

Virginia's 1902 Constitution: The era of disenfranchisement

By A.E. Dick Howard

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Editor's note: Next year marks the 50th anniversary of the current Virginia Constitution, which went into effect in 1971. A.E. Dick Howard, the Warner-Booker Distinguished Professor of Law at University of Virginia School of Law, led the revision of the modern-day Constitution. It largely repudiated the white supremacy legacy of the 1902 state Constitution.

In 1968, Gov. Mills E. Godwin Jr. appointed a Commission on Constitutional Revision. Howard served as the commission's executive director, and then was counsel to the General Assembly when it reviewed the commission's report. The proposed constitution went before Virginia voters in 1970, and Howard directed the successful referendum campaign. He also is the author of the two-volume "Commentaries on the Constitution of Virginia."

This is the first of a two-part series about the development of the 1971 Constitution. The next installment will be published on Sun., Dec. 27.

When the delegates to Virginia's constitutional convention gathered in Richmond in 1901, hatred for everything that Reconstruction had accomplished permeated the debates.

As a price of readmission to the Union after the Civil War, the former Confederate states had been obliged to write new, progressive state constitutions. In Virginia, that was the 1870 Underwood Constitution (named for its president, John C. Underwood, a federal judge despised by conservative Virginians).

A delegate at the 1901-02 convention denounced the 1870 Constitution as "the blackest page in the history of this State." Its provisions, he maintained, "have held in subjection...a race of men whose forebears fashioned this nation."

The 1901-02 delegates knew what they wanted: white supremacy. As one delegate proclaimed, to great applause, "I want it distinctly understood that I am a white man and propose to represent white interests."

Another delegate was equally explicit: He sought “at any cost, to secure white supremacy” in Virginia and every one of its cities and counties. Being white was being destined to rule. “It is by way of intellectual superiority,” he said, “that the Anglo-Saxon claims the right of government.”

The 1870 Constitution had enfranchised former slaves and other Black Virginians. The delegates in 1901-02 were determined to undo that accomplishment. One delegate declared, “Thousands of people in the State would never have voted for the Convention had they not believed by doing so, the negro would be eliminated as an element in our state politics.” Another delegate agreed: “I assert that the horror of negro suffrage has brought shame upon the white people of Virginia.”

Taking broader aim, some delegates deplored giving the franchise to lower classes of people, including whites. One delegate spoke out against “hordes of ignorant and worthless men marching to the polls.” A colleague was of like mind: “I contend that the respectable element of a community has the right to vote.” He refused to “turn my people over to a rabble.”

What place did Blacks have in Virginia? On the land, of course. “There is but one spot in Virginia where the negro can make himself useful and not come into conflict with the superior race,” declared one delegate. “That spot is in the corn field and on the tobacco ground as an agricultural laborer.”

Some delegates looked back with nostalgia on the benign effects of slavery. As one declared, “When the restraining hand of the white race was taken from the slave, when he missed the intimate association between slave and master, he degenerated.”

History and theology were invoked to justify Black subjection. In his opening speech to the convention, the presiding officer declared that “ever since the dawn of history...the black man has occupied a position of inferiority.”

It was, many in the hall believed, God’s plan for the races. Virginians could not preserve their civilization, urged one delegate, if they ignored “this great Black problem which has dragged down everything it has touched since the curse of Ham was pronounced by the Almighty.”

Not only should Black Virginians not be entrusted with the ballot, many delegates thought education was wasted on Blacks. One delegate was categorical: “The Black man is absolutely incapable of cultivation or useful advancement.” A colleague painted a bleak picture of the evils of teaching Black children to read: “For every one that will read

the Bible, there are ten who will read Jesse James, and Billie the Kid, and Uncle Tom's Cabin."

Higher education was even more inconceivable. "What is your educated negro to do in Virginia?" a delegate asked. "Is he to practice law? Is he going to practice medicine?" Advanced education would "bring him into immediate conflict with the superior race."

The men at the 1901-02 convention were there, of course, to write a constitution. They had ample precedents at hand. Reconstruction had come to an end in 1877 when the last federal troops left the South. "Redeemed" governments had then wrested control of Southern states' governments from "carpetbaggers" who had been empowered by radical Republicans in Congress.

The Redeemers could not bring back slavery as such — the 13th Amendment stood in the way of that — but they could set out to restore white supremacy. Mississippi led the way. Its 1890 Constitution was followed by like constitutions in other Southern states, including Virginia. These constitutions used a variety of devices to achieve disenfranchisement of Blacks: the poll tax, literacy tests, understanding clauses and grandfather clauses.

But what of the United States Supreme Court? Surely it would not stand idle while the former Confederate states negated one of the prime accomplishments of the Reconstruction amendments to the Constitution? Well, it did.

In *Williams vs. Mississippi* (1898), the Supreme Court rejected a challenge to Mississippi's 1890 Constitution. Justice Joseph McKenna, writing for a unanimous Court, ruled that Mississippi's Constitution was neutral on its face; it did not matter that those who administered the state's laws might use them to discriminate.

That decision gave a green light to the delegates in Richmond. Small wonder that a leading member of the 1901-02 convention was able to declare that the meeting's "primary purpose" was "to eliminate every negro of whom we could be rid without running counter to the prohibition of the Federal Constitution."

The convention made sure that the path to registration would not be easy. Property owners and those who had served in either the United States or Confederate army or navy (and their sons) were entitled to register to vote. Otherwise, an applicant must be able to read any section of the Constitution submitted to him by the registration officials and to give "a reasonable explanation" of that section. Given the various impediments

(including the poll tax), a delegate at the convention predicted, with obvious confidence, that the obstacles “will be too great for the negro.”

That prediction proved accurate. In 1867, almost half the registered voters (more than 100,000) had been Black. After 1902, there were 21,000 — 4.7% of all registered voters. Poor whites were kept away from the polls as well. It was 1928 before as many Virginians voted as had voted in 1898, even though the state’s population had doubled and women had been admitted to the franchise.

Virginia lived under the shadow of the 1902 Constitution for the next half-century. The 1960s saw momentous changes, both because of federal mandates (one person, one vote; end of the poll tax; the Voting Rights Act of 1965) and within Virginia itself (demographic trends, rise of two-party politics).

In 1968, Gov. Mills E. Godwin Jr. appointed a commission to revise the commonwealth’s constitution. The new constitution took effect on July 1, 1971.

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