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SOCIAL LEGISLATION IN RECONSTRUCTION FLORIDA

by DERRELL ROBERTS

STATE LEGISLATURES, for the most part, generally prefer to leave social and welfare problems to others, either private individuals or other government agencies. Even though their taxing powers, as well as their legislative possibilities, are not nearly so limited as their national counterparts, the ideal solution, they insist, is "private initiative." On the contemporary scene, when many citizens believe that some social legislation is necessary, state legislative bodies seem to prefer leaving such important matters to the national Congress, even on a matching basis. In this regard, Florida's reconstruction legislature was modern, it pursued a policy that is still in vogue today.

The people of the South desperately needed help from some source after the Civil War, and Florida was no exception. The state estimated her loss in real and personal property during the war at \$42,000,000, including slaves; only two other states east of the Mississippi-Alabama and South Carolina-bore a more grievous burden.¹ A traveler in 1866 described the Florida situation as "the gloomiest picture to behold, but claimed that Floridians, with all their many needs and dissatisfactions, wanted most of all to be left alone. He thought they were "set against any and all efforts on the part of Northern individuals and associations" to help them.² The fact that people did not want help did not lessen their need in any way; it merely provided still another hindrance to the passage of social legislation.

Even the newspapers of Florida showed only a perfunctory interest in the problems of schools, crime, poverty, Confederate veterans aid, and related social problems. An exception was a Jacksonville paper, the *Florida Union*, which, about a week

1. Kathryn Abbey Hanna, *Florida: Land of Change* (Chapel Hill, 1948), 293.

2. Joe M. Richardson (ed.), "A Northerner Reports on Florida: 1866," *Florida Historical Quarterly*, XXXX (April 1962), 388-89.

before the December 1865 session of the legislature, suggested that the lawmakers examine such things as state militia laws, a code to regulate domestic relations for freedmen, a code for freedmen's government and protection (including protection of whites), establishment of a chancery court, an increase in the powers and functions of judges, and laws encouraging immigration and capital into the state.³

One of the most pressing problems was education. Whatever system had existed before the Civil War, it was nearly extinct by 1865. As one Freedmen's Bureau teacher reported, schools for white children were almost non-existent in Florida in the fall of 1866. Where they were operating, instructors' qualifications were "either unknown or insufficient."⁴ The problem was recognized by the legislators meeting in Tallahassee in January 1866, and they tried to do something about it. An act was passed authorizing the state superintendent to draw the interest due from the state's school fund, and to "apportion it to the superintendents of each county in the State for the education of the indigent white children therein."⁵ Since the amount available was so limited, this law, however well-intentioned, did little to alleviate the involved educational problem.

The legislature attempted to direct Negro education also during these post-Civil War years. In the January 1866 session, an act was passed to organize Negro schools, erect buildings, and hire teachers. While this was supplemented by efforts of the Freedmen's Bureau, the legislature attempted to finance the Negro school program by assessing fifty cents per month from each pupil and one dollar per year from "all male persons of color between the ages of 21 and 45."⁶ A legislative enactment regulated teachers in Negro schools by requiring licenses; those who taught without a license were liable to fines of one hundred to five hundred dollars. While officials denied that a major reason for this measure was to keep white northern teachers out of Negro schools, one Florida paper stated that Southerners wanted their schools "taught by Floridians" and not by "unfit

3. Jacksonville *Florida Union*, December 16, 1865.

4. Richardson, "A Northerner Reports on Florida," 389.

5. *Laws of Florida (1865)*, 50.

6. *Ibid.*, 37-39; see also Thomas Everette Cochran, *History of Public School Education in Florida* (Lancaster, Pa., 1921), 29-31.

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alien, hostile and dangerous agents.”⁷ The federal military that was stationed in Florida insisted that this state law could not be enforced against schools sponsored by the Freedmen’s Bureau or those aided and supported by benevolent societies and churches.⁸

In 1867, Freedmen’s Bureau Commissioner O. O. Howard intervened for the first time in Florida school affairs when he ordered state school superintendent, the Reverend Mr. E. B. Duncan, removed from office. Duncan was accused of using his office to proselyte Negroes to his own church denomination, the Methodist Episcopal South. He was also charged with favoring white southern teachers over Northerners. While he denied both charges, he did admit that he had told Southerners that if they refused to teach Negroes, teachers from the North would be only too happy to do so. His ouster finally came when Superintendent Duncan refused to allow copies of a recent speech delivered by Radical Republican Thaddeus Stevens to be distributed in the public schools of Florida.⁹ C. Thurston Chase, who, according to Commissioner Howard, was thoroughly versed in the management of freedmen’s schools and enjoyed the confidence of the benevolent societies, was appointed superintendent of Florida schools in July 1866.

Meanwhile, little or nothing had been done for the white schools until the Florida constitution of 1868 was written. The authorization of a uniform system of common schools in the constitution was a big step toward the foundation of the present-day school system. Even so, it merely set up the outline for the project and made some preliminary plans. The establishment of a good school system for white and Negro students was not yet accomplished. The constitution continued the office of state school superintendent and authorized a state board of education. The system was to be financed from a common school fund, with revenue coming from federal land grants, a one mill property tax, and matching funds from the counties. The implementation of this authorization was left to the state legislature.¹⁰

7. George R. Bentley, *A History of the Freedmen’s Bureau* (Philadelphia, 1955), 182.

8. *Ibid.*

9. George R. Bentley, “The Political Activity of the Freedmen’s Bureau in Florida,” *Florida Historical Quarterly*, XXVIII (July 1949), 33-34.

10. In addition to the Florida constitution of 1868, see Cochran, *Education*, 35-36; Jerrell H. Shofner, “The Constitution of 1868,” *Florida Historical Quarterly*, XLI (April 1963), 371; Hanna, *Florida: Land of Change*, 310.

Superintendent of Public Instruction Chase visited other states, North and South, whose educational systems were already established. In fact, he spent so much time away from Tallahassee, one of Commissioner Howard's inspectors reported that he was being very negligent of his duties. There might have been some real basis for this criticism, because, when the January 1869 session of the legislature assembled, Governor Harrison Reed announced that he had not yet been informed of any of Chase's educational plans. The governor said that he was becoming impatient about the delay in setting up a school system, although he agreed that plans should be carefully made.¹¹ On January 30, 1869, the legislature finally passed Florida's first comprehensive uniform public school law, providing even for a state university. The act set forth in detail the type of organization, equipment, teachers, kind of instruction, and support needed to create good public schools for Florida.¹²

In a report to the legislature in 1870, Governor Reed announced that "more than 200 schools . . . had been established and 7,000 pupils admitted" to Florida schools, a major increase over earlier years. He praised property holders and the Freedmen's Bureau for their help and support. He said that property owners everywhere in the state had cooperated in paying their taxes and in giving "general attention to this subject." The attitude of these people, Reed stated, was in "gratifying contrast to the spirit formerly manifested against free schools subsisted by taxation upon the property."¹³ The state was also "under great obligation to the Freedmen's Bureau at Washington. . . ." Reed, said that under the direction of the bureau's supervisor of education, not only had several "fine school buildings" been constructed, but many "competent teachers" had been employed who had stimulated interest in education. The governor counted eighty-seven school buildings that had been "furnished the state by the Bureau."¹⁴

But if there were more schools and an increasing number of children attending school, there were still many serious financial problems. In May 1870, Governor Reed warned the legislature

11. *Florida House Journal* (1869), 13-14.

12. *Laws of Florida* (1869), 7-19; see also Cochran, *Education*, 36-48.

13. *Florida Senate Journal* (1870), 22.

14. *Ibid.*

that since the "tax for schools had been repealed," immediate legislation was needed to save the "school system from paralysis."¹⁵ This emergency was met by what Governor Reed called a response in "taxes and general attention." He informed the legislature in 1872 that people seemed to be somewhat less hesitant about paying school taxes than was true two years earlier. This, he claimed, had not only improved the caliber of government, but the crime rate had also declined as a result of children getting an education. Now he asked the legislature to enact a compulsory education law, and he called for the establishment of an agricultural college as authorized by the Morrill Land Grant Act.¹⁶

Governor Reeds successor, Ossian B. Hart, also evidenced pride in Florida's school system. Floridians, he said, "rejoice greatly that we have numerous public free schools." There were at this time 500 tax-supported schools with a total enrollment of 18,000 students. The system was good, Hart stated, but a rising student population called for an expansion of facilities.¹⁷

Although the Florida public school system continued to grow and improve in the post-reconstruction period, there is evidence that there was an attempt by some Democrats at the constitutional convention of 1885 to abandon the state-supported program. Malcontents charged that the school tax constituted property confiscation, and they claimed the money was being used to educate Negroes to the detriment of white students. Nothing came of the attempt to do away with public schools; a coalition of Republicans and moderate Democrats defeated the move.¹⁸

Florida's penal problems were also serious, and claimed about as much legislative attention in the reconstruction years as did education. As early as December 1866, the legislature discussed the establishment of a state penitentiary for the safe and proper housing of prisoners.¹⁹ In 1866, and again in 1868, the legislature passed resolutions asking the governor to correspond with officials in Washington about the possibility of

15. *Florida House Journal, Extra Session (1870)*, 9.

16. *Ibid.* (1872), 40-43.

17. *Ibid.* (1874), 36.

18. Edward C. Williamson, "The Constitution Convention of 1885," *Florida Historical Quarterly*, XLI (October 1962), 123-24.

turning over the old military arsenal at Chattahoochee to the state to be used as a prison.²⁰ In September 1868, Governor Reed applied to officials in Washington and obtained permission from the Secretary of War and the Commissioner of the Freedmen's Bureau to use the property under a loan arrangement. The governor informed the legislature that, with some modifications, the arsenal would "accommodate 300 convicts." Governor Reed had already used money from his contingent fund to make preliminary provisions for the new penitentiary. He procured temporary supplies, hired a prison guard of fourteen men, and moved in nine prisoners to be used as a work force. Reed asked the legislature for funds to equip the building with cells and to purchase furnishings for about a hundred convicts. Meanwhile, he had already taken bids for the cells.²¹

When the extra session of the legislature convened in June 1869, the arsenal was not yet in full operation as a prison. Governor Reed reported that the forty-two convicts there were lodged in makeshift cells and that the courts were "making daily additions" to the prison population. He claimed that cells, costing \$500 each, were needed for a hundred prisoners.²² The legislature appropriated \$12,000 and advertised for bids. Construction was to be supervised by the adjutant-general, comptroller, and treasurer.²³

A legislative enactment of July 1868 instituted a military type organization at the prison. The commandant in charge was supervised by the state adjutant-general. He was paid five dollars a day and quarters; the captain of the guard received three dollars a day and quarters; and a first lieutenant, in charge of property and business, was allowed two dollars a day and quarters, plus five per cent of the profits earned from the prisoners' work. The prison doctor received five dollars a day, and he was allowed to maintain a private medical practice.²⁴ Forty guards, each to serve three year "enlistments," would be hired. The pay was ten dollars a month for privates, eleven dollars for corporals, twelve dollars for sergeants, and thirteen dollars for the first ser-

19. *Laws of Florida (1866)*, 85-86.

20. *Ibid. (1868)*, 184.

21. *Florida House Journal (1869)*, 15-16.

22. *Ibid., Extra Session (1869)*, 11-12.

23. *Laws of Florida, Extra Session (1869)*, 52.

24. *Ibid. (1868)*, 35-43.

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geant. In addition, the guards received quarters, rations, fuel, clothing, and equipment.²⁵

A discipline program was instituted, including solitary confinement, and uniforms of "red and blue shoddy" were prescribed for the inmates. Prisoners would work eight hours each day, except on the Sabbath when religious services were to be held by the commandant. The superintendent of public instruction was authorized to provide books, papers, Bibles, and other educational material for the prisoners.²⁶

As early as 1868, a legislative enactment allowed the commissioner of public institutions to farm out or lease prisoners at his discretion. These prisoners, like those in the penitentiary, could be worked only eight hours a day and were to be given Sunday off.²⁷ In January 1870, Governor Reed informed the legislature that "the large accumulation of crime" among other things, was causing the prison to become overcrowded, and immediate "attention to the necessities of that institution" was needed. He opposed the military organization of the prison and wanted it changed to a non-military type.²⁸ Lack of finances was another problem that needed resolving. Since the cells were not adequate for the confinement of prisoners, a heavy guard was required. The governor recommended that more prisoners be leased or "farmed out," and to make the leases more desirable, he asked that the work day be set at ten hours.²⁹

The legislature failed to enact penal reforms at either the regular session or the special session in 1870.³⁰ It was not until January 1871, that the lawmakers reorganized the prison. Under this plan, the commissioner of public institutions supervised the system. The commandant was replaced by a warden who was appointed by the governor with the approval of the senate, and he was charged with carrying out the policy of the commissioner of public institutions. Punishment and discipline were prescribed and defined. The physician's salary was reduced to three dollars a day, and a chaplain was employed at a monthly salary of twenty dollars.³¹

25. *Ibid.*, 37.

26. *Ibid.*, 38.

27. *Ibid.*, 39-40.

28. *Florida Senate Journal* (1870), 15.

29. *Ibid.*

30. *Florida House Journal, Extra Session* (1870), 10.

31. *Laws of Florida* (1871), 17-23.

By 1872 the financial problems were still not solved. Governor Reed notified the legislature that Congress had voted to give the prison arsenal, valued at \$50,000, to Florida. Additional cells, however, had not yet been purchased, and Reed argued that they were immediately needed.³² For the sake of economy, Reed proposed that the prison replace the scrip that was being used with a system of cash payments which, he estimated, would reduce annual expenses by at least \$10,000. He also recommended that the "Adjutant-General be constituted warden of the State prison, without additional pay," which would mean a savings of over \$2,000 a year.³³

The state penitentiary continued to suffer from financial and organizational problems throughout the reconstruction period, although the warden's reports to the legislature during the 1870's described several important prison reform programs. The legislature learned in 1872, that a school program had been set up and were told that the educated prisoners were teaching the others. Several illiterates had already learned to read, but more books and slates were needed. The convict lease system continued and prisoners worked for nearby railroads, clearing land and cutting cross-ties.³⁴ In 1873, the warden reported that prisoners had worked for the Jacksonville, Pensacola and Mobile Railroad. They needed additional teams for clearing land, however, and more books and educational materials.³⁵

The convict problem was discussed at the constitution convention of 1885. The Reverend Mr. Robert F. Rogers, a Baptist minister and delegate from Suwannee County, advocated a completely state-operated system without leasing or farming out the prisoners. Rogers was overruled, however, on the grounds that future legislatures would handle the problem when the state's finances improved.³⁶ Florida's convict lease system was to continue on in to the twentieth century.

The need for a Florida asylum for lunatics was strangely connected with the state's prison system. As late as 1873, according to Governor Hart, "Florida's poor, unfortunate insane . . ." were having to be "placed in Asylums in other states," since

32. *Florida House Journal* (1872), 49-50.

33. *Ibid.*

34. *Ibid.*, *Extra Session* (1873), 135-37.

35. *Ibid.* (1874), 207-09.

36. Williamson, "The Constitutional Convention of 1885," 124.

Florida lacked such an institution.³⁷ In 1874, the legislature voted to allow a section of the Chattahoochee prison to be used for those "lunatics" that were committed by the courts. This called for no great outlay of funds; the only added expense was a physician who doubled as the governing officer for the mentally incompetent.³⁸

Florida's reconstruction legislature also concerned itself somewhat with the problems relating to the aged and poor, maimed soldiers, laborers, and Negroes. The needy aged posed a most challenging problem to Provisional Governor William Marvin, and in 1865 he told the legislature it would be "inhumane and anti-christian [*sic*] to leave them to perish so long as we have the ability to prevent it." "The poor ye have always with you," he quoted the Bible, but they "ought to be supported at public expense," he believed.³⁹ The legislature responded to this social need in January 1866, by insisting that the children of the old and poor take care of their parents. In case this was not possible, the local justice of the peace or the judge of the county criminal court was supposed to investigate the situation. The courts had the power to assess children for the support of their parents to the point of a writ of garnishment.⁴⁰ On January 1, 1869, the Freedmen's Bureau referred twenty old and destitute Negroes to the governor's office for help. They were in various stages of serious dependency, which Reed described as "insanity, imbecility, epilepsy." The governor had all of them transferred to the Chattahoochee prison where they would at least be under care of the prison physician and where the cost of taking care of them would not be too great. Meeting the needs of the aged poor was a state and county responsibility, Reed felt,⁴¹ and he informed the legislature in 1870, that he was not pleased with the prevailing system of providing for the poor. In a country where subsistence was so easily obtained, "there should be none so destitute as to require public charity." The need for charity, the governor argued, was due to "ignorance, vagrancy, vice, or . . . some other cause." He recommended that instead of letting

37. *Florida House Journal* (1873), 44-45.

38. *Laws of Florida* (1874), 88-89.

39. *Florida House Journal* (1865), 23.

40. *Laws of Florida* (1865), 39-40.

41. *Florida House Journal* (1869), 16.

the poor draw supplies "to be wasted or misappropriated," each county should establish poor houses.⁴² The legislature in 1872, passed a bill requiring the county commissioners to provide for the poor and indigent in their respective counties.⁴³

Disabled Confederate veterans and the widows and orphans of military personnel of the Civil War caused concern in Florida after 1865. Governor David Shelby Walker, a Democrat and a supreme court justice in Confederate Florida, described the problem in his inaugural address but made no recommendation.⁴⁴ The legislature in 1866, appropriated \$5,000 to purchase artificial limbs for crippled veterans,⁴⁵ and the county commissions were empowered to levy a property tax for the relief of indigent and disabled veterans, widows, and orphans. The county judge of probate was charged with investigating the need and passing the information on to the commissioners. The bill applied only for the year of 1866, and it was not renewed by the legislature.⁴⁶

One of Governor William Marvin's major concerns was the problem of vagrant freedmen in Florida. He felt that the elimination of vagrancy would stimulate industry and he wanted "wise laws upon the subject" enacted.⁴⁷ In January 1866, the governor signed a bill which defined a vagrant as a person able to work and not working, or a person idle and immoral. For the first violation, the defendant could "hire out," after that the punishment was twelve months in jail or thirty-nine lashes. The use of the pillory was even authorized.⁴⁸ The legislature in 1866, also enacted a bill regulating the work of apprentices and apprenticeship contracts. It even included provisions protecting orphans who were "bound out."⁴⁹ Among the labor legislation enacted in Florida during reconstruction, was a bill that exempted "any person who . . . lost one or both of their arms or legs, from any cause whatsoever" from paying either a professional or occupational tax.⁵⁰ Still another law enabled indigent

42. *Florida Senate Journal* (1870), 23.

43. *Laws of Florida* (1872), 32.

44. *Florida House Journal* (1865), 41.

45. *Laws of Florida, Second Session* (1866), 19.

46. *Ibid.* (1865), 94.

47. *Florida House Journal* (1865), 23.

48. *Laws of Florida* (1865), 28-29.

49. *Florida House Journal* (1865) 23-24; *Laws of Florida* (1865), 34-35.

50. *Laws of Florida* (1870), 37.

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persons to borrow money and give as lien everything made or produced as a result of the loan.⁵¹ In 1874, the legislature established the ten-hour work day with extra pay for overtime, unless a written contract stipulated "a less or greater number of hours of labor to be performed daily."⁵²

The most pressing and controversial social problems of the reconstruction era in Florida and throughout the South related to the freedmen. The Freedman's Bureau, of course, was the major agency that worked with the former slaves, trying to establish a place for them in a free society. The Florida legislature was concerned with the need of providing unrestricted public accommodations for all citizens. Governor Reed in 1869, claimed that "Railroad officers . . . [had] excluded [people], on account of their color. . . ." "First-class fare had been extracted when first-class accommodations have been denied," he said. This violated Florida's constitution, and the governor wanted "some statute more clearly defining the rights of citizens upon . . . thoroughfares."⁵³ In 1870, a law was passed that required equal privilege of accommodations when money for such was either taken or tendered.⁵⁴ Another act, passed in 1873, established equal rights in all inns, carriers, and any other business which required state licenses. Included also was a prohibition of discrimination in public state-supported institutions, but the law did exempt private schools and cemeteries from its requirements. Further, the word "white" or other discriminatory terms were to be excluded from laws henceforth. Penalties for violations were \$1,000 fine or twelve months in prison for each offense.⁵⁵

The pressure for social legislation in reconstruction Florida had not come from either the people or the press of the state. Most of it was generated by the governors—both Democrat and Republican. Whatever were their executive records otherwise, Governors Marvin, Walker, Reed, and Hart seemed sincerely interested in the social problems of their day, and they spurred the reconstruction legislatures of Florida into doing something, albeit inadequate, about the immediate and most obvious needs. Social

51. *Ibid.* (1870), 30-31.

52. *Ibid.* (1874), 57-58.

53. *Florida House Journal, Extra Session* (1869), 13.

54. *Laws of Florida* (1870), 35.

55. *Ibid.* (1873), 25-26.

legislation enacted during the post-Civil War period in Florida did not solve the problems or meet the needs of the time, but it did lay the foundation for the stronger public welfare programs of the twentieth century.



Copy of a Portrait of
HENRY SUMMER (1809-1869)