinger a letter of recommendation but also the useful information that his uncle, Green Adams, a prominent Kentucky Unionist, had developed a close relationship with Andrew Johnson while serving as a Treasury Department cotton agent in Nashville during the war. At that time Johnson was provisional governor of Tennessee. Ballinger learned that Adams was
already in Washington, hoping that Johnson would remember his wartime services and appoint him to a lucrative government post. Uncle Green was also eager to earn some ready cash by using his "connections" to aid his nephew. Ballinger relied heavily on Adams' contacts to secure his clients' amnesty, but he owed his own pardon to the influence of another relative: his brother-in-law Samuel F. Miller, associate justice of the United States Supreme Court.

Miller, a staunch Whig-Republican, had been appointed to the Supreme Court by Abraham Lincoln. Miller and Ballinger had been close friends since their youth and despite their political differences the two men had remained close even through the war years. Much to Ballinger's chagrin, however, Miller initially admonished him for his role in the rebellion: "In fact while you yourself were undoubtedly guilty of treason, it did not in the least affect my estimate of your character for honor & truthfulness, nor diminish my affection for you. But I cannot the less deny, that you were guilty of a crime, and if there was no one else but you, in whose person the law might be vindicated it would be that judgment of my reason, that in some way you should be punished." Despite his chastisement, Miller nevertheless supplied Ballinger with letters of introduction to both President Johnson and Secretary of State William Henry Seward. In his endorsements the judge answered that he had
"known (Ballinger) since he was ten years old intimately & I have never known a man on whose integrity I would rely more confidently."**

Needless to say, Miller's influence proved invaluable. The day after he called upon Secretary Seward Ballinger read in the newspapers that his pardon had been granted—at Seward's personal request.** Recording his receipt of pardon on August 25, 1865, Ballinger acknowledged that Miller's letters were largely responsible. "A Godsend," he remarked. "I feel very grateful to the old fellow and shall call to express my gratitude--& at the same time to try and enlist him to aid in my further cases."**

One cannot help but wonder if President Johnson might have been a bit less magnanimous had he known of Ballinger's opinion of him, expressed four months earlier in the editorial columns of the Houston Telegraph: "Of all partisans, Andrew Johnson has ever been the most unscrupulous, the most extreme, and the most vindictive. He is the vilest of all demagogues and is known by all men to lack integrity, to lack justice, to lack honor, to lack humanity . . . it is our sincere belief, that no man is less fit to bind together, to sustain and to guide."** But circumstances alter perceptions, and with his pardon in hand Ballinger took a bit more benign yet still cautious attitude toward the president. He was a "rather good looking man--
tho' how far from prejudice I don't know--He has a good deal of dignity of person--though not much ease of manner. I still think he enjoys the importunities of the Rebels, and thinks it right to force them to humiliate themselves all in his power."** Despite Ballinger's lingering reservations, he and other ex-Confederates had little choice but to "sustain him against the other wing (the Radicals) of the Republican Party."**

Ballinger's success in obtaining his own pardon proved impossible to duplicate for his clients. Nevertheless, no sooner did he receive his reprieve than he was hard at work on his first major postwar legal project: the securing of amnesty for several leading Houston and Galveston professionals and businessmen. There is little doubt these men were aware of Ballinger's family connections with the administration. They hoped that such ties would enable Ballinger to expedite the pardon process. However, by the time he began work on procuring his clients' absolution the procedure became suddenly more prolonged and bureaucratic. Apparently, by August 1865 pardon peddling had become an open scandal in Washington.

According to Ballinger, "the North was complaining of too many pardons--many Republicans are alarmed at the great number of pardons and are protesting vigorously and look to
the President for its correction." Ballinger also heard that a "special Executive Bureau" was being organized to screen all applications. Apparently his information was correct for the number of pardons granted dropped to "about two a day." Though his own acquittal was signed within a week of his arrival in the capital, it took Ballinger an additional two months to achieve his friends' pardons.

Ballinger used a two-pronged approach, engaging first in personal appeals to Johnson, Seward, and Attorney General James Speed in which he emphasized his clients' "honest and good character." Then he argued that geographical and economic factors required their full membership in society if Texas' prewar commercial prosperity were to be restored. They were businessmen, he argued, "not criminated in secession--useful to the community in the restoration of business--that in a commercial town for its businessmen to be under disability prevented the restoration of property... the repairing of railroads &c--that travel had not been opened from Texas none but govt. vessels were running--the Govr. had suggested to me to come on & knew I wd. bring on the petitions he had recommended--that pardons had been granted in other states--& if Texas far off & behind hand as she was could not get a little special attention to her
cases, it wd. operate very unfairly."** Ever the shrewd attorney, Ballinger stressed his client's positive aspects while seeking to find distinctions in individual cases exempting a supplicant from amnesty exceptions.

Despite Ballinger's efforts to convince administration officials that Texans deserved special consideration, all gave him noncommittal answers. Justice Miller, whom he also approached for assistance, did not. He asserted: "I cannot regard the men who participated in this Rebellion, as having incurred no personal guilt. They violated a well known existing law, whose penalty is death. This heavy penalty is imposed because of the awful consequences usually attendant upon treason. Have any of those consequences been wanting to heighten the guilt of this treason? I forbear to comment, further than to say, that if anything were needed before to show that treason is a crime which merits the severest punishment which men are allowed to inflict, it has been furnished by the misery and horror incapable of description which have attended this rebellion."**

Despite Miller's scathing indictment of Ballinger's associates, the Justice's respect for Ballinger overruled his emotions. Even though Miller admitted in his letter to the President that he had no personal knowledge of any of Ballinger's clients, he nevertheless declared: "You may rely implicitly on any statement of Mr. Ballinger as to matter of
fact. . . . I think (he) would not recommend the pardon of
by your excellency any person whom he believed would use his
liberty to the injury of the federal government."**

Despite Miller's endorsement, Ballinger once again had to
solicit his wily and ambitious Uncle Green as his "pardon
agent." No sooner did he engage Adams than the president's
docket, which Ballinger had been told was so "cluttered and
chaotic," miraculously cleared up.** Even before Adams'
intercession, some applications were receiving prompt
attention, but none of Ballinger's. Ballinger thus realized
that an intermediary with connections was essential if he
hoped "to be useful" to his clients.** What prompted
Ballinger to turn to Adams was the success of another Texan,
a Colonel Carter, who was also in the amnesty business. It
was rumored that Carter had found a useful ally in the
attorney general's cousin, who was willing to expedite cases
on cut-rate terms: ten pardons for $150. "This is
disgraceful and shabby," Ballinger snorted.** Yet his
indignation was short-lived, for he soon found himself, via
Uncle Green, doing precisely what Carter and countless other
"pardon attorneys" were forced to do: solicit pardon
brokers.

With Adams acting as his pardon broker Ballinger was
finally able to secure the pardons of twenty fellow Texans by
early November 1865. For his services Uncle Green received
$3,000 from Ballinger and was promised another $500 after his brother-in-law made further collections in Galveston.73

Ballinger too had expected to profit from the venture and did so. His own net receipts totaled approximately $5,000, exclusive of the payment to Adams, and he obtained further fees of $2,500 on his return home.74 In his diary Ballinger reflected on his good fortune: "The parties for whom I obtained pardons so far have been gratified & behaved handsomely enough--Hutchings & House paid me $750 each & Sesum $500 specie. I only charged (E.B.) Nichols $500 more specie--and he feels let off lightly."74

Though he was forced to remain in Washington for over three months, his mission proved to be both a personal and a pecuniary triumph. By securing the pardons for some of the most prominent men in Texas Ballinger helped ensure that their professional and political pre-eminence would continue. Perhaps more important, he greatly augmented his own prestige and influence within the state.

Even though Ballinger had obtained his presidential pardon, he still faced the problem of what to do about his prewar cases pending before the United States Supreme Court. While in Washington he ascertained that he had six cases on the Court's docket and took immediate steps to try to reactivate them. However, he quickly found that the Court, complying with Congressional legislation, had amended its
rules to prohibit any attorney to practice before it who could not take the "iron-clad" oath of allegiance to the United States. The oath required individuals to swear that they "never voluntarily bore arms against the United States", nor did they hold "any office whatever under any authority or pretended authority, in hostility to the United States."

It was painfully obvious to Ballinger that neither he, who had served as Confederate receiver, nor his brother-in-law and partner, Tom Jack, who had accepted a commission in the Confederate army, could take such an oath. Had Ballinger not had family contacts within Washington’s legal community the test oath could have been a serious obstacle. However, once again he solicited the aid of his ubiquitous uncle Green Adams to surmount the difficulty. No sooner did Ballinger discover his pending cases than he contacted Adams, who, having been a loyal Unionist, could appear before the Supreme Court. Ballinger requested his uncle simply to put his name to Ballinger’s briefs. Adams apparently complied with his nephew’s request and assured Ballinger that his cases were being properly looked after and that they would be continued into the next court term.

Unfortunately not all went as smoothly as Adams stated in his letters to Ballinger. Apparently the two were having difficulty coordinating their correspondence, which caused serious communication delays. Slow delivery was compounded
by tardy responses and thus in two of Ballinger's cases, *Teague v. Atchison* and *Osterman v. Baldwin*, his briefs arrived after the cases had been decided. Adams also informed Ballinger that he had taken the liberty of preparing and submitting "supplements" to Ballinger's briefs just in case they encountered another lapse in correspondence. Thus there are "two briefs" in three of Ballinger's six cases: *Lum v. Robertson*, *Christy v. Pridgeon*, and *Crown v. Sheldon.*

Apparently Ballinger was somewhat irked by his uncle's license. In two of the three cases in which Adams provided a supplemental brief—*Lum v. Robertson* and *Crown v. Sheldon*—the Court ruled against Ballinger's clients. Ballinger thus decided to pursue a different course on his sixth case. In *Cook v. Burnley*, he instructed Adams to secure a continuance until he could "either appear before the Court" or "negotiate a settlement." Since the test oath remained in effect for Supreme Court practitioners until January 1867, he had little choice but to settle out of court. In November 1866 Ballinger secured a partial compromise under which James Cook surrendered all claims to 179-1/2 acres of land in Indianola, Texas, in exchange for having Ballinger's clients drop that portion of the suit.
Supreme Court cases, *Christy v. Pridgeon*, which has already been discussed at length in Chapter II.

No sooner was Ballinger home in Galveston than he and Tom Jack immersed themselves into resurrecting their lucrative prewar practice. By the early months of 1866 the firm of Ballinger and Jack was employed in over one hundred suits on the District Court level alone. "We take lunch in a basket, and do not come home to dinner," Ballinger remarked. "I have never in my life however been more indefatigably industrious—Our business prospects seem to be excellent."**

The majority of Ballinger’s cases were in the form of debt collection, for which he usually charged 10 percent of the amount recovered plus costs.*** It is difficult to determine how many cases were settled short of a lawsuit; nevertheless, District Court records indicate that a substantial portion of his cases were resolved in court. Of approximately 190 cases filed in the Galveston District Court between October 21, 1865, and November 21, 1867, in which either Ballinger or Tom Jack appeared as counsel, 146 either involved debts, failure to honor a contract, or were an effort to enforce a judgment by attaching the defendant’s property or by garnishing his wages.**** A number were dismissed on the plaintiff’s motion, probably after an out-of-court settlement had been reached.
Ballinger was especially interested in reviving his "Northern connection" which had been one of the firm's more lucrative enterprises. No sooner had Ballinger reestablished his practice than inquiries from his old Northern clients began pouring in. They were interested in the status of their antebellum collection claims and the prospects, if any, of recovering them. They were also eager to retain Ballinger as their collection agent and began sending him new business. Apparently these clients did not hold Ballinger's actions as Confederate receiver against him. In fact, an A. Blum and Company, out of Boston, which had lost much real estate through confiscation sales authorized by Ballinger, not only engaged Ballinger as their advocate but referred new business to the firm as well.

Fear of suit and possible federal pressure forced Ballinger into attempting to learn the whereabouts of confiscated property and notes. Beginning in the late fall of 1865 he started sending letters of inquiry to former Texas receivers to whom he had forwarded Northern-owed notes. However, by February 1866 he was still unable to account for 159 claims of 67 Northern creditors. Ballinger was sued only once for losses arising from his activities as receiver, and settled out of court for an unknown sum. This certainly was a far cry from his earlier fears of financial ruin.
Some of the amounts sought by Ballinger's clients were quite trivial. On September 4, 1866, Fairthorne & Rand of Philadelphia placed a prewar debt for $18.75 in Ballinger's hand and held him responsible for either collecting it or paying it! If necessary they instructed Ballinger to "sue to the first term of court unless paid or well secured; but if uncollectable, return same, as we do not wish to incur unnecessary expenses."\(^{37}\) Apparently the note was satisfied, as the company sent Ballinger & Jack at least ten more collection cases in 1866.\(^{38}\) A communication from the Commercial Agency of New York to Ballinger in 1866 illustrated the level of sophistication of some of the credit and collection agencies that employed the Galveston attorney. They advised Ballinger: "We have notified our associate offices that you are to have all business that we can influence for collection in Texas." A few days later the agency requested Ballinger to send the commercial credit ratings, "present standing, worth, business reputation, etc. of all Galveston businesses."\(^{39}\) Needless to say, Ballinger promptly replied.

A rather costly real estate venture engaged in by Ballinger during this period indicated how quickly he was able to rejuvenate his practice, despite having neglected it for over four years due to his other wartime responsibilities. In the summer of 1866 Ballinger and Tom
Jack purchased half a block of downtown Galveston for $10,000 in gold at 10 percent interest. Ballinger not only built "Uncle Jimmy" Love's new house on the property, spending $7,000 on construction costs, but three years later spent another $15,000 building his firm's new office to accommodate the addition of a third partner, Marcus Mott, who joined Ballinger & Jack in November, 1867. The new office was designed to house both their firm and rental offices for other Galveston attorneys. It appeared that Ballinger was not only attempting to centralize Galveston's legal services under his auspices but to establish his firm as Texas's most complete legal resource center as well.

Ballinger's was a very ambitious and expensive goal. He realized that only the most thorough library would attract reputable jurists. Thus, while in Washington securing his pardon he began building his future athenaeum by purchasing a complete set of reports for every state as well as the English reports. Prices were not cheap nor were the books easily obtained. Even readily available sets sold for $5.00 per volume, and none were quoted for less than $4.50 by Baker & Voorhis, Ballinger's New York dealer, though they usually gave him a twenty percent discount on stocked items. Ballinger spent over $1,000 on the library while in Washington and budgeted at least that much yearly until his library was as exemplary as he intended. Offering to sell
the library to the Texas Supreme Court in 1874, Ballinger
summarized its contents to Chief Justice Oran Roberts:

The law book-sellers who come to Texas say
that our library is the best in the South--
public or private. We have Federal & State
Court Reports complete down to date,
furnished to us as they come out--except
Delaware--and except the Law volumes which
it was impossible to get--not half a dozen
in all. Also except one of the City
Reporters in New York Bosworth's and one of
the Practice Reporters Abbotts. ... Our
English Reports are as complete as can be
bought in this country--we have all except
the year book 7 vols., and about half a
dozens of the old black folios--and also
except English Chancery Reports of the Vice
Chancellor & Masters of the Rolls--1852-
1865. ... I examined the New York
Library & found that Weekly Reporter as
English Law Serial contained almost all the
cases in the missing vols.--and bought it
(in 14 vols.) as a substitute for the
Chancery Reports which are missing--and
find that it answers very well for
practical reference. My English Reports, I
think, are much more complete than they are
in the Austin Library. ...**

Even though Ballinger's focus shifted from the political
arena to the courtroom after his return to Galveston in
November 1865, he did not altogether cease political activity
and return to his antebellum reserve. Rather, his political
activities simply became sporadic and less visible.
Initially hostile to President Johnson, whom he feared would
have "a natural & infinitude of revenges to satisfy,"**
Ballinger's opinion of him changed somewhat after the
president had pardoned him. Ballinger's change of attitude also reflected his realization that the president's reconstruction policies were by far the most favorable to the South. Johnson's plan, which was essentially the same as Lincoln's, held that secession was illegal and that reconstruction was the responsibility of the executive branch of government. After modifying Lincoln's "ten percent" proposal, Johnson, like his predecessor, expected Southern whites to take the lead in establishing new state governments loyal to the Union. To initiate this process, which he announced in May 1865, Johnson appointed a provisional governor for each former Confederate state and directed him to convene constitutional conventions as soon as the state had been stabilized. The governors were responsible for ensuring that only "loyal" whites were permitted to vote for delegates. Participation required taking the oath of allegiance that Lincoln had prescribed earlier. As in Lincoln's plan, Johnson's too forbade Confederate leaders and office holders who had participated in the rebellion from taking part in these elections. However, ex-Confederates like Ballinger could regain their political and property rights by the process of a presidential pardon and thus engage in state affairs. **

Provisional Governor A.J. Hamilton arrived in Austin on August 9, 1865, and immediately appointed several Texas
Unionists to important offices to help him in the
implementation of President Johnson's plan. Hamilton also
needed the help of ex-Confederates, whom he quickly pardoned,
to fill local offices such as sheriff and justice of the
peace. Because of the state's vastness and the tensions
between Loyalists and Seccessionists, and between blacks and
whites, in Hamilton's opinion Texas was not ready to elect a
constitutional convention until January 1866. The delegates
were to convene in Austin the following month.**

The elections were peaceful and saw the ex-rebels win a
clear majority of the delegates. But when the delegates
reached Austin on February 7 they were far from tranquil.
They tended to divide into two extreme factions that made a
mockery of the Northern victory: Unionists and
Secessionists. Fortunately, a middle group of
"Conservatives" emerged and eventually gained control of the
convention. Led by a former Unionist-turned-Confederate
James W. Throckmorton who was elected president, the
Conservatives simply wanted an end to trouble. Although the
Conservatives were eager to find a compromise between the
insurgents and Loyalists, they nevertheless remained aligned
with the former Seccessionists on pivotal Reconstruction
issues.**
In drafting the state's new constitution the convention was required to abolish slavery, provide for the status of freedmen, repudiate secession, and renounce the Confederate debt. Though the federal government's demands were reluctantly accepted, the delegates made it clear that these concessions resulted from force of arms. The Conservatives dodged the secession question by proclaiming that the Confederacy's defeat served as de facto evidence that the movement had failed but not that it was illegal. They refused to ratify the Thirteenth Amendment which outlawed slavery, declaring that the amendment was already in effect. Although the convention rejected the Thirteenth Amendment to the federal constitution, the state constitution was amended to exclude slavery. As did all other Southern conventions, the Texas convention refused to grant freedmen equal rights with whites. It extended more privileges than most Southern states did, such as the right to testify in court and sit on juries when blacks were on trial. The convention not only repudiated the war debt, but cancelled all state debts incurred during the war, whether they had to do with the conflict or not. These measures and other changes to the 1845 constitution were adopted and submitted to the people for ratification on June 15, 1866.
In a related election for state officers, the Democratic candidate James Throckmorton soundly defeated the Unionist-Republican nominee Elisha M. Pease for governor by a four-to-one majority. Although Pease was not personally a Radical, by election time the majority of Texans identified the former governor with that faction of the Republican party. Thus, Texans overwhelmingly endorsed the Democracy's position of opposing black suffrage but supporting the presidential plan for reconstruction. The amendments carried by a vote of 28,119 to 23,400.\footnote{101}

With the inauguration of civil government on August 9, 1866, and President Johnson's declaration on August 20 of the end of the rebellion in Texas, reconstruction entered its second phase. This phase, however, was destined to be short-lived. Despite Southern support for the President's national policies, the Radicals, who had all along opposed the Johnson plan, won decisive control of Congress in the November elections. During the campaign the Radicals had abused and vilified the president, accusing him of everything from chronic drunkenness to complicity in Lincoln's assassination. They also "waved the bloody shirt," declaring that the South's easy readmission was a disgrace to those who had died for the Union cause.\footnote{102}

Unfortunately, Texans played into the hands of the Radicals by the adoption of the Black Codes that blatantly
regulated and restricted the rights of freedmen. The Radicals were further incensed by the equally bold election of former rebels to administer their new governments and to serve as their representatives to the U.S. Congress. Neither Oran M. Roberts nor David G. Burnet, Texas’s two legislatively elected senators, could take the "iron-clad oath" that they had not aided the Confederacy. Roberts had been the secession convention’s president, and Burnet, although he had opposed secession, once Texas withdrew he too supported the Lost Cause. The majority of Texans maintained that secession was not treasonous and that Congress should repeal the iron-clad oath.103

Despite the pleas of former Confederates like Ballinger and John H. Reagan that Texans should accept both the Thirteenth and Fourteenth Amendments and get back into the Union as quickly as possible, their compatriots refused to acknowledge either measure. Thus, in the eyes of the Radicals Texans refused to recognize any changes beyond the acceptance of military defeat. The Radicals maintained that the South had not learned its lesson and that the election of so many former rebels was an insult to the Union dead. The Radicals also had no intention of abandoning the freedmen to the care of unrepentant whites nor of ignoring their potential votes. Texans simply failed to recognize that
their stubbornness would unleash the Radical's vindictiveness.\textsuperscript{104}

Though Ballinger supported Johnson's reconstruction policies and gradually became a Johnson Democrat, he never extended his approval beyond the president to the Northern wing of the party. Ever the devout Whig, Ballinger retained his previous distrust of the Democracy. In a letter to his brother-in-law Guy Bryan, Ballinger revealed his suspicions of the party. He maintained that "they are taking advanced and extreme positions on issues which they suppose appeal to our prejudices in hope of aggravating the Radicals into violence against the South hoping to thereby render them odious & effect their overthrow. . . ."\textsuperscript{105}

Ballinger extended Johnson more than just verbal support. He, along with other local Conservatives formed a Galveston-based Johnson-Union Club through which they actively promoted the president's reconstruction program. Similar organizations emerged throughout Texas, and it was decided to hold a statewide convention in July in Navasota to elect delegates to attend the National Union Convention in Philadelphia in August 1866. That gathering was to be a rally of the president's supporters in the North and South.\textsuperscript{106} Ballinger was chosen as a member of the Galveston delegation to attend the convention at Navasota.
No sooner did Ballinger arrive than he found himself chairman of the Committee on Resolutions and personally drawing up the convention's declarations. Many delegates opposed Ballinger's resolves because "they approved the call of the Convention (National Union) which denied the right of secession!" Ballinger, however, did not let his challengers intimidate him despite their "inflammatory speeches & distasteful insults." A "Col. Mitchell recently from Mo." was especially annoying, but Ballinger "replied to him very strongly." He told Mitchell and other diehard Secessionists that "Texas & its people as individ. had professed that the question of secession was settled, & that the right did not exist--That all arguments on the subject had been closed by the results of the war. If we are still secessionists then the Radicals' accusations against us are well founded." Ballinger's argument was apparently convincing, for the resolutions were adopted even though many delegates still felt "that disclaims of secession touch our honor & sensibility." Ballinger was asked to attend the Philadelphia convention but "politely refused. I told the committee I had urgent affairs in Galveston to attend to & that my family as well as my work needed my presence more."

Ballinger also quietly urged fellow members of the Galveston Bar to support the candidacy of pro-Johnson and
Conservative judges. His desire to secure Conservative judges sometimes caused Ballinger to engage in some rather interesting contortions, most notably his unsuccessful efforts to persuade William P. Hill, ex-Confederate judge in the Eastern District of Texas, to run for the Texas Supreme Court. According to Hill's replies to Ballinger's letters, the latter had been urging him to run as an alternative to Radicalism and had been making appeals to Hill's "judicial experience," which Ballinger maintained "very few individuals presently possess. Your candidacy would be most welcomed and enthusiastically endorsed here in Galveston, and I am confident, would also be favorably received elsewhere in the State. . . . Your knowledge of the law, fairness & sincere devotion to the People of Texas would prove most beneficial at this time in our affairs. . . . I cannot impress upon you enough how warmly Texans would greet your decision to seek a position on the Court." Two years earlier Ballinger's assessment of Hill's judicial qualities was much less flattering. In fact, during the war Ballinger had criticized Hill rather harshly for the judge's failure to uphold the sequestration law. At that time Ballinger had accused Hill of being "easily influenced by others. He is unwilling to prosecute the law which he has sworn to uphold & is afraid that others would think ill of him." On a later occasion Ballinger wrote that "His fault is that he is timid and
undecided and his nature is not reliable."113 Despite Ballinger's change of attitude, Hill was aware of Ballinger's motive in urging his candidacy and knew that the attorney's plaudits were more perfunctory than genuine. Hill politely informed his formeruper that although he "felt encouraged & gratified" by Ballinger's "display of warm support, I cannot at this time consider running for office."

At the same time he was trying to convince Hill to run for the Texas Supreme Court Ballinger also sought to influence delegates to the 1866 Constitutional Convention. Perhaps because of his own aspirations of someday becoming a justice, Ballinger was especially concerned with the convention's discussion of changing the structure and function of the state Supreme Court. In letters to Oran M. Roberts, chairman of the judiciary committee, former Governor Elisha M. Pease, and John Hancock, Ballinger outlined a number of interesting proposals. In his correspondence with Roberts, Ballinger revealed that his political thinking was still fundamentally Hamiltonian. It seemed that the war had little effect upon his elitist attitudes especially when it came to safeguarding the legal system from "democratic excesses."114 He confessed to Roberts that "the justices of the Court should be appointed by those possessing the highest knowledge of the law and our legal system. Prospective judges should be chosen from among those men who have
consistently & honorably discharged their duties with the utmost sense of their responsibilities as their profession's leaders. It is equally essential that these men be removed as much as is possible from partisan politics, which interfere with their abilities to carry out their important duties, and allow those having no understanding of the law to meddle in affairs which should never concern them. . . ."  

Though Ballinger preferred an appointed judiciary, he realized that his suggestion was too patrician to be accepted by his fellow jurists. The Texas democratic tradition was too entrenched to propose that important offices would no longer be subject to popular approval. Ballinger, however, was intent on removing Texas's judicial system as far as possible from the effects of "petty, unscrupulous & meddlesome individuals seeking to control and manipulate our Courts and the law for partisan reasons."  

He thus proposed that the chief justice and the high court's justices be elected for longer terms, and furthermore, that the chief justice be elected indirectly, either being the candidate receiving "the highest number of votes or the one chosen by the justices from among themselves." Though Ballinger preferred the "latter course" he was "willing to accept the popular will, if by no other means we can protect our justices from political influence."  

Ballinger believed that his provisions were necessary to avoid "the waste of
talent" that resulted when several well-qualified candidates ran for the office of chief justice. He also urged that the number of justices be expanded from three to five, believing that although three healthy men could sustain the court, the average justice was "often too frail in physical composition to work at all times, at full capacity."  

He also suggested a legislative advisory role for the Supreme Court under which the magistrates might "report to any session of the legislature such recommendations of laws as might prove useful." Though his last proposition fell on deaf ears, many of Ballinger’s recommendations were adopted. The Court was expanded from three to five justices and the chief justice was made a semi-nonelective official chosen by his fellow justices. Finally, the terms of the Court’s justices were increased from four years to ten.  

At the same time Ballinger was attempting to influence the Constitutional Convention, he was also doing his best to discredit Provisional Governor Hamilton. Ballinger had always been dubious of Hamilton’s personal qualities and had earlier accused the Texas Unionist of being "dissipated, unprincipled & revengeful." Despite his personal antipathy toward Hamilton, Ballinger hoped that the governor would prove politically conservative and thus allow Texans to return to the Union without having to endure "the great dread of Radical rule." In a letter to Guy Bryan, Ballinger
admitted that perhaps he had been "too hasty" in his "judgement of Hamilton." He urged Bryan—as well as himself—to "absolve all past assumptions & allow him as much consideration as possible so we can restore our people and our state to their constitutional relations to the federal gov't. . . . From my present knowledge of Hamilton, I do not apprehend vindictiveness. I think he will be conciliatory as long as all are willing to compromise with him."

Although the governor did not seriously question the loyalty oaths or obstruct the pardon process, he nonetheless reminded Texans of their fatal misjudgment when they chose to support the Confederacy. "I have been willing to accord to many of those who gave their support to the cause of Secession, honorable and patriotic motives," he declared in his Address to the People of Texas, "though candor obliges me to say that their perversion of judgement filled me with astonishment. And I think that all right minded men of that class ought to be able to see they were deceived." This type of attitude, together with Hamilton's refusal to hold immediate elections for a constitutional convention, eroded Ballinger's optimism that "we will be able to return to the Union without further compromise."

Hamilton's task was further complicated by the fact that as provisional governor he was to function without any clearly designed reconstruction guidelines. Neither the
President nor Congress had yet established a definite reconstruction policy. Lincoln's veto of the Wade-Davis bill momentarily gave the President the responsibility for reconstruction based on his constitutional authority as commander-in-chief. The related role of provisional governor however, was unclear because there existed no determined delineation of military and civilian duties. Ballinger contended that since the fighting had stopped "continued military presence would be seen by the people as contrary to the program established by the president. When our troops laid down their arms and the fighting ended, we regained our former U. S. citizenship and this is true whatever may have been our condition before."

Although Hamilton did not anticipate any trouble between the military and ex-Confederates, he knew that civil authorities alone could not—and in most cases, would not—uphold the law and that loyal citizens, particularly the freedmen, could not be protected without the presence of federal troops. Thus, to most Texans military authority clearly superseded civil jurisdiction. Hamilton was aware that his authority was limited to the immediate necessities of writing a new constitution and forming a new government. Only with Washington's approval would civilian authority be restored.
Ballinger's suspicion of Hamilton was further aroused by the way the governor interpreted his role. Though initially conciliatory, theoretically, Hamilton's reconstruction attitudes were more in accord with those of the Radicals than with President Johnson's reconstruction philosophy. Like the Radicals, he was suspicious of the president's notion of "voluntary action," and he was especially alarmed by reports that told of freedmen being abused, even murdered indiscriminately by white Texans. Such accounts only confirmed the supposition of most Radicals that the majority of Texans were unwilling to accept the freedmen's new status. Accordingly Hamilton supported the trying of such offenses by military courts, which he believed essential if the freedmen's civil rights were to be protected.433

It was Hamilton's use of federal force to safeguard the freedmen that drove Ballinger ever deeper into the opposition camp. Ballinger believed that the governor's policy was "designed to further degrade & humiliate us by using federal troops to protect the negroes and to subvert civil authority and impose upon us military oppression. The Gov't having declared the negro a free person, need no longer to intervene on his behalf. The negroes (sic) welfare is now a matter for the civil authorities where he presently resides. They alone should be entrusted with his protection. All other efforts would be a farce--possibly a tragedy."437
Ballinger was even further alienated when Hamilton publicly endorsed limited black suffrage and then broke with President Johnson over the necessity for a federal civil rights act. Hamilton's decision to journey to Washington to lay his case before Congress must have been the final straw for Ballinger. In a letter to Green Adams, Ballinger revealed his contempt for Hamilton's latest "betrayal of the People of Texas & the duties entrusted to him by the President. He has openly declared himself against the President's policies. . . . It is now tragically clear to all here that Hamilton has joined the ranks of the Radicals. I had always been apprehensive of his purpose, but believed in him during these changing times. But I now realize that he never intended for us to decide our own course, & permit us to deal with our own problems which he knows little of. He is vindictive & perverse & will not stop until he and his associates have made a mockery of our former allegiances, and has placed us under the disgrace of military rule and negro equality. . . . I fear we are headed for worse times than we have ever witnessed. . . ."130

While Ballinger's premonition that Texas was destined to suffer even further the strains of reconstruction proved accurate, the actual breakdown of law and order began subsequent to Governor Throckmorton's election in 1866.
The impression of many northerners that Texans had not accepted their defeat was confirmed by the second year of James W. Throckmorton’s term of office. By 1867 his administration was beset with a multitude of problems that the governor seemed unable to deal with. Lawlessness was rampant as a virtual reign of terror existed against loyalists and freedmen. Whites committed atrocities with impunity, while blacks, often arrested for minor infractions, were often physically abused. Throckmorton maintained that his administration provided adequate safeguards for the freedmen and that all Texans were equally protected under the law. His arguments were untenable, however, as the murder and violent death rate in Texas continued to soar.131

By 1867 Northern public opinion had had enough with the South’s unrepentant behavior. The Radicals, now in complete command of Congress, responded by passing the Military Reconstruction Act of 1867 that abrogated civil authority in Texas and placed the state under the absolute military control of General Philip Sheridan who immediately removed Throckmorton from office. Sheridan then declared the 1866 constitution null and void and appointed Elisha M. Pease interim governor. Pease purged the state government of all ex-Confederates and replaced them with loyal Unionists. He was then instructed to hold elections for delegates to attend a new constitutional convention in June 1868.132
Unlike the previous convention, the 1868 Constitutional Convention was dominated by Unionists. Although the convention was far from harmonious, the resulting document, though short-lived, proved to be Texas' best charter. It centralized authority, granted suffrage to all male Texans regardless of color, and assigned the governor a four-year term with unprecedented appointive and administrative power. The constitution also gave the governor the right to establish a state police force, appoint judges and a state school commissioner, and did more for public education than any previous document.\textsuperscript{133}

Since the majority of Texas Democrats had been disfranchised because of the loyalty oath, party leaders decided not to run a candidate for governor in 1870. Instead, they opted to try to take advantage of a split that occurred within Republican ranks between Hamilton and Edmund J. Davis.\textsuperscript{134} Once again, conservative Texans such as Ballinger were forced to turn to Hamilton as an alternative to Radicalism. Ballinger's support of Hamilton reflected the hope of most Conservatives that the ex-governor would "prevent the Black Republicans from controlling the State by their manipulation of the negroes for their own political advantage. Though I opposed Hamilton before and still believe he is vile & unprincipled, we presently have no choice but to choose between the lesser of two evils--support
Hamilton and the others against the Davis Radicals. In a letter to Elisha M. Pease, a moderate Republican and Hamilton supporter, Ballinger told the former governor that if his party hoped to attract the Conservative vote, "you must lay aside all animosities, & curtail your former demand for the negro vote. . . . If not, the Republican Party cannot be sustained in Texas without military force. . . ."

A political realist, Hamilton understood that his political future, as well as his party's, could not be secured without the endorsement of Texas Conservatives. Hamilton also agreed that a viable Texas Republican party could not succeed if dependent upon the black vote. Thus, during the campaign he publicly urged freedmen to be patient, that a "transition period" was necessary before their equality would be recognized. To insist now on full equality Hamilton warned, would only further antagonize Texas whites.

The Radicals chose Edmund Davis, a former brigadier general who had led the Union invasion of the lower Rio Grande, as their "standard bearer." Unlike the Moderates, the Radicals refused to welcome into their ranks ex-Rebels who would not accept the Thirteenth and Fourteenth Amendments. Economically, Texas Loyalists, unlike the National Republicans, were leery of big business, especially the interstate railroad interests, and instead supported
programs to aid the small farmer and entrepreneurs. The
Moderates’ economic policies on the other hand, tended to be
more favorable to the still powerful planter class and rural
agarians than to urban capitalists and laborers.\textsuperscript{126}

The state election was held from November 30 to December
3, 1869. The 1868 Constitution was adopted by an overwhelming
vote of 72,446 to 4,928, for all factions recognized its
necessity. The main contest, however, was for the
governorship. Hamilton, believing he had the support of the
majority of ex-Confederates, was confident of victory. Even
though Ballinger and other less partisan urban patricians and
planters endorsed Hamilton, rank-and-file Democrats refused
to put in office a former Union army general who had not only
denounced their party leaders as traitors, but who had also
publicly championed black suffrage. Davis not only attracted
loyalist Republicans and the lion’s share of the freedmen but
also had the backing of General Joseph J. Reynolds, the
state’s military commander, and Morgan C. Hamilton, the
foremost Texas Radical leader and brother of the Moderate
candidate.\textsuperscript{127}

Initially spurned by the Moderates in his bid to become a
nominee for the U.S. Senate, Reynolds then defected to the
Radicals, where his services as military commander were
eagerly welcomed. Apparently in return for stacking the
voter registration boards with pro-Davis men, thus ensuring a
Radical victory, Reynolds announced his candidacy for the Senate believing he had Radical support. 140

Ballinger maintained, however, that Morgan Hamilton was more instrumental than Reynolds in securing a Radical triumph because of his connections within the Grant administration. In July Ballinger had spoken with Hamilton about the forthcoming election while the latter was in Galveston trying to rally support for the Radical ticket. According to Ballinger, Hamilton had approached him at his office in hopes of "obtaining my support. I was courteous but firm in telling him that I could not--that his party was contrary to all I believed & that he & his associates were harmful to Texas." Apparently, Hamilton was not antagonized by Ballinger's candor, for he revealed to Ballinger that he was "very bitter in his feelings toward his brother and other conservatives. Says that his brother has deluded himself. Texans will not vote for him. Says majority of the people will not even participate in elections. The Radicals do not intend to leave and will do all necessary for victory. If Radicals not elected they expect to migrate so Hamilton in effect said. Said he was leaving for Washington to see President for purpose of obtaining an increase of military force & the strengthening of military gov't." 141

Apparelly Morgan Hamilton's prediction was correct about the election's outcome. In one of the narrowest margins of
victory ever, and an election in which the returns were never made public, Davis defeated A.J. Hamilton by 899 votes--39,901 for Davis and 39,002 for Hamilton.  

Ballinger’s response to the election results was probably typical of most conservative Texans who had participated in hopes of securing a Moderate victory. Though they had failed, Conservatives like Ballinger believed that "the radicals will never be able to establish themselves here without military force. Their manipulation of the negro--his vote--will turn the people against them. I am confident yet apprehensive that it will only be a matter of time before the people will rise up and turn them out--Until then I fear we have difficult times ahead."  

Ballinger’s assessment of the Radicals would prove accurate. Until that moment he and his fellow Texans would have to endure yet another phase of reconstruction that began on January 11, 1870, when the first Republican governor of Texas, E.J. Davis, took office.

For the next two-and-one-half years Ballinger ceased keeping his diary on a regular basis, minimized reflective personal correspondence, and returned to his prewar reserve. It was time, he believed, to devote his full energies to his practice that he "had neglected long enough. My time has been very constantly occupied with matters that I should have never allowed to compromise my work. I must be more resolved
Ballinger believed that it was his "passion for politics and public affairs" that had caused him to "forsake my professional duties & family." Ever since the secession crises of the late 1850's, when he first threw off his customary restraint, Ballinger was either visibly or privately involved in the major political issues of his day. Despite repeated pledges and reproach for becoming "involved in matters that do not pertain to my profession," Ballinger could not resist the exhortations of his family and peers to use his talents for the benefit of Texas. However, a decade of intense political activism proved physically too much for Ballinger. No sooner did he attempt to return to his practice and "do nothing else but the law," than in early 1871 he collapsed from exhaustion.

Never a healthy man, Ballinger suffered from a variety of ailments throughout his adult life. Especially debilitating were his acute asthma and chronic intestinal disorders that caused great discomfort on a regular basis. His diary is filled with discussion of his maladies, which often forced him to his bed for weeks at a time. Despite his nagging afflictions, Ballinger was no hypochondriac. He never allowed his illness to become an excuse for failure or negligence. Though he privately chronicled his problems, rarely did he publicly display his pain or admit that there
was anything wrong. When stricken and forced to retire, his family and friends were surprised that such a "healthy" and energetic individual had to momentarily slow down.

Only a week before his breakdown his doctor had warned him that he "ought to take special care of his health. I was overworking—that it is not necessary—my professional reputation was among the highest in the State, and that I did not need to wear myself out in order to get business or attend to it properly." Ballinger, however, did not agree with his physician, and after spending only a week recuperating he was back to work. "We have a very heavy docket & I cannot allow Tom to handle all the cases alone—I feel as strong & well as ever—and capable of constant work." Ballinger, however, was deceiving himself. No sooner was he back at his desk than he suffered a relapse, and this time his illness was more serious than fatigue. On April 11, 1871, he was informed by his doctor that part of his right lung "was completely useless and that long and complete rest was absolutely necessary if I expected to regain my former health."

Ballinger's wife and physician knew that the only way their patient would get the rest he needed was if he took an extended trip away from Galveston and his practice for as long as possible. After considerable procrastination on
Ballinger's part, he finally succumbed to his wife's insistence that "we will go to the North & Canada as soon as all preparations are made. I have never seen Hally so obsessed with an idea--I should be grateful that she is solicitous of my condition. I pray my work will not suffer and that Tom can get along without me."\textsuperscript{147}

On June 12, 1871, Ballinger left Galveston accompanied by his wife and two youngest daughters, Lucy and Betty. Ballinger spent the summer months traveling and sightseeing in the northern United States and southern Canada. He visited St. Paul, Minnesota, "a charming city surrounded by water"; Detroit; Chicago, where he stayed only a few days because of "the awful smell of the packing houses & incessant noise"; and Des Moines, Iowa, which, though "incredibly hot," was "a delightful little city encompassed by beautiful farm land & robust people who maintain their land with such care and diligence."\textsuperscript{149}

Though he did not keep as extensive a journal as on his former excursions, his sporadic entries indicated that he again found the North as refreshing and stimulating as before. Ballinger found Canada especially "beautiful this time of year--though I would not wish to live here during the winter."\textsuperscript{151} He was particularly enchanted by Canada's "natural beauty which I believe surpasses all I have seen in our country. Its expanse defies the imagination. We
traveled for hours by train & coach & saw only a few people." Even Canada's major cities were appealing to Ballinger. "Ontario (Toronto) is a magnificent city and so is Quebec though we had some difficulty communicating--my little knowledge of French got us by though--People everywhere treated us with courtesy & were eager to hear about where we were from." By September the Ballingers were back in the United States and on September 25 Ballinger celebrated his forty-sixth birthday in New York City at the Astor Hotel, "my favorite place for lodging and dining in all of New York. After a superb meal Hally told the waiter it was my birthday and all sang 'Happy Birthday' to me & the children had gifts--a memorable celebration." Ballinger remained in New York until October 3 and then traveled to Washington, D.C., where he "took the children out every day to see our glorious Capitol and other monuments around the city. Though it was dreadfully hot our little girls were wonderful & appreciated all they saw." After spending two weeks in the nation's capitol, Ballinger finally left for Galveston, arriving there on October 20, 1871, "fully restored to my former health & eager to return to work."
CHAPTER VI -- The Final Years

The old year nears its close and admonishes me how rapidly and certainly I am reaching the close of my own career. But the incentive is the stronger for the discharge to utmost ability, of all the duties that devolve upon me.

Diary of William Pitt Ballinger
December 29, 1879.

Immediately after returning to Galveston, Ballinger plunged into his work with renewed vigor. However, no sooner was he back home than he was once again called upon to participate in local politics. This time, however, Ballinger was more reticent. His earlier activism had not only caused him to neglect his practice and family but had also proved detrimental to his health. He feared that if he allowed his penchant for politics "to reign free over me again," he would surely "jeopardize my family and practice beyond a recoverable condition. I must refuse Bryan and the others to get involved in the present affairs with the Radicals." Despite his pledge Ballinger could not resist the constant entreaties of his relatives and friends to throw off his restraint and become politically active once again.

By 1872 Radical rule in Texas was fast approaching its downfall. Though Radical reconstruction in Texas lasted only two years, that was long enough for the first and only
Republican governor of Texas for over one hundred years to become anathema in the eyes of generations of Texans. Via the Twelfth Legislature which he dominated, Davis' programs, termed the "Obnoxious Acts," not only alienated Democrats but moderate Republicans as well. These acts included the creation of a state police force and militia under the governor's direct authority and the right of the governor to patronize a state printer and to place public notices in newspapers of his choice. The governor was also allowed to fill all vacancies in public offices, including those created by the 1868 Constitution--nearly 8,000 positions. The postponement of state elections for a year to bring them into accord with Federal elections, gave all current office holders, mostly Republicans, an extra year in office.²

Democrats as well as moderate Republicans denounced the Davis administration as vicious and corrupt. They referred to the antebellum era when Texans were free of oppressive taxation and government interference. The governor was condemned for his arbitrary declarations of martial law and of using his private police force to suppress dissidents. He was accused of "selling out" to powerful Eastern railroad interests that were exploiting Texas for their own aggrandizement. Democratic and moderate resistance to the governor climaxed in the Taxpayers' Convention. Held in Austin in September 1871, its principal purpose was to
organize support for the anti-Davis cause. Key opposition leaders from all parts of Texas were there, including such Democratic notables as John H. Reagan and James W. Throckmorton, and former Republican provisional governor Andrew J. Hamilton and Elisha M. Pease. ³

Caught up in the frenzy of their own pretensions, the delegates accused the Davis administration of all manner of fiscal extravagance and corruption. Highly dubious, distorted figures were extracted to prove that Davis and the Radicals were guilty of oppressive taxation, exorbitant spending, and general mismanagement. Ex-governor Pease, who had been elected convention president, was especially vituperative in his accusations. In his convention address Pease attacked "the disastrous and oppressive financial policies of the Carpetbaggers, who since taking office but less than two years ago, have totally squandered the once healthy surplus in our treasury. But now our State is bankrupt. . . . The warrants of the State are hawked about the streets of Austin at six bits on the dollar, and sold with difficulty as the Carpetbaggers try to redeem lost funds. . . ."⁴ Pease further pointed out that "six million dollars were to be levied in State taxes against an estimated $800,000 to run the State."⁵
The committee on statistics reported that the state and county tax rate had increased in two years from $.15 to $2.17 1/2 on $100. Approximately twenty-one percent of Texans' total income went for taxes. It was also reported that the 1870 and 1871 legislatures had appropriated over three million dollars for governmental expenses alone. Perhaps more important than compiling distorted statistics to "lay before the people," the convention provided the opposition with an opportunity to unite all factions into an organization with which to defeat the Radicals.

A more objective analysis of the Davis administration, however, leads to a very different assessment. Though the cost of state government under the Radicals increased considerably, there were several reasons for the escalation. Texas had grown appreciably both in population and territory inhabited since 1860. The still unsettled frontier conditions, where lawlessness was rampant, warranted the existence of both a militia and state law enforcement agency. In a little over two years the State Police made more than 1300 arrests for murder or attempted murder. The increased taxation lambasted by the opposition was used to finance a desperately needed free public school system, which can by no means be regarded as a waste of money.
In fact, if anything, Davis' use of taxes for educational purposes is to be lauded rather than condemned. He was the first governor to take seriously Texas' dreadfully backward education system and try to improve it. Davis had vetoed several bills giving large grants of school lands to railroads--bills for which convention leaders like Throckmorton had served as lobbyists for the Southern Pacific Railroad. Still, it was the governor who was chastised for his association with the "robber barons."? Whatever the truth of the Democratic charges, attached to the racist appeals for white supremacy, they became the central issues of the 1872 elections in Texas. It was at this juncture that Galveston's most prominent but reserved citizen began to reappear on the political scene.

In a series of articles written for both the Galveston News and Houston Telegraph, Ballinger began to make his opinions known. Though he privately remained suspicious of the Democrats and their "tendency to resort to perversity & dishonorable tactics to gain political office," he approved of their crusade to oust the Davis regime. In editorials filled with white-supremacist appeals and typical histrionics, Ballinger accused the governor "of the most vile and unprincipled extortion ever to befall a people....

The present government in Austin has not only made itself the
lackey of the Carpetbaggers and Scalawags, but has also resorted to the meanest sort of reprisals and insults against the People of Texas. Never before have we had to suffer such degradation—even our bleakest times during the late war for independence seem milder than our present suffering. . . .

All those who dare speak out against these injustices are censored, subject to arrest and confinement and all manner of grievous insults and humiliation. Worst of which is to watch the negro have all his rights guaranteed by the present government. It is time my fellow Texans to unite and cleanse our State of these unscrupulous usurpers who degrade the people while elevating the negro.**

In a similar vein for the Galveston News, Ballinger denounced the Radicals as "extortionists and vindictive usurpers who tax us illegally for the purpose of protecting the negroes and elevating them to a level far above that which they are presently qualified to hold. We are deprived of our money then it is used to suppress us—to pay for programs that are of no benefit to us and only serve to fill the pockets of the Carpetbaggers and their Scalawag associates. . . . It is time for all concerned citizens, regardless of their political affiliation, to unite in a common effort and turn out these scoundrels."**

Apparently, Ballinger's pleas were effective. In the 1872 election, Texans began to reclaim their state from the
aberration of Radical rule. Since Reconstruction in Texas had formally ended a year earlier, previously disfranchised Democrats could now vote, and thus a Democratic victory was ensured. The party easily regained control of the state legislature and at the national level, Democratic-Liberal Republican nominee Horace Greeley, whom Ballinger described as "a sincere, honorable & intelligent man who would make a favorable President," carried the state over incumbent President Ulysses S. Grant. The Democrats also won all six seats in Congress.\textsuperscript{**}

In August 1873 Davis was renominated by the Republicans. The Democrats, who met in Austin that September, nominated Richard Coke, a former secessionist and captain in the Confederate army. Although Davis could claim a number of successes such as his aid to small farmers and businessmen, education programs, and full civil rights for all Texans, his defeat was inevitable. The Democrats championed states' rights, reaffirmed their devotion to the Confederacy, and accused the Republicans of manipulating the freedmen for their own political aggrandizement. Neither side was scrupulous in its tactics during the campaign or at the polls.

Immediately upon regaining ascendancy in the legislature, the Democrats repealed everything that was left of the "Obnoxious Acts." The state police force was
abolished, the governor's appointive powers were reduced, and
the governor's authority to declare martial law was
restricted. The public school system was also decentralized
and perhaps most important, the legislature simplified voter
registration procedures and limited the election to a single
day instead of four. The next election was set for the first
Tuesday of December, 1873.\textsuperscript{12}

Though there was no rigorous investigations after the
election, there were numerous incidents of fraud and
intimidation. The Democrats were determined to regain
control of the state. Coke won with 85,549 votes to Davis'
42,663—a two-to-one margin of victory. At every level of
state and county government the Democrats were victorious.\textsuperscript{13}

Although Davis and the Radicals were soundly defeated,
they were not to go out of office without a fight. When a
Joseph Rodríguez of Houston was accused of voting twice, the
Radicals sought to invalidate the election by appealing to
the Texas Supreme Court. Ironically, the Radicals argued not
about the double voting but about the legality of the
legislative act that limited the election to one day. The
1868 Constitution called for four-day elections. On the
basis of the location of a semicolon in the constitution's
clause, the "Semicolon Court" nullified the one-day
election.\textsuperscript{14}
With the election invalidated, Davis notified Coke that the newly elected officials were not to assume their offices. The Democrats of course refused to be denied the fruits of their resounding victory. Davis was well aware of this and appealed to President Grant for assistance, requesting the support of federal troops to keep him in office. The Democrats learned of Davis' message to Washington and came pouring into Austin—excited, angry and determined to take power. Davis, alarmed by the possibility of violence, alerted his state police and fortified himself in the Capitol. Austin was poised for battle; had a conflict erupted, federal troops would have been dispatched. However, none resulted in spite of the fact that many Democrats were armed and ready to assault the Capitol on Coke's orders. Since there was no upheaval Grant refused to send soldiers. On the evening of January 13, 1874, the Democrats gained access to the second floor of the Capitol by using a ladder, and late that night, inaugurated Richard Coke as Texas' new governor.

In his response to the Democrats' coup, Davis called out the Travis County militia to break up the usurpers. The militia, however, defected and stood guard over Davis' basement bastion while Coke took the oath of office. Finally on the night of January 17, Davis realized the futility of trying to regain his position and quietly slipped out of
Austin unmolested. For the rest of his life his name was
anathema to most Texans.¹⁴

Shortly after Coke's election but before his
inauguration, he had asked Ballinger if he would be
"interested in a position on the Bench of the State Supreme
Court. I can presently think of no more qualified &
honorable jurist than yourself for this position. You have
consistently demonstrated your sincere devotion to the People
of Texas and its laws and your professional reputation is one
of the highest in the state. You will honor not only this
office but the People of Texas by accepting this appointment.

..."¹⁷

Though Ballinger was "flattered" and "greatly delighted
by the Govr. offer," he felt that at this moment in his life
he "could not accept the honor. I must regrettfully inform
the Govr. that due to my present financial affairs, and until
they are properly taken care of, I can not accept public
office."¹⁸

It was Ballinger's constant preoccupation with financial
security that prevented him from accepting Coke's offer.
Though his firm had prospered since the war's end, Ballinger
nevertheless still felt fiscally uncertain. Though he
repeatedly assured himself that he was doing well and was
"confident in his abilities" and that his "reputation was one
of the highest in the State," he was rarely satisfied with
his efforts. No sooner would he laud an accomplishment than in the same breath he would declare that he "deserved reprobation," or "I am feeling deeply sensible that I do not apply myself right. I idle too much--do not work to good advantage--Considering the extent & magnitude of our business this is a most serious fault." 18

Fear of dying at an early age and leaving his family unprotected obsessed Ballinger with material security. Never sure if he would live much longer after a severe bout with asthma or with his "wretched bowels," he was determined that when he died his family "would not have to worry about financial matters. I must make sure now that all will be provided & that Hally & the children are solvent." 20

Members of Ballinger's family, however, were determined not to let their mentor pass up another opportunity to extend the family's prestige and influence within the state. Ballinger's omnipresent brother-in-law Guy Bryan was especially anxious to see Ballinger accept Coke's offer. Bryan, from his position as Speaker of the House of the Texas legislature, continued to pressure the governor to nominate Ballinger regardless of the attorney's desire to remain a private citizen. Apparently, Bryan told Coke that his brother-in-law would not reject the offer if the governor appealed to Ballinger's sense of civic duty. In another entreaty to the Galveston attorney Coke declared that
"Justice to the People of Texas, to yourself and myself, demands that you make any ordinary sacrifice to accept and hold the position for which I have received official notice from the Senate that you were confirmed Associate Justice of the Supreme Court."* Ballinger, however, had to reiterate "politely but firmly" that he could not accept the position. In a letter to Coke, Ballinger told the governor that though his "sense of honor of a position which would fill the measure of my ambition for useful and honorable service, there are presently difficulties in the way of my acceptance. . . . I am under professional obligations from which I cannot relieve myself. . . . Further frankness to you dictates that my income, in addition to the salary of the office would not afford me that exemption from pecuniary embarrassment. . . . It is not a question with me of gain, but of adequate support of my family. . . ."** Despite Coke’s recommendation for an increase in the salaries of Supreme Court justices, Ballinger could not be persuaded and requested that the governor rescind his nomination. Coke regretfully complied on February 3, 1874.

As Ballinger began to focus exclusively on his practice, he was once again called upon for political commentary. Though at first he rejected offers from local newspapers for his observations, by the summer of 1874 Ballinger’s affinity for journalism again overcame him. In a series of editorials
for both the Galveston News and Houston Telegraph he
offered opinions on various topics, most of which touched
upon sensitive political issues. Of particular concern to
Ballinger, and to most Democrats, was the state constitution
that had been promulgated in 1868 by the Republicans. In an
editorial written for both the News and Telegraph,
Ballinger expressed the attitude of most Texans toward the
document:

The old constitution is defective—a
Radical instrument created to suppress
the people. It is nothing but a mere
reminder of past times and serves no
purpose but to perpetuate bitterness and
public rancor. . . . Our present
constitution is a mass of heterogeneous
legal absurdities, bundled together by a
lot of incompetents, and does not do the
work of a constitution. . . .

Although Texans generally agreed that a new constitution
was needed, there was considerable debate whether it should
be drafted by a legislative commission or a special
constitutional convention. A legislative resolution was
finally worked out by both houses which provided that a
convention was to assemble on the first Monday of September
1875 for the purpose of writing a new constitution. The
decree also stipulated that an election was to be held one
month prior to the convention, at which time voters were to
select three delegates from each senatorial district to be
their representatives at the convention.\textsuperscript{24}

On August 2, 1875, Ballinger was unanimously elected by his fellow Galvestonians to represent them at the convention. Though he had hoped to distance himself from political involvement, Ballinger succumbed to this latest appeal to his sense of civic responsibility. However, he was more concerned about his forthcoming role than he revealed. Quite anxious, he privately confessed that he felt "unprepared for my purpose at the convention. I do not possess sufficient knowledge on the subject of constitutions & need to carefully study other documents &c. so that I may be able to contribute."\textsuperscript{25} Ballinger compensated for his unfamiliarity with constitutional history by extensive study of the subject. He read a variety of treatises and essays and carefully examined "the debates of the Kentucky Convention of '49, as well as those of the Constitutional Convention of 1787, the Texas Convention of 1845, and the Virginia Convention of 1832--all produced sound documents which contain much valuable information that will assist me in preparing for our convention."\textsuperscript{26}

Arriving in Austin on September 5, 1875, Ballinger quickly found himself immersed in the convention's business. The first few days were devoted to the appointment of committees and the meeting's general format. According to Ballinger, "several issues had to be worked out before we
could get down to the business at hand." Of special concern to the attendants were the topics of delegate compensation and whether or not the debates should be published. It was decided that convention members should receive $5.00 per diem and 20 cents a mile in travel allowance for their efforts. The motion to allow the printing of the debates was voted down. It was during these first few days, while the convention wasted "valuable time & energy discussing trivial matters," that Ballinger remarked that though "the delegates are generally favorable as to disposition, they are not very strong as to ability."

Finally, on the morning of September 9 convention president E. M. Pickett of Liberty, whom Ballinger had "presented to the assembly," announced the standing committees. Ballinger was appointed chairman of the Committee on the Executive Department and was named second on the Judiciary Committee, which, according to Ballinger, "many generally expected me to head—altho' John Reagan is a fine choice." Despite being somewhat miffed at not being selected for the Judiciary Committee, Ballinger noted that he was "generally pleased with the committee assignments," and that the "President has treated me with proper consideration."

By the convention's fourth day Ballinger was consumed by committee work, which consisted primarily of acting upon the convention's various resolutions. Since many of the
delegates were members of several committees, Ballinger proposed "that the Chairmen of all committees meet and agree upon times of meetings of the various committees." The other chairmen agreed, and a satisfactory schedule was arranged. The rest of the day Ballinger spent preparing a program for the Executive Committee, which would meet "thereafter on Tuesday and Friday afternoons."

The next evening, September 10, Ballinger's Judiciary Committee held its first meeting, and "discussion was held concerning the courts which the Judicial Dept. should consist." During the session Ballinger proposed the creation of "an intermediate appellate court which would help relieve the high courts." He found that "the majority were opposed to it—but my proposal started a spirited debate on how the Supreme Court and district courts were going to dispatch all matters brought before them."

An interesting controversy emerged on the fifteenth day, which not only became one of the most bitterly debated convention issues but also proved to be a personally significant episode for Ballinger as well. The question was whether or not an ordinance should be passed postponing the state election until after the new constitution had been ratified. Under the existing document elections were to be held in December 1875. A special committee of which Ballinger was a member was appointed to study the resolution.
The majority report favored postponement "until the constitution had been acted upon by the people." The report further declared that since the delegates had been chosen by popular consent the convention had the right, as well as "the duty to the People of the State," to postpone the election. Suspension would not only save "confusion and embarrassment" but "an unnecessary expense for the people as well of $300,000." 33

Ballinger, however, disagreed with the majority report and offered a minority statement. He maintained that the convention could not pass any legislative decrees because its authority was restricted "to framing a new Constitution for the State of Texas." Ballinger further argued "that the power vested in the convention is limited to framing, planning, devising, and forming a constitution and to submitting the same to the State for adoption or rejection... Whenever a convention decided to submit a constitution to the people it had no power of sovereignty left, either executive, legislative, or judicial. Where, then, did the convention get the power to put in force a measure like the one recommended by the majority report?" 34 The minority report further declared that regardless of "the economy of the plan, it was no part the duty of the convention to postpone the election. Only the present Legislature has that power and it has refused to postpone the election. If the
convention could suspend a general election and prolong the terms of officers, they did not see what the convention could not do. It could then suspend all the functions of the present legislative, executive, and judicial officers of the government."

After a two-day moratorium on the election debate, the question was raised again on September 23. Ballinger reiterated that the Convention did not have the right to pass the ordinance, and further argued that the resolution "could only be put into effect if it was submitted to the people. Though such action might cause further expense, it would be nothing compared to the danger arising from conflicting powers of government. I had wished this matter might be settled without any speech from me, but I consider it my duty to the State to speak out now against this proposal."

Ballinger reminded the delegates that they had been sent to Austin "to make a constitution, not to pass ordinances to suit their own fancy. The people, did not for a moment, suppose that this body would arrogate to themselves the power to make the results of their labors a finality."

The controversy at last came to a floor vote on September 24, and despite Ballinger's attempt to block the postponement ordinance, the majority report was adopted. Though his argument was defeated, local newspapers praised his cogent defense and maintained that the minority report
was "legally and technically accurate in its assumptions on the issue of postponing the election. However, we must also acknowledge that for the purposes of expediency and economy, the approval of the majority report will better serve the interests of the State."³⁹

Thus far Ballinger believed he had expended a great deal of energy debating extralegal technicalities that were "utterly superfluous to the business at hand. I have yet to offer anything of value to this convention."³⁹ He finally had the opportunity at least to accomplish something for his city when he proposed a resolution to the Committee of Municipal Corporations that would allow "the City of Galveston, and other cities on the Gulf Coast the right to create the debt and issue valid bonds therefor, which may be necessary to build such breakwater, seawall, or other improvement as will protect said city or cities against all injury and danger from the Waters of the Gulf Coast." Ballinger's provision was overwhelmingly approved by the convention and was incorporated into the constitution as Article XI, Section 7.⁴⁰

Ballinger was involved in another heated controversy that addressed the issue of constitutional amendments. The Legislative Committee had proposed that the legislature at any regular session could, by a two-thirds vote, propose amendments. The amendments would then be submitted to the
general electorate for ratification but would not become law until two-thirds of the members of the next legislature had also approved the changes. The committee's report inspired heated debate over the amendment issue; Ballinger recommended that the clause calling for subsequent legislative acceptance be removed. He maintained that approval by the legislature after a measure had already been popularly endorsed was "anomalous to the whole legislative process. There is no need for the legislature, once an amendment has been approved by the people, to resubmit the measure to that body. I see no good reason for such action unless the 120 men comprising the legislature, induced by outside influences, wish to act in opposition to the will of the people." As the debate continued, Ballinger, exasperated, decided to suggest a simple alternative to the amendment process: all proposed amendments, once accepted by a majority of the electorate, should "automatically without any further legislative action, become law." Ballinger believed that his plan would "enable the people, with the utmost facility to amend the constitution in a way that would not be liable to irrational or dangerous precedent. The constitution should at all times be under the active and careful supervision of the people, and they alone ought to be able to change it with reasonable facility." In conclusion, Ballinger argued that when any provision of the constitution was perceived "to work
hard upon the people, or was defective, the public judgment should be allowed to take such direction as would provide amendment to it with facility and dispatch."

It was during these debates that Ballinger revealed a more conciliatory attitude toward the principle of popular sovereignty than he had earlier displayed. Although he still maintained a patrician outlook on the necessity of keeping the well-bred and educated in power, he realized that times had changed and that Texans in particular were less willing to be governed by the elitist notions of the antebellum period. Democracy was on the ascendancy in Texas, and those who wished to retain legitimate political authority had to be willing to accommodate the popular will. Thus, Ballinger, no longer suspicious of the people's ability to control their own future, was inclined to grant the common folk greater participation in the system. He was especially amenable to the idea of acknowledging the electorate's right directly to amend the constitution if the majority believed it was defective.

Ballinger's proposal to simplify the amendment process aroused considerable antagonism. Particularly alarmed were those "Bourbons" who thought his resolution had "elevated the influence of the people beyond a reasonable and prudent capacity. Mr. Ballinger's plan carries with it no more dignity than a simple county election." Despite attempts
by several Bourbon factions to intimidate Ballinger and force him to modify his proposal, his alternative was accepted in toto by the convention and made a part of the new constitution.

No other subject at the convention seemed to generate as much reaction as the question of executive authority. The "Obnoxious Acts" were still fresh in the delegates' memory, and they were especially hostile to those measures of the old constitution that had granted the governor unprecedented appontive power. They were not only determined to curtail executive privileges but to shorten terms of office and reduce salaries for all government officials as well. Ballinger, however, was opposed to the Executive Committee's resolutions and as chairman sought to soften the committee's demands. He was fairly successful in obtaining concessions in all areas but one: that of restricting the governor's appontive power. On this issue the Democratic and Granger majority was adamant. Despite Ballinger's disapproval, the committee voted overwhelmingly to reduce the governor's prerogatives. The previously assigned offices of comptroller, treasurer, land commissioner, and attorney general were now to be elected offices. The governor's right to declare martial law was also limited as well as his use of the veto.**
A reduction of the governor's salary was also on the committee's agenda, and on this question, too, Ballinger opposed the majority opinion. Although he had never campaigned for political office and had no desire to do so, he had always protested low and inadequate salaries for public officials. In his minority report on the salary issue, Ballinger caustically remarked that he had "no idea that the governor's office was sought for profit. A salary of $5,000 annually will surely attract the most qualified individuals. The amount is not even equal to the payment of his actual expenses. What a disgrace to our State that our leading official must be called upon to maintain his office out of his private income."47

Ballinger's excoriations failed to persuade his committee of the importance of adequate salaries. The convention accepted unanimously the committee's resolution to pay the governor an annual salary of $4,000.48

Ballinger next found himself embroiled in the poll tax controversy. The ordinance called for the imposition of a poll tax as a voting prerequisite with the proceeds being used for educational purposes. Though Ballinger admitted that such a tax could be levied legally, he nevertheless opposed the measure on the grounds that it was a blatant restriction of suffrage. Ten years earlier Ballinger would have questioned the notion that suffrage was a "natural
right." In fact, as late as 1874 Ballinger still maintained that the ballot was "a right conferred by govt and could be regulated by it for the good of the people." Ballinger, however, no longer subscribed to such elitist notions, and in a Jeffersonian tone, asserted that "the denial of suffrage was too great for the neglect or inability to pay a tax; the right to vote is derived from nature and cannot be conferred by government." 30 

As far as public education was concerned, Ballinger was heartily in favor of a free public school system, but believed that a poll tax was not "a proper or adequate means of raising the necessary revenue." He also accused the poll tax sponsors of devising a "scheme not to preserve schools but to restrict suffrage." He further claimed that "sentiment outside of Texas, Democrats as well as Republicans, would regard the tax as an attempt to restrict the colored vote. At home not only will the negro be affected but other poor people as well. We will be accused of making a mockery of democracy in Texas." 31 Despite Ballinger's protests, the convention voted 61-20 in favor of the measure.

The concept of free public education could find no more ardent supporter at the convention than Ballinger. In perhaps what was his most impassioned speech at the convention, Ballinger declared that "it was among the
clearest powers and the most imperative duties of the State to give the benefits of free common school education to all the children of the State. This had not only been accepted, but treasured in all the American states... Ballinger then accused the "friends of free schools" of "duplicity and betrayal" of the idea because of their insistence that the system be created "only when the means provided would do it throughout the whole state for a period of four months every year. Yet not one cent of taxation was made imperative and taxation was limited to one-tenth of State revenue. This is notorious!"

Ballinger then pointed out that the rest of the country, particularly the "North and Northwest," had made the establishment of public education a priority. They had at least laid the foundation and "when economy allowed, built upon it." He then asked whether Texas "alone was unable to do even that? If we say we are too poor to levy taxes, will we forever be too poor to establish free schools?"

Ballinger challenged the excuse that Texans were presently too impoverished because of the upheavals of reconstruction to support a public school system. He found it hard to believe that Texas "with her boundless territory, her genial sun, her immense capacity for production, with population teeming into her soil, would be unable to establish free schools." Despite his pleas for an increase in the public
school fund, the convention refused to appropriate more money for education. Once again Democratic reaction to supposed Republican excesses rather than careful analysis of the issue proved to be the principal reason for the measure's defeat. According to the final article the legislature could appropriate "not more than one-fourth of the general revenue" and could "levy a poll tax of one dollar" for the support of public schools.\textsuperscript{22}

Ballinger was enraged by the convention's rejection of the education bill and charged the Democrats of being "reactionaries directed toward ignorance." Ballinger was not alone in his indictment of the Democrats and their failure to establish an adequate public school system. Gulf Coast newspapers were especially supportive of Ballinger's position and decried the convention's "archaic and senseless attitude toward the education of Texas children."\textsuperscript{23} The Houston Telegraph declared that "Texas would not recover for a century from the disgrace of the convention's failure to provide for a public school system."\textsuperscript{24} The Galveston News lamented that "the convention, after decreeing universal suffrage, had now also decreed universal ignorance."\textsuperscript{25}

Ballinger was involved in other constitutional issues ranging from judiciary reform to the disposal of public lands to the question of internal improvements. In most instances
he opposed the final resolutions on these matters. He was especially upset with the changes made in the judicial system, which decreed that all court judges from justice of the peace to the Supreme Court were to be elected and that the number of courts was to be reduced. The Judiciary Committee also established a dual system for criminal and civil proceedings at the appellate level. Equally disturbing to Ballinger was the convention's call for a decrease in the salaries of Supreme Court justices from $4,000 to $3,000. Ballinger contended that such a reduction was not only "an insult to the Supreme Court" but would also "induce the Bar of the State to vote against the Constitution. No document that would pull down the judiciary would receive the support of any member of the Bar." Ballinger was further appalled when he heard the amendment's supporters stating that "these judges were gentlemen who had acquired competency and do not expect to save anything!" Despite his opposition, the judicial reforms were adopted and made part of the constitution.

By late November 1875 the work of the convention was complete. On November 22 an ordinance of submission to a vote of the people was presented, stipulating that as soon as the new document was popularly ratified it would go into effect on the third Tuesday of April 1876. The resolution also provided that general elections should be held
simultaneously for all state, county, and district
officials. Ballinger, however, expressed disapproval as
soon as the declaration was read, maintaining that "the
constitution should be submitted alone, separate from any
elections. It should be allowed to sink or swim on its own
merits, free from partisan influences which the general
elections would invite." The remaining delegates
nonetheless voted his proposal down, although his protest was
"duly noted."

Finally, on November 24 the convention met for the last
time. Though the floor was silent for the first time in
three months, various delegates, encouraged by Ballinger, who
had become the leader of the opposition, entered their
protests against certain sections of the new document. While
his colleagues objected to a variety of articles, Ballinger
limited his exceptions to the issues of low salaries for
public officials, the inadequacy of the public school fund,
and the establishment of an elective judiciary.

Needless to say, Ballinger was dissatisfied with the
completed charter and left behind him in Austin an
interesting legacy of dissent. Although his contributions to
the constitution were manifold, his single greatest service
was perhaps his dissidence. Throughout the convention
Ballinger consistently protested against the excessive and
partisan reactions of the Democratic majority to the last
vestiges of Reconstruction. Though he had played an active role in the struggle to overthrow Radical rule, he was nevertheless more judicious in his assessment of the Davis administration than his Democratic cohorts. In fact, there were moments during the convention when a disgusted Ballinger denounced his fellow delegates for their "petty desires for revenge against the previous Admin." Privately in letters and diary entries he confessed that he had greater antipathy toward the Democrats than he ever felt toward the Radicals. Ballinger, disillusioned with what was taking place at the convention, remarked "They are no more suitable to framing a constitution than the roughest butcher to perform the most delicate surgical operation." Thus, Ballinger's disaffection with the new document stemmed more from his opposition to the reactionary policies the Democrats envisaged than from any real philosophical disagreement with the convention's purpose.

Ballinger had supported those who claimed that the 1868 Constitution was in desperate need of revision. Yet he did not believe that a new constitution was in order if the impetus to throw out the old charter was the result of "vindictiveness upon those responsible in the former government." Ballinger maintained that to create an entire new body of laws for the simple reason that the old ones were "painful reminders of an ignoble past" was wrong. Amend only
those laws, Ballinger observed, that were considered unjust. But to abrogate completely the entire document for purely partisan reasons was "a blatant violation of the cherished & noble reasons which constitutions are promulgated." Thus according to Ballinger, the Texas charter of 1876 was "illegitimate & invalid" because it was the "handiwork of skillful & manipulative individuals who have for their own political aggrandizement fastened upon the People of Texas a mockery."  

Ballinger returned from Austin determined to fight ratification. Although he approved of the constitution as a whole, he nevertheless believed that because of its partisan overtones, it contained "sufficient imperfections that would make it inadequate to properly fulfill the needs of the State." Ballinger and other critics of the constitution found certain newspapers especially receptive to their protests. Gulf Coast publications were particularly willing to publish articles that opposed ratification. Thus, in a series of editorials written for both the Galveston News and Houston Telegraph (many of which were also circulated to other newspapers throughout the state) Ballinger challenged the legitimacy of the new constitution. He summoned its leading proponents "to amend the present document and make it fit to become the organic laws of the State." For reasons unknown, other than perhaps his
renewed enchantment with the Federalist Era, Ballinger decided to issue his editorials anonymously. Alternating between the pseudonyms "Playfair" and "Fairplay," he made his opposition to ratification widely known. In one series of letters to the 
Telegraph he attacked both the postponement issue and "the absurd and excessive election process" that had been established. "Playfair" observed that "the convention had claimed to save the State $300,000 by postponing the fall election, yet at the same time ordered twice as many elections as had been held formerly. . . . Within a decade we will be forced to elect every official from the lowliest clerk to the governor at an expense presently unimaginable. . . ."72 Echoing his convention protests, Ballinger reminded his readers that the delegates' "only power" had been "to frame a constitution and submit it to the people. They had no legal power to take such action as to propose the postponement of the election. . . . To allow the postponement of the election to take place would be high moral treason against the People of Texas."73

"Playfair" also condemned the convention's failure to levy taxes, "even a poll tax if necessary of $2.00," which would have brought "into the school fund the sum of $400,000 annually, sufficient to employ a thousand teachers for eight months in the year."74 Although Ballinger had vigorously opposed the poll tax at the convention, he had reversed
himself by the time of ratification. It appeared that his
desire for an adequate school fund outweighed his previous
objections, and in his subsequent releases he voiced approval
of a poll tax "provided the tax measure be used for the
purpose of raising funds for the education of all our
children." Ballinger further argued that a poll tax would
help reduce the election day "evils of repeating and
emigration."  

Despite his vigorous attempts to vilify the new
constitution, neither Ballinger nor the Republican and
Democratic state conventions, which had also rejected the
document, could persuade the public to do likewise. On
February 18, 1876, Texans overwhelmingly endorsed the
constitution by a margin of 136,606 to 56,652. The 1876
Constitution was no noble declaration of principles and
organic law, but a cumbersome piece of reactionary
legislation and repressive thinking. Its adoption was
accomplished by men devoted to an idyllic past that no longer
existed, and to ideas and institutions that had been
discredited by the carnage of war.  

As soon as the hustings of ratification were over, a
disappointed though resigned Ballinger returned to his
practice. However, no sooner was he settled in and ready "to
become a lawyer again" than he found himself thrust into the
political limelight. The year 1876 was an election year
nationally as well as in Texas. In one of the most
controversial elections in the country's history, haunted by
the legacy of Reconstruction, the Republicans, despite
accusations of fraud and corruption, triumphed again. Though
they were victorious, the Republicans were forced to
"compromise" with their Democratic adversaries in order to
regain the White House. Despite the dubious nature of the
Republican succession, their retention of national power
portended well for Ballinger.

The contest pitted Rutherford B. Hayes of Ohio, a
Republican governor untainted by the scandals of the Grant
administration, against Governor Samuel J. Tilden of New
York. When the returns came in, Tilden had clearly won the
popular vote and seemed likely to win a narrow victory in the
electoral college. But the result was placed in doubt when
the returns of South Carolina, Florida, and Louisiana--states
still controlled by the Radicals--were contested. If Hayes
was awarded these three states he would triumph in the
electoral college by a single vote. The Democrats
immediately cried fraud and corruption, and the election
remained undecided for months, plunging the nation into a
major political crisis. To resolve the impasse Congress
appointed a special electoral commission made up of eight
Republicans and seven Democrats to determine who would
receive the disputed votes. Their decision to award Hayes
the victory by a vote of 8 to 7 was made along strict party lines but had still to be ratified by Congress. The Republican-dominated Senate readily approved it, but House Democrats planned a filibuster to delay the final counting until after inauguration.

Republicans, alarmed at the prospect of an election controlled by House Democrats, decided to negotiate secretly with conservative Southern Democrats, some of whom were amenable to the idea of abandoning the filibuster. In exchange, they required the last federal troops be withdrawn and "home rule" be restored to the South. Eventually an informal bargain was struck, dubbed by historians as "the Compromise of 1877." In reality Hayes did not concede anything, having already decided to end federal support for crumbling Radical regimes, but Southerners were heartened by firm assurances that this would be the policy of the Hayes Administration. Some were also influenced by vague promises involving federal support for Southern railroads and internal improvements. Upon taking his oath of office, Hayes immediately ordered the army not to resist a Democratic takeover in South Carolina and Louisiana. Thus fell the last of the Radical governments, bringing the entire South under the control of white Democratic "Redeemers."

Although Ballinger had abstained from the election, Hayes' victory augured well for him. In his inaugural
address Hayes had promised the South not only "home rule" but also a thorough reform of the federal bureaucracy. He had also declared that new appointments would not be awarded for partisan service. Southerners were hopeful that Hayes, as a conciliatory move, would appoint a number of prominent Southern Democrats to key public offices. Texans in particular were heartened by the President’s gesture, and soon "the talk" around the state had William Pitt Ballinger on his way to Washington to fill a vacancy on the bench of the United States Supreme Court.

When Ballinger was approached by his friends and relatives regarding his possible nomination to the Court, for the first time in his career he seemed genuinely interested in the possibility of public office. In his diary he admitted that though he was "completely surprised by the efforts of our friends to obtain appt. for me, I must confess that I am favorably disposed to the idea of serving on the Bench—I must admit however that I had no more thought of myself in connection with the Court than with the Roman papacy. I will accept the office if conferred upon me—tho' I do feel that there are others with far higher qualifications."**

No sooner did Hayes take office than the Texas Congressional delegation began lobbying for Ballinger's appointment. They came armed with recommendations from
Governor Coke, the present Texas Supreme Court justices, as well as letters from leading Texas Republicans, most notably ex-Governors Elisha M. Pease and Edmund J. Davis. No one, however, was more persistent a champion of Ballinger than his ubiquitous brother-in-law Guy Bryan, a personal friend of the president. Bryan and Hayes had been classmates at Yale, and despite the disruptions of war, they had remained close friends. One of Hayes' early biographers wrote that:

Of all Mr. Hayes' friendships that of the longest duration was the one found in college days with his classmate, Guy M. Bryan, of Texas. . . . Mr. Hayes' letters to Bryan were as free and as full as to any of his friends; perhaps, indeed more so, because of their early intimacy.

Although Ballinger had forbidden Bryan to "mention my possible appt. to the President," Bryan was determined to secure his brother-in-law's nomination. Beginning in June 1877 Bryan began promoting Ballinger's nomination in a series of letters to the president. On June 6 Bryan wrote the following to Hayes:

Dear Rud:

... I have seen it stated that you will not appoint Democrats, South. If such be your action, you are wrong. Appoint as many Democrats as you can well do, the more the better. ... Adhere to your resolution in regard to the Supreme Bench from Texas; the one we spoke of is your
man above all others. Texas is opening her mind and heart to you; no appointment that you could make would commend you more to the judgment of both parties here, than that of Ballinger, not Hancock.

Govr. Davis may visit Washington. He is a bitter partisan, but I believe he is an honest man. Ask him about Ballinger.**

A week later Bryan wrote "Rud" again, reminding the President that Ballinger was "recognized as the Lawyer of Texas, the peer in learning and character of any man whose claims can be considered by the President . . . and is eminently qualified to be Judge Campbell's successor. . . ."**

Ex-Governor Elisha M. Pease also wrote on Ballinger's behalf. Pease too believed Ballinger's legal reputation was "not to be excelled by any lawyer in the State. I think him in every way qualified and believe that he would do honor to the position."** Interestingly, as the endorsements began flooding Hayes' office, Ballinger began to have reservations about his possible nomination. Apparently, his penchant for self-deprecation began to affect him. He informed Bryan and his other sponsors that he "presently felt unqualified to meet the requirements of serving on the Supreme Court of the U.S."** In a letter to Bryan, Ballinger wrote that though he was grateful for all his efforts, had his brother-in-law and friends "not brought my name forward, I would never have
volunteered to aspire to the position." He also admitted:

"When I declined going on our own Supreme Bench, it was with
a very fixed feeling that I should adhere throughout to the
pursuit of my profession and to private life, and I took
pride to myself as an independent gentleman and wholly
nonoffice seeker. I am afraid you have lost my reputation. .
. . Should it be in your way, should it accord your sense of
duty to express these views to the President, I hope you will
do it."**

Apparently, one of the reasons affecting Ballinger's
change of heart was the fact that another relative, Samuel F.
Miller, was already a member of the Court. Perhaps Ballinger
feared the stigma of nepotism or that his nomination would
cause Miller "unwarranted grief and hardship in carrying out
his duties as a Justice."*** Ballinger concluded that "the
President would consider it inexpedient and politically
unsound to have brothers-in-law on the Bench at the same
time."** In a letter to Miller, who had also been promoting
his candidacy, Ballinger again declared that he did not "come
up to the standards which would govern the appt." Ballinger
then offered an alternate to his own selection: "I told him
that I believed John D. Campbell would be a suitable
candidate for the position, & urged him to have the
Republican members of the Court and the President appt.
Campbell."**
Apparently, Ballinger's efforts to dissuade his supporters from nominating him worked. Despite six months of campaigning by Ballinger's friends and relatives, Hayes decided to take Ballinger's decision seriously, and in October 1877 appointed John Marshall Harlan to fill the vacancy.\textsuperscript{32} When the news of Harlan's selection reached Texas local newspapers and politicians accused the president of "attitudes and policies not congenial to the prevailing political predilection of Texas, and as a result an opposition has sprung up that is presently too strong for even combined endorsement of an entire state."\textsuperscript{33} Such partisan responses, though perhaps gratifying to Ballinger, were nonetheless unwarranted. It must be remembered that Texas' "favorite son" had himself withdrawn his name from nomination and thus Harlan's appointment was not the result of political maneuvering by Hayes. Though initially many Texas Democrats felt betrayed by Hayes for not insisting upon Ballinger's nomination, their disgruntlement was soon placated when Ballinger publicly announced "that the President, upon my request and honoring my wishes to withdraw my name from nomination, graciously complied."\textsuperscript{34}

Though Guy Bryan was especially upset that Ballinger did not receive the position, his brother-in-law insisted that Bryan not allow the setback "to affect the warm & sincere relationship you have with the President. You are fortunate
to have such a friend in high public office & you must maintain that tie, if for nothing else, to keep your own sense of honor & dignity. I am confident that the President is a sincere and honest man, and that he is also a trustworthy friend. . . . Do not allow this present affair to taint your relationship with him--It is of no consequence to me--I feel no remorse whatsoever . . ."**

Attempts to put Ballinger in public office were not confined to judicial positions. In July 1878, on the eve of the Democratic state convention, he received an interesting telegram from William Walton of the Texas Democratic party. Apparently the party was not only having internal problems but was also in desperate need of a viable gubernatorial candidate who could "save the Democracy. We are on the eve of going to pieces. We can nominate you for governor. Consent--consent--consent."**

In reply, Ballinger expressed his gratitude "for their good opinions" and remarked that although he would be willing "to make any reasonable effort to promote the public good, I have no adaptation for the governorship. I cannot accept even unanimous nomination for that office."**

At the end of 1879 Ballinger abruptly ceased keeping his diary on a regular basis. Over the next nine years he made only sporadic and cursory entries that revealed little beyond the insights they gave into his family life. He rarely even
commented upon his legal practice, which was apparently enjoying continued success according to his business correspondence. Although he maintained an active professional communication, very few of his letters were of a personal nature to his family or friends. Nevertheless, it was clear that Ballinger's last years were as auspicious and personally meaningful as those of his earlier life.

From 1879 until his death in 1888 Ballinger moved from one professional triumph to another. Reputed by the late 1870's to be one of the country's most brilliant corporation lawyers, he was offered the position of chief counsel for the Santa Fe Railroad Company in 1883. Although he refused the position, Ballinger occasionally represented the company when suits were brought against it for violation of the Fourteenth Amendment. In that same year, another vacancy occurred on the bench of the United States Supreme Court, and Ballinger was again considered for appointment. He received letters of endorsement from Justice Miller, Senators Richard Coke and Samuel Bell Maxey, and even one from ex-President Hayes. Even though Ballinger informed everyone that he was not interested in the position, his fellow Texans were just as determined as before to see "one of their own" on the bench. President Garfield however, unlike his predecessor, was more partisan in his appointments, and much to Ballinger's supporters' chagrin, had never really considered the Texan as
a candidate. Much to Ballinger's relief however, the president ended the potential controversy by quickly appointing Stanley Matthews, a Ohio Republican to the Court. 100

In a subsequent letter to Hayes, Ballinger not only thanked the former president for his recommendation but revealed as well his relief of not having to see his friends "placed in an awkward and embarrassing position of supporting my nomination. I am honored to have once again been considered, but I still profess that I am no more qualified presently than I was earlier, and that I am confident the President has chosen wisely. . . ." 101

In early 1883 Ballinger suffered a severe asthma attack and was forced once again to "take a long and much needed rest. The doctor feels--as does Hally--that I should take a vacation to the North--visit friends & relatives--hunt and fish--maybe it is a good idea." 102 For the first time in his life Ballinger did not contest his physician's advice, for he wanted to spend some time with his only son, Thomas Jack, who had just graduated from the University of Michigan. In the spring of 1884 Ballinger and his son took a three-week hunting trip to Minnesota, where they enjoyed not only "some excellent venison--elk and moose--and even some exotic fowl which there are none of in Texas that I know," but more
important each other's companionship as well. In a letter to his wife Hally, Ballinger talked of how pleased he was to finally have had the time to enjoy his family, particularly his son. "We visited the Barkers & Tom impressed them favorably. All seemed delighted that we came together--several remarked how rarely one gets the time to spend with their children these days. ... I have never had a deeper sense of thankfulness. This trip gratifies me more than any other. Tom is a fine boy, strong, intelligent and well-liked. He connects me more with the future and increases my interest in it. ..."  

Apparently, Ballinger's "connection with the future" was more imminent than he anticipated in relation to his son. In 1887 Thomas Jack Ballinger was admitted to the Texas bar, and one year later young Ballinger became a member of his father's firm. Unfortunately, Thomas Jack did not have the opportunity to study law very long under the auspices of one of Texas' greatest jurists. On January 17, 1888, the elder Ballinger contracted pneumonia, and three days later, "the Nestor of the Texas Bar," was summoned to his final judgment at the age of 62.  

Newspapers throughout the state published the news of Ballinger's death with expressions of "deep regret" and "the tremendous respect he held both as a lawyer and devoted
citizen of the State, from all who knew him. The Galveston News was especially grieved by the loss of their favorite son and referred to Ballinger as "one of the most brilliant lights known to the present age of jurisprudence and a man the state could ill afford to lose, his very name being a tower of strength with the bench and bar. . . ."107

In a letter to Rutherford B. Hayes, Guy Bryan not only informed the ex-president of Ballinger's death but expressed his own sense of loss as well. "I am deeply grieved, for my associations with Ballinger have been the most intimate and affectionate for more than thirty years. You know the estimate I had of him and what our relations were."108

Of the countless eulogies Ballinger received, none perhaps was more appropriate and would have pleased him more than the compliment he received from Justice Oran M. Roberts of the State Supreme Court. In a memorial address given before the Texas Bar Association, of which Ballinger had been the first president, Roberts expressed a sentiment that was undoubtedly shared by many of those who attended the service.

The two greatest lawyers who have appeared before the Supreme Court in my time were William G. Hale and W.P. Ballinger. William G. Hale was an orator, W.P. Ballinger was not. When Hale finished his argument the Court thought it knew the law; when Ballinger finished his the Court knew it knew the law!109
So ended the life of William Pitt Ballinger. Although his contributions to Texas history may not have been as outstanding or momentous as those of an Austin or a Houston, they were nevertheless invaluable. Few Texans have ever done more to promote a given profession than Ballinger. His devotion to the legal profession was so complete that it became a personal obsession. Although Ballinger was compulsive about his success, he was nonetheless equally dedicated to the advancement of the Texas legal community as well. Few attorneys had ever done more to establish the state’s legal reputation and credibility than Ballinger. By the time of his death, the Texas Bar, which he had done much to upgrade, was recognized nationally for both its membership and juridical contributions.

Though Ballinger’s principal concern throughout adult life was the security of his family and practice, he nevertheless devoted himself with great passion to the enrichment of his beloved Galveston. Though he privately hoped to minimize his public duties, when called upon he never ignored the people’s request for his presence in civic affairs. An elitist, Ballinger’s sense of privilege was tempered by an equally strong sentiment of social responsibility. Though he often succumbed to his own personal ambitions and material desires, he nevertheless maintained an uncompromising sense of public duty. He
believed that there was a certain accountability incumbent upon men of professional status; individuals had careers, but gentlemen of substance had communal obligations as well.

Always supportive of projects and ideas that would enhance both his city and state, Ballinger was nonetheless cautious when it came to political participation and endorsement. Though he was personally attracted to the excitement and passion of political discourse, he abstained as much as was possible from such affairs. He feared that his political inclinations, if not constantly kept in check, would obtrude upon what was most important to him: his family and practice.

Despite his apoliticism, by the late 1850's he realized that if the Union was to be preserved it was time to throw off his restraint and invest his reputation in saving the nation from dissolution. When that failed, he offered his services and allegiance to his new country—the Confederate States of America. Whatever the cause, once committed, Ballinger's undertakings often became personal fixations.

A perfectionist who demanded excellence in whatever he attempted, Ballinger frequently drove himself to exhaustion until he had achieved his purpose. Even after his efforts had brought victory and acclaim, Ballinger was unfulfilled: he always felt he could have accomplished more had he put forth all that he was capable of. Preoccupied with his
penschant to digress from what he considered central in his life, Ballinger repeatedly admonished himself for his meanderings and pledged to be more attentive and energetic.

Regardless of what might have motivated Ballinger to achieve so much, he should be recognized for his many contributions to the development of Texas. Though his service is worthy of a place in Texas history, it must be remembered that above all else Ballinger was a nineteenth-century man who shared many of the same experiences, disappointments, and tribulations of his contemporaries. Too often we forget that simple physical survival rather than the performance of romantic and grandiose deeds was the utmost concern for the majority of nineteenth-century Americans. Thus, it is the biographer's task not only to assess objectively his subject's accomplishments but also to show how the crises of the period affected the individual. It is the manner in which the character reckoned with those events that makes him worthy of subsequent acclaim. William Pitt Ballinger was an individual who overcame the challenges of his time and was thus able to accomplish more than the ordinary run of humanity.
NOTES TO CHAPTER I


2. William and Bruce Catton, Two Roads to Sumter (New York, 1963), 5-9.


4. Ibid.


9. Ibid.


11. Ibid.


13. Charles Fairman, Mr. Justice Miller and the Supreme Court, 1862-1890 (New York, 1939), 61; Bloomfield, American Lawyers, 272.
14. Fairman, Mr. Justice Miller, 8-10.

15. Unlike its sister states along the Atlantic and Gulf Coastal plains, Kentucky’s economy was diverse. Small to middle-sized farms rather than plantations dominated the countryside. Kentuckians raised a variety of products ranging from tobacco and hemp to mules, cattle, and cereal crops. Commerce and light manufacturing were also developed. Regardless of their activity the majority of Kentuckians either owned no slaves, or at most a handful who worked the land along side their masters. In 1860 Kentucky’s slaves accounted for only about twenty percent of the total population. William and Bruce Catton, Two Roads to Summer, 101; Bloomfield, American Lawyers, 273.


17. William Pitt Ballinger, Diary, August 9, 1854; February 3, April 11, 1857; October 20, December 5, 1859; March 16, 1863; August 17, 1864; Ballinger Papers (Rosenberg Library, Galveston, Texas).

18. Ibid., November 2, 1860.

19. Ibid., September 18, 1860.

20. Ibid., November 13, 1860.

21. Ibid., March 16, 1863.

22. Ibid., March 23, 1863.


24. Ballinger, Diary, March 18, April 1, June 24, December 22, 1857.

25. Ibid., October 13, November 8, 1862.

26. Ibid., February 17, 1863.

27. Ibid., March 24, 1863.

28. Ibid., April 19, 1863.

29. Ibid., May 20, 1863.

30. Ibid., June 2, 1863.
31. Ibid., August 11, 1875; Brown and Speer, eds., Encyclopedia of the New West, 378; Bloomfield, American Lawyers, 274.

32. Brown and Speer, eds., Encyclopedia of the New West, 378; Bloomfield, American Lawyers, 274.

33. Hayes, Galveston, II, 840-841; Bloomfield, American Lawyers, 274.


38. Henry W. Barton, Texas Volunteers in the Mexican War (Wichita Falls, 1970), 1-5.

39. Ibid., 22-25.

40. Ibid., 42-50.

41. Ibid., 52-55.

42. Ibid., 55.


44. Ballinger to Guy M. Bryan, November 1, 1864, Ibid.


50. McLean, "My Connexion with the Mexican War."

51. Ibid.

52. Ibid.

53. Ibid.


56. The recommendations of Ballinger's committee, his oath, and a copy of his license may be found in the W.P. Ballinger Papers (Rosenberg Library, Galveston, Texas); Bloomfield, *American Lawyers*, 274.


60. Frantz, *Gail Borden*, 176-177.

61. Ibid., 179.

62. Ibid., 180.

63. Ibid., 182.

64. Ibid., 182-183.
65. Ibid., 183.


67. Ibid., 605-606.

68. Ibid., 607-608.

69. Ibid., 610-616.

70. Frantz, Gail Borden, 185.

71. William Pitt Ballinger Papers, Miscellaneous Notes, Documents, and Letters (Rosenberg Library, Galveston, Texas).

72. Ibid.; Frantz, Gail Borden, 186.

73. Brown and Speer, eds., Encyclopedia of the New West, 380; Texas Supreme Court Justices John Hemphill, R.T. Wheeler, and Abner J. Lipscomb to Thomas Ewing, Secretary of the Interior, January 24, 1850, National Archives, M873, R659, frame 600; Texas State Legislature to Thomas Ewing, ibid., Frames 598-599.

74. Some of Love's more notable Whig associates personally endorsing Ballinger were Texas Supreme Court Justice R.T. Wheeler, Colonel Albert Sidney Johnston, and eminent Galvestonian John B. Ash. R.T. Wheeler to Thomas Ewing, June 1, 1849, National Archives, M873, R659, frame 614; Albert Sidney Johnston to Thomas Ewing, June 2, 1849, ibid., frame 626; John B. Ash to Thomas Ewing, May 1, 1849, ibid., frame 620.

75. Wheeler to Ewing, June 1, 1849, ibid., frame 614; Ash to Ewing, May 1, 1849, ibid., frame 620.

76. J.L. Bates to Thomas Ewing, May 1, June 1, 1849, ibid., frames 614 and 620.

77. Thomas F. McKinney to Thomas E wing, May 31, 1849, ibid., frame 612.

78. A.F. Burnley to Thomas Ewing, June 1, 1849, ibid., frame 612.

79. Galveston News, September 4, 1897; Galveston Tribune, August 29, 1924; Bloomfield, American Lawyers, 275.
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2. In the eighteen-fifties personalities rather than issues, dominated Texas politics, and candidates usually aligned themselves according to whether they agreed with the political principles and vision of Sam Houston. Houston was by far the single most powerful political force in the state. Despite his Democratic connection, Houston was one of those rare leaders who placed the welfare of his country and state above partisan interests.

3. William Pitt Ballinger, Diary, June 10, 1853, Ballinger Papers (Rosenberg Library, Galveston, Texas).


5. Ballinger, Diary, September 22, 1853.

6. Ballinger to Thomas Jack, October 25, 1853, Ballinger Papers (Barker Texas History Center, Austin, Texas). Hereafter cited as Ballinger Papers (BTHC).

7. Ralph A. Wooster, "An Analysis of the Texas Know-Nothings," Southwestern Historical Quarterly, LXX (April, 1966), 414-423; Wallace, Texas in Turmoil, 37-38; Richardson, Wallace, and Anderson, Texas, 144-145; Llerena B. Friend, Sam Houston: The Great Designer (Austin, 1954), 235-245; T.R. Fehrenbach, Lone Star: A History of Texas and The Texans (New York, 1968), 333. The Whig Party's failure was the result of its inability to establish a broader base of popular support. Its rank and file was overwhelmingly urban with few followers outside the professional and commercial sectors. Antebellum Texas was predominantly rural and agrarian, and though in many Southern
states the Whigs did find support among the yeoman and planter classes, Texas farmers proved to be decidedly Democratic. Buenger, *Secession in Texas*, 23-26.


11. Ballinger, Diary, October 22, 1859.


18. Ballinger, Diary, February 6, 1857.

19. Royall T. Wheeler to Oran M. Roberts, May 29, 1857, Oran M. Roberts Papers (Barker Texas History Center, Austin, Texas).


25. Ibid., 353.
26. Ibid., 354.
27. Ibid., 357.
28. Ibid., 358-360.
29. Ibid., 372-373.
30. Ibid., 375-377.
31. Ibid., 384.
32. Ibid., 385.
33. Ibid.
34. Ibid.
35. Ibid., 391.
37. Ibid., 322.
38. Ibid.
39. Ibid., 323
40. Ibid.
41. Ibid.
42. Ibid.
43. Ibid.
44. Ibid.
45. Ibid., 324.
46. Ibid.
47. Ibid.
48. Ibid.
49. Ibid.

51. Ibid.

52. Ballinger, Diary, February 3, 1857.

53. Ibid., February 8, 1857.

54. Ibid., February 13, 1857.

55. Ibid., February 14, 1857.

56. Ibid., February 17, 1857.

57. Ibid., February 18, 1857.

58. Ibid., February 19, 1857.

59. Ibid., February 24, 1857.


61. Ballinger, Diary, July 30, 1854; Bloomfield, American Lawyers, 277.

62. Ballinger, Diary, August 2, 1854; Bloomfield, American Lawyers, 277.

63. Bloomfield, American Lawyers, 277.

64. Ballinger, Diary, August 4, 1854.

65. Ibid., August 6, 1854; Bloomfield, American Lawyers, 277.

66. Bloomfield, American Lawyers, 277; Ballinger, Diary, July 23, 1862.


68. Ibid., 1-7.

69. Ibid., 5-6.


74. Ballinger, Diary, August 7, 1854.

75. Ibid., August 8, 1854.

76. Ibid.

77. Ibid., August 23, 1854.

78. Ballinger, Diary, August 31, 1854.

79. Ballinger to Thomas Jack, August 19, 1854, Ballinger and Assoc., (HMRC).

80. Ballinger, Diary, September 5, 1854.

81. Ballinger to Thomas Jack, September 3, 1854, Ballinger and Assoc., (HMRC).

82. Ballinger to Hally Jack Ballinger, August 19, 1854, Betty Ballinger Papers (RL).


85. Ibid., 10-14.

86. Ibid.

87. Ibid., 87-88.

88. Ibid.

89. Ibid., 88-89.

90. Ballinger, Diary, December 11, 1855.


95. Ibid., 192.

96. Ballinger to Guy Bryan, October 24, 1855, Ballinger Papers (BTHC).


98. Ballinger, Diary, June 17, 1859.


100. Ibid., 171.

101. Ibid., 172.

102. Ballinger, Diary, September 19, 1860.

103. Ibid., August 5, 1859.


105. Ibid., 174-175.

106. Ibid., 175.

107. Ibid., 175-176.

108. Ibid., 177-179.


110. Ibid. May 23, 1860.

111. Ballinger to James E. Harrison, March 3, 1854, Ballinger Papers (BTHC).

112. Ballinger, Diary, February 27, March 6, and April 18, 1857.

113. Ibid., January 23, 1857; Fornell The Galveston Era, 94.
114. Ballinger, Diary, March 27, 1857.

115. Galveston Civilian, March 30, 1858.

116. Bloomfield, American Lawyers, 278.

117. Ibid. Ballinger, Diary, January 6, 1859.

118. Bloomfield, American Lawyers, 278; Ballinger, Diary, April 26, 1860.
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4. Ibid., March 5, 1862.

5. Ibid., November 5, 1862.


7. Fornell, *The Galveston Era, 118; Ballinger, Diary, January 21, 1859.*


11. Ballinger Papers, March 26, 1858, Ballinger and Assoc., (HMRC).


15. Ballinger, Diary, December 28, 1864.


17. Ballinger to Harriet Ladd, August 6, 1865, Ibid.

18. Betsy Webster v. T.J. Heard, 32 Texas 687 (1870).

19. Ibid.

20. Ibid.


22. 32 Texas at 688.

23. Ibid., 698.


27. Ballinger, Diary, June 30, 1857.

28. 32 Texas at 690.

29. Ibid., 700.

30. Ibid., 707.

31. Ibid., 711.

32. Ballinger, Diary, January 13 to January 28, 1860; Fornell, The Galveston Era, 120.

33. Fornell, The Galveston Era, 120; Ballinger, Diary, August 11, 1860.

34. Aaron Coffee to Ballinger, November 27, 1862, Ballinger Papers (BTHC); Ballinger, Diary, November 29, 1862; Fornell, The Galveston Era, 120-121.


36. Ibid.
37. Ibid.; Aaron Coffee to Ballinger, March 2, 1863, Ballinger Papers (RL).

38. Coffee to Ballinger, March 2, 1863, ibid.


40. Ibid., March 2, 1863; Fornell, The Galveston Era, 123.

41. Ballinger Diary, August 5, 1863; Fornell, The Galveston Era, 123.

42. Fornell, The Galveston Era, 123.

43. Ballinger, Diary, January 5, 1863; Fornell, The Galveston Era, 123.

44. Ballinger, Diary, January 10, 1863; Fornell, The Galveston Era, 124.

45. Ballinger, Diary, November 15, 1864.

46. Ibid., November 28, 1864; Fornell, The Galveston Era, 124.

47. Ibid., December 10, 1864; Fornell, The Galveston Era, 124.

48. Ballinger, Diary, February 10, 1865; Fornell, The Galveston Era, 125.

49. Ballinger, Diary, June 3, 1867.

50. Ibid., June 21, 1867.


52. Quoted, Fornell, Galveston Era, 116; Bloomfield, American Lawyers, 283.

53. Ballinger, Diary, May-September 1863; Bloomfield, American Lawyers, 281.

54. Ballinger to Guy M. Bryan, July 27, 1863, Ballinger Papers (Barker Texas History Center, Austin, Texas). Hereafter cited as BTHC.

55. Houston Telegraph, August 22, 1863; Bloomfield, American Lawyers, 281.


60. Ballinger to George W. Paschal, May 8, 1863, Ballinger Papers (BTHC).

61. Ballinger, Diary, August-October 1860; McCordell, *Ideas of a Southern Nation*, 91-140.

62. Ballinger, Diary, October 22, 1860.


64. Ballinger, Diary, November 16, 1860.

65. *Ibid*.

66. *Ibid*.


68. Ballinger, Diary, May 27, 1860.

69. Ballinger to Guy Bryan, September 14, 1860, Ballinger Papers (BTHC).

70. Galveston *News*, April 10, 1860.

71. Ballinger, Diary, April 14, 1860.


73. Ballinger, Diary, May 13 to May 24, 1860.


75. "Secession" (draft of a speech delivered by Ballinger on August 23, 1860), Ballinger Papers (RL); Bloomfield, *American Lawyers*, 282.
76. Ballinger, "Secession."

77. Ibid.

78. Ibid.; Bloomfield, American Lawyers, 283.

79. Ballinger, "Secession."

80. Ballinger, Diary, August 13 to August 23, 1860.

81. Ibid., August 17, 1860.

82. Ibid., October 16, 1860.

83. Ibid., November 12, 1860.

84. Ibid., November 14, 1860.

85. Ibid., November 15, 1860.

86. Ibid.

87. Ballinger to George W. Paschal, May 8, 1863, Ballinger Papers (BTHC); Bloomfield, American Lawyers, 284.


90. Friend, Sam Houston 337.

91. Ballinger, Diary, December 21, 1860.

92. Ibid., December 30, 1860.

93. Ibid., December 21, 1860.

94. Ibid.

95. Ballinger to Paschal, May 8, 1863, ibid.; Bloomfield, American Lawyers, 284.

96. Ballinger to Paschal, May 8, 1863, Ibid.


98. Ballinger, Diary, February 23, 1862.
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2. Ibid.


5. Walter L. Buenger, Secession and the Union in Texas (Austin, 1984), 159-177.


7. Ibid., December 21, 1860.

8. Ibid., May 23, 1862.


10. Ibid., August 8, 1861.

11. Ibid.

12. Ibid., August 10, 1861.

13. Ibid., August 12, 1861.

14. Ibid.

15. Ibid., August 15, 1861.

16. Ibid., September 1, 1861; Maxwell Bloomfield, "William Pitt Ballinger, Confederate Lawyer," in American

17. Ballinger, Diary, August 21, 1861.

18. Ibid., September 13, 1861.

19. Ibid., September 15, 1861; Bloomfield, American Lawyers, 286.

20. Ballinger, Diary, October 3, 1861; Bloomfield, American Lawyers, 286.

21. Ballinger, Diary, September 29, 1861, to October 1, 1861.

22. Ibid., September 30, 1861.

23. Ibid., October 10, 1861.

24. Ibid., October 13, 1861.

25. Ibid.

26. Ibid.

27. Ibid., October 18, 1861.

28. Ibid.

29. Ibid., October 19, 1861, to October 1, 1861.

30. Ibid., October 22, 1861.

31. Ibid., October 23, 1861.

32. Ibid., October 26, 1861.


34. Ballinger, Diary, May 17, 1862.

35. Ibid., January 28, 1863.

36. Ibid., August 5, 1862.

38. Ballinger, Diary, June 25, 1862; Bloomfield, American Lawyers, 287.

39. Ballinger, Diary, October 31, November 22, and December 17, 1862.

40. Ibid., February 23, 1862.

41. Ibid.

42. Ibid., December 15, 1860.

43. Ibid., February 23, 1862.

44. Ibid.

45. Ibid., March 7, 1862.

46. Ibid., October 24, 1861; Bloomfield, American Lawyers, 287.


48. Robinson, Justice in Grey, 495-496, 626; Bloomfield, American Lawyers, 288.

49. Ballinger, Diary, October 25-26, 1861; Bloomfield, American Lawyers, 288.

50. Ballinger's untitled circular can be found in the Ballinger Papers, Miscellaneous Notes, Documents and Letters, October, 28, 1861 (RL); Ballinger, Diary, October 28, 1861; Bloomfield, American Lawyers, 288.


52. Ballinger, Diary, November 14, 1861.

53. Ibid., December 1, 1861.

54. Ibid., December 20, 1861, and January 7, 1862; Bloomfield, American Lawyers, 288.

55. Ballinger, Diary, June 5, 1862.
56. Richardson, Wallace, and Anderson, Texas, 202-203.

57. Ballinger, Diary, March 9, 1863.

58. Ibid., April 16, 1863.


60. Ballinger, Diary, July 23, 1862.

61. Robinson, Justice in Grey, 263-264; Years of Confederate Congress, 196; Bloomfield, American Lawyers, 289.


63. Ballinger, Diary, September 5, 1863.

64. Ibid., November 26, 1863; Bloomfield, American Lawyers, 289-290.

65. Bloomfield, American Lawyers, 290; Ballinger, Diary, September 17, 1863.

66. Peter W. Gray to Ballinger, October 14, 1863, Ballinger Papers (Barker Texas History Center, Austin, Texas). Hereafter cited as Ballinger Papers (BTHC); Bloomfield, American Lawyers, 290.

67. Ballinger, Diary, October 26, 1863, and November 15, 1863.

68. Robinson, Justice in Grey, 263-264; Bloomfield, American Lawyers, 290-291.

69. Ballinger Papers, January 2, 1862 to May 3, 1865, Miscellaneous Notes, Documents, and Letters (RL); Bloomfield, American Lawyers, 291.

70. Ballinger, Diary, March 3, 1864; Bloomfield, American Lawyers, 291.

71. Ballinger, Diary, October 10, 1864, November 17, 1864.

72. Ibid., March 7, 1865.

73. Ibid., January 23, 1865.


87. Galveston News, June 10, 1864; and June 17, 1864; Houston Telegraph, June 14, 16, 21, 1864; Ballinger Papers, October 21, 1864 to December 31, 1864, Miscellaneous Notes, Documents, and Letters (RL); Bloomfield, *American Lawyers*, 294.

88. Murrah to Ballinger, April 3, 1864; Ballinger Papers (BTHC); Ballinger, *Diary*, April 11, 1864; Bloomfield, *American Lawyers*, 294.


92. Thomas, Confederate Nation, 147.

93. Ballinger, Diary, May-August, 1862.


96. Ballinger to Hobert, June 12, 1862, Ballinger Papers (BTHC).

97. Ballinger, Diary, June 28, 1862; Galveston News, July 2, 9, 25, August 5, 19, 1862; Houston Telegraph, July 20, August 14, 22, September 3, 15, 19, 1862.

98. Ballinger, Diary, July 10, 1862.

99. Ibid., July 23, 1862; Ballinger to Hobert, July 2, 1862, Ballinger Papers (BTHC).

100. Ballinger, Diary, October 4, 1862.

101. Ibid.


106. Ballinger, Diary, January 5, 1863.

107. Ibid.


111. On Ulysses S. Grant, see T. Harry Williams, *Lincoln and His Generals* (New York, 1952), 60-61, 84-86; on the fall of New Orleans see *ibid.*, 187-188.


115. *Houston Telegraph*, April 26, 1865.
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5. *Ibid*.


7. *Ibid*.

8. *Ibid*.


17. *Ibid*.

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18. Ibid.
19. Ibid., June 1, June 2, 1865.
20. Ibid.
21. Ibid., June 5, 1865.
22. Ibid., June 6, 1865.
23. Ibid., June 8, 1865.

25. Ballinger to Pendleton Murrah, June 1, 1865, Ashbel Smith Letters (Barker Texas History Center, Austin, Texas). Hereafter cited as Smith Papers (BTHC).

26. Ballinger, Diary, June 12, 1865.

27. John Hope Franklin, Reconstruction After the Civil War (Chicago, 1961), 54-68.

28. Ballinger, Diary, June 10, 1865.
29. Ibid.
30. Ibid.
31. Ibid., June 14, 1865.
32. Ibid., June 1, 1865.

33. Ramsdell, Reconstruction in Texas, 55-56.
34. Ballinger, Diary, June 15, 1865.
35. Ibid.
36. Ibid.


38. Ballinger, Diary, May 13, 1865.


41. Ibid., 106-108; Ramsdell, Reconstruction in Texas, 49-49.


43. Ballinger to John Hancock, March 4, 1866, Ballinger Papers (BTHC).

44. Ibid.


46. J.C. DeCress, Sub-agent, Freedmen's Bureau for Fort Bend County to Ballinger, December 26, 1866, Ballinger Papers (BTHC); Ballinger to William P. Hill, December 21, 1866, ibid.; Hill to Ballinger, June 27, 1867, Ballinger and Associates (Houston Metropolitan Research Center, Houston, Texas). Hereafter cited as Ballinger and Assoc. (HMRC).

47. Ballinger, Diary, July 11, 1865.

48. Ibid., July 22, 1865.


50. Ibid., 62-63; Carter, When the War Was Over, 25.


52. Ballinger, Diary, August 8, 1865; Bloomfield, American Lawyers, 298.

53. Ballinger, Diary, July 28, 1865; Bloomfield, American Lawyers, 298.

54. Ballinger, Diary, August 8, 1865; Bloomfield, American Lawyers, 298.

55. Ballinger, Diary, July 28, 1865; Bloomfield, American Lawyers, 298; Ballinger to Elisha M. Pease, July 29, 1865, Pease-Graham-Niles Family Papers (Austin Public
Library, Austin, Texas). Hereafter cited as Pease Family Papers (APL).

56. Bloomfield, American Lawyers, 298; Ballinger, Diary, June 25, 1865.

57. Charles F. Fairman, Mr. Justice Miller and the Supreme Court, 1862-1869 (New York, 1939), 125. Bloomfield, American Lawyers, 298-299.

58. Miller to Ballinger, August 31, 1865, Ballinger Papers (BTHC).

59. Miller to Johnson, August 13, 1865, Ballinger Papers (BTHC); Bloomfield, American Lawyers, 299.

60. Ballinger, Diary, August 25, 1865; Bloomfield, American Lawyers, 299.


62. Houston Telegraph, April 28, 1865; Bloomfield, American Lawyers, 299.

63. Ballinger, Diary, August 25, September 1, 1865.

64. Ibid., August 25, 1865.

65. Ibid., August 27, 1865.


67. Fairman, Mr. Justice Miller, 125; Miller to Ballinger, August 21, 1865, Ballinger Papers (BTHC).

68. Miller to Andrew Johnson, August 31, 1865, Ballinger Papers, Ibid.

69. Ballinger, Diary, October 19, 1865.

70. Ibid., October 21, 1865.

71. Ibid., October 25, 1865; Bloomfield, American Lawyers, 300.

72. Ballinger, Diary, November 10, 1865; Bloomfield, American Lawyers, 300.

73. Ballinger, Diary, November 23, 1865; Bloomfield, American Lawyers, 300.
74. Ballinger, Diary, November 23, 1865.


76. Adams to Ballinger, November 5, December 11, December 28, 1865, Ballinger and Assoc. (HMRC).

77. Adams to Ballinger, October 19, 1865, *ibid*.

78. Adams to Ballinger, December 7, 1865, *ibid*.

79. *Ibid*.

80. Ballinger, Diary, December 7, 1865.

81. Draft compromise dated November 17, 1866, Ballinger Papers (BTHC).

82. Ballinger, Diary, January 24, 1866.


84. *Galveston District Court Dockets*, January 1866, June 1866, January 1867, June 1867 terms, Galveston County Court House.


86. Ballinger to R.A. Stephens, February 14, 1866, Ballinger Papers (BTHC).

87. Ballinger, Diary, April 22, 1867.


89. Fairthorne & Rand to Ballinger & Jack, June 5, July 20, August 16, September 4, November 10, 1866, *ibid*.


91. Ballinger, Diary, July 15, 1866.


94. Ballinger, Diary, October 19, 1865.

95. Ballinger to Roberts, February 19, 1874, Oran M. Roberts Papers (BTHC); Fairman, Mr. Justice Miller, 353.

96. Ballinger to Bryan, May 6, 1865, Ballinger Papers (BTHC).

97. Franklin, Reconstruction, 15-31; Stampp, Era of Reconstruction, 50-82.


100. Wallace, Texas in Turmoil 172-179; Ramsdell, Reconstruction in Texas, 89-107; Moore, "Radical Reconstruction," 19-20; Moore, "Reconstruction," 97.

101. Ramsdell, Reconstruction in Texas, 112.

102. Stampp, Era of Reconstruction, 83-118; Franklin, Reconstruction, 54-68.

103. Wallace, Texas in Turmoil, 184.


105. Ballinger to Guy M. Bryan, August 5, 1867, Ballinger Papers (BTHC).

106. Ballinger, Diary, July 12, 1866; Franklin, Reconstruction, 65.

107. Ballinger, Diary, July 29, 1866.

108. Ibid.
109. Ibid.
110. Ibid.

111. Ballinger to William P. Hill, April 19, 1866, Ballinger & Assoc. (HMRC).

112. Ballinger, Diary, May 28, June 16, 1863; June 23, 1864.

113. Ibid., June 25, 1864.

114. Hill to Ballinger, May 13, 1866, Ballinger & Assoc. (HMRC).

115. Ballinger to Roberts, March 9, 1866, Roberts Papers (BTHC).

116. Ibid.
117. Ibid.
118. Ibid.

119. Ballinger to John Hancock, March 4, 1866, Ballinger Papers (BTHC).

120. Ballinger to Elisha M. Pease, February 24, 1866, Pease Family Papers (APL).

121. Texas Constitution of 1866, Article IV, Section 2, Texas State Archives, Austin, Texas.

122. Ballinger to Guy M. Bryan, July 29, 1865, Ballinger Papers (BTHC).

123. Moore, "Radical Reconstruction," 17.

124. Ballinger, Diary, June 30, 1865.

125. Ramsdell, Reconstruction in Texas, 77-92; Moore, "Radical Reconstruction," 17.

126. Ballinger, Diary, June 10, 1865; Also see Ballinger's editorial for the Houston Telegraph June 17, 1865.


128. Ibid.
129. Ballinger, Diary, July 17, 1865.

130. Ballinger to Green Adams, July 22, 1866, Ballinger & Assoc. (HMRC).


135. Ballinger to Guy M. Bryan, November 1, 1869, Ballinger Papers (BTHC).

136. Ballinger to Elisha M. Pease, November 15, 1869, ibid.

137. Moore, "Reconstruction," 100.

138. Ibid.

139. Ibid.

140. Fehrenbach, Lone Star, 412-414.

141. Ballinger, Diary, July 11, 1869.

142. Ramsdell, Reconstruction in Texas, 283-287.

143. Ballinger, Diary, December 20, 1869.

144. Ibid., January 2, 1870.

145. Ibid., March 13, 1871.

146. Ibid., March 6, 1861.

147. Ibid., March 21, 1871.

148. Ibid., April 11, 1871.

149. Ibid., May 15, 1871.


NOTES TO CHAPTER VI

1. William Pitt Ballinger, Diary, November 7, 1871, Ballinger Papers (Rosenberg Library, Galveston, Texas).


5. Ibid.


11. Moore, "Reconstruction," 102; Ballinger, Diary, July 31, 1872.


17. Richard Coke to Ballinger, December 20, 1873; Ballinger Papers (Barker Texas History Center, Austin, Texas). Hereafter cited as Ballinger Papers (BTHC).

18. Ballinger, Diary, January 3, 1874.


22. *Ibid.*, February 3, 1874. Also see a copy of Ballinger's letter to Coke in Ballinger Papers (BTHC). For Bryan's activities on Ballinger's behalf, see letter from Bryan to Coke, January 20, 1874, *ibid*.


25. Ballinger, Diary, August 15, 1875.


28. Ballinger, Diary, September 7, 1875.

29. *Ibid*.

30. *Ibid*.


33. *Austin State Gazette*, September 22, 1875.
34. Ibid.
35. Ibid.
36. Ibid., September 24, 1875.
37. Ibid.
38. Ibid., September 25, 1875.
39. Ballinger, Diary, September 27, 1875.
40. Austin State Gazette, September 28, 1875; Texas, Constitution of 1876, Article XI, Section 7.
41. McKay, Texas Constitution, 81; Austin State Gazette, October 3, 1875.
42. Austin State Gazette, October 3, 1875.
43. Ibid.
44. Ibid.
45. Ibid.; McKay, Texas Constitution, 82.
47. Austin State Gazette, October 5, 1875.
49. Ballinger, Diary, October 1, 1874.
50. Austin State Gazette, October 8, 1875.
51. Ibid.; Seth Shepard McKay, Debates of the Constitutional Convention of 1875 (Austin, 1930), 180-182.
52. Austin State Gazette, October 12, 1875.
53. Ibid.
54. Ibid.
55. Ibid.
56. Texas, Constitution of 1876, Art. VII.

57. Austin State Gazette, October 23, 1875; McKay, Debates of Convention, 232-233; Houston Telegraph, October 17, 1875.

58. Houston Telegraph, October 23, 1875.


60. Wallace, Texas in Turmoil, 225; McKay, Texas Constitution, 88-94.

61. Austin State Gazette, November 14, 1875.

62. Ballinger, Diary, November 16, 1875.

63. Texas, Journal of Constitutional Convention, 772.

64. Austin State Gazette, November 23, 1875.

66. Ballinger, Diary, October 3, 1875; Ballinger to Guy Bryan, November 10, 1875, Ballinger Papers (BTHC).

67. Ballinger, Diary, October 12, 1875.

68. Ibid., August 30, 1875.

69. Ibid.

70. Ibid., February 15, 1876.

71. Galveston News, January 2, 1876.

72. Houston Telegraph, December 12, 14, 21, 23, 26, 1875.

73. Ibid.

74. Ibid., January 12, 1876. Also see Austin State Gazette, January 15, 1876.

75. Ibid.

76. Austin Democratic Statesman, March 23, 1876; Richardson, Wallace, Anderson, Texas, 230; Wallace, Texas in Turmoil, 227. For a more thorough but somewhat hackneyed assessment of the document see S.D. Myers, "Mysticism, Realism, and the Texas Constitution of 1876,"
Southwest Social Science Quarterly, IX (September 1928), 166-184.

77. Moore, "Reconstruction," 103.

78. John Hope Franklin, Reconstruction After the Civil War (Chicago, 1961), 211-213.


80. Franklin, Reconstruction, 216.

81. Ballinger, Diary, March 1, 6, 1877.

82. See Ballinger’s recommendations from these individuals as well as other endorsements from prominent Texans such as James Throckmorton, John Reagan, and John Hancock in Ballinger Papers, Miscellaneous Notes, Documents and Letters dated April-June 1877 in the Rosenberg Library, Galveston, Tex.


84. Winkler, "Bryan-Hayes Correspondence," XXVII (July 1923), 72-73.

85. Ibid., XXVII (October 1923), 164-165.

86. Elisha M. Pease to Rutherford B. Hayes, June 13, 1877, Ballinger Papers (BTHC). Also see Winkler, "Bryan-Hayes Correspondence," XXVII (January 1924), 242-243.


88. Ibid., June 6, 1877, 249-250.

89. Ballinger, Diary, October 21, 1877.

90. Ibid.

91. Ibid., March 12, 1877; also see Ballinger’s letter to Miller dated March 11, 1877, Ballinger Papers (BTHC).

92. Ballinger, Diary, October 17, 1877, Ballinger Papers.
93. Galveston News, October 21, 1877.

94. Galveston News, October 26, 1877.

95. Ballinger to Guy Bryan, November 15, 1877, Ballinger Papers (BTHC).

96. Ballinger was also appointed to the United States Court of Claims but turned down the position because he believed the annual salary of $4,500 was inadequate. See Diary, January 23, 1878 (RL). The following year Governor Oran M. Roberts offered him a position on the newly created Texas Commission of Appeals, which in effect was simply an extension of the Supreme Court. Ballinger, however, refused this appointment as well. See Diary, July 2, 1879, (RL). A copy of Walton's note can be found in the Ballinger Papers, Misc. Notes, Documents and Letters, (RL).


98. Ibid., December 17, 1883. For an assessment of early efforts at railroad and corporate regulation see Jonathan Lurie, Law and the Nation, 1865-1912 (New York, 1983), 27-29. For an analysis of how lawyers such as Ballinger became "corporate attorneys" see Lawrence M. Friedman, A History of American Law (New York, 1973), 555, 558.


100. Ballinger, Diary, April 19, 1883 (RL).


102. Ballinger, Diary, April 19, 1884 (RL).

103. Ibid., May 8, 1884.


106. Houston Telegraph, January 27, 1888.


109. Copy of Roberts' address dated February 9, 1888 in Betty Ballinger Papers (RL). Also see Galveston News, February 8, 9, 1888; For other tributes to Ballinger see Austin State Gazette, January 23, 1888; Dallas Herald, January 23, 1888; also see speech given by Justice T.N. Waul of State Supreme Court in both Austin State Gazette and Democratic Statesman, February 8, 9, 1888.
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