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MR. DOHONEY proposed as a substitute for the amendment to strike out after the word "convict," in line 6, and insert the words, "of any felony." His resolution was lost.

MR. NUGENT moved to amend by striking out "that amounts to felony."

MR. HENRY, of Smith, said he was opposed to making a discrimination in favor of murder. It would be bad enough if the grade was reduced to manslaughter, but he held that they were retrograding from the standard of civilization in giving the suffrage to murderers either in the first or the second degree.

MR. NUNN moved an amendment specifying the crimes of which persons convicted should not be allowed to vote.

MR. McCORMICK moved to amend the section by inserting, "no person kept in any asylum or confined in any prison, who had been convicted of a felony, or of unsound mind, shall be allowed to vote or hold office."

MR. MOORE proposed to amend by inserting, "persons convicted of felony, with such exceptions as may be prescribed by law."

MR. McCORMICK said he was opposed to offering a premium for crime, whether for manslaughter or murder. There was too much murder in Texas already, and it did not add to their reputation abroad.

### THIRTY-SEVENTH DAY

MONDAY, OCTOBER 18, 1875<sup>75</sup>

#### *Suffrage*

MR. SCOTT moved to table all pending amendments. They were tabled.

MR. ALLISON moved to add to the end of Section 1, "provided pardons by the Governor shall restore the right of voting."

MR. KILGORE moved as a substitute, "unless pardoned by the Governor." It was accepted.

MR. FERRIS moved to substitute for the above, "unless relieved by pardon or the act of the Legislature." It was lost.

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<sup>75</sup>The proceedings for this day were taken from the *State Gazette* (Austin), October 19, 1875

MR. DEMORSE moved as a substitute, "provided that the privilege of franchise may at any time be restored by the Governor on application of the party disfranchised supported by the recommendation of citizens of good standing residing in his own county." He said this would apply not only to those pardoned by the Governor, but to all cases. His amendment was lost.

JUDGE REAGAN proposed to strike out lines 6 and 7 of Section 1, and insert, "and the Legislature shall provide for cases in which persons shall be excluded from voting on account of their having been convicted of felony."

Mr. Allison's amendment was lost.

COLONEL CRAWFORD said that Judge Reagan's substitute would be bad policy. It would leave that vexed question with the Legislature to be varied by every succeeding Legislature, instead of settling what their duty should be by organic law. He referred to crimes of honor. The unfortunate subject of these offenses ought to be commiserated to the end of his days by depriving him of his suffrage.

Men sent to the penitentiary for resisting a tax in their own honor or the chastity of their wives or daughters, ought surely not to be pursued to the end of their lives by being deprived of the rights of manhood, society, and citizenship. He quoted from the report made by Governor Coke's commission to investigate the penitentiary system. This commission had been composed of wise men, and they did not regard men convicted of the above offenses as of 'infamous character.' He also quoted from Governor Seymour's address to the prison association of New York in support of his provision. The area of felony was wider in Texas than in any other state in the Union, for what was misdemeanor elsewhere was felony in Texas. Out of 2,400 or 2,500 convicts in the State of Texas, 749 were between 15 and 21, and 18 were children. The latter would be better attended to at a mother's knee than in a prison. One child was of the tender age of 7 years. These outcasts ought not to be branded forever by our Constitution. Hope ought not to be shut out forever from them. The great bulk of the convicts were there for that, and ought not society to forgive a man when he pleads in justification of a starving wife and children?

He agreed with Seymour as also confirmed by his own experience in the courts, that the brand of infamy ought not to be impressed upon a man's brow forever. As Mr. Ferris had justly said, the law provided a penalty for every offense which should constitute the sole punishment. He opposed the substitute and hoped that some friend of justice would propose that some remedy would be proposed in the Constitution for the redemption of these parties to society.

MR. RUSSELL, of Harrison, said that no man could be convicted of murder under the circumstances referred to by the last speaker, nor ever was convicted, because the law ruled for such cases by a verdict of manslaughter or justifiable homicide. He supported Judge Reagan's substitute. It was strange doctrine that a defense should be made for murder, for it was the crying evil of the country.

MR. DOHONEY proposed to strike out of lines 6 and 7, "all persons convicted of bribery, perjury, forgery, arson, rape or robbery," and insert "all persons convicted of felony, subject to such restrictions as the Legislature may make." He did not see why they should discriminate in favor of murderers and thieves whose offenses were just as bad as bribery, perjury, or robbery.

MR. MCKINNEY said in reply to Colonel Crawford that it was not the Constitution that would place a ban on the brow of a man coming out of the penitentiary, but it was the social law that banned him, the fact of his being convicted by a jury of his countrymen. He said he was willing to leave these matters to the Legislature. Crimes had been committed in the penitentiary, judging from the report held in his hand, unfit for Christian lips to repeat or Christian ears to hear, so that they could not expect to be much benefited by their incarceration. He hoped the Convention would look into the things complained of in the report, arising under the lease. He was opposed to making a division between the two classes of criminals, as suggested by Colonel Crawford.

MR. JOHNSON, of Franklin, said he thought it strange that Colonel Crawford, who had so jealously guarded the ballot box the other day on the poll tax question, should now want to open it to that worst of all class of criminals, murderers.

COLONEL CRAWFORD said the last gentleman had misunderstood him. Murderers were imprisoned for life.

MR. JOHNSON said that his plea of charity included murderers convicted in the second degree.

MR. FLANAGAN called for the previous question, which was sustained, and Mr. Dohoney's amendment was carried by a vote of 68 to 10.

The article was engrossed by a vote of 61 to 18.

*Legislative Article on Second Reading*

MR. GERMAN moved the following amendment to Mr. Abernathy's substitute: "Insert after the word 'money' in Section 51, line 264, 'public land or thing of value.'" The section prevented the Legislature granting aid to corporations, not to actual settlers.

Upon motion of Mr. Fleming, the substitute and amendment were tabled by a vote of 47 to 32.

MR. KILGORE moved as a substitute to Section 2: "The Senate shall consist of —— members, and the House of —— members, until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter the House of Representatives may be increased by a vote of two-thirds of the Legislature." He said he proposed this as a compromise.

MR. MARTIN, of Hunt, proposed the following substitute: "The Senate shall consist of thirty members, and shall never be increased above this number.

"The House of Representatives shall consist of ninety members until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter, the number of Representatives may be increased by the Legislature upon the ratio of not more than one Representative for every 15,000 voters, provided the number of Representatives shall never exceed 150."

MR. CHAMBERS said the sub-committee on apportionment, after much deliberation, had decided upon 31 members for the Senate. He hoped Mr. Martin would adopt that number.

Mr. Martin accepted the suggestion.

MR. DOHONEY said he thought the substitute came nearer to a compromise than anything else.

Mr. Martin's substitute was adopted.

MR. MARTIN, of Navarro, moved as a substitute to fix the Senate at 25 members and the House at 70, never to be increased by any

future apportionment to more than 33 members of the Senate and 100 in the House.

MR. CHAMBERS said the committee had, after great labor, gotten the thing adjusted, and it would be well not to disturb it. It would necessitate going over the whole of the work again.

On motion of Mr. Mills, the substitute of Mr. Martin, of Navarro, was tabled.

MR. BROWN, member of the Committee on Apportionment, said the committee had completed their labors and had decided upon 31 members for the Senate and 93 for the House.

MR. FLANAGAN asked if the embarrassment of the committee was due to Harrison County.

MR. BROWN answered in the negative, saying that it extended to the whole State. He moved to amend the section as submitted by Mr. Martin, of Hunt, by making the House read 93 members.

MR. MCLEAN said he was opposed to the amendment. He thought that thirty and ninety, respectively, for the two branches of the Legislature was about right, and saw no more difficulty in dividing the registered voters by those numbers than by any other numbers.

MR. BROWN said he did not believe in limiting the popular branch, as suggested by Mr. McLean, and did not think that what might be adequate for a voting population of 212,000 would be sufficient for a voting population of 3,000,000.

COLONEL FORD said he wanted Mr. McLean put on the Committee on Apportionment if the latter thought there was no difficulty in settling the question.

Mr. Brown's amendment was adopted.

MR. ROBERTSON, of Bell, proposed a substitute for the section with this feature, it included among the grants of land that might be made, "the grants of headrights to actual settlers in the public domain."

THE PRESIDENT ruled that the subject matter of the substitute was included in the amendment of the gentleman from Camp (Mr. Abernathy), which had been tabled by a vote of the Convention. He put the question to the House whether they would entertain the amendment of Mr. Robertson, and the House refused.

MR. WAELDER proposed to strike out the two last lines of Section 5. It contained a provision (blank) for the next meeting of the

Legislature. He thought this would be provided for by an ordinance, and hence it was useless to insert it in the Constitution. His amendment was adopted.

MR. DEMORSE moved the following as a substitute for Section 49, as substituted by Judge Reagan some days ago: "The Legislature shall have no power to create a public debt under any circumstances exceeding \$300,000, and no debt whatever except in case of invasion."

MR. DEMORSE said that some few days since when the clause referred to was under consideration, the House, he believed, adopted the substitute of the gentleman from Anderson under a misapprehension of the effect of its action. He said that Judge Reagan's amendment was to the clause originally reported restricting debt to \$500,000, and then only in case of invasion, and his amendment left it open to a possible debt entirely unlimited in case of invasion, and provided that any Legislature, the next for instance, might incur a debt of \$200,000. The gentleman's proposition was so worded that the last words which fell upon the ears of the Convention were that the specific amount of debt should not be more than \$200,000, and a large proportion of the members voted under the impression that no debt could be created larger than \$200,000. His (Mr. DeMorse's) amendment was simply to draw out a correct expression of the will of the Convention on this subject. He believed that the general impression of the Convention members was in favor of incurring debt to repel invasion, and then only to a limited extent. In case of invasion it was only necessary to provide for immediate preliminary action, after which the General Government would interpose its forces and repel it. The sum named for his amendment was ample for any emergency that might arise. The people were opposed to the creation of any new debt. They proposed to pay their debts as they went along. The fact that some of the appropriations might not be enough to meet current expenses presented no objection to his amendment, for they were simply deficiencies, which might be carried over to the next Legislature; as was done by every other state in the Union and by the General Government itself. They wanted no more debts. They wanted to restrain the expenditures to their capacity to pay annually,

and with a view of fairly eliciting the opinion on the subject, he had proposed his amendment to the clause as amended.

MR. McLEAN proposed the following amendment to that of Mr. DeMorse: "Nor shall the county court of any county, nor the municipal authority of any incorporated town or city, ever create any debt against said town or city, provided that towns situated in the coast may incur debt in the creation of works for the protection of life and property against storm by the votes of those who pay taxes in said towns and cities."

JUDGE REAGAN spoke in defense of his substitute. It provided that no debt should be created "except to supply occasional deficiencies in the revenue, to repel invasions, to suppress insurrections, to defend the state in war, or pay existing debt." The debt in any or all cases was never to exceed \$200,000.

JUDGE REAGAN said that the only possible contingency by which debt could be created by his substitute was in case of invasion. It was copied from the Pennsylvania Constitution adopted last year, except in one case the amount had been reduced. Under Mr. DeMorse's amendment no State bonds could be issued to take up the old bonds, could create no debt to supply deficiencies in revenue and it would leave us without the power to raise one dollar to carry on the State Government; and its functions would either have to be stopped in whole or in part until its revenues could be augmented. Surely it could not be intended that no mode should be left to supply the casual deficiencies in revenue. Suppose a fire should occur in the Treasury, must the whole State Government stop because the funds were burned up? He thought that it was right to prevent a state from incurring unlimited indebtedness. He also believed in placing restrictions on municipalities. He denied that a debt could be created without limit under his substitute, but he thought that such a thing was possible under the amendment of Mr. DeMorse.

MR. DEMORSE said he desired to say a few things in reply. It was very easy to get up a plausible theory of the possibilities or necessities of the State. Gentlemen expressed a high regard for the wisdom contained in the Constitution of 1845. That Constitution provided that the debt should never exceed \$100,000, except in case of war to repel invasion and suppress insurrection; and in no case except by a vote of two-thirds of both Houses, and already

they had a debt of millions. Judge Reagan had suggested that his (DeMorse's) amendment would prevent the reissuance of bonds for debts already existing. To this he replied that provision had already been made in another clause of this article for that purpose, or could be met by a provision already reported in the article on taxation. His amendment was to prevent the creation of new debts by the issuance of new bonds. Any deficiency, as he had said before, could be carried over from one Legislature to another. It was easy to conceive possible cases, but every gentleman who had had any experience in another line at all in questions of public debt knew that if a loophole should be left open for the future creation of debt, it would be created on mere plausibilities in cases of imaginary necessity, and when there was no real need. He claimed that the people of the State had had enough debt, had been ground into the dust sufficiently, and they were not willing to bear any more. As he had said before, in case of invasion the General Government would come to a state's assistance, and no very large debt would have to be incurred. The term "insurrection" had no proper place in our theory of government. Such an occurrence was improbable—anything beyond a mere riot involving a small community, or county, and easily repressed by a small force. The gentleman's argument was based upon *possible* cases. He only asked members to give the subject due consideration and to vote in accordance with the justice and propriety of the case.

MR. NUCENT inquired if it would not prevent appropriations for frontier defense.

MR. DEMORSE said that that was already provided for upon the basis of the annual revenues of the State, and in the estimate made by the Comptroller and furnished at his request to determine whether the system of taxation reported by the committee would be adequate to the necessities and responsibilities of the State.

MR. WAELDER said that the substitute did not provide for existing debt.

MR. DEMORSE said that if it was not provided for in the amendment it had been provided for in the report he had made that morning.

MR. WAELDER said that the provision was made in the section for the reissuance of bonds, but that part had been stricken out by

Judge Reagan's amendment, and no other provision had been made in the article for the Legislature to incur debt in payment of existing debt.

MR. DILLARD moved to table the substitute and amendment.

His motion was carried by a vote of 47 to 28.

MR. DARNELL moved as an additional section the following: "No exclusive privilege shall ever be granted to any corporation organized for the purpose of constructing and running any railroad or railroads, or for any other association of individuals for any purpose whatever, that has heretofore been, or may hereafter be created over any of the public domain, but the same domain shall be held equally open to location by law, and may have a just claim against the same."

MR. DARNELL reminded them of the case of the Texas & Pacific where a belt of land eighty miles wide was locked up from actual settlement by this policy of reservation to railroads. The Fourteenth Legislature also did the same in chartering companies to cut ditches for irrigation purposes on the highlands where there was no water, giving them a reservation of three miles on either side not subject to entry by certificates or settlement. He said he wanted the public domain open to those only who had just claims against it.

JUDGE REAGAN said he feared the amendment would go farther than was contemplated, and interfere with the rights of corporations, with the road bed and sidings of railroads, etc.

MR. DARNELL said he had no idea of that description.

MR. WEST said he was afraid it would interfere with the rights of railroads then in process of construction.

MR. STOCKDALE suggested that the amendment would come better in the article on railroads or public lands, as those would contain restrictions on railroads by the power given to the Legislature.

MR. WEAVER said he thought the amendment just and proper and that it would not interfere with the rights of railroads.

MR. FLOURNOY proposed the following substitute: "The Legislature shall not hereafter have the power to secure for location any particular part of the public domain, for future location by any railroad or any incorporated company or any private person."

JUDGE REAGAN said he thought the true policy of Texas was to encourage the construction of railroads to develop the material resources of the State, to furnish means of travel and transportation. He regarded it as a wise disposition of the public domain to encourage such companies as liked to invest their capital in Texas by giving them the alternate sections, they being charged with the cost of surveying and all attendant expenses. He was opposed to the legislation of the Twelfth Legislature with regard to railroads and he trusted it might never be repeated. They should want their present railroad facilities trebled before they had enough. He argued that every road and every prospective road brought relief to those who were paying taxation on wild lands. The land held by those who fought the battles of the revolution were of no more value now than they were fifteen years ago, simply for the want of railroad accommodations. He was opposed to putting back the hand on the dial of time or to put the breaks on progress, but hoped to see the same energy and enterprise characterize the people in the future as in the past. For those reasons he favored the donations of land in alternate sections as a bonus to railroads.

MR. WADE moved as an amendment, "that no reservation of public land which hereafter may exist in favor of corporate companies and all such reservations hereafter made shall be void provided that no company shall be deprived of its right in compliance with its charter."

MR. FLOURNOY said he was in favor of giving a portion of the public domain to aid in the construction of railroads, but was opposed to setting apart a reservation for that purpose, either to railroad companies or to any other parties. His amendment did not propose to interfere with any existing charter, the ground for its road-bed, sidings, depots, etc., but hereafter to provide that no reservation should be set apart for railroads or other companies and debarred from general settlement. This did not interfere with the right of the State to grant right of way to railroad companies 200 feet in width. That could be done through private property even. If railroads neglected to carry out their contract, such land for road-bed, etc., reverted to the State just as it would to individuals where obtained from them. The question was whether

choice portions of the public domain should be shut up from settlement for from five to ten years for the benefit of railroads. He was opposed to it. He reminded them of the Texas & Pacific which had failed to carry out the terms of its charter. It would be a question for a future Legislature to determine whether it had not forfeited its charter, or whether in justice to Northern Texas, the time and terms of the charter should be extended. It was a productive section of the country, inviting the construction of railroads and capable of supporting them when constructed. Railroads would not pay for construction unless they could realize something from the industrial energies of the people already there, and the support that would follow their construction. He was opposed to holding up the public domain from settlement to await the construction of railroads.

MR. ROBERTSON, of Bell, spoke<sup>76</sup> in favor of Mr. Darnell's proposition refusing exclusive privileges to corporations, but throwing open the public domain to just claims only.

He said: "Mr. President, I shall support the substitute of the gentleman from Tarrant. As the gentleman from Anderson observed, 'it is as well to meet this issue first as last,' and to decide whether we will check this policy that is carrying us to ruin. As suggested by the gentleman from Galveston (Mr. Flournoy), the policy that has controlled this State, and which was inaugurated in 1854, has been a failure, and it has not answered the ends that were claimed for it by its friends. The policy inaugurated in 1854 was to build railways through the vacant lands of Texas, through the unsettled portions of Texas; to get the railroad sections settled by actual settlers within twelve years, and to reserve the alternate sections—not from location by those who had genuine certificates against the Government, but to reserve them for use of the State. This was a wise policy if it had been properly carried out, but I contend that up to this day no good has resulted from that policy. It is well known that the railroads that have been constructed have passed through the more settled portions of the State, and the wild and unsettled portions are without a railroad today, in addition to which large reservations of land have been held back from actual settlement, and thus the progress and development of Texas has been prevented by it. I cannot undertake to say that the policy which obtained was the policy of the gentlemen who first worked

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<sup>76</sup>His remarks were published in full in the *State Gazette* (Austin), October 20, 1875

up a system of railroads in the State, for it was not their policy to exclude one portion of the people at the expense of the other.

"Their policy was to build up railways subordinated to the purpose of diversifying the interests of the people, equally in every portion of Texas. Such has not been the case. Only one railroad has been built to the coast, the remainder going latterally through the State and simply with a view of making a highway through Texas with our money and land, and withholding it from the benefit of the actual settler. It is the settler, the tiller of the soil that gives permanency and wealth to our Government. Railroads, though they may carry out our commerce, are not needed until you have the commerce for them. As suggested by the gentleman from Galveston, they will not go into a country devoid of tillage, devoid of commerce. But still it has to be determined whether we will extend this policy, which, sir, I contend, has been so ruinous to the best interests of Texas; continue to grant charters; to grant reservations of land to build railroads at some future day through the unsettled portions of our unsettled domain.

"Mr. President, they have had twenty years or more to build the Southern Pacific which was to be a protection of Texas across our border, which was to relieve us of the burdens of defending a large proportion of our frontier, which gentlemen now clamor against so loudly when they are called upon to make provision for defense. The other day, it will be remembered, that when a provision was sought to be inserted in the Constitution enabling the Governor to defend the border, a great clamor was raised against it. The policy was to build railroads for the protection of that border, but it has proved but a poor protection. I apprehend that no gentleman will claim otherwise. Now in justice to the best interests of Texas, and to those who agree with us, let us check a policy that is calculated in itself to bring ruin on the country, to retard our progress, retard our settlements and to drive from us the very men who will develop our resources.

"Is it possible that we shall continue the policy of extension from time to time of a system which has heretofore been fraught with every ill and with no good whatever? Another feature in this railroad system I want explained by gentlemen on this floor who defend railroads, and that is, why railroads wherever they have run, instead of aiming to build up settlements already in progress, already flourishing, have avoided them, destroying the towns along their route and building up new ones for themselves, destroying the towns of the State in nearly every instance, and levying blackmail on both cities and towns to carry their railroads through them, or else run them a short distance from the towns, thereby destroying the permanence of cities and the wealth of the country for their own gain; for their own benefit. With the experience of the past

to guide us, cannot we govern ourselves as becomes men who are determined to represent the people and the property of Texas and not as the representatives of foreign corporations. Mr. President, let us look well to our acts. With these views, I believe that the substitute offered by the gentleman from Tarrant is right and just and proper, and should prevail in the interest of the people."

MR. GERMAN said he thought it would be well to await the action of the special committee on that subject before deciding that important question.

MR. STOCKDALE moved to refer the substitute and amendments to the Committee on Public Lands, and they were so referred by a vote of 50 to 21.

MR. MILLS moved to insert in line 126, Section 25, after "Senator," "or that no county be entitled to a Senator unless it has the requisite number of electors." It was lost.

MR. McCORMICK moved the following as a substitute to Section 43: "At the first session after the adoption of this Constitution the Legislature shall appoint no less than three and not more than five persons, learned in the law, whose duty it shall be to revise and arrange the statute laws of this State, both civil and criminal, so as to have but one law on any one subject, all of which shall be in plain English, who shall at as early a day as is practicable report the result of their labors to the Legislature for adoption or rejection, and such provision shall be made for every ten years hereafter."

MR. CLINE said he wanted to know who was to determine what was plain English.

MR. McKINNEY, of Walker, said he was opposed to the plan on the score of the expense it would entail.

MR. WEAVER said he thought it a reflection on all the foreign-speaking population of the State.

MR. McCORMICK said he expected the last gentleman to oppose plain English.

The substitute was adopted.

MR. WADE moved to strike out "plain" in the substitute.

JUDGE BALLINGER moved to strike out "all of which shall be in plain English." This was adopted.

MR. CLINE moved to amend by striking out "but one law on one subject."

JUDGE REAGAN suggested that the amendment should be altered so as to read "all the laws on one subject."

Mr. Cline's amendment was adopted.

JUDGE BALLINGER moved to add to Sections 43, 35, and 36, "shall not limit the effect which may be given by law to such digest." The amendment was adopted.

The article was engrossed with only sixteen dissenting votes.

### THIRTY-EIGHTH DAY

TUESDAY, OCTOBER 19, 1875<sup>77</sup>

#### *Immigration*

MR. RUSSELL, of Wood, supplemented the majority report by the following resolution: "The Legislature shall not have the power to appropriate any of the public money for the establishment and maintenance of a bureau of immigration, or for any purposes of bringing immigrants to the State."

MR. WAELDER offered as a substitute an article submitted in the minority report providing for "the establishment and maintenance and support of a bureau of agriculture, statistics, and immigration. In support of this he said there seemed to be no great desire for immigration, but so far as he could see as to what could be gathered from the acts of the Convention at that hour, it did seem that immigration was not desired and that the immigration which would be greatly induced by the establishment of an immigration bureau, was less desired than the other, that is, immigration from beyond the Atlantic. Yet this immigration had done much for the improvement of the State of Texas. He reminded them of the case of the region lying between Austin and San Antonio, the valley of the Guadalupe, from San Marcos to within a few miles of San Antonio, which had been converted from sterility into blooming gardens. That foreign population had done more for that section in the advancement of the agricultural interests in the west than any other population within the same limits, every one would admit. Those who had traveled along the Colorado River

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<sup>77</sup>The proceedings for this day were taken from the *State Gazette* (Austin), October 20, 1875.