

ALBION TOURGÉE: REMEMBERING
PLESSY'S LAWYER ON THE
100TH ANNIVERSARY OF
PLESSY v. FERGUSON

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Albion Winegar Tourgée¹ (May 2, 1838-May 21, 1905) is the lawyer who brought (and lost) the landmark nineteenth century civil rights case challenging Louisiana's law segregating railroad cars. Since 1996 is the 100th anniversary of *Plessy v. Ferguson* (1896),² it is appropriate to remember the man who helped engineer the challenge.

History, as Sam Keen has said, provides a story that locates us in the concentric circles of the cosmos, the nation, and the family and that gives meaning to life. Stories are crucial to individual identity,³ and stories about lawyers in American history are important to the identity of contemporary lawyers. Indeed, Tourgée's sense of history and of his place in a cosmic drama explain his extraordinary courage and persistence.⁴ His understanding that Southern opponents of Reconstruction told themselves a very different story added depth to his Reconstruction novels. "A lawyer without history or literature," wrote Sir Walter Scott in *Guy Mannering*, "is a mechanic, a mere working ma-

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1. The most recent account of Tourgée's life is a splendid biography by Otto H. Olsen, *Carpetbagger's Crusade: The Life of Albion Winegar Tourgée* (John Hopkins Press, 1965). The current account relies heavily on Olsen. See also J. G. de Roulhac Hamilton, *Tourgée, Albion W.* in Dumas Malone, ed., IX *Dictionary of American Biography* 603-05 (Charles Scribner's Sons, 1935); Frank Nash, *Albion Winegar Tourgée* in Samuel A. Ashe, ed., IV *Biographical History of North Carolina (From Colonial Times to the Present)* 440-49 (Charles L. Van Noppen, 1906); and Roy F. Dibble, *Albion W. Tourgée* (Lemcke & Buechner, 1921). For a collective biography of Northerners, including Tourgée, who came South and entered politics, see Richard Nelson Current, *Those Terrible Carpetbaggers* (Oxford U. Press, 1988).

2. 163 U.S. 537 (1896).

3. Sam Keen, *To A Dancing God (Notes of A Spiritual Traveler)* 87 (Harper Collins, 1970).

4. See Olsen, *Carpetbagger's Crusade* at 11 (cited in note 1).

son; if he possesses some knowledge of these, he may venture to call himself an architect.”⁵

Albion W. Tourgée was a Northerner who emigrated to the South immediately after the Civil War—becoming a Republican activist, framer of the North Carolina Constitution of 1868, Superior Court judge, enemy of the Ku Klux Klan, and a supporter of equality for newly freed slaves. In 1879 he published a best selling novel on Reconstruction, left North Carolina, and, in the years that followed, published many less successful novels and much political commentary.⁶

Albion Tourgée was the only child of Valentine Tourgée, a farmer, and Louisa Emma (Winegar) Tourgée, who died when he was five. Born in Williamsfield, Ohio, he grew up both in Kingville, Ohio, in the Western Reserve, a center of anti-slavery sentiment, and in Lee, Massachusetts, where he spent two years with an uncle.⁷ Before the outbreak of the Civil War, he had written an essay critical of North Carolina’s 1859 prosecutions of distributors of Hinton Helper’s anti-slavery book, *The Impending Crisis of the South*.⁸

Tourgée entered the University of Rochester in 1859 and became active in campus Republican politics. With the outbreak of the Civil War, he enlisted as a private and became an officer in the Union army. Although his education had been interrupted by financial problems and the Civil War, the University of Rochester conferred a degree on him in 1862 in recognition of his military service.⁹

During the war, Tourgée received a serious spinal injury from which he suffered both temporary paralysis and a permanent back problem that plagued him to the end of his life. Once he had improved, he again enlisted and was later captured and confined in Confederate prisons and exchanged. He then returned to Ohio.¹⁰ On May 14, 1863 he married Emma Doiska Kilbourne. He returned to the service and was present at campaigns in Tennessee where he received a further serious spinal injury.¹¹

5. Quoted on the front piece of Clarence Darrow, *Verdicts Out of Court* (Quadrangle Books, 1963).

6. See Olsen, *Carpetbagger’s Crusade* at 223-28 (cited in note 1).

7. *Id.* at 2-5.

8. *Id.* at 13.

9. *Id.* at 12-14, 17.

10. *Id.* at 16-17.

11. *Id.* at 20, 23.

Tourgée saw the Civil War as a battle for national transformation. In a letter written from the field in 1863, he rejected the "oft repeated maxim of the Administration—'We are fighting but for the Union as it was'" as a "sublime hoax." He insisted instead, "I want [and] fight for *the Union better* than it was."¹²

Continuing difficulties with his spine and failure to achieve a hoped for promotion contributed to his resignation from the army in December 1863. He returned to Ohio, resumed legal studies begun during his earlier convalescence, and was admitted to the Ohio bar in 1864.¹³ In 1865, partly on the advice of a doctor that he seek a warmer climate for his health, he and his wife moved to Greensboro, North Carolina. Tourgée was by this time a thoroughly radical Republican.¹⁴

Tourgée's commitment to racial equality, broader democracy, and protection of the economic underdog—white and black—collided with the values of most of the Southern elite. As Jonathan Worth, a former North Carolina Governor, wrote, "[w]e who were born here will never get along with the free negroes, especially while the fools and demagogues of the North insist they must be our equals."¹⁵ In 1866 Tourgée attended the Convention of the Southern Loyalists where he supported an unsuccessful radical resolution in favor of immediate suffrage for African-Americans. From 1866 to 1867, he edited a short-lived Republican newspaper in Greensboro.¹⁶

When Southern states rejected the Fourteenth Amendment, Congress passed the Reconstruction acts, putting the South under military rule. Before they could be readmitted to the Union, Southern states were required to ratify the Fourteenth Amendment, enfranchise blacks, and adopt state constitutions acceptable to Congress. For the constitutional conventions, Congress established new state electorates that included blacks and excluded some former Confederates. In North Carolina, as in other Southern states, the new Constitutional Convention was chosen by manhood suffrage.¹⁷

12. *Id.* at 24.

13. *Id.* at 23, 26 and sources cited in note 1.

14. *Id.* at 26-27.

15. Jonathan Worth to B. G. Worth, Sept. 11, 1865, in Olsen, *Carpetbagger's Crusade* at 33-34 (cited in note 1).

16. Olsen, *Carpetbagger's Crusade* at 51-53 (cited in note 1); Hamilton, *Tourgée, Albion W.* (cited in note 1).

17. John V. Orth, *The North Carolina State Constitution* 12 (Greenwood Press, 1993); Eric Foner, *Reconstruction: America's Unfinished Revolution (1863-1877)* at 276-77 (Harper & Row, 1988).

In 1868 Tourgée was elected to represent Guilford County at the North Carolina Constitutional Convention. His platform included equal political and civil rights for all citizens; no property qualifications for jury duty and office holding; popular election of all state officers (including judges); free public education; abolition of whipping post, stocks, and branding for those convicted of crimes; judicial reform; and uniform taxation.¹⁸ In good part because of his leadership, these reforms and a homestead exemption, protecting a modest amount of real and personal property from creditors, were written into the North Carolina Constitution. Tourgée's effort to ban the poll tax was not successful. A scholar who was critical of Tourgée's advocacy of racial equality nevertheless praised his contribution to North Carolina. "[F]ew men have lived in the State who have conferred upon it such lasting good. . .," the bemused scholar wrote in 1906, "and yet he was a partisan leader of a motley horde. . ."¹⁹ After the Constitutional Convention, Tourgée was one of three Code Commissioners who prepared a new Code of Civil Procedure for the state, making the legal system less technical and more likely to produce substantial justice.²⁰

Tourgée was elected Superior Court judge and served from 1868 to 1874. Throughout his tenure as a judge, Tourgée continued to attend Republican party functions. Although Tourgée was viciously attacked in the press and criticized for partisanship by an earlier generation of scholars,²¹ Otto Olsen, his modern biographer, concludes that he was a fair and impartial judge.²² Lawyers who were his political opponents said he was the ablest judge before whom they had practiced.²³ He roused the ire of Conservatives by insisting that blacks be included on jury lists

18. Olsen, *Carpetbagger's Crusade* at 89 (cited in note 1); Nash, *Albion Winegar Tourgée* at 443 (cited in note 1). On the election of judges, see John V. Orth, ed., *Tuesday, February 11, 1868: The Day North Carolina Chose Direct Election of Judges. A Transcript of the Debates from the 1868 Constitutional Convention*, 70 N.C. L. Rev. 1825, 1825 (1992).

19. Nash, *Albion Winegar Tourgée* at 443 (cited in note 1). John Orth reports that Tourgée left his mark on many parts of the Constitution of 1868. Orth, *North Carolina State Constitution* at 12-13 (cited in note 17).

20. Olsen, *Carpetbagger's Crusade* at 130-31 (cited in note 1).

21. E.g., Nash, *Albion Winegar Tourgée* at 445 (cited in note 1); Hamilton, *Tourgée, Albion W.* at 604 (cited in note 1).

22. Olsen, *Carpetbagger's Crusade* at 173-74 (cited in note 1).

23. Joseph G. de Roulhac Hamilton, *Reconstruction in North Carolina* 415 n.1 (Books For Libraries Press, 1971). Hamilton was also quite critical of Tourgée as a judge. Nevertheless, he reports, "A number of able lawyers, who were his political opponents, have assured the writer that Tourgée was the ablest judge that they had ever practiced under." *Id.* at 415 n.1.

and that the jail be heated in winter, a concern for inmates which Conservative critics believed would encourage crime.²⁴

During Tourgée's tenure as Judge, the Ku Klux Klan engaged in a systematic campaign of terror and political assassination designed to drive blacks and their Republican allies from power. The Klan was particularly active in Judge Tourgée's piedmont North Carolina judicial district. Tourgée faced threats to his personal safety with extraordinary courage. The terror had an effect, however, and eventually self-styled Conservatives regained power in the state.²⁵

State efforts to prosecute Klansmen had been unsuccessful because of Klan disguise, secrecy, widespread public support, and the Klan practice of intimidating witnesses and furnishing alibis for their fellow Klansmen.²⁶ Still, an 1871 investigation by Tourgée led to indictments of sixty-three members, including many from leading families, for Klan atrocities.²⁷ Tourgée believed the Klan was controlled by the wealthy and powerful.²⁸

Conservatives, by then in power in the legislature, responded with legal maneuvers to block the prosecutions. The legislature repealed the statute under which many indictments had been obtained. For those Klansmen accused of murder, the legislature passed amnesty laws that (on their face at least) sheltered both the Klan and secret Republican organizations.²⁹ As Tourgée sardonically noted, "in the excess of their zeal, and lest it should be supposed they desired to screen only their friends, they extended their mantle of forgiveness so as to cover apparently the innocent as well as the guilty. . . . In short, they pardoned not only the perpetrators of these outrages, but, in a reckless determination to forgive, *they even pardoned the victims!*"³⁰

As Republican political dominance faded, so did Tourgée's hope for re-election as a judge. His law practice did not prosper. A handle manufacturing company he founded had failed during a financial panic, and Tourgée often found himself in difficult financial circumstances.³¹

24. Olsen, *Carpenter's Crusade* at 145 (cited in note 1).

25. Olsen, *Carpenter's Crusade* at 156-69 (cited in note 1). Nash, *Albion Winegar Tourgée* at 446-47 (cited in note 1).

26. See generally Olsen, *Carpenter's Crusade* at 157-69 (cited in note 1).

27. *Id.* at 184-87.

28. *Id.* at 157.

29. *Id.* at 186-87.

30. Albion Tourgée, *A Fool's Errand, by One of the Fools* 284 (Fords, Howard & Hulbert, 1880).

31. Olsen, *Carpenter's Crusade* at 191 (cited in note 1).

He was elected to the state Constitutional Convention of 1875 where he fought a partially successful rear guard action to protect the values enshrined in the Constitution of 1868. He ran unsuccessfully as Republican candidate for Congress in 1878.³²

In 1878, just a few years after the Illinois Supreme Court refused to admit women to the practice of law and the U.S. Supreme Court found nothing in the Constitution to prevent their exclusion,³³ Tourgée argued successfully before the North Carolina Supreme Court for the admission to the bar of Tabitha Anne Holton of Guilford County, the first woman ever licensed to practice law in the state.³⁴

In 1879, Tourgée wrote *A Fool's Errand, by One of The Fools*, a novel based on his Reconstruction experiences, and published several highly regarded legal treatises on North Carolina law. He left North Carolina, eventually moving to Chautauqua County, New York.³⁵ *A Fool's Errand* was a huge success, selling over 200,000 copies³⁶ and attracting laudatory reviews. Tourgée earned substantial profits from the book and from another popular Reconstruction novel, *Bricks Without Straw*, but he invested heavily in a magazine venture that failed.³⁷ Faced with large debts, and struggling with physical pain and depression, he earned an increasingly precarious living by lecturing and writing novels that were less financially successful. He also wrote articles, letters and speeches, including some mean-spirited and personal attacks on Grover Cleveland.³⁸ Reform, concern for the powerless, and pursuit of racial equality were values that motivated most of his journalism, his novels, his lectures, and his public life.

In 1891, Tourgée founded the National Citizens Rights Association, an organization devoted to equality for African-American citizens. Tourgée was a prophet and not an organizer, however, and ultimately the organization failed.³⁹

Tourgée served without pay as counsel in *Plessy v. Ferguson*. "Justice," he wrote in his brief, "is pictured as blind and her daughter, the Law, ought at least to be color-blind," and he in-

32. Id. at 195-205, 218-20; Nash, *Albion Winegar Tourgée* at 448-49 (cited in note 1).

33. See *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872).

34. Laura N. Gasaway and Judith W. Wegner, *Women at UNC and in the Practice of Law*, 73 N.C. L. Rev. 705-06 (1995).

35. Olsen, *Carpetbagger's Crusade* at 220 (cited in note 1).

36. *Albion W. Tourgée Dead*, New York Times, Mon., May 25, 1905, at D1.

37. Olsen, *Carpetbagger's Crusade* at 225-26, 261-64 (cited in note 1).

38. Id. at 271-81. Dibble, *Albion W. Tourgée* at 97-98 (cited in note 1).

39. See generally Olsen, *Carpetbagger's Crusade* at 312-31 (cited in note 1).

sisted that the requirement for "separate but equal" railroad cars established a constitutionally impermissible caste system.⁴⁰ Tourgée apparently inspired Justice John Marshall Harlan's famous dissenting dictum "There is no caste here. Our Constitution is color-blind. . . ."⁴¹

Tourgée had selected Plessy, a person who was 7/8ths caucasian, for his test case. Tourgée argued that sorting passengers by race was simply designed to degrade blacks, imposed a badge of servitude on them, and was unconstitutional. Tourgée also argued that the status and reputation of being white were valuable property. Since the statute required railroad conductors to classify people as white or black without testimony or other procedural safeguards, Tourgée also argued it violated the due process clause of the Fourteenth Amendment. Had the procedural due process argument succeeded and some sort of hearing been required before assigning passengers to the "white" or "colored" car, it could have made the statute unenforceable.⁴²

Tourgée described *Plessy* as a case in which caste ("the legal subjection of one class to the domination and control of another") had triumphed "under the protection of a supreme court, which has always been the consistent enemy of personal liberty and equal right. . . ."⁴³ But, he said, caste was inconsistent with basic American values and would fall eventually, just as slavery had fallen.⁴⁴

Tourgée's statement that the Supreme Court was the consistent enemy of liberty, unless, as he sometimes said, driven in the other direction by public opinion,⁴⁵ should be read in the context of Tourgée's views and of the times. In *Dred Scott v. Sanford*, the decision by Chief Justice Roger Taney had said free Americans of African descent were entitled to no federal constitutional protections.⁴⁶ Subsequently, the Court had ruled that the Fourteenth Amendment did not make the guarantees of the Bill of Rights a limit on state governments,⁴⁷ had hobbled Reconstruc-

40. Albion W. Tourgée, Brief for Plaintiff in Error, in Philip Kurland and Gerhard Casper, eds., 13 *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law* 27, 45-46 (University Publications of America, Inc., 1975) ("*Landmark Briefs*").

41. *Plessy*, 163 U.S. at 559 (Harlan, J. dissenting).

42. *Landmark Briefs* at 35-36 (cited in note 40).

43. Boston Globe (May 31, 1896), in Olsen, *Carpetbagger's Crusade* at 334 (cited in note 1).

44. *Id.*

45. Olsen, *Carpetbagger's Crusade* at 326 (cited in note 1).

46. 60 U.S. (19 How.) 393, 404-05 (1856).

47. E.g., *Walker v. Sauvinet*, 92 U.S. 90 (1875); *Hurtado v. California*, 110 U.S. 516 (1882).

tion acts aimed at protecting blacks and Republicans from Klan violence,⁴⁸ had struck down the first public accommodation law passed by Congress as unconstitutional,⁴⁹ and finally in *Plessy* had upheld state required segregation on railroad cars.

Tourgée's financial resources were limited when he undertook to represent *Plessy* for free, and the passage of time had not improved them. In 1897 Tourgée was rescued from financial problems when President McKinley appointed him U.S. Consul in Bordeaux, France, a post he held until his death.⁵⁰

Tourgée thought and wrote at length about the failure of Reconstruction. In common with modern historians, Tourgée saw Reconstruction as shifting power and resources (as in the case of laws relating to labor and public education) from a landowning aristocracy to the mass of the people of the state, white as well as black.⁵¹ In 1868 Tourgée said that in Reconstruction "for the first time [in North Carolina] the rights of the masses were regarded above the interest of any aristocracy, and manhood regarded as of more value than money."⁵²

As Tourgée saw it, Reconstruction was a continuation of the struggle against slavery.⁵³ The techniques developed in the time of slavery to silence opponents of the institution were reincarnated to silence those who supported civil and political rights for blacks. The elimination of Republicans and blacks as a political force paralleled the similar fate of opponents of slavery in the South before the Civil War.⁵⁴

Tourgée tried to understand the forces that shaped the political outlook of most Southerners. Most Southern newspapers and ministers in their pulpits had helped produce pervasive pro-slavery public opinion. Similarly, the Southern press later overwhelmingly attacked Reconstruction,⁵⁵ and ministers in their pulpits were silent about Klan violence.⁵⁶ Tourgée also noted the powerful technique of ostracizing dissenters.⁵⁷ All these factors,

48. E.g., *United States v. Cruikshank*, 92 U.S. 542 (1875); *United States v. Harris*, 106 U.S. 629 (1882).

49. See *The Civil Rights Cases*, 109 U.S. 3 (1883).

50. Olsen, *Carpetbagger's Crusade* at 337-39 (cited in note 1).

51. See Foner, *Unfinished Revolution* at 364-79 (cited in note 17). In North Carolina the Constitution provided "no property qualification ought to affect the right to vote or hold office." Representation in the Senate was based on population rather than taxes paid to the state treasury. Orth, *North Carolina State Constitution* at 13 (cited in note 17).

52. Olsen, *Carpetbagger's Crusade* at 197 (cited in note 1).

53. E.g., Tourgée, *A Fool's Errand* at 339 (cited in note 30).

54. *Id.* at 286-95.

55. *Id.* at 155-56. Olsen, *Carpetbagger's Crusade* at 145, 151 (cited in note 1).

56. Tourgée, *A Fool's Errand* at 284 (cited in note 30).

57. *Id.* at 131.

he believed, naturally produced broad Southern acceptance of slavery and later supported the Southern elite in its insistence on subordination and disfranchisement of the newly freed slaves.⁵⁸

Under these circumstances, the views of many white Southerners were predictable. A former slaveholder in *A Fool's Errand* explains, "I have been a slaveholder from my youth, and ever since I could remember I have heard the institution of slavery referred to in the pulpit and in religious conversations . . . as a thing . . . incontestably divine in its origin and character."⁵⁹

During Reconstruction, the North Carolina press, which was overwhelmingly opposed to Reconstruction, portrayed blacks as monkeys and their Republican allies as knaves.⁶⁰ The Conservative press, Tourgée's biographer reports, libeled Tourgée and other Republicans and closed its columns to corrections, even when made by Conservatives.⁶¹ The press, Tourgée reports, was characterized by "unanimity," "persistency," and "fertility in falsehood."⁶² "More and more bitter, more and more loathsome, became the mass of Southern journalism. . . . Whoever had aided, assisted, or assented to the process of reconstruction, became a target for infamous assault."⁶³ Tourgée attributed the well-oiled nature of this propaganda machine to the "previous training which the press of the South had received in the art of vilification, under the regime of slavery. . . ."⁶⁴ While the press of the South denounced those who struggled to effectuate the goals of Reconstruction announced by the nation, it was joined by the press of the North.

"The most amazing thing connected with this matter . . .," Tourgée wrote, "was the fact that the press of the North, almost without exception, echoed the clamor and invective of the Southern journals."⁶⁵ The North "discredited its own agents, . . . espoused the prejudices of its conquered foes, and poured the vials of its wrath and contempt upon the only class in the conquered territory who defended its acts [and] supported its policy. . . ."⁶⁶

Finally, and most effective in Tourgée's view, was the Klan terror, which the national government eventually failed to re-

58. Id. at 155-56.

59. Id. at 74.

60. E.g., Olsen, *Carpenter's Crusade* at 114, 145 (cited in note 1).

61. Id. at 145.

62. Tourgée, *A Fool's Errand* at 156 (cited in note 30).

63. Id. at 155.

64. Id. at 155.

65. Id. at 157.

66. Id. at 161.

strain. “These [Klan] acts,” the hero of *A Fool’s Errand* wrote had “sprung from a common motive, and all tended to a subversion of liberty, and a prevention of the exercise of those very rights or privileges” which the nation had sought by the war and its aftermath “to confirm and secure in their completeness and universality.”⁶⁷

Tourgée tried to understand how so many leading white Southerners could countenance the acts of the Klan. “The Fool knew not what to think. There were hundreds of these men whom he knew well, and esteemed highly. Were they deliberately savage and vicious, or was he in error? Was there any absolute standard of right, or were religion and morality merely relative and incidental terms?”⁶⁸ Tourgée concluded that nothing could justify the “atrocious outrages” and “barbarity” of the Klan, its “organized Thuggism.”⁶⁹

Still, if he could not justify the violence, he struggled to explain it. The Klan was, he concluded, an effort by “a proud, brave, and determined people to secure and hold what they deemed to be their rights.”⁷⁰ He found part of the explanation to the conundrum of Klan violence supported by the “best” people in the heritage of slavery. Slavery had “especially cultivated that spirit which countenances the forcible suppression of unpopular ideas, which at the North was called ‘intolerance,’ and at the South ‘self preservation.’”⁷¹ Another part of the story was the ability of those with a deeply held world view to filter out other considerations. “It then became apparent to [Comfort Servosse, the Fool of *A Fool’s Errand*] that the pride, resentment, and sense of ignominious oppression, in the hearts of the Southern people, had swallowed up all other thought, had rendered all other considerations trivial and unimportant. . . .” The goal of “redemption” of the South rendered “insignificant that which would otherwise have been counted horrible and atrocious.”⁷²

Throughout *A Fool’s Errand*, Tourgée shows understanding and even a sort of admiration of most Southerners’ persistence in the face of overwhelming defeat in the Civil War. Given the predominant Southern world view, shaped by slavery, their behavior, though deplorable, was understandable. Tourgée found it

67. Id. at 209.

68. Id. at 284.

69. Id. at 223, 227.

70. Id. at 228.

71. Id. at 291.

72. Id. at 292.

much harder to understand or forgive the behavior of the North. For in the end, he said, the North had decided that

The South must take care of itself now. The nation had done its part: it had freed the slaves, given them the ballot, opened the courts to them, and put them in the way of self protection and self-assertion. The "root-hog-or-die" policy of the great apostle of the instantaneous transformation era became generally prevalent. The nation heaved a sigh of relief.⁷³

But the spirit of slavery was not dead. It had changed its outward shape, but its psychological effect both on the slave and the master class remained:

It was our fault,—the then youngsters who had just come out of the furnace-fire in which the shackles were fused and melted away from the cramped and shriveled limbs. We ought to have seen and known that only the shell was gone. Slavery as a formal state of society was at an end: as a force, a power, a moral element, it was just as active as before. Its conscious evils were obliterated: its unconscious ones existed in the dwarfed and twisted natures which had been subjected for generations to its influences,—master and slave alike.⁷⁴

According to Tourgée, the "wise men" of the North had turned the burden of maintaining democracy and legal equality in the South over to Southern Republicans—white and black, most of whom were illiterate, poor, landless, and inexperienced in public affairs. They had turned a task requiring immense strength over to weaklings. In the battle that ensued, the North ultimately announced it could not and would not help.⁷⁵

In the end, except for the question of secession and the great achievement of formal guarantees of liberty that were for the moment often a dead letter, the nation, Tourgée believed, had left the practice of states' rights largely untouched.⁷⁶ He laid the ultimate failure of Reconstruction squarely at the door of the North. The press of the North had joined the Southern press in denouncing Republicans of the South. The Republican party of the North had been "cowardly, vacillating, and inconsistent in its management" of Reconstruction.⁷⁷

The press' view of Reconstruction so lamented by Tourgée found its way into the history books, and long remained the dom-

73. *Id.* at 150.

74. *Id.* at 340.

75. *Id.* at 151-52.

76. *Id.* at 338.

77. *Id.* at 152.

inant view. It was finally rejected after the second civil rights revolution and the second Reconstruction of the 1960s. A study entitled *Reconstruction in North Carolina* was published in 1914 under auspices of the faculty of political science at Columbia University in New York. The author of that study described Reconstruction in North Carolina as a time “when selfish politicians, backed by the federal government, for party purposes attempted to Africanize the State and deprive the people through misrule and oppression of most that life held dear.”⁷⁸

Tourgée was increasingly a man out of cycle with his times. As literature became realistic, his remained romantic and didactic. As the nation turned its back on blacks in the South, Tourgée protested the rising tide of racism. In a nation increasingly enamored of states’ rights, he demanded federal power to protect individual rights. As big business gained increasing economic and political control, he criticized the effect of economic consolidation not only on the “mere laborer” but also on “the great host of enterprising self-employers.”⁷⁹ In response to a Gilded Age creed that equated wealth with virtue, he insisted that “oppression, evil and national debasement . . . spring always from the ambition, greed or lethargy of the rich, the wise, the strong. . . .”⁸⁰ “The power of wealth,” he wrote, “is just as properly subject to restraint as that of the biceps and is even more liable to abuse.”⁸¹ He complained when rich and respectable individuals escaped criminal prosecution for the Johnstown flood. “He who kills by retail is a murderer; he who slays by wholesale, is, at worst, only ‘responsible.’”⁸²

Tourgée advocated a host of reforms: progressive taxation, federally insured bank deposits, federal aid to education, and profit sharing.⁸³ Though loyal to his Republican party to the end, he was increasingly disenchanted with what it had become. “Already every branch of our government has lost touch and sympathy with the people,” he wrote in 1894. “The idea is almost universal that money rules.” This was so “no matter which party is in power, and the general impression is that the enactment of law, its administration and enforcement, are also controlled by the power of money.”⁸⁴

78. Hamilton, *Reconstruction in North Carolina* at 667 (cited in note 23).

79. Olsen, *Carpetbagger's Crusade* at 288 (cited in note 1).

80. *Id.* at 283.

81. *Id.* at 285-86.

82. *Id.* at 285.

83. *Id.* at 286.

84. *Id.* at 325.

As Tourgée's views diverged farther from a mainstream that was rapidly moving away from him, he found the newspaper for which he wrote rejecting some of his columns.⁸⁵ It pointedly reminded him of how well paid he was and ordered him to stop finding "fault with . . . the Republican party as it now stands."⁸⁶ Columns sympathetic to labor in the Pullman strike were rejected and the paper, for a time, suspended his column altogether.⁸⁷

Historians' view of Tourgée has changed with changes in attitude toward equal rights for African-Americans. Historians writing in the 1960s through the 1990s have been far more positive about Tourgée than those who viewed him through a lens of hostility to the goals of Reconstruction. Tourgée would not be surprised. "The life of the Fool," he wrote in the introduction to his *A Fool's Errand*, "is full of the poetry of faith. . . . He differs from his fellow-mortals chiefly in this, that he sees or believes what they do not, and consequently undertakes what they never attempt. If he succeed in his endeavor, the world stops laughing, and calls him a Genius: if he fail, it laughs the more, and derides his undertaking as *A Fool's Errand*. So the same individual is often both fool and genius . . . a fool to one century and a genius to the next. . . ."⁸⁸

85. Id. at 325.

86. Id. at 325.

87. Id. at 325.

88. Tourgée, *A Fool's Errand* at 3 (cited in note 30).

