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A Constitution of Our Own : The Constitutional Convention of 1872 and the Resurrection of Confederate West Virginia The Constitutional Convention of 1872 and the Resurrection of Confederate West Virginia

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**A Constitution of Our Own:
The Constitutional Convention of 1872
and the Resurrection of Ex-Confederate West Virginia**

**Thesis submitted to
The Graduate College of
Marshall University**

**In partial fulfillment of the
Requirements for the degree of
Master of Arts
History**

By

Richard Ogden Hartman

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Abstract

A Constitution of Our Own: The Constitutional Convention of 1872 and the Resurrection of Confederate West Virginia

By Richard Ogden Hartman

The Radical wing of the Republican Party, which created the state of West Virginia, imposed a punitive reconstruction program on its citizens. The disenfranchisement of most returning Confederate soldiers and the state's Confederate supporters was carried out illegally in many cases. The overzealous administering of restrictive measures longer than necessary or acceptable caused a split in the Republican Party leading to the rise of the Democratic Party in the state. The Liberal Republicans joined the Democrats in successfully removing many of the reconstruction measures affecting the disenfranchised. Once the Democratic Party regained the legislative majority, they swept away all the remaining mechanics of reconstruction by 1870. Firmly in control of the executive and legislative branches of government, the Democrats sought a new constitution for West Virginia. The truth of the matter was that there was not a need for a new constitution to dismantle reconstruction in West Virginia. Why did the Democrats call for a constitutional convention to rewrite the 1863 Constitution? The Democrats demanded a constitutional convention to achieve four goals: restrict, repeal or diminish the civil rights of the Negro and return him to a place of pre-war subservience; take control over the remaining branch of government: the judiciary; regain control over local governance; and create a constitution of their own to return the political culture of West Virginia to an ante-bellum status of political oligarchy and bigotry.

The Democrats were largely successful in achieving their goals. A split within the Democratic Party, however, helped modify the most damaging proposals and produced a more progressive and less strident constitution. Regardless, the 1872 Constitutional Convention and its resulting document insured a southern leaning "Bourbon" democracy in West Virginia that lasted for a generation.

Dedication

To my wife, Lynn, for her understanding and patience
while I spent a year in the 19th century.

Acknowledgments

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Chapter One - Introduction

The Radical Republicans, who created West Virginia, adopted the first constitution in 1863 intending to insure that they monopolized political power in the new state. Through subsequent amendments they retained political power over state government for six years until their over zealous administration forced a split in the party, causing the collapse of their authority. The newly enfranchised ex-Confederate Democrats took control in 1870. Although the dismantling of the mechanics of reconstruction did not require a new state constitution, the Democrats decided to call for a constitutional convention. A new constitution was needed by the Democrats to design a state government which would aid their continued hold on power and return West Virginia to an antebellum political culture.

There has been little written about West Virginia's 1872 Constitutional Convention. In his contribution to *West Virginia History: Critical Essays on the Literature*, John Edmund Stealey, III comments on the "constitutional amnesia" surrounding the 1872 Constitutional Convention. This is because there was no publication of the debates and proceedings. This omission of documentation was noted at the time when the *Wheeling Intelligencer* opined during the convention that "it is to be regretted that no full and accurate report of debates is being made. Evidently, many fine things in the way of oratory and politics - things that would have a curious interest to future generations - are being lost."¹ A journal was created and accounts appeared in state newspapers, yet Stealey's conclusion is that there has been "little examination of the convention." He does offer the summation that, if partition from Virginia

¹ *Intelligencer* (Wheeling) 19 February 1872, No. 151, 2.

was a revolution, then the Constitutional Convention of 1872 was a counter-revolution.² Brief introductions of the events do appear in the West Virginia history textbooks of Charles H. Ambler and Festus P. Summers. Three pages of text in their *West Virginia: the Mountain State* summarizes the 1872 Constitutional Convention. Ambler noted that the Democratic majority in the convention and their growing strength "came largely, but not wholly from former Confederate strongholds."³ Other than listing the fundamental changes from the 1863 Constitution, he only passes judgement on the new document as being "conservative, even reactionary" but "not without merit."⁴ He declines to detail the reasons for this pronouncement. Claude J. Davis and others skim over the constitutional development of West Virginia going back to 1776. Their text, *West Virginia State and Local Government*, again delivers the changes made to the original constitution but little analysis other than to deem the "convention's labors" as conservative.⁵

John Alexander Williams presented an interpretive treatment in his article "The New Dominion and the Old: Ante-bellum and Statehood Politics as the Background of West Virginia's 'Bourbon Democracy.'" The derisive term "Bourbon" had been applied to unreconstructed Southerners, comparing them to the "doomed French kings who had never learned anything or forgotten anything."⁶ Williams presented the Virginia background leading

² John Edmund Stealey III, "In the Shadow of Ambler and Beyond: A Historiography of West Virginia Politics", in *West Virginia History: Critical Essays on the Literature*, ed. Ronald L. Lewis, and John C. Hennen, Jr., (Dubuque, IA: Kendall / Hunt Publishing Co., 1993) 14.

³ Charles H Ambler and Festus P. Summers, *West Virginia: the Mountain State*, 2d ed., (Englewood Cliffs, N.J.: Prentice - Hall, Inc., 1965) 272.

⁴ *Ibid.*, 275.

⁵ Claude J. Davis and others, *West Virginia State and Local Government* (Morgantown, WV: Morgantown Printing and Binding Co., 1963) 47.

⁶ Hodding Carter, *The Angry Scar: The Story of Reconstruction* (Garden City, NY, Doubleday & Company, 1959) 346.

up to the creation of West Virginia. He sees the statehood movement not as a climax but as an ascent, long in progress. The return of the Democrats is thus correctly viewed as a retreat down that mountain to an antebellum past. His treatment of the pivotal 1872 Constitutional Convention is briefly highlighted as a "badly divided" affair that nonetheless represented a victory of southern agrarian forces over northern industrial interests in the political wars. Williams' study extends into the next century, leaving the convention behind.

In 1933 Harvey Mitchell Rice submitted a Masters thesis to West Virginia University titled "The Conservative Re-Action in West Virginia: 1865-1871". Although it gives a rather dull narrative of the events leading up to the 1871 legislative session, during which the legislature voted for a constitutional convention, it offers little analysis of the events and does not address the 1872 Constitutional Convention or the reasons for having it.

All of the literature reviewed covers to a limited degree what occurred up to or during the convention. The debates as covered by state newspapers contain many of the interesting quotes by the leaders crafting the new document. These are interspersed in much of the literature cited. None of the literature reviewed addressed the more interesting questions. Why was there a constitutional convention in 1872? Was such a monumental re-write necessary? If not, what rationale created the need in the minds of the politicians and the people who voted for a convention? This thesis attempts to demonstrate that there was not a need for the 1872 Constitutional Convention in order to dismantle the tools of reconstruction in West Virginia. The reason for the convention was based purely on partisan politics and racial hatred exercised by the ex-Confederate Democrats.

Since there has been scant historical literature produced regarding West Virginia's 1872 Constitutional Convention, this thesis rests largely on primary sources. The Wheeling

Intelligencer and the *Wheeling Daily Register* provide much of the primary documentation for the Civil War and its aftermath in West Virginia. At the time these two major daily newspapers represented the most important news sources in the state. Their coverage of the 1863 and 1872 conventions, as well as the West Virginia political scene are invaluable. Many of the other local papers filled their columns with reports and editorials drawn from the two Wheeling newspapers. However, a more thorough examination of the other newspapers should shed light on regional opinions and perceptions during the period leading up to and during the Constitutional Convention of 1872.

The official papers of the governor, legislature and other local and state officials are available in the State Archives and History Library. Biographies of a few of the principal figures involved in the 1872 Convention has been produced. The personal papers of some of the participants and observers are likewise available in the Archives.

Understanding the political dynamics of post-Civil War West Virginia requires an understanding of the political geography of the new state. The dynamics of political change are reflected in the sectionalism that existed prior to the war and loyalties during the war. The resurgence of the Democratic Party and the desire to create a constitution of their own mirrors the sectionalism inherited from those periods. Therefore, a review of that sectionalism and the geographic map of political power is important in demonstrating the political shift of fortunes leading to and producing the 1872 Constitution.

A comparison of the 1863 and 1872 Constitutions will shed light on the changes made and their effect on the political landscape, particularly the shift in political power. This geographic shift will also show the efforts to not only change the structure of government but the political culture within which government will operate for the next generation.

Chapter Two - The Birth and Death of Radical Republican West Virginia

In order to fully understand the political forces that shaped West Virginia after the Civil War, particularly their geographic distribution, one must first delve into early nineteenth century demographics. The idea that West Virginia was born out of the conflict of the Civil War evokes a dubious analogy. It was less a birth than a contentious partnership. West Virginia was created from a shotgun marriage between a northern commercial, industrial groom and a southern farmer bride. The concept that western Virginia was a Union stronghold that broke from the Confederate ideology of state rights and African slavery, driving the state of Virginia into secession, is, if not erroneous, at least only a partial truth. The counties, which comprise two-thirds of the current state of West Virginia, were largely sympathetic to Virginia and the Confederacy. The statehood movement grew from the more populated northern panhandle and found support primarily from the populated counties along the Baltimore & Ohio Railroad and the Monongahela, Kanawha, Little Kanawha and Ohio rivers. The Radical Republicans that created the state utilized restrictions on her citizens' rights to maintain their hold on power. This tactic, carried out too long and too forcefully, split their own ranks and defeated their primary goal, which was to stay in office. The political house of West Virginia saw reconstruction as practiced by the governor and the Radical Republican controlled legislatures rapidly losing favor and practicality. The draconian measures used by the Radical Republicans to hold onto power were totally unacceptable to the state's southern-leaning population. The election of 1869 marked the death of reconstruction in West Virginia. The Radical Republicans that created West Virginia died from political suicide.

The state of Virginia was the largest of the original thirteen colonies. Virginia's topographical features include the Tidewater, known generally as the Atlantic Coastal Plain, rising slowly west

through the Piedmont until it hits the Blue Ridge wall, where it drops briefly into several valleys and then climbs over the Allegheny Mountains. Continuing west it bumps along a slow slide across the Allegheny Plateau to the banks of the Ohio River. Virginia's man-made transportation system struggled both physically and economically westward. By the mid-nineteenth century few roads ventured into and over the Allegheny mountain range to reach the Ohio River. The Baltimore and Ohio Railroad, completed in 1853, took the least difficult route along the North Branch of the Potomac River, into Grafton in northwest Virginia and then shot northwest to Wheeling, located on the Ohio River. The Northwestern Railroad split from the B&O at the Tygart River and joined Clarksburg and Parkersburg in 1857.⁷ The southwestern counties of Virginia had only the James River and Kanawha Turnpike (later the Midland Trail / US Route 60) linking Covington in the Shenandoah Valley (the Valley) with Richmond to the east and Charleston/Guyandotte to the west. The Midland Trail had regular stage service by 1827. It is important to the political development of West Virginia to observe that all of these transportation corridors had an east-west orientation. There were few transportation routes connecting the northwestern counties of Virginia with her southwestern kin.⁸ A rail route joining these areas would not occur until the end of the nineteenth century.⁹

Civilization travels on established roads. Commerce in goods, people and ideas flow within transportation channels. Citizens residing in the western counties of Virginia looked down those roads, rivers and railroads and saw either Baltimore and the growing industrial north or Richmond and the growing agricultural south. They had little opportunity to face each other.

⁷ John Alexander Williams, "The New Dominion and the Old: Ante-bellum and Statehood Politics as the Background of West Virginia's "Bourbon Democracy,"" *West Virginia History* 33/4 (July 1972) : 327-328.

⁸ West Virginia Department of Highways, *Yesterday and Today: A Highway History of West Virginia from Colonial Times to the Present* (Advanced Planning Division, Charleston, WV, 1973) 2-10.

Only the Ohio River served their north/south perspective. Similarly, the navigable rivers flowing into the Ohio River changed the cultural, commercial and ideological views of those on their shores. An overlay of the Ohio River and the navigable portions of the Monongahela, Little Kanawha and Kanawha rivers placed over those areas of greater support for the northern Union makes this obvious. It was within these populated commercial centers where Union, and later statehood sentiment thrived. This geography was the commanding backdrop to the growing sectionalism of western Virginia and later, West Virginia. This sectionalism defined the state's political battles that would follow during and after the Civil War and determined the winner of those battles.

Sectional conflicts existed within Virginia decades before the Civil War. The slave rich Tidewater and Piedmont areas were in open political conflict with the Valley and Trans-Allegheny regions shortly after the War of 1812. The specific issues remained largely unchanged over time, although reforms shrank the geographic dimensions of unrest. The need for an adequate credit and banking system for western Virginia hindered capital investments. In response "Wildcat" banks were replaced with state chartered lending facilities in the Valley and in the northern panhandle after 1812.¹⁰ The issue of representation in the Virginia General Assembly based on counting slave numbers as well as white owners reduced the political power of the West where there were far fewer slaves. In a similar vein, the ownership of property as a requirement for the right to vote disenfranchised many in the Valley and the Trans-Allegheny west. This diminution of political power could not successfully address the need for internal improvements in the West. The drive by the West for a constitutional convention to correct

⁹ Williams, "The New Dominion", 328.

¹⁰ Richard Orr Curry, "The Virginia Background for the History of the Civil War and Reconstruction Era in West Virginia: An Analytical Commentary", *West Virginia History* 20/4 (July 1959) 221-222.

these inequities was rebuffed in 1816. By 1830 the western region with a population of 319,518 was represented in Richmond by only 28 delegates while 362,745 people in the Tidewater and Piedmont commanded 68.¹¹ The Valley and the Trans-Allegheny became united against the political dominance of the east.¹² Continued strife finally forced a convention in 1830.

The Virginia Constitutional Convention of 1830 did not end this sectional conflict but it did shrink it geographically. The Valley's growing slave population began to tie their interests closer to those of the East. That convention rewarded the Valley with more representation and more funding for internal road and rail improvements. The Winchester *Republican* predicted that the "division of the state must follow", adding that the best thing for Virginia to do would be to let go of the "disaffected population" in the northwestern counties.¹³ Already it was clear that the counties comprising the northwest of Virginia were of different loyalties than the southwestern counties and those bordering the Valley. This separation grew over the decades leading up to 1860. Curry included in his findings the correct corollary that immigration after 1830 into the southwestern counties was "largely Southern in origin" while the northwestern counties pulled from the North.¹⁴

The presidential election of 1860 occurred in the midst of an increasingly divided nation and a divided Virginia. Sectionalism in western Virginia was still a driving political force. The State

¹¹ Ibid., 226, 229. Note: The source for Curry's population numbers come from *Proceedings and Debates of the Virginia State Convention of 1829-30* (Richmond, 1830) 154. Curry does not identify which Virginia counties are included in this figure. The Official Census for Virginia, for the Valley and Trans-Allegheny counties reports a white population of 323,998.

¹² Richard Orr Curry, *Radicalism, Racism, and Party Realignment: The Border States during Reconstruction* (Baltimore, John Hopkins Press, 1969), 86.

¹³ Ibid., 86-87.

¹⁴ Curry, *Radicalism*, 87-88.

Democratic Convention was held in Richmond. The Democratic Party split into two factions over who should be the nominee for president. This split moved on to the National Convention in Charleston, South Carolina where the issue of slavery ruled the debates. The convention delivered two separate positions on the role of the national government over slavery. The Majority Report, which Virginia and most of the southern states supported, claimed that only the states and not Congress should hold power over the continuation of slavery. The Minority Report supported by the Stephen Douglas for President faction declared that the question must reside in the United States Supreme Court. The convention adopted the Minority Report and Alabama, Mississippi, Louisiana, South Carolina, Florida, Texas, Arkansas and Georgia walked out of the convention. The convention was unable to select a nominee and decided to reconvene in Baltimore. The defectors moved to meet in Richmond.

In Baltimore the Douglas camp effectively controlled the now reduced Democratic Party and Virginia finally joined her southern neighbors and walked out. Douglas became the nominee for president, while the southern states nominated John C. Breckenridge and the Majority Report from the Charleston Convention.

The Constitutional Union Party of Virginia joined their national brethren in nominating John Bell of Tennessee for president, the only slave owning candidate in the race. The small Republican Party of Virginia was centered in Wheeling where the editor of the *Wheeling Intelligencer*, Archibald W. Campbell, operated his paper as the "driving force behind Republicanism in western Virginia."¹⁵ So strong was this Republican lair that Wheeling came in second to Chicago in the balloting for the location of the National Republican Convention.¹⁶

¹⁵ Robert Franklin Maddox, "The Presidential Election of 1860 in Western Virginia", *West Virginia History*, 25/3 (April 1964): 213.

¹⁶ *Ibid.*, 213.

Although contentious, the Republican Convention held together and delivered Abraham Lincoln as its nominee.

The 1860 presidential campaign in western Virginia offered two extremes with the pro-south, pro-slavery Breckenridge and the pro-Union, anti-slavery Lincoln. Two more conservative and centrist views offered a compromise, Bell and Douglas. The western counties that would become West Virginia polled for Breckenridge and Bell .¹⁷

With a national conflict looming Virginia debated secession. When the Secession Ordinance was put to the vote, the dividing lines between the minority Republicans and the rest of western Virginia were drawn. Charles Ambler, one of West Virginia's earliest and most influential historians established the myth of a Union supporting western Virginia choosing the higher path by separating from her slave-holding Confederate brothers. Ambler maintained that support for secession in the northwestern portion of Virginia measured only 4,000, while 44,000 stood against leaving the Union. Historian Richard Curry in his 1964 book, *A House Divided: a Study of Statehood Politics and the Copperhead Movement in West Virginia*, came closer to the truth. Curry boldly claims "Ambler's estimate of Union strength in the Northwest has no basis in fact."¹⁸ Curry used newspapers and manuscripts to create a more accurate picture of southern sympathy in western Virginia. His analysis does show opposition to secession in the total vote within the counties that would soon comprise the new state of West Virginia. Nonetheless, the support for secession is far greater than Ambler contends. The final tabulation using Curry's

¹⁷ Ibid., 226.

¹⁸ Richard Orr Curry, *A House Divided: a Study of Statehood Politics and the Copperhead Movement in West Virginia* (Pittsburgh, University of Pittsburgh Press, 1964) 141.

analysis is 34,677 against secession and 19,121 in favor.¹⁹ The important factor is the geographic distribution of secession support. Appendix 1 indicates where the secession support could be found in 1861 in western Virginia. It is not surprising that those counties of western Virginia more closely tied to the Valley and its growing slave population exhibited southern loyalty while those counties located along the more navigable rivers with their northern commerce and perspective were less connected with Virginia's oligarchy. The May 23, 1861 Secession Ordinance mirrored the decades long sectionalism of Virginia and would dictate her loyalties in the future.

The decision by Virginia to secede from the Union prompted several representatives from the western counties, particularly the northwestern counties, to reinvigorate the old idea of creating a separate state. This growing movement to split from Virginia gravitated toward Wheeling where the early debates were over how much of Virginia should be stripped from the Old Dominion to form a new state loyal to the Union. Gathering in Wheeling, the delegates, after deciding a new state should be created, pondered its size. Much of the new state would include counties still loyal to Virginia and clearly sympathetic to the South's struggle against the national government. The number of counties proposed ranged from thirty-nine to seventy-one. After settling on thirty-nine, a vote on a new State Ordinance was held on October 24, 1861 Eligible voters stayed away in droves. Of the 56,240 eligible voters in the 39 counties selected, only 19,189 voted. The ordinance was ratified by 18,408 with only 781 against. Six southern and eastern counties delivered no returns whatsoever.²⁰ . On December 13, 1861, an additional eleven counties were

¹⁹ Ibid., 147.

²⁰ Curry, *A House Divided*, Appendix III, 149-150.

added raising the total to fifty.²¹ A minority of her citizens declared West Virginia a new state. More importantly, it was primarily in the northern and western counties where support was the greatest.

Holding firm to the tail of the dog, the new Wheeling government proclaimed possession of the whole animal. So tenuous was this new state that the new governor requested the federal government's help and only four days after the state of West Virginia was created it was declared a separate military department.²² The new state government protected by Union troops and governing under a Radical Republican banner had no choice but to ignore those counties under Confederate control until the end of war delivered them into the hands of the new state.

While the war raged around them the first session of the West Virginia Legislature initiated a policy of reconstruction. Governor Boreman in his first address to the legislature sought the passage of an act requiring a test oath from all persons seeking to vote or hold office, prophetically concluding "that the passage of these laws will be going too far, but I ask the legislature to act as the imminent peril of the country demands."²³ Six days into the first session the legislature passed a bill requiring all persons "elected or appointed to any office or trust, civil or military" to take an oath supporting the Constitution of the United States and the Constitution of West Virginia.²⁴ West Virginia was ahead of the federal authorities in expressing the need to deny the right to vote or hold office by persons who had taken up arms against the Union.²⁵

²¹ Curry, *Radicalism*, 89 - 90.

²² Milton Gerofsky, "Reconstruction in West Virginia", *West Virginia History*, part 1 6/4 (1945-1946) 297.

²³ "Governor's Message", June 1863.

²⁴ *Acts of Legislature of West Virginia at its First Session, June 20, 1863*, 3.

²⁵ Jonathan Truman Dorris, *Pardon and Amnesty under Lincoln and Johnson: the Restoration of the Confederates to their Rights and Privileges, 1861 - 1898* (Chapel Hill, North Carolina, University of North Carolina Press, 1953), 32.

Following the first elections in the fall of 1863, the legislature amended the oath to retroactively deny the rights of Confederate sympathizers by including the pledge "that I have never voluntarily borne arms against the United States; that I have voluntarily given no aid or comfort to persons engaged in armed hostility thereto, by countenancing, counseling or encouraging them in the same." The amended oath passed on November 16, 1863.²⁶ The oath requirement was later extended to those seeking permission to perform various activities, including practicing law, teaching, sitting on a jury or filing civil suits before the courts. This first session also authorized the courts to confiscate all property, real and personal, of any enemy, including debts owed to them by loyal citizens and businesses of the state. Deemed "War Measures" the new state was beginning to grapple with the problems that would be posed by the eventual return of Confederate soldiers.²⁷

While Congress and the president fought over the regulation of National Reconstruction, the state of West Virginia saw to its own protection from Southern sympathizers. The 1863 general election laws created a system of supervisors and inspectors of elections. The 1863 West Virginia Constitution declared that all adult, white male citizens shall be entitled to vote. The constitution also required an oath of loyalty to be elected to office and that every citizen "*may* (emphasis added), in time of war, insurrection or public danger, be required by law to make the like oath or affirmation, upon pain of suspension of his right of voting."²⁸ Thus, the election officers, who were appointed by the governor, would have total control over the suffrage of all potential voters as the important 1864 national election campaign began.

²⁶ *Acts of the Legislature of West Virginia at its First Session*, 138.

²⁷ Gerofsky, "Reconstruction in West Virginia", 300.

²⁸ West Virginia Constitution (1863), Article III, Sections 1-5.

The presidential election of 1864 was a referendum on continuing the war. The Democrats nominated George B. McClellan as a peace candidate against Lincoln's determination to continue the war until it ended with a military defeat of the Confederacy. The Democratic candidate would surely negotiate a peace with the South, which would, in many minds, nullify the great sacrifices the North had already made. Lincoln easily won re-election. In West Virginia Lincoln polled 23,233 votes to McClellan's 10,437.²⁹ Nonetheless, the Radical Republican government began to worry over the level of support for the Democrat McClellan. They had good cause to worry. Most of McClellan's support came from those counties, which, in 1861 supported the Union. Appendix 2 shows the percentage of voters who choose McClellan over Lincoln. The reasons are several; personal, economic, war weariness and some certainly were Democratic in orientation. Even Ohio County, the seat of the state government went 48% for the Democratic candidate while Wetzel County just south of the capital went 70%. Even the future home of West Virginia's government, Kanawha County, saw almost half of the voters sliding toward the McClellan ranks.³⁰ One thing was certain; too many voters who did not fully support the Radical Republican government of the state were permitted to vote.

The January session of the West Virginia Legislature in 1865 immediately took action to deny more citizens the right to vote. The legislature on February 25, 1865 passed the voter's test oath, here presented in its entirety:³¹

I, ____, do solemnly swear that I have never voluntarily borne arms against the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time sought, accepted, exercised, or attempted to exercise any office or appointment whatever

²⁹ Gerofsky, "Reconstruction in West Virginia", 301.

³⁰ Curry, *A House Divided*, Appendix V, 151-152.

³¹ Gerofsky, "Reconstruction in West Virginia", 302.

under any authority, hostile or inimical to the United States, the reorganized government of Virginia, or the State of West Virginia; that I have not at any time yielded a voluntary support to any government or pretended government, power or constitution within the United States hostile or inimical thereto, or hostile or inimical to the reorganized government of Virginia, or the State of West Virginia; that I will support the Constitution of the United States and the Constitution of the State of West Virginia; and I take this oath freely without any mental reservation or purpose of evasion. (*Session Acts (1865) pp.47-48*)

The 1865 Legislature continued to heap more proscriptive measures on its southern leaning citizens. The oath was required of all persons whose loyalty was questioned. Failure could mean fine or imprisonment. Court cases arising in counties with Pro-Southern sympathies could be moved to counties with more Union supporting populations. A Suitor's Test Oath was enacted barring southern loyalists from access to the courts. When the constitutionality of these measures was debated the legislature decided to amend the constitution to support the statutory laws passed.³² Rather than passing an amendment to the State's organic law and then enacting statutory law to fulfill its dictates, the Radical Republicans created statutory law first and then sought to amend the necessary constitutional framework. They turned the concept of constitutional law on its head. The proposed constitutional amendment required passage by two successive legislatures and then a vote by the citizens. Such a statewide vote would be scheduled for 1866. During the 1866 Legislative Session a crack appeared in the Republican Party. A small faction of the party supported the repeal of the proscriptive measures. The liberal wing was lead by loyal Union men, including Daniel Lamb of Ohio County and James H. Ferguson of Cabell County. They favored a "let-up" policy toward the disenfranchised citizens of the state. Meanwhile, the 1866 Legislature, as required, re-passed the constitutional amendment and scheduled a statewide vote for May 24, 1866. Continuing to create statutory law supported by a constitutional amendment not yet legally adopted, the legislature further placed

³² Ibid., 303-304.

the right to vote into the hands of the governor and his appointed boards of registration.³³ Rather than waiting for the enactment of a constitutional amendment to support their actions the "Radical Republican machine" began enforcing the new registration laws. The actions of these boards questioned the loyalty of any citizen they suspected of opposing the measures in question. In essence many citizens were denied the right to vote against a constitutional amendment designed to deny their right to vote. The amendment passed with 22,224 votes for adoption and 15,302 opposed.³⁴ Opposition to the Radical Republicans was growing. In the election of 1864 the Democrat McClellan had received 10,438 votes. By May 1866 opposition to the current state of affairs had increased to 15,302. This was even after many citizens, particularly in the southern and eastern counties, had been erased from the voting roles. For example Pocahontas County, which had 823 eligible voters in 1861 only cast 166 total votes (20% opposed); Mercer County, which had 1,182 eligible voters in 1861 only cast 75 total votes (19% opposed); Greenbrier County, which had 2,240 eligible voters in 1861 cast 396 total votes (55% opposed); and Raleigh County, which had 641 eligible voters in 1861 cast 221 total votes (23% opposed).³⁵

The adoption of the amendment disenfranchised between fifteen and twenty thousand persons.³⁶ Regardless, the opposition was growing. The support for Radical Reconstruction in West Virginia was shrinking. In the October 1866 elections the Republican ticket received 23,224 votes against 16,885 for the opposition.³⁷

³³ Ibid., 312.

³⁴ Ibid., 315.

³⁵ Secretary of State's Office, Election Returns, 1861 - 1866, West Virginia Archives, Charleston, WV, AR-1769, Box 5.

³⁶ Gerofsky, "Reconstruction in West Virginia", 315.

³⁷ Ibid., 316.

The 1867 Legislative Session "was more bitter and vindictive than any of its predecessors."³⁸ The Registration Laws were made more restrictive. If a registrar doubted the loyalty of a prospective voter he could require the voter to "make it appear" that he was qualified. The voter must prove his loyalty with "satisfactory evidence." He was guilty of disloyalty until proven otherwise. Appeals to the county Board of Registration were useless, as virtually no one was successful in overturning the local registrar's ruling. The legislature carried out even more vindictive acts requiring "teacher test oaths" and prohibiting the collection of any personal debt by any Virginian against any West Virginian, except those West Virginians who gave "voluntary aid to the late rebellion" since June 1, 1861.³⁹ The zealous administering of disenfranchisement was so extensive in some parts of the state that the result became a comedic farce. In Lewisburg the voting rolls were reduced to seven people, three of which were the registrar and his two sons.⁴⁰

The first 1868 Legislative Session saw continuing support for maintaining limited rights for those citizens considered disloyal. The Senate Judiciary Committee reported adversely on a resolution directing an inquiry into the repeal of the Suitor's Oath. Other resolutions requesting the Senate Judiciary Committee to inquire into the repeal of the Attorney's Oath and to recognize contracts entered into between persons while they were under the rule of the Confederate government were also denied.⁴¹ A resolution was introduced to allow voter registration of persons who could produce a "Recommendation of Loyalty" endorsed by at least two honorably discharged Union soldiers. The Senate Judiciary Committee ruled the matter "inexpedient to

³⁸ Ibid., 317.

³⁹ Ibid., 318.

⁴⁰ Ibid., 323-324.

legislate" and immediately began a lengthy debate on a bill to protect birds and other wild game in the state.⁴² The Senate included several motions to permit named attorneys to practice law without taking the test oath.⁴³ Receiving less attention, the House passed House Bill 153 to provide relief for certain persons under disabilities growing out of the late rebellion. The Senate postponed consideration of the bill indefinitely.⁴⁴ House Bill 85 sought to repeal the act, which prevented the prosecution of suits, brought by persons who had been engaged in the late rebellion. The bill was "indefinitely postponed" by the House.⁴⁵

The legislature met in extra session in June of 1868 and continued until the end of the year adding additional restrictions on the rights of its citizens. The results of the fall election followed a familiar pattern. Although Republican gubernatorial candidate William E. Stevenson defeated his Democratic opponent the race was closer than ever. The Republicans polled 26,931 votes to 22,052 Democratic votes.⁴⁶ Stevenson took office on March 4, 1869, on the last day of the Seventh Session of the West Virginia Legislature.

The year 1869 was pivotal to the repudiation of reconstruction politics. The crack in the Republican Party grew wider during the 1869 Legislative Session. The fall elections would see the defeat of the Radical Republican's grip on power and signal the death of reconstruction in West Virginia. Fractures within the Republican Party grew into a chasm too wide to be bridged by compromise.

⁴¹ *Journal of the Senate of the State of West Virginia* (1868), 27-30, 43.

⁴² *Ibid.*, 82-83.

⁴³ *Ibid.*, 149, 198, 220, 229.

⁴⁴ *Ibid.*, 208, 212.

⁴⁵ *Journal of the House of Delegates of the State of West Virginia* (1868) 147-148.

⁴⁶ Gerofsky, "Reconstruction in West Virginia", 325.

The 1869 Legislative Session began with Governor Boreman, who had served as West Virginia's first chief executive since 1863, delivering his last Executive Message. Boreman had been a vehement supporter of congressionally controlled reconstruction and the disenfranchisement of Confederate sympathizers. While still citing several minor skirmishes in a few locations between the state authorities and opposing mobs over voter registration, Governor Boreman claimed "that the laws are now being executed in every portion of the State, and that there is more peace and harmony within its borders than at any previous period since its organization."⁴⁷ On February 2 the legislature elected Governor Boreman to the United States Senate over Daniel Lamb, an early member of the liberal wing of the Republican Party.

One of the most important acts of the 1869 Session was the adoption of House Joint Resolution 22 ratifying the Fifteenth Amendment to the United States Constitution, providing for the voting rights of the Negro. Adopted on the next to the last day of the legislative session, March 3, Senators Applegate, Davis, Wilson and Young unsuccessfully attempted to amend the resolution to require a statewide vote on the ratification. HJR 22 passed with Senators Applegate, Boreman, Cather, Davis, Phelps and Wilson voting in the negative.⁴⁸ The passage of HJR 22 would contribute greatly to the coming year's political turmoil.

With the election of Governor Boreman to the United States Senate, West Virginia State Senate President D.D.T. Farnsworth served as governor for seven days, February 26, 1869 - March 4, 1869, until the newly elected Republican Governor William Erskine Stevenson took office on the last day of the 1869 Legislative Session.

⁴⁷ *Journal of the Senate* (1869) 7.

⁴⁸ *Ibid.*, 173-174.

By the 1869 Legislative Session the number of Senate bills introduced relieving named attorneys from the test oath jumped from five in the first session of 1868 to thirteen, but fell from five in the House to two.⁴⁹ The difficulty in obtaining legal services was becoming a serious problem statewide but particularly in the southern counties. The problem and its effects were detailed in a letter from the Board of Supervisors of Mercer County to the legislature. Written in January, 1869 it requested the repeal of the Lawyers Test Oath as the lack of lawyers had caused fees to rise to "exorbitant and oppressive rates so much so that persons in ordinary business circumstances are denied the use of the courts."⁵⁰ It noted a continuing disservice in that "the Old Bar almost without exception has been denied all privileges because they sympathized with the rebellion and yet they are not now more violent in their opposition to the party in power in this State and the United States than several of those who now compose the bar of this county."⁵¹

Almost four years had passed since the end of the war. The negative effects of Radical Reconstruction on the state were becoming apparent even to the Republicans. Many factors contributing to the difficulties faced by the Radical Republicans coalesced in 1869 and doomed the Radical policies. The Liberal Republican movement that sought an end to the restrictive measures imposed on so many of her citizens grew greater. The ratification by the West Virginia Legislature of the Fifteenth Amendment, which would lead to Negro suffrage, made the disenfranchisement of 20,000 white voters seem ludicrous. The sons of Confederate sympathizers were coming of age and there was no logical means of prohibiting their right to vote. Many saw the restrictive measures against so many of her citizens as damaging to the

⁴⁹ *Journal of the Senate, 1868-1869, Journal of the House, 1868-1869.*

⁵⁰ William Erskine Stevenson Papers, Petition of the Board of Supervisors of Mercer County, January ___ (illegible), 1869, West Virginia Archives, Charleston, WV, AR-1724.

⁵¹ *Ibid.*

state's economy and her drive to encourage immigration. The actual and perceived corruption within the Radical Republican administration over the years cried out for change. Lastly, other states had already completed their efforts to draw their citizens with southern sympathies back into public life.

The fracturing of the Republican Party was becoming more pronounced and obvious after the legislature adjourned. The Liberal wing was gaining support from the leading papers in the state. In the June 26, 1869 edition of *The Greenbrier Independent*, a Whig paper, a county Republican addressed the editor of the largest Republican paper in the state, the *Wheeling Intelligencer*, by saying, "The ground, upon which our disabling statutes have been justified, now no longer exists."⁵² By then the *Intelligencer*, the *Kanawha Journal* and others had come out in favor of the Liberal Republican's "let-up" policy. "The sign of the times indicate a speedy 'let-up' of the proscriptive policy", observed the Lewisburg paper, concluding that "fair-minded men of the party everywhere are coming out in favor of a speedy abandonment of the role of proscription and intolerance."⁵³ The *Intelligencer* called upon the voters "to elect men to the legislature who should be in favor of doing away with *some* of the many enormities of legislation which has been heaped upon the people of the state."⁵⁴ The Kanawha and Wayne County Republican Conventions passed resolutions in the fall of 1869 supporting the repeal of disenfranchising acts in both state statutes and the state constitution and in favor of the local election of registrars rather than appointment by the governor.⁵⁵ The *West Virginia Journal* was succinct when it

⁵² *Greenbrier Independent* (Lewisburg, WV). 26 June 1869, Vol. IV, No. 1, 1.

⁵³ *Greenbrier Independent*, 25 Sept 1869, Vol. IV, No. 14, 2.

⁵⁴ *Spirit of Jefferson* (Charlestown, VA), 12 October 1869, Vol. 22, No. 6, 2.

⁵⁵ *Greenbrier Independent*, 9 October 1869, Vol. IV, No.16, 2.

wrote on July 28, 1869, "In West Virginia the question of suffrage is now, and will be, during the approaching campaign, the leading issue in politics. The question is not whether the Negro shall be enfranchised, but shall the rebel vote?"⁵⁶ Although supporting the removal of test oaths on teachers, lawyers and suitors, during the next legislative session, the *Journal* saw the removal of disenfranchisement as requiring a time consuming process; "a process, by the way, that will continue upwards of two years from next winter."⁵⁷ Time was running out for the Radical Republicans. Although the Republican *Daily Times* of Parkersburg agreed that the process would consume two years, they saw the need for haste. "We should by generous and prompt action deprive the Democratic Party of this issue against us", counseled the editor in late August.⁵⁸ One reason the issue was becoming so important so quickly was of the Republicans own making; Negro suffrage.

The idea that the Negro would soon be able to vote lent weight and fire to the argument that the continuation of voting prohibitions against some whites must be ended. "Why in the name of common sense," lamented one paper, "in the name of justice; in the name of humanity; in the name of everything that is right, fair desirable and good" should the proscriptive laws remain while "the foreigner, the Indian, the Chinese, the Hottentot and the Negro" are allowed to vote.⁵⁹ Numerous editorials in both Republican and Democratic papers throughout the state voiced concern over this obvious irregularity and placed the Radical Republicans in the difficult position of defending such unequal treatment. The Radicals weakly defended the difference because the disenfranchised white voters had lost their suffrage through the criminal act of

⁵⁶ *West Virginia Journal* (Charleston, WV), 28 July 1869, Vol. V, No. 29, 2.

⁵⁷ *West Virginia Journal*, 15 September 1869, Vol. V, No. 36, 2.

⁵⁸ *Daily Times* (Parkersburg, WV) 24 August 1869, Whole # 1217, 2.

rebellion and could regain it only through continued contrition before the authorities. It was a judgement that was rapidly losing credibility. This was a claim that would be turned against the Republicans later on. There were even concerns expressed from the soon to be enfranchised Negro population that the sight of a Black man approaching the polls in a community filled with disenfranchised whites would incite violence.

Corruption charges had plagued the Republicans who ruled the new state since its inception. Access to the ballot box rested in the hands of the governor who personally appointed the local registrars. The party machine was responsible for executing the registration laws. Appeals from voters who believed they had been unjustly disenfranchised were made to the County Board of Registration, also controlled by the governor and the Republican Party. The county board routinely sustained the decisions of the local registrar. Many competent citizens refused to participate in such a partisan theft of their fellow citizens' rights and thus the right to vote was sometimes placed in unscrupulous hands.⁶⁰ When the legislature empowered the registrar to demand proof of loyalty before allowing a suspected "disloyal" citizen to register, many registrars refused even those who produced the affidavits required.⁶¹ The *Mason County Journal* printed a warning in May 1867 that "for the last few years the Radicals have succeeded in covering up their systematic rascality, by the general bug bear 'loyalty', but that time has almost passed, the end of their ignominious career is fast approaching."⁶² In Jefferson County the difficulties were blamed on the Republican's mismanagement of election laws. Under Governor Stevenson, Jefferson County was fast approaching the fall 1869 election with no county Board of

⁵⁹ *Greenbrier Independent*, 25 Sept 1869, Vol. IV, No. 14, 2.

⁶⁰ Ambler, "Disfranchisement", 48-49.

⁶¹ Gerofsky, "Reconstruction in West Virginia", 315.

Registration appointed. "It has been known for some time that registration matters in Jefferson county were being mismanaged, or neglected rather, for the purpose of preventing any election in that county this fall," reported the local paper. "Governor Stevenson has aided this shameful purpose", it declared.⁶³ On the other side of the state the Parkersburg *Daily Times* issued a warning to fellow Republicans. "Whenever a party permits itself to be made the instrument of designing men, its moral power is gone", the result of which is that "it becomes the mere machine for the gratification of personal ends and the distributing box for favor to the supporters of the men, whose chicanery and management, perhaps fraud, have cheated the people."⁶⁴

Another relevant factor by 1869 was the speed with which other southern states were moving to turn their rebels back into citizens. The *Greenbrier Independent* pointed out that other southern states had either abandoned or would soon abandon their restrictive measures. "The tide of liberal opinion will have swept over every state, save ours" reported the editor in the July 31 edition, adding that "the liberals are daily gaining strength and must win in the end, unless the fight be so prolonged as to enable the Democrats, now rapidly growing in strength, to take the pending matter in charge and settle it without the aid of either of the Republican factions."⁶⁵

The 1869 Election produced a resounding defeat for the Radical wing of the Republican Party. While still holding a tight rein over most of the eastern and southern counties through their restrictive war measures, they saw a dramatic loss in those counties that had served as the breeding grounds for statehood and Radical rule. Democratic victories were widespread in the House and two Senatorial Districts elected Democrats in the Senate. More important was the

⁶² *Mason County Journal*, 22 May 1867, Vol 2, No. 15 p 2.

⁶³ *Spirit of Jefferson*, 21 September 1869, Vol. 22, No. 3, 2.

⁶⁴ *Daily Times*, 17 September 1869, Whole # 1238, 2.

gain of Liberal Republicans. Ten were elected to the House and four to the Senate. The House achieved a majority in favor of a "let-up" policy while the Senate was evenly divided. A Jefferson County paper, calling up the ghost of a British explorer who froze to death in the Canadian Arctic twenty years before, concluded that "the voters of West Virginia have changed front with a dreadful suddenness, and by a startling uprising have laid out the policy of disfranchisement as cold as Sir John Franklin's bones."⁶⁶

What had happened to diminish the luster of Radical rule in West Virginia? The Radical Republicans of northwestern Virginia carved out a Union state from southern territory and held power over it through a combination of punitive "war measures" long after the Civil War ended. Faced with opposition they used unconstitutional means to disenfranchise their opponents much longer than security and safety demands required. Their zealous and often incompetent and corrupt administration over the ballot box split their own party. Recognizing too late the rapid growth of the Democratic Party and the depth and breadth of their own schism, the Founding Fathers of West Virginia poisoned their own principles. The laudable efforts of the Fifteenth Amendment were used to reflect the unjust and illogical practice of denying twenty thousand of their own white citizens' equal rights. Although the Democratic Party experienced a division over the Negro's right to vote, the breach was easily mended by the prospect of twenty thousand new white voters, as opposed to approximately three thousand potential Black voters.⁶⁷ Clearly, the Republican split was the dominant agent that killed Radical Republican controls over West Virginia sooner than anyone expected.

⁶⁵ *Greenbrier Independent*, 31 July 1869, Vol. IV, No. 6, 2.

⁶⁶ *Spirit of Jefferson*, 9 November 1869, Vol. 22, No.10, 2.

⁶⁷ *Daily Times*, 3 August 1869, Whole # 1200, 2.

Governor Stevenson delivered his first Annual Message to the legislature in January, 1870. Stevenson stated that the removal of legal disabilities upon persons who gave voluntary aid to the rebellion "has been for some time agitating the public mind" and requested that the legislature give "it full and deliberate consideration."⁶⁸ He appealed to the legislature to repeal the Attorney's and Teacher's Test Oath and questioned the continuation of the Suitor's Oath. He realized that the restoration of constitutional rights to former supporters of the Confederacy was inevitable. The question was no longer whether this would happen but rather how and when. "I feel confident" the Governor continued, "that if it is approached in a proper spirit, and with a sincere desire to advance the true interests of the state rather than to organize the success of party, many of the difficulties which surround it will disappear, and a result will be reached that will be satisfactory to a large majority of the people."⁶⁹ After serving for almost a year in office Governor Stevenson still held to a timetable unsustainable by the October, 1869 election results. He was not leading a movement of reconciliation. He was trying to slow it down so he could catch up. When he finally did, it crushed him and the Republican Party. Radical Republican Reconstruction in West Virginia died on October 28, 1869. All that remained was to orchestrate its burial, and the Democrats would soon do that.

⁶⁸ *Journal of the Senate* (1870), 17-18.

⁶⁹ *Ibid.*

Chapter Three - The Democrats Dismantle Reconstruction

Following the 1869 elections it was clear to most that the succeeding months would see the Radical Reconstruction machine dismantled. What was not evident at the time was any move to dismantle the organic law upon which the entire state rested. No one spoke of a new constitution or seriously foresaw a sweeping change to Democratic rule. Most of the onerous restrictions on its southern leaning citizens were enacted as statutory provisions by the West Virginia Legislature. Their removal would not require a change in the 1863 Constitution. The Republican legislatures, shortly after the formation of the state of West Virginia, statutorily restricted participation in some professions, most notably teaching and the practice of law. The restrictions took the form of a loyalty oath. Although it would not affect a large number of persons, it spoke to many others of the loss of their rights. Those that teach hold great power because they inculcate the generations of children with society's values. The children of southern leaning citizens and former Confederates saw their schools teaching Union lessons. Perhaps more important was the difficulty in obtaining legal counsel due to the Lawyer's Test Oath restrictions. The case in Monroe County has already been described. Similarly, the Suitor's Oath restricted access to an entire branch of government.

Early in the 1870 Legislative Session petitions were delivered to the Senate from 268 persons seeking a repeal of the teachers, lawyer's and suitor's oath requirement and "modifications of the registry act."⁷⁰ House bills repealing or amending the oath restrictions were reported to the Senate and quickly adopted. After toiling under restrictive oaths in order to teach, practice as an attorney or approach the judicial system with grievances, the 1870 Legislative Session began to dismantle Radical Reconstruction. The legislature had for several years passed individual bills

⁷⁰ *Journal of the Senate* (1870) 47, 57.

relieving named individuals from the oaths for reasons arising out of friendships and hardships. In addition, many just ignored the requirement. The bill contained language rationalizing the need for reform. It stated that due to "frequent evasions of the law, and from a change of circumstances since the passage thereof, the same has become, in a great measure, inoperative and of little use."⁷¹ By February 25, 1870, these restrictions on citizenship, though affecting few but denying much, were gone.

One debilitating oath not taken up during the 1870 Legislative Session was one that had to be taken by persons elected or appointed to any public office or trust. Chapter Nine of the West Virginia Code required people to swear that they had never voluntarily borne arms against the United States, given aid or comfort to the enemy, sought or accepted an office under the Confederacy or even supported the Confederacy.⁷² Vast numbers of persons, including those who were able to get around the constitutional prohibition against citizenship, could not serve in a public position. This diminished the pool of qualified and competent persons in many of the southern and eastern counties from occupying public offices. Since it was a statutorily created oath, there would be no need for a constitutional amendment or a constitutional convention to remove this disability.

The requested modifications to the voter's registry laws were more controversial. Again, much damage could be repaired statutorily necessitating no change to the 1863 Constitution. Delegate Selman Wells, of Tyler County presented the proposal to the House of Delegates. Thereafter, it was known as the Wells Bill. It would abolish the boards of registration, immediately remove all incumbent officers of registration and terminate the power to appoint

⁷¹ *Acts of the Legislature of West Virginia* (1870) 16.

⁷² WV Code 1870, Chapter 9, secs. 1-2.

others. Three commissioners elected by the voters would handle voter registry. The majority party in the county would have two seats and the minority candidate receiving the largest number of votes would hold the third seat. The bill also limited the jurisdiction of the boards so that appeals from their decisions would go to the courts rather than allowing the boards final jurisdiction. Most important was the fact that a local registrar "shall not refuse to register any one who takes the test oath and the board shall strike off no one except upon proper evidence of disqualification."⁷³ House Bill 37 was passed by the House and reported to the Senate on February 9. Assigned to the Senate Judiciary, the committee issued a majority report with a "recommendation that it do not pass."⁷⁴ Senators Phelps and Dayton issued a minority report accompanying the majority recommendation stating that "we believe that a large majority of the people of the State demands of this Legislature that some modification of the registry law be made, which fact is demonstrated by the singular unanimity with which the members of the House of Delegates passed said bills and although the change in said law is not altogether what your committee desired it should be; and what we further think a large majority of the legal voters of the state desire; yet we believe that the present bill meets, to some extent, the demands of the people."⁷⁵ Senator Boreman moved to have HB 37 indefinitely postponed, which would kill the bill. The motion passed 14-8.⁷⁶ Within minutes Senator Wilson introduced SB 104 and 107 to amend the registry law.⁷⁷ These bills were referred to the Senate Judiciary Committee. SB

⁷³ *Intelligencer*, 22 February 1870, No. 138, 1.

⁷⁴ *Journal of the Senate* (1870) 110.

⁷⁵ *Ibid.*, 123.

⁷⁶ *Ibid.*, 143.

⁷⁷ *Ibid.*, 145.

104 never escaped and SB 107 was reported out with a recommendation that it do not pass. The Senate failed to even move the bill toward passage by a vote of 14-7.⁷⁸ Surprisingly, the Democrats in the Senate worked to defeat the Wells Bill. The *Intelligencer* commented that "when we consider that it concedes everything essential in reformation of the registry law for which they [the Democrats] have been clamorous, it seems surprising to find them so desperately intent on its defeat."⁷⁹ The *Intelligencer* concluded that the primary object sought by the Democrats was the complete repeal of the registry law or nothing. The Ohio County Democratic Platform and the *Wheeling Register* "demanded immediate and unconditional repeal and nothing less."⁸⁰ The reasons for this were presented in purely political terms. If the Republican Party succeeded in removing much of the disabilities, the Democrats would have less to present to the voters in the fall election. "They realize that if the Republicans in the Legislature remove all genuine cause of complaint ... even their howl about the registry and disfranchisement, will serve them no longer, and they will have nothing left to fight for or to fight with."⁸¹

The actions detailed were amendments to statutory law, not the constitution. It was in the West Virginia Constitution that disenfranchisement found its strength in the adoption of the 1866 amendment. The most important effort occurring during the 1870 Legislative Session were proposals to amend the state constitution to remove restrictions on voting rights. Senator Young introduced Senate Joint Resolution (SJR) 8, which was reported out of Senate Judiciary "without recommendation."⁸² Also introduced by Senator Ramsdell was SJR 20, which had an interesting

⁷⁸ Ibid., 164,180.

⁷⁹ *Intelligencer*, 7 February 1870, No.142, 2.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² *Journal of the Senate* (1870) 92.

evolution on the way to its legislative grave. An attempt was made by Senator Davis to insert the word "white" into the language, which would retain the term as it currently existed in the constitution. The Fifteenth Amendment to the U.S. Constitution had effectively removed the term if, and this became a constantly argued "if", the U.S. Constitution was the controlling organic law above all state constitutions. It failed with only Davis, Applegate and Wilson voting aye. Curiously, Senator Davis then successfully struck the word "male" from the proposal, thus allowing women the right to vote. This action was quickly reconsidered the next day and "male" was reinserted. Regardless, SJR 8 was laid on the table for good on February 25 while the Senate took up the House version found in HJR 8; the Flick Amendment.⁸³ Introduced in the House by Delegate William Henry Harrison Flick of Pendelton County, who was described as "a regular radical Republican, and not either by a let-up Republican or a straight-out Democrat", it became known as the Flick Amendment.⁸⁴ The amendment would repeal the amendment, adopted in 1866, by removing the word "white" from the constitution regulating and restricting the right of suffrage and delete the clause which disenfranchised all who voluntarily gave aid or assistance to the rebellion. The 1866 amendment, which the Flick Amendment would negate, read:

No person who, since the first day of June, one thousand eight hundred and sixty-one, has given, or shall give, voluntary aid or assistance to the rebellion against the United States, shall be a citizen of this State, or be allowed to vote at any election therein, unless he has volunteered into the military or naval service of the United States, and has been, or shall be honorably discharged therefrom. (*West Virginia Constitution, Article III, Section 1*, amended May 24, 1866)

The voters of West Virginia had ratified the 1866 amendment 22,224 to 15,302.⁸⁵ The

Intelligencer presented the need for the Flick Amendment as "two stained classes - one stained

⁸³ Ibid., 153, 158-159, 173.

⁸⁴ *Intelligencer*, 8 February 1870, No.143, 3.

by overt acts of treason, the other by the sun and climate of Africa - come together and both take their places on the same political platform with white men."⁸⁶ Passing through the House of Delegates it made its way through the Senate unscathed and passed on February 28 with Boreman, Brown, Humphreys, Werninger and Wilson voting in the negative. As required by the state constitution, the proposal would also need to pass successfully through the 1871 Legislature before being presented to the people for ratification. In order for West Virginia to remove this great liability of so many of her citizens, the constitution must be amended. There was still no call for a wholesale rewrite of the constitution or for a constitutional convention.

The legislature in 1870 had done much to erase the stigma of rebellion from many of its citizens. The question for both parties was whether enough had been done. The fall elections would answer that question. So far no one had proposed a resolution calling for a constitutional convention. The 1863 Constitution stood firm with only one amendment on the horizon.

The 1870 Legislative Session had removed test oaths for teachers, lawyers and those seeking access to the courts. They had proposed an amendment to the constitution to enfranchise all eligible male citizens regardless of color or accusation of treason. They attempted but failed to remove some, if not most, of the corruptible and restrictive measures in the voter registry system. The radical Voters Test Oath remained, as did the oath of office for elected and appointed officials. Still, the Republicans saw little for the Democrats to run on except opposition to the enfranchisement of the Negro. The Wheeling *Intelligencer* stated that it was the only issue the

⁸⁵ Secretary of State Papers, "Amendment to Constitution Official Vote", Archives and History, Acct. No. 1717, 1868, Box II.

⁸⁶ *Intelligencer*, 8 February 1870, No.143, 3.

Democrats could run on in the fall "through appeals to this ignorance and prejudice".⁸⁷ The statement proved most prophetic.

While the legislature was still in session the *Intelligencer* opined on the Democratic Party's attitude toward Negro suffrage. The Democrats could not accept the certainty of the ratification of the Fifteenth Amendment granting voting rights to the Negro. "These antediluvians who cannot be brought to confess, [that] they ... belong to the present age." They "refuse even to acknowledge the plainest facts." The opinion declares that the Democrats' "hostility to Negro suffrage has grown more implacable as it has come nearer and grown inevitable."⁸⁸ Once the twenty-ninth state had ratified the Fifteenth Amendment, Democratic Delegate Howard offered a resolution withdrawing the ratification by West Virginia, as New York had already done. The *Intelligencer* rightly concluded that such an impossible resolution served only one purpose; announcing the position of the Democratic Party on Negro suffrage for consumption during the coming election campaigns.⁸⁹

The Democratic Party railed against the Flick Amendment, not because it would restore the vote to the disenfranchised former rebel but because it elevated the Negro to equal status at the polls. Even when leading Democrats acquiesced to the fact of Negro suffrage they ranted on about the inferiority of the race. "The negro is an inferior order of creation", declared the *Wheeling Register's* candidate for Congress.⁹⁰ The Democrats' other diatribe against the Fifteenth Amendment was that it usurped the right of the states to control suffrage. On April 26, 1870, the Republican Central Committee delivered for publication their call for delegates to the

⁸⁷ Ibid., 2.

⁸⁸ *Intelligencer*, 18 February 1870, No.152, 2.

⁸⁹ Ibid.

State Convention. In it they condemned the Democratic Party for seeking "to reverse all the decisions of the war." It stated that the Republicans had removed many of the disabilities imposed upon persons who had engaged in rebellion and "signified its purpose to relieve the same class from political disabilities yet resting on them, as rapidly as the Constitution of the State will permit."⁹¹

The Democratic Party Convention was held in Charleston on June 10, 1870. The Platform of Principles could have been written in 1860. The Radical wing of the party orchestrated the highjacking of the convention. The majority on the Committee on Resolutions supported the Flick Amendment and reported to the full convention its support. The majority report also acquiesced to the Fifteenth Amendment and Negro suffrage but called for rebel suffrage. The Radical wing, referred to by the Wheeling *Intelligencer* as the Wheeling "*Register* clique", offered a minority report.⁹² After much heated debate the minority report was adopted by a vote of 324 for to 242 against. The platform as amended by the minority report condemned the Republican Party for supporting the Fifteenth Amendment as a means to "violate its pledges that the question of suffrage should be retained within the control of the people of the states."⁹³ Referring to the Negro as "an alien and inferior class", the platform called upon "all intelligent white men to unite with us in asserting the principle that the white race is the ruling race of this Republic."⁹⁴ Added to the platform's list of principles was the statement that "the Federal

⁹⁰ *Intelligencer*, 5 October 1870, No. 37, 2.

⁹¹ *Intelligencer*, 28 April 1870, No.211, 2.

⁹² *Intelligencer*, 14 June 1870, No.252, 2.

⁹³ Forest Talbott, "Some Legislative and Legal Aspects of the Negro Question in West Virginia During the Civil War and Reconstruction, Part III", *West Virginia History*, April 1963, 220.

⁹⁴ *Ibid.*, 221.

Government has no right to deny to states of this Union the privilege of participating in its affairs, and that all distinction against the representation of states in Congress and all Federal interference in the purely domestic concerns of the state, is unwarranted by the Federal Constitution and ought to cease."⁹⁵ The state rights issue, believed to be settled by the late war, was alive within the Democratic Party. The Democratic Platform also derided the proposed Federal Civil Rights Bill, the Enforcement Act related to the Fifteenth Amendment and the education of Negro children in the same schools with white children.

While condemning the Fifteenth Amendment with one hand the Democrats sought to utilize it to their benefit with the other. On June 15 Governor Stevenson issued instructions to the County Boards of Registration and Township Registrars. It was their duty, he directed, to execute the law "with discretion", but remember that the disenfranchised are still prohibited from the polls.⁹⁶ During the summer of 1870 the Democrats contended that the Fifteenth Amendment enfranchised both the white man and the black man, thus negating the restrictions on rebel suffrage and the need for the Flick Amendment. They claimed the Voter's Test Oath, still on the statute books, and the registration laws of the state were in violation of the Federal Constitution. Several Republican newspapers began aggressively requesting that all persons who felt that they were illegally being denied the right to vote should attempt to register with their local boards of registration. If they were denied, then the Republican press directed them to file charges against the registrar involved. There were several local registrars arrested, including the infamous Lewisburg Registrar. Grand juries selected from registered voters refused in most cases to return an indictment against the registrars. During the August Term of the United States District Court,

⁹⁵ *Intelligencer*, 11 June 1870, No.250, 2.

⁹⁶ *West Virginia Journal*, 20 July 1870, No. 29, 1.

meeting in Clarksburg, Judge John J. Jackson, Jr. issued instructions to the grand jury on the applicability of the Fifteenth Amendment and its accompanying Enforcement Act regarding the registration of voters. The West Virginia Legislature had provided the local registrars the authority to question the loyalty of voters attempting to register and to require the voters to prove their loyalty rather than requiring the state to prove their disloyalty. This placed great discretionary power in the hands of local registrars. Judge Jackson was presented a question regarding a Clarksburg grand jury investigating the authority of local registrars to exercise this judicial power. Several persons had been arrested and charged with violations of the Enforcement Act. Under this Act, adopted May 31, 1870 (16 Stat.140) Judge Jackson issued a charge to the grand jury. Jackson ruled that those who seek to vote are "the sole judge of their right to do so" and that the authority of local registrars was "ministerial, and in no wise judicial."⁹⁷ In Judge Jackson's opinion the local registrars had no discretionary authority whatsoever. Any discretion invested in them by the state was voided. "It is not important", wrote Jackson, "to determine whether they are so invested" as the Federal Act removes all discretion.⁹⁸ The Fifteenth Amendment was interpreted, as the Democrats contended, to qualify all voters regardless of color and one of those colors was white. Judge Jackson also reiterated a position that the Democrats were less likely to embrace. Jackson informed the grand jury that "the state officers should remember that the Constitution and the laws of the United States are the supreme and paramount laws of the land, and they must be governed by them in the discharge of their duties under the laws of the state, whenever a conflict exists between them."⁹⁹ Local election

⁹⁷ Charge to Grand Jury, August, 1870, 2 Hughes 518, 30 F. Cas. 987, No. 18252, 989.

⁹⁸ Ibid.

⁹⁹ Ibid.

officials were faced with federal criminal penalties should they fail to register or fail to allow voting by persons either black, white, Union or Confederate. In late July, upon hearing what Judge Jackson's ruling would entail, the *Journal* supported the governor's interpretation that Judge Jackson's ruling did not enfranchise the rebel. "No Registrar has a right to register such persons or allow them to be registered, Judge Jackson to the contrary notwithstanding" quoted the *Journal*.¹⁰⁰ Regardless of either the governor or the *Journal's* editor, the *Journal* adds that several boards of registration had stated that they were afraid of being punished and would register everybody that applied to them. Judge Jackson appointed several United States Commissioners who proceeded to arrest registration officials. Although few were actually convicted the important result was intimidation. Registration officials began to register anyone who applied regardless of the test oath.¹⁰¹ An opposing judicial opinion arose when one member of the Mineral County registration board applied for a writ of *habeas corpus* before the Judge of the Fourth United States Circuit Court, Henry L. Bond, sitting in Martinsburg. Judge Bond granted the writ and sided with the state officials' argument that the Fifteenth Amendment did not apply to the cases under which the registrars were being harassed.¹⁰² This put an end to future convictions but the arrests continued. The impact and the importance of Judge Jackson's ruling has not been appreciated to the full degree it is due, in other reviews of the period. The federal judicial tide was building against the Republicans. While the Republican controlled legislature had failed to amend the state's registration laws, their restrictions were being dismantled,

¹⁰⁰ *West Virginia Journal*, 20 July 1870, No. 29, 1.

¹⁰¹ Harvey Mitchell Rice, "The Conservative Re-Action in West Virginia: 1865-1871" (Thesis, West Virginia University, 1933) 87.

¹⁰² *Ibid.*, 87-88.

beginning with the hammer blow Judge Jackson crashed down onto the cautious heads of increasingly concerned local registrars.

The 1870 fall elections played out as most expected (see appendix 3). The Democrats elected the governor, other elective executive officers, and a majority of the Senate and House and won two of the three Congressional seats. The *Wheeling Intelligencer* surmised that the defeat of the Republican dynasty in 1870 was due in large part to Republicans abandoning the polls. This, it was claimed, was the result of party disorganization and voter apathy. " "Our defeat", declared the paper, "is not due to any such revolution of opinion as might be inferred from the result."¹⁰³ It was reported that in Ohio County 1,500 registered voters did not vote. In Marshall County 800 did not show up, and in Marion County as many as 400 stayed home. It further conjectured that at least two-thirds of these no-shows were Republican.¹⁰⁴ Governor Stenvenson concluded that the Republican defeat was due to the intimidation of registration officials by the numerous arrests and a belief that the times were changing against proscription and that many ineligible voters had proceeded to the polls unchallenged.¹⁰⁵ They were both correct.

The statewide vote totals show greater voter participation than in 1868. The total vote cast in the gubernatorial election of 1868 was 49,152. The 1870 contest saw 56,030 ballots, 29,090 for Democrat Jacob and 26,940 for Republican Stevenson. The county by county vote changes reflect both reasons for the defeat of the Republicans: low Republican turnout and previously disenfranchised voters making their way into the voting booth. The southern and eastern counties saw great increases in turnout while the Republican strongholds in the north saw decreases. The

¹⁰³ *Intelligencer*, 24 November 1870, No.84, 1.

¹⁰⁴ *Ibid.*

¹⁰⁵ Governor's Message, 1871.

counties of Brooke, Hancock, Marshall, Wetzel, Tyler, Pleasants, Ritchie, Monongalia, Preston, and Hampshire had a decline in voter turnout. Pocahontas in the east also experienced a decrease, which may be attributed to a still vigorous enforcement of the proscription laws. The southern and eastern counties saw tremendous voter increases such as 66% in Mercer, 67% in Monroe, 70% in Lincoln, 88% in Nicholas and 72% in Jefferson. Even Greenbrier County saw a modest 26% increase in voters between 1868 and 1870 (see appendix 4).¹⁰⁶

By the end of 1870 much of the mechanics of Radical Republican Reconstruction policies had been dismantled. The test oaths for teachers, lawyers and suitors had been removed statutorily. The Fifteenth Amendment and the precedential effect of Judge Jackson's ruling succeeded in clearing away the voter's test oath and registration shenanigans. Even the Flick Amendment was reduced to a clean-up amendment. The Republicans had been swept from executive and legislative office. There was no need for a constitutional convention to remove the tools of Radical Reconstruction. They had been killed off one by one. Why then did the Democrats call for a constitutional convention? The *Intelligencer* summed up the growing demand for a constitutional convention after the Democratic victory when it stated, "If a convention is called this demand for spoils will be the chief motive for calling it."¹⁰⁷

The desire for a constitutional convention had been brought up months before, shortly after the 1870 Legislative Session. Remarkably, it was a Republican paper, The Parkersburg *State Journal*, which editorialized on the coming election season by seeking reconciliation among Republicans. The *Journal* suggested that once the ex-rebels were enfranchised, through the passage of the Flick Amendment, "we can then call a Convention to remodel our Constitution" to

¹⁰⁶ Rice, "Conservative Re-Action...", app. 3 & 4.

¹⁰⁷ *Intelligencer*, 28 November 1870, No. 86, 1.

represent all West Virginians.¹⁰⁸ After the Democratic victories in the 1870 elections the idea of a constitutional convention gained support.

The Democratically controlled 1871 Legislature began to immediately alter the few statutory restrictions remaining on the books. On February 3, 1871 the test oath for office holders was amended, removing any mention of past loyalties.¹⁰⁹ On February 25 the Voters Test Oath was removed and the burden of proof of eligibility was shifted from the voter to the election officials.¹¹⁰ Several acts were passed allowing additional time for persons recently elected to office, including the Attorney General, to qualify when the new oath became effective.¹¹¹ Additional assistance was afforded to the rebel elements and southern sympathizers by an act providing for the protection from civil or criminal penalty against persons who aided the Confederacy during the "late war between the government of the United States and a part of the people, thereof, on either side."¹¹² A Joint Resolution instructing the state's representatives in Congress to seek compensation from the federal government for damages to the state's bridges by the Union forces during the war was also adopted.¹¹³ The dominant issue during the 1871 Legislative Session dealt with the Flick Amendment and the growing call for a constitutional convention.

The Flick Amendment had been debated throughout the 1870 campaign. The constitution required that it must be re-passed by the 1871 Legislature prior to submission to the voters. The

¹⁰⁸ *State Journal* (Parkersburg) 21 April 1870, No. 31, 4.

¹⁰⁹ *Acts of the Legislature*, 1871, Chapter 9, p 17

¹¹⁰ *Ibid.*, 151.

¹¹¹ *Ibid.*, 90.

¹¹² *Ibid.*, 261.

¹¹³ *Ibid.*, 273.

Democrats had campaigned against the Flick Amendment as a Republican tool to re-energize their dwindling popularity and enshrine Negro equality. The Republicans were cool to its utility and wasted little campaign noise on its existence. Few believed it was necessary now that the Democrats were in charge. The chief Democratic argument against the adoption of the Flick Amendment centered on whether the 1866 Constitutional Amendment, which imposed the voter test oath and which the Flick Amendment was to remove, was legally adopted. Their position rested on the fact that the amendment was not placed before all of the voters and that it was an unconstitutional retrospective or *ex post facto* law. It disenfranchised persons for acts committed prior to its adoption, and, as was pointed out earlier, its provisions were unconstitutionally imposed on the voters who sought to vote on its very adoption. The first section of Article II of the 1863 Constitution declares that no *ex post facto* law shall be passed. The constitutionally imposed test oath was a "nullity, because of its retrospective operation" claimed the *Register*, and to support the proposed corrective Flick Amendment would give it a validity that it does not possess.¹¹⁴ That, they argued, rendered the 1866 amendment void. That being the case, the Democrats concluded that the Flick Amendment was unnecessary. They likewise stated that enfranchising the disenfranchised could be accomplished solely by legislative action. The *Register* again offered its guidance, "The prompt abolition of every test-oath upon the statute books ... mean the immediate and unconditional revoking of all disabilities, without the intervention of constitutional amendments, or anything of the sort."¹¹⁵ The Republicans' case was that the Flick Amendment would enfranchise the rebels, also making a constitutional convention unnecessary. Their response to the *ex post facto* question was weakly supported by the belief that

¹¹⁴ *Wheeling Daily Register*, 28 November 1870, No. 280, 2.

¹¹⁵ *Wheeling Daily Register*, 21 November 1870, No. 275, 3.

the *ex post facto* prohibition applied to punishments for crimes while the denial of the franchise was not a punishment. This runs counter to previous claims that disenfranchisement was a punishment for the crime of rebellion. Regardless, the larger concern for the Republicans was the call for a convention.

Republican Governor Stevenson opposed the call for a constitutional convention for two reasons: the cost and the Flick Amendment. The governor was concerned over the tremendous cost of such an endeavor, calculated at over \$150,000. Given this expense, he argued that the main thing the Democrats wanted, the enfranchisement of all disenfranchised persons could be effectively accomplished by the passage of the Flick Amendment.¹¹⁶ The Democrats wanted more and with their candidate soon to move into Governor Stevenson's office they had no desire to listen to his opinions. (The convention, once held, reported to the legislature an estimated cost of near \$40,000, not including the cost of balloting for the call or the adoption of the final document.)¹¹⁷

The resolution of both issues were intertwined even further when it was reported that the only way to achieve the needed support for the resolution calling for a convention was to first support the passage of the resolution placing the Flick Amendment on the ballot. Although the Democrats held an overwhelming majority in the House, they were not so dominant in the Senate. The Democratic legion split into the "Jackson" or Moderate Democrats, who desired progressive change rather than a return to 1860 political thought, and the Revolutionary Democrats who pined for the days of "old Virginia" and a return to its Southern political

¹¹⁶ *State Journal*, 19 January 1871, 2.

¹¹⁷ *Intelligencer*, 1 March 1872, No. 161, 2.

culture.¹¹⁸ The Moderate Democrats sided with the Republicans in support of the Flick Amendment. The Revolutionary Democrats were forced to compromise. The *Register* reported the deal as "the compromise which was agreed upon, whereby the passage of a bill submitting to the people the question of calling a constitutional convention, which could not have been otherwise attained, is secure."¹¹⁹ The Revolutionary Democrats withdrew their objection to Flick in exchange for "a matter of vital importance to the interests of the whole State," a constitutional convention.

The campaign for the Flick Amendment, which would be submitted to the electorate on April 27, 1871, and the call for a constitutional convention, set for balloting on August 26, 1871, dominated the press. The same debates heard during the legislative session echoed across the state. It was decided to hold the balloting for the Flick Amendment first so that the newly enfranchised could support the call for the convention. This goal was aided further by the new governor, John J. Jacob, when he issued a Proclamation directed at the supervisors and inspectors of elections on March 18, 1871. Jacob's Proclamation followed Judge Jackson's ruling by declaring that all male citizens were entitled to vote, listing the standard exceptions but excluding the voter's participation in the late rebellion.¹²⁰

The Flick Amendment balloting generated an extremely low voter turnout. While the previous gubernatorial election in 1870 garnered 56,030 voters, only 29,869 cast ballots on the Flick Amendment. The amendment passed 23,546 to 6,323. The counties voting against were Doddridge, Grant, Hardy, Harrison and Marshall, all northern counties. The returns were close in

¹¹⁸ *State Journal*, 23 February 1871, 1.

¹¹⁹ *Wheeling Daily Register*, 26 January 1871, No. 21, 2.

¹²⁰ Governor's Proclamation, as published in the Parkersburg *State Journal*, 30 March 1871, 2.

Ohio and Tucker counties. With Flick adopted attention now focused on the convention call. The returns barely favored the convention where 57,858 voters cast their ballots. There were 30,220 votes for and 27,638 against holding a convention. Other than Monroe County the vote followed a pattern similar to the results of the 1861 Secession Referendum (see appendix 5).¹²¹

¹²¹ Rice, "Conservative Reaction...", Exhibit IV.

Chapter Four - A Constitution of Our Own

Once in power the Democrats sought a constitutional convention for four reasons. First, the Negro had acquired citizenship status and rights. The Democratic Party in West Virginia desired to rescind, restrict or nullify those rights. They conducted an election campaign based on racial prejudice and hatred. The political culture had to be changed to return the Negro to a subservient pre-war status. Second, the election of 1870 had delivered the executive and legislative branches of state government into the hands of the Democrats. The judicial branch remained. Rather than regain control over the state judiciary one election at a time, a constitutional convention might transfer this prize into Democratic hands all at once. Third, with Democratic control of the state government assured, their desire to regain control of local government grew. Again, a constitutional convention might deliver this into their hands by restructuring local government and representation. Lastly, the Radical Republicans had crafted the 1863 Constitution. The Democrats wanted a constitution of their own. Many Democrats wanted to recreate the political culture of the pre-Civil War era and insure their continued political dominance. The constitutional convention was a partisan political effort to restore the racial bigotry and the prominence of the Democratic Party that had characterized antebellum Virginia.

The Negro Issue - While the Republican Party touted its achievements in winning the war, freeing the Negro from bondage and, most recently, elevating him to the status of citizen, the Democratic Platform harped on the broken promise expressed in the Fifteenth Amendment by calling on all white citizens to unite against Negro suffrage, even to the point of repealing the state's ratification of the dreaded Fifteenth Amendment. At the Democratic State Convention in 1870 a speech by H.S. Walker, from Barbour County brought "immense and long continued applause" with his plea to "Let ours be the duty to maintain the honor and dignity of the

Caucasian race. Let ours be the duty of maintaining that this is a white man's country, and ought to be a white man's government."¹²² Regarding the Enforcement Act, the Democratic Party claimed that the Federal authority was "destructive of the public peace" by "lifting them [the Negro] to power and dignity through the degradation of the whites."¹²³ The Democratic candidate for governor, John J. Jacobs, supported the Democratic Platform. Speaking before the Hardy County Convention Jacobs reminded the audience that at no time during the war did the Republicans propose more than the liberation of the Negro. He was quoted as saying that "At no time in the history of that struggle did they dare enunciate their then well-settled purpose to confer the right of suffrage upon the freedmen. To have done so would have been to deplete their ranks and to have surrendered to the South." "We find" declared Jacobs, "the Fifteenth Amendment ... in defiance of the people and their rights and privileges."¹²⁴

In Congress, United States Senator Charles Sumner was attempting, in 1870, to advance an amendment to the Federal Civil Rights Act, which would elevate the social status of the Negro. Sumner's amendment would allow full integration in education and society. Never expected to pass, the bill did engender critical editorials and public outrage. The *Register* issued a call to arms against these "revolting sentiments" and warned the voting public that "If the white people of this county are prepared for such a revolution in society as well as politics, they have simply to keep the Radical party in power, and pander to the corrupt and vindictive passions of partisan leaders."¹²⁵ The *Register* referred to the Republican Party in numerous editorials and headlines as "The White Man's Colored Party" and the Republican State Convention as "The Black and Tan

¹²² *Intelligencer*, 11 June 1870, No.250, 2.

¹²³ *Ibid.*

¹²⁴ *Wheeling Daily Register*, 23 July 1870, No. 174, 3.

Convention." Meanwhile, the Democratic Party Platform had been taken over by the Revolutionaries.

The Democratic Party Platform also criticized the Republicans on the issue of permitting Negro children to attend public schools with white children; a position even the state Republicans did not hold. The Sixth Plank in the Platform tried to alarm the electorate by claiming that Republican integration in schools was "destroying our educational system for the benefit of the blacks."¹²⁶

The 1870 election made it clear that the Democratic Party in West Virginia would run as a "white man's party" and, if elected, operate "a white man's government." The *Register* congratulated itself on the Democratic victory by making it clear where, in its opinion, the people stood on the issue of Negro suffrage contained in the Fifteenth Amendment and the Flick Amendment. It proclaimed the "hope that the result of the late election would have buried the dead carcass of the Flick Amendment."¹²⁷ The *Register* saw a Republican conspiracy to pass Flick as a means to make a constitutional convention unnecessary and to force the state to embrace Negro suffrage. The recent election, it concluded was emphatic that the word "white" should remain in the constitution. Believing the Fifteenth Amendment had been fraudulently imposed upon the people and resurrecting the state rights issue, the *Register* prophesied that "it will not be contended that the people of this or any other state are obliged to change their constitutions, to comply with any and every usurpation in the shape of a Congressional

¹²⁵ *Wheeling Daily Register*, 25 April 1870, No. 97, 2.

¹²⁶ *Intelligencer*, 11 June 1870, No.250, 2.

¹²⁷ *Wheeling Daily Register*, 11 November 1870, No. 267, 3.

enactment."¹²⁸ The Democrats' goal, their hope was based on what they believed would be a reversal of the status of the Negro voter. "We admit the fact for a time being at least ... but never let it be said that the people of West Virginia, by their own deliberate act and deed, to their eternal shame and disgrace, sanctioned, by the solemn form of a constitutional amendment, the humiliating mockery of negro suffrage."¹²⁹

The push to retain the word "white" in the constitution was also argued as a means to frighten off future Negro immigration. "Well, so be it," cried the *Register*, "The negroes as a class are not exactly the kind of immigrants the state needs just now", and further claimed they were only suitable for odd jobs and stealing.¹³⁰ The 1871 Legislative Session would find the revolutionary members of the Democratic majority seeking statutory bigotry. The 1872 Constitutional Convention likewise would attempt to crystallize racial separation.

During the 1872 Constitutional Convention Evermont Ward, of Cabell sought to place the word "white" back into the voter qualification section of the proposed Constitution "so that if the Supreme Court of the United States declared the Fifteenth Amendment unconstitutional, or the grievance of negro suffrage became so great that the people should find a way to abolish it, then our Constitution would not need alteration."¹³¹ Alex Monroe, of Hampshire reiterated the theme by proclaiming "Look to Old Virginia, our blessed old mother. I want to express my preference in this Constitution in favor of making the white man preminent."¹³² Faulkner, of Berkeley offered a provision outlawing slavery but it was rejected 56 to 11. Although few would have

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ *Wheeling Daily Register*, Quoted in *The Intelligencer*, 2 December 1870, No.9, 2.

¹³¹ *Intelligencer*, 19 February 1872, No.151, 3.

¹³² Ibid.

favored a return to slavery, many continued to object to the manner by which it was abolished.¹³³ Armstrong, of Hampshire, Cushing, of Mason and Maslin, of Grant and Hardy and other "old style Democrats" voiced their support for Caucasian superiority. The Moderates such as Chairman of the Bill of Rights Committee, Samuel Woods, along with A. F. Haymond and Blackwell Jackson prevailed on this and other issues mired in bigotry. Woods announced to the members that this was a progressive age and that they did not want to advance backward.¹³⁴ Former U.S. Senator A.H. Willey, one of the few Republicans in the convention, responded to the prejudices of the past being resurrected in an address published in the *Intelligencer*. Speaking of the Revolutionary Democrats, Willey shouted that the "gentlemen are digging downward, downward, after the fossilized dogmas of an obsolete political period, with the hope of galvanizing them into some kind of ghostly vitality."¹³⁵ Another attempt to insert "white" into the new constitutional requirement for holding public office was successful late in the convention. The following day saw "a terrible battle" in the convention, including an attempt to insure that only white men could serve as governor or hold the other constitutional state offices. The efforts finally failed. The *Intelligencer* sighed "It is hoped this is the last struggle of the serpent."¹³⁶ It was not.

¹³³ Talbott, "Some Legislative and Legal Aspects ...Negro Question", 20-21.

¹³⁴ *Intelligencer*, 19 February 1872, No.151, 3.

¹³⁵ *Intelligencer*, 21 February 1872, No.153, 2.

¹³⁶ *Intelligencer*, 18 March 1872, No.175, 2.

The Revolutionary Democrats were successful in institutionalizing the separation of the races in the public schools. While this separation had been established by statutory law from the beginning of the state the Democrats insured its perpetuity within the new organic law.¹³⁷

After the most vitriolic debates of the convention, the Revolutionary Democrats failed to constitutionally impose their racial hatred on West Virginia, except on the most unprotected: the Negro children. The message remained clear, however, that the Negro population of the state would receive no sympathy from the dominant party in the foreseeable future. A final attempt to downgrade the status of the Negro occurred during the 1872 Constitutional Convention with a proposal to prohibit the Negro from holding elective office. The issue was batted back and forth until the last day of the constitutional convention, when many members had already left the proceedings. On a vote of fifty to fifteen it was decided that the question was to be placed on the ballot with the constitution itself, as a separate issue. If the people adopted the new constitution and simultaneously approved the "white only" office holding proposal then the new constitution would be automatically amended.¹³⁸ When the constitution was voted upon in August 1872 forty-two thousand ballots approved its ratification while only twenty-eight thousand supported the "white only" proposal. The voters had grown tired of the Negro question. As expected, support for a "white only" provision garnered the greatest support in the southern and eastern counties (see appendix 6).

The Judicial Takeover - The chief complaint by the Democrats about the judiciary was its unwavering support of Radical Reconstruction. This deference to the Radical's program was believed to derive from the threat of removal by the legislature. An address by the Democratic

¹³⁷ 1872 Constitution, Article XII, Section 8.

¹³⁸ Talbott, "Some Legislative and Legal Aspects ... Negro Question", 242-243.

Party published in the *Register* condemned the judiciary over "instances of partisan decision and personal favoritism."¹³⁹ It complained that under the present constitution only a simple majority in the legislature was required to remove a sitting judge. Under Republican rule there were only two cases of judicial impeachment. The Virginia Constitution likewise only required a simple majority and this continued under the 1863 West Virginia Constitution. Granville Parker, described as a "fearless friend to the new State," who had served as a delegate to the First Constitutional Convention and wrote numerous editorials against the call for a new convention, pointed out the obvious contradiction in these complaints.¹⁴⁰ While the Democrats complained of corrupt judges they also sought to raise the bar on removal by requiring a legislative two-third majority.¹⁴¹ This only makes sense when it is understood that the Democratic proposals included the removal of all judges under the new constitution and the rotation into office of judicial members from Democratic appointment and election. The new judiciary would only then be subject to the higher bar of impeachment. Editorial letters by Parker, published on June 23, 1871, pointed out the Democratic Party's motive as, "since the people have put their party partially in possession of the Government, it is indispensable they should be put in possession of the whole."¹⁴² The great Democratic mouthpiece, the *Wheeling Register*, stated it plainly when it said, "The recent election in this state (1870), gives to the Democratic Party the executive and legislative departments of this government. The judiciary still remains in the hands of the Republican Party; not, however, by the free choice of the majority, but by force and fraud of the

¹³⁹ *Wheeling Daily Register*, 6 June 1871, No. 134, 3.

¹⁴⁰ George W. Atkinson, Alvaro F. Gibbens, *Prominent Men of West Virginia* (Wheeling, WV: W.L. Calling, Publisher, 1890) 816.

¹⁴¹ Granville Parker, *The Formation of the State of West Virginia, and Other Incidents of the Late Civil War* (Wellsburg, WV: Glass & Son, Book and Job Printers, 1875) 449.

¹⁴² *Ibid.*, 445.

ballot. The freemen of this state now demand that these judicial officials be compelled to vacate their seats and appear before the grand assize of free suffragans, to be re-voted for the places they now fraudulently and feebly fill."¹⁴³ Similarly the Lewisburg *Journal* announced that all the judgeships in the state should be vacated at once. It added that there are thousands of officers whose service the state could profitably dispense with but the "one principal reason for a convention is that in this way we will most speedily obtain another judiciary."¹⁴⁴

Under the 1863 Constitution the state judiciary consisted of a Supreme Court of Appeals, circuit courts and inferior courts. The Supreme Court consisted of three judges elected for twelve-year terms. Circuit court judges were elected to six-year terms and were required to meet at least four times a year. Circuit courts supervised the justice of the peace courts. The 1872 Constitution proposed a Supreme Court of Appeals, circuit courts, county courts; replacing the township system, corporation courts and justices of the peace. The Supreme Court was increased to four judges, still with twelve-year terms. Circuit court judge's terms were increased to eight years and they still retained supervision over lower courts.¹⁴⁵ The legislature under both constitutions could rearrange the circuits, the number of terms of court, and the number of circuits based on population changes. In 1863 the number of judicial circuits was thirteen. The 1872 Constitution set the number of circuits at nine, later increased to thirteen in 1880.¹⁴⁶ The causes for removal of a sitting judge under the 1863 Constitution were for misconduct, incompetence, neglect of duty or conviction of an infamous offense. The 1872 Constitution

¹⁴³ *Wheeling Daily Register*, 14 November 1870, No. 269, 2.

¹⁴⁴ *Lewisburg Journal*, quoted in the *Intelligencer* 28 November 1870 No. 86, 1.

¹⁴⁵ Paul C. Cline, "The Constitutional Development of the West Virginia Judiciary" (Thesis, West Virginia University, 1961) 10-15.

¹⁴⁶ Cline, "The Constitutional Development....", 51.

allowed judges to be removed only when, from age, disease, and mental or bodily infirmity; they were incapable of discharging their duties.¹⁴⁷

The adoption of the 1872 Constitution resulted in the removal of all Supreme Court Justices and the thirteen circuit judges effective December 31, 1872. Sitting judges were required to stand for re-election regardless of the length of time remaining in their terms. With the August 22, 1872 election, the Supreme Court returned only one sitting Justice, C.P.T. Moore, a Democrat. The other three Justices elected were A.F. Haymond (Democrat), James Paull (Democrat) and John S. Hoffman (Democrat). The 1872 Constitution produced a Democratic sweep in the highest court of the state. In the nine circuits only one judge was reelected, Thayer Melvin in the Wheeling Circuit (Republican). The other circuit court races resulted in six Democrats and two Democrat Independents, both of whom served in the 1872 Constitutional Convention as Democrats.¹⁴⁸ The Democratic Party had achieved one of its most desired political goals, growing out of the convention call; they had taken over the judiciary. Although the Democrats made great effort to depict fiscal soundness in the judiciary as a goal the constitutional convention produced seven plans to rearrange the judiciary at a cost ranging from \$41,000 to \$59,000. The existing system expended only \$29,400 in tax dollars.¹⁴⁹

Local Control - The county court system of local government had existed in Virginia since adoption of its first constitution on June 29, 1776. When West Virginia drafted its first constitution the county court system was replaced with a township system for local governance. Under the Virginia Constitution the county court exercised administrative, fiscal and judicial

¹⁴⁷ Ibid., 84-85.

¹⁴⁸ Atkinson & Gibbens, *Prominent Men of West Virginia*, 46-47,112.

¹⁴⁹ *Intelligencer*, 9 February 1872, No.143, 2.

authority. The county court system was common throughout the southern states, although it was considered by some as a "supremely antiquated folly."¹⁵⁰ The 1776 Virginia Constitution empowered the county court with the management of all local affairs. The justices that served on the county court were appointed for life or the pleasure of the appointing authority, whichever ended first. The justices would then appointed the sheriff, the coroner and the county clerk. Under statute they also appointed all other civil officers of the county, all military officers under the grade of brigadier-general, laying of all taxes and controlling all expenditures. They were responsible to no one and controlled patronage positions that created powerful political machines. Local citizens had little say in local government.¹⁵¹ In 1850 the Virginia Constitution was amended re-organizing the county court. Three to five justices exercised the same powers as the previous county court except the clerk, the sheriff and other local officials were elected. They still retained a judicial and legislative function. The first West Virginia Constitution omitted the county courts and substituted a township system of local government. This "Yankee institution" provided for the election of township officers; a supervisor, clerk, road surveyors and an overseer of the poor, each elected annually. It allowed for the biennial election of constables and justices every four years. The county retained the positions of sheriff, prosecuting attorney, surveyor of lands; a recorder and assessors, all elected for two years.¹⁵² In each county there would be from three to ten townships. The debates over local government during the first constitutional convention of West Virginia centered on the inadequacies of the county court system. The

¹⁵⁰ John Marshall Hagans, "Sketch of the Erection and Formation of the State of West Virginia from the territory of Virginia", West Virginia Reports I, 7.

¹⁵¹ Maude F. Callahan, "Evolution of the Constitution of West Virginia" (Thesis, West Virginia University, 1909) 2.

¹⁵² Callahan, "Evolution of the Constitution of WV", 21.

members objected to the mix of judicial and legislative functions. "The county courts are damned and have been for twenty or thirty years" remarked one member.¹⁵³ This violation of the separation of powers doctrine also resulted in citizens being forced to approach the county court through legal representation, distancing them from the administration of local government. The county court system was viewed as a support system for the old southern oligarchy. The object sought by creating the township system was to return local government into the hands of the average citizen. "Divide the counties into wards [townships] of such size as that the citizen can attend when called on and act in person" declared a supporter of the measure." "Each ward [township] would thus be a small republic within itself; and every man in the State would thus become an acting member of the common government", he concluded.¹⁵⁴

The first constitutional convention of West Virginia likewise saw the creation of the state's circuit court system as the more proper judicial venue rather than the county courts, where justice frequently carried a very partisan tint. The Republicans drafting the 1863 Constitution also recognized in the county court a dangerous combination of executive, legislative and judicial authority contrary to the concept of separation of powers inherent in all federal and state constitutions. The 1872 Constitution returned the judicial function of the county courts, which were now to be composed of a president and two justices. The Democrats in 1872 considered the township system of local governance as "ill-suited to large and sparsely settled counties" as well as too expensive.¹⁵⁵ Opposition to this move was voiced because of concern that while the old Virginia system utilized justices of the peace, the re-established county court would "attract men

¹⁵³ Charles H. Ambler, Frances Haney Atwood and William B. Mathews, ed., *Debates and Proceedings of the First Constitutional Convention of West Virginia: 1861-1863*, vol.1, (Huntington, WV: Gentry Brothers, Printers, 1939) 756.

¹⁵⁴ Ambler, et.al. *Debates and Proceedings of the First Constitutional Convention*, vol. 2, 449-450.

of few qualifications."¹⁵⁶ There was not a requirement that the county court members hold a law degree. Debates during the 1872 Constitutional Convention saw the Marion County representative speak rapturously about the benefit of the county court system as a "theater upon which their youthful genius might disport with gay freedom before the assembled people," to which J. Marshall Hagans of Monongalia County responded that it would be better if these young men were housed in some law school rather than inflict themselves on the people through the fraud and farce known as the county court.¹⁵⁷ Later the Democrats also concluded that the county courts were not suitable venues for justice. The West Virginia county courts had their judicial function removed in 1880.

The Charleston *Courier*, a Democratic paper, voiced the party's belief that the complicated system of state government was costing too much. "Most of these offices have been created by Legislative enactment, and can be abolished by the power that created them" quoted the paper, to which the *Intelligencer* supported with the reply to "do it."¹⁵⁸ Again, the *Intelligencer* added this did not require a convention.

Long viewed as a means of local control was Virginia's tradition of *viva voce* voting, whereby the voter voices his selection at the polls rather than by secret ballot. The elite ruling class could intimidate the lower class by requiring them to vote openly, knowing that benefits or censure would come from it being known for what and for whom they had voted. The division over ballot versus *viva voce* fell within the customary geographic boundaries illustrated by Delegate Davenport, of Marshall who pledged 15,000 panhandle votes against the proposed constitution if

¹⁵⁵ Cline, "The Constitutional Development of the West Virginia Judiciary", 12.

¹⁵⁶ *Ibid.*, 16.

¹⁵⁷ Callahan, "Evolution of the Constitution of WV", 35.

the ballot was omitted, while Moflet, of Greenbrier asserted that "we are so thoroughly Virginian, that we love her old time-honored institutions, and are a unit in favor of a *viva voce* vote."¹⁵⁹ The compromise reached required voting by ballot, which, at the voter's discretion, would be open, sealed or secret.

The Democrats were successful in regaining some control over local government. The township system was abolished and a return to the county court system would restore a measure of political oligarchy. Regardless, electoral participation had been increased too much to allow the Revolutionary Democrats a full retreat to the past. As one correspondent to the convention wrote, their efforts fell "far short of pleasing some of the old time members who desired to go back half a century, when [the county court] was the embodiment of aristocratic, self perpetuating gentility of the county, where men of leisure met once a month to run the politics of the State, and arrange matters so that common folks need not spend time considering what they knew so little about."¹⁶⁰ The role of the common man's participation in their government had been at the center of years of debate. The common man, both black and white, would not leave the political stage no matter how hard the Revolutionary Democrats tried to get back to old Virginia. On this issue, while they gained some ground, they lost even more.

A Constitution of Our Own - During the contentious 1870 election the *Register* published a letter from a Weston Democrat who called upon the state's Democrats to address the "true issue" before the party. The writer lamented that "all the evils which afflict the people and blight the prosperity and growth of the State, and deprive good citizens of their just rights, and paralyze the

¹⁵⁸ *Courier*, quoted in *Intelligencer* 7 December 1870, No. 94, 2.

¹⁵⁹ *Intelligencer*, 19 February 1872, No. 151, 3.

¹⁶⁰ *Intelligencer*, 12 April 1872, No. 196, 3.

arms of tax payers, are traceable to *our Republican Constitution*." The letter directed that those soon to gather at the Democratic State Convention should adopt, as their main plank, the call for a constitutional convention. The "Old Democrat" charged that "the Constitution of West Virginia in the hands of the Radical party is a license to obtain office wrongfully, and when obtained to perpetuate its tenure by corrupt and extravagant use of public money." He concludes that the Democratic delegates must "strike at the root of the disease", the constitution.¹⁶¹ Although the idea of a constitutional convention did not make it into the Democratic Party Platform that summer, the sentiments of the "Old Democrat" would find voice as the year turned over.

One of those voices was Henry G. Davis, the Democratic lion seeking elevation to the U.S. Senate. A report in the *State Journal* attributed to Mr. Davis highlighted the party's view following the Democratic victory in the 1870 elections. When asked if the results of the election were a "quasi endorsement of the rebellion", Mr. Davis remarked, "it is an endorsement of the position which the Southern people occupied during the war, and the sequel will show it. We shall repeal the odious registry law and then call a constitutional convention, to upset and overturn all the measures that you Radicals have inaugurated."¹⁶²

The 1872 Constitutional Convention convened in Charleston, Kanawha County on January 16, 1872. They met in the old South Methodist Church, described by one writer as dilapidated, small, uncomfortable and totally unsuited for the purpose.¹⁶³ The Democratic majority in the convention greatly desired to resurrect the political culture of pre-war Virginia. The constitutional convention saw several attempts by the Revolutionary Democrats to recreate the

¹⁶¹ *Wheeling Daily Register*, 12 May 1870, No.113, 3.

¹⁶² *State Journal*, 8 December 1870, 2.

¹⁶³ *Intelligencer*, 29 January 1872, No.133, 3.

'life and institutions of Virginia and the South", and to permit possible future rebellion.¹⁶⁴

Besides the return to the county court system and an attempt to resurrect the *viva voce* system of voting, efforts included the disenfranchisement of the poor. This would reestablish governing by the middle and upper classes as well as diminish the number of Negro voters. The proposal would restrict voting privileges to those who had paid their taxes. John Bassel, of Harrison County, argued that he did not think it un-republican to debar a man from voting if he failed to pay his taxes. "The Fifteenth Amendment had thrust a large number of ignorant voters upon us," he reported, and "If a poor white man should be prevented from voting they must bear it."¹⁶⁵ The Moderate Democrats were successful in defeating this obvious return to patrician government.

The constitutional convention successfully insulated its citizens from damage flowing from possible future rebellion. Under Article III, the proposed constitution would prohibit the suspension of the writ of *habeas corpus*. Political test oaths as a prerequisite for voting were repealed as well as suspension of the franchise for acts committed prior to the passage of a law prohibiting such acts. Article IV revoked the power of the state to require voter registration as a condition to exercise the franchise. Finally a majority of the citizens could exercise the right to alter, reform or abolish their government. Reconstruction was outlawed.

The Democrats enjoyed some humor over the election of sixty-six of their kind to the convention while the Republicans could only muster twelve of their party. Dubbed "the Twelve Apostles" the Republican delegation came from the northern counties of Marshall, Tyler, Preston, Hancock, Monongalia and Taylor. Less humorous was the continuing split within the Democratic machine into the Revolutionary and Moderate wings. The Revolutionary Democrats,

¹⁶⁴ Callahan, "Evolution of the Constitution of WV", 37.

¹⁶⁵ *Intelligencer*, 19 February 1872, No. 151, 3.

who had hijacked the party platform in 1870 and who had largely carried the day during the 1871 Legislative Session, were poised to control the constitutional convention. The *Intelligencer* reported on the make-up of both the convention and the 1872 State Legislature, by noting that "the officers of both bodies were selected particularly on account of their rebel war record. . . . Out of some 25 officers, great and small, chosen in the legislature and convention not but one single one comes from that part of the State north of the Parkersburg branch of the Baltimore & Ohio Railroad."¹⁶⁶ The selection of Samuel Price of Greenbrier County, who had served as the Lieutenant Governor of Confederate Virginia during the war, as President of the Convention set the tone. One writer to the editors of the *Intelligencer* reported that the proceedings were nicknamed "The Greenbrier Constitutional Convention."¹⁶⁷ The paper continued to warn that the Moderate Democrats stood "but little better chance to be heard than the Republicans."¹⁶⁸

The debates that followed reflected the tone of the majority and their desire to return to the antebellum days of Virginia. Many kept referring to the state as the Commonwealth of West Virginia and its General Assembly, rather than its Legislature. Evermont Ward of Cabell objected to the first section of the present constitution providing that the state would remain one of the United States and that the United States Constitution was the supreme law. He wanted all to know he believed in the reserved rights of the states and "the heaven-born right to revolutionize."¹⁶⁹ Debates continued as if the late war had never occurred. The first Article of the existing constitution stated that "The State of West Virginia is, and shall remain, one of the United States". Mr. Ward, of Cabell sought to strike this sentence as "it might not be true next

¹⁶⁶ *Intelligencer*, 29 January 1872, No.133, 3.

¹⁶⁷ *Intelligencer*, 9 February 1872, No.143, 2.

¹⁶⁸ *Intelligencer*, 29 January 1872, No.133, 3.

year, or at some future time."¹⁷⁰ The first article continued with, "The Constitution of the United States and the laws and treaties made in pursuance thereof, shall be the supreme law of the land." Mr. Hoge, of Berkeley, stated that "if Congress passed any law infringing upon the reserved rights of the States, it would be void."¹⁷¹ The Revolutionary Democrats saw the results of the late war as null and void.

¹⁶⁹ *Intelligencer*, 7 February 1872, No.141, 2.

¹⁷⁰ *Intelligencer*, 13 February 1872, No.146, 3.

¹⁷¹ *Ibid.*

Chapter Five - Conclusion

In 1865 supporters of the Confederacy in West Virginia lost the Civil War. In 1870 a second civil war was fought at the ballot box and the South won. The issues were the same: state rights, the role of the Negro in society and oligarchic local government. The geographic pattern established by the 1861 Secession Ordinance vote continued through West Virginia's Civil War and reconstruction period. The southern and eastern counties routinely stood separate from the western and northern counties on most of the issues confronting the new state. The final vote on the ratification of the new constitution was not an exception (see appendix 7).

The early political history of West Virginia saw both the Republican Party and the Democratic Party fracture into opposing camps. The Liberal Republicans grew slowly under reconstruction but were unable to moderate the policies of the Radical Republicans soon enough to prevent the rise and eventual victory of the Democratic Party. Within the Democratic Party the split between the Moderates and the Revolutionary wings provided more benefit than harm. The Revolutionary wing of the Democratic Party proved their worth during the election seasons of 1869, 1870 and 1871 by regaining control of the government of West Virginia. However, when the time came to craft and pass legislation and to draft a new constitution the Moderate Democrats were successful in defeating the worst of the Revolutionary proposals. The result was a constitution containing more progressive concepts than punitive and bigoted bile. The success of the Democrats in this regard and the failure of the Republicans to blunt their punishing policies were due to the times during which they operated. The Republicans worked within a cauldron of war and its immediate aftermath while the Democrats were restored to power as the heat of the Civil War diminished. The reaction to Radical control by the Republican Party and their zealous application of reconstruction paved the way for the ascent to power of the southern-

leaning "Bourbon Democrats". Although few, including those in the Democratic Party questioned the need for proscriptive measures during and immediately following the Civil War, the Radical Republicans exercised their stranglehold over the ballot box too long. The amnesty delivered by the Flick Amendment was, as the *Intelligencer* noted, a year too late and not proposed with cordial unanimity.¹⁷²

The 1872 Constitutional Convention was West Virginia's second civil war. It was a battle of words not bullets. The return to 1861 is most evident when one compares the support for secession with the support for the Democratic Party's 1872 Constitution (see appendix 1 & 7). They are almost identical. After four years of Civil War and seven years of reconstruction loyalties remained unchanged. The Revolutionary Democrats tried mightily to reenergize the issues lost on the battlefield and, while they did succeed in reestablishing the political culture of "Mother Virginia", the moderates in the party prevailed in producing a less strident constitution. Although the 1872 Constitutional Convention was unnecessary as a means to remove the tools of reconstruction it did serve a greater purpose. The convention reconciled the passions of the late war. The Civil War was now over in West Virginia. The state of West Virginia, secure in its continued existence would now settle into a generation of bourbon flavored Democratic Party control.

¹⁷² *Intelligencer*, 24 November 1870, No. 84, 1.

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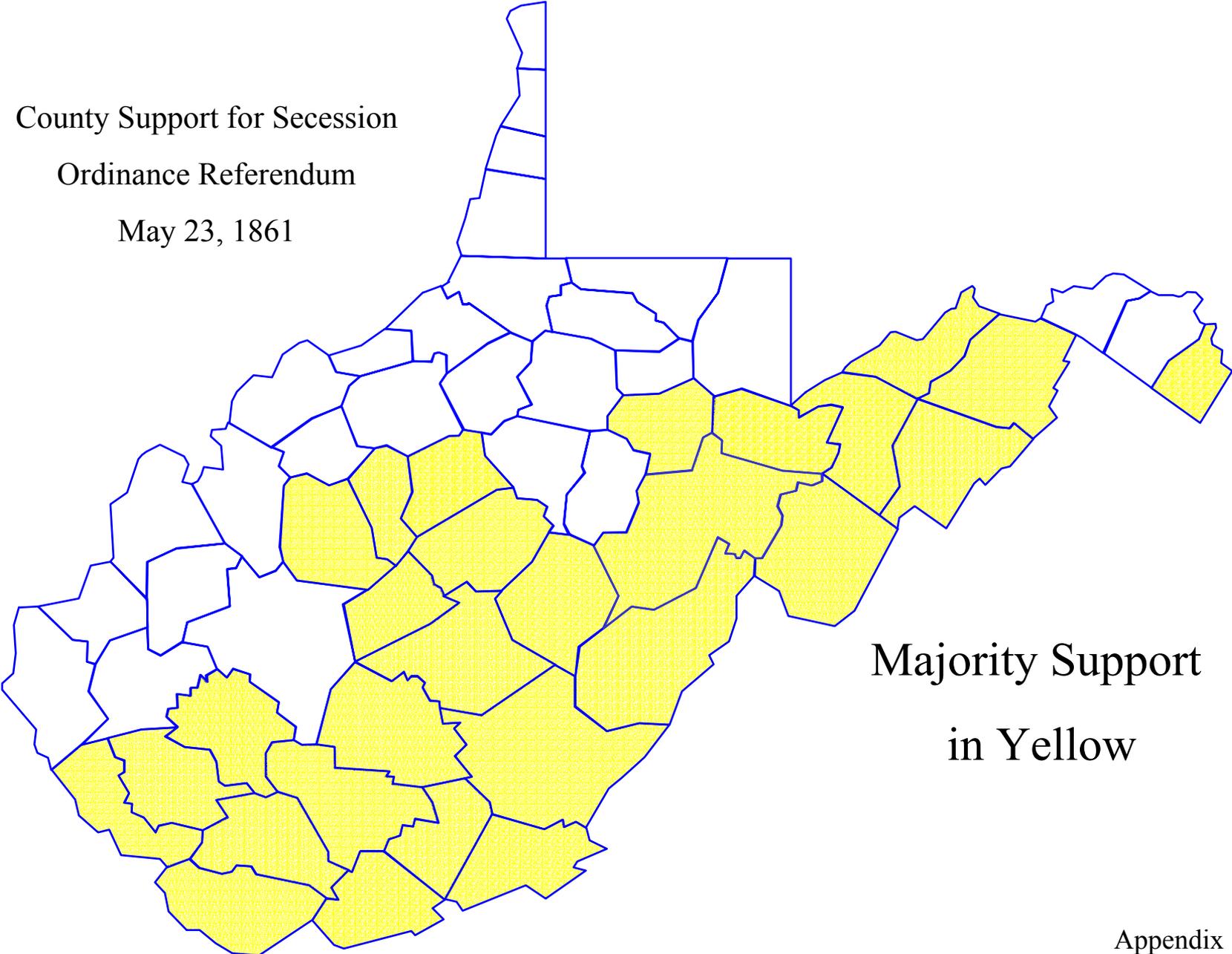
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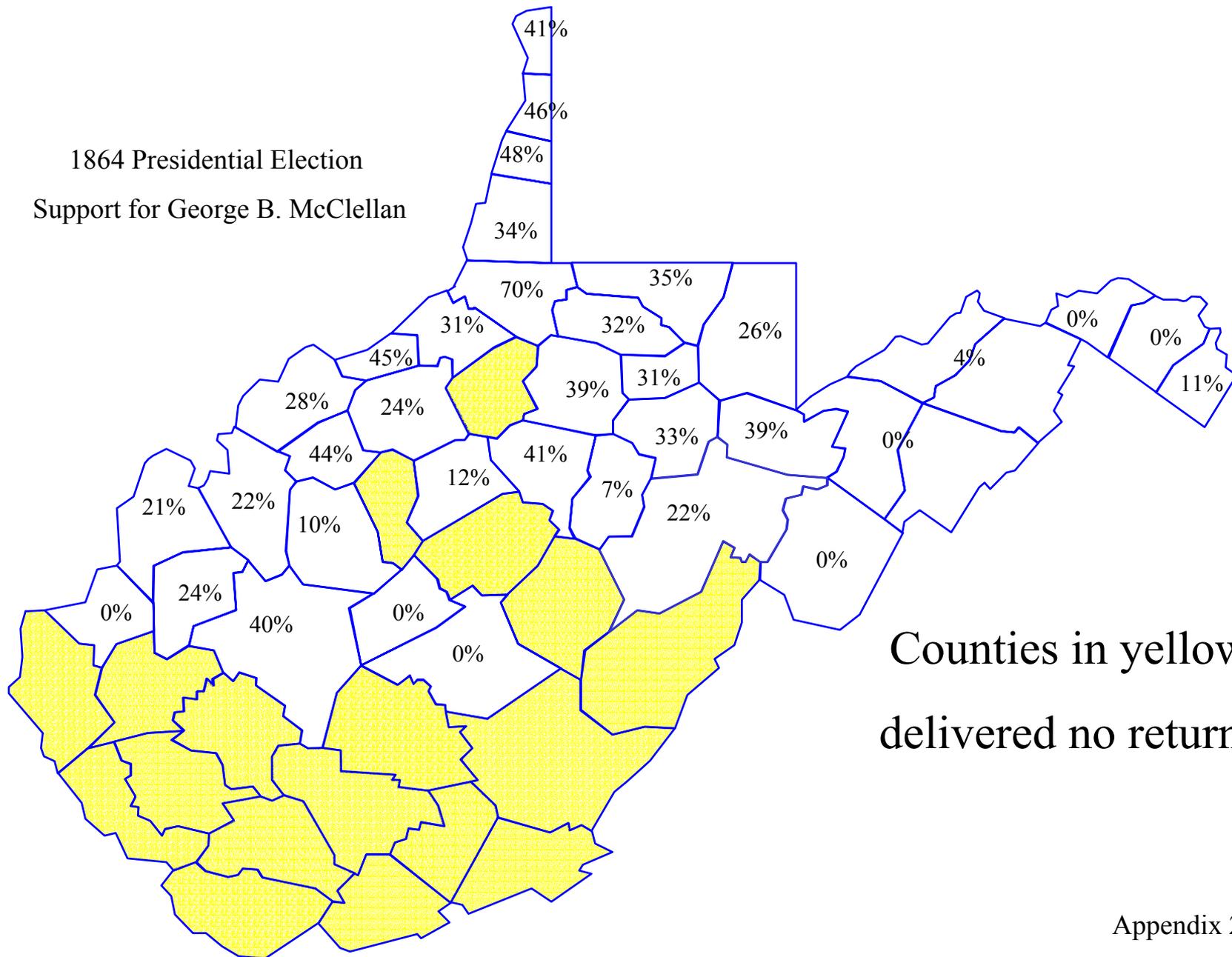
Appendices

County Support for Secession
Ordinance Referendum
May 23, 1861



Majority Support
in Yellow

1864 Presidential Election
Support for George B. McClellan

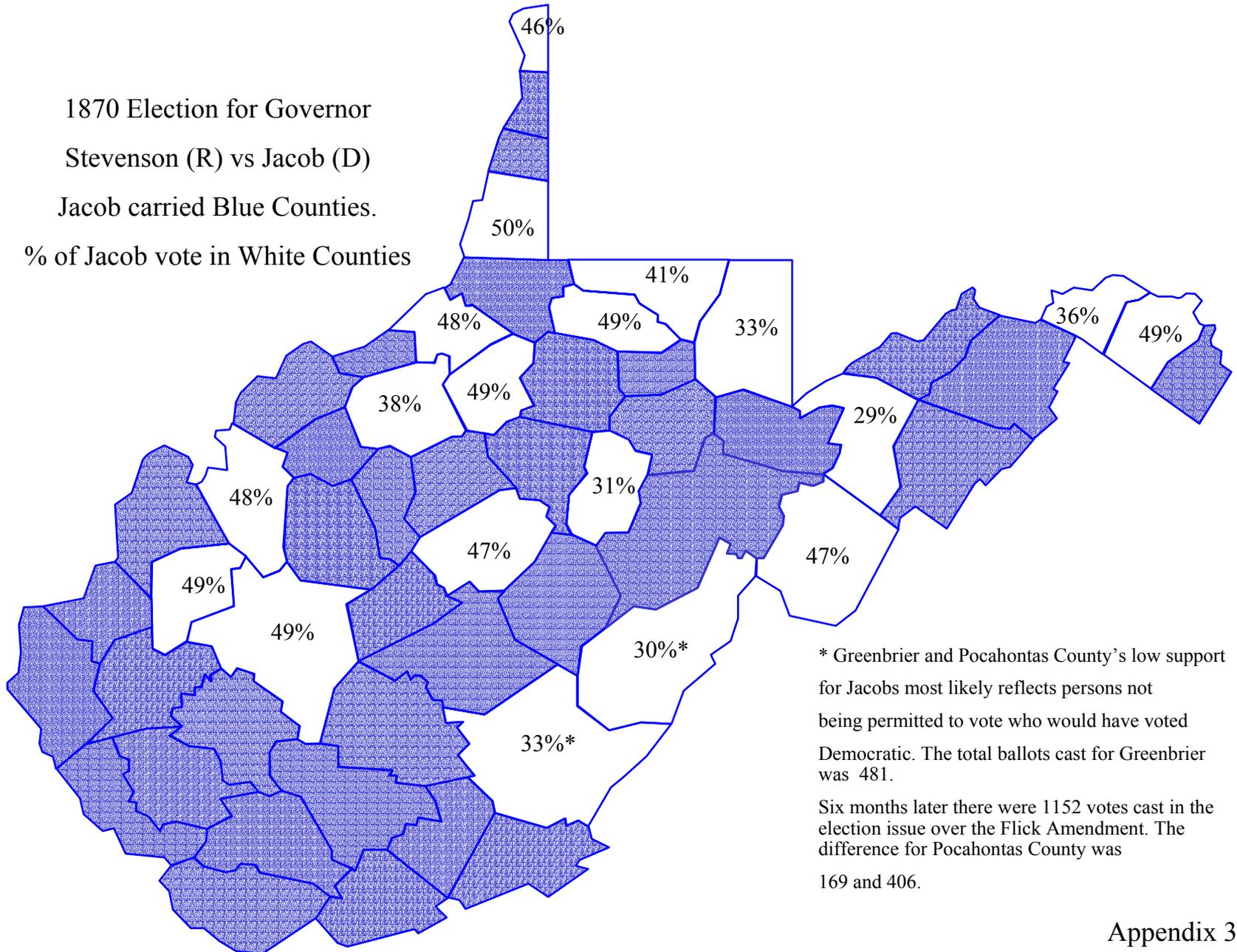


Counties in yellow
delivered no returns

1870 Election for Governor
 Stevenson (R) vs Jacob (D)

Jacob carried Blue Counties.

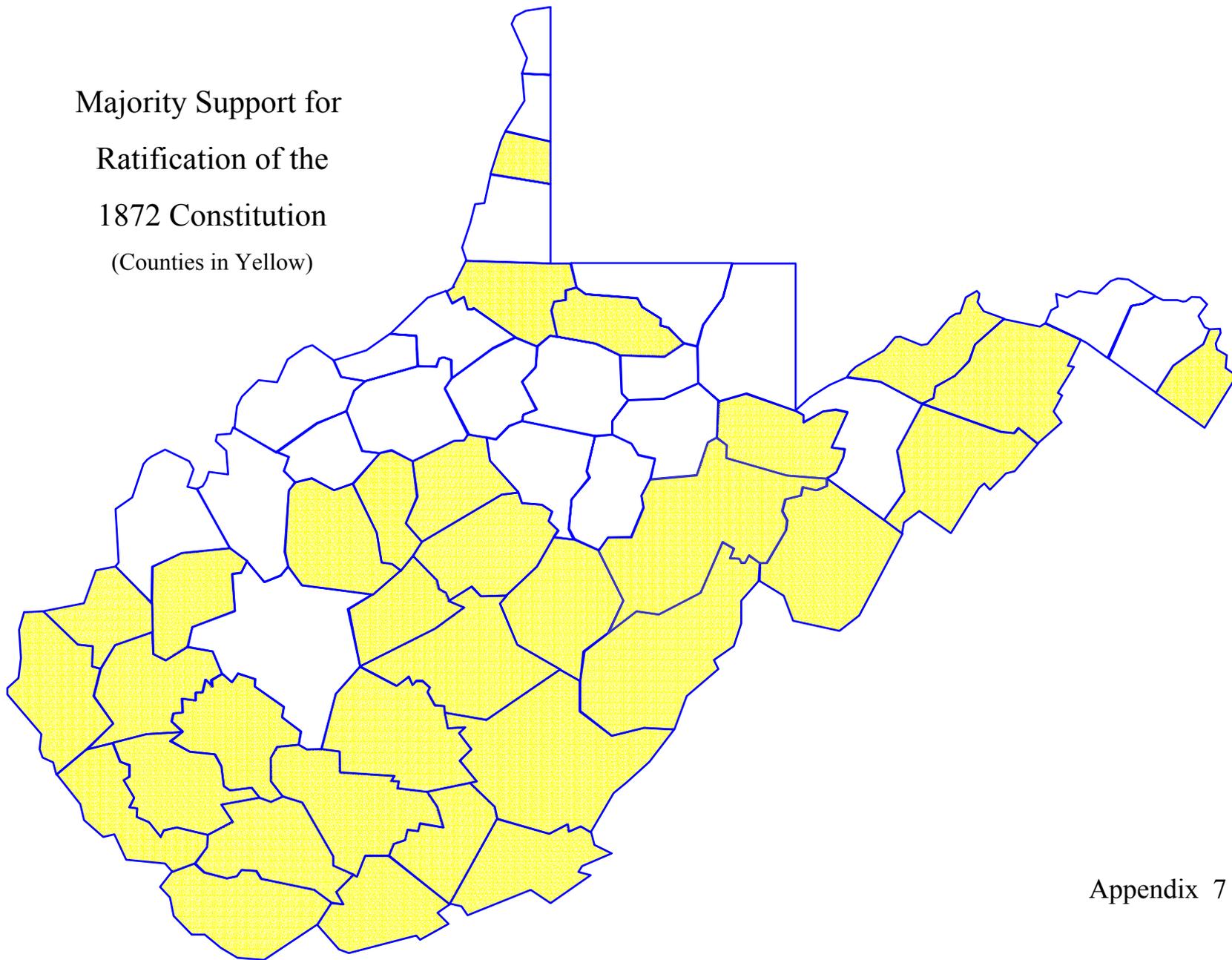
% of Jacob vote in White Counties



* Greenbrier and Pocahontas County's low support for Jacobs most likely reflects persons not being permitted to vote who would have voted Democratic. The total ballots cast for Greenbrier was 481.

Six months later there were 1152 votes cast in the election issue over the Flick Amendment. The difference for Pocahontas County was 169 and 406.

Majority Support for
Ratification of the
1872 Constitution
(Counties in Yellow)



Curriculum Vita

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Education

Marshall University, Huntington, West Virginia – 1971 BA Degree – Economic Geography (Planning)

Marshall University, Huntington, West Virginia – 1980 MA Degree – Political Science (Public Administration, Economics)

National Judicial College, Reno, Nevada – 1987 – Advanced Administrative Law

Marshall University, Huntington, West Virginia – 2004 MA Degree – History

Employment

April 2000 – Present
West Virginia Department of Transportation
Transportation Planning and Research Division
Position – Community Development Specialist

Duties:

- Grants management
- Coordinate community projects
- Additional duties when assigned

September 1998 – March 2000
West Virginia Department of Transportation
Office of the Secretary
Position – Executive Assistant to the Secretary

Duties:

- Coordinate DOT Legislative Program (92% success rate)
- Administrative review of agency procedures and policies, recommendations on corrective actions needed.

- Assist local community efforts as directed.
- Draft legislation, policies and regulations
- Advise Secretary on Administrative matters.
- Policy and Legislative analysis
- Represent Secretary on Boards and Commissions.

December 1994 – September 1998

West Virginia Department of Transportation

Transportation Planning and Research Division

Position - Coordinator – Transportation Enhancement Program & Recreational Trails Program

Duties:

- Manage Federal Transportation Enhancement Program (ISTEA Grants)
- Manage Federal Recreational Trails Program
- Develop policies and procedures for each grant program
- Oversee compliance with program requirements
- Assist local communities with funding opportunities
- Public presentations before state and local bodies
- Consult with federal agencies on programs

August 1989 – December 1994

West Virginia Department of Commerce

Division of Tourism & Parks

Position - Administrative Assistant to Commissioner

Duties:

- Manage daily operations of the Division
- Oversee State Parks operations
- Policy development
- Coordinate legislative program
- Assist with budget preparation
- Insure agency compliance with state and federal law
- Personnel management

January 1985 – July 1989

West Virginia Secretary of State

Position - Director of Administrative Law Division

Duties:

- Advise all state agencies regarding compliance with WV Administrative Procedures Act
- Publish and maintain West Virginia State Register of Rules
- Codified and published first WV Code of State Rules

- Serve as Administrative Law Judge
- Managed office staff

January 1988 – March 1988

January 1989 – March 1989

West Virginia House of Delegates

Judiciary Committee

Position - Legislative Analysts / Clerk

- While on Leave of Absence from the Secretary of State's Office I was staff to the House Judiciary Committee.
- Bill drafting, analysis and presentation before the Committee
- Coordinated review and enactment of all Legislative Rules of Executive agencies

January 1984 – January 1985

West Virginia Legislature

Legislative Rule Making Review Committee

Position - Chief of Staff

Duties:

- Established review procedures
- Analysis of all Executive agency rules and regulations
- Schedule and staff Committee meetings
- Assist executive agencies with compliance with state law and procedures

Professional Activities

- Adjunct Faculty – Marshall University Graduate College (Public Administration)
- Member Phi Alpha Theta Historical Society
- Drafted West Virginia's Rails to Trails Program
- Past Member – West Virginia Tourism Commission
- Past Chairman – West Virginia Recreational Trails Advisory Committee
- Past Member – WV Whitewater Commission
- Past Member – Off Road Vehicle Legislative Study Committee
- Past Member – National Association of Administrative Law Judges
- Past Member – WV Public Lands Corporation
- Past Member – WV Scenic Rivers Study

Papers

- *The Rise and Fall of Reconstruction in West Virginia* (2004)
- *John Lilburne, Leveller Prophet** (2001)
- *The Architectural History of a Residential Street** (2002)
- *Judicial Review Prior to Malbury v. Madison** (2002)

- *The Hawk's Nest Tunnel* (2000)
- *Sir Edward Grey and the July Crisis of 1914* (2003)
- *Intellectual Basis of the French Revolution: Analysis of Darnton, McMahon and Chisick* (2002)
- *Ulysses S. Grant and the Black Man in America: Attitudes and Actions Regarding Slavery, Contraband Slaves and the Black Soldier* (2002)
- * May be viewed at <http://www.marshall.edu/pat/journal/contents.htm>

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- Dr. Frank Riddel, MU Department of History
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