

A Redeemer as Republican: William B. Rodman at the
North Carolina Constitutional Convention of 1868

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JUDITH CONNOR SMITH. A Redeemer as Republican: William B. Rodman at the North Carolina Constitutional Convention of 1868. (Under the direction of Dr. Fred D. Ragan).

William Elount Rodman, a native of Washington, was a member of the elite social and economic stratum of antebellum society. Not only of the planter class, Rodman also practiced law and managed an active trade in timber, shingles, and shipping. As was typical of his social and economic group he was given a classical education.

Although an active member of the antebellum Democratic party, Rodman ran for public office only one time. He, nevertheless, avidly promoted and made speeches in favor of internal improvements and court reform, as well as disunion as early as 1852. Following the principles of Jacksonian democracy, he pursued reforms in government and the political system, and advocated the spread of democratization to all classes of whites. He held firmly to his belief in the inferiority of the Negro race, however, and never sought to make them either politically or socially equal to whites.

In 1867 Rodman won election to the Constitutional Convention to write the state's organic law. As a highly esteemed lawyer, businessman, and orator, many conservative North Carolinians placed their hopes in him to curb the radical tide of democratization of the

poor whites and former slaves. Furthermore, they charged him with preserving the antebellum political and social power structure of the state.

His intent at the convention was one of reform as well as restraint. Having been active before the outbreak of hostilities in the improvement of the courts especially, he sought to implement ideas which had long been advocated by numerous members of the legal system, but he also made every effort to curb what he viewed as radical innovations, such as permitting Negroes to serve on on juries. He approached changes in the fiscal management of government in a similar manner. Certain improvements were needed, but they had to be implemented carefully, so as not to cause the former elite group to lose control of state government entirely.

Rodman made every effort to retain the antebellum social order of the state while at the same time, trying to institute long sought changes in government. Perhaps the task was overwhelming and unachieveable due to the great majority of radical Republicans, the threatening attitude of the national government, and the vicious infighting among the political and economic groups in North Carolina. Admittedly, Rodman performed his historical role at the Constitutional Convention of 1868 a few years prior to final redemption. Nevertheless, he had the same attitude and motivations as any acknowledged

redeemer. Further study and analysis of his subsequent ten years on the North Carolina Supreme Court might provide corroboration that he, indeed, was seminal and active in the redemption process, inspite of his Republican nametag.

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Table of Contents

Introduction	1
The Man and his politics	24
The Convention: Judicial Reform	52
The Convention: Economic Reform	76
Conclusion	106
Bibliography	114

Introduction

The ancient Roman goddess, Janus, best symbolizes North Carolina's politics throughout the nineteenth century. She was the goddess who looked foreward and backward at the same time. While partially entrenched socially and economically in the antebellum plantation system of the Old South, North Carolina also shone as a beacon of politcal reform and emerging industrialism in the nineteenth century. This dual personality of state, if you will, crystalized during Reconstruction. Hopefully this study will clarify the influences the former slaveowners and the democratic reformers had upon each other as they formulated new governmental and legal systems in 1868. Added to the traditional struggle of these two groups was the impact of national events, such as the ascendancy of the radical Republicans in Congress, and the Reconstruction Acts of 1867, as well as the freedom of former slaves and the migration south of the now infamous "carpetbaggers" and other northerners. The result of the efforts made by those who designed the new government was equally an anathema and a boon to the

citizens, depending on one's political perspective.

The purpose of this study is to examine the role and influence of William Blount Rodman in the process of governmental reorganization. He was one of the few native sons from the antebellum aristocracy to attend the constitutional convention which drafted the North Carolina constitution in 1868.¹ His work as Chairman of the Judiciary Committee, the Committee on Relief, plus membership on the Finance Committee produced some of the most significant achievements of the new North Carolina constitution. The questions that need answering, however, are how much influence from the antebellum political power structure did he bring to bear on the new government? How much of that antebellum system did he manage to preserve? Finally, was he one of the instrumental leaders who directed the state back into the hands of the antebellum politicians? As Rodman wrote from Raleigh during the constitutional convention to his wife, "the obvious controversies about the freedmen, though the most exciting, were the least important questions confronting them."²

This study will also attempt to answer two additional questions about Rodman's participation in the Republican reconstruction government. First, why did he, an ardent secessionist and a former member of the social class "of wealth, virtue, and intelligence,"

apparently become a "turncoat" risking the rebuke and rejection of old friends and colleagues? As one acquaintance, Clayton Moore from Jamesville in Beaufort county, observed, from "long acquaintance with you, and from the fact that we allways [sic] agreed in politics untill [sic] recently, you from some cause known only to yourself, have been acting with the Republican party."³ Similar sentiments Rodman conceded in a speech to the convention on February 20, 1868. He said, "having been forced by the course of reasoning - slowly and against my previous views, I admit . . . I am aware I cease my political association with many men I respect and esteem."⁴ Secondly, how extensively did he influence the legal system of North Carolina? What elements of the 1868 constitution are truly Rodman's personal contribution? To what degree was it a Reconstruction or reform document, or one reflecting historical continuity?

The extent of Rodman's role and influence on the history of North Carolina's post-Civil War government requires a study of his personal life and its relationship to the social and political life of the state. Pertinent questions regarding his character, ability, motivation and goals need answering. This seems vital especially in relation to the development of constitutional reforms in North Carolina during the

nineteenth century.

Often the Reconstruction constitutions of southern states have been ridiculed as the fabrications of "carpetbaggers." Historical studies, however, suggest that democratic reforms had long been sought in most of the South Atlantic states, and the "Black and Tan" conventions that produced some of the most progressive constitutions in the nation were a part of that continuity. Such features as prison reform, a statewide public school system, and state boards of public charities increased governmental responsibility beyond anything previously known to the South. In the enactment of universal manhood suffrage they were ahead of most northern states.⁵ Though the issues of segregated schools and the proscription of ex-Confederates divided all the conventions, North Carolina and six others disfranchised no one and left the issue of race exclusively to the legislature, making the constitution truly colorblind. The North Carolina constitutional convention made a serious effort to produce a modern and democratic constitution; the convention's work has lasted to the present with few organic changes.⁶

Constitutional development in North Carolina and the four other original southern states can be characterized as a continuous struggle between the planter aristocracy

from the eastern lowlands, who were generally in the minority, and the increasingly more populous masses of the piedmont and mountain regions. It has been argued that though the former dominated until the Civil War, they nevertheless ruled by the consent and in the interest of the masses.⁷

The North Carolina constitution of 1776 was democratic in theory but not in practice. A separate Bill of Rights guaranteed individual liberties, and specific political and legal rights were incorporated into the document. These guarantees, some taken directly from Virginia and Maryland, included freedom of religion, press, and assembly, the right to bear arms as well as free elections, trial by jury, and immunity from cruel and unusual punishments. Only property owning representatives, however, served in the legislature which elected and dominated the executive and judicial branches of government. In this way power was shifted from the executive supremacy of the Colonial period to legislative predominance. While it established a representative form of democracy and set the course of government in the direction of popular control, the constitution placed control of government in the hands of landowners by retaining property qualifications for suffrage and officeholding. County, rather than population based, representation secured

political dominance for the eastern part of the state. This first constitution, a transitional instrument, preserved many colonial ideas while instituting democratic theories.⁸

Throughout the early part of the nineteenth century, western leaders agitated for social, as well as political reforms. They sought extended suffrage and representation, in addition to the popular election of judges and local officials, as well as free schools for whites. Although the constitution of 1835 disfranchised free blacks, it made the state government more democratic for whites. Western goals of free suffrage and legislative apportionment based on the white population were only partially achieved when the free suffrage amendment was passed by the legislature and ratified by the people in 1857.

From the 1830's to the 1850's Jacksonian democracy emphasized the political and social rights of the common man, changing popular concepts of governmental functions. Nevertheless, many southern Democrats remained conservative on national issues such as tariffs, state's rights, and the distribution of surplus funds. During this period in North Carolina, citizens from the piedmont and western sections of the state often referred to state government as an "aristocracy of the eastern minority." Political reform consequently

became a sectional as well as a class struggle between the Democratic party which dominated the eastern part of the state and the western Whigs. In 1851 thirty-seven legislators issued "An Address to the People . . . on _____ the Subject of Constitutional Reform." All but one were Whigs from the western part of the state.⁹ The ascendancy of western influence helped the Whig party dominate state government from 1836 through 1850. Under their direction constructive programs of internal improvements, public education, railroad construction and state development were enacted, but sectionalism continued through the "age of progress."

During the 1840's and 1850's the roles and character of the Whig and Democratic parties reversed in North Carolina. New, younger leaders of prominence acquired control of the Democratic party. Such men as Augustus Merrimon, David Reid, John Ellis, and Thomas Ruffin directed party philosophy and goals toward progressive improvements in state government and economic development. During this period, too, William W. Holden, the talented editor and publisher, switched from the Whig to the Democratic party. He promoted new Democratic reforms and improvements through his newspaper, the Raleigh Standard. The Whig party, meanwhile, rested on its laurels and waivered on emotional national issues such as state's rights, the

extension of slavery, and the tariff. In 1860 the Whigs mounted a final drive to pull the party together in order to elect John Pool as governor on the issue of ad valorem taxation of slaves.

The ad valorem tax issue continued the sectional and class struggle where the free suffrage amendment left off. The 1835 constitution laid a capitation tax on free white males between the ages of twenty-one and forty-four and all slaves from age twelve to fifty. The two groups were taxed equally at a flat rate, so that slaveholders were protected because "the nonslaveholding majority could raise the tax on slaves only by raising the tax on itself." Legislative reformers in 1858-59 urged the taxation of slaves according to their value and support for them crossed party and sectional lines. In 1860 the Democrats and their candidate for governor, John W. Ellis, countered ad valorem with the "tin cups" ploy: should the poor workingman pay as much tax on necessities as the wealthy man on luxuries? The Democrats managed to retain the governor's seat by a greatly reduced margin, but as secession came closer to reality, the issue of taxing slaves according to their value came closer to compromise. In 1861 the secession convention passed an ad valorem tax basically to unite white North Carolinians of all classes, as W. S. Pettigrew, a wealthy planter from Washington County, said ". . . to unite our people

-nonslaveholders -more closely with us in this contest with the north for our very existence." 10

The framers of the first Reconstruction constitution of 1865, former Unionists and members of William W. Holden's peace movement, never intended to alter the political and economic structure of North Carolina beyond the conservative values of the social and economic elite of the state. The convention of 1865 was composed largely of former Whigs elected solely by white votes. The president, Edwin G. Reade, later became a wheelhorse in the Republican party. Edward Jenner Warren and Richard Spaight Donnell represented Rodman's home county of Beaufort. Those leaders who emerged were conservatives and frequently former members of the Whig party. They differed little from former secessionists in regard to the Negro: they opposed secession, but not slavery; and they opposed Negro equality if not emancipation. Prominent members of this convention were William A. Graham, Governor Zebulon B. Vance, Daniel G. Fowle, John Pool, and Bartholomew F. Moore. These men favored democratic reform insofar as it secured control of government to former political and social leaders, but they abhorred participation in government by the masses.¹¹

The delegates to the constitutional convention of 1865 made few alterations to North Carolina's

organic law. They repealed the ordinance of secession, abolished slavery, and repudiated the state's war debts. Its only liberal features were the "white basis" for representation in the house of representatives and the the election of county magistrates for six years, but Blacks were prohibited from voting and officeholding. Nevertheless, that constitution was rejected by the voters.¹²

After the surrender at Appomattax, President Lincoln had in hand a moderate and temporate plan for the readmission of the southern states. Andrew Johnson started to execute a modified plan after Lincoln's assassination. The Radicals in Congress, however, led by Charles Sumner of Massachusetts and Thaddeus Stevens of Pennsylvania, were dissatisfied with the moderate Presidential plan for reconstruction, and in December 1865 formed a 15 member committee of Reconstruction which developed a much harsher, rigid, and detailed plan. After the election of 1866, in which the main issue was who should control reconstruction, the President or Congress, the Radicals gained control of Congress. Sumner and Stevens led the Congress to override Presidential vetoes and pushed through four Reconstruction Acts during 1867 and 1868. The second Reconstruction Act of March, 1867 established military districts to govern the former confederate states until new

state constitutions were written. In order to be readmitted to the union, the seceded states were directed to elect delegates to conventions to write new constitutions.¹³

Following the passage of the Reconstruction Acts of 1867 William W. Holden organized the Republican party in North Carolina. He established a state organization which adopted the party platform laid down by the national party leaders. Accordingly, the North Carolina party resolved to abide by the Congressional plan for Reconstruction, requesting General E. R. S. Canby, the military governor of the 2nd District made up of North and South Carolina, to call for the election of delegates to a constitutional convention. It also pledged the early construction of a central railroad to the western part of the state.¹⁴

Wealthy, prominent men such as John Pool, the Whig gubernatorial candidate of 1860, and Daniel L. Russell, a large landowner and former slaveholder from Brunswick county, and William B. Rodman, planter and lawyer from Washington joined the Republicans to form the conservative or "white wing" of the party. Believing he had the approval and support of colleagues, he received encouragement from other sources, too. L. L. Hill, friend and kinsman from Alabama, wrote to Rodman that those who had "been true to the South may

make, perhaps should make an effort to organize under the military bill [the Reconstruction Act of March 1867] and keep control of the state government if they can." These conservatives intended to support President Johnson and Governor Holden as long as they continued an "evenhanded and magnanimous policy," or until the restoration of political control to former leaders.¹⁵

Casting his lot with the Republican party, Rodman joined in order to oppose the radical element directed by William W. Holden at the state convention held on September 4, 1867 at Tucker's Hall in Raleigh. The conservatives suffered defeat, however, inspite of acquiring control of the resolution committee. Holden's radical wing overwhelmingly defeated their plank denouncing confiscation of former Confederates' property and the removal of political disabilities of "true and loyal" citizens. Frustrated at this failure to capture control of the Republican party, many of the "white wing" members defected to the Conservative party ranks directed by former Governor William A. Graham from Orange county. Among the defectors was Rodman's close friend and colleague, David Miller Carter, a large landowner and attorney from Hyde county.¹⁶

Rodman, like other former secessionists discredited by the outcome of the war, joined the Republican party in order to regain political power. Thomas Settle from

Rockingham county and Robert P. Dick from Guilford county as well as Rodman were examples of this tendency in North Carolina. Many Conservative party members like Graham and Carter, could not accept the dictates of the Federal government which was absolutely necessary for reentry into the Union. Furthermore, the Conservatives did not trust Rodman due to his previous secessionist views, and he did not feel welcome in their midst. In a letter to Holden, Rodman explained that many Democrats who went into the Conservative party, often those of strong "Confederate sentiments," were not received on an equal footing and may disassociate themselves from the Conservatives. Also, though he hoped to counter as much of the radicals' ideas as possible, he did favor modest reforms in the legal system and the improved economic operation of state government. This was an opportunity to promote his ideas and plans.¹⁷

In the fall of 1867 Rodman campaigned for and won a seat as a Republican delegate to the upcoming constitutional convention with a combination of votes from former Confederates and Negroes. As prescribed by the Reconstruction Acts, he was ineligible to vote in that election. Intending to curb radical reforms, Rodman hoped to continue the progressive Democratic programs set into motion prior to the war. His experience and background qualified him for such an

arduous task.

Rodman's political involvement in the Republican party was encouraged by prominent conservatives such as ~~Bartholomew F. Moore from Halifax~~ county and Daniel L. Russell, Jr., from Brunswick county. Moore had long admired and respected Rodman's legal knowledge and ability. He apparently placed great hope in Rodman and wrote him in December, 1867 that "I shall be glad to see you in the Convention, hoping you may be able to stem the torrent of ultra radicalism. Much will be expected of you." Russell also saw Rodman as their best hope. "I think our position is simply this: That as we see no hope for anything better for the state, we will go within the Republican party and control it in the interest of Law and Order and true conservatism if we can."¹⁸

The new Republican party included three main groups. The largest group, native whites, had a few conservative members but consisted mostly of small farmers, former Unionists, and devotees of William W. Holden. John Pool, Alfred Dockery, Robert P. Dick, and Thomas Settle were a few of the able leaders in this group. The second group, immigrants from the North, formed a minority but wielded a great deal of control as the tools of Congress and the Military Reconstruction government. The third group included the Freedmen who

made up almost half of the party's rank and file.¹⁹ The Republican party, always a tenuous coalition at best, welcomed anyone from any political walk of life to its ranks. Surely Rodman lent an air of respectability to the party dominated by freedman, "carpetbaggers," and "scalawags." Not to be forgotten, either, is that Rodman, like Holden, had been an influential member of the antebellum Democratic party. While adhering firmly to conservative values and beliefs, he agreed totally with Holden and the Republicans that southern interests demanded peace and a return to the Union. In order to best serve those interests, Rodman's motives for participation in the Republican reconstruction of North Carolina were three fold: to get the state government operating again and relieve the people from immediate economic disaster; to make every effort to moderate radical democratic reforms; and to establish a foundation to facilitate the return of antebellum political leaders to control of state government.

The 120 delegates who convened in Raleigh from January 14, through March 20, 1868 included only 15 Negroes, 18 Northerners, and more than 80 white native North Carolinians. The majority of the last group were Union men who, according to Rodman, outdid the Northerners in "every measure of revenge and intolerance

to those who had favored the independence of the state." Among the native white delegates only William B. Rodman and Calvin J. Cowels could claim any political recognition. Cowels' importance was derived from being the son-in-law of William W. Holden. Only Rodman had enjoyed antebellum political prominence.²⁰

Having a dearth of lawyers, the convention membership often followed Rodman's leadership and legal expertise, which were greatly in demand. Of the total number in attendance he was among the few known to possess a college education. A majority of the delegates had little or no formal education or their educational backgrounds were unknown. As a former secessionist Democrat and Confederate officer, he was viewed initially with suspicion, but quickly earned the respect of most of the members, both black and white. He reported to his wife, "My position with all parties is sufficiently agreeable. The Republicans consult me and regard my opinions somewhat."²¹

At the convention he served on five standing committees, two of which he chaired, the Judiciary Committee, and the Committee on the Relief of Debtors. He was a member of the Committee of Sixteen which organized the convention, and served as a member of the Finance Committee and the Committee on Revisions, which put the document in final form to be submitted to the

voters. Though it is difficult to determine the exact extent of his influence, Rodman is given credit by former Chief Justice of the North Carolina Supreme Court, Walter Clark, for writing more sections of the constitution than any other delegate. 'Well known for his conservative views, Rodman made every effort to defeat many of the provisions the radicals sought to engraft upon the fundamental law of the state. He intended to moderate the course of Reconstruction as much as possible.²²

The main body of this paper will deal with historical evidence to support the thesis that William B. Rodman, far from being a radical Republican, was a redeemer. He intended to direct his state back into the hands of the antebellum political leaders. He also hoped to make modest reforms and improvements in state government which had been sought by the people from both antebellum political parties.

Chapter 1 describes Rodman's intentions to direct the state into the control of former leaders. It analyzes his personal and political background in an attempt to demonstrate that, if not consciously a redeemer, he was of the "bourbon" class which always intended and manoeuvred to regain control of state government. Joining the Republican party was a means to that end, but the radical tide almost swept him and his

political allies away.

The second chapter describes his work on the Judicial Article, illustrating the uphill battle Rodman fought to limit radical reforms. His strongest adversary was the leader of the radical wing, Albion Winegar Tourgee. Tourgee, a lawyer and businessman from Ohio, came to North Carolina prior to the war's end primarily because his health required a more temperate climate. He settled in Greensboro and published the Republican newspaper, The Greensboro Patriot. Tourgee, imbued with progressive ideals and social consciousness, had the intellect and education to actively and successfully pursue his goals. It must be noted that he did not acquire any wealth or fame through his business and political activities in North Carolina, but he was tainted by the Swepson-Littlefield scandal. He worked with Rodman at the constitutional convention and later on as a Code Commissioner.²³

The final chapter analyzes and evaluates Rodman's work on the Finance Committee and the Committee on the Relief of Debtors. This work may have been his greatest source of pride since the Finance Article established innovative management practices to improve the running state government. It created a governmental system which dealt with former weaknesses and abuses, especially by the legislature, but did not replace the

former political leadership.

Rodman's contributions to the Committee on Relief of Debtors provided direct relief to millions of citizens in dire economic straits and saved the state, in the view of many, from being swallowed up by out-of-state speculators, which was greatly feared. He drafted stay laws, which stayed or halted all law suits against debtors, and the Homestead Article. These popular provisions also insured ratification of the new constitution, fulfilling an important requirement for North Carolina's reentry into the Union and making the state government operable again.

Though critics and historians have frequently referred to the constitution of 1868 as a "Reconstruction Constitution, [it was] a remarkably sound, progressive document." For the first time such topics as taxation, local government, private corporations, public welfare, and debtors' homestead exemptions were incorporated.²⁴ This paper will focus on the Judicial and Financial Articles. Besides the Suffrage issue, Rodman devoted most of his efforts to these areas and made a profound impact on them. Both articles have remained basically intact to the present day.

By studying his personal background and surveying the political and constitutional history of North

Carolina, hopefully the extent of Rodman's influence at the constitutional convention of 1868 can be determined. His dual roles as a reformer and redeemer should be apparent. This paper will thereby demonstrate how a conservative, southern, antebellum Democrat could maintain the social and political values of a bygone era, yet be instrumental in creating a new, forward looking governmental system in North Carolina.

Introduction

¹James L. Lancaster, "Scalawags of North Carolina, 1850-1868" (unpublished Ph. D. dissertation, Department of History, Princeton University, 1974) 279. Hereinafter cited as Lancaster, "Scalawags of North Carolina."

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³Clayton Moore to William B. Rodman, February 8, 1868, No. 329.3, Folder g, Rodman Papers, ECMC.

⁴William B. Rodman, "Speech on Suffrage and Eligibility," February 20, 1868, No. 329.16, Folder b, Rodman Papers, ECMC.

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⁶Hugh T. Lefler and Albert Ray Newsome, North Carolina The History of a Southern State Revised edition. (Chapel Hill: University of North Carolina Press, 1973) 489. Hereinafter cited as Lefler and Newsome, North Carolina. McPherson, Ordeal By Fire. 537.

⁷Green, Constitutional Development, vii-viii.

⁸Lefler and Newsome, North Carolina. 221-222. Green, Constitutional Development. 97-98.

⁹Green, Constitutional Development. 161-162. Lefler and Newsome, North Carolina. 225. Paul D. Escott, Many Excellent People Power and Privilege in North Carolina 1850-1900. (Chapel Hill: University of North Carolina Press, 1985) 28. Hereinafter cited as Escott, Many Excellent People.

¹⁰Marc Wayne Kruman, "Politics in North Carolina 1846-1865" (unpublished Ph. D. dissertation, Department of History, Yale University, 1978) 120-125. Hereinafter

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¹¹Kruman, "Politics in North Carolina" 141-144.

¹²Escott, Many Excellent People. 105-106.

¹³McPherson, Ordeal By Fire. 537. John M. Blum, et al., The National Experience. (New York: Harcourt, Brace & World, Inc., 1963) Chapter 15. Hereinafter cited as Blum, et. al., The National Experience.

¹⁴Standard (Raleigh, North Carolina) January 14, 1868.

¹⁵Edward Hobson McGee, "North Carolina Conservatives and Reconstruction" (unpublished Ph. D. dissertation, Department of History, University of North Carolina, 1972) 110. Hereinafter cited as McGee, "North Carolina Conservatives." L. L. Hill to William B. Rodman, April 26, 1867, No. 329.3, Folder f, Rodman Papers, ECMC.

¹⁶McGee, "North Carolina Conservatives." 236-237. Daniel L. Russell to William B. Rodman, February 15, 1868, No. 329.3, Folder g, Rodman Papers, ECMC. Russell commented to Rodman that he did not "wish to see a replay of the September convention (which was) dominated by fanatical Yankees and revolutionary Negroes."

¹⁷Catherine S. Silverman, "Of Wealth, Virtue and Intelligence: The Redeemers and their Triumphs in Virginia and North Carolina 1865-1877" (unpublished Ph. D. dissertation, Department of History, City University of New York, 1972) 58. Hereinafter cited as Silverman, "Of Wealth, Virtue and Intelligence." William B. Rodman to William W. Holden, May 5, 1868, No. PC62, William Woods Holden Collection, North Carolina State Archives and History.

¹⁸Bartholomew F. Moore to William B. Rodman, December 7, 1867, No. 329.10, Folder a, Rodman Papers, ECMC and Daniel L. Russell, Jr. to William B. Rodman February 15, 1868, No. 329.3, Folder g, Rodman Papers, ECMC.

¹⁹Lefler and Newsome, North Carolina. 459.

²⁰R. D. W. Connor, North Carolina: Rebuilding an Ancient Commonwealth 1854-1825, III. (New York: The American Historical Society, Inc., 1929).

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²³Otto H. Olsen, Carpetbagger's Crusade: The Life of Albion Winegar Tourgee. (Baltimore: Johns Hopkins University Press, 1965). Hereinafter cited as Olsen, Carpetbagger's Crusade.

²⁴John L. Cheney, Jr., ed., North Carolina Government 1585-1974 A Narrative and Statistical History. (Raleigh: North Carolina Department of Secretary of State, 1975) 2.

The Man and His Politics

William Blount Rodman exemplified a typical eastern North Carolina antebellum business and political leader. He traced his ancestry to New England Quaker stock and the southern landed gentry. Business and political acumen abounded in both families. His education from local Washington, N. C. academies and the state university included a classical liberal arts curriculum, but did not ignore the practical arts and business skills. Although social conditioning during the nineteenth century emphasized economic stratification and class distinction, Rodman valued the personal dignity and individual rights of all white social and economic groups. His intellect, honesty, and sensitivity were well known. Despite these qualities, however, he firmly believed in Negro inferiority and slavery. Nor did his belief in open minded, scientific inquiry, prevent his views from being blinded by social and economic prejudice. He never, throughout his lifetime altered these beliefs, but unlike many members of the antebellum planter class, he did manage to accept new methods of

reconciling the conflicting values of individual human rights and white supremacy.

William Blount Rodman (1817 - 1893) was a scion of the Blount-Harvey family which had wielded political and economic influence in the Albemarle region of North Carolina for more than a century. His grandfather, John Gray Blount, participated in the American Revolution and with the Harveys actively participated in the establishment of the new nation and state. At one time during the confederation period the Blounts owned between one third and one-half of the original Granville tract which composed most of northeastern North Carolina, known as the Albemarle region. As late as the 1840's Blount heirs owned extensive tracts of land in Hyde, Craven, Washington, and Beaufort counties, with related interests in the western part of the state.¹

William Wanton Rodman and Polly Ann Blount married in 1812, two years after Rodman arrived in Washington, North Carolina to practice law. He came from a prominent Quaker family which was active in the whaling industry in Connecticut. They both died young while their three children were minors, leaving them in the care of relatives, mainly their grandfather, John Gray Blount. Their residence at the Blount homeplace near the corner of Main and Market streets in Washington was a hub of social, economic, and political activity. Aunt

Patsey Baker Blount and Uncle William Augustus Blount actively contributed to their upbringing.²

Young Rodman began his education in Washington at the "Old Academy Building" at the corner of Second and Bridge streets where his grandfather served on its first board of directors. The teachers during his primary years were Mr. George Freeman and Mr. Thomas J. Moran, a graduate of Trinity College in Dublin, Ireland, and the Presbyterian minister, Mr. Weatherly. The curriculum consisted of spelling, math, geography, reading and grammar, geometry, algebra, and Latin and Greek. He reputedly read and translated Latin at the age of seven, and had a remarkable ability to memorize and retain all he read. Rodman entered the University of North Carolina in 1832 at the age of 15, graduating with "first distinction" in 1836. After graduation he submitted to the counsel of his uncle and travelled to New Bern to read law with William Gaston, Chief Justice of the North Carolina Supreme Court.³ In 1838 he obtained a license to practice law, returned to "Little Washington," and developed an extensive practice.

Throughout his early adult years Rodman remained single and wholly committed to his profession. Not until 1858 at the age of 41 did he marry Camilla Holliday Croom from Greensboro, Alabama. As a devoted husband and father he frequently expressed interest and

advice regarding the affairs of home and children in his correspondence. He also sought her counsel regarding business and politics, and made the unusual gesture of granting her full ~~power of attorney over his legal~~ affairs as well as entrusting her to make necessary business decisions during his absences during the war years and while he participated in the constitutional convention early in 1868.⁴

Rodman practiced law in Washington and surrounding eastern North Carolina counties with a distinguished group of lawyers, collectively noted for their legal and intellectual abilities. The Beaufort County bar drew less criticism than was generally made of many county courts in the state. Among the practicing lawyers were Thomas Sparrow, Richard Spaight Donnell, and Edward Stanley, all New Bern natives and respectively graduates of Princeton, Yale, and Norwich University in Connecticut. Edward Jenner Warren, a Vermont native, held a degree from Dartmouth College where his maternal grandfather had been president. David Miller Carter from Hyde county and Fenner B. Satterthwaith from Pitt county, like Rodman graduated from the University of North Carolina. Despite the close social and political relationships Rodman had with them, they were, nevertheless, his political opponents, and he remained the lone Democrat of the group.⁵

Despite their political differences, however, his fellow lawyers frequently served as co-counsel and held professional partnerships with him. Carter and Satterthwaith each joined him briefly in a law practice, though usually he practiced alone. He also served as co-counsel with many well known and distinguished lawyers throughout the state, such as Asa Biggs from nearby Martin county and Barthalamew F. Moore from Halifax county.⁶ Prominent men of wealth and politics such as Edward Conigland, one of the largest landowners and slaveholders in the state, often sought Rodman as legal counsel, but he served lesser known men as well. At the murder trial of the Reverend George Carowan, which was widely publicized, Rodman served as co-counsel for the defense with Edward Jenner Warren, and delivered a summation speech which was acclaimed for its legal and oratorical merits. His colleagues valued his warm and sincere friendship, his concise, analytical mind, and his thoroughness as a defense lawyer.⁷

In the world of politics, Rodman rarely sought election to public office following his narrow defeat in 1842 for a seat in the North Carolina House of Commons. Upon being suggested as a candidate for the United States Congress in 1845, he declined to have his name offered as a nominee from the eighth district.⁸ Nevertheless, he contributed his time and talents to public service in

numerous ways, and remained active and interested in local, state, and national affairs.

The Democratic Party in Beaufort County was organized on March 8, 1939, under the tutelage of Henry I. Toole, Representative to the North Carolina House of Commons from Pitt county. Meeting in the courthouse on the corner of Second and Market streets, William Rodman was one of the charter members.⁹ The roots of the new county organization sprang from the soil of Jeffersonian democracy, though Jefferson did not use the name due to its controversial connections with the French Revolution. Jeffersonian principles of individual liberties, strict economy, and state's rights became the framework of the party's philosophy and doctrine.

Following the Jefferson ascendancy, factionalism and "personal politics" dominated political parties, rather than clear differences in party doctrine. By 1816 opposition to the Federalists, as well as the party itself, had disappeared, along with much of the party conflict. In fact a prominent Federalist Boston paper dubbed the first years of James Monroe's administration the "Era of Good Feelings." As the Federalists party faded from the scene, the Republican party split to create two new parties, the Democrat and National Republican (the future Whigs) in the 1820's. The structure of these new political organizations

evolved as new states entered the union and the electorate broadened, thus giving the Jacksonian era of American politics its democratic character.

The Democratic party of Andrew Jackson depended less on abstract concepts such as state's rights than on the practical application of such political tools as the spoils system and the use of conventions (instead of congressional caucuses) to nominate national candidates. The party invoked the two-thirds rule early, requiring that at least two-thirds of the delegates present vote for the candidate to be nominated. Jackson's policies of cheap western land, low protective tariffs, and the breaking of monopolies with pet banks drew membership from all sections of the country and strengthened the intersectional coalition until the Panic of 1837.

In North Carolina opposition to the national Democratic party spurred on Whig dominance of state government from the late 1830's through the 1840's. Under the leadership of men such as Governor John M. Morehead progressive programs in education, internal improvements, and penal and judicial reform were started. The Whig party declined, however, due to the failure of the older members to concede control to the younger generation of rising politicians, and the dissatisfaction of westerners over domination of state government by easterners. Rodman, always a Democrat,

seemed to differ from the Whigs in methods more than in goals. That is to say, while he advocated the Jeffersonian principles of states rights, low tariffs, and the protection of individual liberties, he nevertheless, actively promoted economic development and internal improvements, especially in eastern North Carolina.

As "Little Washington" declined as an inland port by the mid-nineteenth century, the necessity of improved land transportation became evident. In May, 1850 Rodman made promotional speeches along with Edward Jenner Warren and Thomas Sparrow enumerating the benefits of a plank road from Washington and Greenville to Raleigh. He also invested in the Washington and Jamesville railroad in 1857 and was a charter member and official of the local branch of the Bank of the Cape Fear. His business ventures included a saw mill which produced the highest grade cypress and white pine lumber, and the draining and selling of swampland in Hyde county to encourage northern and European immigration. His Urwald plantation, valued at \$7,000.00 in 1849, generated only a fraction of his income during this period, and his law practice even less.¹⁰

Throughout the 1840's and 1850's Rodman belonged to the new leadership of young men in the Democratic party who were "virile, aggressive, sensitive to public sentiment, and determined to commit the party to a

constructive program." ¹¹ His colleagues and correspondents included David S. Reid, Thomas Bragg, John Ellis, Asa Biggs, and Henry T. Clark among others. ¹² William Woods Holden, if not Rodman's social intimate or professional colleague, was akin to him politically during the ascendancy of the Democratic party. They shared common desires in regard to raising the dignity of the common man and laborer, a constructive program of state development, and new progressive ideas for education and other reforms. In national politics both emphasized southern interests by opposing the protective tariff, favoring the annexation of Texas, the extension of slavery, and encouraging immigration to North Carolina.

Rodman's adherence to the progressive philosophy of the Democratic party can be supported by his lifelong membership in that party. Furthermore, his speeches and correspondence demonstrate his desire and ability to be receptive to change. Specifically, he addressed the issue in a speech to the students at Wake Forest College in June, 1846, when he challenged them to be "animated with the idea of progress." He encouraged them to keep an open mind toward change, and assume no existing system was infallible and beyond improvement. He also praised mechanical skills and the practical arts. Other liberal ideas for that period which he supported were

judicial reform and free education for all white citizens. In a letter from an older party member in April, 1844, he was chastised for his support of free education. His careful stewardship of swampland left by John Gray Blount at his death in 1837 for the benefit of the State Literary Fund was further evidence that he believed the education of all whites was the responsibility of the state.¹³ The Literary Fund had been established for the purpose of education many years earlier.

Articles, correspondence, and speeches reflected the forward looking attitude of Rodman and other young members of the Democratic party during the 1840's. Editors of Democratic newspapers advocated educational, judicial, and penal reforms, and promoted constitutional changes to broaden and increase the general electorate, drawing more yeoman and laborers into the political process. Census data showed that yeoman and mechanics comprised 60 to 63 percent of the total white population in North Carolina by 1850. These included independent small non-slave holding farmers, naval stores workers, miners, mechanics, tradesmen, overseers, and some farm tenants.¹⁴ By the 1850's the Democratic party championed the working class by campaigning for judicial reforms, free education, and universal manhood suffrage for all free whites.

As the decade of the 1850's progressed, support for new programs in education, judicial reform, and internal improvements eroded as state and national politics revolved more and more around slavery and the corollary issue of state's rights. Rodman spoke out strongly supporting state's rights, addressing local conventions and meetings on the subject. As early as 1851 he tried to arouse local party interest in the Nashville Convention scheduled for the coming June. A proposal recommending that delegates attend the convention only to discuss separation was voted down. Except for the local physician, Dr. Norcum, and a farmer or two, a majority of the delegates from Beaufort county opposed disunion. Ultimately North Carolina sent no representatives to the Nashville meeting.¹⁵

Following the passage of the Compromise of 1850 and the death of John C. Calhoun, Rodman became a cooperative Secessionist. That is, along with other conservative Southern Democrats, he considered the Compromise a temporary rather than a permanent solution to the problem of expanding slavery to the new states. The Eighth congressional district convention held in June, 1851 passed a resolution supporting the South Carolina doctrine of secession and nominated Thomas Ruffin of Wayne County, a kinsman of Virginia's leading secessionist, Edmund Ruffin, for Congress. Henry

Dimock, editor of the North State Whig, ridiculed the delegates for espousing the views of Mr. Robert E. Rhett of South Carolina, but lacking his "boldness and downright ultraism."¹⁶

Rodman, a popular speaker at state and local party conventions, entertained as well as politicized. His speeches praised the achievements of state and local leaders and the actions of national Democrats such as Franklin Pierce, Stephan A. Douglas, and James C. Breckenridge. As a skilled defense lawyer his use of "plain and intelligible language" could turn the opinion of a crowd as well as a jury, for his political as well as his professional adversaries feared his rhetorical skills. In December, 1860, Samuel Windley wrote William Ellison (two Beaufort county Unionists) pleading for a speaker to respond to Rodman at an upcoming Unionist meeting at Pantego. Windley genuinely feared the counselor would change the attitude of the audience in favor of secession, should he (Rodman) "make one of his ingenuous speeches and nobody to reply to him."¹⁷

Rodman's attendance at political conventions is sparsely documented, but at those at which his presence is recorded he usually served on the committee to draft and report final resolutions and minutes as well as made speeches.

An avid secessionist from early on, Rodman allied

himself to other North Carolinians of like mind, such as Governor John Ellis and Weldon N. Edwards, the grand old man of the Democratic party. These gentlemen, large plantation owners and slaveholders, adhered to the doctrine of that tightly organized and ably directed minority of southerners, led by William Yancy of Alabama, Robert B. Rhett of South Carolina, and Edmund Ruffin of Virginia, who were determined to lead the southern states to independence. By early April, 1861 these secessionist Democrats had been able to manoeuvre moderate unionists and Democrats led by William W. Holden into their camp. Soon after the firing on Fort Sumter and Lincoln's call for North Carolina troops, a secessionist convention in North Carolina was called for late May. Rodman canvassed for a seat, but the Beaufort county electorate turned him down, probably because his secessionists views were widely known and unionism was strong there.¹⁸

After war commenced and North Carolina seceded in May, 1861, Rodman, at his own expense, raised a company of heavy artillery. During February and March, 1862, his unit commanded a defense position for Washington six miles east of town on the Pamlico River at Swan Point. Union troops moved up from New Bern to seize the port town as part of the overall Union strategy to cut off all

trade to the Confederacy. Rodman's efforts failed and on March 20, the Twenty-fourth Massachusetts broke through the blockade, landed a transport and three gunboats at the wharves of the port and marched up Market Street to the Courthouse. The Union Colonel reported that he met no resistance as the Confederates had evacuated and evidence of Union sentiment existed. By June a permanent garrison occupied Washington until March, 1864.¹⁹

John E. Leggett succeeded Rodman as Captain of the heavy artillery company after his promotion to Major in March, 1862. Thereafter he served as Quartermaster for Branch's Brigade from Craven county until President Jefferson Davis appointed him to serve as a Justice of the Military Court attached to the Army of Northern Virginia in Richmond with the rank of Colonel. Rodman's Heavy Artillery eventually became Company I, Fortieth Regiment, North Carolina Troops under the command of General Hardee and saw action in Georgia as well as fighting at Bentonville and surrendering with General Johnston in Greensboro.²⁰

While Washington remained occupied by Union troops, Rodman sent his wife and children to live at Bleak House, a plantation near Greensboro, North Carolina, where he felt they would be safer. His plantation, and residence, Rodman's Quarter, across the Pamlico River

from Washington, but within sight of the town, was left in trust to a local friend. Nevertheless, the Union troops burned the place and confiscated the furniture and farm equipment. The property was further vandalized by "buffaloes." These local Union supporters, mostly small farmers and craftsmen, felt the rich planters had dragged them into a useless and unnecessary war.²¹

In March, 1864, while evacuating the town, the Union troops set fire to the business and commercial district. Several weeks later a rubbish fire burned out of control and demolished what remained of the residential area. Upon his return in 1865, Rodman found Washington devastated, most of the Negroes gone, and about 500 people remaining to rebuild the town from ruins. With Rodman's Quarter gone, Rodman moved his family to town on the corner property at West Main and Bridge streets and allegedly never set eyes on the plantation again.²²

As a result of emancipation Rodman lost more than one hundred slaves and all his financial investments in the Confederacy. His wealth was reduced to less than half of its 1860 valuation. Nevertheless, he and his family survived the hostilities and were more financially stable than many other Confederate leaders. One method he used to generate cash flow during and after the cessation of hostilities was to manufacture shingles from his timberland. Despite the destruction of his

plantations, he retained clear title, and revived productivity in later years was substantial. He also resumed the practice of law.²³

During the period of Presidential Reconstruction, Rodman appealed to President Johnson and received a presidential pardon. Like many other secessionists he remained quiet politically and concentrated on personal economic recovery. As events in Congress became more and more threatening, however, he reconsidered his course of action. Being a former Confederate officer with property valued at more than \$20,000 his presidential pardon of 1865 was nullified by the Reconstruction Acts passed by Congress in 1867. He had to make a personal appeal for a pardon through the provisional Governor, William Woods Holden, his old Democratic party associate. Holden often prolonged his evaluations, antagonizing Conservatives by recommending certain former secessionists such as Rodman, while ignoring former Unionists such as William A. Graham.²⁴

When Congress instituted military control over the defeated Confederate states in March, 1867 many former southern leaders reevaluated their political positions. The Congressional plan of Reconstruction was much harsher and more strongly directed by non-southerners than the earlier presidential plan. Former Confederates were, therefore, compelled to take a new course of

action. Also, two years of drought, a destroyed transportation system, and a flood of uneducated and unemployed freedmen depressed the southern economy.

Regardless of the constitutionality of the Reconstruction Acts, some southerners decided it was more sensible to be realistic and accept the inevitable. There were men of substance in every former Confederate state who held such views. Joseph E. Brown of Georgia warned, "If the south rejected this plan (of Reconstruction) the next step would be to turn the country over almost completely to the Negroes, and confiscation." Rodman also felt the only way the south or North Carolina could be helped was to accept the new order, hopefully under the leadership of representative men. "Are we to let North Carolina become prey to these people and lead the ignorant blacks, or shall men like us, who hold the state near and dear, step in and assume control?"²⁵ Answering in the affirmative, he therefore, joined the Republican party, the party in power and the only political vehicle available to influence the direction in which the state could be reconstructed.

Undoubtedly Rodman's purpose for joining the Republicans was to bridge the gap between the old order and the new. His previous political and legal experience gave him some degree of respect and influence

within the party ranks, and concurrently helped to exert a conservative influence on the radical program. He firmly believed that someone from the old power structure had to work within the new structure to direct the state government into the hands of its former leaders, thereby giving the new order some redeeming value.

The redemptive process, according to Catherine Silverman in her study of redeemers, began before radical reconstruction, rather than in response to Republican rule. Careful planning began as far back as Appomattax. That Conservatives dislodged the state and the south from radical rule is as much a myth as the traditional view that radical reconstruction crippled the south for the subsequent fifty years. Like the government during the Confederacy, the radical reconstruction government was too short lived to have had a lasting effect. Rather, "The work of redemption was more enduring, for the Reedemers laid the foundations in matters of race, politics, economics, and law for the modern South."²⁶

Several arguments which strongly support the theory that early redeemers sabotaged radical reconstruction, at least in North Carolina are presented by Silverman: Most of the North Carolina Republican leaders were native born (unlike Virginia who had more outside whites

in their leadership); the substantial number of affluent Republicans, often from the old slaveocracy, refutes the myth of the downtrodden scalawags; and the failure of the Conservatives ~~to call a new convention~~ in 1871 to amend the 1868 Constitution demonstrated popular support for the Republican regime. The struggle by the Conservative-Democratic party to wrench power from the Republicans in the 1869-70 elections could be accurately viewed as a revival of the old political contest between antebellum Whigs and Democrats. The Republican ticket of 1868 was predominantly ex-Democrat, while the Conservative ticket (except for Thomas S. Ashe) was almost entirely ex-Whig. Redemption had already begun, and the old political machines renewed their power struggle. The principal difference from the antebellum period was that the mass of rank and file membership had changed. The Republican party now embraced the majority of whites often referred to as "sturdy yeomen" and the recently freed slaves.²⁷

If a mold had been cast for the typical southern conservative and redeemer, William B. Rodman fitted it perfectly. He was "white, middle-aged, native born, well educated (college or better), a lawyer, farmer and certainly a landowner, a Confederate veteran, well to do, politically experienced, a former slave owner and a member of a 'fine old family.'" He was a former

Democrat (but could have been a Whig), and his education in a southern university confirmed a narrow conservative viewpoint."²⁸ As with other early redeemers, his education had emphasized the classics, the art of debate and the study of ancient history. Their correspondence and speeches reveal the indelible imprint of classical studies, the identification of the country with ancient Rome, and themselves with toga-wearing senators combating Ceasarism (the radical national government).²⁹

The new Republican constitution of 1868 came into effect in North Carolina before redemption had become very popular but was, nevertheless, a well seeded idea. Those public figures who led redemption generally came from the more affluent and influential families and included Republican leaders such as Supreme Court Justice Richmond Pearson and William B. Rodman. Daniel L. Russell, Jr., also an important and lifelong Republican, had possessed great antebellum wealth. Redeemers can be put into two classifications: The older and wealthier leaders, who were rebuilding antebellum financial dynasties, and the younger ambitious political novices, sons of conservative leaders, who also depended on antebellum wealth to establish themselves.³⁰

The redeemers uniformly allied themselves with business interests. Their trade involved interstate

commerce, government assistance, or patronage of blacks. "If the manners and names were of authentic planter origin, their votes and deeds were of the middle class, and to that class the redeemers lent all the prestige of aristocratic lineage and glorious record." As they did, Rodman also "sought to have it both ways - to promote a new industrial economy without changing the social system beyond the requirements of the Thirteenth Amendment." Whiggish ideas of industrialism were coupled with the former planters' view of the ideal society.³¹

After the war, opponents of disunion, the Conservative party, enjoyed great prestige in their effort to prevent the nightmare of social revolution from becoming a reality. Avid secessionists, many former Democrats, were thoroughly discredited and mistrusted, and compelled to join the Republican party to attain political prominence. These native Republicans in the top level of leadership, and of the same class as their Conservative opponents, were convinced that working with the party in power would produce the desired results. Even secessionist, David Schenk, accepted the Fourteenth Amendment guaranteeing citizenship to all individuals born or naturalized in the United States, as did Weldon N. Edwards, who reluctantly conceded there was no recourse but "to

submit uncomplainingly and guard with care our words as well as our acts." Thus, the reason why some former slaveowners turned to the Republican party is simply that they concluded that cooperation, with rather than opposition to, the administration in Washington would insure the return of conservatives (and southerners) to power. They feared Negro domination, mercenaries, camp followers and unprincipled carpetbaggers infesting the state. Rodman acted in accordance with the view that the only means by which the state, or the South, could be helped was to submit to the new order and attempt to regain former control of leadership.³²

William B. Rodman was greatly influenced by his social and political background. His motives and actions were dictated by the desire to maintain the social and political status quo more than for fame or fortune. As his specific activities at the constitutional convention are revealed, these influences become clear and obvious. Because the new constitution in several areas totally restructured state government, many students of Reconstruction have mistakenly judged it to be a radical reform document. Closer scrutiny will show, however, that while it established a new framework for the state government, especially in the areas of education, the courts, taxation and revenue, and the executive department, the basic power structure

of state government remained intact.

A careful study and analysis of the two areas in which Rodman had a dominant influence, the courts and finances, hopefully will support that thesis. As chairman of the Judiciary Committee, he was largely responsible for the new court system and judicial reforms the committee drew up. It was a totally new system and a complete departure from earlier forms and procedures, but the Courts remained almost wholly in the hands of those who had always controlled it. Similarly, the changes in the revenue and taxation articles were complete departures from traditional laws and customs. New circumstances, however, demanded new ideas, and Rodman was instrumental in establishing them.

The Man and His Politics

¹ General Correspondence to William Blount Rodman, 1825-1868, No. 329.3, Folders A-F, in the William Blount Rodman Papers, East Carolina University Manuscript Collection, Greenville, North Carolina, hereinafter cited as the Rodman Papers, ECMC.

² Ibid. General Correspondence 1825-1868, No. 329.3, Folder A, Rodman Papers, ECMC. Samuel A. Ashe. Biographical History of North Carolina, III. (Greensboro, N. C.: Charles L. Van Noppen, 1905) 344-45. Hereinafter cited as Ashe, Biographical History, III.

³ Ursula Loy and Pauline Worthy, eds., Washington and the Pamlico. (Washington-Beaufort County Bicentennial Commission, 1976) 249-250. (Washington, N. C.) American Recorder January 20, 1924. George H. Brown, Jr. "Speech to the North Carolina Supreme Court Eulogizing William B. Rodman," North Carolina Reports 116:1075-1084 (1897).

⁴ William B. Rodman to Camilla Croom Rodman, Typescript copies No. 329.21, Folder A, Rodman Papers, ECMC.

⁵ Guion Johnson, Antebellum North Carolina. (Chapel Hill: University of North Carolina Press, 1934) Chapter XXI. "The Administration of Justice In North Carolina," Standard (Raleigh, N. C.) September 10, 17, 24, and October 1, 1945. Lindsay C. Warren, "Beaufort County's Contribution to a Notable Era of North Carolina History." Congressional Record. April 29, 1930, 16. Hereinafter cited as Warren, "Beaufort County's Contribution to a Notable Era."

⁶ Asa Biggs served as U. S. Congressman from the 9th Congressional district from 1845-1847 and as U. S. Senator from 1854 -1858. B. F. Moore, "Father of the N. C. Bar," was a prominent jurist with whom Rodman served on the Code Commission of 1854 which revised the North Carolina Code of Civil Procedure. Moore was appointed U. S. District Court Judge by President James Buchanan in 1858.

⁷ Asa Biggs to William B. Rodman, April 1, 1846, No. PC 76.1, Folder , in the Rodman Collection in the North Carolina State Department of Archives and History, Raleigh, North Carolina. Hereinafter cited as the

Rodman Collection, NCAH. Asa Biggs to William B. Rodman, January 6, 1858, No. 329.3, Folder b, and Business correspondence, No. 329.18, Folder c, Rodman Papers, ECMC.

⁸North State Whig (Washington, North Carolina) April 1, 1842. William B. Rodman to John Latham, William Ellison, and B. Runyon, March 24, 1845, No. PC 76.1, Rodman Collection, NCAH.

⁹The Republican. (Washington, North Carolina) March 19, 1839. Others in attendance were Benjamin Runyon, Henry C. Hoyt, George Houston, Jr., John W. Latham, W. T. Pratt, W. C. Copeland, and John Wiley. From Bath were Joseph Bonner, Dr. S. C. Benjamin, and William H. Oden.

¹⁰North State Whig (Washington, North Carolina) May 8 and 9, 1850. Business Correspondence to William B. Rodman, May 3, and July 8, 1854, and November 4, 1857. William B. Rodman to William A. Blount, February 20, 1849. Joseph Y. Bonner to William B. Rodman, December 23, 1857, No. 329.5, Folders A-D, Rodman Papers, ECMC.

¹¹Hugh Talmadge Lefler and Alfred Ray Newsome, North Carolina History of a Southern State. (Chapel Hill: University of North Carolina press, 1963) 358-359. Hereinafter cited as Lefler and Newsome, North Carolina.

¹²General and Legal Correspondence to William B. Rodman, No. 329.3, Folders b and c, No. 329.7, Folders d and e, Rodman Papers, ECMC. David S. Reid to William B. Rodman, October 23, 1851 and February 4, 1852. No. PC76.4, Rodman Collection, NCAH.

¹³William B. Rodman, "Address to the Euzelian and Philomathsian Societies of Wake Forest College," Addresses to Wake Forest College (1846) 8-27. Henry I. Toole to William B. Rodman, April 18, 1844, No. PC76.2, Rodman Collection, NCAH. Nobel J. Tolbert, ed. The Papers of John W. Ellis. (Raleigh: Division of Archives & History, 1964) 316-317.

¹⁴"The Administration of Justice in North Carolina," Standard (Raleigh, North Carolina) September 10, 17, 24, and October 1, 1845. Lefler and Newsome, North Carolina. 361, 367, and 397.

¹⁵North State Whig (Washington, N. C.) March 20, 1850 and June 18, 1851.

¹⁶North State Whig (Washington, N. C.) June 18, 1851.

¹⁷Standard (Raleigh, N. C.) April 12, 1854, December 31, 1845. Enquirer and Progress (Newbern, N. C.) March 25, 1858. William B. Rodman to William Rodman Meyers, August 10, 1860. No. 329.3, Folder c, Rodman Papers, ECMC. Samuel Windley to William J. Ellison, December 15, 1860, in the verticle file of the Brown Library, Washington, N. C.

¹⁸George Howard, Jr. to William B. Rodman, May 2, 1868, No. 329.3, Folder c, Rodman Papers, ECMC.

¹⁹William B. Rodman to William A. Blount, September 23, 1861, No. 329.7, Folder d, Rodman Papers, ECMC. Lida T. Rodman, "William B. Rodman: A Brief Sketch of his Service in the Confederacy." Carolina and the Southern Cross. I, No. 8 (October, 1913).

²⁰Loy and Worthy, Washington and the Pamlico. 46-47.

²¹Warren, "Beaufort County's Contribution to a Notable Era." 16. The term "buffaloe" was used mostly in eastern North Carolina.

²²Loy and Worthy, Washington and the Pamlico. 50-51.

²³Eighth and Ninth Censuses of the United States, Beaufort County, 1860 and 1870. Rodman's estimated combined value of personal and real property dropped from \$140,000 in 1860 to \$35,000 in 1870. Also according to the 1860 Census Rodman owned 112 slaves. William B. Rodman to Camilla C. Rodman, February 16, 1868, No. 329.21, Folder b, Rodman Papers, ECMC.

²⁴Edward Hobson McGee, "North Carolina Conservatives and Reconstruction" (unpublished Ph. D. dissertation, Department of History, University of North Carolina, 1972) 103-104, 113. Hereinafter cited as McGee, "North Carolina Conservatives." James L. Lancaster, "Scalawags of North Carolina, 1850-1868" (unpublished Ph. D. dissertation, Department of History, Princeton, 1974) 306. Hereinafter cited as Lancaster, "Scalawags of North Carolina."

²⁵E. Merton Coulter, The South During Reconstruction. 122-123. Warren, "Beaufort County's Contribution to a Notable Era," 17.

²⁶Catherine S. Silverman, "Of Wealth, Virtue and Intelligence: The Reedemers and their Triumphs in Virginia and North Carolina 1866-1877" (unpublished Ph. D. dissertation, City University of New York, 1972) 280. Hereinafter cited as Silverman, "Of Wealth, Virtue and Intelligence." C. Vann Woodward, Origins of the New South 1877-1913. (Baton Rouge: LSU Press, 1979) 22. Hereinafter cited as Woodward, Origins of the New South.

²⁷Silverman, "Of Wealth, Virtue and Intelligence," 49, 284 and 286. Otto H. Olsen, "Reconsidering the Scalawags," Civil War History. 12 (November, 1966) 317. Hereinafter cited as Olsen, "Scalawags."

²⁸Silverman, "Of Wealth, Virtue and Intelligence," 280.

²⁹Standard (Raleigh, North Carolina) January 27, 1868.

³⁰Silverman, "Of Wealth, Virtue and Intelligence," 278-280, 286.

³¹Woodward, Origins of the New South 1877-1913. Silverman, "Of Wealth, Virtue and Intelligence," 27. Lancaster, "Scalawags of North Carolina," 95.

³²Silverman, "Of Wealth, Virtue and Intelligence," 58, 227-28, 281. Warren, "Beaufort County's Contribution to a Notable Era," 17.

The Convention: Judicial Reform

The constitution of 1868 received much criticism and ridicule because, among other changes, Article IV, the Judicial Article, entirely reorganized the legal system of North Carolina. It, in effect, eradicated the preexisting system and instituted a totally new and different judicial organization with new rules and procedures. As Chairman of the Judiciary Committee, Rodman received the brunt of the attack, not only because he chaired the committee, but also because he had been the main hope of conservative old power structure, future redeemers, "to check the wild current of radicalism" at the convention. Fenner B. Satterthwaith told Rodman that "my short sight does not enable me to discern any (sic) thing but utter and hopeless ruin . . . from the changes you are making in our organic law - with universal Negro suffrage [and] the changes in our judicial system. Most of your old party friends about here who supported you for the convention are expressing deep disappointment at some of your votes."¹

Such fear and disillusionment arose because the

former political machines as well as revered legal customs were quite literally dissolved, and what the new system would produce appeared ominous. The importance of the existing system cannot be overestimated in terms of regaining control of state and local government by antebellum political leaders. From the earliest days of statehood, the county courts had controlled county government, dominated usually by the leading families of "wealth, virtue, and intelligence." The governor appointed county court officials as recommended by the legislature. These officers usually served for life and performed most administrative as well as all judicial functions of local government.² Of less political importance, perhaps, but just as emotional, was the deep reverence by the legal profession for the traditional legal systems of common law and equity, with their specialized rules, language, and formalities.

Since the late middle ages, English speaking lawyers had practiced their profession according to the rules and customs developed over the centuries by such renowned jurists as Sir Thomas Littleton, Sir Edward Coke, and Sir William Blackstone. The dual systems of actions at law and suits in equity evolved during the lengthy constitutuinal struggle between the English crown and Parliament. The common law courts, Exchequer, Common Pleas, and King's Bench developed rules and

procedures that reached back to the medieval common law courts held during the king's progresses throughout the country. When Parliament finally attained statutory dominance following the Glorious Revolution of 1688, the rules and procedures were irrevocably entrenched.

In courts of law the formal, complex, and rigid pleadings constituted the first state of litigation as pre-trial declarations of positions by the parties involved. The trial and later the determinations made by a judge and/or jury also required specialized pleadings and presentations. By mid-nineteenth century the rules and procedures had made the system "most cumbrous, tedious, and expensive."³

Equity courts developed a different and separate code of rules and procedures. Not the direct products of Parliamentary statutes, they began in the fourteenth century in the Chancery court, usually presided over by the King's chancellor (often while the King was on his progress). The use of petitions and subpoenas written in English was not as complicated as the strict formalities of the numerous pleadings required by actions at law, often burdened by complex terminology and innumerable Latin and French phrases. The determinations, based on the Chancellor's sense of justice or equity, were called decrees as opposed to judgments handed down by judges in the courts of law.

They had the power of royal commands, however, and to disobey them was considered contempt of authority. Courts of Equity functioned as appeals courts when justice seemed unattainable in any other court.⁴

The American colonies did not preserve the trinity of Common Pleas, King's Bench, and Exchequer as separate courts, nor did the states, but they did retain separate courts of law and courts of Equity. Several states such as New Jersey and Delaware, retained Chancery courts well into the twentieth century. It was not until 1938 that the federal courts totally fused the separate sets of procedural rules for cases of law and suits in equity. North Carolina, like her sister colonies, adopted and preserved the traditional legal system of the mother country, but rejected those elements it found unsuitable or offensive. Before adoption of the first state constitution, the General Court was "also a trial court exercising equitable as well common law jurisdiction. It was composed of the Governor and his council." English common law prevailed as the foundation for the dispensation of justice and equity throughout the nineteenth century. Its practices and procedures, however, caused overcrowded court dockets and lengthy delays in reaching settlements.⁵

During the nineteenth century legal reformers in the United States and England steadily challenged the dual

systems of legal procedures, substituting a single written code of procedures. They also sought to reduce technical procedural requirements in pleading cases. Combining courts of law and ~~equity increased efficiency~~ overall, however the limited number of pleadings, while saving time often caused procedural errors.⁶ The culmination of legal reform occurred in 1848 when New York enacted the Field Code, authored by David Dudley Field.⁷ This code became the model for judicial systems in several western territories upon attaining statehood. At least 24 states eventually adopted the Field Criminal Code in various forms. Field's codes also became the basis for law reform in England and Ireland in the form of the Judicature Act of 1873.⁸

The Field Code revolutionized American jurisprudence and such reforms were not unheard of in North Carolina. The outstanding features of the code were the merging of the separate courts of law and equity, reducing the number of pleadings to a mere handful, and combining several legal theories and claims so that litigants no longer feared choosing the wrong form of action. The only writ required to start a civil action was a brief summons ordering the defendant to court. The complaint and answer were plain statements of facts in concise, ordinary language without unnecessary repetition.⁹ These and other logical

reforms responded to frequent antebellum demands.

Members of legal profession had sought general reform in North Carolina for many years. A few specific improvements they desired were greater judicial independence, simpler methods of pleading, written records, and more judges. Though primary evidence is scarce, it seems a reasonable assumption that Rodman knew of the Field Code and supported modification and improvements in the legal code and judicial system in North Carolina. His efforts are demonstrated by his work on the code commission of 1854 which revised the North Carolina Code of Civil Procedure. Additional evidence is found in correspondence from Rufus Barringer, a prominent attorney and landowner from Montgomery county, who wrote Rodman at the convention: "Some years ago I was much interested in the question of Judicial Reform in this state and I remember certain articles you then wrote on the subject."¹⁰

Further evidence that judicial reform was not just an unpopular radical innovation for North Carolina in 1868, is reflected in a letter to Rodman from Thomas Sparrow, an attorney from Hyde county. "I have given [the draft of the Judicial Article] a careful reading and have shown it to the members of the bar in attendance at the Court here [Pitt county] - Biggs, Jenkins, and the rest. It is generally approved by them

all. They think it a decided improvement over the present system which is a nuisance."¹¹ The draft referred to most likely was the first one reported from the Judiciary Committee. It described, in a letter to Colonel David M. Carter of Hyde county, dated January 23, 1868, a proposal advocated by Albion Tourgee. "[The] Judicial system introduced in committee [was drafted] by Tourgee of Guilford. It is the New York system. Judges elected by the people for a term of years. All suits brought by petition - law and equity combined in the same jumble. A code embracing emphatically all the law [and equity] of the state." Though not entirely successful in stemming the radical tide, his influence is evident as he further tells Carter: "I think a sort of compromise of his system and mine will probably pass."¹²

The most fundamental alteration of the judicial system, the unification of law and equity into a single system of civil law received a majority approval of the convention by a vote of 50 to 38. As reported by the daily newspaper, the Standard, the convention took action on February 12, to "abolish the distinction between actions at law and equity." Already 17 states had adopted the unified system with positive results. Rodman and others resisted the measure advocated most strongly by Albion W. Tourgee, accusing him of a "mania

to import northern ideas." How or why Tourgee was able to change Rodman's views, or whether several factors contributed to his revising his opinions is unclear, but apparently a compromise was hammered out in committee and a new system emerged to everyone's minimum satisfaction. Other reforms "required proceedings to be in writing, abolished feigned issues, increased the number of judges, dispensed with the old county courts, transferring most of their functions to the Superior Courts and giving the Clerk probate functions, and provided for a Code Commission of three to revise the procedures to give needed independence from the legislature." Rodman ultimately defended the new system, pointing out that it eliminated complexity, delay, and cost.¹³

In regard to the method of selecting judges and the combining of law and equity, the Judiciary Committee submitted to the majority rule of the entire convention. It was so noted in the Convention Journal that a wide difference of opinion existed among the committee members on these two fundamental points of judicial reorganization, and a vote of the Convention for either would be received as a directive to the committee on how to procede. As Rodman wrote to Colonel Carter in late February, "I am utterly opposed to the election of judges by the people. I made one of the most carefully

considered speeches against it, but the Convention instructed the Committee to report a plan with that feature. I had no help from any quarter." His efforts, therefore, to moderate liberal and radical innovations was an uphill battle, despite support from Northerners such as Joseph C. Abbott from New Hanover county and David Heaton from Craven county. "Several of the Northern men, out of regard to me, voted for and advocated my views - although they said their own prejudices were for an elective system." The Standard printed his eloquent and quite convincing speech in support of judicial appointments. He basically restated the reasons for which Federal judges are appointed rather than elected: Judges should be learned in law and independent of partisanship and political influence. "It was not intended for them to reflect the wishes of the people, but merely to minister that justice the state owes every citizen." Nevertheless, the measure passed by a vote of 56 yeas to 34 nays.¹⁴

Despite improvements upon the antebellum judicial system, not all members of the bench and bar submitted to change gracefully. Resistance to judicial reform was strong and not limited to recalcitrant southern conservatives. New York, the leader of the revolution was also the leader of the counterrevolution. Enacted in 1848, Field's Civil Code only a year later was

amended by the New York legislature to delete the words "in such a manner as to enable a person of common understanding to know what is intended." In fact, over the next two decades, Field's Civil Code became so altered by the New York legislature it was not recognizable, much to Field's personal frustration and despair.¹⁵ Rodman himself was not wholeheartedly in support of the New York plan and diligently worked to modify the radical changes promoted by Albion W. Tourgee, the liberal reformer from Ohio, who seized the opportunity to reorganize the judicial system of North Carolina along the more democratic and egalitarian lines of many new western states. The staid and stubborn legislatures of the northeastern states only slowly accepted judicial reforms, and many did not do so until decades after the Old South was reconstructed.

A brief comparative analysis of Tourgee's plan for the Judicial Department and the final Judicial Article as reported in the Journal of the Constitutional Convention of 1868 on March 10, clearly shows that while several important elements of the new system came directly from Tourgee, the Ohio carpetbagger can be credited for barely a third of the final article. Only ten sections were transferred verbatim from his rough draft. Almost half of his original document, 13 of 26 sections, were either greatly revised or expunged.

Fifteen of 35 sections of the final document were never part of Tourgee's plan at all, and approximately six sections of the final article combined elements from Tourgee's plan and other sources. The last six sections of the final article are verbatim from Rodman's handwritten rough draft, but those were the only sections found written in his hand. Being committee chairman, as well as a member of the Committee on Revisions, it is presumable that the wording, if not the ideas, are predominantly Rodman's.¹⁶

The two most substantive and radical changes which must be attributed to Tourgee and which come verbatim from his plan are the combining of law and equity, Section 1, and the direct popular election of Supreme and Superior Court judges, Section 26. In the first matter, though he initially opposed it, Rodman most likely perceived improvements resulting from such reorganization. He also received words of approval from fellow attorneys such as Thomas Sparrow and Rufus Barringer. Regarding the election of judges, Rodman never approved of nor voted for such a measure, but did tell Colonel David M. Carter that "The General ticket system and the long terms [eight years] will save us." District, rather than statewide, elections of Superior Court judges, however, were finally proposed. With

regard to the length of terms of judges, Rodman and Tourgee were in agreement. Rodman noted in his speech that the present New York legislature now sitting was considering lengthening terms to 14 years. If terms of judges were short, they might become slaves of the party. Frequent elections referred to executive and legislative office. Judges should represent the justice of the law, not the wishes of the people. Tourgee agreed that long terms were safeguards of the judiciary.¹⁷

A breakdown of Tourgee's plan and the Judicial Article in its final form, as well as examples of changes during the three readings of the document before the convention, hopefully will more clearly reveal Rodman's influence and his contest with Tourgee.

Section 1 abolished all distinction between actions at law and suits in equity, creating one form of action for all civil suits, i. e., the settlement of disputes and controverseries between private citizens. Any public offense prosecuted by the state was termed a criminal action. This section came verbatim from Tourgee's plan. (Section 22) with the phrase "before a jury" added to the last sentence. Rodman, writing to David Carter, referred to combining of law and equity as a "jumble." It was reported by the Standard that C. C. Pool, a scion of the Pool family from Pasquotank county, tried but failed to have the first part of Section 1, combining law and

equity, deleted during the third and last reading. The measure to combine passed 73 to 29 on the second reading, and 80 to 20 on the final reading.¹⁸

Sections 4 and 5 also came directly from Tourgee's plan (Sections 1 and 2). They eliminated Probate Courts altogether, but established the state senate as the only court of impeachment. It created a Supreme Court, Superior Courts, Justice of the Peace Courts and Special Courts as needed. Section 5 provided details for impeachment trials. Section 6, which conferred on the House of Representatives the sole power to impeach, and Section 7, which deals with treason, were not part of Tourgee's plan, but they passed with Section 5 with little or no recorded dissent. Neither the Standard, the official daily record,¹⁹ nor the Journal of the Constitutional Convention of 1868 made any comment regarding these sections. The same is true of Sections 9, 10, and 11, which dealt with the terms and jurisdiction of the Supreme Court. Section 9 designated that the court sit for two terms each year at the seat of government, and Section 10 restricted the Court to appellate jurisdiction of matters of law and legal reference, but not to issues of fact. Both sections come directly from Tourgee's plan. Section 11 delegated original jurisdiction to the court to hear claims against the state, and the source of this section is

unknown.

In Section 8 Rodman advocated increasing the number of Supreme Court justices from three to five. By decreasing the workload they could more carefully review cases brought before the court and thus execute justice more fairly. Plato Durham, the Conservative leader from Orange county, opposed, arguing that the Republicans were "padding the number of offices." Calvin Cowels, a Radical Republican leader from Watauga county, and W. W. Holden's son-in-law, also opposed for reasons of economy. He did not want to pay the extra salaries. Rodman proposed a compromise amendment adding "the General Assembly may decrease that number whenever necessary." At the first reading the measure providing for four associate justices passed. At the second reading Mr. Durham offered an amendment changing the number back to two, which passed by a vote of 82 to 14. Neither Rodman's nor Tourgee's votes were recorded in the Convention Journal. Rodman's amendment to change the number of associates back to four barely passed at the third and final reading on March 10, by a vote of 49 to 48. The final form of Section 8 merely states that the "Supreme Court shall consist of a Chief Justice and four Associate Justices," with no reference to increase or decrease. Tourgee's original plan called for only two associate justices.²⁰

The number of judicial districts for Superior Courts, Section 12, promoted some discussion among the delegates. Calvin Cowels advocated only ten, the number Tourgee originally designated, but the measure was defeated 57 to 43 in favor of twelve districts. Though its basic elements are from Tourgee's plan, (Sections 6 and 7), it was modified. Section 13 merely assigned the counties to their respective districts.²¹

The eleven sections from 14 through 25 were read and adopted as reported by the Judiciary Committee at the second reading, with compromises and adjustments apparently worked out in committee. Of these eleven sections five, Sections 14, 19, 21, 22, and 24, were never part of Tourgee's plan. Sections 14, 21, and 22 dealt with the personnel and functions of the Superior Courts, while Section 19 established special courts as needed, and Section 24 declared the legality of all previous state laws not repugnant to the United States Constitution. This last section Rodman felt unnecessary as any such law was automatically null and void under the United States Constitution.²² Sections 15 and 16 dealt with the original and appellate jurisdiction of Superior Courts as did Tourgee in Section 8 of his plan, but they expanded and gave more detail to his draft.

Rodman's committee essentially scrapped Sections 9 through 14 of Tourgee's plan which dealt with Probate

Courts, but certain elements of those sections were incorporated into various other sections of the final article. For instance, certain functions of Probate Judges under Tourgee's plan were delegated to Superior Court Clerks. The establishment of Special Courts in Section 14 of Tourgee's plan is provided for in Sections 4 and 19 of the final article, and Section 11, pertaining to the terms and jurisdiction of Probate Courts in the Tourgee plan, was revised and improved in Section 28 of the final report of the Committee. Essentially the Superior Court Clerks were given probate functions, as well as the authority to hear minor misdemeanors and small claims controversies. They were also required to keep the courthouse open at all times for the transaction of all routine business.

In the final report of the Judiciary Committee read and voted on by the convention on March 10. the last five sections, 27 through 31, came from other sources than Tourgee's plan except for the filling of judicial vacancies by Executive appointment for an unexpired term (Section 30). Rodman's two amendments to Section 29 and one amendment to Section 30 regarding the filling of vacancies in the county courts by local officials passed readily. Of special importance was the almost innocuous phrase, "unless otherwise provided for" as an amendment to Section 30, which established Tourgee's principle of

executive appointment to fill judicial vacancies. Other means for filling unexpired terms of county court officials were provided for when Rodman added the following sentence as an amendment to Section 29 on the 28th of February: "In case of a vacancy existing from any cause, in any of the offices created by this section, the Commissioners for the County may appoint to such office for the unexpired term."²³ Thus, Rodman gave ground in regard to the election of judges and combining law and equity, but managed to retain at least a foothold on local control of county government.

This provision was important for the local gentry to retain their long held control over county government and was one of the less obvious yet significant victories of the conservative faction. Then, as now, it is difficult to unseat an incumbent in a political office, and once an appointee was in office reelection was almost assured. The election of Superior Court judges by districts threatened the power of the local courts to no great extent, but the provision did not pass anyway, and they were elected by a statewide vote (as they continue to be today). The chain of party power linking state to local government held firm, since Tourgee's amendment providing for executive appointments could work for the benefit of the county power structure as readily as it could to check it. Though many members

of the former planter elite were excluded from government offices during reconstruction, younger family members were not. Also, the rising class of industrialists and businessmen, still people of property and social status, succeeded to government offices.

Rodman's work on the Judiciary Committee could best be evaluated as legally sound, not blinded by traditional southern prejudices. But he, nevertheless, protected as much of the preexisting legal structure as possible. It must not be dismissed lightly that his was an almost insurmountable task, and perhaps some of his worse critics had unrealistic expectations of what he would be able to accomplish. He had a formidable opponent in Albion W. Tourgee, and northerners held a majority of the committee chairs. But his greatest handicap, perhaps, was the opposition of western North Carolina men, as he complained to David M. Carter: "When I first talked with the members I was satisfied they would be liberal (about proscription). My mistake was that I saw little or nothing of the Western men who form the illiberal portion. It did not occur to me that our own people would be proscriptive when the Yankees are not." Though he was referring to the suffrage amendment, he also found no support for his stand against the election of judges except from a few Northern friends, who supported him out of courtesy

rather than conviction.²⁴

The Judicial Article and the subsequent Codes of Civil and Criminal Procedure were perhaps the culmination of Rodman's activities in the convention. In the re-organization of the state's judicial system, long sought reforms were made, procedures simplified, and the dispensing of justice facilitated. Yet local authorities managed to retain control of local courts. Many of the new provisions were obvious improvements, and they were readily adopted by a majority of the bench and bar.

Keeping the courthouse open at all times for conducting routine business prevented court week from becoming congested with administrative functions. Increasing the number of judicial districts and corresponding judges from 10 to 12 (a long sought reform) decreased the workload as well as reduced travel time for the judges on their circuits. Limiting the number of pleadings and keeping written records reduced the costs and length of time it took to resolve a case, as well as further reducing the caseload of the judges, allowing the Supreme Court to hear only issues at law and not issues of fact facilitated its ability to administer justice and render decisions more effectively.

While the complete reorganization of the judicial

system appeared to be a victory for the radical Republicans, it did little to alter the existing political power of the state. Rodman, one of the more highly visable delegates and a member of that class of "wealth, virtue, and intelligence" which had dominated state government for generations, easily became the object of ridicule and blame. Those citizens who saw the new constitution as submission to Northern dominance and Negro control were unfairly critical. The new Judicial article made North Carolina's legal system one of the most flexible and progressive in the country; but even more important, the personnel of the bench and bar remained the same as before the state seceeded. Rodman, submitting to pressures when he felt he had to, still managed to lay the groundwork for the reassumption of control of state government by its former leaders.

Rodman's work on the Judicial Article was highly visible and therefore subject to criticism and disdain, especially by people who did not understand the long term benefits of the changes. Allowing blacks to serve on juries and to testify in court was viewed as submission to Negro domination. The popular election of judges was seen as the imposition of northern ideas, rather than a reform many North Carolinians had sought for a long time. The greater efficiency in the administration of justice and the improved management of

county courthouses were less obvious and thus received minimum review, good or bad. In the same manner, the taxation and revenue articles dealt only indirectly with the racial issues and their impact was not widely perceived. In the long term, they and the Judicial Article more permanently affected North Carolina state government than did the suffrage issue which received much greater publicity at the time.

The Convention: Judicial Reform

¹Fenner B. Satterthwaith to William B. Rodman, February 16, 1868, No. 329.3, Folder g, Rodman Papers, East Carolina University Manuscript Collection, Greenville, North Carolina. Hereinafter cited as the Rodman Papers, ECMC.

²Hugh T. Lefler and Albert Ray Newsome, North Carolina The History of A Southern State. Third Ed. (Chapel Hill: University of North Carolina Press, 1973) 307-308. Hereinafter cited as Lefler and Newsome, North Carolina.

³Charles B. Rembar, The Law of the Land. (Simon & Schuster, 1980) 224-227. Hereinafter cited as Rembar, The Law of the Land. Rufus Barringer to William B. Rodman, January 23, 1868, No. 329.3, Folder g, Rodman Papers, ECMC.

⁴Arthur R. Hogue, Origins of the Common Law. (Bloomington: Indiana University Press, 1966). James R. Cameron, Frederick William Maitland and The History of English Law. (Norman: University of Oklahoma Press, 1961).

⁵Rembar, The Law of the Land. 277- 278. William J. Adams, "The Evolution of Law in North Carolina," North Carolina Law Review. 2:3 (April, 1924) 141 and 136.

⁶Otto H. Olsen, Carpetbagger's Crusade: The Life of Albion W. Tourgee. (Baltimore: Johns Hopkins Press, 1965) 98. Hereinafter cited as Olsen, Carpetbagger's Crusade. Rembar, The Law of the Land. 239.

⁷David Dudley Field (1805-1894), legal reformer, was born in Haddam, Connecticut, the eldest of five sons among whom were Cyrus, who laid the trans-Atlantic cable, and Stephen, an Associate Justice on the United States Supreme Court from 1862-1892. Dictionary of American Biography.

⁸Rembar, The Law of the Land. 236.

⁹Rembar, The Law of the Land, 238.

¹⁰Olsen, Carpetbagger's Crusade. 101. Rufus Barringer to William B. Rodman, February 4, 1868, No.

329.3, Folder g, Rodman Papers, ECMC.

¹¹Thomas Sparrow to William B. Rodman, February 4, 1868, No. 329.3, Folder g, Rodman Papers, ECMC.

¹²William B. Rodman to David Miller Carter, January 23, 1868, No 143.28 in the Carter Papers, Southern Historical Collection, University of North Carolina, Chapel Hill, N. C. Hereinafter cited as the Carter Papers, SHC.

¹³Journal of the Constitutional Convention of the State of North Carolina at the Session of 1868. (Raleigh: J. W. Holden, Printer, 1868) 186-187. Hereinafter cited as Convention Journal, 1868. Olsen, Carpetbagger's Crusade, 100-101.

¹⁴Convention Journal, 1868, 180-184. Resolutions of the Judicial Committee of the Constitutional Convention of 1868. No. SS295, North Carolina Archives and History, Raleigh, N. C. Hereinafter cited as Convention Papers, NCAH. William B. Rodman to D. M. Carter, February 23, 1868, No. 143.28 Carter Papers, SHC. Standard (Raleigh, North Carolina) February 12, 1868.

¹⁵Henry M. Field, The Life of David Dudley Field. (New York: Scribner's and Sons, 1898) 98.

¹⁶The North Carolinian Constitution of 1868, Article IV. "The Judicial Department" a plan by Albion W. Tourgee in the William B. Rodman Collection, No. PC76.17, NCAH. Albion W. Tourgee Papers, Chautauqua County Historical Society, Westfield, N. Y., on microfilm No. M-3780 positive, Roll 6, Frame 791, SHC.

¹⁷William B. Rodman to David Miller Carter, February 23, 1868, No. 143.28 Carter Papers, SHC. Standard (Raleigh, N. C.) March 11, 1868.

¹⁸Tourgee's Plan. No. PC76.17 Rodman Collection, NCAH. William B. Rodman to David Miller Carter, January 23, 1868, No. 143.28, Carter Papers, SHC. Standard (Raleigh, N. C.) March 11, 1868. Convention Journal, 1868. 264 and 383.

¹⁹William Woods Holden's son, J. W. Holden, editor of the Standard, was hired as the official Convention reporter at a fee of \$6.00 per day and was authorized to print an official Journal of the Convention. The daily

reports in the Standard are much more detailed than the Journal of the Convention, 1868. Convention Journal, 1868. 61.

²⁰Standard (Raleigh, N. C.) March 11, 1868.
Convention Journal, 1868. 265-266 and 382.

²¹Convention Journal, 1868. 266.

²²Standard (Raleigh, N. C.) February 29, 1868.

²³Standard (Raleigh, N. C.) February 29 and March 2, 1868. Convention Journal, 1868. 377.

²⁴William B. Rodman to David Miller Carter,
February 23, 1868, No. 143.28 Carter Papers,
SHC.

The Convention: Economic Reform

For the first time in the history of North Carolina, state government had a fiscal policy as organic law in 1868. The new constitution provided for systematic taxation, limited the General Assembly's powers to levy taxes and borrow money, and imposed control over government spending. As a direct benefit to the people, the constitution granted homestead and personal property exemptions and abolished imprisonment for debt.¹ The two sections containing these innovative provisions are Article V, Revenue and Taxation, and Article X, Homesteads and Exemptions. The Revenue and Taxation article incorporated ad valorem taxation and direct voter approval for new and increased levies in addition to establishing state and local governments debt limits. Article X established the principle of a homestead exemption and protected a debtor's family from a legal suit for his debts, as well as securing the personal and property rights of a married woman to herself. Basically the exemptions prevented a debtor's homestead from being sold to repay debts, except for taxes or the debt incurred to purchase the property.

While these provisions remedied former abuses, they did not completely resolve the immediate and pervasive problems of the state's depressed economy: scarce capital, heavy personal debts, and overloaded court dockets for defaulted loans and purchase agreements.

The delegates to the Constitutional Convention of 1868 were confronted with the economic collapse of North Carolina, and all social and economic groups across the state urged them to deal with the debt problem in the short term. On January 20 the Raleigh Standard succinctly editorialized about the economic situation and its possible solutions:

"Distress is unexampled. Thousands to be stripped of all they have and [will] lose to a few who have money and credit. Temporary stay laws and exemptions for homesteads depend on the will of the military commander. Time is needed, for people to arrange for and compromise their debts. [They] ask indulgence until the next crop is made. We do not perceive one debt more sacred than another - under existing laws new debts are collectible while old ones are stayed or barred. New ones are most pressing. Bankruptcy [is] a strong measure and [should be used] only as a last resort."²

The directives of Congress in the Reconstruction Acts of 1867 instructed the southern state conventions only to draw up new constitutions which would make them acceptable for reentry into the Union, but certain legislative acts were mandatory to prevent a state of anarchy. Thus, the conventions passed ordinances, or bills, to halt judicial proceedings against loan

defaulters, to endorse new railroad stock, to make loans for internal improvements such as swamp drainage and canals, and to incorporate new towns. Although the constitutionality of these laws was ~~challenged on the~~ convention floor and later in the courts, they provided solutions for the immediate economic crises. Two stay law ordinances were passed by the North Carolina convention on February 5 and March 14, 1868. These simply stopped all court actions against debts made before May 1, 1865 and provided a long term schedule for repayment of those debts.

Stay laws, a homestead exemption, and abolition of imprisonment for debt composed the fundamental economic recovery plan of the Republicans and Conservatives alike. Men such as Dennis D. Farebee, a former secessionist Democrat who was also a member of the Constitutional Convention of 1866, as well as Thomas Sparrow, a former Unionist and Whig member of the 1858-59 House of Commons, sought immediate relief for the economic ills of North Carolina.³ Two conflicting ideas motivated them: The need of a huminitarian policy to alleviate suffering and the preservation of a new middle class economy.⁴

Debtor relief, the most crucial and pressing problem of the day, dominated the correspondence to Rodman and others. According to I. H. Burnett from

Rocky Mount, planters were in a very difficult position because they had no money for spring planting and feared borrowing.⁵ Attorney S. P. Bently from Pitt County, expressed approval of recently enacted stay laws, noting that economic relief was a necessity because the morale and energy of the people were depleted. Also Bently observed that the 800 cases which were pending in the March term of Pitt County Superior Court could cause 3/4 of the land in that county to change hands. He was convinced, however, that the people "do not seek repudiation - only temporary relief."⁶ On the other hand, Thomas Sparrow, a fellow attorney from Beaufort County, claimed they wanted more drastic relief. He wrote Rodman that "parties standing about me in the Clerk's office (in Pitt County) say tell Rodman not to come back to this county unless the convention shall repudiate all old debts."⁷ Others such as the Register of Deeds of Orange County, W. J. Hogan, and Samuel Tomlison of High Point, sought relief for Executors and Administrators of estates. As the responsible parties for defaulted prewar loans from those estates, they had "to make the Estate good to the last dollar."⁸

Private debts were not the only problem, however, as state and local officials sought similar relief. James Rumby from Carteret county suggested an ordinance or bill to prevent counties from being sued for bonded

indebtedness. He pointed out that Carteret county's \$20,000.00 interest debt on \$50,000.00 worth of bonds for the Atlantic and North Carolina Railroad had not been paid by the sheriff, although money to pay the interest had been raised by taxes in 1860-61. Now the debt was uncollectible.⁹ Dennis D. Ferebee, from South Mills in Camden county, wrote Rodman seeking immediate and decisive action by the convention to "cut off at once all jurisdiction of the Courts over actions of debt May, 1865, without exception."¹⁰

In the first week of the convention John A. McDonald of Chatham county proposed a select Committee on Relief, composed of one member from each judicial district, be formed to deal with the economic problems which plagued the state and direct it to draw up a bill for debt relief.¹¹ McDonald, Rodman, and other Relief Committee members sought debtor relief for all social and economic groups. They reasoned that the people would not support a new constitution which did not provide for an easing of debts contracted prior to May 1, 1865.¹²

In addition to making the new constitution acceptable to North Carolinians, some provision was required to prevent massive land speculation by Northerners, which was greatly feared. William A. Jenkins, former Attorney General and a future member of

the General Assembly, concerned about the issue wrote to Rodman "some relief is absolutely necessary and if lands are now put on the market, it will be an almost total sacrifice and no one will be benefitted except Northern capitalists." Mr. T. Jones, an attorney from Wilson, and Mr. J. M. Long from Cabarrus county, a representative in the General Assembly of 1866-1867, echoed similar sentiments. Mr. Jones reported that his speech for debt relief at a session of court in Wilson received great popular support. A provision for debt relief provided the radicals with a means to "draw into their party great numbers of (poor) whites" who were otherwise conservatives, and also insured ratification of the constitution.¹³

As early as January 17, Rodman had prepared an ordinance to relieve debtors. It provided "That no Court of Law or Equity . . . shall have jurisdiction of any suit or action founded on any contract made prior to May 1, 1865." This ordinance was passed by the convention, 56 to 39, on February 5.¹⁴ Simply stated the ordinance stayed or suspended all proceedings or final processes by judicial officers and removed all cases from the jurisdiction of the Courts of Law and Equity of the state until July 1, 1868 or until the new constitution took effect, whichever came first. Public officials, executors, trustees, and others who misused

monies in their trust could be tried for fraud, however.¹⁵

This first ordinance effectively stayed or suspended all court actions relating to debts made prior to May 1, 1865 until the new state government became functional. In so doing it bought valuable time for many debtors who otherwise could not help their plight. A second ordinance passed on March 14 repealed sections one and two of an earlier ordinance passed by the convention of 1866 regarding the jurisdiction of courts over actions of debts, so as not to conflict with the Ordinance of February 5. It further amended other sections of the 1866 ordinance, providing for the gradual payment of debts in fractional installments over a four year period.¹⁶ These and other provisions for debt relief, namely the abolition of imprisonment for debt and the homestead exemption, benefitted all social and economic groups represented at the convention, except the former slaves.¹⁷

The two special ordinances respecting the jurisdiction of the courts of North Carolina, as enacted by the convention on February 5, and March 14, provided the conservatives an important victory, and their greatest achievement, overriding radical opposition. The radicals, led by Albion W. Tourgee, sought to stay all debts (including those made after May 1, 1865), and

advocated the repudiation of all former state debts. He also argued for a retroactive homestead provision to be included in the constitution. Clearly the debt relief ordinances did not seek repudiation, public or private, nor did Rodman support any such policy. Reacting to an article in the Raleigh Sentinal, he wrote his wife, "You will see that the Sentinal holds me up as a repudiator - whereas in truth I am more moderate in my views on that subject than 9/10 of the members."¹⁸ That his moderate view prevailed over extreme positions on repudiation and the stay laws, testifies to his stature and personal influence among the delegates.

In debate on the convention floor Rodman was able to entice the majority of white radical Republicans to abandon their leader, Albion W. Tourgee on this issue. Tourgee tried to convince the delegates that the stay laws protected the 1500 wealthy landowners who owned nearly two-thirds of the land and who were heavily in debt, while preventing poorer whites and Negroes from acquiring property at greatly reduced prices. Rodman argued that absentee Northern investors were acquiring the land as charged by William Jenkins, and not the poor whites and Negroes.¹⁹ They, he insisted, simply did not have the cash on hand, however little was required. His argument was supported by correspondence from J. C. Johnston of Plymouth and Thomas D. McDowell

from Elizabethtown. Johnston reported that the cypress swamp between Washington and Jamesville was being worked by Northern interests and recommended leveying a tax on shingles being shipped out of the state. McDowell, also requesting relief ordinances, claimed that northern creditors were more patient than local creditors, providing further evidence that their out of state cash was available, and they were willing to wait for North Carolinians to default.²⁰

Rodman presented his arguments for the passage of stay laws in a speech to the convention on January 29, which was reported in the Standard:

"The doctrine that the obligation of contracts should not be interfered with, is perfectly sound and true, and yet there are times when it is found necessary to legislate otherwise.

"The ordinance stays all processes on debts except in cases of fraud. It expires on 1 July or when the constitution is adopted and is meant for temporary relief only, for it is proposed by the committee to incorporate in the constitution some clause embodying the principle of relief, and interposing a delay on debts contracted prior to May, 1865 requiring the debtor annually to make some payment, say a tenth. The time will come when he must pay and look for no further relief. Those overwhelmed must go into bankruptcy . . . but there are others who can disencumber themselves when their property can bring fair valuation. As soon as the state is restored to the Union, property will rise in value, but if sold now . . . will be purchased at the lowest prices and owned by non-residents. Poor whites and colored men will not be benefitted. They can get it now as cheap as they wish, but they have not the means to purchase with. The state will be nearly owned by a few great absentee landlords, the same as in Ireland, drawing one-third of the wealth of

the state. The people who live and labor here should own the land. [sic] He did not care where they were born, but the owners of the land should live here and spend here the proceeds of what the soil produces.

"If the convention does something of the kind (puts off debt payments) in less than five years the old debts of the people will be paid."²¹

Conservative and radical members alike voiced opposition to the stay laws. John W. Graham, son of former governor, William A. Graham of Orange county, and Richard W. King of Lenoir county, both large landowners and conservatives, argued that the laws were unconstitutional since the Convention had no mandate to enact legislation. Furthermore, argued King, the stay laws were not necessary due to the existence of the Federal Bankruptcy law, Canby's Order #164, which provided debt relief, and the North Carolina homestead law. The Republicans also refuted the ordinances because they felt as did E. W. Jones of Washington county, and James Hood, the Negro delegate from Cumberland county, that the laws benefitted the rich, not the poor. Some people could afford to pay their debts and should be compelled to do so. These laws were forms of repudiation and cheated creditors. Also, the stay laws prevented the poor from being able to buy up cheap land immediately. Abraham Congleton from Carteret county agreed with Tourgee, that relief for all debts, old and new, should be granted.²²

In order to protect small landowners and poor debtors, Tourgee eventually coerced a retroactive homestead provision from Rodman and the conservatives to balance the latter's measures for debt relief. Support for the stay laws as well as the homestead provision and the abolition of imprisonment for debts came from all classes.²³

Following ratification and readmission to the Union, popular opinion shifted in regard to the stay laws. Governor Holden, ever sensitive to the shifting political winds, spoke out against the ordinances in the General Assembly on November 4, 1868.²⁴ In January 1869 the North Carolina Supreme Court ruled in the case of Jacobs v. Smallwood that the stay laws were unconstitutional and detrimental to the general welfare of the state. Associate Justice Edwin G. Reed wrote the majority opinion based on the principle of obligation of contract as well as the need for a strong system of credit in the state to protect all classes of society. Newly elected associate justice Rodman ably dissented on the grounds that the stay laws primarily intended to change the jurisdiction of the courts rather than impair the obligation of contract. He argued that the stay laws did not materially impair the "obligation of the contract and leaves . . . to the creditor every remedy he had before; their operation

being retarded on consideration of public policy," or humanitarian motives. Furthermore, the General Assembly had interfered with obligation of contract previously with the ordinance of emancipation.²⁵

Rodman remained consistent in that he supported the conservative position at the convention for which he received numerous letters making the same argument, and dissenting in the Smallwood case. He never sought to repudiate all debts nor did he seek immediate debt repayment, but only wished to place debts in a sort of limbo until the state government was operable again, and to prevent confiscation of land and wealth by out of state parties. It is arguable that Rodman's social and economic peers had the least to lose due to weak credit throughout the state. If they were debtors their debts were stayed or suspended; if they were creditors, they would eventually receive payment of principal and lose only some of the interest. Nevertheless, the law benefitted all economic groups in North Carolina. By 1869, however, the overriding need for improving credit throughout the state prevailed over humanitarian needs and the law was repealed by the court ruling.²⁶

As the stay law ordinances provided a short term solution to the crushing debt throughout the state, the homestead exemption balanced them with a long term effect. It prevented many freeholders from losing all

their real and personal property, thereby becoming paupers and dependents of the state. As with the stay laws, homestead and personal exemptions were not entirely new to the delegates of the convention. Homestead exemption laws originated in the Texas Republic in 1839 and other states adopted them quickly. In 1850, for instance, New York enacted a homestead law. The North Carolina legislature passed its first homestead law in 1867, based on a vague homestead clause incorporated into the Constitution of 1866. That was not entirely new to North Carolinians either, as the Colonial Assembly of 1773 enacted similar legislation to "protect certain personal property from claims of creditors." Article X superceded all previous homestead legislation and also provided for exemptions based on monetary value. These amounts prevail as minimums today.²⁷

Presuming that a man required real property, the tools of his trade, and the basic necessities of life in order to survive indebtedness, the Homesteads and Exemptions article provided that personal property valued up to \$500.00 would not be sold "under execution, or other final process of court, for the collection of any debt." In the same manner up to \$1,000.00 of real property was exempted. The Constitution as revised in 1971 continued to maintain the \$500.00 and \$1,000.00 as lower limits, and allowed the legislature to increase

the limits commensurate with economic conditions. These exemptions, however, did not prevail for taxes owed on the property or for the "obligation contracted for the purchase of the property." Nor were the debts incurred for the services of laborers and mechanics exempted. The article further provided that minor children or a widow could not be held liable for the debt of their father and husband.²⁸

The most controversial aspect of Article X pertained to its ex post facto application to pre-convention debts. Rodman and Albion W. Tourgee vigorously debated this point at the convention with the result that Rodman conceded the retroactive status of the homestead article in exchange for provisions in the stay laws allowing for the gradual repayment of old debts. As with the stay laws, the North Carolina Supreme Court handed down a ruling on the homestead exemption in January 1869. In the case of Hill v Kessler the court granted the exemption ex post facto status since "it did not impair the obligation of contract [and] the intent of the law was to secure homesteads, not to defeat debts." "It is a question not of defeating debts, but . . . a question of policy and humanity." Associate Justice Rodman concurred with the majority opinion basing his arguments on the same principles he stated in his dissenting opinion in Jacobs v Smallwood.²⁹ The prevailing economic as well as

humanitarian value of the homestead exemption, as with the stay laws, was evident by the fact that Federal laws and court decisions closely paralleled state actions in 1864 (and again in 1870). Though the United States Supreme Court in 1877 ruled against the retroactive status of the homestead exemption in the case of Edwards v Kearsey, the exemption principle itself has retained its constitutionality to the present day.³⁰

Rodman's exact role in the creation of the Homestead Article is difficult to determine. Otto Olsen contends he initially opposed the retroactive effect of the homestead, but in the debates reported by the Standard he supported its retroactive nature. On January 29 he concurred with Tourgee that a retroactive homestead exemption needed consideration to provide economic relief and to eliminate pauperism in North Carolina. In the debate Tourgee said that he was "glad to know the gentleman [Rodman] admits the principle of retrospective homestead . . . [is] an enlightened idea, a principle which he hoped all would admit as cheerfully as the delegate from Beaufort had done."³¹

It can be surmised that the two men arrived at a compromise since Tourgee advocated the repudiation of all previous state debts. Rodman, with as much conviction, felt it imperative to repay the state's pre-war debts in order to restore the honor and credit of

North Carolina.³² The two provisions, for homesteads and debt repayment, essentially sought to achieve the same goals: relieve debt burdens, reestablish credit, revive the economy, and reenter the Union. ~~Logic~~ therefore, dictated compromise to attain these objectives.

Opposition to a retroactive homestead provision as part of the new constitution was argued by C. C. Jones of Caldwell county, that it "would be confusing and inexpedient . . . and amount to a practical repudiation of private obligations between man and man." The stay laws provided for graduated repayment of old debts and the constitutionality of an ex post facto law would very likely be challenged. John W. Graham of Orange county wished to turn the whole matter of homesteads over to the legislature, which Rodman opposed, saying that "a retrospective homestead law was less doubtful if placed in the Constitution than if left to the legislature." At the third reading of the article on March 6, Rodman opposed Mr. Jones' amendment to make the homestead prospective only and declared that he would vote for the article as it stood, which he did and it passed as submitted.³³

Section 6 of Article X is notable in that it secures to a married female her own personal and real property free from any debts or obligations of her

husband. Also, Section 8 explicitly states that no deed executed by the owner of a homestead is "valid without the voluntary signature and assent of his wife." This principle, a customary practice in North Carolina since the 1830's became a permanent part of the organic law.³⁴

Rodman was not a member of the Committee on Homesteads, but two characteristics of the article reflect his views. First the article does not specifically provide for any special group or class of citizen. As with the stay laws, his purpose was to provide relief for all classes, and its constitutionality was left to judicial review. Secondly, Sections 6 and 8 regarding the rights of married women may have been his direct contribution. Tourgee, who drafted the original report did not include any such provisions, as a rough draft in his handwriting among his papers shows. On March 1 Tourgee wrote to his wife that [the Convention] "carried my homestead measure yesterday, but there will be a mighty effort to [illegible] it in the head tomorrow."³⁵ The influence of both men is evident, but the exact extent of each is not clear.

Of the three significant provisions for immediate debt relief: the stay laws respecting the jurisdiction of the courts, the homestead and personal exemptions, and the abolition of imprisonment for debt, only the

last never had its constitutionality challenged in the higher courts, though it had the serious defect of favoring out of state debtors. These three measures dealt with fundamental economic and social principles and "had a greater and more lasting effect than the fanfare of politics."³⁶

Article V on Revenue and Taxation drew much less public attention than the relief ordinances or the homestead exemption since it had a much less direct or immediate effect on the general public. This article reported by the committee to the convention on March 5, provided a system of taxation based on the principle of fiscal responsibility, limited the legislature's power to levy taxes and borrow money for more than the necessary expenses of government, and acknowledged old state debts, except for those made in aid of the rebellion, making specific provisions to repay them. It further restricted the taxing and spending powers of the General Assembly with a public purpose clause and created an "equation of taxation" between poll and property taxes. Other principles of fiscal policy incorporated as organic law included a capitation tax for the exclusive purpose of education and support of the poor, a uniform rule of taxation for all classes statewide, ad valorem taxes, direct popular vote for special levies or increases beyond constitutional

limits, and an income tax and certain exemptions.³⁷

Innovative and far reaching provisions drafted by the Finance Committee were products of Rodman's efforts and influence according to the late and former North Carolina Supreme Court Chief Justice, Walter Clark. Though not the committee chairman, Rodman was the senior member in wealth, education, business and political experience. Chairman Joseph C. Abbott had been a career officer in the Union Army and following the war chose to remain in Wilmington, North Carolina to become a wealthy entrepreneur, processing timber and manufacturing railroad cars. David Heaton, another former Union Army officer, also adopted North Carolina as his new home and became a banker in New Bern. He also knew Rodman prior to the Convention, respected him and looked forward to working with him in that assembly. Of the remaining ten members, five never before or after performed any known public service and most likely had little more than a rudimentary education, if any at all. Four were from modest economic backgrounds, but only one, Richard W. King from Lenoir county, was known to have some wealth.³⁸

Perhaps the most ingenious provision of the Revenue and Taxation article was the ratio between the property and poll tax. The poll tax was levied exclusively for the benefit of local education. Section 1 of Article V established a poll tax of \$2.00 per capita equal to the

tax on property valued at \$300.00 cash, thereby fixing a ratio between the poll tax and property tax. The effect of this limit was to set a valuation of $\frac{2}{3}$ of 1%, or $66\frac{2}{3}$ cents, on every \$100.00 worth of property. It further imposed a \$2.00 limit on the combined capitation tax of State and county, and prohibited, by Section 6, the counties from taxing more than double the state levy.³⁹ The creation of the "equation of taxation," as the ratio was called, had the immediate purpose of balancing the legislative power between the propertied class and propertyless new voters.

In 1868 Rodman astutely protected the property holding classes from potential confiscation by the new voting class which increased by fifty per cent the former voting population. This propertyless group, now granted almost unqualified suffrage, could have realistically obtained a legislative majority; and given the economic crisis of public and private debts, the possibility of placing an undue burden on property owners could not be dismissed out of hand. In an 1869 decision Associate Justice Rodman of the North Carolina Supreme Court explained that the Finance Committee of the constitutional convention wanted "to prevent confiscation of property by numbers, [so] a proportion was established; to prevent oppression of numbers by property, the poll tax was limited."⁴⁰

The majority report of the standing committee on Finance did not pass unchallenged on the convention floor. A minority report submitted by John W. Peterson of Duplin county, received support from Tourgee, who opposed the poll tax, but agreed to its use exclusively for education. The first section of the minority report totally eclipsed the proportion between poll and property taxes, thereby according to Rodman, setting the stage for the age old conflict between numbers and property. "Here this vast power of taxation is given to the government, and if numbers combine, property can be swept away unless provision be made in the constitution to check it. He said that the first signal gun of agrarianism had been heard here today." Tourgee rebutted that the the object of the majority report was that every man should pay \$2.00 per head, to which Rodman countered, "No Sir, the object is . . . to restrain unlimited and unbounded taxes on property, and (retain) a small tax on the poll. He said that there was abroad in North Carolina a feeling of agrarianism. Denunciations of property came from property holders themselves, not the colored people." Supported by Swain S. McDonald of Moore county and John W. Graham of Orange county, the majority report was carried and Tourgee's proposition to substitute the minority report was defeated 27-81.⁴¹

Article V, Sections 1 and 6, of the new constitution attempted a daringly innovative experiment, not yet tried by any other state. It limited the power of the legislature in regard to the rate of taxation. Though Rodman admitted the liklihood of failure with such absolute limits on State and county governments, he later pointed out that construction of Article V must be viewed in light of the old law, [its] mischief, and the remedy intended:

"The old law here was that the Legislature could contract an unlimited state debt, and by abuse of this power for works of internal improvement, threatened the bankruptcy and dishonor of the state, and the ruin of the people; the remedy intended was to restrict the power of the Legislature to incur debts . . . by requiring the previous sanction of the people."⁴²

In simple terms Article V attempted to set a ceiling on the combined state and county taxes to be levied for the ordinary and regular expenses of government which did not require the express consent of the people. For extraordinary or special expenses, the legislature was directed in Section 5 to seek approval by direct vote of the people for any special levy, which had to be applied only to its special purpose (Section 8). Counties seeking such special levies required approval of the General Assembly. One of Rodman's strongest and continuous crusades was restricting the legislature to the business of general legislation.. In 1875 he

criticised state and local governments for flagrant abuse of legislative power by incurring debts beyond the necessary expenses of government without the consent of the tax payers.⁴³

Another important provision offered by the Finance committee was ad valorem taxes which had been an issue in North Carolina for a decade prior to the outbreak of war. It can hardly be claimed that this proposition was forced upon the convention delegates by the radical members. The idea had been a plank in the 1860 gubernatorial campaign of John Pool (uncle of C. C. Pool, who closely associated with Rodman on and off the convention floor).⁴⁴ Increasing popular support of ad valorem taxes had been growing and fermenting in regard to the taxation of slaves as property throughout the 1850's, but the outbreak of hostilities dissipated its impact, and of course emancipation made it academic. By 1860 all the southern states except Virginia and North Carolina had ad valorem taxation and the latter adopted it upon joining the Confederacy in 1861, (Chapter 53, Public Laws 1863-1864).⁴⁵

Section 3 of Article V granted the legislature the power to raise funds by other levies besides the poll and property taxes. On the convention floor Rodman moved to amend Section 3 as reported by adding "The General Assembly may also tax trades, professions, franchises and

incomes." Arguing that "as the section stood neither bar-keepers, inns, or shows of any kind whatever could be taxed, or lawyers or other professions. The legislature ought to be able to tax them as they are able to pay. The legislature ought also to be able to tax incomes, otherwise a wealthy man might come and live here and pay no tax." He further noted that delegates would be astonished to find how much tax is paid in this manner. In regard to franchises, the power to tax ought to be reserved until a charter was granted.⁴⁶

In contrast to the stay laws and the homestead exemption, the Article on Revenue and Taxation dealt with long range fiscal policy and never came under public attack. It laid the foundation for the fiscal responsibility of state government, and though it's been altered by amendment and judicial review no section has ever been ruled unconstitutional, nor have the basic principles established been revoked.

The State Constitution Study Commission appointed by Governor Dan K. Moore in 1968 worked to revise and amend the organic law and produced the Constitution of 1971. In Article V editorial revisions were extensive. Language was modernized, provisions more logically arranged, and pertinent sections from other articles incorporated, as well as spelling and punctuation standardized. Certain provisions were clarified, such as

local government's right to levy taxes for "necessary expenses" without direct voter approval.⁴⁷ Others were expanded such as increasing special tax districts. "Emergencies immediately threatening public safety" was added to the list for which local government could exceed the borrowing limit specified in the constitution, to "two-thirds of the amount by which the local unit's indebtedness was reduced during the last fiscal period." The only substantive change, however, was to give a primary wage earning wife the same income tax exemption as a husband who is a primary wage earner.⁴⁸ These 1971 revisions have made the organizations and language of Article V more lucid and appropriate to contemporary conditions, but its original principles have not been altered.

The Convention: Financial Reform

¹John L. Cheney, Jr., North Carolina Government 1585-1974 A Narrative and Statistical History. (Raleigh: North Carolina Department of State, 1975) 797. Hereinafter cited as Cheney, North Carolina Government.

²Standard (Raleigh, North Carolina) January 20, 1968.

³Cheney, North Carolina Government. 832.

⁴Kenneth E. St. Clair, "Debtor Relief in North Carolina During Reconstruction," North Carolina Historical Review, XVIII (July, 1941) 234. Hereinafter cited as St. Clair, "Debtor Relief."

⁵I. H. Burnett to William B. Rodman, January 19, 1868, No 329.3, Folder g, in the Rodman Papers, East Carolina University Manuscript Collection, Greenville, North Carolina. Hereinafter cited as the Rodman Papers, ECMC.

⁶S. P. Bently to William B. Rodman, February 12, 1868, No. 329.3, Folder g, Rodman Papers, ECMC.

⁷Thomas Sparrow to William B. Rodman, January 18, 1868. No. 329.3, Folder g, Rodman Papers, ECMC.

⁸W. J. Hogan to William B. Rodman, January 18, 1868, No.329.3, Folder g, Rodman Papers, ECMC.

⁹James Rumby to William B. Rodman, January 18, 1868, No. 329,3, Folder g, Rodman Papers, ECMC.

¹⁰D(ennis) D. Ferebee to William B. Rodman, February 7, 1868, No. 329.3, Folder g, Rodman Papers, ECMC.

¹¹Standard (Raleigh, North Carolina) January 23, 1868. Constitutional Convention of 1868 Petitions and Reports, No. SS296, Folder 1, North Carolina State Archives and History, Raleigh, North Carolina.

¹²Standard (Raleigh, North Carolina) January 22, 1868.

¹³William A. Jenkins to William B. Rodman, February 7, 1868; T. Jones to William B. Rodman, February 7, 1868; J. M. Long to William B. Rodman, February 11, 1868, No. 329.3, Folder g, Rodman Papers, ECMC. Merton E. Coulter, The South During Reconstruction 1865-1877. (Baton Rouge: Louisiana State University Press, 1947) 135. Hereinafter cited as Coulter, The South During Reconstruction.

¹⁴Journal of the Constitutional Convention, 1868. (Raleigh: J. W. Holden, Printer, 1868) 32 and 140-142. Hereinafter cited as Convention Journal.

¹⁵Constitution of the State of North Carolina together with the Ordinances and Resolutions of the Constitutional Convention of 1868. Hereinafter cited as Constitution and Ordinances, 1868. Convention Journal, 32.

¹⁶Constitution and Ordinances, 1868. 45-46 and 105-109.

¹⁷Coulter, The South During Reconstruction. 135.

¹⁸William B. Rodman to Camilla C. Rodman, January 23, 1868, No. 329.21, Folder b, Rodman Papers, ECMC. Standard (Raleigh, North Carolina) February 5, 1868.

¹⁹Standard (Raleigh, North Carolina) February 4, 1868. Otto H. Olsen, Carpetbagger's Crusade: The Life of Albion W. Tourgee. (Baltimore: Johns Hopkins Press, 1964) 106-108. Hereinafter cited as Olsen, Carpetbagger's Crusade. James L. Lancaster, "Scalawags of North North Carolina, 1850-1868" (unpublished Ph. D. dissertation, Department of History, Princeton University, 1974) 304.

²⁰J.C. Johnston to William B. Rodman, February 14, 1868; Thomas D. McDowell to William B. Rodman, February 10, 1868, No. 329.3, Folder g, Rodman Papers, ECMC.

²¹Standard (Raleigh, North Carolina) February 4, 1868.

²²Standard (Raleigh, North Carolina) February 4 and 7, 1868.

²³Olsen, Carpetbagger's Crusade. 106-108. Lancaster, "Scalawags of North Carolina." 304.

²⁴St. Clair, "Debtor Relief." 233.

²⁵St. Clair, "Debtor Relief." 222-224. Jacobs v Smallwood (1869) 63NC 129.

²⁶ST. Clair, "Debtor Relief." 233.

²⁷William B. Aycock, "Homestead Exemptions in North Carolina," North Carolina Law Review 39 (1950-51) 143. Hereinafter cited as Aycock, "Homestead Exemptions."

²⁸North Carolina Constitution, 1868, Article X, Sections 1 and 5. North Carolina Constitution, 1971, Article X. Convention Journal, 72. Constitutional Convention of 1868 Petitions and Reports, No. SS295, North Carolina State Archives and History, Raleigh, North Carolina.

²⁹Olsen, Carpetbagger's Crusade. 106. St. Clair, "Debtor Relief," 227. Hill v Kessler (1869) 63NC 477.

³⁰St. Clair, "Debtor Relief," 230. Edwards v Kearsey (1877) 96US 595.

³¹Standard (Raleigh, North Carolina) February 5, 1868.

³²Standard (Raleigh, North Carolina) February 5, 1868. Convention Journal, 214.

³³Standard (Raleigh, North Carolina) February 15, March 5, and March 9, 1868.

³⁴North Carolina Constitution, 1868, Article X, Sections 6 and 8.

³⁵Albion W. Tourgee to wife, March, 1868, in the Albion W. Tourgee Papers, Chautauqua County Historical Society, Westfield, New York on microfilm, Roll 6, Frames 775 and 779, Southern Historical Collection, Chapel Hill, North Carolina. Hereinafter cited as the Tourgee Papers, SHC.

³⁶St. Clair, "Debtor Relief." 233.

³⁷John H. Vernon, III, "The Public Purpose Doctrine Revisited." Wake Forest Law School Intramural Law Review 3:1 (January, 1967) 37-38. Cheney, North Carolina Government. 797. Convention Journal, 403-406.

³⁸Aubrey L. Brooks and Hugh T. Lefler., eds., The Papers of Walter Clark, 1857-1904 I (Chapel Hill: University of North Carolina Press, 1965) 106. Lindsay C. Warren, "Beaufort County's Contribution to a Notable Era of North Carolina History," Congressional Record. April 29, 1930. 17. Lancaster, "Scalawags in North Carolina," 285-292. David Heaton to William B. Rodman, December 2, 1867, No. 329.3, Folder f, Rodman Papers, ECMC.

³⁹North Carolina Constitution, 1868, Article V, Sections 1 and 6. Albert Coats and William S. Mitchell, "Property and Poll Tax Limitations Under the North Carolina Constitution, Article V, Sections 1 and 6," North Carolina Law Review XVIII (June, 1940) 276. Hereinafter cited as Coats and Mitchell, "Property and Poll Tax Limitations." Convention Journal, 304-306.

⁴⁰Coats and Mitchell, "Property and Poll Tax

Limitations," 276. University Railroad v Holden (1869) 63NC 410 (427).

⁴¹William B. Rodman's Poll Tax Speech, Standard (Raleigh, North Carolina) March 5, 1868. Convention Journal, 305-306.

⁴²"Discussion by Justice Rodman," Supreme Court Reports, Appendix, 66NC 501. University Railroad v Holden (1869) 63NC 410.

⁴³North Carolina Constitution, 1868, Article V. Broadside, "To the Voters of Beaufort and Pamlico Counties," July 5, 1875. No. 329.16, Folder b, Rodman Papers, ECMC.

⁴⁴Lefler and Newsome, North Carolina. 368. William B. Rodman to Camilla C. Rodman, February 16, 1868, No. 329.21, Folder b, Rodman Papers, ECMC.

⁴⁵William K. Boyd, "Ad Valorem Slave Taxation, 1858-1860," Historical Papers of the Historical Society of Trinity College Series 5 (1905) 36-37.

⁴⁶Convention Journal, 307-308. Standard (Raleigh, North Carolina) March 5, 1868.

⁴⁷Robert H. Sweenes, II, "Constitutional Changes in the Fiscal Powers of Local Government in North Carolina," Wake Forest Law Review 9:1 (December, 1972) 109-113.

⁴⁸Cheney, North Carolina Government. 803 and 805.

Conclusion

William Blount Rodman came from the planter-merchant aristocracy of eastern North Carolina. Born and reared in Washington, N. C., he was well educated; a highly esteemed lawyer and entrepreneur. In addition to practicing law, he managed two plantations, a lumbering enterprise, and dealt with numerous land transactions for the Blount-Rodman family. His law practice and business interests drew him into political activities and public service.

As an active member of the antebellum Democratic party, Rodman had an excellent reputation as a speaker and writer for the county and district units. While he must have been widely known throughout the state, he was not a highly visible member of the party statewide. Therefore, it is difficult to assess his contributions and value to the Democratic party throughout the 1840's and 1850's.

The antebellum Democratic party of North Carolina advocated some progressive ideas for political and economic reforms. Rodman personally promoted internal

improvements, universal free education for whites, judicial reform, and expanded political and economic rights for white working men. These and other progressive programs gave impetus to the Democrats during the late 1840's and 1850's, enabling them to acquire and maintain control of state government. In spite of the drive to improve certain aspects of the economic and political life of North Carolinians, however, the Democratic party maintained a conservative stance on national issues such as the abolition of slavery, state's rights, a low tariff, and the distribution of surplus funds in the national treasury. They were not, as a general rule, social liberals, and never conceived the Negro as a social or political equal.

After 1850 many North Carolina Democrats, including Rodman, considered and perhaps anticipated disunion. They viewed the Compromise of 1850 as a temporary rather than a final solution to the problem of extending slavery into the new states. As the country came closer to crisis over slavery, Rodman was among the first to speak in favor of secession in his district. His was a minority view in a locale which had strong Unionist sentiments. Most of his professional and political colleagues opposed him vigorously and tried to thwart his efforts.

Once disunion was accomplished, though, many of his opponents fell in line behind the Confederacy. Rodman personally raised a heavy artillery company and eventually served on the military court in Richmond, Virginia, with the rank of Colonel. After four years of service he returned to his hometown, Washington, to rebuild his own life and his community.

For the year following Appomattax he remained politically inactive. He received an official pardon from President Johnson in July, 1866, and like many other conservatives supported Provisional Governor, William W. Holden, as long as the national government maintained a magnanimous attitude towards the former Confederate states.¹ Such magnanimity, however, was shortlived. By late 1866 the Radicals in Congress had taken steps to seize reconstruction of the Confederate states from presidential control.

Rodman, following the elections of 1866, stepped out of character on two counts. He joined the Republican party, organized by William W. Holden, and ran for an elective political office for only the second time in his life. By joining the Republicans he submitted to the radical dictates of Congress and cut himself off from many of his conservative friends and colleagues. He appeared to be compromising his values at best or completely rejecting them by becoming a self-

serving "turncoat" at worst.

Though a staunch supporter and worker for the antebellum Democratic party, Rodman never cared to seek the personal recognition and fanfare of an elective political office. His motivation for running as a candidate for a seat at the convention, therefore, was selfserving insofar as whatever benefits he could bring to the state, he also brought to himself. The people of North Carolina were in dire economic straits, and there was no state government, except for that which was run by a military commander directly controlled by Congress. His purpose for joining the party in power then was threefold: to relieve the people from economic straits, to return the state government to North Carolinians, preferably those who had run the government before the war, and to prevent the radicals from creating a new constitution which would be unacceptable to the citizens of the state.

The Reconstruction Acts of 1867 divided the former Confederacy into seven military districts directly controlled by Congress. They also laid down harsh, rigid requirements for readmission to the Union. The most important one, after ratifying the Fourteenth Amendment, was to reorganize each state based on a new constitution. The new constitution had to be drawn up by delegates elected by all the citizens of the state,

including the recently freed negro. Rodman, at this time apparently reevaluated his personal needs and political aspirations, and sought election to the constitutional convention of 1868.

Rodman was one of the few experienced, well educated, prominent antebellum leaders to participate in the constitutional convention of 1868. He brought to that organization his wide range of abilities from legal expertise to business acumen, plus skills in drafting and composing articles and resolutions. He also had strong personal skills evidenced by his ability to get along with most parties, though he could not always persuade them to his way of thinking. Also, while trying to influence the assembly with his conservative social values regarding race, he advocated those "political reforms, discussed by a few democratic spirits in the 1850's."²

Reorganization of the courts in North Carolina was one of the most significant accomplishments of the new constitution. As a result the judicial system of North Carolina became one of the most simplified and efficient in the United States to that date. The single most important change was unifying courts of Common Law and courts of Equity. By combining procedures and personnel, operation of the courts and the administration of justice were greatly improved.

Additional reforms included increasing the number and terms of judges, rotating judges, and extending the number and duration of court sessions per year. The popular election of judges, which Rodman unsuccessfully opposed, intended to eliminate the old courthouse rings.

The personnel of the courts, even with heavy patronage by the Republican party, remained mostly North Carolinians, and more frequently than not, included antebellum political figures such as Richmond Pearson, Augustus Merrimon, and Rodman himself. The few exceptions, like Albion Tourgee, who aspired to serve on the state Supreme Court, were elected to lower judgeships. Tourgee served less than five years.

Reforms in the Financial article likewise, did little to alter the membership of the legislative or executive branches of government. It imposed fiscal responsibility on government leaders to curb past abuses, and limited the taxing power of state and local governments, among other reforms. While new names were added to the list of government officers, many old names remained. Rather than eradicate the antebellum power structure, the 1868 constitution managed to retain it.

The essential point regarding the new constitution of 1868 is that in spite of the facade of a radical new system being imposed upon the state by northern men, it actually did little to destroy the continuity from the

old system to the new. Rodman's role was one of establishing that continuity by a process of moderating as much as possible the extreme ideas of the large number of native white North Carolinians. The northerners by his own evaluation, were more reasonable and tolerant, if "ignorant of our peculiar wants."³

In evaluating Rodman's role in the Republican party and at the constitutional convention of 1868, one must concede that he made every effort to moderate radical changes in the state's government and tried to counter the western Unionist North Carolinians who wished to take revenge on former Confederates, thereby reviving the class struggle between the elite and masses. By retarding the extreme radicals' efforts, Rodman managed to preserve, in part, the antebellum political system and, therefore, should be classified historically as one of the early redeemers. Nevertheless, while striving to preserve the social and political power structure of the antebellum era, he produced several important reforms which had long been sought in the state. His work at the convention can be viewed only as a beginning of redemption. As a member of the North Carolina Supreme Court for the subsequent ten years, his influence on the state's political and social order demands further study. By his own assessment he helped write a constitution "better than the people have ever lived under."⁴

Conclusion

¹Rodman's official pardon signed by President Johnson is in No. 329.15, Folder a, Rodman Papers, East Carolina University Manuscript Collection, Greenville, North Carolina.

²Edward Hobbs McGee, "North Carolina Conservatives and Reconstruction." (unpublished PH. D. dissertation, Department of History, University of North Carolina, 1972) 250.

³Rough draft of Broadside "To the Voters of Beaufort and Pamlico Counties," July 5, 1875. No. 329.16, Folder b Rodman Papers, ECMC.

⁴Ibid.

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