

WE THE *People*

ALABAMA'S DEFINING DOCUMENTS

Published to accompany a bicentennial exhibition

HUNTSVILLE MUSEUM OF ART
June 30 to August 11, 2019

MUSEUM OF ALABAMA AT THE ARCHIVES
November 3 to December 31, 2019

WETHEPEOPLEALABAMA.ORG

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Alabama DEPARTMENT OF
ARCHIVES & HISTORY

2019

*“Actions the most noble, virtuous, and patriotic,
or the most immoral, base and depraved, may grow out of the laws
which govern them, or out of the constitution on which these laws are built.”*

A FARMER FROM MADISON COUNTY
MARCH 27, 1819

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Alabama DEPARTMENT OF
ARCHIVES & HISTORY

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Delegate William C. Oates signed the constitution of 1901 with this pen.





Foreword

STEVE MURRAY

Director

Alabama Department of Archives & History

Alabama's bicentennial is an extraordinary opportunity for the people of our state to encounter anew its profoundly rich history and to reflect on the many moments when events in Alabama had a direct and powerful bearing on the American experience writ large. In every corner of Alabama, this encounter has happened through festivals, exhibitions, symposia, musical and dramatic performances, professional development for educators, improvements to historic sites, and many other programs.

To this impressive list, the Alabama Department of Archives and History is pleased to add *We the People: Alabama's Defining Documents*, an unprecedented exhibition of the state's six constitutions and the 1861 ordinance of secession. Individually, each of these documents is an important record of a turning point in Alabama history and an artifact with fascinating physical qualities. Collectively, they offer a powerful representation of how economics, politics, and culture have interacted with Alabama's approaches to governance. And they illuminate, in striking detail, the irregular path toward the realization of civil and voting rights for all Alabamians. These defining documents remind us that the relationship between government and the governed is a dynamic one, subject to many influences and deserving of the informed attention of our state's citizens.

Before they were ready for exhibition, the seven featured documents required conservation treatment to repair the effects of handling, lamp soot, and, for most of their existence, the absence of air-conditioned storage. With appropriations made by the Alabama Legislature, we contracted the Northeast Document Conservation Center (NEDCC) to perform the highly technical and extremely delicate work of flattening parchments, mending tears, replacing bindings, and securing ink to the surfaces of the documents.

While conservation treatments were underway, we turned to envisioning an exhibition befitting the bicentennial. It was obvious to our team that the documents should be in Huntsville for the two-hundredth anniversary of the writing and signing of the 1819 constitution, the vehicle for Alabama's attainment of statehood. We soon discovered the pleasure of working with the dedicated professionals at the Huntsville Museum of Art, who embraced this project from the start and have lent their expertise to making it a success. Vital support came from Executive Director Christopher Madkour and the brilliant curatorial team of Peter Baldaia, David Reyes, and Katherine Purves. Samantha Nielsen, director of communications, promoted the exhibition with expertise and enthusiasm. With encouragement from Julian Butler, chairman of the Huntsville-Madison County Bicentennial Committee, and Sally Warden, its executive director, we knew that *forward* was the only direction meriting consideration.

A project of this scope drew on the expertise of professionals in nearly every corner of the Archives. A core team made it the focus of hundreds of hours of work and deserve special mention. Dorothy Davis, our coordinator of archival collections, oversaw the delicate work of transporting the documents to and from the NEDCC and monitored the conservation process from the first day of treatment until the last document was safely back at the Archives. Keri Hallford, archivist of special-format materials, Ryan Blocker, coordinator of museum collections, and archivist Jaimie Kicklighter served as preparators for the project. Their custom-built mounts ensured the safety of these seven treasures and solved complex challenges associated with displaying scrolled documents. The nuanced interpretation offered in *We the People* developed on the keyboard of Scotty Kirkland, our coordinator of exhibits, publications, and public programs, with the assistance of Alex Colvin, curator of public programs. Georgia Ann Hudson, communications coordinator, designed a stunning graphic environment for conveying their text and important contextual materials. The curatorial and editorial expertise of John Hardin, director of our museum division, consistently guided the team to find new ways of improving our presentation. Sarah McQueen provided essential editorial support. I admire each of them and am grateful for the opportunity to call them colleagues.

The subject of *We the People* begs a deeper exploration than a temporary exhibition allows, so it was little surprise when an idea for a concise exhibition catalog grew into this 128-page book. Scotty and Georgia Ann crafted a beautifully illustrated narrative of Alabama's constitutional history from the territorial period through the adoption of the 1901 document, still in effect today. It synthesizes the best available secondary sources and incorporates the results of additional primary research. Readers will find it an illuminating, challenging expansion of the themes introduced in the exhibition. Perhaps more importantly, it will serve Alabama citizens well into the future as they wrestle with fundamental questions about the proper role of state government during Alabama's third century of statehood.



John Melish's 1818 map was the first to feature Alabama as a distinct political entity. The version of the map seen here was published in 1820 and includes the boundaries of the remaining Creek, Cherokee, Chickasaw, and Choctaw nations at the edge of the territory. Within two decades, all of the land would be controlled by Alabama.

Library of Congress

CHAPTER 1

1819

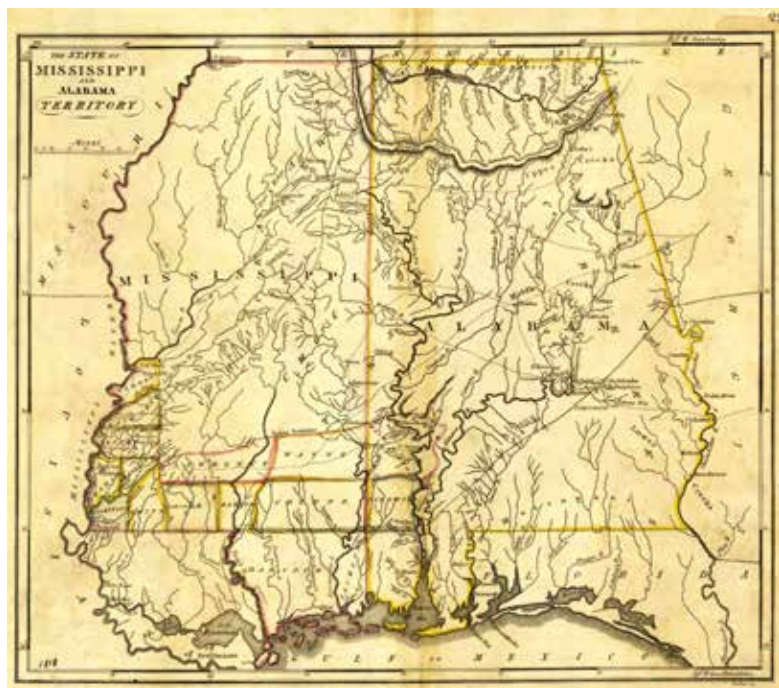
“FIRST PRINCIPLES”

Alabama’s path to statehood began in 1783, when the United States acquired much of the Old Southwest from the British as part of the Treaty of Paris ending the American Revolution. Out of this land Congress created the Mississippi Territory in 1798. The vast area was bounded by Spanish-controlled Florida to its south, the American states of Tennessee and Georgia to its north and east, respectively, and the Mississippi River to the west. During its early years, the Mississippi Territory had only two permanent white settlements: Natchez, the territorial capital, located along the Mississippi River, and St. Stephens, which sat high atop a bluff overlooking the lower Tombigbee River in what became Alabama. Acquired by the United States as part of a Spanish cession in 1799, St. Stephens occupied land that had previously been home to Native American, French, and Spanish inhabitants. It was a prominent stop along early trade routes.¹

The long distance between the capital in Natchez and residents in the easternmost part of the territory often presented difficulties. In 1809, citizens of St. Stephens wrote to Congress seeking relief. “We have Petitioned for a Government,” they wrote. “At present we have only the name of one. We know nothing of our Executive Officers.... We know nothing of our Delegates in Congress. They know nothing of us.” Political representation was but one of their concerns. The citizens also described “present grievances,” including “frequent collisions” with Native American tribes and traders from nearby Mobile, which remained under Spanish control. The territorial officials were “unconnected with us, and a stranger to our sorrows, and our sufferings.” Harry Toulmin shared their frustrations. Appointed by Pres. Thomas Jefferson as a territorial judge in 1804, Toulmin later told him that the Mississippi delegates represented its easternmost constituents’ interests “about as much as the Middlesex members represented the American colonies in the British



*Stoneware ink bottle and Blue Willow saucer found at St. Stephens
St. Stephens Historical Commission*



*"The State of Mississippi and Alabama Territory,"
Francis Shallus, 1818*

parliament." "Give us a Government of our own," the residents of St. Stephens wrote, "and you will give us respectability; you will give us population; you will give us strength."²

White settlement to the territory grew exponentially after the conclusion of the Creek War of 1813–14. The treaty ending the conflict ceded to the United States nearly fourteen million acres of Creek land in Alabama and several million more in Georgia. Fertile soil and a growing global demand for cotton enticed thousands of new settlers to the region, many of whom arrived along the newly improved Federal Road spanning central and southwest Alabama. Yeoman families established small farms. Wealthy planters purchased thousands of acres and brought to the territory more than 35,000 enslaved people to cultivate crops. Within a decade, the white population of the territory had grown threefold to more than 130,000.

Growth brought political consequences. Southern politicians, eager to increase the number of slaveholding states, argued successfully to divide the land into two new states. In March 1817, Congress split the Mississippi Territory. The western portion achieved statehood by the end of the year. The eastern portion was named the Alabama Territory. The act designated St. Stephens as the territorial capital and named William Wyatt Bibb, a former U.S. senator from Georgia, as its governor.³

The first meeting of the territorial legislature occurred at St. Stephens in January 1818. Representatives of the rapidly growing Alabama wrote its first laws, created new counties, strengthened the militia, and authorized a census to determine the population. To achieve statehood, Alabama would need a minimum of 60,000 residents. Although two of Alabama's counties failed to report their numbers, the population of the rest of the territory was established as 67,594. Governor Bibb informed the

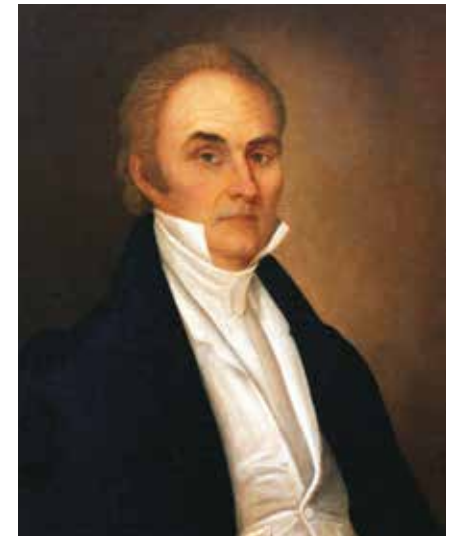


Lantern used by early settlers of Alabama

legislature he estimated the total population to be nearly 75,000. “There can be no doubt that an application on the part of the territory for admission into the Union will be readily granted.”⁴

U.S. Sen. Charles Tait of Georgia submitted Alabama’s petition for statehood to Congress on December 11, 1818, and shepherded the legislation through to success. Pres. James Monroe signed the enabling act on March 2, 1819, two days before Tait’s tenure in the Senate ended. The act called for an election of forty-four delegates who would meet in Huntsville during the summer of 1819 to draft Alabama’s first constitution.⁵

“We are, as a state about to commence our national existence,” a farmer wrote to the readers of the *Alabama Republican*, a Huntsville newspaper, three weeks after President Monroe signed the enabling act. The correspondent expressed fervent hopes that the constitution soon to be written in Huntsville “would be so perfectly formed that its symmetry may be transmitted unaltered to future ages.” In his eyes, the convention would be a supremely important, defining moment for Alabama’s future. “Actions,” he wrote, “the most noble virtuous, and patriotic, or the most immoral, base, and depraved, may grow out of the laws which govern them, or out of the constitution on which these laws are built.”⁶

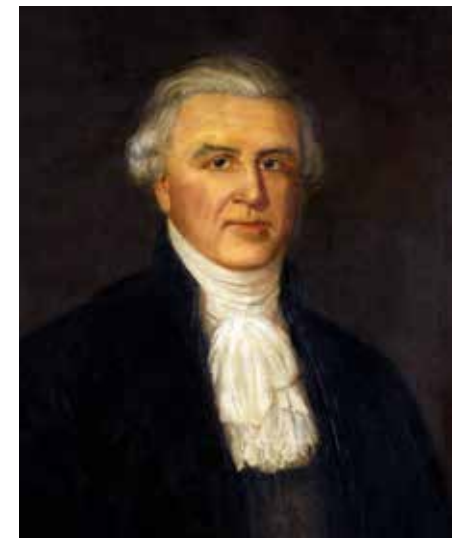


Charles Tait

THE FRAMERS

Throughout the territory, men declared their candidacies for convention delegate. Interest in the election was high, particularly in the Tennessee Valley. Twenty-two candidates vied for the eight delegate seats in Madison County, the most populous in the territory. John Leigh Townes, a planter, told the voters of Madison County he would be an advocate for a “free government,” where the “power emanates from the people.” In both Limestone and Cotaco (now Morgan) counties, there were twice the number of candidates as delegate seats.⁷

On the first Monday and Tuesday of May 1819, qualified voters cast their ballots throughout the territory. The outcome pleased John Boardman, editor of the *Republican*, who confessed to his readers that he held “fearful apprehensions” about the type of men who might win the election.



LeRoy Pope

William Rufus King

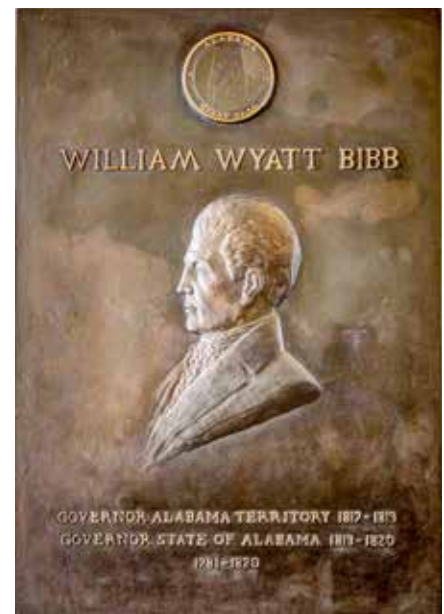


WILLIAM RUFUS KING was a Dallas County delegate to the convention. With John Williams Walker, he was one of Alabama's first two U.S. senators. In 1852, King was chosen as Franklin Pierce's vice president, the only Alabamian to hold that office. King died just a few months later.

Among the forty-four delegates were eighteen lawyers and four physicians, as well as merchants, planters, and tradesmen. Small farmers or laborers—"plain men" delegates, as one historian called them—made up nearly a third of the convention. Most of the delegates were born in either Virginia or the Carolinas; some were from Vermont, Delaware, and Pennsylvania. Harry Toulmin, a delegate from Baldwin County, was born in England. They were mostly younger men, with an average residency in the territory of five years. Toulmin, the "frontier Justinian" appointed to a judgeship by Pres. Thomas Jefferson, likely had the longest Alabama tenure, having arrived fifteen years earlier in 1804.⁸

Nine of the delegates had prior experience in government, serving in either the Alabama territorial legislature or in some capacity in their native states. William Wyatt Bibb, the territorial governor of Alabama, did not run for a seat at the convention. His brothers, Thomas and John Dandridge Bibb, represented Limestone and Montgomery counties, respectively. Like the brothers Bibb, many of the delegates would make their careers in service to the young state. Among the ranks were six future governors, six justices of the state supreme court, and six U.S. senators.⁹

The bustling north Alabama town in which the delegates gathered was one of the most important in the region. First settled in 1805 and incorporated by the territorial legislature three years later,



Statuary Hall, Alabama Department of Archives and History

*John Murphy,
Monroe County delegate*

*Thomas Bibb,
Limestone County delegate*

*Gabriel Moore,
Madison County delegate*

*Reuben Saffold,
Clarke County delegate*



Huntsville was the seat of government for Madison County, the most populous in the eastern Mississippi Territory. Although a young town, Huntsville grew rapidly and boasted a healthy professional class. It benefited from rich surrounding farmland, which enticed planters such as LeRoy Pope, a wealthy tobacco grower from Elbert County, Georgia. When journalist and Maryland native Anne Royall traveled to Huntsville in the winter of 1817, cotton fields dominated her journey from the Tennessee border. “They are astonishingly large,” she wrote, “from four to five hundred acres in a field! It is without parallel.... Although the land is level, you cannot see the end of the fields either way. To a stranger, coming suddenly amongst these fields, it has the appearance of magic.”¹⁰



This painting of Big Spring, Huntsville, ca. 1845, is attributed to William Frye (1822-1872). Huntsville Museum of Art

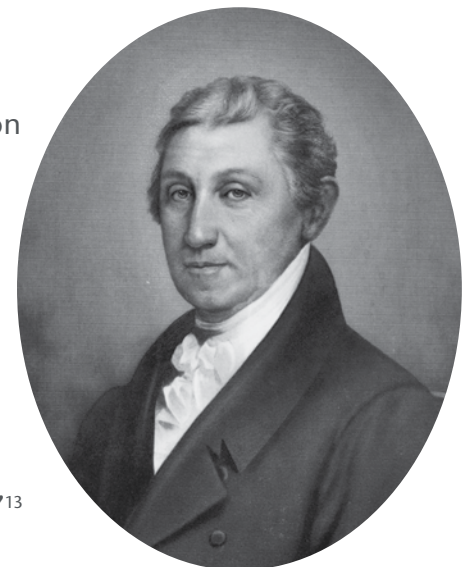


Seal from Alabama's first bank

By 1815, five cotton gins were operating in Huntsville, indicative of the prosperity generated by the crop. “The appearance of wealth would baffle belief,” Royall wrote. She described the presence of more than 250 structures, most of them brick, with a large town square surrounded by merchant shops. “The citizens are gay, polite, and hospitable, and live in great splendor,” she observed. “Nothing like it in our country.”¹¹

Huntsville was not only a place of commerce. It represented the great political power held by north Alabama at the time, evidenced by its designation as the temporary seat of government. Madison County’s eight delegates constituted part of a powerful voting bloc during the convention. The north Alabama counties had twenty-eight delegates to south Alabama’s sixteen.¹²

Just a few weeks before the delegates arrived, Huntsville hosted an important but unexpected guest: Pres. James Monroe, who was on an inspection tour of southern military fortifications. The leading citizens of the town offered up more than twenty toasts during an elaborate, albeit hastily prepared, banquet. In reply, Monroe offered his own toast to the Alabama Territory: “May her speedy admission into the Union advance her happiness, and augment the national strength and prosperity.”¹³



*Pres. James Monroe
Library of Congress*

J. W. Walker



JOHN WILLIAMS WALKER served as Speaker of the House in Alabama's territorial legislature and was elected as a Madison County delegate to the constitutional convention. His fellow delegates selected him as president. Walker later served as one of Alabama's first two U.S. senators but resigned due to declining health. Few men played a larger role in the formation of Alabama.

THE DEBATE

On July 5, 1819, forty-three years and one day after the Constitutional Congress adopted the Declaration of Independence, the framers of Alabama's constitution took up their work, drafting a document that ensured admission to the Union. They assembled in the workshop of cabinetmaker Walker Allen. The setting was not august, but more than adequate for the task before them. From the outset, the plurality of north Alabama delegates proved important. Madison County delegate John Williams Walker was chosen president of the convention. While Walker's prior service as Speaker of the House in the territorial legislature boosted his candidacy, the fact that he was favored by the northern bloc kept southern delegates, including the future U.S. senator William Rufus King of Dallas County, from contention. Walker's election was unanimous. The posts of two convention officers—the clerk and doorkeeper—also went to Madison County men. In a speech following his election, Walker expressed appreciation and vowed to shepherd through a constitution for Alabama “which shall secure to her sons, to the remotest generations, the full enjoyment of the great blessing of life, liberty, and property.”¹⁴

According to historian Malcolm McMillan, Walker presided over the convention “informally and with little decorum. Strict parliamentary procedure could hardly have been expected of a small body of forty-four men under frontier conditions.” Walker appears to have adopted a more congenial approach to his duties as presiding officer. John Campbell, the secretary of the convention, worried initially about the abilities of the group to complete their task. He wrote to his brother in Tennessee, relaying some of the troublesome occurrences: Walker was susceptible to the flattery of the delegates; his soft-handed approach, compounded by his absences from the chamber due to his rather serious case of consumption, wrought confusion; delegates returned from recesses intoxicated. Still, after a few more days Campbell seemed convinced that the convention's whole was greater than the sum of its parts. “They will make a good constitution,” he told his brother, “and the state in a very short time will take its rank among the first in the Union.”¹⁵

To produce a working draft of the constitution, the convention selected a fifteen-member committee. Clement Comer Clay, another Madison County delegate, was chosen as chairman of the committee. Its members included eleven lawyers, three physicians, and a merchant. Nine members of the committee came from counties in which enslaved persons comprised 40 percent or more of the

population. The committee was more evenly distributed geographically, with eight northern and seven southern delegates.¹⁶

On July 13, six days after its formation, Clay presented the work of the committee to the full convention. The document borrowed heavily from the U.S. Constitution and the Mississippi constitution, the latter adopted just two years earlier. The draft document made militia service requisite for voting, apportioned the bicameral state legislature using the federal ratio (counting an enslaved person as three-fifths of a free person), instituted annual elections for legislators, and provided two-year terms for governors. The committee wrote strict rules regulating banks in Alabama, reflecting fears about the ongoing financial panic of 1819 and the general distrust of financial institutions characteristic of the era. The draft's more liberal features included prohibitions on the malicious treatment of enslaved persons and the establishment of any property or taxpaying qualifications for voting or holding elective office.¹⁷

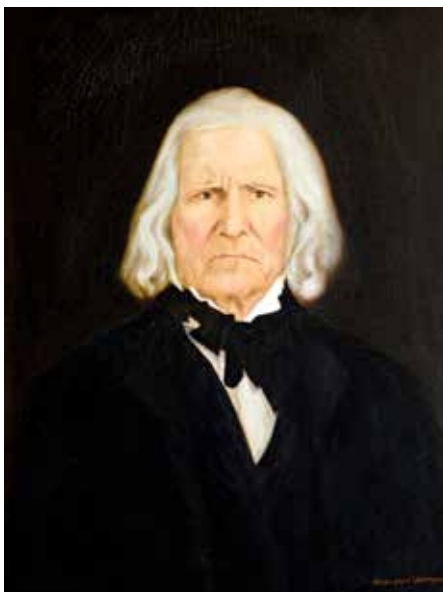


The *Halcyon and Tombeckbe Public Advertiser*, a newspaper published in St. Stephens, predicted that the committee's draft would undergo "great alterations." The editors pointed out that the committee was composed of primarily "professional men" and noted, "There are many objections raised by plain men, who though they make no figure in the [convention], are men of good sound sense and republican principles." The structure of the draft provided by the committee remained unchanged by the convention: a preamble followed by a declaration of rights, an article on the separation of powers, and explanations of the powers of the executive, legislative, and judicial branches. Many of its key provisions, however, were the subject of great debate.¹⁸

Some aspects of the preamble mirrored that of the U.S. Constitution, a reflection perhaps of the enabling act's mandate that the document place Alabama "on equal footing with the original states." In the first section of the declaration of rights, the Alabama framers copied verbatim the language of



CLEMENT COMER CLAY, a veteran of the Creek War and director of the Huntsville Bank, served as a convention delegate from Madison County. He would become the first chief justice of the state supreme court, a legislator, congressman, governor, and U.S. senator.



Hugh McVay,
Lauderdale County delegate



John S. Tindall,
Tuscaloosa County delegate

their Mississippi colleagues, holding that “all men, when they form a social compact, are equal in rights; and that no man, or set of men are entitled to exclusive, separate public emoluments or privileges.” This was likely as close to the U.S. Constitution’s declaration that “all men are created equal” as the Mississippi or Alabama delegates were willing to allow, given the emerging national debate over slavery.¹⁹

The declaration of rights held that political power was “inherent in the people,” and that they possessed an “unalienable and indefeasible right to alter, abolish, or reform their form of government.” It further laid out broad protections for rights of conscience, assembly, and freedom of religion. On the latter point, Harry Toulmin attempted unsuccessfully to further strengthen the section, having fled his native England because of religious persecution decades earlier.²⁰

On the matter of suffrage, the committee of the whole notably removed militia service as a requirement. Thus, every white male citizen aged twenty-one or older could vote in Alabama upon establishing residency (fixed for state elections at one year and local elections at three months). This change established universal white manhood suffrage in Alabama, an unusual provision for the era. In fact, of all the southern states, only Kentucky provided the same broad eligibility. Among the newer western states, only Indiana and Illinois did likewise.²¹

A contentious debate over apportionment reflected the geographical division of the delegates. The northern counties, in which the percentage of enslaved persons was smaller, moved to reject the committee’s draft proposal to count slaves in determining population for apportionment. John Williams Walker led the fight for the amendment. According to the *Republican’s* John Boardman, the issue “produced a much more animated debate than any question which had previously been brought” because counting slaves for the purposes of apportionment would give the southern counties more seats in the state legislature.

As Mississippi’s constitutional convention did in 1817, the Alabama delegates ultimately rejected the three-fifths rule, which had been “the Great Compromise” of the framers of the U.S. Constitution. After each census, the legislature would divide the state into House and Senate districts with an evenly distributed number of white residents. “We can see no other possible plan to preserve the State from sectional jealousies, and party distinctions,” Boardman reasoned. “It has

always been our desire to allay rather than ferment party spirit, and we sincerely rejoice in the amicable settlement of this question." The convention also adopted a measure which called for a quick succession of censuses, to be held in 1820, 1823, and 1826, followed by every six years thereafter, allowing for a rapid reapportionment to occur alongside the anticipated population growth.²²

The delegates plainly preferred a weak executive branch. The governor, chosen by popular vote every two years, had only minor appointive powers. The legislature would elect individuals to a number of constitutional offices, including state treasurer, secretary of state, comptroller, and the justices of the state supreme court, as well as those serving circuit and lower courts throughout Alabama. And while the governor held veto power over legislative actions, as was customary in a government based on checks and balances, the Alabama legislature could override a veto with a simple majority vote. (The committee originally recommended that a veto override require a two-thirds majority.) Furthermore, the constitution made no provision for a lieutenant governor. The president of the Senate, followed by the Speaker of the House, were established as the line of gubernatorial succession. The governor was limited to two terms in office. No such provision was made for members of the state legislature.²³

The delegates devoted considerable space in the new document to education. It quoted the Northwest Ordinance, declaring that "schools and the means of education shall forever be encouraged in this state." It further laid aside a sixteenth section of land in every township for the purpose of establishing a school.²⁴

On the matter of slavery, the convention left the committee's work largely untouched. The new constitution protected the institution of slavery: "The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of owners...a full equivalent in money for the slaves so emancipated." And it set forth broad protections for enslaved persons by empowering the legislature to pass laws "to oblige the owners of

Detail of the portion of Alabama's 1819 constitution relating to enslaved persons



For Sale.
TEN QUARTER SECTIONS OF LAND.
Six miles south of Huntsville, on the main road leading to Dito's Landing, and four miles from said landing, there is about 200 acres of Land, in fine order for the culture of Cotton, Corn and Tobacco—also one thousand barrels of Corn, and between sixty or seventy stacks of blade Fodder—also between four and five hundred bushels of Oats, a quantity of Wheat &c.—also
Twenty-five Negroes,
None over thirty years of age—about two hundred head of hogs; fifteen or twenty head of horses, and the same number of cattle.
References—To Col. LeRoy Pope Dr. David Moore, Capt. J. Brahan, Dr. Bradford and John D. Carriel, for terms enquire of the subscriber himself.
JOHN TURNER.
January 20 20 51°

Huntsville Republican,
January 27, 1818



ISRAEL PICKENS

served as a delegate from Washington County. He was later elected as the third governor of Alabama. Pickens served for a brief time in the U.S. Senate after the death of Henry Chambers, who was elected to the seat in 1825. Pickens' own declining health due to tuberculosis kept him from fulfilling the appointment. He resigned and moved to Cuba, where he died in April 1826.

slaves to treat them with humanity, to provide for them necessary food and clothing, [and] to abstain from all injuries to them extending to life and limb." Slaves accused of crimes were entitled to a trial by jury. Individuals found guilty of mutilating or killing an enslaved person would be subject to the same punishment "as would be inflicted in case the like offense had been committed on a free white person." Although the provisions were considered quite liberal when compared to other slaveholding states, few of the nearly forty thousand enslaved persons then residing in Alabama would have benefited from these provisions during their daily labors.²⁵

In a final flourish of power, the convention established a provision giving the people of Alabama a direct role in amending their constitution. The committee of fifteen had made no such recommendation. Historian Malcolm McMillan explained it thusly: "The legislature was required to pass a proposed amendment by a two-thirds vote and submit it to the voters in the next general election. If a majority of the voters...approved the proposed amendment, it must secure a three-fourths majority vote of the following legislature. Only after it had overcome these hurdles did it become a part of the constitution." Albeit complicated, the measure represented one of the earliest efforts at direct participation in the constitutional amendment process in the United States.²⁶ Although the names of the so-called "plain men" delegates are mostly forgotten—indeed, most of their actions were not adequately recorded in the convention's proceedings—it seems clear that they had some responsibility for the Jeffersonian ideals enshrined in Alabama's founding document.

On August 2, 1819, having been in session less than a month, the convention concluded its work. A ratification by Alabama voters was not required. In fact, no state constitution prior to Minnesota's in 1857 was put to a vote. All forty-four delegates signed the new constitution. A clerk's copy was quickly prepared and transmitted to the U.S. Congress, where some of Alabama's most ardent champions in the nation's capital would shepherd it along the path to statehood.²⁷ After the signatures were applied, Israel Pickens, a delegate from Washington County, introduced a resolution of thanks to John Williams Walker for the "dignity, ability, and impartiality with which he has discharged the arduous duties of the chair." Walker accepted the praise and offered his own to his fellow framers:

The subject on which we were called to deliberate was of the first importance. Our labors are now at an end. We have given to the State of Alabama a Constitution—not indeed perfect—not precisely such as any one member of this body, or perhaps any individual of the community, would, unassisted, have framed in his closet; yet emphatically Republican, and as such gives us

a clear and indisputable title to admission into the great family of the Union. If it has some faults, it has, at the same time, many excellencies; and for all its defects, it carries in itself the grand corrective of amendment. The people can mold it as they please. It proclaims the great first principles of liberty; it guards the equal rights of all; and some new features, of vital interest, seem to promise the happiest results. The offspring of mutual concession and compromise, it occupies that middle ground on which a majority was found to unite.... Let us hope that it will also be approved by the people of Alabama; and that under its auspicious influence they and their posterity may long be free, prosperous, and happy.²⁸

Its task complete, the convention adjourned. And although some of the members would soon return to Huntsville as elected representatives to the first state legislature, most of the delegates simply went back to their farms, businesses, and families. Three days later, on August 5, 1819, John Boardman published the full text of the constitution

Constitution Hall, Huntsville
Robin McDonald



THE 1819 CONSTITUTION

The Alabama constitution of 1819 is written in dark ink on twenty-six sheets of high-quality parchment. The pages are bound together with a fine, blue grosgrain ribbon and red sealing wax. The pages are rolled into a scroll which measures nearly four inches in diameter and nineteen inches wide. Fully extended, the document is approximately thirty-one feet long. Of the seven defining documents featured in *We the People*, the 1819 constitution is perhaps the most pristine. Kathryn Boodle, who conducted the conservation of the document, credits the constitution's framers: "You can see the care that the delegates had for the document," she said. "There are no errors in handwriting. It is laced together with complete continuity. In the other constitutions, you can see the errors, the edits, the crops, and corrections. You don't see those in the 1819 constitution. It's a really beautiful piece."

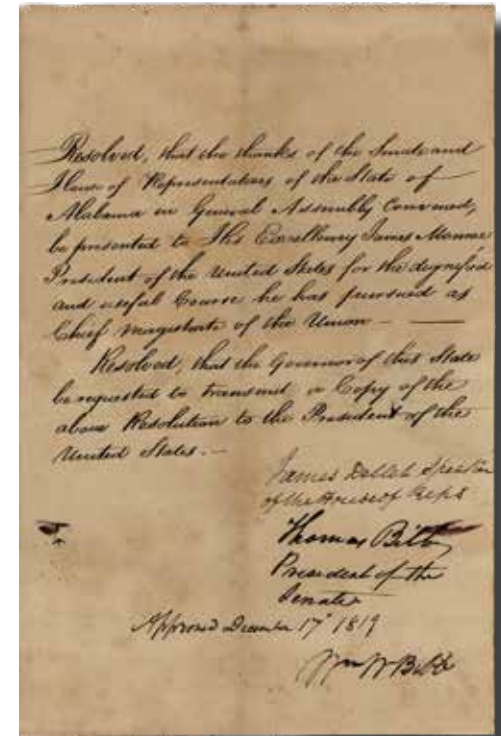




of Alabama for the first time in the *Republican*. Of the new governing document, Boardman had these remarks: “Although it does not entirely meet our wishes, we believe it is the best that could be obtained in the existing state of public sentiment... We can rejoice with, and congratulate the citizens of the state of Alabama, that the fundamental principles of the Constitution were not adopted with rash precipitancy: but are founded in wisdom, and well calculated to insure the permanent happiness and prosperity of the State.”²⁹ One can easily imagine the professional men of the town reading, perhaps aloud, the elucidation of the “first principles” claimed in the new governing document.

HARRY TOULMIN

was born in Taunton, England, in 1766. After immigrating to the U.S. in the 1790s he served as Kentucky’s secretary of state. In 1804, Toulmin became judge of the vast Tombigbee District in the Mississippi Territory. Baldwin County residents chose Toulmin as their delegate to the 1819 constitutional convention. He served in the 1821 state legislature before his death in 1823.



Resolution of thanks to President Monroe
from the Alabama legislature, 1819

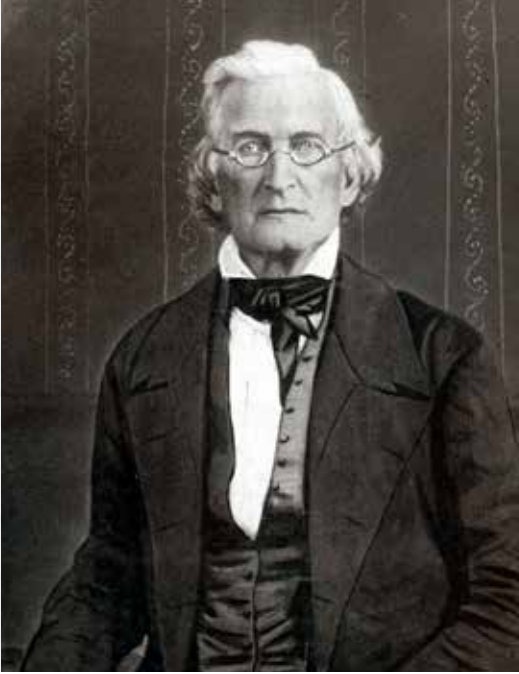
Although rarely displayed before the *We the People* exhibit, the document visited Huntsville during Alabama’s sesquicentennial of statehood in 1969. It was displayed in the Madison County Courthouse for a period of six months. Fittingly, a local cabinetmaker prepared a special case for the document, which had been written in the shop of one of his professional forebears. The case, made of pine and birch, featured a heavy plate-glass top. Security was paramount. The case had three different locks, the keys for which were securely stored separately throughout the city. The only duplicate set resided in Montgomery with Milo B. Howard, director of the Alabama Department of Archives and History. “It is undoubtedly the most valuable document in Alabama,” said James Record, chairman of the Madison County Commission, “and we are proud to have it on display.”³⁰



Nicholas Davis,
Limestone County delegate



Arthur Hopkins,
Lawrence County delegate



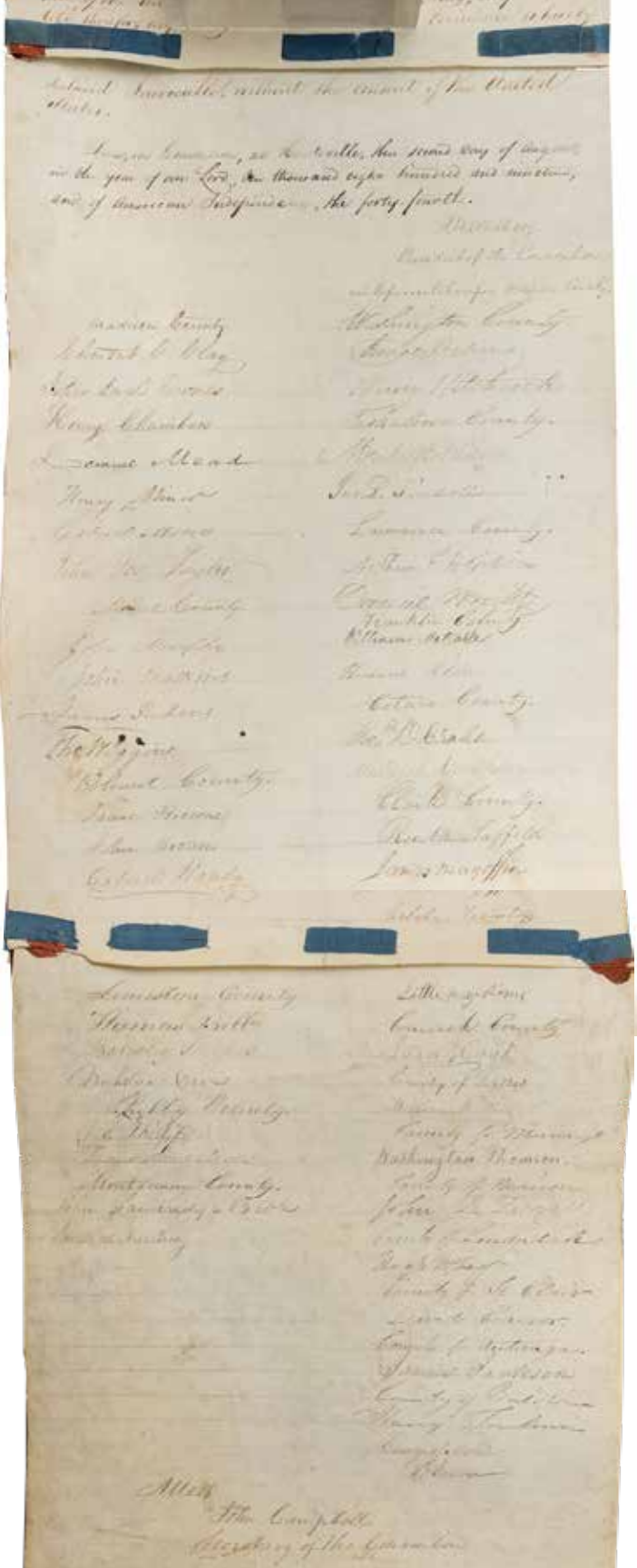
John Dandridge Bibb,
Montgomery County delegate



Henry Hitchcock,
Washington County delegate

***“We have given to the State of Alabama a Constitution....
If it has some faults, it has at the same time,
many excellencies.”***

JOHN WILLIAMS WALKER, CONVENTION PRESIDENT, AUGUST 1819



The document returned to Huntsville in 1969 with great fanfare “after an absence of 150 years,” according to the *Birmingham News*. Its unveiling coincided with the annual meeting of the Alabama Historical Association, whose president that year was Huntsville historian Frances Roberts. The menu for the opening reception replicated a banquet enjoyed by convention delegates in July 1819. More than five hundred guests, including U.S. Sen. John Sparkman, were in attendance.³¹

The most important legacy of the constitution of 1819 is that it ushered Alabama into the Union as the twenty-second state. On December 6, 1819, the U.S. Congress passed a resolution accepting the constitution. They found it to be a sound document, “republican, and in conformity to the principles of the articles of compact between the original states.” Eight days later, on December 14, 1819, Pres. James Monroe signed the resolution. “Thus the eastern part of the Mississippi Territory, with its sparse, isolated settlements, had become the state of Alabama,” wrote historian Thomas Perkins Abernethy. “Seldom in history has an area been settled and developed so rapidly.”³²

The 1819 constitution provided the structure of Alabama government for the next forty-one years. It was amended only three times—in 1830 to impose six-year terms on judges; in 1846 altering the tenure of legislators from one to two years; and most significantly in 1850, giving state senators four-year terms and providing for the popular election of circuit and probate judges.

Historian Malcolm McMillan called the state’s first constitution “a mixture of liberalism and conservatism, the product of the past as well as a forerunner of the future.”³³ Most of the constitution’s first section, the all-important declaration of rights establishing what John Williams Walker referred to as the “first principles of liberty,” remained largely unchanged through Alabama’s five subsequent constitutions. Thus, the state’s first constitution established a framework for many of the fundamental beliefs of civic society in Alabama for generations to come.

Signature pages of Alabama’s first constitution

NOTES

- 1 Thomas Chase Hagood, "Territorial Period and Early Statehood," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1548> (accessed May 4, 2019).
- 2 Herbert James Lewis, *Clearing the Thicket: A History of Antebellum Alabama* (New Orleans: Quid Pro Books, 2013), 111; Malcolm Cook McMillan, *Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism* (Spartanburg, SC: The Reprint Company, 1978), 17-19.
- 3 Herbert James Lewis, *Alabama Founders: Fourteen Political and Military Leaders Who Shaped the State* (Tuscaloosa: University of Alabama Press, 2018), 49-51.
- 4 McMillan, *Constitutional Development in Alabama*, 24-26.
- 5 Edwin C. Bridges, *Alabama: The Making of an American State* (Tuscaloosa: University of Alabama Press, 2016), 60-62; Lewis, *Alabama Founders*, 80-86.
- 6 *Alabama Republican*, March 27, 1819.
- 7 *Alabama Republican*, April 3, 1819; Malcolm Cook McMillan, "The Alabama Constitution of 1819: A Study of Constitution-Making on the Frontier," *Alabama Review* 3, no. 4 (October 1950): 263-264.
- 8 McMillan, "The Alabama Constitution of 1819," 265-266; On Toulmin, see Paul M. Pruitt Jr. *Taming Alabama: Lawyers and Reformers, 1804-1929* (Tuscaloosa: University of Alabama Press, 2010), 1-13.
- 9 McMillan, "The Alabama Constitution of 1819," 266-267.
- 10 Lewis, *Clearing the Thicket*, 134-135; Anne Newport Royall, *Letters from Alabama, 1817-1822* (Tuscaloosa: University of Alabama Press, 1969), 114-115.
- 11 Greg Schmidt, "Huntsville," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-2498> (accessed May 4, 2019); Royall, *Letters from Alabama*, 118-119.
- 12 McMillan, "The Alabama Constitution of 1819," 267.
- 13 Lewis, *Clearing the Thicket*, 130-131.
- 14 Lewis, *Clearing the Thicket*, 134-135; "Journal of the Constitutional Convention, 1819, as Reported in the *Alabama Republican*," *Alabama Historical Quarterly* 31, nos. 1 & 2 (Spring & Summer 1969): 130-131.
- 15 McMillan, "The Alabama Constitution of 1819," 268-269.
- 16 Ibid.
- 17 Malcolm C. McMillan, "The Original Draft of the Alabama Constitution of 1819 as Reported by the Committee of Fifteen, Clement Comer Clay, Chairman," *Alabama Lawyer* 20, no. 1 (January 1959): 6-8.
- 18 McMillan, "The Original Draft of the Alabama Constitution of 1819," 7.
- 19 Constitution of the State of Alabama, 1819, Article I, Section 1; Lewis, *Clearing the Thicket*, 136.
- 20 McMillan, "The Original Draft of the Alabama Constitution of 1819," 9, n11.
- 21 McMillan, "The Alabama Constitution of 1819," 270-271.
- 22 McMillan, "The Alabama Constitution of 1819," 270-273; *Alabama Republican*, July 22, 1819.
- 23 McMillan, "The Alabama Constitution of 1819," 275-277; Lewis, *Clearing the Thicket*, 136-137.
- 24 McMillan, "The Alabama Constitution of 1819," 279.
- 25 McMillan, "The Alabama Constitution of 1819," 280-281; Lewis, *Clearing the Thicket*, 139-140.
- 26 McMillan, "The Alabama Constitution of 1819," 281.
- 27 McMillan, "The Alabama Constitution of 1819," 282-283.
- 28 *Journal of the Convention of the Alabama Territory, Begun July 5, 1819* (Huntsville: John Boardman, 1819), 38-40.
- 29 *Alabama Republican*, August 5, 1819; *Sentinel and Democrat* (Burlington, Ver.), September 3, 1819.
- 30 "Constitution to Return to City after Absence of 150 Years," *Huntsville News*, May 1, 1969.
- 31 "Paper that 'Formed' a State on Trip Home to Huntsville," *Birmingham News*, May 3, 1969.
- 32 McMillan, "The Alabama Constitution of 1819," 283; Thomas Perkins Abernethy, *The Formative Period in Alabama, 1818-1828* (Tuscaloosa: University of Alabama Press, 1965), 52-53.
- 33 McMillan, "The Alabama Constitution of 1819," 283.



On February 18, 1861, Jefferson Davis was inaugurated as president of the Confederate States of America on the portico of the Alabama State Capitol. This 1888 lithograph is an artist's depiction based on a photograph of the event.

Library of Congress

CHAPTER 2

1861

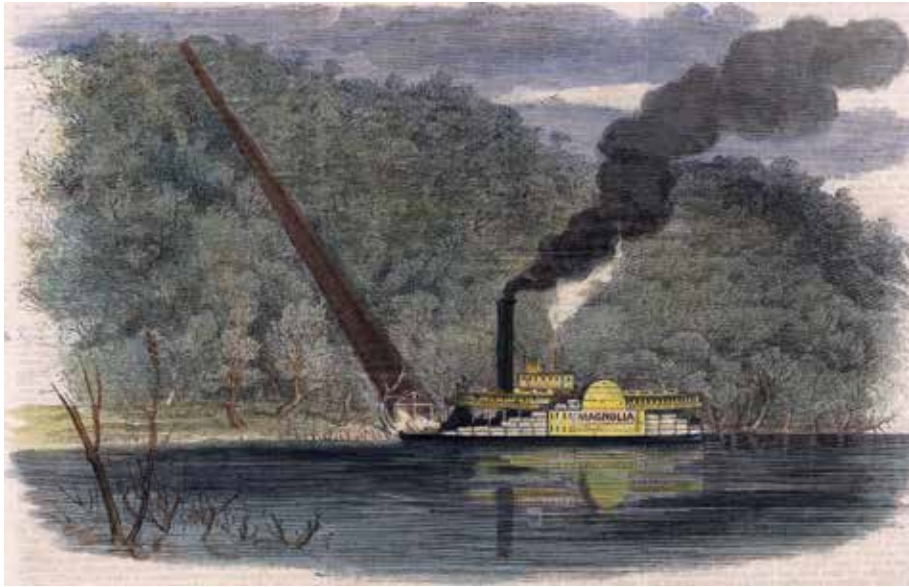
“PROMPT AND DECIDED MEASURES”

In December 1819, Alabama entered a Union increasingly fraught with sectional strife. That same month, Congress resumed debate on the statehood petition by settlers in Missouri. The back-to-back admission of two new slaveholding states would upend the balance of political power in Washington. Over the course of many months, a compromise was reached to admit Missouri as a slaveholding state only after Maine entered the Union as a free state. This “Missouri Compromise” also prohibited the expansion of slavery into any of the territories acquired by the Louisiana Purchase north of Missouri’s lower border (36°30’).

Proslavery advocates in Alabama were early adherents to the doctrine of states’ rights. This included the idea that states, having voluntarily joined the Union, could withdraw, or secede, if they deemed it necessary to protect their interests. During the late 1820s and early 1830s, prominent Alabama politicians supported South Carolina’s view that it could nullify within its borders a tariff it saw as harmful.¹ Concern over the balance between slave states and free states was renewed in 1848 after the Mexican-American War and acquisition by the U.S. of a half-million square miles of Mexican territory. In 1846, Congressman David Wilmot of Pennsylvania had attached a controversial proviso to an appropriations bill that, if enacted, would have prevented slavery’s expansion into any of this new territory. The measure twice passed the House, but southerners successfully defeated it in the Senate. Proponents of states’ rights increasingly saw secession as the only way to prevent being out-numbered and out-voted in Congress.²

Further legislative compromises in the early 1850s provided some hope that peace could prevail, but it was far from a certainty. Andrew B. Moore, a Marion lawyer and later governor, told planter Bolling Hall in 1850 that “99 out of every hundred of our people are for any sort of resistance, short [of] Secession, at this time.” However, Moore noted, “If any further aggressions are perpetrated on our rights, they will go for secession, or any other remedy, that the South...may propose.”³ Sen. William Rufus King agreed. “The preservation of the Union is in the hands of the North,” he wrote to his brother, Thomas, in November 1850. “They have already filled the cup of forbearance, another drop will cause it to overflow, and this





An engraving of the steamboat Magnolia on the Alabama River, taking on a load of cotton bales. It was published in the Illustrated London News on May 4, 1861, and later hand-colored.

great, free and prosperous government of ours will be swept away by the flood, leaving nothing but wrecks behind.” In 1851, candidates favoring union won five of Alabama’s seven congressional seats, suggesting that most voters were reluctant to embrace secession. Meanwhile, the secessionist radicals continued to beat their drums. “Let us have disunion,” wrote Charles E. Haynes, editor of the *Dallas Gazette*, in early 1851. “A SECESSION OF THE SLAVE STATES—a Southern republic—a division of the public property upon equitable terms—or the blood of our enemies.”⁴

The country’s westward growth continued to press the question. In 1854, Sen. Stephen A. Douglas of Illinois successfully championed the Kansas-Nebraska Act. It introduced the idea of popular sovereignty, which would

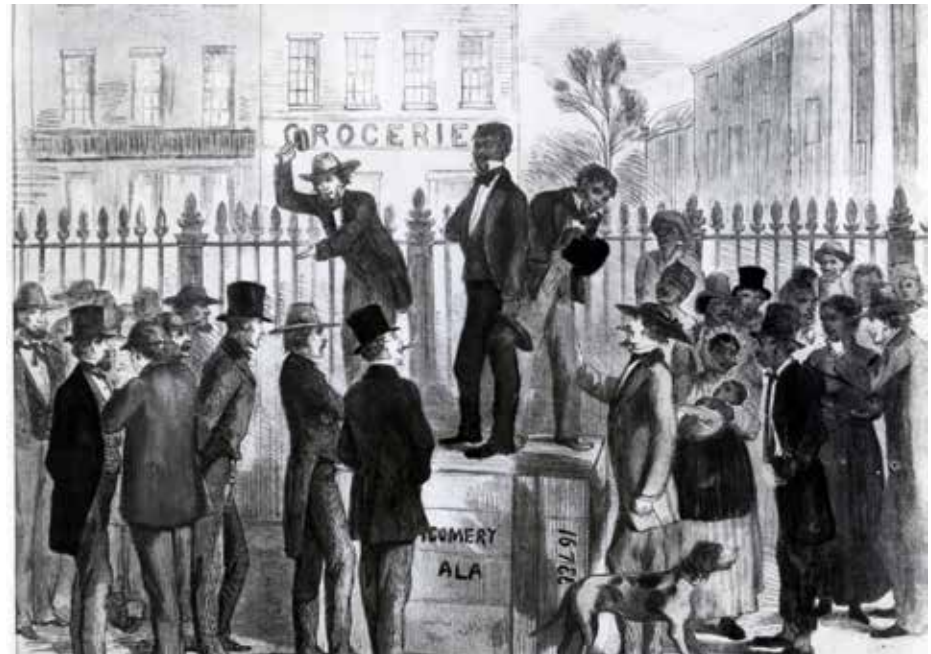
allow the white male residents of territories to decide for themselves whether to allow slavery within their borders. Faraway Nebraska’s free-state declaration was assumed to be a foregone conclusion. But Kansas was up for grabs and became the critical battleground. Proslavery groups including hundreds of people from Alabama flocked to the territory. They were met there by abolitionists from throughout the country. The situation was a veritable powder keg. The national furor over “Bleeding Kansas” prompted the rise of a new political party comprising former Whigs and free-soil Democrats who were weary of the southern stranglehold on the party. The new group called themselves “Republicans.”⁵

For many Alabamians, the rapid rise of a national political party committed to stopping the advance of slavery into the western territories constituted the greatest challenge yet to their way of life. To them, the Kansas-Nebraska Act proved that Congress could easily renege on earlier protections like the Missouri Compromise. A Republican-controlled legislative branch, some feared, might go even farther, and perhaps outlaw slavery altogether, thereby crippling the southern economy. In the presidential election of 1856, the Republican Party’s nominee carried eleven northern states. As the party continued to grow in the North, the doctrine of secession gained many new Alabama disciples. In 1858, the *Eufaula Express* added to its masthead the slogan, “A Southern Confederacy—The Sooner the Better.”⁶

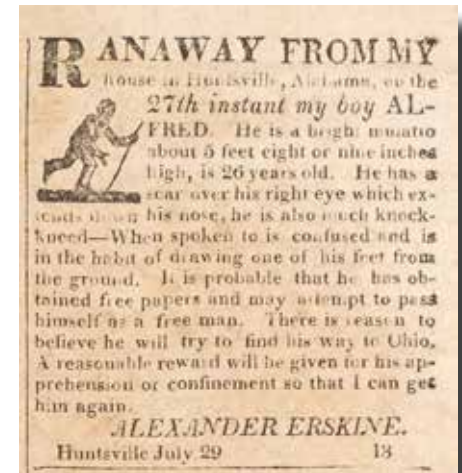
Alabama's investment in slavery was great, indeed. By 1860, there were more than 33,000 Alabama slaveholders. The number of enslaved people in the state was 435,000 out of a population of 965,000. Their labors accounted for 42 percent of Alabama's per capita income, principally in agricultural production. Alabama boasted the nation's fifth most productive agricultural economy. Five million Alabama acres were under cultivation for cotton alone. In 1860, the state produced nearly one million bales of the fleecy staple, shipping it to mills and markets along the northeastern seaboard and overseas to England.⁷

The enslaved population was spread unevenly throughout the state. In northern counties along the Tennessee River, like Limestone and Madison, free and enslaved Alabamians existed in near-equal numbers. Far fewer lived in bondage in the nearby hill-country counties. Winston County's enslaved residents accounted for less than 4 percent of its population. In the fertile Black Belt counties, including Dallas, Lowndes, Marengo, and Greene, slaves outnumbered white residents eight-to-one. "Isolated Alabama River planters and their families lived in a sea of black humanity," historian John S. Sledge wrote, "and, as secession loomed, keenly felt their vulnerability."⁸

Newspapers throughout the state carried even the smallest notices of faraway slave revolts on their front pages. The idea that a national political party would abolish slavery and confer citizenship rights to the emancipated was socially and economically anathema to many white Alabamians. It also seemed to many a matter of life or death. Abolitionist John Brown's unsuccessful 1859 raid on a federal arsenal in Harpers Ferry, Virginia, an attempt to ignite a slave rebellion, seemed to prove the existence of a broader northern conspiracy to purge the U.S. of slavery, with violence if necessary. The editor of the *Montgomery Mail* considered Brown's plot, and the fact that he was greeted as a hero by some northern abolitionists, providential. It "radiat[ed] upon the sentiment of the North a light which enabled us to see the very heartstrings of Black Republicanism."⁹



Slave auction in Montgomery, ca. 1850



Advertisement for a runaway slave published by a Huntsville newspaper, August 5, 1825

Slave collar bearing the name of planter and slaveholder W. T. King of Selma, ca. 1850



In February 1860, members of the Alabama legislature drafted a joint resolution listing the perceived evils of the Republican Party, its “antislavery agitation,” and its “deadly hostility to the rights and institutions of the Southern people.” Should the northern states elevate a Republican to the White House in the 1860 election, the resolution stated, it “would be an act of suicidal folly and madness, almost without a parallel in history.” In the event of such a calamity, the governor should immediately call for a statewide election of delegates to assemble in Montgomery to do whatever it deemed necessary to protect the state’s interests. The resolution passed “with great unanimity,” receiving only two dissenting votes.¹⁰



1860 campaign banner for Abraham Lincoln and Hannibal Hamlin
Library of Congress

In November, news of Abraham Lincoln’s victory and the many Republican victories in congressional races crackled throughout Alabama. In Eufaula, residents constructed symbolic gallows at a busy intersection, and local militia units scheduled military drills in anticipation of violence. A group of the city’s prominent citizens issued a proclamation which read, in part: “The abolitionists have triumphed. Shall we submit? Will Alabamians permit abolitionists to rule them? Shall we yield like slaves or resist like freemen? [This] great question we must now decide.”¹¹

Most white Alabamians greeted South Carolina’s decision to secede from the Union on December 20, 1860, with celebration. “Alabama is firm and decided. Will follow South Carolina in the glorious cause of Southern Independence,” Hayneville resident Henry M. Larey wrote to a cousin living in the Palmetto State. “South Carolina has many warm friends here who are ready to assist her against the aggression of foreign enemies, whether Northern or European,” Claiborne’s *Southern Champion* newspaper wrote.¹² Throughout the capital city of Montgomery, sounds of ringing bells and cannon fire filled the air. In Eufaula, news of secession brought “perfect jubilee,” and the local newspaper noted that “every heart was in a glow of patriotic fervor, and the whole city in a blaze of enthusiastic excitement.”

Alabama's port city of Mobile "was one blaze of light," diarist Kate Cumming wrote. "Scarcely a window in the whole city was not lit. The noise from the fireworks and firearms was deafening.... Everything was done to prove that Mobile...approved of what South Carolina had done."¹³

On December 6, 1860, Governor Andrew B. Moore issued a brief proclamation calling for the election of delegates to meet in a convention at the State Capitol on January 7, 1861, to take up the matter of secession. "The contingency contemplated...has happened," he wrote, referring to Lincoln's election.¹⁴ "We are on the eve of great events," Augustus Benners, a south Alabama planter and lawyer observed. "How they will terminate God only knows. In war and anarchy I much fear."¹⁵



Alabamian Stephen Fowler Hale said Lincoln's election "cannot be regarded otherwise than a solemn declaration...of hostility to the South, her property, and her institutions; nothing less than an open declaration of war." Hale later served as a lieutenant colonel of the 11th Alabama Infantry and was mortally wounded at the Battle of Seven Pines in 1862.



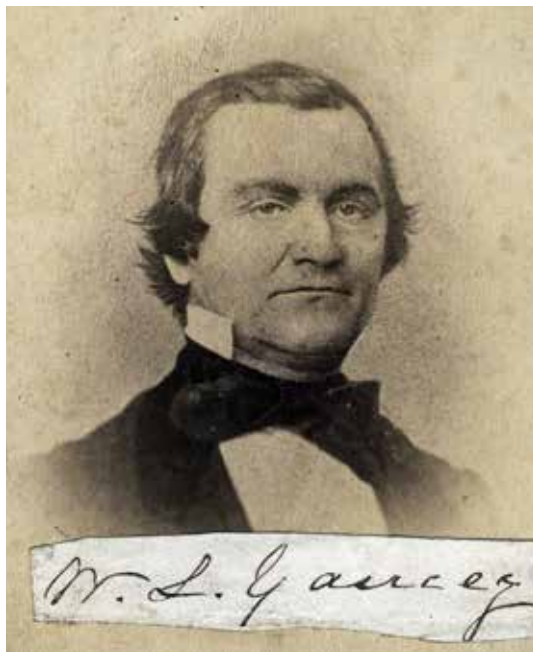
Flag of the Young Men's Secession Association of Mobile, ca. 1860



Sash presented to
William Lowndes Yancey
in 1860 or 1861

THE FRAMERS

Throughout Alabama, men campaigned for the one hundred seats at the convention. The delegates reflected the divided mind of the state over the great crisis of the Union. Those advocating immediate, “straight-out” secession fought against so-called “cooperationists,” men who favored a more pragmatic approach of seceding only after a new cooperative government with other southern states was assured. The Unionists, too, were divided. Some favored using the threat of secession as a bargaining tool with the Republicans. Others were forthrightly opposed to secession for any reason.¹⁶

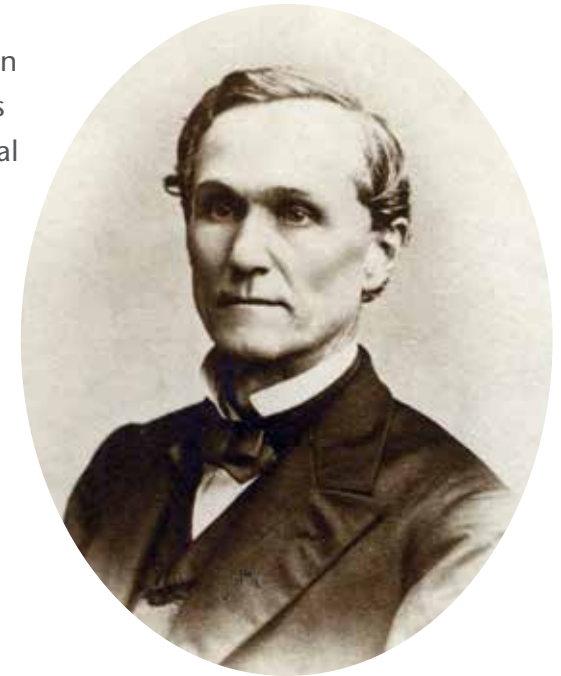


William Lowndes Yancey,
Montgomery County delegate

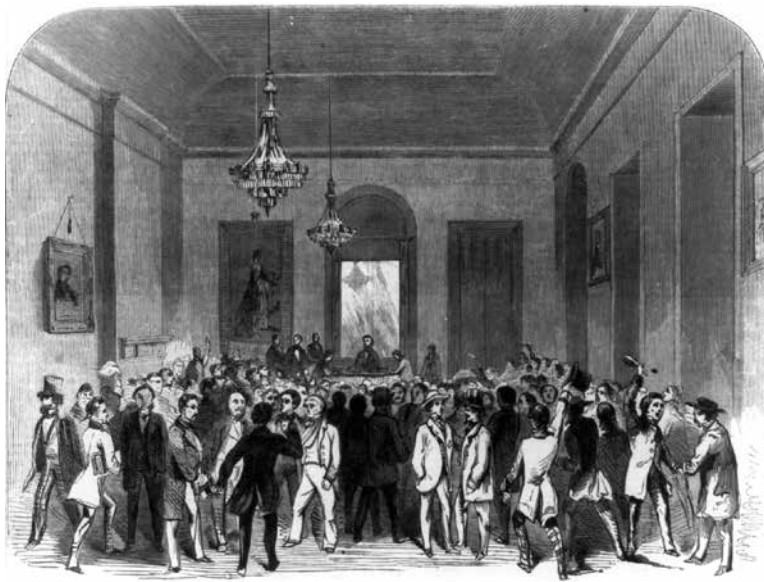
The secessionists rallied around the leadership of William Lowndes Yancey, a central Alabama lawyer, politician, and orator. Born in Georgia in 1814, Yancey moved to New England as a youngster after his mother married a prominent minister. She cultivated his oratorical skills, sending him to prestigious private academies and enrolling him in Williams College in Massachusetts. Yancey departed the institution before graduating, having amassed a long disciplinary record. Infractions included card playing, drunkenness, and using profane language. He moved to South Carolina to study law and became embroiled in the nullification crisis of the late 1820s and early 1830s.¹⁷

In 1835, Yancey married the daughter of a prominent planter and relocated to Alabama. He established a plantation of his own near Cahaba, and when it failed he relocated to Wetumpka, taking over the editorship of the *Argus* newspaper.¹⁸ Yancey began his political career in 1841, elected first to the state legislature and later as a member of Congress. In Washington, he was a strong advocate for the immediate annexation of Texas. He resigned his seat in 1846, citing personal reasons. Two years later, Yancey emerged as a leading secessionist amidst the controversy emanating from the Wilmot Proviso. He strong-armed a reluctant state Democratic party to adopt the so-called “Alabama Platform,” which forbade the national party from supporting any candidate who favored the doctrine of popular sovereignty. In Baltimore, after the Democratic National Convention ignored the Alabama Platform, Yancey and a lone supporter walked out of the hall.¹⁹

Over the next decade, Yancey's intransigence slowly gained support, moving him from the fringe to the vanguard of Alabama's Democratic Party. By the time of the Kansas-Nebraska Act in 1854, he was the unquestionable leader of Alabama's secessionists. His oratorical skills—and his newspaper connections—elevated his stature throughout the country. He was the quintessential “fire-eater,” whose lips and pen dripped with the hot rhetoric of secession, interposition, and war. Sensing the changing current of events, Alabama political aspirants now flocked to Yancey's side. Notable in this group were Jabez L. M. Curry of Talladega, William C. Oates of Abbeville, and Eufaula brothers Eli and John Gill Shorter. The Yanceyites, as they came to be called, took the Alabama Platform back to the Democratic National Convention in 1860, which met that year in Charleston. Once more, they lacked the votes necessary to succeed. But unlike twelve years earlier, the entire Alabama delegation and representatives from several other southern states followed Yancey when he left the convention hall in protest. Thus, as Yancey biographer Ralph Draughon noted, “he precipitated the dissolution, not of the Union, but of the last truly national political organization: the Democratic Party. The dissolution of the Union soon followed.”²⁰



John Gill Shorter



MEETING OF THE SOUTHERN SECEDEES FROM THE DEMOCRATIC CONVENTION AT ST. ANDREW'S HALL, CHARLESTON, APRIL 20, 1860.—[See FRANCHISE PAGE.]

Democratic National Convention, Charleston, April 30, 1860
Library of Congress

Yancey won election to the Alabama secession convention as a delegate from Montgomery County, his home since resigning from Congress in 1846. As the convention began, he was joined by mostly like-minded men. Delegates favoring immediate secession won fifty-four seats. Among Yancey's lieutenants in the convention were Montgomery attorney Thomas H. Watts and a young Dallas County politician named John Tyler Morgan.²¹

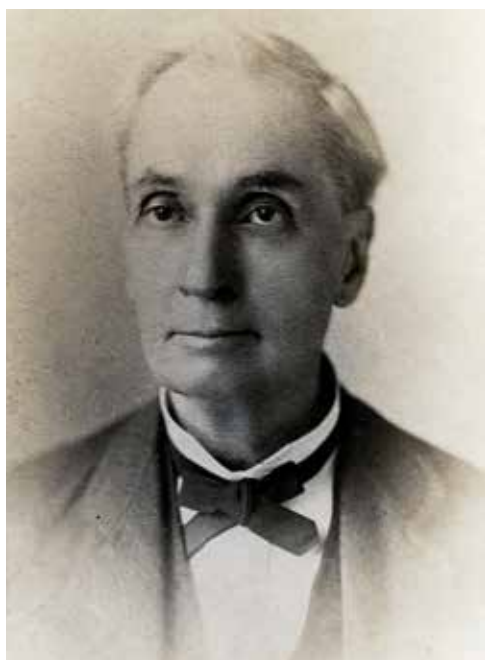


Jeremiah Clemens, Madison County delegate

Cooperationists and Unionists occupied forty-six seats in the convention. Among their ranks were Madison County native Jeremiah Clemens (a cousin of Samuel L. Clemens, known best by his pen name Mark Twain), Tuscaloosa attorney Robert Jemison, and Charles Christopher Sheats, a twenty-two-year-old delegate from Winston County, where Unionist sentiment ran so high that residents threatened to secede from Alabama and form the “Free State of Winston.”²²

The one hundred delegates were mostly wealthy, middle-aged men and were either lawyers or planters by profession. A vast majority of them, seventy-nine, were slaveholders.²³

Secessionists prevailed in electing one of their own, William McLin Brooks of Perry County, as president of the convention. A South Carolina native, Brooks had practiced law in Linden and Mobile, served as a judge, and was a member of the state delegation when it bolted from the 1860 Democratic convention. He was one of the most respected legal men in the state.²⁴ For his part, Yancey likely seemed too impolitic for the position of president. He was, however, placed in charge of a committee of thirteen delegates chosen to draft the initial secession ordinance. Secessionists held a one-vote majority on the committee.



William McLin Brooks, convention president and Perry County delegate

THE DEBATE

“Alabama Will Secede,” predicted a January 9, 1861, headline in the *Montgomery Weekly Advertiser*. Just two days after the convention began, the newspaper was confident of a wide margin of success. With the states of Mississippi and Florida preparing for their own secession conventions, it was now only a matter of time before Alabama’s delegates voted to depart. “The Union is already dissolved,” an *Advertiser* editorial stated, “and we will at once set about the work of preserving our liberties and honor by uniting with those gallant Southern States that are determined not to live under the free negro rule of Lincoln.” The editors of the *Montgomery Mail* held a similar opinion: “To remain in the Union is to lose all that white men hold dear in government. We vote to go out.”²⁵

Alabama will Secede.

On January 10, William Lowndes Yancey presented the draft of the ordinance of secession from the committee. He and the majority members favored a simple ordinance, plainly stating Alabama's imminent departure from the Union and nothing more. But at the insistence of the cooperationist minority, led by Jeremiah Clemens, the committee included a preamble and other resolutions, an eloquently written list of grievances:

WHEREAS, the election of Abraham Lincoln and Hannibal Hamlin to the offices of President and Vice-President of the United States of America, by a sectional party, avowedly hostile to the domestic institutions and to the peace and security of the people of the State of Alabama, preceded by many and dangerous infractions of the Constitution of the United States by many of the States and people of the northern section, is a political wrong of so insulting and menacing a character as to justify the people of the State of Alabama in the adoption of prompt and decided measures for their future peace and security; therefore,

Be it declared and ordained by the people of the State of Alabama in Convention assembled, That the State of Alabama now withdraws, and is hereby withdrawn from the Union known as "the United States of America," and henceforth ceases to be one of said United States, and is, and of right ought to be, a Sovereign and Independent State.²⁶

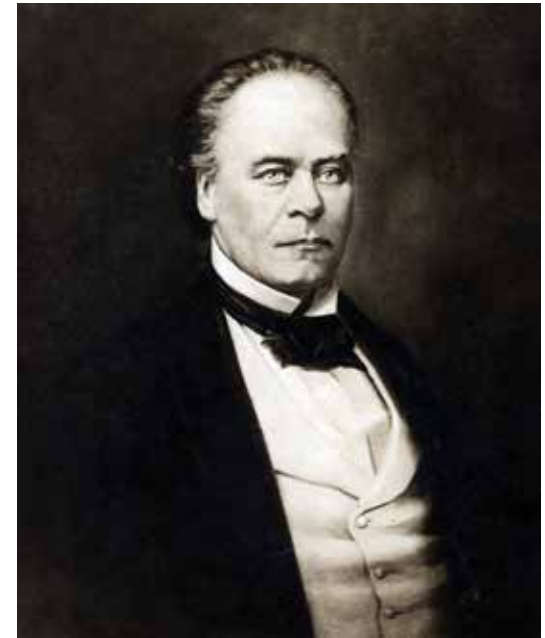
The proposed ordinance also contained within it an invitation to the other "slaveholding States of the South" to meet in Montgomery in early February "for the purpose of consulting with each other as to the most effectual mode of securing concerted and harmonious action in whatever measures may be deemed most desirable for our common peace and security."²⁷

Jeremiah Clemens gave the committee's minority report. He suggested that the convention delay secession until the meeting of southern states occurred. He further listed measures upon which the Union

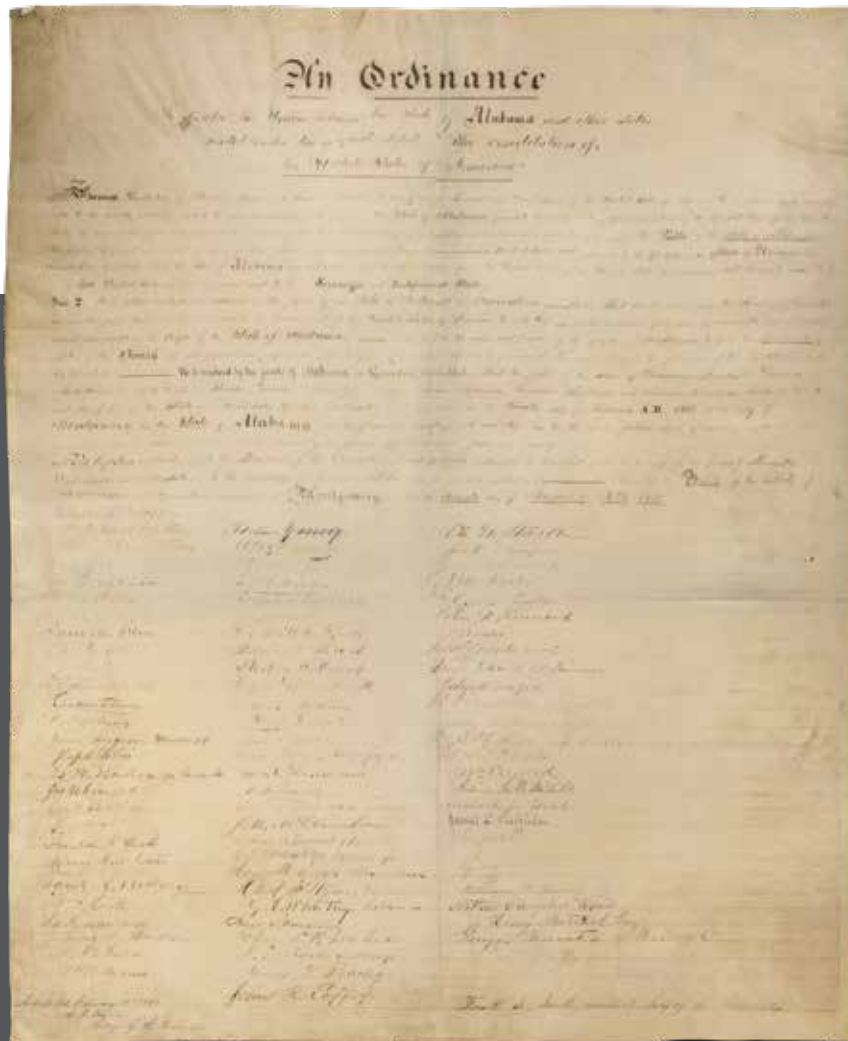


This illustration appeared beneath the masthead of the Southern Champion, a Claiborne newspaper, following Abraham Lincoln's election in 1860.

Yancey's fiery rhetoric drew the ire of cooperationists who resented the absolutist stance. Tuscaloosa's Robert Jemison asked, "Will the gentleman go into those sections of the State and hang all who are opposed to Secession? Will he hang them by families, by neighborhoods, by towns, by counties, by Congressional District?" Nicholas Davis of Madison County declared that Yancey's threat, if carried out, would lead to a bloody conflict within the state. "We will meet him at the foot of our mountains, and there with his own selected weapons, hand to hand, face to face, settle the question of the sovereignty of the people." Convention president Brooks adjourned the contentious day's session.³¹

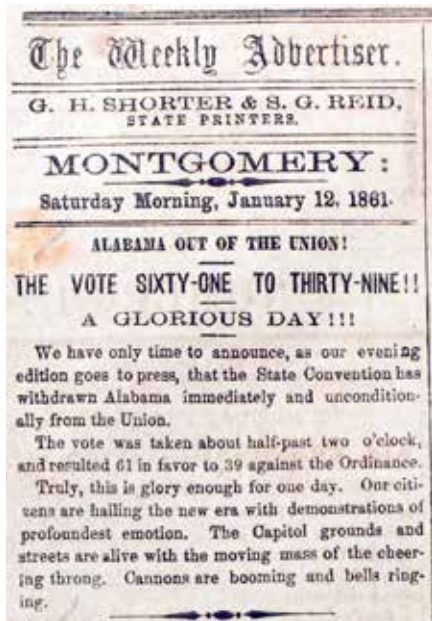


Robert Jemison, Tuscaloosa County delegate



THE ORDINANCE OF SECESSION

Alabama's ordinance of secession is written on a large, single piece of high-quality parchment measuring twenty-six inches wide and nearly thirty-two inches in length. The signatures of the delegates were applied to the bottom half of the document in three columns using various types of iron gall ink popular at the time.



Montgomery Weekly Advertiser,
January 12, 1861

“Be it declared and ordained by the people...that the State of Alabama now withdraws, and is withdrawn from the Union.”

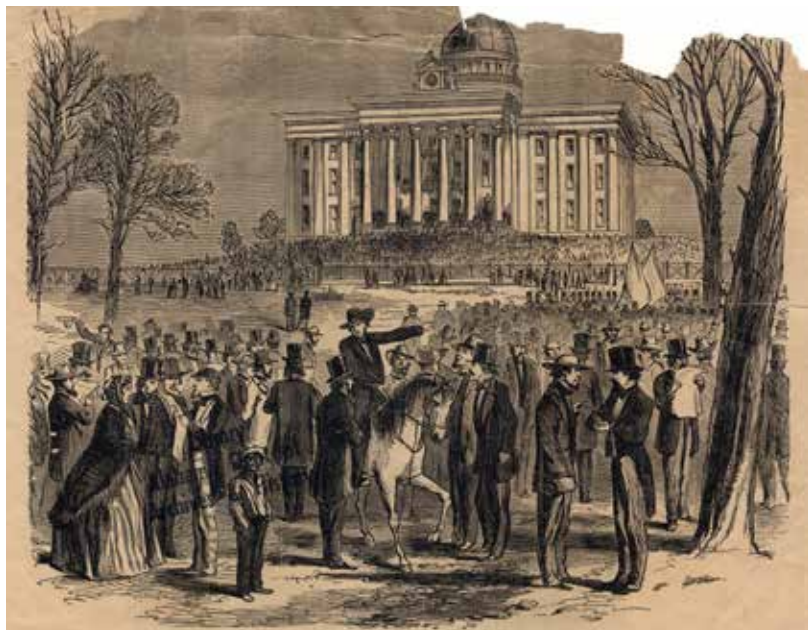
ALABAMA ORDINANCE OF SECESSION, 1861

The following day, January 11, 1861, the convention voted on Alabama’s ordinance of secession. Once passage seemed certain, seven cooperationists voted in favor of the ordinance, feeling that collective action on the part of the southern states was by that time assured. The final vote was sixty-one in favor and thirty-nine against. Twenty-two of the men who voted against the ordinance signed the document. “I resisted the passage of the Ordinance to the last moment in every form,” Huntsville’s Jeremiah Clemens wrote to a friend, “and then, when no more was to be accomplished, I did what I had pledged myself to do on every stump, and openly placed myself on the side of the State.”³²

Upon the conclusion of the vote, a group of Montgomery women presented the convention with a new flag for the Republic of Alabama. The bright blue banner featured on one side Maryanne, Goddess of Liberty, with her sword drawn. “Independent Now and Forever,” her

pennant read. The opposite side of the flag featured a cotton plant and beneath it a coiled rattlesnake, which William Lowndes Yancey noted was a creature “peaceful and harmless until disturbed.” Atop the flag was the Greek phrase *noli me tangere*, “touch me not.” The hall greeted the unfurled banner of the Republic of Alabama with thunderous applause. Men stood atop their desks and stretched forth their arms to touch the flag as it was paraded throughout the hall.³³

“Truly, this is glory enough for one day,” the *Montgomery Weekly Advertiser* wrote. “Our citizens are hailing the new era with demonstrations of profoundest emotion. The Capitol grounds and streets are alive with the moving mass of the cheering throng. Cannons are booming and bells are ringing.” A jubilant Montgomery resident wrote to a friend, “We here in Alabama are now in a new Republic,

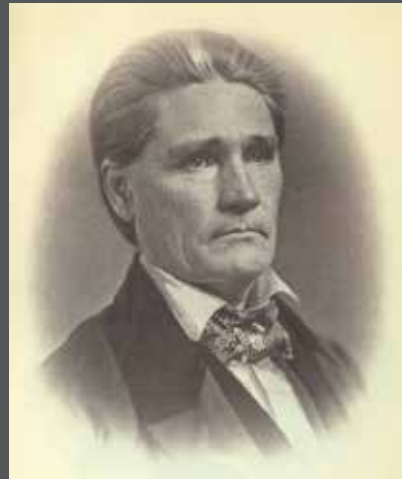


This engraving, published in *Pictorial War Record* on September 24, 1881, was based on a sketch made at the Capitol on the day of secession.

a foreign country from you Kentuckians.” Leaders in Mobile quickly passed an ordinance to rename several streets previously named for northern states.³⁴

Not everyone welcomed the events of the day, however. Thomas J. McClellan, a convention delegate from Limestone County, wrote to his wife, “I have no language to express my feelings when the new flag was unfurled in the Capital. To see a large crowd of both men and women transported with joy...[without] one regret for the old stars and stripes, was to me the most soul sickening spectacle that I ever witnessed in all my life.”³⁵

The convention remained in session after the vote, attending to related matters. The delegates passed ordinances providing for the military defense of Alabama and withdrawing from contracts with the United States government. The convention dictated many of the negotiating points for Alabama’s delegation to the Confederate convention, to begin in Montgomery in early February. In mid-March, the same group of men who had voted on secession ratified Alabama’s entry to the new Confederacy by a vote of eighty-seven to five, bringing a rapid end to the Republic of Alabama.³⁶



Voice of Dissent

CONGRESSMAN W. R. W. COBB

News of Alabama’s secession prompted the withdrawal of the state’s congressional delegation from Washington on January 21, 1861. But one congressman refused to leave that day. Williamson R. W. Cobb represented north Alabama. A former state legislator, Cobb was a champion of the common man and had defeated several of Huntsville’s most prominent young politicians in

his career. Cobb remained in Congress until January 30, nineteen days after Alabama’s secession vote. On his last day, Cobb read into the *Congressional Record* his state’s ordinance of secession and gave a long withdrawal speech that was widely circulated among northern newspapers:

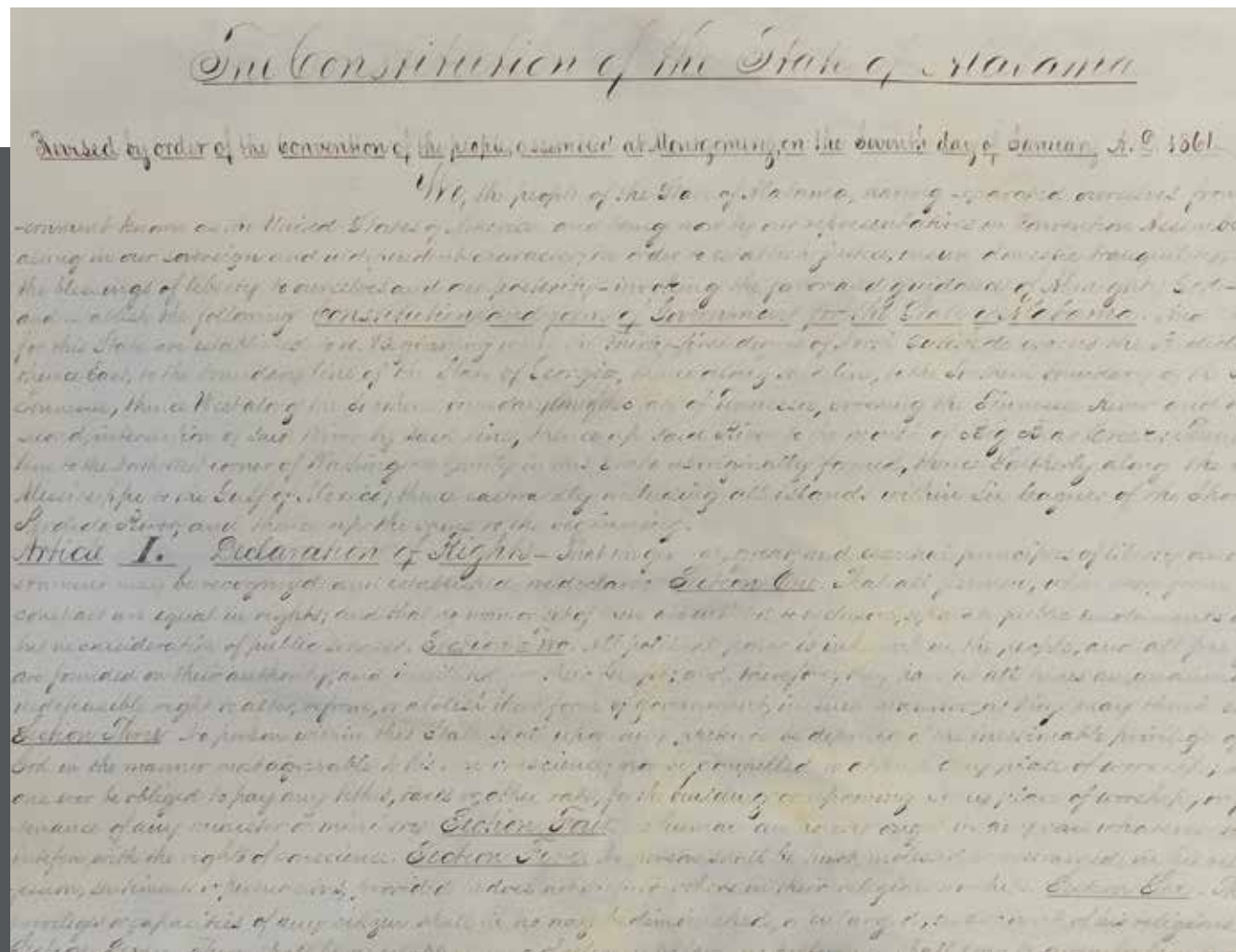
“Under the action of my State, under that ordinance, which I received yesterday, I am, in my judgment, compelled to return to the land which gave me birth, to share its fate through weal and woe, through good and evil fortune.... When I return home, let me not go without hope. Let me have it within my power to say to my people that there is hope, however faint it may now appear. But my appeal to the House is that there shall be action; something done to restore confidence between the different sections of the Union, that there shall be peace, harmony, and prosperity once more restored to this now divided and distracted country.... I trust that you will do something; that peace and harmony may be restored; that your families and our families, that have mingled so long in social harmony, may not be called upon to shed each others’ blood; and that peace may reign from the [Great] Lakes to the Gulf of Mexico. Stand upon your assumed dignity and platform no longer; but come patriotically up to the call of your distracted country, and coming millions shall pronounce you blessed. I now...return, as I have said, to my dear Alabama, where the bones of my father and mother rest; to defend their ashes, and to share the fate of those to whom I am closely bound, be it for weal or for woe.”³⁷

The convention also took up the matter of rewriting Alabama's constitution. The day after the ordinance of secession passed, the delegates established a committee of nine members to recommend changes to Alabama's governing document. Barbour County's John Cochran was chosen as chairman of the committee. Like the convention, the committee was composed primarily of men who had favored immediate secession and were lawyers by profession.³⁸

The committee made its report on January 24, 1861. The draft document's preamble attributed the new constitution to "We the people of the State of Alabama, having separated ourselves from the government known as the United States of America, and being now by our representatives in convention assembled, and acting on our sovereign and independent character." The declaration of rights articulated in the 1819 constitution remained unchanged.³⁹

THE 1861 CONSTITUTION

The 1861 constitution is written on eleven parchment pages of varying lengths bound together with glue and kept as a scroll. Altogether the document is twenty feet, eight inches long and approximately twenty-four inches wide. When rolled, the document measures nearly three inches in diameter. Unlike the 1819 constitution, the 1861 document was not signed by the individual delegates. It bears only the signatures of William McLin Brooks, president of the convention, and A. G. Horn, secretary, on behalf of the entire convention.





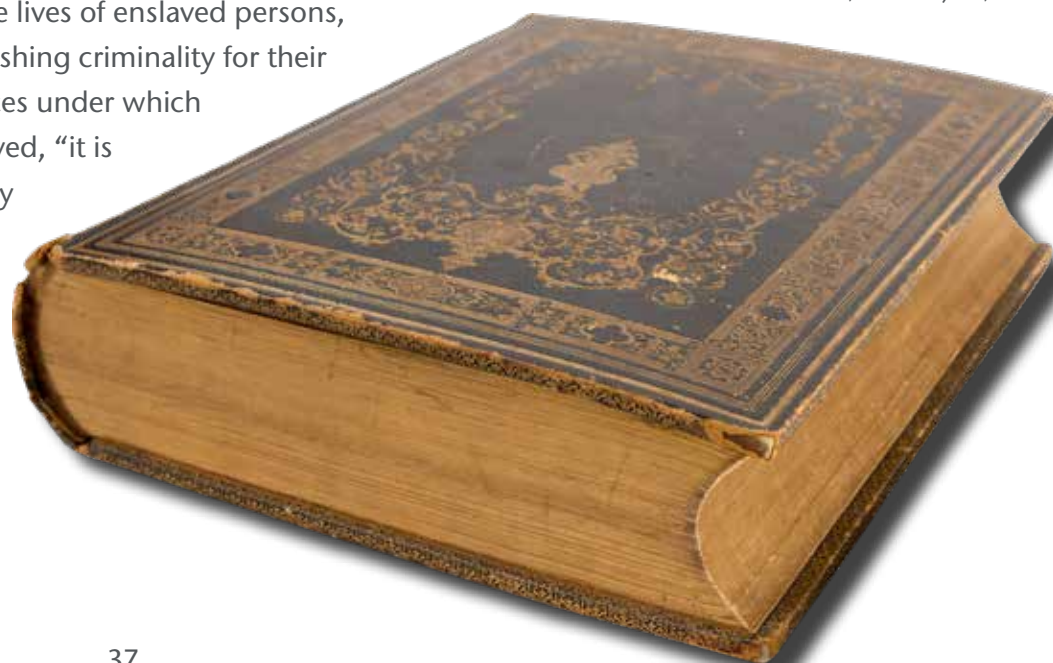
John Tyler Morgan, Dallas County delegate

The committee recommended slight changes to Alabama's legislative and executive branches. It provided for an annual session of not more than thirty days for the legislature, extended to the state the right of eminent domain, and placed the secretary of state in the line of gubernatorial succession following the president of the Senate and the Speaker of the House of Representatives. The 1819 provision that Alabama's governor be a native-born American citizen was changed to read "a citizen of the State of Alabama and a native of one of the states or territories, lately styled the United States of America." The greatest change to the judicial branch was placing all cases involving petitions for divorce within the chancery court. This eliminated an onerous burden from the 1819 constitution requiring the state legislature to review and vote on every divorce petition in the state.⁴⁰

Regarding slavery, the new constitution expressly forbade the emancipation of an enslaved person "by any act done to take effect in this State, or any other country." Yet, the provisions of the 1819 constitution protecting the lives of enslaved persons, guaranteeing them the right to a trial by jury, and establishing criminality for their harm, were kept verbatim. "Considering the circumstances under which the convention met," historian Malcolm McMillan observed, "it is surprising that harsh provisions on the question of slavery were not written into the fundamental law."⁴¹

The committee selected to write the final version of the 1861 constitution included Cochran, John Daniel Webb of Greene County, and John Tyler Morgan. Expediency then became the order of business. Most suggestions for further constitutional revision were not considered. "The opinion prevailed that the constitution

*Alabama State Bible
used by Jefferson Davis to take
the oath of office of president
of the Confederate States of
America, February 18, 1861*



should not be changed more than necessary because of the crisis that faced the state,” McMillan wrote. Some delegates argued for a stronger executive branch suitable for the extraordinary times. They wanted to lengthen a governor’s term from two to four years and require a two-thirds vote of the legislature (rather than a simple majority) to override his veto. Both amendments failed. Also defeated were efforts to reduce the 900-square-mile minimum requirement for the size of counties, to permit a sheriff to hold consecutive terms in office, to provide for an annual session of the state supreme court in Huntsville, and to prohibit the relocation of the state capital away from Montgomery.⁴²

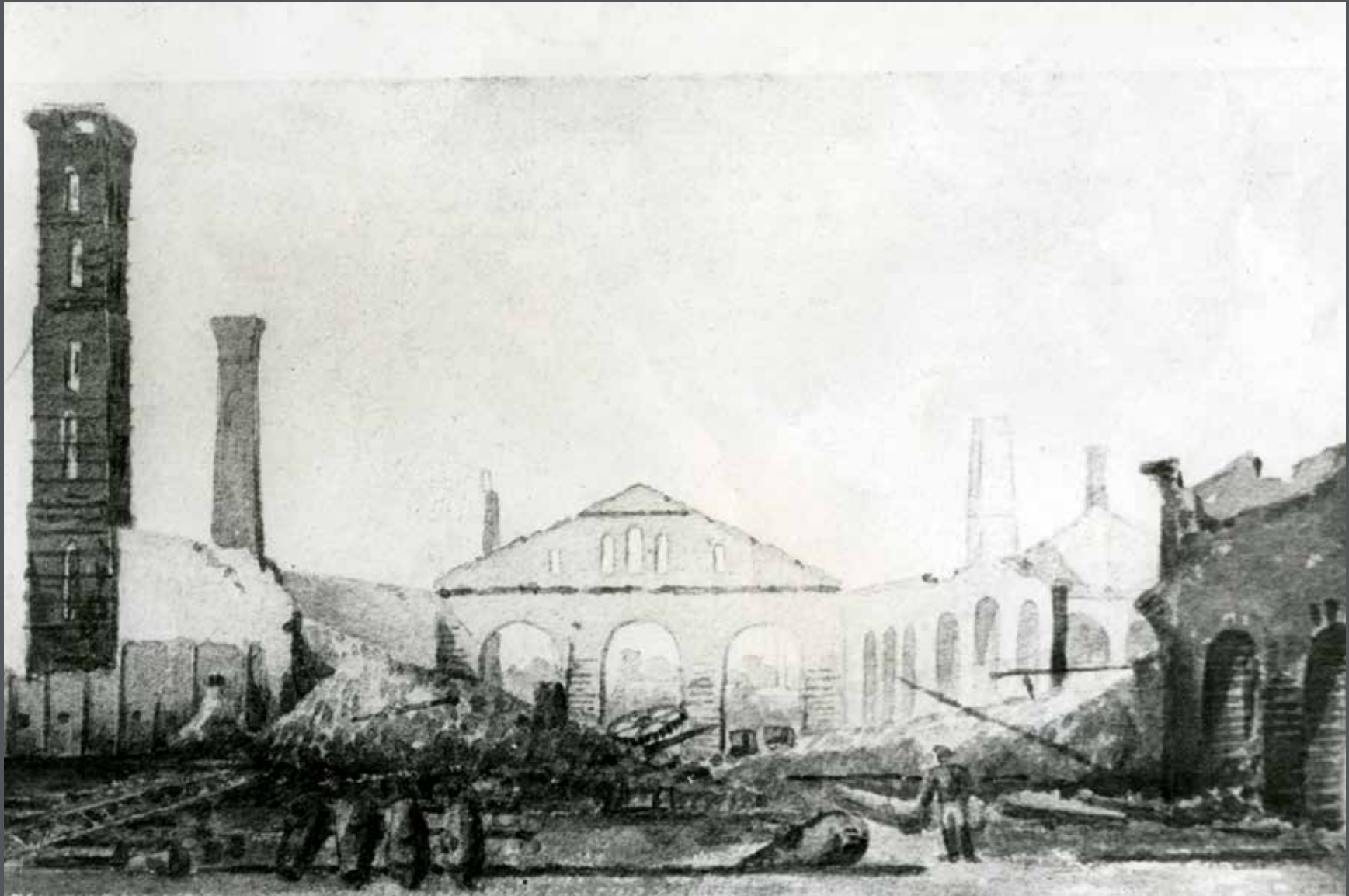
The convention voted unanimously in favor of the new constitution on March 20, 1861. North Alabama delegates were rebuffed in their effort to have the document submitted to the people for a vote. The following day the convention adjourned. In session for nearly thirty days since early January, the delegates had withdrawn Alabama from the United States, helped established “the Confederate States,” and adopted a new state constitution.

Few of Alabama’s newspapers heralded the new state constitution, occupied as they were with informing their readers about the formation of the Confederacy, the inaugural addresses of Jefferson Davis and Abraham Lincoln, and the news from Charleston Harbor, where a stand-off at a besieged federal garrison would ultimately spark war. “The inexorable logic of events has at length brought the country to the verge of war,” the editor of the *Montgomery Weekly Advertiser* wrote soberly in mid-April, at the outset of what would prove to be four years of bloody conflict. “It becomes us to look the matter squarely and calmly in the face.”⁴³



NOTES

- 1 J. Mills Thornton, III, "Secession," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-3148> (accessed April 16, 2019).
- 2 Thornton, "Secession"; William Warren Rogers, Robert David Ward, Leah Rawls Atkins, and Wayne Flynt, *Alabama: The History of a Deep South State* (Tuscaloosa: University of Alabama Press, 1994), 153-154.
- 3 A.B. Moore to Bolling Hall, November 15, 1850, box 5, folder 2, Bolling Hall Family Papers, Alabama Department of Archives and History (ADAH).
- 4 William Rufus King to Thomas D. King, November 21, 1850, box 1, folder 3, William Rufus King Family Papers, ADAH; *Dallas Gazette* quoted in *Montgomery Advertiser*, January 1, 1851.
- 5 Thornton, "Secession"; Bridges, *Alabama: The Making of an American State*, 87-89.
- 6 Mike Bunn, *Civil War Eufaula* (Charleston: The History Press, 2013), 30-32.
- 7 Christopher L. Mcllwain, *Civil War Alabama* (Tuscaloosa: University of Alabama Press, 2016), 13-14.
- 8 Mcllwain, *Civil War Alabama*, 13-14; John S. Sledge, *These Rugged Days: Alabama and the Civil War* (Tuscaloosa: University of Alabama Press, 2017), 5-6, 9.
- 9 *Montgomery Mail* quoted in Mcllwain, *Civil War Alabama*, 15-16.
- 10 William R. Smith, *The History and Debates of the Convention of the People of Alabama, Begun and Held in the City of Montgomery, on the Seventh Day of January 1861* (Montgomery: White, Pfister, and Company, 1861), 9-10.
- 11 Bunn, *Civil War Eufaula*, 35-36.
- 12 Henry M. Larey to Ann Louis, December 20, 1860, SPR546, ADAH; *Southern Champion*, (Claiborne, Ala.), January 4, 1861.
- 13 Cumming quote in Sledge, *These Rugged Days*, 1; "The Secession Jubilee," *Spirit of the South* (Eufaula, Ala.), quoted in *Montgomery Weekly Advertiser*, January 2, 1861.
- 14 Smith, *History and Debates of the Convention*, 17-18;
- 15 Sledge, *These Rugged Days*, 18-19; Mcllwain, *Civil War Alabama*, 26.
- 16 Rogers et al, *Alabama*, 182-183.
- 17 Ralph Draughon, "William Lowndes Yancey," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-2064> (accessed April 16, 2019).
- 18 Ibid.
- 19 Ibid.
- 20 Thornton, "Secession"; Rogers et al, *Alabama*, 180-182; Draughon, "William Lowndes Yancey."
- 21 McMillan, *Constitutional Development in Alabama*, 78-79.
- 22 McMillan, *Constitutional Development in Alabama*, 78-79; David McRae, "Free State of Winston," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1850> (accessed April 19, 2019).
- 23 Rogers et al, *Alabama*, 183-184.
- 24 "Delegates to the Alabama Secession Convention," *Alabama Historical Quarterly* 3, nos. 3 & 4 (Fall and Winter 1941): 378-379.
- 25 *Montgomery Weekly Advertiser*, January 9, 1861; *Mail* quoted in Rogers et al, *Alabama*, 185.
- 26 McMillan, *Constitutional Development in Alabama*, 79; Smith, *The History and Debates of the Convention*, 76-77.
- 27 McMillan, *Constitutional Development in Alabama*, 79; Smith, *The History and Debates of the Convention*, 76-77.
- 28 McMillan, *Constitutional Development in Alabama*, 79-80; Smith, *The History and Debates of the Convention*, 77-81.
- 29 McMillan, *Constitutional Development in Alabama*, 80.
- 30 Smith, *History and Debates of the Convention*, 68-69.
- 31 Mcllwain, *Civil War Alabama*, 40-41.
- 32 McMillan, *Constitutional Development in Alabama*, 80; Sledge, *These Rugged Days*, 21-22; Thornton, "Secession."
- 33 Sledge, *These Rugged Days*, 21-22; "The Alabama Secession Flag," *Alabama Historical Quarterly* 3, nos. 3 & 4 (Fall and Winter 1941): 364-367.
- 34 *Montgomery Weekly Advertiser*, January 12, 1861; E. Lewis to "Mr. Kerr," January 11, 1861, SPR58, ADAH; Sledge, *These Rugged Days*, 23.
- 35 Thomas McClellan to "Dear Wife," January 14, 1861, Thomas J. McClellan Letters, ADAH.
- 36 McMillan, *Constitutional Development in Alabama*, 81-84.
- 37 "Withdrawal of the Honorable W. R. W. Cobb of Alabama," January 30, 1861, pamphlet collection, ADAH.
- 38 McMillan, *Constitutional Development in Alabama*, 85.
- 39 Ibid.
- 40 McMillan, *Constitutional Development in Alabama*, 85-86.
- 41 McMillan, *Constitutional Development in Alabama*, 86.
- 42 McMillan, *Constitutional Development in Alabama*, 87-89.
- 43 *Montgomery Weekly Advertiser*, April 17, 1861.



Ruins of the Selma Ordnance and Naval Foundry, burned by Union troops after the April 2, 1865, Battle of Selma

CHAPTER 3

1865

“THE SUDDEN TRANSITION OF AFFAIRS”

Widely held notions that the Confederacy would win a quick and decisive victory fell away in the months after the shelling of Fort Sumter. Alabama and the other southern states experienced a war that was long, bloody, and destructive. While more than eighty thousand of its sons were fighting, many far from home, Alabama itself was besieged. By early 1862, Union forces had seized control of much of the northern part of the state. A federal blockade of the Gulf Coast cut off supplies to Mobile, a heavy importer of goods. During the hot month of September 1863, the women of the port city rioted, smashing store windows, stealing rations, and demanding relief while carrying signs which read “Bread or Peace” and “Food or Death.” The following summer, after the Battle of Mobile Bay and subsequent victories on land, Union forces were firmly in control of south Alabama as well. In 1865, more than thirteen thousand Union cavalrymen raided the state, destroying foundries and arsenals in Jefferson, Bibb, and Dallas counties. In Tuscaloosa, they burned the University of Alabama. Upon seeing the thousands of Union soldiers arriving in Montgomery, the first capital of the beleaguered Confederacy, one youngster exclaimed, “I didn’t know there were so many Yankees in the world!”¹

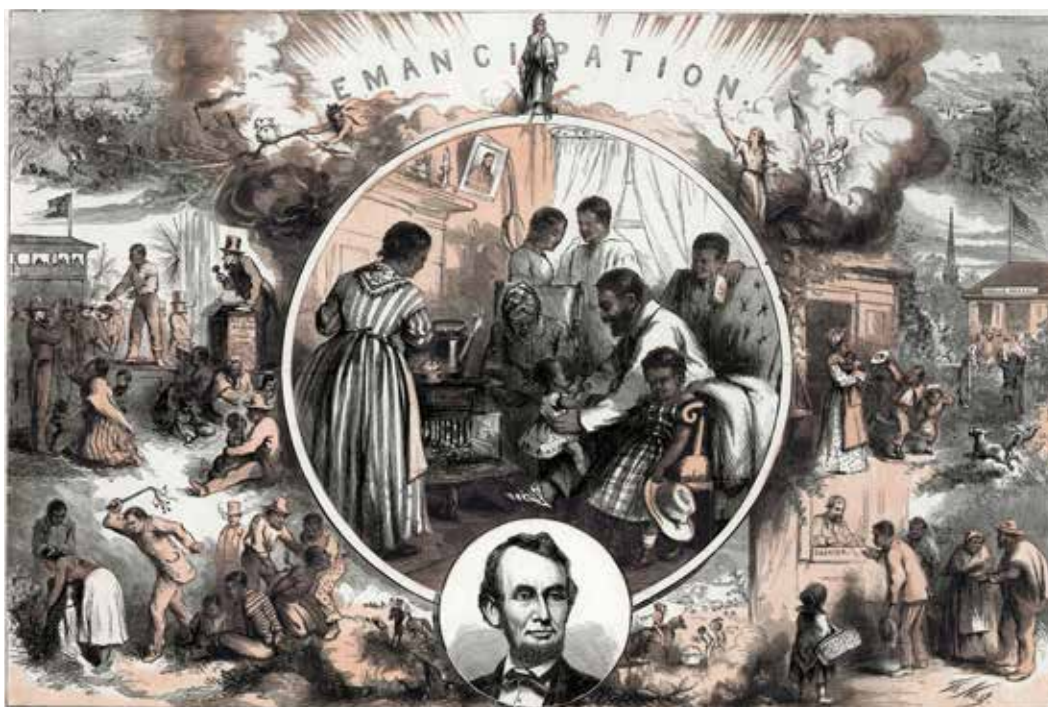
Alabama’s wartime dead numbered twenty-seven thousand. Countless more bore wounds, some that were visible and others that were not, for the rest of their lives. “Widows, orphans, and one-armed men became fixtures of the age,” wrote historian John S. Sledge. “The Surrender! How it hurts me to write that,” Mary Fielding of Limestone County penned in her diary in August 1865. “To think that after all we have endured, lives lost, the untold suffering of thousands of widows and orphans, that it should be for nothing, worse than nothing, ‘tis almost unendurable. But it cannot be helped.”²

Grave marker of Capt. John B. Hazzard, Co. I, 24th Alabama Infantry





"Alabamians Receiving Rations," A. R. Waud, Harper's Weekly, August 11, 1866



The land of Alabama, too, suffered from four years of war and neglect. Fields left abandoned during the fighting were slow to recover. Livestock revenue did not return to prewar levels for more than a decade. "Work as our people may, do what they can—pray and work, yet they fail," the editor of an Opelika newspaper lamented, "and we ask, involuntarily, is the South abandoned, that the very earth doth mock us!"³ Even sections of the state that were not directly affected by invasion suffered greatly as a result of the war. In south Alabama, Clarke County lost nearly 150 farms between 1860 and 1870. Its cultivated land decreased by thirty-eight thousand acres, and the cotton crop declined by one-third. Sections of the Wiregrass along the Georgia and Florida borders saw similar changes. "Cotton may recover the throne," the editor of the *Montgomery Mail* noted in September 1865, "but the old monarch is very shaky."⁴

At the outset of the war, almost half of Alabama's people were enslaved. The conflict's end brought freedom to more than four hundred thousand black Alabamians and removed from planters' ledgers an asset with an estimated value of \$200 million. Emancipation was, in the words of historians Robert David Ward and William Warren Rogers, "a time for jubilation, for release, for confusion—and for cares and worries about the future."⁵

*Engraving celebrating the emancipation of slaves, Thomas Nast, 1865
Library of Congress*

“To think that after all we have endured, lives lost, the untold suffering of thousands of widows and orphans, that it should be for nothing, worse than nothing, `tis almost unendurable.”

MARY FIELDING, LIMESTONE COUNTY, AUGUST 1865

In the fall of 1863, following Union victories at Gettysburg and Vicksburg the previous summer, President Lincoln issued his Proclamation of Amnesty and Reconstruction. Under the plan, seceded states could re-enter the Union if 10 percent of their citizens who voted in the 1860 presidential election swore an oath of allegiance to the U.S. Constitution and received a presidential pardon. Confederate government officials and high-ranking military officers were excluded from potential pardons. Under Lincoln’s plan, new governments were established in Tennessee, Arkansas, and Louisiana. Congress, however, refused to seat the newly elected representatives from those states, inaugurating a long fight in Washington over who truly had the power to reconstruct the Union. Favoring more punitive measures for the former Confederate states, Radical Republicans in Congress passed their own version of Lincoln’s plan, only to see the president veto it. In the words of historian George Brown Tindall, Lincoln “shunned the vindictiveness of the Radicals” in Congress and favored a more moderate path. “He wanted ‘no persecution, no bloody work,’ no radical reconstruction of southern social and economic life.”⁶

Lincoln’s assassination in April 1865 elevated to the presidency Andrew Johnson, a Tennessee Democrat whom Radical Republicans viewed with great derision and suspicion. With Congress in recess until December, Johnson adopted measures for Presidential Reconstruction which were more in keeping with his fallen predecessor’s plans. With the exception of wealthy planters, Johnson believed, former Confederates should receive leniency.⁷



Pres. Andrew Johnson
Library of Congress



Gov. Lewis E. Parsons

“Reconstruction took the existing ingredients of Alabama life and shuffled them and dealt them out again to match a vision that was itself incomplete and unfinished,” historians Robert David Ward and William Warren Rogers wrote. “It was a laboratory of social ferment, a vast experiment in action, inaction, and reaction.”⁸ For Alabama, this experiment commenced on June 21, 1865, when President Johnson named Lewis E. Parsons provisional governor. A native of New York, Parsons was the son of a farmer and a descendant of the Puritan theologian and orator Jonathan Edwards. After studying law in New York and Philadelphia, Parsons moved to Alabama in 1840 and settled in Talladega.⁹ By 1860, Parsons was a wealthy man and an emerging Unionist political leader. He was a member of the state Democratic party and one of only a few who had supported the national party’s 1860 nominee, Stephen Douglas. Parsons opposed secession. According to historian Sarah Woolfolk Wiggins, “William Lowndes Yancey termed Parsons the ablest and most resourceful Unionist debater he ever encountered.” Throughout the war Parsons remained in Talladega. He was a “Union man,” a contemporary recalled, “without disguise, though offering no fractious opposition to the majority.” In 1863 he won a seat in the Alabama House of Representatives, part of a growing number of elected officials advocating peace.¹⁰



John Taylor Rather, Morgan County delegate

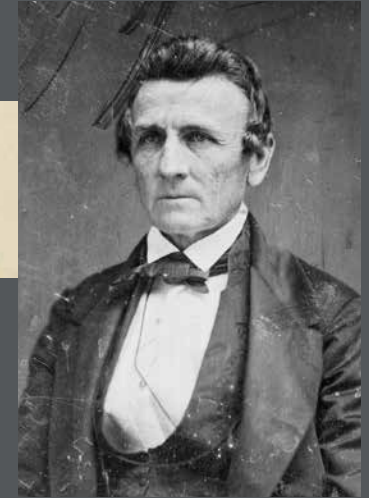
As governor, Parsons called for an August 31 election to choose delegates to a constitutional convention. Newspapers throughout the state urged participation. The *Clarke County Democrat* called it the most important election in living memory: “We hope our citizens will properly qualify themselves, and vote for some sensible, calm and discreet gentlemen to represent them.” The *Huntsville Advocate* urged that only loyal Unionists run for the delegate seats. Fire-eaters were generally unwelcome. The *Montgomery Advertiser* agreed, stating it was “no time to allow old prejudices to control our actions—such a course is neither wise or manly.”¹¹

Of the 56,000 Alabamians who met the qualifications and registered to vote after the war, approximately 30,000 cast ballots. This amounted to a third of the number of voters in the 1860 presidential election. A *New York Times* correspondent explained the low turnout as an expression of “the confusion and bewilderment of the people at the sudden transition of affairs.”¹²

THE FRAMERS

Ninety-nine delegates assembled in Montgomery in mid-September to write the document that would bring Alabama back into the Union. Unlike the secession convention of 1861, the members were older, the majority being over fifty years in age. Nearly half of the delegates were farmers or planters. The group included twenty-nine lawyers, six physicians, three judges, seven ministers, and two teachers. Only a few had been in public life prior to the war, including Benjamin Fitzpatrick, a former U.S. senator and governor, Congressman Alexander White, and Elisha Fair, who served as the American minister to Belgium under the administrations of Presidents Franklin Pierce and James Buchanan.¹³

Eleven of the delegates had served in the 1861 convention, but only one had signed his name to the ordinance of secession. Delegates from the largest slaveholding counties occupied a minority of seats. The “white counties” of north Alabama held a two-to-one advantage. Overlapping political affiliations abounded in the convention and tended to realign depending on the issue at hand. A *New York Times* correspondent observed that “a hundred undefined shades of political complexion are visible.” An observer from Mobile concurred, noting the “great diversity of views and opinions on the vital questions to be acted on by the Convention.”¹⁴



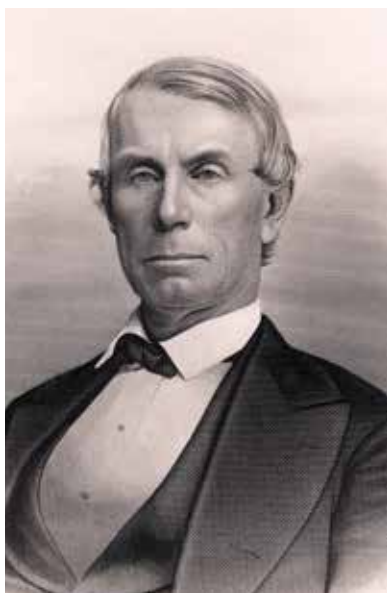
BENJAMIN FITZPATRICK AUTAUGA COUNTY DELEGATE & CONVENTION PRESIDENT

Born in Georgia in 1802, Fitzpatrick moved, alone, to what became the Alabama Territory at age fourteen. Within five years, he was admitted to the Alabama Bar and chosen by the legislature to serve as solicitor of Montgomery County. Thereafter, with the help of his wife’s family, he established a plantation along the Alabama River. By the 1850s, he owned more than one hundred slaves.

Fitzpatrick entered the political realm following the death of his wife in the late 1830s. Elected to two terms as governor, he was in every sense a Jacksonian Democrat, suspicious of banks and in favor of low taxes. Fitzpatrick was appointed to fill vacancies in the U.S. Senate in 1848 and again in 1853. He won election outright in 1855. At the time of Alabama’s secession, he was president pro tempore of the Senate. Fitzpatrick opposed secession and was a vocal critic of William Lowndes Yancey. These factors, combined with his close association with Sen. Stephen Douglas of Illinois, kept Fitzpatrick out of Alabama and Confederate politics during the war. Because of this, he was eligible to serve in the 1865 convention and was elected to represent Autauga County. In recognition of his long tenure in state and national politics and his views on secession and the war, the like-minded delegates unanimously elected Fitzpatrick president of the convention. The role would be his final act of public service. Fitzpatrick died in 1869.¹⁵



John Hamilton Hastie,
Baldwin County delegate
Georgene Gause Conner



William Mudd,
Jefferson County delegate

Overall, the delegates chose practicality over pomp. Compared to the secession convention four years earlier, the speeches were fewer and shorter. And while some delegates would take to the floor of the chamber to bemoan their circumstances, most adopted a begrudging acceptance that they must acquiesce to the demands of the White House. Few matters met with unanimity of opinion. One was the selection of Autauga County delegate Benjamin Fitzpatrick as the convention's president.

THE DEBATE

Among the former Confederate states, only Mississippi had begun its convention by mid-September. The nation's eyes were fixed on Montgomery, the very city in which the Confederacy had been forged four years earlier. On September 15, the delegates held an initial vote to repudiate the state's wartime debt, much of which was owed to former Confederates. President Johnson had instructed the state conventions to take this step, along with votes abolishing slavery and invalidating their secession ordinances. When the test vote on the war debt failed by a margin of fifty-eight to thirty-four, northern newspapers viewed it as an act of defiance by delegates who harbored Confederate sympathies. Their criticism was immediate and withering. The *New York Tribune* called it an "abomination." The *National Republican*, published in Washington, D.C., called the convention "the Rump of the Confederacy." The final vote to repudiate the debt, an estimated \$20 million, came later in the convention with a palatable majority of sixty-nine to nineteen. Still, the necessary vote was not without its critics. The entire delegation from Mobile, the commercial port city where much of the debt was held, voted against it. The editor of the *Eufaula Daily News*, concurring with the Mobile delegates, said the state's credit had been "unceremoniously murdered by the convention."¹⁶

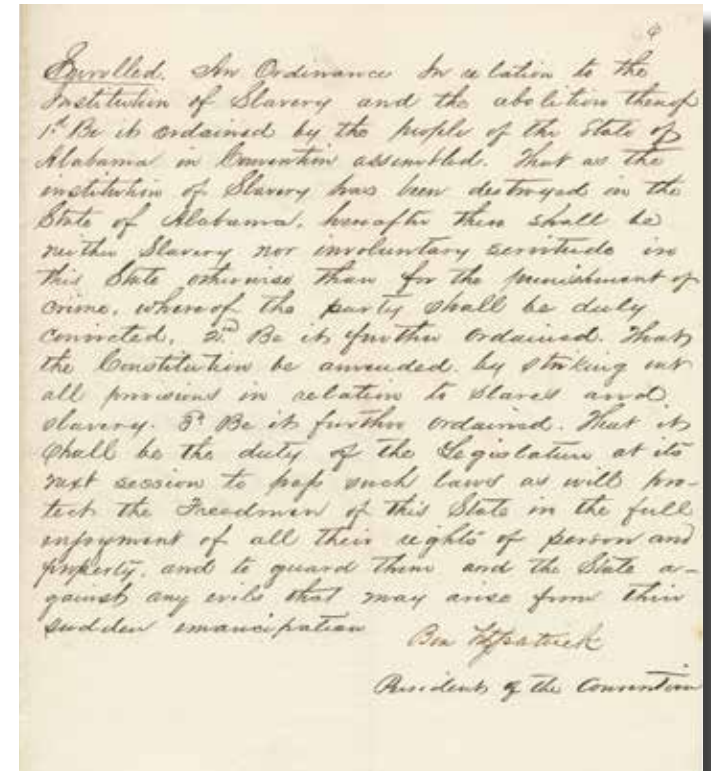
Another critical mandate from President Johnson was that Alabama invalidate its 1861 ordinance of secession. Several phrases were proposed for the language of the repeal: it was the "so-called ordinance of secession," it was "unconstitutional, null and void," or "unconstitutional, and therefore illegal and void." Much more than semantics was at play here, for the words carried great weight. Many still held that the right of secession was, in fact, constitutional. After all, the question had been settled by the sword, not the law, they claimed. (Not until the 1869 case *Texas v. White* did the Supreme Court rule secession unconstitutional.)¹⁷

A north Alabama delegate favored a repeal using the word “unauthorized,” feeling anything else was too weak and would invite reprisals from Congress. But, as historian Malcolm McMillan asserted, such language was too problematic for the members of the convention: “To declare the ordinance of secession unauthorized would mean that the convention of 1861 had usurped authority and that members of the convention and those who supported it were traitors.” The wording failed by a three-to-one margin, and the convention settled instead on a plain statement of fact, that the ordinance of secession was “null and void.” The simple repeal passed by a vote of ninety-two to zero.¹⁸

Debate over the language used in outlawing slavery was equally fraught. William Mudd of Jefferson County authored the draft of the measure, which declared that “the institution of slavery had been destroyed in the state of Alabama,” and it was thus “null and void.” Old guard Unionists at the convention favored language stating that slavery had been abolished by proclamation of President Lincoln. Still others favored striking the slavery provisions from the 1861 constitution and going no further. Both alternatives were defeated. Mobile County delegate C. C. Langdon argued forcefully in favor of Mudd’s language.

“The momentous events of the last four years will hardly be forgotten or overlooked,” he proclaimed, “and it will be recorded that the institution of slavery was destroyed by the power of the sword.... We have no choice in this matter. We must accept the terms of our conquerors. We are a conquered people.”¹⁹

The convention endorsed Mudd’s language by a wide margin with only three dissenting votes. The delegates did not, however, confer any other protections or legal rights to the newly emancipated. They left this work, instead, to a subsequent session of the state legislature, “to pass such laws as will protect the freedmen of this state in the full enjoyment of all their rights and property, and guard them and the state against any evils that may arise from their sudden emancipation.” The language hardly inspired the confidence of the editor of the *New York Tribune*, who asked, “Have our readers looked at the phraseology of the ordinance adopted in Alabama in reference to Slavery?” The language was perhaps too frank, he wrote: “It does not ‘gladly and willingly’ put an end to the institution...but says in so many words that since Slavery is dead, killed—‘destroyed’ by a higher and stronger power, and Alabama cannot help herself, she makes the best of a bad bargain, and proclaims emancipation under protest.”²⁰



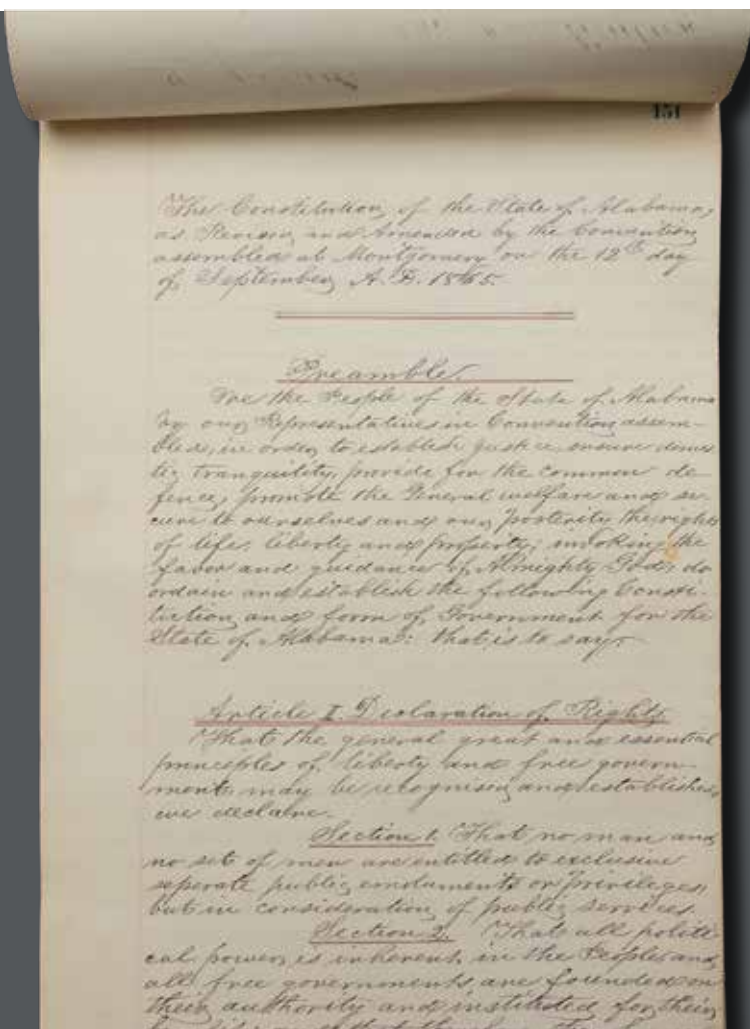
Ordinance passed by the constitutional convention abolishing slavery in Alabama

The convention voted unanimously to table a petition from black residents in Mobile seeking the right to vote. Fearful that language contained in the declaration of rights from Alabama's prewar constitutions might empower formerly enslaved persons, the delegates also struck the statement "that all freemen, when they form a social compact, are equal in rights." Some delegates tried unsuccessfully to remove the provision giving citizens the right to bear arms "in defense of himself and [the] state," fearing it might be used to provide weapons to freedmen. Another delegate attempted to introduce an amendment that would expel all free blacks who had entered the state since 1861.²¹

On the matter of apportionment, representatives from the Black Belt counties attempted to use emancipation to their political advantage. They advocated a full count of citizens, regardless of race,

THE 1865 CONSTITUTION

The 1865 constitution is written on thirty-four pages of paper using a variety of inks. The pages were torn from a ledger book and tightly resewn at the top margin. Although the edges are marbled, the size and format of the pages give the constitution the appearance of a modern-day legal pad. The document was not signed by the delegates. It bears only the signatures of convention president Benjamin Fitzpatrick and William H. Ogbourne, the secretary. Many of the important ordinances are not included in the original document itself, but rather on loose sheets of paper. Like the main body of the constitution, these ordinances bear only the signatures of the president and the secretary of the convention.



for the purpose of determining the number of seats in the legislature. "The representation upon a basis of white population was never just," argued the *Livingston Journal*. "We can see no justice or sense in a wealthy and productive county with a heavy mixed population having less...representation than a barren one, producing little revenue." The north Alabama delegates fought the maneuver vehemently. "The middle belt counties in the state with their [black] population will have a majority of representatives," the *Huntsville Advocate* complained. "Marengo [County], with her 1,000 white voters will have more power in our legislature than the counties of DeKalb, Marshall, and Blount with their white voting population of 4,500 voters. We ask you, will the free white voters of north Alabama and the wire-grass counties bordering on Florida submit to such a law?" Further, counting black residents on an equal basis as whites might be interpreted by a Radical-controlled Congress as a step toward extending the franchise, they argued. The Black Belt's effort to change the method of apportionment failed by a two-to-one margin.²²

Most of the remaining articles of the 1861 constitution were readopted. On the subject of putting the new governing document to a referendum of the people, the delegates were once more divided along geographical lines. North Alabama delegate Charles Christopher Sheats, who had also been a representative to the secession convention, favored submitting the document to voters, except for the portions relating to slavery. Opponents argued that there was no time for such a measure, that Alabama needed to return quickly to a position of good standing and move forward. Although Sheats's effort was defeated, the Winston Countian's attempt brought about an important concession. The delegates attached a proviso to the new constitution stating that no future convention could be called without a popular vote.²³

A New Apportionment.
Presuming that the Convention now in session at Montgomery will so amend the State Constitution as to recognize the abolition of slavery, and taking it for granted that an election will be ordered for State officers, Legislators, &c., we think that body should not adjourn without making a new apportionment for representation in the State Legislature. The representation upon a basis of white population never was just, and it would be clearly within the province of the Convention to alter it. The next Legislature will be a new one—a first Legislature under the new order of things—the creation of the Convention, and it would be just as proper to designate the number of members each county should send up, as to say that a Legislature should be chosen.
We can see no justice or sense in a wealthy and productive county, with a heavy mixed population having a less representation than a barren one, producing little revenue, and having few or no negroes, simply because of its unproductiveness. But if there was any reason heretofore why the slave population should not be considered, that reason does not exist now. In proportion to population and wealth, counties have interests that may be affected beneficially or injuriously by legislation, and in that proportion they should be represented. We hope the delegates from this county will not overlook this important matter.

Livingston Journal editorial in favor of changing the way the legislature was apportioned, September 16, 1865



Gov. Robert Patton with his wife, Jane, and their children Mattie and Andrew, ca. 1865

On September 30, having been in session only eighteen days, the convention adjourned. They did not, however, adjourn *sine die*, a Latin phrase meaning “without day.” Deliberative bodies which adjourn *sine die* do not assign another date to assemble again. Rather, the 1865 convention adjourned “at the call of the chair,” meaning Fitzpatrick could bring its members back into session at any time over the next year. This was done, presumably, to remove the need for a second convention should additional requirements be placed on them by Washington. Later that fall, Alabamians elected a new governor, Robert M. Patton, and congressional representatives.²⁴

The work of the delegates received the praise of President Johnson, who said the proceedings “met the highest expectations of all who desire the restoration of the Union.” Others were less conciliatory.

“The Alabama State Convention has adjourned,” observed the *New York Independent*. “Better for President Johnson’s plans had it never met!” Horace Greeley, the abolitionist and *Tribune* editor, found little comfort in the president’s praise for the reconstructed governments of the southern states, including Alabama. They intended to defy the national will, he said plainly: “They meant it in 1861 when they opened fire on Sumter. They meant it in 1865 when they sent a bullet through the brain of Abraham Lincoln. They mean it now. The moment we remove the iron hand from the Rebels’ throats they will rise and attempt mastery.” Nothing in the conventions of Mississippi or Alabama gave Greeley any confidence in Johnson’s Reconstruction plan. “The first fruits of reconstruction promise a more deplorable harvest,” Greeley wrote, “and the sooner we gather the tares, plow the ground again, and sow new seed, the better.”²⁵

Soon thereafter, the Republican-controlled Congress refused to seat newly elected members from the former Confederate states, including Alabama, setting up a confrontation with Johnson over control of Reconstruction. “To Congress alone belongs the power...of giving law to the vanquished,” asserted Thaddeus Stevens, a leader of the Radical Republicans. Alabama’s constitution of 1865, part of that “vast experiment in action, reaction, and inaction,” would soon be declared insufficient by Congress. And it would be left to a new and historically diverse group of delegates to sow new and different seeds.²⁶

NOTES

- 1 Bridges, *Alabama: The Making of an American State*, 107-111; G. Ward Hubbs, "Civil War in Alabama," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1429> (accessed April 26, 2019); Scotty E. Kirkland, "Mobile Bread Riot," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-3536> (accessed April 26, 2019); Sledge, *These Rugged Days*, 191.
- 2 "Confederate Military Deaths by State," <https://www.battlefields.org/learn/articles/civil-war-casualties> (Accessed June 11, 2019); Sledge, *These Rugged Days*, 206; Faye Acton Axford, ed. "To Lochaber Na Mair": *Southerners View the Civil War* (Athens: Athens Publishing Company, 1986), 158-159.
- 3 Rogers et al, *Alabama*, 229.
- 4 Rogers et al, *Alabama*, 229; Christopher L. McIlwain, *1865 Alabama: From Civil War to Uncivil Peace* (Tuscaloosa: University of Alabama Press, 2017), 152.
- 5 Rogers et al, *Alabama*, 227; Sledge, *These Rugged Days*, 207.
- 6 George Brown Tindall, *America: A Narrative History* (New York: W.W. Norton and Company, 2010), 707-708.
- 7 Rogers et al, *Alabama*, 230.
- 8 Rogers et al, *Alabama*, 225-226.
- 9 Rogers et al, *Alabama*, 230-231; Sarah Woolfolk Wiggins, "Lewis Eliphalet Parsons," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1169> (accessed April 26, 2019).
- 10 Rogers et al, *Alabama*, 230-231; Wiggins, "Lewis Eliphalet Parsons."
- 11 McMillan, *Constitutional Development in Alabama*, 71; *Clarke County Democrat*, August 3, 1865.
- 12 McMillan, *Constitutional Development in Alabama*, 90-91; Michael W. Fitzgerald, *Reconstruction in Alabama: From Civil War to Redemption in the Cotton South* (Baton Rouge: Louisiana State University Press, 2017), 70-71; *New York Times*, September 25, 1865.
- 13 McMillan, *Constitutional Development in Alabama*, 92.
- 14 Fitzgerald, *Reconstruction in Alabama*, 71; McIlwain, *1865 Alabama*, 181.
- 15 J. Mills Thornton, "Benjamin Fitzpatrick," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1404> (accessed April 26, 2019).
- 16 McMillan, *Constitutional Development in Alabama*, 94, 101; McIlwain, *1865 Alabama*, 180-181.
- 17 McMillan, *Constitutional Development in Alabama*, 98.
- 18 Ibid.
- 19 *Mobile Evening News*, October 9, 1865; McMillan, *Constitutional Development in Alabama*, 96.
- 20 McMillan, *Constitutional Development in Alabama*, 95-97; *New York Tribune*, September 26, 1865.
- 21 McIlwain, *1865 Alabama*, 183; McMillan, *Constitutional Development in Alabama*, 102-103; Fitzgerald, *Reconstruction in Alabama*, 74.
- 21 McMillan, *Constitutional Development in Alabama*, 104-105; *Livingston Journal*, September 16, 1865.
- 23 McMillan, *Constitutional Development in Alabama*, 107-108.
- 24 McIlwain, *1865 Alabama*, 183-184.
- 25 Fitzgerald, *Reconstruction in Alabama*, 74-75; McIlwain, *1865 Alabama*, 183-186.
- 26 Rogers et al, *Alabama*, 232-233.

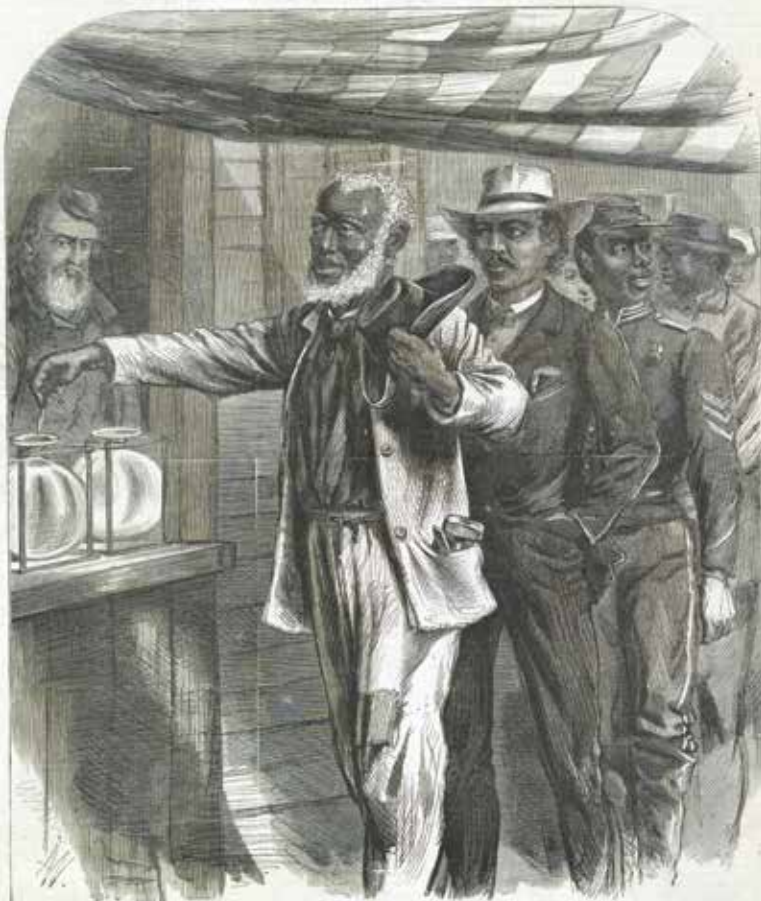
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"THE FIRST VOTE."—DRAWN BY A. R. WAUD.—[SEE PAGE FOUR.]

"The First Vote," drawn by A. R. Waud,
was first published in Harper's Weekly on
November 16, 1867.
Library of Congress

CHAPTER 4

1868

“THE DISCHARGE OF OUR NEW OBLIGATIONS”

Supporters of southern freedmen and Radical Republicans found Pres. Andrew Johnson’s plan to be frustratingly slow in pace and weak in effect. They felt little had changed. Former Confederates still held great power in the southern states. Millions of formerly enslaved African Americans remained in a type of economic and social bondage and enjoyed few of the protections promised to them by Emancipation.¹

Nothing that occurred in Alabama politics during the years of Presidential Reconstruction assuaged Republican concerns. The delegates to the 1865 convention had declined to confer many legal rights to the freedmen, leaving it to a subsequent meeting of the state legislature. In its first session thereafter, the legislature passed a bill requiring freedmen to accept the labor contracts offered to them by white landowners without exception. Gen. Wager Swayne, head of the Freedmen’s Bureau in Alabama, called the bill “a rival of slavery,” and Gov. Robert M. Patton refused to sign it. During its 1866-67 session, the legislature failed three times to ratify the Fourteenth Amendment and also adopted a series of punitive measures aimed at restricting the freedoms of black Alabamians. Most notably, they broadened the definition of the crime of vagrancy (a method of discouraging political activism) and instituted a hefty fifty-dollar fine.²

The 1866 midterm elections gave Republicans in Congress a numerical advantage against President Johnson. A new phase of Reconstruction began. On March 2, 1867, Congress passed the first of a series of acts creating more stringent requirements for the South. It divided the former Confederate states into five military districts. Alabama, Florida, and Georgia comprised the Third Military District, under the control of Gen. John Pope. The new act required each state to hold a constitutional convention, to ratify the Fourteenth Amendment, and to confer full political rights on freedmen. Preceding a statewide referendum on holding the convention and simultaneously electing delegates, all qualified males, black and white, were to register to vote.³



A carpetbag of the type used by northern Republicans who traveled to the South seeking opportunity during Reconstruction



Brig. Gen. John Pope
Library of Congress

Pope divided Alabama into forty-four voting districts. Each district would have three registrars, one of whom was required to be black. These men, once appointed, would become the first African American officials in Alabama. During the late spring and early summer of 1867, against a backdrop of increasing and often violent white reprisals, 88,243 black men registered to vote in Alabama, outpacing the number of white registrants (many of whom were boycotting the entire affair) by more than 15,000. By the time of the referendum in October, the number of registered voters was 104,518 blacks and 61,295 whites.

Throughout the state, African Americans met together and expressed their desire to participate in Reconstruction. Blacks in Mobile organized a meeting to discuss the ramifications of the new Reconstruction Acts and form a political society. Speakers included

a prominent A.M.E. minister, an editor of the city's Republican-leaning newspaper, the *Nationalist*, and two white northern lawyers. The *Nationalist* reported the group soon had twenty-five hundred members on its rolls. "This would have been over half the adult male black population," historian Michael Fitzgerald observed, "which clearly meant political agitation touched a wide portion of the community." Similar meetings occurred in Montgomery, Wetumpka, Tuskegee, and Decatur.⁴ At a subsequent event near Mobile, an estimated five thousand gathered for a rally that the *Nationalist* called "one of the largest

RETURN OF REGISTERED VOTERS IN BULLOCK COUNTY, ALABAMA, FOR THE YEAR 1867					
NAME	AGE	SEX	COLOR	REGISTERED	REMARKS
Allen J. G.	45	M	White	1867	
Baker J.	42	M	Black	1867	
Carter J.	40	M	White	1867	
Davis J.	38	M	Black	1867	
Evans J.	35	M	White	1867	
Foster J.	32	M	Black	1867	
Gibson J.	30	M	White	1867	
Harris J.	28	M	Black	1867	
Johnson J.	25	M	White	1867	
King J.	22	M	Black	1867	
Lee J.	20	M	White	1867	
Miller J.	18	M	Black	1867	
Moore J.	16	M	White	1867	
Nelson J.	14	M	Black	1867	
Phillips J.	12	M	White	1867	
Reed J.	10	M	Black	1867	
Stewart J.	8	M	White	1867	
Taylor J.	6	M	Black	1867	
White J.	4	M	White	1867	
Young J.	2	M	Black	1867	

Bullock County voter registration book, 1867. This and other registration rolls created in 1867 were among the first records to show black Alabamians on an equal footing with whites.

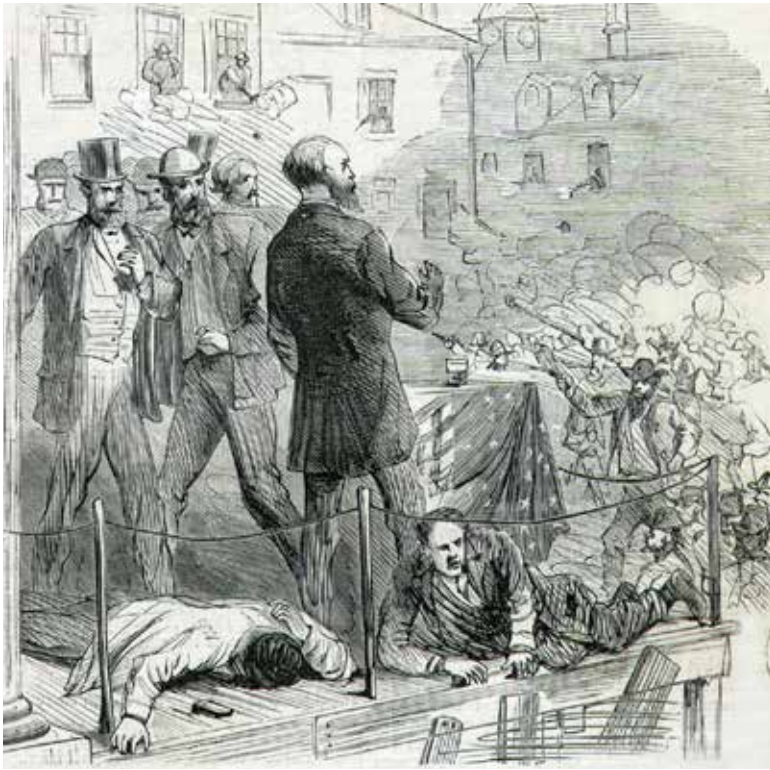
and most successful political gatherings ever held in Alabama.” Local minister Lawrence Berry was among those who addressed the crowd: “We are here tonight to tell the world that after being enfranchised, we are wise enough to know our rights and we are going to claim those rights.” Another speaker asserted that freedmen could be “good friends” with the white conservative politicians who had previously held power in the state, “but they have no right to control our political future.”⁵

In late April, 150 freedmen gathered in the chapel of the Florence A.M.E. Church to choose a nominee for appointment as the forty-third district’s African American registrar. James T. Rapier addressed the crowd, telling them about the new Reconstruction Acts which had made their gathering possible. The person they chose would become the first African American official in the county’s history. In their “first act of participation in the politics of the State,” they should “proceed in their deliberations with calmness, moderation, and intelligence.”⁶

The group unanimously nominated Rapier’s fifty-nine-year-old father as registrar. Born into slavery, John H. Rapier arrived in the region in 1819, the year Alabama became a state. A decade later, he was emancipated and became a prosperous barber. The assembly of freedmen also passed a resolution expressing support of the Republican Party “for its steadfast adherence to the cause of Equal Rights, and for the liberties which we now enjoy.” Further, the resolution expressed the sentiments held by the freedmen of north Alabama in an auspicious era: “We will endeavor to bring to the consideration of our new duties, a solemn sense of the great responsibilities now resting upon us as enfranchised citizens, and that, entertaining kindly feelings toward all men, regardless of antecedents, we will enter upon the discharge of our new obligations, with a sincere desire to promote peace, harmony, and union.”⁷



*Sketch of “a meeting of the colored citizens of Florence and vicinity”
by artist Caleb O’Connor for
Alabama Bicentennial Park, 2019*



A deadly riot breaks out as Republican congressman William D. Kelley addresses a crowd in Mobile on May 14, 1867. This illustration appeared in Harper's Weekly on June 1, 1867. Library of Congress

Violence and acts of intimidation peppered a season of rising black political activism throughout Alabama. Shots rang out during an address in Mobile by Congressman William D. Kelley of Pennsylvania. In the ensuing riot, scores were injured and two men, one white and one black, were killed. In Greensboro, a white shopkeeper shot and killed Alexander Webb, the county's newly appointed African American registrar. An official in Chambers County reported that he knew of no specific acts of violence but was convinced "that parties have thrown every obstacle [sic] in the way that they could without making themselves liable to arrest by the military authorities." William Hurter, a white registrar from Mobile, informed federal officials, "We have registered all who have come forward without any delay.... I intend to do my duty without fear or favor & do no man any injustice."⁸

General Pope set October 1-5, 1867, as the dates for the referendum. For the first time, black Alabamians statewide went to the polls to vote. Of nearly 96,000 votes cast, the overwhelming majority, 71,730, were by black men, and nearly all of those votes were in favor of the constitutional

convention. The *Republican State Sentinel* in Montgomery heralded "A Glorious Victory." In Mobile, only three dissenting votes were recorded, and the delegates selected were, according to the *Nationalist*, "true Union men." Although some incidents of violence occurred during the election, as in Calhoun County, where whites dispersed a black political rally, the campaign concluded in relative peace. A Republican newspaper in Tuscaloosa pronounced it "the most orderly and quiet ever held" in the city.⁹

Almost 70,000 registered voters—roughly 33,000 blacks and 37,000 whites—did not cast a ballot. In the case of the former, General Swayne reported that "the power of intimidation has been very great" in reducing black turnout. As to the latter, many white Alabamians had determined to boycott the process altogether, seeing no possible outcome in which they would be fairly treated. The editor of a

Greene County newspaper wrote that the entire Reconstruction process would only serve to “destroy the white man’s government which our fathers formed... [and] to erect upon its ruin a mongrel, cross-breed government, a mulatto government, half white and black, a monster which nothing but the heats of fanaticism and the lusts of ambition could have engendered, to curse the world...with its monstrous deformities.” Others, perhaps dizzied by the pace of change, chose to focus on more tangible concerns. “I find a good many of the whites are not fully aroused to the necessities [sic] of the occasion,” one observer declared, and were “much more eager and intent in saving their cotton than their county and state.”¹⁰



*Ballot box used in Precinct 6,
Perote, Bullock County*

THE FRAMERS

The ninety-nine delegates elected in October assembled in Montgomery to begin deliberations on November 5, 1867. As a group, they were the most racially and professionally diverse constitutional convention in Alabama history. Eighteen of them were African American. Only twelve of the delegates were lawyers by profession. There were ten or more ministers, including two of the black delegates, along with newspapermen, farmers, teachers, and merchants. Ten delegates were also Freedmen’s Bureau officials. All but two delegates identified as members of the Republican Party. “The large body of the convention is composed of new men,” the *Selma Times* wrote, “men who heretofore have taken but little, if any, part in political matters.” The editor observed both “good men and demagogues” therein.¹¹

Two dozen of the delegates had arrived in Alabama after the end of the war. They were, in the parlance of the day, “carpetbaggers,” a derogatory descriptor given to northern men who came to the war-torn South in search of political and economic opportunity. These included Ohio native Albert Griffin, editor of Mobile’s *Nationalist*, and Pennsylvania’s John C. Keffer, who served as chairman of the nascent Alabama Republican Party. Although he lived for a time in Alabama before the war, New York native Daniel H.



Thomas Minott Peters,
Lawrence County delegate
Alabama Supreme Court and
State Law Library



George Parrish Plowman,
Talladega County delegate

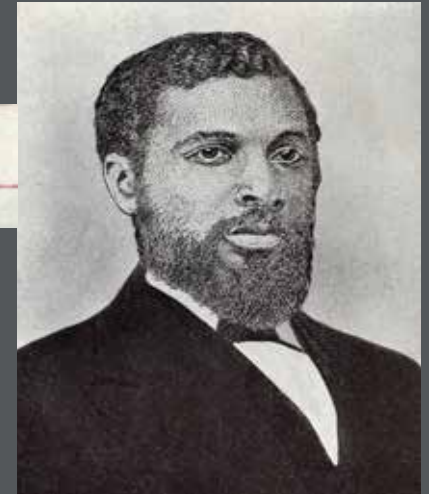
Bingham was considered a carpetbagger as well. Driven out of the state because of his Unionist views, Bingham returned after the war and was elected as a delegate from Limestone County. He was one of the oldest men at the convention and died before the ratification vote. Bingham was a personal friend of Thaddeus Stevens, a leading Radical Republican congressman. “The intensity of his radicalism is entirely coordinate with his lengthened life span,” a *New York World* correspondent observed of the colorful and controversial Bingham. Balding with a long beard, Bingham had a decades-old mouth injury that reduced his speech to a near-imperceptible whisper. This fact in no way blunted the forcefulness of his rhetoric. He frequently referred to southerners as “merciless wretches” and “hellhounds of secession.”¹²

Most of the white convention delegates, however, were southerners or native Alabamians. “We are loath to believe that they will be willing to impose any disability upon their fellow citizens,” the editor of the *Selma Times* wrote. Southern Republicans who failed to live up to the expectations of their fellow citizens were often called “scalawags,” a reference to an animal or person of no real worth. A typical description of the era noted that a scalawag was “the local leper of the community.... Once he was respected in his circle; his head was level, and he could look his neighbor in the face. Now, possessed with the itch of office...he is a mangy dog, slinking through the alleys.... He waiteth for the troubling of the political waters, to the end that he may step in and be healed of his itch by the ointment of office.” The “scalawags” of the convention included Selma mayor Benjamin F. Saffold, whose father, Reuben, had been a delegate to Alabama’s 1819 convention, and Elisha Wolsey Peck, a native New Yorker but longtime resident of Alabama. A lawyer and judge, Peck had lived in Jefferson and Tuscaloosa counties and amassed a personal wealth of over \$100,000. On the eve of the Civil War, his household included nineteen enslaved persons. Peck was elected to the 1865 convention but did not serve because of poor health. He was determined to play a role in the 1867 convention and emerged as the “compromise candidate” for president of the body. In addition to his wide acclaim as a legal scholar, Peck was seen as a loyal Unionist who had “denounced secession at the first, in the middle, and at the end.”¹³

Of the eighteen African American delegates, only five had known freedom before the Civil War. Florence’s James T. Rapier and Mobile’s Ovid Gregory were born free. Educated and well-traveled,

Gregory was fluent in Spanish and French and owned a successful business in the port city. Three of the delegates—John Carraway of Mobile, Lafayette Robinson of Huntsville, and J. Wright McLeod of Marengo County—were born in bondage but attained freedom prior to the war. Carraway was an assistant editor of Mobile's *Nationalist*. Robinson had been freed along with his mother and sister by a petition of his mulatto father to the Alabama legislature in 1830, a rare occurrence.¹⁴

Peck appointed African American delegates to thirteen of the convention's sixteen committees. Although none were made chairmen, their presence on the committees was important to Peck. "Delegates had been elected by black votes," the *New York Herald* correspondent observed. "It was felt proper that some concessions should be made to the all powerful race." Peck further appointed a number of African Americans to the positions of assistant secretaries, messengers, pages, and doorkeepers, thus ensuring that black Alabamians would be a constant presence in the convention hall. Historian Paul M. Pruitt Jr. wrote that Peck was "well aware that this convention represented an historic moment for groups that had been ignored, oppressed, or silenced."¹⁵

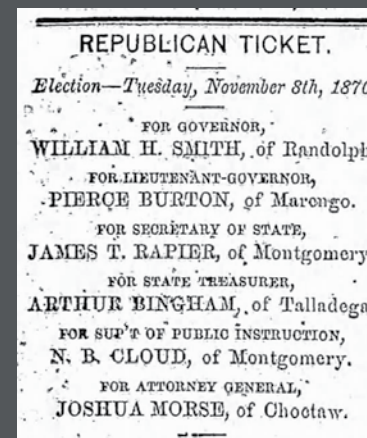


JAMES T. RAPIER LAUDERDALE COUNTY DELEGATE

James T. Rapier was born in Florence, Alabama, in 1837. His father was an emancipated slave, and his mother was a free woman from Baltimore. After his mother died in childbirth in 1841, Rapier lived with relatives in Tennessee and then Ontario, Canada, where he studied Greek, Latin, and mathematics and earned a teaching degree. He returned to Tennessee in 1864 and became a successful cotton planter.

Rapier relocated to Florence in 1866 to care for his aging father and soon became involved in Alabama politics. He was vice chairman of the Alabama Republican Party, a delegate to the constitutional convention, and chairman of the Alabama branch of the National Negro Labor Union. In 1870, Rapier became the first African American to be nominated as Alabama's secretary of state. He lost the election but remained active in politics. In 1872 he defeated William C. Oates, a former

Confederate general and future governor, for a seat in the U.S. Congress. In Washington, he championed a bill making Montgomery a federal customs collection site, which contributed greatly to the city's growth. Rapier served one term and then relocated to Lowndes County in an unsuccessful attempt to run for a congressional seat in a redrawn district. Having expended his wealth on furthering the cause of African American education and opportunity, Rapier died in poverty in 1883.¹⁶



Southern Republican, December 10, 1870

THE DEBATE

The delegates began their work on November 5, 1867, amidst nationwide interest in the kind of Alabama they might produce. Alabama would be the first state to hold a new convention under Congressional Reconstruction. Questions abounded. Would the carpetbagger radicals win the day and refashion Alabama after the northern states? Would black Alabamians be extended their full freedoms? What kind of voice would the former Confederates be allowed to have in state government? These were all unanswered questions as the convention began debate. “What strange things do happen in this world of ours,” Dallas County resident Sally Randle Perry wrote in her diary. “Today in Ala[bama]—a slave state—a convention is being held in Montgomery—a motley crew (negroes and whites) elected by the negroes and renegades—What a mockery! What humiliation for a proud people.” The coming year “looms up darkly,” she predicted.¹⁷

An 1867 photograph from Court Square, looking up Market Street (now Dexter Avenue) toward the Capitol, where the delegates met to write the new constitution.

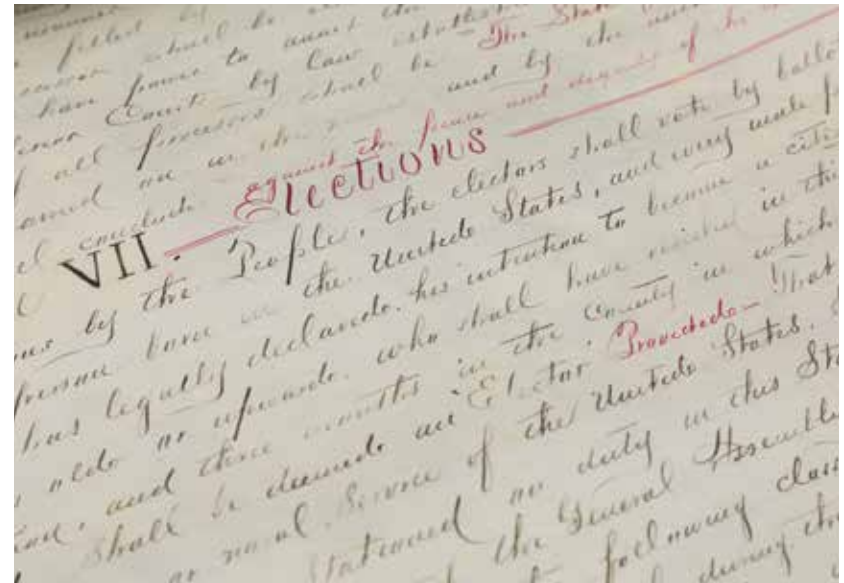


The most important question before the delegates was suffrage. Congress had mandated the extension of the franchise to African Americans, so there was little to debate on that point. In fact, only one delegate, James Hurt Howard of Crenshaw County, gave a speech opposing black suffrage. The matter at hand was how many former Confederates would be allowed to vote or hold office under the new constitution. Ohio native Albert Griffin chaired the suffrage committee, which included three northerners, three southern white men, and one African American delegate, Thomas Lee of Perry County. The committee produced majority and minority reports and submitted both to the convention for debate. The majority report recommended wide-ranging limitations on former Confederate officers and officials, the disfranchisement of any registered voter who

did not vote to ratify the new constitution, and a requirement to sign an oath declaring, in part, “If I have ever believed in the right of the State to secede, I hereby abandon it.... I accept the civil and political equality of all men.”¹⁸

The signers of the committee’s minority report felt this was too radical and called on the convention to “act with moderation, discretion, wisdom, justice, and with charity to all and malice toward none.” They advocated extending the franchise to “all men of every race and color” who pledged their allegiance to the state and nation. Thomas Lee argued passionately for the measure. “I have no desire to take away any rights of the white man,” he stated. “All I want is equal rights in the courthouse and equal rights when I go to vote. I think the time has come when charity and moderation should characterize the actions of all.”¹⁹

The convention held a protracted debate on both reports. Albert Griffin stated that unless they forbade all Confederate soldiers and officials from voting or holding office, they would quickly return to power and “drive out every Union man in the State and deprive the Negro of the elective franchise.” Daniel Bingham concurred, allowing he might be persuaded at some point in the future “to give the rebels a back seat [in government], but it should be a long way back and a long time hence.” Convention president Peck supported the notion, too, saying, “The great object which ought to govern the convention is to keep the State out of the control of disloyal men.” James Rapier found neither option satisfactory. The majority report was too harsh, he stated. And the minority report did not meet the requirements put forth by Congress. He proposed male suffrage for all but those disfranchised by previous acts of Congress, which meant former Confederates convicted of violating the “rules of civilized warfare” and those public officials convicted of certain crimes since the end of the war.²⁰



Detail of Article VII, Elections, Alabama constitution of 1868



Alabama State Capitol, ca. 1867

The delegates were not ready to compromise, however. They rejected Rapier's proposal and the committee's minority report. Seven substitute bills and more than forty amendments were ultimately offered up on the matter of suffrage, exposing tensions within the state's young Republican party. "The Alabama Reconstruction Convention seems to swing like a pendulum betwixt radicalism and moderation," the *New York Times* observed. "The question of the suffrage may end in the disruption of the lately organized Republican party in this state," the *New York Herald* predicted. "The moderate men who have joined the party simply because they saw no other means of getting the state back in the union will not accept Negro suffrage unless the project of white disfranchisement be abandoned."²¹

In the end, the delegates adopted a suffrage clause that closely resembled the initial majority report. It extended the franchise to all males aged twenty-one and older who had lived in the state for a period of six months for statewide elections and three months for local elections. It excluded from registering, voting, or holding office any individuals accused of acts of cruelty during the war, those disfranchised by previous acts of Congress or the Fourteenth Amendment, and those found guilty of certain crimes, such as treason, embezzlement of public funds, or malfeasance while in office. Many Alabamians were opposed to the restrictions. As one disgruntled observer noted, "The ante-bellum office-holder, however much he preferred the Union, and hated secession, found in almost every case, that in the opinion of the Government, he was no less a rebel than Yancey."²²



Henry C. Semple,
Montgomery County delegate

Beyond the suffrage debate, the delegates moved quickly through the rest of their work. For the first time, the framers of an Alabama governing document adopted verbatim the language of the U.S. Constitution, declaring that "all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness." Since the Fourteenth Amendment had not yet been ratified by enough states to become law, the delegates also defined state citizenship so that it was certain to include black Alabamians. To the section outlawing slavery, Daniel Bingham attempted to add a proviso forbidding any form of "peonage or contract labor of any form for longer than one year." The effort was defeated by ten votes.²³

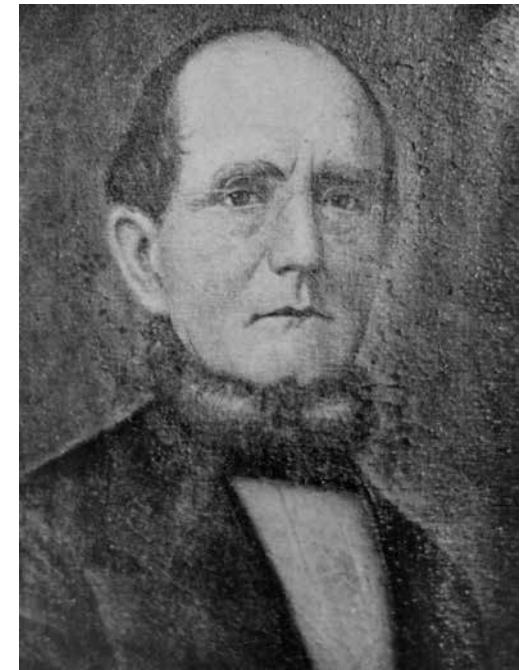
Attempts to guarantee African Americans equal access to public places and transportation widened the rift among Republican delegates. James Rapier offered a new constitutional article

ensuring equal access to public conveyances, known as “common carriers,” and was joined in the effort by John Keffer. Scalawag delegate Henry C. Semple made an alternative proposal: “Equality of civil rights is not evaded by the adoption of such reasonable regulations by the proprietors of hotels, steamboats, railroads, and places of public amusement as may be necessary to furnish separate accommodations to the two races which inhabit our country, so long as such separation shall be demanded by the sentiment of the white race.” Semple’s language infuriated Rapier and other African American delegates. Unlike the debate over suffrage, the segregation issue drew little response from the more liberal white delegates. The *Selma Daily Messenger* reported that they “did not press the matter because it was about to break up the convention.” The second section of the declaration of rights, which declared all men equal and “possessing equal civil and political rights and public privileges,” was sufficient, they argued. The Rapier and Keffer effort failed.²⁴

Full and equitable apportionment based on the “whole number of inhabitants,” the issue of such great debate in previous constitutional conventions, was a foregone conclusion. “North Alabama scalawag delegates gracefully accepted the new basis,” historian Malcolm McMillan wrote, “knowing full well that it was an inevitable result of the abolition of slavery and the extension of the franchise” to African Americans. Delegates removed the previous constitution’s prohibition of interracial marriage but only after lengthy debate.²⁵

Few changes were made from the 1865 constitution regarding the powers of the governor, other than limiting his ability to pardon former rebels without the consent of the legislature. The new constitution did, for the first time, make provision for an office of lieutenant governor. First in the line of succession, the lieutenant governor would also preside over the Senate, casting a vote only in the instance of a tie. Many delegates felt the position useless and wasteful. It passed by just a two-vote margin.²⁶

The new constitution’s robust section on education was championed by Gustavus Horton, a delegate from Mobile who previously helped organize the city’s school system. “The article was the result of a sincere attempt to give the state a good public school system,” McMillan wrote. Under the new constitution, an elected Board of Education guided all aspects of Alabama’s public schools. The state superintendent was made an elected constitutional officer and president of the Board of Education.



*Gustavus Horton,
Mobile County delegate*



Noah B. Cloud

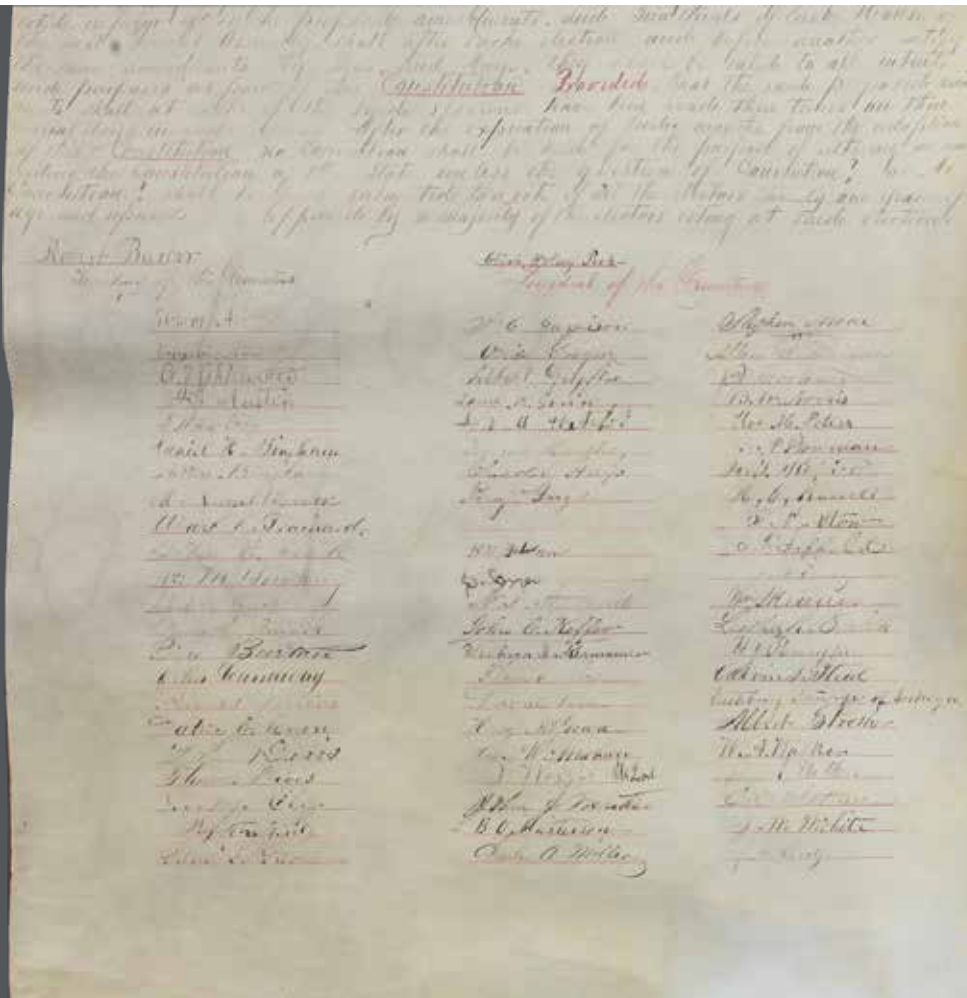
Twenty percent of the state's annual revenue was earmarked for education. Few of the delegates were advocates for mixed-race schools, but they feared that requiring school segregation in the document would violate federal law.²⁷

Delegates created a new Bureau of Industrial Resources charged with encouraging immigration and economic investment. The bureau would prepare reports on the geological and agricultural resources available in the state and disseminate the information to other states and foreign countries. *Sentinel* editor John Hardy championed the move, as did Noah B. Cloud, a Macon County agricultural reformer. Cloud would serve as one of the new department's first commissioners. In a nonpartisan vote, the delegates extended certain property rights to women. They also forbade men to sell their homesteads without the consent of their wives.²⁸

After twenty-eight days in session, the delegates held a vote on the entire constitution on December 6, 1867. Twenty-four boycotted the vote, a reflection of the growing tensions within the Republican party over suffrage and related issues. Democrat James Hurt Howard of Crenshaw County issued a lengthy statement opposing the convention as "unjust, selfish, vindictive, proscriptive and subversive of the best interest of the State." He believed that if the voters of Alabama ratified the constitution they would "bring about a war of races." Most of the boycotting delegates did not harbor such vehement objections. But they were frustrated nonetheless with the restrictions on suffrage for former Confederates. "The moderate men of the convention have lost all heart," one observer wrote to Governor Patton a few weeks after the convention began, "and are now indifferent to what is going on." Most of those who boycotted the vote were scalawag delegates from north Alabama. Nine other members, including carpetbaggers, scalawags, and one African American delegate, cast their votes against the constitution.²⁹

RATIFICATION

Alabamians debated the merits of the proposed constitution for two months. During that time, the “protesting delegates,” those who voted against it, allied themselves with members of the old Democratic party and members of the press to defeat ratification. They opposed the constitution because they believed it was too punitive toward former Confederates and gave too much power to black Alabamians. They were confident in the coalition they had built upon these collective frustrations. “We are beginning to stand as a Unit,” a newspaper editor wrote to Pres. Andrew Johnson in late December. “We do not think there can be more than 2500 white men in the State who are with the Negroes.”³⁰



THE 1868 CONSTITUTION

The 1868 constitution is written in iron gall ink and red manuscript ink on twenty-one sheets of parchment of varying lengths, all approximately eighteen inches wide. The sheets are glued together to form a scroll. Unrolled, the document is nearly thirty-four feet in length. The diameter of the full scroll is approximately four inches. The headers of the preamble and the various section titles are all written in red manuscript ink. The oath of office for all constitutional officers is written entirely in red ink as well.

The signature page is divided into three columns beneath the signatures of Robert Barbour, convention secretary, and Elisha Wolsey Peck, president. The 1868 constitution is the only Alabama constitution to bear the signatures of African American delegates. To highlight this significance, the signature page was displayed during the *We the People* exhibition.



John Tyler Morgan

The group of former Alabama officials who opposed the new constitution was large, indeed. All told, eighty-two prominent figures in the state, among them governors, congressmen, senators, and judges, signed a widely circulated petition against ratification. It included Mobile newspaper editor and mayor John Forsyth, politicians John Tyler Morgan, Jabez L. M. Curry, and Alexander White, industrialist Daniel Pratt, and former governors Lewis E. Parsons and Benjamin Fitzpatrick. “I can scarcely conceive of a greater calamity to our people than the adoption of this constitution,” Fitzpatrick stated, pointing out that he, too, would be disfranchised under the new governing document.³¹

While these former officials focused on the implications of the document for themselves, members of the press preferred largely to target the qualifications of the framers of the new constitution. “The convention of today is composed of men utterly unlettered,... demagogues in search of place and power,” read one *Montgomery Advertiser* editorial. The *Montgomery Daily Mail* suggested that the constitution’s education articles would make Alabama’s schools “nurseries of...social equality, or the monopoly of the negroes.” Opponents of the constitution also benefited from a series of referendum votes in Indiana, Connecticut, Wisconsin, and Ohio refusing to grant African Americans full voting rights. “A just and generous spirit may revolt at the idea of forcing the South to accept a large mass [of black voters] which the North rejects in minimum quantities,” asserted Richard Wilde Walker, a former Confederate senator.³²

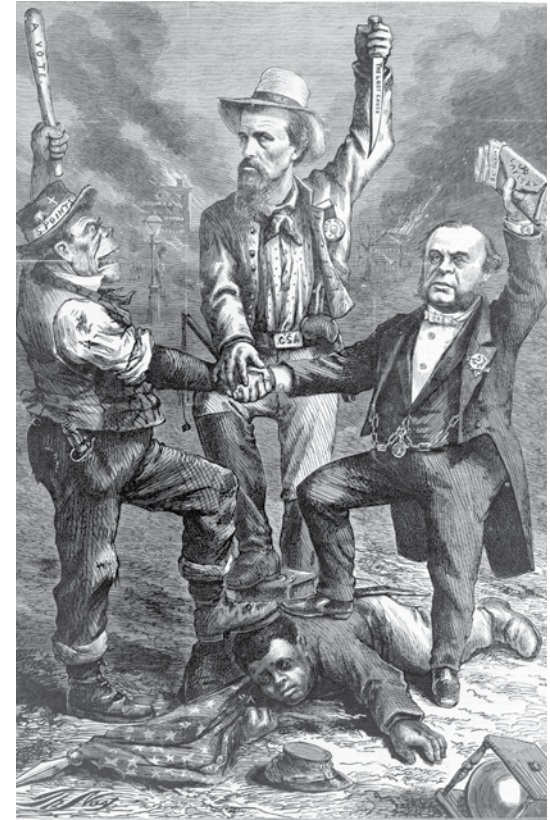
Supporters of the new constitution appealed foremost to the state’s newly enfranchised African American voters under a slogan stating, “Adopt the constitution and protect the rights of the colored men.” Delegate Albert Griffin declared that the constitution was the beginning of a new period in the lives of black Alabamians: “All avocations, honors, and emoluments will be open to him. The State and community will assist him to rise, instead of striving to keep him in degradation. Officers of the law will protect instead of oppressing him in all his various interests, and if he does not rapidly improve in social and political wellbeing it will be his own fault.”³³



Montgomery Advertiser office, Commerce Street, ca. 1870

In appealing to white voters, supporters argued that black suffrage did not mean black supremacy. “The idea that four million colored people, without wealth or education, can become supreme over thirty million whites, with all the wealth, refinement and education of the 19th century is an absurdity,” Mobile’s John Carraway asserted. Albert Griffin, in an address printed in several Republican newspapers, made a similar argument: “Some men talk as though they believed that the proposed constitution would, if adopted, establish social equality, whatever that is. Upon this subject I have only to say, read the constitution for yourself, and if you can find it there you have keener eyes than mine.”³⁴

Throughout the debate over ratification, opponents claimed that the most certain way to defeat the constitution was by a boycott of the vote. Under the stipulations of the Reconstruction Acts passed by Congress, a majority of registered voters (not merely those who voted in the actual referendum) had to support ratification for it to take effect. By February 1868, there were roughly 170,000 registered voters in the state—75,000 white and 95,000 African American. The required threshold for ratification of the constitution, then, was around 85,000 votes in favor.³⁵



“This is a White Man’s Government,”
 Thomas Nast, Harper’s Weekly,
 September 5, 1868
 Library of Congress

Vote for the Constitution!
 Do you want Alabama again in the Union? Vote for the Constitution!
 Do you want a loyal, good government, to protect life, liberty and property?—Vote for the Constitution!
 Do you want the return of peace, order and prosperity? Vote for the Constitution!
 Do you want employment and good wages? Vote for the Constitution!
 Do you want the railroads built and manufactories erected? Vote for the Constitution!
 Do you want your children educated? Vote for the Constitution!
 Do you want time on your old ante-war and war debts? Vote for the Constitution!
 Do you want the speedy development of all the resources of the State? Vote for the Constitution!
 Do you want capital to come into the State and money in freer circulation?—Vote for the Constitution!

Alabamians went to the polls in early February 1868. Voting was extended to a five-day period due to severe weather and took place in an atmosphere of widespread intimidation of African American voters and their white supporters. Only 72,000 voters went to the polls. Although the overwhelming majority, 70,812, voted in favor of the new document, the number was far below the percentage of registered voters needed to meet Congress’ requirements. On the first occasion in the state’s history that a document establishing the framework for governing was placed before the people for a vote, ratification failed.³⁶

Editorial in support of the proposed constitution, Daily State Sentinel, Montgomery, January 30, 1868. The newspaper was published by John Hardy, an influential Republican in Alabama’s capital city.



“Alabama a la Stevens” is an uncredited political cartoon that characterizes how Congressional Reconstruction was received by former Confederates and their sympathizers. In their view, the extension of voting and civil rights to thousands of African Americans, combined with the denial of suffrage to former Confederates and the requirements for a new constitutional convention, had turned Alabama upside down. Chief among the men responsible for the turn of events, they felt, was Congressman Thaddeus Stevens of Pennsylvania. Fine Arts Museums of San Francisco

Indicative of the confusing state of affairs, newspapers on both sides of the debate claimed victory. The *Montgomery Mail* confidently printed an obituary for “Radicalism in Alabama, who died in attempting to give birth to a bogus constitution after a painful illness of five days.” The Republican *Nationalist* stated flatly, “What will Congress do? We answer, unhesitantly, it will accept our constitution and admit the state. It cannot do otherwise without vastly betraying those who have put their trust in it.”³⁷

In early March, days after the U.S. House of Representatives presented articles of impeachment against Pres. Andrew Johnson, Congress passed the fourth of its Reconstruction Acts. It stipulated that new state constitutions could be ratified “by a majority of votes actually cast.” In June, Congress passed an omnibus bill by Thaddeus Stevens to readmit Georgia, Louisiana, the Carolinas, and Alabama. President Johnson, acquitted by the U.S. Senate in his impeachment trial, vetoed it, citing the election in Alabama as proof that the Radicals in Congress were “forcing upon that state a constitution which was rejected by the people.” Congress overrode Johnson’s veto, clearing Alabama’s return to the Union. In late July, the state legislature sent to Washington a congressional delegation that contained no native southerners.³⁸

In Alabama, Congressional Reconstruction moved political power into new hands. In the 1868 constitution, the framers fashioned the most liberal governing document in Alabama’s history. Many of the state’s defeated white elites viewed the new constitution, and the radicals who had imposed it upon the state, with great and lasting enmity. “I do not think that all the incidents of the war produced as bad an effect upon the minds of the people as the imposition by Congress of this constitution upon the people,” one politician observed. Yet tens of thousands of Alabamians had voted for the new constitution and were, for the first time, full beneficiaries of the principles laid out in its preamble. “The process of Reconstruction involved nothing less than the monumental effort to create a biracial democracy out of the wreckage of the rebellion,” historian Henry Louis Gates Jr. wrote. For a moment in Alabama, this new order of democracy held.³⁹

At right, the Alabama Senate, including five African American members, on the front steps of the Capitol, 1872

“We declare that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.”

ALABAMA CONSTITUTION OF 1868



The State
instituted by the Convention as
the Fifth day of November 1868
Alabama by our Representatives in Convention as
tranquillity. provide for the common defence
and to our posterity. The rights of life
of our Government. God do ordain and
I do solemnly swear. The State of Alabama
- We declare (Section) First
and contain inalienable
rights - Sections Second
- We declare (Section) First
and contain inalienable
rights - Sections Second

Detail of the Alabama
constitution of 1868

NOTES

- 1 Rogers et al, *Alabama*, 233.
- 2 Rogers et al, *Alabama*, 238-239; J. Mills Thornton, III, *Archipelagoes of My South* (Tuscaloosa: University of Alabama Press, 2016), 83-87.
- 3 Rogers et al, *Alabama*, 242-243; Scotty E. Kirkland, "'The Discharge of Our New Obligations': Documenting African American Voter Registration in Alabama," *Alabama Heritage* No. 126 (Fall 2017): 58-59.
- 4 Kirkland, "'The Discharge of Our New Obligations,'" 58-59; Loren Schwener, "Alabama Blacks and the Congressional Reconstruction Acts of 1867," *Alabama Review* 31 no. 3 (July 1978): 185-186; Michael W. Fitzgerald, *Urban Emancipation: Popular Politics in Reconstruction Mobile, 1860-1890* (Baton Rouge: Louisiana State University Press, 2002), 86-87.
- 5 Schwener, "Alabama Blacks and the Congressional Reconstruction Acts of 1867," 187-188.
- 6 Schwener, "Alabama Blacks and the Congressional Reconstruction Acts of 1867," 182-198.
- 7 "Proceedings and resolution from a meeting of the 'colored citizens of Florence and vicinity.'" U.S. District of Alabama, administrative files, box 1, folder 10. ADAH.
- 8 Rogers et al, *Alabama*, 242-243; R. T. Smith to O. D. Kinsman, July 13, 1867. William Hurter to William Hugh Smith, June 22, 1867, U.S. District of Alabama, administrative files, box 1, folder 10, ADAH.
- 9 Fitzgerald, *Reconstruction in Alabama*, 150-155; Schwener, "Alabama Blacks and the Congressional Reconstruction Acts of 1867," 196-197.
- 10 Fitzgerald, *Reconstruction in Alabama*, 150-155; "Polemic Statement Opposing Reconstruction in Alabama," Richard C. Ramsey Papers, ADAH.
- 11 McMillan, *Constitutional Development in Alabama*, 114.
- 12 McMillan, *Constitutional Development in Alabama*, 119-120.
- 13 McMillan, *Constitutional Development in Alabama*, 114, 123; Sarah Woolfolk Wiggins, *The Scalawag in Alabama Politics, 1865-1881* (Tuscaloosa: University of Alabama Press, 1977), 1-3; Paul M. Pruitt Jr., "Scalawag Dreams: Elisha Wolsey Peck's Career, and Two of His Speeches, 1867-1869," *Alabama Review* 66, no. 3 (July 2013): 211-239.
- 14 McMillan, *Constitutional Development in Alabama*, 117; Richard Bailey, *Neither Carpetbaggers Nor Scalawags: Black Officeholders During the Reconstruction of Alabama, 1867-1878* (Montgomery: NewSouth Books, 2010), 51-52.
- 15 McMillan, *Constitutional Development in Alabama*, 123; Bailey, *Neither Carpetbaggers Nor Scalawags*, 56; Pruitt, "Scalawag Dreams," 218.
- 16 Brett J. Derbes, "James T. Rapier," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-3272> (Accessed May 25, 2019).
- 17 Sally Randle Perry diary, November 30, 1867, SPR303, ADAH.
- 18 McMillan, *Constitutional Development in Alabama*, 125-126; Wiggins, *Scalawag in Alabama Politics*, 27-28.
- 19 McMillan, *Constitutional Development in Alabama*, 126; Fitzgerald, *Reconstruction in Alabama*, 156-157.
- 20 McMillan, *Constitutional Development in Alabama*, 127-128; Loren Schwener, *James T. Rapier and Reconstruction* (Chicago: University of Chicago Press, 1978), 58-59.
- 21 McMillan, *Constitutional Development in Alabama*, 130-131; *New York Times*, November 25, 1867.
- 22 Alabama Constitution of 1868, Article VII, Section 3; Wiggins, *Scalawag in Alabama Politics*, 28-29.
- 22 Alabama Constitution of 1868, Article I, Section 1; McMillan, *Constitutional Development in Alabama*, 134.
- 24 McMillan, *Constitutional Development in Alabama*, 134-136; Schwener, *James T. Rapier and Reconstruction*, 60-61.
- 25 McMillan, *Constitutional Development in Alabama*, 139-140.
- 26 McMillan, *Constitutional Development in Alabama*, 140-141.
- 27 McMillan, *Constitutional Development in Alabama*, 143-145.
- 28 McMillan, *Constitutional Development in Alabama*, 148; Rogers et al, *Alabama*, 246.
- 29 McMillan, *Constitutional Development in Alabama*, 149; *New York Times*, December 12, 1867; Fitzgerald, *Reconstruction in Alabama*, 160.
- 29 McMillan, *Constitutional Development in Alabama*, 151-152; Fitzgerald, *Reconstruction in Alabama*, 163.
- 30 McMillan, *Constitutional Development in Alabama*, 153-154.
- 32 McMillan, *Constitutional Development in Alabama*, 157-160.
- 33 McMillan, *Constitutional Development in Alabama*, 162-163.
- 34 McMillan, *Constitutional Development in Alabama*, 167-168.
- 35 McMillan, *Constitutional Development in Alabama*, 168-169.
- 36 McMillan, *Constitutional Development in Alabama*, 169.
- 37 Wiggins, *Scalawag in Alabama Politics*, 36-37; McMillan, *Constitutional Development in Alabama*, 170.
- 38 McMillan, *Constitutional Development in Alabama*, 173-174; Rogers et al, *Alabama*, 247-248.
- 39 McMillan, *Constitutional Development in Alabama*, 174; Henry Louis Gates Jr., *Stony the Road: Reconstruction, White Supremacy, and the Rise of Jim Crow* (New York: Penguin Press, 2019), 6-7.



Delegates to the Alabama constitutional convention of 1875 on the front steps of the Capitol in Montgomery

CHAPTER 5

1875

“THE RESULTS OF THE WAR ARE TO BE REVERSED”

The reformist traditions of Alabama’s 1868 constitution did not last. Critics of the constitution considered the document illegitimate and the Republicans who came to power unworthy. Plagued by party infighting, principally on racial issues, Republican leaders struggled to find a governing consensus. The party’s failings were magnified in the press and among the many white Alabamians who wanted them out of power. Matters of economy proved problematic as well. Through a combination of corporate fraud, government mismanagement, and plain bad luck, many of the internal improvements championed by the Republicans, particularly railroad expansion, proved disastrous. Revenues did not keep pace with projections, and state-provided services, including the school system, suffered greatly because of it. In 1871, the Alabama & Chattanooga Railroad failed. At the time, the state’s share of the enterprise, through direct investment and bond guarantees, was nearly seven million dollars. The state then assumed control of the railroad and lost another million dollars before being rid of it entirely. The global financial crisis of 1873 brought about more railroad closures and financial calamities for a debt-ridden Alabama.¹

There existed in Alabama continued broad displeasure with the results of Reconstruction. Along the Black Warrior River, Hale County resident Samuel Strudwick wrote to his family in California and urged them to stay away from Alabama. “This country is degraded, wretched, and miserable to the last degree,” he wrote. “The bottom rail has got on top at last—the spirit of chivalry, of manhood and self respect, has dwindled so low.” Black Alabamians were “courted, flattered, patted on the shoulder and caressed,” Strudwick complained, “by many, many, many who we once thought could never be made to stoop so low.”

Reaction to continued Republican rule often manifested itself through acts of violence and racial terror, waged in ways great and small against black Alabamians. “There is no safety here for any



A Ku Klux Klan hat worn during Reconstruction



Benjamin Sterling Turner was a member of the U.S. House of Representatives from 1871 to 1873. He was Alabama's first African American congressman.

Republican,” a Greene County man wrote to Gov. William Hugh Smith during the summer of 1869. “Republicans cannot go to Eutaw to attend to their business without being insulted and mobbed on the streets.” Similar difficulties existed in Calhoun County. A group of Jacksonville men petitioned the governor for relief. “Colored men are not allowed any chance,” they said. “They are beaten...and told if they vote with the Radicals that they will be deprived of their homes and [have] their crops taken away from them.”² Sometimes, such messages carried greater urgency. A teacher in Stevenson sent a telegram to a nearby U.S. Army general: “Civil guard overpowered and prisoner taken out by Ku Klux, our lives in danger—officer in charge refused to stay.”³

In 1870, Republicans briefly lost the governor’s office to Democrat Robert B. Lindsay in a highly contested election. Seeking to regain control two years later, they turned to David P. Lewis. A native Virginian, Lewis moved with his parents to Huntsville in the 1820s. After gaining admittance to the state bar, Lewis moved to Lawrence County and established a lucrative practice. By the outbreak of the war, his fortune included more than thirty enslaved persons.⁴

Active in Democratic politics up to nearly the moment he switched political parties, Lewis was an unconventional choice for the Republican nomination. He was, however, a north Alabama Unionist, and thus represented a category of voters critical to Republican success at the polls. For the 1872 elections, they nominated a slate of candidates comprised entirely of native Unionists. Lewis easily defeated Democratic nominee Thomas Herndon, and the Republican strategy proved successful statewide.⁵

As the 1874 election loomed, Democratic party officials were determined to overcome the regional differences that had prevented statewide success in previous years. Unity was required, they argued, to “redeem” Alabama, to liberate their state from radical and unfit rule. “We are in favor of giving the Negro every right which the Constitution guarantees to him,” read one



Gov. David P. Lewis

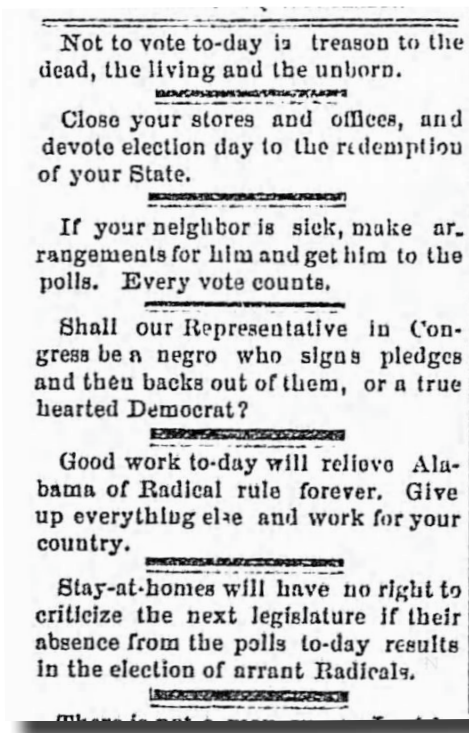
Democratic campaign statement. “But we are not in favor of placing him, with all his ignorance and prejudices, over the white man as a ruler.” At the state convention in July, party leader James Lawrence Pugh said, “We hear the roar of the black wave...but the glorious white cliffs of Caucasian supremacy, illuminated by eternal sunshine, will roll back this black sea and sink it forever.”⁶

As their standard-bearer for 1874, the Democrats chose north Alabama’s George S. Houston. A native of Tennessee, Houston came to Alabama when he was sixteen. He worked alongside his father on their farm and later attended law school in Kentucky. In 1831, Houston won election to represent Lauderdale County in the state legislature. A decade later, he won a seat in the U.S. House of Representatives, which he retained until Alabama’s secession. During the war, Houston retired to his Athens plantation, cultivated by more than seventy enslaved persons, and took no active part in the conflict. During Presidential Reconstruction, Houston won election to the U.S. Senate but was refused his seat by Senate Republicans. In 1867, he lost

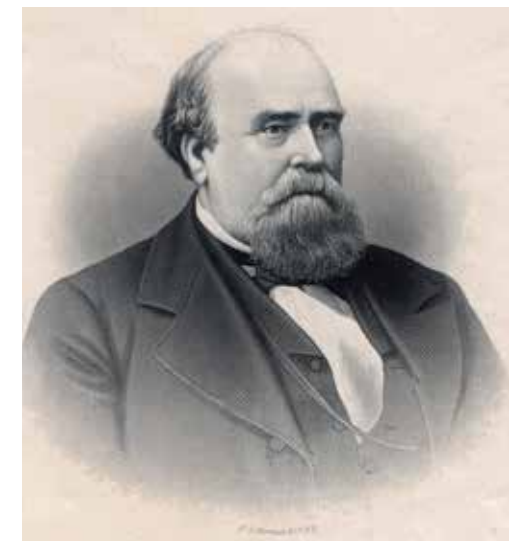
a second election for the seat to former governor John Winston.⁷

“There are but two parties now in the field, the negro party and the white man’s party,” declared the editor of the *Florence Times Journal*. “There is no middle ground between the two—to one or the other, every man must belong.” The *Montgomery Advertiser* implored its readers to “devote election day to the redemption of your State” and thus “relieve Alabama of Radical rule forever.” Widespread voter fraud characterized the contest. Ballot boxes were destroyed, tampered with, and stolen. Republican votes were thrown out en masse on technicalities. A riot erupted in Eufaula after a white man stabbed a black voter. Shots rang out, bringing more armed men to the polling

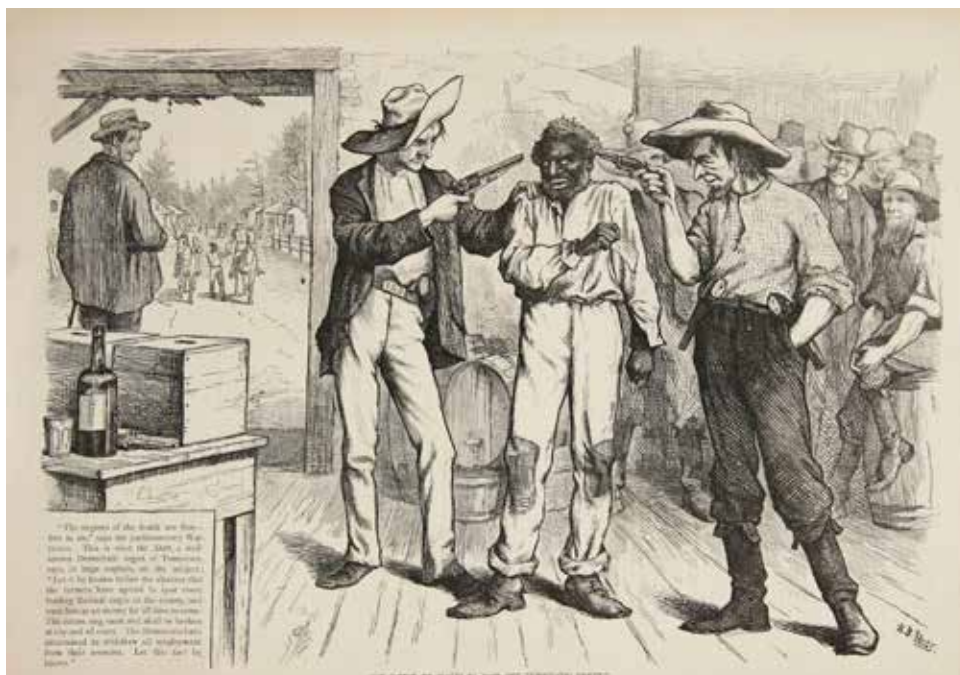
Montgomery Advertiser, November 3, 1874



*James Lawrence Pugh,
17th district delegate*



Gov. George S. Houston



place. In the melee, seven or eight black men were killed and dozens more wounded. In nearby Spring Hill, armed Democrats patrolled a polling place, intimidating black voters. Judge Elias Keils, seeking to preserve the integrity of the ballots that were cast, barricaded himself and his sixteen-year-old son, Willie, inside. After an hour, a gang of armed men gained entry to the building and seized and burned the ballot box. In the chaos, Willie Keils was shot four times. He died soon thereafter. During fights outside polling places in Mobile, two black voters were wounded and another killed.⁸

Democratic nominee George Houston's margin of victory over the incumbent Republican David Lewis was nearly thirteen thousand votes. Houston carried the north Alabama counties except for Winston and Talladega. The

"Of Course He Wants to Vote the Democratic Ticket," A. B. Frost, Harper's Weekly, October 21, 1876 Newberry Library

record-high participation of this bloc, combined with low turnout and fraudulent returns in the state's Black Belt, gave Democrats almost total control of state government. "Glory! Glory!! Glory!!!" exclaimed the front page of the *Clarke County Democrat* after the election.⁹

For securing the Democratic takeover of state government, the *Montgomery Advertiser* congratulated Alabamians "on their great deliverance" from the "once all-powerful Republican Party." A subsequent item proclaimed, "ALABAMA IS FREE!" Two days later, the *Advertiser* confessed, "We can't resist the temptation of crowing." And crow it did. Spread atop the full length of the newspaper's masthead for several days thereafter were images of a rooster, the adopted symbol of the state's resurgent Democratic

Montgomery Advertiser, November 5, 1874



party. In Huntsville, Democratic supporters carried a coffin through the streets to celebrate the demise of Radicalism in the state.¹⁰

The victors called themselves “Bourbons,” a reference to the restored royal house of France following the revolution and Napoleonic wars. “Republicans used the word in its pejorative sense,” historians Robert David Ward and William Warren Rogers wrote, “but to those who proudly wore the label it meant honesty and efficiency in government—and adherence to white supremacy.”¹¹ After 1874, the Bourbons’ political dominance went virtually unchallenged for nearly two decades. Republicans in the state were increasingly outnumbered. In 1872 and 1874, for example, Bullock County Republicans held an advantage of nearly 2,000 votes. In 1876, Democrats won the county by 2,300. Fewer than 200 Barbour County voters cast their ballots for a Democratic candidate in 1872. By 1876, the number grew to 3,600. In 1876, after Democrats in the legislature redrew his district, Jeremiah Haralson, the last remaining Republican congressman from Alabama, lost his seat.¹²

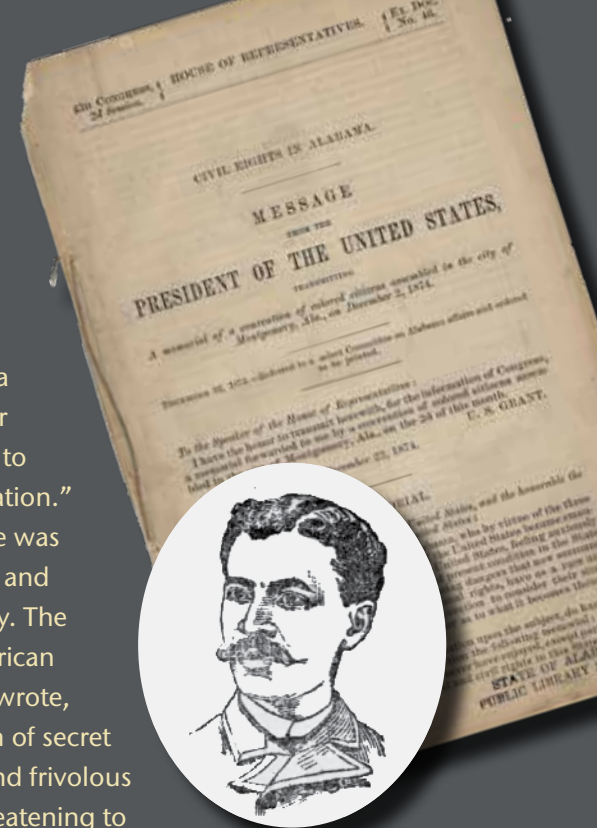
Voice of Dissent

“CIVIL RIGHTS IN ALABAMA”

A few weeks after the election, a group of black Alabamians gathered in Montgomery to prepare a petition to Pres. Ulysses S. Grant “to consider their situation, and to take solemn counsel together as to what it becomes them to do for their self-preservation.” As its president, the group chose Philip Joseph. He was a leader of the Mobile Union League, a journalist, and an active member in the national Republican Party. The methods used by the Democrats to discourage African American voters from the polls were varied, they wrote, “but have chiefly consisted of violence in the form of secret assassination, lynching, intimidation, malicious and frivolous prosecutions and arrests, and by depriving or threatening to deprive us of employment and the renting of lands, which many of us, in our poverty and distress, were unable to disregard. These acts of lawlessness have been repeated and continued since our first vote.”¹³

The petition detailed dozens of specific incidents of violence and provided charts which showed the waning Republican vote since 1868, a decline the authors attributed to widespread intimidation. Against such a campaign of terror, black Alabamians were defenseless: “If we bear arms, only for self-defense, it is charged that we mean offense and war. The most atrocious crimes committed against us by white men go unnoticed and unpunished. We can be killed, our property destroyed, by white men with utter impunity.”¹⁴

The petitioners urged President Grant not to assume that the Ku Klux Klan—the group his administration had pursued vigorously a few years earlier—had been defeated. “That organization, or a substitute and successor to it, under a changed name and a somewhat changed wardrobe...still exists in all its hideous and fearful proportions.... Nothing but fear restrains them from making open war upon the Government and the flag of the United States.” President Grant submitted the petition to Republicans in Congress, who read it into the *Congressional Record*, preserving it for history.¹⁵





Charles Hays

“The old secession leaders are now scheming to...entrench themselves permanently in power. Then all of the results of the war are to be reversed so far as Alabama is concerned.”

ALABAMA STATE JOURNAL, JULY 23, 1875

Representative Charles Hays, Republican from Greene County, secured a congressional investigation into the election, which revealed disturbing evidence of voter fraud on the part of both Democrats and Republicans in the state. Congress adjourned in March 1875, however, without taking any action to invalidate Alabama’s November elections. In Montgomery, the newly elected legislature remained in session, waiting out the Forty-Third Congress so it could pass a number of new laws which might have otherwise elicited the immediate wrath of Republicans in Washington. “The agony is over,” the *Mobile Register* proclaimed, “and Alabama still remains a state.”¹⁶



Walter L. Bragg

After Houston’s victory, calls for a convention to write a new constitution steadily increased. Democrats in the legislature endorsed the idea with only one dissenting vote, setting an August 1875 referendum date. Walter L. Bragg, who served as chairman of the state Democratic executive committee, oversaw the campaign. He orchestrated a thorough effort, deploying lawyers and politicians to make hundreds of speeches across the state. In contrast with the Democrats’ unity, Alabama Republicans adopted conflicting strategies regarding the referendum. Some leaders advocated voting no, while others felt Republicans should turn out in large numbers and attempt to win control of the convention outright.¹⁷

Democrats assured voters that they meant to hold a convention to rid the state of the evils of the 1868 constitution and little else. They pledged to do nothing to draw the ire of Congress, which might risk the return of the military presence that existed in the state during Reconstruction. The editor of the Republican *Alabama State Journal* was unconvinced, however:

The old secession leaders are now scheming to get full and complete control of the State government; and they hope by means of a constitutional convention to accomplish their purposes and entrench themselves permanently in power. Then all the results of the war are to be reversed so far as Alabama is concerned, and a system of human slavery is to be again established, by which the Negroes will be deprived of every vestige of political existence.¹⁸

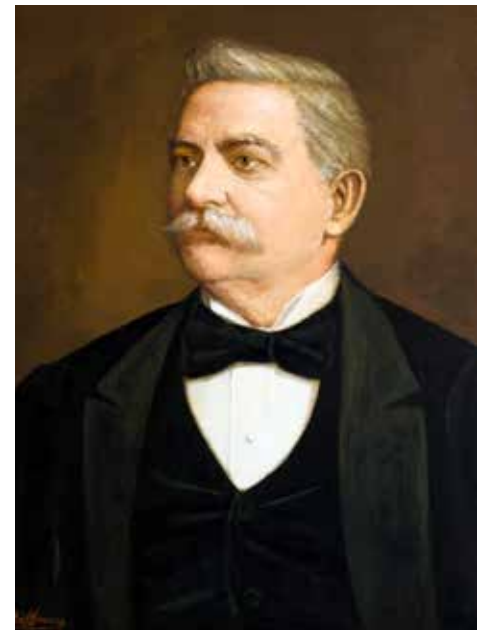
On August 3, 1875, voters endorsed the convention by a seventeen-thousand-vote margin. Only the Black Belt counties and five others scattered about the state voted against it. In Mobile, convention supporters won by a narrow margin. In most counties, however, the vote was overwhelmingly in favor. In Barbour County, where the previous election day had ended in bloodshed, voters endorsed the constitution twenty to one. The delegates who would assemble in September would write Alabama's fourth constitution in less than fifteen years. "Many circumstances combine to render the Convention...the most important body which has met in Alabama since she was admitted as one of the States of the Union," the *Montgomery Advertiser* proclaimed. "Its deliberations will be watched with unusual interest by every citizen of the State who has its welfare at heart, and the Constitution which it will adopt, if ratified by the people, will, no doubt, remain as the fundamental law of Alabama for many years to come."¹⁹

THE FRAMERS

Voters across the state chose eighty Democrats, twelve Republicans, and seven independent delegates to write the new constitution. Most of the delegates were lawyers by profession. The delegates were older, most over the age of forty—"men of age and experience," according to the *Advertiser*. Several were in their eighties. Seven of the delegates had previously served in the 1861 secession convention. There were two delegates from the 1865 convention. None of the framers of Alabama's 1868 constitution were elected to serve as delegates to write the new governing document.²⁰



Rufus W. Cobb,
Shelby County delegate



William Calvin Oates,
33rd district delegate



Alexander H. Curtis, 22nd district delegate



Leroy Pope Walker, convention president and 4th district delegate

Among the prominent Democratic delegates were future Govs. Rufus W. Cobb, Edward A. O'Neal, William J. Samford, and William C. Oates. They were joined by Thomas H. Herndon, who was the Democratic gubernatorial candidate in 1872, newspaper editor C. C. Langdon, Troy politician and merchant Joel Dyer Murphree, and future U.S. senator James Lawrence Pugh. The most prominent Republican delegate was Samuel Farrow Rice, a legislator and former chief justice of the state supreme court.²¹ Only four African American delegates were elected to the convention, including Alexander H. Curtis. Born in bondage in North Carolina, Curtis was brought to Alabama as a child. By 1859, at the age of thirty, Curtis had saved enough money to purchase his freedom, a rare achievement. A successful Marion businessman during the war, Curtis won election to the Alabama House in 1870 and to the Senate two years later.²²

Delegates chose Leroy Pope Walker as convention president. Walker's father had been chairman of the state's first constitutional convention in 1819. Like his father, Walker had also served as Speaker of the Alabama House of Representatives. He later served in the Confederate cabinet as secretary of war. From the Confederate headquarters at the Exchange Hotel in Montgomery, Walker had authorized the firing on Fort Sumter in Charleston Harbor. In his opening speech to the convention, Walker appealed to the delegates' sense of history and propriety: "The Constitution framed by our fathers in 1819 was made for a new State and under it our people prospered and grew into a great commonwealth." He called the present constitution "a piece of unseemly mosaic...incongruous in design, inharmonious in action, discriminating and oppressive."²³



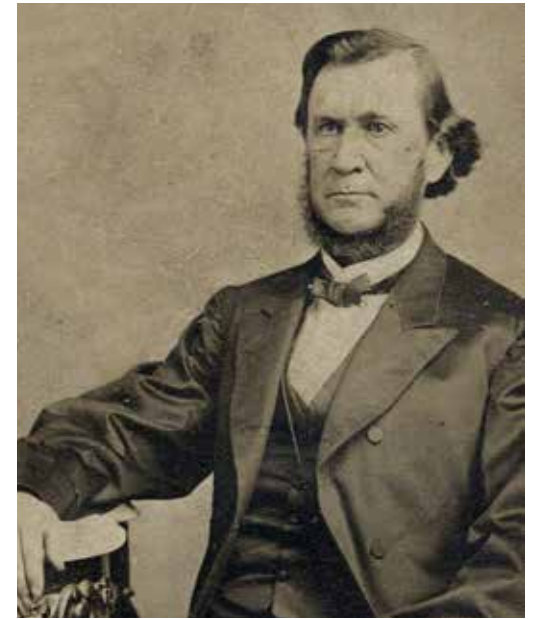
THE DEBATE

Much of the detailed work of drafting the sections of the new constitution was done in various committees, all under the control of Democratic chairmen. Thus, few issues elicited the kind of vigorous floor debates which characterized previous conventions. Delegates rebuffed an offer from a Huntsville printer to produce a verbatim transcript of the proceedings. Some felt that such a document might be used by the federal government to undermine the work of the convention or even invalidate the document they produced. The specter of federal intervention loomed large in Montgomery as the delegates wrote Alabama's latest constitution.²⁴

The committee on the bill of rights made several changes to the 1868 document, both substantive and symbolic. Under their revisions, the state could not be sued in any court. They also added a prohibition on the suspension of habeas corpus, a key mechanism used by the federal government in enforcing the Ku Klux Klan Acts in the early 1870s. The delegates made no changes to the portions of the constitution pertaining to suffrage, out of concern that doing so would bring about federal scrutiny. They did, however, alter the section from the 1868 constitution declaring that "all men are created equal." In its place, the framers of the new document wrote, "All men are equally free and independent."²⁵

Fierce debate arose over how to address the 1868 constitution's renunciation of secession from the United States. The Republicans at the convention favored leaving the existing language. A few Democrats wanted to strike any mention of secession altogether and were supported in this notion by some of the state's leading newspapers. "It was enough for the South to obey the law of the sword," wrote the editor of the *Mobile Register*. "She was not expected to rub salt in her wounds. The subject should have been religiously left alone." The *Greenville Advocate* concurred: "We do not clearly see what [secession] has to do with a Bill of Rights; still less do we understand how the Convention could have thought it necessary to say anything on the subject."²⁶

Other delegates argued that striking the treatment of secession entirely might be misinterpreted by the federal government. They settled upon compromise language authored by James Lawrence



*Francis Winfield Sykes,
2nd district delegate*



*John Daniel Rather,
Colbert County delegate*

Pugh, which read: “The people of this State accept as final the established fact that from the Federal Union there can be no secession of any State.” The *Huntsville Weekly Democrat* thought this a poor effort, the kind “as men and nations generally do that try to ride two horses.... When deliberative bodies undertake to say what they do not believe, and cannot say it with a clear conscience, the part of wisdom is to let it alone and preserve a dignified silence.” The delegates unanimously endorsed Pugh’s language after a long debate.²⁷

The framers made several changes to the 1868 legislative section. Citing an interest in economy, they altered the frequency with which the state legislature met from annually to biannually and limited each session to fifty working days. They further reduced the per diem for legislators to four dollars a day plus ten cents per mile in travel costs. The number of state representatives was fixed at one hundred and the number of senators at thirty-three. The two legislative bodies were required to meet in their respective chambers in Montgomery and nowhere else, a stipulation directly tied to an episode of the early 1870s in which there were briefly competing legislatures—one Republican and one Democratic—meeting in separate facilities. The framers prohibited legislators from authorizing a lottery, placed limitations on special or local legislation, and limited the scope of special sessions of the legislature to specific issues of the governor’s choosing.²⁸



Edward A. O’Neal, 1st district delegate

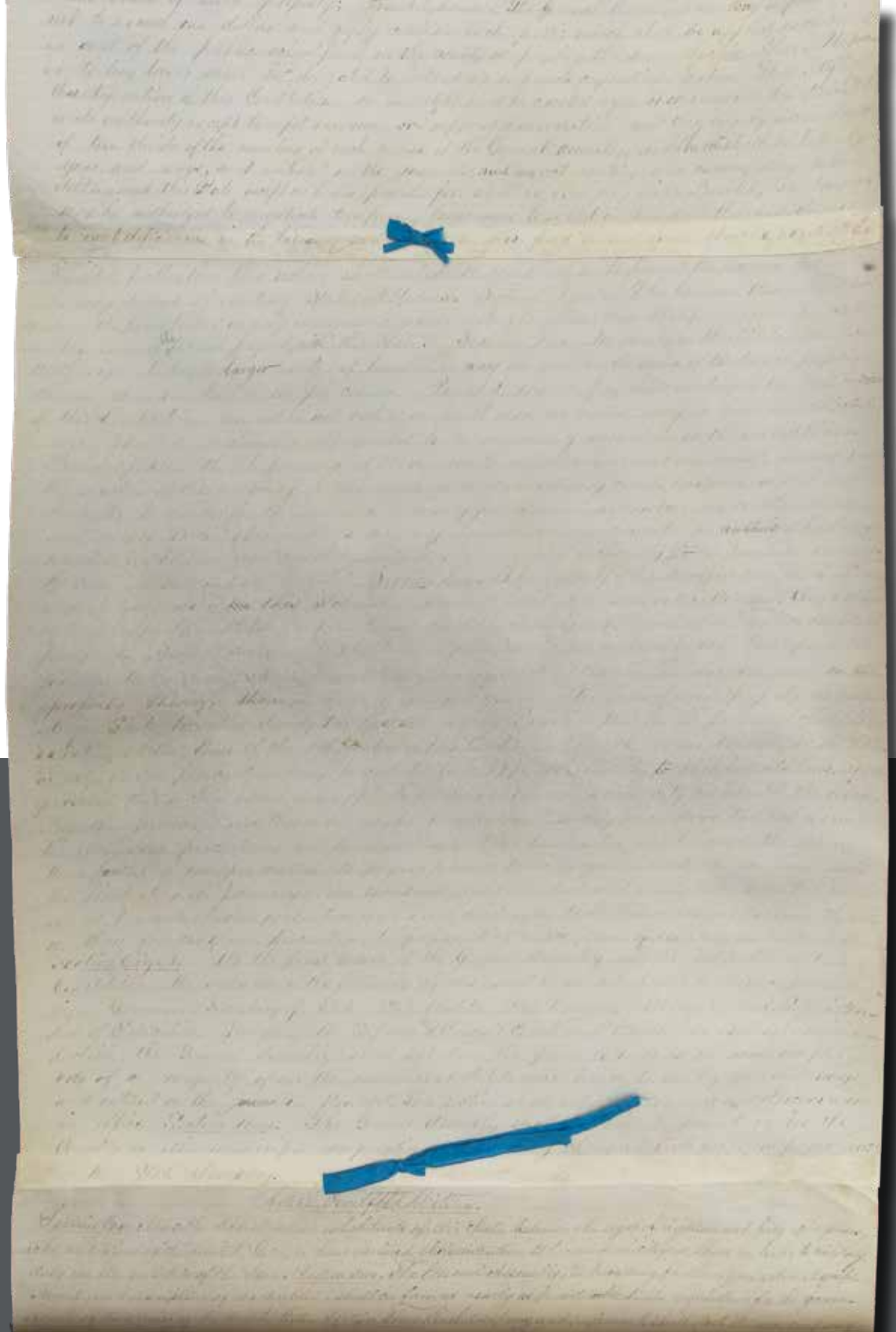
The new constitution separated the dates of state and national elections. This, they felt, would limit the potential for federal intervention in Alabama politics. Taking advantage of their numerical superiority, Democrats also reduced the number of representatives from Republican strongholds in the Black Belt. The framers increased the number of crimes that would prevent an individual from holding office to include embezzlement, bribery, and perjury. Once convicted, a person could never again hold office in Alabama. All of these provisions, historian Malcolm McMillan wrote, were intended to make it easier to remove carpetbagger and scalawag remnants from government.²⁹

Fulfilling a campaign pledge, the framers abolished the office of lieutenant governor, which they saw as an unnecessary extravagance. They lengthened the terms for all executive officers from two to four years and allowed both the governor and state treasurer to hold two consecutive terms. The framers reduced all executive department salaries by 25 percent and mandated that a subsequent session of the legislature reduce them further still.³⁰

Edward A. O'Neal chaired the education committee. It recommended abolishing the controversial state board of education, which the previous constitution had made so powerful that it often rivaled the legislature. The committee made the superintendent an elected position. They mandated separate schools for black and white pupils. The amount of money that could be committed to school improvements was capped at 4 percent of annual education spending. The framers allocated \$100,000 per year for schools, in addition to the revenue from the poll tax, which was less than the 20 percent of all state revenue that had been reserved for education under the 1868 constitution.³¹

THE 1875 CONSTITUTION

Alabama's 1875 constitution is written with black and blue inks on twenty-eight sheets of parchment of varying lengths and a width of eighteen inches. The pages are joined together at the center with a small piece of blue grosgrain silk ribbon. Unrolled, the document measures nearly forty-three feet, making it the longest, physically, of Alabama's defining documents. When rolled, the diameter of the scroll is approximately three inches.



Reflecting the state's growing distrust of the railroad industry, the constitution placed strict prohibitions on using state or local funds for internal improvements. The state and its municipalities were forbidden from giving aid of any kind to a corporation. Delegates also abolished the Bureau of Industrial Resources created by the 1868 constitution and moved those responsibilities to the existing Department of Agriculture. Taxation was limited to 7.5 mills by the state and 5 mills by counties and cities. All of these measures were presented to the people as necessary controls on the expansion of government which had occurred under the 1868 constitution.³²

The delegates completed the document on October 2, 1875, after twenty-seven days in convention. Eighty-one delegates voted for and signed the new constitution. None of the Republican delegates supported the document. It was, in many respects, more of a legislative work than a constitution. "The most distinguished features of the new constitution are its great length and its legislative character," the Republican *Alabama State Journal* criticized. The loyal *Montgomery Advertiser* acknowledged the length and verbosity of the document but said the delegates had been true to their mandate of "amending and revising" the 1868 constitution. The newspaper predicted that ratification would bring about "a most wholesome revolution in the public affairs of Alabama."³³



Francis Strother Lyon,
26th district delegate

RATIFICATION

"The new constitution gives our people, generally, satisfaction," state party chairman W. L. Bragg stated. The convention appointed Francis Strother Lyon to write an address to be printed in friendly newspapers urging ratification. "The highest aim of the late convention was to ensure the safety of the people against the possibilities of extravagance and corruption," it read. "The Constitution of 1868 and the Constitution of 1875 are now before you. Make your own selection, and shoulder the responsibilities and possibilities of your decision. How can any man hesitate[?] Behind him and around him are the bitter fruits of a constitution he had no voice in making. What is the future of Alabama and her people, if the incubus of an alien Constitution framed by usurpers in the interest of plunderers remains the organic law for their government?"³⁴

Leroy Pope Walker and most of the Democratic delegates crisscrossed the state giving speeches in favor of ratification. The *Advertiser* urged a vote for change: “Who made the present constitution? Corn field Negroes, corrupt carpetbaggers, and United States soldiers. Vote for the new one, made by your own representatives.” This was a frequent refrain among supporters—advocacy for a “home rule” constitution, written by Alabamians for Alabamians. “Alabama knows what is good for herself better than the Jacobin spawn of aliens and plunderers, who have had her by the throat since 1868,” wrote the *Mobile Register*. “We have a ‘home rule’ constitution to support.” The new document was not perfect, of course. “It is far from being such a Constitution as I desire for the State to have,” delegate William C. Oates told the *Register*, “but perhaps it is the best that could be ratified under the circumstances which now surround us.”³⁵

Republican opposition to ratification existed but was clearly weak. Former governor William Hugh Smith, former Alabama Supreme Court justice and 1867 convention delegate Benjamin Saffold, and delegate Samuel Farrow Rice spoke out against the document, as did the editors of the waning number of Republican newspapers in the state. “To your posts, citizens,” the *Alabama State Journal* exclaimed, “regardless of wealth, poverty, race, color, or previous condition, and vote against this proposed new infamy!” Such appeals fell upon a decreasing number of adherents to the party of Lincoln in Alabama. Among the supporters of ratification were former governors Lewis Parsons and David Lewis, who, like many of the state’s Republican politicians, would soon rejoin the ranks of the Democratic Party.³⁶

Despite evidence that the vote in favor of the constitution would be substantial, the *Advertiser* urged vigilance. The Republicans were organizing, the newspaper asserted, and called upon Democrats to do likewise, to “secure a good state Constitution for yourselves, your wives and your children.”³⁷

On November 16, 1875, Alabamians ratified the new constitution with a margin larger than fifty-six thousand votes. Only Autauga, Dallas, Lowndes, and Montgomery counties voted against the document. “Bourbons enshrined their values in the Constitution of 1875,” historian Harvey H. Jackson wrote. It was “a document the small farmer class supported because they were as concerned about taxes as the wealthy property owners.” In Eufaula, only six dissenting

Advertiser and Mail.
W. W. SUREWS, }
H. M. COOKE, } REU
Montgomery, Ala., Sunday, October 31, 1875

For the Constitution.

Why it Should be Ratified.

The new Constitution is economical. Auditor SARRIN says it will save, annually, to the oppressed people of Alabama, the sum of two hundred and sixty-five thousand dollars in the expense of running the government. That alone ought to secure its ratification.

When the new Constitution is ratified it will be impossible to add to the debt of Alabama. This will be a great boon to all, and especially to those who can scarcely earn food for themselves and their families, much less pay onerous taxes.

By the new Constitution there can be no more Federal interference in State elections, thus putting at an end the hand-cuffing and jailing, for political purposes, of honest and innocent citizens by tyrannical and heartless United States Deputy Marshals.

Montgomery Advertiser,
October 31, 1875



"A truce - not a compromise, but a chance for high-toned gentlemen to retire gracefully from their very civil declarations of war," Thomas Nast, 1877
Library of Congress



Pres. Rutherford B. Hayes
Library of Congress

votes were recorded; in all of Sumter County there were only two. Governor Houston set the effective date of the new constitution for December 6. The following day, the *Advertiser* wrote: "Thus shall all the bitter past be obliterated, so that men may look forward instead of looking backward, and make our future great, glorious, and grand."³⁸

By the time campaigning for the presidential election of 1876 was underway, Republican state governments existed in only three southern states and Reconstruction was nearly at an end. The backroom deal which settled the election in favor of Republican nominee Rutherford B. Hayes—the so-called Compromise of 1877, in which southern Democrats ended their challenge to Hayes' election in exchange for a pledge to withdraw the remaining federal troops from the South—brought an official conclusion to Reconstruction. In Alabama and elsewhere, the few protections still in place for African Americans receded under the rule of white elites. "The whole South," one freedman observed in 1877, "had got [back] into the hands of the very men that held us as slaves."³⁹

The legal legacies of Reconstruction, however, were written into the U.S. Constitution in the form of protections guaranteed under the Thirteenth, Fourteenth, and Fifteenth Amendments. These would form the foundations for important advancements in future generations. "African Americans had lost most of what they had sought from Reconstruction," historian Michael Fitzgerald wrote of the end of the era in Alabama. "But they gained knowledge of the uses of state power and the ability to articulate it. One day...with a different nation watching, that would matter—but not yet."⁴⁰

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- 2 Samuel Strudwick to Martha Sledge and Mary Holmes, May 31, 1872, in box 1, folder 5, Samuel Strudwick papers; Charles Hays to William Hugh Smith, August 4, 1869, and Letter from three county officials in Jacksonville, Alabama, to William Hugh Smith, August 7, 1869, Alabama Governor (1868-1870: Smith), Administrative Files, box 2, folder 10, ADAH.
- 3 Telegram from R. Starkweather to "General Crawford," March 1, 1870, Alabama Governor (1868-1870: Smith), Administrative Files, box 3, folder 20, ADAH.
- 4 Sarah Woolfolk Wiggins, "David P. Lewis," in *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1170> (accessed May 23, 2019).
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- 6 Allen Johnston Going, *Bourbon Democracy in Alabama, 1874-1890* (Tuscaloosa: University of Alabama Press, 1951), 14-15; Fitzgerald, *Reconstruction in Alabama*, 299.
- 7 William Warren Rogers, "George S. Houston," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1511> (accessed May 23, 2019).
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- 9 Rogers et al, *Alabama*, 263-264; *Clarke County Democrat*, November 10, 1874.
- 10 *Montgomery Advertiser*, November 4-6, 1875; Rogers et al, *Alabama*, 264; Fitzgerald, *Reconstruction in Alabama*, 316.
- 11 Rogers et al, *Alabama*, 264.
- 12 Joseph H. Taylor, "Populism and Disfranchisement in Alabama," *The Journal of Negro History*, 34, no. 4 (October 1949): 410-427 (figures on page 413); Brett J. Derbes, "Jeremiah Haralson," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-3270> (accessed May 23, 2019).
- 13 "Civil Rights in Alabama: Message from the President of the United States, Transmitting a Memorial of a Convention of Colored Citizens Assembled in the City of Montgomery, Ala., on December 2, 1874," box 64, folder 13, pamphlet collection, ADAH.
- 14 Ibid.
- 15 Ibid.
- 16 Wiggins, *Scalawag in Alabama Politics*, 103; Going, *Bourbon Democracy in Alabama*, 18-19.
- 17 Fitzgerald, *Reconstruction in Alabama*, 324-325; McMillan, *Constitutional Development in Alabama*, 176-178.
- 18 McMillan, *Constitutional Development in Alabama*, 184-185; *Alabama State Journal*, July 23, 1875.
- 19 McMillan, *Constitutional Development in Alabama*, 187-188; Fitzgerald, *Reconstruction in Alabama*, 324-325; *Montgomery Advertiser*, September 5, 1875.
- 20 Going, *Bourbon Democracy in Alabama*, 22; *Montgomery Advertiser*, September 7, 1875.
- 21 McMillan, *Constitutional Development in Alabama*, 190-191; H. E. Sterkx, "Joel Dyer Murphree, Troy Merchant, 1843-1868," *Alabama Review* 11, no. 2 (April 1958): 117-124.
- 22 Charles A. Brown, "A. H. Curtis: An Alabama Legislator 1870-1876, with Glimpses into Reconstruction," *Negro History Bulletin* 25, no. 5 (February 1962): 99-101.
- 23 *Montgomery Advertiser*, September 7, 1875; *Journal of the Constitutional Convention of the State of Alabama Assembled in the City of Montgomery, September 6, 1875* (Montgomery: W. W. Screws Printing, 1875), 5-7.
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- 25 McMillan, *Constitutional Development in Alabama*, 193.
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- 28 McMillan, *Constitutional Development in Alabama*, 195.
- 29 McMillan, *Constitutional Development in Alabama*, 196-197, 202; Fitzgerald, *Reconstruction in Alabama*, 328.
- 30 McMillan, *Constitutional Development in Alabama*, 195, 205.
- 31 McMillan, *Constitutional Development in Alabama*, 206-207.
- 32 McMillan, *Constitutional Development in Alabama*, 208-209; Rogers et al, *Alabama*, 267.
- 33 McMillan, *Constitutional Development in Alabama*, 209-210; *Montgomery Advertiser*, October 4-6, 1875.
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- 35 McMillan, *Constitutional Development in Alabama*, 211-212; Going, *Bourbon Democracy in Alabama*, 25.
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ROLL OF CONVENTION
WITH P. O. ADDRESSES

JAMES E. KNOX, Tuscaloosa
 D. V. Adams, Mobile
 W. A. Adams, York
 John T. Adams, Phenix
 Wm. H. Adams, Hamilton
 J. H. Adams, Mobile
 W. H. Adams, Greenville
 J. H. Adams, Oklawaha
 Charles F. Adams, Birmingham
 D. S. Adams, Union Springs
 Samuel Blackwell, New Decatur
 S. Bayles, Mobile
 S. E. Bayles, Mobile
 Carl Bayles, Talladega
 T. L. Bayles, Dale
 John D. Bayles, Tuscaloosa
 John F. Bayles, Barbourville
 John A. Bayles, Barbourville
 H. W. Bayles, Center
 A. H. Bayles, Tuscaloosa
 M. S. Bayles, Etta
 G. H. Bayles, Barter
 David C. Bayles, Lebanon
 Robert Chapman, Livingston
 James L. Bayles, Tuscaloosa
 W. T. L. Bayles, Talladega
 Thomas W. Bayles, Etta
 E. W. Bayles, Dale
 J. J. Bayles, Tuscaloosa
 B. H. Bayles, Selma
 B. H. Bayles, Phenix City
 Herbert Bayles, Gadsden
 John A. Bayles, Fort Payne
 A. H. Bayles, Barbourville
 H. Bayles, Oneonta
 J. H. Bayles, Lafayette
 B. T. Bayles, Union Springs
 John C. Bayles, New Decatur
 T. W. Bayles, Barter
 Charles W. Bayles, Birmingham
 W. C. Bayles, Tuscaloosa
 A. A. Bayles, Barbourville
 J. M. Bayles, Etta
 N. H. Bayles, Tuscaloosa
 J. A. Bayles, Barbourville
 W. F. Bayles, Barter
 H. Bayles, Montgomery
 J. H. Bayles, Talladega
 S. W. Bayles, Andalusia
 J. W. Bayles, Huey
 Charles H. Bayles, Marion
 L. F. Bayles, Oxford
 C. L. Bayles, Barbourville
 W. A. Bayles, Huey
 H. T. Bayles, Opelika
 J. T. Bayles, Barbourville
 J. Thomas Bayles, Lafayette
 A. C. Bayles, Troy
 Evans Bayles, Haystack
 F. W. Bayles, Albertville
 O. H. Bayles, Gadsden
 Wilson F. Bayles, Oak Level
 A. C. Bayles, Birmingham
 W. B. Bayles, Birmingham
 E. C. Bayles, Auburn
 Samuel C. Bayles, Gadsden
 John T. Bayles, Barter
 J. M. Bayles, Phenix
 Thos. G. Bayles, Montgomery
 E. C. Bayles, Gadsden
 J. T. Bayles, Huey
 W. W. Bayles, Tuscaloosa
 Wm. S. Bayles, Oak Level
 S. D. Bayles, Gadsden
 E. W. Bayles, Huey
 S. E. Bayles, Huey



Constitutional Convention of Alabama, 1901.

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ROLL OF CONVENTION
WITH P. O. ADDRESSES

L. W. Beck, Phenix Hill
 Thomas Beck, Montgomery
 T. L. Beck, Jasper
 W. T. Beck, Barbourville
 R. J. Beck, Birmingham
 Thomas Beckwith, Montgomery
 Lee Beckwith, Birmingham
 S. P. Beckwith, Barbourville
 Geo. H. Beckwith, Etta
 J. T. Beckwith, Jacksonville
 J. C. Beckwith, Alexander City
 A. H. Beckwith, Barbourville
 Charles H. Beckwith, White P. O.
 J. E. Beckwith, Gadsden
 Wm. Beckwith, Phenix Hill
 E. H. Beckwith, Phenix Hill
 W. H. Beckwith, Selma
 J. D. Beckwith, Troy
 C. C. Beckwith, Varona
 J. D. Beckwith, Union Springs
 Joseph Beckwith, Montgomery
 Wm. C. Beckwith, Montgomery
 Samuel O'Neil, Phenix
 John W. O'Neil, Birmingham
 Henry J. Beckwith, Andalusia
 E. A. Beckwith, Jasper
 John Beckwith, Selma
 Geo. K. Beckwith, Etta
 J. H. Beckwith, Wetumpka
 James F. Beckwith, Phenix Hill
 Eric Beckwith, Andalusia
 E. A. Beckwith, Andalusia
 H. Beckwith, Mobile
 J. H. Beckwith, Selma
 John H. Beckwith, Etta
 John F. Beckwith, Barbourville
 H. F. Beckwith, Selma
 John F. Beckwith, Opelika
 Louis H. Beckwith, Andalusia
 E. J. Beckwith, Andalusia
 C. F. Beckwith, Andalusia
 J. A. Beckwith, Gadsden
 W. H. Beckwith, Troy
 W. T. Beckwith, Andalusia
 John W. A. Beckwith, Montgomery
 Geo. A. Beckwith, Tuscaloosa
 E. C. Beckwith, Birmingham
 J. O. Beckwith, Lawrence
 J. H. Beckwith, Gadsden
 Gregory L. Beckwith, Mobile
 Geo. A. Beckwith, Phenix Hill
 Morgan M. Beckwith, Andalusia
 W. Beckwith, Oak Level
 Geo. A. Beckwith, Alexander City
 E. E. Beckwith, Oak Level
 H. E. Beckwith, Barbourville
 J. H. Beckwith, Barter
 S. L. Beckwith, Huey
 W. H. Beckwith, Tuscaloosa
 J. F. Beckwith, Center
 William M. Beckwith, Selma
 S. H. Beckwith, Huey
 S. W. Beckwith, Huey
 Thos. H. Beckwith, Montgomery
 John H. Beckwith, Phenix
 James Beckwith, Birmingham
 Frank A. Beckwith, Birmingham
 W. W. Beckwith, Andalusia
 E. D. Beckwith, Gadsden
 J. S. Beckwith, Clayton
 Arthur S. Beckwith, Wetumpka
 George Beckwith, Andalusia
 Nancy Beckwith, Huey Hill
 E. F. Beckwith, St. Stephens
 J. J. Beckwith, Clayton
 W. W. Beckwith, Tuscaloosa
 F. S. Beckwith, Tuscaloosa
 Secretary.

Composite image of the delegates to the 1901 constitutional convention
 Birmingham Public Library Archives

CHAPTER 6

1901

“THE NEW INSTRUMENT”

By the mid-1870s, the precipitous decline of the state’s Republican party, along with the federal government’s increasing reluctance to involve itself in the affairs of southern states, helped to entrench the Bourbon Democrats in power. The 1875 constitution, the fourth adopted in fourteen years, promised to introduce an era of stability.¹

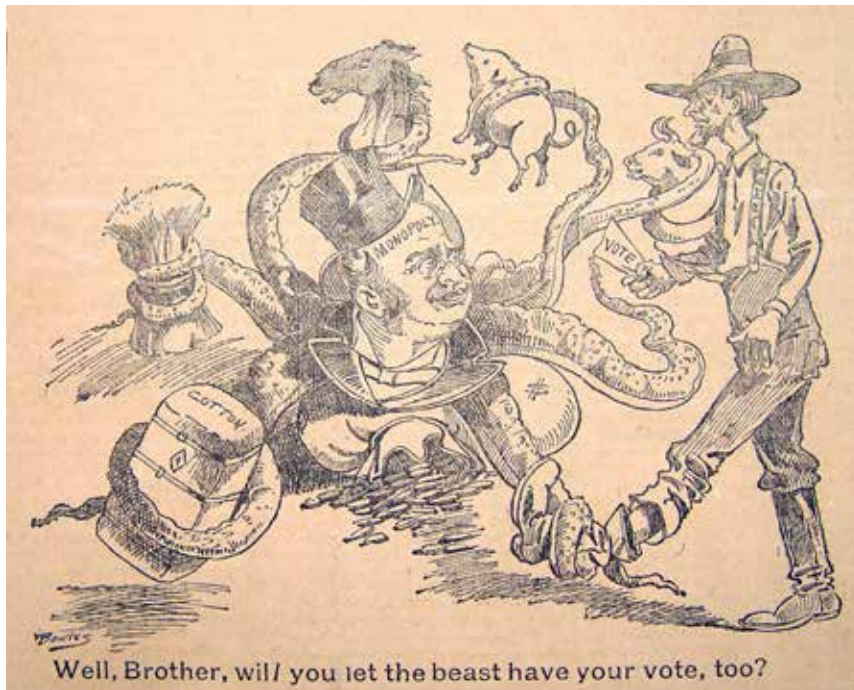
Not everyone was content with the new arrangement, however. Populists, a coalition of black and white farmers and union members, organized a nearly successful political revolt in the late 1880s and early 1890s. At the core of their wide-ranging demands, the Populists wanted an activist government that could provide more opportunities for its citizens. Historian Wayne Flynt wrote that Populists “terrified conservative Democrats” by appealing to a broad, biracial constituency with class-based platforms. In the Black Belt, Flynt asserted, Democrats fearfully “envisioned a neo-Reconstruction coalition taking over.”²

Populist candidates won seats in city and county governments and in the state legislature. Twice during the early 1890s, Democrats in the Black Belt had to rely on blatant election fraud to prevent Populist standard-bearer Reuben F. Kolb from being elected governor. After being denied the office in the 1894 election, Kolb and throngs of his supporters descended upon Montgomery on inauguration day. He marched up Dexter Avenue toward the State Capitol and was met there by Montgomery police and several militia units. Discretion won the day, but the memory did not soon fade in the minds of Alabama’s Bourbon Democrats.³

The Populists’ appeal to African Americans underscored for Democrats the dangers of a volatile electorate that was not under their control. Since 1874, Alabama politicians had used a variety of methods to dilute the African

*Gavel used by president
John B. Knox during the 1901
constitutional convention*





This political cartoon published for Reuben F. Kolb's 1894 gubernatorial campaign portrays the state's moneyed interests as a tentacled "monopoly" seeking to control the votes of Alabama farmers.

law's ends justified its means. Russell M. Cunningham, president of the Senate, told a group in Mobile he would support Sayre "because it is the best and cheapest method of swindling...ever devised for the maintenance of white supremacy."⁴

Despite these and other efforts, there remained more than 180,000 eligible black voters in the state at the turn of the century. As the Populist revolt demonstrated, these voters, if marshaled together with a disgruntled, poor white electorate, constituted a significant threat to Alabama's ruling class. The sheer extent of the fraud required to defeat the Populists in the 1890s gave some Democrats great pause. They had grown weary of having to steal elections. Calls for a more legal means of securing a manageable electorate increased. Many supporters talked of these reforms with a

American vote. They gerrymandered black enclaves out of city limits, changed numerous public offices to appointed rather than elected positions, and further complicated the state's election laws. The most onerous of these came in 1893, when a bill named for Montgomery legislator A. D. Sayre added forty-eight new stipulations to the state's suffrage laws. These included a requirement that a prospective voter had to register in May of each year (May being among the busiest months for Alabama farmers) and provide certificates of identity. The Sayre Election Law mandated that candidate names be arranged alphabetically on ballots with no party identification. Registrars, all appointed by the governor, were empowered to fill out ballots for illiterate voters. Poll observers were prohibited within fifty feet of a ballot box. Opponents claimed the Sayre law would deprive thirty thousand white Alabamians of the vote. To its supporters, however, the new



A. D. Sayre

foreboding concern for what ongoing theft of the franchise would do to the thieves. “We must provide against anarchy, into which we will surely drift before long unless the causes which produce ballot box stuffing are abandoned,” the *Mobile Register* warned.⁵

Although the driving force of reform was suffrage revision, other important factors also existed. Historian Malcolm McMillan noted that by 1900 “the whole state had outgrown the constitution of 1875.” In a quarter-century, Alabama’s population had nearly doubled. Development of the surrounding mineral wealth had transformed Birmingham from a mining boom town into the second-largest city in the state. Continued industrial development in north Alabama fueled an ongoing population shift. Anti-industrial provisions of the constitution (written during a period of great mistrust of corporations, particularly the railroads) inhibited growth, many argued. It prevented municipalities from increasing taxes to create revenue for improvements. Among the critics of the existing taxation system were the influential editor of the *Mobile Register* Erwin Craighead, and Govs. William C. Oates and Joseph F. Johnston.⁶

An increasing number of Alabamians wanted a better funding structure for their public schools. Others wanted changes to the state’s political structure in the form of a statewide primary system and the extension of terms for elected officers from two to four years. In the words of one critic, there were “too many elections and too much politics in Alabama.” Smaller groups, no less vocal, advocated for prison reform and for thorough changes to the constitution’s judicial articles.⁷

Events beyond Alabama’s borders pointed to a favorable climate for a new convention to meet these ends. In a series of opinions during the late 1870s and 1880s, the U.S. Supreme Court adopted narrow interpretations of both the Fourteenth and Fifteenth

The House is doing a very wise thing in going to work on the Sayre election bill. It should be promptly perfected and passed, in order that the Senate may have time to consider and enact it. It has every appearance of being a judicious adaptation of the Australian ballot system to the situation in this State, our present anti-educational-qualification Constitution considered. The Sayre bill is a necessary step to any movement for a Constitutional Convention in the future. It will ensure a body made up of wise and patriotic Democrats.

Montgomery Advertiser editorial in support of the Sayre Election Law, February 8, 1893



This turn-of-the-century postcard shows a busy, prosperous Birmingham. By 1900, it was Alabama’s second-largest city.

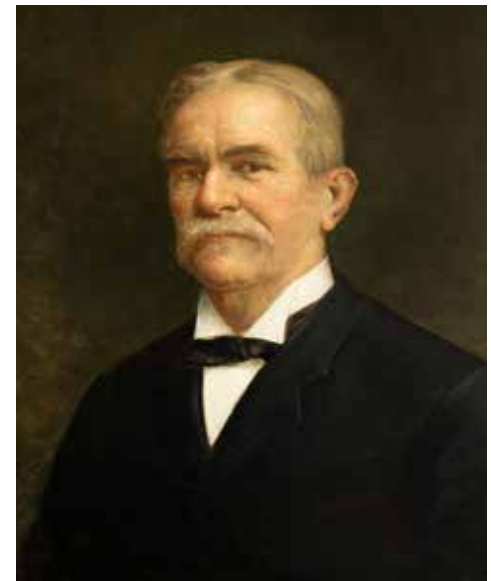


This illustration from the January 18, 1879, issue of Harper's Weekly depicts an American Uncle Sam endorsing the southern practice of restricting the vote through literacy tests and educational qualifications. It is entitled, "The color line still exists—in this case." Library of Congress

Amendments, two fundamental legacies of Reconstruction that the framers of Alabama's 1875 constitution were fearful to contradict. Moreover, in the final decade of the nineteenth century, four southern states—Mississippi (1890), South Carolina (1895), Louisiana, (1898), and North Carolina (1900)—adopted new constitutions or suffrage amendments which disfranchised black voters through various methods, including poll taxes, literacy tests, a vague "understanding clause," requirements for property ownership, and educational qualifications. The newest method of disfranchisement was the "grandfather clause." A Louisiana invention, it allowed any man to vote whose father or grandfather exercised the franchise prior to 1867, regardless of the other qualifications. Since few African Americans voted before the onset of Congressional Reconstruction that year, the grandfather clause gave southern states the means to register white voters they found worthy while excluding everyone else.

The methods by which southern states had disfranchised black voters withstood scrutiny from both the courts and Congress. With its 1896 decision in *Plessy v. Ferguson*, a case involving a segregation ordinance in New Orleans, the Supreme Court legitimized the practice of establishing "separate but equal" facilities and accommodations for whites and blacks. Using the decision as precedent, southern states codified decades of de facto segregation into law. If the Democrats in power wanted to rewrite Alabama's constitution, there was little standing in their way.⁸

In 1890, Gov. Thomas Seay had urged Alabamians to follow the lead of Mississippi and call a convention. His successor, Thomas Goode Jones, took up the matter as well, but was rebuffed by a coalition that feared the Populists might marshal enough votes to stack a convention in their favor. After another failed attempt at reform by Gov. William C. Oates, it appeared that his successor, Joseph F. Johnston, might bring about a new convention. The state



Gov. Joseph F. Johnston

party and the legislature endorsed the idea in 1898, but Johnston reneged, worried that it might endanger his attempt to unseat John Tyler Morgan from the U.S. Senate. The veteran senator then deftly made the calling of a convention a key part of his reelection campaign. As campaign manager Frank White stated, "Morgan's victory is a triumph for better politics in Alabama. It means a constitutional convention. The state can no longer do without it."⁹

"The doors of opportunity now swung open," wrote historians Robert David Ward and William Warren Rogers, "and the obstacles to constitutional change were removed." In December 1900, the legislature approved a bill calling for a convention. The act provided for the election of 155 delegates. One hundred would be elected based on the apportionment of the counties in the House. They would be joined by two delegates from each congressional district, one from each of the thirty-three Senate districts, and four delegates elected at-large. The act included a stipulation that the new constitution would be submitted to a vote of the people of Alabama, something unique among the southern conventions of the era.¹⁰

Alabamians endorsed the convention on April 23, 1901, by more than twenty-four thousand votes. The cotton-rich counties in the Tennessee Valley voted for the convention. The hill-country counties rejected it, as did much of the Wiregrass in southeast Alabama. Black Belt Democrats lined up large numbers of African American voters in support. So great was the power of the region's planter class that they could manipulate the black vote to support a constitutional convention promoted with the slogan "white supremacy, suffrage reform, and purity in elections."¹¹

IT MEANS A NEW CONSTITUTION

While the result of Monday's election was a foregone conclusion, so far as the general result was concerned, it is a matter of congratulation that the result in the several counties was so nearly an unanimous endorsement of the Democratic tickets. Both houses of the next Legislature will be almost entirely Democratic, and in most of the counties the present Populist officials are succeeded by Democrats. It was almost a clean sweep from the highest to the lowest offices voted on.

In our judgment, the result means a new Constitution for Alabama. Any attempt to cure by amendment the many defects in that instrument will fail. At almost every session of the Legislature during the last twenty years amendments to the Constitution have been submitted to the voters, and not one has been really carried, nor will future attempts in this direction be more successful. Alabama wants and needs a better Constitution, and that means—not "a thing of shreds and patches," but a new instrument entirely. The present one is out of date, imperfect and unfitted to present conditions.

After the 1900 elections, the Montgomery Advertiser expressed confidence in this December 8 editorial that the new year would see a constitutional convention.

THE FRAMERS



J. Thomas Heflin,
Chambers County delegate

When they assembled in Montgomery on May 21, 1901, Democratic delegates occupied 90 percent of the convention seats. Remnants of the once-powerful Populists and Republicans comprised the minority of the convention delegates, holding six and seven seats, respectively. Within the Democrats, a small contingent of moderate, urban delegates was present. They advocated for a number of progressive issues, including better funding for education, expanded public services, prison reform, and even anti-lynching legislation. A single independent delegate also sat in the convention. Combined, these groups were dwarfed by the large number of delegates from the planter class and the state's railroads, banks, and industrial interests in Birmingham, Tuscaloosa, Anniston, and Gadsden. These business magnates would subsequently become known as Alabama's "Big Mules," a term possibly coined by Bibb Graves, a critic of the group and later a two-term governor. Generations of politicians, journalists, and historians have used the term since.¹²

Two former governors, William C. Oates and Joseph F. Johnston, were among the delegates, as were two former chief justices of the state supreme court and two attorneys general. The body included three future governors: Emmet O'Neal, Charles Henderson, and William W. Brandon, who served as recording secretary. Delegates J. Thomas Heflin and Frank White were later elected to the U.S. Senate. One delegate had been a framer of the state's 1865 constitution. Four were present at the 1875 convention, including Troy merchant and politician Joel D. Murphree. "Little did I think I would ever again ask the voters of my county to support me for office," he wrote. "Neither did I expect to live to see the day when our State would need a new Constitution."¹³



W. W. Brandon, recording secretary
of the convention

All of the delegates were white men, the days of widespread African American officeholding in Alabama having come to an end in the 1870s. Not until 1970 would another black politician win election to the legislature. By profession, the delegates in 1901 were primarily lawyers and public men. Ninety-six of them were members of the Alabama Bar. Twelve were bankers. Twenty-eight had previously served in the legislature, and seventeen were serving currently. They were older men, most above the age of forty and "at least one-third grey heads," observed Max Bennett Thrasher, who covered the convention for the *New York Evening Post*.¹⁴

Almost forty of the delegates were veterans of the Civil War. The most prominent among them was William C. Oates, a Wiregrass native and one of the convention's at-large delegates. Involved in various business and publishing interests before the war, in 1861 he assembled a local infantry company that was soon folded into the 15th Alabama Infantry Regiment. Oates rose to the rank of colonel and was given command of the regiment. At Gettysburg in July 1863, he and his men engaged in a legendary battle against the 20th Maine at Little Round Top. Oates was later shot at the Battle of Chickamauga and again near Petersburg, Virginia, resulting in the amputation of his right arm.¹⁵

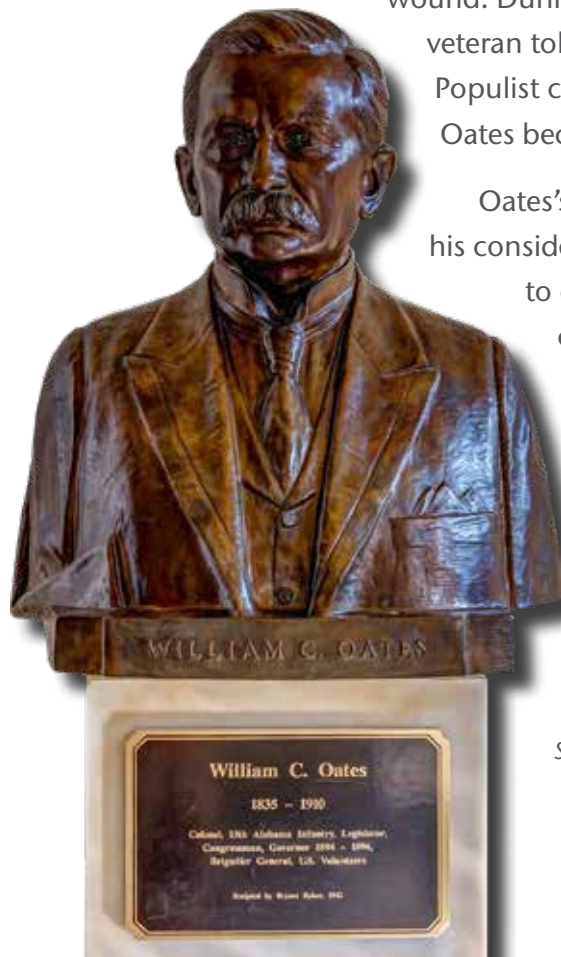
After the war, Oates became a key figure among state Democrats and was a delegate to the 1875 convention. He was subsequently elected to Congress and served as governor from 1894 to 1896. Historian David E. Alsobrook wrote that, in his public appearances,

Oates often assumed a right oblique stance that accentuated his war wound. During the 1894 gubernatorial campaign, a Confederate veteran told Oates that, although he supported the ideals of Populist candidate Reuben F. Kolb, he would nonetheless vote for Oates because he “could not vote against the ‘empty sleeve.’”¹⁶

Oates's record of public service and his popularity naturally led to his consideration for president of the convention. Yet his public opposition to certain methods of disfranchisement, including the grandfather clause and property qualifications, were marks against him in the minds of more conservative members of the convention. They disliked his contention that the wholesale removal of the vote from eight hundred thousand black Alabamians was “unwise and unjust.” The railroad interests in the state also opposed his candidacy, still bitter from his veto of a commercial bill when he was governor. Sensing inevitable defeat, Oates withdrew his name from consideration.¹⁷



John B. Knox, delegate-at-large and president of the convention



Statuary Hall, Alabama Department of Archives and History



Massey Wilson

MASSEY WILSON CLARKE COUNTY DELEGATE

At thirty-two, Massey Wilson was the youngest member of the convention. Wilson previously worked as a clerk in the legislature. He was elected as a delegate from Clarke County. His participation in the convention launched a political career which lasted the first half of the twentieth century. He served in the legislature, rising to the position of Speaker of the House, and later as attorney general. Active in the state Democratic party, Wilson was an informal advisor to several governors.

For many years, Massey Wilson held the distinction of being the last surviving member of the 1901 convention. Even late in life, he did not shy away from Alabama politics. In the early 1960s, he joined a chorus of Democrats who protested the expansion of the Jefferson County legislative delegation through court-mandated reapportionment. Wilson died in Camden in March 1966 at age ninety-seven.



Wilson reviewing 1901 convention proceedings in 1962

Immediately thereafter, the convention by acclamation chose Anniston attorney John B. Knox to serve as president. A corporate lawyer and Democratic party insider, Knox had never held elected office. Moreover, he hailed from north Alabama, and his leadership of the convention might help win more votes there for ratification. Renowned for his oratorical skills, Knox had argued cases before the U.S. Supreme Court. He enjoyed a statewide network of business connections. Neither the planter class nor the Big Mules objected to Knox's candidacy. He was, after all, one of their own.¹⁸

In his first address as president, Knox told the delegates that he believed their convention carried a greater responsibility than any in Alabama's history with the exception of the secession convention of 1861. "Then, as now, the negro was the prominent factor in the issue," he stated. "And what is it that we want to do?" Knox asked the delegates. "Within the limits imposed by the Federal Constitution to establish white supremacy in this State. This is our problem, and we should be permitted to deal with it, unobstructed by outside influences."¹⁹ Knox addressed the

underlying desire to codify disfranchisement: “If we would have white supremacy, we must establish it by law—not by force or fraud. If you teach your boy that it is right to buy a vote, it is an easy step for him to learn to...steal whatever he may need or greatly desire. The results of such an influence will enter every branch of society.”²⁰

For the first time in the state’s history, members of a constitutional convention decided to produce a verbatim transcript of their proceedings. Delegate John Ashcraft was among those who questioned both the expense of the endeavor and wisdom of creating such a record. “When this work is tested before the Supreme Court of the United States, we do not want that body to search for light amid the darkness of the debates on the Fourteenth and Fifteenth Amendments,” he reasoned. Pickens County’s *West Alabamian* newspaper predicted that the presence of a stenographer in the convention hall “would encourage an economy of words...cutting off a lot of unnecessary gab.” Nothing could have been further from the truth. The proceedings of the convention fill four thick volumes of nearly five thousand pages.²¹



John T. Ashcraft,
Lauderdale County delegate

THE DEBATE

The large number of delegates to the convention made the work of its committees all the more important. This was doubly true of the committee on suffrage and elections. To lead this group of twenty-five, which included twenty-one lawyers, Knox appointed Thomas W. Coleman. The Black Belt delegate held a degree from Princeton University. He owned slaves until Emancipation and had been a delegate to the 1865 constitutional convention. Coleman had also served in the legislature and as an associate justice on the state supreme court. Delegates from the Black Belt and industrialized central Alabama held most of the seats on the committee, which counted among its members Governor Oates, Frank White, Emmet O’Neal, two former congressmen, and Richard Channing Jones, former president of the University of Alabama.²²

The committee had no shortage of ideas. During their two months of deliberations in May and June, they received thirty-eight proposals from fellow delegates, along with extensive correspondence from



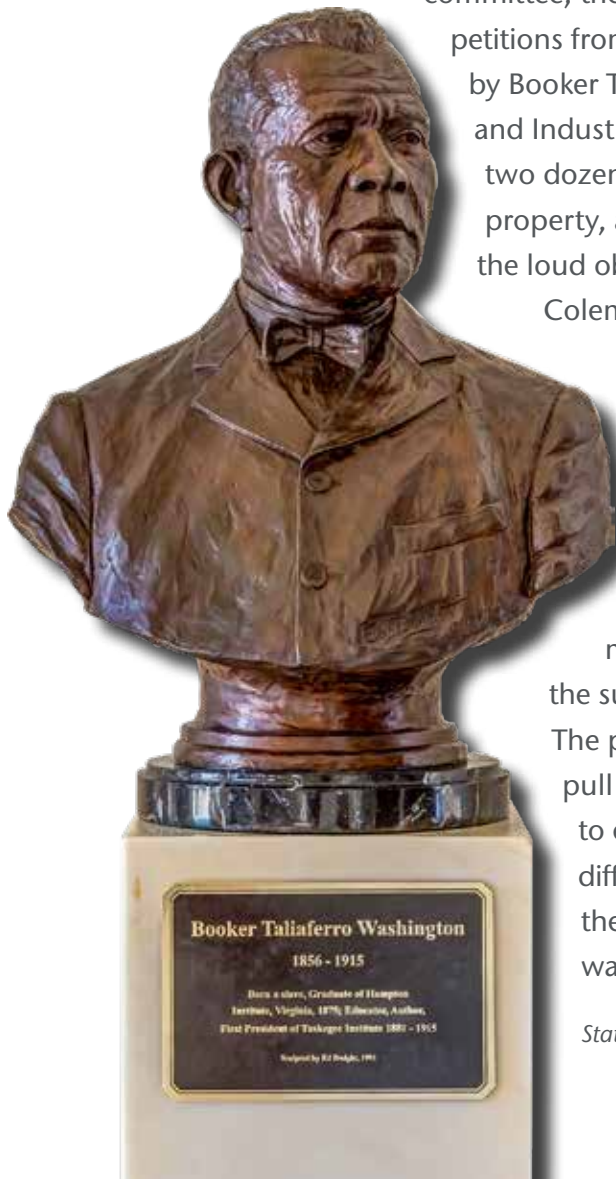
Thomas W. Coleman,
Greene County delegate

individuals such as South Carolina's Benjamin Tillman and both of Alabama's U.S. senators, John Tyler Morgan and Edmund Pettus. Opinions ranged widely. Oates and fellow ex-governor Thomas Goode Jones urged moderation, avoiding potential conflicts with federal law. Others, including convention president John Knox, encouraged decisive action.²³

In late May, amidst the continued work of the suffrage committee, the convention received a number of written petitions from black Alabamians. The first was submitted by Booker T. Washington, president of Tuskegee Normal and Industrial Institute, on behalf of himself and nearly two dozen notable black citizens, all men of means, property, and standing within their communities. Over the loud objections of his fellow delegates, Thomas Coleman demanded the letter be read into the record: "Under the circumstances, as we are considering a question in which he and his race are vitally interested, I for one would be pleased to hear it."²⁴

The petition was moderate in tone: "We beg to your honorable body to keep in mind...that, as a race, we did not force ourselves upon you, but were brought here in most cases against our will." The petitioners acknowledged that the delegates could craft the suffrage restrictions they desired without fear of reprisal from the federal government. The power was entirely theirs. "It requires little thought, effort or strength to degrade and pull down a weak race," the petition continued, "but it is the sign of great statesmanship to encourage and lift up a weak and unfortunate race. Destruction is easy; construction is difficult." Black Alabamians were not seeking supremacy over whites, they explained. What they desired, in exchange for paying their taxes and for being subject to the laws of the state, was "some humble share in choosing those who shall rule."²⁵

Statuary Hall, Alabama Department of Archives and History



Gov. Thomas Goode Jones, delegate at-large

Some of the delegates were proponents of extending the franchise to Alabama women. Dallas County's Benjamin H. Craig favored the vote for women on its own merits. He was in the minority, however. Others reluctantly supported the idea because it would further dilute the black vote. "It would double the available white vote in the state," Jefferson County's Russell Cunningham reasoned. Seventeen women from Madison County (all taxpayers, they noted) petitioned the convention for the right to vote. "We insist that those powers of government only are just which are derived from the consent of the governed," the petition read. "The consent of the women of Alabama to government affecting their rights and property can only be obtained by giving them the right of suffrage." Carrie Chapman Catt, president of the National American Woman Suffrage Association, wrote letters to the delegates seeking their support for the "just claim of the Alabama woman to some share in the law-making power of the State." After a lengthy debate, delegates passed an ordinance that would grant property-holding women the right to vote in referendums on local bonds. But the following day, on a motion to reconsider, the delegates repealed the measure by a vote of eighty-seven to twenty-two.²⁷

Voice of Dissent

WILLIS E. STERRS

Willis E. Sterrs was born in Montgomery in 1867. The son of former slaves attended Lincoln Normal University in Marion, Alabama, and earned a medical degree from the University of Michigan in 1888. After working for a few years in Montgomery, Sterrs relocated to Decatur in north Alabama, where he opened a medical practice and other business interests.



On June 18, Morgan County delegate Samuel Blackwell requested that a letter written by Sterrs be read into the official record of the 1901 convention. "Realizing the fact that no member of the negro race is represented in your august body to speak one word for us, we must appeal to you in this manner," Sterrs wrote. Taking the franchise from black Alabamians would "at once relegate us to the ranks of a brute," he argued. "Do not deal a crushing blow."

Sterrs encouraged the delegates to consider all that African Americans had contributed throughout Alabama's history: "The tickle of our hoe has made your lands laugh forth in harvests. Our axe has cleared your forests. We have built your cities. Our pick has sunk down into the bowels of the earth and [brought] up iron and coal.... We petition and implore you to not disturb our content by an unjust franchise. If you place an educational qualification that touches all alike, we are satisfied. In short, we...are willing to be weighed in the scale of manhood and measured with a tape of justice."²⁶

The African American Museum and Library,
Oakland, California



Voice of Dissent

FRANCES GRIFFIN

Among the most dramatic days of the 1901 convention was June 10, when Frances Griffin addressed the delegates on the topic of women's suffrage. A few delegates attempted to block Griffin's speech through various parliamentary maneuvers. When she finally rose to speak, the gallery overlooking the chamber was filled with women, many of them clad in white.

For over half an hour, Griffin listed the many ways Alabama women had contributed to the growth and health of the state, underscoring the inherent unfairness in their lack of the franchise. "The man without a vote is a subject, not a citizen," she said. "The woman without a vote is an inferior, not an equal." Griffin was interrupted by applause, jeers, and laughter during her speech. "So long as laws affect both men and women, men and women together should make those laws," she proclaimed to the displeasure of some delegates. Responding to their silence, Griffin quipped, "Now why don't you applaud that?" In the gallery above, her female supporters cheered and waved their white handkerchiefs. Griffin closed her remarks by asking the delegates to confer upon Alabama's women the very right to vote that they intended to take away from African American men.²⁸

New Decatur Advertiser,
June 21, 1901

Miss Frances Griffin, president of the Alabama Woman Suffrage Association, made a grand speech before the members of the Constitutional Convention at Montgomery. As a native Alabamian Miss Griffin was able to deliver her "blows str aight from the shoulder." She made an excellent effect.

**MISS FRANCES GRIFFIN
ON WOMAN'S SUFFRAGE**
She is to Address the Constitutional Convention at
Noon on Monday

Montgomery
Advertiser,
June 9, 1901

On June 30, following weeks of anticipation, the committee on suffrage and elections presented its reports to the convention. The committee's majority, led by Coleman, recommended a temporary suffrage plan, a kind of modified grandfather clause that would last until January 1, 1903. During this time, anyone could register as a voter who had been a soldier or sailor during any American war or were the descendants of these men, as well as those who were "of good character who understand the duties of citizenship in a republican form of government." The final clause was purposefully vague, giving discretion to local registrars.²⁹

Beyond the temporary provisions, which were designed to allow desirable white voters onto the rolls, the committee recommended sweeping restrictions on the electorate. Residency requirements were increased to two years for statewide elections, one year for county elections, and three months for local elections. Each February, a poll tax of \$1.50 had to be paid. The tax was cumulative, so skipping payment for one year required payment of \$3.00, skipping payment for two years required payment of \$4.50, etc.

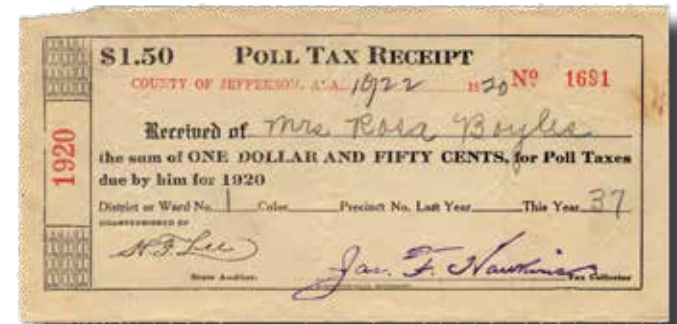
The committee further recommended literacy tests and a requirement to own forty acres of land or other real property valued at \$300 or more. The threshold for real property came at a time when Alabama's yeoman farmers were losing their lands to foreclosure or unpaid taxes at an increasing rate. Finally, the committee lengthened the list of crimes and misdemeanors that would result in disfranchisement. "With the exception of a religious qualification, the Alabama Constitution of 1901 contained almost every qualification for voting ever devised by the mind of man," wrote historian Malcolm McMillan.³⁰

Four of the committee members, including William C. Oates and Frank White, submitted a minority report. They called the temporary plan arbitrary and a direct contravention of federal law that would not survive a legal challenge. They considered the new suffrage restrictions to be "a backwards step" for Alabama that would establish in the state a permanent, hereditary ruling class that was wholly undemocratic. Oates maintained that such draconian laws were unnecessary, stating, "The ballot can be secured to the honest and the capable without resorting to this subterfuge."³¹

When continuous debate on the two reports began on July 23, interested Alabamians, black and white, filled the chamber's gallery to capacity. Among the delegates below were flashes of a growing indecorous spirit. "I want cheaper votes," a Randolph County delegate exclaimed. "We want that poll tax to pile up so high that he will never be able to vote again," another declared. "I like the grandfather clause because it is a white man's clause," a Tallapoosa County delegate stated. "I like it because it practically permits all white men to vote and it practically denies all negroes to vote."

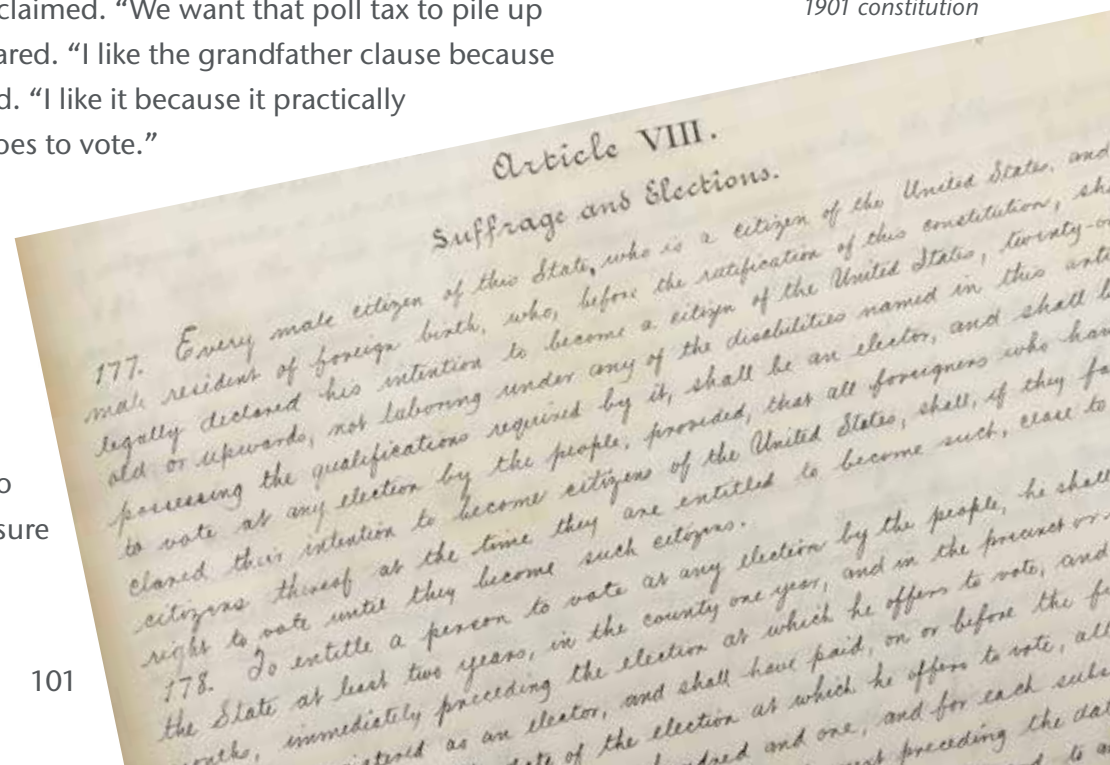
When Napoleon Bonaparte Spears, the "Populist-Republican" delegate from north Alabama rose and spoke on the merits of the Fourteenth and Fifteenth Amendments, Thomas Coleman angrily replied that he welcomed the day when Spears and his like-minded constituents were stricken from the rolls of Alabama voters.³²

Those who opposed the plan on the convention floor did so because of the grandfather clause. One delegate said the measure



Poll tax receipt issued to Rosa Boyles in Jefferson County, October 22, 1920, months after the Nineteenth Amendment to the U.S. Constitution extended suffrage to women.

Article VIII of the 1901 constitution



This 1905 map shows all of Alabama's sixty-seven counties. The 1901 constitution included a provision that permitted the creation of a new county in southeastern Alabama. The legislature created the county in 1903 and named it in honor of Gov. George S. Houston.

was so utterly undemocratic that it would make the bones of Thomas Jefferson "rattle in his grave." As Robert J. Lowe, a delegate at-large and chairman of the state Democratic committee, stated, "White supremacy is secure in Alabama. We are here to promote fair elections." The grandfather clause was anything but fair, he asserted. Most of the state's small-town newspapers opposed the grandfather clause, as did influential daily papers in Montgomery, Birmingham, and Mobile.³³



Very little of this criticism swayed the majority of the convention delegates, who also ignored the protestations of both of Alabama's senators. More than one hundred delegates approved the new suffrage and election provisions. Thus, wrote historian Malcolm McMillan, the type of liberal election laws of Alabama's 1819 and 1868 constitutions were reversed: "Alabama had been made safe not only for white supremacy but the supremacy of white Bourbon Democracy."³⁴



Robert J. Lowe,
delegate at-large

In addition to these revisions, the delegates made a number of changes to the state's governing structure. Although they were lauded for increasing the amount of revenue allocated for education, the state's overall tax structure changed little from the 1875 constitution. The cap on state property taxes was reduced by one point to 6.5 mills, of which 3 mills were dedicated to education and 1 mill to the care of Confederate veterans, leaving only 2.5 mills to support the remaining functions of state government. County and municipal rates were capped at 5 mills each, but a county had the option of levying an additional 1 mill to enhance local education funding if three-fifths of the county's voters were in favor. The restrictions made Alabama's

property taxes among the lowest in the nation. Local governments could do little else to seek capital for improvements.³⁵

Delegates reestablished the office of lieutenant governor in response to the ill health of Gov. William J. Samford. He died on June 11, after only six months in office, while the convention was still in session. William Dorsey Jelks, president of the Senate, succeeded him.³⁶ Wiregrass delegates successfully lobbied for a provision permitting the creation of a new county from portions of Dale, Geneva, and Henry counties. (The legislature would follow through in 1903 with a county named in honor of Gov. George S. Houston.) Any additional new counties were required to be at least six hundred square miles in area and to leave their feeder counties with at least the same square mileage.³⁷

The new constitution vested more power in the governor and executive branch by lengthening terms of office. The legislature was mandated to hold quadrennial sessions lasting no more than fifty days each. One meeting of the legislature every four years was hardly in keeping with Jeffersonian ideals, critics claimed. Commercial interests throughout the state endorsed the change, however.³⁸

Petitioners implored the convention to address a number of other critical issues, such as reforms to the state's child-labor laws; improvements to the prison system, including the practice of convict leasing; strengthening the regulatory power of the Railroad Commission; and making it easier for Alabama municipalities to seek bond issues for capital projects. Although these needs were debated, some at length, none were written into the new constitution. Its framers were fearful that such controversial measures might undermine the work of the suffrage committee and endanger ratification.³⁹

The framers of the 1901 constitution crafted the most centralized government that had yet existed in Alabama. The new document greatly limited the ability of municipalities and counties to govern themselves and made unusually onerous the process of passing local bills in the legislature. The legislature alone could write laws for unincorporated areas, taking further power away from county commissions, particularly in the rural parts of the state. The new constitution, Wayne Flynt wrote, "did not empower the people; it empowered the legislature." The centralizing nature of the document reflected the governing preferences of the Big Mules. Instead of focusing their lobbying efforts on hundreds of elected officials spread throughout Alabama's towns, cities, and counties, they could focus solely on Montgomery and the legislature to enact their will.⁴⁰

Gov. William C. Oates, a delegate at-large, signed the constitution with this pen on September 3, 1901.



Alabama's 1901 constitutional convention concluded on September 3, 1901. The session had lasted more than three months. Dabney Palmer, a delegate from Washington County, sent the pen with which he signed the constitution to his granddaughter. "This will never be forgotten," he wrote to her, summarizing the work of the delegates. "We have virtually disfranchised the negro, reduced the taxes, and largely increased the school fund." The state Democratic party met and resolved to "aid in every possible way" the ratification of the new governing document. Governor Jelks announced that the ratification vote would occur on November 11, 1901.⁴¹

RATIFICATION

A committee of fourteen led by Congressman Oscar Underwood canvassed the state encouraging support for the constitution. Governor Jelks, convention president John Knox, and, eventually, the state's entire congressional delegation joined its ranks. Late in the campaign, Sen. John Tyler Morgan, who had been silent on the new constitution since delegates ignored his concerns about the grandfather clause, lent his important voice in favor of ratification. Many former Populist leaders, including former gubernatorial candidate Reuben F. Kolb, joined with their old Democratic foes in support of the constitution.⁴²

For many supporters, race was the main focus. "The great incubus of unlimited negro suffrage will undoubtedly be removed by ratification," the *Montgomery Advertiser* stated. "That alone ought to commend it to white voters." The *Choctaw Advocate* concurred, calling the document "made by white men for white men." The constitution would help maintain "the proper relations of the races," John Knox told Bibb County voters on the eve of the referendum. Knox proclaimed that the new constitution "eliminates the ignorant negro vote, and places control of our government where God Almighty intended it should be—with the Anglo-Saxon race.... The ignorant and vicious negroes in our



Oscar Underwood
Library of Congress

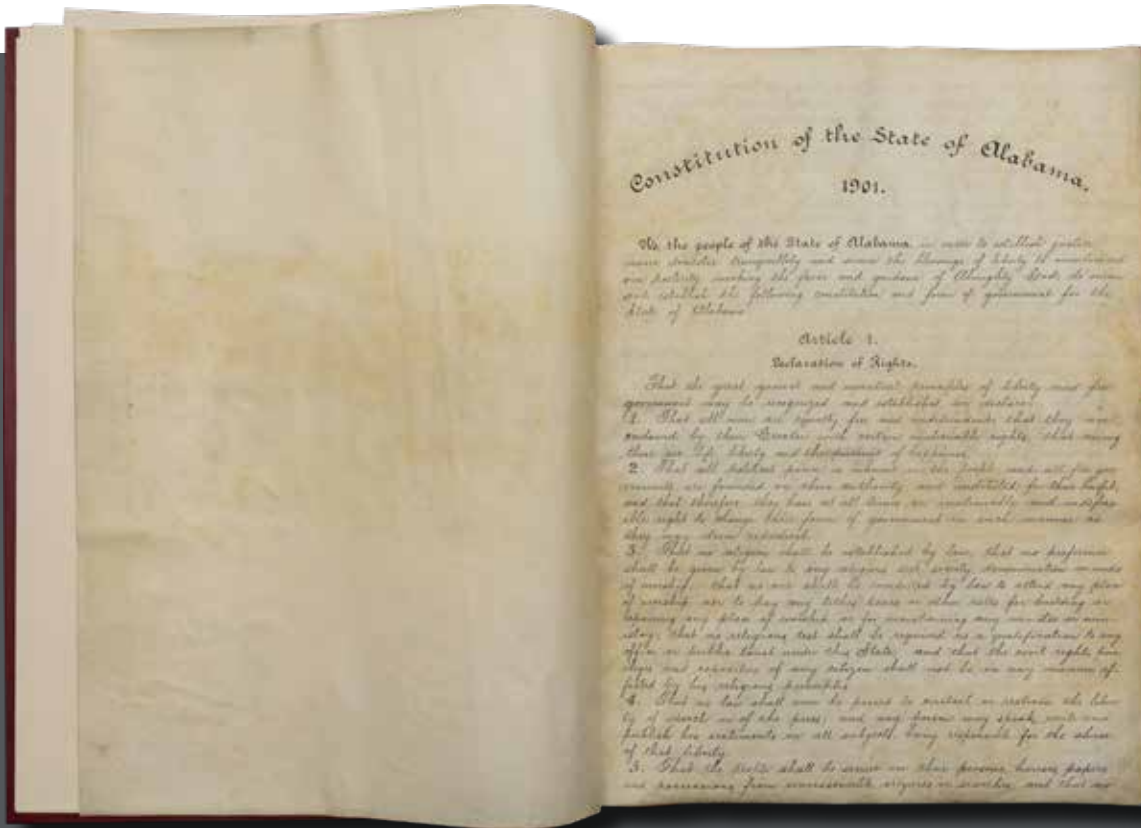
midst should never have been invested with the right of suffrage, and it is our duty...to protect ourselves against these dangers with which we have had ample experience.”⁴³

Key opponents of ratification included former governor Johnston and three former congressmen. “There was no spokesman here against black disfranchisement,” historians Robert David Ward and William Warren Rogers wrote of the group. Rather, “their constant emphasis concerned the issue of depriving the poor white of his vote and themselves of public office.”⁴⁴ Many African American leaders understood the inevitability of ratification. “What have the white men of Alabama ever cared about opposition to any political rascality they wanted to carry through?” A. N. Johnson, a south Alabama undertaker and editor, asked readers of the *Mobile Weekly Press*. “When men can manufacture any sort of majority they need by the simple process of addition and silence, the talk about the popular vote becomes farcical.” His words proved prescient.⁴⁵



A. N. Johnson

Archives Collection, The Doy Leale McCall Rare Book and Manuscript Library, University of South Alabama



THE 1901 CONSTITUTION

The 1901 constitution is written in 287 sections numbered consecutively through its seventeen articles. It is written on eighty-two pages of fine parchment. The constitution is the only one of Alabama’s defining documents that is bound. Brown Printing Company and Black Book Manufacturers in Montgomery created the original binding. It was made of burgundy-colored leather with three double-layered bands on the spine. Gold tooling around the spine and edges formed a decorative border and a diamond shape in the center. Over the last century, the original binding of the constitution became brittle and loose. As part of the conservation of the document, the staff at the NEDCC replaced the binding.

“The new Constitution...places control of our government where God Almighty intended it should be—with the Anglo-Saxon race.”

JOHN B. KNOX, CONVENTION PRESIDENT, NOVEMBER 9, 1901

In November, Alabamians ratified the new constitution by a margin of twenty-seven thousand votes. Thirty-four counties voted for ratification; thirty-two opposed it. Dubious counts from the Black Belt provided the margin of victory. Officials there claimed that nearly thirty thousand African Americans voted to disfranchise themselves. In the three most populous counties in the region, only five hundred people voted against ratification. Excluding the Black Belt region, the referendum would have failed statewide by nearly four thousand votes.⁴⁶

Supporters of the constitution welcomed the victory. In bold letters, the headline atop the *Montgomery Advertiser* lauded ratification’s “overwhelming majority.” “THE CITIZENS OF ALABAMA DECLARE FOR WHITE SUPREMACY AND PURITY OF BALLOT,” it read, passing over the irony of the claim. The white men of the state “worked hard for the adoption of the new instrument.”⁴⁷

That “new instrument” performed as Alabama’s ruling elites hoped it would. Before the new constitution was ratified, more than 180,000 black Alabamians were eligible to vote. By 1903, fewer than 3,000 were registered. The number of registered African Americans voters in fourteen Black Belt counties fell 99 percent, from 79,311 to 1,081. Although not as dramatic, the percentage of white voters decreased over the same period as well. Forty thousand fewer

whites were registered to vote in 1903 than in 1900, despite an increase in the white population. Voter turnout naturally declined as well, from a high of more than 60 percent to less than 20 percent by the 1920s.⁴⁸



Front page of the *Montgomery Advertiser*, November 12, 1901, the day after voters ratified the new constitution

The worst provisions of the 1901 constitution—its legal suppression of Alabamians’ civil and voting rights—were invalidated through processes of federal legislation, judicial action, and public activism in the mid-twentieth century. Other fundamental questions about taxation and home rule remain and are the focus of constitutional reform efforts in the twenty-first century.

The 1901 constitution’s centralizing nature has transformed it into an increasingly unwieldy governing document. As of Alabama’s bicentennial year, the document has grown by 946 amendments, the overwhelming majority of which deal with purely local matters. This underscores historian Malcolm McMillan’s claim that Alabama’s is more akin to a legislative document than a typical constitution.⁴⁹ The five constitutions which governed Alabama from statehood through the dawn of the twentieth century collectively have fewer than a dozen amendments. Alabama’s 1901 constitution is more than fifty times the length of the U.S. Constitution, to which, in more than two centuries, only twenty-seven amendments have been added.



A headline in the Montgomery Advertiser, April 28, 1903, announces the end of the first legal challenge to the 1901 constitution

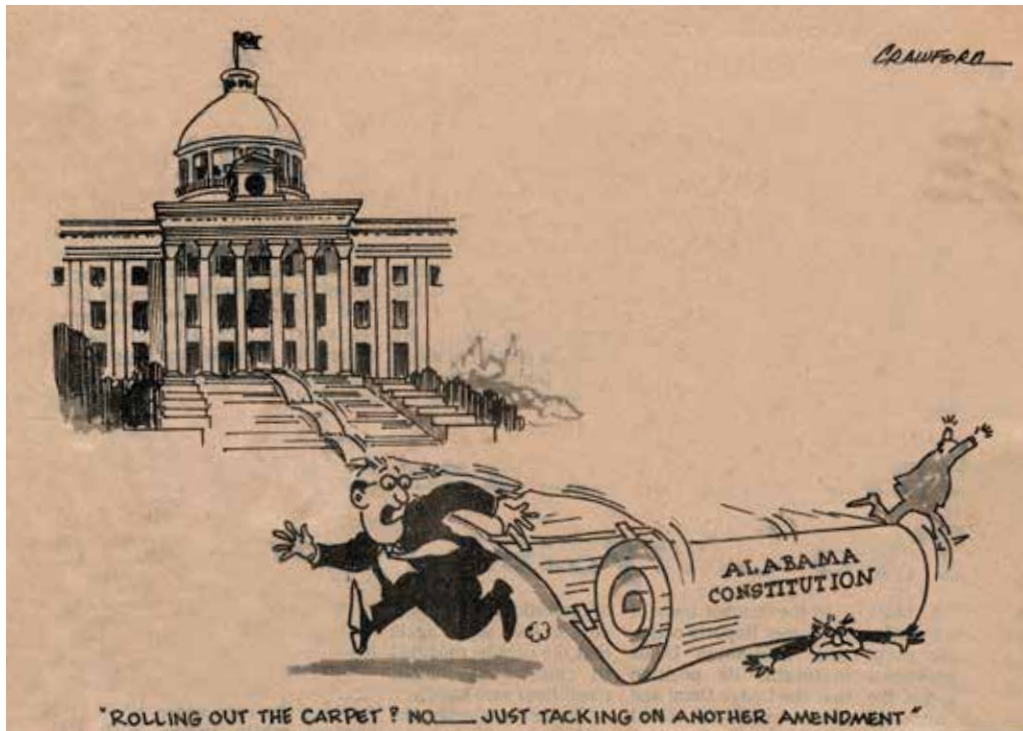
Constitutional reformers have confronted a difficult task. Through court challenges, ballot initiatives, executive actions, and the sheer force of public will, more than two dozen revision and reform attempts have been launched. The first came in 1903 when Jackson W. Giles, an African American postman from Montgomery, took his challenge to the new constitution all the way to the U.S. Supreme Court, which ruled against him. Govs. Emmet O’Neal (himself a framer of the document), Thomas Kilby, James E. Folsom, Albert Brewer, Fob James, Don Siegelman, and Bob Riley all tried by various means to reform the document. Each of them encountered tremendous, and often insurmountable, opposition. Governor Brewer’s effort was perhaps the most successful, since it led to a significant revision of the constitution’s judicial article.⁵⁰



Gov. James "Big Jim" Folsom



Gov. Albert Brewer



Stymied at various points in history by special interests, elected officials, and the courts, constitutional reform shifted from the realm of the politicians to the people. In 2000, a group of concerned citizens founded a grassroots lobbying organization called Alabama Citizens for Constitutional Reform. Today, while a new constitutional convention seems unlikely, reform efforts continue through the established amendment process and by educating the public and elected officials about the document's deficiencies.⁵¹

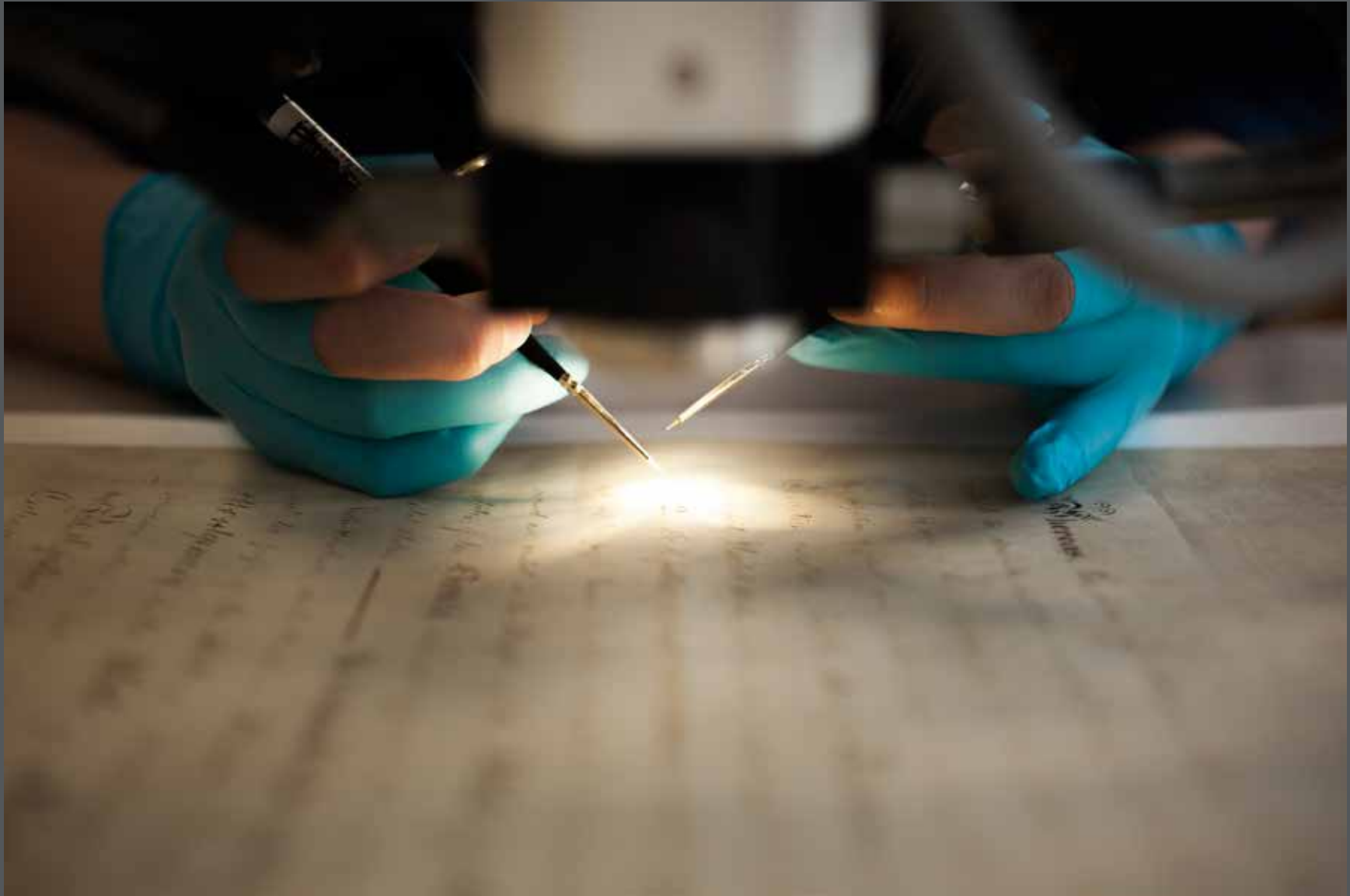
This undated political cartoon from the Alabama Journal underscores a chief deficiency of the 1901 constitution: its dependence on the amendment process to accommodate routine changes in state and local government, which has made it the longest governing document in the world.

The form that Alabama's principal governing document will take in the third century of statehood will depend on the answers to persistent questions: Whose voice will matter? What will Alabamians value? What will be the role of state government? Who will be able to vote? The framers of all six Alabama constitutions wrote into these documents the defining values of their eras, values that were seen as progressive, idealistic, or sometimes punitive. So it will be in years to come. As the civic conversation about what it means to be an Alabamian continues, the past offers a lesson for the stewards of the future.



NOTES

- 1 McMillan, *Constitutional Development in Alabama*, 217-219.
- 2 Wayne Flynt, *Alabama in the Twentieth Century* (Tuscaloosa: University of Alabama Press, 2006), 6.
- 3 Ibid.
- 4 Flynt, *Alabama in the Twentieth Century*, 5; Rogers et al, *Alabama*, 311-312; McMillan, *Constitutional Development in Alabama*, 223-225.
- 5 Flynt, *Alabama in the Twentieth Century*, 5; McMillan, *Constitutional Development in Alabama*, 230.
- 6 McMillan, *Constitutional Development in Alabama*, 233-235, 247-248.
- 7 McMillan, *Constitutional Development in Alabama*, 238-246.
- 8 McMillan, *Constitutional Development in Alabama*, 231-232; Sarah A. Warren, "Constitutional Convention of 1901," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-3030> (accessed May 25, 2019); Bridges, *Alabama: The Making of An American State*, 153-154.
- 9 McMillan, *Constitutional Development in Alabama*, 249-250, 257-259.
- 10 Rogers et al, *Alabama*, 345; McMillan, *Constitutional Development in Alabama*, 258-259.
- 11 McMillan, *Constitutional Development in Alabama*, 259-261.
- 12 Flynt, *Alabama in the Twentieth Century*, 7-8; McMillan, *Constitutional Development in Alabama*, 263.
- 13 McMillan, *Constitutional Development in Alabama*, 263; "To the Public," Joel Dyer Murphree Papers, box 3, folder 1, ADAH.
- 14 McMillan, *Constitutional Development in Alabama*, 263.
- 15 Paul M. Pruitt Jr., "William Calvin Oates," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-1410> (accessed May 29, 2019).
- 16 David E. Alsobrook, *Southside: Eufaula's Cotton Mill Village, 1890-1945* (Macon: Mercer University Press, 2017), 23-24.
- 17 McMillan, *Constitutional Development in Alabama*, 264-266.
- 18 Ibid.
- 19 *Official Proceedings of the Constitutional Convention of the State of Alabama, May 21, 1901, to September 3, 1901*, Vol. 1 (Wetumpka: Wetumpka Printing Company, 1940), 7-8.
- 20 *Official Proceedings*, Vol. 1, 9-10.
- 21 R. Volney Riser, *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890-1908* (Baton Rouge: Louisiana State University Press, 2010), 112-113.
- 22 McMillan, *Constitutional Development in Alabama*, 266-267.
- 23 Ibid.
- 24 Riser, *Defying Disfranchisement*, 115-116.
- 25 Booker T. Washington to John B. Knox, May 23, 1901, Alabama Secretary of State, Constitutional Convention of 1901 Records, Correspondence and Petitions, SG5550, folder 5, ADAH.
- 26 Petition of Willis E. Sterrs, Alabama Secretary of State, Constitutional Convention of 1901 Records, Correspondence and Petitions, SG5550, folder 5, ADAH; Riser, *Defying Disfranchisement*, 118.
- 27 McMillan, *Constitutional Development in Alabama*, 278-279; "To the Constitutional Convention of the State of Alabama," Alabama Secretary of State, Constitutional Convention of 1901 Records, Correspondence and Petitions, SG5550, folder 6, ADAH; Carrie Chapman Catt to Joel D. Murphree, June 14, 1901, Alabama Secretary of State, Constitutional Convention of 1901 Records, Correspondence, SG17778, folder 2, ADAH.
- 28 McMillan, *Constitutional Development in Alabama*, 278; *Official Proceedings*, Vol. 2, 464-471.
- 29 McMillan, *Constitutional Development in Alabama*, 280-281.
- 30 McMillan, *Constitutional Development in Alabama*, 280-281, 359; Flynt, *Alabama in the Twentieth Century*, 9.
- 31 McMillan, *Constitutional Development in Alabama*, 281-282.
- 32 McMillan, *Constitutional Development in Alabama*, 283-284, 288-289, 292, 300.
- 33 McMillan, *Constitutional Development in Alabama*, 292-295.
- 34 McMillan, *Constitutional Development in Alabama*, 295, 308-309.
- 35 Flynt, *Alabama in the Twentieth Century*, 10-11.
- 36 Rogers et al, *Alabama*, 351; Marlene Hunt Rikard, "William J. Samford," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-2015> (accessed May 25, 2019).
- 37 Scotty E. Kirkland, "Dothan," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-2447> (accessed May 25, 2019).
- 38 McMillan, *Constitutional Development in Alabama*, 335-336.
- 39 McMillan, *Constitutional Development in Alabama*, 339.
- 40 Flynt, *Alabama in the Twentieth Century*, 10-11, 15, 22.
- 41 McMillan, *Constitutional Development in Alabama*, 340; Flynt, *Alabama in the Twentieth Century*, 3.
- 42 McMillan, *Constitutional Development in Alabama*, 347-348; Flynt, *Alabama in the Twentieth Century*, 11.
- 43 Flynt, *Alabama in the Twentieth Century*, 11; "Speech of John Knox in Closing the Campaign in Favor of Ratification," November 9, 1901, pamphlet collection, ADAH.
- 44 Rogers et al, *Alabama*, 353.
- 45 Riser, *Defying Disfranchisement*, 120-121, 133-134; David E. Alsobrook, "A. N. Johnson," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-2144> (accessed May 29, 2019); McMillan, *Constitutional Development in Alabama*, 303, 346-347.
- 46 McMillan, *Constitutional Development in Alabama*, 350-351.
- 47 *Montgomery Advertiser*, November 12, 1901.
- 48 Flynt, *Alabama in the Twentieth Century*, 14-15.
- 49 Flynt, *Alabama in the Twentieth Century*, 23-24.
- 50 Flynt, *Alabama in the Twentieth Century*, 26-28.
- 51 Ibid.



With the aid of a powerful microscope, conservators at the Northeast Document Conservation Center (NEDCC) inspected each character of text on Alabama's defining documents to identify instances where the ink was separating from the parchment. Problem areas were treated with a high-grade, non-food-based gelatin to create a stronger bond.

CHAPTER 7

2019

PREPARING FOR *WE THE PEOPLE*

What do we value? This is more than simply a broad interpretive question used to frame the *We the People* exhibition. In fact, what we value lies at the very heart of the reasoning behind the exhibit. Just as the constitutions are a reflection of the people who created them, the care given to the documents by the Alabama Department of Archives and History is indicative of the agency's mission to be good stewards of the state's past.

Founded in 1901, the Archives was the first state-funded archival and historical agency in the country. Although it had been a state for more than eighty years and boasted a rich, centuries-old history, Alabama previously had no formal system in place for the collection and preservation of its records. Consequently, those materials were scattered throughout the state. Early Alabama historians by necessity traversed the old towns and former capitals of the state, seeking out its recorded history. The desire to correct this deficiency, combined with interest in improving public education and professionalizing the field of history, was the impetus needed to create the agency. Broad concern for the preservation of Confederate history and materials provided momentum.

Thomas McAdory Owen emerged as the most ardent proponent for an Alabama Archives. Born in Jefferson County in 1866 and a lawyer by profession, Owen developed a deep interest in history. Upon graduating from the University of Alabama, he held a variety of positions, including justice of the peace, assistant county solicitor, and chairman of the Jefferson County Democratic Executive Committee.



Thomas McAdory Owen, 1900



Ainsworth R. Spofford
Library of Congress

Owen worked in Washington, D.C., for three years as chief clerk for the U.S. Postal Service's division of inspectors. His time in the nation's capital deepened his interest in history. Owen befriended Ainsworth R. Spofford, the librarian of Congress, who encouraged his pursuits. In 1898, the American Historical Association published a lengthy Alabama bibliography compiled by Owen, followed by one on Mississippi the next year. The pieces earned accolades for the young historian and established his credentials within the profession.

Owen returned to Alabama in 1897 and took up the practice of law in the town of Carrollton. The following year, he and like-minded individuals revived the Alabama Historical Society, which had been dormant for over two decades. In June 1898, the group met in Tuscaloosa. It was clear at that meeting that Tom Owen would be the organization's "guiding light," as an early biographer described him. The members elected Owen secretary of the group. In that capacity, he set about rebuilding the society, distributing 1,500 membership invitations. The results were impressive.

Within a year, he added more than 250 new members to the rolls and an additional twenty-five "corresponding members," which included eminent American historian Herbert Baxter Adams and two historically minded future presidents of the United States: Theodore Roosevelt and Woodrow Wilson.

In December 1898, Owen authored two bills and submitted them to the state legislature. The first appropriated \$250 annually to support the work of the Alabama Historical Society. The second bill called for the creation of a commission to research, catalog, and preserve Alabama's scattered history. The measures received the prominent support of the *Montgomery Advertiser*. "The State owes it to her sons to preserve her history," an editorial noted, "and the beginning...made in this behalf will reflect credit on those who support the measure long after the ordinary incidents of this [legislative] session are forgotten." Representative William W. Brandon of Tuscaloosa, a member of the historical society, sponsored the appropriations bill and lobbied vigorously for its passage: "We owe it to



Statuary Hall, Alabama Department
of Archives and History

ourselves, we owe it to all the people of Alabama, we owe it to all that is high and uplifting in life.”

In the legislature, Owen’s bills benefited from good timing, caught up in patriotic fervor surrounding the dedication of a new Confederate monument on the north lawn of the Capitol. At the unveiling ceremony for the monument, Gov. Thomas Goode Jones, himself a member of the society, called for Alabama to fulfill its obligations to preserve the state’s history. The bills passed both chambers easily.

Owen became chairman of the new, five-member commission. He proved to be an able leader of the group. He was fastidious by nature, a necessary quality for the task before them. Owen modeled the work on an eight-volume compilation of the public records of the Commonwealth of Massachusetts. He marshaled the commission’s members to locate and catalog records of state and local government agencies, religious and educational institutions, benevolent societies, military services, the state’s public men, its artists and authors, and the locations of historic homes and battlefields. “So far as can be ascertained,” he wrote, “no where has a similar effort, quite so ambitious and comprehensive, been put forth.” A circular produced by the commission summarized the work:

In all parts of Alabama are individuals who have facts in their knowledge on some, if not all, of the topics embraced in the proposed investigation. Hid away in old trunks, drawers, book-cases, and chests, are numbers of manuscript treasures: private letters, letter books, diaries or journals, weather notes, manuscript maps, account books, surveyor’s notes or field books, etc.... The location, extent and present ownership of all such materials is earnestly desired; and if possible a gift of the same to the Historical Society.

Politically astute in his own right, Owen also benefited from the considerable influence of the family into which he married. In 1893 he wed Marie Bankhead, daughter of John Hollis Bankhead, who served in the U.S. Congress for more than thirty years, first in the House and then the Senate. The Bankheads were



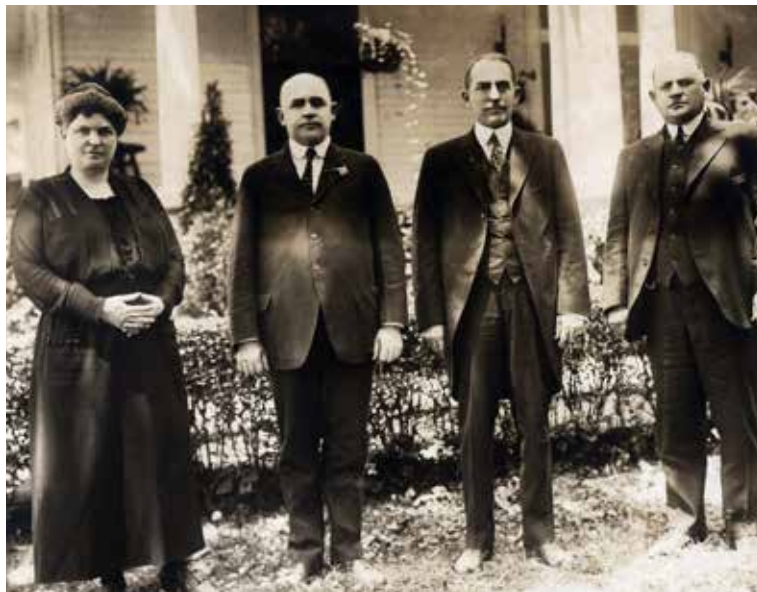
Dedication of the Confederate monument at the Capitol, December 7, 1898



Marie Bankhead, ca. 1885

among the most powerful families in the state, with a coterie of attorneys, state and local officeholders, bankers, and businessmen among their ranks. William Bankhead, Marie's brother, would later serve as Speaker of the U.S. House of Representatives. John II followed their father in the U.S. Senate. Marie Bankhead Owen shared her husband's interest in history and worked alongside him to make the commission a success.

In December 1900, Tom Owen submitted to Gov. William J. Samford a thorough report more than four hundred pages in length noting the locations and conditions of Alabama's historical records. In the report the commission also called for the creation of a state department of archives and history to institutionalize and continue the work of the group and to ensure that the records of Alabama could be properly preserved and utilized. During the winter of 1900–1901, the state legislature took up a bill authored by Owen creating the Alabama Department of Archives and History. On February 27, 1901, Governor Samford signed it into law. In an organizational session of the new board of trustees on March 3, Owen was appointed the agency's first director.



Marie Bankhead Owen and her brothers John, William, and Henry Bankhead, ca. 1910

Owen initially ran the new agency from the Senate cloakroom in the Capitol. Although cramped, the space afforded the Archives maximum exposure among Alabama's elected officials. Owen collected broadly, acquiring the personal papers of prominent Alabamians including politician and education reformer Jabez L. M. Curry, antebellum fire-eater William Lowndes Yancey, and Albert James Pickett, one of Alabama's earliest historians. He sought out books, artifacts, political ephemera, unpublished manuscripts, and Civil War battle flags. Ainsworth Spofford, whose tutelage of a young Tom Owen in Washington had been crucial, offered the Archives duplicate copies of Alabama newspapers held at the Library of Congress. When the legislature was not in session, Owen set up displays in the legislative chambers.

Owen's nimble lobbying and public-relations efforts proved fruitful. In 1907, upon completion of the new south wing of the Capitol, the Archives received dedicated space to house its diverse and growing



Collections of the Archives on view in the Senate chamber

collections. Other southern states soon followed the example set by Alabama. Mississippi, Arkansas, and the Carolinas all established state archives. The Mississippi Valley Historical Association and the American Historical Association both recognized Owen for his trailblazing work in the professionalization of state history and records preservation.

In 1915, a new state law mandated that public officials transfer all non-current agency records to the Archives for preservation. The law served two purposes: It allowed the Archives to take possession of early Alabama records still held in various state agencies, and it accelerated discussion of the need for a separate Archives building. In 1919, as part of the effort to honor Alabamians who died during the Great War, the legislature authorized a commission to make plans for a World War Memorial Building



Tom Owen sorting records in the Capitol, ca. 1901



The Alabama World War Memorial Building, home of the Archives, 1940



Marie Owen, ca. 1940

that would also house the Archives. The state procured land opposite the Capitol but lacked funding for construction of the new building.

“The Department is in every sense one of service and help,” Owen wrote in 1919. “It aspires to be an uplifting, refining and stimulating force in State life, and in a high degree it is meeting these ideals.” But Tom did not live to see his dream of an adequate home for the Archives become a reality. He died in 1920. His widow, Marie Bankhead Owen, succeeded him as director.

The second woman to lead an Alabama state agency, Marie served the Archives for the next thirty-five years. Her most lasting contribution was to secure federal funding for the construction of the World War Memorial Building, the permanent home of the Archives. The ornately detailed facility, filled with richly veined white marble quarried in nearby Sylacauga, opened to national acclaim in 1940. Permanent exhibit galleries in the new building added significant capacity to the dual missions of the Archives—preservation and education.



Alabama Department of Archives and History, 2019

The agency continued to advance in this mission under the leadership of successive directors. And while some services begun under the auspices of the Archives have become standalone agencies, including the Public Library Service and the Historical Commission, the original commitment to collect, preserve, and share the records of Alabama remained central. In addition to housing permanent state government records, the Archives is the principal repository of Alabama's newspapers and microfilmed county records. It boasts digital collections containing hundreds of thousands of photographs, maps, and documents used by teachers, students, and researchers across the globe. Its historical and genealogical resources are widely used, both in the research room and through numerous online partnerships.

Additions to the building in 1974 and 2005 completed the original architectural design for an H-shaped structure and provided more space for records storage, exhibits, and educational and public programming. The final expansion, which included a spacious, state-of-the-art research room, also paved the way for an overhaul of the Archives' exhibit spaces. The result was the creation of the *Museum of Alabama*. Galleries



Alabama Voices exhibit at the Museum of Alabama, 2014

focusing on the geology of the state and its Native American history opened in 2011. The museum's centerpiece, *Alabama Voices*, opened in 2014. This 10,000-square-foot, Smithsonian-quality exhibit uses nearly 1,000 artifacts, two dozen audiovisual programs, and immersive scenic elements to tell the story of Alabama from the dawn of the eighteenth century through the beginning of the twenty-first century.

Planning for the commemoration of the state's bicentennial began shortly after the opening of *Alabama Voices*. From the beginning, it was clear that the Archives would play a central role, particularly in the area of education. Here, the intersection of the Archives' decade-long planning project for *Voices* and its ever-expanding digital collections helped build a firm foundation for several programs. Historians and archivists drew deeply from the Archives' collections to prepare resource packets for K-12 educators. Staff traversed the state promoting bicentennial-sponsored workshops, symposia, and special events. In the same spirit as Tom Owen a century before, the staff of the Archives caught a vision of how the agency could serve a

noble purpose at the two-hundredth anniversary of statehood. The bicentennial created an extraordinary opportunity for connecting Alabamians to their collective history, one not to be wasted.

Archives staff envisioned a signature exhibition bringing together the state’s six constitutions. *We the People: Alabama’s Defining Documents* would serve overlapping purposes—providing a rare opportunity to view some of the most important documents in Alabama history, and fostering a discussion about what it means, and what it should mean, to be an Alabamian.

What do we value? Whose voice matters? What is the role of state government? The broad questions inherent in the state’s six constitutions and 1861 secession ordinance are with us still. They are as hotly debated now as they were two centuries ago when delegates met in a cabinetmaker’s shop in Huntsville and crafted a declaration of rights under the banner of “We the People of Alabama.” These are much more than mere words in faded ink on old parchment. They are touchstones in the collective history of Alabamians, worthy of examination during the state’s bicentennial.

Although each of the documents remained in relatively good condition, the prospect of their public display was the impetus for a thorough conservation effort. The Archives chose the Northeast Document Conservation Center (NEDCC) to conduct the highly technical and detailed work. Founded in 1973 as a regional conservation center for libraries and archives in New England, the NEDCC now serves clients throughout the country. Its conservators specialize in the treatment of paper-based materials, including books, maps, photographs, scrapbooks, and artwork, as well as more complex materials including wallpaper, papyrus, and parchment.



Alabama 4th graders at the launch of Alabama’s three-year bicentennial commemoration, March 2017



NEDCC workroom

The conservation of Alabama’s defining documents took place in the NEDCC’s book and paper lab, located in a former textile mill in a Boston suburb. What happens in this spacious workroom, bathed in sunlight, is equal parts art and science. Their portfolio includes photo and document conservation for the Coca-Cola Corporation and the Smithsonian Institution’s National Museum of African American History and Culture, among others. Early twentieth-century maps printed on fragile tissue paper, Japanese watercolor paintings of John Lennon and Yoko Ono, and rare volumes of photographer Edward Curtis’s epochal work *The North American Indian* are just a few of the items that have undergone the careful, quiet, meticulous work of conservation in this lab.

From the beginning, the goal of the project was twofold: conduct treatment that would benefit long-term preservation of the documents, and make the items ready for the 2019 exhibition. Although the constitutions and the ordinance of secession have all been displayed occasionally at the Archives, placing all seven documents on exhibit for several weeks required special precautions to ensure that no damage would result.

Six of the seven documents (excepting the 1865 constitution) are parchment, a writing material made from the chemically treated skin of sheep, cows, or goats. Creating quality parchment is a labor-intensive process which involves scraping and tensioning the skin into a taut, smooth surface suitable for writing. The rawhide skin is soaked in an alkaline chemical solution, typically lye, which softens the skin. Hair and fibers are removed by scraping. The skin is then placed tightly onto a frame and the process of stretching and refining begins. Slowly over a period of days, even weeks, the parchment-maker scrapes and stretches the skin until it achieves a uniform thickness, leaving it to dry under tension to ensure it remains flat after removal from the frame.

Upon inspecting Alabama's defining documents, NEDCC associate conservator Kathryn Boodle concluded that great care had been taken in the selection of the high-quality parchments. Expense apparently was not a primary concern. Such fine pieces, Boodle noted, were typically found in the houses of the British Parliament and were rare in America outside the New England states.

Parchment presents its own unique set of conservation concerns. Despite an elaborate production process, parchment remains essentially a skin, susceptible to climatic changes in ways not unlike our own. The difference is that parchment lacks the ability to heal itself. Damage to parchment is therefore often permanent. The most common damage is curling, caused by the expansion or contraction of the document over time because of repeated handling, improper storage, or fluctuations in temperature and humidity.

Curling was a particular concern with the 1861 ordinance of secession, written on a single, large sheet of parchment. To conserve the ordinance and prepare it for exhibition, the NEDCC carefully humidified the document and built a new tension mount to keep the parchment flat. The new mount is hidden beneath an archival mat, allowing the ordinance to be placed on exhibit without lessening the tension, which would risk compromising its treatment.

Parchment differs from paper in its response to the application of ink. Plant-based paper documents have a fibrous texture that will absorb ink. But with parchment, the ink sits atop the surface and is never fully absorbed. Because of this, the ink does not expand or contract with the parchment. This results in flaking or fragmenting of the writing, which over time can render the document illegible. Most of the fragmentation is imperceptible to the eye until it is too advanced to be stopped. Fortunately, this was not the case with Alabama's documents when Boodle and the NEDCC staff inspected them under a microscope. "This was fantastic to see," Boodle said. "It meant the inks could be secured."



Alabama's 1868 constitution unrolled in NEDCC's workroom



Associate Conservator Kathryn Boodle conducted the treatments on Alabama's documents. Trained at London's Camberwell College, Boodle has studied and worked in the conservation field since 2010.

signature pages of each document required a great deal of consolidation as well. Boodle attributes this to a number of factors, including the haste and varying pressure with which delegates applied their signatures and variations in the quality of ink used. Easily and cheaply made with only four primary ingredients—tannin, vitriol, vegetable gum, and water—iron gall ink was durable and produced a consistent tone. In certain places on the documents, inks of other colors, including blue, dark brown, and red, were used. Although these portions required more attention during the consolidation phase, none were beyond the point of conservation.

Inspection of text on the 1868 constitution

Securing the inks proved to be the most detailed and time-consuming aspect of the conservation effort. It involved a process called “consolidation,” which secures the ink and parchment together. Working with the aid of a powerful microscope, conservators inspected each character of text to identify instances of flaking or fragmentation. This occurred line by line, page by page, for each of the parchment objects.

Problem areas were first treated with an ethanol solution to clean and prepare them for the application of a high-grade, non-food-based gelatin, which helps to bind the ink and parchment. Approximately 10 percent of the text from Alabama's constitutions required detailed consolidation. The secession ordinance required the most work. Nearly 65 percent of its text required treatment. The



Four of the seven documents in *We the People* are parchment scrolls. The substance originally used to bind the individual sheets of parchment together had begun to deteriorate. This required cleaning the “join lines,” the technical term for the tops and bottoms of the connected sheets. To repair the join lines, NEDCC specialists applied a protein-based adhesive similar in composition to the original binding agent. The treatment is reversible and can be easily removed in the future if warranted.

The twenty-six pages of the 1819 constitution are joined in a uniquely elaborate manner using wide blue ribbon and red wax seals. Conserving the two-hundred-year-old textile pieces “added a level of complexity,” according to Boodle. Tattered and frayed in places, the ribbons required meticulous mending. Boodle used hair silk, toned to match the color of the original ribbon, for the repair. She used a heat-set adhesive to bind the new and old ribbons together and created a series of barriers to separate the heat source from the parchment.

Primum non nocere. “First, do no harm.” This maxim of the Greek physician Hippocrates is also the first rule of conservation. As in virtually every professional field, advances in science and technology frequently produce game-changing moments in conservation and preservation. “As we learn more about the types of materials we work with, our treatment decisions change,” Boodle says. As she worked to repair the join lines of the documents, Boodle also removed all other types of adhesive that had, in decades past, been applied in well-meaning efforts to bind the pages together. The chemicals from these varying forms of tapes could have eventually caused permanent damage to the documents.



Repairing the join lines of the 1868 constitution



Conservators secure the iron gall ink to the parchment through a process called consolidation.



The conservation of Alabama's defining documents required meticulous work, often with the aid of a powerful microscope.

In March 2019, more than a year after the project began, the last of the documents returned to Montgomery. Newly cleaned, conserved, and housed in custom-built enclosures, they were placed in the Archives to await the debut of *We the People*. Their return marked the conclusion of one of the largest and most labor-intensive conservation efforts in the Archives' history. It ensured that Alabama's six constitutions and the ordinance of secession could be safely displayed for the special exhibition during the bicentennial and, more importantly, that they will survive for future generations of Alabamians to examine, study, and debate.

For more information on the work of the NEDCC, visit www.nedcc.org.



Mending the blue ribbons of the 1819 and 1875 constitutions



ADDITIONAL RESOURCES

Rebecca Lapczynski Hébert, "Alabama Department of Archives and History," *Encyclopedia of Alabama*, <http://www.encyclopediaofalabama.org/article/h-2014> (accessed April 2 2019).

Alden N. Monroe, "Thomas Owen and the Founding of the Alabama Department of Archives and History," *Provenance* 21 (2003): 22-35.

Robert R. Simpson, "The Origins of the Alabama Department of Archives and History," *Alabama Historical Quarterly* 34 (Summer 1972): 155-70.



The original burgundy-colored leather binding for the 1901 constitution was created by a Montgomery book manufacturer. After more than a century, the binding had become brittle and loose. Todd Pattison, a book conservator with NEDCC, replaced the original binding. Pattison holds a master's degree in library science from the University of Alabama.

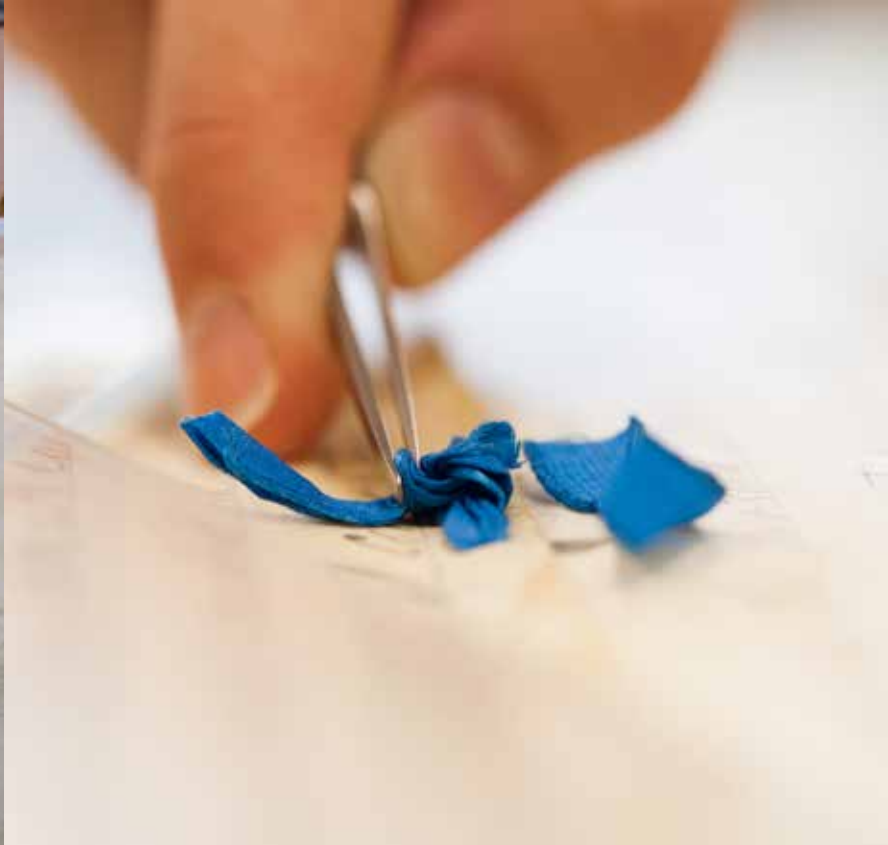


Humidifying the 1861 ordinance of secession in preparation for a new tension mount



Securing the ordinance in a tension mount





WE THE PEOPLE: ALABAMA'S DEFINING DOCUMENTS

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*Alabama State Capitol
Bryan Carter*