

**MADELINE:** Thank you all so much for having us. I'm excited for the discussion today. I thought we could get started. Both Professor Lovelace and Professor Ortiz, as you've learned, have been working on pieces related to the 50th anniversary of the 1971 Virginia Constitution.

I thought it would be helpful for you all to walk us through some of the things you've been focused on and your scholarship in this area and, of course, how it relates to the civil rights movement and the role of race in the Constitution, which is what we're here to discuss today. And then after you give us overviews of your work, then I'll have a couple of questions for the two of you. And then we want to have lots of time for you all in the audience to ask whatever questions you may have as well. So Professor Ortiz, do you want to get us started and then we'll turn it over to you, Professor Lovelace?

**DANIEL ORTIZ:** Sure.

**MADELINE:** Thank you.

**DANIEL ORTIZ:** Thank you very much. I thank the *Journal of Law and Politics*. It was a wonderful invitation. And also for getting me engaged in a project that turned out to be more interesting than I had actually anticipated. It's a pleasure to be here with such interesting other guests, and I want to thank you all for coming out so late on such a fine autumn afternoon. I know by looking at the size of the little food packages there it can't be because of the free dinner.

So let's talk first about the problems of evaluating the voting rights in the 1971 Virginia Constitution. Because you pick up the 1971 Constitution and you look at it, and it's hard to figure out what's going on. There aren't really mentions of voting rights much one way or another. There's a felon exclusion, which was pretty standard at the time. It was thought to be relatively non-controversial. There's a very odd provision I want to talk about which says that the General Assembly, if it wants, can require people in their own handwriting to answer qualifications questions. That strikes you as odd.

But then there's nothing really one way or another. It doesn't seem particularly progressive on its face, it doesn't grant a lot of voting rights protections. On the other hand, it doesn't really seem to take them away. So just looking at the document itself you really can't tell very much. It's an enigma.

So what you have to do is put it in various different historical perspectives. And first of all, I think most importantly, you have to compare it to the prior Constitution, which is 1902. And then you also, I think, have to be very aware of the times. Now, compared to the 1902 Constitution-- when you pick the one up, compare it to the other, wow, 1971 looks great. So you say, wow, mark one up for progress in Virginia. Something like that.

If you want to ask yourself why, you want to look at the detailed history. And it becomes much more complicated and interesting. And you might be tempted to tell yourself a triumphalist narrative. I mean, now, wow, things were really bad in Virginia for a long time. And then we had this epiphany in the 1960s and we realized what was wrong with the way we have been doing things we changed the Constitution to correct that. And it's a very progressive narrative.

You wonder, though, about the reality. Here it was 1971 when the Constitution was adopted. Actually, the General Assembly and the governor set the balls in motion, set things going in 1967 and early 1968. And the commission that actually came up with the proposals-- which were not completely but were largely unchanged, and they were adopted by the General Assembly and sent to the Virginia voters-- they were working as early as 1968. And I think that time is significant.

You're way too young to realize-- there's some thinking, 1968. Well, 1968 is as close to the Great Depression as it is to now. I was alive in 1968 and I thought the Great Depression was when dinosaurs roamed the Earth and stuff like that. So it's strange time. But it was really important. Because it was-- times were very fraught.

In April, Martin Luther King was assassinated. There were riots in Washington DC, riots in Richmond. 41 people in Richmond-- I think at least 41 people in Richmond died. In July, Robert Kennedy was assassinated. In August, there was a Democratic National Convention which just turned out to be a bloodbath on TV. For those who know anything about it, police brutality, lots of stuff.

So it's a time of great racial and social unrest. And the presidential campaign that year focused in large part on law and order and how hard you should be on people to preserve order. So I think that's important also, an important part of your background as well.

So let's talk about the 1902 Constitution. So give you a picture of what things were like before. And I want to read you a statement by the person who is thought to be most responsible for all the election law provisions in the 1902 Constitution, which is a guy named Carter Glass.

He was a publisher of the newspaper in Lynchburg. A very big deal in the state. Later on, went to become a Congressman. And then he's the one who's responsible for the Glass-Steagall Act. Here he is talking to the convention. I'll just read you verbatim.

"Mr. President, in the midst of different contentions and suggested perplexities, there stands out the uncontroverted fact that the article of suffrage, which the convention will today adopt, does not necessarily deprive a single white man of the ballot but will inevitably cut from the existing electorate 4/5 of the Negro voters." And then the record says applause. So people are happy with that. "That was the purpose of this convention, that will be its achievement."

Then a delegate asked him, "Will it not be by fraud and discrimination?" And Glass responds, "By fraud? No. By discrimination? Yes. But it will be discrimination within the letter of the law and not in violation of the law.

Discrimination! Why, that is precisely what we propose. That, exactly, is what this Constitution was elected for, to discriminate to the very extremity of permissible action under the limitations of the federal Constitution, with a view to the elimination of every Negro voter who can be gotten rid of, legally, without materially imperiling the numerical strength of the white electorate.

As has been said, we have accomplished our purpose strictly within the limitations of the federal Constitution by legislating against the characteristics of the Black race and not against the race, color, or previous condition of the people themselves. It is a fine discrimination, indeed, that we have practiced in the fabrication of this plan. And now, Mr. President, we ask the convention to confirm our work and emancipate Virginia." Stirring call.

Now, what this convention did is it came with two different regimes for voter qualification. Basically, you had to be a male, you had to be over 21, you couldn't have engaged in certain felonies, you had to be mentally competent, and you couldn't ever have been in a duel. Go figure.

Now, between the adoption of the Constitution in 1902 and January 1, 1904, there was one regime for getting on the electoral rolls. If you are a veteran or the son of a veteran in any war the United States. Guess which war that primarily was. The Civil War. Didn't matter which side you were on, you were automatically allowed to vote.

If you were a property holder and had paid a certain minimum tax, you were allowed to vote. And if you could go into the registrar's office and read any provision of the Constitution that the registrar chose for you and then explain it to the registrar in a way that satisfied the registrar, you could be enrolled there. So either one of those three ways, that would do it.

Now of course, the so-called understanding clause-- which is this bit that allowed the register to test your understanding-- there is no guarantee. In fact, it's pretty clear from the debates that it was expected to be administered discriminatory. And that actually was what happened.

White people would be asked things like what are the three parts of government. Pretty easy question. Even though, I don't know if you remember the last Alabama senatorial race, it appears that one of our present senators wasn't able to answer that one correctly. Whereas African American applicants would be asked to explain things like ex post facto clauses or very complicated technical provisions of the Virginia Constitution.

Then on January 1, 1904, a different regime came in. You had to do all three of these things. You had to pay a poll tax to vote. You had to be able to register in your own handwriting without any help from anyone. Fill out all the things that were relevant for registration. And you had to do it without being able to necessarily know what you were being asked for.

So for example, when African American registrants would come in, they'd be given a blank sheet of paper and say, fill it out. They wouldn't be cued at all as to the information that was required. And then you also had to answer-- registrants had to answer any and all questions concerning their qualifications as an elector.

So notice the change in approach. 1902 to 1904, there were three separate things. If you satisfied any one of them, you could vote. After January 1, 1904, you had to satisfy all three of those things. What's the reason for it, you might ask, of why the change? Is that they wanted to be able to get illiterate white people on the rolls-- and the history is clear from the debates. They wanted to get as many illiterate white people on the rolls as possible between 1902 and 1904 and then make it as hard as possible for lots of people to get in but, disproportionately, African Americans.

So this had a huge effect. And the city of Richmond, for example, just in 1902 from when the Constitution was adopted to October-- just a few months-- when the first regime was in place, the number of registered African Americans in the city dropped from 6,427 to 760. That's what, about a-- that's like 10% of what it was. Or something like that of what it was before. So it really worked.

And there was also, there were non-constitutional or sub-constitutional barriers that worked in this way, too. So for example, African American applicants were asked to wait for a long time before they could register. Whites were not. There were white primaries in Virginia-- I think until like late 20s or early 1930s-- which had the same effect. But that was not actually in the Constitution. So the Constitution wasn't everything, it was just a big part of the picture.

So after 1904, there were four hurdles. Someone had to answer all questions about their qualifications, they had to pay a poll tax, they had to pass literacy test, and they couldn't be a felon. So let's talk about how all of these things operated and what their durability.

The questions about qualifications. Well, some registrars understood this as giving them the latitude to ask people just questions about civics. And some African Americans showed up to register and were asked how many people had signed the Declaration of Independence? How many of you all know that? I don't. I don't think I ever did.

Kind of thing. Were denied registration because they couldn't answer that question. Well eventually, in the 19-- when did this happen-- 1931, the NAACP represented someone that this happened to-- or something like this happened to-- and they sued.

And the Virginia Supreme Court limited it a bit and said, well, you actually have to be able to answer questions about qualifications, not just about everything in the world that might conceivably be relevant to a civic education, like how many people signed the Declaration of Independence. But it turned out in a related case that was going through at the same time that the registrar who denied the African Americans ability to register because they didn't know how many people signed the Declaration of Independence, he himself wasn't able to answer the question on the stand. Pretty crazy.

Poll tax. The Supreme Court of the United States in 1937 upheld it, but not under a racial challenge. Then the 24th Amendment banned in federal elections-- not state and local elections, that was in 1964. Virginia really opposed that. That didn't ratify, the 24th Amendment, until 1977. Didn't make any difference, really, then. But the Supreme Court in the case called *Harper versus Board of Elections* in 1966 struck down poll taxes in state and local elections, too, as violating the Equal Protection Clause.

Literacy tests. Well, they had been upheld by the Supreme Court. Then the Supreme Court, in 1965 I think it was, said that, well, if they invest a lot of discretion, the unreviewable discretion with the registrar-- the old-fashioned understanding clause-- those are unconstitutional. But by that time, Virginia just required you to, in your own handwriting, answer all the required questions. So Virginia's literacy test wasn't affected by that.

But then in 1965, Congress passed the Voting Rights Act, which suspended literacy tests in jurisdictions where there were low registration rates. And that included Virginia, which had one of the worst voter registration rates in the country. But that was only for five years, from 1965 to 1970.

Felon disenfranchisement. Around the time, late 1960s, that was thought just fine. Pretty much all the cases had said it was OK and it wasn't really a big deal on people's radar screens the way it is now.

So here we have 1971 Constitution. Notice it didn't say very much about voting rights. Now, I think says there's a felon-- you can exclude felons, if you want. And also, the General Assembly could have handwriting tests. You ask people to answer questions in their own handwriting.

I think that's significant. Because look, in judging, how progressive the Constitution is. You could say, well, everything went away. That's progress. Yeah.

They didn't go away because people in Virginia wanted them to go away. It's toolbox was taken away. Congress and the Supreme Court had said that the poll tax, literacy test, things like this, you could no longer do. And Virginia actually held on to the things that were still permissible, like the felon exclusion.

And that explains this snapback provision in the Constitution allowing the General Assembly to have a literacy test of some kind later if it wanted. It just couldn't do it then because the literacy tests had been suspended. Well, turned out, but no-- I think that makes it a lot, helps evaluate how progressive it really is. Well, yeah, it took a lot of bad stuff away, but it had to. There's no longer-- you could actually use any of those devices anymore.

So I think it's, at best, cup half-full. It's probably a little bit more than half empty, if you will. Properly understood, probably not that progressive at all. Subsequent history, just filling in a little of the details where we stand now. Maybe now we're in a more hopeful situation. The Voting Rights Act was extended time and time again until, finally, in 1975 the suspension of literacy test was made permanent and nationwide.

Felon disenfranchisement. The Supreme Court upheld those provisions in 1974, generally. But in 1985 in a case called *Hunter versus Underwood* said that if they were enacted with discriminatory intent, they would be constitutionally unsound. There were Virginia challenges to the Virginia felon disenfranchisement. They basically went nowhere until one good one was set up during the McDonnell administration. And then surprisingly Governor McDonnell restored that person's civil rights, mooted the case.

More recently, Democratic Governor McAuliffe tried to restore civil rights to people en masse, basically wholesale. And the General Assembly sued him. And the Virginia Supreme Court said, no, no, no, no, no, you can't actually do this en masse. You have to do it case by case by case by case.

So the governor then said, OK, I'll do it by autopen. So he just had this autopen working day by day, hour by hour-- literally hour by hour-- signing tens of thousands of these things. And he was sued by the General Assembly again. Because this wasn't really-- for contempt of court. This wasn't really what the Supreme Court meant. And the Supreme Court unanimously told the General Assembly to go away. It didn't want to be involved in it anymore.

Right now, the situation maybe is a little bit better. Constitutional Amendment went through the first stage of passage in the General Assembly to restore felons rights. Whether it actually becomes part of the Constitution will depend, I think, largely on the elections this November, and then how voters feel next fall.

Virginia adopted a baby Voting Rights Act, which is actually better than the federal Voting Rights Act. Doesn't apply to federal elections, of course. And we now have an independent redistricting commission, which we're trying to get our way through. So maybe there is some hope there and things are going to be much better.

But it's probably too early to say. Virginia has reached its second Reconstruction. But at least this one, it looks like we've had more effect. And it's something that we'll have really done ourselves. So I think we actually should feel good about the recent moves in this area. So thank you.

**MADLINE:** Thank you, Professor Ortiz. So I think you've set out a compelling thesis that the '71 Constitution, not nearly as progressive as maybe it's been made out to be. Professor Lovelace, what can you add to that from your own research? I think you'll tell us about the capital city amendment and how that plays into, I think, a pretty similar theme for today.

**TIMOTHY  
LOVELACE:** Absolutely. And my comments really do flow nicely with Professor Ortiz's. But first, I'd like to thank Madeline for the warm introduction, the members of the *Journal*, Bryan Blaylock, who's provided me with some research assistance. And I'd also like to thank Professor Schragger, [INAUDIBLE], Professor Ortiz, Judge Lorish and Professor Dick Howard for his work on the state Constitution.

For me, it's great to be back. I am an alum several times over from the University of Virginia. This is a place that I called home. I could have never imagined myself, when I was a 1L, 2L, 3L being on the other side of this desk. And it's a real privilege to talk about the role of the civil rights movement in shaping the Virginia State Constitution in 1971. I'm a native Virginian. And so this brings me back in many ways to my roots.

And so what I'll do today is three things. First, I'll talk a bit more about the background of the 1902 state Constitution and then the provisions that flow from that, and the 1971 Constitution. Second, I'll explore this forgotten movement in the state's constitutional history. Commemoration sometimes invite nostalgia. But remembering can also be a way of forgetting.

And when you think about the 1971 Constitution compared to the 1902 Constitution, we might get nostalgic. We might celebrate lots of progressive change-- and we'll talk about this. But we must not also forget the capital city amendment and the violence that that amendment-- which was never actually passed-- the violence that that did. And then, finally, I'll leave you with a couple of takeaway points.

So as Professor Ortiz has told us, the Constitutional Convention of 1901 and '02 made Virginia's Constitution a Jim Crow Constitution. In those early years of the 20th century, we see mandates for racial segregation in Virginia public schools, felony disenfranchisement, petty larceny added to the list of voter disqualifications to limit Black voting. This decision here relies on stereotypes and perpetuates stereotypes around Black criminality and it ties this to voting.

The imposition of a poll tax, the emergence of a literacy test. And that there were clear racial and class disparate impacts. But the racist overtones of those constitutional debates and the provisions that flowed in the first decade of the 20th century were clear. I also want to quote from delegate Carter Glass of Lynchburg. This is his language.

"This plan will eliminate the darky as a political factor in this state in less than five years so that in no single county will there be the least concern felt for the complete supremacy of the white race in the affairs of government." This is in the heart of those debates. And in many ways Carter Glass proved to be right. It decimated Black voting power in the state of Virginia.

By the late 1960s, a more progressive spirit had no doubt emerged in the state. But it didn't emerge from a vacuum. These constitutional drafters didn't one day simply have an epiphany about changing law and society. It was reflected by people like Irene Morgan who, in the 1940s, more than a decade before Rosa Parks sat down on the bus, Irene Morgan in Virginia refused to get up on an interstate bus. And her work with the NAACP expanded our ideas of the Commerce Clause. Irene Morgan.

Barbara Johns, in the early 1950s. She was a high school student in Prince Edward County and she led a strike on her segregated high school. And she enlisted Oliver Hill and Spottswood Robinson, these famed NAACP lawyers to fight against segregation in public education. The *Davis* case became one of the *Brown* cases. And then Annie Harper. Her challenge on the state poll tax helped to open up the political process for many in America and, indeed, here in Virginia.

As Professor Ortiz has told us, this Constitution revision emerged less than a year after the assassinations of Dr. Martin Luther King and UVA alumnus Robert F. Kennedy. And during this process, unlike the 1901-1902 Constitutional Convention, there was at least an attempt, by then a deliberate attempt, at inclusion. We can tell this in a couple of ways. We can look at the body of the draft produced that was sent to voters. We can also look at the bodies of the drafters-- most notably Oliver Hill-- this NAACP lawyer-- and Brown served as a member of the Commission on Constitutional Revision.

And the 1971 Constitution repudiated some of these Jim Crow provisions in the state's 1902 Constitution. One of the clearest expressions of the ties between the civil rights movement and the 1971 Constitution appears in Article II of the 1971 Constitution. It declares that every electoral district shall be drawn in accordance with the requirements of federal and state laws that address racial and ethnic fairness with respect to the Voting Rights Act of 1965. There are other notable provisions that emerge in the 1971 Constitution, tying the civil rights movement to the text. The 1971 Constitution provided for an Equal Protection Clause. It removed all references to the poll tax and it required a decennial reapportionment of congressional and General Assembly seats in accordance with the one person, one vote principle.

But, to be sure, one might easily argue that the state Constitution in 1971 didn't need to do any of these things. The Voting Rights Act of 1965 was six years old when the 1971 state Constitution emerged. *Harper* had struck down the state poll tax and the Warren Court had opened the political process for many disadvantaged Virginians through the reapportionment cases. But in some ways, we might think about this as no simple feat. When I think about Virginia history and I turn to a place like Richmond-- and go to the archives and you read *The Richmond News Leader* or the *Times-Dispatch*, there were powerful forces arrayed against civil rights activists and lawyers in the state that had opposed things like voter rights legislation.

And so the connection here can be clear. But perhaps what's equally striking in the state's constitutional history is not simply these provisions that are enshrined in the 1971 Constitution emerging from the civil rights movement, but also what provisions were not enshrined in the state Constitution. The General Assembly consider two constitutional amendments with very racist overtones. I'll talk about one that was particularly explosive, the capital city amendment.

In the 1960s, the city of Richmond attempted to annex portions of Chesterfield County and Henrico County to enlarge the city's tax base. As developments in Richmond and elsewhere showed, debates over annexation often turned into so much more than debates around their tax base. They became thinly veiled ways to talk about race in America.

During the 1960s, Black political power in Richmond was growing tremendously due to civic organizations like the Crusade for Voters, an African American organization. There was an emergence of political candidates like Henry Marsh, who was a law partner of Oliver Hill and Sam Tucker. This represented Black self-determination in local politics. And demographers showed that Richmond would soon become a majority Black city.

Whites in Richmond, on the other hand, were moving from the city at unprecedented rates. Excited lots of things. Lower taxes, better schools. And the language of better schools became a way to talk about de facto school segregation. It's a more polite way to think about massive resistance. They also talked about social problems. Things like welfare. Again, these thinly veiled references to raise as they exited to the suburbs.

The region weathered pitched and protracted annexation battles. And these battles produced strange political bedfellows. You had Black Richmonders on one hand, who increasingly opposed annexation. They were concerned about Black political power. On the other hand, you had many whites in Henrico and Chesterfield counties they did not want to be annexed. In fact, many of them had become suburbanites so that they didn't have to live in the same political community, in these municipal bounds with Black Richmonders.

But pro-annexation officials in Richmond and interest groups lobbied the General Assembly to expand the city's boundaries. They used the state constitutional revision as an opportunity to move their debates that were happening largely outside of the General Assembly. They took this constitutional moment and they seized that moment. And they proposed the capital city amendment.

Under the capital city amendment, the General Assembly every decade could redraw the boundaries of Richmond. Richmond doesn't sit in any county. And so think about the power here. That there would be a constitutional amendment that would allow the General Assembly every decade to redraw these boundaries that could take land, that could take residents, that could take a tax base from one of the surrounding counties. And so Chesterfield County caved. They conceded here, as these debates were raging. The General Assembly was clear that they were actually going to approve this constitutional amendment.

But in the correspondence and the archival record, you see correspondence between Chesterfield County officials and Richmond officials around annexation. And we might-- talked about Carter Glass, now more than a century ago, using racial epithets. But many of the conversations between Richmond City officials who were pro-annexation and Chesterfield County officials were filled with racial epithets.

And this simply didn't happen in private, it happened also in public. Outright racist appeals. In an article published in *The Richmond News Leader* declared that James Wheat, a local businessman and politician, said that, if the city could not annex or merge, Richmond, quote, "will become a permanent Black ghetto, a happy hunting ground for ambitious political opportunities." He's talking about people like Henry Marsh.

And so these pre-annexation forces found success. They had forced Chesterfield County to concede. 47,000 largely white residents of Chesterfield County were annexed. More than 20 miles of Chesterfield County was annexed. And so in the next term of the General Assembly, the capital city amendment was actually dropped.

This is really interesting. Sometimes winning for Black Richmond groups-- winning, ostensibly, this amendment has been dropped-- is losing. Their votes were diluted. We think about on one hand, you have this ostensibly progressive Constitution in 1971. One that respects the Voting Rights Act of 1965. On the other hand, you have a process that diluted the votes of Blacks in Richmond. And so the turn of events was, no doubt, ironic.

I want to leave you with a couple of takeaway points. The first is a cautionary tale. A cautionary tale. This constitutional process in 1971, in the late 1960s seemed progressive. And, in fact, when compared to 1901 and 1902, no doubt progressive. There was an attempt at inclusion.

At the same time, this process of inclusion, there was great exclusion. That there could be more than one reality. That sometimes, winning is not winning. And everything that we call inclusion is not inclusion. That Blacks were losing their power to elect officials of their own choice.

Second takeaway point, hope. In the late 1960s, there was a growing spirit of progressive reform. That people from often the bottom-- Annie Harper, Barbara Johns, others-- created the context for social and legal change. We began to see many of these changes

Today, there's another racial reckoning that's happening a half century after those debates. There is a new voting Rights Act in Virginia, who are now talking about prison gerrymandering, nonpartisan gerrymandering. But we should never sit on our laurels. The work of civil rights is not yet finished. Democracy is still a work in progress. If we can't be truthful about the democracy we have and the work to be done, we won't have the democracy we so sorely need. Thank you.

**INTERVIEWER:** Thank you, Professor Lovelace. So I think there's a lot of commonalities in what you all have shared with respect to your scholarship today. And one thing it calls to my mind is I understand-- and it makes a lot of sense to me-- that Virginia's hand was more or less forced by the federal changes that happened, both with respect to the Voting Rights Act and also decisions from the Supreme Court with respect to many of the changes, at least to the poll tax that you've talked about. Also to voter qualifications, literary test.

Do you think there's still any significance, though? The fact that Virginia did put it in writing and that there was a public campaign to ratify-- a pretty high ratification rate, I think. North of 70% of Virginia citizens did vote to put this Constitution into place. Is there a significance to that story being told and putting a marker in the sand, if you will, even if Virginia didn't really have much of a choice? And as part of that, I also wonder if you could share any reflections on whether the addition of rights with respect to education and the 1971 Constitution have any significance to the other aspects of that Constitution that you've shared today or had any role in the civil rights movement.

**DANIEL ORTIZ:** I think it's very important how we think about these things. So the 1971 Constitution surely did represent progress in some ways. But, as Professor Lovelace has suggested, there's a danger to that-- especially if it's somewhat unwarranted-- in that it causes you to accept things that you probably shouldn't accept. It probably stops you from working as hard as you need to be working to actually make things better.

So maybe, on the one hand, the 1971 Constitution was this public affirmation and maybe just civic sigh of relief-- oh my God, we've gotten beyond what we had been-- and a little bit of self-back patting. But on the other hand, it's really taken us, as Tim said, 50 years and a perfect alignment of the political stars to get to this moment where we are now, which is really thrilling in some ways. But still, even if all these things are successful, it's going to be somewhat incomplete. And so maybe it's, on the one hand, it is good and [INAUDIBLE]. But on the other hand, it can lull you into a sense of false consciousness that everything is better and we don't need to worry anymore. And aren't we great people, when we're really not.

**TIMOTHY  
LOVELACE:**

In many ways, the Virginia state Constitution of 1971 is a reflection of changing law in society. So this state Constitution was not on the cutting edge driving federal law-- changing society because of state provisions. That it was a reflection of things that had already happened. And so in some ways, we should say that this Constitution, while more progressive than 1901 and 1902, didn't go far enough.

Thinking about education, this just brings to mind what could have been done. What could have been done? Could the state Constitution, for example, could it have created a fundamental right to education? We don't see a fundamental right to education on the state Constitution until decades later. And this is through courts, not through changing the text of the state Constitution. So it might have gone further, easily, at that time. There's a welfare rights movement that was occurring.

But, no doubt progress. So under the state Constitution, the state is required to maintain public schools. This was a response to developments in Prince Edward County. That Prince Edward County, in places like Charlottesville, had closed their public schools during massive resistance.

Now, the Supreme Court was ahead of the state here on that issue. But the fact that the state Constitution reflected this, there is a civic spirit there. And a recognition that massive resistance is wrong. And there's a clear statement of that. But no doubt, the state Constitution might have gone further.

**INTERVIEWER:** Thank you. Another thing that stood out to me when you both shared remarks today is the interplay just more generally of the federal and state systems. And having just come from the federal government to now state government, I'm experiencing that on an everyday basis. But I'm wondering if you might posit that we're about to see a flip. You mentioned, both of you, hope and the current moment in Virginia, and a progressive wave-- some new efforts that have been passed, some that are about to be passed, potentially. Will we see a shift where states, Virginia and other, may be out ahead of the federal government in terms of civil rights legislation and voting inclusion?

**DANIEL ORTIZ:** Yeah. Well, I think Virginia now certainly is, in several important ways. But I would not generalize from the Virginia experience. In many other states, we seem to be running in the opposite direction more quickly. And there's been a general relaxation of, at least in the voting rights area, federal requirements. Mostly because of the Supreme Court, the Shelby County decision 10 years ago.

Earlier this year, which basically undercut Section 5 of the Voting Rights Act, which was thought to be legitimately most important provision. And then in Shelby County, the justices who voted to basically incapacitate it said, don't worry, there's always Section 2. And then this past year in the case called *Brnovich*, the Supreme Court basically neutered Section Two. Rolled things back pretty far there.

And some states will, like Virginia, will basically legislate to try to at least make up for that, if not supersede where we were before. Other states, however, are going to go with the flow and make things easier. And you've seen areas where the Voting Rights Act doesn't actually touch, like election administration. It's very hard to make a case. [INAUDIBLE] has much power there. You've seen states like Georgia, Texas, and some others move quite radically to politicize every day election administration. So I think Virginia is, in a sense, I think, a special case. Maybe there's Virginia and a few others. But the state-federal dynamic is actually worked, I think, to allow a lot of states to really go in the opposite direction if they want.

**TIMOTHY  
LOVELACE:**

Yeah. In the area of voting rights, Virginia is ahead of states like Texas, Florida, Georgia on multiple fronts. Obviously with the Voting Rights Act of Virginia-- and being the first Southern state to make this move. So Virginia is ahead of the federal government on this front and many states. In the area of nonpartisan districting in the state-- I'm in North Carolina. There's been a huge fight over partisan gerrymandering. And so Virginia's ahead of, no doubt, states like North Carolina, but even the federal government here.

When I think about HR1, the calls for ending partisan gerrymandering are not being heard by many in Congress. That HR4, a milder voting rights bill, will not probably be passed, even though there are Democratic majority. There's a Democratic majority in the House and it's a 50-50 tie, obviously, in the Senate with the vice president being able to break that tie. And so in some ways, Virginia is ahead of many other states and the federal government.

However, there's still clear work to be done. Felon disenfranchisement is one of those fronts. We're moving on prisons. How do we count prisoners? Do we count prisoners in the prisons where they're being housed or do we look to their last state address? This work is happening but we must continue.

The last thing I'll say here about just unfinished business, municipal balance in and of themselves. And this goes to Professor Schragger's work, in many ways. But the idea here that we confronted Richmond that you could not necessarily have, as a person of color, great voting strength and expect to receive high social services. That part of the unfinished business that we have to confront as a state is Dillon's rule. And this idea that home rule, which offers many more progressive opportunities for change, that Virginia might become more progressive if you're on home rule and not be so wedded to an older system of Dillon's rule. And so in this way, we might be behind.

**INTERVIEWER:** I think we should probably wrap up there, then. And really want thank you both for the work you put into studying this 50-year anniversary. And I certainly learned a lot, and I hope that you all have as well. And thank you all for the opportunity to be here.

**DANIEL ORTIZ:** Thank you.