

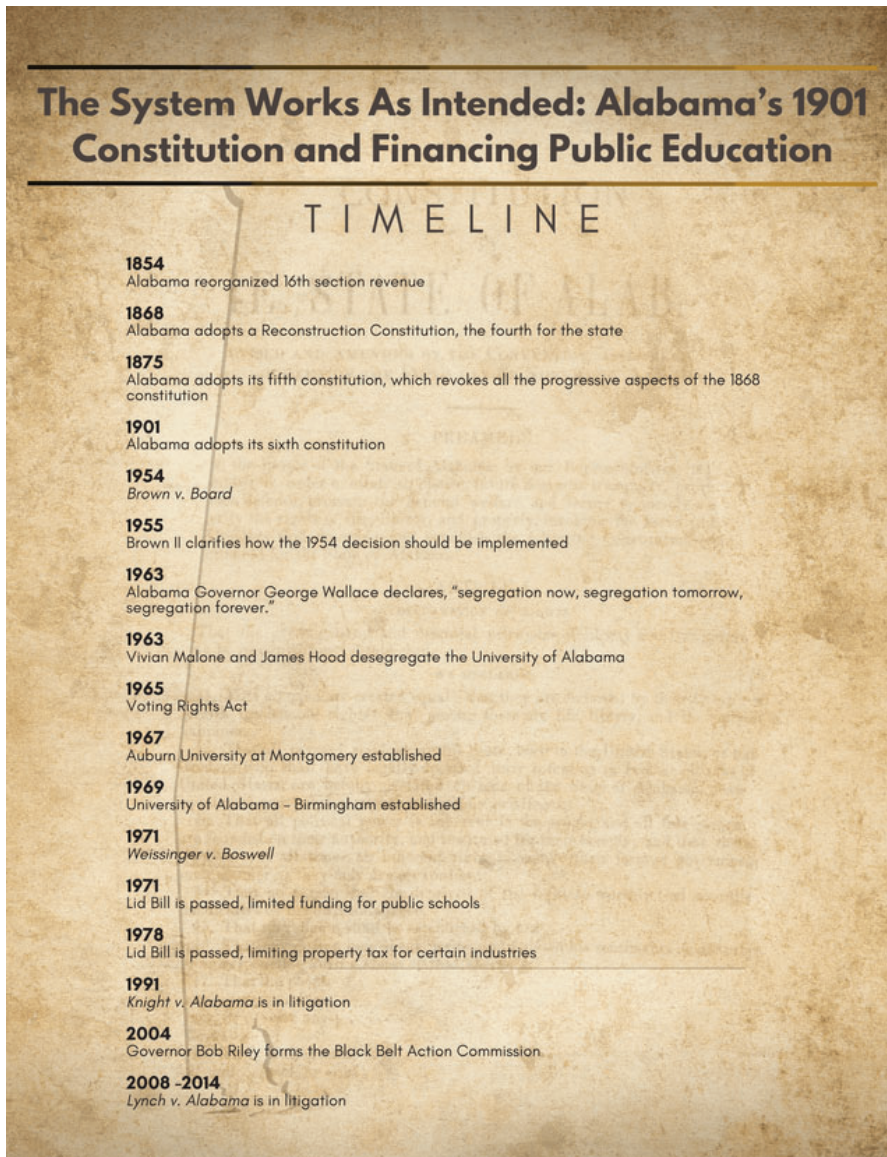
The System Works As Intended: Alabama's 1901 Constitution and Financing Public Education

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ABSTRACT

From 1990-2014, Alabama fought against improving the property tax system for the benefit of public schools in *Knight v. Alabama* (2007) and *Lynch v. Alabama* (2014). *Knight* and *Lynch* charged the State with upholding a racially discriminatory property tax system that served to keep public school systems, particularly in rural, predominately Black counties, severely underfunded. *Brown v. Board* compelled Alabama to desegregate its school systems with “all deliberate speed,” but school systems remained unequal due to funding disparities from the state’s overly complicated tax system. Despite over 700 amendments by 2014, Alabama’s constitution left the property tax system created in 1901 nearly unchanged. The system created in 1901 worked to keep property taxes low and profits for large landowners high, while disenfranchising Black citizens and demolishing the public school system. To protect the system created in 1901, the Alabama Legislature, during Governor George Wallace’s administration, responded to Brown and the 1965 Voting Rights Act by removing the responsibility of funding public schools from the state and removing the power to change property taxes from local officials. While the courts acknowledged the racially discriminatory intent behind Alabama’s property tax system, they refused to amend the systems created by the 1901 and 1963 state governments. The rulings in *Knight* and *Lynch* highlight the contentious relationship between property rights and civil rights deeply embedded in Alabama’s history of state-sanctioned racism.



Dates covered in this chapter

INTRODUCTION

Alabama fought against improving the property tax system for the benefit of public schools in landmark cases from 1990-2014. *Knight v. Alabama* (2007) and *Lynch v. Alabama* (2014) charged the state with upholding a racially discriminatory property tax system that served to keep public school systems, particularly in rural, predominately Black counties, severely underfunded. The troubles faced by *Knight* and *Lynch*'s plaintiffs began nearly a century earlier with the end of Reconstruction.

Seeking to disenfranchise African Americans and prevent access to public education, Alabama's legislators in 1901 devised a constitution according to their desires that survives nearly unaltered in the present day. Whereas public education depends on revenue derived from property taxes, lowering or capping property taxation padded the pocketbooks of wealthy elites. Building on previous cases, *Knight* and *Lynch* reflect the battle to achieve equal public-school education in Alabama following the *Brown v. Board of Education* Supreme Court decision (*Brown v. Board of Education*, 1954). The *Brown* ruling signaled a watershed moment for public education throughout the nation, particularly in the South. Despite the real, revolutionary changes *Brown* catalyzed, the effects of decades of unequal education could not be undone overnight. Whereas *Brown II* (1955) compelled Alabama to desegregate its school systems with "all deliberate speed," school systems remained unequal due to funding disparities from the State's overly complicated tax system created in 1901.

While histories on public education post-*Brown* acknowledge the difficulties in achieving equal public schools despite *Brown*'s initial success, they largely omit the role of property taxes in perpetuating discrimination in education (Bagley, 2010; Kruse, 2005; Tullos, 2011).¹ This chapter analyzes the rulings, key actors, and political climate contributing to the creation of Alabama's 1901 Constitution and its effects on property taxation and public school financing. *Knight* and *Lynch* provide a direct line from 1901 to 2014 to highlight the lasting effects of the Alabama Legislature on public school funding inequities post-1954. The rulings in *Knight* and *Lynch* highlight the contentious relationship between property rights and civil rights that is deeply embedded in Alabama's history of state-sanctioned racism. The property tax system created in 1901 by white legislators looking to remove political power from Black citizens remained essentially unchanged by the end of the *Lynch* case in 2014. In *Lynch*'s concluding opinion, the appellate judges noted,

In deciding this difficult appeal, we are cognizant of Alabama's deep and troubled history of racial discrimination. And given the evidence at trial, we share the district court's concern regarding Alabama's public education system: Alabama continues to be plagued by an inadequately funded public school system alike... courts, however, are not always able to provide relief, no matter how noble the cause (*Lynch v. Alabama*, 2014, p.28).

Lynch's concluding opinion reflected decades of policies that served the interests of white property owners at the expense of public schools. Despite a recognition of wrongdoing in both *Knight* and *Lynch*, the system created in 1901 continued to work as intended.²

The poignancy of history lies in the inability to escape it. Both *Knight* and *Lynch* reflect decades of previous litigation surrounding Alabama's tax system. Therefore, one must analyze the origins of the system to understand its effects. The chapter begins with a summary of the 1901 Constitution, and the 1868 Constitution it sought to overturn.³

Alabama responded to civil rights litigation in two distinct ways concerning public education. In response to *Brown*, Alabama attempted to prevent desegregation by removing the state's responsibility to finance public education. After the federal government compelled Alabama to desegregate, the state took the power to assess property out of the hands of local officials to ensure that white legislators controlled the allocation of tax revenues. Following the Voting Rights Act in 1965, Alabama's predominately white legislature feared that communities, particularly in the Black Belt region, would elect Black local officials who would work to provide decent funding to recently integrated public schools. *Knight* and *Lynch* affirmed that underfunded public schools constituted state-sanctioned segregation; however, neither case succeeded in proving the connection between discrimination and the property tax system. Whereas *Knight* petitioned the court to redress desegregation and property tax disparities in higher education, the court chose to only respond to the desegregation claim. *Lynch* built on the failures in *Knight* by taking the same claims and applying them to Alabama's K-12 schools. The district court concluded in *Lynch* that Alabama's property tax system worked to underfund public schools in predominately Black communities, yet refused to redress the system based on a legal technicality. In each case, the district courts affirmed the prosecution's argument but declared the judiciary unable to act. The architects behind Alabama's tax structure in 1901 developed a system for the express purpose of removing political power and educational opportunities from African Americans to protect the wealth of whites with large amounts of land. Looking at the verdicts of *Knight* and *Lynch*, it appears that over a century later, Alabama continues to privilege the pocketbooks of agribusiness industry heads at the expense of proper political representation and public education.

CREATING THE CONSTITUTION: 1868-1901

Three years after the Civil War ended, the Alabama legislature drafted a constitution to reflect the interests of its newly freed citizens. Created during Reconstruction, the Republican-dominated legislature worked to protect the rights of citizenship for all Alabamians. For the first time in Alabama's history, African Americans had a voice in their government. The election of thirty Black delegates to Alabama's House of Representatives in 1868 reflected real change as promised by the right to vote enshrined in the 15th Amendment to the U.S. Constitution. Black elected officials in Alabama, for example, represented counties in the Central and Tennessee Valley plantation belts where "on average sixty percent of the residents were Black" (Hahn, 2003, p. 208). Alabama's first interracial Constitutional Convention ushered in a series of progressive policies deemed "radical" by later state governments, such as the protection of property rights for married women and strong state support for public education. Prior to 1865, white Alabamians put little effort into funding education at public expense. Until emancipation, it was illegal in Alabama to teach African

Americans how to read or write. The federal government, rather than the state, primarily contributed to the funding of public schools in Alabama for white children until the mid-nineteenth century. Prior to Alabama's admittance as a state, the federal government surveyed the territory of Alabama and divided the land into sections. The government granted the 16th section of each township for the benefit of public education. Profitability, or the ability to produce high-yielding crops, was not taken into account when designating the 16th section, so counties with agriculturally profitable 16th sections, such as the Black Belt region, received more funding than neighboring areas. This method worked to ensure that the tax revenue from wealthy areas went directly to schools in those districts. By 1854, the state reorganized the 16th section revenue into a general fund which was distributed equally on a per-student basis. This general education fund catalyzed the formation of a statewide system of public education. However, in antebellum Alabama, public schools primarily served poor children whose families could not afford private tutoring. After emancipation, the consensus by wealthier whites and freedmen believed some form of public education would be beneficial for all. The formation of Alabama's Board of Education in 1868 emphasized the delegates' belief that proper public education established the foundation for social change (Hall, 2015; Harvey, 2010). Formerly enslaved people, in particular, strongly believed in public education as a means to secure and protect their status as free people. In one Alabama community, a formerly enslaved man contributed his entire life savings of \$38 in nickels, dimes, and pennies to fund a local school stating, "I want to see the children of my grandchildren have a chance so I am giving my all" (Werner, 1939, p.129). To finance the growth of Alabama's public schools, the Constitution greatly increased property taxes and designated nearly twenty percent of the state budget to public schools (Ala. Const. art. XI. §11, 1868). While the 1868 delegates hesitated to compel integration, they insisted that each school receive equal shares of state funding, explaining that, "should it prove expedient to have separate schools for white and colored children, The Board of Education shall cause an equal division of the school fund in such district where such division is demanded" (State of Alabama Constitutional Convention, 1868). To create an equal division of funds, the Board of Education consolidated the 16th Section Fund and distributed the revenue based on student population. By promising adequate funding to all public schools regardless of race or region, the Constitution provided financial protection for public schools. While the reallocation of property tax revenue created a more equitable public school system, for wealthier whites it appeared as if their hard-earned tax dollars were being stripped from their local school district and redistributed to poor whites and African Americans.

Less than a decade after the 1868 convention, Reconstruction ended as former Confederates and white elites of the Democratic party regained state control, allegedly seeking to "redeem" the state from radical rule. The nearly all-white legislature removed any doubt of their intentions when they erased "all men are created equal" from the preamble of the Constitution during their first convention. The 1875

Constitution thus revoked nearly all progressive policies implemented during Reconstruction to restrict Black access to political power. "Radical" Reconstruction, as one historian explained, "[saw] remarkable political inversions on the local and state levels, but it also proved to be a very painful lesson in the nature and boundaries of American democracy" (Hahn, 2003, p. 8). To appeal to the agricultural and industrial interests of wealthy whites, the "Redeemers" implemented a state tax ceiling, which substantially cut revenues for public school systems. Whereas the previous constitution set the rate property could be taxed, the new constitution capped the amount of revenue that could be derived from property. For example, if a large farm was worth \$1,000,000 under the 1868 Constitution, the public education system received 20% of the farm's assessed value. Under the 1875 Constitution, the public school system could receive up to \$100,000 from property taxes, regardless of whether the tax rate exceeded that amount. These laws served to promote Alabama's anti-tax and agricultural interests at the expense of social improvement, creating a policy agenda that predominated through the next century.

The Redeemer government believed "free education beyond the basic rudiments was imported here by a gang of carpetbaggers...and that taxation to support it was socialistic. It should be provided to pauper children only, as before the war" (Woodward, 1971, p. 61). Furthermore, the Democrats feared "education of the negroes would make them less easily manipulated in elections" (Woodward, 1971, p. 64). A particular concern for the Redeemers, prosecutors in *Lynch* noted, "[was] to prevent the possibility that taxes could again be levied on the property of Alabama Planters in an onerous amount to educate blacks" ("U.S Supreme Court Review of Petition for Writ of Certiorari in *India Lynch v. Alabama*" [*U.S. Review*], 2014, p.4). Pushing an anti-tax agenda served to restrict African Americans' education under the guise of keeping "carpetbag" influences out of Alabama. By abolishing the Board of Education and capping property taxes, the 1875 Constitution all but killed any chance of adequate public education in Alabama.

If the 1875 Constitution reinstated white control, the 1901 Constitution solidified it. The delegates pronounced on day two of the 1901 convention that for white supremacy to succeed, it must be codified into law ("Proceedings of the Alabama Constitutional Convention" [Ala. Const. Conv.], 1901, p.9). As historian J. Mills Thornton noted, "there [was] nobody at the convention who [was] not a white supremacist" (*Knight v. Alabama*, 2004). Indeed, the Planters and Big Mules crafted a series of amendments tailored to their interests.⁴ Although the delegates primarily focused on disenfranchising Black citizens

the records also clearly and convincingly establish that another objective of nearly equal importance... was that of reaffirming those provisions of the 1875 Constitution suppressing the millage rates of *ad valorem* property taxes that

could be devoted to the support of black education at public expense (U.S. Review, 2014, p.5).

The funding necessary to improve education rests on two factors: the property tax (or millage rate) and the assessed value of property.⁵ Property taxes are commonly used to fund public education because they are a stable source of revenue in comparison to sales and income taxes. However, unlike other states such as Georgia, the classification system used to determine the millage rate in Alabama is applied uniformly throughout the state rather than on a case-by-case basis. Class III land, or rural/agricultural land, is taxed at the lowest rate and constitutes over 80% of all land in the state (“Declaration of Dr. Dan Sullivan,” *Lynch v. Alabama*, 2008). Whereas all Alabama citizens benefited from a functioning education system, low tax rates primarily served the interests of white elites. Lacking the oversight of the Board of Education, under the new constitution, school boards uniformly received funding based on total student population but disproportionately allocated revenue to white schools (U.S. Review, 2014, p.7). By 1924, even though African Americans represented 40% of the state’s population, Alabama spent less than \$1.5 million on Black public schools compared to \$13 million for white schools. In addition, rural areas like Lowndes County averaged less than \$5 for Black children versus \$96 for whites (Hamill, 2007). In some ways, the effects of the 1901 Constitution mirrored the later phenomena of white flight. As public schools rapidly deteriorated due to underfunding, wealthy white children fled to privately funded schools, forcing Black children to rely on the goodwill of Northern philanthropists and Black school teachers who tirelessly worked amid the underfunding of Alabama’s public school systems (Fairclough, 2001, p. 4).⁶ By 1901, Alabama’s schools primarily depended on state support. Facing the effects of a crumbling educational infrastructure, delegates worked to amend their image as effective leaders while maintaining a commitment to state rule and low taxes. Alabama’s Superintendent of Education provided a report to the state lamenting that, “schools have been almost broken up by partisan politicians and their followers...” Although upset, the Superintendent worked to assuage the all-white legislature noting that, “all reports on the subject of education for Alabama have been entirely on the public schools without any account taken whatever of private or denominational schools” (Alabama Department of Education, 1898). The superintendent understood that public schools primarily educated poor white and Black children; thus, private schools protected the education of wealthy white children from the dangers of party politics. On the second day of the 1901 convention, one delegate proclaimed,

I believe we should keep faithfully the pledges 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... it will not do to say you are too poor to educate the people—you are too poor not to educate them (Ala. Const. Conv. 1901, p.15).

The 1901 delegates insisted, like many future legislators, that Alabamians could receive a decent education without paying higher taxes. However, the statistics proved that adequate public education and an anti-tax agenda could not co-exist. As one study noted, “the state has the ability to do vastly more than it has done,” explaining that “at no such time since 1880 has the assessed value of property reached the required sixty percent of its fair and reasonable cash value” (Department of the Interior, 1919, p.21). The report concluded that if Alabama assessed property at the required rate, the state could provide \$24 per child rather than the current amount of less than \$7 (Department of the Interior, 1919, p.21).

Despite constituting a majority of the population, African Americans in the Black Belt region of the state could not elect public officials after disenfranchisement. As county officials held the power to assess property and distribute funds to local schools, property assessments and school fund distributions overwhelmingly favored whites. Indeed, Black Belt counties from 1900-1917 voted against local tax levies to aid public schools because white schools in the area already compared favorably with other schools in the South (Sisk, 1956, p.192). The combination of disenfranchisement and entrenched tax policies from the 1901 Constitution created enormous funding disparities between white and Black schools. For example, in 1907, Wilcox County allocated \$10.58 per white child and \$0.37 per Black child (Sisk, 1956, p.193). By devising a system that ensured that whites retained most of their land value while simultaneously undermining educational and political opportunities for African Americans, the 1901 delegates succeeded in codifying white supremacy. Once again, the system worked as intended.

RESPONSE TO BROWN

Section 256 of the 1901 Constitution declared,

the legislature shall establish, organize, and maintain a liberal system of public schools throughout the state... separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.

As part of a Jim Crow society, every aspect of education in Alabama was segregated by race. Sonnie Hereford III had to walk six miles to attend Huntsville’s public school for Black children, even though there were buses that ran along that route. Hereford noted that school buses were reserved for white children and that oftentimes, on his way to school, “the buses would kick up dirt as they passed, and sometimes white children would throw things out the window or spit at the Black children” (Harris, 2020). The Court found that daily humiliations such as those faced by Hereford caused significant harm to a child’s education noting, “Segregation of white and colored children in

public schools has a detrimental effect on the colored children...a sense of inferiority affects the motivation of a child to learn” (*Brown v. Board of Education*, 1954). When the Supreme Court found that “in the field of public education, the doctrine of ‘separate but equal’ has no place” in 1954, Alabama’s legislature responded by amending Section 256, removing the responsibility of funding public education entirely (*Brown v. Board of Education*, 1954). As one historian explained, “The committee reasoned that if children were not entitled to an education, then desegregation could not be pressed in courts” (Key, 2009). By 1956, the Constitution read, “nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense” (Ala. Const., art.XIV,§ 256, Amend. 111, 1901). The Court in *Brown* stated,

Education is perhaps the most important function of state and local government. It is the very foundation of good citizenship. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education (*Brown v. Board*, 1954).

If schools did not exist, at least in the eyes of Alabama’s government, federal desegregation could not occur.

Determined to prevent full-scale desegregation, Governor George Wallace resorted to physically evading the federal government. When two federal officers appeared in Wallace’s office to serve a court order for interfering with school desegregation in 1963, Wallace sent out a secretary to retrieve the papers as he was “too busy” to be disturbed (*Daily Northwest Alabamian*, 1963). The glacial pace of the law granted Wallace and his government time to craft mechanisms to ensure public schools remained in white control. Indeed, Alabama’s schools remained largely segregated nearly a decade after *Brown*. *The Anniston Star* reported in 1963 that, “little more than 9% of the Negro public school students in Southern and border states are attending elementary and high school with whites” (“Barely Tops One Percent,” *The Anniston Star*, 1963). However, Alabama could not defy the federal government forever. Vivian Malone and James Hood desegregated the University of Alabama in 1963 (Alabama Governor administrative files, 1958). For anyone watching the five o’clock news, the arrival of federal troops to the University of Alabama’s campus signaled the end of an era. The federal government, it appeared, finally defeated the wayward state of Alabama. Although desegregation prevailed, underfunded school systems remained. Unlike states such as Virginia, Alabama did not close its schools in the aftermath of desegregation. Instead, Wallace and his government responded to desegregation by amending Section 256, and devising a series of “Lid Bills” in the 1970s which further limited access to funding for public schools (Kruse, 2005, p.25).⁷

1971 AND 1978 LID BILLS

By 1965, the combination of federally ordered desegregation, the flight of white children from newly integrated public schools, and an increasingly enfranchised Black electorate from the Voting Rights Act caused Wallace and his white political associates to fear the election of local officials in the majority-Black, Black Belt region of the state. White Alabamians with large tracts of agricultural property or timberland worried that a Black local official would increase the property taxes. As one chairman during the 1901 constitutional convention warned six decades before, “if you had a n--- tax assessor...he would increase the assessment of white land” (U.S. Review, 2014, p.10). Under the limitations outlined in Alabama’s Constitution, tax reform proved difficult but not impossible. In 1971, the courts ruled the tax system unconstitutional for reasons unrelated to race in *Weissinger v. Boswell*. Before *Weissinger*, “essentially all property in Alabama was assessed at less than fair market value, but the ratio of assessed value to fair market value varied widely from county to county” (U.S. Review, 2014, p.8). Described as “the most fervent and committed segregationist in State history,” the Democratic Chairman of the State Senate’s Finance and Taxation Committee, Walter Givhan, proposed the Lid Bill package in response to *Weissinger* as an appeal to the state’s flourishing agribusiness industries such as the Alabama Farmers Federation (ALFA) (Bagley, 2010, p.209).⁸ Instead of adjusting the tax rate to reflect the varying property values, the state froze assessment values and removed the power to change them from local officials. Under the Lid Bill amendments, timber and farmland is taxed on current use rather than market value. Despite constituting nearly 70% of all land in Alabama, under the current use restrictions, forestland contributes less than 2% of total property tax revenue (Blalock, 2008). To adjust the tax rate, local officials are required to submit a request to the Legislature, and over half of the Legislature must approve a request for an adjustment to be implemented (Ala. Const., art.XIV,§ 269,1901). One veto from a major interest group such as ALFA, therefore, would kill a county request to increase the millage rate.

Having contributed nearly \$80,000 to the Democratic Party in the primary election of 1978, ALFA assured that Alabama remained a “No-Party” state to protect the anti-tax agenda and anti-unionist sentiments that served their business interests. In other words, opposition to the Democratic Party did not exist (Latimer, 1979). Of the four proposed bills supported by ALFA and the Democratic legislators, the Alabama Education Association (AEA) opposed all but one (Hamilton, 1978). While ALFA and its supporters, such as Wallace, portrayed the Lid Bills as a helping hand for everyday Alabamians, AEA executive secretary Paul Hubbert noted that while some small farmers and homeowners might benefit from the bills, “... it is going to be the Big Mules who benefit the most.” Hubbert noted that some industries such as Alabama Power could save nearly \$7 million under the Lid Bills (Hamilton, 1978). Yet, “as promoters emphasized cheap labor and low taxes, they neglected to explain that maintaining these advantages for industry helped to perpetuate less than

advantageous living conditions for Southerners at large” (Cobb, 1993, p.264). In 2020, a report by the Business Education Alliance in Alabama found that the state faced a workforce crisis stemming from its inability to develop skilled workers, noting that Alabama is on pace to have a shortage of close to 200,000 highly skilled workers by 2025-2026. Researchers highlighted statistics that rank Alabama’s fourth graders 47th nationally in reading and 50th in math as evidence of the state’s inability to develop a highly skilled workforce (Harper, 2020). The desperation for attracting industry without improving the living conditions for industry workers mirrored Alabama’s policies from 1901 in which “New South leaders persisted in achieving a developed economy at the expense of a developed society” (Cobb, 1993, p.3). Thanks to the Voting Rights Act of 1965, the state could no longer prevent Black Alabamians from electing local officials. Thus, the Lid Bills removed the power to raise property taxes from local officials entirely, ensuring major industries like those represented by ALFA retained their profit margin.

Whereas in 1963, Wallace declared “segregation now...segregation tomorrow... segregation forever,” promising to protect Alabama’s schools and industries from the “tyranny” of the federal government, by 1970, he employed a litany of code words to support a white supremacist strategy “designed to withstand the scrutiny of law” (Wallace, 1963; Bagley, 2010, p.4). Wallace stressed “the urgent need for relief from high taxes, the high cost of living, and the solving of the crisis in our public schools” to his supporters during his reelection campaign (*The George C. Wallace Newsletter*). Wallace understood, as did his predecessors, that underfunded public schools primarily affected Black children. Speaking to white private school patrons in Bibb County, Wallace remarked, “I think it’s horrible that you people have to pay taxes to support public schools. Then you have to dig in again to pay for quality education for your children in a private school” (“Lynch v. Alabama,” 2014, p.25). Wallace and his allies believed that as long as the ability to reform taxes remained in white control, segregation could remain “today...tomorrow...and forever” (Wallace, 1963). Under the new Lid Bill provisions established by Wallace’s government,

the maximum permissible local property tax for the support of public schools... [was] a mere 69 cents. A \$1 million farm or timber plantation would under the statutory method thus be valued on average at about \$274,000, have an assessed value of \$27,400, and be subject to a maximum tax for the support of the public schools of a paltry \$411 (U.S. Review, 2014, p.12).

As one historian noted, the Lid Bills served as “the instrument preserving the status quo of Alabama’s past” by privileging property rights over civil rights in Alabama, and reflected a new ideology of conservatism based on protecting industrialists and white middle-class Southerners (Bagley, 2010, p.215). Indeed, it appeared that industrialists cared more for low taxes than for school systems as “starving education was best for attracting industries” (Cobb, 1993, p.3).

In response to the Lid Bills, the president of ALFA spoke for Wallace's allies in industry writing, "You have won a victory for every person in this country who believes that individual freedoms are the basis for this country's greatness and who do not have the opportunity to speak their opinions" (Hays, 1964). Furthermore, he applauded Wallace as "A champion of state's rights, and a sworn enemy of those forces who would trample us down under the hypocritical cry of civil rights...he has shown himself to be a friend of the farmer" (Hays, 1964). Clearly, ALFA understood the connection between the anti-tax agenda and the discrete opposition to civil rights coming out of the modern conservative movement. As Bagley aptly noted, "The Lid Bills had done what they were designed to do: withstand a legal test, protect white tax dollars, and protect white rights" (Bagley, 2010, p.6).

KNIGHT 1991-2007

By the late 1990s, Alabama's practice of creating controversies for the federal government to fix designated it as the "make me" state or "the federal court order capital of the country" (Tullos, 2011, p.176). Indeed, Alabama's decision to amend rather than rescind its nearly hundred-year constitution resulted in numerous federal court cases such as *Knight v. Alabama*. While Alabama changed significantly between the twentieth and twenty-first centuries, its property tax system mirrored the intentions of the 1901 Legislature. The tax rates created in 1901 and retrenched in 1978 continued to stunt Alabama's schools, and in 1991, John F. Knight alongside representatives of Alabama State University (ASU) and Alabama A&M University filed a case to redress the effects of underfunding in higher education (*Lynch v. Alabama*, 2014, p.3).

While desegregation allowed students of either race to attend previously all-white or all-black schools, historically Black schools suffered from inadequate state funding, causing students to flee to well-financed historically white universities. Alumni and faculty members worried that the lack of financial resources for HBCUs would destroy the decades of commitment to providing education for the Black community. As one of *Knight's* leading attorneys, Harold Watkins explained, "We felt that by the late 1970s and early 1980s that our backs were against the wall," noting, "...if you were a Black institution, you were either downgraded or closed. Your students were sent to a white institution.... This whole thing started out as a vehicle and concept to survive" (Klass, 2014). Although the district court did not issue a ruling until 1991, it eventually found "numerous actionable vestiges of discrimination surviving in Alabama's system of higher education" and issued a remedial decree in 1995 to improve recruitment and hiring in HBCUs (*Knight v. Alabama*, 2004, p.6). The trial's short duration and initial success allowed Governor Bob Riley to posture that "Alabama truly is in on the cusp of magnificence" (Tullos, 2011, p.177). The remedial decree set out specific steps to be implemented over ten years under court oversight, yet the prosecution determined

near the end of the ten-year period that “chronic underfunding of elementary and secondary schools” prevented the state from fulfilling its duties as outlined in the decree (Bagley, 2010, p.6). The second claim pushed *Knight* back into court, shedding light on the inadequacies of Alabama’s “magnificence.”

In the aftermath of *Brown*, federal oversight of Alabama’s educational systems resulted in a series of successful desegregation cases. However, the federal government usually declined to oversee issues of taxation, leaving Alabama’s courts in charge of tax reform. After thirty years of litigation, the court reiterated in 2007 that parts of Alabama’s constitution intentionally discriminated against Black students. Alabama’s tax system, the court contended, “[was] a vestige of discrimination,” however, the court refused to act because “...relief for those constitutional violations was not within the scope of the higher education claim” (“*Lynch v. Alabama*,” 2014, p.28). In other words, because *Knight* initially sought to address desegregation, the court could not alter the tax provisions. In a last stand, *Knight* petitioned the Supreme Court in the hopes that the federal government could provide relief. However, the court declined to hear the case.

Reflecting on the court’s decision, Harold Knight commented that “without federal courts intervening, nothing seems to happen” in Alabama (Tullos, 2011, p.176). *Knight* served as the continuation of a longer history of civil rights litigation which attempted to pull Alabama into a new era of progress, only to be stopped short of the finish line by those unwilling to imagine change. As seen by the *Weissinger* decision in 1971, Alabama could, when needed, adjust property taxes promptly. However, white interests needed to be threatened for change to occur with any sense of haste. Federal oversight protected Alabama against the perpetuation of segregated schooling, but the government left issues of taxation in the hands of the state leaving the Lid Bills to hamper progressive reforms. Despite these setbacks, the movement persevered. *Knight* represented just one battle in the long war against inequitable education in Alabama.

LYNCH 2008-2014

Four years after the Supreme Court neglected to hear *Knight*’s case, prosecutors filed a suit against the state on behalf of children in Lawrence and Sumter Counties, directly targeting Alabama’s Lid Bills. By filing the same case under a different scope, *Lynch*’s prosecution hoped to force the court to address the relationship between property taxes and funding disparities in education. By 2011, the district court agreed that “several provisions of the Alabama Constitution of 1901 were adopted for the purpose of limiting the imposition on whites of property taxes that would pay for the education of Black public-school students” (U.S. Review, 2014, p.1). Yet, the state argued that victory for the plaintiffs’ “would throw an already complicated tax system

into disarray” (Carsen, 2011). Perhaps Alabama’s tax system seemed complicated because it remained nearly unaltered from its original form produced in 1901. Indeed, collecting revenues for 21st-century necessities from property tax rates based on a 20th-century economy is difficult. Despite 977 amendments as of 2021, the effects of Alabama’s property tax system mirror the intentions of the government in 1901 (Warren, 2011).

As the Sumter County Schools Superintendent, Dr. Fred Primm, lamented, “We’re working with very little revenue. Basically, you have no money to do anything creative or innovative.”

“If things continue the way they are with farmland and timberland not being taxed properly,” remarked plaintiff Stella Anderson, “what we’re going to see is more declining of educational resources... the poor will continue to get poorer, the educational system coming from rural distressed communities will continue to diminish” (Carsen, 2011).

Because Alabama taxes property based on “use” or type, and each county holds varying types of property in different proportions, some schools have larger revenue pools than others. Children in urban or suburban school systems benefit from a larger tax base with higher assessment values than schools in rural areas. In addition, urban and suburban centers receive a diverse array of property taxes as various stores, shops, and homes contribute to the property tax pool. Schools in rural areas, however, primarily receive funding from land used by Alabama’s agricultural and timber industries. In other words, a town filled with high-end department stores, exclusive suburban neighborhoods, and high-powered industries like hospitals and business centers receives exponentially more property tax revenue than a town with little more than a gas station and the occasional Wal-Mart. The Sumter County school system, for example, is located in “Alabama’s overwhelmingly rural Black Belt, where in half of the counties, the school system is over 98% Black,” with “[African Americans] owning only about 3% of Alabama’s agricultural acreage and 2% of its timber acreage” despite representing the majority of the population (U.S. Review, 2014, p.6). Not only do the majority of Black Belt residents suffer from embarrassingly low property values, they do not receive the benefits of the low assessments because they do not own the property.

Instead of implementing the necessary reforms outlined by *Lynch*’s prosecution, Alabama’s legislature paid homage to the issues highlighted in *Knight* through a Black Belt Action Commission created in 2004. Governor Bob Riley stressed, “The Black Belt has been studied and studied. The problems there have already been identified. It’s time to take action—to put into practice a new approach that focuses on results and measurable improvements” (Alabama Governor administrative files, 2004). Yet, Riley declined to outline avenues for “results and measurable improvements” unless they benefitted Alabama’s industries. Furthermore, Riley’s commitment to “keep the

interest of business first” fell short as Alabama suffered from immense financial issues caused by the 2008 recession during his final term in office (Tullos, 2011, p.179). Black Belt counties experienced unemployment rates of over twenty percent, while Alabama’s legislature “cut education spending and drained the rainy-day fund” to mitigate expenses (Tullos, 2011, p.179). Riley’s Black Belt Action Commission promised to benefit local Alabamians just as Wallace’s Lid Bill campaign promised to protect the interests of everyday people. Yet, both the Commission and the Lid Bills overlooked the actual needs of the people in favor of business interests and economic reform. Riley’s fight to protect citizens within the Black Belt reflected an ideological lynchpin for the modern conservative movement based on a “mythical South” that bore little resemblance to reality (Lassiter & Crespino, 2010, p.310). Indeed, looking back to the arguments posited by the 1978 Legislature, “one would assume that [Alabama] continues to be dominated by a population who lives and earns its livelihood from agriculture. Such, however, is not the case” (*Alabama School Journal*, 1982, p.11). While the Commission included a nature trail, a heritage guide, and a fruit and vegetable marketing center for small farmers to sell their product “to buyers in Alabama and beyond Alabama,” Black Belt citizens needed employment opportunities and educational improvements to survive financial hardships (*Selma Times Journal*, 2010).

By 2012, the district court in *Lynch* ruled in favor of the state and refused to remove the Lid Bills stating, “Although the district court acknowledged that Alabama’s racist past...cast long shadows, it ultimately found that the Lid Bills were financially, and not discriminatorily motivated” (U.S. Review, 2014, p.26). In defining the Lid Bills as a financial reaction to *Weissinger* rather than a response to civil rights legislation, the 1978 Legislature succeeded in passing anti-Black policies under the guise of an anti-tax agenda. District Judge Lynwood Smith once commented that “Interest groups spend untold amounts in lawyers, lobbying, and advertising to promote legislation enhancing the wealth of their members,” noting, “State powerbrokers perceive little benefit from investing in a quality statewide public school system because the children of their most influential constituents are generally enrolled in exclusive suburban school systems...or in private schools” (Lyman, 2014). Indeed, ALFA spent nearly \$4 million in 1994 to “purchase” candidates and place them in positions like governor, attorney general, and state chief justice (Alfa, *The Anniston Star*, 1996). By refusing to upend the Lid Bills, the courts appeased hard-hitting lobbyists like ALFA, ignoring the needs of everyday Alabamians. As one report noted, “...representing farmers has become a side crop for ALFA. What it really does is run Alabama politics” (Alfa, *The Anniston Star*, 1996). Furthermore, because the children of wealthy elites received adequate education regardless of property tax revenue, “it did not matter where the money might go; [the State] did not want it to go anywhere” (*Paying Taxes in Alabama*, *The Anniston Star*, 2011). By projecting sympathy for the plaintiffs while ruling in favor of the State, the district court’s decision emphasized the durability of property taxes as an avenue for discrimination, despite changing attitudes towards race. However, Alabama’s attention to special interest groups like ALFA left the courts

as “the last refuge for justice for those little folks who can’t afford \$4 million worth of influence” (Alfa, *The Anniston Star*, 1996).

Between 1981 and 2014, the “little folks” in Lawrence and Sumter counties sought relief through Alabama’s judicial system. Yet, as the district judge in *Lynch* concluded, “Courts are not always able to provide relief, no matter how noble the cause” (*Lynch v. Alabama*, 2014, p.28). The district court justified its decision by noting, “...because the requested remedy would not redress the alleged injury, the plaintiffs lacked standing to challenge the millage cap provisions despite the district court’s finding that they were enacted with discriminatory intent” (*Lynch v. Alabama*, 2014, p.28). The “requested remedy,” as proposed by *Lynch*’s prosecutors, sought to return the power to raise taxes to local county officials which the 1978 Legislature usurped. However, the Court concluded that because the prosecution could not prove that local officials would choose to raise property taxes, it declined to give them the opportunity. The court of appeals refused to engage in “guesswork as to how independent decision-makers—e.g., the county commissioners otherwise empowered to increase millage rates—will exercise their judgment” (*Lynch v. Alabama*, 2014, pp.16-17). Furthermore, the court declared that “millage caps...create no cognizable injury, because a court could only speculate about whether [the plaintiffs’] efforts would succeed in the absence of the caps” (*Lynch v. Alabama*, 2014, p.19). Without the power to predict the future, the plaintiffs’ claims failed to produce any change. The district court reflected Alabama’s unwillingness to alter property taxes under any circumstance, even if the system proved unconstitutional.

In an alarmingly tone-deaf response to the district court’s ruling, one Alabama think tank blamed the Lawrence and Sumter County citizens for their underfunded schools stating, “A community’s willingness to pay higher taxes for the benefit of their schools is directly tied to the citizen’s level of engagement and involvement in the schools” (Robertson, 2014). The think tank neglected to acknowledge that the state, rather than the citizens, held the authority to raise taxes. By the policymakers’ reasoning, the state’s unwillingness to raise property taxes reflected a low level of engagement and involvement in rural school systems. Indeed, in 2007, *Education Weekly* placed Alabama among the bottom five states in offering children a chance for success according to K-12 education improvement policies (Tullos, 2011, p.245). While *Education Weekly* focused on K-12, the National Center for Public Policy and Higher Education issued Alabama a failing grade in all six categories, including preparation, participation, affordability, benefits, completion, and learning in 2008. Analyzing the outcomes from *Weissinger*, *Knight*, and *Lynch*, the state opposed any improvements in public education at the expense of Alabama’s agriculture industries. Despite assurances from elected officials, Alabama’s public schools were not “fine,” and they certainly could not be described as “on the cusp of magnificence.” Meanwhile, ALFA continued to generate millions of untaxed dollars through membership dues to advance the organization’s cause across the state (Tullos, 2011, p.165). Thanks to the

support of Alabama's legislature and court systems, agribusiness executives could rest easy knowing the state protected their revenues from silly little expenditures like education.

CONCLUSION 2014-2020

When asked about their state's history, the children of Lawrence and Sumter counties might struggle to provide a confident answer as they read about the triumphs of the civil rights movement in a classroom unable to provide necessities. Part of Alabama's education standards for social studies requires students to analyze the Alabama Constitution of 1901 "to identify how its key components impact the relationship of funding between state, local, and special interest groups."⁹ As students learn about the influence of special interest groups on Alabama's government, they understand the mutually beneficial relationship between the two. Students would be shocked, then, to discover that their state worked alongside the largest lobbying group in Alabama against the needs of their school. If the students understood the implications of *Lynch's* ruling, they might question the requirement to "explain how the balance between individual versus majority rule is essential to the functioning of American democracy."¹⁰ Indeed, after learning about the importance of a representative government and fair elections, students might ask how an individual is supposed to assert rule if they are not allowed to do so. However, like the district court's refusal to connect Alabama's Lid Bills to a longer history of anti-Black legislation, the lessons given to Alabama's students are not fully historicized. Beginning with the 1875 Constitution, Alabama's Legislature retracted state support of public education to prevent tax dollars from educating Black citizens. In 2018, 90.34% of students attending Alabama's 75 "failing" schools were African American (Patterson, 2020). As seen in the 1901 Constitution, the 1956 Amendment of Section 256, and the 1970 Lid Bills, Alabama's response to progressive reforms usually serves to further undermine Black citizen's opportunities for equitable education. Yet, unequal and inequitable education disadvantages all Alabamians. One research report notes that "higher educational attainment is correlated with higher rates of labor force participation, higher personal income, and higher GDP per capita, as well as better health outcomes" (Patterson, 2020). For those holding on to hope that Alabama might change, the federal government appears a likely ally. Yet, despite the historical narrative promoted by *Brown*, the federal government cannot always undermine Alabama's wayward legislation. *Lynch's* opening statement to the district court declares, "In the best of all possible worlds, state and local governments would ensure adequate funding for all facets of their public education system." However, "the reality is that some public school systems do not have sufficient resources to educate the children entrusted in their care" (*Lynch v. Alabama*, 2014, p.1). Unlike the court's refusal to amend Alabama's tax structure, the lack of adequate funding for Alabama's

public schools is not a government oversight. As seen in *Knight* and *Lynch*, the state, alongside the court system, chose to support multimillion-dollar agribusiness industries against the interests of poor, rural schoolchildren. In doing so, Alabama's legislative decisions post-1954 question the extent to which equitable schools can exist without adequate funding. As Dr. Derryn Motten, chair of the Department of History and Political Science at Alabama State University stated, "We're losing... if Alabama wants to thrive, Alabama has to invest in all of its children, not some of its children" (Patterson, 2020).

KEY TERMS

ad valorem taxes: "Ad valorem" refers to the assessed value of an item. Ad valorem property taxes are taxes based on the assessed value of property such as farm land, or personal property.

Assessment value: The assessed value of an item such as property is determined by an assessor. Assessed value is different from market value, which is the amount an item can be sold for.

Current Use: Property in Alabama is divided into Class I, II, III, and IV. Class III represents all residential, agricultural, and forest properties, and has the lowest assessment ratio in comparison to Class I, II, and IV.

Black Belt: The Black Belt is a region of Alabama across the middle portion of the state. The eighteen counties within the Black Belt are largely rural and have a majority African American population. The region derives its name from the rich black soil within the area.

Lid Bills: Bills passed in 1971 and 1978 which amended the state's property tax system. Collectively, the bills affirmed classifications for different types of property, set the assessment rate for each class, and capped the revenue that could be derived from property taxes.

New South: Coined by Henry Grady to describe the South's promise for industrial development after the Civil War, historians of the American South have debated the existence of a "New South" as opposed to the "Old South", defined by slavery and a plantation economy.

Big Mules: Alabama's wealthy powerbrokers, including coal mining, iron, steel, power, insurance, and other industrial institutions.

"Mythical South": A categorization of the American South that emphasizes whiteness, conservative values, and Protestantism. This portrayal discounts the diverse array of people, religions, and ideologies within the American South.

Dixie: An idiom for the American South typically associated with bigotry, state's rights, and conservatism.

Think tank: Institute that performs research for a specific topic or discipline.

DISCUSSION QUESTIONS

1. How did Alabama's 1868 Constitution differ from the 1875 Constitution? What was the main goal of Alabama's 1901 Constitution, and how did it differ from the 1875 Constitution?
2. What are some of the benefits of funding public education with property tax? What are the associated downsides?
3. When faced with desegregating schools because of the Brown v. Board of Education decision, what did policymakers in Alabama decide to do and why?
4. How did race influence policymakers' choices in how public education was funded in Alabama?
5. Who benefits from assessing property at "current use" versus market value? How does "current use" assessment affect public education funding?

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CITATION

Porter, B. (2024). The system works as intended: Alabama's 1901 Constitution and financing public education. In N.A. Aguado (Ed.), *Never Gonna Change? An examination of the 1901 Alabama Constitution* (pp. 33-56). North Alabama Digital Press @ Collier Library. <https://una.pressbooks.pub/nevergonnachange/>

NOTES

1. For works on Alabama school systems post-Brown, see Joseph Bagley's *Politics of White Rights*, chapter five of Wayne Flynt's *Alabama in the Twentieth-Century* (2004), Tondra Loder-Jackson's *Schoolhouse Activists* (2015), and Brian Landsberg's *Revolution By Law* (2022).
2. I have drawn from several among the vast historiographies of educational and southern history. In addition to the works on Alabama schools post-Brown, see Ansley Erickson's *Making the Unequal Metropolis* (2016), Sonya Ramsey's *Reading, Writing, and Segregation* (2008), and Noquera Wing's *Unfinished Business* (2019). For Brown's historical legacy, see Steve Suitt's *Overturing Brown* (2020), William Hustwit's *Integration Now* (2019), and Gay Orfield's *Dismantling Desegregation* (1996). For residential and financial discrimination see Richard Rothstein's *Color of Law* (2017), Destin Jenkin's *Bonds of Inequality* (2021), Camille Walsh's *Racial Taxation* (2018), and Crystal Sander's *A Chance for Change* (2016).
3. For reasons too complicated to address in this analysis, the 1901 Constitution continues to serve as the governing doctrine for Alabama. Thus, it will be referred to throughout the examinations of both cases.
4. "Planters" historically refer to large landowners, mostly from the Black Belt region. "Big Mules" refer to industry leaders in the early twentieth-century, who were primarily representatives in the banking, railroad, and industrial community.
5. The tax rate in Alabama is expressed in "mills." One mill equals \$1.00 of tax per \$1,000 of assessed property value.
6. For more on the extraordinary work of Black teachers, see Williams (2009), Ramsey (2008), Green (2016), Fairclough (2007), and Loder-Jackson (2015).
7. The Lid Bills appear to be named for the "lid" or cap they placed on property tax revenue.
8. The Alabama Farm Bureau formed in 1918 as part of the national American Farm Bureau Federation. In 1981 the Alabama Farm Bureau broke away from the national organization.
9. See <https://alex.alsde.edu/stds/COS/32674>
10. See <https://alex.alsde.edu/stds/COS/32707>

The Elusiveness of Tax and Constitutional Reform

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ABSTRACT

In this chapter, Professor Hamill illustrates that Alabama's regressive tax policy oppresses poor Alabamians and denies their children a chance for a better future and explains why the 1901 Constitution makes meaningful tax reform impossible. She then shows that Governor Bob Riley's 2003 failed reform efforts and ten years of unsuccessful civil rights litigation which followed, means reformers must convince Alabama's citizens at the ballot box. Professor Hamill's story of her personal experiences as an outspoken reformer, especially the anecdotes of her speaking to thousands of voters at their doors when she was a candidate for the legislature, illuminate why meaningful reform has remained elusive and reveals the distasteful strategy reformers must adopt to have any chance of success.