



Harbor and Bay looking East, Galveston, Texas.

Postcard depiction of Galveston Bay, 1910.

A HISTORY OF THE PORT OF GALVESTON: A CONSTITUTIONAL-LEGAL OVERVIEW

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The history of the city of Galveston has been essentially the history of the port, whose growth has been attributed to the combined efforts of the public and private sectors. The city, the state and national governments, and private enterprise engaged either alone or jointly to promote Galveston as a major trade center for the nation as well as for the state. Of all the public and private institutions involved in the venture, however, the city of Galveston became the conduit through which the development of the port proceeded. City and port became synonymous. Accordingly, the state, through its power to create cities, vested the city of Galveston with powers sufficient to promote navigation and commerce, activities that would benefit the state itself. In custom, in practice, and in law, the city became caretaker of the port. The port had given rise to the city, and together their fate hung.¹

Official establishment of the port of Galveston preceded the creation of the city.² Capitalizing on Galveston's natural harbor facilities and strategic location, the Congress of Mexico designated it as a provisional port and point of customs entry on October 17, 1825.³ In 1838, two years after Texas's independence from Mexico, the first permanent wharf was built.⁴ That same year the port officially opened, and a year later, when the Republic of Texas incorporated the city of Galveston, it handled \$1,000,000 worth of business, most of which involved cotton.⁵

*I wish to thank Carol E. Dinkins and L. Diane Schenke, attorneys at Vinson & Elkins, who suggested I research the topic. Ms. Schenke in particular provided useful comments and helpful editorial suggestions. Legal research assistant Susan E. Robertson, offered valuable aid in collecting documents. Jane Kenamore of the Rosenberg Library in Galveston provided invaluable assistance in the overall research of the topic.

¹Robert A. Nesbitt, "Port of Galveston 150 Years Old, Looks to Future and World of Giant New Ocean Ships with Confidence," in *The Port of Galveston Bicentennial Appointment Calendar and Compendium of 1976* (Galveston, 1976), p. 43; Ruth E. Kelly, "Twixt Failure and Success: The Port of Galveston in the 19th Century," (M.A. thesis, University of Houston, 1975), p. 11.

²Nesbitt, "Port of Galveston," p. 42.

³*Ibid.*; Kelly, "Twixt Failure and Success," p. 5.

⁴Lynn M. Alperin, *Custodians of the Coast: History of the United States Army Engineers at Galveston* (Galveston, 1977), p. 3.

⁵*Ibid.*; 1839 An Act to Incorporate the City of Houston and Other Cities Therein Named sec. 20, at 99, 2 H. GAMMEL, LAWS OF TEXAS 99 (1898).

The expansion and development of the port hinged, however, on surmounting the natural obstacle of shallow water which restricted entry to the port to the lightest of vessels. Without deep water, Galveston, unable to compete with other ports along the Gulf of Mexico, faced economic decline and a future as a second-class entrepot. The quest for deep water, thus, dominated the energies and resources of those interested in the port and ultimately shaped its history.⁶

Texas had barely achieved independence when private interests began to develop plans for the port. On December 9, 1836, a French-Canadian fur trader, Michel Branamour Menard, and his associates purchased from the Republic for \$50,000 "one league and one labor of land" on Galveston Island.⁷ Menard then proceeded to plan a city and organize the Galveston City Company.⁸ Incorporated on February 5, 1841, the Company began promoting the port by granting wharf privileges and waterfront property to entrepreneurs who agreed to build wharves and other shipping facilities.⁹ While Menard and his companions expanded and consolidated their control over wharf and warehousing business, government activity to promote navigation and commerce accelerated.

A sandbar prevented large vessels from entering the port and necessitated the use of lightering, which, in the case of unfavorable weather, delayed cargo transfers.¹⁰ Lightering boosted harbor expenses and threatened to price Galveston out of the shipping market.¹¹ Additionally, the introduction of the railroad further stimulated competition and intensified Galveston's search for deep water.¹² The state responded by appropriating over \$200,000 in 1852 and a larger sum in 1856 for dredging and improvements.¹³ As enterprising residents of Galveston soon discovered, however, the acquisition of deep water proved exasperating. Inadequate funding and technological barriers continually frustrated community efforts.¹⁴

⁶Nesbitt, "Port of Galveston," p. 42; Kelly, "Twixt Failure and Success," pp. iii, 93-94.

⁷Alperin, *Custodians of the Coast*, p. 2; Kelly, "Twixt Failure and Success," p. 7; 1836 An Act Relinquishing One League and Labor of Land to Michel B. Menard and Others, On the East End of Galveston Island secs. 1-7, at 70-72, 1 H. GAMMEL, LAWS OF TEXAS 1130-32 (1898).

⁸Alperin, *Custodians of the Coast*, p. 2; Kelly, "Twixt Failure and Success," p. 7; 1841 An Act to Incorporate the Galveston City Company secs. 1-5, at 122-23, 2 H. GAMMEL, LAWS OF TEXAS 586-87 (1898).

⁹Alperin, *Custodians of the Coast*, p. 2; Kelly, "Twixt Failure and Success," p. 7.

¹⁰Kelly, "Twixt Failure and Success," pp. 93-94; Kenneth W. Wheeler, *To Wear a City's Crown: The Beginnings of Urban Growth in Texas, 1836-1865* (Cambridge, 1968), p. 87.

¹¹Alperin, *Custodians of the Coast*, p. 40; Kelly, "Twixt Failure and Success," p. 94.

¹²Kelly, "Twixt Failure and Success," p. iii.

¹³Wheeler, *To Wear a City's Crown*, p. 85.

¹⁴Alperin, *Custodians of the Coast*, p. 4.

With the advent of the Civil War, the campaign for deep water subsided, but immediately after the war's close Galveston's business and political elements jointly petitioned the state and federal governments for assistance in deepening the harbor.¹⁵ Their requests were hampered by a bankrupt state government and a Reconstruction Congress absorbed in critical postwar issues.¹⁶ With the prospects for outside aid bleak, Galveston turned to city and private financing.¹⁷ In 1869, in an attempt to deepen the water over the inner sandbar by scour, the city constructed a jetty from Fort Point one mile into the Gulf. The following year the federal government designated the port of Galveston as a point of delivery for the United States and appropriated \$25,000 for dredging the inner bar. Both the means and the methods were inadequate.¹⁸

Attempting to devise a more permanent and effective method of achieving deep water, the United States Army Corps of Engineers built underwater dikes or gabionnades consisting of cement, sand and wickwork rather than the costlier quarried stone.¹⁹ The Corps completed the project in 1875, but by the mid-1880s sand had covered the jetties and destroyed the system.²⁰ Discarding that approach, the Corps tried the Dutch method of jetty construction, but lack of funds and the severe settling problems of the jetty under construction doomed the project. By 1888, Galveston's port remained too shallow to accommodate deep-draft vessels and so remained a second-rate port.²¹

To attract regional interest in the value of a deep water port, the Galveston Deep Water Committee, appointed by the mayor in 1883, participated in a regional conference in 1888 which pledged support for a deep water harbor on the northwest coast of the Gulf.²² A year later a board of engineers, appointed by Congress, surveyed the coast and chose Galveston as the "regional port."²³ Undoubtedly the selection of Galveston encouraged federal assistance in obtaining deep water. In 1890, Congress provided \$6,200,000 in federal funds to construct a five-mile jetty and to deepen the

¹⁵Nesbitt, "Port of Galveston," p. 45; Kelly, "Twixt Failure and Success," p. 94.

¹⁶*Ibid.*

¹⁷*Ibid.*, p. 95.

¹⁸*Ibid.*, pp. ii-iii, 95.

¹⁹*Ibid.*, pp. 95-96. In 1874 the inner bar had a mean average level of water of 11 feet. The outer bar had a level of nine and one-half feet. Nesbitt, "Port of Galveston," p. 45. Wheeler contends that Galveston needed only to cut a 12 foot deep channel through the sandbar to have a first-class harbor to accommodate the largest of ocean vessels. Wheeler, *To Wear a City's Crown*, p. 162.

²⁰Kelly, "Twixt Failure and Success," pp. 95-96.

²¹*Ibid.*, pp. 96, 97. The Dutch system used brush mattresses and stone; stone comprised one-third of the volume of the completed structure.

²²Alperin, *Custodians of the Coast*, pp. 47-48; Nesbitt, "Port of Galveston," p. 45. Alperin explains that Galvestonians were discontented with Congress and thus appealed to the city to remove the whole matter from the Corps' hands.

²³Alperin, *Custodians of the Coast*, p. 51; Kelly, "Twixt Failure and Success," p. 98.

harbor.²⁴ With the completion of the jetty six years later, the channel depth measured 22 feet, deep enough to accommodate vessels of 25 foot drafts. This engineering feat transformed Galveston into a major seaport. By 1900 it ranked as the world's chief port for cotton exchange and as the fifth most important harbor in the nation. But its success, to be sure, literally rested on insecure grounds.²⁵

Achieving and maintaining deep water was the city's lifeline, and the state—recognizing the value of a deep port to the city and to the state itself—empowered the city to do everything necessary to promote navigation and commerce. Such legislative authorization began with the early growth of the port itself and was a constant and ever-expanding feature of the city's charters.

An 1851 statute granted Galveston the right to erect wharves and to fix and collect wharfage fees.²⁶ Five years later, the state authorized the city to regulate the anchorage of vessels through its harbor master.²⁷ Even more significantly, it defined the city's limits as embracing the harbor and anchorage areas of the bay.²⁸ These narrow authorizations were later expanded by the legislature to encourage the city to promote navigation by deepening the harbor.

Reincorporating Galveston and issuing the city a new charter in 1866, the state legislature extended the city limits one-half mile into the Gulf and empowered it "to remove and prevent all obstructions in the bay and channel . . . and to improve and preserve . . . navigation."²⁹ The charter explicitly extended the city's powers over a portion of Galveston Bay and reaffirmed its powers over the anchorage and harbor area to the bar at the entrance of the

²⁴Nesbitt, "Port of Galveston," p. 45; Kelly, "Twixt Failure and Success," pp. 98-99.

²⁵*Ibid.*, pp. iii-iv, 99, 101, 102.

²⁶1851 Tex. Gen. Laws, ch. 13, secs. 1-4, at 11-12, 3 H. GAMMEL, LAWS OF TEXAS 1043-44, (1898). The city also received the power "to fill such portions of the flat covered by water, between ordinary low tide water mark, and the channel on the Bay side, as said corporation may deem necessary for public purposes."

²⁷1856 Tex. Gen. Laws, ch. 238, sec. 16, at ch. 238, 4 H. GAMMEL, LAWS OF TEXAS 688, 694 (1898). This was first provided in the 1840 act of incorporation. 1840 An Act for the Incorporation of the City of Galveston sec 17, at 272, 2 H. GAMMEL, LAWS OF TEXAS 446 (1898).

²⁸1856 Tex. Gen. Laws, ch. 238 sec 24, at 151, 4 H. GAMMEL, LAWS OF TEXAS 688, 697 (1898). This was first provided for in the 1840 act of incorporation. 1840 An Act For the Incorporation of the City of Galveston sec. 19, at 273, 2 H. GAMMEL, LAWS OF TEXAS 440, 447 (1898). An 1860 act amended the 1856 charter to include Pelican Island. 1860 Tex. Gen. Laws, ch. 179, secs 1-2, at 197, 5 H. GAMMEL, LAWS OF TEXAS 237 (1898). Pelican Island became part of the city on Feb. 2, 1856. 1856 Tex. Gen. Laws, ch. 56, secs. 1-2, at 52-53, 4 H. GAMMEL, LAWS OF TEXAS 232-33 (1898).

²⁹1866 Tex. Gen. Laws, ch. 173, sec. 2, 27, at 307-8, 319, 5 H. GAMMEL, LAWS OF TEXAS, 1527-28, 1539. (1898).

harbor.³⁰ To facilitate the acquisition of deep water, a section of the charter further authorized the city "to preserve the harbor, dredge out, widen and deepen the channel."³¹ Three years later, a city ordinance authorized harbor improvements, including the removal of obstructions in the channel. Additionally, it created a board of harbor improvements and provided the requisite financing.³²

To assist the city in its financing efforts, the state in 1873 empowered the city to issue bonds for harbor improvements; the improvements could be made by the city alone or by the city in conjunction with state or federal agencies. Improvements were at the discretion of the city; it decided what harbor activities were essential to its commerce.³³ Through its 1871 charter, Galveston could levy taxes for such improvements.³⁴

Acknowledging Galveston's role in fostering navigation and commerce, the state in 1879 reaffirmed its relinquishment of Pelican Island to the city. That island, the state explicitly declared, "formed . . . the channel and harbor of Galveston, and was . . . essential to the preservation of . . . [the] harbor."³⁵ Upkeep of the harbor often translated into the acquisition and maintenance of deep water. An amendment to the city's charter in 1889 enabled Galveston to appropriate funds for any agent it needed to foster "the enterprise of obtaining deep water from the gulf into the harbor of Galveston."³⁶

By the turn of the century, Galveston had acquired from the state all necessary powers to utilize its property for commercial purposes and for the preservation of the harbor in encouraging navigation. Its charter retained the city's powers over the harbor and anchorage area to the bar at the entrance of the harbor. Specifically, the city limits included portions of Galveston Bay and the whole of Pelican Island.³⁷ Moreover, the city retained authority by ordinance to remove and prevent any obstruction in the Bay and channel within prescribed limits and within those boundaries to improve and preserve navigation.³⁸ Also, the city could erect wharves and set rates with respect to its property.³⁹

³⁰*Ibid.*, pp. 1527-28.

³¹*Ibid.*, pp. 1545-46.

³²1871 Tex. Gen. Laws, ch. 195, sec. 1, at 383, 6 H. GAMMEL, LAWS OF TEXAS 1480, 1521 (1898).

³³1873 Tex. Gen. Laws, ch. 160, secs. 1-5, at 408-9, 7 H. GAMMEL, LAWS OF TEXAS, 1109-11 (1898).

³⁴1871 Tex. Gen. Laws, ch. 195, sec. 1, at 365, 6 H. GAMMEL, LAWS OF TEXAS 1480, 1503 (1898).

³⁵1879 Tex. Gen. Laws, Joint Resolution in Regard to Pelican Island, at 190-1, 8 H. GAMMEL, LAWS OF TEXAS 1490, 1491 (1898).

³⁶1889 Tex. Gen. Laws, ch. 6, sec. 75a, at 94, 9 H. GAMMEL, LAWS OF TEXAS 1318, 1320 (1898). With respect to boundaries in this instance, the amendment did not specify.

³⁷1876 Tex. Gen. Laws, ch. IX, sec. 2, at 7, 8 H. GAMMEL, LAWS OF TEXAS 1192-3 (1898).

³⁸*Ibid.*, p. 1202. A March 29, 1887, act amending the 1876 charter allowed the city within its limits "to regulate, prohibit, or remove all buildings or structures on the shores or in the waters" where such structures were unlawful. 1887 Tex. Gen. Laws, ch. 5, sec. 54, at 10, 9 H. GAMMEL, LAWS OF TEXAS 977, 984 (1898).

³⁹1876 Tex. Gen. Laws, ch. XI, sec. 2, at 7, 8 H. GAMMEL, LAWS OF TEXAS 1192, 1202 (1898).

More significantly, for purposes of obtaining deep water, the city retained the power "to preserve the harbor, [and] dredge out, widen and deepen the channel." Additionally, the state reaffirmed the city's powers to levy special taxes for the improvement of the harbor, among other types of public property.⁴⁰ Until the current charter, those provisions remained part of the city's fundamental laws.⁴¹ The city explicitly retained at least until 1960 the power "to do any and all acts necessary . . . to promote the use and availability" of its property or any property under its control "for the purposes of commerce and in aid of the preservation and protection of the harbor . . . and the channel."⁴²

On April 19, 1960, the city of Galveston adopted a new charter.⁴³ This charter, presently in force, differs considerably in its format from previous charters, specifically with respect to the city's powers over the harbor and channel. The city removed from the document any reference to the city's control over the harbor, wharves, docks, and waterways, except those provisions governing Galveston Wharves, a separate utility.⁴⁴ Instead, it incorporated such areas of control into its Code of Ordinances.⁴⁵ In general, the code delineates waterfront properties, prescribes the duties and powers of the harbor master, and establishes other regulations to guarantee safe and efficient operation of the city's waterfront properties.

⁴⁰*Ibid.*, 1207, 1210.

⁴¹In 1893, the city added to its charter the 1889 state amendment which empowered the city to appropriate funds for any agent they selected to foster and encourage "the enterprise of obtaining deep water from the Gulf into the harbor of Galveston." 1889 Tex. Gen. Laws, ch. 6, sec. 75a, at 94, 9 H GAMMEL, LAWS OF TEXAS 1318, 1320 (1898); Galveston, Tex., Charter of the City of Galveston with the Amendments Thereto . . . (1893) sec. 75a, p. 34. Its 1901 charter simply replaced the city council with a Board of Commissioners. 1901 Tex. Gen. Laws, ch. 12, sec. 2, at 104; 1901 Tex. Gen. Laws, ch. 12, sec. 37, at 127. In 1903 the 1901 charter was amended. It added a section which, like the 1889 amendment, authorized the Board of Commissioners to appropriate any agent to assist in the promotion and acquisition of deep water in the harbor, from the "harbor into the Gulf of Mexico . . ." However, the new law reduced the amount which the city could expend. The 1889 act established a ceiling of \$5000 annually. The 1903 law lowered the amount to \$3000 annually. Galveston, Tex., Charter of the City of Galveston . . . (1903), sec. 38, p. 48. Those sections pertaining to the Board's powers over the harbor and channel and to the city's limits were essentially those adopted in the 1901 charter. Galveston, Tex., Charter of the City of Galveston . . . (1903), secs. 2, 37, pp. 4-5, 47-48. Those sections remained part of the city's charter until 1960. In 1948, the city of Galveston updated its charter as established in 1903 and revised and codified its general ordinances. That update kept verbatim the 1903 sections dealing with the city's limits and jurisdiction and with the powers of the Board of Commissioners over the harbor and channel. Galveston, Tex., Code of the City of Galveston, Texas 1948, secs. 2, 37, pp. 9-10, 59. It also retained that section empowering the Board of Commissioners to hire agents to aid in acquiring and maintaining deep water in the harbor. *Ibid.*, pp. 59-60. The city obtained in 1913 the power to adopt and amend their own charters within prescribed limits, 1913 Tex. Gen. Laws, ch. 147, sec. 1, at 307.

⁴²This was first stated in the 1901 charter and was adopted by the 1903 and 1948 documents. 1901 Tex. Gen. Laws, ch. 12, sec. 37, at 127; Galveston, Tex., Charter of the City of Galveston . . . (1903), sec. 37, p. 48; Galveston, Tex., Code of the City of Galveston, Texas 1948, sec. 37, p. 59.

⁴³Galveston, Tex., Charter, City of Galveston, Texas, April 19, 1960.

⁴⁴*Ibid.*, art. XII.

⁴⁵Galveston, Tex., Code of Ordinances, ch. 11, art. I *et seq.* (1960).

Though the charter adopted the city limits established in the 1903 charter amendment, which clearly extended the city's powers over portions of Galveston Bay and the whole of Pelican Island and over the harbor and anchorage areas to the bar at the entrance of the harbor, it failed to direct the city explicitly to preserve and improve navigation within its limits.⁴⁶ That is, the charter omitted any reference to the city's power to preserve the harbor or to widen, dredge or deepen the channel. The code, however, prohibited the obstruction or contamination of the harbor.⁴⁷ Plausibly, the state laws governing the power of cities over ports and other water activities made the inclusion of such provisions superfluous. Such laws go back at least to 1883.⁴⁸

State enactments permitted cities on navigable streams to acquire land to benefit navigation and to annex navigable streams for purposes of erecting wharves, docks, and other aids to navigation.⁴⁹ Thereupon, cities had "the fullest and most complete power of regulation of navigation and of wharfage or navigation . . . and of all facilities, conveniences and aids to wharfage or navigation."⁵⁰ Additionally, they enabled such cities to float bonds for harbor improvements and for the enhancement of other bodies of water within its jurisdiction.⁵¹ To achieve these objectives, the state vested cities with the powers of eminent domain and with the ability to create districts specifically to carry out navigational improvements.⁵² With respect to islands, flats, and other submerged lands which the state or the Republic had relinquished to cities, the state in an apparent move to stimulate development allowed municipalities to sell, lease or contract them out to any private or public corporation.⁵³ Overall, statutes governing coastal cities empowered them to engage in all activities necessary to operate ports and harbors properly and moreover offered them the legal wherewithal to enrich such facilities to encourage navigation and commerce.⁵⁴

⁴⁶Galveston, Tex., Charter, City of Galveston, Texas, April 19, 1960, sec. 2, pp. 1-2.

⁴⁷Galveston, Tex., Code of Ordinances, ch. 11, art. III, secs. 11-23 (1960).

⁴⁸On April 7, 1883, the legislature approved a bill which authorized cities on the Texas coast to appropriate money and to issue bonds for the improvement of their harbors. It additionally allowed such cities to impose taxes to finance the improvements. 1883 Tex. Gen. Laws, ch. 57, secs. 1-5, at 48, 9 H. GAMMEL, LAWS OF TEXAS 354 (1898).

⁴⁹1913 Tex. Gen. Laws, ch. 25, sec. 1 at 47.

⁵⁰*Ibid.*, p. 48.

⁵¹1913 Tex. Gen. Laws, ch. 147, sec. 8 at 316. This applied to cities of more than 5,000 inhabitants.

⁵²*Ibid.*, pp. 312, 316.

⁵³1953 Tex. Gen. Laws, ch. 80, sec. 1, 5 at 126.

⁵⁴1961 Tex. Gen. Laws, ch. 341, sec. 1 at 724.

As currently codified, the state's laws also permit coastal cities to accept federal, state, or county aid to develop, improve, operate and regulate their ports and harbors and to issue bonds for these purposes. Not only does the code allow cities to construct, maintain, and regulate installations such as docks, channels and turning basins, but also to embark on any work incidental to those activities. Presenting a list of activities that coastal cities might engage in, the code is careful to note that the list is partial, thereby allowing cities considerable latitude in determining what is needed to operate its harbor and ports and to promote business.⁵⁵ Moreover, since these cities are "performing an essential public function," they are, the code expressly states, exempt from any tax on such facilities or improvements, including any tax on improvement bonds for their revenues.⁵⁶

For Galveston, the importance of its harbor facilities to its general welfare is documented by the transformation of an essentially private activity into a public utility. Designed to oversee Galveston's wharf and terminal facilities, the present Galveston Wharves, a municipal utility, was for nearly a century a "semipublic" corporation.⁵⁷ It was the offspring of the machinations of Menard and his associates.⁵⁸ In 1854, Menard gathered together the owners of wharves, warehouses and other waterfront properties and suggested they merge their holdings under one management.⁵⁹ The owners agreed, and on February 4, 1854, the state chartered the Galveston Wharf and Cotton Press Company.⁶⁰

From the start, the city was an owner of the venture. The semipublic status was simply a device to exempt the company from the usual tax burdens. The city held one third of the stock, while private interests retained the rest. Since the city's share did not include voting privileges, however, the city remained outside the decision-making process. Management of the company was solely in the hands of the private stockholders. This arrangement, at least for the time being, was satisfactory since a number of city officials also held shares in the company; indeed, conflicts of interest were minimized.⁶¹

⁵⁵TEX. REV. CIV. STAT. ANN. art. 1187e, sec. 1 (Vernon 1963). Cities located on the Gulf with populations over 5,000, or located on any body of water connected to the Gulf which owns and operates port facilities can build, acquire, improve, enlarge, extend and maintain any and all improvements and facilities which they think necessary for the operation of the ports or harbors. They can issue bonds for such purposes. TEX. REV. CIV. STAT. ANN. art. 1187f, sec. 1 (Vernon Supp. 1978-1979).

⁵⁶TEX. REV. CIV. STAT. ANN. art. 1187e, sec. 7 (Vernon 1963).

⁵⁷Galveston, Tex., Charter, City of Galveston, Texas, April 19, 1960, art. XII, sec. 1, p. 37. Alperin, *Custodians of the Coast*, pp. 3-4; Wheeler, *To Wear a City's Crown*, pp. 87-88; Earl Wesley Fornell, *The Galveston Era: The Texas Crescent on the Eve of Secession* (Austin, 1961), p. 16.

⁵⁸Alperin, *Custodians of the Coast*, p. 3; Wheeler, *To Wear a City's Crown*, pp. 87-88.

⁵⁹Maury Darst, "The Saga of the Galveston Wharves," *In Between*, April, 1979, p. 21; Alperin, *Custodians of the Coast*, p. 3. Among the warehouses and shippers were: Kuhn's Wharf, Parson's Wharf, Beans Wharf, Merchants Wharf, and the Brick Wharf Company. The Wharves' directors were prominent people of the Galveston business community: Michel Menard, Samuel May Williams, John Sealy, Henry Rosenberg, A.F. James, E.B. Nichols, William Pitt Ballinger, Robert Mills, Stacey B. Lewis, J.S. LeClare, J.L. Darragah, Thomas Shearer, J.G. Duffield, C.G. Weels and Isadore Dyer. Darst, "The Saga," p. 21.

⁶⁰1854 Tex. Gen. Laws, ch. 48, secs. 1-5, at 72-73, 4 H. GAMMEL, LAWS OF TEXAS 72-73 (1898). Alperin, *Custodians of the Coast*, pp. 3-4; Nesbitt, "The Port of Galveston," p. 42; Wheeler, *To Wear a City's Crown*, pp. 87-88; Fornell, *The Galveston Era*, p. 16.

⁶¹Alperin, *Custodians of the Coast*, pp. 3-4; Nesbitt, "The Port of Galveston," p. 59; Wheeler, *To Wear a City's Crown*, pp. 87-88; Fornell, *The Galveston Era*, p. 16.

Eventually the company gained control over a major portion of the city's waterfront property. By 1860, the company owned and operated seven out of the ten wharves and held an additional fifteen hundred feet of frontage. In time, the company abused its powers and incurred the wrath of those outside the clique. Shippers, merchants, and political organizations, such as the Grangers and the Populists, irked by the exorbitant shipping costs, moved to wrest control from the plutocrats, who they believed were more interested in personal gain than in the welfare of the city.⁶²

Since the company monopolized Galveston's source of sustenance, it essentially controlled the city. Accordingly, opponents of the monopoly derisively dubbed it the "Octopus of the Gulf."⁶³ Meanwhile, the initially harmonious relationship between the city and the private shareholders soured, undoubtedly spurred by changes in city administrations and by the company's increasing notoriety. The city's suit against the company in 1869 hailed the beginning of a long, stormy exchange between it and the company.⁶⁴

That suit ended with a decree of compromise issued by the District Court of Brazoria County on April 1, 1869, and by legislative confirmation of the settlement on June 23, 1870.⁶⁵ From the agreement, the city obtained additional shares of the company, but not a commensurate role in its management.⁶⁶ The court declared, "that in all the stockholders meetings . . . no measure shall be adopted, and no vote, act or proceeding shall be valid unless by a vote of three-fourths of all the stock of . . . [the] company exclusive of the . . . stock of the plaintiff."⁶⁷

Efforts by the city to absorb the controversial company into the realm of public utilities were apparent in its May 11, 1920, amendment to its charter. That document legally enabled Galveston to condemn property or otherwise acquire it for public use, such as for docks and wharves. The charter expressly extended the powers of eminent domain to properties owned jointly by the company and the city "for the purpose of acquiring, establishing, constructing, owning, operating, equipping and maintaining any . . . public service . . . or utility."⁶⁸

⁶²Nesbitt, "The Port of Galveston," pp. 42-44; Wheeler, *To Wear a City's Crown*, p. 88; Fornell, *The Galveston Era*, pp. 16-20.

⁶³Alperin, *Custodians of the Coast*, p. 39; Wheeler, *To Wear a City's Crown*, p. 87-88; Fornell, *The Galveston Era*, p. 18.

⁶⁴Alperin, *Custodians of the Coast*, p. 3-4.

⁶⁵Decree of Compromise of 1869 in *Charter and By-Laws of the Galveston Wharf Company*, adopted December 7, 1897, compiled by C. W. Branch, Secretary, 1929. 1870 Tex. Gen. Laws, ch. 2, at 5-6, 6 H. GAMMEL, LAWS OF TEXAS 507-8 (1898).

⁶⁶Darst, "The Saga," p. 22; Fornell, *The Galveston Era*, p. 18. The settlement gave the city an undivided one third interest in the property of the company and the appointment of three directors. However, these three could not vote in the management of the company.

⁶⁷Decree of Compromise, p. 21.

⁶⁸Galveston, Tex., City Charter, (1903), as amended to May 17, 1927, sec. 100, p. 134.

This movement was carried to its logical conclusion on September 21, 1940, when the voters of Galveston approved the city's plan to purchase the entire wharf company.⁶⁹ Apparently a citizen's committee had advocated the change. Though the new contract awarded to the private owners the selection of three of the company's trustees, leaving the city to choose the remaining two, the city received the profits. According to one source, Galveston was in this respect the last in a trend among other port cities "to go public." The day after the election, the *Galveston Daily News* commented that "now Galveston [can] compete for shipping on an equal basis with other municipal ports."⁷⁰

No substantive changes in the powers of the company occurred with its change in ownership and in legal status. The company's 1897 by-laws closely paralleled those grants of power delineated in Galveston's current charter. The earlier laws authorized the company's Board of Directors to establish wharfage fees, to maintain wharves and buildings, and to propose the construction of new wharves, which they believed essential to commerce. Likewise, the Committee on Construction and Repairs could suggest to the Board new wharf construction as well as other improvements they thought shipping required.⁷¹

Today, a Board of Trustees oversees the development, maintenance, and operation of Galveston's port facilities. In general, the Board prepares the budget, fixes fees, acquires property, and determines overall policy. Accordingly, it authorizes and appropriates monies for the maintenance and improvement of its properties that are needed to keep Galveston Wharves an efficient and viable wharf and terminal facility.⁷²

Though many scholars and contemporaries of the old Galveston Company have indicted it for its selfishness and for its myopic policies and practices, closer examination of the sources leads to a less harsh historical verdict. At least in terms of Galveston's search for deep water—crucial to its economic survival—the old wharves company demonstrated real concern.

At a meeting of the stockholders on January 6, 1873, the president of the company, J.H. Hutchings, urged the standing committees "to do all that may be practicable . . . to promote the improvements of the harbor and deepening the bars." Hutchings added that vessels had difficulty and faced danger in attempting to use the wharves facilities. He advised,

⁶⁹Darst, "The Saga," p. 45; *Galveston Daily News*, Sept. 22, 1940, p. 1.

⁷⁰*Galveston Daily News*, Sept. 22, 1940, p. 1. The above came from a conversation with Jane Kenamore, archivist at the Rosenberg Library in Galveston, who spoke with Nesbitt on April 10, 1979. Nesbitt thought that the company's profits were down anyway. No one who has written a history of the Galveston Wharves has satisfactorily answered why the company became public in 1940; some writers do not address that question at all. Kenamore interviewed John W. McCullough, former President of the Hutchings Sealy Bank and a former trustee of the Galveston Wharves on April 12, 1979. According to McCullough, a friend informed him that the company was losing money on outstanding bonds, and he encouraged him to urge the company to turn the bonds over to the city as they could get "a municipal bond rate." McCullough added that the city was taxing the company heavily. The Great Depression of 1929-1937 took its toll on port activities, which affected the wharves company. Darst suggests that selling out to the city saved the company from financial disaster. Darst, "The Saga," p. 49.

⁷¹*Charter and By-Laws of the Galveston Wharf Company*, pp. 11, 16. These rules governing the company were in force at least until 1929.

⁷²Galveston, Tex., Charter, City of Galveston, art. XII, secs. 4, 7, p. 39, 40.3.

Looking to the rapid growth of our commerce and to the safety and convenience and comfort of the fine lines of New Orleans and New York steamers, now our regular and best customers, it is my belief that slips ought to be cut of the width and extent to give them the best accommodations and increase our wharfage capacity.⁷³

Hutchings recalled when, around 1869 or 1870, the inner bar of the harbor, which had been filling up, had not drawn more than seven and one-half to eight feet of water at low tide. Fearing that only the lightest of vessels could enter the harbor, the company, knowing that neither state nor federal aid was available, participated in plans to issue city bonds to deepen and improve the harbor. Fifteen years later, the company contributed \$350 to the Deep Water Commission "as a matter in which the Wharf Company [was] directly interested."⁷⁴

Other private entities had participated in Galveston's quest for deep water and in its efforts to improve navigation. After 1889, when the federal government selected Galveston as the port to serve the interests of regions west of the Mississippi River, there occurred a flurry of private activity along the Texas coast. Under the state's chartering laws, dock, channel and deep water corporations engaged in deep water channel and harbor improvements.⁷⁵ In 1897, the Texas legislature explicitly empowered dock and channel companies to own, construct, and operate channels as far into the waters of the Gulf as they thought essential "to obtain an adequate depth of water . . . to facilitate the ingress and egress of . . . vessels." To accelerate the process, the state vested these corporations with the powers of eminent domain.⁷⁶ Moreover, the

⁷³*Galveston Wharves Minute Books, Annual Meeting of Stockholders*, Jan. 6, 1873, p. 201, 202.

⁷⁴*Galveston Wharves Minute Books, Regular Meeting of the Executive and Finance Committee*, Sept. 4, 1888, p. 320. Darst argues that "by the end of the nineteenth century Galveston had secured a Class I harbor, but only through the efforts of the Galveston Deepwater Committee, dominated by George Sealy, R. Waverly Smith, and William Lewis Moody, all principal stockholders in the Wharf monopoly." Darst, "The Saga," p. 23. But Darst explains that the lethargy that followed, combined with arrogance, contributed heavily to the creation of the deep water port at Houston. "And it was the completion of the Houston Ship Channel, not the 1900 storm, that would be the undoing of Galveston's monopoly of seacoast trade." *Ibid.*, p. 45. The unpopularity of the monopoly was well documented by a series of articles presented in the *Galveston Daily News* in 1928 entitled "The Port Situation at Galveston: A Study of the Galveston Wharf Company and Its Relation to the City of Galveston."

⁷⁵Wheeler, *To Wear a City's Crown*, pp. 119, 122.

⁷⁶1897 Tex. Gen. Laws, ch. 23, sec. 1 at 1074. This was codified in 1911. Tex. Rev. Civ. Stat. art. 1250 (1911). According to the law, dock and channel corporations could "enter upon and condemn and appropriate any lands . . . that may be necessary for the uses and purposes of such channel corporation." Damages would be assessed as in the case for railroads. However, "no damages shall be assessed against or paid by it for any portion of the route of the channel embraced within and covered by the waters of any bay or lake on the coast of this state, nor for any portion of any island belonging to the state that may be requisite and necessary to the construction and successful operation of its channel." The 1897 law explained that there was a contract to build a large ship channel across the bay of Sabine Lake and there had been no legal provision for enough right-of-way to dump or pile the material taken from the bed of the channel. Hence, the work had been stopped. The state then expedited the passage of the bill. 1897 Tex. Gen. Laws, ch. 23, sec. 2 at 1074.

state allowed deep water companies to purchase islands, shores, or shallow bays from them as part of their efforts to build, own, and operate deep water harbors and channels, and docks and wharves along the Texas coast.⁷⁷

In addition, the state cooperated with port cities when these municipalities shared with private companies the burden of obtaining deep water as well as of seeking other improvements. In 1899, the Texas legislature ratified a Galveston ordinance authorizing Collis P. Huntington, the entrepreneur and railroad magnate, to build and maintain piers on Galveston Bay. Specifically, the act permitted Huntington to construct piers and to dredge on their sides to secure "at least twenty-five feet of water at mean low water . . . and . . . to secure a connection by a continuous channel twenty-five feet in depth at mean low water from . . . [the] piers to the Gulf of Mexico." Accepting the ordinance's description of Huntington's work as "greatly to the interest of the city," the legislature relinquished to him title "to any portion of the flats or lands under water" involved in the project.⁷⁸

Similarly, in 1905, the legislature confirmed a Galveston ordinance granting M.A. Low the right to build and maintain docks and wharves on Galveston Bay and to dredge and fill on either side of these structures. Reiterating that these activities were in the public's interest, the act declared that the area needed improvement, specifically enlargement of the Port of Galveston to better accommodate commerce.⁷⁹ By this time, however, private activity along the Texas crescent had diminished. A number of projects had proven exceedingly ambitious and financially devastating. By 1900 the government, namely the Corps of Engineers, had assumed responsibility for completing and maintaining the shaky schemes.⁸⁰

Legal scholar G. Sidney Buchanan, has observed that the abdication to localities of the responsibility for development of their ports was part of Texas's tradition.⁸¹ Indeed, in the case of Galveston, the development of the port has been at its heart an intensely local affair. The state—conceding to the city from time to time power essential to promote its growth—has through charters and other special laws acknowledged and encouraged that process.

Though state and federal entities have shared with Galveston powers over the port's growth, the city nonetheless has been in law and in practice the dominating force in determining the port's future. That future has basically hinged on the degree to which Galveston has acquired and preserved deep water facilities. As a port city, Galveston has been a crucible for federal, state and local jurisdictions. But as a community, it alone has been responsible for its survival. In its constant struggle to remain a competitive port city, Galveston has had to adapt to the changing needs of navigation and commerce. Its current campaign for an offshore superport is only a contemporary manifestation of that contest.

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⁷⁷Tex. Rev. Civ. Stat. art. 1254 (1911).

⁷⁸1899 Tex. Gen. Laws, ch. 94, sec. 1, at 163, 164-165.

⁷⁹1905 Tex. Gen. Laws, ch. 35, sec. 1 at 291.

⁸⁰Wheeler, *To Wear a City's Crown*, p. 119.

⁸¹G. Sidney Buchanan, "Texas Navigation Districts and Regional Planning in The Texas Gulf Coast Area," *Houston Law Review*, X (March, 1973), pp. 576, 578.

DONALD BARTHELME IN HOUSTON

BY ROBERT MURRAY DAVIS

Like many overnight successes, Donald Barthelme served a long and varied apprenticeship, but only through the luxury of hindsight can we determine in his nearly five hundred signed items between 1949 and 1962 the nature of that apprenticeship. Until the last third of the 1950s, there was only slight indication that he was more than a reviewer with considerable facility, some talent for broad parody, and a limited stylistic and intellectual range. In 1956, however, with the founding of the University of Houston's magazine, *Forum* Barthelme's interest in learning something from everyone, indeed from every conversation, began to show results that led from editorship to authorship on new levels, to directorship of the Contemporary Arts Museum in Houston, and finally, in a combination of his long-established editorial ability and his newly-evident knowledge of contemporary art, to the editorship of the short-lived but prestigious journal, *Location*, and the expanded horizons that a New York base can provide.

The most obvious feature of Barthelme's early career—and for that matter his later career, as *Guilty Pleasures* testifies—is an interest in parody. His first discoverable work, "Rover Boys' Retrogression," published in the Lamar High School literary magazine in 1949, is a parody of *Pilgrim's Progress* which traces the journey of Half-Asleep and Not-Quite-Awake to the banks of the River of Respect Due where, failing to prostrate themselves before "an impressive array of state barges carrying great quantities of Personages, Dignitaries, Golden Calves, Sacred Cows, Cabbages, Kings, and Members of the School Board," they reach the final goal of Expulsion. Though somewhat labored, the parody is significant because of the preface in which the seventeen year old Barthelme explains his theory that

a parody, to be completely effective *as a parody*, must be a complete reversal of attitude, set in the form of the work being parodied. As "Pilgrim's Progress" is highly moral, the ensuing "Rover Boys' Retrogression" is not. It has been written as the antithesis of Bunyan's