

Austin concession. A short time afterward it was duly confirmed; and on the twenty-eighth of April, 1823—a year less one day from the time he had ridden into the capital—Austin rode away, his task fully accomplished.<sup>1</sup>

The local authorities, when Austin reached the Rio Grande, proved complaisant, and cheerfully recognized the grants made by the central authorities. It was officially proclaimed that Austin was authorized to administer justice, make war on Indian tribes, import goods, and govern his colony “according to the best of his abilities and as justice might require,” until the government was otherwise organized.<sup>2</sup>

The last touch had now been put to the model of ineptitude which the Mexican government in its dealings with Austin had managed to construct. They had begun by making a bargain which was extraordinarily vague, and they had then abdicated and in effect turned over to the contractor the interpretation and supervision of the enterprise. Austin was a well-meaning and honorable man; but the highest sense of honor and the best intentions do not fit a man to be judge in his own cause.

A single example of the way in which this method of transacting business actually operated, will suffice. “The first and principal requisite” for intending emigrants had always been that they should be Catholics, or have agreed to become so, and the imperial decree of February 18, 1823, had declared that the colonists must prove “that they are Roman Apostolic Catholics, and of steady habits.” The plain meaning of these words and the unquestionable intent of the authorities was that only Roman Catholics should come in as settlers; and there were very obvious reasons why this policy should have been adopted. How did Austin interpret this provision? “I wish the settlers to remember,” he said in a manifesto issued just after his return to

<sup>1</sup> The official communications from Gov. Martinez to Moses Austin; imperial colonization law of Jan. 4, 1823; report of council Jan. 14, 1823; imperial decree of Feb. 18, 1823; resolution of Congress of April 11, 1823; and correspondence with the local Mexican authorities from July 26, 1823, to May 31, 1827, are printed in *White's New Collection*, I, 559-622.

<sup>2</sup> *Comprehensive Hist. of Texas*, I, 455-457, 473-477.

Texas, “that the Roman Catholic is the religion of this nation. I have taken measures to have Father Miness, formerly of Natchitoches, appointed our curate; he is a good man and acquainted with the Americans. We must all be particular and respect the Catholic religion.”<sup>1</sup> In the same spirit a few years later a pamphlet issued in New York to intending settlers, informed them that “the Catholic continues to be the established religion of the state, as it is in most of the nations on the continent of Europe, and as the Episcopal is in England.”<sup>2</sup> There was not a word in either document to show that the law forbade any but Catholics to become settlers.

As a matter of fact, it is quite possible that not one of Austin's settlers was a Roman Catholic. The immigrants were naturally recruited along the banks of the Mississippi, and they were much the same sort of population as that which first moved into Arkansas, or western Tennessee, or Mississippi. Thus, for example, out of three hundred and twenty-three old settlers, whose names are among those of the first class (*i. e.*, the earliest) of the Texas Veteran Association, forty-one were natives of New England and the Middle states, eight were natives of Louisiana, nineteen of foreign countries, one hundred and seven of the Southern Atlantic states, and one hundred and thirty-seven of the states bordering on the Ohio and the Mississippi.<sup>3</sup> They were no more Catholics than the men who settled Kentucky or Tennessee; and a decent respect to the established religion of Mexico was all that even the most scrupulous supposed was required of them.<sup>4</sup> If this was the respect paid to “the first and principal requisite” of the contract, it may readily be inferred with what exactness the less important details were complied with.

<sup>1</sup> Address to Settlers, dated Aug. 6, 1823; *Comprehensive Hist. of Texas*, I, 494. He wrote long afterward that the stipulation requiring colonists to become Catholics was “formal and unessential.”—(Austin to Wharton, Nov. 18, 1836; *Tex. Dip. Corr.*, I, 134.)

<sup>2</sup> *Address to the Reader of the Documents Relating to the Galveston Bay & Texas Land Co.*, 15.

<sup>3</sup> Baker, *A Texas Scrap-Book*, 585.

<sup>4</sup> *Ibid.*, “The First Sunday School in Texas,” 69.

During the period between the spring of 1822, and the summer of 1823, while Austin was in Mexico, and while some action by the Mexican government was awaited which should define the legal status of the colonists and their slaves, the settlement of Austin's grant had hardly progressed at all; but now that he was recognized by Congress, and was helped by friendly officials who gave the most liberal interpretation to the terms of the law, he was able to recruit his ranks with great rapidity. In a very short time his colonists were scattered over the extensive region bounded by the San Jacinto and La Vaca rivers on the east and west, by the Gulf on the south, and by the San Antonio-Nacogdoches trail on the north. A town site, San Felipe de Austin, was established on the Brazos River at a point about a hundred and fifty miles east of Béxar.<sup>1</sup>

One of Austin's first cares was to establish a code of laws for his little kingdom. This was completed and promulgated early in the month of January, 1824, and being later approved by the *jefe político* of Texas, was put into effect at once. In most of its features it was adapted from American models, although in some instances Spanish names were bestowed upon the officers of justice. Austin himself was to be the chief judge and the sole court of appeal. Inferior courts were to be presided over by the *alcaldes*. An *alguazil* (sheriff) was to be appointed for the whole colony, and there was to be one constable for each *alcalde* to carry his decisions into effect.

There were some remarkable provisions in the code. Thus on an execution upon a judgment for money the constable was to seize the debtor's property; and if no property were found he was to seize the debtor himself; and if it appeared to the satisfaction of the *alcalde* that the defendant had "fraudulently conveyed away or concealed his property, then in such case the *alcalde* may at his discretion hire out the defendant to the highest bidder until his wages pay the debt." Indians whose conduct justified a belief that they

<sup>1</sup> San Felipe de Austin must not be confounded with the present city of Austin, a much later settlement on the Colorado River.

meant mischief, were to be arrested and might be punished by the *alcalde* for rudeness or ill-treatment of settlers with not more than twenty-five lashes. Gambling was prohibited, but "horse-racing, being calculated to improve the breed of horses, is not included in the above prohibition." No person was to harbor or protect any runaway slave under severe penalties; and it was made the duty of every person who should find any slave away from his master's premises without a pass from his master or overseer, to tie him up and give him ten lashes.<sup>1</sup>

The history of Austin's settlement has thus been traced in some detail, because it was the first of several similar enterprises under which foreign colonists were brought into Mexican territory under the auspices of the government, and were given liberal grants of public lands. The later cases differed from Austin's, in their legal aspect, only because they were established under general instead of special statutes; and the provisions of these later statutes must now be examined.

The resolution of the Mexican Congress, passed April 11, 1823, which authorized the confirmation of Iturbide's grant to Austin, had also provided that the imperial colonization law of 1823 should be suspended in all other cases. Nothing, however, was done in reference to this subject until August 18, 1824, when an act known as the national colonization act of 1824, was passed, which superseded the imperial act of 1823, and thenceforth regulated the subject so far as the federal authority had power to deal with it.

By this statute it is declared that "the Mexican nation offers to foreigners who come to establish themselves within its territory, security for their persons and property, provided they subject themselves to the laws of the country." The legislatures of the several states are to pass colonization laws, but no colony is to be established within twenty leagues of the boundary of any foreign country or within ten leagues of the coast, without the previous approval of the national executive; the right of eminent domain is to be reserved;

<sup>1</sup> *Comprehensive Hist. of Texas*, I, 481-492.

no tax is to be imposed for four years on the entrance of foreigners; and no person who acquires a title to land under this law shall hold such land, if he is domiciled beyond the limits of the republic. The question of slavery was not dealt with.

Two clauses, drawn with the utter lack of precision characteristic of Mexican statutes, seem to indicate that a distrust of the American settlers was already felt. These clauses are as follows:

"Art. 7. Before the year 1840, the general Congress cannot prohibit the entrance of foreigners as colonists, unless imperious circumstances should compel it to do so with respect to the individuals of some particular nation.

"Art. 8. The government, without prejudice to the object of this law, shall take such precautionary measures as it may deem expedient for the security of the confederation, in respect to the foreigners who may settle within it."<sup>1</sup>

Under the foregoing act, the federal government prescribed regulations for carrying the law into effect, and authorized the jefe político of each district to issue grants of land to all qualified applicants, subject, of course, to all statutory restrictions.<sup>2</sup>

On March 24, 1825, the state of Coahuila and Texas, after considerable debate, adopted a local law of colonization, under the authority of the national colonization law of 1824. The controversy was again over the question of slavery, and the member from Texas, who was at this time Baron de Bastrop, was very warm in urging that it be permitted.<sup>3</sup>

After a short preamble, the state statute declares that all foreigners who wish to settle in any part of the state of Coahuila and Texas are at liberty to do so, "and the state itself invites and calls them." Foreigners desiring to settle must take an oath to obey the federal and state Constitutions, and observe the Catholic religion; must furnish a statement of their place of birth, age, and family (if any);

<sup>1</sup> Dublan y Lozano, I, 712.

<sup>2</sup> See *Comprehensive Hist. of Texas*, I, 798, for the details of these rules.

<sup>3</sup> Bugbee, "Slavery in Early Texas," *Pol. Science Quar.*, XIII, 403.

and must "prove their christianity, morality, and good habits by a certificate from the authorities of the place from whence they came." Persons offering to bring in at their own expense one hundred families or more, are authorized to present their projects to the state government; and if these are found to be acceptable, the locality for such settlement will be designated by the state, which will guarantee to the families brought by the empresario, the due execution of the contract. As compensation to the empresario, the state will give him five sitios (22,140 acres) of grazing land, and five labors (886 acres) of arable land, for each one hundred families brought in.

Administrative details, including provision for a nominal payment by settlers for allotments, are carefully regulated. The state undertakes to provide a suitable number of priests, whose stipends (to be fixed by the state) are to be paid by the settlers. "In regard to the introduction of slaves," says article 46 of the law, "the new settlers shall subject themselves to the laws that are now, and shall be hereafter established on the subject."<sup>1</sup>

By the time of the passage of this act the success of Austin's colony had become so fully assured, that numerous imitators applied for contracts to import immigrants on the liberal terms set forth in the act, and the state authorities were unquestionably eager, not to say reckless, in granting concessions to empresarios.

As early as April 15, 1825, two contracts were entered into, for four hundred and eight hundred families respectively, which formed the bases of what were later known as DeWitt's Colony and Robertson's Colony. These adjoined, on opposite sides, the district within which Austin's immigrants had settled. DeWitt and Robertson counties in modern Texas indicate roughly the regions in which the operations of these two empresarios were carried on.<sup>2</sup>

<sup>1</sup> The text of this statute, in Spanish and English, will be found in *Laws and Decrees of the State of Coahuila and Texas*, 15.

<sup>2</sup> A very excellent and detailed account of the origin and growth of De Witt's Colony, by Dr. Ethel Zivley Rather, will be found in *Tex. Hist. Quar.*, VIII, 95-192.

In the same month of April another contract was entered into with Hayden Edwards, which was destined to lead a few years later to some serious difficulties. It limited Edwards's settlement to a district near Nacogdoches in the extreme eastern part of the state.

In all, eight contracts entered into by the state authorities under the colonization act of 1825, called for the introduction in the aggregate of twenty-nine hundred families; and these contracts were substantially carried out, so far as concerned the number of families. In addition, a number of other families were brought in under *empresas* which were but very partially carried out by the *empresarios*.<sup>1</sup>

Every contract made with an *empresario* defined an area within which settlements might be made; and the area so defined far exceeded the amount of land which all the immigrants together could receive. The professed object of the designation of such wide borders in the concessions, was to allow settlers the widest choice; but the result, in some cases, at least, was to delude the unwary into believing that the *empresario* had title to the whole tract, instead of an option to select limited portions of it for actual, qualified settlers. This delusion was availed of in forming the somewhat notorious Galveston Bay and Texas Land Company of New York, which, in 1830, acquired the contracts made with Lorenzo de Zavala (a Mexican), Joseph Vehlein (a Swiss merchant living in Mexico), and David G. Burnet (a settler from Ohio, living in Texas). The company issued scrip, granting the absolute right to locate land within the limits of the three concessions; and this scrip, though legally worthless, actually found purchasers.<sup>2</sup> Of Zavala and Burnet there will be occasion to speak later on.

The supervision of the authorities over the mode of carrying out the contracts was very lax.

<sup>1</sup> Wooten, "Spanish and American Titles to Land," in *Comprehensive Hist. of Texas*, I, 806. Concessions were granted to about twenty-five foreigners, mostly Americans; but many of these proved unsuccessful and resulted in no material accessions to the population. There were some contracts entered into with Mexicans, which were also ineffectual.

<sup>2</sup> See *Rose v. The Governor*, 24 Tex. Rep., 496, for a history of this company.

"In strict conformity to law," says Kennedy, a British historian partial to the settlers, "an applicant for settlement was required to present a certificate from the authorities of the place whence he came, accrediting his 'Christianity,' that is, his profession of the 'Catholic Apostolic Roman' religion, and his morality and steady habits; without the production of such certificate, as also that of the *empresarios* testifying its genuineness, the (Mexican) commissioner was bound to withhold title. In practice, a law so narrow in itself, and generally at variance with the interests of the *empresarios*, was unscrupulously evaded. To procure an order of survey, it was sufficient for an applicant to go to a neighboring *Alcalde*, and obtain, on the testimony of two by-standers, and payment of a dollar and a half, the certificate required."<sup>1</sup>

Under these circumstances, the population naturally increased with great rapidity. There were large numbers of people ready and anxious to settle in Texas, and there were no barriers at the open door. Certainly up to 1829 or 1830 neither the federal nor the state government made any serious effort to find out whether the laws of colonization were observed. Nobody thought of guarding the eastern frontier against unauthorized settlers. Any man who chose could cross the Sabine in the confidence that he would not be asked inconvenient questions. A man was free to make his home upon any of a million unoccupied acres, and many a squatter built his hut and raised corn and chickens, and hogs and children, without any point of law upon his side except the nine points of possession. And, beside the farmers, there were shopkeepers, tavern-keepers, horse-traders, and others who could live by supplying the wants of a simple agricultural community, and who came drifting in without anybody's permission.

This somewhat motley community existed for a time without any regular system of government. The first settlement of Texas had taken place just at the period when national independence was secured and before a constitution had been established by the Mexican nation; and until the national affairs were put upon a permanent basis no attention was paid to the political affairs of Texas. The first step

<sup>1</sup> Kennedy's *Texas*, I, 339.

in this direction was the decision of the federal Congress to erect Coahuila and Texas into a state of the confederation, and the next step was the creation of a constituent state legislature, which met on August 13, 1824, before the national Constitution was promulgated, and which for the next three years legislated for the state, and incidentally adopted a prodigiously long state Constitution.<sup>1</sup>

Under this instrument, which is dated March 11, 1827, the state legislature was to consist of a single house of twelve members, chosen for two years, and to be apportioned from time to time among the several districts of the state. By the first apportionment two members were allotted to Texas and nine to Coahuila.<sup>2</sup> The legislature was required to meet annually. It was given various exclusive powers; among them the power to adopt and interpret the laws of the state, to vote money, to impose taxes, and to regulate the militia. The governor was chosen for four years, and was not eligible for successive terms. He was given a limited veto power, the pardoning power, and power to appoint to all state offices not elective, and he was commander-in-chief of the state militia. A council of state, consisting of three members elected by the people, was to advise the governor when called upon to do so, to notify the legislature of infractions of the state or federal Constitution or laws, to examine the public accounts, and to encourage and promote the establishment of all kinds of industry in the state ("*promover el establecimiento y fomento de todos los ramos de prosperidad del estado*").

There was to be a supreme court, with appellate jurisdiction only. Inferior courts then existing were to be continued until the revenues of the state would permit the appointment of judges learned in the law ("*jueces de letras*"). No tribunal was to undertake to interpret the laws or suspend their operation, and doubts as to the meaning of statutes ("*dudas de ley*") were to be reported by the courts to the

<sup>1</sup> The complete text, with an English translation, is printed in *Laws and Decrees of Coahuila and Texas*, 313-343.

<sup>2</sup> *Laws and Decrees of Coahuila and Texas*, 47.

legislature. Soldiers and ecclesiastics residing in the state were not subject to the civil courts. Controversies involving small amounts were to be settled without appeal by the local executive authorities ("*por providencias gubernativas*"). Other cases were to be first heard by a tribunal of conciliation. In criminal cases the procedure was only regulated so far as to provide that search-warrants should not be issued except in cases prescribed by law. In other respects the practice was left to statutory regulation, with the proviso that one of the first objects of the legislature must be to establish trial by jury in criminal cases, and to extend the system gradually even to civil cases if it proved practicable.

There was nothing at all resembling the county governments of most of the American commonwealths. For electoral and administrative purposes the state was divided provisionally by the Constitution into three districts—Béxar, Monclova, and Saltillo, Béxar being defined as embracing the whole of what had been theretofore known as the province of Texas. The legislature, however, was authorized to modify this division. In each of these three districts there was a jefe político appointed directly by the governor, who had power to nominate his own deputies. All the other duties of the office were left to be defined by statute.

Prior to the adoption of the Constitution the law of February 1, 1825, had regulated the government of localities, and the state Constitution merely adopted the agency it found in existence. By the statute just mentioned the jefe político of Béxar was required to watch over public tranquillity; to act in a summary way in imposing punishment for certain minor offences; to arrest any person if the public good required ("*en los casos de exigir el bien público*") and to turn him over within forty-eight hours to a court of competent jurisdiction; to command the local militia; to examine and issue passports; and to take a census.

The control of the towns and villages of the state was continued in the hands of the ayuntamientos, or local councils—a popular institution which had existed in Spain for

many centuries, and which had persisted even under the Bourbon Kings. Through the operation of a variety of local causes these councils had developed in different parts of the Peninsula into many varying forms, with some curious mediæval survivals of custom. In some places the councillors were chosen by lot from among a limited number of names; in others the office was hereditary. The names and functions of the other municipal officials also varied in different towns.

In the reign of Charles III attempts had been made to unify this chaotic system, but nothing effectual was accomplished until after the French invasion, when the Cortes passed a law abolishing hereditary tenures, providing for popular elections of members of the ayuntamientos, and fixing the number and grade of all municipal officials according to the population of the several towns;<sup>1</sup> and by a decree of December 14, 1824, the legislature of Coahuila and Texas bodily adopted the provisions of the Spanish statute.<sup>2</sup>

The state Constitution of 1827 provided that there should be ayuntamientos in all villages (*pueblos*) where they had theretofore existed, and that others might from time to time be established by the legislature. In places which were too small to have an ayuntamiento, the people were to elect a *comisario de policía* and a *síndico procurador*, who may be said to correspond, roughly, to a constable and a justice of the peace. All these officials were to be elected for short terms—one and two years.<sup>3</sup>

On April 14, 1827, the legislature, complying with the requirements of the Constitution, passed an act for the speedy election of ayuntamientos in the various towns.<sup>4</sup> The number of men composing the ayuntamiento varied according to the size of the town. For a population between one thousand and twenty-five hundred there were to be four members chosen; namely, one *alcalde*, two *regidores*,

<sup>1</sup> Decree of May 23, 1812, in *Dublan y Lozano*, I, 380.

<sup>2</sup> *Laws and Decrees*, 11.

<sup>3</sup> Articles 155 to 164, Constitution of Coahuila and Texas.

<sup>4</sup> *Laws and Decrees*, 56-58.

and one *procurador*. These numbers gradually increased to a maximum of three *alcaldes*, six *regidores* and two *procuradores* for towns of more than ten thousand inhabitants.

The ayuntamientos, therefore, were, in Texas, very effective instruments for political action and organization, and the people were not long in learning how to make use of the opportunities thus afforded.

It is little better than guesswork to attempt to state the population of Texas at any particular stage of its early history; but it may be said that in 1825 it amounted to seven thousand or seventy-five hundred in all—perhaps about evenly divided between the Mexicans and the American settlers. In 1827 the number of inhabitants, excluding Indians, may be estimated at about ten thousand. By this time the Americans probably outnumbered the Mexicans in the proportion of five to three. The latter were a stationary, the former a rapidly growing element in the population, and had already begun to excite misgivings in the minds of the more far-seeing observers in the city of Mexico.

The British minister, Ward, who was always on friendly terms with the leading men in public life, and particularly with the Conservative party at the capital, took very early occasion to advise his own government of the serious difficulties to which the presence of American settlers was likely to give rise. Less than five months after his arrival in Mexico he addressed the British Foreign Office as follows:

“On the most moderate computation,” he wrote, “six hundred North American families are already established in Texas; their numbers are increasing daily, and though they nominally recognize the authority of the Mexican Government, a very little time will enable them to set at defiance any attempt to enforce it. . . . General Wavell has, I believe, a considerable share [of the land], but he is, I understand, almost the only Englishman who has applied for land in Texas. The rest of the settlers are all American—Backwoodsmen, a bold and hardy race, but likely to prove bad subjects, and most inconvenient neighbors. In the event of a rupture between this country and the United States, their feelings and earlier connections will naturally lead them to side with the latter; and in time of peace their lawless habits, and dislike of all restraints, will, as naturally, induce

them to take advantage of their position which is admirably adapted for a great smuggling trade, and to resist all attempts to repress it. In short, Mexico, though she may gain in point of numbers, will not, certainly, acquire any real strength, by such an addition to her population. . . . Were but one hundredth part of the attention paid to practical encroachment, which will be bestowed upon anything like a verbal cession, Mexico would have little to fear."<sup>1</sup>

It was hardly fair to speak of the "lawless habits and dislike of all restraints" of these people. They were, in fact, always ready to conform to laws which they had made themselves and which they understood, for that had been their custom and the custom of their fathers for many generations. But there was one thing they would never submit to. They would never submit to the domination of a race they regarded as inferior. They despised Mexicans as they despised negroes and Indians, and they calmly ignored Mexican laws.

They were industrious and brave, and their morality, on the whole, stood high. The political conditions of their existence were already difficult, and were certain to become more and more so, as the disproportion increased between the numbers and wealth of the colonists on the one hand, and of the Mexicans on the other. On the side of the Mexicans was legal authority, backed by the distant and deeply distracted government in the city of Mexico; on the side of the new-comers were industry, frugality, intelligence, courage, and a great preponderance of numbers within the territory itself. A struggle was inevitable.

<sup>1</sup> Ward to Canning, Sept. 6, 1825, in *Tex. Hist. Quar.*, IX, 140.

## CHAPTER VII

### MEXICAN POLITICS: 1824-1830

IN the preceding pages an account has been given of the condition of the Mexican people—and especially of those who inhabited her northernmost provinces—at the period when they had finally succeeded in releasing themselves from the grasp of Spain and had set up a federal republic. We are now to see what use they made of their newly acquired freedom.

When the first election for President and Vice-President took place the condition of the country was, on the whole, fairly satisfactory, and those who hoped for the success of the republic could not have wished a better opportunity for testing the working of the governmental machinery. Order had been restored in all parts of the country. Relations with the continental powers of Europe—thanks to the friendly offices of the United States and England—were in a hopeful state of adjustment. The credit of the country was good. The proceeds of foreign loans had given the Treasury adequate funds. Trade was increasing. Foreign capital, chiefly English and German, was eagerly seeking to develop the mining industry of the country, and was ready to embark on any enterprise in Mexico which could show a reasonable assurance of profit. All that was needed in order to secure continued prosperity was internal peace and the certainty of protection to life and property.

The Constitution adopted in 1824 had provided that the President and Vice-President should be elected by the votes of the state legislatures. Two names were to be presented by each legislature—the person receiving the most votes to be President, and the person receiving the next highest number to be Vice-President. If there was not a ma-