

LESSON EIGHT

“A convention shall meet and frame a state constitution . . .”

I. OBJECTIVES

- ◆ To explain the provisions of the Treaty of Guadalupe Hidalgo relating to land ownership and suffrage.
- ◆ To use the novel *Squatter and the Don* to explain how Californios regarded the equity of the legal system established by the California Constitution.
- ◆ To explain the issues delegates faced in drafting the California Constitution of 1849.
- ◆ To analyze the suffrage article of the California Constitution.
- ◆ To interpret documents and explain how different motives, beliefs, interests, and perspectives influence interpretations of the past.

II. BACKGROUND INFORMATION

On May 11, 1846, President James K. Polk sent a message to Congress calling for a declaration of war with Mexico. The House of Representatives voted for war on the same day and the Senate concurred on May 12. A little over a month later, on June 15, William B. Ide in Sonoma, California, proclaimed the Bear Flag Revolt without knowing that the United States was actually at war with Mexico. The Bear Flag insurgents were aided by John C. Frémont, who had been sent to California on an exploring expedition. After the conclusion of the war, Frémont claimed that his mission to California was authorized by the Secretary of War, confirming Mexico’s belief that the United States had long coveted California. Frémont’s forces faced little opposition in Northern California. Commodore John Sloat, United States Navy, took Monterey and by July 11 the Stars and Stripes had been raised over San Francisco, Sonoma, and Sutter’s New Helvetia (Sacramento). Southern California resisted. When General Stephen Watts Kearny arrived overland from Santa Fe, New Mexico, he was defeated near San Diego in early December. Victory over Kearny’s forces at the Battle of San Pasqual encouraged the Californios; however, Kearny occupied the pueblo of San Diego a few days later. By January, 1847, the Californios surrendered Los Angeles and signed the Treaty of Cahuenga ending the war in California. In May, 1847, Kearny appointed Colonel R. B. Mason military governor of California.

Lesson Eight



On February 2, 1848, the Treaty of Guadalupe Hidalgo ended the war with Mexico and ceded California to the United States. Before the ratification of the treaty, Governor Mason exercised legitimate authority. Once peace was secured, his authority was questioned. While Congress argued over sectional issues, especially the status of slavery in the Mexican cession, Governor Mason lost the support of Anglo-Americans in the territory. The more the military tried to secure order, the more bitter Anglo-Americans became with the military government. Californios, on the other hand, were supportive of the military regime largely because it recognized their rights as specified in the peace treaty.

By summer 1848, as word of the discovery of gold spread, residents from all parts of the state abandoned their towns and villages and flocked to the gold fields. The flight wrecked agricultural production and commerce in the territory.

Officers and soldiers abandoned their regiments, sailors deserted their ships, and local government leaders (alcaldes) relinquished their responsibilities to search for gold. Faced with an impossible task of governing and with no immediate hope of Congressional action on establishing civilian government, Mason resigned in November 1848.

Anglo-Americans formed Committees of Correspondence to call for a convention to establish a civilian government. Mason's replacement, Brevet General Bennett C. Riley, arrived in April 1849. Recognizing that the Congress was deadlocked over the issue of slavery in California, the increasing lawlessness in the gold fields, and that the military was incapable or unwilling to control the situation, Riley called for an election of representatives to a convention to frame a constitution to submit to Congress. Forty-eight delegates met in Monterey to draw up a constitution. Six of the forty-eight had been born in California, while thirty-four delegates had lived in California for six years or less. Four were born in Europe, all of whom had lived in California for ten years or longer (John Sutter, a native of Switzerland, was one of these four). The two remaining delegates were Thomas Larkin and Abel Stearns, both born in Massachusetts. Larkin had resided in Monterey for sixteen years prior to the constitutional convention and had served as U.S. Consul in the Mexican capital of Alta California. Stearns had lived in Mexico before establishing a residence in Los Angeles about 1829.

III MATERIALS

- ★ **Document 1**—Provisions of the Treaty of Guadalupe Hidalgo
- ★ **Document 2**—Governor Mason’s *Proclamation to the People of Upper California*, August 7, 1848
- ★ **Document 3**—*The Squatter and the Don* by María Amparo Ruiz de Burton
- ★ **Document 4**—Governor Riley’s *Proclamation To the People of California*, June 3, 1849
- ★ **Document 5**—Constitutional Convention from the *Land of Golden Dreams: California in the Gold Rush Decade, 1848–1858*
- ★ **Document 6**—Draft of Article 2 submitted to the Constitutional Convention of 1849
- ★ **Document 7**—Article 2 of the Constitution of 1849

IV. LESSON ACTIVITIES

- A. Read text accounts of the Nicholas Trist mission to negotiate a settlement to end the war with Mexico. Review with students the provisions of the Treaty of Guadalupe Hidalgo (**Document 1**). Have students assume the roles of Mexican citizens residing in Upper California, including Spaniards, Mestizos, Indians, and free Blacks (slavery had been abolished in Mexico in 1829). From their respective roles, students record in a journal their views of how life will change as a result of the annexation of California by the United States. As a class, discuss:
1. who will have the right to be a citizen of the United States.
 2. how the annexation will affect land holdings.
 3. the extent to which life will improve, worsen, or remain the same.
- B. Select a student to read to the class Governor Mason’s *Proclamation to the People of Upper California* (**Document 2**). As a class, discuss the prospects for the establishment of civil government in California. According to Governor Mason, what are the benefits that will come from the peace treaty? Under the treaty, what rights do Californios have? What is the “new destiny” of California?
- C. Read an excerpt from María Amparo Ruiz de Burton’s novel *The Squatter and the Don* on the Treaty of Guadalupe Hidalgo (**Document 3**). What was Don Mariano’s attitude toward the treaty? According to Don Mariano, did the government of California comply with the provisions of the treaty? If you assumed the character of George in this brief excerpt from the novel, how would you have responded to Don Mariano? What is the point the author is making about the land claims of Californios?

Lesson Eight

- D. Have the class read Governor Riley's *Proclamation to the People of California* (**Document 4**). Inform the class that Californios, especially those in the south, were supportive of military rule. Anglo-Americans who had settled in California before the Gold Rush and settlers who flocked to the territory in search of gold wanted an immediate end to military rule and the establishment of civil authority. Have students, in pairs, discuss the proclamation from both perspectives.
- E. Read to the class an excerpt from the *Land of Golden Dreams* exhibition catalogue (**Document 5**) as background information before examining the suffrage article adopted by the convention.
- F. Examine the draft of Article II of the Constitution approved by the convention (**Document 6**) and compare it to Article II of the ratified constitution (**Document 7**). Explain how the articles differ. Review Article IX of the Treaty of Guadalupe Hidalgo and explain how Section 1 of Article II is more in line with the provisions of the treaty than the draft document. How does Section 4 of Article II differ from the committee's draft?
- G. Conclude the lesson with a creative writing assignment. Have students assume the roles of reporters and write an article or feature story on the suffrage article from the perspective of a Californio or Anglo-American.

V. VOCABULARY

Bevet	franchise
concurrent	insurrection
constituents	fickle
covet	reciprocal
emulate	retroactive
ex officio	suffrage
fractious	vacillate

VI. EXTENDED LESSON IDEAS

- A. Research the land issue. Conduct a moot court hearing in which a Californio attempts to confirm his title to land under a grant from the Mexican government dating from the 1820s or 1830s.
- B. Using the public library or local historical society archives, research the ranchos in your community. What information can you find regarding land titles? How difficult was it for the Californio to have the state recognize his

title to the land?

- C. Examine the suffrage section of the California Constitution of 1879. How does it differ from the Constitution of 1849? What are the suffrage qualifications of the current state constitution?
- D. As a creative writing assignment, have students write a short chapter for a novel, patterned after that of María Amparo Ruiz de Burton's *The Squatter and the Don*, from the perspective of an Anglo-American. How accurate was your depiction of events? How did it differ from Ruiz de Burton's account? Discuss how literature can be used as a means of promoting a point of view.

Treaty of Guadalupe Hidalgo

On February 2, 1848, Mexican and American commissioners initialed the Treaty of Guadalupe Hidalgo, bringing the Mexican-American War to a conclusion. The United States Senate ratified the treaty on March 10.

Preamble

In the name of Almighty God: The United States of America, and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure the concord, harmony and mutual confidence, wherein the two peoples should live, as good neighbors, have for that purpose . . . arranged, agreed upon, and signed the following Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic. . . .

* * * *

Article V

The Boundary line between the two Republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande . . . from thence, up the middle of that river . . . to the point where it strikes the southern boundary of New Mexico; thence, westwardly, along the whole southern boundary of New Mexico . . . to its western termination; thence, northward, along the western line of New Mexico, until it intersects the first branch of the river Gila; . . . and thence down the middle of the . . . river, until it empties into the Rio Colorado; thence, across the Rio Colorado, following the division line between Upper and Lower California, to the Pacific Ocean. . . .

* * * *

Article VIII

Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to

remove at any time to the Mexican Republic, retaining the property which they possess in the said territories, or disposing therefore, and removing the proceeds wherever they please. . . .

Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their elections within one year from the date of the exchange of ratifications of this treaty: and those who shall remain in the said territories, after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

In the said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it, guaranties equally ample as if the same belonged to citizens of the United States.

* * *

Article IX

The Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States and admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

"Proclamation to the People of Upper California"

August 7, 1848

PROCLAMATION.

TO THE PEOPLE OF UPPER CALIFORNIA.

The undersigned has the pleasure to announce the ratification of a Treaty of Peace and Friendship between the United States of America and the Mexican Republic, by which Upper California is ceded to the United States.

The boundary separating this country from Lower California, "consists of a straight line drawn from the middle of the Rio Gila, where it unites with the Colorado, to a point on the coast of the Pacific Ocean distant one marine league due south of the northernmost point of the port of San Diego."

By the conditions of this Treaty, those residing within the limits of the Territory thus ceded, who may wish to become citizens of the United States, are absolved from all further allegiance to the Mexican Republic, and will, at the proper time (to be judged of by the Congress of the United States), be incorporated into the Union, and admitted to the enjoyment of all the rights and privileges granted by the constitution to American citizens. Those who wish to retain the character of Mexicans will be at liberty to do so, and also to retain their property in this territory or to dispose of it and remove the proceeds thereof wherever they please. But they must make their election within one year from the thirtieth day of May last; and those who remain after the expiration of that year, without declaring their intention to retain such character, will be considered to have elected to become citizens of the United States. In the mean

time they will be protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion. They, however, are reminded that, as war no longer exists, and as Upper California now belongs to the United States, they owe a strict obedience to the American authorities; and any attempt on their part to disturb the peace and tranquillity of the country, will subject them to the severest penalties.

The undersigned has received instructions from Washington, to take proper measures for the permanent occupation of the newly acquired Territory. The Congress of the United States (to whom this power alone belongs), will soon confer upon the people of this country, the constitutional rights of citizens of the United States; and no doubt, in a few short months, we shall have a regularly organized territorial government;— indeed, there is every reason to believe that Congress has already passed the act, and that a civil government is now on its way to this country, to replace that which has been organized under the rights of conquest. Such territorial government will establish all legal laws and regulations which, within the scope of its legitimate powers, it may deem necessary for the public welfare. In the mean time, the present civil officers of the country will continue in the exercise of their functions as heretofore; and when vacancies exist, or may occur, they will be filled by regular elections held by the peo-

ple of the several towns and districts, due notice of such elections being previously given. The existing laws of the country will necessarily continue in force till others are made to supply their place.

From this new order of things, there will result to California a new destiny. Instead of revolutions and insurrections, there will be internal tranquillity; instead of a feeble and vacillating policy, there will be a firm and stable government, administering justice with impartiality, and punishing crimes with the strong arm of power. The arts and sciences will flourish; and the labors of the agriculturist, guided by the lamp of learning, will stimulate the earth to the most bountiful production. Commerce, freed from the absurd restrictions formerly imposed, will be greatly extended; the choked up channels of trade will be opened, and the poisoned fountains of domestic faction forever dried up. Americans and Californians will now be one and the same people, subject to the same laws, and enjoying the same rights and privileges. They should therefore become a band of brothers, emulating each other in their exertions to develop the wealth and resources, and to secure the peace, happiness, and permanent prosperity of their Common Country.

Done at Monterey, California, this seventh day of August, 1848.

R. B. MASON,
Col. 1st Drago. and
Gov. of California.

“Proclamation to the People of Upper California”**[transcription] August 7, 1848**

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The Squatter and the Don

María Amparo Ruiz de Burton, descendant of a well-established Baja California land-owning family, married Colonel Henry Burton, an officer in the U.S. army during the war with Mexico. Ruiz de Burton was sharply critical of the failure of the state to readily recognize Spanish and Mexican land grants. In her 1885 novel she offered a harsh indictment of the impoverishment and dispossession of many Californios because of the state's land policy established by the land Commission Act of 1851.

... "I remember," calmly said Don Mariano, "that when I first read the text of the treaty of Guadalupe Hidalgo, I felt a bitter resentment against my people; against Mexico, the mother country, who abandoned us—her children—with so slight a provision of obligatory stipulations for protection. But after wards, upon mature reflection, I saw that Mexico did as much as could have been reasonably expected at the time. In the very preamble of the treaty the spirit of peace and friendship, which animated both nations, was carefully made manifest. That spirit was to be the *foundation* of the relations between the conqueror and conquered. How could Mexico have foreseen that when scarcely half a dozen years should have elapsed the trusted conquerors would, 'In Congress Assembled,' pass laws which were to be retroactive upon the defenseless, helpless, conquered people, in order to despoil them? The treaty said that our rights would be the same as those enjoyed by all other American citizens. But, you see, Congress takes very good care not to enact retroactive laws for Americans; laws to take away from American citizens the property which they hold *now*, already, with a recognized legal title. No, indeed. But they do so quickly enough with us—with us, the Spano-Americans, who were to enjoy equal rights, mind you, according to the treaty of peace. This is what seems to me a breach of faith, which Mexico could neither presuppose nor prevent."

"It is nothing else, I am sorry and ashamed to say," George said. "I never knew much about the treaty with Mexico, but I never imagined we had acted so badly."

"I think but few Americans know or believe to what extent we have been wronged by Congressional action. And truly, I believe that Congress itself did not anticipate the effect of the laws they impose upon people," said Don Mariano, sadly.

“It is the duty of law-givers to foresee the effect of the laws they impose upon people,” said Doña Josefa.

“That I don’t deny, but I fear that the conquered have always but a weak voice, which nobody hears,” said Don Mariano. “We have had no one to speak for us. By the treaty of Guadalupe Hidalgo the American nation pledged its honor to respect our land titles just the same as Mexico would have done. Unfortunately, however, the discovery of gold brought to California the riff-raff of the world, and with it a horde of land-sharks, all possessing the privilege of voting, and most of them coveting our lands, for which they very quickly began to clamor. There was, and still is, plenty of good government land, which any one can take. But no. The forbidden fruit is the sweetest. They do not want government land. They want the land of the Spanish people, because we ‘have too much,’ they say. . . .”

Proclamation to the People of California

General Bennett Riley was appointed "civil governor" of California in an attempt to play down the military control of the territory. Regardless of his title, it was impossible to disguise the fact that Riley was an army officer acting under direct orders of the War Department. The U.S. Congress, bogged down in sectional disputes, adjourned in 1849 without taking up the issue of California. Governor Riley's Proclamation of June 3 calling for a constitutional convention was a means of undercutting the growing resentment of military rule and the independent efforts, especially among new emigrants, to create local provisional governments in different regions of the territory.

Congress having failed at its recent session to provide a new government for this country to replace that which existed on the annexation of California to the United States, the undersigned would call attention to the means which he deems best calculated to avoid the embarrassments of our present condition.

The undersigned, in accordance with instructions from the Secretary of War, has assumed the administration of civil affairs in California, not as a *military* Governor, but as the executive of the existing civil government. In the absence of a properly appointed civil Governor, the commanding officer of the Department, is, by the laws of California, *ex officio* civil Governor of the country, and the instructions from Washington were based on the provisions of these laws. . . .

The laws of California, not inconsistent with the laws, constitution and treaties of the United States, are still in force and must continue in force till changed by competent authority. Whatever may be thought of the right of the people to temporarily replace the officers of the existing government by others appointed by a provisional Territorial Legislature, there can be no question that the existing laws of the country must continue in force till replaced by others made and enacted by competent power. That power by the treaty of peace, as well as from the nature of the case, is vested in Congress. . . . The situation of California is almost identical with that of Louisiana, and the decisions of the Supreme Court in recognising the validity of the laws which existed in that country previous to its annexation to the United States, where not inconsistent with the constitution and laws of the United States . . . furnish us a clear and safe guide in our present situation. . . .

As Congress has failed to organize a new Territorial Government it becomes our imperative duty to take some active measures to provide for the existing wants of

the country. This, it is thought, may be best accomplished by putting in full vigor the administration of the laws as they now exist, and completing the organization of the civil government by the election and appointment of all officers recognized by law: While at the same time a convention, in which all parts of the Territory are represented, shall meet and frame a State constitution or a Territorial organization, to be submitted to the people for their ratification and then proposed to Congress for its approval. Considerable time will necessarily elapse before any new government can be legitimately organized and put in operation; in the interim the existing government, if its organization be completed, will be found sufficient for all our temporary wants. . . .

Every free male citizen of the United States and of Upper California 21 years of age, and actually resident in the district where the vote is offered, will be entitled to the right of suffrage. All citizens of Lower California who have been forced to come to

this territory on account of having rendered assistance to the American troops during the recent war with Mexico, should also be allowed to vote in the district where they actually reside. . . .

Given at Monterey, California, this third day of June, A.D. 1849.
 (signed) B. RILEY
 Brevet Brig. Genl.
 U.S.A., and Governor
 of California.
 Official—H. W.
 HALLECK,
 Bvt. Capt. and
 Secretary of State.



The Constitutional Convention

(Secondary Source)

Forty-eight delegates were elected to attend the Constitutional Convention, which met in Monterey between September 3 and October 13, 1849. Most of the delegates were from northern regions of the territory that were settled by Anglo-Americans. Miners were the largest single segment of the population in this region, but they were too busy searching for gold to send delegates to the convention.

The forty-eight men chosen to devise a written charter for the state-to-be arrived in Monterey to begin their work on September 3, 1849. Californios, Anglo-American “old settlers,” veterans . . . who had settled in California after their release from the service, and argonauts from various parts of the United States, they possessed a formidable array of backgrounds, occupations and interests. Included among them were men who had stood on opposite sides of the Mexican-American War, men whose ties to California reached back decades, and men who had only just arrived from the United States. Drawn heavily from the ranks of merchants, lawyers, farmers and ranchers, the membership of the convention represented segments of the population who all desired the establishment of stable, orderly government, although the degree and scope of its power could be debated. . . .

. . . [F]or the Californios, the convention’s efforts constituted a fundamental redrawing of their political landscape according to the vision of others. Nonetheless, they did manage to secure certain measures to protect matters of importance to their constituents, such as ensuring that the new government’s public documents would have to be published in Spanish as well as English. Though not a solidly unified voting bloc, they and their Anglo-American allies such as Abel Stearns and Stephen Foster represented a quarter of the convention’s strength. . . .

Reshaping the political world of California, however, did pull Anglo-Americans and Californios into fractious debate on more than one occasion during the convention. When the convention began to lay out the standards for who could exercise the right to vote, for example, it followed the standard American practice of the time and limited suffrage to white male citizens over the age of twenty-one. Some members of the convention pointed out, however, that under the stipulations of the Treaty of Guadalupe

Hidalgo, citizens of the Mexican Republic who accepted American citizenship had to be accorded the full rights and privileges of any other citizen. Moreover, while the notion of granting the right to vote generally to members of what one delegate described as those “objectionable races,” African-Americans and Indians, received no strong support, other delegates noted that to limit the franchise only to white males might well act to bar some of the Californios of mixed ancestry and dark complexion. As a compromise, the final version of the suffrage article included a provision that the legislature could, at a later date, choose to grant Indians the right to vote, though such a measure would need the support of two-thirds of the legislature. Furthermore, it specifically recognized the right of citizens of Mexico to vote after they had become citizens of the United States—as long as they were white. . . .

Peter Blodgett, *Land of Golden Dreams: California in the Gold Rush Decade, 1848–1858* (San Marino: Huntington Library Press, 1999), used by permission.

Draft of Article II of the California Constitution of 1849

The Committee appointed to report to the Convention "a plan or any portion of a plan for a state constitution," having had the same under consideration respectfully report further as follows—

Sec. 1st Every white male citizen of the United States, of the age of twenty one years, who shall have been a resident of the State six months next preceeding the election, and the County (District) in which he claims his vote thirty days, shall be entitled to vote at all elections which are or hereafter may be authorized by law.

Sec. 2d Electors shall in all cases except treason, felony or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

Sec. 3d No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

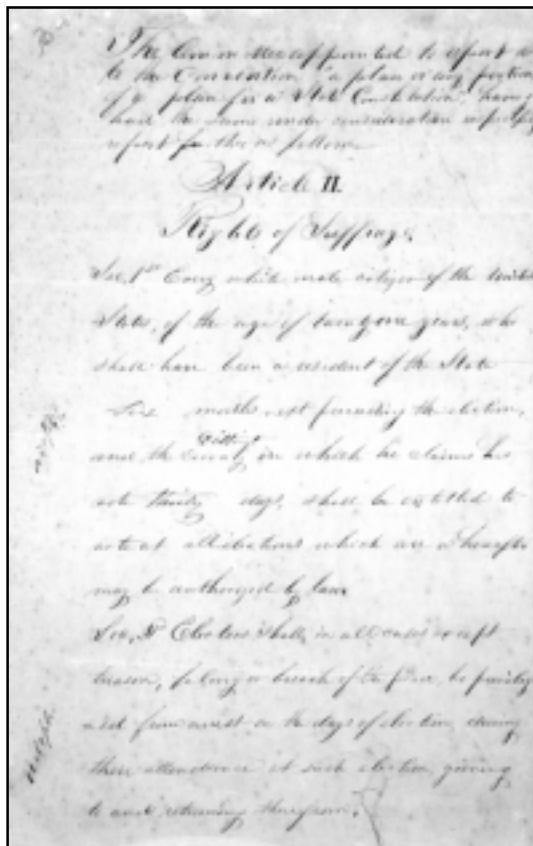
Sec. 4th No person in the military, naval, or marine service of the United States, shall be considered, a resident of this State by being stationed in any garrison, barrack, or military or naval place, or station within the State.

Sec. 5th No idiot or insane person or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

Sec. 6th All elections by the people shall be by ballot.

All of which is respectfully submitted

(Signed) Myron Norton
Chairman



Article II of the California Constitution

A designated committee on suffrage adopted Article II of the Constitution and submitted them to the Convention for final approval.

Sec. 1. Every white male citizen of the United States, and every white male citizen of Mexico, who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Querétaro, on the 30th day of May, 1848, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law: Provided, that nothing herein contained, shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage, Indians or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.

Sec. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of the election, during their attendance at such selection, going to and returning therefrom.

Sec. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

Sec. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

Sec. 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

Sec. 6. All elections by the people shall be by ballot.