

Texas Historical Commission

Establishing Law in the Colony

Grade 4 & 7

SAN FELIPE de AUSTIN

STATE HISTORIC SITE

San Felipe, Texas



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Virtual Field Trip



Texas General Land Office, Austin, 1856.
Courtesy of Texas Historical Commission.

Establishing Law in the Colony

Overview: A New Beginning for Texas

In Part 9 in the *Empresario* series from the Texas Historical Commission's **San Felipe de Austin** site, learners are introduced to process of establishing a legal system in early colonial Texas. The activities explore primary sources that demonstrate empresario and temporary chief legal officer Stephen F. Austin's challenge in establishing civil and criminal regulations that were suitable to both the colony and the government of Coahuila y Tejas. An introductory video is included.

Objectives

- Demonstrate understanding of the early legal system of colonial Texas.
- Analyze hypothetical early Texas legal cases to determine outcomes.
- Analyze primary source documents.
- Reflect on the empresario experience.

Social Studies TEKS

4th Grade: 4.2 A, 4.2 E, 4.3 B, 4.14 B, 4.21, 4.23

7th Grade: 7.1 A, 7.2 D E, 7.17 A, 7.20 A, 7.23

Resources

- Video: [Establishing Law in the Colony](https://www.youtube.com/watch?v=xZ1So58RSXw&feature=youtu.be) (THC YouTube) <https://www.youtube.com/watch?v=xZ1So58RSXw&feature=youtu.be>
- Activity 1: Judging a Case and activity resource
- Activity 2: Letters from Alcalde John Coles to Stephen F. Austin (transcription)
- Activity 3: Provisional Laws of Stephen F. Austin's Colony, 1824
- Activity 4: Journal Reflection activity resource
- Primary Resource: Letters from Alcalde John Coles to Stephen F. Austin (transcription)
- Primary Resource: Provisional Laws of Stephen F. Austin's Colony, 1824



Vocabulary

alcalde (all KAHL day) noun: a mayor who also acts as a judge during legal disputes

banish (BAH nish) verb: to send someone away from a place as punishment

empresario (ehm preh SAH ree oh) noun: a person who was contracted by the Mexican government to bring colonists to settle in Texas

civil case (SIH vuhl kayss) noun: a legal case brought to court to settle a dispute between two citizens

criminal case (KRIH mih nul kayss) noun: a legal case brought to court to determine if a person has done something unlawful or illegal

laws (lahz) noun: a series of rules that are enforced by a government

legal system (LEE guhl SIH stum) noun: a set of laws for a community, state, or country that is upheld and enforced

sentence (SEHN tunss) noun: a punishment given by law to a guilty person

verdict (VERR dikt) noun: a decision made by a judge or jury in a civil or criminal case

Historical Context

In the early years of Mexican Texas, an empresario was the chief legal authority of a colony. He led trials for those accused of a crime and imposed punishments such as fines or hard labor if necessary. To assist in enforcing law and order, an empresario could appoint an alcalde who could also hear trials. However, any action taken by the alcalde first had to be approved by the empresario.

The major challenge in establishing law and order in Coahuila y Tejas was that the state didn't have a completed constitution until 1827. This meant that until that time, empresarios and alcaldes were leading trials without a written set of laws. While some actions were clearly illegal (i.e. theft and murder), other actions fell into a legal grey area without a set of codified state laws. For example, things that were illegal in one colonist's state might not have been illegal in another colonist's state or country.

In 1824, that legal uncertainty led to Stephen F. Austin to write his own civil and criminal regulations for his colony. With these laws, Austin tried to walk the line between laws that were familiar to the colonists and laws that he knew the Mexican government would find acceptable. Before these regulations were written, Stephen F. Austin and his alcaldes made decisions based on their own opinions of right and wrong. Once these laws were written, legal continuity across the colony was ensured.

In 1827, Coahuila y Tejas adopted a formal constitution. This official set of laws created a supreme court for the state and set out official laws for alcaldes to follow. At this point, the alcalde replaced the empresario as the colony's chief legal authority.



Video: Establishing Law in the Colony

To provide context for the activities, have learners watch the **Establishing Law in the Colony** video which focuses on how law and order was enforced in early Mexican Texas.

Activity 1: Judging a Case

In this activity, learners use the Judging a Case activity resource and assume the role of an empresario who is serving as a colony's chief legal officer. Presented with both civil and criminal cases, and without a set of written laws for the colony, learners must analyze each case and decide an outcome. Share responses when completed.

Activity preview might include the following:

Your empresario contract has made you the chief legal authority in the colony. You were hopeful that you could appoint an alcalde to take care of any legal problems in the colony, however, you were not able to do so quickly enough. Multiple colonists have come to you with cases that require you to figure out a solution. Some of these are criminal cases and others are civil arguments that you must resolve.

The challenge for you as a judge is that the state of Coahuila y Tejas hasn't completed writing the laws of the state. At this point, there is no set code of laws. You were told to "do what is right in your own eyes" in order to make a ruling. This means you have to use your own judgment to determine what is fair or right and wrong in each case. You must render a decision of guilty or not guilty in each case. Your options for punishment, if you need to impose a sentence, are included on the resource sheet.

Activity 2: Letter from Alcalde John Coles to Stephen F. Austin

Using the primary source document and activity resource, learners analyze four primary source letters written on January 31, 1824 by alcalde John Coles (Jno. P. Coles) to Stephen F. Austin describing a case that Coles settled. Note that the language of the text is the original. Assisting learners in understanding the meaning of the text may be helpful and/or necessary due to missing punctuation and unusual spellings. Preview the comprehension questions at the bottom of the activity resource. Share responses when completed.

Answer Key

- What two crimes was Peter Whitaker accused of? **stealing hogs in 1822, stealing horses in 1823**
- Why was Peter Whitaker the only person who went to trial for the crimes? **The other two men involved in the crimes, W.F. Gibbons and William Whitaker, ran away to the United States.**
- How does Cole feel about Whitaker and his involvement in the crimes? **He feels sorry for the boy and feels his stepfather (Gibbons) has been a bad influence.**
- In letter 3, what problems does Coles ask Austin for help in resolving? **what to do with the stolen horses and a rifle; whether Whitaker's stepfather's (Gibbons) property can be taken to cover the cost of the stolen hogs**
- What crime was Peter Whitaker found guilty of? What was the amount of the fine? **guilty of stealing hogs; fine was \$120**



Activity 3: Provisional Laws of Stephen F. Austin's Colony, 1824

Using the **primary source document** and the **activity resource**, learners read for information from selected articles of Stephen F. Austin's provisional laws document of 1824. Note that the language of the text is the original. Assisting learners in understanding the meaning of the text may be helpful and/or necessary. Preview the comprehension questions at the bottom of the activity resource. Share responses when completed.

Answer Key

- In the opening paragraph, what three groups of people does Austin mention as upsetting the peace and safety of the colony? **Indians, robbers, “men of bad character”**
- In Article 5, Austin set out a condition for Indians to be treated in a friendly manner by colonists. What was it? **“as long as they deserve it”.**
- Article 7 made all gambling illegal except for what? Why was that still legal? **Betting on horse races remained legal. Racing was thought to improve the breed of horses.**
- According to Article 11, what was the highest fine (dollar amount) a person would pay for stealing or encouraging an enslaved person to run away? **\$1,000.**
- Article 15 states that any person who is found guilty of theft must pay a fine that is treble (meaning triple) the amount of the stolen property. Calculate the fines for stealing these items: pig valued at \$10 (**\$30**); team of oxen valued at \$50 (**\$150**); wagon valued at \$120 (**\$360**).
- According to Article 22, what happened to a colonist who was unable to pay the fine for a crime? **The colonist would be forced to perform hard labor until the fine was paid off. The colonist's normal pay rate was used to calculate the amount of labor time.**
- According to Article 24, who issued all writs, warrants, and executions in criminal cases? **the Mexican nation.**

Activity 4: Journal Reflection

Using **the journal reflection activity resource**, learners write five new laws, and the accompanying punishment for breaking them, for the state of Coahuila y Tejas.



Activity 1 Resource: Judging a Case

As empresario, you are the acting legal authority in the colony. You have been presented with these civil and criminal cases. As this point, there is no written set of laws in Mexican Texas yet, so you must use your own judgment to decide whether the defendant in each case is innocent or guilty. If guilty, you must also decide on a punishment. These are acceptable sentences:

- a monetary fine and/or a set amount of time doing hard labor (constructing public roads)
- a punishment or solution acceptable to both parties in a civil case
- banishment from the colony (for a guilty verdict in a major criminal case)
- NOTE: Jail time is not an option. Your colony doesn't have a jail.
- NOTE: If you decide to banish a colonist, you can't also impose a fine or hard labor.

Read each case below. Circle your verdict. Fill in a sentence if the defendant is guilty.

Case 1

Mr. Stewart says that he caught Mr. McAllen organizing a game of dice in order to gamble for money and other goods with some of the local men and women. Mr. Stewart says that gambling is immoral and illegal in all areas where civilized people wish to live.

Mr. McAllen argues that he hasn't heard if gambling will eventually be made illegal in Mexican Texas. Because it hasn't been declared illegal at this point, he and other colonists can gamble whenever they want. Mr. McAllen also states that no person in his games will be forced to gamble against his or her will.

★ **Verdict:** Mr. McAllen is found guilty not guilty.

★ **Banishment:** Is Mr. McAllen banished from the colony? yes no

Write your reason for this decision:

★ **Sentence:** Choose one or both if the colonist is guilty but not banished.

- Colonist is to pay a fine of \$_____.
- Colonist is to serve _____ weeks of hard labor constructing the public roads.



Activity 1 Resource: Judging a Case pg. 2

Case 2

Mrs. Williams accuses her neighbor, Mr. Rawlins, of stealing and eating some of her pigs. Mrs. Williams estimates five of her pigs have been stolen in the past few months. She suspects that her neighbor has taken all five of the animals. Mrs. Williams wants to be reimbursed for the missing pigs which she says were worth ten dollars each.

Mr. Rawlins reports that the pigs he has been eating have either had his mark of ownership or haven't had any markings whatsoever. Mr. Rawlins admits that he collected and ate two unmarked pigs from the edge of his and Mrs. William's land. He noted that those two pigs were running with pigs which had his mark of ownership. Mr. Rawlins says that he is completely innocent of this accusation.

★ **Verdict:** Mr. Rawlins is found guilty not guilty.

★ **Banishment:** Is Mr. Rawlins banished from the colony? yes no

Write your reason for this decision:

★ **Sentence:** Choose one or both if the colonist is guilty but not banished.

- Colonist is to pay a fine of \$_____.
- Colonist is to serve _____ weeks of hard labor constructing the public roads.

Activity 1 Resource: Judging a Case pg. 3

Case 3

Mr. Bothman and Mr. Funk need a solution to an argument. Mr. Bothman had hired Mr. Funk as a laborer to build a brick chimney and agreed to pay him \$30 for one week's labor. Mr. Funk built the chimney, but he became upset when Mr. Bothman paid him with a pig instead of the agreed-upon money. Mr. Funk states that, "It is not this pig I object to, but it's the size of the pig. If Mr. Bothman doesn't have \$30 in cash, then I do expect the equivalent of \$30 to be paid in animals or goods! I estimate the pig he has given me is worth only \$5."

Mr. Funk is suing for the \$25 he feels he is still owed. Mr. Bothman argues that he doesn't have anything else he can use as payment to Mr. Funk.

Write a solution to this civil case that will make both parties happy.

Case 4

Mr. Platt, one of your current colonists, has been identified as having a warrant out for his arrest in his home state of Georgia. He is wanted for the murder of another man. Most of your colonists have had a good opinion about Mr. Platt since he joined your colony.

However, others say that there is no place for murders in the colony. They want Mr. Platt to be kicked out. Some of the colonists have asked you to notify the American state of Georgia that Mr. Platt is now living in this Mexican Texas colony. They have also requested that Georgia send officers to come and remove Mr. Platt from their colony.

What is your solution to this issue?

Case 5

Mr. Bradburn's barn recently burned down, destroying all the equipment and supplies inside. Mr. Bradburn is convinced that Mr. Smith burned the barn down as revenge for losing a debate they held a month ago. Mr. Bradburn stated that Mr. Smith was very angry about losing the debate. Mr. Bradburn admitted that he had insulted Mr. Smith's honor and intelligence numerous times during the debate and afterwards. This has led Mr. Bradburn to accuse Mr. Smith of trying to get even by burning the barn and its contents.

Mr. Smith confirmed that a debate had taken place between himself and Mr. Bradburn. Mr. Smith admitted that he was initially very upset by his loss. When asked if he was upset enough to destroy some of Mr. Bradburn's property, Mr. Smith responded by saying that he is determined to beat Mr. Bradburn in the next debate. He asked how destroying someone's property would help him win a debate. In addition, Mr. Smith stated that he couldn't have burned the barn down because he returned from a business trip to San Antonio two days after the barn had burned. A witness mentioned seeing Mr. Smith riding into the colony from San Antonio two days after Mr. Bradburn's barn burned.

★ **Verdict:** Mr. Smith is found guilty not guilty.

★ **Banishment:** Is Mr. Smith banished from the colony? yes no

Write your reason for this decision:

★ **Sentence:** Choose one or both if the colonist is guilty but not banished.

- Colonist is to pay a fine of \$_____.
- _____
- Colonist is to serve _____ weeks of hard labor constructing the public roads.

Case 6

Mr. Conroy recently moved to Tejas and hired Miss Garcia to wash his clothes. When he came to collect his clothing, Mr. Conroy said that Miss Garcia informed him that the amount to wash his clothes had risen from \$3 to \$5. She said that this increase was because she had repaired a few holes in his trousers, and she had replaced a handful of missing buttons. Mr. Conroy refused to pay the new amount for his clothes, saying that he didn't agree to the repairs being made. Miss Garcia has kept Mr. Conroy's clothing and refuses to return anything until she is paid the \$5. Mr. Conroy refuses to pay the new amount for the additional repairs and has demanded that his clothes be returned.

Miss Garcia regularly performs repairs on the clothes that colonists give her to wash. Most colonists are happy to pay for any repairs. Miss Garcia's services are well known among the locals and she has a reputation for honest and fair prices.

Write a solution to this civil case that will make both parties happy.

Activity 2 Resource: Letters from Alcalde John Coles to Stephen F. Austin

Read the **primary source transcript** of the January 31, 1824 letters from alcalde John Coles to Stephen F. Austin about a criminal case. In these letters, Coles describes the charges against Peter Whitaker.

Write answers to the questions.

- ★ What two crimes was Peter Whitaker accused of?

- ★ Why was Peter Whitaker the only person who went to trial for the crimes?

- ★ How does Cole feel about Whitaker and his involvement in the crimes?

- ★ In letter 3, what problems does Coles ask Austin for help in resolving?

- ★ What crime was Peter Whitaker found guilty of? What was the amount of the fine?

Activity 3 Resource: Provisional Laws of Stephen F. Austin's Colony, 1824

Read the **primary source transcript** of selected articles from the set of laws Stephen F. Austin wrote for his colony in 1824. Austin wrote these because Coahuila y Tejas had not yet adopted a set of constitutional laws of its own that would apply to Austin's colony.

Write answers to the questions.

- ★ In the opening paragraph, what three groups of people does Austin mention as upsetting the peace and safety of the colony?

- ★ In Article 5, Austin set out a condition for Indians to be treated in a friendly manner by colonists. What was it?

- ★ Article 7 made all gambling illegal except for what? Why was that still legal?

- ★ According to Article 11, what was the highest fine (dollar amount) a person would pay for stealing or encouraging an enslaved person to run away?

- ★ Article 15 states that any person who is found guilty of theft must pay a fine that is treble (triple) the amount of the stolen property. Calculate the fines for stealing these items:
 - pig valued at \$10 _____
 - team of oxen valued at \$50 _____
 - wagon valued at \$120 _____

- ★ According to Article 22, what happened to a colonist who was unable to pay the fine for a crime?

- ★ According to Article 24, who issued all writs, warrants, and executions in criminal cases?

Activity 4 Resource: Journal Reflection

As an empresario, you must make laws for your colony because the state of Coahuila y Tejas doesn't have a set of laws yet. The laws you create should be written to prevent any kind of activity or behavior that you do not want occurring in your colony. You will also need to determine a sentence for breaking each law.

Law	Sentence
1.	
2.	
3.	
4.	
5.	

Primary Resource: Letters from Alcalde John Coles to Stephen F. Austin

Letter 1: January 31, 1824

Sir I send you a Transcript of the proceedings in the case of Peter Whitaker on the 24th day of January now past James Alexander came before me and made oath that William F. Gibbon Peter Whitaker and William Whitaker had stolen Hogs from John Mitchel John Milican and Mr. Roberts sometime in the summer of 1822 and that they also had stolen three Horses from a Spaniard about the last of August 1823 upon which Information I found a warrant against the said W. F. Gibbon Peter Whitaker and William Whitaker Peter Whitaker was taken on the 26th day of January and brought to a Trial on the last day of said month W. F. Gibbons and William Whitaker not to be found said to have ran of to the United States

On the day above mentioned the last day of January the above named Peter Whitaker was Tried for the above offences he being first ask whether he was guilty or not declared that he was not guilty and was Ready for Trial Mrs Alexander was introduced as an Evidence against Sd Whitaker who first being sworn to make true statements as the Law directs—stated as follows that sometime in the summer of eighteen hundred and twenty-two she saw Peter Whitaker the defendant in company with W. F Gibbons and William Whitaker at one time kill 2 Hogs the property of John Mitchel and at different times Killed one other Hog belonging to John Mitchel and one belonging to John Milican and further states that she lived at the House of William F. Gibbons at the time and place where those Hogs were Killed and has an Entire Knowledge of the whole of the circumstances

the Evidence being herd the case were submitted to a Jury of six men who were duly qualified to Try the case the Jury found the defendant Guilty and returned a verdict as you will see accompanying this

*Given under my hand this 31st day of January 1824
Jno P. Coles*

Letter 2: January 31, 1824

*January 31st 1824
Sir*

as Respects this affair of Peter Whitaker the Evidence against him is very positive and I am fearfull that they are altogether a bad set my oppinion of the Matter is that Gibbons is very much of a thief and has perhaps been the cause of those young men getting into these bad habits he is their Step Father and has partly Raised them this young man Peter Whitaker has the appearance of an Innocent young man and appears much mortified—for my own part I feel much disposed to pity the young man tho I believe he has done Rong an order for the whole of them to leave the country Immediately perhaps would be the shortest way of Ending the Trouble he the sd Whitaker first paying all cost and charges before he should be Released

Jno. P. Coles

Letter 3: undated

There is also three Spanish Horses left in my possession the Horses that were said to have been stolen tho the theft of the Horses were not proven I have not found out the Spaniard name that owns the Horses nor neither do I Know where he lives

as also there is an old Rifle Gun left Here that was taken from a duchman by Gibbons the ducmans name not Known you will direct me what to do with this property the Horses and Gun as also State to me wheather Gibbons property can be taken to pay for three Hogs that were stolen.

Jno. P. Coles

Letter 4: January 31, 1824

Verdict of the Jury

*District of Brasos Austins Colony Province of Texas Vs. William F Gibbon Peter Whitaker
William Whitaker*

the charges exhibited against the above Named Persons were steeling of Hogs som time in the summer of 1822 as also steeling of three Horses about the first of August 1823 we find the Defendants Peter Whitaker to be Guilty of Steeling fore Hogs supposed to be worth 10\$ Dollars a peace and agreeable to Law in that Case we assess three times the value which is One Hundred and Twenty dollars

The theft of the Horses were not proven the defendant paying all cost and Expençe for Guarding at the rates of \$2.00 for each thirty fore Hours allowing Two men to be sufficient Guard Cost as Respects his on Trial.

James Whiteside James Lynch Micajah Byrd R. C. Millican Orlando Hopkins

Simon Miller Jurors

January 31st 1824

Primary Resource: Provisional Laws of Austin's Colony, 1824

TO ALL PERSONS-Charged by the superior authorities of the Mexican nation with the government of this colony until its organization is completed, and observing that the public peace and safety of the settlers is jeopardized by the pilfering depredations of strolling parties of Indians and robbers, and also that the good order of the colony is endangered by the introduction and transit of men of bad character and its good morals scandalized by their irregular conduct, I have thought proper, in order more effectually to insure good government, security, and tranquility, to decree as follows :

ARTICLE. 5-No person within this colony shall ill-treat or in any manner abuse any Indian or Indians without just cause, under the penalty of one hundred dollars fine for the first offence, and two hundred dollars for the second, but shall treat them at all times and in all places in a friendly, humane, and civil manner so long as they deserve it.

ART. 6.-Should any murder, theft, robbery, or other depredations be committed, it shall be the duty of any person to apprehend the criminal or criminals concerned in it ... and convey him or them to the nearest alcalde, for which purpose they are authorized to use arms. ... The prisoners shall be brought in and delivered to the alcalde of the district for trial, and the stolen property recovered shall also be delivered - to the said alcalde to be returned to the legal owners; ...

ART. 7. -No gambling of any description, under any pretext or name, shall be permitted in this colony, and the person or persons who violates this article shall be fined, on conviction thereof, in a sum not less than twenty nor more than two hundred dollars; ... Horse-racing being calculated to improve the breed of horses is not included in the above prohibition, but no debt contracted thereby shall be recoverable in law.

ART. 8.-Profane swearing and drunkenness are misdemeanors against the good morals and good order of the colony, and any person convicted thereof shall be fined in a sum not less than one dollar and more than ten. ...

ART. 9.-Living publicly with a woman as man and wife without first lawfully united by the bands of matrimony is a gross violation of the laws of this nation, and a high misdemeanor, and the man or woman who is convicted thereof shall be fined in a sum not less than one hundred dollars nor more than five hundred, and be liable to be condemned to hard labor on public work...

ART. 10.-No person within this colony shall harbor or protect any runaway slave belonging to any person within this colony, or out of it... Any person who violates this article shall, on conviction thereof, pay all the damages which the owner of such slave may sustain in consequence of the loss of his labor, and shall, moreover, be finable in any sum not exceeding five hundred dollars, and be condemned to hard labor on public works until the superior government decides on the case.

Primary Resource: Provisional Laws of Austin's Colony, 1824 pg. 2

ART. 11. -Any person who shall be convicted of stealing any slave or slaves, or enticing, or inducing them to run away, shall be fined in a sum not exceeding one thousand dollars, and be condemned to hard labor on the public works until the superior government decides on the case.

ART. 15-Any person who shall be convicted of stealing any money, horse, or other property shall pay treble the amount of the property stolen, and be condemned to hard labor on public works until the superior government decides on the case.

ART. 16. -Any person who shall willfully or maliciously assault another, or who shall maim, beat, abuse, or ill-treat him or her, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars and be liable to imprisonment not exceeding three months, and shall, moreover, give security for his good behavior, and also be liable in a suit for damages to the person injured.

ART. 17-Any person who shall falsely and maliciously slander another shall, on conviction thereof, be fined in a sum not less than ten nor more than one hundred dollars, and shall, moreover, be liable in a civil suit to the party injured.

ART. 20.-Should it come to the knowledge of any alcalde that a person of bad character, a vagabond, or a fugitive from justice is within the limits of his district ... it shall be the duty of such alcalde to cause such person to appear forthwith before him to answer to such accusation, and to such interrogatories as the alcalde may deem proper to put; and after recording the evidence on both sides, and the interrogatories and answers, the said record, together with the opinion of the alcalde and the defence of the person, shall be sent up to the superior judge for final judgment...

ART. 22.-In all cases where a person fined is unable to pay said fine, or to give security therefor, he shall be condemned to labor on public works until his wages at the usual rates allowed in the country will amount to said fine.

ART. 23-In all criminal cases, the party convicted shall pay all the costs, for which purpose his property may be seized and sold under an execution from the alcalde of the district.

ART. 24--All writs, warrants, and executions in criminal cases shall be issued in the name of the Mexican nation.

Given at the town of San Felipe de Austin, in the province of Texas, this 22d day of January, 1824, fourth year of the independence and third of the liberty of the Mexican nation. STEPHEN F. AUSTIN.