JUDGES AS POLITICAL ORATORS: THE 1860 SECESSION DEBATE BETWEEN TEXAS SUPREME COURT JUSTICES O.M. ROBERTS AND JAMES H. BELL

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The Texas Declaration of Independence oscillates between Locke’s theory of natural rights on the one hand and assertions of Anglo-Protestant cultural superiority on the other, including condemnations of Catholic priests as “the eternal enemies of civil liberty, the ever ready minions of power and the usual instruments of tyrants.” Soon, this type of ethnocentric xenophobia would also come to dominate Texas secessionist rhetoric in the years leading up to the Civil War. Even today, it is all too common. This self-definition by reference to “the other” is one aspect of the broader topic of this paper, rhetorical strategy in antebellum political speeches. This paper also touches upon the question of judicial politics, a subject of increasing interest to those concerned about the independence of our judiciary.

Raising the subject of judicial politics at this juncture allows me to take the opportunity to thank our immediate past chief justice, Tom Phillips, for agreeing to chair this panel. It is truly fitting that the one man most associated with eliminating the influence of partisan politics from the Texas judiciary should be here to offer his comments.
Returning to the subject of what rhetoric can tell us about politics and ideology, the events of the Texas Revolution did not rely solely upon a foundation of ethnic bias, but also upon an ideological underpinning of classical learning. Education in the early 19th century was largely a matter of Greek and Latin, and Texas leaders often used Greco-Roman rhetorical flourishes. For example, Sam Houston claimed that he ran off to the Cherokees as a boy mainly because he wanted to read *The Iliad* in peace, and his first speech on the floor of the U.S. House of Representatives was in support of the Greek War of Independence of 1821-1825.

One might wonder if, like ethnocentrism, this early 19th century penchant for Greco-Roman analogy was also reflected in Texas’ debate over whether to secede from the Union. Query: Is there a discernible pattern within history as to when politicians appeal to ethnic nationalism and xenophobia, and when they appeal to the lessons of history and the classics?

While these are some of the broader issues implicated, this essay only attempts to provide evidence that might support a more general theory. It examines one rhetorical skirmish in Texas’ secession debate. It concludes that this one historical example supports the thesis that although both unionists and secessionists employed historical evidence to support their polemics, they differed in the type of historical evidence they utilized. The unionists were much more likely to use allusions to classical history and literature than their secessionist counterparts. The example specifically analyzed here is a rather odd vignette, one that modern lawyers and historians might even deem inappropriate and extremely ill-advised: a political debate, on a supremely divisive and emotional issue, in a public forum, between sitting justices of the Texas Supreme Court.
The participants themselves were fascinating: Associate Justice James H. Bell, and his secessionist colleague, Associate Justice Oran Milo Roberts.

Previous books, dissertations, and articles have dealt with Texas secession. The major works on the subject are Walter Buenger’s book, *Secession and the Union in Texas*, and James Marten’s more recent book, *Texas Divided: Loyalty and Dissent in the Lone Star State.* Although treatments of Texas secession abound, references within these works to specific speeches or proclamations of the protagonists in the dispute are rare and usually limited to official proclamations. I have found no published work specifically devoted to the Bell-Roberts debate of December 1, 1860.

Dr. Buenger describes Texas’ secession as a riddle, in that having achieved prosperity as a member of the Union and having heavily favored joining the Union a mere 15 years earlier, “Secession was both a spontaneous popular movement present in most counties of the state and a process openly led by the pillars of the community.” At least with reference to Justices Bell and Roberts, what rhetorical devices did these “pillars of the community” use in leading, or in opposing, this process?

Let us begin by setting the historical stage and describing the participants, Bell and Roberts. Hardin R. Runnels defeated Sam Houston in the gubernatorial election of 1857, at which time Houston ran as a “Know-Nothing” Independent. Runnels lost a rematch to Houston in 1859 when Houston ran as an “Independent Union Democrat.”

In several of his speeches that year, Runnels attempted to associate Houston with “Whiggishness,” and he portrayed the “Black Republicans” as intellectual heirs to the evil Federalists and their Whig successors who, according to Runnels, had always been “at open warfare with the rights of property and the constitutional laws by which it is
protected.” He described abolitionism as “fanatical pretensions,” resulting from a loose construction of the Constitution claiming “for the General Government more extensive powers than are warranted by that instrument.”

This was the characteristic secessionist formula found in many other speeches: xenophobia combined with a healthy dose of legalism and strict construction. Ultimately, Oran Milo Roberts would take up these same secessionist rhetorical cudgels. His judicial colleague, James H. Bell, held views just as characteristic of the anti-secessionist party and its leader, Sam Houston.

Bell and Roberts were elected to the Texas Supreme Court under somewhat unusual circumstances. In 1856, Associate Justice Abner Lipscomb died in office, and Chief Justice John Hemphill was elected by the state legislature to the United States Senate to succeed Sam Houston, whose unionist opposition to the Kansas-Nebraska Act had already made him unpopular with rank and file states-rights Democrats. This created two vacancies on a three-judge court. The remaining associate justice, Royall T. Wheeler agreed to run for the chief justiceship in a special election the following year. The elections of 1857 resulted in the easy election of O.M. Roberts, the Democratic nominee, to fill Lipscomb’s vacancy, and a rather more interesting development in the case of filling now Chief Justice Wheeler’s associate justice position. The Democratic nominee was something of an alcoholic rascal, and a group of concerned citizens, led by the unionist newspaper editor George W. Pascal, convinced James H. Bell, a respected former district judge from Brazoria County, to run as an independent. The Democratic nominee was such an embarrassment that Bell narrowly won his only campaign for statewide office.
Newly elected Associate Justice James H. Bell was a graduate of Harvard Law School, the first to sit on the Texas Supreme Court. He was born near Columbia, Texas in 1825 to Stephen F. Austin’s dear friends Josiah and Mary Bell. Josiah Bell was a self-made man whose own father had died when he was five. He learned the hat business from two uncles in Tennessee and then moved west in search of fame and fortune. He immigrated to Missouri where he became a justice of the peace and fought in the Indian Wars of 1813-1815. After marrying, he moved to Louisiana, and then joined up with Austin’s first three hundred colonists, settling near Washington on the Brazos in 1821. He and Austin became such fast friends that Bell was placed in charge of the entire colony during Austin’s mission to Mexico of 1822-23. Bell was a slave-owner and soon started a sugar plantation and founded the towns of East and West Columbia nearby. He continued to serve essentially as Austin’s deputy in the colony all the way through the events of 1835-36.12

His son, James H. Bell was thus a child of some privilege. Little is known of his early childhood. In 1837, after the War of Independence was over, young Bell was sent to Kentucky by his father to attend college at the age of 12. His father died the following year, and after returning to Texas briefly on that account, young James resumed his studies and graduated from Centre College in Danville, Kentucky in 1842 at the age of 17. He returned again to Texas just in time to join Alexander Somervell’s expedition against Mexico. He read the law with William Houston Jack13, a Texas revolutionary leader, and after a few years under Jack’s tutelage, Bell left for the Harvard Law School in 1845. Upon graduation, he moved to Brazoria and went into practice with Robert J. Townes. Townes and Bell soon dissolved their partnership because both were elected to
the district court bench of Brazoria County in 1852. Townes would later become a prominent secessionist and the Secretary of State of Texas.\textsuperscript{14}

Bell was a complex, erudite, thoughtful man. He came from a slave-owning plantation family but was educated in Boston, a hotbed of abolitionist sentiment. One cannot read the few extant letters and personal papers of this gentleman lawyer without being impressed with his solicitude towards his family and fellow man, and his sense of propriety, grooming, and good manners. His son, Barclay, was born with a serious hearing impediment, and Judge Bell entrusted him to the care of a private tutor in the progressive city of Philadelphia, the best place he could find for the unfortunate lad. His letters to his daughter are filled with fatherly concern and advice, particularly to avoid anything dishonorable. He summarized his moral teaching thus:

\begin{quote}
When it is proposed to you to do some particular thing, the propriety of which is doubtful, and it is plain that no harm can come of leaving it undone, then by all means leave it undone… Be neat and cleanly. Be neat and cleanly…(emphasis original).
\end{quote}

He was a careful, considerate, broad-minded but scrupulous gentleman, not apt to take chances. His portrait reveals a clean-shaven, rather small and neat fellow, with a passing resemblance to his father’s friend and mentor, Stephen F. Austin.\textsuperscript{15}

Justice Oran Milo Roberts and his career in Texas politics both prior to secession and long afterwards are much better documented. He is perhaps the most accomplished Texas politician about whom no biography has ever been written. He was very intelligent and ambitious -- a serious and self-confident, if not downright egotistical man who does not seem to have ever agonized over a moral dilemma or held an unpopular point of view. For example, the Civil War neither humbled nor reconstructed Roberts. He proudly served in the Confederate Army and was promptly elected a United States Senator from
Texas in the post-war election of 1866, but the Radical Republican Congress denied him, along with the entire Texas congressional delegation, his seat. Undaunted, he returned to the Texas Supreme Court in 1874, served as Chief Justice, and was elected to two terms as governor beginning in 1878. In that office, he was instrumental in founding both the University of Texas and its law school. He retired from politics to teach law at the university in 1884 and spent the remainder of his life as a scholar. He was an austere looking man with a long Civil War era beard who cultivated his gravitas. Of course, he was also elected the first president of this organization, the TSHA, in 1897. He died in Austin the following year. 16

Roberts was born in South Carolina, moved to Alabama in infancy, studied Greek and Latin in grammar school, and then began studying the law with a local practitioner in Ashville, Alabama when he was only 17. In 1833, he was admitted to the University of Alabama, and then resumed the study of law under Judge Ptolemy Harris in the southern part of the state. He moved to Texas in 1841, at age 26. So, unlike, Bell, neither Roberts nor his family was part of the revolutionary generation of Texans. Like many other southerners he came to the post-war republic in search of opportunity. He was an outstanding debater in college, and he used these skills in his East Texas law practice, centered upon the city of San Augustine. 17

In 1844, he was appointed San Augustine’s district attorney and then, in 1846, state district judge, and it was from this position that he conducted his political activities. He does not seem to have felt that his position on the bench should in any way impede his political career. In fact, he was thoroughly involved in Democratic Party politics throughout the 1840’s and 1850’s, having run unsuccessfully for congress in both 1851
and 1853. Around 1855 he became involved in criticizing the rising “Know-Nothing” Party in Texas, including its eventual leader, Sam Houston, and he was rewarded for his service to the traditional Democratic Party and the judicial branch of the government by his election to the position of Associate Justice of the Supreme Court of Texas in 1857.\(^\text{18}\)

Contemporary observers marked him for his intelligence, clear-cut argumentation, and lack of bravado, rather than any mastery of history. He sought most to emulate the sermons of ministers, and the clear cogent argumentation of lawyers. Contemporaries described him as an objective judge so concerned with legalistic analysis that he “decided a case to peaces.”\(^\text{19}\)

Although his contemporaries may not have realized it, Roberts was well schooled in ancient history and philosophy. As early as his first years in Texas, Roberts wrote articles on educational, philosophical, and religious subjects.\(^\text{20}\) His familiarity with ancient church history was truly astounding. He had read *The Didache*, an early Greek patristic work that had not yet been translated into the English language, and had studied the “Classical Age of Pericles,” the academy of Plato, and the peripatetic followers of Aristotle. He also demonstrated a familiarity with Pythagorean mystical philosophy and the Alexandrian library,\(^\text{21}\) but oddly, no evidence of Roberts’ wide-ranging knowledge of ancient and medieval history is to be found in any of his political speeches.\(^\text{22}\)

To return to the chronology of events in Texas, when Houston came back to win the 1859 election as an “Independent Unionist” or “Union Democrat,” rather than as a Know-Nothing, his states’ rights enemies in the Democratic party were not likely to just disappear. As Dr. Buenger has said, secession as a political agenda progressed rapidly from the inchoate ruminations of states-rights Democrats to a grassroots movement. That
grassroots movement was touched off by Lincoln’s election in 1860, and Oran Milo Roberts saw his opportunity to ride this groundswell of public sentiment to even greater heights of fame.

In November, 1860, Roberts, due to his reputation as a legal scholar, was asked to draw up the “First Call Upon the People of Texas to Assemble in Convention” by a group of secessionists led by “Gen’l W.P. Rogers, George Flournoy, attorney general, and Col. John S. Ford.” They met in his Supreme Court office. This “Call” was published in Austin, copied by Roberts, and sent later in the month to Rogers, who had left for Houston to organize a mass meeting. The Call, like the secessionist pronouncements before it, made no appeals to lessons of the ancient past, but merely listed the affronts recently suffered at the hands of the “Black Republicans” of the North. In response, a convention was indeed convoked by the Texas Legislature over Governor Sam Houston’s objection.23

The Bell-Roberts debate came about as a result of an odd combination of circumstances, and there are at least two stories concerning those circumstances, one by Roberts, and one by his friend John S. “Rip” Ford. After Lincoln’s election in early November, Texas was in an uproar with citizen committees and public meetings everywhere spontaneously discussing how to respond. According to Roberts, in Austin, one of the few places where Union sentiment ran strong, a large number of unionists met publicly on November 28th, 1860 in response to the Call for a Secession Convention. At one point, the crowd called for the views of the Supreme Court justices on secession, since it was known that at least Roberts and Bell had attended some public meetings “rather as spectators than as participants.” Evidently, the hope was that at least some
members of the court would be forced to agree that the secessionists were on thin legal
ground. Roberts’ writings on the subject claim that “it was a time when not only judges
but preachers were expected to give…their opinions…” Bell, who was at the unionist
meeting and known to be sympathetic, stepped forward to agree that he would publicly
state his views the following Saturday, December 1st, if a suitable place could be found.
Roberts offered to give a similar speech against the Union “at the same time and place,”
if it could be arranged. According to him, he agreed with Bell that, “though it was known
that they held different views, there was to be nothing of a debate between them. Each
was to express his opinion without reference to the other.” Miraculously, all logistical
difficulties were solved when Governor Houston immediately agreed to make the Texas
House of Representatives’ Legislative Hall available for the speeches. 24

This explanation seems awfully coincidental and serendipitous. There is good
reason to conclude that the guiding hand of the cagey Houston arranged this
confrontation. Rip Ford told a lesser-known part of the story in his unpublished memoirs.
According to Ford, Houston had already asked his friend Chief Justice Royall Wheeler to
speak out against secession, apparently thinking that a constitutional opinion from the
state’s leading jurist might divert the growing tidal wave of popular support for leaving
the Union. Houston hoped he could enlist Wheeler in the unionist cause. Ford, on the
other hand, felt sure that Wheeler could be relied upon to join the Secessionists, and
events proved him right. Wheeler refused Houston’s offer, citing the need to maintain his
judicial impartiality and demeanor, but he would soon give his public blessing to the
Secession Convention in a brief statement. One can only imagine Houston’s
disappointment, or perhaps even feeling of betrayal, at this later turn of events.25
Bell was Houston’s second choice, the only judge he could find for the job of lending judicial dignitas to the argument that secession was unprecedented and dangerous. Perhaps he hoped Wheeler might still come around, or at least remain neutral, if Bell’s performance were sufficiently impressive. Probably, Houston had much to do with orchestrating the unionist meeting of November 28th, the apparently spontaneous demand of the crowd to hear from the Supreme Court on the advisability or legality of secession, and even Bell’s fortuitous presence at the meeting. He was certainly instrumental in arranging state accommodations for the debate.

Bell spoke first, for two and a half hours, according to Rip Ford, who says Roberts spoke for an hour and a half. Ford, a secession partisan, clearly felt that Bell’s speech was dull. He wrote that many in the audience began leaving before Bell was finished. Judging by the relative length of the published texts of both speeches, the difference in duration was probably less than Ford estimated, but many unionists were undoubtedly disappointed in Bell’s performance and left. Roberts later recalled that partisans of both sides were present, and they were respectable and attentive. He also noted that while “Judge Bell made a splendid speech…He was a states’ rights man, so he disappointed the abolitionists in the crowd by confining himself to counseling against violent action.”

Robert’s speech begins: “Fellow citizens, a public exposition of my views in reference to the impending crisis has been solicited by gentlemen of all parties. It is time for all men to speak out. I shall not hesitate to express my opinions freely.” The first paragraph of the speech assails “the revolutionary party of the north” that has “advanced step-by-step toward the destruction of our domestic institutions.” The remainder of the
text continues along the same lines as ex-Governor Runnels’ speeches of a few months before. 27

Unlike Roberts’ oration, Judge Bell’s anti-secession speech is full of literary analogies. He quoted Edmund Burke’s observation that “Timidity where the welfare of one’s country is concerned, is heroic virtue.” He even mentioned republican Rome at length, quoting Calpurnia’s ominous speech from Shakespeare’s Julius Caesar, when he declaimed:

“We do not indeed behold those signs and wonders which agitated the
superstitious minds of the Roman people ‘a little ere the mightiest Julius fell.’ We
do not see
‘Fierce, fiery warriors fighting on the clouds,
In ranks and squadrons and right form of war,
Which drizzled blood upon the Capitol.’
but we do see approaching convulsion.”

In addition, Bell cited the opening Canto of Shelley’s Revolt of Islam,
Shakespeare’s Romeo and Juliet, and the fictional rabble-rousers Jack Cade and Wat
Tyler from Shakespeare’s Henry VI. While Tyler was never a character in any
Shakespeare play, Cade’s character in Henry VI is an amalgamation of the real Jack Cade
and England’s other famous medieval Jacobin, Tyler. It was this real-life Wat Tyler who,
in the rebellion against Richard II in 1381, actually proposed “killing all the lawyers,”
although Shakespeare has this line spoken in Henry VI. Judge Bell’s point, like
Shakespeare’s, was not to vilify lawyers, but to discourage mob rebellion against the rule
of law. Like Houston and the vast majority of Texas unionists, Bell was no abolitionist.
He did not oppose slavery, merely secession from the Union, and the civil war he feared would inevitably result.  

Roberts’ speech of December 1, 1860, on the other hand, had no need of similar culture. It simply ran through the traditional litany of legal and constitutional arguments in favor of a state’s right to secede from the Union. Characteristically, Roberts did not reach for historical support more remote than his own Anglo-Saxon origins. In a passage echoing his religious writings, he set forth his personal ethic:

“European society, since the extinction of villenege and serfdom, has assumed and rests upon this basis. That every person of lawful age must provided for himself and the liberty and means of doing…is controlled by the few-the governing class.”

The rest of the speech refers to the need for cooperation with Texas’ “sister southern states, whether it be in or out of the union,” to the northern “virulent antipathy” towards slavery, to the north as “a set of fanatics,” to the dangers associated with “an infuriated mob of free Negroes,” and to an evil liberal construction that “induces a continual effort to find powers in the constitution that are, in fact, not expressed.” There are no references to ancient history or even The Bible. Rather, “constitutional legitimation” combined with xenophobia was Roberts’ strategy. He needed to do little more than demonize the “Black North” as “the other” in order to further inflame those already hot for action. Events would soon prove that Roberts’ side had won the debate.

Dr. Buenger appropriately titled his doctoral dissertation on Texas Secession “Stilling the Voice of Reason.” The fact that secessionist orators like Roberts well knew ancient history but did not use it leads to the inescapable conclusion that the nature and
quality of the popular opinion they inflamed was not amenable to long views of the distant past and centuries of western constitutional tradition. It was visceral, emotional, and immediate, produced by recent events. The attempts by Houston, Bell, and others to calm this rebellious temperament by appeals to reason, logic, and the broader, quieter lessons of history fell upon deaf ears. Many were not surprised by this. As Judge Bell himself wrote to his supporters afterwards:

“I spoke…with full knowledge of the fact that the expression of my opinions would subject me to be denounced as a freesoiler and an abolitionist by those who think that the greatest political offense of which a man can be guilty is to differ from them in opinion. I am perfectly willing to take my full share of abuse from those who wish to plunge hastily into revolution…if by this means, I can be instrumental in persuading the people to act with calmness and moderation in this great crisis of our affairs.”

This contest between reflection and the wisdom of history on the one hand, and prejudice and resentment on the other, would be oft repeated in the ensuing century with similarly discouraging results. The appeal to tradition and moderation against the temptations of faction and prejudice requires a calm reflective audience to sink in. Thus, inevitably, it seldom does. Long views do not sell well in the heat of the moment.

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citations are to the reprint edition). Crane’s book includes an appendix containing not only some of
Houston’s writings, but also a copy of the Texas Declaration of Independence and other primary source
material.

3 While on the subject of gratitude, I must also thank Professor Jim Paulsen, our other presenter, for
directing me to a couple of primary sources of which I was previously unaware in the course of our
discussions on this topic. I also want to thank the History department at Texas A&M University-Corpus
Christi for guiding my graduate studies, most particularly my major professor Dr. Robert Wooster, the
incoming president of the TSHA, who taught me how to write about history, and the other members of my
committee, Dr. Pat Carroll, who taught me how to construct a historical argument, and Dr. Tom Kreneck,
the curator of our special archive and Texana collection, who greatly assisted my research. Professor
Paulsen, in particular, familiarized me with the alternative explanation given by Rip Ford for the way in
which the Bell-Roberts debate came about. I have relied on his reading of Ford, and added my own
conclusions based on other sources, including the dissertation of Dr. Donna Tobias and the personal
writings and correspondence of Bell and Roberts, themselves. While Professor Paulsen has written that it is
not necessary that Ford’s and Roberts’ explanations be mutually exclusive, my own somewhat stronger
view is that both accounts are probably true. See pp. 11-12, infra. Professor Paulsen also allowed me to
read a draft of his own excellent work on the general history of the antebellum Supreme Court, and this was
also of great assistance in clarifying certain political aspects of the court itself.

4 The cry at Gonzales of “come and take it” was but a reprise of the Spartans’ reply to Xerxes’ demand that
they hand over their arms at Thermopylae. “Come and take them!” replied their king, Leonidas. When
Travis swore “Victory or Death” at the Alamo, he was repeating this same Leonidas’ battle order to his 300
Spartans: “Conquer or die! (Νικα η πεθαινω!).” See Plutarch, Moralia 225.d. (quote re: come and take
them); Herodotus, The Histories 7.104, describes the orders of the Spartans at Thermopylae. Other classical
Greek writers expressed the same sentiment, e.g., Aeschylus’ famous line: “Death is softer by far than
tyranny.” Aeschylus, Agamemnon, lines 1360-1370. As for Houston’s running off to read The Iliad,
William Carey Crane, The Life and Select Literary Remains of Sam Houston of Texas (Philadelphia, Dallas:
W.G. Scarf, 1884); (reprint Philadelphia: J.B. Lippincott and Co., 1885) 18-19 paraphrases this story,
originally told in Charles Edward Lester, *The Life of Sam Houston* (New York: J.C. Derby, 1855). Susan Ford Wiltshire, “Sam Houston and the Iliad.” *Tennessee Historical Quarterly* 32, no. 3 (1973): 249-254 is the most recent scholarly treatment of Houston’s affinity for the Greco-Roman classics. Houston was awarded a laurel wreath for winning the Battle of San Jacinto, and one of his favorite portraits of himself, still hanging in the Governor’s Mansion, depicts him as the populist general Caius Marius, replete with laurel wreath and Roman toga. See also Marquis James, *The Raven*; Charles Edward Lester, *The Life of Sam Houston* (New York: J.C. Derby, 1855); George Creel, *Sam Houston: Colossus in Buckskin* (New York: Cosmopolitan Book Corporation, 1928). Wiltshire also cites M.K. Wisehart, *Sam Houston: American Giant* (Washington: R.B. Luce, 1962). Lester’s book is a later re-editing of his original *Sam Houston and His Republic* (New York: Burgess, Stringer, 1846). This book is reportedly based heavily on the author’s actual conversations with Houston, who was then the 53 year-old first President of the Republic of Texas. See Wiltshire, “Sam Houston and the Iliad,” 250; Marshall De Bruhl, *Sword of San Jacinto: A Life of Sam Houston*, 364. On this subject, DeBruhl quotes David G. Burnet, an inveterate Houston detractor, as having told Houston’s associate Thomas J. Rusk that “I entertain no doubt that Houston is himself, the real author of that volume of lies.” Wiltshire says merely that Lester “worked closely with Houston for three months” and she concludes, correctly in my view, that Lester wrote the 1846 book and later embellished it as part of Houston’s possible “Know-Nothing” U.S. presidential campaign of 1856, producing *The Life of General Sam Houston* in 1855. “Campaign biographies” were, at that time a common literary genre.


There is one content analysis of a Texas politician’s secession rhetoric available, a dissertation in Speech and Communications authored by Dr. Donna Tobias. Fortuitously, Tobias focused on the state’s rights speeches of one of the characters of this drama, Oran Milo Roberts. See Donna R. Tobias, “The States’ Rights Speaking of Oran Milo Roberts 1850-1861: A Study in Agitational Rhetoric” (Ph.D. diss., Louisiana State University and Agricultural and Mechanical Col., 1982. DAI 43(8) (1983): 2497-A). While Tobias’ article is a useful resource, it does not concentrate on the specific question raised here, the extent to which the style of argument relied upon classical history and philosophy a la the American founding fathers, and she says little about Roberts’ opponent, James H. Bell. Those in search of the actual rhetoric of the secession debate are more likely to find it in biographies of the participants than in scholarly


10 Runnels also claimed in this speech that the “unconditional submission” to the union urged by the neo-Federalists Republicans resulted from a “higher law construction” that “makes the agent superior to the principal.” Ibid., 50-51.


12 Handbook of Texas Online, s.v. “BELL, JAMES HALL,”
http://www.tsha.utexas.edu/handbook/online/articles/view/BB/fbe36.html (accessed February 25, 2005);
Handbook of Texas Online, s.v. “BELL, JOSIAH HUGHES,”

Handbook of Texas Online, s.v. “BELL, JAMES HALL,”  
http://www.tsha.utexas.edu/handbook/online/articles/view/BB/fbe36.html (accessed February 25, 2005);  
Handbook of Texas Online, s.v. "SOMERVELL, ALEXANDER,"  
http://www.tsha.utexas.edu/handbook/online/articles/view/SS/fso4.html (accessed February 26, 2005);  
Handbook of Texas Online, s.v. "SOMERVELL EXPEDITION,"  
http://www.tsha.utexas.edu/handbook/online/articles/view/JJ/fja4.html (accessed February 26, 2005);  

There is a portrait of Bell in O.M. Roberts, “The Political, Legislative, and Judicial History of Texas for its Fifty Years of Statehood,” in Dudley Wooten, ed., A Comprehensive History of Texas (Dallas: W.G. Scarff, 1898) 87-93. The quote is from James H. Bell “December 15, 1854 Letter to Daughter,” James H. Bell Collection, Center for American History, The University of Texas at Austin. The reference to Bell’s son may be found in a letter from his tutor in Philadelphia: S. H. Buckingham, “June 16, 1867 Letter to James H. Bell,” James H. Bell Collection, Center for American History, The University of Texas at Austin.

Handbook of Texas Online, s.v. "ROBERTS, ORAN MILO,"  


Ibid., pp. 30-36.
Ibid., p. 46 quoting James D. Lynch, *The Bench & Bar of Texas* (St. Louis: Nixton-Jones Printing Co., 1885), p. 280 (about deciding a case to pieces); Tobias concludes that Roberts may not have been considered eloquent, but he attempted “to communicate his state’s rights messages in a simple, clear and effective manner…. As a political agitator for state’s rights and secession, Roberts appears to have been guided by his regional prejudices and his personal political philosophy. In his speeches, and in his court decisions, he quoted constitutional law often.” Ibid., p. 46. See generally, Tobias, 43-46.

Tobias, Ibid, p. 42 cites as an example “In Defense of the University at San Augustine: Criticism Upon the Pedantry and Presumption of M.A. Montrose’ Articles Published in the Redlander Under Signature of ‘AVE’ and Strictures Upon Refusal of Canfield to Publish Articles Answering Montrose” (1843). In 1858, he wrote an essay refuting the tenets of Mormonism. His traditional Anglo-Protestant thesis would reappear in his later works:

“The society of Europe and America is based on a few leading ideas generally regarded…as axiomatic truths. Some of these are First, the Christian Religion; Second, a man shall have one wife; Third, every male person shall look out and provide for himself and his family.” O.M. Roberts, “Essay on Mormonism,” Roberts Collection, Center for American History, The University of Texas at Austin.

In an undated article titled “Primitive Christian Education,” probably written long after the Civil War, Roberts cites the sermons of St. John Chrysostom and the biographies of Saints Basil the Great and Gregory of Nyssa. O.M. Roberts, “Primitive Christian Education,” 35-37. Roberts Collection, Center for American History, The University of Texas at Austin.

See Tobias, “The States Rights Speaking of Oran Milo Roberts,” 139-141. The appearance of Know-Nothingism in the late 1850’s provided Roberts his first opportunity to speak out publicly in behalf of the Texas Democratic Party against any form of “whiggishness.” The other major leaders of the state’s rights Democrats in the 1850’s were Runnels, his Lieutenant Governor F.R. Lubbock, U.S. Senator J. Pinckney Henderson, Lewis T. Wigfall (also a United States Senator), John H. Reagan, and Thomas Rusk. As early
as the late 1850’s, the anti-Unionist rhetoric of these individuals and Judge Roberts set the pattern for the oratorical style of later secessionists. For example, in 1855, Rusk made a speech condemning the North as follows:

“Their secrecy is highly objectionable. No party can be safely trusted with power who does not openly avow their principles, the oaths which it is understood they take are illegal, tyrannical, and at open war with the fundamental principles of our government . . . at the north, as all elections show, they are abolitionists. At the south they profess to be pro-slavery men . . . The whigs are disorganized if not disbanded; no one can mistake the rock upon which they split.”

Speaking to Democrats, he recommended that, “If we desire to succeed as a party . . . we must drive out of our ranks that cursed faction of free-soilers and abolitionists who, determined to rule or ruin, have . . . jeopardized the Union.” While this early speech only accused the Know-Nothings of being abolition-tolerant chameleons and former Whigs, demonization of the North would intensify in the years to come. As to his own party, Rusk clearly wanted any quasi-abolitionists out, even though Democratic Presidents James K. Polk and Franklin Pierce had coddled them.

Roberts gave a similar anti-Know-Nothing speech in Henderson, Texas on August 24, 1855. In it, there is no indication that he relied upon his vast knowledge of ancient history or the Greek and Roman classics. In conformity with his religious bent, he did, however, quote Macaulay’s essays in comparing Puritans and Pharisees to Know-Nothings. He used this analogy to create fear in his audience that Massachusetts, “the breeding ground for Federalism and Puritanism,” was responsible for the Know-Nothings blurring the distinction between church and state. However, he quickly moved on from this brief historical analogy to demonize “the north, the Puritans, the Federalists, Massachusetts, northern preachers, and the Know-Nothings. Roberts’ efforts in 1855, along with those of other Democrats, including moderately Unionist Democrats like John Reagan, soundly defeated the Know-Nothing candidate for governor, sitting Lieutenant Governor David C. Dixon. In 1855 and 1856, Sam Houston was toying with national politics and a run for President on the 1856 American (Know-nothing) Party ticket. This came to naught in the party’s nomination of Millard Fillmore by an overwhelming majority. Fillmore was then trounced by James Buchanan, the Democratic candidate, and 1857 saw the Know-Nothings refocus on state
politics. This time, they were able to convince Sam Houston to be their gubernatorial candidate. In his only electoral defeat, he was badly beaten by Runnels by a margin of 9,000 votes.

23 O.M. Roberts, “1860-The First Call Upon the People of Texas to Assemble in Convention,” The Roberts Collection, The Center for American History, University of Texas at Austin. This document, handwritten by Roberts, is attached to his personal description of the events surrounding it, from which the quotes in this paragraph are taken. It was a slightly amended version written by George Flournoy that was printed and published in December, 1860, according to Roberts’ notes. Roberts describes the circumstances in O.M. Roberts, “The Political, Legislative, and Judicial History of Texas for its Fifty Years of Statehood,” in Dudley Wooten, ed., A Comprehensive History of Texas (Dallas: W.G. Scarff, 1898) 87-90.


26 Ibid; and Tobias 159, citing John S. Ford, Memoirs, Ford Collection, Center for American History, University of Texas at Austin 955-956

27 O.M. Roberts, “The Impending Crisis,” original manuscript of speech of Judge O.M. Roberts of the Supreme Court of Texas at the capital, 1 December 1860, O.M. Roberts Collection, Center for American History, University of Texas at Austin (speech quotes); Tobias, pp. 159-209 (circumstances and content of the speeches of Roberts and Bell). The original handwritten draft of Roberts’ speech is written in ink on lined sheets of very thick light blue paper from a legal pad manufactured by John C. Clark & Son, 230 Dock Street, Philadelphia. The speech fills an entire legal pad and is written in a close antique hand. Fortunately, Roberts’ speech was self-published shortly after it was given, as was that of Judge Bell. All of these speeches are located in Box 2F473 of The Roberts Collection, The Center for American History, The University of Texas at Austin. Roberts bound most of them together in a scrapbook (bearing the label
“MSS #8211”) with the essay on Mormonism and some other essays, as well as the original handwritten draft of the “1860-The First Call Upon the People of Texas to Assemble in Convention.”.

28 James H. Bell, “Speech at the Capitol-December 1, 1860,” O.M. Roberts Collection, The Center for American History, University of Texas at Austin. See also William Shakespeare, Henry VI, Part 2. Clearly, “First let’s kill all the lawyers” was not first used as a political slogan in the late twentieth century. It is equally clear that while some, in agreement with the hackneyed contemporary lawyer joke, regard this as a “good start,” there have always been others to remind us of the context in which Shakespeare penned this line: it is the battle cry of rabble-rousers, brigands, and tyrants. Those societies in which it has actually been practiced include Nazi Germany, Stalinist Russia, Maoist China, Castro’s Cuba, and virtually every other regime of extreme repression in modern history. Judge Bell apparently knew his Shakespeare and his history well enough to know this. Unlike modern politicians, Judge Bell understood that Jack Cade and Wat Tyler, not lawyers, were the bad guys, and that this is the point Shakespeare sought to make.

29 O.M. Roberts, “The Impending Crisis” (quotes from Roberts’ speech) Tobias, “The State’s Rights Speaking of Oran Milo Roberts,” p. 183 (“constitutional legitimation” quote). Tobias concludes that Roberts’ chief modus operandi was constitutional legitimation. In my view this ignores the rather obvious cultural xenophobia and sectional ethnocentrism running throughout his speech.

30 James H. Bell, “Letter to M.C. Hamilton, et.al.,” cover letter transmitting printed copy of Speech at the Capitol-December 1, 1860,” O.M. Roberts Collection, Center for American History, University of Texas at Austin. Indeed, it was for this reason that Walter Buenger titled his dissertation “Stilling the Voice of Reason.”

31 Examples are legion. The League of Nations was a flop. The “voice of reason” attributed by Buenger to Houston was equally ineffective when employed by others against the Bolsheviks in 1917, the American Red Scare in the 1920’s, the rise of Mussolini, Tojo, and Hitler in the 1930’s, and the McCarthyism of the 1950’s.