

**“Let the World Know What We Have Suffered:”  
Black Testimony at Virginia’s 1867–1868 Constitutional Convention**

Kathryn R. Patterson  
Charlottesville, Virginia

BS, Abraham Baldwin Agricultural University, 2020  
MA, Florida State University, 2023

A Master’s Thesis presented to the Graduate Faculty of the University of Virginia  
in Candidacy for the Degree of Master of Arts

Corcoran Department of History

University of Virginia  
May 2025

“The right to testify is not abstract and fanciful, but real and practical, and its deprivation must have a remedy[.]”<sup>1</sup>

– Colored Monitor Union Club, Norfolk Va., 1865

“My people seems to have been possessed of a natural etching to meet, in open debate[.]”<sup>2</sup>

– George Teamoh, *God Made Man, Man Made the Slave*

On Tuesday, January 21, 1868, delegates to Virginia’s Constitutional Convention assembled for their thirty-first session in the chamber of the House of Delegates in Richmond. To Willis Augustus Hodges, a Black delegate born in 1815 to free parents on a 200-acre farm in Princess Anne County, the convention offered more than an opportunity to draft a new state constitution.<sup>3</sup> It afforded Black delegates an unprecedented moment to define and defend their newly established freedom. “We are not here now as slaves,” Hodges declared, “but we are here as free American citizens.” “The work that we do here, for ourselves and our people, is to last, I think, forever. We cannot change the past,” Hodges conceded, and “that is all right. Now, it is for us to make up our grievances, and let the world know what we have suffered.”<sup>4</sup> Delegate Dr. Thomas Bayne of Norfolk concurred. He noted that Virginia’s war-torn cities were afflicted with violence even as federal troops lingered well into peacetime. Former Confederates had responded to defeat with deadly force, making such promises as to “kill one negro” for every one

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<sup>1</sup> “*Equal suffrage: address from the colored citizens of Norfolk, Va., to the people of the United States Also an account of the agitation among the colored people of Virginia for equal rights, with an appendix concerning the rights of colored witnesses before the state courts,*” <https://www.loc.gov/item/09032794/>. From the Joseph Meredith Toner Collection, and African American Pamphlet Collection, Library of Congress, Washington D.C. [hereafter cited as JMTC-LOC, Equal Suffrage Address].

<sup>2</sup> George Teamoh, F. N. Boney, Raifia Zafar and Richard L. Hume, *God Made Man, Man Made the Slave: The Autobiography of George Teamoh*, (Macon, Ga: Mercer, 1990), 118.

<sup>3</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 566. Luther Porter Jackson, *Negro Officeholders in Virginia, 1865-1895* (Norfolk, Va: Guide Quality Press, 1970). Brent Tarter with *Dictionary of Virginia Biography*, “Willis A. Hodges (1815–1890),” in *Encyclopedia Virginia*, December 7, 2020. <https://encyclopediaivirginia.org/entries/hodges-willis-a-1815-1890/>.

<sup>4</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 566.

of their men who perished on the battlefield.<sup>5</sup> Like Hodges, he saw the convention as a platform from which to testify about both the material and emotional brutality that had stained freedom. “If we can do no more,” Bayne surmised, “we can at least make our grievances known[.]”<sup>6</sup> Though not necessarily a remedy for the perilous conditions Black Virginians faced, he concluded that “the *discussion itself* will be of benefit to us, [even] if the Convention takes no immediate action.”<sup>7</sup> Bayne and Hodges were but two of the twenty-four Black delegates who recognized the hope and comfort their voices offered to Black Virginians grappling with the possibilities and limits of freedom.<sup>8</sup>

Elected in October 1867 as delegates to the Virginia constitutional convention, this assembly of Black musicians, janitors, schoolteachers, shoemakers, physicians, Union veterans, and former slaves knew well what it meant to be silenced. To deny an entire population of free people the right to be taken at their word required that ex-Rebels enact a two-front war in government records, newspapers, and at the ballot box. They used violence and withheld civil and political rights that left Black Virginians voiceless before the state. But in December 1867, a record from which white southerners could not exclude Black expression emerged.

Scholars have examined the Reconstruction conventions most often through a legal and political lens, focusing on power shifts in the federal and state government, the resolutions offered and the rights secured, or delegates’ voting patterns.<sup>9</sup> Many have interrogated Black

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<sup>5</sup> U.S. Congress, Joint Committee on Reconstruction, *Report of the Joint Committee on Reconstruction, at the first session, Thirty-ninth Congress*, 39th Cong., 1st sess., (Washington: Government Printing Office, 1866), 59.

<sup>6</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 63.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. Emphasis mine. Bayne had preached in Norfolk since he returned to Virginia after emancipation in 1863, and Hodges delivered sermons in parts of Virginia, New York, and Philadelphia over the previous twenty years.

<sup>9</sup> John G. Deal, Marianne E. Julienne, and Brent Tarter, *Justice for Ourselves: Black Virginians Claim Their Freedom After Slavery*, (Charlottesville: University of Virginia Press in association with the Library of Virginia, 2024); Paul E. Herron, *Framing the Solid South: The State Constitutional Conventions of Secession, Reconstruction, and Redemption, 1860-1902*, (Lawrence, Kansas: University Press of Kansas, 2017); Michael W Fitzgerald,

testimony during Reconstruction poring over the Joint Committee on Reconstruction interviews conducted in 1866 and the “Klan hearings” in 1871. But in doing so, they have missed a key moment of Black expression that blossomed in interregnum of 1867. A closer examination of the intimate stories and perspectives Black delegates shared at the Virginia constitutional convention of December 3, 1867–April 17, 1868, reveals much more than the education system they advocated, the property they hoped would be distributed fairly, or the suffrage they had finally won and intended to protect. Some used their positions as delegates to attest to the persistence of slavery witnessed in various mediums of “intimidation,” and to urge the delegation to promise legal protection, as no law passed would be self-executing. Black and white Virginians understood that this convention would inform the historical record, and delegates like Willis Hodges and Thomas Bayne ensured both the strife and hope that characterized Black life in bondage and as new citizens would be transcribed. Their treatment of the convention as an extension of claims-making in place of a courtroom exposed where Black delegates located freedom’s limits in their own institutional erasures.

Virginia’s constitutional convention proved an unprecedented opportunity for Black Virginians to make themselves heard. Testimony had long been embedded in African Americans’ idea of a public self-defense, and the mental triumph over narrative, character,

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*Splendid Failure: Postwar Reconstruction in the American South*, (Chicago: Ivan R. Dee, 2007); Richard G. Lowe, “Republicans, Rebellion, and Reconstruction: The Republican Party in Virginia, 1856-1870,” (MA Thesis, University of Virginia, Corcoran Department of History, 1968); James D. Smith, “The Virginia Constitutional Convention of 1867-1868,” (MA Thesis, University of Virginia, Corcoran Department of History, 1956); Jane Elizabeth Dailey, *Before Jim Crow: The Politics of Race in Postemancipation Virginia*, (Chapel Hill: University of North Carolina Press, 2000); Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877*, (New York: Perennial Library, 1988); Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South, From Slavery to the Great Migration*, (Cambridge, Mass: Belknap Press of Harvard University Press, 2003). Kidada E. Williams, *They Left Great Marks on Me: African American Testimonies of Racial Violence from Emancipation to World War I*, (New York: New York University Press, 2012); Hannah Rosén, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*, (Chapel Hill: University of North Carolina Press, 2009); Peter Wallenstein, *Cradle of America: A History of Virginia*, 2nd ed., (Lawrence, Kansas: University Press of Kansas, 2014).

politics, and law that ex-Confederates tried to persuade was no match for the performance Black delegates gave as witnesses to their own peril. Testifying against the very men who had orchestrated the desperate conditions out of which the freed men aimed to rise was perhaps a necessary cathartic release as much as it was a pragmatic declaration of their expectations from the state's government and people. Southern whites, whether justices of the peace, police officers, journalists, slaveholders, or employers had challenged repeatedly the veracity of Black claims in every corner of the Commonwealth for the previous 250 years. But at the convention, where their words would be recorded in full and absent of dialect, where former slaveholders sat next to and before them, and where Virginia's new constitution would be born and sent "before the world," Black delegates projected their experiences and expectations aloud and into the record, hopeful that their testimonies might make them arbiters of a habitable peace.<sup>10</sup>

In 1867, Hodges and Bayne, the most vocal of the Black delegates, honored an impetus to "speak the truth" as members of a dignified public forum for the first time in state history. They did so first as delegates to dictate to the Commonwealth her new governing laws, but also as citizens whose fraught history and present circumstance would be most affected by the performance of those laws. In a conscious effort to let the world know what they suffered, Black delegates reframed the Virginia 1867–1868 Constitutional Convention into a platform from which to testify about past and present grievances and make claims on expectations for the future.<sup>11</sup>

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<sup>10</sup> Willard B. Gatewood Jr., ed., *Free Man of Color: The Autobiography of Willis Augustus Hodges*. (Knoxville: University of Tennessee Press, 1982), lxii.

<sup>11</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 61. Vincent Harding, *There Is a River: The Black Struggle for Freedom in America*, (New York: Harcourt Brace Jovanovich, 1981).

From the earliest days of freedom, Black Virginians sought to offer a record of all they endured and survived. In occupied cities such as Norfolk and Alexandria thousands of Black refugees began to craft new lives relative to freedom within the first year of fighting. Beginning in 1862, Union Leagues, tasked with securing equal rights for African Americans and support for the Republican party, worked with Black people to elaborate upon a long-held tradition of convening and petitioning to define visions of liberty in the public sphere and persuade the government to confer the rights promised in its founding documents.<sup>12</sup>

Hodges traced his own political origins to a series of conventions organized around temperance, abolition, and education in Philadelphia and New York in the 1830s and 1840s, and Bayne had served on the New Bedford City Council in Massachusetts around 1858 and was likely involved with local antislavery meetings.<sup>13</sup> Both had been active orators of Black freedom in the North and having returned to Virginia by 1865, guided local and state efforts to restore the government.

When the federal government established the Freedmen's Bureau in early March 1865 to help facilitate African Americans' transition from slavery to a free-labor system, Republican Congressmen and Bureau agents observed that suppressed speech in the courts was perhaps "the greatest single impediment to justice for the freedmen."<sup>14</sup> Civil tribunals disallowed their testimony, and in early April 1865, Bayne helped found the Colored Monitor Union Club (CMUC) in Norfolk, which promised to "give publicity" to Black Virginian's views "all over the

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<sup>12</sup> Alrutheus Ambush Taylor, *The Negro in the Reconstruction of Virginia*, (New York: Russell & Russell, 1969); Pier Gabrielle Forman, Jim Casey, and Sarah Lynn Patterson, eds., *The Colored Conventions Movement: Black Organizing in the Nineteenth Century*, (Chapel Hill: The University of North Carolina Press, 2021); Richard Lowe, "Another Look at Reconstruction in Virginia," *Civil War History* 32, no. 1 (1986): 56-76, see 61 for convention work with Union Leagues. <https://dx.doi.org/10.1353/cwh.1986.0054>.

<sup>13</sup> William Still, *The Underground Rail Road. A Record of Facts, Authentic Narratives, Letters, &c., Narrating the Hardships, Hairbreadth Escapes and Death Struggles of the Slaves in their Efforts for Freedom*, (Philadelphia: Porter & Coates, 1872), 254-259. <https://www.loc.gov/item/11008368/>; Willard B. Gatewood, *Free Man of Color*.

<sup>14</sup> *Ibid.*

country,” “to enlighten each other” of important liberties, and “to call frequent meetings” to pressure Congress and the state to administer and protect those freedoms.<sup>15</sup> Their words absent from any official documentation, the freedmen amassed a thorough record of their proceedings and resolutions to later publish and disperse.

On May 11, the CMUC met again in Norfolk at the Bute Street Baptist Church and Dr. Bayne oversaw the writing of nine resolutions. The first among them, which stated that Black people had “peculiar claims to be heard” regarding Virginia’s reconstruction, was particularly telling of the spirit in which most Black men later gathered in Richmond in 1867. The most “directly, immediately and deeply affected,” the self-described citizens wrote just one month after Appomattox, “we cannot keep silent.”<sup>16</sup>

These conventions gave organization to a burgeoning Black political movement and, in the absence of legal recourse in civil courts, provided an informal space for claims-making and testimony.<sup>17</sup> Giving voice to grievances proved difficult even in freedom, and when President Andrew Johnson announced his plans for Reconstruction in late May 1865, beginning with an amnesty proclamation pardoning whites who had participated in the rebellion, freedom’s landscape quickly took the shape of a new battlefield.

On June 5, the CMUC and other Black Virginians circulated an “Equal Suffrage Address,” a record of their activities through the spring and summer, which illuminated the despair they felt “unable to testify before the courts in any case in which a white man is one of

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<sup>15</sup> JMTC-LOC, Equal Suffrage Address.

<sup>16</sup> Herbert Aptheker, *To Be Free: Studies in American Negro History*, 2nd ed., (New York: International Publishers, 1968), 139.

<sup>17</sup> Michael Hucles, “Many Voices, Similar Concerns: Traditional Methods of African-American Political Activity in Norfolk, Virginia, 1865-1875.” *The Virginia Magazine of History and Biography* 100, no. 4 (1992): 543–66. <http://www.jstor.org/stable/4249313>; Eric Foner, *Freedom's Lawmakers: A Directory of Black Officeholders During Reconstruction*, (Baton Rouge: Louisiana State University Press, 1996), 13-14, 105-106; John Preston McConnell, “Negroes and Their Treatment in Virginia from 1865 to 1867,” (Dissertation, University of Virginia, Corcoran Department of History, 1904), chapter X. doi.org/10.18130/V3NP2V.

the parties to the suit.”<sup>18</sup> Aware of the court’s limits and appealing to the federal government for aid, African Americans included an appendix in their suffrage plea advocating “The Right of Colored People to Testify in Virginia.”<sup>19</sup> It highlighted recent outrages and a shortage of legal options, including the “kidnapping” of a Black man in Alexandria that only “colored witnesses,” who could not testify, saw.<sup>20</sup> Black Virginians decried this practice as revealing only partial truths about their experiences and recognized that the bare right of suffrage would not suppress “the glorification of human slavery [witnessed] in the press, the pulpit and legislatures of the Southern states.”<sup>21</sup> An extension of the silencing undergirding slavery, freed people argued that the exclusion of their testimony from court proved necessary after the war “for its maintenance and perpetuation.” Naming the repression of their speech “inconsistent with a state of freedom,” the CMUC reminded white Virginians that slavery had ended with war and argued that the institution’s “concomitants” “must follow its fate.”<sup>22</sup> Freedom’s project would move closer toward completion when their words, the vernacular of a shared terror, was no longer rendered meaningless before the state and its government—when it was not abridged, erased, or excluded.

In December 1865, Congress established the Joint Congressional Committee on Reconstruction to investigate conditions in Southern states after the war that heard testimony from generals, politicians, and former slaves. Representing Norfolk, Dr. Bayne testified on February 3, 1866, that violence toward Black people was so severe the “only hope the colored

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<sup>18</sup> This record contains a “history” of many meetings that had been held up to that point.

<sup>19</sup> Richard Lowe, “Another Look at Reconstruction in Virginia,” *Civil War History* 32, no. 1 (1986): 56-76. <https://dx.doi.org/10.1353/cwh.1986.0054>.

<sup>20</sup> JMTC-LOC, Equal Suffrage Address.

<sup>21</sup> *The Norfolk Post*, October 2, 1865; Philip Sheldon Foner and George E. Walker, *Proceedings of the Black State Conventions, 1840-1865*, vol. 2, (Philadelphia: Temple University Press, 1979), 257; JMTC-LOC, Equal Suffrage Address.

<sup>22</sup> JMTC-LOC, Equal Suffrage Address.



people have is in Uncle Sam's bayonets; without them, they would not feel any security.”<sup>23</sup> He indicated that the “war after the war” had already commenced as former Confederates began confiscating Black veterans’ weapons in November 1865, leaving many defenseless as tensions swelled.<sup>24</sup> Just as Virginia courts failed to record the testimony of Black witnesses, the committee neglected to record Bayne’s words in full. When asked about the threats he had heard on the streets of Norfolk proving the “hard” and “terrible” feelings ex-rebels harbored for freed people, the committee omitted the details Bayne shared. They recorded only that the “witness related some incidents going to show how much afraid the colored people there are of ill treatment from the whites.”<sup>25</sup>

Bayne’s unknown examples are but few of the violent incidents that went undocumented, and the threat of federal intervention compelled the Virginia legislature to pass an act that permitted testimony from Black people on February 28, but only when they were “witnesses in certain cases” or “a party” in criminal and civil proceedings.<sup>26</sup> As historians William Blair and Kidada Williams have documented, “the political struggles over Reconstruction prominently featured arguments over the truth behind information,” and the act, passed only to maintain state jurisdiction, made clear that “probable cause” and other “evidence” presented to judges and juries could be denied or excluded at will.<sup>27</sup> This was often the case, as southern whites refused

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<sup>23</sup> U.S. Congress, Joint Committee on Reconstruction, *Report of the Joint Committee on Reconstruction, at the first session, Thirty-ninth Congress*, 39th Cong., 1st sess., (Washington: Government Printing Office, 1866), 59.

<sup>24</sup> Kidada E. Williams, *I Saw Death Coming: A History of Terror and Survival in the War Against Reconstruction*, (NY: Bloomsbury Publishing, 2023), 20. Williams argues that Reconstruction’s “failure” was that ex-Confederates were permitted to overthrow it, and that the violent recourse it took white southerners to do this began “the war *after* the Civil War.”

<sup>25</sup> *Ibid.*; When whites offered their testimony, their examples, by comparison, seem to have been retained. See, U.S. Congress, Joint Committee on Reconstruction, *Report of the Joint Committee on Reconstruction, at the first session, Thirty-ninth Congress*, 39th Cong., 1st sess., (Washington: Government Printing Office, 1866).

<sup>26</sup> Virginia General Assembly. *Acts of the General assembly of the state of Virginia: passed in 1865-66, in the eighty-ninth year of the commonwealth*, (Richmond: Allegre & Goode, 1866), 89, 90.

<sup>27</sup> *Ibid.*; James Oakes, “A Failure of Vision: The Collapse of the Freedmen’s Bureau Courts,” *Civil War History* 25, no. 1 (1979): 66–76. It was often left to juries to determine the “credibility of Black witnesses.”

to validate, listen to, or record the reports of atrocities that African Americans tried to expose in court or elsewhere.<sup>28</sup> Military force may have put down the rebellion, but guns certainly could not arbitrate truth. As conditions worsened in the South, Congress assumed control over Reconstruction. While an unintended outcome of the decision to include both Black and white delegates in the constitutional conventions, the federal government had effectively provided a forum where Black Virginians could resist former Confederates' restoration of what Hodges called the "Old Virginia," by testifying on record against its revival.<sup>29</sup>

Apart from adopting the Thirteenth Amendment, swearing loyalty to the Union, and agreeing to pay off their war debt, former Confederate states had been left to rebuild their governments with limited federal oversight. But after reviewing the reports on conditions in southern states from 1865-1866, Congress passed the First Reconstruction Act, which mandated that each state hold a constitutional convention, draft a new constitution, and ratify the 14<sup>th</sup> Amendment before it could be readmitted to the Union. Congress opened the election to Black voters across the South to help determine whether citizens favored a convention.

In Virginia, former commander of the Federal Army of the Ohio, General John Schofield, oversaw policy implementation of the Acts and the election of delegates to a constitutional convention. Voters hurried to the polls on October 22, 1867, to indicate whether they supported a convention, and if so, who would emerge from their respective counties as representatives. Most African Americans, many traveling long distances from the countryside to reach the closest polling booth, cast their first ballot that autumn. The election placed Black men in direct political

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<sup>28</sup> William Alan Blair, *The Record of Murders and Outrages: Racial Violence and the Fight Over Truth at the Dawn of Reconstruction*, (Chapel Hill: The University of North Carolina Press, 2021), 7.

<sup>29</sup> Gregory P. Downs, *After Appomattox: Military Occupation and the Ends of War*, (Cambridge, Massachusetts: Harvard University Press, 2015).

conflict with white southerners, making them vulnerable to new hostilities. General Schofield, who had stationed 1,500 troops in Richmond to dissuade riots, thought that Black “political equality with the whites would be to enslave the latter and would tend to incite rebellion,” and news coverage demonstrated a belief among southern whites that the convention may very well lead to “a clash of arms.”<sup>30</sup>

To journalists at *The Richmond Dispatch*, the election of delegates began the transformation of the “kind, docile, imitative, and of course good humored” former slave to a politically “ferocious and overbearing monster.”<sup>31</sup> Editors of *The Whig*, *The Dispatch*, and *The Enquirer* tried vehemently to convince the Black voter to abandon the Republican ticket, pointing to “a perfect reign of terror” among the city’s Black population that permitted “none of his color to vote his own opinions.”<sup>32</sup> Coverage of Black voters’ unevidenced shift toward violence was among the first of many editorial efforts to convince white southerners they needed to resist a bellicose electorate.

Black political activity was readily ignored or repressed when it unfurled in the streets, but as it pressed into Richmond’s legislative center, it became intolerable. Not only were the freedmen permitted to elect delegates to rewrite the state’s constitution, but they were also eligible candidates in the race for seats. Whites, then, confronted the new reality of the Black voter alongside the sudden emergence of the Black politician. African Americans’ impending access to the capitol building felt like trespass to former Confederates. The coming intrusion was enough to harden their “terrible” feelings toward Black Virginians, and a momentary lapse in

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<sup>30</sup> James L. McDonough, “John Schofield As Military Director of Reconstruction in Virginia,” *Civil War History* 15, no. 3 (1969): 237-256, quote on 238; John M. Schofield, *Forty-Six Years in the Army* (New York, 1897), 373- 376; *The News and Advance*, October 30, 1867. This newspaper also cites “election fraud” because Schofield reopened the polls in some locales (in Richmond, voting was extended three times) to give African Americans time to travel and cast their ballots and to gain more Republican votes.

<sup>31</sup> *Ibid.*

<sup>32</sup> *The Richmond Dispatch*, October 23, 1867.

political organization among southern whites only exacerbated tensions. Joined together solely by their disloyal sentiment, ex-Confederates belonged to no official party at the time of the election, though Richmond editors quickly took to calling them “conservatives” and “reminded” them of their stake in the voting process as much as the outcome.<sup>33</sup>

Still the white press launched slanderous attacks on Black voters. Telegraphs from Lynchburg and Petersburg reported violent disputes between Black men at the polls that were printed as “the attempts of Radical negroes to mob colored Conservatives.” The *Alexandria Gazette* claimed, “we could easily fill our columns with [such] accounts.”<sup>34</sup> But reports of this kind, appearing across numerous papers, were undoubtedly falsified. Journalists were constructing a narrative to depict Black Virginians as a violent, ignorant mass, likely to later position white retaliation as responsive rather than reactionary, and to divert attention from their own barbarism. Indeed, newspapers chastised the apathetic voter and cautioned Black domination of the convention should white Virginians neglect their suffrage at this most critical moment.<sup>35</sup>

The Reconstruction Acts barred those who had held national or state office prior to the war or later supported the Confederacy, leaving Black and white men who had signed an oath of loyalty and were over the age of twenty-one as eligible voters. But many white southerners, appalled by Black political participation and perhaps feeling secure in their ownership of the laws, land, and popular press, had either refused the required loyalty oath or to take part in the process altogether.<sup>36</sup> Their temporary ambivalence meant a Black majority prevailed in 59 of the

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<sup>33</sup> *The Richmond Dispatch*, October 10, 1867.

<sup>34</sup> *The Alexandria Gazette*, vol. 68, no. 232, October 30, 1867.

<sup>35</sup> *The Lynchburg News*, October 30, 1867. *The News and Advance*. October 23, 1867. *Staunton Vindicator*, November 11, 1867.

<sup>36</sup> John G. Deal et. al, *Justice for Ourselves: Black Virginians Claim Their Freedom After Slavery*, 95.

105 electoral districts. Of the 105,832 Black men who registered with help from the Leagues, 93,145 (88%) journeyed to their local polling booths all over the state, “bags and baskets in hand” as if to collect and carry home with them a physical token of the suffrage for which they had waited so long, or perhaps documentation assuring the 40-acre plots promised them by the Bureau.<sup>37</sup>

When election results revealed that only about one percent of Black voters supported the conservative ticket in Richmond (or 116 out of 10,051 total votes), reporters accused freedmen who voted in Lynchburg, Petersburg, and Richmond of fomenting riots at the polls to enforce a Republican political agenda.<sup>38</sup> Many of these paper proprietors had readily endorsed secession in 1861 and propagandized for the Confederate cause through the four years of war, and just as Robert E. Lee’s surrender did not terminate the convictions for which rebels had fought, newspapers, too, kept the Confederate cause alive.<sup>39</sup> Journalists tried to convince white southerners that Black men were on their way to “meet to complete the work of Africanizing Virginia” at the convention, and to fight to undermine them.<sup>40</sup> A correspondent of the *New York Herald* (which had supported the Democratic Party during the war) who traveled through Southwest Virginia in late October 1867 wrote that “every negro cabin contains a rifle or revolver.” Black men were drilling under cover of nightfall in barns, churches, and schoolhouses

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<sup>37</sup> *The Lynchburg News*, October 30, 1867; Leslie Winston Smith, “Richmond During Presidential Reconstruction, 1865-1867,” (Dissertation, University of Virginia, Corcoran Department of History, 1974). doi.org/10.18130/V39W6B.

<sup>38</sup> *The Richmond Dispatch*, October 26, 1867; Nelson Lankford, “Richmond and Virginia in the 1867 Election for a Constitutional Convention” (Honors Theses, 278, Richmond University, 1970), 9; LeeAnna Keith, *The Colfax Massacre: The Untold Story of Black Power, White Terror, & The Death of Reconstruction*, (New York: Oxford University Press, 2008), xiii. Keith describes that white “opinion-makers” strategically applied the term “riot” and a “tendency to riot to the freedmen” which “served notice of the deadly consequences of ideas and behavior that disrupted the antebellum status quo.”

<sup>39</sup> Caroline E. Janney, “Free to Go Where We Liked: The Army of Northern Virginia after Appomattox,” *Journal of the Civil War Era*, vol. 9, no. 1 (2019): 4–28. <https://www.jstor.org/stable/26642046>; Janney, *Ends of War: The Unfinished Fight of Lee’s Army after Appomattox*, (Chapel Hill: University of North Carolina Press, 2021).

<sup>40</sup> *Spirit of Jefferson*, November 5, 1867.

“with guards mounted to prevent intrusion or discovery,” and newspapers spun tales of an anticipated uprising that they sensationalized with references to the Haitian Revolution. But accounts from Washington noted where Black Virginians had sent letters to the Congressional Republican Executive Committee expressing that it was their “great fear of violence from the white men” that stirred a desire to “organize militia companies” to protect themselves.<sup>41</sup>

Neither white nor Black Virginians could know whether a “clash of arms” would come to pass. But with African Americans primed to enter the statehouse, newspapers issued a call for organized white resistance. “We call upon the people. . .of this Commonwealth,” they implored, “by conventions, primary meetings, resolutions, through organization, speeches and public addresses, to prepare to treat the work of [the] Convention as a nullity and a mockery.”<sup>42</sup> While some scholars have argued that former Confederates began working toward the objective of white rule *after* 1868, the election of Black delegates (which their public meditations at the convention later reinforced) initiated a collective response with the same purpose in the winter of 1867.<sup>43</sup> Conservatives’ “war cry” to rally an army of belligerent citizens need only be that “*Virginia must be ruled by white men.*” “*In hoc signo vinces* [in this sign you will conquer].” A united and “enthusiastic resistance,” they proffered, would win this new war.<sup>44</sup>

Delegates arrived at Richmond’s capitol building on December 3, 1867, for the constitutional convention’s first meeting. Donning their best matched, dark-hued, and woolen three-piece suits, the men filed into the Old Hall opposite of the portico entranceway. Just off the

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<sup>41</sup> *The Native Virginian*, November 15, 1867.

<sup>42</sup> *Spirit of Jefferson*, November 5, 1867.

<sup>43</sup> Kidada E. Williams, *They Left Great Marks on Me: African American Testimonies of Racial Violence from Emancipation to World War I*, 29-30. Williams says that most white southerners handled daily disputes with freed people independently before 1868.

<sup>44</sup> *Ibid.*

Rotunda and on the north end of the building, the seventy-six-foot-wide room was trimmed with elaborate cornices, and from the coved ceiling hung three copper chandeliers. Beneath them sat white and Black delegates of either faction shoulder to shoulder, divided only by a narrow aisle separating about every five or six men. A balcony encircled the space and hosted spectators high above the floor, and some six rows of seating were arranged in a half-circle around the Speaker's chair. Nestled between two large windows dressed in dark, velvet drapes that blocked the winter chill, sat the elected president, federal judge John C. Underwood.<sup>45</sup>

Underwood, a New York native and longtime antislavery advocate, had argued in 1864 for the admission of Black testimony in Southern courts when Virginia's loyal government ratified its antislavery constitution. In 1865 and 1866, he worked with Black Norfolkians—particularly Bayne and his constituents—to address the freedmen's concerns about access to justice and the ambiguity of their freedom.<sup>46</sup> The judge had lamented that freed people's accounts and evidence were routinely dismissed or falsified, and at the convention, conservative whites employed the same tactics laden with paternalistic language and tone to try and quiet the freedmen. But the initial designation of committees proved the first of many ways Virginia's constitutional convention and record would be imbued with Black testimony.

On December 9, 1867, white Republican Edgar Allen proposed that a committee of five receive reports “of all cases where injustice has been done by the civil courts of the State, since the 1<sup>st</sup> day of June, 1865, and to report to this Convention as to the best means of remedying the evils now existing in the civil government of this Commonwealth.”<sup>47</sup> Allen represented

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<sup>45</sup> John G. Deal et. al, *Justice for Ourselves: Black Virginians Claim Their Freedom After Slavery*, 98-102.

<sup>46</sup> *The Norfolk Post*, October 2, 1865. There had been a Convention of the Colored People of Virginia held in Alexandria from August 2-5, 1865, and many marveled at the wondrous opportunity afforded by public gatherings that, for African Americans, were punishable by law until April (1865). Delegates to the Colored Convention understood that ex-Confederates in Virginia and elsewhere had been “subjugated but unconverted,” and were concerned about imminent violence and retaliation from white southerners.

<sup>47</sup> *The Debates and Proceedings of the Constitutional Convention of the State of Virginia*, 1868, 42-3.

Appomattox and Prince Edward County, along with James W. D. Bland, a Black teacher born free in Farmville in 1844. No one offered any specific recollections, but Black delegates might have reminisced that in April 1866, ex-Confederates had rioted in response to a parade of freedmen through Norfolk who celebrated passage of the Civil Rights Act, and soon turned their vengeance on a Black-owned newspaper, burning down its headquarters just for having reported on the atrocities.<sup>48</sup> Allen's resolution to inquire into the "injustice" and "evils now existing" was overwhelmingly rejected by white Radicals and "conservatives" alike who hoped the convention would not "entertain" the resolution even "for a moment."<sup>49</sup>

White southerners had relied on corrupt courts, justices, juries, and Black Codes to enact a violent postwar order, and as the convention began to resemble a makeshift courtroom, conservatives resorted to the same strategies as members of the delegation that tribunals performed. According to former Confederate colonel of the 49<sup>th</sup> Virginia Infantry, Eustace Gibson, it was beyond the purview of the convention to assemble a "committee who shall go out and scour the country around to get the stories of every ignorant and unlettered man who may fancy himself aggrieved." Virginia lawyer and former slaveholder Edward K. Snead, who sat right next to Hodges during several if not all meetings, agreed that the Convention provided "no authority to enter into any such investigation." "If any wrongs. . . have been committed," he added, "this committee has not the power to redress them."<sup>50</sup> Snead's eager response revealed

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<sup>48</sup> Richard H. Abbott, *For Free Press and Equal Rights: Republican Newspapers in the Reconstruction South* (Athens: University of Georgia Press, 2004), 35; *True Southerner*. vol., 1 no. 19, April 12, 1866; David B. White, "Position to a Lawful Celebration," *Remaking Virginia: Transformation Through Emancipation*, <https://www.virginiamemory.com/online-exhibitions/items/show/585>; "Riot in Richmond, May 11, 1867—The Soldiers Dispersing the Mob," *Remaking Virginia: Transformation Through Emancipation*, <https://www.virginiamemory.com/online-exhibitions/items/show/621>; John Hammond Moore, "The Norfolk Riot: 16 April 1866," *The Virginia Magazine of History and Biography* 90, no. 2 (1982): 155–64. <http://www.jstor.org/stable/4248541>.

<sup>49</sup> *Ibid.*

<sup>50</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 42-3.



that conservatives would deny relief from wrongs in any setting where recent history might be challenged, or measures of justice pursued. Though Black delegates had not proposed the resolution, conservatives likely believed a quick realignment of the goals of this body might dissuade Black men from setting forth their own calls to action. Indeed, former Confederates had already launched a successful campaign to quell such calls and publicly announced their intent to do the same at the convention. Snead advised that “if the courts of justice of this Commonwealth fail to do justice to any class of its citizens,” which they willfully had, “we have General Schofield. . . who, if appealed to, will afford redress whenever it can be shown that wrong has been done.”<sup>51</sup>

No doubt Black delegates imagined then how they might compile the “evidence” to make their case, or how their communities had pursued proof of injuries for the last two years to see only fragments of the wrongs shared appear in the record, or to no avail at all. The Bureau, which began compiling its “Record of Murders and Outrages” in September 1866, reported seventy-two “outrages in Virginia” from April through July, and all knew that was nowhere near a full accounting.<sup>52</sup> Thus far, the civil courts of the Old Dominion had failed African Americans as justice was rarely served to those who were forced into silent victimhood. But Snead and others portrayed it an absurd and “interminable” task to send a committee around the state “from the ocean to the mountains” and “far beyond the Alleghenies” in search of testimonies he knew had been refused.<sup>53</sup> The geographic range used to justify the investigation’s impossibility

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<sup>51</sup> Ibid, W. E. B. (William Edward Burghardt) Du Bois, *Black Reconstruction: An Essay Towards a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy In America, 1860-1880*, (Philadelphia: A. Saifer, 1952), 179-80 for vagrancy laws.

<sup>52</sup> William Alan Blair. *The Record of Murders and Outrages: Racial Violence and the Fight Over Truth at the Dawn of Reconstruction*, (Chapel Hill: The University of North Carolina Press, 2021).

<sup>53</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 42-3.

exposed conservatives' awareness of the extensive terrain along which Black Virginians had experienced and would continue to endure injustice.

No Black delegates spoke to the failed resolution directly, but they knew intimately the wrongdoings to which Allen had referred and, ignoring the hostility from conservative delegates, brought their concerns before the convention anyway. On December 10, Hodges became the first among the Black delegates to express his grievances. In the same chamber where both the Confederate Congress and General Assembly had devised old and new laws to subjugate Black people, Hodges renounced ex-Confederates' attempt to reclaim power by way of "intimidation" and wanted to appoint a committee to address what happened at the "late election" of delegates after "receiving numerous letters asking [him] to bring this case before this Convention."<sup>54</sup> Hodges had helped organize voter registration for Black men in Princess Anne and Norfolk counties, and as a delegate, his pledge to constituents was to bring before the convention those "peculiar claims" that would not be heard elsewhere. He witnessed firsthand the intimidation Black voters faced as violence against African Americans became political.<sup>55</sup>

While political violence was new, resistance to Black freedom in the shape of racial violence was not, and Hodges understood that "free" did not mean safe. When he was just thirteen years old, Hodges's mother, Julia Nelson, was brutally attacked by a white man named Benjamin Woodard at her home of Casteen's Farm. White southerners, Hodges recalled, had made it so that "no free person of color within their reach was safe in person or property." He was plowing the field when he saw the one hundred or so mounted men barreling toward the house armed and approaching at top speed. The only male on the property that day, Hodges ran

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<sup>54</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 61.

<sup>55</sup> Willard B. Gatewood, *Free Man of Color*, lx.

for the main dwelling and tried with all his might to force his way into the house. Woodard's company stopped him as he reached the threshold and held the young boy back with practiced ease. Crouched and shouting between the legs of the assailants, Hodges watched in horror while his mother's eyes were nearly gouged from her face. The scene changed him. "That day," he wrote, "I swore eternal war against slavery and to avenge my mother's wrongdoings."<sup>56</sup> Hodges had witnessed what happened when Black people had no legal recourse, no political voice. "Born free" in a society where slavery existed meant there was no real freedom—not legally or physically. Property and land meant so little when you could be killed in your own backyard. Though Hodges did not share this history with the convention, he understood intimately that Black voices were essential to make freedom real in the postwar world.<sup>57</sup>

In his testimony to the Joint Congressional Committee on Reconstruction in 1866, Judge Underwood speculated that Black men exercising suffrage would certainly turn white southern contempt for the freedmen to bitter hate. Ex-rebels would "prefer their total annihilation" to a "legal and political equality" with African Americans.<sup>58</sup> But Underwood did not expect that backlash would be "very serious."<sup>59</sup> For the freedmen, Black delegates remembered, it had been profoundly serious. Before Hodges requested an investigation into "intimidation," Samuel H. Powell had reported from Modest Town on December 9, 1867, that "Soon after the late election,

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<sup>56</sup> Ibid, 15-17.

<sup>57</sup> His father's death in 1844 brought Hodges back to Princess Anne County for a short time to look after the family farm. It's possible scarring memories overlapped with grief as he made his hostility toward slavery known to the community. Hodges left for New York the next year after facing jailtime in Virginia for preaching antislavery sermons. There, he continued preaching, founded an antislavery newspaper, worked on his autobiography, married, and had four children. In 1864, Hodges traveled to back to Norfolk, Virginia, on behalf of the Brooklyn Church to assess conditions for helping freed women and children get to New York. And the following year, he applied to open a school in Princess Anne.

<sup>58</sup> U.S. Congress, Joint Committee on Reconstruction, *Report of the Joint Committee on Reconstruction, at the first session, Thirty-ninth Congress, 39<sup>th</sup> Cong., 1<sup>st</sup> sess.*, (Washington: Government Printing Office, 1866), 6-10, quote on 7.

<sup>59</sup> Ibid, quote on 9.

gangs of white persons on the bayside with others in different localities banded together, and going to the houses of the colored people, especially those who were in the army, took from them their arms.” These men pursued and attacked families, “breaking up their furniture, shooting in and around their houses and. . .beating those who would not yield to every indignity.”<sup>60</sup>

Black suffrage and the work to follow had indeed marked a turn from contempt to bitter hate, and Hodges, knowing that evidence presented had likely been denied or disputed, tethered his call for an investigation to proof that former Confederates were still “not willing to yield to the results of the war.” They had built slavery, nurtured its cruel fixtures, and planned to govern freedom with the same brute force to undo the work Black delegates intended before they could even assume their posts.<sup>61</sup> When those posts enabled Black men to accuse white citizens of wrongdoing at a public convention and in a political space, it opened a new record of contestation over truth that finally included Black witnesses. Conservatives had fought to remain the authority on what was deemed factual by intimidating Black men at the polls and burying the evidence.

After the election, many Black people had asked Powell what could be done to protect them. Recognizing that “the colored people have little hope of protection from the civil courts under the present organization,” he instructed the men and women to gather and take any “evidence” they could produce to military commissioner, Major Sherwood, who might help

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<sup>60</sup> Letter from Samuel H. Powell, December 9, 1867, Accession #37024, Box 7, Folder 2, *Governor Francis Harrison Pierpont, Executive Papers, 1865-1868*, State Records Collection at The Library of Virginia, Richmond, Va. The letter is addressed “Dear Judge” (likely referring to Underwood) and in closing, remarks “your convention.” For providing advice to those who reached out to him for help, Powell claims to have been put under bond for that very act. He blamed Sherwood and pleaded with Underwood to “say nothing” about it; Kidada E. Williams, *They Left Great Marks on Me: African American Testimonies of Racial Violence from Emancipation to World War I*, 29. Only after 1868, Williams concludes, were “white gangs” “more likely to administer fatal violence.”

<sup>61</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 60-2.

those in danger protect themselves against subsequent attacks.<sup>62</sup> But Powell was placed under bond for even advising they marshal evidence. According to both Powell and Hodges, this violence was not performed without calculation. Black, Union veterans were targeted first. Perhaps white southerners assumed they still held their armaments. When Black men voted in the October election, Hodges recalled, most were forced “by the disunionists and disloyalists” to recite “for whom and for what they would cast their ballots.” Those who voted the Republican ticket, “were not only thrown out of employment, but were at once thrust forth from their homes. In this condition they are now found all over our State,” and “it shall not be permitted.”<sup>63</sup>

Voters had elected Hodges and Bayne to shed light on the persistent intimidation Black Virginians faced, which conservatives habitually rebuffed as subjects not “properly before the convention.” But overwhelming grief, reflected in outrages like those in Modest Town, had composed the Black delegates’ petitions, and as promised in 1865, they did not keep quiet. Hodges demanded it be settled “whether the loyal, Union men shall rule and govern this Commonwealth, or whether the control of its destiny is to be restored to rebels and traitors.”<sup>64</sup> Prior offenses revealed it already had been. “The disloyalists have the land,” Dr. Bayne echoed, and “they hold every court in the state of Virginia. The disloyalists rule the State and have ruled it from the time the war ceased until now.”<sup>65</sup> Black delegates explained that it was not only unabated violence in the material sense, but also the very nature of its perpetration that had become unbearable.

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<sup>62</sup> Possibly First Lieutenant George P. Sherwood. See *The Richmond Dispatch*, December 24, 1867.

<sup>63</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 61.

<sup>64</sup> Ibid, 60; Letter from Samuel H. Powell, December 9, 1867, Accession #37024, Box 7, Folder 2, *Governor Francis Harrison Pierpont, Executive Papers, 1865-1868*, State Records Collection at The Library of Virginia, Richmond, Va.

<sup>65</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 63.

According to Bayne, a “system of persecution began at the time of registration,” poisoned the whole campaign, and “is even going on now” as conservative delegates acquitted themselves of political and violent crimes and dismissed Black Radicals’ attempts to put them on trial.<sup>66</sup> An oppressive regime of this magnitude, he believed, could be demolished not just by any constitution which may be composed, but by the convention itself. Throwing off Snead and Gibson’s earlier remarks, “I say that this Convention has got the power to take action upon these subjects,” Bayne asserted.<sup>67</sup> And if action was rejected, he swore that by the “‘old man eloquent’ from Massachusetts,” who “argued in Congress for the right to present petitions,” that Black delegates would “at least make [their] grievances known to General Schofield or to Congress.”<sup>68</sup> But accurate accounts were absent from the commander’s books, too. Schofield’s own records describing Black delegates—like Congress’s incomplete accounting of and shorthand for outrages shared—lacked care for honest representations.<sup>69</sup> He incorrectly classified half the Black delegation as “illiterate,” among them, Hodges, who had enjoyed a few years of schooling with siblings in the 1820s and later honed his authorial voice through a self-published antislavery newspaper called the *Ram’s Horn*.<sup>70</sup>

Disputes over reality continued as Black Virginians used their speaking time to indict ex-Confederates for their damaging mischaracterizations and violent behavior. Upon accepting—however bitterly—the election results and taking their seats, conservative delegates were forced to hear (if not reckon with) these claims. Expecting resistance from the opposition, Bayne

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<sup>66</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 63.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> John G. Deal et. Al, *Justice for Ourselves: Black Virginians Claim Their Freedom After Slavery*, 98.

<sup>70</sup> Steven E. Woodworth, *The Human Tradition in the Civil War and Reconstruction*, (Wilmington, Delaware: A Scholarly Resources Inc. Imprint, 2000), 213; Richard G. Lowe, “Virginia’s Constitutional Convention: General Schofield Rates the Delegates,” *Virginia Magazine of History and Biography*, LXXX (July 1972), 353; Willard B. Gatewood, *Free Man of Color*, lxii.

charged that “if we have no law to reach these cases,” and there will be no investigation, “I hold that we should create a law. . . we must check these men in their mad career of outrage and oppression[.]” Black delegates were finally able to name the forces that worked against them, and their words implied proof of experiences and observations. They reasoned that “object of all this strife and oppression and intimidation is to defeat the constitution which we may frame—to overturn and render futile everything which we may here propose and execute.”<sup>71</sup> Hodges and Bayne expected that all they “proposed” would be dismissed or challenged as newspapers had promised that and more. For Conservatives, this felt much like the investigation into conditions that Allen had proposed, so they accused the Black delegates of “stirring up strife” in the community by looking backward and daring even to speak of such matters.<sup>72</sup> But present conditions analogous to slavery compelled Black delegates to do so as Powell had revealed, and Black Radicals assumed that white southerners were organizing to defeat the convention. “If there is no protection given to the colored people,” Powell warned, by the time of ratification “they will be afraid to vote at all.”<sup>73</sup>

Black delegates refused to accept that African Americans should be made fearful of voting to ratify the new constitution, and they fulfilled their promises to voters who called upon them to “take action” and remedy poor conditions. Part of this action, as historian Kidada Williams has explored, was the narrativization of experience for public acknowledgement. Black delegates made intentional use of the occasion to make public the realities that had been kept from view. “God has given to us the right and the power to speak the truth, and to disseminate

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<sup>71</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 63.

<sup>72</sup> *Ibid*, 69.

<sup>73</sup> Letter from Samuel H. Powell, December 9, 1867, Accession #37024, Box 7, Folder 2, *Governor Francis Harrison Pierpont, Executive Papers, 1865-1868*, State Records Collection at The Library of Virginia, Richmond, Va.

the principles of justice all over the land,” Hodges proclaimed. Justice might be achieved, then, through deliberative performance disproving a purported unfitness for leadership.

Hodges and Bayne equated their words with a new decree and believed themselves to be speaking not only to criminalize those who oppressed them but to impose a new social order which would allow them to forge and enjoy a meaningful freedom. The delegates demonstrated what Black people could do even in tentative freedom. “It shall be known throughout the land,” Bayne shared, that “our action in this Convention. . .is to shape the conduct of our people for all time.”<sup>74</sup> African Americans, he believed, would never again be silenced, and never again should he have to fight for the right to speak. What lay at the heart of the “mean little injustices of every day” that wore on Black progress in freedom was a moral and ethical code that had no place in this “New Virginia.”<sup>75</sup> Arguing for the inclusion of a shared humanity in the Commonwealth’s constitution, Bayne named three systems of law governing communities with which all were familiar: The first, “written law,” the second, a “law of custom, of prescription, of usage,” and a third system, “better known than either of the former to men generally—the law of necessity.”<sup>76</sup>

Laws of necessity have been described by legal scholar Frederick McKean as “the sum of the influences that determine decisions in courts of justice,” often derived from “current notions of morality and of practical wisdom.” “Necessity” also manifests as “equitable jurisdiction,” a procedure “found to be absolutely essential to the ends of justice where local prejudice or inherited difficulties have prevented. . .courts of equity.”<sup>77</sup> The convention had been the closest Black Virginians had come to an equitable court, and local prejudice and inherited

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<sup>74</sup> Ibid, 64.

<sup>75</sup> James Oakes, “A Failure of Vision: The Collapse of the Freedmen’s Bureau Courts,” *Civil War History* 25, no. 1 (1979): 66–76, quote on 68.

<sup>76</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 62.

<sup>77</sup> Frederick G. McKean Jr., “The Law of Necessity,” *Dickinson Law Review*, vol. 36, 4: (1932), 237, 240. <https://ideas.dickinsonlaw.psu.edu/dlra/vol36/iss4/2>



custom was precisely what Bayne's testimony aimed to overturn. For Black delegates, the constitution was a living document that would not only animate but edify public sentiment and action.

Having just chastised the conservative opposition for their "vindictive and traitorous" efforts to later prevent Black and Union men from voting by killing them, burning their homes, or firing and displacing them, Bayne pleaded with conservatives for legal action and, with even greater ardor, for compassion. As conservatives blocked an investigation into injuries practiced upon Black flesh at the polls, Bayne pushed for broader social reform. It should be "acted upon in this Convention upon the law of necessity," as every man, he said, "practices that law daily." Black voters, Bayne and other Black Radicals felt, could not be expected to continue to purely survive at the polls when he should *enjoy* his suffrage and his citizenship free from threats of harm.<sup>78</sup> "We have in this assembly," he observed, "a set of men whose hearts still cling to the old Constitution," because it was "good enough for them."<sup>79</sup> He likely referred to Virginia's 1851 constitution, which further protected slavery and prohibited manumission. But to Black delegates, even the 1864 constitution's recent abolition of slavery had not ensured the institution's death.<sup>80</sup>

Indeed, the persistent violence and outrages committed against Black Virginians underscored their testimonies of how tenuous freedom remained. John L. Marye, a native Virginian, slaveholder, lawyer, and Confederate veteran representing Spotsylvania County countered in the usual manner that "there is not one pulse of evil feeling or desire. . .not one

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<sup>78</sup> Christopher James Bonner, *Remaking the Republic: Black Politics and the Creation of American Citizenship*, (Philadelphia: University of Pennsylvania Press, 2020), 36. Bonner notes that "given the constant hurdling, given the terms under which they may be grudgingly admitted into the political community, perhaps John Russwurm was right to say black Americans could never truly enjoy their citizenship."

<sup>79</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 62, 63.

<sup>80</sup> JMT-LOC, Equal Suffrage Address, 25.

emotion of unfriendliness in the white breast toward the colored man” that would require or permit the convention to do anything to remedy what Black men had vulnerably shared hurt their cause. Marye suggested they “bury” their “feelings”—a familiar dismissal of recurring sentiments.<sup>81</sup> During that “late election” into which there would be no investigation, several Richmond editors had couched their threats in voting advice, just as Marye and his compatriots did when accused.<sup>82</sup>

Hodges’s bold call for an investigation had certainly hit a nerve, and those on the opposing side responded in kind. Much to the dissatisfaction of conservatives, the election results had shown that Radical Republicans organized effectively enough to gain full control of the floor. It took only the thought of Black men acting as part of a legislative body that would make state laws and impress public discourse to push ex-Confederates to organize politically after the war.<sup>83</sup>

In November, just two weeks after the election they aimed to sabotage, white conservatives were already so alarmed by the narrative power these positions on the delegation might afford the freedmen that they rallied former Whigs and Democrats to attend a “Conservative Convention” to be held on December 11-12. Forming the Conservative Party on the heels of Hodges’s resolution, the men spoke of “fear that a policy is to be inaugurated here which tends, if it be not designed, to subvert our whole social fabric and bring the [state]. . . under the dominion of an alien and inferior race.”<sup>84</sup> The social implication they found most abhorrent was engaging in public debate with Black men, especially as it became clear Black

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<sup>81</sup> Ibid, 64.

<sup>82</sup> *The Whig*, October 25, 1867.

<sup>83</sup> Nelson Lankford, “Richmond and Virginia in the 1867 Election for a Constitutional Convention” (Honors Theses, 278, Richmond University, 1970), 5-6.

<sup>84</sup> *Richmond Dispatch*, December 12, 1867.

delegates were using the convention to document their experiences and cultivate an equitable public order. The Conservatives planned to “earnestly protest against and seek to arrest so fearful a calamity.”<sup>85</sup> Language like “protest” and “arrest” used to describe their dissent reveals a deep and conscious effort on part of Conservatives to bar Black voices from state institutions and assemblies—a practice which had gone undisputed. Newspaper editors, many of whom shared Conservative views and became party affiliates, furthered this aim to “arrest” Black success at the convention and elsewhere by forming a tight knit “editorial fraternity.”<sup>86</sup> This fraternity of affection churned out cruel, degrading coverage of the convention’s proceedings to cast Black delegates as inexperienced, unintelligent, “beasts.” But by the New Year, the press had gone too far.

Following a brief reprieve for the Christmas holiday, delegates assembled at 12 o’clock on January 4, 1868, and Hodges entered the chamber with something on his mind. Despite all their attempts to silence and re-subjugate African Americans, Conservatives found themselves on politically equal footing with Black men for the first time, and suitable intimidation required the new designs of this “editorial fraternity” to launch a different kind of campaign. Journalists began to defame delegates’ character in the press alongside recurring headlines like “the kitchen comedy” or “the black and tan convention” to ground their depictions of an apolitical people whose words meant nothing to the language of law, and Hodges would have none of it.

Covering most of the convention and playing a leading role in denigrating Black delegates’ character was Richmond’s *Southern Opinion*, one of the first Lost Cause periodicals.<sup>87</sup> This rhetorical “engine of oppression” had quickly become one of the most widely read papers in

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<sup>85</sup> Ibid.; *The Staunton Spectator*, November 12, 1867.

<sup>86</sup> Ibid.; *The Richmond Dispatch*, November 6, 1867.

<sup>87</sup> George Teamoh, et al, *God Made Man, Man Made the Slave: The Autobiography of George Teamoh*, 119.

the state, and Hodges was its most recent victim. He arrived in the Old Hall on January 4, prepared to make threats of his own against reporters seated in the audience. Perhaps considering the courts would never allow such a confrontation, Underwood permitted the “personal explanation” from the delegate, and Hodges charged that he would not tolerate false representations of his character: “I hold in my hand a paper called the *Southern Opinion*, which contains a libellous article speaking of myself as an ex-convict. I wish to state that it is a libel. . .made with a design to injure me individually and as a minister of the Gospel.”<sup>88</sup> The Princess Anne representative identified himself the “individual” target of a political attack. His brother William’s indictment in 1829 for forging documents to help enslaved people escape through the Underground Railroad had recently resurfaced, and the press interchanged “Willis” and “Williams” quite willfully to invalidate Hodges’s work.<sup>89</sup> Conservatives not only meant to invent laws to subvert delegates’ success, but also to prescribe identities that complimented the desired social order. While slave narratives had contested similar practices before the war, Black men had the podium at the convention to share their “gospel,” a personal truth that for the moment could be shared in real time and posed a very real threat.

This “vilifying sheet,” as Bayne called it, intended to disrupt the framing of the constitution by discrediting Black members of the delegation—particularly those who had proved themselves to be leaders within their communities in the years after the war and who had been the most vocal at the convention. Insisting that something be done to put a stop to these fabrications, Bayne had asked “Do not the proprietors of those papers know that it is them and

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<sup>88</sup> Willard B. Gatewood, *Free Man of Color*, lxiii; Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 211.

<sup>89</sup> Steven E. Woodworth, *The Human Tradition in the Civil War and Reconstruction*, 219; Willard B. Gatewood, *Free Man of Color*, lx.

their people who have robbed the black man” of his education, money, labor, and land?<sup>90</sup> He shared his pain at hearing so many reports of “the outrages and oppressions committed upon our constituents since this Convention assembled. We have only read the rebel papers of the State,” he estimated, “and we will clearly see the condition of our people from the spirit manifested in their editorial columns.”<sup>91</sup> “Rebel” was sometimes used by the Black delegates in place of “ex-rebel,” perhaps to demonstrate their knowledge that newspapers had and continued to support the Confederacy. It may have also been a rhetorical strategy to denote the “spirit” which emanated from defeated soldiers and sympathizers who sought to “pursue the Confederate cause by other means.”<sup>92</sup> To do that, “rebels” had drawn from antebellum traditions rooted in rhetorical and legal disarmament to silence and re-enslave Black people.

Bayne believed the Conservatives’ need to produce this libel proved that Black representation at the convention was an indispensable feature of the body’s lasting impressions. And while it was meant to obstruct their work, Conservative recognition of Black men as a political threat only validated Bayne and Hodges’s efforts. “The day has come,” the Norfolk representative rejoiced, “when [ex-rebels] attempt to outrage and libel black men, that they must be met by black men in argument. It was a good thing to come here.”<sup>93</sup> Political violence was new, but so were political attacks. To the authors behind the disparaging article looking to incriminate Hodges, Bayne related an “old proverb, that if a black man is arrested, the decision is made in his case by the fireside before the jury is called or assembled. That,” Bayne concluded, “is the spirit in which this article is written.”<sup>94</sup> Hodges, knowing that the piece was crafted with

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<sup>90</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 63.

<sup>91</sup> *Ibid.*, 64.

<sup>92</sup> Kidada E. Williams, *I Saw Death Coming*, xxi.

<sup>93</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 212.

<sup>94</sup> *Ibid.*

no supporting evidence, challenged the courts to “produce records showing where [he had] been accused of a crime.” Unsurprisingly, there were no records to retrieve, and Bayne drew the line, too, at defamation of character. Whites could “laugh and grow fat” over their fictive representations, he said, “but when he wields his pen to the detriment of our characters; when he publishes us as convicts and sends our names forth to the world as such, it is time that he should be made to know that there is some law that will hold him responsible.”<sup>95</sup>

In this battle over truth, Black delegates prosecuted the spirit of the law to the same extent as the law itself, an effort later expanded by debates over the new Bill of Rights. On January 6, delegates convened to parse related language and Conservatives considered phrases found in Alabama’s while others pondered the old composition of Virginia’s. But James W. D. Bland thought differently. “I move to strike out the word ‘men,’” he said, “and insert. . .the words ‘mankind, irrespective of race or color.’”<sup>96</sup> Bland, though born free, had his own intimate ties to slavery. He was “taught to read and write by a slave in the household of his mother’s former owner” and spent his early life working alongside his father as a carpenter.<sup>97</sup> In 1864, he embarked to join an American Missionary Association (AMA) school in Norfolk, and his teachers spoke highly of his intelligence and praised his ability “to teach elementary reading.”<sup>98</sup> But when Bland requested to open a school in his hometown of Farmville, the AMA denied his application. He was deemed “too careless and dissolute in his habits” to represent the Missionary Association, and probably had no means to dispute their claims.<sup>99</sup>

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<sup>95</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 212.

<sup>96</sup> *Ibid*, 249.

<sup>97</sup> Jordan Ervin with *Dictionary of Virginia Biography*, “J. W. D. Bland (1844–1870)” in *Encyclopedia Virginia*, December 7, 2020. <https://encyclopediaofvirginia.org/entries/bland-j-w-d-1844-1870/>.

<sup>98</sup> Robert Charles Morris, *Reading, 'Riting, and Reconstruction: The Education of Freedmen in the South, 1861–1870*, (Chicago: University of Chicago Press, 1981), 99.

<sup>99</sup> *Ibid*.

Bland had felt the culture of unfreedom when it cast its ugly shadow over his educational pursuits and arranged his identity for him. He feared the same would be done now in the press and in the courts as Conservatives showed no willingness in this new forum to acknowledge what they had done in the aftermath of the war. While the teacher used his words sparingly, he recognized something in the Bill of Rights that deepened Dr. Bayne's proposed alliance between the law and citizen conduct and further served as proof that former Confederates had used the law to resurrect slavery. "When I recollect that the word men, as written in this first section has been construed to mean white men only in Virginia. . . I think it is right and proper that we should state distinctly what we mean by mankind, or what we mean by men." Bland "always thought that the word 'men' took in all the races on this earth," and fellow Black delegates agreed. But he rightfully worried that "the best lawyers in our country have decided differently."<sup>100</sup> Reciting the Bill of Rights in its current state, Bland highlighted that "in the words life, liberty, happiness and safety, I recognize all I come here for. As I said before, others do not recognize that," nor had Conservatives honored it in the last two years. "Whatever I can do," Bland pledged, he meant "at least to change that by inserting the words 'irrespective of race or color.'"<sup>101</sup> This solemn and wise reflection illuminated what had been true for Black Virginians—that the absence of such phrasing would leave legal and rhetorical interpretations of "men" "subject to erroneous constructions," just as they had recently been abused.<sup>102</sup> Bayne agreed, but he also wondered aloud whether language would be enough if "we can take a good constitution and place it in the hands of bad men [who] will make [it] work wickedly."<sup>103</sup> Speaking against those men—and he

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<sup>100</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 259.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

meant any citizen who might treat the constitution produced as a “nullity”—was the most powerful form of resistance and argument the delegates had in this moment.

Black Virginians had already witnessed a volatile protest against their freedom, and as the subject of their suffrage came to the floor on January 20, Bayne believed his testimony and performance as a delegate forced ex-Confederates to conceive of a society wherein Blackness was not made synonymous with “slave.” “We mean to corner you, to drive you to the wall,” if it means “you tell us who gave that right to you,” Bayne professed.<sup>104</sup> He finally had a captive audience. After the delegate was robbed of that most basic principle in the wake of emancipation, Bayne shared his memory of fleeing bondage with all those gathered in the chamber on January 20, 1868, to enlighten them of the nature of his role as a delegate. “When James K. Polk was running for President,” he recalled to the delegation, “I was running through the woods from my master[.]” Bayne’s journey to New Bedford was no doubt scarring. But it had also marked a critical turning point in his life, when freedom meant he could “stand up and speak” his mind. “When I got there I felt that I was a freeman,” and when “I entered on the soil of Massachusetts it was my right to stand up and speak if I chose.”<sup>105</sup> It was his right now, he thought.

When it came to slavery, forgetting was as deliberate an act as any recollection shared. But how does one forget something that he feels persists? As Bayne remembered aloud this harrowing story of flight, he intended to “make an analogy in my conduct in that particular, and this nation, under government like ours.” Drawing from his own painful memories, the dentist shared his story on the convention floor to shed light on the idea of “inherent rights” that birth

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<sup>104</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 259.

<sup>105</sup> Ibid.



alone conferred. “When I was in the woods,” he explained, “that was just the condition this nation was in. . . ,suffering, dodging and being discouraged by the old country; just as I did in 1855, when I ran to Massachusetts for my liberty, so this nation crossed the waters for its liberty and came to this country.”<sup>106</sup> His story conveyed that no one had “given” the right of suffrage or any privilege of freedom to white settlers. Rather, they had taken it for themselves. Now, it was for African Americans to seize, guard, and exercise.

Slavery was a national trauma whose memory needed to be dealt with not just by a long overdue extension of rights, but through discussion. An embattled debate over its remains ensued from an amendment offered by Bland. He wanted to amend the thirtieth line in Virginia’s 1776 Preamble to the constitution to substitute “our” for “the.”<sup>107</sup> The line referenced the founder’s “grievance” with King George III for inciting domestic insurrection between colonists, indigenous tribes, and slaves “by prompting *our* negroes to rise in arms against us[.]”<sup>108</sup> As an affluent reader, Bland seems to have spoken most often to matters of language, particularly when he felt future claims under this new constitution rested upon a clear disavowal of present misuse. He explained the possessive nature of the adjective “our” followed by “negroes” as if to the children he taught in Norfolk. But once more, Conservatives feigned innocence and told the Black delegates it was “not a declaration of ours. . . or of any opinion that we have entertained that slavery was right or wrong.”<sup>109</sup> Snead argued that Bland had “not correctly examined the fact. It is not declaring any fact existing now, or any opinion existing now.”<sup>110</sup> But that was the

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<sup>106</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 523.

<sup>107</sup> Ibid, 565.

<sup>108</sup> Virginia Convention of 1776, “The Constitution of Virginia, 1776: Bill of Rights,” in *Encyclopedia Virginia*. <https://encyclopediaofvirginia.org/primary-documents/the-constitution-of-virginia-1776/>. (Emphasis on “our” is mine).

<sup>109</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 566.

<sup>110</sup> Ibid.

spirit with which the Black delegates had been met after the war, and they meant to make that public. Conservatives tried to convince them that slavery was dead, but Black delegates had shown by their own “facts” and “opinions” where it still lived in the laws and convictions former Confederates held close. Hodges shared in Bland’s estimation of what was factual: “The word ‘our’ means something present, and we have no such things as slaves now.”<sup>111</sup>

Former Confederates could and did intend to force Black delegates to confront the limits of their freedom by inventing punitive laws and exploiting histories of enslavement. But Hodges took this moment to recite what it was the delegates had gathered in the chamber to do. “I am very sorry,” he lamented, “to find my brethren here so feeling on this subject. I wish that the history was written more plainly, and that the facts of the treatment of the colored people of this country were given more broadly.”<sup>112</sup> But here budded a new record of Black political work and history that scholars have overlooked. Many Radical Republicans, Black and white, had promised voters that the words “negro” and “colored” would not appear in the new constitution to avoid making racial distinctions which no longer applied in this “New Virginia.” But Black delegates, because of the intimidation they had faced in the interim, struggled to determine how best to overcome those distinctions—to locate every instance of dehumanizing language and strike it out, or to let the record of their speeches prove their dissent.

“The negroes have been treated without humanity,” Hodges assured, “but we are here to try, if possible, to forget the past.” He hoped his friends, both seated and at home, would not fear the words “slave” or “negro,” and understand this moment to be one Black Virginians could

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<sup>111</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 566.

<sup>112</sup> Ibid.

“point to” to “show how we have risen up and taken the position of men.”<sup>113</sup> Their presence at the convention and access to that political platform had shown that no matter how diligently southern whites worked to revive slavery, African Americans had officially joined the body politic. Black delegates became architects of freedom, and their speeches had performed the work of political protest as citizens and free men. Because of their bravery and intellectual labor, they could now pass to the next generation a record of the very moment when they stood up “before the world” and seized Black citizenship, offering a blueprint for its survival. That was the work meant to last forever.

In Richmond, Black delegates had found a remedy for the “deprivation” of their testimony. The convention had been a moment to secure and define freedom and to let the world know its limits by sharing what they suffered along with what they wanted and expected. It was the act itself, of transforming their roles as delegates into ministers of truth, that exemplified Black freedom. For these men, the stakes were too high for mere “speechifying;” it had to be more than that, Hodges had later written.<sup>114</sup> Ideas about all freedom should mean and resemble were in constant flux as Black people had been burdened even in their liberation with naming personal and collective priorities that addressed their safety and enjoyment in ways that whites never had to. Delegates themselves debated what to share, remember, and forget, and to do that publicly under threat of bodily harm and rhetorical debasement was not only exceptional, but it was also necessary. To “forget the past,” and to transcend slavery, Black delegates first needed to testify and hold to account the parts of it that remained in the law and among the people. “I would like the world to know what has been done with our people,” Hodges declared, and “when

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<sup>113</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 566; Caroline E. Janney, *Remembering the Civil War: Reunion and the Limits of Reconciliation*, (Chapel Hill: University of North Carolina, 2013).

<sup>114</sup> Willard B. Gatewood, *Free Man of Color*, 50.

that history shall have been written, the people will find that all these things will prove a diadem in our crown.”<sup>115</sup> To overcome their history, they had to begin the writing of a new one. In this instance, Black delegates resolved that freedom meant the right to be heard. To accomplish that was an achievement for all Black Virginians.

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<sup>115</sup> Virginia Constitutional Convention, *The Debates and Proceedings of the Constitutional Convention of the State of Virginia* (Richmond, Va: Office of New Nation, 1868), 566.