

**TEXAS**  
**LAW**

**Tarlton Law Library**  
Jamail Center for Legal Research

Citation: *Journal of the Constitutional Convention of the State of Texas: Begun and Held at the City of Austin Texas. Constitutional Convention (1875). Galveston : Printed for the Convention at the "News" Office, 1875.*

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).

*Resolved*, That the following shall be a part of the constitution:

“It shall be the duty of the Legislature to provide for the settlement of differences by arbitration where parties shall elect that mode of trial.”

Referred to Committee on Legislative Department.

Mr. Brown offered the following resolution:

“GENERAL PROVISIONS.

“Sec. —. No person shall be prosecuted in any civil action or criminal proceeding for or on account of any act by him done, performed or executed between the first day of January, one thousand eight hundred and sixty-one, and the twentieth day of August, one thousand eight hundred and sixty-six, by virtue of military authority vested in him, or in pursuance of orders from any person vested with such authority by the government of the United States, or of this State, or of the late Confederate States, or any of them, to do such act. And if any action or proceeding shall have been, or shall hereafter be instituted, against any person for the doing of any such act, the defendant may plead this section in bar thereof.”

Referred to Committee on General Provisions.

Mr. Ramey offered the following resolution:

*Resolved*, That in every county in this State there shall be elected by the qualified voters thereof a County Clerk, who shall be the Clerk of the District, County and Probate Courts of said counties respectively. Shall also be Recorder for the same, and perform such other duties as may be required by law. But in counties containing 10,000 inhabitants, or more, the Legislature may make provisions to divide the duties of said office and provide for the electing of two clerks in each county, one to be denominated District and the other County Clerk, each to perform such duties as may be prescribed by law.

Referred to the Executive Committee.

On motion of Mr. Waelder, the Convention adjourned to 9 o'clock A. M. Monday.

---

THIRTEENTH DAY.

HALL OF REPRESENTATIVES,  
AUSTIN, TEXAS, September 20, 1875. }

Roll called; quorum present; prayer by Rev. Mr. Lee.

On motion of Mr. Mills, Messrs. Cline and Morris were excused one day.

On motion of Mr. Chambers, Mr. McKinney was excused temporarily on account of sickness.

Journals read and adopted.

Report from Committee on Legislative Department:

COMMITTEE ROOM,  
AUSTIN, September 20, 1875. }

*To the Hon. E. B. Pickett, President of the Convention:*

The Committee on the Legislative Department, to whom were referred sundry resolutions, have had the same under careful consideration, and instruct me to report the accompanying articles as a substitute for the whole subject matter and recommend their adoption.

JOHN L. HENRY, Chairman.

“ARTICLE —.

“LEGISLATIVE DEPARTMENT.

“Section 1. The Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled “the Legislature of the State of Texas.”

“Sec. 2. The Senate shall consist of thirty members, and the House of Representatives of ninety members, until the first apportionment after the adoption of this constitution; when, or at any apportionment thereafter, both houses may be increased by the Legislature, the Senate not to exceed thirty-three members and the House of Representatives not to exceed one hundred members.

“Sec. 3. The Senators shall be chosen by the qualified electors for the term of four years, and shall, after the first election under each apportionment, be divided by lot into two classes. The seats of the senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that one-half of the senators shall be chosen biennially thereafter.

“Sec. 4. The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election.

“Sec. 5. The Legislature shall meet every two years at such time as may be prescribed by law, and at other times when convened by the Governor. The first session under this constitution shall convene on the . . . day of . . . 1876.

“Sec. 6. No person shall be a senator, unless he is a citizen of the United States, and at the time of his election a qualified elector of this State, and shall have been a resident of this State five years next preceding his election, and the last year thereof a

resident of the district for which he shall be chosen, and shall have attained the age of thirty years.

“Sec. 7. No person shall be a representative unless he be a citizen of the United States, and at the time of his election a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

“Sec. 8. Each house shall be the judge of the qualifications and election of its own members, but contested elections shall be determined in such manner as shall be provided by law.

“Sec. 9. The Senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members President *pro tempore*, who shall perform the duties of the Lieutenant Governor in any case of absence or disability of that officer, and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members. And each house shall choose its other officers.

“Sec. 10. Two-thirds of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may provide.

“Sec. 11. Each house may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offense.

“Sec. 12. Each house shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the journal.

“Sec. 13. When vacancies occur in either house, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill said vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy, within twenty days after it occurs, the returning officer of the district, in which such vacancy may have happened, shall be authorized to order an election for that purpose.

“Sec. 14. Senators and representatives shall, except in cases of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty

miles, such member may reside from the place at which the Legislature is convened.

“Sec. 15. Each house may punish, by imprisonment, during its sessions, any person not a member for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; *provided*, such imprisonment shall not, at any one time, exceed forty-eight hours.

“Sec. 16. The sessions of each house shall be open, except when the Senate is in executive session.

“Sec. 17. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may be sitting.

“Sec. 18. No senator or representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State, which shall have been created, or the emoluments of which may have been increased during such term; no member of either house shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature, and no member of either house shall vote for any other member for any office whatever, which may be filled by a vote of the Legislature, except in such cases as are in this constitution provided. Nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

“Sec. 19. No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States or this State, or any foreign government, shall be eligible to the Legislature.

“Sec. 20. No person who at any time may have been a collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the Legislature, or to any office of profit or trust under the State government, until he shall have obtained a discharge for the amount of such collections, or for all public moneys with which he may have been entrusted.

“Sec. 21. No member shall be questioned in any other place for words spoken in debate in either house.

“Sec. 22. A member who has a personal or private interest in any measure or bill, proposed, or pending, before the Legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

“Sec. 23. If any senator or representative remove his residence from the district or county for which he was elected, his

office shall thereby become vacant, and the vacancy shall be filled as prescribed in section 13 of this article.

“Sec. 24. The members of the Legislature shall receive from the public treasury such compensation for their services as may, from time to time, be provided by law, not exceeding five dollars per day for the first sixty days of each session, and after that not exceeding two dollars per day for the remainder of the session; except the first session held under this constitution, when they may receive not exceeding five dollars per day for the first ninety days. In addition to per diem the members of each house shall be entitled to mileage in going to and returning from the seat of government; which mileage shall not exceed five dollars for every twenty-five miles, the distance to be computed by the nearest and most direct route of travel by land, regardless of railways or water routes; and the Comptroller of the State shall prepare and preserve the table of distances to each county seat now or hereafter to be established, and by such table the mileage of each member shall be paid; but no member shall be entitled to mileage for any extra session that may be called within one day after the adjournment of a regular session.

“Sec. 25. The State shall be divided into Senatorial Districts of compact and contiguous territory, according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one senator; and no single county shall be entitled to more than one senator.

“Sec. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the house is composed; *provided*, that whenever a single county has sufficient population to be entitled to a representative, such county shall be formed into a separate representative district, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other, and where any one county has more than sufficient population to be entitled to one or more representatives, such representative or representatives shall be apportioned to such county, and for any surplus of population it may be joined in a representative district with any other contiguous county or counties.

“Sec. 27. Elections for senators and representatives shall be general throughout the State, and shall be regulated by law.

“Sec. 28. The Legislature shall, at its first session after the

publication of each United States decennial census, apportion the State into Senatorial and Representative districts, agreeably to the provisions of sections 25 and 26 of this article, and until after the next decennial census, when the first apportionment shall be made by the Legislature, the State shall be, and it is hereby, divided into Senatorial and Representative districts as follows:

SENATORIAL DISTRICTS.

First District—Liberty, San Jacinto, Tyler, Jefferson, Jasper, Orange, Hardin, Newton and Polk.

Second District—Houston, Angelina, San Augustine, Nacogdoches and Sabine.

Third District—Rusk, Panola and Shelby.

Fourth District—Harrison.

Fifth District—Marion, Bowie, Cass and Morris.

Sixth District—Red River, Titus, Franklin and Hopkins.

Seventh District—Camp, Upshur, Gregg and Smith.

Eighth District—Cherokee, Anderson and Henderson.

Ninth District—Lamar, Fannin and Delta.

Tenth District—Wood, Van Zandt, Kaufman, Rains, Rockwall and Hunt.

Eleventh District—Grayson and Cook.

Twelfth District—Collin and Denton.

Thirteenth District—Dallas and Ellis.

Fourteenth District—Navarro, Limestone and Freestone.

Fifteenth District—Leon, Brazos and Robinson.

Sixteenth District—Grimes, Trinity, Madison and Walker.

Seventeenth District—Montgomery, Waller, Fort Bend and Wharton.

Eighteenth District—Harris and Chambers.

Nineteenth District—Galveston, Brazoria and Matagorda.

Twentieth District—Austin, Washington and Burleson.

Twenty-first District—Falls, Milam and Bell.

Twenty-second District—Johnson, Hill and McLennan.

Twenty-third District—Tarrant, Parker, Wise, Montague, Clay, Jack, Young and unorganized counties, first of them.

Twenty-fourth District—Corvell, Bosque, Hamilton, Brown, Coleman, Moore, Erath, Hood, Summerville, Palo Pinto, Eastland, Shackelford, and unorganized counties of Runnels, Baylor, Comanche, Callahan, Jones and Stephens.

Twenty-fifth District—Travis, Williamson, Burnett and Lampasas.

Twenty-sixth District—Fayette, Bastrop and Lee.

Twenty-seventh District—Colorado, Lavaca and Gonzales.

Twenty-eighth District—Calhoun, Victoria, DeWitt, Aransas, Refugio, Bee, Goliad, Karnes, Wilson, Jackson and Atascosa.

Twenty-ninth District—Cameron, Hidalgo, Starr, Webb, Maverick, Kinney, Uvalde, Medina, Nueces, San Patricio, Live Oak, Frio, and the unorganized counties of Duval, Encinal, McMullen, La Salle, Dimitt and Zavalla.

Thirtieth District—Bexar, Conal, Bandera, Kendall, Kerr, Gillespie, Mason, Menard, Tom Green, Pecos, Presidio, El Paso, and the unorganized counties of Concho and Crockett

Thirty-first District—Guadalupe, Caldwell, Hays, Blanco, Llano, San Saba, and unorganized county of McCulloch.

REPRESENTATIVE DISTRICTS.

First District—One representative—Liberty, Hardin and Jefferson.

Second District—San Jacinto, Polk and Tyler, one

Third District—Jasper, Newton and Orange, one.

Fourth District—San Augustine and Sabine, one.

Fifth District—Houston, one.

Sixth District—Nacogdoches and Angelina, one.

Seventh District—Rusk, one.

Eighth District—Panola and Shelby, one.

Ninth District—Rusk, Panola and Shelby, one

Tenth District—Harrison, one.

Eleventh District—Marion, Morris, Cass and Bowie, three.

Twelfth District—Red River, one.

Thirteenth District—Titus and Franklin, one

Fourteenth District—Hopkins, one

Fifteenth District—Smith, Gregg, Upshur and Camp, three.

Sixteenth District—Lamar, one.

Seventeenth District—Fannin, one.

Eighteenth District—Lamar, Fannin and Delta, one.

Nineteenth District—Hunt and Rockwall, one.

Twentieth District—Kaufman, Rains, Wood and Van Zandt, two.

Twenty-first District—Henderson, one.

Twenty-second District—Anderson, one

Twenty-third District—Cherokee, one.

Twenty-fourth District—Leon, one

Twenty-fifth District—Robertson, one.

Twenty-sixth District—Brazos, one.

Twenty-seventh District—Grimes, one.

Twenty-eighth District—Grimes and Madison, one.

Twenty-ninth District—Walker and Trinity, one.

Thirtieth District—Montgomery, one.

- Thirty-first District—Harris, two  
 Thirty-second District—Harris and Chambers, one.  
 Thirty-third District—Galveston, two.  
 Thirty-fourth District—Galveston, Brazoria, Matagorda, one.  
 Thirty-fifth District—Wharton, Fort Bend and Waller, two.  
 Thirty-sixth District—Austin, one.  
 Thirty-seventh District—Washington, one.  
 Thirty-eighth District—Washington and Burleson, one.  
 Thirty-ninth District—Falls, Milam and Bell, three.  
 Fortieth District—Limestone, one.  
 Forty-first District—Freestone, one.  
 Forty-second District—Navarro, one  
 Forty-third District—Ellis, one.  
 Forty-fourth District—Dallas, two.  
 Forty-fifth District—Collin, one.  
 Forty-sixth District—Grayson, two.  
 Forty-seventh District—Grayson and Collin, one.  
 Forty-eighth District—Cook, one.  
 Forty-ninth District—Denton, one.  
 Fiftieth District—Clay, Montague and Wise, and unorganized counties west of Clay, one.  
 Fifty-first District—Tarrant, one.  
 Fifty-second District—Parker, Jack and Young, and unorganized counties west of them, one.  
 Fifty-third District—Johnson, one.  
 Fifty-fourth District—Hill, one  
 Fifty-fifth District—McLennan, one.  
 Fifty-sixth District—Jackson, Calhoun, Victoria, DeWitt, Aransas, Refugio, Bee and Goliad, two.  
 Fifty-seventh District—Colorado and Lavaca, two.  
 Fifty-eighth District—Gonzales, one.  
 Fifty-ninth District—Fayette, one.  
 Sixtieth District—Bastrop, one.  
 Sixty-first District—Fayette and Lee, one.  
 Sixty-second District—Caldwell, Guadalupe and Hays, two.  
 Sixty-third District—Travis, one.  
 Sixty-fourth District—Travis and Blanco, one.  
 Sixty-fifth District—Williamson and Lampasas, one.  
 Sixty-sixth District—Corvell, Hamilton, Brown, Coleman, and unorganized county of Runnels, one.  
 Sixty-seventh District—Bosque, Summerville and Hood, one.  
 Sixty-eighth District—Erath, Comanche, Palo Pinto, Eastland, Shackelford, and unorganized counties of Stephens, Jones, Callahan and Taylor, one.

Sixty-ninth District—Bexar, one.

Seventieth District—Bexar and Comal, one.

Seventy-first District—Uvalde, Medina, Bandera, Kendall, Kerr, Gillespie, Menard, and unorganized counties of Edwards and Kimball, one.

Seventy-second District—Llano, Mason, San Saba, Burnet, McCulloch and Concho, one.

Seventy-third District—El Paso, Presidio, Pecos, Tom Green and Crockett, one.

Seventy-fourth District—Cameron, Hidalgo, Starr, Zapata and Webb, one.

Seventy-fifth District—Nueces, Frio, Maverick and Kinney, and the unorganized counties of Duval, Encinal, McMullen, La Salle, Dimitt and Zavalla, one.

Seventy-sixth District—San Patricio, Live Oak, Karnes, Wilson and Atascosa, one.

Seventy-seventh District—Cherokee, Rusk, Panola, Shelby and Harrison, one.

“PROCEEDINGS.

“Sec. 29. The enacting clause of all laws shall be: ‘Be it enacted by the Legislature of the State of Texas.’

“Sec. 30. No law shall be passed except by bill, and no bill shall be so amended, in its passage through either house, as to change its original purpose.

“Sec. 31. Bills may originate in either house, and, when passed by such house, may be amended, altered or rejected by the other.

“Sec. 32. No bill shall have the force of a law until it has been read on three several days in each house and free discussion allowed thereon; but in cases of imperative necessity (which necessity shall be stated in a preamble), four-fifths of the house in which the bill may be pending may suspend this rule, the yeas and nays being taken on the question of suspension and entered upon the journals.

“Sec. 33. All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

“Sec. 34. After a bill has been considered and defeated by either house of the Legislature, no bill or resolution, containing the same substance, shall be passed into a law during the same session.

“Sec. 35. No bill (except general appropriation bills, which may embrace the various subjects and accounts, for and on ac-

count of which moneys are appropriated,) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed.

“Sec. 36. No law shall be revived or amended by reference to its title, but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

“Sec. 37. No bill shall be considered unless it has been first referred to a committee, returned therefrom, and printed for the use of the members.

“Sec. 38. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing, and the fact of signing shall be entered on the journal.

“Sec. 39. No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in the case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the Legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays and entered upon the journals.

“Sec. 40. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session; and no such session shall be of longer duration than thirty days.

“Sec. 41. Every bill which shall have passed both houses of the Legislature, shall be presented to the Governor, who, if he approve, shall sign it; but if not, he shall return it, with his objections, to the house in which it originated; such house shall enter the objections at large upon its journals and proceed to reconsider such bill. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, with the objections, to the other house, by whom it shall likewise be re-considered. If approved by two-thirds of the members present of that house, it shall become a law; but in such cases the votes of both houses shall be taken by yeas and nays, and the names of the members voting for or against the bill, shall be entered on the journals of each house respectively. If any bill shall not be returned by the Governor within ten days, Sundays excepted, after it shall have been presented to him, the same

shall become a law in like manner as if he had signed it, unless the Legislature, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same with his objections in the office of the Secretary of State, and give notice thereof by public proclamation within thirty days after such adjournment. The Governor may approve any appropriation, and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved, and return a copy of such appropriations, with his objections, to the house in which the bill shall have originated; and the same proceedings shall then be had as in the case of other bills disapproved by the Governor; but if the Legislature has adjourned before the bill is returned to the house, he shall return the same to the Secretary of State, with his objections.

“REQUIREMENTS AND LIMITATIONS.

“Sec. 42. The Legislature shall pass such laws as may be necessary to carry into effect the provisions of this constitution.

“Sec. 43. The first session of the Legislature under this constitution shall provide for revising, digesting or codifying and publishing the laws, civil and criminal; and a like revision, digest or codification and publication may be made every ten years thereafter.

“Sec. 44. The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors not provided for by this constitution, but shall not grant extra compensation to any officer, agent, servant or public contractor after such public service shall have been performed, or contract entered into for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law.

“Sec. 45. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the Legislature shall pass laws for that purpose.

“Sec. 46. The Legislature shall, at its first session after the adoption of this constitution, enact effective vagrant laws.

“Sec. 47. The Legislature shall pass laws prohibiting the establishment of lotteries or gift-enterprises in this State, as well as the sale of tickets in lotteries, gift-enterprises or other evasions involving the lottery principle, established or existing in other States.

“Sec. 48. The Legislature shall not have the right to levy

taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which shall be included the following purposes:

“The payment of all interest upon the bonded debt of the State, that may become due during the term for which each Legislature is elected; the benefit of the sinking fund, which shall not be more than two per centum of the public debt; the support of public schools; the payment of the cost of assessing and collecting the revenue; the payment of all officers, agents and employes of the State government, and all incidental expenses connected therewith; the support of the eleemosynary institutions of the State; the enforcement of quarantine regulations on the coast of Texas; the protection of the frontier.

“Sec. 49. The Legislature shall have no power to contract or authorize the contracting of any debt or liability on behalf of the State, (except in cases of insurrection or invasion, and then only to the amount of five hundred thousand dollars) or to issue bonds or other evidences of indebtedness therefor, except in the renewal of existing bonds, when they can not be paid at maturity out of the sinking fund or other resources.

“Sec. 50. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

“Sec. 51. The Legislature shall have no power to make any grant, or to authorize the making of any grant, of public money to any individual, association of individuals, municipal or other corporation whatsoever; *provided*, that this shall not be so construed as to prevent the grant of aid in a case of public calamity.

“Sec. 52. The Legislature shall have no power to authorize any county, city, town or other political corporation, or subdivision of the State, to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

“Sec. 53. The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into and performed in whole or in part; nor pay, nor authorize the payment of any claim hereafter created against

any county or municipality of the State, under any agreement or contract made without express authority of law.

“Sec. 54. The Legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in anywise change the tenor or meaning, or pass an act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

“Sec. 55. The Legislature shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any county or other municipal corporation therein.

“Sec 56. The Legislature shall not pass any local or special law authorizing the creation, extension or impairing of liens; regulating the affairs of counties, cities, wards or school districts; changing the names of persons or places; changing the venue in civil or criminal cases; authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys; relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State; vacating roads, town plats, streets or alleys; relating to cemeteries, grave-yards or public grounds not of the State; authorizing the adoption or legitimation of children; locating or changing county seats; incorporating cities, towns or villages, or changing their charters, for the opening and conducting of elections, or fixing or changing the places of voting; granting divorces; creating offices or prescribing the powers and duties of officers in counties, cities, towns, election or school districts; changing the law of descent or succession, regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, Justices of Peace, Sheriffs, Commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate; regulating the fees or extending the powers and duties of Aldermen, Justices of the Peace, Magistrates or Constables; regulating the management of public schools, the building or repairing of school houses and the raising of money for such purposes; fixing the rate of interest; affecting the estates of minors or persons under disability; remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury; exempting property from taxation; regulating labor, trade, mining and manufacturing, declaring any named person of age,

extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability; giving effect to informal or invalid wills or deeds; summoning or empanneling grand or petit juries; for limitation of civil actions; and in all other cases, when a general law can be made applicable, no local or special law shall be enacted.

“Sec. 57. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality, where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law; the evidence of such notice having been published shall be exhibited in the Legislature, before such act shall be passed.

Article 1, section 16, of the constitution of Georgia, declares that “no person shall be abused in being arrested, while under arrest, or in prison.”

The constitution of Delaware, article 1, section 11, declares that in the construction of jails “proper regard shall be had to the health of the prisoners,” and the constitution of Tennessee, in addition to the requirement that prisons shall be “*safe and comfortable*,” requires the Legislature to provide for the “*humane treatment of prisoners*.”

Other reference might be given, but these will suffice to show that the insertion of the section prepared by us on this subject would not be the introduction of a novelty in organic law.

We think in view of our recent history it would be eminently proper to declare in this solemn form the enlightened and humane views we hold upon this subject, and in so doing lay down an unchangeable rule for the guidance of our law-makers and courts in affording protection to this unfortunate class of our people. We can not, if we would, shut our eyes to the fact that a convict is still a living being; that he has a body that can be starved and tortured, and feelings that can be wantonly lacerated. When he enters the walls of a prison to serve out his sentence for a given time he is in the custody of the State. To the State only can he appeal for food and for protection against brutal outrage. He has offended against the law and must pay the penalty. Beyond requiring him to pay this penalty, and while so doing, as far as possible to be self-sustaining, the State has no demands upon him. To the penalty should not be added needless misery and degradation.

To impose harsh conditions not necessarily embraced in the due execution of the sentence, is to inflict an injury which naturally awakens in the breast of the sentenced a feeling of hatred towards society itself, and produces a demoralization which leads to crimes of a worse character after the appointed term is served out. Take a man who had always borne the character of a good citizen, who, in the transport of passion, commits an offense which consigns him to the penitentiary—starve him, apply the lash, ride him on “the horse,” in other words, treat him as a brute—and not as a human being during his confinement, and you produce a feeling of despair and desperation which makes him ripe for any crime when his prison doors are opened. In such cases does not society itself offend?

We have also prepared a section upon the subject of a house of correction for juvenile offenders. We think it should be made the duty of the Legislature at its first session after the adoption of this constitution, to provide for the immediate establishment of such an institution, in which all juvenile offenders under the age of eighteen years, not punishable under the direction of the county authorities, shall be confined, and preventing any such offenders, except in case of sentence for life, from being sent to the penitentiary. The constitutions of several of the States contain provisions upon this subject. A list of some twenty States, with the character of the reformatory institutions established by them, will be found on page 128 of the report of the Commissioners.

Twenty years ago our State committed itself to the policy of adopting such an institution by making full provision therefor in the Penal Code, art. 187 *et seq*. Our legislators then declared that the principal design of a house of correction was to reform and improve the moral condition and character of juvenile offenders, and that all officers charged with the duty of the management and discipline thereof should use kind and persuasive measures to produce the reformation of the persons under their care. The necessity for action in this direction is now urgent. From the best information we can obtain, the number of convicts now confined in the Penitentiary, under twenty-one years of age, is not less than one thousand, some of them are mere children, and in a statement of the Inspector, furnished the Commission, two of them are reported as being under *ten years of age*.

The mingling of young persons with hardened and depraved convicts can but prove pernicious. No better school to educate them in crime could be devised. In the end society must lose by so manifest a disregard of a wise philanthropy and indiffer-

ence to its best interests. To take a mere child for driving stock from its accustomed range, or even for stealing a yearling, worth perhaps two dollars (things that some of his neighbors may have grown rich by doing, and whose wealth enables them to successfully defy the law) and send him to the Penitentiary, not only disgracing him for life but placing him beyond the reach of moral instruction and in daily association with the vile, the desperate and the hardened criminal, is, it seems to us, a great wrong, a wrong to the youthful offender and an injury to society. The percentage of juvenile convicts sent to houses of correction and who are afterwards returned, is very small compared to the number of those of the older offenders confined in the penitentiaries. With the former the statistics show that reformatory efforts have been crowned with success. We sincerely trust that the Convention will agree with us as to the importance of requiring the establishment of such an institution as is contemplated in the section prepared by us. We have now about two thousand penitentiary convicts in this State, and the number is rapidly increasing—perhaps in no State in the Union is the number so large. Their management and the utilization of their labor present questions for consideration that may well arrest the attention of this body. The Fourteenth Legislature at its last session passed a law for the building of two additional penitentiaries, and we understand they have already been located. If we are to judge of the probable cost of these additional penitentiaries, machinery, etc., by the cost of the one at Huntsville, the State will soon be called upon to make an outlay of something like a million of dollars, to say nothing of the money required to pay a retinue of officers and guards for their management. If it is the policy to keep all convicts confined in prison walls and matters go on as they are now, several more penitentiaries will soon be required.

“ARTICLE —.

“MODE OF CALLING A CONVENTION AND AMENDING THE CONSTITUTION OF THIS STATE.

“Section 1. The Legislature, by a vote of three-fourths of all the members of each house, with the approval of the Governor, shall have the power to call a convention of the people, for the purpose of altering, amending, or reforming the constitution of this State; the manner of electing delegates to the convention, the time and place of assembling them, to be regulated by the law calling such convention.

“Sec. 2. The Legislature, at any biennial session, by a vote of two-thirds of all the members of each house, may propose

amendments to the constitution, to be voted upon 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 months before the next election for representatives to the Legislature, in one weekly newspaper of each county, in which such a newspaper may be published; and it shall be the duty of the several returning officers at said election, to open a poll for, and make returns to the Secretary of State, of the number of legal votes cast, at said election, for and against said amendment; and if more than one be proposed, then the number of votes cast for and against each of them; and if it shall appear from said return that a majority of the votes cast upon said amendment or amendments, have been cast in favor of the same, and two-thirds of each house of the Legislature, at the next regular session thereafter, shall ratify said proposed amendment or amendments, so voted upon by the people, the same shall be valid, to all intents and purposes, as part of the constitution of the State of Texas; *provided*, that the said proposed amendments shall, at each of said sessions, have been read on three several days in each house of the Legislature, and the vote thereupon shall have been taken by yeas and nays; *and provided further*, that the rule in the above proviso shall never be suspended by either house.

Mr. Russell, of Harrison, gave notice of a minority report from the Committee on Legislative Department.

Mr. Brown moved that 400 copies of the report and proceedings just read be printed for the use of the Convention.

Mr. Wade moved to amend by substituting 200 copies

Mr. Brown's motion carried, and 400 copies ordered.

Mr. West presented a memorial from the Texas State Medical Association and physicians of Travis county.

Referred to Committee on State Affairs.

Mr. Cook, of Gonzales, submitted the following report:

COMMITTEE ROOM,

AUSTIN, September 17, 1875. }

To the Hon. E. B. Pickett, President of the Convention.

Your Committee on Printing and Contingent Expenses, in pursuance of resolution of this date adopted by the Convention, have contracted with John D. Logan & Co., publishers of the *Evening News*, for publishing the daily journals of the Convention in the *Evening News*, and to deliver to each delegate daily five copies of the same, for the sum of eleven dollars and twenty-five cents (\$11 25) per day, and have instructed me to report accordingly.

W. D. S COOK, Chairman.

On motion of Mr. Mills the report was adopted.  
Mr. McCormick submitted the following report:

COMMITTEE ROOM,  
AUSTIN, September 18, 1875. }

*To the Hon. E. B. Pickett, President of the Convention:*

Your committee, to whom was referred the resolution to inquire into the present management of the State Penitentiary, and report what action, if any, is necessary to be taken by this Convention in relation thereto, beg leave to submit the following report and recommendations:

During the past summer the public mind was greatly excited over the alleged mismanagement of the Penitentiary by the present lessees. Charges, apparently well founded, of cruelty to and abuse of convicts were in general circulation. His Excellency, Governor Coke, in obedience to a public demand, and acting upon information in his possession, which fully justified, if it did not impel the course pursued by him, promptly appointed a special commission, composed of Hon. A. J. Peeler, Assistant Attorney General, and the Hons. D. H. Triplett and Tillman Smith, to make a thorough investigation into the matter and report thereon. This commission visited in person the Penitentiary at Huntsville and various points at which convicts were employed outside of the walls. Their report, copies of which can be obtained by the members of this Convention from the Secretary of State, is full and exhaustive, and embraces among other things, the history of the present lease, with copies thereof, the laws of the State concerning the Penitentiary, the condition of the Penitentiary when it went into the hands of the lessees, a schedule of the property, its value, etc., turned over to them, the expenditures made by the lessees in the way of improvements, and their estimated value, the manner in which the various officials have discharged their duties, and the manner in which the convicts have been fed, clothed, lodged, punished, etc. We have examined this report with care, and have no reason to doubt the statements made or the correctness of the conclusions reached by the commissioners, who seem to have discharged their duty with great ability, faithfulness and strict impartiality. The evidence taken by them is on file in the Governor's office, and was placed by His Excellency at our disposal, but owing to its voluminousness, the length of time required to examine it in detail, the fact that the report of the commission gives in brief its purport and effect, we have thought it neither desirable nor necessary to encumber our report with extracts therefrom.

That the convicts have not been properly fed, clothed and lodged; that they have been, in many instances, subjected to cruel and shocking punishments, is established beyond doubt.

Since the report of the Commissioners, matters seem to have improved somewhat, except as to food—this at times has been wholly insufficient. The Governor, as we learn, has been in constant apprehension that he would, on this and other accounts, be compelled to resume possession for the State. Stringent rules and by-laws for the government of the Penitentiary, framed to secure, as far as possible, humane treatment of the convicts, have been put in operation by the Governor and Directors. Excessive and harsh punishments, at the hands of irresponsible guards, are now seldom, if at all, inflicted. For the sake of humanity and for the credit of the State, it can but be gratifying that reforms, which were so much needed, were so promptly inaugurated.

But we do not believe it possible, under the present leasing system, with the convicts scattered about over the State, on railroads and plantations, as they must necessarily be, owing to the want of capacity of the buildings at Huntsville, to secure the convicts proper treatment. Not only is it out of the question to properly care for and protect them from abuse while this is the case, but reformatory measures are wholly impracticable.

The latter we regard (and it has been so declared by our laws from the beginning) as one of the chief objects of punishment, and should not be lost sight of. While there is a considerable difference of opinion as to the positive and general beneficial effects of moral and secular instruction upon convicts, all agree that what is known as a "good-time law," accomplishes much in the way of stimulating them to obedience to prison rules and regulations, and to good conduct. By this law the convict who is industrious and observant of the rules and regulations of the prison, is allowed certain time by which his sentence is shortened. A copy of such a law, with some comments thereon, will be found on page 119 of the report of the Commissioners.

We think this reformatory measure, which is now adopted by nearly all the States, is of sufficient importance to direct, by constitutional provision, its adoption in this State, and have prepared a section, to be incorporated in its appropriate place, not only requiring the passage of such a law, but authorizing the Legislature in their discretion to extend its benefits to persons now undergoing sentence. Another section has also been prepared by us, which we think ought to be incorporated in the constitution, which declares in substance that all convicts and persons undergoing sentence of imprisonment in any peniten-

tiary, house of correction, house of refuge, jail, or other place in this State, shall be fed, clothed, lodged and treated with care and humanity; that no greater amount of labor shall be required of them than their health and strength may render proper, that they shall not be subjected to cruel, unusual and degrading punishment, and requiring the Legislature to pass appropriate laws to secure all such persons humane treatment and to punish all violators of such provision or the laws which may be passed for the enforcement thereof. In the opinion of some the insertion of such a provision in the fundamental law may seem too much like legislation. We find, however, in the constitution of New Hampshire, part 1, article 18, this provision: "All penalties ought to be proportionate to the nature of the offense. No wise Legislature will affix the same punishment to the crimes of theft, forgery and the like which they do to those of murder and treason. Where the same undistinguishing severity is exerted against all offenses, the people are led to forget the real distinction in the crimes themselves, and to commit the most flagrant with as little compunction as they do the lightest offenses. For the same reason, a multitude of sanguinary laws is both impolitic and unjust, *the true design of all punishment being to reform, not to exterminate mankind*"

We think it is time to pause before going further in this direction. We believe that the expense of erecting more than one additional penitentiary can be avoided. To begin at the beginning the fault lies, to a great extent, in our criminal laws. For many offenses for which persons should be punished in their county, by being compelled to work in chain gangs, if necessary, on the public roads or in county work houses, they are now sent to the penitentiary.

We have heard of instances where persons, some of them children, have been sent to the penitentiary for the theft from a house of a box of matches, a plug of tobacco, or some other article of insignificant value. With proper changes in our criminal law, and applying, if need be, through authorized legislation or executive pardon the benefits of such changes to those already convicted, and who have served a sufficient length of time to pay the penalty of their offenses, according to the more just standard to be adopted, and further by extending the benefit of the "good-time law" to those already convicted, and by removing from the penitentiary to a house of correction all the juvenile convicts. We believe that the present penitentiary will hold all the convicts that ought to be thus confined. We think before any additional penitentiaries are built that these measures

should be adopted, and especially, a house of correction established for the younger offenders. Then if the present Penitentiary be found insufficient, a new one could be built, if the excess was not large, some of the convicts under proper regulations to prevent their escape and to insure their proper treatment, might be employed on public works. The labor of a considerable number could no doubt be utilized in the building of the house of correction referred to.

Before concluding our report we desire to again advert to the fact that the Penitentiary may suddenly be thrown back upon the State. If the lessees should be unable to feed and clothe the convicts, no other alternative would be left. We have reason to believe that the Governor has been in constant apprehension of such a contingency. With two thousand convicts suddenly thrown upon his hands, without a dollar with which to buy food and clothing or employ guards, his position would be most embarrassing. He has sought and will we believe continue to avert such an issue, but still it may come, and, it seems to us, the Convention should take such action as may be in its power to enable him, if the State is forced to resume possession, to do so. We should, in justice to ourselves, have taken more time in the preparation of this report, but for the fact that we thought it important to bring the matters herein contained to the attention of the Convention at an early day, that they might receive mature consideration.

We respectfully ask to be discharged from the further consideration of this subject.

SECTIONS PROPOSED TO BE INCORPORATED IN THE NEW CONSTITUTION AND RECOMMENDED BY THE COMMITTEE.

“Section —. All convicts and persons undergoing sentence of imprisonment in any penitentiary, house of correction, house of refuge, jail, or other place in this State, shall be fed, clothed, lodged and treated with care and humanity, and no greater amount of labor shall be required of them than their health and strength may render proper, nor shall they be subjected to any cruel, unusual or degrading punishment; and the Legislature shall pass appropriate laws to secure to all such persons humane treatment and to punish all violators of this section and of the laws passed for the enforcement hereof.

“Sec. —. The Legislature shall pass such ‘good-time’ and other laws as will encourage all convicts and others sentenced to imprisonment to industry, obedience and good conduct during

their confinement, and may extend the benefits of such laws to all now undergoing sentence.

“Sec. —. The Legislature shall, at its first session after the adoption of this constitution, provide for the establishment of a house of correction, in which all juvenile offenders under the age of eighteen years, not punishable under the direction of county authorities, shall be confined, and such juvenile offenders shall not be sent to a penitentiary unless sentenced to imprisonment for life.”

GEO. McCORMICK, for Committee.

Mr. Mills offered the following resolution:

WHEREAS, The present Constitutional Convention having reduced their salaries three-eighths of the original amount, or that which was paid members of the Legislature, and have promised their constituents and the people generally to practice rigid retrenchment; therefore be it

*Resolved*, That it is the sense of this Convention that all State officers created by the new constitution shall be subject to a like reduction. That the salary of the Governor shall be \$3,125; that of Supreme Judges \$2,812 50 each, and of District Judges \$2,187 50 each, and all other State officers in like proportion.

Mr. Mills moved to adopt the resolution.

Mr. Flournoy moved its reference to Committee on Stock and Stock-raising.

On motion of Mr. Martin, of Navarro, the resolution was referred to Committee on Executive Department.

Mr. Ford offered the following resolution:

*Resolved*, That the Committee on Printing and Contingent Expenses be instructed to inquire into the expediency of printing the new constitution in the Spanish language, and report by resolution or otherwise.

Adopted.

Mr. Robertson, of Bell, offered the following resolution:

*Resolved*, That the Commissioner of the General Land Office be requested to furnish the President of this Convention with a tabular statement of the number of acres of land, the titles to which are on file in said office, issued by the King of Spain, the Viceroy of Mexico, the Republic of Mexico, the State of Tamaulipas, and the State of Coahuila and Texas, previous to the second day of March, 1836.

Also, the number of acres of land granted by the Republic of Texas, either as head-rights, bounty, donation, scrip or otherwise.

Also, the number of acres patented by the Republic of Texas.

Also, the number of acres granted by the authorities of the State of Texas, either as head-rights, bounty, donation or otherwise, railroads excepted.

Also, the number of acres patented by the State of Texas on all classes of claims, railroads excepted.

Also, the number of acres of land of all classes of claims, (railroads excepted), the field notes of which are on file in the General Land Office, but on which no patents have issued.

Also, the number of acres of land granted to railroads, canals, ditches, and the clearing out of rivers and bayous, respectively, since the second day of March, 1836, up to the present time.

Also, the number of acres, the certificates to which have been issued to railroad, canal, ditch, river and bayou companies, respectively.

Also, the number of acres that have been patented to said companies.

Also, the number of acres, the field notes of which have been returned to the General Land Office by virtue of said certificates, the patents to which have not been issued.

Also, a statement of the annual expenses of said office; and

Also, a statement of the annual revenues of said office.

Also, the number of acres in the entire area of Texas, according to the Land Office computation.

Adopted.

On motion of Mr. Fleming the Convention adjourned till 9 o'clock, A. M., to-morrow.

---

#### FOURTEENTH DAY.

HALL OF REPRESENTATIVES, }  
AUSTIN, TEXAS, September 21, 1875. }

Convention met pursuant to adjournment; roll called; quorum present. Prayer by Rev. W. H. D. Carrington.

Journals of yesterday read and adopted.

On motion of Mr. McCabe, Mr. Reynolds was temporarily excused on account of sickness.

Mr. Flournoy, Chairman of the Committee on Municipal Corporations, made the following report: