"The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."—Chief Justice CHASE

"If I regard the truth of history for the last eight years, I cannot discover the State of Texas as one of these United States."—Justice GRIER

Texas v. White

74 U.S. (7 Wall.) 700, 19 L.Ed. 227 (1869).

As an indemnification for adjustments in Texas's boundary, Congress in 1851 gave that state 5,000 U.S. bonds, with a face value of $1,000 each, redeemable in gold in 1865. During the last months of the Civil War, the Texas Military Board turned over some of these bonds to George W. White and John Chiles in exchange for a promise to deliver supplies needed for the war. The arrangement smacked of fraud: The Confederacy was crumbling and the agreement called for White and Chiles, if they could not deliver the supplies, to return not the gold U.S. bonds but an equivalent amount in almost worthless state bonds.

Not surprisingly, White and Chiles did not deliver the supplies; instead, shortly after the war, they produced the now totally worthless Confederate paper to fulfill their obligation. The provisional governor refused to accept the "paper" and branded the agreement a swindle. In February, 1867, Texas filed an original suit in the U.S. Supreme Court—Article III of the constitutional document allows a state to invoke the Court's original jurisdiction—asking for an order that White and Chiles return the U.S. bonds.

During the leisurely course of litigation—the Court would not decide the case until almost two years after it was filed—Congress enacted much more stringent policies of Reconstruction than Presidents Lincoln and Johnson had followed. The new legislation denied the former Confederate states representation in Congress and removed their elected civil state governments. In their place, Congress established military officers as rulers. Thus the Court confronted a series of questions: What was Texas's constitutional status during the Civil War? What was its status immediately after the war when the suits were filed? And, assuming that the Court would rule that secession was unconstitutional and so Texas had always remained a member of the Union, what was its status now, when it had no senators or representatives and was under military rule? Was it still a state in the sense the constitutional text used that term? If so, was it not entitled to representation in Congress and were its people not entitled, as Article IV of the constitutional document ordered the federal government to guarantee them, to a "republican" not a military form of government? In sum, if Texas were still a state in the constitutional sense, then were not the policies of Radical Reconstruction invalid?

The answers to these questions were all the more difficult and delicate because of the belligerent mood of Congress. Not only were the Radicals determined to exact retribution from the South for the bloody Civil War, but they were also determined to control all three branches of the federal government. They had impeached and tried Andrew Johnson during the time the case had been on the Court's docket; and, in an effort to prevent the justices from declaring part

of Reconstruction unconstitutional, Congress had also removed part of the Court's appellate jurisdiction. (See the discussion of Ex parte McCardle [1869], in Chapter 10 at pp. 467–72.)

We reprint here only those parts of the opinions dealing with questions relating to Texas's statehood—and so to the structure of the American constitutional system.

The Chief Justice [**CHASE**] delivered the opinion of the Court. ...

If ... it is true that the State of Texas was not at the time of filing this bill, or is not now, one of the United States, we have no jurisdiction of this suit. ...

In the Constitution the term "state" most frequently expresses the combined idea ... of people, territory, and government. A state, in the ordinary sense of the Constitution, is a political community of free citizens, occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution, and established by the consent of the governed. It is the union of such states, under a common constitution, which forms the distinct and greater political unit, which that Constitution designates as the United States, and makes of the people and states which compose it one people and one country. ...

Did Texas, in consequence of these acts [of seceding, joining the Confederacy, and warring against the United States], cease to be a State? Or, if not, did the State cease to be a member of the Union? ...

The Union of the States never was a purely artificial and arbitrary relation. It began among the colonies and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form, and character, and sanction from the Articles of Confederation. By these the Union was solemnly declared to "be perpetual." And when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained "to form a more perfect Union." It is difficult to convey the idea of indissoluble unity more clearly than by these words. What can be indissoluble if a perpetual Union, made more perfect, is not?

But the perpetuity and indissolubility of the Union, by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Under the Articles of Confederation each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated to the United States. Under the Constitution, though the powers of the States were much restricted, still, all powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the people. ... Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.

When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union, and all the guaranties of republican government in the Union, attached at once to the State. The act which consummated her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration, or revocation, except through revolution, or through consent of the States.

Considered therefore as transactions under the Constitution, the ordinance of secession, adopted by the convention and ratified by a majority of the citizens of Texas, and all the acts of her legislature intended to give effect to that ordinance, were absolutely null. ...

Our conclusion therefore is, that Texas continued to be a State, and a State of the Union, notwithstanding the transactions to which we have referred. And this conclusion, in our judgment, is not in conflict with any act or declaration of any department of the National government, but entirely in accordance with the whole series of such acts and declarations since the first outbreak of the rebellion.

But in order to the exercise, by a State, of the right to sue in this court, there needs to be a State government, competent to represent the State in its relations with the National government, so far at least as the institution and prosecution of a suit is concerned.

And it is by no means a logical conclusion, from the premises which we have endeavored to establish, that the governmental relations of Texas to the Union remained unaltered. Obligations often remain unimpaired, while relations are greatly changed. ...

... No one has been bold enough to contend that, while Texas was controlled by a government hostile to the United States, and in affiliation with a hostile confederation, waging war upon the United States, senators chosen by her legislature, or representatives elected by her citizens, were entitled to seats in Congress; or that any suit, instituted in her name, could be entertained in this court. All admit that, during this condition of civil war, the rights of the State as a member, and of her people as citizens of the Union, were suspended. The government and the citizens of the State, refusing to recognize their constitutional obligations, assumed the character of enemies, and incurred the consequences of rebellion.

These new relations imposed new duties upon the United States. The first was that of suppressing the rebellion. The next was that of re-establishing the broken relations of the State with the Union. ...

The authority for the performance of the first had been found in the power to suppress insurrection and carry on war; for the performance of the second, authority was derived from the obligation of the United States to guarantee to every State in the Union a republican form of government. ...

There being no government in Texas in constitutional relations with the Union, it became the duty of the United States to provide for the restoration of such a government. ...

In the exercise of the power conferred [on the United States] by the guaranty clause [Art. IV, § 4], as in the exercise of every other constitutional power, a discretion in the choice of means is necessarily allowed. It is essential only that the means must be necessary and proper for carrying into execution the power conferred, through the restoration of the State to its constitutional relations ... and that no acts be done, and no authority exerted, which is [sic] either prohibited or unsanctioned by the Constitution.

It is not important to review, at length, the measures which have been taken ... by the executive and legislative departments of the National government. ...

... [Congress] proceeded, after long deliberation, to adopt various measures for reorganization and restoration. These measures were embodied in proposed amendments to the Constitution, and in the acts known as the Reconstruction Acts, which have been so far carried into effect, that a majority of the States which were engaged in the rebellion have been restored to their constitutional relations, under forms of government, adjudged to be republican by Congress, through the admission of their "Senators and Representatives into the councils of the Union." ...

... We do not inquire here into the constitutionality of this legislation so far as it relates to military authority, or to the paramount authority of Congress. It suffices to say, that the terms of the acts necessarily imply recognition of actually existing governments; and that in point of fact, the governments thus recognized, in some important respects, still exist. ...

In the case before us each [governor of Texas] has given his sanction to the prosecution of the suit, and we find no difficulty ... in holding that the sanction thus given sufficiently warranted the action of the solicitor and counsel in behalf of the State. The necessary conclusion is that the suit was instituted and is prosecuted by competent authority.

The question of jurisdiction being thus disposed of, we proceed to the consideration of the merits. ... [The Court held that Texas was entitled to recover the bonds.]

Mr. Justice **GRIER**, dissenting. ...

The original jurisdiction of this court can be invoked only by one of the United States. ... Is Texas one of these United States? ... This is to be decided as *a political fact,* not as a *legal fiction.* This court is bound to know and notice the public history of the nation. If I regard the truth of history for the last eight years, I cannot discover the State of Texas as one of these United States. ...

Is Texas a State, now represented by members chosen by the people of that State and received on the floor of Congress? Has she two senators to represent her as a State in the Senate of the United States? Has her voice been heard in the late election of President? Is she not now held and governed as a conquered province by military force? The act of Congress of March 2d, 1867, declares Texas to be a "rebel State," and provides for its government until a legal and republican State government could be legally established. It constituted Louisiana and Texas the fifth military district, and made it subject, not to the civil authority, but to the "military

authorities of the United States."

It is true that no organized rebellion now exists there, and the courts of the United States now exercise jurisdiction over the people of that province. But this is no test of the State's being in the Union; Dacotah [sic] is no State, and yet the courts of the United States administer justice there as they do in Texas. The Indian tribes, who are governed by military force, cannot claim to be States of the Union. Wherein does the condition of Texas differ from theirs? ...

... I am not disposed to join in any essay to prove Texas to be a State of the Union, when Congress have decided that she is not. It is a question of fact, I repeat, and of fact only. *Politically*, Texas is not *a State in this Union.* Whether rightfully out of it or not is a question not before the court. ...

[Mr. Justice **SWAYNE** and Mr. Justice **MILLER** concurred with Mr. Justice **GRIER**]