Tourgée’s career in the South had thus far been entwined with many central threads of state and national history, but after 1868 his activities were of a more confined nature. Before dealing with these activities, however, it would be well to look at the subsequent history of Republicanism in North Carolina. Very much as Tourgée had feared, the national government refrained from decisive interference in the South, and the success or failure of southern Republicans was left primarily dependent upon their own ability, strength, and conduct. They were ill-prepared for the task, and following a steady decline in status and power, they lost legislative control of North Carolina in the election of 1870. Although a Republican governor and judiciary remained, Republican rule was, in effect, at an end in the state.

Historical interpretations of this phenomenon have usually attributed it primarily to Republican evil and extravagance between 1868 and 1870. Undoubtedly there were evil and selfish Republicans, but they may have been the exception rather than the rule, and the traditional picture of a corrupt, immoral, oppressive, and greedy coalition of Negroes, scalawags, and carpetbaggers is an unconvincing one. Although Republicans did introduce new and costly state services, this was a modern trend that has continued to the present. The one really momentous and controversial Republican expenditure consisted of continued state loans to railroads, a policy intended to benefit the state, but which was accompanied by a deleterious enthusiasm that desired “the end without caring for the means”\(^1\) and was tainted by fraud,

bribery and greed. But Conservatives were very prominent in promoting and profiting from these grants, and when Conservative party opposition did solidify, it was based in good part upon political opportunism and the selfish interest of private stockholders. Republicans cannot, of course, escape responsibility for measures that they passed (partly to secure patronage for a poor party), but the reasons for the failure of their attempt to build the railroads and increase the prosperity of the state remain unclear. Although Conservatives denounced the resultant debt as impossible to maintain, they themselves had been willing to assume a war debt just as large, incurred for a somewhat less positive cause. The various reasons for the collapse of the Reconstruction railroad program included careless expenditure, fiscal mistakes, sectional poverty, Conservative repudiation propaganda, and a national depression; and although loud cries against excessive taxation accompanied the entire venture, the state’s main burden was the old debt and certain grants in its behalf that were honored by both parties. Republicans finally agreed with Conservatives that the debt was a burden the state was unwilling, if not unable, to pay immediately, and after 1869 there was little difference in the fiscal policy of the two parties. Meanwhile, the disputed new debt’s interest continued to accumulate and was periodically quoted to discredit the Republicans, but this debt, ironically, was no problem at all because it was never paid.

There are other puzzling aspects of the purported impact of Republican misbehavior. Why should a degree of misrule or corruption which was actually quite slight in comparison with similar activities throughout the nation during that era have so lastingly eliminated the Republican party from effective political participation in the southern political process? Or how can the final collapse of Republican power in the state be attributed to the policies followed between 1868 and 1870, when this

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2 Perhaps the most bitter critic of Republicanism was Josiah Turner, Jr., irascible editor of the Raleigh Sentinel, who would later assert that the “state was not robbed by negroes and carpet-baggers but by Democrats who filled high stations” (Turner to editor of Raleigh News and Observer, n.d., Holden Papers, Duke University Library).

3 There was much Conservative dissension over this, e.g., Greensboro Patriot, October 21, 1869, quoting Wilmington Journal. In 1881 the state’s governor would assert that the state tax could be tripled without unduly burdening the state (H. T. Lefler and R. A. Newsome, North Carolina: The History of a Southern State [Chapel Hill, 1954], 504).
final collapse did not occur until 1876? One should note in this connection that the Republicans, though never recapturing control of the state, carried a majority of the state's voters in the constitutional dispute of 1871, the gubernatorial and presidential elections of 1872, and the convention elections of 1875. These majorities necessarily included a sizable minority of whites. Republican strength had been continually undermined during these same years, but this had been accomplished largely by intimidation, by the race issue, by the Negro-carpetbagger-scalawag stereotype, and by distorted recollections of the period of Republican power. It was Conservative power and propaganda rather than righteousness that played the central role in completing "re-

demption."

After the convention of 1868, Tourgée was not connected with any further promotion of state aid to railroads. He continued to fear that such financial burdens might undermine the entire Republican experiment, and when the danger of excessive debt became apparent, Tourgée advised Governor Holden to withhold bonds already granted by the legislature. This, he said, "is the only course which can save the Republican party and the State from defeat, ruin and disgrace. There must be some end to the road on which we have entered." Whether due to Tourgée's advice or not, Holden did cease issuing bonds, but matters had already proceeded too far to save the party, and the issue intensified an enervating split between eastern and western Republicans. Tourgée was also probably connected with the code commission's preparation of an act to restrict further bond issues and to recall all unsold bonds. Thereafter, in typical free-enterprise fashion, Tourgée distrusted any tie between political and economic activities. He favored the sale, at prices set by the legislature, of all the state's interest in public works, a step that he believed would increase efficiency, eliminate political jobbery, and furnish proceeds with which to reduce the state's debt and restore her credit.

The controversial railroad matter was only a small item in Tourgée's life, however, and his activities as a code commissioner more adequately

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4 Tourgée to Holden, May 11, 1869, Tourgée Papers.
5 Tourgée to C. L. Harris and others, n.d., Tourgée Papers. Here he agreed with many Conservatives, but the subsequent end of state interference was accompanied by gross favoritism to business at the expense of the public.
reveal the relationships between this carpetbagger and the rise and fall of Republican Reconstruction. Two very competent North Carolinians, William B. Rodman and Victor C. Barringer, were on the code commission with Tourgée. Neither Rodman, a Democrat, nor Barringer, a Whig, had been very prominent in politics before the war, although (as an indication of the surprising backgrounds of some Republicans) each had endorsed secession and served as a Confederate Army officer, and Barringer had been elected a state senator in 1860. Rodman was rather prominent after the war; he was elected a member of the convention of 1868 and a state Supreme Court justice on the Republican ticket of that year. Despite the prominence of his colleagues, Tourgée was the best known and perhaps most influential member of the code commission. He had launched the code movement and was well acquainted with it, he was secretary of the commission, his persuasions attracted Rodman and many other lawyers and judges to codification, and one opponent even advised the proud carpetbagger that “it is admitted by all, that the Constitution and Code—are yours.” But Tourgée was only one of three capable men, and the emphasis upon the contributions of the carpetbagger often reflected an effort to discredit the commission’s work altogether.

The most urgent task of the commission was the preparation of a code of civil procedure, the state meanwhile lacking a civil court system, but the constitution also specified that the commissioners were to prepare “as soon as practicable, a Code of the laws of North Carolina.” That this meant more than a mere revised code of legislative law, such as had been prepared previously in the state, was indicated by a convention ordinance that had been copied from David Dudley Field’s plan for complete codification of both substantive and procedural law. The commissioners had been presented the task and opportunity of creating the complete body of law for the state, and this effort was to be implemented not only by their code work but also by their preparation of a vast number of particular acts for the Republican legislature. Complicating the immense task of thus “collecting and arranging the jurisprudence of a people” was the need to define the results of the social upheaval that had disturbed the state since 1861.

George V. Strong, quoted in Tourgée to his wife, January 12, 1873, Tourgée Papers.
It was another touch of Reconstruction irony that while Tourgee and others sought to carry out these legal reforms in the South, the father of code reform, David Dudley Field, was promoting Federal court decisions that were helping undermine the entire Reconstruction program.

By mid-July, about a month after beginning their work, the commissioners presented their first report, along with some legislation and portions of the civil code. The following month, after “constant and assiduous labor” (in the words of a subsequent Conservative legislative committee),7 the commission presented its completed code of civil procedure. Admitting their haste, the commissioners urged “a generous criticism” of their work, but reflecting an incisive appreciation of the new system and of the need to adapt it to local conditions, they had prepared an admirable code. They had also been concerned with “opening the forum, the bar and the bench, to the honorable competition of the colored man,” and with tactless ardor they later defended their much-criticized utilization of the state code of New York as a model by expressing doubt that “a system suited to the highest civilization would be unsuitable to ourselves.”8 Tourgee valued the new system as conducive to simplicity, efficiency, and dispatch, and devoid of the rigid and artificial formalism of the past. The code spirit, he asserted, “seeks to discard form in favor of substance.” During August the new code of civil procedure was enacted by the legislature.

Great hostility greeted this work of Tourgee and his fellow commissioners. As had happened in New York, older lawyers resented a simplification that vitiated a mass of knowledge that they had spent their lives in learning, and in the Reconstruction South opposition to Republican reforms was a matter of course. The commissioners and their code were insulted and ridiculed. Almost the entire legal profession opposed the new code, and the Sentinel professed to know not one citizen who approved it. It was condemned as alien, costly, and un-

necessary, and with obvious reference to Tourgée, one newspaper objected that the new simplicity was designed “to do away with the necessity of legal learning, so that negroes and carpetbaggers might be qualified to come to the bar, or sit upon the bench.” Conversely, another paper complained of a complexity that was intended to force the people to “go to lawyers for information.” The influence of Tourgée, “who is powerful for evil,” was particularly deplored, and the Greensboro press hopefully saw signs that “even Radicals are disgusted with the N.Y. ‘Code of Civil Procedure’ so recently palmed off upon this state by the Code Commissioners—Judge Tourgée & Co.” It was asserted that “no man of sense” could expect such a ridiculous system to be borne by the people, who preferred “the speedy restoration of our former cheaper and safer system.” Although the commissioners did not hesitate to admit errors and weaknesses in their work, their efforts to make reasonable revisions were often frustrated by such emotional and irrational opposition.

The reception of the code was not always so hostile. The Salisbury bar received it favorably and was inclined to give it a fair trial, and after practicing under it, many former opponents, especially the younger lawyers, began to appreciate its merits. The astute Conservative lawyer Samuel F. Phillips (who became a Republican in 1870) provided an interesting commentary:

I have been reading my primer in the new law. Barring the circumstances which surround its imposition upon us I am disposed in its favor. All the lawyers in old N.C. would never have framed as good a code—in a century. Old lawyers (like myself for instance) are too fond of the conundrums, Chinese puzzles & quibbles & “quillets” (see grave-digger in Shakespeare’s Reports) which they pick up in 20 or 30 years’ conversancy with the Common law, to be pleased with, or even to acquiesce in any system however simple or scientific, that rifles their treasures. Nine tenths of the objections to the Code will have this extent. Meanwhile without committing myself to its details—this much is to be said in its favor—that it is a modern scientific system for

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9 Wilmington Daily Journal, July 29, August 13, 1868; Raleigh Sentinel, August 8, 13, December 9, 18, 1868; Greensboro Patriot, December 24, 1868.
administering justice—a system produced with great labor and the result of consideration given to the subject by very learned gentlemen who were trammelled by the past no further than it had reason with it, & who have been very liberally aided by the “censures” of lawyers, English, Continental & American, in framing it. I think this is a great deal to be said for it. Nor are the gibes of a gibing profession, nor the invectives of a profession exercised in invective—much to be weighted au contraire.¹⁰

It was in response to the commissioners' own request for criticism that a meeting of the bench and bar was held in the state capital a few months after the adoption of the Code, a meeting greeted by the Sentinel with the comment that objections to the code “were endless and serious.” Such was not quite the case, though, since the real objection was not to the commission’s work but to the change to a code system itself, and this was a constitutional matter beyond immediate remedy. The dilemma was revealed when a committee of lawyers, including many vociferous opponents of the code, studied the commissioners’ work for weeks but could recommend little more than that as few changes be made from the past as possible. At a second meeting, Tourgée presented “an able and forcible defense of the code,” while the state’s chief justice, Richmond M. Pearson, attempting to smooth over existing antagonisms, suggested some minor modifications and “complimented the commissioners on the very excellent work performed by them in the short time they had to do it in.” According to the sympathetic Standard, “The conclusion generally arrived at seemed to be that the new Code, though defective in some of its parts, was not liable to any criticism upon its intrinsic merits.”¹¹ The commission then set about correcting the “several deficiencies and imperfections” that had been pointed out.

During these two meetings of the state bar, one serious and lasting dispute did arise. It involved the interpretation of the constitutional clause that “the Superior Courts shall be at all times open for the transaction of business within their jurisdiction, except the trial of issues of fact requiring a jury.” Because each Superior Court judge presided over

¹⁰ Phillips to D. L. Swain, August 20, 1868, Spencer Papers.
¹¹ Raleigh Standard, January 8, 1869; Raleigh Sentinel, December 19, 1868.
a number of individual courts, the code commission desired to implement this phrase by allowing the clerk of each court to handle, throughout the year, almost all matters preceding the actual trial of facts before a jury. This would obviously speed up procedure and relieve the great amount of litigation crowding the dockets. But many, if not most, members of the legal profession objected to the courts' handling matters at all times, or to the clerks' handling some of them at all. Reasons for these objections included a mere sense of inconvenience, scepticism about the capabilities of the clerks, and, most important of all, a desire to delay litigation.

Significant post-bellum economic considerations were involved in this dispute. The commissioners believed that promptness and punctuality were imperative for justice, but they also associated this necessity with the maintenance of credit, the sanctity of contract, and the encouragement of investment. In effect, the position of the commissioners would facilitate the operation of the free-enterprise process. "Legal development," they asserted, "must keep step with commercial and industrial development," and this clear expression of a capitalist orientation did little to allay certain fears of an agricultural society. Assuming that private contracts would make needed adjustments, there may be nothing intrinsically harmful to an agricultural population in speedy procedures, but such adjustments are not always easily made, and, in addition, southern farmers and planters were still heavily in debt and desired to stay the hands of northern and southern creditors. Thus there was reason for the complaint of one Carolinian that the new code system was "too short and rapid for an impoverished agricultural people." Tourgee appeared eager to promote the economic survival of the fit, and although he tempered this belief with respect to the poor, he revealed less compassion for the substantial farmer or planter. His lack of sympathy for "the potentates of the South" with their "ill gotten gains" was increased by the fraudulent protection of property that he frequently encountered on the bench. Since the war, Judge Tourgee complained, "the nonpayment of debt has become an epidemic and our Legislature has a perfect scabies of nil debit." But such sentiments on the part of the commissioners should not be exaggerated. Tourgee and his colleagues primarily sought modernization and efficiency in the law rather than advantage to any

12 Commissioners' Report of March 20, 1869, Raleigh Standard, March 25, 1869.
13 Ibid., January 25, 1869.
one group. There were interesting qualifications in their position, and
the code itself allowed old cases to proceed under the older slow pro-
cedure. Barringer considered Tourgée's judicial decision implementing
this provision of the code "a better stay law" than any other, and
Tourgée was actually credited by Conservatives with the comparatively
better economic conditions in his judicial district.\textsuperscript{14} Also, Justice Rod-
man, who championed speedy procedure under the code, wrote a
vigorous dissent to the Supreme Court's rejection of the stay law passed
by the convention of 1868.

Nevertheless, Tourgée remained adamant in opposition to "any 'Stay-
law,' 'Suspension Law,' 'Jurisdiction Law,' or any other legislative
humbug." Admitting that immediate final settlements would be hard
on some citizens, he still believed it best "for the people." But pressure
for delay was growing in both political parties. When early in 1869 the
courts nullified the stay law, Reverend Welker, now a state senator,
informed Tourgée of confusion and consternation in the capital and
appealed for suggestions as to how to avoid the threatened foreclosures.
But Tourgée would accept nothing beyond the implementation of the
constitution's homestead measure, which he considered fully adequate
to protect the really needy debtor, and to ensure the success of the
homestead, he engaged in his only known lobbying activity among Re-
publican legislators. He wrote numerous letters to leaders in the general
assembly urging the quick passage of a simple clarifying bill submitted
by the code commission, and he angrily denounced efforts to complicate
the measure, as by registration requirements: "We might as well have
no homestead as have one fettered, cut up and cramped by such absurd
conditions. It is all that stands or can stand between thousands of our
people and untold misery. Let its provisions be plain, simple and effec-
tive, as I know those of my bill to be."\textsuperscript{15} To Tourgée's dismay, the bill
that passed was a compromise. He had desired a simple exemption from
sale, and many years later the courts did interpret the constitution's
homestead as he had suggested.\textsuperscript{16}

The homestead law offered little to the wealthier debtors. While it was

\textsuperscript{14} Tourgée to Judge J. S. Henry, March 13, 1869, and Barringer to Tourgée,
March 26, 1869, Tourgée Papers; Tourgée to Martin B. Anderson, February 13,
1873, Anderson Papers, University of Rochester; Raleigh Standard, March 17, 1869.
\textsuperscript{15} Tourgée to G. W. Welker, February 26, 1869, Tourgée Papers.
\textsuperscript{16} William B. Aycock, "Homestead Exemption in North Carolina," North
admitted that over seventy-five per cent of the debtors in the state were fully protected, many citizens failed to see any equity in thus allowing the poor to escape their debts completely, while not allowing even a delay for the wealthy. The power and influence of this prosperous debtor group was felt in both parties and did secure new legislation, but most such laws "to postpone for the relief of the debtor" were quickly overruled in the courts.

Although further efforts to legislate stays were considered hopeless because of the attitude of the courts, one decisive law remained, which was connected with the disputed questions of keeping the Superior Courts open at all times and increasing the functions of the court clerk. This law foiled the desires of the code commission by suspending certain portions of their code. Summonses were to be returnable and defendants were to appear only when a judge was holding court; thus the courts were in effect closed eleven months of the year to such proceedings, affording an easy lengthy delay. When these provisions came before Judge Tourgée's court in March, 1869, he promptly ruled them in violation of the disputed constitutional provision. His decision was immediately taken before the state Supreme Court and reversed, Chief Justice Pearson adding to the technical justifications for his decision certain smug references to northern importations that could not work in North Carolina.  

The Supreme Court's decision was a questionable one, and Associate Justice Rodman, also a code commissioner, strongly dissented, claiming that the law violated both "the letter and the spirit of the Constitution." Rodman was well qualified to judge thereof because the disputed constitutional section had been inserted not from New York, but at his own insistence, in order to relieve the overcrowded dockets of the court. Tourgée also criticized the higher court for declaring, in effect, that "the plain unmistakable words of a constitutional provision . . . must be modified in their application by a subsequent act of the legislature."  

The Supreme Court's most convincing technical argument was that the legislature could define the jurisdiction of the court clerk, and Tourgée reluctantly conceded this point in hopes of allowing at least min-

17 McAdoo v. Benbow, 63 N.C. 461.
18 Manuscript on the McAdoo decision, and Tourgée to E. G. Reade, November 6, 1869, Tourgée Papers.
isterial activities by the clerk the year round. In the present case, he argued, jurisdiction of the clerk was not involved, as he had merely to deposit the returns in the court files. Pessimistically, the commissioners continued this struggle for several years, and an attempted compromise, originally prepared by Tourgée, was rejected by the Conservative legislatures of 1870–1871 and 1871–1872, although in the latter instance it was strongly recommended by the House judiciary committee. Not until thirty-five years later were the provisions sought by the commission restored.

During these disputes, the commission also continued with such other work as the drafting of at least forty-six specific bills for the state legislature, including acts on state and local government, liens, fence laws, the homestead, the University, and the state Bureau of Statistics and Immigration. Tourgée had prepared one item that involved him personally, a convincing defense of a proposed increase in judicial salaries, which was defeated by the demand for economy. The commissioners estimated that their acts displaced three-quarters of the previous legislation of the state, and they had enhanced their influence by securing the privilege of addressing the House of Representatives directly. Conservatives objected that the commission was originating practically “all the important legislation,” although eventually they applauded the intelligent influence in such matters “of the one or two sensible lawyers [excluding the carpetbagger, of course] on the Code Commission.”

The final fate of the commission’s work was determined by the decline of Republican strength during 1869 and 1870. Consistently under Conservative attack, frightened by Ku Klux Klan atrocities, and disturbed by railroad failures and exposures of fraud, Republican policies became weak and dilatory during these two years. Idealistic Republicans neglected party success to root out taint from their ranks, while others appeared immobilized by fear or inability, and the Republican legislature was often guided by its Democratic minority. Reflecting this state of affairs, a financial investigation was launched that extended to the code commission because of complaints that it was a waste and that Tourgée and Rodman were receiving pay as both commissioners and judges. The latter, while true, was traditional procedure. The three com-

19 Raleigh Sentinel, August 8, November 6, 1868.
missioners ably defended themselves in a reply that was never seriously challenged and reported that at that moment, late in 1869, they had almost completed a penal code and code of criminal procedure. The success of the commission, however, was approaching an end. Its further legislative activities were effectively opposed, and attempts were made to abolish it—the Sentinel actually insisted that the commission had been abolished, but that the bill “got lost by the indiscretion of somebody!” That somebody, by implication, was Tourgee. Politically motivated denunciations of the commission as part of that “corruption and stealing foistered upon us by Radical carpetbaggers and scallawags” were soon frequent and were closely connected with Conservative desires to alter the constitution of 1868. Bowing before these desires, the frightened Republican legislature obsequiously appointed a committee dominated by Conservatives to study the need for constitutional revision, and this committee singled out the new judicial system as the most objectionable feature of the constitution. Should North Carolina follow the ancient and honored past, asked their quite unintelligent report, or should it “be led by the nose by one or two freshly imported innovators far more remarkable for pertinancy and self-assertion than for sound sense or legal learning?” A return to the old law and to “the time-honored distinction between law and equity” thereupon foolishly became the main plank in a Conservative movement for constitutional reform that was defeated by popular vote in 1871.

Despite these attacks, the commissioners happily recognized that their new code of civil procedure had already become a success within the legal profession, that even its “greatest enemies” would now “admit that it has some merits over the former system,” and that only occasional opposition to this code continued within the bar. The commissioners’ further work, however, came to naught. Early in 1870 they completed their code of criminal procedure and penal code, and they were prepared to submit to the next legislature a general law for corporation charters.

20 Commissioners to Senate, January 25, 1870, Documents of Code Commission. Law codifiers before and after Reconstruction received compensation while holding other official positions, e.g., the Chief Supreme Court Justice in 1821, the reporter of the Supreme Court in 1837, and a state senator and the head of the law department of the state university in 1883. Tourgee and Rodman might be criticized, however, in that they were each receiving two separate salaries.

21 Raleigh Sentinel, July 30, September 29, 1870.

(eliminating the time-consuming legislative charters), a law defining women's property rights, a compilation of the internal improvement laws of the state, and "a codification of the whole statute [emphasis added] law of the State, arranged in a convenient form for reference, and making a single volume about the size of the Revised Code." "When this shall be done our labors will have finished," they declared, apparently having dropped the idea of complete codification. But the timid Republican legislature postponed consideration of the completed criminal codes, and hostile Conservatives captured legislative control in the election of 1870.

Barringer resigned from the commission in the summer of 1870, and an effort was made to restore its prestige by securing Chief Justice Pearson as his replacement. Pearson, however, further undermined the commission by declining with the assertion that Rodman and Tourgée desired to reduce the entire common law to a written code, which he considered an "impossibility." In view of the commission's latest published report, this statement was inaccurate, a fact that Rodman took pains to point out. Tourgée initially had sought complete codification; however, he was not only willing to surrender this goal but offered to resign and did resign in the hope that Pearson would join the commission and help salvage its work. Pearson did not do so, but a moderate, William H. Bailey, joined Rodman to prepare the commission's final report of November, 1870. This report sought only the adoption of a mildly revised code of civil procedure, one that Tourgée had prepared earlier and that included an attempted compromise on keeping the superior courts open throughout the year. Although Tourgée's absence was apparent in the report's unusually apologetic tone, its humility was ineffective. The legislature ignored the commission's work, curtailed its printing privileges, and treated it as abolished. Following one more unsuccessful attempt by Rodman and several leading Conservative attorneys to secure acceptance of the revised code, the code commission itself was abolished by constitutional amendment in 1873.

In the face of many difficulties, Tourgée and his fellow commissioners had labored diligently and had decisively influenced legal development within North Carolina. Their code of civil procedure was a lasting and

23 Ibid., No. 28.
momentous contribution to the state, while their many legislative contributions have never received a scholarly evaluation. The commissioners' own view of their work (including the rejected criminal codes) was most complimentary:

These acts, with many others such as those concerning the settlement of the estates of deceased persons, guardian and ward, landlord and tenant, fences, draining low land, etc., prescribing just rules and convenient modes of procedure in all these important subjects, form a body of law, the enactment of which will, for at least a century to come, mark an era in our history. We may be permitted to believe that this body of law, by the certainty and economy it has introduced into the administration of justice, has saved, and will save, millions of dollars which otherwise would have been spent in unnecessary legislation. 24

With the possible exception of the disputed railroad grants, Republican legislation in general, whether initiated by the code commission or not, had not displayed the destructive characteristics that Conservatives had predicted. For example, concessions to the state's landowners were apparent in the attempted stay laws, the act suspending portions of the code of civil procedure, the lien law, and the landlord and tenant act. Once again the more equalitarian-minded Tourgee had displayed greater concern for the lower classes than the majority of Republican legislators, and his effort to abolish the customary local practice of forcing people to work upon the roads was rejected by the Republican legislators. Instead, in what appears to have been a violation of the constitution's ceiling upon the head tax, the Republican regime continued to allow as much as thirty days' labor per year in some counties. 25 Nevertheless, it can be maintained that Republicans were somewhat more solicitous of the interests of the poorer whites and Negroes than were the Conservatives, who would subsequently pass an even harsher law on road work, rewrite the lien law and the landlord and tenant acts to be more firmly in favor of both landlords and merchants, pass elec-

24 Ibid.
25 Greensboro Patriot, September 2, 1869; North Carolina, Public Laws (1869-70), 66.
toral laws disadvantageous to the poor, and encourage the degradation and exploitation of the Negro. Such laws, including one that arbitrarily made it a misdemeanor to sell cotton between sunrise and sunset, were later critically exposed by Tourgée in his novels.

While most of the code work prepared by the commissioners was shamefully wasted, the Republicans had succeeded in establishing in North Carolina a codified civil procedure, "the most sweeping legislative contribution in the nineteenth century to the law of private relations." The significance of this contribution was suggested three decades after Reconstruction by a North Carolina Supreme Court justice, who stated that since 1868 "the time formerly wasted by the Profession and by law students on technical and ingenious works on pleadings . . . has been economized for a study of useful principles of the law, save by those curious to delve in the most useless waste and ashes of the past." In addition, the absence of legislative tinkering with the code (as urged by the initial commission) and the influence of an eventually friendly Supreme Court left the North Carolina civil code unusually unencumbered and gave that state one of the most flexible and informal legal procedures in the Union.

Some mild objections to the new legal system did continue, the most significant, perhaps, pointing to a decline in legal accuracy and care. While this defect existed, it appears to have been the result of a misunderstanding and was certainly contrary to Tourgée's desires. The code's emphasis upon fact rather than procedure was utilized by the state Supreme Court to excuse carelessness and error, and in one of the first of his decisions appealed to the higher court, Judge Tourgée's emphatic objection to thus extending flexibility of form to the point of condoning actual error was overruled. Other objections to the code were of a minor nature, and the state increasingly turned toward paths that the code commission had urged. While several substantive codes prepared by the initial commission were all rejected, the state soon prepared new versions of each. Similarly, the wisdom of speedier procedure con-

continued to gain support, and in the twentieth century the disputed provisions of the code of 1868 were, in effect, restored. Even Tourgée's desire for complete codification of substantive law won increased and significant support.

The history of legal reform in North Carolina during Reconstruction is suggestive, and the frequent asininity of the attacks upon this Republican endeavor suggests that some good was being accomplished despite, rather than because of, the opponents of Reconstruction.