

CROSSING JUDGE PARKER’S *LUTEN BRIDGE*:  
PARTISAN POLITICS, ECONOMIC VISIONS,  
AND GOVERNMENT REFORM IN  
RETROSPECT AND PROSPECT:  
A COMMENTARY TO PROFESSOR RICHMAN

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INTRODUCTION

The *Luten Bridge* case,<sup>1</sup> so thoroughly plumbed by the author, raised salient issues of past political affiliation, concern for the economic development of North Carolina and the South, and good government at state and national levels for Judge John J. Parker. Which values would prove decisive in this case involving construction of a controversial bridge, bereft of a connecting road?<sup>2</sup> Parker’s values encompassed links to all three. He was politically linked, albeit indirectly, to Rockingham County.<sup>3</sup> In his pre-judicial political career, and as a judge nurturing a pro-South constitutional jurisprudence, Parker articulated an industrial development policy for the state and for the region.<sup>4</sup> Simultaneously, however, he promoted good government in the progressive tradition, embodying the virtues of democracy, responsibility, accountability, efficiency, and conservation of resources.<sup>5</sup> Parker must have found highly perplexing

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1. *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929).

2. Transcript of Record at 63, 74, 113, 117, *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929) (reporting completion of the bridge across the Dan River without either a connecting road or governmental authorization for such).

3. See *infra* notes 26–33 and accompanying text.

4. See *infra* notes 34–57 and accompanying text.

5. See *infra* notes 58–82 and accompanying text.

the appearance on his court's docket of a case involving a member of the business-oriented North Carolina Republican Party, Benjamin Franklin Mebane, Jr.<sup>6</sup> (the leading advocate of the Luten Bridge), an economic development strategy gone awry, and a dysfunctional county government.

### I. TAR HEEL REPUBLICAN POLITICS

Parker's rise to a federal judgeship began in the Republican political vineyard after he joined the state party in 1908,<sup>7</sup> a decade after a political earthquake had shaken the Old North State<sup>8</sup> to its core. Led by Trinity College graduate and future United States Senator Furnifold M. Simmons,<sup>9</sup> *News and Observer* editor Josephus Daniels, and soon-to-be governor Charles B. Aycock, the Democratic Party in 1898 dislodged from political power a reformist, biracial, populist-Republican alliance.<sup>10</sup> The alliance originated with the post-Civil War plight of the state's numerous small farmers.<sup>11</sup> Politically ignored by the dominant Democratic Party controlled by conservatives ("Bourbons"),<sup>12</sup> dissident agricultural interests initially found a voice in the Farmers' Alliance within the Democratic Party and then in "fusion" with state Republicans.<sup>13</sup>

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6. Brenda Marks Eagles, *Mebane, Benjamin Franklin, Jr.*, in 4 *DICTIONARY OF NORTH CAROLINA BIOGRAPHY* 245 (William S. Powell ed., 1991).

7. *John Parker Good Business Lawyer: Business First and Last With Monroe Man With Politics Convenient Side Line*, *NEWS & OBSERVER* (Raleigh, N.C.), Mar. 9, 1920, at 14; *Parker Scores Revaluation in Speech at Hill*, *CHARLOTTE OBSERVER* (Charlotte, N.C.), Apr. 18, 1920, at 1.

8. See Part IV: *North Carolina Miscellanea*, in *NORTH CAROLINA GOVERNMENT, 1585-1979: A NARRATIVE AND STATISTICAL HISTORY* 647 (1981) (stating "when Carolina was divided in 1710, the southern part was called South Carolina and the northern, or older, settlement, North Carolina, or the "Old North State").

9. See Richard L. Watson, Jr., *Furnifold M. Simmons and the Politics of White Supremacy*, in *RACE, CLASS, AND POLITICS IN SOUTHERN HISTORY: ESSAYS IN HONOR OF ROBERT F. DURDEN* 126-72 (1989); see also JEAN BRADLEY ANDERSON, *DURHAM COUNTY: A HISTORY OF DURHAM COUNTY, NORTH CAROLINA* 328-31 (1990) (reporting acceptance of the name change by the Board of Trustees of Trinity College on December 30, 1924).

10. See Jeffrey J. Crow, *Cracking the Solid South: Populism and the Fusionist Interlude*, in *THE NORTH CAROLINA EXPERIENCE: AN INTERPRETIVE AND DOCUMENTARY HISTORY* 334-42 (1984).

11. WILLIAM S. POWELL, *NORTH CAROLINA THROUGH FOUR CENTURIES* 422 (1984).

12. See *id.* (defining "Bourbons" as leaders of the ascendant Democratic Party controlling state politics who, "like the former ruling French monarchs, were tied to the past and were not progressive").

13. See *id.* at 423-32.

Elections and appointments of unprecedented numbers of state and local Black and Republican officeholders spawned a reaction by the Democratic Party: a memorable white supremacy campaign<sup>14</sup> marked by the Wilmington race riot<sup>15</sup> and intimidation tactics that targeted Populists, Republicans, and especially Blacks, through the party's "Red Shirts" paramilitary arm.<sup>16</sup> Prompt removal of the Black presence from North Carolina politics by means of constitutional revision, featuring the "Grandfather Clause," secured restoration of Democratic ascendancy.<sup>17</sup> The political revolution of 1898–1900 inaugurated what the Democrats hailed as the "Dawn of a New Day" wherein "White Supremacy" would permit public consideration and even division among Whites on progressive issues.<sup>18</sup> The youthful and

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14. *See id.* at 433–38.

15. *See* H. Leon Prather, Sr., *We Have Taken a City: A Centennial Essay*, in DEMOCRACY BETRAYED: THE WILMINGTON RACE RIOT OF 1898 AND ITS LEGACY 15–41 (1998); GLENDA E. GILMORE, *Murder, Memory and the Flight of the Incubus*, in DEMOCRACY BETRAYED: THE WILMINGTON RACE RIOT OF 1898 AND ITS LEGACY 73–93 (1998); LERAE UMFLEET, 1898 WILMINGTON RACE RIOT REPORT 121–55 (2006), available at <http://www.ah.dcr.state.nc.us/1898-wrrc/default.htm> (last visited Sept. 1, 2006).

16. Crow, *supra* note 10, at 340–41. The "Red Shirts" were a powerful white supremacy force that had originated in South Carolina and were linked to some 800 statewide chapters of the White government unions established by the Democratic headquarters in Raleigh, and were designed to suppress political opposition, especially in eastern North Carolina counties with their majorities of Black voters. UMFLEET, *supra* note 15, at 66–68. Making their first North Carolina appearance in October 1898, unmasked "Red Shirts" wore distinctive red outfits in varying styles and of different fabrics and brandished rifles and pistols while parading in towns or riding horses night and day from 1898 into 1900, after which date they disappeared, having restored White political supremacy in North Carolina. *Id.*

17. PAUL LUEBKE, TAR HEEL POLITICS: MYTHS AND REALITIES 6–7 (1990). By popular vote on August 2, 1900, North Carolina ratified Article VI, § 4 (Suffrage and Eligibility for Office) of the state constitution to conform to a model text previously adopted by Louisiana, Mississippi, and South Carolina that imposed a poll tax and literacy test as a condition for registering to vote. John V. Orth, *The North Carolina State Constitution: A Reference Guide*, in 16 REFERENCE GUIDES TO THE STATE CONSTITUTIONS OF THE UNITED STATES 18 (G. Alan Tarr ed., 1993). However, the latter condition was waived for any registrant ("grandfather") eligible to vote on January 1, 1867, on which date the 1835 constitutional amendment, Article I, § 3, cl. 3, was in effect barring from registration any African American or descendant thereof "to the fourth generation inclusive (though one ancestor of each generation may have been a white person)," or his lineal descendant(s) who registered prior to December 1, 1908. *Id.*; POWELL, *supra* note 11, at 438; John L. Sanders, *The Constitutional Development of North Carolina: A Brief History of the Constitution of North Carolina*, in NORTH CAROLINA GOVERNMENT, *supra* note 8, at 892–93 (providing full text of the 1900 Amendment); *Guinn & Beale v. United States*, 238 U.S. 347, 350 (1915) (holding unconstitutional on Fifteenth Amendment grounds a "grandfather clause" provision in the Oklahoma Constitution).

18. POWELL, *supra* note 11, at 438–39; *see also* JACK TEMPLE KIRBY, DARKNESS AT THE DAWNING: RACE AND REFORM IN THE PROGRESSIVE SOUTH 4 (1972) (contending that in the South "the great race settlement of 1890–1910—black disfranchisement and

energetic Parker believed that the outcome of the upheaval had settled the race question by eliminating it from political discourse.<sup>19</sup> In the state's new political dawn, he waged one election campaign after another for Congress, attorney general of North Carolina, and governor<sup>20</sup> as an issue-oriented apostle of Southern Progressivism. Early in his 1920 campaign for the governorship, the Raleigh-based *News and Observer* headlined, "Parker Blossoms Forth as Reformer."<sup>21</sup>

Notwithstanding his positive personal attributes including demonstrated intellectual prowess, oratorical skills and industry,<sup>22</sup> all of Parker's electoral forays came to naught, including his 1920 campaign against Cameron Morrison, a certified Richmond County

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segregation—was itself the seminal 'progressive' reform of the era . . . [because] counting out Negroes politically and socially made possible nearly every other reform [that whites] might undertake").

19. *Mr. Parker's Speech: Address of Acceptance of Republican Nominee for Governor of the State Convention at Greensboro, March 3, 1920*, UNION-REPUBLICAN (Winston-Salem, N.C.), Mar. 11, 1920, at 5; *Republicans Happy in Progress of Negroes to Democratic Party*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Apr. 19, 1920, at 1 ("Mr. Parker . . . stands by the letter and the spirit of the 1900 constitutional amendment . . . . He was seeking to avert a race conflict in his own party and particularly to prevent a 'nigger' campaign in 1920.").

20. See NORTH CAROLINA MANUAL 1911, at 178 (reporting votes cast in 1910 Seventh Congressional District election: John J. Parker (Rep.) 11,006 and Robert Newton Page (Dem.) 14,367); *Official Figures*, UNION REPUBLICAN (Winston-Salem, N.C.), Dec. 7, 1916, at 1. (reporting votes cast in 1916 attorney general of North Carolina election: John J. Parker (Rep.) 120,121 and James S. Manning (Dem.) 187,312); NORTH CAROLINA MANUAL 1921, at 315-16 (reporting votes cast in 1920 Governor of North Carolina election: John J. Parker (Rep.) 230,175 and Cameron Morrison (Dem.) 308,151); *id.* at 316 (reporting Rockingham County vote: Parker (Rep.) 3,592 and Morrison (Dem.) 4,469).

21. *Parker Blossoms Forth as Reformer: Republican Nominee for Governor Tells Students State Needs Tax Reform*, NEWS & OBSERVER (Raleigh, N.C.), May 13, 1920, at 5.

22. Iredell Meares, *John Johnston Parker: An Appreciative Sketch of His Life and Character*, UNION-REPUBLICAN (Winston-Salem, N.C.), Oct. 21, 1920, at 5 (describing Parker as "warm, considerate, approachable, energetic, and loyal[,] . . . a man resolute in will, just in spirit, self-poised and confident, without egotism, bold in expression, fair in argument, eloquent and persuasive in . . . speech, incorruptible in integrity . . . and a gentleman by instinct and a man of culture by study and reflection."); In Memoriam, *Honorable John Johnston Parker, 1885-1958, Proceedings in the United States Court of Appeals, Fourth Circuit, 24-25* (Apr. 22, 1958) (statement of Dr. Frank P. Graham), inserted in 253 F.2d [hereinafter In Memoriam] (recalling student days with Parker: "Parker was always a prodigious worker with little or no waste motion . . . . He led his class in scholarship, won the Greek Prize [sophomore year], the [William Jennings] Bryan Prize [in economics], the Mangum Medal in oratory . . . president of the Dialectic Literary and Debating Society . . . [and] one of those student leaders who helped to build in Chapel Hill a campus climate of opinion and attitudes in which excellence in scholarship, literature, debate, and leadership were no less renowned among students than triumphs in intercollegiate athletics.").

white supremacist “Red Shirt.”<sup>23</sup> The G.O.P. candidate soon realized the impossibility of outflanking Morrison on the race issue in order to make himself heard by the voters on vital economic and social issues.<sup>24</sup> Parker’s dogged efforts to deflect the Democrats’ vicious race-baiting strategy to gain a hearing for his reformist policies would return to haunt him a decade later when his nomination by President Herbert Hoover to the United States Supreme Court came before the Senate for confirmation.<sup>25</sup>

Judge Parker’s decision in the *Luten Bridge* case cast Mebane and his hand-picked Rockingham County Commissioners as the losers. Yet Parker’s political past had forged associations with Republican stalwarts linked to that county. At the inception of his entry into state politics, he became manager of John Motley Morehead’s successful 1908 congressional campaign in the Piedmont’s Fifth District.<sup>26</sup> This Mark Hanna<sup>27</sup> of North Carolina served as chief executive officer of the Leaksville cotton and woolen mills at Spray,<sup>28</sup> established by

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23. See Nathaniel F. Magruder, *Morrison, Cameron*, in 4 DICTIONARY OF NORTH CAROLINA BIOGRAPHY, *supra* note 6, at 328–30; H. Leon Prather, *The Red Shirt Movement in North Carolina*, J. OF NEGRO HIST. 178 (1977) (identifying Cameron Morrison as a leading orator at “Red Shirt” rallies).

24. See Letter from John J. Parker to Marion Butler (Nov. 4, 1920), in MARION BUTLER PAPERS, Box 34, Folder 444 (Southern Historical Manuscripts Collection, University of North Carolina, Chapel Hill, N.C.) (reporting that Parker had become convinced “in the last two weeks of the campaign that nothing could stay the prejudice which was being aroused by the unwarranted injection of the negro issue”); *Parker Wants to Get Away from Negro Issue*, CHARLOTTE OBSERVER (Charlotte, N.C.), Oct. 25, 1920, at 7 (reporting that Parker “made it clear the race issue is not the issue of this campaign and roundly denounced those politicians who are seeking to make it the issue”).

25. See KENNETH W. GOINGS, THE NAACP COMES OF AGE: THE DEFEAT OF JUDGE JOHN J. PARKER 18–53 (1990); 72 CONG. REC. 5849, 5849 (1930) (reporting nomination by President Hoover on March 21, 1930); 72 CONG. REC. 8475, 8487 (1930) (recording roll call vote on Parker’s confirmation held on May 7, 1930: forty-one “nays” thirty-nine “yeas”; with pairs forty-nine “nays” forty-seven “yeas” in a Senate then composed of ninety-six members).

26. Meares, *supra* note 22; *Congressional Committee Meets*, UNION-REPUBLICAN (Winston-Salem, N.C.), Sept. 24, 1908, at 3; U.S. OFFICIAL CONG. DIR., 61st Cong., (2d Sess.) (3d ed.) Apr. 1910 at 90 (reporting votes cast in 1908 Fifth Congressional District election: John M. Morehead (Rep.) 19,228 and Aubrey L. Brooks (Dem.) 18,938); BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS, 1774–1971, S. DOC. NO. 92-8, at 1435 (1996) (reporting that Morehead served in the sixty-first Congress from 1909–11).

27. Mark A. Hanna was an industrialist and Republican politician from Ohio who rose to fame as William McKinley’s campaign manager in 1896, in what is considered the forerunner of the modern political campaign. See FRANCIS RUSSELL, THE PRESIDENT MAKERS: FROM MARK HANNA TO JOSEPH P. KENNEDY 1–41 (1976).

28. DWIGHT B. BILLINGS, PLANTERS AND THE MAKING OF A “NEW SOUTH”: CLASS, POLITICS, AND DEVELOPMENT IN NORTH CAROLINA, 1865–1900, at 79 (1979).

Mebane's father-in-law, James Turner Morehead.<sup>29</sup> Additionally, he became a partner in James T. Morehead Company, a manufacturing and milling enterprise also located in Spray.<sup>30</sup> Meanwhile, he labored to reform the federal-patronage-oriented state G.O.P. by aligning it with the national party's industrial policies and thereby attracting to its ranks members of North Carolina's rising business and commercial interests.<sup>31</sup> When Morehead died in 1923, Parker succeeded him as North Carolina's Republican National Committeeman.<sup>32</sup> Notwithstanding his political links to those associated with Rockingham County's economic development, the outcome of the *Luten Bridge* case clearly suggests that political values carried little weight with Parker, who had severed his party ties immediately upon ascending the federal bench in 1925.<sup>33</sup>

## II. "NEW SOUTH" ECONOMIC UPLIFT AND COSTS

If the bridge to nowhere constituted an essential infrastructure building block to subsequent economic development, then it presumably would be regarded as an important value for Parker. After all, in his pre-judicial career, he had embraced Henry Grady's

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29. Catherine L. Robinson, *Morehead, John Motley, II*, in 4 DICTIONARY OF NORTH CAROLINA BIOGRAPHY, *supra* note 6, at 322.

30. *Id.*; see BILLINGS, *supra* note 28, at 78-80 (reporting on James T. Morehead's entrepreneurial and political activities and elite network of which the Morehead family was a part).

31. See Joseph F. Steelman, *The Trials of a Republican State Chairman: John Motley Morehead and North Carolina Politics, 1910-1912*, 43 N.C. HIST. REV. 31-32, 36-39 (1966) (relating Morehead's efforts to reform the North Carolina Republican Party and discussing Morehead's patronage-oriented intra-party opposition).

32. Letter from John J. Parker to William G. Mebane, (Dec. 27, 1923), in JOHN J. PARKER PAPERS, at Box 1, Folder 5 (Southern Historical Manuscripts Collection, University of North Carolina, Chapel Hill, N.C.); *John M. Morehead Dies of Pneumonia: Funeral Today*, CHARLOTTE OBSERVER (Charlotte, N.C.), Dec. 14, 1923, at 1 (reporting death of Morehead on December 13, 1923); GEORGE L. HART, OFFICIAL REPORT OF THE PROCEEDINGS OF THE EIGHTEENTH REPUBLICAN NATIONAL CONVENTION HELD IN CLEVELAND, OHIO, JUNE 10, 11 AND 12, 1924 RESULTING IN THE NOMINATION OF CALVIN COOLIDGE, OF MASSACHUSETTS, FOR PRESIDENT AND THE NOMINATION OF CHARLES G. DAWES, OF ILLINOIS, FOR VICE PRESIDENT 129, 201 (Tenny Press 1924) (reporting John J. Parker as a member of the Republican National Committee).

33. 64 J. OF THE EXECUTIVE PROC. OF THE SENATE OF THE U.S.A. 48, 149-50 (69th Cong., 1st Sess. 1925-26) (reporting nomination by Calvin Coolidge on December 8, 1925 of John J. Parker to be United States Circuit Judge for the Fourth Circuit, vice Charles A. Woods, deceased, and reporting that the Senate did advise and unanimously consent on December 14, 1925 to the appointment of John J. Parker); *Parker Will Resign from Committee at Once He Announces*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Oct. 6, 1925, at 1; *Parker Getting Ready to Don Judicial Robe*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Oct. 9, 1925, at 20 (reporting resignation as Republican National Committeeman from North Carolina).

“New South” creed in proclaiming industrialization as the wave of the future.<sup>34</sup> Progressives like Parker believed that such economic development would elevate people to a higher stage of civilization and integrate the South into the national culture, thereby promoting freedom of thought throughout the region.<sup>35</sup>

Thus, in his 1920 gubernatorial campaign, Parker declared that, if elected: “I would encourage industrial development. I believe that a man who builds a factory confers a blessing upon the state. He furnishes investment for capital, employment for labor, and a home market for the farmer’s product.”<sup>36</sup> Republican tobacco manufacturer James B. Duke provided a model of Parker’s vision to be emulated: “humble beginnings . . . a business of world-wide importance . . . and . . . the wealth which resulted from his Herculean labors for the relief of suffering, the advancement of religion and the support of education.”<sup>37</sup>

Yet economic development and its associated infrastructure incurred costs borne by the public in the form of taxes. “I am a tax reformer,” Parker declared in 1920.<sup>38</sup> The state legislature enacted the Revaluation Act of 1919 to avoid debilitating revenue-raising limitations frozen into the North Carolina Constitution adopted in 1868.<sup>39</sup> Thereafter, the state tax commission revised real property valuations to be paid, the gubernatorial candidate contended, predominantly by “the small farmer, the home owner, and the

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34. See John J. Parker, Graduation Address at the University of North Carolina, in 54 UNIVERSITY OF NORTH CAROLINA RECORD: THE ONE HUNDRED TWELFTH COMMENCEMENT 5 (1907); *Mr. Parker Says the South Is in Need of Political Freedom*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Oct. 31, 1920, at 8. On Grady and the “New South” creed, see Dewey W. Grantham, *Henry Woodfin Grady*, in 9 AMERICAN NATIONAL BIOGRAPHY 366–69 (1999); Henry Woodfin Grady, *The New South*, Speech at New York, New York (Dec. 1886), in THE NEW SOUTH: WRITINGS AND SPEECHES OF HENRY GRADY 1, 11 (1971) (advancing the author’s vision for the post-Reconstruction rebuilding of the South and asserting that while “[t]he old South rested everything on slavery and agriculture . . . the new South presents . . . a social system compact and closely knitted, less splendid on the surface, but stronger at the core—a hundred farms for every plantation, fifty homes for every palace—and a diversified industry that meets complex needs of this complex age”).

35. DEWEY W. GRANTHAM, *SOUTHERN PROGRESSIVISM: THE RECONCILIATION OF PROGRESS AND TRADITION* 26 (1983).

36. *Parker Would Favor a Compensation Act: Discusses Relations of Labor and Capital in His Lexington Speech*, GREENSBORO DAILY NEWS, June 27, 1920, at 2.

37. John J. Parker, *The Challenge of Our Changing World*, DUKE ALUMNI REG., Jan. 1957, at 16, 16.

38. *Republicans in Burke Hear John J. Parker*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Sept. 21, 1920, at 3.

39. *Id.*; see Act of March 11, 1919, ch. 84, 1919 N.C. Sess. Laws (Gen. Pub.) 115.

te[n]ant.”<sup>40</sup> Parker had then argued for a progressive income tax as “the fairest of all taxes, for it taxes in accordance with ability to pay.”<sup>41</sup>

Parker perceived government, endowed with taxing and regulatory powers, as a positive force for promoting agricultural and industrial progress,<sup>42</sup> not through ownership of the means of production,<sup>43</sup> but rather by providing the necessary infrastructure: “a decent system of schools,”<sup>44</sup> “a state system of roads, a state warehouse system, a rural credit law.”<sup>45</sup> Linking the interests of the state’s developing industries to the national Republican Party’s economic program, he endorsed a protective tariff, anathema to the “tariff for revenue only” tradition among Southern Democrats.<sup>46</sup> Parker’s strategy aimed to bring prosperity to the region’s cotton mills as tariffs had “for half a century” brought prosperity to those in New England.<sup>47</sup> State regulatory power might be required to ameliorate industrial conflicts and protect labor. Although Parker rejected compulsory arbitration of labor-management disputes, he favored creation of a government mediation board to resolve such disputes involving private businesses and “creation of machinery by which disputes between public service corporations and their

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40. *Parker Attacked Revaluation Act*, MORNING HERALD (Durham, N.C.), Apr. 20, 1920, at 3; *Parker Scores Revaluation in Speech at Hill*, *supra* note 7.

41. John J. Parker, Address to the Members of the General Assembly of North Carolina (July 17, 1920), at 3 (transcript available in the North Carolina Collection of Wilson Library at the University of North Carolina at Chapel Hill).

42. *Extract from Speech of JNO. J. Parker: Something About State Politics—The State Must Encourage Agriculture*, UNION-REPUBLICAN (Winston-Salem, N.C.), July 8, 1920, at 1; *Hon. John J. Parker: The Republican Candidate for Governor Speaks to a Large Audience—Many Ladies Present—Issues Very Clearly Discussed*, UNION-REPUBLICAN (Winston-Salem, N.C.), Sept. 30, 1920, at 6; *see also* KIRBY, *supra* note 18, at 131–54 (describing progressivism and agriculture).

43. *See* W.T. Bost, *North Carolina Republican Convention Here: Feast of Brotherly, Sisterly Love*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Mar. 4, 1920, at 1.

44. *Parker Makes Speech in North Wilkesboro*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Sept. 26, 1920, at 8.

45. *Mr. Parker Says the South Is in Need of Political Freedom*, *supra* note 34.

46. SIDNEY RATNER, *THE TARIFF IN AMERICAN HISTORY* 31 (1972) (noting that most Democrats traditionally favored tariffs enacted for revenue purposes only—to meet the fiscal needs of the national government—as distinguished from tariffs designed not only to raise revenue, but also to impose duties on imported goods sufficient to protect manufacturing enterprises and thereby stimulate them).

47. *Election of Coolidge Means Prosperity, Says J.J. Parker*, GREENSBORO DAILY NEWS (Greensboro, N.C.), Nov. 2, 1924, at D4 (Parker was likely referring to the Morrill Tariff Act of 1861 and its progeny); *see also* RATNER, *supra* note 46, at 112–13 (noting that the Morrill Act was “the first of a long series of Civil War and post-Civil War highly protective tariffs that helped to put and to keep the Republicans in power by eliciting the support of iron, cotton, woolen, and other industrialists”).



employees can be adjusted without the suffering which arises from strikes and lockouts."<sup>48</sup> Parker in 1920, encouraged by Fusionist ex-United States Senator Marion Butler,<sup>49</sup> also called for a state workmen's compensation law and laws to protect women and children in mills and factories.<sup>50</sup> Once on the federal court of appeals, Parker undertook to develop a Southern regional constitutionalism protective of both labor and business.<sup>51</sup> The bituminous coalfields of southern West Virginia provided the context. Situated farther from ultimate coal markets in the Great Lakes region than were competing Northern mines, those in the South depended on restraining both the costs of mine labor and coal transportation in order to offer competitive prices in Northern industrial markets.<sup>52</sup> Parker sought to cloak this vital regional industry with a protective judicial mantle.<sup>53</sup>

However, the judge's pronounced solicitude for regional economic development found no place in his *Luten Bridge* opinion.

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48. *Parker Would Favor a Compensation Act*, *supra* note 36.

49. See JAMES L. HUNT, *MARION BUTLER AND AMERICAN POPULISM* 243–44 (2003).

50. See Letter from Marion Butler to John J. Parker, (Mar. 15, 1920) in *MARION BUTLER PAPERS*, *supra* note 24, at Box 33, Folder 432; Letter from John J. Parker to Marion Butler, (Jan. 24, 1920), in *id.* at Box 32, Folder 428; *Parker Would Favor a Compensation Act*, *supra* note 36; *John Parker Speaks to Hickory People*, *CHARLOTTE OBSERVER* (Charlotte, N.C.), Oct. 30, 1920, at 3.

51. See Peter Graham Fish, *Torchbearer for Pre-New Deal Southern Economic Development: Judge John J. Parker of the U.S. Court of Appeals for the Fourth Circuit*, in *AN UNCERTAIN TRADITION: CONSTITUTIONALISM AND THE HISTORY OF THE SOUTH* 266–68 (1989).

52. See George Brown Tindall, *The Emergence of the New South 1913–1945*, in 10 *A HISTORY OF THE SOUTH* 318–23, 336–37, 440–41 (Wendell Holmes Stephenson & E. Merton Coulter eds., 1967) (reporting regional wage differentials in a colonial Southern economy); C. Van Woodward, *Origins of the New South, 1877–1913*, in 9 *A HISTORY OF THE SOUTH* 306–20 (Wendell Holmes Stephenson & E. Merton Coulter eds., 1967) (reporting regional wage and freight rate differentials in a colonial Southern economy); GAVIN WRIGHT, *OLD SOUTH, NEW SOUTH: REVOLUTION IN THE SOUTHERN ECONOMY SINCE THE CIVIL WAR* 156–65 (1986).

53. His opinion in *International Union, United Mine Workers of America v. Red Jacket Consolidated Coal & Coke Co.*, 18 F.2d 839 (4th Cir. 1927), *cert. denied sub nom. Lewis v. Red Jacket Consol. Coal & Coke Co.*, 275 U.S. 636 (1927), achieved notoriety in 1930 at the time of his Supreme Court nomination. Peter Graham Fish, *Red Jacket Revisited: The Case that Unraveled John J. Parker's Supreme Court Appointment*, 5 *LAW & HIST. REV.* 51–53 (1987); JOHN ANTHONY MALTESE, *THE SELLING OF SUPREME COURT NOMINEES* 56–59 (1995). The opinion sought to limit marginally the ability of John L. Lewis's United Mine Workers Union to impose a national wage scale disadvantageous to Southern mine operators and labor. Fish, *supra* note 51, at 271–74. The same policy preference was evident in his opinion for a three-judge district court in *Anchor Coal Co. v. United States*, 25 F.2d 462 (S.D.W. Va. 1928), in which he curbed the power of the Interstate Commerce Commission, an independent regulatory agency, to fix freight rates disadvantageous to carriers of Southern bituminous into Northern markets. Fish, *supra* note 51, at 268–71.

The reason is apparent. As Parker caustically described it in a case memorandum written prior to oral arguments at the summer session of the court of appeals held at Asheville,<sup>54</sup> the bridge was a structure erected “in the midst of the wilderness, which is perfectly useless to the county or to anybody else.”<sup>55</sup> That the bridge builder had failed to mitigate damages caused by the county’s breach of an admittedly valid contract further irked Parker.<sup>56</sup> In the garb of a tax reformer, he must have recognized that the costs of Rockingham County’s high bonded indebtedness would be borne not by those industrialists whom the bridge would primarily benefit, but by those who paid real property taxes in a county where 459 of its 579 square miles were devoted to farming and nearly eighty-seven percent of its population lived in rural areas.<sup>57</sup>

### III. “GOOD GOVERNMENT” TESTED

The dysfunctional county government that confronted Parker in the *Luten Bridge* case hardly conformed with “good government” attributes such as democracy, responsibility, accountability, efficiency, and effectiveness.<sup>58</sup> The necessity for adhering to “good government” values became apparent shortly after publication of Parker’s opinion in mid-October 1929, when the stock market crashed and the Great Depression subsequently engulfed the nation.<sup>59</sup> North Carolina slid into a fiscal cauldron. Its local and county governments’ euphoric

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54. Act of July 17, 1916, Pub. L. No. 64-159, 39 Stat. 385 (authorizing the judges of the United States Court of Appeals for the Fourth Circuit to “annually open and hold a term of the court . . . at Asheville, North Carolina, at such times as may be fixed by the judges thereof”); see Opening of the Initial Term of the United States Circuit Court of Appeals at Asheville, N.C., July 5, 1917, in 19 PROCEEDINGS OF THE NINETEENTH ANNUAL SESSION OF THE NORTH CAROLINA BAR ASSOCIATION HELD AT BATTERY PARK HOTEL, ASHEVILLE, NORTH CAROLINA, JULY 3-5, 1917, at 203-19 (Thomas W. Davis ed., 1917).

55. Memorandum by John J. Parker on Case No. 2873 [*Luten Bridge*], in JOHN J. PARKER PAPERS, *supra* note 32, at Box 60, Folder 1234.

56. *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301, 307 (4th Cir. 1929).

57. See MOODY’S MANUAL OF GOVERNMENT SECURITIES (1929), *microformed on MOODY’S MANUALS ON MICROFICHE—1909 TO PRESENT—SERIES M29*, Fiche 23, at 1855 (Moody’s Investors Serv., Inc.); NORTH CAROLINA GOVERNMENT: 1585-1979, *supra* note 8, at 1259 (Table: Rockingham County Population Statistics, 1790-1980).

58. See *Luten Bridge*, 35 F.2d at 301-06; see also Letter of Horace Williams to John J. Parker, Oct. 31, 1929, in JOHN J. PARKER PAPERS, *supra* note 32, at Box 23, Folder 426 (admiring Parker’s commitment to “the rational” rather than being controlled by feeling).

59. See *Luten Bridge*, 35 F.2d at 301 (reporting delivery of the opinion on October 15, 1929); FREDERICK LEWIS ALLEN, SINCE YESTERDAY: THE 1930S IN AMERICA, SEPTEMBER 3, 1929-SEPTEMBER 3, 1939, at 18-20 (1972) (noting stock market crashes on October 19, 21, 23, 24, and 29 (“Black Tuesday”), reaching a 1929 bottom on November 13 by which time \$30 billion in 1929 dollars had evaporated); see also MAURY KLEIN, RAINBOW’S END: THE CRASH OF 1929, at 202 (2001) (reporting mid-October sell-offs).

pursuit of public works during the 1920s incurred high bonded indebtedness in a bullish bond market and rising tax rates to pay interest and principal.<sup>60</sup> The economic collapse brought a reckoning for Rockingham County as its bond ratings fell<sup>61</sup> while sixty-one of the state's one hundred counties defaulted on their bonds.<sup>62</sup>

To meet the unprecedented crisis confronting state government, in 1931 Governor O. Max Gardner appointed a legislatively authorized constitutional commission that included Judge Parker to recommend amendments to, or revision of, the state constitution extant since Reconstruction days.<sup>63</sup> The commission proposed what Governor Gardner characterized as "the most thorough-going and constructive revision of the Constitution ever produced in the history of North Carolina,"<sup>64</sup> but a constitutional obstacle prevented a popular vote.<sup>65</sup>

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60. See Charles D. Liner, *State and Local Government Finance over the Past Fifty Years*, 46 *POPULAR GOV'T* 32-33 (1981); *THE NORTH CAROLINA YEAR BOOK: 1933*, at 34 (1933) (reporting that on June 30, 1931 the bonded indebtedness of Rockingham County was \$2,903,000, ranking it eleventh among North Carolina's 100 counties behind such urban counties as Buncombe (Asheville), Forsyth (Winston-Salem), Guilford (Greensboro), Mecklenburg (Charlotte), and Wake (Raleigh)).

61. *MOODY'S MANUAL OF GOVERNMENT SECURITIES*, *supra* note 57, Fiche 23, at 1855 (reporting the county's rating at A, or top one-third of ratings); *MOODY'S MANUAL OF GOVERNMENT SECURITIES (1934)*, *microformed on MOODY'S MANUALS ON MICROFICHE—1909 TO PRESENT—SERIES M29*, Fiche 15, at 1122 (Moody's Investors Serv., Inc.) (reporting the rating at B and collections on the 1933 tax levy of \$408,349 at \$240,000 to December 1, 1933).

62. See *NORTH CAROLINA, REPORT OF THE LOCAL GOVERNMENT COMMISSION 8 (1934)* (reporting data as of November 30, 1933).

63. *REPORT OF THE NORTH CAROLINA CONSTITUTIONAL COMMISSION TO THE GOVERNOR AND GENERAL ASSEMBLY 5 (1932)* (reporting that the governor acted in pursuance of Resolution No. 36, Public Laws, 1931); *id.* at 1-3 (reporting the membership from the bench: Walter P. Stacy, Chief Justice of the Supreme Court; John J. Parker, Senior Circuit Judge of the United States Court of Appeals for the Fourth Circuit; Michael Schenck, North Carolina Superior Court; from the bar: George E. Butler of Clinton; J.O. Carr of Wilmington; Burton Craige of Winston-Salem; Congressman Lindsay Warren of Washington, DC; Allen J. Maxwell, State Revenue Commissioner; Clarence Poe, editor and humanitarian); Orth, *supra* note 17, at 12-20 (critiquing the 1868 constitution); Sanders, *supra* note 17, at 798-99.

64. Letter from O. Max Gardner, Governor of N.C., to Members-Elect of the North Carolina General Assembly of 1933 (Nov. 26, 1932), in *REPORT OF THE NORTH CAROLINA CONSTITUTIONAL COMMISSION TO THE GOVERNOR AND GENERAL ASSEMBLY*, *supra* note 63, at 3.

65. Appendix: [Advisory] Opinion of the Justices [of the Supreme Court of North Carolina] in the Matter of Whether the Election Held on Tuesday after the First Monday in November, 1933, Was the Next General Election Following the Adjournment of the 1933 Session of the General Assembly, 207 N.C. 879, 181 S.E. 557 (1934) (answering the question in the affirmative and construing the North Carolina Constitution, Article XIII, Section 2 to provide that any amendment to the Constitution must be submitted "at the next general election to the qualified voters of the whole state, in such a manner as may be

Prior to the demise of the commission's handiwork, the indefatigable Parker, a skilled judicial workhorse on a low caseload court that facilitated the disposition of the *Luten Bridge* case,<sup>66</sup> became a leading promoter of the constitutional revision cause, authoring and distributing to managing editors of all the state's daily newspapers fourteen supportive articles to be published seriatim.<sup>67</sup> Meanwhile, he publicly campaigned for adoption of the proposed constitution.<sup>68</sup>

The opportunity thus presented enabled Parker to spell out in detail the "good government" values he had articulated in his prejudicial political career, which values he had implicitly figured in his *Luten Bridge* opinion involving a county government gone awry.<sup>69</sup> Perhaps recalling his recent encounter with the bridge case, he flatly asserted that "[t]he breakdown of local government is the most staggering fact in the recent history of North Carolina."<sup>70</sup> Parker also believed that the remedy for "corruption in local government of crushing indebtedness and of wholesale repudiation of bonded debts"<sup>71</sup> lay in constitutionally prescribed limits on borrowing

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prescribed by law"). The general assembly on May 8, 1933, had fixed the date of the election to consider the ratification of the proposed constitution at the "next general election" in conformity with the constitutional stipulation. See Act of May 8, 1933, ch. 383, 1933 N.C. Sess. Laws (Gen. Pub.) 547. However, on May 9, 1933 the general assembly passed Public Laws 1933, Chapter 403, which fixed the vote on a convention call at "a general election to be held . . . on the Tuesday after the first Monday in November" 1933. See Act of May 9, 1933, ch. 403, 1933 N.C. Sess. Laws (Gen. Pub.) 601. The court determined that the "general election" held on November 7, 1933 relating to repeal of National Prohibition constituted the "next general election" and that the proposed constitutional revision could therefore not be submitted to the people at the 1934 general election); see Orth, *supra* note 17, at 33 n.226; ROBERT S. RANKIN, *THE GOVERNMENT AND ADMINISTRATION OF NORTH CAROLINA* 22 (1955).

66. See Peter G. Fish, *A "Freshman" Takes Charge: Judge John J. Parker of the United States Court of Appeals 1925-1930*, 10 J.S. LEGAL HIST. 59, 75-76 (2002) (reporting praise of Parker's industry, professional expertise, and efficient work habits).

67. Letter from John J. Parker to the Managing Editor of the \_\_\_\_\_ (Sept. 13, 1934) (mimeograph, 8½ x 14), in JOHN J. PARKER PAPERS, *supra* note 32, at Box 10, Folder 161, n.50 (entitling the numbered submissions "The Revised Constitution" with subtitle and publication release date); Letter from John J. Parker to Victor S. Bryant (Nov. 29, 1957), *id.* at Box 17, Folder 295 (recalling that "[a]s the election was called off, the articles were not published, but they contain my analysis of the work of the Commission").

68. John J. Parker, *The Proposed Constitution*, in 35 PROCEEDINGS OF THE THIRTY-FIFTH ANNUAL SESSION OF THE NORTH CAROLINA BAR ASSOCIATION 133-48 (H.M. London ed., 1933).

69. See *Rockingham County v. Luten Bridge Co.*, 35 F.2d 301, 301-06 (4th Cir. 1929).

70. John J. Parker, *The Revised Constitution: 10 Local Government* at 23, in JOHN J. PARKER PAPERS, *supra* note 32, at Box 10, Folder 161 (released for publication Sept. 27, 1934).

71. *Id.*

power.<sup>72</sup> Other provisions accorded with Parker's Hamiltonian-inspired vision of "good government"<sup>73</sup> that would transform North Carolina government and render it responsive to modern needs.<sup>74</sup> If Rockingham County in the 1920s had manifested a nightmare vision of government, Parker in the years after handing down his opinion in the case of "the bridge to nowhere," advocated augmented legislative taxing power,<sup>75</sup> particularly enhanced executive powers, and unification of judiciaries through procedural and administrative reforms.<sup>76</sup> For Parker, centralization of power meant not only efficiently managed government, but also responsible government wherein accountability to the people, and thus democracy, prevailed.<sup>77</sup>

His "good government" reformer zeal applied in the Luten Bridge controversy and shortly thereafter articulated in the constitutional revision campaign also marked his long career as presiding judge of the United States Court of Appeals for the Fourth Circuit,<sup>78</sup> in developing the Administrative Office Act of 1939,<sup>79</sup> in

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72. Parker, *supra* note 68, at 139–40.

73. Letter from John J. Parker to W.M. Hendren (Dec. 9, 1931), in JOHN J. PARKER PAPERS, *supra* note 32, at Box 26, Folder 520. See generally THE FEDERALIST NOS. 67, 69, 70, 72, 73 (Alexander Hamilton) (encapsulating Hamilton's views on executive power).

74. John J. Parker, *The Revised Constitution: 1 The Need for Revision* 2–4, in JOHN J. PARKER PAPERS, *supra* note 32, at Box 10, Folder 161 (released for publication Sept. 17, 1934).

75. Parker, *supra* note 68, at 139–40; John J. Parker, *The Revised Constitution: 5 Limitations on Bonded Debt* 1–2, in JOHN J. PARKER PAPERS, *supra* note 32, at Box 10, Folder 161 (released for publication Sept. 21, 1934).

76. See Parker, *supra* note 68, at 137; John J. Parker, *The Revised Constitution: 6 The Veto Power of the Governor* at 17, in JOHN J. PARKER PAPERS, *supra* note 32, at Box 10, Folder 161 (released for publication Sept. 22, 1934) (advocating the inclusion of the governor's veto power in the revised constitution); John J. Parker, *The Revised Constitution: 7 The Executive Budget* at 1, *supra* note 32, at Box 10, Folder 161 (charging the governor with the responsibility of submitting a budget to the legislature); John J. Parker, *The Revised Constitution: 11 The Short Ballot* at 1, *supra* note 32, at Box 10, Folder 161 (giving the chief executive the power to appoint members of the Council of State); see also George E. Butler et al., *Alternative Suggestion as to Executive Department*, in REPORT OF THE NORTH CAROLINA CONSTITUTIONAL COMMISSION, *supra* note 63, at 39–44 (suggesting changes to the North Carolina Constitution to provide increased executive powers); Letter of John J. Parker to W.M. Hendren, in JOHN J. PARKER PAPERS, *supra* note 32, at Box 26, Folder 520 (advocating governor's reelection); John J. Parker, *The Revised Constitution: 9 The Judicial System* at 2, in JOHN J. PARKER PAPERS, *supra* note 32, at Box 10, Folder 161 (arguing that the revised constitution would provide a "simple and modern system of jurisprudence unified under the supervision of the Chief Justice of the State").

77. John J. Parker, *Recommendation of Additional Change in Constitution* (1932), in JOHN J. PARKER PAPERS, *supra* note 32, at Box 9, Folder 147.

78. In Memoriam, *supra* note 22, at 14 (reporting that "[f]rom 1931, he was Chief Judge of that court"); see also 28 U.S.C.A. § 45 (1993) (reporting that the provision "for 'chief

promoting the Federal Rules of Civil Procedure,<sup>80</sup> and in organizing courts in post-World War II Germany.<sup>81</sup> In the twilight of that career and nearly three decades after his resolution of the Rockingham County governance crisis, Parker served, however briefly, on another constitutional commission intended to confer the benefits of “good government” on his native state.<sup>82</sup>

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judge’ is new. Such term is adopted to replace the term ‘senior circuit judge’ in recognition of the great increase in administrative duties of such judge.”).

79. Act of August 7, 1939, Pub. L. No. 76-501, 53 Stat. 1223 (1939) (providing for the administration of the United States courts, and for other purposes); *id.* § 304 (duties of the Director of the Administrative Office of the U.S. Courts); *id.* § 306 (establishing circuit judicial councils); *id.* § 307 (establishing circuit judicial conferences); *see also* PETER GRAHAM FISH, *THE POLITICS OF FEDERAL JUDICIAL ADMINISTRATION* 134–65 (1973) (describing Parker’s role in developing the circuit judicial conferences and the context surrounding the adoption of the Act); John J. Parker, *Court Integration Through Voluntary Leadership*, 25 J. AM. JUD. SOC’Y 38, 39 (1941) (advocating for procedural reform in the federal court system, noting that such reform “*depends primarily upon the judges*”).

80. *See* Orders re Rules of Procedure, 302 U.S. 783 (1937) (adopting Rules of Civil Procedure for federal district courts); Peter G. Fish, *Guarding the Judicial Ramparts: John J. Parker and the Administration of Federal Justice*, 3 JUST. SYS. J. 105, 106 (1977).

81. *See* Letter from John J. Parker, Circuit Judge, U.S. Court of Appeals for the Fourth Circuit, to John J. McCloy, Jr., U.S. High Commissioner to Germany (Sept. 10, 1949), in JOHN J. PARKER PAPERS, *supra* note 32, at 8–10, Box 16, Folder 255; Letter from John J. Parker, Circuit Judge, U.S. Court of Appeals for the Fourth Circuit, to Col. John M. Raymond, Attorney, U.S. Department of State (Nov. 3, 1949), U.S. Department of State, Record Group 59, File 862.041 (National Archives, Washington, D.C.).

82. REPORT OF THE NORTH CAROLINA CONSTITUTIONAL COMMISSION TO THE GOVERNOR AND MEMBERS OF THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA (1959) (reporting that Governor Luther Hodges appointed Parker to the fifteen-member commission chaired by Durham attorney Victor S. Bryant, Sr., but that Parker died on March 17, 1958, while the commission “work was in the initial stages of projection and organization”); *see also* Orth, *supra* note 17, at 20 (reporting that the “comprehensive reform effort . . . came to grief in the General Assembly.”); Sanders, *supra* note 17, at 799–800 (summarizing provisions contained in the proposed 1959 Constitution and reporting that conflict over the degree of legislative authority over the courts primarily caused failure of the proposed constitution).