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The Texas Bar in the Nineteenth Century

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The Texas Bar in the Nineteenth Century

Maxwell Bloomfield*

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I. INTRODUCTION

At first glance, a paper on the Texas bar might seem somewhat irrelevant to an inquiry into the legal history of the South. Certainly Texans have tended at times to be ambivalent, if not schizophrenic, about their cultural heritage, and the stereotype of the Texan-as-western-frontiersman remains potent to this day. Still, there is no denying that in the nineteenth century, the eastern part of the state shared the outlook and values of its Gulf Coast neighbors, while north central Texas—the area around Dallas—received its cultural conditioning principally from the border states of the Upper South. These variant cultural models—Deep South versus Border South—were not assimilated into a new unitary amalgam, but rather preserved their distinctive features as regional configurations within a decentralized territorial empire. I use the term “empire” advisedly, and not in a spirit of “Texas Brags.” Cultural geographers today continue to refer to an “imperial Texas” made up of nine distinct culture areas, each characterized by a unique blend of climate, population, settlement patterns, and differing socioeconomic needs.¹ An awareness of this regional diversity and its accompanying tensions may be traced back at least as far as 1857, when

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1. See, e.g., D. MEINIG, *IMPERIAL TEXAS* 91-109 (1969).

Frederick Law Olmsted published his pungent observations on the subject in his now classic *Journey Through Texas*.²

From the standpoint of the legal historian, this prevailing sectionalism suggests some interesting research possibilities. If we agree with Hurst, Friedman, Horwitz, and others that legal evolution is intimately related to economic change,³ should we not expect to find some measurable differences in the legal concerns of established and developing regions? Moreover, the frontier remained a living reality in Texas throughout the nineteenth century. This fact provides us with a unique opportunity to compare the functioning of legal institutions in successive frontier situations, and to contrast the membership and mores of rural and metropolitan bars. Country lawyers have received scant attention from legal scholars, but in numbers alone they dominated the profession in the nineteenth century. No study of the Texas bar can afford to overlook these individuals or the possibly significant ways in which they may have diverged from the norms established by urban practitioners. We need to know more, for example, about their styles of lawyering, and how they related to the expectations of local clientele. Would a lawyer in frontier Palo Pinto have conducted his cases with more bombast than would have been acceptable in San Antonio or Houston? Similarly, how were the tensions between urban and rural practitioners reflected in legislation? When small-town lawyers were elected to the legislature, what stand did they take on issues that were of professed concern to the elite bar leaders, such as bar admission requirements or changes in substantive law recommended by the state bar association? By way of a preliminary inquiry into some of these matters, I propose to take a close look at several local bars, both large and small, that existed during a span of fifty years in Texas.

II. TEXAS LEGAL COMMUNITIES: A DESCRIPTIVE OVERVIEW

The middle of the nineteenth century provides a convenient starting point for a survey of long-range trends in the Texas bar. By 1850, the Texas legal system, with its peculiar blend of Anglo-American and Spanish elements, was well established, and the pioneer generation of lawyers and jurists faced increasing competition from newly arrived practitioners. There were as yet only four places in the entire state that could be termed "cities"—San Antonio,

2. See F. OLMSTED, *A JOURNEY THROUGH TEXAS* 418-57 (1857).

3. See L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* (1973); M. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1780-1860* (1977); J. HURST, *LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES* (1956).

Austin, Houston, and Galveston. Of these, Galveston was preeminent in terms of its commercially advantageous location on an island in the Gulf of Mexico and with respect to the prestige of its legal community.⁴

A. *The Galveston Experience*

"*The Bar at Galveston is crowded to overflowing,*" observed Royall T. Wheeler, an Associate Judge of the Texas Supreme Court, in the spring of 1847.

*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. 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 is vastly overdone here*⁵

Indeed, by 1850 the Galveston bar comprised thirty-six members, who served the legal needs of a population of slightly more than four thousand persons, a ratio of one lawyer for every 103 potential clients, excluding slaves.⁶ This statistic may sound impressive, but the condition it reflects was by no means as unusual as Wheeler's comment might suggest. The town of San Augustine near the Texas-Louisiana border, for example, had a free population of 2087 persons in 1850, including fifteen lawyers, or a ratio of one lawyer for every 149 inhabitants.⁷ As a general rule it may be said that lawyers were attracted to new settlements like flies to honey.

Of the thirty-six members of the Galveston bar, six were old hands who had held legal positions under the Republic, while another five were recent arrivals who had figured prominently in the politics of their home states. Geographically, the entire bar was divided almost evenly between northerners and southerners. Seventeen attorneys had been born in the South, sixteen in the North, two were foreign-born (coming from England and the West Indies), and the birthplace of one is unknown. Of the southern contingent, nine came from the Border South, including Tennessee, six from the South Atlantic states, and only two from the Gulf Coast area. The

4. See E. FORNELL, *THE GALVESTON ERA* 22, 36 (1961).

5. Letter from Royall T. Wheeler to Oran M. Roberts (May 29, 1847) (Oran M. Roberts Papers, Vol. 3, Barker Texas History Center, Austin, Texas).

6. See U.S. BUREAU OF THE CENSUS, *POPULATION SCHEDULES OF THE SEVENTH CENSUS OF THE UNITED STATES, 1850*, RG 29, M432, Roll 910 (Galveston County, Texas) [hereinafter cited as *POPULATION SCHEDULES OF THE SEVENTH CENSUS*].

7. See *id.*, Roll 914 (Red River County, Texas).

median age of the entire bar was thirty-five years, with fourteen practitioners still in their twenties and only two older than fifty.

Further information of a reliable sort is difficult to obtain for most of these individuals. Data is available, however, regarding the family background and educational attainments of twelve of the group. Four attorneys were the sons of lawyers, and a fifth the stepson of a judge; the fathers of the remaining seven practitioners included five farmers, one court clerk, and one businessman. In terms of formal education, seven of the twelve bar members either attended or graduated from a college, while two went to law school.⁸

Only one person managed to combine both college and law school training. He was Daniel D. Atchison, a young Kentuckian who graduated from Centre College in Danville, Kentucky, in 1842 and went on to spend two years at the Harvard Law School, from which he received his LL.B. degree in 1844. While at Harvard, Atchison became a close friend of Simon Greenleaf, who later advised him to migrate to Texas. The move paid off handsomely. Atchison began his Galveston practice in 1846, and four years later his real estate holdings were valued at \$25,000 for census purposes. By 1860 this figure had risen to \$100,000, and Atchison's personal property was valued at an additional \$8000.⁹

This estimate of net worth was among the highest recorded by the local census-takers in 1860, and equaled the valuations reported for the city's leading physicians and merchants. Although only three other attorneys approached Atchison in reputed wealth, one-third of the bar owned property valued at more than \$30,000. The holdings of another one-third fluctuated between \$5000 and \$30,000, while the remaining one-third owned little or no recorded property.¹⁰ While these figures are suggestive only, they do at least indicate the potential profitability of legal practice in Galveston during the 1850's.

Most of the attorneys had a general law practice, with bar leaders, as well as the rank and file, handling a broad range of

8. Apart from the 1850 census records, which list birthplace and age, biographical material was obtained from local and regional histories, college and law school alumni lists, and sketches in the *Texas Bar Journal*. See J. LYNCH, *THE BENCH AND THE BAR OF TEXAS* (1855); *THE HANDBOOK OF TEXAS* (2 vols.) (W. Webb ed. 1952).

9. POPULATION SCHEDULES OF THE SEVENTH CENSUS, *supra* note 6, Roll 910, at 511 (Galveston County, Texas); U.S. BUREAU OF THE CENSUS, POPULATION SCHEDULES OF THE EIGHTH CENSUS OF THE UNITED STATES, 1860, RG 29, M653, Roll 1294, at 146 (Galveston County, Texas) [hereinafter cited as POPULATION SCHEDULES OF THE EIGHTH CENSUS]. For further information on Atchison, see *HISTORY OF TEXAS: TOGETHER WITH A BIOGRAPHICAL HISTORY OF THE CITIES OF HOUSTON AND GALVESTON* 716-18 (1895).

10. See POPULATION SCHEDULES OF THE EIGHTH CENSUS, *supra* note 9, Roll 1294 (Galveston County, Texas).

matters, from divorces and debt collections to criminal cases and land litigation. In Galveston, lawyers had access to several sets of courts, including the state and federal district courts and the Texas Supreme Court. Some also practiced in the courts of neighboring counties on a regular basis, and occasionally Galveston lawyers attended a session of the State Supreme Court at Austin, or even argued a rare case before the United States Supreme Court. By 1860, however, the leading firms were becoming somewhat more selective in their choice of clients, and there were hints of increasing specialization in some quarters. The firm of Ballinger & Jack, for example, which began the decade with an extremely miscellaneous practice, increasingly concentrated on attracting permanent retainers from substantial corporate clients, such as a newspaper, a wharf company, and a bank. "I must make myself thorough in Railroad law," mused Ballinger in 1860,¹¹ and he did so with a vengeance, becoming in time one of the nation's foremost authorities on railroad receiverships.

To an outsider this antebellum legal community, with its close ties to other power-wielding local elites, must have seemed remarkably cohesive—an integral part of a smoothly functioning system of social stratification. Even twentieth-century urban historians have tended to adopt this view, at least by implication. Kenneth Wheeler, in a study of early Texas cities published in 1968, observed:

Unlike the mainland's upper classes who usually dispersed themselves throughout their towns, Galveston's elite created an island for itself in the Third Ward. These American families whose money came from mercantile, shipping, professional, and plantation sources and who ruled the town during the fifties moved in a closed, cosmopolitan social circle. Their affluence contrasted strikingly with that of their neighbors. . . . Open conflicts between the monied elements and other classes rarely occurred prior to the Civil War, yet by sealing itself away from the main body of the community the elite began to undermine the cohesiveness of the city.¹²

Not all lawyers lived in the Third Ward, were affluent, or obeyed the dictates of the local aristocracy, of course, and Wheeler makes no such claim. But neither does he look beyond the generic label "elite" or attempt to explore the major issues that divided the bar in the 1850's. These issues—judicial misconduct, economic legislation, and slavery—were concretely symbolized by two individuals

11. Diary of William P. Ballinger (June 23, 1860) (Rosenberg Library Archives, Galveston, Texas) [hereinafter cited as William P. Ballinger Diary]. See also M. BLOOMFIELD, *AMERICAN LAWYERS IN A CHANGING SOCIETY, 1776-1886*, at 271-301 (1976).

12. K. WHEELER, *TO WEAR A CITY'S CROWN: THE BEGINNING OF URBAN GROWTH IN TEXAS, 1836-1865*, at 131 (1968).

whose activities served to polarize bar opinion.

At mid-century tempers flared over the case of John Charles Watrous, the state's first federal district judge, whose alleged involvement in the fraudulent schemes of a New York land company litigating before his court led to repeated efforts to impeach him throughout the 1850's. Of particular interest to the Galveston bar was the charge that Watrous had imported four talented attorneys from other states for the express purpose of litigating claims to more than two million acres of public land. In protest against this privileged clique, known to its enemies as the "Galveston Law Land Speculating Company," several prominent practitioners refused to plead in Watrous' court. Their resistance proved fruitless, however, as the judge survived all moves against him, including impeachment hearings on two separate occasions.¹³

By 1855 a new source of dissension arose in the person of attorney Lorenzo Sherwood. A radical Democrat from New York state, Sherwood alienated the business community and its legal allies by advocating a system of publicly funded, state-owned railroads. In addition, he and his partner William Goddard successfully represented a number of clients with grievances against local merchants, bankers, and railroad promoters. In the courtroom Sherwood proved as abrasive as he was in political debate; he made no concessions to prevailing norms of professional etiquette. "Sherwood is rather a mean old fellow to get along with," complained one southern lawyer. "He doesn't act like a gentleman."¹⁴

Unfortunately, the railroad question became entangled with another matter—slavery—on which public opinion was less divided. Sherwood criticized the slave system on moral and economic grounds in several speeches, which were cited by his opponents as evidence that he was "a wiseacre and a nigger lover,"¹⁵ whose views on all subjects were unsound. When he attempted to defend himself in an open meeting, businessmen and conservative bar leaders combined for the purpose of silencing him. Professing to speak for an outraged citizenry, these notables convened an emergency meeting of their own, at which an ultimatum prepared by attorney William Pitt Ballinger was adopted. This document, which was delivered to the "intruder from New York"¹⁶ by a blue ribbon committee, warned that Galvestonians would not tolerate discussion of the slavery issue

13. See generally W. HAWKINS, *THE CASE OF JOHN C. WATROUS* (1950).

14. William P. Ballinger Diary, *supra* note 11, (May 17, 1859) (quoted in E. FORNELL, *supra* note 4, at 164).

15. E. FORNELL, *supra* note 4, at 173.

16. *Id.* at 175.

in any form and threatened the violent disruption of Sherwood's announced meeting. Intimidated, Sherwood cancelled his scheduled appearance and soon resigned from the state legislature. Deprived of Sherwood's polemical skills, the supporters of the "State Plan" for Texas railroads were unable to block passage of a measure subsidizing the construction of railroads by private corporations.¹⁷

The tendency of Galveston lawyers to close ranks on the slavery issue may account in part for the changed complexion of the bar in 1860. By that time the city's population had more than doubled, while the legal community, which had expanded to fifty persons by 1857, had declined thereafter to thirty-six, its exact size a decade earlier.¹⁸ But these gross figures mask some interesting internal changes. Because of deaths, removals, and occupational shifts, only about one-half of the attorneys practicing in 1850 remained in active practice ten years later. In turn, their new associates substantially altered the pattern of geographic distribution among bar members. Whereas the mid-century bar had been balanced almost evenly between northerners and southerners, nearly two-thirds of the 1860 practitioners were southern-born. The border states again supplied the largest number of these southern attorneys with twelve members, while seven came from the South Atlantic states and four from the Lower South. The median age of the 1860 group, thirty-nine, was also slightly higher than that of its predecessor, which was thirty-five. Fifteen practitioners fell within the thirty to forty age range, while the others were divided into three equal groups of seven men in their twenties, forties, and fifties.¹⁹

This trend toward a more southern and relatively middle-aged bar was strikingly affirmed in the years following the Civil War. By 1870 Galveston's legal community had expanded to sixty-one persons, only seven of whom were holdovers from the mid-century bar. Fifty-two of these sixty-one attorneys were southern-born; six came from northern states and three from foreign countries (one each from England, Scotland, and Germany). The Border South, especially the states of Virginia, Maryland, and Kentucky, continued to provide the largest number of practitioners with twenty-one members, but the remaining attorneys were now distributed more evenly throughout the whole South, with the South Atlantic states accounting for sixteen lawyers and the Lower South for fifteen. Two-thirds of all practitioners were men in their thirties and forties,

17. See *id.* at 163-79.

18. See POPULATION SCHEDULES OF THE EIGHTH CENSUS, *supra* note 9, Roll 1294 (Galveston County, Texas).

19. *Id.*

while the others were evenly divided between lawyers in their twenties and senior attorneys in their fifties and sixties.²⁰

Why did so few northern lawyers settle in post-war Galveston? Texas had suffered much less physical destruction than most states of the Confederacy, and economic recovery was well underway by 1870. A partial answer may lie in the generally inhospitable temper of the local community toward Yankee newcomers. More importantly, the bar itself seems to have made a special effort to discourage undesirable competitors. On April 11, 1868, thirty-five attorneys met to adopt a constitution and bylaws for the Galveston Bar Association, the first permanent bar organization in the state. After pledging to uphold the highest standards of learning and personal integrity, they further resolved to "engage in such efforts as will tend to the unity, improvement, and prosperity of the Galveston Bar."²¹ Although political concerns were nowhere mentioned, it is hard to believe that the program of military reconstruction then going forward did not provide a strong impetus for bar organization. Certainly the older bar leaders were highly distrustful of the state and federal judges before whom they had to plead. As Ballinger noted on one occasion: "Judge Sabin's court adjourned yesterday He did not go thro with 1/3 of a term—& his assumed superiority as a radical to the rebel bar & people is apparent—He is not a very sound lawyer. . . ." ²²

B. *The Bar Association Movement in Texas*

How exclusionary the Galveston Bar Association in fact was, or how successfully it may have employed social or professional ostracism on occasion, cannot be determined from existing records. It was, however, far more than a paper organization. Its members drafted bills on subjects of general professional interest, such as judicial reform, and lobbied for their adoption by the state legislature.²³ In this respect, as in an insistence on periodic lectures of a professional nature, the organization served as a prototype for the Texas Bar Association, which was founded in Galveston in 1882. Initial support for this statewide agency came from thirty-eight lawyers and eight law firms in twenty-four cities and towns, but three

20. See U.S. BUREAU OF THE CENSUS, POPULATION SCHEDULES OF THE NINTH CENSUS OF THE UNITED STATES, 1870, RG 29, M593, Roll 1586 (Galveston County, Texas).

21. GALVESTON BAR ASSOCIATION, DECLARATION, CONSTITUTION AND BY-LAWS (1868) (Rosenberg Library Archives, Galveston, Texas).

22. William P. Ballinger Diary, *supra* note 11, (June 24, 1868).

23. See letter from William P. Ballinger to Oran M. Roberts (May 8, 1876) (Oran M. Roberts Papers, Vol. 3, Barker Texas History Center, Austin, Texas).

cities—Galveston, Austin, and Dallas—accounted for more than fifty percent of its sponsors.²⁴

Like its counterparts in other states, the Texas Bar Association appealed primarily to urban practitioners, especially the new corporate elite, as well as to judges, legal educators, and other attorneys whose appellate practice made them aware of the need for uniform state laws and improved court procedures. Such innovations were of less concern to country lawyers, whose practice was often confined to the lower courts and who tended in many places to combine lawyering with one or more auxiliary pursuits, such as land agent, surveyor, schoolteacher, newspaper editor, or county officer. Bar association proposals to upgrade bar admission requirements or to promote the cause of university legal training at the newly established University of Texas Law School likewise ran counter to deeply entrenched traditions of frontier individualism and occupational fluidity. A single turn-of-the-century statistic reveals the narrow base from which leaders of the organized bar purported to speak for their fellow attorneys: Of the 4600 men and 17 women licensed to practice in the state in 1900, only 315 belonged to the Texas Bar Association.²⁵

C. *Law Practice on the Frontier*

Throughout the nineteenth century most Texas attorneys lived and practiced outside major urban areas. For a lively account of what it meant to be a pioneer village lawyer, we are indebted to Alfred Howell, whose letters to his family offer rich and rewarding insights into every aspect of the frontier experience. Howell, a Virginian, was the son of a noted Baptist minister. He received a good education at the University of Virginia, from whose law school he graduated in 1851 at the age of twenty-one. Early the following year, after an unsuccessful effort to establish a practice in Richmond, he journeyed to Texas and settled at Clarksville, a small but thriving agricultural community in the northeastern part of the state, near the Texas-Arkansas border. There were already fourteen lawyers in Clarksville when Howell arrived. Although he classified these attorneys as “men of no learning & little ability,”²⁶ he was forced to

24. See TEXAS BAR ASSOCIATION, PROCEEDINGS OF THE ORGANIZATION SESSION (1882).

25. For overall figures for the Texas bar, see U.S. CENSUS OFFICE, CENSUS REPORTS: TWELFTH CENSUS OF THE UNITED STATES, 1900 (POPULATION) Vol. II, Pt. II, Table 93, at 541 (1902). For the bar association membership list, see TEXAS BAR ASSOCIATION, PROCEEDINGS OF THE NINETEENTH ANNUAL SESSION 55-58 (1900).

26. Letter from Alfred T. Howell to Morton B. Howell (Jan. 18, 1853) (Morton B. Howell Family Papers, Manuscripts Section, Tennessee State Library and Archives, Nashville, Tennessee). All future references to the Howell letters in this Article are from the

admit that: "It is as hard to succeed here as in Richmond, and it takes nearly, if not quite as long" ²⁷

[T]here are many older & better lawyers here than I, therefore I must wait—until I have proved myself capable to cope with them before I can get anything to do. I have tried, through others, to get a partnership with some of these old stagers, but that is now impossible because there are none here practising alone. ²⁸

Even more ominous was the continued influx of new lawyers: "Since last fall, four lawyers have settled here, all of them possessing more or less extensive and wealthy connections here. And I hear of more who intend following their example next summer." ²⁹ Faced with mounting debts, Howell tried one unsuccessful venture after another—doing copy work for the county clerk, writing for a newspaper, teaching school. Finally, on the advice of a friendly judge, he packed up his meager belongings and moved eighty-five miles further west to Greenville, Texas.

Compared to Greenville, most Texas towns were centers of cosmopolitan culture. Soon after his arrival in April 1853, Howell described Greenville with slight exaggeration as "a little prairie town containing seven or eight families, one tavern, two or three stores, four grog shops, and one blacksmith-shop; the court-house is a small log building, only one room, stuck on one side of the square. Aunt Mary's kitchen would be a palace [compared] to it." ³⁰ The one bright spot in this otherwise sordid scene was the absence of any effective professional competition. There was only one other lawyer in Greenville, a twenty-five year-old native of Maryland named John Wilson, who was reputed to be a drunkard, a gambler, and a general hell-raiser—in other words, a rather ideal competitor. Howell reasoned that, under the circumstances, he could count on representing one side in every lawsuit that arose in Greenville or its environs, and this assumption proved correct.

Within a year he built up a fairly extensive, although not very lucrative, practice in the lower courts. "I wish the fees came in half as fast as the cases," he remarked to his brother Morton, who was then studying law in Virginia. ³¹

In my District Court cases, I will not perhaps make as much as I had hoped. If I am unsuccessful, I will make ten dollars. If I succeed, I will make one

Morton B. Howell Family Papers, Manuscripts Section, Tennessee State Library and Archives, Nashville, Tennessee.

27. *Id.* (Oct. 10, 1852).

28. *Id.* (Jan. 18, 1853).

29. *Id.* (Jan. 27, 1853).

30. *Id.* (Apr. 7, 1853).

31. *Id.* (Sept. 5, 1853).

hundred dollars—as most of my fees are contingent—My Magistrates Court cases pay, and that's all—I make about five dollars in each court.³²

It took him almost the rest of the decade to pay off an accumulated debt of four hundred dollars.

The cases that Howell handled were an extremely miscellaneous lot, ranging from probate matters and divorces through contract and land actions to a broad spectrum of criminal prosecutions. He seldom practiced above the district court level and hesitated to turn away even the most unpromising client. Each year he traveled hundreds of miles to attend district courts in other counties, in the hope that such public exposure might generate future business. Most of his early cases were argued before magistrates' courts, which in Texas were composed of a judge and a six-man jury. These popular tribunals, whose origins went back to the days of Mexican rule, provided a valuable training ground for inexperienced country lawyers. Howell commented to his brother:

I have seldom had a case in a Justice's Court which did not involve some principle of law, which would hardly have been well understood without such an examination as use rendered necessary—and which did not call for as good an argument as I could make . . . We have cases here which the law compels us to bring in JP's Courts, which anywhere but in Texas would be in higher Courts—I have attended to several before Justices Courts here that for interest & importance have few Superiors in the Circuit Superior Ct. of your City [of Richmond] . . .³³

Compelled to practice regularly before juries, Howell soon overcame a native shyness and developed a style of lawyering commensurate with community expectations. Rhetorical flourishes, exaggerated humor, and a flair for the dramatic were all in demand, and he tried not to disappoint his audiences. He affected a courtroom flamboyance in various cases before the district court, indicating on occasion his intention to expatiate in one case “on justice—In another *Equity*, and another *Law*—I'll make that old log house *ring*,” he vowed.³⁴

But courtroom oratory, however popular, did not add much to the size or frequency of his fees, and as a result he found himself drawn almost irresistibly into county politics. At the urging of friends he ran for the post of justice of the peace and was elected easily over three law contenders. He wrote to his brother Morton:

I accepted the position . . . because it pays well &c, and because I am desirous of being free of debt so that I can feel at liberty—I shall have the greater portion of the collecting business, which, together with the contingent fees,

32. *Id.* (Sept. 15, 1853).

33. *Id.* (Sept. 3, 1855).

34. *Id.* (Sept. 26, 1853).

such as taking acknowledgements, &c—which otherwise would be lost to me—will yield me 300\$ a year, perhaps more, and it will in no way conflict with my practice. Speaking of collecting, I have claims to collect as *Attorney*, which will pay me *ten per cent* as *Attorney*, and my fees as *Justice* of the *Peace*—That's what is called in Texas "playing low down."³⁵

Officeholding on the local level often served as a stepping stone to higher political posts, of course. Howell took account of the prospects for advancement from the start, and in 1855 he made an unsuccessful bid for election to the state legislature. Again his motives were primarily financial and professional. He had no real interest in politics, and he had drifted into the Democratic party because no one other than a Democrat stood much chance of winning an election in Hunt County. Legislators were paid five dollars a day for their services, however, and he calculated that the increased visibility he would achieve as a lawmaker would benefit his law practice. He reflected, "[m]y opinion on any subject would be ten times more weighty backed by the idea that I had been in the Legislature—I would gain more in [professional] standing by one trip to the Capitol, than I would lose in practice"³⁶

Howell's strong sense of professional identity owed much to early home and school influences. Unlike most Texas lawyers, especially those in frontier areas, Howell insisted on the need for a college education as a prerequisite for entrance into any profession. In this respect he may be classed with those whom Burton Bledstein has labeled the avant-garde of the "romantic generation"—those individuals who, well in advance of the great push toward university training that began in the 1870's, perceived the value of academic certification as a badge of social status.³⁷ In writing a brother who was following in his footsteps at the University of Virginia, Howell urged: "You must obtain your sheepskin—in the battle of life it wields a tremendous influence—by most young men at school it is too lightly regarded—little attention is paid to that which, without anything else will give them an enviable standing in a strange country—'I speak that I do know'"³⁸ To illustrate the practical advantages of book learning in an unlettered community, Howell referred to the sensation created by the mere display of several volumes in his office:

The presence of a *library* gives the people a still better opinion of me. Some who have entered my office have started in surprise at the vast number of books—(29) (litterary 27.) The first exclamation they make has frequently

35. *Id.* (Aug. 28, 1854).

36. *Id.* (June 1, 1854).

37. B. BLESTEIN, *THE CULTURE OF PROFESSIONALISM* 178-96 (1976).

38. Letter from Alfred T. Howell to Morton B. Howell (June 9, 1856).

been, "Why, Squire Wilson hasn't any at all"! I answer only by a sorrowful sort of smile.³⁹

As the condescending tone of such passages suggests, professional status for the college-educated practitioner was closely related to class consciousness. Howell spoke disparagingly of the young laboring men who made up the bulk of Greenville's population and urged his brothers to adopt a profession as the only form of remunerative labor suitable for gentlemen. His frequent matrimonial reflections, in which he vowed to marry only a woman who combined beauty and wealth, displayed the sort of cash-register mentality one associates with a Jane Austen novel. Typically, he would interrupt a lengthy catalogue of the charms of some Virginia belle to inquire: "Ask father, if she is actually worth \$40,000."⁴⁰ Although his long-range courtships produced no results, he did eventually marry the daughter of a well-to-do planter and merchant from Fort Worth.

III. URBAN AND RURAL BARS: SOME COMPARATIVE TRENDS

Certain trends discernible in Howell's career—geographical mobility, occupational shifts, local officeholding—were also apparent in the lives of other frontier lawyers. Consider, for example, the bar of Dallas, another north Texas village, which included eight practitioners at mid-century. Reliable information concerning family background and education exists for five of these men. Their fathers were all farmers, only one of the lawyers was a college graduate, and none had attended law school. Five of them came from the Border South, two from the Midwest, and one from South Carolina. Their average age was a youthful thirty-two.⁴¹ Three of these attorneys held local judicial posts, a fourth was a district judge, another a district clerk, and a sixth sat in the state legislature from 1851 to 1857, after which he was elected mayor of Dallas. One lawyer combined a legal practice with newspaper editing, while another soon abandoned the law to engage in land speculation and other promotional ventures. By 1860 only two members of this group remained in practice⁴²—a rate of turnover considerably higher than that experienced by the Galveston bar, which still claimed half of its mid-century members a decade later.

39. *Id.* (July 19, 1853).

40. *Id.* (Apr. 23, 1854).

41. See POPULATION SCHEDULES OF THE SEVENTH CENSUS, *supra* note 6, Roll 910 (Dallas County, Texas).

42. B. COBB, A HISTORY OF DALLAS LAWYERS, 1840-1890, at 23-55 (1934). See generally P. LINDSLEY, A HISTORY OF GREATER DALLAS AND VICINITY (2 vols.) (L. Hill ed. 1909); MEMORIAL AND BIOGRAPHICAL HISTORY OF DALLAS COUNTY, TEXAS (1892).

These factors varied from community to community, however, and it would be hazardous to generalize on the basis of such limited population samples. Thus, one should not infer from the Dallas record that college-educated lawyers were seldom found outside settled urban areas. Such a conclusion is contradicted by the experience of yet another frontier settlement, Waco, located ninety-four miles south of Dallas. No Waco attorneys were reported in the mid-century census because McLennan County was not organized until August 1850. Thereafter Waco speedily developed into a bustling agricultural and trading center, which employed the services of twenty-six lawyers by 1860. The educational attainments of one-half of this group can be determined. Nine of these thirteen practitioners attended, or graduated from, a college, while three went to law school⁴³—a record that marks a slight improvement over the corresponding figures for the Galveston bar at mid-century.

From such recalcitrant data one deduction alone seems supportable: It was as difficult to establish a law practice on the frontier as anywhere else, and the incidence of professional outflow and displacement was highest in these new settlements. An extreme example of this trend occurred in Floyd County, which was organized in 1890 in the high plains of the Panhandle. Two years later the first bar examinations were given, at which four candidates applied for, and obtained, law licenses. By 1900 not one of these men was still in practice. One had abandoned the law for farming and politics, two went to New Mexico and points west as missionaries, while the fourth resigned his post of county attorney and moved to Houston in search of greater professional opportunity.⁴⁴ Their places were filled by four later arrivals who comprised the county bar in 1900. Two members of this group lived on mortgaged farms, and a third reported that he had been unemployed during four of the previous twelve months.⁴⁵

Contrast this picture with the pattern of stability displayed by the Galveston bar in 1900. Although the city had not fulfilled its mid-century potential and was in visible economic decline, it still managed to support a legal community of 128 practitioners. Twelve of these attorneys had helped to found the Galveston Bar Association back in 1868; as a group they comprised one-third of the asso-

43. See POPULATION SCHEDULES OF THE EIGHTH CENSUS, *supra* note 9, Roll 1300 (McLennan County, Texas); F. JOHNSON, A HISTORY OF TEXAS AND TEXANS (5 vols.) (E. Barker ed. 1914); THE BENCH AND BAR OF WACO AND MCLENNAN COUNTY, 1849-1976 (B. McSwain ed. 1976).

44. See C. COOMBES, THE PRAIRIE DOG LAWYER 254-57 (1945).

45. U.S. BUREAU OF THE CENSUS, POPULATION SCHEDULES OF THE TWELFTH CENSUS OF THE UNITED STATES, 1900, RG 29, T623, Roll 1635, Vol. 42 (Floyd County, Texas).

ciation's original membership. Moreover, twenty-five percent of the city's lawyers in 1900 had been practicing in Galveston at least twenty years. If we add to these senior bar members their younger brothers, sons, and sons-in-law who began to practice in the 1880's and 1890's, a network of established family and professional relationships can be perceived that encompassed fully one-third of the city's practitioners. In five instances legal dynasties had been created whose roots stretched back to mid-century and beyond.⁴⁶

During all those years the formal requirements for admission to the bar had been minimal, as befitted a pioneering society that placed great emphasis on such values as self-help and individualism. An aspiring lawyer had only to familiarize himself with a handful of basic texts prescribed by the state supreme court and apply to a district judge for a license. The judge would then appoint an ad hoc committee of practitioners to examine the applicant orally in the courtroom. In the unlikely event that he failed to survive such a cursory inquisition, he could proceed to another district court and try again. This freewheeling system reflected a societal preference for on-the-job training, coupled with a conviction that the conditions of legal practice would themselves weed out the irresolute and the ignorant in short order.⁴⁷ Howell's experience at Clarksville, as well as the early history of the Dallas and Floyd County bars, suggests that this post-admission screening process worked pretty much as intended, although admittedly at the expense of client-consumers.

IV. CONCLUSION

As the twentieth century approached, bar leaders increasingly complained that the open bar, like the open range, had outlived its usefulness. In 1899 the Texas Bar Association began a vigorous lobbying effort for more restrictive regulation of attorneys. The state legislature responded four years later with a bill that required all future bar candidates to take a standardized written examination. The results of this new approach were immediate and gratifying to those who clamored for a more exclusive profession. While approximately four hundred candidates had applied for, and obtained, a license between August 1, 1896, and August 1, 1897, only ninety applicants took the new written tests during the first year they were

46. *See id.*, Roll 1637, Vols. 44 & 45 (Galveston County, Texas); S. GRIFFIN, HISTORY OF GALVESTON, TEXAS (1931); HISTORICAL REVIEW OF SOUTH-EAST TEXAS, (2 vols.) (D. Hardy & I. Roberts eds. 1910); THE ENCYCLOPEDIA OF THE NEW WEST (S. Speer & J. Brown eds. 1881).

47. Oran M. Roberts, "Legal Education and Admission to the Bar," TEXAS BAR ASSOCIATION, PROCEEDINGS OF THE THIRD ANNUAL SESSION 43-48 (1884).

administered, and sixteen of these failed.⁴⁸

The bar regulations of 1903 signaled the end of a frontier-oriented professionalism in Texas, just as the simultaneous discovery of oil at Spindletop ended the state's long history of economic subservience to other regions. In an age of increasing affluence, urbanism, and professional bureaucratization, there was as little sympathy for the "prairie-dog lawyer" as there was for the buffalo. But the rural practitioners of the nineteenth century deserve better treatment from historians. Serious attention to their collective careers cannot fail to enhance our knowledge of regional folkways and of the role of law in reshaping the material environment of a restless and acquisitive people.

48. "Report of the Committee on Legal Education and Admission to the Bar," TEXAS BAR ASSOCIATION, PROCEEDINGS OF THE TWENTY-THIRD ANNUAL SESSION 16-23 (1904).