THE IMPEACHMENT AND TRIAL OF GOVERNOR WILLIAM W. HOLDEN, 1870-1871

by

Lowell Thomas Young

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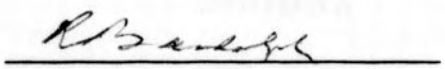

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William Woods Holden, in spite of his illegitimate birth into an environment of ignorance and poverty, became one of the most influential figures of North Carolina history. He was a key figure in the politics of his state from the time he became the editor of the North Carolina Standard in 1843 until 1871. The Standard became the most influential paper in the state, and he was chiefly responsible for shaping three political parties in North Carolina -- the Democratic, Conservative, and Republican. Holden led the peace movement in the state during the Civil War, and, as a result, was appointed Provisional Governor in 1865.

Holden's ultimate ambition was to be the duly elected governor of North Carolina, and in 1868, after a number of defeats, he achieved this goal. Holden, who was now the leader of the Radical Republicans in the state, had been elected by the Negro vote. The conservative element in the state determined to destroy Holden in order to overthrow the Republican Party and restore white supremacy. The activities of the Ku Klux Klan became so violent in certain parts of the state that the Governor was forced to resort to the use of martial law to restore order. This "War" with the Klan led directly to his impeachment.

The August, 1870 election sealed Governor Holden's fate. The state legislature, which had been predominantly Republican, went Conservative by a more than two-thirds majority. A caucus of Conservatives now determined to remove Governor Holden from office at once. Eight Articles of Impeachment were adopted by the House of Representatives on December 19, 1870. The forty-four day impeachment trial proper began on January 23, 1871, and the vote which removed Holden from office was taken on March 22.

This work, which is an analysis of the impeachment and trial, gives

special reference to the impeachment charges. The most serious of the charges was that Governor Holden had declared an unlawful state of insurrection in the counties of Alamance and Caswell. Almost as important was the charge that the persons arrested at the Governor's order had been denied the procedural rights guaranteed by the state constitution, especially the writ of habeas corpus. Less significant charges were that the Governor had employed an unlawful army in Alamance and Caswell counties; he had allowed maltreatment of the prisoners arrested by this band; he had issued an unlawful warrant to draw money from the state treasury to support this army; and he had evaded a court order forbidding the disbursement of the funds.

The reasons for William Holden's impeachment were political and social. The list of charges in the Articles of Impeachment were introduced as a rationalization to justify the overthrow of the Holden administration; the real reason for impeachment being the Republican assault upon white supremacy. The partisan-political nature of the entire proceedings is an undisputed fact which was most apparent in the final balloting. The thirty-six Conservatives present voted unanimously for removal from office; the thirteen Republicans voted to a man for acquittal. Holden, who had served his state well, was unjustly impeached, removed from office, and disqualified from ever again holding public office in the state. Unfortunately, he never lived to see his name vindicated.

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PREFACE

William Woods Holden was chiefly responsible for shaping three political parties in North Carolina -- the Democratic, Conservative, and Republican. He was a key figure during both the Civil War period and the Reconstruction era. He is important in national history for his reputation as a "scalawag", and because he was the first state governor to be removed from office by impeachment. He was, in addition, the first of the Reconstruction governors to be impeached, and the only one to be convicted. It is because Holden's impeachment was so important, and because no adequate study has been made of it, that this study has been attempted.

The work is an analysis of the impeachment and trial, with special reference to the impeachment charges. Holden is perhaps the most controversial figure in North Carolina history. A great deal of what has been written about him is polemical, and it is only with great difficulty that the historian can reach a degree of objectivity. While I have attempted to be detached and impartial, my study of the sources has led me to form a more favorable opinion of Holden than has usually been the case among historians.

My primary source was the voluminous Impeachment Proceedings. Most contemporary newspapers ignored the proceedings, but two papers were especially useful -- The Raleigh Sentinel and The Wilmington Journal. Holden's papers (at Duke University) contained little information about the impeachment and trial, but they did contain a long series of letters that he wrote in 1871, while in Washington, D. C.

For this study, I wish to acknowledge the invaluable aid rendered

by the library staff of the University of North Carolina at Chapel Hill in allowing me the use of their facilities. I am also indebted for the aid, advice, and criticism rendered by Professor Richard Bardolph, who directed the study.

CHAPTER I

BIOGRAPHY TO 1870

William Woods Holden was born near Hillsborough (later, Hillsboro), North Carolina on November 24, 1818. His illegitimate birth into an environment of ignorance and poverty was always to be an obstacle to the achievement of his political ambitions. Had his family background been more prestigious he could doubtless have gained political office at a far lighter cost to himself, and enjoyed a thoroughly successful career, instead of one that ended in impeachment. As it was, Holden always seemed out of place among North Carolina's aristocracy, a figure whom it could not quite understand and whom it therefore felt disposed to destroy.

The youthful Holden lived with his mother, Priscilla Woods, until he was six years old, and was then sent to live with his father, Thomas Holden, who operated a grist mill in Hillsborough. There were ten other children in the Holden household, all of whom were later to sever relations with William because of his political career.

Holden was in every respect a self-educated man. After a formal education which was limited to one or two short terms at an "old field school", be became, at the age of ten, a "printer's devil" to Dennis Heartt, the editor of the Hillsborough Recorder. It is to Heartt, the state's foremost Whig editor, that credit must be given for Holden's early education and political views.

When he was a mere sixteen, the young apprentice left Hillsborough and went to Milton, North Carolina, where he was employed by the Chronicle.

After four months there, restlessness took him to Danville, Virginia, where he wrote his first press article. Within a year he had returned to Hillsborough, and was working as a clerk in order that he might have time to study. He spent his leisure time, said one scholarly authority, "laying the foundations of that broad culture which ranks him among the best literary men the State has produced."[1]

Even during these early years young Holden had an intense ambition to rise above his lower-class background, and become an accomplished person. An anecdote which he later told about his childhood illustrates this point. One cold morning when he was about twelve years old, Holden was invited into one of the homes to which he delivered newspapers. At the table sat a well dressed young man who was a student at the state university, an extreme contrast to the ill-clad, bare-foot newsboy. "I looked at him," said Holden many years later, "and thought how happy I would be if I had his opportunities, and then I thought what a gulf there is between us and how uneven are our chances in life. But I determined then and there that I would keep pace with him in life's struggle."[2] In 1868 Holden was to defeat this young student, Thomas Ashe, in a campaign for the governorship of the state.

It was in 1836 that Holden decided to move to Raleigh. He was to remain there for the rest of his life, except for a short stay in Washington, D. C. On the coach to Raleigh, he met Thomas Sparrow, the lawyer who was to manage his prosecution, and William Clark, a colonel of the special troops Holden was to employ in 1870 which led directly to his impeachment.

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[1]W. K. Boyd, "William W. Holden," Historical Papers of the Trinity College Historical Society, Series III, 1899, p. 42.

[2]Ibid., 41.

Upon arriving in the capital city, Holden's poverty and obscurity were exceeded only by his ambition.[3] His writing ability enabled him to secure a position with Thomas Lemay, the editor of the Star, who hired him as a typesetter, and permitted him to do some writing for the paper. The Star was a leading Whig journal and had great influence in quarters where it was especially desirable for a young man to be known.[4]

In 1837 Holden launched a newspaper of his own, but it proved unsuccessful and he returned to Lemay's employ. The following year he made an unsuccessful attempt to borrow sufficient money to purchase part-interest in the Star, but he failed to secure the loan and turned instead to the study of law in the evenings. He borrowed law books from Henry Miller, a young lawyer, who guided his choice of readings, and in 1841 Holden passed the North Carolina bar examination with honors. In less than a year the young lawyer received an appointment as general assignee in bankruptcy in Wake County. During the year he held this position, the rising young attorney won a local reputation at the bar and achieved some prominence in public life. "Perhaps," as one writer has remarked, "he could have had a successful career in law and thus attained at far lighter cost to himself his later political ambitions."[5]

Meanwhile Holden had married Miss Anne Young in 1841. She belonged to a prominent North Carolina family, and the marriage not only improved

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[3]William W. Holden, Memoirs, ed. W. K. Boyd (Durham: The Seeman Printery, 1911), p. 95.

[4]Samuel A. Ashe (ed.), Biographical History of North Carolina (Vol. VIII; Greensboro: Van Noppen, 1906), p. 185.

[5]Edgar E. Folk. "W. W. Holden, Political Journalist" (Unpublished Ph. D. dissertation, Dept. of English, George Peabody College for Teachers, 1934), p. 25.

her husband's social status considerably, but also provided the sort of security which enabled him to borrow the money that was so essential to the achievement of his soaring ambition. The marriage proved a happy one, and produced three children -- a boy and two girls.

Not only was Holden advancing professionally, publicly, and socially, but politically as well. In politics he was a Whig, true to the teaching of "Father" Heartt and Thomas Lemay. In 1840 he made his first political speeches, and two years later he was a delegate to the Whig state convention.

The Whig Party was at the time in the ascendancy in the state, and had the backing of a number of excellent newspapers. The official organ of the Democratic Party, The North Carolina Standard in Raleigh, was, on the other hand, in the hands of an editor who possessed little or no ability. Because a change of editors was imperative if they were ever to defeat the Whigs, the party leaders, recognizing Holden's literary abilities, offered him the editorship of the Standard. Holden thereupon borrowed $2000 to purchase the paper and on June 1, 1843, became the owner and editor of the official Democratic organ. He now gave up all idea of practicing law and dedicated himself to a career as a political editor.

A satisfactory explanation of Holden's change of parties has never been given. His critics charge that the change was made purely for personal gain, and that there was no real change of political opinions. This insinuation has never seemed wholly credible, however, for the Whig Party was then dominant and Holden was one of its most promising adherents. The Democrats, on the other hand, had, at the time, little power and little prestige. Holden was moreover compelled to hazard borrowing funds to purchase a newspaper that was in every sense a failure.

A study of Holden's personality suggests the more plausible explanation that he was by nature out of harmony with the increasingly aristocratic

tendencies of the Whig Party in North Carolina. If he had not been influenced by a complete change of political opinions as some authorities have held,[6] he had at least begun to realize that his principles had more in common with those of the Democratic Party. Holden was also beginning to be influenced by the states' rights doctrines of John C. Calhoun, and to feel that the Democratic Party was developing a stronger position on this issue than were the Whigs. His shift in party allegiance was made, it would seem, because it "offered a true challenge to his ingenuity, a chance to set forth his ideas on individual liberties and state rights."[7]

From the beginning Holden set an example of journalistic excellence, and in time he became the best known editor, and his paper the most widely circulated in the entire state. The success is not surprising for he brought to his task great abilities and drive, which his training still further enhanced. He had grown from childhood in the offices of the best newspapers in North Carolina, under the most experienced and capable editors in the state.

His newspaper techniques added much to the advancement of state journalism. As an editor, he demonstrated that he was utterly fearless in campaigning for the causes that he considered right and, in a surprising majority of cases, he had the support of the people. Unlike most leaders of his type, Holden did not appeal solely to the prejudices of the lower classes, but preferred to key the Standard to reaching "the people" -- the

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[6]Boyd, 28.

[7]Horace Wilson Raper, "The Political Career of William W. Holden with Special Reference to His Provisional Governorship" (Unpublished Masters' Thesis, Dept. of History, University of North Carolina, 1947), p. 9.

Hereafter cited as Raper, "Political Career of Holden"

intelligentsia as well as the masses.[8]

Both as an editor and as a political leader, Holden worked for the advancement of the common man and did a great deal to undermine the aristocratic control of the state. He labored for an extension of suffrage to the masses, for construction of railroads in all sections of the state, for labor reforms, for a state penitentiary system, and for improvement of public schools. On the other hand, he became a confirmed follower of John C. Calhoun, and during this period championed slavery and states' rights. He supported the right of the South to secede peacefully, although in the last years before the Civil War he cautioned against taking such a step.

Through his editorship of the Standard, Holden not only helped to prepare the popular mind for the acceptance of the right of secession, but he also built the Democratic Party into the dominant party of the state. When he became editor of the Standard, he found that the Democratic Party had deteriorated to the point that it was out of touch with the people. It was opposed to all internal improvements and, it seemed, to progress in general. Holden put new life into the party and in 1848 the Democrats emerged in favor of internal improvements.

Holden realized that if the Whigs were to be defeated, a thoroughly popular issue had to be found. The issue he chose was free suffrage, and in 1848 the Democrats nearly achieved victory on the strength of this appeal.

After this Holden was the virtual dictator of the Democratic Party. His influence could "kill and make alive" politically. He was the drill-master of the party whipping straying members back into line or dismissing

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[8]Horace Wilson Raper, "William W. Holden: A Political Biography" (unpublished Ph. D. dissertation, Dept. of History, University of North Carolina, 1951), p. 410.
Hereafter cited as Raper, "W. W. Holden."

them, and building a powerful efficient organization.[9] In 1850 he succeeded in electing David Reid governor, and the Whigs never again controlled the state. After Reid had served two terms as governor, Holden was successful in placing Thomas Bragg in that office in 1854 and 1856.

The year 1858 was a turning point in Holden's career. Having made governors of less capable men, he felt that he could secure the chief executiveship for himself because of his popular appeal to the public. He had an intense ambition to be governor, perhaps not so much for himself as for his family. He felt that his illegitimacy and lack of aristocratic background deprived his family of ready acceptance by the socially prominent. As members of the governor's family, he reasoned, they would be accepted.[10]

The Democratic Convention, however, refused to give Holden the nomination. The slaveholding aristocracy which was beginning to gain control of the party blocked his nomination, in part, presumably, because of his family background. In any case Holden blamed his defeat upon his lack of social acceptability. In addition, however, his brusque manner in dealing with his antagonists created a fear within the opposition that he wished to build an absolutist state for his own political ends.

This defeat did not quench Holden's political ambitions. A few months later he ran for the United States Senate, but the General Assembly refused to appoint him, and these two rejections marked the beginning of his quarrel with the Democratic aristocracy, which led eventually to his complete break with the party he had espoused a decade and a half earlier. By 1860 Holden had shifted from his militant stand on secession to a position of loyalty to the Union. This repudiation of the aristocratic slaveholders

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[9]Folk, "Holden, Political Journalist," 48.

[10]Raper, "W. W. Holden," 41.

involved more than his quarrel with them. Actually he had always been committed to the advancement of the common man and had therefore never been truly in rapport with the slaveholding class. Holden also prided himself on editing the only newspaper in the state that actually expressed the ideas and wishes of the people; and, being a political opportunist, he did not want to advance a cause which the people would not follow. In 1860 he was persuaded that the people were oppossed to secession, and such was the position that his paper advanced. His position on secession was now so stoutly opposed to that of the slaveholding Democratic leaders that they punished him first by depriving him of his office as State Printer, and then by founding another Democratic paper in Raleigh which would reflect the opinions of the party leadership.

In 1860 Holden supported the Southern Democratic ticket, though he personally favored Stephen A. Douglas, the leading Northern Democrat. He continued to hold his pro-Union views, but, after the bombardment of Fort Sumter, acquiesced in his state's secession, forced as he was by Southern opinion to join the movement or become a martyr.[11]

William Holden was one of the delegates who signed the North Carolina secession ordinance, but it came too late to win him reinstatement into the Democratic Party. In 1861 he therefore assumed the lead in organizing the discontented elements of the state into the Conservative Party and his amazing leadership abilities led the new party from obscurity to state domination within a year. He more than anyone else, brought about the election of Zebulon Vance, destined to be remembered as one of the Confederacy's greatest war governors.

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[11]Horace Wilson Raper, "William W. Holden and the Peace Movement in North Carolina," North Carolina Historical Review, XXXI (October, 1954), 494.

During the Civil War Holden was the acknowledged leader of his state's peace movement, which began in 1863. Convinced of the futility of the war, he felt that it would be far better to make an honorable peace while it was possible, than to be forced later to accept unconditional surrender. Holden was condemned by the Confederates and troops wrecked the Standard's presses, but the notoriety created by this episode only publicized his peace activities.

Holden as "party boss" expected the Vance administration to adopt the peace movement. In time, however, Governor Vance shifted from the position of a partial supporter of the peace movement to that of a positive opponent. Early in 1864 Vance decided that to stay in office he must follow a policy of vigorous support of the War, and break with Holden. The rupture came not as a result of conflicting opinions, but because of an irrepressible conflict between two politicians. Holden had failed to realize that Vance would and could not be controlled by anyone.[12]

Vance's "treachery" could not be tolerated by Holden, and he set out to defeat the Governor in 1864. Holden depended upon the popular momentum of the peace movement to elect him, but his strength with the people was not nearly so effective as it first appeared to be. He was now for the second time denied the office of governor, and he accepted his defeat without undue bitterness. His peace efforts did not stop, however, until the movement was finally suppressed by force, and until the very close of the war, there remained a discontented element in the state.

It was no surprise that when the war was over, Holden was appointed by President Andrew Johnson as Provisional Governor of North Carolina. He turned the editorship of the Standard over to his son, Joseph, and assumed

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[12]Raper, "Political Career of Holden," 36.

office in June, 1865, confronting an enormously difficult task, for the state government was utterly disorganized, without funds, and with no means of collecting taxes.

The Provisional Governor assumed that all state and local offices were automatically vacated with the fall of the Vance Administration, and that to Unionize the state he should appoint only those who were in complete sympathy with the federal government. In less than thirty days, Holden appointed some four thousand state and local officials, including, perhaps understandably, a number of bad choices. The most criticized aspect of the provisional governorship was Holden's granting of pardons. The northern press charged that the governor was too liberal with his pardon recommendations. There was some truth in this accusation for of the twelve hundred requests for pardons, Holden recommended that only four be rejected. The financial problem was solved when Holden induced President Johnson to turn over to the state the remains of its war property, valued at $150,000. This was done for no other state. When the provisional governorship ended, the state treasury showed a surplus of $40,000.

Holden's primary task was to prepare the state for readmission into the Union. He, therefore, called a state convention to meet in Raleigh on October 2, 1865. The convention repealed the Ordinance of Secession, prohibited slavery in the state, and provided that a governor's election be held on November 9. Holden wished above all things to be the duly elected governor of North Carolina upon completion of his term as provisional governor. His opponent, Jonathan Worth, defeated him, however, by almost six thousand votes, despite the fact that Holden had carefully planned, through the patronage power, to build an effective political organization. He had been denied his greatest ambition for the third time, but, as one careful

student of the episode has said, "North Carolina was the loser. He had proven he was a capable leader."[13]

Holden did not expect his term of office to terminate quickly. He felt it would continue until Congress gave formal recognition to the new state government, but he was directed by the President to turn the office over to Worth, and on December 28, 1965, the provisional governorship was terminated.

Holden now resumed the editorship of the Standard, and set out to wrest control from the Conservative Party and return it to the Johnson supporters. It was to accomplish this goal, that he took the lead in organizing a Republican Party in the state. During the fall of 1866 Holden and others began to weld the discontented elements in the state into a party unit. Perhaps the most notable feature of this campaign to organize the Republican Party in every county was the introduction of the Union League as a party weapon to control the Negro vote. Holden became head of the League in North Carolina, and his paper became its official organ. It should be added, however, that while Holden felt compelled to protect the Negro, he never recognized him as an equal of the white. He was forced to accept political equality for the Negro, but he never accepted social equality.

North Carolina felt the wrath of radical reconstruction during the administration of Governor Worth. Holden supported the congressional radicals and broke with President Johnson for vetoing the Reconstruction Act of 1867, which placed North Carolina like the other states of the late Confederacy, under a federal military commander, and required that the state draw up a new constitution and adopt the Fourteenth Amendment before it could be readmitted to the Union.

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[13]Raper, "W. W. Holden," 173.

The Constitutional Convention which met on January 14, 1868, was dominated by Republicans -- 107 to 13. Among other things, the new constitution changed the governor's term of office from two to four years. Had this change not been made, Holden would not have been impeached in 1870 for he would have been defeated at the polls four months earlier.

The election of 1868 was an extremely bitter one. "It was in part a battle between the Union League and the Ku Klux Klan."[14] The Republican, or Radical, nominee was Holden; the Conservative, or Democratic, candidate was Thomas S. Ashe. The election was the first in which the Negroes voted for governor, and their vote determined the outcome. Holden received the Negro vote, as well as the white Republican vote, and the party which had been formed only a year before under his leadership, now took control of the state. Holden had at last achieved his greatest ambition. His success, however, was to be short lived.

He sold the Standard, relinquished all connections with it, and promptly began negotiations for the removal of Governor Worth. After a protest, Worth was deposed, and Holden was again appointed Provisional Governor until the beginning of his elected term. He took the oath of office on July 2, 1868.

The first task of the Holden administration was to secure the re-admission of North Carolina into the Union. Holden was successful in inducing the state to meet the Congressional requirements, and on July 11, President Johnson announced by proclamation that North Carolina was restored to the Federal Union. Radical Reconstruction and military rule came to an end, and Holden was on his own.

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[14]Folk, "Holden, Political Journalist," 61.

His efforts, as governor, in the fields of public education, internal improvements, and industry (especially in raising the position of labor) were of great service and lasting benefit. Forced to work with Carpetbag and Negro elements of his party, however, he committed excesses that he might otherwise have avoided. This was especially true in the matter of racial equality, and in the end it led to his being removed from office.[15]

The opposition to Governor Holden was begun by Governor Worth on the day Holden took office, and did not cease until he was finally impeached. The attack upon the Holden administration was led by the official organ of the Conservative Party, The Raleigh Sentinel, edited by Josiah Turner, Jr. Two especially damaging charges were the reconstruction frauds perpetrated by the state legislature, and the "war" with the Ku Klux Klan which led directly to Holden's impeachment.

Governor Holden was accused by the Conservatives of being implicated in the reconstruction fiscal irregularities that occurred during his administration. The most important of these involved an issuance by the General Assembly of more than six-million dollars in worthless railroad bonds. Had they been executed, it would have bankrupted the state. It has never been proved, however, that Holden was connected with this or any other fraud in any way, or that he profited from them. Instead, it is generally conceded that North Carolina suffered as little as any southern state under reconstruction and that Holden's administration was among the best of the reconstruction governments.[16] Nevertheless there was a move during Holden's impeachment proceedings, to charge him with being involved in the railroad frauds.

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[15]Raper, "W. W. Holden," 411-412.

[16]Raper, "Political Career of Holden," 155.

CHAPTER II

THE "WAR" WITH THE KU KLUX KLAN

The "war" with the Ku Klux Klan, which led directly to the impeachment of Governor Holden, resulted from the attempts of the Republican Party to break with the tradition of white supremacy. The Republicans owed their victory of 1868 to the Negro vote, and because their future successes depended upon the continued support of this group the Holden administration made "radical" attempts to guarantee political and civil equality to members of the colored race. To prevent this radical plan for Negro equality, the Ku Klux Klan was formed in the state, and, by intimidation and other illegal action, it succeeded in returning North Carolina to white supremacy.

The Klan was organized in North Carolina in the same year that Holden was elected governor. It consisted of three separate organizations: the Constitutional Union Guard, the White Brotherhood, and the Invisible Empire. Holden had been in office only three months when trouble began to occur throughout the state. During the fall of 1868 the Klan concentrated its actions in the counties of Alamance, Caswell, Orange, Jones, Lenoir, and Chatham, but there were threats of violence and outlawry all over North Carolina. While no accurate figures are available as to the number of Klan depredations upon their hapless victims, they are known to be high. The offenses ranged from mere threats or beatings to actual murder.

With the first outbreak of violence, Holden accepted the responsibility of restoring peace and order to the state, and "spared no means and

no labor for the space of two years."[1] The Governor attempted at first to put an end to the Ku Klux outrages by using normal constitutional methods, but this only stirred them to greater activity, and Holden finally felt impelled by necessity to use military force.

The Governor's first peaceful action against the Klan was taken in October, 1868 when he issued the first of five similar proclamations to deter the organization's activities. When it became evident that these executive pronouncements served only to incite his masked enemies to greater daring, the Governor turned to legislative action to find corrective measures. Having an obedient legislature at his command -- thirty-eight Republicans out of fifty Senators and eighty out of one hundred and twenty members of the House of Representatives -- he secured in April, 1869, authority to use detectives to search out Klansmen. Such action proved unsuccessful, and, like his proclamations, only increased Klan activities.

By the end of 1869, Holden was beginning to feel that he must use force and, possibly, martial law. Under existing statutes, a governor could not send state militia into a county unless the magistrates requested it, and to Holden's discomfiture, the counties needing the militia were either controlled by the Klan or by Klan sympathizers.[2] It was also impossible to obtain white militia as promptly as needed, and the use of Negro militia aroused bitter opposition. To forestall any question as to the legality of the Governor's declaration of martial law, Holden sent a message to the General Assembly on December 19, 1869, requesting that power be granted him to suppress the violence existing in the state. In response

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[1]Holden, Memoirs, 125.

[2]Raper, "W. W. Holden," 358.

to this request, the legislature passed the famous Shoffner Act which gave Holden broad executive prerogative in declaring martial law. (See page 38)

With the passage of the Shoffner Act, Holden was empowered to strike against the Klan, but he was unwilling to resort to such a move immediately. Instead, he announced in February, 1870, that if a number of prominent citizens in a county would recommend someone of influence to canvass that county to persuade the Klan to disband, he would appoint that person a representative of the law. Four counties at this time -- Orange, Chatham, Alamance, and Caswell -- were in need of such a measure. The plan worked successfully in both Orange and Chatham, but it failed in Alamance and Caswell, where the Klan was much larger than in Orange and Chatham, and where its activities were more extensive. In fact, the civil officers there were known to be Klan members, and no one volunteered for the job.

All peaceful methods of restoring law and order to Alamance and Caswell counties had been exhausted. Holden had issued four proclamations within a year and a half. He had written to members of Congress, to President Grant, and to military officers asking for aid in finding a solution to the vexing problem,[3] and it now appeared that military force was the only recourse left to the executive if political rights were to be maintained for the Negroes, and if the Republicans hoped to remain in office. State elections were to be held in August, 1870, and unless some drastic action were taken immediately, the Ku Klux Klan would be successful in its intimidation policy. The Negroes would be too frightened to exercise their newly won voting privileges; thus the future of the Republican Party would be in serious trouble.[4]

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[3]Folk, "Holden, Political Journalist," 68-69.

[4]Raper, "Political Career of Holden," 165.

On March 10, 1870, Governor Holden declared Alamance County in a state of insurrection on the grounds that the county officials were unable to safeguard the persons and property of that county. The civil authorities were not immediatley replaced by military authorities because, as Holden wrote President Grant, he could not "rely upon the militia to repress these outrages, . . . for in the localities in which these outrages occur, white militia of the proper character cannot be obtained, and it would but aggravate the evil to employ colored militia."[5] At the same time, Holden requested and received federal troops to aid in the suppression of the insurrection. He also made an unsuccessful request to the states' congressmen that the writ of habeas corpus be suspended in counties declared in a state of insurrection.

No action was taken until June 8, when Holden met with John Pool and eleven other prominent Republicans to discuss the problem. The suggestion to employ military force against the Klan was made by John Pool, and the entire group agreed that it was the only remaining recourse. It was decided that two regiments of militia should be organized on a volunteer basis. Colonel William Clark was chosen to command the first regiment with headquarters in Raleigh; and George W. Kirk, a native of Tennessee, was chosen to command the second. Kirk had led a band of Union guerrillas during the Civil War, which made numerous raids upon western North Carolina. He had a reputation among former Confederates as a desperado and bush-whacker. Holden probably chose him on the assumption that his terroristic reputation would be an advantage in putting down the Klan, with less bloodshed, since he was so much feared.[6] Kirk left Raleigh immediately for

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[5]Ibid., 164.

[6]Folk, "Holden, Political Journalist," 70.

Asheville, where he organized his force, and by July 15, they were officially mustered into the service of the state. He chose George B. Burgen, also a Tennessean, as second in command.

In the meanwhile, Holden had declared Caswell County in a state of insurrection as of July 8. Before allowing Kirk to take any action, the Governor went to Washington to make certain he had the President's support. President Grant, Holden said, sustained him in his action.[7]

The Conservatives, needing an issue which could be used to overthrow the Holden administration, had provoked the Governor to use military force. They now condemned the executive as a tyrant and pilloried his administration without stint. It was charged that the Governor intended to use troops to control the August elections, and that he hoped to provoke a violent conflict between the people and the military so that he could proclaim the entire state in insurrection; and thus set up a Republican military dictatorship.[8] Had these charges been true, the Governor would not have limited the activities of Kirk to such a small area.

The "war" with the Ku Klux -- commonly called the Kirk-Holden War[9]-- began on July 15 when both Alamance and Caswell counties were occupied by Kirk's militia. Kirk began at once to arrest men whom he had reason to believe were leaders of the Klan. Eighty-two were arrested in Alamance County and nineteen in Caswell. The normal constitutional rights of the men who were seized were denied on the grounds that the two counties were

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[7]Holden, Memoirs, 144.

[8]The Raleigh Sentinel, July 7, 1870.

[9]The "Kirk-Holden War" was the name given the clash by Holden's political enemies, and is misleading. The episode was not a war declared by the executive upon the citizens of the state, but rather a police action to control the Klan.

under martial law. There was no warrant for their arrest, no reason was given for their detention, and no provision was made for their trial. Through counsel the prisoners appealed to Chief Justice Richmond M. Pearson for writs of habeas corpus. The writs were granted, and Kirk was ordered to appear before the Chief Justice in Raleigh at once with the prisoners, and to show cause for their arrest and detention. When the writ was served upon Kirk, he refused to obey it, but instead transported his prisoners to Yanceyville, where he used the Caswell County Courthouse as his official headquarters and jail. The counsel for the defendants next sought a writ of attachment against Kirk, but before Pearson acted, he consulted with the Governor. Holden then put into writing the reasons for Kirk's refusal to obey the writ, and declared that the prisoners would be brought before Pearson as soon as the circumstances allowed it.

The Chief Justice refused to issue the writ of attachment, but on July 26 he handed down a second order demanding that Kirk's prisoners be brought before him. Kirk and Holden again refused, and an attempt was immediately made to get writs of attachment issued against both Kirk and the Governor. The Chief Justice rejected this request, maintaining that the judicial remedies had been exhausted. Pearson's position seemed to have been that the right of habeas corpus had not been suspended, but the court was unable to enforce its decisions. The impotency of the court derived from the fact that a posse comitatus to execute a writ in either Alamance or Caswell county would have to be composed of citizens of that county, which was impossible under the present status. If the court attempted to enforce its order, civil war might occur.[10] The writ was, therefore, for all practical purposes suspended.

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[10]Cortez A. M. Ewing "Two Reconstruction Impeachments," North Carolina Historical Review, XV (July, 1938), 209.

The state elections were to be held on August 3, and Holden made plans for policing any section of the state where the Ku Klux Klan might cause trouble. Kirk was ordered to send troops to Asheville and Shelby; Colonel Clark sent troops to Hillsboro, Chapel Hill, and Carthage. The Governor's purpose was to assure a fair and free election, but the Conservatives pointed to this move as proof that the Governor intended to control the elections. This was true only in the sense that he was attempting to guarantee to a minority group the right to vote. In reality, it was the Klansmen and not the Republicans, who were attempting to control the elections.

In spite of Holden's actions, or perhaps because of them, the Republican Party suffered a landslide defeat. Six Conservatives were elected to Congress, and the General Assembly went Conservative by more than a two-thirds majority. This election marked the turning point of Holden's Governorship and of his political career. He was never again to experience political success in any form. It would have been better for him had he been up for re-election for he would surely have been defeated -- a much less disgraceful way to leave office than impeachment.

The climax to the "war" with the Ku Klux Klan came the day after the elections, with the arrest of Josiah Turner. Turner had been violently critical of the Holden administration in the Sentinel, and had publicly dared the Governor to arrest him. On August 3, he published a threatening letter to Holden, and on the following day he was arrested before the results of the election were known. George Burgen, Kirk's assistant, made the arrest without a warrant, in Orange County, which was not under martial law. Turner had, in fact, provoked his arrest and he was pleased when it happened, for it gave the Conservatives an additional issue to use against Holden in demanding his impeachment.

Having gained control of the state legislature, the Conservatives were now determined to break the military rule. The counsel for Kirk's prisoners, having failed to get results from the state judiciary, appealed to Judge George W. Brooks, of the United States District Court in Salisbury. Brooks heard their plea and decided that the Fourteenth Amendment due process clause gave him jurisdiction in the case. His jurisdiction was questionable for even today United States courts would hesitate to interfere with the states in criminal law enforcement. Nevertheless, Judge Brooks issued writs of habeas corpus on August 6 ordering Kirk to produce the prisoners before him by August 18.

Holden had not expected the federal government to interfere with his plans. On the following day he telegraphed President Grant that he did not plan to obey the federal order unless federal troops were sent to enforce it, and the President, thereupon turned the matter over to his Attorney General who advised the Governor to yield to the federal court. This forced upon Holden a complete change in strategy. He dared not resist the federal government; yet he could not depend upon what Judge Brooks would do. Holden decided it would be best to obey Chief Justice Pearson's original writs of habeas corpus.

The Chief Justice opened court on August 18, but the prisoners, through counsel, withdrew their original application on the basis that Judge Brooks had already issued his writ returnable on the same day. The federal judge on August 18, released the prisoners on the motion of the defense counsel without hearing a word of testimony or investigating the matter in any way. In response to this action, the Standard charged that "he turns loose upon the state a body of men charged with crimes which would put to blush the

darkest page of criminal history."[11]

Motions were then made to attach Kirk and his assistant, George Burgen. Both were arrested during the fall and given a trial, but were acquitted and released on November 24. Turner tried to draw up a bench warrant against Holden, but it was turned down by the State Supreme Court. He was able, however, to get the grand jury of Orange County to draw up a true bill against the Governor for assault and battery in a suit for three thousand dollars. The sheriff of Wake County refused to serve the warrant and the case was dropped.

On August 25, Holden's opposition secured from Judge Anderson Mitchell -- North Carolina Superior Court Justice for the tenth district -- an injunction against David A. Jenkins, State Treasurer, and A. D. Jenkins, Paymaster, forbidding them to pay the state troops. Holden evaded the injunction by removing Jenkins as Paymaster. He then appointed John B. Neathery to the post. Neathery withdrew from the state treasury sufficient funds to pay the troops, and began making payments.

Holden ordered the troops mustered out of service on September 21, and on November 10 he declared the state of insurrection in Alamance and Caswell at an end. The Governor's efforts to suppress the Ku Klux Klan had ended in failure, and this failure, brought with it his destruction as well as the downfall of the Republican Party in North Carolina.

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[11] The North Carolina Standard, August 20, 1870.

CHAPTER III

IMPEACHMENT AND TRIAL

The Republican defeat in the elections of August, 1870, had come as a surprise to Republicans and Conservatives alike. Few believed that the Conservatives would win; certainly none had expected such an overwhelming victory. Having gained the upper hand, however, the Conservatives determined to put an immediate end to the Radical Republican rule of Holden. This determination plus the failure of President Grant to support Holden's use of military force had brought to a rapid end the "war" with the Ku Klux Klan.

As soon as the results of the election were known, the Conservative press began to demand the impeachment of Governor Holden.

> He is [said one journal] the vilest man that ever polluted a public office and his crimes are now crying in trumpet tones against him. Impeach the traitor, the apostate, and the renegade, and drive him into the infamous oblivion which is so justly his due.[1]

This demand was continued throughout the fall of 1870; many of Holden's friends turned away from him, and he was left with only the carpetbag element of the Republican Party to support him. A Greensboro paper argued that:

> He deserves impeachment at the hands of the representatives of the people. The people demand it, their outraged honor demands it, and

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[1] The Tarboro Southerner, August 11, 1870.

their representatives must execute their will, not as partizans representing a political party prosecuting a political leader, but as representatives of the people who ask that justice may be done. . . .[2]

The General Assembly met on November 21, and the Conservative-controlled legislature began at once to undo a great part of the Republican Reconstruction program. On the second day of the session a memorial of Adolphus G. Moore, one of the men arrested by Kirk, was presented to the House of Representatives, demanding the impeachment of both Governor Holden and Chief Justice Pearson.[3] The Conservatives did not act at once for they were not certain they could command the two-thirds vote required to remove the Governor from office. They began, instead, by removing six Republicans from their seats in the House and Senate and replacing them with Conservatives, (See page 33) so that there was no doubt that the opposition could secure a two-thirds majority against the Governor.

Governor Holden was well aware of what was happening and he attempted to stop his impeachment by trying to reconcile his differences with his opponents. In his annual message to the General Assembly, he presented a reasoned defense for his military activities against the Klan, and announced that he favored the removal of ex-Governor Vance's disabilities. It is to Holden's credit, however, that he made no concessions to the Klan. He presented a defense, but not an apology. In fact he denounced the depredations of the Ku Klux Klan with the same vigor that he had employed when the possibility of impeachment had not been hanging over him.

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[2]The Greensboro Patriot, November 24, 1870.

[3]The Conservative move to impeach the Chief Justice was based upon his failure to force Holden and Kirk to obey the writs of habeas corpus. It was charged that he was in sympathy with the Governor's plan to set up a military dictatorship over the state. Actually Pearson's actions, like Holden's, were not in accord with those of the Conservatives, and they wished to replace him with a Chief Justice who would express their views.

Chief Justice Pearson also sought to clear himself by forwarding a memorial to the Senate, but the Conservatives refused to hear it. Despite the efforts of Josiah Turner, who led the movement to impeach the Chief Justice, the General Assembly soon dropped the charges against the jurist.

A Conservative Party caucus decided to press for impeachment of Holden immediately, but there were prominent members within the party who were opposed to the move. The most prominent person to oppose the move was ex-Governor Vance.[4] While opposed to the move, Vance did not take a public stand against it, but rather followed a neutral course. He told a New York Herald reporter:

> I have had little or nothing to say about the impeachment of Governor Holden. I have advised neither way in regard to it, my ideas in regard to its justice and policy being somewhat in conflict. Were I to interfere in it either way it would be charged upon me . . . as an act of personal revenge toward a personal enemy, or as done to effect my admission to the Senate.[5]

Despite the opposition, the Conservatives impeached the Governor in less than three weeks after the legislature met. The General Assembly believed itself to be making history by impeaching the first American governor. Actually Governor Charles Robinson of Kansas, who had been impeached in 1862, had been the first. His trial, however, had ended in an almost unanimous rejection of the charges, while Holden's impeachment was the first to result in conviction and actual impeachment and removal of a Governor from office. He was also the first of six Reconstruction

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[4]Raper, "W. W. Holden," 390.

[5]Reprinted in The Wilmington Journal, January 6, 1871. Vance had been appointed to the United States Senate, but had been refused his seat until his disabilities were removed.

governors to be legally impeached. Against the other five, however, the charges were not sustained, even though two of them gave up their office.[6]

On December 9, F. M. Strudwick, a Klan leader who had been a member of the murder party that planned to hang Senator Shoffner,[7] introduced into the House of Representatives the following resolution:

Resolved that William W. Holden, Governor of North Carolina, be impeached of high crimes and misdemeanors in office.[8]

The resolution was adopted and referred to the judiciary committee. After five days of discussion, the committee recommended that impeachment proceedings begin at once; that a committee of seven be appointed to prepare the articles of impeachment; and that the Senate be informed of the proceedings.

Three members of the House appeared before the Senate and informed that body of the impeachment. The notification message stated in part:

> Permit us, Mr. President and Senators, to adopt almost the very language used by him under circumstances somewhat similar, and to ask: "What is it we want here to a great act of national justice?" "Do you want a criminal?" "Where was there so much iniquity ever laid to the charge of any one?" Senators, "is it a prosecutor you want?" "You have before you the representatives of the people of North Carolina!" "Do you want a tribunal?" Where will you find one superior to this? Therefore it is that, ordered by the representatives of the people of this commonwealth, we impeach William W. Holden, Governor of the State of North Carolina, "of high crimes and misdemeanors in office."
>
> We "impeach him in the name of the Representatives of North Carolina, whose national character he has dishonored."
>
> We "impeach him in the name of all the people of North Carolina, whose laws, rights and liberties he has subverted."

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[6]Ewing, 204.

[7]Trial of William W. Holden Before the Senate of North Carolina on Impeachment, Vol. II (Raleigh: Sentinel Printing Office, 1871) p.592. Hereafter cited as Holden, Impeachment Proceedings.

[8]Holden, Impeachment Proceedings, I, 1.

We "impeach him in the name and by virtue of those eternal laws of justice which he has violated."

We impeach him in the name of human nature itself, which he has so cruelly outraged, injured and oppressed; and in the name of the Representatives of the people do demand that the Senate organize a high court of impeachment, and take order that William W. Holden appear at its bar to answer the particular charges which the House of Representatives will in due time exhibit, and that the Senate do make such other and further orders in the premises as may seem to them best calculated to bring this trial to a just and speedy termination; and in conclusion the House of Representatives, through us, most heartily prays that God, the God of Eternal Justice may protect the right.[9]

The committee that drew up the impeachment articles was given the authority to investigate Holden's official acts. It possessed the power to send for any papers or records it needed, and to take testimony under oath. The committee, nevertheless, seems to have drawn up the articles without making any official investigation. It apparently relied upon newspaper reports for evidence.[10] Eight Articles of Impeachment were drafted and reported to the House, every charge being concerned with the activities of Holden during the "War" with the Ku Klux Klan. "The articles were long, rambling, political canards" one careful scholar has concluded, "poorly drafted, inaccurate, and in all, fine illustrations of shysterism in investigatorial workmanship."[11]

An accurate summary of the articles which was given by the prosecution in its opening argument is as follows:

Article I charges substantially that the accused corruptly and wickedly declared the county of Alamance to be in "insurrection," whereas there was no insurrection; that he took military possession of the county by armed bands of lawless and desperate men, organized without lawful authority;

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[9]Ibid., I, 7-8.

[10]North Carolina Standard, December 14, 1870.

[11]Ewing, 214.

and that he made unlawful arrests of peaceful citizens, whom he imprisoned, beat, hung [sic] by the neck, and otherwise maltreated.

Article II charges that he did the same in the county of Caswell.

Article III charges the unlawful arrest and imprisonment of Josiah Turner, Jr., in the county of Orange, by the procurement and order of the accused.

Article IV charges the unlawful arrest and imprisonment of John Kerr and three other citizens, in the county of Caswell, by the procurement and order of the accused.

Article V charges the unlawful arrest and imprisonment, in the county of Alamance, by order of the accused, of Adolphus G. Moore, and the refusal of George W. Kirk, acting under and by the authority of the accused, to surrender the said Moore, in obedience to the writ of habeas corpus, to the civil authorities.

Article VI charges the arrest of John Kerr and eighteen other peaceable citizens of Caswell County, and their detention and imprisonment, under the orders of the accused, by a large band of armed men, unlawfully organized into an army and commanded by George W. Kirk and others as officers, and the refusal of said Kirk by the order and command of the accused, to surrender the said citizens unlawfully held by him as prisoners, to the civil authorities in obedience to the writ of habeas corpus.

Article VII charges (1) The unlawful organization of an army of desperate men commanded by Kirk, Burgen and Yates, all desperadoes from the State of Tennessee; (2) the hanging by the neck in Alamance County of William Patton and Lucian H. Murray, and thrusting into a loathsome dungeon Josiah Turner, Jr., and F. A. Wiley; (3) unlawful warrants made by the accused upon the treasurer of the state, for large sums of money, for the unlawful purpose of supporting and maintaining the lawless bands of armed men organized as aforesaid.

Article VIII charges that the accused, as Governor, made his warrants for large sums of money on the public treasurer for the unlawful purpose of paying the armed men before mentioned -- caused and procured said Treasurer to deliver to one A. D. Jenkins, appointed by the accused to be paymaster, the sum of forty thousand dollars; that the Honorable Anderson Mitchell, one of the superior court judges, on application to him made, issued writs of injunction which were served upon the said treasurer and paymaster, restraining them from paying said money to the said troops; that thereupon the accused incited and procured the said A. D. Jenkins paymaster, to disobey the injunction of the court and to deliver the money to another agent of the accused, to-wit: one John B. Neathery; and thereupon the accused ordered and caused the said John B. Neathery to disburse and pay out the money so delivered to him, for the illegal purpose of paying the expenses of, and keeping on foot the illegal military force aforesaid.[12]

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[12]Holden, Impeachment Proceedings, I, 110-112.

A complete text of the Articles of Impeachment can be found in the Impeachment Proceedings, I, 9-17. See also Articles Against W. W. Holden (Raleigh: James H. Moore, State Printer and Binder), 1871.

After adopting the Articles on December 19, the House of Representatives elected seven managers to conduct the impeachment trial before the Senate. Those chosen were C. W. Broadfast, J. W. Dunham, G. H. Gregory, T. P. Johnson, J. G. Scott, Thomas Sparrow, and W. P. Welch. Thomas Sparrow was appointed as Chairman of the Board of Managers. Contrary to the usual practice, the House employed private counsel -- ex-Governor Thomas Bragg, ex-Governor William A. Graham, and Judge A. S. Merriman -- to assist the managers in the prosecution of the case. The two former Governors had also been Congressmen. Graham had been Secretary of Navy, and the Whig candidate for Vice President in 1852. Merriman had been a Superior Court judge since the close of the Civil War. These ten men chosen to prosecute Holden were all loyal Conservatives, and avowed political enemies of the Governor.

The Board of Managers, accompanied by a committee of the whole House, went before the Senate on December 20, to exhibit the Articles of Impeachment and to demand that the Senate take action upon them at once. The upper house acted immediately and Chief Justice Pearson was informed that the Senate would organize as a court of impeachment on December 23. According to state law, the Chief Justice of the state Supreme Court was required to preside when the Governor was being impeached. Among other things, he had the responsibility of directing all forms of procedures during the trial, and deciding all questions of evidence. The Senate itself could, however, upon the demand of one-fifth of its members, vote upon questions of evidence. As will be seen, Holden's partisan jurors made much use of this privilege.

The state Constitution provided that "in case of the impeachment of the Governor . . ., the powers, duties and emolutions of the office

shall devolve upon the Lieutenant Governor until the disabilities shall cease or a new Governor shall be elected and qualified."[13] Lieutenant Governor Tod R. Caldwell, therefore, after announcing that the Senate would take action upon the impeachment articles, gave up his position as President of the Senate to assume the office of Governor. Holden formally turned his office over to Caldwell the following day.

Governor Holden employed as counsel Richard Badger, Nathaniel Boyden, Edward Conigland, J. M. McCarkle, and William N. H. Smith, all five outstanding and capable members of the state bar.[14] Two of them were later to serve on the state Supreme Court -- one as Chief Justice.

The Court of impeachment was formed on December 23, when Chief Justice Pearson administered the oath to the thirty-six Senators present. Governor Holden, who had been summoned to give his reply to the impeachment articles, was represented by a member of his counsel, R. C. Badger. When Holden requested in writing that the Court allow him thirty days for the preparation of his answer, the request was granted, and court adjourned for one month.

The trial proper began on January 23, 1871. Thirteen Senators had meanwhile been added to the Court, bringing the total to forty-nine. Governor Holden's official reply to the impeachment charges was presented. It was voluminous, consisting primarily of his messages about Ku Klux outrages and the various proclamations he had issued. This answer was so framed as to clear the way for the taking of testimony on Klan depredations.[15]

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[13]Article 3, Section 12.

[14]Holden attempted to employ Zebulon Vance and B. F. Moore, but both declined.

[15]The complete text of Holden's answer can be found in Holden, Impeachment Proceedings, I, 26-54. See also W. W. Holden. Answer to the Articles of Impeachment (Raleigh: N. P., 1871).

The Republican Senator from Granville County had been removed from his office by the Conservatives before the impeachment, and his replacement, L. C. Edwards, did not appear until February 1. (See page 33) When Edwards asked to be seated as a member of the Court, Holden's defense objected. It was argued that he had not been a member of the Court when it was formed and to add him would be tantamount to "packing" the Court. The Chief Justice overruled the challenge and Edwards was seated.

An attempt was made during the trial to increase the number of charges against the Governor. A ninth article of impeachment, which charged Holden with being involved with the reconstruction railroad frauds, was introduced into the House of Representatives on February 10.[16] When Holden was informed of the charge, he wired G. W. Swepson, president of the railroad involved, that if the charge were pressed, it would be necessary for him to come to Raleigh to testify. Swepson telegraphed the members who had drafted the charge that Holden was innocent, and that if they insisted on introducing the charge he would testify in the Governor's favor. The article was apparently never reported out of the committee to which it had been referred. It was never presented to the Senate, and it was not mentioned thereafter by the press. In all probability the charge was stopped by Conservative leaders who feared that evidence would show that they were connected with the frauds and were as guilty as the Republicans.[17]

The somewhat lengthy forty-four day impeachment trial of Governor Holden was described by one observer as "-- somewhat tedious, interspersed

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[16]For the complete text of the article see The Raleigh Sentinel, February 10, 1871.

[17]Raper, "W. W. Holden," 396.

. . . with spicy debates upon admissibility of testimony."[18] Thomas Sparrow opened the case for the prosecution on February 2, and sixty-one witnesses were summoned to substantiate the impeachment articles. On February 18, the twentieth day of the trial, the prosecution closed its case. Holden's defense began its case five days later when Edward Conigland delivered the opening argument. One hundred-thirteen witnesses testified on Holden's behalf, chief of whom was James E. Boyd, a former Klansman. The defense ended its case on March 14, the thirty-seventh day of the trial. The closing arguments lasted for six days. Ex-Governors Thomas Bragg and W. A. Graham presented the arguments for the prosecution; Nathaniel Boyden and William Smith spoke for the defense. The trial ended on March 21, there having been scarcely a session in which the Klan had not figured prominently. The vote which removed Holden from office was taken the following day.

The reasons for William Holden's impeachment were political and social, rather than being based on the criminal charges with which he was confronted. The list of charges in the Articles of Impeachment was introduced as a rationalization to justify the overthrow of the Holden administration, and the real reason for impeachment was the Republican assault upon white supremacy. Holden's only crime was that he had given the Negro the right to vote. He had made no attempt to break with the social and economic aspects of white rule, but he had supported political equality. As long as the Negroes remained political equals, the Holden administration could never have been accepted.

The partisan-political nature of the entire proceedings became

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[18] The Wilmington Journal, February 24, 1871.

obvious even before the actual impeachment. Almost all writers of North Carolina Reconstruction history, prejudiced or otherwise, admit the existense of undiluted partisanship throughout the four-month period. Indeed "there has scarcely occurred an impeachment proceeding in the United States which has more forcibly presented the general political character of impeachment."[19]

Before the impeachment resolution was introduced into the House, the Conservatives had feared they would not be able to command the two-thirds vote necessary for removing Holden from office. To guarantee the Conservatives an absolute voting majority, they removed three Republicans from the House of Representatives and three from the Senate. The Republican Senator from Granville County was replaced by L. C. Edwards, a Conservative. The two Republican Senators from Alamance and Caswell counties were deprived of their seats on the grounds that free elections had been impossible during the occupation of these counties by Kirk's troops. A new election was called and both were replaced by Conservatives. In the House of Representatives, the Republicans from Alamance and Caswell were replaced in a new election by Conservatives because the county officials had counted the vote of Kirk's men while they were serving in the "insurrection counties".[20] After this partisan action the Conservatives possessed an absolute two-thirds majority in both houses. There were now in the Senate thirty-six Conservatives and fourteen Republicans; in the House there were seventy-five Conservatives, forty-two Republicans, and three independents.

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[19]Ewing, 224.

[20]Holden, Memoirs, 171. See also Raper, "W. W. Holden," 387.

During the trial the partisan Conservatives overruled the decision of the Chief Justice in favor of the prosecution nine times out of ten when there was an uncertain issue. They also prevented the introduction of relevant evidence by the defense on a number of occasions. This was especially true concerning the introduction of evidence regarding the Ku Klux outside of Alamance and Caswell. The defense sought to introduce such testimony on five different occasions, and each time the Conservatives vetoed it.

The evidence introduced by the prosecution was often partisan and doubtful. Much of the testimony was based on Conservative newspaper reports rather than on facts. The most striking illustration of this was the introduction in evidence of the files of Josiah Turner's Sentinel.[21] A more partisan, biased and emotional newspaper would have been difficult to locate. William Smith, speaking for the defense, was not exaggerating when he said of the Sentinel:

> The prosecution has produced in evidence to affect the governor harsh and violent paragraphs from a political paper opposed to him. . . . The statements in that paper are in many particulars quite unlike the facts as they came out in evidence on this trial. It is an excited partisan press.[22]

The outcome was determined from the beginning by a caucus of Conservative leaders. It was decided not only to remove Governor Holden from office, but also to disqualify him from ever again holding public office in the state. A number of Conservatives were originally opposed to this decision, and intended to vote against conviction. But those who were

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[21] Holden, Impeachment Proceedings, I, 1014ff.

[22] Ibid., III, 2418.

reluctant about removing Holden, were threatened, and the Ku Klux Klan brought its whole power to bear upon them.[23] On the day Holden's fate was to be voted upon, two Conservative Senators arrived so deeply intoxicated that the doorkeeper had to lead them into the Senate chamber.[24] The vote for removal was strictly a party vote. The thirty-six Conservatives present voted unanimously for removal; the thirteen Republicans voted, to a man, for acquital. (See page 83)

At least one Conservative Senator expressed in his written opinion that the trial had not been fair. Said Senator R. M. Norment:

> I was not as free from prejudice against the accused as I should have been and as I desired to be. The many reports, ex parte as they doubtless were, which came to my ears through the public press before the meeting of this general assembly, and which, without intermission, have been industriously circulated almost up to the present hour, were well calculated to warp the judgment and bias the minds of jurors who belonged to the political party of which those papers were the accredited organs.[25]

A number of the Conservative papers denied that the impeachment had been a party measure. The Wilmington Journal wrote that if the impeachment had been for partisan reasons, it would have been useless. It pointed out that Lieutenant Governor Caldwell, who replaced the Governor, was, like Holden, a radical Republican, and was "certainly as objectionable politically to the Conservatives of North Carolina as Governor Holden can possibly be."[26] This argument could never prove wholly convincing, for the Conservatives believed that if Holden were removed from power, the entire Republican Party could soon be overthrown.

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[23]Raper, "W. W. Holden," 402.

[24]Holden, Memoirs, 172.

[25]Holden, Impeachment Proceedings, III, Appendix, 10.

[26]The Wilmington Journal, January 6, 1871.

The trial did not seem to create a great deal of interest in the state outside the capital city, perhaps because the outcome was a foregone conclusion. This was true in spite of the efforts of the Raleigh Sentinel to excite the public about "the great event of the century". The galleries and lobbies of the Senate were crowded with interested spectators almost every day during the proceedings, but even in Raleigh the interest in the trial was not as great as the Sentinel maintained. One contemporary said:

> I do not feel the trial of William W. Holden excites very much public interest. It is true that the galleries and lobbies are generally crowded during the session. . ., and when the weather permits about a dozen ladies . . . grace the scene. But there seems to be an impression that the result of the trial is a foregone conclusion, and hence that interest does not attach to it that would be excited by a doubtful contest.[27]

This same attitude was expressed by many of the states' newspapers, both Conservative and Republican. The attitude of the Salisbury Old North State toward the impeachment was typical. Having rarely commented upon the proceedings during the entire trial, the editor wrote concerning Holden's removal that "this announcement will produce but little excitement or sensation, inasmuch as it has been expected from the beginning."[28]

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[27]Ibid., February 24, 1871.

[28]March 24, 1871.

CHAPTER IV

AN UNLAWFUL STATE OF INSURRECTION[1]

The most serious charge brought against Governor Holden, which constituted the major part of the first and second articles of impeachment, was that he declared an unlawful state of insurrection in the counties of Alamance and Caswell. The crux of the whole case was the Shoffner Act of 1869, and the prosecution took the position that this act did not, as the defense had argued, authorize the Governor to declare either county in a state of insurrection. The concepts "insurrection" and "martial law" were discussed in great detail by both the prosecution and the defense in an attempt to give them the meaning each desired. The prosecution presented evidence to prove that the state of society in both counties was tranquil, and that the civil authorities were capable of maintaining law and order. The defense, on the other hand, argued that the civil law was powerless, because both counties were under the control of the Ku Klux Klan. Evidence of the numèrous atrocities of the Klan, for which no one had been found guilty, was presented. While the prosecution maintained that Governor Holden acted to control the approaching elections, the defense argued that he only took such a drastic step after trying every other means available to restore law and order to the counties involved.

The defense's entire case rested upon the assumption that the

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[1]Unless otherwise indicated, the information contained in Chapters IV, V, and VI comes from, Holden, Impeachment Proceedings.

Shoffner Act did in fact authorize Governor Holden to declare the counties of Alamance and Caswell in a state of insurrection and to establish martial law. The state constitution designated the Governor as commander-in-chief of the state militia, but under the existing law, he could not send them into a county unless the magistrates requested it.

The relevant sections of the Shoffner Act of December 16, 1869 were these:

> Section 1: That the governor is hereby authorized and empowered whenever in his judgment the civil authorities in any county are unable to protect its citizens in the enjoyment of life and property, to declare such county to be in a state of insurrection and to call into active service the militia of the state to such an extent as may become necessary to suppress such insurrection; and in such case the governor is further authorized to call upon the president for such assistance, if any, as in his judgment may be necessary to enforce the law.
>
> Section 3: That the expenses attending the calling of the militia into active service as herein provided shall be paid by the treasurer of the state upon the warrant of the governor and it shall be the duty of the commissioners of the county declared to be in a state of insurrection and in which such service was rendered, to reimburse within one year the treasurer of the state the expenses thus paid.
>
> Section 5: That all laws or clauses of laws in conflict with this act are hereby repealed.[2]

The prosecution attacked the Shoffner Act on the grounds that it was unconstitutional, and therefore did not authorize Holden to declare the counties of Alamance and Caswell in a state of insurrection.[3] This they seem to have stated as an axiom needing no proof. No analysis was made of the act to show in what ways it conflicted with the state constitution. Assuming the unconstitutionality of the Shoffner Act, the prose-

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[2]Public Laws of North Carolina (1869-1870), Chap. 27, pp. 64-66.

[3]This presumably established a precedent that an impeachment court may, for all practical purposes, declare unconstitutional an act of the legislature through the conviction of a state officer who sought to enforce it.

cution argued that Holden had used his influence to its fullest extent to induce the legislature to pass the act, which both knew was not constitutional. The Governor and the legislature had a common design, they maintained, of conferring upon Holden certain unwarranted and unauthorized powers.

Even if the Shoffner Act were constitutional, the prosecution maintained categorically that it could not give the Governor any authority not conferred upon him by the Constitution of North Carolina which stated in Article 1 -- Section 24: ". . . as standing armies in time of peace are dangerous to liberty, they ought not to be kept up, and the military should be kept under strict subordination to, and governed by, the civil power." Basing their argument upon this article, the prosecution maintained that the absolute suspension of civil authority by Holden in both counties, and its replacement by martial law was contrary to the constitution and consequently unlawful. They maintained that when using military authority, it must always be to aid the civil authority -- never to replace it.

The defense ignored the charge that Holden's purpose in pushing the Shoffner Act through the state legislature was to subvert the state, and concerned themselves with the constitutionality of the Act. They argued that it was the judicial branch that must decide whether or not an act was constitutional, not the executive. Since no judicial body had ever questioned the constitutionality of the Act, the defense maintained that Holden assumed it to be constitutional. It was pointed out that the governor of North Carolina did not possess the veto or any equivalent power and could not dispense with laws or suspend their execution even if he desired. Even if the law were unconstitutional, the defense argued that no doctrine was better established than the principle that, whether a law is constitutional or not it is the right and the duty

of the governor to carry that law into execution until it has been officially invalidated by the proper judicial authority. It was pointed out that the governor was an executive officer bound to enforce all the laws of the state and he had no right under any circumstance, and certainly not in a doubtful case, to suspend or resist the declared will of the law-making power, even if he himself felt the act was unconstitutional.

The defense reminded the court that at the trial of Andrew Johnson, the prosecution used the argument opposite to that used by Holden's prosecution. Johnson's prosecution argued that he had no discretionary power to judge the constitutionality of an act, whereas Holden's maintained that he did. There was also talk of impeaching Governor Tod Caldwell if he did not carry out the Convention Act by calling a state convention to revise the constitution.[4] This led the defense to ask if Holden would be impeached for obeying one act and Caldwell for disobeying another.

The defense also argued that Holden acted within the provisions of the Shoffner Act and in the circumstances contemplated by the legislature in enacting the law. It was maintained that the act was passed with full knowledge of its effect, and of the extraordinary powers with which it undertook to invest the governor. The defense contended that the act was intended to arrest lawlessness and crime. Because the judicial process had proved inadequate to afford protection, it was thought that an extreme remedy had become necessary. Therefore when the Governor came to the conclusion that the civil authorities were in fact unable to protect life and property, he was not only authorized, but it became his duty to declare Alamance and Caswell counties in a state of insurrection. As

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[4]The Wilmington Journal, February 24, 1871.

Nathaniel Boyden put it: "He would have rendered himself liable to impeachment before this very court and removed from office had he remained idle -- had he failed to use the power conferred on him for the protection of both."[5]

The prosecution insisted that the case depended upon the actual meaning of the concepts "insurrection" and "martial law". A number of authorities were cited, and it was maintained that the number could be multiplied almost indefinitely, in an attempt to define "insurrection" in such a way as to prove that no such state existed in either county involved. An insurrection, the prosecution concluded, is a rising, open, active, and violent, of a number of persons in opposition to the execution of the law. "An insurrection is where there is a combination for the purpose and with the view to resist the government; for insurrection is a crime leveled at the government directly."[6]

As for martial law, the prosecution maintained that all authorities, however much they disagree, at least concur that it can only be exercised in times of war -- flagrant war -- and not in such a state of things as was alleged to have prevailed in either Alamance or Caswell county. To be a war there must be an attempt to overthrow the government, and it was maintained that evidence proved no such attempt had been made.

The reply of Holden's defense was that the very object of the Ku Klux Klan in both counties had been to overthrow the laws of the country and prevent their execution. This attempt to overthrow the laws, the defense maintained, was treason. It was true that the Klan worked in secret in an attempt to prevent detection, but it was nevertheless guilty of treason. The laws here referred to were the Reconstruction acts

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[5]Holden, Impeachment Proceedings, III, 2381.

[6]Ibid., I, 321.

and amendments which gave the Negroes certain rights and privileges. Since the majority of Holden's jurors believed in white supremacy and condemned the Reconstruction laws as unconstitutional, it is doubtful that this argument was very convincing to them. Nevertheless, the defense argued that such a lawless situation as existed in both counties did constitute insurrection, and that no authority could be found which would say that military power might not be invoked to insure the lives and property of the people.

Denying that a state of war must exist before martial law might be used, Holden's defense maintained that it could be employed in those cases where extreme necessity -- such as existed in Alamance and Caswell counties -- required it. The defense retorted that the authority of a state to declare martial law had already been upheld in Luther v. Borden (1849), and in Martin v. Mott (1827) the United States Supreme Court had already held that the president, empowered to declare martial law, should be the judge of the necessity for invoking it.

One of the most important issues in the trial was, of course, whether or not an actual state of insurrection existed in the two counties involved. The prosecution insisted that the only insurrection which had occurred had been an imaginary one which Holden had himself created on paper. It was argued that the state of conditions in both counties had been generally tranquil. In spite of the evidence presented by the defense, the prosecution contended that it had not been proved that any Klan organization existed at all in Caswell,[7] and that in Alamance its

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[7]This argument was proved to be completely false in 1935 when John G. Lea, the organizer of the Klan in Caswell County, revealed a great deal of information concerning the Klan in that county. Raleigh News and Observer, Oct. 6, 1935.

affect on the administration of justice had been very slight. In support of the proposition that a state of insurrection did not exist in either county, a number of Conservatives from both counties testified, among other things, that there was no resistance to the execution of the law; that there was no danger to Negroes; that there was no hostility between the white and Negro races; that as a general rule there was no danger to either race because of their political opinions; and that Negroes were fairly employed. As the Raleigh Sentinel stated it: "They testified to a man . . . that no secret political society existed or exists. . . ."[8]

Holden's defense, on the other hand, attempted, primarily through the introduction of evidence of the atrocities and depredations of the Klan in the two counties involved, to prove that a state of insurrection did in fact exist. The prosecution, of course, sought to prevent introduction of such evidence on the grounds that it was not germane to the charges of the impeachment. After more than three days of arguments, however, the presiding Chief Justice ruled in favor of the defense. Thus they were successful in presenting over one-thousand pages of evidence concerning the Klan in the counties of Alamance and Caswell. The defense attempted to offer proof of Klan atrocities in other counties later, but the Court refused to admit this evidence. The defense was therefore unable to verify the statements it made about the Klan outside Alamance and Caswell counties. There was no lack of evidence, however, in either Alamance or Caswell, for witness after witness described the outrages of the Klan in their most gruesome details.

The most common of these crimes charged to the Klan was the beating of Negroes. The following case, as told by Damon Holt, was a typical example.

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[8]The Raleigh Sentinel, February 13, 1871.

> They called me [about midnight] and I wouldn't answer. They said, "Come out of there; if you don't come out of there . . . I'll shoot you." I got up and came on out, and they gathered me, one by the arm and one by the hand, and told me "to follow them, . . . that they were going to hang me." They took a stick and punched me in the back and made me follow them out in the woods. . ., and there they took my shirt off and made me hug around a tree, and gave me about sixty licks, I reckon. Four whipped me at a time; and then they turned me loose and told me to run. I then took a run down into the hollow. . ., and they shot at me. I ran . . . into the barn and lay there all night.[9]

Other Negroes, not so fortunate, told of being hanged and beaten until unconscious before being released; of being choked with a rope; and of being beaten with a club. In several instances the Klan was not satisfied with chastizing the head of the household, but also went as far as to tear their victim's house down to the bottom log. Mary Gappins, for example, a prostitute who had her house torn down, was forced to live in a tent. One Negro baby died from being trampled upon by Klansmen, another from being struck across the face with a club.

White Republicans testified that they, like the Negroes, were at the mercy of the Klan in both counties, and that they were threatened with death if they did not conform to the will of their oppressors. One white man was cudgelled for being at a Negro's house; another for allowing Negroes to live on his land. A man and his wife were badly beaten for inviting a Negro into church and for teaching in colored schools. Still another was made to get down on his knees and pray for the Klan.

Evidence was also presented to show that the Klan had been guilty of murder on a number of occasions in both counties. Watt Outlaw, a leader of the Union League, was hanged in the public square of Graham a few days after the passage of the Shoffner Act. A Negro named Puryear, who claimed he had evidence concerning the death of Outlaw, was drowned

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[9]Holden Impeachment Proceedings, II, 1382.

by the Klan. It was asserted that the Klan had planned to kill every adult Republican male citizen of Graham, had they not escaped. The Klan itself probably made this affirmation but it is doubtful that they would have carried it out.

Perhaps the boldest act was the murder of state senator John Stephens. While political debates were taking place at the court house in Yanceyville during May, 1870, Stephens was enticed away, and then found the next morning with a rope almost buried in the muscles of his neck and with fatal stabs in his chest and neck. While it could not be proved at the time of Holden's trial that the Klan killed Stephens, the affair has now apparently been solved. The Klan leader of Caswell divulged sixty-five years later that he witnessed Klansmen murder Stephens.[10] Shoffner, the state senator who had introduced the act bearing his name, was forced to leave the state to escape death. James E. Boyd, a former Klansman, testified that he met the Klan party that planned to kill Shoffner.[11]

In the face of the overwhelming evidence presented by the defense, the prosecution admitted that a number of outrages had been committed in both counties, but the attorneys still protested that these offenses were not serious enough to justify the Governor's declaring the counties in a state of insurrection. The position taken was that the crimes committed in the counties of Alamance and Caswell were no more serious than those in any other county -- indeed in any other state! As Thomas Sparrow put it: "The outrages in Alamance and Caswell do not vary from similar ones occurring in all parts of the country every year, and every month of the year."[12]

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[10]The Raleigh News and Observer, October 6, 1935.

[11]Holden, Impeachment Proceedings, I, 992.

[12]Ibid., 108.

The reasoning of the prosecution on this point cannot be understood except in light of the "southern mind" during this period. A large portion of the population of North Carolina in 1871 evidently believed that the punishment which the Negroes and white Republicans had received was well deserved. This attitude was expressed by the prosecution when William Graham described Holden's witnesses as a ". . . long procession . . . of harlots, adulterors, thieves, and other vicious characters not infrequently subjects of unlawful treatment in any community."[13] The Conservative press expressed the same view. "The lobbies are thronged with quite a motley crew of witnesses summoned for the defense. . . to prove outrages etc. and no doubt every thief who has met with well merited punishment will tell his tale to justify the illegal acts of Holden."[14]

The prosecution clothed its prejudice in the argument that these men were all guilty of some crime like stealing. The defense, however, maintained that this was at best a flimsy rationalization. The prosecution argued that the Klan's victims were criminals, but it may well be doubted that they ever produced a single piece of evidence against any of them.

It was maintained by the prosecution that even if any unusual outbreak of crime had occurred in either Alamance or Caswell county, civil authorities should have been used to suppress it. The civil authorities in both counties, it was affirmed, were capable of maintaining law and order, and there was no need for military assistance. And if there had been a need for military assistance (so ran the argument), the federal troops which were stationed in both counties could have easily handled the situation. At the time Governor Holden declared Alamance County in

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[13] Ibid., III, 2285.

[14] The Wilmington Journal, March 3, 1871.

a state of insurrection, he requested and received federal troops from President Grant, which remained in both Alamance and Caswell counties until after Kirk's troops had left. Furthermore, the prosecution argued, after the arrival of the federal troops, peace and quiet prevailed in both counties, and what lawlessness there had been ceased.

The evidence of the defense did not agree with this argument, but no reply was made concerning the federal troops. Instead, they emphasized the inability of the civil authorities to maintain law and order, and asserted that the civil law was powerless because the governments of both counties were controlled by the Klan. Not only, they argued, did the civil authorities fail to bring to justice those of the Klan who violated the law; they actually shielded them from arrest and punishment. Not one person, the defense pointed out, had been arrested in either county for any of the multitude of crimes and felonies committed by the Klan.

From evidence presented by the defense, it was established that a number of officials in both counties were Klan members. In Alamance, for example, the sheriff, deputy sheriff, magistrates, and justices-of-the-peace were all Klansmen. In addition, a number of officials who were not members were in sympathy with the movement. While it is impossible to know how many officials were Klansmen, the defense probably over-dramatized this point. Even more damaging to the processes of civil law was the assertion of the defense that those who desired justice were afraid to administer it. One judge was said to have endangered his life by letting it be known that he desired to bring guilty Klansmen to justice. Another official swore that he had been afraid to interfere with the murder of Watt Outlaw.

Perhaps the most important question connected with the ability

of the civil authorities to suppress the Klan was that of the effectiveness of the courts. The prosecution evaded the real issue by refusing to recognize the difference between actual justice and the external machinery of justice. That is to say, they ignored Holden's charge that the courts met only as a matter of form, and insisted that as long as the courts were open, they were effective. They also maintained that the courts in both counties had tried criminal cases, and that judgments of the most serious nature had been pronounced and were being executed. But they ignored the fact that no guilty Klansman had been convicted in either county. The circumstance that the courts tried a number of individuals and found them guilty had, in fact, no relationship to the crimes committed by the Klan.

The defense maintained that while the judicial power in both counties was, for the most part, in the hands of energetic men, they had not been able to bring guilty Klansmen to justice, and that even if they were arrested, it was almost impossible to convict them because Klan members were sworn to go to their rescue at all hazards, to swear for them as witnesses, and aquit them as jurors. Grand juries, therefore, refused to find true bills against members of the Klan for the gravest crimes and petit juries refused to convict them. Holden, in his reply to the court said: "Magistrates failed to act. Judges and Solicitors of the district attended the courts merely as a matter of form, a reign of terror existed and administration of justice was wholly impeded."[15]

The defense argued that the voting privileges of the Negroes in Alamance and Caswell counties had been discriminated against, while, the prosecution produced Conservatives to testify that this was not true.

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[15]Holden, Impeachment Proceedings, I, 42.

They argued that "this was merely one of the old devices of the party to hold every colored man to his party-fealty and insure his attendance at the polls, by saying his right to suffrage was threatened."[16]

As a matter of fact, the prosecution argued that the reason Holden had declared a state of insurrection in Alamance and Caswell counties was to control the elections. Holden, it was charged, had met with the Republican leaders early in 1870 to discuss the August elections. Realizing that the Republican Party was in great danger of being defeated, they decided to "send Kirk's force to Alamance and Caswell to degrade and bring on a collision, to produce confusion and thereby affect the pending election."[17] "Kirk's force was wanted for no purpose but to control the election and make a last desperate effort to preserve the ascendency of the party."[18]

The defense, for some undisclosed reason, failed to comment upon this point. Instead, they steadily declared that Holden did not proclaim that a state of insurrection existed until he had exhausted every other means of preserving the public peace, and then only with utmost reluctance. The defense reviewed the months preceeding the declaration of insurrection in Alamance, pointing out how Holden had tried every peaceful means available to bring law and order to Alamance and Caswell. Four proclamations were issued, and even after the legislature had been forced to pass the Shoffner Act, Holden hoped the Klan could be put down by the civil authorities. He thought that merely declaring the counties in a state of insurrection might accomplish his purpose of reestablishing order, but the Klan grew stronger with his every move. Finally he had no choice but

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[16]Ibid., III, 2308.

[17]Ibid., 2292.

[18]Ibid., 2309.

to use force. The defense took the position that the evidence produced proved that the situation in both counties was so serious that it demanded the extreme action Governor Holden was finally forced to take. As a matter of fact, said they, "Holden was in great error in that he did not proceed long before he did to call in the military and put a stop to this carnival of murder and outrage."[19]

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[19] Ibid., 2361.

CHAPTER V

THE "DENIAL" OF PROCEDURAL RIGHTS

Four of the Articles of Impeachment charged Holden with denying to persons procedural rights guaranteed them by the state constitution. The lower house charged in Articles IV, V, and VI that the Governor had ordered George Kirk, the Commander of Holden's special forces, to arrest without warrant a number of citizens in Alamance and Caswell counties, and had denied these prisoners the writ of habeas corpus. The crucial issue in these two charges was whether or not the act of declaring a county in a state of insurrection and under martial law suspended the normal procedural rights of its citizens. In both instances the attorneys for the prosecution refused to analyze this issue in an impartial and objective manner. Instead, they based their arguments upon the assumption that no state of insurrection had existed in either county. From this premise the prosecution concluded that the same constitutional rights which had been in effect in the other ninety-eight counties had prevailed in Alamance and Caswell as well. The defense, on the other hand, argued that these procedural rights had been legally suspended by the declaration of a state of insurrection.

The prosecution based its entire argument upon Articles I and II, which charged that Governor Holden had declared an unlawful state of insurrection in Alamance and Caswell counties. His conviction or acquittal of the charges in Articles IV, V, and VI would seem to have been dependent upon the Court's decision on the first two articles. Nevertheless the

Court acquitted Holden of the charge that he had declared an unlawful state of insurrection, and at the same time voted to remove him from office for suspending certain procedural rights in Alamance and Caswell. Such logic can be understood only in light of the partisan nature of the Court.

A different issue was involved in the charge of Article III that Governor Holden had ordered the unlawful arrest of Josiah Turner, Jr. in Orange County. Since the arrest had taken place outside the two insurrectionary counties, the procedural rights guaranteed by the state constitution were without question in effect. The issue was simply whether or not the Governor had ordered the arrest.

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Holden admitted, in his reply to the impeachment charge, that he had ordered Kirk to arrest without warrant a number of men in both Alamance and Caswell. Evidence presented by the prosecution showed that, while Holden's order issued through his Adjutant General to Kirk had not contained the names of the men to be arrested, the Governor had presented Kirk with such a list in a private letter.

The appeal of the prosecution to the Court's emotions was nowhere better illustrated than in its arguments relating to this charge. In his closing argument W. A. Graham told the Court:

> The object [of Holden] seemed to be to strike terror into the country by seizing men of known respectability and character. . . . Having declared Caswell in a state of insurrection and proceeding under cover of the insurrection which he himself created -- for it had no existence except upon paper in his proclamation -- he sent there an armed force on the day when the people had assembled together to hear those who aspired to represent them in Congress discuss the state of the United States.
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> This armed force entered that peaceful and orderly assembly and there without authority or civil officer of the law, without pretence that anybody had made any affidavit, without warrant upon which a man could be deprived of his liberty, first seized Doctor Roane, one of the most respectable gentlemen in the state; and then . . . the sheriff, the coroner and others of the prominent citizens of the county, many of

them pillars of society, both in church and state and men above reproach in every respect.[1]

When they asked, "By what authority?" the answer was, "Here is my authority." -- referring to the men with bayonets in hand with oaths and imprecations disgraceful to civilization.[2]

The prosecution took the position that the Governor could not, under any circumstance, order an arrest without a warrant. Even if parties were actually in arms as insurgents or in insurrection, the governor, when he called out the militia, might not have these men arrested without a warrant. If the militia saw parties in the act of violating the law, it had the same right to arrest them that any citizen had. The prisoners must, however, be turned over to the civil authorities at once. The prosecution maintained that even if the privilege of the writ of habeas corpus were suspended in time of invasion or rebellion a warrant of some kind was necessary to authorize arrests.

Furthermore, the prosecution continued, the executive of the state had no power to make arrests. In the distribution of powers under the state constitution, the legislative, executive and judicial departments each had their several duties and powers, and the personal liberty of the citizen was under the especial care of the judiciary. There was no necessity which could authorize the executive to assume the exercise of judicial power and seize the persons of citizens by his own orders.

It was maintained by the prosecution that the men arrested at Holden's orders had been prominent and outstanding citizens of the state, and that there had been no evidence to justify their arrest. It was

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[1]It should be remembered that it was brought out in evidence at the trial that many of these "respectable citizens" arrested at Holden's order were active leaders of the Klan, and had participated in the atrocities of that organization.

[2]Holden, Impeachment Proceedings, III, 2275-2276.

pointed out that no piece of evidence had been presented during the entire trial against any of the one hundred persons arrested. Kirk was reported to have said to Judge Kerr at the time of his arrest, "I have nothing against you; there is no evidence against you, I should not have arrested you, but I was directed to do it by the governor."[3] In summarizing this argument, Thomas Bragg asked:

> Was there a charge against them? None except that they were prominent men and belonged to a different political party from that of the governor. . . . the respondent caused the arrest of these gentlemen when he knew that there was no evidence against them. Out of his own wicked heart and for wicked purposes, he had them seized and detained and imprisoned until he was forced to surrender them.[4]

Furthermore, the prosecution maintained, if these men had been suspected, they could have been readily arrested by process from a civil magistrate. As this point has been discussed earlier, it need not be considered further here.

The argument used by Holden's defense was that the declaration of a state of insurrection and martial law suspended not only all ordinary law, but all the provisions in the state constitution and bill of rights which served to protect the lives, liberties and property of citizens. "If William Holden had legal power and authority to declare Alamance and Caswell in insurrection, he was justified in arresting, without warrant all suspected persons therein, and of detaining the same, until such time as the public safety permitted their surrender to the civil authorities."[5]

A number of authorities were cited in support of this point. The Duke of Wellington was quoted as having said that martial law was no law

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[3] Ibid., 2503.

[4] Ibid., 2502-2503.

[5] Ibid., II, 1050.

at all. It was a denial of a law and could not be subject to regulation. That meant a denial of all civil law, and in a locality where an insurrection had been declared the civil law had no force or effect. In addition, the defense pointed out, the state Supreme Court had decided in the habeas corpus cases of 1870 that arrests might lawfully be made of suspected persons within the limits of insurrectionary counties. The Chief Justice, who had written the opinion for the unanimous Court, stated that the effect of the declaration of insurrection in Alamance and Caswell had been to authorize -- to legalize so to speak -- the arrests of suspected persons without all the constitutional safeguards that were applicable under normal conditions.

The defense produced no evidence against the men arrested other than the testimony of a few witnesses that certain of the "outstanding citizens" of Alamance and Caswell were active Klan members. Because of the nature of the Klan's crimes it would have been almost impossible to find enough evidence against any person to obtain a conviction in the civil courts. It was brought out in evidence that Holden had been informed of persons in both counties who were active in the Klan crimes. The Governor ordered Kirk to arrest them on probable cause for crimes each of them had committed. It is not known who informed Holden, nor how accurate the source was. No doubt some innocent men were arrested, but Holden maintained that this was a necessary risk if the Klan's depredations were to be stopped.

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The burden of Articles V and VI -- the charge that Governor Holden had refused to obey the writs of habeas corpus -- was second only in importance to the charge that he had declared an unlawful state of insurrection in Alamance and Caswell. The real point at issue here was

the authority of the state executive to suspend temporarily the operations of the regular civil courts. Could the writ of habeas corpus be suspended for the duration of the state of insurrection? Could the governor overrule the demands of the civil courts temporarily? These were the points to be argued.

The prosecution, instead of analyzing these issues, devoted most of its efforts to a partisan narrative of the facts, apparently hoping to dramatize the "magnitude of the offense". It was pointed out to the Court that the original Shoffner Bill had contained a clause authorizing the state executive to call upon the President to suspend the privilege of the writ of habeas corpus. The legislature, however, had voted to exclude such a provision from the bill. Holden's next move, the prosecution emphasized, had been to make a direct appeal to the North Carolina delegation in Congress. Holden wrote:

> Gentlemen we want military tribunals by which assassins and murderers can be summarily tried and shot, but we cannot have these tribunals unless the president is authorized to suspend the habeas corpus in certain localities. Please aid in conferring this power on the president as the only effective mode of protecting life and property in Alamance and other localities in the state.[6]

Congress did not grant this application if indeed any were made. Nevertheless, as W. A. Graham argued:

> Holden with full knowledge of the positive injunction in the Declaration of Rights, . . . and that the Congress of the United States had failed to respond to his wishes, and in the absence of any pretence of authorization by the president, more than three months later when the county was in perfect tranquility, undertook himself, by mere executive orders, to make arrests, to hold his prisoners in defiance of writ, and actually proceeded to appoint a military commission to try them as prisoners amenable to military law.[7]

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[6] Ibid., III, 2311-2312.

[7] Ibid., 2312.

Soon after the arrests had been made, the state Supreme Court issued the prisoners writs of habeas corpus. Chief Justice Pearson had said in his opinion for the Court in the habeas corpus cases (1870) that the writ had not been suspended and could not be. The Chief Justice served an order upon Holden to deliver the prisoners before him, but Holden declined to obey the order, "pretending that he was justified by a portion of his [Pearson's] opinion in doing what he did".[8]

The prosecution maintained that Holden had not planned to turn the prisoners over to a civil judge, but that he had arranged to try them before a military court. It was charged that at the same time the Governor had been assuring Pearson that he would turn the prisoners over to him as soon as conditions allowed it, he had been arranging with Kirk for a military trial. The charge was made that Holden through correspondence had arranged for a military trial to be held on July 25, 1870, but for some unspecified reason it had been postponed until after the August election. The situation had changed so fast after the election that the trial was never held.

It was pointed out that the Chief Justice in his opinion for the habeas corpus cases -- a copy of which had been sent to Holden -- had stated that the Governor had no authority to institute a military commission to try the prisoners; that he had no right to try any citizen by any other device than by bringing him before the civil courts.

The prosecution concluded by invoking the argumentum ad horrendum.

> It is implied [said W. A. Graham] . . . that such of them as this military court found guilty were to suffer death by hanging or shooting or such penalties as this wise military commission should impose. And then perhaps it was intended to re-open the correspondence with the chief-

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[8] Ibid., 2506.

justice, by advising that the writs had abated by the death of the applicants.[9]

There was some disagreement among the members of the defense concerning this charge. Edward Conigland denied that it had been Holden's purpose to bring any prisoner before a military court;[10] but William Smith, on the other hand, implied that although the Governor had planned such a trial he had fortunately failed to carry it out. Holden's authority, Smith said, was restricted to the arrest and detention of prisoners, until, and no longer than, they could be surrendered to the courts. "If William Holden planned a military court he made a grave error. But since he did not carry it out, it cannot be held against him."[11]

The defense took the position that the declaration of martial law had suspended the writ of habeas corpus. Nathaniel Boyden told the Court:

> Martial law places at once every citizen under the military power; and the judicial power of the state has no sort of authority in such locality and neither the Chief Justice nor any other judge has any authority to issue a precept to run into any locality declared in a state of insurrection.[12]

The purpose of the arrest of suspected persons, the defense argued, had not been to bind them over for trial; it had not been so much to bring offenders to justice, as it had been to break up and destroy Klan organizations which had been the source of crime. Holden had arrested the men involved because the safety of the state demanded it. It had been his purpose to detain them only until such time as he might with safety to the state surrender them to the civil authorities, and as soon as in his judg-

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[9] Ibid., 2281.

[10] Ibid., II, 1077.

[11] Ibid., III, 2396.

[12] Ibid., 2328.

ment such time had arrived, he had surrendered them. Actually, as the prosecution made clear, Holden had not turned the prisoners over to the civil authorities because he believed the Klan menace to be at an end. It was rather "a forced obedience. . . . He made a virtue of necessity -- it was not his choice."[13]

In 1870 there were few precedents except British ones to justify William Holden's temporary suspension of the operation of the civil courts, but the defense made full use of the few that were available. The opinion written by Pearson for the habeas corpus cases (1870) was invoked as justification for holding the prisoners. The Chief Justice had upheld Holden's right to make arrests, and the defense argued that this carried with it the right to detain as long as was necessary to accomplish the object for which the arrest was made. Pearson had, in fact, left his position ambiguous, and it was possible for both the defense and the prosecution to use his opinion in support of their cases.[14]

The defense also cited President Lincoln as having said in 1861:

> Soon after the first call for militia it was necessary . . . to suspend the privilege of the writ of habeas corpus. . . . The whole of the laws which were required to be faithfully executed were being resisted . . . in nearly one-third of the states. -- Are all the laws but one to go unexecuted and the government itself to go to pieces lest that one should be violated?[15]

While the bill legalizing Lincoln's actions was being debated in the Senate, Senator Sherman had said:

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[13] Ibid., 2514.

[14] Nathaniel Boyden later told Holden, however, that Pearson had confided to him during the trial that the Governor had the right to suspend the writ of habeas corpus. Holden, Memoirs, 151.

[15] Holden, Impeachment Proceedings, III, 2372.

Lincoln did not act lawfully in suspending the writ of habeas corpus for the Congress of the United States alone is competent to do this. Yet I would have done the same thing. His justification must be found in the exigencies of the hour, and the perils of the nation.[16]

The defense insisted that the condition which existed in Alamance and Caswell in 1870 had demanded that Holden take the same drastic action that Lincoln had taken nine years earlier.

Perhaps the most important precedent cited by the defense was that of ex parte Milligan (1866), in which the Supreme Court had held that the writ should have been issued because the courts in Indiana had been open. Nevertheless, Chief Justice Chase added obiter dictum:

Those courts might be open. . . . and unrestrictive in the execution of their functions, and yet wholly incompetent to avert threatened danger or to pusish with adequate promptitude and certainty the guilty conspirators -- In Indiana, the judges and officers were loyal to the government. But it might have been otherwise. In times of rebellion and civil war, it may often happen indeed, that judges and marshalls will be in active sympathy with the rebels, and the courts their most efficient allies.[17]

Such had been the situation in Alamance and Caswell in 1870, the defense maintained, and the courts in both counties had been so effectually controlled by Klansmen or Klan sympathizers that not a single violation of the law by the Klan had ever been punished in either county.

Unfortunately for Holden, his former Confederate jurors were not impressed by Lincoln's rationalization for suspending the writ, and the private opinion of Senator Sherman was, of course, not established law. Instead of accepting the defense's interpretation of ex parte Milligan (1866), the prosecution, on the contrary, construed the case to prove that Holden had not had the right to suspend the writ.

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[16] Ibid.

[17] Ibid., 2324-2325.

Today there are a number of precedents which sustain the right of a governor to ignore, for the time being, the orders of the courts, and history has vindicated Holden on this point, though the vindication came too late to afford him much gratification.

4

The partisan nature of the trial was nowhere more apparent than in the proceedings relating to the charge that Holden had ordered the arrest of Josiah Turner, Jr., outside the two insurrectionary counties. The Governor's conviction by a majority of one was based upon the questionable evidence of three witnesses -- Josiah Turner, Senator John Graham, and John W. Gorman. No order for the arrest was presented as evidence.

Turner testified that Lieutenant Hunnicutt, the arresting officer, had told him that he was being arrested by the order of Governor Holden. Senator John Graham, who had been present when Turner was arrested, told the Court:

> I . . . asked the lieutenant [Hunnicutt] . . . to state what authority he had for Mr. Turner's arrest. He said that he was arrested by the order of Governor Holden, and he said further, 'If you have come here about any writs of habeas corpus I have an order to arrest you'.[18]

Graham went on to testify that he saw the order for Turner's arrest, and that the arresting officer had received his orders from Lt. Colonel George Burgen, the second in command, who had secured them from Holden. A third witness, John W. Gorman, testified that on the day of the election he had gone to the courthouse to vote and met Holden there talking to a friend. Since he could not vote at that time, Gorman stopped and listened to Holden's conversation. "In the conversation," Gorman said, "I heard him say he either would as soon as he left there or he had already ordered

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[18] Ibid., I, 916.

the arrest of Mr. Turner. It is my impression he said he would when he left."[19] Such was the evidence upon which the senate convicted Holden.

Turner and his newspaper had been violent critics of the Holden administration and the prosecution maintained that the Governor had ordered the arrest of Turner to gratify a private grudge. The argument was that it was a new law of libel when a newspaper editor could be arrested and severely dealt with for a criticism or denunciation of a man in authority.

Actually Holden and Turner had been political enemies for several years. When Turner was asked during his cross-examination what his personal feelings were toward the Governor, he replied that "they are just as they ought to be between a good and a bad man."[20] Governor Holden then rose from his seat and informed the Court that he would not submit to such language. When the witness repeated his statement Holden rose again and in anger shook his fist at Turner. Nathaniel Boyden, a member of his counsel, caught the Governor by the coattail, but could not pull him back into his seat. Senator Edwards demanded that the Governor be made to behave himself in Court. Holden, refusing to submit to Turner's abuse, asked for permission to leave the chamber. A few days later Turner wrote that when Holden "left the Senate Chamber breathing wrath against us we received a note, informing us that Governor Holden said we ought to be 'stomped'."[21]

Turner finally admitted to the Court that bitter feelings had existed between the Governor and himself for about twenty years, and that

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[19]Ibid., 919.

[20]Ibid., 906.

[21]The Raleigh Sentinel, February 20, 1871.

he had never spoken a dozen words to Holden. In his Memoirs Holden said that this last statement was untrue:

> Mr. Turner when in Raleigh during his canvassing for the Confederate Congress, talked with me for some time and he and I adjourned to a restaurant and took a drink together. . . . My paper, the Standard was for him for Congress and really elected him over his opponent.[22]

The argument of the defense was that Governor Holden, far from ordering the arrest of Turner outside the counties under martial law, had given specific verbal orders to the militia officers not to arrest Turner outside those two counties. The arrest had been made contrary to Holden's orders and without his advice, knowledge or consent.

The Governor had, on the other hand, given a verbal order to have Turner arrested if he were found in either Alamance or Caswell county on the ground that Turner had been instrumental in inciting a state of civil war in the two insurrectionary counties. In his reply to the impeachment charge Holden averred that he had good reason to believe that Turner was a member of the Klan, and an instigator of the outrages which had been committed in Alamance and Caswell.[23] By his writings in the Sentinel, as well as by his public speeches in various parts of the state, and by a continued course of agitation which he pursued, Turner had contributed largely to the deplorable state of affairs which existed there. Furthermore, Holden charged, Turner had worked to bring about a collision between the militia and the citizens in Alamance and Caswell, and had tried to incite the citizens to eject the militia by force. He had also attempted

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[22]Holden, Memoirs, 166.

[23]It cannot be proved whether or not Turner belonged to the Klan; however, there is no question that he was at least a Klan sympathizer.

to induce the people in other parts of the state to enter the two counties under martial law and drive the militia out by force.

Both Holden and his defense protested that Turner had actually attempted to bring about his own arrest by frequently challenging and defying the Governor to do so. They maintained that Turner had been anxious to be arrested in order to advance his own political prospects and patronage as an editor. If he could provoke Holden to arrest him, the Sentinel could condemn the Governor as a tyrant.

Certainly, as the defense declared, there was not sufficient evidence to justify Holden's conviction. The arrest might have been ordered by Lt. Colonel Burgen, who had given Lieutenant Hunnicutt an order signed by himself rather than by the Governor. If so, this would discredit the testimonies of both Turner and Senator Graham. If John Gorman had not heard enough of Holden's conversation to know when the Governor was planning to order the arrest, he might also have failed to hear the Governor say that he was going to order the arrest only if Turner went into either Alamance or Caswell. Also, it must be remembered, these three witnesses were all political enemies of the Governor.

Whether or not Holden ordered the arrest of Josiah Turner remains uncertain. Most historians who have written about Holden, however, have assumed that he gave such an order. J. G. de R. Hamilton wrote that Colonel C. L. Harris -- Superintendent of public works in 1870 -- told him in 1906 that he heard on the morning of August 5, 1870, that the order had been given to arrest Turner, and although he and Holden had not spoken for a year, he went at once to the Governor's office and asked if it were true. Holden replied, "It is none of your d--d business but I have ordered it."[24]

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[24]Reconstruction in North Carolina (New York: Columbia University Press, 1914), p. 524.

The prosecution retorted that even if Holden had not ordered Turner's arrest, he had sanctioned it by authorizing his detention. "That makes him just as responsible as if he had ordered the arrest or had admitted he had ordered it."[25]

There was no question that Holden ordered Turner's detention, for the Governor said, in his reply to the charge, that he had given such an order. The defense argued that Turner's detention was justified even though he had been arrested in Orange County because the military movement was on a large scale, and contemplated the overthrow and breaking up of an organization of great strength, extending over many counties. In such circumstances there would be occasional irregularities and excesses which might perhaps have been avoided, but were incidental to such enterprises. If the dispersion of the illegal Klan and the reinstating of law over a large area from which it had been expelled, were objects of the military operations, the wrongful arrest of a single person should not require an impeachment when the grand military movement itself stood approved.

The absurdity of the charge was expressed by Nathaniel Boyden in his closing argument, which supplied the one humerous event of the entire trial. Said he, with tongue in cheek:

> - - - Josiah Turner, Jr., . . . labored for months to have himself arrested by the respondent, and . . . at last succeeded. He went out of his way during his examination three times to prove that he was a pious and holy man, and that the respondent was a vile sinner! -- and held himself as a man whose example was to be followed by all good men! Sir, everybody knows that Mr. Turner was this sort of a man, and he need not have gone out of his way to prove what a holy and virtuous man he was. Every man who has read the Sentinel since he became its editor knew that he was a shining example of the beauty of holiness and that he had consecrated his talents

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[25]Holden, Impeachment Proceedings, III, 2496.

and his energies to elevating the character of our judiciary and all our state officers! He knew the importance of his powers in this regard, and I am glad that these military men, with all their faults, had an eye to "the eternal fitness of things." They found in the prison . . . a poor wretch condemned to death, who needed ghostly advice, and instead of sending the cursing parson -- Yates -- . . . they sent this good, pious, and holy and meek man, Josiah Turner, Jr. (laughter) to perform that spiritual office, and I am surprised that he is not grateful for having accorded to him that exalted privilege. (laughter) Wouldn't it be a farce for grave senators to try the Governor for doing to Turner of all things earthly what Turner most desired (laughter)?[26]

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[26]Ibid., 2362-2363.

CHAPTER VI

THE MINOR CHARGES

The House of Representatives included in the Articles of Impeachment a number of charges which were not serious enough to justify impeachment, but which gave added weight to the more important charges discussed in the two previous chapters. Governor Holden was charged with having employed an unlawful army of "desperate" men in Alamance and Caswell. Furthermore, he had allowed maltreatment of the prisoners arrested by this band; he had issued an unlawful warrant to draw money from the state treasury to support this army; and he had evaded a court order forbidding him to disburse the funds. The defense, as a last resort, advanced the argument that even if Holden had committed the acts as charged, he could not be removed from office because there was no unlawful intent on his part.

2

Article VII charged that the military force used in the counties of Alamance and Caswell was not a lawful state militia. The argument of the prosecution was essentially that both the Constitution and laws of the state of North Carolina, as well as the Constitution of the United States, showed Kirk's "army"[1] to have been an unlawful force. The requirements for the militia, as set forth in the state constitution, were that "all able-bodied male citizens of the State of North Carolina, between the

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[1]The prosecution never referred to the military force as a militia.

ages of twenty-one and forty years, who are citizens of the United States, shall be liable to duty in the militia. . . ."[2] On the supposition that this provision laid down the qualifications of those who could lawfully serve in the militia, the prosecution proceeded to prove that many of Kirk's men had not met its specifications. The muster rolls of the regiment, which were introduced as evidence, showed that out of the entire force of 670 men, 399 were under twenty-one years of age -- some as young as thirteen; sixty-four were over the age of forty; over two hundred came from other states, nearly all of these from east Tennessee, with a few from Virginia and South Carolina; and all the field officers, including Kirk, were east Tennesseeans.

The Militia Act of 1868 was also appealed to for proof that Kirk's regiment had been unlawfully organized. The Act, it was affirmed, required in Section eleven that "no man shall be an officer or private in the detailed militia, unless he be an elector of the state . . . .," and as a twelve-month residence was necessary to be a voter, the appointment by Holden of officers from Tennessee had been illegal. Furthermore, the same act stated in Section seven, that "the white and colored men in the militia shall be enrolled in separate and distinct companies, and shall never be compelled to serve in the same companies." In spite of this provision, the prosecution protested, Holden enrolled Negro and white troops in the same regiment. Kirk's regiment, it was argued, was therefore not a part of the state militia, but rather an armed band of "foreign mercenaries". "It was a regular standing force," said Thomas Bragg, "gotten up as any other army is gotten up, the officers and men all sworn, which is not required by law in the militia."[3] The handbill

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[2]Article 12, Section 1.

[3]Holden, Impeachment Proceedings, III, 2482.

which Holden drew up for Kirk for use in recruiting troops read: "Rally Union men. Your old commander has been commissioned to raise at once a regiment of state troops." The prosecution maintained that it was significant that the bill read "state troops" instead of "state militia", and that Kirk's men all signed similar articles to those prescribed for soldiers in the regular army of the United States, with the substitution of "North Carolina" for "United States". "They were called 'North Carolina State Troops'," W. A. Graham noted, "their officers always signing their orders or communications with an appendix of 'N. C. S. T.', until Kirk was forced by Judge Brooks to sign his returns to the writs as 'Colonel of the Detailed Militia of North Carolina'."[4] These troops also received the same pay as United States regulars, and the reason no commission was produced by the defense for Kirk or any of his officers, a member of the prosecution argued, was probably "because the documents would have shown that they were not commissioned in the militia, but in a regular army raised by the respondent . . . in disregard and defiance both of the Constitution of the state and of the national government."[5] In the matters of required age, citizenship, and mode of enlistment these forces had no pretension to the character of North Carolina militia.

In conclusion, the prosecution contended that Kirk's regiment had been formed and armed in express violation of a clause in the Constitution of the United States which provides that "No State shall, without the consent of Congress, . . . keep troops, or ships of war in time of peace . . .

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[4] Ibid., 2306.
Because of a printing mistake there are two pages by this number.

[5] Ibid.

unless actually invaded. . . ."[6]

The defense based its rebuttal upon the Militia Act of 1868 which specified, in Section eight:

> The governor is hereby authorized to accept and organize regiments of volunteer infantry, not exceeding six. . . . If in the discretion of the governor, it shall be deemed advisable, he may also accept and organize volunteer battalions or cavalry, not to exceed three, and one volunteer battery of artillery. . . .[7]

This act, in the defense's view, gave express authority to Governor Holden to use regiments of volunteer infantry to a number exceeding those actually used. What type of military force -- regular or volunteer militia -- was best suited for the repression of violence was necessarily left to the judgment of the governor; and he, in turn, believed the volunteer force the most available and best adapted to the desired end.

As for the limitations respecting age, citizenship, mode of enlistment, and race, the defense argued that they pertained only to coerced involuntary service. These limitations, it was maintained, did not apply, and were not intended to apply to persons who had volunteered and were willing to serve. As William Smith said in summary:

> Whether the troops enlisted under Kirk were within or without the constitutional age, whether they were from Tennessee or North Carolina, wherever they may have come, when accepted by William Holden they became and were part of the militia and could be used for any legitimate and proper service for which any other class of the militia could be used.[8]

The law commanded that persons of two races "shall never be compelled

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[6]Article I, Section 10.

[7]Holden, Impeachment Proceedings, III, 2409.

[8]Ibid., 2410.

to serve in the same companies," but their voluntary association in a single company was nowhere prohibited. Furthermore, declared the defense, evidence showed that the Negroes were employed as teamsters, cooks, and in other menial offices, and there was little genuine intermixing. All this, the defense held, proved that the regiment had been duly organized and accepted, and its officers had been commissioned, according to law.

3

In Articles I and VII Governor Holden was accused of having employed an armed band of "lawless and desperate men", and with maltreatment of the prisoners. In support of this charge, the prosecution submitted that there had been violent arrests by rude soldiers without any semblance of legal warrant; bail had been refused; the writ of habeas corpus had been defied; there had been continued confinement of prisoners, torture by imprisonment and threats of speedy death of the prisoners and their women and children as well. In some cases their dwellings had been burned, and, even after writs had been issued, a number of the prisoners were thrust "into the common jail amid filth and vermin, as if to consummate the last act of revenge and degradation before the victims are wrested out of his [Holden's] hands."[9]

To prove that Colonel Kirk and his men were "lawless" and "utterly without character", the prosecution presented the testimony of a number of the men arrested at Holden's order. Witnesses described how they had been cursed, threatened with death, and hanged until they were unconscious. Josiah Turner claimed to have been insulted and tortured by having rocks thrown into his cell, by having water poured on his bed, and by having his soap stolen by the militia.

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[9] Ibid., 2285.

Both Kirk and Lieutenant Colonel George Burgen were depicted by the prosecution as ruthless leaders. Unfortunately for Holden, the charges made against Burgen seem to have carried a large measure of truth. Even Holden's defense admitted that Burgen had black-mailed prisoners, freed them for money, and hanged others -- a familiar practice of the Klan -- to extort confessions. Three witnesses -- Lucien Murray, William Patton, and George Rogers -- testified that they had been tortured and intimidated by Burgen to force them to reveal information concerning the Klan. While Burgen made some serious threats, he did not actually carry out any of them. Apparently, as the following testimony of Lucien Murray indicates, he hoped to frighten a confession from the prisoners.

> Burgen asked me [said Murray] about the Klan and I answered: "I don't know anything about them. Burgen replied: "None of your d--d lies. Then he got up and taking his pistol he put it at my breast and the other three men did the same. Four pistols were presented at my breast and cocked, and he told me that they would "blow my d--d heart out if I didn't tell." Finally he carried me to a tree with a rope around my neck and drew me up. How long he held me there I don't know, but I soon became unconscious. On being let down, I was unable to stand and could not speak or anything else. When I came to and still would not confess Burgen said to the sergeant: "Hang him on that limb until 8 o'clock tomorrow morning, and then cut him down and bury him under the tree. . . ." Burgen did not carry out the threat but sent me back to the sergeant's quarters with the threat that: "I will give you till ten o'clock tomorrow to make your confession; if you don't give it by that time I will take you out and kill you dead."[10]

The defense denied that Holden could be held responsible for Burgen's actions, performed in disregard of his instructions. All that could be legally demanded of the Governor, the defense maintained, was that he select suitable and competent officers; that he prescribe necessary rules and instructions for their guidance; and that he interpose when advised of misconduct by an officer. It was noted that Holden had

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[10] Ibid., I, 662.

given his officers specific directions to afford ample protection to the lives and property of the prisoners. If any prisoner had been mistreated, it had been done contrary to the Governor's orders and without his consent. When Holden had heard of Burgen's actions he had promptly intervened to prevent their recurrence. The partisan Court, however, refused to allow the defense to present evidence showing that Holden had attempted to arrest and punish Burgen for his unlawful conduct. While testimony could not be introduced, the defense continued to argue that Governor Holden had never sanctioned a single act of outrage on the part of any of his subordinate officers. If Burgen were guilty, he was to be tried as any criminal would be, but, as William Smith concluded: "It would be a monstrous doctrine . . . to hold the supreme executive officer of a state chargeable personally with the misconduct of all those whom he appoints and commissions to perform public trusts."[11]

The only concrete evidence presented to prove that Kirk was a "desperate" and "lawless" man, was that he had made a single threat that if he were attacked in Yanceyville, he would kill all the prisoners and destroy the town with the women and children in it. The reputation Kirk had made for himself as a Union guerrilla was, however, enough to satisfy the Court that the charge was true.

The defense went to the opposite extreme and described the Colonel as "brave in battle and gentle in peace."[12] It was asserted that in Alamance and Caswell Kirk had acted with prudence and discretion, except for one threat, which was merely uttered in a moment of excitement. It was

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[11] Ibid., III, 2417.

[12] Ibid., 2415.

made obviously for no other object than to overawe and prevent an uprising among the prisoners, and he made no demonstration of a serious purpose to execute the threat.

The defense granted that the measures taken by the militia had not been the most desirable, but it was countered that extreme measures were required to put down the lawless situation which had existed in Alamance and Caswell. The Klan, the defense maintained, could never have been broken up by the regular and peaceful remedies of the law.

Actually the situation was not nearly so bad as the Conservatives maintained, for none of the prisoners suffered more than temporary discomfort. When the depredations of Kirk's troops are compared with those of the Klan they appear mild. Nevertheless the prosecution and the Conservative press of Josiah Turner continued to maintain that "such barbarity and cruelty was never known before on this continent."[13] "One wonders," as one historian concluded, "how the whole episode could have been so successfully dramatized so soon after the termination of the real war, when actual physical and mental suffering were not mere fictions of the imagination."[14]

4

Article VII also charged that Governor Holden by his illegal warrant had caused large sums of public money to be drawn from the state treasury to sustain his unlawful military force. This charge rested upon the contention that Kirk's regiment had been an unlawful force, for the Shoffner Act had given the Governor the authority to use public funds to maintain a lawful militia.

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[13]The Raleigh Sentinel, February 14, 1871.

[14]Ewing, 219.

The defense, as has already been shown, maintained that the force was a lawful state militia, and that the Governor was required by the Shoffner Act to draw from the treasury such funds as were necessary for paying the troops. The prosecution, on the other hand, insisted that since it had already been proved that Kirk's regiment had been an illegal force, it followed that neither the state constitution nor the Shoffner Act had given the Governor the authority to draw funds from the state treasury to support a military force which they prohibited him from forming.

Article VIII involved a somewhat related, but more involved charge. After Holden had appointed A. D. Jenkins, the Paymaster, to draw a large sum of money from the state treasury to sustain the militia, an injunction was obtained by Holden's political enemies from Anderson Mitchell, the superior court judge, for the tenth district, to prevent the disbursement of the money. Article VIII charged that Holden sought to evade the force and effect of the injunction, and to that end removed Jenkins from his place as Paymaster, appointed John B. Neathery in his place, and arranged to turn over the money to him to be disbursed. In this way, it was charged, the Governor evaded the purpose of the writ of injunction.

This was the second charge accusing Holden of refusing to obey a court order. The basic question seems to have been whether or not a state judge had the authority to issue an injunction ordering that funds not be drawn from the treasury to support the militia, or, from the point of view of the prosecution, whether he had the authority to issue such an order, even though the military force was unlawful. The prosecution, as usual evaded the central issue. They accepted the proposition that the judge had such authority, and assumed that if it could be proved that Holden did not obey the injunction, he must be found guilty. "The main

point involved here," said Thomas Bragg, "is whether he did the acts charged and did thus disregard this injunction which, as chief executive officer of the state, it was his duty to respect, and if necessary to be enforced."[15]

The prosectuion once again devoted its efforts to a partisan narrative of the facts of the case. Soon after Kirk went into Alamance and Caswell, the prosecution alleged, some $60,000 or more was drawn from the treasury at one time to sustain the force. It was charged that there was no need for this money at that time, but that the Governor, suspecting that someone might attempt to stop him from using public money for unlawful purposes, drew the money out before that could happen. After a court injunction had been issued against Jenkins, to prevent the disbursement of these funds, or the paying of more money, Holden set out to adopt some means of evading the injunction order. The Governor replaced Jenkins with Neathery and ordered him to give the money to his successor.

Jenkins was doubtful as to whether he ought to transfer the money to Neathery, but the Governor, after much persuasion, convinced him that he could safely turn over the funds without disobeying the injunction. The Governor remarked in Jenkins' presence that it was necessary to have the money at once because there might be another injunction obtained to stop the money in the banks where it was deposited. Holden was so anxious to obtain the money that Jenkins went to the bank at once, even though it was Sunday evening, and, by personal application to one of the bank officers, withdrew the funds. They were turned over to the new paymaster and disbursed at once.

The defense took the position that the Governor was not subject

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[15]Holden, Impeachment Proceedings, III, 2518.

to the judicial fiats of the judges, and that the judiciary possessed no power to issue such an injunction against Holden. In fact, so ran the argument, the injunction had not been against Holden himself but against a subordinate officer -- an appointee of his, but not an officer for whose conduct he was responsible.

Since Holden had a right under North Carolina laws to call out troops, he had a right to provide for their payment; and his right to pay these troops did not depend upon whether or not an injunction was issued, but upon his own authority, independent of the injunction, to draw his warrant and make the payment.

5

A final argument used by Holden's defense was that a public official could not be held responsible for an unlawful action done in the line of duty unless an evil intent were present. The defense argued that the impeachment court must inquire into the conduct of the Governor, for such was a rule applicable in all cases of impeachment of public officers. The Senate could not depose an executive from office merely because he had assumed and used powers not delegated to him. Instead the Court must ask if his motive were an honest effort to discharge his official responsibilities, and execute in good faith his public trusts. Did he act for the protection of the civil rights and for the preservation of the liberties of the people of the state? If so, he could not be removed from office. "To constitute an offense punishable by indictment, in the case of any and all civil officers," William Smith argued,"it is necessary to charge, and in the trial to show a corrupt purpose accompanying the act, or a party cannot be convicted."[16]

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[16]Ibid., 2374.

Among other authorities cited in support of this argument was Wharton's American Constitutional Law, which said:

> It is generally necessary to constitute the offense . . . that the motive should be corrupt. In an indictment against an officer of justice for misbehavior in office, it is necessary that an act imputed as misbehavior be distinctly and substantially charged to have been done with corrupt, partial, malicious or improper motives; and above all, with knowledge that it was wrong. . . .[17]

The principle of official responsibility, the defense held, was decided in the state of North Carolina in the case of State v. Zachary. In his opinion Judge Nash said:

> Does the giving the judgment in the absence of the parties and without their knowledge, in itself constitute corruption? Certainly not; because it might have been in good faith; and if so, an indictment cannot be supported.[18]

These authorities established, it was maintained, the principle that official misconduct necessarity involved corruption. There must be the corrupt intent -- there must be a guilty purpose.

The defense therefore reasoned that if Governor Holden really believed, when he issued the proclamations declaring Alamance and Caswell in a state of insurrection, that life and property were not safe, and that the civil authority was unable to protect both, he could not be deposed from his office. The subjective nature of such an approach put the defense at a disadvantage. It could not have expected a court that refused to accept concrete evidence of Holden's innocence to be impressed by efforts to establish his good intentions.

Rejecting the proposition that the Governor had to be proved guilty of criminal intent, the prosecution declared that such a rule did not

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[17] Ibid.

[18] Ibid., 2375.

apply to executive officers, certainly not to the extent claimed by the defense. Such an argument was considered to be an admission that Holden had no law upon which to stand. "Any such plea as that," said Thomas Bragg, "is a thing that addresses itself to your clemency, and not your justice."[19]

Besides, the prosecution maintained, the facts of the case proved absolutely that Holden possessed a guilty intent, especially in view of the fact that the Governor had spent the greater part of his life studying legal and constitutional questions, and was therefore well aware of the illegality of his actions.

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[19] Ibid., 2474.

CHAPTER VII

THE END OF THE TRIAL, AND HOLDEN'S LATER CAREER

On March 21, 1871, the arguments were concluded and the Court agreed to vote upon the Articles of Impeachment the following day. In the meanwhile a number of prominent citizens from different sections of the state had come to Raleigh to witness the final act of the drama. When the Court convened in the Senate chamber on the following day at 11:00 A. M. the galleries and lobbies were thronged with interested spectators. The House of Representatives and the Board of Managers were also present in the hall. A two-thirds vote of the Senators present was required for conviction. The roll call revealed that forty-nine of the jurors were in attendance -- thirty-six Conservatives and thirteen Republicans. Because Senator Flythe, a Republican, was absent, thirty-three votes were necessary for conviction.

When the ballots were taken the vote on each Article was as follows:

Article	For Conviction	For Acquittal	Verdict
I	30	19	Acquitted
II	32	17	"
III	37	12	Convicted
IV	33	16	"
V	40	9	"
VI	41	8	"
VII	36	13	"
VIII	36	13	"

Holden was thus acquitted of the charges in Articles I and II, as had been anticipated, but was convicted on the other six counts. If Senator Flythe had been present to vote for acquittal, the Governor would have been found

innocent of the charges in Article IV as well.

That the partisan nature of the proceedings was most apparent in the final balloting, can be seen readily from the chart on the following page, which records how each member voted on the individual articles. The thirty-six Conservatives cast 274 of their 288 votes for conviction. Less than five per-cent were contrary to party interests. Thirty of the thirty-six Conservatives voted "guilty" on every charge. The thirteen Republicans cast 93 of their 104 votes for acquittal. Over ten per-cent were contrary to Republican interest. The three Negro Senators voted for acquittal on every charge, as did Senator Olds, Holden's son-in-law. On the other hand, Senators Lehman and Moore, the two carpetbag members, cast only sixty-nine per-cent of their ballots for acquittal. The native Republicans cast only five votes against the Governor. Only on Articles V and VI, which concerned the writs of habeas corpus, was there a decided majority vote for conviction. It is possible that had three Republican Senators not been replaced by Conservatives, Holden would not have been convicted at all. Certainly the severity of punishment would have been less.

Immediately after the balloting, the Impeachment Court voted upon the resolution that William W. Holden, having been convicted of six out of eight Articles of Impeachment, "be removed from the office of governor and be disqualified from holding any office of honor, trust or profit under the state of North Carolina."[1] Senator Moore, a Republican, objecting to the severity of the resolution, declared that he would not object to the order if it merely pronounced a judgment removing Holden from his office, but that he could not, considering the evidence, agree to so severe a penalty as disqualifying Holden from holding office in North Carolina. Senator

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[1]Holden, Impeachment Proceedings, III, 2559.

Final Balloting of Impeachment Court*

	Articles of Impeachment**								Total	
	I	II	III	IV	V	VI	VII	VIII	G	I
CONSERVATIVES										
Adams	G	G	G	G	G	G	G	G	8	
Albright	G	G	G	G	G	G	G	G	8	
Allen	G	G	G	G	G	G	G	G	8	
Battle	G	G	G	G	G	G	G	G	8	
Brown	G	G	G	G	G	G	G	G	8	
Council	G	G	G	G	G	G	G	G	8	
Crowell	G	G	G	G	G	G	G	G	8	
Currie	G	G	G	G	G	G	G	G	8	
Dargan	G	G	G	G	G	G	G	G	8	
Edwards	G	G	G	G	G	G	G	G	8	
Graham (Alamance)	G	G	G	G	G	G	G	G	8	
Graham (Orange)	G	G	G	G	G	G	G	G	8	
Jones	G	G	G	G	G	G	G	G	8	
Latham	G	G	G	G	G	G	G	G	8	
Ledbetter	G	G	G	G	G	G	G	G	8	
Linney	G	G	G	G	G	G	G	G	8	
Love	G	G	G	G	G	G	G	G	8	
Mauney	G	G	G	G	G	G	G	G	8	
McClammy	G	G	G	G	G	G	G	G	8	
Merriman	G	G	G	G	G	G	G	G	8	
Morehead	G	G	G	G	G	G	G	G	8	
Murphy	G	G	G	G	G	G	G	G	8	
Robbins (Davidson)	G	G	G	G	G	G	G	G	8	
Robbins (Rowan)	G	G	G	G	G	G	G	G	8	
Skinner	G	G	G	G	G	G	G	G	8	
Troy	G	G	G	G	G	G	G	G	8	
Waddell	G	G	G	G	G	G	G	G	8	
Warren	G	G	G	G	G	G	G	G	8	
Whiteside	G	G	G	G	G	G	G	G	8	
Worth	G	G	G	G	G	G	G	G	8	
Gilmer	I	G	G	G	G	G	G	G	7	1
Speed	I	G	G	G	G	G	G	G	7	1
Norment	I	I	G	G	G	G	G	G	6	2
Cook	I	I	G	I	G	G	G	G	5	3
Cowles	I	I	G	I	G	G	G	G	5	3
Fleming	I	I	G	I	G	G	I	G	4	4
REPUBLICANS										
Beasley	I	I	I	I	I	I	I	I		8
Bellamy	I	I	I	I	I	I	I	I		8
Brogden	I	I	I	I	I	I	I	I		8
Eppes (Negro)	I	I	I	I	I	I	I	I		8
Hyman (Negro)	I	I	I	I	I	I	I	I		8
King	I	I	I	I	I	I	I	I		8
Olds (son-in-law)	I	I	I	I	I	I	I	I		8
Price (Negro)	I	I	I	I	I	I	I	I		8
Barnett	I	I	I	I	I	G	I	I	1	7
Hawkins	I	I	I	I	G	G	I	I	2	6
Leham (carpetbagger)	I	I	I	I	G	G	I	I	2	6
Moore (carpetbagger)	I	I	G	I	G	G	I	I	3	5
McCotter	I	I	I	I	G	G	G	I	3	5
Total Guilty	30	32	37	33	40	41	36	36	285	
Total Innocent	19	17	12	16	9	8	13	13		107

** "G" = Guilty "I" = Innocent

* In the preparation of this chart I have relied heavily upon Ewing, 233.

Cowles, a Conservative who had voted to remove Holden, also felt that the disqualifying clause was too drastic.

The vote on the order to remove Holden from office was completely partisan, the thirty-six Conservatives voting for the order and the thirteen Republicans present voting against it. The Conservatives of North Carolina had achieved their objective, for William Holden, though only fifty- three years old, was never again to be a political influence in the state. The Governor's arch-enemy, Josiah Turner, enthusiastically announced in the Sentinel the following day:

Close of Impeachment

Conviction of William W. Holden on Six of the Eight Articles

GRAND VINDICATION OF CIVIL LIBERTIES

TARDY JUSTICE COMES AT LAST[2]

3

Governor Holden had been impeached on December 20, 1870, and the following day he had turned his office over to Lieutenant Governor Tod R. Caldwell. On December 22, Holden, though he had never been active in any church, attended a Baptist revival service and was received into the membership of that congregation. On Sunday evening, both he and his wife were baptised. Commenting upon this sudden interest in religion, the New York Herald wrote: "Governor Holden goes to his impeachment as if he were going to be hanged."[3]

Holden always contended that he was innocent of the impeachment charges. As early as December 21 he declared that the act was a party

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[2]The Raleigh Sentinel, March 23, 1871.

[3]Reprinted in The Wilmington Journal, December 23, 1870.

measure and no more. "My opinion," he told one reporter, "is that they [the Conservatives] intend to overthrow all Republican government and obtain possession of every office from constable up."[4]

Holden did not testify in his own behalf. Confident at first of acquittal, he soon sensed that his conviction was a foregone conclusion. Nevertheless, he attended the trial for the first eighteen days. After his angry confrontation with Josiah Turner he realized that the cause was lost, and did not return. A few days later he left for Washington D. C. where he lived for almost a year. The reason he gave for leaving was that he had been asked to testify before the Senate Committee investigating the Ku Klux Klan outrages in the South. He worked through his defense to get the trial prolonged, believing his chances for acquittal would be improved if he could do so. Nevertheless, he wrote his wife that he took it for granted that he would be found guilty.[5] When Holden was informed of the verdict he was not surprised. His attitude was that time would moderate the feeling against him. Later in the year he wrote to his son: "I feel sure that . . . I will ultimately be fully vindicated."[6]

No appropriations were allowed Holden to secure counsel. He was, therefore, compelled to pay his own lawyers and in some instances to pay the expenses of his own witnesses. The Managers had hired three of the ablest lawyers in the state for fees of $1,000 each. This forced Holden to hire counsel of the same caliber at great cost. He had to pay William Smith and Edward Conigland $1,000 each and J. M. McCarkle $500. Richard Badger refused any fee for his services.

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[4]The New York Herald, December 21, 1870. Reprinted in the Wilmington Journal, December 30, 1870.

[5]Holden to his wife, March 8, 1871, The William W. Holden Papers, Duke University.

[6]Holden to his son, August 11, 1871, Ibid.

Holden found it exceedingly difficult to pay for his counsel and witnesses. Some funds were collected for him by Isaac Young and David Jenkins. He had hoped to receive additional funds from northern supporters and friends; he even wrote President Grant about his financial plight, but no money was received. He was therefore compelled to supply the greater part of the fees from his personal funds and by mortgaging his Raleigh residence for $2,500.

During the entire proceedings, Chief Justice Pearson apparently presided over the trial in a fair and judicious manner, but two of Holden's counsel, Nathaniel Boyden and Richard Badger, informed the Governor later that the Chief Justice had advised them on matters of procedure and points of law throughout the trial. According to both Boyden and Badger, Pearson had given his advice to the two individually and without the other's knowledge. Holden was careful to avoid any contact with Pearson after the trial began for fear of embarrassing the Chief Justice. Boyden told Holden that Pearson had informed him that the Governor had the right to declare a state of insurrection, and that the writ of habeas corpus, therefore, had been legally suspended. Holden never ceased to believe that Pearson believed him to be innocent.

After the trial had ended, Holden was anxious to return to Raleigh, but upon the advice of Edward Conigland he remained in Washington.[7] If he had returned to North Carolina he would have been involved in a number of court cases pending against him, and possibly could have been imprisoned.

Holden was confident that he would be given assistance by his Republican friends. He expected some federal office from the national Republican administration, but he did not attempt to force himself upon

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[7]Conigland to Holden, May 2, 1871, Ibid.

President Grant for an immediate appointment. He preferred to wait until matters concerning his impeachment were cleared away, and he wanted to make the best possible arrangements, both for the interest of his family and for his honor and good name. Knowing that he had been convicted by a partisan court, he hoped ultimately to vindicate his public honor.

The Republicans offered Holden two possibilities: diplomatic service, or the editorship of a new national newspaper that the Republican Party hoped to open in Washington. Holden refused two diplomatic posts, and the proposed editorship of the Republican paper did not materialize. Instead he became the political editor of the Washington Daily Chronicle on September 13, 1871, at $5,000 a year. Holden was successful with the paper and he was well treated by the Republican leaders, but he was not satisfied, for he wanted to return to North Carolina and his family. On February 29, 1872, he gave up his editorship and returned to Raleigh. He could not hold a state office but federal positions were open to him. He had requested and received from President Grant an appointment as postmaster in Raleigh. The appointment was for four years and was renewed in 1877 by President Hayes. During his eight years as Postmaster, Holden was a leader of the Republican Party in the state. In order that he not harm the party, however, he limited his activities. Considerable Republican opposition developed to Holden as Postmaster because he did not employ Negro clerks. He was charged with discrimination, and a mass meeting on April 2, 1881, in Raleigh, called by the Republican leaders, drew up a set of resolutions condemning Holden. The report charged discrimination against Negroes and Carpetbaggers in giving jobs at the postoffice. A request was sent to President Garfield requesting that he not be reappointed, and although he went to Washington to plead his own case, Holden lost the appointment.

Holden began to realize that the Republican Party had become too radical for him. On August 31, 1883, when the Negro question was becoming dominant, and his party seemed to be identified with the colored race, he announced through the Raleigh News and Observer that he was leaving the Republicans. The reasons he gave were that the party advocated a high tariff, Negro equality, and sectionalism in government. For the rest of his life he remained an independent.

As time lessened the bitterness connected with the impeachment, and as some of the actors passed from the stage, many attempts were made to have Holden's disabilities lifted. Edward Conigland, a member of Holden's counsel in 1871, took the lead in urging removal, and in 1875, wrote to Thomas Clingman asking that the constitutional convention pass resolutions favoring such a step.

Had it not been for Holden's pride, the disabilities might well have been removed, but he refused to do anything in his own behalf. He was too proud to ask for a legislative pardon. He insisted that any proposal to remove his disabilities must come voluntarily from the people without opposition from any party. In 1885 a majority of the Senate pledged to vote for a removal proposal, but Holden requested that they drop the question when one senator announced that he would oppose the move in debate. The same thing happened again in 1887, and as a result, Holden's disabilities were never withdrawn.

Holden continued to be active in local affairs until 1889 when he suffered a stroke of paralysis. He recovered partially, but he was left almost blind.

Shortly before his death, he began dictating his Memoirs to his daughter in a last attempt to vindicate his name. While the Memoirs show a remarkable absence of vindictive feeling, they contend in no uncertain

terms that Holden had been innocent of the impeachment charges. There could be little question that Holden honestly believed that he had been justified in the actions for which he had been impeached. He wrote that he had been aware of the grave responsibility in declaring an insurrectionary state, "but human life was above all price. I did not care how the elections of 1870 went if by what I did I saved one human life."[8] Holden read the entire three volumes of his Impeachment Proceedings, and concluded: "I here and now declare with the utmost solemnity that I am not guilty of the charges preferred against me. . . . There is no person so well qualified to say I am not guilty as myself, I know I am not. . . ."[9]

Another theme of Holden's Memoirs was that the trial had been thoroughly partisan. President Grant told Holden that a number of his jurors were Klansmen. From another source he learned that the Klan dens had declared his impeachment.

> The intention of the Senate [said Holden] was to have a victim. It was believed that if I could be impeached and silenced the Republican Party in North Carolina would gradually and surely cease to exist.
>
> I was certainly impeached by party counsel, by a party House of Representatives and by a party Senate.[10]

Even at this advanced age, Holden's loss of state political rights greatly distressed him, for in spite of all that was said against him, he was deeply attached to his state. He wrote:

> Only one thing touching the proceedings against me gives me pain, and that is the utterly unfounded charge that I acted corruptly and wickedly and in defiance of the Constitution and the law. I love my mother State, no matter how she treats me. I am satisfied with a sense of my own integrity.

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[8]Holden, Memoirs, 121-122.

[9]Ibid., 147.

[10]Ibid., 161-162.

While I am hurt by the impeachment, I am not angered, I feel acutely the fact that I am pronounced by my mother State an unfit person to hold office. I cherish no resentment toward any person for what has occurred in the past. I am at peace or would be, with all men.[11]

The day after the manuscript of his Memoirs was completed, Holden again was stricken by paralysis and this time he did not recover. For the last year of his life his memory faded and he was mentally unbalanced. Death came quietly on March 2, 1892, twenty-one years after his impeachment. No man had been a more interesting and picturesque figure in North Carolina history.

3

William Holden has been judged by history, as he was by the Senate, sitting as an impeachment court, "as a tyrannical governor, a political demagogue, and one who changed his political ties for the sake of ambition."[12] The only definitive work that has been written about Holden's political career has been done by Horace W. Raper, and it is unpublished. The historical profession needs an objective biography of Holden. Now that almost a century has passed since his impeachment, it is possible to make a non-partisan study.

It is the opinion of this author that William Holden used martial law in 1870 for the protection of the lives and property of the citizens of the state. The Governor has been accused by a number of historians, as he was by his contemporaries, of using military force only to control the August, 1870 elections. If this had been true he would not have limited his activities to two counties. He controlled the elections only in that he attempted to guarantee to the Negro the right to vote. Holden did

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[11] Ibid. 182.

[12] Raper, "Political Career of Holden," iii.

not deserve impeachment. He was a political opportunist, but he also felt the responsibility to protect life and property in the state. Had he known that his actions would result in the destruction of his party, he probably would not have taken such drastic measures, but that is not a question here. As a two-thirds majority of the impeachment court voted, a state of insurrection did exist. The Governor took the only recourse that was left to him, if peace and order were to be restored. The other charges against Holden cannot be upheld if one accepts, as the court did, that an insurrectionary state existed. Yet these are the charges upon which his removal from office was based. Necessity alone would have justified his actions. Some of the more disagreeable aspects of the attempt to suppress the Ku Klux Klan could have been avoided, but they were insignificant in comparison to the atrocities of the Klan.

No matter what had been the Governor's motives in using martial law, he did the proper thing. Even if he had acted to assure Republican ascendency, the important thing is that measures were taken to end the depredations of the Klan. Yet for attempting to protect the life and property of a minority group, Governor Holden was removed from office and forbidden ever again to serve his state.

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