

JOHN C. UNDERWOOD--A CARPETBAGGER
RECONSIDERED, 1860-1873

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PREFACE

The purpose of this essay is to examine the life of John C. Underwood from 1860 to 1873. Initially, research for the essay began as a seminar paper. To research and objectively narrate the last thirteen years of a man's life seemed like a reasonably simple task at the time. However, it soon became apparent that Underwood was no ordinary man and, consequently, the responses he evoked were seldom mild in nature. Those who knew him, both friend and foe, usually reacted with intense feeling whenever his name was mentioned. He had the ability to inspire loyalty as well as a knack for generating a burning hatred. In an age in which the issues themselves were also of the same polarizing quality, the problem of reaching a balanced view was multiplied. Frequently, the conservative and liberal newspapers of the period were undependable as sources because they resorted to the publication of rumors to support their positions. Since the John C. Underwood papers consisted of a scrapbook of over two hundred and fifty pages of newspaper clippings, many of which are unidentified, and a small group of letters, the need for other source material became one of paramount concern.

Other primary source materials, however, were somewhat scattered and occasionally left tantalizing gaps that have simply prevented the author from being more conclusive in some cases.

A few letters of value were found in the Richard Todd Lincoln Collection of the Papers of Abraham Lincoln and in the executive papers of Andrew Johnson. A spotty but extremely valuable source of material was discovered in the court order books, confiscation and judgment dockets and execution and rule books for the United States District Court of the Eastern District of Virginia. This material, heretofore housed in the United States District Court office building in Richmond, has been or is being transferred to the Virginia State Library where an effort is now being made to arrest its deteriorating condition and make it more accessible to scholars. Once collected and cataloged, these materials will provide a rich depository of information for the legal historian. The major source of information on Underwood's activities prior to 1860 is Patricia P. Hickin's work, "John Curtis Underwood and the Antislavery Crusade 1809-1860," (Unpublished M.A. thesis, University of Virginia, 1961).

Some of the controversy surrounding Underwood resulted from his views and personality. In the first place, he took positions that were contrary to those held by the majority of Virginians at the time. Such heresy alone would have been sufficient to gain him the ire of Virginia citizens in the doctrinaire age of slavery. But he went even further than this. To the rest of the American people he posed as one of Virginia's political spokesmen. The Commonwealth was outraged. Born in New York, possessed of a hatred for slavery, and friend of northern

abolitionists, he could hardly lay claim to a sizable Virginia constituency. Virginia newspapers let no chance pass to defame his reputation in whatever manner they saw fit. As the debate over slavery intensified, so did the vitriolic diatribes against Underwood. Gradually, his name came to represent everything that was bad for the Commonwealth. In the process, objectivity fell by the wayside.

Second, Underwood's personality is partially responsible for his fate. He was a man who held strong opinions on issues like slavery and women's suffrage and refused to accept compromise as an intermediate step. Many times his views would have been less reprehensible and maybe even acceptable to his opponents had he not stated them in such rigid and virulent terms. The methods he used to advertise his causes were, at times, crude and combative. To Virginians, he came to symbolize those things which were crass, ignoble, cheap, and unsophisticated. Eventually, he became so infamous in Virginia newspapers that rumors about him, however preposterous, were accepted without question and even embraced as a means of damaging his character.

Although, the nature and inadequacy of the source material, as well perhaps as the controversy of the individual, have halted this study at the brink of unravelling an enigmatic historical figure, these impediments have not prevented an answer to the main question: "Was John C. Underwood a carpetbagger?" This was the charge most frequently thrown at him. It is also the

term that has been applied to him down to the present day. Indeed, the thing which puzzled the author and generated an early interest in the subject was how historians could unabashedly refer to Underwood as the "Carpetbagger Judge" when no study existed of his life after the Civil War. In addressing the question, it is hoped that the author has avoided the proverbial 'pendulum of history.'

Finally, I am grateful to those who have made this essay possible. To Professor Edward F. Younger, who made the original suggestion and willingly guided and encouraged me all the way, goes a large measure of thanks. To Professor Charles B. Dew I am grateful for several invaluable leads and for some candid advice that greatly improved the essay. The greatest debt of all is to my family, Barbara and Kirsten, who graciously accepted my prolonged absences and made other unrepayable sacrifices in my behalf. I alone am responsible for the style, content and conclusions.



I. INTRODUCTION

Until 1961 the place of John C. Underwood in Virginia history had been largely neglected, despite the fact that the constitution that governed the state from 1869 until 1902 was called the "Underwood" Constitution and was drafted under his guidance.¹ There is still no published history of his life and only scattered references to him in Virginia history books. No work, published or unpublished, deals with the last thirteen years of his life. During these eventful and stormy years he served as president of the Virginia Constitutional Convention, was appointed by President Lincoln as consul to Callao, Peru, served as fifth auditor of the United States Treasury, and was, for the last nine years of his life, judge of the United States District Court of Virginia.² Not only has Underwood been neglected,

¹Patricia P. Hickin, "John Curtis Underwood and the Antislavery Crusade, 1809-1860" (Unpublished M.A. thesis, University of Virginia, 1961). (Hereafter cited as "Underwood and the Antislavery Crusade.") The author goes a long way to rescue Underwood from the obscurity to which he had been relegated.

²Ray W. Irwin, "John Curtiss Underwood," in Dictionary of American Biography, ed. Dumas Malone; et. al., 20 Vols: (New York: Charles Scribner's Sons, 1936), XIX, 113-114. Compare James Grant Wilson and John Fiske, eds., Appleton's Cyclopaedia of American Biography, 6 Vols. (New York: D. Appleton and Company, 1889), VI, 210. For a family chronicle see Lucien M. Underwood, The Underwood Families of America, ed. Howard J. Banker, 2 Vols. (Lancaster, Pennsylvania, 1913).

but he has also been historically maligned.³ The most frequently heard charge is that of "carpetbagger." One author has called him an "outstanding example" of those so called "carpetbaggers" who were drawn to the South after the Civil War⁴ for political gain.

Others have unobjectively propagated and perpetuated as truth much of the myth and rumor surrounding his life, and all of the calumny and obloquy. W. H. T. Squires states, "We cannot understand President Lincoln sending such an unspeakable man to be judge in Virginia."⁵ Mary Newton Stanard in a history of Richmond refused to "besmirch the pages of this chronicle" with Underwood's bitter and abusive language.⁶ (Hamilton J. Eckenrode asserted that "This man was the most malignant enemy the Virginia people had to contend with in the Reconstruction."⁷) W. Ashbury Christian commented that there was no mourning in Richmond when

³Perhaps, there is a causal relationship between a scholar's propensity to ignore even a figure of substantial historical import and the uncritical acceptance of a stereotyped image. If he has not been neglected because of his assumed lack of redeeming qualities, little else explains the treatment given to such a prominent individual.

⁴Roy Meredith, Mr. Lincoln's Contemporaries, an Album of Portraits by Matthew B. Brady (New York: Charles Scribner's Sons, 1951), 223.

⁵W. H. T. Squires, Through Centuries Three, A Short History of the People of Virginia (Fortsouth: Printcraft Press, Inc., 1929), 491.

⁶Mary Newton Stanard, Richmond: Its People and its Story (Philadelphia: J. B. Lippincott Company, 1923), 216.

⁷Hamilton J. Eckenrode, "Virginia Since 1865: A Political History, 1865-1945," (Unpublished manuscript, University of Virginia Library, n. d.) 10.

news of Underwood's death was received.⁸ Only Raymond H. Pulley feels it is a mistake to call Underwood a "bitter and unscrupulous carpetbagger in Virginia politics," as historian Richard L. Morton did.⁹

On the surface, Underwood appears to have all the qualifications for the classic image of the carpetbagger. He was born in the North and became an avid antislavery champion. He was a Free-Soiler in 1856 and supported Abraham Lincoln for president in 1860. After the Civil War, he was awarded the office of United States District Judge for the Eastern District of Virginia where he vigorously supported Negro participation in political activities. There is some scant evidence of corruption surrounding his tenure as judge. Both before, during, and after the war he was active in the organization and furtherance of the Republican Party. However, only in the highly qualified sense of his attitude toward the Negro was he akin to the carpetbagger. Significantly, it was this attitude which so outraged his contemporaries that they stopped at nothing to denigrate his character.

A closer look at the last thirteen years of Underwood's life simply does not sustain the charge of carpetbagger. Even

⁸W. Ashbury Christian, Richmond: Her Past and Present (Richmond: L. H. Jenkins, 1912), 342.

⁹Raymond H. Pulley, Old Virginia Restored, An Interpretation of the Progressive Impulse 1870-1930 (Charlottesville: University of Virginia Press, 1960), 60. One scholar rather magnanimously calls Underwood a "semi-carpetbagger" since he had lived in Virginia. See William Edwin Hemphill, Marvin Wilson Schlegel, and Sadie Ethel Engelberg, Cavalier Commonwealth (New York: McGraw Hill Book Company, Inc., Second Edition, 1963), 350. The most incredible thing about all of these statements is their total lack of supporting evidence.

if one uses Richard N. Current's "non-valuational definition,"--
"white northerners who went south after the beginning of the
Civil War and, sooner or later, became active in politics as
Republicans"¹⁰--the label still fails. Underwood is a good
 example of that majority of so called carpetbaggers which Current
 discovered did not fit the stereotype. Rather Underwood falls
 into that group which Current found were impelled by, among other
 things, "patriotic idealism." This is the group who felt they
 had a right and a duty to live in the South. Of course, this
 group disturbed racial relations. "Their doing so was the basic
 cause of the animus against them. This is the reason why the
 honest ones. . .were as thoroughly hated and as strongly
 opposed. . . .Thus the carpetbaggers upset the pattern of race
 relationships, the pattern of Negro passivity, which most white
 southerners considered ideal."¹¹ So it was with Underwood. Yet,
 to echo Current, "We would make little progress if we merely took
 the same old morality play and switched the labels of Evil and
 Good. But surely the time has long since passed when we can
 uncritically accept the 'carpetbagger' stereotype."¹² An
 examination of Underwood's life from 1860 until his death in
 1873, heretofore ignored, will substantiate these conclusions

¹⁰ Richard N. Current, "Carpetbaggers Reconsidered," A Festschrift for Frederick B. Artz, David H. Pinkney and Theodore Ropp, eds. (Durham: Duke University Press, 1964), 144. This is an outstanding article for its balance and perception.

¹¹ Ibid., 152-155.

¹² Ibid., 156.

and, hopefully, lead to a more objective assessment of his historical significance. But first a brief synopsis of his life up to 1860 is necessary.

II. LIFE TO 1860

John C. Underwood was born March 14, 1809, the son of John Underwood and Mary Curtis Underwood who owned a farm in Herkimer County, New York. When he was fifteen years old his father died, leaving the family nothing but the farm and some livestock. The youth began to prepare for college after his father's death. He studied first at Utica Academy, where the principal was a reformer and emancipationist, and then at Fairfield Academy. Both schools were Presbyterian. In 1830 he enrolled as a junior in Hamilton College, Clinton, New York, from which he graduated in 1832 with a Bachelor of Arts degree. Upon graduation he came to Clarksburg (West) Virginia as a tutor in the family of the late Dr. Edward Brake Jackson. While tutoring, Underwood was also reading law, and a year after he returned to Herkimer in 1834 he was examined and licensed in the state of New York. On October 24, 1839, he returned to Virginia and married Dr. Jackson's twenty year old daughter, Maria Gloria, one of Underwood's former pupils.¹³ Returning to New York, he became

¹³The Jackson family of which Maria was a part had a long history of distinguished public service. Her great grandparents had settled in Clarksburg in the late eighteenth century. John J. Jackson, her great grandfather, served with Andrew Jackson in Congress during the late 1890's where they became personal friends. Maria's grandfather was a member of the Virginia Assembly from 1786-1790, of the U. S. Constitutional Convention, and of the Fourth, Sixth, and Seventh Congresses. Her father had served in the Virginia Assembly, the War of 1812, the Seventeenth Congress, and was elected to the Eighteenth but resigned. In addition, she was a double first cousin of General Thomas J. (Stonewall) Jackson. See Roy Bird Cook, The Family and Early Life of Stonewall Jackson (Charleston, West Virginia: Education Foundation, Inc., Fifth Edition, 1967), 9-14.

active in a number of reform movements and gained popularity in central and western New York. He usually stood on the side of sound currency and a protective tariff. He advocated greater accessibility of the Erie Canal and development of the arts and manufacturing. He took some interest in temperance, phonetic spelling, schools and legal reform. But his paramount concern was slavery.¹⁴

In 1840 Underwood helped to organize a branch of the antislavery Liberty Party in Herkimer County. At the same time he became associated with New York abolitionist Gerrit Smith. In 1842 he bought the reform journal Rockton Enterprise and turned it in 1844 into the Herkimer Freeman, an abolitionist journal. Between 1846 and 1848 Underwood began to sell some of his land in Herkimer County¹⁵ in order to launch his antislavery crusade in Virginia. He was convinced that one way to abolish slavery was to educate the lower classes to the fact that slavery had been the source of definite social and economic damage. He hoped, by establishing dairy farms and cheese factories run by free white labor, to demonstrate the advantages of a free labor

¹⁴Hickin, "Underwood and the Antislavery Crusade," 5-21. See also a detailed and accurate obituary in an unidentified newspaper clipping, n. d., "Class of '32," Scrapbook in John C. Underwood Papers, Library of Congress, Washington, D. C., 255. (Hereafter cited as Underwood Scrapbook).

¹⁵Hickin, "Underwood and the Antislavery Crusade," 25. The author does not indicate how much land the Herkimer County Deed Books show Underwood initially purchased. Nor does she state where he got the money to buy the land. His wife is a possibility since the author earlier reported that she supported him in his antislavery crusade, ibid., 13.

society. He chose dairying because it required less labor and because it was familiar to him as an already well established enterprise in Herkimer County.¹⁶

By 1850 Underwood had approximately twenty dairies in operation in Clarke, Fauquier, and neighboring counties which were managed by former Herkimer County dairymen. The dairies averaged about 50 cows each and produced three to four pounds of cheese per cow per day.¹⁷ The dairies and cheese factories in Clarke County were purchased June 13, 1849 in his wife's name, and Underwood apparently ran the whole operation from New York until he purchased the property in Clarke and moved his family there shortly afterwards. Yet, by 1854 there was almost no dairying, the Herkimer men had returned to New York, and the experiment had failed. It is unclear why the scheme was unsuccessful. It does not appear that the reason was solely financial, since Underwood united with Eli Thayer later and tried a similar plan to which Underwood devoted a large sum of money. Harriet Beecher Stowe provides an additional clue. She claimed that Underwood attracted a small colony of abolitionists "a la Garrison" who were much more objectionable than himself. This group appears to have been very outspoken and abrasive, soon gaining the ire of neighbors.¹⁸ Regardless of the reason, Underwood momentarily turned to politics to further his antislavery sentiment.

¹⁶ Ibid., 30-31.

¹⁷ Ibid., 32-46.

¹⁸ See Harriet Beecher Stowe, "Reminiscences," Christian Union, December 7, 1873, Underwood Scrapbook, 257.

After the failure of his experiment, Underwood continued to live in Clarke County. In June, 1856, he attended the Republican National Convention in Philadelphia. He had been elected by the convention delegates of the Republican Party of Virginia that met in Wheeling, September 14, 1856.¹⁹ On the third day of the Philadelphia convention, after most of the delegates had departed for home, he rose and made a rousing speech that closed with a call for a halt to the extension of slavery. "Why had the sceptre departed from the Old Dominion," he shouted. "Is it as Thomas Jefferson declared, because God is just, and His justice will not slumber forever?" He charged that the Southern land had been blighted by the institution of slavery.²⁰ From Virginia, Underwood's wife wrote her husband that the speech had stirred up a great deal of hostility in the Commonwealth. She affirmed her belief in his cause but stated that she did not "believe in courting mob-law or martyrdom."²¹ Even before the Virginia reaction, one of the Maryland delegates, who had anticipated some trouble, invited Underwood to the safety of his home. This was declined.²² On July 26, 1856, the Clarke County citizens met

¹⁹Wellsburg Herald, n. d., Underwood Scrapbook, 8. In March 1856 Underwood had written to Senator Seward explaining that he planned to support him. In the letter he expressed a belief in the rising political importance to Republicanism of the non-slaveholding farmers and laborers. See Richard Grady Lowe, "Republicans, Rebellion, and Reconstruction, the Republican Party in Virginia" (Unpublished doctoral dissertation, University of Virginia, 1968), 12-13. (Hereafter referred to by author's last name only).

²⁰Lowe, 17.

²¹Unidentified newspaper /Evening Post/, June 23, 1856, Underwood Scrapbook, 1.

²²Lowe, 17-18.

and charged Underwood with "atrocious fraud" for presuming to represent them in the convention. They contested his right even to live in the county any longer and threatened to eject him, by force if necessary.²³ Harriet Beecher Stowe asserts that there were threats of lynching.²⁴ Rumors began to circulate again. A rather preposterous one was that Underwood habitually stole Negroes and sold them in Canada at a higher price.²⁵ Underwood himself, in the spirit of the true crusader, seemed to bask in the warmth of epithets such as "exile from Virginia." But the citizens of Clarke County were serious, and Underwood decided to heed their warning and move to New York. On December 28, 1856, he returned to Virginia when he sold his farm equipment and livestock, rented the land and house, and, after an unpleasant visit from the Vigilance Committee, temporarily left the Commonwealth.²⁶

²³Unidentified newspaper [Winchester Virginian], August 5, 1856, Underwood Scrapbook, 3.

²⁴Stowe, "Reminiscences," Underwood Scrapbook, 257.

²⁵Hickin, "Underwood and the Antislavery Crusade," 74-75. See also New York Daily Tribune, n. d., quoting a correspondent to the Evening Post, Underwood Scrapbook, 3. Significantly, this same correspondent also reports that he had been told by some of Underwood's neighbors that the more liberal people in the county were afraid to say anything good about Underwood or espouse antislavery sentiment for fear of being overheard, *ibid.*

²⁶Hickin, "Underwood and the Antislavery Crusade," 74-75. Apparently, when the War broke out, the place was confiscated and the furniture sold at public auction. See Stowe, "Reminiscences," 257. Several reports place the amount of land at 800 acres. See Clement Eaton, The Freedom-of-Thought Struggle in the Old South (Durham: Duke University Press, 1940, Harper Torchbook, Revised Edition, 1964), 265. See also Irwin, Dictionary of American Biography, XIX, 114. Underwood also claimed publicly that his 800 acres was confiscated for no other reason than "violating the Rules of Virginia." See New York Daily Tribune, n. d., Underwood Scrapbook, 3.

In 1857 Underwood joined with Eli Thayer, the Massachusetts congressman previously active in settling antislavery advocates in Kansas, in a scheme to buy up waste lands in Western Virginia for the purpose of building a community.²⁷ Hopefully two things could be accomplished: a cultivation of the reputed, latent antislavery sentiment in this section of Virginia, and a grass roots constituency that would boost Virginia's small Republican party.²⁸ Ostensibly, the idea was to be presented to Virginians as an effort to industrialize the state. This made the plan much more palatable to speculative investors as well as the general citizenry which was always wary of threats to the institution of slavery. About five hundred families were actually settled in the western Virginia town called Ceredo, a well-chosen site which is a suburb of present day Huntington, West Virginia.²⁹ The settlers began to build a church and a school and several light industries were also attracted to the site. By the end of 1857 a Republican weekly, the Ceredo Crescent, had begun publication. Yet by 1865 the town had been reduced to one hundred twenty-five settlers.³⁰

²⁷ A company was chartered and stock issued to finance the venture. It was called the American Emigrant Aid and Homestead Company. For the charter see Hickin, "Underwood and the Antislavery Crusade," Appendix, 142-144.

²⁸ Lowe, 37.

²⁹ Patricia Hickin, "John C. Underwood and the Antislavery Movement in Virginia, 1847-1860," The Virginia Magazine of History and Biography (April, 1965), 164-165. (Hereafter cited as "Underwood and the Antislavery Movement.")

³⁰ Ibid.

The major reason for the failure of Ceredo was the discovery of its real purpose. Gradually, the initial discretion gave way to careless revelations of the primary objectives. Eventually, Underwood was associated with the scheme and several recent, highly publicized incidents had rekindled the ire of Virginians toward him. A package containing abolitionist literature, addressed to Underwood, was "accidentally" broken open in the Culpeper express office.³¹ Moreover, it was commonly known that he was collecting subscriptions for a compendium of Hinton R. Helper's The Impending Crisis to be distributed as campaign literature.³² Finally, the Harper's Ferry raid, which occurred only thirty-five miles from Underwood's Clarke County home, produced further distrust of Underwood. One rumor had a battle between the combatants actually occurring on Underwood's farm.³³ Hence, the demise of Ceredo partially resulted from its identification as a northern foot-in-the-door scheme, exposed in no small part, because of the highly publicised activities of one of the major sponsors.

³¹ Unidentified newspaper clipping, Underwood Scrapbook, 3.

³² Helper also asked Underwood if he would come to North Carolina and campaign for several congressional candidates. "Your voice, as one of the persecuted and proscribed whites of Virginia, would, I doubt not /, / be heard with interest and profit. . . ." Hinton R. Helper to Underwood, October 22, 1860, Underwood Papers.

³³ Millard Kessler Bushong, A History of Jefferson County West Virginia (Charles Town, West Virginia: Jefferson Publishing Company, 1941), 132.

When Ceredo began to wane, Underwood saw the need for Republican control of the national government as a means to end Virginia slavery, and so he turned his attention to the election campaign of 1860.³⁴ For a while, he stumped the New England states where he spoke out for the nomination of William H. Seward. On May 2, 1860, he attended the Wheeling convention of Virginia Republicans, who were meeting to elect delegates to the national convention to be held in Chicago.³⁵ He was elected by his fellow Republicans as one of the four Virginia delegates. Virginia newspapers were incensed over what they considered a second Black Republican convention in the state. The Wheeling platform called for such things as a protective tariff to boost manufacturing and diversify the economy, encouragement of white labor, enactment of a homestead bill, elimination of favoritism to slaveholders in tax laws, and an end to the inequality of state representation. On the issue of slavery, the states were to make the choice with all territories remaining free until the

³⁴ Jack P. Maddex, Jr., The Virginia Conservatives 1867-1879 (Chapel Hill: The University of North Carolina Press, 1970), 11.

³⁵ Underwood, along with several others, had previously recommended Wheeling at a meeting of the Republican National Committee, December 27, 1859, in New York. See Lowe, 51. In the 1859 gubernatorial campaign in Virginia, Underwood had visited western Virginia and proposed a union of Democrats and Republicans for the coming Congressional elections. At that time, he personally advocated a "convention of opposition" to be held in Wheeling in 1860. Hickin, "Underwood and the Antislavery Crusade," 117-118.

states decided.³⁶ These were hardly the things to excite the fancy of most Virginians, and Underwood was certainly not a delegate whom they would have supported had they been given the choice. In Chicago, after Lincoln won the nomination, Underwood urged the delegates to line up behind the nominee and in October 1860 made a number of speeches in the North for the Republican ticket.³⁷

The election of Lincoln was a turning point in the life of John C. Underwood. Previously, his antislavery, free-soil activity had been an individual crusade. Now, he was to become an administrator of measures which were designed to bring about some of the things he had advocated all his life. In a sense, it was a legitimation of efforts previously considered illegitimate. The election certainly was not a mandate. Yet, it did confirm the position of the majority. For the rest of his life, Underwood would take advantage of his new access to power to rigorously administer the policies of the national government in order to advance his views.

³⁶Hickin, "Underwood and the Antislavery Crusade," 127-128. The platform also called for colonization of free Negroes in Central America. See Lowe, 56. Lowe also argues that Underwood considered the Negro inferior, but, nevertheless, tried to empathize with him, *ibid.*, 12n.

³⁷Hickin, "Underwood and the Antislavery Crusade," 133. However, his antislavery activities did not completely end with the election as Hickin has stated. Underwood continued to correspond with the antislavery tractarian Lydia Maria Child, with whom he supplied a list of Virginians to whom she could send antislavery tracts. Lydia Maria Child to Underwood, October 26, 1860; November 15, 1860; and December 6, 1860. Underwood Papers.

III. AS FIFTH AUDITOR

When Abraham Lincoln became president, it was almost certain that Underwood would be rewarded for his past political support as well as his active participation in the Republican Party.³⁸ It was even suggested that he might receive a cabinet post, "If Mr. Lincoln does not hereafter yield to the Southern pressure. . . ."³⁹ Instead, he was nominated and confirmed as United States consul to Callao, Peru on July 26, 1861.⁴⁰ But Underwood did not want the job for several reasons and managed,

³⁸ Underwood had advocated as early as 1858, that Lincoln run for political office. He wrote to Lyman Trumbull in which he stated that he felt Lincoln should seek the Sixth district seat in Springfield. He added that "I want to do something to aid it." Underwood to Lyman Trumbull, December 6, 1858, The Robert Todd Lincoln Collection of the Abraham Lincoln Papers, (Hereafter referred to as the Lincoln Papers) Library of Congress. Trumbull passed the word on to Lincoln, but added that he should not run unless he had a good chance of winning. Lyman Trumbull to Abraham Lincoln, December 7, 1858, Lincoln Papers. Lincoln replied to Trumbull that he had no intent of running for Congress in Springfield. He adds: "I am not spoken of in that connection; and I can scarcely conceive what has mislead Mr. Underwood in regard to that matter." Abraham Lincoln to Lyman Trumbull, December 11, 1858. Roy P. Basler, ed. The Collected Works of Abraham Lincoln, 9 Vols. (New Brunswick: Rutgers University Press, 1953), III, 344-345.

³⁹ W. W. Gitt to Underwood, January 26, 1860, Underwood Papers. See also W. W. Gitt to General George K. Stule, n. d., Underwood Papers in which Gitt claims to have recommended to Lincoln that Underwood be given a cabinet post.

⁴⁰ Irwin, Dictionary of American Biography, XIX, 114.

perhaps through Salmon P. Chase, to get the appointment as Fifth Auditor to the United States Treasury. Underwood stated that he took this position "of less salary and dignity" because it would be easier for him to get his scattered family together again and to clear up any unsettled business that had resulted from his "enforced absence from Virginia."⁴¹ Hence, Underwood resigned as consul to Callao and was confirmed as Fifth Auditor on August 1, 1861.⁴²

Generally, the duties of the Fifth Auditor included examination of expenses and disbursements made by all foreign diplomatic missions. These included salaries paid to consular officials, the costs of arresting seamen charged with crime in foreign countries, and the payments made for relief of destitute sailors.⁴³ The scant evidence available of Underwood's actions during this tenure indicate a passion for honesty and frugality in government expenditures. Concerned with the losses resulting from a lack of instructions on currency conversions, he sent

⁴¹Underwood to William H. Seward, July 31, 1861, Lincoln Papers. See also Lincoln to Chase, May 7, 1861, Basler, The Collected Works of Abraham Lincoln, IV, 359-360.

⁴²Irwin, Dictionary of American Biography, XIX, 114. See also Lincoln to Chase, July 18, 1861, Basler, The Collected Works of Abraham Lincoln, IV, 422 and n:

⁴³Kenneth W. Munder and Henry Putney Beers, Guide to Federal Archives Relating to the Civil War. (Washington: The National Archives and Records Service, General Services Administration, 1962), 199. Underwood served in this position under Francis E. Spinner, elected treasurer in 1861, also of Herkimer County, New York. See Charles Lanman, Biographical Annals of the Civil Government of the United States (James Anglin Publisher, 1876), 399.

out a circular to all foreign consulates establishing a policy in this regard.⁴⁴ Underwood also conducted an investigation for U. S. Treasurer F. E. Spinner when a rumor was started that Lincoln drew his salary in gold while the army was being paid in depreciated greenbacks. He reported that not only was Lincoln not getting paid in gold, he was even failing to draw his salary and as a result had "lost at least four thousand dollars" in interest.⁴⁵

During this same period Underwood was also active in other ways, mostly in support of the war effort. In November 1861 Lincoln had casually suggested that eastern Virginia refugees be organized into a brigade. Yet from the beginning the plan was plagued with difficulties. At first the Union armies failed to establish a firm position in eastern Virginia and only two companies were organized by Colonel William Wall.⁴⁶ At this point Underwood received permission from the War Department to pursue the effort further. His primary concern appears to have been for the "poor laboring white men" who were being taken

⁴⁴William H. Seward to Underwood, February 29, 1863, Underwood Papers. This is a letter approving the circular.

⁴⁵Carl Sandburg, Abraham Lincoln: The War Years, 4 Vols. (New York: Harcourt, Brace and Company, 1939), -III, 289-290.

⁴⁶Underwood to Lincoln, February 17, 1862, Underwood Papers. In this letter Underwood recounts the history of the attempt and requests that Lincoln throw his full support into the effort. He argues that it would be "an act of justice" for these loyal Unionists "who are in an almost starving condition."

advantage of because of their loyalist sentiments.⁴⁷ The plan received a further setback after Underwood was incapacitated by a long illness.⁴⁸ The effort appears to have ended after this. A similar attempt by Underwood to organize a company of black soldiers met with greater success. After the company was raised, it became active in Herkimer County, New York. Underwood commented that "They are a sober, industrious, and religious set of men."⁴⁹ Underwood's duties as Fifth Auditor came to an end with his appointment to the Federal District Court in Virginia.

⁴⁷Letter from Underwood "To the Laboring Men of Virginia," n. d., unidentified newspaper clipping, Underwood Scrapbook. Underwood here reiterates his frequently expressed fear of the future establishment of oligarchic rule in Virginia, 74.

⁴⁸Unidentified newspaper clipping, n. d., Underwood Scrapbook, 85.

⁴⁹Letter from Underwood to "Friend Stebbins," October 29, 1864, unidentified newspaper clipping, Underwood Scrapbook, 85. Underwood also inexplicably stated that they had captured twelve of Mosbey's guerillas.

IV. AS FEDERAL JUDGE--CONFISCATION

After serving as Fifth Auditor for seventeen months, on March 28, 1863 Underwood was appointed United States Judge of the District Court for the Eastern District of Virginia.⁵⁰ Apparently, the Court was established primarily to handle confiscation cases. Underwood scheduled the first Monday in October in the Alexandria court room as the time and place of trial for the first confiscation suit.⁵¹ The new judge's position on confiscation was already well known. Generally, it centered around the Robin Hood idea of taking from the rich and giving to the poor. In addition, it seemed to be motivated by several attitudes: a feeling that former rebels should be punished for their disloyalty, a desire to reward Southern loyalists, and a combination of the Jacksonian appotheosizing of the common man together with the Johnsonian hatred of the wealthy planter class. On Independence Day in 1863, at Alexandria, Underwood set forth these ideas in the following words:

⁵⁰Edward Bates to Underwood, March 28, 1863, Underwood Papers. This is a transmittal of the Commission.

⁵¹Inventory of Federal Archives in the United States: The Federal Courts, Virginia, Series II, No. 45 (Work Projects Administration: Historical Records Survey, 1942), XXVIII. Because of the fact that District Court Records are now being moved from one location to another, Order Book A, the quoted source of this information, could not be located.

And, first, with the extinction of slavery will come the confiscation, sale and subdivision of the old rebel plantations into farms, owned and cultivated by soldiers and other loyal men who have stood by the country in its hour of trial. . . .With the denser white population thus obtained will naturally come a higher civilization, free schools, universal education, arts, manufactures, and a corresponding growth of Christian morality and pure religion. . . . We should even seek to improve the condition of that too often neglected class which produces the food we eat, the clothes we wear, the houses we inhabit, and all that conduces to the comfort, the convenience, and the elegancies of life. . . .⁵²

One newspaper placed the speech second only to Washington's Farewell Address.⁵³ Needless to say, views of this sort were highly unpopular in Virginia at this time. To compound the hostility, Underwood vigorously prosecuted the policy of confiscation, even using the imprecise language in the Confiscation Acts to extend the meaning.⁵⁴

⁵²Unidentified newspaper clipping, n. d., Underwood Scrapbook, 75-79.

⁵³Ibid., 79.

⁵⁴The 1862 Act had called for forfeiture of property for the lifetime of the owner. See James G. Randell and David Donald, The Civil War and Reconstruction (Boston: D. C. Heath and Company, Second Edition, 1962), 285. Underwood, undoubtedly because of his fervent belief in the policy of confiscation, construed the Act as forbidding the return of the property to the owner's descendants as well. In 1869, after former President Johnson's somewhat confusing confiscation policy had been abandoned, the Supreme Court ruled that property could be seized only for the life span of the original owner. See Lowe, 166. Eckenrode claimed that as early as 1866 confiscated property in Virginia had decreased from the 100,000 acres given the Freedmen's Bureau when it was established, to 10,000 acres, most of which was woodland. Eckenrode, "Virginia Since 1865," 13.

The confiscation and sale of rebel property under the 1861 and 1862 Confiscation Acts, heretofore, had been largely ignored. Proceedings had really depended upon the attorney general who had made little effort to enforce the provisions.⁵⁵ But Underwood's court rigidly enforced the law and expropriated more property than any other court in the country. While the rest of the nation confiscated \$163,000 worth of property, Underwood's court alone turned over to the Treasury property valued at \$133,000.⁵⁶ In May, 1864, Underwood wrote to a Hamilton College classmate that he had heard over five hundred suits since being appointed with two hundred coming since October, 1863. He confirmed that the suits involved millions of dollars of real estate. He concluded, perhaps gleefully, that the decrees were "fast converting this city [Alexandria] into a Yankee town." But he quickly added that he preferred dismissal of cases as long as the claimant would take the oath of allegiance.⁵⁷ In Norfolk between 1863-1865 approximately three hundred cases in confiscation were recorded on the docket. Although most of the

⁵⁵Randall and Donald, The Civil War and Reconstruction, 284-285.

⁵⁶Lowe, 163-164. Lowe argues that such zealous administration grew out of Underwood's view of confiscation as a means of reform. Ibid., 166. This is certainly true in the sense that reform was equated with a greater participation in government by the common man.

⁵⁷Underwood to Joseph R. Dixon, May 16, 1864, unidentified newspaper clipping, Underwood Scrapbook, 83. This is another example of the enigmatic nature of the individual. At times, he appeared vindictive, while at other times he could exhibit qualities of compassion and understanding.

property was returned to the owners because of pardons and the swearing of allegiances, the total court costs collected for these cases was over \$6,000.⁵⁸ In Richmond between July 19 and September 9, 1865, 435 cases in confiscation were processed.⁵⁹ Thus, confiscation in Virginia was certainly actively administered. Nevertheless, it is misleading to assert that Underwood was acting alone. Charles Sumner introduced a joint resolution in the Congress to sustain Underwood's views on confiscation.⁶⁰ Moreover, District Attorney Chandler gave his approval in all cases. A much more significant question, than that of who was pushing confiscation, is the one of how the money flowing through the Court was handled.

⁵⁸ Confiscation Court Docket, United States District Court, Eastern District of Virginia, 1863-1865, Virginia State Library, 1-148. All of these cases were approved by L. H. Chandler, United States District Attorney.

⁵⁹ United States District Court, Eastern District of Virginia, "Confiscation Cases Numbers 1-435," July 19-September 9, 1865, Virginia State Library. This does not mean 435 separate cases since one person may have multiple properties involved. The cases are filed in individual envelopes and include the following documents: (1) Libel of information--a statement signed by the individual admitting past allegiance to the Confederacy; (2) Order of Seizure--An order signed by the District Attorney affirming that the subject has signed a "Libel of Information" and that the property should be seized. Upon seizure, the U. S. Marshal signs the document so stating; (3) Order of Process--Sets the time of trial and requires publication in a newspaper. This is the only document signed by Underwood. He is a witness on the Order of Monition; (4) Order of Monition--An order to the U. S. Marshal to publish in a designated local newspaper, for fourteen days, and post on the Custom House door, notification of seizure and the day of the court hearing. On the day of hearing, anyone interested can appear "and make their allegations in that behalf." The first case handled during this period was that of Joseph R. Anderson, head of the Tredgar Iron Works. See Inventory of Federal Archives in the United States, XXIX.

⁶⁰ Samuel A. Foot to Underwood, n. d., Underwood Papers.

To be sure, the conditions for malfeasance were present. Yet no concrete evidence exists of corruption. First, the people surrounding Underwood's court were either relatives or personal friends. On March 1, 1864, the clerk's office was moved from Richmond to Alexandria and Edward J. Underwood, the judge's son, was appointed Clerk of the United States District Court and took the oath of allegiance the same day.⁶¹ The Virginia District Attorney, L. H. Chandler, from 1863-1868 was Underwood's personal friend.⁶² The marshal for Underwood's court, John Underwood, may have been, though evidence is lacking, a relative of the judge.⁶³ Moreover, the court not only handled a great deal of money in cases of confiscation, but also had a huge number of cases in revenue, bankruptcy, and admiralty where large sums of cash were involved. The records show much of this money usually going to the Clerk of the Court (Underwood's son), the Marshal (John Underwood), the printer (for the cost of newspaper ads), the United States Treasury (in cases of violations of Internal Revenue laws), the District Attorney, and, in

⁶¹United States District Court Order Book Number 15, May 12, 1852-March 8, 1861; February 8, 1864-February 6, 1874, 99-100.

⁶²Underwood to Andrew Johnson, July 10, 1865, Andrew Johnson Papers, Library of Congress. -

⁶³During September, 1863 a rumor was circulated that the judge had been captured by guerillas and sent to Richmond. In a letter to the editor, Underwood confirmed that it was not he, but another John Underwood recently returned home from prison confinement, and "a staunch Unionist." It is only speculative whether this same man became the marshal in Underwood's court. Unidentified newspaper clipping, September 14, 1863, Underwood Scrapbook, 81.

cases of seizure of illegal stills, to the informer.⁶⁴ Perhaps, these individuals received part or all of their salary in this manner. An order signed by Judge Underwood on July 1, 1866 stated that Edward J. Underwood receive "out of the funds collected in confiscation cases now in the hands of the Court the sum of seventeen hundred and fifty dollars (\$1,750) for compensation as clerk during the half year ending June 30, 1866."⁶⁵ On January 1, 1867 another order was given for compensation of \$639.79 for the remaining half of the year.⁶⁶ No other orders of salary payments of this nature are recorded. Periodically, Chandler was paid certain sums of money from the monies collected in confiscation cases as well.⁶⁷ No case was found where Underwood received any money himself in these cases. Furthermore, Underwood did establish rules for the handling of money in bankruptcy cases in his court. Rule twenty-eight stated that where monies came into hands of court officers, they must deposit it in "the nearest National Depository," not "to the credit of themselves as individuals, but as said Officers of the Court,

⁶⁴ A typical breakdown for example in a case in revenue shows the following distribution of proceeds gained from the sale of a still: to the Marshal--\$994.75; to the printer--\$20.00; to the District Attorney--\$40.00; to the Clerk of Court--\$30.25; to the informer--\$430.00; to the United States Treasury--\$520. See United States District Court Order Book 15, U. S. v. One Still, Case Number 24, May 25, 1869, 157. There were numerous cases of this nature.

⁶⁵ United States District Court Order Book 15, 100.

⁶⁶ Ibid.

⁶⁷ Ibid., 108, 137.

unless by special order of the Court in special cases."⁶⁸ Thus, although ample opportunities for such things as whiskey rings, real estate speculation, and fund rakeoffs were present, evidence of an incriminating nature is absent. However, there is one case in confiscation that generated an enormous controversy and plagued Underwood for the remainder of his life.

In the summer or early autumn of 1862, L. H. Chandler gave order to seize the property of William N. McVeigh in Alexandria. McVeigh, who had fled to Richmond during the war, was a contractor to the Confederate government for furnishing shoes to the Confederate Army.⁶⁹ When Underwood set up his court in Alexandria in 1863, one of his first needs was to get his family together. Since being driven from his home in Clarke County, his wife had been living with friends near Culpeper Courthouse.⁷⁰ However, the judge was apparently somewhat skeptical

⁶⁸United States District Court Order Book 15, September 20, 1869, 149.

⁶⁹L. H. Chandler to L. R. Tuttle, January 21, 1874, Underwood Scrapbook, 263-265. Much of the early history of this case (as well as many evaluative comments on Underwood's career as district judge) are presented in this letter. The controversy and publicity in this case, in specific, and about Underwood in general, became so intense that in 1874 L. R. Tuttle, Assistant Treasurer of the United States, requested that Chandler, Underwood's superior from 1863-1868, report to him about this case and about Underwood's conduct as judge. The author has used this letter with extreme caution since much of its explanation was not corroborated by other sources.

⁷⁰Dislike for Judge Underwood had reached a point in 1862 that Secretary Stanton found it necessary to issue an order that safeguard be given Mrs. Underwood and her property "consisting of horses, sheep and cattle, now on the plantation of Mrs. Slaughter in the vicinity of Culpepper C. H. Va." Order signed by the Commanding General of the Army of the United States, July 26, 1862, Underwood Papers.

about purchasing confiscated property under the jurisdiction of his court. Nevertheless, the McVeigh property was purchased, outstanding claims of \$2,500 against it were paid, and the deed was placed in Maria's name.⁷¹ After the trial, Maria reputedly offered, through McVeigh's counsel, to release the property complete for \$2,500, but the offer was declined.⁷² When Underwood denied in July, 1865, ever having "purchased or leased out any confiscated property in this or any other city," a reporter went to the county court house in Alexandria and found a deed from Marshal Underwood conveying the McVeigh's property to Maria. On the same property Edward Underwood, John Underwood, and William A. Duncan all owned houses.⁷³ As one fully conversant with the legal system, and having the added advantage of personal

⁷¹Chandler to LeRoy Tuttle, Underwood Scrapbook, 263-265. Chandler reports that Maria purchased the property with her own funds and in her own name, without the judge's knowledge, because she felt him "too scrupulous" to do such a thing. William A. Duncan, the auctioneer in Underwood's court, is reported by Chandler to have confirmed that the deed was in Maria's name and that he (Duncan) was directed by Maria not to tell the judge of her plans. It is difficult to imagine that all of this could have taken place without the judge's knowledge. It is more likely that they both felt uneasy about the affair on the one hand, while feeling justified because of the total loss of their Clarke County home on the other.

⁷²Ibid., 263.

⁷³Unidentified newspaper clipping, Alexandria Gazette, n. d., Underwood Scrapbook, 97. Present Alexandria County Court records only contain two deeds to property owned by Underwood. Both of these pieces of property were owned by Dr. J. W. Bowen and sold for unpaid taxes. They totaled 277 acres. One piece was valued at \$1,908 and sold for \$1,100 (159 acres). The other was valued at \$3,540 and sold for \$810 (118 acres). A John M. Downey was co-buyer. See Arlington Courthouse Deedbook, Numbers 573 and 575, 392-394. (On microfilm, Reel -, Virginia State Library.) Unfortunately, no will for the judge was located.

acquaintance with all "impartial" adjudicators, Underwood successfully beat back each attempt by McVeigh to regain the property. At one point, McVeigh's counsel actually managed to get the case to the Supreme Court on the basis that the President's pardon had cleared the defendant, whereupon, the Court remanded the case to the Circuit Court and ordered it to proceed according to law.⁷⁴ Trial was then set for November 21, 1871, repeatedly delayed on technicalities, and finally decided against Underwood and others who were required to pay a \$20,000 penalty.⁷⁵ Incredibly, Underwood managed to get a stay of execution, and even a new trial after "exhibition of vouchers showing the probable [Italics mine] payment and satisfaction of the plaintiffs demand."⁷⁶ McVeigh became so enraged that he physically assaulted Underwood on a Richmond street one morning as the judge was on his way to his office. McVeigh called him an "hypocritical scoundrel" and charged him with reducing his family to poverty.⁷⁷ Much to Underwood's chagrin, United States Commissioner M. F. Pleasants charged McVeigh with assault, subpoenaed Underwood as a witness,

⁷⁴ Court Record Book, United States Circuit Court, Eastern District of Virginia, November 1869-September 1871, Volume B, Richmond: United States District Court, 491.

⁷⁵ Court Record Book, United States Circuit Court, Eastern District of Virginia, October 1871-April 1875, Volume C, 49, 59, 62, 117. Other plaintiffs involved were William A. Duncan, F. Richards, Samuel Troth, and Thomas Crux.

⁷⁶ Ibid., 117, 168, 174, 179.

⁷⁷ New York Times, November 12, 1873. This was a month before Underwood's death.

and both appeared before the Commissioner on November 17. At that time W. W. Crump, McVeigh's counsel, attempted to bring out the history of the case, but the Commissioner ruled it irrelevant. Instead McVeigh was ordered to appear before a Grand Jury in April, 1874.⁷⁸ Underwood died before the convening of the Grand Jury, apparently of causes unrelated to the attack. On July 6, 1876 McVeigh's property was returned to him because "it is considered and adjudged by the Court that the said sale was irregular and void, and that the plaintiff Wm. N. McVeigh do recover. . .the premises. . .and that he also recover his costs."⁷⁹

Underwood's eager use of confiscation as a means of punishing the rebellious South while championing the common man, as well as his illegal retention of McVeigh's property, increased the hatred for him on the part of Virginians. Most failed to temper their criticism with the acknowledgement of what must have been a sizable financial loss from Confederate sequestration of his Clarke County home. To the majority it was a confirmation

⁷⁸Richmond Whig and Advertiser, November 18, 1873. Two things are worthy of note here. First, although some have asserted that Underwood did not want to press charges because of his non-vindictive nature, it is more likely that he feared public exposure of his illegitimate claim to the property. Second, McVeigh's counsel, W. W. Crump, may have been eager to punish a man who had presided over the confiscation of some of his own property. See United States District Court Order Book 15, U. S. v. W. W. Crump, April 10, 1868, 137.

⁷⁹Court Record Book, United States Circuit Court, Eastern District of Virginia, April 1875-October 1878, Volume B, 244.

of their assumption that he was a carpetbagger. In the context of his life, it was a manifest mixture of idealism coupled with a feeling of justified retribution. This same amalgam of emotions can be seen in another highly controversial chapter of his life--the indictment of Jefferson Davis.

V. AS FEDERAL JUDGE--U. S. v. JEFFERSON DAVIS

Another great controversy that engulfed Underwood during his period as district judge was the indictment of Jefferson Davis for treason. Just as in most events of his life, the judge received much criticism that was warranted and an equal amount that was the result of bigotry or ignorance. Underwood had issued indictments for treason before.⁸⁰ But this was no ordinary case, and certainly promised to be one of the most momentous trials in legal history. Secretary Stanton and Judge-Advocate General Joseph Holt became convinced after an investigation of Lincoln's assassination that the murder was committed with the knowledge and approval of Jefferson Davis. Davis was captured and imprisoned. No evidence was every produced to substantiate their convictions, but President Johnson, for some reason, would not release Davis. Instead, in a cabinet meeting in July 1865, it was decided to try him for treason in the Virginia district court closest to Davis's wartime center of operations. This circuit was presided over by Supreme Court

⁸⁰ Between 1865 and 1866, thirty-nine indictments were filed, though most were never prosecuted. Of these, the most famous were Wade Hampton, Henry A. Wise, William Mahone, Robert E. Lee, James Longstreet, Fitzhugh Lee, Richard H. Hooker, Roger A. Pryor, Jubal A. Early, Robert Ould, William N. McVeigh, James A. Seddon, and John C. Breckenridge. See Judge's Court Docket, United States District Court, District of Virginia, "Criminal Docket, Term 1865," Richmond: United States District Court, 1-7.

Justice Salmon P. Chase with John C. Underwood usually joining him on the bench. The two men were to act as trial judges.⁸¹ To try Davis in this circuit raised an important question for the Johnson administration: Could a jury be found that would find Davis guilty?⁸² Most felt that the answer was no. The Richmond Whig, quoting a Northern journal, agreed "It would have been impossible to obtain a verdict against him in Virginia, unless the jury was packed for that purpose."⁸³ The administration was in a quandary. To pack a jury might outrage even some of the Radicals. To throw support behind the case and lose would be not only embarrassing, but would vindicate a cause supposedly settled by four years of war and countless sacrifices.

Other difficulties plagued the case as well. Justice Chase, overly sensitive to adverse publicity, found all sorts of reasons not to convene the Circuit Court.⁸⁴ First, he objected to holding court in a region still under military rule. Then he disclaimed his legal right to hold a court due to a congressional oversight that had failed to assign judges to their circuits.⁸⁵ When he finally did consent, the impeachment

⁸¹Roy F. Nichols, "United States Vs. Jefferson Davis," in The American Historical Review, Vol. XXXI (January, 1926), 266-284. This is a confusing account of the intricate and involved history of the case.

⁸²Ibid., 267. The administration was not out to see justice done so much as to make a public example of Davis, ibid., 269.

⁸³Richmond Whig and Advertiser, January 1, 1869.

⁸⁴Nichols, "United States Vs. Jefferson Davis," 267-270.

⁸⁵Ibid., 270.

of Andrew Johnson required additional postponements.⁸⁶ Moreover, a large amount of procrastination and indecision was the result of the internecine warfare transpiring between the President and the Radicals. The President wanted to maintain at least some semblance of an impartial trail whereas the Radicals "wanted to make capital out of the Davis Case."⁸⁷ Underwood, at times, was caught in the middle of the battle, though he usually sided with the Radicals. A good example of this was the question of bail. The counsel for Davis tried repeatedly to get him released on bail. The President said it was a matter for the courts. Chase averred it was up to Underwood.⁸⁸ Underwood was hesitant to act due to a lack of instructions from the Radicals. Finally, a group of Congressional Radicals, headed by George S. Boutwell, put a resolution through Congress convincing Underwood that it was an improper time to grant release.⁸⁹ At this point Underwood wrote to Chase that he was not in favor of bail.⁹⁰

A final problem plaguing the case was Underwood himself, a difficulty partially growing out of his peculiar personality. Incapable of dissimulation, blinded by a crusader's zeal, and periodically given to overstatement, Underwood routinely, but

⁸⁶Ibid., 279.

⁸⁷Ibid., 269.

⁸⁸Ibid.

⁸⁹Ibid. In October 1866 Boutwell, answering an inquiry from Underwood, replied that Davis could be given the death penalty for treason. Boutwell to Underwood, October 30, 1866.

⁹⁰Underwood to Chase, June 11, 1866, Andrew Johnson Papers.

perhaps unwittingly, was indiscreet. That is, "He seemed to have a peculiarly unfortunate temperament and an uncanny aptitude for saying the wrong thing at the wrong time."⁹¹ He usually said publicly what others were thinking and saying privately. For example, when he testified before the Reconstruction Committee in 1866, he clearly stated that trials for treason in Virginia would require a packed jury to convict.⁹² He had also allegedly stated that if Davis were found guilty, he would fine him in an amount sufficient to take his Mississippi plantations which he would sell to ex-slaves at fifty cents an acre.⁹³ Remarks such as these disturbed counsel for the defense as well as that of the plaintiff. Such being the case, there was always a decided hesitancy to have the Circuit Court meet without Chase being present.⁹⁴

⁹¹Ibid., 276.

⁹²Ibid. See also Lowe, 223.

⁹³Nichols, "United States Vs. Jefferson Davis," 277. This statement would not be out of character given Underwood's ideas on land re-distribution as witnessed in his confiscation policy.

⁹⁴Nichols also concludes that Attorney General Speed was averse to having the case heard with Underwood alone because he feared "partisan irregularities" and "knew" that Underwood hated Virginians. See Nichols, "United States Vs. Jefferson Davis," 268 and n. In the first place, "partisan irregularities," for the Attorney General, most likely meant the furthering of Radical desires. In the second place, the charge that Underwood "hated Virginians" was one frequently made against the judge, especially in conservative Virginia newspapers. Such a generalization is a distortion of the truth. Underwood hated slavery and abhorred those, Virginians or otherwise, who supported such a labor system.

For a while, Underwood played the role of engaging in delaying tactics. Growing impatient because of the lack of instructions from above, in May 1866, he suddenly convened the Grand Jury and indicted Jefferson Davis for treason. He opened the session with a scathing attack on the people and press of Richmond.⁹⁵ In a rambling speech, he called the masses of Virginia largely uneducated and then reasoned that this was no excuse for "crime in a free government." But then nobody holding so many in abject slavery could claim to be a free government. He stated that the sin of the institution of slavery had kept Virginia in a backward condition. He accused the courts of not respecting the rights of Negroes. He charged the Southern aristocracy with widespread sexual promiscuity. The Virginia newspapers he labelled "treasonable."⁹⁶ A New York Times editorial rightly charged the speech was indiscreet and said

⁹⁵For the text of the speech and the names of the jurors see the New York Times, May 12, 1866. After this speech the charge that Underwood hated Virginians became more widespread. Yet, the text of the speech indicates Underwood's consuming hatred for the institution of slavery. As will be shown later, at the close of his life, he was working to bring industry into Virginia. One scholar has erroneously asserted that on this occasion Underwood seated a jury containing a number of Negroes. The author even included a picture to substantiate the claim. See Philip Alexander Bruce, Lyon Gardiner Tyler, and Richard L. Morton, History of Virginia, 6 Vols. (Chicago: The American Historical Society, 1924), III, 104-105; 86. Yet no definite proof of a mixed jury occurs until the District Court opened on May 6, 1867 with six black Grand Jury members. See Alrutheus A. Taylor, The Negro in the Reconstruction of Virginia (Washington: The Association for the Study of Negro Life and History, 1926), 214. See also New York Times, May 11, 12 and June 4, 1866; May 9, 13, 1867. Regardless of the exact date and number of black jurors, Underwood did place Negroes on a jury in Virginia for the first time in the state's history--a first for which Virginians did not care to be noted. In addition, the mixed jury made Underwood more unpopular than ever.

⁹⁶New York Times, May 12, 1866.

there was no excuse for it. In a perceptive comment, the editorial admitted that the judge was in the "midst of a population among which he is personally unpopular," but that name calling was unlikely to improve the situation. It argued that a federal judge should learn how to do disagreeable things with as little friction as possible. "One should remember that a right thing done in the wrong way is just as bad as doing a wrong thing."⁹⁷ Apparently, some thought that he had done a wrong thing, for after the speech one newspaper reported an attempt had been made to assassinate the judge.⁹⁸ When the court convened again in June, Underwood made another fiery speech, this time telling the jury that he was happy to see them still living.⁹⁹ A New York Times editorial observed, "It would be no surprising thing if there had been such [an assassination attempt]. The state of things in Virginia has by no means become such as to render threats out of place or not to be expected."¹⁰⁰ Needless to say, the people and press of Richmond were not only incensed over Underwood's statements but also over the adverse outside publicity. To make matters worse, while the jury was being impanelled, a small racial disturbance not related to the trial

⁹⁷New York Times, June 8, 1866.-

⁹⁸Unidentified newspaper clipping, Underwood Scrapbook, 128.

⁹⁹New York Times, June 8, 1866.

¹⁰⁰Ibid.

occurred in Richmond which some scholars have hastened to attribute to Underwood's presence in the city.¹⁰¹

On May 1, 1867 George Shea, chief counsel for Davis submitted a writ of habeas corpus to the Circuit Court in which he asked for trial or release on bail.¹⁰² On May 13, 1867, after a two year incarceration, Davis was bailed.¹⁰³ Finally, on February 26, 1869, after the repeated delays described above all charges were dropped and Jefferson Davis became a free man. Few paused to reflect that a man's right to a speedy trial had been denied for almost four years.

For Underwood, the net result was to make him more hated in Virginia than before. His casual remarks about the case and his Congressional testimony were acts of poor judgment. His indiscreet and pugnacious speeches supplied his enemies with ammunition. Yet, as the Washington Chronicle noted, he received a large measure of unjustified criticism. Many had the impression that Underwood alone was delaying the case or that he was responsible solely for the hesitancy to grant bail.¹⁰⁴ Yet it has been shown that even he was impatient with its progress and attempted to speed things up. The fact is that Underwood had little to do with the actual progress of the case or its final outcome. His real function had been one of a servant of the Radicals. In this capacity he also became a lightening rod for resentment.

¹⁰¹Squires, Through Centuries Three, 261. See also Christian, Richmond: Her Past and Present, 282-289.

¹⁰²Writ of Habeas Corpus, May 1, 1817, Underwood Papers.

¹⁰³Nichols, "United States Vs. Jefferson Davis," 274.

¹⁰⁴Washington Chronicle, n. d., Underwood Scrapbook, 131.

VI. AS FEDERAL JUDGE--THE VIRGINIA CONSTITUTIONAL CONVENTION

During the period of Davis's indictment, Underwood had also been active in Virginia Republican politics. Even before this, on December 5, 1864, at the second session of the Alexandria government's legislature, he had been elected as United States Senator from Virginia. But the Congressional Radicals did not consider the state "reconstructed" at this time and refused to seat the Virginia delegation.¹⁰⁵ On February 5, 1866, the Virginia Republicans met in a statewide convention in Alexandria, presided over by the judge. Underwood used the occasion to denounce the state government and to demand that Virginia become a territory.¹⁰⁶ The meeting had been called to establish a government to protect Virginia loyalists who were considered by some to be unsafe under Governor Pierpont's conciliatory

¹⁰⁵Morton, History of Virginia, III, 73-74. Yet Underwood, for some reason, continued to use the franking privilege until the legislature demanded that he stop. See Robert C. Glass and Carter Glass, Jr., Virginia Democracy, A History of the Achievements of the Party and its Leaders in the Mother of Commonwealths, the Old Dominion 3 Vols. (Democratic Historical Association, Inc., 1937), I, 162.

¹⁰⁶Matthew Page Andrews, Virginia, the Old Dominion (Richmond: The Dietz Press, Inc., 1949), 536.

policy.¹⁰⁷ Underwood was suggested as a provisional governor to replace Pierpont whom the Radicals hoped to oust. The judge was labelled by his colleagues ". . .the faithful patriot and distinguished jurist, who has always adhered to the Government with a fidelity which no flattery could seduce, no bribery corrupt, nor fears intimidate. . . ." ¹⁰⁸ No change in governors was made, however, and in February 1867 Underwood was again suggested as the Republican candidate for governor.¹⁰⁹ Before elections could be conducted, on March 2, 1867, Virginia became military district number one in order that the state might be "reconstructed" by the Congress. At the same time, Congress ordered the states to call constitutional conventions for the purpose of addressing themselves to the question of Negro suffrage.

In the Commonwealth of Virginia, elections were held in October 1867 for the purpose of voting on the question of a

¹⁰⁷Eckenrode, "Virginia Since 1865," 10. In July, 1865, Underwood had expressed concern to President Johnson about the fears of Virginia loyalists as follows: "Ten thousand thanks for your plain talk with the rich rebels of Richmond. It will give pain to the hearts of all true men of this State who since the cruel desertion of Pierpont began to fear that they were abandoned by all the powers of the Earth." Significantly, Underwood also expressed his dislike for universal amnesty which might send forth "the worst rebels. . .to devour and prey upon us." Underwood to Johnson, July 10, 1865, Johnson Papers.

¹⁰⁸The American Annual Cyclopaedia and Register of Important Events of the Year 1866 (New York: D. Appleton and Company, 1873), 766.

¹⁰⁹Lowe, 245.

constitutional convention and to elect delegates should this be accepted. The voters decided in favor of the convention. The vote was 107,322 for the convention and 61, 887 against.¹¹⁰ Since those allowed to vote were determined by the March 1867 Reconstruction Acts, the outcome was never really in doubt. Because of a vigorous and well organized campaign, the Radicals elected 72 delegates while the Conservatives won only 33 seats.¹¹¹ Among those elected were several non-native whites and twenty-four blacks.¹¹² This defeat so startled and angered the conservatives that they began in earnest to organize themselves and by 1870 were in complete control of Virginia politics.

When the convention convened in Richmond, December 3, 1867, Underwood was elected President. The vote for the judge reflected, almost like a model, the Radical-Conservative difference in membership--64 votes for Underwood and 33

¹¹⁰Eckenrode, "Virginia Since 1865," 36-37. For a detailed account of the convention see James Douglas Smith, "The Virginia Constitutional Convention of 1867-1868" (Unpublished M.A. thesis, University of Virginia, 1956). See also David L. Pulliam, The Constitutional Conventions of Virginia from the Foundation of the Commonwealth to the Present Time (Richmond: John T. West, 1901), 128. Compare J. N. Brenaman, A History of Virginia Conventions (Richmond: J. L. Hill Printing Company, 1902), 72-76. For a listing of the members by county see ibid., 74-76.

¹¹¹Eckenrode, "Virginia Since 1865," 37.

¹¹²James Douglas Smith, "Virginia During Reconstruction, 1865-1870--A Political, Economic and Social Study," (Unpublished doctoral dissertation, University of Virginia, 1960), 59.

against.¹¹³ The judge did not let the occasion pass to make a speech "abounding in expressions of humility, and phrases of great verbosity."¹¹⁴ Underwood's role in the convention has been viewed differently by various historians. Alrutheus A. Taylor called Underwood "the moving spirit of the convention."¹¹⁵ Robert Ours averred that the Radicals "flocked to the leadership of Federal Judge John C. Underwood" in the convention.¹¹⁶ In spite of W. H. T. Squires' distaste for the judge, he claimed that the "Underwood" Constitution, the basis of Virginia government until 1902, was so named because of the marked influence of Underwood.¹¹⁷ Yet, all of these studies have failed to support adequately these statements. One recent study showed that Underwood's role was less pervasive than these writings suggest.¹¹⁸ In fact, the study indicates that the Constitution was called the "Underwood" Constitution only to distinguish it

¹¹³Eckenrode, "Virginia Since 1865," 39. Brenaman lists the membership as 65 Radicals and 35 Conservatives with 5 undecided. Brenaman, A History of Virginia Conventions, 73. However, the important thing is not the number, but the clear majority of the Radicals. Underwood had won the Radicals support in a party caucus, where the Radical forces opposing him split over two candidates. See Smith, "The Virginia Constitutional Convention of 1867-1868," 65-66.

¹¹⁴Squires, Unleashed at Long Last, 303.

¹¹⁵Taylor, The Negro in the Reconstruction of Virginia, 28.

¹¹⁶Robert Maurice Ours, "Virginia's First Redeemer Legislature 1869-1871," (Unpublished Master's thesis, University of Virginia, 1966), 2.

¹¹⁷Squires, Unleashed at Long Last, 306.

¹¹⁸Smith, "The Virginia Constitutional Convention of 1867-1868," 29n.

from other Virginia constitutions.¹¹⁹ Moreover, an examination of the evidence of Underwood's role also demonstrates that he guided the proceedings rather than provided vigorous leadership. On January 16, 1868, he addressed the convention and advocated the right of the clergy to hold office and the right of the woman and the Negro to vote. As he had done so many times in the past, he presented the egalitarian arguments of Jefferson, Madison, Henry, and other illustrious Virginians. At the same time, he denounced those who disagreed. In conclusion, he expressed the hope that the constitution would be an expression of Virginia's enlightenment.¹²⁰ Two things must be said about this speech. First, it was one of the few active things that Underwood did during the convention. Second, the content indicates that Underwood was a tool of the Radical Republicans and was being directed by them. There is ample evidence to support this conclusion. Elihu Washburne, for example, assured Underwood in a letter that the Republicans in Washington were keeping their eye on the convention and instructed him to get

¹¹⁹Ibid. See also Smith, "Virginia During Reconstruction," 67. Although not a recent study, this is also the view of Richard L. Morton, History of Virginia, III, 120. The burden of proof for the conclusion that the Constitution bears the judge's name because of his vigorous leadership certainly lies with those so concluding. Unfortunately, it appears that this idea has been propagated without any detailed examination of his actual role in the proceedings. Furthermore, most conservative historians of the Commonwealth who have viewed this Constitution in very disparaging terms may have been overly eager to connect it with Underwood as a means of further denigrating his image, or eager to discredit the Constitution because it was tainted with "Underwoodism." Yet, this speculation would not explain the positions of Ours and Taylor whose interpretations remain enigmatic.

¹²⁰Taylor, The Negro in the Reconstruction of Virginia, 232.

a constitution written that would "reflect Virginia's enlightenment."¹²¹ Also, at one point Underwood became so disturbed by Conservative successes that he appealed for Congressional help.¹²² Moreover, Schulyr Colfax wrote to Underwood during the Virginia Convention informing him that he was watching the proceedings with interest since "our success politically. . .depends so largely on the use and judicious action of the Southern Const¹ Conventions, assembled under the Cong¹ policy of Reconstruction. . . ."¹²³ Finally, there is also other rather minor evidence of outside influence.¹²⁴

As one historian has observed, it is difficult to say who the real powers in the convention were. But "as a presiding officer Underwood was amiable, often ineffectual and hardly the man to whip so diverse a group as the Radicals into line."¹²⁵ In a sense, the occasion did not require vigorous

¹²¹Elihu B. Washburne to Underwood, January 6, 1868, Underwood Papers. In the same letter, Washburne apologizes for not being able to come to the convention and "lend some help" because of illness.

¹²²Smith, "The Virginia Constitutional Convention of 1867-1868," 69.

¹²³Schulyr Colfax to Underwood, January 7, 1868, Underwood Papers.

¹²⁴Pulliam, The Constitutional Conventions of Virginia, 133-134. Pulliam mentions such things as the necessity for the military commander to approve the rate of per diem for convention members and the attitude of the convention toward the local military authorities.

¹²⁵Smith, "The Virginia Constitutional Convention of 1867-1868," 147.

leadership. The Radicals were certain to write their program into law. The Conservatives only fought a delaying action, a battle that was solely designed to preserve pride and dignity. In fairness, however, someone had to be the leader. It is to Underwood's credit that he had the respect of so diverse and independent a group of men as to gain their confidence. It is a distortion to call him "the moving spirit." Yet it is equally distorting to gainsay that some type of leadership was required, however ineffectual or manipulated that leadership might be.

In an attempt to discredit Underwood and the Constitutional Convention of 1867-1868, some have charged that it spent more money than other conventions. An examination of the evidence does not support this contention. The total expenditure for the convention was \$145,068.55.¹²⁶ It was in session approximately 120 days (arbitrarily allowing 16 days for holidays). Since per diem was authorized at the rate of \$8.00 per man per day, that alone would have totaled \$100,800.00. The 1850-1851 convention cost \$197,068.15 and it was in session for nine months with 108 delegates. The 1861 convention cost \$166,473.83 and it was in session for 10 months with 157 delegates.¹²⁷ Hence, the 1867-1868 expenses were only a fraction higher relatively than those of other years. As for Underwood

¹²⁶Brenaman, "Cost of Virginia Conventions," A History of Virginia Conventions, 105.

¹²⁷Ibid., 53-105.

himself, he was hesitant to accept money until assured that men like John Marshal and Judge Barbour were paid in the convention of 1829-1830.¹²⁸

The convention adjourned April 17, 1868 after approving the "Underwood" Constitution by a 51-36 vote.¹²⁹ The product was a mixed bag. On the positive side, it initiated many democratic provisions that allowed the state to move almost totally to democratic rule. Four types of taxes were installed--an ad valorem tax on capital stock, a property tax, an income tax on incomes over \$600, and a one dollar per capita poll tax for support of the free public schools. One of its most significant achievements was the inauguration of a free public school system.¹³⁰ It increased the governor's power in the areas of reprieve and pardon and also gave to him the legislative veto. A homestead exemption clause was included to prevent creditors from seizing the homes of delinquent debtors.¹³¹ Voting, office-holding and jury service were not to be restricted by color.¹³² All judges were to stand election every twelve years.¹³³

¹²⁸William F. Taylor to Underwood, December 20, 1867. Taylor was in the State Auditor's office.

¹²⁹Ours, "Virginia's First Redeemer Legislature 1868-1871," 5.

¹³⁰Underwood considered the provision for universal education and the limited property tax as the greatest achievements of the convention. Underwood to Editor, Washington Chronicle, January 7, 1868.

¹³¹Lowe, 293-298.

¹³²Eckenrode, "Virginia Since 1865," 48-49.

¹³³Lowe, 298.

On the negative side, the state's power to issue bonds for the purpose of contracting a debt was limited to those cases of "casual deficits" in the revenue, or for a previous liability, or to provide revenue for war or insurrection.¹³⁴ The state was to be reorganized along the lines of the New England township principle. Because of the wide variances in size and population of Virginia counties, this idea was largely ignored. However, the bureaucratic machinery established to govern these areas was kept. Judicial power was transferred to county judges who were dependent for appointment, tenure and salary upon the state legislature. Moreover, the General Assembly would also appoint all school officials, the Board of Public Works officials, and all other boards.¹³⁵ The concentration of such widespread powers made it possible for one-party rule in Virginia. Consequently, the man who could gain control of the political party in power could gain control over the entire state. Hence, organization politics could become a reality. The Constitution also required the test oath and disfranchised former Confederates.¹³⁶ Such a feature alienated the Conservative forces

¹³⁴Ibid., 294. Here the author is using hindsight for this provision was considered to be a positive reform in that it was designed to restrain graft. In the sense that it has been successful in doing that, it has been a positive feature. For Virginia, it has also been detrimental to its economic growth. It formed the foundation for a policy later known as "pay-as-you-go" which has retarded the state's economic development.

¹³⁵Charles Chilton Pearson, The Readjuster Movement in Virginia (New Haven, 1917), 17-19.

¹³⁶Eckenrode, "Virginia Since 1865," 49.

so that through vigorous effort, by 1870, former loyal members of the Confederacy could vote, Negro suffrage, though possible, was in the hands of hostile whites, and the Conservatives were in full control of the General Assembly. Thus, it is an overstatement and simplistic to assert, as Taylor did, that the "Underwood" Constitution gave Virginia the only democratic instrument of government the state had ever had.¹³⁷ Some of its provisions were democratic while others were either the antithesis of democracy or provided a fertile ground for the growth of a more undemocratic government.

¹³⁷Taylor, The Negro in the Reconstruction of Virginia, 262.

VII. AS FEDERAL JUDGE--FINAL YEARS

After the constitutional convention adjourned in April 1868, Underwood spent his remaining years tending to his court. Even here he continued to evoke passion and hostility in various ways. First he declared all acts of judges prior to ratification of the Fourteenth Amendment illegal unless the jurists were capable of taking the test oath. When this vacated a number of offices, Underwood appointed a board of military officers to sit in Richmond and examine applicants for offices.¹³⁸ Such action was not highly unusual since President Grant was known to want all offices occupied by provisional office-holders vacated.¹³⁹ Nevertheless, Underwood's decision created a great deal of animosity. Additional dislike for him during this time was created when he began releasing on writs of habeas corpus convicted criminals, previously tried under what he felt were illegal courts. The most famous case was that of James Jeter Philips who had murdered his wife and been sentenced to be hanged.¹⁴⁰ Yet, there is no evidence that Underwood freed such people except for reasons of strict legality. The Petersburg

¹³⁸ Unidentified newspaper clipping, Underwood Scrapbook, 211.

¹³⁹ Richmond Whig and Advertiser, January 5, 1869.

¹⁴⁰ Christian, Richmond: Her Past and Present, 294-299.

Times asserted that in spite of such actions, they still favored Underwood to "that bunch on the Supreme Court."¹⁴¹ In addition Underwood was honoring the right of Negroes to testify before him in his court.¹⁴² None of these deeds was likely to gain him much love in Virginia.

Another highly controversial event in Underwood's later life centered around the mayoralty of Richmond. In February 1870, an Enabling Bill for filling vacant offices resulting from removal of military occupation came before the legislature. Conservative delegates saw in it a chance to grab additional offices and passed numerous amendments to the bill that vacated many offices. As General Mahone had already noticed, "The Conservatives seemed even greedier for office than the Carpet-baggers had been."¹⁴³ Governor Walker used this act to appoint Conservatives to office. When he appointed Henry K. Ellyson as mayor, the Radicals contested the issue and claimed George Chahoon as mayor. When the case was appealed to Underwood, he naturally sided with Chahoon. The rivals then carried the case to the Supreme Court of Appeals, a court controlled by Conservatives, and Ellyson became mayor.¹⁴⁴ The citizens of Richmond

¹⁴¹Petersburg Times, n. d., Underwood Scrapbook, -211.

¹⁴²Unidentified newspaper clipping, Underwood Scrapbook, 211.

¹⁴³Jack P. Maddex, Jr., The Virginia Conservatives 1867-1879, 89.

¹⁴⁴Ibid... The contention by Eckenrode that Chahoon appealed to the Supreme Court in frustration is not only incongruent with the rest of Eckenrode's account but also a distortion of the facts. See Eckenrode, "Virginia Since 1865," 70-71. The fact that Chahoon had the support of Richmond Negroes also made anyone supporting him unpopular in the city. To the Richmond residents, Underwood's part in the case was just another manifestation of his hatred for Virginians.

considered Underwood's efforts in the matter just another attempt by him to impose Radical rule upon them. After this controversy, Underwood lived out the few remaining years of his life without creating much fanfare.

On December 9, 1873, the New York Times carried the following terse announcement on its front page:

John C. Underwood, United States District Judge for the District of Virginia, died suddenly at a late hour last night of apoplexy at his residence in Washington. During yesterday he seemed in better health and spirits than usual.

He was buried in Arlington Cemetary beside John Dean, a Hamilton College classmate.¹⁴⁵ Thus ended the stormy career of a highly controversial Virginia figure.

¹⁴⁵Current, "Carpetbaggers Reconsidered," 156.

VIII. CONCLUSION

One historian has observed:

. . .the story of the carpetbaggers has been told mainly by their enemies. Historical scholarship has given its sanction to the propoganda of the victorious side in the Reconstruction War. That propoganda, like most, has its elements of truth, and like most, its elements of distortion and downright falsehood.

In this case, the "elements of truth," though they have received a grossly disproportionate amount of attention down through history, are scarcely evident and certainly not so simplistic as to be unqualifiable. In the Virginia Constitutional Convention, Underwood demonstrated a desire to disfranchise disloyal whites both as a means of punishment and as means of preventing their further political control of the state. His confiscation policy was prosecuted also with a vengeance. Yet these things alone would have been insufficient to gain him the label of carpetbagger. A significant factor of additional importance was his choice of methods and his manner of lobbying for his causes. His obsession with the issue of slavery and Negro equality frequently led him to crude and even ludicrous schemes designed to publicize the undesirability of servitude.¹⁴⁶ The speeches he made at the

¹⁴⁵Current, "Carpetbaggers Reconsidered," 156.

¹⁴⁶One of the most distasteful examples of this occurred in May 1866. Underwood had collected a picture of a black child's back which had been mutilated by a racist slaveholder. Underwood suggested to Northern Republicans that Phineas T. Barnum show the picture around the country in order to gain Republican votes for Congress in the North. See Maddex, The Virginia Conservatives, 41. See also Lowe, 234-235.

court hearings of Jefferson Davis and upon other occasions may have been even counter-productive. Some would argue that they helped to bring the issues to a head, and to those who accord to war the solution of seemingly insoluble problems, such logic is understandable.¹⁴⁷ But for those of a wiser ilk, a better alternative would have been a strategy of moderation and vision. It was in these personal qualities that Underwood was singularly lacking. Undoubtedly, this temperament encouraged those who desired to stereotype Underwood as a carpetbagger. It certainly contributed to the charge that he hated Virginians. This was in spite of the fact that near the end of his life he was attempting to develop Virginia industrially. In 1871 he wrote to Benjamin F. Butler and pleaded with him to use his influence to get some of his New England business friends interested in the industrial development of Virginia. Underwood listed the Commonwealth's abundant natural resources, its good location, and its superb transportation systems.¹⁴⁸

¹⁴⁷ Underwood himself felt that war was the only solution, as he once observed, ". . . can it be expected that our great iniquity, the great cancer on our body politic, will ever be eradicated without pain, and perhaps peril to the very life of the patient." Underwood to Thomas Hornbrook, September 2, 1861, Underwood Papers. This was in spite of the fact that Seward had once warned him that "there is an emancipation-intent in the South--on which we ought to build, and that the danger we are now moving into is that of ignoring this intent and entering war. . . ." William Seward to Underwood, n. d., Underwood Papers.

¹⁴⁸ Underwood to Benjamin F. Butler, April 3, 1871, Underwood Papers. Butler replied that it was no use for him to even try because New England businessmen felt the South was still too unstable to locate there. Butler to Underwood, April 8, 1871, Underwood Papers.

Furthermore, not only is the stereotype Procrustean, it ignores those other factors commonly ascribed to the carpetbagger which Underwood lacked. For example, he never needed or depended on black support for his political offices. He became Fifth Auditor as a reward for past work in organizing the Republican Party. He was appointed federal judge for the same sort of allegiance and perhaps also because of his feelings on confiscation. In addition, he was a Northerner only in the sense of birth and conviction. He was not drawn South after the Civil War, carrying his belongings in a carpetbag, to prey on the carcass of a prostrate region. He had lived in the South most of his life and owned large amounts of property there.

Perhaps the chief reason Underwood was called a carpetbagger, and certainly the source of much of the hatred and hostility shown toward him, was because of his attitude toward the Negro. Yet, even here, he is unlike the recorded image of the carpetbagger whose only interest in the blacks was political. Indeed at least one Negro leader considered Underwood different in his attitude toward blacks. When, in 1866, Underwood was attempting to get Frederick Douglass to establish a press in Virginia in the interest of equal rights the latter replied:

I would be more enclined to come to Alexandria but that I fear my doing so would be taken as a defiance by the old residents of the city. Very long and well known radical abolitionists will render me all object of unusual hostility and will render me less

likely to gain their attention than almost any other colored man. It is not my duty to court violence or martyrdom or to act in any way which can be construed into a spirit of bravado.¹⁴⁹

There are other evidences of a genuine concern for the plight of the Negro. In answer to a war veteran who charged him with favoring "the colored race" Underwood replied:

The true way to keep our race ahead of the colored race is, to prove ourselves more learned, wiser and better men. But let us be generous and give them their full due. Let them grow to their full capacity. . . .¹⁵⁰

In addition, in 1867 he answered a commonly heard charge that three-fourths of the crimes committed in the state were by Negroes by claiming his experience had been different. He stated that in the last four years he remembered only one complaint against "a colored person." He concluded that whites were more avid in their desires to prosecute black criminals. He admitted some petty thievery on their part but added "they are making progress toward physical, educational, mental, and moral

¹⁴⁹ Frederick Douglass to Underwood, November 14, 1866. This is an extremely revealing letter in other respects as well, especially with regard to sectional feelings about Negroes in general. "For sometime yet to come, the future of the colored race, will depend more upon the sentiments and opinions of the people of the North and West than upon those of the South. The sceptre has passed from Virginia and the law from between her feet. The loyal North and West must now and-for sometime to come control not only the destiny of the Negro but that of the nation. . . .When the Liberty to utter my opinions in Virginia shall depend upon a more reliable man than our present Commander in Chief of the Army and Navy, it may be safe for me to accept to establish a press in Virginia."

¹⁵⁰ Underwood to Editor, Washington Chronicle, July 21, 1865.

improvement. . .and should be praised for it."¹⁵¹ Furthermore, he was one of the first to permit Negroes to testify in a Southern Court. He had impanelled Negro jurors on the Grand Jury in the Jefferson Davis Case and in subsequent criminal cases. His confiscation policy was based, in part, on the belief that the federal government had a responsibility to provide the Negro with some land so he could make a living after the war. Finally, he was also attempting toward the end of his life to establish an educational trust at Howard University.¹⁵² It is these enlightened and advanced views which so enraged Virginians that they embraced the label of carpetbagger whenever they referred to him.

Perhaps Underwood's contemporaries who insisted on maligning him can be excused on the grounds that most men are captives of their times. Perhaps it is too severe to indict an era for its lack of clairvoyance or for its inability to recognize those in its midst more far sighted than others. However there is no excuse for the perpetuation of such malignity by those charged with the awesome responsibility, as historians certainly are, of seeking out and propogating the truth.

¹⁵¹Underwood to Editor, New York Times, July 28, 1867.

¹⁵²O. O. Howard to Underwood, n. d., Underwood Papers.

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