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TWENTY-THIRD DAY

FRIDAY, OCTOBER 1, 1875⁴⁶

(The twenty-third day of the Convention was without debates. Committee reports and new resolutions, referred to the proper committees, consumed the day.)

TWENTY-FOURTH DAY

SATURDAY, OCTOBER 2, 1875⁴⁷*The Legislative Article*

JUDGE REAGAN moved to strike out "three-fourths" and insert "two-thirds" in Section 1, on the mode of calling a convention and amending the Constitution of the State by the Legislature. He explained that he thought it ought not to be left to one-fourth of the legislative department to defeat the will of the people when they desired the calling of a constitutional convention. The amendment was adopted.

MR. J. W. STAYTON, of Victoria, moved to strike out after the word "favor" in line nineteen all of the clause, and to add so it would read as follows: "If it shall appear from said return that a majority of the votes cast upon said amendment shall be cast in favor thereof, the same shall be valid to all intents and purposes as a part of the Constitution of the State of Texas, and the same shall be so declared by a joint resolution of the Legislature at the first session thereof after such election."⁴⁸

MR. BROWN claimed that the section as reported by the committee only threw an additional safeguard against hasty amendments to the Constitution, and opposed the Stayton amendment.

MR. STAYTON said his purpose was to prevent the will of the people from being defeated by one-third of the Legislature. Such

⁴⁶The proceedings for this day were found in the *State Gazette* (Austin), October 2, 1875.

⁴⁷The proceedings for this day were taken from the *State Gazette* (Austin), October 3, 1875.

⁴⁸The committee report provided for ratification of proposed amendments by a two-thirds vote of each house of the Legislature after favorable action by the people at the ballot box. Mr. Stayton proposed to eliminate the ratification by the Legislature after the amendments had been accepted by the people.

a power conferred upon the agents of the people was utterly at war with the whole theory of our Government. After the people had expressed their will in a manner provided by law, he saw no valid reason why it should be placed within the power of the Legislature to defeat this will. It was not probable that people would vote for amendments to the Constitution which were not acceptable to them.

JUDGE BALLINGER thought the amendment was a judicious one, and said it had his earnest support. The position, that while the people might remodel their Constitution on a vote of two-thirds of the Legislature calling a convention, while it would take two years to secure an amendment, was anomolous. The Legislature had first to propose an amendment, it had next to be adopted at a general election, and then had to be ratified by a succeeding Legislature. It was an anomaly which might drive the people to the necessity and expense of calling a constitutional convention to accomplish that which might be secured by amendment.

MR. BROWN said he did not so regard it. The difference in time would be only about two months, the time intervening between the general election and the meeting of the Legislature. He again said that it was a great safeguard against hasty and injudicious amendments.

MR. T. G. ALLISON, of Panola, moved to strike out "two-thirds" and insert "a majority," so that it should require only a majority of the Legislature to ratify.

MR. HENRY, of Smith, said that unless it was intended that the Constitution should be changed from time to time he did not think it wise that either of the amendments should be adopted. He thought it unwise for constitutional law to be changed with the same ease as statutory law. Such was not the case with the Federal Constitution. Constitutional law ought not to be subject to every caprice, and some safeguards should be thrown around it.

(Mr. Stockdale in the chair.)

PRESIDENT PICKETT said he regarded the question as one of the most important that would come before the Convention. It seemed to him that the people were just as competent to pass upon amendments to the Constitution as on the Constitution itself. He saw no good reason for submitting the vote of the people on an amendment to the Constitution to the danger of being thwarted by 120 men

composing the Legislature, who might be induced by outside influences to act in opposition to the will of the people. It was vicious to incorporate into their Constitution a provision that might lead to the defeat of the will of people when they desired to amend and had voted to amend their Constitution. He intended, at the proper time, to propose an amendment to the first section of the article being considered.

MR. BROWN supported the section as it came from the committee. A similar provision was incorporated in the Constitutions of most of the western and southern states, and he believed it was a wise one. Even the vote for amending the Constitution in 1872, so as to change the charters of the International and the Texas & Pacific from money to land donations—which saved the people \$12,000,000 directly—was much smaller than the vote of State officers. It was in such instances as this that the Legislature stood as a very bulwark in defense of the people's interests. He spoke of a case in Missouri in 1834 or 1835, where the people had ratified an improper amendment. The succeeding Legislature discovered the bug under the chip, refused to ratify, and saved the people from the evil consequences of their own act. Like Thomas Jefferson, he was opposed to hasty action. Jefferson was no Red Republican nor yet a Radical—not using it in the sense in which it was applied today—but a friend to popular liberty, and there was nothing in his experience that would lead to the supposition that he was opposed to the principles embodied in the clause proposed by the committee.

MR. WEAVER said that he was no Red Republican in any sense of the word, but he did believe in the powers of government by the people when their will was expressed at the ballot box. He was not an advocate of the theory that the people were always right, and did not adopt the adage that the voice of the people was the voice of God, but he refused to recognize any principle that would set the Legislature up above the people as censors on their action and corrective of their will as expressed at the polls. He would rather risk the people at the ballot box than any Legislature, however democratic, because experience proved, not only in Texas but in all other states of the Union and in the national capital itself, that they might be influenced by improper means, so that instead of protecting the people, like boa-constrictors, they would strangle them. He was

entirely willing to trust the intelligence of the people. He was in favor of Mr. Allison's amendment

MR. EDWARD CHAMBERS, of Collin, supported the original clause. He referred to the stand made by five members of the Legislature, himself among the number, to the ratification of the amendment donating the public lands to works of internal improvement. Judge Harrison, of Van Zandt, was their mouthpiece, and it was through the opposition of these five members that one-half of the public domain was set apart for school purposes and for incorporating into the Constitution that the school fund should be forever held sacred. The people, in their desire to throw off the yoke of \$12,000,000, had thrown loose the whole public domain to works of public improvement. The people had not intended for any such principle to be established, but if it had not been for the legislative check, they would have suffered just as much as if they had intended it. While he yielded to no one in his confidence in the people's voice, as was attested by his votes heretofore and would be attested by his votes hereafter, it was possible for cases to arise when similar legislative restriction upon an inconsiderate act of the people might lead directly to their welfare.

MR. L. W. MOORE, of Fayette, moved to strike out of line nineteen the word "of" down to "so" and to insert "either of them" and to strike out all after the word "Texas" and add, "the Governor shall by his proclamation so declare." He thought the will of the people should be declared as soon as it was ascertained by the proper officers of the people. He agreed with Judge Ballinger that it was contradictory that one-third of the Legislature should have power to defeat the will of the people, while on a vote of ratification of a new Constitution their will would be supreme. The objects of both amendments seemed to be to compel the agents of the people to do the will of the people. He proposed to take all danger of wrongdoing away from them, and have the Governor declare what the will of the people was, and let that be the Constitution, or the amendment, whichever the case might be.

MR. RUSSELL, of Wood, opposed both amendments. He said he thought the original clause contained a very wise safeguard and would support it with his vote.

JUDGE BALLINGER offered the following as a substitute for both amendments, and for the whole clause: "Section 2. The Legislature, at any biennial session, by a vote of two-thirds of all the members elected to each House, to be entered by the yeas and nays on the Journals of both Houses, may propose amendments to the Constitution to be voted on by the qualified electors for members of the House of Representatives, which proposed amendments shall be duly published once a week for four weeks, commencing at least three weeks before the election, the time of which shall be specified by the Legislature in one weekly newspaper of each county in which such newspaper may be published, and it shall be the duty of the several returning officers of such election to open the poll for and make return to the Secretary of State of the number of legal votes cast for and against said amendments, and if more than one be proposed, the number of votes cast for and against each of them, and, if it shall appear from said returns that a majority of the votes cast have been cast in favor of any of the said amendments, the said amendments receiving the majority of the votes cast, shall become a part of the Constitution, and proclamation of the same shall be made by the Governor."

JUDGE BALLINGER said the substitute was proposed for the express object of enabling the people to amend the Constitution of the State with the utmost facility, and in a way, he thought, that would not be liable to irrational or dangerous precedent. He believed that this was the true method of perfecting constitutions. It was precisely the same mode as was adopted for remodeling or of reconstructing the Constitution, and was, in his opinion, the correct mode. He had read the Constitutions of other states, and did not regard this as an experiment or as an unusual measure. On the contrary, he would make it the duty of members of the Supreme Court to suggest amendments to the Constitution. The Constitution, he thought, should be under the active and careful supervision of the people, and they ought to be able to change it with reasonable facility. Mere party matters were not the only things that should affect Constitutions. Parties were made on the evanescent questions of the day, but when any provision of the Constitution was found to work hard upon the people, or was defective, the public judgment should be allowed to take such direction as would provide amendment to it, and such

amendment should be made with facility and dispatch. He need not say that he was not a Red Republican, and that he expressed no extreme anxiety in the making of a Constitution, but in matters of that sort the will of the people should be supreme.

MR. ROBERTSON said the question appeared to be simply whether they should give the Legislature or the Governor the power of examining the election returns. The provision in the clause reported was about the same as in the Constitution of 1845, namely, that two-thirds should propose amendments and that two-thirds should look over the local returns and declare whether the election was properly held, but not to declare whether the amendments were proper to be made. Of the two he should be inclined to vote for the amendment of the gentleman from Victoria.

MR. WEST warned the Convention against hasty action on the matter. It seemed that the Constitution ought not to be degraded to the level of an ordinary statute. He differed in toto with those who thought a change in the instrument ought to be made with every change in the moon. He believed it should be changed deliberately, submitted to the people on a two-thirds vote of the legislative department, or at least a majority; that it should again be submitted to a Legislature, because the people are not infallible, and make great mistakes sometimes, and these mistakes can be rectified only in the manner proposed. There had never been an election at which two-thirds of the people voted for an amendment. He thought there should be a *locus penitentiae*—a place of repentance—and time to consider their action. Such had been the usual mode of correcting institutions. He hoped the Convention would stand by the committee, for he believed it was the wisest and safest course.

MR. DEMORSE said it seemed to him that the proposition of Judge Ballinger was the most dangerous of anything yet submitted to the Convention, but others of them remembered that the people seldom paid attention to the matter unless the proposition was to change the Constitution entirely, or to create a new one. One-half of the people might not take any interest in the amendments submitted to them, and one-half might vote for amendments submitted to them which might be dangerous to their interests, but, under the amendments proposed in the Convention, the thing was virtually ended and complete. It carried with it no more dignity than a county election.

All the fathers had provided safeguards to prevent sudden changes in the organic law. The greatest departure he was willing to make to the established usage was that a majority of the Legislature should record the will of the people. He had no fear that the Legislature would ever dare to oppose the will of the people, and he looked upon their approval as a mere formality, designed to protect rather than to injure the people. Mr. Brown had instanced a case in Missouri where the people would have been greatly injured but for this precaution of the legislative safeguard. Such instances might arise in Texas, but no harm could arise from a submission of the matter to the people.

PRESIDENT PICKETT opposed Judge Ballinger's substitute. He repeated his former arguments, strengthening them with additional reasons.

MR. WAELDER said he did not regard the action of the Legislature in passing upon the vote of the people as a mere formality. He thought that it was rather an action intended to protect the people and prevent an improper vote. He trusted, therefore, that the amendments would be defeated.

At this point the substitute was put to a vote and was passed, having 39 yeas to 34 nays.

PRESIDENT PICKETT moved to strike out Section 1, and supported his motion with a speech. The effect of the section was to provide the means of calling a convention by two-thirds of the Legislature voting for such a call. This was the only mode of calling one. He denied the right of the Convention to bind the people of Texas, or to take from them the liberty to alter, amend, or abolish their Constitution.

MR. McCORMICK offered the following as a substitute for the section: "The people of this State may call a constitutional convention at any time and in any manner in which the majority of them may express by their voice at the ballot box, and no law shall be passed curtailing or preventing the exercise of this great and inalienable right."

PRESIDENT PICKETT accepted the substitute.

MR. FLOURNOY offered a substitute providing that the question of convention or no convention should be submitted to the people once in every ten years, the mode of ascertaining their will to be in such

manner as prescribed by law, but the foregoing not to be construed as interfering with the right of the people to assemble in convention whenever they so will it.

MR. MARTIN, of Navarro, moved as an amendment to the above to strike out "ten years" and insert "twenty years."

JUDGE REAGAN followed with an able speech in support of the amendment of President Pickett. He said it was the inalienable right of the people to meet in assembly or convention whenever they so desired, and that it was not within the power of any Legislature to limit them in this right.

MR. NUNN opposed striking out Section 1. As he understood the object of those favoring it, it was to withdraw from the regular administration of the Government the power of providing a regular and lawful mode of calling a constitutional convention, or to amend their organic law. Their argument seemed to be that there was an inherent power in the people which they might put in operation whenever they deemed best. He was not prepared to contradict it, thought it might lead to overturning the Government, but it would be in a revolutionary way. He denied that the Legislature and the Government of the State, elected by the people, constituted a foreign power or would seek to perpetuate or force upon them an odious rule. The Convention could not have assembled except in obedience to the popular voice, and it was so with their Legislature. He could conceive of a case where the Legislature might seek to disregard the will of the people, but not under the restrictions imposed by the section it was sought to strike out. The action of the committee had been taken only after mature, deliberate, and careful thought on the subject. He trusted their labors would not be in vain, and that their judgment would be sustained by the Convention.

MR. ASA HOLT, of Van Zandt, called for the previous question, which was ordered.

Mr. Martin's amendment was lost.

Mr. Flournoy's substitute was lost.

Mr. McCormick withdrew his substitute by leave.

President Pickett's motion to strike out the section carried by a vote of 49 to 24.

MR. DOHONEY offered the following as Section 1 of the article:

“SECTION 1. The Legislature may at any regular session, by a vote of two-thirds of all the members of each house, pass a joint resolution, to take the sense of the qualified electors of this State, at the next succeeding general election, upon the proposition to call a constitutional convention; and if at such election a majority of those voting vote in favor of calling a constitutional convention, the Legislature at the next succeeding session shall pass a joint resolution calling a constitutional convention; which convention, when it shall assemble, shall frame a Constitution and submit the same to a vote of the qualified electors of the State for ratification or rejection; and if a majority of those voting at that election shall vote in favor of the ratification of said Constitution, it shall, by proclamation of the Governor, be declared the Constitution of the State.”

MR. DEMORSE offered the following as a substitute for Mr. Dohoney's substitute for Section 1:

“The Legislature, by a majority of all the members, shall have the power to suggest and provide by appropriation for a convention of the people for the purpose of creating a new organic law, and shall submit the proposition to a popular vote; and, a majority of the people approving, the succeeding Legislature shall, by a majority vote, recognize their will, and provide that no general election shall be held until the convention shall have assembled and provided therefor to suit the exigency; but this election shall not be considered as in any degree questioning the sovereign right of the people to assemble and create organic law, without authorization from any legislative body, and by such means as they prefer.”

JUDGE REAGAN moved to lay both substitutes on the table.

MR. MURPHY moved to adjourn until 9 o'clock the next morning. The motion to adjourn was lost.

Judge Reagan's motion to lay the substitutes on the table was carried by a vote of 48 yeas and 24 nays.

TWENTY-FIFTH DAY

MONDAY, OCTOBER 4, 1875⁴⁹

MR. DOHONEY presented the petition of Mrs. G. W. Hyatt, of Eldorado, praying for woman suffrage as a “legitimate application of Democratic principles.”

⁴⁹The proceedings for this day were taken from the *State Gazette* (Austin), October 5, 1875.