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THE CONSTITUTION OF 1868

by JERRELL H. SHOFNER

ON MARCH 2, 1867, CONGRESS enacted a law declaring that no legal government existed in Florida. As a part of the Third Military District, Florida was placed under a commander whose authority was superior to the outlawed state government. The law provided that the state could resume normal relations with the Union when it had adopted the fourteenth amendment and formed a constitution in conformity with the Constitution of the United States. This instrument was to be drawn up by a convention of delegates elected by all eligible male citizens, ratified by the people, and approved by Congress. No persons excluded from political activity by the fourteenth amendment could participate in the formation of this constitution.¹

The old state leaders had been given an opportunity to reform Florida's political and economic structure under the mild reconstruction plan advocated by President Andrew Johnson. They had been unable or unwilling to make an equal place for the newly freed Negroes in their new regime. Meanwhile, President Johnson had lost his Reconstruction leadership to the radical-controlled Congress. The Reconstruction Acts of March 1867 were intended to give the Negro equal political status. These edicts left Floridians the problem of meeting Congressional demands and at the same time devising a working arrangement between the divergent elements of Florida society.²

Native whites were in dire economic straits, bitter in defeat, and alarmed that their social structure was about to be destroyed. Most of their leaders were prohibited from political participation by Congressional laws. Almost half the population were freedmen who had been uprooted from their old life and had not yet found a new place in the state's economic or social structure. With little conception of a free citizen's role in a free society, most Negroes were dependent on Freedmen's Bureau agents for advice and as-

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1. United States *Statutes at Large*, XIV, 428; Caroline Mays Brevard, *A History of Florida*, 2 vols. (DeLand, 1925), II, 133-134.
 2. Walter L. Fleming, *The Sequel of Appomattox* (New Haven, 1919), 115-116; Kathryn Abbey Hanna, *Florida Land of Change* (Chapel Hill, 1941), 296.

sistance in both economic and political matters. Other than Freedmen's Bureau agents, groups interested in the Reconstruction Acts included military officers and federal officials stationed in Florida, a few recent immigrants, and a small number of native whites of Republican persuasion. Among this latter group were some who wanted to help the freedmen gain full political rights to protect themselves. Others hoped to use Negro suffrage to establish control of the state. Some wanted to turn Florida society upside down, while others were willing to work out agreement with the old state leaders if such a course might achieve their ends.

The two extreme elements of the political spectrum were the radical Republicans, who wished to exclude native whites from state politics, and the native Conservatives, who desired continued white control of the state at all costs. These Conservatives were former Whig and Democratic political leaders. As political alignments took shape during the summer and fall of 1867, a group of moderate Republicans was formed. This group, opposed to the radicals and willing to compromise with native whites, became strong enough by early 1868 to dominate the formation of the new state government.

Contrary to popular belief, the Constitution of 1868 was not a radical document imposed on a helpless white population by "carpetbaggers" and Negroes. Unique methods were employed to meet a unique situation. An examination of this document reveals the compromises and concessions that were made to various interests in Florida's population. Though many of them were disfranchised, the Conservative leaders of Florida exerted considerable influence on the constitution-makers.

The Reconstruction Acts confused and divided Conservative leadership. Some Conservatives tried to unite the party and secure support from the newly-enfranchised freedmen, but their efforts generally failed.³ Many native whites, thinking the situation hopeless, refused to participate in politics. Others were wholly

3. Tallahassee *Semi-Weekly Floridian*, April 23, October 27, 1867; *St. Augustine Examiner*, September 21, 1867; *American Annual Cyclopaedia and Register of Important Events of 1868*, (New York, 1869), XIII, 312-313; William W. Davis, *Civil War and Reconstruction in Florida* (New York, 1913), 487; Joe M. Richardson, "The Freedmen's Bureau in Florida," (unpublished Master's thesis, Florida State University, 1959), 63.

concerned with earning a livelihood and could not afford the time. Their greatest obstacle, however, was inability to mingle with Negroes as political equals. While the Conservative group remained weak and divided, vigorous factions were evolving based on support from the new Negro electorate. Negroes were being reached effectively by northern politicians and Freedmen's Bureau officials who had no qualm about rubbing shoulders with colored voters.

Thomas W. Osborn, an assistant to the head of the Florida Freedmen's Bureau, organized Negro voters through a secret fraternal organization called the Lincoln Brotherhood. The Negroes were attracted to this Brotherhood which employed an elaborate system of secret signs and passwords. With a parent lodge in Tallahassee, the Lincoln Brotherhood spread to other communities. By mid-summer of 1867, Osborn headed an organization claiming the fidelity of thousands of Negro voters. The oath of this league read in part, "and I will not vote for . . . any person for any office who is not a brother of this league."⁴

Daniel Richards, William U. Saunders, and Liberty Billings organized the Loyal League of America in Florida to counteract Osborn's political force. Similar in form to the Lincoln Brotherhood, the Loyal League replaced that organization. Richards, a white radical from Illinois, and Saunders, a mulatto ex-barber from Baltimore, were sent by the Republican National Committee to organize the party in Florida. They arrived in late spring of 1867, although Richards had previously been in Florida as a tax commissioner. Liberty Billings was from New Hampshire and had been an officer in a colored Union regiment but was living at Fernandina in 1867. Negroes were told that they could not be recognized as Republicans unless they joined the Loyal League. Using this League as a basis, these three men organized the radical faction of the Republican party. By November of 1867 Richards could write that "Colonel Liberty Billings, Colonel Wm. U. Saunders, and myself have literally created the Republican party in Florida. . . ."⁵

4. John Wallace, *Carpetbag Rule in Florida* (Jacksonville, 1888), 42-44; Richardson, "Freedmen's Bureau," 58-59.

5. George C. Osborn (ed), "Letters of a Carpetbagger in Florida," *Florida Historical Quarterly*, XXXVI (January, 1958), 239, 263; Davis, *Civil War and Reconstruction*, 470; John T. Shufren, *A*

A moderate group centered around the Republican Club of Jacksonville began a humble existence in March of 1867.⁶ Consisting mostly of white federal officeholders from the North and native white Republicans, this group gradually gained strength until it became a dominant force in Florida politics for a brief period. The Republican Club drew support from dissimilar groups because it was pliable and willing to compromise, while the Billings-Richards faction was unswerving in its devotion to radical principles.

During the fall of 1867 voters were registered for an election to decide whether a Constitutional Convention would be held. Conservatives controlled the press and their opposition to a convention was expressed vigorously. With their number badly divided and apathetic, the Conservatives were hardly regarded as a threat to the Republicans who controlled the Negro electorate. When registration was completed, 26,582 persons had registered to vote- 11,148 whites and 15,434 Negroes. In the election, 14,503 voted, with all but 203 favoring the Convention. Since this was a majority of the total registration, the Convention was scheduled for January 20, 1868.⁷

Forty-six delegates elected at the same time the Convention was approved were named to the Convention by the Third Military District. There were forty-three Republicans and three Conservatives on the list; about eighteen were colored. John Wallace, a Negro who served as a page at the Convention, observed that most of the delegates were either grossly ignorant or bent upon self-aggrandizement. According to one historian, "enlightenment and honesty were more than balanced by stupidity and dishonesty." Solon Robinson, a *New York Tribune* reporter, was pleasantly surprised by the parliamentary ability and conduct of a few Negroes, but expressed disgust at the selfish motives of the more able whites. Although these indictments are too critical, there was some justification for them. Some of the Negroes were illiterate and served only as a pool of votes for the contending factions to struggle over. If there were those willing to sell votes, there were

Colored Man's Exposition of the Acts and Doings of the Radical Party South, from 1865 to 1876 and its Probable Overthrow by President Hayes' Southern Policy (Jacksonville, 1877), 8.

6. Davis, *Civil War and Reconstruction*, 472.

7. Samuel S. Cox, *Three Decades of Federal Legislation* (Providence, Rhode Island, 1894), 517-518.

also those willing to buy them. If the Convention was attended by delegates pursuing selfish motives, there were some notable exceptions. Jonathan C. Gibbs, a Negro from the North; J. H. Goss of Marion County; and Eldridge L. Ware of Key West were three such men. There were probably others genuinely interested in framing a good constitution, but their aggregate voice was weak in the din of the Convention.⁸

Location of the Convention in Tallahassee benefited the Billings-Richards faction which drew its support from the heavily populated black-belt counties near the state capital. The delegates of this faction arrived early and Billings and Richards lodged them in a rented house where free liquor and quarters were available. On Saturday before the Convention opened, this faction held a caucus and selected a prospective slate of officers. Richards had written, "we have secured a majority of friends in the Constitutional Convention. . . ." His prediction was borne out when twenty-nine of the forty-six delegates met in Convention on January 20, 1868, and organized according to Richards' plan. C. H. Pearce, a Billings-Richards man and leader of the African Methodist Episcopal Church organization, was made temporary chairman. H. Ford, a Negro from Baltimore, was made temporary secretary. A committee on permanent organization, headed by William U. Saunders, immediately reported Daniel Richards for president. It seemed that the Osborn supporters would be defeated at the outset. Osborn's Negro support had diminished since the Loyal League had been organized. The only resistance to the Billings-Richards group came from W. J. Purman, an ex-Union officer and Freedmen's Bureau agent, who moved for a postponement until the other delegates arrived. This motion set off a long quarrel but Richards was finally seated.⁹

Early in the Convention, J. H. Goss introduced a resolution suspending the collection of taxes and the laws providing punishment for their nonpayment; all who were confined for this offense

8. *Journal of the Proceedings of the Constitutional Convention Begun January 20, 1868* (Tallahassee, 1868), 17; Cox, *Three Decades*, 518; Wallace, *Carpetbag Rule*, 53-57; Davis, *Civil War and Reconstruction*, 497; *New York Tribune*, February 5, 1868.

9. Philip D. Ackerman, "Florida Reconstruction from Walker Through Reed, 1865-1873," (unpublished Master's thesis, University of Florida, 1948), 108; Osborn, "Letters of a Carpetbagger," 261; Dorothy Dodd, "Bishop Pearce and the Reconstruction of Leon County," *Apalachee* (1946), 5-6; *Journal of the Convention*, 3-4, 5.

were to be released. This resolution was directed at a law of January 10, 1866, which levied a three dollar per annum head tax on all adult males. If a person failed to pay it, he could be arrested and sold out for labor until enough money was earned to pay the tax and expenses incurred.¹⁰ The law had operated harshly on the freedmen and the Goss resolution quickly passed with support from all the Negro delegates.

Purman held up progress for three days with dilatory tactics, but the Convention was finally organized in favor of the radical faction. Radicals controlled each of the seventeen committees. The committee on privileges and elections was made up of Saunders, Billings, and C. H. Pearce, the three delegates whose eligibility was most doubtful. Their eligibility had been questioned by Conservatives in a protest to General George G. Meade prior to the Convention but Meade had refused to act. The struggle now shifted to the eligibility question. The group led by Osborn and Purman demanded the ouster of Richards, Billings, Saunders, and C. H. Pearce because they were not residents of the districts from which they were elected. Since one of them was Convention president and the other three comprised the committee on privileges and elections, this was an ambitious request. The committee on privileges and elections ruled that delegates previously approved by the Third Military District could not be questioned. Then, by shrewd parliamentary procedure, the eligibility question was tabled.¹¹

The question was raised once more, however, when George J. Alden moved that John W. Butler, an Osborn supporter from the first district, be seated in place of George W. Walker, a Conservative delegate elected from that district who had not claimed his seat. A renewed debate was thus set off which lasted several days. Parliamentary duels between Purman and Saunders got out of control on several occasions and the sergeant-at-arms was called on to restore order. Solon Robinson observed that the Convention resembled a gladiatorial arena more than a solemn meeting of human beings.¹² This stalemate was caused by the Osborn faction

10. *Ibid.*; *Florida Acts and Resolutions* (1865), 65.

11. Ackerman, "Florida Reconstruction," 112; Brevard, *History of Florida*, II, 138; Hanna, *Florida*, 307; *Pensacola West Florida Commercial*, January 24, 28, 1868.

12. Wallace, *Carpetbag Rule*, 54; *New York Tribune*, February 8, 1868.

which wanted to hold up progress until all the late-arriving delegates were seated. Osborn had been gaining support through a coalition with other federal officeholders and the moderate group from the Jacksonville Republican Club. He had acquired support from two lobbyists with money to spend: Harrison B. Reed, a federal mail agent, and William H. Gleason, a Freedmen's Bureau agent.

Although they had used the same methods successfully, the radical Billings-Richards faction denounced the opposition's tactics. Richards wrote:

We have had a desperate struggle. . . . They are constantly canvassing and using money and whiskey to corrupt the delegates. . . . They have been very confident of . . . turning me out of the chair. . . . All our delegates are poor. . . . All those of easy virtue soon fall prey to these minions of the devil and A. Johnson who has plenty of money.¹³

Reed and Gleason boasted that they had the power to reorganize the Convention and intended to use it. The battle reached a climax on January 31. If Butler were seated, the Osborn faction would have a majority of one. Solon Robinson wrote that Billings and Richards were losing their fight and that the Osborn faction "might make an acceptable constitution, but if they do I will hereafter believe in miracles. . . ." On January 31, N. C. Dennett, an Osborn supporter, was called home on an emergency. This gave the radicals confidence that they could muster a majority and the seating question was brought to a vote. By skillful maneuvering Billings removed the seating question from the debate by a vote of twenty-one to twenty.¹⁴ This demonstrated that the radicals still controlled the Convention. An Osborn delegate moved for adjournment until Tuesday, February 4, and some Negro delegates, misunderstanding his motive, voted for the motion. This temporarily saved the day, but the Osborn group was desperate. Extreme measures were now in order.

After almost two weeks of procedural debates, the radical leaders believed that they could now turn to constitution-making.

13. Osborn, "Letters of a Carpetbagger," 264-265.

14. *New York Tribune*, February 8, 1868; *Journal of the Convention*, 30; *New York Times*, February 2, 1868; *New York Tribune*, February 10, 1868.

When they met on Tuesday, February 4, however, the entire opposition was absent. During the weekend the Osborn group had moved in a body to Monticello to prevent a quorum. The twenty-two remaining members decided that they constituted a majority of the forty-one delegates who had been seated in the Convention. Five of the forty-six delegates elected had never been seated. This "rump" Convention asked Colonel F. F. Flint, commander of the fort at Tallahassee, to arrest fourteen of the seceders. After voting themselves a generous pay bill, the remaining delegates adopted a constitution within two days. Its length lends strength to the story that it was brought from Chicago by Daniel Richards. The twenty-two members present signed the document and dispatched it by messenger to General Meade in Atlanta. The Convention then adjourned until February 15, awaiting instructions from General Meade. Meanwhile, the members organized as a state nominating convention and named a radical ticket for the forthcoming election.¹⁵

At midnight on February 10, the Osborn faction returned from Monticello, entered the capitol, and reorganized the Convention during the night. They had acquired the support of several delegates who had not been previously seated in the Convention.¹⁶ A majority of twenty-four was rounded out by Charles M. Hamilton, a recently-resigned Freedmen's Bureau official. Hamilton ordered two colored radical delegates out of their beds and told them to report to the Convention. Unaware that he was no longer a Bureau official, the two complied.¹⁷

In the earlier part of the Convention, Billings had prevented defection of the less enlightened radical delegates by making in-

15. Osborn, "Letters of a Carpetbagger," 267; Jacksonville *Florida Union*, February 8, 1868; Ackerman, "Florida Reconstruction," 118; *American Annual Cyclopaedia, 1868*, 267; Memorial to Congress from Daniel Richards and William U. Saunders, quoted in Wallace, *Carpetbag Rule*, 69; *ibid.*, 57; *New York Times*, February 7, 1868; Hanna, *Florida*, 307.

16. *St. Augustine Examiner*, February 22, 1868; Osborn, "Letters of a Carpetbagger," 268; William T. Cash, *History of the Democratic Party in Florida* (Tallahassee, 1936), 55-56; John L. Campbell of the second district and W. Rogers of the fifteenth district were Conservative who joined the Convention at this time. A third Conservative, George W. Walker of the first district, never claimed his seat but was replaced by John W. Butler, a moderate Republican, when the Convention was reorganized.

17. *House Miscellaneous Documents*, 40th Cong., 2nd Sess., No. 109, p. 2.

flammatory speeches to the crowds of freedmen gathered outside the capitol. The delegates who lived among the freedmen were thus discouraged from deserting for fear of bodily harm. The success of his speeches was demonstrated the day after the two dele-



DAVID S. WALKER
GOVERNOR OF FLORIDA, 1866-1868

gates attended the midnight reorganization. They were mobbed in the street by freedmen and escaped only after one of them shot and wounded an assailant.¹⁸

18. *St. Augustine Examiner*, March 7, 1868; Wallace, *Carpetbag Rule*, 58.

Richards was deposed as president and replaced by Horatio Jenkins, Jr. A new committee on privileges and elections assumed authority to rule on eligibility of delegates and quickly vacated the seats of Billings, Richards, Saunders, and Pearce. These radicals were replaced by Marcellus L. Stearns, J. E. A. Davidson, Richard Wells, and Ossian B. Hart who were much more pliable than their predecessors.¹⁹

During the next few days both groups met, each claiming to be the lawful Convention. Osborn had the assembly hall in the capitol while Billing and Richards held their meetings in a Negro church or on the public square. The freedmen wanted to storm the capitol building in behalf of Billings, but Conservative Governor David S. Walker had secured support from federal troops to prevent this. Billings and Richards realized that they would lose by default unless they assumed the initiative. Richards called on Governor Walker to arrest those who had usurped the powers of the Convention. Walker replied that he had no authority or desire to intervene in the contest, but assured Richards that peace and order would be maintained. Richards then appealed to Colonel Flint who also declined to interfere. As a last resort, he wrote a long report to General Meade explaining that the governor and the commander of federal troops would not give their support to the legitimate Convention. Meanwhile, Jenkins had proposed to Meade that both contending presidents resign so that a new one might be elected. General Meade informed Richards that he favored this course.²⁰

The General arrived in Tallahassee on February 17 and accepted resignations from both Jenkins and Richards, though Richards rendered his under protest. Meade ordered all original delegates back to the Convention where Colonel John T. Sprague, in full dress uniform, was temporarily presiding. A roll call showed

19. *Journal of the Convention*, 42-47; Wallace, *Carpetbag Rule*, 62.

20. *New York Tribune*, February 17, 1868; Pensacola *West Florida Commercial*, February 18, 1868; D. Richards to Governor Walker, February 5, 1868, quoted in Wallace, *Carpetbag Rule*, 371-372; Jacksonville *Florida Union*, February 28, 1868; Walker to Richards, February 15, 1868, quoted in Wallace, *Carpetbag Rule*, 372; Richards to Colonel Flint, and Flint to Richards, February 15, 1868, *ibid.*, 372-373; Richards to Meade, February 17, 1868, *ibid.*, 373; H. Jenkins to Meade, February 17, 1868, *ibid.*, 373-374; Meade to Richards, February 17, 1868, *ibid.*, 374; *House Miscellaneous Documents*, 40th Cong., 2nd Sess., No. 109, pp. 21-24.

forty-five delegates present. Jenkins was elected president by a vote of thirty-two to thirteen. The "ineligible" delegates were ousted and their replacements were seated. The newly-organized Convention adopted another constitution. The work was again simplified by using a document prepared at another location, this time at Monticello. In drafting this constitution the moderates at Monticello had consulted with such prominent Conservatives as Charles E. Dyke, editor of the Tallahassee *Floridian*, and McQueen McIntosh, a former federal judge who had resigned to support the Confederacy.²¹

With minor corrections this document was accepted on February 25 by a vote of twenty-eight to sixteen. After an ordinance was passed which denied pay to those refusing to sign, nine more delegates signed under protest.²² Of the two constitutions before him, General Meade selected this more moderate one on the grounds that it was signed by a majority of the Convention. He had previously informed Richards that the first document would be acceptable if two more signatures could be obtained.

Another nominating convention was held and Harrison B. Reed was nominated for governor with William H. Gleason for lieutenant-governor. Charles M. Hamilton was nominated for Congress. In the ensuing campaign, this became the regular Republican ticket. The radical candidates remained in the race, but their campaign was hampered by Saunders' defection to the opposition and Liberty Billings' arrest for making incendiary speeches.²³

The Conservatives, encouraged by the split in the Republican ranks, nominated a Union Conservative ticket at Quincy on March 31, 1868. Some Conservative leaders questioned the wisdom of running a Conservative ticket. Editor Dyke of the *Floridian* complained that this would force the Republican factions to coalesce after he had abused one wing and praised the other to promote

21. *St. Augustine Examiner*, February 29, 1868; Jacksonville *Florida Union*, February 22, 1868, and March 7, 1868, quoting *Pensacola Observer; Journal of the Convention*, 34; Edward C. Williamson (ed.), "Florida's First Reconstruction Legislature," *Florida Historical Quarterly*, XXXII (July, 1953), 41-43; Hanna, *Florida*, 265.

22. *Journal of the Convention*, 130-132.

23. Fernandina *East Floridian*, March 5, 1868; Wallace, *Carpetbag Rule*, 57-58; Ackerman, "Florida Reconstruction," 126; Jacksonville *Florida Union*, April 11, 1868.

the split. Their candidates were George W. Scott, an ex-Confederate, for governor and former Whig James W. Hall for lieutenant governor; John Friend, a Northerner, was nominated for Congress. The Conservatives campaigned against the constitution. Most white natives supported this ticket, but others were willing to accept the moderate constitution and the moderate Republican ticket.²⁴

Before an election could be held, the Joint Committee on Reconstruction in Congress had to approve one of the constitutions. George J. Alden and William H. Gleason presented the case for the Monticello document. Daniel Richards and William U. Saunders presented a bitter memorial denouncing the moderate version, both on its merits and method of adoption.²⁵ On April 4, 1868, the Committee decided that only one constitution should be submitted to the people of Florida and selected the Monticello document which had the endorsement of General Meade. The Constitutional Convention had been in session for more than a month and most of its time was spent in a struggle between two factions for control of the new government. Yet both documents were creditable works reflecting significant concepts on the role of government. They differed markedly in only three matters and in each the Monticello document reflected the influence of Conservatives who had helped draft it.²⁶

The radical version made most state and county officials elective. The Monticello constitution created more offices and made them appointive by the governor. The radical document excluded from suffrage all who had held federal office and afterward en-

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24. G. E. Dyke to Edward M. L'Engle, March 23, 1868, L'Engle Papers microfilms, P. K. Yonge Library of Florida History, University of Florida; Davis, *Civil War and Reconstruction*, 520-521; Pensacola *West Florida Commercial*, April 23, 1868; Jacksonville *Florida Union*, March 7, 1868, and March 21, 1868, quoting *West Florida Commercial* and Quincy *Commonwealth*. Both of the latter papers were Conservative. See also Pensacola *West Florida Commercial*, March 10, 1868, and letter of Stephen R. Mallory, A. E. Maxwell, and General William Miller to J. P. Sanderson, D. P. Holland, John A. Henderson, and Edward M. L'Engle, March 26, 1868, and Mallory to L'Engle, April 3, 1868, in L'Engle Papers.
25. *House Miscellaneous Documents*, 40th Cong., 2nd Sess., No. 109, *passim*.
26. Wallace, *Carpetbag Rule*, 350, 358-362, 382-385, 393-394; Jack B. Scroggs, "Carpetbagger Constitutional Reform in the South Atlantic States, 1867-1868," *Journal of Southern History*, XXVII (November, 1961), 492.

gaged in rebellion, and required a lengthy loyalty oath excluding everyone who had supported the Confederacy. The Monticello document was much milder on this point, omitting any reference to the rebellion and requiring a simple oath of loyalty. In apportioning representation, the radical constitution joined some small counties into districts with one representative. The larger counties, which were mostly dominated by Negroes, were given multiple representation according to their population. For example, Leon County was to have seven representatives while Orange, Volusia, Brevard, and Dade shared one. The Monticello constitution modified equal representation in favor of the small white counties. It provided each county with at least one representative and no county more than four. By this method approximately one-third of the voters would elect a majority of the representatives. Since Negro strength was concentrated in about nine counties in the north central part of the state, such apportionment would insure white control in the assembly.²⁷

Daniel Richards was the most vociferous opponent of the Monticello constitution. He was incensed by the failure to proscribe ex-Confederates and the apportionment which distorted numerical representation. He accused Reed and Osborn of selling out to the "vilest rebels." Richards looked on the ex-Confederates as criminals. This sincere hatred was amplified by his defeat in the convention. If the constitution was voted down by the people, Richards hoped to secure appointment as provisional governor under military control.²⁸

Conservatives opposed the constitution mostly on principle because it had theoretically been imposed on them by a hostile Congress and by a convention which they had not selected. They attacked such specific provisions as the increased number of government offices, and increased salaries. Predominantly white counties opposed the appointment of county officials by the governor, but Conservatives in black-belt counties favored this pro-

27. Wallace, *Carpetbag Rule*, 362; Richard E. Bain, "Legislative Representation in Florida: Historic and Contemporary," (unpublished Master's thesis, Florida State University, 1960), 93-94, 114; Scroggs, "Carpetbagger Constitutional Reform," 489.

28. Osborn, "Letters of a Carpetbagger," 275-277; Jacksonville *Florida Union*, April 11, 1868.

vision. The constitution was as favorable as anything which could have reasonably been expected at the time.²⁹

Complying with a Third Military District order, an election for ratification of the constitution and election of state officers was held on the first Monday, Tuesday, and Wednesday in May of 1868. Since the Osborn faction controlled the election machinery by virtue of its Convention victory, it was accused of gross fraud and manipulation of the returns. According to Samuel Pasco, the three day duration of the election was advantageous because election officials could build majorities at night in their homes. Moderate Republicans were accused of openly boasting that they would make the returns show a majority for Reed and the constitution. Conservatives published affidavits "proving" fraud. The Republicans denied this and countered with different affidavits from the same persons. Finally, a Conservative committee appointed to investigate the charges concluded that it would be impossible to ascertain the number and quality of frauds. The election returns showed a majority favoring the constitution - 14,520 to 9,491. Reed was elected governor with 14,170 votes. Scott, the Conservative candidate, received 7,852, while Samuel Walker, the radical, received only 2,262.³⁰

The Constitution of 1868 satisfied no one entirely, yet it made concessions to the divergent groups in the state. Although some of these concessions detracted from the excellence of the document, it was a good Constitution. It embodied the views then prevailing in America concerning the scope and responsibility of government.³¹ It was by far the most liberal organic law up to that time in Florida. The Constitution extended equal rights to all men, guaranteed protection of these rights, and obligated the state to a system of free public instruction so that these newly-granted rights could be exercised effectively. It provided for a

29. Pensacola *West Florida Commercial*, January 13, 1868, March 10, 1868; *St. Augustine Examiner*, March 28, 1868. Edward L'Engle wrote a friend that "the proposed constitution will if adopted not absolutely ruin us." Letter of March 5, 1868, in L'Engle Papers.

30. *American Annual Cyclopaedia, 1868*, 270; Hilary A. Herbert, *Why the Solid South?* (Baltimore, 1890), 141-142; Osborn, "Letters of a Carpetbagger," 278; Cox, *Three Decades*, 517.

31. Rowland H. Herick, *Memoirs of Florida*, 2 vols. (Atlanta, 1902), I, 304; W. E. Burghardt DuBois, *Black Reconstruction* (Philadelphia, 1935), 516; C. Vann Woodward, *Reunion and Reaction*, revised edition (Garden City, 1956), 15.

uniform tax burden on all citizens and state-supported institutions for the physically and mentally handicapped. Its most objectionable features were the provision for disproportionate representation, and the long list of appointive offices to be filled by the governor.

The declaration of rights was expanded and made inclusive. The phrase in the 1865 Constitution "That all freemen, when they form a government, have certain inherent and indefeasible rights . . .," was changed to read "All men are by nature free and equal. . . ." In view of the provisions for representation, however, it would seem that equal political rights were modified by the ante-bellum principle that territory as well as people deserved representation in the legislature.³²

The governor was to hold office for four years and could succeed himself.³³ He could call extraordinary sessions of the legislature and, in cases of disagreement between the two houses, could adjourn them to such time as he thought proper. He had veto power which could be overcome only by a two-thirds vote of both houses. He was to be assisted by a secretary of state, attorney-general, comptroller, treasurer, surveyor-general, superintendent of public instruction, adjutant-general, and commissioner of immigration, all of whom he appointed with the consent of the senate. In each county he was to appoint an assessor of taxes and collector of revenue, a county treasurer, county surveyor, superintendent of common schools, and five county commissioners.

The judicial article expanded the court system to provide justice for the increased free population, but it also added to the list of offices to be filled by gubernatorial appointment. The governor was to appoint three supreme court justices for life or during good behavior and seven circuit judges for eight year terms. In each county he would appoint a county judge, a sheriff, a clerk of the court, and as many justices of the peace as necessary.³⁴ The voters were to elect constables, but no other local officials. The gov-

32. Declaration of Rights, Constitution of 1865, in *Compiled General Laws of Florida* (Atlanta, 1928), V, 4921; Declaration of Rights, Constitution of 1868, in *ibid.*, 4947-4949; Bain, "Legislative Representation," 25-26. The constitution of 1838 had guaranteed each county at least one representative. This was extended in 1868, not to insure representation for isolated counties, but to limit the voting power of the Negroes.

33. Article V, Constitution of 1868, *Compiled General Laws*, 4954-4956.

34. Article VI, Constitution of 1868, *ibid.*, 4956-4957.

error was to be a powerful official and the party controlling that office would have a strong position in the state.

The state recognized its responsibility to provide adequate education for all children without distinction through a uniform system of common schools and a university with free instruction. It was to be a unified system under control of the state superintendent of public instruction. A common school fund was established with revenue from a variety of sources including a percentage of the proceeds from public land sales. There was also provided a property tax of at least one mill for support and maintenance of common schools.³⁵

A state prison and state-supported institutions for the insane, blind, and deaf were to be established.³⁶ A homestead exemption provided that 160 acres of land, or one-half acre of city property, with improvements, and \$1,000 worth of personal property was to be exempt from forced sale under any process of law.³⁷ A capitation tax was authorized but it could not exceed one dollar.³⁸ Taxes were to be uniform on all citizens and no taxes could be used in support of companies chartered by the state.³⁹ Incorporation of eleemosynary and other useful corporations was to be by general law.⁴⁰

A bicameral legislature would hold annual sessions. A census would be taken in 1875 and every ten years thereafter.⁴¹ Representation would be apportioned according to this census except that each county would have at least one representative and no

35. Article VIII, Constitution of 1868, *ibid.*, 4961-4962. These basic provisions for a unified school system have not been greatly altered. This provision stimulated the practice of undervaluing property. By low assessment and high millage the county could reduce the state's share of its tax receipts.

36. Article X, Constitution of 1868, *ibid.*, 4963.

37. Article IX, Constitution of 1868, *ibid.*, 4962.

38. Article XII, Constitution of 1868, *ibid.*, 4964. This poll tax had borne heavily on the freedmen under the 1865 constitution and one of the radicals' first acts was to abolish it. See *ibid.*, p. 6. Although they limited the amount, the moderates incorporated the poll tax in their constitution. It was used in 1885 to disfranchise Negroes. See Eldridge R. Collins, "The Florida Constitution of 1885," (unpublished Master's thesis, University of Florida, 1939), 125, *passim*. This thesis is badly biased in favor of Democratic white supremacists and contains many factual errors, but it remains one of the few sources for this period.

39. Article XII, Constitution of 1868, *Compiled General Laws*, 4965.

40. Article IV, Constitution of 1868, *ibid.*, 4952.

41. Article XIII, Constitution of 1868, *ibid.*, 4965.

county more than four. Senators would number no less than one-fourth nor more than one-half the number of representatives. The old provision for counting Negroes by a ratio of three-fifths their number was dropped.

Suffrage was extended to every male person twenty-one years of age or over regardless of race, color, nationality, or previous condition of servitude. Each voter was required to take an oath to support the State of Florida and the United States Government. There was also a provision that "The legislature shall enact laws requiring educational qualifications for electors after the year 1880, but no such laws shall be made applicable to any elector who may have registered or voted at any election previous thereto."⁴² A miscellaneous provision reiterated the prohibition against civil or political distinctions for reason of race, color, or previous condition of servitude.⁴³

This Constitution was not imposed on a reluctant and helpless population, nor was it the work of benevolent Northerners who wisely provided an equalitarian organic law for the protection of the newly-freed Negroes. It was the product of a struggle between groups of men with widely differing interests. The struggle took place within the framework laid down by the Congress controlled by radical Republicans, but this framework left room for compromise and concession. For reasons of their own the radicals in the Constitutional Convention were unbending in their demands for Negro equality and punishment of ex-Confederates. Native Conservatives, though deprived of participation in the Convention, constituted an important part of Florida's population. They were unwilling to be subjected to domination by northern radicals supported by a Negro electorate.

The normal political process of open debate and open voting broke down in this extreme circumstance. Thereafter, compromise and concession occurred behind the scenes. The unbending radicals lost out to a group of moderate Republicans who were willing to collaborate with certain Conservative leaders, and the Monticello constitution was drafted to their mutual benefit. The two Conservative delegates who joined the Convention only after the Monticello secession were important to the moderates in the close-

42. Article XIV, Constitution of 1868, *ibid.*, 4965-4966.

43. Article XVI, Constitution of 1868, *ibid.*, 4973.

ly divided Convention. Governor Walker's efforts to keep the radicals from recapturing the Convention hall were also vitally important. Less tangible, but just as important, was Conservative willingness to rely on vocal and editorial criticism rather than more extreme forms of resistance.⁴⁴ Osborn had maintained good relations with the military, but General Meade was probably impressed by Osborn's support from some of the local leaders.⁴⁵

Considering their political disability, the Conservatives were well rewarded for favoring the moderates. The apportionment provision insured continued white control, and the mild proscriptive feature against ex-Confederates enabled them to resume political activity. Wide appointive powers resting with the governor aided both Conservatives and moderate Republicans as long as they could elect the chief executive. Willingness to vest such power in the chief executive indicates their confidence in an election victory.⁴⁶ When moderate candidate Harrison B. Reed became governor he rewarded prominent Conservatives with appointments to cabinet positions.⁴⁷

The radical leaders lost because they asked too much and could not accept less since their entire support came from Negroes. Numbering less than half of Florida's population, Negroes were unable to control the government. To do so they would have had to form an agreement with some element of the white population more numerous than that represented by the radicals. Unlike the radicals, the moderate Republicans were willing to seek support wherever it could be found. If the radicals were defeated,

44. Conservative opposition was held in check by fear that the convention might re-assemble and adopt a constitution which excluded ex-Confederates from suffrage. See Mariano D. Papy to Edward M. L'Engle, March 10, 1868, and Stephen R. Mallory to L'Engle, April 3, 1868, in L'Engle Papers.

45. George R. Bentley, "Freedmen's Bureau in Florida," *Florida Historical Quarterly*, XXVIII (July, 1949), 29-31.

46. Scroggs, "Carpetbagger Constitutional Reform," 492. Local control was maintained by whites through this device until 1885, but there was increasing opposition to such an undemocratic system in the white counties. After 1885, Conservatives felt secure enough to alter the system. The weak executive of the 1885 Constitution was partly a reaction to the excessively strong powers wielded by the governor under the 1868 Constitution. After 1885, Negroes were controlled by a poll tax requirement for voting, appointive county commissioners, and bonding requirements for county officials. See Collins, "Florida Constitution of 1885," I, 120-125, *passim*.

47. Brevard, *History of Florida*, II, 146. Robert H. Gamble became comptroller and James D. Wescott, Jr., became attorney-general.

the moderates would then be able to mend their fences with the Negroes. A case in point was Saunders' desertion of the radicals when the moderate Constitution was accepted by Congress. Even Jonathan C. Gibbs and J. H. Goss, the native white radical from Marion County, advised all Republicans to unite and support Reed and the Constitution. It was easy for many moderate Republicans to make concessions to white supremacy since some of them were sympathetic to this principle. W. J. Purman, who had led the parliamentary fights for the moderates, later boasted that he had kept Florida from becoming "niggerized."⁴⁸

48. Bentley, "Freedmen's Bureau in Florida," 36; Jacksonville *Florida Union*, March 21, April 4, 1868; Tallahassee *Weekly Floridian*, August 20, 1872.