

# TEXAS LAW | Tarlton Law Library Jamail Center for Legal Research

Citation: *Debates in the Texas Constitutional Convention of 1875 Texas. Constitutional Convention (1875). Austin: Published by the University of Texas, c1930.*

Content downloaded from

Tarlton Constitutions 1824-1876 (<http://tarlton.law.utexas.edu/constitutions/>)

The text of these documents is in the public domain. That is, the original words and content are freely usable.

The images of the documents are copyrighted material; the copyright is held by the Tarlton Law Library. The copyrighted images may be used only with permission. Permission is granted to use the copyrighted materials in the classroom for educational purposes. Downloading, printing, publication, public display or otherwise using any of the copyrighted images, including on the web or in a forum other than a classroom, requires permission from Tarlton. Requests for permission to use these materials should be submitted online to [rarebooks@law.utexas.edu](mailto:rarebooks@law.utexas.edu).

If you are uncertain whether you need permission to use these materials, please contact us at [rarebooks@law.utexas.edu](mailto:rarebooks@law.utexas.edu).

he would vote for it on the ground that "a half loaf of bread is better than no bread."

MR. FLOURNOY said he was opposed to any system of public free schools supported by taxation. He contended that no free government could levy tribute on the citizens to force education on the children. Massachusetts and other states had been held up as having magnificent schools, sustained by their respective states. Were those people any happier, wiser, or more virtuous than those of Texas? Nay. He would venture the assertion that there lived no more virtuous, intelligent, and prosperous people than Texans. They were the peers of any people. They had no right to invade the mansion of the parent and take from him or her their bright-eyed child, and turn him over to the State. Whenever they should do that they could do anything. When that was done the science of free government was trodden under foot; the liberties of the country gone.

MR. WADE said he strongly advocated a system of public free schools. He claimed that ignorance was the mother of nearly all the crime in the country; and that, vice versa, education tended to make one all that was noble and pure.

On motion of Mr. Graves, further debate was cut off, and the Convention proceeded to a direct vote on the pending amendments. The amendments were all voted down by decided majorities.

MR. WAELDER then offered the following as a substitute for Section 3: "The Legislature shall provide for the levying and collection of an annual tax of not more than one-sixth of the per centum of taxable property, real and personal, of the State, and also a poll tax of \$2 on each voter of the State; and the taxes so levied and collected, as well as the income from the fund herein provided, shall be annually distributed for the education of all children between the ages of 8 and 14 years among the several counties or school districts according to their respective scholastic populations."

### THIRTY-SECOND DAY

TUESDAY, OCTOBER 12, 1875<sup>68</sup>

MR. DOHONEY offered the following amendment to the amendment: "Provided that the taxes raised under this provision shall

---

<sup>68</sup>The proceedings for this day were taken from the *State Gazette* (Austin), October 13, 1875

be applied to the public schools in the county where they are collected.”

MR. NUNN said that a reinauguration of the system of 1845 would perhaps not be acceptable. The hostility to the school system under the Constitution of 1869 was hostility to extravagance and to unnecessary offices, rather than to education itself. But the people did require a school system, and his people had instructed him to press the question. He believed in living up to the declaration of the Democratic platform. The utility of public education had been settled by a policy of twenty-five years. He read an estimate from the Superintendent of Public Instruction to show that the 150,000 scholastic population between 9 and 15 would cost about one million of dollars annually. This would be raised by adding to the present school fund of \$125,000, a poll tax of \$3, which would be reasonable enough when made a provision precedent to voting, and a tax of one-eighth of 1 per cent on taxable property.

MR. ROBERTSON, of Bell, said he could not consent to such a proposition as one-eighth of 1 per cent. He was not opposed to free schools when they were in a condition to establish a good system. The tax of one-eighth of 1 per cent on taxable property, not one-tenth of the annual revenue, would materially increase the present taxation and he and his constituency were opposed to it.

MR. DEMORSE offered a substitute to the substitute, providing that free schools might be established in populous districts by a vote of the majority of the freeholders taxing themselves in a sum not to exceed one-fourth of 1 per cent.

MR. MCLEAN spoke at length in favor of the substitute.<sup>69</sup>

He said: “Mr. President, the debate has been so discursive that I have almost lost sight of the question. I shall not undertake to speak of the general importance of education. It seems to me, sir, that it reflects upon the general intelligence of gentlemen, in fact, to my mind, it is an insult to the intelligence of this body that such arguments as I have listened to should be submitted. It is gravely argued by some that education enhances and refines the moral and intellectual natures of men, and others contend that this is accomplished only by the miraculous intervention of Deity! Life is too short to discuss questions of this sort in this late day of the nineteenth century. It is likewise too late to stop to discuss the question

---

<sup>69</sup>His speech was published in the *State Gazette* (Austin), October 15, 1875.

as to whether a sound system of free schools is beneficial to the people. The question before us is, can we put into practical operation in the State of Texas a system of public instruction that shall accommodate all of our population, adapted to our situation, and such as we can avail ourselves of; are we ready for it, and are our people ready for it, are our resources adequate to the accomplishment of the purpose? I contend that no system of public education ever was or can be maintained or sustained, except by taxation. We may felicitate ourselves on a magnificent fund in the future, to be derived from the sales of public lands set aside for public school purposes; but when we look into this question and study it closely and estimate the future by looking at the present and the past, in my opinion we must conclude that if a million dollars shall be realized in a period of twenty-five years to come, it is all that the most sanguine can expect from the sales of school lands, and this is a very insignificant school fund. Our population is too sparse to admit of the establishment of a general system of public education. We have had some public schools and have made some spasmodic efforts at a public school system since the war, but they have been total and disastrous failures and all because our population is too sparse to allow the practical application of a system that shall be equal in its burthens and its benefits.

“But Massachusetts is referred to. There can be no analogy established between Texas and Massachusetts that would be of service to us in pursuing the inquiries suggested by this subject, no parallel between their respective conditions can be drawn at all calculated to enlighten us in this discussion. Massachusetts is densely populated; it is an old, a rich, and a prosperous state; she can collect within the walls of one building 400 pupils with the same ease and expense that we should incur in gathering forty pupils, because here they are not within reach of any one given point, except in a few exceptional localities. Until the time shall come when our population is sufficient in numbers and compactness, for the establishment of a general system, the attempt to disseminate public instruction generally and thoroughly will bankrupt the Treasury and the people of the State. We cannot expect to go at one short step into the position that Massachusetts occupies in this relation, when she has taken 200 years to reach this present state of perfection in the matter of public schools which is her chief pride. Her population is compact, her people are all neighbors, her system has been matured, and they are the best public schools in the United States. They are the cheapest schools and the best institutions of learning in the states.

“The amendment of my colleague (Colonel DeMorse) proposes to provide in the populous districts of Texas, where public schools may be desired and can be maintained, that the people shall have

the privilege of taxing themselves to support these schools, the property-holders being the judges of the necessity and the amount of taxation, which is not to exceed one-fourth of 1 per cent. By the terms of this substitute the people of these districts are permitted to establish public schools—if they think it feasible—in the populous districts, at the expense of the immediate beneficiaries of the schools. That proposition does not tax men on the frontier to pay for the education of children elsewhere, but brings the tax immediately home and takes it from the pockets of those who are immediately benefited by its expenditure. This cannot be objected to. It does not impose the tax on any portion of the State but that which is directly benefited, and then only by a vote of the *bona fide* taxpayers. It does not attempt to do what we cannot do, establish a general system of public instruction in the State of Texas, under the auspices and sole control of the State Government. Besides, the poll tax in the substitute of \$2 and the tax not to exceed one-fourth of 1 per cent, will be willingly and cheerfully paid by the land owners of these districts for the privileges of these schools. I assert that a good system of public education is superior to any other. It is not subject to the whims and caprices of individuals; sects and cliques cannot control it. It will be controlled by designated authority, satisfactory to the freeholders of the district and the patrons of the schools, and the conduct of those who manage the schools will be criticized with the same jealousy and watchfulness that characterizes the most jealous patrons of private schools and private school teachers, with all of the good and none of the bad results.

“Allusion has been made to the school system of Germany, and when the gentleman from Bexar uttered an invocation that Texas might have here as good a system, from the depths of my heart I responded amen! But it is impracticable. I am sick of hearing gentlemen cry out monarchy, when allusion is made to a system of public schools that may exist in autocratic governments. We are not talking about forms of government, but systems of education that are suited to Texas. The German system, a system that has been improved upon and embellished until it is the chief pride of the German empire, cannot be applied to Texas for reason already given. There no boy or girl can grow up in ignorance. They have the population, the system and the means to carry on a thorough system, and they have availed themselves of these. There, sir, the boon of an education is not merely dreamed of by the poor boy, but it is at hand, and is as free as the air he breathes. This is what I would like to see in Texas, but it is impossible. It is impracticable to establish a public system of schools with the means at our command, for as I have said, we cannot collect together a sufficient scholastic population to warrant the establishment of schools for more than one-third of their number. Hence I support the substitute of my

colleague, because it does give the people of the State an opportunity of establishing a system of public schools at their own expense where it is practical, that shall not be a burden on other portions of the State impracticable. There is not a county in the State in which there are not communities where the scholastic population is insufficient to establish private or public schools of respectable size, and yet gentlemen propose to adopt a general system of education for the whole State of Texas, where the benefits must fall upon the few, and the burdens upon the whole State alike. The people have tried it and cannot stand it. We have spent millions of dollars in one or two years trying to establish a general system of education, and the schools were so few in number, so partial in their benefits, that no adequate return was made for the outlay. We have seen a public education tax of 1 per cent levied, collected and consumed in this way and not one-fourth of the children at the schools, and hence I say that the fund will do no more than provide for the indigents and orphans of the State. But the substitute of my colleague will give to the populous districts an opportunity to establishing free schools at their own expense, for they are without doubt, the best and cheapest schools in the world when placed on a proper basis.

"This much I have said, Mr. President, to define my position upon this important, and I must confess, embarrassing question. The people of this State are not able to support a complete and general system of education, but the fund already provided is sufficient to provide for the unfortunate indigents, and these must be taken care of, charity demands it, society is interested in the mental and moral culture of these children, and the State has a direct interest in seeing to it that these future citizens shall be prepared for usefulness."

Mr. DeMorse's substitute to Mr. Dohoney's substitute was lost by a vote of 33 to 42.

Mr. Dohoney's amendment was lost, the vote being 28 to 48.

MR. FLEMING said that he supported Mr. Waelder's amendment, which provided for the levying and collection of one-sixth of 1 per cent on all taxable property, real and personal, and a poll tax of \$1, and the fund therein provided; to be distributed among the counties and school districts for the education of the scholastic population between the ages of 8 and 14.

MR. BARNETT said he was opposed to going any further in the matter than giving one-tenth of 1 per cent for the education of the indigent. This, he thought, was the sentiment of the Convention.

MR. FLOURNOY spoke as one of the young Democrats who was in favor of free schools. He had voted for every amendment looking

to their establishment on that floor. If they wanted the assistance of the young members of the Democratic party and the new Constitution not to be voted down they must give them a system of free schools. He said the people of his county were not opposed to free schools, but only to the manner in which they were maintained, to the dangerous and unrestricted delegation of power to irresponsible boards of school directors. All they asked was that the question should be left to the Legislature under reasonable restrictions. He characterized the nineteen delegates who opposed free schools, and who had been lauded so highly, as a *band of old fogies*. He regarded the majority report of the committee—without intending to be personal in either case—as a fraud on the people. If they would not give them free schools the committee had no right to waste the fund. He would have preferred the minority report of Mr. Cline, if he had stricken out the office of Superintendent of Public Instruction. Under the old system it took \$68,000 out of \$100,000 to pay the school officials. Under the DeGress system, the school officials received nearly as much as the teachers received. This was what his people opposed, not free schools; they wanted them and would not rest satisfied until they had them.

MR. NUGENT said he had confidence in the people. He would scorn to stand in the sunshine of the nineteenth century and assert that the people should not be trusted to the extent of taxing themselves to the amount of one-fourth of 1 per cent. He never had such a degraded view of his constituency, much less of the people of the entire State. He had never been opposed to a system of public education on the fund raised from the school lands. He didn't believe that a system could be funded on the funds as they then stood, and considered the majority report a sham, and a subterfuge. It would never accomplish it. He would not vote for the amendment because it was a special tax.

MR. MARTIN, of Navarro, introduced a substitute for the whole article on education. The principle feature was in leaving the Legislature free to make provision for public schools by taxation, giving the use of the school fund to free schools, and making such a system when the proper time arrived. He said it might not be today or tomorrow, but he wanted the Legislature left with power to act as it saw fit after the burdens of taxation were lightened.

MR. BRUCE said he had been elected on a platform which would not recognize the levying of a cent tax for anything other than the support of the Government.

MR. NUNN moved to recommit the whole question and all the pending amendments to a select committee of seven.

MR. SANSOM said he feared that such a committee would fail to harmonize the different opinions of members, and thus the whole debate would have to be repeated.

COLONEL CRAWFORD said he thought the minority report was much kinder to the children of the State than was the majority report. He referred the Convention to the various Constitutions of the State, to all the laws ever made on the subject of schools, to show that even when steeped in poverty the statesmen of Texas had always made ample provision for the education of the children of the State. From the days when the noble Texans had declared their independence education had been one of their chief objects. Even in 1866, when the people were broken in fortune, both public and private, their firesides cheerless, their farms laid waste, and all lost save honor, even then the Convention of 1866 had made ample provision for the education of the bright-eyed children of their loved State. The Democratic platform of 1866 had reaffirmed the doctrine. He was compelled to look upon the majority report as a sugar-coated, stupendous fraud. If he were compelled to choose between the two he would take the minority report submitted by Messrs. Sansom, Holt, Dunham, and Cooke, of San Saba. It was kinder by far to the orphans of the land. If delegates did not believe that the State had the right to tax for the support of free schools they ought to say so boldly, like Mr. Sansom had done, and they ought not to try to hoodwink the Convention and the country with such an abortion as the majority report.

MR. FERRIS supported the motion to refer to a new committee. He had come to Austin as a friend of the free schools, and was ready to support the system as defined in the Constitution of 1845. He thought there was not a county in the State which would go back on such a system. It would be indeed strange if, at that late day, they should change a system which had worked so well. If the majority report prevailed it would be the death blow to free schools, and he wished to ask those who claimed it was a compromise to show where

the compromise came in. It took away the trust fund for free schools and handed it to private schools, and hence would destroy public schools as a necessary consequence of the misappropriation of the funds. If they committed that crime against the people, it would defeat the Constitution, and it ought to do so. He was not in favor of public schools, for the people could not bear the necessary taxation. The Constitution of 1845 had left the Legislature to establish free schools throughout the State as soon as practicable, and as soon as sufficient means could be raised for the purpose. Could they not do as much?

MR. DARNELL said that he, too, favored a recommitment, and hoped the committee could report a compromise upon which all could agree

JUDGE BALLINGER said that from his earliest manhood he had never doubted that it was among the clearest powers and the most imperative duties of the State to give the benefits of free common school education to all the children of the State. This had not only been accepted, but had been treasured, in all the other American states. In Texas, from the day on which her independence from Mexico was proclaimed, one of the causes set forth being the want of public education, which was essential to liberty and the capacity for free government; in every organic act that duty had been clearly declared. Both parties in Texas had adopted it in their political platforms. He had come to the Convention with no sense of duty stronger upon him than to preserve unimpaired the principles referred to, and to do all things practicable to carry them through. Yet he now heard upon the floor that right of government wholly denied. Such was the anxiety of gentlemen for their individual liberty that they denied that principle which was so essential to public liberty. Such was the solicitude of gentlemen for the religious instruction of their own children that that had been made the protest for denying the blessings of education to the poor. He would not discuss the subject.

But the report of the majority, many of whom professed to be the friends of free schools, involved the abandonment of the system power. They called it a compromise, but it was a complete surrender. Free schools were to be established only when the means provided would do it throughout the whole State for a period of four

months every year. But not one cent of taxation was made imperative, and taxation was limited to one-tenth of the State revenue. It was notorious. Both sides, or rather he would say all sides, admitted that that amount would never establish a system of free schools. One-tenth was the minimum, and it was imperative in 1845. It was now proposed as the maximum, and might be entirely ignored, according to the majority report. Why should the people of Texas be so restricted? In the North and Northwest, wherever American people went, they first laid the foundations of a free school system and then built upon it. Was Texas alone unable to do that? If they were too poor just then to levy taxes, they should not do it. But was it their destiny to be forever too poor to establish free schools? With the funds already in hand, with the munificent domain their fathers had transmitted for the purpose, was it true that Texas, with her boundless territory, her genial sun, her immense capacity for production, with population teeming into her soil, forever and forever would be unable to establish free schools? He said he did not believe it to be true, and would never consent to such action. He had referred several days before to the conditions of the readmission of Texas to representation in Congress, that the provision for free schools in the Constitution of 1869 should never be impaired. He knew there was no judicious judge to enforce this. He hoped there would never be any political power to enforce it. But they were answerable for it to public opinion, which, North and South, Democratic as well as Republican, favored free schools; and he believed that to pass the majority report they would do much to prevent the development of the State and to retard its growth, as well as to produce the belief that the policy of the Democratic party in Texas was reactionary and directed toward ignorance. If the friends of free schools could not preserve those principles which would result in the establishment of a free school system throughout the State, they should be made to understand the fact, and then he would make no farce of the system. He would then, on the contrary, support the views of the delegate from Williamson, and those who acted with him, and confine the bounty of the State to the orphan and indigent children of the State.

MR. COOKE, of Gonzales, said he would go as far as the fathers before them—one-tenth of the annual tax—but no farther. They

had various financial difficulties, and were not in a condition to attempt too much.

The motion of Mr. Nunn, to refer to the subject matter of free schools to a committee of seven, prevailed.

### THIRTY-THIRD DAY

WEDNESDAY, OCTOBER 13, 1875<sup>70</sup>

#### *Bill of Rights*

MR. DEMORSE moved to amend Section 10 by inserting after the word "favor," "and shall have the right to make a declaration of his acts and the motives therefor, the truth and weight of which may be considered by the jury in connection with other evidence." He said it was now the system used in the State of New York. There had been cases when men had lost their lives from circumstantial evidence, when had they been allowed to explain the circumstances their lives would have been saved.

MR. WEAVER said he was against it as an innovation. He said that in civil cases it led to more hung juries than anything else.

MR. DEMORSE said there was no parallel between civil and criminal cases. His proposition merely allowed the jury to take the man's explanation at its own worth, and which, taken into consideration with outside circumstances, might be the means of saving his life.

MR. RUSSELL, of Harrison, said if it was of importance that such a principle should be adopted in civil cases, how much more was it so where a man's life was endangered. In civil cases it had the weight of evidence, in a criminal case it would be a statement only.

MR. DAVIS, of Brazos, regarded the amendment as a dangerous innovation. As the law stood, a man could not be convicted where there was a reasonable doubt, and in cases of circumstantial evidence, there must be such a train of circumstances as could lead to absolute certainty before conviction could take place. A plausible defendant could always get up a plea that would raise a doubt of guilt in the minds of the jury. It was an unnecessary departure from the old landmarks.

---

<sup>70</sup>The proceedings for this day were taken from the *State Gazette* (Austin), October 14, 1875.