The front cover contains a picture of the Bennett Building, home of the Upsilon-Upsilon Chapter of Phi Alpha Theta and the History and Political Science Department of University of the Cumberlands. Built in 1906 as part of Highland College, University of the Cumberlands assumed ownership in 1907. The building underwent extensive renovation in 1986-1987.
THE UPSILONIAN

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TABLE OF CONTENTS

iv Comments from the Student Editor .................... Jared Stafford
v Comments from the President ................................. Kyla Fitz-Gerald
vi Comments from the Advisor ................................. Eric L. Wake
vii The Authors

ARTICLES

1 “Kentucky’s Great Political Drama: The Goebel Election Law and Its Effect on the Right to Vote in the 1899 Gubernatorial Election in Kentucky” .................. Jacob Moak

12 “Mungo Park’s Life and Works in the Public Eye” .................................................. Kyla Fitz-Gerald

22 “Broken Promises? The Guarantee Clause of Article IV, Section 4, and the Right to Vote” ............ Matthew Brotherton
If there is one lesson my time at Cumberlands has taught me, it is not to believe anything just because someone else says so. The pursuit of truth is an opportunity all humans have but of which few take advantage. In a world governed by the laws of supply and demand, often it is easy to take something for granted once it is readily available; however, though truth is open to anyone who would find it, this does not diminish its value. The pursuit of truth is the highest calling anyone can answer.

Although the old adage may be true that “ignorance is bliss,” the historian is not satisfied to live in a blissful oblivious bubble. He wants to learn the world as it was and as it is for himself, through research, and if at all possible, find both secondary and primary sources. Our three exceptional authors have done this.

I would like to extend my sincerest congratulations to our three contributors to this year’s publication of The Upsilonian. Kyla Fitz-Gerald, Jacob Moak, and Matthew Brotherton have all shown their deep interest not only in studying history but in discovering truth. I also would like to thank those who submitted papers even though they may not have gotten chosen.

To the faculty of the History and Political Science Department I would like to send heartfelt thanks for their dedication and service to their students year after year. Specifically, I would like to single out Dr. Eric Wake for his commitment to Phi Alpha Theta and his hard work associated with The Upsilonian. Behind every good man is a good woman, and behind the History and Political Science Department is Mrs. Fay Partin. We all as majors, minors, and Phi Alpha Theta members would like to tell her how much she means to us and thank her for her hard work.

On a more personal note, I want to say thank you to Dr. Christopher Leskiw for pushing me to dig for the truth. His uncanny ability to never answer a question which we the students could find the answer to on our own has developed my curiosity and eagerness to learn; tools I do not plan to let go.

May this publication be a joy to all who read it, and may it stir a fire in at least one individual to learn the truth. “You will know the truth and the truth will set you free” (John 8:32).

Jared Stafford
Student Editor, Upsilon-Upsilon
2010-2011
COMMENTS FROM THE PRESIDENT

This has been a fantastic year for Upsilon-Upsilon, and despite our few numbers we have been strong in enthusiasm. I am very excited to wrap up the 2010-2011 year with the publication of our student’s hard work. Also this year our chapter of Phi Alpha Theta won the Best Chapter Award for the thirty-third time, and four lectures were given and well attended by fellow students, faculty, and townspeople. We held two book and bake sale fundraisers with the help of the History and Political Science Department, and used the funds raised to attend the Phi Alpha Theta Kentucky Regional Conference. Matthew Brotherton and I attended and gave presentations which are two of the articles featured in The Upsilonian. Dr. Wake was also in attendance and served as a paper judge. I was honored to receive third place for my paper and proud to represent our chapter. Our chapter has inducted three new members this year, and we are excited to see our group continue to grow and work hard.

Thank you to Dr. Eric Wake, who makes our group possible and keeps us all on track. From the bottom of my heart, I thank Fay Partin, who is every student and professor’s hero. I want to thank everyone who has sacrificed their time to give a lecture, and help with our fundraisers. Finally, I want to thank our members whose tireless work has made this year a joy to be a part of.

Kyla Fitz-Gerald, President
Upsilon-Upsilon, 2010-2011
COMMENTS FROM THE ADVISOR

The University of the Cumberlands is proud of our Upsilon-Upsilon Chapter of Phi Alpha Theta. And so is the Department. One day when a perspective student was visiting, I was asked for what were we most noted? I thought for a second and then showed the family our “wall of fame” as we like to call it. On that wall, there are thirty-three plaques honoring our chapter for being “Best Chapter” in Division I of Phi Alpha Theta. The father of the student told me that I did not have to say another word. He was impressed! But the plaques are more than simply awards. In order to earn those awards, students had to stand up and do the work. Over the years our chapter size has varied. Some years our chapter has been rather large for our size. Other years our size has been small, but our people have still managed to carry on the tradition and do the work. This year our numbers were small, but the students would not be denied. They did the work that our campus has come to expect from the chapter, and the Department is proud of them for binding together to do it.

As we come to the end of another academic year we face it with mixed emotions. Some will graduate and leave our chapter to go on to graduate school or into the work force. We know that they will be successful and remember that they are always a part of the Upsilon-Upsilon tradition. The rest of us will remain behind to carry on that tradition! Our Chapter alumni expect it.

Eric L. Wake, Ph.D
Advisor, Upsilon-Upsilon Chapter
JACOB MOAK was a May 2011 graduate with majors in business administration, political science, and Spanish. The original draft of his paper was written for the Issues in Political Science course, a senior capstone course.

KYLIA FITZ-GERALD is a rising senior in the class of 2011-2012. She has a major in history and a minor in criminal justice. The original draft of her paper was written for a course entitled, Europe, 1648-1815.

MATTHEW BROTHERTON will finish his studies in January 2012 with a Social Studies concentration. The original draft of his paper was written for the Issues of History course, a senior capstone course.
In 1898, a law claiming “to further regulate elections” was passed in the General Assembly of the Commonwealth of Kentucky under the leadership of Democratic state senator William Goebel. The “Goebel Election Law” caused a great political drama in Kentucky history and represented one of the most brazen attempts in any state’s history to compromise its inhabitant’s rights to vote because the law gave the final decision on all elections to the legislative branch, not to the voters.

As a result of this law’s passage, Kentucky experienced some of the most violent politics in the nation’s history. For a better understanding of this political drama and the tumultuous events that followed, two very important aspects must be evaluated. First, a look must be taken at the law itself and determine how it led to these events. Second, an examination must be made of the life and times of William Goebel, who holds the dubious distinction of being the only man to die as Governor of a state in the United States as the result of assassination, and his role regarding his Election Law.

In evaluating the Goebel Election Law, the political climate that allowed the law’s passage must be examined. In 1895, Republican William O’Connell Bradley was elected Governor, the first Republican to hold this office in Kentucky’s history. To make matters worse, for the Democrats, mistakes by their party in the United States Presidential Election of 1896 allowed the state to go Republican in this election as well. It was inconceivable and unacceptable to Kentucky Democrats that any Republican could win a statewide race. In this era, Kentucky was an extremely partisan state, particularly, at the local level. Democrats dominated most local races. When the Kentucky General Assembly convened in January 1898, the body had a large Democratic majority. Democrats held twenty-six of the thirty-eight seats in the Senate, the Republicans held but eleven, and Populists one. The House of Representatives was even more lopsided, with seventy-five Democrats to twenty-five Republicans. These numbers insured that Republicans were powerless to block any bill from the Democrats even with a veto from the Republican Governor.

Many issues and events allowed the law to come before the legislature. One of these events was the Constitutional Convention in 1890. This constitution, ratified in 1891, was the fourth in the state’s history, and resulted from social and economic conditions that caused the previous constitution to become antiquated. Many who came to the Convention represented Kentucky’s agrarian interests and were interested in corporate reform. Chief among the corporations being reformed were the railroads. Leading this charge against the railroads was Northern Kentucky politician William Goebel.

Goebel was unlike other Kentucky politicians of his day. Typical politicians prized their Kentucky roots, English ancestry, Confederate loyalty, and warm,
outgoing personalities. Goebel possessed none of these traits. Goebel was born the son of German immigrants in Sullivan County, Pennsylvania. His father had fought for the Union in the Civil War. As a boy, William Goebel did not speak English until he was five. His sole appeal as a Kentucky politician was that his uncle had fought for the Confederacy. At age ten, Goebel’s father moved the family to Covington, Kentucky. As a teenager, Goebel was a jeweler’s apprentice. As he matured, his ambition grew. He hoped to be a lawyer. At nineteen, he began to study under former Governor John W. Stephenson. Goebel graduated from law school in Cincinnati and became a lawyer before his twenty-second birthday.6

Goebel’s political career got its start upon his return to Covington after law school. He began to work for the influential Northern Kentucky politician, John G. Carlisle.7 Goebel was a driven man. He did not let anyone or anything get in his way. For example, in 1895, Goebel shot and killed a political rival, John Sanford, because Sanford humiliated Goebel in the newspaper.8 While Goebel was never charged with murder, the event would haunt him the rest of his political career.

Goebel was not known for his sociable personality. He was considered awkward, aloof, cold, and reserved.9 Contemporary Urey Woodson considered him a “poor mixer;” however, what he lacked in people skills, he compensated for this with his renowned intelligence and organizational skills.10 Goebel used his talents to great success; nonetheless, his methods were very different than his contemporaries. His methods, like those of his father’s homeland, were foreign, hard-core and unpredictable.11

While his methods may have seemed alien, Goebel’s politics reflected the interests of the “common people,” especially Kentucky’s agrarian interests. He was very quick to sense that political alignments in state were no longer solely based upon rigid hereditary partisan faiths, but upon economic conditions.12 Goebel played on these sentiments and was elected to the state Senate as a Democrat in 1887.13 As a senator, Goebel fought hard against corporations, the railroad companies in particular. No man had more to do with the insertion of sections into the 1891 Constitution regulating the corporations than William Goebel.14 His efforts made him popular with many voters; however, his politics made him an enemy to others, especially railroad companies such as the Louisville and Nashville (L&N) Railroad. To the L&N, Goebel was an extremist.15 Goebel caused intense feelings and discord among Kentuckians. As 1898 dawned, however, Goebel was ready to make his move. He wanted to be Governor and was prepared to use whatever means necessary to accomplish his goal.

The Goebel Election Law could serve as his means to accomplish his goal. The General Assembly convened in Frankfort on January 4, 1898, and here the Election Law made its début. Senator Goebel was elected president pro tem of the Senate. From his leadership position, Goebel introduced the highly controversial bill.16 The Election Law provided for the creation of a state election commission of three individuals with four-year terms to be selected by
the General Assembly. The members of the state election commission would annually appoint three election commissioners in each county, who, in turn, would be empowered to select the election and registration officers in each county. The state commission could be filled with members entirely from one party. County boards would have to have members from both major parties. In addition, the state commission had the power to remove members of the county boards at any time without showing cause. The county boards were to be in charge of counting and certifying the results of all elections. Election contests in the counties were to be made to the county board. For the officers of Governor and Lieutenant Governor, a special contest board selected from three members of the Senate and eight members of the House of Representatives would decide election contests. This board would have the power to give its report on contested elections to the General Assembly, who would then vote on the results of a contested election.17

Anger and outrage met the proposed bill. Many people condemned the law as a “force bill.”18 The objections would be to no avail. By early March, the bill passed easily through both Houses. Governor William Bradley refused to sign the Election Law and swiftly vetoed the bill on March 10, 1898. The Democrats, having an overwhelming majority in both houses, easily overpowered the veto the very next day.19 After a brief court battle, a partisan court ruled for the Democrats.20 Goebel immediately selected three Democrats to the State Election Commission to the shouts of “Hurrah for William the Conqueror” and “William the Czar.”21 Goebel had succeeded in making his bill law. He was one step closer to being Governor.

After the passage of the Election Law, opposition and outcry came from all sides. Many saw it as a far-reaching political evil. Anger and rage were directed not only at the law, but the man who championed it. Democratic congressman and editor of the Lexington Herald, W.C.P. Breckinridge, declared that this law was a “moral aberration” and that William Goebel was, “The most expert political schemer, trickster, and charlatan.”22 Even the editor of the pro-Goebel Louisville Courier Journal, Henry Watterson, said, “Goebel follows out his own ambitions in desiring to become governor of Kentucky, and he sees, or he thinks he sees, a ready chariot to bear him thither in the electoral bill that bears his name.”23 Many in the state saw the law for what it really was: a power play for Goebel. Goebel’s law gave the legislature, controlled by his Democratic Party, the power to decide all elections. The people would have no voice in the outcome of elections. Many people suggested that Goebel could have only overlooked one thing, that the members of the election commission might be honest men.24

Goebel’s law would have the power to lead him to the governorship. Even Democratic Governor John Y. Brown stated that he had heard too many Democrats say, “We care not what be the vote; we will do the counting.”25 Other prominent Democrats called the law “undemocratic.” They thought it not only threatened the end of self-government in the state, but also the very existence of the Democratic Party and party politics in general.26 The bill made no claim of show of fairness. Republicans denounced the bill. They saw it as an attack
on their very existence and retaliation for their victories in 1895 and 1896. Republican Attorney General William Taylor said that the bill was “corrupt and dishonest in purpose” and that it destroyed the basic principles of republican government so that one man could have full control.27

The Election Law hung in the minds of the people. The upcoming Gubernatorial Election of 1899 would be the first great test of the law. The election itself did not disappoint. This election would be unlike any past races for governor. This race brought Kentucky to the brink of war, and produced conflict, corruption, violence, and eventually assassination. The events that followed shook the Commonwealth to its very core.

The election cycle for the 1899 election began in a flurry. The stakes for the Democrats could not be higher. The state had gone Republican four years earlier in the Governor’s race and Democrats felt that it should not be allowed to happen again. To lose again would mean four more years of “black rule” by the minority party.28 The Democratic Party, while roughly united in passage of the election law, was not united in policy. The Democrats were primarily divided into two factions based on national issues such as free silver versus the gold standard and state issues like the regulation of the railroads. Some, typically traditional, more conservative Democrats preferred to stay on the hard-money gold standard system and did not approve of railroad regulation. Other, more leftist Democrats, like Goebel, preferred the free-silver system exemplified by William Jennings Bryan and favored regulation of large corporations like the railroads. The agrarian interests in the state preferred free silver and disliked the corporations.29 This divide would manifest itself in the 1899 Democratic Convention.

William Goebel hoped to be named the Democratic nominee for Governor at the convention. As stated before, Goebel was quick to pick and gauge the feelings of the people. As a result, railroad regulation and free silver were at the top of his political platform. Goebel would face fierce competition from within the party. Many of the hard-money, conservative Democrats not only disliked Goebel’s Election Law, but they also personally abhorred Goebel himself. In June 1899, in the infamous Music Hall Democratic Convention in Louisville, Goebel forces, known as Goebelites, and anti-Goebel forces literally fought for control in what was called by the New York Times as “. . . the most uproarious and disorderly body of men ever gathered for the transaction of political or other business.”30 Corruption, backroom deals, and fistfights characterized the raucous convention. After all was said and done, Goebel won the nomination on the twenty-sixth ballot. Speaker of the House J.C.W. Beckham was selected as nominee for Lieutenant Governor.31

The pieces for Goebel were now in place. As the Democratic nominee, the Election Law would allow him to assume the office of Governor with or without the will of the people, but only if the election was close. There was a chance the race might not be close enough for the law to be used. Some Democrats, furious after the corrupt convention and the selection of Goebel as nominee, defected and decided to support former Governor John Brown. Brown’s supporters, affectionately called Brownies, despised Goebel and campaigned against his
Election Law and sought to bring honor back to the Democratic Party. Taylor began his campaign by furiously crusading against Goebel and his Election Law. Taylor believed the law was machine politics at best and oligarchy at worst. In a campaign speech he stated, “A government by force and fraud is about to be established. The ballot box is intended to be robbed . . . Is this election law to voice the will of the people, or is it to subserve [sic] the ends of men who lust for office, override and stifle the will of the people?”

Goebel’s policies of free silver and corporate regulation may have resonated well among many, especially farmers, but not with Republicans or corporate interests. The L&N Railroad particularly despised Goebel and was prepared to do what was necessary to keep him out of office. Before the convention, L&N lobbyist Basil W. Duke had written to Democratic United States Senator William Lindsay, “I am convinced that any proper policy in Kentucky is to let the Republican candidates win this year if they can . . . and beat Goebel for the gubernatorial nomination and commit the party (Democrats) to a repeal of his bill.” Now that Goebel was the nominee, he was dangerous. The L&N would use its influence to try to prevent Goebel from becoming governor. Like the L&N, many people across the state were dismayed at the possibility that the “King of Kenton” could become governor. Election Day was coming.

The risk of losing was too great. Both parties and interests groups would need to find, create, or scare away the votes needed to win. Many predicted that there would be violence and bloodshed on Election Day. On November 6, 1899, the day before the election, the Courier Journal displayed blaring headlines that said, “Threatened Mob and Murder” and “Shameless Advocacy of Riot and Bloodshed By the Organ of the L&N Railroad.” That organ, the Louisville based newspaper, Daily Dispatch, had run stories supposedly “. . . advocating the murder of the mayor, the assassination of the Democratic Officers of Election, and the burning of the (pro-Democratic and pro-Goebel) Courier Journal Building.” Peace in Louisville and across the state was threatened.

Election Day dawned. The Courier Journal’s headline stated, “Bayonet Rule Threatened Over the Election in this City by Republican Governor” and “Soldiers at Covington, Newport, and Lexington.” Democrats feared the Republican Governor would use the militia to intimidate voters and keep them from the polls. Strangely though, the violence never happened. Louisville, like the rest of the state, was calm on Election Day. The militia was only called out once in Louisville, but, having nothing to do, left without doing anything. Unfortunately for the state, the drama was just beginning.

The race appeared tight. Both Republicans and Democrats were confident of their side’s victory, but the election was too close to call. The closeness of the results insured that the Goebel-appointed Board of Electoral Commissioners would have the power to decide the election. The Election Law would surely come into play. On the day after the election, the Courier Journal reported that Goebel had a slim lead of 1,777, with many precincts’ results still missing. Most of those missing were from Republican mountain counties in Eastern
Kentucky. On Friday, in a bold and premature declaration, the *Courier Journal* proclaimed William Goebel the next Governor of Kentucky. The next day, in a not so confident tone, the newspaper reported that the final “result may depend on the contests.” In an election this close, there were bound to be irregularities in some parts of the state.

Despite the calm and peaceful election, there were allegations of fraud and corruption from around the state. In reality, both sides could legitimately claim that they had lost votes through fraud. In the week after the election, the *Courier Journal* reported numerous instances of wrongdoing. In Louisville, Democrats claimed that the L&N Railroad had intimidated voters, kept them from the polls, and brought in hundreds of voters from Indiana. In Eastern Kentucky, Democrats claimed Republicans had used “tissue ballots” that were so thin that one could see the written marks made on them even through several layers of ballots. Voter intent could be seen, and had the potential to intimidate many other voters. On the other side, Republicans claimed the unjust Election Law would be used against them to throw out legitimate returns and steal victory. Regardless of the actual vote tally, the groundwork had been laid for potential contests to the election.

Over the next days and weeks, returns crept into Frankfort. By December, the election was still not final, but the Goebel-appointed Election Board was ready to certify the returns of the election. Hundreds of mountain Republicans, flocked to Frankfort, courtesy of free train rides provided by the L&N, to protect their free right of franchise. They feared their side would be cheated by the Democrats, and claimed they would use “Peaceful means if we can, forceful if we must” to protect their rights. In the midst of this charged atmosphere, something happened that no one expected. On December 8, the Election Board declared Taylor and the Republicans winners, ruling 2-1 in their favor for the offices of Governor and Lieutenant Governor. The board claimed it had no power to throw out any of the contested returns in Louisville or the mountain counties. The results were final. Taylor received 193,714 votes to Goebel’s 191,331. William Taylor was sworn in as Governor and John Marshall was sworn in as Lieutenant Governor on December 12, 1899. This year should have gone to the Democrats, but it did not. Against all odds, a Republican had defeated Goebel and his Election Law.

Unfortunately for the Republicans, the Election Law provided for more than the Electoral Commission to decide the election. The State Board had claimed that they could not throw out any of the election returns; however, the General Assembly had that power and the final say on the election contests. When the body convened on January 2, 1900, it immediately took up the issue of the electoral contests. The law stated that the special contest committee, made up of three Senators and eight Representatives, would decide the electoral contests. The committee would be drawn at random from a box containing the names of all the members of both Houses. In what was likely a pre-arranged drawing, the Democrats received a 10-1 majority on the contest committee for Governor and a 9-2 majority for Lieutenant Governor.
The situation in Frankfort became heated and tense. The Contest Committees had the power to investigate the election contests and make a ruling on them. When hearings began on January 15, there was very little semblance of fairness. The Democrats used the hearings to throw out contested election results in Louisville and many mountain counties. They charged the Republicans of resorting to force and corruption to win the elections. Republicans were furious. Outmanned and outnumbered, the party became desperate. Governor Taylor called upon the militia and the mountain army to protect him and his government. More than one thousand armed mountain men, via the L&N, came to the capitol in order to protect their franchise and to intimidate the contest committee. Democrats armed themselves in response. The committees wrapped up their hearings on January 29 and were ready to make a decision. Frankfort was at the edge of a civil war between the two leading parties. A stray shot could make the conflict explode. Kentuckians waited on the committees’ decisions. Then, the unthinkable happened.

The morning of January 30, 1900, in Frankfort, Kentucky, was unusually quiet. On this cold morning, William Goebel was walking with two friends past the Capitol Building. Suddenly, without warning, shots rang out. Goebel had been shot. The barrel of a Winchester rifle retreated from the window of the Secretary of State’s office. The violence feared for the last week had occurred. Critically wounded, Goebel was taken to the Capitol Hotel to receive medical attention. The doctors stated that the situation was grave and that Goebel would probably die from the wounds.

Word of the event quickly spread around Frankfort. The Contest Committees acted quickly. In a strict party vote, the Contest Committees for both offices ruled in favor of Goebel and Beckham. Their report prompted Governor Taylor to declare a “state of insurrection.” He adjourned the General Assembly and ordered it to meet again in London. Taylor called the militia to prevent additional violence and to block Democratic members of the General Assembly from gathering and voting to uphold the Committees’ decisions. Finding it impossible to meet in one place because of the militia, the Democrats made their way to the Capitol Hotel. Here, Democrats went one by one and signed the Committee’s report naming Goebel Governor. Goebel, lying on his deathbed, took the oath of office from the Chief Justice of the Court of Appeals, James H. Hazelrigg. J.C.W. Beckham was sworn in as Lieutenant Governor.

His law had succeeded. Goebel obtained the office he so fiercely desired at the expense of the will of the people. Unfortunately for Goebel, he would not live long. Goebel died from his wounds on February 3, 1900, becoming the only man in the history of the United States to die as Governor as the result of assassination. While some debate exists regarding Goebel’s final words, the Courier Journal and other pro-Goebel papers reported that his last words were, “Tell my friends to be brave, fearless, and loyal to the great common people.” This message spread across the state. Goebel was a martyr now and symbolic of the honorable Democratic Party. The Democrats who left the party before the election came back. As many have stated, “In death Goebel became what he had never been in life, a charismatic hero, a man worshiped.”
After Goebel’s death, Beckham was sworn in as governor. With this, Kentucky again had two governors claiming legitimate rule. Beckham immediately ordered the militia to disperse and urged Kentuckians to remain calm. William Taylor and the rest of his party were held responsible for the murder in the public’s eyes. Republicans now felt they could not win, and decided not to make a bad situation worse. The Republicans decided not to convene in London, and a peace was struck between the two parties. The courts, it was agreed, would bring this drama to its final conclusion. On February 15, the United States 6th Circuit Court of Appeals remanded the issue to the state courts saying state courts, not federal, should decide the final outcome. Kentucky’s highest court, the Court of Appeals, made its final ruling on April 6. In a bi-partisan decision, the court ruled that the law should stand and Taylor should be unseated immediately. That decision was appealed and made its way before the United States Supreme Court. In Taylor v. Beckham, the Court ruled 7-1 that it had no jurisdiction. The drama was over. The law had accomplished its ultimate goal. A Democrat was Governor.

The state will never know the actual vote tally in the 1899 election. Both parties certainly engaged in activities that changed the actual count. The first count, which showed William Taylor received over 2,000 more votes than William Goebel, might have reflected the will of the people, but, it may never be known. As is clear with the Goebel Election Law, the will of the people did not matter. Kentuckians’ right to vote was voided by the law. This great political drama had produced an assassination, three governors, and had brought the state to the brink of civil war. The Goebel Election Law forever left its scar on the history of Kentucky.

ENDNOTES

1 Hambleton Tapp and James C. Klotter, Kentucky: Decades of Discord, 1865-1900 (Frankfort: Kentucky Historical Society, 1977), 349.


13 *Courier Journal*, February 4, 1900.


15 *Courier Journal*, February 4, 1900.


18 *Lexington Herald*, March 2, 1898.


20 Tapp and Klotter, *Decades of Discord*, 373; Constitution of Commonwealth of Kentucky, Section 90, 1328. The constitutional precedent for the law can be found in the Constitution of Kentucky, ratified in 1891. Section 90 states, “Contested elections for Governor and Lieutenant-Governor shall be determined by both Houses of the General Assembly, according to such regulations as may be established by law.”


22 Ibid., 424.

23 Caleb Powers, *My Own Story: An Account of the Conditions in Kentucky Leading to the Assassination of William Goebel, Who Was Declared Governor of the State, and My Indictment and Conviction on the Charge of Complicity in His Murder* (Indianapolis: Bobbs-Merrill, 1905), 73.
24 Tapp and Klotter, *Decades of Discord*, 373.


26 *Lexington Herald*, March 2, 1898.

27 Tapp and Klotter, *Decades of Discord*, 373.

28 Ibid., 416.

29 Clark, “The People, William Goebel, and the Kentucky Railroads,” 38. The debate between free-silver and the gold standard surrounded whether the dollar in the United States would be based on gold, as it had been in the past, or expanded to be based on silver and other precious metals. Free silver would devalue the currency. This measure was popular with farmers because it had the potential to benefit their industry, ease payments, and reduce their debt.

30 Short, *Caleb Powers*, 70.


34 Ibid., 432.


36 *Courier Journal*, November 6, 1899.

37 Ibid., November 7, 1899.

38 Ibid., November 8, 1899.

39 Tapp and Klotter, *Decades of Discord*, 441.

40 *Courier Journal*, November 8, 1899.

41 Ibid., November 10, 1899.

42 Ibid., November 11, 1899.

43 Ibid., November 13-19, 1899.


45 *Courier Journal*, December 5, 1899.

46 Tapp and Klotter, *Decades of Discord*, 443.
47 *Courier Journal*, December 8 and 13, 1899.


49 Tapp and Klotter, *Decades of Discord*, 449.

50 *Courier Journal*, January 17-29, 1900.


52 *Courier Journal*, January 31-February 1, 1900.

53 Tapp and Klotter, *Decades of Discord*, 449.

54 *Courier Journal*, February 4, 1900; Tapp and Klotter, *Decades of Discord*, 450. The other version of his last words was, “Doc, that was a damned bad oyster.”

55 Tapp and Klotter, *Decades of Discord*, 450.

56 *Courier Journal*, February 4, 1900.

57 Ibid., February 5-6, 1900.

58 Ibid., February 15, 1900. The Chief Judge was future President and United States Supreme Court Chief Justice William Howard Taft.

59 Tapp and Klotter, *Decades of Discord*, 452. The decision was 6-1, with two Republicans switching sides.

60 *Taylor v. Beckham*. Appendix B, Woodson, *The First New Dealer*, 275. It should be noted that the one dissenting opinion was from Kentuckian John M. Harlan, twice the unsuccessful Republican nominee for the Kentucky governorship.
“Some of them ventured so far as to examine the texture of my clothes; but many of them were still very suspicious; and when by accident I happened to move myself, or look at the children, their mothers would scamper off with them with the greatest precipitation.”

Much like the African villagers’ fascination with explorer Mungo Park, Europeans who read of his travels and heard of his adventures poked and prodded his life. Park’s readers—which were much of Great Britain during the beginning of the nineteenth century—extracted bits of inspiration and enlightening knowledge from his writings. His book, *Travels in the Interior Districts of Africa*, was a breakthrough account of the Niger region of West Africa. It shed light upon the true nature of ‘Negro’ society, culture and customs and inspired the British to view the ‘African’ differently. Yet the events of his later life, and more importantly his own attitude, contradicted this and unconsciously undid some of the progress made by his travel writings.

Mungo Park was born in 1771, the seventh child of thirteen to a Scottish farmer. He studied medicine at the University of Edinburgh, though he was interested in botany. After his studies he moved to South London where he was introduced to the celebrated naturalist, Sir Joseph Banks. Banks was best known for sailing the Pacific with James Cook, and promoting the natural sciences and exploration. When Banks observed Park’s interest in these things he arranged for him to travel as a surgeon on a British East India Company ship headed for Sumatra in 1792. After Park’s return in 1794 he sought to offer his services to Bank’s newly formed organization, the “Association for Promoting the Discovery of the Interior Parts of Africa,” or more commonly known as the “African Association.”

The Association’s only specific mission was to solve the question of the Niger River in West Africa. Virtually nothing was known of the river; only that it was said to connect the trade city of Timbuktu to the West African coast. The Association’s inquiry was to the river’s location, termination, and direction of flow. The information they had, at their formation, was based upon past explorations dating as far back as the sixteenth century.

The Portuguese had been the first to explore the African Coast, and by 1550 they had established strategic posts on both the Atlantic and Indian Ocean. Other Europeans were very quick to follow and by 1650, England, France, and Holland had established trade with West Africa. The first real account of the exploration of the West African interior was from Paul Imbert, a Frenchman, who in 1618 wrote of his journey from Morocco to Timbuktu. In the same year Englishman David Thompson trekked up the Gambia River, and two years later Richard Jobson succeeded in gathering more information about Timbuktu along that same river. Between 1650 and 1750 the trade routes along the Senegal were claimed by the French, while the British claimed the Gambia River route.
From 1700 to 1750 many books were written on Africa and by the end of the Seven Years’ War (1763) there was a growing interest in the unknown regions of the world and the use of a scientific approach to explore them. This was the purpose of the African Association, and they were one of the first organizations to promote this method of discovery.

Before Mungo Park, four others attempted to map the Niger, but of these four only one survived to bring back his account. Simon Lucas started from Tripoli in 1788, heading to Frezan and from there to the Niger. His counterpart, John Ledyard, was directed to go to Cairo, through Nubia and then across the continent. Lucas turned around one hundred miles from Tripoli, but he had obtained information regarding the Saharan trade routes. Ledyard unfortunately did not make it out of Cairo before he died of illness. The Association sent Friedrich Hornemann to attempt the Egypt route in 1789, but he was sidetracked to Tripoli for a time. When he started again for the Niger he died mysteriously between the desert and his destination. The last explorer before Park was the most productive of the four, as he was able to send information back to the Association as he traveled.

This explorer was fifty-year-old Irish Army Major Daniel Houghton who asked the Association to sponsor an exploration using the Gambia as a route to the Niger. He wished to discover Timbuktu and another city, called Houssa, known for its trade. Houghton was the first Association explorer that received the orders to gather information on the rise, course, and mouth of the Niger; they also gave him a very long list of questions that they wanted answered about the surrounding nations and natives. Although he was murdered by the Moors in 1791, he did discover that the Niger was not part of the Senegal River as had been believed by some. This information was helpful to Mungo Park.

When Park offered his services to the African Association in 1794, he did so because he realized that he “had a passionate desire to examine into the productions of a country so little known; and to become acquainted with the modes of life, and character of the natives.” His attitude was that of an anthropologist. The Association’s requirements mirrored those given to Major Houghton, but they were interested in the nations and their culture as well. Park’s first expedition will be explained in detail as it regards his account later in this paper, but the basic events occurred as follows.

Park departed Portsmouth, England on the 22nd of May 1795, and on July 5th arrived at the River town called Pisania along the Gambia. There he stayed for five months learning the Mandingo language and gathering information of the nations he would be visiting. When he departed from Pisania he was robbed many times, mostly by the kings he encountered. He was captured by the Moorish chief Ali in Benown and held for three months, but he escaped and continued on to find the Niger. At the riverside city of Silla, he decided to turn back. He dreaded the Moorish country before him and had no money left to support such travel. On his return he fell ill and a native slave trader, Karfa Tawa, offered him aid and passage back to the coast on his slave caravan. Park returned to Pisania June 10th 1797.
Park only accomplished part of his mission; he discovered where the Niger lay, and which direction it flowed (to the East), but his real success was his book. What set his book apart was its honest, pity-free, and balanced observations of African life. Simply put, Park took everything in and wrote open-mindedly. The aesthetic appeal was described by English historian Nicholas Howe as resembling Daniel Defoe’s *Robinson Crusoe*, and he established that both narrators’ voices are similar. Park succeeded in creating an honest account, without unnecessary embellishment, but with the excitement of a novel. At that time, tales of exotic places like the aforementioned Crusoe were growing extremely popular. *Travels in the Interior Districts of Africa* was published in 1799 and the first edition was sold out at 1500 copies within a month. It went into second and third editions quickly, and a fourth edition was printed in 1800. The public was receiving his message, and its popularity proved that it was being accepted.

What were Park’s messages? What did he present that would cause the average Englishman to think differently of Africa? When considering accounts of Africa, the slave trade cannot be ignored. Most early accounts came from Englishmen. Of course, as the slave trade became more and more important to European markets and economies the travesty of its methods were easier to overlook. The slave traders’ attitudes stemmed from their interaction with the already well established African slave trade; people who sold their own kind into slavery and lived in such a hostile climate. The general image that was received from early accounts was of “depravity and instability.”

The majority of the accounts before Mungo Park’s *Travels* were negative towards Africa, and in fact, some see Park’s story as the turning point in African accounts. School children were exposed to the idea of Africa as a savage continent. *A New and Easy Introduction to the Study of Geography by way of Question and Answer, Principally Designed for the Use of Schools* said that the African people spent their time looking after their camels and fighting lions. A letter from the Fourth Earl of Chesterfield to his son called the Africans “the most ignorant and unpolished people in the world, little better than the lions, tigers, and leopards and other wild beasts, which that country produces in great numbers.” This letter was later published and widely read and accepted. James F. Barbot, a trader, called Africa a “wild savage country” with “woods pester’d with robbers” and “ravenous wild beasts.” Park’s travels and writings could do quite a bit to improve the attitude that the British held towards Africa.

Park knew that the subject of slavery was of high interest in Britain at the time, and this might have influenced some of the focus on his descriptions of the slave trade on the continent and on the ship that he took to the West Indies. In his description and implied opinion of the slave trade, a reader can see how objective Park was as an observer. He was clearly horrified by the method and manner in which slaves were treated, but he was of the belief that the institution was foundational to African society and if stopped would bring upheaval. Though this might have discouraged a few anti-slavery readers, he was not writing to change society. It was the small details, and his attitude towards the African people that was important. It can be said with confidence that *Travels*
had a part in ending the slave trade in the British Empire. It should also be noted that one of the leaders of the anti-slavery movement, William Wilberforce, had a membership in the African Association.26

The simplest way that Park’s observations were so revolutionary was in his description of the culture, industry, and governments. At the beginning of his journey, he encountered the Feloop people who are gloomy and unforgiving, yet he explained why they might be that way and also talked of their loyalty and gratitude to their benefactors.27 He described the Jaloffs as quick tempered and excellent textile manufacturers, completing the entire task from spinning to dyeing.28 Park was especially interested in the people who spoke the language he had learned from Dr. Laidly in Pisania, the Mandingoes. He explained that while most of the Mandingo states were monarchical, the king could not declare war without conferring with a council of elders. He was excited to find that their justice system resembled that of Great Britain’s in their use of lawyers, most of whom actually studied the law as a profession.29 While he was in Pisania he observed the corn harvest, which was almost exactly like the British in the method used to clear the chaff from the wheat.30

Park’s real adventure began when he left Pisania in December of 1795; he first encountered benevolent King Fatta of Woollni who offered him safe passage, provisions, a guide through his country, and his own personal prayers for safety. Here Park also discovered that the Foolah malted whiskey exactly as the British did, and he expressed a partiality for the Foolah’s version of it.31 By detailing the African customs and the king’s behavior, Park presented them as human beings, and not beastly people who could have no meaningful relationships.32

Of course not all the Negro kings Park came across were kind. Park encountered men, especially kings, that he had to work very hard to please. One king was so pleased with him, however, that he gave Park many provisions. Shortly after this he was robbed, but he did not resist knowing that it could come to a deadly end. Park and his traveling companions decided to go hungry for a day instead of risking being robbed once again, and a kind Negro woman took pity on them. In passing she found them hungry and without hesitation gave them some of her ground nuts.33 After this, Park witnessed the homecoming of a villager after a four year absence, and he showed his love for the Africans in the following passage. “I was fully convinced, that whatever difference there is between the Negro and European in the confirmation of the nose and the colour of the skin, there is none in the genuine sympathies and characteristic feelings of our common nature.”34

Park was repeatedly robbed throughout his journey. He gained supplies and gifts from kind kings, only to lose them to bandits and greedy kings. This contrast showed how the entire continent and people could not be judged hastily because of a few bad figures. Before entering the Moorish country, Park discovered the fate of Major Houghton. He had been tricked by the Moors into taking the wrong route and died of either starvation or at the hand of the Moors.35 Because of this and other reports Park dreaded crossing Moorish territory, but he crossed the frontier in February of 1796. The Moorish King Ali heard of him right away and sent a boy to bring him to their camp ‘safely.’ Even
with this boy he was robbed, and then to make a bad day worse he was held against his will in Ali’s camp at Benown. It was unclear what the King wanted with Park, but near the end of his captivity—which lasted for three months—he heard of plots to kill or maim him. Park escaped one night, and was once again robbed in the process. In classic Mungo Park form, he excused their behavior, gathering that they treated him cruelly because he was a stranger and a Christian, and he believed that the Moors hated the Negros because of their own ‘superior’ ability to read and write.36

In his escape Park had to go hungry and at one point fainted from it. Once again, he was saved by a kind poor Negro woman. Every time Park encountered the type of African to strengthen the European stigmas about Africa, shortly afterwards he was saved or aided by the kind of African that would make the Europeans rethink their idea of the Negro.37 Another example of this occurred when he once again had no food and no shelter while waiting for King Mansong of Segu to allow him an audience. A Negro woman fed him and gave him lodging in her hut.38 When he reached the city of Silla on the Niger, he decided that the dangers from the Moors and his lack of provisions were too great to continue, and he began his return journey. Kindness was again shown to him when Karfa Tawa, the slave trader, gave the ailing Park passage and care on his slave caravan. He returned to Pisania on June 12th 1797, but the only ship available was a slaver bound for the West Indies. Thus he made the Middle Passage to catch a ship bound for England from the West Indies. His trip on the slave ship gave him insight into the treatment and condition of the slaves, and these references would later be used in debates protesting the institution. Historian Peter Brent commented that, “It is a wonder that its publication did not bring an abrupt end to European support for slavery.”39

Upon Park’s return the Association received a brief of his trip, and all were pleased with his findings. One can only imagine that because of Park’s steadfast nature and persistent mind he was a bit concerned at his failure to make it to Timbuktu and to discover the headwaters of the Niger. He was gratified when the Association expressed their deep pleasure with the information he had gained. The official record of 26th of May, 1798 reported, “Mr. Park has obeyed his instructions as far as was practicable, and executed the purpose of his mission with a degree of industry, perseverance and ability that entitle him to the warmest approbation of this Association.”40 Park published his book and lived in Peebles, Scotland with his new wife and worked as a surgeon. It was clear that at this time he was not happy with his profession. He kept a close eye on the Association’s work, which was minimal at the time due to the war with France.41

The African Association used the war to justify a request for government funding for another trip to the Gambia and Niger. There had been some activities that suggested that France was trying to expand into the Gambia. Park was asked to lead an expedition of twenty-five or so soldiers. To secure his place as military commander he received a temporary commission as a Captain.42 The nature and attitude of his second trip was beginning to show in the early stages to be polar opposite from his last venture, and his focus on firepower
rather than passive acquiesces would hold on throughout the journey. Historian George Shepperson called it the foreshadowing of an army coming to conquer the African lands. There was more at work than his love for travel influencing his journey. His later actions showed that his motives went far deeper than this. It could also be said that his failure on his first journey heightened his desire to finish what he had been sent to do. Perhaps Park did not feel like he had failed, but as though his work was incomplete and therefore, his life was as well.

Park, with thirty-four soldiers and four carpenters, left Pisania on May 4, 1805. Park wrote in some of the notes that survived that he “desired that the soldiers might have on their pouches and bayonets, and be ready for action at a moment’s notice.” He was grateful for the soldiers, but he would not take care of them as they trekked through the African wilderness. They started losing men at the very beginning of the trip, some from illness and others from exhaustion. He ignored the inhabitants and used firepower to get them out of many situations. This was out of character for Mungo Park who had held the policy of appeasement, and held foreign cultures in high respect. Another attitude that was different from his first journey could be seen when he began naming features of the land. In his 1795 trip Park would have instead gone to the Africans to learn their names, and he would have respected the language that had been there millennia before his own. The reason for this may have been the desire to see his goal met, and he did not think he had time to learn anymore about African culture.

When Park finally reached the Niger he had lost three quarters of his men, leaving him with six soldiers and one carpenter to build the boat that would take them the rest of their journey. On September 26, 1805, this small party left Segu to sail down the Niger. Early in October two more men were lost near Silla. Turning back there, at the same town he had ended his travels in 1795, would have been a humiliation. So they continued on. During their time on the river, Park decided to ignore those along the bank and chose to shoot his way out of every slightly intimidating situation. This created many enemies, and many resented the white man using the river as a free travel route when, in fact, it was considered a toll road. The last written entry by Park was of the party, now down to five men, leaving the town of Sansanding.

Remember that on his first trip Park had defied his predecessors and proved to Great Britain that one could survive Africa. This was just as important of an achievement as his book. This makes his death, which was speculated over in the years following, influential to the British mindset. The tale that was most commonly accepted and widely circulated came from a Negro named Isaaco who was sent to find out what happened to Park. He came across another of the party, Amadi Fetouma, who had been Park’s guide. When the party reached Yauri he set Amadi ashore, as this was where they had agreed he would leave the expedition. The King of Yauri was angered when Park left immediately without paying the toll, and the King put Amadi in prison and sent an army to ambush Park’s canoe at Bussa, down river. At the Bussa rapids Park and his men put up a fight, but they ended up abandoning their canoe and drowning in the river.
It was quite predictably, the story of its time. Africans murdering the unsuspecting Mungo Park played along with the slowly fading British attitude towards them. Another explorer, Hugh Clapperton, later went through the region inquiring after Park’s death and was told that the people of Bussa had been the culprits, not the army of Yauri. He found that there were some problems with the original story. First of all, the army of the King of Yauri would have had to trek 64 kilometers on rough terrain to lay in ambush for Park who was traveling on the river. It would have been nearly impossible for them to reach the Bussa rapids first. Second, Bussa was a kingdom of its own, with an army of its own, and would not have tolerated the army of Yauri tramping across their border. Historian Derek O’Conner suggested instead that perhaps Park had angered the King of Bussa, and it was the Bussa army that had met them there. He wrote Amadi’s account off as an angered imprisoned man who wanted to put the blame of his benefactor’s death on his captors.48

This, however, is contradicted by a story told by District officer of Yelwa Nigeria, Mr. J.C.O. Clarke in 1913, and related in a letter from W. Hamilton Browne, Secretary of the Northern Provinces of Kaduna, to Viscount Milner, secretary of state for the colonies. Clarke uncovered a tale from the Sark (King) of Bussa that many years before a white man had been traveling down the river and had given the Sark of Bussa a ring made from a gold coin as a gift. Every Sark had worn the ring ever since, and the story goes that the white man drowned in the rapids after returning to the river. If this white man was Mungo Park, it would be improbable that the King of Bussa had sent his army to ambush the giver of such a revered item.49 Besides identifying the ‘white man,’ there is another problem with this story, why would Park have stopped in Bussa, after avoiding every other city including Timbuktu? The answer might be that since Bussa was out of Moorish territory and a Negro city, Park might have relaxed as it was clear he trusted the Negroes.50

If this was true, then how did Park die? There are many incomplete rumors all easily disproved, but many of them have two things in common. They all say that Park died from drowning—not battle—and that the natives of Bussa witnessed his death. There is another account that was gained by M. Cameron Blair while he was quartered on Jebba Island with his northern Nigerian regiment. On Jebba Island Blair met two aging Nigerian natives who were indignant that blame for Park’s death had been placed upon the African people. They had heard the story from their fathers who had witnessed Park’s death themselves. Their fathers told them that word had been traveling of a white man who was coming down the river knowing nothing of the rapids ahead, which took skill and knowledge to pass through. They rode out to meet him, but he took their signals as those of hostile intent and ignored them to his own demise upon the rapids.51 Of course, there are a myriad of possibilities, but the basic idea that Park’s own pride and arrogance caused his death was the important fact missed by the British.

Rumors of Park’s death reached the West Coast of Africa in 1806, and it took until 1809 for a newspaper to carry the story, but it was one which circulated through many a household in Britain. Thankfully, the idea of
the African barbarians murdering Great Britain’s beloved explorer did not completely undo his previous breakthrough with his book. His account, now largely unknown, was beloved and read for many years. Mungo Park’s tragic death did not overshadow the unique treasure of *Travels in the Interior Districts of Africa* which would have one of the greatest positive influences coming from a traveler’s account.

ENDNOTES


5Ibid.

6Mary Louise Pratt, “Chapter 4: Anti-Conquest II: The Mystique of Reciprocity” in *Imperial Eyes* (New York: Routledge, 1992), 70.


12Hallett, *Records of the African Association*, 120.


18 Hallett, *The Penetration of Africa*, 243-244.


20 Ibid., 3.


22 Ibid., 128.


28 Ibid., 17.

29 Ibid., 18-20.

30 Ibid., 10.

31 Ibid., 36-42.


34 Ibid., 82.

35 Ibid., 103-104.

36 Ibid., 114-164.


41Ibid., 322-323.

42Ibid., 329-331.


45Ibid., 141.

46Ibid., 147-156

57Ibid., 159.


Article IV, Section 4, of the United States Constitution, the “guarantee clause,” could have been a cornerstone of the young American nation. These sixteen words, properly utilized, could have impacted government in many ways, including, in several instances, the individual’s right to vote. Despite the potential impacts, the Guarantee Clause has never been given the opportunity to support the republic and its citizens’ right to vote, though a number of people have tried to use it. This clause has a history of missed opportunities and might-have-beens spanning the history of the United States.2

Merriam-Webster Collegiate Dictionary defines “republican” as “of, relating to, or having the characteristics of a republic or to favor, support, or advocate a republic.”3 The same dictionary defines “republic” as “a government in which supreme power resides in a body of citizens entitled to vote and is exercised by elected officers and representatives responsible to them and governing according to law.”4

What is the Guarantee Clause? It is the only restriction in the Federal Constitution on what form or structure the individual state governments should have.5 The clause is the only place in the Constitution where the words “republican” and “guarantee” are found, making it the sole site in the document directly allotted to republicanism.6 As interpreted, the Guarantee Clause has become the least important of all the constitutional provisions for one of two reasons: either the state governments almost never stray from the concept of republican government or the federal government has been lax in its duty to enforce the clause as a part of the Constitution.7

What is the Guarantee Clause supposed to do? It permits the general government to suppress any rebellion or insurrection in the states, as well as forestall any relapse by any state government to a monarchic or aristocratic form of government. The relapse was a real concern for many of the writers of the Constitution in the years following the American Revolution.8

Subsequent conflict has periodically produced many shifts in political thinking; the Dorr Rebellion in Rhode Island was no exception. It brought to the public mind a problem that had not been fully considered before: who is really in charge? In 1842, Rhode Island still had not ratified (or attempted to draft) a state constitution. The state was still operating under the royal charter granted by King Charles II in 1663. This charter had not had a single important update since 1663.9

Under this “charter government,” suffrage was restricted to the male owners of at least (the equivalent of) one hundred thirty-four dollars of real estate and their oldest sons.10 Compounding the problem was that the charter
decreed that the lower house of the state legislature would be composed of two representatives from each town, with the exceptions of Newport (six delegates) and Providence, Portsmouth, and Warwick (each with four delegates each). The great surge in manufacturing facilities in the northeast from the 1780s to the 1840s, combined with the influx of Catholic Irish and French-Canadian immigrants into the cities of Rhode Island, exacerbated the malapportionment. For example, in 1840 Providence, the population per delegate was 5,793 to 1 (and they had four). By comparison, the ratio in 1840 Jamestown was one hundred eighty two to one. This great a disparity, combined with the great disenfranchisement of Rhode Island men, meant that change was inevitable, one way or another.

The Dorr Rebellion began as a political movement to remedy the injustice of living under the charter of a British king for sixty-six years after the American states had been granted independence and to grant all white men in the state suffrage. These political activists met in Providence, Rhode Island, on Monday, November 1, 1841, for the purpose of drafting a new state constitution and presenting it to the people (white males) of Rhode Island for passage. The drafters of the new document hoped that, once the new state constitution was approved by a majority of the people, officials of the old charter government would step aside gracefully and allow the new constitutional government to take its place.

Once the constitution was passed by a majority of the people, they proceeded to elect state officers under the new constitution, and Thomas Dorr (leader of the rebellion) was elected governor. The new legislature existed for an entire two days before it adjourned and did not attempt to enact any new laws. Dorr’s Rebellion began and ended almost in the blink of an eye. Arms were acquired by those favoring a new constitution, martial law was declared in the state by the charter government, and the insurrectionists went home. Thomas Dorr fled to New Hampshire for a time, but returned to Rhode Island and was tried for treason in 1844. One of the Dorr supporters, Martin Luther, did not leave Rhode Island after the failed coup. He returned to his home to find it ransacked by police forces and torn apart. Believing himself a victim of injustice, Martin Luther sued Luther Borden, the police officer responsible for the break-in. In 1848, United States’ Supreme Court Chief Justice Roger Brooke Taney found documentation in the case of *Luther v. Borden (Luther)* on his desk waiting for him.

The premise of *Luther* was simple: Luther alleged that, since the government that created the police force and hired the police officer who ransacked his house was un-republican in form (remember the serious malapportionment and disenfranchisement), Borden had no right to trespass against Luther’s home. The broad question before the Court became: which government of Rhode Island was the legal one?

It is here, in *Luther*, that the foundation of what would become known as the “political questions doctrine” first surfaced. In the resulting decision, Chief Justice Taney, writing for the majority, understood the claim that Luther was bringing, but was hesitant to act on it. Taney wrote, in his opinion, that the
power to recognize the legitimate government of a state rested with Congress, and that Congress must first recognize a state (giving it legitimacy) in order to establish republicanism. He further quoted from the Militia Act of 1795, stating that the power of deciding whether to call out state militia to support a recognized state government in order to suppress a rebellion (a political act) lies with the President of the United States.

What became the political questions doctrine was outlined here: the Supreme Court had no ability or jurisdiction to rule on a question of politics (such as the legitimacy of a government); the Court was to rule only on constitutional questions. As such, the Guarantee Clause became non-justiciable. The means of acting under Article IV of the Constitution was left to the “political departments” of the executive and the legislative branches of government, with their decision binding on all other areas of the government, including the judiciary.

In 1843, Rhode Islanders adopted a new state constitution and elected a new government to serve under it. This new constitution granted universal male suffrage to citizens of that state. After the Court’s opinion was handed down, the Guarantee Clause debate faded into obscurity for nearly two decades. The Court had made its decision, and there was nothing else to be done. Congress and the President were in charge of political questions. In making this decision, the Supreme Court cracked a door that would not be opened until the American Civil War, clearly assigning Congress the power to recognize a state. In effect, Chief Justice Taney handed the “political departments” of the federal government and all three branches of state and local governments the keys to the kingdom in the period of history that followed. He could not have predicted that another shift in political thinking was on the horizon.

Few, if any, eras in the history of the United States have brought about more turmoil and change than the War between the States of 1861 to 1865 and the period of Reconstruction that followed. As early as 1862, sharp differences began to appear among Union (Northern) officials as to what the Reconstruction of Southern states would be. As the war dragged on month after month, year after year, the various opinions became sharper and more divided.

Those differences in opinion over what form Reconstruction would take in the states opting for secession led to a showdown between President Abraham Lincoln and the Radical Republicans in Congress, who were headed by Senator Charles Sumner of Massachusetts and Representative Thaddeus Stevens of Pennsylvania. President Lincoln believed that the states had not really seceded from the Union, and proposed his lenient ten-percent plan as a way to heal the wounds between North and South. Representative Stevens insisted on treating the “insurgent states” as “conquered provinces” and forcing them to apply for re-admission to the Union. This also had the added benefit of cutting the White House completely out of Reconstruction policy. Senator Sumner took the most radical stance. He introduced a motion into the Senate that “through acts of secession and treason, they [the Southern states] had committed suicide” and that “the land and inhabitants of these former states should fall back under the exclusive jurisdiction of the Congress.”
The Wade-Davis Bill, introduced in 1864 by Senator Benjamin Wade (Republican, Ohio) and Representative Henry Winter Davis (Republican, Maryland), is the best known expression of legislation demonstrating the congressional belief that Congress, not President Lincoln, would be in charge of Reconstruction. The Bill was short, to the point, as harsh as its authors could make it, and the first of its kind to embody the views of Congressional Radical Republicans regarding what would become Reconstruction. The Wade-Davis Bill stipulated that the seceded states were, in fact, no longer in the Union but gave up Sumner and Stevens’ desire for territorialization in favor of a guarantee to protect a republican form of government.

Much of the Bill in question describes the “proper” manner that the seceded states should reestablish a republican form of government. For example, in contrast to President Lincoln’s plan, a majority of fifty percent among white adult males would have to swear an oath of loyalty to the United States before that state could form a Convention and elect a government. There are two areas of this specific Bill that concern the topic at hand: disenfranchisement and representation.

Had this Bill been signed into law by President Lincoln, two things would have happened. First, in the given state, any person who had held or exercised “…any rebel office, civilian or military, would be unable to vote for, or be a member of the legislature or governor.” Following the passage of this Bill, every person who held an “…office, civil or military, except offices merely ministerial, and military offices below the grade of colonel, in the rebel service, state or confederate, [would be] declared not to be a citizen of the United States.”

Secondly, any state government that refused to end “involuntary servitude,” guarantee the freedoms of all people living in the state, and offer equality in law would be considered not to have a republican government and would be denied representation in the United States Congress until such a time as a republican government was created. The authors of the measure believed that Article I, Section Five, Clause One of the United States Constitution which states that “each House shall be the Judge of the Elections, Returns, and Qualifications of its own members…” gave them the power to enforce this plan.

The Wade-Davis Bill passed through both houses of Congress, ironically on Independence Day, 1864, and was sent to the White House for President Lincoln’s signature. The differences in this legislation and Lincoln’s own Reconstruction plans led him to allow the congressional session to end without signing the Bill (a pocket veto). As there were less than ten days in the session when the Bill was submitted, the measure failed.

It is a strange occurrence that a failed congressional measure would provide such a unique insight into not only another aspect of the Guarantee Clause but also the right to vote from the Radical Republican viewpoint. Most of the time, it has been the Supreme Court of the United States that looks at claims regarding the Guarantee Clause. In distinctly writing that it would be the “United States” guaranteeing republican governments, some historians believe that any branch could potentially rule on the Clause. Lending weight to this argument is that
the Guarantee Clause is not found in Article I (powers and responsibilities of Congress), Article II (powers and responsibilities of the President), or Article III (powers and responsibilities of the judiciary) but in Article IV, the section describing the relationship between the federal government and the states.35

Examining the right to vote and the Wade-Davis Bill, Congress was willing to disenfranchise thousands of people in the service of the Confederate States. In addition, members of the congressional majority proved willing to deny congressional representation if millions of former slaves were not granted their rights and suffrage. This Bill was pocket-vetoed by President Lincoln in July of 1864, and, instead, the people of America received the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution in its place. Of these, the Fourteenth is of particular importance. It would be the “equal protection” clause of that amendment, in addition to the already established political questions’ doctrine, that, in practice, took the place of the Guarantee Clause as the United States continued its journey to the future.

Following Reconstruction and its turmoils, a new movement began to take shape in the succeeding century across many states. Tired of not having a voice in government at the state and federal levels, many people began advocating new types of direct voting such as the initiative (a petition signed by a certain minimum number of registered voters can force a public vote) and the referendum (direct vote in which an entire electorate is asked to either accept or reject a particular proposal.)36 These innovations sometime came into direct conflict with proponents of the Guarantee Clause.

After long and arduous debate over the merits and problems associated with direct democracy, Oregon led the nation by becoming the first state to allow the referendum and the initiative in 1902, by a vote of 62,024 in favor and 5,668 against.37 The measure amended Article I of Oregon’s state constitution to read: “The people reserve to themselves power to propose laws and amendments to the constitution [of Oregon] and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly.”38

Things proceeded well until June 1906, when Oregon voters passed a gross earnings’ tax on the express, telegraph, and telephone companies then operating in Oregon, by a vote of 70,872 to 6,360. At the time, the tax impacted only one company operating in Oregon: the Pacific States Telephone and Telegraph Company (PT&T).39 Like all other past and current corporations, PT&T resisted the added tax.

Pacific States Telephone and Telegraph Company v. Oregon (223 U.S. 118, 1912, Pacific States) was presented to the United States Supreme Court in November, 1911, for argument.40 Legal counsel for PT&T argued that direct democracy violated the Constitution’s Guarantee Clause because the initiative and referendum did not allow the legislative assembly to represent the people.41 Oregon litigators argued that each state should determine its form of republican government. The latter also pointed out that the state’s legislature had not been dissolved, it merely had augmented Oregon voters.42
Chief Justice Edward D. White, writing the opinion for the Court, wrote “This case comes to the single issue whether the enforcement of that provision [direct democracy in Oregon’s constitution], because of its political character, is exclusively committed to Congress, or is judicial in its character. Chief Justice White also held that the initiative “…is in contravention of a republican form of government…” and that “…representative assemblies [have] the power to make the laws….the legislature[s] are destroyed by the initiative.”

By unanimous vote, the Supreme Court ruled (as it had earlier in *Luther v. Borden*) that the ultimate authority for deciding if a government is established and republican resides with the Congress of the United States. Chief Justice White also ruled in the *Pacific States* opinion that “…when senators and representatives of a State are admitted into the councils of the Union (Congress), the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority.”

In agreeing that the initiative and the referendum were antithetical the Guarantee Clause and therefore a violation of the Constitution, the Chief Justice might have provided adherents an opportunity to define the Clause. Instead, he reaffirmed the *Luther* decision and passed the responsibility to Congress. Officially, the case was dismissed for “want of jurisdiction,” meaning the Court had no ability to rule on the case. Many constitutional scholars now believe that the “constitutional order” might have been clearer had the Court provided a definitive definition of the Guarantee Clause. Currently, the Clause is difficult to understand because of the many differing opinions from state courts.

*Pacific States* remained the foremost law concerning the relationship between the political question doctrine and the guarantee clause for over fifty years until its authority was weakened by *Baker v. Carr* half a century later. The *Pacific States* opinion was consistently and subsequently read as a blanket prohibition of lawsuits challenging legislation for depriving any state of a republican form of government.

If Chief Justice White believed that forms of direct democracy violated Article IV, Section 4, why did he reinforce the *Luther v. Borden* decision? First, the ruling in *Pacific States* could have brought the Supreme Court into a political confrontation with Congress. Second, the insertion of the judiciary into the debate over direct democracy might also have brought it with President William Howard Taft, and as well as the Sixty-Second Congress and into crossfire between the latter two branches.

In this instance, the right to vote was extended, first in Oregon, then to other states, because the Supreme Court refused to get involved in the political turmoil between the White House and Congress during the winter of 1911-1912. Chief Justice White held that direct democracy was not compatible with the constitutional protection of republicanism and would destroy the legislatures of the states accepting the changes. For all that, however, White upheld the contention of previous courts that the Guarantee Clause was off limits to the Court. The right to vote was extended through this case but possibly to the point of violating the Constitution.
Moving forward, the 1960s represented a unique and strange time for the United States. Love was in the air, individuals were attempting to levitate buildings, and people began to realize their right to vote was not what it once was. In 1960, Tennessee districts that held thirty-seven percent of the population of the state elected twenty of the thirty-three state senators. Districts with forty percent of the population elected sixty-three of ninety-nine state representatives. Such disproportionate state representation was a blatant violation of the Tennessee State Constitution, which specifically provided that the state legislative districts would be redrawn every ten years. In 1962, this had not been done since 1901.51

Charles Baker of Memphis, Tennessee, the state’s most populous city, realized that his vote did not carry the same weight as votes from across the state and decided to do something about it. In 1961 he sued the Tennessee Secretary of State Joseph Carr in federal district court. The lower court ruled that it had no jurisdiction to get involved in state political affairs.52 Baker eventually appealed to the United States Supreme Court and, in 1962, he got his day in court.53

*Baker v. Carr (Baker)* is strange in that the case was brought to the Court under the “equal protection” clause of the Fourteenth Amendment, not the Guarantee Clause of Article IV, Section Four, yet the case had a great impact on the clause and the political question doctrine that had guided the Court since *Luther v. Borden*.54 This case is also the first time where the Court conceded that the right to vote is necessary in order to have a republican form of government.55

Associate Justice William Brennan, writing the opinion for the majority (six to two with one abstention) reformulated the political question doctrine by introducing a new six part test designed to establish the justiciability of a case outside the framework of *Luther*. In creating the test, Justice Brennan and the Court believed that the federal courts should become more “intricately entangled” in politics and stop letting such problems as the deplorable malapportionment in Tennessee slide by the Congress.56 Brennan further stated that the political question doctrine applied “only to the relations of the federal judiciary to the President of the United States and Congress, not with the state governments.”57

Even though he created a new political question doctrine and favored inserting the Court into more political matters, Justice Brennan wrote in his opinion for *Baker* that challenges to malapportionment were justiciable if brought under the “equal protection” clause, not under the Guarantee Clause.58 The Supreme Court used the Equal Protection Clause to strike down the greatly malapportioned Tennessee legislature, even though the case might have been heard under the provisions of the Guarantee Clause.59 Associate Justice Felix Frankfurter later said that the *Baker* case was a “Guarantee Clause claim masquerading under a different label.”60 The refusal of the Court to ground not only *Baker* but subsequent reapportionment cases in the Guarantee Clause set the latter once more at the fringes of constitutional study and development.61

Where is the Guarantee Clause today? It is still unused but has its proponents, notably former Associate Justice Sandra Day O’Connor of the
United States Supreme Court. In a 1992 case, New York v. United States, O’Connor did two unusual things in writing her opinion. First, she quoted from secondary sources (law journal articles, as well as Gordon Wood’s Creation of the American Republic), almost unknown at the time in a Supreme Court decision. Second, she wrote that people should demand a case be heard under the Guarantee Clause to force a decision on what exactly it is. She remarks that the Guarantee Clause cannot be challenged in the courts, but that view has not always been accepted.  

Even now, nearly two decades after the O’Connor efforts, the Guarantee Clause has never been applied to uphold the values of republican government, among the most important of which could have been, but was not, the right to vote. The Guarantee Clause was relegated to a back-stairs role in Luther v. Borden, a potential right to vote case; Congress was unsuccessful in using the Clause to force Reconstruction policy into the Capitol Building, the Pacific States Telephone and Telegraph Company had to pay their taxes levied under an initiative, and the Tennessee legislature was reapportioned because of the Equal Protection Clause, not the Guarantee Clause. One would think that it would be easier to define “republican form of government” than it would be to define vaguer terms such as “equal protection” or “due process.” As the Constitution continues to develop through interpretation and reinterpretation, perhaps it will be possible at some future time for the Guarantee Clause to fulfill the potential the founding fathers put into it.

ENDNOTES

1United States Constitution, Article IV, Section 4, Clause 1.


4Ibid.


6Leib, “Redeeming the Welshed Guarantee,” 114.


8Wiecek, Guarantee Clause, 4.
9Ibid., 86.


11Wiecek, Guarantee Clause, 87.

12Ibid.


15Wiecek, Guarantee Clause, 88.

16Mowry, Dorr War, 213-215.

17Wiecek, Guarantee Clause, 106-111.

18Luther v. Borden 48 U.S. 1 (1849).

19Wiecek, Guarantee Clause, 123.


21Wiecek, Guarantee Clause, 128-129.

22Mowry, Dorr War, 303.


27Belz, Reconstructing the Union, 289.


29Ibid., 15.

30Wiecek, Guarantee Clause, 187.
31United States Constitution, Article I, Section 5, Clause 1.


33Burgess, Reconstruction and the Constitution, 18.


36Ibid., 981.


38Ibid., 359-390.

39Wiecek, Guarantee Clause, 264.


41Williams, “Direct Democracy,” 982.

42Wiecek, Guarantee Clause, 264.


44Ibid.

45Ibid.

46Wiecek, Guarantee Clause, 266.

47Williams, “Direct Democracy,” 1005.

48Wiecek, Guarantee Clause, 265.


50Wiecek, Guarantee Clause, 264.

51Donald Grier Stephenson, Jr., The Right to Vote: Rights and Liberties under the Law; America’s Freedoms, ed. Donald Grier Stephenson, Jr. (Santa Barbara, California: ABC-CLIO, 2004), 229.


56 Stephenson, *Right to Vote*, 313.


60 Smith, “The Rule of Law,” 564.

61 Wiecek, *Guarantee Clause*, 270.

