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Comment: The Texas Bar in the Nineteenth Century

Mary K. Bonsteel Tachau*

Maxwell H. Bloomfield's Article, "The Texas Bar in the Nineteenth Century," presents an ingenious collage of information derived from more or less standard kinds of secondary works, interspersed with excerpts from the diary of a Texas lawyer and the brotherly correspondence of another, and highlighted with statistical data from the manuscript censuses of 1850, 1860, and 1900. Although the evidence centers on Galveston, the careers of William Pitt Ballinger and Alfred Howell, and the Texas Bar Association movement, Professor Bloomfield's skill in creating a series of vignettes leaves us with impressions of the entire bar for fifty years of what was then the largest state in the Union.

Professor Bloomfield raises some interesting questions in the beginning of his Article that I hope he can address in his expanded study. Citing the work of cultural geographers, he describes Texas as composed of "nine distinct culture areas, each characterized by a unique blend of climate, population, settlement patterns, and differing socioeconomic needs." Furthermore, Professor Bloomfield states that "this prevailing sectionalism suggests some interesting research possibilities." But then he proceeds to contrast the urban bar of Galveston with the frontier practice of Alfred Howell. I find myself still wondering about the nine distinct culture areas. I question what or where they are and whether evidence is available that would permit one to pursue this provocative statement and to compare the lawyers or the law of those nine different places. What combination of characteristics made these nine areas so distinct from each other? Are there different crime rates in these nine areas, analogous to the different patterns of capital crimes that now exist nationally?

My curiosity also is piqued by some of the lawyer/client ratios Professor Bloomfield cites: San Augustine having one lawyer for every 149 free inhabitants; Galveston having one for every 103 free persons. That kind of statistic would not surprise me if it were given for Kentucky in the early national period, where a chaotic land law provided employment for an enormous (and enormously successful) lawyer population.¹ But Professor Bloomfield has not explained

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1. M. TACHAU, *FEDERAL COURTS IN THE EARLY REPUBLIC: KENTUCKY 1789-1816* (1978).

what of comparable litigative worth drew that many attorneys to Galveston, much less San Augustine. Perhaps there are local court records that would shed some light on this question, or possibly this information could be deduced from appellate court records by identifying the courts of original jurisdiction whose decisions were appealed. Moreover, is it not likely that this unexpected proportion of lawyers to the general population was itself a major factor contributing to the growth of specialized practices?

It seems unusual to me that a general practice in Texas included "a broad range of matters, from divorces and debt collections to criminal prosecutions and land litigations." I presume Professor Bloomfield meant defending criminal prosecutions, unless Texans, like Kentuckians, had to bolster the prosecution—which may bring Texas into the competition for the most lawless state.² I also am surprised that divorces constituted any measurable proportion of a typical private practice because most southern states still required private bills in state legislatures for divorces,³ and the cost and trouble, not to mention the scandal, minimized their incidence.

The characterization of Galveston as southern is well illustrated by the increasing proportion of attorneys born in the South, the closing of their ranks as they discouraged the discussion of slavery, and after the war, Ballinger's probably typical resentment of Judge Sabin, "a radical" who apparently patronized the unregenerated rebels. Alfred Howell's problems in establishing a legal practice, however, perhaps were more directly related to the sparsely settled frontier than to sectionalism, especially since he held the important credential of southern birth. It is well for us, in our urban-oriented late twentieth-century world, to be reminded of the place in nineteenth-century legal history of part-time rural lawyers throughout the nation. Too often our view of the bar has been limited to those relatively successful attorneys whose careers are described in the biographical directories so beloved of end-of-the-century businessmen.

The final section of Professor Bloomfield's Article may contain an essential clue toward understanding the degree of disorder in Kentucky described by Robert Ireland in the Article that follows. If admission to the Kentucky bar was as casual and haphazard as admission to the Texas bar before 1903, the deterioration of the

2. For an expose on violence and crime in nineteenth century Kentucky, see Ireland, *Law and Disorder in Nineteenth-Century Kentucky*, 32 VAND. L. REV. 281 (1978). See also H. GRAHAM & T. GURT, *THE HISTORY OF VIOLENCE IN AMERICA: HISTORICAL AND COMPARABLE PERSPECTIVES* (1969).

3. L. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 181 (1973).

Kentucky criminal justice system from the procedures and standards of the English legal system upon which it was initially grounded becomes more easily understandable.

