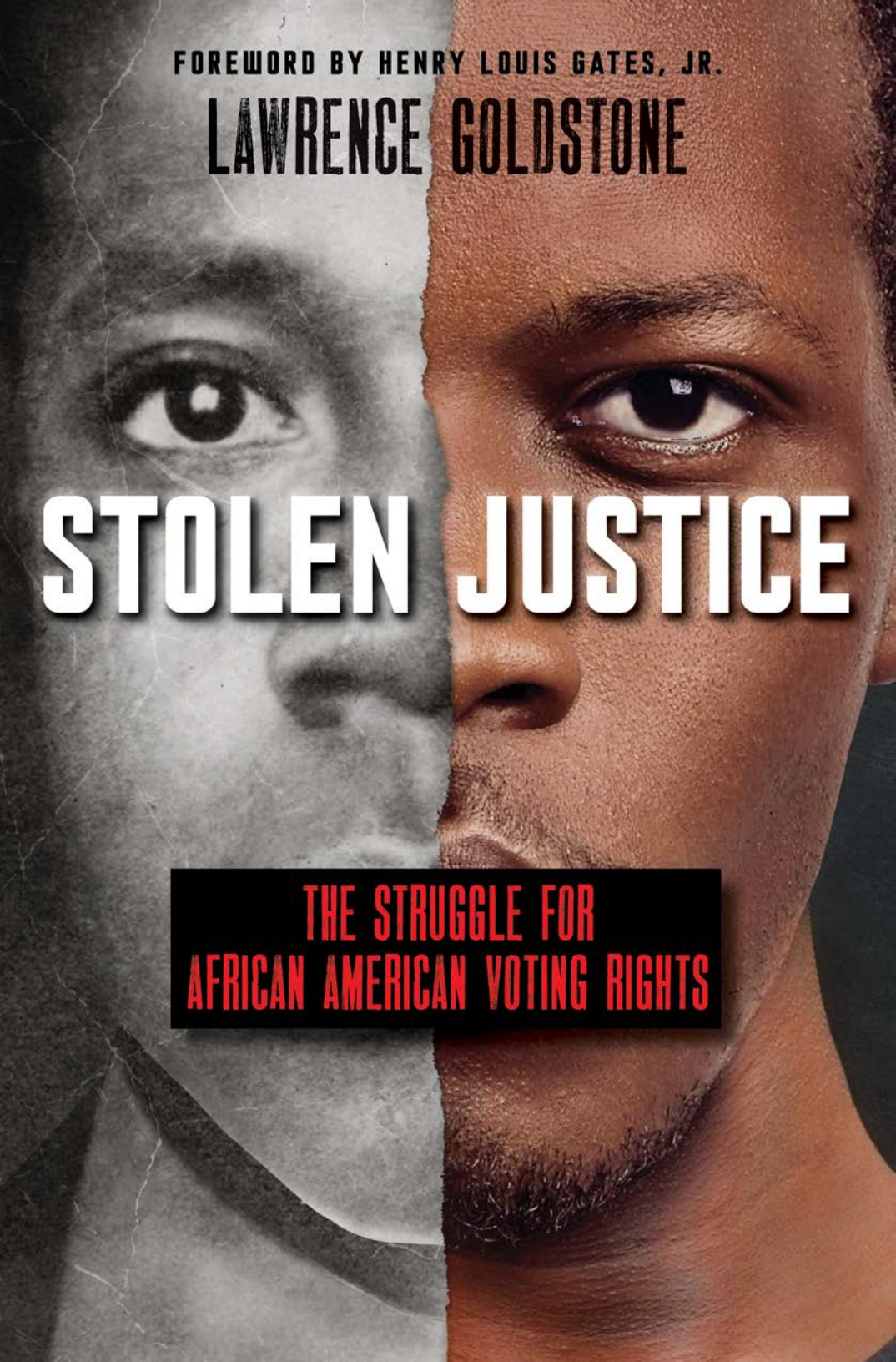




FOREWORD BY HENRY LOUIS GATES, JR.

LAWRENCE GOLDSTONE

STOLEN JUSTICE

THE STRUGGLE FOR
AFRICAN AMERICAN VOTING RIGHTS

STOLEN JUSTICE

THE STRUGGLE FOR
AFRICAN AMERICAN
VOTING RIGHTS

ALSO BY
LAWRENCE GOLDSTONE

UNPUNISHED MURDER
MASSACRE AT COLFAX AND
THE QUEST FOR JUSTICE

STOLEN JUSTICE

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AFRICAN AMERICAN VOTING RIGHTS

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A NOTE TO READERS:

This book includes quoted material from primary source documents, some of which contains racially offensive language. These passages are presented in their original, unedited form in order to accurately reflect history.

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In a bitter partisan fight over the legislature and Constitution, the
answer eventually became yes, though only after two constitutional
amendments, two Reconstruction Acts, two Civil Rights Acts, three
Enforcement Acts, the impeachment of a president, and an army of
occupation. Yet, even that was not enough to ensure that African
American voices would be heard, or their lives protected. White
supremacists loudly and intentionally prevented black Americans from
voting -- and they were willing to kill to do so. In this vivid portrait
of the systematic suppression of the African American vote, critically
acclaimed author Lawrence Goldstone traces the injustices of the
post-Reconstruction era through the eyes of incredible individuals, both
heroic and barbaric, and examines the legal cases that made the Supreme
Court a partner of white supremacists in the rise of Jim Crow. Though
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FOREWORD

MARTIN LUTHER KING, JR., GAVE his first address at the Lincoln Memorial during the Prayer Pilgrimage for Freedom on May 17, 1957. In this speech, he argued that the betrayal of disenfranchised Americans offered the best argument for why the struggle for voting rights is so essential for economic and social justice. King declared, "Give us the ballot, and we will no longer have to worry the federal government about our basic rights." In the following years, the modern civil rights movement continued its struggle for voting rights. By April 1964, Malcom X angrily expressed the frustration that many felt by the lack of progress. Ominously, he warned, "It'll be the ballot or the bullet." Indeed, by 1968, both Malcolm X and King had been assassinated, but it was King's vision of justice that came to be broadly accepted. In early 1964, the overwhelming majority of states approved the Twenty-Fourth Amendment to the Constitution, which banned the poll tax, thus finally barring economic barriers to voting. Later that year, Congress enacted the Civil Rights Act of 1964 with a comprehensive Voting Rights Act to follow in 1965.

After providing a concise and beautifully written history of enfranchisement in the United States of America, *Stolen Justice: The Struggle for African American Voting Rights* details the many ways in which voting rights were systematically denied to African Americans. Beginning this history with an account of voting privileges in the early days of the republic, Lawrence Goldstone provides a lively account of the conflicts between the Founding Fathers in their fashioning of electoral processes. To be sure, voting was a state matter, resulting in a patchwork of different rules and regimes. In all cases, slaves were excluded, but in these early days, free men of color were allowed to vote in a surprising number of states, North and South. However, the rollback was swift, especially in the South, and as the Union expanded, fewer states offered voting rights to nonwhites. Eventually, even states in the North restricted voting rights to white men. As Goldstone explains, by 1860, only a handful of Northern states allowed men of color to vote. That year New Yorkers defeated an effort to remove a property qualification that applied only to black voters. As a result, only 6 percent of free blacks in the North were registered to vote in the antebellum era.

In *Stolen Justice*, Goldstone describes the forces that led to the Reconstruction Acts of 1867–1868 and the brief period in which the vote was extended to all male freedmen over twenty-one years of age. I have seldom seen such a clear and

straightforward description of the passage of the Fourteenth and Fifteenth Amendments as is presented in this book. Aiding in his historical account, Goldstone has added illustrations, photographs, and a remarkably helpful glossary of terms. Of course, the majority of *Stolen Justice* is concerned with the almost immediate attacks on the rights of African Americans following the Civil War. From the violence that began with the founding of the Ku Klux Klan within a year of Lee's surrender at Appomattox to the judicial rulings that chipped away at voting rights promised in the Fifteenth Amendment, *Stolen Justice* charts the victories of the movement to codify white supremacy in the American South. In his consideration of the judicial challenges to the Fourteenth Amendment, Goldstone begins with the compelling story of the Louisiana *Slaughter-House Cases*, in which the seemingly banal problem of where New Orleans could locate butchers ended up shifting power away from federal protections and toward state rights. Other surprising cases are cited in this volume, including *Strauder v. West Virginia* (1880), in which decisions about the racial makeup of a jury began with the case of a confessed ax murderer. In every topic cited in *Stolen Justice*, the author infuses his history with vibrant personalities, fascinating details, and outrage at racial injustice.

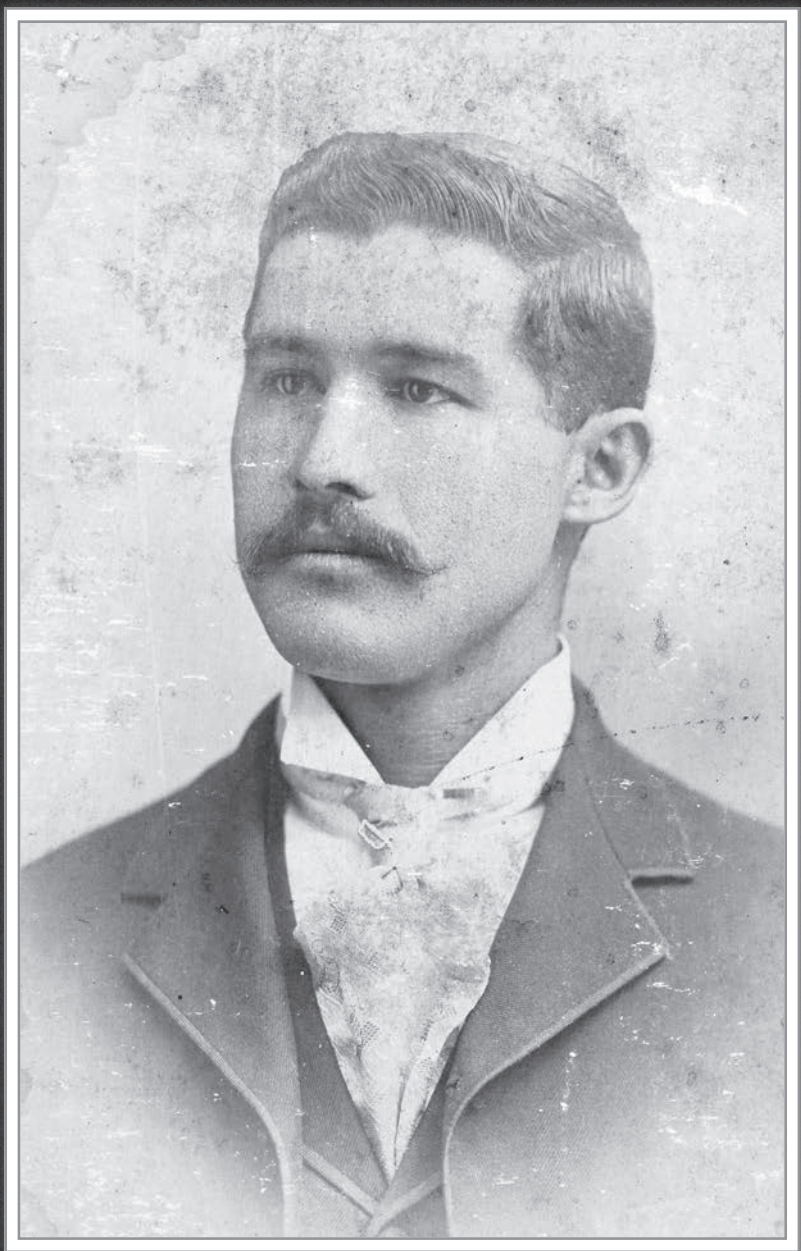
In the very divisive political period in which we find ourselves, it is important to remember the critical importance

of voting rights for all Americans. Contemporary attempts to rig voting outcomes including extreme gerrymandering of state legislative and congressional district lines, the enactment of harshly restrictive voter ID laws, draconian restraints on early voting, and the purging of voter rolls should alarm all concerned citizens. *Stolen Justice* reminds us of our ongoing responsibility to protect voting rights.

Dr. Henry Louis Gates, Jr.
Director of the Hutchins Center
for African & African American Research
Harvard University

STOLEN JUSTICE

THE STRUGGLE FOR
AFRICAN AMERICAN
VOTING RIGHTS



Alex Manly.

PROLOGUE

OVERTHROW

BY AUGUST 1898, ALEX MANLY, a thin and handsome man, only thirty-two years old, had made himself into a remarkable American success story. He was a respected community leader in Wilmington, North Carolina; owned and edited the *Daily Record*, the city's most widely read newspaper; served as the deputy register of deeds; and taught Sunday school at the Chestnut Street Presbyterian Church. And, although he was the grandson of Charles Manly, a former governor of North Carolina, Manly's achievements were in no way a result of family connections.

That was because his grandmother Corinne had been one of Charles Manly's slaves.

Although he was light-skinned, with features that could easily be taken for white, Alex Manly never forgot his African American identity. In fact, the *Daily Record* was billed as "The Only Negro Daily Paper in the World." What made Manly's achievements more unusual was that, by 1898, virtually all of the gains made by African Americans in the 1870s,

during Reconstruction, had been swept away by the white supremacists who had once again taken control of state governments across the South. American citizens who happened to be African American were often treated little better than when they had been slaves. Many could not work where they chose or live where they chose; they were often brutalized by whites, arrested under the flimsiest of excuses, and subjected to beatings, rape, and even murder with little or no protection from the local police or courts. In fact, it was not unusual for the local police to be among the worst offenders. And despite anything the United States Constitution may have promised, fewer and fewer African Americans in the South were still able to vote.

But Wilmington, then North Carolina's largest city, was an exception, a thriving port on the Atlantic coast that was also an outpost of racial harmony. More than eleven thousand of its twenty thousand residents were African American—former slaves or their descendants—and black men owned a variety of businesses frequented by members of both races, from jewelry stores to real estate agencies to restaurants to barber shops. Although the mayor and city council remained almost entirely white, there were black police officers and firemen.

Members of both races voted regularly and without

intimidation. African Americans voted Republican, then the party of equal rights, and exerted a good deal of influence in Wilmington. Democrats, however, the party of white supremacy, had for decades controlled the state house in Raleigh. But in 1894, North Carolina's Populist Party, a group of mostly small farmers, almost all of whom were white, had tired of the Democratic ruling elite and joined with black Republicans to force Democrats from state government.

Although almost all the whites in this coalition continued to believe in the racial inferiority of African Americans, they needed the black vote to defeat their enemies. And defeat them they did. In the November 1894 elections, Fusionists, as they called themselves, took control of the general assembly and the state supreme court, and also won in most of the state's congressional districts. Although once again the vast majority of new officeholders were white, some black men were elected to local and state office, by then almost unheard of in the South. Once in power, Fusionists made it easier for blacks and poor whites to vote, imposed taxes to fund public education, and passed a number of economic laws that favored small farmers and businessmen over large financial interests.

Democrats were enraged at these changes, but nearly all of their anger focused on the measures that improved voting prospects for black men. (Women would not gain the vote

for more than two decades.) The Fusionists were again successful in 1896, even adding the governorship to their trophy case when Daniel Russell, a Wilmington native, was elected to that office. Democrats were determined to win it back.

As the 1898 elections approached, Daniel Schenck, a leading Democrat, warned, “It will be the meanest, vilest, dirtiest campaign since 1876. The slogan of the Democratic Party from the mountains to the sea will be but one word—nigger.” One of the main Democratic campaign themes was that if their party were not returned to power, there would be an epidemic of attacks by black men on white women.

To stoke those fires, a statewide Democratic newspaper, the *News & Observer*, reprinted an August 1897 speech by a Georgia suffragette—a campaigner for a woman’s right to vote—named Rebecca Latimer Felton, who would later become the first woman to serve in the United States Senate. “If it requires lynching to protect woman’s dearest possession from ravening, drunken human beasts,” she had told an enthusiastic white audience, “then I say lynch a thousand negroes a week.”

Alex Manly had generally avoided controversy, but the accusation in the *News & Observer* that black men preyed on white women was too much. Manly, whose very existence was due to a white man preying on a black woman, responded with an editorial in which he charged white lynch mobs with

murdering African American men because white women had *chosen* to become romantically involved with them. “Meetings of this kind go on for some time,” he wrote, “until the woman’s infatuation or the man’s boldness brings attention to them and the man is lynched for rape. Every Negro lynched is called a ‘big, burly, black brute,’ when in fact many of those who have thus been dealt with had white men for their fathers, and were not only not ‘black’ and ‘burly’ but were sufficiently attractive for white girls of culture and refinement to fall in love with them, as is very well known to all.”

It is difficult to imagine an accusation that would more enrage white supremacists.

Manly’s editorial was reprinted across the South, accompanied by thinly disguised calls to do violence against him. Typical was an article in the *Jacksonville Times*. “Last week the editor of the Daily Record of Wilmington, the only negro daily printed in the state, published the following slander about the white women of the south. Strange to say the wretch has not been lynched, but poses before the people as one of the grand achievements of republican rule and a hideous example of one of the many that have come to the surface since white supremacy was relegated to the rear by selfish politicians.”

The editorial and the fact that Wilmington had so many successful African Americans made the city perfect for Democrats to inflame white rage as the November election



"Pitchfork Ben" Tillman.

approached. When South Carolina senator "Pitchfork Ben" Tillman visited his neighboring state to campaign for white rule, he thundered to a cheering crowd, "Why didn't you kill that damn nigger editor who wrote that? Send him to South Carolina and let him publish any such offensive stuff, and he will be killed." (Tillman had acquired his nickname for threatening to stick a pitch-

fork into President Grover Cleveland, whom he called "a bag of beef.") Sprinkled through Tillman's audience were men dressed in red shirts, the first appearance of a group of white supremacist paramilitaries—civilians operating as if they were soldiers—determined to use any means necessary to take back state government.

At a rally on the night of November 7, 1898, the eve of the election, Alfred Waddell addressed a Red Shirt rally. Waddell was a former Confederate cavalry officer who had served three terms in Congress before losing his seat in 1878



Red Shirts.

to Daniel Russell, who at the time was a Republican. He told the Red Shirts, “You are Anglo-Saxons. You are armed and prepared, and you will do your duty. If you find the Negro out voting, tell him to leave the polls, and if he refuses, kill him, shoot him down in his tracks. We shall win tomorrow if we have to do it with guns.”

With Red Shirts and other armed white men roaming the streets, Democrats regained all they had lost in the election four years before, winning in Wilmington by six thousand votes, where they had lost by five thousand votes only two years earlier. Fraud was everywhere. Ballot boxes

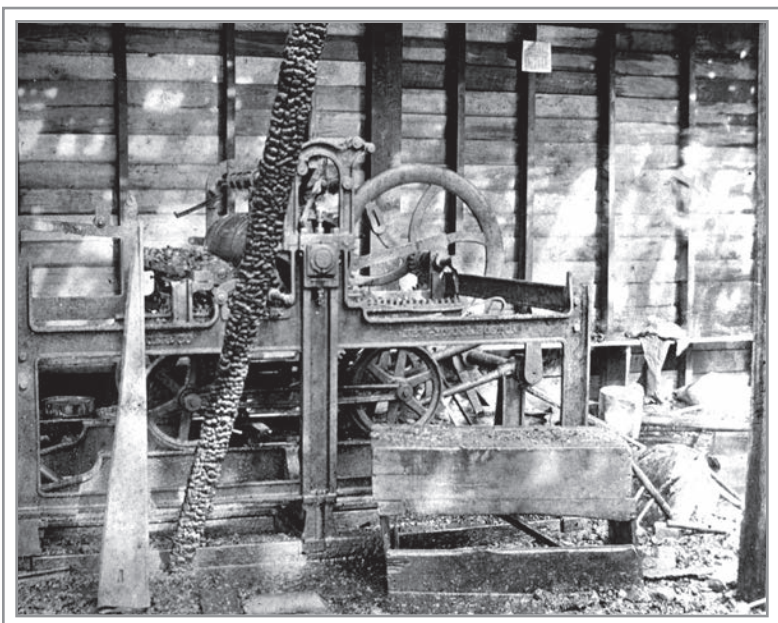
were stuffed so openly with phony votes for Democrats that in some districts the number of votes for Democratic candidates exceeded the total number of registered voters. In one precinct, for example, although only 30 Democrats were registered, 456 Democratic votes were reported out. Another precinct, with only 343 registered voters, reported out 607 votes, almost all for Democrats. And where the white Democratic vote was inflated, Red Shirts made certain the Republican vote, especially among African Americans, was suppressed. One predominantly black precinct reported only 97 votes, although 337 Republicans had registered. The Red Shirts were so brazen that they met the train carrying Governor Russell, who was returning home to vote, and threatened to lynch him. Russell ran through the train and hid in a baggage car to escape.

Although Democrats had achieved almost total victory across North Carolina, triumph had only increased their thirst for revenge, especially in Wilmington, where Alex Manly's editorial and a thriving black community remained irresistible targets. In addition, since many local officials had not been up for reelection in 1898, Fusionists remained a power in city government.

On the morning of November 9, one day after the election, Waddell again called a meeting of Red Shirts. He waved in front of him a "White Declaration of Independence," which

insisted that the American Constitution “did not anticipate the enfranchisement of an ignorant population of African origin.” The Founding Fathers “did not contemplate for their descendants a subjection to an inferior race.”

The following morning, Waddell, “his white hair flowing in the light breeze,” led an armed band of more than one hundred white supremacists on a procession to Alex Manly’s newspaper office. Manly was not there, so they stormed inside, poured kerosene on all the printing equipment, and set it ablaze. Soon, the wooden building was consumed in flames and totally gutted.



Alex Manly's charred printing press.

The soaring flames seemed only to make the rampaging white mob more furious at black residents of Wilmington, even those who lived peacefully and were not at all involved in politics.

And so the shooting began.

Rev. Charles S. Morris, a Wilmington pastor, gave an eyewitness account in a speech to the International Association of Colored Clergymen in Boston in January 1899.

Nine Negroes massacred outright; a score wounded and hunted like partridges on the mountain; one man, brave enough to fight against such odds, who would be hailed as a hero anywhere else, was given the privilege of running the gauntlet up a broad street, where he sank ankle deep in the sand, while crowds of men lined the sidewalks and riddled him with a pint of bullets as he ran bleeding past their doors; another Negro shot twenty times in the back as he scrambled empty handed over a fence; thousands of women and children fleeing in terror from their humble homes in the darkness of the night, out under a gray and angry sky, from which falls a cold and bone chilling rain, out to the dark and tangled ooze of the swamp amid the crawling things of night, fearing to light a fire, startled at every footstep,

cowering, shivering, shuddering, trembling, praying in gloom and terror: half clad and bare-footed mothers, with their babies wrapped only in a shawl, whimpering with cold and hunger at their icy breasts, crouched in terror from the vengeance of those who, in the name of civilization, and with the benediction of the ministers of the Prince of Peace, inaugurated the reformation of the city of Wilmington the day after the election by driving out one set of white office holders and filling their places with another set of white office holders—the one being Republican and the other Democrat. All this happened, not in Turkey, nor in Russia, nor in Spain, not in the gardens of Nero, nor in the dungeons of Torquemada, but within three hundred miles of the White House.

The killing did not end until the following day. Two dozen African Americans were officially reported murdered, but scores more may have been killed and their bodies dumped into the river. One local historian, Harry Hayden, an eyewitness, insisted that more than three hundred had died.

While African Americans were slaughtered or ran in terror to hide in the nearby woods, Waddell and his men invaded city hall and informed the mayor, the aldermen, and the police chief, all Fusionists, that they must either resign on

the spot or be shot down. All complied, and by late afternoon, November 10, 1898, Wilmington had a new government, led by Mayor Alfred Waddell. Those local officials, both black and white, lucky enough not to be murdered were marched to the train station, some with nooses around their necks, and told they would be killed if they ever returned. None did.

Although the white press would later term the events in Wilmington a “race riot,” it was in fact the only violent overthrow of a local government in United States history.

Harry Hayden, interviewed later by reporters, insisted that he and his fellows were not thugs. “The Men who took down their shotguns and cleared the Negroes out of office yesterday were . . . men of property, intelligence, culture . . . clergyman, lawyers, bankers, merchants. They are not a mob. They are revolutionists asserting a sacred privilege and a right.” North Carolina authorities evidently agreed, since no one was punished for the crimes and Waddell and his fellow Democrats were allowed to remain in the jobs they had seized by force.

As to the terrified black citizens who had been forced to flee to the woods and sleep without blankets or shelter in a cold rain, only a few attempted to sneak back to town to gather some possessions before leaving Wilmington for good. In all, more than two thousand African American men, women, and children fled the city, most of whom, like Rev.

Morris, would never return. Those who remained would live in total subjugation for the rest of their lives.

The victors, proud and triumphant, posed for a group picture in front of Alex Manly's burned-out newspaper office, which was later reproduced in newspapers and magazines across America. But they had failed in one of their main objectives—to lynch Alex Manly. Years later, Manly's son Milo described how his father had escaped.

A German grocer, who knew my father got in touch with him, and said, 'Look, you've got to get out of town . . . This gang, there's all these people out there, but they've lined it up that nobody can leave the vicinity of this area, with this cordon, unless they have a certain password.' He said, 'Now, if it ever got known that I gave you the password, they'd kill me. But I know you. I trust you. I want you to get out of here.' He gave my father the password. My father come up the line. They stopped him. 'Where are you going?' He said—named a town up there. 'What are you going up there for?' 'Going to buy some horses. There's an auction up there.' Or something like that. 'Oh, all right.' He gave the password. 'Okay, but if you see that nigger Manly up there, shoot him.' And

they gave him two rifles. That's right. Off away
he went.

North Carolina authorities, appalled at the events in
Wilmington, vowed to make certain such an incident could
never take place again. The following year, the state legisla-
ture passed an amendment to the North Carolina constitution
with provisions making it almost impossible for any African
American to vote in the state.

CHAPTER 1

WHO VOTES?

IN THE SUMMER OF 1787, when the fifty-five delegates to the Constitutional Convention in Philadelphia were pounding out rules for a new government, one of the most important questions was who should be allowed to vote and for what offices. Women, slaves, and Native Americans—still called “Indians”—were out of the question, but what should be required in order that a man—almost always a white man—be allowed to participate in government?

Very few of the delegates, all white men of property themselves, favored allowing those who were not property holders to help choose the nation’s leaders. James Madison, who would later write in *The Federalist*, “The definition of the right of suffrage is very justly regarded as a fundamental article of republican government,” had a very different view in August 1787. In a convention session, which was kept secret from the public, he said, “Viewing the subject in its merits alone, the freeholders [that is, landowners] of the country would be the safest depositories of republican liberty.” John Adams,

then the nation's chief diplomat in London, was not present at the convention but had previously made his views known. In a letter written only six weeks before he would sign the Declaration of Independence, Adams expressed a firm conviction that those without property should not be allowed to vote. "Such is the frailty of the human heart, that very few men who have no property have any judgment of their own," he wrote.

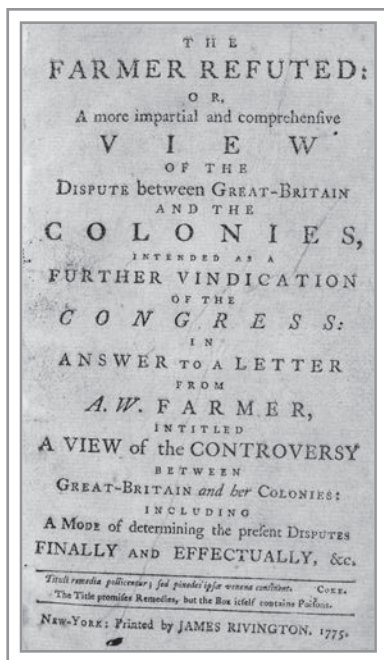
Alexander Hamilton was the most insistent that only men of property could be trusted to vote in the best interests of the nation. In a 1775 pamphlet, *The Farmer Refuted*, Hamilton cited the great English legal theorist William Blackstone, who insisted that those "under the immediate dominion of others"—workers—or "persons of indigent fortunes"—the poor—could not be trusted to "give his vote freely, and without influence of any kind, then, upon the true theory and genuine principles of liberty." At the convention, Hamilton, during a six-hour speech in which he proposed a system of government very much like a monarchy, added, "All communities divide themselves into the few and the many. The first are rich and well born; the other, the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the

first class a distinct, permanent share in the government.”

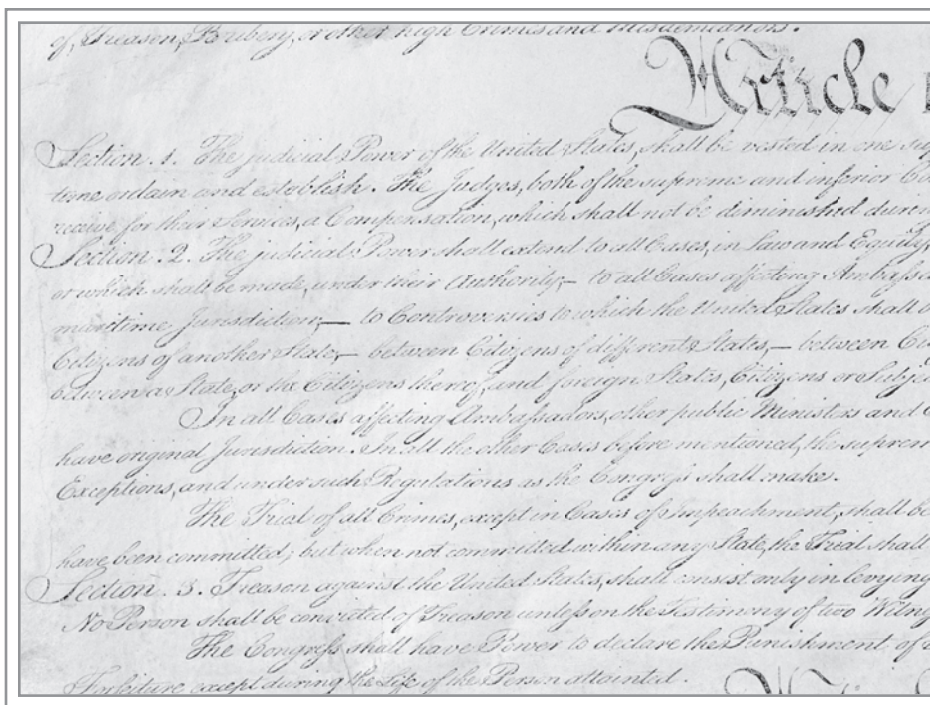
The only prominent Founder who favored allowing “universal” voting rights—at least among adult white males—was Thomas Jefferson, who in 1787 was representing the United States in Paris, and so also did not attend the Constitutional Convention. Jefferson had written in a 1776 letter, “I was for extending the rights of suffrage (or in other words the rights of a citizen) to all who had a

permanent intention of living in the country. Take what circumstances you please as evidence for this, either the having resided a certain time, or having a family, or having property, any or all of them.” In a 1789 letter, he added, “Whenever the people are well-informed, they can be trusted with their own government; whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.”

In the end, the convention delegates chose to avoid the issue entirely. For the House of Representatives, Article I, Section 2 simply reads that it “shall be composed of Members



Hamilton's 1775 pamphlet where he first proposed a property requirement for voting.



chosen every second Year by the People of the several States,” without specifying *which* people, except that qualifications would be the same as those for “the most numerous Branch” of a state’s legislature. Senators were to be chosen entirely by state legislatures—which was changed to popular vote in 1913 by the Seventeenth Amendment—and the president would be chosen by “electors,” equal to a state’s total number of congressmen, chosen once again according to rules adopted by individual state governments.

Although most Americans had been left out of the voting

III.

Supreme Court, and in such inferior Courts as the Congress may from time to time, shall hold their Offices during good Behaviour, and shall, at stated Times, for their Continuance in Office.

Extending under this Constitution, the Laws of the United States, and Treaties made under the same, to all Cases of admiralty and maritime Jurisdiction, to Cases of Controversy between two or more States, between a State and Citizens of the same State claiming Lands under Grants of different States, and between States.

Criminal, and those in which a State shall be Party, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed, or in such Place or Places as the Congress may by Law have directed.

War against them, or in adhering to their Enemies, giving them Aid and Comfort, or in any Case of Treason, or in any Case of Contempts in open Court.

Treason, but no Attender of Treason shall work Corruption of Blood, or

Article III contains only two brief sections.

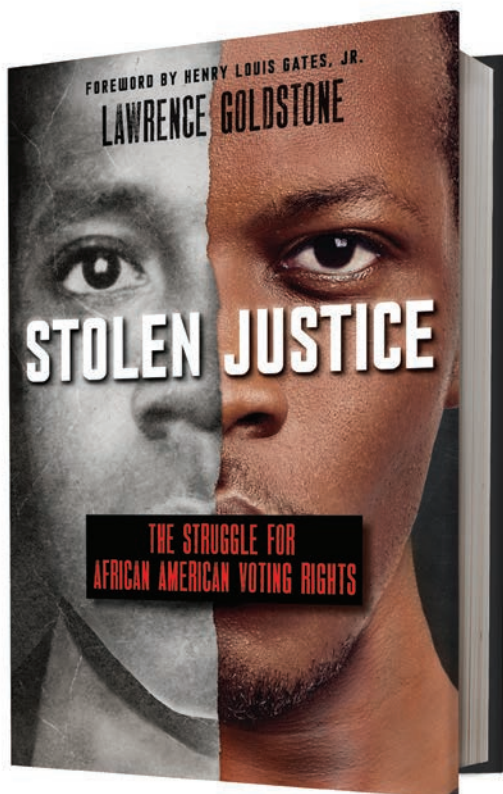
process entirely, this was not a feature that Federalists—those who favored enacting the new Constitution—wanted to publicize during the period when the document needed to be ratified—approved—by nine of the existing thirteen states. In the *Federalist* paper number 52, for example, James Madison, after calling the right to vote “fundamental,” wrote, “It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress would have been

improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone.”

In fact, almost none of this was true. The right to vote was left almost entirely “to the legislative discretion of the States,” and they would exercise that right as they saw fit until after the Civil War, when the right to vote began to come under the authority of the Constitution with the enactment of the Fourteenth and Fifteenth Amendments. Although each of these amendments was meant to ensure that newly freed slaves—“freedmen”—could not be denied access to the ballot box because of the color of their skin, it would be the Supreme Court’s job to decide just how far those guarantees stretched.

The Court’s opinions would shape race relations in the United States for more than a century, and their impact continues to be felt across the nation today.

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