

Exhibit B

**THE RELATIONSHIP BETWEEN THE CONSTITUTION, AD VALOREM
TAXES, AND EDUCATION FOR AFRICAN-AMERICANS**

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The purpose of this report is to survey critical years when, it is alleged, Alabama constitutional law, ad valorem taxes, and public education for African-Americans in Alabama were connected in important ways. The most consequential years to examine are those of Reconstruction (e.g., especially 1872-1876), and the 1901 Constitution framing period (lasting from the late 1890s to the end of 1901). Then, one must examine the 1970s when the constitutional restrictions on property tax were relaxed giving local authorities additional authority to raise property taxes upon the majority vote of the citizens affected, including "lid law" requirements in 1972 and 1978.

A major area of concentration in my professional work has been the Constitution of Alabama of 1901. I have studied the political history of the development of the Alabama Constitution 1901, which begins in the Reconstruction period, and the intent and motives behind its provisions. I have authored numerous works related to this subject, including books such as *The Alabama Constitution: A Reference Guide* (Westport, Conn.: Greenwood Press, 1994), and *Alabama Government and Politics* (coauthored with James D. Thomas; Lincoln: University of Nebraska Press, 1988), and articles such as "Failure of Reform: Attempts to Rewrite the 1901 Constitution" (in Bailey Thompson, ed.; Tuscaloosa, University of Alabama Press, 2002).

I am paid \$175 per hour for my work. As of the date of this report (September 8, 2009), I have spent 99.4 hours conducting research for and drafting this report. In the drafting of this report, I have relied upon those sources cited herein. During the last four years I have provided expert testimony in only the *Knight v. Alabama* case in which I testified on behalf of the State of Alabama. A more complete version of my qualifications and a list of all of my publications within the last 10 years are included in the CV attached to this report.

I. Reconstruction and Afterward

As Dr. J. Wayne Flynt points out, "No statewide public school system existed until 1854, and even then it was poorly funded from a variety of sources (gambling, charitable gifts, raffles, etc.)" It did not depend on property tax funding. (Expert Report of Dr. J. Wayne Flynt, *Lynch v. Alabama*, April 30, 2009, p. 1)

Alabamians' opposition to taxes is not a new phenomenon. When the State was young, taxes were low. In the halcyon days of the state bank before the Civil War, an editorial writer for the *Selma Free Press* speculated that, "Should our banking institutions continue to be conducted in the manner they have heretofore been, for the future, the Tax gatherer will be unknown within the borders of our state." (January 16, 1836, p. 2) Of course, this was not to be.

In 1868, Republicans had control of most of the offices of state government. Early on they increased tax rates to three-fourths of one percent, or 7.5 mills, on real and personal property while at the same time creating new incentives for railroad construction. (*New York Times*, March 13, 1876, p. 4) During Republican rule, property taxes increased more than 300%. When the Democrats/Conservatives prevailed in the 1870 state elections, the Legislature reduced the tax rate on real and personal property to one-half of one percent. The Democratic majority did not, however, reduce the proportion of funds going to black education on a per capita basis; each black student still received roughly the same amount of education funding as each white student. The year 1872 brought Republican victories and a return to the three-fourth of one percent tax rate.

The 1870s were bad times economically for Alabama, evidenced most notably by the large number of foreclosure sales of property on account of tax delinquencies. This helps explain why voters switched back to the Democratic Party in the 1874 elections. Of the reasons presented for the 1875 constitutional convention the year after the elections, Malcolm C. McMillan, in *Constitutional Development in Alabama, 1798-1901: A Study in Politics, the Negro, and Sectionalism*, finds them to be unrelated to race. On page 190 he says that the convention was race neutral. Beginning on page 196 he talks about the

tremendous state debt. On page 203 he talks about the increase of property taxes during Reconstruction to 7.5 mills. There is no mention of race in this discussion. Likewise, Alan Nevins in his discussion of the 1875 Constitution (p. 216, 314ff.) finds the bases of support not to be grounded in the enhancement of racial discrimination.

On page 365 of his book, McMillan discusses growing distrust of the legislature throughout its constitutional history. This phenomenon was not unique to Alabama at that time; it continues to be important in terms of what Alabama does or does not do today. Corruption was pervasive during the Reconstruction era. This increased the determination of the people to put in place constitutional restraints to ensure that their property taxes would not go up further to support untrustworthy politicians and their wasteful spending. (On this subject see McMillan pages 329, 334, 335, 336, and 355-56.) Property taxes had gone up from 2 to 7.5 mills during Reconstruction. Citizens surely would have rejected any tax raise proposed by the Constitutional Convention. The *Tuscaloosa Times* observed that the convention would "represent a distressed people, without money and without credit." (May 13, 1875, p. 2) Unless something were done to reduce expenditures by a constitutional convention, "absolute bankruptcy must sooner or later overwhelm the State, and it is mainly to guard against this fearful misfortune that we favor a remodeling of the present [1868] state constitution." (June 9, 1875, p. 2) The only alternative to a new constitution was "to perpetuate the misrule of the past eight years, with its accumulated taxes." (July 14, 1875, p. 2) In time the State would become even more "beggared in property" and "bankrupt in character." (Ibid.)

The War had had a devastating impact on Alabama both financially and in human terms. Whereas personal estates in Alabama in 1860 were valued at \$277 million, by 1870 they were valued at only \$39 million – a decline in value of \$239 million. (*Tuscaloosa Times*, August 11, 1875, p. 1) Professor Flynt, in his book *Poor but Proud*, also notes that there was a massive wave of home/property foreclosures for inability to pay taxes, especially during the depression in 1873.

Education in the overwhelmingly rural Alabama of the late 19th century was seen more as a luxury than a

necessity. During the early decades of Alabama's membership in the Union public education was definitely not viewed as an essential function of state government. In fact, some of the funds received from the sale of federal lands supposedly to support education were used for other purposes instead. As we will see below, there are a host of compelling reasons why the framers of the 1875 document would not be concerned with education and why the constituents whom delegates to the convention represented would be demanding constitutional property tax limitations.

II. The 1875 Constitution

It is worth emphasizing that suffrage was not a critical issue in the Convention for the 1875 Constitution. With the threat of federal intervention by no means over, this was a subject that the framers did not tackle. What was desperately needed, as they saw it, was to control spending, eliminate rampant public and public-supported construction, and get taxes down to a level where the average citizen could pay them and not lose the property he had worked so hard for—even if this was detrimental to the development of a public education system and other public programs. (In fact, tax rates were not reduced during the 1875 constitutional convention.) Within government, there was extravagance, gross mismanagement, and, for that time, excessive administrative bureaucracy, especially given the lack of revenue with which the government had to work. Republicans who supported the ratification of the new Constitution assumed that education funding would increase as property values increased. (*Montgomery Daily Advertiser*, November 2, 1875, p. 2) On this there was bi-partisan agreement. (See Democratic position, *Montgomery Daily Advertiser*, October 12, 1875, p. 2)

By 1875, the indebtedness of the State of Alabama had risen to about \$29,000,000 or, amazingly, to about 20 percent of the total value of all the property in the state. (State guarantees of railroad bonds that had been issued during the Reconstruction period constituted about two-thirds of this debt.) The Depression of 1873 was still very much ongoing in the lives of average Alabamians at this time. The wave of foreclosures instilled in thousands of Alabamians a deep distaste for the property tax. At the state level, the government had gone deeply into debt to finance railroad construction (a significant amount of which in one instance went to finance a hotel in

Chattanooga). At the local level, more than a few counties and cities were bankrupt. (The local jurisdictions hardest hit were Randolph, Chambers, Lee, and Pickens counties and the municipalities of Mobile, Selma, and Opelika.) The depression had diminished property values and, consequently, tax revenues.

The delegates whom the voters selected to go to the mid-1870s constitutional convention understandably wanted to be responsive to demands to put limits on property taxes in the Constitution. The level of trust in state legislators was rapidly diminishing. The typical farmer in Alabama was destitute. He definitely lacked confidence in the Legislature and demanded that the delegates selected for the 1875 Convention rein it in. Political elites, however, were disinclined to put low limits on property taxes because this would have been a signal to outsiders that Alabama could not be depended on to pay its debts.

Even though there was a strong desire to restrict the functions of government to a bare minimum, there was also some concern among convention delegates that even the proposed 7.5 mill limit might not allow sufficient revenue for the general expenses of state government, the reasonable costs of the public schools, and payment of the interest and principal on the extant state bonds and other forms of state indebtedness. In all of the discussions pertaining to the taxation article and its 7.5 mill limitation on the power of the state to tax property, race was not an issue. Counties and municipalities also were forbidden to levy property taxes greater than 5 mills in any year. Race was not an issue in this debate either.

It is also worth pointing out that there were other states that set a millage cap lower than the 75 cents on \$100 (7.5 mills) set in the Alabama Constitution of 1875. Many of these states were non-southern states. For example, Connecticut established a cap of 10 cents on the \$100, Maine and Minnesota 50 cents, Ohio 40 cents, Illinois 24 cents, Michigan 22 cents, and Oregon and Rhode Island 20 cents.

Harvey Jackson writes in his book, *Inside Alabama*, that "by the time Reconstruction ended, run-of-the mill Alabamians had become convinced that trust put in government was trust misplaced." This accounts in large part for the pressure on constitutional convention

delegates to put strict limitations on property taxes in the constitutions they were drafting in 1875 and 1901.

The *Southern Argus*, a Grange newspaper published in Selma, acknowledged in an editorial that, "Three-fourths of one per cent [the tax rate established when Alabama was under Republican rule] may not be comparatively a high rate of taxation. But it is more than the poor people of Alabama can pay. It is more than they are willing to try to pay. It is more than they think is necessary for carrying on economically the government." (April 2, 1875, p. 2) Many papers at this time were filled with announcements of tax foreclosure sales made necessary by the non-payment of property taxes. "Our people are poor," the *Argus* observed, "and the collectors' sales in the several counties proclaim their inability to pay the taxes imposed." (July 17, 1875, p. 2) As we have seen, however, the tax limits of the 1875 Constitution equaled the 1868 tax rate.

Obviously the establishment of a good system of common schools could not be the reason for assembling a constitutional convention in 1875. Even though education was essential for "all the children of the State," "the poverty of our State and the appalling embarrassment of its finances" would prevent Alabama from doing what it should do for education at this time. (*Florence Gazette*, October 6, 1875, p. 2) Edward A. O'Neal, who would later serve as governor as would his son, was chairman of the education committee. The diminution of property values in the 1870s accompanied by the increase in public debt were certainly not "caused" by any wish to reduce black educational opportunities.

Of course, one of the actions taken by the constitutional convention was to abolish the Board of Education that had functioned under the 1868 Constitution as a legislative body. This would be another way of reducing government expenditures of any kind. Education (including black education) was not singled out for injurious cuts. For example, the office of lieutenant governor was abolished. According to the new constitution, the General Assembly would be obligated to appropriate \$100,000 annually for the support of public schools. This would be "as liberal an appropriation for public schools as possible under the embarrassed condition of our State finances, and the impoverished condition of our already

tax-burthened people." (*Huntsville Weekly Democrat*, January 19, 1875, p. 4)

As we have previously mentioned, at the time of ratification of the 1875 Constitution, the total indebtedness of the State of Alabama was approximately \$29 million. Of this sum, \$15 million was acknowledged to be legitimate. The State did not believe it was liable to pay the principal and interest on what were regarded as corrupt railroad bonds, however, and decided to negotiate with its creditors to repudiate some debt. Without shedding this railroad debt and a more efficient system for collecting taxes legitimately owed, the *Florence Gazette* observed sadly that "there can be nothing before us but the hopeless insolvency of the State, and a continued depreciation of the value of property of all kinds." (June 9, 1875, p. 2) The railroad debt was not regarded as "legitimate indebtedness."

The *Huntsville Weekly Democrat* asked that state creditors "contrast its financial condition in 1860, and at this time." If they would do this "they will see and admit that the State intends to observe good faith, and that the abatement of interest up to 1st July 1876, and the modification proposed thereafter, results from the inability of the State to do more." (*Huntsville Weekly Democrat*, October 10, 1875, p. 4)

The *Tuscaloosa Times* asserted that, "The State must be prohibited from making, in any shape, appropriations of credit or money for any other than the necessary and legitimate expenditures of the government." Furthermore, "Counties, cities, and towns must be prohibited from subscribing to any internal improvement enterprise or taking stock therein or granting aid thereto." (August 25, 1875, p. 2) The president of the 1875 convention, L. P. Walker, said local governments "should be restrained from lending their credit to ventures of private speculation, however plausible in theory and possibly profitable in results." (*Tuscaloosa Times*, September 15, 1875, p. 2) The only reason the *Times* saw for a constitutional convention was "a reduction of annual expenditures and taxation—for that reason, or not at all." (*Tuscaloosa Times*, August 25, 1875, p. 2)

The tax rate caps implemented in 1875 were an important part of Alabama's debt reduction strategy. If a

constitutional cap was placed that required a reduction in the tax rate, this would have made bondholders suspicious of whether they would receive even the diminished rate of interest the state would offer them. Reducing the rates would have been a sign of bad faith towards creditors, so limits were not placed that would have required reduced rates. Any contention that rates were constitutionally decreased to injure black education is wholly false.

(McMillan, *Constitutional Development*, 203-205; Allen Johnston Going, *Bourbon Democracy in Alabama, 1874-1890*, 70-71) Litigation by some creditors against the State of Alabama was already pending in federal courts within the state as well as in Tennessee. (See *Montgomery Daily Advertiser*, January 25, 1876, p. 2; February 16, 1876, p. 2; and February 22, 1876, p. 2.)

The tax ceiling did not reduce rates or revenues, but one thing it helped accomplish was preventing additional creditors from suing the State and local governments in federal courts seeking writs of mandamus to force them to levy higher property taxes to pay their debts in full. For examples of such cases, please consider *Board of Commissioners of Knox County v. Aspinwall*, 65 U.S. 376 (1860); *Hoffman v. City of Quincy*, 71 U.S. 535 (1866); *Heine v. Levee Commissioners*, 86 U.S. 655 (1873); *Chisholm v. Montgomery*, 5 F.Cases 635 (M.D.Ala., 1875); and *Sibley v. Mobile*, 22 F.Cases 57 (S.D.Ala., 1876). (See also *Mobile Daily Register*, June 15, 1875, p. 3)

The debt resolution committee which went into full operation after the adjournment of the constitutional convention expressed "regret that Alabama is unable to pay in full every dollar of her indebtedness." Bondholders, however, would have understood the destitute condition of the state as a whole. (*Huntsville Daily Times*, January 19, 1876, p. 1) The debt commission worked to reach a compromise on an amount of debt Alabama could afford, the most reasonable figure in their minds being \$10 million. According to post-convention comments made by one 1875 delegate, the "object of the convention" was to provide Alabama's creditors "satisfactory guarantees upon which the adjustment would be consummated" and which were "demanded by the creditors." (*Montgomery Daily Advertiser*, December 12, 1875, p. 2) Actually, the creditors had no other choice but to accept what Alabama offered. A tax rate sufficient to pay off the entire debt would have been uncollectable. The *New York Journal of Commerce* saw the

Alabama debt solution as repudiation in disguise ("deftly concealed" and "cunningly planned") because, in its opinion (which is questionable), the state couldn't be sued. (See *Montgomery Daily Advertiser*, November 18, 1875, p. 2, and December 21, 1875, p. 2; *Florence Gazette*, June 9, 1875, p. 2; and *Mobile Daily Register*, December 17, 1875, p. 2.) The *New York Times* called the Alabama plan an "ultimatum" to state creditors and one of its correspondents didn't mince words when he referred to it as "bared faced robbery." (*New York Times*, March 13, 1876, p. 4) But the state had the upper hand. The *Mobile Daily Register* observed that if, despite conscientious efforts to pay off a substantial portion of Alabama's debt, "the bondholders remain sullen, the argument is exhausted." (December 15, 1875, p. 2) A similar argument was advanced in the *Florence Gazette*. (June 9, 1875, p. 2)

Commissioners, led by Governor Houston, worked with constitutional convention delegates to formulate these provisions and did not reveal the full details of their debt satisfaction proposal until the Constitution had been put into effect. (See *Huntsville Daily Times*, December 15, 1875, p. 4, and the *Montgomery Daily Advertiser*, September 11, 1875, p. 2.)

Finally, proof that the limitation on state property taxes in the 1875 Constitution was not discriminatory in intent or effect is found in the fact that for years following the adoption of that Constitution, salaries for white and black teachers remained essentially equal, and appropriations for white and black students in the state were equitably distributed. For instance, monthly teacher salaries were \$22.50 for whites and \$22.74 for blacks in 1876-1877, \$22.40 for whites and \$22.10 for blacks in 1882-1883, and \$21.14 for whites and \$21.15 for blacks in 1888-1889. (See "Table 1.—School population, teachers, property, and school year" in Stephen Weeks, *History of Public School Education in Alabama*, 197)

Before 1891, funds continued to be distributed equally among public schools serving different races on a per capita basis. (Bond, *Negro Education*, 155) After 1891, a statutory - *not constitutional* - law gave local trustees the ability to distribute education funds unequally. This was a legislative not constitutional development, and it demonstrates that constitutional provisions did not cause a misallocation of school funds.

III. The 1901 Constitution

One of the first things that one finds upon examining the environment of the 1901 Constitution is that the interest in summoning a convention to draft it was not intense. "The lack of interest the people of Alabama are exhibiting in the approaching contest for delegates to the constitutional convention is lamentable," declared the *Tuscaloosa Daily Gazette*. (June 2, 1901, p. 3) "There is scarcely any interest manifested in any of the counties in the selection of these delegates."

A. The Tax Provisions

It has been suggested that the provisions in the 1901 Constitution discouraging the raising of property taxes were inserted because the delegates realized that the Supreme Court of the United States would ultimately strike down their discriminatory suffrage provisions. I believe the framers believed, however, that as long as they did not specifically mention race their provisions would stand. John B. Knox, president of the convention was cited in the *Gazette* on May 24, 1901. Quoting extensively from U.S. Supreme Court decisions, he shows (to his satisfaction) that there was no reason to believe that blacks would ever again be able to vote in substantial numbers in Alabama. Whites had no reason to fear that their property tax restrictions would ever be struck down by new black voting majorities. The Supreme Court gave virtually a blank check endorsement to Negro disfranchisement so long as it was not specifically based on race but on the "characteristics" of the Negro. (*Atlanta Constitution*, May 24, 1901, p. 6) The writer believed that "the question of the negro and his place in Alabama politics" had been "permanently settled" by what had been done in Montgomery. (*Atlanta Constitution*, August 24, 1901, p. 2) These were no mere stop-gap measures. On March 20, 1901, the *Anniston Evening Star* reprinted the platform of the Democratic party, the chief agent pushing the 1901 constitutional convention. First listed is the question of suffrage. Second is to limit the rate of taxation by governments at all levels. Property tax exemptions were to remain in effect. These were considered as separate issues. (Page 2)

So much focus (and rightly so) has been put on the anti-black voting emphasis of the 1901 Constitution that one loses sight of the huge anti-tax sentiments of

citizens. A review of publications during this period helps the observer get a better perspective, however. On July 13, 1901 the *Anniston Evening Star* had the headline, "Citizens Gather in Mass Meeting to Urge Against Higher Taxes." (Page 1) On March 28, 1900, the editor of the *Tuscaloosa Gazette* asserted that Tuscaloosa County had too much debt. It has overspent, e.g., a new jail, probate office, bridges, etc. (p. 1) (Interestingly, the most discussed issue at this time was the dispensary system for selling liquor as opposed to the saloon. The *Gazette* favored the dispensary.) William C. Fitts was a candidate for delegate to the 1901 convention from Tuscaloosa. Aside from maintaining the bill of rights, the most important thing, in his mind, was to reaffirm and retain the limitations on state, county, and city taxation now embedded in the constitution. Ideas related to the franchise were listed fifthly. (*Tuscaloosa Gazette*, February 10, 1901, p. 2) Comments such as those quoted above show the environment locally (Anniston and Tuscaloosa) at the time the constitutional convention was meeting in Montgomery.

It was also reported that in Tennessee there was a general feeling that real estate was bearing too much of the burden of taxation. Conditions for property taxes were even harsher in Alabama, however. (*Atlanta Constitution*, January 20, 1901, p. 4) A story with a Richmond dateline (May 22, 1901) talked about the need to "lessen the cost of state government." (*Tuscaloosa Gazette*, May 22, 1900 p. 4) This would be one of the tasks of a constitutional convention if the people decided to call one. Before he became governor (July 7, 1900), William Samford said he "believed in the gathering of the lowest possible tax rate." His remarks here were reported to have been "so loudly applauded he had to stop a bit." (Speech in Tuscaloosa) On March 8, 1901 Governor Samford referred to his fellow-citizens as "an over-taxed people." (*Tuscaloosa Gazette*, July 7, 1900, p. 2) And, the editor of the *Tuscaloosa Gazette* lamented that, "The warning of Governor Samford [who by now had been inaugurated] in regard to the too free appropriation of state money by the legislature is not being treated with the degree of attention which its gravity entitles it to." (February 7, 1901, p. 3)

There is no doubt that the paramount objective of the 1901 Constitutional Convention was to limit suffrage in Alabama in ways which discriminated against the black vote. A close examination of the recorded proceedings of the 1901

Convention, however, shows that the consideration and debate of the suffrage provisions were separate from the consideration and debate concerning the taxation article. In 1901, during the campaign to call a constitutional convention, people throughout the state expressed strong fears that the restrictions they had secured in the 1875 Constitution might be stricken from a new constitution. However, assurances were given by the leaders of the convention movement that the previous document's restrictions would not be weakened. The limitation of 6.5 mills on the power of the state to tax property contained in Article XI, section 214 of the 1901 Constitution evolved from the 7.5 mill restriction in the 1875 Constitution. In fact, the language of s 214 is essentially identical to that of Section 4 of the taxation article of the 1875 Constitution (with the exception of the millage rate).

Given the continuing intensity of public demands and the strength of the memories of property foreclosures, there was no serious consideration of removing or raising the 1875 limitation. What was discussed at length was whether the limitation should stay at 7.5 mills or be reduced. The convention delegates ultimately lowered the limit from 7.5 mills to 6.5 mills at the state level, and added a new provision, section 269, which furnished counties with the opportunity to raise one mill in property taxes for the support of public schools—subject to voter approval in each county interested in exercising this option. Otherwise, the 5 mill annual property tax millage rate limitation would be continued. As in committee, the debate on the property tax limits focused on what revenues were needed for general government operations and public education. Since numerous delegates (or their fathers) were veterans of the Civil War, they were also concerned that adequate revenues be available for pensions for Confederate soldiers. Once again, race was not an issue in the recorded proceedings of the 1901 Constitutional Convention regarding what constitutional limits should be placed on property taxes.

B. Education

Numerous scholars, among them Professor Flynt, have noted the lack of interest in education in the period under examination. See pages 6, 7, 26, 31, 87, 91, and 191-93 of *Poor but Proud*. "Public expenditures for education were a low priority," he writes. (p. 6) "Many working class and

poor white farmers placed so little value on education." (p. 6) "More than 500 white schools and a similar number of black schools had been unable to open during 1919 because no teacher was available." (p. 7)

This problem was noted by commentators both inside and outside Alabama. On February 23, 1902, there was a reprint of an article from the *New York Independent*. A New Hampshire writer focused primarily on uneducated white people who have little appreciation of the value of education. The problem was not, the author asserted, that they were against educating blacks. They did not see the value of education for their own children. Thus, "To educate the white people is the negro's only hope." (Note: Negro has been spelled in this report as it was spelled in the documents quoted.)

On April 23, 1901, a conference for education in the south was held in Winston-Salem, N.C. As reported in the *New York Times*, the consensus seemed to be that, "The southern people as a whole need to acquire a better sense of the worth of education." (*New York Times*, p. 6) They did not get angry if school funds were used for roads and they took their children out of school on the slightest pretext. Superintendents of education were typically untrained for their jobs. On the positive side, however, "In many sections the southern white people are showing genuine interest and co-operation in the education and uplifting of the negroes." One Anniston woman presented a memorial to the 1901 Constitutional Convention in support of better schools. She was chairman of the education committee of the Alabama Federation of Women's Clubs. She did not distinguish between white and black schools. (June 1, 1901, *Anniston Evening Star*, p. 1)

The Democratic platform leading up to the 1901 convention had said "no backward step shall be taken in the matter of public education." Education was to be for "every child." More fully the platform asserted, "We pledge the people of Alabama that no backward step shall be taken in the matter of public education... every effort possible will be made to establish and maintain within the reach of every child, both poor and rich, the means of obtaining absolutely free of tuition such instruction as will qualify him for the intelligent performance of the responsible duties of citizenship." (*Tuscaloosa Daily Gazette*, April 28, 1900, p. 4) Convention president John Knox said, as

reported on May 24, 1901, "It is ignorance which must be eliminated in the interest of society—white ignorance as well as negro ignorance." (p. 6) Both the white youth and the black youth should find in the new constitution a motivation to become educated. (*Atlanta Constitution*, May 24, 1901, p.6) During the ratification campaign, one pro-constitution speaker argued much more money would be available for education under new constitution. (October 25, 1901, *Anniston Evening Star*, p. 8) About \$1.5 million was spent on schools during 1901. (December 23, 1901, *Anniston Evening Star*, p. 4) It is noted that appropriations for education in Alabama have doubled in the past five years. (January 14, 1901, *Atlanta Constitution*, p. 3)

Suffrage was identified as the "leading problem" which the new constitution addressed in a campaign address written by ex-Gov. Jones. However, "The importance of the public schools to the welfare of the state is recognized and emphasized." (*Atlanta Constitution*, September 20, 1901, p. 4) No mention was made of any intent to undermine funding for black education and, as we will see, Jones was one of the leading opponents of any notion of dividing up school funds on the basis of the amounts paid by the black and white races, respectively.

The editor of the *Tuscaloosa Gazette* said he "firmly believe[d] that the state will need the present rate of taxation and should it prove in future years that we are raising too much revenue there is always a place for it in the educational system of Alabama." "Today our state is a 'tail-ender' in the matter of education and what Alabama needs is more schools and better teachers." He did not distinguish between education for whites and education for blacks. (June 15, 1901, p. 2)

Harvey Jackson also notes that in the convention of 1901 it was not just appropriations for education that Bourbons wanted to keep low. They also opposed expenditures for roads and other outlays that would improve the quality of life. (*Inside Alabama*, p. 135) "Determined to preserve the status quo under which they had prospered, Bourbons refused to revise the ceiling to provide more funds for state and local governments and did not lift restrictions on state support for internal improvements." (p. 138) The Democratic platform written prior to the assembling of the 1901 Constitutional Convention had also pledged to provide

"such safeguards as may be necessary to preserve the limitations upon the right of taxation now existing."

At this time, property values in Alabama were going up. "The figures speak well for the general prosperity of the state," according to the editor of [newspaper to be identified]. It had been reported the previous summer (*Atlanta Constitution*, August 15, 1901, p. 3) that the common school contingent favored the 3 mill tax instead of the present system of general appropriations since "there is a prospect of largely increased appropriations." "The [previous] low limit placed on local taxation restrained both city development and the growth of the public school system." (*Atlanta Constitution*, August 15, 1901, p. 3) The *Birmingham Age-Herald* believed that the 1875 constitution "crippled and dwarfed...education..." (Quoted by McMillan, Chapter XVII) The professor noted that the Supreme Court previously had voided the taxing power of local school districts. Thus "supporters of public schools were convinced that a constitutional convention was necessary to establish in Alabama a broad program of public education." A new constitution would be "the primary step toward educational progress in Alabama."

Women's groups, economic groups, labor groups, educational groups, etc., supported this. They were not groups essentially concerned with the perpetuation of racial discrimination. With the change to supporting education with a fixed percentage of ad valorem taxes from direct appropriations by the legislature, "there [was] a prospect of largely increased tax values and the school fund will thus rise automatically." "Largely to meet their [the schools'] demands, and to pacify a threatened revolt on their part, the convention passed the section which allows the reduction of 10 cents in the general rate to be put back by the counties." "[The school people] have now secured a permanent state fund of about \$1,100,000 and a county special tax on the \$100." (*Atlanta Constitution*, August 16, 1901, p. 3) (Note: This statement is quoted as printed. It may mean that localities could levy a tax of ten cents on every \$100 worth of property given a vote of approval by 3/5 of their citizens.) "It is really a sharp advance on anything the schools had under the old constitution." (Ibid.)

The education article of the 1901 Constitution contained a provision that guaranteed public education the

proceeds from 3 mills of the 6.5 mills state property tax authority (46 percent). Public education interests were pleased with this provision since it seemed to assure that schools would continue to receive the relatively generous funding they had received in the period immediately preceding the 1901 Convention. Under the 1875 Constitution, only \$100,000 per year had been assured for the support and maintenance of public schools.

C. Proposal to Allocate Property Taxes by Race

It is true that race entered the debate on the tax article to the 1901 Constitution, but not in a way by which property tax limitations would reduce the ability of citizens to fund black schools. Rather, the question was asked whether property taxes should be divided between white and black schools based on the respective property taxes paid by white and black property owners. All provisions supporting such an unfair formula were defeated, with Black Belt delegates being among the strongest opponents.

On May 22, 1901, William H. Council, Alabama's most distinguished black educator aside from Dr. Washington, appealed to the convention not to apportion school funds on the basis of the taxes paid by each race, and it didn't. (*Atlanta Constitution*, May 22, 1901, p. 3) On March 19, 1901, Booker T. Washington observed that the Negro who "possesses education" is typically highly regarded by white people. Washington did not believe that most whites were opposed to black education. (*Atlanta Constitution*, March 19, 1901, p.1)

"Governor Jones...[said] the fundamental principles of justice are violated in discriminating between classes or races in dividing money raised by taxation, and to divide it unequally among races is unconstitutional." (*Atlanta Constitution*, May 31, 1901)

Even though ultra-conservative, the framers of the 1901 Constitution were concerned about how Alabama would be viewed by outsiders. This would affect their material prosperity as well. "Any attempt in this state to draw for the first time in the history of public education race lines would call down upon the state public condemnation of the severest sort to the detriment of every leading

interest." (*New York Times*, June 11, 1901, p. 8, quoting *Birmingham Age-Herald*)

On June 23, 1901, the committee on education at the constitutional convention unanimously refused to divide up education revenues racially. "The revised constitution will secure to the negroes the provision of schools which they are entitled to on a per capita apportionment of the school fund." "Everything being considered, Alabama is doing about all that can reasonably be expected for the education of her children." "Alabama is doing very well for the negro in the matter of free schools." "In all respects the negro children are as well off in the matter of school facilities as the white children." "Since 1867 the appropriations for school purposes in Alabama have increased from about \$100,000 to more than \$1,000,000 and the principle of free education has been established in the confidence and favor of all classes of the community." (*New York Times*, June 23, 1901, p. 7) It was noted as well that the Tuskegee Institute was funded in part from state funds.

D. Other Observations

On April 24, 1901, it was reported by the *Anniston Evening Star* that State Superintendent of Education Abercrombie had visited Tuskegee. He noted that Alabama was giving half of educational appropriations to fund Negro education. A news reporter pointed out that northern men present were favorably impressed with what Alabama was doing and would remember it in the future. Alabama leaders wanted to be seen in a good light. (*Anniston Star*) On April 4, 1901, Samford said the people of the south are generous with blacks "in the distribution of the school funds." "The negro pays 3 per cent of the taxes of Alabama and receives 47 per cent of the school fund." The next month (May 24, 1901), president Knox said, "I believe we should keep faithfully the pledge we have given not to increase taxation, but this should not deter us from making every effort to rid our state of the disgrace of its illiteracy." (*Atlanta Constitution*, May 24, 1901, p. 6) On May 30, 1901, a *New York Times* editorial supported Knox's proclaimed goal of providing Alabama with "a public school system that will place within the reach of every child in the state the means of acquiring an education which will fit it for the duties and responsibilities of life." (*New York Times*, p. 6)

The summer before the assembling of the 1901 Convention, the Washington Post had noted (August 12, 1900, p. 3) that 66.19 percent of black males of voting age were illiterate in 1890. "It is...well known that rapid strides of public education among the negroes has largely reduced the percentage of illiteracy." The number of illiterates had gone down to 59.14 percent by the turn of the century.

Even among many supposedly enlightened non-southerners, there was a widespread belief at this time that African-Americans, because of the horrible treatment they had previously received as slaves, were predisposed to crime. "The crimes against women cannot be stopped by putting an end to the education of the negro" said Hillary Herbert who had previously served in the Cleveland Cabinet. Herbert especially supported industrial education as at Tuskegee. "The crimes committed by blacks in the southern states are, to a very large extent, the outcome of miseducation, and they would be minimized through a wider training of the negro. Mr. Herbert will have rendered an inestimable service to this section of our common country, if the result of his speech at Montgomery shall be the systematic introduction of technical schools for blacks." (Reprinted from Collier's Weekly in *The Daily Gazette of Tuscaloosa*, July 27, 1900, p. 2) Professor H. B. Frissell of Hampton, Va., Normal and Agricultural Institute said that "the problem of illiteracy among both black and white is the great problem of the south today." (*Atlanta Constitution*, May 10, 1900, p. 7) Education was seen as a "safeguard against crime." In May 1900, there was also a Montgomery meeting of the Southern Society. Alleged Negro criminality was explainable in large part on account of the lack of Negro education. Thus it was considered mandatory to educate the Negro. Conferees quoted the Democratic platform relative to "no backward step" as far as education was concerned. Opposition to Negro voting and strong support for Negro education were not seen as being in conflict. (See *New York Times*, May 9, 1900, p. 7; May 10, p. 7; and *Atlanta Constitution*, May 10, 1900, p. 7)

On September 16, 1903, the *Florida Times-Union* hyperbolically declared: "On educational lines the South has always pursued and is still pursuing a generous policy toward the negro." One example cited is Alabama's appropriation to the private Tuskegee Institute. The editorial writer says southerners are convinced "the negro

should have all of the advantages educationally that are given to the white man."

Early 1970s Property Tax Revisions

It has only been in the modern period, specifically in the context of the *Knight v. Alabama* litigation, that the notion has been advanced that property tax limitations were inserted as Alabama constitutional language to restrict funds for the education of African-American school children or that the limitations were somehow an effort to deny elected black officials the authority to raise property taxes.

The political history of changes to Alabama property tax constitutional law in the early 1970s shows that the debate was not a racial one in any way. State action was necessary at this time because a federal district court had ruled that variations in property assessment rates across the State were unconstitutional.

When Governor George Wallace opened the special session needed to respond to the federal court challenge on November 30, 1971, he said, "This might be the most important session of the Legislature I have spoken in my history as governor. It was brought upon you by the federal courts." There is no evidence in the press that he mentioned federal court orders in the area of racial integration, which it would have been very natural for him to do, if plaintiffs' arguments are correct.

The *Birmingham News*, the quintessential representative of the urban press, repeatedly characterized the conflict as one between the Alabama Farm Bureau and homeowners in the populous areas of the state. (See, for example, editorial on January 14, 1972, "A Sorry Dish.") No connection was ever made between the amount of money to be collected from property taxes and appropriations to be available for African-American education. In a *Birmingham News* editorial on December 1, 1971, it was noted that Gov. George Wallace had called a special legislative session "to seek a way out of the state's ad valorem property tax dilemma, now under scrutiny by the federal courts." No attempt was made to connect federal interest in Alabama taxes with litigation pertaining to desegregation of schools or racial fairness as far as state legislative redistricting was concerned. In another editorial in the

same paper on December 6, 1971, "The Senate's Turn," the focus was on property tax assessments and problems associated with very decentralized assessments. Editorial writer James Jacobson focused his ire on the Farm Bureau which was continuing to attempt to "keep the large-scale farm interests off the fair-share tax hook, a privilege it has enjoyed for many years."

The *Birmingham News* was very strong in its support for public education and it would have been very easy to use as one of its arguments against the Farm Bureau that it wanted to suppress appropriations which would primarily benefit African-American Alabamians or that the Farm Bureau's actions were designed to reduce the authority of black-elected governmental officials from increasing property taxes. However, this was never done, even as the news decried "the sorry plight of public support in too many Alabama counties." (November 28, 1971, "Our Own House")

It is interesting to note that the original classification plan that the Senate considered at this time and which was identified as the Farm Bureau plan was introduced by Sen. Roland Cooper of Camden, an arch-Black Belter, and Kenneth Hammond, a north Alabama liberal (by Alabama standards). They were bound together by both being representative of rural interests, not because of racist views.

Mayor David Vann, in a speech to the Birmingham Young Men's Business Club on May 22, 1972, indirectly pointed to the popularity of the classification system for taxing property. He noted that "the Jefferson delegation, for reasons unknown, after filibustering for a month against classification, in the end adopted a classification system within Jefferson County." Even though Mayor Vann, a liberal by Alabama standards, attacked the Farm Bureau, he did not accuse it of being racist. He said its "crying" was "fraudulent" because "rural land is already favored by the system because the tax rates out in the country are lower than in the city." This was not a racial conflict.

Moreover, the classification plan was not unique to Alabama. Several states were reported to have tried it, including the non-southern state of Minnesota.

The urban vs. rural schism is also indicated in letters to newspaper editors. Charlie Cargile of Gardendale

saw the struggle as one of elites vs. the "common people." "Most of the common people, who actually pay all taxes in this county [Jefferson], are pretty well fed up with the drones and deadbeats on the public payroll." There was no trace of a racial conflict in Mr. Cargile's lengthy letter to the *Birmingham News*. (date unknown)

The Alabama League of Municipalities was primarily concerned with the "uniform assessment of all property in the state." This would "end the system that has allowed vast rural acreage to be assessed at a small fraction of its value." (*Birmingham News*, December 3, 1971) In the League director's view the struggle was between the majority of voters in the state who paid 80 percent of the taxes and rural residents who received higher state appraisals for the lesser percentage of taxes they paid.

It should be noted that at the same time the State Legislature was considering property tax reform legislation, a federal court was voiding a state anti-busing law. No evidence was seen in tax news stories that there was an overlapping resentment which would provide more support for the rural bloc's anti-reform efforts. (See *Birmingham News*, December 4, 1971, p. 1.)

The official journals of the Alabama House and Senate have been reviewed in the preparation of this report. It is interesting to note that the property tax reform legislation introduced by House Speaker Joe McCorquodale and others had the support Representative Fred Gray, one of two black members of the House. This included most amendments to the main bill which were also supported by the Speaker and other rural white leaders of the Legislature. The other black Representative, Thomas Reed, did not vote on these issues.

1978 Property Tax Revisions

Due to inadequacies in the property tax provision worked out earlier in the decade, it was necessary for Alabama political leaders to revisit the issues involved again in 1978. Gov. Wallace was now completing his third term in office. Even though he would serve one more term (1983-1987), it was obvious even at this point that Wallace's power was not as significant as it had once been. When he gave his opening address to a session that convened on January 11, 1978, most senators were not even in

attendance. ("Senators approve a resolution of apology to Wallace for snub," *Birmingham News*, January 12, 1978, p. 1) In reporting on Wallace's priorities, the *Birmingham News* listed first, "a ceiling on projected property tax rate increases." ("State of the State," January 12, 1978) There were no racial remarks reported. The opposition Wallace was expected to face as far as his property tax goals were concerned would come from the League of Municipalities and the Alabama Association of County Commissioners, as well as the "teacher lobby" (Alabama Education Association). Even though it was opposed to most of the ideas advanced by the Farm Bureau, the *News* did agree that, "in view of the big increase in the property tax and increases in Social Security tax and other taxes, a ceiling certainly must be legislated this session." ("'Lid' Bills Lacking," *Birmingham News*, February 2, 1978)

A letter-to-the-editor writer lamented that "if the state does not adjust the property tax by passing some kind of lid bill or an adjustment law many people like myself will be stuck with a large increase of their taxes in 1978." (*Birmingham News*, February 17, 1978, p. 12) In another editorial, the *News* pointed to "mounting pressure from citizens throughout the state to put some kind of ceiling on property taxes." A "reasonable bill" was needed to "prevent homeowners, farmers and others from going bankrupt." (*Birmingham News*, February 22, 1978, p. 12) Opposing moderate interests were "the Farm Bureau, large landowners, and out-of-state corporations." (See editorial cartoon, March 3, 1978.) Apparently taxpayers across the board were demanding relief. *News* reporter Ralph Holmes said, "in this election year, the general feeling in the Legislature is that some sort of 'lid' bill will pass both houses." (Note: In this *News* story the legislative conflict was presented as being one primarily between the Farm Bureau and AEA, neither of which was apparently actuated by racial concerns, positive or negative.) A few days later, the *News* had an editorial, "Lid Bill a Fraud." In the writer's judgment, "the talk about protecting the homeowner and the farmer from a catastrophic increase in ad valorem taxes [was] a smoke screen to hide the real intent of the bill, the protection of large landowners." It was not to prevent greater appropriations for any specific public purpose such as education. It was to ensure that the major tax burden was on homeowners, not large landowners. (March 21, 1978, p. 10)

A letter to the *News* editor at this time criticized federal intervention in Alabama affairs. In this letter national efforts to secure racial integration were panned, but there was no mention of court tax edicts which were being mentioned daily in the same paper. Another letter to the editor criticized federal court efforts to achieve racial balance in Alabama schools as well as "excessive" welfare spending, but made no mention of ongoing litigation to secure greater equity in Alabama ad valorem taxes. (See *Birmingham News*, March 11, 1978, p. 10, and undated photocopy from *Birmingham News*.)

Turning to the *Birmingham Times*, an African-American oriented newspaper, it is noteworthy that the publication regularly carried a column by then-Lieutenant Governor Jere Beasley. Governor Beasley used his column to plug a lid bill, noting the wider support it enjoyed, including backing from average wage-earners and elderly persons on fixed incomes. "The public" was demanding "relief in some form to keep property tax bills at least [at] an affordable level." No effort was made to rebut Governor Beasley's arguments in this black-oriented newspaper. In another column he said that, "If the Legislature fails to pass the lid law the loser will be the people of Alabama"—presumably all the people. (undated photocopy) In an April 1, 1978, column, Governor Beasley noted that, "The Alabama Senate ha[d] passed on a vote of 30 to 2 the controversial Lid Bill on property taxes." A similar measure had received House approval earlier that month (March 1978). Once again, Beasley was gratified: "Homeowners, businesses, and farmers in all areas of Alabama are due this control to keep property tax bills at an affordable level."

The AEA and the Farm Bureau were evenly matched interests. The *Birmingham News* noted that in the Senate the AEA-backed education bill was supported by a 30-4 vote, even though it called for the appropriation of more money than could be expected to flow into the educational trust fund during the upcoming fiscal year. The *News* attributed the education vote to Paul Hubbert's success at "machine politics." (*Birmingham News*, August 4, 1978)

The package of bills to limit property tax increases passed very quickly in a late summer 1978 Alabama special legislative session. Even though it had other matters to consider as well, the legislature completed its work in

five days, which is the minimum amount of time required to pass any kind of law under the Alabama constitution. It is noteworthy that 1978 was an election year in Alabama.

The votes on the 1978 legislation as it was working its way through the Legislature did not show racial sensitivity. Of those African-Americans voting against the bill, all were from urban counties. These include Louphenia Thomas (Jefferson), James Buskey (Mobile), Cain Kennedy (Mobile), and Alvin Holmes (Montgomery). Thomas Reed, an African-American representative from the rural Black Belt, voted for the bill. No evidence was found, however, that African-Americans were opposing all or parts of the reform legislation because of fears related to potential underfunding of African-American education or limits on black political power. In the Senate, Senator U. W. Clemon was, according to the record, one of the principal opponents of the House-passed H.B. 170, the property tax reform amendment. Senator Clemon was a member of the upper chamber from 1975-1980. According to former Lieutenant Governor George McMillan, Senator Clemon was a close ally of his, as well as another African-American legislator, J. Richmond Pearson. They did not see the move to limit property taxes in the 1970s as a racial issue.

As indicated in this report, the main conflicts were between the Farm Bureau (now known as ALFA) and urban interests. Lieutenant Governor McMillan was an articulate spokesman for urban interests and ran a very competitive race against George Wallace for governor in 1982. According to McMillan, by this time Wallace had abandoned racial demagoguery and had made large utility companies his main targets. Utility companies bore the brunt of the 1978 Amendment, as their property was assessed at 50% more than other commercial property and three times that of residential property.

Another former Alabama legislator, also a former member of the Jefferson County commission, conferred with in the preparation of this report was former U.S. Representative Ben Erdreich. Mr. Erdreich also stated that the measures considered by the Alabama Legislature in the 1970s were not argued in a racial context. The same position was taken by former State Senator Richard S. Manley of Demopolis. Senator Manley was an extremely influential legislator for many years and he would certainly have known if the debates on the 1970s property

tax restrictions were at all racial in their origins and development.

The issues in the debate were simply not racial in nature.

Conclusion

This report has shown that there is a disconnect between successive efforts limiting or amending ad valorem taxes in Alabama through constitutional provisions and any discrimination based on race. Many leading Alabamians were guilty of racial prejudice at the turn of the nineteenth century. This litigation is not about that, however. Plaintiffs contend that constitutional provisions dating from 1875 are mainly explainable by the intentions of Alabama politicians, mainly those resident in the Black Belt, to ensure that elected black officials would have no authority to increase property taxes. In contrast, it is shown here that these constitutional property tax limitations have their origins in opposition to ad valorem taxes on the part of Alabamians generally. These negative attitudes can be traced back to before the Civil War but most emphasis has been placed in this document on post-war developments. We have shown how abject poverty brought on by the folly of war and the excesses of Reconstruction government caused many Alabamians to lose their property because they could not pay the taxes on it. Those who somehow had managed to hang on to their property and/or acquire new property were determined that what they regarded as high tax rates necessitated by "extravagant" and "corrupt" government spending would not bring on a new wave of foreclosure sales.

In the modern period we have seen that legislative conflicts over ad valorem taxes fit into the classic battle of rural vs. urban interests which has so often characterized behavior in the state assembly. Even though Alabama life was very much in a state of flux, in part due to federal legislation and court orders pertaining to race relations, battles related to property taxes were carried on in a different context. Although not discussed herein, during Alabama's passage of the 1978 property tax revisions there was underway a national movement against property taxes. This movement had nothing to do with race. Alabama was caught up in this tax revolt even though its property

taxes were already the lowest or among the lowest in the nation. ,

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