

**We the “White” People:
Race, Culture, and the Virginia Constitution of 1902**

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Abstract

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In 1902, in an effort to reestablish what they saw as whites’ natural right to control government rule over blacks, the delegates to Virginia’s Constitutional Convention of 1901-1902 declared the new constitution law that they felt reflected “the true opinion of the people of Virginia.” This thesis argues that while Virginia’s 1902 Constitution increased the political power of whites and decreased that of black Virginians, the reasons why they needed the document in the first place highlights an important aspect regarding the anxiety of many white Virginians in the late 19th and early 20th centuries. Specifically, it helps to show how whiteness as a source of political and social power was not concrete or absolute, but rather was a reaction to the increasing presence and assertion of power by black Virginians. I argue that white Virginians, faced with the increasing political and social presence of black Virginians as equals, sought to reestablish their racial superiority through law and constitutional revision. However, by making their whiteness “visible”-- by continually reasserting their claim to legitimate power because they were “white”-- white Virginians revealed how unstable their racial world had become.

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Preface

What began as a dream as a sophomore in college has turned into a dream-come-true. My unofficial advisor at the University of Virginia's College at Wise, Tom Costa, thought that my desire to pursue graduate study in history in hopes of sitting behind a desk similar to his was a wonderful idea, so with his encouragement I worked hard to get into graduate school. I have never been dissatisfied with my decision, and I hope that the completion of this thesis is one small step toward my dream to be a college professor and inspire another student to pursue his or her goals unashamedly.

My experience at Virginia Tech has been one of the most important and fulfilling of my life. Those not on my thesis committee who nonetheless guided me through my studies at Virginia Tech include Kathleen Jones, E. Thomas Ewing, and Robert Stephens. I appreciate the advice, both personal and professional, they have given me. Peter Wallenstein, who until the end of the project was also a member of my committee, provided his usual invaluable commentary and careful readings which made this thesis much better than any I could produce on my own. He put as much work into this project as I, and for that I am very grateful.

My thesis committee, Crandall Shifflett, Marian Mollin, and Beverly Bunch-Lyons, have improved this thesis tremendously with their insightful comments and criticisms. I have enjoyed their comments on my drafts have worked hard to put their insights to good use. Throughout this project I wanted to produce something that would impress these individuals, because their own research and teaching have impressed me.

Any graduate student would be fortunate to have any or all of these scholars on his or her committee.

Without the support and encouragement of my family I would not have gone as far as I have. My parents, Kim and Fayettea Boggs, have been the examples of dedicated and hard-working people that I have tried to emulate. My brother and best friend Justin has always been there for me to make me laugh and remind me that there are things in life much more important than history books. My aunt Charlene and grandmother Eula have always provided a warm home in addition to the ones my parents provided. My wife's parents, Donnie and Sandra Franklin, have welcomed me into their family unquestionably and have encouraged me to help make a life with their daughter while pursuing the field of study that I love. I know that everyone in my family is proud of what I have accomplished, but I want them to know that I could not have succeeded without them.

Lastly, I would like to thank my wife, Jill, for her seemingly endless love and support throughout this project and the rest of my education at Virginia Tech. She has endured my disorganized way of going about things (which I continue to remedy without much success), and has stood as an example of how a good, honest, and decent person should be. I am lucky to have her in my life. This thesis, and every other project I produce, is dedicated to her.

Introduction

A Constitution for “The People of Virginia”

In the preface of the *Report of the Proceedings and Debates of the Virginia Constitutional Convention, 1901-1902*, the editor of the volumes explains that “the Constitution declared in 1902 superseded the code of organic law imposed upon the people in the days of Reconstruction.” The ultimate goal of the Convention was “to put forth a Constitution which should be the conception and achievement of representatives of the people in free and unrestricted deliberation.”¹ After several attempts to call a constitutional convention were defeated in referendums, the call for a convention in May 1900 succeeded, and after elections in February the delegates to the convention met on June 12, 1901, to deliberate on the construction of a new organic law that would, in the eyes of the delegates, reflect the “true opinion” of “the people of Virginia.”

While the call for a new constitution was certainly motivated by the desire to rid the Commonwealth of the Underwood Constitution, the reasons why this document was despised, and why a completely new document was needed, were influenced by the increasing threat of political and social power wielded by blacks in Virginia. Important in this convention was the notion that the white race had been violated and “warped” by the enfranchisement of blacks. Thus, the 1902 constitutional convention’s primary motivation was the disenfranchisement of black Virginians and the constitutional

¹ *Report of the Proceedings and Debates of the Constitutional Convention, State of Virginia...June 12, 1902, to June 26, 1902* (Richmond: The Hermitage Press, Inc., 1906), I, i. (hereafter cited as *Debates*)

reassertion of white racial dominance in Virginia society; in essence, “to eliminate the negro from political life.”²

The contexts behind the creation and implementation of the Virginia Constitution of 1902 provide a stimulating opportunity to examine the ways in which whiteness and constitutionalism weaved intricate cultural “webs of significance” in late-nineteenth century Virginia. Specifically, it helps to show how whiteness as a source of political and social power was not concrete or absolute, but rather was a reaction to the increasing presence and assertion of power by black Virginians. I argue that white Virginians, faced with the increasing political and social presence of black Virginians as equals, sought to reestablish their racial superiority through law and constitutional revision. However, by making their whiteness “visible”-- by continually reasserting their claim to legitimate power because they were “white”-- white Virginians revealed how unstable their racial world had become.

Virginia experienced only three years of military reconstruction by holding a constitutional convention and passing a new state constitution in 1870. The so-called Underwood Constitution, named after the convention’s president John Underwood, made slavery illegal, provided equal protection and political rights to citizens regardless of race, and implemented a secret ballot in elections. The passage and implementation of the Underwood Constitution brought abundant protest from native white Virginians, who despised the imposition of the constitution by Northerners and black Virginians. As

² *Washington Post*, January 21, 1901.

Wythe Holt has noted, “the most dangerous of the changes was the enlargement of the franchise.”³

Virginia’s *Code* of 1873 reveals the new place black Virginians occupied in society. An entire chapter in Title 30, titled “Of Colored Persons,” outlined the specifics of integrating this new class of citizen in to the polity. The chapter defined “colored persons” as “every person having one-fourth or more of negro blood,” and “Indians” as “every person not a colored person having one-fourth or more of Indian blood....” The chapter also states that black Virginians could competently testify in court “as if they were white.” By comparing the ability to testify with being white, the *Code* shows that whiteness was a primary indicator of competent citizenship.⁴

At the same time that the Code made whiteness the measure of citizenship, many whites in Virginia felt that the white race had been violated and “warped” by the enfranchisement of blacks. “The people of Virginia,” convention delegate Carter Glass argued, believed that “negro enfranchisement was a crime to begin with” and was “debauching the morals and warping the intellect of our own [white] race.”⁵ Not only did Glass denounce black suffrage and political participation in Virginia, he also claimed to speak for a collective white community, all of whom he believed felt wronged by the forced enfranchisement of blacks. The “people of Virginia” in Glass’s quote refers to the “white people” of the state. Members of the 1901-2 convention make it explicit that that the “people” to whom they refer in their language are the “white people” of Virginia.⁶

³ Wythe Holt, *Virginia’s Constitutional Convention of 1901-1902* (New York: Garland Publishing, Inc., 1990), 2.

⁴ *Virginia Code* (1873), 840, (title 30, ch. 103).

⁵ *Debates*, I, 293.

⁶ *Ibid.*, I, 293-4.

The motivations behind Virginia's constitutional reform at the beginning of the twentieth century, as well as the cultural contexts that developed before and after it, are the primary focus of my study. The cultural contexts I discuss include specifically the culture of constitutionalism, or the constitutional ideology that whites used to legitimate white privilege in Virginia society, as well as the increasing scrutiny of racial classification and ideology.

Historiography

The historiography on segregation, Reconstruction, and Virginia history after the Civil War contains intriguing layers of narrative and argumentation, all of which contribute to our knowledge and understanding of the historical developments in Virginia. The story of the Virginia Constitution of 1902 takes place in broader historical developments that deal with the emergence and evolution of Jim Crow segregation in the South. The starting point for any scholar of the Jim Crow South is C. Vann Woodward's *The Strange Career of Jim Crow*. The book, in which Woodward outlines his famous "Woodward Thesis," confronts the reasons why racial segregation appeared extensively in law in the 1890's-- over 25 years after the end of the Civil War. Woodward concludes that Jim Crow was not preordained, but in fact emerged only after a period of fluid and relaxed race relations in the 1870's and 1880's.⁷

J. Morgan Kousser, a student of Woodward elaborates upon the Woodward thesis in his *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910*. An innovative study that makes use of the statistical technique known as regression method to estimate the numbers of voters and reasons for

⁷ C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1955).

their particular votes, Kousser argues that suffrage restriction was motivated primarily by partisan reasons, which helped to create a one-party “solid South.” Important for the in-depth analysis into each of the eleven former Confederate states, Kousser’s book nonetheless neglects the significance of racial antagonisms in the political sphere.⁸

Wythe Holt’s *Virginia’s Constitutional Convention of 1901-1902*, the most recent work dealing exclusively with the 1902 document, argues that the disfranchisement movement in Virginia occurred because of intensive class interests.⁹ A solid political and economic history influenced heavily by Marxist ideology, Holt’s study counters Kousser’s assertion that disfranchisement occurred because of party politics. Holt believes that disfranchisement spread throughout Virginia because of class interests. While Holt deftly shows how class politics worked in the creation and implementation of the 1902 Constitution, he undermines the ways in which race ideology affected the class struggles in late-nineteenth and early twentieth century Virginia.

Both Kousser and Holt deal with the suffrage restriction, law, and constitutional conventions in specific, unmovable interpretations that downplay the unstable development of Jim Crow segregation. Of course, party politics and class interests played an important part in the struggle for white superiority in Virginia, but more issues combined with these to form a new call for racial order.

More recent scholars deal with Jim Crow segregation as a complex development that included other strands of society that made the movement dynamic and uncertain. Jane Dailey’s work on post-emancipation Virginia, for example, is exemplary. Her recent book, *Before Jim Crow: The Politics of Race in Postemancipation Virginia*

⁸ J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, CT: Yale University Press, 1974).

⁹ Holt, 2-6.

analyzes the culture of race in Virginia and the role of the Readjusters in that culture. Dailey challenges “teleological” interpretations of Southern history that make Jim Crow segregation inevitable and instead argues that Jim Crow emerged from the deliberate, everyday actions of white Virginians.¹⁰

The recent work of Michael Perman discusses the constitutional revisions of Virginia and other Southern states in the late 19th and early 20th centuries. In *Struggle for Mastery*, Perman explains that the movement to disfranchise sought to restore the electorate in the South “to its pre-Reconstruction form and composition.” Perman admits to narrowly focusing on the “process of disfranchisement,” and not the “context in which disfranchisement occurred.” While the focus that Perman gives to the process illuminates important trends in the disfranchisement movement, it treats the movement in a vacuum, and leaves the motivations, ideologies, and social pressures that influence disfranchisement proponents out of the picture. Thus, I disagree with Perman that historians should differentiate historical context from historical process; they both create the impetus for change that drives history. By focusing solely on disfranchisement, Perman leaves other legal and constitutional issues on the sidelines and neglects to look at other facets of racial restriction that affected the rights and privileges of African-American citizenship.¹¹

Perman argues that while the early twentieth century racial segregation in the South contained new elements, nothing was essentially new because the basic purpose of

¹⁰ Jane Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia* (Chapel Hill: University of North Carolina Press, 2000).

¹¹ Michael Perman, *Struggle for Mastery: Disfranchisement in the South, 1888-1908* (Chapel Hill: University of North Carolina Press, 2001), 8.

segregation was the continued “subordination of African-Americans.”¹² While I agree that the reason for segregation was African-American subordination, the intensification and attention to specifics that characterized the movement for white racial superiority does give the order new facets that must be discussed. White supremacy in the law did not stop, and the ratification of disfranchising constitutions throughout the South did not end the “struggle for mastery” for whites. The newness of the imposed racial system emphasizes the instability of the racial order.

In addition to the historical literature on race, segregation, and the South, my thesis uses the approaches and interpretations of whiteness studies to discern how constitutional ideals have helped construct social and racial identities in the post-war South, and thus adds a new perspective to race relations and identity in Reconstruction historiography. Racial identity in the American South, particularly during Reconstruction, is important to my study because it highlights key issues regarding race in the South. By using the approaches and frameworks of whiteness studies, my analysis will contribute innovative methods through which we can understand the complexity of race and racial identity in post-Civil War South.

Several works in the field of whiteness studies have influenced my interpretations of historical change. Ian F. Haney Lopez’s book *White by Law: The Legal Construction of Race* examines the ways in which immigration laws excluded immigrants from Asia and India because they were not “white.” These immigrants tried in court to “prove” their “whiteness,” in order to gain citizenship. The court cases in essence molded the

¹² Perman, 7, 15, 17.

values placed on whiteness.¹³ Matthew Frye Jacobson's *Whiteness of a Different Color* studies the ways in which white Americans perceived European immigrants, and how various European immigrants gained or "achieved" white status and privilege. The achievement was not simple; increasing numbers of Irish, Slavic, Jewish, Mediterranean, Mediterranean and other non-Anglo Saxon immigrants complicated the naturalization and immigration policies of the United States that made whites uncertain about the identity of their culture.¹⁴

Grace Hale's *Making Whiteness* examines the "culture of segregation" that spread across the South after emancipation. Emancipation created a social space open to black activism, social mobility, and success, of which blacks took ample advantage. In reaction to black initiatives, whites relied more heavily upon racial differences instead of the former master/slave distinction to limit the freedoms asserted by blacks after emancipation. The emphasis of whiteness as a racial identity of privilege affected southern consumerism, social spheres of interaction, and southern culture. By "making whiteness" a central part of southern culture, white southerners not only defined their identity through race in modernizing America, they also limited the freedoms asserted by African Americans after emancipation.¹⁵

Whiteness studies originate from a larger field of legal academia called Critical Race Theory (CRT). Advocates of CRT argue that race is a social construction, created by socio-cultural relationships, contexts, and perceptions, that hinders justice in

¹³ Ian F. Haney-Lopez, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1994), 14-9, 39, 194.

¹⁴ Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press 1998), 11, 18-9, 139-42.

¹⁵ Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Vintage, 1998), 4-5, 75, 93, 292-6.

American society. A movement begun in legal academia, CRT has expanded into other academic fields, including history. CRT scholarship contains two conflicting elements; First, many CRT scholars argue against the emergence of a single, “correct” way to resolve America’s race problem. Second, CRT scholars nevertheless strive to achieve peace and justice in fashions similar to traditional civil rights scholarship. One side is more pessimistic, the other continually optimistic.

Whiteness studies in the field of history continue to advocate the social construction of race in the same manner as critical race theorists while also arguing that race is also a historical construction. By social construction, CRT scholars mean that “race and races are products of social thought and relations;” They are “categories that society invents, manipulates, or retires when convenient.” I argue in my thesis that particular societies or groups within societies, such as “whites,” construct racial categories instead of an all-encompassing “society.”¹⁶ Whiteness studies historians contribute to the social and historical construction of race by illustrating that definitions of whiteness have changed over time and within historical contexts and circumstances.

My thesis, then, certainly follows in the steps of recent historians of white racial identity. As an innovative and expanding historical perspective, whiteness studies has much to offer in understanding the importance and pervasiveness of race in American history. By examining how white privilege evolved in the Reconstruction south, coupled with the constitutional ideology within the South, historians can better understand how racial privilege and elitism permeated the legal and constitutional institutions in the South. Like Woodward and the countless historians that have come after him I believe

¹⁶ Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (New York: New York University Press, 2001), 7-8.

that Jim Crow segregation was not inevitable or a certain ending to Reconstruction in the South.

Definitions

Constitutionalism in this study includes not only the written document itself, but also the reasoning behind its design, the ideologies that motivated its construction, and the institutions that put those ideologies into action. In the broadest sense of the term, constitutionalism includes beliefs about the role of government in society, the origins of power in that government, and the relationship of that government to the people it governs. It embodies not only written constitutions, but also the interpretations of those documents, those discourses and cultural bases of knowledge which go beyond the written word. Constitutionalism, then, is one of many aspects of culture in late-nineteenth century Virginia, a culture composed of “the structures of meaning through which men shape their experience.” The Constitution itself, the institutions it created, and the laws it professed, is “one of the principal arenas” in which the structures of culture “publicly unfold.”¹⁷

The beliefs and actions that make up the culture of constitutionalism stem not only from interpretations of the federal Constitution, but also from constructions of state constitutions, the language in state and local laws, judicial rulings, and personal conversations and social interactions. As Jane Dailey has persuasively shown, the meaning of citizenship was contested as much on the sidewalk and the street as it was in the courtroom or the legislature. “Refusing to yield the sidewalk” to whites, Dailey

¹⁷ Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books 1973), 312.

argues, and “referring to oneself as a ‘gentleman’ and to a white man as a ‘man’ were acts of self-definition” that enabled African-American Virginians to express their “identity as citizens” and challenge the notion of citizenship constructed by white privilege.¹⁸ Citizenship, rights, and constitutionalism itself were constantly contested and reconstructed, as Dailey demonstrates, through everyday interaction.

Organization

The first chapter examines the political and cultural climate of race in Virginia between 1879 and 1900. The Readjuster party, in power between 1879 and 1883, heavily influenced race relations in Virginia with their adherence of the separate spheres doctrine. While they tried to divide the public and private spheres in order to, issues such as education and marriage show that the public/private dichotomy remained vague and uncertain. White Virginians, wary of the threat to their superiority as whites because of political and social equality, sought legal and constitutional means to reaffirm their supremacy as whites.

Chapter two investigates in more depth the issues and motivations contained within the constitutional debates. Here I study the rhetoric and ideologies of the members of the convention, and show how the desire to create a constitution that would “purify the electorate” in Virginia was the primary motivating factor in the convention. Moreover, this chapter focuses on the desire to create a more “pure” electorate, the implications behind this desire, and relative uncertainty of white supremacy in its quest to ensure its domination over black Virginians.

¹⁸ Dailey, 4.

Finally, the third chapter takes a broader look at the developments between 1902 and 1924, and considers the importance of the visibility of whiteness and the implications of that visibility in the contexts of power in Virginia. From the defeat of the Readjusters to the enactment and enforcement of the Racial Integrity Act of 1924, race as a contested source of power fluctuated and meandered with local, regional, and national contexts. Despite the passage of a state constitution designed to hinder the political and social equality of blacks, white Virginians continued to pass laws and ordinances, in a more focused effort to assert white superiority, to further limit the equal integration of black Virginians in society.

In his dissent in *Plessy v. Ferguson*, Justice John Marshall Harlan argued that the Constitution was “colorblind.”¹⁹ A person’s race or color, Harlan contended, mattered not to the Constitution or the constitutional order that bound the United States after the Civil War. Harlan’s provocative notion that the Constitution was supposed to be “colorblind” leads one to ask how the Constitution, or rather how people interpreting the Constitution, was or were not “colorblind.” As this thesis will show, the implications behind language and the motivations behind change reveal that the Virginia Constitution of 1902 and the constitutionalism that helped create that document were not “colorblind” at all, but were in fact heavily shaped by the cultural webs of race. It is these webs, their construction, their boundaries, and their effects, which this thesis seeks to explain.

¹⁹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

1

Combating the “Peril of Negro Domination”

The Political and Cultural Climate of Race, 1879-1900

The political and cultural climate in Virginia became highly unstable following the end of the Civil War. While Reconstruction officially ended in Virginia in 1870 with the adoption of the Underwood Constitution, the state experienced important changes in the area of race relations that coincided with regional and national experiences with Reconstruction. The growth of liberalism at the national level coincided with the growth of liberalism in Virginia, where Readjusters used its tenets to gain political power. Disfranchisement relied heavily upon measures similar throughout the South that gained support--or at least tolerance-- at the national level. Finally, though the Civil War ended slavery, developments afterward led to heightened senses of racism throughout the South. As Joel Williamson maintains, “when the nation freed slaves, it also freed racism.”²⁰

This chapter examines politics and culture in Virginia with particular attention to the changing developments of race relations and the social constructions of race in regards to law and constitutionalism. I argue that as racial categorization became a pivotal element of Virginia’s constitutionalism, whiteness in Virginia developed a defensive, reactionary element. The unstable nature of Virginia’s social systems as a result of emancipation and full citizenship granted to black Virginians gave whites anxiety about their superiority. As the developments between 1879 and 1900 reveal,

²⁰ Joel Williamson, *The Crucible of Race: Black-White Race Relations in the American South Since Emancipation* (New York: Oxford University Press, 1984), 109.

white superiority became more established in law but also appeared more vulnerable because of its visibility in law.²¹

Political Developments in Post-war Virginia

A hotly debated topic in Virginia politics in the 1870s concerned the repayment of the state's debt. Two sides emerged in this debate: Funders, who wanted to completely repay the debt, and Readjusters, who wanted to "readjust" the state's debt. While Funders included men of wealth whose economic interests stood to improve with a full refunding of the debt, Readjusters included poor whites and a vast majority of blacks who wanted state money channeled into schools. The Readjuster party gained political power as a result of their bi-racial alliance, but they also earned the hatred of the Democratic Party and many white Virginians who felt that interracial alliances compromised proper race relations.²²

Public debt after the Civil War remained a fiercely debated topic in many southern states, but in Virginia the debate produced a political party with the coherence and support to challenge the conservative Democratic party. Led by William Mahone, a former Confederate general, the Readjuster party took control of the state legislature in 1879, won the governor's office in 1881, and remained a formidable political influence until 1883. The Readjusters changed tax laws to place more burdens upon corporations

²¹ Robyn Wiegman, *American Anatomies: Theorizing Race and Gender* (Durham: Duke University Press, 1995), 6, 23; Norbert Elias, *The Civilizing Process* (Malden, MA: Blackwell Publishers, Inc., 1994), 440. Elias argues that in "periods of transition," people "become more uncertain in their social conduct."

²² Jane Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia* (Chapel Hill: University of North Carolina Press, 2000). Dailey's work is a splendid example of how historical research at the everyday level reveals insights into the politics and culture of race.

than farmers, sent nearly one-third of the debt to West Virginia, and increased spending on education for both blacks and whites.²³

The rise and fall of the Readjusters marked a period in which interracial democracy seemed possible, though this democracy stood on a very uneasy (and, ironically, undemocratic) system that separated the public and private spheres. While the Readjusters agreed that the public sphere (voting, jury service, office holding) remained open to blacks and whites, they wanted the private sphere (schools and marriages) to be strictly segregated. As a result, black Virginians could enjoy the privileges of public citizenship but they could not freely “intermingle” with white Virginians. Historian Jane Dailey dubs the issue the “Othello issue”; “once the black man has been admitted to the republic, is there any way to limit his rights in private?” The fact that whites needed to limit the private rights of blacks in the first place shows that whites felt unsure about their superiority in both public and private spheres.²⁴

While the Readjusters enjoyed limited political influence after 1883, the Democratic party regained much of the power it had lost in 1879. The Democrats immediately began to implement ways to maintain their political power and diminish any threats against white superiority.

First, the Democrats in the Virginia legislature passed a bill that required the election of “freeholders”-- land-owning citizens-- in the cities and counties throughout the state to appoint election officials. Sponsored by William Anderson and J. Marshall

²³ Edward L. Ayers, *The Promise of the New South: Life After Reconstruction* (New York: Oxford University Press, 1992), 46-47.

²⁴ Dailey, *Before Jim Crow*, 87; Jane Dailey, “The Limits of Liberalism in the New South: The Politics of Race, Sex, and Patronage in Virginia, 1879-1883,” Jane Dailey, Glenda Elizabeth Gilmore, and Bryant Simon, eds., *Jumpin’ Jim Crow: Southern Politics from Civil War to Civil Rights* (Princeton: Princeton University Press, 2000), 88-114; Wiegman, 6-9.

McCormick, the Anderson-McCormick law sought to reestablish white control of elections through the freeholding qualification. Passed in February, 1884, the act specified that the General Assembly would elect “three qualified voters, who shall be freeholders and residents” of the county or city they would represent. The act also advised that “whenever it is practicable to do so,” election judges should belong to “different political parties.” However, the act declared that no election would be invalidated if the judges belonged to the same political party. Virginia’s Readjuster governor William Cameron vetoed the bill, and in a special session in November, 1884, the legislature produced a new Anderson-McCormick law similar to the first but without the freeholding qualification.²⁵

In defense of the Anderson-McCormick Law, the Richmond *Dispatch* remarked that the bill “was passed in the interest of the white people of Virginia...It is a white man’s law.” The whole purpose of the bill, argued the *Dispatch*, was “to perpetuate the rule of the white man in Virginia.” The “rule of the white man” coincided with the rule of the Democratic party; the year after the Anderson-McCormick law went into effect, Democrats won nearly every election in Virginia.²⁶

Democrats successfully used race as a means to get votes from poor whites, especially those in the western part of Virginia. While Wythe Holt argues that the lack of “even-handed justice” in Virginia worked “to keep blacks and other poor” in their “place,” Democrats saw in poor whites a dangerous but important voter population.

²⁵ General Assembly, *Acts and Joint Resolutions*, 1883/1884, ch. 115; *Ibid.*, 1884, ch. 158. Charles Wynes, *Race Relations in Virginia, 1870-1902* (Totowa, NJ: Rowman and Littlefield, 1971), 39-40.

²⁶ Richmond *Dispatch*, quoted in Wynes, 40. Charles Wynes states that “in the Senate, [Democrats] gained twenty-nine seats to eleven for the Republicans, the latter including one Independent white Republican and one Negro Republican. In the House, they won seventy-two seats to twenty-eight for the Republicans, only one of whom was a Negro.”

While other historians have dismissed “race-baiting” as merely a means to gain poor white voters, the fact that politicians used race as a means to gain votes and poor white responded so positively to “the race issue” shows that race was more than a simple tool to gain votes. Race affected the thinking of all whites in Virginia, whether black Virginians could or could not participate directly in politics.²⁷

In the late 1880’s, racism against blacks began to acquire a scientific basis. An editorial in the *Dispatch* discussed a “distinguished physician’s” opinion in regards to the increase in Virginia’s black population. According to the unnamed physician, “in the natural course of things rats would so multiply as to take possession of the whole earth.” Though the editorial mentioned that the physician meant no offense to blacks, it did conclude that “though negroes might in a sparsely populated region increase more rapidly than whites, yet whenever there came a struggle for the means of subsistence the fittest only would survive.” “If the present condition of things” continued, the editorial explained, “there will not be on the globe ten thousand years hence one single full-blooded Negro, Malay, Mongol, or Indian.” Thus race antagonism went far beyond the poll booth; it acquired a scientifically-grounded basis on which to support white supremacy. White supremacy was the result of “an ir repealable and inexorable law of nature.”²⁸

²⁷ Wythe Holt, *Virginia’s Constitutional Convention of 1901-1902* (New York: Garland Publishing, Inc., 1990), 24. Holt frequently lumps poor white and blacks throughout his book, which inevitably leads one to conclude that race was not nearly a determining factor as class and social status. While Holt’s analysis reveals important insights into the socio-economic factors leading up to the 1902 Constitution, it neither explains in detail why race was used in political rhetoric throughout the state nor why people responded to it more than other issues. Other historians who dismiss “race-baiting” include Allen W. Moger, *Virginia: Bourbonism to Byrd, 1870-1925* (Charlottesville: University Press of Virginia, 1968); Jack Kirby, *Darkness at the Dawning: Race and Reform in the Progressive South* (Philadelphia: J.B. Lippincott Company, 1972); and J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven, CT: Yale University Press, 1974).

²⁸ Richmond *Dispatch*, January 1, 1888.

Like much of the South, the 1890's saw in Virginia an increase in disfranchisement-related measures. In what Joel Williamson calls "the rage of radicalism," much of the South turned to legal and constitutional means to complete the "larger and longer process that might be called the depoliticization" of blacks. Segregation and disfranchisement, created by legal and constitutional measures, was one segment in a long development that depoliticized blacks and sought to teach blacks that "political power would never be theirs again."²⁹

In 1890 Mississippi produced a state constitution that disfranchised a vast majority of its black population through the use of poll taxes and literacy tests. Many southern states looked with favor to Mississippi as an example of how to reinstate white political dominance, and the 1898 ruling of the U.S. Supreme Court in *Williams v. Mississippi* ensured that Mississippi's constitution would become a model for the creation of disfranchisement constitutions throughout the south, including Virginia.³⁰

In 1894, the Virginia legislature passed the Walton Act, a measure which relied upon complicated ballots to disfranchise those too illiterate to read and understand the ballots. State senator M.L. Walton, a representative of Page and Shenandoah counties, drafted the bill and pushed for its approval despite heavy white-majority populations in his constituency. Pushed in order to purge the state of fraudulent elections, the Walton Act effectively monopolized Democratic control of the state and eliminated what little voting power black Virginians possessed in the state.³¹

²⁹ Williamson, 225.

³⁰ C. Vann Woodward, *Origins of the New South* (Baton Rouge: Louisiana State University Press, 1951), 321-2. *Williams v. Mississippi*, 170 U.S. 213 (1898).

³¹ General Assembly, *Acts and Joint Resolutions*, 1894, ch. 746; Wynes, 51.

The Walton Act called for ballots that lacked any kind of symbolic reference to a particular political party or even party names; only the names of the individuals running for office were printed on the ballots. Furthermore, to vote one must cross out all of the names except the preferred candidate. If someone did not cross out all of the names but one, the vote did not count, nor did it count if less than three-quarters of any name was marked out. The voter had two and a half minutes to complete the ballot. Not only did the ballot require some level of literacy to complete, it also left ample room for election judges to dismiss votes because the ballots were improperly marked or because voters took too much time.³²

Ironically, though not unexpectedly, the Walton Act made election fraud more frequent, not less. Election judges and assistants held considerable power over illiterate voters. They frequently gave misleading assistance to voters, especially black voters who did not want to vote for the Democratic party.

In 1896 another important development involving race and law took place at the level of the U.S. Supreme Court. *Plessy v. Ferguson* approved “separate but equal” public services along the lines of race. While the lone dissenter, Justice John Harlan, argued that the U.S. Constitution was “colorblind,” the rest of the court disagreed. Far from being “colorblind”, the U.S. Constitution and the people who interpreted it and enforced it kept a keen eye on race in order to create social interactions that whites saw as proper.³³

³² General Assembly, *Acts and Joint Resolutions*, 1894, ch. 746.

³³ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Political Equality vs. Social Equality: Race, Equality, and Law in Post-war Virginia

The period between 1870 and 1900 contained a gradual but apparent distinction between political and social equality regarding race. In the political realm, black Virginians could in theory exercise their rights to vote, hold office, and serve as jurors and witnesses in the courtroom. Of course, legal measures and threats from whites seriously limited black Virginians from practicing their political rights. Even more pressure existed against social equality; while whites reluctantly agreed to submit to the provisions of the Fourteenth and Fifteenth amendments to the federal Constitution, they did not wish to allow blacks and whites to “intermingle” freely in the classroom or in marriage.

The Readjusters relied heavily upon a doctrine of separate spheres that divided public and private rights on racial lines. Essentially, the Readjusters wanted to give black Virginians political equality on par with whites but limit their social equality in a way that kept black and white Virginians from interacting in the social realm. Because this doctrine was so difficult to maintain effectively, the Readjusters took heavy criticism from opponents.

“The school issue” in Virginia carried racial and sexual undertones that revealed the illusory division of political equality and social equality. Unlike suffrage, schools were a place in which the division between public and private spheres became blurred, and political equality between blacks and whites threatened to establish social equality as well. Schools in Virginia and through the South reveal the illusory nature of public and private spheres and the futility of attempts to keep the spheres separate. The

presence of black male authority in schools made white women vulnerable in the eyes of white men, and compromised the separation of public and private rights.

In February 1883, Readjuster governor William E. Cameron appointed two black men, Richard Forrester and Robert A. Paul, along with several other white Readjusters to the Richmond School Board. Democrats turned the Readjusters' separate spheres doctrine against them and charged that black men were now in control of white women teachers. Far from guaranteeing the separation of political equality and social equality, the appointments exposed the illusion of separation and garnered the criticism of Democrats who despised the authority given to black men over white women.³⁴

The Richmond *Dispatch* criticized the appointments of the two black men in gendered terms. Reluctant to "embarrass the Supreme court of Appeals," the *Dispatch* nevertheless warned that "to threaten the people of this city with a war of races as a result of their refusal to consent that negroes shall have the right to visit the white schools at their own sweet wills, inspect those schools, and question the lady-teachers and girls, is indeed treading on forbidden ground." The article maintained that there were "unconquerable objections" to the black men's authority "to visit white schools, and question white lady-teachers on any subject whatsoever." The *Dispatch* was also "amazed to learn that any white man should raise his voice in defense of such a wrong." The article thus expressed outrage with black men's power and criticized white men *as men* for their lack of protest in the matter.³⁵

The *Dispatch* also argued on constitutional grounds that "there is no requirement in the Constitution, State or Federal, which compels the State Board to appoint negroes

³⁴ Dailey, *Before Jim Crow*, 98.

³⁵ Richmond *Dispatch*, February 23, 1883.

trustees of the public schools upon pain of violating their oath of office.” “For it is a clear case,” the *Dispatch* maintained, “that if there were such a constitutional requirement it would open the white public schools of this city to negro pupils”-- another violation of the separate spheres doctrine and Virginia’s laws that barred school integration.³⁶

Democrats in Richmond challenged Cameron’s appointments, but the appointed trustees fought back. In *Childrey et al. v. Rady et al.*, Cameron’s appointees petitioned the Virginia Supreme Court of Appeals to uphold their appointments to the School Board. The court sided with the petitioners and ordered the trustees elected by Richmond authorities to vacate their positions. The day after the decision the *Dispatch* declared that “the outrage has been consummated.” The paper reasoned that because two out of nine members of the School Board were black, “a majority of a majority of a quorum are negroes” and wielded threatening power over “the fifty or sixty young lady-teachers” and “white schoolchildren” of the city.³⁷

The issue of marriage in Virginia delved even deeper into the issue of social equality. Though marriage seemed to be a wholly private matter, whites felt that marriage, especially between people with two different racial identities, was also a political matter and should be discussed in the public arena. Whites agreed to give black Virginians the freedom to vote and hold some offices, but they did not wish to allow marriages between blacks and whites because such marriages threatened to undermine the social inequality that whites believed should exist in Virginia. Marriage, in other words, was a place in which social equality with blacks frightened white Virginians.

³⁶ Richmond *Dispatch*, February 23, 1883.

³⁷ *Childrey et al. v. Rady et al.*, 77 Va. 518 (1883), Richmond *Dispatch*, May 12, 1883.

Black Virginians, however, argued in masculine ways that freedom to marry was a universal male right, a “political right,” and any limitations on marriage hindered political equality based on masculinity. The privileged position of masculinity as a prerequisite for citizenship shows in the language of the Fourteenth and Fifteenth Amendments to the federal Constitution. While the Fifteenth Amendment did not specifically limit the right to vote only to men, section 2 of the Fourteenth Amendment stated that if any state denied the right to vote “to any of the male inhabitants,” that state would lose congressional representation in similar proportions. In effect, the law granted political equality on the basis of masculinity but withheld social equality on the basis of race.³⁸

The Virginia Code in 1873 listed marriage between whites and blacks under “offenses against morality,” Listed in the same section as adultery, “injuries to burial grounds,” “keeping house of ill fame,” and “obscene books,” interracial marriage was seen as an immoral act, one that debauched the integrity of good social standing. The 1873 Code threatened the white party in an interracial marriage with jail time “not more than one year” and fines “not exceeding one hundred dollars.” Interestingly, the 1873 Code specifically noted that “a similar penalty is not imposed on the negro.”³⁹

Marriage in Virginia and the rest of the South reflects the same trend in transportation segregation that Woodward noticed in that interracial marriage had an “intermediate stage” of fluidity. As Peter Wallenstein notes, marriage in the South did experience a “quick emergence of a universal antimiscegenation regime” after the Civil

³⁸ U.S. Constitution, amend. 14, sec. 2, and amend. 15; Dailey, *Before Jim Crow*, 90-1.

³⁹ *Virginia Code* (1873), 1208 (title 54, ch. 192, sec. 8).

War. This regime, however, had a very loose grip on the situation of interracial marriage.⁴⁰

The courts and the legislature began to tighten their grip on interracial marriage in the late 1870's and 1880's. Several court cases between 1878 and 1885 illustrate the dual nature of citizenship and rights in along public and private lines. *Jones v. Commonwealth* and *Gray v. Commonwealth*, for example, involved Isaac Jones and Martha Ann Gray. After the two married, the state arrested them because they were unlawfully married according to laws that forbade interracial marriage. While the state claimed that Jones was "a negro" and Gray "a white person," the burden of proof rested with the state, which had to prove the racial identities of Jones and Gray.⁴¹

Judge Christian, a Democratic member of the Virginia Supreme Court, ruled in *Kinney v. Commonwealth* that Virginia had every right to annul an interracial marriage if the couple left the state to marry and then returned to Virginia to reside. Christian's rhetoric in his judgment in the case speaks volumes about the value whites placed upon racial separation. Arguing that "every well organized society is essentially interested in the existence and harmony and decorum of all its social relations, Christian stated:

[t]he purity of public morals, the moral and physical development of both races, and the highest advancement of our cherished southern civilization, under which two distinct races are to work out and accomplish the destiny to which the Almighty has assigned them on this continent—all require that they should be kept distinct and separate, and that connections and alliances so unnatural that

⁴⁰ Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law—An American History* (New York: Palgrave Macmillan, 2002), 105-6.

⁴¹ *Jones v. Commonwealth* and *Gray v. Commonwealth*, 80 Va. 538 (1885). For a thorough discussion of these and other Virginia miscegenation cases, see Peter Wallenstein, "Law and the Boundaries of Place and Race in Interracial Marriage: Interstate Comity, Racial Identity, and Miscegenation Laws, in North Carolina, South Carolina, and Virginia, 1860s-1960s," 32 *Akron Law Review* 557-576, Wallenstein, "Race, Marriage, and the Law of Freedom: Alabama, and Virginia, 1860s-1960s," 70 *Chicago-Kent Law Review*, 371-437, and Samuel N. Pincus, *The Virginia Supreme Court, Blacks, and the Law, 1870-1902* (New York: Garland Publishing, Inc., 1990), 63-84.

God and nature seem to forbid them, should be prohibited by positive law, and be subject to no evasion.⁴²

Christian linked the “purity of public morals” and “God and nature” to the law. The prohibition of “unnatural” relationships became the responsibility of the law and the state. While the state allowed blacks political equality with whites, it barred social equality in the form of marriage.

Even in 1878 whites concerned themselves with the “purity” of their “public morals,” which relied exclusively upon distinction and separation from blacks. Virginia’s whites used rhetoric remarkably similar to the rhetoric used two decades later, when delegates in the 1901-1902 constitutional convention pleaded in God’s name that distinction between whites and blacks must remain a cornerstone of Virginia’s society in order for the Old Dominion to regain its prominence and dignity. Furthermore, law became distinctly responsible for the enforcement of public morals and God’s will that races remain separate. However, as the existence of the laws and the court cases that attempted to uphold those laws show, separation and segregation with regards to social rights never fully existed to the satisfaction of whites.

Movements for a New Constitution, 1888-1900

Even though the Democratic party dominated much of the politics in Virginia, the party contained internal divisions about the creation of a new constitution. Discussions about government expense, party strife, and race all played a part in the various referendums for constitutional conventions in Virginia. While the referendums in 1888

⁴² *Kinney v. Commonwealth*, 71 Va. (30 Gratt.) 869 (1878); Wallenstein, “Law and the Boundaries of Place and Race in Interracial Marriage,” 564-5; Pincus, 73-4.

and 1897 failed, the one in 1900 succeeded thanks to solidified Democratic support, a stronger campaign for the convention, and a heightened sense of race embodied in scientific racism.

The first call for a convention came in 1888, the year in which the Underwood Constitution allowed the question to be raised. In November of that year, 63,125 people voted against the convention, while only 3,698 voted for it. In 1897 another referendum passed in the legislature to submit the prospect of calling a constitutional convention to the voters. That year, the 83,453 people voted down the convention while 38,326 people supported it. While the number of votes increased from the previous referendum, and support apparently increased by 35,000 votes, the polls seemed to show that voters remained skeptical about the virtues of a constitutional convention.⁴³

Several reasons can explain the lack of support for a new constitution as illustrated by the failures of these convention referendums. Charles Wynes argues that if the purpose of 1897 referendum was to “clean up elections,” then most white Virginians were not “greatly concerned about election frauds.” The lack of votes in both the 1888 and 1897 referendums may also indicate a degree of apathy toward the possibility of further disfranchising blacks. Either whites were satisfied with the results of the Walton Act or felt that because black voting had been so diminished that they did not need to vote. Wythe Holt argues that “elections became ‘calm’ and voter turnouts dropped, as the condition which many call ‘apathy’ began to display itself on a wider and wider scale.” Holt attributes the “apathy” of poor white and black to the “repeated social, political, and economic blows” by Virginia elites.⁴⁴

⁴³ Wynes, 52.

⁴⁴ Ibid; Holt, 76-78.

In 1888, an editorial in the *Richmond Dispatch* addressed the concerns of some of its readers that a constitutional reform that year would allow Mahone and his Republicans to take part in the creation of a new constitution. The editorial quoted one reader's question about the convention: "What great calamity could befall this good old State than to have its whole system of constitution and laws changed, its congressional and judicial districts rearranged, and all of it under the direction of John Sherman and General Mahone." The editorial quoted a speech by Mahone that revealed his desire to "regain control of every department of State government...." With the editorial, the *Dispatch* "[warned] the Democrats of Virginia against the policy of raising against one another points of no moment when contrasted with the all-important object of preserving the civilization of the Old Dominion."⁴⁵

Finally, because Virginia experienced an economic depression in the late 1880's and early 1890's, many voters felt that the state could not afford a constitutional convention. Some Virginians felt that because the state spent a great deal of money on the revision of the Code of Virginia in 1887, it could not afford a lengthy constitutional convention. It seemed a waste to some that the state went to "great expense" to revise the code in 1887, only to have a constitutional convention "undo it all" a year later.⁴⁶

With the degree of election fraud that took place in Virginia between 1870 and 1902, it is nearly impossible to determine the public's true feelings about a constitutional convention. It remains clear, however, that white Virginians on both sides of the issue felt a great deal of distrust and anxiety toward black political power. Both sides wanted to stop the purchase of black votes, and a majority of one side, the Democrats, wanted to

⁴⁵ *Richmond Dispatch*, February 26, 1888.

⁴⁶ *Richmond Dispatch*, February 25, 1888.

rid Virginia of black votes indefinitely. But because Democrats were divided on the issue, whatever the reasons, the referendums in 1888 and 1897 failed.

At the same time, however, the Republican party experienced its own internal strife. Republicans teamed with rising Populists in Virginia. Ironically, this Republican-Populist alliance actually fostered the sentiment for election reform that materialized in the Walton Act. Democrats seized the opportunity to use its opposition's wishes for its own ends in 1894. The Populists also wanted a constitutional convention to reform corruption and government expense in Virginia. But the Populists, who pushed for a "non-partisan election law" in 1895, along with Republicans, remained "bound up" with blacks in the eyes of many white Virginians. The Democrats seized upon this opportunity in 1900 to get its constitutional reform as did in 1894 with the Walton Act.⁴⁷

Democrats themselves had become worried about fraudulent election practices by Republicans and members of their own party. A portion in the Democratic party hoped that a new constitution would create more honest elections in Virginia while it stopped any threat of black political activity. Part of the progressive element in the party, these Democrats attributed their white purity and moral standing to the conduct of elections, and fought to clean up the polling place to reaffirm their racial superiority.

The way in which the ballot for the referendum was printed, however, made fraud and intimidation influential factors in the 1900 outcome. The ballot simply had the words "For Constitutional Convention" printed on them. To vote for the convention, one merely had to drop the ballot in a ballot box without entering the polling booth. To vote against the convention, one had to enter the polling booth and cross out every word on the ballot. If someone failed to do so, or wrote something else on the ballot, election

⁴⁷ Kousser, 176-7; Holt, 57; Wynes, 52-3.

officials discarded their vote. This method of voting not only allowed election officials to discard many votes, it discouraged anyone, blacks and whites, who disapproved of the convention to enter the booth and mark their ballot in front of others.⁴⁸

After 1898, several factors other contributed to a safe convention referendum. William Mahone, infamous Readjuster turned Republican was dead and the Populist-Republican alliances had faded. Moreover, with the Supreme Court decision in *Williams v. Mississippi*, the convention now had an example to follow in their quest to constitutionally disfranchise black Virginians. On the surface, the Democratic party seemed united in its effort for constitutional reform.⁴⁹

Strong Democratic support for a convention helped to produce a stronger public campaign for a convention. Speakers held meetings to discuss the virtues of constitutional reform. Judge Eugene Withers from Danville spoke two days before the referendum. The *Dispatch* predicted that Withers's address would "have a fine effect in arousing the voters of Richmond" to vote for the convention and "do away with the Underwood 'black-and-tan' Constitution, which Withers characterized as "the offspring of the illiterate negro and the white carpet-bagger."⁵⁰

Andrew Jackson Montague, Attorney-General of Virginia in 1900, made a speech the night before the referendum in which he criticized the 1870 Constitution as the product of "carpet-baggers," "aliens," and "negroes." According to the *Dispatch*, Montague made the convention a party issue and assured listeners that the Democratic party was "altogether the white people's party," and that "no white man was intended to be disfranchised." The same night, George Anderson also spoke about the referendum,

⁴⁸ Wynes, 59-60; Holt, 158.

⁴⁹ Wynes, 56-7, Kousser, 177.

⁵⁰ Richmond *Dispatch*, May 23, 1900.

which if passed would allow “the people of Virginia to throw off the menace of negro rule.” Anderson asked the crowd to “trust the party that had ever stood by the white people of Virginia.”⁵¹

Scientific support of white superiority also influenced the campaign in support of a convention. Next to an article on the convention election, the *Dispatch* published an article about a meeting of the American Medico-Psychological Association in which members discussed the “effect of freedom” upon the black population. Dr. J. Allison Hodges of Richmond gave the meeting’s annual address, in which he extrapolated upon the way in which freedom had retarded blacks’ “physical and psychological growth.” Hodges remembered and embraced the “black mammies” and “faithful slaves” and declared that “a monument should be erected” in their honor. “In bondage,” Hodges continued, “the southern negro reached his highest development—physically, mentally, and morally.”⁵²

Freedom, Hodges maintained, caused blacks to “degenerate” and “removed all hygienic restraints.” Hodges argued that blacks were “no longer obedient to the inexorable laws of health” and practiced “all sorts of excesses and vices.” Without the same brain capacity as whites, according to Hodges, blacks had “little or no control over their appetites and passions.”⁵³ The solution to the “race problem,” argued Hodges, required that blacks “give up their aspirations to full citizenship and confide his education and government to the whites.” Hodges continued:

⁵¹ Richmond *Dispatch*, May 24, 1900.

⁵² Ibid.

⁵³ Ibid. Hodges argued that blacks’ “lack of ability” stemmed from their smaller brain. “Science,” Hodges declared, “has demonstrated that the negro is a moral being, without the high moral character or broad brain abilities of the white man, it being an anatomical fact that the average weight of the negro’s brain is 42 ounces, while 49 ounces is the recognized average for the Caucasian.”

Some kind of restraining and inhibitory influences such as once characterized the institution of slavery must be thrown around him [black Virginians] as a safeguard for many years to come, or there will be a continued degeneracy and a tendency to a reversion to his primitive type as a savage.⁵⁴

Hodges declared that “the Anglo-Saxon will not make a holocaust of the negro....”

Rather, “white supremacy” existed for “the everlasting good of the negro race.” The continuation of “southern civilization” relied upon the cooperation of blacks to submit political power to whites, who would become the caretakers of blacks.

Black Virginians did not, however, relinquish their political rights willingly, so whites sought political domination in the form of a new constitution. A concerted effort to promote the convention by Democrats combined with increased attention to the “scientific point of view” of the “race problem” added a new element to the 1900 referendum that previous attempts lacked.⁵⁵ A new constitution in the eyes of many whites would not only rid the state of the Underwood Constitution, it would also allow Virginia to rise above “the menace of negro rule.” Explicit party support, a strong campaign for constitutional reform, and scientific racism helped the referendum to pass by a fairly narrow margin: On May 24, 77,362 people voted for the convention and 60,370 against.

The Democratic party’s united support for the convention attracted Democratic voters who were unsure how to vote on the issue. The chief slogan of the party’s platform on the convention claimed that “no white man shall lose his vote.” As the events during and after the convention showed, however, delegates to the convention quickly dismissed that promise.⁵⁶

⁵⁴ Richmond *Dispatch*, May 24, 1900

⁵⁵ Ibid.

⁵⁶ Holt, 66.

Men like Allen Caperton Braxton, who eventually became a delegate to the constitutional convention in 1901, believed that their “revolution of 1900” was just as important as Thomas Jefferson’s revolution of 1800; both were revolutions of “virtue over power.” Virtue in the case of Braxton’s revolution meant white domination in government and society. With the help of the constitutional convention in 1901, white Virginians who feared that their race had lost its prominence would attempt to reinstate white superiority that they felt came “naturally” with their racial identity.⁵⁷

Despite the lack of support for a new constitution before 1900, racism in Virginia clearly thrived in law and remained the primary lens through which Virginians, both white and black, saw their society. As early as 1878, equality before the law had two important distinctions. While in the public sphere blacks possessed political equality, they did not have in the private sphere social equality embodied in the right to marry and attend school across racial lines. These distinctions helped pave the way for the Readjuster’s downfall because they could not counteract the contradictions inherent in the separate spheres doctrine. Because blacks held rights in the public sphere, they threatened the sanctity of the whites’ private sphere.

Whites, however, believed that blacks would always have social equality with whites if they possessed political equality. To prevent the deterioration of their own private sphere, whites began to restrict the public rights of blacks through suffrage restrictions, ballot revision, and general intimidation. Social Darwinism and scientific racism informed whites’ plans to reduce black political and social equality for the good of white civilization and black morality and health. The cultural and political climate of

⁵⁷ Williamson, 236.

race in Virginia, then, developed a highly volatile and reactionary social space in which white superiority seemed threatened at every angle. To remedy this, Democrats and other whites alike looked to constitutional revision to bring order to their society.

2

A New Emancipation
Issues and Motivations in the Convention of 1901-1902

Carter Glass, convention delegate from Lynchburg and fierce white supremacist, told the Committee of the Whole that he wanted “a new emancipation, not now of the black man, but of the white man, whom the black man has enslaved in turn.”⁵⁸ The idea that whites had been “enslaved” by the Underwood Constitution and the ensuing political power of black Virginians was a recurring theme in the 1901-1902 Convention. Despite the measures instituted over the previous three decades to restrict the suffrage of black Virginians, white political leader felt it necessary to eliminate the Underwood Constitution and craft a new constitution for the state.

As the statement by Glass reveals, the convention of 1901-1902 stands as an important step in the attempt of white Virginians to solidify and legitimize their claim to racial superiority and “emancipate” white Virginians from their enslavement. While the convention addressed myriad issues and topics, white supremacy was the primary motivation for a new constitution and the standpoint from which delegates voiced their opinions for constitutional reform. However, the notion that whites needed “a new emancipation” shows that whites felt insecure about their superiority as whiteness. Unlike the measures taken in previous years, the creation of a new constitution signifies that whites wanted something more substantial to assure their racial superiority.

A special session of the Virginia General Assembly, assembled by Governor J. Hoge Tyler, passed the legislation necessary for the convention to take place. From June

⁵⁸ *Debates*, II, 2968.

21, 1901 to July 10, 1902, the delegates to the Convention met to form the new Virginia organic law. The ultimate purpose of the convention was to disfranchise the African-American population in Virginia without violating the Fourteenth and Fifteenth amendments to the federal Constitution. Convention members saw these federal amendments as terrible but surmountable barriers toward a more “pure” electorate and system of government in Virginia.

A more “pure” electorate for convention delegates meant a white electorate, one that in their eyes stood for the “people of Virginia.” Delegates to the convention left little doubt as to who exactly was included in “the people of Virginia.” “Who were meant by ‘the people?’” asked Glass, who then quickly retorted, “was it not clearly referable to the preceding section of the preamble, which declared that the white people desired constitutional revision, and per contra the black people did not desire it?”⁵⁹ In his address to the convention’s members, the convention’s preside John Goode remarked that “the people have submitted patiently to [the Underwood] Constitution, unsuited, in many respects, to present conditions.” Goode praised the “people of Virginia” for their patience, and praised the convention for its “honorable duty” to raise Virginia from the “dark days of Reconstruction.”⁶⁰

The rhetoric of the “people of Virginia” as the white people prevailed heavily throughout the convention debates. Issues concerned with the oath to uphold the Constitution of 1870, suffrage restriction, and the method to put the new constitution into effect are figuratively “colored” by the whiteness that the delegates feared had lost power and that they sought to reestablish in Virginia government. The visibility of whiteness as

⁵⁹ *Debates*, I, 295.

⁶⁰ *Ibid.*, 19-20.

expressed by convention delegates, and by the convention itself, helps to show how unstable their racial world had become.⁶¹

Uphold a “Black and Tan Convention”? The Debate over the Oath

On June 12, 1901, the day of the first meeting of the convention, members engaged in a heated and lengthy debate over whether it was necessary to take an oath to uphold the then-current constitution of Virginia, the Underwood Constitution of 1870. While some members wanted to take the oath because it would better legitimize their work in the convention, many members protested the oath because they did not want to support a constitution which they planned, by taking part in the convention, to dismantle. The debate over the oath not only illustrates their antagonism toward the Underwood Constitution, it also shows how race as a motivating factor wavered in Virginia culture. The debates among members concerning this question reveal a great deal about their political stances, their motivations, and their ultimate goals in framing a new organic law for the state. Lasting over two weeks, the oath debate brought out many issues that faced the delegates for months to come and provides an important starting point to examine the emotion of the convention as a whole and the ways in which the racial language of whiteness shaped other issues debated by the delegates.

Upon the proposal by Allen C. Braxton, delegate from Staunton, to elect a convention president, A. P. Thom from Norfolk advised the convention that “this

⁶¹ Robyn Wiegman, *American Anatomies: Theorizing Race and Gender* (Durham, N.C.: Duke University Press, 1995), 1-4, 6, 41-2.

Convention should [not] proceed to the performance of any function without the members first taking the oath required by the Constitution.” “As I see it,” offered Thom,

we are proceeding under the power of this Constitution in revising and establishing a new one. Whatever powers we have are not revolutionary powers, but the powers derived from the present organic law of this State. The present organic law provides that all persons before entering upon the performance of any function, as officers of the State, must take and subscribe the following oath or affirmation.⁶²

Thom went on to say that the members of the convention were indeed officers of the state, and “must qualify themselves” so that the work they performed in the convention would be valid. “[It] would be a most unfortunate thing,” Thom lamented, “for us to discover after months of labor, in adopting a Constitution, that we had been an unauthorized body, and that the court should upset everything that we had done.” Thus, in the interest of “safety” and “necessity,” Thom advised that the members take an oath.⁶³

Braxton immediately took the opposing view. From Braxton’s perspective, the convention members were not necessarily state officers, and thus were not required to take an oath as stated in the 1870 Constitution. Instead he argued that “the act of assembly providing for the calling of this Convention, providing for the qualification of its members, and how we shall convene, says nothing about the taking of any oath.”

Braxton’s took issue with the oath because it required that members to support “not only the Constitution of the United States, but the Constitution of the State of Virginia-- the very paper that we are called here to reform, revise, and amend.” His animosity against the 1870 Constitution aside, Braxton found the oath stifling and without precedent in

⁶² *Debates*, I, 3-4.

⁶³ *Ibid.*, I, 4.

previous constitutional conventions, and thus unnecessary for delegates to take.⁶⁴

Braxton did offer another oath “more appropriate”:

You do solemnly swear that you will support the Constitution of the United States, and you will faithfully discharge your duty as a member of this Convention for the purpose of amending the Constitution of the State of Virginia.

However, Braxton admitted that, in his opinion, the Convention should follow the respective courses of action taken by previous conventions and avoid an oath altogether.⁶⁵

Several other members besides Thom desired to “err on the side of safety” and take the oath prescribed in the 1870 Constitution. John C. Wysor, the delegate representing Pulaski and Giles counties, rose to speak after he saw that Thom’s resolution was in danger of being defeated. “Gentlemen rise here,” claimed Wysor, “and instead of admitting that it is a body of very limited powers, contend that it is a body with revolutionary powers.”⁶⁶

Moreover, Wysor claimed that Braxton’s refusal to take the oath as prescribed in the 1870 Constitution and his willingness to swear to the alternative oath, revealed that Braxton and other delegates wanted to avoid the provision in the 1870 state constitution that required delegates to “recognize and accept civil and political equality of all men before the law.” While the oath in the 1870 Constitution required this recognition, Braxton’s oath only required support for the U.S. Constitution and, in the eyes of Wysor, allowed delegates more “revolutionary” latitude to implement whatever they wished. Wysor, like other delegates, wished to rid Virginia of the Underwood Constitution and restrict suffrage, but he did not want the Convention to have full, unlimited power.

⁶⁴ *Debates*, I, 4-5.

⁶⁵ *Ibid.*, I, 5.

⁶⁶ *Ibid.*, I, 5-6.

From these criticisms emerges a caution against “revolutionary” action by the Convention. Delegates desiring to take an oath, though small in number, stressed the importance of taking an oath for fear that their work would be invalid and would not stand legal challenges once the convention finished. They did not, for various reasons, want to imply that the Convention had “revolutionary powers” above the 1870 Constitution, despite their wishes to replace that document.

Delegates against the oath, however, contended that by taking an oath, the convention members bound themselves to support a document that they intended to dismantle. “What is the oath when we come here and swear that we will support the Constitution [of Virginia],” asked Braxton. “It is like swearing that we will not commit murder,” he answered.⁶⁷

Their reasons against supporting the 1870 Constitution were clear. Braxton, in response to the suggestion that delegates use the convention that drafted the 1870 Constitution as precedence, criticized that assembly as a “black-and-tan Convention,” and asked delegates to compare the precedents of that convention against those of 1829, 1850, and 1861. After Braxton, Carter Glass continued criticizing the Underwood Constitution. The oath for Glass meant that the delegates “are to bind [themselves] by oath to maintain, and not alter, that very feature of the existing Constitution of Virginia which we were expressly and designedly sent here to change radically.”⁶⁸

“That very feature,” for Glass and many other members of the convention, was suffrage. Article XII of the Underwood Constitution stated, as Glass pointed out, that “No amendment or revision shall be made which shall deny or in any way impair the

⁶⁷ *Debates*, I, 8.

⁶⁸ *Ibid.*, I, 13-14.

right of suffrage or any civil or political right that is conferred by this Constitution, except for causes which apply to all persons and classes without distinction.” Glass found it absurd to take an oath supporting a document that he despised and felt was a burden upon the “people of Virginia.” “The chief purpose” of the 1901 Convention was, according to Glass,

to amend the suffrage clause of the existing Constitution. It does not require much prescience to foretell that the alterations which we shall make will not apply to “all persons and classes without distinction.” We were sent here to make distinctions. We expect to make distinctions. We will make distinctions. Hence I object to taking an oath which will bind me not to make distinctions. ...Indeed, I really believe I would sooner permit myself to be expelled from this Convention than to bind myself by oath not to alter the suffrage clause of the Underwood Constitution, which was unquestionably designed to prevent the white people of Virginia from ever again getting possession of their government.

Glass wanted to avoid the oath so that he, in his conscience, could give power back to the “white people” of the State, power that had been taken by the Underwood Constitution.⁶⁹

By couching his objections in the language of race and power, Glass and other delegates reveal the importance of regaining racial supremacy in the Old Dominion, and thus make the power of whiteness visible. By taking an oath, as Glass lamented, the convention was supposedly bound to uphold a constitution that many despised because of its symbolism of white subordination. The visibility of whiteness in the oath debate emerges in the rhetoric of the delegates on both sides of the issue.

The 1901 convention thus started with an uproar over authority, purpose, and execution. The debate over the oath quickly revealed the issues and motivations the delegates brought with them to the convention, especially racial motives behind the work for a new constitution. Rhetoric that bemoaned the implementation of the Underwood Constitution characterized much of the debate against the oath, while arguments that

⁶⁹ *Debates*, I, 14.

supported the oath stressed the importance of making the organic law they were there to construct a valid project to replace the Underwood Constitution. While on the surface a legal and constitutional issue--whether the delegates were state officers and whether the document they would frame would stand after their convention-- the oath debate was couched in rhetoric that reveal the visibility of whiteness and its place in the drafting of the new state constitution.

A New Emancipation: Suffrage Restriction and the Rhetoric of Whiteness

Convention delegates hoped that, by crafting a state constitution that disfranchised black Virginians while adhering to the Fourteenth and Fifteenth Amendments to the federal Constitution, they would make politics and elections more “pure,” and honest, and thus “emancipate” white Virginians from the vices of black suffrage. Thus, the “people of Virginia,” according to convention delegates, chose to disenfranchise black Virginians through legal, constitutional means, which in their minds gave the effort more validity against accusations of corruption and malice while creating for them a new kind of citizenship based on supposed white virtues. As the true Anglo-Saxon heirs to political dominance in Virginia, convention delegates instituted restrictive suffrage requirements in an effort to undermine the political power of black Virginians, but in this effort made their own whiteness visible and revealed the unstable nature of their desired racial order.

The problem faced by the delegates was the methods proposed to limit suffrage for blacks without disfranchising whites. As Wythe Holt has acknowledged, “almost

everyone wanted to disfranchise blacks,” but few delegates wished to take away votes from whites.⁷⁰ Because the Fifteenth Amendment restricted delegates from explicitly using race as a barrier to suffrage, the convention grappled with multiple ways to get around this “wretched crime.”

The stated desire to “purify the electorate” of the state paralleled other efforts at civic and political reform spearheaded by Progressive reformers across the nation. A complex and often contradictory movement, progressive reform combated corporate power. As Jack Temple Kirby notes, “the race issue was intimately involved” in progressive movements in the South. Kirby argues that “black disfranchisement and segregation...was itself the seminal ‘progressive’ reform of the era,” and the developments between 1890 and 1910 show that whites “elaborated their racial ideologies with care.” Progressivism in the South, then, not only fought corrupt politics and corporate power, it also allowed whites to elaborate upon their racial identities and use scientifically-based racism to implement segregation and disfranchisement.⁷¹

The idea that black enfranchisement corrupted the electorate and election process dominated the convention debates. Ironically, Virginia’s convention delegates felt that black suffrage *required* whites to institute fraud at the ballot box, so without any sense of sarcasm or humor delegates blamed black Virginians for the political corruption that plagued the state. Purity of the electorate, and political and governmental reform along

⁷⁰ Wythe Holt, *Virginia’s Constitutional Convention of 1901-1902* (New York: Garland Publishing, Inc., 1990), 150.

⁷¹ Jack Temple Kirby, *Darkness at the Dawn: Race and Reform in the Progressive South* (Philadelphia: J.B. Lippincott Company, 1972), 1-5, 23-5.

Progressive ideology, fit well with the determination to “eliminate the negro from political life.”⁷²

The suffrage debate also reveals the ways in which social Darwinist discourse influenced the perspectives of the convention members. In one of his many addresses to the Convention, A.P. Thom read the letter he wrote to accept his nomination to the Convention:

For a whole generation we have been patiently working at the problem growing out of the enforced legal equality of two essentially different and unequal races. The result of this problem upon our people has been most disastrous. In morals it has resulted in the lowering of our civic standards; intellectually it has dwarfed us on all public questions, for in the presence of a dreadful menace to our domestic and social institutions, we have not felt free to think independently on any great economic or governmental question. To the Convention about to assemble is entrusted the task of removing, as far as possible, this great burden from the manhood of Virginia...I regard the present as an opportunity to accomplish, in a large measure, the moral and intellectual emancipation of our people.⁷³

Thom’s letter exposes significant themes in whites’ fears of “legal equality.” The idea that legal equality forced “two essentially different and unequal races” together and fostered the “lowering” of whites’ “civic standards” and morals falls in line with Social Darwinist ideas that inferior races often “degrade” superior ones. Furthermore, the presence of black voters to Thom hindered any civilized discussion of politics and government. “Legal equality” thus enslaved whites to moral and intellectual degradation, and the new constitution served as a vehicle to the “emancipation” of whites.

This theme of “moral and intellectual emancipation” ran throughout the convention debates on a variety of issues. Andrew J. Montague, Democratic candidate for Virginia Governor in 1901, believed that “if we could get a clean electorate and a

⁷² *Washington Post*, January 21, 1901.

⁷³ *Debates*, II, 2967.

clean ballot then we may at once achieve an ethical and intellectual freedom.” Writing to Montague, Beverley Munford believed that it was possible to “relieve the Commonwealth of the fear of negro domination” and “stimulate a healthy and fearless discussion of all questions of public interest.” Both Montague and Munford loathed the way in which black suffrage stifled the freedom of debate and discussion in Virginia government. “Fearless discussion” remained an important component of government brought about by “Anglo-Saxon civilization.” In order to free whites from “negro domination,” whites must hinder-- if not eliminate-- black suffrage.⁷⁴

Some delegates believed that black suffrage made constitutional revision imperative. “What, then, was the origin of the movement in Virginia for constitutional revision?” asked Carter Glass. He unashamedly answered that “it had its origin in the consciousness of the people of Virginia that negro enfranchisement was a crime to begin with and a wretched failure to the end.” Glass continued to assert that “the demand for reformation came from the white people of Virginia.” Because, as Glass asserted, the “unlawful, but necessary, expedients employed to preserve us from the evil effects of [black enfranchisement] were debauching the morals and warping the intellect of our own race,” white Virginians sought a “lawful” way to curtail the growing threat of African-American political power in their culture. They found that way in the creation of a new constitution. Delegates and other whites in Virginia held the notion that black Virginians who possessed the right to vote caused corruption and made impossible a true, genuine

⁷⁴ Montague to Henry St. George Tucker, Nov. 22, 1901; Munford to Montague, Nov. 7, 1901, all quoted from Holt, 153-4.

reflection of self-government. Convention delegates sought to “emancipate” white Virginians with a new constitution.⁷⁵

Some felt that enfranchising blacks was immoral and a burden for black Virginians. Adhering to the social Darwinist and eugenics ideology that was developing at the turn of the century, delegates such as A.C. Braxton felt that whites should extend blacks “all civil rights” and act “with the utmost generosity towards him [black Virginians] in the matter of improving his condition of mind, body, and morals.” But extending political rights was immoral because it allowed black Virginians to follow their “own devices, filling [their] heads with false notions as to [their] importance and capacities.” Throughout the convention Braxton and other delegates expressed their goodwill toward blacks, but put them at a lower status based upon the “natural” inferiority of their race.⁷⁶

John Goode’s presidential address on June 12 also stressed that “the white people of Virginia have no prejudices and no animosity toward the colored race.” Goode expressed to the convention that the installation of “universal negro suffrage was a grievous wrong, not only to the white race, but to the colored race also.” Blacks, according to Goode and many other white Virginians, “had no qualification for participation in the functions of government.” Goode argued that black inferiority--and consequently white superiority-- had been ordained by God “for some wise purpose.” Suffrage was not a “natural right,” Goode explained, but “a social right” earned only by those who held the capabilities for self-government.⁷⁷

⁷⁵ *Debates*, I, 293.

⁷⁶ Allen Caperton Braxton, quoted in Edward Ayers, *The Promise of the New South: Life after Reconstruction* (New York: Oxford University Press, 1992), 307.

⁷⁷ *Debates*, I, 20.

Similarly, some delegates argued that disfranchisement of black Virginians would help, not hurt, the lives of whites in the state. Speaking upon the suffrage amendments, John Daniel asked the delegates to “respect the burdens of the people of Virginia,” including those of the “black race.” “We are not here as enemies of the colored man,” Daniel explained. “On the contrary,” he continued, “the good people of Virginia look upon him with deep interest, and with pity and compassion and friendship for the condition in which he is.” The quote distances blacks from the “good people of Virginia” and makes them outsiders distinct from “good” white Virginians.⁷⁸

However, arguments against literacy tests show that the convention did not have any intentions of “bettering” the conditions of black Virginians to allow them to participate in politics. Glass, an avid opponent of literacy tests, argued that with the “alarming” rate of increased education in Virginia, literacy tests would be obsolete in a few decades. Glass’s desire for a “new emancipation” for white Virginians would be destroyed by literacy tests. “With these Herculean efforts to destroy illiteracy,” asserted Glass, “and, if that be the obstruction to suffrage, to destroy the obstruction that would exist between the negro and the ballot-box, can we as sane, as thoughtful, as patriotic men, be content with basing the whole of our future upon such a fleeting and disappearing factor.”⁷⁹

The exact method to institute black disfranchisement while adhering to the Fourteenth and Fifteenth Amendments and while limiting white disfranchisement as much as possible proved a formidable task for the suffrage committee and the convention as a whole. After much wrangling and debate, a compromise written by Carter Glass was

⁷⁸ *Debates*, I, 306.

⁷⁹ *Ibid.*, II, 2968-9.

approved by a vote of 59 to 20. The “Glass Compromise,” which became Article II of the 1902 Constitution, included a cumulative poll tax, a grandfather clause, a literacy test, and an understanding clause. Before 1904, men who were Civil War veterans or sons of veterans, paid property taxes of one dollar or greater, or could adequately read or explain any section of the 1902 Constitution could vote in state elections. After 1904, all men wishing to vote needed to pay a poll tax of \$1.50, write personally their voter registration, and answer an indeterminate number of questions “affecting [their] qualifications as an elector.”⁸⁰

Braxton was staunchly opposed to an understanding clause, as well as a grandfather clause. He argued that the best way to curtail black political power while ensuring white suffrage included articles that required prepayment of poll taxes for four years, demanded that voters be physically able to fix their own ballot, and limited office holding to whites only. The understanding clause, whether temporary or permanent, represented for Braxton an opportunity for “fraudulent administration and other offensive and objectionable features.”⁸¹

The debates over the understanding clause reveal another component in white supremacist ideology. Braxton deplored the understanding clause for its possibility to allow fraud and “debase and debauch” whites into “a race of moral degenerates.”

Braxton opposed the understanding clause because it would continue the corruption that

⁸⁰ Virginia State Constitution of 1901, Article II; *Debates*, II, 2960; Raymond H. Pulley, *Old Virginia Restored: An Interpretation of the Progressive Impulse, 1870-1930* (Charlottesville: University Press of Virginia, 1968), 83-4; Holt, 161.

⁸¹ *Debates*, II, 3008-9.

he was there to remedy. He wanted to make white supremacy a “moral” and “decent” practice, as it naturally should be because of inherent Anglo-Saxon virtues.⁸²

Others, such as Carter Glass and Richard McIlwaine, felt little remorse for those whites who “disfranchised themselves” by not meeting the suffrage requirements.⁸³

McIlwaine lamented that the “depraved and vicious whites” of the state were the chief cause of fraud in Virginia. “It is this element,” McIlwaine explained,

which constitutes a menace to society, which under the manipulation of corrupt political leaders, constitutes the balance of power in elections, and by which the voice of intelligent and upright citizens is stifled at the polls, and incompetent and bad men are put into office. It is not the negro vote which works the harm, for the negroes are generally Republicans, but it is the depraved and incompetent men of our own race, who have nothing at stake in government, and who are used by designing politicians to accomplish their purposes, irrespective of the welfare of the community.⁸⁴

Whiteness was thus defined not only by skin color, but also the ability to pass the suffrage restrictions, contribute to the welfare of the Commonwealth, and enjoy more responsibly the “privileges” of suffrage. It was the start of a political eugenics, one that valued decent citizens with a “proper stake in society.”⁸⁵

Jane Dailey notes that “the adoption of the understanding clause is the clearest indicator that democracy, not fraud, was the chief target of the constitutional convention.” Many of the convention’s delegates, however, asserted that by instituting an understanding clause, the new constitution would allow a better democracy and civil society to prevail in Virginia. What is important here is the idea that democracy in Virginia had been “debauched” by full manhood suffrage, and the Constitution of 1902

⁸² *Debates*, II, 3009.

⁸³ *Ibid.*, II, 2965.

⁸⁴ *Ibid.*, II, 2998.

⁸⁵ *Ibid.*, II, 2975.

sought to reestablish the white political supremacy that characterized Virginia before the Civil War.⁸⁶

The 1902 Constitution, declared law by the convention instead of submitted to Virginia voters, represents a heightened effort to make whiteness an integral part of Virginia constitutionalism. Like other Southern states and the nation as a whole, white Virginians saw validity in written, organic law, and in an explicit effort wanted to make white superiority the primary function of the state constitution. However, because they felt it necessary to create a new state constitution to “emancipate” whites in Virginia and reinstate the supposedly “natural” hierarchy of race relations in Virginia, convention delegates inadvertently show that white superiority was in fact “unnatural” and a reactionary, artificial construction to deal with the uncertain social relationships that had developed in late-nineteenth century Virginia.

Making the Constitution Law: Debates over Declaring the Constitution

Even before the contents of the Constitution had been agreed upon by the Committee of the Whole, the convention had paid careful attention to the method in which it would make their creation the supreme law of the state. Like the promise to guarantee universal white manhood suffrage, the convention broke the Democratic party’s promise to submit the newly formed Constitution back to the voters of Virginia for approval. Instead, the convention opted to declare the Constitution law albeit by a fairly close margin, and made 1902 Constitution law without consulting the people whom they claimed to represent.

⁸⁶ Jane Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia* (Chapel Hill: University of North Carolina Press, 2000), 164.

As the debate over the oath revealed, a few convention members worried about accepting any measure that gave the body “revolutionary” powers. These powers included the possibility to declare the constitution instead of submitting it to voters. Even in the early days of the convention, discussion about proclamation surfaced and played an important part in the arguments that ensued.

Those who initially wanted to send the new constitution to the abridged electorate, the electorate qualified by the very constitution which had yet to be passed, were hesitant to allow “146,000 negro voters” to pass upon the fundamental law. “If the 146,000 black people of this Commonwealth are fit and competent to pass upon the work of this Constitutional Convention,” argued Glass, “they are fit and competent to assume the ordinary prerogative of citizenship.” However, if “they are not fit” for citizenship, Glass responded, “then it would be an awful responsibility...to permit them to pass upon the fundamental law of this Commonwealth.” Supported by a large majority of the delegates, Glass’s opinion shows that the desire to submit to an abridged electorate was motivated by racial attitudes against blacks and predetermined ideas about their qualifications as citizens.⁸⁷

In response to arguments that cited the Democratic Convention’s promise to submit the constitution to the people for ratification or rejection, Glass asked, “was it intended to plight any faith or make any promise to the unfortunate black illiterates of Virginia?” Glass continued:

Why did I not put in there the words, “Shall be submitted back to the white people of Virginia”? Because, I might answer if I would, there was not among all the friends of Constitutional revision at Norfolk one man who was so sensitively solicitous about disfranchising the black Republicans of this Commonwealth as to require me to do it. But the real

⁸⁷ *Debates*, I, 303.

truth is that I did not do it because it never entered my mind that anybody would every think that a Democratic Convention would undertake to speak for its natural enemies.⁸⁸

The purpose of Glass's oration was to assert that the Democratic Convention did not have the authority or the intention to promise "unqualified suffrage." Using his cunning as a lawyer, Glass shaped the language of the Democratic Convention's platform to support his argument for submission to an abridged electorate. While Glass did not want the convention to proclaim the Constitution, he "preferred that method to the method of submitting it to a certainly hostile electorate of 146,000 ignorant blacks, and perhaps, 80,000 of their white allies who have condemned it before it is made."⁸⁹

Those who supported the motion to send the constitution back to the "Underwood" electorate did so because it followed their belief in the fundamentals of constitutional law. John C. Wysor best summarized the argument for submission to the present electorate when he asked the convention, "do you want to violate all the legal, moral, and constitutional principles because there are 146,000 negro voters in the State?" "Is there a man in this Commonwealth who will say that if [our state was] entirely white he would be willing to proclaim this Constitution?" he continued. After waiting for a response, Wysor answered that none of the delegates would proclaim the Constitution "unless you had negroes in your electorate." Even though Wysor admitted that the Fifteenth Amendment "may be bad," he still felt morally compelled to submit to the entire electorate because any differentiation would lead to exclusion of a number of others on equally vague grounds.⁹⁰

⁸⁸ *Debates*, I, 296.

⁸⁹ *Ibid.*, I, 297.

⁹⁰ *Ibid.*, II, 3222.

Many state newspapers declared that it was irresponsible to submit the Constitution to anything other than an abridged electorate. The Richmond *News* stated:

When we say “the people of Virginia” we mean the white people of Virginia. The colored people in political matters have never voted or felt or acted as Virginians. They have voted, felt, and acted as negroes, have kept before them always the fact that they are a separate race and have made us feel likewise and vote on the color line.

There would be no sense in asking the negroes to vote on the question whether or not they shall vote hereafter. That would mean submitting the work of the Convention to its natural enemies.⁹¹

Like Glass, the Richmond *News* explicitly stated that the political constituency of Virginia should be all white. Only whites “felt” and “acted as Virginians.” Because black Virginians “acted as negroes,” the *News* claimed that whites were forced to “vote on the color line.” By arguing that whites acted defensively while claiming that “the people of Virginia” included only “the white people,” the *News* made whiteness more visible and revealed the defensive, unstable nature of white racial identity.

The Richmond *Dispatch* equally supported submission to an abridged electorate based on racial grounds. “We have faith,” the paper declared, “that the party will respect its pledge in the spirit in which it was made, and which it is logical to conclude contemplated submission to the proposed new electorate alone.” Later, the *Dispatch* cried for submission “to the whites of the State; surely not to those whom the Convention was expected to pronounce unworthy of suffrage.”⁹²

As the debate about submission continued, sentiment grew in support of proclaiming the new constitution as the state’s fundamental law. This sentiment grew so great that the convention took extended recesses in April and May, 1902, to allow delegates to return to their home districts to determine public opinion on the constitution

⁹¹ Richmond *News*, quoted in *Debates*, I, 302.

⁹² Richmond *Dispatch*, August 24, 1901, August 30, 1901.

and proclamation. Many Virginia newspapers changed their tune along with the convention in support of proclamation. The *Dispatch* conducted a poll throughout Virginia and discovered that out of 69 counties, 51 supported proclamation. “The will of the people,” the *Dispatch* claimed, wanted proclamation. Five days later, the paper argued that “the exigencies of the present situation can be met best by proclaiming the work of the Convention’s hands.”⁹³

Discussion in the convention about proclamation was heated and lengthy. Some, like Wysor and George D. Wise of Richmond, argued that proclamation was completely out of the powers of the convention. Despite his animosity toward the Underwood Constitution, Wise emotionally stated that he would “never consent that any body of men, however able, pure and patriotic they may be, shall be invested with the absolute power to dictate the organic law for this State.”⁹⁴

Others there in favor of proclamation used the rhetoric of white domination and “natural” Anglo-Saxon superiority to argue that it was the duty of the convention to guarantee, under any circumstances, the passage of the constitution. “I had rather that these one hundred men, assembled here in the Capitol, should say what is to be the organic law under which I and my children are to live,” proclaimed W.F. Dunaway, “than to submit the question to an alien, hostile, ignorant, and prejudiced race.”⁹⁵

Wysor believed that the newly created constitution was “a good Constitution,” but nonetheless desired to submit it back to the electorate who made the convention possible. “I believe it is an excellent Constitution,” admitted Wysor. He did not believe that anyone “would be hurt if it [was] proclaimed,” but he felt that proclamation “set a bad

⁹³ Ibid., May 1, 1902, May 6, 1902.

⁹⁴ *Debates*, II, 3157.

⁹⁵ Ibid., II, 3201.

example.” “You take away from the people the right to vote upon the fundamental law,” he lamented:

[We] should be careful how we violate the fundamental principles of law, and promises and pledges. It will be brought up against you for generations... You have made a good Constitution. It is being met with approval everywhere. You are being complimented. But now, right at the end of the matter, you are going to put a blot on your escutcheon.⁹⁶

Despite Wysor’s warnings, the Convention voted to declare the constitution the fundamental law of Virginia instead of submitting the document to either the original or the abridged electorate. On May 29, 1902, by a vote of 47-38, the convention proclaimed their work the fundamental law of Virginia. A month later, the convention adjourned, and its delegates joined their respective constituents under a constitution which they felt corrected 30 years of oppression under the Underwood Constitution.

The effects of the 1902 Constitution were, according to Jane Dailey, “immediate and catastrophic.” The new suffrage provisions nearly cut the electorate in half. While there were over 6,000 black voters in Richmond in 1900, in 1902 there were 760. The 1900 presidential election in Virginia drew over 260,000 voters, but the 1904 campaign garnered fewer than 130,000 voters. Black voting, as several historians have estimated, was cut nearly 90%. Democracy in Virginia had been so devastated that political scientist V.O. Key sarcastically stated that “Mississippi is a hotbed of democracy” in comparison.⁹⁷ Several challenges to the constitution occurred shortly after its proclamation, but the constitution survived these challenges and stood as the

⁹⁶ *Debates*, II, 3224-5.

⁹⁷ Dailey, *Before Jim Crow*, 164; Pulley, 89-90; V.O. Key, quoted in J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* (Chapel Hill: University of North Carolina Press, 2002), 26.

Commonwealth's fundamental law until 1928. As an attempt by whites to ensure racial supremacy over blacks, the Constitution of 1902 white Virginia's greatest declaration yet that their notions of racial superiority had lost salience.

3

“To Purify, Exalt, and Ennoble”
The Rhetoric of Whiteness in Post-Reconstruction Virginia

Between the late 1860’s and the late 1920’s, black and white Virginians battled over the meanings of citizenship and rights and how the fluid definitions of race affected those meanings. The Virginia Constitution of 1902, while an important benchmark in the history of post-emancipation Virginia, was only one aspect of a multiple-layered narrative of the culture of race and constitutionalism. As systems of beliefs, customs, and ideas, race and constitutionalism became intertwined and gave whites cultural “webs of significance” with which they could understand and attempt to control their society.⁹⁸

To fully understand the place of the Constitution of 1902, it is necessary to survey broadly the contexts of race culture in Virginia after its adoption. Despite the implementation of the 1902 constitution, white Virginians continued to make race a cornerstone in their legal and constitutional ideas and continued to reassert their superiority over black Virginians. Taken as a whole, the period in Virginia between 1902 and 1924 not only reveals that white Virginians struggled to fully impose their superiority, it also shows that race existed as a cultural construction through its reliance on other social categories, people, places, and times.⁹⁹

⁹⁸ Clifford Geertz, “Thick Description: Toward an Interpretative Theory of Culture,” *The Interpretation of Cultures* (New York: Basic Books, 1973), 5.

⁹⁹ For the ways in which race and racial identity shift with different contexts, consult Jane Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia* (Chapel Hill: University of North Carolina Press, 2000); Grace Elizabeth Hale, *Making Whiteness, The Culture of Segregation in the South, 1890-1940* (New York: Vintage, 1998); Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998); Richard Delgado and Jean Stefancic, eds., *Critical Race Theory: An Introduction* (New York: New York University Press, 2001); Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law—An American History* (New York: Palgrave Macmillan, 2002).

The Legal Counterattack: Challenges to the 1902 Constitution

On November 14, 1902, shortly after the proclamation of the 1902 Constitution, William H. Jones, with the assistance of attorneys John Wise and Jim Hayes, filed grievances with the district court in Richmond in regards to the election provisions in Article II of the 1902 Constitution. Particularly, the plaintiffs claimed that the Virginia Constitution violated the Fourteenth and Fifteenth Amendments in the Federal Constitution because it limited the right to vote by African-Americans. The poll tax, the grandfather clause, and the understanding clause, argued the plaintiff, allowed the state to discriminate on account of race. The case wended its way through the state judiciary system until it surfaced in the United States Supreme Court on April 4, 1904. Virginians paid particular attention to *Jones v. Montague* because it challenged the authority of the 1902 Constitution. A victory by the plaintiff would certainly disable the election processes that had begun to transform the political landscape of the state.¹⁰⁰

The Richmond *Times-Dispatch* provided summaries and commentary on the Supreme Court case as white Virginians anticipated the outcome. On April 5, 1904, the *Times-Dispatch* described the previous day's event as an exciting and contentious one. "Nearly all the crowd in the court room were negroes," the paper stated. Condescendingly, the *Times-Dispatch* revealed that "the darkey preachers [gave] notice of the hearing and [asked] their flocks to turn out. And the negroes obeyed the command." The black crowd in the courtroom was diverse in color, the paper revealed; "Hundreds of them, of every shade, from coal black to lightest yellow, and all sizes, from the pickaninny to the old uncle of gray wool and bowed form, were there." Despite the

¹⁰⁰ *Jones et al. v. Montague*, 194 U.S. 147 (1904).

large crowd, the *Times-Dispatch* maintained that those who “stood in line for hours” only pretended “that they wanted to get inside, but [passed] the time very pleasantly chatting and giggling with their dusky escorts.”¹⁰¹

The defense, led by state Attorney-General William A. Anderson, former delegate to the 1901-1902 convention, defended the Virginia Constitution against the accusations of discrimination. Anderson used the opinion of *Williams v. Mississippi* to show that the suffrage clauses in the 1902 Virginia Constitution were consistent with the Fourteenth and Fifteenth Amendments. In *Williams v. Mississippi*, the Supreme Court decided that provisions that restricted suffrage were constitutional so long as they did not specifically mention race. Anderson also cited other state constitutions in response to accusations that the Virginia document contained vague elements in its suffrage clauses. “Nowhere in the Virginia suffrage clause,” argued Anderson, “was there any discrimination on account of race or color, or of former servitude.” Moreover, the defense claimed that the Supreme Court did not have jurisdiction over the case.¹⁰²

The *Times-Dispatch* portrayed John Wise’s arguments in condescending terms. The paper chided Wise for making unfounded and irrelevant accusations. They pointed out that Wise’s comments about “the members of the Constitutional Convention and the people of Virginia” were “not so violent” in the Supreme Court as his speech in the Richmond circuit court. In contrast, the *Times-Dispatch* pointed out that the defense was “warmly congratulated by the bar...on their arguments.” The paper characterized the arguments of the state as “brilliant.”¹⁰³

¹⁰¹ Richmond *Times-Dispatch*, April 5, 1904.

¹⁰² Major Anderson, quoted in Richmond *Times-Dispatch*, April 7, 1904; *Williams v. Mississippi*, 170 U.S. 213 (1898).

¹⁰³ Richmond *Times-Dispatch*, April 5, 1904; April 7, 1904.

On April 24, 1904, the Supreme Court reached a verdict and agreed with Anderson and the defense. Justice Brewer delivered the court's opinion that the case could be resolved because the court's action could not reverse the process that was already in motion. "The canvas [of voters] has been made," argued Brewer,

certificates of election have been issued, the House of Representatives (which is the sole judge of the qualification of its members) has admitted the parties holding the certificates to seats in that body, and any adjudication which this court might make would be only an ineffectual decision of the question whether or not these petitioners were wronged by what has been fully accomplished. Under those circumstances there is nothing but a moot case remaining, and the motion to dismiss must be sustained.¹⁰⁴

The lack of sympathy from the Supreme Court gave Jones and Wise, and the other plaintiffs in the case little comfort. Wise complained about the complacency of the federal government in the matter: "Congress doesn't want to do anything, the Supreme Court doesn't want to do anything, and so it goes. The Supreme Court passes the question along to Congress, and Congress politely passes it along to the Supreme Court. It is a game of 'After you, my dear Alphonse,' and it is amusing to everybody, except the Negro."¹⁰⁵

The *Times-Dispatch* praised the outcome of the case. An editorial in the *Times-Dispatch* heavily criticized John Wise and his attempt to dismantle the 1902 Constitution. Entitled "The Constitution Forever!," the editorial characterized Wise's defense of the case as "malicious" and rejoiced that his attempt to "overthrow the Virginia Constitution has ended in dismal failure and contempt." The editorial sarcastically thanked Wise

¹⁰⁴ *Jones et al. v. Montague*, 148.

¹⁰⁵ John Wise, quoted in Dailey, *Before Jim Crow*, 166.

because he had “done Virginia a good service in putting her new Constitution to the test,” but described Wise as greedy and interested only in “pocketing a good fee.”¹⁰⁶

Jones v. Montague shows how discrimination against blacks in the name of white superiority went ignored at the national level. As Nancy Cohen has argued, progressive reformers at the turn of the twentieth century embraced a social Darwinist “reinvention of race” when they abandoned “equality and inclusive citizenship” and supported a hierarchical view of society. National leaders, fearful of massive popular power, supported (or simply ignored) state constitutions in the South that implicitly disfranchised black voters.¹⁰⁷

Another case reached the Virginia Supreme Court that challenged the 1902 constitution’s validity because the convention proclaimed the constitution law instead of allowing the voters of the state to decide the issue. *Taylor v. Commonwealth* involved a black man convicted of “house-breaking with intent to commit larceny.” Again Attorney-General Anderson led the defense for the Commonwealth, only this time he was assisted by Staunton lawyer and outspoken delegate to the 1901-1902 convention A.C. Braxton.¹⁰⁸

The plaintiff in the case argued that because the 1902 Constitution had been proclaimed and not approved by the voters of Virginia, the 1870 Constitution was the state’s only valid constitution. Hence, the plaintiff believed he was entitled to a “speedy trial by an impartial jury” as provided by Article I, section 10 of the 1870 Constitution. Instead, the circuit court in Augusta tried and sentenced him “without the intervention of

¹⁰⁶ “The Constitution Forever!” *Richmond Times-Dispatch*, April 26, 1904.

¹⁰⁷ Nancy Cohen, *The Reconstruction of American Liberalism, 1865-1914* (Chapel Hill: University of North Carolina Press, 2002), 219-220.

¹⁰⁸ *Taylor v. Commonwealth* 101 Va. 829 (1904).

a jury” as provided by Article I, section 8 of the 1902 Constitution. So, the plaintiff believed that because the 1902 constitution had “never been legally modified or repealed,” the court should dismiss his case.¹⁰⁹

The court, however, disagreed with the plaintiff. Speaking for the court, Judge Harrison argued that all branches of Virginia’s government—executive, legislative, and judicial—validated the 1902 Constitution when they respectively agreed to adopt and uphold the document. Furthermore, “the people” also validated the 1902 Constitution when they registered “as voters under it to the extent of thousands throughout the State, and by voting, under its provisions, at a general election for their representatives in the Congress of the United States.” The 1902 Constitution, “having been acknowledged and accepted” by the state’s officers and by “the people of the State,” remained “the only rightful, valid, and existing Constitution of this State.” The court then demanded that “all the citizens of Virginia owe their obedience and loyal allegiance” to it.¹¹⁰

Even though the Virginia Supreme Court affirmed the Augusta circuit court decision in *Taylor v. Commonwealth*, Judge Harrison did not want “to be understood as acquiescing in the contention of the prisoner that the convention of 1901-‘2 was without power to promulgate the Constitution it ordained.” To avoid a discussion of the issue, the court explained that their library was “not sufficient” to allow them to “properly investigate...the question.” More importantly, Harrison argued that if the court found that the convention “was without power to promulgate the Constitution,” it would not change the fact that the 1902 Constitution had been adopted by the state’s government and the “people of the State.” While the court seemed to leave some room for debate, it

¹⁰⁹ *Taylor v. Commonwealth*, 830.

¹¹⁰ *Ibid.*, 831.

nevertheless concluded that “the Constitution of 1902 [had] become the fundamental law of the State.”¹¹¹

The judicial challenges made against the validity of the 1902 Constitution failed to undermine the document’s authority in the eyes of the state’s Supreme Court and the United States Supreme Court. As *Jones v. Commonwealth* and *Taylor v. Commonwealth* show, state and national courts were reluctant to undermine the authority of the 1901-1902 constitutional convention because the state and its people, directly and indirectly, validated and accepted the 1902 Constitution. Nevertheless, the cases exemplify the steadfast perseverance that black Virginians and others deemed “non-white” exhibited in the struggle against prejudice in the law. These challenges and the threat of other challenges to white supremacy by “colored” people spurred white Virginians to repeatedly enact measures that asserted their rightful domination.

Progressivism, Eugenics, and Racial Identity in Virginia

The power that racial identities and ideologies had to alter constitutionalism emerged in the early twentieth century with the rise of eugenics and scientific racism in Virginia. Under the guise of these ideological strains, Virginia political leaders passed legislation designed to “purify” the white population of Virginia, separate the races geographically, and promote a paternal constitutionalism in which disfranchisement and segregation were progressive measures for the good of the Commonwealth. The rise of eugenics science and ideology as depicted in the law reveals a heightened sense of racial

¹¹¹ *Taylor v. Commonwealth*, 832.

awareness on the part of whites, and an attempt to refine and strengthen their hold on racial supremacy.

Progressivism in Virginia included not only a promotion of industrialism and business expansion, it also promoted a paternalistic social reform embodied in “strong, able-bodied” political and social leaders who made decisions for the good of their constituents. Progressive reform, then, took shape in strong, centralized government and state intervention.

Exclusively white, these paternalists in Virginia saw themselves as the champions of the glory of “Old Virginia” and the guardians of social and cultural morality. Of course, this morality hinged upon the establishment of “proper” race relations that kept the white population “pure” through segregation. Virginia’s progressives embodied a paternalistic view of race relations, a view that embraced white superiority as the bulwark of civilization.¹¹²

Progressivism, like white supremacy, also had a “reactionary impulse.” The “progressive impulse” in Virginia reacted against the growth of popular democracy from the work of the Readjusters and Populists in the late 1870’s and 1880’s. Along with the paternalistic view of the future came a reactionary infatuation with the past in the form of traditionalism. In the 1890’s, Virginia traditionalists reacted to the social “turmoil” with acts and ordinances that reestablished control over popular democracy.¹¹³

Numerous acts and ordinances that pertain to Confederate celebrations and commemorations show the increased attention to and elaboration of traditionalism in

¹¹² Charles Wynes, *Race Relations in Virginia, 1870-1902* (Totowa, N.J.: Rowman and Littlefield, 1971), 146-7.

¹¹³ Raymond H. Pulley, *Old Virginia Restored: An Interpretation of the Progressive Impulse, 1870-1930* (Charlottesville: University Press of Virginia, 1968), 92-3.

Virginia. Between 1890 and 1927 the General Assembly passed over one hundred acts that pertained to Confederate remembrances and provided funding to confederate veterans and their widows. Newspapers throughout the state also featured “Confederate columns” that discussed reunions and romanticized Civil War battles.

The emergence of traditionalism in Virginia, however, contained new, science-oriented elements: Eugenics and social Darwinism. Part of the larger social Darwinist ideology that swept through much of Europe and the United States, eugenicists pushed for racial segregation through law. While Virginia was not the first state to implement eugenics-inspired laws, it became a leader of forced sterilization, imprisonment, and segregation all in the name of public morality and health. Eugenics and social Darwinism played a small but integral part in the 1901-2 constitutional convention in Virginia, they became pivotal ideological standpoints in Virginia politics and law for much of the twentieth century.

Infatuation with racial purity only increased after the passage of the 1902 constitution. A gradual but deliberate increase in segregation law and a refinement in the specificity of that segregation in terms of racial classification and special separation took place with unprecedented vigor. White political leaders in Virginia began to devise ways to separate public space in order to maintain the “health” and “morals” of the public.

Before the creation of the 1902 Constitution, the General Assembly approved an act that required “railroad companies to provide separate cars for white and colored passengers.” The act, passed January 30, 1900, maintained that the each car or portion of a car should post “appropriate words in plain letters indicating the race for which it is set apart.” The act protected conductors and managers from court damages but threatened

fines and jail time to those conductors and managers who did not enforce the provisions of the act.¹¹⁴

On February 9 the General Assembly extended segregation to steamboats. The Virginia legislature required that captains or other “[officers] in command” of any boat in Virginia’s jurisdiction provide separate accommodations, “as far as the construction of his boat and due consideration for the comfort of the passengers will permit” for “white and colored passengers.” The act punished passengers who refused to occupy their designated location with a fine between five and fifty dollars and confinement in jail “not less than thirty days.” On February 26 the assembly altered the length of jail time for “disruptive passengers” to “not less than one month nor more than six months.”¹¹⁵

The next year, the General Assembly revised the 1900 acts. On February 15, 1901, the General Assembly revised the January 30, 1901 act that pertained to railroad segregation. Trains that did “no local business” were exempt from the act’s segregation policy, as well as railroad employees, nurses, “officers in charge of prisoners,” and the prisoners themselves were exempt from the act’s segregation policy. Interestingly, the act does not state in which segregated car the officers and their prisoners, if they were different races, should occupy.¹¹⁶

On February 16, 1901, the Assembly revised the February 9, 1900 act and omitted only the statement that boat officials segregate as far as the “construction of the boat” and the passengers’ comfort would allow. Apparently, the General Assembly no longer felt

¹¹⁴ General Assembly, *Acts and Joint Resolutions*, 1900, ch. 226.

¹¹⁵ *Ibid.*, ch. 312, 551.

¹¹⁶ General Assembly, *Acts and Joint Resolutions*, 1901, ch. 169.

that “the comfort of passengers” nor the dimensions of the boat should hinder the proper segregation of whites and blacks.¹¹⁷

In 1904, the Assembly passed an act that empowered “any corporation, its agents, conductors, or employees” that operated “sleeping, dining, palace, or compartment cars” in Virginia to “reject and refuse admittance to any and all persons” at their discretion. In 1910 the General Assembly passed an act “to promote order and the comfort of passengers” on public transportation and “at the stopping places of carriers of passengers.” This act threatened persons who failed to “take and occupy the seat or seats or other space assigned to them by the conductor, manager or other person in charge” with a fine of “not less than five nor more than twenty-five dollars for each offense.” The act gave discretion to conductors to assign separate space for “white and colored passengers” and protected conductors from arrest in the performance of their duties.¹¹⁸

One of the more interesting acts passed in Virginia was the 1912 act that enabled city officials to create “segregation districts” within their respective city’s boundaries. Using eugenicist rhetoric, the act proclaimed that because “the preservation of the public morals, public health, and public order...is endangered by the residence of white and colored people in close proximity to one another,” city officials could separate races geographically through the designation of white and colored districts. So, the act called for the partitioning of the city into “segregation districts,” with the rule that “no such district shall comprise less than the entire property fronting on any street or alley, and

¹¹⁷ General Assembly, *Acts and Joint Resolutions*, 1901, ch. 300.

¹¹⁸ General Assembly, *Acts and Joint Resolutions*, 1910, ch. 337.

lying between any two adjacent streets or alleys, or between any street and an alley next adjacent thereto.”¹¹⁹

The act instructed city council members to designate a “white district” as an area where more whites than non-whites lived, and a “colored district” where “there are as many or more residents of the colored race, as there are residents of the white race.” Again, white in this clause represents a privileged position, one that must be protected at any cost. While an area with a clear majority of whites was designated a “white district,” an area where the white population was either equal to or less than the black population was deemed a “colored district.” According to the language in this act, whites must be a majority in order to ensure their superiority; equality, even in numbers, became unacceptable.¹²⁰

The 1912 urban segregation act revealed striking characteristics of Virginia’s constitutionalism. Clause 11 of the act stated that only a “recorded majority” of city council members could enforce the acts provisions within their respective city limits. Local government took responsibility for the “public morals, public health, and public order” of the city, all of which hinged upon the written and unwritten code of conduct between “white and colored people.” The state now defined and controlled the parameters of health and morality for society through racial definitions.¹²¹

The most famous of Virginia’s acts on race is the Racial Integrity Act of 1924. Approved March 20, 1924, the “act to preserve racial integrity” called for the registration of all individuals in the state to order to ascertain and record their “racial composition.”

¹¹⁹ General Assembly, *Acts and Joint Resolutions*, 1912, ch. 221.

¹²⁰ Ibid..

¹²¹ Ibid.; Jack Temple Kirby, *Darkness at the Dawning: Race and Reform in the Progressive South* (Philadelphia: J.B. Lippincott Company, 1972), 24-5.

The act gave enormous power to state and local registrars, whose job was to list and certify the racial heritages of individuals. Registration certificates became important documents when a person applied for birth and death certificates and marriage licenses, and for school attendance and the general need to prove oneself a certain race in certain social situations such as on trains and in theaters.¹²²

Among the vital statistics registrars in Virginia was the head of the Bureau of Vital Statistics, Dr. Walter A. Plecker. Plecker served at the head of the Bureau between 1914 and 1926, and during that time he embarked upon a fierce campaign for racial purity. Plecker and his colleagues in the Anglo-Saxon Clubs, including John Powell, sponsored the Racial Integrity Act and pushed for its implementation. The Racial Integrity Act influenced many aspects of Virginia society and culture, including marriage, education, and social standing.¹²³

The most intriguing part of the Racial Integrity Act was its references to “pure white race.” This act redefined a “white person” as one who has “no trace whatsoever of any blood other than Caucasian,” and refined a 1910 act that defined a “colored person” as having “one-sixteenth or more of negro blood” and an Indian as “having one-fourth or more of Indian blood.” However, those whites who proudly proclaimed Pocahontas as a relative won, after fervent petitions, a clause in the act which gave white status to those with “one-sixteenth or less of the blood of the American Indian” so long as there was no trace of blood from any other “non-Caucasic” race.¹²⁴

¹²² General Assembly, *Acts and Joint Resolutions*, 1924, ch. 371.

¹²³ J. Douglas Smith, “Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922-1930: ‘Nominally White, Biologically Mixed, and Legally Negro’,” *Journal of Southern History* 68 (February 2002): 65-106.

¹²⁴ General Assembly, *Acts and Joint Resolutions*, 1924, ch. 371.

Specifically, the act emphasized a distinct and explicit difference between “Caucasic” and “non-Caucasic” races. The act called for the registration of a person’s “racial composition” as either “Caucasian, Negro, Mongolian, American Indian, Asiatic Indian, Malay, or any mixture thereof, or any other non-Caucasic strains[.]” The addition of “non-Caucasic” reveals that the chief purpose of the act was to define whites and non-whites, and any other “strain” other than Caucasian was considered non-white.¹²⁵

In addition, the act specified that the city or county clerks had the power to “withhold” a marriage license if “reasonable cause to disbelieve that the applicants [were] of pure white race” if the one of the applicants claimed to be white but appeared to be non-white. Thus it became even more important that applicants prove themselves to be white as Virginia’s government became increasingly obsessed with white purity. While the act also advised clerks to “use the same care” when they determined that both applicants were “colored”, it does not explicitly iterate the various other “non-Caucasic” races. Lumping all of these races into “colored”, the act merely sought to protect the purity and sanctity of the white race. The act only made unlawful marriages between whites and non-whites, not explicitly among the varieties of non-whites that the act listed in its first paragraph. This distinction clearly shows that while Virginia followed the scientific scrutiny of race-specific eugenics, the act ultimate goal was the protection and continuation of the “pure white race.”¹²⁶

On March 22, 1926 the Virginia legislature extended segregation from modes of transportation to any public places where whites and blacks met. In all places of “public entertainment or public assemblage,” including opera houses, theatres, and movie shows,

¹²⁵ General Assembly, *Acts and Joint Resolutions*, 1924, ch. 371.

¹²⁶ *Ibid.*

managers had to designate spaces to separate whites and blacks. The act shows that public space had become more and more integrated, to the apparent discomfort of whites, and included much more than trains and steamboats. To enforce the provisions in the act, the legislature fined those in charge of “places of public entertainment and public assemblages” between \$100 and \$500 for each offense. People who refused to occupy their racially-designated seat or area were fine no less than \$10 and no more than \$25 for each offense. Thus, the act put more pressure on persons in charge of segregating public places and less on those who occupied the public spaces.¹²⁷

As the statutes between 1900 and 1926 reveal, Virginia could no longer define only a “colored person”; now, with a heightened sense of racial awareness combined with the ideology of white purity from eugenics science, Virginia law now had to explicitly define who was white, and who was not. The alteration, though on the surface a semiotic one, shows that while whiteness in Virginia took on a heightened importance it also existed in a reactionary and unnatural position. While whiteness gained privilege as racial classification through law, it lost power as an invisible cultural ideology and a source of natural political and social dominance.

The Anglo-Saxon Clubs of America: The Epitome of the Visibility of Whiteness

Eugenics and social Darwinism shaped the rise of a culture of race-oriented social activity in Virginia with the formation of the Anglo-Saxon Clubs of America.

Headquartered in Richmond, the Anglo-Saxon Clubs worked at local, state, and national

¹²⁷ General Assembly, *Acts and Joint Resolutions*, 1926, ch. 569. See also Grace Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Vintage, 1998).

levels to ensure that whites understood and expressed their “natural” and “rightful” superiority over all other races. Unlike the Ku Klux Klan, the Anglo-Saxon Clubs were not secret societies; they prided themselves on their openness.

Delegates to the 1901-2 convention held social and cultural views in line with eugenics and social Darwinism. Convention members spoke of the “purity” of the white race and the need to reinstate the “natural” and “rightful” superiority of the white race for the good of the Commonwealth. Some delegates, including A.C. Braxton, ordered copies of Darwin’s *Origin of Species* in preparation for the convention.¹²⁸

Post No. 1 of the Anglo-Saxon Clubs formed in September, 1922 under the leadership of John Powell and Ernest Sevier Cox of Richmond. In less than a year, the club expanded throughout the state and boasted over four hundred members in Richmond. While other scholars have claimed that the energy of the Anglo-Saxon Clubs originated from the leadership of the organization, J. Douglas Smith argues that the views of the Clubs “resonated with a much broader swath of the white population.” Thus, the Anglo-Saxon Clubs embodied the feelings and identities of a majority of white Virginians anxious about unstable race relations.¹²⁹

The Anglo-Saxon Clubs dedicated themselves to “the preservation and maintenance of Anglo-Saxon ideals and civilization.” A 1923 article in the Richmond *Times-Dispatch* entitled “Is White America to Become a Negroid Nation?” outlines the principles of Powell, Cox, and other Anglo-Saxon Club members. Possibly the most widely-cited publication that outlined the Anglo-Saxon Clubs’ ideals, the lengthy article

¹²⁸ Dailey, *Before Jim Crow*, 164.

¹²⁹ J. Douglas Smith, “Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922-1930,” 66; J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* (Chapel Hill: University of North Carolina Press, 2002).

provides an excellent source to discern not only the principles of the Anglo-Saxon Clubs, but also the anxiety and instability that Powell and other white supremacists experiences in the early twentieth century regarding the “proper” establishment of race relations. The article, written by John Powell and Ernest Cox supported what would become the 1924 Racial Integrity Act.¹³⁰

The first part of the article, authored by John Powell, stressed that white Virginians needed to act quickly to ensure that America did not become a “Negroid nation.” The Anglo-Saxon Clubs, argued Powell, represented “a serious movement” that faced “frankly and courageously, without regard to considerations of political opportunism, the fundamental issues of the Negro problem.” Powell then outlined a petition to the General Assembly that demanded action on the “Negro problem” and its threat against “the racial integrity of the Caucasian.” Among the facets of the petition was a plea for “a system of registration and birth certificates showing the racial composition (white, black, brown, yellow, and red) of every resident of this state.” The petition also demanded that “white persons may marry only whites” and that the state should issue marriage licenses only after presentation of authentic and valid race registration.¹³¹

Powell distanced himself from “political opportunism” throughout the article. While previous race legislation, “as necessary and beneficial as it has been in maintaining white ascendance and Anglo-Saxon civilization,” addressed only political “carpet-bagger” policies, Powell’s legislative agenda “offer[ed] fundamental and final solutions of race problems.” Powell maintained that “the Negro was not to blame” for “his

¹³⁰ John Powell, “Is White America to Become a Negroid Nation?” *Richmond Times-Dispatch*, July 22, 1923, p. 2.

¹³¹ *Ibid.*

inferiority,” and that the preservation of Anglo-Saxon civilization was essential to “guarantee [blacks] decent and fair treatment in any part of the world.”¹³²

“The color line,” argued Powell, “must be made absolute.” A person for Powell could only be “white” if he or she had “no trace whatsoever of any blood other than Caucasian.” While Powell admitted that the outlawing of interracial marriage would not “prevent extra-marital interbreeding,” the law would “regard amalgamation sufficiently to insure the possibility, if not the probability, of achieving a final solution.” “It will at least enable us to know with approximate certainty who is and who is not tainted,” concluded Powell.¹³³

Powell’s tract reads as a warning of paranoia about the “hidden Negroes” who easily pass as “white” by the color of their skin, facial features, and mannerisms. Nevertheless, Powell stressed, Virginia must reveal these “slightly Negroid persons” for the good of society and Anglo-Saxon purity. Thus, as Powell argued, the Anglo-Saxon Clubs intended “to arouse, to waken, the mind and conscience of our people,” and to strengthen “Anglo-Saxon instincts, traditions, and principles.”¹³⁴

As for the definition of “Anglo-Saxon,” Powell claimed to use the term not in a “narrow racial sense” but in a “cultural sense.” Interestingly, Anglo-Saxon “had no right to exist” according to Powell, but he maintained that “there [was] no doubt in the mind of any as to the meaning of the words ‘Anglo-Saxon Civilization’.” So, Anglo-Saxon civilization involved much more than racial classification; it included sound government, civic duty, and social caste and customs.¹³⁵

¹³² Powell, “Is White American to Become a Negroid Nation?” p. 2.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

Nevertheless, Powell stressed that Anglo-Saxon civilization could only persevere through “a pure white race.” As the article shows, Powell used eugenicist arguments in order to give his prejudices a respectable, scientific foundation. Powell made a case against interracial unions on the grounds that white civilization would dwindle on the grounds that “the more primitive, the less highly specialized, variety always dominates.” The article adhered to current ideas about the hierarchy of races, which placed the Anglo-Saxon race (and thus its civilization) at the top of the hierarchy. As expected, the black or “Negroid” race was near the bottom, right above Paleolithic humans.¹³⁶

Powell also traveled extensively to collect Anglo-Saxon folksongs in an effort to find a truly American style of music. An accomplished pianist, Powell composed several publications that discussed the importance of music in the establishment of Anglo-Saxon culture and civilization in the United States. In an article entitled “Music and the Nation,” Powell argued that American should avoid mixing races for the sake of their own culture and civilization:

Everyone knows that if he wished to breed thorough-bred horses he cannot mix inferior breeds into the stock. The same applies to flowers, to garden vegetables. How dare we sit still and let happen to our children--bone of our bone, blood of our blood--that which we would not allow to happen to the very beasts of the field. I wish here and now to enter my protest against this insidious, this hideous doctrine with every drop of blood in my veins and every ounce of vigor in my body.¹³⁷

An article with a seemingly simple title turned out to be a rhetorical plea to save the culture of the white race and an effort to make every part of that culture, including musical prowess and style, a valid issue through which Powell could indoctrinate his readers with the principles of Anglo-Saxon pride.

¹³⁶ Powell, “Is White American to Become a Negroid Nation?” p. 2.

¹³⁷ John Powell, “Music and the Nation,” *The Rice Institute Pamphlet*, 10, no. 3 (July 1923), 132.

Culturally, however, the fact that a group of white Virginians felt compelled to form a social club in the interest of Anglo-Saxon pride shows that white Virginians' certainty about their superiority wavered. Despite the proclamation of the 1902 state constitution, political leaders and private citizens in Virginia felt it necessary to separate whites and blacks in public and private spaces and elaborate upon definitions of respective races. As passage of segregation acts continued and white political leaders broadened their discussion of racial identity, white Virginians made their racial identities visible and revealed their lack of certainty, confidence, and security in society.

In *Managing White Supremacy*, J. Douglas Smith argues that white elites in early twentieth century Virginia had a difficult time “managing” race relations in the Old Dominion. The elites employed several tactics to manage their racial domination over black Virginians, but nevertheless felt that their authority had eroded after the First World War. Smith’s insightful volume reveals that whites lacked confidence in their supremacy and sought to reestablish it, or “manage” it, through legislation.¹³⁸

The very idea that whites “managed” instead of established or declared white supremacy reveals a great deal about the malleability and instability of race relations in Virginia and the rest of the nation. While Smith argues that this crisis of white authority occurred rapidly after 1919, I argue that white authority in Virginia had never been fully stable, and became more unstable shortly after the Civil War with the 1870 state constitution and the Thirteenth, Fourteenth, and Fifteenth Amendments to the federal constitution. The emergence of an entirely new population of citizens--in this case black

¹³⁸ J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* (Chapel Hill: University of North Carolina Press, 2002), 3-5, 9.

Virginians- altered the constitutional and cultural ideas of citizenship that had previously taken precedent in American history.¹³⁹

Thus, while Samuel N. Pincus argues that the 1902 Constitution ended the “era of racial uncertainty” when it removed blacks from politics the increasing passage and modification of race-based legislation suggests otherwise. As the refinement of racial definitions and designation of race-specific public space reveals, whites did not “have definite ideas” about race and race relations. Even after the passage of the 1902 constitution, political leaders in Virginia worked diligently to ensure white dominance in nearly every aspect of social, political, and economic life.¹⁴⁰

Charles Wynes best explained why after countless laws and constitutional revisions white leaders strove to establish white supremacy when he stated that black Virginians “real significance...lay more in [their] potential for action” than action itself. “[Their] wishes were rarely consulted or heeded,” Wynes continued, but their “presence could never be ignored.”¹⁴¹ White Virginians feared the equality of blacks in their society whether they took action or not. Their existence as constitutional equals undermined the very fabric of whites’ racial identities as white.

As numerous whiteness studies scholars have asserted, white racial identity rests on the dichotomy between the “privileged” and “natural” white identity and the “unprivileged” and “unnatural” non-white identity. The term “non-white” here is

¹³⁹ Wynes, 1-3.

¹⁴⁰ Samuel N. Pincus, *The Virginia Supreme Court, Blacks, and the Law, 1870-1902* (New York: Garland Publishing, Inc., 1990), 15.

¹⁴¹ Wynes, 1.

essential, for it exemplifies the inclusive/exclusive relationship upon which whiteness rests. A person is either “white” or not white.¹⁴²

All of the acts examined above exhibit this division. Whiteness became the top priority of nearly every act and ordinance in Virginia in the early twentieth century. The 1924 Racial Integrity Act defined a white person for the first time in Virginia history, and the other acts that pertained to railroad segregation and urban segregation made it important to identify the racial identity of individuals to establish public order and harmony. The identification of an individual’s racial identity, and the establishment of public order through segregation, relied upon a white/non-white division. The protection of the white race, whether on a train, in a street car, or in school or marriage, became the chief purpose of Virginia’s constitutionalism.

Culturally, Virginians mixed an emotional attachment to the past with a scientific view of the future. The traditionalism that characterized the desires of whites for subservience of blacks in social and political situations combined with the scientific tenets of Social Darwinism to form a convincing but reactionary cultural web that shaped the views of many white Virginians. The emergence of the Anglo-Saxon Clubs of America marked the culmination of these two views.

Between 1902 and 1927 Virginia law redefined and refined definitions of identity and contexts of proper etiquette in regards to race. While political leaders claimed that the 1902 Constitution would alleviate the problems of race relations in Virginia and give white Virginia its rightful and proper authority, the continuation and refinement of

¹⁴² For discussion of whiteness and racial identity, see Grace Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Vintage, 2000); Joel Williamson, *The Crucible of Race: Black White Race Relations in the American South Since Emancipation* (New York: Oxford University Press, 1984); Daily, *Before Jim Crow*.

segregation laws and racial definitions speaks to the contrary. White Virginians never felt secure in their superiority, and strove continuously to assert it through law and social contexts. The growth of the Anglo-Saxon Clubs, a group that used the rhetoric of eugenics to promote the “strength and traditions” of Anglo-Saxon civilization, corresponded with a decrease in the confidence of white Virginians to tell who was white and who was not. Whiteness continued to become visible, which marked the continued decline in the certainty of its privileged position.

Conclusion

The Position of the Virginia Constitution of 1902 in History and Culture

At the end of her book *Making Whiteness*, historian Grace Hale asks, “Would America be American without its white people?”¹⁴³ As a small attempt to answer that question, this thesis examines what Virginia was like *because of* its white people between 1879 and 1928. Virginia, because of its white people, was a state obsessed with race, to the point of paranoia. The regime that defined racial identity became more and more focused to create a pure white race at any expense.

The need to make white supremacy a legitimate, constitutional fact characterizes Virginia’s history after the Civil War. While the contexts of this need show how powerful racial ideology was to white Virginians, they also show how fluid and uncertain those ideologies had become. Because white Virginians had to reiterate their claim to superiority and reaffirm their white identities, and especially because white Virginians had to establish a new state constitution in an effort to reestablish their racial superiority, they also expose their insecurity in dealing with drastically altered race relations. The visibility of whiteness, as seen through the reiteration of white supremacist rhetoric in late-nineteenth and early twentieth century Virginia, shows that the racial order that prevailed before emancipation had quickly and radically altered.

The visibility of whiteness becomes more apparent immediately after the Civil War. White Virginians after the war continuously reasserted their white supremacy ideology through legislation in an attempt to reestablish the social system that existed

¹⁴³ Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890-1940* (New York: Vintage, 1998), 296.

prior to emancipation. In a graduate but nonetheless focused process, white Virginians elaborated in law their position as the rightful dominant race. Whites continued to make whiteness a legal privilege well into the twentieth century.

The Readjuster party relied upon an ideology that separated public and private spheres and gave each sphere deliberate racial values. This separation, however, was never sharp and distinct. Essentially, white Virginians, however unwillingly, gave blacks political equality but balked at the idea of full social equality. The defeat of the Readjuster party was in no small part due to the weakness of their separation between public and private spheres, which Democrats criticized because public, political life could not be separated from private, social life when it came to race relations. By allowing blacks to freely participate in political life, and by giving blacks rights in the public sphere, Democrats argued that those same rights could not be adequately limited in the private sphere. This posed a threat to the “civilized” white lifestyle by allowing interracial marriage, co-education between blacks and whites, and by blurring the lines between public and private life. White Virginians after the defeat of the Readjusters sought to establish those lines more permanently, but found it increasingly difficult to do so.

To counter the threat, whites created a new state constitution. Debates in the Constitutional Convention of 1901-1902 reveals that white Virginians wished to create a constitution that guaranteed racial superiority for whites. Delegates implemented several ways to eliminate African-American voters in the state, including poll taxes and an understanding clause that left power and discretion to election officials to enforce its provisions. More than this, the constitutional convention sought to reestablish the

supremacy of the white race, as a race, on the grounds that its was a natural, preordained result of their racial makeup.

The 1902 Constitution, however, was not enough for white Virginians to feel secure about their racial superiority. After 1902, white political and social leaders began an intense campaign for racial separation and racial purity. Laws that segregated residential areas, transportation, and business combined with laws that banned school integration and interracial marriage intensified in the early twentieth century. The definitions of race became more nuanced and specific in an attempt to hunt down anyone that tried to pass as a pure white individual. In the name of science and morality, whites in Virginia expanded and perpetuated their strict racial categorization in order to reaffirm what they saw as their natural, rightful superiority as white people.

The Virginia Constitution of 1902 and the laws, acts, and measures that help form Virginia's constitutionalism stand as a reminder of how radically the social order regarding race had changed in relatively short time after the Civil War. Emancipation created a new group of citizens, and the federal Constitution guaranteed their status as citizens by prohibiting slavery and ensuring that the suffrage would not be denied based on "race, color, or previous condition of servitude." The fourteenth amendment, addressed directly to the individual states, barred the states from encroaching upon the rights of individual citizens of the United States. Nevertheless, Virginia's white political leaders continually hindered or violated those rights by using racially-motivated reasons, all in the name of white supremacy and purity.

Grace Hale concludes that America would not be American without its white people; "It would be something better," she concludes, but we postpone it by "calling it a

dream.”¹⁴⁴ Racial identity, not only in Virginia between 1870 and 1926 but everywhere else in the world, is the creation of society. It is not a natural, biological fact but a social construct that has been used. To fulfill the dream to which Hale refers, we need to closely examine the developments and uses of race and racism in our history and see that race is not a concrete fact, but a historical and cultural development. From this, we can more clearly and deliberately discuss how to change our reliance on race to understand our world.

¹⁴⁴ Hale, 296.

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