

CONSTITUTIONAL TALES: Annotated Bibliography

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Purpose of this Bibliography

A premise of Constitutional Tales is that while case law is essential in analyzing the meaning of a constitution, lawyers – as well as policy-makers, historians, and we, the people – should make use of all available resources to better understand our most important legal document in North Carolina. This annotated bibliography describes the sources used in creating the Tales and is intended to help others in their research.

Most of the education provisions affecting public schools have their origins in the 1868 Constitution. For this reason, many of the resources relate to the 1868 Constitution and the political, educational, and social context of that time period. There also are numerous resources related to racism, politics, and education as they coalesced many times to be a decisive and often destructive force in public schools. Those researching other provisions in the North Carolina Constitution may find that other time periods and particular amendments or constitutions to be the most crucial. The bibliography will provide some tools to help begin researching other subjects.

This bibliography uses a modified Blue Book citation format in order to include additional information that may be helpful or is required by other style books, including the APA. Some citation manuals require providing the date that electronic sources were retrieved. This has not been included in individual cites, but all websites were confirmed still operational on January 9, 2009.

The most important resource does not easily fit into any citation style – the people who have led me to these resources. All the librarians at UNC Chapel Hill and the State are helpful. Among those who stand out as extraordinarily resourceful are Alex Hess III, librarian, and Marsha Lobacz, assistant librarian at the School of Government Library. The School of Government Library houses many original documents related to the legislative process and they can guide you to resources that are not in any electronic database. Steve Case, senior reference librarian with the State Library and whom UNC Law School graduates may remember from his days in the UNC Law Library, is also extremely helpful and gets a special thank you for finding a series of articles without a date or name of a particular newspaper by reviewing reel after reel of blurry 1868 newspapers on microfilm.

Organization of Annotated Bibliography

Part I: North Carolina Constitution: Documents Related to Creating and Revising Constitutions

- A. 1776 Constitution and Early Laws
- B. 1868 Constitution and Amendments
- C. Failed Efforts to Rewrite the 1868 Constitution
- D. 1971 Constitution

Part II: Analysis of the North Carolina Constitution

- A. General Treatments
- B. More Specific Analysis of the Constitutions
- C. Analysis of Education Provisions
 - 1. Education encouraged (Art IX, § 1).
 - 2. General and uniform (Art. IX, § 2).
 - 3. Educated by other means (Art. IX, § 3).
 - 4. State Board composition and authority (Art. IX, §§ 4, 5).
 - 5. Fines, penalties, and forfeitures (Art. IX, § 7).

Part III: State Constitutions

- A. State Comparisons and Texts
- B. State Constitutions, Purposes, and Theories
- C. Application of Federal Constitutional Language

Part IV: School Finance, Adequacy Litigation

Part V: North Carolina Public Education History

- A. Original Documents
- B. General Treatments

Part VI: Southern and United States Public Education History

Part VII: University of North Carolina History

Part VIII: North Carolina History

- A. General Treatments
- B. Local History

Part IX: North Carolina Race and Reconstruction Politics

- A. Biographies of Delegates to the 1868 Convention
- B. Freedmen's Conventions
- C. Newspaper Sources
- D. Other Treatments

- Part X: Southern Race and Reconstruction Politics, Jim Crow Era
A. Religious Thought and Reconstruction Politics
B. Other Treatments

Part XI: Other Resources Used for Constitutional Tales

*Part I: North Carolina Constitution:
Documents Related to Creating and Revising Constitutions*

A. 1776 Constitution and Early Laws

Many official documents from 1735 to 1754 are included in the *Records of the Executive Council*. The lengthy introduction is also useful for understanding the legal structure in place before the 1776 Constitution. *The State Records of North Carolina* is a multi-volume series. Volumes 23 through 25, edited by North Carolina Supreme Court Chief Justice Walter Clark, contain the laws of North Carolina (as a province and state) from 1663 through 1790. The Constitution of 1776 is included in Volume 23 with the Declaration of Rights beginning on page 977 and the Constitution, on 980. The 1776 Constitution was amended in 1835. The Journal from the 1835 convention is available online.

Cain, Robert J. & Whitley, Caroline B. (eds.), *Records of the Executive Council, 1735-1754* (Raleigh, N.C.: Dept. of Cultural Resources, Division of Archives and History 1988).

Clark, Walter, ed., *The State Records of North Carolina, Vol. 23. Laws, 1715-1776* (Goldsboro, N.C.: Nash Brothers 1904).

North Carolina, *Journal of the Convention, Called by the Freemen of North-Carolina, to Amend the Constitution of the State, which Assembled in the City of Raleigh, on the 4th of June, 1835, and Continued in Session until the 11th Day of July thereafter* (Raleigh, N.C.: J. Gales & So, Printers to the Convention 1835); transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) available at <http://docsouth.unc.edu/nc/conv1835/menu.html>.

B. 1868 Constitution and Amendments

The development of the 1868 Constitution is documented in the Journal of the Constitutional Convention. It is available as a fully searchable and downloadable text from Documenting the American South, a resource made available by the University Library at the University of North Carolina at Chapel Hill. In the near future, an even more complete set of the debates, edited by Joseph Ferrell, will be available electronically from the same source. An authoritative source for the 1868 Constitution is the version published by the convention printer. It is also available online, although this

copy made available from the Making of America series is more cumbersome to search and download than the Documenting the American South series. The only amendment made to the 1868 Constitution through a constitutional convention was in 1875. Copies of the convention documents are available only in hard copy and the only edition is that published in 1875. All other amendments to the 1868 Constitution were initiated by the General Assembly so that copies of those amendments are available through the session laws.

Copies of the 1868 Constitution and amendments are available from other sources; however, many of the sources have some errors so that if it is important to get the wording precisely correct, it is best to go back to these original sources.

North Carolina, *Constitution of the State of North Carolina together with the Ordinances and Resolutions of the Constitutional Convention, Assembled in the City of Raleigh, Jan. 14, 1868* (Raleigh, N.C.: J.W. Holden, convention printer 1868); online access by same title (Making of America, University of Michigan Library 2005) available at <http://quod.lib.umich.edu/cgi/t/text/text-idx?c=moa;idno=AEY0617.0001.001>.

North Carolina, *Journal of the Constitutional Convention of the State of North-Carolina, at its Session 1868* (Raleigh, N.C.: J.W. Holden, convention printer 1868); transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) available at <http://docsouth.unc.edu/nc/conv1868/conv1868.html>.

North Carolina, *Amendments to the Constitution of North Carolina Proposed by the Constitutional Convention of 1875, and the Constitution as It Will Read as Proposed to be Amended* (Raleigh, N.C.: J. Turner, public printer 1875).

C. Failed Efforts to Rewrite the 1868 Constitution

The 1868 Constitution was amended 69 times before being rewritten as the 1971 Constitution. (See John L. Sanders, Brief History..., in *North Carolina Government 1585-1974*, page 801, in Part II, below.) In addition, there were two significant efforts to rewrite the constitution, the first in 1931-1933, and the second, in 1957-1959. The committee reports and proposed constitution are of historical significance. In addition, the reports provide data and legal analysis that are useful in understanding the development of constitutional issues. For example, the 1930 report of the Education Commission documents disparities in school systems, including in the length of term provided.

The 1959 rewrite of the constitution would have produced some significant changes in education. The most significant was a recommendation of the Constitutional Commission to remove “general and uniform system” from the constitution to avoid

constitutional challenges of the state allowing local communities to close schools to avoid racial integration. John Sanders provides legal analysis of this recommendation in his monograph. In a separate publication, he explains the connection between controversial court reform and the failure of the drafted constitution to be approved by the General Assembly.

Gardner, Dillard S., *The Proposed Constitution for North Carolina* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill 1934).

North Carolina Constitutional Commission, *The Report of the North Carolina Constitutional Commission to the Governor and General Assembly* (Raleigh, N.C.: no publisher noted 1932).

North Carolina Constitutional Commission, *Documents of the NC Constitutional Commission, 1957-59* (Raleigh, N.C.: The Commission 1959).

North Carolina State Educational Commission, *Report of the Educational Commission Submitted to Governor O. Max Gardner and Members of the General Assembly of 1931 in Compliance with Chapter 266, Public Laws of 1929* (Raleigh, N.C.: Edwards & Broughton company 1930).

Sanders, John L., *A General and Uniform System of Public Schools* (Chapel Hill, N.C.: Institute of Government 1959), available at: <http://www.archive.org/details/generaluniformsy00sand>.

Sanders, John L., *Constitutional Revision and Court Reform: A Legislative History, 1959* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill 1959), available at: <http://www.archive.org/details/constitutionalre00sand>.

D. 1971 Constitution

The rewrite of the constitution is well documented through the work of the North Carolina State Study Commission that met through 1968 and the General Assembly's actions in 1969. There are numerous documents related to this process available in the School of Government Library. A good starting point, however, is the report of the Study Commission, and the text of the proposed constitution, prepared by John L. Sanders, that provides a side by side comparison of the text of the existing constitution (as amended) with the proposed constitution.

North Carolina State Constitution Study Commission, *Report of the North Carolina State Constitution Study Commission to the North Carolina State Bar and the North Carolina Bar Association* (Raleigh, N.C.: North Carolina State Study Commission 1968).

Sanders, John L., *Proposed Constitution of North Carolina, 1969: Text Proposed by Session Laws 1969, Chapter 1258* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill 1969).

Part II: Analysis of the North Carolina Constitution

The documents listed in the previous section are the actual text of the constitution and amendments and other reports generated in the constitutional conventions and legislative processes. The following documents provide analysis of these constitutions and their amendments.

A. General Treatments

There are several excellent sources that should be reviewed in any study of North Carolina's constitutions. John V. Orth, professor at the University of North Carolina School of Law, provides an excellent historical overview of the development of North Carolina's three constitutions and commentary to each section of the current constitution. He also provides a very useful bibliographical essay for additional resources. John L. Sanders, former director of the Institute of Government who gave guidance and assistance to the constitutional commissions in the late 1950's and 1960's, has written numerous articles about the constitutions. The "brief history" captures all the significant events and the list of amendments is a useful resource for finding all amendments to the constitutions by year. Earle Ketcham's article provides detail on the sources of the 1776 Constitution which is difficult to find elsewhere. Dillard Gardner's article is similar to John Orth's overview and John Sander's brief history, but is worth noting here given his position as Marshall-Librarian of the North Carolina Supreme Court when his article was published. The annotated constitution provided by Henry Connor and Joseph Cheshire, Jr. is similar in approach to John Orth's and given its publication date of 1911, may not be as useful. However, it is highly regarded so that if there is an opportunity to make use of it, it is an authoritative source.

The Secretary of State has published a tome of over 1500 pages, *North Carolina Government 1585-1974*. It has a complete record of elected officials in the covered time period and much useful information about North Carolina government. Of particular interest regarding the constitution is that it is the one source that provides copies of all constitutions and amendments by year. Unfortunately, there are many errors in these copies so that it is better as a beginning point for reading possibly relevant amendments. This manual is described in its inside cover page as an update of the 1913 manual. This older manual may be only of historical interest, but since it is available online, it is easy to review for possible use.

Cheney, Jr., John L., ed., *North Carolina Government, 1585-1979: A Narrative and Statistical History (a revised and updated edition of the 1913 North Carolina Manual)* (Raleigh, N.C.: N.C. Dept. of the Secretary of State 1981).

Connor, Henry G. & Cheshire, Jr., Joseph B., *The Constitution of the State of North Carolina* (Raleigh, N.C.: Edwards & Broughton 1911) (Constitution with annotations by Henry G. Connor and Joseph B. Cheshire, Jr.).

Connor, R.D.W., ed., *A Manual of North Carolina Issued by the North Carolina Historical Commission for the Use of the Members of the General Assembly Session 1913* (Raleigh, N.C.: E.M. Uzzell, state printer 1913) transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) (2001 first ed.) *available at* <http://docsouth.unc.edu/nc/manual/menu.html>.

Gardner, Dillard S., The Continuous Revision of Our State Constitution, 36 N.C. L. Rev. 297-313 (1957-58).

Ketcham, Earle H., The Sources of the North Carolina Constitution of 1776, 6 N.C. Hist. Rev. 3, 215-236 (1929).

Orth, John V., *The North Carolina State Constitution with History and Commentary* (Chapel Hill, N.C.: University of North Carolina Press 1995) (Westport, Conn.: Greenwood Press 1993).

Sanders, John L., A Brief History of the Constitutions of North Carolina, in Cheney, Jr., John L., ed., *North Carolina Government, 1585-1979: A Narrative and Statistical History* (Raleigh, N.C.: N.C. Dept. of the Secretary of State 1981 pp. 795-807).

Sanders, John L. & Lomax, John F., *Amendments to the Constitution of North Carolina, 1776-1996: A List of Constitutions and Constitutional Amendments Submitted to the Qualified Voters of the State, with the Vote Cast on Each and the Statement of the Issue as It Appeared on the Ballot* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1997), *available at*: <http://www.archive.org/details/amendmentstocons00sand>.

B. More Specific Analysis of the Constitutions

Among many articles about the North Carolina Constitution or aspects of the adoption process, those noted below are particularly helpful. Former N.C. Supreme Court Justice Harry C. Martin's article provides perspective on the Declaration of Rights. The article by Arch T. Allen, III, provides an exhaustive analysis of executive power in the North Carolina Constitution. Issues regarding the short ballot and elected state superintendent are particularly relevant in considering the authority structure in education. Albert Coates incorporates many articles from *Popular Government* to explain proposed amendments from 1937-1957 so that it is a helpful source for numerous articles. Although the constitutional convention process has not been used since 1875, a

good explanation of that process is found in the article by John Sanders. The Institute of Government played a key role in creating documents that helped to explain the proposed constitution approved by the 1969 General Assembly (and ratified as the 1971 Constitution). Two such documents are listed below are by John Sanders and Jerry Adams.

Adams, Jerry, *Seven Proposals to Amend the North Carolina Constitution* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1969).

Allen, III, Arch T., *A Study in Separation of Powers: Executive Power in North Carolina*, 77 N.C. L. Rev. 2049-2122 (1998-1999).

Coates, Albert, *Amendments to the Constitution of North Carolina Proposed by the General Assembly 1937 – 1957: Text and Commentary /Compiled for the North Carolina Constitutional Commission created by the 1957 General Assembly* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill 1958?), available at: <http://www.archive.org/details/amendmentstocon00nort>.

Martin, Harry C., *The State as a “Font of Individual Liberties”*: North Carolina Accepts the Challenge, 70 N.C. L. Rev. 1749-1758 (1991-1992).

Sanders, John L., *A Report on the Convention of the People in North Carolina, 1776-1958* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill 1958).

Sanders, John L., *State Constitutional Revision: Seven Amendments Pending 1970 Vote* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1970), available at: <http://www.archive.org/details/stateconstitutio00sand>.

C. Analysis of Education Provisions

Some useful publications on particular constitutional provisions affecting public schools are described below. Articles about school finance litigation are provided in Part IV.

1. Education encouraged (Art IX, § 1).

Article IX, section one of the 1868 Constitution encourages education for good government and the happiness of mankind. The provision is identical to the education requirement in the Northwest Ordinance of 1787. The same language continues in the 1971 Constitution with an amendment to also encourage libraries. The Northwest Ordinance is considered one of four “organic laws” of the United States and the only one of the four that addresses education. The origin of the language for education in the

“immortal ordinance” can be traced to the Massachusetts Constitution, which was written virtually single-handedly by John Adams. The following books and articles provide a thorough explanation of the significance of the ordinance.

Cox, Richard A., *Four Pillars of Constitutionalism : The Organic Laws of the United States* (Introduction and text of laws, Amherst, N.Y.: Prometheus Books 1998).

Duffey, Denis P., *The Northwest Ordinance as a Constitutional Document*, 95 Colum. L. Rev. 929-968 (1995).

Handlin, Oscar & Handlin, Mary, eds., *The Popular Sources of Political Authority; Documents on the Massachusetts Constitution of 1780* (Cambridge, Mass.: Belknap Press of Harvard University Press 1966).

Onuf, Peter S., *Statehood and Union: A History of the Northwest Ordinance* (Bloomington, Ind.: Indiana University Press 1987).

2. *General and uniform (Art. IX, § 2).*

School finance litigation is provided Part IV. The report to the governor on *Brown v. Board of Education* is of historical significance as a step in the process of determining North Carolina’s response. It also provides valuable data on inequities in the system and legal analysis of potential issues in responding to *Brown v. Board of Education*. In 1956, voters approved a constitutional amendment and the General Assembly passed enacting legislation to provide a means for local communities to close schools to avoid integration. The article by Robert Wettach was written contemporaneously and provides insight into how legal issues were being analyzed shortly after the *Brown* decisions.

Coates, Albert & Paul, James C., *A Report to the Governor of North Carolina on the Decision of the Supreme Court of the United States on the 17th of May 1954* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill 1954).

Wettach, Robert H., *North Carolina School Legislation : 1956*, 35 N.C. L. Rev. 1-16 (1956-1957).

3. *Educated by other means (Art. IX, § 3).*

Eric Evenson, II. analyzes the compulsory attendance requirement “unless educated by other means.”

Evenson, II, J. Eric, Note, *State Regulation of Private Religious Schools in North Carolina: A Model Approach*, 16 Wake Forest L. Rev. 405-437 (1980).

4. *State Board composition and authority (Art. IX, §§ 4, 5).*

The constitutional amendment approved by the General Assembly in 1941 and ratified by voters in 1942 altered the State Board's composition and authority. The North Carolina Law Review article provides some historical context for these changes and offers interesting legal analysis of potential problems from the amendment. And indeed, another amendment was approved just two years later. The School Law Bulletin article traces State Board authority primarily as it relates to its rule-making function and the inherent tension between its authority and that of the General Assembly.

A Survey of Statutory Changes in North Carolina in 1941, 19 N.C. L. Rev. 435-550, 463-66 (proposed constitutional amendment to State Board) (1940-1941).

McColl, Ann, The North Carolina State Board of Education: Its Constitutional Authority and Rule-Making Procedures, 29(4) *School Law Bulletin* 1-11 (1998).

5. *Fines, penalties, and forfeitures (Art. IX, § 7).*

The constitutional requirement for proceeds from fines, penalties, and forfeitures to be given to public schools has been the subject of extensive litigation. David Lawrence provides historical analysis, comparing North Carolina's provision to that in other state constitutions (and finding the likely source for North Carolina's) and uses North Carolina case law to analyze the meaning of this constitutional requirement.

Lawrence, David M., Fines, Penalties, and Forfeitures: An Historical and Comparative Analysis, 65 N.C. L. Rev. 49-84 (1986-1987).

Part III: State Constitutions

A. State Comparisons and Texts

In examining North Carolina's constitution, it is helpful to be able to compare it to other state constitutions. Robert Maddex's book provides some excellent charts and comparisons of state constitutions. It also has a copy of the then current constitution with brief analysis. Unfortunately, it is now ten years old. Similarly, a more extensive collection by William Swindler provides constitutions as they have evolved but it is even more outdated. For historical research, however, it is still helpful. The most accessible option is the NBER/University of Maryland State Constitution Project. It provides all copies of constitutions for a state in a downloadable format. Many of the texts have been reviewed since 2000. (If only the current constitution is needed, there are many public and private websites that will provide state constitutions.)

Maddex, Robert L., *State Constitutions of the United States* (Washington, D.C.: Congressional Quarterly, 1998).

Swindler, William F., ed., *Sources and Documents of United States Constitutions* (Dobbs Ferry, N.Y.: Oceana Publications, 1973-1988)

Wallis, John J.NBER/University of Maryland State Constitution Project,
www.stateconstitutions.umd.edu.

B. *State Constitutions, Purposes, and Theories*

While the importance of state constitutions relative to the federal constitution seems to ebb and flow, there are numerous sources that analyze their purposes and help frame constitutional analysis that is targeted at the state level. John Adams is one of the great thinkers about the forming of state governments. His ideas are expressed in the letters that he wrote to North Carolinians before the Constitution of 1776 was adopted.

In the landmark *Corum* decision, the North Carolina Supreme Court described the state constitution as “more detailed and specific than the federal Constitution in the protection of the rights of its citizens.” *Corum v. University of North Carolina*, 413 S.E.2d 276, 290, 330 N.C. 761, 783 (1992). In addition to citing court cases, it cited to an article written by then Associate Justice James G. Exum, Jr., who later became Chief Justice. While it is a brief article delivered originally as a talk, it has particular prominence given its author and later citation by the court.

The 2005 annual meeting of the Rights and Responsibilities Section of the NC Bar Association has some extremely useful presentation materials, including those by Robert Hunter, Jim Exum, Jr., and Eddie Speas. Although this may not be a scholarly publication, the materials are well written with excellent practical information for lawyers.

The 1963 Model State Constitution by the Municipal League is the last publication by this organization of a model constitution. In addition to providing a useful comparison to North Carolina’s, the commentary explaining the constitution provides insights into the role of state constitutions and what constitutes a well-written constitution.

The other three articles are scholarly works that delve into the role of state constitutions and interpretation of state constitutions.

Adams, John, *The Works of John Adams, Second President of the United States: With a Life of the Author, Notes and Illustrations by Charles Francis Adams, Vols. I, 203-209 (history of John Adams guidance on state constitutions), IV, 203-209 (letter to John Penn), IX, 235-36 (letter to the inhabitants of the county of Edgecombe, North Carolina)* (Boston, Mass.: Little, Brown 1850-1856) (Microfiche, Woodbridge, Conn.: Research Publications 1984).

Developments in the Law: The Interpretation of State Constitutional Rights, 95 Harv. L. Rev. 1324-1502 (1981-1982).

Exum, Jr., James G., *Dusting Off Our State Constitution*, 33 State Bar Quarterly, No. 2, 6-8 (1986).

Grad, Frank P., The State Constitution: Its Function and Form for Our Time, 54 Va. L. Rev. 928-980 (1968).

Hunter, Robert N., Albion Tourgee and the 1868 Constitution of North Carolina (1-11), Exum, Jr., Jim, Interpreting the North Carolina Constitution (IV-A-1 to IV-A-14), Speas, Jr., Edwin M., Some tips and Observations for Trying a Constitutional Case – Practical and Otherwise (VI-B-1 to VI-B-7) in *Hot Topics in Constitutional Law: (Constitutional Rights & Responsibilities Section Annual Meeting/May 6, 2005* (Cary, N.C.: North Carolina Bar Association Foundation 2005).

National Municipal League, *Model State Constitution (6th ed.)* (New York, N.Y.: National Municipal League, 1963).

Tarr, G. Alan & Williams, Robert F., Forward: Getting from Here to There: Twenty-first Century Mechanisms and Opportunities in State Constitutional Reform, 36 Rutgers L.J. 1075-1124 (2004-2005).

C. Application of Federal Constitutional Language

Given the direct connection between the federal and state constitutions (including through the supremacy clause and the Fourteenth Amendment), understanding language used in the Federal Constitution helps in interpreting state constitutions. State constitutions, of which North Carolina is no exception, invokes God and even more specifically Christian theology. A window into this development is provided in Steven Waldman's, *Founding Faith*. Daniel Rodgers provides an evolution of the meaning of terms, such as "the people," which is relevant in considering Article I, section 15 of the N.C. Constitution.

Rodgers, Daniel T., *Contested Truths: Keywords in American Politics since Independence* (Cambridge, Mass.: Harvard University Press 1987, 1988).

Waldman, Steven, *Founding Faith: Providence, Politics, and the Birth of Religious Freedom in America* (New York, N.Y.: Fandom House 2008).

Part IV: School Finance, Adequacy Litigation

In the early 1970s, there was great interest in North Carolina regarding a federal lower court opinion finding the Texas funding system to violate the federal constitution, *Rodriguez v. San Antonio Independent School District*. North Carolina had a similar funding scheme for education and there was concern that if the U.S. Supreme Court

found the Texas system to be in violation, that North Carolina would need to be prepared to make changes as well. While the case was on appeal to the U.S. Supreme Court, the Institute of Government prepared a report on North Carolina's funding system and offered possible funding options that would be more equitable. The Supreme Court held that the federal constitution did not require parity so that a North Carolina response was not legally required.

Constitutional challenges to a right to education in North Carolina are rooted in the North Carolina Constitution in Article I, section 15 and Article IX, section 2. Examining these constitutional requirements, the North Carolina Supreme Court found that while equal funding was not required, the constitution did require an equal opportunity to a sound, basic education. *Leandro v. State* (1997). Researchers also have examined North Carolina's funding system and have made recommendations for changes. A recent examination is found in the RAND Education working paper series. It offers an objective perspective on the effectiveness of the funding system in supporting improved student performance. RAND has performed similar case studies for Ohio, Texas, and Washington State. A recent article in the *Journal of Education Finance* by Anthony Rolle and coauthors finds continuing disparities between counties in its analysis of North Carolina's funding system.

North Carolina litigation continues after the Supreme Court remanded the *Leandro* (also known as *Hoke County Bd. of Educ. v. State*) case to the trial court in 2004. As the trial court examines education performance at the high school and middle school levels, an underlying issue persists of how to fully define the constitutional right and measures of the adequacy of state and local efforts. Timothy Zick's article is useful on this issue of the use of "constitutional empiricism" – data or other scientific evidence – to measure constitutional rights.

The finance and adequacy litigation challenging state constitutional rights has spawned an industry of articles. Among these, Molly McUsic's is a classic, often cited article for providing a detailed comparison of state constitutions. This is updated in a Comment by Kelly Thompson Cochran in the *North Carolina Law Review*. The footnotes often take up more space on the page than the text and provide extensive research on case law and other publications.

The state constitutional litigation often has been described as coming in waves, based on the arguments that seemed to gain the most support with the courts during a time period. Recent commentary suggests litigation is approaching the end of the third wave, has started a fourth wave, or is on its last wave. An example of this kind of analysis that tends to focus on the problems in constitutional litigation is found in Aaron Saiger's article. Another recent publication, *School Money Trials* also explores issues in adequacy litigation.

Campbell, William A., Liner, Charles D., Payne, John M. & Phay, Robert E., *Report on North Carolina School Finance: Responses to Serrano-Rodriguez*

(Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill 1972).

Cochran, Kelly Thompson, Comment, *Beyond School Financing: Defining the Constitutional Right to an Adequate Education*, 78 N.C. L. Rev. 399-476 (1999-2000).

Hansen, Janet S. et. al., *School Finance Systems and Their Responsiveness to Performance Pressures: A Case Study of North Carolina* (RAND Education working paper series 2007) at http://www.rand.org/pubs/working_papers/WR452/.

McUsic, Molly, *The Use of Education Clauses in School Finance Reform Litigation*, 28 Harv. J. on Legis. 307-340 (1991).

Rolle, Anthony, Houck, Eric, & McColl, Ann, *And Poor Children Continue to Wait: An Analysis of Horizontal and Vertical Equity among North Carolina School Districts in the Face of Judicially Mandated Policy Restraints 1996–2006*, 34 Journal of Educ. Finance 75-102 (2008).

Saiger, Aaron Jay, *The Last Wave: The Rise of the Contingent School District*, 84 N.C. L. Rev. 857-926 (2005-2006).

West, Martin, R. & Peterson, Paul E., eds., *School Money Trials: The Legal Pursuit of Educational Adequacy* (Washington, D.C.: Brookings Inst. Press 2007).

Zick, Timothy, *Constitutional Empiricism: Quasi-Neutral Principles and Constitutional Truths*, 82 N.C. L. Rev. 115-222 (2003-2004).

Part V: North Carolina Public Education History

A. Original Documents

One way to approach the study of this period is by using original documents, some of which are readily available online. Archibald Murphey's reports to the General Assembly in 1816 and 1817 are the first efforts to move towards a state system of public schools. The General Assembly enacted school laws in 1839 and elected Calvin H. Wiley as the first general superintendent of common schools in 1854. Commonly regarded as one of the most important, progressive leaders in education in the 19th century in North Carolina, his first annual report to the General Assembly is available online. Also available online is the first annual report after the 1868 Constitution was in effect by then Superintendent Samuel S. Ashley. This report also includes the report by Assistant Superintendent James Walker Hood on the status of schools for Blacks.

Education for children in residential schools is included in the report of the Board of Charities, which also is available online.

For more detailed research, the papers of superintendents, including Calvin H. Wiley and Samuel S. Ashley are available at the North Carolina Department of Archives. Governor Aycock is a pivotal figure in North Carolina politics and education. His speeches, including his famous speech on universal education, are included in the collection by R.D.W. Connor.

Ashley, S. S., *Report of the Superintendent of Public Instruction of North Carolina, for the Year 1869* (Raleigh, N.C.: M.S. Littlefield, state binder and printer 1869), transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) available at <http://docsouth.unc.edu/nc/report1869/report1869.html>.

Ashley, Samuel S. papers, North Carolina Department of Archives and History.

Connor, R.D.W., *The Life and Speeches of Charles Brantley Aycock* (Garden City, N.Y.: Doubleday Page 1912), transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) available at <http://docsouth.unc.edu/nc/connor/menu.html>.

Murphey, Archibald D., *Report of the Convention Committee to the Legislature of North-Carolina, 1816* (Raleigh, N.C.: Tho. Henderson 1816).

Murphey, Archibald D., *Report on Education: Made to the General Assembly of North-Carolina, at its Session of 1817* (Raleigh, N.C.: Tho. Henderson 1817).

Murphey, Archibald D. papers, Southern Historical Collection, University Library, University of North Carolina at Chapel Hill.

North Carolina Board of Public Charities, *First Annual Report of the Board of Public Charities of North Carolina* (Raleigh, N.C.: printed by order of the Board 1870), transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) available at <http://docsouth.unc.edu/nc/char1870/menu.html>.

Wiley, Calvin H., *First Annual Report of the General Superintendent of Common Schools* (Raleigh, N.C.: W.W. Holden 1854) transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) available at <http://docsouth.unc.edu/nc/schools1854/menu.html>).

Wiley, Calvin H. papers, North Carolina Department of Archives and History.

B. General Treatments

The status of public education from the time of the 1868 Constitution through the turn of the twentieth century has been the primary focus so far in Constitutional Tales and it is reflected in these resources. Charles Coon's two-volume series leads up to this time period and is available on line. The books by Edgar Knight and M.C.S. Noble provide rich detail of the reconstruction period; however, they are written with a clear bias toward the conservative white power structure and have little favorable to say regarding the contributions of "carpet baggers, scalawags, or negroes" in education.

The book by Charles Lee Smith is interesting, in part, because of its own history. It was written as a part of a monograph series for the U.S. Bureau of Education in 1888. In a letter (included in the book, pp. 9-11) to the Secretary of the Interior, Commissioner N.H.R. Dawson wrote: "[t]he subject of the present monograph is the history of education in North Carolina. It is an original and valuable contribution, and deserves to be widely read. In this monograph Mr. Charles Lee Smith, who has been trained in historical methods at the Johns Hopkins University and now holds a fellowship in history and politics at that institution, gives the results of a thorough and careful study of the educational history of his native State." This book is also available on line through the Documenting the American South series.

Daniel Jay Whitener provides a close look at public education in the reconstruction era. James Leloudis provides a more recent examination of efforts at education reform in North Carolina between 1880 and 1920. He provides careful scholarship on issues of transition from the common school to graded practices and the intersection of educational reform with politics and race. There are several good books addressing educational opportunities for African-Americans, including the book by Hugh Victor Brown. It is more difficult to find books or articles on schooling for American Indians. The dissertation by V. Ray Thompson is excellent and provides detailed information about Robeson County.

Brown, Hugh Victor, *A History of the Education of Negroes in North Carolina* (Raleigh, N.C.: Irving Swain Press 1961).

Coon, Charles L., *The Beginnings of Public Education in North Carolina: A Documentary History, 1790-1840* 2 Vols. (Raleigh, N.C.: Edwards & Broughton 1908), transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2003) available at <http://docsouth.unc.edu/nc/coon976/menu.html>.

Knight, Edgar W., *Public School Education in North Carolina* (Cambridge, Mass.: Riverside Press (Houghton Mifflin) 1916).

Leloudis, James L., *Schooling the New South: Pedagogy, Self, and Society in North Carolina, 1880-1920* (Chapel Hill, N.C.: University of North Carolina Press 1996).

Noble, M.C.S., *A History of the Public Schools of North Carolina* (Chapel Hill, N.C.: The University of North Carolina Press 1930).

Smith, Charles Lee, *The History of Education in North Carolina* (Washington, D.C.: Government Printing Office 1888), transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2005) available at <http://docsouth.unc.edu/true/smith/menu.html>.

Thompson, V. Ray, *A History of the Education of the Lumbee Indians of Robeson County, North Carolina, from 1885 to 1970* (Doctoral Dissertation, N.C. Collection, Wilson Library, University of North Carolina at Chapel Hill 1973).

Whitener, Daniel Jay, *Public Education in North Carolina During Reconstruction, 1865-1876* in Green, Fletcher Melvin, ed., *Essays in Southern History: Presented to Joseph Gregoire de Roulhac Hamilton by his Former Students at the University of North Carolina* Chapel Hill, N.C.: University of North Carolina Press 1949, pages 67-90).

Part VI: Southern and United States Public Education History

To put North Carolina's education history in perspective, Ellwood Patterson Cubberly's book provides an excellent resource. It was originally printed in 1919 and has been substantially revised and updated. Edgar Wallace Knight wrote a series of books about public education, including one on the South and one on North Carolina (noted above). Since the books follow a similar format, they are easy to use together to gain some regional perspective on North Carolina's history. James D. Anderson provides more detailed information regarding education for African-Americans in the South. Heather Andrea Williams' *Self-taught* focuses more directly on how African-Americans – young and old – sought education in the South during and after slavery ended. Thomas Woody's book is a good resource on education for women, although it has a much broader focus than public schools.

Anderson, James D., *The Education of Blacks in the South, 1869-1935* (Chapel Hill, N.C.: University of North Carolina Press 1988).

Butchart, Ronald E., *Northern Schools, Southern Blacks, and Reconstruction: Freedmen's Education, 1862-1875* Westport, Conn.: Greenwood Press 1980).

Cubberly, Ellwood Patterson, *Public Education in the United States* (Cambridge, Mass.: Houghton Mifflin Revised and Enlarged Ed. 1962) (1919).

Knight, Edgar Wallace, *Public Education in the South* (Boston, Mass.: Ginn and company 1922).

Williams, Heather Andrea, *Self-taught: African American Education in Slavery and Freedom* (Chapel Hill, N.C.: University of North Carolina Press 2005).

Woody, Thomas, *A History of Women's Education in the United States, Vol.1* (New York, N.Y., Lancaster, Penn.: The Science Press 2 volumes, 1929).

Part VII: University of North Carolina History

Constitutional Tales addresses the “inseparable connection” between the State University and the public schools in the 1868 Constitution. Kemp Battle, historian and University of North Carolina at Chapel Hill president, created a two-volume *History of North Carolina*. It is the authoritative source on the history of the University of North Carolina at Chapel Hill through 1912 and is available online. As not only a contemporary to the times but a major leader, researchers should be aware of the perspective this would bring to events, including his replacing the early reconstruction era President Solomon Pool. John Sanders has numerous publications, including the one noted below, that trace and analyze the legal developments of the UNC system. Mr. Sanders was integrally involved in the Governor’s Commission on Education Beyond the High School and in the legislation passed in 1971 that created the new structure for the UNC Board of Governors. A recent book by the North Carolina Center for Public Policy Research provides extensive research on the history and effectiveness of the governance structure of the UNC system with recommendations for changes.

Battle, Kemp P., *History of the University of North Carolina* (Spartanburg, S.C. 1974 2 volumes) (Raleigh, N.C.: Edwards & Broughton 1907-1912), transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2002) available at <http://docsouth.unc.edu/nc/battle1/menu.html> (Vol. 1 1789-1868), <http://docsouth.unc.edu/nc/battle2/menu.html> (Vol. 2 1868-1912).

Coble, Ran, Watts, Sam & Scharer, Joanne, *The Statewide UNC Board of Governors: Its Selection, Powers, and Relationship to the 16 Local Campus boards of Trustees* (Raleigh, N.C.: North Carolina Center for Public Policy Research 2006).

Sanders, John L., *The Legal Development of the University of North Carolina* (Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, University of North Carolina at Chapel Hill 1965).

Part VIII: North Carolina History

A. General Treatments

There are several well-known treatises on North Carolina history. Historians Hugh Talmage Lefler and Albert Ray Newsome, along with William Stevens Powell, are held in high regard and the sources noted below or other books by them would be authoritative sources. Older texts provide helpful detail, including the two volume series by R.D.W. Connor and another by Samuel Ashe. Researchers should take care, however, in recognizing when historians of another time period share perspectives of their contemporaries. This is especially true in studying issues of race. See Part IX, North Carolina Race and Reconstruction Politics, for more current writings on this history.

Ashe, Samuel A., *History of North Carolina* (Spartanburg, S.C.: Reprint Co. 2 vols. 1971) (1908-1925).

Connor, R.D.W., *North Carolina: Rebuilding an Ancient Commonwealth, 1584-1925* (Spartanburg, S.C.: The Reprint Co 2 vol. 1973) (1929).

Lefler, Hugh Talmage & Newsome, Albert Ray, *North Carolina: The History of a Southern State* (Chapel Hill, N.C.: University of North Carolina Press 3rd ed. 1973).

Powell, William Stevens, *North Carolina Through Four Centuries*, (Chapel Hill, N.C.: University of North Carolina Press 1989).

B. Local History

Constitutional Tales draws on local history important to the state in the emergence of leaders, development of political positions, and the evolution of public schools. Wilmington and New Bern were two of the most important cities in the Civil War and reconstruction era. “Carpetbagger” Samuel S. Ashley who arrived in North Carolina in Wilmington and Bishop James Walker Hood who arrived in New Bern are highlighted in the Tales both for their roles leading up to being delegates at the 1868 Constitutional Convention as well as their roles respectively as superintendent and assistant superintendent of public schools.

William Evans provides a masterful historical analysis of the events in the Cape Fear region and Bill Reaves provides a useful documentation of events and key figures in Wilmington, largely through the use of newspaper articles. Joe Mobley describes James City, a community created during the civil war just across the Trent River from New

Bern for African American refugees. Key events in New Bern in the Civil War and reconstruction period are provided in Richard Sauers' definitive treatment of the battle leading to union control of New Bern, in the monograph by Mary Lindsay Thornton that focuses on the union occupation, and in the expansive historical review by Alan Watson.

Angley, Wilson, Cross, Jerry L, & Hill, Michael, *Sherman's March through North Carolina: A Chronology* (Raleigh, N.C.: Division of Archives and History, N.C. Department of Cultural Resources 1995, 3rd ed. 2003).

Evans, William McKee, *Ballots and Fence Rails: Reconstruction on the Lower Cape Fear* (Athens, GA: The University of Georgia Press 1995, reprint of Chapel Hill, N.C.: University of North Carolina Press 1966, 1967).

Mobley, Joe A., *James City: A Black Community in North Carolina, 1863-1900* (Raleigh, N.C. Division of Archives and History, N.C. Department of Cultural Resources 1981, 2000).

Reaves, Bill "*Strength Through Struggle*": *The Chronological and Historical Record of the African-American Community in Wilmington, North Carolina 1865-1950* edited by Beverly Tetterton (Wilmington, N.C.: New Hanover County Public Library 1998).

Sauers, Richard A., "*A Succession of Honorable Victories*": *The Burnside Expedition in North Carolina* (Dayton, Ohio: Morningside House 1996).

Thornton, Mary Lindsay, *New Bern, North Carolina, 1862-1865: A Southern town Under Federal Occupation* (Unpublished, available from the North Carolina Collection, University Library, University of North Carolina at Chapel Hill 1959).

Watson, Alan D., *A History of New Bern and Craven County* (New Bern, N.C.: Tryon Palace Commission 1987).

Part IX: North Carolina Race and Reconstruction Politics

A. Biographies of Delegates to the 1868 Convention

Constitutional Tales highlights the roles of Rev. Samuel Stanford Ashley and Bishop James Walker Hood. John Bell has provided an excellent biography of Ashley. The masters' thesis by Marion O'Quinn provides some additional resources. James Walker Hood wrote four books, including the one referenced below that includes his description of his success with the first congregation in the South choosing to join the A.M.E. Zion denomination – St. Peter's A.M.E. Zion in New Bern. The published dissertation by Sandy Dwayne Martin provides useful biographical information on Hood. While Albion Tourgée had a limited role in the Constitutional Convention as it relates to

public education, he was one of the most talented and forceful carpetbaggers in the convention. He continued his legal career in North Carolina after the convention and argued for the plaintiffs in the landmark case, *Plessy v. Ferguson*. While there are several biographies of Tourgée available, Mark Elliot provides a compelling version.

Bell, John L., Samuel Stanford Ashley, Carpetbagger and Educator, 72 *N.C. Hist. Rev.* 456-483 (1995).

Elliott, Mark Emory, *Color-blind Justice: Albion Tourgée and the Quest for Racial Equality from the Civil War to Plessy v. Ferguson* (Oxford, N.Y.: Oxford University Press 2006).

Hood, James Walker, One Hundred Years of the African Methodist Episcopal Zion Church; or, The Centennial of African Methodism (New York, N.Y.: A.M.E. Zion Book Concern 1895) transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2001) *available at* <http://docsouth.unc.edu/church/hood100/menu.html>.

Martin, Sandy Dwayne, *For God and Race: The Religious and Political Leadership of AMEZ Bishop James Walker Hood* (Columbia, S.C.: University of South Carolina 1999).

O'Quinn, Marion Nolan, *Carpetbagger Samuel S. Ashley and his role in North Carolina education 1865-1871* (Unpublished Thesis, available at Raleigh, N.C.: North Carolina State University 1975).

B. Freedmen's Conventions

North Carolina was one of the first states in which freedmen organized to hold a Freedmen's convention. In *Constitutional Tales*, the 1865 and 1866 Conventions are described for their role in promoting public education. They are of great historical significance as well, producing the first state-wide organized efforts of freed blacks. Sidney Andrews, a traveling northern journalist, describes the 1865 N.C. Freedmen's Convention as well the 1865 Constitutional Convention that was held a few blocks away at about the same time in October. Another accounting of the 1865 Freedmen's Convention is provided by Philip Foner and George Walker. Minutes of the 1866 Convention is available through the Documenting the American South collection.

Andrews, Sidney, *The South Since the War* (New York, NY: Aro Press and The New York Times 1969, reprint of *The South Since the War: As shown by fourteen weeks of travel and observation in the Georgia and the Carolinas* (Boston, MA: Ticknor and Fields 1866)). The 1865 N.C. Freedmen's Convention is covered pages 119-131, the 1865 N.C. Constitutional Convention, pages 132-140.

Foner, Philip S. & Walker, George E., eds., *Proceedings of the Black National and State Conventions, 1865-1900* (Philadelphia: PN temple University Press 1986). 1865 Freedmen's Convention is covered pages 179-182.

Minutes of the Freedmen's Convention, held in the city of Raleigh, on the 2nd, 3rd, 4th and 5th of October, 1866 (Raleigh, N.C.: Standard Book and Job Office 1866) transcribed with online access by same title (Documenting the American South, University Library, University of North Carolina at Chapel Hill, Electronic ed. 2001) available at <http://docsouth.unc.edu/nc/freedmen/freedmen.html>.

C. Newspaper Sources

Newspapers also are an excellent source for commentary on these issues. In the 19th century, newspapers were polarized in viewpoints with little distinction made between facts and opinions. Richard Abbott's book helps to explain the newspapers of the day. In North Carolina, the *Daily Sentinel* (Raleigh) was the leading paper for conservative whites and the *North Carolina Standard* (Raleigh) was the official newspaper for the 1868 Constitutional Convention. The North Carolina Newspaper Project, available online, identifies newspapers in print across the state.

Abbott, Richard H., *For Free Press and Equal Rights: Republican Newspapers in the Reconstruction South* (John W. Quist, ed., Athens, Georgia: University of Georgia Press 2004).

North Carolina Division of Historical Resources & State Library of North Carolina, North Carolina Newspaper Project at <http://statelibrary.dcr.state.nc.us/tss/newspape.htm>.

D. Other Treatments

There are many excellent resources on North Carolina during the reconstruction era. John Hope Franklin's research and analysis on the lives of African Americans is indispensable. Paul Escott provides an excellent analysis of leadership in his book and has edited a thought-provoking collection of essays by other authors. Hamilton's *Reconstruction in North Carolina* is an authoritative source, although his perspectives may not match contemporary points of view. Jeffrey Crow and coauthors provide a useful overview of North Carolina history of African Americans while Roberta Sue Alexander provides a more in-depth review of the early reconstruction period.

The late 1800s and early 1900s is another important time in the way race, politics, and education came together. While there were no constitutional amendments to the education provisions, a literacy test requirement for voting was added to the North Carolina Constitution in 1900 and the campaign for universal education was directly connected to the literacy requirements. Louis Harlan takes a close look at the politics of race and public education from 1901 through 1915 in North Carolina, South Carolina, Virginia, and Georgia. He examines the campaigns for universal education and the growing disparities in schools for whites and African-Americans.

Another excellent resource is Eric Anderson's book on the second congressional district in North Carolina. While such a regional orientation may initially dissuade those with a state-wide interest, the second congressional district is the home of many state leaders, including Charles B. Aycock and the influential and often inflammatory Josephus Daniels. African-American Congressman George H. White was a well-known prosecutor and orator and was the last black congressman from North Carolina in this time period. It was, as Eric Anderson suggests, not a coincidence that some of the

strongest leadership in the African-American community and in the white power structure were from the same region of the State.

Alexander, Roberta Sue, *North Carolina Faces the Freedmen* (Durham, N.C.: Duke University Press 1985).

Anderson, Eric, *Race and Politics in North Carolina, 1872-1901: the Black Second* (Baton Rouge, La.: Louisiana State University Press 1981).

Crow, Jeffrey J., Escott, Paul D., & Hatley, Flora J., *A History of African Americans in North Carolina* (Raleigh, N.C.: N.C. Department of Cultural Resources, Division of Archives and History 1992).

Escott, Paul D., *Many Excellent People: Power and Privilege in North Carolina, 1850-1900* (Chapel Hill, N.C.: University of North Carolina Press 1985).

Escott, Paul D., ed., *North Carolinians in the Era of the Civil War and Reconstruction*, (Chapel Hill, N.C.: University of North Carolina Press 2008).

Franklin, John Hope, *Reconstruction: After the Civil War* (Chicago, Il.: University of Chicago Press 1961).

Franklin, John Hope, *Free Negro in North Carolina, 1790-1860* (Chapel Hill, N.C.: University of North Carolina Press 1995).

Hamilton, J.D. de Roulhac, *Reconstruction in North Carolina* (Gloucester, Mass.: Peter Smith 1964).

Harlan, Louis R., *Separate and Unequal: Public School Campaigns and Racism in the Southern Seaboard States, 1901-1915* (New York, N.Y.: Atheneum 1968, copyright 1958).

Part X: Southern Race and Reconstruction Politics, Jim Crow Era

A. Religious Thought and Reconstruction Politics

Religious freedom, political rights, and education were intertwined as the goals of the African Methodist Episcopal and African Methodist Episcopal Zion denominations. The American Missionary Association and Congregationalists also held to these views. Because many of the leaders in the 1868 Constitutional Convention were ministers, including Rev. S. S. Ashley and Bishop James Walker Hood, understanding religious thought during this time period is crucial to understanding their political agendas. As an indication of the continuing relevance, the three books cited below were all published in the 1990s or later.

Angell, Stephen W., *Bishop Henry McNeal Turner and African-American Religion in the South* (Knoxville, Tenn.: University of Tennessee Press 1992). Pages 64-67 address Bishop Turner's efforts in North Carolina.

Angell, Stephen W. & Pinn, Anthony B., eds., *Social Protest Thought in the African Methodist Episcopal Church, 1862-1939* (Knoxville, Tenn.: University of Tennessee Press 2000). Chapter 2 is The A.M.E. Church on Education, Chapter 3 is Theology in the A.M.E. Church.

Harvey, Paul, *Freedom's Coming: Religious Culture and the Shaping of the South from the Civil War through the Civil Rights Era* (Chapel Hill, N.C.: University of North Carolina Press 2005).

Jones, Maxine Deloris, "A Glorious Work" *The American Missionary Association and Black North Carolinians, 1863-1880* (Doctoral Dissertation, Florida State University College of Arts and Sciences 1982 on file at the University of North Carolina at Chapel Hill library).

B. Other Treatments

Edmund Morgan's *American Slavery American Freedom* is critically acclaimed for its highly readable and insightful analysis into slavery as an institution. It is useful context for then examining the reconstruction and Jim Crow/Plessy era, for which there are numerous other books and articles written, including those noted below, by Gabriel Chin, Richard Nelson Current, Donna Lee Dickerson, Paul Finkelman, Michael Klarman, and Kenneth Stampp. Highly-regarded historian C. Vann Woodward has written numerous books and articles including the two listed below. W.E.B. Du Bois makes an extremely important contribution in providing analysis of public schools in the South after the Civil War and giving credit to the governments established by African Americans and carpetbaggers for jumpstarting public education. Eleanor Flexner's book is also noted here; it is important for understanding the connection between the women's rights movement and education for women as well as the juxtaposition between how these related issues emerged for women and African-Americans. And finally, any discussion of North Carolina's politics is incomplete without V.O. Key's analysis of the "progressive plutocracy."

Chin, Gabriel J., The "Voting Rights Act of 1867": The Constitutionality of Federal Regulation of Suffrage During Reconstruction, 82 N.C. L. Rev. 1581-1610 (2003-2004).

Current, Richard Nelson, *Those Terrible Carpetbaggers* (New York, N.Y.: Oxford University Press 1988).

Dickerson, Donna Lee, *The Reconstruction Era: Primary Documents on Events from 1865 to 1877* (Westport, Conn.: Greenwood Press, 2003).

Du Bois, W.E.B., *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860-1880* (New York, N.Y.: Oxford University Press 2007, reprint of New York, N.Y.: Harcourt, Brace 1935).

Finkelman, Paul, Exploring Southern Legal History, 64 N.C. L. Rev. 77-116 (1985-1986).

Flexner, Eleanor, *Century of Struggle: The Woman's Rights Movement in the United States* (New York, N.Y.: Atheneum 1973) (Cambridge, Mass: Belknap Press of Harvard University Press 1959).

Key, V. O., *Southern Politics In State and Nation* (Knoxville, TN: University of Tennessee Press 1984) (New York, N.Y.: Knopf 1949).

Klarman, Michael J., The Plessy Era, 1998 Sup. Ct. Rev. 303-414 (1998).

Morgan, Edmund S., *American Slavery American Freedom: The Ordeal of Colonial Virginia* (New York, N.Y.: W.W. Norton 1975, 2003).

Stamp, Kenneth M., *The Era of Reconstruction, 1865-1877* (New York, N.Y.: Knopf 1965).

Woodward, C. Vann, *Origins of the New South 1877-1913* (Baton Rouge, La.: Louisiana State University Press 1951, 1971, 1993).

Woodward, C. Vann, *The Strange Career of Jim Crow* (New York, N.Y.: Oxford University Press 1966).

Part XI: Other Resources Used for Constitutional Tales

Constitutional Tales makes use of some resources that don't readily fit within categories of research. In examining Article XI of the 1868 Constitution and its provisions for children with disabilities, it is useful to understand the broader social movements that caused "asylums" and penal institutions to be grouped together. Both reflected the movement to remove those with "defects" from society. Michel Foucault's classic text provides some understanding of this movement.

The photograph used of education leaders in the 1800s in Constitutional Tales is from the 1942 textbook by Jule Benjamin Warren. Calvin H. Wiley's textbooks, his series of North Carolina readers, also are highlighted in the Tales and different editions of those readers are cited below.

Foucault, Michel, *Discipline and Punish: The Birth of the Prison* (Alan Sheridan, trans., New York, N.Y.: Vintage Books, Random House 2nd. Ed., 1995, originally published *Surveiller et Punir: Nascence del la Prison* (Paris, France: Editions Gallimard 1975).

Warren, Jule Benjamin, *North Carolina Yesterday and Today* (Raleigh, N.C.: State Department of Public Instruction 1942) The photo of education leaders in North Carolina is on page 168.

Wiley, Calvin Henderson, *The North-Carolina Reader: Containing a History and Description of North-Carolina, Selections in Prose and Verse, Many of Them by Eminent Citizens of the State, Historical and Chronological Tables, and a Variety of Miscellaneous Information and Statistics* (Philadelphia, PA: Lippincott, Grambo & Co. 1851). Other editions and series of the reader are available, including New York, N.Y.: A.S. Barnes & Burr 1859, 1860, 1866, 1868, 1874.