

THE OLD ALCALDE: ORAN MILO ROBERTS, TEXAS'S FORGOTTEN FIRE-EATER

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Oran Milo Roberts was at the center of every important event in Texas between 1857 and 1883. He served on the state supreme court on three separate occasions, twice as chief justice. As president of the 1861 Secession Convention he was instrumental in leading Texas out of the Union. He then raised and commanded an infantry regiment in the Confederate Army. After the Civil War, Roberts was a delegate to the 1866 Constitutional Convention, and was elected by the state legislature to the United States Senate, though Republicans in Congress refused to seat him. He served two terms as governor from 1879 to 1883. Despite being a major figure in Texas history, there are no published biographies of Roberts. This dissertation seeks to examine Roberts's place in Texas history and analyze the factors that drove him to seek and exercise power. It will also explore the major events in which he participated and determine his historical legacy to the state.

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CHAPTER 1: INTRODUCTION

Few public figures in Texas have affected the state as profoundly as Oran Milo Roberts. From the mid-1850s until his death in 1898, Roberts was not only involved in every major event in Texas politics, he drove them. During the 1850s he was a power broker in the states' rights wing of the Texas Democratic Party, and from his position on the state supreme court, provided the philosophical underpinnings to support secession. When Abraham Lincoln was elected in 1860, Roberts maneuvered his state out of the Union by circumventing Governor Sam Houston. He then defended Texas by raising and commanding an infantry regiment in the Confederate Army. Roberts served as an important delegate in the 1866 Constitutional Convention, and was later selected by the state legislature to represent Texas in the United States Senate, although Republicans in Congress refused to seat him and other southern legislators. When Democrats regained power in Texas, he was appointed, and then elected chief justice of the Texas supreme court. Roberts then served two terms as governor, and forced his party to make hard choices about spending, taxation and land policy. He was also instrumental in the founding of the University of Texas and the building of a new capitol. After leaving public office in 1883, he was appointed to be the University's first law professor, a position he held for ten years, teaching hundreds of young Texas lawyers his legal and political philosophy. During his retirement, he corresponded with governors, state legislators, congressmen and senators, all of whom sought his advice on subjects as varied as taxation, monetary policy, Populism, and railroad policy. In short, Roberts was at the center of every major political event in Texas during the second half of the nineteenth century.

Though Roberts is a central figure in dozens of monographs, there are no published biographies of him. The closest thing to a full biography is a Ph.D. dissertation written by Leila Bailey in 1932 at the University of Texas. Bailey wrote her dissertation at a time when the Dunning School interpretation of southern history (a benevolent, chivalric, slaveholding South overwhelmed by the industrial North and forced to endure the horrors of Yankee occupation and black political participation) was dominant in southern universities. Bailey's work certainly reflects the milieu in which it was written, and it often borders on hagiography. For example, in her preface, she wrote, "I awakened to the fact that I had the problem of presenting to an unsuspecting public one of the greatest characters that has adorned the pages of Texas history – a man who combined the greatest number of the attributes of greatness and exhibited less of the detractive qualities."¹

Although not a biography, one prominent general work on Texas history in which Roberts figures prominently is Randolph B. Campbell's *Gone To Texas*. Campbell first introduced Roberts as chairman of the secession convention, mentioned his prominent role in the Constitution of 1866, and devoted two or three pages to his administration as governor. Because *Gone to Texas* covers prehistoric times to the present, Campbell did not go into deep detail about Roberts. He did mention one of Roberts's major purposes during Reconstruction, writing of the Constitution of 1866:

Nevertheless, it was clear that where freedmen were concerned, the convention had followed the wishes of Oran M. Roberts, the chairman of the secession convention and former Confederate colonel who served as a delegate even though he did not yet have a presidential pardon. We must form, Roberts said, "a white man's Gov[ernmen]t" that will "keep Sambo from the polls."²

¹ Leila Bailey, "The Life and Public Career of O.M. Roberts, 1815-1883" (Ph.D. Dissertation, University of Texas, 1932), iii.

² Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford University Press, 2003), 270.

Several monographs on specific aspects of Texas history have also devoted a significant amount of space to Roberts. An excellent source of information on his judicial career is James L. Haley's, *The Texas Supreme Court*. Haley wrote extensively about Roberts's career on the Supreme Court, from his election as associate justice in 1857, through his tenure as chief justice from 1864-1865 and again from 1874-1878. He presented Roberts as a fire-eater who evolved over time into a fair and erudite magistrate. For example, Haley introduced the judge by writing, "Roberts expressed pro-southern views and ardent admiration of the southern firebrand John C. Calhoun, making Roberts a profound disappointment to his first Texas mentor, Sam Houston, who had appointed him district attorney for San Augustine in 1844." When writing of Roberts's term as chief justice from 1874-1878, Haley argued that Roberts had evolved to a degree, writing, "As chief justice, Roberts managed to reinvent himself from Confederate firebrand to an elder statesman of judicial sagacity."³

As Roberts was a central player in the secession movement in Texas, it is to be expected that the most comprehensive book on that movement, Walter Buenger's *Secession and the Union in Texas*, should deal with him often. Buenger portrays Roberts as extremely rational and legalistic in his views on secession. When detailing the beginnings of the secession movement, Buenger wrote of Roberts and his friend John H. Reagan, "For these two lawyers, secession was not to be a chaotic social revolution but a well-considered legal step which would preserve and promote stability." He further asserted that Roberts viewed secession as a movement of a broad swath of respectable Texas society, writing:

As Reagan and Roberts had hoped since October [1860], the convention represented the best men of Texas – not the richest slaveholders, for there were

³ James L. Haley, *The Texas Supreme Court: A Narrative History, 1836-1986*, (Austin: University of Texas Press, 2013), 60 [first quotation], 92 [second quotation].

few of those present, but the prosperous farmers, lawyers, and small planters who dominated the economic, political, and social life of much of Texas.⁴

Ten More Texans in Gray, edited by W. C. Nunn, devoted a chapter to Roberts. The chapter's author, Ford Dixon, a graduate student at Texas Christian University, provided a brief sketch of Roberts's life but appropriately focused on secession and the Civil War. Dixon, like Buenger, viewed Roberts as a man driven by the law and devoted to secession as an orderly movement. Dixon wrote, "O.M. Roberts was a man of the law all his life. He was, like Calhoun, absolutely convinced of the legality of secession." He added, "Roberts supported secession *only* because he thought it right just and legal."⁵ Few scholarly works deal with Roberts's military service during the Civil War, undistinguished as it was. The most important work to mention Roberts to any notable degree is Richard Lowe's *Walker's Texas Division*. Lowe gave a detailed description of the Battle of Bayou Bourbeau near Opelousas, Louisiana, the only combat Roberts saw during the war. He gave no judgment of Roberts's conduct in the battle, but included him when discussing the postwar career of many of the veterans of Walker's Texas Division, writing, that these men were determined:

to preserve the old order as much as possible. A small, almost invisible, federal government, an even smaller state government, a political system and social order controlled by traditional-minded southern whites, and a docile, black laboring class – this was life as they remembered it before the war and life as they hoped to continue it.⁶

Histories of Texas during Reconstruction have mentioned Roberts's role, particularly during Presidential Reconstruction. For years, the standard interpretation of that period of Texas

⁴ Walter Buenger, *Secession and the Union in Texas* (Austin: University of Texas Press, 1984), 122 [first quotation], 144 [second quotation].

⁵ Ford Dixon, "Oran Milo Roberts," in *Ten More Texans in Gray*, ed. W.C. Nunn (Hillsboro, Texas: Hill Junior College Press, 1980), 104.

⁶ Richard Lowe, *Walker's Texas Division C.S.A.: Greyhounds of the Trans-Mississippi* (Baton Rouge: Louisiana State University Press, 2004), 135-145, 259 [quotation].

history was Charles Ramsdell's *Reconstruction in Texas*. First published in 1910, Ramsdell's work was a product of the Dunning School interpretation of Reconstruction. It was published only twelve years after Roberts's "Political, Legislative, and Judicial History of Texas," and shared the former governor's view of the period. Roberts is mentioned as a leader of the secessionist faction in the Constitutional Convention of 1866. Ramsdell seemed to be sympathetic to Roberts and quoted him when writing of the Texas congressional delegation's unsuccessful attempt to claim their seats in Congress. Ramsdell wrote, "Not only were their seats refused to them, but their credentials were ignored and they were not welcome even in the lobbies. Thus the 'accredited representatives of a sovereign state' were reduced to watching the doings of Congress from the galleries."⁷

Far more critical of Roberts and his role in Reconstruction is historian Carl H. Moneyhon. Author of several books on Reconstruction-era Texas, Moneyhon, writing more than seventy years after Ramsdell, portrayed Roberts and other secessionists in a different light. He pointed out that Roberts was technically ineligible to be elected senator in 1866 since he was not able to take the Test Oath. Moneyhon was also critical of Roberts's role as a writer of Texas history while acknowledging his influence in that area. For example, he wrote that Roberts's account of Reconstruction "scarcely reflects the complex realities of those years. A century later, Roberts's peculiar interpretation still holds sway over many, especially the popular interpretation of the state's history." Moneyhon also wrote that "Roberts's characterization of [Republican governor E.J.] Davis and his administration quickly became part of Texas's historical canon."⁸

⁷ Charles William Ramsdell, *Reconstruction in Texas* (New York: Columbia University Press, 1910), 117-118; Oran M. Roberts, "The Political, Legislative, and Judicial History of Texas for its Fifty Years of Statehood, 1845 – 1895," in Dudley G. Wooten, ed., *A Comprehensive History of Texas, 1685 to 1897, Volume II* (Dallas: William G. Scarff, 1898), 100-101 (hereafter cited as "Political, Legislative, and Judicial History").

⁸ Carl H. Moneyhon, *Texas After the Civil War: The Struggle of Reconstruction* (College Station: Texas

Roberts's two terms as governor of Texas from 1879 to 1883 have also been thoroughly documented by histories of the period. One of the first comprehensive treatments of Texas politics after Reconstruction was Alwyn Barr's *Reconstruction to Reform*. Barr depicted Roberts as something of a throwback to antebellum days, writing, "Roberts, an honest, materially selfless man whose basic views had been formed in the antebellum South, believed strongly in limited government and rigid economy." Barr, unlike Bailey, was also critical of the governor's land policy, writing:

Thus Roberts's efforts, which reduced the state debt and increased the permanent school fund, also halted public school growth temporarily, cost the state revenues from land sales in the long run, and retarded the settlement and development of West Texas by anyone except large ranchers and corporations.⁹

A similar treatment of Roberts as governor can be found in Patrick Williams's *Beyond Redemption: Texas Democrats After Reconstruction*. Williams probably dedicated more pages to Roberts's governorship than any other work had previously. He presented Roberts as a politician who "possessed clearer ideas than many of his brethren as to how to dislodge the state from the fiscal impasse shadowing the 1878 campaign." According to Williams, "the stiff-necked judge would not continue to promise Texans both retrenchment and expanded state services." Williams wrote that Roberts employed a two-pronged strategy to reduce the state's deficit: reducing spending, particularly on public schools, and increasing revenues by selling public land cheaply and initiating a series of occupational taxes. Williams's assessment of Roberts as governor was that he accomplished what he set out to do, but in such a way that Texans subsequently rejected his policies. For example, Williams wrote:

A & M University Press, 2004), 205 [first quotation], *Edmund J. Davis: Civil War General, Republican Leader, Reconstruction Governor* (Fort Worth: TCU Press, 2010), 2.

⁹ Alwyn Barr, *Reconstruction to Reform: Texas Politics, 1876 – 1906* (Dallas: Southern Methodist University Press, 1971), 43 [first quotation], 81 [second quotation].

As much as Roberts made good on his promises, though, many Texans seemed unwilling to continue to take his medicine at its prescribed dosage. Some appeared to doubt that he had been doctoring the most worrisome maladies. Roberts had succeeded on his own terms, yet by the end of his tenure in office, his party faced its greatest challenge since returning to power in 1873-1874. . . .¹⁰

All of these scholarly works are valuable; yet they are like individual pieces of a puzzle that has not yet been put together. The only full-length biography among them, Bailey's unpublished dissertation, is void of criticism of Roberts at all, and as such, lacks authority as a definitive source. She presented a man who acted from the purest of motives, but he could be manipulative, ambitious to a fault, and virulently racist, an aspect of his character Bailey ignored completely. As Campbell noted, Roberts was indeed committed to white supremacy and during Reconstruction set out to block black suffrage. Yet, as governor, he helped save Prairie View Normal School, Texas's first institution of higher education for blacks, from closing by soliciting private donations and calling the legislature into special session to pass legislation to fund the school. Haley viewed Roberts's attitudes on a sort of continuum, going from white supremacist secessionist firebrand to elder judicial statesman. However, on the antebellum court, he often ruled in ways that were more liberal than those of his colleagues, and as chief justice after the war, could give opinions that were rather partisan. As governor, as Barr and Williams explained, Roberts could be rather "stiff-necked" and inflexible. Yet, he often commuted the sentences of prisoners condemned to death, and many angry Texans charged him with being too soft hearted.

All of these scholarly works are valuable. But, as they focus on broader themes, leave certain questions unanswered. For example, how did Oran Roberts rise to power so quickly in Texas? In 1841 he was a young immigrant lawyer. In just sixteen years, he became an associate supreme court justice. Were there factors in his upbringing that could account for his political

¹⁰ Patrick G. Williams, *Beyond Redemption: Texas Democrats After Reconstruction* (College Station: Texas A & M University Press, 2007), 147 [first quotation], 158 [second quotation].

views and drive to exercise power? Did his political views change over time, or did they remain essentially unchanged? Did the governor who left office in 1883, adhere to the same basic philosophy that he had espoused as the president of Texas's secession convention in 1861? Did the law professor at the University of Texas from 1883 to 1893 teach his students this philosophy? Did the first president of the Texas State Historical Association enshrine his view of Texas history in his writings?

What follows is an attempt to answer these questions and bring a sense of completeness to the historiography on Oran Roberts. The picture that emerges is of a man whose attitudes on slavery, education, law, and politics were formed and shaped by family, friends, and mentors in Alabama. Personal traits that he exhibited throughout his life were formed by his associations there as well. An unhappy tenure in the Alabama state legislature led him to eschew politics for a time; yet, when he believed the institution of slavery was threatened, he actively sought public office. As a supreme court justice, the legalistic strict constructionist views he developed as a young man continued to shape his decisions. His legalism guided his approach to secession. Once he guided Texas out of the Union, a sense of duty and burning ambition led him to resign his seat on the state bench and seek a commission in the Confederate Army. That same ambition, frustrated by a failure to achieve promotion, drove him to resign from the army and go back to the supreme court. During Reconstruction, as a delegate to the Constitutional Convention of 1866, he sought to preserve as much of the life he had always known as possible, and when he failed, turned to the one avenue he had left to influence his society, education. Once his party took back political control of Texas, Roberts was crucial as a power broker, judge (again) and eventually as governor, the culmination of his political ambition. As the state's chief executive, he adjusted to certain political realities of post-bellum life but, again, attempted to retain as much

of the old order as possible. As a law professor and historian, Roberts committed himself to building his legacy by teaching, serving as an elder advisor to his party, and writing the history he had lived in such a way as to justify his actions. In short, Roberts, committed to strict construction of the United States Constitution, states' rights, and white supremacy, never truly changed. He had to modify his public stance to a degree, but Roberts in 1898 was every bit the fire-eater he had been in 1860. Since he played such a crucial role in Texas politics during the latter half of the nineteenth century, a study of his life and career is instructive in helping to understand the politics, personalities, and philosophies of this crucial period in Texas history.

CHAPTER 2: “SUCH WAS MY RAISING IN THE MOUNTAINS”
1815 – 1841

Oran Milo Roberts was born to Oba and Margaret Ewing Roberts on July 9, 1815 in Laurens District, South Carolina. Though born in South Carolina, Alabama, where the family moved when he was three years old, would shape him. Through family, friends, and mentors in Alabama, Roberts would develop many of the attitudes that characterized his political life in Texas as a fire-eater. In Alabama, he decided early that he would be a lawyer, not a farmer. He learned that slavery was beneficial in allowing him to become a man of letters. From his mother he learned the value of being reflective rather than impulsive, and from his oldest brother and his first teacher, he learned to apply himself and work hard to achieve his goals. As a student at the University of Alabama, he learned the value of social interaction and of maintaining strong friendships. He also became convinced that the state capital was the best place to locate the state university. By the age of twenty-six, Roberts decided that his prospects would be better in the Republic of Texas and left his childhood home. Alabama never left him, however, and the lessons he learned there would stay with him throughout his life.

Oran was the youngest of six children, five of whom lived to adulthood. His father, Oba Roberts, was of Welsh ancestry while his mother’s family, the Ewings, were Scotch-Irish. By the time of the American Revolution, both families had settled in the southern part of Laurens District near the community of Duncan’s Creek. Both of Oran’s grandfathers fought on the Patriot side during the war. Obadiah Roberts served in a militia cavalry unit during 1781 and 1782 while Oran’s maternal grandfather, Captain Samuel Ewing, commanded a company of South Carolina militia throughout the Revolutionary War, losing two horses in the process.

Although both families lived in roughly the same area, the Ewings possessed more property. Samuel Ewing owned many parcels of land and was a frequent litigant in title disputes before the courts in Laurens District.¹

Prior to Oran's birth the family moved several times. Shortly after the birth of his first daughter, Unity, in 1795, Oba Roberts moved the family to Georgia. They stayed in that state only a year before moving to Kentucky. After living in Kentucky for two or three years, the Roberts family returned to South Carolina, resettling in the Laurens District. The family continued to grow with the birth of Jesse Carter in 1799, Jane in 1803, John Ewing in 1805, Franklin Ford in 1810, and finally, Oran Milo in 1815. In 1818, when Oran was three years old, the elder Roberts uprooted the family again, this time to St. Clair County, Alabama Territory. Situated in the northeast part of Alabama, St. Clair County was named after Revolutionary War hero Arthur St. Clair. It had previously been occupied by the Creek Indians and ceded to the United States via the Treaty of Ft. Jackson, signed after the Creeks had been defeated by Andrew Jackson at the Battle of Horseshoe Bend. The county attracted numerous settlers from Georgia and Tennessee, including veterans of Jackson's army. Many, like the Roberts family, moved there from the South Carolina upcountry.²

In later years, Oran Roberts would write about his childhood in an almost clinical fashion, attributing several of his own character traits to each of his parents. He wrote that his father, although his own education was limited, desired to educate his children. He passed that

¹ Bobby Gilmer Moss, *Roster of South Carolina Patriots in the American Revolution* (Baltimore: Genealogical Publishing Co., 1994), 300, 820; Brent Holcomb, *Laurens County, South Carolina Minutes of the County Court, 1786 – 1789* (Columbia: South Carolina Genealogical Society, 2004): 238; Oran Milo Roberts, "Memoirs of Early Years," Oran M. Roberts Papers, 1815-1898, Dolph Briscoe Center for American History. The University of Texas at Austin (hereafter cited as Roberts Papers).

² John Ewing Roberts died in 1808 at the age of three. He was the only child of Oba and Margaret Roberts that did not live to adulthood. William Warren Rogers, Robert David Ward, Leah Rawls Atkins, and Wayne Flynt, *Alabama: The History of a Deep South State* (Tuscaloosa: University of Alabama Press, 1994), 54-60.

love of education on to his youngest son, who would be involved in the teaching profession off and on throughout his life. Although the younger Roberts attributed his quest for learning primarily to his father, his memoirs reveal that he was closer to and had more in common with his mother. He described her years later as being “sedate taciturn careful thoughtful and firm, with a uniform cheerful habit of mind, and rarely excited beyond her usual composure.” Roberts would later pride himself on exhibiting the same traits.³

Oran’s oldest brother, Jesse Carter Roberts, made quite an impression on his youngest sibling. Jesse, sixteen years Oran’s senior, studied medicine in South Carolina and moved with the family to Alabama in 1818, already a practicing physician. Another brother, Franklin Ford Roberts, cared little for academic pursuits and instead focused on farming. He also volunteered for military service several times, fighting in the Second Creek War in Alabama and later as a lieutenant in a Texas cavalry unit during the Mexican War. Both of Oran’s sisters married farmers who were fairly successful. By 1820, the family, although not wealthy, was moderately comfortable. Oba owned a small farm about a mile east of Ashville, the county seat, as well as seven slaves.⁴

Oran’s childhood was typical of small slaveholding farmers in the Alabama hill country. He hunted and fished with his neighbors, worked the fields with his father, brothers, and slaves, and acquired a rudimentary education in rural field schools. Oran had evidently shown academic promise as a child, and it was generally understood by the family that he was to be educated and enter a profession. As the family farm was situated so close to the county seat, Oba often

³ Roberts, “Memoirs,” Roberts Papers.

⁴Roberts, “Memoirs,” Roberts Papers; Alabama State Census, St. Clair County, 1820; United States Department of War, *Compiled Service Records of Volunteer Soldiers Who Served During the Mexican War in Organizations From the State of Texas* (Record Group 94, National Archives, Washington, DC) [hereinafter cited as CSR, Mexican War].

entertained visiting lawyers and judges on their way to or from a session of the court, and Oran came to view these men as different. He saw that their education set them apart from the majority of his neighbors, and he began to think that the law might be a good profession for him. Unfortunately, Oba's sudden death in October, 1827 threatened to jeopardize Oran's plans.⁵

In addition to acquiring land and slaves, Oba had also managed to accumulate considerable debt by the time he died. His estate went into probate, and Oran's two brothers-in-law, Robert Bourland and Joshua Hooper, were appointed administrators. St. Clair County Judge John H. Garrett assigned three of Oba's closest friends to appraise the estate: George Shotwell (whose son later settled in Polk County, Texas), John W. Cobb (whose son Rufus would be governor of Alabama at the same time Oran Roberts was governor of Texas), and Robert Towson. Although many of the family's possessions were sold to pay Oba's debts, the family kept seven slaves worth \$2,900. Bourland bought the family farm, allowed his in-laws to stay on it and raise a crop, and held the money he paid for the farm in trust for Ford and Oran.⁶

Oba's death affected Oran profoundly. The younger Roberts went from being the baby of the family to being the main provider, along with his older brother Ford, because Jesse had moved to Shelby County. Although the Roberts owned slaves, they, like many other small slaveholding families in the piedmont regions of the South, worked the fields alongside their slaves. Based on the values of each slave listed in Oba's probate record, it is likely that three of the male slaves, George, Prince, and Nick, were the main field hands. In order to provide for the

⁵ Roberts, "Memoirs," Roberts Papers.

⁶ Roberts later wrote that his father was "considerably involved pecuniarily." See Roberts, "Memoirs," Roberts Papers. The slaves' names were George, Prince, Nick, Mick, Isabel, Jack, Lewis, and Beck. Prince would later accompany Oran to the University of Alabama, and eventually to Texas. Probate of Oba Roberts' Estate, Ashville Archives and Museum, Ashville, AL; Samuel L. Webb and Margaret Armbruster, eds., *Alabama Governors: A Political History of the State* (Tuscaloosa: University of Alabama Press, 2001).

family, Ford and Oran had to go to work along with their slaves. For Oran, this also meant delaying his schooling indefinitely.⁷

His father's death and subsequent events more than likely impressed upon young Oran the importance of slavery. Without the slaves, the family, now consisting of a fifty-one-year-old widow and her two sons aged twelve and seventeen, might have had a hard time raising a crop and surviving. However, with the labor of George, Prince, and Nick in the field, and Isabel likely doing the cooking and cleaning, the family was able to raise enough food to sustain themselves. At an early age, Oran Roberts saw that not only was slavery beneficial to him, it made possible everything he was later able to achieve. When he vigorously defended slavery as a public figure during the 1850s, his motive was more than just an expression of a political philosophy; slavery had kept him alive and laid the foundation for his future success.⁸

For the next three years, Oran and Ford worked with the slaves to raise crops and provide for the family. During this period of time, Oran did not go to school. While Ford dealt with the loss of his father by spending time with friends, Oran, a more bookish, introspective child, became even closer to his mother. Roberts described his mother as a very intelligent woman who was an avid reader, though she was not able to obtain many books in the frontier southwest. She could remember the events of the American Revolution in South Carolina and no doubt regaled her youngest son with the exploits of that state's patriots, including her own father, Samuel Ewing. Margaret Roberts was also a Universalist, a religious viewpoint that was no

⁷; James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: Knopf, 1982): 64; Roberts, "Memoirs," Roberts Papers; The Roberts' slaves were assigned the following values in the probate of Oba's estate: George, \$500; Prince, \$500; Nick, \$500; Mick, \$350; Isabel & her two children Jack and Lewis, \$650; Beck, \$400. Based on comparable slave prices for the time period, it is reasonable to assume that the three slaves valued at \$500 were the main field hands. Probate of Oba Roberts Estate, Ashville Archives and Museum, Ashville, AL

⁸ Probate of Oba Roberts Estate, Ashville Archives and Museum, Ashville, AL.

doubt rare in northeast Alabama during the days of the Second Great Awakening. In his later life, Oran, although he married a devout Christian, retained his mother's distrust and dislike of organized religion. Although he often attended services, he never joined a church and was zealously committed to the separation of church and state. Oba's death brought his widow and the young son that was so much like her even closer together and strengthened their bond.⁹

Despite the hardship occasioned by the loss of his father, Oran never gave up his desire to pursue his education. He was encouraged in this by his oldest brother, Dr. Jesse Carter Roberts. By the early 1830s, Jesse, then residing in Shelby County, Alabama, had decided to move to Arkansas Territory. Before leaving, he came to Ashville to say goodbye to his mother and siblings. While there, he pulled Oran aside and gave his youngest brother some advice that so impressed Oran that he was able to recount the conversation verbatim over half a century later. Jesse told his brother, "Oran, if you do succeed in getting an education, do you study the law. It is the high road to fame and fortune in this country and is more pleasant in every way than the profession of medicine." The younger Roberts had already been impressed by lawyers and this parting charge from his respected older brother confirmed his opinion. Unfortunately, Oran never saw his oldest brother again. Jesse soon moved to Arkansas where he served a term in the territorial legislature as representative from Conway County and died on April 22, 1834, while attending to patients during a cholera epidemic.¹⁰

Oran's prospects for acquiring an education improved in early 1831 when an academy opened in Ashville under the direction of James Lewis, a college-educated lawyer who quit his

⁹ Roberts, "Memoirs," Roberts Papers; Thomas Perkins Abernethy, *The Formative Period in Alabama, 1815-1828* (Montgomery: The Brown Printing Company, 1922) 128-129.

¹⁰ Roberts, "Memoirs," Roberts Papers; Little Rock *Arkansas Weekly Gazette*, April 29, 1834.

practice to teach. This was the first school in the county that taught Greek and Latin, two languages considered important for a young man seeking to enter the legal profession. Because the school was in Ashville, a mile away from the farm, Oran was able to keep up with his chores and still attend school and study. At some point during this time, Roberts began planning to go to college. The school closed after six months when Lewis was elected to serve as clerk of the circuit court of St. Clair County. Again, Oran's education in preparation for going to college appeared to be in jeopardy.¹¹

Fortunately for the young scholar, a young lawyer named Ralph P. Lowe befriended Roberts and three other students from the academy and agreed to teach them in his law office. The young lawyer quickly became a mentor and role model for Oran. Lowe was originally from Ohio and had obtained a degree from Miami University in that state. He had only recently moved to Ashville when he agreed to teach Roberts and the others. After a few years, Lowe moved to Iowa, where he eventually became governor and a state supreme court justice, a career path mirrored by Roberts's own (although in the opposite order). Lowe reinforced brother Jesse's advice to Oran that the law was the best profession for a young man of his talents to pursue. Roberts always felt indebted to Lowe, and the two men maintained a friendly correspondence for half a century. Indeed, Roberts appears to be one of the few acquaintances from Ashville to have corresponded with Lowe, a fact that demonstrated the affection the pupil felt for the mentor.¹²

The point of Oran's study of Greek and Latin with Lowe was to allow him to become proficient enough in the ancient languages to permit him to be admitted to a university. The

¹¹ Roberts, "Memoirs," Roberts Papers.

¹² Roberts, "Memoirs," Roberts Papers; Ralph P. Lowe to Oran M. Roberts, May 18, 1850, and July 15, 1858, Roberts Papers.

University of Alabama had opened in 1831 in Tuscaloosa, approximately 100 miles southwest of Ashville. At that time, a college education was not absolutely necessary for the study of law. Many frontier lawyers read law with members of the bar until they could pass an examination themselves. However, a college education would distinguish him from other members of the community and open many doors to him. Besides, two of his role models, his brother Jesse and mentor Ralph Lowe, were college graduates, and Oran seemed eager to follow in their footsteps.¹³

Again, Oran's plans to obtain a college education were almost derailed. Sometime in 1832, Oran's brother-in-law and administrator of his father's estate, Robert Bourland, became convinced that the study of Greek and Latin was an empty pursuit and one that put an economic strain on a family struggling to sustain itself. Bourland was a successful farmer himself and devoted to his wife Unity's family, especially since the couple had no children of their own. Not wanting to hurt his young brother-in-law's feelings, Bourland talked to Margaret Roberts about convincing her son to give up his studies and pursue a job as a store clerk. Such a job would bring income for the family, was more suited to Oran's skill set than farming, and was an extremely respectable profession in early Alabama.¹⁴

One night, while Margaret sat before the fire knitting and Oran studied his Greek and Latin texts, she broached the subject with him. According to Roberts, his mother said:

Oran, your brother-in-law thinks you had better quit studying Latin and go into some sort of business such as a clerkship which you could easily get, or if not that something else that you could do to start you in life. He says that you have not

¹³ James Benson Sellers, *History of the University of Alabama, Volume I: 1818-1902* (Tuscaloosa: University of Alabama Press, 1953), 3-6.

¹⁴ Roberts, "Memoirs," Roberts Papers.

got means enough to get a complete education and a profession, and that you may spend what you have and still not accomplish that object.

Oran's response was indicative of his later manner in public life. He wrote years later that he was at first overwhelmed with despair, but thought through the issue silently before deciding to speak. When he finally broke his silence, he calmly and deliberately stated:

Mother, I intend to get an education if it takes every dollar that has been left to me. I heard my father say that if any of his children ever needed a friend, they would find one in George Shotwell who would be able and willing to help them. I am over fourteen years of age and can choose my own guardian, and if I am not allowed to go on I will apply to him to be my guardian, and he will let me spend what is mine to get an education.

He then closed up his books and went to bed with tears in his eyes. He got up the next morning, went to Lowe's office, and never spoke another word about the incident with his mother.¹⁵

This incident reveals character traits that Roberts would later exhibit in public life as well. It shows the importance he placed on education. Throughout his life, Roberts would balance the law profession and public office with a desire to be involved in educating young people. He would be instrumental in attempting to establish a university in San Augustine, Texas, during the 1840s. He also taught law at a private school during Reconstruction, and became the first law professor at the University of Texas during the 1880s. Roberts also displayed a stubbornness and tenacity that would characterize his public career. As a teenager, he was determined to get an education even if it meant emancipating himself from his mother, a woman he evidently loved very much. As an adult, Roberts would display a similar determination to lead his adopted state out of the Union, and later, as governor to bring Texas's spending within its revenues. His public career was also characterized by his tendency to reflect before speaking.

¹⁵ Ibid.

Oran studied with Lowe for eighteen months before leaving to attend the University of Alabama in early 1833. Finances were tight as the yearly tuition of forty dollars was a large sum for a widow. However, he had his share of the money that his brother-in-law Bourland had paid for the family farm. The family also decided to send Oran's slave, Prince, to the university with him, and hire him out to help pay for the young scholar's expenses. Thus, in February 1833, Ford Roberts loaded up the family wagon and took seventeen-year-old Oran and Prince to Tuscaloosa.¹⁶

Oran enrolled in the University of Alabama on February 13, 1833. In order to help defray his expenses, Ford remained in Tuscaloosa for another day, long enough to hire Prince out before returning to Ashville. There is no record of who hired Prince or what he was doing, but family legend was that he was a cook on a steamboat plying the Black Warrior River earning forty dollars a month for his master. Prince's labor directly benefitted Roberts by allowing him to obtain a college education. Roberts's station in life was again directly due to slavery, a fact of which he had to be well aware.¹⁷

Up until that point, Oran had never been more than ten miles from home without one of his parents being present. After Ford came by his dorm and said goodbye, he went outside away from his classmates and had a good cry. He became very homesick and would sometimes stare out of the east window of his dorm toward his home. Fortunately, his existence was not completely devoid of friendly faces. During Oran's first term at the university, one of his

¹⁶ Upon Oba's death, the slaves had been divided up between Margaret, Ford, and Oran. Prince was part of Oran's inheritance. Roberts, "Memoirs," Roberts Papers; List of Students and Tuition, August 10, 1835, Student Records, William S. Hoole Library, University of Alabama, Tuscaloosa, AL.

¹⁷ Roberts, *Memoirs*, Roberts Papers; Bailey, "The Life and Public Career of O.M. Roberts," 10-11, 16. Several of Roberts's children were still alive when Ms. Bailey wrote her dissertation, including Margaret Roberts Spain and Oran, Jr., both of whom lived in Austin. She interviewed them and included their reminiscences in her dissertation. She wrote of Prince's work in Tuscaloosa, "His purpose in life, however, was to educate 'Marse Oran', which to him was a greater thing than freedom." This is highly doubtful.

roommates was John Cameron of Cahaba Valley, a settlement about thirty miles south of Ashville. The two students had previously met at a Methodist camp meeting in St. Clair County. Oran's loneliness was also somewhat mitigated by Prince, who would come to campus every Sunday, likely his only day off from work, and keep his master company.¹⁸

Aside from loneliness, Oran also had to make up some deficiencies in his academics. Upon his arrival at the university, he was examined by the faculty at the home of Professor Henry Tutwiler. His Greek, Latin, and arithmetic were sufficient, but he tested poorly in geography and other subjects he had never studied. In addition, he was four months behind his classmates, as the rest of his freshman class had started school in October, 1832. One of the professors, Henry Hilliard, a professor of elocution, suggested that the faculty should admit the bright young man and Hilliard himself would tutor him on the subjects in which he was deficient. Hillard tutored Roberts for the rest of that session before resigning and going into private law practice in Montgomery. Hilliard would later become one of Alabama's most important Whigs and opponents of secession.¹⁹

Since Oran entered the university four months into the session, he spent most of his first semester engaged in serious study. Like many college freshmen before and since, he became the object of pranks. One night while he was asleep, he awoke to see what he later described as "two tall objects, covered with white sheets, passing into the room, mumbling out some sort of disguised utterances calling on me." Oran jumped up and tackled the one in front, then reached

¹⁸ Roberts, "Memoirs," Roberts Papers.

¹⁹ Roberts, *Memoirs*, Roberts Papers; Rogers et al, *Alabama*, 155, 150-162; David I. Durham, *A Southern Moderate in Radical Times: Henry Washington Hilliard, 1808-1892* (Baton Rouge: Louisiana State University Press, 2008) 30. Tutwiler is legendary in the history of education in Alabama. He later left the university and began his own preparatory school in Hale County. His daughter, Julia, was a pioneer of women's education in Alabama and author of the state's anthem. Tutwiler and Roberts maintained a correspondence until the end of the professor's life. See Paul M. Pruitt, Jr., *Taming Alabama: Lawyers and Reformers, 1804 – 1929* (Tuscaloosa: University of Alabama Press, 2010), 32-35.

for the other as he tried to leave the room and tore part of his shirt. The two “ghostly” figures turned out to be two older students. Roberts angrily got back in bed and never mentioned the incident to his fellow students. However, no one pulled a prank of that nature on him again.²⁰

Many of Oran’s fellow students at the University of Alabama came from very wealthy and distinguished families. In his freshman class alone were two former governors’ sons and the son of one of Alabama’s U.S. senators. Roberts’s later memoirs of his college years indicate that he was self-conscious around many of these students, having no family connections on which to draw. He determined early in his freshman year to distinguish himself by hard work and superior scholarship and was encouraged in this by his professors. Another way he coped with his new surroundings was to develop close friendships with like-minded students. One of these students was Walter Coleman of Butler County, Alabama. A few months into his freshman year, Oran sought permission to change dorms to the new Franklin Dormitory, where he roomed with Coleman for the remainder of his time at the university. The two became inseparable, often being mistaken for each other in town. Coleman would later serve as mayor of Montgomery, Alabama.²¹

Although most of his freshman year was spent in serious study in order to make up for his academic deficiencies, Oran also recognized the importance of being involved in social organizations. Fraternities as modern Americans know them did not yet exist at the University of Alabama. Instead, a number of debating societies existed that allowed students to hone their rhetorical skills and scholarship. Toward the end of his freshman year, Oran and Walter Coleman joined one of these groups, the Erosophic Society. At first, Roberts was content to

²⁰ Roberts, “Memoirs,” Roberts Papers.

²¹ Ibid.

listen, watching the other students debate and rarely speaking. Over time, however, he became one of the most active debaters in the Society, and his activity there taught him how to study the issues of the day, formulate an argument, and defend it. It also revealed a character trait that Roberts would exhibit throughout the rest of his life. When faced with a new situation, he preferred to observe others first, learn from those who were the best at whatever it was he was involved in, and in time, he would come to dominate the endeavor in which he had chosen to display his talents, again demonstrating the trait of reflecting before speaking or acting.²²

Prior to ending his first session at the university in June of 1833, Oran had become extremely homesick. However, when he returned for his sophomore year in October of 1833, the feeling of intense loneliness never returned. He had acquired a taste for college life and was determined to finish his education. Oran became more involved with the rest of the student body during his second term in Tuscaloosa. He participated in pranks with other students, took part in public memorials such as the one the university held after the death of the Marquis de Lafayette in May of 1834, and became more active in the Erosophic Society. As a freshman, Roberts had often been content to watch other students debate. Now, he became more active in those debates himself and spoke whenever he was given an opportunity. Because he had caught up to his classmates under the tutelage of Professor Hilliard, Oran had more time to engage in social activities and to take advantage of the opportunities afforded by attending school in the state capital. He regularly attended sessions of the state legislature, Supreme Court sessions, and although he remained aloof from membership in any denomination, also attended church services and camp meetings. In short, young Roberts was taking an interest in the workings of

²²Roberts, "Memoirs", Roberts Papers; The Erosophic Society was the first debating society on campus and membership in it was considered prestigious. Erosophic Society to Board of Trustees, November 27, 1832, Student Records, Hoole Library, University of Alabama; Sellers, *History of the University of Alabama, Volume I*, 175.

society. As an old man, he described his transformation from a country boy to a man of the world by writing:

It was to me as if I had dropped down in a new world, of which I had had but little conception before. It fastened on me the lasting impression, that the university of the state ought to be located at the capital of the state, in order to give its students, coming from all parts of the country, the greatest advantages attainable in attending such an institution.²³

This impression remained with him fifty years later when, as governor of Texas, he was instrumental in establishing the University of Texas in the state capital of Austin.²⁴

Roberts again went home to Ashville at the conclusion of his sophomore year in June of 1834. When he came home he did not intend to return to Tuscaloosa in the fall. He, Coleman, and two other students had decided to transfer to Miami University in Ohio, the alma mater of Oran's friend and mentor, Ralph Lowe. Before leaving Tuscaloosa, they had obtained their discharge from the University of Alabama. However, when he arrived in Ashville, northeast Alabama was in the throes of "an epidemic of chills and fever." Oran became sick as well and was unable to make the long trip to Ohio in time for the fall session. He made plans to return to the University of Alabama, but unexpected bad news caused him to think he might have to delay his return indefinitely. Shortly before he was to return, he learned that his share of the money from the sale of the family farm had been exhausted. Roberts decided to pursue a teaching position at a nearby academy in order to raise the money necessary to complete his education. His brother-in-law, Robert Bourland, however, dissuaded him from this course of action. Just two years before, Bourland was convinced that Oran's pursuit of a classical education was a waste of time. Now, doubtless having seen the progress his young brother-in-law had made,

²³ Roberts, "Memoirs," Roberts Papers.

²⁴ Ibid.

Bourland offered to pay for the rest of Oran's education at the university. Roberts remained grateful for this and eventually paid his relative back.²⁵

Oran returned to the university to begin his junior year in September 1834. His junior year was memorable mostly for the lifelong friendships he made with two new students, Franklin Bowdon and Washington D. Miller. Bowdon was a year younger than Roberts, the son of a well-to-do farmer in Shelby County. Bowdon had been educated by private tutors up to that point, and the shy young man had little experience interacting with other students. As such he became the target of pranks. One night, two students entered Bowdon's room and pretended to get into a fight. One pulled a cane sword and appeared to stab the other before fleeing. Several students entered the room, whereupon the supposedly mortally wounded young man pointed to Bowdon as his assailant. Several students took him into custody and stated they were going to town to get the sheriff. Two of Bowdon's captors convinced him to run, and he bolted into the woods and spent the night behind a log before walking back to his father's farm near Montevallo, about a hundred miles east of Tuscaloosa. About a week later, Bowdon returned to the university with his father for reinstatement. He visited Roberts in his dorm room and said, "I have come back here to redeem myself. I want a friend, and I have come to you to be that friend." Oran, already sympathetic to the young man's plight and probably seeing something of his earlier hazing in the situation, agreed. Oran became something of a mentor to the young scholar and the two would remain friends until Bowdon's untimely death in 1857. Roberts always considered Bowdon the greatest orator he ever heard speak. According to Roberts, he

²⁵ Ibid; It is interesting to note that Bourland's original objection to Oran's education, that of not having enough money to complete college, turned out to be correct. Nevertheless, having seen the importance of the university to his young brother-in-law, he agreed to fund the rest of his studies. Bourland died in 1845, and his widow Unity moved to Texas to be with her family.

was “excellent in diction, strong in argument, and overpowering in pathos with a fund of acquired information that seemed inexhaustible.”²⁶

Bowdon’s roommate, Washington D. Miller of Lawrence County, became part of Roberts’s close circle of friends as well. All three men would eventually move to Texas and have distinguished careers as lawyers. Miller would serve as Sam Houston’s secretary during his second term as president of the Republic of Texas, and as Secretary of State under Governor George T. Wood after statehood. Roberts later stated, “From that time [1834-35] my most intimate associates were my roommate Coleman, and Bowdon, and Miller, who were roommates in another building.” Oran tended to choose his friends carefully, but once he did, they remained friends for life. He was always drawn to those he viewed as intellectuals and cultivated those friendships, learning from the experiences of others, and becoming a master at networking.²⁷

During his junior year, Roberts continued the practice he had previously developed of attending sessions of the legislature, court sessions, and church meetings. He also decided that he needed to acquire social skills that would enable him to interact with ladies. Years later he wrote that because he had grown up in a house with only brothers (his two sisters were much older and he likely never remembered them living at home) and never interacted with girls that much in Ashville, he decided to take dancing lessons. This enabled him to attend dances in Tuscaloosa with some degree of confidence. Even in his relations with the fairer sex, Roberts approached the issue with the same clinical detachment and determination with which he mastered his studies.²⁸

²⁶ Ibid; Sellers, *History of the University of Alabama, Volume I*, 229-230.

²⁷ Roberts, “Memoirs,” Roberts Papers.

²⁸ Roberts, “Memoirs,” Roberts Papers.

Roberts also continued to learn from leaders in Alabama politics and society. One of those leaders was a representative from Madison County named Judge Smith. Judge Smith was originally from South Carolina and had moved to Alabama late in life, having amassed a fortune in land and slaves. A fellow student named Watson, also originally from South Carolina, invited several other students who had been born in that state, including Roberts, to visit Judge Smith at his room in Dick Donaldson's hotel in Tuscaloosa. The elder statesman received the boys happily, discussing members of their families he had known in South Carolina and generally exchanging pleasantries. At some point Watson asked the Judge to share with the group how he had obtained his fortune while being involved in public service most of his life. Judge Smith replied that through his career as a lawyer, judge, or congressman, he tried to spend less than he made and invested his earnings in land. This made quite an impression on Roberts who later remarked, "What a lesson that was to young men? But I am not aware that any one of us followed up his example." While Roberts never amassed a great fortune, he did take Smith's advice by investing in land after he moved to Texas, often owning sizeable tracts in multiple counties. While never among the richest men in Texas, Roberts always lived quite comfortably by following Smith's advice.²⁹

Toward the end of Roberts's junior year, an incident occurred which threatened to divide the student body and lead to actual bloodshed. A circus came to Tuscaloosa, and although the university prohibited students from leaving their dorms at night, many surreptitiously left campus to see the show. Roberts and Bowdon, normally eager to follow the rules set by the faculty, could not overcome their curiosity and left campus one night to see the sights for

²⁹ Ibid.; Records of the Comptroller of Public Accounts, Ad Valorem Tax Division, Shelby County, Real and Personal Property Tax Rolls, 1857, Archives Division, Texas State Library, Austin (hereafter cited as "County Tax Rolls, ____ County, 18__").

themselves. About a week after the circus left town, the faculty, at a morning chapel service, read the names of six or seven students that were to be dismissed for the remainder of the session for attending the circus. About eighty or ninety students had attended, and the few that were dismissed believed that if the faculty knew how many actually went, they would rescind the dismissal and come up with some other form of punishment. As such, a petition was drawn up and signed by about half of the students who attended, acknowledging their guilt. Roberts was one of those who refused to sign it, stating that he went to the circus of his own accord, not in combination with the others. If the faculty called him to account for his behavior, he would own up to the consequences, but reiterated that he was there to get an education, not to force the faculty's hand to disavow their pre-stated policy. Eventually, some of those who signed the petition stated that if the others would not sign their names, those names would appear on the petition anyway. This caused Roberts's faction to threaten violence, and the situation became very tense. Both sides quit going to morning chapel and travelled in groups.³⁰

Roberts decided to take action and went to see the president of the university, Dr. Alva Woods. Roberts told him what was afoot and predicted bloodshed if the issue was not resolved quickly. Woods gave him no assurances, but soon thereafter, the petitioning party was dismissed from school. At the same time, very stringent regulations were announced for those who remained. Because of the difficulty in travelling during the 1830s, most of those who had been dismissed continued to stay in Tuscaloosa for a week or more until they could obtain passage home. Now, the students who had not been dismissed were so disgusted by the stringent new rules that many of them prepared to leave as well. Roberts was convinced that if the two groups left at the same time, they would attack each other as either side now blamed the other for their

³⁰ Roberts, "Memoirs," Roberts Papers; Sellers, *History of the University of Alabama, Volume I*, 63-68.

difficulties. He had packed his trunk and was prepared to leave but decided to visit Woods one last time. Woods was surprised that Oran was involved in any dissatisfaction as he had always been “an orderly student.” Roberts responded:

I was willing to abide by any rules the faculty might prescribe as long as I was a student, provided they were enforced when all of the students were in school, that those who had been dismissed were mad at those who remained, and when they came back next session, they would accuse us of being **submissionists**, and without the spirit to object to anything imposed upon us, and the bitter feud would be continued as it existed when they left . . . [emphasis mine]³¹

Again, Woods gave Roberts no assurances, but the next morning the faculty announced that the new regulations would not take effect until the start of the next session.

This incident is instructive for a number of reasons. First, it shows that Roberts would never be forced to do anything he did not want to do. Several of the students who signed the petition lobbied him on numerous occasions to change his mind; he refused to budge. It also shows the disdain which Roberts attached to being labeled a “submissionist.” To young southern gentlemen, steeped in the culture of honor, submission and cowardice were synonymous. Years later, when he led the secession movement in Texas, Roberts would display the same dislike of submission and use much the same language that he used as a junior at the University of Alabama. Last, Roberts displayed a character trait that would follow him throughout his life. When he believed a course of action needed to be taken, he went ahead with it, on his own if need be. At the end of his public career, Roberts, looking back at this incident, wrote that:

. . . above all it should be considered that whether a boy or a man, he who has a will and a way in an emergency in important events, and promptly and determinedly acts upon his own judgment, will find himself an important actor and often a leader without his having purposely intended to have occupied such a position amongst those with whom he was associated.³²

³¹ Roberts, “Memoirs,” Roberts Papers.

³² Ibid.

Clearly Roberts regarded this incident as a turning point in his life. His actions as a junior at the university set a pattern for his public endeavors. By quickly and decisively taking action, not only would he lead other men, but they would actively court his leadership. This incident also showed that when Roberts believed he was right, he was ready to stand his ground and endure negative consequences. He would display this trait prominently during Reconstruction.³³

Roberts returned to Ashville for the summer break of 1835 a different man than he had left two and a half years earlier. He was no longer a precocious seventeen year old farm boy with few experiences outside his rural home. Now, in the summer of his twentieth year, he had acquired a taste of society in his state's capital city, honed his debating skills in the Erosophic Society, and had become a respected member of the student body at the state university. That summer, after taking dancing lessons the previous year and learning how to interact better with girls, he continued his increased attention toward the opposite sex. Social gatherings such as weddings, or camp meetings were ideal opportunities for a young man in a small town to meet young ladies. Upon his arrival at Ashville, Roberts learned that he had just missed a wedding that had taken place. However, as he wrote his friend, Miller, "like all of the disappointed race, I have one animating consolation, the girls (unless they flatter me mightily) lamented my absence very much!" One young lady in particular made a particular impression on him that summer. Roberts described his feelings for this unnamed girl to Miller, writing, "But oh, the snares of Love, the snares of Love. They caught me by the heel as I did flee. And to tell you the truth I came very near faling [sic] in love with one of the prettiest mortals that creation ever beheld."

³³ Oran M. Roberts, "Speech of Judge O. M. Roberts of the Supreme Court of Texas, at the Capitol, on the 1st Dec., 1860, Upon the 'Impending Crisis,'" Roberts Papers, 31; Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982), 23-24, 40.

Perhaps he was speaking of Frances Edwards, the young lady he would marry in December of 1837.³⁴

Roberts returned to Tuscaloosa for his senior year in October 1835. As it was then customary for a member of the senior class to serve as the university's librarian, the trustees of the university chose him to fill that capacity. His job was to select the books that the professors and students applied to use, keep general records of books loaned out, and assist visitors to the library. This job, in addition to carrying a certain amount of prestige, also gave Roberts access to a wealth of information which he would use in preparing for debates with his friend Bowdon in the Erosophic Society. The society had elected Roberts to serve as its president for the 1835-1836 school year, and he planned to take an active role in its debates. He and Bowdon had already agreed to take opposite sides on any debate the society engaged in. If the two friends were not the selected speakers, they would stay after the meeting had closed and debate each other on the selected topic. Roberts benefitted greatly from these contests with Bowdon, whom he considered a master debater. In later years, when both men were practicing attorneys in Texas, they would often find themselves on opposite sides of a case. Roberts later wrote, "Of course, I could only aspire to meet him in arguments upon the facts and law of the cases: for he had a style of oratory, whenever he spoke, that I never saw excelled."³⁵

Until this point in his life, Roberts had not been particularly outspoken on politics. However, 1836 was a presidential election year, and partisan acrimony was rather high. After two terms in office, Andrew Jackson, the hero of the common man, had made many enemies,

³⁴ Roberts to Washington D. Miller, August 26, 1835, Washington D. Miller Papers, Texas State Library and Archives, Austin, TX.

³⁵ Roberts to Miller, August 26, 1835, Miller Papers; Roberts, "Memoirs," Roberts Papers [quotation]; Sellers, *History of the University of Alabama, Volume I*, 103-107, 178.

particularly for his fight against the Second Bank of the United States which resulted in the removal of all federal deposits from that institution and its subsequent closure. Indeed, the Whig Party formed in 1834 primarily to oppose Jackson. This new party comprised old Federalists, former National Republicans and disaffected Democrats who simply disliked Jackson. As such, the Whigs lacked the cohesion in 1836 to run one strong candidate to challenge Jackson's handpicked successor, Vice President Martin Van Buren. Instead, the upstart new party ran three candidates who were strong regionally in an attempt to prevent anyone from gaining a majority of electoral votes, thus throwing the election into the House of Representatives. The Whig candidate running in the South was Hugh Lawson White of Tennessee, a former friend and supporter of Jackson. Alabama was divided politically along regional lines; the hill country of northern Alabama overwhelmingly supported Jacksonian candidates, while the wealthy planters of the Black Belt counties generally voted for Whigs.³⁶

The merits of each candidate were debated in the Erosophic Society, and only two members, Roberts and another student named Fox, supported Van Buren. It is ironic that Roberts's first expression of political interest was in support of the Jacksonian wing of the Democratic Party since as an adult he fully endorsed the views of the John Calhoun, states-rights wing of that party. Of his earliest foray into party politics, he later wrote, "You must not understand from that fact, that I was controlled by political wisdom. The truth is, that it was then understood that Genl Jackson was for Van Buren, and I merely followed the hero of the hermitage [sic]. I would have stood up for him against any odds. Such was my raising in the mountains."³⁷

³⁶ Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 195-196.

³⁷ Roberts, "Memoirs," Roberts Papers.

In previous years, graduation had always been held in June. In 1836, it was postponed until December. The university allowed seniors to go home in June and not return until the first of November. During this hiatus, Roberts began to prepare himself in earnest to pursue a profession in the law, as he had been urged to do by his brother Jesse, and inspired to do by his mentor, Ralph Lowe. Doubtless, he desired to read law with Lowe, but Oran's former teacher had left Ashville earlier in 1836 and returned to Ohio. Instead, he studied with another lawyer in town, Samuel Hinton. His course of study consisted of studying William Blackstone's commentaries on English law, the standard text for aspiring lawyers in the nineteenth century. When he was not studying law with Hinton, Oran spent his summer hiking in the woods, visiting old friends, as well as attending weddings and camp meetings. He continued to call upon the young ladies of Ashville, developing "a considerable partiality toward some of them."³⁸

Roberts returned to campus in early November and passed the time waiting for classes to resume by attending, with Coleman, Bowdon, and Miller, a camp meeting in the rural part of Tuscaloosa County. Commencement exercises began in December and continued sporadically for about a week. The class of 1836 consisted of twelve students. At that time grades were not published nor honors conferred. Instead, the faculty selected five students to give speeches. Roberts and Bowdon were both selected to give speeches. Oran had originally planned to go back to Ashville and continue to read law with Hinton after graduating. However, at some point

³⁸ Roberts, "Memoirs;" Alabama Law License for Oran M. Roberts; Roberts to Miller, September 8, 1836, Roberts Papers. Hinton later moved to Cedar Bluff in Cherokee County, Alabama, where he continued to practice law as well as started a newspaper, *The Messenger*. On December 3, 1845, Cherokee County Sheriff Lansford Stallings attempted to arrest Hinton on the public square in Cedar Bluff. Hinton shot the sheriff, killing him, and mortally wounded another man. He fled to Texas, and the governor of Alabama placed a \$1,000 reward for his capture and extradition. In June of 1847, a group of men arrested him and were in the process of returning to Alabama, stopping for the night in Shreveport, Louisiana. Hinton, despite being manacled, managed to grab a shotgun and a brace of pistols, and threatened to shoot anyone who followed him. The next morning they found his tracks leading to the Red River where they soon discovered his corpse, apparently drowned. Washington, D.C., *Daily National Intelligencer*, December 16, 1845; Houston, Texas, *Weekly Telegraph*, August 9, 1847.

during commencement week, Woods summoned him to the president's residence. When Roberts arrived at Woods' house, he was greeted by the president and a visitor, Judge Ptolemy Harris of Washington County, Alabama. Harris had moved to St. Stephens, Alabama, from Georgia in 1819, when that city was the first capital of Alabama. From 1826 to 1830 he had represented Washington County in the state legislature, and in 1832, he was elected to be circuit court judge. Judge Harris had come to Tuscaloosa to find a tutor for his three children. Woods naturally thought of Roberts, and the young scholar agreed to the terms. Oran would live at the judge's home, teach his children, and study law at the judge's office for a "reasonable compensation." Thus ended Roberts's career at the University of Alabama. In less than four years, he had gone from being a nondescript freshman from a poor county to being considered a leader in his graduating class on the verge of realizing his dream of becoming a lawyer.³⁹

Instead of returning to Ashville, Roberts travelled directly from Tuscaloosa to Judge Harris' home in St. Stephens. This town at the southernmost shoals of the Tombigbee River was founded as a river port where goods brought overland could be loaded on boats to be taken to the seaport of Mobile, one hundred miles to the south. By the time Roberts arrived in late 1836 or early 1837, the town was a shadow of its former self. When the capital of Alabama was moved first to Huntsville, and then Cahaba in the early 1820s, the town withered on the vine. Despite having an excellent opportunity to study with a well-respected jurist, Roberts was miserable in St. Stephens. Having just spent close to four years in the capital among college professors and students, he found little in Washington County to pique his intellectual interest. He found "nothing to look at but the wild woods of the forest, enshrouded, too, in long moss. . ." Although he enjoyed the company of Judge Harris and his wife, who he described as "an intellectual

³⁹ Willis Brewer, *Alabama: Her History, Resources, War Record, and Public Men from 1540 to 1872* (Montgomery: Barrett and Brown, 1872), 576; Roberts, "Memoirs," Roberts Papers.

woman, with somewhat limited education, with good manners, and a disire [sic] to please,” other regular guests at the Harris home bored him to tears. He spent many Sunday evenings in conversation with “two old maids, that saw their best days fifteen years ago,” and “a fat little ordinary woman whose husband left her.” In addition to his legal studies and teaching duties, he tried to pass the time by writing to Coleman (similarly tutoring and studying law with Judge Anderson Crenshaw in his native Butler County), Miller, and Bowdon. Four months into his time with Judge Harris, Roberts had already made up his mind to go home to Ashville. It seems that his education, in addition to opening up a new world of possibilities to him, had made him less tolerant of those whose existence was more parochial.⁴⁰

Roberts arrived back in Ashville in June 1837, but he did not stay at home very long. On July 4 of that year he left Ashville and moved to Talladega, approximately forty-five miles southeast of the former place, to complete his law studies in the offices of William P. Chilton and George P. Brown. Chilton, only five years older than Roberts, had practiced law in Talladega County since 1834. He had been born in Kentucky, and prior to his arrival in Alabama, had studied law in Nashville, Tennessee. He soon built a lucrative practice and became the most prestigious lawyer in northern Alabama. Although a Whig, he was so well-respected that his heavily Democratic district sent him to the state legislature in 1839. Chilton was later chosen by the state legislature to be the chief justice of the Alabama Supreme Court, and after his death, Chilton County was named in his honor. Again, Roberts found a mentor who

⁴⁰ Harvey Jackson III, *Inside Alabama: A History of My State* (Tuscaloosa: University of Alabama Press, 2004), 49-51; Roberts to Miller, April 9, 1837, Miller Papers.

had been very successful and whose success he desired to emulate. He would soon follow Chilton's career path, as well as that of his first law teacher, Ralph Lowe.⁴¹

Because Roberts had already begun his study of Blackstone in Ashville under Hinton, it did not take him very long to master the subject after arriving in Talladega. He took copious notes on the famed English commentaries and endured hours of questioning by Brown. By September, ready to begin his practice, earn a living, and get married, Roberts felt he was ready to pass the bar and applied to Circuit Court Judge Eli Shortridge of Talladega for a law license. Shortridge was one of the most respected jurists in northern Alabama. He had originally settled in Tuscaloosa in 1826 and two years later was an associate justice of the Alabama Supreme Court. He had been in Talladega since 1835. Judge Shortridge came to Chilton's office on September 22, 1837 and asked Chilton and Brown to examine Roberts. Both replied that they were "well acquainted" with his "proficiency" and were ready to stipulate as to his fitness to join the bar. Shortridge replied, "Well then, I will grant the license," and hand wrote a license right there in Chilton's office.⁴²

Roberts had at last succeeded in becoming a practicing attorney, a profession to which he had aspired since he was a child. He remained under the tutelage of Chilton and Brown for a while, however, rather than immediately go into practice for himself. He soon got a chance to put his new license to use in his hometown. Within days of receiving his license, he went to Ashville with Brown to assist the latter in a larceny case before the court of St. Clair County. Those who heard him expressed praise for his efforts, but Roberts considered them backhanded compliments, writing to Miller, "Many of the people openly told me I did 'extronary [sic] for a

⁴¹ T.A. DeLand and A.Davis Smith, *Northern Alabama: Historical and Biographical Illustrated* (Birmingham: Smith & DeLand, 1888), 630; Roberts, "Description of Alabama Law License," Roberts Papers.

⁴² Brewer, *Alabama*, 536-537; Roberts, "Description of Law License," Roberts Papers [quotations].

young man' but plague take them they would always put in the hateful words 'for a young man.'" The next day, he got a chance to handle a case on his own for the first time. Judge Shortridge appointed him to defend a man accused of assaulting his wife with intent to kill. Roberts examined the witnesses himself, including the wife who took the stand "with her eyes bruised up and blood shotten." The couple's daughter testified against her father who was found guilty.⁴³

Roberts continued to work for Chilton and Brown until the summer of 1838, but began to grow restless with a subordinate role. When he was not assisting the two experienced lawyers with cases, he studied Blackstone and other legal texts. He tried to break the monotony of his law studies by writing literature, penning a short story called "The Soldier's Feast," which he managed to have published in a literary periodical called *The Southern Register*. His main objective in writing this tale (aside from boredom with the law) was to improve his style, and he planned to write more for his own amusement. The drudgery of being a legal apprentice of sorts caused him to speculate, "Who knows but what I shall cast aside the dull law book and pick up the fantastic pen of a tale-writer?" Wisely, he decided to stay with the law.⁴⁴

Now that his law career was finally in motion, Roberts took care to order his personal life as well. He had known Frances Edwards for some time and had probably been courting her as early as the summer of 1835, while he was still a student at the University of Alabama. Her father, Peter Edwards, lived within a mile of the Roberts farm. The Edwards had been friends with Ralph Lowe during his time in Ashville, and Frances had studied English grammar under his tutelage. Roberts later wrote than in marrying Frances, he was redeeming "a long standing

⁴³ Roberts to Miller, October 21, 1837, Miller Papers.

⁴⁴ Ibid.

pledge.” The two were married in Ashville on December 12, 1837. They were married for forty-six years, until her death in 1883, and had seven children.⁴⁵

After the wedding, the couple returned to Talladega, where Roberts continued to practice and study law under the guidance of Chilton and Brown. They remained there less than a year, returning in August 1838 to Ashville where Roberts started his own law office. In a short amount of time, he built a respectable practice. He argued cases in Talladega, DeKalb, and Cherokee counties, as well as his home county of St. Clair. As his law practice grew, so did his standing in the community. In the fall of 1838, Roberts was elected to be colonel of St. Clair County’s militia regiment. Leadership roles in antebellum militia regiments were often ceremonial, but Roberts took his role very seriously. He studied Winfield Scott’s tactics manual and participated in a drill at Springville, about twenty miles southwest of Ashville, in the fall of 1839. While Roberts’s law practice and standing in the community continued to grow, his family did as well. On October 30, 1839, Frances gave birth to the couple’s first child, Sarah Jane Roberts.⁴⁶

While Roberts established himself as a successful lawyer in Ashville during 1839 and 1840, the ambitious young man soon turned his attention to a political career. His visits to the state capital during his college years had given him a curiosity about the political process as well as a desire to participate in it. He paid particular attention to politics when studying law with Chilton “upon the idea, that to make a good lawyer, one must understand the government that makes the laws.” Consequently, he decided to run for the state legislature in the fall of 1840. Roberts’s opponent was the incumbent, John Massie. Under Alabama’s 1819 constitution,

⁴⁵ Roberts, “Memoirs;” Lowe to Roberts, May 18, 1850, Roberts Papers.

⁴⁶ Roberts, “Memoirs,” Roberts Papers

legislative terms were one year. Massie had served in the state house for thirteen of the previous fourteen years. Undaunted, Roberts campaigned throughout St. Clair County, and on election-day, August 3, 1840, his vote count nearly tripled that of his opponent. Roberts was the first lawyer elected to the state legislature from St. Clair County. He attributed his victory to his “organization and attention to the militia as well as having devoted some attention to the principles of our government.”⁴⁷

When he returned to Tuscaloosa in the fall of 1840 for the first session of the new legislature, Roberts was a young man on the rise. Up to this point in his life, he had succeeded in every endeavor he had undertaken. He soon discovered that success in the state legislature was a more difficult proposition than those he had previously conquered. By his own account, Roberts was not a successful legislator. He sponsored no bills that passed or that were even brought to the floor. No bills regarding St. Clair County were passed during his term of office. There are no accounts of speeches he made on the floor of the legislature. In short, his term as a representative from St. Clair County was a failure. Roberts attributed his lack of influence to the fact that he represented a poor mountain county. Politics in Alabama, from its territorial days to Roberts’s time, had been a struggle between factions in different portions of the state. During the 1840s, the center of political power was in the Black Belt counties of central Alabama, and the Tennessee River Valley of northern Alabama. Looking back on his time in the state legislature, Roberts would write, “I learned in this short public career one important fact – that the estimate placed upon a young member depended very much upon the county he represented, unless he had very brilliant parts as a speaker.”⁴⁸

⁴⁷ Roberts, “Memoirs,” [first quotation]; Oran Milo Roberts, “Description of Certificate of Election to Alabama Legislature,” Roberts Papers [second quotation].

⁴⁸ Roberts, “Description of Certificate of Election to Alabama Legislature,” Roberts Papers.

Although his experience as a legislator was neither memorable nor pleasant, Roberts's time in office was not altogether fruitless. As a lawyer, he took a particular interest in judicial matters and helped campaign for several successful candidates for the bench. He was also appointed to Alabama's Democratic Convention in 1841 and assisted in having Benjamin Fitzpatrick win the party's nomination for governor. Roberts began learning the machinations of state party politics during this time, an education he would put to good use later. He was also exposed to the views of politicians from different parts of the state including the fire-eater William L. Yancey, a man whose views he would soon mirror.⁴⁹

After the summer legislative session of 1841, Roberts went home to Ashville and never returned to Tuscaloosa as a representative of St. Clair County again. He declined to run for re-election that fall and instead, made plans to move his young family to Texas. His unhappy tenure in the state legislature was the first time in his adult life he had experienced failure. However, he learned what he considered to be several valuable lessons. He realized that he was not an orator, and that his talents lay in the practice of law or on the bench. He also convinced himself that if he was going to be successful in public life, Ashville would never afford him the prestige to advance his career. At the age of twenty-six, Roberts decided he had outgrown his childhood home. On October 8, 1841, he, with his wife, child, and mother, left for Texas.⁵⁰

Although he never returned to Alabama to live, Roberts's childhood home had left an indelible mark upon him. As a child, college student, and young lawyer, he exhibited several traits that would come to characterize him later in his public career. As a child he displayed tenacity and singularity of purpose in pursuing an education. Throughout Roberts's life he would

⁴⁹ Ibid.

⁵⁰ Ibid.; Roberts, "Description of Alabama Law License," Roberts Papers..

display a similar focus in attaining goals he set for himself or for his state. He would rarely fail to obtain what he went after. As a college student, he learned how to make friends with like-minded men that would help him accomplish his goals. He also learned how to lead others when a favorable situation presented itself. As a young lawyer he learned his strengths as well as his limitations. He also learned that if he wanted a career that went beyond that of a country lawyer, he needed to live in an area that afforded him opportunities for advancement. Although he would henceforth be associated with Texas, the lessons learned by Oran Milo Roberts in Alabama would guide him throughout his long life.

CHAPTER 3: "I WOULD WISH TO BE A LAWYER" 1841 – 1850

Oran M. Roberts and his family arrived in Texas after a six-week journey from Alabama on November 18, 1841. In less than ten years he would go from being a young lawyer to serving as district judge over a large section of East Texas. At first, disappointed by his stint as an Alabama legislator, Roberts avoided elective office. He focused on learning the legal system of the Republic, and after 1845, the State of Texas. However, the national crisis that roiled the nation in 1850 convinced him to seek elective office. During this time, Roberts continued to display the traits he had first exhibited in Alabama: he was reflective, social, quickly made new, lasting friendships, and was a stickler for the rules. Roberts's early career in San Augustine County, Texas, laid the foundation for his future political success.

By the first of December, 1841, the Roberts family had settled in San Augustine, Texas. Several factors led Roberts to Texas. His college friend, Washington D. Miller, had moved to Gonzales, Texas, in 1837, shortly after graduation from the University of Alabama. Miller served in the congress of the Republic of Texas during 1840 and by 1841 was serving as President Sam Houston's personal secretary. Perhaps Roberts looked at his friend's rapid advancement in politics and society and decided he could emulate that success in the law.¹

He also had family in the area. Nathan J. Davis, a native of South Carolina, had married Margaret Roberts' older sister, Jane Elizabeth Ewing, in 1796. The Davis's moved to Kentucky at the same time Oba Roberts did in the 1790s. Instead of returning to South Carolina, however, Nathan moved the family to Illinois. From there, they moved to Arkansas and eventually to Texas, where he settled in 1822. He received a land grant from the Mexican government and

¹ "Miller, Washington D.," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/fmi29>), accessed September 22, 2014; Roberts, "Description of Texas Law License," Roberts Papers.

became the first alcalde of the Ayish Bayou District in 1827. By 1841, the Davis's were living in southeastern Shelby County, fifteen or twenty miles northeast of the town of San Augustine. Although there were many good reasons for Oran Roberts to settle in this part of East Texas, reuniting his mother with her sister must have been at least a small inducement.²

Perhaps the most important factor that led Roberts to choose San Augustine as a residence was its location and reputation as “the great legal and political centre [sic] of Eastern Texas.” In 1841, San Augustine, in combination with Nacogdoches, a town about twenty miles to the west, was one of the leading commercial centers in East Texas. Situated along the old Spanish Camino Real, San Augustine profited from its location beside this important highway and attracted many new settlers entering Texas for the first time. Sam Houston had lived there briefly and served as San Augustine's delegate to the Convention of 1833, a meeting called to protest Mexican anti-immigration laws among other things. By the time Roberts arrived in December of 1841, San Augustine was home to a number of able lawyers and future statesmen. The San Augustine bar included future Texas governor James Pinckney Henderson, future Texas Supreme Court Chief Justice Royall T. Wheeler, and future U.S. representative Richardson Scurry, among others. At the time of Roberts' arrival in San Augustine, William B. Ochiltree was the district judge, and Royal T. Wheeler was district attorney. In addition to a number of capable lawyers, San Augustine was also home to a young doctor from Tennessee named John S. Ford. Ford and Roberts would remain lifelong friends and collaborators well into their old age. After his experience in the Alabama legislature, Roberts had decided that a young man seeking

²Roberts, “Description of Texas Law License,” Roberts Papers; George Louis Crocket, *Two Centuries in East Texas: A History of San Augustine County and Surrounding Territory From 1685 to the Present Time* (Dallas: Southwest Press, 1932) , 82, 93.

advancement would have trouble doing so in a poor locality. San Augustine thus represented a more appropriate and noteworthy field of endeavors for him than Ashville, Alabama, had.³

Roberts spent the next two months studying the laws of the Republic of Texas in preparation for applying for a law license. In February of 1842, he applied to Judge Ochiltree for a license to practice law. The process for obtaining said license was far more informal in 1842 than it is today. Ochiltree appointed Henderson and Wheeler to examine Roberts in order to ascertain his knowledge of Texas law and competence to practice. According to Roberts's memoirs, the examination was very thorough, and he was duly impressed with both of his examiners. This legal examination would be the beginning of a lifelong friendship with both men. They would both play the role of friend, mentor, and promoter in Roberts's life. Henderson and Wheeler were impressed with Roberts's knowledge of the Texas legal code, especially given his short time in the Republic. Judge Ochiltree granted him a license to practice law in Texas on February 7, 1842.⁴

Roberts's account of this incident in his memoirs allows one to ascertain certain aspects of his character, even at this early date. He was obviously an intelligent man who was able to digest information quickly. He also took knowledge of the legal code seriously and was determined to master it in order to be a good lawyer. In his memoirs, Roberts mentioned that during the two months he was studying Texas law, he made few acquaintances. Similar to his first semester at the University of Alabama, Roberts focused on his studies before engaging in social activities. After he passed the bar exam, his two examiners, Henderson and Wheeler,

³Vista K. McCroskey, "San Augustine, TX (San Augustine County)," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/hgs01>), accessed November 17, 2011; Roberts, "Description of Texas Law License," Roberts Papers [quotation]; Richard B. McCaslin, *Fighting Stock: John S. "Rip" Ford of Texas* (Ft. Worth: TCU Press, 2011), 4 - 10; San Augustine, *The Red-Lander*, May 12, 1842.

⁴ Roberts, "Description of Texas Law License," Roberts Papers.

became lifelong friends and political mentors of Roberts. Throughout the rest of his career, both of these men would be influential in promoting Oran M. Roberts and encouraging him to run for office. Again, Roberts appears to have been the kind of person who entered a new situation, sat back and assessed his surroundings, identified influential people, and became their friend.⁵

After receiving his license to practice law, Roberts started a private practice, opening an office “near Main St.” in San Augustine. He had apparently brought some wealth to Texas with him. According to San Augustine County tax rolls for 1842, Roberts owned three lots in the town of San Augustine, one slave over ten years of age and four packs of playing cards. By 1843, he had increased his holdings in San Augustine to five lots. His family continued to grow in 1843 as well, with the birth of his first son Oba on October 12.⁶

In addition to his growing law practice, Roberts took notice of local affairs, frequently writing letters to the editor of San Augustine’s newspaper, *The Red-Lander*. *The Red-Lander* had been established in 1838 by Isaac Parker. In 1841, Parker sold his press to Alanson Wyllys Canfield, an immigrant to Texas from Connecticut. Canfield hired locals Henry Sublett and J.A. Whittlesey as assistant editors and published his paper weekly, staunchly defending Houston and initially calling for tariff reform. Although Roberts avoided getting involved in politics at this point in his career, Canfield’s arrogance and bombastic style of writing angered him. Particularly odious to the young lawyer was the voice Canfield gave, via his paper, to Marcus A. Montrose. Montrose had been born in Scotland and educated at the University of Edinburgh as a Presbyterian minister. He moved to San Augustine in the spring of 1842 and quickly became

⁵ Ibid.

⁶ County Tax Rolls, San Augustine County, 1842, 1843; Campbell, *Gone to Texas*, 231; San Augustine, *The Red-Lander*, May 12, 1842[quotation]. The slave listed in the tax rolls is not named, but presumably is Prince, Roberts’s slave since childhood.

president of the newly chartered University of San Augustine. Under his leadership, the school became associated with the Presbyterians and denied meaningful influence to other denominations. San Augustine's Methodists responded by establishing their own school, Wesleyan College. Montrose frequently attacked the Methodists in the pages of *The Red-Lander* and caused a considerable amount of sectarian strife in the town.⁷

This aroused Roberts's ire. The town was hardly large enough to support one college, must less two, and he probably realized that education in San Augustine would be better served by one strong institution. In addition, his non-denominational upbringing had instilled in him a distrust of denominations and a genuine dislike of sectarian factionalism. These factors encouraged Roberts to become involved in the dispute, and he wrote a letter to the editor of *The Red-Lander* under the pen name "Randolph." After lecturing Canfield on the duties of the press in a free society, Roberts wrote, "It is now unnecessary to decide whether those efforts have made you notorious as a dignified, honorable editor, or a frisky catchpenny proprietor." Roberts accused Canfield of dissimulation, writing, "Review your columns upon the subject of the tariff. At one time you opposed it with zeal. Your zeal declined for a season, you sniffed the air of public opinion (or rather of those who, you thought, controlled it) and now you are its zealous advocate." Roberts reserved his worst criticism of Canfield, however, for his alliance with Montrose. He stated, "Upon what principle will you pretend to justify the selling of your press to M.A. Montrose? You sold to him the use of your paper for the purpose of discussing a subject of public importance, and you refused to publish pieces in opposition, on account of that sale."

⁷ Marilyn McAdams Sibley, *Lone Stars and State Gazettes: Texas Newspapers Before the Civil War* (College Station: Texas A & M University Press, 1983) 158-59.

Unsurprisingly, Canfield refused to publish this letter to the editor, and therefore “went unscourged.”⁸

An interest in affairs such as this showed that although Roberts was not actively pursuing a political career at that time, he had not lost his interest in public affairs nor his tenacity when he believed he was right. He seemed to continue to display a characteristic he had earlier exhibited at the University of Alabama. When placed in a new situation, Roberts preferred to wait, watch, become involved when circumstances were propitious, and eventually take a leadership role upon the request of his peers. At this stage of his career in Texas, he was not quite ready to take the reins of public confidence. Writing to his friend Miller, he stated:

I do not engage in politics farther than to form an express and independent opinion upon the important subjects that affect our national prosperity. I would wish to be a lawyer. And although I had many private solicitations from my friends to offer for Congress, my circumstances and situation as well as inclination forbade it.⁹

Even while disclaiming any interest in political involvement, however, Roberts maintained a close watch on political developments. “For any one who has enlightened views of government, the present is a propitious period to commence a political career in Texas,” he wrote to Miller. “Never did an aspiring patriot behold a brighter prospect for the testing of his intellect and energies.”¹⁰ For now, Roberts saw his path to prominence in the law, but he kept a keen eye on politics in case a favorable opportunity presented itself.

⁸ O.M. Roberts, “Writings and Acts of O.M. Roberts,” Roberts Papers. Not only did Roberts let Canfield know what he thought about him, he made his views known to friends as well. He wrote to Washington D. Miller, “Were it [*The Red-Lander*] entirely under Sublett’s management we would have a good paper. Canfield will have some hand in it; who is as excellent as an enterprizing [sic] publisher as he is an imbecile in the editorial department.” Roberts to Miller, September 14, 1843, Miller Papers.

⁹ Roberts to Miller, September 14, 1843, Miller Papers.

¹⁰ Ibid.

Although he declined to run for office, he did not eschew politics completely. On October 2, 1843, a group of citizens met in San Augustine to recommend candidates for president and vice-president of the Republic of Texas in the fall elections of 1844. The incumbent president, Houston, was extremely popular in San Augustine, but under the laws of the Republic of Texas, he was unable to succeed himself. The citizens' meeting unanimously chose Anson Jones of Brazoria, a Houston man, as their nominee for president. They also chose local attorney and former speaker of the Texas House of Representatives Kenneth L. Anderson as their vice-presidential nominee. Before adjourning, the meeting appointed a committee of five to "prepare an address to the citizens of this Republic, setting forth the merits and claims of the nominees." Roberts was appointed to that committee.¹¹

On February 6 of that year, President Houston appointed Roberts to be the new district attorney of Texas's Fifth Judicial District. Roberts was surprised by the appointment as he had not petitioned for it. His friend Henry W. Sublett and another lawyer named Charlton Payne were applicants for the job, and Roberts only learned of the appointment when San Augustine's representative, Nicholas Darnell, returned from Austin and told him. Although Roberts and Houston did not know each other well, they had been introduced in December 1842 at Washington-on-the Brazos. Miller was Houston's private secretary and likely recommended his college friend to the president when the previous district attorney, Kenneth L. Anderson, resigned the post at the end of 1843 in preparation for his vice-presidential campaign. Roberts took the oath of office on March 18, 1844.¹²

¹¹ San Augustine, *The Red-Lander*, October 7, 1843.

¹² Records of District Five Court, Spring Session, 1844, San Augustine County Courthouse, District Clerk's Office, San Augustine, TX.

The next day, March 19, 1844, Houston wrote Roberts and asked him to look into several lawsuits he had outstanding in East Texas. Houston had earlier entrusted his legal business in east Texas to the San Augustine law firm of Charles M. Gould and David S. Kaufman and was dissatisfied with their handling of his affairs, as well as what he perceived to be their exorbitant fees. This letter is revealing for a number of reasons beyond the irony of these two men's opposition to each other years later during the secession crisis. The fact that Houston wrote Roberts the day after the latter was sworn in as district attorney may indicate that Roberts's appointment to that post was due to his being able to manage Houston's personal affairs in East Texas. It may simply indicate that Miller, whom Houston trusted, recommended his friend as a capable lawyer able to handle complex land claims. The letter reveals a familiarity between the two men, and Houston included many personal details. Houston wrote Roberts, "I hope you will soon write to me, and tell me of any thing which I ought to do, in my affairs of business. I am poor, and must try and repair my matters as far as I can." Houston signed the letter, "Truly yr friend, Sam Houston." This correspondence between Houston and Roberts also shows that Roberts was skilled in cultivating friendships with men in positions of authority and influence. Although Roberts had evidently established himself as a competent and effective lawyer at this point, he also seemed to be aware of the importance of making strategic alliances.¹³

The Fifth Judicial District in 1844 was expansive, consisting of Jasper, Newton, Sabine, Shelby, San Augustine, Nacogdoches, Angelina, Cherokee, Henderson, Kaufman, Rusk, Houston, and Anderson counties. At the time, the Sabine River was an international border, and one of the biggest problems Roberts faced as district attorney was enforcing the collection of tariff duties. Tariff duties had become a divisive issue in the politics of the Republic of Texas.

¹³ Records of District Five Court, Spring Session, 1844, San Augustine County Courthouse, District Clerk's Office, San Augustine, TX; Sam Houston to Roberts, March 19, 1844, Roberts Papers.

During Mirabeau B. Lamar's presidency, in 1840, Congress passed a tariff act which placed low duties of 15 percent on most imports. However, as the Lamar administration continued to spend money fighting Indians and Mexico, tariff duties were raised to about 50 percent in 1841. When Houston resumed the presidency in 1842, he again urged Congress to increase tariff duties. Generally speaking, eastern Texas strongly opposed the tariff and sought to avoid paying duties whenever possible. The fact that there was only one custom house along the eastern border of the republic, in San Augustine, meant that the law was enforced only in that town. This created strong opposition to the tariff in San Augustine, and congressmen from that town tried unsuccessfully to get the tariff repealed. The duties went uncollected all along the eastern border of Texas, but San Augustine, because of the presence of the customs house, paid it. This, argued local merchants, placed an unfair burden upon them.¹⁴

Roberts was personally opposed to a protective tariff. His views on this subject had been made clear in his unpublished editorial attacking Canfield. However, as district attorney he believed that the tariff should be enforced as long as it was the law of the Republic of Texas, stating, "If the system is to be continued it must be changed in the mode of collection so as to make all contribute equally. Custom-houses must be established along the line. It is inevitable – there is no other remedy." His attitude toward a tariff policy he disagreed with was much like his attitude toward faculty rules at the University of Alabama.¹⁵

Having learned from Ochiltree (then serving as Secretary of the Treasury) that the tariff would not be repealed or modified any time during 1844 or 1845, Roberts made a concerted

¹⁴ Asa Kyrus Christian, "The Tariff History of the Republic of Texas," *Southwestern Historical Quarterly* 20 (April, 1917), 339-340; Oran Milo Roberts, "Commission as District Attorney," Roberts Papers; Roberts to Miller, September 14, 1843, Miller Papers.

¹⁵ Roberts to Miller, September 14, 1843, Miller Papers.

effort as district attorney to enforce it. He tightened enforcement and prosecuted customs officials who broke the law. One of those deemed indebted to the Republic was Sanford Holman, former Collector of Customs for San Augustine. Although Holman died in 1843, by summer of 1845 the Comptroller and acting Secretary of Treasury of the Republic of Texas, James B. Shaw, was cooperating with Roberts in an attempt to recover money from Holman's estate.¹⁶

In addition to his work as district attorney, Roberts continued to grow his private practice. Since most of his energies were spent in his capacity as district attorney, he went in to partnership with his friend Henry W. Sublett. The partnership went into effect on June 1, 1844, and the two were careful to note that the partnership "did not extend to criminal cases." The majority of civil cases Roberts handled as a private attorney during this time had to do with the morass of conflicting land claims in eastern Texas left over from Spanish and Mexican rule. He continued to manage legal matters concerning land claims for Houston, as well as for some of his relatives from Alabama who wished to move to Texas.¹⁷

Roberts also took a keen interest in the most important issue facing Texans during 1844 and 1845, that of annexation to the United States. Shortly after winning independence from Mexico in 1836, Texas sought annexation. However, the political climate in the United States at that time was not favorable to admitting a new slave state, and President Andrew Jackson was able to do little except recognize the Republic of Texas before he left office in March of 1837. Jackson's successor, Martin Van Buren, spent most of his administration battling the Panic of 1837, and annexation, at least from the perspective of the United States government, was

¹⁶ William P. Ochiltree to Roberts, December 17, 1844, James B. Shaw to Roberts, July 16, 1845, Roberts Papers.

¹⁷ San Augustine, *The Red-Lander*, October 9, 1845 [quotation]; Houston to Roberts, March 19, 1845; Levi C. Roberts to Roberts, October 8, 1845, Roberts Papers.

shelved. The issue became relevant again during the presidency of John Tyler. Tyler's secretary of state, John C. Calhoun, signed a treaty of annexation with the Republic of Texas during April of 1844. However, the United States Senate voted against the treaty on June 8. Annexation became the major issue during the subsequent presidential campaign of 1844, with Democrat James K. Polk in favor of acquiring Texas while Whig Henry Clay was opposed. Polk won, and annexation seemed inevitable.¹⁸

Texas was annexed by a joint resolution of the United States Congress in early March of 1845, only days before Polk was inaugurated. Although most Texans preferred annexation, a significant minority within the Republic was opposed to it for a number of reasons. Although the joint resolution had passed Congress, certain conditions remained to be worked out between Texas and the United States, and some were concerned that the United States Senate would once again derail the process. In addition, many Texans believed that the president of the Republic of Texas, Anson Jones, was opposed to annexation. As a result, communities throughout the Republic began holding meetings during the spring and summer of 1845 to encourage President Jones to call for an election of delegates to a convention which would consider annexation.¹⁹

The citizens of San Augustine held one of these mass meetings during the early summer of 1845, and Roberts addressed the gathering, speaking in favor of annexation. He framed the issue of annexation as a question of republicanism versus monarchy and encouraged his fellow Texans to join the United States in order to help protect liberty. He said:

There she [the United States] stands alone, at once the advocate and proof of free government, and against her are arrayed in principle the combined potentates of Europe. This is the grand issue which the political world now presents. Which

¹⁸ Joel Silbey, *Storm Over Texas: The Annexation Controversy and the Road to Civil War* (New York: Oxford University Press, 2005), 52 – 70; Campbell, *Gone to Texas*, 183-184.

¹⁹ Ochiltree to Roberts, March 29, 1845, Roberts Papers.

side will Texas take? Which side will you take? Put the whole monarchical world against Republican America, and palsied be this arm if it strike not for the United States. This war of principle ever has been and is being waged – and the United States, having cradled us in Republicanism, calls upon us to aid her in its support. Shall we hearken to the call, or shall we turn a deaf ear to the voice of our native land? Will you yield yourselves to the affectionate embraces of a parent, or will you thrust yourselves into the iron-grasp of the eternal enemies of a Republic?²⁰

This passionate speech was one of Roberts' first attempts to influence mass public opinion in Texas, and as such, it lacked the clarity and precision of his later political speeches. Instead of addressing factual issues regarding annexation such as military protection, and economic security, Roberts constructed a straw man of a hostile world seeking to eliminate a fragile republic, a republic that now relied upon annexing a smaller, weaker, republic to survive. Perhaps he was responding to British attempts to forestall Texas's annexation by the United States. The British government wanted Texas to remain independent and had encouraged Mexico to recognize this independence under the condition that Texas not be annexed to another country. Following this speech, Roberts was called upon to draft a series of resolutions to be submitted to President Jones. Unlike his earlier speech, the resolutions adopted by the San Augustine citizens' meeting were brief and concise. They simply expressed the desire of the people of that locality to accept annexation and join the United States.²¹

After receiving reports of similar meetings all over the Republic of Texas, President Jones called the Texas Congress into session on June 16 to consider annexation. That body called for an election of delegates to vote on annexation and draft a state constitution. The delegates met in Austin on July 4, 1845, where Jones placed a simple choice before them: annexation by

²⁰ Oran Milo Roberts, "Speech on Annexation and Resolutions Drawn in Favour of it," "Writings and Acts of O.M. Roberts," Roberts Papers.

²¹ Roberts, "Speech on Annexation and Resolutions Drawn in Favour of it," Writings and Acts of O.M. Roberts, Roberts Papers; Campbell, *Gone to Texas*, 180-181.

the United States or independence recognized by Mexico. The convention voted for annexation and began to draft a state constitution.²²

On that same day, Roberts spoke at a Fourth of July celebration in San Augustine. He began this speech with a lengthy history lesson, tracing the development of America from colonization through the Revolution and Washington's administration. He clearly viewed annexation as a foregone conclusion at this point, declaring, "Being now in the act of placing our national honor and resources into the common repository of the American Union, of taking our station as a joint-heir of the rich inheritance and of reuniting our destinies, forever, it is fit that we shall join with our brethren in the celebration of this day." More than three weeks after delivering this speech, seven companies of United States dragoons under Colonel David Twiggs passed through San Augustine on their way to Corpus Christi. Even though Texas would not formally accept annexation until later in the year, Roberts viewed it as a *fait accompli* at this point, writing, "This act seals forever the annexation of Texas to the American Union and may be the first military movement of a war involving both America and Europe [underlined in original]."²³

On a personal level, Roberts continued to prosper during 1845. That year he bought 329 acres of land in San Augustine County worth \$560 dollars. He also owned fifteen head of cattle and had increased his holdings in the town of San Augustine to six lots worth \$1,500. While his duties as district attorney kept him busy, he stayed abreast of events outside San Augustine County. He continued to communicate with classmates from the University of Alabama, many

²² Campbell, *Gone to Texas*, 184.

²³ Oran Milo Roberts, "4th of July Speech," July 4, 1845, [first quotation], "Journal Entry," July 28, 1845, Roberts Papers [second quotation].

of whom had moved to Texas. He turned thirty years old that summer, and took the time to wax philosophic on this occasion, writing in his journal:

This day I was thirty years of age. Most of my life has been spent in rather a desultory unsettled manner, without any particular star to light my path. I have perhaps about learned how to lead. In this process my lot is not peculiar. This world has continually been struggling through error, superstition, barbarity, and ignorance to arrive at its present condition. Nor is it free from them yet. Still its progress and advancement in all the arts and sciences are predicated upon natural laws and fixed principles and for the most part in the future will not be forced to feel its way in the dark as it has done in former times.²⁴

Roberts's friend and mentor, James Pinckney Henderson, was a delegate to Texas's constitutional convention and kept Roberts apprised of developments. Of particular interest to Roberts was the structure of the state judiciary. Henderson provided him with details about the structure of the courts as well as salaries for judges. Perhaps Henderson had already decided to run for governor and was thinking about appointing his protégé as district judge. The convention adjourned in August 1845, and in October of that year Texans voted overwhelmingly to accept annexation and to approve the new state constitution.²⁵

In addition to his duties as district attorney and interest in annexation, education occupied much of Roberts's energies during the summer of 1845. In June of that year, Marcus Montrose, whom Roberts despised, resigned as president of the University of San Augustine. Roberts began teaching law classes and by July, he was the president of the board of trustees of the school. He tried to heal the sectarian bitterness engendered by the Montrose administration by reorganizing the board to represent a broader array of Protestant denominations, particularly the Methodists who were the majority in San Augustine. Unfortunately, the divisions caused by Montrose and

²⁴ Ochiltree to Roberts, December 17, 1844, March 29, 1845, Miller to Roberts, October 12, 1844, Oran Milo Roberts, "Journal Entry," July 9, 1845, Roberts Papers.

²⁵ James P. Henderson to Roberts, July 8 and 20, 1845, Roberts Papers; Campbell, *Gone to Texas*, 184.

the presence of another college (Wesleyan College) in such a small town were too difficult to overcome, and the university closed in 1847.²⁶

In November 1845, Texans went back to the polls to elect their first governor and state legislature. Henderson was elected governor, but did not take office immediately. Texas's new state constitution was accepted by the United States Congress on December 29, 1845, and Texas officially became one of the United States. However, a formal transfer of power to the new state government did not take place until February 19, 1846, when Republic of Texas President Anson Jones handed the reins of government to Governor Henderson. Texas's new state constitution made important changes to the judicial system. Under the constitution of the Republic of Texas, the Supreme Court had consisted of a chief justice, and the district judges who made up the rest of the bench. Henderson favored a plan to create a separate Supreme Court consisting of three judges, appointed by the governor to six-year terms and confirmed by two-thirds of the state senate. This plan was adopted by the convention and written into the new state constitution, although subsequent amendments would make Supreme Court justice an elected position.²⁷

In March of 1846, Governor Henderson appointed John Hemphill to be chief justice, and Abner Lipscomb and Royall T. Wheeler as associate justices. At the time of his appointment to the Supreme Court, Wheeler was the district judge of the Fifth Judicial District. This created a vacancy, and shortly thereafter, on April 18, 1846, Henderson appointed Roberts to the vacancy in the Fifth Judicial District. Henderson and Wheeler were old friends from San Augustine and

²⁶ Louise Kelly, "Montrose, Marcus A.," *Handbook of Texas Online*(<http://www.tshaonline.org/handbook/online/articles/fmo15>), accessed December 19, 2011; Nancy Beck Young, "University of San Augustine," *Handbook of Texas Online*(<http://www.tshaonline.org/handbook/online/articles/kcu06>), accessed November 18, 2011; San Augustine, Texas, *The Red-Lander*, San Augustine, TX, July 31, 1847.

²⁷ Campbell, *Gone to Texas*, 185-186; *Journals of the Convention Assembled at the City of Austin on the Fourth of July, 1845, For the Purpose of Framing a Constitution for the State of Texas* (Austin: Miner & Cruger, 1845), 16-17, 347-350; Haley, *The Texas Supreme Court*, 53-54; Henderson to Roberts, July 8 and 20, 1845, July 20, 1845, Roberts Papers.

again, Roberts's connections with people in power worked to his advantage. According to Roberts, Henderson, before even leaving for Austin to be inaugurated as governor, had determined to appoint Wheeler to the Supreme Court and Roberts to take his place as district judge. In addition to having the confidence of Governor Henderson, Roberts's former law partner in San Augustine, Henry W. Sublett, represented his interests from a seat in the state legislature. Sublett, as a member of the Senate Judiciary Committee, worked to secure Senate confirmation of Roberts's appointment as district judge. Shortly after Governor Henderson forwarded Roberts's appointment to the Senate, Sublett wrote, "Your prospects are certain – there will be no dissenting vote against your nomination."²⁸

The position of district judge brought Roberts a substantial salary of \$1,750 per year. The increase in salary appears to have allowed him to increase his land holdings. In addition to his San Augustine town lots and an 87-acre farm just outside the San Augustine town limits, he acquired 320 acres in Nacogdoches County, and 89 acres in Shelby County, as well as a horse. He also still owned one slave. The extra income came at a good time because the Roberts family was continuing to grow. On January 3, 1846, Frances Roberts gave birth to the couple's third child, Robert Pinckney Roberts. At this point, Roberts was continuing to climb the ladder of success in East Texas.²⁹

Roberts became a district judge just as the United States was preparing to go to war with Mexico. Despite his new duties, he continued to stay informed on the progress of events. Sublett was a frequent source of information on the war, writing on May 2, "At this time war is the order

²⁸ Oran Milo Roberts, "Notes on District Judge Commission," Henry W. Sublett to Roberts, April 1, 1846, Roberts Papers.

²⁹ County Tax Rolls, San Augustine County, 1846; San Augustine, Texas, *The Red-Lander*, March 6, 1847.

of the day – there is scarcely a voice to be heard, but what is clamoring for war.” He continued, “It seems that General [Zachary] Taylor has suffered himself to be surrounded by 7,000 Mexicans.” Although Sublett vastly exaggerated the size of the Mexican force, he was accurate about the fact that a Mexican army had crossed the Rio Grande and attacked Taylor’s force. Less than two weeks later, on May 13, 1846, the United States Congress declared war on Mexico.

Several elected officials in Texas, including Governor Henderson, resigned their offices to fight in Mexico. Although Roberts remained on the bench, he remained personally interested in the war due to the fact that his older brother, Ford, served as a captain in the Texas Mounted Volunteers. Ford Roberts participated in the capture of Monterrey in September of 1846 but became sick and went home to San Augustine, arriving in November, still very ill. He eventually recovered, and several prominent citizens wanted him to serve as sheriff in Shelby County the next spring. He declined the appointment.³⁰

While the United States fought Mexico, Roberts was beginning a five year term on the District Five bench. His job was rendered difficult by several factors. Printed copies of the new state constitution and statutes passed by the state legislature were not easily accessible. His old law partner, Sublett, wrote that “The members of the present legislature have done themselves no credit – our laws will present a very uncooth [sic] mass of legislation.” To make matters worse, Supreme Court decisions were not published in book form until 1848. Roberts had to rely on newspapers for the text of statutes and Supreme Court decisions. He was also not hesitant to ask Governor Henderson’s Secretary of State, David G. Burnet, to furnish him with printed copies of statutes passed by the state legislature. In spite of these difficulties, Roberts did his best to keep informed, carrying in his saddlebags notes on Blackstone, Thomas Starkie’s popular work on

³⁰ Campbell, *Gone to Texas*, 187; J. Randal to Roberts, November 26, 1846; A. W. O. Hicks to Roberts, April 11, 1847, Roberts Papers.

legal evidence, and Joseph Story's commentaries on equity, as well as newspaper clippings and notes on legal matters.³¹

Roberts enjoyed a good reputation as a judge. Other judges wrote to him frequently to obtain his opinion on judicial matters. An example of the esteem in which he was held came from his friend, Supreme Court Associate Justice Royall T. Wheeler. Wheeler wrote, "I hear of your increasing reputation with as much pride and satisfaction as if it were my own. I often hear your conduct put in contrast with that of other Judges in a manner exceedingly favorable to you."³²

As judge, Roberts ruled on a wide variety of issues such as Spanish land claims, contested wills and other civil matters. On several occasions, he presided over trials involving the crime of card-playing. He usually rendered hefty fines to be paid in these cases. One wonders if he did so with a sense of irony, considering the fact that playing cards were among his few possessions when he moved to Texas.³³

During Roberts's time as District Five judge, it was customary for judges to exchange districts and preside over each other's caseloads. Judge Roberts enjoyed a good reputation among the lawyers, judges, and juries of the districts over which he presided. This swapping of districts gave Roberts a good working knowledge of all of East Texas and made him a household name throughout that part of the state. During this time he developed more contacts and grew a reputation that later aided his entry into Texas politics. He had begun developing this skill, which modern Americans call "networking," at the University of Alabama. He became a master of it

³¹ Henry W. Sublett to Roberts, May 2, 1846 [quotation], David G. Burnet to Roberts, August 19, 1846 Oran Milo Roberts, "Notebook Kept While Studying Law in Alabama," Roberts Papers.

³² Royall T. Wheeler to Roberts, February 23, 1847, Roberts Papers.

³³ W.D. Hill to Roberts, September 12, 1846, Roberts Papers; Records of District Five Court, Spring Session, 1847, San Augustine County Courthouse, San Augustine, Texas.

during his time as district judge. One example of the praise he earned from his peers came from the bar of Harrison County in northeastern Texas:

Judge Roberts, while upon the Harrison bench, has uniformly exhibited those solid qualities and attainments, which enter into our ideas of the able jurist and the impartial judge. Cool and dispassionate he patiently investigates the cause before him, and brings to its decision a knowledge of the law, sufficiently extensive and varied to accomplish the ends of justice.³⁴

In addition to his duties on the bench, Roberts also remained active in promoting higher education in San Augustine. In 1847, both local colleges, the University of San Augustine and Wesleyan College, closed. Roberts, a former trustee of the University of San Augustine, was instrumental in uniting the two schools under a new board of trustees and giving the new school the nonsectarian name University of Eastern Texas. The new college was to be a purely secular one, as religious instruction was prohibited, and the school's charter prohibited more than three members of the same denomination serving on the Board of Trustees. Roberts was elected president of the Board, and soon dispatched an agent, A. W. Arrington, to travel the United States, raise donations, and buy textbooks for the school. Arrington was unable to raise sufficient funds for the school (by February of 1850 he had only collected five dollars) and by 1851, it was defunct. Although neither school was successful, these events show the importance of education to Roberts. Later, as governor from 1879 to 1883, he would be instrumental in founding the University of Texas and taught law there after leaving the governor's seat. Throughout his life he corresponded with friends from the University of Alabama and took pride in their

³⁴Bailey, "Life and Public Career of O.M. Roberts," 54; Clarksville, Texas, *The Standard*, June 17, 1848; Bar of Harrison County to Roberts, June, 1848, Roberts Papers [quotation].

accomplishments. It is obvious that Roberts enjoyed teaching. Perhaps he saw this as a way to influence public opinion.³⁵

Indeed, addressing the public is something that Roberts seems to have become very comfortable with by the late 1840s. As his reputation as district judge grew, he was often asked to speak to various groups and give his opinion on legal and social matters. He addressed the bar in several counties and in June of 1849, spoke to the Red Land Division of the Sons of Temperance. At some point prior to 1848, Roberts was initiated into San Augustine's Masonic Lodge and frequently made speeches there. By 1849, Roberts was widely known throughout East Texas and was admired by his peers. It was therefore not surprising that he would begin to think about re-entering the world of politics and to attract the attention of Democratic Party leaders as a potential candidate for higher office.³⁶

In November 1849, Peter Hansborough Bell defeated incumbent George T. Wood in the gubernatorial race. Bell had met Roberts earlier that summer while campaigning in East Texas. The two men rode together from Nacogdoches to San Augustine and doubtless discussed many political issues, realizing their political views were very similar. Bell probably heard much praise for Roberts in East Texas and may also have known of him through his old friend Miller, Secretary of State for outgoing Governor Wood. Regardless, Bell decided that Roberts would be a good fit as attorney general. On December 6, 1849, Bell wrote to inform the judge of his appointment, stating, "I shall be pleased to have your services as Attorney General of the State,

³⁵ Louise Kelly, "University of Eastern Texas," *Handbook of Texas Online*(<http://www.tshaonline.org/handbook/online/articles/kcu02>), accessed November 18, 2011; Benjamin Wallace to Roberts, February 25, 1848, A.W. Arrington to Roberts, April 1, 1848, February 22, 1850, Minutes of University of Eastern Texas Board of Trustees Meeting, April 19, 1848, Roberts Papers; H.P.N. Gammel, *The Laws of Texas, 1822 – 1897* Volume 3 (Austin: Gammel Book, 1898), 362-365 (hereafter cited as *Gammel's Laws of Texas*).

³⁶ Oran Milo Roberts, "Address to the San Augustine Masons," December, 1848, C. P. Alexander et al. to Roberts, June 10, 1849, Roberts Papers.

and with your approbation will present your name to the Senate. As it will be necessary to make a nomination at an early day after the 21st Inst. [January 21, inauguration day], you would please express your wishes to me by the return mail.”³⁷

One reason Bell needed a quick reply is because a constitutional amendment was about to pass making the Attorney General an elected rather than appointed office. If he appointed Roberts before the amendment passed, the judge would be grandfathered in. However, Bell never received a reply. Roberts wrote decades later that he did not receive the letter until March of 1850. He later suspected that Bell’s letter was intercepted by a man named A.J. Evans who presumably aspired to the job. According to Roberts, no one from the governor’s office spoke to Roberts during the winter, even though his appointment was announced in New Orleans newspapers. He later wrote, “I did not get the letter for three months after it was written, was written to by no other person about it, and knew nothing about it until the whole matter had been disposed of.” According to Roberts, by the time he received the letter it was too late; the state constitution had been amended and the next attorney general would have to be elected. Judge Roberts’s former law partner, Sublett, reported to him upon returning to San Augustine from the spring session of the legislature that Governor Bell was highly offended at Roberts’s silence. The judge and Governor Bell never spoke again. Two weeks after Bell sent his letter, Sublett wrote to Roberts, stating that “Judge Webb will be Secretary of State, and I learn that you have had the offer of the Attorney General’s office, and that should you refuse – (as I suppose you would) Shedd of Marshall would receive the appointment.” Perhaps the judge, having been informed of his impending appointment by Sublett, simply waited for an appointment that never came.

³⁷ Oran Milo Roberts, “Notes on Tender of Appointment as Attorney General,” Peter H. Bell to Roberts, December 6, 1849, Roberts Papers.

Roberts's own personality would have prevented him from actively inquiring about the appointment.³⁸

Although he missed a chance to be the state's attorney general, subsequent events during 1850 showed that Roberts was ready to enter the political arena. That year, for the first time since moving to Texas, he became vocal in speaking on the major political issues of the day. Events surrounding the United States' victory in the Mexican War served as the catalyst for Roberts's re-entry into national and state politics. Shortly after the war began, in 1846, Congressman David Wilmot of Pennsylvania introduced legislation that would prohibit slavery in any territory acquired from Mexico. Northerners supported the Wilmot Proviso because it promised to stop the spread of slavery without the taint of radical abolitionism. Many southerners viewed Wilmot's action as an unwarranted attack on their way of life. When Mexico ceded vast territories to the United States in 1848 at the conclusion of the war, the issue of slavery's expansion into those territories became extremely contentious. This tense situation escalated when President Zachary Taylor (elected in 1848 and inaugurated in March of 1849) encouraged California and New Mexico to bypass the territorial stage and apply for admission as states. Most Americans assumed that both would apply for admission as free states. Many southerners, led by John C. Calhoun of South Carolina, argued that it was unlawful for Congress to prohibit slavery in the territories.³⁹

³⁸ Roberts, "Notes on Tender of Appointment as Attorney General" [first quotation], Sublett to Roberts, December 22, 1849, Roberts Papers [second quotation]; There are some inconsistencies with Roberts's later recollections of this event. If the A.J. Evans Roberts referred to is Andrew Jackson Evans, he was still in Mississippi in late 1849. This man was later a Unionist and served as a district judge during Reconstruction. Perhaps Roberts simply confused the timeline and accused a man he had little use for anyway. *Handbook of Texas Online*, Jennifer Eckel, "Evans, Andrew Jackson," accessed March 10, 2016 <http://www.tshaonline.org/handbook/online/articles/fev30>.

³⁹Alexander et al to Roberts, June 10, 1849, Roberts Papers; Randolph B. Campbell, "Texas and the Nashville Convention of 1850," *Southwestern Historical Quarterly* 76 (July; 1972): 5; James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 70-77.

Like other southerners, many Texans were indignant because New Mexico's admission as a free state would curtail the expansion of slavery. In addition, the Treaty of Guadalupe Hidalgo, which ended the Mexican War, established the Rio Grande as the boundary between the United States and Mexico. Texas, if allowed to claim the Rio Grande as a boundary to its source in modern day Colorado, could lay claim to what is today eastern New Mexico, including Santa Fe. Although Santa Fe's citizens had begun to set up civil government under the auspices of the United States Army, two Texas governors tried to organize county governments in the Santa Fe area. Governor Wood, in 1847, sent Spruce M. Baird to Santa Fe to organize a county government and serve as county judge. Baird was opposed by local citizens as well as the Army and returned after six months. Wood's successor, Peter H. Bell, subscribed to Calhoun's view that Congress could not prohibit slavery in federal territories and was determined to assert Texas's claims to eastern New Mexico. In early 1850 Governor Bell sent former Republic of Texas Indian Agent Robert S. Neighbors to organize counties in the El Paso and Santa Fe regions. Neighbors was successful in El Paso but, like Baird, met resistance from the citizens of Santa Fe.⁴⁰

Governor Bell responded by calling for the legislature to meet in a special session in August 1850. While anger built in Texas over Santa Fe, the political tension in the nation as a whole was reaching a state of crisis over a variety of issues. Californians, following President Taylor's advice, had written a state constitution in late 1849 that prohibited slavery. Southerners, feeling cheated that slavery never had a chance to be introduced while California was a territory, adamantly opposed her admission. They also wanted a stronger fugitive slave law. Northerners desired the admission of California as a free state, opposed a stronger fugitive slave law and

⁴⁰ Campbell, *Gone to Texas*, 234 – 235.

wanted to ban slavery in the District of Columbia. Hoping to forestall a sectional conflict, Kentucky senator Henry Clay introduced an omnibus bill in January of 1850 that would hopefully lesson tensions between North and South. Clay's bill, commonly known as the Compromise of 1850, would admit California as a free state, organize the New Mexico and Utah territories without mentioning slavery, enact a stronger fugitive slave law, ban the slave trade in the District of Columbia, and pay Texas's \$10 million debt held over from the Republic, in exchange for the state giving up its claims to eastern New Mexico. These proposals were debated over a nine month period.⁴¹

While Congress considered these proposals, delegates from the slaveholding states met in Nashville, Tennessee, in June 1850 to discuss what course of action to take against these perceived northern threats. Former governor Henderson was Texas's lone delegate. Although some, such as Robert Barnwell Rhett of South Carolina hinted at secession, the convention instead adopted a series of resolutions insisting upon the property rights of slaveholders in the territories, extension of the Missouri Compromise line to the Pacific Ocean, and an endorsement of Texas's land claims. One of the resolutions passed by the convention on the subject of the Texas boundary stated, "That it is the duty of the whole south to oppose the attempts of the northern fanatics, to get possession of any part of the territory rightfully belonging to Texas, for the purpose of excluding therefrom the people of the south, and especially the Texans themselves." The convention urged Texans not to back down on the boundary issue, declaring that:

these states [the slaveholding states represented at the Nashville Convention] have a like right to expect that she will not be so false to herself and regardless of their interest, as to accept any sum of money as a consideration for admitting an enemy

⁴¹ Ibid.

within her gates, and establishing there a strong-hold of abolition and a harbor for fugitive slaves.⁴²

The closing of the Nashville Convention did not end the excitement in Texas over the Santa Fe region. Indeed, the resolutions of the convention and Neighbors's report on the Santa Fe situation were published by newspapers all over Texas at virtually the same time, igniting anger among the population of Texas. Governor Bell sent an angry letter to the Taylor administration and called the legislature into another special session in August. Indignation meetings were held all over the state to discuss the possibility of military action to secure Texas's claims to the Santa Fe region. One of these meetings was held in San Augustine on July 19, 1850. Henderson, Texas's delegate to the Nashville Convention, gave a report of the proceedings of that body. Judge Roberts then addressed the crowd, and his speech revealed clearly his position on slavery in the territories and showed him to be an adherent of the views of the recently deceased Calhoun concerning slavery in the territories. Roberts argued for swift action on the part of Texans, stating, "Delay is fatal to our cause, and must in its consequences work a virtual abandonment of our title. Now or never can you preserve your state from dismemberment." Again, Roberts showed the same distaste for submission he exhibited as a college student.⁴³

Roberts continued to urge his listeners to resist what he perceived to be encroachments by the United States upon the rights of Texas to Santa Fe, stating:

If such an event is to happen, the sooner we can make the issue and know our fate, the better. If such a thing should happen, it will emanate from the dominant

⁴² Campbell, "Texas and the Nashville Convention of 1850," 11; McPherson, *Battle Cry of Freedom*, 73-74; Bailey, "The Life and Public Career of O.M. Roberts," 58; San Augustine, Texas, *The Red-Land Herald*, July 27, 1850 [quotations].

⁴³ Campbell, "Texas and the Nashville Convention of 1850," 12; Klemme, "The Rise, Fall, and Redemption of Oran M. Roberts," 12 – 14; San Augustine, Texas, *Red-Land Herald*, July 27, 1850 [quotation].

propagandist spirit of a portion of the North, inimical to our domestic institutions. Tamely to yield the rights of your state as a sacrifice to appease that domineering and presumptuous spirit, is disgraceful to you as American citizens.⁴⁴

Roberts argued that Clay's proposed compromise on the Texas-New Mexico boundary, which involved Texas giving up its claims to the region in exchange for \$10 million, should be rejected on principle. According to Roberts, acceptance of the compromise would further the cause of "free-soilism" in the territories, excluding slaveholders from "an equal participation in its benefits." Echoing Calhoun, he declared:

The constitution regards this territory as property of the United States, - common property of all the citizens of the Union, politically confederated. All have an equal right and should have an equal opportunity to enjoy it. It is a species of property whose value cannot be realized by sale and division of the proceeds in money amongst the states or citizens of the Union. The true value of our territory in its vast extent can only be realized through its occupation by the citizens of this union. While it thus remains common property, shall any citizen be subjected. to the condition of a total change in his habits of life, his mode of industry, and his capital? Shall the Northerner as a condition precedent to his full enjoyment of this right, abandon his improved husbandry, his spinning-jenny or his helps; or shall the Southerner be required to abandon his slaves? The condition in either case would be equally unjust and humiliating to the American citizen.⁴⁵

Having diagnosed what he saw as the problem, Roberts then espoused two possible solutions:

First, let the general government by direct action, remove every impediment now existing or supposed in all our territory to its free occupation by any citizen of this union. Thus the people would have the opportunity of enjoying their property together in common until they could build up states with such domestic institutions as would suit their own interests and inclinations. These states should then be admitted into the Union without any question other than that required by the Constitution [underlined in original].⁴⁶

⁴⁴ San Augustine, Texas, *Red-Land Herald*, July 27, 1850.

⁴⁵ Ibid.

⁴⁶ San Augustine, Texas, *Red-Land Herald*, July 27, 1850.

At this point, Roberts was still fully consistent with Calhoun. This solution completely rejected the Wilmot Proviso and argued that there should be no restrictions on slavery at the territorial stage. Judge Roberts continued:

Or secondly, the government should at once make an equitable division of the common property by a line east and west to the Pacific from the states – allowing the citizen to settle either side of the line according to his discretion; but with a full guarantee to those south of the line that slavery may exist, until states are formed and determine this question for themselves. The south should demand of the government to do us ample justice by its action before another state shall be severed from the common territory and admitted into the Union. To deny the constitutional power of the general government to prescribe all the rules and regulations necessary to the accomplishment of this object, is like denying the right of the farmer to provide for his domestic welfare.⁴⁷

This speech reveals a number of insights into Roberts’s career and personal views.

During his time as district judge, he had earned a reputation for erudition on legal and constitutional matters. The citizens of San Augustine obviously valued his opinion on weighty issues of the day. During his tenure as district judge, Roberts had eschewed publicly speaking on matters of partisan politics. However, Roberts believed that the nature of this controversy impelled him to voice his opinion publicly. According to the editor of the *Red-Land Herald*:

Were this a mere party question of politics he would have to decline the request of his fellow citizens to participate in it; but being national in its character – involving some of our dearest rights as citizens of Texas, and as citizens of this glorious confederacy of states, he did not feel himself warranted in withholding his views when thus solicited.⁴⁸

The speech also shows a willingness to shape public opinion. It is one thing to rule on legal matters from the bench as an impartial interpreter of existing law; to expound upon matters of national importance reveals a man eager to inform others of what he has come to believe.

⁴⁷ Ibid.

⁴⁸ San Augustine, Texas, *The Red-Land Herald*, July 27, 1850 [quotation]; Bailey, “The Life and Public Career of O.M. Roberts,” 59.

Roberts publicly revealed his states' rights views in this speech and put himself squarely in Calhoun's camp. His words were consistent with the South Carolinian's arguments on the rights of slaveholders in the territories. However, he departed from the most radical southern Democrats in seeing an extension of the Missouri Compromise line as a possible solution. William L. Yancey of Alabama, for example, asserted that Congress had no right to interfere with slavery in the territories at all, and, in fact, should protect it with a federal slave code. Above all, what Roberts argued was that Texas must retain control of the territory east of the Rio Grande in order to keep "free-soilism" from gaining a foothold there. In addition, while not openly advocating secession yet, Roberts definitely evinced a willingness to resist federal authority. At this point, the only thing keeping Roberts from being as radical as "fire-eaters" such as Yancey of Alabama, Rhett of South Carolina, and Louis T. Wigfall of Texas was his conditional willingness to compromise on an extension of the Missouri Compromise line.⁴⁹

By September 1850, the Compromise's original sponsor, Clay, had become sick and resigned from the United States Senate. Senator Stephen A. Douglas facilitated the passage of the Compromise by breaking the original omnibus bill into five separate pieces of legislation. One of those bills, introduced by Senator James A. Pierce of Maryland, proposed to give Texas \$10 million (roughly the public debt left over from the Republic) in exchange for the state giving up its claims to the Santa Fe area. The Pierce Bill passed Congress and, with the other proposals, was signed by President Millard Fillmore in the late summer of 1850.⁵⁰

⁴⁹ Eric H. Walther, *William Lowndes Yancey and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 2006), 125 – 127; Alvy L. King, *Louis T. Wigfall: Southern Fire-eater* (Baton Rouge: Louisiana State University Press, 1970), 52.

⁵⁰ Campbell, *Gone to Texas*, 232-33; *Handbook of Texas Online*, Roger A. Griffin, "Compromise of 1850," accessed February 25, 2016, <http://www.tshaonline.org/handbook/online/articles/nbc02>.

Although many Texans at least tacitly approved of the Pierce Bill, others, including Henderson and Roberts, opposed it. Roberts considered the possibility of trying to arouse Texans to take military action to secure Santa Fe. He apparently hoped that if Texas took a stand on the New Mexico question, the rest of the South would rush to her aid. He was eventually dissuaded from this course of action by Sublett, himself a proponent of the Pierce Bill. Sublett wrote, “Our people cannot be convinced from what has taken place that either the union, or the institution of slavery is in danger [emphasis in original].” Apparently Roberts heeded Sublett’s advice. He backed down on resisting the Pierce Bill and made no more public statements about it as it became clear that most Texans (especially those who held Republic of Texas bonds) acquiesced in it. The bill was approved by voters by a three to one margin in a special election that fall, and the state legislature passed a resolution accepting the Pierce Bill. Governor Bell signed that resolution in November 1850.⁵¹

The events surrounding the Compromise of 1850 motivated Roberts to enter elected politics beyond the county level. He was convinced that the institution of slavery was under attack and must be defended at all costs. Not only was slavery the basis for the wealth of the South, it had made possible everything Roberts had. The profits of slavery had made his education possible, leading to his legal career. In 1850, he owned six slaves and continued to prosper from their labor. By the fall of that year, Roberts had also become convinced that the time was right for him to seek state or national office in order to defend that institution. His five years as district judge had made him well known throughout East Texas, and his reputation as a learned jurist made him an attractive candidate for office to many of his possible constituents. He

⁵¹ Sublett to Roberts, October 4 and 13 [quotation], 1850, Roberts Papers; *Handbook of Texas Online*, Roger A. Griffin, "Compromise of 1850," accessed March 10, 2016, <http://www.tshaonline.org/handbook/online/articles/nbc02>.

had made friends with some of the most prominent men in East Texas, including a former governor (Henderson), current Supreme Court Judge (Wheeler) and current state legislator (Sublett). His opinion was valued by his neighbors on subjects as varied as alcoholism, the roots of freemasonry and the Compromise of 1850. In short, just as sectional crisis loomed over the political horizon, Judge Roberts was becoming a rising leader of the states' rights wing of the Texas Democratic Party.⁵²

⁵² County Tax Rolls, San Augustine County, 1850.

CHAPTER 4: "I AM IN FAVOR OF A PROMPT AND ENERGETIC SUPPORT OF THE RIGHTS OF THE SOUTH": 1851 - 1860

The Crisis and Compromise of 1850 convinced Oran Roberts that he needed to seek statewide office in order to protect slavery. Since arriving in Texas in the fall of 1841, he had been successful in every professional endeavor he had undertaken and had become friends with many influential and important men. He had made friends and acquaintances throughout East Texas, and his opinions on legal and political matters were held in great regard by many citizens of the region. The problem confronting Roberts toward the end of 1850 was deciding which field of endeavor afforded the most favorable prospect for advancement and influence. Should he consider running for Congress or the state legislature, or should he run for the Texas Supreme Court? He made two unsuccessful runs for Congress, races in which his native propensity for reflection before action cost him, and eventually chose the judicial branch. In this, he was ultimately successful, placing him in the top echelon of Texas government at a pivotal period in the history of Texas and the South.

Several factors favored his seeking a place in the judiciary rather than the legislative branch. A constitutional amendment passed in 1850 provided for popular election of judges, including the Supreme Court. Elections would be held in early 1851 to elect a Chief Justice and two Associate Justices to the state bench. Many people encouraged Roberts to run for Associate Justice. In January of 1850, a former Republic of Texas congressman from Brenham, A.M. Lewis, asked him to run for that position. In addition, Roberts's experience in the Alabama state legislature had been a frustrating one, and he considered himself more of a legal scholar than a politician. The difficulty in seeking a seat on the Texas Supreme Court was that he would have to run against one of the three incumbent justices who had been appointed by Governor Henderson

in 1845; namely Chief Justice John Hemphill, and Associate Justices Royall T. Wheeler and Abner S. Lipscomb. Running against Hemphill and Wheeler was out of the question. Hemphill was a popular Chief Justice and was widely acknowledged as the premier legal mind in Texas. Wheeler, of course, was Roberts's close friend and confidant. Lipscomb's seat was the only one open to Roberts, especially if, as rumor had it in late 1850, Lipscomb would not seek election.¹

As early as July, Roberts received assurances from friends and colleagues that his candidacy would be warmly received. A.H. Evans, a lawyer from San Augustine, hoping to succeed Judge Roberts on the district bench, wrote from Walker County, "I find that your name, in connection with the Supreme bench takes finely wherever I have been and you will meet with a warm reception in Martin's District [Ninth Judicial District]."² By the end of 1850, however, it was becoming increasingly clear that Judge Lipscomb would indeed stand for election. The first indication of Lipscomb's intentions came from Archibald W. O. Hicks, a Shelby County lawyer. Roberts had asked him to feel out the people and bar of Panola County when he was at court there. Hicks reported that William G. Webb and Lipscomb would likely be candidates, but that the Panola bar could probably be persuaded to support Roberts. Definitive proof of Lipscomb's candidacy was confirmed by Sublett. He wrote:

I have seen Judge Hemphill and had a short conversation with him. . . . He informed me that Lipscomb was a candidate for reelection [sic]. He expressed some anxiety to know how they the whole court would run in the East. I told him that I had heard but little said upon the subject, but that I presumed that there would be no serious objection to any of them. I told him however that the people of at least a large portion of the East were desirous to see O.M. Roberts on the Supreme Bench, but that I apprehended that this was not on account of any dissatisfaction with the present Judges, but from the great partiality which they have for you. He remarked that he had noticed some such demonstrations by the

¹ Haley, *The Texas Supreme Court*, 55; A. M. Lewis to Roberts, November 18, 1850, Sublett to Roberts, October 13, 1850, Roberts Papers.

² A.H. Evans to Roberts, July 23, 1850, A.W.O. Hicks to Roberts, December 12, 1850, Roberts Papers

Eastern members during the last session of the legislature.” [underlined in original]³

Roberts was in a quandary. He had great respect for Judge Lipscomb, going back to the latter’s term as Chief Justice of Alabama from 1823 to 1835. However, he believed he had a good chance of winning and continued to receive letters encouraging him to run. For example, a meeting of citizens in Cherokee County published the following appeal: “We know of no man in the state, as we believe, better qualified to discharge the Judiciary functions than Judge O.M. Roberts, and if he will give his consent to be a candidate for one of the Judges of the Supreme Court of this State, he will be supported by many voters of Cherokee County.” San Augustine attorney Richard S. Walker assured Roberts that he would have the support of the bar in East Texas if he chose to run. On February 22, 1851, a public meeting in San Augustine nominated Roberts to run for Lipscomb’s seat. Roberts accepted, and prepared to challenge Judge Lipscomb for a seat on the state bench.⁴

Shortly after the San Augustine meeting nominated Roberts for the Supreme Court, Texans learned that Congressman David S. Kaufman, representing the eastern district of Texas in the United States House of Representatives, had died suddenly on January 1, 1851.⁵ This presented the judge with an unforeseen opportunity; he could run for Congress without having to face an incumbent, particularly one he admired. Roberts announced that he was declining the

³ Sublett to Roberts, December 4, 1850, Roberts Papers.

⁴ Mary J. Highsmith, "Lipscomb, Abner Smith," *Handbook of Texas Online*(<http://www.tshaonline.org/handbook/online/articles/fli14>), accessed March 02, 2015; Resolutions of Cherokee County Citizens’ Meeting, February 8, 1851 [quotation], Richard S. Walker to Roberts, February 17, 1851, Resolutions of San Augustine Citizens’ Meeting, February 22, 1851, George F. Moore to Roberts, March 31, 1851, Roberts Papers. Roberts had written to Moore on the day of the San Augustine meeting. Moore wrote back on March 31, “I was glad to hear that you had consented to become a candidate for the Supreme Bench.”

⁵ News of Kaufman’s death had reached Texas by March 7. Benjamin Rush Wallace announced his candidacy for the vacant seat on that date. Clarksville, Texas, *Northern Standard* , April 26, 1851.

candidacy for the Supreme Court in the San Augustine *Red-Land Herald* on March 8, and a week later, in the same newspaper, announced that he was running for Congress. On March 14 he wrote to Governor Bell resigning his district judgeship to take effect on April 13.⁶

Roberts entered a crowded field of six Democrats (including himself) and one Whig.⁷ Very few new issues were discussed during this campaign; the primary point of contention between the various candidates had to do with the events of the previous fall. The Texas Legislature and the people of the state had approved the Pierce Bill, and those who had opposed the bill were singled out as disunionists. Roberts attempted to rebrand himself through the press. On April 12, 1851, the Clarksville *Northern Standard* published an open letter from Roberts to the citizens of the First Congressional District. In this letter, Roberts espoused his views on a number of issues including southern rights and the Constitution. In doing so, he tried to tone down the sectional rhetoric he employed in the San Augustine meeting of the previous summer. For example, Roberts wrote:

I am in favor of a prompt and energetic support of the rights of the South, by all honorable and constitutional means.

I am in favor of a rigid adherence to the late adjustment of the slavery question. . .

It shall be my effort to prevent, so far as my power may extend, a recurrence of the dangerous excitement and angry controversy which has just swept over the country. . . .⁸

⁶ San Augustine, Texas, *Red-Land Herald*, March 8 and 15, 1851; Seymore White to Roberts, March 16, and 25, 1851, Roberts to Bell, March 14, 1851, Bell to Roberts, March 29, 1851, Roberts Papers; Klemme, "The Rise, Fall, and Redemption of Oran M. Roberts," 16.

⁷ The Democrats were Roberts and Benjamin Rush Wallace of San Augustine County, Nicholas H. Darnell of Shelby County, Lemuel D. Evans of Harrison County, George W. Smyth of Jasper County and Richardson Scurry of San Augustine County. The lone Whig was Roberts' old San Augustine acquaintance, William B. Ochiltree.

⁸ Clarksville, Texas, *Northern Standard*, April 12, 1851.

These statements were certainly far less bellicose than the ones he had made in San Augustine the previous July. Judge Roberts could see that most Texans endorsed the Compromise of 1850 (including the Pierce Bill), and adjusted his public stance accordingly.

The judge travelled throughout northeastern Texas giving speeches and campaigning for office. He stated that he:

avored a strict construction of the constitution – the confining of the General Government to its proper sphere, taking nothing by intendment – rather falling under, than exceeding the letter of the compact – not encroaching upon the rights of the States – favoring no consolidated government, which would reduce the States, and the State Legislatures to insignificance.

He also made clear that he opposed internal improvements funded by the national government, as well as a protective tariff.⁹

One contentious issue was how to resist what many southerners viewed as northern attacks on their rights. While some radicals (especially in South Carolina) continued to argue that secession was the proper course of action for the slave states, most southerners were satisfied with the Compromise of 1850. Unfortunately for Roberts, his words were on record. Two of his early opponents, Judge Lemuel D. Evans and Roberts's old acquaintance, Whig candidate William B. Ochiltree, used his San Augustine speech of the previous July to attack him, albeit from different sides of the issue. Roberts claimed that Ochiltree accused him of being for disunion, while Evans asserted that Roberts did not believe in the right of secession or nullification. In May of 1851, Roberts wrote a circular letter to be published by several newspapers in which he addressed the claims of his critics. He adroitly steered a middle course between the two charges by arguing the difference between secession and revolution:

⁹ Clarksville, Texas, *Northern Standard*, May 21, 1851; Roberts gave speeches at Henderson, Tyler, Gilmer, Mt. Pleasant, Clarksville, Jefferson, Marshall, and Shelbyville before returning home. Roberts, "Notes on My Resignation as District Judge," Roberts Papers.

There is a vast difference between the peaceable secession, which the disunionists all claim as a right, and which if it exist at all, may be exercised as much of right upon a trivial pretence, as under the weight of a great wrong, and that right of revolution, which is a natural right and is only acted upon, when the injury is too grievous to be borne, -when endurance ceasing to be a virtue becomes a galling degradation. The first may be a pretence without a wrong – the last is born of human nature, and is an inherent instinct, akin to that of self preservation in the last extremity, when the common law not merely of England, but the *lex non scripta* of the whole world, allows a man to preserve himself.¹⁰

In claiming a distinction between secession and revolution, Roberts tried to avoid the charge of being a disunionist while at the same time leaving himself the option of supporting resistance to the federal government if and when the time came. This argument may have come too late. Ochiltree continued to make speeches and write letters calling the judge out as a secessionist, and Roberts later wrote to editor Charles DeMorse of *The Northern Standard* that “the public mind had been poisoned” as to his position on secession. In that same letter to DeMorse, he attempted to free himself of the taint of disunion by writing:

While I have been and am still in favor of uniting the South in sentiment, for the purpose of repelling freesoil aggression, I am unequivocally opposed to any measure or measures which have for their object the dissolution of the Union. And while I believe, that the South has lost much in the late compromise of the slavery question; still I am in favor of abiding by it, as it has been settled, and of holding all parts of the Union to a strict adherence to it.¹¹

Roberts was inadvertently aided in his desire to appear moderate by Louis T. Wigfall of Marshall, a radical secessionist formerly of South Carolina. At a public meeting at Tyler, Wigfall repudiated Roberts.¹²

While Roberts, Evans, and Ochiltree were travelling throughout East Texas attacking each other and defending themselves from the others’ attacks, another candidate, Democrat

¹⁰ Clarksville, Texas, *Northern Standard*, May 24, 1851.

¹¹ Clarksville, Texas, *Northern Standard*, May 31, 1851.

¹² James M. Ardrey to Roberts, May 9, 1851, Roberts Papers.

Richardson Scurry, was able to convince many delegates from the northern counties of Texas's First Congressional District to support him at a convention in Henderson. The call for this convention was made in May at Tyler, where many members of the East Texas bar were attending the Spring session of the Supreme Court. Roberts had been campaigning in Tyler a few weeks earlier but left by April 26. Regardless, Roberts, Evans and other candidates doubtless knew about this convention but did not take it very seriously. The Democratic Party in Texas was not very organized at that point. Sometimes conventions were called, but failed to meet. Scurry and his campaign managers took advantage of this apathy and made sure that as many of the delegates from the northern counties of the district (where Scurry's support was greatest) as possible were present. When the convention met in Henderson on June 9, only fifteen counties were represented, about half of the counties in the district, and all of them from the northern portion of it.¹³

Judge Roberts originally thought little of this convention, and he stayed on his Shelby County farm when it convened. The only candidates to show up at the Henderson Convention were Scurry, Evans, and Darnell. Scurry, with the support of Cooke County's William C. Young and Anderson County's John H. Reagan, was soon declared the Democratic nominee. Roberts, despite his absence, won the votes of the delegates from Houston, Anderson, and Henderson Counties, mostly due to the efforts of his friend, Houston County's John Burton. As soon as the judge received word of what was transpiring, he hurried to Henderson to ascertain the situation for himself. He was too late. Roberts decided that he did not have enough support to risk

¹³ Wheeler to Roberts, April 26, 1851, Roberts, "Notes on my Resignation as District Judge," Roberts Papers; Bailey, "The Life and Public Career of O.M. Roberts," 71; Ernest Winkler, ed., *Platforms of Political Parties in Texas* (Austin: University of Texas Bulletin 53, 1916), 22-23. Texas Democrats were not very organized in the early 1850s because they did not have to be. Very few Texans voted Whig, prompting Sam Houston to tell a Pennsylvania audience, "There are but six men belonging to the Whig Party in Texas, one of whom [is] a horsethief – another a black-leg – a third a land grabber, and the other three were the mere tools and understrappers of the first three, ready to do their bidding at all times for a glass of grog or an occasional suit of old clothes." Campbell, *Gone to Texas*, 231.

contesting this nomination and withdrew from the race. He briefly considered running as an independent candidate, but did not think he had enough support to defeat Scurry and Ochiltree. Withdrawing from the race was preferable to splitting the Democratic vote. Scurry defeated Ochiltree handily in the general election that fall.¹⁴

This was the first time Roberts had lost an election (even though voters never had a chance to voice their support or opposition to him), and he was greatly disappointed. Although he had failed, Roberts had gone, in ten years, from being unknown in his new state to being a serious candidate for Congress. Though he was thwarted by Scurry's machinations, his views on secession and resistance to federal authority would have continued to come under scrutiny during a general election campaign. In time, however, the voters of Texas would come to espouse his views as their own.¹⁵

After his failure to win the Democratic nomination in 1851, Roberts retired to his farm in Shelby County. He spent the remainder of the year overseeing the building of a new house before resuming his private law practice in 1852. During his tenure as district judge, Roberts had continued to add to his real and personal property. By 1850, Roberts owned two lots in San Augustine, 480 acres in San Augustine County, his 1200 acre farm in Shelby County (purchased from his uncle, Nathan Davis, Sr.), 600 acres in Hunt County, and 320 acres in Nacogdoches County. He also owned four slaves, a horse worth \$100, and "sundry chattel" worth \$400. Three of the slaves were females, ages twenty-one, eleven, and three. They were residing on his agricultural property in San Augustine County, where he raised cattle and hogs. In 1852 he

¹⁴ Roberts, "Notes on my Resignation as District Judge," Roberts Papers; Bailey, "The Life and Public Career of O. M. Roberts," 70 – 72.

¹⁵ Bailey, "The Life and Public Career of O.M. Roberts," 72; Roberts's friends were disappointed as well. Henry W. Sublett detested Scurry and wrote, "I know him too well not to despise him." Sublett to Roberts, April 10, 1852, Roberts Papers.

bought an additional 497 acres, worth \$720. He owned a buggy worth \$350. He acquired more slaves, bringing his total to six. He probably paid for these slaves by selling his town lots in San Augustine and his acreage in Nacogdoches. In 1852, his real and personal property was worth \$6,370. While this level of wealth did not place Roberts within the economic elite of Texas society, it certainly made him more comfortable than most.¹⁶

The move to Shelby County brought Roberts closer in proximity to his extended family. His farm, purchased from his uncle Nathan Davis, was originally part of the latter's headright and adjoined his uncle's property. His older brother Ford lived on Patroon Bayou on 200 acres, also part of Nathan Davis's original headright. Their mother, Margaret, lived with Ford. Roberts's nuclear family continued to grow during his residence in Shelby County. Margaret Eliza Roberts (Maggie), was born on October 8, 1851, joining twelve-year-old Sarah, eight-year-old Oba, and five-year-old Robert. They were later joined by Peter Edwards Roberts, born October 27, 1853, and Una Frances (Fannie) Roberts, born November 23, 1856.

Roberts was also successful in cultivating friendships. Since his days at the University of Alabama, he had sought successful and influential people as friends. While these friendships were certainly beneficial to him, they were also long-lasting and appeared to be borne of true affection. He continued corresponding with Miller and Bowdon (although it appears the college friends had lost touch with Coleman), as well as other friends from Alabama. Roberts's friends valued his company and took a genuine interest in his well-being. The judge seems to have been a good friend as well, helping in times of trouble. Wheeler, one of his closest friends, greatly

¹⁶Bailey, "The Life and Public Career of O.M. Roberts," 73; County Tax Rolls, San Augustine County, 1850; Bureau of the Census, Seventh Census of the United States, 1850, Texas, San Augustine County, Schedule 1 (Free Inhabitants), and Schedule 2 (Slave Inhabitants), National Archives, Washington, D.C.; County Tax Rolls, Shelby County, 1851, 1852; Klemme, "The Rise, Fall, and Redemption of Oran M. Roberts," 23; Randolph B. Campbell and Richard G. Lowe, *Wealth and Power in Antebellum Texas* (College Station: Texas A & M Press, 1977), 115. One of these slaves was presumably Prince, Roberts's slave since childhood. Prince was still alive as late as 1857. See Frank Benton to Roberts, March 21, 1857, Roberts Papers.

missed his friendship after leaving San Augustine for Galveston. Wheeler wrote, “I shall never cease to bear in grateful remembrance the acts of kindness and friendship I received when I most needed friends from yourself & your Lady. . . I wish the distance between us were less or the possibilities of intercourse greater. Can you & Mrs. Roberts not visit us at Galveston?”¹⁷

Despite being married to a devout Methodist, Roberts remained unorthodox in his religious views. While most of his close friends appear to have accepted this about him, a few were concerned enough about his lack of faith in traditional Christianity to broach the subject with him. For example, his old mentor from Ashville, Ralph P. Lowe, now living in Iowa, wrote him, “. . . whilst you have my sincere wishes for your temporal prosperity, permit me to express the hope that you will not altogether overlook your eternal and spiritual welfare.” Roberts never changed his views on organized religion. Years later he wrote to Miller, “[My wife] is a good Methodist. I am a sinner, and have never belonged to any church.”¹⁸

By this point in his life, Judge Roberts had already influenced and mentored many young attorneys. District Judge Nat Burford of Dallas claimed Roberts as his “legal stepfather.”¹⁹ His opinion was valued on a variety of subjects, and he was sometimes asked to vouch for an acquaintance’s character. Frank Benton of San Augustine, a nephew of Missouri Senator Thomas Hart Benton, wrote Roberts, “A report has reached me this evening, that I am charged in the Western part of this county with being a ‘real free soiler. . . .’ you will please state whether . . . you believe me to have been guilty of the charge”²⁰

¹⁷ Wheeler to Roberts, February 23, 1850, Roberts Papers.

¹⁸ Lowe to Roberts, May 18, 1850, Roberts Papers [first quotation]; Roberts to Miller, August 23, 1864, Miller Papers [second quotation].

¹⁹ Nat Burford to Roberts, October 25, 1851, Roberts Papers.

²⁰ B.F. Benton to Roberts, July 23, 1850, Roberts Papers.

When Roberts resumed his private law practice, he had the benefit of being well-known and respected throughout East Texas. Several lawyers requested his services in the courtroom, including his college friend Frank Bowdon, now practicing law in Henderson after several terms as a congressman from Alabama. In January of 1852, attorney Burwell Lewis asked Roberts to work with him on a case in Milam County. The case involved the recovery of a female slave and her seven children. The plaintiff's father allegedly sold the slaves to the defendant in exchange for a saddle and a bridle. The plaintiff's father subsequently died, and his son sued for recovery. The defendant had a bill of sale, but it was never signed by the original owner nor witnessed. Lewis asked Roberts to assist in the case. The plaintiff, John J. Grisham, offered Lewis \$400 for recovery of all the slaves or a proportional amount for recovery of some of them. Lewis offered Roberts half of this award.²¹

Roberts agreed to assist Lewis. Two of his close friends from San Augustine, James Ardrey and ex-Governor Henderson represented the defendant, William Clark. Roberts made the closing arguments to the jury. He summed up the facts of the case and then, "in vigorous terms," declared that the defendant's deed was a "fraud upon an old helpless crazed man." Apparently Roberts's argument was loud and forceful because spectators on balconies around the courthouse square began to beat their chairs on the floor, and people in the courthouse stood and cheered. The noise persisted until Roberts asked them to stop. The defendant eventually settled and Roberts made a decent amount of money from this case. Despite being on opposite sides in this case, Roberts would work with Henderson as well during this period.²²

²¹ Franklin Bowdon to Roberts, October 1, 1855, Burwell Lewis to Roberts, January 31, 1852, Roberts Papers.

²² Burwell Lewis to Roberts, January 31, 1852, Roberts Papers. Much later, Roberts wrote his recollection of the trial at the bottom of the original letter; see Henderson to Roberts, March 11, 1852, Roberts Papers.

The congressional election during the fall of 1851 convinced many Texas Democrats that the party needed to be better organized. As the presidential contest of 1852 approached, momentum for a statewide nominating convention gathered steam. A convention was tentatively scheduled for January of 1852, and the bar of the Ninth Judicial District (comprising Dallas, Ellis & Navarro Counties among others) asked Roberts to allow himself to be considered as a delegate to the Democratic National Convention in Baltimore in 1852. One of the reasons friends and supporters wanted him to take part in a state convention was to introduce him to politicians statewide preparatory to another congressional run in 1853. One of Roberts's friends, Palestine lawyer John Cravens, wanted him to take part in this state convention, "knowing as I [Cravens] do that your oppinions [sic] upon some subjects are misunderstood. . . ." Cravens also hinted that it was necessary for states' rights Democrats to play a greater role in the party in Texas, writing, ". . . the democratic party is luke warm , and unless aroused, our adversaries will gain the vantage ground, but if a decided stand is taken, and the canvass of 1852 conducted with ability and energy the character of the state is fixed. . . ." ²³

When this convention met in Austin in January of 1852, Roberts was not present. He stayed at home in Shelby County and let his friends who were present nominate him for delegate to the Democratic National Convention. There were some irregularities. Ephraim Daggett of Shelby County, a close friend of Roberts's, was a delegate to this convention and placed Roberts's name before the Committee on Nominations. However, that committee was controlled by the Sam Houston wing of the party (strong Unionists in the tradition of Andrew Jackson). The judge only received three votes from the seven man committee and thus failed to be selected as a delegate, as did other states' rights delegates. Roberts's faction did not accept the committee's

²³ Burford to Roberts, October 25, 1851, John Cravens to Roberts, October 30, 1851 [quotations], Roberts Papers.

report and adjourned for two hours before returning to address irregularities. Daggett and Emery Raines considered challenging the committee to have another vote taken on Roberts, but in the end, they decided that such action would be more injurious to the judge than helpful. The convention succeeded, however, in bringing a measure of organization to the Texas Democratic Party. The convention elected a state party chairman, Roberts's old college friend, Miller. Miller called for a nominating convention for the First Congressional District to meet in Tyler in April 1853 preparatory to that year's congressional elections.²⁴

By the fall of 1852 Roberts apparently had decided to run for electoral office again. He considered running for the state legislature, writing, "If the men of first-rate practical talents could be induced, as an act of pure patriotism, to go to the legislature for a few sessions, the foundation of a great work might be laid."²⁵ Roberts doubtless considered himself a man of first-rate practical talents and a pure patriot. However, the state legislature probably seemed too small a field of endeavors for a man of his considerable talents, and he soon made the decision to run for Congress again.

Roberts announced his candidacy as early as February, 1853. He again entered a crowded Democratic field; other prominent candidates included J.P. Henderson and Richard S. Walker of San Augustine County, District Five Attorney when Roberts was judge of that district, James H. Rogers of Harrison County, and William C. Young of Cooke County. He did not appear to have fully learned the lesson of the 1851 contest because he was very late in trying to get his supporters (mostly from the southern counties of the district) organized. He did not start

²⁴ Ephraim Daggett to Roberts, January 10, 1852, Roberts Papers; Clarksville, Texas, *Northern Standard*, May 28, 1853.

²⁵ Nacogdoches, Texas, *Nacogdoches Chronicle*, October 9, 1852.

soliciting support until mid-March and by then, many of his friends were dedicated to support other candidates or running for other offices themselves.²⁶

The convention met in Tyler on April 25, 1853, and quickly established a rule stating that two-thirds of the delegates' votes were required to secure the party's nomination. Roberts led through the first eight ballots, with Young a close second. However, he could not gain a two-thirds majority. Henderson later entered the voting on the eleventh ballot with the effect of splitting the votes of the states' rights wing. After a recess for supper, the balloting continued, with Matthew Ward of Cass County entering and increasingly gaining votes, especially after Young withdrew and his supporters backed Ward. Roberts learned that Young's supporters had agreed prior to the convention that if their candidate should not prevail, all of the others should be "thrown overboard." He then took the floor and announced his withdrawal from the race in the interest of party unity. Balloting continued until 2 a.m. when the convention adjourned until the next morning. When the meeting reconvened, Ward had lost most of his support and George W. Smyth of Jasper County, a compromise candidate, eventually won the requisite two-thirds support and was declared the Democratic nominee.²⁷

Roberts later learned from several of Young's supporters (including future governor Hardin Runnels), that had they known him better they would have supported him. Indeed, Roberts considered running as an independent candidate. He had asked Runnels to support him, and the latter agreed to, provided one of his close friends or neighbors did not enter the race. Others urged Roberts to run as an independent candidate on principle, considering the political

²⁶ Cravens to Roberts, March 31, 1853, Stephen P. Hollingsworth to Roberts, March 21, 1853, George A. Patillo to Roberts, March 29, 1853, Roberts Papers.

²⁷ Nacogdoches, Texas, *Nacogdoches Chronicle*, May 3, 1853; Roberts, "Notes on My Resignation as District Judge," Roberts Papers; Bailey, "The Life and Public Career of O.M. Roberts."

maneuverings of the Tyler Convention, “a certain guile.” A German merchant of Crockett, J.H. Kirchoffer, encouraged the judge’s independent candidacy, writing, “I feel that you are politically killed except you can show that you have friends through the country. Suppose you come out as the people’s candidate – Don’t die without a struggle.” [underlined in original] Despite losing a second congressional race in a row, the judge continued to grow his reputation and garner future support for his political endeavors.²⁸

Despite these pleas for his independent candidacy, Roberts declined to enter the race. He was surely disappointed at being thwarted for the nomination again, but as a loyal Democrat, refused to do anything to injure his party. Just as he had in college, Roberts followed the rules and accepted the consequences. Several citizens of Shelby County wanted him to run for the state legislature that fall, but he declined in favor of James Truit of Shelbyville. Both of Roberts’s attempts to be the Democratic nominee for Congress had failed, but his efforts had not been totally wasted. He was now known to a large number of influential men throughout northern and eastern Texas and had acquired a reputation as an honest man and a loyal Democrat. He would focus the next few years on growing the states’ rights faction of the party as well as his private law practice, both while biding his time for a favorable opportunity to hold state or national office.²⁹

The attempts at Democratic Party organization that took place in 1852 and 1853 were not satisfactory to many of the rank and file. Several people believed conventions merely encouraged cliques. Indeed the Democracy in Texas by 1853 had largely divided itself into nationalist or

²⁸ Hardin Runnels to Roberts, May 4, 1853, J.H. Kirchoffer to Roberts, May 29, 1853 [quotations], Roberts Papers.

²⁹ Bailey, “The Life and Public Career of O.M. Roberts,” 76 – 77; James Truit to Roberts, July 15, 1853, Roberts Papers.

Jacksonian Democrats and states' rights or Calhoun Democrats. As early as 1850, it was clear that Roberts sided with the Calhoun faction of the Democratic Party. In 1853, Elisha M. Pease, a northern-born, slaveholding, Jacksonian Democrat was elected governor. Sectional issues played a small part in the campaign that year, but many states' rights Democrats viewed the 1855 gubernatorial election as a chance to put one of their own in office. However, the rise of a new political party in the statewide elections of 1855 caused Texas Democrats to briefly put aside their differences and organize to meet the threat.³⁰

The Whig Party had ceased to be a cohesive national force following the passage of the Kansas-Nebraska Act in early 1854. That act, proposed by Illinois senator Stephen A. Douglas, in effect repealed the Missouri Compromise of 1820 by declaring that slavery in those two territories would be decided on the basis of popular sovereignty. Thus, the possibility existed that slavery could exist in a region from which it had been barred for thirty-four years. Northern Whigs tended to be anti-slavery while Southern Whigs included some of the South's biggest slaveholders. In addition, Whigs were divided over a new wave of immigration from Ireland and Germany during the late 1840s and early 1850s. This wave of immigration created an anti-immigrant backlash among many Whigs. The two issues of slavery expansion and massive Catholic immigration combined to effectively kill the Whig Party after 1854.³¹

Anti-slavery Whigs throughout the North (especially the Northwest) began to coalesce around the new Republican Party. Others in eastern cities and some in the South, were drawn to a group that reflected the anti-immigrant, anti-Catholic elements of the Whig Party. The official

³⁰ Daggett to Roberts, undated, 1853, Roberts Papers; Bailey, "The Life and Public Career of O.M. Roberts," 78 -79; Campbell, *Gone to Texas*, 234-235.

³¹ David M. Potter, *The Impending Crisis: America Before the Civil War, 1848-1861* (New York: Harper, 1976), 165 - 169, 246 - 248.

name of this new group was the American Party, but they were popularly called the Know-Nothings because they were instructed to say, “I know nothing,” when asked about their activities. They also strongly opposed the Kansas-Nebraska Act. Perhaps this aspect of their platform caused Texas senator Sam Houston to briefly flirt with Know-Nothingism. He had opposed the Kansas-Nebraska Act and was concerned that the Democrats had left their Jacksonian roots.³²

Texas Democrats did not initially view the Know-Nothings as much of a threat. A Democratic nominating convention, held in Huntsville on April 21, 1855, was so sparsely attended that only twelve counties sent delegates. The convention did little except to recommend the re-election of Pease as governor and David C. Dickson for lieutenant governor. As late as May 30, James Ardrey of San Augustine wrote to Roberts, “. . . we regard the probability of a Convention as a thing impossible now as matters stand. . . . I know that Ochiltree will run upon the Credit of the Know Nothings, but I also know that he cannot get the Whig branch of that party, and that the Know Nothings as a distinct party will not have a candidate of their own. . . .” However, on June 11, 1855, a meeting of Know Nothings at Washington-on-the-Brazos turned into a nominating convention. Sam Houston was present at this meeting as the new party nominated Lieutenant Governor Dickson to run against Pease.³³

Roberts took an active part in the 1855 gubernatorial campaign. States’ rights Democrats were generally opposed to Governor Pease and several prominent Democrats, including ex-Governor George Wood, planned to challenge him in the general election. Roberts and many

³² Potter, *Impending Crisis*, 246; McPherson, *Battle Cry of Freedom*, 135-137; Randolph B. Campbell, *Sam Houston and the American Southwest* (New York: Pearson Education, Inc., 2007), 159 – 160.

³³ Clarksville, Texas, *The Northern Standard*, May 26, 1855; Ardrey to Roberts, May 30, 1855, Roberts Papers[quotation]; Austin, *Texas State Gazette*, June 23, 1855.

others in East Texas favored Middleton Tate Johnson, a former Texas Ranger and Mexican War veteran, originally from Shelby County but presently living in Tarrant County near present day Arlington. Roberts was concerned about the Know Nothings, however, and did not want to see the Democratic vote split and open the door to the election of Dickson. Roberts consulted Johnson about the possibility of uniting the Democratic vote on one candidate. The two men decided on a course of action. Most of the details of this plan are not known but it evidently involved Pease declining to run in favor of Johnson. Roberts outlined his plan in a letter to Governor Pease and Johnson took that letter to Austin.³⁴

Johnson delivered the letter to Pease on July 20, 1855. The governor asked for a few hours to consider the proposal and talk it over with his political managers. When the two men met later that day, Pease informed Johnson that he was staying in the race, and the two men agreed that each one would stay in. Roberts had evidently urged Johnson to withdraw from the race if Pease refused. However, Johnson had done that very thing in 1853 and believed that if he did so again, his political career was over. Accordingly, he wrote Roberts, “I thank you kindly for what you have done to produce harmony in the Democratic ranks – and could I decline the race without ruin to myself I would not hesitate but under the circumstances no real friend can expect it.” Public pressure was soon brought to bear on Johnson, however. In July, two petitions made the rounds in Austin, one asking Pease to stay in the race, and the other asking Johnson to drop out. He announced his withdrawal on July 23, 1855.³⁵

Now that the Democrats had settled on a single candidate, Roberts proceeded to address what he saw as a real threat, the Know Nothings. During the summer of 1855, he made speeches

³⁴ M.T. Johnson to Roberts, July 20, 1855, Roberts Papers.

³⁵ Johnson to Roberts, July 20, 1855, Roberts Papers.

in several towns in East Texas attacking the new party. His standard speech on the subject developed a theme he would employ in polemical writings for the rest of his life. Roberts began with the premise that there had always been two political parties in the United States: Federalists and Democrats. Democrats believed in a strict construction of the constitution. Federalists, on the other hand, “By construction and indirection . . . they have enlarged some rules of the constitution and abridged others, and thereby infused elements into the actual government of the country for which there is to be found no certain plain rule in the constitution.” According to Roberts, the origin of these two parties went back to the early settlement of the country. Simply put, the Federalists were the intellectual offspring of the Puritans of New England, a controlling judgmental people, while the Democrats were the heirs of the noble, liberty-loving, Virginia cavaliers.³⁶

Roberts clearly equated the Know Nothings with the Federal, Puritan branch of American politics. Compounding that original sin was the fact that they were a secret organization and were anti-immigrant. According to Roberts, “Know-nothingism aspires to be something more than what we have shown it to be – a fragment of the Massachusetts idea; it aspires to be the American party.”³⁷ His speech implicated Know-Nothingism as un-American, and perhaps more importantly to his listeners, un-Southern. Roberts would use these same themes (Federal vs. Democrat, Puritan vs. Cavalier) in the years following the Civil War in similar attacks upon the Republican Party.³⁸

The Know Nothings had limited success during 1855. Although Dickson was soundly defeated in the gubernatorial race, the Know Nothings managed to elect twenty-five state

³⁶ O.M. Roberts, “Know-Nothing Speech, 1855,” Roberts Papers.

³⁷ Roberts, “Know-Nothing Speech, 1855,” 4, Roberts Papers.

³⁸ O.M. Roberts, “Know Nothing Speech, 1855,” Roberts Papers.

legislators. Lemuel D. Evans, a former Jackson Democrat who ran against Roberts for Congress in 1851, won the race for Congress from Texas's eastern district. Many of Roberts's friends scolded him for not running for Congress in 1855, believing that he could have defeated Evans. James Ardrey of Nacogdoches, recently elected to the state legislature, wrote, "News has reached us here that Evans has been elected to Congress. This I very much regret and think that if you had come out when I solicited you that you could have made a much better run than [Matt] Ward."³⁹ Most Democrats of the states' rights wing of the party cared little for Governor Pease, but viewed him as preferable to any Know Nothing. George Smyth, returning from his one term as Representative of Texas's Eastern District, wrote Roberts, "I must acknowledge that I have so great an aversion to the doctrines of Governor Pease's Galveston letter that it could only be exceeded by my abhorrence of Know-Nothingism[underlined in original]."⁴⁰

One reason Evans won election as a Know Nothing was that he was opposed by several Democratic candidates who split that party's vote. Once the election was over, Roberts turned his attention to organizing the Democratic Party in Texas. In order to accomplish this, he sought the advice of several prominent and influential Texans, including U.S. Senator Thomas J. Rusk. Rusk responded, "I fully agree in all the sentiments of your letter and think no time ought to be lost in fully organizing the Democratic party in every county in the state."⁴¹ The senator enclosed a copy of the Democrats' Baltimore Platform of 1852 and suggested that its tenets be used to guide the party in Texas.

³⁹ Ardrey to Roberts, August 27, 1855, Roberts Papers. Similarly, Roberts's old friend Daggett, now living in Fort Worth, admonished him, "You are also made an other misstep [sic]. You aught [sic] to have remembered that you have been looked on for severall [sic] years as a probible [sic] candidate for Congrass [sic]. Daggett to Roberts, August 13, 1855, Roberts Papers.

⁴⁰ George W. Smyth to O. M. Roberts, August 14, 1855, Roberts Papers.

⁴¹ Thomas J. Rusk to Roberts, October 1, 1855, Roberts Papers.

Apparently, part of Roberts's strategy was to organize on the county level and build from the grass-roots up. This effort was successful as the Democrats held a state convention in Austin on January 8, 1856. Roberts was also solicited to allow his name to be selected as a presidential elector, although apparently he declined. However, his old college friend, Frank Bowdon, was chosen as an elector. The judge was called upon to address several county meetings over the next two years. In October of 1855, he was invited by Democrat leaders in Harrison County to speak at a barbeque given in honor of Senator Rusk. Louis T. Wigfall, Pendleton Murrah, and Chester M. Adams invited Roberts to speak, "well knowing your ability and devotion to the cause of the democracy. . . ." Roberts was invited to speak at barbeques like this throughout the fall of 1855 and up through the presidential election of 1856.⁴²

Once the Know-Nothings had been defeated and their influence was on the wane, the main political division in Texas was "between the states-rights leadership – prominent among whom were Roberts, Henderson, Rusk, Reagan, Wigfall, Murrah . . . – and the followers of Houston."⁴³ Although the judge was solicited to run for a number of elected positions, he preferred to bide his time for the right opportunity and focus on his private law practice. In August of 1856, elections for Texas Supreme Court were held, and some of Roberts's friends, including future governor Richard B. Hubbard, encouraged him to run against Associate Justice Abner Lipscomb. Although he had briefly considered running against Lipscomb in 1851, Roberts had made a political and personal decision not to oppose Judge Lipscomb, a man he admired. There was simply no need to risk defeat in a contest against a popular incumbent when his

⁴² A.G. Cantley to Roberts, December 1, 1855, Louis T. Wigfall, Pendleton Murrah, and Chester M. Adams to Roberts, October 17, 1855 [quotation], Wigfall, Adams, J.M. Clough, Murrah, Patillo, and R. W. Laughery to Roberts, October 11, 1856, Matthew Ector, J. G. Graham, L. P. Hollingsworth, J. H. Parsons, and M. D. Graham to Roberts, October 16, 1856, Roberts Papers.

⁴³ Bailey, "The Life and Public Career of O.M. Roberts," 87.

popularity as a Democratic Party leader continued to grow. Why jeopardize his political capital in a race he may not win? Another lawyer from East Texas, Thomas J. Jennings, ran against Lipscomb and was defeated.⁴⁴

The wisdom of Roberts's decision not to oppose Lipscomb soon manifested itself in an unexpected manner. On December 6, 1856, while attending the winter session of the Supreme Court, Judge Lipscomb died suddenly in Austin. Almost immediately, politicians hopeful to succeed Lipscomb began to jockey for position, causing Judge Wheeler to be "mortified at the indecent haste manifested here [Austin] to forestall public opinion & rush into his place, almost before it was vacant." Friends of Andrew Jackson Hamilton, an Austin lawyer, began circulating a petition soliciting members of the bar in the capital to urge him to run. One of those who signed Hamilton's petition was Roberts's friend Sublett, Hamilton's law partner. More than likely, Sublett's involvement with Hamilton's candidacy was a ruse to buy time while raising support for Roberts. Within a week of Lipscomb's death, Sublett wrote to Roberts urging him to announce his candidacy quickly. Wheeler had written to him around the same time as well, apprising him of the situation in Austin and encouraging him to announce as a candidate as quickly as possible. Although propriety prevented him from saying so publicly, Wheeler made it clear that both he and Judge Hemphill preferred Roberts to all other candidates. As soon as he received word of developments from his friends in Austin, Roberts replied, announcing himself as a candidate.⁴⁵

⁴⁴ Richard Hubbard to Roberts, January 1, 1856, Thomas J. Jennings to Roberts, June 19, 1856, Roberts Papers.

⁴⁵ Wheeler to Roberts, December 10, 1856 [quotation], Sublett to Roberts, December 13 and 28, 1856, Roberts Papers.

In addition to Wheeler and Hemphill's silent support, Roberts was able to count a number of prominent Texans among those wanting to see him on the state bench. Shortly after Lipscomb's death, Sublett circulated a petition among prominent lawyers and legislators in Austin, calling on Roberts to run. Among those who signed were A.J. Hamilton (whom Sublett convinced to decline nomination in favor of Roberts),⁴⁶ future governor Edward Clark, William Pitt Ballenger of Galveston and Alexander W. Terrell. He also had the support of former governor Henderson. Henderson wrote plainly, "You are my preference and I think you ought to become a candidate." Like Sublett and Wheeler, the former governor urged Roberts to announce his candidacy quickly in order to avoid having to face a multitude of rivals. His congressional campaigns had been largely undone by his tardiness in getting involved while waiting to be "called upon" by constituents. Henderson counselled his old friend in this regard, writing, "But I suggest that you do not wait for the receipt of any further invitation. I take it for granted that [Thomas J.] Jennings will be a candidate. He surely will if you are not announced at an early day." [underlined in original]⁴⁷

Jennings indeed was preparing to run for the open Supreme Court position. The Cherokee County lawyer had run against Lipscomb the previous August and had been defeated. He wanted to run again, but wanted to wait and see what Roberts would do. Jennings informed Roberts that he was being asked to run by many people in East Texas and needed to know what Roberts would do. He proposed to "defer any decision of the matter till (sic) the Grand Lodge at Palestine (3d Monday in Jany next) when and where I will meet you if you say so." He also

⁴⁶ O. M. Roberts, "Notes on My Election to the Supreme Court," Roberts Papers.

⁴⁷ C. H. Randolph to Roberts, December 17, 1856, Henderson to Roberts, December 20, 1856 [quotation], Roberts Papers.

wrote, "I think you owe me some courtesy at least for the manner in which I gave you the preference in regard to a similar matter last summer"⁴⁸

Roberts wasted no time in replying, and his answer was a polite but firm, "no."

Immediately upon receipt of Jennings's letter he wrote:

I shall always acknowledge the debt [referring to Jennings's deference during the summer of 1856], and I trust I may yet find some occasion when I may more publicly acknowledge my appreciation of your kindness. But it so happens that the very fact to which you refer, your generous solicitation, together with the proffered support of many other friends at that time caused me to act more promptly in responding to the present extensive manifestation in my favor. Indeed it had not occurred to me that you would wish to be a candidate for that office, or that your friends would urge you to run, so soon after the late election. Our previous relations through a long period, required that I should be thus explicit.⁴⁹

Despite this rebuke, Jennings decided to stay in the race.

While various candidates jockeyed for position, letters came to Roberts from all over Texas urging him to run in the special election which had been called for February 2, 1857. In addition to the petition from the bar in Austin, He was solicited to run by the Ellis County Bar and by a citizens committee from San Augustine. Individuals from all over northern and eastern Texas wrote to express their support. Former Shelby County neighbor Ephraim Daggett, now living in Fort Worth, wrote to express his support as well as that of Middleton T. Johnson, the man Roberts had tried to promote for governor in 1855.⁵⁰

By January of 1857, the slate of candidates for February's special election was set. They were Roberts, Peter W. Gray of Houston, John Taylor of Cherokee County, B.C. Franklin of

⁴⁸ Jennings to Roberts, December 24, 1856, Roberts Papers.

⁴⁹ Roberts to Jennings, December 26, 1856, Roberts Papers.

⁵⁰ J.G. Brooks, Franklin B. Sexton, Richard Waterhouse, R.F. Slaughter, and E. Williams to Roberts, December 20, 1856, Minutes of the Ellis County Bar Association, December 28, 1856, Daggett to Roberts, December 26, 1856, Roberts Papers.

Galveston, and Jennings. Roberts was at a disadvantage for several reasons. First, although he was well known in East Texas, he had “never been two miles west of the Brazos River.” His support in the western part of the state would have to come from people who had moved there from East Texas, or from friends in the state legislature. Second, his principal rival, Gray, being a resident of Houston, had the advantage of being more centrally located. He was better known by people in the western part of the state as well as those in the Houston and Galveston areas. Roberts, living in Shelby County, had his base of operations in the easternmost part of the state and was not as well exposed to voters in other areas. Third, the candidacy of Jennings, another East Texan, threatened to split the vote in that region, a fact that irritated Roberts to no end. Fourth, the remnants of the Know Nothings concentrated their ire on Roberts for his vigorous denunciation of them in the 1855 gubernatorial campaign. In East Texas, they focused their vote on Jennings, while in southern Texas, they tended to vote for Gray.⁵¹

Despite the difficulties, Roberts had many advantages in this election as well. Sublett was tireless in his support for the judge, to the point of arguing with the editors of the *Texas State Gazette* because they did not immediately endorse Roberts in the judicial election. Sublett was also able to influence his law partner, Hamilton. Despite belonging to the Jacksonian wing of the Democratic Party, he was invaluable in promoting Roberts for the Supreme Court and had more contacts in western Texas than either Sublett or Roberts. According to Sublett, “I have written as many letters as I thought would do any good and have caused Hamilton to write many, to

⁵¹ Recalling this election decades later, Roberts wrote, “I had the gratification of beating Col. Jennings in his own County of Cherokee. This was a cutting rebuke upon him for his inopportune candidacy [sic] for the office, I having previously been called out by an exhibition of public sentiment, which no one could decently disregard.” Roberts, “Notes on My Election to the Supreme Court” [quotation]; B.T. Selman to Roberts, February 5, 1857, Ward Taylor to Roberts, January 30, 1857, Roberts Papers.

persons whom I knew he could control and if you don't get through safe I can well say, the fault is not ours."⁵²

Roberts was endorsed by several newspapers in East Texas. The Henderson *Democrat* endorsed him, writing, "[Roberts] has but few equals in the State in sound legal acquirements. His integrity is unspotted, for through his whole life – and he has occupied many prominent positions – there is not a single act [that] can be found which would cast a shadow upon his fair fame as a man of the strictest integrity and of the most unexceptionable morals."⁵³

The race came down in a large degree to geography. Both Roberts and Gray were states' rights Democrats, so there was not much ideologically to differentiate the two candidates. It was generally understood that Franklin, a resident of Galveston, would draw some of the southern vote from Gray, just as Jennings and John Taylor, both of Cherokee County would diminish Roberts's dominance in East Texas. The contest, therefore, came down to which candidate could gain a majority of votes west of the Brazos.

The election went as Roberts and his supporters expected. Roberts won most of the counties in East Texas, and Gray won most of the counties along the coast (except Galveston which went for Franklin). The turnout in western Texas was quite low, which proved to be an advantage to Roberts. Many of his friends and acquaintances from East Texas who had moved to the west tipped the balance in his favor. Sublett and Hamilton were crucial in drumming up votes in Austin, a city that gave Roberts 198 votes to Gray's 89. This support proved crucial because

⁵² Sublett to Roberts, January 20, 1857, Roberts Papers. Hamilton, a Unionist, would later serve as a Union brigadier general and as the military governor of Texas during the Civil War and become a Republican during Reconstruction. He would briefly serve as governor during Reconstruction as well. At this point he was a Unionist Democrat. In this same letter, Sublett wrote, "Him [sic] and I have differed upon the rights of the Territorial Legislatures – He thinks with Cass, and I with Calhoun." *Handbook of Texas Online*, James A. Marten, "Hamilton, Andrew Jackson," accessed March 11, 2016, <http://www.tshaonline.org/handbook/online/articles/fha33>.

⁵³ Henderson, Texas, *The Democrat*, January 17, 1857.

he narrowly defeated Peter W. Gray, 4,740 votes to 4,394, on February 2, 1857. It took some time for all the returns to come in, but the vote was certified by Secretary of State Edward Clark on April 3.⁵⁴

Roberts wanted to waste no time in assuming his new duties. There was some question of election returns arriving late from remote counties such as El Paso. The spring session of the Supreme Court opened in Tyler on April 13, 1857, and Judge Wheeler had advised Roberts to take the oath of office as soon as he received his certificate of election. Roberts went on to Tyler, where the certificate of election was delivered by Supreme Court clerk Thomas Green. His arrival on the bench could not have come sooner for his friend and fellow Associate Justice Wheeler. The docket for the spring session was full, and Wheeler was feeling overworked. He wrote, “On second thought, I believe you are entitled to sympathy – for this life of a judge of the Sup. Court is a dog’s life – day & night – ceaseless labor – no cessation – no relaxation – no slave labors as we do. . . .”⁵⁵

Despite being the newest judge sharing a bench with giants Hemphill and Wheeler, Roberts quickly established his presence and made certain innovations. Prior to his arrival on the bench, opinions were handed down without dissent. One judge wrote the opinion with the implication that the others, at least tacitly, concurred. However, Roberts was not the kind of man to go along with a decision if he disagreed with it. During the fall term of the Supreme Court in 1857, Roberts, in the case of *Cain v. The State*, became the first associate justice to offer a dissenting opinion. Disagreeing with the majority opinion, offered by Judge Wheeler, he wrote, “Not being able to satisfy myself of the correctness of the rule of construction upon which the

⁵⁴ Sublett to Roberts, December 13, 1856 [quotation]; Bird Holland to Roberts, March 20, 1857, Certificate of Election, April 3, 1857; Roberts Papers. See also Austin *Texas State Gazette*, April 4, 1857.

⁵⁵ Wheeler to Roberts, March 12, 1857 [quotation]; Williams to Roberts, April 11, 1857, Roberts Papers.

very able and elaborate opinion of the majority is based, I respectfully present my views leading to a different conclusion; and will only say enough to develop the principle upon which they rest.”⁵⁶

Roberts ruled on a wide variety of cases during his time as Associate Justice. Most of these cases dealt with mundane issues rather than weighty legal questions. For example, during Roberts’s first session on the state bench, in April of 1857 held in Tyler, he heard an appeal from Alexander Dixon who had been tried and convicted in Rusk County for stealing a hog worth five dollars. He had been sentenced to pay a fine of fifty cents and spend six hours in jail. Dixon appealed on a technicality; during the original trial in Henderson, the judge allowed the state to admit into evidence a bill of exception which showed that the hog had been marked by its owner, John McCauly. Dixon argued that McCauly’s mark had not been registered and that it was identical to Dixon’s mark, which was registered, proving that the hog actually belonged to Dixon. Dixon did not bring any of this up during the original trial, only afterwards. Judge Roberts called the appellant’s motive into question, stating, “Not before, but after the trial, appellant shews by his affidavit that he is in indigent circumstances; not for the purpose of having his innocence manifested, but to be relieved from the costs of the prosecution.” Roberts affirmed the lower courts judgment, concluding, “. . . it is difficult to see, from the record, any good reason why this case should have been brought here, when its only result must have been to perpetuate the infamy of this poor man, by the records of the highest Court in the State.”⁵⁷

The Supreme Court in the 1850s often dealt with cases regarding the institution of slavery. In one of these cases, *State v. Stephenson* (1857), Roberts wrote the opinion. This case

⁵⁶ *Cain v. The State*, 20 *Texas Reports*, 366; Bailey, “The Life and Public Career of O.M. Roberts,” 250-251.

⁵⁷ *Dixon v. The State*, 19 *Texas Reports*, 134-135.

came from Washington County, where John Stephenson had whipped another man's slave. A lower court had found Stephenson not guilty, and his lawyers argued that people other than the slave's owner, could lawfully chastise slaves, including overseers. Roberts's opinion showed a surprisingly liberal legal view of the rights of slaves. He wrote that the defense's argument was:

. . . predicated on the idea, that a slave is property only, as a horse or any other domestic animal. If we recognize in the slave personal rights, an assault and battery, by one not the owner, is *prima facie* an invasion of them. Upon the contrary hypothesis every white person would have *prima facie* the right to whip any slave; which is a principle not recognized either by the public opinion and usage, or the laws of the country. . . . The principle that the slave has personal rights being established, it is somewhat like an assault and battery upon a child, a ward, or an apprentice.⁵⁸

This decision is instructive for a number of reasons. While Oran Roberts was certainly a believer in white supremacy he argued that the law recognized that slaves had certain personal rights, including the right to not be beaten without their owner's consent. Roberts's legal view of slavery was that slaves were both property and persons. Even though this is a legal decision, one wonders how much of Roberts's personal feelings about slavery entered into his opinion. The institution of slavery made possible his education, social position, and wealth. If non-slaveholders had the right to attack any slave they saw, they would be attacking the very thing that made his success possible.⁵⁹

Roberts also evinced a willingness to tackle weightier questions of constitutionality. His opinion in *The State v. The Southern Pacific Railroad Company* involved the contract clause of the U.S. Constitution. The main question involved in this case was whether or not the incorporation charter given to Southern Pacific was a contract. If it was, the contract clause of

⁵⁸ *State v. Stephenson*, 20 *Texas Reports* 152-153.

⁵⁹ Haley, *The Texas Supreme Court*, 64.

the Constitution, as interpreted by U.S. Chief Justice John Marshall in *Fletcher v. Peck* (1810) and *Dartmouth v. Woodward* (1819), would keep the legislature from passing a law that violated that contract. Roberts ruled that the charter of incorporation given by the state to the railroad was not a contract and then attached a note to his decision explaining himself:

In the decision of this case, it is not necessary to examine a question which has been settled by the highest authority in this country, and seems to be acquiesced in generally; that is, whether or not the charter of incorporation is a contract, within the meaning of that clause of the constitution, which prohibits any law from being passed "impairing the obligation of contracts." I desire to express it as my own opinion, that it is not.

That clause is borrowed from a similar one in the Constitution of the United States. It was there inserted to meet and prevent a prevalent evil, which was well known at the time, and had reference to executory contracts. A grant of a franchise is like a grant of land. It may be construed into a contract, but it is the work of construction. It is not treated of as a contract, and was never, as it is believed, spoken of in that connexion, by those who taught or administered the laws, up to the time of the adoption of the constitution; nor, indeed, up to the time of the leading cases of *Fletcher v. Peck* and *The Dartmouth College v. Woodward*.

This construction met with dissent, when first adopted. Its application to new cases, as they have arisen, has met with increasing disagreement and dissent. If carried to its legitimate conclusion, to the full extent, the State government may, by improvident legislation, be deprived of many of its important powers, ceded, by contract, to the numerous corporations that are filling the country, without the capacity to reclaim them, except by a revolution.⁶⁰

Roberts, by his own admission, did not have to explain his decision by disagreeing with the venerable John Marshall. His explanation shows his strict constructionism and his willingness to point out what he saw as fallacies in a loose construction of the Constitution. It is interesting to note that Judge Roberts wrote this explanation during the fall 1859 Supreme Court term, a time when Texans were deciding whether to elect as governor Unionist Sam Houston or states' rights Democrat, Hardin Runnels. Sectional conflict was high that autumn, and Roberts's decision may have reflected his understanding of the problems that faced Texas and the United States as a whole.

⁶⁰ 24 *Texas Reports* 131.

Despite the supposedly non-partisan nature of his new elected position, Judge Roberts stayed involved with Democratic Party politics. A new governor would be elected in 1857, and potential candidates for various offices all over East Texas wrote Roberts for advice and support. Even while promoting Roberts for Associate Justice, Sublett had decided to run for Lieutenant Governor as M.T. Johnson's running mate. He asked for Roberts's assistance, writing, "I do not expect you of course to take an active part. But you know how things of this sort are done – one working man is worth a hundred mere well wishers in a crisis like this – You know what kind of tools you can work with and what can be affected with them."⁶¹

How much support Roberts gave to Johnson and Sublett's candidacy is not known. If he did work on their behalf, he was not successful. In May of 1857, at a state convention in Waco, Texas Democrats nominated Hardin Runnels for governor and Francis Lubbock for lieutenant governor. Runnels, a wealthy Bowie County planter, was a states' rights Democrat and his nomination represented the fact that the states' rights faction was irritated with U.S. Senator Sam Houston for his opposition to the Kansas-Nebraska Act in 1854 and pro-Union positions since. Indeed, shortly after Runnels was nominated, Houston announced as an independent candidate for governor. Runnels narrowly won the election, and the states' rights Democrats, at least temporarily, seemed to have the upper hand in Texas.⁶²

While Runnels and Houston vied for the governorship, one of Texas's U.S. Senate seats was suddenly and tragically vacated. Senator Thomas J. Rusk, mourning the loss of his wife over a year earlier and suffering from a tumor, committed suicide on July 29, 1857. Texas politicians mourned his loss even as they jockeyed for position to replace him. Henderson quickly emerged

⁶¹ Sublett to Roberts, February 8, 1857, Roberts Papers.

⁶² Campbell, *Gone to Texas*, 235.

as a favorite. At the same time, state legislators were already putting a plan in motion to choose Houston's replacement as Senator, even though his term did not expire for two more years. Among those spoken of as his successor were Calhoun Democrats such as Williamson Oldham, one of the editors of the states' rights *Texas State Gazette*. Unionist or Jacksonian Democrats vying for the seat were ex-Governor Pease, and Sublett's law partner A. J. Hamilton. Sublett, possibly believing that Roberts did not vigorously support his candidacy for lieutenant governor, wrote the judge, "You said to me once that if elected you did not intend to forget your friends. I was pleased with the sentiment, so much so, that I showed your letter to Jack Hamilton, who was quite as much pleased with the sentiment as myself. You can now have a very fine opportunity of redeeming your pledge . . . Jack Hamilton will be a candidate for the Senate."⁶³

It is doubtful that Roberts seriously considered campaigning for a Jacksonian Democrat like Hamilton, despite the latter's support for him during the Supreme Court election. He was far more likely to support his friend and mentor, Henderson, who soon emerged as the favorite to succeed Rusk and wrote to Roberts to elicit his support. Henderson preferred that the state legislature elect him to Houston's seat (Houston's term was set to expire in 1859) so he had two years to get his affairs in order. "You may say to my friends when you get to Austin that such is my preference should it meet the approbation of the East and the West," Henderson wrote. Despite his preference to succeed Houston, the state legislature, in November of 1857, elected the former governor to succeed Rusk.⁶⁴

At the same time they nominated Henderson, the state legislature also took the opportunity to put pressure on Senator Houston to resign. They elected Chief Justice Hemphill to

⁶³ Campbell, *Gone to Texas*, 235; Sublett to Roberts, August 7, 1857, Roberts Papers.

⁶⁴ Henderson to Roberts, September 28, 1857, Roberts Papers.

replace Houston when the latter's term expired in 1859. Houston, of course, did not resign, but the early selection of Hemphill necessitated the election of a new chief justice when he went to the Senate. Many members of the bar soon expressed their support for Wheeler to replace Hemphill as Chief Justice, and looked to Roberts for support. Henderson broached the subject by asking, "If Judge Hemphill is elected to the Senate Judge Wheeler should be elected Chief Justice? How can that be managed?" Roberts was involved with the effort to promote Wheeler to Chief Justice and helped to draft a series of resolutions urging his nomination at the Democratic Convention in Austin in early 1858.⁶⁵

The division among Texas Democrats between states' rights men and Union men continued to grow wider. After being defeated by Runnels for the governorship in 1857, Houston began to marshal support for another run at the same office in 1859. Hemphill's resignation from the bench to go to the Senate and Wheeler's ascension to Chief Justice left an opening on the state bench. In the fall of 1858, Unionist James H. Bell was elected to fill that seat. In the same election, A.J. Hamilton, Roberts's former supporter for Associate Justice in 1857, a Unionist as well, was elected to Congress. Unionist Democrat James W. Throckmorton of Collin County was elected to the state legislature as well. As sectional rhetoric heated up across the nation, the Jackson wing of the Texas Democratic Party appeared to be gaining ground.⁶⁶

In addition to the apparent Unionism displayed by Texas voters during the last two years of the 1850s, many older states' rights Democratic leaders died, leaving a temporary vacuum in leadership. Many of these men were personal friends of Judge Roberts. Shortly before Senator

⁶⁵ Henderson to Roberts, September 28, 1857 [quotation], Richard S. Walker to Roberts, November 14, 1857, January 2, 1858, Joseph L. Hogg to Roberts, December 5, 1857, January 2, 1858, O. M. Roberts, "Resolutions in Favor of Judge Wheeler as Chief Justice," Roberts Papers.

⁶⁶ Buenger, *Secession*, 38-39; Campbell, *Gone to Texas*, 235-236.

Rusk killed himself, Roberts's old college friend, Frank Bowdon, died in Henderson on June 8, 1857. Bowdon had served several terms as a Congressman from Alabama before moving to Texas in 1852. He had concentrated on his law practice, but was poised to reenter the political arena. He was an elector for James Buchanan in 1856 and was mentioned by many as a possible candidate for Congress. Of his death, Wheeler wrote, "How melancholy that such a genius, just when prepared to shine, & and benefit mankind should have been thus eclipsed & dethroned." Former Republic of Texas President Anson Jones committed suicide on January 9, 1858, and on June 4, of that year, Roberts's old San Augustine mentor and friend, James P. Henderson, died after a brief illness.⁶⁷

The position of Associate Justice brought with it a salary of \$2,000 per year, and Roberts continued to add to his personal wealth. By 1857, his first year on the state bench, he owned 1,658 acres on Patroon Bayou in Shelby County, 250 acres on Ayish Bayou in San Augustine County, and his 640 acre headright in Hunt County. He owned 7 slaves, 4 horses and 30 cows that stayed on his Shelby County farm, and his total wealth in that year was \$10,359. Roberts moved to Smith County in 1859, where he bought 350 acres and 2 town lots in Tyler. He moved his slaves and livestock to the Smith County farm and bought 30 more cows for a total of 60. Although he moved his residence, he remained in possession of the Shelby County property and doubled the size of his holdings in Hunt County.⁶⁸

By 1858 Oran Roberts had established himself as a leader of the states' rights faction of Texas Democrats. Although he had been unsuccessful in two bids for U.S. Congress, he had succeeded in helping to thwart the Know-Nothing threat and in organizing the party in Texas. Before 1855, Democratic conventions were sparsely attended and not taken seriously. After

⁶⁷ Wheeler to Roberts, July 1, 1857 [quotation], Walker to Roberts, July 18, 1858, Roberts Papers.

⁶⁸ County Tax Rolls, Shelby County, 1857, 1858; County Tax Rolls, Smith County, 1859.

Roberts's two unsuccessful congressional runs and the challenge of the Know-Nothings, he helped to lead his party into a system where they would nominate a single candidate instead of splitting the vote among several. In doing so, he had emerged as a power broker among states' rights Democrats in Texas. His expertise in the law and connections with influential friends had resulted in his election to the Supreme Court in 1857. As the nation careened towards disunion, and older (and perhaps, calmer) statesmen died off, Roberts stood on a pedestal of public acclaim and professional accomplishment and readied himself to defend the institution of slavery and the philosophy of states' rights.

CHAPTER 5: "I BOW TO THE SOVEREIGNTY OF THE PEOPLE OF MY STATE:"
1859 - 1861

By 1859, the divide between unionist Democrats and states' rights Democrats had become a veritable gulf. For much of the 1850s, the Calhoun wing of the party, the faction Oran Roberts identified with, appeared to be gaining strength. Sam Houston, the standard bearer of Unionism in Texas, had lost the 1857 gubernatorial race to Hardin Runnels, a states' rights man. That same year, the Texas legislature delivered a stinging rebuke by naming a replacement, Chief Justice John Hemphill, two years before Houston's term expired. As the states' rights Democrats gained strength in Texas, Oran Roberts rose with them. By 1859 he was not only an Associate Justice, but a power broker. In a short time, he would become instrumental in leading Texas out of the Union. In doing so, the lessons he learned as a young man in Alabama continued to influence him. He became convinced that slavery, so important in his own early life, could only be successfully defended outside the framework of the Union. In order to protect it, he worked with friends and acquaintances to maneuver Texas out of the Union.

During 1858, Texas voters elected several unionist candidates, and they continued that trend into 1859. In August, Houston defeated Runnels for governor. Houston focused more on local issues than national ones and pointed out Runnels's failed record on defending the frontier. Rumors circulated that Houston might seek re-election to the Senate if the Jacksonian Democrats had a majority in the next legislature. Following a series of electoral defeats, Calhoun Democrats were determined to see one of their own chosen by the state legislature to replace the deceased Henderson. Some looked to Judge Roberts to represent Texas in the Senate. State legislator William Wright Morris of Henderson wrote:

It is thought by some that the [states' rights] democrats will have a small majority in the next legislature. Friends are looking about for some good Southern-rights

man to run for the office of Senator in Congress who can fill the bill and unite on him the great strength. Your name has been suggested in connection with the above views. In fact I heard one of our representatives elect say that he thought you the strongest man.¹

This information certainly intrigued the judge. He was very ambitious, and the prospect of going to the U.S. Senate appealed to him. He replied that he would not announce his candidacy, but that under “proper circumstances” his name could be brought up.²

The general consensus among states’ rights Democrats, however, seemed to be that Roberts was more useful on the state bench and providing the philosophical underpinnings for the defense of slavery and states’ rights. He had never been much of an orator, a fact that had frustrated him during his one term in the Alabama legislature, and probably affected his two campaigns for Congress in the early 1850s. The first hint that his colleagues wanted him to stay on the bench came from Morris. “We are now at sea and the question should be not who deserves elevation but who can best serve us not only in the national council but in reorganizing our scattered forces at home,” Morris wrote. By that point, the man many states’ rights Democrats in the state legislature had begun to favor was fire-eater Louis T. Wigfall of Marshall. Unlike Roberts, Wigfall was a fiery and effective orator. The final stroke to the judge’s senatorial ambitions apparently came from an old friend, former law partner Daniel M. Short, representative from Shelbyville. When Roberts arrived in Austin for the fall term of the Supreme Court, he and Short went to the Avenue Hotel for drinks. Roberts asked Short to help him get elected as Senator and was dismayed when his former law partner replied that he was supporting Wigfall, responding, “Why, you are not going to vote for Wigfall! You won’t even speak to him on the street.” Short retorted, “Yes, I am going to vote for Wigfall! You know you can’t make a

¹ William W. Morris to Roberts, August 25, 1859, Roberts Papers.

² Campbell, *Gone to Texas*, 235-236; Morris to Roberts, September 10, 1859, Roberts Papers.

speech, and we need someone in Congress who can speak for the South.” As late as December, The Clarksville *Standard* was reporting that those opposed to Wigfall in the state legislature would concentrate their vote on Roberts. That was not true; the judge removed himself from consideration. Wigfall went to the Senate, and Roberts stayed on the bench.³

Staying on the bench put Roberts in the position of being the intellectual leader of the pro-slavery, states’ rights forces in Texas. At some point during 1859, he wrote an essay on the right to carry slaves into federal territories. This exposition, although never published, is a window into Roberts’s thinking on the subject. It shows him to be a proponent of the compact theory of the Constitution and an adherent to the views of John C. Calhoun. Roberts began this exposition by quoting portions of the Constitution outlining the powers of Congress over U.S. territories. According to Roberts (in full agreement with Calhoun), the federal government held territories as properties in trust, belonging equally to citizens of every state. He wrote, “It is the duty of the Federal Government as trustee to administer the trust so as to give the people of the several states equal opportunities to realize the benefits of this trust-property.”⁴ According to Roberts, those benefits were pecuniary, the ability to settle there and make a living, and political, or the right to establish a republican form of government.

Having established his theory of territories as property held in trust by the federal government for the states, he then proceeded to disqualify other theories concerning the right of Congress to regulate slavery in the territories. He insisted that Congress could not ban slavery in

³ Morris to OMR, September 10, 1859, Roberts Papers (first quotation); Bailey, “The Life and Public Career of O.M. Roberts,” 99 (second quotation). Many people who knew Judge Roberts were still alive during the 1930s when Ms. Bailey wrote her dissertation. This account came from an interview she conducted with Short’s son, Judge Hugh Ballard Short. King, *Louis T. Wigfall*, 67-69.

⁴ Oran M. Roberts, “Constitutional Exposition of the Right of Protection of Slave-property in the Territories of the United States,” 2, Roberts Papers; John Niven, *John C. Calhoun and the Price of Union: A Biography* (Baton Rouge: Louisiana State University Press, 1988), 200-205.

the territories by arguing that “Each one of the states has an equal right, through its emigrating population, to impress the new state that is to be formed, with its own peculiar character, of social or political organization.” Roberts next dealt with the doctrine of popular sovereignty, which would allow citizens of a territory to decide the issue of slavery for themselves at the territorial stage, in the abstract. He admitted the attractiveness of this theory, writing, “In accordance with the general principles of American liberty, the people of the territory should be allowed the greatest freedom of self-government consistent with the preservation of these common and respective rights of the states and the people thereof.” However, “The trustee cannot in good faith administer this trust so as to give a portion, even the greater portion, of the several beneficiaries the entire benefits. The appropriation of the trust is not to be decided to suit the interests of the majority as that would leave the minority without any benefit.” One can easily see the influence of John C. Calhoun on Roberts’s argument.⁵

Having dealt with the right of the federal government to regulate the territories in the abstract, Roberts next explained how Congress should deal with the specific issue of slavery in the territories. He explained that limiting slavery in federal territories violated the rights of the citizens of the fifteen slave states by not allowing them to derive either pecuniary or political benefits of those territories. He wrote:

If then it is the duty of the General Government, as the trustee of this property and rights arising out of it, to provide the means for the equal distribution of the benefits to each and all of the States and not to distribute them according to the mere preference of a majority, then it must not suffer such discouragement of slave labor to be affected either by its own action or by the actions of the territorial legislature, either by prohibition or non-protection.⁶

⁵ Roberts, “Constitutional Exposition,” 3-4, Roberts Papers.

⁶ Roberts, “Constitutional Exposition,” 5, Roberts Papers.

This was intended as a rebuke of Stephen A. Douglas's so-called "Freeport Doctrine." In one of his famous 1858 debates with Abraham Lincoln, Douglas had argued that territories could not overtly prohibit slavery because that would violate the Dred Scott decision. However, they could refuse to pass laws protecting slavery, which would discourage slaveowners from bringing their slaves to that territory. Roberts was making the case that neither the federal government nor a territorial legislature could ban slavery in a federal territory.⁷

What should happen in the event that territorial legislatures, following Douglas's Freeport Doctrine, refuse to pass laws protecting slavery? Other southern Democrats, most notably William L. Yancey of Alabama, had argued that the federal government had a duty to protect slavery in the territories. His Alabama Platform (which he would attempt to have adopted by the Democratic Party in 1860) called for a federal slave code, explicit protection of slavery by the national government in territories. However, Roberts stopped short of that position. In fact, the judge argued that such a provision would be equally unconstitutional, writing:

So it would be equally a breach of trust to give or suffer to be given a premium or any preference whatever to the introduction of slave labor. For that would discourage emigration from the free states and thereby place them at disadvantage in the territory. . . It is not necessary that the Federal Government should establish slavery by a positive enactment of legislation directly or indirectly made. Being property it goes to the territory as such and is protected by the general laws that may be made for the protection of property and of persons. To exclude it from the Territory by establishing the rule that slaves are not property would require a positive enactment of legislation. If the General Government does this, or permits it to be done by any sort of Territorial government that it may organize, it will be intervention in favour of free labor and against slave labor.⁸

According to Roberts, those who wanted to prohibit slavery from the territories, like Abraham Lincoln, William Seward, and the Republican Party in general were incorrect, but so were Yancey and other radical southerners who demanded a federal slave code. So how did

⁷ Potter, *Impending Crisis*, 335-338.

⁸ Roberts, "Constitutional Exposition," 6-7, Roberts Papers; Walther, *Yancey*, 102-104.

Judge Roberts believe the federal government should deal with the issue? He wrote, “The General Government should be indifferent, impartial, neutral, as to the species of property that should be introduced into the territory by the citizens of the several states to be then protected. . . .” Thus, Associate Justice Roberts of the Texas Supreme Court endorsed the majority opinion of Chief Justice Roger B. Taney of the United States Supreme Court in the case *Scott v. Sanford* (The Dred Scott Decision) decided in 1857. Slavery must be permitted in all U.S. Territories and could not be prohibited by either the federal government or the territorial legislature. In the process of laying out his thoughts on the issue, Roberts rejected both popular sovereignty, which had caused chaos in Kansas, and the Alabama Platform, which he argued was unnecessary. How would Roberts’s philosophy on this subject translate into practical politics, though? What would happen if Republicans, a purely northern party that sought to exclude slavery from all federal territories, gained control of Congress and the White House? Roberts and Texas would soon have to address that very question.⁹

A far more pressing question for states’ rights Democrats in Texas was how to alert the public to what they viewed as the dangers of free-soilism. Roberts had pondered how to arouse the public after the Compromise of 1850 passed. Throughout most of 1859 it was clear that Texans were rejecting the rhetoric and threats of fire-eaters such as Wigfall and Thomas N. Waul. That summer and fall, Texans chose several unionists for office including Sam Houston as governor, and A. J. Hamilton as U.S. Representative. However, events outside the state would soon alarm Texans to the point that they became open to talk of secession. In October of 1859, abolitionist John Brown attacked the federal arsenal at Harper’s Ferry, Virginia, in an attempt to incite a slave revolt. Though he and his men were quickly captured, and Brown was hanged in

⁹ Roberts, “Constitutional Exposition,” 7, Roberts Papers; Potter, *The Impending Crisis*, 202-205.

December, his raid sent shock waves of fear and anger throughout the South. This fear was amplified when it became known that Brown had received financial support from several prominent Abolitionists in the North. That paranoia increased during the summer of 1860 when fires broke out in several north Texas towns almost simultaneously. The immediate reaction to these fears was that a slave revolt had begun, and Texans overreacted, rounding up and beating (sometimes killing) any black person that could not account for his whereabouts.¹⁰

This milieu of fear and paranoia caused Texans to believe that they were not safe within the Union. Many believed that the election of a Republican president would bring an administration to power which was extremely hostile to the South. Thus many Texas voters, though voting for unionists the previous fall, began to believe that if a Republican was elected president, secession was the only way to protect their property and even their lives. The ability of northern and southern Democrats to unite was destroyed in May of 1860 when Democrats loyal to Stephen A. Douglas rejected adoption of the Alabama Platform at the party's convention in Charleston, South Carolina. Yancey, primary author of that platform, led delegates from the Deep South (including the Texas delegation led by Guy M. Bryan) to walk out. The northern Democrats convened a month later in Baltimore and refused to let the delegates who walked out at Charleston participate. The Baltimore convention nominated Douglas for president, while the Deep South delegates met at Richmond and nominated sitting Vice President John Breckinridge of Kentucky. The Democrats were further divided when a third group calling themselves the Constitutional Union Party, largely composed of moderates from the Upper South, nominated

¹⁰ Waul, who unsuccessfully ran against Unionist A. J. Hamilton for Congress in 1859, promised during his campaign to drink all the blood that would be shed as a result of secession. Campbell, *Gone to Texas*, 236; Buenger, *Secession and the Union in Texas*, 20; Donald E. Reynolds, *Texas Terror: The Slave Insurrection Panic of 1860 and the Secession of the Lower South* (Baton Rouge: Louisiana State University Press, 2007), 29-39.

Tennessee's John Bell for president. The Democrats were now divided into three separate camps, opening the door to the election of a Republican.¹¹

The Republicans held their convention in Chicago in April and nominated Abraham Lincoln. Although Lincoln was a relative unknown outside the North, he was a Republican and thus unacceptable to the South. Indeed, Lincoln would not even be on the ballot in most southern states. Nevertheless, the arithmetic existed for Lincoln to win the election without a single electoral vote from any slave state. During the summer of 1860, Judge Roberts began to ponder the question of what the slave states should do if Lincoln were elected, as he believed likely to happen. After preparing and delivering a speech on July 20 to the Smith County Agricultural and Mechanical Society on the topography and agriculture of Texas, he spent the rest of his summer vacation studying the political situation and what course of action Texas should take should Lincoln be elected. During the late summer he corresponded with several friends and exchanged views on the subject. One of these friends, a protégé from Shelbyville named Henry Hall, replied to one of these letters, by proposing an ultimatum; he wanted southern congressmen at the next session of Congress to tell their northern colleagues to stop agitation on the slavery question or the South would secede. He further added, "But if madness rules, I believe separate nationality would increase our material wealth. An apoplectic tariff would no longer force the political secretions, the circulating medium, the blood drawn from our resources, to the Northern section."¹²

After Roberts returned to Austin for the fall session of the Supreme Court, he spent more time discussing with legislators and other government officials the course of action to be taken in

¹¹ Buenger, *Secession and the Union in Texas*, 49; Potter, *The Impending Crisis*, 407-411;

¹² H.G. Hall to Roberts, August 29, 1860, Roberts Papers (quotation); David Herbert Donald, *Lincoln* (New York: Simon & Schuster, 1995): 246-250.

the event of Lincoln's election. Roberts and his associates agreed that if Lincoln were elected, Texas should secede. The main question that confronted states' rights Democrats was how to go about that. Ideally, the legislature would call for a secession convention, but the legislature was not in session and a special session could only be called by Governor Houston, who was known to be against secession. Richard B. Hubbard wrote to Roberts:

In the event of Lincoln's election, what will Gov. Houston do? Will he convene the Legislature? Would the expression of the 'people' (for whom he expresses so strong a regard) manifested in primary meetings or otherwise, induce him, in response to the popular will, to convene the Legislature for the purpose of calling a convention to deliberate on the wrong which we will have then suffered, and to appoint delegates to a Southern Convention? [underlined in original]¹³

One of the politicians the judge corresponded with was Congressman John H. Reagan of Cherokee County, representative for Texas's Eastern District. Reagan had been a conditional unionist until late in 1860. His experience in the House of Representatives, controlled by the Republicans during that session, convinced him that Texas would not be safe with a Republican in the White House. From October of 1860 forward, once he was convinced Lincoln would be elected, Reagan advocated secession. Like Roberts, Reagan was a lawyer, and both men desired that should Lincoln be elected, secession should be carried out in an orderly fashion and not as a spontaneous outburst of unruly element in Texas society. Reagan wrote:

And I believe with you fully that whatever is done should be done by an open and manly appeal to the people, and through the instrumentality of a state convention, acting as the exponent and organ of the sovereignty of the people – of the power which makes and may change or remake governments when their interests require it to be done.¹⁴

Roberts believed (and Reagan concurred) that any call for a secession convention should not include a secret society known as the Knights of the Golden Circle. The Knights supported a

¹³ Richard B. Hubbard to Roberts, November 6, 1860, Roberts Papers.

¹⁴ Reagan to Roberts, November 1, 1860, Roberts Papers.

uniquely southern version of Manifest Destiny and dreamed of a slave empire, ruled by southern whites, that would expand throughout Mexico and the Caribbean. Roberts and Reagan believed that a movement to leave the Union, led by such a group, would be disastrous to the South. It would encourage distrust among those who were not members and possibly divide the secession movement into numerous parts. Instead, any movement towards disunion had to be an orderly expression of the people through their elected representatives.¹⁵

The problem Roberts, Reagan, and others faced in early November was which elected representatives would express the will of the people. Ideally, the state legislature would call for a convention. However, the legislature would not meet until late 1861 and could only be called into special session by the governor. Houston had already made clear that he would not call them into special session for the purpose of voting Texas out of the Union. The idea of other state leaders circumventing the governor and calling for a convention had been propounded by this point, but Reagan was not sure that was legal. He wrote, “Such a call might demonstrate popular opinion, but would not secure us the authority of the state for action. . . .” Another option would be to amend the state constitution so as to allow for secession, but that was fraught with legal difficulties and constitutional questions, not to mention taking a long time to accomplish.¹⁶

A decision on what course of action to take needed to be made fairly quickly. Election day fell on November 6 in 1860, and 75 percent of Texans, including Judge Roberts, cast their votes for the states’ rights Democrat, John C. Breckinridge. However, as many Texans feared, Abraham Lincoln won the election, carrying all of the free states except for a few electoral votes

¹⁵ Buenger considered Reagan to be a “moderate secessionist.” These were Democrats who placed value in the Union but became convinced that a Republican led government would be destructive, *Secession and the Union in Texas*, 120 - 121; Reagan to Roberts, November 1, 1860; Roberts had reason to worry about the Knights of the Golden Circle. The Knights were particularly active in Texas, organizing mass meetings that fall. Donald S. Frazier, *Blood & Treasure: Confederate Empire in the Southwest* (College Station: Texas A & M University Press, 1995), 14.

¹⁶ Reagan to OMR, November 1, 1860, Roberts Papers (quotation); Campbell, *Gone to Texas*, 239.

in New Jersey. Shortly after official word of Lincoln's election reached Texas, Judge Roberts, former Texas Ranger John S. "Rip" Ford, Treasurer C. H. Randolph, Attorney General George Flournoy, George W. Baylor, William P. Rogers and others met in Flournoy's office to discuss a possible course of action. Roberts presented the group with three possible options: demand that Governor Houston call the legislature into session, mount an effort to elect a governor in 1861 who would be more sympathetic, or encourage Texans to begin a grassroots movement towards a secession convention. Houston had already declined to call the legislature into special session, and the second option would take too long; South Carolina and other Deep South states were already in the process of calling conventions. Of the third possibility, Roberts said, "If the people over the state exhibited the spirit of resistance sufficiently, we might advance more directly to our object on the development of the crisis." Thus the group of influential men agreed that mass meetings should be encouraged throughout the state.¹⁷

Meetings of citizens called for the purpose of spurring politicians to action were not unheard of in Texas. Indeed, both Roberts and Ford had participated in similar meetings in San Augustine in 1845 that adopted resolutions calling for President Anson Jones to issue a call for a state convention to consider being annexed to the United States. Grassroots meetings of this sort could be used to take Texas out of the Union as well, and would not be inconsistent with Roberts's desire that secession be accomplished in an orderly fashion. Accordingly, Ford and others called for a pro-secession meeting to be held at the Travis County courthouse in Austin less than a week after the meeting in Flournoy's office. John R. Baylor and others addressed the

¹⁷ Austin *Texas State Gazette*, October 20, 1860; Buenger, *Secession and the Union in Texas*, 123 – 125; . McCaslin, *Fighting Stock*, 102 – 104; Campbell, *Gone to Texas*, 239; John S. Ford, "Memoirs," Dolph Briscoe Center for American History, Austin, Texas, 943 [quotation].

crowd of several hundred, and resolutions were passed demanding that Governor Houston call the legislature into session.¹⁸

Within days, public meetings were held all over Texas demanding that Governor Houston call the legislature into special session. Roberts's influence can easily be detected in many of these meetings, especially in East Texas. In Smith County, the judge's home, Hubbard and others issued a call for a meeting to convene on November 24. According to Hubbard, the meeting "agreed upon a plan here, **according with the course you suggest**, in the event of the refusal of the Gov to convene the Legislature – We must act promptly in the matter, or else, in my opinion all will be lost" [emphasis added].¹⁹ Reagan reported from Palestine that a public meeting in Anderson County was scheduled for November 24, the same day as the meeting in Tyler, and that the meeting would call on Houston to convene the legislature. According to Reagan, "The feeling is decided and strong here for resistance, energetic and decisive, to the rule of the Republicans, and for separate state action as the first step." Although some there spoke of having the legislature meet informally in Austin to call for a secession convention, he preferred Roberts's idea of circumventing the legislature, writing, "I rather incline to think **the course you suggest** may be the safer one for the emergency if the Governor refuses to act" [emphasis added].²⁰

Clearly, Roberts expected Governor Houston to refuse to convene the legislature. However, he and his allies waited until a delegation from the public meeting in Houston arrived in Austin on November 18 and presented their petition calling on Houston to convene the

¹⁸ Bailey, "The Life and Public Career of O.M. Roberts," 105-106; McCaslin, *Fighting Stock*, 105; Buenger, *Secession and the Union in Texas*, 125.

¹⁹ Hubbard to Roberts, November 26, 1860, Roberts Papers.

²⁰ Reagan to Roberts, November 20, 1860, Roberts Papers.

legislature. William P. Rogers, both a personal friend of Houston's and one of the group that had met in Flournoy's office, was a member of this committee. He evidently believed that he might be able to convince Houston to call a special session, but was unable to do so. By this point, Roberts saw that the secessionists' only option was to issue a call for a secession convention independently (and extralegally) of the governor and legislature. On November 25, he wrote to Reagan, "I doubt whether the people will not, of their own accord, find the means of selecting delegates to a convention of some sort so as to express the will of the state before Lincoln is inaugurated." The judge meant to furnish the people with those means himself.²¹

Roberts met with the committee from Harris County and discussed with them the possibility of calling for a convention. That committee, as well as the secessionists who had previously met in Flournoy's office decided that such a course of action was justified since none of them believed that Houston would call the legislature into session. Roberts, Rogers, Flournoy, and Ford went to Roberts's office in the old state capitol to draft an address to the people of Texas, and the group decided that Roberts should be the principal author. This "Call Upon the People of Texas to Assemble in Convention" reflected the views of the secessionists that Lincoln's election was dangerous, and that the people had every right to circumvent the proper constitutional process; indeed, the current crisis demanded it. The address read as follows:

Abraham Lincoln has been elected President of the United States by a sectional vote. This is a public sanction by the northern States of the fanatical sentiment of his party, and presents to the American people the grave question: Shall the Southern States protect their domestic institutions, or shall they submit to the gradual but certain extinction of slavery in the Southern States, by yielding to the aggressive domination of a party, that has no other bond of union than that of hostility to our reserved rights. We have no remedy for this evil but for the people of the Southern States, singly and conjointly, acting in their sovereign capacity, to take the defence of their rights and liberties into their own hands. The right of the people of a State thus to act is fully recognized by the wise founders of free

²¹ Roberts to Reagan, November 25, 1860, John H. Reagan Papers, Briscoe Center for American History, Austin, TX [quotation]; Bailey, "The Life and Public Career of O.M. Roberts," 107; Buenger, *Secession*, 124-125

government in America, and has been expressly asserted in the Constitutions of nearly every State in the Union. Texas declared this right in her Constitution [1845] in the following language: "All political power is inherent in the people, and all free governments are founded on their authority and instituted for their benefit, and they have at all times the unalienable right to alter, reform, or abolish their form of government, in such manner as they may think expedient." (1st section of the Bill of Rights). This right of the people "is excepted out of the general powers of government," and it is declared that it "Shall forever remain inviolate and any laws contrary thereto shall be void.

The rest of the original draft stated that this action would not conflict with any action of the legislature should they be called into session and established the mechanics for electing delegates. Each legislative district would elect twice the number of representatives they had, and elections for these delegates would take place on January 8, 1861. The convention would meet on the fourth Monday of January.²²

Just as Roberts finished drafting this call, Dr. Ashbel Smith, one of the commissioners from Harris County who had come to Austin to petition the governor, arrived at Roberts's office. After discussing the situation with his fellow commissioner William Rogers, Smith decided that he could not sign the document until he had returned to Harris County and reported to his constituents. Since the group wanted to present a united front, they decided not to immediately issue the document. Roberts suggested that they copy the document, send it to cities throughout Texas, and publish them all on the same day, December 3. The next day a copy was sent with Rogers to Houston, one with John Green to Waco, and another to Corsicana. However, several legislators and government officials wanted to sign the document before they left Austin for winter recess. In addition, the electors who had voted for Breckenridge were due to arrive in town by early December and they wanted to sign the document. Accordingly, Attorney General Flournoy drafted another copy. This one was published as the official call for a convention from

²² Oran M. Roberts, "Call Upon the People of Texas to Assemble in Convention," November, 1860, Roberts Papers.

the citizens of Austin. Flournoy's draft included a plan to submit the action of the secession convention to a popular referendum, but this was not added to the document until after most had signed it. In the meantime, Roberts's draft went out and was adopted by a citizens' meeting in Houston.²³

While this call for a convention was being written and revised, Roberts also prepared to defend secession publicly. Both he and his fellow Associate Justice, Judge Bell, had been asked to give their views on the current crisis, and the two colleagues discussed the matter together. Roberts had decided to write an open letter to be published in various newspapers. However, a pro-Union meeting in Austin on November 25 requested that all three Supreme Court justices speak publicly on the matter. Bell, the only Unionist on the state bench, was, accordingly, the only one of the three present at this meeting. He declined to speak at that meeting, but announced he would speak publically on the matter on the Saturday afterwards, December 1. Roberts, never one to let an opponent's views go unchallenged, decided he would have to speak as well.²⁴

Before doing that, however, he sought the advice and approval of his friend, Chief Justice Wheeler. Wheeler believed that judges should not speak on public affairs, and that since the people were already beginning to act, a speech by Roberts would be superfluous. Roberts disagreed; Governor Houston, Representative Hamilton, and Judge Bell were all influential men, and he believed it would be disastrous to let the views of these high government officials go unanswered by some one of similar gravitas. According to Roberts, he and Wheeler "parted that day without coming to any conclusion. But I did not part with the subject, for it haunted me all

²³ Oran M. Roberts, "Notes on the Call Upon the People of Texas," Rogers to Roberts, December 16, 1860, Roberts Papers; Ford, "Memoirs," 950 – 951, 957; Bailey, "Life and Public Career of O.M. Roberts," 111-112; Buenger, *Secession*, 125; Campbell, *Gone to Texas*, 240. Although the primary author, Roberts did not sign the document out of deference to Wheeler, who thought Supreme Court justices should find an alternate means to show their approval,

²⁴ Ford, "Memoirs," 953.

day, and until late at night.” By the next day Roberts had made up his mind to speak at the same time as Judge Bell. He consulted with Bell, and the two men decided to each air their views on Saturday, December 1, in the chamber of the House of Representatives. They had advertisements printed and posted throughout Austin.²⁵

On December 1, a crowd gathered at the capitol to hear the two justices give opposing views. Many of the state’s leading Unionists, including Governor Houston, former Governor Pease, and George Paschal, editor of the pro-Union *Southern Intelligencer*, attended. Bell spoke for two and a half hours and disputed many claims of the secessionists. He began by arguing from history. Many of the secessionists based their arguments on those of Calhoun, but Bell pointed out that prior to 1847, Calhoun had not disputed the right of Congress to keep slavery out of the territories. He argued that the founders had never intended slavery to spread, and when it did, as the United States acquired new territory, the North became alarmed at the power the Three-Fifths Compromise gave the southern states. Judge Bell argued that Texas should not take such drastic action until Lincoln did something that violated the Constitution. He reminded his listeners that the Supreme Court of the United States still supported the rights of slaveholders, and that Democrats controlled the House of Representatives. A convention of slave states, much like those which took place in 1850, would be a much more appropriate action than calling for a secession convention. In fact, Governor Houston had already attempted to put such a meeting in motion. In closing, Judge Bell said, “Men of Texas, let us prove that we appreciate the government under which we live. Let us make a sincere and noble effort to preserve it. Let us keep reason in the ascendant. Let us tread passion under foot. . . .”²⁶

²⁵ Ford, “Memoirs,” 953.

²⁶ James H. Bell, “Speech of the Hon. James H. Bell of the Texas Supreme Court Delivered at the Capitol on Saturday, December 1, 1860,” Roberts Papers.

When Judge Bell finished speaking, Judge Roberts took the floor. Most of the rank and file Unionists in the audience had already left, but Houston, Pease, Paschal and Bell remained to hear what Roberts would say. After a brief greeting and a statement of his objective, the judge launched into his subject. He began by presenting the problem as he saw it, stating:

The revolutionary party of the North, have for years past, advanced step by step, towards the destruction of our domestic institutions. It has enlisted State after State in its cause, and now, by an overwhelming sectional vote, has elected a President of the United States. The purpose is, to wield the Executive arm of the Federal Government, and eventually, by further advances, the whole Federal Government, for the accomplishment of its object.

Having stated the problem, he presented his audience with a list of possible solutions. The South could protest via state resolutions (like Virginia and Kentucky had done to protest the Alien and Sedition Acts in 1799) and hope that the American public was sufficiently outraged to turn the Republicans out of office. Of course, having just held a presidential election, they would have to wait four years for that course of action to be effective. He also argued that the South could call for a convention of the states for the purpose of proposing amendments to the Constitution as outlined in Article V. Again, this would take time, and might be too late to prevent disaster. The third option was to call for a convention of delegates to consider the situation. This convention could then vote to sever Texas's connections with the United States.²⁷

If the goal of the North was to control the federal government, for what end did they seek to control it? What issue occasioned such a danger to the South? On this subject, Judge Roberts was unequivocal: "The great question before the American people is, shall the institution of slavery be put upon a sure basis of gradual extinction. The northern controlling majorities say it shall. The South say it shall not. And that is the issue. This is our institution – not theirs." He

²⁷ Oran M. Roberts, "Speech of Judge O. M. Roberts of the Supreme Court of Texas, at the Capitol, on the 1st Dec., 1860, Upon the 'Impending Crisis,'" 2 – 4 [quotation pg. 2], Roberts Papers.

then argued that slavery was the basis for politics, economy, and social organization of the South. Indeed, slavery was necessary for the maintenance of republican governments in the South “by establishing an inferior class, fixed by law and known by color; and by promoting the equality of the superior white race. Nor is this a legalized fiction. For the African race is indeed the inferior, intellectually, and for that reason the better fitted for its position of servitude.”²⁸

Roberts then argued that ending slavery, even gradually, would be disastrous. The South would have no place to send its slaves (as the North sent theirs South around the time of the Revolution), causing social discord and even a race war. In short, abolition of slavery would destroy the South’s economy, society, and government. On this point, Roberts was emphatic, saying:

In fine, it would make us a different people, in all our leading characteristics, moral, social, domestic, industrial and political. That is simply revolution. And that is what northern majorities are seeking to force upon us – To us it is in its final results, a matter of life and death – politically, socially, and economically. To them [the North] it is a speculative experiment, for their and our good, if nothing worse. . . . This aggressive party do not deny our right to maintain slavery within the Southern States where it exists; but they do claim to have the right, derived from their connection with us in the same general government, to use such means as will eventually so act upon us, as to eradicate slavery within the States. And now, the position which I assume, is, that the measures they have adopted, and have put in operation, and those which must follow in the same train, constitute a character of aggression, that cannot be successfully opposed, or averted, except by prompt State action, and that we are justified in pursuing that remedy to any extremity that may be necessary to secure our endangered rights.²⁹

Most of the speech was a lengthy exposition on the constitutionality of secession. Roberts asserted that the Union was a compact of sovereign states which, in creating the federal government, voluntarily gave certain powers to the national government. He argued that if this compact was broken by either action or non-action, the sovereign citizens of a state could take

²⁸ Ibid, 6.

²⁹ Ibid, 7-8.

action to protect their rights. According to Roberts, northern states had already violated the rights of slave states by violating the Fugitive Slave Act. They did this by passing laws that forbade state officials from assisting in the capture and return of runaway slaves. Therefore, the North had already repeatedly violated the Constitution with the result that the South was “no longer . . . bound to observe the compact.”³⁰

One of the key arguments made by Bell, Houston, and other Unionists was that neither Lincoln nor the Republican majority in the House of Representatives had yet violated the Constitution. Therefore, Texas should wait until such an overt action took place before taking drastic action. As he built towards his conclusion, Roberts addressed this claim. After listing various ways in which the federal government and northern states had violated the Constitution, he stated:

Why then wait for an overt act after Lincoln is inaugurated? These are palpable, deliberate and dangerous violations of the Constitution. Some of which have already been done, and are being done, and the rest certainly contemplated and intended. They are not violations waived by acquiescence. They are subsisting, continuing, progressing, and increasing violations. The election of Lincoln shows that they are sanctioned and affirmed, and thereby shown to be the deliberate will of the controlling majorities in the Northern States. By his election under the avowed principles of his party, the whole attitude of the Northern States, impressed upon them by that ruling party, is an overt act. . . . Overt act by a direct attack on slavery in the States! Who expects it? They do themselves disclaim it. That is not the way of the battle. Their whole scheme of battle is a siege – a protracted siege. It is a siege for years to come. They have gained nearly all the positions they want or need. Let them retain them, and get well fortified in them, and they will environ us with their power at their easy leisure. Our defeat will be a matter of time only.³¹

Roberts concluded the speech by discounting the notion that secession would lead to a bloody, protracted Civil War and would be disastrous for the South economically. He argued that

³⁰ Roberts, “Speech Upon the ‘Impending Crisis,’” 8 – 20 [quotation, 17], Roberts Papers; Potter, *Impending Crisis*, 138-140.

³¹ Roberts, “Speech Upon the ‘Impending Crisis,’” 25-26, Roberts Papers; Buenger, *Secession*, 124.

secession would benefit the South because it would free the region from the hated protective tariff. He also did not believe that the North would try to force the South back into the Union. He stated that once the South was gone, northerners would no longer feel guilty about slavery and would turn their attention to other issues. They would try to maintain friendly relations with the South for the purposes of trade. He further stated that European powers would be desirous to trade with the South and would prevent northern aggression from interfering with that trade. He would soon be proved horribly wrong on these points. Roberts closed by referring to the proposed election of delegates to a state convention to take place on January 8, 1861, the anniversary of Andrew Jackson's victory at the battle of New Orleans. He ended by saying, "Texans may cast their votes on that day inspired by the brilliant achievement, that made it memorable: Southern valor driving back the enemy, that dared to invade southern soil."³²

The judge's speech, followed two days later by a call for a convention, met with approval among secessionists throughout Texas. Friends in San Augustine, Houston, Tyler, and Gonzales reported enthusiastic mass meetings in those places. Citizens of the latter town were particularly angry with Governor Houston. T.M. Harwood of that place wrote to Roberts, "I have even heard it seriously advocated by good men and determined men to raise a company and go to Austin & put the old man down – drive him out – knock him on the head with a chunk. . . ." Although no one came to Austin to knock Governor Houston on the head, they did begin to organize elections for January 8, 1861, to elect delegates to a state convention.³³

Houston next attempted to obstruct the movement toward secession on December 17 by calling the legislature into special session on January 21, 1861. The governor was clearly playing

³² Ibid, 31 – 32.

³³ T.M. Harwood to Roberts, December 7, 1860 [quotation], Sexton to Roberts, December 2, 1860, Peter Gray to Roberts, December 27, 1860, M.A. Long to Roberts, December 18, 1860, Roberts Papers.

for time, hoping the convening of the legislature would disrupt the planned convention. He apparently hoped that the planned elections to the convention would be postponed until the legislature had time to act, and that the legislature would repudiate the extra-legal convention. Judge Roberts and his allies refused to yield the initiative to Houston, however. According to Ford, within ten minutes of learning of the governor's proclamation, Roberts was writing letters to secessionists all over Texas, urging them to stay the course. That evening, Roberts, Ford, and the other secession leaders in Austin met again to discuss their response. They drafted a brief announcement that portrayed the governor's proclamation as a victory for the secessionists. This document was published in the *Texas State Gazette* on December 22, 1860 under the headline, "Good News For The People," and expressed confidence that the "Legislature will ratify the action of the People, and the call of a Convention. There will be no conflict."³⁴

Governor Houston continued his attempts to forestall secession. On December 27, 1860, he ordered an election for delegates to a convention of slave states, but this was largely ignored. When news reached Texas of South Carolina's secession on December 20, 1860, the governor's efforts became manifestly more difficult. Efforts at compromise on the national level proved futile as well. On December 6, the House of Representatives appointed a committee comprised of one representative from each state. This committee was to try and come up with some sort of compromise but, according to Texas Representative John H. Reagan, "the idea of another Congressional compromise was vain & foolish as a means of settling the pending difficulties." The Speaker of the House appointed Republicans to the committee from every northern state, and appointed mostly Douglas Democrats from the South. No states' rights men were

³⁴ Buenger, *Secession*, 125-126; Campbell, *Gone to Texas*, 240; Bailey, "The Life and Public Career of O.M. Roberts," 117-118; Austin *Texas State Gazette*, December 22, 1860[quotation]. According to Ford, Houston was incensed at this tactic and was heard to exclaim, "The scoundrels! They would contaminate Christ's sermon upon the mount if they could," Ford, "Memoirs," 962.

represented, and Reagan stated that as soon as he learned a convention had been called, he would resign, come home and stand for election. A later effort at compromise out of the Senate, proposed by Kentucky Senator John J. Crittenden, was likewise unsuccessful.³⁵

When the Supreme Court session in Austin closed, Judge Roberts faced another dilemma. Many were encouraging him to stand for election as a delegate to the secession convention from Smith County. However, he was hesitant to relinquish leadership of the movement in the capital; the secessionists needed to stay focused, and unless someone trustworthy was willing to assume that responsibility, he believed his presence in the capital was necessary. Ford, whom Roberts had known for many years, was preparing to stand for election in Cameron County. The only other person he trusted implicitly was Chief Justice Wheeler, who, though in favor of secession, had taken no active part in the movement up to that point. The two old friends met to discuss the situation, and Wheeler agreed to meet regularly with Flournoy, Johns, and Randolph. He also agreed to keep Roberts apprised of any developments coming from the Unionist camp. Judge Wheeler, on Wednesday, December 19, gave a speech and endorsed the calling of a convention. After this, Roberts left for his home in Tyler, where he, Oliver Lofton, and John C. Robertson were elected as delegates from Smith County to the Secession Convention on January 8, 1861.³⁶

Wheeler continued to keep Roberts informed of events in the capital through early January, 1861. On January 3, James M. Calhoun, a commissioner appointed by the governor of Alabama, A.B. Moore, arrived in Austin with instructions to confer with the executive and legislature of Texas, as well as a state convention, on the possibility of Texas joining a southern

³⁵ Buenger, *Secession*, 126; Campbell, *Gone to Texas*, 249; Reagan to Roberts, December 7, 1860, Roberts Papers [quotation]; Potter, *Impending Crisis*, 529-530.

³⁶ Ford, "Memoirs," 964, Ford Papers; Bailey, "Life and Public Career of O.M. Roberts," Hubbard to Roberts, December 12, 1860, Wheeler to Roberts, December 27, 1860, Roberts Papers; Austin *Texas State Gazette*, December 22, 1860; *Journal of the Secession Convention of Texas 1861*, Edited from the original in the Department of State by Ernest William Winkler, State Librarian, (Austin: Austin Print Co., 1912), 419 (hereafter cited as Winkler, ed., *Journal of the Secession Convention*).

confederacy. As neither the legislature nor convention were then in session, he was only able to meet with Governor Houston briefly on January 5. Houston apparently told Calhoun that a majority of Texans were opposed to secession, a misconception that Wheeler sought to rectify when he met with the Alabamian later that evening. Wheeler told Calhoun that “the whole population of the East and South East, where the slave interest is, are a unit on the question – that they did not much expect the united cooperation of the West and cared not for it [emphasis in original]”³⁷

Any hope Governor Houston had for the legislature invalidating the Secession Convention was dashed on January 21, 1861, when the legislature convened and by a joint resolution, endorsed the action of the secessionists. The legislature also allowed the convention to use their chambers as a meeting place. Governor Houston signed the resolutions, but attached a protest stating that the convention should have no power beyond submitting the question of secession directly to the people.³⁸

The delegates assembled in the chambers of the House of Representatives on Monday, January 28, 1861, at 2 o’clock p.m. After forming a committee to examine and certify the credentials of the delegates, the Convention moved to elect permanent officers, including a president, secretary, and several lesser functionaries. Judge Peter Gray of Harris County, Roberts’s 1857 opponent for the Supreme Court, nominated Roberts for president of the convention. Drury Field of Panola County nominated William B. Ochiltree (another old Roberts acquaintance), but Ochiltree declined and suggested that Roberts be elected by acclamation. That motion carried. Roberts thus saw all of his efforts since the previous October come to fruition. He had engineered the strategy of calling for the election of delegates in spite of Governor

³⁷ Wheeler to Roberts, January 6, 1861, Roberts Papers.

³⁸ Winkler, ed., *Journal of the Secession Convention*, 14; Buenger, *Secession*, 143-144.

Houston's refusal to call the legislature into session; he had provided the underlying philosophy behind the pro-slavery, states' rights wing of the Texas Democratic Party for the past decade; now, his peers acknowledged him as their leader, an unqualified triumph for this man of energy, determination, and ambition.³⁹

Roberts was conducted to the stand by Gray, Flournoy, and Anderson County's Alexis T. Rainey. He bowed to convention hall and then declared, "I bow to the sovereignty of the people of my state." The convention erupted in sustained applause. After this applause died down, Roberts continued to address the convention, saying:

All political power is inherent in the people. That power, I assert, you now represent. We have been congregated in obedience to the public will, by the voluntary concert of the people of the State, to consider and dispose of questions equally as momentous and more varied than those which were solved by our Revolutionary forefathers of '76! The crisis upon us involves not only the right of self-government, but the maintenance of a great principle in the law of nations – the immemorial recognition of the institution of slavery wherever it is not locally prohibited – and also the true theory of our general government as an association of sovereign States, and not a blended mass of people in one social compact.

However grave the issues presented may be, I trust this body will be fully adequate to their solution in such manner as to preserve the rights of the State. While not insensible to the great honor conferred on me by this body of distinguished citizens, I am aware that my selection is attributable more to my position in the judiciary of the State than to my experience or knowledge of parliamentary deliberations. It is an indication to the world that this movement of the people of Texas has not originated in any revolutionary spirit of social disorder, and I doubt not that the moderation and wisdom of your deliberations and acts will demonstrate it.⁴⁰

Roberts's extemporaneous statements upon being elected President of the Secession Convention perfectly encapsulated his political philosophy as it had evolved over the years. In this brief speech he espoused the Compact Theory of the Constitution, the idea that the Union

³⁹ Winkler, ed., *Journal of the Secession Convention*, 16.

⁴⁰ Winkler, ed., *Journal of the Secession Convention*, 16 – 17 [quotations]; Roberts, "Political, Legislative, and Judicial History of Texas," 100-101.

was a voluntary arrangement of sovereign states that could withdraw from said arrangement when they felt their rights were violated. Foremost among those rights, according to Roberts, was the right to hold men in bondage. Although acknowledging that slavery could be “locally prohibited,” his previous statements made clear that said prohibition did not extend to federal territories, the source of the current trouble. Finally, his speech demonstrated the importance he placed on order. To Roberts, secession was not an anarchic uprising, but a deliberate expression of the sovereignty of the people of Texas. The fact that he was able to summarize his philosophy without notes or a prepared speech showed how thoroughly and deeply he believed in it.⁴¹

Over the next few days, the convention created committees to carry out its work. Roberts, as president of the convention, appointed delegates to these committees, the most important of which were the Committee on Federal Relations (whose job would be to draft a secession ordinance) and the Committee on Public Safety (tasked with removing federal troops from the state and taking over federal property). The Committee on Federal Relations quickly drafted an ordinance of secession which repealed annexation and called for a popular referendum on said ordinance to be held on February 23. Pending the action of the voters, the ordinance would go into effect on March 2, 1861, the twenty-fifth anniversary of Texas’s Declaration of Independence from Mexico. The convention set Friday, February 1, as the day the delegates would vote on the ordinance. Joining Roberts on the president’s stand that day were Governor Houston, Lieutenant Governor Edward Clark, Chief Justice Wheeler, and Jonathan McQueen, commissioner from South Carolina. The delegates voted in favor of secession, 166 to 7. When Roberts announced the result of the vote, the hall erupted in cheering, and Attorney General

⁴¹ Winkler, ed., *Journal of the Secession Convention*, 17.

Flournoy led a group of four ladies who had made a Lone Star flag to the stand. Governor Houston leaned over, spoke briefly to Roberts, and left.⁴²

The convention remained in session for three more days, taking such action as arranging for the popular vote on secession to be held on February 23, and drafting a “Declaration of the causes which Impel the State of Texas to Secede from the Federal Union.” This document was mainly written by Pryor Lea, and it reiterated all of the things Roberts and other secessionists had been saying since Lincoln’s election. Copies were printed in English, German, and Spanish, and distributed all over the state. The convention also appointed delegates to a convention of seceding states in Montgomery, Alabama. These states formed the Confederate States of America, and Texas’s delegates took part in the proceedings of this convention, after Texas’s voters approved of secession. On February 2, the convention created a Committee on Public Safety whose job was to remove federal troops from Texas and take possession of federal property. Roberts appointed the members of this fifteen-man committee and included many of his close political allies such as John C. Robertson, his fellow Smith County delegate, William Rogers, and Rip Ford. The convention adjourned on February 4 to await the decision of the people. They planned to reconvene on March 2.⁴³

Roberts, given a great deal of power as president of the convention, remained in Austin throughout the recess of the convention to superintend continuing operations set in motion by that body. He had commissioned Ebenezer Nichols, a cotton factor from Galveston, to secure a loan to fund the Committee of Public Safety. Roberts oversaw the disbursement of those funds to

⁴² Winkler, ed., *Journal of the Secession Convention*, 48-49; Roberts, “Political, Legislative, and Judicial History,” 104; Lilly Bouldin, Bettie Buckner, Maggie Ragsdale, and Ruth Davidson to Roberts, January 29, 1861, Roberts Papers; Campbell, *Gone to Texas*, 240-241.

⁴³ Campbell, *Gone to Texas*, 240-241; Roberts, “Political, Legislative, and Judicial History,” 107. Texas’s delegates to the Montgomery Convention were Louis T. Wigfall, John Hemphill, John H. Reagan, John Gregg, Williamson Oldham, William B. Ochiltree, and Thomas N. Waul.

said committee which had sent Rip Ford to take over the federal forts on the Rio Grande, and Henry McCulloch to occupy the forts on the western frontier. After executing these duties, Roberts and the other members of the convention, “being tired of witnessing the angry faces that met their gaze in the streets, and of hearing the furious denunciations of the convention,” left Austin for Galveston until the main body reconvened in March. In Galveston he continued to keep himself apprised of events. Allies in Smith County wrote that the vote there was overwhelmingly for secession, 1,149 to 50. The Supreme Court held its winter session in Galveston, but Wheeler assured Roberts that his work as president of the secession convention was more important. Wheeler and Bell disposed of the criminal docket themselves and delayed civil cases until the spring session in Tyler.⁴⁴

While Roberts was in Galveston, the Committee of Public Safety completed the work of removing federal troops from Texas. Roberts assisted in arranging for supplies to be shipped from Galveston to Brazos Santiago, at the mouth of the Rio Grande, for Ford’s force on the border. Simultaneously, the Committee of Public Safety was negotiating with David Twiggs, commanding U.S. forces in Texas, for the surrender and removal of those forces. Twiggs, a native Georgian, agreed to evacuate his forces from the state after the popular vote on secession, provided his men were allowed to leave peacefully and honorably. However, rumors that Twiggs was about to be replaced by another general less sympathetic to secession prompted the committee to take action. They ordered former Texas Ranger Ben McCulloch, who had gathered a force of about 400 men at Seguin (many of whom were members of the Knights of the Golden Circle) to march on San Antonio, Twiggs’s headquarters. On the way McCulloch’s men were joined by 600 more volunteers. On February 16, they occupied San Antonio and ordered Twiggs

⁴⁴ Roberts, “Political, Legislative, and Judicial History,” 110-113; Stephen Ross to Roberts, February 20, 1861, Yarbrough to Roberts, February 25, 1861, Wheeler to Roberts, March 5, 1861, Roberts Papers.

to surrender all federal property in the state and make arrangements to evacuate all federal troops in Texas.⁴⁵

The convention reassembled in Austin on March 2, and three days later voted to join the Confederate States of America. On March 14, the convention passed another resolution mandating that all state officers take an oath of loyalty to the Confederacy. All took the prescribed oath except Governor Houston and his Secretary of State, Eber W. Cave. Both men were summoned to appear at the capitol at noon on March 16 and take the oath. Houston went to the capitol but stayed in the basement, whittling, while Roberts called his name three times. After failing to appear to take the oath, the convention declared the governor's office vacated, and named Lieutenant Governor Edward Clark as the new governor.⁴⁶

The convention continued to meet until March 25, when it adjourned *sine die*. During that time the body functioned as the de facto government of Texas, ratifying the Confederate Constitution, writing a new state constitution, raising state troops for defense, and negotiating treaties with the tribes in Indian Territory. As president of the convention, Roberts wielded a great deal of power, a fact alluded to by a delegate from San Antonio, Thomas J. Devine. Devine later wrote Roberts, "I have often thought and have freely expressed it, that the promptness and vigor with which you acted when Gov. Houston called in question the acts of the Convention was one of the principal causes why Texas was not placed in the deplorable condition of Missouri."⁴⁷

⁴⁵ Roberts, "Political, Legislative, and Judicial History," 113; Campbell, *Gone to Texas*, 241; McCaslin, *Fighting Stock*, 106-107; Frazier, *Blood and Treasure*, 23; Buenger, 156-158.

⁴⁶ Winkler, ed., *Journal of the Secession Convention*, 183-184; Roberts, "Political, Legislative, and Judicial History," 124 – 125; Campbell, *Gone to Texas*, 242.

⁴⁷ Winkler, ed., *Journal of the Secession Convention*, 183-184; Roberts, "Political, Legislative, and Judicial History," 124 – 125; Thomas J. Devine to Roberts, August 27, 1861, Roberts Papers [quotation].

After the convention adjourned, Roberts went home to Tyler to attend the spring session of the Supreme Court. His family had grown by one during his absence, Frances having given birth to the couple's youngest son, Oran Milo Jr., on February 14, 1861. He was well situated financially to weather whatever economic distress the coming Civil War might bring. By 1861 Roberts owned 528 acres in Hunt County, 268 acres in Shelby County, his 579 acre farm in Smith County, his home in Tyler, 8 slaves and 15 cows. The total value of his real and personal property that year was \$10, 725.⁴⁸

As he made his way back to Tyler that spring, Roberts may well have looked back on his accomplishments since the previous fall with pride. He had not only set in motion a chain of events leading to Texas's withdrawal from the Union, but had guided the state through the whole process. He had circumvented the popular governor, Sam Houston, and encouraged secessionists in the state to take action on their own. He provided the intellectual and legal arguments for secession through speeches and letters. He had been chosen by his home county to represent them in the secession convention, and then had been chosen by that convention to preside over them. Oran Roberts had done more than merely participate in the secession of Texas; he had driven it. The issue confronting him during the spring and summer of 1861 was what he would do to defend the state he led out of the Union.

⁴⁸ County Tax Rolls, Smith County, 1859.

CHAPTER 6: "DEFEATED BY LIMITATION OF TIME AND PUBLIC POLICY:"
1861 – 1865

Having led Texas out of the Union, Oran Roberts now turned his attention to defending his state and the Confederacy. Initially, he sought to do so in the political realm, but when all avenues for political advancement were blocked, he transferred his energies to the military, eventually organizing and becoming colonel of the Eleventh Texas Infantry Regiment in early 1862. Roberts's tenure in the army was mostly spent on garrison duty, arguing with his superiors and the Confederate government over issues of rank. When he did have an opportunity to lead his men in combat, he was cool under fire and handled his duties effectively. Ultimately, bad health ended his military career and by late 1864, he was back on the Texas Supreme Court, this time as chief justice. Although his service in the army failed to measure up to the success of his legal career, Roberts proved that the complaint of "rich man's war, poor man's fight" did not apply to him.

The spring session of the Texas Supreme Court at Tyler met from April 22 to May 25, 1861. After the court adjourned, Roberts took a greater interest in military matters. In June, Colonel Elkanah B. Greer mustered in the Third Texas Cavalry in Dallas. One of the companies in this regiment came from Smith County, and Roberts accompanied them to Dallas. He acted as an honorary private and commissary for this company. However, Roberts could never be content to merely lend support for the cause, and he began to seek opportunities for leadership.¹

By the late summer of 1861, Roberts considered running for the Confederate Senate. Louis T. Wigfall, who held one of Texas's two senate seats in the Provisional Confederate Congress, was commissioned as colonel of the First Texas Infantry Regiment, and many

¹ Douglas Hale, "Third Texas Cavalry," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/qkt05>), accessed April 04, 2015; Dallas, Texas, *Weekly Herald*, June 19, 1861.

assumed that he had retired from politics. Judge Thomas Devine of San Antonio urged Roberts to allow his name to be placed before the state legislature as a candidate for the seat that fall, and initially, Roberts appeared willing to explore the possibility. John S. “Rip” Ford wrote from the Rio Grande that he would be happy to aid Roberts in the “contingent matter,” and would “speak to the members of this district, and try to have them lend their assistance.” Ford indeed lobbied for Roberts among the state legislators of South Texas, but by that time, the situation had changed.²

The fall session of the Texas Supreme Court was held in Austin, and Roberts expected to have his name presented then for the Senate by his friends in the legislature. Before he could arrive, however, Wigfall, recently returned from Virginia, preceded him to the capital and got a caucus of legislators to nominate him. Roberts refused to run against him, as did Hardin Runnels, and so the legislature re-elected Wigfall to the Confederate Senate. In November 1861, Confederate President Jefferson Davis had nominated him for brigadier general, but he resigned from the army in March 1862 to take his seat in the Senate.³

After deciding not to oppose Wigfall for a Senate seat, Roberts began to consider other opportunities for leadership. He kept abreast of the military situation through friends who had gone to fight. For example, Tom Green, clerk of the Supreme Court, wrote to inform the judge that he was going to New Mexico with Brig. Gen. Henry H. Sibley’s brigade and wanted his brother to take his place as clerk. A friend fighting with Ben McCulloch in Missouri penned a detailed description of the Battle of Wilson’s Creek. More importantly, during October 1861,

² Devine to Roberts, August 27, 1861, Ford to Roberts, August 18, 1861 [quotation], September 30, 1861, Roberts Papers.

³ Roberts’s endorsement on John C. Robertson to Roberts, October, 1861, Roberts Papers; Dallas, Texas *Weekly Herald*, November 6, 1861; Alvy L. King, "Wigfall, Louis Trezevant," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/fwi04>), accessed April 04, 2015.

Chief Justice Royall T. Wheeler ordered the records of the Texas Supreme Court, which had been kept in Galveston, to be moved in anticipation of a Federal attack on the port city. That attack would not come until a year later, but the belief that an attack was imminent spurred many Texans to action.⁴

As Roberts studied the military situation, he became convinced that the military Department of Texas, commanded by Brigadier General Paul O. Hébert, needed to be reorganized. He wanted the Confederate government to create a separate department for East Texas and began to develop a plan for one. Roberts proposed that the territory for this new department be the same as the former Eastern Congressional District. The officer in charge of this district would be in charge of “the collection of munitions of war, and the training, organizing, and sending into the field the military force of that department, during the war.” In addition to training camps, he envisioned a departmental arsenal, a workshop to repair broken weapons, and a periodic reassessment of the department’s resources to be forwarded to Richmond for the purpose of keeping the Confederate government apprised of conditions.⁵

Roberts forwarded his proposal to Secretary of War Judah P. Benjamin. At the same time he had friends in East Texas (including his brother Ford) petition the Texas delegation in the Confederate Congress to present this plan to the War Department. He corresponded with his friend John H. Reagan, now Postmaster General of the Confederacy, and Confederate Senator Williamson S. Oldham of Texas and encouraged them to press the issue. Roberts also called in favors with friends in the army. He had recommended Joseph L. Hogg of Cherokee County for

⁴ Thomas Green to Roberts, September 2, 1861, B.W. Musgrove to Roberts, September 5, 1861, Wheeler to Roberts, October 10, 1861, Roberts Papers.

⁵ Roberts to the Secretary of War of the Confederate States, November 17, 1861, Roberts Papers; Campbell, *Gone to Texas*, 251; Richard Lowe, *Walker’s Texas Division C.S.A.*, 11; Bailey, “Life and Public Career of O.M. Roberts,” 125-126.

an appointment as brigadier general, and Hogg promised to return the favor by lobbying the government for a military department in East Texas. By enlisting support from citizens, cabinet members, legislators, and soldiers, Roberts was doing all he could to ensure the successful adoption of his plan by the Confederate government.⁶

On December 23, 1861, Senator Oldham met with Secretary of War Benjamin specifically to discuss Roberts's plan for a military department in East Texas. Oldham told Benjamin that Roberts should be placed in charge of the proposed department because his knowledge of the people of East Texas would enable him to raise anywhere from five to ten regiments. Benjamin assured the Senator that he would discuss the matter with President Davis and "determine the military position or grade to be bestowed upon the officer who should be charged with the service [underlined in original]." The Secretary did not promise the appointment to Roberts, and Oldham did not push the issue with him. Oldham left the interview feeling satisfied that the matter would be resolved as Roberts wanted it. It never was. The idea died a slow death in the Confederate bureaucracy as more pressing matters took precedent.⁷

By the time Roberts received Oldham's letter he had already begun to explore other options. Hébert, commanding the Department of Texas, issued a call on November 18 for thirty companies of infantry to be mustered into Confederate service. On December 5, while still in Austin, Roberts had written to Ebenezer N. Nichols, a cotton factor who had secured a loan for the Committee of Public Safety and then became a colonel commanding troops at the port of Galveston, in response to Hébert's call for troops. Nichols forwarded Roberts's letter to Hébert,

⁶ John Boyd, G.W. Moore, et al to the Texas Delegates in the Confederate Congress, November 1, 1861, Reagan to Roberts, December 8, 1861, Williamson S. Oldham to Roberts, November 25, 1861, Joseph L. Hogg to Roberts, December 7, 1861, Roberts Papers. Hogg was the father of James Stephen Hogg, Governor of Texas from 1891 to 1895. The elder Hogg died of dysentery on May 16, 1862 in Corinth, Mississippi.

⁷ Oldham to Roberts, December 23, 1861, Roberts Papers.

who stated that if Roberts wanted to raise a battalion or regiment, they would be needed. Nichols forwarded Hébert's endorsement with a letter of his own, writing, "Is it not time my dear Judge – for one of your position – character, influence and devotion to this holy cause – to close and shelve the 'black lettered law books' – never to be opened until this all important case now on the docket is disposed of?" Nichols was speaking Roberts's language, both in his judicial allusions and in appealing to the judge's lofty position and character. When the Supreme Court adjourned at the end of December, Roberts, instead of going home to Tyler, went to Galveston to confer with Hébert.⁸

After initial Confederate victories at Manassas Junction, Virginia, and Wilson's Creek, Missouri, during the summer of 1861, southern arms had more recently suffered a series of reverses. In September of 1861, a Union army under Major General Ambrose E. Burnside effected a lodgment at North Carolina's Roanoke Island. In November of that year, an amphibious assault by the Federal army and navy captured Port Royal, South Carolina. Roberts became convinced that Galveston was the next target and agreed to raise a regiment of infantry for coastal defense. As early as January 5 he was writing letters to friends and acquaintances in East Texas about recruiting infantry companies for his proposed regiment.⁹

After conferring with Hébert and agreeing to raise a regiment of infantry, Roberts returned to Tyler and issued a call for troops. Dated January 13, 1862, this plea for volunteers contained Roberts's understanding of the military situation and clearly outlined what he saw as the dangers to the country. It stated:

⁸ General P.O. Hébert, "Proclamation! Call For Troops," November 18, 1861; Colonel E.B. Nichols to Roberts, December 10, 1861, Roberts Papers; Bailey, "Life and Public Career of O.M. Roberts," 128.

⁹ James McPherson, *Battle Cry of Freedom*, 370-371; Lowe, *Walker's Texas Division*, 4-5; L.H. Casey to Roberts, January 8, 1862, M.W. Wheeler to Roberts, January 11, 1862, Walker to Roberts, January 12, 1862, Roberts Papers.

FELLOW-CITIZENS of TEXAS:

The country now needs your services in the field. The plans of our enemies are made manifest. They are landing troops at different points, all around the coast of the Southern Confederacy, to menace, and if practicable, to advance into the interior. They are collecting several immense armies to assail us from all parts of the North. They seek thus to surround us with overwhelming numbers, and crush our power by a concerted movement in all quarters at once.

The great struggle of this war will be upon us in a few months. Now is the time to get ready for it. An attack upon our coast is daily expected, and at least five thousand more troops are needed to defend it. They are needed now. Heretofore the young men of the country, for the most part, have achieved our victories on the battlefields. The time has come when the body of the people must turn out to sustain them in their struggle. Who is it that does not want to take some part in this fight for liberty? The glorious result of our certain success will dignify and enoble the humblest position of the service. To have been a soldier in the war of 1861 will be a more precious legacy to your posterity than all the wealth you can leave them. In a just cause a brave people only require to be assured that their services are needed. . . .

He went on to say that the regiment would rendezvous at Houston and that volunteers should supply their own weapons and ammunition.¹⁰

Soon, Roberts was flooded with letters from those who wanted to raise companies for his regiment and from others who wanted a position on his staff. Despite the interest shown by many, Roberts faced several difficulties in recruiting men for his regiment. One of these difficulties was that many East Texans were reticent to enlist as infantry. The Judge's nephew, Oba E. Roberts of Hopkins County, organized a company for the regiment and wrote his uncle that "if it were cavalry I could succeed better as Texans dislike to walk." E.P. Nicholson of Dallas wrote, "Very few men in this section desire to enlist as infantry when there is an

¹⁰ Recruiting Poster, January 13, 1862, Roberts Papers. The sentiments expressed by Roberts in this call for troops are consistent with the conclusions drawn by Richard Lowe in *Walker's Texas Division*. Lowe, after analyzing census data and manuscript evidence, determined that the men of Walker's Division, of which Roberts's Regiment was a part, were generally older than earlier recruits, less wealthy, and more essential to their family's survival. They joined the army in early 1862 as federal armies drew closer to Texas, and they felt the need to defend their homes. Lowe, *Walker's Texas Division*, 20-21.

opportunity to enter the cavalry service.” Years later, Roberts wrote, “I could have raised a dozen of cavalry regiments and have commanded them as I now know I ought to have done.”¹¹

Another problem Roberts faced in recruiting this regiment was in outfitting it. Much of East Texas had been denuded of supplies. His nephew, Oba, wrote that “Our county [Hopkins] is destitute of camp equipage, tenting, etc.” M. Bolin of Titus County wrote, “From one third to one half of my company can furnish themselves guns & the whole of them can procure large knives. If it is absolutely necessary that we arm ourselves in order to git [sic] into service, I have only to say that we will have to change our destination.”¹²

Despite the difficulties in raising an infantry regiment in East Texas, by March 3, 1862, Roberts had mustered nine companies. Six more soon reported to him at Camp Lubbock, a camp of instruction at Harrisburg, near Houston. Five of those companies were assigned to Colonel Richard B. Hubbard’s Twenty-Second Texas Infantry. Many of these new recruits were probably motivated to join by recent Confederate military reverses. Whatever their motivations, enough men for ten companies gathered under Roberts and were officially mustered into Confederate service on March 15, 1862. Two days later, General Hébert appointed Roberts as provisional colonel of the regiment, to date from March 1. After receiving his commission as colonel of the regiment, the judge resigned from the Texas Supreme Court on March 30, 1862. In resigning his position, he wrote to Governor Francis R. Lubbock, “I beg leave to state that in laying down so

¹¹ O. E. Roberts to Roberts, January 18, 1861 [first quotation], E.P. Nicholson to Roberts, January 28, 1862 [second quotation], Roberts’s endorsement on E.P Nicholson to Roberts, January 28, 1862 [third quotation], Roberts Papers. Oba E. Roberts was the son of Oran’s older brother, Jesse. Another one of Jesse Roberts’s sons, Richard Roberts, became a 1st Lieutenant in a Shelby County company of the same regiment; Lowe, *Walker’s Texas Division*, 8-9.

¹² O.E. Roberts to OMR, January 18, 1861 (first quotation), M. Bolin to OMR, January 29, 1862 (second quotation), Roberts Papers; Lowe, *Walker’s Texas Division*, 9.

high a trust reposed in me by the people my only motive is to be more useful in another sphere of public influence.”¹³

Roberts soon had to stand for election as colonel of the regiment. General Hébert had provisionally appointed Roberts as colonel and A.J. Coupland as lieutenant colonel but had not appointed a major. When the Colonel applied to Hébert to fill that position, the latter stated that he preferred that the position be an elected one. Roberts then proposed to hold an election for all regimental officers. On April 9, he was elected colonel of the newly designated Eleventh Texas Infantry. Coupland was returned as lieutenant colonel, and Nathaniel J. Caraway was elected as major. Roberts subsequently received another appointment from the Secretary of War. A week after these regimental elections, the Confederate Congress passed the first conscription law in American history, a fact that would necessitate another regimental election in June.¹⁴

Conditions at Camp Lubbock were less than ideal. By late May, out of 622 men in the Eleventh Texas and Colonel Hubbard’s battalion (soon to become the Twenty-Second Texas), 232 were sick and unfit for duty, 100 had no weapons, and 40 of the weaponless soldiers were detailed to take care of the sick and bury the dead. Colonel Roberts tried to make up for the lack of arms by taking those of the infirm and giving them to soldiers fit for duty, but that only left about 350 men who were fit for duty and armed. According to one of Roberts’s soldiers, numerous diseases were ravaging the camp including “the pneumonia typhoid feaver remitten feaver brain feaver & flux but the most fatal of all is more fatal than balls. It is called the black tongue and is considered contagious or ketching [.]” Many of Roberts’s men, all East Texans,

¹³ A.J. Coupland to Roberts, March 8, 1862, Roberts to F.R. Lubbock, Governor of the State of Texas, March 30, 1862 [quotation], Roberts Papers; Lowe, *Walker’s Texas Division*, 16. As Lowe points out, Confederate defeat at Forts Henry and Donelson in Tennessee and Pea Ridge in northwestern Arkansas brought federal troops perilously close to Texas. Most of the men who enlisted in early 1862 were older, tended to be heads of households, and did not enlist until Texas appeared to be in danger.

¹⁴ O. M. Roberts, “Explanation of Regimental Elections,” Roberts Papers.

blamed the coastal climate for the rampant disease in camp, and some declared that they would leave and go home. Colonel Roberts dealt with this potential mutiny “more by a speech of kind words than by the force I [Roberts] had to use.”¹⁵

In addition to sickness, Colonel Roberts had to deal with a chronic lack of supplies. The regiment was short of cartridge boxes, cartridge paper, knapsacks, haversacks, and tents. Most of the regiment’s weapons were unserviceable and needed repair. After working on the problem for two weeks, the weapons of one company had been repaired, but no more. After detailing his problem, Roberts suggested a plan to Samuel B. Davis, Hébert’s assistant adjutant general. The colonel requested the authority to extend the time on furloughs that he had already granted and to give a leave of absence to officers who were not needed due to the number of privates on sick leave. Those officers would return to their home counties and work with recruiting officers to enlist men to bring the two regiments at Camp Lubbock (the Eleventh and Twenty-Second regiments of Texas Infantry) to full strength. These new recruits would be required to bring their own rifles, powder horns, cartridge boxes, and knapsacks. The furloughed officers and new recruits would then report for duty to Camp Clough, near Tyler, where they would join the rest of the command by June 20.¹⁶

Hébert had no objection to this plan, and Colonel Roberts proceeded to carry it out. By June 23rd the Eleventh Texas was posted at Camp Clough. The conscription law passed by the Confederate Congress prompted yet another reorganization. Prior to the conscription law, many men, including those of the Eleventh Texas, enlisted for twelve months. The law provided that all men between the ages of eighteen and thirty-five would enter Confederate service (with

¹⁵; Lowe, *Walker’s Texas Division*, 16 [first quotation]; Roberts to Samuel Boyer Davis, May 20, 1862, Roberts’s endorsement on Pvt. W.W. Malone to Roberts, undated, 1862 [second quotation], Roberts Papers.

¹⁶ Roberts to Davis, May 20, 1862, Roberts Papers.

certain exemptions) and extended the term of service to three years for those already active. The act also stipulated that regiments reenlisting for three years would be able to choose their officers. Regimental elections were held on June 23, and Roberts was elected colonel for a second time.¹⁷

Roberts had not yet given up on the idea of a separate military department for East Texas with himself in command. His interests were represented in Richmond by Malcolm D. Graham, Confederate congressman from Rusk County. Graham met with President Davis and made application on Roberts's behalf for an appointment as brigadier general. The representative believed that Davis would make the appointment but not until Roberts's muster rolls arrived in Richmond. The President would not appoint someone to a generalship until he had proof that they led an organized brigade. Graham encouraged the Colonel to send his rolls to the capital posthaste. Unfortunately for Roberts, that commission never materialized.¹⁸

After the Confederate reverses of the late winter and early spring, the Confederate government wanted to send as many Texas troops as possible to Arkansas to meet a possible threat from the Federals. During the summer of 1862, Brigadier General Henry McCulloch, commanding troops in northeast Texas, ordered the regiments at Camp Clough (Colonel Hubbard's Twenty-Second Texas Infantry, Colonel Overton Young's Twelfth Texas Infantry, and the Eleventh Texas) to proceed to Little Rock. A considerable number of men in these three regiments were sick and would have to remain at Camp Clough. Roberts was ordered to remain with the convalescing soldiers while the rest of his regiment started for Arkansas. At this, Roberts balked. He believed that he was the ranking colonel of the three as his commission from

¹⁷ Roberts, "Explanation of Regimental Elections," Roberts Papers; Lowe, *Walker's Texas Division*, 18.

¹⁸ Thomas W. Cutrer, "Graham, Malcolm Duncan," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/fgr04>), accessed April 09, 2015; Graham to Roberts, April 8, 1862, Roberts Papers.

Richmond came in March, before Hubbard even had a full regiment, and as such, he should be in charge of the march to Arkansas. He applied to General McCulloch for clarification, and McCulloch ruled that Hubbard was the ranking colonel.¹⁹

Roberts, an ambitious man, was not willing to let the matter rest and appealed the matter to Lieutenant General Theophilus H. Holmes, commanding all Confederate forces in the Trans-Mississippi theater. Holmes eventually reversed McCulloch's decision, but, from Roberts's perspective, great damage was done. The regiments in Arkansas were organized into brigades by Holmes, and, not being present, Roberts missed out on a chance to command a brigade and possibly be promoted to brigadier general. In the meantime, the Eleventh Texas was brigaded with the Fourteenth Texas Infantry, the Twenty-Eight Texas Cavalry (dismounted), Major Robert Gould's Texas Cavalry Battalion (dismounted), and the Lamar Artillery. The brigade was placed under the command of Colonel Horace B. Randal, commander of the Twenty-Eighth Texas Cavalry, ranking colonel of the brigade, and a graduate of the United States Military Academy.²⁰

In September 1862, Roberts was ordered to bring the rest of the men at Camp Clough to Arkansas. He rejoined his men north of Little Rock near Austin, Arkansas, in early October. Roberts still believed he should be in charge of the brigade and that his commission as colonel came before Randal's. He made his case in a letter to Holmes's assistant adjutant general, laying out the facts of his commission and adding:

¹⁹ Lowe, *Walker's Texas Division*, 28; Bailey, "Life and Public Career of O.M. Roberts," 133; John Henry Brown to Colonels Roberts, Hubbard, and Young, July 31, 1862, Roberts Papers. McCulloch's decision was based on the conscription law. He reasoned that when the regiments held elections that summer, any previous commission was void because there was no need for an election if the position was already filled. Hubbard's election as colonel of the Twenty-Second Texas dated to June 17, six days prior to Roberts's election as colonel of the Eleventh Texas on June 23.

²⁰ McCulloch to OMR, September 2, 1862, Caraway to OMR, September 12, 1862, Roberts Papers; Lowe, *Walker's Texas Division*, 42.

Not being in Arkansas, but being represented by a portion of my regiment when the Texas troops here were formed into brigades, and not being fully informed of the basis upon which the rank of officers has been settled, I have deemed it my duty to myself and my command to submit these facts, trusting that my absence upon other duties will not preclude a consideration of them in fixing my position in the service.

This prompted Holmes to order all regimental commanders under his command to submit information on their rank according to a complex formula.²¹

Despite an endorsement from General McCulloch, then commanding the division, stating that Roberts should be the ranking colonel of the brigade, the matter was not decided in his favor. On December 10, Roberts was placed in charge of the division's sick while the division was ordered to Vicksburg, Mississippi, in anticipation of an attack by Union Major General William T. Sherman. Although the order to march to Mississippi was quickly changed, and the men were ordered to march in the opposite direction, Roberts viewed his assignment to sick detail as a de facto denial of rank. Again, he appealed the decision, this time to Holmes's new Assistant Adjutant General George T. Howard. Roberts wrote, "I never expect to object to a duty assigned me because it is onerous or distasteful. But I believe, from the best information that I can get that I am the Senior Colonel of this Brigade, and if rank should determine its commander that I am justly entitled to it, and if so I claim my right to command it."²²

The matter was still not resolved. General Holmes, commanding the Trans-Mississippi Department, took a few months to review evidence and decided in favor of Colonel Randal. By this time, he was familiar enough with Roberts to know that the colonel would not be satisfied and offered to refer the matter to the War Department. Roberts appealed the decision and finally

²¹Roberts to Capt. J. W. Sylvester, October 8, 1862 [quotation], Sylvester to Roberts, October 22, 1862, Roberts Papers.

²²Roberts to George T. Howard, December 11, 1862, Roberts Papers [quotation]; Lowe, *Walker's Texas Division*, 60.

got a definitive answer from the War Department on April 28, 1863. Adjutant General Samuel W. Melton wrote to Major General John G. Walker, now commanding the Texas Division, “Col. Randal should take rank from the 12th day of February, 1862 – the date of his commission – his acts being deemed a sufficient compliance with the terms of the commission and any defect being cured by his reception and long continuance in service.” Roberts was stung by the decision and years later wrote “OM Roberts was defeated by limitation of time and public policy by a West Pointer.”²³

By the time Roberts received word of the failure of his appeal, he was at home in Tyler. In January 1863, when the division was ordered to Pine Bluff, Arkansas, Roberts remained in Little Rock, in command of a convalescent camp. While in camp there, his son, Oba Roberts, a private in his father’s regiment, contracted typhoid fever, and Colonel Roberts was granted a sixty day leave of absence to take his son home and care for him. Although he could be abrasive with his superiors, Roberts had a reputation for kindness to those under his command. One of his schoolmates from Ashville, W.H. Shotwell, wrote, “I freely give you my boys that’s in your brigade and shall rest satisfied that when tried they will follow you in to the fire or any where.” Another father wrote, “We have been informed by my son, W.J. Lister, who is a private souldier [sic] in your Regiment of your kindness to him while he was sick at Houston. Indeed I have no doubt that the promptitude with which you had medical attention afforded him was the means of saving his life.” Indeed, seventy years after the war, some soldiers of the Eleventh Texas who were still living talked about the Colonel’s solicitous care of his men.²⁴

²³ S.S. Anderson to Major General J. G. Walker, February 4, 1863, Roberts to Capt. J. B. Hardiman, February 12, 1863, Roberts’s endorsement on Samuel W. Melton, Major and Assistant Adjutant General to Major General John G. Walker, April 23, 1863 [quotation].

²⁴ Special Order No. 75, W.A. Smith, Assistant Adjutant General by order of Major General John G. Walker, April 9, 1863, with Roberts’s endorsement, W.H. Shotwell to Roberts, March 29, 1862, Z.F. Lister to Roberts, July 18, 1862, Roberts Papers; Bailey, “O.M. Roberts,” 137-138; It appears that young Oba never returned

When his sixty-day furlough was over, Colonel Roberts reported to his command, then at Monroe, Louisiana. By the time he arrived, McCulloch's brigade of Walker's Texas Division had been involved in combat at Milliken's Bend, Louisiana, a Union supply depot on the Mississippi River opposite Vicksburg, Mississippi. The objective of this assault was to disrupt the supply lines of Union Major General Ulysses S. Grant, whose forces were on the east side of the river investing the Confederate bastion of Vicksburg. This diversion was unsuccessful, and Vicksburg surrendered to Grant on July 4, 1863. Shortly after the capture of Vicksburg, Union forces previously also captured a smaller Confederate stronghold at Port Hudson, Louisiana.²⁵

By the second week of July, 1863, Lieutenant General Edmund Kirby Smith, commanding all Confederate forces in the Trans-Mississippi Department, ordered Walker's Texans to reinforce Major General Richard Taylor's small army in southern Louisiana. During this time, Colonel Randal took a leave of absence and left Roberts in charge of the brigade. Walker's Division marched overland from Monroe to Natchitoches, then boarded steamboats and steamed down the Red River to Alexandria. Many of the men became sick and on July 13, General Walker ordered Roberts to bring his brigade back to Monroe. Roberts placed his sick on trains and marched with the rest of the brigade early the next morning. The brigade soon returned to Alexandria and camped south of the city at a place they called Camp Texas.²⁶

In August, after Randal returned to the brigade, Roberts was detached to serve on a court martial. Henry H. Sibley, who had become a brigadier general in Taylor's army, stood accused of drunkenness and abandoning his command during a retreat. This was Sibley's second court

to the army. He was transferred to the Postal Service, probably with the help of his father's friend, Postmaster General Reagan, and served as postmaster of Tyler for the remainder of the war. Samuel Earle, Chief Justice, Smith County, Texas, to President Andrew Johnson, January 27, 1866, Confederate Amnesty Papers, Fold3.com, accessed April 11, 2015.

²⁵ Lowe, *Walker's Texas Division*, 109-113;

²⁶ Walker to Roberts, July 13, 1863; Lowe, *Walker's Texas Division*, 113 – 115.

martial, having been accused of the same thing when he was commanding troops in New Mexico in 1862. In addition to Roberts, Hubbard, another pre-war lawyer, served on this board, with two colonels from Louisiana. They acquitted Sibley, but he was never allowed to command troops again.²⁷

In early September, Randal's brigade was ordered to relieve Fort Beauregard, a Confederate post approximately forty miles northeast of Alexandria. The fort was threatened by four thousand federal troops, but the Confederates believed it was a much smaller raiding party. The brigade saw its first combat on September 4, but the Eleventh Texas was held in reserve and remained unbloodied. The commander inside Fort Beauregard decided to abandon the place and march west to join Randal. The brigade soon marched back to Camp Texas to await further orders.²⁸

Roberts and the Eleventh Texas would not have to wait very long before seeing combat. After the fall of Vicksburg and Port Hudson, the Union high command set their sights on Texas. Two separate groups had been urging President Abraham Lincoln to invade Texas for two separate reasons. Textile mill owners in New England desired cotton to feed their mills, while Texas Unionists, led by former Texas Congressman Andrew J. Hamilton, wanted to reclaim the state for the Union. Lincoln had appointed Hamilton military governor of Texas, but the title meant nothing if the Union Army could not establish an area of control in the state. On September 4, 1863, as Randal's brigade was receiving its baptism by fire in Louisiana, Union Major General Nathaniel P. Banks sent Major General William B. Franklin with five thousand infantry and four gunboats as support from New Orleans to steam up the mouth of the Sabine River, reduce a small fort there, and then march on Houston and Galveston. On September 8,

²⁷ Christian to Roberts, August 24, 1863, Roberts Papers; Frazier, *Blood and Treasure*, 296.

²⁸ Lowe, *Walker's Texas Division*, 119.

forty-seven Confederate gunners commanded by Lieutenant Richard Dowling, a Houston saloon owner, destroyed the Union flotilla, crippling two of the gunboats and capturing 300 soldiers after their transports were sunk. The remaining Union forces went back to New Orleans in disgrace.²⁹

Rather than abandoning the entire effort, Banks decided to march overland into Texas. Major General Henry W. Halleck, commanding Union armies from Washington, D.C., preferred that Banks move up the Red River to Shreveport, then march into East Texas near Marshall, confiscating cotton all the way. Banks would have preferred that route as well, but the Red River was low that fall, and his infantry would not have had the protection of Union gunboats on their march up the river. Instead, he proposed to march west from Vermillionville (present-day Lafayette) through open prairie and cross the Sabine River near Niblet's Bluff. Accordingly, on September 13, Banks's 30,000 men left New Orleans and began their trek into western Louisiana.³⁰

The only Confederate troops in that area were 4,400 men under the command of Taylor. 2,000 of those men were Texas cavalry, veterans of the New Mexico and Galveston campaigns, commanded by Green, the former clerk of the Texas Supreme Court, who had become a brigadier general. In late September, Taylor, son of former United States President Zachary Taylor, ordered Walker to bring his 4,200 man Texas Division to join him as soon as possible. Walker's Texans headed south on September 23. They made camp at Washington, Louisiana, about eight miles north of Opelousas, on October 17. By this time, Federal troops were northwest of Vermillionville and had been involved in several engagements with Green's cavalry, whose

²⁹ Campbell, *Gone to Texas*, 253-254; Lowe, *Walker's Texas Division*, 130.

³⁰ Richard Lowe, *The Texas Overland Expedition of 1863* (Abilene: McWhiney Foundation Press, 1998) 26; Lowe, *Walker's Texas Division*, 130.

job was to slow and harass the advancing Yankees. Green's troopers fought two sharp engagements with the Federals, on October 15 and October 25, on the grounds of a plantation called Chretien Point, fourteen miles northwest of Vermillionville. At this point, the Union advance stalled. Banks, convinced all was well, returned to New Orleans and prepared to lead troops to the mouth of the Rio Grande and occupy Brownsville, Texas. He left Franklin in charge of the expedition, but gave him little direction. Franklin, a naturally cautious commander, decided to move back to New Iberia to secure his supply line. Green's horsemen were constantly harassing the Federals and capturing small foraging parties. On November 1, Franklin began to move his men southeast, back toward Vermillionville. He left the army's cavalry and one veteran infantry brigade to hold the rear about 1,800 men total. They were stationed at Chretien Point, a plantation situated near a lazy stream called Bayou Borbeau, about a mile north of the site of their skirmish with Green's cavalry on October 15.³¹

Now Taylor had the opportunity he had been seeking: a chance to attack an exposed segment of the Union army. Green was given command of the attack and requested a detachment of infantry. The closest infantry in the area were Colonel Roberts's Eleventh Texas, Colonel Wilburn King's Eighteenth Texas, both of Walker's Division, and the Fifteenth Texas Infantry, temporarily commanded by Lieutenant Colonel James Harrison, detached from Major General Alfred Mouton's division. These three regiments had marched in advance of the main body of infantry in order to support the cavalry. On the night of November 2, Green sent a dispatch to Roberts, the ranking colonel of the three, instructing him to "report at his [Green's] headquarters (the Catholic church) with your whole command by daylight tomorrow morning. [underlined in original]." The soldiers had been asleep but were wakened by their officers and started marching

³¹ Lowe, *The Texas Overland Expedition*, 55, 61; Lowe, *Walker's Texas Division*, 131.

the seven miles to Opelousas. By daybreak, Tuesday, November 3, the three regiments had arrived at St. Landry Catholic Church in Opelousas, Green's headquarters.³²

After eating breakfast on the church grounds, Roberts put his men on the road for the Federal camp, seven miles south of Opelousas on the banks of Bayou Bourbeau. Roberts, the senior colonel, took command of the three infantry regiments and placed Lt. Colonel James Jones in charge of his Eleventh Texas. The 950 men under Roberts were just as green as their commander. Of the three infantry regiments, only the Fifteenth Texas had experienced combat. The Eighteenth Texas was still armed with smoothbore muskets that were inaccurate at more than fifty to seventy-five yards. Green had also assigned a squadron of cavalry commanded by Captain H. S. Fisher of the Seventh Texas Cavalry to protect the infantry's flank.³³

The 3,000 Confederates were opposed by a lone Federal brigade of about 1,250 men. However, this brigade, led by Scottish-born Richard Owen, included hardened veterans of the 1862 Kentucky Campaign and Grant's 1863 Vicksburg Campaign. Comprising four infantry regiments - the Sixty-Seventh and Sixtieth Indiana, Twenty-Third Wisconsin, and Ninety-Sixth Ohio Infantry - Owen's brigade was the rear guard of the Union army, most of which was marching to Vermillionville and beyond to New Iberia. These Yankee veterans were separated from the main force by three miles and were exposed to just such an assault as the one Green was preparing to launch. Furthermore, they were tired. Brigadier General Stephen G. Burbridge, Owen's division commander, was present and anticipated an attack by Green's cavalry. He had his officers rouse the troops at 4 a.m. and placed into line of battle, facing northwest toward the

³² Lowe, *The Texas Overland Expedition*, 70-72; Lt. E. R. Wells to Officer Commanding Infantry, November 2, 1862, Roberts Papers. Green's adjutant added at the bottom of the dispatch, "If Col. Roberts has not come up dispatch a courier to him at once with orders to move up immediately."

³³ Lowe, *The Texas Overland Expedition*, 71-72; Lowe, *Walker's Texas Division*, 135; Roberts to Wells, November 6, 1863, Roberts Papers. This letter is Roberts's report of the battle.

open prairie. After two hours, Burbridge allowed the men to return to camp and prepare breakfast. After breakfast, they returned to their line, but several companies of the Twenty-Third Wisconsin stayed in camp to draw their pay and vote in state elections.³⁴

Two miles south of Opelousas, Green halted his march to explain his plans for the attack to his colonels. Roberts's infantry would form the left of the small Confederate force; Colonel Arthur P. Bagby's cavalry brigade with the two artillery sections would form the center, and Colonel James P. Major's cavalry brigade would form the right. Roberts then placed a battalion of skirmishers consisting of the Eleventh Texas's Company C, and Companies A and F of the Fifteenth Texas, all commanded by Major Caraway of the Eleventh Texas, ahead of the main body. He placed the Fifteenth Texas, the only regiment under his command with combat experience and the best armed, on the right, nearest the enemy. He positioned the Eleventh Texas on the left, and the Eighteenth Texas, because they were armed with smoothbore muskets, in the middle. Roberts informed his regimental officers that there would certainly be a fight, ordered his regimental surgeon to make the necessary arrangements and resumed his march toward the Federal camp.³⁵

At about 11:00 a.m., approximately two miles north of the Federal camp, Green ordered his colonels to deploy for battle. Roberts was instructed to form his right on the Opelousas Road, his line of battle extending east from that point through farm fields and his left anchored on Bayou Borbeau. The cavalry would deploy in a semicircle on the prairie northwest of the Federal position. Green's plan was for the infantry to force back the Federal pickets and hit the main enemy force on the left, while the Confederate troopers swooped in from the right to finish the job. Roberts threw forward his skirmishers and ordered his men to advance. At this point, they

³⁴ Lowe, *The Texas Overland Expedition*, 74-75.

³⁵ Roberts to Wells, November 6, 1863, Roberts Papers; Lowe, *Walker's Texas Division*, 137.

were spotted by Federal pickets who opened fire. However, they were still hidden from the main body of enemy troops. Roberts later wrote, “The cornstalks and weeds served considerably to conceal from view our numbers.”³⁶

As the infantry advanced, they met numerous natural obstacles. The Eleventh Texas on the left crossed and recrossed the bayou several times as it wound its way south. At one point, the men came to a bois d’arc hedge, filed through gaps in it, and reformed on the other side. By this point, they were receiving both artillery and small arms fire from the enemy. One of Roberts’s soldiers recalled the Colonel saying, “They will not hurt you, my men.” However, with lawyerly precision, he quickly added, “. . . provided they don’t hit you.” They soon came to a thick copse of woods along the bayou, and Roberts halted the command in a slight hollow for a rest. Major Caraway informed him that the skirmishers were exhausted, and Roberts relieved them and sent them back to their regiments.³⁷

About that time, Caraway informed Roberts that Yankee cavalry had crossed a bridge and was on the east side of the bayou, in a position to launch a flank attack on the Confederate infantry’s left. Roberts detached Company C of the Eleventh Texas, the only company in that regiment armed with Enfield rifles, to take position on the bridge to guard against an attack from the enemy’s horsemen. After a rest of about ten minutes, Roberts, deciding that it was too late to change dispositions, ordered a charge on the Federal infantry, yelling, “Just let me give one command, forward, forward, forward, march!” As the rebel infantry poured out of the hollow they began to take casualties. However, they inflicted many as well and soon put the Federal troops to flight. Within minutes, Roberts’s screaming soldiers were in the Union camp. The Colonel’s horse was wounded, and he was thrown to the ground. However, he quickly got up and

³⁶ Roberts to Wells, November 6, 1863, Roberts Papers; Lowe, *Walker’s Texas Division*, 137-139.

³⁷ Lowe, *Walker’s Texas Division*, 139.

continued to lead his men. At that point, Green unleashed his troopers who descended upon the retreating Federals, and the rout was on.³⁸

While Green's horsemen smashed into the remaining organized resistance from Union infantry, Roberts decided to deal with the Federal cavalry that had crossed over to the east side of the bayou. He ordered an about face and attacked the blue-clad cavalry which had now recrossed the bridge and was threatening Roberts's rear. The Federal troopers were no match for the rebel infantry's massed volleys of musketry and were quickly put to flight. At this point, Green, mistaking Robert's retrograde movement for a retreat, angrily rode up, cursing and demanding an explanation. When he was satisfied that the movement was not a retreat, he ordered the infantry to cross to the east side of the bayou in a position to support the Confederate artillery, which was harassing the retreating Federals.³⁹

Green called off the pursuit when heavy Union infantry columns, ordered by Franklin to rescue his rear guard, approached the battlefield. He ordered Roberts's infantry to withdraw to the west side of the bayou, where he detached the Fifteenth Texas to serve as part of the rear guard for his force's withdrawal. The rest of the Confederate infantry marched to their supply train a mile south of Opelousas, where they rested and ate. The entire action lasted about three hours. Roberts reported that casualties for his command were twenty-one killed, eighty-two wounded, and thirty-eight missing. The Battle of Bayou Bourbeau confirmed the decision made by the Union commanders that a march overland into Texas was not feasible at that point. Franklin, originally planning only a short strategic withdrawal, withdrew his divisions into prepared earthworks at New Iberia. In addition to halting a proposed invasion of eastern Texas

³⁸ Roberts to Wells, November 6, 1863, Roberts Papers; Lowe, *Walker's Texas Division*, 140-142.

³⁹ Roberts to Wells, November 6, 1863, Roberts Papers; Lowe, *Walker's Texas Division*, 140-142.

dead in its tracks, the battle also provided the Texas regiments with an opportunity to partially rearm themselves with captured Federal Enfield rifles. In short, from the Confederate perspective, the battle was a success, a fact later attested to by General Walker, who referred to it as “a splendid little affair.”⁴⁰

Roberts had done well commanding troops in his first combat experience, and others acknowledged it. Two days after the battle, an officer in Waller’s Texas Cavalry Brigade, George McKnight, presented Roberts with a captured Federal drum, writing, “Though the Texan is from habit a horseman and prefers the cavalry service; yet the sons of the Lone Star State can accommodate themselves to any arm which the necessities of our country may require.” Perhaps the highest praise came from General Green. Two weeks after the battle, Green wrote, “Colonel, I cannot omit this opportunity of returning to you and your gallant officers and men my thanks, and the thanks of the Country for their distinguished gallantry in the battle of Bayou “Borbeaux,” and for their fortitude under their fatigues and privations.” [underlined in original]⁴¹

Colonel Roberts and his three infantry regiments stayed in the vicinity of Opelousas for two weeks after the battle, before being ordered to Simmesport on the Atchafalaya River. On November 24, Roberts’s semi-independent command came to an end as General Walker ordered the three regiments to return to their brigades. The Eleventh Texas returned to Randal’s brigade and spent the rest of the winter of 1863-1864 at Simmesport, then settled later at Marksville on the Red River, where they were charged with disrupting Union riverboat traffic. When the men

⁴⁰ Roberts to Wells, November 6, 1863, Roberts Papers; Lowe, *Walker’s Texas Division*, 145-147.

⁴¹ Geo McKnight to Roberts, November 4, 1863 [first quotation], Green to Roberts, November 19, 1863 [second quotation], Roberts Papers.

were not harassing the Federals, they spent the winter drilling. The Eleventh Texas was eventually recognized as one of the two best drilled regiments in Walker's Division.⁴²

In addition to drilling his men, Roberts spent a large part of the winter lobbying for promotion. He apparently believed that his performance at Bayou Bourbeau would, and should, win him a promotion to brigadier general. The most obvious avenue for promotion would have come from recommendations from his superior officers, particularly Walker and Taylor. However, no surviving records indicate that those generals seriously considered advancing him. Roberts then used his friendship and influence with Confederate government officials to advance his cause. In December 1863, he wrote to Postmaster General Reagan, asking for his help and enclosing a copy of his Bayou Bourbeau battle report. Reagan replied, "I will do anything in my power most cheerfully toward your promotion to the rank of Brigadier. But the recommendations of civilians can be of little value now. . . Now the president, in matters of promotion, is governed nearly entirely by the reports and recommendations of commanding officers." He also requested the aid of Frank B. Sexton, representative for Texas's eastern district. Sexton was no more encouraging than Reagan, writing, "We [Reagan and Sexton] . . . have agreed to lay it before the Secretary of War, and President. It is proper for me to say, however that military recommendations are much more influential with the President than anything said by members of Congress." In short, Reagan and Sexton promised to do what they could, but the Colonel should not expect too much.⁴³

⁴² Green to Roberts, November 19, 1863, Walker to Roberts, November 24, 1863, Roberts Papers; Lowe, *Walker's Texas Division*, 152 – 168.

⁴³ Reagan to Roberts, February 25, 1864 [first quotation], Sexton to Roberts, March 12, 1864 [second quotation], Roberts Papers.

At the same time he was lobbying for promotion, Colonel Roberts's health was failing. He was forty-eight years old, and the exertions of camp life were becoming too strenuous for him. During the winter of 1863 – 1864, he stayed at the home of a district judge named E. Worth Cullom near Marksville. He was very sick while there, and on January 4, 1864, he secured a leave of absence and left camp for home. While there is no doubt that he was sick, it is hard to imagine his leaving the army if he had obtained the promotion he sought after so eagerly. Judge Cullom seemed to think so, writing later, "Your time of life will not endure the exposures, fatigues, and irregularities of camp life. . . . It is astonishing how well you did stand up, and the country owes you its gratitude for the many deprivations (and I may add slights) you willingly endured to promote its cause."⁴⁴

Ironically, in taking a medical leave of absence, Roberts missed his best chance for promotion. On April 8 and 9, Taylor's small army, including Walker's Texas Division and the Eleventh Texas, ended their long retreat up the Red River and inflicted a heavy blow on Banks's Federal army at Mansfield and Pleasant Hill. Less than a week later, elements of Walker's Division, including Randal's brigade, marched north to confront a Federal advance in Arkansas. On April 30, they fought a brutal engagement at Jenkins' Ferry, and General Randal was killed in that battle. Colonel Roberts later learned from his nephew, Captain Oba E. Roberts, that Randal, while dying on the field at Jenkins' Ferry, was asked who he wanted to command his brigade. He replied, "Colonel Roberts, if he is able."⁴⁵

By that point, however, Colonel Roberts had missed his chance for advancement in the Confederate Army. He returned to the army in April 1864, but only to request an extension of his

⁴⁴ Roberts's endorsement on W. G. Engledow to Roberts, January 5, 1864, E. Worth Cullom to Roberts, April 15, 1865 [quotation], Roberts Papers.

⁴⁵ Roberts's endorsement on Sexton to Roberts, April 30, 1864 [quotation], Roberts Papers; Lowe, *Walker's Texas Division*, 187 – 212,

leave. He learned that Randal's brigade was now commanded by Robert Maclay, thus closing his last possible path for military promotion. As he recuperated at home, he began to consider other options, including detached service as a judge advocate. While he pondered possible alternatives to active service, an unexpected opportunity in civilian life became available. On April 9, 1864, as the Eleventh Texas fought at Pleasant Hill and Roberts recuperated at his home in Tyler, his close friend and mentor, Chief Justice Wheeler, committed suicide at the home of R.E.B. Baylor in Washington County. Wheeler had been subject to bouts of depression, which apparently became worse as the Confederacy's military fortunes declined. He had not attended sessions of the Supreme Court since December 1863, and he had already declined to run for reelection during the summer of 1864 when his term was up. Roberts must have been terribly saddened to learn of the death of his close friend and confidant, but it gave him an opportunity for leadership in a profession he was more suited to than the military.⁴⁶

Shortly after news of Wheeler's death spread throughout Texas, letters poured into the Tyler post office from friends requesting that Roberts run for the vacant position. A friend in Austin wrote on May 13 that he had polled members of the state legislature and was convinced that they would support Roberts overwhelmingly if he would announce. His old friend Washington D. Miller had gone so far as to prepare an announcement to be published in Austin newspapers but decided to wait and have Roberts announce himself. Other friends, perhaps recalling Roberts's propensity during the early 1850s to procrastinate and allow the electoral field to become crowded, encouraged him to announce for the office of chief justice immediately.⁴⁷

⁴⁶ Roberts to S. S. Anderson, April 20, 1864, Roberts to Christian, May 14, 1864, T. H. Rountree to Roberts, June 16, 1864, Roberts Papers; Houston, Texas, *The Telegraph*, March 12 and April 13, 1864.

Roberts took the advice of his friends and announced his candidacy for chief justice of the Texas Supreme Court by May 25, 1864. His former colleague on the court and opponent in the debates over secession, Judge James H. Bell, announced his candidacy for the same office a few days later. Bell's candidacy left a vacancy in one of the associate justice spots, and that seat was contested by Reuben Reaves and George Buckley. Now that he was running for office, Roberts needed to secure his release from the army. He could have simply resigned, but he wanted a medical discharge, perhaps to forestall any accusations that he quit the army at a time when the Confederacy's fortunes were waning. The Confederate Congress had passed an act to retire sick or invalid officers on February 17, 1864, and Colonel Roberts desired examination by a medical review board under the provisions of that act. On July 15, 1864, a medical examining board made up of surgeons in Maclay's brigade recommended that the Colonel be discharged from service. The board reported that "his constitutional strength failed during December 1862, since which time, he has suffered with functional derangement of the liver, indigestion, carbuncles and dysuria the result of which is, that he is at all times too much debilitated to endure any kind of labor." Despite the recommendation of the medical board, Roberts was not retired from service. Instead, he was granted another sixty day leave of absence.⁴⁸

During the summer of 1864, Roberts stayed at home in Tyler and recuperated while his friends campaigned on his behalf. They did not have to work hard to convince many Texans to support him over Bell. Many who had supported secession were still angry at Bell's opposition during the crisis of 1860 and 1861. Roberts had the advantage of not only leading the secession movement, but serving in the military. A supporter of Judge Bell from Matagorda County wrote

⁴⁷ Thomas Smith to Roberts, May 13, 1864, L.P. Butler to Roberts, May 18, 1864, Roberts Papers.

⁴⁸ Roberts to E. Surget, A. A. Genl, July 2, 1864, "Medical Certificate to Retire Invalid Officer," July 15, 1864 [quotation], Brig Genl King to Roberts, July 22, 1864, Roberts Papers.

to the editor of the *Houston Telegraph*, attempting to assert that Bell, despite his initial opposition, was a patriotic Confederate citizen. He wrote that Roberts's supporters were trying "to fasten a misapprehension upon the public mind calculated to operate to the injury of Judge Bell," by implying that "those voting for Col. Roberts. . . will vote for the Confederate Government, the active prosecution of the war, and confusion to the Yankees, while those who vote for Judge Bell will vote against all of these." Most Texas voters were not convinced. When voters went to the polls on August 1, 1864, they elected Roberts by about 17,000 votes, a landslide.⁴⁹

Now all that remained was for Roberts to terminate his army service before taking the oath of office on October 1. The medical discharge he had sought did not appear to be forthcoming anytime soon, and as a result, he decided to resign his commission and did so in a letter to General Kirby Smith's chief of staff on August 16. Almost two weeks later, he still had no word from the army and wrote to Colonel Guy M. Bryan, a personal friend and fellow Democratic politician, who served on Smith's staff. He asked Bryan to look into the matter quickly, writing that "it is important . . . that I should have my resignation as colonel in the C. S. A. perfected by the first day of October." Bryan apparently dealt with the matter because Smith accepted the resignation to take effect on September 19, 1864.⁵⁰

Roberts took the oath of office as chief justice on October 1, 1864, in Tyler, and travelled to Austin for the opening of the fall session on October 17. The court did not hand down any decisions of note during the Civil War period, but by the fall of 1864, there was much discontent

⁴⁹ "A Word or Two About Judge Bell," Houston, Texas, *The Telegraph*, July 6, 1864; Roberts's endorsement on "Certificate of Election, 1864," Roberts Papers.

⁵⁰ R.J.Towns, Secy of State to Roberts, August 22, 1864, Roberts to W. R. Boggs, Chief of Staff, August 16, 1864, Roberts to Col. Guy M. Bryan, August 29, 1864 [quotation], Special Orders No. 235, General E. Kirby Smith, September 19, 1864, Roberts Papers.

in Texas over conscription. Many of the state's leading men were serving in the army and those left were often incompetent. Judge J. W. Ferris complained that his court session in Parker County during October 1864 was in danger of being disrupted by mob violence. In addition, he was "seriously embarrassed by a weak & incompetent District Attorney," to the point that he seriously considered asking questions from the bench which his prosecutor omitted. The western part of the state had become a haven for draft dodgers and deserters, and many citizens desired that the Confederate army come in and restore order. By early 1865, many Texans wanted a change in political leadership and some looked to Roberts to provide it.⁵¹

By March of 1865, some were hoping Roberts would run for governor in the state elections to be held in August. The judge preferred fellow lawyer, Thomas J. Devine of San Antonio, but Devine wanted Roberts, writing, "I believe you could be elected. I know you would receive the vote of the west in preference to any of the names referred to in the newspapers, as probable or possible candidates." Devine went on to say that he thought Roberts would be just as useful on the bench as in the executive branch, but Charles Robards, reporter for the Supreme Court, thought differently. He wrote:

I almost regret that you are on the bench at the present time. Though useful there, you would serve the country much better at the present time in the Executive chair – Were you free to run now, you could be elected without a doubt. I would start your name without your consent were I not afraid that your recent election might forbid your becoming a candidate now – and it might not meet your approbation – I am very much afraid we will have thrust upon us some brainless fellow for governor – If a man of brains was ever needed, it is now.⁵²

⁵¹ J. W. Ferris to Roberts, November 2, 1864 [quotation], Unknown to Roberts, December 14, 1864, Roberts Papers.

⁵² Devine to Roberts, March 6, 1865 [first quotation], Charles Robards to Roberts, March 24, 1865 [second quotation], Roberts Papers.

By April the question of a gubernatorial candidate was moot. Robert E. Lee's surrender of the Army of Northern Virginia, the Confederacy's largest and most important army, on April 9, 1865, signaled the beginning of the end. Other Confederate armies under Joseph E. Johnston and Richard Taylor surrendered in April and May, respectively. In the Department of the Trans-Mississippi, Kirby Smith ordered his Confederate troops to concentrate at Houston, but instead, many of the troops under his command just went home, an event known as "The Break Up." Federal troops reached Marshall on June 17, 1865, and Union Major General Gordon Granger arrived in Galveston on June 19 and proclaimed all Texas slaves free by virtue of the Emancipation Proclamation. On July 21, Andrew J. Hamilton, President Andrew Johnson's appointee as provisional governor of Texas, arrived in Galveston. He began appointing government officials to begin the process of Reconstruction. Not only would Roberts not be running for governor, he would no longer be chief justice.⁵³

Despite the defeat of the Confederacy, and the loss of his job, Judge Roberts's financial situation and social standing was not significantly altered. He attributed his position in life to his ability to make friends, writing, "I have through life been the most fortunate of men in having the best of friends. They embrace every class, and are found in almost every county of the state." Of his financial status he wrote:

As to property, I must say I have been very improvident. While I have made thousands every year for the last twenty, I have accumulated but little. It has not been from extravagance, high-living, or anything of that kind, but my heart was not in it. I never could engross my mind with money-making and money-saving, which is necessary to become rich. For instance though I have never owned, at one time, twenty negroes, I have to enquire and count up their number when I give in my taxes. . . . We have enough however to be moderately independent. Our residence in Tyler is comfortable, and we have plenty of room for friends who come to see us.⁵⁴

⁵³ Campbell, *Gone to Texas*, 265-269.

⁵⁴ Roberts to Miller, August 23, 1864, Miller Papers.

While Roberts may not have accumulated much liquid capital, he certainly possessed a significant amount of wealth in real property. In 1864, he owned, in addition to his home in Tyler, 574 acres worth \$4,000 in Smith County, 710 acres worth \$2600 in Shelby County, and 640 acres worth \$320 in Hunt County. Despite never owning more than eight slaves prior to 1864, that year, he owned sixteen worth \$8,000. In terms of liquid capital, he possessed \$600 in Confederate treasury notes, which were virtually worthless by late 1864. While a great deal of Roberts's wealth, especially in slaves, was wiped out by the end of the war, land constituted the bulk of his assets. In 1865, he owned 549 acres in Smith County, 25 less than the year before. This would tend to suggest that he was able to sell land to make up for losses in other areas. Although that land was valued at \$2306, a little more than half of its value the previous year, it still enabled the judge to live relatively comfortably, despite the loss of slaves and Confederate money. The next year, 1866, he sold 209 acres in Smith County. Although the end of the war affected Roberts's finances negatively, he was in a better position to weather these tough times than many Texans.⁵⁵

During the crisis of Civil War, Roberts had led his state out of the Union, and then raised and commanded an infantry regiment to defend it. Most of his service was spent in camp, arguing with superiors over rank, lobbying for promotion, and fighting off illness. When he did see combat, he was competent in leading his men. However, being an extremely ambitious man, Roberts believed he deserved a promotion to brigadier general. When that promotion never materialized, he took the opportunity to run for chief justice of the Texas Supreme Court, a position for which he was well suited. By the summer of 1865, the life Roberts had known was

⁵⁵ County Tax Rolls, Smith County, 1864, 1865, 1866.

gone forever. He had lost his slaves, his job, and his country. The issue facing him in 1866 and beyond was how to adapt to the new circumstances in which he found himself.

CHAPTER 7: "THIS MUST BE A WHITE MAN'S GOVERNMENT:" 1866 - 1871

When the Civil War ended in 1865, life as Oran Roberts had always known it was no more. Slavery, the institution that he firmly believed in as a positive good, had been abolished. His view of the federal government as a compact between sovereign states had been officially destroyed by the war. Nevertheless, Roberts would take a leadership role in Texas government during Reconstruction, just as he had during secession, and in doing so, would try to preserve as much of the antebellum way of life as possible. As a delegate to the Constitutional Convention of 1866, he sought to keep the new Freedmen from participating in government as voters or elected officials. He would be elected to the United States Senate by the state legislature, and, when refused his seat by Republicans, stayed in Washington to plead the case of Texas and the South. But by 1867, Roberts decided that his career in government was over and opened a law school in Gilmer, Texas, using his knowledge to influence a younger generation of legal scholars. By 1874, conservative Democrats were back in power in Texas, and Roberts was back on the state bench.

As early as 1863, Abraham Lincoln had announced a lenient plan for bringing the southern states back into the Union. Commonly called the "Ten Percent Plan," the President's program stated that once ten percent of the people in any southern state who voted in the 1860 election took a loyalty oath, they could register to vote again and thus begin the process of recreating loyal governments. Radical Republicans in Congress thought Lincoln's plan far too lenient, and when three states held elections and sent congressmen and senators to Washington, Congress refused to seat them. After the death of President Lincoln in April 1865, Vice-President Andrew Johnson, a Unionist from Tennessee, became president. Johnson promised to continue

Lincoln's liberal plan for Reconstruction with one caveat: all citizens of the seceding states with a total worth of \$20,000 or more had to apply directly to President Johnson for a pardon.¹

Johnson took office knowing that he faced opposition from Radical Republicans in Congress in regard to Reconstruction. He wanted to work quickly, while Congress was out of session, and have the South reconstructed before Congress reconvened in December.

Accordingly, on May 29, 1865, he issued a proclamation declaring amnesty for persons who would take the loyalty oath. High Confederate officials and military officers were excluded from this amnesty, but Roberts, despite being the chair of the Texas Secession Convention, was not. On August 19, 1865, Provisional Governor Andrew J. Hamilton issued a proclamation which called for the registration of voters, preparatory to a constitutional convention. On September 15, 1865, Roberts took the amnesty oath, administered by Smith County Chief Justice Sam Earle, and was registered to vote.²

In November, Hamilton called for an election to take place on January 8, 1866 for delegates to a constitutional convention to meet on February 7, 1866. The Governor had previously expressed three actions he wanted the convention to take: ratification of the Thirteenth Amendment, equal treatment of freedmen under the law, including the right to testify in court, and a declaration that the Ordinance of Secession was null and void. During November and December 1865, however, opposition to Hamilton's goals began to coalesce in several groups. One group, Conservative Unionists, consisted of men with conflicting agendas, but they shared certain elements in common; they had generally opposed secession but once Texas left the Union, they either supported the Confederacy or did not actively seek to undermine it. Led by

¹ Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper & Row, 1988), 35-36, 44.

² Campbell, *Gone to Texas*, 269; Certificate of Amnesty issued to O. M. Roberts, September 15, 1865, Roberts Papers.

James W. Throckmorton of Collin County, who voted against secession in the 1861 convention but later served as a Confederate general, these men also generally opposed extending civil rights to the Freedmen beyond recognition of the fact that they were no longer slaves. Others, like Galveston's Ashbel Smith and Willard Richardson, became known as moderate Democrats. These men had supported secession, but were prepared to accept the outcome of the war provided they had a chance to influence policy with as little disruption to the social, political, and economic order as possible. Finally the secessionists, those who had supported and led disunion and served in Confederate forces, were prepared to resist the results of the war as much as possible. These men, who could best be described as Conservative Democrats, were willing to recognize emancipation, but believed that the freedom of Texas's black citizens must be curtailed. Roberts summarized his position by stating that Texas must form "a white man's Gov[ernment]t' that will 'keep Sambo from the polls.'"³

Roberts, like other secessionists, was determined to change as little as possible in Texas government and society. Before leaving for the convention, he drew up a list of his objectives, all three of which were in direct opposition to the views of Provisional Governor Hamilton, who tended to side with the Radical Unionists. These goals were:

1st The certain organization by the convention of a white man's government, as soon as practicable, and supplanting the military government of Governor Hamilton. 2nd The establishment of a domestic amnesty by an ordinance confirming the laws of the State and the legal acts of officers, thereby fixing by the political authority the status of the Confederate and State governments during the war as governments de facto. 3rd The establishment of a conservative party which would make these measures permanent.⁴

³ Moneyhon, *Texas After the Civil War*, 28-29, 39-41; Campbell, *Gone to Texas*, 270 [quotation].

⁴ Oran M. Roberts, "List of Objectives for 1866 Constitutional Convention," Roberts Papers.

On January 8, 1866, Roberts was elected to be one of Smith County's delegates to the Constitutional Convention, and travelled to Austin, arriving on the second day of the Convention, February 8. From the beginning, Roberts's political strategy was to unite the former secessionists with the conservative Unionists in order to defeat the radicals. For example, despite his ambition, he never seriously considered standing for election as president of the Convention, instead supporting Throckmorton who was elected to that chair. Roberts also continued to maintain his insistence on legal precision. On February 9, Isaiah Paschal, a radical Unionist, introduced a resolution calling for a committee of five delegates to inform Provisional Governor Hamilton that the Convention had been organized and the delegates were ready to take the constitutional oath. Roberts objected to the term "constitutional oath," arguing that because the Convention was "a primitive body, no oath was necessary." He cited as precedent the Virginia Constitution of 1829 and the Texas Constitution of 1845. The issue was resolved when John Hancock, another pre-war Unionist, suggested that they should change the term "Constitutional oath" to "Amnesty oath prescribed by the President's Proclamation, if there be any members of the Convention who have not taken said oath." This language satisfied Roberts and the resolution passed.⁵

On February 12, Throckmorton appointed Roberts to be the chairman of the Judiciary Committee. Under the Judge's leadership, the committee made several changes to the antebellum version of that branch of government. The Supreme Court was expanded from three judges to five. Instead of three Supreme Court sessions in three different locations, the court would meet in

⁵ *Journal of the Texas State Convention: Assembled at Austin, Feb. 7, 1866* (Austin, TX.: Printed at the Southern Intelligencer Office, 1866) 5, 7 (hereafter cited as *Journal of the Texas State Convention, 1866*); Bailey, "Life and Public Career of O.M. Roberts," 149; Galveston, Texas, *Flake's Weekly Bulletin*, February 21, 1866, [quotation]. A later resolution required all delegates to take an oath to support the U.S. Constitution. Roberts voted for the resolution and took the oath (along with all the other delegates) on February 10.

one long session from October through June, at Austin. The proceedings of this committee tended to be relatively nonpartisan, as there were prominent secessionists, conservative Unionists, and radical Unionists among its members. Joining Roberts on the committee as a secessionist was former associate justice Reuben Reeves. Republican leader and radical Unionist Edmund J. Davis was also a member, as was conservative Unionist John Hancock.⁶

The debates in the Convention at large, however, were decidedly partisan, and Roberts played a role in uniting secessionists with conservative Unionists to oppose the radicals. The first goal Roberts had set for his allies was to organize a “white man’s government.” That required denying the franchise to the freedmen, and the Judge was instrumental in advancing that agenda. The Convention voted to exclude blacks from voting, holding state office, and attending public schools. In addition, interracial marriage was constitutionally prohibited, and blacks were not counted in determining population for representation in Congress. Roberts voted in favor of all of these provisions. Surprisingly, however, the Judge sponsored an amendment to accept black testimony in court, albeit only in cases that involved them. Historian Carl H. Moneyhon posited that this provision may have reflected an awareness of northern disapproval of southern states’ treatment of their black population. It may also have been a reflection of Roberts’s deep seated desire for order in the legal system. If blacks could no longer be controlled and ostensibly protected by their owners, they needed to have at least a rudimentary access to the legal system.⁷

⁶ *The Constitution, as Amended, and Ordinances of the Convention of 1866, Together With the Proclamation of the Governor Declaring the Ratification of the Amendments to the Constitution, and the General Laws of the Regular Session of the Eleventh Legislature of the State of Texas* (Austin: Printed at Texas State Gazette Office by J. Walker, State Printer, 1866), 10-11 (hereafter cited as *Texas Constitution of 1866*); *Journal of the Texas State Convention*, 1866, 30; Moneyhon, *Davis*, 77 – 84.

⁷ *Journal of the Texas State Convention: Assembled at Austin, Feb. 7, 1866* (Austin, TX.: Printed at the Southern Intelligencer Office, 1866), 96; Moneyhon, *Texas After the Civil War*, 46-47; By the time Texas’s Constitutional Convention met, Northern congressmen had already refused to seat representatives from other southern states. In addition, the enactment of “black codes,” laws designed to control the freedmen, resulted in

Whatever Roberts's reasons for supporting black testimony in courts, it was clear that he did not support political equality for the freedmen. On March 5, he introduced the following ordinance into the Convention:

Be it ordained by the delegates of the people of Texas, in Convention assembled, that the permanent preservation of the white race being the paramount object of the people of Texas, the Legislature shall have power to pass all such laws, relating specially to the African race within her limits, as may be necessary and proper to secure their ultimate removal or colonization, so as to give place to an unmixed white race, should it in future be found expedient and practicable, with the co-operation or consent of the United States, or with the co-operation of other States of the Union, with the consent of the United States.⁸

Roberts's object in introducing this language into the Convention was likely to prevent the development of the Republican Party in Texas. The Judge was well aware of what was going on in Washington, D.C., and that the Radical Republicans were poised to take over Reconstruction from President Johnson. The Civil Rights Act of 1866, which mandated that states could not discriminate against freedmen, had been introduced into Congress in January and would pass over President Johnson's veto in April. Roberts seemed to be saying that if Texas could not control its black population, the government should be able to deport it. While such a measure would certainly not gain "the co-operation or consent of the United States" at the present, it might in the future if Democrats could gain control of Congress. Although the ordinance died in the legislative committee, it shows Roberts's thinking on what the role of Texas's black citizens should be in the post-slavery world.⁹

Having done what he could in the Convention to establish a "white man's government," Roberts proceeded to the next item on his personal agenda, "the establishment of a domestic

Congress creating the Joint Committee on Reconstruction to investigate conditions in the South. Foner, *Reconstruction*, 200–202, 239–240.

⁸ *Journal of the Texas State Convention, 1866*, 119.

⁹ Foner, *Reconstruction*, 243–244.

amnesty by an ordinance confirming the laws of the State and the legal acts of officers, thereby fixing by the political authority the status of the Confederate and State governments during the war as governments de facto.” Fellow secessionist and former governor Hardin Runnels proposed a resolution that the convention look into the propriety of exempting state and Confederate officials from being sued for actions taken in the course of their duties during the war. The matter was referred to Roberts’s judiciary committee and on March 12, he reported the following ordinance to the convention:

Be it ordained by the people of the State of Texas in Convention assembled, That no person shall be sued in any civil action, nor prosecuted in any criminal proceeding, for or on account of any seizure, impressment, or injury to property or person, or other act done since the 2nd day of February, 1861, by virtue or in pursuance of military authority given by the Confederate States Government, or by this State, or in pursuance of orders given by any person vested with such authority; nor shall any person be held responsible in any civil action, or criminal prosecution, for any such injury to person or property, in which he was not an actual participant.

This ordinance was eventually combined with several other issues and adopted by the convention. As late as April 2, the final day of the Convention, several radicals protested its adoption and considered it “to be utterly inconsistent with, and obnoxious to every principle of justice.” However, it was subsequently passed by the Eleventh Legislature.¹⁰

When the convention adjourned, Roberts had accomplished the first two of his goals. On the day of adjournment, he wrote:

I invite a careful perusal of all our measures taken together, in which I think you will find an effort to preserve the harmony, peace and future unity of the people, the preservation of the rights of the State as far as practicable, an improvement in the form of the State government without greatly increasing the expense, and at the same time a manly effort to restore the State to its position in the Federal Union upon terms acceptable to the President, without pandering to the fanatical sentiment of the north upon which he is now making open war.¹¹

¹⁰ *Journal of the Texas State Convention, 1866*, 160 [first quotation], 355 [second quotation].

In short, Roberts and other former secessionists recognized that the war had fundamentally altered Texas government and society. He clearly saw his role as preserving as much of antebellum Texas as possible, and in this respect he was largely successful.¹²

The success of the third item on his personal agenda, the formation of a conservative coalition to control state government, would be contingent upon the statewide elections to take place on June 25. Roberts wasted no time in encouraging the formation of such a coalition, writing:

The radical party here headed by the Provisional Government will make war upon what we have done, and already they have driven to us all the conservative Union men of the Convention, and with them we have consulted and made a joint ticket for state offices, that will oppose the radical party and eject them from power and thereby unite the mass of the people. What we have done is mainly the work of the conservative element of both parties, and we stand together now to defend it as a whole, not denying that there may be some objections to it.¹³

Indeed, in the weeks leading up to the close of the Convention, a coalition of secessionists and conservative Unionists had drawn up a ticket for the statewide elections in August. They nominated Throckmorton for governor, and George W. “Wash” Jones of Bastrop County for lieutenant governor. Throckmorton was acceptable to secessionists like Roberts for a number of reasons. Although he had been one of the seven delegates that voted against secession in the 1861 convention, he eventually supported the Confederacy, becoming a Confederate officer and then a brigadier general of state forces. His views on the freedmen were compatible

¹¹ O.M. Roberts to T.J. Devine, April 2, 1866, Thomas Jefferson Devine Papers, Briscoe Center for American History, Austin, Texas (hereafter cited as Devine Papers).

¹² Moneyhon, *Texas After the Civil War*, 47.

¹³ Roberts to Devine, April 2, 1866, Devine Papers.

with Roberts's, and may have actually been more virulent. Reconstruction brought these two former political opponents together as allies.¹⁴

In putting together a ticket for statewide elections, many conservatives expected Roberts to run for chief justice of the Texas Supreme Court. However, he declined to do so in order to avoid potentially dividing the coalition of secessionists and conservative unionists he had been working to build. He explained his reasoning by writing:

My name before the public now would tend too much to revive the question of secession & anti-secession, and although it seemed the general wish to run me, I declined. Again, I have served the public from District Attorney up to Chief Justice through a period of over twenty-two years, and I ardently desire for the present at least to return to private life. And again I have done much during the present Convention to harmonize all of the conflicting elements of conservatism and place them together in direct combined opposition to radicalism, and in order that my motives may not be misunderstood I must decline now to run for any office.¹⁵

Instead, Roberts supported conservative candidates for the Supreme Court including Richard Coke of McLennan County for associate justice, and William P. Hill for chief justice. Hill later dropped out of the race, but Coke was successful.¹⁶

Roberts spent May and June 1866 working behind the scenes to promote candidates of the conservative coalition and garner support for them in East Texas. His efforts and those of other conservatives were ultimately successful. On June 25, Throckmorton handily defeated former governor Elisha M. Pease in the gubernatorial race, and conservatives won a majority of seats in the state legislature as well. James H. Bell, former associate justice and Roberts's

¹⁴ Kenneth Wayne Howell, *Texas Confederate, Reconstruction Governor: James Webb Throckmorton* (College Station: Texas A & M University Press, 2008), 84-85, 179-180.

¹⁵ Roberts to Devine, April 2, 1866, Devine Papers.

¹⁶ Richard Coke to Roberts, May 8 and 21, 1866; W.P. Hill to Roberts, April 30, May 18, 1866, Roberts Papers.

nemesis during the secession crisis was defeated in his attempt to regain a seat on the state bench.¹⁷

When Throckmorton and the new legislature took over from Hamilton's provisional government in early August 1866, they had the benefit of seeing how Reconstruction in the other former Confederate states had been received by the national government. Republicans in Congress became concerned over the "black codes" passed by former Confederate states, as well as the fact that many of these states sent secessionists to represent them in Congress. As a result, Congress refused to seat any of the representatives and senators from the former Confederate states. They had passed the Civil Rights Act of 1866 over President Johnson's veto, and then passed a proposed Fourteenth Amendment, which stated that the Freedmen were citizens of both the nation and their respective states, and could not be denied equal protection under the law. In his inaugural address on August 9, Governor Throckmorton attempted to balance the need to prove Texas's loyalty to the nation with the conservatives' desire to preserve as much of the old order as possible. He recommended that the legislature not ratify the Thirteenth and Fourteenth Amendments. The Thirteenth had already become law by being ratified by the requisite three-fourths of the states, but refusal to ratify the Fourteenth would surely irritate the North. In addition, he encouraged the passage of a "black code" to regulate labor in the state.¹⁸

On August 21, the legislature convened to elect the United States Senators for Texas. Because the conservatives controlled the legislature, no radicals were seriously considered for office, and the election became a contest between conservative Unionists and secessionists. It had previously been agreed in caucus that someone from the western district would be elected to

¹⁷ Howell, *Texas Confederate*, 113; Moneyhon, *Texas After the Civil War*, 50-51.

¹⁸ Foner, *Reconstruction*, 243-244; Moneyhon, *Texas After the Civil War*, 52-53; Howell, *Texas Confederate*, 113-115.

fill the long term, and an easterner to fill the short term. For the long term senator, secessionist David G. Burnet was elected over Unionist John Hancock, and for the short term, Roberts was elected over Benjamin Epperson of Red River County. The vote was contentious, and the Judge was not elected until the twenty-fourth ballot. Much of the opposition to Roberts came from Hancock's supporters, angry at being defeated by Burnet and determined not to allow another secessionist to be elected to the Senate. Many legislators also objected to the fact that Roberts could not take the test oath required by federal employees, including congressmen and senators. Despite his previous assertion that he was ready to retire to private life, the Judge actively sought this election through his allies in the legislature. He had confided to a friend that he was "a better politician than jurist, tho the people did not believe so," and as a consequence, he was "forced to remain. . . on the bench." He had already served in the highest position in the state judiciary; he now sought to exercise power in the Senate.¹⁹

Ironically, Roberts had also been opposed in this election by many secessionists. They were angry with him for coalescing with what his former law partner, D.M. Short termed, "that miserable abortion the Union Conservative Ticket." Despite this, his closest friends and allies among the secessionists, Short included, stood by him to assure his election. In the aftermath of the election, however, Short wanted the Judge to understand who his true political friends were, writing:

Now Judge, you are elected by the Secession element of this legislature. If you ever expected anything from the Union men of the Country you have been mistaken, take my advice and instead of trying to conciliate them by consulting public sentiment of the North show the country that it is your intention to preserve the remnants of rights yet left to the State. . . . I have writ thus plainly so that if

¹⁹ R. H. Gaston to Roberts, August 24, 1866, Robards to O.M. Roberts, August 24, 1866 [quotation], Roberts Papers; Howell, *Texas Confederate*, 115; Moneyhon, *Texas After the Civil War*, 51. The Test Oath required one to swear that they had never voluntarily supported the Confederacy before they could hold federal office. This had been required by Congress in 1862. Obviously, Roberts could not take this oath.

you used your influence in foisting upon the country this gang of Union men and semi-Radicals that you will repent of it in sack cloth and ashes.

Short need not have been so concerned. Roberts had abandoned none of his secessionist or white supremacist principles; rather, his coalition with the conservative Unionists was tactical. Roberts believed that the only way to defeat radicalism in Texas was to unite all opposition to it. In addition, he also understood the danger of antagonizing the North by allowing the perception that the same people that took Texas out of the Union were still in control. An alliance with pre-war Unionists might give his political agenda a thin veneer of loyalty.²⁰

While Roberts's secessionist allies were advising him on the course of action he should take, conservative Unionists were attempting to influence the Judge as well. Governor Throckmorton wrote to Roberts before he left for Washington advising him on a number of issues he considered important. Throckmorton knew from the experience of other southern states that Congress would probably refuse to seat Texas's representatives, but that the state should have people in Washington, D.C., to make the case for Texas's readmission. As he wrote to Roberts, "We must have a representative there, whether our delegates get seats or not. . . ." The best chance Texas had to have its representatives seated and avoid having additional conditions imposed by Congress was to appear as conciliatory and contrite as possible. He advised Roberts on this point by writing:

Allow me just now to suggest that a letter from you in the public prints advising our people to express in public meetings their fidelity to the government – their determination to aid the civil authorities in enforcing the laws, & bringing to punishment lawless offenders – and giving adequate and certain protection to the freedmen in their persons and rights to property etc. etc. This will give me further excuse to urge the withdrawal of troops – and our people must do these things if they expect to get rid of the troops & freedmens bureau agents – If we can preserve peace and good order, and enforce the laws there will be no apology for

²⁰ D. M. Short to Roberts, August 24, 1866, Roberts Papers.

this state of affairs to continue & every reason why the military should be withdrawn to where they can do good.²¹

Apparently, Roberts never published such an open letter as the Governor requested, and one probably would not have done much good. Northerners were incensed that so many southern states sent secessionists to represent them in Congress. *The New York Tribune* took notice of the Judge's role in the Secession Convention and his objection to requiring a loyalty oath during the recent Constitutional Convention. In reference to the Texas legislature refusing to ratify the Thirteenth Amendment, *The Tribune* wrote, "Now we insist that it shall not be sent her again until she ascertains that she has a use for it, and signifies in plain terms her consciousness of the fact. One such insult to Congress and the loyal states should suffice."²²

Before Judge Roberts could face the challenges that would surely be posed by the Radical Republicans in Congress, he had to surmount a more immediate obstacle: getting to Washington, D.C. and staying there. Roberts's finances had suffered in the past year. He no longer had a guaranteed salary from the Supreme Court, and his involvement in the Constitutional Convention left him little time to tend his private law practice. Governor Throckmorton attempted to have the state legislature appropriate funds to defray the expenses of the four representatives and two senators during their time in the capital, but the legislature had not acted upon his request by the time the Judge was ready to leave. One thing Roberts did have plenty of was real estate. He had already sold one 209-acre tract in Smith County, and during the fall of 1866, his wife proposed

²¹ J.W. Throckmorton to Roberts, October 1, 1866, Roberts Papers.

²² New York, *Tribune*, October 12, 1866. The *Tribune* article mistakenly referred to Roberts as the President of the 1866 Constitutional Convention.

that they sell their home in Tyler and move the family to their farm outside of town. This enabled the judge to afford to travel to Washington.²³

Roberts had written to William L. Sharkey, former provisional governor of Mississippi and senator-elect from that state, about the possibility of having southern senators and congressmen meet and confer on a common strategy. Sharkey replied that no such meeting had been called, but that he thought it was a good idea. He also suggested that the southern delegates should be in Washington well before Congress convened on December 3. Judge Roberts left Tyler on the morning of November 15, travelling to Shreveport by stagecoach and hired carriage and then to New Orleans by steamboat. From New Orleans he took a train to Washington and arrived there on November 25. This gave him a week before Congress met to confer with the other members of the Texas delegation as well as meet other southern congressmen and see the sights of the capital. At Willard's Hotel, the Judge met with an old classmate from Alabama, Clement Comer Clay Jr., a former United States and Confederate Senator. Roberts and his fellow senator-elect, David G. Burnet, rented rooms at a house on E Street, and went together to the White House to pay their respects to President Johnson.²⁴

One of the acquaintances Roberts made during the week between his arrival and the opening of the congressional session was Reverdy W. Johnson, Democratic Senator from Maryland. On the morning of December 3, Roberts and Burnet went to his house and presented their credentials to him. They evidently believed they had a better chance of getting their seats if

²³ Throckmorton to Roberts, October 1 and November 21, 1866, Roberts Papers; County Tax Rolls, Smith County, 1865 and 1866; Bailey, "Life and Public Career of O.M. Roberts," 162. Ms. Bailey obtained her information on Mrs. Roberts's part in the decision making process through an interview conducted with two of Roberts's surviving children, Margaret Spain and O.M. Roberts, Jr., in July of 1931. Both of them were still at home when their father went to Washington.

²⁴ W. L. Sharkey to Roberts, October 5, 1866, Roberts Papers; Washington, DC, *Daily National Intelligencer*, January 23, 1867; O. M. Roberts, "The Experiences of an Unrecognized Senator," *Texas State Historical Association Quarterly*, 12 (October, 1908), 89-91.

a Union Democrat vouched for them. At noon the two Texans went to the opening session of the Senate and sat in the gallery. Senator Johnson presented their credentials which were then laid on the secretary's desk and ignored. After this, President Johnson's message to Congress was read, and upon hearing this all of Roberts's hopes for a restoration of the Union "as it was" were dashed. The President's message stated his view that Congress had the right to reject membership for disloyalty, giving his sanction to the test oath. Roberts saw at once that not only would he and Burnet not be seated, but his entire doctrine of states' rights was in serious jeopardy. He wrote:

If . . . it is meant that Congress can exclude a member for acts of aid to or sympathy for the South during the late Civil War, all of which must have transpired before his election, then the whole question at issue of State rights might as well be given up – for that power alone is sufficient to centralize the government and perpetuate power in the hands of the minority that are in office. Although the President had often used the term *loyal* in this connection, I had supposed that he meant by that term to designate those who had returned to their allegiance by taking and observing the amnesty oath which he had himself prescribed as the test of loyalty [italics in original].²⁵

After the President's message was read, Roberts and Judge Lemuel D. Evans of Texas walked outside where a large crowd of both black and white people listened to speeches by members of Congress. What Roberts heard and saw here punctuated the despair he was already feeling after hearing the President's message. Representative Schuyler Colfax of New York made a speech in which he stated that the South would not be permitted to set Reconstruction policy and would not be allowed to discriminate against their black citizens. He summed up his speech by quoting the poet John Greenleaf Whittier, "No black laws in our borders, No pirates on our strand; No traitors in our Congress, No slave upon our land." In short, Congress was about to take over Reconstruction from President Johnson on much harsher terms, and Roberts clearly saw that the mood of the North was in favor of punishing the South. He was moved to

²⁵ Roberts, "The Experiences of an Unrecognized Senator," 94-95.

remark to Evans, “that where the United States, confident of its great power, and arrogant and domineering in spreading its principles and influence, assumes to grasp and control the great moral and political world, the liberty of the people will shrink in dismay from neglect, disregard and abuse.”²⁶

Roberts spent the next two days meeting with Senator James R. Doolittle of Wisconsin, and on Thursday, December 6, went with Burnet to the White House for a meeting with President Johnson. Governor Throckmorton had given the two senators-elect papers that related to purported outrages committed by the United States Army in Texas. Roberts showed these papers to President Johnson and Secretary of War Edwin M. Stanton and requested that the national government remove the authority of army officers to control the civilian officials of Texas. President Johnson directed Roberts to keep the papers and submit a written synopsis of what they contained. He did this, gave his written report to the President the following day, and was told that the matter had been laid before the Cabinet. It appeared that Johnson was merely placating Roberts and Burnet and did not intend to take any real action on the matter.²⁷

Roberts’s hopes for an end to Reconstruction were further dampened on Saturday, December 8, when he and Benjamin H. Epperson, representative-elect from Texas’s first district, visited Secretary of State William H. Seward at his Lafayette Square home. Seward received the men warmly but made it clear that the radicals in Congress would not accept them and give them their seats. Seward stated, “I told the people at St. Louis that the South was now more loyal to the government than those of the North. If they will not believe me, who have always been with them, how can they believe you, that have been against them?” The Secretary’s advice to the two

²⁶ Ibid, 97.

²⁷ Ibid.

Texans was to be patient and wait for the North's anger to subside. He encouraged them to do nothing to irritate the northern people, but to remain in Washington and wait to see what happened.²⁸

Roberts was perhaps most alarmed at the presence in the capital of many members of the Grand Army of the Republic. This organization of Union army veterans had been formed in Illinois in April 1866 and by December of that year had 500,000 members by conservative estimates, while others ranged as high as 1,200,000. Roberts became convinced through talking with congressmen of both parties, as well as through a contentious meeting with Hamilton, that the purpose of the Grand Army of the Republic was to overthrow President Johnson if he attempted to interfere with Congress's handling of Reconstruction. Under this perceived state of affairs, the Judge wrote a letter to friends in Texas that was published in newspapers in Tyler and Galveston. In this letter, he reported that the radicals in Congress were about to take control of Reconstruction and impose black suffrage upon the South. He urged Texans to "sustain law and order, and by constant perseverance in maintaining the right, to show themselves worthy of a better destiny than that which is sought to be prepared for them."²⁹

As Christmas approached, the Judge became more discouraged about the prospects of representing his state or influencing Reconstruction policy in any way. He visited President Johnson twice more, but met with a lukewarm reception both times. Both Roberts and Burnet concluded that they were not accomplishing anything in the capital and decided to leave. Burnet travelled to New Jersey to visit relatives, while Roberts prepared to leave his boarding house and

²⁸ Ibid, 98.

²⁹ Ibid., 101-102; Stuart McConnell, *Glorious Contentment: The Grand Army of the Republic, 1865 – 1900* (Chapel Hill: University of North Carolina Press, 1992): 29-30.

return to Texas. However, the closer he got to leaving, the more he felt like he was leaving something unfinished. He later wrote, “I could not but feel that my mission was incomplete; that the great State of Texas – a far-off country – would expect of me and her other representatives to make her, her people, and their sentiments to be publicly known to Congress and to the whole country.” The Judge thus determined to write an open letter to be published in a Washington newspaper before he left for home.³⁰

Roberts’s address was at once an exposition of his views on federalism (which the war had not altered), a window into his beliefs about race relations, and a defense of Texas’s government under Presidential Reconstruction. He began by recounting the history of Texas’s relations to the national government, beginning with annexation in 1845. He then briefly dealt with the causes of the Civil War, emphasizing the expansion of slavery and the issue of state sovereignty. Roberts wrote that after the South lost the war, they accepted defeat and began the process of reconstruction, a process that was being subverted by Congress in not allowing them to have representation in that body. He advanced a rather curious argument in this regard, writing:

Texas was annexed or admitted into the Union by an act of Congress which has never been repealed, and she is now performing the duties and resting under the obligations of a State in the Union, except that one of the departments of the government – the Congress - has not admitted its Senators and Representatives-elect to seats within their respective bodies.³¹

On the surface it seems odd that Roberts would argue for his seat by stating that Texas’s annexation had never been repealed. After all, the state claimed to have severed those connections itself, with the Judge leading the charge. However, he was cannily employing the view of Presidents Lincoln and Johnson regarding the legality of secession; that is, secession was

³⁰ Roberts, “The Experiences of an Unrecognized Senator,” 104-105.

³¹Ibid, 109.

illegal and those states had never legally left the Union. Very subtly, Roberts was using the language of his opponents to further his own ends, a technique he would master in his later political career.³²

The Judge next listed and attempted to refute the reasons the radicals gave for denying Texas representation in Congress. The first reason he listed was that Texas had refused to ratify the Thirteenth Amendment. Roberts stated that ratification of the amendment had not been explicitly stated as a condition for readmission. Texas's refusal to ratify the amendment did not affect the abolition of slavery as the requisite three-fourths of the states had accepted it. He argued that Texas refused to ratify the amendment because it was "dangerous to the public good." He added:

She [Texas] may yield to such a fate if imposed by others, or possibly under some species of duress, and it is to be hoped that her people will do it, if they must, with that uncomplaining fortitude and unshrinking manhood that have characterized them in every emergency. But is it not, indeed, asking too much of such a people to do it themselves?³³

Roberts next addressed the charge that Texas's sending representatives to Congress who could not take the test oath was evidence of disloyalty. While some had argued that this was a way to reward the secessionists, the Judge stated that far from being a reward, in the current political climate, it was more of a burden. Rather, the people of Texas (or the legislature in the case of the senators-elect) chose men who were proven leaders in a time of uncertainty and chaos. Besides, the test oath was a war measure anyway, Roberts postulated, and should not apply now that the war was over.³⁴

³² Foner, *Reconstruction*, 35, 178-179.

³³ Roberts, "The Experiences of an Unrecognized Senator," 109.

³⁴ *Ibid*, 110.

Another claim made by the radicals was that Texans were still disloyal and rebellious. Numerous incidents of violence toward freedmen had taken place and were reported by Unionists in Texas. Roberts did not try to refute these charges; he really could not deny that such things had taken place. Instead he argued that a rebellious spirit was not constitutional grounds for excluding Texas's representatives from Congress. He also stated that northerners were quick to believe every negative report about Texas because they were prejudiced against the South. Without representation in Congress, how could the state refute slanders and exaggerations upon its character?³⁵

According to Roberts, expressions of Texans' continued disloyalty were greatly exaggerated. He cited as proof the fact that although many Texas Confederates had fled to Mexico or Brazil when the war ended, almost all of them had returned and submitted to the current political reality. Of these men Roberts wrote, "They are looking to no other land as their abode and that of their children. They are entirely satisfied with the experiment of division, and are resigned to their losses and sacrifices. They aspire to arise from the new standpoint, and to be part and parcel in the great progress of their race on this continent." The Judge also asserted that claims that Northern men and "southern loyalists" (carpetbaggers and scalawags) were being persecuted and denied equal protection under the law was mere hyperbole. Not only were these men treated fairly and equally, if they were mistreated in the future, the members of the Texas judiciary were honorable men and would not allow such treatment. As far as the Freedmen were concerned, Roberts admitted that there had been violence against them by some, but excused it by writing, "it is not to be expected that the prejudices against an inferior class should be

³⁵Ibid, 110-111.

banished in a day or a year.” Indeed, the Judge marveled that there were not more acts of violence against blacks in Texas.³⁶

Having denied that carpetbaggers, scalawags, and Freedmen were being mistreated as badly as northerners believed they were, Roberts presented the radicals’ plan to address these issues. He wrote:

It is now proposed, as the means of protecting “Southern Loyalists,” Northern men, and negroes, and of reforming State governments generally in the South, to set aside the State governments now existing, and, either directly or through Territorial governments, to erect new State governments, based upon the suffrage of the Southern Loyalists and negroes, and upon the disfranchisement and disqualification from office of all those who adhered to and aided in the rebellion, excepting those only who may be relieved by such disability from Congress.³⁷

He then proceeded to attack this plan from a legal standpoint. He argued that President Lincoln had prosecuted the war from the standpoint that secession was not legal and that the Confederate States of America was not a legitimate government. As a result, the war ended, not by treaty, but by military conquest and the rebellious states responding to proclamations issued by Lincoln’s successor, Johnson. To make the former Confederate states start Reconstruction over would be tantamount to admitting that they had, in fact, seceded. It would also be a breach of faith, not only with the seceded states which complied with presidential proclamations and repudiated both secession and slavery, but also to “the brave soldiers who conquered us to preserve the Union of the States [!]”³⁸

Roberts argued that the radicals’ plan was inconsistent not only with the objects for which the war was fought, but with ontological reality as well. Texas as a political entity was

³⁶Ibid, 111-112.

³⁷Ibid, 113.

³⁸Ibid, 116.

formed by seceding and winning independence from Mexico in 1836. As such, “Annexation did not destroy its corporate existence. It only modified its powers and relations. The late war did not destroy its corporate existence an hour or a day.” Besides, the Civil War was not about destroying the states as corporate entities; it was about restoring their relations to the federal government.³⁹

Having dealt with the legal aspects of Reconstruction, Roberts closed his address by appealing to thinly veiled threats of continued resistance. He introduced that by including a history lesson, writing, “Why is it that the Irish will not adopt English civilization and pride of country? Because they hate England for its traditional oppression of Ireland. Surely that lesson ought to be known, without learning it by bitter experience in America.” Roberts next argued that Radical Reconstruction would destroy representative government in the United States by dispensing with the doctrine of federalism. Worst of all, this destruction would be done in the name of black suffrage. Roberts believed that enfranchising the freedmen would be disastrous, writing:

The people of Texas have some right to claim to know the capacities, disposition, and habits of the negro race; and with that knowledge, they do not now believe that they are fit to be made voters, and to be entrusted with the government of the State. . . This centralization of power based upon a reckless extension of suffrage to the negro, were it adopted for his own sake, earnestly, as the best government for the country, must be predicated upon the idea that republicanism is the normal condition of mankind, adapted to all races and countries. In that point of view it is an invitation of all the inferior races of the world to this country.⁴⁰

Roberts worked on this address for three days, encouraged by Judge Evans and John M. Waskom, a Texas railroad entrepreneur who was in town on business. After he finished writing it, he showed it to Judge Sharkey, who was highly complimentary. Rather than publish the

³⁹ Ibid.

⁴⁰ Ibid, 117 [first quotation], 119 [second quotation].

address on his own, Roberts wanted to issue it as a statement of the Texas delegation. Epperson had gone to New York City on business, so Roberts took a train there to confer with him. Epperson thought the conclusion of the address (where Roberts lambasted black suffrage) too confrontational and suggested they replace it with one whose tone was more conciliatory. After rewriting the conclusion, Epperson signed it. Roberts stayed in New York City for five or six days, seeing a Broadway play and spending a Sunday afternoon in Central Park. He then visited Burnet at his nephew's home in Newark, New Jersey. Burnet approved of the address and signed it as well. Roberts left New Jersey the next morning, on New Year's Eve, 1866, and arrived in Washington that evening. On New Year's Day 1867, he went to Willard's Hotel to confer with George W. Chilton and Anthony Branch, representatives-elect from Texas who had just arrived at the capital. They approved the document as well, although they preferred Roberts's original conclusion to Epperson's. Nevertheless, they signed the address and on January 10, 1867, it was published in the *National Intelligencer*, the Johnson administration's mouthpiece in the capital.⁴¹

"The Address of the Texas Delegation" was republished in newspapers all over the nation. In the South, it generally met with widespread approval from editors. The New Orleans *Daily Picayune* compared it to I Corinthians 13 and the Declaration of Independence. Austin's *Weekly State Gazette* referred to the address as "a masterly production." However, despite Roberts's assertion that "no criticism against it was published anywhere," some took umbrage with the address. Unionist Ferdinand Flake of Galveston accused the Texas delegation of

⁴¹ Ibid, 104-106, 140; Washington, D.C., *National Intelligencer*, January 10, 1867. Like Roberts, Chilton and Branch were Confederate veterans and unable to take the test oath. Claiborne C. Herbert, representative -elect from Texas's Fourth Congressional District is not mentioned by Roberts in his memoirs of the event and probably had not arrived in the capital by the time the address was published. Charles Christopher Jackson, "HERBERT, CLAIBORNE C.," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/fhe25>), accessed July 01, 2015.

“enjoying a five thousand dollar sojourn at the Capital.” He went on to offer a bit of advice for Roberts and the others, writing:

It was altogether unnecessary to insult Congress by accusing it of injustice, neither was it wise to suggest that it was disposed to tyrannize [sic] and override the people. If these gentlemen wanted admission, they have taken the wrong way of attaining their object. But being in Washington, they must do something, even a bad thing is preferred to doing nothing. Let us suggest to them a few brilliant flashes of silence. They may derive instruction from the lad who was advised by parental solicitude, not to open his mouth, that his folly might not be known.

Far to the north, the editor of the *Chicago Republican* wrote that:

the statement of Messrs. Roberts, Burnett [sic], Epperson, Branch, and Chilton, assuming to be Senators and Representatives in Congress from Texas, will be regarded as furnishing confirmation of the total want of fitness of the people of that State for representation in Congress, and, especially, of the unfitness for admission of such Senators and Representatives.⁴²

After arranging for the publication of the address, Roberts prepared to leave Washington, as he and Burnet had decided to do before Christmas. He wrote to Governor Throckmorton, expressing his discouragement and writing that there was “but one body of men about Washington who had any positive affirmative ideas, and that they were the vanguard of the radical party. They knew exactly what they wanted to do, and were determined to do it.”⁴³ In Roberts’s view, Johnson and his supporters had no plan for the situation; they were simply reacting to the radical agenda. However, as he had earlier, he still felt that there was something more he may be able to accomplish and decided to stay a little longer. On January 8, 1867, Roberts, Epperson, Chilton, Branch, and Lemuel D. Evans attended a Democratic Party dinner at the National Hotel in honor of the fifty-second anniversary of Andrew Jackson’s victory in the

⁴² New Orleans, Louisiana, *The Daily Picayune*, January 15, 1867; Austin, Texas, *Weekly State Gazette*, January 26, 1867 [first quotation]; Roberts, “The Experiences of an Unrecognized Senator,” 129 [second quotation]; Galveston, Texas, *Flake’s Bulletin*, January 10, 1867 [third quotation]; Chicago, Illinois, *Republican*, January 16, 1867 [fourth quotation].

⁴³ Roberts, “The Experiences of an Unrecognized Senator,” 131-32.

Battle of New Orleans. Other southern congressmen-elect attended the dinner as did President Johnson. Apparently, Roberts and the Texas delegation hoped to talk and network with northern conservatives and devise a strategy to support the President and derail radical reconstruction. After the dinner, they remained in the banquet hall hoping to engage some of these men in conversation, but to their dismay, none would even approach them. As the Texans walked down Pennsylvania Avenue, toward their respective boarding houses, Roberts remarked to his colleagues, "I was not satisfied thoroughly that Northern Democrats were afraid of a contact with us, and that we had better go home. I had suspected it before, but that now it was too plain not to be recognized with a certainty."⁴⁴

Roberts had previously decided to leave Washington and had stayed behind to write and publish the "Address of the Texas Delegation." His experience at Willard's on January 8 convinced him that nothing further could be done. A few days after that dinner, Roberts, Epperson, Chilton, and Branch went to the White House on business. Unlike previous visits, President Johnson received the Texans warmly and spent some time discussing public affairs with them. Apparently, Judge Evans of Texas, a friend of Johnson's, had told him that Roberts wrote the address of the Texas delegation, and spoke favorably of Roberts. As they prepared to leave the White House, Roberts lagged behind to speak to President Johnson and told him that he would be leaving the capital. According to Roberts, the President asked him not to leave, but to stay in Washington and come to the White House after 8 p.m. the next night or any night to discuss public affairs. Roberts replied that he would indeed stay in town, and went back to his boarding house. He later wrote, "That occurrence altered the whole face of things with me, and gave me the hope that I should find out something about his policy, as to future conduct, if he

⁴⁴ Ibid, 137.

had any, to defeat the extreme members of Congress in their efforts to abolish our State governments.⁴⁵

At this point, the Judge believed he was on the verge of actually accomplishing something in Washington. If President Johnson took him into his counsel, he might be able to influence Reconstruction policy in some way. Rather than appearing to abuse the President's invitation, he went to the theater the night of January 10, rather than to the White House. He intended to go the next night, but an unforeseen emergency prompted him to leave the capital without seeing the President again. Roberts returned from the theater at 11:00 p.m. and went to Epperson's room to visit with him. Epperson informed him that a young Texas Unionist had come to the boarding house looking for him, and not finding him, spoken with Epperson instead. The young man had learned of a plot by certain Southern loyalists currently in Washington to arrest Chilton and transport him to Brownsville for trial. During the war, Chilton had been in charge of a body of cavalry that had gone into Mexico, captured Union colonel and future governor Edmund J. Davis, and turned him over to Confederate Brigadier General Hamilton P. Bee. This same troop then murdered William W. Montgomery who served under Davis in the First Texas Cavalry (USA), although Chilton denied any involvement in the latter incident. Despite his denial, he had been indicted in Cameron County, although attempts to arrest him and return him there for trial had all failed.⁴⁶

Roberts was alarmed at this information. He had a long association with the Chilton family as Chilton's father, William P. Chilton, had been one of his early mentors as a young Alabama lawyer. Furthermore, he had already met the young Unionist who provided the information and believed him to be trustworthy. Despite the lateness of the hour, Roberts

⁴⁵Ibid, 141.

⁴⁶Ibid, 142; Moneyhon, *Davis*, 54-55.

immediately walked the half mile to Willard's Hotel and went to the suite that Chilton and Branch were sharing. The two representatives-elect were drinking with a Democratic congressman from New Jersey when the Judge arrived and asked to speak to Chilton in his bedroom. Roberts relayed his information, and Chilton initially determined to stand trial as he was sure he would be acquitted. Judge Roberts was not as optimistic, telling Chilton, "if you are carried to Brownsville now you are a doomed man. All of the Federal influence there will be brought to bear to convict you, and you will be made a victim of revenge for what was done during the war; witnesses will be produced to prove whatever is necessary to implicate you in the murder." Instead, the judge suggested that the three men - Roberts, Chilton, and Branch - leave Washington immediately and return to Texas. Chilton and Branch agreed, and the three men took a train for New Orleans the next day, arriving on January 16. They stayed in New Orleans several days before departing for their respective homes in Texas.⁴⁷

The end of Roberts's role in Reconstruction coincided with the diminished role of President Johnson. Mid-term congressional elections in 1866 returned a two-thirds majority of Republicans to Congress that could override every bill that Johnson vetoed. Armed with this power, Congress began Reconstruction over, beginning in March, 1867, with the passage of the Reconstruction Act. This act divided the former Confederate states (except Tennessee) into five military districts run by Army generals. These military commanders had the power to intervene in civil affairs in order to protect life and property. Although the act did not immediately abrogate the state governments formed under Johnson, it required the registration of voters to begin anew. This time, voters were required to swear an oath proscribed by the Fourteenth Amendment, which disfranchised all who had taken an oath to support the Constitution and then

⁴⁷ Ibid., 144-145; New Orleans, Louisiana, *Daily Picayune*, January 17, 1867.

fought against the United States. In addition, black males over the age of twenty-one were allowed to vote for the first time. On July 30, 1867, General Charles C. Griffin, commander of the subdistrict of Texas, removed Governor Throckmorton as an impediment to Reconstruction. Griffin, displeased with Throckmorton's lack of zeal in protecting blacks and Union men in Texas, replaced him with former governor Elisha M. Pease, a pre-war Unionist who had since become a Republican.⁴⁸

During the spring and summer of 1867, Roberts resumed his law practice. In April, he was granted a license to practice in the United States Circuit Court at Tyler. Issuance of this license required that Roberts take an oath to support the Constitution of the United States. In every East Texas town where he appeared in court, people wanted his opinion upon Congressional (or Radical) Reconstruction and what they should do about it. Roberts, while counselling citizens to obey the law, also urged a policy of non-cooperation. He encouraged Texans not to actively participate in Reconstruction, saying, "We must be calm, but we can be passive, and still retain our self-respect." According to Roberts, the best thing that Texans could do during this time was to build railroads and factories and become less dependent economically on the North.⁴⁹

Roberts's law practice was directly affected by some of the policies of the military government in Texas. On April 27, General Griffin issued Circular Order 13, also known as the "Jury Order." This order required all jurors to swear that they had never voluntarily supported the Confederacy, in essence taking the Test Oath. Order 13 also allowed freedmen to sit on juries

⁴⁸ Foner, *Reconstruction*, 268-271, 276-277; Moneyhon, *Texas After the Civil War*, 69-77. Howell, *Texas Confederate*, 154-155.

⁴⁹ "License to Practice Law in the United States Circuit Court in Tyler Texas," April 22, 1867, Roberts Papers; "Judge Roberts Before the People," Rusk, Texas, *The Texas Observer*, March 2, 1867.

for the first time in Texas history. Many white Texans were outraged by this order. In some counties, district judges closed their courts after claiming that they could not find any eligible jurors. In May, while attending court in Tyler County, Roberts presided over a meeting of the bar that called on General Griffin to modify Order 13. Despite outrage from ex-Confederates, the General refused to change the order.⁵⁰

At some point during the summer of 1867, Roberts had probably decided that the practice of law was a dead end for him. The judicial system of Texas was in chaos, and it is entirely conceivable that he was repulsed at the thought of arguing cases before black jurors. In addition, his political career was seemingly over. The Fourteenth Amendment, with its provision disfranchising all who had taken an oath to support the Constitution and then rebelled against it, had not yet been ratified, but its ratification had been made a condition for the former Confederate states (except Tennessee) to resume their place in the Union. In short, in order for Texas to return to the Union, men like Roberts had to take no part in the process. Under these circumstances the Judge looked for ways he could exert his influence, and he settled on one of the few options available to him, education. If he could not direct the affairs of state, he could at least influence the next generation by imbuing them with his philosophy on the Constitution and the law.⁵¹

The Looney School in nearby Gilmer, Texas, became Roberts's chosen field for his next mission. Established in 1861 by Morgan H. Looney, this private school had an annual enrollment of about 200 students. By 1867, the school was teaching students from elementary to high school

⁵⁰ Randolph B. Campbell, "The District Judges of Texas in 1866-1867: An Episode in the Failure of Presidential Reconstruction," *Southwestern Historical Quarterly* 93 (January; 1990): 368-370; Moneyhon, *Texas After the Civil War*, 70-72; McKinney, Texas, *The Enquirer*, June 8, 1867.

⁵¹ Foner, *Reconstruction*, 253-254; Bailey, "Life and Public Career of O.M. Roberts," 185-186.

levels and offering courses such as English, mathematics, and ancient languages. In October 1867, Roberts wrote to Looney and proposed to teach law, agriculture, and bookkeeping at the school. Looney was ecstatic at the offer, replying that “such a man as O.M. Roberts filling the chair of that professorship, would be an honor to any school in the South!”⁵² The headmaster believed that having Roberts’s name connected with the school would attract more than enough students to justify his salary.⁵³

The two men agreed to terms and although Looney had already distributed a thousand circular letters regarding the spring term, he had a thousand more printed and distributed featuring Roberts’s new professorship. Of his new hire, Looney wrote:

As Professor of Law, Agriculture, and Scientific Bookkeeping, we have secured the services of Hon. O. M. Roberts, formerly Judge of the Supreme Court, Chief Justice of the State, and United States Senator-elect from the State of Texas. He is so well known to our citizens that not a word of comment is needed here in reference to his character as a gentleman, a scholar, a lawyer, and a statesman. The courses of Study in the law department will be, Blackstone’s and Kent’s Commentaries; Stephen’s Pleadings; Greenleaf’s Evidence; Story’s Equity Jurisprudence; and other ordinary text-books on special subjects. The study of each work is to be accompanied by lectures on the Jurisprudence of Texas.⁵⁴

Looney also noted that the spring session of the school would begin on January 15, 1868, and the tuition for each of the subjects that Roberts was to teach would be thirty dollars per semester.

Roberts moved his family to Gilmer in late 1867. He probably rented accommodations for the first year, but by 1869, he had purchased a house in Gilmer. He lectured for about three

⁵² M.H. Looney to Roberts, October 26, 1867, Roberts Papers.

⁵³ Tommy J. Hicks, "LOONEY SCHOOL," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/kbl22>), accessed July 26, 2015; Bailey, “Life and Public Career of O.M. Roberts,” 186; J.J. Lane, “The Educational System of Texas,” in Dudley G. Wooten, ed., *A Comprehensive History of Texas, Volume II* (Dallas: Scarff, 1898), 465-467 (hereafter cited as Lane, “Educational System of Texas.”)

⁵⁴ Morgan H. Looney, Circular Letter, November 20, 1867, citing the opening of the Spring Session for January 15, 1868, Roberts Papers.

hours every morning and spent the rest of his day attending to his law practice, which he also moved to Gilmer. Roberts devoted much energy into teaching his law classes. He supplemented the standard legal textbooks with weekly written lectures designed to instruct his students on the legal systems of Texas from the earliest Anglo settlement to the present. The purpose of these lectures was to:

. . . present to the student a connected view of the changes of government, with the nature and character of each one of them, the different systems of laws that have been in force in Texas, with their peculiar features as they exist in our blending system, with such facts relating to the settlement and development of the country, as from time to time influenced its judicial history, and the character of bar and bench, who were the founders of our institutions.⁵⁵

These lectures would eventually form the basis for at least one of Roberts's books.⁵⁶

Although the Judge was generally acknowledged by his peers as an expert in the law, no one would have considered him a master agriculturist. As an adolescent, he had chosen to study law partly to avoid farming. On this basis it is hard to imagine Roberts as a professor of agriculture. In fact, his agricultural lessons were more about scientific subjects that interested him than they were about traditional farming methods. Of his course, Roberts wrote, "I aspire to teach something much higher in this department than mere plowing and hoeing, and manuring, and the use of the improved machinery in agriculture, as they are taught in the northern colleges." Instead, he taught "the general elements of production, with their application to the different parts of this country, which necessarily includes the elements of Geology, Geography, Botany, Meteorology, Hydrostatics, and Agricultural Chemistry."⁵⁷

⁵⁵ County Tax Rolls, Upshur County, 1869; Roberts to James H. Rogers, July 14, 1868, Roberts Papers.

⁵⁶ Richard S. Walker to Roberts, June 6, 1868.

⁵⁷ Morgan H. Looney, Circular Letter, November 20, 1867, citing the opening of the Spring Session for January 15, 1868, Roberts Papers.

More than likely, Roberts taught courses on agriculture and bookkeeping to keep his mind active in the absence of governmental leadership duties. Although it is doubtful that he made a lasting impact in those fields, he undoubtedly did in teaching law. Among his law students at the Looney School who later held statewide offices were future Supreme Court Judge Sawnie Robertson, future Attorney General John D. Templeton, future District Judge George Aldredge, and future governor Charles A. Culberson. A less well-known student was Thomas Montrose, who went on to have a successful career as an attorney. He was a son of Marcus Montrose, former president of the University of San Augustine, whom Roberts despised and quarreled with when he first moved to Texas. Although the elder Montrose had died years before, it had to be satisfying to Roberts to have such a strong influence on the son of a former adversary.⁵⁸

In addition to his work at the Looney School and the maintenance of his law practice, Roberts continued to remain informed on political developments. A new Constitutional Convention, mostly composed of Republicans, met in Austin in June 1868. Democrats did not have a sufficient number of delegates in that Convention to prevent the Republicans from drafting a constitution that would enshrine black suffrage, among a number of other things odious to them. As a result, Texas Democrats focused on trying to influence that year's Democratic National Convention in preparation for that fall's presidential election. One of Texas's delegates to the Democratic Convention, James M. Burroughs of Milam, sought advice from Roberts on who the southern Democrats should support for president. Burroughs was

⁵⁸ Lane, "Educational System of Texas," 467.

inclined to support George H. Pendleton of Ohio, George B. McClellan's running mate in 1864, but desired Roberts's advice on the matter.⁵⁹

Roberts did not give Burroughs much hope. The Judge was convinced that Ulysses S. Grant would be elected as a Republican. The only hope the Democrats had, in his opinion, was to find a candidate who would be the polar opposite of radicalism. Unless such a candidate was found, and the Democrats were mobilized and united against radicalism, they would fail in this election. Roberts also warned of the consequences of Republican victory in 1868. He believed that the only reason southerners had not risen up and overthrown the military governments and murdered the freedmen was because they hoped that Democrats would take control of Congress and end Radical Reconstruction. If Grant was elected, he believed all hope would be lost and a race war would commence in the South. According to Roberts:

It is inevitable; - it is right upon us; and there is no use to shut our eyes to the ugly sight. It has commenced already in its initiary [sic] steps of occasional reckless violence; and nothing short of the utter disfranchisement of the negro race can stop it. I do wish that the North could understand and fully realize this dreadful issue; and I hope those from the South will not hesitate to tell them the whole truth on this subject. Were I a member of the democratic convention (as you are) I would let the North know that we would never submit to negro equality. [underlined in original]⁶⁰

Roberts's reply to Burroughs is instructive for several reasons. First, it demonstrates that his commitment to white supremacy had not ebbed. He, like most white southerners, still viewed blacks as inferior and the protection of their rights under the law as odious. His letter also shows a grudging acknowledgment of southern Democrats' inability to influence the situation. After having been refused a seat in the Senate, and barred from holding office for the foreseeable

⁵⁹ Moneyhon, *Texas After the Civil War*, 87-89; Bailey, "Life and Public Career of O.M. Roberts," 194-195; J.M. Burroughs to Roberts, June 8, 1868, Roberts Papers. Burroughs was a former neighbor of Roberts along Patroon Bayou in southern Shelby County.

⁶⁰ Roberts to Burroughs, June 20, 1868, Roberts Papers.

future, Roberts was reduced to ginning up fears of a race war to convince northern allies to fight Radical Reconstruction. Gone were the appeals to the Constitution and states' rights philosophy; what remained was a naked, brazen appeal to racism. This was all a moot point as regarded the presidential election of 1868 anyway. On July 20, Congress passed a joint resolution barring the states which had not been readmitted to the Union (Texas, Mississippi, and Virginia) from having electors admitted to the electoral college. National Democrats eventually nominated Horatio Seymour, wartime governor of New York.⁶¹

Any prospect of a race war in Texas was in the hands of the Democrats. During the summer of 1868, the Ku Klux Klan became active in Texas, and violence against blacks, carpetbaggers, and scalawags occurred across the state. While Roberts was not involved with Klan activity, he was involved with a movement that happened concurrently: the formation of local Democratic clubs in counties all over Texas. He was instrumental in forming the Democratic Club of Upshur County and gave a lengthy speech to that organization at a meeting in Gilmer during the late summer of 1868. Moneyhon has suggested that the appearance of these two organizations simultaneously may have been linked and utilized by Democratic leaders as a "carrot or stick" strategy. For example, in his speech to the Upshur County Democratic Club, Roberts proposed that the club form a standing committee whose purpose would be "to communicate with the freedmen, and give them information as to the designs and wishes of the great body of the white people toward them." In this way, they would not be misled by Republicans, "seeking to use them in the accomplishment of their own political objects, in a

⁶¹ Foner, *Reconstruction*, 339-340.

manner continually endangering the peace of society.” Other prominent Democrats made similar statements.⁶²

Roberts’s proposed outreach to black Texans should not be construed as an appeal for the freedmen to vote Democratic; the object was most likely to convince them not to participate in government at all. After detailing the evils of the radical platform, the Judge posed a question to his audience:

Why is it that the negro is enfranchised, and is in future to be made a part of the body politic, a part of the governing power equal with the most favored whites, in Texas? Is it because their political associates, the white radicals deem them fit persons, as individuals or as a class to become voters? Is it because the northern people believe that negroes are fit persons to become voters?⁶³

According to Roberts, the answer was an unequivocal “no”. Rather, the freedmen were given the vote for two reasons: to consolidate the power of the Republicans, and because the North did not understand the way southern society operated. The Judge continued:

The same power that passed the reconstruction acts, could with equal propriety, have placed the Southern Loyalists in charge of the governments of the Southern States, by appointment or otherwise, without enfranchising the negroes. It would have been a far less ruinous course, and much more manly. For its action would have been open and direct in the purpose, and not under the disguise too transparent to deceive any one, except those who know nothing about the negro race.⁶⁴

The flaw in the logic of northerners, according to Roberts, is that they did not understand that blacks were inferior. The principle of universal manhood suffrage worked in the North because it kept competing factions from overrunning each other. For example, workers, by being able to vote, could protect themselves from abusive capitalists. They applied this same logic to

⁶² Moneyhon, *Texas After the Civil War*, 94-95; Bailey, “Life and Public Career of O.M. Roberts,” 196-197; O.M. Roberts, “Speech of O.M. Roberts to the Democratic Club of Upshur County,” Roberts Papers [quotations].

⁶³ Roberts, “Speech of O.M. Roberts to the Democratic Club of Upshur County,” Roberts Papers.

⁶⁴ *Ibid.*

the South and claimed that blacks should be given the franchise to protect themselves from their former owners and whites that would abuse them. For Roberts, such thinking was flawed. He wrote:

It must be recollected that they [the North] are a homogenous people, the great mass of whom are from kindred nationalities of the same white race. They have long been devoted to general intellectual culture, & each diversified interest in the community, is intelligently and energetically prosecuted. However correct such a principle may be, as applicable to such a state of society, it is not equally applicable to all states of society and certainly not to ours, composed of two races of people as different from each other, as are to be found in the world – the very extremes of the human family, physically, intellectually and morally.⁶⁵

Roberts's goal of attempting to unite conservative northerners against black suffrage was ultimately unsuccessful. Although Texas did not participate in the 1868 presidential election, black Republicans across the South turned out to support Grant. Their contributions were so important that Congress ultimately passed the Fifteenth Amendment, enshrining black voting rights in the Constitution. Ratification of this amendment was made a condition of Texas's readmission to the Union. Black suffrage, the bane of many white Texans, was here to stay for the foreseeable future.⁶⁶

Roberts spent the rest of 1868 and the spring term of 1869 teaching his law classes at the Looney School and attending to his law practice. When the spring term ended, he left Gilmer to take a trip into Louisiana. However, his trip was interrupted at Marshall where he received an urgent telegram from a friend in Jefferson who wired, "Your son Robert is here under Military arrest. Come over at once." The Judge replied that he would come immediately. After spending the previous summer warning northerners of racial violence, he found his son caught up in such

⁶⁵ Ibid.

⁶⁶ Foner, *Reconstruction*, 316 – 333.

an incident. His concerns were no longer in the abstract; the Roberts family had come face to face with Radical Reconstruction.⁶⁷

The incident began in August 1868 when a man named George P. Kennedy hit a freedwoman with his cane for failing to yield the sidewalk to a white woman on a Tyler street. The Freedmen's Bureau Subassistant Commissioner for Tyler, Lieutenant Gregory Barrett, arrested Kennedy and brought him to his office inside the Smith County courthouse. Barrett fined Kennedy fifty dollars for assault and ordered him to pay a bond of two thousand dollars. Kennedy protested by drawing his pistol and exclaiming, "You have put me under bonds I won't give, and you have fined me fifty dollars which I won't pay." Another soldier tried to grab Kennedy, but Kennedy shot him and then exchanged fire with Lieutenant Barrett. While all of this was transpiring, business owners on the square closed up their shops and local whites began running toward the courthouse, calling for others to join them and "Shoot the damn yankee sons of bitches." Seeing Barrett in trouble, cornered in his office, the local black citizens also began arriving on the square, arms in hand, to protect him. Barrett managed to escape under a hail of bullets and ran towards the Union garrison stationed across the street from the courthouse.⁶⁸

At the time the incident occurred, Bobby Roberts (as he was commonly known) was working as a clerk in a dry goods store on the northeast corner of the Tyler square. According to Bobby, when the tumult commenced, his employer told him to "get the gun and keep them [the blacks] out, and not let them come in the house." He was standing in the doorway with the shotgun when Richard B. Long ran up, grabbed the gun out of Bobby's hands, and gave it to

⁶⁷ Morgan H. Looney to Col. R. J. Looney, July 3, 1869, Roberts Papers; E. Jones to Roberts, July 10, 1869, Roberts Papers [quotation].

⁶⁸ Christopher B. Bean, "A Stranger Amongst Strangers: An Analysis of the Freedmen's Bureau Subassistant Commissioners in Texas, 1865-1868," Ph.D. dissertation, University of North Texas, 2008.

Thomas Meadows who headed towards the courthouse. By this point, Lieutenant Barrett had returned to the square with a number of Federal soldiers, and he ordered the arrest of Meadows, and subsequently of Roberts and Long as well.⁶⁹

Roberts, Long, and Meadows were arrested in July of 1869 and taken to the stockade in Jefferson, there to await bail or be held for trial. As soon as Judge Roberts got the telegram informing him of the arrest, he hurried to Jefferson and got an order from Brevet Brigadier General George P. Buell for Bobby to be allowed bail. He then secured his release on a \$100,000 bond, with eighteen men serving as surety. This took time; Bobby was not released until August 25. In October, Roberts, Long, Meadows, and Kennedy went on trial before a military commission. The trial was held in Jefferson as Lieutenant Barrett, the principal witness for the prosecution, was despised in Tyler, and there were fears for his safety. Judge Roberts represented both Bobby and Long. He first cast doubt on the charge, assault with intent to murder, and argued that such a charge was simply not supported by the facts of the case. He argued that the firing on the square was already over by the time Bobby got the gun after being instructed by his employer to do so.⁷⁰

When the trial was over, the commission withheld its verdict. There was much confusion as to what the final verdict was. On November 4, James H. Rogers of Jefferson, Roberts's partner in the legal defense of Bobby and Long, wrote that neither client had been convicted. However, more than three weeks later, M.A. Long wrote to Roberts, "The record had not been opened and read, and I think will not be decided until after the election, and until after the

⁶⁹ Bean, "A Stranger Amongst Strangers," 374 – 376; Bailey, "Life and Public Career of O. M. Roberts," 192; "Speech Delivered by Judge Roberts Before the Military Commission," Jefferson, Texas, *The Jimplecute*, October 22, 1869.

⁷⁰ Bailey, "Life and Public Career of O.M. Roberts," 193; "Application for Bail," "List of Witnesses at Robert P. Roberts's Military Trial," Roberts Papers; "Speech Delivered by Judge Roberts Before the Military Commission," Jefferson, Texas, *The Jimplecute*, October 22, 1869.

Supreme Court decides upon the legality of this commission.” Apparently, the military commission never gave their decision, and the accused remained free on bond. The lack of action on the part of the commission may have had to do with the fact that the Freedmen’s Bureau had ceased all operations except for education by the end of 1868.⁷¹

While Roberts was busy teaching and defending his son, the Constitutional Convention which started meeting in June 1868 ended in February of 1869. The proposed new state constitution reflected the goals and principles of the moderate wing of the Texas Republican Party. It repudiated secession and slavery, increased the power of the governor by making key state officials appointed, and mandated that all elections would be held in the county seat and had to be open for four days. In addition, black voting rights were confirmed, public education was made compulsory, and a poll tax was instituted. Before adjourning, the Convention authorized elections for July 1869 to allow Texans to vote on the Constitution. If the voters approved it, elections for state officers and U.S. congressmen and senators would be held at a future date.⁷²

Democrats had been a minority in the Convention and many of that document’s provisions, particularly black suffrage, were odious to them. However, if they united to defeat the Constitution, military rule would continue indefinitely. Some Democratic leaders, like Ashbel Smith, proposed that the party not make a concerted effort to defeat the Constitution, but let individuals follow the dictates of their conscience on the matter. This would almost assuredly result in the ratification of the Constitution. However, in the subsequent elections for state and congressional offices, Democrats should follow a united strategy. Smith argued that they should

⁷¹ Rogers to Roberts, November 4, 1869, M.A. Long to Roberts, November 30, 1869, Roberts Papers [quotation]; Bean, “A Stranger Amongst Strangers,” 374.

⁷² Moneyhon, *Texas After the Civil War*, 100-102.

elect as many Democrats as possible to the state legislature and unite behind Andrew J. Hamilton, a more conservative Republican, against Edmund J. Davis, leader of the radical wing of that party. According to Smith, “the election of Hamilton, under the circumstances, is the shortest road to the ultimate triumph of the Democratic party in the state.”⁷³

Others, such as Franklin B. Sexton of San Augustine wanted nothing to do with the Constitution and wanted Democrats to remain aloof from it. He wrote, “Let us never admit directly or indirectly that we were wrong. Never compromise with oppression or concede to usurpation. Submit to everything – agree to nothing. [underlined in original].” Roberts instead agreed mostly with the strategy endorsed by Smith. He believed that ratifying the Constitution and electing conservative Republicans like Hamilton was the best possible strategy. Other than that, the Democrats should take no concerted action. The Radical Republicans were already charging their more conservative brethren with colluding with Democrats, and Roberts was concerned that such a charge would bring the opposition of the military in charge of Reconstruction in Texas.⁷⁴

Statewide elections were called for November 30. In late September, a group of Democratic leaders in Houston sent out a circular letter urging Democrats to vote for Hamilton and to drum up votes for him. This effort was unsuccessful. Davis defeated Hamilton for governor by less than one thousand votes. Close to forty thousand registered white voters did not vote, likely because they could not stand the thought of voting for either Davis or Hamilton, despite the urging of Democratic leaders to support the latter. Although the military was still technically in control of Texas’s government, Major General Joseph J. Reynolds, who had

⁷³ Ashbel Smith, J.W. Henderson et al to Roberts, February 12, 1869, Roberts Papers.

⁷⁴ Sexton to Roberts, May 11, 1869, Roberts Papers [quotation]; Rusk, Texas, *Sentinel*, April 15, 1869.

become commander of the Department of Texas when Griffin died unexpectedly, began the transfer of power to a civil government by appointing Davis as governor on January 8, 1870. In February, the newly elected Texas legislature convened and completed the process of Reconstruction by ratifying the Thirteenth, Fourteenth, and Fifteenth Amendments. They also elected Morgan Hamilton (Andrew J. Hamilton's brother and an ally of Davis) and James Flanagan to the United States Senate. On March 30, 1870, Congress voted to accept the Texas delegation and the state was officially readmitted to the Union.⁷⁵

All of Roberts's efforts to defeat black suffrage and thwart Radical Reconstruction in Texas had come to naught. His political ideals had been defeated, and his ability to influence the course of Reconstruction had been defeated. Moreover, Radical Reconstruction was not an abstraction to the Roberts family; he had defended his son on charges of assault with intent to murder before a military commission. For a man who had been in public life since 1840, this had to be a bitter pill to swallow. Before long even his law classes, the one avenue for influencing opinion left to him, was removed.

During the spring of 1870, Looney's wife became very ill and he had to leave school to take care of her, eventually relocating his family to northwest Arkansas. Roberts and the rest of the faculty finished the spring term, but the school's future was in doubt. In May, the Sunday School class at Gilmer Methodist Church, which included many of his law students, petitioned the Judge to take over the management of the school in conjunction with Lafayette Camp, a prominent Gilmer lawyer. Roberts declined to do so, and that summer he moved back to his Shelby County farm.⁷⁶

⁷⁵ J.D. Giddings, Geo. M. Flournoy et al to Roberts, September 28, 1869, Roberts Papers; Bailey, "Life and Public Career of O.M. Roberts," 206-207; Moneyhon, *Texas After the Civil War*, 114 – 118.

By the summer of 1870, Roberts believed his public career was over. He was disqualified from voting or holding office, and his law school had closed. He had resigned himself to resuming his law practice with D.M. Short and living on his Shelby County farm. His friends considered his public career over as well. Richard S. Walker of San Augustine practically eulogized Roberts's career, writing:

A career most bright and honorable has attended you through these long years – and if now, oppression has doomed you to retirement from the places wherein your usefulness was ever reflected on the people, it is a pleasant thought to know how honored your name will continue to be – “the past is secure” – I hope that you derive no small satisfaction amidst misfortunes, & the wreck of national and individual prosperity and happiness, in considering the good you have done in the past and estimating at its great worth the pride the country feels in her true men of the past and better days.⁷⁷

Unbeknownst to both Roberts and Walker, this period of retirement from public life would be short-lived. Democrats would soon begin to reclaim control of the government of Texas, and they would need someone like Roberts with experience to lead them.

⁷⁶ Lane, “The Educational System of Texas,” 467; Bailey, “Life and Public Career of O.M. Roberts,” 207-208; Geo N. Aldredge, Sawnie Robertson et al to Roberts, May 4, 1870, Roberts Papers.

⁷⁷ Walker to Roberts, June 20, 1871, Roberts Papers.

CHAPTER 8: "THE MOST PROPER MAN FOR THE SUPREME BENCH:"
1871 – 1878

By the summer of 1871, Oran Roberts had apparently given up on the prospect of returning to public life. He was barred from voting or holding office by the Fourteenth Amendment, unless granted amnesty by Congress, and the school at which he had taught was closed. Roberts accepted his fate without much complaint. He had defied the federal government and lost; he was now prepared to accept the consequences, just as he had as a student at the University of Alabama. However, his political fortunes soon changed when Democrats began to reclaim control of Texas in 1873. By the next year, Roberts would again be chief justice of the Texas Supreme Court, and by the end of 1878, governor-elect. The traits that had sustained him throughout most of his life, reflection, hard work, and important friendships, would all aid him in his return to power.

In 1871, Roberts returned to his Shelby County farm and resumed his law practice with his friend D.M. Short. However, the population in that county had declined since the last time he made his permanent residence there in 1857. As a result, there was not enough legal business to keep him occupied, and Roberts was not a man who could remain idle for long. He began to consider opening up another law school on his own. He considered returning to Gilmer and reopening the law school section of the Looney School but eventually decided against it. He had offers to start a school in Fort Worth as well.¹

In early 1873, Roberts moved his family back to Tyler, apparently with the intent of establishing a law school there. However, this plan never materialized. The problem with starting a law school from the ground up was that it required a substantial outlay of capital at the

¹ Ed. P. Marshall to Roberts, October 19, 1871; John D. Templeton to Roberts, August 13, 1872, Roberts Papers.

beginning. In addition, time would be required to see any profit from the venture. Simply put, Roberts did not have the liquid capital to begin a law school on his own without outside investors. Still, Tyler was a larger town than Shelbyville, and there was plenty of legal work to keep Roberts occupied. He went into partnership with Ruben Reeves and Stockton P. Donley, both former Supreme Court justices who had been removed from office by the United States Army as impediments to Reconstruction.²

While Roberts was pondering whether to start a new law school, Texas Democrats were mobilizing to take back the state government. In doing so, they employed a new strategy called “The New Departure.” In 1866, 1867, and 1868, Democrats, led by Roberts, fused with conservative Republicans in an attempt to defeat the Radicals. They even went so far as to drop the name “Democrat” for a while, and rebranded themselves the Conservative Party. That strategy failed, and by 1871, the Democrats were eschewing association with conservative Republicans and calling themselves Democrats again. In that year, four Congressional seats were up for election, and the Democrats set their sights on winning those. Their strategy on the campaign trail was to avoid mentioning Reconstruction at all and instead to focus on Republican corruption, high taxation, and the Texas State Police, which most white Texans despised. The Democratic candidate in the First District was William S. Herndon, a Confederate veteran and lawyer from Tyler. He wrote to Roberts’s law partner, Short, “With a proper understanding of the registration and election laws and organization of our party we will be successful. We cannot urge too strongly perfect organization by clubs and keeping the canvass warm [underlined in

² Bailey, “Life and Public Career of O.M. Roberts,” 208-209.

original].” This strategy was successful as the Democrats won all four congressional seats and won a majority in the state House of Representatives.³

After winning major victories in 1871, Texas Democrats realized that their prospects were on the rise and planned to continue this trend in 1872. The state Democratic Convention was scheduled to meet in Corsicana in July, 1872, and friends wanted Roberts to be involved. Although he declined to serve as a delegate to the convention, friends kept him abreast of events. Many ex-Confederates attended the convention and took an active part in politics for the first time since the end of the war. The Democratic platform continued the strategy of the previous year and eschewed mention of Reconstruction, instead focusing on taxation and Republican corruption. The strategy was extremely successful as the Democrats increased their control over the state house of representatives and gained a one-seat majority in the state senate. It was clear that the next statewide elections, including the gubernatorial election in 1873, would return control of Texas to the Democrats.⁴

Calls for Roberts to run for governor began as early as April of 1872. Friends from Shelby County encouraged the judge to apply to Congress to have his political disabilities removed so he would be eligible to run for office in the fall of 1873. Similar entreaties continued into 1873. State Senator William Neal Ramey of Shelby County kept Roberts informed of public opinion across the state. In early 1873 he wrote Roberts:

We, in my section, are for you for Governor. I find many here [the state legislature] friendly to you; but I also find that there are many aspirants for Governor. Some want Winkler, some Pickett, some Ireland, some Taylor, etc. I find that many very many want you for the Supreme Bench Chief Justice. Some desire you for the U.S. Senate. The general wish is for you to be Chief Justice.

³ Moneyhon, *Texas After the Civil War*, 172 – 175; W.S. Herndon to Short, July 19, 1871, Roberts Papers [quotation].

⁴ Moneyhon, *Texas After the Civil War*, 182 – 185; Short to Roberts, April 27, May 11, 1872, Herndon to Roberts, July 14, 1872, Roberts Papers; Winkler, *Platforms*, 145-147.

There is not a man in the State that can beat you. I had a long talk with Judge Reagan. He is a particular friend of yours, I heard him speak highly of you to several, and he thinks you are the most proper man for the Supreme Bench in the State.⁵

Ramey also suggested that an ideal gubernatorial ticket would be Roberts for governor and Wells Thompson of Matagorda County as lieutenant governor.⁶

After the Democratic Party announced that their convention would be held in Austin on September 5, 1873, momentum for a Roberts candidacy grew. Letters came to Roberts from as far away as Galveston urging him to run for governor. Of course, his base of support was in East Texas, and friends in Marshall, Tyler, and other locations wrote to encourage him to run. A former law student wrote from Carthage, “I feel fully justified in saying that you are ‘the man.’” You are in high favor with the large majority of the People of this Section and from the reports of several of the leading papers of this State I think your chances are very good.” The Democrats of Titus County instructed their delegates to the state convention to vote for Roberts as well.⁷

Unfortunately for Roberts, the fact that the convention was located in Austin greatly diminished any chances an East Texan had to be nominated for governor. Because of the distance and expense, many delegates from East Texas, including Roberts’s friend, Short, could not afford to travel to the capital. Short was sure that the nomination would go to a West Texan, writing that “no man between the Colorado and the Trinity can secure the nomination,” because

⁵ Ramey to Roberts, February 4, 1873, Roberts Papers.

⁶ Ramey to Roberts, February 10, 1873, F.L. Johnston to Roberts, April 30, 1872, Roberts Papers. The Fourteenth Amendment specified that those who had taken an oath to uphold the U.S. Constitution and then engaged in rebellion could not vote or hold office unless two-thirds of Senators voted to remove that disability. Roberts had not applied to have his disabilities removed by this point, and it soon developed that he would not need to. In May of 1872, Congress passed (by the required two-thirds majority) the General Amnesty Act which restored voting rights to most ex-Confederates, Roberts included. Foner, *Reconstruction*, 415.

⁷ Thomas E. Boren to Roberts, August 14, 1873 [quotation], A.C. Lerner to Roberts to Roberts, August 23, 1873, Roberts Papers.

all four of Texas's congressmen were already from that region. Short added, "If it [the nomination] should happen to fall upon a man in that section it will be Judge Coke of Waco. He is universally popular, but I believe that his locality will defeat him as it should."⁸

Judge Roberts attended the Austin Convention as a delegate from Smith County. Before leaving Tyler, letters continued to pour in requesting him to seek the nomination. When he arrived in Austin, however, political circumstances dictated a different course of action. The Democrats were divided over the issue of subsidies to railroads. An agrarian faction of the party that opposed such subsidies supported John Ireland of Seguin for the nomination. Ireland was opposed by former governor Throckmorton and John H. Reagan of Anderson County. The convention deadlocked over these candidates, and there was fear that Ireland's supporters would not support Throckmorton or Reagan in a general election. In order to break this impasse, Democrats agreed on a compromise candidate who had not taken a strong stance on the railroad issue. That candidate was Richard Coke of Waco.⁹

Coke's emergence as a serious contender presented a problem for Judge Roberts. The two men were friends, fellow veterans of Walker's Texas Division, and shared similar political views. If both men sought the nomination, they would divide support in such a way as to allow either Ireland or Reagan to win, which would present problems in the general election if one group refused to support the other. When Roberts arrived in Austin, he immediately went to see Coke and talk the situation over. The two men decided that Coke should be the nominee, after which Roberts called his friends together and informed them that he would not allow his name to

⁸ Bailey, "Life and Public Career of O.M. Roberts," 212 – 213; Short to Roberts, July 29, 1873, Roberts Papers.

⁹ Bailey, "Life and Public Career of O. M. Roberts," 212 – 213; Moneyhon, *Texas After the Civil War*, 193 – 194; H.J. Jones to Roberts, August 12, 1873, Roberts Papers. Throckmorton withdrew his name from consideration before the convention opened. Throckmorton to Austin *Democratic Statesman*, September 2, 1873, Roberts Papers.

be placed before the convention as a candidate. He also declared to his friends that he intended to support Coke, and although he hoped they would do the same, they were free to use their own judgement. Roberts, in addition to not wanting to divide support between himself and Coke, likely knew his candidacy might inspire a greater effort from the Republicans. Although Coke was also a Confederate veteran and former Supreme Court Justice, Roberts, as president of the Secession Convention, was the *bête noir* of radicals in Texas. A Coke administration would advance the same goals as Roberts and would draw less fire from the national Republican Party.¹⁰

The election was set for December of 1873, and Roberts spent the fall campaigning for Coke and the candidate for lieutenant governor, Richard Hubbard, an old friend of Roberts's from Smith County. Although he kept his name out of the public, he was instrumental in keeping in touch with both Coke and his campaign managers. He continued to be instrumental in the formation of Democratic clubs, a movement he had begun in Upshur County in 1868. Democratic clubs were founded in Shelby, San Augustine, and Smith Counties, and Roberts was the driving force behind all of them. He also supported Democratic candidates for the state legislature. As a result of Democratic organization and intimidation of black voters, Coke defeated Governor E.J. Davis handily in the December election.¹¹

Davis, however, was not ready to vacate the governorship. The Supreme Court declared the election invalid because the polls had not been open for four days as prescribed in the Constitution of 1869. A mob descended on Austin in January, 1874, determined to seat the new

¹⁰ Bailey, "The Life and Public Career of O.M. Roberts," 212-213. Much of Leila Bailey's information about Roberts's decision not to seek the Democratic nomination came from an interview with O.M. Roberts Jr.

¹¹ M.D. Herring to Roberts, October 10, 1873; D.B. Culberson to Roberts, November 5, 1873; A.W. Terrell to Roberts November 13, 1873; George Clark to Roberts, September 21, 1873; J.L. Camp to Roberts, December 13, 1873, Roberts Papers; Moneyhon, *Texas After the Civil War*, 197.

legislature and inaugurate Coke. At first, Democratic leaders thought they may be able to make a deal with Davis, but the governor insisted that he would stay in office until April, four years from the date he was inaugurated. The Democrats argued that his term should end in January, four years from the day General Reynolds had appointed him as provisional governor. Faced with an armed, angry, mob intent on ousting him, Davis sought help from President Ulysses S. Grant. Grant refused to intervene, and on January 13, 1874, the new legislature met and inaugurated Coke as governor. Davis left office, protesting that the legislature had convened illegally and inaugurated Coke before his own term had ended.¹²

Now that the Democrats were firmly ensconced in power, most Texans conversant in political affairs expected Roberts to play a prominent role in government. The two positions he was most likely to seek were U.S. Senator or Supreme Court Chief Justice. By January, he had probably ruled out a run for the Senate because his friend John H. Reagan was running for that office. Reagan had written to him in December, 1873:

I should be much gratified to have your good will & support if you should think me worthy of such an honor, & qualified for high duties it would impose on the incumbent. I make this suggestion in this form because I have not understood whether your name would be presented for senator, & because you are no doubt one of those who will be looked to for that position.¹³

Many Democrats preferred to see Roberts as Chief Justice and wrote him to that effect.

The ultimate decision would lie with Governor Coke. On December 2, 1873, a constitutional

¹² Moneyhon, *Texas After the Civil War*, 197-199; Haley, *The Texas Supreme Court*, 85 – 87; R.P. Roberts to O.M. Roberts, January 18, 1874, Roberts Papers. This case, *Ex parte Rodriguez*, became known as “The Semicolon Case.” The court ruled that the election was invalid because Article III Section 6 of the 1869 Constitution read, in part, that elections “shall be held at the county seats . . . until otherwise provided by law; and the polls shall be opened for four days.” The Democrat-controlled legislature had earlier passed a law changing elections from county seats to precincts and restricting voting to one day. The Texas Supreme Court ruled on January 6, 1874, that the insertion of a semicolon meant that although the portion on the locality of elections could be changed by the legislature, the length of time the polls were open could not, and required a constitutional amendment.

¹³ Reagan to Roberts, December 26, 1873, Roberts Papers.

amendment passed that made supreme court justices appointed offices. Coke probably had Roberts in mind as Chief Justice from the beginning. However, the Semicolon Case presented a serious legal challenge to his governorship. Although the threat of mob violence had put him in office, there was no guarantee that the Republicans might not mount a successful legal challenge later. In addition, he could not possibly appoint Roberts if the judge believed that the court's ruling was correct. Coke asked Roberts to prepare a written opinion on the case for publication. Roberts agreed that Coke was rightly the governor, and although Coke decided not to publish the opinion, he was now assured of Roberts's views on the matter and was free to appoint him Chief Justice.¹⁴

When the legislature convened, many of its members firmly expected Coke to name Roberts as Chief Justice. Bobby Roberts was in Austin and overheard several legislators discussing his father. One of them related a conversation with Coke in which the governor stated that the judge "had been an ornament to the bench and saw no reason why [he] could not be again and that if he (Coke) ever did appoint a court that [Roberts] should be chief justice" [underlined in original]. It was no surprise then, that on January 27, 1874, when Coke announced his appointments to the Supreme Court, Roberts was named Chief Justice. Joining him on the bench as associate justices were old friends and colleagues Reuben A. Reeves, George F. Moore, Thomas J. Devine, and William Pitt Ballinger.¹⁵

Roberts returned to the state bench at a time of great social and economic transition in Texas. The building of railroads represented an attempt to link the state with the rest of the

¹⁴ Coke to Roberts, December 29, 1873, Roberts Papers; Bailey, "Life and Public Career of O.M. Roberts," 218; Haley, *The Texas Supreme Court*, 88.

¹⁵ R.P. Roberts to O.M. Roberts, January 19, 1874, Roberts Papers [quotation]; Haley, *The Texas Supreme Court*, 88 – 90. Ballinger only served for one day before resigning. Coke replaced him with Peter W. Gray, but he had to resign in April 1874, due to poor health. Gray was replaced by Robert S. Gould who was still on the court when the Constitution of 1876 made the post an elected one.

nation and expand commerce. In 1860, there were only 500 miles of track in Texas; by 1880, there were more than 8,000. By the time Richard Coke took office in January of 1874, The Houston and Texas Central Railroad connected Houston with Dallas and Denison. In Denison, it connected with the Missouri, Kansas and Texas Railroad, which ran to St. Louis. The state recognized the importance of railroads to economic growth in Texas and had begun to shower railroads with favors in order to entice them to build in the state. Even before the Civil War the state was giving sixteen sections of land for every mile of track completed. The Constitution of 1869 prohibited such grants, but not the outright payment of money to these railroad companies.¹⁶

One of the first major cases to come before Roberts's Supreme Court in 1874 was *Bledsoe v. The International Railroad Company*. In 1870, the legislature passed an act to charter the International Railroad Company, and agreed to pay the company \$10,000 per mile to build it. The state issued \$500,000 in state bonds and in November, 1871, turned them over to the Comptroller of Public Accounts, Albert A. Bledsoe, to be countersigned and transferred to the railroad company. Bledsoe refused and returned the bonds to Governor Davis, unsigned. The railroad took legal action in November, 1873, and asked for a writ of mandamus against Bledsoe from the District Court of Travis County. Bledsoe argued that the act authorizing the payment to the railroad company was procured by "fraud, corruption, and bribery" on the part of said railroad and was therefore "null and void." The District Court sided with the railroad and ordered Bledsoe to countersign and register the bonds. Bledsoe then appealed to the Supreme Court.¹⁷

¹⁶ Campbell, *Gone to Texas*, 304 – 305.

¹⁷ Bailey, "The Life and Public Career of O.M. Roberts," 220-221; 40 *Texas Reports*, 539. A writ of mandamus is a court order to execute or not execute a particular action. In this instance, the railroad company wanted a district court to order Bledsoe to turn over the bonds to them.

The case came before the court during the spring session in Austin. Associate Justice Moore recused himself from the case as he had previously been a lawyer for the International Railroad Company. J.W. Ferris of Ellis County, a friend of Roberts's, was appointed Special Justice for this case. Roberts had his friend write the opinion, but conferred with him on it and wrote the last part of it himself. Bledsoe's lawyers argued that "A *mandamus* does not lie, even in a court that has original jurisdiction, to compel any officer to do against his judgment and will any act involving an exercise of official discretion." They cited as precedent Judge Wheeler's opinions in *Arbery v. Beavers* and *Commissioner of the General Land Office v. Smith*, as well as Roberts's own opinion in *Houston Tap and Brazoria Railroad v. Randolph*. Wheeler had argued in *Commissioner of the General Land Office v. Smith* that a mandamus could only be issued to a state official when the duty being mandated was "ministerial" in its character. Any other duties were discretionary. The case, therefore, rested upon the definition of "ministerial" duties.¹⁸

The court was divided on this issue. Justices Devine and Reeves argued that countersigning and registering the bonds was a ministerial function, while Roberts, Ferris, and Gould argued the opposite. The majority opinion was based on two questions:

1. Does the record present a proper case for a *mandamus*, considered on general principles?
2. Has the district court the power and authority to compel the comptroller of the state of Texas to countersign and register the state bonds?¹⁹

On the first question, the majority ruled that the Constitution of 1869 gave the comptroller discretion in matters such as these, writing, "The comptroller being thus placed at the head of the fiscal department, clothed with the power of directing the same, and entitled to bring to his aid

¹⁸ Bailey, "The Life and Public Career of O.M. Roberts," 221 – 222; 40 *Texas Reports* 541 [first quotation], 548 [(subsequent quotations)].

¹⁹ 40 *Texas Reports* 557.

able counsel, surely it was intended that in all matters pertaining to the duties of his office, under the constitution, he should exercise judgment and discretion.” On the second question, the majority opinion was “that the District Court had not the power and authority under the Constitution to compel an officer of the executive department of the government to perform an official duty.” They cited separation of powers as the basis for this decision.²⁰

The majority opinion was lauded by a significant faction of the Democratic Party. State Senator William Neal Ramey wrote, “We feel that we have a court that is not carried away with the progressive ideas of the day – many of them put into existence and sustained by the monopolists and others at the expense of the country.” Others, however, disagreed with Roberts’s and Ferris’s conclusions in the *International* case, among them, Roberts’s fellow justice George F. Moore. Moore criticized the majority opinion in *International* in writing the opinion for a case decided during the same term, *Keuchler v. Wright*.²¹

When *Keuchler* came before the Roberts court, it was the third time the state bench heard the case that involved a grant of land originally reserved for the Memphis, El Paso and Pacific Railroad. Chartered by the Texas Legislature in 1853, the railroad was supposed to run west through the Red River Valley and turn southwest somewhere near the headwaters of the Trinity River. The railroad was only able to grade sixty-five miles of roadbed before the Civil War broke out, and the one load of iron rail they were able to acquire was confiscated by the Confederate government. In 1870, one of the members of the railroad’s board of directors, George W. Wright, filed a land certificate for 1,280 acres, 640 of which were unlocated, with the Lamar County clerk. Wright wanted to claim his unlocated acres on a fractional portion of the Memphis, El

²⁰ 40 Texas Reports 562 [first quotation], 564 [second quotation].

²¹ Ramey to Roberts, July 31, 1874, Roberts Papers.

Paso and Pacific Railroad's reserved lands in Lamar County. In March of 1871, Wright had the land surveyed and filed the survey, with the field notes and certificate, with the General Land Office.²²

Jacob Keuchler, Commissioner of the General Land Office, refused to issue a patent for those lands because they were reserved for the railroad. Wright asked a Travis County court to issue a writ of mandamus to compel Keuchler to issue the patent. The district court granted the mandamus, and Keuchler appealed to the Supreme Court in 1872. The Supreme Court ruled in favor of Keuchler, reversing the decision of the lower court on the grounds that Wright did not have a legal right to a patent. Wright managed to have the case reheard in October, 1873, but the court maintained its earlier opinion. Wright was granted a second rehearing, and his case was heard by Roberts's court on March 20, 1874. Roberts's court reached the same conclusion its predecessor did, and the case was dismissed.²³

Justice George F. Moore wrote the majority opinion in *Keuchler*, and in doing so, attacked Roberts's decision in the *International* case. Moore's opinion centered on the question of what exactly constituted a ministerial act. Roberts (through special justice Ferris) had ruled in *International* that a state official had discretion on whether to carry out certain acts. In writing that opinion, Ferris, stated that this question had been "authoritatively decided in this state under the Constitution of 1845 in the *Randolph* case." Moore attacked this statement, writing that Roberts's opinion in *Houston Tap and Brazoria Railroad v Randolph* case was mere dictum and

²² Bailey, "Life and Public Career of O.M. Roberts," 227; George C. Werner, "Memphis, El Paso and Pacific Railroad," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/eqm03>), accessed November 07, 2015. Wright, besides being a board member of this railroad, was one of the early pioneers of Lamar County. As a member of the 1861 Secession Convention, he had voted against secession, one of only eight delegates to do so. Skipper Steely, "Wright, George Washington," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/fwr05>), accessed November 07, 2015.

²³ Bailey, "The Life and Public Career of O.M. Roberts," 222.

not authoritative. Furthermore, Moore argued that the other judges on the state bench at the time, Bell and Wheeler, never endorsed Roberts's opinion either. Interestingly, Moore had been the court reporter in 1859 when the case was decided and reported it as authoritative, not dictum.²⁴

Some questioned Moore's motives in effectively overruling Roberts's earlier decision in the International case, writing that his opinion showed "more the attorney, than the disinterested judge." The implication was that Moore, who had recused himself from the earlier case because he had been a lawyer for the International Railroad, was motivated by protecting the interests of railroad companies. Regardless of Moore's motives, Roberts determined to issue an opinion of his own. Although most described this as a dissenting opinion, fellow lawyer Alexander W. Terrell preferred to call it a "separate" opinion because Roberts reached the same conclusion as the majority, but arrived there for completely different reasons.²⁵

Roberts's main purpose in writing a separate opinion was to validate the strict constructionist viewpoint he had espoused regarding the writ of mandamus in the International case. In typical Roberts style, his opinion was lengthy (forty-six pages, ten pages longer than Moore's majority opinion), well-researched, and well-written. The Chief Justice traced the origin of the writ of mandamus backed to English Common Law, noting its historical usage and frequently quoting Blackstone, the famous English legal commentator. He noted its historical usage in America and ended his opinion by criticizing the United States Supreme Court's most famous mandamus case, *Marbury v. Madison*. Of John Marshall's famous decision, Roberts wrote, ". . . it is high time that the judicial idolatry for a name, however great and deserving, by

²⁴ 40 Texas Reports, 600 [quotation]; 623 – 624; Bailey, "The Life and Public Career of O.M. Roberts," 228.

²⁵ Ferris to Roberts, August 20, 1874, Terrell to Roberts, December 14, 1874, Roberts Papers.

which a *dictum* of any court has been made the law of the land should begin to cease in this country [emphasis in original].” He closed his opinion with a quote from William Blackstone, writing that “nothing is more to be avoided in a free constitution than uniting the provinces of a judge and a minister of the state.”²⁶

Roberts’s opinion in the *Keuchler* case is significant for a number of reasons. Again, he had produced a memorable “first” in the judicial history of Texas. Just as he had earlier been the first to write a dissenting opinion in *Cain v. the State* in 1857, he was now the first to write a “separate” opinion. It also again is a profound exposition of his strict constructionist views on both constitutional and statute law. Roberts clearly viewed the right of judicial review as pioneered by John Marshall as dangerous and unconstitutional. Others shared his viewpoint and praised him for his opinion on it. One writer in a prominent legal journal of the time wrote, “Mr. Chief Justice Roberts dissented at great length, and in his opinion examines the question involved with an ability which, in our judgment, stamps him as one of the foremost jurists of the country.”²⁷

The chief justice’s opinion in *Keuchler* also furthered his popularity with white Democratic voters in Texas, many of whom were opposed to railroad subsidies. The issue of public support for railroads was a divisive issue for Texas Democrats after Reconstruction. Although several Democratic politicians argued that Texas could not develop economically without subsidizing railroad companies, many rank and file Texas Democrats rejected the idea. To many, public support for these corporations was merely a scheme to aid the rich and powerful at the expense of the ordinary Texan. To make matters worse, many of these railroad companies

²⁶ 40 Texas Reports 693.

²⁷ John F. Dillon, “Power of the Judiciary to Control the Official Acts of Officers of the Executive Department of the Government,” *Central Law Journal* 2 (January, 1875), 20-31.

were controlled by northeastern stockholders. Roberts's decisions in both the International and Keuchler cases resonated with these voters. One Clarksville lawyer compared him favorably to Judge Hemphill and wrote that his Keuchler opinion "shows clearly that you are a friend of the people, and willing to give them the benefit of the law as against their natural enemies, the monied corporations." As the Texas Democratic Party became more divided over this issue, Roberts was seen as a reasonable middle ground between those viewed as friendly to the railroads and those completely opposed to railroad subsidies.²⁸

Railroad subsidies continued to be a major point of contention throughout the rest of 1874 into 1875. Two prominent Democrats, Throckmorton and Reagan, had lost support among many state legislators in the race for a U.S. Senate seat due to their ties to railroads. The state legislature instead had chosen Samuel Bell Maxey, a man without the taint of railroad subsidies.²⁹

By early 1875, Texas legislators wanted a new constitution to replace the Constitution of 1869. The state legislature issued a call for an election to be held in August of 1875. Voters approved a constitutional convention and elected delegates. Although Roberts and the other justices of the Supreme Court did not stand for election as delegates, their views on the judicial branch were solicited by prominent delegates and the result surely reflected at least some of Roberts's views. The convention met on September 6, 1875, and had seventy-five Democrats and fifteen Republicans, six of whom were black. The document produced by this convention was radically different from its predecessor. The delegates set out to decentralize state government, reduce the cost of operating said government, and curb the power of the executive.

²⁸ Williams, *Beyond Redemption*, 93 – 97; Charles S. Todd to Roberts, December 14, 1874, Roberts Papers [quotation].

²⁹ Williams, *Beyond Redemption*, 94-95; Camp to O.M. Roberts, January 21, 1874, Roberts Papers.

This commitment to decentralization and fiscal retrenchment extended to the judicial branch as well. The number of justices on the Supreme Court was reduced from five to three (one chief justice and two associate justices), and these seats were made elective, with judges serving six-year terms. Salaries for Supreme Court justices were cut by \$1,000 per year, and the number of district courts was reduced from thirty-five to twenty-six. Changes were also made to try and reduce the excessive caseload for the Supreme Court, which by 1875 lagged two years behind. A Court of Appeals was created to handle appeals in civil cases from county courts, as well as having appellate jurisdiction in all criminal cases. The Supreme Court was given appellate jurisdiction in civil cases only.³⁰

The Convention adjourned on November 24, 1875, and an election to approve the new Constitution and elect state officials was called for February 15, 1876. Although some railroad supporters made a feeble effort to oppose him, there was little doubt that Roberts would be elected as Chief Justice. Governor Coke assured him that “No man in the state could poll five per cent of the Democratic vote against you.” A.W. Terrell could find only one delegate to the convention that would not support Roberts and added, “outside of the bar the sentiment is universal in the convention in favor of your candidacy.”³¹

The judgment of Coke and Terrell soon proved valid. On Election Day, Roberts was elected as chief justice, while Moore and Gould were returned as associate justices. The Constitution of 1876 was approved by the voters by a more than two to one margin and went into

³⁰ Williams, *Beyond Redemption*, 52-53; Haley, *The Texas Supreme Court*, 91-92; Joe E. Ericson and Ernest Wallace, "Constitution of 1876," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/mhc07>), accessed January 13, 2016. *Gammel's Laws of Texas*, Vol. 8, 800-808; Reagan to Roberts, August 5, 1875; Terrell to Roberts, October 28, November 29, 1875, Roberts Papers.

³¹ Bailey, "The Life and Public Career of O.M. Roberts," 239-240; Coke to O.M. Roberts, November 26, 1875; Terrell to Roberts, November 29, 1875, Roberts Papers.

effect on April 18. Article V of the new constitution continued the practice of having the Supreme Court hold three sessions per year, in Galveston, Austin, and Tyler. Nepotism perhaps played a part in the selection of clerk for each session of the court. Nicholas J. Moore, Judge Moore's brother, was appointed to be the clerk for the Galveston session, Bobby Roberts was appointed for the Tyler session, and William P. De Normandie, the one clerk not related to a Supreme Court justice, was chosen for the Austin session.³²

On April 18, 1876, the court convened concurrent with the first session of the new state legislature. The elected judges took the oath of office, and Roberts then addressed the bar with a brief speech praising Judges Reeves and Ireland, now private lawyers. The court then adjourned until the next morning, and Roberts repaired to his office and administered the oath of office to the three justices elected to the Court of Appeals. After that, the Chief Justice walked across the capitol grounds to attend the opening session of the state legislature. While waiting to enter the House chamber, Roberts felt a touch on his shoulder, and turned around to see Meshack "Shack" Roberts, a black Republican representative from Harrison County. Judge Roberts wrote of this meeting, "He is a large man and for a negro a very sensible one. He was formerly owned by my nephew Capt. Oba E. Roberts, and was his blacksmith. He is now as he has long been a sort of king, or natural leader amongst the people of his race and color." The judge's words here show that while he had not abandoned his white supremacist views, he clearly placed Shack Roberts in a different class than other black Texans. While it must have been disconcerting to the judge to know that his nephew's former slave was a state representative, his sense of paternalism and family ties led him to display a sort of grudging admiration for this black representative. Shack

³² Haley, *The Texas Supreme Court*, 92; Oran M. Roberts, "Journal of Supreme Court Organization, 1876," 1 – 3, Roberts Papers.

Roberts was comfortable enough with the judge to approach him and would later endorse Judge Roberts for governor.³³

During the first few days of the legislature, Governor Coke came to visit Judge Roberts and suggested that he draft an amendment to improve the judicial article in the Constitution of 1876. The Constitution was a product of compromise, and, according to Roberts, “it was generally agreed that the late constitution was very defective in that respect [the judiciary].” Earlier that year, William W. Lang, leader of the Texas Grange and representative from Falls County, had written to the judge and requested his views on how to improve the judicial system. Governor Coke had since conferred with Lang and agreed that Judge Roberts’s experience and wisdom was vital to any amendments that Lang might propose. They decided, however, that Roberts’s participation should not be known, because some of the legislators would vote down anything with which he was connected. Roberts prepared a manuscript, and gave it to Lang who presented it as his own. However, nothing came of this as no amendments were made to the Judiciary article until 1891. Roberts’s participation was likely known anyway; his writing style was very precise and legalistic, and Lang was not a lawyer. Regardless of the failure of his amendment, this incident demonstrates the esteem in which Judge Roberts was held as Texas’s premier jurist.³⁴

Although Roberts’s proposed amendment to the judiciary article was not accepted at the time, state legislators sought his advice in revising statutes. Former Attorney General George

³³ Roberts, “Journal of Supreme Court Organization, 1876,” 4, Roberts Papers; Nolan Thompson, “Roberts, Meshack,” *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/fro20>), accessed January 16, 2016.

³⁴ Roberts, “Journal of Supreme Court Organization, 1876,” 8 – 9, Roberts Papers.

Clark, now a state legislator from Waco, was assigned to revise the Texas Penal Code. He wrote to Roberts:

. . . I have to request as a special favor, not only to myself personally but to the profession and people generally, that at your convenience you give me the benefit of such suggestions concerning changes, modifications and alterations therein as may have occurred to you as proper and necessary, in the course of your judicial and professional labors, to the end that the commission may have the benefit of such suggestions in the important work before it.³⁵

Similarly, Charles S. West was charged with revising statutes pertaining to the Supreme Court and Court of Appeals. He also appealed to Roberts, writing, “. . . it is the desire of the commission and especially my own desire, in the interest of the public to get the benefit of your own experience and that of your associates, with the view of remedying as far as is possible such defects in the present law as experience has shown to exist.”³⁶

Texas politicians continued to seek legal, constitutional, and political advice from Roberts as well. After winning reelection as governor in February, 1876, Richard Coke allowed himself to be nominated for election to the U.S. Senate seat held by Morgan Hamilton, a Republican elected to the Senate when his party controlled the state legislature. In May of 1876, the Texas legislature elected Coke to the U.S. Senate over John Ireland, John Hancock, and Fletcher Stockdale. Earlier, Coke had promised members of his party who were uncomfortable with Lieutenant Governor Richard Hubbard becoming the executive of the state that he would not resign until March, 1877, when Hamilton’s term officially ended. However, toward the end of 1876, he chose to resign and sought advice from Roberts as Chief Justice on the best way to submit his resignation. Some had suggested that Coke had to submit a resignation to the state legislature and have it accepted before he could legitimately step down, and he did not want the

³⁵ Clark to Roberts, December 15, 1876, Roberts Papers.

³⁶ Charles.S. West to Roberts, April 20, 1877, Roberts Papers.

Republicans to use the issue against him. Roberts suggested that he issue a proclamation to the people of Texas and have it read also to the legislature, Supreme Court, and Court of Appeals.

Roberts advised the governor:

You are no more bound to tender your resignation to the Legislative Department than you are to the Judicial Department. The Legislature did not make you Governor in whole or in part, they simply recognized you as Governor, after the Speaker of the House counted and declared the vote in your favor, so did the Judicial Department and all of the officers of the state.³⁷

Coke heeded Roberts's advice, and on December 1, 1876, issued a proclamation announcing his resignation and the accession of Lieutenant Governor Richard Hubbard to the executive office.³⁸

Roberts spent a great deal of time as chief justice establishing rules for the judicial branch of Texas's government. The Constitution of 1876 granted the Supreme Court the power to make rules and regulations governing the state judiciary, and Judge Roberts poured himself into the task, preparing an exhaustive system of judicial rules to govern calling a docket, preparation of legal briefs, and almost every other legal matter. The new rules were adopted by the Supreme Court during their session at Tyler, December 1, 1877. Roberts gave several lectures on the new rules in Tyler and was requested to publish his lectures in newspapers so attorneys who had not been able to hear his exposition could read what he had said.³⁹

During the Galveston term of the court, in the early spring of 1878, Roberts further expounded upon and defended the new judicial rules. His opinion in *Texas Land Company v. Fletcher Williams* was essentially a statement of the new rules and an exposition on the proper preparation of legal briefs. He argued that the new rules were necessarily exhaustive:

³⁷ Roberts to Coke, November 20, 1876, Roberts Papers.

³⁸ Barr, *Reconstruction to Reform*, 28-31; Coke to Roberts, November 6, 1876, Roberts Papers.

³⁹ *Gammel's Laws of Texas*, Vol. 8, 808; 47 Texas Reports, 597 – 641;

so as that the points of controversy in judicial proceedings in all of the courts should be presented with distinctness and certainty, the want of which, under our present practice, produces delay, expense, and injustice in litigation, that have long been increasing from year to year, until they now amount to intolerable evils that must be remedied.⁴⁰

Reception of the new judicial rules was mixed. One Hopkins County lawyer was pleased with the rules and expressed his belief that “They will facilitate the dispatch of business, curtail the expenses of litigation, lessen the labors of the courts and make better lawyers and cause more accuracy, precision and certainty in pleading.” Others, like former associate justice John Ireland, believed the rules would speed up the dispatch of business but worried that it would create much more work for attorneys with a large number of cases to handle already. Letters poured in from attorneys across Texas during the spring and early summer of 1878. However, Judge Roberts’s time on the Supreme Court came to a sudden end during July of that year when the Texas Democratic Party selected him to be their nominee for governor.⁴¹

Roberts began receiving calls to run for governor as early as the summer of 1876, but he refused to challenge his friend and fellow Smith County resident, Richard Hubbard, the incumbent. Vying with Hubbard for the Democratic nomination were former governor Throckmorton and William W. Lang, state legislator and Master of the Texas Grange. Hubbard and Throckmorton held similar views on the important issues of the day; both favored railroad subsidies, frontier defense, and fiscal retrenchment. The main difference seemed to be regional as Hubbard’s strength lay in East Texas, while Throckmorton was strongest in North Texas. The Democrats met in convention in Austin on July 17, 1878. Party rules required a two-thirds majority in order to receive the nomination, and neither Hubbard nor Throckmorton could gain

⁴⁰ 48 Texas Reports, 604.

⁴¹ Haley, *The Texas Supreme Court*, 92-93; Green J. Clark to Roberts, March 1, 1878, John Ireland to Roberts, February 8, 1878, Roberts Papers.

enough votes. Lang withdrew on the third day of the convention and was replaced by San Antonio lawyer and former Supreme Court justice Thomas J. Devine. After eighteen ballots, the Hubbard and Devine camps authorized a conference committee to find a compromise candidate. After three more days of balloting, on July 23, the committee decided on Roberts, and the convention at-large then nominated him.⁴²

Roberts was not present at the convention; he had gone home to Tyler to attend the funeral of his daughter-in-law. The committee telegraphed him to inform him of his nomination. Roberts wired back his acceptance and stated that he would either come to Austin and address the convention in person or do it by telegraph. The delegates were ready to adjourn, and requested that he address them by telegraph, and the judge sent back a short address in which he promised efficiency and integrity and asked the people of Texas to send good men to the state legislature. The convention then nominated Joseph D. Sayers of Bastrop as lieutenant governor, George McCormick of Colorado County for attorney general, Stephen H. Darden of Gonzales County as comptroller, former governor Francis R. Lubbock for treasurer, and William C. Walsh of Travis County for commissioner of the general land office.⁴³

Almost immediately, letters began streaming in to Roberts from all over the state, congratulating him on the nomination and expressing joy at his selection. Several lawyers expressed similar sentiments to those of A.T. Watts of Weatherford, who wrote, “. . . while we regret to loose [sic] you from the bench, we believe we get in exchange a good Governor at a time when such a man is greatly needed.” Both Hubbard and Lang wrote to offer their full

⁴² G.W. Patrick to Roberts, August 1, 1876, Herring to Roberts, April 17, 1877, Chenoweth to O.M. Roberts, April 1, 1878, Roberts Papers; Barr, *Reconstruction to Reform*, 39-42; Williams, *Beyond Redemption*, 146-147.

⁴³ Bailey, “Life and Public Career of O.M. Roberts,” 275; Roberts, “Political, Legislative, and Judicial History of Texas,” 227; Roberts to Chenoweth, Herndon, and Bonner, July 23, 1878, Roberts Papers.

support, though Hubbard was disappointed to have garnered so many votes without getting the two-thirds necessary for the nomination. Old army associates wrote to offer their congratulations and well-wishes, both former subordinates and Major General John G. Walker, commander of the Texas Division of which Roberts's Eleventh Texas Infantry had been a part. A former classmate from the University of Alabama, now living near Shreveport, Louisiana, offered to support Roberts by proxy, writing, "I am planting here [Louisiana], but have a good plantation in Ellis Co Texas, and as my citizenship is in La and I cannot vote, I have quite a vote I can cast in the shape of a negro element in my plantation in Texas, all of which you shall have the benefit of."⁴⁴

Reaction from the press was mixed. Some editors, such as Charles Gibson of the Waxahachie *Enterprise*, were pleased with the nomination, writing, "An honest and capable man has been placed at the head of the ticket, one who is beloved from one end of this great state to the other, and one who will poll the solid vote of the Democratic party." Others, while acknowledging his contributions to the bench, were not as sanguine about his fitness to serve as an executive. The editor of the Dallas *Morning Call* wrote, "As he is now more than sixty years old, and as most of his public life has been spent upon the bench, it is doubtful whether his long judicial career qualifies him for the position of governor." The *Denison Herald*, a Throckmorton organ, was suspicious of the circumstances of his nomination, writing, "His nomination is a disappointment to the people, but is quite satisfactory to the scheming politicians of the state who have a covetous eye upon a seat in the United States senate. The old judge will not be in the least in the way of these aspiring gentlemen."⁴⁵

⁴⁴ Hollingsworth to Roberts, July 23, 1878, Watts to Roberts, July 27, 1878 [first quotation], Hubbard to Roberts, July 26, 1878, Lang to Roberts, July 28, 1878, John G. Walker to Roberts, July 24, 1878, Stephens to Roberts, July 24, 1878, Lister to O.M. Roberts, July 25, 1878 [second quotation], Roberts Papers .

Immediately, the political class in Texas began to speculate on Roberts's intentions to resign his judgeship. If he resigned from the bench fairly quickly, the Democratic Party would have time to nominate a candidate for the November general election. If he waited until after the election, Governor Hubbard, as a lame duck, would have to appoint a judge who would be in place until the next general election in 1880. John Ireland was worried that Hubbard would run for chief justice and wanted Roberts to wait until after the election to resign. Many Texas Democrats, however, wanted him to resign and focus on the coming gubernatorial election. An old army comrade from Henderson wrote, "Permit me . . . to suggest that you resign your judgeship and travel through the state, going to prominent places that are easy of access, and address the people." The editor of Austin's *State Gazette* believed that the convention should have obtained Roberts's resignation before giving him the nomination, and worried that he would hold on to the post until the election. His fears were unfounded as Roberts tendered his resignation as Chief Justice on August 9, to take effect on the first Monday in October.⁴⁶

Prior to his resignation, several friends had speculated that he might keep his seat on the bench and appoint his own successor as governor. Such a course would of necessity meant that he would do very little campaigning, and some of his friends believed that he should avoid the campaign trail. One Marshall lawyer wrote, "Your reputation is good enough and no word or deed of yours will add anything to it during the canvass." Roberts might have been persuaded to

⁴⁵Waxahachie, Texas, *Enterprise* as quoted in Galveston, Texas, *Weekly News*, August 5, 1878; Dallas, Texas, *Morning Call* as quoted in Galveston, Texas, *Weekly News*, August 5, 1878; Denison, Texas, *Herald*, as quoted in Galveston, Texas, *Weekly News*, August 5, 1878.

⁴⁶ Austin, Texas, *State Gazette* as quoted in Galveston, Texas, *Weekly News*, August 5, 1878; Ireland to Roberts, July 24, 1878, O.M. Roberts, "Copy of Resignation as Chief Justice of the Supreme Court of Texas," August 9, 1878, James H. Jones to Roberts, July 29, 1878 [quotation], Roberts Papers. Jones, though fifteen years younger, had lived in Talladega County, Alabama, during the 1830s when Roberts was a young lawyer there. He moved to Texas in 1851 and established a law practice in Henderson. During the Civil War, Jones served as lieutenant colonel of the Eleventh Texas Infantry under Roberts and led the regiment during the Red River Campaign in Roberts's absence, sustaining a wound at Pleasant Hill. He was involved in Democratic party politics throughout the late nineteenth century. Thomas W. Cutrer, "Jones, James Henry," *Handbook of Texas Online* (<http://www.tshaonline.org/handbook/online/articles/fjo51>), accessed January 25, 2016.

follow this advice were it not for the rise of a new threat to Democratic political hegemony in Texas, the Greenback Labor Party.⁴⁷

The Greenbackers mainly represented the interests of farmers and urban workers. They opposed resumption of specie and favored increased coinage of silver, two measures that they believed would inflate the money supply and help sharecroppers and other debtors become solvent. They also favored large scale printing of what they called “absolute paper money,” or fiat money. Greenback clubs began to appear in large numbers in Texas in 1877, and in August of 1878, 217 delegates from almost 500 clubs held a convention in Waco. They unanimously nominated soft-money Democrat William H. Hamman for governor and wrote a platform that endorsed national Greenbacker goals. Their platform for Texas included an income tax, public schools, regulation of railroads and restriction of public land sales to settlers. As radical as those goals may have appeared to Redeemer Democrats, perhaps the most radical feature of the Waco Convention was the fact that many of the delegates were black.⁴⁸

The Democrats needed to walk a fine line on monetary issues; many Democratic voters in Texas were small farmers who favored an expansion of the money supply. Before the Democratic Convention adjourned in Austin in July, they adopted a platform that co-opted some of the Greenbackers’ main issues. The Austin Platform called for free coinage of silver and blamed the Republicans for the economic woes of the nation. However, they stopped short of advocating increased printing and circulation of greenbacks. William Hamman was actually a member of the platform committee and unsuccessfully tried to get the committee to adopt a more

⁴⁷ “The Possible True Inwardness of the demand for Judge Roberts’s Resignation,” Galveston, Texas, *Weekly News*, August 12, 1878; James H. Starr to Roberts, July 31, 1878, Roberts Papers [quotation].

⁴⁸ Barr, *Reconstruction to Reform*, 43 – 47; Winkler, *Platforms*, 187 – 190; Terrell to Roberts, July 31, 1878, Roberts Papers.

liberal greenback policy. Shortly after the convention ended, he left to join the Greenbackers. On state issues, the Austin Platform called for increased regulation of railroads and keeping spending in line with revenues.⁴⁹

The 1878 election posed a serious challenge for the Democrats. A poor economy and looming monetary contraction made the Greenbackers' appeals for inflation of the money supply attractive to farmers and urban wage laborers. In addition, the Redeemers' previous promises to reduce the tax burden and the expense of state government while still providing for popular services such as public education and frontier defense were beginning to ring hollow. Roberts countered the appeal of the Greenbackers by employing a two-pronged strategy in his debates and campaign speeches. First he accused the Greenbackers of being a northern philosophy, unnaturally foisted upon the Texas political scene by corrupt opportunists. This strategy, which could be considered the southern version of "waving the bloody shirt," more than likely resonated with his listeners, many of whom would have been Confederate veterans. This line of attack was probably more effective than his criticisms of Greenbacker monetary policy. Blaming the Republicans for the nation's & Texas's economic woes was guaranteed to produce a favorable response among his audiences.⁵⁰

Roberts cited support for the Greenbackers among some Texas Republicans as further proof of the movement's evil motives. He noted that anywhere from one-fourth to one-third of the Waco Convention's delegates were Republicans. In particular, he cited a news report in which Edmund J. Davis, sarcastically referred to by Roberts as "the great republican [sic] leader in Texas," signaled his intention to support fusion between Texas Republicans and Greenbackers in an attempt to defeat the Democrats. The former governor also stated that the Waco

⁴⁹Barr, *Reconstruction to Reform*, 42 – 43; Winkler, *Platforms*, 1916, 183 – 186.

⁵⁰Williams, *Beyond Redemption*, 146 – 148.

Convention was a move in the right direction, “a nail in the democratic [sic] coffin.” Davis had been vilified by the Democrats for years, and many white Texans considered the former Union general a traitor. As the leader of a state party made up mostly of blacks, he was further suspect in the minds of most white Texans.⁵¹

Some variations of his speech associated the Greenbackers with a former political foe. On October 27, 1878, in Galveston, Roberts reminded his listeners of an earlier third party, the Know-Nothings. He stated that “this new fledged party of that day had one all-absorbing idea, a mania originating in an all-consuming hatred for catholics [sic] and foreigners.” Roberts wanted Catholics and foreign-born citizens of Galveston to remember that the Democrats opposed this threat to their liberty and would continue to do so. One wonders if any blacks were present for Roberts’s speech and whether or not they viewed the Democrats as the defenders of their liberty.⁵²

Although Roberts generally refrained from overtly referring to the presence of blacks among the Greenbacker delegates, other prominent Democrats made sure to inform their audiences of this fact. Senator Richard Coke appeared with Roberts for a campaign event in Waco on October 4, 1878. Coke attacked the Greenbackers as tools of radical republicans such as Davis and Jacob DeGress, former head of the state public education system. He also promised “to disclose the faces of disappointed negroes [sic], and of this material is this greenback party [sic] composed here in Texas.”⁵³

⁵¹ Oran M. Roberts, “Speeches Prepared by O.M. Roberts as a Nominated candidate for Governor of Texas, Fall, 1878,” 16, Roberts Papers; Moneyhon, *Davis*, 248-249.

⁵² Galveston, Texas, *Weekly News*, October 28, 1878.

⁵³ Galveston, Texas, *Weekly News*, October 14, 1878.

Roberts and the Democrats managed to blunt the appeal of the Greenbackers enough to win fairly handily. The Democratic platform, calling for the expansion of the money supply without going as far as advocating fiat money, probably managed to retain some farmers who might have been tempted to vote Greenbacker. In this regard, William Lang and the Texas Grange's support of Roberts probably helped considerably. Regrettably, but not unexpectedly, the Democrats also employed methods other than rhetoric to make their case. A week or so before the election, seventy-five armed Democrats disrupted a Greenbacker campaign rally in Montgomery County, forcing the Greenbacker speakers to flee. The final vote tally on November 5 showed Roberts garnering 158,933 votes to Hamman's 55,002 and Republican candidate Anthony B. Norton's 23,402. The non-Democratic votes were mainly centered in counties with black majorities or black minorities of over 40 percent. The addition of the Greenbackers into the election lessened the Democratic majority from three to one in 1876 to two to one in 1878. Much like the challenge posed by the Know-Nothings twenty years earlier, the Greenbackers did not overturn Democratic hegemony in Texas, but they won a few seats in the legislature and forced the Democrats to organize and campaign in order to maintain their dominance.⁵⁴

Thus, by the end of 1878, Roberts had ascended to a level of political prominence he must have thought forever beyond his grasp at the beginning of the decade. In 1871, he had been living on his Shelby County farm, barred from voting or holding office, recently deprived of teaching law by the closure of the school. In less than ten years he had helped to organize the Democratic "redemption" of Texas, been appointed Chief Justice, and later elected to the same position. He had reorganized the judicial system of the state single-handedly, and then, without solicitation, was called upon to save his party by being acceptable to two implacably opposed

⁵⁴ Barr, *Reconstruction to Reform*, 52-53; Galveston, Texas, *Weekly News*, November 25, 1878.

factions. To Oran M. Roberts, it must have seemed as if his election as governor was a just reward for a long life of public service.

CHAPTER 9: "TEXAS WILL THEN BE A GREAT STATE INDEED:"
1879 - 1883

Oran M. Roberts took the oath of office as governor of Texas on January 21, 1879, before a joint session of the legislature assembled in the chamber of the House of Representatives. As governor, he was committed to bring the state's spending within its revenues. To this end he encouraged the legislature to cut the state's budget while finding new sources of revenue other than ad valorem taxes. This strategy caused a minor split in his party over the public school funding and land policy. However, Roberts refused to waver from his principles and when criticism and political challenges were directed toward him, he dealt with the negative consequences unflinchingly, as he had done since his days at the University of Alabama.

In the two months between the election and inauguration, Roberts went to Austin and began to study the state's finances. What he found appalled him: Texas was \$400,000 in debt and had spent more than it collected for the previous thirty years. The 1876 Constitution prohibited bond issues of more than \$200,000 at a time, yet the Democrats, in their platform adopted in 1878, promised not to raise taxes or spend more than they collected, while at the same time they pledged to maintain the public school system begun under the Republicans and continue to provide for frontier defense. Clearly, something had to give, and Roberts concluded that hard choices would have to be made. He devised a two-pronged strategy to cut public spending while simultaneously increasing revenues. This approach reflected the political philosophies that he had developed during decades of public service, but it also proved divisive and did not provide an enduring legacy for Roberts as governor.¹

¹ Oran M. Roberts, "Political, Legislative, and Judicial History of Texas," 233-235; Williams, *Beyond Redemption*, 147-148; Campbell, *Gone to Texas*, 315.

Roberts's inaugural address outlined the course of action he planned to take as governor.

He spoke plainly, telling the legislators:

First, the laws, organic and ordinary, should be so reformed and vigorously executed as to more certainly and speedily protect the rights of persons and of property; and, second, that the expenses of the government should be so reduced that they can be paid by the taxes which the people are reasonably able to pay, and which may be collected without increasing the public debt annually.²

This commitment to fiscal retrenchment, or a “pay-as-you-go” strategy, would eventually cause discontent toward Roberts from members of his own party. However, as governor, he was just as stubborn and committed to his principles as he had been in his other official capacities and refused to budge. Once Roberts committed himself to a position, nothing could move him from it. His other purpose, to reform the laws of the state, stemmed from his experience as chief justice of the Texas Supreme Court, when he had written the rules for the judicial branch and advised state legislators on passing laws in other areas.³

Roberts then proceeded to specifically mention the issues he believed needed to be addressed. These included frontier defense, public schools, asylums for the disabled and mentally ill, the state's bonded debt, salaries for public officials, and the sale of public lands, among other issues. If there was any doubt about what course Roberts meant to pursue as governor, he dispelled it with the following statement:

The true policy of the State, in my opinion, under the present juncture of affairs is to retrench expenses from top to bottom, wherever it can be done consistently with the efficiency of the public service, and inaugurate the policy now of disposing of the public lands at a fair value as soon as practicable to any purchaser that will buy them in any quantity, so as to meet the varied obligations of the government, increase the school fund and asylum fund, and thereby if possible relieve the present generation from the onerous burden of taxation

² Oran M. Roberts, “Inaugural Address, January 18, 1879,” Roberts Papers.

³ Williams, *Beyond Redemption*, 147-148.

imposed upon them for the dim prospect of a future good which will never be realized.⁴

His closing remarks demonstrated how little his political thinking had changed since the Civil War and also served as a defense of his role in the secession movement. The governor closed by saying:

Standing in this place on the 4th day of March, 1861, as the president of the seceding convention, and acting by their authority, I proclaimed Texas a free and independent State. I did it in good conscience, believing it to be right. I now, with the same good conscience, as the governor of the State, declare Texas to have been in good faith reconstructed into the Union by the voice of its own people – marching steadily on with her sister States in the new progress of national development, and standing ready to vie with any other State in advancing the prosperity and defending the honor of our common country. Having made it the study of the flower of my life to know how the rights and liberties of her people could best be preserved and her material interests advanced, I now believe that the chief reliance should be placed upon building up a great State, with all of its varied interests fostered and the rights of all protected by a good State government, vigorously and economically administered, so as to secure permanently the confidence and love of her own people. Nothing less than a bold and determined strike for that end will accomplish it. The power, the responsibility, and the honor of the attempt are yours, and if my services shall substantially aid you in fixing it upon the country as its permanent policy, the end of my political ambition will have been attained.⁵

The Governor thus proudly claimed that the state had been reconstructed, while at the same time bragging that he was personally unreconstructed.

The executive branch under Roberts comprised both men of experience and relative newcomers to state government. Elected officials besides Roberts were Lieutenant Governor Joseph D. Sayers, former chairman of the Texas Democratic Executive Committee and future governor; Attorney General George McCormick; Comptroller Stephen H. Darden; Treasurer Francis R. Lubbock, a former governor; and General Land Office Commissioner William C.

⁴ Roberts, "Inaugural Address, January 18, 1879," Roberts Papers.

⁵ Ibid.

Walsh. In addition to these elected officials, Roberts appointed John D. Templeton of Fort Worth, a former law student from the Looney School at Gilmer, as secretary of state; John B. Jones, commander of the Frontier Battalion of Texas Rangers, as adjutant general; V.O. King, commissioner of insurance, statistics, and history; and Thomas Ball, assistant attorney general. He also named his son, Bobby, as his private secretary.⁶

After laying out his list of problems to be tackled in his inaugural address, Roberts then addressed the legislature on individual issues, one at a time. In each one, he dealt with the problems, and then proceeded to offer a solution to the legislators. He delivered separate lectures on the judiciary, finance, colleges, the asylums, the frontier, revenue, and railroads, leading the editors of the *Galveston News* to jokingly write, “There is no truth to the rumor that a professional pedestrian has been hired to carry Gov. Roberts’s special messages to the legislature.” As he had stated in his inaugural address, Roberts believed the state needed to cut expenses and increase revenues. As a result, the Sixteenth Legislature passed several pieces of legislation designed to slash expenses. They authorized a new bond issue at five per cent interest, retiring ten per cent bonds which had been issued earlier. One author estimated that this conversion saved an estimated \$50,000 in interest payments each year. The legislature also slashed the already-meager salary for state officials, including that of the governor. Roberts had recommended lowering the annuities for veterans, but the legislature dealt with that issue by suspending the pension payments and giving veterans of the Texas Revolution land grants of 640 acres.⁷

⁶ Roberts, “Political, Legislative, and Judicial History of Texas,” 233.

⁷ Galveston, Texas, *Weekly News*, April 14, 1879 [quotation]; Williams, *Beyond Redemption*, 148; Edmund T. Miller, *A Financial History of Texas* (Austin: *Bulletin of the University of Texas* 37), 1916; *Gammel’s Laws of Texas*, Volume 8, 1420-1425.

The first test of Governor Roberts's commitment to fiscal retrenchment came over the public school system. The legislature passed an appropriations bill that gave first priority to public schools and servicing the state's debt. The school appropriation alone was one-fourth of the state's budget for fiscal year 1879-1880, and that, combined with the \$500,000 the legislature appropriated for interest on the state debt and other expenses would have left the state without sufficient operating expenses. Roberts vetoed those two portions of the appropriations bill and sent a lengthy veto message to the legislature explaining his action. In this message, he lectured the legislators on the proper role of taxation, writing:

The prime object of levying taxes is the necessity of supporting an efficient government and of paying the officers and employees who administer, support, and maintain it by their labor and means. The public support of free common schools is a secondary object compared to the administration of the government; so also, is the payment of interest on the public debt, however desirable it may be for both of these things to be done. If the condition of the country is such as that taxes cannot be collected sufficient for all of these purposes at any one time, the actual government should first be maintained rigorously and efficiently, and the other objects should have devoted to them what could be spared from the revenue after defraying the necessary expenses of an economical administration. Such is the practice, as it is believed, of all other government in this whole country except that of Texas, and should be so here.⁸

The Governor continued by noting that projected expenditures would far exceed projected revenues and warned the legislators that if they insisted on paying for schools and service on the state debt first, the executive department would be forced to make a hard choice: either cut pay for school administrators, or default on the state debt. Roberts could not have been clearer; the legislature must keep spending in line with actual revenues. Deficit spending would not be tolerated.⁹

⁸ Oran M. Roberts, "Veto of Appropriations, April 22, 1879," *Governors' Messages, Coke to Ross (Inclusive)*, edited by and for the Archive and History Department of the Texas State Library, 1916, 290 (hereafter cited as *Governors' Messages*).

The appropriations bill was not passed until late in the legislative session; Roberts vetoed it on April 22, two days before the legislature adjourned. As there was not enough time in the regular session to deal with the Governor's veto, a special session was called for June, 1879. In the meantime, Roberts's veto ignited a firestorm of controversy throughout the state. Republicans, of course, were livid. One German language newspaper, the *San Antonio Freie Presse*, was particularly virulent in their attack on the governor. The editor of the *Freie Presse* attributed the veto to racism, writing:

Roberts, the former president of the secession convention, the living representative of the bourbonism of the seventeenth century, who regrets nothing except that he can't whip his niggers anymore, is hand-in-glove with those leaders of the democracy who are squeezing the life-blood out of the people to enrich their personal adherents.¹⁰

Others were far more supportive. The *Galveston Weekly News*, a Democratic Party organ, published an analysis of Roberts's veto message in which the editors expressed little doubt that the public would support the Governor and added that it was time to end the policy of giving preference to public schools.¹¹

Between the close of the regular session of the legislature and the beginning of the special session in June 1879, Roberts received letters from all over the state both endorsing his veto and opposing it. Most of the expressions of support came from Texans in rural areas, who stood to benefit from decreased property taxes. While most of these came from fellow Democrats, one Houston County Republican agreed with the Governor's action, remarking, "I write to say that public sentiment is crystalizing in your favor . . . But I would advise that you let

⁹ Roberts, "Veto of Appropriations, April 22, 1879," *Governors' Messages*, 290-291. Article IV, Section 14 of the 1876 Constitution gave the governor a line item veto in appropriation bills. *Gammel's Laws of Texas*, Volume 8, 796-797.

¹⁰ San Antonio, Texas, *Freie Presse* as translated in Galveston, Texas, *Weekly News*, May 5, 1879.

¹¹ Galveston, Texas, *Weekly News*, April 29, 1879.

them understand that you take a bold but honest and practical stand in favor of public free schools.” Perhaps most gratifying to Roberts was a letter of support from one of his professors at the University of Alabama. Henry Tutwiler, now headmaster of a private boarding school in Hale County, Alabama, wrote, “You were right in throwing yourself into the breach, and if you are the first to do so, so much the more credit do you deserve.”¹²

In the end, the Governor got his way. During the special session, the legislature reduced the amount allocated to the public school system to one-sixth of what they originally wanted. The reduction in the school budget was mainly opposed by Republicans, Greenbackers, and Democrats in urban areas. This would have long-lasting effects for secondary education in Texas; estimates for the actual amount cut range as high as \$200,000. As a result, schools in many places shortened the school year and cut teacher salaries. The effects would be felt in politics as well, as some Democrats, including Lieutenant Governor Sayers, began to consider opposing Roberts in 1880, largely due to his stance on public education.¹³

Contrary to the beliefs of many political opponents, Governor Roberts was not against public education per se. Instead, he believed that maintenance of the government should take precedence over education in the allocation of tax dollars. If schools could be funded by methods other than imposing a large tax burden on the citizens, Roberts was amenable. In fact, in January 1879 he approved the founding of Texas’s first two normal colleges. In 1876, the legislature had passed a law to create an “Agricultural and Mechanical College for the Benefit of Colored Youth.” The school opened near Hempstead in 1878, but it was poorly funded and attended.

¹² A.T. Monroe to Roberts, May 29, 1879 [first quotation], Henry Tutwiler to Roberts, May 10, 1879, [second quotation], Roberts Papers.

¹³ Williams, *Beyond Redemption*, 148-149; Barr, *Reconstruction to Reform*, 77-79; Miller, *A Financial History of Texas*, 229-231.

Roberts suggested that the legislature close it, but in January 1879, he received a letter from Barnas Sears, administrator of the Peabody Education Fund. Sears promised that the Peabody Fund would match up to \$6,000 per year for the operation of a “first-class normal school.” The legislature then chartered Prairie View Normal School, the first black college in Texas. Later that year, the legislature established Sam Houston Normal School in Huntsville, again with promised funding from the Peabody Fund.¹⁴

The legislature was more accommodating on the other half of Roberts’s calculus for the state budget, that of raising revenue. For Roberts and the Democrats, this was not simply a matter of raising taxes; indeed, the goal was to “increase the revenue from sources that would not increase the burden upon permanent property.” Accordingly, the legislature, during its regular session, passed, and Governor Roberts signed, a variety of occupational and corporate taxes. These included taxes on travelling salesmen, telegraph companies, and passenger railroads among others. The most controversial of these new taxes, however, was a tax on alcohol, a measure known as the “Bell Punch” law.¹⁵

The “Bell Punch” law was a tax on “dealers in spirituous, vinous, and malt liquors.” The law required retailers of alcoholic beverages to pay an annual tax of \$250, or \$25 for those selling malt liquors only. In addition, a tax of two cents was levied on each drink, except malt liquor which was taxed at one-half cent per drink. The state would provide special cash registers, one for liquor and wine, another for beer, in order to keep track of sales. The law was scheduled to go into effect on October 1, 1879. This measure was what modern Americans might call a “sin

¹⁴ Roberts, “Political, Legislative, and Judicial History of Texas,” 236; *Gammel’s Laws of Texas*, Volume 8, 1481-1483; Campbell, *Gone to Texas*, 316-317.

¹⁵ Williams, *Beyond Redemption*, 149-150; Barr, *Reconstruction to Reform*, 86; *Gammel’s Laws of Texas* Volume 8, 1444-1450.

tax.” In other words, it was designed to raise revenue, while at the same time discouraging undesirable behavior.¹⁶

The Bell Punch law stirred a hornets’ nest of controversy similar to Governor Roberts’s veto of the public school appropriations. A week before the law was to go into effect, thirty Houston saloon keepers met and discussed ways to protest the law. In many cases, saloon keepers just refused to turn the punch and record the sale. Sheriffs rarely made arrests in these matters. One hotel owner wrote, “The Bell Punch can be inforced [sic] if they the sheriffs did not have to look to the people for their [sic] authority. They will not inforce [sic] the law on that acct.” The law was particularly unpopular among the German population of Texas. In the end, it proved to be unenforceable and was repealed by the legislature in 1881.¹⁷

Another act advocated by Roberts to raise revenue proved to be divisive as well. On July 14, 1879, during the special session, the legislature passed what became known as the “Fifty Cent Law.” This law, subsequently signed by Governor Roberts, provided for the sale of public lands in the Panhandle and West Texas in virtually unlimited quantities for as low as fifty cents per acre. Half of the proceeds would be used to service the public debt while the other half would go toward the school fund. Roberts had encouraged the speedy disposal of public lands during his inaugural address in January. Rather than reserve unsold public lands for future homesteaders, the law opened these western lands to anyone who wanted to buy them, including large corporations and land speculators. The legislature passed an additional bill during the

¹⁶ *Gammel’s Laws of Texas*, Volume 8, 1371-1375; Williams, *Beyond Redemption*, 150; Barr, *Reconstruction to Reform*, 86. The name “bell punch” comes from the design of the state-issued cash registers. The register’s operator would turn a crank which punched a hole in a ticket while simultaneously ringing a bell. Roberts, “Political, Legislative, and Judicial History of Texas,” 240.

¹⁷ Galveston, Texas, *Weekly News*, October 2, 1879; H.S. Hastings to Roberts, November 21, 1879, [quotation] Roberts Papers; *Gammel’s Laws of Texas*, Volume 9, 113-116.

special session that sold land earmarked for public schools in 640 acre blocks at one dollar an acre.¹⁸

The “Fifty Cents” law divided Democrats in a similar manner as Roberts’s veto of the appropriations bill had. Although the law did not end homesteading, many Democrats feared a land policy where large companies and speculators acquired so much land that not enough was left for families. For example, Charles DeMorse, a delegate to the 1875 Constitutional Convention and longtime editor of the *Clarksville Northern Standard*, argued that the land policy threatened to turn Texas farmers into a “pauper peasantry, controlled by a rich land proprietary.” One of the most strident critics of the “Fifty Cents” law came from within the administration itself. General Land Office Commissioner Walsh never liked the land policy and often urged its repeal. According to Walsh, land sold in the Panhandle under the provisions of this law, “would probably have brought \$1 per acre as readily as 50 cents. The fact that lands can be acquired under this act in large, solid, bodies, at a nominal expense for surveying, in addition to the purchase money, operates to the prejudice of the alternate sections of school lands, and retards their utilization.” Opposition to the law increased as land speculation grew out of hand, and the law was repealed in 1883.¹⁹

One matter of considerable expense to the state was frontier defense. Although large-scale depredations on the northwest frontier had ended with the defeat of the Comanches in the Red River War of 1874-1875, smaller bands of Comanches and Kiowas continued to leave their reservation near Fort Sill, Oklahoma, to hunt in Texas. Occasionally, they attacked settlements as

¹⁸ *Gammel’s Laws of Texas*, Volume 9, 80-81; Williams, *Beyond Redemption*, 152; Barr, *Reconstruction to Reform*, 78.

¹⁹ Ernest Wallace, *Charles DeMorse: Pioneer Editor and Statesman* (Lubbock: Texas Technological College Press, 1943), [first quotation] 211; William C. Walsh, *Special Report of the Commissioner of the General Land Office of the State of Texas, from August 31, 1881, to March 1, 1882* (Galveston: A.H. Belo, 1882) [second quotation].

well. During January and February of 1879, reports from Company C of the Frontier Battalion indicated that over one thousand Kiowas and Comanches were presently on Texas soil, with larger numbers expected in the spring. There were very few wild buffalos left by 1879, and these Comanches and Kiowas often subsisted by stealing cattle from ranches. In the Trans-Pecos region, Mescalero Apaches led by Victorio made war on settlers throughout 1879 and well into 1880. Governor Roberts, working with Adjutant General Jones, reorganized the Frontier Battalion in 1879 and sent George W. Baylor to Ysleta to take command of Company C. Baylor and his men, in conjunction with United States Army troops stationed at Fort Davis, spent the next year unsuccessfully chasing Victorio through the mountains of West Texas.²⁰

In addition to sending troops to West Texas to fight the Mescalero Apaches, Roberts began lobbying the federal government to block the Comanches from the Fort Sill reservation from hunting in Texas. The Governor directed Adjutant General Jones to begin collecting information to submit to the national government proving the presence of Fort Sill Indians on Texas soil. Jones passed this information on to Army authorities who promptly sent troops to return the Indians to the reservation. Roberts also communicated the situation to Texas's delegation in the United States Senate. Senator Samuel B. Maxey met with the Secretary of War, who promised to look into the problem and take prompt action.²¹

Another problem related to frontier defense was the expense incurred by the state in the course of protecting settlements from Indian depredations. Roberts contended that the job of subduing the Indians and guarding settlements belonged to the Army. As such, he worked with

²⁰ Campbell, *Gone to Texas*, 292-293; "G.W. Arrington to J.B. Jones," January 20, 1879, "Ira B. Sadler to O.M. Roberts," February 3, 1879, Dorman H. Winfrey and James M. Day, eds. *The Indian Papers of Texas and the Southwest, 1825-1916*, Volume IV (Austin: Texas State Historical Association, 1995) 409-412. Hereafter cited as *Texas Indian Papers*.

²¹ J.B. Jones to O.M. Roberts, February 15, 1879; J. Pope to O.M. Roberts, April 2, 1879; S.B. Maxey to O.M. Roberts, March 27, 1879; Winfrey and Day, *Texas Indian Papers*, 417, 421, and 420 respectively.

Texas's congressional delegation to get the federal government to reimburse Texas for funds expended in the course of outfitting state troops. Again, copious amounts of documents were collected and forwarded to Washington. Jones reported to Roberts that since 1855, Indian attacks in Texas resulted in the death of 407 Texans, while 76 more were wounded, 81 women and children became captives, and over 60,000 head of livestock were stolen and numerous wagons were destroyed. Jones estimated the total amount expended by Texas for frontier defense, including damages, since 1865, to be just under \$2,000,000.²²

In April, 1879, Representative John H. Reagan introduced a joint resolution into Congress authorizing the payment of \$1,629,615.69 to reimburse Texas for expenses incurred for frontier defense since 1855. By December, however, the documents Roberts had forwarded to Washington had been misplaced, and Reagan asked him to send another account of expenses. In January 1880, the Texas delegation in the House went back to work on the matter, introducing a resolution authorizing the Secretary of Treasury to communicate directly with Roberts on the matter, as well as a bill authorizing the Secretary of the Interior to take action to stop Indians from Fort Sill coming into Texas. The matter was finally settled in May 1880 when Texas Representative Olin Wellborn authored an amendment to an appropriations bill for the Bureau of Indian Affairs that reimbursed Texas for expenses. The money sent to the state, added to the decreased need for frontier defense, was a significant boon to Governor Roberts's "pay-as-you-go" policy.²³

²² J.B. Jones to O.M. Roberts, January 12, 1880, in *Texas Indian Papers*, 436-438.

²³ House Resolution 23, 46th Congress, 1st Session, April 21, 1879; J.H. Reagan to O.M. Roberts, December 15, 1879; R. Coke to O.M. Roberts, December 22, 1879; A Bill to prevent Indians on the reservations from going into the State of Texas; O. Wellborn to O.M. Roberts, May 22, 1880; Winfrey and Day, *Texas Indian Papers*, 424-425, 431-432, 432-433, 440, 440-441 respectively.

Aside from fiscal policy, Governor Roberts provoked ire by some of his executive actions as well. During the summer of 1879, Roberts commuted the sentences of two Harris County men who had been condemned to death. Richard Coward had been convicted of murder, and John Fields, a black man, had been convicted of rape. Both men were scheduled to die by hanging on June 20, 1879, before the Governor intervened. Roberts granted clemency to both men, an act which provoked outrage in Houston, where the crimes occurred. The Harris County grand jury that had indicted both men issued an official statement denouncing Roberts's commutation, characterizing the act as "short-sighted, unwise, mischievous and utterly subversive of the security and safety of the lives of the people of this, our said county." Reportedly, one thousand citizens of Houston attended an indignation meeting which condemned the Governor's executive clemency as well.²⁴

Although the matter raged in the press for a couple of weeks, little came of these protests. The editors of the *Galveston Weekly News* attributed the outrage to the fact that Houstonians were deprived of the entertainment of seeing a hanging, "and consequently everybody has something unpleasant to say about the 'old alcalde.'" Soon, friends, public officials, and even the Texas press began to vindicate the Governor in his decision. Many editors concluded that as Roberts had been the most important figure in the Texas judiciary for many years, he must have had excellent legal reasons for doubting the guilt of the two condemned men. Part of the outrage stemmed from the fact that no one knew what the Governor's reasons for commuting the sentences were. One Galveston lawyer wanted Roberts to publish his reasons and thought there should be a constitutional amendment requiring the governor to give reasons for executive clemency to the legislature. Roberts continued to commute sentences when he thought the

²⁴ Galveston, Texas, *Weekly News*, June 23, 1879 [quotation]; Bailey, "The Life and Public Career of O.M. Roberts," 307-308.

evidence warranted it throughout his term, and these actions often cost him political support. However, going forward, he generally published his reasons for commuting sentences in the newspapers.²⁵

Roberts's first year in office had been momentous. He had come into office determined to implement his fiscally conservative principles, and in that sense, he had been successful, eventually persuading the legislature through the use of the veto to follow his program. While his first term was largely popular with his fellow lawyers, reaction from the people of Texas was mixed. Although rural interests tended to favor the Governor's policies, the growing urban centers of the state demonstrated resistance. For the first time in Roberts's life, he was often pilloried in the press. While earlier press criticism of him had come mainly from Republican outlets, now even Democratic papers often denounced him, sometimes savagely, as the following editorial from the New Orleans *Times* illustrates:

This man [Roberts] ancient in years and holding to the fossilized and forgotten doctrines of the Paleozoic age of politics discouraged immigration, made war on the public schools, vetoed the customary appropriation to pay interest on the State debt, broke down the State force for the conservation of public order, and by extraordinary abuse of the pardoning power, robbed the gallows of its dues and the State's prison of its usefulness.²⁶

For the first time in Roberts's long public career, public criticism nearly equaled public acclaim. The Governor's personal friends were worried about him; William Pitt Ballinger of Galveston, while decrying the bad press Roberts had received, wrote in late December that he

²⁵ Galveston, Texas, *Weekly News*, July 3, 1879; Albert N. Mills to Roberts, July 9, 1879, Roberts Papers; Bailey, "The Life and Public Career of O.M. Roberts," 308-309. In April 1880, Roberts commuted the sentences of two men sentenced to hang by a Cooke County jury to hard labor for life. In this instance, the Governor published his reasons for commuting the sentences which included a request from the district judge who heard the case, John A. Carroll of Denton, to commute the sentences. See *Galveston Weekly News*, April 29, 1880.

²⁶ *New Orleans Times*, August 7, 1879.

hoped the Governor enjoyed the Christmas season, “in all your old cheerfulness and elasticity of spirits.”²⁷

Roberts replied to Ballinger two days later, and his letter is a window into his thinking and reflection on his first year as governor. Roberts expressed no ill will toward the negative treatment he received in the newspapers, writing:

I never intend to be a misanthrope or a grumbler under any circumstances. The press must be free, and being so with no better means of intelligence and information they must make mistakes, and have egregious misconceptions of public affairs and the conduct and motives of public officers. I have a liberal charity for others, that enables me to be often amused and seldom feel hurt at what is said about me.²⁸

This comment is instructive for a number of reasons. It reveals Roberts’s strict adherence to his principles, even when his actions generated strong criticism of him. It displays a level of maturity not seen in his early political battles. Of course, at sixty-four years of age, he was presumably much wiser than he was when he first ran for office in the 1850s. Perhaps most important was that his ambition appeared to have been tempered. That is not to say that the Governor was not ambitious, but after his experiences during Reconstruction, he seemed to have come to the viewpoint that public acclaim was not the ultimate measure of his success. After all, he did not seek the office of governor but was nominated as a compromise candidate. Now that he wielded that power, he would use it to advance an agenda, and the newspapers of Texas could do little to stop him besides turn public opinion completely against him. Given his high regard among the bar of the state and the power brokers of the Democratic Party, that seemed unlikely.

Roberts attributed his “rough handling” by the newspapers to the fact that he came into office without a faction of the Democratic Party attached to him personally, as James W.

²⁷ W.P. Ballinger to Roberts, December 26, 1879, Roberts Papers.

²⁸ Roberts to Ballinger, December 28, 1879, Roberts Papers.

Throckmorton and Richard B. Hubbard had. He then outlined the difficulties he faced when taking office, highlighted by five provisions of the Democrats' 1878 platform that were seemingly contradictory. Those provisions were: not to increase the public debt, not to increase ad valorem taxes over fifty cents per one hundred dollars, to maintain free public schools, to protect the frontier, and to vigorously execute the laws. According to Roberts:

There was but one way to do it, and that was to get laws passed that would improve the working of the government in all of its branches and operations, to curtail expenses, and to increase the revenue from sources that would not increase the burden upon permanent property, and to post-pone [sic] the deficiency debt of \$400,000 until the surplus revenue would gradually pay it off.²⁹

The Governor believed that this had been accomplished, and thus his administration to that point had been a rousing success. He claimed that the schools were operating better than they had before, at less expense, the frontier was protected, ten million acres of public land had been reserved for sale to pay off the public debt, twelve million acres of school land had been surveyed preparatory to sale, three million acres had been set aside to pay for a new capitol, and one million acres had been reserved to pay for a state university.³⁰

Governor Roberts then expressed his plan for the future. If the state's revenues could exceed expenses for another year or two, the legislature would be able to reduce ad valorem taxes from fifty cents to forty cents per one hundred dollars. He summarized his vision for the future thus:

My chief ambition is to see this policy improved upon and carried out. It will make Texas in a few years a great state, inhabited by a prosperous people who will love and cherish their government and their country. Whether or not I shall be made any further the instrument to aid in its accomplishment, is to me

²⁹ Roberts to Ballinger, December 28, 1879, Roberts Papers.

³⁰ Ibid.

personally a matter of little concern. I shall always find something to do, with which I shall be satisfied, as regards my own interest and personal comfort.³¹

In many regards, the Governor was correct to be proud of his accomplishments. He had worked with the legislature to rein in spending and find new ways to increase revenues. However, many of these measures continued to be controversial. Many, particularly poor Texans, criticized the school budget. Others were angry at the “Fifty Cents Law” because they believed railroad companies and landed interests would purchase land in such quantities that little would be left for actual settlers. The act of the legislature authorizing the sale of public school land in 640 acre blocks was equally unpopular because few poor Texans could afford to buy land in those quantities at one dollar per acre. Although he could not know it in December, 1879, many of these measures would not last very long. As 1879 passed into 1880, an election year, the issue of whether or not he would continue to be the instrument of fiscal retrenchment was in doubt.³²

Those Democrats opposed to Governor Roberts’s policies began to coalesce around Lieutenant Governor Sayers as early as March and April 1880. The *Galveston Weekly News*, on April 1, 1880, ran an interview with Sayers in which the Lieutenant Governor delineated his differences with Roberts on most of the main issues dealt with by the Sixteenth Legislature. In particular, he took exception with the “Fifty Cents Law,” the Bell Punch Law, the appropriations for public schools, and frontier defense. Sayers’s support came mainly from the self-styled “Young Democracy” of Texas, a generation of Texas Democrats with a more progressive view of the role of state government than that of Governor Roberts.

Roberts responded to this challenge by defending his record, rather than attacking Sayers. At the behest of several citizens of Galveston, the Governor explained his actions in a letter

³¹ Ibid.

³² Clarksville, Texas, *Northern Standard*, May 14, 1880.

which was published by the *Galveston Weekly News* under the heading, “An Open Letter from the Old Alcalde on the Results of his General Financial Policy,” on April 22, 1880. Roberts replied to his critics by stating that his policies had indeed been successful, bringing much needed revenue to the state treasury and reducing expenditures. He wrote that the ending of ten percent bonds and sale of five percent bonds had saved the state some \$57,000 by that point, and that the frontier was being adequately protected at a cost of \$75,000 per year. He defended the school veto and argued that the state’s school system was currently educating more students than before at a significantly lower cost. Roberts also touted the building of two penitentiaries, and the revenue from the sale of public lands as successes of his administration. He closed by writing:

There are numerous beneficial results which will be developed, not the least of which is, that the people of Texas, the business men, the tax-payers, the rich and the poor, are now beginning to see their way out of the former gloom of financial embarrassment, and appreciate the labors and efforts at improvement in the affairs of government since the democratic party has had the control of it, and to see that they have so developed during the first fifteen months of my administration as to inspire confidence, that all of our leading interests have reached a solid basis, that gives promise of future prosperity in the operations of the state government, and that each and all of them may now be safely promoted in harmonious co-operation.³³

Sayers began to actively campaign for the Democratic nomination by the spring of 1880. He gave speeches all over Texas, drawing distinctions between himself and Roberts on almost every important issue. Much of Sayers’s criticism tended to ignore the financial results of the Governor’s agenda and to center on statements made by the governor in his inaugural address. For example, the Lieutenant Governor attacked Roberts for stating when he was inaugurated that frontier counties without sufficient population to be organized should be abolished and combined with larger counties that were able to defend themselves. He also aggressively criticized the

³³ Galveston, Texas, *Weekly News*, April 22, 1880.

Governor over the Bell Punch Law, public schools, and almost everything else. Roberts, by contrast, gave fewer public speeches and seemed content to let his friends defend him on the stump and in the press. Ballinger attributed this to his age and years on the bench, writing, “Judge Roberts is a novice in all this [electioneering], and is too old to commence it. . . He knows and cares as little about using ‘the machine’ of the executive office for electioneering as about running a steam engine.” Ballinger’s statement was not wholly accurate: Roberts was skilled in gaining influence with important people and knew who to contact to forward his agenda.³⁴

Ultimately, Sayers’s challenge amounted to very little. Governor Roberts struck a serious blow to his challenger in June 1880 when he delivered an address to the State Teachers’ Convention in Mexia, and garnered the endorsement of that body. When the Democrats met in convention in Dallas on August 10, the Old Alcalde received two-thirds of the vote, and thus the nomination, on the first ballot. The Dallas convention adopted a platform that represented a half-hearted attempt at compromise with the “Young Democracy.” For example, the Democrats pledged to support the public free school system with “the largest appropriation, within constitutional limits, justified by the financial condition of the State.” To highlight this commitment to education, the Dallas Convention pledged to establish the University of Texas during the next legislature. They also expressed support for attracting immigration and promised to protect the frontier while calling on the national government to do a better job of that. Of course, there was no way Sayers would stand for re-election as lieutenant governor, and

³⁴ “Address of Lieutenant Governor Sayers to the People of Houston, July 9: The Governor Arraigned,” *Galveston Weekly News*, July 15, 1880; “Judge Ballinger on the Political Situation,” *Galveston Weekly News*, March 4, 1880 (quotation).

Leonidas J. Storey of Caldwell County, a Confederate veteran and lawyer, was selected as the party's nominee for that position.³⁵

Securing the Democratic nomination was tantamount to winning re-election for Roberts in 1880. Two years earlier, he had to campaign in order to stave off a challenge from the Greenbackers, who were supported by some Texas Republicans. In 1880, the old Republican stalwart, former governor Edmund J. Davis, entered the race, which ended any hope of fusion the Greenbackers may have had. William H. Hamman ran as the Greenbacker candidate again, but without the possibility of fusion, he had little chance of being elected. Roberts did not campaign vigorously, though he did speak at Turner Hall in San Antonio on October 14. Most of his speech was an endorsement of Winfield Scott Hancock as the Democratic nominee for president of the United States that year. He gave some attention to a defense of his first term, which essentially reiterated the points he made in his open letter to the *Galveston News* in April. When the election was held on November 5, 1880, the Governor won re-election handily, garnering 166,101 votes to Davis's 64,382, and Hamman's 33,721. Democrats won easily in the congressional races as well, with the notable exception of the Fifth Congressional District where George Washington "Wash" Jones won as a Greenbacker.³⁶

Governor Roberts was inaugurated for his second term on January 18, 1881. Executive branch officers continued from Roberts's first term were Lubbock as treasurer, Walsh as Commissioner of the General Land Office, and John B. Jones as adjutant general. New officials for Roberts's second term were Leonidas J. Storey as lieutenant governor, J.H. McLeary as

³⁵ "The Old Alcalde Makes a Ten Strike at Mexia," *Galveston Weekly News*, July 8, 1880; Winkler, *Platforms*, [quotation] 201-206; Barr, *Reconstruction to Reform*, 58-59; *Handbook of Texas Online*, "Storey, Leonidas Jefferson," accessed February 20, 2016, <http://www.tshaonline.org/handbook/online/articles/fst66>.

³⁶ Roberts, "Political, Legislative, and Judicial History," 242-243; Campbell, *Gone to Texas*, 316; Barr, *Reconstruction to Reform*, 59-60; "Certificate of Election as Governor," Roberts Papers; "The Issues Presented," Galveston, Texas, *Weekly News*, October 21, 1880.

attorney-general, A.W. Spaight as commissioner of insurance, statistics, and history, and T.H. Bowman as secretary of state. He again appointed his son as his personal secretary, but this time it was Peter instead of Bobby.³⁷

Roberts began his second inaugural address by giving a brief history of Texas since the days of Spanish rule. He then extolled the system of government set up by the Founding Fathers of the United States and lamented the transition from a system where states were sovereign to one where the federal government exercised power at the expense of the states. According to Roberts, “A state now, instead of being as originally intended, *regnum in regno*, is *regnum sub regno* – that is, all of its supposed deficiencies to promote the private interests of its own people are supplemented or provided for by a superior power, according to its discretion, and to accomplish its purposes.” The Governor then gave multiple examples of what he considered federal government overreach, showing that his political philosophy had changed very little, if any, since the 1850s.

In contrast to the national government, Roberts asserted that the government of Texas was operating as it should, especially under his stewardship. He stated:

One point in good government has been gained – the expenses have been brought within the revenue, and our public credit has been established. Let us hold on to that, which will now, as ever, be found no easy matter. Every great interest of State will now appeal to the Legislature for advancement and enlargement. Right now, at this session of the Legislature, is the turning point of its continuance and permanent establishment.³⁸

Even as he extolled the virtues of financial retrenchment and warned that this policy would continue to come under attack, he seemed to have been somewhat chastened by the criticism he received in his first term, particularly as regarded public schools. Governor Roberts added that

³⁷ Roberts, “Political, Legislative, and Judicial History,” 242-245.

³⁸ Oran M. Roberts, “Inaugural Address, January 18, 1881,” *Governors’ Messages*, 347.

not only could public schools be maintained and expanded by the rapid sale of land, a state university could be built, the two normal schools maintained, and other normal schools added. He called for a constitutional amendment to exempt agricultural and mining interests from ad valorem taxes for ten years, and ended with a flourish, stating:

Texas will then be a great state indeed – an empire in its matured and varied capacity – indissolubly united, holding her own in an association of States, and capable of standing alone in the wreck of disintegration, should it come, with the lone star, whether associated with the galaxy of stars, or again hoisted alone, the emblem of Texas sovereignty, to be still the adoration of a united people.³⁹

Thus did Roberts make the case for the continuance of his fiscal policies; if Texas continued on this course, she might be able to survive a catastrophe resulting from Federal overreach. It appears that twenty years after he served as president of the secession convention, Roberts had not given up hope that separation might one day still be accomplished.

Roberts continued his practice from his first term of delivering messages to the legislature on matters of importance. One of the items Roberts most desired the legislators to act on the most was the creation of a state university. The Constitution of 1876 provided for such an institution, and in his second inaugural address, the Governor urged the legislature to act on the matter. Roberts had won the endorsement of the State Teachers' Association the previous summer in part because they wanted a state university built as well. On March 30, 1881, the legislature passed an act to establish the University of Texas, and the next day passed an act authorizing the governor, with the advice and consent of the Senate, to appoint a board of regents for the University. The first board of regents of the University of Texas was thus composed of prominent Democratic politicians, men Roberts knew and trusted; among the seven regents

³⁹ Ibid., 348.

appointed by the governor were long-time colleagues Ashbel Smith as president, Thomas J. Devine, and former governor Richard B. Hubbard.⁴⁰

The Seventeenth Legislature also increased the public school appropriation to one-fourth of the state's budget, and this time Roberts did not veto it. In addition to perhaps being chastened by the criticism of the previous two years, enough school land had been sold in the Panhandle to enable the state to support the schools without raising ad valorem taxes. Indeed, ad valorem taxes were cut from fifty cents to forty cents per one hundred dollars in 1881. They would fall to thirty cents per one hundred dollars the next year. The legislature also reduced the poll tax by one-fourth and repealed the unpopular "Bell Punch" Law. The Governor signed all of these measures into law.⁴¹

After the legislature adjourned on April 1, 1881, there was much less criticism of the Governor than there had been the previous two years. Roberts had succeeded in bringing spending within revenues, funding certain programs by land sales, and having the legislature establish the University of Texas, a project near to his heart. For the first time in his capacity as governor, he was not at the center of controversy. That all changed during the summer of 1881 when Roberts again stirred up a hornets' nest, this time over national politics and religion. Republican James Garfield had defeated Hancock in the 1880 presidential race and took office on March 4, 1881. On July 2, 1881, Garfield was shot in Washington by Charles Guiteau, a disappointed office seeker. He was taken back to the White House and after a few days, appeared to be recovering. However, he eventually succumbed to his wounds on September 19, 1881.⁴²

⁴⁰ Roberts, "Political, Legislative, and Judicial History," 246-247; *Gammel's Laws of Texas*, Volume 9, 171-174, 186.

⁴¹ *Gammel's Laws of Texas*, Volume 9, 113-116; Williams, *Beyond Redemption*, 155.

⁴² Kenneth D. Ackerman, *Dark Horse: The Surprise Election and Political Murder of President James A. Garfield* (New York: Carrol and Graf, 203), 378-380.

On July 10, Charles Foster, the governor of Ohio, Garfield's home state, sent telegrams to the governors of every state and territory, requesting them to proclaim a day of thanksgiving and prayer "to almighty God for the blessed deliverance of our Prest. and for this great evidence of his goodwill to this nation." Foster further added that if all the governors agreed, a committee composed of the governors of New York, Kentucky, Maryland, Ohio, and Pennsylvania would fix a date for a nationwide observance. Roberts did not immediately respond to Foster, and may not have intended to reply at all. However, six days later, Foster wrote again, requesting a response. He had received favorable replies from all other governors and wanted Roberts's participation as well so the proclamation would be unanimous. He would be greatly disappointed by Roberts's answer.⁴³

Roberts responded two days after Foster's second telegram, writing:

My failure to answer you favourably is not on account of any want of sympathy for the President; but because I do not deem it consistent with my position as governor to issue a proclamation directing religious services, where church and state are, and ought to be kept separate in their functions. I doubt not the people of Texas have as strongly wished, and will devoutly pray for the recovery of the President as any people in the United States.⁴⁴

Governor Roberts's reply was made available to the press and instantly provoked outrage throughout the nation. Newspapers across the nation accosted him on a variety of charges. Some accused him of simple partisanship, of being unwilling to pray for the life of a Republican. The New Orleans *Times* accused him of this and lamented the fact that the northern press would label all southerners as "zany" or "vicious partisan[s]." The editors of a Kansas newspaper had a rather extreme suggestion for dealing with Roberts. They wrote, "What we need in this country, is a well-regulated inquisition. The churches now have their hand in running the politics and the

⁴³ Chas. Foster to Roberts, July 16, 1881, Roberts Papers.

⁴⁴ Roberts to Foster, July 18, 1881, Roberts Papers.

government of the country; there should be a fitting tribunal to try and punish offenders. The first man to make a fearful example of is Gov. Roberts of Texas.”⁴⁵

While Roberts was excoriated in the press, he also received letters from all over the country expressing sympathy with his reply to Governor Foster and encouraging him to bear up under criticism. State representative Guy M. Bryan wrote, “As one of your friends personally and politically, I wish you to know that I think with you and believe that governors have no right to interpret the thoughts and wishes of God to the people.” One Republican from California wrote that he wished he could cast a vote for Roberts for a national office. Resolutions were passed by the Iowa Liberal League congratulating the governor, and a Freethinkers’ Convention in Wisconsin did as well. Of course, not all of the letters addressed to the Governor were as complimentary. One anonymous correspondent from Chicago simply wrote, “Gov. R., You are an ass.”⁴⁶

As far as Texans were concerned, Roberts’s refusal to act in concert with the other governors on this matter did not appreciably affect his popularity. Those that tended to dislike the Governor viewed this incident as more evidence of his depravity. Those that supported the Governor either agreed with him or ignored the incident. He did manage to garner much negative attention in the northern press; one might assume from reading newspapers that the two most hated men in the North during the summer of 1881 were Guiteau and Roberts. Why did Roberts take such a controversial action? Many editors believed it was simply hatred toward a Republican president and former Union general. He may have been somewhat motivated by that

⁴⁵ “Governor Roberts on Church and State,” New Orleans, Louisiana, *Times*, as quoted in Galveston, Texas, *Weekly News*, July 28, 1881 [first and second quotations]; Troy, Kansas, *The Kansas Chief*, August 4, 1881 [third quotation].

⁴⁶ Bryan to Roberts, July 26, 1881 [first quotation]; John R. Cannady to Roberts, July 20, 1881; H.L. Greene to Roberts, September 8, 1881; Anonymous to O.M. Roberts, July 26, 1881 [second quotation]; Roberts Papers.

fact. However, Roberts had a deep-seated distrust of organized religion. He was raised by a Universalist mother and had never claimed formal membership in any church, despite being married to a devout Methodist. In 1842, shortly after moving to Texas, he became embroiled in a dispute with a Presbyterian minister over control of the University of San Augustine. Roberts's antipathy toward church and state intermingling had deep roots; the fact that the request came from a Republican governor on behalf of a Republican president may not have helped, but did not appear to be the primary reason for his action.

November proved to be a momentous month in the state capital. At the beginning of the month, Chief Justice George F. Moore had to resign due to poor health. Roberts appointed Associate Justice Robert S. Gould of Galveston to be the new chief justice and named Victoria lawyer John W. Stayton to fill Gould's vacant position as associate justice. The appointment of Stayton came as a surprise to many, including Stayton himself, as he was relatively unknown at the time. However, Judge Roberts had followed his career for some time and showed great judgment with this appointment. Stayton would stay on the Texas Supreme Court until his death in 1894, serving as chief justice the last six years of his life.⁴⁷

Stayton joined the Supreme Court in Tyler on November 6, 1881. Three days later, the capitol burned. The fire started in a room in the basement where Supreme Court records were kept and quickly spread to the rest of the building. Within hours, the capitol was gutted. The building had been deemed inadequate for some time, and the Constitution of 1876 authorized the sale of three million acres of public land to finance the construction of a new one. The Seventeenth Legislature had approved the land sale and made plans to construct a new building.

⁴⁷ John W. Stayton to Roberts, November 4, 1881, Roberts Papers; Haley, *The Texas Supreme Court*, 96-97. Like Roberts, Gould was a graduate of the University of Alabama. He finished in 1844, eight years after Roberts. *Handbook of Texas Online*, Fred F. Abbey, "Gould, Robert Simonton," accessed February 25, 2016, <http://www.tshaonline.org/handbook/online/articles/fgo22>; *Handbook of Texas Online*, Craig H. Roell, "Stayton, John William," accessed February 25, 2016, <http://www.tshaonline.org/handbook/online/articles/fst23>.

Now, however, these plans had to be hastened. Accordingly, Governor Roberts called for a special session of the legislature to meet in April, 1882, in part to make provisions for the building of a new capitol. In the meantime, the executive offices were moved into the Supreme Court building, the Supreme Court rented rooms at the Bruggerhoff Building in downtown Austin, and the Travis County commissioner's court donated space for furnishings and papers that had been saved by the fire.⁴⁸

Roberts had called a special session of the legislature in response to the capitol fire, but as it turned out, another emergency would have made one necessary anyway. In January 1882, Comptroller William M. Brown decided that the law establishing the black normal school at Prairie View was unconstitutional and refused to draw warrants upon the fund that paid for it. Professors at the school made appeals to some of the governor's acquaintances who passed on their concerns to him. One Bryan lawyer wrote that if something was not done, the school would not survive ten more days. He suggested that Roberts could not politically afford to let the school close, writing that, "the effect of a suspension will necessarily attach itself to the present administration and be used to revive the charge of insincerity of the party to which we belong in a professed desire to deal justly and even liberally toward the colored people." The lawyer suggested that a hundred dollars or so should purchase enough supplies for the school to subsist on until the special session of the legislature met in April.⁴⁹

Roberts was annoyed by the comptroller, writing, "I have now used all the arguments, persuasion [sic] and influence in my power to induce Mr. Brown, the comptroller, to audit for payment the accounts for expenses of the Prairie View Normal School until the legislature meets

⁴⁸ Roberts, "Political, Legislative, and Judicial History," 249; Haley, *The Texas Supreme Court*, 97.

⁴⁹ Roberts, "Political, Legislative, and Judicial History," 249-250; Bailey, "The Life and Public Career of O.M. Roberts," 331; J.P. Ayers to Roberts, January 20, 1882 [quotation], Roberts Papers.

to provide for them.” Legally, there was not much he could do. The comptroller was an elected official and could not be fired. Furthermore, it seems that Governor Roberts was undone by Chief Justice Roberts. Brown seems to have used the same arguments advanced by Roberts in the 1874 case *Bledsoe v. the International Railroad Company*. The majority of the court in that case, including Roberts, had argued, “The comptroller being thus placed at the head of the fiscal department, clothed with the power of directing the same, and entitled to bring to his aid able counsel, surely it was intended that in all matters pertaining to the duties of his office, under the constitution, he should exercise judgment and discretion.”⁵⁰

Hoisted upon his own judicial petard, Governor Roberts now had to find some other way to fund the school until the special session of the legislature. He would have to find help from the private sector, writing:

If those in charge of it [Prairie View Normal School] can induce any one to advance means for its support until after the legislature meets and has time to act, I will use the utmost of my influence with the legislature to have the last farthing paid of the debts that have been incurred or may hereafter be incurred in its support.⁵¹

As far as the ability of the comptroller to refuse payment at his discretion, Roberts realized that his argument in the *International* case was now being used against him. This time, however, he used a different line of attack, writing to Comptroller Brown that while he had the power to exercise discretion he did not have the power to veto acts of the legislature, which is what he was effectually doing. It seems to have irritated the Governor that one could oppose a Democratic executive in the same way they could a Republican. Regardless, Roberts stated his determination to have the school survive, writing:

⁵⁰ Bailey, “The Life and Public Career of O.M. Roberts,” 331-332; Roberts to E.R. Pickett, January 22, 1882, [first quotation] Roberts Papers; 40 Texas Reports 562[second quotation].

⁵¹ Roberts to Pickett, January 22, 1882, Roberts Papers.

I can only say that if that school must go down now, I feel it to be my duty, when the legislature does meet, to use whatever influence I may possess as governor of the state to have that school re-established, with every student now ejected from it restored to it, and its status fixed upon unquestionable grounds of permanent solidity, and I doubt not that the legislature will make haste to do it, as an act of justice to the colored race, and for the credit of the state they represent.⁵²

The Governor did indeed use his influence to keep Prairie View Normal School in operation. His friend, Judge James M. Burroughs of Galveston, advanced six hundred dollars to keep the school running through February and March 1882. The Houston firm of Carlton and Ellis, wholesale grocers and cotton factors, also furnished supplies for the school. The legislature did indeed pass an act to appropriate over ten thousand dollars to fund the school through the summer of 1883. Curiously, though, Governor Roberts did not sign the act. He did not veto it either, and after ten days, it became law. His reasons for not signing the act are unknown, but the board of Prairie View Normal School did not hold that against him. Rather they thanked him “for his great interest in our mental advancement and his noble hearted kindness in thus recognizing and providing for our necessities.”⁵³

Many prominent Democrats wanted Roberts to run for a third term in 1882. Most of the regents of the University of Texas especially desired to keep him in office as they understood that he was committed to the success of the school. One of these regents wrote, “My great interest in the future of Texas especially in our great University enterprise as well as the Normal, and common schools, is my apology for pleading with you, as an humble citizen to consent to again serve us as Governor.” Others wanted him to continue to oversee the construction of the new capitol and worried that a future administration might botch the job. The editors of the

⁵² “Governor Roberts to Comptroller Brown,” Austin, Texas, *Daily Statesman*, January 24, 1882.

⁵³ *Gammel’s Laws of Texas*, Volume 9, 297-298, Burroughs to Roberts, June 9, 1882, Ellis to Roberts, November 24, 1882, Resolutions of Prairie View Normal School, August 4, 1882, Roberts Papers.

Austin Democratic Statesman fretted that “before the capitol is completed new men will be administering the affairs of the state, and whether they and a legislature may combine in agreeing to any deviation from the contract, is one of the things the future must tell.”⁵⁴

Roberts did not immediately rule out a run for a third term, and in fact, seemed to hint that it might be a possibility. The Governor’s former Texas Supreme Court colleague, John Ireland of Seguin, was spoken of as a candidate as early as April, and he attracted support from the more progressive elements of the Texas Democracy, including many who had supported Sayers two years earlier. In June, Roberts visited the Agricultural and Mechanical College in Bryan for the opening of the Mechanical Department, and after the festivities answered questions from reporters. He hinted that someone who shared his views should run for governor against Ireland, and suggested his friend John H. Reagan, then a United States Senator. When queried about Reagan’s desire to run, Roberts said, “Let it be offered, and we will see. Many a man . . . did not seek an office but accepted when tendered him.” From this statement, a correspondent for the *Galveston Weekly News* concluded, “It is evident to the reportorial mind that while Governor Roberts will not be a candidate for governor in the common acceptance of the term, he will not refuse to accept the Democratic nomination if tendered him. He is watching and waiting.” Indeed, Roberts had been watching and waiting his whole life. Since his days at the University of Alabama, he had preferred to assess a situation carefully before committing himself to action.⁵⁵

Roberts refused to commit until the Democratic state convention met in Galveston on July 18, 1882. Several counties had instructed their delegates to vote for the incumbent, but Roberts had still refused to commit. On the opening day of the convention, the Roberts caucus at

⁵⁴ Smith Ragsdale to O.M. Roberts, June 23, 1882.

⁵⁵ “Governor Roberts on Education and Politics,” Galveston, Texas, *Weekly News*, June 22, 1882 [quotations]; Barr, *Reconstruction to Reform*, 64-66.

the convention decided to finally nail the Governor down and wired him to ask if he would allow himself to be nominated if two-thirds of the convention would do it. The following day, he responded in the negative. Roberts would not be a candidate for a third term as governor of Texas. Why had it taken so long to make a decision? Roberts seems to have wanted to run for a third term. Many newspapers speculated that he was simply using the office of governor preparatory for a candidacy for the United States Senate, and he might have been considering that. In the end, however, he decided to retire to private life due to the wishes of his wife, Frances. Mrs. Roberts was in poor health during the summer of 1882. She had supported her husband throughout his various public offices for forty years; now, she wanted to retire to a quieter life, and her husband acquiesced.⁵⁶

The state convention proceeded to nominate Ireland and immediately began to back away from Roberts's policies. For example, the platform adopted at Galveston in 1882 called for a constitutional amendment authorizing a school tax, and it expressed the authority of the state over railroads, an appropriate stance for a candidate nicknamed "Oxcart" John. Ireland's opponent in the general election was Independent candidate "Wash" Jones, who had been elected to Congress as a Greenbacker in 1880. On the stump, Ireland tried to steer a middle course between the fiscal retrenchment of Roberts and the more activist policies of the Greenbackers. For example, he supported repealing the "Fifty Cents Law," state regulation of railroads, and the expansion of the national currency. Roberts, despite his disagreement with Ireland on many issues, was a loyal party man, as he always had been, and campaigned for Ireland that summer

⁵⁶ "The Convention," Galveston, Texas, *Weekly News*, July 20, 1882; S.W. Blunt et al to Roberts, July 18, 1882, Roberts Papers; Barr, *Reconstruction to Reform*, 64-66; Bailey, "The Life and Public Career of O.M. Roberts," 345-346.

and fall. Ireland defeated Jones, but Democrats had their closest call since Reconstruction, winning 150,809 votes to 102,501.⁵⁷

When Roberts turned control of the executive branch of Texas over to Ireland in January 1883, he had much to be proud of. In the closing days of his term, Roberts defended his record as governor in several areas. On the state's finances, he noted that since taking office four years earlier, ad valorem taxes had been reduced from fifty cents to thirty cents per one hundred dollars, the treasury was "overflowing," the state debt had been reduced, and public credit enhanced. On education, the public school system had been maintained, two normal schools established (with the help of the Peabody Fund, he admitted), and the University of Texas had been established with a main branch in Austin and a medical branch in Galveston. In addition, the Indian threat in West Texas had been dealt with, a new capitol was in the process of being constructed, and railroads were being constructed throughout the state.⁵⁸

Roberts's legacy as governor in the final analysis, however, was more complicated. Though he considered his policies successful, after he left office many of them were rejected by Texas Democrats in favor of a more progressive agenda. The "Fifty Cents Law" was repealed in 1883, almost as soon as he left office. Indeed in his inaugural address Ireland urged the ending of Roberts's land policies. From Ireland's administration forward, public land would go toward funding education and settlement of families first. Later, the state legislature would begin using state land to pay down the public debt again. Land grants to railroads would end even while Roberts was still governor, but under Ireland and his successors, state regulation of the railroads

⁵⁷ Winkler, *Platforms*, 209-211; Galveston *Weekly News*, August 24, October 19, 1882; Barr, *Reconstruction to Reform*, 66-69; Williams, *Beyond Redemption*, 158-159.

⁵⁸ Oran M. Roberts, "Initial Message to the Eighteenth Legislature, January 10, 1883," *Governors' Messages*, 430-457.

would increase to the point where a constitutional amendment in the 1890s authorized a commission to regulate them. In short, while Roberts could point to the success of his agenda, a younger generation of Texas Democrats rejected them. After Roberts left the governor's mansion, Texas Democrats left behind his commitment to fiscal retrenchment.

On January 16, 1883, however, as Roberts addressed the legislature for the final time, all of that was in the future. As he prepared to leave the reins of the executive branch of the government of Texas to Ireland, he took pride in the fact that he had been a good and faithful public servant. In his last public words as governor Roberts declared:

We that have been in authority as servants of the people have had a weighty responsibility resting upon us in the endeavor to build up Texas into a great, prosperous, and intelligent State. However much has been accomplished, much still remains to be done. Having full confidence that wise counsels and prudent action will continue the good work, it is with pleasure that I now retire from the position, the most important and the most honorable within the gift of the people of his great and growing state, the office of Governor of Texas.⁵⁹

⁵⁹ Oran M. Roberts, "Valedictory Address, January 16, 1883," *Governors' Messages*, 467.

CHAPTER 10: “A TEXAN OF THE TEXANS,” 1883-1898

When Oran M. Roberts left the temporary capitol building on January 18, 1883, he was a private citizen for the first time in nine years. Indeed, since becoming district attorney in 1844, he had spent all but thirteen of the subsequent years in some political office. Roberts committed the remaining years of his life to building his legacy. He would do this in three ways: teaching law at the University of Texas, influencing Texas Democrats as the party’s elder statesman, and finally, by writing the history he had lived, defending his actions for posterity.

Instead of directing the affairs of state from elected office, the Old Alcalde would go back to one of his first loves, teaching. As early as June 1882, Ashbel Smith, president of the Board of Regents for the University of Texas reported that “the people will demand that the Ex Chief Justice Roberts shall fill the highest chair in the Law Department.” The Regents made that official after the gubernatorial election in November of that year when they named Roberts the first professor of law at the University. The selection of Roberts made sense. As governor, he had been instrumental in urging the legislature to found the University. He was also crucial in the selection of Austin as the location for the main campus; as a young man he experienced college life in a state capital and believed it was beneficial for a developing mind. In addition, he was an experienced law teacher, having taught in San Augustine during the 1840s and at the Looney School in Gilmer during the 1860s.¹

Some opponents of Roberts as governor, however, saw in his appointment the result of policies designed to benefit no one but him. Charles DeMorse of the *Clarksville Standard*, a former ally-turned-opponent of Roberts over public land policy, wrote that the Old Alcalde

¹¹ Ashbel Smith, “Report to University of Texas Board of Regents,” June 15 1882 [quotation]; Certificate of Appointment as Professor of Law at the University of Texas, June 25, 1885; Roberts Papers.

claimed to represent the people, but in reality only aided himself. He noted, “The governor, to the last, rides his hobby – the State University – of which he is the special beneficiary.” It was not the first time Roberts had been charged with living off the state; in 1881, a letter to the *Galveston Weekly News* likened him to a milkmaid, writing, “He has milked different teats, but it is the same stool. At one time he milked the Supreme Court teat, at another the gubernatorial teat, until they were pretty dry, and he is said to be reaching out for the senatorial teat. If he misses getting it he will fasten on to the State University teat.”²

Regardless of criticism, Roberts was returning to something he loved to do. He would be working with his friend and Texas Supreme Court colleague, Robert S. Gould, as the only two professors in the law department. The two friends each earned an annual salary of \$3,500 per year, as did all other faculty of the new University except one (John W. Mallett made \$4,000 as a professor of physics and chemistry and chair of the University faculty). The university opened on September 15, 1883. At the time, there was only one building, soon to be known as the Main Building. When the University opened in the fall of 1883, that building was only partially constructed and would not be completely finished until 1899. Classes were held in the Senate chamber of the temporary capitol until January 1884, when they moved into the west wing of the Main Building. Two days after the opening of the university, Mallett and Roberts addressed the student body in the Senate chambers. The purpose was to inform the students that attendance at chapel, or any religious service, would be strictly voluntary. This was consistent with Roberts’s views on the need for church and state to occupy separate spheres. Fifty years earlier, when he

² Clarksville, Texas, *The Standard*, as reported in Galveston, Texas, *Weekly News*, January 25, 1883 [first quotation]; “Governor Roberts as a Texas Milk-Maid,” *Austin Texas Siftings*, as reported in Galveston, Texas, *Weekly News*, June 2, 1881.

was a student at the University of Alabama, attendance at chapel services was mandatory, which no doubt had irritated the young skeptic.³

During his time as law professor at the University of Texas, Roberts acquired a reputation for being easily distracted. Students benefitted from his encyclopedic knowledge of Texas law and jurisprudence in two ways. The Old Alcalde could remember every important case, judge, and lawyer since the days of the Republic and often regaled his students with anecdotes of Texas's legal giants. Students also learned that they could waste time and avoid lectures by asking the old man questions about some important case or personage. In addition to his nickname, "Old Alcalde," students also referred to him as the Governor, rarely as Professor Roberts. According to a colleague, "While the boys of the law class could throw him off the day's lesson, they generally got something far better, his judicial life history."⁴

In addition to his duties as a professor, Roberts often addressed the faculty on various subjects, and occasionally gave the faculty address at graduation exercises. Friends who had children or other young relatives attending the University often wrote to the former governor for guidance and asked him to keep an eye on these young pupils. Longtime friend and colleague, Guy M. Bryan, instructed his great-nephew to report to Roberts posthaste. Bryan wrote, "I have told him to see you first and learn from you what studies he had better pursue in the university to prepare him for study of law." Roberts also contributed to the University by donating the bulk of his personal library to the fledgling institution. The professor doubtlessly recalled his days as

³ "Teaching and Practice at Variance," Galveston, Texas, *Weekly News*, September 27, 1883; J. J. Lane, *History of the University of Texas Based on Facts and Records* (Austin: Henry Hutchings State Printer, 1891) 268; Oran M. Roberts, "A History of the Establishment of the University of the State of Texas," *The Quarterly of the Texas State Historical Association* 1, no. 4 (April, 1898): 265; *Handbook of Texas Online*, William James Battle, "University of Texas At Austin," accessed March 01, 2016, <http://www.tshaonline.org/handbook/online/articles/kcu09>; Roberts to the President and Members of the Board of Regents of the University of Texas, June 20, 1893, Roberts Papers.

⁴ T. U. Taylor, *Fifty Years on Forty Acres* (Austin: Alec Book Company, 1938), 86-87, 89-90.

librarian at the University of Alabama and wanted to make sure his students at the University of Texas had adequate access to scholarly literature.⁵

After ten years as law professor, Roberts resigned his position in 1893. By the beginning of that year, he had started to become unhappy with the lack of influence he had on the faculty. As the law department enjoyed semi-autonomy from the academic department, Roberts and Gould rarely attended faculty meetings. The former governor disagreed with many of the recommendations made by the academic faculty, particularly in regard to the management of the state's universities. Roberts believed that the Texas Agricultural and Mechanical College, as well as Prairie View Normal School, should all be brought under the authority of the Board of Regents as provided for in the Constitution of 1876. However he often found himself in the minority of the faculty when they made recommendations to the Board of Regents. Most odious to the former Chief Justice was the fact that minority opinions were never heard by the Board.⁶

In January 1893, after a Board meeting, a frustrated Roberts confided to one of his friends, Regent Thomas M. Harwood, that he planned to resign his position at the end of the semester. When asked if he had any objection to Harwood making this known to the Board of Regents, Roberts replied that he had none. The next morning, the *Austin Daily Statesman* reported that the Professor had handed in his resignation. This information touched off a debate in the state legislature and resulted in an investigation by a Texas Senate committee. The members asked Roberts to submit his views on the management of the university in writing, but

⁵ James B. Clark to Roberts, January 13, 1890, Bryan to Roberts, October 9, 1892 [quotation], Clark to Roberts, July 9, 1890, Roberts Papers.

⁶ Roberts to the President and Members of the Board of Regents of the University of Texas, June 20, 1893, Roberts Papers.

the Professor declined. He continued to teach until the end of the semester, and officially resigned on June 20, 1893.⁷

Shortly after he submitted his resignation, two of the Board members visited Roberts in his Austin home at the corner of Nueces and 22nd streets and informed him that his resignation had been accepted. The former governor was therefore surprised to receive official notice on June 26 that not only had his resignation been accepted, but that he was “subsequently on the same day elected lecturer upon ‘Constitutional Law’ and ‘Constitutional History’ in the University at an annual salary of fifteen hundred dollars.” Roberts was incensed and responded accordingly. He replied, “I thank the secretary for the information given to me of the action of the board which enables me promptly to decline the appointment thus tendered to me.” By the time he sent his reply, the Board had already adjourned. He then authorized the *Austin Daily Statesman* to print his correspondence so the public would know for certain that he no longer had any connection to the university. This ended Roberts’s official capacity at the University of Texas.⁸

Roberts continued to keep up with state and national politics the entire time he taught law at the University of Texas. He was often spoken of as a candidate for governor or United States Senator, though he declined to run every time he was solicited. During 1884, a half-hearted attempt was made to induce Roberts to run for governor again. A faction of the Democratic Party opposed to Governor John Ireland wanted to draft Roberts to run against him. One Beaumont lawyer pleaded with Roberts to run, painting a bleak picture of the state of affairs under Ireland.

He wrote:

⁷ Ibid.

⁸ A.P. Wooldridge, Secretary of the Board of Regents of the University of Texas to Roberts, June 26, 1893 [first quotation]; Roberts to the Members of the Board of Regents of the Texas State University, June 30, 1893 [second quotation]; Roberts Papers; Taylor, *Fifty Years on Forty Acres*, 90.

As soon as you left the governor's office the papers were filled with news items of troubles and disputes between the races; of the reckless and open violation of the law by the mobs; of the encroachments of capital and wealth on the rights of the people; of the rebellion and wild resistance of the people against these encroachments; of bad blood between the poor settler and the rich non-resident land and stock syndicates; the cash began to slip out of the Treasury, like sand from a sieve; the mutterings of discontent and disappointment of the people are heard on every side – even the dark form of Communism can be discerned against breaking dawn of the future.⁹

He concluded that Roberts was the only man who could fix this sorry state of affairs, and if he was willing, should announce his candidacy immediately. The whole situation was oddly similar to the 1880 race, when those discontented with Roberts coalesced around Joseph D. Sayers as a candidate. The former governor quickly disabused everyone of the notion that he might be a candidate. Indeed, two weeks before he received the letter from Beaumont, he had written to the *Austin Statesman*, “I am not a candidate for the office, do not intend to be, and do not intend to be placed in any such position before the country.” Despite that clear and forceful statement, friends and supporters continued to lobby him to run for months.¹⁰

Two years later, a certain segment of the Democratic Party wanted Roberts to run for governor again. Former Confederate general and state senator Lawrence Sullivan “Sul” Ross was the frontrunner for governor in early 1886. Nevertheless, he wrote Roberts, “if you will permit your friends to use your name as a candidate for Governor, I will withdraw in your favor and bring to your support as loyal and gallant a crowd as you commanded in the days of your ‘Rebel’ experience.” Roberts did not immediately make his intentions known, but by June he had

⁹ P.A. Work to Roberts, February 29, 1884, Roberts Papers.

¹⁰ “Not a Candidate,” Austin, Texas, *Statesman*, February 5, 1884 [quotation]; Thomas H. Murray to Roberts, April 1, 1884, Roberts Papers.

announced that he would not be a candidate. Many who hoped for his candidacy threw their support behind Ross, who won the nomination handily.¹¹

Other candidates for statewide office sought Roberts's advice in 1886 as well. Smith County's James Stephen Hogg, son of Roberts's friend Joseph Hogg, was considering running for attorney general but was not sure if he should give up his law practice to do it. He wrote the former governor, "My main object in life is to occupy a high position as a lawyer and to command in the future a select, lucrative practice." Roberts's response was candid and frank. He wrote:

Really, I have always thought that a man of ordinary judgment knows what he ought to do better than any one else can tell him, though sometimes that fails to be the case. From what I know and have heard of you, I think you can gain distinction in public life, if you have a strong desire to do so, and will use reasonable efforts to do it.

Hogg decided to run for attorney general, served two terms in that position, and then served as governor for two terms as well.¹²

In addition to advice and support for public office, Texans constantly solicited Roberts's advice on major political issues of the day. During the spring of 1887, the legislature authorized a referendum on prohibition. Again, friends and acquaintances from all over the state solicited the Professor's advice on the issue. Though he was not a heavy drinker, Roberts made it known that he was against prohibition as it seemed to him a violation of personal liberty. A committee of anti-prohibitionists wanted him to make speeches in North Texas against prohibition. No evidence exists that he did so, but his views were widely known and may have influenced some

¹¹ L.S. Ross to Roberts, February 4, 1886 [quotation]; R.M. Wynne to Roberts, June 4, 1886, Roberts Papers.

¹² J.S. Hogg to Roberts, March 11, 1886, [first quotation] Roberts Papers; O.M. Roberts to J.S. Hogg, March 14, 1886, J.S. Hogg Papers, 1836-1969, Dolph Briscoe Center for American History, University of Texas at Austin; Robert C. Cotner, *James Stephen Hogg: A Biography* (Austin: University of Texas Press, 1959): 101-102.

who were on the fence about prohibition. The proposed constitutional amendment banning alcohol in Texas was defeated by an almost two to one margin.¹³

In 1890, another gubernatorial election year, the Old Alcalde's name again was mentioned as a possible candidate as early as the fall of 1889. This time, Roberts dispelled any notion of his candidacy quickly rather than let speculation build. As the *Dallas Morning News* reported, he published a statement in the *Austin Statesman* which read in part:

For whenever the subject has been mentioned to me I have invariably answered that I did not wish to be governor again, even if I knew that I could get the nomination and be elected to office; that I did not believe that I was now physically able to perform the arduous labors of the office in such a manner as to be beneficial to the state and creditable to myself, and that my present position as a law professor in the university was better adapted to my capacity and taste, as long as I could make myself useful in it, than any public office whatever.¹⁴

It is indeed surprising that anyone in 1890 may have seriously considered Roberts for governor as his laissez-faire conservatism was falling out of favor in Texas. That year, Hogg ran for governor on a reform platform, advocating a constitutional amendment that would create a commission to regulate railroads in the state. He won the nomination and then easily defeated his Republican opponent in the general election, ushering in a new era of Texas politics. In the following milieu of reform, the Old Alcalde would have been out of place indeed.¹⁵

Roberts seemed to recognize that his day as a power broker in the Democratic Party had passed. In August 1890, during a visit to Tyler, he told a Dallas reporter, "I am out of politics for good. I have during some time past positively refused to be interviewed by newspaper men." His reason for refraining from public expression was that he did not want to offend his law students

¹³ Campbell, *Gone to Texas*, 318-319; Horace Chilton to Roberts, April 25, 1887, Gibbs to Roberts, April 22, 1887, George Clark to Roberts, May 7, 1887, Roberts Papers.

¹⁴ "The Old Alcalde in Political Desuetude," *Dallas Morning News*, October 15, 1889.

¹⁵ Cotner, *Hogg*, 183-219; Campbell, *Gone to Texas*, 320-321.

or their parents. Although he refused to comment on politics to the press, he was happy to offer his opinions to public officials when he felt they were warranted. In March 1891, Austin officials applied to the legislature for a new city charter and authority to extend the boundaries of the city. Part of the purpose of this was to permit the city to issue bonds to pay for public improvements like paving streets, electric lights and other things of that nature. Roberts wrote to Hogg, warning him that the measure would be injurious to the citizens of Austin who would be stuck with the bill for these improvements. The charter passed the legislature, but Governor Hogg vetoed it.¹⁶

Though he rarely commented on policy publicly during the 1890s, Roberts continued to loyally support the Democratic Party with which he had been associated for sixty years. The biggest threat to the party by 1894 was an upstart third party, the Populists. Populism grew out of farmers' discontent with the United States' depressed economy within which they paid high prices for things they had to buy but had to sell the crops they raised for low prices. The Populists had run Thomas L Nugent for governor in 1892, which reduced the vote for Hogg and his reform Democrats as they faced a challenge from conservative George Clark. Hogg won, but the Populist message appealed to many who thought Hogg's reforms did not go far enough, particularly as the nation was plunged into economic depression in 1893. As the 1894 gubernatorial election loomed, the Populists stood a good chance of winning if the Democrats remained divided between the Hogg and Clark factions.¹⁷

In January 1894, both Roberts and Ireland made speeches appealing for unity among Democrats to forestall a possible Populist-Republican coalition. On January 2, Roberts gave a speech in San Marcos in which he appealed to both Democratic factions to unite, resolve their differences, and defeat the Populists and Republicans. Roberts had faced threats to Democratic

¹⁶ Roberts to Hogg, March 2, 1891, Roberts Papers; Cotner, *Hogg*, 333.

¹⁷ Campbell, *Gone to Texas*, 325-327; Cotner, *Hogg*, 392-394.

hegemony before, notably from the Know-Nothings during the 1850s and the Greenbackers during the 1870s. However, the threat from the Populists was more serious than either one of those had been. Roberts's and Ireland's efforts resulted in the Democratic factions holding a harmony meeting in Dallas in March. The reunited party nominated Dallas lawyer Charles Culberson, a former student of Roberts's from the Looney School. The Populists again nominated Nugent who ran well. However, Culberson won that fall with 49 percent of the vote. Texas Democrats dodged the proverbial bullet in 1894; in 1896, a presidential election year, Populists fused with the Democrats to vote for William Jennings Bryan, a reform Democrat. Fusion combined with Bryan's defeat spelled the end for the Populist Party, and the Democrats would not seriously be challenged again in Texas until the second half of the twentieth century.¹⁸

After the 1894 campaign, Roberts became less visible as a political advisor. Still, since he left the governor's seat in January 1883, he had remained influential within his party.

Throughout the 1880s, he had been solicited to run for governor again, and after he put that notion to rest, he was still respected enough to be sought out for advice. Roberts's influence in these years extended to Governors Ross, Hogg, and Culberson, as well as numerous candidates for lesser office. However, as he aged, and the political climate in Texas changed from laissez faire to reform, the Old Alcalde became more interested in securing his legacy through writing history rather than through politics.

Roberts had begun writing while he was still governor. In 1881 he published a book entitled *A Description of Texas, Its Advantages and Resources with Some Account of Their Development, Past, Present and Future*. This book, commonly known as *Governor Roberts's Texas*, was part history, part geography and part travel brochure. Much of the book was based on lectures he gave at the Looney School during the late 1860s and early 1870s. Though the book

¹⁸ Campbell, *Gone to Texas*, 325-331; Cotner, *Hogg*, 392-397; *Dallas Morning News*, January 6, 1894.

did not focus on politics at all, Roberts revealed his Jeffersonian roots in dedicating the book to the farmers of Texas. He wrote:

This little work is respectfully dedicated to the Texan farmers, upon whose labors, rightly directed, the material prosperity of Texas must largely depend, and whose intelligence and integrity in public affairs must be relied on to sustain good government in this country; on the principle that the civilization capable of republican, local self-government begins and ends with the plow.¹⁹

Apparently, Roberts did not sense the irony in lauding an occupation, agriculture, he had sought desperately to escape as a young man.

In 1890, while teaching law at the University of Texas, Roberts published a textbook, *Elements of Texas Pleading*. This book was used as the standard text for law classes for years after Roberts's departure from the university. Perhaps the greatest influence Roberts had as an author, however, was in writing history. In January 1894, Dallas lawyer Dudley G. Wooten, son of University of Texas Board of Regents President Thomas Wooten, wrote to the former governor asking him to write a chapter in a history of Texas he was putting together. The book would focus on various aspects of Texas history, and Wooten wanted Roberts to write the chapter on the political history of the state. Wooten was not above engaging in a bit of flattery, writing, "You will allow me to say that no one living is so thoroughly competent to do this work with that degree of accuracy, discrimination and thoroughness as yourself, and I wish to urge upon you, if it is within your power, that you accede to the request to prepare this chapter."²⁰

Roberts accepted and got to work. He had a treasure trove of material to work with as he had kept every letter he had ever received since he was a student at the University of Alabama. He also borrowed correspondence from friends and acquaintances who had taken part in the

¹⁹ O.M. Roberts, *A Description of Texas, Its Advantages and Resources, with Some Account of Their Development, Past, Present and Future* (St. Louis: Gilbert Book Company, 1881): II.

²⁰ Dudley G. Wooten to Roberts, January 4, 1894, Roberts Papers.

events referred to. For example, he received correspondence from James W. Throckmorton when writing about Reconstruction. He had also collected photographs of prominent Texans for some time, and forwarded these to his publisher, William G. Scarff of Dallas. When the book was published in 1898 as *A Comprehensive History of Texas, Volume 2*, Roberts's chapter, "A Political, Legislative, and Judicial History of Texas for its Fifty Years of Statehood, 1845-1895," was the first section of the book. At 318 pages, it was also the longest, an impressive feat for a man who had taken part in most of the major events he described.²¹

Roberts's account of Texas history was also rather biased, and the former governor made no attempt to conceal those biases. For example, he wrote about the election of 1860:

As the probability of the election of Lincoln began to dawn upon the people of Texas, who had a large interest in slaves, the spirit of antagonism was fostered, not only by the possible danger of pecuniary loss and discomfort, but by a feeling of indignation towards a party outside of their State, composed as well of those who had no slaves as those who had, which would seek to intermeddle with and control our internal social and industrial relations against our consent and to our prejudice, and this feeling greatly extended and intensified the antagonism.²²

Roberts made no attempt to whitewash slavery's role in the events surrounding secession; he clearly believed that the North had no right to interfere with the South's "Peculiar Institution."

His account of Reconstruction was similar in tone. Concerning the effect of the Ku Klux Klan on black Texans he wrote:

this mimic display of the spirits of dead soldiers, riding in military array and performing military evolutions in the streets, took the negro captive by reaching the weak points of his character – his superstition and the fear of a mysterious power he could neither understand nor oppose. It carried him back to the state of his native docility, where, with occasional exceptions, he still remains.²³

²¹ William G. Scarff to O.M. Roberts, March 23 and May 23, 1894, Roberts Papers; Roberts, "Political, Legislative, and Judicial History."

²² Roberts, "Political, Legislative, and Judicial History," 83.

²³ *Ibid.*, 170-171.

Wooten's book would be the standard history of Texas for many years, and Roberts's view of secession and Reconstruction would be the commonly accepted interpretation of those events until well into the twentieth century.²⁴

Roberts also published many addresses he gave while teaching at the University of Texas on subjects as varied as the role of public education in Texas, a southern view of federal relations, and the history of taxation. He also contributed the chapter on Texas to Clement Evans's *Confederate Military History*, although it would not be published until 1899, a year after his death. However, perhaps his longest lasting contribution to the preserving of Texas history came as a founding member of the Texas State Historical Association.²⁵

Roberts had twice tried to start a historical association for the state. On April 14, 1874, while serving as chief justice of the Texas Supreme Court, he had held a meeting in his office for the purpose of organizing a historical society. Present at the meetings were friends and political allies such as John S. "Rip" Ford, John H. Reagan, and Guy M. Bryan, as well as political enemy and former governor Elisha M. Pease. This self-styled Historical and Statistical Association of Texas did not last long, however, largely due to poor funding and the active political careers of its members. In 1888 another attempt was made, this time prompted by Ira Evans, a Vermont-born former Union Army officer. Roberts was not present at this meeting, but he joined the group in 1890. They organized the Texas State Historical Society and elected Roberts the first president, but again, this effort did not last. Historian Richard B. McCaslin has speculated that

²⁴ Moneyhon, *Davis*, 2.

²⁵ O.M. Roberts, *The History and Burden of Taxation*, *Bulletin of the University of Texas*, December, 1889; O.M. Roberts, *The Relation of Public Education to the Government of the State of Texas*, *Bulletin of the University of Texas*, June 17, 1890; O.M. Roberts, "Texas," in *Confederate Military History*, Volume XI, ed. Clement A. Evans, (Atlanta: Confederate Publishing Company, 1899).

sectional animosity between the former Confederates and Yankees in the group as well as the Panic of 1893 may have derailed the organization.²⁶

The first enduring attempt to form a historical association for Texas came from a young history professor at the University of Texas, George P. Garrison. Garrison followed the model of the Wisconsin Historical Society, which had created a lasting organization by tying their Society to the University of Wisconsin. Garrison brought together ten men interested in Texas history on February 13, 1897, at the administration building on the campus of the University of Texas. While these ten men were all either amateur or professional historians of a sort, none were household names throughout the state. Therefore, in order to secure the success of the fledgling organization, Garrison reached out to Roberts, Reagan, and Francis R. Lubbock among prominent politicians, University of Texas President George T. Winston, and Roberts's friend and collaborator, Dallas lawyer Dudley G. Wooten.²⁷

In a letter written shortly after the February 13 meeting, which Garrison referred to as a gathering of "historical cranks," the young professor invited the Old Alcalde to join the new organization and attend a March 2 organizational meeting. He also asked Roberts to think of any suggestions he may have for a proposed constitution for the new group, and encouraged him to invite others he may know with an interest in Texas history. The latter request was a shrewd move on Garrison's part, for Roberts knew virtually everyone still living who had taken part in the major political events of the past fifty years in the state.²⁸

²⁶ "Minutes of the Historical and Statistical Association of Texas," April 14, 1874, Roberts Papers; Richard B. McCaslin, *At the Heart of Texas: 100 Years of the Texas State Historical Association, 1897-1997* (Austin: Texas State Historical Association, 2007): 6-8.

²⁷ McCaslin, *At the Heart of Texas*, 14-16.

On March 2, 1897, somewhere between twenty and thirty of the two hundred and fifty people Garrison had invited met at the capitol in the office of Archibald J. Rose, Commissioner of Insurance, Statistics, and History. Roberts was present as was his longtime friend and fellow secessionist Ford. While those gathered waited for Garrison to finish his preparations, the Old Alcalde entertained the group by sharing his reminiscences of Thomas J. Rusk. Garrison finally called the meeting to order and was quickly elected secretary. Ford protested the inclusion of women as fellows, to no avail. He left noisily in protest, and Garrison was concerned that Ford would refuse to take part and thus doom the effort to failure. Later in the evening after Roberts left, those remaining approved a constitution for the newly named Texas State Historical Association. They also elected officers, and Roberts was chosen in absentia to be the first president.²⁹

Surprisingly, Roberts was not pleased at his election as president. He was honored, but thought that the job should have gone to a younger man; the former governor was almost eighty-two when the Association was formed. Bryan, chosen as one of four vice-presidents, protested his own election on the same grounds. Garrison, however, did not want to choose a professional historian who might outrank him in the University. He talked Roberts into remaining president, and by mid-March, Roberts agreed. He also talked Bryan into accepting his position as well, in the interest of helping Garrison. The Old Alcalde also wrote to his friend Ford to calm him down and keep him on board. After some time to reflect, Ford agreed to stay as well. He replied to

²⁸ George P. Garrison to Roberts, February 15, 1897, Roberts Papers; McCaslin, *At the Heart of Texas*, 16 – 19. March 2 was chosen as the date for the first meeting to coincide with Texas Independence Day. The Texas State Historical Association still holds its annual meeting as close to March 2 as possible.

²⁹ Lester G. Bugbee to Roberts, March 12, 1897, Roberts Papers; McCaslin, *At the Heart of Texas*, 25-30.

Roberts, “I anticipate remaining with ‘The Texas Historical Society’ as long as I can do anything to promote the interest of Texas history, however I can not promise that will be a long time.”³⁰

In July, 1897, the first issue of *The Quarterly of the Texas State Historical Association* was published. The first article was a version of Roberts’s presidential address to the Association, given on June 17, 1897 and titled, “The Proper Work of the Association.” He began by noting his participation in two previous attempts at forming a historical society for Texas, stating, “There have been two such associations instituted in the city of Austin, in which I participated, that failed to be continued in operation. It is to be hoped that this one has been organized under such circumstances as that it will be a permanent institution.” Roberts went on to list several subjects that would be fruitful fields of study for historical inquiry, adding that, “any and everything that the people do or think, that tends to form habits of life, or to build up prevailing institutions affecting society, constitute material for history, and may be properly presented to this Association as such.” Roberts contributed two more articles for the quarterly before his death: “The Prehistoric Races of Texas,” published in January 1898, and “Establishment of the University of Texas,” published in April 1898.³¹

Roberts’s personal life had changed drastically since becoming a private citizen. While Roberts was settling into his new job as a law professor, tragedy struck the family. On November 27, 1883, his wife Frances Wickliff Edwards Roberts died at their home in Austin after a brief illness. She had been in poor health for some time, suffering from chronic asthma, and four years as first lady of Texas seems to have taken its toll on her. She entertained frequently and political

³⁰ Ford to Roberts, March 20, 1897, Roberts Papers [quotation]; McCaslin, *At the Heart of Texas*, 27-35.

³¹ Oran M. Roberts, “The Proper Work of the Association,” *The Quarterly of the Texas State Historical Association*, I (July, 1897), 3 (first quotation), 7 (second quotation); McCaslin, *At the Heart of Texas*, 21.

friends of Governor Roberts often stayed overnight, necessitating the conversion of the back parlor of the Governor's Mansion into a bedroom. At her subsequent funeral, the entire law class of the University of Texas served as honorary pallbearers. Her death had to have been hard on the former governor; they had been married for almost forty-six years and raised seven children together. She had kept the family together throughout his many absences from home and supported his political aspirations for most of their lives together. Roberts likely dealt with his grief by pouring himself into his work as a law professor. No letters survive between October 1883 and February 1884, and it would be consistent with his character to assume that Roberts dealt with his grief privately and stoically.³²

One of Roberts's greatest regrets in life involved the education of his children. While teaching at the University of Texas, he confided in a fellow faculty member, saying, "Professor Taylor, my life has been a failure." Shocked, Thomas U. Taylor replied, "Governor, if your life has been a failure, there is not much chance for a man like me." Roberts explained himself, remarking:

Oh, you have the greatest opportunity in the world. I was absorbed in the law, in public affairs and I neglected the greatest thing in this world – the education of my children until it was too late. When I realized that I had neglected their education they were then too big to go into the classes with much smaller children. I put it off until it was too late.

It is indeed surprising that a man who prided himself on being educated and was involved with education for large portions of his life did not make the education of his children a priority.³³

It did not take very long for the ex-governor to attract attention as an eligible bachelor. In February of 1884, he received a letter from an anonymous admirer in Shelby County who wrote,

³² Pearl Cashell Jackson, *Texas Governors' Wives* (Austin: E. L. Steck, 1915) 89 – 95; "From Austin," Galveston, Texas, *Weekly News*, November 29, 1883.

³³ Taylor, *Fifty Years on Forty Acres*, 111. Taylor was Professor of Engineering at the University of Texas when Roberts taught law there.

“If you ever want some one to light your old cob pipe, call at Center.” Presumably, Roberts did not respond to this letter. Three years, later, however, he surprised many Texans by getting remarried. On December 15, 1887, Roberts married Catherine Harding Borden, a widow, formerly of Tyler. They were married at the home of Borden’s daughter in New Braunfels and resided in Austin until Roberts resigned from the University.³⁴

Shortly after resigning his law professorship, Roberts and his second wife moved to Marble Falls, Texas, in Burnet County, roughly fifty miles west of Austin. The town had only existed for a few years, being founded by former Confederate general Adam Rankin Johnson in 1887. Roberts had a small house built at the corner of Third and Main Streets and evidently intended to spend his remaining years there. He had a law office and a library, and though not engaged in private practice, kept up with the news of the day. In 1897, he moved back to Austin, presumably to take an active role in the affairs of the Texas State Historical Association.³⁵

He was in his home at Austin when he died on Thursday, May 19, 1898. The governor was two months shy of his eighty-third birthday and had been sick for about a week. Some out-of-state newspapers listed the cause of death as Bright’s Disease. On Saturday, May 20, his body was placed in the reception room of the state capitol he was instrumental in having built. He was buried the next day, May 21, 1898, at Oakwood Cemetery with full Masonic rites. He was eulogized in newspapers all over the country, from the state of his birth, South Carolina, to the state of his youth, Alabama, and beyond. The expression that would have been most gratifying to

³⁴ Anonymous to Roberts, February 14, 1884, Roberts Papers. Roberts wrote on the bottom of this letter that he believed it came from a widow he had known in Shelby County years before; “Old Alcalde Married,” Pittsburg, Texas, *Gazette*, December 22, 1887.

³⁵ *Handbook of Texas Online*, Vivian Elizabeth Smyrl, “Marble Falls, TX,” accessed March 09, 2016, <http://www.tshaonline.org/handbook/online/articles/hgm03>.

the Old Alcalde, however, came from the *Dallas Morning News*: “He lived a righteous life and was a Texan of the Texans.”³⁶

³⁶ Kalamazoo, Michigan, *Gazette*, May 21, 1898; “Governor Roberts’ Funeral,” Dallas, Texas, *Morning News*, May 20, 1898 (quotation).

CHAPTER 11: CONCLUSION

After Roberts's death, friends and colleagues remembered him in a variety of ways. Dudley G. Wooten, Roberts's successor as president of the Texas State Historical Association, eulogized him in the president's annual address, which was printed in its entirety in the next issue of the *Quarterly*. Wooten, a personal friend, was, as one would expect, laudatory in his remarks. He concluded his address by stating:

the abiding tribute to his fame and influence is written in the table of laws he illumined by his learning, in the institutions of social life perfected by his patient skill, in the grateful remembrance of the people he served so faithfully and loved so well, and in the splendid prowess of the State whose grandeur was the dream of his youth, the purpose of his manhood, and the pride of his old age.¹

During the next fifty years, this view of Roberts would be standard in Texas.

Roberts was remembered fondly in the decades after his death. In 1900, a Houston chapter of the United Daughters of the Confederacy was named after the governor. In 1907, the Fort Worth *Telegram* invited its readers to cast their votes for a list of the top ten greatest Texans. Roberts was ranked third, behind Stephen F. Austin and Houston. Of course, the governor was still fresh in the memory of many Texans, especially after the 1908 publication in the *Quarterly* of his account of his experience in Washington D.C. as an unrecognized senator in 1866. In 1910, a Dallas school named for the governor opened.²

As time passed, and those who had known Roberts began to die, he became relegated to a footnote in history. Newspapers would occasionally run articles on him and other contemporaries, but the issues of twentieth century Texas were so far removed from those of

¹ Dudley G. Wooten, "The President's Annual Address: The Life and Services of Oran Milo Roberts," *The Quarterly of the Texas State Historical Association* 2, no. 1 (July, 1898), 20.

² *Minutes of the Seventh Annual Meeting of the United Daughters of the Confederacy Held in Montgomery, Alabama*, 1901; "Austin Stands First Among Great Texans," Fort Worth *Telegram*, April 14, 1907.

Roberts's time, that there seemed to be little continuity. Gradually, newspaper articles about the governor were less frequent and consigned to the "on this day in history" category. Despite that, there are at the time of this writing, schools named after Roberts operating in Dallas, Brazosport, Freeport, Lake Jackson, El Paso, and Houston.

Oran Roberts's legacy in Texas remains significant in the early twenty-first century, in ways both tangible and intangible. In the realm of jurisprudence, he established the practice of offering minority and separate opinions. As chief justice from 1874 to 1878, he proscribed rules for Texas's entire court system. In the field of education, Roberts was instrumental in the founding of three institutions of higher learning that still exist today: The University of Texas, Sam Houston Normal School (today known as Sam Houston State University), and Prairie View Normal School (today Prairie View A & M University).

Equally important as these tangible reminders of Roberts's influence is his contribution to the identification of Texas as a southern state. His attitudes and beliefs were shaped by his youth in Alabama, and those never significantly changed his entire life. He advocated a small federal government, a strict interpretation of the United States Constitution, the institution of slavery as a positive good, and the inferiority of the black race. He acted on these beliefs by leading his state out of the Union in an effort to protect slavery, and then defended his state by raising and leading a regiment in the Confederate Army. When the Civil War ended and slavery was abolished, he attempted to maintain his belief in white supremacy as an influential member of the 1866 Constitutional Convention. As an unrecognized senator-elect, Roberts defended Texas's secession and subsequent treatment of its black population at the nation's capital. When that effort failed, he taught his strict constructionist ideals to law students. As governor, Roberts's southern upbringing was evident in several ways. His land policy was intended to benefit farmers

in the eastern parts of the state by paying for the maintenance of state government from the sale of western land, rather than by raising ad valorem taxes. Even his attitude toward frontier defense was more oriented toward reducing expenses by having the federal government pay than it was vigorous protection of frontier areas. During the last five years of his life, Roberts published several works that promoted his southern ideals and identified those ideals with the story of Texas. Perhaps his most lasting contribution is this identification of Texas as more of a southern state than a western one.

Oran Roberts is also important because he represents the tragic consequences of slavery and white supremacy. In many ways, he represented the best the South had to offer. He was educated, hard-working, honest, sociable, and truly dedicated to his family, friends, and his state. Most of his life was spent in public service, and his commitment to the legal profession and the state judiciary was truly laudatory. However, he was born and reared in an economic and social system that caused him to espouse views and take positions that modern Americans rightly find repugnant. His commitment to slavery drove his desire to lead Texas out of the Union. His belief in the superiority of whites over blacks drove his efforts to disenfranchise the latter and keep them in a state of perpetual serfdom. Roberts truly believed that what he was doing was right, and this belief drove him to justify his actions when writing the history of Texas. In short, Roberts represents something of a tragic figure. Though there is plenty to admire and respect about his life, much of that is marred by his commitment to racism and human bondage. As such, his life story is something of a cautionary tale, an example of what can happen when good men are driven by the conditions surrounding their lives to defending the indefensible. Perhaps this is his most important legacy.

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