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## THE EVOLUTION OF VIRGINIA'S CONSTITUTIONS: A CELEBRATION OF THE RULE OF LAW IN AMERICA

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Dr. Pat Robertson, Dean Jeffery Brauch, Jay Sekulow, and my fellow Virginians—It is an honor to participate in the celebration of 400 years of the rule of law in Virginia and in America.

Our great Commonwealth of Virginia was conceived upon the issuance of the Charter for the Virginia Company of London by King James I on April 10, 1606.<sup>1</sup> This Charter empowered the Virginia Company of London to establish the first permanent English settlement in America.

On Saturday, December 20, 1606, three ships, the *Susan Constant*, the *Godspeed*, and the *Discovery*, left England and began the four and one-half month voyage.<sup>2</sup> The *Discovery*, whose captain was John Ratcliffe, was the only ship owned by the Virginia Company of London.<sup>3</sup> Christopher Newport was the Captain of the *Susan Constant*, and he was also the Admiral of the three-ship fleet.<sup>4</sup> One hundred and five men and boys, accompanied by thirty-nine seamen, made the journey from

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\* Chief Justice of the Supreme Court of Virginia. This Keynote Address was delivered on April 12, 2007, as part of “Liberty Under Law: 400 Years of Freedom,” a symposium hosted by Regent University, School of Law.

I would like to thank my law clerk, Nöelle Groves, for her assistance with research and editorial comments.

<sup>1</sup> FIRST CHARTER OF VIRGINIA (1606), in THE HARVARD CLASSICS: AMERICAN HISTORICAL DOCUMENTS 1000–1904 WITH INTRODUCTIONS, NOTES AND ILLUSTRATIONS, 51, 51 (Charles W. Elliot ed., 1910).

<sup>2</sup> PARKE ROUSE, JR., THE VOYAGE TO JAMESTOWN: A SAGA OF SEAMANSHIP 1, 3 (1973).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> Tom Roberts, *A Look Inside the Flagship Susan Constant*, RICHMOND TIMES-DISPATCH, Dec. 14, 2006, at E1.

London to the New World during the harsh winter months.<sup>5</sup> Only one hundred and four men and boys survived the journey to America.<sup>6</sup>

Sir Walter Raleigh initially suggested the establishment of an English colony in the New World during the reign of Queen Elizabeth I.<sup>7</sup> Ironically, he was a prisoner in the Tower of London, charged with intriguing with Spain, when the three ships left England.<sup>8</sup>

George Percy, the younger son of the Duke of Northumberland, was one of the men who traveled on this journey to the new world. He remained in Jamestown until 1612 and kept a journal.<sup>9</sup> According to one entry in the journal, about four o'clock in the morning, on April 26, 1607, a Sunday, the three ships entered the Chesapeake Bay.<sup>10</sup> A small group of men left the ships and began to explore the land adjacent to the Chesapeake Bay. Indians attacked them, and two members of the group were injured.<sup>11</sup>

The Reverend Robert Hunt had been selected to serve as chaplain and the first parish rector for the settlers by the Virginia Company of London. During the voyage from London to America, he became "weake and sicke" and his fellow voyagers thought he would die.<sup>12</sup> However, Hunt lived, and his miraculous recovery was a source of inspiration to others.

Wednesday, April 29, 1607 is a significant day in Virginia's history because on that date the English settlers erected a cross and gave thanks to God at Cape Henry.<sup>13</sup> Percy stated in his journal: "The nine and twentieth day, we set up a cross at [Chesapeake] Bay and named that place 'Cape Henry.'"<sup>14</sup>

Our celebration in Virginia Beach this evening is very symbolic. Cape Henry is the site where the English settlers knelt in prayer and thanked God for their safe journey in 1607. Exactly 174 years later, on September 5, 1781, Cape Henry was the location of another great event that changed the world forever.

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<sup>5</sup> ROUSE, *supra* note 2, at 3-4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

<sup>9</sup> George Percy, *Observations Gathered out of a Discourse of the Plantation of the Southern Colony in Virginia by the English, 1606*, in JAMESTOWN NARRATIVES: EYEWITNESS ACCOUNTS OF THE VIRGINIA COLONY: THE FIRST DECADE: 1607-1617, at 85 (Edward Wright Haile ed., 1998).

<sup>10</sup> *Id.* at 90.

<sup>11</sup> *Id.*

<sup>12</sup> William Simons, *The Third Booke. The Proceedings and Accidents of The English Colony in Virginia*, in 2 THE COMPLETE WORKS OF CAPTAIN JOHN SMITH (1580-1631) 136, 137 (Philip L. Barbour ed., 1986).

<sup>13</sup> ROUSE, *supra* note 2, at 4.

<sup>14</sup> Percy, *supra* note 9, at 91.

Americans were engaged in a war for freedom and independence from Great Britain. The French fleet was commanded by Admiral de Grasse.<sup>15</sup> The British naval force was commanded by Admiral Graves, who had been sent to provide assistance to Lord General Cornwallis' British Army in Yorktown.<sup>16</sup>

A battle ensued for over three and one-half hours between the French fleet and the British fleet.<sup>17</sup> The French Navy was able to prevent the British Navy from helping Cornwallis, contributing to the eventual surrender of Cornwallis to General George Washington a few weeks later on October 19, 1781.<sup>18</sup> Thus, Virginia Beach represents not only our true birthplace of Virginia, but also our birthplace as a nation, separate and independent from Great Britain.

There are so many aspects of Virginia's rich legal history during the past 400 years that are worthy of discussion. This evening, I would like to limit my discussion to the fascinating evolution of Virginia's constitutions from 1776 through the present, a span of 230 years. As Virginians, and lawyers, often we fail to recognize and acknowledge the significant role of Virginia's constitutions in the development of our nation and our Federal Constitution.

And, too often, lawyers fail to raise state constitutional issues that would be beneficial to their clients. I believe that lawyers fail to raise these significant constitutional issues because our state constitutions have been largely ignored by legal writers and constitutional law professors.

The historical events surrounding the birth of Virginia's first constitution are worth noting. In 1775, Patrick Henry addressed the Virginia Convention, where he uttered his famous words, "[G]ive me liberty or give me death!"<sup>19</sup> That same year, Paul Revere and William Dawes alerted the New England patriots that the British Army was on its way to Lexington and Concord to seize them.<sup>20</sup> George Washington was named Commander-in-Chief of the American forces, and Benjamin Franklin became the first Postmaster General.<sup>21</sup>

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<sup>15</sup> CHARLES LEE LEWIS, *ADMIRAL DE GRASSE AND AMERICAN INDEPENDENCE* 96–97, 156–90 (1945).

<sup>16</sup> *Id.* at 152–55.

<sup>17</sup> *Id.* at 158–61.

<sup>18</sup> *Id.* at 185–90.

<sup>19</sup> Patrick Henry, *The "Give Me Liberty or Give Me Death" Speech (1775)*, in 8 *THE WORLD'S FAMOUS ORATIONS* 62, 67 (William Jennings Bryan & Francis W. Halsey eds., Funk & Wagnalls Co. 1906).

<sup>20</sup> DAVID HACKETT FISCHER, *PAUL REVERE'S RIDE* 97 (1994).

<sup>21</sup> U.S. POSTAL SERV., *THE UNITED STATES POSTAL SERVICE: AN AMERICAN HISTORY 1775–2002*, at 6 (2003).

The following year, in 1776, Spain and France agreed to provide arms to the rebelling colonists, and Richard Henry Lee, an outstanding Virginian, made a motion before the Continental Congress on June 7th, “[t]hat these United Colonies are, and of right ought to be, free and independent states.”<sup>22</sup>

Virginia’s first constitution was both a revolutionary and extraordinary document. Virginia’s constitution was the first state constitution to contain a written bill of rights, called the Declaration of Rights.<sup>23</sup> The Preamble to the Virginia Constitution was authored by Thomas Jefferson, while he was in Philadelphia drafting the Declaration of Independence.<sup>24</sup>

George Mason drafted the Declaration of Rights and the first Virginia Constitution, which were never approved by the people of Virginia.<sup>25</sup> Thomas Jefferson and other leading Virginians questioned whether the first constitution was legitimate because it had not been submitted to the male voters for their approval.<sup>26</sup> However, the Supreme Court of Virginia stated in *Kamper v. Hawkins* in 1793:

The convention of Virginia had not the shadow of a legal, or constitutional form about it. It derived its existence and authority from a higher source; a power which can supercede [sic] all law, and annul the constitution itself—namely, the people, in their sovereign, unlimited, and unlimitable authority and capacity.<sup>27</sup>

The very first paragraph of Virginia’s first Declaration of Rights states: “A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free Convention; which rights do pertain to them, and their posterity, as the basis and foundation of government.”<sup>28</sup> This was a revolutionary statement in 1776, and in many places around the world today, this principle remains unknown.

The right to vote, no taxation without representation, separation of powers, the concept that an individual cannot be deprived of property for public use without consent—these principles are protected in the Declaration of Rights.

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<sup>22</sup> HENRY BALDWIN, A GENERAL VIEW OF THE ORIGIN AND NATURE OF THE CONSTITUTION AND GOVERNMENT OF THE UNITED STATES, DEDUCED FROM THE POLITICAL HISTORY AND CONDITION OF THE COLONIES AND STATES, FROM 1774 UNTIL 1788, at 28 (Lawbook Exch., Ltd. 2000) (1837).

<sup>23</sup> JOHN DINAN, THE VIRGINIA STATE CONSTITUTION: A REFERENCE GUIDE 2 (2006).

<sup>24</sup> 6 A. LONDON FELL, ORIGINS OF LEGISLATIVE SOVEREIGNTY AND THE LEGISLATIVE STATE 20–21 (2004).

<sup>25</sup> DINAN, *supra* note 23, at 2.

<sup>26</sup> *Id.* at 3.

<sup>27</sup> *Kamper v. Hawkins*, 3 Va. (1 Va. Cas.) 20, 74 (1793).

<sup>28</sup> A Declaration of Rights, in ORDINANCES PASSED AT A GENERAL CONVENTION OF DELEGATES AND REPRESENTATIVES, FROM THE SEVERAL COUNTIES AND CORPORATIONS OF VIRGINIA, 3, 3 (Williamsburg, Alexander Purdie 1776).

The Declaration of Rights also states “[t]hat in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.”<sup>29</sup>

Virginia’s Declaration of Rights also protects the right to worship. The Declaration of Rights states:

That religion, or the duty which we owe to our CREATOR, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity, towards each other.<sup>30</sup>

Many of the protections set forth in the Declaration of Rights were embodied within Virginia’s first constitution. For example, our first constitution provided that “[t]he legislative, executive, and judiciary department, shall be separate and distinct, so that neither exercise the powers properly belonging to the other.”<sup>31</sup>

The Virginia Constitution of 1776 provided that the governor was to be elected by the General Assembly for a one-year term and could not serve more than three successive terms.<sup>32</sup>

Virginia’s first constitution also created the General Assembly of Virginia with the House of Delegates and the Senate. All laws were required to originate in the House of Delegates and had to be approved or rejected by the Senate.<sup>33</sup> This constitution did not have a provision that would enable the Governor to veto acts of the General Assembly. Patrick Henry, who vehemently objected to this omission, argued that “a governor would be a mere phantom, unable to defend his office from the usurpation of the legislature, unless he could interpose on a vehement impulse or ferment in that body; and that he would otherwise be ultimately a dependent, instead of a coordinate branch of power.”<sup>34</sup>

The General Assembly elected all judges and the Attorney General; the judges and the Attorney General served for terms of good behavior.<sup>35</sup>

Interestingly, all ministers of the Gospel, of every denomination, were constitutionally incapable of being elected members of the General Assembly or the Privy Council,<sup>36</sup> which was a special council that exercised certain constitutional duties.<sup>37</sup>

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<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Id.*

<sup>31</sup> VA. CONST. of 1776.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> DINAN, *supra* note 23, at 2.

<sup>35</sup> VA. CONST. of 1776.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

Virginia's first constitution and Declaration of Rights served as models for the Federal Constitution and the Federal Bill of Rights.<sup>38</sup> The Supreme Court of Virginia, which predates the United States Supreme Court, served as a model for that Court.

Virginia's constitution was revised in 1830. One hundred and one delegates participated in the Constitutional Convention of 1829 and 1830.<sup>39</sup> These delegates were described as "an assembly of men . . . which has scarcely ever been surpassed in the United States."<sup>40</sup> The Chief Justice of the Supreme Court of the United States, two former Presidents of the United States, distinguished members of the judiciary and the bar, and a future President of the United States participated as delegates.<sup>41</sup>

During discussions about the judiciary, United States Chief Justice John Marshall noted: "[T]he greatest curse an angry heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary. Will you call down this curse on Virginia?"<sup>42</sup>

The Virginia Constitution of 1830 continued the requirement that "[a]ll laws shall originate in the House of Delegates, to be approved or rejected by the Senate, or to be amended with the consent of the House of Delegates."<sup>43</sup> This constitution also expanded the right to vote to include a greater number of Caucasian male citizens of Virginia.<sup>44</sup>

Delegates at this Convention spent a great deal of time arguing about voting apportionment plans and redistricting,<sup>45</sup> issues that have been a constant source of political contention throughout Virginia's history, continuing through the present.

The Virginia Constitution of 1830 vested judicial power "in a Supreme Court of Appeals, in such Superior Courts as the Legislature

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<sup>38</sup> W. B. Swaney, *The Federal Constitution and First Ten Amendments: Virginia Documents*, 11 VA. L. REV. 210, 212 (1925).

<sup>39</sup> Virginia Historical Society, *Becoming Southerners: Virginia Constitutional Convention*, <http://www.vahistorical.org/sva2003/vacc.htm> (last visited Oct. 8, 2007).

<sup>40</sup> PROCEEDINGS AND DEBATES OF THE VIRGINIA STATE CONVENTION OF 1829-30, at iii (Richmond, Ritchie & Cook 1830) [hereinafter PROCEEDINGS AND DEBATES].

<sup>41</sup> THE HORNBOOK OF VIRGINIA HISTORY: A READY-REFERENCE GUIDE TO THE OLD DOMINION'S PEOPLE, PLACES, AND PAST 41 (Emily J. Salmon & Edward D.C. Campbell, Jr. eds., 4th ed. 1994).

<sup>42</sup> HUGH BLAIR GRIGSBY, THE VIRGINIA CONVENTION OF 1829-30, at 16 (Da Capo Press 1969) (1854).

<sup>43</sup> VA. CONST. of 1830, art. III, § 10.

<sup>44</sup> *Id.* § 14.

<sup>45</sup> See generally William F. Swindler, *Background Note to Virginia Constitutions*, in 10 SOURCES AND DOCUMENTS OF UNITED STATES CONSTITUTIONS 13, 14 (William F. Swindler ed., 1979).

may from time to time ordain and establish, and the Judges thereof.”<sup>46</sup> The Justices of the Supreme Court of Virginia and the other courts served for a term of good behavior and were elected by a joint vote of the House of Delegates and the Senate.<sup>47</sup>

During the debates surrounding this constitution, Chief Justice John Marshall uttered his often quoted observation about judicial independence:

Advert, Sir, to the duties of a Judge. He has to pass between the Government and the man whom that Government is prosecuting: between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the exercise of these duties, [a judge] should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and the security of his property depends on that fairness? The Judicial Department comes home in its effects to every man's fireside: it passes on his property, his reputation, his life, his all. Is it not, to the last degree important, that [a judge] should be rendered perfectly and completely independent, with nothing to influence or controul [sic] him but God and his conscience?<sup>48</sup>

Virginia's constitution was revised again in 1851. To fully understand the Constitution of 1851, we must consider the historical developments that occurred during that era.

Tensions were high in the northern states and southern states regarding the expansion of slavery. The Compromise of 1850, sponsored by United States Senator Henry Clay, allowed California, where slavery was forbidden, to be admitted as the 31st state.<sup>49</sup> Utah and New Mexico were deemed territories.<sup>50</sup> The Fugitive Slave Act was amended so that slave-owners could reclaim slaves who had escaped from the south and lived in non-slave holding states.<sup>51</sup>

Of literary interest, Nathaniel Hawthorne's *The Scarlet Letter* was published in 1850,<sup>52</sup> and *Moby Dick*, written by Herman Melville, was

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<sup>46</sup> VA. CONST. of 1830, art. V, § 1.

<sup>47</sup> *Id.*

<sup>48</sup> PROCEEDINGS AND DEBATES, *supra* note 40, at 616.

<sup>49</sup> Act of Sept. 9, 1850, ch. 50, 9 Stat. 452 (1850). The Compromise of 1850 included five statutes, one of which provided for the admission of California as a state. In his Resolutions to the Senate, Senator Henry Clay stated: “California, with suitable boundaries, ought, upon her application, to be admitted as one of the States of this Union, without the imposition by Congress of any restriction in respect to the exclusion or introduction of slavery within those boundaries.” S.R. MISC. DOC. NO. 31–36, at 1 (1850). Senator Clay spoke for two days straight in favor of the Compromise Resolutions. 2 THE LIFE & SPEECHES OF HENRY CLAY 601 (Philadelphia, J.L. Gihon, 1854).

<sup>50</sup> *Id.*

<sup>51</sup> Fugitive Slave Act of 1850, ch. 60, § 6, 9 Stat. 462, 463 (1850) (repealed 1864).

<sup>52</sup> NATHANIEL HAWTHORNE, *THE SCARLET LETTER* (Alfred A. Knopf, Inc. 1992) (1850).

published in 1851.<sup>53</sup> In 1852, *Uncle Tom's Cabin*, written by Harriet Beecher Stowe, was published.<sup>54</sup>

Harriet Tubman was intimately involved in the Underground Railroad,<sup>55</sup> and the American Express Company was founded in 1850.<sup>56</sup> *The New-York Times*,<sup>57</sup> the *Reuters* news service,<sup>58</sup> and Macy's Department Store<sup>59</sup> were also founded in the 1850s.

The Virginia Constitution of 1851 marked a significant departure from prior constitutions because, for the first time, "[b]ills and resolutions [could] originate in either of the two houses of the [G]eneral [A]ssembly, to be approved or rejected by the other, and [could] be amended by either house, with the consent of the other."<sup>60</sup>

The Constitution of 1851 provided that emancipated slaves forfeited their freedom if they remained in Virginia more than twelve months after they became free.<sup>61</sup> This constitution also empowered the General Assembly to impose restrictions and conditions upon the power of slave owners to emancipate their slaves.<sup>62</sup>

This constitution reflected the expanded growth of the Commonwealth and the need for greater government regulation. It created the offices of the Secretary of the Commonwealth, the Treasurer, the Auditor, and the Board of Public Works.<sup>63</sup>

The Constitution of 1851 is remarkable in that it provided for the election of judges by the voters.<sup>64</sup> Though the judges who had been elected under the Constitution of 1830 were entitled to serve for life, the Constitution of 1851 divested them of that life tenure. I remain surprised that a constitutional crisis did not ensue.

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<sup>53</sup> HERMAN MELVILLE, *MOBY DICK* (Literary Classics of the United States, Inc. 1983) (1851).

<sup>54</sup> HARRIET BEECHER STOWE, *UNCLE TOM'S CABIN* (Oxford Univ. Press 1998) (1852).

<sup>55</sup> See CATHERINE CLINTON, *HARRIET TUBMAN: THE ROAD TO FREEDOM* 79–108 (2004); Catherine Clinton, "Slavery is War": *Harriet Tubman and the Underground Railroad*, in *PASSAGES TO FREEDOM: THE UNDERGROUND RAILROAD IN HISTORY AND MEMORY* 195, 195–209 (David W. Blight ed., 2004).

<sup>56</sup> *Becoming American Express: 150+ Years of Reinvention of Customer Service*, <http://home3.americanexpress.com/corp/os/history.asp> (last visited Oct. 6, 2007).

<sup>57</sup> *New York Times Timeline 1851–1880*, [http://www.nytc.com/company/milestones/timeline\\_1851.html](http://www.nytc.com/company/milestones/timeline_1851.html) (last visited Oct. 6, 2007).

<sup>58</sup> *History of Reuters*, <http://about.reuters.com/home/aboutus/history/index.aspx> (last visited Oct. 6, 2007).

<sup>59</sup> *Macy's: A History*, [http://www.macysinc.com/company/his\\_macys.asp](http://www.macysinc.com/company/his_macys.asp) (last visited Oct. 6, 2007).

<sup>60</sup> VA. CONST. of 1851, art. IV, § 11.

<sup>61</sup> *Id.* § 19.

<sup>62</sup> *Id.* § 20.

<sup>63</sup> *Id.* art. V, §§ 11–18.

<sup>64</sup> *Id.* art. VI, §§ 6, 10.



The Constitution of 1851 was the first Virginia Constitution that required the judges of the Supreme Court to state reasons for their decisions.<sup>65</sup> This requirement remains intact today.

As a consequence of the 1851 Constitution, for the first time in the history of our Commonwealth, the Governor would be elected by the voters.<sup>66</sup> The term of the Governor was for four years.<sup>67</sup> This constitution also provided for the election of Commonwealth's attorneys.<sup>68</sup>

Virginia's next constitution was the Constitution of 1864. When this constitution took effect, our nation was in a civil war. The Confederate submarine Hunley attacked and destroyed the U.S.S. Housatonic. This naval attack marked the first time that a submarine destroyed an enemy ship.<sup>69</sup> Arlington National Cemetery was established on 200 acres of land owned by General Robert E. Lee, Commander of the Confederate Army.<sup>70</sup>

The Battle of Petersburg began, and General Ulysses Grant led his forces against an army commanded by General Lee.<sup>71</sup> General Sherman, leading the Union forces, occupied Atlanta, Georgia after placing the city under a four-month siege.<sup>72</sup> President Abraham Lincoln was re-elected, and Nevada was admitted as the 36th state.<sup>73</sup>

The Constitution of 1864 is fascinating because it was drafted by only seventeen delegates, all of whom were loyal to the Union forces.<sup>74</sup> This small group of delegates met in Alexandria on February 13, 1864.<sup>75</sup> This constitution was adopted in the spring of 1864 after it was submitted to the people who approved it "by about five hundred votes."<sup>76</sup>

Virginia's Constitution of 1864 was not accepted by many Virginians. In 1900, the president of the Virginia State Bar Association stated:

I need not notice the Alexandria Constitution of 1864, adopted by a pretended and spurious convention, which did not represent one-

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<sup>65</sup> *Id.* § 13.

<sup>66</sup> *Id.* art. V, § 2.

<sup>67</sup> *Id.* § 1.

<sup>68</sup> *Id.* art. VI, § 30.

<sup>69</sup> EDWIN P. HOYT, *THE VOYAGE OF THE HUNLEY* 55–68, 151 (2002).

<sup>70</sup> Arlington National Cemetery: Historical Information, [http://www.arlingtoncemetery.org/historical\\_information/arlington\\_house.html](http://www.arlingtoncemetery.org/historical_information/arlington_house.html) (last visited Oct. 6, 2007).

<sup>71</sup> WELCOME THE HOUR OF CONFLICT: WILLIAM COWAN McCLELLAN AND THE 9TH ALABAMA 260–63, 390 (John C. Carter ed., 2007).

<sup>72</sup> WILLIAM R. SCAIFE, *THE CAMPAIGN FOR ATLANTA* 108–13 (1985).

<sup>73</sup> Nevada State Library and Archives, Nevada Facts, <http://dmla.clan.lib.nv.us/docs/nsla/services/nvfacts.htm> (last visited Oct. 6, 2007).

<sup>74</sup> DINAN, *supra* note 23, at 12.

<sup>75</sup> Hamilton James Eckenrode, *The Political History of Virginia During the Reconstruction*, in 22 *JOHNS HOPKINS UNIVERSITY STUDIES IN HISTORICAL AND POLITICAL SCIENCE* 287, 306 (J.M. Vincent et al. eds., 1904).

<sup>76</sup> *Id.* at 306–08.

thousandth part of the people of the Commonwealth, and which would, in fact, but for the serious results which flowed from the game it was suffered to play, have been a ridiculous farce. By no specious reasoning, not even by a resort to the device of a legal fiction, can that convention be ever galvanized into legal vitality.<sup>77</sup>

Not surprisingly, this constitution contained a provision requiring that all voters and officeholders “take an oath to support the United States and the Restored Government of Virginia,” which was recognized by the Union as the legitimate government of Virginia.<sup>78</sup> This constitution abolished slavery and involuntary servitude in the State of Virginia.<sup>79</sup>

Virginia’s constitution was revised again in 1870. One hundred and five delegates participated in the constitutional convention, and approximately twenty-five of these delegates were black.<sup>80</sup>

The Constitution of 1870 was also a very comprehensive document. Voting rights were granted to every male citizen with certain exceptions. The following persons were excluded from voting:

No person who, while a citizen of [Virginia], has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this state, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to vote or hold any office of honor, profit, or trust under this constitution.<sup>81</sup>

Additionally, the 1870 Constitution contained a provision recognizing that laws passed by the Congress of the United States constituted “the supreme law of the land” and that allegiance and obedience to the Federal Constitution were required from every citizen.<sup>82</sup>

For the first time, the Virginia Governor was granted the power to veto legislation;<sup>83</sup> finally, Patrick Henry’s position in 1776 was embraced.<sup>84</sup> Additionally, the popular election of judges was eliminated, and the General Assembly, once again, was given the power to elect judges.<sup>85</sup>

The Constitution of 1870 is also very significant because it provided for a superintendent of public instruction who “shall have the general

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<sup>77</sup> DINAN, *supra* note 23, at 12 (citation omitted).

<sup>78</sup> *Id.* (citation omitted).

<sup>79</sup> VA. CONST. of 1864, art. IV, § 19.

<sup>80</sup> DINAN, *supra* note 23, at 12.

<sup>81</sup> VA. CONST. of 1870, art. III, § 1.

<sup>82</sup> *Id.* art. I, § 3.

<sup>83</sup> *Id.* art. IV, § 8.

<sup>84</sup> DINAN, *supra* note 23, at 2.

<sup>85</sup> VA. CONST. of 1870, art. VI, §§ 5, 11.

supervision of the public free school interests of the state.”<sup>86</sup> This constitution created the Board of Education and required that the General Assembly establish a uniform system of public free schools.<sup>87</sup>

The Constitution of 1902 was the product of another constitutional convention. Numerous noteworthy historical events occurred around 1901 and 1902, when Virginia enacted this constitution. American League Baseball became Major League Baseball.<sup>88</sup> New York became the first state to require that owners of cars obtain license plates.<sup>89</sup> The Cadillac Motor Company was founded in Detroit, Michigan.<sup>90</sup> President McKinley was assassinated<sup>91</sup> and Theodore Roosevelt became President of the United States.

Theodore Roosevelt invited Booker T. Washington to the White House, and the invitation extended to this famous black American caused racial riots and violence throughout the South.<sup>92</sup> The American Standard Version Bible was first published,<sup>93</sup> and the first Nobel Prize ceremony was held.<sup>94</sup> The Carnegie Foundation was founded.<sup>95</sup> The Rose Bowl, the first American collegiate football bowl game, was played in Pasadena between Michigan and Stanford.<sup>96</sup>

The Constitutional Convention of 1901 and 1902, which drafted the 1902 Constitution, was an omen for racial progress and the rule of law in Virginia. As one commentator noted:

Of particular concern to the convention delegates was how to restrict the suffrage of [black Virginians], and, relatedly, how to reduce the electoral fraud . . . that had increasingly been resorted to by the white majority, at first in order to ensure white dominance, and increasingly

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<sup>86</sup> *Id.* art. VIII, § 1.

<sup>87</sup> *Id.* art. VIII, §§ 2–3.

<sup>88</sup> *New Baseball Factor: National League Behind the American Association*, WASH. POST, Jan. 15, 1901, at 8.

<sup>89</sup> Joseph Nathan Kane et al., *Motor Vehicles*, in FAMOUS FIRST FACTS 718, 719 (H.W. Wilson Co., 6th ed. 2006) (1933).

<sup>90</sup> GM: Corporate History, <http://www.gm.com/corporate/about/history/?m=1900> (last visited Oct. 6, 2007).

<sup>91</sup> See Sidney Fine, *Anarchism and the Assassination of McKinley*, 60 AM. HIST. REV. 777, 777–82 (1955).

<sup>92</sup> *The Night President Teddy Roosevelt Invited Booker T. Washington to Dinner*, J. BLACKS IN HIGHER EDUC., Spring 2002, at 24, 24–25.

<sup>93</sup> *Biblical Literature and Its Critical Interpretation*, in 14 ENCYCLOPEDIA BRITANNICA 903, 915 (15th ed. 2007).

<sup>94</sup> Nobelprize.org, Alfred Nobel—The Man Behind the Nobel Prize, [http://nobelprize.org/alfred\\_nobel/](http://nobelprize.org/alfred_nobel/) (last visited Oct. 6, 2007).

<sup>95</sup> The Carnegie Foundation for the Advancement of Teaching, Carnegie Foundation History, <http://www.carnegiefoundation.org/about/index.asp?key=13> (last visited Oct. 6, 2007).

<sup>96</sup> Pasadena Tournament of Roses: Rose Bowl Game FAQs, <http://www.tournamentofroses.com/rosebowlgame/gamefaqs.asp> (last visited Oct. 6, 2007).

for other purposes as well. [John] Goode[, the president of the Constitutional Convention,] maintained that “our people have no prejudice, no animosity, against the members of the colored race, but they believe, and I believe with them, that the dominant party in Congress not only committed a stupendous blunder, but a crime against civilization and Christianity, when, against the advice of their wisest leaders, they required the people of Virginia and the South, under the rule of bayonet, to submit to universal negro suffrage.” The challenges for the convention, therefore, were threefold: to devise a method of restricting [black] suffrage; to do so in a manner that would conform to the U.S. Constitution; and in the process to ensure that “politics in Virginia may be so purified that in all the years to come [Virginia] shall not be stained by any act of fraud, bribery, corruption, false registration, false counting, or any debauching methods in the conduct of the elections.”<sup>97</sup>

As a consequence of this convention and the new constitution, voter registration required the payment of a poll tax in each of the three preceding years before an election and the passage of a voter literacy test, referred to as an “understanding” clause.<sup>98</sup> This poll tax remained in effect until 1966 when the United States Supreme Court held that the imposition of the tax as a prerequisite for voting was unconstitutional.<sup>99</sup>

I am pleased to report that even though the Constitutional Convention of 1901 and 1902 achieved its desired purpose, many courageous delegates, principally from the southwestern portion of Virginia, argued against constitutional provisions that would have deprived black Virginians of the right to vote. The literacy test, designed to prevent black Virginians from voting, was also used to prevent Republicans from exercising their rights to vote.<sup>100</sup>

Even though there were numerous legal challenges to the legitimacy of the constitution because it was not submitted to the people for approval,<sup>101</sup> the Supreme Court of Virginia ruled in *Taylor v. Commonwealth* that the 1902 Constitution was lawful.<sup>102</sup>

Our present constitution was approved by the voters in 1971 and is the sixth complete revision of Virginia’s constitution since 1776. The 1970s marked a turbulent era in American history. The nation was at war in Vietnam. United States postal workers embarked upon a strike, and approximately 200,000 postal employees refused to work.<sup>103</sup>

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<sup>97</sup> DINAN, *supra* note 23, at 15.

<sup>98</sup> *Id.* at 16.

<sup>99</sup> *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666, 670 (1966).

<sup>100</sup> DINAN, *supra* note 23, at 16–17.

<sup>101</sup> *Id.* at 18.

<sup>102</sup> 44 S.E. 754, 755 (Va. 1903).

<sup>103</sup> Richard J. Murphy, *The Difference of a Decade: The Federal Government*, PUB. ADMIN. REV., Mar.–Apr. 1972, at 108, 110.

Violent antiwar demonstrations were occurring throughout the nation. At Kent State University, four students were killed and nine were wounded by National Guardsmen.<sup>104</sup> The Apollo 13 spacecraft, which was en route to the moon, was damaged as a result of an oxygen tank explosion, and the crew aborted their mission. They returned to Earth as Americans prayed and waited anxiously for their safe arrival.<sup>105</sup>

Virginia's current Declaration of Rights is substantially identical to the Declaration of Rights adopted in 1776. The Declaration of Rights was amended on November 5, 1996, adding a provision guaranteeing the rights of victims of crime.

Our present constitution has numerous provisions regarding the regulation of the right to vote and requires that the General Assembly establish a uniform system for permanent registration of voters. The principle of separation of powers remains deeply embedded within Virginia's constitution.

Section 14 of Article 4 of the Constitution of Virginia describes the powers of the General Assembly and prescribes certain limitations upon that power. For example, the General Assembly may not, by special legislation, grant relief to persons in any case in which the courts or other tribunals have jurisdiction.<sup>106</sup>

In November 2004, in response to the need for the continuity of the operation and continuation of government after terrorist attacks in New York and in Virginia, Section 16 of Article 5 was added to the Constitution of Virginia. Section 16 provides for a detailed succession to the office of governor.<sup>107</sup>

As one might expect, Article 6 of our constitution, which relates to the judiciary, is very dear to my heart. Section 1 of this Article vests the judicial power of the Commonwealth in the Supreme Court of Virginia and makes such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may from time to time establish.<sup>108</sup>

Virginia's constitution empowers the Supreme Court to adopt rules governing the course of appeals and the practice and procedures to be used in all courts of the Commonwealth.<sup>109</sup> The constitution also states: "When a judgment or decree is reversed, modified, or affirmed by the

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<sup>104</sup> See Raymond J. Adamek & Jerry M. Lewis, *Social Control Violence and Radicalization: The Kent State Case*, 51 SOC. FORCES 342, 342-47 (1973).

<sup>105</sup> See Thomas O'Toole & Stuart Auerbach, *Apollo Power Loss Aborts Mission; Astronauts Attempting Return Flight*, WASH. POST, Apr. 14, 1970, at A1; Nixon: 'Join . . . in Offering . . . Prayer . . . of Deep Thanks,' WASH. POST, Apr. 18, 1970, at A12.

<sup>106</sup> VA. CONST. art. IV, § 14.

<sup>107</sup> *Id.* art. V, § 16.

<sup>108</sup> *Id.* art. VI, § 1.

<sup>109</sup> *Id.* § 5.

Supreme Court, or when original cases are resolved on their merits, the reasons for the Court's action shall be stated in writing and preserved with the record of the case."<sup>110</sup> The judicial branch of government is the only branch of government that is required to explain its decisions in writing.

Today's constitution reflects the tremendous growth in Virginia's government and the complexity of our society. Our constitution includes provisions related to compulsory education,<sup>111</sup> the State Corporation Commission,<sup>112</sup> taxation and finance,<sup>113</sup> property exempt from taxation,<sup>114</sup> distribution of State revenues,<sup>115</sup> lottery proceeds,<sup>116</sup> State debt,<sup>117</sup> State employees' retirement system,<sup>118</sup> public education,<sup>119</sup> and conservation of the Commonwealth's natural resources and historical sites.<sup>120</sup> Our constitution was recently amended by Virginia's voters to include a definition of marriage.<sup>121</sup>

As Americans, as Virginians, as members of government, as lawyers, as professors, we should always remember that we are a nation devoted to the rule of law and that we must never permit the predilections of men and women to undermine our strong adherence to this fundamental concept.

Our constitution is more than a mere legal document. Our constitution is a living document, a reflection of the values and beliefs of all Virginians. This document is an embodiment of the basic rights that we believe are necessary to ensure the enjoyment of liberty, freedom, security, and religious expression.

Our constitutions have not been, and will never be, perfect because they are drafted by men and women who suffer from human frailties, biases, and predilections. As our history demonstrates, some of our constitutions have been unfair to the poor, members of the clergy, black citizens, women, and Native Americans.

Even though our constitutions may be imperfect, we must always seek perfection in our continuous quest to protect the principles of freedom, liberty, justice, and the rule of law.

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<sup>110</sup> *Id.* § 6.

<sup>111</sup> *Id.* art. 8, § 3.

<sup>112</sup> *Id.* art. 9, §§ 1–4.

<sup>113</sup> *Id.* art. 10.

<sup>114</sup> *Id.* § 6.

<sup>115</sup> *Id.* § 7.

<sup>116</sup> *Id.* § 7-A.

<sup>117</sup> *Id.* § 9.

<sup>118</sup> *Id.* § 11.

<sup>119</sup> *Id.* art. 8, §§ 1–9.

<sup>120</sup> *Id.* art. 11, §§ 1–2.

<sup>121</sup> *Id.* art. 1, § 15-A.

As Virginians, as Americans, as people of faith, just as the English settlers thanked God for their successful journey from Great Britain to America on the shores of Virginia Beach 400 years ago, we too should thank God for 400 years of the rule of law and liberty in our great nation. This evening, let us together renew our commitment to the rule of law thereby ensuring liberty, freedom, and justice to future generations of Virginians. May God bless this Commonwealth and our great United States of America.