





ELEMENTARY CIVICS

FOR USE IN THE

Public Schools of Texas

BY

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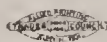
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Texas Pleading, American Elementary Law, General
Principles of the Laws of Torts, Law Books
and How to Use Them, and Civil
Government in the United
States and in Texas

Published by

E. L. STECK

AUSTIN, TEXAS



JK 274
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A. 75

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PREFACE.

Intelligence and correct information on governmental affairs are as essential as patriotism to the proper exercise of citizenship. The Legislature of Texas recognized this fact when, in 1907, it added Civil Government to the topics to be taught in the Public Schools of the State.

Instruction in this subject in order to overcome the conditions of ignorance sought to be removed by the Legislature, must cover both the Science and Art of Government. The text on which the instruction is based must, therefore present the subject in both these aspects.

The Science of Government deals with its necessity, sources, powers, duties, and fundamental principles and is necessarily abstract. The Art of Government deals with the actual agencies in and through which it operates, and its methods of action, and is necessarily concrete.

All abstractions are difficult to children. The concrete separated from the abstract, in this topic at least, is unreasoning, and arbitrary, and can be gotten and retained only by memoriter processes.

These conditions are inherent in the subject.

They cannot be changed and ought not to be ignored in the preparation of a text. To remove the difficulty would require a change either in the subject itself or in the human mind, tasks alike impossible.

To ignore them would be to follow the proverbial folly of the ostrich, in thinking it has avoided danger by sticking its head into the sand.

There is but one intelligent solution, that is to recognize these difficulties, and lessen them as far as thoughtful treatment can do this. This the author has earnestly endeavored to do in this volume.

The textbook on Civil Government now in use in the public schools was written by him. It was designed for use in the High Schools. The only criticism of the subject matter of the book which extensive inquiry of teachers and pupils have elicited, is that it is too difficult for use in the sixth to the eighth grades. Feeling that pupils in those grades should have the benefit of study of this topic, the author has prepared this Elementary book.

It is modeled, in general plan and organization of the subject and doctrines, after the former book, but has been very much simplified. The author firmly believes it will be as

easily taught and comprehended as any book on the subject can be made to be, which presents it in a manner needed by the public and contemplated by the law.

JNO. C. TOWNES.

Aug. 1, 1912.

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ELEMENTARY CIVICS

PART ONE

Principles of Government

CHAPTER I.

General Conceptions of Government.

Introduction.—We are going to study about government in the United States and in Texas. First, we must understand what is meant by the word government, then we can apply this general idea to ourselves and our country.

General Idea of Government.—To govern is to control. A mother governs her child when she controls it—when it obeys her will rather than its own. Thus we see that there are two factors in government—a governor, the one who controls, and the governed, the one who is controlled. The governor decides what the other is to do and then sees that he does it.

There are three steps that the governor must take in doing this. First, he must make rules for the other to obey. Making the rules includes making these rules known to the person who is

to obey them. It would not be fair to fail to do this. Thus, if a mother wishes to control her child, or a teacher her pupil, she should make such rules as she thinks best for the child to obey, and then she must tell the child of them. It would not be fair to expect the child to obey a rule that he did not know.

The second step in governing is to explain and apply these rules. It is clear, that in addition to knowing a rule the child must understand what is meant by it in order to obey it. This is of great importance. Suppose it is the rule of a school that every pupil must be in his place on time. It is very necessary for the pupil to understand what is meant by on time. He must go to the one whose business it is to explain this rule and find out just what is meant by it. If this one in authority says that on time means nine o'clock, all the children in the school must accept that meaning. This is called interpreting the rules. The second part included in this second step is applying the rule after its meaning has been decided upon. Thus to apply this rule, that every pupil must be in his place by nine o'clock, the time at which each pupil arrives must be found out and compared with the time stated in the rule. All who were in school by nine o'clock obeyed the rule, and all who were not there at nine disobeyed it. In this way

the general rule is applied to each pupil in the school.

The third step in governing is the enforcement of a rule after it has been made and applied. Rules are not always obeyed willingly. In order to enforce a rule there must be some punishment provided for those who disobey it. This punishment should be in proportion to the nature of the disobedience. Punishment has two uses. It makes the one who has disobeyed the rule suffer for his disobedience and also tends to keep him and others from like disobedience in the future. Thus those pupils who came in late and so disobeyed the rule of the school must be punished, and the rule thus enforced, or all government in the school would come to an end.

Thus we see that in general all government means some power making, applying and enforcing rules for those who are under its control. We must keep in mind the two main factors in government, and these three steps by which government is carried on.

The Necessity for Civil Government.—Civil government is very necessary. People must live together and have a great deal to do with one another. No person can live entirely by himself. There are very few who would want to do so if they could. Most of us wish to come in

contact with others. In our social and business life we are forced to do this. We depend upon one another for our comfort and safety. We could be safe and happy without the aid of civil government if each person always did what was right of his own accord, but this is not always the case. Human nature is sometimes cruel, sometimes dishonest and very often selfish to the extent of injuring others. Thus we need some means of protection from one another. If, for instance, there were no government to say that a man should not steal, and to punish him for so doing, any man who was stronger than his neighbor could take all that his neighbor possessed if he so desired.

If every person in a community were allowed to do as he pleased, the whole community would be in discord and confusion. Therefore there must be some sort of regulation or law by which all must live in order to have any degree of peace or prosperity. Only in this way can we carry on at all the life we are accustomed to live.

For instance, a school cannot be kept without government. Without government see what would happen. How much school could you have if each pupil came when he pleased and did what he pleased after coming? There would be great confusion and little work. The stronger pupils could mistreat the weaker, and the com-

fort and property of all would be in danger. Some power must be at the head to make and enforce rules, and this power, whether given to a teacher or to a board, governs the school.

Government is necessary not alone in the schools but in every department of life. In playing games certain rules must be observed or the play would soon be broken up with confusion or quarreling. In all our social life we must be governed by well known rules and customs. These are known as social laws or conventions. The church and religion give us moral laws.

Force Necessary to Government.—These social and moral laws are not enough to insure us freedom and safety because they cannot always be enforced. We must have political power, with enough strength back of it to enforce its laws in order to protect the weak from the strong, and the good from the bad, and to enable us to work together for the greatest good of all. For instance, the man who steals from his neighbor breaks a social and a moral law, but he cannot be tried by these laws and punished by them for his crime. He is tried and punished because the law of our government says that one man cannot take what belongs to another, and because there is power enough behind our laws

to enforce them or at least to punish those who break them.

This power to enforce laws is an essential part of government. If some person were to say that every one must live in a certain way this would not be government unless he had power enough to make those whom he sought to control obey him. His rules might be good, and it might be helpful for every one to live by them; but all the people would not do so unless there were enough power back of the rules to enforce them. So a real governor must not only make laws, but must have the power to compel obedience to them. Whenever such power exists in a community and makes rules for the people of that community to live by, applies and enforces these rules, this power constitutes government. Some such government must exist in every community or there can be no order or successful life among its people.

Purpose of Government.—We have just seen the necessity of government. We can have no order, development or safety without it. The purpose of government naturally grows out of this necessity. Its purpose is to give order, opportunity and safety to its people. It protects each person and the general public from harm by others. It protects citizens from one another and from outside nations. If another man

steals from you he is punished by the laws of our government. If another nation makes war upon us we are protected by the armies of our government. This then is the purpose of government, to give a well ordered and peaceful community in which to live and develop unhindered by others so long as we ourselves abide by the laws.

Three Kinds of Power in Government.—We have already mentioned the three steps that a government must take in order to govern successfully. To put it differently, there are three kinds of power in government, or three divisions of power. The first of these powers is the one under which the one who governs makes the laws. This is the law making power, usually called legislative power. The second of these powers is the one under which the one who governs interprets the laws and finds out whether or not they have been obeyed. This is the law applying power, and is called judicial power. The third is the one under which the one who governs inflicts punishment. This is the law enforcing power, and is called executive power.

Political Power.—Political power is a combination of these three powers of government. Therefore we have worked out for ourselves the following definition. The power in any community which makes, applies and enforces the laws

by which that people is governed and which protects that community from outside danger is called political power. Every person in the state is governed and protected by political power. Therefore we should try to understand it, for the safety of the individual and the greatness of our country is largely due to the wise use of such power.

The Extent of Political Power.—In a community such as that in which we live, this political power does not undertake to control men in every respect. It controls only in those matters in which it is necessary to do so in order to protect each person in his just and equal rights, and to protect the whole community from disorder and violence. Political power does not try to control man's thoughts or feelings, nor does it try to determine what men shall say or do except so far as is necessary in order to give the protection just stated. Such protection enables each person to carry out his own purposes and ways of living, to develop himself and to provide for himself and his family in any way that he chooses so long as he does not unjustly interfere with the equal opportunities and rights of others.

For example, as a rule a man can do as he pleases with his own property. If he so desires he can own a gun and shoot with it where it will

not endanger the life or property of any one else; but he cannot use his gun to take another man's life or to injure another man's property. The law does not prevent a man from eating what he pleases, but it does prevent him from stealing another man's food, or punishes him if he does so. So political power protects us from others, and only restricts our actions when they would interfere with the equal rights of others.

Sovereignty.—The person or collection of persons having political power is called a sovereign. Unlimited Political Power is called Sovereignty. No one government or ruler has unlimited political power over all the world, so that in this sense we have no practical example of unlimited political power or sovereignty. However, if a ruler has absolute power within his kingdom, he is sovereign within the limits of that kingdom, and his sovereignty is only limited territorially, that is by the boundaries of his kingdom. All power is limited as to territory. If, on the other hand, a ruler has absolute power over certain matters within his kingdom, and no power over others, he would be sovereign as to the matters over which he has absolute control. His sovereignty would then be limited as to subject matter as well as territorially.

We have an illustration of this in our own gov-

ernment. The United States government, or the Federal Government, as it is called, has absolute power over certain matters, while the separate state governments have absolute power over certain other matters. Thus each is sovereign over the matters coming under its control, while neither has any power over the matters coming under the sovereignty of the other. For example, our postal system is entirely under the control of the United States government. Our state government can make no laws concerning it. As to the postal system, then, the Federal Government is sovereign, because its power is unlimited over that matter. The state governments have entire control over questions of land titles in the respective states. If you bought land in Texas, your title to that land would be determined by the laws of Texas, not by those of the United States. Therefore the Texas state government would be sovereign over that matter. This will be more fully explained later, and the division of power between the Federal and state governments given in greater detail. Hence it is important to remember that there is such a division of power and to understand that each government is sovereign over those matters over which it has absolute and unlimited control.

Seat of Sovereignty.—When political power is given to any one person or to any number of

persons acting together, it is said to be seated in that person or group of persons. Vested and lodged are other terms used to express this idea. Sovereignty over postal matters, then, we may say, is seated or vested in the Federal Government. Thus in a school controlled by one teacher, the power governing that school is seated in that teacher. If a school is controlled by a board, the power governing the school is seated in this board. In an absolute kingdom the king is sovereign, and all the political power governing that kingdom is seated or vested in him. In a representative democracy political power or sovereignty is seated in the people themselves.

These differences in the location or in the seat of political power are the principal distinctions between the different forms of government. They lead to different organizations of government. In all government some organization is necessary. Let us see how such organization is affected by the location of the seat of sovereignty.

Organization Where All Political Power Is In One Person.—In a country where all the political power is vested in one person we have a very simple form of government, and but little organization is necessary. The ruler himself makes, applies and enforces his laws. He does not need any extensive organization to help him.

He must, of course, have officers to carry out his will, but he can change these officers at any time, so that nothing is permanent or, as we say, organized. There is no use for a council, or for a body of men to organize to make laws—the ruler does all this himself.

Organization Where Political Power Is Vested in a Few.—Where sovereign power is vested in more than one person, even though the number is small, some arrangement must be made by which these may all work together. Otherwise each man governing might make different laws, and when these contradicted one another the people under them would not know which to obey. Those governing must get together and make some plan for ruling together. This plan would be the organization of their government.

Organization Where Political Power Is Widely Distributed.—In some countries sovereign power is vested in a large number of persons—thousands or even millions. Where this is the case it is, of course, impossible for all these people to get together to make their laws, apply or enforce them. They must select certain men out of their number to represent them in doing these and other things connected with their government. Such a government is called a Representative Democracy, and calls for a more

complex organization than the other forms of government we have considered.

Officers.—These people selected to act for the whole community are really representatives or agents of the whole people, authorized by the people to do for them such acts in carrying on the government as the people see fit to employ them to do. Each of these agents is an officer. These officers are given different official names.

All of them together make up a system of agents who act for the people in actually exercising their legislative, judicial and executive powers. All of these different agencies together form the government, organized and kept up by the people whose power they represent.

Definition of a Government.—A government, then, is the system of agencies which the sovereign power creates to enable it to control those under it. So, that, expressing the thought in another way, we may say that a government is the system of agencies established and kept up by a people for the purpose of exercising their political powers.

QUESTIONS.

1. What are we beginning to study in this book?
2. What do we mean when we say a mother governs her child?
3. Why must there always be at least two persons in governing?

4. What is the first step in governing? Why must this be done? Would it be fair to expect a person to obey a rule of which he had never heard?

5. What is the second step? Why is this necessary? Could a person who did not know what a rule meant, or whether or not it had been disobeyed, justly punish any one for disobeying it? How could you find out whether or not a rule had been obeyed?

6. What is the third step in governing? Why must disobedience of rule be punished?

7. Why can not each person in a community make rules for every body in the community to be governed by? Could your school be carried on successfully without any order or set times and ways for doing things? Could any order or peace be brought about by letting each pupil run the school at the same time? If rules and their enforcement are necessary in school, what do you think about them in the neighborhood or town in which you live?

8. If rules are made, will every one obey them? If not, how can obedience be insured? Could obedience by every one be secured without some kind of punishment for disobedience? Why is it necessary to have force back of the rule if you really want to govern people by it?

9. What is the purpose of government?

10. What three kinds of power must be exercised in order to make government effective?

11. What is political power?

12. As to what matters does political power attempt to control persons?

13. Who is a sovereign? Is there any such thing as unlimited political power? Why? What is meant by limiting political power as to subject matter?

14. Who has control over our postoffices? Who has control over land titles? Could the State make a law fixing the salaries of postmasters? Could the United States Congress make a law regulating the inheritance of lands?

15. What is meant by political power being seated in a person or a number of persons? What other two words have the same meaning as "seated," in this connection? In a Representative Democracy where is sovereignty seated?

16. Why is very little organization required in a government where the sovereign power is in one person?

17. Why must there be greater organization where political power is widely distributed? What is an officer?

18. What is a government? Give the differences between a sovereign and a government?

CHAPTER II.

Forms of Government.

Introduction.—Before we begin a study of our own government in particular we should know something about the different forms of government in general. How many different forms of government do you already know, and in what way do they differ?

First, governments may differ in the seat of sovereignty. That is, in the number of persons in whom political power is vested. Sometimes all this power is in one person. Sometimes it is in a small number of persons, and sometimes it

is distributed among a great many of the people. Second, governments may differ in their organization, that is, in the number and nature of their officers and agencies. These differences divide governments into three main classes: Monarchies, Aristocracies and Democracies.

Monarchies.—Governments in which sovereignty is seated in one person are called monarchies. Monarchies are of two kinds, absolute and limited.

Absolute Monarchies.—In an absolute monarchy there is one ruler at the head, who has all the power. Whatever he wills is law and must be obeyed by all his subjects. Such a ruler is called a monarch. In different countries the monarch is called king, emperor, sultan or czar. This monarch can make laws, apply them, and punish as he pleases those who refuse to obey them. There are no lasting agencies to help him or to protect the people. He can, if he chooses, select certain officers to aid him, but he can discharge these officers at any time and select new ones in their places. These officers and the people in general have no rights except those given them by the monarch. Such rights can be taken away by the ruler at his will. Fortunately there are very few absolute monarchies, and these are usually short lived. The ruler having the greatest power in any American or

European country today is the Czar of Russia. As a rule these absolute monarchies gradually change into limited or constitutional monarchies.

Limited or Constitutional Monarchies.—As the limited or constitutional monarchy usually grows out of the absolute monarchy these are much alike in many respects. There is still a monarch at the head, but his power is not absolute. The monarch cannot have everything his own way as in an absolute monarchy. Others share to some extent in the right to rule. In some monarchies the powers which are taken away from the ruler and given to others are of little importance; in others they are of great importance. In every case the use of such powers by others limits the power of the monarch, and from this we get the name limited monarchy.

If the limitations on the power of the monarch are great and lasting, that is, if they are not changed with each new monarch, the government is called a constitutional monarchy. In a constitutional monarchy the chief ruler sometimes has very little power. The more powers given to others the less he has.

This is the case with the English government. England was at one time an absolute monarchy in which the king could do no wrong. Gradually it became a limited monarchy, and now has a strong constitutional government. Almost the

entire political power is now vested in the people, and the king is kept rather as a matter of national pride than as serving any useful governmental purpose. There is probably no government in the world in which the people have such direct control over all practical political matters as they have in England. A constitutional monarchy is much better for a nation than an absolute monarchy, for one person is not often wise enough to make laws for a whole people.

Aristocracies.—When political power is vested not in one person but in a small number of persons the government is called an aristocracy. This was a fairly common form of government in ancient times, but there are few, if any, examples of it today. We see this form of government oftenest after some revolution where a government is seized by a few strong men and held by them for a short time. Such a form of government seldom lasts longer than one generation of rulers.

Democracies or Republics.—Governments in which all political power is in the people are called Democracies or Republics. Democracies are of two kinds, Pure Democracies and Representative Democracies.

Pure Democracies.—A Pure Democracy is a government in which every person has an equal right and a direct voice in political matters.

Such a form of government is not practical in a community of any great number of people. No such government exists now, and it is doubtful if any such ever did exist.

A slightly different form of the Pure Democracy is a government in which not all the people but a very large number of them exercise political power in a direct way, making their laws, applying and enforcing them, not through representatives, but by direct action of their own. This form of government is also impracticable in large communities, and it is doubtful if any such government really exists. This form of political action, however, may and does exist in small communities as to their local affairs. Probably the best illustration of this is found in the New England townships in which the people, at least the adult male members of the community, control their local affairs in their town meetings.

Representative Democracy.—A Representative Democracy is the form of government in which political power is vested, not in all the people, but in such a large number of them who are so identified with every kind and class of people that their action may truly be regarded as the action of all. The name, Representative, is not based on this fact, but upon the conditions set out in the next paragraphs.

In these Representative Democracies so many people share in the exercise of political power that it is found impossible for them all to exercise this power directly. For instance, in the United States, which has this Representative form of government, it would be impossible for all the people in the nation to meet together in any one place at any one time either to make, apply or enforce their laws by direct vote of each individual. Hence they select from among their number a few agents, whom they call officers, who are to represent them in the exercise of their political powers.

All the people possessing the proper qualifications, that is, those who have the right to exercise political power, act directly in arranging for the form of government, in settling what officers they shall have, how these shall be chosen, and what their powers and duties shall be. Such action is called the establishing or ordaining of a Constitution. By this constitution the people, by direct vote, make their plan of government and determine the powers that each and every officer provided for in the constitution shall have. These officers are truly called representatives of the people, and it is from this fact that the name Representative Democracy comes.

In such a government the officers have only such powers as the people have given them, and

it is their duty in all their official actions to represent the people.

This form of government is the one existing in the United States and in each state of the Union. For many years this plan seemed to work very well. In later years, however, dissatisfaction has arisen and very strong efforts are now being made to limit the powers of the representative officers, and to give the people as a whole a larger opportunity for exercising their political powers directly. These changes are known as the Initiative, Referendum and Recall of officers. The Initiative is a plan by which the people themselves may pass laws without the action of the state legislature. The Referendum is a plan by which laws which have been passed by the state legislature, may be referred to a vote of the people and accepted or rejected by them. If accepted by the people, they remain laws; if rejected by the people they are no longer of any effect. The Recall of officers is a plan by which any representative of the people, whose conduct has been displeasing to the majority of those putting him in office, can be voted out of office before his term has expired without the formalities of a legal trial.

The True Seat of Sovereignty in Democratic Governments.—Democracies are often spoken of as governments by the people, and many of the

constitutions of the different states declare "that all political power is inherent in the people." It is important to know just what is meant by this. Does it mean that each individual has in himself in his own right all political power? If so, how could any sort of government be possible. It is impossible to think of a government in which each person has the right to make laws for himself and for every other person, to apply these laws to the conduct of others and to enforce obedience to them. There would be as many sovereigns as there were people, as many laws as there were different wills, and the result would be political disorder amounting to anarchy. It is evident, therefore, that this expression quoted from our constitution does not mean that each person separately has all political rights and powers. Its true meaning is that all political power is inherent in the people collectively, and that the will of the greater number of the people, called the majority, when legally and properly expressed, is the rule by which all are to be governed. We see this quite clearly when we think about the making of laws.

The Right to Vote.—It is a little harder to see this same truth when it is applied to the right to vote. To vote is to express one's choice concerning any political matter in the manner provided by law. A good many persons seem to re-

gard the right to vote as a primary right existing in the individual himself and not as a privilege given him by the people collectively. If this were true the right to vote would fall under certain guarantees in the Constitution of the United States forbidding any state to take from a person his legal rights; and no one who had once had this right could be deprived of it. We find, however, that it has been settled that the collective body of the voters in any state may confer the power to vote upon any person whom they see fit, and that they can also take away such power from any person having it for any reason except "on account of race, color or previous condition of servitude." A voter cannot be disfranchised, that is his right to vote taken from him, for any of the three reasons just named, because such action is expressly forbidden by the Fifteenth Amendment to the Constitution of the United States.

The right to vote is regulated by the states and not by the Federal government. The voters of each state determine who shall vote in all elections held in that state whether for state or for federal offices. This explains the fact that we find such great differences as to the qualifications for voting in the different states. For example, women vote in some states and not in others. There are property and educational

qualifications in some states which are not in others.

In every state there are legal rules governing the qualifications of voters. In all states a voter is required to be at least twenty-one years of age, and in many states there are a number of facts which disqualify. Therefore, when we speak of our government as one by the people we do not mean that it is one in which every person may take a part, but that those persons who do take part are so numerous and so identified with those who are not permitted to do so, that every interest and class in the entire community is fairly represented.

Self Government.—It is sometimes contended that if a government is carried on for the benefit of a people that it is not necessary for it to be carried on by them. It is claimed that a few persons can be found in every community who are wiser than the average of the community, and that it is better to select those few to rule than it is to let the great mass of the people take part in their own government. This sounds plausible, but it is not correct. The first difficulty is to find persons who are wise and patriotic enough to be trusted with the government of their fellows. Self interest is the most powerful motive in human conduct. If a government were under the control of a few persons it

would not be long before these persons would see that their own interests were in conflict with the interests of the great mass of the people. Gradually they would seek their own advantage to the hurt of the people governed by them. We find even in Representative Democracies, where the real power is in the mass of the people, that most persons who remain long in the same office come to feel that they have a personal right in the office and lose sight of the fact that it belongs to the people.

Subdivisions of a State and Their Powers.—

No matter what form of government may exist, in any large number of people occupying a large territory there would be differences of interest among those living in different localities. For this and other reasons it is necessary to have political subdivisions in each state. These subdivisions are usually local. Some of them, such as counties in a state, are made to enable the government and the citizens to carry out their public duties more easily. Others, like cities and towns, are made largely for the benefit of the people living in the particular locality. It is not meant that the counties are of no advantage to the people living within them, or that all of the advantages from a city or town are purely local, but only that the general public good is the principal reason for making the

county, and the local advantage is the principal reason for making the city or town.

Besides counties and cities there are numerous other divisions, like representative districts, school districts, road districts, local option districts and others, which are created principally for the benefit of the persons living within them, though the public may also be benefited to some extent. Counties are the usual divisions of the states. These are subdivided into justice's precincts, voting precincts, some school districts and similar small districts. Counties are joined to make judicial, legislative and other districts.

Different Kinds of States.—We were discussing a short while ago the different kinds of governments, such as Monarchies, Aristocracies and Democracies. We now wish to consider states or governments from another point of view, that is, as to whether they are single states or combined states. From this point of view, we have three kinds of states: Unitary, Confederated, Federal.

Unitary States.—Unitary means consisting of only one unit, single, and when applied to a state means that it has not divided its political power with any other. Hence a Unitary State is one which possesses all kinds of political power limited only as to territory. Speaking techni-

cally we would say a Unitary State is one which has complete sovereignty.

Examples of Unitary States are at this time unknown on the North American Continent. Probably the best example of such a State that has ever existed in America, was the Republic of Texas, formed in 1836, by the people of Texas as the result of a successful revolution from Mexico. This Republic lasted until it was annexed to the United States in 1845, when Texas became a state of the Union. The Republic of Texas was an absolutely sovereign nation, having full authority and power in all political matters of every kind. It made laws for the government of every one within its territory according to its own will and judgment. It alone protected its citizens and the people within its territory against all other nations. It maintained its own army and navy, established and kept up its own postoffices, and did everything that could rightfully be done in the exercise of political power.

Confederations.—When a number of Unitary States enter into an agreement by which they are to act together in the exercise of certain political powers they form a Confederacy. In entering into such an agreement no one of the Unitary States actually parts with any of its political powers. It only agrees that some of these powers may be exercised for it by the confed-

eration created by such agreement. Any member of a Confederacy, therefore, has the power to withdraw from the agreement whenever it sees fit. It may be morally bound not to do so, so that withdrawing would be a breach of the spirit of the agreement, but there would be no power to prevent this breach if the state desired to make it.

Federal Government.—When a number of Unitary States agree together to create a new government and to give over to that government certain political powers which are from that time to belong to the new government and not to the Unitary States creating it, such an agreement creates a Federal State. The political power thus parted with by the several Unitary States and given over to the Federal State is then vested in the Federal State and cannot be taken back by the separate states. The difference between an agreement of this kind and the one creating a Confederation is very important. An agreement to confederate several states merely creates an agency to exercise for them the delegated powers while the several states themselves retain the right to these powers. The agreement forming a Federal State gives over the powers themselves to the Federal Government so created.

This difference between a Confederation and

a Federal State is so important that it had better be illustrated. You own a book which another pupil wants. If you lend this pupil the book you give him the right to use it, but the right of ownership in the book still belongs to you. You can demand back the book at any time. On the other hand, if you give away or sell the book, you give up all right in it, and the right of ownership belongs to the one to whom you gave or sold it. You cannot then demand back the book or any right concerning it.

Thus in creating a Confederation the several Unitary States do not give away any of their sovereign powers, but simply lend the Confederation the right to use some of them. In creating a Federal Government the several states give to it certain of their sovereign powers, parting with all right to them for all time.

The principal matter over which the Civil War was fought was whether or not the Constitution of the United States created merely a Confederacy or a Federal Government. One of the results of the Civil War was to declare the United States to be a Federal Government.

QUESTIONS.

1. Name the three most common forms of government.
2. What is a government in which sovereign power is in one person called? What does absolute mean? What

kind of monarchies are called absolute? Why can not individuals have real, permanent legal rights under such a government? Name the European country whose government is nearest an absolute monarchy.

3. What is a limited monarchy? Show how England changed from an absolute to a limited monarchy?

4. What is an aristocracy?

5. What is a democracy? What other name is given to democracies? What is a pure democracy? Why is this an impracticable form of government in large bodies or people?

6. What is a representative democracy? Why are such governments so called? Through whom are political powers exercised in such governments? Why are constitutions necessary in such governments? Give an example of such a government.

7. What is the initiative? What is the referendum? What is meant by the recall of officers?

8. Where is sovereignty really seated or lodged in a representative democracy? What is meant by the phrase in the Constitution of Texas "All political power is inherent in the people?"

9. What is voting? Is the right to vote a primary one, that is one possessed by the individual himself? How is such a right obtained? Can the right to vote be lawfully taken away from a person who has once possessed it? What limitation on the powers of the people of the states to disfranchise voters, is contained in the Fifteenth Amendment to the Constitution of the United States? Do the states or the Federal government determine who shall vote? Why is it that women can vote for members of Congress in some states but can not in others?

10. What is a political subdivision of a state? Why do

we have counties? Why cities and towns? Why do we have school districts? Why, voting precincts?

11. What does unitary mean? What sorts of states are called unitary? Show that the Republic of Texas was a unitary state.

12. What is a Confederacy? Do unitary states actually part with any of their sovereign powers in forming a confederacy? Can the states forming a confederacy secede from it?

13. What is a Federal state? Can the states forming a Federal state secede from it? Why? Is the United States a Confederacy or a Federal government?

CHAPTER III.

Development of Constitutional Government.

Earlier Forms of Government.—It seems probable that the first government was that of the family. The head of the family, usually the father, was the ruler. As families united governments became tribal, that is, some one member of a group of families would assume the right to govern all or have this right given him by the consent of the others, and in this way he would become ruler of the entire group or tribe. Gradually the larger tribes conquered or absorbed the smaller ones. Different men by different methods would acquire personal supremacy in the various groups and so become their

rulers. The governments thus formed were strongly centralized. That is, all political power was in one ruler and was exercised by him either in person or through officers selected by him for that purpose. This form of government lasted as long as war was the chief occupation of nations and military strength was the most desirable thing in a government.

Democratic Tendencies.—When nations became less warlike and gave more of their attention to matters of peace, intelligence and fitness to take part in the government became more general. This steady increase in the number of capable men resulted in increasing the number of persons who actually shared in the exercise of political power, and governments became more democratic. As this kept on a greater number of persons saw that political power really ought to belong to the majority of the people and be exercised by them. Thus democratic ideas gained more and more influence.

England as an Example.—Centuries ago England was inhabited by a number of separate and contending tribes. These had more or less in common in tradition and experience, but there were no express political ties among them. Their country was invaded from time to time by hostile people from continental Europe. Each invasion left some impression upon the people who

survived. Later England became a United Kingdom under the rule of one monarch. There was constant conflict between the king and the people as to the political powers each should have. Sometimes the advantage would be with one and sometimes with the other. Gradually through the centuries the power of the people has prevailed, so that now, while the forms of monarchical government continue the power of the people is recognized as the great source of law and of government. The king, though he holds by inherited title and is not directly dependent upon the choice of the people for his office, has practically no part in making, applying or executing their laws.

During the struggle referred to above the people forced from different kings a number of written promises and concessions which, taken together, constitute a set of very valuable state papers. These are too fragmentary to form a constitution, so that England today has no written Constitution.

Constitutional Development in America.—Permanent settlement of that part of the Atlantic seaboard now within the territory of the United States and lying north of Florida was made by colonists coming from England. These different colonies were composed of men of different characteristics and religious views, but

they were all English, and had the sturdy qualities of the Anglo Saxon. Each colony had some grant of power from the English king or Parliament. These grants were called charters. They differed largely in detail, but all had this much in common that they were the basis of the political rights of the colonists in each settlement. These seem to have been the earliest form of written constitutional guarantees. As the colonies developed and the Revolutionary War came on and was waged most of these charters from England were changed into written constitutions adopted by the people in the respective colonies, or states as we now call them. Some of these changes preceded the Declaration of Independence. The most of them were made during the Revolutionary War. A few of the states did not adopt formal constitutions until many years later.

Thus the idea of a written constitution as a basis of government became firmly fixed in the minds of the American people. Each state in the Union now has a written constitution, outlining and establishing its plan of government.

When the colonists found it necessary to make common cause against England they entered into a written agreement called "Articles of Confederation," which outlined the plan of co-operation that was to exist among them. La-

ter on, when it became necessary to “form a more perfect union,” the same idea was in the minds of the people, and the written constitution of the United States was prepared and adopted, embodying the plan of government thereby created. We may, therefore, say that a written constitution as the basis of popular government is an American idea, gradually developed by the American genius for government. It is now so firmly fixed that nothing short of revolution can change it.

Matters Usually Contained in Written Constitutions.—Written Constitutions usually contain:

First. A preamble, setting forth by whom and for what purpose the Constitution is ordained.

Second. A bill of rights. This is a number of provisions declaring that certain rights and privileges belong to the people and that they are not to be affected by the grants of authority to the several officers of the government except as is expressly provided in the Constitution itself.

Third. Provisions creating the several departments of government, enumerating many of the offices which constitute these departments and giving general directions regarding the exercise of their powers.

Fourth. A number of general provisions on miscellaneous subjects, such as the right of suffrage, taxation, public schools, etc

Fifth. Provisions as to the manner of amending the constitution.

Sixth. Provisions for voting upon the adoption of the constitution; a statement of the time it shall go into effect if adopted, and of its effect upon pre-existing laws and rights.

A Second Classification of Constitutional Provisions.—As the people's purpose in adopting a constitution is to form a perpetual government through which their powers may be exercised; and as such powers can really be exercised only through officers; and as the government ought to be effective in its operations; and as it is always dangerous to entrust large powers to a few persons; and as there are always a number of matters of various kinds with which the government must deal, every constitution should have in it provisions covering all of these points.

We do not mean that a constitution is so written that one Article or Section of it necessarily covers any one of these points and another Article or Section another of them. This sometimes occurs. Most frequently, however, the several matters mentioned above are intermingled in all the parts of the instrument. Hence, ordinarily in searching for each of these points you must go through the entire constitution, study it carefully and put together the different

ideas contained in it which relate to the particular matter under investigation.

Let us consider this a little more carefully for the idea is an important one. If you get it clearly in your mind and fix it there it will help you, not only in your study of the rest of this book, but whenever you deal with any constitutional question in after life, whether in or out of school.

From the point of view which we are now taking there are five different classes of provisions in every constitution.

First. Those which create the government to be carried on under it and name the departments into which this government is to be divided and the officers which are to be included in each.

These provisions are properly called creative.

Second. There must be provisions which show how the government created under the first is to be actually put into operation, and then how it is to be continued. These deal with the manner in which all the officers who are to fill the various offices established in the creative parts of the instrument are to be selected. This must cover not only the first or original officers, but their successors so long as the government is to last.

These parts are properly called perpetuative.

Third. There are other provisions which set out the powers and duties of these several officers, and how these are to be performed. It would not be worth while to create an office and select some one to fill it unless he has some power which he may exercise, and duties which he must perform for the public good.

The powers and duties which go with an office are called the functions of that office. So the provisions in a constitution which set out these powers and duties which go with the offices created by it are called functional.

Fourth. To enable the officers to perform their duties the powers conferred upon them must be real and extensive. Sometimes a bad man might get into office or a good man might sometimes yield to great temptation and use his official power wrongfully. The people need to be guarded against both of these dangers. They, therefore, put limiting or restrictive provisions in the constitution which forbid the improper exercise of official power.

These provisions are called restrictive. In many constitutions a large number of these provisions are grouped together in one Article called "A Bill of Rights." In no constitution, whether state or Federal, are all of the restrictive provisions thus grouped. No matter how comprehensive the "Bill of Rights" may be,

there are always other restrictions on official power and its improper exercise, in other Articles or Sections.

Fifth. After you have pointed out and classified all the provisions in a constitution which fall into each of the foregoing groups, you will find quite a number of provisions left which will not go into any one of these four groups. Many of these will be important. They relate to various matters so that it is difficult to find anything in common among them.

We, therefore, treat these together, under the head, miscellaneous provisions.

Reasons for Different Departments of Government.—We found in Chapter I that there are three kinds of power to be used in governing. The first is the power to make laws, called the Legislative Power. The second is the power to investigate the conduct of persons whose duty it was to obey the laws and to apply the laws to that conduct, called the Judicial Power. The third is the power to enforce the law and to inflict punishment for its violation, called the Executive Power. In order to govern successfully a ruler must possess all three of these powers.

In a state where political power is vested in a large number and the people themselves are the rulers we have found that they must act through representatives or officers, and that all

these officers, taken together, form that people's government.

From these facts it follows that the people must have some representatives to exercise each one of the powers just discussed. Trusting political power to representatives is always more or less dangerous to the welfare of the people. It is, therefore, very desirable that in giving power over to officers the people should be protected against its abuse by these officers. In order to secure such protection the people of the United States and of each state of the Union, in preparing and adopting their written constitutions have provided for the separation of these three powers. They have authorized one set of officers to make their laws, another to apply them and still another to enforce them.

Departments of Government.—This separation of powers among the different officers gives us three departments of government:

Legislative,
Judicial, and
Executive.

In some constitutions all that is done in this matter is simply to declare that the legislative powers shall be exercised by one department of government, the judicial powers by another and the executive, by another. In some states, among them Texas, the people have gone fur-

ther and have declared in their constitutions that no officer exercising any of the powers of one department of government shall have the right to exercise powers belonging to any other department, unless the constitution shall so declare in the particular case.

Legislative Department.—The Legislative Department is that branch of the government through which the people exercise their power to make laws. The constitutions of the several states and of the United States have quite a number of provisions regarding the Legislative Department. These set out, among other things, how many bodies of law makers there shall be, what the qualifications for membership in these bodies shall be, how the members shall be elected and how they shall proceed in the passage of laws. All these questions we shall study later in connection with the Federal Government and with the government of the State of Texas.

Judicial Department.—The Judicial Department is that branch of government through which the people exercise their power to interpret and apply the law. This department consists of a number of courts, each of which is authorized by law to try certain kinds of cases. These courts must themselves always act in obe-

dience to the law as made by the people in their constitution and by their legislature.

Executive Department.—The Executive Department is that branch of government through which the people exercise their power to enforce the law. In the United States the chief executive officer is known as the President. The chief subordinate executive officers in the Federal Government are the heads of the different departments at Washington. The executive head of the several states is called the Governor. The heads of the different executive departments in the several states are known by various names, though they have about the same powers and duties in each state. All of these matters will be considered in detail later.

QUESTIONS.

1. In what groups of people is it probable that the first governments existed? How did governments pass on to tribes?

2. Trace the growth of democratic ideas in England. Has England any written Constitution? What secures the permanency of English governmental institutions?

3. By whom was the Atlantic coast within the United States settled? Under the authority of what government were these settlements made? What is meant by the charter of a colony? Into what state papers were these charters changed about the time of the Revolutionary War? By whom was the charter of each colony changed? What

were the "Articles of Confederation?" By what written instrument was the present government of the United States created?

4. Enumerate the matters usually contained in written constitutions. What is a preamble? What a Bill of Rights?

5. Pass to the second classification of the provisions of a constitution. What provisions are called creative? What perpetuative? What functional? What restrictive? What miscellaneous?

6. What connection is there between the three phases of power necessarily involved in governing and the division of government into three departments?

7. Name the three departments of government and describe each. What do you mean by making laws? What by interpreting laws? What by applying laws? What by enforcing laws?

CHAPTER IV.

Sovereignty—Some of Its Powers and Its Relations to Individuals.

Duty of Self Protection.—The first duty of any state or government is to protect itself and keep itself alive so that it can perform its other duties and exercise its other powers. This carries with it the duty to provide for the filling of offices, so that there will be some one always ready to discharge the duties of each office. This

duty of self-protection also includes the power to raise military forces to carry on war with other nations or to put down rebellion within its own territory. It also includes the power to raise money to pay all proper expense of carrying on the government both in times of peace or in war. It also includes the power to take and use property belonging to private persons.

Power to Raise Money.—The government cannot be maintained without money, so that in organizing their government a people must make provision for getting money in some proper and just way. The usual method by which money is raised for public purposes is taxation. A tax is a sum of money which must be paid into the public treasury to be used by the government in carrying out its different purposes.

The power to collect money in this way is absolutely necessary in order to keep up a government. All people might not voluntarily pay money to support the government therefore they must be compelled to do so by the payment of taxes. Every one ought to pay his just share of all lawful taxes.

Most of the state constitutions provide that taxation shall be equal and uniform. The different governments try very hard to carry this out. It is much more difficult to do this, how-

ever, than it would seem. No more serious questions have arisen in our plan of government than some of those relating to the taxing power and its exercise.

Taxes can only be collected for public purposes. To make one man pay money to the government to be paid out by it for the benefit of an individual would be taking money away from one person to give it to another. This the government has no power to do. The purpose for which the money is to be expended must be one for the public good or else no tax can be lawfully collected for it.

Other Sources of Public Revenue.—In times of war or great public danger the government can take the property of a private citizen to be used for the public good. This is called impressing the property. Whenever this is done, as soon as possible the government should pay to the owner of the property its full value and interest thereon up to the time of payment. This differs greatly from taxation. When property is impressed its entire value is taken away from the owner and all the burden falls on him, while in taxation the burden is distributed uniformly and justly among all the people.

Some of the states have land from which they receive revenue, this is particularly true of

Texas. When Texas declared her independence of Mexico a large part of the land within her territory had never been granted and did not belong to any private person. It belonged to the public and was known as public domain. From time to time different laws have been passed by which the state has given away or sold much of this land. Some of it has been set aside for educational purposes and a very large part of our present school fund comes from this reserved territory or money received from the sale of portions of it.

Power to Borrow Money.—A government can borrow money unless there is something in its constitution which forbids it from doing so. This is not really a means of procuring revenue. It is only a method by which a present lack of funds may be made up. This is usually done by the issuance of bonds extending over a number of years.

Power of Eminent Domain.—Another political power is the right to take property belonging to individuals and apply it to public use upon making just compensation for doing so. If a school house were needed in a community and no one was willing to give or sell the ground upon which to build it, under this power the proper officers could value a certain piece of ground, or have it valued by a jury, pay such valuation to

the owner and take such ground for school purposes. This power of taking private property for public use is called the Power of Eminent Domain.

Police Power.—In addition to the powers which we have been considering a government has the power to make laws for the protection of the health, safety and morals of the people. This is called the Police Power. A great deal of legislative action is taken in the exercise of this power. All the laws regarding the health of the people, all those regulating different kinds of business, those forbidding and punishing gambling and other evil practices, indeed all the laws which tend to protect the people in their just rights as to health, safety and morals come within this general head.

Quarantine laws against persons having yellow fever or other dangerous and communicable diseases, are examples of laws passed to protect the health of the people.

Laws providing for building the sea-wall at Galveston and levying taxes to pay for it, are examples of laws passed for the public safety.

Laws punishing gambling are examples of laws passed to protect the public morals.

There are a great many other laws of each of these classes, but these instances are enough for

illustration of what we mean by laws of each class.

Relation of the Individual to Sovereignty and Government.

Generally.—It is clear from what has already been said that individuals have different rights and owe different duties under different forms of government. In a monarchy an individual would have rights and duties different from those of an individual living under a democratic form of government. It will therefore be necessary to treat these relations existing under different governments separately.

Subjects.—An individual living under a monarchical form of government is called a subject. The powers and duties of a subject vary according to the nature of the monarchy to which he owes allegiance. In an Absolute Monarchy the subject would have practically no political power and no legal rights. He would be absolutely under the control and subject to the will of the monarch. In a Constitutional Monarchy, such as England, the individual, while still called a subject, has many of the rights and duties, and exercises many of the political powers that pertain to citizens in democratic forms of government.

Citizens.—In democratic forms of govern-

ment the individual is called a citizen. He is entitled to the protection of the government both at home and abroad and has such other privileges and rights as the constitution and laws of his republic give him.

Allegiance.—Both subjects and citizens owe duties to the government under which they live. The sum of the duties that a person owes to his government are called allegiance.

Aliens.—An alien is one who is neither a citizen nor a subject of the government to which his relation is being considered. Every person is a citizen or a subject of some one government and an alien as to all other governments. For example, a citizen of the United States is an alien as to England, or France, or Germany, or any other government except the United States. An Englishman is a subject of England and an alien as to all other governments.

Inhabitant.—An inhabitant is one who lives within the territory of a government whether he is a citizen or a subject or an alien. An American citizen living in England is an inhabitant of England although he is an alien to the English government.

Residence and Domicile.—Residence and domicile are nearly the same, but there are some legal differences between them that should not be overlooked. A man's residence is where he

is actually living at the time, his domicile is where he has his permanent home. For example, most of the pupils in your school are living with their parents in their permanent homes so that their residences and domiciles are the same. If, however, there is any pupil whose home is in some other place and who is boarding here during the session, his residence is at his boarding house while his domicile is still at the home of his parents. The same thing is true of a man who is elected to congress. His residence is in Washington, but his domicile is at his home in his own state. These illustrations will show you the difference in the meaning of the two terms.

Duties of a Government to Its Citizens.—It is the duty of a government to protect all its subjects or citizens, as the case may be, in their just rights. This protection should be given both at home and abroad. The nature and extent of the protection and the way in which it is secured differs under these two conditions. While a citizen is at home he enjoys the full protection of the laws of the government to which he belongs. It protects him in his person, in his property and in all his other legal rights. If another invades these legal rights in any way he can go into the courts of the land and get relief. When a citizen is abroad these conditions are changed. So long as he

is in a foreign country he is, to a very great extent, subject to the laws of that country and must obey them. While there his rights are to be governed largely by the laws of that country instead of the laws of his own government. Notwithstanding this there are some fundamental principles or rights that are recognized by all civilized nations in dealing with one another. These principles are known as rules of International Law. If any injury is done to an individual while in a foreign land which is contrary to any of these rules it is the duty of his home government to take the matter up with the government in which the wrong occurred and have it adjusted. If the government where the wrong has been done will not make this adjustment in cases of serious abuse, the government whose citizen or subject has been injured will be justified in declaring war against the offending government, and thus force proper redress for the injury. To this extent and in this way it is the duty of the government to which the individual belongs to protect him from serious wrong, even when abroad.

Duties of the Citizen.—As just stated the government owes to the citizen the duty of protection. In turn the citizen owes to the government the duty of every patriotic service within his power. In time of war it is his duty, if he

be within the military age and capable of rendering military service, to fight the battles of his country. Whether he be able to render such service or not, it is his duty to cheerfully bear the additional expense and burden growing out of the war. He should also do all in his power to advance his country's interest and to bring about the success of his country's cause.

In time of peace the citizen's duties are numerous. He should at all times be mindful of the best interests of his community. He should not only refrain from doing those things which are hurtful to the general public, but should earnestly strive to bring about better conditions. He should keep himself posted on all public questions and exercise his best judgment with regard to them. He should do what he can toward correctly informing his fellow citizens concerning both men and measures in which the public is interested.

He should vote on all public questions in every election and should take the trouble to inform himself so as to vote intelligently and properly. He should render jury service whenever called upon and should use his best efforts to do justice and enforce the law. He should give information as to all serious violations of the law coming within his knowledge and aid

all legal officers to the extent of his ability in the enforcement of the law. He should render his property for taxation truthfully and pay his taxes cheerfully and without complaint. In short he should be intent upon the intelligent discharge of every public duty and should never shirk public responsibility or fail to avail himself of an opportunity to promote the public good.

These duties are due from all citizens. They are particularly due from those who receive their education from the state and are thus fitted at public expense for larger enjoyment and success in life. For such an one to fail to meet his obligations of citizenship would be to add ingratitude to selfish lack of patriotism.

QUESTIONS.

1. Why is it the duty of a government to protect itself?
2. Why must a government have money? What is the most usual way by which a government raises money? What do you mean by a tax? Why should taxation be equal and uniform? Why is it improper to tax one person for the benefit of another private person?
3. What is meant by impressing property? Under what conditions may this power be exercised?
4. Is, or is not borrowing money a real way of raising revenue? Why?
5. For what purpose is the power of eminent domain

used? Why is it just for a government to pay for the property it takes under this power?

6. What do you understand by the police power of a government? Give an example of a law passed to protect the health of the people. One to protect their safety. One to protect their morals.

7. Who is a subject? Who is a citizen? What is allegiance? Who is an alien? Who is an inhabitant? Give an illustration of the difference between residence and domicile.

8. What is meant by the statement that it is the duty of a government to protect its citizens? How is such protection given while the citizen is within the territory of his own government? How when he is abroad?

9. State generally the duties a citizen owes to his government. Why should one educated at the public expense be particularly patriotic?

CHAPTER V.

Political Parties.

Parties Necessary in a Republic.—A political party is a number of persons holding the same political beliefs, acting together to forward such beliefs and have the government conducted in accordance with them.

In a Republican or Democratic government political parties are essential. In such governments public opinion is the real power that forms the laws. It is the opinion of the ma-

majority of the voters that makes law, but before this opinion can become law it must be developed and put into legal form.

One of the principal reasons for having written constitutions is to protect the people against the evils of sudden and impulsive public opinion. This protection is usually spoken of as given to the minority of the people. This view is too narrow. While it is true that the minority needs such protection more than the majority does, it is also true that the majority, if unrestrained, might take rash and impulsive action that would be very harmful to it as well as to the minority. In other words the chief purpose of a written constitution in a republican government is to make the government one based not upon impulse, but upon the sober second thought of the people.

Origin of Political Parties.—In a republic no one man's opinion is law or can be made such unless it be accepted and adopted by the majority. Few men are qualified for leadership. Those who are thus qualified present their ideas and announce their political doctrines and strive to have these accepted by the majority of the people. In this way such ideas, after a while, become laws. In order to have ideas accepted and made into laws it is necessary for the people who agree in such political belief and doc-

trine to act together. When great questions are before the people some of the leaders are on one side and some on the other. The people will differ as to these questions. Each person will come out on the side whose views are most like his. All of those on each side of a question will act together in trying to make their views prevail. In order to do this they will try to elect officers who agree with them and who will help them in carrying out their ideas.

This taking of sides by the people on different question is the beginning of political parties. Many political questions cannot be settled by one submission of them to the people. For this reason the difference growing out of the questions continue for a long number of years. The people continue to divide on the same questions during all this time and this brings about the continuance of the political parties formed when the questions were first considered. This gives some idea of the manner in which political parties are developed.

Organization of Political Parties.—Political parties are very earnest in advocating their views and in having them adopted in making laws and electing officers. In order to do this it is necessary for each party to organize, that is, to form some plan for acting together, in urging the adoption of its views. To be really

worth anything, such plan must take in the whole country. So we find that in the United States party organizations begin with the smallest political subdivisions known as voting precincts and go to the boundaries of the nation. They embrace precinct chairman and committees, county chairman and committees, district chairman and committees, state chairman and committees and national chairman and committees. Such organizations are extremely powerful and have very great influence in determining the result of elections and the policies of the government.

How Such Organization is Effected.—As just stated, these organizations begin with the voting precinct. All the voters belonging to a certain political party who live in the same neighborhood, called a precinct, and vote at the same place, meet at a time and place fixed by the party to which they belong, and elect a chairman to act for them for the next two years. These different precinct chairmen make up the county executive committee, the head of which is a county chairman, who is either elected by the voters themselves or by the different precinct chairmen of the county. In a district composed of several counties, the county chairmen of all these counties constitute the execu-

tive committee of such district and they select one of their number to act as chairman.

The State Executive Committee is formed in this way. Every election year on the same day that people of each precinct meet to elect their precinct chairman, they also elect a number of voters to represent them in a county convention. All these representatives from the precincts meet in a county convention and select representatives to attend a general state convention of the party. At the time and place of meeting of the state convention all the delegates from each senatorial district meet together and elect some man from that district as a member of the state executive committee. This selection is subject to the approval of the state convention. If the convention chooses it can displace these senatorial committeemen and elect others in their stead. The state convention itself elects the chairman of the state executive committee, and he and those men chosen as the representatives from the senatorial districts constitute the state executive committee.

Party Platforms.—Each party convention has the right to adopt a platform, that is, to prepare and publish a short statement of the political doctrines which the party believes in and stands for. Platforms adopted by precinct, county or district conventions are formed by

so few people that they are of but little consequence. The platforms announced by state or national conventions are public documents of great importance as showing the opinion of the members of the parties on political questions. Each convention is supposed to put in the platform of the party the real beliefs of the party on all important political questions. Sometimes, however, the platforms are written more with the view of pleasing a large number of voters than of expressing the real convictions of the party.

Nomination of Candidates.—A candidate is a person who is seeking an office. It is clear that if any political party wishes to carry out its political beliefs and have them made into law and enforced as such, that it must elect officers who favor its views. In almost every community there is more than one political party. Frequently more than one member of the same party wishes to run for the same office at the same election. This would divide the vote of that party. If the other party put forth only one candidate for this office he would receive the entire vote of his party. This would probably elect him, although his were the weaker party. There must, therefore, be some way found to choose between the numerous candidates offering to run for the same office in the

same party, and to name one of them as the representative of the party. Such selection is called nominating, and the person selected a nominee.

There are two ways used by political parties to do this. That is, two ways by which political parties nominate candidates to represent them in races before the people for election to the various offices. One method is known as the convention plan, the other as the primary election plan.

Convention Plan.—Party Conventions are bodies composed of representatives of the same party who meet together for the purpose either of preparing party platforms or for nominating party candidates or both. Such conventions are formed in this way. All the voters belonging to a party who live in each voting precinct are notified to be at a given place at a named time to select delegates to a county convention. Later the delegates selected from all these voting precincts meet together and constitute the county convention.

In almost every such convention some precincts send more delegates than others. It would not be just to permit the precinct sending this larger number of men to have, for that reason, more than its just share of votes in the convention. To avoid this each precinct is given

a certain number of votes in proportion to the number of voters in the particular party living in that precinct. By this means each voting precinct is given its proper strength in the county convention without reference to the number of delegates that may attend. This county convention votes for and nominates candidates for county offices who will represent the party to which they belong in the next election. This convention also selects delegates from it to every district convention to be held by that party in any district which includes that county, and also to the state convention.

District conventions are held in each electoral district, that is, in each district from which any district officer is to be elected. These are composed of the delegates from the various county conventions constituting the district. Each county has a vote in proportion to the strength of the party in it. Such conventions nominate the party candidates for each of the offices to be filled in the district represented by the convention.

State conventions are held for the purpose of nominating state officers, adopting state platforms and electing a chairman of the State Executive Committee. Such conventions are composed of delegates sent from each county in the state, selected by the county conventions in

each county. In these conventions the delegates from each county have votes proportioned to the strength of the particular party in the county voting.

Primary Elections.—The convention system, that has just been described, is objected to because it gives too great opportunity to political wire workers and bosses to adopt platforms and nominate candidates which do not represent the real choice of the members of the party. To prevent this the people of some of the states have passed laws doing away with party conventions for the purpose of nominating officers and requiring all candidates of organized parties to be nominated by primary election.

Under this method of selecting candidates the persons desiring to be nominated by any party announce this fact to the voters in such party. On a day fixed by law the voters in each voting precinct in the state who belong to the party making the nomination, meet in their voting precinct and vote by ballot for candidates for the respective offices. These elections are held by regularly sworn officers and in the same way as regular elections. A record is kept of the votes cast and the officers holding the election in each precinct make a written report to the chairman of the county executive committee

of their county. In this they state how many votes each candidate received.

At some time fixed by law, not long after the primary election, the county executive committees in each county meet at the county seat of their respective counties and count the votes cast for the different candidates, as sent into them by the several precinct election officers. The candidate who receives the highest vote in the primary election for each county or precinct office is declared the nominee of his party for that office.

Where a district candidate is to be nominated the different county executive committees in the district count the votes cast in their respective counties for the different candidates for that office. Each of such committees then makes out a certificate stating the number of votes received by each such candidate for each district office and sends this certificate to the chairman of the district executive committee of the party in that district. This chairman keeps all these certificates until the district convention of the party is held. He brings these certificates or returns before the district executive committee. This committee from these returns counts the votes for all the candidates and reports the result to the district convention. This convention then declares the candidate for each office

having the highest number of votes to be the nominee of the party for that office.

The same process is gone through in connection with making nominations for state officers, except that the county executive committees certify the returns in the state races to the state executive committee and the count is made by that committee and the result reported to the state convention and the nominations are declared by it.

While the primary election is an improvement, perhaps, over the convention plan of nominating, it is by no means perfect. Under it there are many opportunities for trickery and fraud by the different party committees and election officers, for which neither the party nor the candidates have any remedy.

QUESTIONS.

1. What do you mean by public opinion? What relation does public opinion have to law in a democratic government? How do written constitutions curb the rash exercise of public opinion? Who is protected by this?

2. What is a political party? Why must there be political parties in democratic governments?

3. What is meant by organizing? Name the officers who make up the organization of a political party in the United States. How and by whom is each of these chosen?

4. What is a political platform? Why is a national platform of more importance than a county platform?

5. What is a candidate? Why is it necessary for each political party to name one man to represent it in the race for each office? What is this selection called? Name the two ways in which this is done.

6. Describe very briefly the convention plan, beginning with the precinct convention and going up to the state convention.

7. Describe the primary election plan.

8. Which do you think the better plan? Why?

PART TWO

Early Government in America

CHAPTER VI.

Government in the Colonies and Under the Confederation.

Early Settlements.—Each of the thirteen original states which first formed the Confederation and later the present United States, had its origin in a colony; that is, in a number of people coming out together from England for the purpose of making a settlement in that portion of the United States known as the Atlantic seaboard. These people were to a large extent of the same blood and the same religion, and had the same traditions and ideas of government. When we speak of these settlers as

being the same in the respects just mentioned, we are speaking very generally for they differed in many important ways in each of these particulars. To illustrate: While both the Pilgrim Fathers of New England and the Cavaliers of Virginia believed in the christian religion, the one was a Puritan of the strictest type, while the other was a High Churchman. They worshipped the same God, but had materially different notions as to His character and the kind of service which was pleasing to Him. The Puritan punished a man for kissing his wife on Sunday, while the Cavalier said it is lawful to do good on the Sabbath Day. Still they had many things in common.

These settlements were far apart, and the means of communication were difficult, slow, and dangerous. The Colonists met many obstacles and encountered many hardships, but in the end each of the thirteen settlements proved a success. The Colonists were necessarily sturdy and vigorous. Life in the New World was not attractive to weaklings or cowards and those who came as colonists and their descendants were men of power, capable of self-protection and full of resources.

Charters.—The Charters under which these several Colonies were settled were of three general types, known as the Colonial, the Propri-

etary and the Provincial. In the Colonial Charters considerable political power was given to the colonists. In the Proprietary the power was more concentrated in one man or in a few leaders who were put in charge of the colony. In the Provincial, but little power was conferred upon the colonists or any one accompanying them; the principal authority being retained in the king of England and in the Parliament. These differences in the charters made considerable difference in the colonies at the beginning of their life, but the sturdy character of the people and the life they lived in the New World had a strong tendency to remove these differences as time went on. When the Revolutionary War came the same spirit of independence and earnest purpose to have and to exercise political power was shown by the inhabitants of all the settlements. While the details of their experiences varied, the general results were the same and each of the colonies by virtue of the War of Independence became a separate and independent state.

Convention of 1765.—No one of these states or colonies, for they were called by either name, was sufficiently strong unaided to resist the English government or even the attacks made upon them by the Indians. Under the pressure of this common danger the political authorities

in the several colonies began to discuss among themselves and with the people of their own colonies and the representatives of other colonies, the need of acting together in resisting the tyranny of England and the ravages of the Indians. In 1765 "a convention of the English Colonies" was held in New York. Representatives from nine colonies were present. At this convention on the 19th of October a resolution known as "The First Declaration of Rights" was adopted. This paper does not show any intention or even desire on the part of the colonists to separate from Great Britain.

Continental Congresses.—Early in 1774 the British Parliament passed the Boston Port Bill. This induced the authorities of Massachusetts to take up with the other colonies the question of suspending trade relations with Great Britain. They also suggested co-operation among the colonies in resisting the English power if this should become necessary.

A short time after the passage of the "Port Bill" British soldiers took possession of the city of Boston. The Legislature of the Colony of Virginia was then in session. This Legislature was known as the House of Burgesses. On the 24th of May this Assembly set aside June 1st as a day of "fasting, humiliation and prayer," on account of the conditions then existing

in the Colony of Massachusetts. The Governor of Virginia was a loyal follower of the King of England. He became offended at the House of Burgesses on account of their sympathy with the people of Massachusetts, and on the 26th of May dissolved the House and forbade their acting any longer in a legislative or public capacity. Under the laws of Virginia, as they then were, the burgesses were compelled to submit to the power of the governor in dissolving them as a legislative body. On the 27th of May, however, the members of the House acting, not as officers, but as private citizens, met in a tavern and recommended to all the colonies that they should create a Congress to meet annually "to deliberate on those measures which the mutual interests of America may from time to time require." The annual assemblies thus suggested became the famous Continental Congresses. These so-called congresses were not such in fact. A congress is a body of representatives of the people in different sections of the same government come together for the purpose of passing laws, binding on all the people in the government. This was not the nature of these bodies, on the contrary they were assemblages of ambassadors from separate and independent states, meeting together for the purpose of counsel and common assistance. They could do nothing but

discuss measures and give advice concerning them.

The First Continental Congress.—The first of these congresses met in Philadelphia on September 5th, 1774. Its most important acts were:

First. To vote down, on September 28th, 1774, a suggested “plan for a proposed union between Great Britain and the Colonies.”

Second. The passage of a “Declaration of Rights and Union.”

Third. The passing of a measure providing for an association among the colonies for the purpose of suspending trade with Great Britain.

This proposed association was in a short while approved by the legislatures of eleven of the colonies.

Second Continental Congress.—The Second Continental Congress met in Philadelphia on May 10th, 1775. It had no greater authority than the first had, but the conditions of the colonies had changed greatly since the meeting of the First Congress in 1774. War with Great Britain was being carried on in a desultory way. Under the pressure of these circumstances the Second Continental Congress passed the following important acts:

First. On June 14th, 1775, it voted to raise an army and on the next day selected General George Washington of Virginia as commander-

in-chief. This action was in effect a recognition by the American Colonies that war was being waged between them and Great Britain and that all the Colonies must co-operate in their common defense.

Second. It drafted and adopted the "Declaration of Independence" and drew up a plan for the organization of the Confederation. The committees to draft these two instruments were appointed on the same day.

Condition of the Colonies When Independence Was Declared.—In May, 1776, while the Revolutionary War was in progress certain of the colonies changed their colonial charters to state constitutions. The Second Continental Congress advised the assemblies of all the colonies, which had not previously done so, to make such changes in their charters and forms of government as they thought would lead "to the happiness and safety of their constituents in particular and of America in general." This was a clear recognition on the part of the colonies and of Congress that the several Colonies were independent of each other and that there then existed no agreement among them that in any way interfered with their separate and independent political action. This advice on the part of Congress preceded the "Declaration of Independence" by nearly two months. Before July 4th,

1776, all but three of the Colonies had acted upon this suggestion and had made such changes as they thought necessary in their forms of government.

Declaration of Independence.—While the political status of the several colonies was such as has just been described their representatives in the Continental Congress on July 4th, 1776, adopted the great state paper known as the “Declaration of Independence.” In this instrument the political organizations taking part therein were spoken of sometimes as states and sometimes as colonies. The most important declaration contained in this most important document are in these words:

“We, therefore, the representatives, of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions do, in the name and by the authority of the good people of the colonies solemnly publish and declare that the United Colonies are and of Right ought to be Free and Independent States; that they are absolved from all allegiance to the British Crown and that all political connections between them and the state of Great Britain is and ought to be dissolved; and that as free and independent states they have full power to levy War, conclude Peace, contract

Alliances, establish Commerce, and do all other Acts and Things which Independent states may of right do.”

This concluding clause asserts absolutely and without room for misunderstanding that these colonies as free and independent states had all the powers and rights of sovereignty.

The Confederation.—The committee appointed to draft the Articles of Confederation did not act so promptly as the one which drafted the Declaration of Independence, but made its report somewhat later. This report was not adopted by Congress until November 15th, 1776. Before the plan provided for in it should go into effect these Articles of Confederation had to be adopted by all of the states. The last state did not make this adoption until 1781, nearly five years after the suggestion of the instrument by the Continental Congress. The Confederation thus created was called “The United States of America.”

The second and third paragraphs of the Articles of Confederation are:

“Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not in this Confederation expressly delegated to the United States, in Congress assembled.”

“The said States hereby severally enter into

a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.”

These two paragraphs give a good idea as to the nature of the Confederation. It was a friendly league between independent states; these states intrusted to a Congress in which each had an equal voice, such powers as seemed to them necessary to secure to them defense against common enemies. A careful study of the whole instrument confirms this impression drawn from the sections quoted.

Nature of the Confederation.—In this Confederation there was no executive department and no regular judiciary. The Legislative Department was very limited. Congress was to settle disputes between states by a method set forth in the Articles, but there was no way to enforce the decisions rendered. It could also create courts with some admiralty jurisdiction. The only private rights that could be dealt with at all were disputes over land claimed under grants from the different states, and these were not to be submitted to regular courts, but to a

special tribunal organized by Congress in a manner prescribed.

It was a confederation pure and simple as we have defined that term, formed by a covenant between the independent colonies obligating them to aid and assist each other in maintaining their independence and in protecting one another from their common foes. In order to carry out this agreement they organized a legislative body known as Congress. Its powers were very limited, so limited that it was not sufficient to enable the Confederacy to maintain itself as a government.

So long as the Revolutionary War continued this common peril held the states together in this weak form of confederacy. But the war was scarcely over when the different states began to disregard the acts of Congress and to look after their own special interests at the expense of the welfare of the Confederation as a whole. The so-called government was too weak to prevent this and it seemed for a time that these conflicting interests would be strong enough to destroy the Confederacy. It was under these conditions that the plan of creating a stronger government, with larger powers and greater efficiency came to be considered. It was clear that the several states must either become more closely united or all attempt at general co-operation among

them would cease. Seeing this Congress recommended the calling of a convention to which all the states were requested to send delegates to meet in Philadelphia on May 14th, 1787, for the purpose of revising the Articles of Confederation. The amendments to these Articles were to become effective when agreed to by Congress and by the Legislatures of the several states.

Convention Forming the Present Constitution.—This convention met in Philadelphia. It did not organize until May 25th, 1787. Every state was represented except Rhode Island. The convention sat behind closed doors and its discussions were not given to the public for years afterwards. It completed its work and adjourned September 17th, 1787.

The Convention departed from the congressional plan in two most important respects. First, it formed an entirely new constitution. Second, it submitted this constitution directly to the different states without requiring any concurrence by Congress before it should become operative. The Constitution itself declares “the ratification of the Conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.”

The question naturally arises what would have been the result if only nine of the states had

ratified the Constitution. Such action by them would clearly have destroyed the old Confederation. The same states could not at the same time be members of the Confederation and of the government formed under the new Constitution. The nine states would have been bound together in the new government. The four states not ratifying could not have held one another to the original Articles of Confederation for nine of its members having already withdrawn from it the four remaining states would have been unable to carry on the purposes for which the old Confederation was formed.

Organization of Government Under the Constitution.—Nine of the states ratified the Constitution during the years 1787 and 1788, and on the 13th day of September, 1788, Congress passed an Act providing for the organization of the new government. The first Wednesday in March, 1789, was set as the time “for commencing the proceedings under the Constitution.” This first Wednesday in March, 1789, was the fourth day of that month and the Constitution went into effect on that day. The President, however, was not inaugurated until the 30th of the next April.

QUESTIONS.

1. What is a colony? In what part of the United States did the thirteen colonies settle? What did the people in

these various settlements have in common? Why were the colonists and their immediate descendants sturdy and self-reliant?

2. Name the three kinds of charters under which these colonies were governed? Give briefly the nature of each kind. What was the effect on each of the colonies of the result of the Revolutionary War?

3. Why were these colonies compelled to act together? What was the purpose of the convention of 1765? Did the colonies then desire separation from England?

4. When was the Boston Port Bill passed? What action did Massachusetts Colony take with reference to this bill? What action was taken by the Virginia legislature regarding the matter and how did the governor of Virginia act? Who called on the different colonies to create the first "Continental Congress?"

5. What was the real nature of these so-called congresses? How did they differ from real congresses?

6. When and where did the First Continental Congress meet? Name the three most important things done by this congress.

7. When and where did the Second Continental Congress meet? Did it in fact have any greater authority than the First? What facts induced it to exercise greater authority?

8. What did this congress do regarding an army to resist Great Britain? What as to the assertion of American Independence? and what as to bringing about a closer co-operation among the colonies?

9. When did the colonies begin to change their charters into state constitutions? What advice did the Second Continental Congress give the colonies on the subject? Why did not this congress make these changes itself? Was this advice by congress given before or after the Declaration of

Independence? At this time were the colonies separate or were they parts of one common government?

10. When was the Declaration of Independence made? What does it declare concerning the colonies?

11. At what time did the committee appointed to draft Articles of Confederation between the colonies report to congress? How long was this after the Declaration of Independence? What number of the states were to adopt the Articles of Confederation before they should go into effect? When were the Articles of Confederation adopted by the last state? What name was given the Confederation?

12. Give the substance of the second and third paragraphs of the Articles of Confederation. Was this United States created by these articles, a unitary state, a confederacy or a Federal state? Why do you say this?

13. What causes led up to the abandonment of this confederation and the creation of a new government among the states? By whom was the convention called which prepared the present Constitution of the United States? What was the purpose of this convention as expressed in the call? What was contemplated as being necessary to the acceptance of the work of the convention?

14. When and where did it meet? Which states were represented in it? When did the convention adjourn?

15. In what two important respects did the convention depart from the plan set out in the call from Congress under which it came together?

16. When was the Constitution prepared by this convention to go into effect, and upon whom was it to be binding?

17. How many states ratified the Constitution during the years 1787 and 1788? On what date was the government of the United States organized under the present Constitution?

PART THREE

The United States of America

General Nature of the United States Government and Its Relation to the States Composing it.

Introduction.—We have traced very briefly the causes leading up to and resulting in the formation of the government of the United States and the manner in which that government was created. We have seen that it was preceded by the thirteen original states, existing first as colonies of Great Britain and later as independent states and that these independent states by a compact among themselves entered into a Confederation for their mutual protection and advantage. Through this Confederation they successfully waged the War of the Revolution and compelled England and the world to acknowledge their independence. We have further seen that this Confederation was too weak to hold together after the pressure of war was withdrawn and that the several states either had to form a stronger union or to lose all advan-

tages of co-operation. They chose the former and the present United States of America was the result.

The United States and Its Constitution.—The United States government was created by the states by means of a written constitution in which its plan and purposes are set forth and which all were expected to understand and accept with a common meaning. Notwithstanding this there has never been a time since the Constitution was written when people have not honestly disagreed as to its meaning. Those who believe in a strong centralized government can find arguments for their views in some portions of the instrument. While others equally honest and patriotic who believe in the sovereignty of the states and in strict limitation of the powers of the general government can also find argument in support of their views in the same document. The principal question concerning the Constitution on which men differed, may be briefly stated thus: Is the United States a confederation from which any of the states can withdraw for just cause, or is it a federal state from which no state can secede for any cause whatever. This question was not settled until the close of the Civil War.

Result of the War on Construction of the Constitution.—In 1861 differences arose between

the Northern and Southern states of the Union concerning the rights of the states in the Union. These differences were so difficult to settle that the Southern states attempted to withdraw from the Union and establish a government of their own. The Southern states held that the United States formed a confederation from which they had the right to withdraw. The Northern states held that the United States was a Federal state and that the Southern states did not have the right to withdraw. These differences were so great that the Southern states attempted to secede from it. The Civil War was the result. The North was successful, thus settling by war the much disputed question. All alike agree that since the surrender of General Lee and the Southern army no state has the right to secede from the Union. So whatever may have been the nature of the government at its beginning it is now Federal and no state can take back from it any portion of the sovereignty once given over to it.

Sovereignty Divided Between the People of the States and of the United States.—This does not mean that in creating the Federal government the states gave up all their sovereignty. It is only an example of the division of subject matter and powers between two sovereigns. Before the adoption of the Constitution each of the

separate thirteen states was a Unitary state and had jurisdiction over all political matters. Some of these powers had by agreement been delegated to the Confederation to be exercised by it as the common agent of all the colonies, but the powers still belonged to the colonies. The political power thus delegated by each state was subject to be recalled at any time. By the Constitution of the United States as it has finally been construed, this right to recall this delegated power is denied. It is now held that in creating the United States of America under this Constitution the several states and their people did not simply give over temporarily, the powers delegated to that government, but actually separated these powers from those kept by the state and gave them over to Federal government in such a manner that they passed forever from the states to that government. Each state reserved to itself all powers not given over by it to the United States in the Federal Constitution. This is a division of sovereign power. As to those matters given to the Federal government the people of the whole Union became sovereign. As to the matters not so given over the people of each of the several states remained sovereign.

The Constitution the Basis of Separation.—The line of separation between the powers of

these two sovereigns is found in the Constitution of the United States. In the main it is not difficult to trace, so that as to most of the matters within the jurisdiction of each government there is no controversy. In some instances, however, it is difficult to determine which government has control over a given matter. For example, these difficulties come up as to some matters connected with commerce. It is often difficult to distinguish between the domestic and interstate commerce and so to decide which government has the right of control.

Constitution Construed by the Supreme Court.

—The meaning of the Constitution is settled by the Supreme Court of the United States. When that court has passed upon the meaning of any part of the Constitution all officers of the United States and of the several states and the people of each are bound to obey its decision. If there is to be a Constitutional Union at all some officer or officers must have the final right to construe and apply the Constitution. Unless this power be given to one tribunal there could be no uniformity of construction and therefore no uniformity of rule under the Constitution. The only tribunal to which such power could be intrusted is the Supreme Court of the United States, whose decisions are binding throughout the whole Union.

Relations Between the State and Federal Government.—We may summarize the relations between the two governments thus: The thirteen original states preceded the creation of the United States. At that time they had ceased to be colonies dependent upon England and were complete Unitary states. The United States was formed by the ratification of the Constitution by each of these several states. What part of the sovereignty of the states is surrendered and what part is retained can only be determined by construing the Constitution of the United States. The Supreme Court of the United States has the authority to construe that instrument and to bind all persons by such decisions. These general doctrines must be kept in mind in our study of our American institutions or we cannot properly understand them.

Amendments to the Constitution.—Written constitutions are intended to be lasting or, as we say, permanent. Therefore the framers of the Constitution had either to provide by peaceful methods for changes in the Constitution to meet the changes in political conditions which time and development necessarily make or else invite revolution.

On this account Article V was put in our Constitution. This article provides two methods of amendment, one in which Congress takes the

first action and one in which the first action is taken by the states.

Congress upon a vote of two-thirds of both Houses can propose to the states such amendments as it thinks best. Or if the Legislatures of two-thirds of the states shall join in a call for a convention to propose amendments, it is the duty of Congress to make the call. Amendments proposed in either of these ways must be ratified by three-fourths of the states. This ratification by any state can be either by the State Legislature or by a convention called for that purpose.

Since the organization of the government, fifteen amendments, proposed by Congress, have been ratified, and have thus become parts of the Constitution. Ten of these were made almost immediately after the adoption of the original Constitution, and two others within a short while. The remaining three came as reconstruction measures after the Civil War, and reflect a different public sentiment from that which prevailed when the Constitution was adopted.

QUESTIONS.

1. State briefly the political growth in America which led up to the formation of the present "United States of America."

2. How was the United States created? What was the contention of the South as to the nature of this government? What did the North contend? To what did this controversy lead? What was the effect of the war on this controversy? Can the states of the Union secede from it?

3. What is sovereignty? What do we mean by each of the original states being a Unitary State before it went into the Union? When each of these Unitary States went into the Union, what effect did such action have on the sovereign powers theretofore held by it which were conferred upon the United States. What effect did such action have on the sovereign powers of the states not given over to the United States?

4. What instrument draws the line between the powers given over to the United States and those reserved by the states? What tribunal construes the Constitution of the United States and determines the respective powers of the states and Federal Government?

5. Give a brief summary of the relations between the United States and the several states composing it.

6. What is an amendment to a Constitution? In what ways may the Constitution of the United States be amended? How many amendments have been made to the Constitution of the United States?

CHAPTER VIII.

Territorial Possessions and New States.

Territorial Possessions.—Article IV, Section III, Clause 2, of the Federal Constitution provides: “The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

A number of colonies had received grants from the English government of vast areas of land which stretched far inland from the Atlantic coast. No state had strength within itself to maintain its title to these grants against the hostility of the Indians or the claims of European nations. The result was that after a time, by mutual agreement between the United States and the different states interested in these lands, this vast area came into the possession of the United States. In addition to the lands thus gotten, in course of time the United States gained larger territory from France, Spain and Mexico. Thus this government came into possession of a vast amount of public land which was not divided into states. This territory rapidly filled with settlers from the older states. The general policy adopted by the general gov-

ernment toward all such territory and its inhabitants is substantially the same.

Territorial Governments.—The general policy with regard to these public lands and the people living on them is to organize temporary governments within certain boundaries or territories. This is done in the following way: Congress by statute fixes the boundaries of the proposed territory, gives it a name and provides for the people within it to organize a government in accordance with the Act of Congress. This Act is called an Organic Act and the government created under it has only such powers as this Act confers. The usual plan is to provide for the three departments of government, consisting of a Legislature chosen by the people of the Territory; of a Governor and other executive officers, the higher of whom are appointed by the President of the United States or by the Governor, and the lower selected by the people; and of Judicial Department, the higher judges being appointed by the President and the lower being elected by the people.

Territorial Organic Acts and State Constitutions.—In general it may be said that an Organic Act of Congress providing for a Territory is a substitute for a Territorial Constitution. It is the basis on which the Territorial govern-

ments are founded and the source of and limitation upon all official authority within them. In other respects these enabling or organic acts differ widely from state Constitutions. They are not permanent and are not adopted by the people, but come from Congress.

A Territory has no Senators in the United States Congress. It has one Representative elected by the people of the Territory, who is entitled to sit in the House of Representatives at Washington and to take part in the discussion of matters affecting the Territory, but who has no vote.

Territorial governments established in this way exist until Congress sees fit to withdraw such authority from them or until State governments are formed within their boundaries.

New States.—Article IV, Section III, paragraph 1, Constitution of the United States provides: “New States may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor shall any state be formed by the junction of two or more states or parts of states without the consent of the legislatures of the states concerned as well as of the Congress.”

All of the territory which came into the possession of the United States was settled mainly

by people from the older states who were citizens of the United States and who wanted to have the full measure of political power that they had enjoyed in the several states from which they had come. Therefore the question of the organization of new states in this territory soon arose. The demand for state government was a demand for the same political powers, rights and duties which were enjoyed by the older states. It was to this that the Southern and Western pioneers had been accustomed and they would be content with nothing less.

Creation of New States.—The American idea of state government carries with it a written Constitution formed and adopted by the people to be governed under it. No territory could be changed into a state without such a Constitution. This fact has been acted upon in every early change of this kind. A closely connected question, however, arose. Could the people of a Territory form and adopt a Constitution before Congress had passed an Act authorizing them to do so? It was determined that such action may be taken, though it is not customary.

Usually Congress expresses its willingness for the Territory to be changed into a state before the change is made. The Constitution is prepared and voted on and adopted by the people of the Territory. This constitution must then

be submitted to the proper Federal officers for approval before the state is created and admitted into the Union. The Constitution adopted by the people must provide for a republican form of government and agree in all other matters with the Constitution of the United States.

When the state constitution has been formed without Congressional authority it must be approved by Congress and also by the President before the new state can come into the Union. When Congress has given its consent to the formation of the state before a constitution has been adopted it still rests with the President to approve or reject the particular constitution which may be proposed by the people of the Territory.

Either the method of forming the constitution and then getting Congressional approval or that of getting Congressional approval and then adopting a constitution is legal. Still all states which have been organized within recent years have first obtained Congressional consent. It may be doubted whether Congress and the President would now concur in the other method.

Annexation of Texas.—Texas came into the Union by an entirely different method. It had never been within the territory or jurisdiction of the United States. It had originally belonged to Spain and after the Mexican Revolution be-

came a part of the Republic of Mexico. It remained a part of that government until March 2nd, 1836, when it became a separate nation, adopting the name "Republic of Texas." It remained an independent nation until by a treaty between it and the United States it was annexed and became a part of that government. As a part of this plan of annexation the people of Texas in 1845 adopted a Constitution suited to its changed condition as a state and in the spring of 1846 its first state government was organized and Texas took its place as one of the states in the Republic of the United States of America. The Supreme Court of the United States has decided that the jurisdiction of the Federal government over the people of Texas for revenue purposes began in December, 1845, but the state government was not organized until 1846.

Status of New States.—When a new state is received into the Union whether by the organization of a state within territory already subject to the jurisdiction of the United States or by treaty of annexation, as in the case of Texas, the new state takes the same position in the United States as that of the original states. It has the same rights and powers and is subject to the same duties and limitations as every other state in the Union.

United States Dependencies.—In addition to the extension of its territory in North America the United States has within recent years acquired large Insular possessions. The conditions in most, if not in all, of these are very different from conditions in the United States proper. The people inhabiting these island possessions are of a different race with little political development, different traditions, and institutions almost the opposite of ours. Many of them are said to be incapable of helpful self-government.

There are numerous theories as to the proper policy to be followed in dealing with these people. The theory adopted by Congress and the President may be summed up in the expression that it is better for the inhabitants of these islands to have a good government for the people than a bad government by the people. These people are subjected therefor to a strong centralized government which receives its powers from the United States, instead of being allowed the privilege of establishing their own institutions and of taking political charge of themselves, and are being governed and educated in politics by methods which are acceptable to the Federal government and which the Islanders are powerless to resist.

QUESTIONS.

1. Give the substance of the provision in the Federal Constitution regarding the territory of the United States. State very briefly the ways in which the United States became possessed of the territory now within her borders in which no state governments then existed.

2. What is a Territorial Government? By whom are they organized? Give a brief outline of the process. Give the points of correspondence and the points of difference between a State Constitution and a Territorial Organic Act. What representation does a territory have in Congress?

3. Give the provisions in the Federal Constitution as to admitting new states. May new states be formed under the authority of this provision? Is it necessary for a new state to have a written constitution? Why? By whom must such a constitution be adopted? Is it essential that Congress should first have given its consent to the formation of the state? Is it customary for it to do so? Can the territory become a state without the approval of its Constitution by the proper Federal officers? What Federal officers exercise this power of approval?

4. Describe briefly the annexation of Texas to the United States.

5. When a new state is admitted into the Union how do its powers and its relations to the Union and to the other states compare with those of each of the original states? Why is this?

CHAPTER IX.

Legislative Department of the United States Government.

Introduction.—We have found early in our study of civil government that political power is of three kinds, Legislative, Judicial and Executive, and that no government can be successful without all three. Hence in the organization of the Federal Government three departments corresponding to these powers were provided in the Constitution. Neither the Judicial nor the Executive departments could exercise their powers unless the Legislative department made laws for them to apply and enforce. Hence the Legislative department naturally comes first in our treatment.

Law Making.—Law making is one of the highest powers and most important duties of sovereignty. As we have seen in the first chapter of this study, it is the first step in all control. Unless the will of the sovereign is formed into a rule and made known it is impossible for others to obey it.

The rules made by sovereignty for the control of those subject to it are laws. The Latin word

for law is *lex*. The plural is *leges*. From this word the making of laws is called legislation, the men who make laws, legislators, and the collective body of these men, a legislature. The legislature of the United States is called Congress.

In this chapter we will take up the formation of Congress, its division into two Houses, and the organization of each.

Formation of Congress.—The Constitution of the United States declares “all legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” The meaning of the first clause of this sentence will be explained under the powers of Congress. The second provides for the division of Congress into two Houses, the Senate and House of Representatives. This division does not give us two separate law making bodies, as neither can make a law by itself. Every law of the United States must be passed by both the Senate and House of Representatives. Thus each acts as a check upon the other. This was the purpose of dividing Congress into two bodies.

Senate.—The Senate is the smaller of these two Houses. It is made up of two members from each state called Senators. Each Senator has one vote on all matters coming before the Senate. This gives each State, whether large or

small, poor or wealthy, an equal voice with every other state.

Election of Senators.—Senators are elected for terms of six years, not by the vote of the people, but by the vote of the State Legislature. After the first election of Senators they were divided by lot into three classes, one of whom was to hold office for two years, one for four and one for six; but after this all new Senators were to serve for the regular term of six years. This was to prevent a complete change in the membership of the Senate at every election, and so make sure that at all times two-thirds of the members would be experienced law makers.

Before a person can be elected to the Senate he must be at least thirty years of age, must have been for nine years a citizen of the United States, and must, when elected, be an inhabitant of the state from which he is chosen.

Filling Vacancies.—When a vacancy occurs in the Senate it is filled by vote of the State Legislature, if that body is in session. If the legislature is not in session the Governor of the State appoints some one to fill the place until the legislature meets and elects a new Senator.

Organization of the Senate.—The Senate is presided over by the Vice President of the United States. The Vice President is not a member of the Senate and has no vote except in case of

a tie, when he casts the deciding vote. In the absence of the Vice President the Senate elects a President pro tem. from among its own members. The other officers of the Senate are a Secretary, a Postmaster and a Chaplain. These and the various committees are chosen by the Senate. The Senate passes on the election and qualification of its members, and makes its own rules regulating the way in which its business shall be carried on.

House of Representatives.—The House of Representatives, often referred to simply as the House, is the larger of the Houses of Congress. It is composed of representatives from all the states. Each state is entitled to at least one Representative, but the number of Representatives which each state has depends upon the number of people in the particular state. A Representative is allowed for every 212,407 of inhabitants. This number of persons entitling a state to a Representative is changed by Congress from time to time, as the population of the United States increases, to keep the House from becoming too large.

Election of Representatives. — Representatives in Congress are elected for a term of two years by direct vote, either of the voters of the whole state or of those of the District from which the Representative is chosen. When Con-

gress determines how many Representatives the state shall have it is the duty of the State Legislature to divide the state into as many Representative Districts as it should have Representatives. The qualified voters of each District should elect one Representative from that District, but this is not absolutely required. All the voters of the state might vote for all their Congressmen for that State. They can do this only when the state has not been divided into congressional districts. If the state is divided into congressional districts and Congress increases the number of Representatives for that state, then, if the State Legislature does not re-divide the state, Representatives are elected in each of the existing congressional districts by the people of that district, and the additional Representatives are elected by the people of the whole state. These additional Representatives are called Congressmen-at-Large. Under the Constitution the same persons who are entitled to vote for members of the legislature in any state may vote for the Congressmen in that state.

In order to be elected to the House of Representatives a person must be at least twenty-five years of age, must have been a citizen of the United States for seven years, and must be an inhabitant of the state from which he is chosen.

Filling Vacancies.—If a vacancy occurs in the House the Governor of the state orders an election for a new Representative in the district in which the vacancy occurs.

Organization of the House.—The House of Representatives chooses its own officers. Its presiding officer is known as the Speaker. As he is also a member of the House he has the right to vote on all questions before that body, and if he chooses he can take part in all discussions. Until very recently the Speaker of the House has had the right to appoint all House Committees. This gave him great power in influencing legislation. This has now been changed and the House itself appoints a committee to select all other committees. This is a very important change, as no bill can become a law until it has first been referred to a committee and reported back by it. It is, therefore, in the power of a committee to practically kill any bill which comes before it, for it is very difficult to get the House to act favorably on a measure on which a committee has reported adversely. The House, like the Senate, makes its own rules for carrying on its business.

Manner of Legislating.—The manner of legislating is very much the same in both Houses of Congress. A bill is a proposed law properly prepared and brought before either House for

the purpose of having it passed and made into law. Any member of either House may introduce any bill that he sees fit, except that all bills for raising revenue must originate, that is, be first introduced, in the House.

The following steps must be taken to change a bill into a law. A bill is introduced by a member calling the attention of the presiding officer and members of the House to the fact that he desires to introduce a bill on a certain subject, giving its title. The bill is then filed by the proper clerk and is said to be introduced. Next the bill is referred to the proper committee, which takes it, and in due time considers it. If a majority of the committee think the bill ought to become a law they report the bill back to the House with a recommendation that it pass. If there are any members of the committee who disagree with this suggestion they file a minority report opposing the bill. If the majority of the committee does not think that the bill ought to become a law they report it back recommending that it do not pass. If a minority thinks it is a good bill they can make a minority report recommending its passage. The bill must be read on three different days in the House in which it was introduced, and if it then passes by a majority vote it is sent over to the other House. There it is again referred to a com-

mittee and reported on, and must be read three times and passed by a majority vote. If it receives such vote without any amendment, the bill must then be signed by the presiding officer of each House and be sent to the President for his action. If the second House dealing with the bill does not pass it, this defeats the bill, for the concurrence of both Houses is necessary before a bill can become a law.

If the second House thinks well of the general purpose of the bill, but wishes to change it in any way, it may do this by adopting amendments to it. If it then passes the bill as amended, the amended bill must be sent back to the House in which it originated and be acted upon there. If that House agrees to the amendment it is then ready for the signatures of the presiding officers and the President. If this House does not agree to the bill as amended this will defeat the bill altogether unless the two Houses shall appoint a joint conference committee which will take up the bill and consider it. If they agree on the bill, or any changes in it, it has to be referred back to both Houses and passed by them. If this is not done the bill is lost.

The President's Connection With Legislation.

—The Constitution of the United States makes it the duty of the President, “from time to time, to give to the Congress information on the state

of the Union and recommend to their consideration such measures as he shall judge necessary and expedient." It also authorizes him to call both Houses of Congress together on extraordinary occasions.

Under these two powers the President may exercise great influence in suggesting and urging the passage of laws. If he thinks that a law on any subject ought to be enacted he can call the attention of both Houses of Congress to this fact and request them to pass such a law. This need not control Congress, but it would have great influence with the members, frequently being sufficient to secure the passage of the bill.

The President also has the right to veto any law passed by Congress. The word veto means, I forbid, and the vetoing of a law means that the President states to Congress that he is not willing for the Act which he vetoes to become a law. This action on his part will prevent the Act passed by Congress from becoming a law, unless both Houses of Congress shall again pass the bill by a two-thirds vote in each House. If they do pass it in this way it becomes a law notwithstanding the President's veto. When a bill is passed and sent to the President he has ten days, not counting Sundays, within which to consider it. If he does not act on it and send it with his veto back to the House in which the

bill originated within the ten days, the Act becomes a law without his approval.

QUESTIONS.

1. What is law making? Can there be successful government without this?
2. What is a law? What is the Latin word for law? What three English words relating to law making do we derive from this?
3. In what body is the law making power of the United States vested? What are its two houses, respectively, called?
4. Of whom is the Senate composed? How does this tend to give equal power and opportunity to each state?
5. How are United States Senators elected? For what length of time do they hold? Name the qualifications of a Senator? State briefly the organization of the Senate.
6. Of whom is the House of Representatives composed? Does each state have the same number of representatives? On what basis is the number of representatives determined? How are representatives elected? Give the qualifications of representatives.
7. Describe briefly the organization of the House. Why is the Speaker of the House permitted to vote on all questions before the House while the President of the Senate can only vote in case of a tie?
8. What is a bill? Who may introduce bills which do not provide for raising revenue? Who alone can introduce bills of the kind named? Trace briefly the course of a bill after its introduction until it becomes a law.
9. What powers and duties has the President of the

United States in securing the enactment of laws? What powers has he to prevent a bill from becoming a law? If a President has vetoed a bill what must be done before the bill can become a law?

CHAPTER X.

Powers of Congress.

United States Government One of Enumerated Powers.—We must never forget when we are studying about the Federal Government that all its powers are enumerated in the Constitution of the United States. We mean by this that the Federal Government has no political powers except such as are given it by the Constitution.

This is clearly shown as to the legislative department, by the first clause of the section of the Constitution regarding this department, which declares “all legislative power herein granted shall be vested in a Congress.” The powers spoken of are declared to be granted, and the powers thus granted are all the legislative powers belonging to the Federal Government.

Most of the powers granted it are expressly set out in the Constitution, but it is well settled that the government has also some implied

powers. Express powers are those which are granted in express words in the Constitution itself; implied powers are such powers as it is reasonable to believe the framers of the Constitution intended the government should have in order to enable it to properly exercise the powers and perform the duties expressly set out in the Constitution. We will discuss these express and implied powers separately.

Express Powers of Congress.—The Constitution expressly authorized by Congress:

To levy and collect taxes of different kinds, to pay the debts of the Government and to provide for the common defense and general welfare of the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, among the several states and with the Indian tribes.

To establish uniform rules of naturalization.

To pass uniform laws on the subject of bankruptcy.

To coin money.

To fix the standard of weights and measures.

To punish counterfeiting.

To establish postoffices and post roads.

To grant copyrights and patents.

To create courts inferior to the Supreme Court,

and to add to the jurisdiction of the Supreme Court.

To define and punish crimes committed on the high seas.

To define and punish offenses against the law of nations.

To declare war.

To raise, support and govern armies.

To provide, maintain and govern a navy.

To make laws concerning the militia.

To govern the District of Columbia and such other places in the several states as may be acquired by the Federal Government for maintaining forts, etc.

We will take up and explain the most important of these express powers.

Taxing Powers of the United States.

Direct Taxation.—The first paragraph of Article I, Section 8, of the Federal Constitution says “that Congress shall have power to lay and collect taxes, duties, imposts and excises.” If this were all that the Constitution said on this subject it would be a general grant of power to raise money by taxation in any way that the Government saw fit. But the effect of this is very much limited by clause 3, Section 2, Article I, which declares that “direct taxes shall be apportioned among the several states which may

be included in the Union according to their respective numbers.”

Direct taxes are taxes levied and collected in such way that the person paying the tax has no opportunity to make any one else pay the tax back to him.

An indirect tax is one levied and collected in such way that the one paying it has an opportunity to make some one else pay him back. For example, the United States levies a tax on all persons who sell tobacco. The tobacco merchant pays the tax to the government, and then raises the price of his tobacco and makes each of his customers pay him a little more for the tobacco he buys. In this way the merchant passes the tax on to the customers as a part of his business expense.

Coming back to the power of the United States to levy direct taxes, we find that one part of the Constitution gives the government this power. Another part of the Constitution puts very serious limitations on the manner in which the power may be exercised.

The most important direct taxes are taxes levied against owners of property which they are keeping for their own use, as lands, etc. To be just all such taxes should be based on the value of the property taxed. The framers of the Constitution lost sight of this, and in the limit-

ing clause on this subject require that all direct taxes shall be apportioned among the states, not in proportion to the value of the property within the several states subject to the tax, but according to the number of people living in each state. Under this direction Congress cannot divide such taxes justly among the different states and it has consequently ceased to exercise this power at all. It could resume it again if it saw fit, but it is not probable that it will do so.

Indirect Taxation.—The Federal Government derives its revenue principally from indirect taxation. The most important of these indirect taxes are tariff charges and excise charges. Tariff charges are money paid for the privilege of bringing foreign goods into the United States. Excise or license taxes are taxes paid by persons for the privilege of carrying on certain businesses, principally the manufacture or sale of intoxicating liquors, tobacco and similar articles. Upon the payment of this tax a person obtains a license permitting him to carry on the particular business for which the tax was paid. This is the reason they are frequently called license taxes.

Collection of Taxes.—People do not pay taxes voluntarily, so that the Government employs a large number of officers known as Collectors of

Customs and Internal Revenue Collectors to see that these taxes are paid.

Power to Establish Postoffices and Post Roads.—The people of the United States could not live as they now do without having ready means of sending information from one part of the country to another. Much of this communication is carried in the form of letters and printed matter, such as newspapers, magazines, etc. The Federal Government is given power to establish postoffices and post roads for the purpose of carrying and distributing such matter through the mails. To help pay the expense of our Postal System every one sending matter through the mails has to pay for the service rendered a small sum by the purchase of Postage Stamps from the Government. These matters are exclusively within the control of the Federal Government.

Coining Money.—People must have something with which to pay for things they buy and to pay their debts. Anything that is generally used for these purposes we get into the habit of calling money. This is not correct. Money is used for these purposes, but as we shall see after a little, other things may be so used without becoming money in an accurate or legal sense.

One of the principal uses of money is as a standard by which to measure the value of all

other things. If you go into a store and ask the price of anything, the answer you get will be some sum of money. Suppose you ask the price of one thing and are told that it is a dollar, you then ask the price of another thing and are told it is two dollars. In this way you would not only find that the value of each of these things was measured by money, but you would know that one of them was worth just twice as much as the other.

In this simple transaction the merchant has measured the value of two different articles by a standard called a dollar. He has found that one article is worth one dollar and the other is worth two dollars. As the dollar he used in measuring the value of each is the same, he has also found the relative value of the two things. One is just twice as valuable as the other.

Now, suppose when you ask the merchant the price of the first article he tells you it is worth a bushel of corn. And when you ask the price of the second article he tells you that it is worth fifty pounds of cotton. You would not really know what either is worth, nor which one is worth the more. There are two difficulties in this last supposition. First, the merchant does not measure either article by any fixed standard. Second, he does not use the same standard for measuring both articles. You really know very

little more about the matter after the merchant has answered you than you did when you asked him the question. It is true you could find out what a bushel of corn would sell for and in that way find out the price of the first article in money. You could also find out what cotton is worth, and by this means get the money value of the second article. As you would now have both articles valued in money you could compare the prices and find out which is the more valuable and how much more it is worth than the other. You now know what you wanted to find out. In order to do this, however, you were compelled to get the value of each article in the same fixed standard, money. It would take a great deal of time and trouble to go through this roundabout process in carrying on our everyday business. Besides, we found by our illustration that we could get no real idea about value until we came back to the money standard.

The confusion and uncertainty in your dealing with the merchant would be very much increased if instead of closing it out at once and paying the merchant the bushel of corn for the one article or the fifty pounds of cotton for the other you had bought them on a credit and promised to deliver the corn and the cotton six months afterward. In this case you would still have all the uncertainty you had before. In ad-

dition there would be uncertainty as to whether corn or cotton, or both of them, would be cheaper or higher at the end of the six months than they were when you made the promise to pay. So a fixed standard of value is even more important in transactions in which credit is given than it is when the payment is to be made right away. The world has never found any way to carry on the bulk of its business without using credit and taking promises to pay in the future.

We have gone into this long statement in order to show you the great need of having one fixed standard by which to measure the value of every thing that is bought and sold, and by which to make certain the meaning of all promises to pay at a future time, and the extent of the promisors liability thereunder.

It is so important to have this fixed standard and for it to be the same all over the country that in framing the Constitution of the United States this matter was given over to the Federal Government. The statement in the Constitution on this subject is very brief. It simply says that Congress has the power "to coin money." Brief as this statement is, it ought not to be difficult to understand.

Only metals can be coined, so that the word coin limits the power of Congress to the use of metals in making money. At the time the Con-

stitution was adopted only two metals were used for this purpose. These were gold and silver. So applying to these few words the ordinary rules of construction that govern in interpreting the Constitution, we find that Congress under them has the power to coin gold and silver into money; and cannot make money out of anything else. It is true we have other things besides gold and silver coins that are freely used as, and called, money. This is not strictly accurate as we shall show later on.

Coining money is done in this way. The proper officer of the government takes a quantity of gold or silver and tests it to find out whether or not it is pure. If it is not, he refines it until it is. Pure metal, either gold or silver, is too soft for use as money. So after the gold or silver has been freed from all dross the officer takes some harder metal and thoroughly mixes enough of this with the gold or silver to make it as hard as coins ought to be. This hard metal is called alloy. From this metal he then makes the individual coins by taking as much metal as is needed for each coin, casting it in a mold and pressing it in what is called a die. This die is harder than the metal pressed, and has in it certain letters and figures, depending on the kind of coin. The pressure forces the softer metal into these. When the coin comes out it has on it

the name of the Government, the name of the coin, the date it is made and the other impressions corresponding with the die in which it has been pressed. Every coin, therefore, shows what government made it, at what date it was made and its name or denomination. Its name carries with it its value. When the Government issues a coin it in effect guarantees to the business world that the facts stated on the coin are true, and everybody deals with the coin on that basis.

Coins issued in this way by the United States Government are strictly money. They form the standard of value by which the business world of the United States measures the price of every other article.

We said a while ago that there are other things besides gold and silver coins that are called money and used as such. The things so used and spoken of are of two kinds.

First. Small pieces of metal, neither gold or silver, usually either nickel or copper, which the Government has coined in very small sums to be used as change. These are the nickels and pennies that we find so convenient in daily life. They are not really money or even promises to pay money. Their use is based upon convenience and the fact that each coin represents so little that the chance of loss by it is too small to be considered.

Second. The other substitute, in common use as money, is promises to pay money. These are frequently more convenient to use than gold or silver coin, and if the person making the promise to pay is absolutely sure to do so, they are quite as safe. If the promise to pay is made by the Government or is practically guaranteed by it, then it is, humanly speaking, sure to be kept. It is promises to pay, made by the United States Government, or practically guaranteed by it, which we use so much as money, and that we have come to call money.

If you will examine any piece of paper money, as you are in the habit of calling it, you will find on it somewhere a promise by somebody to pay the bearer a certain amount of gold or silver coin, if the bearer will present the paper to the one making the promise, at a named place. As everybody believes that this promise will be kept, and as the paper is lighter and easier to handle than the amount of gold or silver which it calls for, people doing business would just as soon, if not rather, have the paper than the coin.

If the piece of paper you examine is a national treasury warrant the promise you find on it will be, that the United States Government will pay the bearer the amount of gold or silver stated, upon presentation at the United States Treasury in Washington. If the paper is a gold or silver

certificate it will state that the amount of gold or silver has been deposited with the proper officer of the United States Government and is now in its possession and will be paid to the bearer of the certificate upon presentation. These are called gold or silver certificates, as the case may be. If the paper you examine is a national bank note the promise on it will be made by some particular national bank and will bind that bank to pay the amount of gold or silver named in the note upon presentation to that bank. This, you see, is not a direct promise by the United States Government. It is only the promise of a national bank. No national bank can issue such notes without the permission of the Federal Government. The law giving this permission is very strict. The result is that the United States Government exercises such control and supervision over the banks making these promises that it practically amounts to a guarantee by the Government that the promise will be kept and the money paid on demand.

These different promises to pay are used as money all over the United States. We are so accustomed to this use that we all call them money, and some people have actually come to believe that they are money.

There is not near enough gold and silver coined in the United States to meet the business

demands of the people. We are obliged, therefore, to have some substitute for them to use as money. The bills discussed above are the substitutes we now use.

The states are expressly forbidden to coin money or to make anything but gold or silver a legal tender in the payment of debts.

QUESTIONS.

1. What is there in the first clause in the section of the Federal Constitution regarding the legislative powers of the United States, which shows that government to be one of delegated or derived powers?

2. What is an express power? What is an implied power? Does Congress have any implied powers? How many times have you gone carefully over the enumeration of the express powers of Congress?

3. What is a direct tax? Give an example. Why has Congress abandoned this way of raising money? What is an indirect tax? Give an example. What is a tariff?

4. What is a postoffice? What is a post road? What government has control over these matters? How does the sale of postage stamps help to pay the expenses of keeping up the postoffices.

5. What is money? What government has the power to coin money? Out of what two metals may money be coined? Is the paper currency in circulation in our business transactions really money? Why do we use it as and call it money? Why do we need a fixed standard by which to measure the value of all articles?

CHAPTER XI.

Powers of Congress—Continued.

Power to Borrow Money.—It is difficult to know in advance just what the expenses of a Government will be. Therefore, the Government is not always able to raise money by taxation just when it is needed. For this reason the Federal Government was given the power to borrow money. When borrowing money for a fixed length of time the Government gives out bonds promising to pay a certain sum at a certain time with a certain rate of interest thereon. These are known as United States bonds.

Bills of Credit.—A Bill of Credit is a promise to pay a certain sum of money. Congress has the power to borrow money on the credit of the United States and does so by issuing and selling Bills of Credit. Money can be raised in this way only for public purposes and to meet public demands. Under this power a great deal of the paper currency is issued and circulated.

Power Over Commerce.—Commerce is a term of very broad meaning. It has been decided by the Supreme Court of the United States that it includes all sorts of buying and selling of ar-

ticles and also the transporting of all articles or of persons from one place to another, either for business or pleasure. The Power of Congress regarding this subject is limited to commerce with foreign nations, commerce among the several states and different Indian tribes. Commerce with foreign nations includes not only dealing with the nations themselves, but with their subjects or citizens. Commerce among the several states includes (1) all buying and selling carried on by persons who are in different states; (2) all buying and selling of things in one state when one or both persons are in another; and (3) the carrying of persons and things from one state into or through another. Whenever, therefore, commerce comes under any of the heads given above it is within the power of the Federal Government to regulate it.

This power, however, does not extend to dealings among people of the same state with reference to things that are in that state, nor to the carrying of persons or things when the carriage is entirely within one state. These matters not being included in the grant of power to Congress, are governed by the several states.

Naturalization.—To naturalize a person is to change him from an alien into a citizen of the United States. Persons who are born subjects or citizens of any other government may come

into our country, but their coming does not of itself make them citizens. To become citizens of the United States they must obey the laws of Congress on that subject. In general these laws require that the person seeking to become a citizen shall go before some named court of record and file a written statement setting out his name and residence, of what country he is a subject or citizen, and declare his intention of becoming a citizen of the United States by following the course that the law requires in such cases. This is called filing his declaration of intention. He must live in the country for at least five years, two of them after filing his declaration. After such time he can come before the court in which he filed his declaration, or any other proper court, and by making proof of having filed his declaration and of his required residence, and by making oath that he changes his allegiance from his former sovereign to the United States he can obtain an order declaring him to be a citizen of the United States. He is then entitled to all privileges and advantages of a citizen, except that he can never become President.

It is important that there should be no doubt or mistake about matters of citizenship, and that the proceedings should be the same everywhere in the United States. For this reason the power

to naturalize aliens is denied to the states and granted exclusively to the Federal Government.

Power Over Bankrupts and Their Creditors.—The people of different states have so much business with one another that it must sometimes happen that persons living in one state will have creditors living in another. Such debtors are sometimes unable to pay their debts. It, therefore, seemed well to include in the powers of the Federal Government the right to make uniform laws regarding the settlement of the estates of those owing debts which they cannot pay. The power of regulating such settlements is given to Congress. Under this power the Federal Government can compel the creditors of a man who cannot pay all his debts to accept such part of their debts as the creditor can pay and to release him from the part unpaid. The law goes into great detail as to how this shall be done. A man who cannot pay his debts is called a bankrupt. Hence laws regulating this subject are called bankruptcy laws.

No state can pass a law compelling any creditor to take less than the full amount of the debt owed him or to release the debtor from what he still owes. This power is not only vested in the Federal Government but the states are forbidden to pass any law impairing the obligation of contracts.

Copyrights and Patents.—A copyright is a written statement by the proper officer of the United States that a certain person is the author or producer of a book or writing or of some certain piece of music or painting or other work of art. Such a certificate gives to the person having the copyright the exclusive right to print, publish and sell the copyrighted book or picture. This enables him to make a larger profit out of his production than he could do without this protection.

A patent is a written certificate from proper officers of the Federal Government that a certain person is the inventor of some new and useful thing, and as such is entitled to the exclusive right to make and sell this thing for a named number of years. This is a very valuable right as it prevents other people from making or selling the thing patented during the years named in the patent. This protects the inventor and enables him to get a higher price for his invention.

The power to issue Copyrights and Patents is exclusively within the jurisdiction of the Federal Government.

Implied Powers.—After enumerating all the powers set out near the beginning of this chapter the section of the Constitution continues: “To make all laws which shall be necessary and

proper for the carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.”

This quotation is the principal basis for the implied powers of Congress. It authorizes that body to make all such laws as may be necessary and proper for carrying into execution the powers that had previously been enumerated. This is a very important grant and under it a great deal of far reaching legislation has been passed.

It is quite impossible to enumerate and discuss all the implied powers of Congress. Powers which are necessary to the efficiency of the Government and which are fairly and reasonably to be gathered from the Constitution should not be denied. Powers not given by a fair and reasonable interpretation are not to be supplied merely because they seem to be desirable.

Example of Implied Powers.—There is no express power given Congress to establish banks or even to charter corporations. At an early day it chartered a corporation to do business as a bank. Its purpose was to assist the officers of the Government in carrying on its financial operations. Without money it was impossible for the Government to carry on its business, and it was important to have safe and quick means by

which to send money collected in one place to other places where it was needed. Hence the Supreme Court of the United States held that Congress had the implied power to charter such a bank and use it in carrying on the business of the Government.

Powers the Houses Exercise Separately.—The powers of Congress discussed up to this time have been powers given to the two houses acting together. In addition to these powers each House has some powers which it may exercise separately, that is, without the concurrence of the other.

Separate Powers of the Senate.—The most important of the separate powers possessed by the Senate in addition to those of passing on the qualifications and election of its members, making its own rules and selecting its own officers, which have already been treated, are:

To approve or reject appointments to office made by the President.

To concur in or reject treaties proposed by the President.

To try all cases of impeachment brought before it by the House of Representatives.

To elect a Vice President in case there is no election made by the Electoral Colleges.

The first, second and fourth of these powers

are explained in the chapter on the Executive Department.

Impeachment.—An impeachment is a charge made by the House of Representatives to the Senate accusing an officer of a violation of his official duty. If he is found guilty he is removed from his office. Any important Federal officer except a member of Congress may be impeached. Members of each House of Congress can only be tried for an official wrong by the house to which they belong.

An impeachment trial is carried on as follows: Some one or more persons who believe an officer to be guilty of a serious violation of the law, reports the facts as he believes them to one or more members of the House of Representatives. These members, if they think the officer guilty, bring the charges in definite form before the House. The House appoints a committee to investigate the matter. This committee reports to the House, recommending either an impeachment of the officer or that the matter be dropped. The House votes on this report and decides either to abandon the prosecution or to prepare charges against the officer and present them before the Senate. If impeachment is decided upon by this vote the House appoints a committee to try the case before the Senate. The Senate acts as a court. If the officer is found guilty

he is removed from office and can never again hold an office under the United States Government. The officer can be tried by the courts and punished in other ways for his offense whether or not the Senate finds him guilty.

Separate Powers of the House of Representatives.—The Separate Powers possessed by the House of Representatives in addition to those of passing on the qualifications and election of its members, making its own rules and selecting its own officers, are:

To present to the Senate all charges in case of impeachment and prosecute such charges.

To elect a President in case there is no election made by the Electoral Colleges.

The first of these powers has already been explained in connection with the Separate Powers of the Senate. The second will be discussed in the chapter on the Executive Department.

QUESTIONS.

1. Why is it necessary for a government to have the power to borrow money? What is a United States bond?

2. What is a Bill of Credit? For what purposes may money be raised by issuing Bills of Credit?

3. What is commerce? Over what kinds of commerce does the United States Government have control? What is meant by commerce with foreign nations? What is included in interstate commerce? What government has control over all other kinds of commerce except those kinds just mentioned and with the Indian tribes?

4. Who is an alien? What is meant by naturalizing an alien? What government has exclusive control over naturalization? Describe very briefly the process of naturalization.

5. Who is a bankrupt? Why is it desirable that all bankrupt laws be the same all over the United States? Can a state compel a creditor to release his debtor on payment of less than the whole amount due him? Why?

6. What is a copyright? What is a patent? What benefit does a copyright or patent give to its holder? What government has exclusive control over these matters?

7. What authority has the United States Government to charter a National Bank?

8. What separate powers has the Senate?

9. What is an impeachment? Who makes the charge and who tries it in cases of impeachment? What is the penalty if the officer is found guilty?

CHAPTER XII.

Executive Department.

Introduction.—We have already seen the necessity for executive power in government, and the general nature of an executive department. We know that this general purpose is to enforce the laws made by the legislative department. Let us now discuss more definitely the officers making up the Executive Department of our Federal Government, and their powers and duties.

Executive Officers.—The two executive offi-

cers named in the Constitution, are the President and Vice President. No others are named in that instrument. Reference is made, however, to executive departments and officers in each. Under this Congress has provided nine branches of this Department and for a great many and very important officers in connection with them. The President and Vice President and the heads of these constitute the most important executive officers in the Federal Government.

The President.—The President is by far the most important executive officer in the Federal Government. If you will turn to Article III of the Constitution of the United States, given as Appendix A, in your text book, you will find an enumeration of his powers and duties. You should study those provisions carefully. We will summarize for you the most important of them.

Qualifications and Term of Office.—The President must be a natural born citizen of the United States. No one born an alien can be put into this exalted office. Naturalization cannot make him eligible. He must have lived 14 years within the United States and must be at least 35 years of age. His term of office is four years. If the person chosen President proves fairly acceptable, it is customary to elect him for a sec-

ond term. This is not required by law, but has become a somewhat well established custom. No one has ever been elected for more than two terms. There is no law forbidding a third term, but the sentiment of the best presidents and of the people generally is very much against it.

Electoral College.—The President is not directly voted for by the people, but by a body of men in each state called an “Electoral College.” The Electoral College in each state is composed of a number of men selected in such way as the state legislatures may determine. Each member of the Electoral College is called an Elector. There are as many Electors in the college of each state as there are members of Congress from that state, including members of both Senate and House.

There were no organized political parties in the United States when the Constitution was written, and it was expected that the people of each state would select from among themselves the number of Electors to which they were entitled and that these Electors would meet and exercise their own judgment in selecting a President and Vice President, for this officer is also chosen by the Electoral College. This was actually done for some time. The development of political parties and party organization have made very great changes in these respects.

These changes are so great and seemingly so permanent that we give you a brief discussion of them.

The Effect of Political Parties on the Election of President and Senators.—In Chapter V we discussed at some length Political Parties within the United States and their effect, organization and power of operation. We find some curious results coming from these parties in connection with the election of the President and Vice President and of United States Senators. Discussion as to United States Senators seems out of place just here, but the theories and facts involved in the election of these two classes of important federal officers are so very similar that we take them up together.

The purpose of making party platforms and nominating party candidates is to bring the whole strength of the party doing so to bear on the adoption of principles discussed and policies announced in the party platform and on the election of the nominees, and so to have the governments, federal and state, carried on in accord with such principles.

If the person nominated for office by a party is elected, he is therefore under moral and political obligation to so act in his office as to bring this about. He is under no legal obligation to do so. Political parties are, so to speak, spon-

taneous growths, springing up in connection with our democratic plan of government and practically inseparable from it, but they are not legally speaking, parts of them. So a nominee of a party after he is elected is not legally bound to advocate or to vote for the measures set out in the platform of his party or for candidates nominated by it for office. The only force coercing him to do so is party allegiance. If he does not do so he will lose standing in his party and his chances for any other political favor would be gone.

To get the full force of the foregoing observations we must bear in mind that there are two sets of elective officers whose official duty it is to vote for other officers. One of these are the members of the Electoral College. This is the only duty these officers have to perform. They vote for a President and a Vice President of the United States, and their political life and activity is passed.

The other officers who have such duties are members of the State Legislatures. You remember that United States Senators are not elected by direct vote of the people, but by the Legislatures of the several states. Members of the legislatures have a great many other duties to perform, but all United States Senators ex-

cept in cases of short vacancies must be elected by them.

If there were no political parties every voter would vote for whomsoever he wished for Presidential Electors. The candidates to the number of electors getting the highest vote would be the electors. No one of the electors selected in this way would be under any sort of obligation, political or moral, to vote for any particular man for President or Vice President. Each elector would be absolutely free to exercise his own judgment and vote for the men of his individual choice.

The organization of political parties changed this. Each party now nominates its preference for President and Vice President. In each state it then nominates men for the Electoral College. If these nominees for the College are elected, they are both morally and politically bound to vote for the nominee of their party for President and Vice President. As stated before, this is not a legal obligation. If the electors wanted to do so they could vote for some one else. The law would not punish them or refuse to recognize their votes. Their party would, however, excommunicate them and they could never again aspire to office of any kind in that party. These influences are so strong as

to be absolutely controlling under ordinary circumstances.

So that the members of the Electoral College no longer vote their individual preferences as the Constitution contemplates, but the choice of their party as expressed in their party convention or primary election, as was explained to you under the head of Political Parties in chapter V.

The same results are worked out by party organization with regard to the election of United States Senators.

In almost all the states now, whenever a United States Senator is to be elected, each party nominates a candidate for that office. This is sometimes done in a state primary, sometimes in a state convention. It is almost always done in one or the other of these ways. Each member of the Legislature is elected by the voters of some party which has expressed its preference for Senator. When the election comes on before the Legislature it is practically certain that each member will recognize the binding force of the party nomination and vote for the nominee.

You see from this that by the process of party nominations the selection of President and Vice President and of United States Senators has practically been changed from the mode con-

templated in the Constitution to one of party preference expressed through party action. These changes, though radical, seem permanent. They have so impressed the minds of some writers on our American Institutions that they are spoken of as "Unwritten Amendments to the Federal Constitution." This is incorrect and the expression ought not to be adopted. The Federal Constitution sets out how it may be amended. This method must be followed to make a real amendment to that instrument. The moral and political effect of these changes are, however, very great.

Manner of Election.—The electors chosen for each state meet at the capital of their state at a time designated and each votes by ballot for some one for President. A list of these ballots is then made up, certified, sealed and taken by messengers to the Capitol of the United States and given to the President of the Senate. Another list is sent to him by mail. This officer opens and counts the ballots in the presence of both houses of Congress and announces the result. If any person has secured a majority of the votes cast by the electors for President, he is declared elected to that office. If no one receives a majority of all the votes cast there is no election and the House of Representatives chooses a President by ballot from the three can-

didates having the highest number of votes. In such election the Representatives vote by states, each state having one vote. Two-thirds of the states must take part and a majority of all the states is necessary for an election.

Powers and Duties of the President.—The Constitution declares that the executive powers “shall be vested in the President of the United States” and further declares that “he shall take care that the laws be faithfully executed.” In a general way these two provisions give us the powers and duties of the President.

Chief Executive.—The President is the Chief Executive officer of the nation, charged with the duty and responsibility of enforcing its laws throughout the United States and protecting its citizens abroad. He is the head of the several departments of the executive branch of the government and is chiefly responsible for the way in which each of these is carried on. As he selects the heads of these departments and can practically remove them at pleasure, it is just that he should be so regarded.

Pardoning Power.—The pardoning power is also vested in the President. To pardon is to relieve from punishment. When a person has violated a law of the United States and has been tried and found guilty he must suffer the penalty whatever it may be unless the President

pardon him entirely or lessen the punishment in some way. This power to relieve from punishment is a very delicate one and should be exercised with great care. If an innocent person has been convicted by some mistake he ought to be pardoned. If the punishment assessed against a guilty man is clearly too great he ought to be relieved from so much of it as is unjust. If a man were guilty and such changes have come about as to his health or other conditions as make it just to relieve him from further punishment it ought to be done.

Powers in Connection With Treaties.—A treaty is an agreement between nations. Under our Constitution no state can enter into a treaty with any other state or country. Treaties between the United States and foreign nations are made by the President and Senate. Just what part each takes in entering into a treaty seems not to be entirely settled. It is sufficiently accurate for our purpose to say that the treaty-making power is exercised by the President and the Senate together.

Appointment and Removal of Officers.—The President selects and appoints, with the approval of the Senate, all important officers in the United States Government except the President and Vice President and the members of Congress. This is a very extensive and

important power. If the President makes such appointment with reference solely to the public good, he can be of great service to the people in providing them with good and efficient officers. If, on the other hand, he forgets his duty to the people and appoints officers not so much with reference to the public good as to the wishes of his friends and supporters or to his own advantage, he can do the people great harm.

All appointments to important offices made by the President must be reported by him to the Senate, to be by it confirmed or rejected. It is the duty of the Senate to investigate the fitness of the person appointed to the office. If he is found to be a suitable person for the office his appointment is confirmed. If the Senate does not consider him a suitable person, his appointment is rejected and the President must appoint some one else.

As a general rule the power to appoint an officer carries with it the power to remove him from office. This is not true, however, if the office has a fixed term or is for life.

Powers in Connection With Legislation.—The President has the power to send messages to either house and to recommend measures. He also has the power to veto any bill passed by Congress. These powers have been fully discussed under the Legislative Department.

Military Powers.—The President “is the Commander-in-Chief of the Army and Navy of the United States and of the Militia of the several states when called into the actual service of the United States.” In times of peace this authority is little exercised; but in times of war it affords very large opportunity and carries with it tremendous responsibility. The safety of the nation may depend upon the efficiency with which these powers are exercised.

Plan of Succession. —The Constitution provides that the Vice President shall take the place of the President when the latter ceases to exercise the powers and duties of his office. The Constitution makes no further provision as to presidential succession, but authorizes Congress to act upon the matter. Under the present law if the President and Vice President are both unable to act the right to act as President shall pass to the heads of several of the departments in the following order: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, Secretary of the Interior.

Vice President.—The Vice President is elected in the same way as is the President, except that in the case of no election by the Electoral College, the Senate chooses the Vice President from the two candidates having the highest vote. Each

Senator has a vote. A majority vote is necessary for an election.

Duties of Vice President.—It is the duty of the Vice President to preside over the Senate. As before stated he has no vote in the Senate except in case of a tie, when he casts the deciding vote.

Branches of the Executive Department.—There are nine branches in the executive department of our Government. These are Departments of State, of the Treasury, of War, of Justice, of the Postoffice, of the Navy, of the Interior, of Agriculture and of Commerce and Labor. The principal officers in these Departments are appointed by the President with the approval of the Senate. Each of these Departments is in charge of a chief or head, called Secretary of the particular Department, except in the Department of Justice in which he is called the Attorney General and in the Postoffice, in which he is called the Postmaster General.

President's Cabinet.—The President's Cabinet is made up of the heads of these Departments. They meet frequently, usually twice a week, and discuss important matters of state. They have no power to decide questions, but simply advise with the President.

Work of These Departments.—Through these Departments is carried on an immense amount

of business which is increasing annually and promises to increase more rapidly in the future than it has in the past.

There are a great many subordinate officers in each Department. For illustration the Department of the Postoffice has charge of all the postoffices and all the mail carriers throughout the United States and it is through this department that our efficient mail service is carried on. We do not come in as close contact with the work of the other Departments, but for all that they are constantly engaged in carrying on work of great practical importance both to the individual and the public at large, and which, if left undone, would bring about very great inconvenience.

QUESTIONS.

1. Who is the highest executive officer of the United States? What is his term of office? Is there any law regulating the number of times the same person shall be elected President? What is the custom as to this?

2. Are the President and Vice President elected by a direct vote of the people? What is an Electoral College? How is the number of presidential Electors in each state determined? Where do the Electoral Colleges meet? How do the Electors vote?

3. What is done with the votes of the Electoral College of each state? When, where and by whom are the electoral votes of the states counted? What proportion of

the votes cast is necessary to the election of a president? If no person receives a majority of the votes for president, how is a president elected?

4. State briefly the changes in the manner of electing a president which have been brought about by the organization of political parties?

5. What is the pardoning power? Who exercises this power in the United States Government?

6. What is a treaty? Who make treaties in the United States?

7. What Federal officers does the President appoint? What is meant by these appointments being made subject to approval by the Senate? What is the general rule as to the power to remove an officer going with the power to appoint? What are the exceptions to this rule?

8. What powers has the President as to securing legislation desired by him? What is his veto power? For answers to these questions, refer to chapter X on Legislative Department.

9. What military power has the President?

10. If the President dies or is, for any reason, unable to discharge the duties of his office, who takes his place? How is the Vice President elected? What duties are attached to the office of Vice President as such? Why is the Vice President allowed to vote only in case of a tie?

11. How many branches of the Executive Department are there? Give the official name and the head of each. What are these officers called collectively?

CHAPTER XIII.

Judicial Department of the Federal Government.

Introduction.—The Judicial Department is that Department of Government which interprets the laws and applies them to the conduct of individuals. The tribunals through which the people exercise these powers are called courts. The officer who presides over a court is called a judge. All the courts of a Government taken together, make up its judicial system. Each class of courts in such a system is authorized to try certain kinds of cases. In the trial of such cases the court acts for the people as their regular agents or representatives and the people are compelled to carry out the decisions which the court makes.

If a court created for the purpose of trying certain cases should undertake to try other kinds of cases, such action would be outside its power and the people would not be bound to carry out its decisions.

Classification of Courts.—The lawful power to try cases is called jurisdiction. Cases which a court is authorized to try are said

to be within its jurisdiction. Those cases which it is not authorized to try are said to be without or beyond its jurisdiction. The jurisdiction which each court has is granted to it by the law creating the court.

The classification of courts is made upon the basis of their jurisdiction. They are classified first according to the nature and importance of the cases to be tried before them. For instance one class of courts tries civil cases and another class criminal cases. The importance of the case generally determines in which court it will have to be tried. Matters of small importance are tried in the inferior courts. Matters of greater importance are tried either in the County Court or the District Court.

The other classification of courts in general is based on whether or not they are trial courts or courts of appeal. By trial courts is meant those courts in which cases are tried for the first time and such courts are spoken of as courts of original jurisdiction. Courts of appeal are courts which rehear cases which have been tried in the courts of original jurisdiction.

Judicial Power of the United States.—As the Federal Government is one of enumerated powers it follows that its courts can only try such cases as are provided for in the Constitution.

The Constitution declares that this power extends:

To all cases in law and equity arising under the Constitution and laws of the United States or treaties which shall be made under its authority.

To all cases affecting Ambassadors and other public Ministers and Consuls.

To all cases of Admiralty and Maritime jurisdiction.

To controversies to which the United States shall be a party.

To controversies between two or more states.

To controversies between a state and citizens of another state.

To controversies between citizens of different states.

To controversies between citizens of the same state claiming lands under grants from different states.

To controversies between a state or citizens thereof and foreign states, citizens or subjects.

Congress could not give to any Federal Court the power to try a case which does not deal with some one or more of the matters enumerated above.

The two clauses under which most cases in

the Federal Court come are the first and seventh set out above. The first of these covers all cases in which either party to the suit claims any right under the Constitution of the United States or of any law passed by Congress. The second relates to controversies between citizens of different states.

In business people are no respecters of state lines and those in one state often conduct business with those of another state. Thus a great many misunderstandings and disputes arise. All cases growing out of such disputes come within the judicial power of the Federal Government and most of them within the jurisdiction of the Federal Courts. It is not true, however, that all cases of either of these kinds named above may be tried in the Federal Courts. Congress could provide for the trial of all such cases in a Federal Court, but in fact it has not done so. For example, there is no Federal Court that can try suits between citizens of different states unless the amount in controversy is as much as \$3,000. Such cases must be tried in the state courts.

Federal Judicial System.—Article III, Constitution of the United States, Section 1, provides: “The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may, from time to time, ordain and establish.”

Congress has passed several Acts providing such inferior courts as the interests of the country seem to demand. The Federal judicial system now consists of the Supreme Court, provided for in the Constitution, nine Circuit Courts of Appeal, a large number of District Courts, and in addition to these United States Commissioners, a number of Courts of Claims of different kinds, and Courts for the District of Columbia and United States Dependencies.

We will not treat here of the courts by United States Commissioners, nor of the Courts of Claims, nor of the District of Columbia, nor in the Dependencies.

We will reverse the order given above in considering the others, beginning with the District Court and going upward.

District Courts.—The most important Federal Court having original jurisdiction over the largest number of cases are the District Courts. These courts are held by some one or more of the Federal Judges. The Judge presiding may be either a District Judge, Circuit Judge or Justice of the Supreme Court, but in any case he would be holding a District Court and could try only such cases as could be brought in a court of that class.

These courts have the power and jurisdiction of courts of equity and also of courts of common

law. This distinction is very old in England. The reasons for its existence are historical rather than juridical. They are too technical and difficult to be discussed here. One or two differences as to the procedure in these courts should be pointed out.

If a case is of such kind as to be classed as a suit in equity there can be no jury, but all questions of law and fact are decided by the judge. Nor can the parties bring witnesses before the court to testify at the trial. All the evidence must be gotten and written down before an officer and presented to the court in that way. In common law cases either party is entitled to a jury and the jury is always used in such trials unless both parties waive it in writing. In these cases witnesses are brought before the court and testify in the presence of the judge and jury. In criminal cases there is always a jury and the witnesses must be brought before the court.

The kinds of cases most frequently tried in the District Courts are: (1) Cases in which there is as much as \$3,000 involved and in which one of the parties claims some right under the Constitution or laws of the United States. (2) Cases in which there is as much as \$3,000 involved and in which the parties are citizens of different states or countries. (3) Cases involving copyright or patent rights. (4) Bank-

ruptcy cases. (5) Criminal cases for violation of the laws of the United States.

These are by no means all the kinds of cases these courts may try, but they are those most frequently brought before them. Most of the cases tried in the District Courts may be taken to the Circuit Courts of Appeal for revision.

Organization of a Court of Original Jurisdiction.—A court is a tribunal created by the people for the purpose of applying the general rules of law to the conduct of particular persons who are before it, and of deciding the legal rights of such persons.

You will understand this better from an illustration. One of the general rules of law is that every man is entitled to the possession and use of his own property and that no one else should be permitted to take this property away from him. One man has a horse which was in his pasture. The owner misses it and after a while finds it, or a horse he thinks is it, in the possession of another man. The owner claims the horse and asks the other party to let him have it. The other man says this horse is his, and refuses to give it up.

If there were no laws on the subject of ownership or if there were laws on that subject, but there were no one authorized by the people to find out the facts of this case and decide who

really owned the horse these men would be compelled to settle the matter in some way between themselves. They might do this peaceably or the stronger might take the horse away from the weaker whether it really belonged to him or not; or they might have a difficulty about it in which one or both would be killed. From this the whole community might get into a feud. On the other hand if there were some officer who had the authority and whose business it was to settle this dispute, the men claiming the horse could bring the case before him, this officer would find out to whom the horse belonged and give it to him and protect him in its possession and use. In this way the dispute could be settled peaceably and justly. The courts are the tribunals made and kept up by the people for the purpose of settling such disputes.

We may, therefore, enlarge somewhat on the statement at the beginning of this paragraph and say: That a court is a tribunal or body of officers created and kept up by the people in accordance with their constitution for the purpose of trying disputes between different persons about their legal rights and violations of these rights and of deciding what their rights are and of giving remedies to those who have been injured.

The officers that make up a court are a

Judge, or Judges, for there may be one or more, a Clerk, a Sheriff or Marshal, Attorneys at Law and in many instances, Jurors.

The Judge is the head of the court. He is its presiding officer and has the greatest authority and the largest responsibility of any other person connected with it. His authority is so much greater than that of any of the other officers or of all of the others taken together that he is spoken of as holding the court. He decides all questions of law that come up in the trial of cases; tells all the other officers making up the court what their duties are and very often how they must perform them. He frequently decides questions of fact.

In every case there are two kinds of questions to be decided. These are called questions of law and questions of fact. There can be no dispute about a legal right without having questions of both kinds involved. To state it differently in every such dispute one party to the controversy declares that there is a certain rule of law and that the other party has disobeyed it. The other party to the dispute must either deny that there is such a rule of law or that he has disobeyed it. He may, of course, deny both propositions. Unless he does one or the other of these things there can be no dispute about the matter.

The dispute over the rule of law of course brings up for determination by the Judge what the law really is. The dispute as to whether or not the law has been disobeyed can not be settled until it is known what the party who is charged with disobeying the law really did. This involves a question of fact or it may be a number of questions of fact. As stated to you, the Judge always decides all questions of law. He often decides questions of fact, but he does not always do so. There are different rules about this in different kinds of courts and often under different circumstances, in the same court.

Whenever the rules are such that the Judge is not authorized to decide questions of fact, the court must be so organized as to have some one else to do so. The officers provided to pass on the facts are called jurors. Taken together they are called a jury. A jury, therefore, is a number of men selected by a court, or under its authority, from the county or district in which the court is held, for the purpose of investigating questions of fact and deciding what is true. Juries are of two kinds—Grand Juries and Petit Juries.

A Grand Jury is a number of men brought together in a lawful way by a court whose duty it is to hear testimony as to the commission of crime in the county or district in which the court

is held and to make to the court written charges against all persons whom they have good reason to believe are guilty of any violation of the criminal law. A Grand Jury does not really try any case. It only inquires about supposed crime and if it finds sufficient reason for doing so, makes written charges against persons whom it believes to be guilty and files these charges with the court so that the persons accused may afterwards be tried in the proper court.

The written charges which a Grand Jury makes are called Indictments or Presentments. The differences between these two kinds of charges are quite technical. Presentments have fallen into disuse and are now of very little importance. The Constitution of the United States declares that no person can be tried for a serious offense before any Federal Court unless he has first been indicted or presented by a Grand Jury. This is guaranteed by the Federal Constitution.

A Petit Jury is a body of men selected by a court or under its authority to hear evidence and determine the facts of a case then being tried before the court. In some courts six men will constitute a jury, in others there must be twelve. Juries in all Federal Courts consist of twelve men chosen from the district in which the court is held. The conclusion reached by a jury

as to the facts of a case and reported by it to the court is called a verdict. This is a word compounded from two Latin words and means a true speech. This is what all verdicts should be, a true speech by the jury concerning all the matters submitted to it. In reaching its conclusions, a petit jury is governed by the instructions regarding the law given it by the Judge. These instructions as to the law are called a charge.

Procedure in Trial Courts.—Cases are presented to the court by lawyers who represent the different sides and who make written statements of the facts for which each side contends and file them with the clerk of the court. These written statements are called pleadings. From the pleadings the court finds out what is to be tried and decided in the case.

The facts in a case are brought before the court by the lawyers by means of written testimony or the testimony of witnesses who know or claim to know the facts about which they testify. All testimony is called evidence. The evidence of each side must correspond to the pleadings of that side. That is, a lawyer cannot set up one set of facts in his pleadings and prove a different set of facts by his witnesses.

When the facts are all in the lawyers argue

the case before the judge, or the jury, if there be one.

If there is no jury the judge passes upon the law and the facts and decides who is entitled to win the case. If there is a jury it decides the facts, and the judge tells the jury the law of the case in a paper which is called a charge. When the jury decides the case, it brings into court a written statement of its conclusions which is called a verdict. The lawyer whose side wins draws up a formal statement of what has been done in the trial and the result, setting out in it the rights of the parties as they have been declared by the judge and jury and this is entered upon the minutes of the court. This is called the judgment of the court.

This judgment settles the rights of the parties to the suit and neither one can dispute or open up the settlement thus made unless he gets the judgment set aside by the court in which it was rendered or by a higher court to which he has taken the case in one of the ways provided by the law.

New Trials.—The court which has tried a case may, for good cause, set aside the verdict and judgment which it has rendered and have the whole case tried over. This is very rarely done unless the party who loses the suit requests it and gives good reasons why it should be done.

If it is done it sets aside everything done in the first trial and the case must be tried over just as if no trial had ever taken place.

Appeal or Writ of Error.—If the Court which tried the case will not give a new trial in most instances the losing party in the suit can take the case up to a higher court to have the way in which it was tried in the lower court investigated. If the higher court thinks that any error was committed by the lower court in trying the case and that such error was hurtful to the man who lost, it can set aside the judgment of the lower court and send the case back for another trial there.

There are two ways of taking a case from the court in which it has been tried up to a higher court for revision. These are called, one, Appeal, and the other, Writ of Error. There are differences in these which are very important in practice, but that need not be pointed out to you at this time.

Circuit Court of Appeals.—The next Court in the Federal System is called the Circuit Court of Appeals. There are nine such courts. They are held by three Judges. Judges of the Supreme Court or Circuit Judges or District Judges may sit in them. This is the court to which most of the cases tried in the District Court, which are taken up for revision, must go. Some of

these are brought by appeal and some by writ of error. The practice in either case is much the same. No new pleadings nor new evidence can be brought into the case in this court. The trial consists in examining what was done in the District Court and finding out whether or not that court's action was proper. To enable the Court of Appeals to do this the clerk of the District Court in which the case was tried makes a correct copy of all the papers and records filed in the case in his court which would throw any light on the matter in the Circuit Court of Appeals and sends this copy to the Circuit Court of Appeals. This copy is called a Transcript. After the transcript is filed the attorneys on each side of the case present to the court printed briefs. The brief for the appellant sets out the reasons why he wants the judgment of the lower court reversed and the case sent back for a new trial. The brief for the appellee sets out the reasons why this ought not to be done.

The case can be heard in the Circuit Court of Appeals on these briefs or on the briefs and oral argument. If the court finds that there was material error in the case it will set the judgment of the District Court aside and send the case back for a new trial. If it does not find error it will let the judgment stand as it was rendered in the lower court. Judgments sending cases back

for new trials are called reversals. Judgments sustaining the judgments of the District Courts are called affirmances.

Supreme Court.—The Supreme Court of the United States is the highest court in this country if not in the world, and consists of a Chief Justice and eight Associate Justices. Some of its jurisdiction is original and some is appellate. It has original jurisdiction over “cases affecting ambassadors, other public ministers and consuls, and those in which a state is a party.” This means that if any one has a law suit which he wishes to have tried against any representative of a foreign government, no matter how much or how little is involved in the suit, it must be brought in the Supreme Court of the United States. Also that if any one has the right to sue a state for any reason in a Federal Court, he must bring the suit in the Supreme Court of the United States. Not many suits of this kind can be brought. Those that can be are principally by one state against another. In the few instances in which a state as such is subject to suit in the Federal Courts the Supreme Court of the United States has jurisdiction.

This court also has appellate jurisdiction in a number of cases that have been tried in the Federal District Courts and appealed to the Circuit Court of Appeals, although there are a

great many cases in which the judgment of the Circuit Court of Appeals is declared to be final.

The Supreme Court of the United States also has appellate jurisdiction over all cases that are tried in any state court in which one of the parties claims a right under the Constitution of the United States or an act of Congress or treaty, and this right has been denied him in a state court.

This is done so that every case involving a construction of the Federal Constitution may be brought to the highest court, which, by its judgments, gives the same meaning to the Constitution in all the states.

Procedure in case of appeal has been discussed under the Circuit Court of Appeals.

Federal Judges.—All Federal Judges are appointed by the President with the approval of the Senate. They hold office for life but are subject to removal by impeachment. The amount of their salaries varies but is determined by Congress.

QUESTIONS.

1. What is a court? What is a Judicial System? What is meant by the jurisdiction of a court? Whose powers does a court exercise when it tries a case within its jurisdiction? Why is an attempt by a court to try a case outside of its jurisdiction void?

2. What is a court of original jurisdiction? What is one of appellate jurisdiction?

3. What is meant by the judicial power of the United States? Name as many as you can of the matters over which this power extends.

4. What kinds of cases are most frequently tried in Federal courts? Can any Federal court try a suit between citizens of different states where the amount in controversy is less than \$3,000? Why?

5. Name the courts in the present Federal judicial system. Which of these is named in the Constitution? By what authority are the others created?

6. Which of the Federal courts has the largest original jurisdiction? Name the five classes of cases which are most frequently tried in these courts. To what court are cases, originally tried in these courts, appealed?

7. Name the officers which usually compose a court of original jurisdiction. State the duties of a judge. What two kinds of questions must come up in every case tried?

8. What is a jury? What are the duties of a Grand Jury? What is an indictment? What guarantee is there in the Federal Constitution as to indictments? What are the duties of a petit jury? What is a verdict?

9. What are the pleadings in a case? What is evidence? What is a charge? What is a judgment? What is the effect of a judgment on the rights of the parties to a suit, which are passed on in it?

10. What is a new trial? What is an appeal or writ of error?

11. How many judges sit in the Circuit Court of Appeals? How many such courts are there? Is their jurisdiction original or appellate? What is a transcript? What is a brief? What two kinds of judgments may such courts enter?

12. How many judges compose the Supreme Court of the United States? What kinds of jurisdiction does this court have? Why may cases tried in state courts which involve the meaning of the Federal Constitution be carried to the Supreme Court of the United States?

13. How are Federal judges selected? How long do they hold office?

CHAPTER XIV.

Restrictions and Guarantees in the Federal Constitution.

Introduction.—Many of the provisions of the Federal Constitution are restrictive in their nature. That is, they limit power, whereas the other provisions give power. Some of these restrictive provisions limit the powers of the Federal Government, some those of the state Governments and some those of both. Restrictions in the Federal Constitution apply only to the Federal Government unless the Constitution expressly says that they apply to the states. It is of the greatest importance to have such restrictions. They are in part for the benefit of the governments, but their chief purpose is to protect the rights of the people individually.

Restrictions on the Federal Government Only.—Some of the most important restrictions on

the Federal Government protect the rights of the people. We will discuss briefly a few of these.

Habeas Corpus.—The Federal Constitution declares that the writ of Habeas Corpus shall never be denied to anyone, except in case of rebellion or invasion or when the public safety may require. The writ of habeas corpus is an ancient writ whereby any person restrained of his liberty by another may have the cause of his restraint heard and passed upon by a judge or magistrate.

The Federal Constitution declares that this right is not to be denied to any one except in times of great distress or war. We will discuss habeas corpus more fully under State Government.

Religious Rights.—The First Amendment to the Constitution protects the people in their religious rights. Congress cannot establish a religion or interfere with any person in his religious worship, unless such worship interferes with the rights of others.

Freedom of Speech and of the Press.—Another provision restricting the powers of the Federal Government assures to the individual freedom of speech and of the press. A citizen of the United States may speak or publish what he pleases, unrestrained by Federal authority,

so long as he tells the truth and does not unjustly injure others by so doing.

Manner of Charging With Crime.—No one can be tried in the Federal courts on a serious criminal charge except upon indictment or presentment by a grand jury. A grand jury is a body of men selected by a court sworn and charged to inquire into violations of criminal law. An indictment or presentment is a written charge against any person presented by a grand jury to a court. There are some technical differences between the two, but these are of no consequence in this study.

Former Jeopardy.—To jeopardize is to put in danger. The Federal Constitution declares that no person shall be twice put in jeopardy for the same offense. This means that a person must not be tried twice for the same crime. This and another guarantee in the Constitution forbid that a person shall be tried again for the same offense after he has once been tried and acquitted. This guarantee goes further than that. A man may be put in danger of punishment in a trial even though the trial was never completed. Hence if a trial against a person for a criminal offense has once been actually begun and is stopped before a verdict and judgment is reached in the case, the defendant cannot be again tried for the same offense unless the court

had good legal reason for stopping the trial, or unless the defendant himself consented to its being stopped. If a defendant has been tried and convicted and then gets a new trial, either in the court trying him or in the Appellate Court, this guarantee has no application, and he can be tried again.

Trial by Jury.—You have been told what a jury or petit jury is. The Federal Constitution declares that in all common law cases where more than twenty dollars are involved and in all criminal cases the right to a trial by jury shall remain inviolate. This means that in all such cases the parties shall have the right to be tried by a jury in the common law sense of that term. At common law a jury means a body of twelve men and all were required to agree on a verdict.

Guarantees as to Evidence.—In all criminal cases the defendant is protected against being compelled to give evidence against himself. He is also entitled to be present when any witness testifies against him. This does not mean before a grand jury, but when the case is on trial before the court. He is also entitled to compulsory process to get his witnesses and to be represented by counsel.

The Tenth Amendment to the Constitution.—When the Constitution of the United States was

submitted to the different states for ratification there was a great deal of discussion as to what it meant and what its effect would be upon the powers of the states. A good deal of criticism was made because there was no express statement contained in the original Constitution on this last point. After the Constitution was ratified the Tenth Amendment was proposed in order to cure this defect. It is perhaps the most important restrictive provision found in either the original Constitution or any of its Amendments.

It is in these words: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states respectively and to the people." Note the language. It speaks of the powers of the United States as delegated, and of the powers of the states as reserved. To delegate is to give over from one person to another. To reserve is to keep what one already has. According to this Amendment, therefore, the powers of the United States Government are powers formerly possessed by some one else and given over to that Government in and by means of the Constitution, while the powers of the states were already in them. All of the powers originally in the states, which they failed to delegate to the Federal Government by the Constitution,

remained in them and the people unaffected by the Constitution.

Restrictions Binding on the State Governments Only.—The most important of the restrictions that apply to State Governments only are also intended to protect the rights of individuals.

Laws Impairing the Obligations of Contracts.—A contract is a legally binding agreement. The obligation of a contract is the power which a person to whom a legal promise has been made has to compel the one making him the promise to fulfill it. A State can pass no law which impairs or destroys this right. This provision does not apply to the Federal Government.

Equal Protection of the Law.—The effect of this provision is to keep a state from making unjust discriminations between different individuals or classes of individuals. All must be dealt with alike under the law. This prevents unfair class legislation.

Provisions Restrictive on Both Federal and State Governments.—There are a number of restrictive provisions in the Constitution of the United States which apply both to the Federal and State Governments. Some of these were originally designed to have this double application and appear in the same provision, as in the Fifteenth Amendment, regarding suffrage.

Others are found in different sections, one affecting the Federal Government and the other the States. The provisions as to due process of law are of this kind; those applying to the Federal Government being in the Fifth Amendment, and those applying to the States being in the fourteenth.

Ex Post Facto Laws.—An Ex Post Facto Law is one that undertakes to make punishable as a crime an act or omission which was lawful when it occurred, or to punish an act unlawful when committed more severely than it was punishable at the time of its commission. Neither the Federal Government nor the states are allowed to pass such a law.

Due Process of Law.—Due process of law means that a person whose right is to be judged of must be informed that action is to be taken against him and must also be informed of that with which he is charged. Then he must have reasonable opportunity to be heard in the trial. This is to protect one of our most important rights.

Right to Vote.—No one can be denied the right to vote either by the Federal or state government on account of race, color or previous condition of servitude.

These are the most important restrictions made upon both governments.

Guarantees.—In addition to the provisions in the Federal Constitution granting powers and those restrictive provisions already studied, this instrument contains certain Guarantees. These are largely for the benefit of the states, but some are for the protection of the citizens.

Guarantees to the States.—The most important guarantees to the states found in the Federal Constitution are the following:—“The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.” Article IV, Section IV, Constitution of the United States.

“No tax or duty shall be laid on articles exported from any state.”

“No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.” Article I, Section 9, Clauses 5 and 6, Constitution of the United States.

Republican Form of Government.—The states had been republican from their foundation. The Colonies had become fully satisfied that monarchical government was not desirable. Hence

in entering into the Union and parting with so many of their sovereign powers they received the guarantee that they should each retain a republican form of government. In this connection the word "republican" means substantially the same as "democratic." These terms have already been discussed.

Invasion and Insurrection.—The States entering into the Union gave up their power to enter into treaties, to keep standing armies or engage in war. It was then natural that the Government to which they had given over these powers should undertake to exercise them in the protection of the states. This is provided for in the Constitution and the Federal Government is pledged to protect the states in case of need.

Invasion is the actual entry upon the territory of a state by hostile forces of a foreign government. Insurrection is the rising against the authority of the government by some of its citizens or subjects.

In either invasion or insurrection the state can protect itself so far as it is able, though it has the right to call upon the Federal Government for aid. In case of invasion the Federal Government should give protection without waiting to be requested to do so by the state. In cases of insurrection the Federal Government is not permitted to act until called upon by

the state, through its legislature, if that body is in session, or through its Governor, if it is not in session.

Guarantees as to Commerce.—The United States Government is forbidden to levy any tax on goods sent out of the United States. It is also forbidden to levy different charges for bringing goods into the United States or to make different charges for the ports of one state from those which are made for the same article in the ports of another state. Nor can Congress make any charge either for shipping out or receiving articles carried from one state to another.

Relations of States to Each Other.—Article IV, Section 1, of the Constitution, is in these words: “Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.”

This is a difficult clause to understand. Its general meaning is that Congress shall have power to say, first, how the acts of public officers of one state may be proved in another state, and, second, that when they are proved, the officers of the state in which the proof is made must receive the proof and give such official acts of the officers of the other state due effect.

For illustration: If two men live in the same state and one sues the other and gets a judgment against him for a certain sum of money, and the debtor then moves into another state, the creditor could send a properly proven copy of the judgment into the state where the debtor had moved, and sue him on the judgment without having to go back of the judgment to prove the facts which showed the debt.

Extradition of Criminals.—Under the Constitution criminals can be extradited from one state to another. This means that if a person commits a serious crime in one state, and before he is tried goes to another, that the Governor of the state where the crime was committed can ask the Governor of the state where the criminal is to let the officers of the state where the crime was committed come into the other state and bring the criminal back for trial and punishment.

Privileges and Immunities of Citizens Within Other States.—There are two sections of the Constitution, or rather one section of the original Constitution and one in the Fourteenth Amendment, that relate to this subject. These two sections should be studied together. The first one is in these words: “The citizens of each state shall be entitled to all the privileges

and immunities of the citizens of the several states.” Article IV, Section 2.

The second says: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”—Fourteenth Amendment.

The first of these gives protection to citizens of the state. The second to citizens of the United States. The first one forbids either the state or the Federal Government to deny to citizens of any state the same privileges and immunities in any other state that the citizens of that state enjoy. The second does not affect the power of Congress, but only of the states. It forbids the states either to make or to enforce laws which deny to citizens of the United States any privilege or immunity to which they are entitled as such citizens.

Privileges and immunities, in these clauses, do not mean all legal rights, but only rights to life, liberty and property, and to equal protection of the law. They do not include political rights, such as the right to hold office or to vote.

Corporations are not citizens of any state or of the United States within the meaning of either of these clauses, and hence can claim no protection under either of them.

QUESTIONS.

1. What does restrictive mean? What is a restrictive provision in a Constitution? Why are such provisions needed in a Constitution? What is the rule as to when such provisions in the Federal Constitution apply to the state governments?

2. What is a writ of habeas corpus? What advantage does the right to have this writ give to an individual?

3. What restrictions are there upon the Federal Government as to the religious rights of individuals?

4. What guarantee does the Federal Constitution give as to freedom of speech?

5. What is the meaning of jeopardize? What is the meaning of the clause in the Constitution forbidding second jeopardy?

6. What is a trial by jury? In what kind of cases are jury trials guaranteed in the Constitution? How many men are required on a petit jury at common law?

7. Can a person accused of crime in a Federal Court be compelled to give evidence against himself? What guarantee does the Federal Constitution give such a person as to getting his witnesses before the court?

8. What is the purpose of the Tenth Amendment to the Constitution? How does it declare the powers of the United States were acquired? What powers does it declare are reserved to the states and the people? What do you learn from this amendment as to the nature of the powers of the United States? What as to the nature of the powers of the states?

9. What is a contract? What is the obligation of a contract? Can a state legislature pass a law which takes away the obligation of a contract? Why?

10. What is meant by equal protection of the law?
11. What is an *ex post facto* law? Can such laws be passed in the United States?
12. Give, generally, your idea of "due process of law."
13. What prohibition is there in the Fifteenth Amendment to the Federal Constitution against depriving persons of their right to vote? On whom is this binding?

PART FOUR.

Government of States With Particular Reference to Texas.

CHAPTER XV.

The State Governments.

Brief Review.—We have found that each of the thirteen states which formed the United States of America began its political existence as a separate colony planted by English subjects under the protection of the British Crown, and owing political allegiance to England. There was no organized connection between any of these colonies. Each was politically distinct from every other. There existed between them, however, the ties of common race, common tradition and common religion. And perhaps more powerful than all these, the tie of common difficulties and dangers.

The colonies were at first largely dependent upon their Mother Country for supplies, and for protection from Indians and from European nations. As they increased in population and developed in strength they became more independent. England had been at considerable expense

in founding these colonies, and it was but natural that as they grew in resources she should seek to repay herself for her expenditure. It was also natural that the King's Parliament should not draw very sharply the line between just return for expenses and additional financial income, and hence that it should demand more than was due. England was practically impartial in her exactions from the colonies and in the manner of enforcing payment. Thus the grievances and dangers of one colony were the grievances and dangers of all.

For these reasons the separate colonies united in declaring their independence of Great Britain and in maintaining such independence on the battlefield. They were successful in this common enterprise and the rebellion of the colonies was by that success changed into the Revolution of the States. During this war they united in a Confederation, each still retaining its sovereignty unimpaired. Later, by the adoption of the Federal Constitution and the organization of the Union under it in 1789, they entered into the Federal State, which continues as the United States of America.

We have treated at some length the nature and powers of this Federal State. We must now see the nature and powers of the separate state governments within this Union. The Federal

Government has sovereignty only over matters given to it by the states, in the Federal Constitution. The states retained their sovereignty over all matters not so given over.

The Federal Constitution grants to the United States Government control over all international and interstate matters and over other matters which are of such nature that they affect the general well being of the whole Union. All purely local and domestic matters are left to the states. Therefore, important as the Federal Government is, it is far from constituting the whole of our governmental institutions. The Government of the United States and that of the separate states mutually support and supplement each other. Each without the other would lack efficiency. Taken together they possess and exercise all the duties and powers of a Unitary State and constitute the best form of Government the world has ever known.

Political Subdivisions of a State.—As each state has control over all its domestic affairs it owes to the people the duty of providing means and agencies for their local government. It would be extremely inconvenient if not impossible to have all the courts in a state held at one place. The hardships on parties to suits and on witnesses and jurors would be too great. It would be equally inconvenient to have all the

public records kept and all the taxes assessed and paid at one place. This inconvenience would arise in carrying on all other local matters. It is the duty of the Government to make and maintain good roads and highways over which the people can go and come as their business and pleasure may demand. If, however, all these public highways were under the control of one state officer there might be great discrimination and injustice. He might make good roads in some places and not in others. To prevent these difficulties the state divides itself into convenient subdivisions, giving each such powers as the interests of the public and of the people in each locality may require. The state gives to these subdivisions such names as it sees fit, and makes such laws concerning them as the general good demands.

Counties.—In a majority of the states the most important of these subdivisions are called counties. In Louisiana they are called parishes. The name, county, is of English origin and indicates the territory belonging to a count. In England a county was usually composed of smaller subdivisions known as Towns and Hundreds. It is customary in the United States to divide counties into districts or precincts. These districts have different names in different states.

The county is very important in our form of

Government. It is a subdivision made largely for convenience in carrying on state affairs and in enforcing state laws. It has but little power conferred upon it for its own benefit.

Organization of Counties.—Counties are created by the state legislative authority. No community can organize itself into a county without such authority or assume the rights and duties of one. The usual way in which counties are organized, is for the Legislature to subdivide the territory of the state. These subdivisions must be of convenient size, with well defined boundaries. The inhabitants within each select a county seat, elect the proper county officers and report these facts to the proper officer of the state.

Courts, records, public roads and all other matters attended to through county officers are controlled by state laws and not by rules made by the county.

County Officers.—In each county there are a number of officers elected whose duties are mainly executive and judicial. To these officers all matters affecting only their particular community and all such state matters as can be attended to by local officers are given over.

The usual county officers and their duties are as follows: The County Judge, who presides over the County Court in the trial of cases, and

in matters relating to estates, called probate matters; a County Attorney, who is the lawyer who represents the state in litigation in the County and Justice's Courts; a Sheriff, who is the chief executive officer and who keeps peace in the county and carries out the orders of the Governor and of the Court; a Tax Assessor, who assesses all taxes on persons and property within the county for both state and county purposes; a Tax Collector, who collects the taxes for both state and county; a County Treasurer, who receives, takes care of and pays out the county money; a County Clerk, who keeps the records of the County Court and records relating to land and other property, marriages, births, etc; a County Superintendent of Public Schools, who has general charge over the public schools of the county; and a County Surveyor, who surveys public lands, public roads, etc. These are the officers usually provided by law, but the people, either in their Constitution or in some cases through the Legislature, can add such others or leave off such of these as they see fit.

Political Districts.—It is necessary for some purposes, principally for the election of different kinds of officers, to have state political subdivisions, sometimes larger and sometimes smaller than counties. The larger districts are

formed by combining as many adjoining counties as may be necessary to make up a required number of inhabitants. These combinations are made for the election of legislative or judicial officers. To illustrate: A state may have a great many more counties than it has members in either branch of the State Legislature. The Legislature determines how many inhabitants are entitled to one Representative, and puts into one Representative District a sufficient number of counties to make up this required number. If a single county should have many more inhabitants than entitle it to one Representative, it is given two or more, as the case may be. The same is true in the election of State Senators, Representatives in Congress and some judicial officers.

It is also more convenient for the people to have some political subdivisions smaller than counties. These are made by dividing the counties into districts, or precincts, as they are sometimes called in Texas. These precincts are the smallest political subdivisions of a state. The most common of these small divisions are voting precincts, justice precincts, commissioners' precincts and various kinds of school and local option districts.

Voting Precincts.—The number and size of the voting precincts in each county are usually

left to the discretion of the County Board, or Commissioners' Court, as that body is sometimes called. In each of these precincts there is a polling or voting place where the legally qualified voters of the precinct cast their votes. It is within these precincts that the primary elections and precinct conventions of political parties are held.

Justices' Precincts.—Each county is divided into several precincts, usually called Justices' Precincts, in each of which there is a trial court for small cases. The presiding officer of this court is a Justice of the Peace, and the executive officer is called a Constable. These courts are of great advantage to the people, as they give convenient and reasonably prompt means of settling the less important disputes, both civil and criminal, which arise in the neighborhood.

Commissioners' Precincts.—These are divisions of a county usually larger than Justice Precincts, made for the purpose of electing County Commissioners, one Commissioner being chosen from each such precinct. These Commissioners have charge of all county business, such as building and keeping up courthouses and jails, laying off and working the public roads, levying county taxes, passing on and ordering paid all claims

against the county for debts, and taking care of the paupers in the county, etc.

School Districts.—School Districts are subdivisions of a county made for convenience in organizing and carrying on the different kinds of public schools.

Cities and Towns.—Experience shows that for both business and social purposes people will come together in large numbers within small spaces. This massing of population creates a necessity for better and special means of protecting private rights and supplying public needs. The people in such thickly settled places must have better highways, better health rules, better protection against fire and against crime and larger and better means for getting water, light and transportation. These and many other matters just as important, and yet local in their nature, make it necessary to have additional organization of the community in which these needs exist. To meet these conditions these thickly settled districts are organized into political units known as Cities or Towns. Making Cities or Towns into political organizations is called incorporating them, and Cities and Towns when incorporated are called Corporations, or sometimes Municipal Corporations. These Corporations are more for local than for general purposes, that is, they are created more for the

special convenience, advantage and protection of their inhabitants than for that of the state at large. The powers given them and the duties imposed on them correspond with these facts.

Methods of Incorporating Cities and Towns.—

There are two general methods of incorporating Cities and Towns. First, by the passage of general laws providing for their creation and stating how such corporations shall be made, what powers they shall have, what duties they shall owe and giving the inhabitants of any thickly settled place the right to combine themselves into such a corporation. The second method is by direct or special Act of the Legislature creating a particular City or Town. The first method is called chartering under the general law, and the second chartering under a special charter.

Powers and Duties of Cities and Towns.—In whichever way a City or Town is created it has such powers and owes such duties as its charter prescribes. The government of such corporations is local. The usual officers are, a Chief Executive, known as a Mayor, a taxing officer, officers who keep public records, others who keep the public funds, a City Board, known as Councilmen, Commissioners or Aldermen, officers having local judicial authority and police officers. Cities and Towns have very little legis-

lative power but what they have is exercised by the City Board. Their legislative acts are local and cannot conflict with the general laws of the state. The power of the judicial officers of a City or Town is limited to the enforcement of city ordinances and state laws against small offenses. City officers are usually elected by the people of the City, though sometimes some of them are appointed, usually by the Mayor or City Board.

Important Political Powers of the State.—

Among the most important powers retained by the state are the Taxing Power, Power of Eminent Domain and Police Power.

Taxation.—A state has the power to tax every person or thing within its territory, unless it is forbidden to do so by the Federal Constitution. That instrument forbids the state to levy imposts on imports or exports for revenue purposes, or to levy any duty on tonnage. Neither can the state tax the officers or agencies through which the Federal Government is performing its duty. Nor can they tax interstate commerce, as neither of these is within the state's jurisdiction. There is no express denial of these last two powers, but the denials are implied. The first because to let the state tax Federal agencies would put the Federal Government under the control of the states. The second, because

the control of Congress over such commerce is exclusive. However, a state can tax property within it though it is used in interstate commerce. The application of these rules is often hard to make, but the rules themselves are well settled.

Eminent Domain.—The state has the Power of Eminent Domain and can exercise it for its own benefit, for the benefit of its political subdivisions, or for the benefit of persons or of corporations engaged in public business, such as the operation of railroads, waterworks, telegraph and telephones and similar public utilities. Property taken under this power must always be paid for, as it would be unjust to put all the expense of supplying the public on one person.

Police Power.—Each state retains Police Power over all its internal affairs. Under this power it may take any action that may be necessary to protect its inhabitants in their health, morals or safety. A very interesting case, showing the nature and exercise of this power, occurred some years ago in Mississippi. The legislature, for a sum of money paid to the state, and for a share of the proceeds of the business chartered a lottery company. This company organized, made the cash payment and began to operate. For years it continued, taking in large

sums of money and paying over to the state its share. Later the people of Mississippi concluded that lotteries were immoral and had the law chartering this company repealed. The company refused to stop its business, on the ground that its charter was a contract, and that the state was forbidden to take any action impairing the obligation of contracts. The trial court upheld the repealing act on the ground that a lottery is immoral, and that a state cannot take from itself the power to forbid any act which is hurtful to the morals of its people. The Supreme Court of the United States held that this decision was right and lawful. In other words, the Supreme Court of the United States holds that the Police Power of a state is a solemn trust which cannot be bargained away by a legislature in such a way that it cannot be recalled and exercised.

QUESTIONS.

1. How many states originally constituted the United States of America? How had these states originated? What did they have in common? What was the nature of the first government into which all of them entered? What do we mean by saying that the present United States is a Federal Government?

2. State, in general terms, the nature of the matters which are given over to the United States under the pres-

ent Constitution. State generally, the nature of the matters reserved to the states.

3. Why do states make political subdivisions within themselves. What name is given to the most important of these subdivisions?

4. By whom are counties created? How are they usually organized? Name the most important county officers, giving briefly the duties of each.

5. How are political districts formed? Name some of the purposes for which such districts are created.

6. What is a voting precinct? Why should such precincts be small?

7. How are justices' precincts formed? What is the purpose of such precincts? Who holds the justices' courts?

8. What is a Commissioner's precinct? Why do we have them?

9. What is a school district? Why do we have them?

10. Why is it necessary to have cities and towns? What do we call the process by which cities are made? What are the two ways of incorporating cities?

11. How would you find out what powers a city had and what duties it owed to the public? What are the usual officers in a city government? Who passes the ordinances of a city? On what subjects can a city pass ordinances? If a city ordinance and a state law conflict, which will control?

12. Name some of the most important powers of a state.

13. What is a tax? (See page 44.) What limitations are there on the taxing powers of a state? Why can not a state tax the salary of a Federal officer?

14. What is the power of Eminent Domain? For whose benefit can such power be exercised? Why must compensation be made for property taken under this power?

CHAPTER XVI.

Brief Historical Sketch of Government in Texas.

Early Claims.—In the early settlement of the country the territory now included in the State of Texas was claimed by both France and Spain. France owned Louisiana, extending from the Mississippi westward. Spain owned Mexico, extending from the country now known by that name east and northward. These two sovereignties could not agree upon the boundary line between them.

In 1803 the United States bought Louisiana from Spain. She was unable to agree with Spain as to the boundary between Louisiana and Mexico, which would also be the boundary of Texas, as Texas was the northeast province of Mexico.

In 1819 the United States bought Florida from Spain. As part of the agreement Spain gave up all claim to any territory east of the Sabine River. That river has since been the boundary between Louisiana and Texas, at least for a considerable distance from its mouth inland.

Mexican Revolution.—Early in the nineteenth century the Mexicans began a revolution against Spain. In 1824 they succeeded in this revolution and established the Republic of Mexico.

They adopted a written Constitution forming a democratic Federal Government very much like that of the United States.

Texas in the Mexican Republic.—Texas and Coahuila together formed a state in the Mexican Republic. They had one legislative body, called the Congress of Coahuila and Texas, one Governor and the same judicial system. In this combined state the Mexicans greatly outnumbered the Americans.

In their Congress there were ten members elected from the portion of the state known as Coahuila and only two from Texas.

In forming the Republic in 1824, the Texans had been promised that so soon as the population within the boundaries of Texas was sufficient to keep up a state government they should be divided from Coahuila and made a separate state, with their own Congress, Governor and judicial system.

Colonization of Texas.—At an early time the Spanish and Mexican governments had been anxious to have Texas settled, and they made many efforts to do this. Shortly after the Republic was established they adopted the plan of colonizing the state. This plan was carried out by giving persons who had money and influence the privilege of bringing in settlers from the United States and establishing them in different

communities or colonies within stated boundaries. The Government gave to the leaders large grants of land, and these the leaders would divide among the different colonists who came in and settled the country. By this plan a comparatively large number of Americans were induced to come.

While these colonies were being established numbers of people in the older states were forming groups and coming out to Texas on their own account. It was not long before there were quite as many if not more Americans in Texas than there were Mexicans. The Government, however, was still Mexican in character, and most of the offices were filled by Mexicans. The Americans were dissatisfied with these conditions. They wanted to be governed by laws and have their rights tried in courts and enforced by officers more like those they had been accustomed to in their homes in the United States.

Disturbances in Mexico.—The plan of Government provided for in the Constitution of the Republic of Mexico was good if it had been carried out. The Mexicans did not seem able to do this. First one leader, then another would arise, who, as soon as he had sufficient power, would disregard the Constitution and set up a government to suit himself. Other leaders would resist him, and the country was in a state

of continual dissension amounting to insurrection. Most of this trouble was in the central states of the Republic and near the City of Mexico.

Effect in Texas.—Communication between Texas and the City of Mexico at that time was slow and dangerous, so that it was difficult for the people of Texas to find out just what was going on. They knew that the Constitution was not being followed and that ambitious leaders and military men were using the Government for their own advantage instead of for the good of the people. These conditions made them very uneasy and added greatly to their dissatisfaction with their state government.

They began to hold Conventions or Consultations, where they would meet and discuss what was to be done. The Texans then believed that if they could have a separate state government that this would be all they would need. The first of these Consultations insisted only upon the separation of Texas and Coahuila. At least two Conventions, one held in 1832, and the other in 1833, very earnestly tried to get relief in this way. The last of these sent Stephen F. Austin to the City of Mexico to induce the Mexican authorities to give Texas separate statehood. The Mexicans put him in prison and kept him there for two years.

Santa Anna's Usurpation.—In 1832 the Mexicans who favored the government under the Constitution of the Republic began a movement to re-establish the Republic. They chose Santa Anna as their leader, but as soon as he had overthrown the former usurper he himself took charge of the Government and in a short while made himself a Military Dictator. Having overcome the central states he started northward to subdue the states of Zacatecas and of Coahuila and Texas. This was in 1835. Having overcome all resistance in Zacatecas he then moved against Texas.

Consultation of 1835.—In the fall of 1835, shortly after the return of Austin from Mexico, and while Santa Anna was carrying on his military operations, a call was made by a number of Texans for a general Consultation. This was to be a meeting of representatives from all the communities, or as they called them, Municipalities, to be held at San Felipe de Austin, the Capitol of Austin's Colony. The representatives selected by the people met on November 3rd, 1835, and the Consultation was organized. This body was larger and more representative than any of the former Conventions, still there were a number of large settlements which did not send delegates.

Some of the delegates wanted only to separate

Texas from Coahuila, and still stay in the Republic of Mexico. Others wanted to separate entirely from the Mexicans in every way, and have an independent Republic.

They finally concluded not to establish a separate Republic, but to insist upon separate statehood.

Provisional Government.—As the Consultation concluded to remain in the Mexican Republic as a separate state it went forward and organized a temporary State Government. This government was only to last until the Republic of Mexico would consent to the separation of Texas from Coahuila, and a regular state government for Texas could be formed. This temporary government was known as the Provisional Government. It was composed of a Governor, a Lieutenant Governor and a Council.

In the meantime Santa Anna was coming northeastward with his army, and the Consultation authorized the Provisional Government to raise an army to resist this invasion. Steps to do this were taken and General Sam Houston was given the command.

Convention of 1836.—It became more and more apparent that the plan for separate statehood in the Mexican Republic could not be carried out. In December, 1835, the Governor and his Council called another Convention to meet

in Washington, Texas, on March 1, 1836, to decide what further steps the Texans should take. Delegates were elected from almost all of the large settlements. These met on the day and at the place named. They were a sturdy body, who could bring things to pass. On the following day they declared Texas to be a free, sovereign and independent Nation. They remained in session in order to prepare a permanent Constitution for this independent Republic. As the majority of the best citizens were then in the army, the Constitution could not be submitted to them for acceptance or rejection, nor could they take part in any Governmental affairs. It was therefore necessary for the Convention to provide a plan for carrying on the affairs of Government until an election could be held by the citizens. The preparation of these two papers, the Constitution and the plan of the temporary government, detained the Convention until March 17. At that time it adjourned and most of its members joined Houston's army.

Military Operations.—In the meantime the Alamo had fallen with the slaughter of Travis and his two hundred men. Fannin and his soldiers had been massacred at Goliad. Houston had reached Gonzales on March 11, and, being informed of the fall of the Alamo, had begun to retreat eastward. This eastward march contin-

ued with little interruption, with Santa Anna in rapid pursuit, until April 21, when the two armies met on the battlefield at San Jacinto. It was here that Texan independence, which had been declared at Washington was won. The Republic of Texas then took her place among the nations of the world.

Government ad Interim.—The temporary government established by the Convention of 1836 was to have control until the Constitution proposed by that Convention could be adopted by the people and the government provided for in it should be organized. Ad interim means in between. As the temporary government came in between the Texas Declaration of Independence and the permanent government established under the Constitution it is called the Government Ad Interim.

The Government Ad Interim consisted of a President and his Cabinet. David G. Burnet was selected and installed as President. He and his Cabinet took charge of affairs and carried them on as best they could under the circumstances then existing. It took some time after the battle of San Jacinto to get the public affairs so nearly settled that the army could safely be disbanded. Most of the citizens, therefore, were not permitted to go home, so a vote on the Constitution could not be taken at once. An

election was called for September 1st, 1836, at which the people were to vote upon the adoption of the Constitution, and also for the officers provided for in it. If the Constitution should be adopted the officers could at once qualify and organize the Government. If the Constitution should be defeated the vote for officers would be of no effect.

QUESTIONS.

1. What two European countries claimed Texas at the time of its earliest settlement? How was the boundary between Louisiana and Texas finally settled and where was it located?

2. When was the Mexican Republic established? What government did this Republic resemble? With what other Mexican province was Texas combined in this Republic? What was the name of the state formed by them?

3. Were there more Mexicans or Texans in this state? What was their law-making body called? Of how many members did it consist? How many were to come from Coahuila and how many from Texas? What prospect did Texas have of getting laws suitable to her from this congress? What promise was made Texas as to separation from Coahuila?

4. Describe in brief outline, the Mexican plans for colonizing Texas. How did these succeed as to bringing in Anglo-American settlers? Why were these settlers dissatisfied with the conditions they found in Texas?

5. Did the Mexicans carry out the provisions of the Constitution of the Republic? How was the Constitution disregarded? What effect did the conditions in Mexico

have on the Texans? What relief did they contemplate at the beginning of their troubles?

6. What usurper finally conquered Central Mexico and began an invasion of the Northeastern States of the Republic? When was this? About what time did he approach the border of Texas?

7. What important meeting was held by the Texans in the fall of 1835? What remedy did this convention propose? Why did they provide for a temporary separate state government for Texas? By what name was this government known? What were the principal officers in this government? What did it do with reference to Santa Anna's invasion?

8. Did Mexico fulfill its promise to give Texas separate statehood?

9. What important body was called by the Provisional Government to meet on March 1, 1836? Did it meet? What action was taken by it on the 2nd of March? What two other important papers did this convention prepare? Why was it necessary for it to plan for two governments? Why could not the Constitution be submitted to the people at once? Why is the temporary government, created by this convention, called the "Government ad interim?" Of what officers did this government consist? Why was the chief executive in the Provisional Government called a Governor, while the chief executive in the Government ad interim was called a President?

10. What was the nature of the government provided in the Constitution prepared by this convention? Cover the following points: (a) Was it Monarchical, Aristocratic or Democratic? (b) Was it Unitary, Confederate or Federal? Give reasons for your answers. When was the vote on the adoption of the Constitution of the Republic taken? What was the result?

CHAPTER XVII.

Brief Historical Sketch of the Government of Texas.—Continued.

Republic of Texas.—The Constitution was adopted almost without opposition, and Sam Houston was elected President. The first Congress under the Republic assembled the following October, and the new Nation was fully organized in all its departments.

The Government thus organized was National in its nature. It was a Unitary State in the fullest sense, possessing in itself all the powers of sovereignty which in the United States are divided between the Federal Government and the governments of the States. Its constitution was modeled to some extent after that of the United States, though the differences just pointed out are very clear. The three departments of government were recognized, and it was provided that no officer in any of them could exercise any power properly belonging to any other.

The chief executive was called a President. His cabinet consisted of a Secretary of State, Secretary of War, Secretary of the Navy, Sec-

retary of the Treasury, and an Attorney General.

The legislature was called the Congress, and consisted of two houses, the Senate and the House of Representatives.

The Judicial Department consisted of a Supreme Court, District Courts, County Courts, and Justices' Courts. Original jurisdiction was divided among the last three; the Supreme Court had appellate powers only.

Jurisprudence of Texas.—Spain is a civil or Roman law country. For this reason the Roman law, as modified by Spain and Mexico, was in force in Texas when Texas achieved her independence. The Anglo-Americans were all from English common law countries, and possessed the habits of life, mental training and political traditions belonging to such countries. The responsibility of founding a system of laws was great, and the Texans set themselves deliberately and patriotically to the task. The founders of the Republic chose wisely between these two systems of laws, the Roman and the English. Laws relating to the family and the rights and duties of the husband and wife which had been modeled after the Roman laws they left almost unchanged. Laws pertaining to land and land titles they changed but little, but laws relating to less permanent things they

altered greatly, thus combining what seemed best to them in the two systems.

Original Legislation in Texas.—Besides selecting the best from each of the old systems of law these Texas statesmen originated some very important governmental policies. Among these is the homestead law. Under the Roman and the common law all that a debtor had could be seized and sold for his debts. Even the bedding of his family, their food, or their fuel, could be taken, and, under the common law at least, in addition the debtor himself could be put in jail until the debt was paid. Texas declared in its Constitution of 1836 that no man should be imprisoned for debt, and its Congress in 1839 exempted from forced sale a small portion of personal property and, if the debtor had a family, a home. It further provided that on the death of the debtor these privileges and exemptions should continue for the benefit of his family. This home, free from seizure for debt, was to be the refuge for the unfortunate and his family, the hearth-stone where, in spite of adverse fortune, children could be reared who would be filled with love of country and who would be ready to live in its service or die in its defense.

This policy needs no higher praise than to state that it has been adopted in nearly all of

the forty-eight states of the Union and that no state which has adopted it has ever given it up.

Success of the Republic.—The independence of Texas was recognized by the United States in 1837. Not long after that it was recognized by France, a little later by England, and soon by all the civilized nations.

The Republic had many and great difficulties, most of which were due to want of money. Neither the Government nor the people had the cash with which to operate. The principal resources of the Republic were her extensive lands, so she adopted the policy of encouraging their settlement and development. This is shown in almost all the legislation of the times. Large tracts were offered to heads of families who would come to the Republic and settle. Smaller tracts were given to unmarried men. Homes made on these lands were exempted from sale for debts.

It was often difficult to tell just where a particular tract of land was located. In many parts of the Republic it was dangerous to go upon the land and live. For these reasons if a man settled upon another man's land by mistake the Republic favored the actual settler. Laws were passed which gave to the man who actually lived upon the land for a stated period, title to it or at least the right to hold it

against the real owner. If a settler who acted in good faith took possession of land belonging to another and stayed on the land for a year, making improvements on it, he could get pay for these improvements from the owner, although this was too short a time to give him the land. This policy of protecting the actual settler was a wise one and has been justified by the results.

Texas as a State Prior to the Present Constitution.—In 1845 Texas was annexed to the United States and became one of the States of the Union, having the same rights and privileges and owing the same duties as one of the original Thirteen.

Its first Constitution as a State was adopted in 1845, and the first State Government was organized in February, 1846. This State Constitution was very like the Constitution of the Republic. It made no provision for the exercise of national powers, as all such powers passed to the United States by annexation. It established a republican form of government. The three departments of government were separated, each having the powers generally recognized as belonging to it.

The Legislature consisted of two houses which had powers and organization similar to those under our present Constitution. The Chief

Executive was called the Governor. All the Cabinet offices which existed under the Republic, except the Secretary of War and of the Navy were retained. The duties of all these officers were the same as before except those of the Secretary of State. His were very much lessened because he no longer had anything to do with foreign nations or any diplomatic affairs. The judicial department was very much like that under the Republic, though a few alterations were made.

Secession.—After 1845 there were no important changes in the Constitution of Texas until the State adopted the Ordinance of Secession in 1861. The Constitution was then amended so as to meet the new conditions. No other changes worthy of note were made at that time. As these changes took place in 1861 this amended Constitution is known as the Constitution of 1861.

Reconstruction.—This is a difficult period of our history. The Southern States had affirmed their right to withdraw from the Union. This had been denied by the states of the North. In the appeal to arms the North had been victorious. The right to secede was thus disproved. What was the status of the States which had attempted to secede and failed? Were they still members of the Union, entitled to all the

privileges belonging to such membership? Were they conquered territory, subject to absolute control by the victors? Did they occupy some intermediate position? Who was to decide these most important questions? Logically the Federal authorities undertook to answer. Who among them had the right of determination? Should it be the President or Congress? The first action was taken by the President, but the power of control was finally assumed by Congress. It exercised this power by finally placing the South under military rule, enforced by the officers of the army. All civil authorities during this period were subordinated to the officers of the Army.

The President is the Commander-in-Chief of the Army, and so had the appointment and supervision of the officers who were to carry out in detail and in fact the general policies adopted by Congress. The result is difficult to characterize.

When the war was over the President appointed a provisional governor of Texas to take charge of affairs here. He and the military officers in command of this Department were to act together. Which was to be the superior power was not made clear at this time. Differences of opinion as to that necessarily arose though no irreconcilable conflict was occasioned!

A convention to form a new constitution was called to meet in February, 1866. The purpose of the convention was to propose a constitution so conformed to the results of the war and to the prevailing sentiment in Congress that Texas would again take her place as a state in the Union, and the civil authorities be put in undisputed control. This convention did not draft an entirely new instrument, but took as a basis of action the Constitution of 1845, which had never been superseded, and amended it so as to take out the objectionable features engrafted on it in 1861, and also to approximately express the results of the war as the delegates to the convention understood them.

State, district and county officers were to be elected at the same time. The amendments to the Constitution were adopted in June, 1866, and the democratic candidates for all state officers and for most others, were elected.

These officers took charge of the affairs of the state, but Congress refused to approve the Constitution or to receive the senators and representatives in Congress or to in any way recognize Texas as freed from the taint of rebellion. The military authorities were continued in actual control. All that the so-called officers of Texas did being subject to their supervision and approval.

Congress passed a "Reconstruction Act" which went into effect on March 2nd, 1867. In this Act the civil government operating under the unapproved constitution of 1866 was declared to be "provisional only and in all respects subject to the paramount authority of the United States to abolish, modify or control or supersede."

The determination as to which of these different things should be done was primarily with the commanding officers of the military division in which Texas was situated.

On July 30th, 1867, the Governor and Lieutenant Governor were removed from office as "impediments to reconstruction." A provisional governor was appointed at the same time. He was, if possible, more completely under the domination of the army officers than his predecessors.

The military authority on December 18th, 1867, ordered an election to be held in February, 1868, to determine, first, whether or not a constitutional convention should be called, and, second, at the same time to select delegates to such convention in the event it was to be held. It was voted to call the convention.

This convention met in Austin on June 1st, 1868. After a protracted and most remarkable session or rather two sessions, it prepared a

constitution known as the Constitution of 1869. This was not an amendment to the previous constitutions but was a new instrument entirely.

It was submitted to the people and adopted by them at an election held on the first Monday in July, 1869. A state government was organized under it. On March 30th, 1870, the Act of Congress admitting Texas into the Union went into effect. Her senators and representatives were seated in Congress and her state officers were also recognized. She has since been a state in the Union on an equality with other states.

Preparation and Adoption of the Constitution of 1876.—Shortly after the close of the war Congress passed several laws of amnesty, as they were called, restoring to the people who had engaged in the Civil War on the side of the South their political rights upon their taking an oath of allegiance to the United States as presented in the several statutes. The real citizens of Texas were thus gradually restored to their right to vote and to hold office.

At a general election held in 1873 the Honorable Richard Coke of Waco, the democratic nominee, was elected Governor of the State. A democratic legislature was also elected. After a good deal of opposition by the officers then in

power the newly elected officers took charge of the State government.

Among the first things they did was to provide for preparing and adopting a new constitution. A convention was called for this purpose and delegates were elected to it. They met at Austin in 1875 and prepared a constitution which was submitted to the people and adopted by them in February, 1876. This constitution, by its express terms, went into effect on the 18th day of April, 1876, and has been the constitution of the State since that time.

Amendments to the Constitution of 1876.—Many amendments to this Constitution have been proposed from time to time. The majority of these have been rejected by the people. Several have been adopted. Among the most important of those adopted are: one providing for the creation of the Railroad Commission, which was voted on in 1890, and another, changing the judicial system, voted on in 1891.

This Constitution of 1876, as modified by the various amendments adopted since that date, is the present fundamental law of the State, and as such will be the basis of our treatment of the various departments of the Government of Texas.

Summary.—From the foregoing it will be seen that many different governments have

existed in Texas since its earliest known history.

First, it was inhabited by Indians and was claimed by both Spain and France, neither exercising any real control over it.

Second, it became a province of Spain and as such subject to the Spanish king.

Third, as a result of the Mexican Revolution, in connection with Coahuila, it became a State in the Mexican Republic.

Fourth, in 1836 it became an independent nation called the Republic of Texas.

Fifth, in 1845 by annexation it became a State in the American Union.

Sixth, in 1861 it attempted to secede from the United States and declared itself to be a member of the Southern Confederacy.

Seventh, upon the fall of the Southern Confederacy it found itself still a member of the United States of America, but was subject to military rule until it should reorganize its government in such way as to be satisfactory to Congress.

Eighth, its first effort to reorganize its government made in 1866 was not satisfactory to Congress and military rule was continued.

Ninth, in 1869 another Constitution was adopted which was accepted by Congress and

on the 30th day of March, 1870, Texas became a State in the Union in good standing.

Tenth, in 1875 another Constitution was adopted which went into effect on the 18th day of April, 1876. This Constitution, modified by the amendments subsequently adopted, is the basis of our present government.

QUESTIONS.

1. When was the Republic of Texas fully organized? Was the Government State or National? Was it Unitary or Federal? In this respect, how did it compare with the government of the United States as that is now held to be? How many departments of government were recognized in it?

2. Name the principal executive officers in the Republic. What was its legislature called? Of how many houses did it consist? Name the four classes of courts in its judicial system.

3. From what ancient government had Spain received her laws? How had this law been brought to Texas? To what system of law were the Texans accustomed? What general policy governed the founders of Texas in choosing between these two systems? Name some of the matters as to which the Spanish or Mexican laws were to a large extent retained.

4. By what people was the homestead law originated? What are the general purposes of this law? What evidence have we, in the conduct of other states, as to the wisdom of this law?

5. By what government was the independence of Texas

first recognized? When was this? What government came next in its recognition?

6. What were some of the needs of the young Republic? What was her principal financial resource? What kinds of laws were passed to encourage immigration?

7. How long did Texas remain a Unitary Republic? In what way did it cease to be such a government? When did annexation take place? When Texas came into the Union in this way how did her rights, privileges and duties correspond with those of other states in the Union?

8. When was the first State Constitution adopted? When was the first State Government organized? Why did not that Constitution provide for the exercise of all political power as the Constitution of the Republic had done?

9. For how many departments of government did this Constitution provide? What was the chief executive officer called? Why were a Secretary of War and of the Navy omitted from this Constitution?

10. When were the first important changes in the Constitution of 1845 made? What was the occasion for these changes?

11. What period in the history of Texas is called the reconstruction period? What was the great difference in the views of the North and South as to the nature of the United States Government? Which view was established by the result of the war?

12. During the reconstruction period, who had control in Texas, the civil authorities of the State or the Army officers of the United States?

13. What effort was made in 1866 to re-establish the state government? Did this convention write a new Constitution or propose changes in the existing one?

14. When were these amendments adopted? The can-

didates of what party were successful in that election? Did Congress recognize the State and her officers under these amendments? Who continued to exercise actual control in all state and local affairs?

15. When did Congress pass its Reconstruction Act? What did this Act declare as to the state government in Texas sought to be recognized under the Constitution of 1866? Who was left to determine the extent to which this state government should be recognized?

16. When and for what reasons were the Governor and Lieutenant Governor removed by the commanding general? What kind of state government was then established?

17. When and by whom was the next election to call a constitutional convention ordered? When was this election held and what was its result? When did the convention meet? When was the Constitution submitted to the vote of the people? Was the Constitution adopted? At what time was Texas recognized as a state in the Union?

18. When did the next constitutional convention meet? When was the Constitution prepared by it adopted? When did it go into effect? Name two important amendments to this Constitution? What is the present fundamental law of this state?

19. Give the recapitulation at the end of this chapter.

CHAPTER XVIII.

The Present State Constitution Known as the Constitution of 1876.

Introduction.—As we saw at the end of the last chapter the Constitution of 1876 was prepared by a Convention of delegates elected by the people just after the days of reconstruction. The convention met and the Constitution was drawn up in 1875, but as it was not adopted by the people until February, 1876, and did not go into effect until April 18th of that year it is usually spoken of as the Constitution of 1876.

In many ways it is in sharp contrast with all of our previous State Constitutions. It is probably twice as long as the Constitution of 1845. It has articles consisting of many sections on numbers of subjects scarcely mentioned in the early Constitutions. It abounds in detail. All through the instrument there are evidences of lack of confidence by the people in the various officers provided for in it.

The Preamble to the Constitution.—The preamble or introduction to the Constitution is in these words, “Humbly invoking the blessings of Almighty God, the people of the State of

Texas do ordain and establish this Constitution.”

Study this statement carefully. You will find in it two great truths, first that the highest human power is dependent on the blessings of God for its prosperity and continuance, and, second, that the people of this State possess sovereign political power and establish their own government through this constitution.

Sovereignty of Texas.—The sovereign power of Texas which is asserted in the preamble is expressed more fully in Sections 1, 2 and 3, of the Bill of Rights, as follows: “Section 1. Texas is a free and independent State, subject only to the Constitution of the United States; and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government unimpaired to all the States.”

Section 2. “All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a Republican form of government, and subject to this limitation only they have at all times the inalienable right to alter, reform, or abolish their government in such manner as they think expedient.”

Section 3. "All free men when they form a social compact have equal rights, and no man or set of men is entitled to exclusive public emoluments or privileges but in consideration of public services."

Recognition of God.—The people of Texas believe in the separation of Church and State. They do not believe that any person ought to be compelled to worship God, to engage in any religious exercise or to support any religious order unless he does so of his own free choice. But this does not mean that Texas is not a Christian country which does not recognize the existence of God. On the contrary the preamble to the constitution humbly invokes the blessings of God upon the people in the preparation of the constitution and in the establishment of the government created by it.

In many other ways in the body of the Constitution and in the law of this State God is recognized and our dependence upon Him as a people is accepted as a fact.

In these sections the Constitution repeats the important fact that the people of the State of Texas have in themselves the power to make and unmake their state government and to form it in such way as they see fit with the single exception that it must remain republican in its nature. This recognized limitation on

their political power is found in the Constitution of the United States. This is a very forcible statement of the facts. The people of Texas are sovereign, having all political power except that which was given by the Constitution of the United States to the Federal Government. This is true of Texas notwithstanding she was not one of the original thirteen colonies and did not come into the Union until 1845, when she entered by treaty of annexation. For it is settled law that new states coming into the Union, no matter by what method, have just the same rights and owe just the same duties and in every way have just the same relations to the Federal Government as each of the original states has.

Departments of the State Government.—The second Article in the Constitution of Texas declares that there shall be three separate departments of governments, legislative, executive and judicial. On this point our Constitution goes further perhaps than that of any of the other states. It says that no person who is an officer in either one of these departments shall act as an officer in or exercise any powers belonging to either of the others, except in instances in which the right to do so shall be expressly given in the Constitution itself.

We have explained these three kinds of power

and have discussed the necessity for their exercise whenever one person undertakes to control another. Our Constitution simply recognizes these facts. It also seeks to prevent the abuse of power by officers by denying to each of them the right to exercise more than one of these kinds of power. The wisdom of this sharp division of power has been called in question; but neither the people of the United States nor those of Texas have yet been convinced that it would be safe to do away with the division.

Political Rights.—The Constitution has a number of provisions about the right to vote. Some of these are affirmative, declaring who may vote. Others are negative, declaring who may not vote. Others give general directions as to the way in which voting shall be done.

Considering all these together we find that the general rule is that all males over 21 years of age who have resided in the state for more than one year and in the district or county in which they offer to vote for six months just before the election, may vote. To this general rule there are several exceptions. First, no one can vote unless he be either a citizen of the United States or shall have declared his intentions to become such a citizen. Second, idiots, lunatics, paupers, persons who have been convicted of a penitentiary offense and soldiers in

the service of the United States are denied this right.

Under a recent amendment to our Constitution persons who are otherwise qualified to vote in order to be permitted to do so at any election, must have paid their poll tax for the year before that in which the election is held. Such payment must have been made before the first day of February of the election year. This law applies to all voters unless they are 60 years of age or over. This age limit is the only exception made by the Constitution. The legislature has attempted to extend it by statute, exempting persons who are blind or have lost an arm or a leg. If exempt persons live in a city of ten thousand inhabitants or over, they must get a certificate from the Tax Collector that they are exempt, before they can vote. This certificate must be gotten before February 1st of the election year. If they live in the country or in a smaller city or town they need not get a certificate of exemption.

Voting and Citizenship.—The general impression is that voting and citizenship go together. This is not true, though it ought to be, at least to the extent that no one who is not a citizen should be permitted to vote. Many persons who are not citizens but have only declared their intention to become such are permitted to vote.

Many persons who are citizens are not permitted to vote. Among the latter are many women who have large property interests and corresponding responsibilities as citizens.

Another peculiar fact about voting in the United States is that each state determines who shall vote within its territory for representatives in Congress and Presidential Electors. There is no power in the United States Congress to fix qualifications for voting for either state or federal officers. The provision of the Fifteenth Amendment regarding race, color and previous conditions denies both to Congress and the state legislatures the power to disfranchise any person for either of these reasons, but does not give to Congress or the states any powers as to fixing qualifications for suffrage which they did not have before the adoption of that amendment.

Regulation of Elections.—The Texas Constitution requires that the people in all elections shall vote by ballot. That these elections and their results shall fully represent the will of the people the Constitution makes it the duty of the Legislature to prohibit “all undue influence in elections from power, bribery, tumult or other improper practice.”

Another provision commands the passage of such laws as may be necessary “to detect and

punish fraud and preserve the purity of the ballot box.”

A ballot is a paper on which a voter states his vote. If the election is held to choose candidates or officers the ballot must contain the names of the persons for whom the vote is cast and the office to which each is to be chosen. To do this the name of each person voted for and the office which he is to hold must be either written or printed on the ballot. If the election is about a political measure such as adopting a constitutional amendment, the ballot must show the measure voted on and whether the voter favors or opposes its adoption.

Each voter deposits his ballot with the proper officer. It is afterwards counted in making up the returns of the election. These returns are written statements by the election officers as to the votes cast in their respective election precincts. In these returns they state the name of each man voted for, the office for which he was running and the number of votes he received. The correctness of these statements is then certified to by the election officers and the returns are delivered by one of such officers to the person designated by law to receive them.

If it is a primary election they are given to the Chairman of the County Executive Committee of the political party holding the pri-

mary. If it is a regular election they are delivered to the County Judge. In either case the boxes containing the ballots cast in the particular election are sealed up and delivered by the election officers with the returns. These are kept for the time provided by law when the proper officers open the returns from all over the county and declare the result.

If it is a primary election the returns and ballot boxes are delivered to the County Executive Committee of the party holding the election. At the proper time this committee counts the votes and declares the candidates for county and precinct offices who received the highest votes to be the nominees of that party. These officers send the returns for District and State candidates from their respective counties to the Executive Committees of the different electoral districts, including their county, and to the State Executive Committee.

If it is a regular election the returns and ballot boxes are delivered to the County Judge and Commissioners. At the proper time these officers count the votes. The candidates receiving the highest number of votes for the different county and precinct offices are declared elected to these offices.

A certificate as to the votes for all other offices, district and state, are returned to the Sec-

retary of State. These votes are canvassed by the Governor, Secretary of State and the Attorney General for all offices except for Governor and Lieutenant Governor. The returns for these two offices are kept by the Secretary of State until the Legislature meets and then delivered by him to the Speaker of the House of Representatives. They are counted by the Speaker in the presence of the House and Senate and the candidate receiving the highest number of votes for each of these offices is declared by him to have been elected.

Protection of the Ballot.—The state does not do its full duty to the voter by simply permitting him to vote. It must make and enforce such laws as will cause his ballot to be counted properly and as will keep all persons not entitled to vote from doing so. It must also prevent the election officers from using or permitting any fraud or trickery or other wrong practices to change the result of an election.

Right to Hold Office.—There are only two general requirements for holding office in Texas. The first demands that every officer must acknowledge the existence of a Supreme Being. The second forbids any one who has fought a duel or acted as a second in a duel or who has sent or accepted a challenge to fight a duel to hold office.

There are a number of facts which disqualify particular persons from holding office or prescribe qualifications for particular offices. For example: A District Judge "shall be at least 25 years of age, shall be a citizen of the United States, shall have been a practicing attorney or judge of a court in this state for a period of four years and shall have resided in the district in which he is elected for two years next before his election." Numerous other examples might be given. Many of these are given in connection with the various named offices throughout the text.

QUESTIONS.

1. Repeat the preamble to the Constitution of Texas. What two great truths are set forth in these words? What is the belief of the people of Texas as to the separation of church and state? Does this belief prevent our government from recognizing the existence of God? How does the preamble to the Constitution prove this last statement?

2. What is the effect of sections one, two and three of the Bill of Rights as to the power of the people of Texas to form their state government and the limitations upon such power? Are the rights and duties of Texas as a state affected by the facts that she did not come into the Union until 1845 and then entered by treaty? Why?

3. What three departments of government were provided for in the Texas Constitution? What explicit state-

ments are made in it as to keeping these departments distinct? Why is this division of power proper?

4. What is the general rule in Texas as to who may vote? What exceptions are made to this rule (a) based on sex; (b) on citizenship; (c) on mental condition; (d) on thriftlessness; (e) based on crime; and (f) on military service?

5. What is the substance of the recent amendment to the Constitution requiring the payment of poll tax to entitle one to vote?

6. Are all citizens allowed to vote in Texas? Are all voters required to be citizens? Who fixes the qualifications of voters for representatives in Congress, and for presidential electors? Has Congress any power to fix qualifications of voters? What is the provision of the Fifteenth Amendment regarding race, color and previous condition as affecting the right to vote?

7. In what way must the people vote in Texas? What is a ballot? How is voting by ballot done? What is an election return? What must it contain? In primary elections to whom are the returns made? To whom are they made in a regular election? What is done with the ballots cast at an election?

8. Who declares the result as to county officers in a primary election? Who in regular elections? How are the results ascertained in district and state elections?

9. What duties does the Constitution impose upon the Legislature regarding the purity and protection of elections and the ballot box?

10. What is the right to hold office? What two provisions are there in the Texas Constitution disqualifying persons from holding office?

CHAPTER XIX.

Legislative Department.

Introduction.—The general nature of the different departments of government has been so fully explained in connection with the Federal Government that it is unnecessary to take it up here. In this and the succeeding chapters we will discuss these different departments as they exist in Texas. In so doing we will follow the order in which they appear in the State Constitution.

Legislative Power of a State.—Article III, Section 1, of the Texas Constitution says: “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.’ ”

Let us compare this with the corresponding clause in the Constitution of the United States, which is as follows: “All legislative power herein granted shall be vested in a Congress of the United States which shall consist of the Senate and House of Representatives.” Art. I, Sub. 1, U. S. Const. Look carefully at the first statement in each of these clauses. The State Constitution speaks of the legislative

power of this state. It does not refer to this power as being granted to the people. This is correct. State Constitutions deal with powers inherent in the people of the state. Inherent powers are those which the person possessing them has in his own right, without gift or grant from any one else.

In the case of Texas this is a part of the power which the people asserted in their Declaration of Independence adopted on March 2nd, 1836, when they declared Texas "to be a free, sovereign and independent nation." Some of the legislative power asserted by the people in their Declaration and possessed by them while they were a Republic, was given over to the Federal Government when Texas became a state in the Union in 1845. The legislative powers which remained in the people of the state, however, were inherent and primary just as they had been during the days of the Republic.

Let us examine the clause in the Constitution of the United States. It is: "All legislative powers herein granted." This shows that the Constitution of the United States is an original source of power which did not exist before that instrument was drawn up and ratified by the people of the several states.

We have thus impressed on us by these two

clauses the fact that state constitutions deal with power already possessed by the people, whereas the Federal Constitution deals with powers originating in and granted by that instrument.

The legislative power of the people of Texas therefore extends to and includes the right to legislate on all subjects which have not been given over to the exclusive control of the Federal Government or which they have not been forbidden to exercise in the Federal Constitution. This division of power has been considered heretofore.

While it is true as we have just stated that the people of Texas have all legislative powers not parted with by them by becoming a state in the Union, we must not think from this that the state must give to its legislative department the right to use all these powers. Not a single state in the Union does this. The Constitution of each state withholds from the legislature created by it some of the legislative power of the people of that state. This explains to you why it is that in order to get correct notions of our Government we must study not only the grants of power made by our constitutions to the different officers, but also the restrictive provisions of the Constitution which give us the denials of power and the restraints on those

given. If we did not do this we would not get true ideas of our Government.

Legislature.—As stated in the beginning of this chapter the Legislature of Texas consists of two houses, the Senate and the House of Representatives. It meets once in every two years in regular session. These meetings begin on the second Tuesday in January of the year following general elections. The Legislature may be called together in special session by the Governor whenever he thinks proper. At regular sessions the Legislature may pass any laws that it sees fit not contrary to the Constitution of the State or of the United States. At called sessions it can only act on matters specially submitted to it by the Governor in his messages. Both the House and Senate must concur in all laws and joint resolutions passed by the Legislature.

Each house is the judge of the election and qualification of its own members, makes its own rules of procedure, keeps a record of its acts, elects its own officers, may punish or expel its members for improper conduct and punish any other person for contempt.

Senate.—There are thirty-one senatorial districts, each of which has one senator elected by the qualified voters of the district. A senator must be a citizen of the United States,

a qualified voter of the State, twenty-six years of age, must have been living in Texas for at least two years and in his district for at least one year before his election. He holds his office for four years.

The Senate, without the concurrence of the House, passes on all appointments to office made by the Governor and tries all cases of impeachment or redress against officers brought before it by the House.

Organization of the Senate.—The Lieutenant Governor presides over the Senate. As he is not a member of this body he can only vote in case of a tie, or when the body is in committee of the whole. The Senate elects its other officers, the most important of whom is the President pro tem., who presides over the Senate in the absence of the Lieutenant Governor. He is always a member of the Senate and is entitled to vote on all questions. The other officers of the Senate are a Secretary, Assistant Secretary, Journal Clerk, Assistant Journal Clerk, Calendar Clerk, Enrolling Clerk, Sergeant-at-Arms, Assistant Sergeant-at-Arms, Doorkeeper, Assistant Doorkeeper, and Chaplain. The duties of the several officers are fairly well indicated by their names.

House of Representatives.—The number of the members of the House is not fixed by the

Constitution. The smallest number permissible is ninety-three, and the largest number can never go over one hundred and fifty. There are now 142 members, elected from 127 districts.

The legislature divides the State into representative districts, making the division, so far as this can be done, so as to give one representative to a designated number of inhabitants, which can not be less than 15,000. This number is changed from time to time as the population of the state increases.

In making this distribution the county is taken as the unit as far as it is possible to do so. If one county has about the number of inhabitants which entitles it to a representative the county is made a representative district and one member of the House is elected from it. If another county has a larger number of inhabitants, it will be entitled to a number of representatives in proportion to its population. If there are several counties lying together, no one of which has enough inhabitants to entitle it to a representative, these will be combined and together will be given a representative. If there are a number of counties, each of which has more inhabitants than would entitle it to a representative, but not enough to entitle it to two, each county would be given one representative and then another

representative would be elected from all the counties combined into a district. Such a representative is called a floater.

A representative must be at least twenty-one years of age, a citizen of the United States, a qualified voter of the State, must have lived in the State for at least two years and in his district at least one year before his election. The term of office is two years.

Organization of the House.—The House elects from its own members its presiding officer, called a Speaker, who, as he is a member, is entitled to vote on all questions. The House also elects its other officers. These are a Chief Clerk, Calendar Clerk, Journal Clerk, Assistant Journal Clerk, Engrossing Clerk, Enrolling Clerk, Reading Clerk, Sergeant-at-Arms, Doorkeeper, and Chaplain.

Payment.—Members of each House receive \$5.00 per day for the first sixty days and \$2.00 per day during the remainder of a session. The purpose of this provisions is to force the Legislature to give attention to business and to have short sessions, but such has not been the result.

The Legislature usually adjourns on the sixtieth day, and is called immediately in special session by the Governor. This is a new session and the members receive \$5.00 per day.

Proceedings in the Legislature.—There are a

great many detailed provisions in the Constitution as to how legislation shall be carried on. These are long and need not be given here, as they are practically the same as the methods of procedure in Congress, which have been considered.

Restrictive Provisions.—Many of the restrictions on the legislative powers are contained in the Bill of Rights and affect the Legislature no more than they do the other Departments of government. Some of these will be considered hereafter under that head. Other restrictions relate to taxation, public debts, and claims, and will be considered under those heads.

Local and Special Laws.—One limitation on the powers of the Legislature relates to the passage of local and special laws. Local laws are those which affect only a particular place. Special laws deal with some private matters and affect only those persons interested in such matters. Section 56, Article 3, of the Constitution, forbids the Legislature to pass local or special laws on any of the subjects set out in that section, which are about 56 in number. The next section of that article regulates the manner of passing local or special laws when this is permitted. One of these provisions requires publication of the intent to apply for the passage

of a local law thirty days before the introduction of the bill into the Legislature.

QUESTIONS.

1. Repeat Section I, Article III of the Texas Constitution, regarding the legislative power of the state. Repeat Section I, Article I, of the Constitution of the United States, regarding the legislative power of that government. Contrast these two sections showing what they teach as to the nature of the legislative powers of the two governments.

2. To what subjects does the legislative power of the people of Texas extend? Are the people required to authorize the Legislature of Texas to exercise all these powers? Does the Constitution of Texas give such authority to the Legislature?

3. Of what two houses does the Legislature of Texas consist? How often does the Legislature meet in regular session? On what subjects can the Legislature act in regular session? Who may call special sessions of the Legislature? What may be legislated on in these sessions? Can either house pass a law without the concurrence of the other?

4. How many members are there of the State Senate? How are they elected? State the qualifications of a Senator. What powers has the Senate acting apart from the House? How is the Senate organized?

5. Is the number of members of the House of Representatives fixed by the Constitution? By whom and on what basis is the number determined? By whom and how are representative districts made? What are the qualifications for a representative? How is the House organized?

6. What pay do members of the Legislature receive?

What was the purpose of cutting down the pay after sixty days? What has been the practical working of this provision?

7. Turn back to the discussion of proceedings in Congress and describe the proceedings in the State Legislature.

8. What is a local law? What is a special law? What does the Constitution require as to giving notice before the passage of such a law?

CHAPTER XX.

Executive Department.

Introduction.—We have already studied the general nature of the Executive Department of the Government and the powers and duties of the executive officers in the Federal Government. We will now take up the Executive Officers in our State Government.

We will find the duties of these officers are very similar to those in the Federal Government though not identical with them. The similarities come from the fact that each performs Executive action. The differences come, first, from the different matters with which the two governments have to deal, those of the United States being National, while those of the State are domestic; and, second, from the differences in the conditions under which the two governments are carried on.

Officers of the State Executive Department.—

The following officers compose the Executive Department of the State of Texas: The Governor, Lieutenant Governor, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, Attorney General, Superintendent of Public Instruction and Commissioner of Agriculture, who are elected by the people; and the Secretary of State, Commissioner of Banking and Insurance, Adjutant General, two commissioners constituting the Board of Pardon Advisers, State Health Officer, State Revenue Agent, State Purchasing Agent, State Tax Commissioner, Pension Commissioner, Superintendent of Public Buildings and Grounds, Texas Library and Historical Commissioner, State Expert Printer, Commissioner of Labor Statistics, State Inspector of Masonry, Superintendent of Public Buildings and Works, Live Stock Sanitary Commissioner, State Mining Board, Pure Food Commissioner, and a Game, Fish and Oyster Commissioner, who are appointed by the Governor with the approval of the Senate.

There are also a number of Boards and Principals in charge of different matters of public interest, such as the various Charitable Institutions, Reformatories and Penitentiaries.

Most of the County Officers also belong to this Department.

Terms and Manner of Election.—The terms of these offices are two years. If vacancies occur they are filled by appointment for the remainder of the unexpired term. Vacancies in state offices except that of Governor are filled by appointment of the Governor; in county offices, by the County Commissioners' Court.

A number of the state officers, as stated in the last paragraph, are elected by the people of the whole state. The others are appointed by the Governor with the approval of the Senate.

The Governor and Lieutenant Governor are inaugurated on the Third Tuesday in January after the general election. The inauguration ceremonies consists in administering the oath of office to each of these officers in the Hall of Representatives in the presence of both houses of the Legislature and the delivery of an address by each.

If a vacancy occurs in the office of Governor the Lieutenant Governor takes the office and the President pro tem. of the Senate becomes Lieutenant Governor.

The Governor.—The Governor, at the time of his election, must be at least thirty years of age, a citizen of the United States and must

have lived in Texas for at least five years. His salary is \$4,000.00 per year. In addition to this he has the use of the Governor's Mansion.

He is commander-in-chief of the State militia at all times except when it is called into actual service of the United States, when the President of the United States takes command of it.

It is his duty to see that all the laws of the State are enforced and he must suppress insurrections, repel invasions and protect the frontier. In the discharge of these last named duties he can have the assistance of the Federal Government if he so desires.

It is also the duty of the Governor to send messages to the Legislature, telling them about all matters of importance that require legislative action. He can go further than this and recommend the passage of laws which in his judgment would be for the public good. It is especially made his duty to give the legislature information about the financial and business affairs of the State and to go into detail about these, stating the amount of money that he thinks will be needed for each of the departments of government for the next two years, and giving other similar specific information.

Through him all communications between the

State and the United States or any other state of the Union must be carried on.

The Governor also has the power to pardon or lessen the punishment of all persons convicted of crimes, except in cases of treason or impeachment. In cases of impeachment he has no pardoning power. In cases of treason he can recommend pardon to the Senate and if that body agrees with him the pardon will take effect.

There are two officers called the Board of Pardons whose business it is to look into all requests for pardon, consider them carefully and recommend to the Governor what they think ought to be done. The Governor can do as they suggest or not, as he thinks best.

The Governor appoints all state officers who are not chosen by election, and if a vacancy occurs in any state or district office, even though it be one that is filled by election by the people, he fills the place by appointment, the man appointed by him holding the office until the next general election, unless the legislature shall meet before that time. In such case he must send in the name of the appointee to the Senate for its action.

Governor's Connection With Legislation.—As we have stated, the Governor may influence legislation by making recommendations to the

Legislature when it is in regular session. It is also in his power to call special sessions of the Legislature. When called together in this way the Legislature can only pass upon such matters as are submitted to it by the Governor in the message calling it together or in some later message that he may send in.

Every bill that is passed by the Legislature must go to the Governor for his action. The Governor may do any one of three things with it. First, he may approve it; second, he may fail to act on it; third, he may veto it. If he approves it he must sign it and it then becomes a law. If he does not take any action on it within the time specified by law, it becomes a law without his approval. If he vetoes the bill, if the Legislature is in session, he must send the bill back to the house in which it originated, giving in writing the reasons for his veto. This kills the bill unless it is taken up by each house and passed by a two-thirds vote, in which case it becomes a law without further action by the Governor.

There are two ways in which the Governor can veto a bill. First, if the bill is sent to him more than ten days before the end of the session of the Legislature, if he disapproves it he must indorse his veto on the bill, giving his reasons, and send it back within ten days to

the house in which it originated. Second, if the Legislature adjourns within less than ten days after the bill reaches the Governor he then has twenty days after the adjournment within which to act on the bill. He need not take this time to act on it. It would be in his power to veto the bill before adjournment. If he did this he must send the bill and the veto message to the house in which the bill originated. If he does not act on the bill during the session and desires to veto it afterward he writes on the bill his objections to it, signs this officially and files the bill and statement of objections with the Secretary of State. The Secretary of State then publishes the bill and the veto in some newspaper within twenty days after the Legislature adjourns.

In vetoing ordinary bills the Governor must act on them as a whole. He cannot approve part of such a bill and veto another part of it. This is not true of general appropriation bills. In dealing with these the Governor is especially authorized to approve some items and disapprove others. After the Governor has once acted on a bill, either approving or disapproving it, he cannot change this action.

Lieutenant Governor.—The Lieutenant Governor “shall by virtue of his office be President of the Senate and shall have, when in commit-

tee of the whole, a right to debate and vote on all questions; and when the Senate is equally divided, to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or his impeachment or absence from the state, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified; or until the Governor impeached, absent or disabled, shall be acquitted, return or his disability be removed.”

It is customary for the Lieutenant Governor, as presiding officer of the Senate to appoint the committees of that body. This is not a power given him by the Constitution and the Senate can change it at any time it sees fit.

Comptroller of Public Accounts.—The Comptroller of Public Accounts is the State’s principal bookkeeper. It is his duty to collect all moneys belonging to the state and pay them over to the Treasurer, to be kept by him for the purpose for which they were paid in. The Comptroller also gives written orders authorizing the Treasurer to pay to any person entitled to collect money from the State Treasury the amount due such person as stated in the order. This written order is called a Treasury War-

rant. The Comptroller keeps accounts with all tax collectors and sheriffs and other officers whose duty it is to collect or handle money belonging to the state.

It is also the Comptroller's duty to look after the issuance of licenses to persons engaged in selling intoxicating liquors anywhere in the state and to see that the laws regulating licenses and the conduct of such business are complied with.

The Comptroller is also a member *ex officio* of several State Boards; such as the State Board of Education, the State Tax Board, and others.

State Treasurer.—The State Treasurer is the officer who actually handles and pays out the state's money. Formerly the money was kept in the vaults in the Treasury. There were two bad effects from this. First, the money was kept out of circulation; and, second, the state got no revenue from it. At this time there are a number of banks designated as depositories, among whom the Treasurer can divide the money, taking security for its repayment as required by law. The banks pay a low rate of interest on the money received by them, thus adding to the state's funds. They also use it in their banking business, thus putting it in circulation among the people. When the state

needs more money than it has in her Treasury it can call upon these banks to repay the money deposited with them. The law goes into a good deal of detail in regulating these deposits so as to secure the state against loss and the banks against sudden demands for payment, which they might not be able to meet without injury.

The Constitution forbids the State Treasurer to pay out any money for any purpose unless an appropriation has been made by the Legislature permitting such payment. To appropriate a thing is to set it apart for a certain purpose. This is the meaning of the word here. An appropriation of money therefore is a law passed by the Legislature setting apart a certain amount of money to a certain purpose and authorizing its payment for that purpose. Even after money has been appropriated by the Legislature it cannot lawfully be paid out by the Treasurer until the Comptroller has drawn a Treasury Warrant for the amount, stating to whom and for what purpose and out of what fund the money is to be paid.

Commissioner of the General Land Office.— This officer is the head of the Texas land system. When Texas declared itself a free and independent nation there was a great deal of land within her borders that had never been granted to individuals. It belonged to the peo-

ple of the Republic and was called the public domain. When the Republic became a state, the title to these lands passed to the state. The Republic and the state have both put this land to a great many different uses and have disposed of it in a great many different ways.

No matter for what purpose the state parts with any of her land, the evidence that she has sold it or given it away, as the case may be, is a written instrument signed by the Governor and the Commissioner of the General Land Office, called a patent.

A great deal of the public land has been set apart for common school purposes and for the University. Some of this land has been sold and paid for. A good deal more of it has been sold partly on credit with notes bearing interest. Much of it has not been sold but has been leased or rented to different people, who pay the state for the use of the land.

All of the foregoing matters are attended to in the General Land Office, and the records about all land transactions with the state are kept there. The Commissioner of the General Land Office has general charge of them.

Attorney General.—The Attorney General is a lawyer elected by the people of the state to attend to the state's legal affairs. His term of

office is two years. His salary and fees are four thousand dollars.

It is his duty to give legal advice to every officer concerning his official duties when the officer applies to him for his opinion. As any officer in the state, from the Governor to the Constables, is permitted by law to submit questions about his official duties to the Attorney General, it is easily seen that there must be a great deal of business transacted in his office.

Besides giving advice to officers, it is the business of the Attorney General to represent the state in all important law suits brought by or against it. There is a great deal of litigation of this kind; much of it is about lands, a good deal about violations of duties by officers collecting money from different individuals for the state, and a good deal about the violation of penal laws, such as the anti-trust law and similar acts.

These duties are more than any one man could possibly perform, so the law provides for the appointment of a number of assistants to the Attorney General who act with him and under his direction.

QUESTIONS.

1. Name the state executive officers who are elected by the people. Name the state executive officers who are

appointed by the Governor. What is the length of term of each of these officers? If a vacancy occurs in any of these offices except the Governor's how is it filled?

2. When does the inauguration of the Governor and Lieutenant Governor take place? Of what do the inaugural ceremonies consist?

3. What are the qualifications for Governor? What pay does he receive?

4. What military power does the Governor have? What is his duty as to the enforcement of the laws generally? What as to insurrections and invasions?

5. What powers and duties does the Governor have in bringing about the enactment of laws?

6. Who pardons persons guilty of crimes against the state? Can a Governor pardon in impeachment cases? What limitations are there on his power to pardon in cases of treason?

7. To whom must every bill passed by the Legislature go before it can become a law? What three courses is it possible for the Governor to take as to such bills? Discuss briefly but accurately the Governor's veto power.

8. State briefly the powers and duties of the Lieutenant Governor? of the Comptroller? of the State Treasurer? of the Commissioner of the General Land Office? of the Attorney General?

CHAPTER XXI.

Executive Department—Continued.

Superintendent of Public Instruction.—This officer is the head of the public school system of the state. His term is two years and his salary twenty-five hundred dollars.

There are more than two hundred and forty organized counties in Texas, and the law provides for schools of different grades in each of these counties. While there are county officers whose business it is to look after the schools in their counties in a detailed way, still it is necessary to have a state officer who shall have general control and direction over all of these county officers, and over the common school matters of the state as a whole. This is the duty of the Superintendent of Public Instruction.

In addition to looking after the schools as they actually are, the Superintendent of Public Instruction also studies the school system in general and makes reports to the Governor concerning it, suggesting ways in which the schools can be made better. He also has supervision of the issuing of certificates for teachers.

Commissioner of Agriculture.—Texas is a great farming country. It has more money invested in its farms and more people engaged in farming than in any other one business. It is such a large state and so many different crops can be raised in its different sections that the farming interests are exceedingly important. It was not until recently, however, that it was seen that the interests of the farmers needed attention by the state. In 1907 this fact was recognized and an officer known as Commissioner of Agriculture was provided for. It is the duty of this officer to look after all matters of benefit to the farmers.

He and men working under him study the questions of soil and climate, trying to find out what crops are best suited to different localities. They make experiments at various places in raising different kinds of crops and in the different ways of cultivating them, and give the farmers the benefit of their experience. They also study the diseases of trees and crops of all kinds and the kinds of insects that injure them, and in many other ways endeavor to assist the farmers throughout the state.

Secretary of State.—The Secretary of State is the custodian of the seal of the state and the keeper of all records belonging to the Governor's office or to the Legislature or to Consti-

tutional Conventions. He issues all proclamations made by the Governor. He receives and keeps the election returns for all state and district officers and turns them over to the proper officers to be counted. He calls the House of Representatives to order when it first meets and administers the oath of office to the members. Commissions, that is written statements of the fact that a person is entitled to hold a specified office are issued by him to all state and district offices and to all notary publics. He receives, approves and files the charters of all corporations and receives all franchise taxes from them. He issues permits to all foreign corporations except insurance companies, to do business in the state, and has a number of other duties similar to those enumerated. He also is given a number of clerks and assistants. He is appointed by the Governor and holds office for two years.

Commissioner of Insurance and Banking.— This is a relatively new office made necessary by the increase of business in the state. Its duties are of several different kinds. The most important relate to insurance companies doing business in this state, and to state banks. Under the law he has a number of large powers in connection with each of these. He issues all permits to insurance companies of all kinds

doing business in Texas, and has the right to inspect their records and find out all about the companies and their way of doing business.

His duties as to banks are also extensive. The law puts a great many safeguards around the state banks in order to be sure that the people who leave their money with them will not lose it. It is the duty of this officer to see that all these laws are complied with.

He also has important duties with reference to state statistics and in connection with the history of the state. The importance of these last matters is becoming more and more recognized and more attention is now being given them. He is appointed by the Governor and holds office for two years.

Adjutant General.—The Governor is commander in chief of the State Militia. He has too many duties, however, to enable him to give direct personal attention to military affairs. The officer who has charge of these matters under him is called the Adjutant General. It is his duty, under the supervision of the Governor, to take general control of the militia of the State and of all matters of business pertaining to military affairs of the State Government. He also is appointed by the Governor for two years.

Board of Pardons.—The Constitution confers upon the Governor the power of pardoning crim-

inals. This power cannot be taken away from him by the Legislature, still the Legislature authorizes the appointment of men by the Governor to look into all applications for pardons, to find out the facts concerning each case, and to recommend to the Governor what they think it is proper for him to do regarding them. The Legislature has exercised this power and provided for two commissioners appointed by the Governor, who are called a Board of Pardons. They cannot pardon any one or prevent the Governor from pardoning any one whom he sees fit. All that they can do is to help the Governor in finding out whether or not a case is a proper one, and make suggestions to him as to their conclusions. The Governor himself, however, must in the end decide the matter. These commissioners hold office for two years.

State Health Officer.—No Government is true to its duties and the people governed by it unless it takes a great deal of care of the people's health. In communities where there are only a few people, and they live far apart, regulations as to health are not so necessary. But whenever communities begin to be thickly settled carrying disease from one person or community to another becomes easy and frequent. In many instances this can be prevented if the proper steps are taken at the proper time.

We have in Texas a good many laws on this subject, a State Board of Health and a State Health Officer, whose special duty it is to see that they are carried out. The State Health Officer acts under the general control of the Governor and the State Board of Health, and in connection with the local health officers throughout the state. He is charged with the enforcement of state quarantine laws and similar matters. He is very frequently consulted by local officers regarding local matters.

Since the creation of this office there has been no epidemic of yellow fever in the state, and the spread of such diseases as smallpox and others of like kind has been greatly lessened. The state is now earnestly trying to control and prevent the spread of Tuberculosis. Probably in no other department of political activity have the laws improved more in the last few years or been enforced with better results than in the Department of Public Health.

State Revenue Agent.—The state has so many business transactions with so many different people in so many different parts of the state that it has been found wise to create the office of State Revenue Agent. The duty of the person holding this office is to see that all those who owe the State money pay it when it is due. Most of his business is to collect money from

persons following occupations which are taxed by the state. It is easy for people who ought to pay these taxes and take out license, to go into business without doing so. This officer and his representatives go from place to place throughout the state to find out whether or not anything of this kind is being done. If they find any such violations of the law they collect the money from the person owing it and make him take out his license. If the persons will not do this, the officer reports them to the district or county attorney to be prosecuted and punished.

State Purchasing Agent.—The state has a great many public institutions that it keeps up. Most of these are charitable in their nature, like the Deaf and Dumb or Blind Institutions, or the different asylums for the insane. Some of them, like the penitentiary, are necessary in the enforcement of the criminal laws. None of these institutions can be maintained without the buying of a great many supplies by the state. Formerly it was the custom for the head of each such institution or some one appointed by him or by the Board of Managers of the institution to buy the supplies for that particular institution. This proved unsatisfactory, so that a short while ago a law was passed authorizing the Governor to appoint an officer whose duty it is to buy supplies of all kinds for all of these institu-

tions. This is done principally by advertising for bids for supplies of all sorts in large quantities to be delivered from time to time to the different institutions where they are to be used and examining these bids and accepting those which are best for the state. The plan has proved very successful.

State Tax Commissioner.—This is a new office, created for the purpose of securing better results in levying and collecting taxes. It is his duty to study carefully all matters of taxation and make recommendations to the Governor as to the best methods of raising money by taxation. He also looks especially after levying and collecting taxes against corporations. He and the Secretary of State and the Comptroller constitute the Board known as the Intangible Tax Board, whose special duty it is to regulate taxes on railroads and on the property of similar corporations.

Pension Commissioner.—There are a number of disabled Confederate soldiers still living. Many of these are poor and unable to provide for themselves. The state allows each of these a small amount as a pension. It is the duty of the Pension Commissioner to look after all matters pertaining to the allowance and payment of these pensions.

Other State Executive Officers.—The duties

of the office of Superintendent of Public Buildings and Grounds; Texas Library and Historical Commission; State Expert Printer; Commissioner of Labor Statistics; State Inspector of Masonry, Public Buildings and Works; Live Stock Sanitary Commission; State Mining Board; Pure Food Commissioner, and the Game, Fish and Oyster Commissioner, are fairly well indicated in the respective names of their offices. Each of them is entrusted with matters of real value to the public. Some of them are of the very highest importance.

Different State Boards.—All the state institutions are managed by Boards appointed by the Governor. The rules governing these different institutions differ in detail, but they are still very much alike. These different Boards have the general management and supervision of the different institutions under their charge. They determine to a large extent what shall and what shall not be done in them and appoint or over-look the appointment of persons who are actually engaged in the work of each.

Railroad Commission.—There are three officers in Texas known as Railroad Commissioners who together make up the Railroad Commission. These are usually classed as members of the Executive Department, but as their work and duties are almost all of them related to railroads

we will leave a discussion of them until that matter is taken up in a subsequent chapter.

County Officers.—There are a number of county officers provided for by the laws of Texas who are members of the Executive Department. We have considered these in the general treatment of our topic and will take up their duties again in connection with county government. We will not treat of them further at this place.

QUESTIONS.

1. State briefly and accurately the powers and duties of the Superintendent of Public Instruction; of the Commissioner of Agriculture; of the Secretary of State; of the Commissioner of Insurance and Banking; of the Adjutant General; of the Board of Pardons; of the State Health Officer; of the State Revenue Agent; of the State Purchasing Agent; of the State Tax Commissioner; of the Pension Commissioner.

CHAPTER XXII.

Judicial Department of the State Government.

Introduction.—This is the third time that we have had judicial power under consideration. We treated it very briefly under General Principles of Government. We dealt with it a little more extensively in connection with the

United States government. By this time we ought to be able to understand still fuller discussion.

The fact that distinguishes law from advice is that law must be obeyed by the person subject to it, while advice may be taken or rejected as the person to whom it is offered may choose. It is useless to say that law must be obeyed unless the law giver has some way to compel obedience. This may be done either by offering a reward for obedience or inflicting a penalty for failure to obey. The latter method is very much more likely to be effective and is the one adopted by sovereignty.

It would not be just to give reward to particular persons or to inflict penalties upon them until it was definitely known whether they had obeyed or disobeyed the law. To find this out there must be some way to investigate what the parties have really done or failed to do. This investigation would do no good if the matter stopped there. After the facts have been found they must be compared with the rules of law made to govern conduct of the sort under investigation so as to see whether they conformed or not to those rules. This matter must be decided in such way that it cannot be again inquired into. If it is ascertained that the conduct was in conformity with law and proper,

rewards ought to be given. If it is found that the conduct was not in conformity with law, penalties should be inflicted.

The process just described of investigating conduct, comparing it with the law, deciding its quality and bestowing rewards or imposing penalties is the exercise of judicial power. It is easily seen that there can be no real and just government without the exercise of such power.

Judicial Power of the State of Texas.—The Judicial Powers of the states are very great. Some of these powers are exclusive of the judicial powers of the Federal government. Some of them are concurrent with those powers. Some matters are outside of the judicial power of the state, but within that of the Federal government. To state this differently; there are some judicial powers exclusively in the state government. These can be exercised only through state courts. There are some of these judicial powers exclusively in the Federal government and these can be exercised only through the Federal courts. There are a great many of these powers that are concurrent, that is, exist at the same time, in both the state and Federal governments and may be exercised by either state or Federal courts.

In our study of the Federal government we found that the legislative powers of that gov-

ernment and of the states were largely exclusive of one another. This is reasonable and just. It would be very unfortunate to have two law-making bodies passing laws on the same subject to be obeyed by the same people. No good results could possibly come from such an arrangement. Only confusion and conflicts of authority could result.

There is no such necessity for many of the judicial powers of the two governments to be exclusive. If Congress passes a law within its power, this law becomes a rule of action to be observed by every person in the United States. Each such person must make his conduct conform to it or he is subject to the penalties provided for its violation. The same is true as to the states. If a state legislature passes a law within its power, this becomes a rule of action for every person within that state and he must conform his action to it or become subject to the penalties provided for disobedience. In each case, that is whether the law is made by Congress or by a state legislature, we must all obey it. In addition every one subject to a law is supposed to know that law. This is particularly true of those men who have studied law sufficiently to be selected as judges, either in the state or Federal court. Each judge, whether state or Federal, must take an

oath to obey and enforce the Constitution and laws of the United States and of the state in which his courts are held. There are, therefore, no broad questions of public policy which prevent Federal courts from enforcing state laws or state courts from enforcing Federal laws.

There are, however, certain kinds of cases in which the judicial powers of the two governments are respectively exclusive. The most important of these are those charging crimes against the laws of the respective governments. It would not be wise for Federal courts to try cases for violations of the criminal laws of the state; nor for state courts to try cases for violations of the criminal laws of the United States. This fact is recognized by both governments and the criminal jurisdiction of the courts of each is absolutely exclusive. Another class of cases, exclusively within the jurisdiction of the Federal courts, are cases between private individuals, where the rights claimed depend entirely upon congressional legislation. Most of these cases are one of three kinds—suits for violation of patent rights, suits for violation of copyrights and bankruptcy proceedings. Another class of cases exclusively within the jurisdiction of the Federal Courts

are suits for wrongs occurring on the high seas, called Admiralty cases.

No Federal court can have power to hear any case not within the judicial powers of the Federal government. The nature and extent of those powers we considered in chapter XIII, and will not take up again. Cases outside of the judicial powers of the United States government must of necessity be tried in the state courts if tried at all.

Another matter necessary to a complete understanding of this subject was also touched upon in connection with the Federal judicial powers. It is this, that Congress has not created any court through which to exercise some of the judicial power of the Federal government. For example: The judicial power of the United States extends to all controversies between citizens of different states, without reference to the amount involved. At this time there is no Federal court that can try such a case unless it involves as much as \$3,000. From this it follows that controversies between such parties for amounts less than that, so far as the Federal court are concerned, must go unsettled. However as these cases come also within the judicial powers of the states, such suits may be brought and tried in the state courts.

The people of Texas can make such provision

for the exercise of their judicial power as they may see fit. They can give all this power to one court or may divide it among such different courts as they prefer. In point of fact they have created a number of classes of courts through which to exercise their judicial power.

The Present Texas Judicial System.—The series of different courts which the people keep up through which to exercise their judicial powers, as we have heretofore seen, is called a Judicial System.

The Judicial System in Texas has been very much the same under all the Constitutions, both of the Republic and of the State. As it now stands it was created by an amendment to the Constitution adopted September 22nd, 1891.

Section 1 of this amendment is as follows: “The judicial powers of this state shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners’ Courts, in Courts of Justices of the Peace and in such other courts as may be provided by law. * * * The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof and may conform the jurisdiction of the District and other inferior courts thereto.”

You will note that this section names a num-

ber of courts and then gives the Legislature the power to create others. The Legislature has not created any other class of courts for the whole state though it has in a few counties made a few courts suitable to their special needs.

The Constitution in other sections tells how each of these courts shall be constituted and organized and what jurisdiction it shall have. These different divisions are far too long to be copied. We will endeavor to state in as simple a way as we can, though very generally, the most important facts about the different courts named above. In doing this we will reverse the order in which they are named in the Constitution and instead of beginning with the highest and coming down we will begin with the lowest and go up.

Justices' Courts.—The lowest court in which cases are tried is called the Justice's Court. There must be as many as four justice precincts in every county and there may be not more than eight. The number of precincts and their boundaries are fixed by the Commissioners Court of the county. There is a Justice's Court in each precinct. Each Justice's Court is presided over by an officer called a Justice of the Peace who is elected by the people of the precinct. The executive officer of the court is known as a constable. He also is elected by the people of the

precinct. Each of these officers holds his place for two years from the time of his election. These officers have no salary, but collect fees from the people who have business with them.

The Justice's Court can try civil suits, that is cases between persons about their private affairs when there is no more than \$200 involved. This is a general rule. There are some cases about lands and other special matters that must be tried in other courts whether the amount be small or great. The justice's courts also try cases for small offenses, called misdemeanors, that are punishable by fine not greater than \$200.00. If the crime can be punished by fine greater than that or by putting the wrongdoer in jail the Justice's Court cannot try the case.

A jury in the Justice's Court consists of six men. Any man who is charged with a crime in the Justice's Court can have a jury, without paying for it, if he wishes it. Either party to a civil suit may get a jury by asking for it and paying \$3.00. The trial in the Justice's Court is very informal. The justice keeps his own records and can give certified copies of them to any one who wishes them at any time. If the case is a civil suit for \$20 or less or if it is a criminal case in which the fine cannot exceed \$20 the trial in the justice's court is final. This means that the case cannot be taken to any

other court for a new trial. In all other instances the case may be carried to the County Court of the county and be tried over in it.

In addition to their powers to try cases as just discussed, Justices of the Peace may hold examining trials as magistrates. This will be explained later.

These courts also may try suits of forcible entry and detainer. These are cases in which a renter or other person has been put in possession of a house or land by some one having the right to do so and refuses to give up possession at the time that he ought to and the person having the right to the house or land brings suit to put the person wrongfully in possession off the premises.

Commissioners' Court.—This is not really a court in the strict meaning of the word, but the law calls it such. There is a court of this kind in each county in the State. Its principal duty is to look after the business affairs of the county. It levies all county taxes; opens and keeps up all county roads; provides the county with court-houses and jails; looks after the paupers in the county; approves the bonds of county officials; appoints all county officers when vacancies occur, except District Clerks and divides the county into its various political subdivisions,

as Commissioners' Precincts, Justices' Precincts, School Districts, etc.

This court consists of the County Judge, who is elected by the people of the whole county, and four other officers, called County Commissioners, each of whom is elected by the voters of one of the Commissioners' Precincts into which the county is divided.

County Courts.—The court next above the Justice's Court is called the County Court. There is one court of this kind in every county. It holds its sessions at the county seat and must meet at least once every three months. If the Commissioners Court of the county so orders it can meet oftener. The officers of this court are the County Judge, who presides over it, County Clerk, Sheriff, and County Attorney. This is a very important court and can try any criminal case except one in which the defendant can be sent to the penitentiary or hung, or unless the charge is against an officer for some official wrong. In civil matters this is the court that tries cases where the amount is over \$200 and not over \$500 unless there be some special question, such as title to land, suits for slander and some other matters. If the suit is for over \$500.00 and not more than \$1,000.00 the trial may be in either the County Court or the District Court. The County Court has some other jurisdiction

about issuing writs that is too technical to be gone into here.

Probate Jurisdiction of the County Court.—

The County Court has original jurisdiction over all probate matters. These are actions in court for the purpose of taking charge of, managing and settling up estates of deceased persons, minors, insane persons, habitual drunkards, or idiots. The purpose of these actions is to have some responsible party acting under bond and subject to the orders of a court to control and manage the estates of such persons as are not in condition to look after their own affairs. It is a very important power.

One who has charge of an estate of a deceased person and who is named in that person's will is called an executor. If there is no will or if the person named in the will will not act or dies or is removed by the court the person selected by the court is called an administrator. In all the other proceedings of this kind, that is in those to take charge of the estates of minors, insane persons, and others who are living, the person put in charge of the property is called the guardian. The person whose estate is being managed is called the ward.

It is the duty of the court in all such cases to watch over what the representatives of the es-

tate do and protect the interests of the real owner of the property.

When all the debts of a deceased person are paid, the balance of the estate is delivered to the person entitled to receive it. If the deceased person made a will which has been proved up the persons named in the will as owners are entitled to the property. If there was no will the property will be given to the heirs of the deceased person in shares stated in the statute. In the case of a guardianship over a minor, when he becomes of age, the court has the guardian to make a full report of all that has been done and settle the estate. This is done by paying all legal charges and debts and delivering the balance of the estate to the ward. The same is true in cases of insane persons and others whose estates have been administered.

Appellate Jurisdiction of the County Court.—As stated in connection with the Justice Court the County Court has appellate jurisdiction of all cases tried in the Justice's Court where the amount involved is over \$20.

Appeals From the County Court.—All cases tried in the County Court upon appeal from the Justice's Court, when there is as much as \$100 in dispute, and all cases first brought in the County Court and tried there, may be appealed. All such civil suits go to the Court of Civil Ap-

peals; all probate proceedings to the District Court; and all criminal cases to the Court of Criminal Appeals.

QUESTIONS.

1. How can you tell the difference between law and advice? Why must there be some way to enforce obedience in order to make law of any value? Why does the law provide penalties for disobedience? Could penalties be inflicted justly without finding out what the parties whose punishment was contemplated had done and how their conduct compared with the law? What four things must be done in the exercise of judicial power?

2. What do we mean by exclusive powers of a government? What by concurrent powers? Are there any judicial powers exclusively in the state government? Any exclusively in the Federal government? Any that are concurrent in both governments?

3. Why is it essential that the legislative powers of each government should be largely exclusive? Why do not these same doctrines apply to judicial powers?

4. As to what classes of cases are the judicial powers of the Federal Government exclusive? As to what class of cases are the judicial powers of the state exclusive?

5. Can a Federal court be given the right to try a case not within the judicial powers of the Federal Government? Has Congress created courts which may exercise all the judicial power of the Federal Government? Is a suit between citizens of different states for \$2,000 within the judicial powers of the Federal Government? Has any Federal court power to try such case? Can such a case be tried in a state court?

6. What is a judicial system? When was the constitutional amendment creating the present Texas judicial system adopted? Name the different classes of courts in this system.

7. What is the name of the lowest trial court in Texas? How many such courts must there be and how many may there be in a county? Who is the presiding officer in such a court? Who is the executive officer? What civil suits may be tried in a justice's court? What criminal cases may be tried there? How many men make a jury in a justice's court? What cases tried in a justice's court can be appealed? To what court do such appeals go? What is an action of forcible entry and detainer?

8. What are the principal duties of the commissioners' court? Of whom does this court consist? By whom is each of these officers selected?

9. What is the next class of courts above the justices' court? How many such courts are there in each county? Who is the presiding officer in such court? Name the other officers belonging to it. What criminal jurisdiction has it? What civil jurisdiction has it?

10. What are probate matters? What court has jurisdiction over these? What is meant by administering on the estate of a deceased person? Are the estates of living persons ever taken in charge by the probate court? If so, of what class of persons and why? To whom is the estate of a deceased person delivered when the administration is over? When a guardianship is closed to whom is the estate delivered? To what court do appeals in probate cases go? What appellate jurisdiction has the county court? To what court do appeals from the county court in criminal cases go? To what courts do appeals in civil cases go?

CHAPTER XXIII.

Judicial Department—Continued.

District Courts.—These are the most important courts of original jurisdiction in Texas. All criminal cases which are felonies, and all misdemeanors which involve official misconduct must be tried in the District Court. A felony is any crime that may be punished either by confinement in the penitentiary or by death. All other crimes are called misdemeanors. All of the most important civil suits must be tried in the District Court. If the suit is for land, or for divorce, or for damages caused by slander or libel or of some other kinds, these courts alone have jurisdiction. In ordinary cases their jurisdiction is determined by the amount of money involved in the suit. Whenever the amount is over \$500 the suit may be brought in these courts. If the amount is over \$1,000 it must be brought in them. If it is over \$500 and not over \$1,000 it can be brought either in the County or District Court.

These courts have very large and important powers regarding the issuance of writs for the purpose of controlling the conduct of individuals. Sometimes paying money to a person

who has been injured is not a complete remedy. Frequently the court will compel the wrongdoer to do something else for the benefit of the person who is injured or it will stop the wrongdoer from doing something in which he is engaged which hurts another person. This control is actually exercised by issuing writs from the court commanding the person to do the right thing or forbidding him to do the wrong thing. The District Courts have very large powers in such cases.

The Constitution does not try to name all the kinds of cases that may be tried in the District Courts, but names some and then has a general provision which declares that if there should be any legal wrong done by one person to another and no other court has been given jurisdiction over it suit can be brought in the District Court.

Appellate Jurisdiction of the District Courts.—District Courts have little appellate jurisdiction. They have none at all in civil suits proper nor in criminal matters. They do have such jurisdiction in probate matters, and in one or two instances in matters concerning the laying out of public roads.

Appeals from the District Court.—Any case tried in the District Court may be appealed. In civil suits appeals go to the Courts of Civil Ap-

peals. In criminal matters to the Court of Criminal Appeals.

Terms of the District Courts.—There must be a session of the court held at the county seat of every organized county at least twice each year. The Legislature may provide for holding a larger number of terms. In thickly settled sections of the State the Legislature may create a number of district courts to be held in a single county and fix the terms for holding their sessions in such way as it thinks best.

Judicial Districts.—The Legislature divides the State into judicial districts making as many as the business of the courts and the interests of the people require. In most parts of the State several counties are combined into one district, the same judge presiding over all the courts, their sessions being held at different times. In some sections one county will be made into a district, but sometimes a county is so large and has so much business that several courts will be provided for it.

District Judges.—There must be a district judge in each District. He is the presiding officer of the District Courts held in his district. When elected he must be at least twenty-five years of age, and must have been a lawyer or a county judge for four years, must be a citizen of Texas and must have resided in his district

for at least two years before his election. The judge is elected by the qualified voters of his district and holds his office for four years, receiving a salary of \$3,000.00 per year. If a vacancy occurs the Governor appoints some one to fill the office until the next regular election. If there is a session of the Legislature before the election the Governor must send in the appointment to the Senate for its approval.

District Attorneys.—In a number of judicial districts the law requires that District Attorneys shall be elected. These are lawyers chosen to represent the State in all suits which it may have in the District Courts of their Districts. In all criminal cases he prosecutes the defendant, seeking to have him punished, if he is guilty. He represents the State in all civil suits unless the law makes it the duty of the Attorney General or the County Attorney to act for the State in some particular case or class of cases.

County Attorney.—There is a County Attorney elected by the voters in each county in the State. He represents the State in all criminal and civil cases to which the State is a party in the county and Justice's Court of his county. If the county in which he lives is included in a district in which they have a District Attorney, the County Attorney does not represent the State in the District Courts in ordinary cases.

In a number of districts, however, there are no District Attorneys. In these districts the County Attorney represents the State in all the courts.

District Clerk.—In each county there is elected a district clerk. He holds his office for two years. He is the clerk of all the district courts held in his county. As such, he must keep a written record of all that is done in these courts. He also issues all written orders of the court. These written orders are called processes or writs. He attends to the drawing of juries and administers oaths to all persons who have to be sworn about the court.

Sheriff.—The executive officers of the district and county courts are called sheriffs. There is a sheriff elected by the people of each county, and he holds his office for two years. Vacancies in this office are filled by appointment by the Commissioners Court. It is his duty to carry out all the orders of the court whether written or verbal. He serves all citations and other processes. He arrests all criminals and summons all juries and witnesses. He looks after all juries while they are trying a case, preserves order in the court and its neighborhood, and has charge of the county jail and all prisoners in it. He may appoint deputies to assist him in the performance of his duties.

Grand Juries.—A Jury is a number of men chosen from the citizens who live in the county to hear and decide facts. When a jury is selected by a District Court for the purpose of finding out whether or not any of the criminal laws of the State have been violated, it is called a Grand Jury.

Grand Juries in Texas consist of twelve voters of the county in which they are impaneled, and must be men of good character who own land. Their sessions are secret, no one being permitted to come before them except the witnesses being examined and the District and County Attorneys. They summon persons whom they think know anything about the violations of the law, compel them to come before them, and when sworn, to give their testimony as to what they know about such matters. If, after investigating the facts, the Grand Jury thinks that the law has been violated by anyone in that county, it is their duty to indict the person for the offense. In Texas if the offense is a felony the prosecution must be based on an indictment presented by a grand jury. This is one of the guaranties contained in the Constitution. Grand Juries may indict persons for any of the lesser offenses called misdemeanor, though these may be prosecuted by the county or district attorney without action by the Grand Jury.

Petit Jury.—In every law suit there are two kinds of questions to be answered. First, what are the facts in the case. Second, what is the law applicable to these facts. All questions of law that arise in a trial are decided by the judge. He is supposed to have studied the law carefully and to have made himself thoroughly acquainted with it. It is therefore safer to have questions of law passed on by him.

The Judge, however, is not specially trained to pass on the facts. For a long time it has been the habit in all common law countries to have the facts in the case decided not by the judge but by the jury. The men who are selected to try the facts of a case before a court are called a petit jury, more frequently simply a jury.

In trials in the District Court a jury is composed of twelve men; in the county and justices' courts of only six. The men who are to sit on the jury are selected by the parties to the suit or by their lawyers from a number of persons who are summoned before the court to act as jurors. After they are selected they are sworn to try the case according to the law and evidence. It is their duty to give strict attention to all the testimony in the case and to the law as the judge tells it to them and to decide the facts as they truly believe them to be. The decision of the jury is called a verdict. Under

our law it must be in writing and signed at least by the foreman of the jury.

QUESTIONS.

1. Which are the most important courts of original jurisdiction in Texas? What criminal cases must be tried in these courts? What is a felony? What is a misdemeanor? Name some of the most important civil suits over which these courts have jurisdiction. What general provision is there in the Constitution regarding the right of these courts to try cases, jurisdiction to try which is not given to any other court?

2. How many sessions of the district court must be held in each county each year? Is there any constitutional limit on the number that may be held?

3. What is a judicial district? How are such districts usually formed? Can more than one district court be provided for a county?

4. What is the presiding officer of a district court called? How is he selected? What qualifications must he have? What are his official duties?

5. What are the duties of a district attorney? What are the duties of the county attorney?

6. What are the duties of the district clerk? of the sheriff?

7. What is a Grand Jury? How many men compose a Grand Jury in Texas? What are their qualifications? What are their duties? Can a felony be prosecuted in Texas without an indictment by a Grand Jury? Can Grand Juries indict for misdemeanors? Can misdemeanors be prosecuted in any other way?

8. What is a Petit Jury? How many men compose

such a jury in the district court? How many in county and justice courts? How are jurors, to try a case, selected? What oath must jurors take? What is the decision of a jury called?

CHAPTER XXIV.

Judicial Department—Concluded.

Procedure in the District and County Courts.
—We will here turn aside from considering the kinds of courts we have and take up the way cases are tried in the District and County Courts. There are a great many rules on this subject that it would not be at all profitable for you to study, but it is important for you to know in a very general way how courts act in the exercise of their powers.

There are always two parties to a lawsuit. One of these is the person who thinks that some one else has done him wrong in some way that the law forbids. This person is always dissatisfied with the present conditions and wants the court to make the party he thinks has done him wrong do something to relieve the wrong. Usually what he wants is to compel the person who has done him wrong to pay him enough money to make up the loss he has suffered. The person feeling this way makes a complaint before

the court against the one whom he thinks has done him wrong. The one making this complaint is called the plaintiff. The person against whom the complaint is made is called the defendant.

When the plaintiff makes his complaint to the court and asks the court to give him relief, this is bringing a suit.

In the District and County courts this complaint must be made in writing and filed with the clerk of the court. It may be signed either by the plaintiff or by a lawyer whom he has employed to represent him. This lawyer is called the attorney or counsel for the plaintiff. As the plaintiff always asks the court for some sort of a remedy against the defendant his complaint filed by him with the clerk is called his petition.

When the plaintiff files his petition with the clerk it is the clerk's business to note the date on the back of the petition and to make a minute in one of his record books, called a docket, of the fact that the petition has been filed. This minute states the names of the parties, both plaintiff and defendant, what the suit is about and when the petition was filed.

It would not be right to let the plaintiff come before the court and try his case on his statement and the statements of such witnesses as

he might bring. So the law makes it the duty of the clerk, as soon as the petition is filed by the plaintiff, to issue a notice called a citation to the defendant, telling him that suit has been brought against him by the plaintiff, what the suit is about, and when and where the court will meet to try the case. The clerk delivers this notice or citation to the Sheriff and he gives a copy of it to the defendant, who is thus informed of the suit against him.

As soon as the defendant finds out about the case in this way it is his duty to get ready to try the case. Of course, if he admits all that the plaintiff says against him in his petition, and is willing for the plaintiff to get a judgment against him as he asks in the petition, he need not pay any attention to the case, and when it comes to trial the court will give the plaintiff a judgment as requested by him. Such a judgment is called a judgment by default. If the defendant does not want such a judgment against him he must come before the court and file an answer to the plaintiff's petition, setting up the law and the facts as he claims them to be. This answer in the District and County courts must be in writing and signed by the defendant or his attorney.

These two papers, plaintiff's petition and the defendant's answer, and all other papers filed

by either of them showing for what he contends in the case, are called pleadings. The pleadings bring before the court the matters that are to be tried in the case; so that the judge and the jury and the parties to the suit may know just what the suit is about and what is to be settled by it. Each party must now get ready to prove the facts as he claims them to be. If he has any papers that go to show the truth of the matters in dispute, often he can use them as evidence. If there are any persons who know about the facts he can bring them before the court and let them testify. If the witness, that is, the person knowing the facts about the case, is sick or old, or lives outside of the county where the suit is to be tried, the person wishing to use his testimony can have him examined under oath before a proper officer, have his answers written down, signed and sworn to by him and sent to the court by the officer taking his answers. Testimony taken in this way is called a deposition, and may be read before the court in the trial of a case.

When the court meets and the proper time comes for trying the case the Judge calls the case and asks the parties if they are ready to try. If they are they go on with the trial. If they are not, the time for trial can be postponed by agreement of the parties if they are

willing, or on request of either party for good reasons shown by him.

When the case is called for trial is the time for selecting the jury, if there is to be one in the case. If neither party asks for a jury the whole case, both law and facts, will be decided by the Judge. If either party demands a jury the Judge decides the questions of law and the jury the facts about which the parties differ in their petition and answer.

When the trial begins the Judge or the Judge and Jury, if one be demanded, then hear the plaintiff or his lawyer read his petition, and the defendant or his lawyer read his answer. There may be other pleadings in the case, if so these are read. Then the plaintiff must prove his case, either by written evidence or by the testimony of witnesses. When the plaintiff gets through offering evidence, then the defendant brings in his proof. The investigation goes on until both parties get through with their evidence.

After the evidence is all in the lawyers argue the case. If there is no Jury, both the law and the facts are argued to the Judge. If there is a Jury, the law is argued to the Judge and the facts to the Jury.

When the argument is through, if there is no Jury, the Judge either decides the case at that

time, or, if he is in any doubt on any point, takes the case under consideration and states his decision at some later time. If there is a Jury, when the argument is over the Judge reads to the Jury his charge in the case. This charge is a statement of the rules of law that are to be applied by the Jury to the facts in the case as they find the facts to be. The Jury then retire in charge of an officer and discuss the case, trying to agree as to what the facts are and what conclusion they should come to as to the rights of the parties to the suit. When they do come to a conclusion they write this down and the foreman signs it, and all the Jury comes into court and hands the paper upon which their conclusion is written, to the clerk of the court and he reads it. This conclusion as to the facts made by the Jury is called a verdict. Our law requires all the Jurors to agree to the verdict. If they cannot do this the Judge discharges them and the case has to be tried over as though it had not been tried.

It is the duty of the court then to render a judgment in accordance with the verdict returned by the Jury. This judgment is a statement by the court of the rights of the parties as shown by the verdict and a declaration as to whether or not the plaintiff shall have any rem-

edy against the defendant, and if so, what the remedy shall be.

It is the duty of the lawyer representing the side which wins the case, to reduce this judgment of the court to writing and hand it to the clerk to be made a matter of permanent record by entering it in a book called the minutes of the court. The judgment when so entered settles the rights of the parties to the suit as to the matters tried in it, and neither one of them can ever afterward dispute the rights of the other as declared in the judgment, unless in some proper way the judgment is set aside.

New Trials.—When a case has been tried and decided in the way that we have outlined, the party losing can ask the Judge who presided in the trial to set the trial aside and give him another. This is called moving for a new trial. In doing this the losing party states all the reasons that he has for thinking the first trial was not carried on properly. If he shall convince the Judge that there has been any serious errors committed it is the duty of the judge to give the new trial and rehear the case.

Appeals.—If, however, the losing party cannot convince the judge that he ought to have a new trial he may take the case up to a higher court for that court to go over the record and say whether or not the case was tried in accord-

ance with the law. If the higher court thinks it has been, it will decide that the judgment of the lower court was right and must stand. If, however, the higher court thinks that there was error of any consequence committed in the trial court it can do one of several things. It may set the whole judgment aside and send the case back for another trial, or, if the error did not affect the whole suit, but just some separable part of it, the higher court can set aside so much of it as was wrong, and send only the matter affected by this back to the lower court for another trial. Sometimes when the record shows that the case has been so tried that there are no new facts that could be brought before the court by either of the parties, the Appellate Court will set aside the judgment rendered in the lower court and render such judgment itself as the lower court ought to have rendered. This last, however, is not often done.

Courts of Civil Appeals.—Texas is divided into eight Supreme Judicial Districts. In each of these there is a Court of Civil Appeals, each consisting of three judges, one the Chief Justice and two Associate Justices. Each court has one term a year, extending from the first Monday in October to the last Saturday of the following June. These courts have no original jurisdiction and can only try civil suits that have al-

ready been tried in the County or District courts, and have been brought up to the Court of Appeals for the purpose of finding whether or not the trials have been properly carried on. No new testimony can be heard in these courts. A copy of all that was done in the trial court which will throw any light on the matters that are to be heard in the Court of Appeals is made by the clerk of the lower court and is sent up to the higher court by the party taking up the case. This is called a Transcript. The case is tried and decided on this record made in the lower court. If that shows that no error was committed the judgment of the lower court will stand. If there was error the judgment will be set aside and the case disposed of by one of the methods discussed in the last paragraph.

Supreme Court.—There is one Supreme Court in Texas. It also consists of three Judges, one the Chief Justice and two Associate Justices. They are elected by the voters of the state and hold office for six years. This court sits at Austin. It holds one session each year, beginning the first Monday in October and closing the last Saturday in June of the next year. It is the highest court in the state in civil cases, but it has no criminal jurisdiction. Its appellate jurisdiction is limited to certain kinds of cases which have been tried in the District Courts

and carried to the Courts of Civil Appeals. No cases can be carried from the County or District Courts directly to the Supreme Court.

The purpose of the Supreme Court is to keep the decisions of the different Courts of Civil Appeals in harmony. As there are eight of those courts, each having the same powers, and neither having any control over the other, there is great danger that their decisions might become inconsistent and conflicting. Therefore, we have the Supreme Court, which can take up and try any questions coming from the District Courts to these Courts of Appeals, and in this way can keep the decisions of these courts uniform throughout the state.

The procedure in the Supreme Court is very much like that in the Courts of Civil Appeals. In cases brought to it from the Courts of Civil Appeals the trial must be on the Transcript, and is confined to the points that have been made, first in the trial court and then in the Court of Civil Appeals. If the Supreme Court finds no error in the decision of the Court of Civil Appeals the action taken by that court will be sustained. If it does find error in that action, it will make such orders in the case as the law requires.

The Supreme Court also has original jurisdiction to grant certain kinds of writs named in the statutes, in order to remedy wrongs done by

District and State officers. No such writ, however, can be issued against the Governor.

In these cases the parties to the suit prepare and file their petition and answer as is done in the District Court. The court then examines these papers. If they show any dispute between the parties as to any facts of any importance in the case, the court will not hear it. This court has no way to impanel a jury or to try facts. If, however, there is no dispute about the facts, and the only difference between the parties is on question of law and the facts as agreed upon, seem to show that the officer complained against has done wrong in some official act, or in refusing to act officially, the court will set the case down for trial at a day fixed by it. At that time the parties come before the court and argue the law of the case, and the court takes the matter under advisement and decides it as in its judgment the law requires.

The Supreme Court also has power to make rules for the government of the other courts in the state in all matters that are not governed by acts of the Legislature.

Court of Criminal Appeals.—The highest court in criminal cases is the Court of Criminal Appeals. It also consists of three judges. All of these are elected judges of the Court of Criminal Appeals. After their election they se-

lect one of their number who is to act as Presiding Judge. These Judges are elected by the people of the state and hold office for six years. Criminal cases tried in the County or District courts, in which the defendant is convicted, may be appealed to this court. If the state loses a criminal case in the trial court it is not allowed to appeal. When defendant has been convicted and appeals he has the clerk of the court in which the trial took place to make out a transcript, that is, a copy of all that took place in the trial, and send this to the Court of Criminal Appeals, where the trial is had on it. The attorney for the defendant, called appellant in this court, tries to convince the Court of Criminal Appeals that the lower court committed some error in the trial which was hurtful to the defendant. The representative of the state tries to show that no such error was committed. The court can either affirm the case, that is, approve the judgment of the lower court, or set the judgment aside and send the case back to the lower court for retrial, or in some cases can set the judgment aside and dismiss the prosecution, thus ending the matter.

Examining Magistrates and Trials by Them.—All Justices of the Peace and all County and District Judges are known as magistrates and are authorized to hold examining trials. These

are not regular trials in which final judgment is rendered for either party, but are investigations held for the purpose of finding out whether or not it is probable that some person accused of crime is guilty as accused. If the magistrate believes the person guilty he puts him in jail or makes him give bond for the purpose of having him before the proper court when it shall meet to try his case and settle questions of his guilt or innocence. In examining trials all the testimony on both sides is written down and signed by the witnesses, and these sworn statements are preserved by the magistrate and sent by him to the next Grand Jury. The Grand Jury examines these and any other testimony that it wishes that may bear on the subject, and decides whether or not the defendant ought to be indicted. If he should be, the indictment is prepared and the defendant is arrested and put upon trial in the proper court. If the Grand Jury does not indict him he is turned out of jail or his bond released, as the case may be.

QUESTIONS.

1. How many parties must there be to a law suit? What is the party bringing the suit called? What is the party against whom the suit is brought called? How is a suit brought in a district or county court? What is the complaint filed by the plaintiff called?

2. What must the clerk do when the plaintiff files his petition? What is meant by issuing a citation? What information must a citation give to the defendant? To whom does the clerk deliver the citation, and what does the party receiving it from him do with it?

3. What is a judgment by default and under what circumstances may it be taken?

4. When the defendant is cited, if he wants to contest the case, what must he do? What is the paper filed by him called?

5. What are the pleadings in a case? What is the purpose of these pleadings?

6. How can the parties to a suit prove the facts for which they contend?

7. When a case is called for trial what must be done?

8. If no jury is demanded, who tries the facts? If a jury is demanded, who tries the facts?

9. When are the pleadings of the parties read? What comes next after this? When and by whom is the case argued?

10. If there is no jury, when is it usual for the judge to decide the case? If he is in doubt on any point, what may he do?

11. If there is a jury, what follows after the close of the argument? Who then takes care of the jury?

12. If the jury come to a conclusion, how do they make this known to the court? What is this conclusion called? If the jury can not agree, what is done?

13. What is a judgment? Whose duty is it to prepare the judgment and have it entered of record? What is the effect of the judgment on the rights of the parties to the suit as to the matters covered by the judgment?

14. What is a new trial? By whom may new trials be granted? What is the effect of granting a new trial?

15. If the judge will not give a new trial what further remedy has the losing party? What can the appellate court do with the case when it is brought before it on appeal?

16. How many Courts of Civil Appeals are there in Texas? How many judges are there on each of these courts? How many terms a year does each court hold? What kind of jurisdiction have they? On what is a case tried in this court?

17. How many Supreme Courts in Texas? How many judges are on the Supreme Court? What original jurisdiction has this court? What appellate jurisdiction has it? How do proceedings in this court in trying cases on appeal correspond with that in the Court of Civil Appeals?

18. What is the highest court having jurisdiction over criminal cases called? How many judges on this court? What jurisdiction does it have?

19. What is a magistrate? What is an examining trial? Can a defendant be acquitted or punished in such trial? Why?

CHAPTER XXV.

Public Schools of Texas.

Historical References.—From the time that the Anglo-Americans first came to Texas they have insisted upon a good system of public free schools. The Declaration of Independence that was adopted on March 2nd, 1836, stated as one of the serious grievances against the Mexican Government that it had failed to provide

any system of public education. The Republic of Texas was then an experiment, its future depending on the success of the war that was then being waged with Mexico, so that nothing practical could be done at that time toward starting a school system.

After the successful termination of the Texas revolution the Republic and then the State were so much in debt and so many other matters of serious importance were before the people that it was a number of years before the public schools were actually opened.

This does not mean that the people or their representatives in Congress or the Legislature had lost interest in the matter. On the contrary, from time to time laws were passed setting aside large portions of the public lands for the support of the schools. Most of these lands were set aside for the benefit of the school funds of the state, but a good deal was given to each organized county to be used by it for school purposes. Lands thus set aside and the money which has been received from the sale of parts of them make the greater part of our present school fund.

Constitutional Provisions.—Every constitution from the date of the Republic to the present time has had provisions regarding the public schools. The general spirit and purpose of

these has been the same. In our present constitution there is an entire Article comprising fifteen sections, devoted to this subject.

School Funds.—The Constitution speaks of three state school funds, called, “perpetual,” “permanent,” and “available.” Why a distinction is made between perpetual and permanent we need not discuss. The use of the two terms, perpetual and permanent, is quite confusing.

The Constitution undertakes to define these two terms by stating the different items which go to make them up. We will make these definitions as plain as the subject will admit.

There is also some confusion in the different uses of the term available school fund. This grows out of the fact that an amendment to the Constitution includes in this fund one very important item that was not embraced in it in the Constitution as originally adopted.

Perpetual Funds.—Section 2, Article 7, of the Constitution, 1876, defined the perpetual fund in these words, “All funds, lands, and other property, heretofore set apart and appropriated for the support of the public schools; all the alternate sections of land reserved by the state out of grants heretofore made or that may hereafter be made to railroads, or other corporations, of any nature whatsoever; one-half of the public domain of the state; and all sums of

money that may come to the state from the sale of any portion of the same, shall constitute a perpetual public school fund.”

From this it is seen that the perpetual fund comprises, first, all lands and other property which prior to the adoption of this Constitution, in 1876, had been set apart for the public schools; second, all the lands that the state had kept when it was making grants to corporations engaged in public service, such as railroads, navigation companies, and others; third, and one-half of all the public lands still belonging to the state; and, fourth, all sums of money that should be received by the state from the sale of any of the lands or property before mentioned.

We will treat these several provisions separately.

The first is very general. Its evident purpose is to keep in the perpetual school fund every thing of value that had formerly belonged to the public schools and to make all of these items capital or principal, which was not to be used in carrying on the schools, but which should be held as sources of revenue from which to obtain available funds each year.

This capital consisted of bonds, lands and other property. Whatever its nature after this Constitution went into effect it became part of the perpetual fund.

The second item mentioned is the alternate sections of land. These are most probably included in the lands enumerated in the first. In order that there should be no doubt about the matter these alternate sections of land are mentioned separately. It will be necessary to explain to you what is meant by these alternate sections.

In the settlement of Texas it was very important to have railroads built and the rivers of the state opened up for navigation, and to have steamboats to run upon them. In order to encourage the making of public improvements of these kinds the state offered to give the persons or corporations making such improvements certain amounts of land according to the kind and extent of improvement made. In offering these lands the state required that the companies receiving them, when they surveyed land for themselves, should divide it up into tracts of 640 acres each, called sections, and that every company that surveyed a section for itself should survey another section adjoining it for the state, which should continue to belong to the state. These sections surveyed for the state in this way are called alternate sections, and are the lands referred to in this clause. By it they are made part of the perpetual school fund.

The third item is an addition to the school

When this section was adopted in 1876 the fund. It embraces one-half of all lands then belonging to the state which had not formerly constituted part of the school fund. This grant increased the school fund very much.

The fourth item consists of all sums of money that may come to the state from the sale of any of the land or property included in the first three clauses. This was intended to remove all doubt as to whether money received from the sale of any of said property should be perpetual or available school funds.

Taken together this section of the Constitution declares that all property of any kind mentioned in it and all money received from the sale of any such property shall forever remain a part of the perpetual school fund.

Permanent School Fund.—Section V, Article 7, of the Constitution provides that “the principal of all bonds and other funds and the principal arising from the sale of land hereinbefore set apart to said fund shall be the permanent school fund.”

By comparing this section with portions of section 2 of this Article, which we have just discussed, you will see that all of the items which are here declared to be permanent fund are declared by Section 2 to be a part of the perpetual fund.

Constitution expressly forbade the use of any part of this permanent fund for carrying on the schools.

Available Fund.—This fund means the money that may be used each year in support of the schools. The Constitution of 1876 defines this fund, in Section 3 of Article 7, in the following words, “One-fourth of the revenue derived from the state occupation taxes, and a poll tax of one dollar on every male inhabitant of this state between the ages of 21 and 60 years, shall be set apart annually for the benefit of the public free schools, and in addition thereto, there shall be levied and collected an annual ad valorem state tax of such amount, not to exceed twenty cents on the one hundred dollars valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this state for a period of not less than six months in each year.” These items remain unchanged. We will take them up in the order in which they are enumerated.

The first source of revenue going into the available school fund is the occupation taxes levied by the state. Under our Constitution the Legislature has the power to make persons pursuing different occupations pay a certain sum

each year for the privilege of carrying on their several businesses. Such taxes were formerly very common in Texas. In later years the policy has changed and now very few occupations are taxed. One-fourth of whatever money comes to the state from this source each year goes into the available school fund.

The next item going into this fund is money collected as poll taxes. You will notice that as to occupation taxes the statement is that one-fourth of the revenue derived from that source shall go into the available fund, but the Constitution does not say that any such taxes must be levied, nor, if the levy is made, how much it shall be. It is different as to poll taxes. The language here is, "a poll tax of \$1.00 on every male inhabitant of this state shall be set apart annually for the benefit of the school fund." Hence, you see, the Constitution itself requires positively that a poll tax shall be levied each year, and that it shall be \$1.00 for every poll. A poll here means a head or an individual. So that under this provision every man in Texas over twenty-one and under sixty is required to pay \$1.00 a year tax on his head. The whole of this must go into the available school fund. The legislature has relieved, or attempted to relieve, certain persons under disability under sixty years from the pay-

ment of poll taxes. No one has questioned this so far as I know.

The next item is an ad valorem state tax not to exceed twenty cents on the one hundred dollars valuation of property. This is not made absolutely obligatory like the poll tax, but is left to the Legislature to decide. Still the duty is clearly imposed upon that body to levy a sufficient sum not to exceed twenty cents on the one hundred dollars to keep up the schools all over the state for not less than six months of each year.

These are all the items of the available school fund mentioned in Section 3. Section 5 of the same Article adds to the available school fund as just discussed, "all interest on all bonds or other indebtedness constituting part of the school fund."

These items taken together were all the state funds which could be used for carrying on the common schools under the Constitution of 1876 as originally adopted. They were entirely inadequate to provide even fair educational advantages for all of the children of the state. The demand for such advantages was great and continued to increase.

In 1891 the Legislature proposed an amendment to Section 5, Article 7, which was intended to enable subsequent Legislatures to increase

the available fund. This was to be done by permitting the Legislature to take from the permanent fund each year one per cent of its value and include this sum in the available fund. This amendment was adopted in September, 1891, and the Legislature now has such authority. This power has not been exercised up to this time.

The increased taxable values, interests and rents have relieved the situation very much since this amendment was adopted.

Recapitulating these different provisions of the Constitution, we find that at this time the available state school fund consists of the following items:

1. One-fourth of the state occupation tax.
2. All state poll taxes.
3. Interest on bonds, land notes, and other indebtedness belonging to the permanent school fund.
4. Rents on the school land.
5. Ad valorem taxes not to exceed twenty cents on the one hundred dollars of valuation levied by the Legislature from time to time, and
6. Not exceeding one per cent of the value of the permanent fund, provided the Legislature shall see fit to so provide for any year.

Investment of the Permanent School Fund.—The investment of the permanent school fund is made by the Board of Education. This Board

consists of the Governor, Comptroller and the Secretary of State. The Superintendent of Public Instruction is *ex officio* secretary of this Board. It is the duty of this Board to invest all cash belonging to the permanent school fund in interest-bearing bonds and securities. The Constitution and statutes specifies the kinds of bonds and securities in which it may be invested. At this time the Board may buy bonds of the United States, of the State of Texas, of Counties or Cities in Texas and of Independent School Districts in this state. Such bonds must bear at least 3 per cent interest. In case of County or City or Independent School District bonds, the bonds bought, together with other indebtedness of the County, City or District, must not be more than 7 per cent of the assessed value of the land in the county, city or school district, as the case may be.

Whenever any school fund is invested in bonds or securities of any sort the state becomes responsible to the school fund for the amount of money paid for the bonds. This is done in order to prevent loss to the school fund.

Distribution of the Available Fund.—The State Board of Education must every year, on or before the first day of August, divide the available school fund among the several counties, cities, towns, and districts constituting sep-

arate school districts, according to the number of children entitled to go to school in each. The amount of money set apart to each of these divisions must be used by the proper authorities in it for the purpose of keeping up the public schools in it.

QUESTIONS.

1. What evidence is there in the Texas Declaration of Independence that the fathers of the Republic were interested in public education? Why were not public schools established at once? How is interest in public schools shown by early legislation regarding public lands?

2. How many different kinds of state school funds are named in the Constitution? Name them.

3. What items are embraced in the perpetual fund? Is there any school property in any of the other items which is not embraced in item one? If so, what are these kinds of property?

4. What is meant by the alternate sections of land mentioned in item two?

5. Had the one-half of the public lands referred to in item three previously been school property?

6. What is embraced in the fourth item, and what is its evident purpose?

7. What property is declared by the Constitution to be in the permanent school fund? Is there anything in the permanent fund which is not also in the perpetual? If so, what is it? Is there anything in the perpetual fund that is not in the permanent? If so, what is it?

8. Under the Constitution of 1876, as at first adopted, could any part of the perpetual or permanent funds be used to pay the expense of carrying on the schools?

9. What is meant by the available school fund? What items were embraced in this under the Constitution of 1876, as originally adopted? What are occupation taxes? What part of all state occupation taxes must go into the available school fund each year? Does the Constitution require that any occupation tax must be levied?

10. What is a poll? What is a poll tax? How much poll tax does the Constitution require shall be levied each year, and on whom? How much of this must go to the state school fund?

11. What is an *ad valorem* tax? Does the Constitution name any specific *ad valorem* tax to be levied for school purposes? How does it indicate the amount of such levy? What is the largest tax of this kind which can be levied under this provision?

12. What other items does Article VII, section 5, add to the available fund? What power is given the legislature by the amendment of 1891, to Article VII, section 5, as to increasing the available fund each year? What effect would such increase have on the permanent fund? Does the legislature exercise this power?

13. Who invests the public school funds? In what way may such investments be made? How are school investments secured in addition to the security which goes with the bonds, etc., purchased?

14. Who distributes the state available school fund? Who is intended to share in this fund?

CHAPTER XXVI.

Public Schools of Texas—Continued.

Local School Funds.—The perpetual, permanent and available funds which we have considered up to this time, are all state funds. In addition to these, the several counties in the state have lands, or the proceeds of the sale of lands, which are permanent school funds belonging to them. The rent of these lands or the interest on the money that the county has gotten by their sale are available county school funds. These funds must be divided among the different schools in the county in proportion to the number of common school pupils in each school district or community. These available funds can not be used for buildings or for getting furniture or equipment unless there is a surplus after keeping up the schools for eight months in the year.

District Funds.—Article VII, Section 3 of the Constitution of 1876 gave the Legislature the power to “provide for the formation of school districts within all or any of the counties of this state by general or special law, * * * ; to authorize an additional ad valorem tax to be levied and collected within such school district

for the further maintenance of the public free schools and the erection of school buildings therein; provided, that two-thirds of the qualified property tax-paying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district; but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts.”

This section has since been amended so as to authorize the levy of the tax when approved by a vote of the majority of the qualified voters, and also so as to permit a tax of not exceeding fifty cents on the one hundred dollars.

Under the authority thus conferred the Legislature has passed laws under which school districts may be created and taxes levied for the purpose of maintaining schools in such districts.

These districts are of different kinds, and the laws governing each kind vary somewhat from the laws governing the other kinds. It would not be profitable to undertake to discuss these different matters in this work.

The Schools Constituting the Present Public School System.—The present public school system of Texas, using these words in the broadest

sense, includes the State University, the Agricultural and Mechanical College, the Sam Houston Normal Institute, the North Texas State Normal College, the Southwest Texas Normal School, the Texas Industrial Institute and College for the Education of White Girls of the State of Texas in the Arts and Sciences, and the Prairie View State Normal and Industrial College, all the high schools, and all grammar or primary schools in the state.

The University of Texas.—The Constitution commands the Legislature of Texas to “establish, organize, and provide for the maintenance, support and direction of a University of the first class, to be located by the vote of the people of this state, and styled, ‘The University of Texas,’ for the promotion of literature, arts and sciences, including an agricultural and mechanical department.”

The main University, as it is called, that is, that part of the University consisting of the Department of Arts and Sciences, of Law, of Engineering and of Education, is located at Austin; the Medical Branch is located in Galveston.

The Departments of Arts and Sciences and of Law were opened in 1883; the Medical Department in 1891, and the Engineering Department in 1894, and the Department of Education in 1906.

The general management of the University is in a Board of eight Regents appointed by the Governor every two years, subject to the approval of the Senate. The administrative work of the institution is performed by the President and a staff of assistants, who act under the general supervision of the Board of Regents.

The permanent funds of the University consist in lands, bonds, and land notes. The available funds are derived from the rental of lands, interest on the bonds and land notes, and money appropriated by the Legislature from time to time.

The Agricultural and Mechanical College.—This is an institution maintained at College Station, Brazos County, Texas, for the purpose of training the youth of the state in agriculture and the mechanical arts. It is under the control of a Board of Directors consisting of the Commissioner of Agriculture and seven other members appointed by the Governor with the approval of the Senate. The executive head is known as the President. He has charge of all the administrative affairs under the general control of the Board of Directors.

It has a permanent fund consisting of United States bonds, but this is not nearly sufficient to maintain the school, and it is kept up principally by appropriations by the Legislature. The col-

lege is military in its organization. In connection with its agricultural and mechanical studies it maintains a number of experimental stations in agriculture in which practical tests as to soils, diseases of plants and trees, breeds of stock and other matters of general interest are made.

Normal Schools.—The Sam Houston Normal is located at Huntsville. The North Texas State Normal College is located at Denton. The Southwest Texas Normal is at San Marcos. The West Texas State Normal College is located at Canyon. All of these schools are kept up for the purpose of training teachers, and in this way to increase the value of public schools generally.

All of these schools are under the control of one Board appointed by the Governor and approved by the Senate.

The Texas Industrial Institute and College for the Education of White Girls of the State of Texas in the Arts and Sciences is located at Denton. Its purpose and nature are set out in its name. It is under the same management as the normal schools.

Prairie View State Normal and Industrial College.—This is the State college for colored youth mentioned in Section 14, Article 7, of the State Constitution. It is at Prairie View, in Waller County. It gives training both to teachers and in industrial branches. It is under the

same management as the Agricultural and Mechanical College.

Common Schools.—The common schools proper of the state consist of the primary, or as they are sometimes called, grammar schools, and of high schools. The county is the territorial unit in the common school system, and the general school law is based upon the county as such unit. As stated before, there are a number of provisions in the law providing for the creation of various school communities and school districts. These are too complicated to make a detailed treatment profitable.

All the common schools, whether of primary, grammar or high school grade, are entitled to share in the available state public school fund. Many of them have in addition revenues from the county funds of the county in which they are located and from district taxation which has been voted by the people of the school district under the terms of the law. The government of these schools varies with the different kinds. The officers having charge of school matters are some of them state officers and some county officers and some are school district officers.

State Officers Connected With the Common Schools.—The State Board of Education and the State Superintendent of Public Instruction are the state officers who deal with the common

school matters. The State Board of Education, as stated before, consists of the Governor, the Comptroller and the Secretary of State. The State Superintendent of Public Instruction is, by reason of his office, secretary of the Board. It is the duty of the Board of Education each year to set aside to each county and school district its proper portion of the state available school fund. The Board also has the power to hear and decide appeals taken from the decision of the Superintendent made in matters pertaining to the common schools.

State Superintendent of Public Instruction.—This officer is “charged with the administration of the school law and general superintending of the business relating to the public schools of the state.” He prepares all the forms of all kinds to be used by school officers in the different public schools. He examines all accounts against the state school fund, and nothing can be paid from such fund without his approval. He is advisor of all the school officers. He decides all disputes between school trustees and teachers. His decisions in such cases are subject to review by the State Board of Education.

County Superintendent.—Every county in the state has a Superintendent of Public Instruction. If there are as many as three thousand inhabitants within the county of scholastic age the Su-

perintendent is elected by the people, and his only official duties relate to the common schools. If there are less than three thousand children within the county of scholastic age, the County Judge acts as School Superintendent. In these latter counties, if twenty-five per cent of the voters ask to have a County Superintendent elected, this should be done.

The duties of the County Superintendent are to supervise and control all public schools in his county which are not in independent school districts. He particularly looks after and assists the school trustees as to the selection of teachers and the expending of the school fund. He visits the various schools in his county and holds institutes for the teachers and does similar work which will be of advantage to the schools in his county. He acts under and makes reports to the State Superintendent of Public Instruction.

Common School Districts.—The “district system” is the prevalent one in this state. Each county in which this system exists is divided into a convenient number of school districts. Each of these districts has one or more primary schools. All of these in each district are in charge of the same three trustees, who are elected every two years by the voters in the district for general control over all schools in the

district. They employ the teachers and see that the schools are properly carried on.

Special Taxes in Common School Districts.—Many of these common school districts may levy special taxes for common school purposes, provided a majority of the qualified property owning voters living in the district shall vote in favor of the special tax. Such districts may also, by the same kind of vote, authorize the issuance of bonds for the purpose of building and furnishing school houses. There are limits set as to the amount of taxes that can be levied for each of these purposes.

Independent School Districts.—If the majority of the qualified voters in any district not exceeding twenty-five miles square shall vote in favor of making that district an independent school district, this may be done. Whenever such a district is formed it takes the schools in that district from under the control of the County Superintendent. Such district elects seven trustees instead of three. These districts share in the available state and county funds in their just proportion. They may provide for special taxes and bonds, the same as ordinary school districts may.

Sometimes a city or an incorporated town will make itself an independent school district. Sometimes the school district will include a town

or village and the territory lying around it. There are differences in these districts as to the amount of taxes that may be levied, but we cannot go into this matter here.

Community System.—A few counties in the state keep the community system. Under this system there are no permanent school districts. In every neighborhood the parents or guardians of children of school age who desire to patronize the same school may organize themselves into a free school community.

This is done in this way. The parents and guardians sign a petition to have such a school established. In this petition they state the kind of school they want and give the names of all of the children in the community within scholastic age. They further state in a separate list the names of all the children who are under the control of the parents and guardians signing the petition. The petition asks to have the petitioners and their children put into the same community school, giving its name. They give this petition to the County Superintendent. At the same time the petitioners name three persons in their community to act as trustees for the school.

The County Superintendent files this petition in his office. At any time before the first of August of that year, upon proper request by the parties interested, he may add the names of pu-

pils to the petition or take off names of those already on it. The communities must be organized on or before the first of August.

After that date no changes can be made. The County Superintendent must appoint the persons named in the petition as trustees unless they are unfit for the place.

The funds which may be used in keeping up the schools of this sort must come entirely from state or county sources. There can be no local taxes for such schools.

Teachers.—In order to be sure that the teachers in the common schools will be competent, the law denies the trustees the right to employ any teacher who does not hold a teacher's certificate. These certificates can be given only for work done in some approved University or College, or after examination before a proper Board of Examiners. These certificates differ. Some indicate very little education, while others indicate a fair amount. The grade of school in which a teacher may be employed and the amount of salary he or she can get depends largely on the grade of certificate that the teacher holds. The higher the grade of certificate the larger the salary that can be paid him.

Scholastic Age.—The age fixed by the general law of the state as entitling a pupil to free attendance upon the common schools is from seven

to seventeen years exclusive. In independent districts these limits may be changed by the trustees.

QUESTIONS.

1. What school funds belong to the counties of Texas? What part of these funds are available for keeping up the county schools?

2. What is a school district? What provision did the Constitution of 1876 make as to local taxes in school districts (a) as to the number of votes necessary to authorize such tax; and (b) as to the amount of the tax that could be levied? What changes have been made in these two matters by subsequent amendment?

3. What schools constitute the present public school system?

4. What command does the Constitution of Texas give to the legislature as to the establishment of the University? When was the University of Texas opened? What departments are located at Austin? What department is at Galveston? What Board has control of the affairs of the University? What available funds has the University?

5. Where is the Agricultural and Mechanical College located? For what purpose is this institution maintained? Who has general control of its affairs? By what funds is this school supported? What kinds of experiments and tests are made in connection with this school?

6. What is a Normal school? How many such schools for whites does the state regularly maintain? How many for negroes? Where are these schools located? What is the purpose of the "Industrial Institute?" Where is it located? How are all these schools managed? How are they supported?

7. What schools are properly included in the Common Schools of the state? How are these supported? Do all share in the same available state funds? Do any of them have additional available funds? How are these funds obtained?

8. What state officers have official duties in connection with the common schools? What are the duties of the Superintendent of Public Instruction? What are the duties of the State Board of Education?

9. What county officer has charge of the common schools in his county? In the smaller counties, who exercises the duties of this office? Give the duties of this office.

10. Does the district or the community system prevail in Texas? Which of these systems gives better opportunity for permanent organization and voting of taxes?

11. Who can authorize the levy of special taxes in school districts for school purposes? Can available funds be raised in this way? Can funds for building and equipment be raised in this way? Are there any constitutional limits on the amount of special tax which can be voted for these purposes?

12. What is an Independent School District? What effect does establishing such a district have on the powers of the County Superintendent in that district? How many trustees are elected in such districts?

13. Describe the organization of a school under the community system.

14. What is a teacher's certificate? Is there any connection between the grade of a teacher's certificate and the kind of school he can teach or the amount of his salary?

15. What is the scholastic age under the general school law? Can this be extended in independent districts?

CHAPTER XXVII.

Restrictive provisions of the Texas Constitution.

Introduction.—The Constitution of Texas is too long to be printed in the text or even as an appendix to a school book. We have already studied the most important of its provisions included in its creative, perpetuative and functional parts. We now pass on to the restrictive portions and when we complete them will consider its miscellaneous provisions.

Some of the provisions of each of these kinds are not sufficiently important to justify discussion in a book such as this. Others are so essential to a proper understanding of our subject that we cannot omit them even though they are so difficult that it is hardly practicable to present them so you can easily understand them. No text book on Civil Government can justly be regarded as complete unless it makes an honest effort to make them intelligible.

Restrictive Provisions.—Most of the restrictive provisions in state constitutions are included in an Article called a Bill of Rights. This is true of the Texas Constitution. This name is given to these provisions because they enumerate many of the fundamental rights of individ-

uals and of the people collectively, and declare that such rights shall forever remain free from interference by the Government or any of its officers.

The last section of the Texas Bill of Rights is a fine statement of the purposes for which such provisions are inserted in state constitutions. That you may have the benefit of this we quote it as follows:

“Sec. 29. To guard against transgressions of the high powers herein delegated, we declare that everything in this ‘Bill of Rights’ is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.”

Religious Liberty.—Religious liberty is guaranteed to all persons in Texas by Sections 4, 5 and 6 of the Bill of Rights. These guarantees take two forms. First, that human governments ought not to interfere with the rights of the individual in religious matters; and, second, that it is the duty of the state to protect its citizens in their religious worship against interruption or disturbance by any other persons.

These sections do not mean that a person can do anything he wishes and call it religious worship. He must in worship, as in everything else, act in such way as not to interfere with the just

rights of other people or of the public. If a so-called religious sect should teach that it was proper to offer human sacrifices to God, the teaching of this doctrine and its acceptance by the sect would not protect persons who killed the sacrifice from prosecution for murder. In such a case the carrying out of religious beliefs would deprive others of their lives and disturb the good order and peace of society, and the state would have the right to prevent such sacrifices or punish those who offer them.

Still the Government is very careful, and will not interfere with any form of religious worship unless it is clear that under the guise of such worship persons are really interfering with the just rights of others.

Liberty of Speech.—It is very essential, particularly in a democratic or republican form of government, that information shall be freely given and the truth scattered broadcast. This could not be done if the government or its officers could prohibit the publishing of papers, or could say what could be published in them, or could prevent public discussions by the citizens or the free exchange of ideas among them. This right to the free interchange of information and thought is regarded as so important that the constitution provides that the right to speak, write or publish the citizens' opinions shall not

be taken away. This does not give the right to anyone to make statements that are false, but only protects him in the statement of the truth.

Guarantees of Personal Safety.—There are a great many provisions in our Bill of Rights regarding the safety of persons and of property.

Seizures and Searches.—One of these prohibits the seizure or search of any person or his house or his papers or any of his possessions unless some one shall first make oath that there is reasonable and proper cause for so doing.

To Persons Accused of Crime.—Another section guarantees to every man accused of crime that he shall be informed of the nature of the charge against him, shall have a right to be heard on the trial, and shall not be compelled to give evidence against himself; and shall have the benefit of trial by jury.

Bail.—Another provision guarantees to every person accused of crime the right to give reasonable bail before trial unless the proof is very strong that he has committed a crime that may be punished by death. To give bail is to give security that a person giving the bail will come before the proper court at the time set for the trial of his case and surrender himself to the court to be tried on the charge against him. The person giving bail is then permitted to go free until the time set for his trial. If the accused

were not permitted to give such security he would be kept in jail up to the time of the trial. As there is often a good deal of delay after a man is charged with a crime before he can be tried, to keep him in jail all this time would be a very great hardship, particularly if he were innocent.

Restrictions as to Second Prosecutions.—One of the sections of the Bill of Rights is:

“Sec. 14. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.”

Jeopardy here means the same as explained to you in connection with the Federal Government. It only applies to felony cases and misdemeanor cases which may be punished by imprisonment.

The other clause means that if a man is once tried on a criminal charge and the jury says he is not guilty, that he can never be prosecuted any more for that alleged wrong. The guarantee is for the benefit of the accused person. If, therefore, a man charged with a crime is tried and found guilty, this provision in the Constitution neither forbids the judge or the Appellate Court to give him a new trial; nor if he gets a new trial will it prevent him from being tried again.

Due Course of Law.—Another provision secures to everyone the protection of the due course of the law of the land. This means that the Government cannot take away a man's rights until he has had a fair opportunity to know why it is trying to do so and also an opportunity to be heard in the matter; that is, to introduce testimony showing his side of the case and to argue the questions before the judge or jury or other proper officer.

Keeping Arms.—The right to keep and bear arms is also a right secured by the Constitution. The purpose for which this right is guaranteed is the lawful defense of an individual or of the state. It is not intended by this provision to guarantee the right to have or wear arms for the purpose of making unlawful attacks on other people.

Trial by Jury.—Another provision is that "the right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same and to maintain its purity and efficiency."

Habeas Corpus.—Another section guarantees to any person who is arrested or taken in charge by another, whether he is accused of a crime or not, the right to apply to a judge or court and have the matter brought before him for the purpose of having an investigation to see whether

his detention is lawful or unlawful. If it is lawful he will not be released. If it is unlawful the judge will release him.

The order made by the judge to have the person brought before him is called a writ, and as the purpose of this order is to have the petitioner brought before the judge, the writ commands the officer to have the petitioner's body before the court at a time and place named in the writ. Writs of this sort are very ancient. They used to be written in Latin. The Latin for "have you the body" is "habeas corpus." Hence these writs have come to be known as Writs of Habeas Corpus.

The restrictive provisions that we have discussed are by no means all that are in the Constitution. They are among the most important of them and are perhaps quite as many as you will keep fixed in your mind.

QUESTIONS.

1. Why is a Bill of Rights called by that name? Give the substance of the last section of the Texas Bill of Rights.
2. Does the Texas Constitution have any guarantees as to religious liberty? What is provided as to interference with one's religion by the government? What as to interference by private persons? Do these provisions mean that a person may do anything he wants to if he calls it a re-

ligious act? Where is the line that separates between what he may do as a religious act and what he cannot?

3. Why is full information and free discussion essential to the public well being in a democracy? How does the Texas Constitution attempt to protect the freedom of speech and of the press? Do these provisions protect a person in any and everything he may say? Has one person the right to make false statements about another under this guarantee? Would public peace and order be brought about and increased by spreading false information?

4. Under what circumstances can the person or property of another be seized or searched?

5. What protection is provided for persons accused of crime? What is bail? Why is it important to have guarantees on this subject?

6. Can a person be tried for a crime after he has been acquitted? If he is convicted on the first trial and he gets that set aside, can he be tried again? Why? What is meant by jeopardy? (See Chapter XIV, page 164.)

7. What does the guarantee as to due course of law mean?

8. Can the state prevent a citizen from keeping arms with which to protect himself and his home? Can it lawfully prevent the wearing of arms for the purpose of disturbing the peace?

9. What guarantee is there in the Texas Constitution as to trial by jury?

10. Explain what is meant by a writ of habeas corpus? From what does this writ get its name?

CHAPTER XXVIII.

Miscellaneous Provisions of the Texas Constitution.

Introduction.—We come now to the consideration of some of the more important of the unclassified provisions of the Constitution. We will treat them under the head of Miscellaneous Provisions. There will be no apparent connection between them, but they all go to make up parts of our government or governmental policy of too much consequence to be properly omitted.

The Texas Land System.—Before the Texas Revolution the governments of Spain and Mexico had granted to individuals a good deal of land within the present boundaries of Texas. These grants have always been respected by both the Republic and the State of Texas. There has been a great deal of controversy as to the genuineness of some of these alleged grants and as to the location and boundaries of others that were conceded to be genuine, but the State authorities have never sought to take away any real and just rights which any person had under such grants. As these grants were made prior to the existence of the Republic of Texas they

cannot properly be called a part of the Texas system.

When the Republic was successfully established it had an immense amount of public domain. It was very much in need of more inhabitants so that one of the first things that was done was to encourage immigration by offering to settlers large tracts of land as a bonus for coming. A good deal of land was disposed of in this way.

The Republic also felt itself under obligation to those who had fought in any of the wars or battles to establish the independence of the Republic. Lands were given to these.

Public improvements, such as railroads, steamship lines, etc., were also very much needed. Making such improvements was encouraged by the state by offering to give large quantities of land to individuals or to companies who would engage in such enterprises. Under this stimulus a great many improvements were made and the right to a great deal of land acquired.

Much of the best public land of the state was in sections not then settled. Much of it was on the frontier or even beyond the frontier in localities where the Indians were in undisturbed possession. The lands so situated could not at that time be actually surveyed and put into possession of persons entitled to them.

Land Certificates.—As it was impracticable to deliver the land itself to which persons might be entitled under any of the foregoing laws or even to describe any particular land as being sold or given to any particular person, the policy was adopted of issuing written certificates to all persons who were entitled to land. Such a certificate would name the person for whose benefit it was issued, state how much land he was entitled to and give the reason for his claim and authorize him to locate the certificate on any part of the public lands of the state which he might select.

These written statements were called Land Certificates. Most of them were transferable, that is, could be sold and the purchaser would then have the right to select the land called for in the certificate and get title to it.

Location of Certificates.—It is clear from the foregoing statements, that in order for any one who was entitled to land under a certificate to actually get title to any particular tract of land he must apply his certificate to the particular tract selected by him. This was called locating the certificate.

Locations were made in this way: The state was divided into a great many land districts. In each of these districts there was an officer known as a Public Surveyor. Any person hold-

ing a land certificate and desiring to locate it would select the particular tract of land to which he wished to get title under the certificate. He would then go to the office of the surveyor in whose district this land was, and present to him his certificate and such a general description of the land on which he wanted the certificate to be located as would enable the surveyor to find the land. He would also file a written request to have the certificate located on the land described. This certificate and request to have it located and the description of the land were filed with the surveyor. He would then make a brief record of all these facts in his office. As soon after this as he could do so it was the duty of the surveyor to survey the land by actually running its lines on the ground. As he did this he was required to make true and correct notes describing the land and its boundaries. These were called the field notes of the survey. After having copied the field notes into his records the surveyor would send them and the certificate to the General Land Office, the Commissioner of which you will remember has charge of all public lands in Texas.

In that office the certificate and field notes would be carefully examined and if they were found to be correct the land covered by the location would be plotted on the maps in the land

office, that is, would be drawn on those maps at the place in the county or district that the land was shown to be on the ground. The Commissioner of the Land Office would then prepare a patent for the land. A patent is a written statement formally transferring the land described in it to the person who owned the certificate and had located it. This patent would then be signed by the Governor and the Commissioner of the General Land Office and delivered to the owner of the certificate or his agent. The person named in the patent as grantee would thus become the owner of the particular land located by the certificate and described in the patent.

The law required the surveyor to actually survey the land on the ground and describe it by objects that he found there, such as streams, rocks, springs, trees, or by stakes or piles of rock made by him, etc. Unfortunately this was not always done. A great many times the surveyor would stay in his office and make the field notes and describe the land by means of objects that he thought might be found on the ground. This made it hard and sometimes impossible for the owner of the land to find just where it was when he went to settle on or to sell it. A great deal of litigation grew out of this way of locating land.

All land certificates ever issued in Texas have

either been located or else have become invalid because the time in which they could lawfully be located has passed. No lands can be acquired now in this way.

Pre-emption and Homestead.—The state, during all its history, has granted lands to persons settling on them without the location of certificates. Grants of these kinds are known as pre-emption and homestead grants.

Under the pre-emption law the head of a family could get a small tract of land by living on it for a certain length of time without paying anything at all for it. Under the homestead law he could get a larger tract of land, but he had to live on it for a year and pay a small sum of money for it. This is not the homestead right which protects a man's home from sale to pay his debts and you must not get these two uses of the word confused.

School Lands.—As stated in a former chapter in connection with the school land, Texas has always kept a large part of her public land for the benefit of her schools. The State did not survey this land herself, but when she gave lands to railroad companies, navigation companies, and other companies of this sort, she required them, when they surveyed their lands, to locate them in sections of 640 acres each and for every section they surveyed for themselves to survey an-

other 640 acres adjoining theirs which was to be part of the school lands. These alternate sections constitute a very large part, though by no means all, of the school lands of the state. Under the present system these lands may be sold to persons who desire to buy them to settle on or to use in connection with land which they are already living on.

Registration of Land Titles.—Land is the most enduring property that man can have and the evidence of his right to the land owned by him should, if possible, be made as enduring as the land itself. For this reason the law requires that all sales of land shall be made in writing and then gives to the man who buys the land the privilege of having his deed copied into the public records of the county in which the land is, so that if his deed should be lost or destroyed his right can be proved by the public records. This is a matter of very great importance to the business interests of the community as nobody wants to buy land unless he is sure that he is getting a good title and that he can prove this whenever he wants to sell the land.

State Taxation.—The people of Texas have the right to levy taxes of any kind and in any way not forbidden by the Constitution of the United States. We have found that the Con-

stitution forbids to the States the right to lay any imposts or duties on imports or exports except such as may be absolutely necessary for executing its inspection laws. This prohibits Texas, by her own authority, to make any sort of charge for bringing in any articles of commerce or taking any out for the purpose of raising revenue. The Federal Constitution further denies to any state the power to levy any tax on tonnage. A tax on tonnage is a tax on cars or ships or other vehicles engaged in interstate or international commerce based on and proportioned to their size and the amount of freight they will carry.

We have also found that though there is no express provision in the Constitution forbidding it, that a state cannot tax the officers or agencies through which the Federal Government carries on its Governmental affairs. A state cannot tax interstate or international commerce.

With these exceptions the state can levy taxes in any way that it sees fit.

The people of the state in making the State Constitution are not required to confer all this power and they may and do regulate taxation by the officers of the State Government. This is very common. There is a whole article in our present Constitution on the subject.

The most important provisions in this article are:

First. Taxation must be equal and uniform.

Second. When the tax is on property it must be assessed according to the value of the property.

Third. The Legislature may levy poll taxes, that is taxes on persons.

Fourth. It can levy occupation taxes on any sort of business except mechanical and agricultural pursuits.

Fifth. Taxes must be levied and collected according to general laws that affect everybody alike.

Sixth. No tax can be levied for private purposes but only for public purposes.

Seventh. The taxes levied should never exceed an amount sufficient for the proper and economical running of the government.

Eighth. The State tax on property, except in order to enable it to pay debt incurred before 1876 and to run the public schools, shall never exceed thirty-five cents on the one hundred dollars.

Ninth. The State shall never, by any agreement or charter, give up its right to tax private corporations or their property.

Tenth. Farm products before they are sold by the farmer and supplies for the home and

farm and \$250.00 worth of household goods for each family are not subject to taxation.

Eleventh. The Legislature cannot relieve persons from the payment of taxes unless as a result of some great public calamity when a whole community may be in distress. In such cases everybody living in the community may be relieved for a short while from taxation, provided two-thirds of both houses of the Legislature vote to do so.

Twelfth. With a very few exceptions, taxes must be paid in the county where the property is situated.

Thirteenth. Taxes levied on land are a lien on the land, that is the land is bound for the payment of the taxes on it, and if the man who owns it when the taxes were levied sells it without paying the tax, the man who buys the land will have to pay the taxes or the land can be sold for them.

Fourteenth. The Legislature is commanded to pass laws providing for the regulation of the sale of property for taxes when the owners do not pay.

Fifteenth. The Legislature is commanded to pass laws to make taxes equal and uniform.

State Revenues and Debts.—Our Constitution is very careful in regulating the use and expenditure of money and other property belonging

to the State, and declares that such property shall never be given to any person or used for any purpose except for the public good.

Great care is also taken to keep the State, and cities, towns, counties and other political subdivisions from going security for any person or corporation.

The general effect of all these provisions is that neither the State nor any of its political subdivisions has the right to give away money or property belonging to it or to become security for anybody else for any purpose whatever.

QUESTIONS.

1. In what way did Texas obtain its vast public lands? How did Texas induce immigration in the early days of her settlement? In what way did she seek to show her appreciation of the soldiers who fought in her behalf? How did she seek to encourage the making of public improvements, such as railroads, etc.?

2. Why did she adopt the policy of issuing land certificates? What was a land certificate? What was meant by locating a certificate? Describe the way in which this was done.

3. How were public lands acquired by pre-emptions? How as homesteads?

4. Go carefully over the paragraph in this chapter on school lands and compare it with what you learned about these lands in the chapter on public schools. What is meant by alternate sections of school land? What other

school land does the state have? When any of these lands are sold, to what school fund does the cash paid for them belong? To what fund does the principal of the notes taken for them belong? To what fund does the interest on these notes belong?

5. What is meant by registering a land title? How do the registration laws protect owners of land?

6. Are there any limitations upon the power of the people of Texas to levy taxes? What express limitations are there, if any, in the Constitution of the United States on this power? What implied limitations are there on this power? In forming the Constitution do the people have to give their officers the right to exercise all of the people's power of taxation? Are there any limitations in our Texas Constitution on this subject?

7. Enumerate the provisions of the Texas Constitution on the subject of taxation? Make a written memorandum showing which of these are grants of power, which are denials of power, and which are directions to the state officers as to how to use the power?

8. Why is it wise to forbid state and county officers to give away public money? Why is it bad policy for the state and its political subdivisions to pledge their credit for the benefit of other persons?

CHAPTER XXIX.

Miscellaneous Provisions of the Texas Constitution—Continued.

Municipal Corporations.—You will find it difficult to understand the idea of corporations. It is, however, very necessary for you to do so. It would do you little good to write out a formal definition and have you to memorize it. It would be fairly easy for you to repeat the words but you might still lack a great deal of understanding their meaning. Probably the best way to really get into your mind what we mean by a corporation would be to give you an example from things with which you are familiar. We may not get absolutely accurate results this way but they ought to be fairly correct.

If your friend should ask you “What you are doing” you would say, “I am going to school.” What do you mean by that statement? What is a school? It would be hard for you to tell. You know that it is not the school house. So that answer would not do. If you will think a little while you will see that this school has existed a long time and has been the same school during all these years. The building may have

changed several times. If some time in the past the building has burned and the trustees next week got another and all the teachers and pupils went over there it would be the same school, though meeting at a different place. In all the years the school has been kept up the teachers and pupils have never been exactly the same at any two sessions. Some who were there the year before would not re-enter. Others who were never there before came in. You can see this very plainly in the lowest and highest grades. It may be that there is not a single pupil in the first grade this session that was in it last year. It may be that all the students in your highest grade last session passed in all their subjects and have either gone to some other school for more advanced work or are not going to school at all. Still you have a first grade and a highest grade this session just as you did last. Taking all your grades together and all your teachers together you speak of the school this year as the same school that it was last year. Thus you see the school is something different from the school house in which it meets and also that it continues to be the same school although its teachers and pupils are constantly changing.

Let us take another illustration. The University of Texas was established in 1883. It

then had a small faculty and few students. It has now grown into a large institution with a large faculty and many students. There is not a single officer or teacher or student in the University now who was there in 1883. During this time the buildings have changed very much. At that time there was only one wing of one building on the campus. Now that building is complete and there are several others larger than the wing that was used when the school first opened. Still it is the same University now that it was then. The students who graduated in the first class are just as much graduates of the institution as those who graduated last summer. So you see that this larger institution like the school you attend remains the same although its buildings, its officers, teachers and students all have changed. It is this unchanging thing that we call the corporation.

The illustrations we have given you are both educational. This was done for your convenience because you know more about schools than you do about other kinds of continuing institutions. The same idea, however, holds true in all institutions of this kind. The fact that the institution continues to be the same unaffected by the change in its members is the most distinguishing characteristic of a corporation. Other facts in connection with this must exist

regarding the institution to make a full corporation; but there can be no corporation without this capacity for continued existence. For an institution to be a corporation the State must take part in creating it. The institution must also have a fixed and continuing purpose which it is seeking to accomplish. Suppose we say that a corporation is a combination of persons formed by the State or under its authority with the view of accomplishing a fixed purpose, which combination does not change in its nature with a change in the persons who compose it.

If a corporation is created for the purpose of governing the people or exercising any large amount of political power it is called a Municipal Corporation. The Romans called cities *municipae*. The word municipal, therefore, really means pertaining to a city. Many of the first permanent governments were in cities. So we now give an enlarged meaning to the word municipal and include among municipal corporations all political subdivisions of the state that have any legal rights and duties.

The best organized and most important municipal corporations in Texas are counties, cities and towns. Our present Constitution deals extensively with each of these. We will confine our consideration to them.

Counties.—The whole of Art. IX and a good

part of Art. XI of the Constitution are devoted to Counties. Counties are always created by the act of the Legislature. It is not necessary for the people living in the territory embraced in the county to want the county to be made. The Legislature can create the county whether the people there want it or not. Though this power exists it is rarely if ever actually exercised and as a fact counties are almost always, if not always, created at the request of the people who live in the territory. Each county has a county seat or place within the county as near the center as conveniently can be, where all public offices are kept and all county officers must stay and where the county records are preserved. The most important county officers are County Judge, County Attorney, County Clerk, County Treasurer, County Tax Assessor, County Tax Collector, Sheriff, Superintendent of Public Schools, Surveyor, Animal and Hide Inspector, and the County Commissioners. These different officers are elected by vote of the people and vacancies in all but the District Clerk's office are filled by appointment by the Commissioners of the county. Vacancies in District Clerk's office are filled by appointment of the District Judge. The duties of these officers are fairly well shown by their names and have also been discussed before under various heads.

Counties are permitted to levy taxes on property and polls and on occupations not to exceed one-half of the taxes levied by the State on each of these. If there are outstanding debts, under some conditions larger assessments may be made.

Cities and Towns.—There are two ways of creating cities and towns. One is by special act of the Legislature granting a charter to the particular city. The other is by passing a general law governing the matter and stating how the people living in a particular neighborhood may incorporate themselves, as it is called, into a city or town. In Texas the Legislature cannot create cities by special charter unless there are as many or more than ten thousand inhabitants living in the community. Communities having less than that number can be incorporated only under the general law.

City Governments.—Cities and Towns have only such power as the Legislature may grant to them in their charters. The powers granted are usually most of them executive as there is little use for legislative or judicial powers by them.

The chief executive officer of a city is usually called the Mayor. The other officers are aldermen, councilmen, or commissioners. There are also city attorneys, tax assessors and collectors, treasurers, city clerks, and some other officers.

The city officers that the public sees most frequently are the policemen. The chief policeman is called either marshal or chief of police. He has command over all other policemen. It is the duty of the police to see that good order is observed in the city and that nothing is done in violation of any state or city law.

Such legislative powers as a city has are exercised by its Board of Aldermen, or the City Council, or the City Commissioners, according to the terms of its charter. None of these bodies can pass laws which have any effect outside the city limits nor can they pass any law to have effect inside the city limits except such as are authorized by their charters and that are necessary to preserve the peace and order in the community, usually known as police regulations. Laws passed by a city are called ordinances.

The judicial powers of a city are vested in a Mayor's or Recorder's Court. Such courts can try only criminal cases in violation of city ordinances. They cannot try persons for violating State laws unless the charter of the city expressly so declares.

Cities and towns get all their powers from their charters and cannot do anything at all except what is authorized by the charters. In addition to this general rule of law, there are a

good many express limitations on the powers of cities and towns set out in our Constitution.

Cities created under the general law may levy and collect taxes annually to defray their current expenses. This tax must never exceed one-fourth of one per cent for any one year. They may also collect license and occupation taxes. These cannot exceed, however, one-half of similar taxes levied by the state. Cities created by special charter may levy and collect such taxes as their charters authorize. No charter can authorize taxes for any one year which exceed two and one-half per cent of the value of the taxable property in the city, as shown by its assessment rolls for that year.

There is no express limitation in the Constitution upon the amount of debt that a city can create. There is a provision, however, declaring that no debt can ever be made by a city unless at the same time provision is made to assess and collect annually a sufficient sum to pay the interest on such debt and to create a sinking fund of at least 2 per cent. A sinking fund is a fund to be held until the principal of the debt or some part of it matures, then to be paid on the principal of the debt. This provision, taken in connection with the one that limits the taxing power to two and one-half per cent, makes a very

decided and positive restriction upon the powers of cities to create debts.

Private Corporations.—Private corporations take a very important part in the business of the world.

As stated to you in the preceding paragraph on municipal corporations, it is very hard to express in simple words the exact idea of a corporation. We tried in that connection to give you the thought that one of the characteristics of a corporation is that it continues the same, whether or not its members change. As the State University is the same institution now that it was when first organized in 1883, although there is not a single person as officer, teacher or pupil in it now who was there when it opened. We also got the idea that there must be a fixed and continuing purpose and the co-operation of the State before we can have a corporation.

We now come to the subject of private corporations. They have different purposes from those sought to be accomplished through municipal corporations and differ from them in many ways. The ideas of continuing identity of the corporation, unaffected by the change of membership, of fixedness of purpose and state co-operation are the same in both.

We will try to make the idea of a private cor-

poration as plain to you as we can. Here as in the case of municipal corporations we will attempt to lead up to the conception of private corporations by a discussion of their purposes and manner of action instead of giving you abstract definitions.

If a person wishes to carry on business and has the time and money to do so he can engage in it by himself. He would have the sole management of the business as long as it continued. Such a business must necessarily change, however, when the person carrying it on dies. So there are two difficulties in this method. One that the capital and ability engaged in the business must all come from one man. And the other, that the business must be changed before a great while and might be changed at any time.

If more capital were needed in the business the proprietor might get some one to come in with him and put in capital belonging to him and they would manage the business together. This would form a partnership between them. Each one of the partners would have an equal voice in deciding how the business should be conducted. Either one of them could withdraw from the partnership at any time or might die at any time. Either of these events would change the business. But more important still the law makes each partner responsible for all

the debts that the partnership owes. There is no way to avoid any one of these three difficulties in a partnership.

Very frequently a large number of persons wish to go together in the same business. This is not only desirable but necessary if the undertaking is such as takes a great deal of money to carry it on. Concerns doing large business and handling large capital often find it necessary to make large debts, so that in large enterprises the difficulties in connection with a partnership are very much increased. The large number of persons makes rapid and efficient action in the management of the business impossible if all are to be consulted. The increase in numbers also increases the opportunity for change in the business. The size of the business increases the danger arising from each member of the firm being responsible for all of its debts. It is therefore impracticable to carry on many of the large business enterprises that are necessary to the comfort and convenience of the people, such as railroads, telegraph lines, etc., by partnerships.

To meet these difficulties another way of doing business was worked out. This plan is for a number of persons to agree together for each of them to put a named amount of money into a business. The sum paid by each, which need not

be the same for all the persons, represents the investment or share of each in the undertaking. Each receives a written statement or certificate showing by whom the money was put in and how much he has contributed. The agreement also provides that the owner of these certificates may sell them and that the purchaser of the certificates shall take the place in the business that the seller had held.

The agreement further provides all the persons putting in the money and having these certificates have the right to choose a few of their number to manage business for them all, and that the persons thus chosen shall really carry on the business without having to consult with the others. The agreement also fixes the length of time the business is to continue and under what name it shall be carried on. Finally they agree that no one of them shall owe anything on the debts made in carrying on the business and that all creditors of the concern will have to look only to it and its property, or assets, as such property is called, for payment of what is due them.

This agreement, if valid, you see relieves all the difficulties of the partnership way of doing business. But while some of its terms are legal, others are not, and cannot be enforced unless the state in some way gives its express consent to

the agreement. The terms which cannot be enforced without this express consent of the state are (a) those which give the right to the holders of certificates of membership to sell these certificates and relieve themselves from further liability as members; (b) those which provide that the business shall not change with the change of membership; and (c) particularly those which provide that no member shall be responsible for the debts made in carrying on the business.

To make these parts of the agreement binding the state must in some way give its express consent to them, or to express it differently, the state must by some action by it, join in the agreement with the private individuals. With such consent the whole agreement is valid.

In order that the terms of such an agreement may be understood alike by everybody and may be easily proved whenever that is desirable it is necessary to put the agreement in writing. This writing should show all about the transaction. If properly drawn up it would give the names of all the persons going into the business; would state how much money was to be put in altogether and what part of this each person paid; the nature of the business to be carried on: what its name should be; by whom and how the business should be managed, and for what time it

should continue, and would state clearly that all the persons entering into the agreement, including the State, had agreed that none of the parties was to be liable for debts made in carrying on the business, and that the business was to go on without reference to the change of members.

Let us see how closely the agreement we have outlined corresponds with what is actually done in chartering a private corporation. The individuals going into the business and who put in their money correspond to the stockholders of the corporation. The written statements showing how much money has been paid in and by whom, correspond with the certificates of stock. The entire amount of money paid in by all corresponds with the capital of the corporation. The name of the business corresponds with the corporate name. The length of time the business is to continue corresponds with the time set out in the charter for the life of the corporation. The parties agreed upon as managers, correspond to the directors and other officers of the corporation. The statements as to how the business is to be run correspond with the by-laws. The fact that the members are not to be responsible for the debts of the concern correspond with the limited liability of the stockholders. The fact that the business was to go on unaffected by change of members corresponds to the

corporate idea of continuing. The fact that the State is a party to the agreement and signs it corresponds to the joinder in the charter by the state. We find, therefore, that this arrangement not only comes very close to following the methods necessary to create a private corporation, but that in law and in fact actually does follow them.

It is true that the business world and the law each aiding the other, have gotten the private corporate idea very much clouded and confused with fictions and technicalities. Notwithstanding this the simple process just given you is the real base and framework of all corporate existence, so far as private business affairs are concerned.

We may say then that: A private corporation is a combination of persons formed by agreement between them and the state for the purpose of carrying on a particular business, under a designated name and for a fixed time without legal liability on the part of its members for debts made in carrying on the business, which combination continues the same in legal idea although the members composing it may change.

Do not get the idea that this is a technically accurate definition of a private corporation. A lawyer might be able to point out several points

in which it is not strictly correct. It is, however, sufficiently close to the legal idea to answer all practical purposes in this course.

We must not forget that the three leading points in the corporate way of doing business are: first, the concentration of the power to manage the business in a few persons; second, that no one of the persons interested in the business can be made to pay any of its debts, but that all creditors of the business must collect their debts from the property owned by the corporation; and, third, the continuous life of the corporation notwithstanding the change of members. It is the combination of these three things that gives private corporations such immense power, and sometimes makes them reckless in its use.

The increase of power comes from the concentration of the right to manage and the power of continuous life. The temptation to use the power recklessly comes from freedom from responsibility by any of those interested in the business or engaged in its management.

Many corporations do not render any public services but are engaged in strictly private business, such as carrying on stores, etc. These corporations rarely have any monopolistic power. Still as they are created by the aid of the state and have the concentrated power, limited liability and continuous existence, which,

under our law, go with the corporate way of doing business they ought to be carefully regulated. The regulation ought to be just. So long as it is it can do no harm to the corporation and may still afford needed protection to the public.

In addition to the points just discussed, many private corporations carry on businesses in which the public is very much interested; such as operating railroads, telegraph lines, etc. These are called public service corporations. It is in the power of all such companies to either greatly benefit or greatly injure the public or particular localities or individuals.

Let us illustrate by a railroad company. Such a company is created to build and keep up a railroad between different sections of the country, for the purpose of carrying persons and goods along its route. As we have seen, some way of communicating between different sections is absolutely necessary. Before the road is built there are stage coaches and freight wagons running between the different places that are connected by the railroad upon its construction. These stages and wagons cannot compete with the railroad and hence go out of business after it begins to operate. After that, if one wishes to go himself or to send anything from one point to another on the railroad he must use it. He has practically no choice. The

railroad under such conditions is a monopoly in fact, though it might not be defined as such by the law. If left to itself it could charge almost anything it wanted to for its services, and could make any sort of differences that it saw fit in its charges against different persons or to or from different places. By these means it could ruin one merchant and make his rival rich. Or it could favor all the merchants in one town with low rates and charge exorbitant rates to another town close by, and in this way build up the one and destroy the other.

You see from these facts how important it is for the state to have real control over corporations of this kind, so as to make them do their duty to all the people and to each individual. The Constitution of Texas gives to the Government extraordinary powers of control over such corporations. This is particularly true as to railroad companies and to railroads as we shall see in discussing them later on.

How Private Corporations Are Created.—We have seen that the state must take part in the promotion of every private corporation. The written instrument showing the state's consent to and joinder in the creation of a corporation is called a charter. Such action by the state may be evidenced in two ways. Hence we say that there are two ways of creating private cor-

porations. One is by special law, chartering the particular company and the other is by passing a general law giving the way in which charters may be obtained and letting the particular individuals apply for charters in the manner set out in the general law. In Texas only the second method is now permitted. In whichever way the corporation is created it has only such powers and can do only such things as its charter, properly construed, gives it the right to do.

Under the present law in Texas corporations can be created to carry on almost any kind of a private business, but we must not forget that a corporation can never be created for any purpose not set out in the law.

QUESTIONS.

1. When was the University of Texas established? How long ago was that? Are there any officers or teachers or students now who were there when the school was opened? How many changes have taken place in its buildings? Is the University the same institution now that it was when it opened?

2. What is the most distinguishing characteristic of a corporation? Can there be a corporation without this? Who must take part in or authorize the creation of a corporation? Must a corporation have a continuing, definite purpose? Write out a short statement accurately expressing the ideas in your last four answers. Compare the statement you have just written with the definition given of

a corporation in the text and see in what they are alike, and in what they differ.

3. What are corporations called which are created for the purpose of governing the people? From what Latin word do they get this adjective?

4. Name the three most important classes of municipal corporations in Texas?

5. By what authority are counties always created? In creating a county is it necessary to get the consent of the people living in the territory affected? What is a county seat? Name the principal county officers? How are these officers selected? In case of a vacancy in any of the offices except district clerk how is it filled?

6. How do counties get money to pay their expenses? What is the limit to the county's power to tax?

7. In what two ways can cities and towns be incorporated? Which of these methods must be followed in Texas in incorporating communities having less than ten thousand inhabitants? What powers do cities have?

8. What is the chief executive officer of a city usually called? Name the other city officers.

9. Who exercise the legislative powers of a city? Can a city pass any ordinance not authorized by its charter?

10. Could a person doing business by himself know certainly that he could keep up the business for any certain length of time? If two men formed a partnership could they know that both would live for any certain length of time? Would either of these methods of doing business give any assurance that the business would last, say, fifty years?

11. In a partnership, who controls the business? Is there any way to prevent any of the partners from withdrawing from the firm whenever he wishes to? Who are responsible for the debts of a partnership?

12. What effect does it have on the objectionable features of a partnership business, if you enlarge the business? Would it be practicable at all to carry on such business as operating railroads, telegraph lines and other enterprises of that sort, by partnership?

13. What plan of doing business was worked out in order to relieve the difficulties found in carrying on such enterprises by partnership? Would an agreement having all these features be valid without express consent of the state? Which of the terms in such an agreement require such special authority? Why ought such an agreement to be in writing? What ought such writing to show?

14. Trace out the correspondence between such an agreement and one creating a private corporation.

15. Write out the definition of a private corporation. Compare your definition with the one in the text and see whether or not they are the same in thought.

16. Name the three leading points of advantage in the corporate method of doing business? From what does the increase of power found in corporate enterprises come? What gives rise to temptation to use this power recklessly? Why does the state have the right and owe the duty to control all private corporations?

17. What additional reasons are there for the state exercising extraordinary control over corporations engaged in such enterprises as operating railroads, supplying water and light, etc.?

18. What is the charter of a corporation? In what two ways may private corporations be created? What gives the measure and limit of corporate power of each corporation? Can a corporation be created to carry on any business not particularly provided for by law?

CHAPTER XXX.

Miscellaneous Provisions of the Texas Constitution—Concluded.

Railroads and Railroad Companies.—It is impossible to have civilized life, such as we are accustomed to, without means or ways by which people can go from one place to another and move different things so as to get them from the places where they are made or sold to the places where they are to be used. However rich and productive a piece of land may be it could not be used by its owner to produce everything that he would need for the health of his family. If he could grow the raw material for everything he needed without assistance from other persons, he could not manufacture this into articles such as he could use. Establishing and keeping open public highways is, therefore, one of the first duties of the Government.

Section 2 of Article 10 of the Constitution is in the following words: “Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies common carriers. The Legislature shall pass laws to regu-

late railroad freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties; and for the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable.”

The first sentence of this section declares that all railroads are public highways. We have seen that it is the duty of the state to provide highways for its people, so that they can come and go, and send and bring the things that they need as they may desire. When the Constitution says railroads are public highways, this gives the idea that they are subject to extensive control by the legislature. The same idea is carried in the last statement in the sentence when it declares that railroad companies are common carriers. A common carrier is one engaged in the business of carrying freight and passengers, for all persons who apply. For centuries the English government and the governments of America have exercised very strict control over common carriers because of the public nature of the business in which they are engaged.

Taken together these two statements show

conclusively that the state has the right to control railroads and railroad companies in a special way and more completely than she does ordinary business operations. The next sentence in this section of the Constitution makes it the duty of the legislature to pass laws to regulate freight and passenger charges on railroads and to correct all kinds of abuses that may grow up in carrying on the business of railroads.

The legislature is also given power to prevent unjust discriminations in the charges which the roads make, either to different persons in the same community, or to different communities, or in the service rendered either. You must note carefully that all discrimination is not forbidden. Only such as is unjust. It is impossible to give everyone the same treatment. Unimportant differences made for good reasons should be permitted. No differences ought to be permitted which give to one person or community any real advantage over another. The section further commands the legislature to forbid any and all overcharges by the railroads for services rendered. Not only must the legislature make laws forbidding all the things mentioned above, but it is especially commanded to enforce obedience to these laws by providing adequate penalties to be inflicted for disobeying them or any of them.

So much of this section as we have considered up to this time treats of railroads and railroad companies and direct control of them by the legislature. This method of regulation was tried in Texas for many years. It proved inadequate. There was no authority in the Constitution as it then read, for the legislature to create any board or agency to control or assist in controlling the railroads.

In 1891 the section of the Constitution which we are now considering was amended with the view of giving the legislature the authority necessary to create a Railroad Commission. These amendments consisted in some immaterial changes in the language of the section that we have heretofore considered and in adding an entirely new clause, which is now the concluding portion of the section.

State Railroad Commission.—Under the authority conferred upon it by the amendments just referred to the legislature, in 1891, created the Railroad Commission of Texas. This is an official body of three members, who are called Railroad Commissioners. These officers are elected by the people, hold office for six years and receive a salary of \$4,000 per year each.

The duties of the Commission, stated in general terms, are:

First.—To obtain information of all kinds re-

garding railroads in Texas. This should cover the locations of the lines of road, the cost of building them, their present condition, their present value, the kinds of cars and engines and other equipment they have, how the roads are run, what the cost of running them is, how much stock they have issued, how much bonded and other indebtedness they have, the amount of business they do in freight and passengers, what charges they make for their services, and all other matters connected with the business and operation of the road. All information gotten should be kept in a permanent record.

Second.—To make such rules and regulations governing the railroads and their affairs as shall prevent their making improper charges or unjust discrimination between places or persons, and all other rules that will prevent or correct abuses. Under this authority the Commission fixes the charges for carrying different kinds of freight for different distances and between different places, and the charges for passenger service. It may require the building of depots and stations, and regulate crossing of the tracks of different roads, and do anything and everything necessary to accomplish the purposes set out in the section of the Constitution which we have quoted.

Third.—It is the duty of the Commission

whenever a complaint against a road is made before it charging any railroad company with any violation of the law, which seems to be reasonable, accurate and substantially true, to investigate the matter and determine whether or not the road is guilty, and if so, to say how it shall be punished under the law. It cannot enforce these penalties by any action of its own, but it can order the Attorney General or other proper officer to bring suit to collect them. In the trial of such a suit the decision by the Commission that the road is guilty will be taken as true unless the company introduces evidence to show that it is incorrect.

These are very great powers and should be exercised with great care. The Commission in fact has been of great service to the State and to the people.

Amendments to the Constitution.—Governments are intended to be permanent. They may always be changed by revolution. No people ever has, and perhaps none could, give up the right to institute and carry on a revolution whenever the majority of them wanted to do so. Still when the people prepare written constitutions they and the governments founded by them are intended to continue. They ought not to be changed rashly or without due consideration. Still there ought to be some way by

which the plan of government could keep up with the progress of the people. If there were no other way provided by which to do this revolutions would necessarily occur. To prevent this, in preparing a constitution, the people put in it very plain provisions authorizing amendments or changes of the instrument.

In Texas the method of amending the Constitution is as follows: Any desired amendment must be submitted to the Legislature in the form of a resolution. This must be passed in the same way as bills are passed in order to make them laws, except that it is necessary that such resolution should receive two-thirds of the vote in each house. The vote is taken by "Yea" and "Nay" and entered on the Journal of each house. If the proposed amendment is passed by the Legislature it must then be submitted to the Governor for his approval. If he vetoes it that ends the matter. If he approves it, it must then be submitted to a vote of the people. This may be either at special election called for this purpose or at a general election. A majority of the votes cast on the amendment is necessary for its adoption.

There are a number of other Constitutional provisions of importance, but it does not seem advisable to consider them further.

QUESTIONS.

1. Why is it necessary to have public highways? What does the Constitution mean when it says that all railroads are public highways? Who is a common carrier? Why do the people claim the privilege of controlling common carriers very strictly? What power is given by Article X, Section 2, of our Constitution to the legislature as to direct control over railroad companies? What is meant by an unjust discrimination? What are overcharges? What does the Constitution require of a legislature as to enforcing obedience to the law by the railroads?

2. What provision is there in this section of the Constitution for the creation of a Railroad Commission? What is the State Railroad Commission? How are its members selected? For what term do they serve, and what salary do they receive?

3. What duties and powers has this commission with reference to getting information from and concerning the railroads? What are its powers with reference to making rules and regulations for railroads? What are its powers as to investigating charges of violations of law by railroads?

4. Why was it necessary to provide for amendments to the state Constitution? In what way may amendments to the Constitution of Texas be made?

APPENDIX.

CONSTITUTION OF THE UNITED STATES.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section I. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

2. No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States.

and within every subsequent term of ten years, in such manner as they, by law, shall direct. The number of Representatives shall not exceed one for every 30,000, but each State shall have at least one Representative; and until such enumeration shall be made the State of New Hampshire shall be entitled to choose 3; Massachusetts, 8; Rhode Island and Providence Plantations, 1; Connecticut 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware 1; Maryland 6; Virginia, 10; North Carolina, 5; South Carolina, 5; and Georgia, 3.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Section III. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years. Each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year, and the third class at the expiration of the sixth year—so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof shall make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore in the absence of the Vice President, or

when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in case of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Section IV. 1. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but Congress may, at any time, by law, make or alter such regulations, except as to places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section V. 1. Each House shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds, expel a member.

3. Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy, and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal.

4. Neither House during the session of Congress shall, without the consent of the other, adjourn for more than three

days, nor to any other place than that in which the two Houses shall be sitting.

Section VI. 1. The Senators and Representatives shall receive compensation for their services to be ascertained by law and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to or returning from the same, and for any speech or debate in either House they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office under the United States shall be a member of either House during his continuance in office.

Section VII. 1. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States. If he approves, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journals of each House respectively. If any such bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be approved by him; or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII. The Congress shall have power—

1. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States.

2. To borrow money on the credit of the United States.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

4. To establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States.

5. To coin money, regulate the value thereof, and of foreign coin, and for the standard of weights and measures.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

7. To establish postoffices and postroads.

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

9. To constitute tribunals inferior to the Supreme Court.

10. To define and punish piracies and felonies committed on the high seas and offenses against the laws of nations.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

13. To provide and maintain a navy.

14. To make rules for the government and regulation of the land and naval forces.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

16. To provide for organizing, arming and disciplining the

militia and for governing such parts of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock yards and other needful buildings, and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States, or in any department or office thereof.

Section IX. 1. The migration or importation of such persons as any of the States now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to or from one State be obliged to enter, clear or pay duties in another.

6. No money shall be drawn from the treasury but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust un-

der them shall, without the consent of Congress, accept any present, emolument or title of any kind whatever from any king, prince or foreign state.

Section X. 1. No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of the Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II.

Section I. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same time, be elected as follows:

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. (Annulled. See Amendments, Article XII.)

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural born citizen or a citizen of

the United States at the time of the adoption of the Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the removal, death, resignation or inability both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected.

7. The President shall at stated times receive for his services compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enters on the execution of his office he shall take the following oath or affirmation:

“I do solemnly swear (or affirm), that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States.”

Section II. 1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into active service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for,

and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of the next session.

Section III. 1. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them until such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV. The President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery or other high crimes and misdemeanors.

ARTICLE III.

Section I. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Section II. 1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the

same State, claiming lands under grants of different States, and between a State and citizens thereof, and foreign states, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III. 1. Treason against the United States shall consist in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV.

Section I. Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.

Section II. 1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence

of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section III. 1. New States may be admitted by Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States without the consent of the Legislatures of the States concerned, as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Section IV. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the Legislature or of the executive (when the Legislature can not be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as parts of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

1. All debts contracted and engagements entered into before the adoption of this Constitution shall be valid against

the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the Several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the convention of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall

be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

ARTICLE IX.

The enumeration, in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.

Section 1. The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves. They shall name in their ballots the persons voted for as President, and in distinct ballot the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate

shall, in the presence of the Senate and House of Representatives, open all certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be President, if such number be a majority of the whole number of electors appointed, and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President.

But in choosing the President the vote shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of death or other constitutional disability of the President.

Section II. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President. A quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

Section III. But no person constitutionally ineligible to the office of President shall be eligible to that of the Vice President of the United States.

ARTICLE XIII.

Section I. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

Section II. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Section I. All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States. Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section II. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But whenever the right to vote at any election for electors for President and Vice-President, or for United States Representatives in Congress, executive and judicial officers, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged except for participation in rebellion or other crime, the basis of representation therein shall be reduced in proportion which the number of male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section III. No person shall be a Senator or Representative in Congress, elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to enemies thereof, but Congress may by vote of two-thirds of each house remove such disability.

Section IV. The validity of the public debt of the United States, authorized by law, including debts incurred for the payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned; but neither the United States nor any State shall assume or pay

any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims, shall be held illegal and void.

XV.

Section I. The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

Section II. That Congress shall have power to enforce this article by appropriate legislation.

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