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Pathways to Liberty: What Colonial, Antebellum, and Postbellum Education Can Teach Us About Today

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PATHWAYS TO LIBERTY: WHAT COLONIAL, ANTEBELLUM, AND POSTBELLUM EDUCATION CAN TEACH US ABOUT TODAY

Danielle Wingfield*

ABSTRACT

Education is a critical part of nation-building. More specifically, it can also be a powerful pathway to liberty and a tool for disseminating knowledge. However, historically it has been used to subjugate and censor vulnerable groups like women, socio-economically disadvantaged persons, as well as men of color. Therefore, to avoid subordinating members of such minoritized groups and suppressing uncomfortable historical facts, advocates must continually evaluate the purpose and method of education. Such persistent monitoring can provide a basis for constructive reform of public education in the United States. Such reform must also consider changing social conditions.

Presently, for example, public education is at the center of culture wars involving issues such as censorship and the ongoing battles for access to quality education. In addition, efforts have mushroomed to prevent the teaching of comprehensive, fact-based American history and to silence discussion of marginalized groups. To effectively understand this crisis, there is a need to better understand the historical relationship between public education, representative government, and liberty.

In this fraught context, this Article excavates history and narratives important to the goal of an educated citizenry and liberated society to show that America has

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been here before. The Article’s overarching goals are to show the subjective practices of education in the Colonial, Antebellum, and Postbellum eras in Virginia, the birthplace of America. The Article also aims to amplify the narratives of formerly enslaved and free Black Americans who leveraged education to achieve liberty and contribute to the democratic project. Further, this Article underscores the significance of access to a quality and robust education for advancing equality and empowerment—and, ultimately, freedom.

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INTRODUCTION

In July 2023, the state of Florida blocked an Advanced Placement African American Studies class in the public high school curriculum, stating that the course’s content “lacks educational value.”¹ In 2015, in Texas, a student exposed a world geography textbook published by McGraw-Hill that referred to African people who were forcibly brought to the Americas on slave ships as “workers” and “immigrants.”² In the past decade, social studies courses for second graders in Alabama

¹ Patricia Mazzei & Anemona Hartocollis, *Florida Rejects A.P. African American Studies Class*, N.Y. TIMES (Jan. 19, 2023), <https://www.nytimes.com/2023/01/19/us/desantis-florida-ap-african-american-studies.html> [<https://perma.cc/Y8RG-RCJQ>]; see also Letter from The Office of Articulation and the Florida Department of Education to Brian Barnes, Senior Director of the College Board Florida Partnership (Jan. 12, 2023).

² See Tom Dart, *Textbook Passage Referring to Slaves As ‘Workers’ Prompts Outcry*, THE GUARDIAN (Oct. 5, 2015), <https://www.theguardian.com/education/2015/oct/05/mcgraw>

listed Harriet Tubman, a renowned figure who escaped enslavement and helped others do the same, as an “exemplary” American without acknowledging her role as an enslaved person or the institution of slavery itself.³ In Virginia, textbooks were originally written to downplay the role of race in the state’s history, especially during the Civil War era.⁴ These are just a few of the documented examples of a sustained push, in southern American states, to revise civics and history instruction in public-funded schools in order to fit a narrative that is uncritical of America’s story. Moreover, that narrative is incomplete and often incorrect.⁵ These ongoing efforts—and others—that focus specifically on sanitizing curricula in public-funded schools, furnish evidence of a war on comprehensive, fact-based public education.⁶

Why is education a centerpiece of today’s culture wars? The answer lies in history. Consequently, to show the importance of education as a pathway to liberty, this Article focuses on facts spanning Colonial, Antebellum, and Postbellum Virginia.

-hill-textbook-slaves-workers-texas [<https://perma.cc/7ZPN-6AD7>] (noting the public outcry in response to the problematic nature of this description downplaying enslaved persons’ status as victims of a violent and coerced migration into forced labor). This choice of terminology implied a sense of consensual and paid labor, which inaccurately depicted the harsh realities of slavery. *See also* Laura Isensee, *Why Calling Slaves ‘Workers’ Is More Than an Editing Error*, NPR (Oct. 23, 2015, 6:33 AM), <https://www.npr.org/sections/ed/2015/10/23/450826208/why-calling-slaves-workers-is-more-than-an-editing-error> [<https://perma.cc/3ABA-9QFP>] (explaining this is an example of the lack of factual and complete civics and history instruction in publicly funded schools); THE 1619 PROJECT: A NEW ORIGIN STORY, at xx (Nikole Hannah-Jones et al. eds., 2021) [hereinafter THE 1619 PROJECT] (illustrating how the Texas state board of education approved curriculum standards that equate Confederate general Thomas “Stonewall” Jackson with Frederick Douglass, which inaccurately emphasized both figures as examples of “the importance of effective leadership in a constitutional republic,” disregarding the stark differences in their actions and motivation).

³ *See* THE 1619 PROJECT, *supra* note 2, at xx (“Within the last decade, Alabama social studies courses for second graders listed Harriet Tubman, the woman who became famous for escaping slavery and then helping others do the same, as an ‘exemplary’ American without ever mentioning the words ‘slave’ or ‘slavery.’”).

⁴ *See* Mechelle Hankerson, *Virginia Explained: How Virginia’s History Textbooks Are Vetted*, VA. MERCURY (May 1, 2019, 11:45 PM), <https://www.virginiamercury.com/2019/05/01/virginia-explained-how-virginias-history-textbooks-are-vetted> [<https://perma.cc/DBM4-A2CR>]; *see also* Sonia Rao, *Virginia Was Primed to Teach Black History. Then the Nation’s First Anti-Critical Race Theory Governor Took Office.*, SCALAWAG (June 14, 2022), <https://scalawagmagazine.org/2022/06/critical-race-theory-virginia/> [<https://perma.cc/A432-LQB3>] (highlighting how Virginia was primed to include more Black history in its civics and social studies curricula, but then the administration changed).

⁵ *See* Bennett Minton, *The Lies Our Textbooks Told My Generation of Virginians About Slavery*, WASH. POST (July 31, 2020, 9:35 AM), https://www.washingtonpost.com/outlook/slavery-history-virginia-textbook/2020/07/31/d8571eda-d1f0-11ea-8c55-61e7fa5e82ab_story.html [<https://perma.cc/97XV-5GN9>] (discussing the history of the inaccuracy of textbooks in Virginia).

⁶ *See generally* Danielle Wingfield, War on Education (Sept. 6, 2023) (unpublished manuscript) (on file with author).

But why Virginia? Many prominent voices of the Colonial period hailed from Virginia.⁷ Some of these leaders, like James Madison and Thomas Jefferson, recognized the importance of education to achieve their goals of democracy and liberty.⁸ Nonetheless, there is no mention of education in the United States Constitution, and the Court's failure to acknowledge and protect a constitutional right to education has helped to undermine access to quality public-funded education, especially for minoritized groups like Black Americans, because policymakers are not constitutionally required to provide that type of education.⁹

Yet despite facing resistance to accessing education during Colonial, Antebellum, and Postbellum eras, some Black Americans were able to utilize education as a tool to transcend the daunting constraints. Obtaining educational resources enabled them to attain true freedom beyond what democratic systems alone could safeguard.¹⁰ Such narratives have often been silenced, and these counter stories of

⁷ See Jennifer González, *Virginia Dynasty: James Madison*, LIBR. OF CONG. BLOGS: IN CUSTODIA LEGIS (Jan. 4, 2016), <https://blogs.loc.gov/law/2016/01/virginia-dynasty-james-madison/> [https://perma.cc/JE8R-GN3M].

⁸ See Derek W. Black, *America's Founders Recognized the Need for Public Education. Democracy Requires Maintaining That Commitment*, TIME (Sept. 22, 2020, 11:00 AM) [hereinafter *Black, America's Founders*], <https://time.com/5891261/early-american-education-history/> [https://perma.cc/L5LU-KHEB] (quoting Jefferson and Madison about what democracy requires). However, this Article is discussing the ideal of a constitutional democracy where its members self-govern equally. See U.S. CONST. pmbl. (stating the goals of the Constitution). However, scholars recognize that constitutional democracy and how the democracy functions are at odds, and that democracy is in a fragile state. See, e.g., Martha Minow, *Education: Constitutional Democracy's Predicate and Product*, 73 S.C.L. REV. 537, 538–39 (2022) (citing Lawrence Lessig, *Why the US Is a Failed Democratic State*, N.Y. REV. BOOKS (Dec. 10, 2021), <https://www.nybooks.com/daily/2021/12/10/why-the-us-is-a-failed-democratic-state/> [https://perma.cc/AXC4-GGF5]) (“[C]onstitutional democracy ha[s] become only too pressing by 2022 with serious jeopardy to the entire system of governance in the United States and in other democratic republics.”). As Lawrence Lessig recognized:

At every level, the institutions that the US has evolved for implementing our democracy betray the basic commitment of a representative democracy: that it be, at its core, fair and majoritarian. Instead, that commitment is now corrupted in America. And every aspiring democracy around the world should understand the specifics of that corruption if only to avoid the same in its own land.

See Lessig, *supra*.

⁹ See David Dorsey, *Education Is Still (for Now) Not a Fundamental Right Under the U.S. Constitution*, KAN. POL'Y INST. (Sept. 17, 2020), <https://kansaspolicy.org/education-is-still-for-now-not-a-fundamental-right-under-the-u-s-constitution/> [https://perma.cc/43NN-Y94W] (mentioning how education is not discussed in the Constitution). See generally A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY (Kimberly Jenkins Robinson ed., 2019) (examining and advocating for a federal right to education).

¹⁰ See Walter R. Allen & Joseph O. Jewell, *African American Education Since An American Dilemma*, 124 DAEDALUS 1, 77 (1995) (“Myrdal thought of the American race problem

freedom are often left out of today's American history curriculum to downplay the central role of slavery in our nation's story.¹¹

Indeed, such blanching of American history has undermined attempts to illuminate and alleviate the effects of legalized racism rooted in events dating back to colonial America.¹² This is the history that is scarcely taught, if at all, in American public-funded schools.¹³ For better or worse, in the United States, public education has been perceived by those in power as a method of subjugation and disempowerment, while those advocating for racial and social progress have recognized it as a potent tool for empowerment.¹⁴

In these circumstances, resources exist to help us overcome the frequent deficit of known historical facts. For example, thoughtful scholars have broadly explored the scope and life of free Black people in Colonial, Antebellum, and Postbellum Virginia and related early jurisprudential infrastructure regulating societal customs.¹⁵ Furthermore, scholars have spotlighted these eras in Virginia history to explore issues of interracial sex¹⁶ and religion.¹⁷ This Article acknowledges that Virginia is frequently viewed as a colonial leader, the birthplace of America, and the cradle of

as a moral dilemma located at the very heart of this nation's democratic ethos. For him the key to its solution resided in education.”).

¹¹ See generally Alma Rubal-Lopez & Angela Anselmo, *Being Educated in the Absence of Multiculturalism*, in NARRATIVE & EXPERIENCE IN MULTICULTURAL EDUCATION (Joann Phillion et al. eds., 2005) (examining the ways in which non-white and non-Western narratives have been left out of traditional public education).

¹² See A. Leon Higginbotham, Jr. & Greer C. Bosworth, “*Rather than the Free*”: *Free Blacks in Colonial and Antebellum Virginia*, 26 HARV. C.R.-C.L. L. REV. 17, 17–18 (1991) [hereinafter Higginbotham & Bosworth, *Rather than the Free*] (discussing how even the phrase “free blacks” was paradoxical during the Colonial period).

¹³ See Rubal-Lopez & Anselmo, *supra* note 11, at 55 (“Through our narratives we describe a time when homogeneity, a Euro-centered education, and an absence of any acknowledgement of any non-Western contribution to civilization was the norm.”).

¹⁴ See Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12, at 46 (discussing how free African Americans were prevented from pursuing certain kinds of employment or obtaining training in some fields, which might have otherwise provided for economic empowerment).

¹⁵ See, e.g., Ellen D. Katz, *African-American Freedom in Antebellum Cumberland County, Virginia*, 70 CHI.-KENT L. REV. 927, 927–28 (1995); A. Leon Higginbotham, Jr. & Anne F. Jacobs, *The “Law Only As an Enemy”: The Legitimization of Racial Powerlessness Through the Colonial and Antebellum Criminal Laws of Virginia*, 70 N.C. L. REV. 969, 969 (1992) [hereinafter Higginbotham & Jacobs, *Law Only As an Enemy*]; A. Leon Higginbotham, Jr. & F. Michael Higginbotham, “*Yearning to Breathe Free*”: *Legal Barriers Against and Options in Favor of Liberty in Antebellum Virginia*, 68 N.Y.U. L. REV. 1213, 1213 (1993). See generally Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12 (discussing generally the status of African Americans in Colonial and Antebellum Virginia).

¹⁶ See, e.g., A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 GEO. L.J. 1967, 1967 (1989).

¹⁷ See, e.g., Nicholas May, *Holy Rebellion: Religious Assembly Laws in Antebellum South Carolina and Virginia*, 49 AM. J. LEGAL HIST. 237, 237 (2007).

enslavement in this nation.¹⁸ Therefore, as a case study for better understanding the current war on public education, this Article provides necessary historical background by outlining important facts related to public-funded education during Virginia's Colonial, Antebellum, and Postbellum eras. This Article also centers the narratives of Black Virginians who used education to become constructive civic participants and influencers of social change. By focusing on these historical accounts, some of which have been excluded from educational curricula and popular histories, this Article provides examples of what can be lost within democracies when incomplete and inaccurate histories are taught. These narratives also demonstrate how knowledge of a more accurate, complete history can facilitate the production of a well-informed and free citizenry, which would go a long way toward supporting a representative government.¹⁹

Part I excavates general history about the origin and purpose of public education in Virginia during the Colonial, Antebellum, and Postbellum eras to contextualize the anti-education movement and why education has taken the shape it continues to take. Part II highlights underexplored historical narratives to show what pathways to liberty could look like in the face of resistance to access to quality education. These narratives are also part of the same history that is either not taught, or is being pushed out of, public-funded schools.²⁰ Part III draws lessons from this history, ultimately concluding that education matters. It further calls for a reimagination of public education's utility and values. It suggests that, to create an environment in which more individuals will recognize and embrace the opportunity to become future peacebuilders, education should prioritize creating a robust curriculum with more complete accounts of history. Indeed, the stories thus far left out of school curricula have the potential to equip students with a context necessary for them to participate fully in civic society. Surfacing these histories left out of public education curricula (especially civics and history) shows that the result of teaching factual education in public schools does not necessarily result in division, but can instead promote nation-building. The Article concludes that advocates for equitable education should prioritize defending access to a good quality and full public education. Now is the time to consider how public policy decision-makers, as well as private individuals, can use education to encourage the creation of a more free society for all people, including the most vulnerable.

¹⁸ See John Noble Wilford, *Jamestown Fort, 'Birthplace' of America in 1607, Is Found*, N.Y. TIMES (Sept. 13, 1996), <https://www.nytimes.com/1996/09/13/us/jamestown-fort-birthplace-of-america-in-1607-is-found.html> [<https://perma.cc/B62X-SF5T>].

¹⁹ See Gabriel R. Sanchez & Keesha Middlemass, *Misinformation Is Eroding the Public's Confidence in Democracy*, BROOKINGS INST. (July 26, 2022), <https://www.brookings.edu/articles/misinformation-is-eroding-the-publics-confidence-in-democracy/> [<https://perma.cc/BVS3-NSBT>] (noting that democracy in the United States is at a critical point, and major efforts must be made to repair the public's trust in the election system).

²⁰ See, e.g., Mazzei & Hartocollis, *supra* note 1 (discussing an instance of history courses focused on marginalized groups being blocked from public classrooms).

I. EDUCATION DURING THE COLONIAL, ANTEBELLUM, AND
POSTBELLUM ERAS IN VIRGINIA

Education has a deep and intricate connection to the concept of liberty in America. Throughout history, education has been seen as a crucial foundation for fostering and preserving individual freedoms and democratic principles.²¹ Education empowers individuals to exercise their rights, participate in the democratic process, and contribute to the betterment of society. Further, an educated populace is essential for the preservation and enhancement of the values upon which the United States was founded—“liberty and justice for all.”²²

Education, as a cornerstone of liberty, thus becomes central to major social movements.²³ For many of the social movements that spanned the eighteenth and nineteenth centuries, the pursuit of liberty was fundamental.²⁴ Indeed, the emphasis on liberty in these campaigns reflect the broader influence of Enlightenment philosophies of the age, which emphasized the value of individual freedom, equality, and human rights. In this vein, these movements challenged existing hierarchies and power structures, aiming to create societies where individuals could exercise their inherent rights without undue interference—which included the laws and structures put in place during the Colonial, Antebellum, and Postbellum periods to enforce racial subordination and limit the rights and opportunities available to Black people.²⁵

The early laws from the Colonial and Antebellum eras would later serve to reinforce racial segregation and limit citizenship rights in the Postbellum era and beyond. These laws also had lasting implications in terms of limiting access to education for Black Americans.²⁶ This Part therefore explores the origins of education for formerly enslaved and free Black Americans in Virginia and the sliding scale of access to quality education that emerged during these eras.

²¹ See, e.g., Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12 (referring to preventing the education of African Americans as a precept of slavery, used to maintain its structures after emancipation).

²² See, e.g., *Historic Documents: The Pledge of Allegiance*, USHISTORY.ORG (July 4, 1995), <https://www.ushistory.org/documents/pledge.htm> [<https://perma.cc/7BBT-YYAP>].

²³ Victoria M. Young, *Assessing the Cornerstone of U.S. Education Reform*, 31 J. EDUC. FOUND. 74, 74 (2018), <https://files.eric.ed.gov/fulltext/EJ1212039.pdf> [<https://perma.cc/3Y7V-795S>].

²⁴ These movements include the Decolonization Movements, the American Revolution, Abolitionist Movement, Women’s Suffrage Movement, and Labor Movements.

²⁵ See, e.g., *The Commonwealth of Virginia v. Mrs. Douglass: Sentence of Imprisonment for Teaching Children to Read*, N.Y. DAILY TIMES, Feb. 14, 1854, at 2.

²⁶ See Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12, at 18–19, 28–33 (examining how in colonial Virginia, Black Americans, particularly those who were enslaved faced severe limitations on their citizenship rights).

A. The Colonial Era: The Beginning of Limited Access to Education for Subjugated Classes

During the Colonial era in Virginia, education was primarily accessible to privileged white families, and Virginia lacked a comprehensive system of free public schools.²⁷ During this time, the education of both free and enslaved Black Americans was actively discouraged and, in certain instances, prohibited by law.²⁸ Therefore, education during this period was mostly privatized, and parents took the lead on education initiatives by passing on trade skills to their children.²⁹ Churches and Sunday schools covered religious learning.³⁰ If parents could write, they would teach their children, and if they could not, a tutor or minister would do so for hire.³¹

White families with social status, greater wealth, and more resources would hire a tutor to facilitate more traditional English education for their children, including reading, writing, Greek, and Latin.³² Parents with fewer means would take on most of the educational duties themselves.³³ During the seventeenth and eighteenth centuries, it was uncommon for many families, regardless of race, to have the financial means to hire a teacher on their own and would have to combine their resources with other families to do so.³⁴ However, the widespread population and lack of concentrated settlements made it challenging to bring children together in a school setting in Colonial Virginia.³⁵ Thus, education was a very individualized process.

Virginia's early stance toward public education, as articulated by its Governor, Sir William Berkely, supported the individualized nature of education for colonists' children. Governor Berkely believed that education was a private concern for individual families.³⁶ In 1671, for example, Berkely wrote that Virginia's approach to education was one of "every man according to his own ability in instructing his children."³⁷ This philosophy would be later recognized in the U.S. Constitution,

²⁷ See *id.* at 56–57 (discussing education in colonial Virginia).

²⁸ See *id.* at 46.

²⁹ *Id.* at 56–57.

³⁰ Robert J. Vejnar, III, *The State of Education in Colonial Virginia*, 77 INT'L SOC. SCI. REV. 16, 16 (2002).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ "I thank God, there are no free schools, nor printing[]; and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best governments. God keep us from both." *The Social System of Virginia*, 2 S. LITERARY MESSENGER 65, 72 (Feb. 1848), <https://quod.lib.umich.edu/m/moajrnl/acf2679.0014.002/76:1?page=root;size=100;view=text> [<https://perma.cc/897N-ZCRH>].

³⁷ WAYNE J. URBAN & JENNINGS L. WAGONER, JR., *AMERICAN EDUCATION: A HISTORY* 18 (5th ed. 2014).

which has, over time, been interpreted to guarantee a fundamental right for parents to direct the care, upbringing, and education of their children.³⁸

In spite of the support, like that of Berkely's, for a privatized approach to education, the Virginia Company of London had an interest in educating indigenous populations in the colony in a more public manner.³⁹ For example, in 1611, Sir Thomas Dale, a British colonial leader, left the Jamestown settlement in Virginia to establish a new settlement further upriver.⁴⁰ The group eventually arrived at a peninsula on the north side of the river, which is now known as Farrar's Island.⁴¹ It was here that Dale founded the second settlement in the colony, which was named "Henricus" or "Henrico."⁴² This new town became an important center of trade, industry, and agriculture, with a significant role in the early history of the Virginia Colony.⁴³

The founders of the Henricus settlement planned to establish a university at the site with the objective of educating and converting both colonists and the indigenous population to Christianity.⁴⁴ In 1618, the Company informed newly appointed governor Sir George Yeardly that it intended to create "a college for the training up of the Children of those Infidels in true Religion[,] moral virtue and Civility[,] and for other godly uses."⁴⁵ However, this plan did not succeed. The ongoing conflicts between the settlers and the indigenous people increased and related tensions escalated, leading to an uprising on March 22, 1622, which ultimately resulted in the abandonment of the settlement.⁴⁶ The colonists' attempt to use education to convert indigenous children to Christianity was part of these tensions.⁴⁷ Moreover, the early establishment of uprisings, resistance, and discontentment often disrupted attempts at educational progress.⁴⁸

³⁸ This right includes the ability for parents to make decisions concerning their children's education, religious upbringing, medical care, and general welfare. *See* Meyer v. Nebraska, 262 U.S. 390, 397–98 (1923); Pierce v. Soc'y of Sisters, 268 U.S. 510, 518 (1925); Wisconsin v. Yoder, 406 U.S. 205, 213–15 (1972); Troxel v. Granville, 530 U.S. 57, 63–75 (2000) (establishing together the legal precedent that parents have a fundamental right to make decisions concerning the upbringing of their children, subject to certain limitations, such as state interest in protecting the child's health and safety).

³⁹ Vejnar, *supra* note 30, at 16–17.

⁴⁰ *Virginia Records Timeline: 1610–1619*, LIBR. CONG., <https://www.loc.gov/collections/thomas-jefferson-papers/articles-and-essays/virginia-records-timeline-1553-to-1743/1610-to-1619/> [<https://perma.cc/83MK-ZHMT>] (last visited Dec. 4, 2023).

⁴¹ *Henricus & Beyond*, HENRICUS HIST. PARK, <https://henricus.org/history/> [<https://perma.cc/43S6-YKQL>] (last visited Dec. 4, 2023).

⁴² Vejnar, *supra* note 30, at 16–17.

⁴³ *Virginia Records Timeline: 1610–1619*, *supra* note 40.

⁴⁴ Vejnar, *supra* note 30, at 16–17.

⁴⁵ 3 THE RECORDS OF THE VIRGINIA COMPANY OF LONDON 102 (Susan Myra Kingsbury ed., 1933).

⁴⁶ Vejnar, *supra* note 30, at 23.

⁴⁷ *Id.*

⁴⁸ HEATHER ANDREA WILLIAMS, SELF-TAUGHT: AFRICAN AMERICAN EDUCATION IN

Indeed, it took over seventy years after the uprising for Virginians to create their first college.⁴⁹ Though Virginia's first attempt at establishing a university did not succeed, the model of the Henricus school came back around when it was time to establish future educational institutions in the colony. Ultimately, it laid the groundwork for the development of a formal education system in Virginia and helped to establish what type of education was deemed important during the Colonial period.

Among the types of education deemed important was religious education. In 1628, the number of Africans in Virginia rose dramatically when a captain sold one hundred enslaved Africans for tobacco.⁵⁰ Tobacco emerged as the colony's most prosperous cash crop, with its cultivation extending across Virginia.⁵¹ As a result of more widespread production, the demand for enslaved labor also increased, particularly in port settlements like Henricus where export was growing.⁵² The increased population of enslaved people meant an increase in restrictions with the purpose of controlling the enslaved populace. The increase in the number of enslaved people also introduced another layer in the discussion of access to education as colonists desired to educate enslaved persons for the purpose of religious conversion, but not for the purpose of upending the system of enslavement.⁵³

Given Virginia's lack of anti-literacy laws—which would not be passed in Virginia until the 1800s—educating enslaved persons in general was strongly discouraged because of the fear that literacy would prompt their freedom.⁵⁴ In fact,

SLAVERY AND FREEDOM 22 (2005):

Cognizant of the revolutionary potential of black literacy, White elites enacted laws in slave states to proscribe teaching enslaved and sometimes free blacks to read or write. The timing of these antiliteracy laws often exposed the close association in White minds between black literacy and black resistance. Whether the threat to slavery came in the form of a slave rebellion or talk of abolition, southern lawmakers linked black literacy to the institution's demise . . .

⁴⁹ In 1693, the College of William & Mary was chartered—the first to be established in the Virginia Colony and the second oldest in the United States to Harvard. *The College of William and Mary*, VA. MUSEUM OF HIST. & CULTURE, <https://virginiahistory.org/learn/college-william-and-mary> [<https://perma.cc/4VU3-RZR6>] (last visited Dec. 4, 2023).

⁵⁰ Some scholars estimate that African people were amongst the earliest to arrive in the Jamestown colony in 1619. See William Thorndale, *The Virginia Census of 1619*, 33 VA. MAG. GENEALOGY 155, 155–56 (1995). This number of enslaved Africans declined over the next few years after their arrival as a result of diseases for which they had no immunity. See *Colonial Era*, HENRICO CNTY., <https://henrico.us/history/colonial-era/> [<https://perma.cc/8D5M-PEPU>] (last visited Dec. 4, 2023).

⁵¹ See *Colonial Era*, *supra* note 50.

⁵² See *id.* (“The colony was divided into settlements, or ‘plantations,’ one being the City of Henrico. Each plantation sent representatives to Jamestown . . . [and] Henrico’s representatives to the assembly were Thomas Dowse and John Polentine.”).

⁵³ See *infra* note 61.

⁵⁴ *Oldest Schoolhouse for Black Children in the Country Moved to Virginia Museum*,

there were few laws that specifically prohibited the education of enslaved persons, but other laws impaired their access to education. For example, the Virginia General Assembly enacted the Virginia Slave Codes of 1705.⁵⁵ These laws were enacted by the Virginia General Assembly in response to growing concerns about slave resistance and the potential for slave revolts.⁵⁶

The 1705 codes established a strict system of control over enslaved individuals, regulating their behavior and movements, and imposing severe penalties for violating the codes.⁵⁷ Yet, the Virginia Slave Codes of 1705 did not explicitly mention education.⁵⁸ Nevertheless, these early laws are today an important primary source for understanding the legal framework that governed the treatment of enslaved individuals in Virginia in the early eighteenth century.⁵⁹

As noted above, the limited instruction that did exist for enslaved populations during this period was religious instruction, which followed a model similar to that imagined for Henricus, where the intention had been to convert indigenous populations to Christianity.⁶⁰ Bishop Edmund Gibson and minister Dr. Thomas Bray, in particular, promoted educating enslaved persons in America.⁶¹ The Bray School, founded in 1760, is the oldest school developed expressly for free and enslaved Black American children in the United States.⁶²

NBCNEWS (Feb. 11, 2023), <https://www.nbcnews.com/news/us-news/oldest-us-schoolhouse-black-children-moved-museum-rcna70255> [<https://perma.cc/XB5L-YXBT>].

⁵⁵ 3 THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 447–63 (William Waller Hening ed., 1969).

⁵⁶ Jonathan A. Bush, *Free to Enslave: The Foundations of Colonial American Slave Law*, 5 YALE J.L. & HUMAN. 417, 434 (1993).

⁵⁷ *Id.* at 433–34.

⁵⁸ See General Assembly, “An Act Concerning Servants and Slaves” (1705), ENCYCLOPEDIA VA. (Dec. 7, 2020), <https://encyclopediavirginia.org/entries/an-act-concerning-servants-and-slaves-1705> [<https://perma.cc/JNN4-LXKN>].

⁵⁹ See Bush, *supra* note 56, at 434.

⁶⁰ See Antonio T. Bly, *Literacy and Education of the Enslaved in Virginia*, ENCYCLOPEDIA VA. (Feb. 21, 2023) [hereinafter Bly, *Literacy and Education*], <https://encyclopedia.virginia.org/entries/slave-literacy-and-education-in-virginia> [<https://perma.cc/UE3U-95KU>]. Significantly:

As many as 5 percent of enslaved people may have been literate by the start of the American Revolution (1775–1783), their educations often tied to religious instruction. Many enslavers viewed Christian teaching as their duty, and converts to the Church of England were required to be literate enough to read a catechism.

Id.

⁶¹ See Thomas N. Ingersoll, “Release us out of this Cruell Bondegg”: An Appeal from Virginia in 1723, 51 WM. & MARY Q. 777, 781–82 (1994) (referencing a letter from Virginia Slaves to Bishop Edmund Gibson (Aug. 4, 1723; Sept. 8, 1723)).

⁶² *Oldest Schoolhouse for Black Children in the Country Moved to Virginia Museum*, *supra* note 54.

In line with the interest in providing religious education, students in the Bray schools learned the Apostles' Creed, the Lord's Prayer, and the catechism.⁶³ Initially, their lessons involved recitation and memorization.⁶⁴ As they progressed, they learned grammar and how to read.⁶⁵ The Bray School's model followed the privatized model of the day, with a faith-based focused curriculum that ultimately served as the underpinnings of what would later be a more traditional public-school curriculum focused on reading and writing.⁶⁶ Historians that study the Bray School and the Colonial period in depth suggest that a goal of the Bray School was, as suggested above, to "proselytize and to bring salvation while still not doing anything to destabilize the institution of slavery [to] [s]ave the soul, but continue to enslave the body."⁶⁷

Those who associated with Dr. Bray and the Bray schools believed that enslavers had a Christian obligation to provide reading instruction to enslaved children, especially to those who had been born in the colony.⁶⁸ As many as four hundred mostly urban enslaved people and a few free Black individuals in and around Williamsburg were educated at the Bray School in classes of twenty to thirty students, with their numbers fairly evenly divided between boys and girls.⁶⁹ Dr. Bray's records show that between 1765 and 1771, forty-two students attended a Bray school in Fredericksburg.⁷⁰ In addition to the Fredericksburg and Williamsburg schools, several unofficial Bray schools operated in the colony.⁷¹ African-born

⁶³ Antonio T. Bly, *In Pursuit of Letters: A History of the Bray Schools for Enslaved Children in Colonial Virginia*, 51 HIST. EDUC. Q. 429, 434 (2011) [hereinafter Bly, *In Pursuit of Letters*].

⁶⁴ *Id.* at 445.

⁶⁵ *See id.* at 446.

⁶⁶ *Oldest Schoolhouse for Black Children in the Country Moved to Virginia Museum*, *supra* note 54.

⁶⁷ *Id.*

⁶⁸ Bly, *In Pursuit of Letters*, *supra* note 63, at 456.

⁶⁹ *Id.* at 446–48.

⁷⁰ The Associates of Dr. Bray's records are housed in the Bodleian Library, Oxford, in the papers of the United Society for the Propagation of the Gospel, and have been digitized in '*Bray Schools' in Canada, America and the Bahamas, 1645–1900—Key Data*, BRITISH ARCHIVES ONLINE, <https://microform.digital/boa/collections/30/bray-schools-in-canada-america-and-the-bahamas-1645-1900/key-data> [<https://perma.cc/N973-A797>] (last visited Dec. 4, 2023). Much of the relevant documentation has been published in John C. Van Horne & Grant Stanton, *Bray School Enrollments for Free and Free and Enslaved Black Children, 1758–1845*, UNIV. PA. LIBRS. (Mar. 23, 2023), <https://repository.upenn.edu/entities/publication/efb02932-9f3e-4777-b4af-d1254b9ebe4d> [<https://perma.cc/XWC2-ZKZ6>].

⁷¹ *See* Bly, *Literacy and Education*, *supra* note 60. Notably:

Most were run by churchwardens who usually also served as the schoolmasters. Two of these schools had enslaved schoolmasters. Adam Dickie, the minister of Drysdale Parish in King and Queen County, taught several enslaved people, some of whom he trusted to teach

enslaved people were not considered to be good candidates for biblical literacy because they were thought to be too unfamiliar with Western languages.⁷²

Yet despite discouraging the education of enslaved persons in general, and despite the intentions of the school to maintain the institution of slavery even as they taught enslaved persons to read and write, the students who attended Bray schools still read words like “liberty” in their texts.⁷³ In this way, the fear that education would open the minds of enslaved persons to the idea of freedom was not completely unsubstantiated. Indeed, a former Bray School student, Isaac Bee, would escape from his enslaver as an adult.⁷⁴ Perhaps, that was no coincidence.

In sum, during the Colonial period and the early Republic, white colonists and citizens attempted to deny enslaved persons any knowledge of their historical roots and obfuscated the function of education within the institution of slavery. Enslavers named enslaved persons by their size, stripping them of their birth names; their new names were the only names that they were allowed to use.⁷⁵ That was only the first step in taking away their culture.⁷⁶ Enslavers also disparaged those using their previous skills in America. They ridiculed the native language of enslaved persons and repeatedly remarked on their minds’ ineptness.⁷⁷ These tactics for maintaining control, which persisted beyond the early Republic, clearly had early roots.⁷⁸ However, enslaved persons resisted, and while many would answer to their new names, they

others. In 1732, the parson boasted that he had fourteen enslaved people in his congregation who “could answer for themselves and repeat the Catechism very distinctly.” Two years later, he circulated books from the Society for the Propagation of the Gospel to those enslaved people “he thought most diligent and desirous to read.”

⁷² Letter from Rev. James Marye Jr. to Rev. John Waring (Sept. 25, 1764), in *ENCYCLOPEDIA VA.*, <https://encyclopediavirginia.org/entries/letter-from-rev-james-marye-jr-to-rev-john-waring-september-25-1764/> [<https://perma.cc/58A3-NKDV>].

⁷³ *Oldest Schoolhouse for Black Children in the Country Moved to Virginia Museum*, *supra* note 54.

⁷⁴ *Id.*

⁷⁵ Ira Berlin, *From Creole to African: Atlantic Creoles and the Origins of African-American Society in Mainland North America*, 53 *WM. & MARY Q.* 251, 251–52 (1996).

⁷⁶ *Id.* (“Renaming marked Carter’s initial endeavor to master his new slaves by separating them from their African inheritance.”).

⁷⁷ *Id.* at 252.

⁷⁸ See Marvin H. Lett, Grutter, Gratz, and *Affirmative Action: Why No “Original” Thought?*, 1 *STAN. J. C.R. & C.L.* 417, 432 (2005) (discussing the treatment of Black people in the Confederate states after the Civil War and the role of the Thirteenth and Fourteenth Amendments in addressing this treatment). It is noted that slavery was not only a labor and property issue but a racial issue as well, and that the American institution of slavery constituted a legal and practical code of deprivations and inferiority for both enslaved persons and free Black people. Lett mentions that enslaved people were deprived of basic rights, including the ability to contract, own property, sue, or serve as witnesses in court. The 38th and 39th Congresses abolished enslavement and reinforced this measure with the Equal Protection Clause in Section One of the Fourteenth Amendment. *See id.*

would also maintain their African names and some of their cultural identity.⁷⁹ Learning to live dual lives, one where they labored for their enslavers and another in which they kept a homeplace for themselves, would prove to be beneficial for enslaved persons in the Antebellum era. With this point in mind, the next section takes up the Antebellum era, during which apprehensions of insurrection prompted the establishment of structured Slave Codes—which enslaved individuals nevertheless managed to navigate adeptly in their quest for education.

B. The Antebellum Era: The Emergence of Slave Codes

The Antebellum era spans the period from the ratification of the U.S. Constitution in 1788 to the onset of the Civil War in 1861.⁸⁰ This time frame saw significant developments that set the stage for the Civil War, which played a major role in shaping the nation's identity. A major facet of the era was the conflict over slavery, as the South's economy and society remained deeply intertwined with slavery, while the North gradually moved toward abolition. This dichotomy generated tensions culminating in the Civil War.

The Antebellum era also witnessed rapid economic shifts. The North experienced industrialization and urbanization, while the agrarian South still relied on plantations. This divide contributed to distinct social structures and priorities, and political tensions mirrored the North-South divide. The era also marked the Second Great Awakening, fostering religious revivals and social reforms,⁸¹ while American thought was influenced by transcendentalism and various literary movements.⁸² As tensions heightened, and the clash between the industrialized, free-labor North and the agrarian, enslaving South became irreconcilable, southern states seceded, and war broke out in 1861.⁸³

⁷⁹ Berlin, *supra* note 75, at 252.

⁸⁰ The Antebellum era in this Article refers to the period from the ratification of the U.S. Constitution in 1788 to the start of the Civil War in 1861. Some historians refer to Antebellum beginning in 1812 until 1861 before the Civil War began; however, other historians take the literal meaning of Antebellum, a Latin word that translates to “before the war” to include everything from 1788 to the onset of the Civil War.

⁸¹ *The Second Great Awakening and Reform in the 19th Century*, CONST. RTS. FOUND. (2017), <https://www.crf-usa.org/images/pdf/the-second-great-awakening.pdf> [<https://perma.cc/3VUZ-DWDA>] (“American Protestant Christians’ beliefs changed during the early 19th century in a period known as the Second Great Awakening. Marked by a wave of enthusiastic religious revivals, the Second Great Awakening set the stage for equally enthusiastic social reform movements, especially abolitionism and temperance.”).

⁸² See David Faflik, *Race and the Cultures of Transcendental Reform*, 50 REVS. AM. HIST. 25, 27–28 (2022).

⁸³ See *Time Line of the Civil War: 1861*, LIBR. CONG., <https://www.loc.gov/collections/civil-war-glass-negatives/articles-and-essays/time-line-of-the-civil-war/1861/> [<https://perma.cc/Y2SF-HFXJ>] (last visited Dec. 4, 2023).

Discussion of the Antebellum period often focuses on the decades immediately preceding the start of the Civil War. However, the ratification of the United States Constitution in 1788, thirteen years after the commencement of the American Revolution, holds relevance to this discourse because of its role in the early formation of democratic governance and the lack of a federal assurance for quality public-funded education. A goal of the Constitution was to create a framework for a stronger and more unified nation, to protect individual rights, and to establish the principles of governance that continue to shape the United States to this day. Yet the United States Constitution does not mention the word “education,” even though James Madison, John Adams, and George Washington advocated for public education to be included.⁸⁴ Instead, the document focused on establishing a cohesive federal governance structure, and public-funded education was seen as a power within the province of the states under the Tenth Amendment.⁸⁵

Nevertheless, the discussion about the role of the federal government in public education continued long after the Constitution was ratified.⁸⁶ In fact, the absence of education in the U.S. Constitution continues to have implications for who has access to education and the quality of the education provided. Indeed, this absence has even allowed for local autonomy that has posed a challenge to achieving equitable access to quality education across diverse communities predicated on both race and class.⁸⁷ This discussion about the role of the federal government in public education continued long after the Constitution was ratified.⁸⁸ The Constitution’s general principles of equality and liberty continue to be invoked in legal efforts to address educational disparities, but the absence of explicit language about education leaves room for interpretation and variation in educational approaches at the state and local levels. This tension—so palpable today—is evident as early as the Antebellum era.

Thomas Jefferson’s belief that public education was central to the new republic marked a shift from previous private efforts in education.⁸⁹ Drawing inspiration from

⁸⁴ See Black, *America’s Founders*, *supra* note 8 (quoting Jefferson and Madison about what democracy requires).

⁸⁵ See generally Kimberly Jenkins Robinson, *The Essential Questions Regarding a Federal Right to Education*, in *A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY* (Kimberly Jenkins Robinson ed., 2019).

⁸⁶ Sarah J. Forman, *Ghetto Education*, 40 WASH. U. J.L. & POL’Y 67, 78–81 (2012) (noting various scholars who put forth federal government role in education arguments like Kimberly Robinson across the years).

⁸⁷ See Robinson, *supra* note 85, at 2.

⁸⁸ See Forman, *supra* note 86, at 78–81 (noting various scholars who put forth the federal government’s role in education arguments like Kimberly Robinson across the years).

⁸⁹ See Committee of the Virginia Assembly, *A Bill for the More General Diffusion of Knowledge* (June 18, 1779), in *FOUNDERS ONLINE*, NAT’L ARCHIVES [hereinafter *Diffusion of Knowledge Bill*], <https://founders.archives.gov/documents/Jefferson/01-02-02-0132-0004-0079> [<https://perma.cc/FX2J-DYFF>].

Enlightenment philosophers like Jean Jacques Rousseau, who, in 1758, emphasized the pivotal role of public education in preserving a republican style of government for the fledgling nation, numerous influential American intellectuals were likewise proponents of public education.⁹⁰ Yet the general public had less trust in the proposed public education model, although some did embrace public education.⁹¹ The question was who should receive such education and how it would be established and supported.⁹²

In 1779, Jefferson, as Virginia's governor, first proposed legislation for a public-funded, statewide education system.⁹³ Jefferson proposed a two-track system aimed at segregating the laboring class from the educated elite, which had the potential to address class-based educational disparities.⁹⁴ He delineated two distinct categories among citizens: the laboring majority requiring basic education to complete their tasks and the learned minority who would require education as a foundation for higher learning.⁹⁵ Jefferson envisioned a mechanism to sift out exceptional individuals while at the same time hindering the laboring class's access to the educational achievements commonly linked with opportunities, influence, and affluence.⁹⁶ The bill additionally proposed to educate children whose parents could not afford to educate them at their own expense.⁹⁷ The bill was never fully enacted by the Virginia House

⁹⁰ Forman, *supra* note 86, at 73–75 (“Influenced by enlightenment thinkers such as Jean Jacques Rousseau, who in 1758 stated that ‘public education . . . is one of the fundamental rules of popular or legitimate government,’ many prominent American thinkers touted public education as critical to the new nation’s ability to maintain a republican form of government.”).

⁹¹ CAMERON ADDIS, *JEFFERSON’S VISION FOR EDUCATION, 1760–1845*, at 14–15 (2003) (explaining the opposition to Jefferson’s public education bill as stemming from three main reasons: general aversion to taxation, the impracticality of the ward scheme due to Virginia’s vast and dispersed population, and discontent among Christians who felt that Jefferson’s curriculum did not align with their faith).

⁹² Forman, *supra* note 86, at 78–79.

⁹³ *Diffusion of Knowledge Bill*, *supra* note 89.

⁹⁴ *See id.* Public education differed by both race and class. White children from lower economic backgrounds also had limited access to quality education.

⁹⁵ Letter from Thomas Jefferson to Peter Carr, Virginia Politician (Sept. 7, 1814), in FOUNDERS ONLINE, NAT’L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/03-07-02-0462> [<https://perma.cc/7HWV-U8BR>].

⁹⁶ *Id.*

⁹⁷ *See Diffusion of Knowledge Bill*, *supra* note 89. The bill provided:

[T]he indigence of the greater number disabling them from so educating, at their own expense, those of their children whom nature hath fitly formed and disposed to become useful instruments for the public, it is better that such should be sought for and educated at the common expence of all, than that the happiness of all should be confided to the weak or wicked[.]

See id. Jefferson strongly valued the principles contained in his public education bill, writing to his legal mentor George Wythe:

of Delegates, but the ideas contained in Thomas Jefferson's plan for public education nevertheless influenced many proponents of public education in the eighteenth century. In fact, the bill was finally passed in 1796 under a new name, *An Act to Establish Public Education*.⁹⁸ It was the first statute pertaining to public education in Virginia.⁹⁹

Initial deliberations over public education typically excluded enslaved Black individuals in the colonies due to their classification as property.¹⁰⁰ An exception is in the instance of the Quakers, which marked the earliest instances of American settlers who sought to provide equitable education and religious opportunities to Black individuals alongside white children.¹⁰¹ As in the Colonial period, they aimed to underscore the significance of religion in Virginia in their endeavor to educate the Black population.¹⁰² However, in addition to morality and religion, the curriculum also included practical literature, writing, reading, and practical arts, to equip students for freedom and productive citizenship.¹⁰³ The Quakers' push to educate enslaved people was just one example of early abolition.

I think by far the most important bill in our whole code is that for the diffusion of knowledge among the people. No other sure foundation can be devised, for the preservation of freedom, and happiness. . . . Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people. Let our countrymen know that the people alone can protect us against these evils [tyranny, oppression, etc.], and that the tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests and nobles who will rise up among us if we leave the people in ignorance.

Letter from Thomas Jefferson to George Wythe (Aug. 13, 1786), in FOUNDERS ONLINE, NAT'L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/01-10-02-0162> [<https://perma.cc/6UWU-7RBE>].

⁹⁸ See generally Thomas Jefferson, *Draft Bill to Create Central College and Amend the 1796 Public Schools Act* (Nov. 18, 1814), in FOUNDERS ONLINE, NAT'L ARCHIVES, <https://founders.archives.gov/documents/Jefferson/03-08-02-0075> [<https://perma.cc/34KF-8TUS>].

⁹⁹ See *Diffusion of Knowledge Bill*, *supra* note 89.

¹⁰⁰ See Steven L. Nelson & Ray O. Williams, *From Slave Codes to Educational Racism: Urban Education Policy in the United States as the Dispossession, Containment, Dehumanization, and Disenfranchisement of Black Peoples*, 19 J.L. SOC'Y 82, 86 (2019) (discussing enslaved persons status as chattel property).

¹⁰¹ See Raymond Pierce, *The Quaker Roots Of Civil Rights In Education*, FORBES (Oct. 20, 2021, 2:58 PM), <https://www.forbes.com/sites/raymondperce/2021/10/20/the-quaker-roots-of-civil-rights-in-education/?sh=5c3806ba38d0> [<https://perma.cc/YL2U-YXNC>]; Governor's Council, *The Case of John Graweere (March 31, 1641)*, ENCYCLOPEDIA VA. (Dec. 7, 2020), <https://encyclopediavirginia.org/entries/the-case-of-john-graweere-march-31-1641/> [<https://perma.cc/VWH2-XY4Q>]; see also BRYCCHAN CAREY, *FROM PEACE TO FREEDOM: QUAKER RHETORIC AND THE BIRTH OF AMERICAN ANTISLAVERY, 1657–1761*, at 51–52 (2012).

¹⁰² CAREY, *supra* note 101, at 64.

¹⁰³ *Id.* at 48.

In spite of the general lack of interest in educating enslaved and free Black people, concern over an educated Black populace remained muted until 1800, when a plot by enslaved men in and around Richmond generated worry about how to prevent enslaved people from being empowered to revolt.¹⁰⁴ Known as Gabriel's Conspiracy, the plot entailed a plan to kill the enslaved men's enslavers and other white people, kidnap Governor James Monroe, and burn Richmond.¹⁰⁵ The plot was betrayed, and the participants were captured.¹⁰⁶ In response, twenty-six enslaved persons, including Gabriel, were hanged, and eight others were sold out of the state.¹⁰⁷ During the trials, it was revealed that some of the enslaved participants, including Gabriel, George Smith, and Sam Byrd Jr., had the ability to read and write.¹⁰⁸ Using these skills, they had created passes to move from one plantation to another, kept a list of the conspirators, and even planned to create a flag with the words "death or liberty."¹⁰⁹

Though Gabriel's Conspiracy sparked some anxiety, it was not until the mid-1800s, when the insurrection movement reached its height, that educating Black people moved to the forefront of public concern.¹¹⁰ As noted previously, prior to the nineteenth century, there were few laws that dealt directly with the education of enslaved and free Black people.¹¹¹ However, the rebellions and insurrections that

¹⁰⁴ As John F. Marszalek details:

The shock of the insurrection also convinced 'White liberals' like Monroe and his patron, Thomas Jefferson, that something had to be done to prevent any future slave rebellion. Hanging the guilty was no permanent answer; besides, the reimbursement of owners proved expensive to the state. Monroe and Virginia, therefore, turned to colonization. . . . Virginians, their anxiety so intensified, turned not only to colonization, but also to repression. . . . Stricter manumission laws were passed, free blacks were restricted as never before (though no free blacks were involved with Gabriel), slave patrolling was intensified and the system that came to identified with antebellum slavery was established.

John F. Marszalek, *Battle for Freedom—Gabriel's Insurrection*, 39 NEGRO HIST. BULL. 540, 543 (1976).

¹⁰⁵ See Bly, *Literacy and Education*, *supra* note 60.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See *id.*

¹¹⁰ See Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12, at 56 (quoting C. WOODSON, *THE EDUCATION OF THE NEGRO PRIOR TO 1861*, at 2 (1919)):

During most of that period, there was little concern about the potential danger to White society of educating [B]lacks. After the Revolution, benevolent and religious workers were allowed access to both enslaved and free [B]lacks. Nevertheless, Woodson described the education of Blacks in the South as "rudimentary training incidental to religious instruction."

¹¹¹ See Derek W. Black, *Freedom, Democracy, and the Right to Education*, 116 NW. U.

were beginning to occur in Virginia and other Southern states contributed to the formulation of strict Slave Codes.¹¹² For example, after Nat Turner's 1831 rebellion, the restrictions on Black people's educational opportunities escalated significantly, compelling them to seek alternative avenues for acquiring knowledge.¹¹³

The fear of uprisings of enslaved people prompted legislators and enslavers to establish laws that aimed to keep enslaved individuals submissive, controlled, and ignorant.¹¹⁴ These codes imposed restrictions on movement, education, assembly, and communication to prevent future rebellions and insurrections.¹¹⁵ The influence of these codes endured well into the Antebellum era and beyond, shaping the lived experiences of enslaved persons and further entrenching the institution of enslavement.¹¹⁶

Similar to those established in colonial times, in Virginia, Slave Codes were laws in Virginia that regulated the behavior and treatment of Black Americans during the period before the American Civil War.¹¹⁷ These codes defined enslaved persons as property and, in addition to the restrictions on movement, assembly, and education mentioned above,¹¹⁸ they also imposed severe punishments for resistance or rebellion. These codes, also known as Black Codes or Black laws, helped to maintain the system of slavery and uphold white supremacy in Virginia and elsewhere during the Antebellum period by severely restricting the daily activities of Black people and curtailing their civil and economic rights.¹¹⁹ Further, these laws continued to implicate the access to quality education for formerly enslaved Black people.

L. REV. 1031, 1041 (2022) [hereinafter Black, *Freedom, Democracy, and the Right to Education*]:

It was not until the early- to mid-1800s that anti-literacy laws spread. Before then, many slave owners acquiesced in or supported the literacy of enslaved people. Literate enslaved people's leading role in planning and executing revolts in 1822 and 1831 crystalized American slavery's need for more aggressive limits on the literacy of enslaved people.

¹¹² See Birgit Brander Rasmussen, "Attended with Great Inconveniences": *Slave Literacy and the 1740 South Carolina Negro Act*, 125 MOD. LANGUAGE ASS'N AM. 201, 201 (2010).

¹¹³ See Colette Coleman, *How Literacy Became a Powerful Weapon in the Fight to End Slavery*, HIST. (July 11, 2023), <https://www.history.com/news/nat-turner-rebellion-literacy-slavery> [<https://perma.cc/E9NW-EANZ>].

¹¹⁴ See Higginbotham & Jacobs, *Law Only As an Enemy*, *supra* note 15, at 975.

¹¹⁵ See *id.*

¹¹⁶ See Nelson & Williams, *supra* note 100, at 86 (discussing enslaved persons status as chattel property); Higginbotham & Jacobs, *Law Only As an Enemy*, *supra* note 15, at 971.

¹¹⁷ See Nelson & Williams, *supra* note 100, at 87.

¹¹⁸ See *id.* at 86–87.

¹¹⁹ See *id.* at 87–88. In the aftermath of the Civil War, white legislatures in the South enacted Black Codes, drawing inspiration from the earlier slave codes that had been in place. These codes were implemented as part of a broader strategy by Democrats to uphold their political dominance and suppress the newly emancipated African Americans, commonly referred to as freedmen. See *id.*

As early as 1832, there existed a distinction between the political privileges granted to free white persons and those of African descent, and Black Americans did not enjoy the same civil and political rights as their white counterparts across most parts of the United States.¹²⁰ This had a great bearing on how Black people, both free and enslaved, were educated.¹²¹

Indeed, these laws played a pivotal role in significantly limiting access to quality education for those held in bondage, perpetuating a cycle of ignorance and powerlessness. Enforced through various means, these regulations systematically denied enslaved persons the opportunity to gain knowledge and skills that could potentially challenge the institution of slavery.

In the southern colonies, the Slave Codes also aimed to curb the influence of free Black individuals, particularly in the aftermath of rebellions by enslaved people, as such rebellions posed a potential threat to the very institution of slavery.¹²² Thus, the underlying intent behind these laws was to maintain and protect the institution of slavery within societies where it was prevalent.¹²³ In this context, Black Americans gaining access to education in any capacity, or access to other rights and means of civic participation such as voting, were threats to the social order of the day. That understanding of education as a threat was made evident by the denial of access to education and the sometimes insistence that those who had violated the laws be legally required to leave the state, thereby negating their ability to be part of government processes.¹²⁴ These legal restrictions clearly indicate that education was feared as a tool for integrating Black Americans into society in a way that went against the grain of the status quo, and as a tool that educated Black people would use to demand social and political equality.¹²⁵

Most of the laws that spilled over into the Antebellum period were initially imposed during the Colonial era. It is worth noting, however, that such laws differed

¹²⁰ See Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12, at 36.

¹²¹ See *id.* at 55–56.

¹²² See Nelson & Williams, *supra* note 100, at 86 (discussing the constitutional roots of racial oppression). Black Americans did not benefit from the Constitution the way that white people did. Further, “slave protections under law were granted only to the point where white people could have their economic and social interests and rights to enjoy slaves as chattel property realized.” See *id.*; see also Rasmussen, *supra* note 112, at 201.

¹²³ See *id.* at 88.

¹²⁴ See Lacreteria Dye et al., *Beyond Social Justice for the African American Learner: A Contextual Humanistic Perspective for School Counselors*, 6 J. INT’L SOC’Y AUGMENTATIVE & ALT. COMM’N 1, 4 (2017).

¹²⁵ See WILLIAM PRESTON VAUGHN, *SCHOOLS FOR ALL: THE BLACKS AND PUBLIC EDUCATION IN THE SOUTH, 1865–1877*, at 43–44 (2014) (discussing how Southern whites feared that any education provided to Black individuals, even through private associations in segregated schools, might eventually lead to integrated schools, and they worried that educated Black individuals would demand social and political rights, often using pseudo-scientific and economic theories like Black people were physically unable to learn, to oppose Black education).

in their explicit prohibitions, and some of the prohibitions changed or developed over time.¹²⁶ Indeed, some colonies enacted laws that explicitly prohibited teaching enslaved persons, but others did not. For example, South Carolina did impose penalties for anyone who taught enslaved people how to read or write and required enslavers to supervise their enslaved workers to prevent them from gaining an education.¹²⁷ In Virginia, however, anti-literacy laws would not be formally introduced until the 1800s.¹²⁸

Despite these variations across states, the outright prohibition of literacy among enslaved individuals was one of the most effective ways in which Slave Codes hindered education. Anti-literacy laws explicitly forbade enslaved persons from learning to read and write—a deliberate strategy aimed at preventing them from accessing information, communicating ideas, or engaging in any form of intellectual empowerment.¹²⁹ Enslaved individuals who were caught attempting to educate themselves faced severe and often brutal consequences, ranging from harsh physical punishments to further psychological oppression.¹³⁰

Moreover, this control extended beyond mere restrictions on learning: it encompassed control over social interactions as well. Enslaved individuals were typically not allowed to gather in groups at all, including for educational purposes.¹³¹ The fear among authorities and enslavers was that group gatherings might provide an opportunity for enslaved persons to exchange knowledge, share insights, and potentially

¹²⁶ See JONATHAN K. STUBBS & OLIVER W. HILL, NO CLUE: WHAT IS WHITE AFFIRMATIVE ACTION AND WHY WE NEED A MORAL REVOLUTION (forthcoming 2023) (manuscript at 1–11) (on file with author).

¹²⁷ See W.G., Letter to the Editor, *The Virginia Law Against Teaching Colored Children to Read and Write*, N.Y. DAILY TIMES, Dec. 14, 1853, at 2 (quoting 2 Brevard’s Digest, 243):
[B]e it enacted that all and every person and persons whatsoever, who shall hereafter teach, or cause any slave or slaves to be taught to read or write, or shall use or employ any slave as a scribe in any manner of writing whatsoever, hereafter taught to write, every such person shall, for every such offense, forfeit the sum of one hundred pounds current money.

¹²⁸ See *id.*

¹²⁹ See *id.*

¹³⁰ See *Literacy as Freedom*, SMITHSONIAN AM. ART MUSEUM, <https://americanexperience.si.edu/wp-content/uploads/2014/09/Literacy-as-Freedom.pdf> [<https://perma.cc/3KF6-55FQ>] (last visited Dec. 4, 2023).

¹³¹ See Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12, at 32. On June 8, 1680, the General Assembly enacted the “An act for preventing Negroes Insurrections” as a response to the fears held by enslavers. They were concerned that gatherings such as feasts and burials, which served as social events and community rituals, might potentially trigger uprisings among the enslaved population, a group they were intent on subjugating. *Slave Law in Colonial Virginia: A Timeline*, SAMHOUSTON STATE UNIV., https://www.shsu.edu/~jl1004/vabeachcourse_spring09/bacons_rebellion/slavelawincolonialvirginiatimeline.pdf [<https://perma.cc/49PZ-2N2Y>] (last visited Dec. 4, 2023).

organize for resistance or emancipation.¹³² This restriction on gathering further marginalized the possibility of any informal educational activities within the enslaved community.

In addition, enslavers strategically limited access to educational resources, including books, newspapers, and any materials that could foster intellectual growth.¹³³ By tightly controlling the information available to enslaved individuals, enslavers aimed to ensure their continued ignorance about subjects that could challenge the institution of slavery or inspire aspirations of freedom. Moreover, as noted above, some Slave Codes mandated heightened supervision of enslaved individuals by not only their enslavers but also by white women, white indentured servants, and supervised free Black people.¹³⁴ This strict oversight effectively thwarted any attempts at unauthorized learning and communication.

Fear of challenges to the status quo were not the only reasons that access to education was restricted for enslaved individuals. Economic and productivity concerns of enslavers also contributed to the limitation of education for enslaved individuals. Many believed that education could make them less productive or harder to control within the plantation economy.¹³⁵ Additionally, the deeply ingrained racial prejudices of the era played a significant role in justifying the denial of education to enslaved persons. These prejudiced beliefs portrayed enslaved individuals as inherently inferior and unworthy of education, further bolstering the oppressive agenda of the Slave Codes.¹³⁶

These early codes restricting the education of enslaved persons reveal the significant role that education in particular played in shaping societal power dynamics and maintaining control over enslaved populations. Indeed, these codes highlight the recognition by those in power that education can empower individuals and can

¹³² See Higginbotham & Bosworth, *Rather than the Free*, *supra* note 12, at 32.

¹³³ See The African's Friend, Letter to the Editor, *American Slavery: The African Race in the United States*, N.Y. DAILY TIMES, Apr. 7, 1854, at 2.

¹³⁴ See Nelson & Williams, *supra* note 100, at 88 n.28 (discussing how white women, white indentured servants, and white people without slaves, were required to serve as slave patrollers in addition to some free black people under supervision).

¹³⁵ See VAUGHN, *supra* note 125, at 43, stating:

[T]hose opposing black education often made frequent use of pseudo-psychological and economic theories. At Doctortown, Georgia, General Charles H. Howard (brother to Oliver Otis Howard) found that most local Whites believed that instructing freedmen would result in a loss of labor output, and some believed that book learning was injurious to all working classes. A bureau agent in Tennessee reported similar sentiments, i.e., "the more ignorant they [the freedmen] are the better they work; that in proportion as they increase in intelligence the more insolent, lazy and worthless they become."

See also Coleman, *supra* note 113.

¹³⁶ See Dye et al., *supra* note 124, at 3.

challenge established hierarchies. Thus, by explicitly prohibiting education for enslaved persons, authorities aimed to prevent them from gaining knowledge, critical thinking skills, and literacy, which could potentially lead to questioning their subjugated status and seeking emancipation.

The very existence of such laws reflects the belief that education was a tool for enlightenment and empowerment.¹³⁷ Enslavers understood the potential of education to foster a sense of autonomy and self-worth among the enslaved, which could ultimately threaten the institution of slavery itself. These laws underscore the acknowledgment that access to education has the power to transform individuals' perspectives, challenge social norms, and promote intellectual and personal growth. In essence, early codes restricting the education of enslaved persons highlight the recognition of education as a means to empowerment, liberation, and the potential to challenge oppressive systems. As this Article argues, the vestiges of colonialism—and its restrictive codes—are still present within public education today.

Yet, in spite of these massive structural hurdles, Black Americans found ways to educate themselves and leverage the limited Christian education they received from others. These facts are made evident, for example, in the economy that enslaved people began to create for themselves during their enslavement.¹³⁸ Ultimately, this self-liberation would spill over into future eras and movements for liberation.¹³⁹

C. The Postbellum Era: From Slave Codes to Black Codes

The obstruction of the use of education as a pathway to liberty began in the Colonial and Antebellum eras and spilled over into the Postbellum era. Slave codes morphed into Black Codes, a series of laws enacted in the Southern states, including Virginia, most commonly following the Civil War. These codes were used to continue the exertion of control over the movement and labor of freedmen because the institution of slavery had been replaced by a system of free labor. Despite being legally emancipated, the lives of freedmen were significantly restricted by these codes.

¹³⁷ See *Literacy as Freedom*, *supra* note 130.

¹³⁸ In the early days of the Civil War in Virginia, African Americans established freely accessible schools for Black people. For example, Mary Chase, Jane Crouch, and Anna Bell Davis, Black women who had previously conducted classes in secret, started teaching openly in Alexandria as soon as Union forces secured the city. See Ronald E. Butchart, *Freedmen's Education in Virginia, 1861–1870*, ENCYCLOPEDIA VA., <https://encyclopediavirginia.org/entries/freedmens-education-in-virginia-1861-1870/> [<https://perma.cc/N7XD-STGG>] (last visited Dec. 4, 2023). Other African American teachers, such as Sarah Gray and Mary Peake, opened schools in Alexandria and Hampton, respectively, in the summer and fall of 1861, and by October of that year, Black teachers were teaching in Norfolk, Fort Monroe, and Yorktown. *Id.*

¹³⁹ See *id.* (“By 1866, nearly 12,000 students were attending schools across the state; by 1868, 19,000 were enrolled; by 1870, the total was nearly 33,000.”).

While Black Codes had existed prior to the Civil War and were present in some Northern states, it was in the Southern states where these laws became more explicitly codified and enforced in everyday practice in the aftermath of the Civil War.¹⁴⁰ The most well-known instances of such laws were passed by Southern states in 1865 and 1866.¹⁴¹ With the end of slavery (and thus the obsolescence of Slave Codes), these laws aimed to curtail the freedom of Black Americans in spite of emancipation and enforce their labor for extremely low or no wages. Black Codes in Virginia also imposed a series of restrictions on the freedom of Black Americans, including the right to vote, the right to own property, the right to work, the right to travel, the right to testify in court, and the right to serve on juries.¹⁴² The objective was to maintain control over the formerly enslaved population and to ensure the continuance of their economic exploitation.¹⁴³

Black Codes directly linked to the limitation of access to education for Black individuals in several significant ways. First, these laws broadly aimed to curtail the rights and freedoms of Black people while upholding remnants of the pre-Civil War slave system.¹⁴⁴ More specifically, the codes deliberately restricted school attendance for Black individuals, demonstrating that these codes were explicitly employed to restrict educational opportunities for formerly enslaved populations.¹⁴⁵ For example, these laws explicitly prohibited or severely limited the access of Black students to both public and private schools. This exclusion from educational institutions served the broader goal of maintaining a racial hierarchy, where access to education equated to access to power and mobility.

Additionally, segregation was also a prevalent aspect of the Black Codes in Virginia, which mandated separate education systems for Black and white students.¹⁴⁶ Indeed, this separation extended beyond physical facilities, often resulting in unequal resources, funding, and educational opportunities.¹⁴⁷ These unequal conditions were integral to perpetuating educational disparities.¹⁴⁸

Furthermore, Black Codes restricted the curriculum available to Black students. By mandating a curriculum focused on basic education and vocational training, the

¹⁴⁰ See PHILIP J. SCHWARZ, *SLAVE LAWS IN VIRGINIA* 154 (1997).

¹⁴¹ See *The Southern "Black Codes" of 1865–66*, TEACH DEMOCRACY, <https://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html> [<https://perma.cc/5DSG-LEDA>] (last visited Dec. 4, 2023).

¹⁴² See *id.*

¹⁴³ See *id.*

¹⁴⁴ See Nadra Kareem Nittle, *How the Black Codes Limited African American Progress After the Civil War*, HIST. (Aug. 4, 2023), <https://www.history.com/news/black-codes-reconstruction-slavery> [<https://perma.cc/6SKK-YTL3>].

¹⁴⁵ See Higginbotham & Jacobs, *Law Only As an Enemy*, *supra* note 15, at 1020.

¹⁴⁶ See *Segregation in the United States*, HIST. (Jan. 12, 2023), <https://www.history.com/topics/black-history/segregation-united-states> [<https://perma.cc/2KCV-NCPD>].

¹⁴⁷ See Dye et al., *supra* note 124, at 4.

¹⁴⁸ *Id.*

codes deliberately limited the scope of learning and opportunities for intellectual advancement.¹⁴⁹ This design ensured that Black individuals were confined to specific types of labor and occupations, reinforcing a cycle of limited socio-economic mobility. Financial disparities were another consequence of Black Codes in Virginia, as funding for schools serving Black students was systematically lower than that for schools serving white students.¹⁵⁰ This discrepancy meant that Black schools lacked proper resources, such as up-to-date textbooks, suitable facilities, and essential educational materials.¹⁵¹

Additionally, Black Codes placed significant barriers in the path of Black individuals seeking to become teachers.¹⁵² Licensing requirements and stringent supervision were imposed, making it exceedingly difficult for Black individuals to assume teaching roles.¹⁵³ This hindered the establishment of a robust Black educational community and diminished the availability of positive role models for Black students.¹⁵⁴ The curfew and labor restrictions embedded in the Black Codes further hindered access to education by limiting the time available for pursuing learning after working hours.¹⁵⁵ Moreover, the legal framework established by Black Codes sanctioned discrimination, rendering it difficult for Black individuals to challenge or alter the education-related policies that perpetuated their exclusion from quality schooling.¹⁵⁶

¹⁴⁹ See Philip T.K. Daniel & Todd Walker, *Fulfilling the Promise of Brown: Examining Laws and Policies for Remediation*, 83 J. NEGRO EDUC. 256, 262 (2014).

¹⁵⁰ See *id.*; Danyelle Solomon et al., *Systematic Inequality and Economic Opportunity*, CTR. AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/article/systematic-in-equality-economic-opportunity/> [<https://perma.cc/4ENY-ZVJ8>].

¹⁵¹ See Daniel & Walker, *supra* note 149, at 256, 259.

¹⁵² See David E. Bernstein, *Licensing Laws: A Historical Example of the Use of Government Regulatory Power Against African-Americans*, 31 SAN DIEGO L. REV. 89, 90 (1994).

¹⁵³ *Id.*

¹⁵⁴ See Daniel & Walker, *supra* note 149, at 261; see also Solomon et al., *supra* note 150.

¹⁵⁵ Nittle, *supra* note 144. For more on curfews, see also Christopher Petrella, *How Curfews Have Historically Been Used to Restrict the Physical and Political Movements of Black People in the U.S.*, WASH. POST (June 3, 2020, 11:06 AM), <https://www.washingtonpost.com/nation/2020/06/03/how-curfews-have-historically-been-used-restrict-physical-political-movements-black-people-us/> [<https://perma.cc/L7UY-NC44>], explaining how:

Curfews expressly intended to restrict the movement and liberties of free and enslaved African people—and in many cases, indigenous people—proliferated in the British colonies in North America throughout the 17th and 18th centuries. In fact, some of the first colonial codes and statutes enacted in the 1690s applied exclusively to Africans and Native Americans. The restrictions represented a grouping of policies that granted selective access to space and unencumbered movement as the basis for an emerging racial order. Such codes helped produce social hierarchy and racialized notions of political belonging.

¹⁵⁶ See Daniel & Walker, *supra* note 149, at 256; Dye et al., *supra* note 124, at 3–4.

Black Codes, an embodiment of post–Civil War legal discrimination, had direct and lasting implications for the education of Black individuals in Virginia.¹⁵⁷ Through restrictive policies on school attendance, segregated education systems, limitations on curriculum, unequal funding, barriers to teaching, and curfew-induced time constraints, these codes systematically denied Black individuals access to quality education.¹⁵⁸ The legacy of these practices continued well into the twentieth century, reinforcing educational disparities and their wide-ranging consequences within the Black community.¹⁵⁹

However, just as enslaved persons during the Colonial and Antebellum periods found ways to self-liberate, despite the obstacles imposed by the system of enslavement, formerly enslaved people also found a way to continue their advancement in the Postbellum period. In the first year of emancipation and reconstruction, “[s]ixteen of the first twenty-four teachers in Black schools . . . were African Americans.”¹⁶⁰ Of the eight Northern white teachers, only one remained employed for more than one year.¹⁶¹ However, that was not the same for Black teachers who were employed for many years.¹⁶² These private schools created for Black students were initially sponsored by a number of Presbyterian, Catholic, and Episcopal churches, which offers context to the composition of teachers in these schools.¹⁶³

In part, the reason non-public funding was necessary for these schools came out of an incident in the mid-1850s when Virginians, who were taxed to support a public-funded school, expressed dissatisfaction with the General Assembly’s decision to permit counties to establish schools for “paupers”; they claimed that the system had not gained public trust nor conferred any public benefits.¹⁶⁴ Despite this opposition, the cause for public-funded education continued to advance. Norfolk County, for example, had already established a public school system in 1845, and

¹⁵⁷ See Janel A. George, *Deny, Defund, Divert: The Law and American Miseducation*, 112 GEO. L.J. (forthcoming 2023) (manuscript at 8), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3987248# [<https://perma.cc/FP43-ULW2>]; Dye et al., *supra* note 124, at 3–4.

¹⁵⁸ See Dye et al., *supra* note 124, at 3–4.

¹⁵⁹ See *id.* at 3–4; see, e.g., Carole Guy, *Towards a More Healthy America: Reallocation of Health Care Resources In An Inequitable Health Care System*, 6 DEL. J. PUB. HEALTH 74, 74 (2020).

¹⁶⁰ See Butchart, *supra* note 138.

¹⁶¹ See *id.*

¹⁶² See *id.*

¹⁶³ See *id.*; *Consecrated Ground: Churches and the Founding of America’s Historically Black Colleges and Universities*, NAT’L MUSEUM AFR. AM. HIST. & CULTURE [hereinafter *Consecrated Ground*], <https://nmaahc.si.edu/explore/stories/consecrated-ground-churches-and-founding-americas-historically-black-colleges-and> [<https://perma.cc/R953-YFN7>] (last visited Dec. 4, 2023); *Beginnings of Black Education*, VA. MUSEUM OF HIST. & CULTURE, <https://virginiahistory.org/learn/civil-rights-movement-virginia/beginnings-black-education> [<https://perma.cc/9R6U-CNWW>] (last visited Dec. 4, 2023).

¹⁶⁴ See Marianne E. Julienne & Brent Tarter, *The Establishment of the Public School System in Virginia*, ENCYCLOPEDIA VA. (Dec. 7, 2020), <https://encyclopediavirginia.org/entries/public-school-system-in-virginia-establishment-of-the> [<https://perma.cc/4A7D-H5X6>].

the neighboring city of Norfolk followed suit in 1850; however, other local governments in Virginia declined to establish public schools.¹⁶⁵ Because of this pushback against public-funded schools, Black Americans and others from lower economic classes had to find other ways to educate themselves, which often occurred through the creation of their own private, segregated schools.¹⁶⁶

In 1870, however, the passage of the Underwood Constitution, a post–Civil War Constitution, represented a significant step forward for Black Americans in Virginia and helped to lay the foundation for further progress in the years to come.¹⁶⁷ Under the Underwood Constitution, the state was required to establish a system of public schools for Black children, and to provide public funding to support these schools.¹⁶⁸ The Constitution also required that Black schools receive the same level of funding as white schools, although in practice this requirement was often not met.¹⁶⁹

In addition to the provisions for public education, the Underwood Constitution also sought to address other issues facing Black Virginians, including voting rights, political representation, and segregation.¹⁷⁰ While the Constitution represented a step forward for Black Virginians, it also fell short of providing full equality, and its provisions were often ignored or disregarded in practice.¹⁷¹

¹⁶⁵ See *id.*

¹⁶⁶ See *id.*; *African Americans and Education During Reconstruction: The Tolson's Chapel Schools*, NAT'L PARK SERV., <https://www.nps.gov/articles/african-americans-and-education-during-reconstruction-the-tolson-s-chapel-schools.htm> [<https://perma.cc/A2N9-G8Z5>] (last visited Dec. 4, 2023); *Consecrated Ground*, *supra* note 163.

¹⁶⁷ See Context, *Attendance Records of The State Constitutional Convention, 1867–1868*, LIBR. VA., <https://edu.lva.virginia.gov/dbva/items/show/258> [<https://perma.cc/HE4X-NQT7>] (last visited Dec. 4, 2023); Brent Tarter, *John C. Underwood (1809–1873)*, ENCYCLOPEDIA VA., <https://encyclopediavirginia.org/entries/underwood-john-c-1809-1873/> [<https://perma.cc/8GMV-9NJS>] (last visited Dec. 4, 2023).

¹⁶⁸ See Julienne & Tarter, *supra* note 164.

¹⁶⁹ See VA. CONST. of 1869, art. VIII, §§ 1–12 (articulating that a universal free education must be provided). However, while funding was provided, it severely lacked for Black schools and there were great debates about how, if at all, Black children should be educated. See Richard G. Salmon, *The Evolution of Virginia Public School Finance: From the Beginnings to Today's Difficulties*, 86 THE VA. NEWS LETTER 1, 2 (2010) (citing Acts of Virginia Assembly of the Commonwealth of Virginia, 1870), <https://newsletter.coopercenter.org/publication/virginia-news-letter/evolution-virginia-public-school-finance-beginnings-todays> [<https://perma.cc/8Q32-URCW>]; Julienne & Tarter, *supra* note 164; *Beginnings of Black Education*, *supra* note 163 (“Southern [B]lack schools, however, were often dependent on funding from unsympathetic state and local governments controlled by Whites, resulting in education programs with fewer resources for both students and teachers.”).

¹⁷⁰ See *Constitutional Convention*, REMAKING VA., <https://www.virginiamemory.com/on-line-exhibitions/exhibits/show/remaking-virginia/voting/constitutional-convention> [<https://perma.cc/2C7D-3U46>] (last visited Dec. 4, 2023).

¹⁷¹ The Underwood Constitution represented a departure from the previous state constitutions in Virginia, which had upheld slavery and denied political and civil rights to African Americans. However, it faced opposition from conservative elements in the state who

Indeed, the progress that was made under the Underwood Constitution was met with significant backlash.¹⁷² This resistance followed the pattern of retrenchment from the previous eras: Slave Codes were created to maintain the system of enslavement during the Colonial period in the 1600s, and then, after the Civil War, Black Codes were codified when enslaved persons began to challenge the system of enslavement and seek freedom during the Antebellum period. Postbellum efforts faced similar resistance.¹⁷³ In this case, the resistance to the 1870 Underwood Constitution in Virginia was marked by opposition from conservative white Virginians who resisted expanding civil rights and political participation to African Americans.¹⁷⁴ Driven by racial animosity, economic concerns, and a desire to maintain pre-Civil War power dynamics, opponents of the Constitution attempted to undermine its implementation through voter intimidation, violence, legal challenges, and political maneuvering.¹⁷⁵

This history—from the Colonial period to the Antebellum period and on to the Postbellum era—reveals the initial oppression experienced by Black and impoverished individuals, as well as the early resistance against financing a public education system. The original objectives of public education revolved around religion and conversion and served to uphold the structure of the system of enslavement. Understanding this history sets the context for Part II, which delves into individual historical accounts of transcending the oppression detailed thus far, and thereby utilizing education as a route to freedom.

resisted the changes brought about by Reconstruction. *See* *Brown v. Lambert's Adm'r*, 74 Va. 256, 266 (1880) (upholding the valuation of an estate including the value of “negros”).

¹⁷² *See African American Legislators in Virginia*, DR. MARTIN LUTHER KING JR. MEM’L COMM’N, http://mlkcommission.dls.virginia.gov/lincoln/african_american.html [<https://perma.cc/WRP8-998L>] (last visited Dec. 4, 2023).

¹⁷³ *See id.*:

During the era of Jim Crow, very few African Americans dared to brave the political and social realities of the time to run for public office or were able to register and vote under state constitutions and laws in force; from 1890 to 1968, African Americans were not represented in the Virginias General Assembly, the oldest continuous legislative body in the Western Hemisphere; in 1967, William Ferguson Reid, a Richmond doctor and community leader, became the first African American in the 20th Century elected to the Virginia House of Delegates.

¹⁷⁴ *See Constitutional Convention*, *supra* note 170.

¹⁷⁵ After the Underwood Constitution, the 1902 post-Reconstruction Constitution in Virginia was ratified undoing what the Underwood Constitution attempted to do during Reconstruction. Under the 1902 Constitution, segregation was required not only in education, but “[b]y the 1920’s, state legislation had expanded segregation to include virtually every aspect of life, and clarified how segregation would affect Virginia’s public schools. The results were devastating for black education.” Brian J. Daugherty, “*Keep on Keeping On*”: *African Americans and the Implementation of Brown v. Board of Education in Virginia*, in *WITH ALL DELIBERATE SPEED: IMPLEMENTING BROWN V. BOARD OF EDUCATION* 41–42 (Brian J. Daugherty & Charles C. Bolton eds., 2008); *see also Reconstruction*, VA. MUSEUM OF HIST. & CULTURE, <https://virginiahistory.org/learn/story-of-virginia/chapter/reconstruction> [<https://perma.cc/73W2-JKIJ>] (last visited Dec. 4, 2023).

II. SILENT NARRATIVES OF EDUCATION AS A PATHWAY TO LIBERTY

This Part acknowledges the silent narratives of formerly enslaved and free Black Virginians and their allies that were forged beyond the subjugation of Colonial, Antebellum, and Postbellum education laws and practices. These stories inform the intersection of education and liberty. Moreover, these are the narratives, which are poised to empower the underprivileged, that are often kept out of secondary education.¹⁷⁶ However, if they are taught, their histories could push the narratives of education forward and transform how we understand the function of education and for whom it can work if allowed.¹⁷⁷

A. Forging Forward in the Face of Resistance

Black thought leaders have a long and intricate history of engaging with questions about the relationship between education and democracy.¹⁷⁸ Thinkers, scholars, community leaders, and social advocates such as W.E.B. Du Bois, Carter G. Woodson, and Horace Mann Bond all held thoughtful views about the state of education and democracy. The history of their ideas is deeply relevant to the current education landscape, as their views on education can play a valuable role in informing contemporary debates regarding how to keep American education moving forward. As advocates chart paths for education reforms, this rich intellectual tradition can serve to help determine viable alternatives to the status quo. Below, I discuss the contributions of Black thinkers W.E.B. Du Bois, Carter G. Woodson, and Horace Mann Bond and surface the ways in which their work continues to be relevant today.¹⁷⁹

¹⁷⁶ See Cathy Rainone, 'The Humanity of Blackness' Missing From History Classes: How to Transform Black History Education in Schools, NBC PHILA. (June 19, 2020, 1:27 PM), <https://www.nbcphiladelphia.com/news/national-international/how-to-transform-black-history-education-in-schools/2450465/> [<https://perma.cc/X5EH-EHQ4>].

¹⁷⁷ See *id.*

¹⁷⁸ The advocates and activists also did not think about these issues in the same way. William Fontaine critiqued Black scholars as socialized to accept "the idealistic American democratic way of life" worldview. See Pero Gaglo Dagbovie, *African American Intellectual History: The Past as a Porthole into the Present and Future of the Field*, in THE BLACK INTELLECTUAL TRADITION: AFRICAN AMERICAN THOUGHT IN THE TWENTIETH CENTURY 21 (Derrick P. Alridge et al. eds., 2021).

¹⁷⁹ See W.E.B. Du Bois, NAACP, <https://naacp.org/find-resources/history-explained/civil-rights-leaders/web-du-bois> [<https://perma.cc/J7EY-V4EB>] (last visited Dec. 4, 2023); Carter G. Woodson, NAACP, <https://naacp.org/find-resources/history-explained/civil-rights-leaders/carter-g-woodson> [<https://perma.cc/6AU9-A5FB>] (last visited Dec. 4, 2023); About Horace Mann Bond, LINCOLN UNIV., <https://www.lincoln.edu/academics/honors-program/about-horace-mann-bond.html> [<https://perma.cc/M9WK-NEXQ>] (last visited Dec. 4, 2023).

Du Bois, a prominent Black intellectual and activist, made significant intellectual contributions in multiple spheres throughout the nineteenth and twentieth centuries.¹⁸⁰ While he is widely recognized as a historical scholar, particularly for his research on the African slave trade and the Reconstruction era, his role as a major thinker and philosopher of education is often overlooked.¹⁸¹ Du Bois's intellectual pursuits extended beyond his well-known involvement in historical research and his instrumental role in the establishment of the National Association for the Advancement of Colored People (NAACP).¹⁸² His writings on education shed light on the crucial role that schools play in fostering democratic values and promoting social progress.¹⁸³ In particular, he emphasized the need for educational systems to embrace cultural diversity and provide students with the necessary skills for active participation in a democratic society.¹⁸⁴ Du Bois also emphasized the importance of incorporating Black Studies into the school curriculum.¹⁸⁵ His insights on education and the importance of representing diverse perspectives in the curriculum remain relevant and continue to inspire contemporary discussions on equitable education.¹⁸⁶

At the outset of his career, Du Bois held the belief that education had inherent value on its own merits.¹⁸⁷ However, as the challenges of racial discrimination and its associated issues intensified for Black Americans, his perspective evolved.¹⁸⁸ He began to view education as a practical tool for societal advancement.¹⁸⁹ This transformation was driven by the conviction that education could serve as a means to combat racial bias, enhance the economic and political standing of Black Americans, and contribute to broader social progress.¹⁹⁰

Furthermore, Du Bois connected the progress of socialism, the refinement of democracy, and the eradication of warfare with the transformative potential of education.¹⁹¹ However, as he distanced himself from democratic socialism, he may have relinquished some of the adaptability commonly associated with left-leaning intellectuals. He exhibited impatience with the gradual nature of improvements in

¹⁸⁰ See *W.E.B. Du Bois*, *supra* note 179.

¹⁸¹ See David Sumpter, *W.E.B. Du Bois on Education: Its Socialistic Foundation*, 35 J. THOUGHT 61, 61 (2000) [hereinafter Sumpter, *W.E.B. Du Bois on Education*].

¹⁸² See *W.E.B. Du Bois*, *supra* note 179.

¹⁸³ See Sumpter, *W.E.B. Du Bois on Education*, *supra* note 181, at 61.

¹⁸⁴ See *id.*

¹⁸⁵ See *id.*

¹⁸⁶ See *id.*

¹⁸⁷ See *id.*

¹⁸⁸ See *id.*

¹⁸⁹ See Chad Williams, *W.E.B. Du Bois, Black History Month and the Importance of African American Studies*, THE CONVERSATION (Feb. 7, 2023, 8:30 AM) [hereinafter Williams, *W.E.B. Du Bois, Black History Month*], <https://theconversation.com/w-e-b-du-bois-black-history-month-and-the-importance-of-african-american-studies-199232> [https://perma.cc/FE9B-XDJS].

¹⁹⁰ See Sumpter, *W.E.B. Du Bois on Education*, *supra* note 181, at 61.

¹⁹¹ See *id.* at 63.

the conditions of Black America and displayed a lack of faith in democratic processes.¹⁹² This shift in his thinking ultimately culminated in his departure to Ghana in 1961, marking a definitive break with his allegiance to American democracy.¹⁹³

Like Du Bois, Carter G. Woodson believed in the inherent value of education, generally and as a response to systemic racial discrimination. Woodson authored a compilation of articles and speeches titled “The Mis-Education of the Negro” in 1933.¹⁹⁴ This book has stood the test of time, becoming a timeless work. It not only called for a high standard of education for Black students but also vehemently demanded that educational systems nationwide rectify their deliberate efforts to “mis-educate” Black children.¹⁹⁵ These systems had been perpetuating the false notion of white supremacy.

Woodson’s influential work remains as relevant today as it was when it was first published in 1933. Indeed, as contemporary efforts continue to downplay Black history and omit discussions about America’s racial past from public school curricula, this historical knowledge of Woodson’s and Du Bois’s work is of utmost importance for ongoing advocacy and the development of effective educational strategies that cater to all children.¹⁹⁶ Teaching incomplete histories of America’s story or not teaching history at all aids in the “mis-education”—to recall Woodson’s term—of American children today. As Woodson once said, regarding taking race out of history, “I don’t understand why they would devote all this time [in history class] to Europe, descendants of Europe, and not give equal time to the origins of Africans.”¹⁹⁷

Another Black thought leader whose work offers insight into the pursuit of education was Horace Mann Bond. Bond was an important figure in Pan-African and African American education during the mid-twentieth century.¹⁹⁸ He played a crucial role in the fight for desegregation and the improvement of education for African descendants. Coming from a distinguished family that produced many notable scholars and human rights advocates, Bond emerged as a prominent figure in his

¹⁹² Du Bois wrote, “I know the United States. It is my country and the land of my fathers. It is still a land of magnificent possibilities,” but he also accused the nation of “selling its birthright” and “betraying its mighty destiny.” Chad Williams, *W.E.B. Du Bois and the Fight for American Democracy*, WASH. POST (Aug. 27, 2018, 6:00 AM), <https://www.washingtonpost.com/news/made-by-history/wp/2018/08/27/w-e-b-du-bois-and-the-fight-for-american-democracy/> [https://perma.cc/N4W3-QUEL].

¹⁹³ *See id.*

¹⁹⁴ *See* DeNeen L. Brown, *Black History Month Founder Showed How Schools Should Teach About Race*, WASH. POST (Feb. 1, 2022, 7:00 AM), <https://www.washingtonpost.com/history/2022/02/01/carter-woodson-miseducation-negro-schools> [https://perma.cc/DPL2-4Z4M].

¹⁹⁵ *See id.*

¹⁹⁶ *See id.*

¹⁹⁷ *Id.*

¹⁹⁸ *See generally* Rita Norton, *The Horace Mann Bond Papers: A Biography of Change*, 53 J. NEGRO EDUC. 29, 30 (1984) (describing Bond as an educational administrator and a strategist for black civil rights).

own right.¹⁹⁹ His career encapsulated the challenging position of Black educators in the segregated South of the 1930s and 1940s.²⁰⁰ While vehemently opposing segregation and working quietly to dismantle it, Bond also dedicated himself to enhancing educational opportunities for individuals of African descent within the confines of the discriminatory system.²⁰¹

These figures added to the intellectual discussions of their time about what type of education to pursue, and the means for doing so as part of the Black American quest for equality and liberty. Additionally, these thought leaders were able to opine regarding the strengths and flaws of the educational system, while contributing in lasting and meaningful ways to the cause of education because they themselves had each received a quality education. Moreover, they had access to education *in spite of* the resistance they faced in attaining their levels of success, not because there existed (then or now) a proper K–12 public-funded education.

Du Bois, for example, was the first Black graduate of a classical, college preparatory school; he then went on to obtain bachelor's, master's, and doctoral degrees from Harvard University.²⁰² Woodson, born to formerly enslaved parents who were illiterate, was largely self-taught for secondary school, then completed his bachelor's at Berea College, a master's degree at the University of Chicago, and a doctorate from Harvard University.²⁰³ Bond graduated high school early and obtained his bachelor's degree from Lincoln University and his master's and doctorate degrees from the University of Chicago.²⁰⁴ These men, therefore, are examples of how a quality education can lead to a more progressive society.

B. Education as a Pathway to Law and Government Participation

From 1865 to 1895 in Virginia, Black elected officials who were lawyers played a significant role in shaping the political landscape and advocating for the rights and

¹⁹⁹ See *id.* at 30, 33 (describing Bond as a “significant member of the intellectual community” and listing the papers the Bond family published).

²⁰⁰ See *id.* at 40 (“Where government often ignored the needs of [B]lack education, many private foundations, for better or worse, historically paid heed to them. Horace Bond frequently connected with the private foundations that were contributing to the development of Afro-American schools in the South . . .”).

²⁰¹ *About Horace Mann Bond*, LINCOLN UNIV., <https://www.lincoln.edu/academics/honors-program/about-horace-mann-bond.html> [<https://perma.cc/UV5E-T6KB>] (last visited Dec. 4, 2023).

²⁰² See *W.E.B. Du Bois*, HIST. (Jan. 26, 2021), <https://www.history.com/topics/black-history/w-e-b-du-bois> [<https://perma.cc/7Z9M-5SME>].

²⁰³ *Carter G. Woodson*, *supra* note 179.

²⁰⁴ *Id.*; *Horace Mann Bond*, ENCYCLOPEDIA.COM (last updated May 29, 2018), <https://www.encyclopedia.com/people/social-sciences-and-law/education-biographies/horace-mann-bond> [<https://perma.cc/EF4U-663U>].

interests of the Black community.²⁰⁵ These individuals, referred to as Black Reconstruction politicians, emerged after the Civil War, when the state underwent significant political and social changes.²⁰⁶

Black lawyers who became elected officials in Virginia, during this time, faced immense challenges due to the prevailing racial prejudices and the resistance from white supremacist groups that were seeking to regain political control.²⁰⁷ Despite these obstacles, these Black lawyers made notable contributions toward advancing civil rights and ensuring equal representation. Their narratives are offered because these lawyers are prime examples of what is possible when there is access to quality education. These educated Black people did not simply go on to use their educations haphazardly, but fully participated in government at some of the highest levels. Their narratives exemplify how education can be used as a key to full participation in American democracy. These narratives also evidence how these positions of influence, obtained by those who are afforded an education, can be used to help further the social advancement of all people. Examples of prominent Black elected officials who were lawyers during this period in Virginia include men like George Lewis Ruffin,²⁰⁸ John Mercer Langston, William W. Evans, James A. Fields, and Alfred W. Harris.²⁰⁹

²⁰⁵ See generally LUTHER PORTER JACKSON, *NEGRO OFFICE-HOLDERS IN VIRGINIA 1865–1895* (1945).

²⁰⁶ See William C. Hine, *Black Politicians in Reconstruction Charleston, South Carolina: A Collective Study*, 49 J.S. HIST. 555, 560 (1983); David C. Rankin, *The Origins of Black Leadership in New Orleans During Reconstruction*, 40 J.S. HIST. 417, 418 (1974); Ciara Torres-Spelliscy, *The Political Branding of Us and Them: The Branding of Asian Immigrants in the Democratic and Republican Party Platforms and Supreme Court Opinions 1876–1924*, 96 N.Y.U. L. REV. 1214, 1218–19 (2021); Bobby J. Donaldson, *Meet Joseph Rainey, the First Black Congressman*, SMITHSONIAN MAG. (Jan. 2021), <https://www.smithsonianmag.com/history/joseph-rainey-first-black-congressman-180976502/> [<https://perma.cc/EJW7-6E8F>].

²⁰⁷ Cf. *1861 to 1876: Reconstruction*, VA. MUSEUM HIST. & CULTURE, <https://virginiahistory.org/learn/story-of-virginia/chapter/reconstruction> [<https://perma.cc/5XYU-M5DV>] (last visited Dec. 4, 2023).

²⁰⁸ George Lewis Ruffin was one of the first African Americans to graduate from Harvard Law School and the first African American judge in the United States. J. Clay Smith, Jr., *In Freedom's Birthplace: The Making of George Lewis Ruffin: The First Black Law Graduate of Harvard University*, 39 HOW. L.J. 201, 214, 230–31 (1995). He was an influential figure in Boston during the 19th century. See generally WILLIAM J. SIMMONS, *MEN OF MARK: EMINENT, PROGRESSIVE AND RISING* 740–43 (Cleveland, Ohio, Geo. M. Rewell & Co. 1887). While they shared the same last name and were active in the same general historical period, they are not the same person. They may have been distantly related.

²⁰⁹ Other lawyers include William H. Jordan, Richard G. L. Paige, John H. Robinson, R.D. Ruffin, William N. Stevens, and Luther Porter Jackson. I have only included lawyers turned politicians, but other professions also spurred Black people into politics this time including teaching, ministry, farming, carpentry, contractors, and merchants. See JACKSON, *supra* note 205, at ix.

George Lewis Ruffin, not to be confused with R.D. Ruffin, was born in 1834 in Virginia.²¹⁰ In 1834, Ruffin was born to free parents in Richmond, Virginia.²¹¹ Ruffin's mother realized the value of education for her children.²¹² Therefore, in 1853 she left Richmond and moved him and his siblings to Boston, Massachusetts, to give her children better educational opportunities.²¹³ Despite having to evade the oppressive circumstances of his upbringing in the South,²¹⁴ Ruffin's outstanding educational record in Boston public schools demonstrated his determination to seek freedom through education.²¹⁵ Virginia's prohibition on Black Americans receiving an education required that Ruffin and his family relocate to access equal educational opportunities.²¹⁶

In 1868, Ruffin enrolled at Harvard Law School, becoming the first Black person to graduate from the institution.²¹⁷ His educational journey at Harvard was groundbreaking, as he navigated through a virtually predominately white institution during a time of intense racial prejudice.²¹⁸

²¹⁰ *George Lewis Ruffin*, ENCYCLOPEDIA.COM (Mar. 14, 2006), <https://www.encyclopedia.com/african-american-focus/news-wires-White-papers-and-books/ruffin-george-lewis> [<https://perma.cc/8CGY-KUU5>].

²¹¹ *Judge George L. Ruffin, LL.B.: From the Barber's Chair to the Bench*, DETROIT TRIB., Sept. 13, 1941, at 3; see also Stacy Hawkins Adams, *George Lewis Ruffin*, RICHMOND TIMES-DISPATCH (Sept. 19, 2019), https://richmond.com/george-lewis-ruffin/article_3fce060e-6afd-11e2-8b39-001a4bcf6878.html [<https://perma.cc/2GHY-HQDH>]; Jessie H Roy, *Colored Judges: Judge George Lewis Ruffin*, 28 NEGRO HIST. BULL. 135, 135 (Mar. 1965).

²¹² Roy, *supra* note 211, at 135 (“[Ruffin’s] parents realized the value of education and were determined that their boys and girls should have as complete a one as they could possibly give them. Accordingly, they moved to Massachusetts when young George was nineteen years old.”).

²¹³ See *id.*; see also *Judge George L. Ruffin, LL.B.: From the Barber's Chair to the Bench*, *supra* note 211, at 3; Smith, *supra* note 208, at 205 (stating “Ms. Ruffin ostensibly left the South so that her children could receive a good education”).

²¹⁴ See Smith, *supra* note 208, at 205 (discussing that despite the *Dred Scott v. Sandford* decision not yet being decided before Ms. Ruffin left, it was clear that even though they were free Black people, their race would not allow them to be treated as free in the South); see also Gladys J. Gray, *George Lewis Ruffin*, 5 NEGRO HIST. BULL. 18, 19 (Oct. 1941) (discussing how Nancy Ruffin was thoughtful about moving to Massachusetts to give her children “full moral and intellectual development,” and it was not possible to do this in Virginia because of “laws forbidding the teaching of reading or writing to Negroes.”).

²¹⁵ See Gray, *supra* note 214, at 19 (discussing Ruffin’s excellence in Boston Public Schools as a manifestation of his desire to learn); *Judge George L. Ruffin, LL.B.: From the Barber's Chair to the Bench*, *supra* note 211, at 3 (discussing Ruffin’s “remarkable scholarship record in the public schools.”); Roy, *supra* note 211, at 135 (discussing Ruffin’s eagerness to learn).

²¹⁶ See Gray, *supra* note 214, at 19.

²¹⁷ See Smith, *supra* note 208, at 209, 214.

²¹⁸ See *id.* at 210–11, 214 (discussing how Ruffin was one of sixty-two students in Harvard history to study less than two years on an accelerated track and be awarded an LL.B. degree).

Ruffin went on to become one of the first Black members of the Massachusetts bar and made history as the first Black American judge in the state.²¹⁹ Along with meeting the demands of his legal career, Ruffin actively participated in the abolitionist movement and the ongoing struggle for justice.²²⁰ Ruffin's standing grew as he engaged with the state legislature.²²¹ He immersed himself in abolitionist circles and gained recognition for his influential role in organizations dedicated to the advancement of Black Americans.²²² He enjoyed close relationships with prominent abolitionists of that time.²²³

James Apostle Fields, also born into slavery, in 1844 in Hanover County, emerged as a similarly remarkable figure, transcending life as the son of enslaved parents to become both a teacher and lawyer.²²⁴ His mother, Martha Ann Fields, lived on the Nutshell Plantation in Hanover; his father lived on a separate plantation.²²⁵ Amid the Civil War, his father fled his owner's brutality, eventually reuniting with his family who had earlier escaped to Union army lines in 1863 in the Hampton area.²²⁶

²¹⁹ See *George Lewis Ruffin*, *supra* note 210. Shortly after receiving his LL.B., "Ruffin was admitted to the bar of the Supreme Judicial Court of Massachusetts in September 1869." *Id.* He joined the law firm Harvey Jewell, specializing in criminal law and representing African American and white clients. *Id.* He won election to the Boston City Council, and seats in the state legislature in 1869 and 1870. *Id.* This appears to be the path of many firsts who blazed trails in the Black Freedom Struggle, especially using the law. See generally, e.g., Danielle Wingfield-Smith, *Movement Lawyers: Henry L. Marsh's Long Struggle for Educational Justice*, U. RICH. L. REV. 1339 (2022) (detailing Henry Marsh's path and its intersection with education justice).

²²⁰ See *George Lewis Ruffin*, *supra* note 210 (explaining that Ruffin's contributions are commemorated through the Justice George Lewis Ruffin Society, which was established in 1984 and is dedicated to supporting minority professionals in the Massachusetts criminal justice system, paying homage to Ruffin's legacy and commitment to promoting diversity and equity).

²²¹ *Id.*

²²² See *id.*

²²³ See *id.*

²²⁴ See Donald W. Gunter, *James Apostle Fields (1844–1903)*, ENCYCLOPEDIA VA. (Dec. 22, 2023) [hereinafter Gunter, ENCYCLOPEDIA VA.], <https://encyclopediavirginia.org/entries/fields-james-a-1844-1903/> [https://perma.cc/2LDS-ASRC]; *Martha Ann Fields Building*, HANOVER CNTY., <https://www.hanovercounty.gov/1247/Martha-Ann-Fields-Building> [https://perma.cc/47JX-B95U] (last visited Dec. 4, 2023).

²²⁵ *Martha Ann Fields Building*, *supra* note 224; see also Donald W. Gunter, *Dictionary of Virginia Biography: James Apostles Fields*, LIBR. VA. [hereinafter Gunter, LIBR. VA.], http://mlkcommission.dls.virginia.gov/lincoln/pdfs/bios/fields_james_apostles.pdf [https://perma.cc/44WZ-J5R5] (last visited Dec. 4, 2023). In 1863, Martha Ann Fields led her family across the Pamunkey River to freedom at the Union lines in Hampton, Virginia. *Martha Ann Fields Building*, *supra* note 225.

²²⁶ Gunter, LIBR. VA., *supra* note 225.

Part of the Fields family's quests for the full attainment of liberty included prioritizing education.²²⁷ James likely acquired literacy during enslavement.²²⁸ He observed courtroom proceedings that ignited his interest in the law while maintaining attorneys' horses outside the Hanover courthouse as a teenager.²²⁹ Fields enrolled in an American Missionary Association school dedicated to educating Black people.²³⁰

In 1864, he was employed at Fort Monroe with the army's Quartermaster Department and later assumed the role of a watchman for the Bureau of Refugees, Freedmen, and Abandoned Lands between 1865 and 1866.²³¹ In 1869, he became a member of the first-ever class at the Hampton Normal and Agricultural Institute, which would later become Hampton University.²³² The subsequent year, Fields taught in Williamsburg and graduated from Hampton in 1871.²³³ Fields then furthered his education at Howard University from which he earned a law degree in 1882.²³⁴ In addition to his legal endeavors, he engaged in teaching before and after law school, while also serving as doorkeeper of the Virginia House of Delegates during the 1879–1880 session.²³⁵ In the Virginia House of Delegates, Fields represented Elizabeth City, James City, Warwick, and York counties, as well as Williamsburg, in the Virginia House of Delegates from 1889 to 1890.²³⁶

John Mercer Langston, another accomplished attorney, served as the first African American to the United States Congress from Virginia, elected in 1888.²³⁷ He was a staunch advocate for civil rights and fought against racial discrimination through his legal expertise and political influence.²³⁸ Langston was born on December 14, 1829, in Virginia.²³⁹ He was of mixed-race heritage; his mother was a free Black woman and his father was a white plantation owner.²⁴⁰ Langston moved to Ohio in

²²⁷ See *Martha Ann Fields Building*, *supra* note 224. James A. Fields' siblings were also educationally exceptional. His brother, George Washington Fields, was the first Black American graduate in law from Cornell University. *Id.*

²²⁸ See Gunter, *ENCYCLOPEDIA VA.*, *supra* note 224.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ See Luis-Alejandro Dinnella-Borrego & Dictionary of Virginia Biography, *John Mercer Langston (1829–1897)*, *ENCYCLOPEDIA.COM*, <https://encyclopediavirginia.org/entries/langston-john-mercer-1829-1897/> [<https://perma.cc/ES9J-UAYJ>] (last visited Dec. 4, 2023).

²³⁸ See *id.*; see also Anthony V. Alfieri & Angela Onwuachi-Willig, *Next Generation Civil Rights Lawyers: Race and Representation in the Age of Identity Performance*, 122 *YALE L.J.* 1484, 1494 (2013) (book review) (describing Langston as placing himself between two races by simply becoming a lawyer).

²³⁹ See Luis-Alejandro Dinnella-Borrego & Dictionary of Virginia Biography, *supra* note 237.

²⁴⁰ See *id.*

the 1830s,²⁴¹ which is no surprise given the social milieu and racial oppression in Virginia at the time.²⁴²

Langston's move to Ohio marked the beginning of his early education. Orphaned, young Langston first lived with Colonel William Gooch and his family, who were friends of Langston's father.²⁴³ Colonel Gooch, responsible for educating Langston, directed his youngest daughter, Virginia, to tutor Langston.²⁴⁴ Langston's father knew that for him to receive "public educational advantages" he would have to send Langston away; Langston's father also realized that such educational opportunities would allow him to be a "useful, influential member of society."²⁴⁵

Virginia tutored Langston until 1837 when he began public school in Chillicothe, where he was placed in the more advanced class.²⁴⁶ Langston thrived in school and with the Gooches, who had become his family. His time with the Gooches came to an end when they moved and a judge decided that Langston could not move with them.²⁴⁷ Langston briefly stayed with a man who purchased the Gooches' farm, but he thought Langston should work and not learn.²⁴⁸ Therefore, Langston left and moved to Cincinnati for better schooling.²⁴⁹

Langston first enrolled in a private school in the basement of Baker Street Baptist Church, where he quickly advanced.²⁵⁰ However, here is where Langston felt the pronouncement of racial prejudice.²⁵¹ Langston returned to Chillicothe, Ohio, where he was taught by the first Black men to graduate from Oberlin College.²⁵² Langston was so sharp, that at the age of fourteen, he enrolled in the Preparatory Department of Oberlin College in 1844; he completed the program at the top of the class and was the class speaker.²⁵³

²⁴¹ *Id.*

²⁴² *See generally* SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* (2001) (discussing the increase of legal restrictions and violence against Black people in Virginia and the Carolinas in the 1830s).

²⁴³ Colonel Gooch told John's father before his death that he would care for and educate John. JOHN MERCER LANGSTON, *FROM THE VIRGINIA PLANTATION TO THE NATIONAL CAPITOL* 36 (Hartford, Conn., Am. Publ'g Co. 1894), https://archive.org/stream/fromvirginiaplan00langiala/fromvirginiaplan00langiala_djvu.txt [<https://perma.cc/568S-9FDU>].

²⁴⁴ *Id.* at 40. Virginia was of exceptional intelligence, had a sharp memory, and an unusual love for books. She trained Langston with diligence and quickly. *Id.* at 39–40.

²⁴⁵ *Id.* at 40.

²⁴⁶ *Id.* at 43.

²⁴⁷ *Id.* at 50–53.

²⁴⁸ *Id.* at 54.

²⁴⁹ *Id.* at 59.

²⁵⁰ *Id.*

²⁵¹ *Id.* at 62–67 (discussing incidents which evidenced the growing resentment and hatred white people had against Black people in the Cincinnati community in the mid-1800s).

²⁵² *Id.* at 74.

²⁵³ WILLIAM CHEEK & AIMEE LEE CHEEK, *JOHN MERCER LANGSTON AND THE FIGHT FOR BLACK FREEDOM 1829–65*, at 85–86 (1996); *id.* at 80.

The college was a leading abolitionist institution and one of the first in the United States to admit students of all races and genders.²⁵⁴ Langston was able to return to Oberlin for his formal collegiate studies; his time at Oberlin was marked by a commitment to his studies and his involvement in the abolitionist movement.²⁵⁵ After completing his secondary education at Oberlin, Langston went on to attend Oberlin College's Collegiate Department, where he continued his education.²⁵⁶ He later pursued legal studies, becoming the first Black attorney in Ohio²⁵⁷ and one of the first Black Americans to earn a law degree in the United States.²⁵⁸ Not only that, but Langston was one of the first Black Americans to hold public office in the United States. He was a city councilman, was appointed to the Board of Education, helped found Howard University's law school, and later served as Acting President at Howard University.²⁵⁹ In 1885, Langston returned to Virginia to serve as President of the Virginia Normal and Collegiate Institute.²⁶⁰

Blanche Kelso Bruce, born on March 1, 1841, in Prince Edward County, Virginia,²⁶¹ was similarly biracial, though he was the child of an enslaved woman and her enslaver.²⁶² He spent his early years enslaved on his father's plantation.²⁶³ After the death of his father, Bruce's family moved to Missouri.²⁶⁴ After arriving in

²⁵⁴ See Ronald E. Butchart, *Mission Matters: Mount Holyoke, Oberlin, and the Schooling of Southern Blacks, 1861–1917*, 42 HIST. EDUC. Q. 1, 8 (2002).

²⁵⁵ See LANGSTON, *supra* note 243, at 81–82 (“[Langston’s] taste for study, with more matured purpose as to his general and thorough culture, had grown and developed itself, and he had been moved by an earnest desire and serious determination to secure for himself at all hazards a complete academic, collegiate, and professional education.”). Langston had a brief period where he did not know if he would be able to return to Oberlin to continue his studies; he almost was forced into a life of mechanical labor. *Id.* at 88–90. In his plea to be allowed to return to Oberlin, the still underaged Langston said that he would take his studies seriously. *Id.* at 90; see also *id.* at 98–100 (discussing how the mission of the school included speaking against slavery).

²⁵⁶ Shirley Yee, *John Mercer Langston (1829–1897)*, BLACKPAST (Oct. 1, 2017), <https://www.blackpast.org/african-american-history/langston-john-merc-1829-1897/> [<https://perma.cc/ZXE9-29KQ>].

²⁵⁷ *John Mercer Langston (1829–1897)*, OBERLIN COLL. ARCHIVES [hereinafter OBERLIN COLL. ARCHIVES], <https://www2.oberlin.edu/external/EOG/OYTT-images/JMLangston.html> [<https://perma.cc/4MN9-ZLXL>] (last visited Dec. 4, 2023).

²⁵⁸ *John Mercer Langston*, BROWNHelm TOWNSHIP, <https://www.brownhelm.org/history/john-merc-1829-1897/> [<https://perma.cc/UU5X-YXAA>] (last visited Dec. 4, 2023).

²⁵⁹ OBERLIN COLL. ARCHIVES, *supra* note 257.

²⁶⁰ *Id.*

²⁶¹ OFF. HIST. & PRES. ET AL., BLACK AMERICANS IN CONGRESS 1870–2007, H.R. DOC. NO. 108-224, at 116 (2008), <https://www.govinfo.gov/content/pkg/GPO-CDOC-108hdoc224/pdf/GPO-CDOC-108hdoc224.pdf> [<https://perma.cc/W6VS-8S3D>].

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

Missouri, Bruce learned to read and write by a tutor for hire.²⁶⁵ After moving to the free state of Kansas, young Bruce attended a Quaker school.²⁶⁶ The Quakers, as noted earlier, were known for their support of education and abolitionism, making their schools an attractive option for many Black children seeking education during and after the Civil War.²⁶⁷ This education would form the foundation for his future pursuits in academia and law. Like Langston, Bruce also attended Oberlin College in Ohio and later taught school in Missouri before eventually moving to Mississippi.²⁶⁸ In Mississippi, he became involved in education and politics, which set the stage for his remarkable career.²⁶⁹

Bruce studied law and was admitted to the bar in 1870, becoming one of the first Black Americans to practice law in the state.²⁷⁰ He soon became active in Republican Party politics and held various public offices.²⁷¹ His political career took off during the Reconstruction era, the period after the Civil War when efforts were made to rebuild and integrate the Southern states.²⁷² He was appointed by the governor of Mississippi to fill an unexpired term in the U.S. Senate in 1875, and in 1876, he was elected by the state legislature to serve a full term in the U.S. Senate, becoming the first Black American to be elected to serve a full term in the Senate.²⁷³ During his time in the U.S. Senate, Bruce advocated for civil rights, education, and economic opportunities for African Americans.²⁷⁴ He supported legislation which aimed to protect the rights of newly freed enslaved people and worked to combat racial discrimination.²⁷⁵

Blanche K. Bruce's political career was marked by his determination to improve the lives of Black Americans during a challenging period in American history. He left the Senate in 1881 once his term ended.²⁷⁶ After his political career, Bruce served as the register of the U.S. Treasury from 1881 to 1885, making him the first African American to have a signature on U.S. currency.²⁷⁷ His legacy is a testament

²⁶⁵ See James M. Rosbrow, *Negroes in the Halls of Congress: Blanche Kelso Bruce, Last Negro Member of the U.S. Senate*, PITTSBURGH COURIER, Feb. 19, 1949, at 7.

²⁶⁶ Todd Arrington, *Hiram Revels and Blanche Bruce: America's First Black Senators*, EMERGING CIVIL WAR (Feb. 28, 2019), <https://emergingcivilwar.com/2019/02/28/hiram-revels-and-blanche-bruce-americas-first-black-senators> [<https://perma.cc/6FWS-Q2S5>].

²⁶⁷ W.E.B. Du Bois, *How Negroes Have Taken Advantage of Educational Opportunities Offered by Friends*, 7 J. NEGRO EDUC. 124, 124 (1938).

²⁶⁸ Arrington, *supra* note 266.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² OFF. HIST. & PRES. ET AL., *supra* note 261, at 116.

²⁷³ *Id.* at 117–18.

²⁷⁴ *Id.* at 118.

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 117.

²⁷⁷ See *id.* at 120; see also Interview with Lawrence Otis Graham, *A Pioneering Black*

to his resilience, his advocacy for civil rights, and commitment to public service. He played a significant role in advancing the rights of African Americans during a critical time in American history.

Alfred W. Harris also played a pivotal role in law and politics by proposing the legislation that established the charter for Virginia Normal and Collegiate Institute, which would later be known as Virginia State University, during his tenure in the House of Delegates from 1881 to 1888.²⁷⁸ Born into enslavement in Fairfax County, his family's journey led them to Alexandria during the American Civil War.²⁷⁹ There, he received his education at a school operated by the Bureau of Refugees, Freedmen, and Abandoned Lands, before eventually attending the city's first racially segregated public schools.²⁸⁰

Harris's engagement with public service began early: he secured a seat on the Alexandria Common Council while still in his twenties.²⁸¹ With dedication and determination, he pursued a legal career and achieved the status of a lawyer.²⁸² He subsequently relocated to Petersburg, embarking on a notable political trajectory.²⁸³ In 1881, he clinched the first of four consecutive terms as a representative of Dinwiddie County in the House of Delegates.²⁸⁴

Harris's influence in education, politics, and law extended to the nascent stages of the Virginia Normal and Collegiate Institute. Beyond his vote for the Institute's charter, as noted above, he held significant roles at the institution, including acting as the de facto treasurer and assuming the position of the first secretary of the board of visitors.²⁸⁵ Harris aligned himself firmly with the Readjuster Party, ardently supporting its leader William Mahone and later the Republican Party.²⁸⁶ Notably, he

Senator on Capitol Hill, NPR (June 27, 2006), <https://www.npr.org/templates/story/story.php?storyId=5515007> [<https://perma.cc/25JB-DVH4>].

²⁷⁸ See Michael Woods & Dictionary of Va. Biography, *Alfred W. Harris (1853–1920)*, ENCYCLOPEDIA VA. (last updated Dec. 22, 2021) [hereinafter *Alfred W. Harris*, ENCYCLOPEDIA VA.], <https://encyclopediavirginia.org/entries/harris-alfred-w-1853-1920/> [<https://perma.cc/QEM9-E3PD>]; Michael J. Woods, *Alfred William Harris*, LIBR. VA. [hereinafter *Alfred William Harris*, LIBR. VA.], http://mlkcommission.dls.virginia.gov/illiam/pdfs/bios/harris_alfred_william.pdf [<https://perma.cc/9Z36-MBVS>] (last visited Dec. 4, 2023); John Deal & Mari Julienne, *The First Civil Rights: Black Political Activism After Claiming Freedom*, THE UNCOMMONWEALTH (Feb. 22, 2023), <https://uncommonwealth.virginiamemory.com/blog/2023/02/22/the-first-civil-rights-Black-political-activism-after-claiming-freedom/> [<https://perma.cc/TG92-962Y>].

²⁷⁹ See *Alfred W. Harris*, ENCYCLOPEDIA VA., *supra* note 278.

²⁸⁰ See *id.*

²⁸¹ See *id.*

²⁸² See *id.*; *Alfred William Harris*, LIBR. VA., *supra* note 278.

²⁸³ See *Alfred W. Harris*, ENCYCLOPEDIA VA., *supra* note 278.

²⁸⁴ *Id.*

²⁸⁵ See *id.*

²⁸⁶ See *id.*

threw his support behind William Mahone's candidacy during the 1888 congressional election, even though Mahone was pitted against John Mercer Langston.²⁸⁷

Following his tenure in the House of Delegates, Harris continued to contribute to the community in various capacities. He served as a special customs inspector in Newport News and later undertook the role of a census enumerator in Petersburg, Virginia.²⁸⁸ He passed away in 1920 at his residence in Petersburg.²⁸⁹ Alfred W. Harris's legacy is defined by his dedication to education, advocacy for political causes, and his enduring commitment to public welfare and advancement.²⁹⁰

William W. Evans, also born into enslavement in Dinwiddie County, was educated in a private school run by Major Giles B. Cooke in Petersburg, Virginia.²⁹¹ He began his career as a barber before turning to law and, like some of his contemporaries described so far, served in the House of Delegates from 1887 to 1888.²⁹²

Indeed, whether born enslaved or free, one common thread for these lawyers who turned politicians was a good education, either from educated families or from private groups committed to education. These lawyers were more than legal practitioners—they were local leaders. As leaders, they sought out every possible avenue and used every available tool to create social change for their communities.

More specifically, these Black elected officials, who were lawyers, utilized their legal expertise to advocate for educational opportunities, fight for voting rights, and push for social and economic equality.²⁹³ They played a crucial role in shaping the political landscape of Virginia during a tumultuous time of racial tension and transition.²⁹⁴ Their education was essential to their ability to become public officials, and then, as public officials, they became active representatives in our democracy and used their standing to advocate for racial progress.

²⁸⁷ *See id.*

²⁸⁸ *See id.*

²⁸⁹ *See id.*

²⁹⁰ *See id.*

²⁹¹ JACKSON, *supra* note 205, at 15.

²⁹² *Id.*

²⁹³ For example, John Mercer Langston journeyed across the Southern states, championing the cause of educational access, political equity, and economic fairness, all while emphasizing the importance of individual accountability. His speeches garnered widespread approval from both Black and white communities, which was partly responsible for elevating him to a position of national prominence. OBERLIN COLL. ARCHIVES, *supra* note 257.

²⁹⁴ This progress did not come without challenges. From 1865 to 1895, Virginia also saw significant challenges for Black elected officials, as the Reconstruction era eventually gave way to the rise of Jim Crow laws and widespread efforts to suppress the political power of African Americans. Many gains made during Reconstruction were eroded, and Black elected officials faced increasing opposition and disenfranchisement. *See* Richard Lowe, *Local Black Leaders During Reconstruction in Virginia*, 103 VA. MAG. HIST. & BIOGRAPHY 181, 181 (1995). For more on Black elected officials in Virginia, see generally Michael B. Chesson, *Richmond's Black Councilmen, 1871–96*, in SOUTHERN BLACK LEADERS OF THE RECONSTRUCTION ERA 191–222 (Howard N. Rabinowitz ed., 1982).

Despite the challenges they faced, Black elected officials who were lawyers in Virginia during this period left a lasting impact on the state's history. They played a vital role in the struggle for civil rights and equal representation, laying the foundation for future generations of Black leaders and activists in Virginia and beyond. This was possible, in part, because of their access to quality education. Langston provides one such example. As a teenager, he attended a number of public and private schools, with some of the most devoted teachers, where he continued to develop his academic skills.²⁹⁵ However, it was his time at Oberlin College, the renowned institution in Ohio, that truly shaped his educational path—the one that led him to make great progress toward the advancement of justice and equity for all people.²⁹⁶

This section has highlighted the transformative role of education in empowering Black leaders from Virginia, enabling them to drive progress and enact significant change. Education—which equipped these leaders with the tools to actively participate in our representative democracy and thus advocate for the betterment of constituents and the nation—emerges as a catalyst for their impactful contributions. These narratives of Black leaders, and the narratives that follow, collectively underscore the enduring resilience of Black individuals throughout history and how education profoundly shaped the trajectories of their lives. In the present moment, marked as it is by fragility of the democratic process and instances of protest and insurrection, these narratives offer a glimmer of hope—and this hope can only be realized through a continued emphasis on prioritizing education moving forward.

C. Education, Civil Disobedience, and Pioneering: Mary Smith Peake

While the preceding section emphasized the significance of education in the experiences of Black leaders from Virginia, this section delves into the paramount role that educators played in challenging the prevailing norms for Black Americans. To illuminate the educator's role in this era, the focus turns to the narrative of Mary Smith Peake, a figure who deeply understood the value of education in advancing the cause of racial progress and dedicated herself to educating as many individuals as possible.

Mary Smith Peake, before named Mary Smith Kelsey, was born into freedom in Norfolk, Virginia.²⁹⁷ Her father, an Englishman of high social standing and culture, and her mother, a light-skinned, free woman of color, raised her.²⁹⁸ At six years

²⁹⁵ See generally LANGSTON, *supra* note 243, at 37–54 (discussing Langston's early education, beginning with his private tutor in Colonel Gooch's home, and later in public and private school).

²⁹⁶ *Id.* at 81–82.

²⁹⁷ See David Freedman, *African-American Schooling in the South Prior to 1861*, 84 J. NEGRO HIST. 1, 1 (1999); LEWIS C. LOCKWOOD, MARY S. PEAKE: THE COLORED TEACHER AT FORTRESS MONROE 5 (Bos., Mass., Am. Tract Soc'y 1863).

²⁹⁸ See LOCKWOOD, *supra* note 297, at 5.

of age, Mary was sent to Alexandria, then part of the District of Columbia, to receive an education.²⁹⁹ She lived with her aunt and studied for approximately ten years until the United States Congress enacted a law prohibiting education for free people of color in the District of Columbia, similar to the restrictions in other southern states.³⁰⁰ This law resulted in the closure of all schools for free Black individuals in Alexandria.³⁰¹ These measures, which mirrored the actions taken in Virginia, were implemented after the Nat Turner Rebellion of 1831.³⁰² It is worth noting that Alexandria was retroceded to Virginia in 1846.³⁰³ At the age of sixteen, in 1839, Peake returned to live with her mother.³⁰⁴ Despite the risks involved, she courageously taught enslaved individuals and free Black Americans how to read and write even though it was against the law.³⁰⁵

Recognizing the importance of education for her community, Peake dedicated herself to this cause. She ultimately became an esteemed member of the Black community in Hampton, Virginia, known for her significant contributions as an educator and humanitarian.³⁰⁶ While living in Hampton, she commenced teaching the children of formerly enslaved individuals; in order to do so, Peake received a salary from the American Missionary Association (AMA).³⁰⁷

On September 17, 1861, she began conducting her classes for the children of formerly enslaved persons outdoors beneath a majestic oak tree in Phoebus, a quaint town situated near Hampton in Elizabeth City County.³⁰⁸ In 1863, this tree, located near Fort Monroe in present-day Hampton,³⁰⁹ became where the Virginia peninsula community gathered to hear President Abraham Lincoln's Emancipation Proclamation, leading "the Emancipation Oak" to become its namesake.³¹⁰

Over time, Peake's school gained prominence, and the AMA soon provided Mary Peake with Brown Cottage, which is now widely recognized as the first building of Hampton Institute, now known as Hampton University.³¹¹ In this way,

²⁹⁹ See Freedman, *supra* note 297, at 1, 38 n.3.

³⁰⁰ See *id.* at 1; LOCKWOOD, *supra* note 297, at 6–7.

³⁰¹ See LOCKWOOD, *supra* note 297, at 7.

³⁰² See generally Coleman, *supra* note 113.

³⁰³ Freedman, *supra* note 297, at 33.

³⁰⁴ LOCKWOOD, *supra* note 297, at 8.

³⁰⁵ Freedman, *supra* note 297, at 1; LOCKWOOD, *supra* note 297, at 14–15.

³⁰⁶ Freedman, *supra* note 297, at 1.

³⁰⁷ *Id.* at 2.

³⁰⁸ *Freedom's Fortress*, NAT'L PARK SERV., https://www.nps.gov/articles/featured_stories_fomr.htm [<https://perma.cc/QA7L-KRRF>] (last visited Dec. 4, 2023).

³⁰⁹ See *id.*; see also Jaweed Kaleem, *For 156 Years, a Mighty Oak in Virginia Has Stood as a Symbol of Freedom Across the Nation*, L.A. TIMES (Sept. 26, 2019, 9:29 AM), <https://www.latimes.com/world-nation/story/2019-09-26/emancipation-oak-tree-hampton-university-virginia> [<https://perma.cc/968L-VHXF>].

³¹⁰ Kaleem, *supra* note 309.

³¹¹ *Id.*

Peake played an important role in the Hampton University's 1868 founding.³¹² This contribution is an interesting feat, considering that Peake's defiance of unjust education laws as a young woman ultimately led to the establishment a preeminent historically Black university. This point—that defiance of unjust laws may ultimately be put to impactful ends—is one potential response that teachers and advocates can take in the face of unjust laws that do not serve their causes.

Indeed, Peake's story demonstrates the value to society of having education available to all children because, as the Emancipation Oak symbolizes, true emancipation is difficult to come by without the freedom to learn and be taught. An ancillary point is that today's school children should be provided these histories as part of receiving a quality education because, armed with these histories, students can understand how to leverage their education and use it to create meaningful futures. This history shows the importance of education and educators to democracy.

D. Freedmen's Teachers and Allyship: Lucy and Sarah Chase

While Black educators, exemplified by figures such as Mary Smith Peake, made significant advancements in the education of Black Americans during the 1800s, it is important to recognize that Peake was just one individual. The presence of allies played a crucial role in the educational efforts of the 1800s, as seen in the story of John Langston, with Colonel Gooch and his family ensuring Langston's early access to a quality education. Similar allies also emerged in support of other Black Americans, including the Chase sisters, demonstrating the power in collective commitment to advancing educational opportunities.

Sisters Lucy Chase and Sarah Chase were born in Massachusetts in 1822 and 1836, respectively.³¹³ The Chase sisters, both white women, decided to go to the South after the Civil War to organize and teach in schools for formerly enslaved persons.³¹⁴ When they asked their father if they could join this education effort, he responded:

We are all here for a purpose—we have missions, and if we are true to ourselves we shall seek to know what that mission is, and knowing, endeavour to fulfill it. Whatever our suffering, whatever our privation may be, if we come out of it with the consciousness of having been instrumental in saving a brother, a husband, a father, or soothing their pain in the last struggle of

³¹² HISTORY OF THE AMERICAN MISSIONARY ASSOCIATION 6 (N.Y.C., N.Y., Am. Missionary Ass'n 1886).

³¹³ *Early Lives of Freedmen's Teachers Lucy and Sarah Chase*, AM. ANTIQUARIAN SOC'Y ONLINE RES., <https://www.americanantiquarian.org/Freedmen/Intros/chaseearly.html> [<https://perma.cc/EQR9-B7QB>] (last visited Dec. 4, 2023).

³¹⁴ *Id.*

human existence, we feel abundantly compensated. . . . I disapprove of all wars and fightings, but not of the office of good Samaritan [sic].³¹⁵

The sisters then began their teaching careers, focusing on providing quality education to Black students.³¹⁶ They became known for their dedication, innovative teaching methods, and commitment to empowering their students.³¹⁷ The Chase sisters believed in the power of education to uplift the community and fought against the prevailing prejudices and inequalities of their time.³¹⁸ They taught in various schools, including in Richmond, Virginia, where they added value to their students' lives and the educational landscape.³¹⁹

Lucy and Sarah Chase's work as white women teaching freedman, in which they risked their lives in a war zone, is a lesson in allyship that carries forward to the present moment. They contributed to the broader movement for educational equity and social progress for Black people because they felt it was the correct and humane thing to do. The legacy of Lucy and Sarah Chase as allies underscores not only the significance of education for advancing equality and empowerment—and ultimately freedom—but also the role of allies, those with agency and privilege, in the quest for education justice.

These types of stories—including those of the Chase sisters, Mary Peake, and the Black lawyers-cum-elected-officials—are kept out of secondary school curricula. Yet knowledge of these stories could change America's social landscape by providing a bridge to educational triumphs and entrance into the legal profession to enlighten young people. Politicians try to sell racial history as one of divisiveness; yet, on the contrary, it could actually promote a greater unity, as all students learn about the variety of incredible stories that came out of America's origin story.³²⁰

³¹⁵ Letter from Anthony Chase to Sarah Chase (Apr. 1861), in AM. ANTIQUARIAN SOC'Y ONLINE RES., <https://www.americanantiquarian.org/Freedmen/Intros/chaseduring.html> [<https://perma.cc/99AT-D64Q>].

³¹⁶ See DEAR ONES AT HOME: LETTERS FROM CONTRABAND CAMPS 5–6 (Henry L. Swint ed., 1966) (discussing how they wrote these letters as they began work in 1863 in Craney teaching 2,000 Black people “the three R’s” in the schools that they opened).

³¹⁷ See *id.* at 7. A testament to their dedication and devotion, the sisters often turned down working in quieter and less difficult areas in schools that were already established and instead chose work relevant to “their interest in the Negro, in reform, and in intellectual activity.” *Id.*

³¹⁸ *Id.* at 6 (“They worked as labor superintendents as well as teachers, for they hoped to train the Negroes in skills which might be put to use in the coming industrialization of the South.”).

³¹⁹ *Id.* (discussing the value of the Chase sisters opening schools and helping military officers and freedmen); John T. O’Brien, *Reconstruction in Richmond: White Restoration and Black Protest April–June 1865*, 89 VA. MAG. HIST. & BIOGRAPHY 259, 264 (1981).

³²⁰ Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*,

With this point in mind, Part III of this Article highlights lessons learned from these historical narratives of educational attainment.

III. LESSONS LEARNED: REIMAGINING EDUCATION, LAW, AND DEMOCRACY AS TOOLS FOR LIBERTY

Education historically has been established as one of the necessary conditions for the success of democracy—that is, for the healthy function of institutions that make up the American republic.³²¹ Jefferson and Madison recognized that if done in the correct way, education has the capacity, without question, to advance democracy.³²² The United States Supreme Court, in education jurisprudence, has acknowledged the nexus between education and democracy,³²³ and legal scholars write about this connection.³²⁴ Political leaders dating back to America’s founding also mentioned this connection.³²⁵ There is also, of course, a logical connection between education and democracy as tools for liberty. Democracy is a system of government where power rests with the people who can participate in decision-making processes through elected representatives. And, if public education is understood as a public service to society, wherein children are taught a curriculum that promotes the fulfillment of promise in individuals and fosters social mobility, then the link between an educated citizenry and a representative democracy is apparent on the most basic level.

Yet even with the connection between education and democracy established, “the wrong kind of ‘education’ promote[s] its own kind of tyranny,” as James Madison noted.³²⁶ Indeed, American founders were aware of what education could

BROOKINGS INST. (Nov. 2021), <https://www.brookings.edu/articles/why-are-states-banning-critical-race-theory/> [<https://perma.cc/C89X-HYSC>].

³²¹ See Black, *Freedom, Democracy, and the Right to Education*, *supra* note 111, at 1031. See generally Caitlin Millat, *The Education-Democracy Nexus and Educational Subordination*, 111 GEO. L.J. 529 (2023).

³²² Martin D. Carcieri, *Democracy and Education in the Thought of Jefferson and Madison*, 26 J.L. & EDUC. 1, 4 & n.8 (1997) (citing J. CONANT, THOMAS JEFFERSON AND THE DEVELOPMENT OF AMERICAN PUBLIC EDUCATION 16–17 (1962)) (“Among other necessary conditions of a modern constitutional democracy, Jefferson included freedom of religion, trial by jury, free elections, and freedom of the press.”).

³²³ Millat, *supra* note 321, at 545–46 (discussing the connection between education, democracy, jurisprudence, and the rhetoric the Court has used to acknowledge the nexus between education and democracy, but still refuses to federally protect education in a real way).

³²⁴ See Minow, *supra* note 8, at 537 (“America’s constitutional democracy both presumes and supports commitments to educating each generation in the knowledge and dispositions to enable self-governance.”). See generally Millat, *supra* note 321 (discussing the education-democracy nexus throughout); Carcieri, *supra* note 322 (discussing the education and democracy through the theories and values posited by Jefferson and Madison).

³²⁵ See generally Carcieri, *supra* note 322.

³²⁶ See *id.* at 4 & n.9 (citing R. S. Peters, *What Is an Educational Process?*, in THE

do for a republican government;³²⁷ Black thought leaders, too, understood why education was important to equality and freedom. W.E.B. Du Bois even called for education to be a part of the Niagara Movement, a precursor to the National Association for the Advancement of Colored People (NAACP) and the Civil Rights Movement.³²⁸ Du Bois made very clear what type of education—the right kind of education, to recall Madison’s terms—was necessary for the liberty and upward mobility of Black people into society:

[W]hen we call for education we mean real education. We believe in work. We ourselves are workers, but work is not necessarily education. Education is the development of power and ideal. We want our children trained as intelligent human beings should be They have a right to know, to think, to aspire.³²⁹

With this context in mind, the Article now turns to the present day, where education and freedom are both under assault. In addition to the political climate outlined in the Introduction, and despite education jurisprudence and legislation articulating the importance of education to democracy, the Supreme Court recently radically curtailed affirmative action, a mechanism formerly used to establish fair access to education for persons of color.³³⁰ Furthermore, there is still no guaranteed federal right to an education, which helps explain why some students are still expected to learn in the most deplorable of conditions. Moreover, teachers are now leaving the classroom in record numbers.³³¹ History shows that education for the

CONCEPT OF EDUCATION (R. S. Peters ed., 1967)). Recognizing:

While some degree of indoctrination is no doubt an indispensable component for civic education under any constitutional scheme, including democracy, R. S. Peters suggests that it is incompatible by definition with the acquisition of critical thought which is essential to the liberal education I shall argue is necessary for the success of democratic institutions.

See id.

³²⁷ *See Black, America’s Founders*, *supra* note 8 (quoting Jefferson and Madison about what democracy requires).

³²⁸ W.E.B. Du Bois, *The Niagara Movement’s Address to the Country* (Aug. 19, 1906) (transcript available at https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtID=3&psid=1108 [<https://perma.cc/ZH4J-SB9L>]).

³²⁹ *Id.*

³³⁰ *See Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (holding that Harvard’s admissions program violates the Equal Protection Clause of the Fourteenth Amendment).

³³¹ *See* Matt Barnum, *‘I Just Found Myself Struggling to Keep Up’: Number of Teachers Quitting Hits New High*, USA TODAY (Mar. 6, 2023, 7:23 AM), <https://www.usatoday.com/story/news/education/2023/03/06/more-teachers-quitting-than-usual-driven-stress-politics-data-shows/11390639002/> [<https://perma.cc/7WN7-KNNU>]; Annette Choi, *Teachers Are*

general populace, regarding America's complicated history and Black American history, has always been lacking.³³² Now is an especially urgent moment to reevaluate the history and civics curriculum taught in public-funded schools. Although the United States has historically recognized the significance of education to the American experiment, there has also been a long history of what this Article calls the "anti-education movement," which seeks to prevent a truly, and fully, liberated and upwardly mobile society. This third Part explores the lessons from Colonial, Antebellum, and Postbellum education in Virginia.

A. Recognizing the Role of Education in the Pursuit of Liberty

The most important lesson from the history presented here is that education matters. Education is the key to freedom, and a liberated society is an educated society. For this reason, education has historically been the battleground for social progress and civil rights, and a major source of resistance from those who maintain power.³³³ Education—that is, access to tools that work for varied kinds of intelligence³³⁴—has the power to increase enthusiasm as it relates to civic responsibility, to encourage social progress through law and policies, and enforce a truly representative government that enables people to solve their own problems and rectify their own social ills. Thus, it stands to reason that advocates who are focused on liberation and justice must also focus on education.

As this Article has shown, education played a vital role in the reconstruction efforts following the American Civil War and beyond. It was widely understood as

Calling It Quits Amid Rising School Violence, Burnout and Stagnating Salaries, CNN (May 31, 2023, 7:33 AM), <https://www.cnn.com/2023/05/31/us/teachers-quitting-shortage-stress-burnout-dg/index.html> [<https://perma.cc/BZH5-BCGY>]; Chalkbeat Staff, *The Teachers Who Aren't Coming Back to School This Year*, CHALKBEAT (Sept. 6, 2022, 6:30 AM), <https://www.chalkbeat.org/2022/9/6/23220508/teachers-leaving-the-profession-quitting-teaching-reasons> [<https://perma.cc/MQ9T-HCYL>].

³³² In Virginia, textbooks creators intentionally downplayed race in America's story. See Hankerson, *supra* note 4; see also Minton, *supra* note 5 (discussing the history of the inaccuracy of textbooks in Virginia).

³³³ All ideological sides have long regarded education as a pathway to liberty. See Barbara A. Sizemore, *Education for Liberation*, 81 SCH. REV. 389, 389–95 (1973); Joyce E. Williams & Ron Ladd, *On the Relevance of Education for Black Liberation*, 47 J. NEGRO EDUC. 266, 266–73 (1978); see also Black, *America's Founders*, *supra* note 8; Black, *Freedom, Democracy, and the Right to Education*, *supra* note 111, at 1034–35 (discussing how during the Colonial and Antebellum periods, education was intricately linked to freedom and the South criminalized education to maintain power and preserve the status quo).

³³⁴ There are various types of intelligence including: linguistic intelligence, mathematical intelligence, emotional intelligence, and social intelligence. See Howard Gardner's *Theory of Multiple Intelligences*, N. ILL. UNIV. CTR. INNOVATIVE TEACHING & LEARNING, <https://www.niu.edu/citl/resources/guides/instructional-guide/gardners-theory-of-multiple-intelligences.shtml> [<https://perma.cc/PVC7-E6UP>] (last visited Dec. 4, 2023).

an essential tool for achieving social, political, and economic advancement in the aftermath of slavery and the devastating impact of the war.³³⁵ There are several reasons, outlined below, why education has been a focal point in both the Black freedom struggle and the maintenance of social structures more generally.

First, emancipation and citizenship play a significant role in the stories narrated thus far. The abolition of slavery and the recognition of citizenship rights for formerly enslaved Black Americans created an urgent need for education.³³⁶ In this context, education was seen as a means to empower individuals with the knowledge and skills necessary to exercise their rights as citizens, actively participate in the democratic process, and engage meaningfully in civic life.³³⁷

Then there is the connection between social progress and integration.³³⁸ Beyond an understanding of education as essential for civic engagement, education was also regarded as a catalyst for social progress and integration. Advocates believed that providing educational opportunities to African Americans would help overcome racial prejudice and discrimination, promote social equality, and foster a sense of unity among diverse populations.³³⁹ Those working to advance education viewed it as a tool to both bridge gaps in progress and foster togetherness between ethnicities.³⁴⁰

³³⁵ See Black, *Freedom, Democracy, and the Right to Education*, *supra* note 111, at 1034–35 (discussing how pre- and post-reconstruction education was critical to “remedying slavery and rebuilding democracy in the South.”) Rebuilding democracy and establishing freedom and citizenship necessarily includes shifting social, economic, and political power. See *The Struggle Against Segregated Education*, NAT’L MUSEUM AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/explore/stories/struggle-against-segregated-education> [https://perma.cc/AEV4-FGEG] (last visited Dec. 4, 2023); *African Americans and Education During Reconstruction: The Tolson’s Chapel Schools*, *supra* note 166; David Tyack & Robert Lowe, *The Constitutional Moment: Reconstruction and Black Education in the South*, 94 AM. J. EDUC. 236, 237–39 (1986). See generally Black, *Freedom, Democracy, and the Right to Education*, *supra* note 111.

³³⁶ Tyack & Lowe, *supra* note 335, at 237.

³³⁷ *Id.* at 240.

³³⁸ *The Struggle Against Segregated Education*, *supra* note 335; Tyack & Lowe, *supra* note 335, at 240.

³³⁹ See generally W.E.B. Du Bois, *The Talented Tenth*, in THE NEGRO PROBLEM: A SERIES OF ARTICLES BY REPRESENTATIVE AMERICAN NEGROES TODAY (Booker T. Washington et al. eds., 1903) (discussing how Black people who had advanced knowledge and education had the moral responsibility to uplift their community and help Black Americans out of political and economic oppression).

³⁴⁰ The NAACP Legal Defense Fund memorialized:

In *Brown v. Board of Education*, the Court struck down segregated schools as unconstitutional. At the heart of this decision was a powerful idea: students of different races will thrive together when they learn together. Today, there is no dispute that diverse schools, from kindergarten through college and beyond, strengthen student experiences. Both in the way they unite students from different racial backgrounds and the way that those students thrive academically, diverse schools represent the promise of *Brown*.

Next is the importance of education for economic empowerment.³⁴¹ Education was recognized as a pathway to break the cycle of poverty and economic dependency that many Black Americans faced after emancipation. By equipping individuals with literacy, numeracy, vocational skills, and knowledge of various trades, education aimed to empower them to secure better employment opportunities, establish businesses, and improve their economic conditions. It was viewed as a means to provide individuals with the tools for self-sufficiency and upward mobility.

Reconstruction efforts acknowledged the significance of human capital development for the overall progress and prosperity of the nation, and thus education was considered an investment in the future, as it enhanced the skills, knowledge, and productivity of the workforce. By investing in education, society could build a stronger and more capable generation capable of contributing to the nation's growth and development.

To meet this growing demand for education, new educational institutions, such as schools and universities, were established or expanded during the Reconstruction era. Organizations like the Freedmen's Bureau and various missionary societies played pivotal roles in providing necessary resources, teachers, and support for these educational initiatives.³⁴² These institutions became important centers of learning and community development.³⁴³

As noted, education during the Reconstruction era was seen as a dramatically powerful force, as educators and advocates aimed to empower formerly enslaved individuals, foster social integration, provide economic opportunities, and contribute to the long-term progress of society. By prioritizing education, Reconstruction efforts sought to build a more equitable and prosperous nation for all its citizens. In sum, education was recognized as a transformative force during the Reconstruction era, aiming to empower formerly enslaved individuals, promote social integration, enhance economic opportunities, and foster long-term societal progress.

As demonstrated in the above historical narratives, education was significant to the success of the prominent Black legislators, lawyers, and educators in these historical narratives. Whether they were born enslaved or free, these renowned figures were educated either by their families, private groups, other people, or even themselves. Their education often led them to be educators themselves, in addition to the other occupations they held.

See Remembering Brown v. Board of Education, LEGAL DEF. FUND (May 17, 2012), <https://www.naacpldf.org/remembering-brown-v-board-of-education/> [<https://perma.cc/4KB4-BXCC>]. Much of the early Reconstruction efforts, including Du Bois's early work, were building toward the Civil Rights Movement and the Brown ruling. *See generally* Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 91 J. AM. HIST. 1233 (2005) (discussing how the Civil Rights Movement began long before 1954).

³⁴¹ Tyack & Lowe, *supra* note 335, at 240.

³⁴² *Id.* at 238.

³⁴³ *Id.*

Indeed, as the narratives and histories outlined here have shown, equipping children with knowledge and nurturing independent thinking can serve as a potent catalyst for shaping the lives of future change agents. However, history also reveals that liberation is usually synonymous with challenging established norms—and when the existing social order faces upheaval, education is either restricted or obscured. Or, in another response to such challenges, the use of education to subjugate marginalized groups is intensified. We see that response today, as education is manipulated in ways similar to past efforts to use education against empowerment and for oppression.³⁴⁴ In the current context, the persistence of certain curricula that downplay or distort the histories and contributions of Black individuals, cultures, and communities exemplifies that manipulation.³⁴⁵ Those efforts, in turn, sustain a limited perspective of history and society, in a way that—again—mirrors methods of subordination from bygone eras. Consequently, the need for culturally responsive curricula, antibias training for educators, enhanced representation, and policies fostering equitable educational practices become paramount. Indeed, such measures are essential for crafting a comprehensive and robust education that is accessible to all students, regardless of their background.

B. The Anti-Education Movement Requires a Pro-Education Response

As this Article has demonstrated, history shows—and present-day initiatives confirm—that impacted communities who are denied access to education will either continue to fight for it or create it for themselves. W.E.B. Du Bois long ago warned that the anti-education movement would persist in perpetuity. Thus, Du Bois suggested, “[w]hat the Negro needs, therefore, of the world and civilization, he must largely teach himself; what he learns of social organization and efficiency, he must learn from his own people.”³⁴⁶

Indeed, the educational philosophies of W.E.B. Du Bois, Carter G. Woodson, and Horace Mann Bond, outlined in detail in Part II, offer valuable insights into contemporary education challenges and reveal the enduring relevance of these thinkers. For example, Du Bois suggested that it is the responsibility of Black educated people to take up the call to educate their own.³⁴⁷ Du Bois emphasized the importance of education as a means to achieve full citizenship and social equality.³⁴⁸ With his concept of the “Talented Tenth,” he argued that a well-educated elite from the Black community could uplift the entire race.³⁴⁹

³⁴⁴ See Brown, *supra* note 194.

³⁴⁵ See *id.*; Minton, *supra* note 5.

³⁴⁶ W.E.B. DU BOIS, *The College-Bred Community (1910)*, in *THE EDUCATION OF BLACK PEOPLE: TEN CRITIQUES, 1906–1960*, at 49, 56 (Herbert Aptheker ed., 2001) (1973).

³⁴⁷ *Id.*; see also Derrick P. Alridge, *On the Education of Black Folk: W.E.B. Du Bois and the Paradox of Segregation*, 100 J. AFR. AM. HIST. 473, 477 (2015).

³⁴⁸ See W.E.B. Du Bois, *supra* note 339, at 31, 33.

³⁴⁹ See *id.*

The silent narratives in Part II, however, show that the work of Black Americans uplifts not only their entire race, but also the nation by moving society forward. During these early periods in American history, before those like Horace Mann Bond and other more mainstream advocates of public education began to push for a more streamlined system, Black Americans educated themselves—and then went on to educate others. The same occurred for those from lower economic positions. In the Colonial era, families who could not financially provide an outside tutor to educate their children would do the tutoring themselves or pool together their resources to provide an education.³⁵⁰ We see the same occurrences during the Antebellum and Postbellum periods with enslaved and free Black people putting great effort to create their own schools or escape their conditions to a place where they could freely become educated.³⁵¹

Yet given that some Black Americans chose to leave the place of their subordination for freedom and educational opportunities, the Slave or Black Codes they were escaping, depending upon the era, may have in fact done the opposite of what these codes were created to accomplish. For instance, stories like Ruffin's demonstrate that the resistance applied with the intention of limiting education for Black people during these earlier periods actually created a greater urgency for Black people to learn. Virginia's prohibition on education drove Ruffin to a place where he could freely become educated.³⁵² In this way, Virginia's goal of obstructing education backfired and, as a result, produced the first Black person to graduate from any law school in the United States;³⁵³ in this case, Ruffin completed his education at Harvard Law School.³⁵⁴ Moreover, Ruffin completed a three-year program in one year, all while working at a barbershop.³⁵⁵ Ruffin's story confirms that the fear of success and freedom that motivates some educational obstructionists is founded: there is a great possibility that if all children are given the opportunity to succeed, they just might actually succeed.

In the present day, the emerging Black home education movement³⁵⁶ is positioned to heed the counsel of visionaries like Du Bois and Woodson, wherein Black

³⁵⁰ See Nancy Kober & Diane Stark Rentner, *History and Evolution of Public Education in the US*, CTR. EDUC. POL'Y 1 (2020), <https://files.eric.ed.gov/fulltext/ED606970.pdf> [<https://perma.cc/TWZ8-MMJD>].

³⁵¹ See, e.g., *supra* Section II.C (discussing Mary S. Peake establishing a school); *supra* notes 210–16 and accompanying text (discussing how George Ruffin's family relocated to Massachusetts seeking educational opportunities).

³⁵² See Stacy Hawkins Adams, *George Lewis Ruffin*, RICHMOND TIMES-DISPATCH (Feb. 13, 2004), https://richmond.com/george-lewis-ruffin/article_3fce060e-6afd-11e2-8b39-001a4bcf6878.html [<https://perma.cc/932U-LPWF>].

³⁵³ See *id.*; Ernest Gellhorn, *The Law Schools and the Negro*, 1968 DUKE L.J. 1069, 1069 (1968).

³⁵⁴ See Adams, *supra* note 352.

³⁵⁵ See *id.*

³⁵⁶ Black parents are home-educating their children to protect them from racial harm. See Najarian R. Peters, *The Right to Be and Become: Black Home-Educators as Child Privacy Protectors*, 25 MICH. J. RACE & L. 21, 23 (2019).

communities embrace autonomy to shield and educate their own children.³⁵⁷ This movement arises in response to the potential exclusion of these children from a just and accessible education—a right long overdue, denied for centuries due to the enduring legacy of enslavement and racism. Indeed, despite strides within the American education system, racial bias persists, inflicting lasting wounds on Black children.³⁵⁸ As Professor Najarian Peters’ research into Black home education underscores, these children grapple with psychological strain emanating from daily racial microaggressions and assaults.³⁵⁹ They are disproportionately subjected to punitive discipline and juvenile incarceration.³⁶⁰ In the face of these persistently traumatic experiences, a growing number of Black parents are choosing to withdraw their children from conventional schooling.³⁶¹ Opting for home education, these parents seek to safeguard their children’s right to flourish during their formative years.³⁶² The current moment represents a juncture where the educational detriment stemming from the prevailing anti-education agenda—anti-identity, anti-truth, anti-history, and anti-Black—casts a shadow on all children in a similar manner.

As the history in Part II showed, Woodson championed the study of Black history to counter the omission and distortion of Black contributions in mainstream education—that is, to counter precisely the kinds of aims embodied by this current anti-education agenda.³⁶³ Woodson’s creation of what is now known as “Black History Month” aimed to rectify this oversight.³⁶⁴ Woodson’s work still highlights the need for a more inclusive and accurate curriculum that acknowledges the diversity of contributions from different racial and cultural groups. His ideas also align with present-day calls for culturally responsive education that reflects the experiences and achievements of historically marginalized communities.³⁶⁵

Lastly, Bond similarly emphasized the significance of education for fostering critical thinking, creativity, and the ability to question societal norms. His concept of “education for freedom” underscored the role of education in enabling individuals to think independently and challenge injustices.³⁶⁶ Today, Bond’s emphasis on

³⁵⁷ For a discussion of the educational theories of both Du Bois and Woodson—and their relevance to today—see *supra* notes 180–97 and accompanying text.

³⁵⁸ See Peters, *supra* note 356, at 35–36, 43.

³⁵⁹ See *id.* at 48–49.

³⁶⁰ See *id.* at 36–39, 42–43, 42 n.85.

³⁶¹ See *id.* at 31.

³⁶² See *id.* at 43, 48.

³⁶³ See Carter G. Woodson, *supra* note 179.

³⁶⁴ *Id.* (“Carter G. Woodson was a scholar whose dedication to celebrating the historic contributions of Black people led to the establishment of Black History Month, marked every February since 1976.”).

³⁶⁵ See *id.*; Joan Sedita, *Culturally Responsive Literacy Instruction*, KEYS TO LITERACY (Jan. 5, 2022), <https://keystoliteracy.com/blog/culturally-responsive-literacy-instruction/> [<https://perma.cc/TW6V-PNPH>].

³⁶⁶ See Norton, *supra* note 198.

fostering critical thinking and nurturing a socially conscious citizenry resonates as educators strive to equip students with the skills to engage with complex societal issues and navigate an ever-changing world.

Collectively, then, the thinking of Du Bois, Woodson, and Bond underscores the enduring importance of education in addressing social inequalities, promoting cultural inclusivity, and nurturing active, engaged citizens. Their insights continue to guide efforts to create a more equitable and just educational system that empowers individuals to contribute positively to society.

C. A Necessary Reimagining of Public Education

In the absence of a federal mandate ensuring universal access to education, the responsibility for education falls heavily upon communities, which must demand accountability from state, local, and federal authorities regarding publicly funded education. The premise of this Article is not that liberty is impossible without a robust education; rather, a robust educational framework fosters a society that is more liberated and bolsters the democratic foundation. Hence, striving for true liberation necessarily prompts a reconsideration of how to successfully integrate comprehensive history and narratives previously overlooked within public education, thereby envisioning how such inclusion would enhance the quality of education and contribute to a more enlightened society.

As this Article has shown, the exploration of the aforementioned challenges to accessing education gives rise to several themes that urge a reevaluation of public education curricula. First and foremost, public education was established partially to level the educational playing field for a wider array of children.³⁶⁷ Second, the significance of preserving history is evident. Last, it is important to heed calls to broaden our comprehension of education while maintaining ongoing engagement with the public and communities at-large.

One lesson from this history of public-funded education is that the existing model of public education has failed to be truly public and accessible to all children.³⁶⁸ While public education is often considered a cornerstone of democratic societies, the reality is that not all children have equal access to quality education. This lack of access is rooted in various factors that perpetuate educational disparities. Socio-economic disparities, in particular, play a significant role, as economically disadvantaged children face barriers such as underfunded schools and a lack of resources.³⁶⁹ Unequal distribution of resources also contributes to education justice issues, with schools in wealthier neighborhoods offering better facilities, more

³⁶⁷ See Kober & Rentner, *supra* note 350.

³⁶⁸ See *id.*

³⁶⁹ See *Education and Socioeconomic Status*, AM. PSYCH. ASS'N (2017), <https://www.apa.org/pi/ses/resources/publications/education> [<https://perma.cc/2QRH-UUU4>] (last visited Dec. 4, 2023).

experienced teachers, and advanced curricula. Racial and ethnic disparities further compound the issue, as minority students face systemic biases and discrimination within the education system.³⁷⁰ Additionally, children in remote or rural areas often encounter unique challenges in accessing quality education due to limited school options and a lack of resources.

Another lesson is the significance of preserving and passing along a complete and accurate history of America to children without causing harm. The history of the United States shows that teaching a full and complete history about the founding of the nation or the Civil War or other unflattering parts of United States history has not necessarily been at the center of American children's education.³⁷¹ In the same vein, and more specifically, historical narratives about traversing or overcoming the subjugation of Black and poor Americans is also not always included in civics and history instruction in American public-funded schools.³⁷² However, a fact-based history that includes these narratives could be useful for children because telling the truth about fraught histories fosters a sense of hope and fills children with a sense of possibility. Modifying or removing the history of slavery and Black advancement from curricular deprives Black students, and all other students, of the complete and accurate education necessary to prepare them as active members of our democracy.

Ultimately, the value of education lies in achieving higher knowledge and the ability to think, reason critically, and innovatively find solutions. This type of education can occur within the bounds of the formal education system, but with the anti-education movement in full swing, it is incumbent upon mainstream society to push for and demonstrate where and how real knowledge acquisition occurs. In this vein, education must be redefined as more than reading, writing, and arithmetic. Indeed, the same type of rearticulation applies to how we think about a healthy democracy. It is no longer enough to have the legal ability to engage civically—e.g., the legal right to vote—the vote and engagement must carry weight. In other words, people must have the actual ability to create democratic change. It can no longer be merely rhetorical, with the real political power resting within the hands of just a few. Similarly, the law and its function in society related to education and democracy must also be reordered—it is not enough for there to be mere access to education; the education that children access must carry weight.

³⁷⁰ See Kirsten Weir, *Inequality at School*, AM. PSYCH. ASS'N, <https://www.apa.org/monitor/2016/11/cover-inequality-school> [<https://perma.cc/8BHV-4DQH>] (last visited Dec. 4, 2023).

³⁷¹ See Jericka Duncan et al., *50 States, 50 Different Ways of Teaching America's Past*, CBSNEWS (Feb. 19, 2020, 8:16 AM), <https://www.cbsnews.com/news/us-history-how-teaching-americas-past-varies-across-the-country/> [<https://perma.cc/MAA8-7ZGU>].

³⁷² See Rainone, *supra* note 176; LaGarrett J. King & Crystal Simmons, *Narratives of Black History in Textbooks: Canada and the United States*, in THE WILEY INTERNATIONAL HANDBOOK OF HISTORY TEACHING AND LEARNING 93, 93–94 (Scott Alan Metzger & Lauren McArthur Harris eds., 2018) (discussing the how history text books often marginalize Black history and have limited nuanced racial discourse).

Some in the United States believe that the country—including the public education system—should push to get beyond race; the corollary to this premise is that in order to move beyond race, one must stop talking about race. However, in the words of Justice Jackson, “[o]ur country has never been colorblind.”³⁷³ Therefore, it may be worth considering, from a legal, legislative, and civil standpoint, how to push through legislation that would encourage the provision of an education that fully covers history and civics, as a means toward achieving the ends of a healthy constitutional or representative democracy.

Indeed, since the No Child Left Behind Act was introduced in 2002, civics and history have received less instructional time.³⁷⁴ However, in 2020, the United States Senate passed the Educating for Democracy Act—a promising bill that would authorize the Department of Education to fund states, non-profits, researchers, and higher education institutions to expand access to civics and history education.³⁷⁵ However, the bill failed to become law. In 2021, the Senate tried again with the Civics Secures Democracy Act,³⁷⁶ and in 2023 with the Civics Learning Act.³⁷⁷ The federal attempts have failed. Still, some states have attempted to fill the gap in the history curricula about race and society, by including slavery and another important history that composes America’s story.³⁷⁸ Now, however, many of these efforts are trending in the opposite direction as there is a push to censor and keep this crucial history out of schools.³⁷⁹ Some books, out of those currently being banned, have no honest basis for being taken out of schools.³⁸⁰ Further, anti-Critical Race Theory, anti-identity, and anti-inclusion political rhetoric are front and center of the current iteration of the anti-education movement.³⁸¹

³⁷³ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 385 (2023) (Jackson, J., dissenting) (“Given the lengthy history of state-sponsored race-based preferences in America, to say that anyone is now victimized if a college considers whether that legacy of discrimination has unequally advantaged its applicants fails to acknowledge the well-documented ‘intergenerational transmission of inequality’ that still plagues our citizenry.”).

³⁷⁴ See Adam Harris, *America Isn’t Ready for the School-Funding Crisis Ahead*, THE ATLANTIC (May 15, 2023), <https://www.theatlantic.com/ideas/archive/2023/05/school-funding-american-rescue-plan/674048/> [https://perma.cc/7SZU-99RL].

³⁷⁵ See Educating for Democracy Act of 2020, S. 4928, 116th Cong. (2020).

³⁷⁶ See Civics Secures Democracy Act, S. 4384, 117th Cong. (2022).

³⁷⁷ See Civics Learning Act of 2023, H.R. 1387, 118th Cong. (2023).

³⁷⁸ See Duncan et al., *supra* note 371.

³⁷⁹ See *id.*

³⁸⁰ See Jay Parini, *Banning Books Is a Nasty Habit, Whether It Comes from the Right or Left*, CNN (Sept. 17, 2021, 6:05 PM), <https://www.cnn.com/2021/09/17/opinions/york-pennsylvania-school-district-book-ban-parini/index.html> [https://perma.cc/BX9X-6GEQ].

³⁸¹ See Suzanne Nossel, *Parents Should Have a Voice in Their Kids’ Education But We’ve Gone Too Far*, TIME (Sept. 20, 2022, 3:11 PM), <https://time.com/6215119/parents-rights-education-gone-too-far/> [https://perma.cc/R8CP-XLSZ].

When members of Congress Rosa DeLauro and Tom Cole introduced the *Educating for Democracy* bill on Constitution Day,³⁸² Representative DeLauro stated, “if students of all ages are not given the information in their classrooms to actively participate in our democracy, we cannot expect them to stay engaged and informed as adults.”³⁸³ Representative DeLauro further suggested that:

[T]he divide in this country continues to grow as we neglect civic education and fail to build a nation adequately informed of our democratic principles, norms, and institutions. We must focus on educating our citizens in order to sustain our democracy, and the federal government must provide the resources to support this learning.³⁸⁴

As has been alluded to in this Article, there is good reason that proposed legislation, like the *Educating for Democracy Act*, *Civics Secures Democracy Act*, or *Civics Learning Act*, should be reconsidered, as this is a time when American society at-large is reflecting on the role of history and civics in the public education curriculum.

Martin Luther King Jr., a spirited activist following in the footsteps of Du Bois and Woodson, emphasized the importance of recognizing and addressing the historical injustices and systemic barriers faced by marginalized groups.³⁸⁵ He argued that a society cannot claim neutrality if it fails to actively dismantle discriminatory laws, policies, and practices that have perpetuated inequality for centuries.³⁸⁶ Reverend King’s message during the March on Washington highlighted the contradiction between the promises of equality enshrined in the Fourteenth Amendment and the harsh realities experienced by marginalized communities.³⁸⁷ He metaphorically referred to the promise of equality as a rubber check that bounced due to insufficient funds.³⁸⁸ To demand justice, Dr. King and others marched in order to demand justice, using their collective actions to protest against inequality and move towards truth, rather than being swayed by misleading propaganda.³⁸⁹

³⁸² Press Release, Rosa DeLauro, U.S. House of Representatives, DeLauro, Cole Introduce the Educating for Democracy Act, Historic Investments in Civic Education (Sept. 17, 2020), <https://delaurow.house.gov/media-center/press-releases/delauro-cole-introduce-educating-democracy-act-historic-investments> [<https://perma.cc/YW3Y-BQYN>].

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ See Martin Luther King Jr., I Have a Dream Speech at the March on Washington for Jobs and Freedom (Aug. 28, 1963) (transcript available at <https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety> [<https://perma.cc/982F-P2XZ>]).

³⁸⁶ See *id.*

³⁸⁷ See *id.*

³⁸⁸ See *id.*

³⁸⁹ See *id.*

Education is ultimately in the hands of many. Public education originated with parents and communities disseminating knowledge and learning. Gatekeeping—and the fact that some families could not, due to a lack of social or other capital, educate their children in the most desirable way—led to the establishment of public-funded education.³⁹⁰ This Article’s suggestion is ultimately not to abandon public-funded education, but rather to expand what “education” is, and to what ends we employ it, and then to allow communities to play a vital role in educating each other and the world around them.³⁹¹

CONCLUSION

Public Education paves multiple pathways to freedom. Such liberating avenues encompass the acquisition of citizenship rights for civic engagement, the means to upward social and economic mobility, and the knowledge necessary for physical liberation. Within this Article’s historical narratives, we witness illustrations of this transformative journey. Unfortunately, however, students are too often deprived of the enriching perspectives and the sense of hope that emerges from a more comprehensive understanding of these narratives and similar accounts embraced by America’s intricate story. In sum, these narratives are examples of how much better-served society can be when students have access to a quality and comprehensive education.

Indeed, the historical narratives in this Article, like that of the Chase sisters who educated free Black individuals amidst challenging circumstances, not only emphasize the pivotal role of public education in driving equality, empowerment, and ultimately freedom, but also highlight the essential contributions of allies who have wielded agency and privilege in the pursuit of educational justice. These types of histories provide a roadmap for lawyers and educator leaders who have the same opportunity to effect change over time. While access to education can enable these lawyers and educators to be direct participants in our representative democracy, they can also influence the next generation of civic actors through community education and serving in more formal education functions. Now’s the time, arguably more than

³⁹⁰ Kober & Rentner, *supra* note 350, at 1:

Without a formal system for funding education, local schools were dependent on parents’ tuition payments, charitable contributions, property taxes, fuel contributions, and in some cases state support. At the time of the American Revolution, some cities and towns in the Northeast had free local schools paid for by all town residents, but this was not the norm.

³⁹¹ It is worth noting that federally guaranteeing a right to access quality education could do the work that affirmative action was created to do. There is an opportunity for real affirmative action, which is to fully and federally fund public education throughout the United States. A federal right paired with resources to support that right would be required. This would all be required in pursuit of liberty and a representative, stable, enduring democracy. For a discussion of affirmative action, see generally STUBBS & HILL, *supra* note 126.

ever, when lawyers must make themselves available as nation builders through civic leadership to strategize how to establish and maintain a viable democracy that best serves all.

Ultimately, education justice advocates must steadfastly champion education as a route to liberty. Advocates must acknowledge public education's potential to propel representative democracy forward. The crux of the challenge remains: education's importance is paramount. The pivotal task is to ensure access to quality education for every child. While laws and individuals may, in the end, fail to quell critical thinking, they can nevertheless amplify difficulties. Proponents of independent, wide-ranging thinking, must work to dismantle these barriers and teach children to rise above them. In this way, defenders of freedom of thought can pave the way for further societal advancement. Within this paradigm, freedom of thought advocates can help to establish and preserve the integrity of America's history. Moreover, based on comprehensive access to and understanding of facts, young people can blossom as civic leaders. A broad fact-based educational curriculum can inspire leaders to prioritize developing a society that is enlightened and free.

In short, today's persistent quality education access as well as educational achievement gaps are rooted in laws and practices extending back to colonial times. This Article has presented a historical overview to shed light on background for today's "anti-education movement." Originating in earlier eras and resurfacing in a modern manifestation, current anti-education efforts hinder the march towards a truly emancipated and upwardly mobile society for all persons. Despite positive strides made in the American education system, the enduring lack of access from the Colonial era to the present, continues to disproportionately afflict all children, but particularly marginalized ones, resulting in enduring harm. Advocates must pivot their mission toward and persevere in seeking to eliminate this harm.