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### A Tale of Two Alabamas Book Review

Susan Pace Hamill

*University of Alabama - School of Law*, shamill@law.ua.edu

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## BOOK REVIEW

### A TALE OF TWO ALABAMAS

*Susan Pace Hamill\**

ALABAMA IN THE TWENTIETH CENTURY. By Wayne Flynt.\*\*  
Awarded the 2004 Anne B. and James McMillan Prize.  
Tuscaloosa, Alabama: The University of Alabama Press, 2004.  
Pp. 602. Illustrations. \$39.95.

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\* Professor of Law, University of Alabama School of Law. Professor Hamill gratefully acknowledges the support of the University of Alabama Law School Foundation, the Edward Brett Randolph Fund, the William H. Sadler Fund, and the staff at the Bounds Law Library, especially Penny Gibson, Creighton Miller, and Paul Pruitt, and also appreciates the hard work and insights from her "Alabama team" of research assistants, led by Kevin Garrison and assisted by Greg Foster and Will Walsh. I am especially pleased that this Book Review is appearing in the issue honoring my colleague Wythe Holt, whose example and support expanded for me the realm of what scholarship can be and do.

\*\* Professor Emeritus, Auburn University; formerly Distinguished University Professor of History, Auburn University. Flynt is the author of eleven books, which have won numerous awards, including the Lillian Smith Book Award for nonfiction, the Clarence Cason Award for Nonfiction Writing, the Outstanding Academic Book from the American Library Association, the James F. Sulzby, Jr., Book Award (three times), and the Alabama Library Association Award for nonfiction (twice). His most important books include ALABAMA: THE HISTORY OF A DEEP SOUTH STATE (1994), a book he co-authored that is widely viewed as the finest single-volume history of an individual state and was nominated for a Pulitzer Prize, POOR BUT PROUD: ALABAMA'S POOR WHITES (1989), which also was nominated for a Pulitzer Prize, and DIXIE'S FORGOTTEN PEOPLE: THE SOUTH'S POOR WHITES (1979), which was reissued in 2004.

Flynt is Alabama's preeminent historian and a social reformer who has devoted his life, often at significant personal cost, to challenging his fellow Alabamians to confront and solve the state's persistent problems of poverty and injustice. In 2005, the University of Alabama inducted Flynt into the Communications Hall of Fame, which honors those who have brought lasting fame to the state of Alabama. Flynt serves as editor-in-chief of the new Online *Encyclopedia of Alabama*, a product of a partnership between the Alabama Humanities Foundation and Auburn University, and as president of the board of the Alabama Poverty Project, an organization dedicated to mitigating and eventually eliminating the problem of poverty in Alabama that enjoys support from numerous organizations, including the Babcock Foundation. From its founding until December 2006, he served on the board of the Alabama Citizens for Constitutional Reform (ACCR).

Coming from humble beginnings—his paternal grandfather was a sharecropper who could not read or write until later in life—Flynt is a fifth-generation Alabamian who lived all over the state while growing up, including Gadsden and Sheffield, and who graduated from Anniston High School. Flynt received his A.B. from Samford University (formerly Howard College) and his M.S. and Ph.D. from Florida State University. He has been married to Dorothy Ann Smith Flynt for forty-five years, "To Dorothy, As always, the light of my life," WAYNE FLYNT, ALABAMA IN THE TWENTIETH CENTURY (2004) (dedication page), and has two sons and two grandchildren. Flynt is an ordained Baptist minister, lifelong member of the Baptist church, and thirty-year member of Auburn First Baptist Church, where he teaches an adult Sunday school class and serves as a deacon.

*It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way . . . .*<sup>1</sup>

## INTRODUCTION

These immortal words describing London and Paris in the eighteenth century fully resonate in Alabama throughout the twentieth century and at the dawn of the twenty-first century. Alabamians pondering the conditions of the state and its people tend to gravitate to one of two seemingly irreconcilable perspectives—extreme irritation or profound affection.<sup>2</sup> Extreme irritation is not difficult to understand given the state’s backward political and economic environment, persistence of poverty, horrendously unfair tax laws, inadequately funded public schools, and inefficient state government, all fueled by Alabama’s antiquated and racist 1901 constitution. Many Alabamians committed to improving the state, believe that those who profoundly adore Alabama have succumbed to romantic images and feelings totally divorced from reality. And many other Alabamians, especially those with ancestral family roots going back several generations, do unconditionally love the state in a way that breeds defensiveness and resistance to change contrary to their own best interests. Finally, most Alabamians leaning toward one of these two perspectives do not fully understand the other perspective.

In his extraordinary book spanning the entire twentieth century, Wayne Flynt, Alabama’s most distinguished and well-known historian and social reformer, develops and ultimately reconciles these contradictory perspectives. Flynt reveals a paradox of two Alabamas—that is, the “increasing complexity, irony, and ambiguity” of “Alabama ha[ving] a worse record in the 20th century than other states[,] . . . [especially] for blacks and poor whites[, while i]n other ways . . . [experiencing] 100 years of uncommon accomplishment.”<sup>3</sup> Capturing encyclopedic portions of the vast complexities of the state’s political, economic, and social history, while often presenting mind-numbing statistics and examples to back up his claims, Flynt lays out “enough corruption, opportunism, cowardice, betrayal of power, and lack of vision to make even the most chest-thumping booster

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1. CHARLES DICKENS, A TALE OF TWO CITIES 1 (1859).

2. I acknowledge Don Noble, who made remarks along these lines as the moderator of a workshop held on March 19, 2004, at the College of Communication and Information Sciences of the University of Alabama immediately after Rick Bragg and the late Bailey Thomson received the Clarence Cason Award for Nonfiction Writing.

3. WAYNE FLYNT, ALABAMA IN THE TWENTIETH CENTURY xii (2004).

ashamed.”<sup>4</sup> At the same time, Flynt presents “enough nobility of spirit, courage under fire (literally and figuratively), creativity, and accomplishment to make even the most cynical citizen proud[,] . . . [forcing e]ven the state’s harshest critics . . . to concede ground in the face of so much positive exertion against such heavy odds.”<sup>5</sup>

Rather than presenting Alabama’s journey through the twentieth century chronologically, Flynt opts for an unusual style of covering the entire century in a series of freestanding topics. After starting with Alabama’s 1901 constitution and its negative effects that reverberated across the entire century, Flynt paints the state’s political and economic landscape and then moves on to the social structures covering class, education, women, and African Americans. Even though Alabama’s familiar problems of poverty, oppression, corruption, racism, and inadequate education and social services dominate the themes of these chapters, Flynt persistently challenges these layers of hopelessness by including numerous examples of individuals and occasionally even institutions rising above these conditions and producing extraordinary accomplishments. Flynt then uses the chapters on war and especially on sports to build a bridge leading to the book’s grand finale: the chapters covering Alabama’s religion and culture, which climatically proves that both perspectives of the two Alabamas are equally true.

To fully explore the paradox of the two Alabamas and illustrate how Flynt’s topic-centered chapters validate and reconcile both the perspectives of extreme irritation and profound affection, I have organized this Review into three broad chronological periods that appear in each chapter of the book. The first period, spanning from the creation of the 1901 constitution through the years of the Great Depression and New Deal, presents the bleakest picture of oppression and despair, starkly contrasted by the undercurrent of steady perseverance from seemingly hopeless masses of African Americans, poor whites, and women, as well as a significant number of highly visible accomplished Alabamians. The second period, covering the dramatic social and political changes and unprecedented opportunities created by World War II as well as the tumultuous and violent years of the civil rights movement, exposes and aggressively challenges the oppression and injustice that dominated the first few decades of the twentieth century.

Finally, the paradox of both Alabamas during the third period, the years following the civil rights movement up through the dawn of the twenty-first century, leaves unresolved the future course the state likely will chart during the twenty-first century. On the one hand, during the last quarter of the twentieth century, the state seemed to forge ahead, building on the progress resulting from the traumatic and costly battles of the civil rights era and still producing an impressive lineup of highly accomplished Alabamians. At the same time, however, the state showed disturbing patterns being built on the

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4. *Id.*

5. *Id.*

foundation laid by the 1901 constitution, revealing a late twentieth-century style of oppression and injustice reminiscent of the early twentieth century. This conflicted picture, especially the eerie shadows of Alabama's darkest historical chapters repeating themselves, invites all Alabamians to contemplate whether the state is headed toward a twenty-first-century version of the violent events characterizing the civil rights era or if there is hope for a better way, which must start with removing the guaranteed oppression and injustice anchored in the 1901 constitution. Constitutional reform will level the playing field between those determined to keep the state chained to the past and those equally determined to move forward, and it will allow all Alabamians of the twenty-first century the freedom to decide for ourselves what the state's future will be. This offers the greatest hope for an internally inspired, gradual, and steady transformation of the state's social, political, economic, and educational systems that will both permanently dissolve the bonds of oppression and injustice still holding too many Alabamians back and raise the quality of life for all.

#### I. THE CREATION OF THE 1901 CONSTITUTION THROUGH THE GREAT DEPRESSION AND THE NEW DEAL

Flynt introduces his book with the irony of the late nineteenth-century New Year's Eve musings of journalists predicting great progress and advancement while "Alabamians greeted the new century with firm resolve that change was the order of the day"<sup>6</sup>—change they were determined to enshrine in a new constitution, change destined to bring nothing but trouble for the new century, change that would continue to stymie the state's progress and advancement long after the 1901 constitution's original supporters were dead and buried. Flynt's first chapter presents the 1901 constitution as the root cause of "most if not all the state's formidable problems."<sup>7</sup> After highlighting the nineteenth-century origins of the 1901 constitution, Flynt introduces two powerful groups, the planters, large landowners mostly concentrated in the Black Belt, and the "Big Mules," the state's banks, railroads, and industries in Birmingham and other industrial towns. These groups dominated not only the constitutional convention but also the state's economy and politics.<sup>8</sup> Flynt describes how they created a series of constitutional roadblocks "to place the power of government in the hands of the intelligent and virtuous."<sup>9</sup> That translated to disenfranchising virtually all blacks and most poor whites, many of whom were former Populists, "the great unwashed, uneducated masses of white tenant farmers; textile, steel, and sawmill workers; coal and iron ore miners [who] were as much a threat

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6. *Id.* at xvii.

7. *Id.* at 3.

8. *Id.* at 3-13.

9. *Id.* at 13 (quoting MALCOLM COOK McMILLAN, CONSTITUTIONAL DEVELOPMENT IN ALABAMA, 1798-1901: A STUDY IN POLITICS, THE NEGRO, AND SECTIONALISM 269 (The Reprint Co. 1978) (1955)) (internal quotation marks omitted).

to their class hegemony as were black voters.”<sup>10</sup> It also meant denying “the right of local communities to govern themselves” by transferring control of all local matters to the state legislature and guaranteeing that funding for schools and other social services would be inadequate and unstable by maintaining the property tax limitations initially anchored in the 1875 constitution.<sup>11</sup>

The political process that entrenched indisputably unconstitutional and unconscionable provisions disenfranchising a huge segment of Alabama’s population was even more outrageous than the offensive provisions themselves. Flynt summarizes the well-documented evidence that the 1901 constitution was fraudulently ratified by “[w]hite planters who dominated the Black Belt and employed virtually all blacks as landless, powerless sharecroppers [whom they] either intimidated . . . to support ratification or, more likely, simply reported the necessary huge majority without bothering to cast votes at all.”<sup>12</sup> Without obscuring the irony that enough lower-income white Populists succumbed to their racist baser instincts and voted for ratification, thus rendering these manufactured Black Belt votes critical to the outcome, Flynt minces no words in his sarcastic evaluation of both the 1901 constitution and its supporters: “The organic law that governed Alabama during the 20th century was, like the political process that created it, stained with racism and corruption. And the progenitors of this political bastardy were Alabama’s finest, wealthiest, and self-proclaimed ‘best’ citizens.”<sup>13</sup>

Flynt distills massive amounts of material showing how the political domination of the planter and Big Mule elites under the 1901 constitution blocked the masses of low-income Alabamians from challenging the state’s post-Civil War economic developments, which condemned most of these Alabamians to either a life of poverty or a struggle just above the poverty line with little hope of advancement. During the early decades of the twentieth century, industries such as “textiles, mining, lumber, and iron and steel making[, where] [l]aborers needed few skills, received low wages, and possessed little bargaining power”<sup>14</sup> fostered what has been described as the family wage system. Flynt reveals some astounding statistics on the number of children working, including those for 1910 showing that more than 60% of all boys and more than 40% of all girls ages ten to fifteen were gainfully employed.<sup>15</sup> Moreover, the proliferation of tenancy, with almost two-thirds of all Alabama’s farmers owning no land by 1930, compelled many children to work in the fields during key planting and harvesting seasons.<sup>16</sup> A 1918 report commented on the badly underfunded state of Alabama’s schools, which condemned even many children who could attend school to a woeful

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10. *Id.* at 8.

11. *Id.* at 9-10.

12. *Id.* at 13.

13. *Id.*

14. *Id.* at 115.

15. *Id.* at 42.

16. *Id.* at 117, 224.

future.<sup>17</sup> Flynt illustrates this point in full color by providing a snapshot of the white schools in Montgomery County, which had a value of “less than half the cost of the county jail and one-quarter that of the courthouse[,] . . . [with] desks for only a third of [the] students” and most schools “lack[ing] sanitary toilet facilities” and “proper ventilation.”<sup>18</sup> During the height of the Roaring Twenties, Alabama ranked near the bottom in literacy and even had very high rates of white illiteracy.<sup>19</sup>

Flynt discusses Alabama’s devastating early twentieth-century public health situation, including the suffering inflicted by pellagra, a disease caused by the nutritionally deficient diets of the poor, and hookworm, a widespread parasite, also “rooted in rural poverty . . . [and] related to lack of shoes and unsanitary hygiene practices.”<sup>20</sup> Flynt points out the tragic irony, revealed by the 1918 report showing state funding to treat and prevent diseases in animals was nearly three times greater than the funding for people, that “widely distrusted federal officials and northern philanthropists did more to aid poor Alabamians than did their own state officials.”<sup>21</sup> Entrenched political elites kept funding low in a number of other areas, including Alabama’s pre-New Deal welfare policies, which tolerated the wretched conditions of almshouses in most counties described as “firetraps consisting of dilapidated shacks with filthy and dangerous sanitary systems . . . maintained for the purpose of having a place of banishment, . . . a quiet, secluded spot to carry [Alabama’s] unfortunates to die.”<sup>22</sup> Prisoners were also subject to horrendous abuses. Flynt identifies the convict leasing system, which generated nearly 20% of the state’s revenue in 1919, as another symptom of the state’s low taxes, “turn[ing] a state financial liability into a resource”<sup>23</sup> with brutal consequences, including the nation’s top death rate for state prisoners.<sup>24</sup> Unlike the early twentieth century’s general conditions, which denied women the full rights of citizenship, the horror of Alabama’s prisons was equally inflicted on women. Despite Julia Tutwiler’s efforts, “prison remained the ultimate hell-on-earth for women unfortunate enough to wind up there,” with “rape . . . a standard part of reminding women of their status.”<sup>25</sup>

Amid this indisputable suffering inflicted on poor Alabamians, Flynt presents another side of the story, showing “[t]he interior lives of poor people were often at variance with middle-class perceptions.”<sup>26</sup> Using oral histories to tell the real stories of individuals, Flynt shows that “[b]uttressed by strong families and keen identity with local communities, many created a

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17. *Id.* at 196.

18. *Id.* at 42.

19. *Id.* at 223.

20. *Id.* at 209.

21. *Id.* at 212.

22. *Id.* at 195.

23. *Id.* at 46.

24. *Id.* at 47.

25. *Id.* at 203.

26. *Id.* at 190.

rich folk culture and possessed a remarkable sense of self-worth.”<sup>27</sup> For example, Marvin Malley Champion and his family were sharecroppers who supplemented farm income by hunting and trapping while “walk[ing] four miles to the nearest railroad line and pick[ing] up coal that fell off trains headed to and from Mobile” to have heat in the winter.<sup>28</sup> Massie Miller and his family “earned extra income by taking odd jobs at a sawmill when not engaged in raising cotton” and moved twelve times in a eleven-year period, “seeking a nicer house, better land, or a fairer landlord.”<sup>29</sup> “Despite her illiteracy, [Myrtle] Lawrence became the star of the 1937 National Sharecroppers’ Week in New York City,” and though Lawrence was considered one of the best organizers of the Southern Tenants Farmers’ Union, she embarrassed some other organizers at this event due to “[h]er rotten teeth, a by-product of pellagra, and her ever-present ‘spit can’ decorated with bright pink paper.”<sup>30</sup> Flynt includes another obscure but great story of a folk band of white sharecroppers playing at a lawn party at the Roosevelt White House and then “earn[ing] an encore, playing for FDR and guests on the presidential yacht sailing down the Potomac.”<sup>31</sup> Flynt also puts a human face on mill workers, telling the story of Mrs. L.A. House, a proud woman who found the work “arduous and boring, but . . . ‘easier than digging’ . . . [and who,] when middle-class Sylacauga children mocked her grandson as a ‘cotton head,’ fir[ed] back a pointed rejoinder: ‘If it wasn’t for the “cotton heads” you wouldn’t have nothing to eat in Sylacauga.’”<sup>32</sup>

Examples throughout Flynt’s book of heroic efforts by individuals and communities take some of the sting out of the harsh facts documenting the grossly underfunded schools and deplorable public health situation. The examples include a tale of Pinson residents, determined to have a school for their children, who “collected donations and pledges, purchased land, . . . [and] picked up rocks out of Turkey Creek and carried them to the building site.”<sup>33</sup> Flynt also tells the story of Tommie Bass “of mountainous Cherokee County[,] . . . [who] liv[ed] in a two-room cottage heated by a pot-bellied stove,” was a practitioner of holistic medicine who treated many Alabamians with no access to a conventional physician, and much later in the century, “became a star of the folk medicine movement, lecturing botany and medical school students from Duke [University], the University of North Carolina, and elsewhere.”<sup>34</sup> More conventionally, before northern-based philanthropy stepped in and widely combated hookworm in Alabama, Dr. John Waller Haygood diagnosed and treated his younger brother Edwin’s

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27. *Id.*

28. *Id.*

29. *Id.* at 117.

30. *Id.* at 118.

31. *Id.* at 519.

32. *Id.* at 126.

33. *Id.* at 226.

34. *Id.* at 206.



hookworm infection and launched statewide efforts to educate the medical profession.<sup>35</sup>

Flynt shows that Alabamians of the early decades of the twentieth century made substantial contributions at an intellectual level. Though Helen Keller, one of the most influential Alabamians ever to live, is best known as “the foremost activist on behalf of blind and handicapped people worldwide,” Flynt reminds his readers that Keller also “became a crusading socialist, opposing militarism and U.S. involvement in World War I, favoring birth control and woman suffrage, and opposing child labor.”<sup>36</sup> Flynt also introduces Hallie Farmer, a professor and author of “the definitive *Legislative Process in Alabama*,” who from 1927 through 1956 influenced generations of female college students and “advocated adding women to juries, abolishing the poll tax, . . . banning the use of whips on state convicts, . . . [and] establishing a state merit system and a pardon and parole board.”<sup>37</sup> One of Farmer’s students, Sybil Pool, enjoyed a thirty-four-year political career starting in 1936 in several statewide offices.<sup>38</sup> Within the realm of literature, Alabamians during the 1920s and 1930s produced literature inspired by the social, racial, and economic injustice permeating the state that foreshadowed even greater works later in the century. For example, Octavus Roy Cohen formed a group of aspiring writers called “the Loafers,” which influenced novels and short stories written by Edgar Valentine Smith, Jack Bethea, and James Saxton Childers.<sup>39</sup> Clarence Cason, “a self-conscious liberal,” wrote a “mildly critical memoir,” *90 Degrees in the Shade*, which “frankly described the poverty of mill workers near his Talladega County home and denounced Klan influence in Tuscaloosa,” thereby “set[ting] the pattern for books to follow.”<sup>40</sup>

Flynt also reveals how Alabama’s political, economic, and social landscape produced other prominent intellectual figures that either opposed many reform efforts or pursued the personal and social liberation opening up in the 1920s. Among these significant public intellectuals were Marie Bankhead Owen, who led the state’s female anti-suffragists, politically aligned herself with the state’s Big Mules, and also directed the state archives from 1920 to 1955, thereby remaining “synonymous with Alabama history,”<sup>41</sup> and Grover Hall, the influential *Montgomery Advertiser* editor who opposed most progressive reforms and won the Pulitzer Prize in 1928 by exposing the excesses of Alabama’s Ku Klux Klan.<sup>42</sup> Flynt provides interesting details of the lives of four Alabama women, all from Montgomery, who benefited from the social liberation of the 1920s. Flynt comments that

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35. *Id.* at 210-11.

36. *Id.* at 266.

37. *Id.* at 284.

38. *Id.* at 287.

39. *Id.* at 501-02.

40. *Id.* at 497.

41. *Id.* at 276.

42. *Id.* at 55.

the most famous, Zelda Sayre Fitzgerald, who with her famous literary husband F. Scott Fitzgerald “during the 1920s pretty much defined ‘flaming youth[,]’ . . . was a talented dancer, artist, and writer in her own right.”<sup>43</sup> Owen’s niece, Tallulah Bankhead, a Broadway and film star who was considered for the role of Scarlett O’Hara in *Gone With the Wind*, was “without question one of the most uninhibited and flamboyant women of the 20th century.”<sup>44</sup> The stories of Sara Haardt Mencken and Sara Mayfield, both lesser known but part of “a rarified intellectual circle that included H. L. Mencken[,] . . . [the] high priest of American intellectual iconoclasts during the Jazz Age,”<sup>45</sup> show that Alabamians fortunate enough not to be stifled by the pervasive poverty and lack of educational opportunities that plagued virtually all in the lower classes enjoyed a chance to develop to their full potential.

The encouraging stories of desperately poor sharecroppers and workers making the best of their situation or rising above it, alongside the list of impressive intellectual accomplishments and the examples of iconoclastic women who flourished despite Alabama’s backward environment, do not mask the largely callous and inadequate political response to the dismal economic and social conditions faced by so many Alabamians. Flynt illustrates how the 1901 constitution’s restrictions of the franchise and concentration of authority in Montgomery shaped Alabama’s political culture and this response. The chilling statistics on the 1901 constitution’s most immediate effects, “the sudden and dramatic decline in voting,” indicate that few tenant farmers and low-wage workers could even vote; thus, they were denied the ability to invoke the political process directly to improve the detrimental economic and social conditions they faced.<sup>46</sup> Though the numbers of black voters initially dropped much more quickly than the number of white voters, the poll tax and other punitive provisions cumulated over the decades, massively disenfranchising not only virtually all black voters but also almost all lower-income white voters, resulting in only a mere third of all adults being registered by 1940, with approximately 600,000 whites and 520,000 blacks disenfranchised by the 1901 constitution.<sup>47</sup>

The 1901 constitution’s massive removal of many citizens from the voter rolls and the denial of home rule power at the local level fostered what has been described as the “courthouse gang” style of Alabama politics. This involved “a small local elite unduly influenc[ing] the remaining citizenry[,] . . . [with] voters often t[aking] cues from circuit or probate judges, sheriffs, county commissioners, or mayors.”<sup>48</sup> Flynt describes in picturesque detail how local “courthouse gangs,” having little power under the 1901 constitu-

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43. *Id.* at 271.

44. *Id.* at 272.

45. *Id.* at 269.

46. *Id.* at 14.

47. *Id.*

48. *Id.* at 32.

tion, “extracted their pound of flesh as the price for endorsement” by requiring “prospective candidates [to] offer a paved road, sewer system, or cabinet appointment . . . [as they] appeared . . . before the local inquisition of powerful courthouse officials,” often held “at a local café for coffee and breakfast, or for barbeque and sweet tea at lunch, or at night to drink some stronger libation at a roadhouse or hunting club.”<sup>49</sup>

While documenting the inadequate and callous responses that most of the political leaders elected by this “courthouse gang” style of politics offered to the state’s economic and social problems, Flynt also outlines the more enlightened responses of Alabama’s two most progressive governors, Thomas E. Kilby and Bibb Graves, and emphasizes the remarkable accomplishments contributed by women tapped to serve in both administrations. Despite his background as “an Anniston foundryman and banker and no friend of organized labor,”<sup>50</sup> Kilby in 1919 created the Alabama Child Welfare Department and appointed as its director Lorraine Bedsole Bush Tunstall, who “vigorously conducted her work, and by July 1921 had reduced the percentage of gainfully employed Alabama children from 45 to 24 percent.”<sup>51</sup> Other women who took part in the Kilby administration included Sarah E. Luther, in charge of a division in the new state board of education, and Augusta Martin, the first child labor inspector. Graves, though backed by the Ku Klux Klan, which thrived in the 1920s and sometimes resorted to violence against “Catholicism, prostitution, bootlegging, immigrants, [and] adolescents who rebelled against traditional moral values,”<sup>52</sup> finally ended the brutal practice of convict leasing in 1927 and improved the funding of public education. During his second term, which began during the heart of the Great Depression, Graves created a new Department of Labor and appointed two women, Daisy Donovan and Mollie Dowd, to head divisions within that department. During this time, Loula Friend Dunn, a protégé of Tunstall, became commissioner of the Alabama State Department of Public Welfare, which replaced the Alabama Child Welfare Department during the New Deal period.<sup>53</sup>

Flynt juxtaposes the political establishment’s responses to the state’s economic and social problems with the loud voices and persistent action of individual reformers, many of whom largely have been forgotten. Reformers outside the political establishment included some evangelical Christians who, “[o]nce engaged in politics on behalf of prohibition, [found] it was difficult . . . to ignore other problems such as child labor or the convict lease system.”<sup>54</sup> For example, Edgar Gardner Murphy, an Episcopalian priest, “declared spiritual war on child labor”<sup>55</sup> during the early years just after the

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49. *Id.* at 33.

50. *Id.* at 196.

51. *Id.* at 44.

52. *Id.* at 40.

53. *Id.* at 263.

54. *Id.* at 44.

55. *Id.* at 43.

turn of the century. L.L. Gwaltney, the editor of *The Alabama Baptist*, wrote a 1937 editorial titled "A Better Alabama," pleading for a state "where no one will have to live in the miserable shacks and hovels that some of our people now call their homes[,] . . . [where] unemployment[,] . . . underemployment[,] and semi-employment are no longer major problems," while stating that "[s]uch a state . . . will come only when one takes seriously this business of building the Kingdom of God on earth, because then only will come a real brotherhood of man, whose foundation will be laid in the Fatherhood of God."<sup>56</sup> However, amid these encouraging examples, Flynt reveals that most early twentieth-century Alabama evangelicals chose a different path, a path involving an exclusive "[e]mphasis upon purity of belief and personal purity, and determination to . . . aggressively [and] self-righteous[ly] . . . enforce their values on others,"<sup>57</sup> which included not only campaigning for prohibition while ignoring the rampant injustice in other areas but also perpetuating injustice by displaying bigotry and sometimes violence against Catholics.<sup>58</sup>

Flynt also identifies organizations such as the Women's Christian Temperance Union and the Alabama Federation of Women's Clubs, which by 1915 included more than 150 clubs with more than 4,000 members, as "launching pad[s] for reform" that "moved thousands of women from private to public arenas."<sup>59</sup> These organizations mobilized mostly middle- and upper-class women not only to work to establish prohibition and obtain the right to vote for women but also to oppose convict leasing and child labor and "endorse improved teacher education, higher qualifications for school superintendents, anti-illiteracy programs, [and] higher local taxes for schools."<sup>60</sup> Flynt provides a personalized touch through mini-biographies of a number of individual women suffragists, most of whom are not well-known historical figures. Examples include Bossie O'Brien Hundley, who "[a]s chief strategist in the 1915 lobbying effort on behalf of enfranchising women, . . . sat in the gallery while one legislator after another quoted Scripture to justify denying women the vote . . . [and] located a proof text of her own, Psalm 116:11: 'All men are liars,'"<sup>61</sup> and Patti Ruffner Jacobs, "the state's preeminent suffragist," whose husband "surrounded her with servants, cooks, housekeepers, gardeners, and nurses, funded her suffrage activities, and took pride in her growing celebrity."<sup>62</sup>

Despite the victories of both Kilby and Graves and the far greater efforts put forth by reformers outside the political structure, "progressives did not sweep conservatives from the field of political combat. Bourbons con-

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56. *Id.* at 467.

57. *Id.*

58. *Id.* at 467-70.

59. *Id.* at 255.

60. *Id.* at 256.

61. *Id.* at 260.

62. *Id.* at 259.

tested every inch of ground, winning as many skirmishes as they lost.”<sup>63</sup> Flynt’s extensive discussion shows that out “[o]f the nine governors who served between 1900 and 1930, five were essentially conservative Bourbon Democrats; two were Progressive Democrats; and the other two vacillated between the two ideologies.”<sup>64</sup> Using the metaphor of “a semivirtuous woman” to capture the mixed contribution of progressive reformers— “[i]t was not as bad as it could have been, but it could have been lots better”<sup>65</sup>— Flynt ultimately concludes that Alabama’s version of progressivism “contributed measurably” to the “mutual animosities [that] would [politically] divide Alabama for the rest of the 20th century”<sup>66</sup> between “[r]eformers— divided by ideology, cause, region, race, gender, racial and religious prejudices, and class status—[and] a largely united patrician, business-oriented, conservative, Big Mule, Bourbon coalition . . . armed with the 1901 constitution, traditionalism, racism, and contempt for the white masses.”<sup>67</sup>

Despite the encouraging examples of forward-looking reformers and some progressive change in the political arena, Flynt reminds us that virtually no white leaders proposed reforms for blacks, stating bluntly “[t]hese decades in fact were arguably the worst in the 20th century to be black and to live in Alabama.”<sup>68</sup> Even the chorus of women suffragists, including Jacobs, “rejected the idea that black women should be included in the vote.”<sup>69</sup> Trapped in Jim Crow’s world, the South’s system of legalized segregation, with very limited education opportunities, most blacks “filled an important niche in Alabama’s 20th-century economy, which was constructed for the most part on cheap, unskilled physical labor.”<sup>70</sup> Using a number of different statistical perspectives to back up his claim, Flynt proves that “[t]he state simply ignored late 19th-century Supreme Court decisions that required that racially separate schools must be equal.”<sup>71</sup> Especially before the education funding increases that Graves pushed through, many counties had no high school for blacks.<sup>72</sup> Even though 40% of the state’s population was black, Alabama spent less than \$1.5 million to educate black children in 1924, compared to \$13 million for white children.<sup>73</sup> In 1930, Lowndes County averaged less than \$5 a child for black education, compared to \$96 for whites.<sup>74</sup>

Flynt paints pictures of hope rising out of the oppressive conditions foisted on blacks throughout the Jim Crow period. Flynt identifies the black

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63. *Id.* at 51.

64. *Id.* at 38.

65. *Id.* at 57.

66. *Id.*

67. *Id.* at 56-57.

68. *Id.* at 51.

69. *Id.* at 260.

70. *Id.* at 319.

71. *Id.* at 225.

72. *See id.* at 224.

73. *Id.* at 225.

74. *Id.* at 223.

church as “essentially defining life for most African Americans” by “providing affirmation of blackness, alternative forms of worship, leadership opportunities for women, [and] political and economic leadership,”<sup>75</sup> thereby “preserv[ing] the dignity of countless Alabama blacks and allow[ing] them to make sense of their cosmic predicament during the reign of Jim Crow.”<sup>76</sup> Flynt provides a wealth of examples of blacks trapped in the despair of poverty finding creative outlets in the form of crafts and self-taught art, including the bittersweet story of Bill Traylor, recognized toward the end of the century as a major figure in folk art for his pencil and straightedge drawings.<sup>77</sup> Traylor, “born a slave in 1856 in Lowndes County,” was “[t]rapped into the world of sharecropping by his illiteracy [but] finally left the plantation in the mid 1930s . . . [to] set up a ‘sidewalk studio’ [in Montgomery while] sleeping in the back of a funeral home and shoe repair shop” as his elite patron reaped the financial benefits of his priceless collection by the time Traylor died in 1949.<sup>78</sup>

Even within the wasteland of pitifully low education funding for black children, Flynt emphasizes the heroic efforts of black leaders within the state who were determined to provide a chance for the next generation to enjoy a better future. Flynt defends Booker T. Washington and George Washington Carver, both well-known and often criticized for accommodating rather than challenging the system of segregation, as “racial moderates forced to conform to a world neither of their making nor of their preference” who “kept hope alive and made generations of young blacks believe in themselves.”<sup>79</sup> Flynt discusses the work of lesser-known black educators such as Carrie Tuggle, who established a black newspaper in the first decade of the twentieth century and founded the Tuggle Institute, and James A. Weldon and Arthur Harold Parker, principals of black public schools during this period.<sup>80</sup> Flynt’s details surrounding these stories provide a personal glance back into that time. For example, when Parker wanted to expand his Industrial High School’s music program, which John T. Whatley had developed as one of finest in the region, to include orchestral music, he had to “guarantee that the songs from slavery days so popular among white audiences would remain in the repertoire.”<sup>81</sup> Flynt notes the irony that “[w]hites seemed to put aside their racism for the Whatley band, even when it played in Cullman, a community renowned for its racial exclusion.”<sup>82</sup>

Flynt also covers the inspiring stories of individual phenomenally talented black Alabamians, many of whom were only able to achieve success after migrating to the North. Flynt reminds his readers that though Nat

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75. *Id.* at 331.

76. *Id.* at 332.

77. *Id.* at 526-28.

78. *Id.* at 527.

79. *Id.* at 328.

80. *Id.* at 329-30.

81. *Id.* at 331.

82. *Id.* at 515.

“King” Cole, “one of the nation’s most beloved popular singers,”<sup>83</sup> formed his first band in Chicago in the 1930s, he was born in Montgomery. Flynt also introduces his readers to other extremely talented though less well-known black musicians, including James Reese Europe, who was born in Mobile and presented the first Concert of Negro Music at Carnegie Hall; W.C. Handy, a Florence native who made a name for himself in St. Louis, Missouri, and Memphis, Tennessee, composing and playing blues jazz; Charles Melvin “Cootie” Williams, who earned the title of the most acclaimed Alabama jazz musician; Clarence “Pine Top” Smith Jr., whose music in 1928 inspired the “boogie woogie” style of dancing; and Erskine Hawkins, a alumnus of Whatley’s band whose talent playing the trumpet matched Louis Armstrong’s.<sup>84</sup> In the area of sports, black Alabamians excelled, earning high rankings in various sports surveys. For example, Joe Louis and Jesse Owens achieved world champion status in the 1930s in heavyweight boxing and track, respectively, with Owens paving the way for Carl Lewis, another expatriate track star who won unprecedented Olympic gold medals later in the century.<sup>85</sup> In baseball, Leroy “Satchel” Paige, a pitcher of extraordinary talent in the segregated leagues of the 1930s, paved the way for superstars Willie Mays and Hank Aaron in later decades.<sup>86</sup> Even in the area of politics, expatriate black Alabamians achieved the milestones of being the first black Republican (Oscar De Priest, a Florence native, in 1928) and the first black Democrat (Arthur Mitchell, a Lafayette native who attended Tuskegee, in 1934) elected to Congress in the twentieth century.<sup>87</sup>

The economic devastation brought on by the Great Depression affected all Alabamians regardless of where they stood in the state’s complex economic and social hierarchy. Providing a wealth of statistics, Flynt presents the state’s vast economic decline in terms of employment figures, per capita income, and declining crop prices; the virtual collapse of state government in 1932 following Governor Benjamin Miller’s failed income tax referendum; and the desperation that permeated the landscape as funding for the limited progressively installed agencies such as the Alabama Child Welfare Department dried up.<sup>88</sup> Politically, the progressive tendencies existing before the Great Depression “merged into class-based New Deal liberalism,”<sup>89</sup> meaning a political strategy of looking to the federal government for funding and reforms. At the congressional level, Alabama “produced the most liberally minded public men of any Deep South state,”<sup>90</sup> particularly Hugo Black, whose consistent support for Roosevelt’s New Deal earned him a spot on the U.S. Supreme Court in 1937 and the opportunity to develop one

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83. *Id.* at 516.

84. *Id.* at 513-15.

85. *Id.* at 410-13.

86. *Id.* at 414-15.

87. *Id.* at 334.

88. *Id.* at 59, 60, 138-39, 197.

89. *Id.* at 58.

90. *Id.* at 62.

of the most distinguished records in the Court's history, and Lister Hill, who by the 1960s was considered "one of the dozen most influential U.S. senators of the century."<sup>91</sup> Flynt candidly presents the New Deal's mixed results. The creation of social safety nets, New Deal labor and employment policies, and numerous projects such as the Tennessee Valley Authority brought Alabama's economic structure closer to the mainstream outside the South.<sup>92</sup> However, due to the efforts of Alabama's Senator John H. Bankhead and Congressman Bob Jones, the Agricultural Adjustment Act, which paid farmers subsidies for reducing crops, greatly favored owners over tenants, resulting in many displaced tenants and "[o]wners watch[ing] indifferently as tenants shifted from their responsibility to public welfare."<sup>93</sup>

## II. WORLD WAR II THROUGH THE TUMULTUOUS AND VIOLENT YEARS OF THE CIVIL RIGHTS MOVEMENT

Using a combination of colorful stories and dry statistics, Flynt presents "returning prosperity" as "the most obvious consequence" of the coming of World War II, with Birmingham being rapidly transformed from "the American city hardest hit by the Great Depression" to "the 'great arsenal of the South.'"<sup>94</sup> Emphasizing Alabama's important role, Flynt documents the extensive wartime industry economic growth in Birmingham, Huntsville, the surrounding Muscle Shoals area, Mobile, and smaller towns such as Childersburg, Gadsden, and Sylacauga.<sup>95</sup> Flynt covers Alabamians' service in all twentieth-century wars and shows that during World War II, "Alabamians rallied to the flag in massive numbers until the total mobilization reached a staggering 321,000, one-third of the state's adult male population."<sup>96</sup> Flynt tenderly honors several Alabama mothers for having numerous sons serve, including "Emma Grady[, who] from her farm near Montevallo gave 7 sons to the cause[, a]nd Charity Deason of Lomax near Clanton[,] . . . [who] contribut[ed] 8 sons to the U.S. military."<sup>97</sup> Flynt outlines the professional accomplishments of prominent Alabamians serving as officers, including "Marine Corps general Holland McTyeire Smith[,] [c]onsidered by many military historians to be the father of amphibious warfare."<sup>98</sup> To represent the thousands of largely anonymous enlisted men whose lives were radically changed, Flynt also tells the personal stories of several, including Private Eugene B. Sledge, "the author of what many military historians consider the best ordinary rifleman's memoir of the Second

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91. *Id.* at 68.

92. *Id.* at 134.

93. *Id.* at 137.

94. *Id.* at 395.

95. *Id.* at 141, 395-96.

96. *Id.* at 384.

97. *Id.* at 391.

98. *Id.* at 384.



World War,”<sup>99</sup> who “suffered through nighttime Japanese infiltrations where jittery marines mistook each other for the enemy and killed their own men[,] . . . [d]escribed the savagery of marines extracting the gold teeth of dying Japanese soldiers[,] . . . [and] mused that ‘war is such self-defeating, organized madness the way it destroys a nation’s best.’”<sup>100</sup>

Using the same technique of intertwining personal stories and statistics, Flynt presents World War II as “a major catalyst for change” in women’s lives.<sup>101</sup> Close to half of the industrial workforce in some Alabama plants were women, and women made up an estimated one-quarter of Alabama’s total industrial workforce by 1943.<sup>102</sup> Alongside upbeat images of women “disassembling and reassembling airplane engines, welding, and performing other manufacturing jobs”<sup>103</sup> while “also bec[oming] auto mechanics, pharmacists, school bus drivers, legislative clerks, and security guards”<sup>104</sup> and the riveting stories of Harriett Engelhardt, who drove a huge GMC truck in France while on staff with the American Red Cross Foreign Service, and Nancy Batson Crew, who “flew P-38s, P-39s, P-40s, P-47s, and P-51s as well as B-24 and B-26 bombers to airfields, aircraft modification plants, and embarkation sites,”<sup>105</sup> Flynt reminds us that many women faced problems such as “sexual harassment[,] disparaging labels such as ‘welderettes[,]’ . . . or sexist remarks.”<sup>106</sup> Others “experienced the war through a familiar prism of female experiences[,] . . . cop[ing] as volunteers, housewives, and mothers”<sup>107</sup> or “occupy[ing] unskilled or semiskilled jobs.”<sup>108</sup>

Similarly, “[f]or many black Alabamians, World War II was as much a catalyst for change as the *Brown* decision,”<sup>109</sup> with “African Americans flood[ing] into the military . . . increasingly because . . . a person was more likely to be judged on the basis of ability than color.”<sup>110</sup> Amid the inspiring story of the Tuskegee Airmen units, Flynt recognizes the “firestorm of disagreement” surrounding the failure to “mainstream[] blacks into previously white units”<sup>111</sup> and reveals hardened racism at its worst in a heartbreaking story of “grieving parents . . . [who] produced a son good enough to sacrifice his life over Sicily” but were “refused a seat and told they would have to stand” at the memorial dedication sponsored by the Montgomery Civitan Club because they were black.<sup>112</sup> Flynt describes black veterans who “[a]fter having been overseas fighting for democracy, . . . [sought to] enjoy

99. *Id.* at 373.

100. *Id.* at 389 (quoting E.B. SLEDGE, WITH THE OLD BREED AT PELELIU AND OKINAWA 85 (1981)).

101. *Id.* at 397.

102. *Id.* at 397-98.

103. *Id.* at 397.

104. *Id.* at 398.

105. *Id.* at 399.

106. *Id.* at 398.

107. *Id.* at 400.

108. *Id.* at 169.

109. *Id.* at 338.

110. *Id.* at 374.

111. *Id.* at 402.

112. *Id.* at 403-04.

a little of it" by participating in lawsuits challenging county boards to register more black voters.<sup>113</sup> He also reveals the chutzpah of others such as Henry Hooten, who attended a dance in England despite being denied a pass "because only white girls would be present," and who stood up to a restaurant owner who initially refused to serve a group of black children.<sup>114</sup> Flynt illustrates the smoldering racial conflict spawned by pressure to end discrimination for skilled jobs fulfilling government contracts, describing in chilling detail a 1943 riot where more than fifty workers were injured in a two-hour gun battle.<sup>115</sup>

In the national political arena, Flynt proudly displays several extraordinarily accomplished Alabamians as he navigates through the maze of complex cross currents between New Deal liberals and "the conservative resurgence"<sup>116</sup> when the focus became increasingly racial following World War II. In addition to Senator Lister Hill, prominent members of Alabama's congressional delegation included John Sparkman, who as the "son of Tennessee Valley sharecroppers, . . . headed the Senate Foreign Relations Committee, helped craft bipartisan Cold War foreign policy, and became Adlai Stevenson's running mate in the 1952 presidential race."<sup>117</sup> Also prominent was Carl Elliot, who was "[i]n some ways, the most remarkable of [Alabama's] congressmen[,] . . . [who] joined forces [with Hill] in 1958 to pass the National Defense Education Act, camouflaging their longtime desire for federal funding of education as a matter of national defense[,] . . . [and who] offer[ed] Alabamians a moderate alternative to George and Lurleen Wallace in the 1966 gubernatorial race."<sup>118</sup> Flynt also acknowledges dishonorable examples, including Frank Boykin, who was convicted twice of federal crimes and was known for "trying to seduce underage Mobile beauty queens, and taking breaks from congressional hearings to fornicate with secretaries, prostitutes, or anyone else available."<sup>119</sup> Boykin staunchly opposed civil rights during his twenty-eight years in Congress, writing in 1959 to Vice President Richard Nixon, "'We are not having trouble with our darkies . . . This Negro in Montgomery, . . . Martin Luther King, . . . hasn't done anything but cause trouble.'"<sup>120</sup>

Flynt presents the state side of Alabama's post-World War II politics as at best marked by lost opportunities and at worst overwhelmed with shameful racism and demagoguery, both of which materially contributed to the political backwardness that continues to plague the state. Flynt states that "Big" Jim Folsom's 1946 gubernatorial landslide victory had significant

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113. *Id.* at 340 (quoting ROBERT J. NORRELL, REAPING THE WHIRLWIND: THE CIVIL RIGHTS MOVEMENT IN TUSKEGEE 61 (1985)) (internal quotation marks omitted).

114. *Id.* at 339.

115. *Id.* at 340, 401.

116. *Id.* at 75.

117. *Id.* at 69.

118. *Id.*

119. *Id.* at 70.

120. *Id.* at 335.

potential to shift the course of Alabama's history due to Folsom's bold liberal agenda to reapportion the legislature, rewrite the 1901 constitution, and abolish the poll tax. Unfortunately, personal foibles, including womanizing, "drunken antics and shameless cronyism,"<sup>121</sup> legislative resistance, and increasing racial hostility among whites in the wake of the Supreme Court's 1954 *Brown* decision, thwarted Folsom's most important goals.<sup>122</sup> Capturing the tragedy of George Wallace's abandonment of his populist roots, Flynt describes Wallace's 1962 gubernatorial victory, his successful 1966 campaign on behalf of wife Lurleen, and his 1970 defeat of Albert Brewer in "the dirtiest campaign in Alabama political history"<sup>123</sup> as "strident racism at its worst,"<sup>124</sup> with profound negative consequences that "froze political change . . . [and] delayed emergence of a two-party system and New South modernization."<sup>125</sup> Flynt invites readers to contemplate Alabama's future had Brewer, who "typified the emerging New South governors[,] . . . transforming southern politics . . . [while] champion[ing] educational and constitutional reform, establishment of a state ethics commission, and recruiting new industry,"<sup>126</sup> won in 1970.

As he streamlines accounts of the well-known events in Birmingham, Montgomery, and Selma that define the civil rights movement, Flynt captures the range of white response: from the comparatively "tepid and moderate"<sup>127</sup> White Citizens' Council and its efforts to "make it difficult for any black resident who advocated desegregation to find a job, obtain credit, or renew a mortgage[,] . . . a time-honored, well-honed Black Belt strategy for controlling blacks,"<sup>128</sup> to the "violent, psychopathic fringe . . . [s]ome historians suggested that Birmingham's white business and political elites had fostered . . . for purposes of controlling black activists . . . during the 1930s and '40s."<sup>129</sup> Flynt paints vivid pictures of white terrorism, including images of sniper fire at integrated buses hitting a pregnant black woman, thugs randomly kidnapping and castrating a black man, the beating of the Freedom Riders as police stood idly by, Bull Connor and his forces unleashing powerful firehoses and snarling German shepherds on children, and Sheriff Jim Clark and his deputies inflicting billy clubs and tear gas on the marchers at Selma.<sup>130</sup>

Flynt views the more than thirty racially motivated bombings during the civil rights era as a powerful indictment of white evangelical churches.<sup>131</sup> With a touch of disappointment and sadness, Flynt describes how "[w]hite

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121. *Id.* at 66.

122. *Id.* at 26, 64-65.

123. *Id.* at 90-96.

124. *Id.* at 88.

125. *Id.* at 99.

126. *Id.* at 95.

127. *Id.* at 345.

128. *Id.* at 344.

129. *Id.* at 344-45.

130. *Id.* at 349, 351, 353.

131. *Id.* at 345, 347, 470-72.

churches fell silent on the most critical ethical issue of the century”<sup>132</sup> and evaluates their silence—or worse, their support of racist bigotry—as ultimately a betrayal of Jesus Christ’s message. In his chapter on religion, Flynt directly describes racist Catholics and Jews allying with racist Baptists and Methodists and provides a chilling list of Birmingham bombings against black churches or pastors, stating that “the virtual silence of white evangelical churches, associations, conventions, and conferences does not speak well of the capacity of Christians to transcend their culture” and speculating that “[h]ad such a waive of terror been conducted by Islamic extremists after September 11, 2001, the nation would have declared war.”<sup>133</sup> Flynt describes “the direct role of Southern Baptists in defending Jim Crow” as “even more appalling”<sup>134</sup> and cites state convention president Henry L. Lyon Jr.’s view of racial segregation as central to biblical teaching, but he also points out that “Baptists had no exclusive claim on racism.”<sup>135</sup> For example, Robert Strong, a Northern-born and California-educated pastor of Montgomery’s Trinity Presbyterian Church, “used Palm Sunday 1965 and the celebration of Christ’s Resurrection to preach that instant integration was both unreasonable and unworkable.”<sup>136</sup> “Sol Tepper, a leader of Selma’s Jewish community, . . . showed up outside the courthouse with an M-1 army rifle, volunteering to join Sheriff Jim Clark’s posse.”<sup>137</sup>

Despite his stinging criticism of the white religious establishment, Flynt marvels that it is “remarkable . . . how many slipped the bonds of racism and courageously worked for change.”<sup>138</sup> After describing vigorous internal debates within the Methodist Church that led many ministers to leave because of their liberal views on race, Flynt recognizes a handful of Baptist pastors and laypeople who “produced some courageous and prophetic voices” within the sea of overt racial bigotry or silence otherwise seen among the Southern Baptists.<sup>139</sup> Flynt individually recognizes the courage and exemplary accomplishments of other well-known whites, including federal district Judge Frank M. Johnson, demonized by George Wallace as a “no-good goddamn lying son-of-bitching race-mixing bastard,”<sup>140</sup> who ruled from the federal bench in favor of many civil rights goals, and Virginia Foster Durr, who crusaded with her husband to end the poll tax, befriended Rosa Parks, and opened her Montgomery home to civil rights activists.<sup>141</sup> Flynt also provides a wealth of stories of courageous stands by more ob-

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132. *Id.* at 343, 350.

133. *Id.* at 472.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* at 473.

138. *Id.*

139. *Id.* at 474-75.

140. *Id.* at 90 (quoting DAN T. CARTER, *THE POLITICS OF RAGE: GEORGE C. WALLACE, THE ORIGINS OF THE NEW CONSERVATISM, AND THE TRANSFORMATION OF AMERICAN POLITICS* 103, 105 (1995)) (internal quotation marks omitted).

141. *Id.* at 338, 348-49.

scure whites, including Charles F. Zukoski, Jr., who in 1948 published regular pseudonymous columns challenging segregation; Charles M. Nice, a legislator who refused to support a resolution condemning *Brown*; and Murial Lewis, who wrote letters to the local newspaper in the Black Belt criticizing the treatment of blacks and suffered retaliation when whites boycotted her husband's car dealership and drove him to a fatal heart attack.<sup>142</sup> Finally, commenting on the situation in Birmingham, Flynt observes that the commercial community overall reacted far better than the spiritual one, "noting that businessmen accepted the inevitable before most white ministers or educators[,] . . . adopting a course of good sense as anyone, albeit out of concern for their material well-being rather than from any moral sensibilities about the wrongness of their cause."<sup>143</sup>

Flynt reserves the greatest respect for the courage and efforts of local black Alabamians, proudly noting "one of the most important human rights movements of the 20th century had indigenous roots" with "strong local black leaders . . . [who] created vigorous protest movements before Martin Luther King . . . arrived."<sup>144</sup> Flynt highlights the work of Tuskegee's Dr. Robert R. Moton in the 1920s to get black staff at the new veterans' hospital; Charles Gomillion, who led black voter registration drives in the 1940s; and the Dallas County Voters' League, formed by blacks in Selma during the 1930s.<sup>145</sup> Local black leadership behind the Montgomery bus boycott included Alabama State University professor Jo Ann Robinson and labor leader E.D. Nixon.<sup>146</sup> Flynt describes black churches throughout Alabama as "the key to organizing a mass movement" because "[b]lack preachers were least vulnerable to white financial power, possessed the respect of their communities, spoke persuasively to large audiences, and had access to their congregations three times a week, allowing them to mobilize masses of people quickly," and he reveals informal discussions in Alabama during the Montgomery bus boycott as the source of the Southern Christian Leadership Conference.<sup>147</sup> Flynt also individually recognizes Vernon Johns, who "served a stormy pastorate [at Dexter Avenue Baptist Church], pressing his congregation to be more assertive" before King's arrival;<sup>148</sup> Fred Shuttlesworth, a minister "less compromising than other black ministers[,] . . . [who] moved into leadership because of the timidity of others"<sup>149</sup> and led civil rights efforts in Birmingham for almost ten years before King arrived;<sup>150</sup> and John Lewis, "a young Baptist minister born in Pike County near Troy [who] mobilized Selma's black youth with his emotional rallies at

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142. *Id.* at 337-38, 473.

143. *Id.* at 353.

144. *Id.* at 347.

145. *Id.* at 336.

146. *Id.* at 347.

147. *Id.* at 349.

148. *Id.* at 347.

149. *Id.* at 350.

150. *Id.* at 352.

Selma's black churches and persuaded black celebrities . . . to visit and encourage voter registration."<sup>151</sup>

Flynt also insightfully captures the often-observed complex cross currents within the black community. For example, Flynt debunks the simplistic image of a united black church against segregation, candidly pointing out that "[m]any pastors of well-to-do black congregations had always stood apart from the struggles of the black masses"<sup>152</sup> while also stating it is equally simplistic and unfair to simply "characterize conservative pastors as accommodationists who had profited from opportunities afforded by a segregated society or allowed themselves to be co-opted by the white power structure."<sup>153</sup> Recognizing the no-win situations black educators faced during the movement, Flynt sympathetically presents Alabama State University President H.C. Trenholm's decision "[t]o save his college" when he caved to Governor John Patterson's demand and fired a faculty member prominently involved in civil rights activities.<sup>154</sup> Flynt also explains that Huntsville's comparatively calm transition resulted from "[l]ocal leaders [hearing] the message loud and clear" that "federal moneys would not be available to build the space program in Huntsville if blacks were fighting in city streets for basic constitutional rights"<sup>155</sup> and that Mobile's transition resulted from moderate leadership and cooperation between John L. LeFlore, a postman and president of the local NAACP, and Joseph N. Langhan, a white legislator whose racial attitude greatly improved as a result of service in World War II.<sup>156</sup>

Amid his stinging criticism of the embarrassing scandals and misplaced priorities, Flynt still shows pride for the area for which Alabama is arguably best known, describing college football as "the sparkling jewel in the scepter of athletic power."<sup>157</sup> Flynt humorously jibs that "[a]lthough University of Alabama fans like to believe that God awoke one morning, yawned, then thundered 'Roll Tide,' the transformation of Alabama's sport history actually began at Auburn."<sup>158</sup> He then describes how an Auburn classics professor discovered football in the late nineteenth century while on leave to complete a Ph.D. at Johns Hopkins University and "decided to introduce football to the Deep South as a way of bringing progressive northern values to provincial southern students."<sup>159</sup> After covering the phenomenal rise of the Crimson Tide in the early twentieth century,<sup>160</sup> Flynt acknowledges Paul "Bear" Bryant as "America's winningest coach,"<sup>161</sup> "the most successful

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151. *Id.* at 347, 352, 356.

152. *Id.* at 461.

153. *Id.* at 461-62.

154. *Id.* at 329.

155. *Id.* at 346.

156. *Id.*

157. *Id.* at 416.

158. *Id.*

159. *Id.*

160. *Id.* at 418-19.

161. *Id.* at 420.

major college football coach of all time,"<sup>162</sup> and "a legend"<sup>163</sup> who attained 323 victories and six national championships during his quarter century as the Crimson Tide's head coach.<sup>164</sup> Finally, while crediting the sports arena for embracing integration before "churches, country clubs, or politics," Flynt notes that Bryant did not lead efforts to integrate Southeastern Conference football.<sup>165</sup> That did not get started until 1971, when an African-American fullback playing for the Southern California Trojans "ran over, around, and through the Crimson Tide, gaining 230 yards and scoring three touchdowns . . . [and doing] more to integrate southern football in 60 minutes than King had done in 20 years."<sup>166</sup>

Consistent with his pervasive theme of juxtaposing the very best alongside the very worst, Flynt describes Alabama's impressive literary, musical, and artistic accomplishments bubbling out of the intensive decades from World War II through the civil rights movement. Country music came into its own during this period with the renowned talent of Hank Williams, who dominated the charts in the early 1950s just before his untimely death, and the lesser-known Louvin brothers, also popular during the 1950s, who recorded twenty-two top country hits.<sup>167</sup> Reading like a "Who's Who" list, Flynt describes the many "chief stars in Alabama's literary galaxy"<sup>168</sup> that won the Pulitzer Prize and other prestigious prizes, the best-known being Harper Lee's *To Kill a Mockingbird*, "the most influential and beloved Alabama novel of the century,"<sup>169</sup> and the novels and short stories of Truman Capote.<sup>170</sup> The "explosion of black creativity" coming from or inspired by Alabama's oppressive racial environment includes Margaret Walker's *Jubilee*, referred to as "the Negro *Gone with the Wind*," and Ralph Ellison's *Invisible Man*, "what many critics consider the finest novel ever written by an African American," which was heavily influenced by his experiences as a Tuskegee student.<sup>171</sup> The violent white backlash against the civil rights movement inspired the editorial writing of Buford Boone of *The Tuscaloosa News*, producing a 1957 Pulitzer Prize, and of "Gadsden native and University of Alabama journalism graduate Hazel Brannon Smith[, who] became the first female editor to win a Pulitzer . . . [thanks to] a series of 1963 editorials [that] attacked violations of civil liberties and civil rights."<sup>172</sup> The civil rights movement also inspired Bernice Sims, an artist from Georgiana whose "bright colors added an inspirational, almost visionary dimension to the 1965 attack on marchers at Selma's Edmund Pettus Bridge and to as-

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162. *Id.* at 421.

163. *Id.* at 422.

164. *Id.* at 421.

165. *Id.* at 430.

166. *Id.* at 431.

167. *Id.* at 517-18.

168. *Id.* at 505.

169. *Id.* at 503.

170. *Id.* at 505.

171. *Id.* at 506.

172. *Id.* at 493-94.

saults on Birmingham's child demonstrators," and Myrtice West, who "painted numerous portraits of George C. Wallace, her favorite politician."<sup>173</sup> Finally, the theme of the two Alabamas comes through strong in Flynt's description of the work of "[t]he state's premier professionally trained artist, William Christenberry, . . . [who] sculpted, painted, assembled, and crafted a phenomenal testament to Alabama's Black Belt," thus "remind[ing] us that home could be a grim, mean, unkind residence for both blacks and whites."<sup>174</sup>

### III. POST-CIVIL RIGHTS MOVEMENT ERA THROUGH THE OPENING OF THE TWENTY-FIRST CENTURY

Flynt streamlines an enormous amount of complicated information explaining why Alabama's economy failed to enter the national mainstream by the end of the twentieth century and instead continues to rank at or near the bottom in all economic indicators.<sup>175</sup> In addition to highlighting the international factors that precipitated the decline of Alabama's iron and steel industry following World War II and documenting the thousands of jobs lost in the largely low-wage and low-skilled textile industries due to new technology and operations moving overseas, Flynt paints a grim picture of a "a topography of despair that stretched across . . . most of Alabama's 35 Appalachian counties, and the Black Belt."<sup>176</sup> After World War II, agriculture sharply declined, resulting in rural counties losing population, suffering double-digit poverty and unemployment, and finding their land ownership consolidated in fewer and fewer hands.<sup>177</sup> Flynt notes that timber became the state's major crop due largely to "out-of-state corporations that established huge timber plantations and several hundred wealthy citizens who together owned one-third of the state's total land . . . [and] more than half the land in eight counties."<sup>178</sup> Despite the impressive economic growth tied to the space program in Huntsville, Birmingham's "economic minimiracle[,] . . . thanks partly to a succession of progressive mayors . . . closely allied to the business community,"<sup>179</sup> and aggressive recruitment of the automobile and tire industries at the end of the century, "Alabama failed to gain recognition as a full-fledged Sunbelt success story."<sup>180</sup> Flynt attributes this to Alabama's backward image, arising out of the deplorable conduct of many during the civil rights movement, an overall negative view of the political culture,<sup>181</sup> the stymieing of economic development as well as tax and

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173. *Id.* at 528.

174. *Id.* at 529.

175. *Id.* at 110-12.

176. *Id.* at 142.

177. *Id.* at 142-43.

178. *Id.* at 144-45.

179. *Id.* at 159-60.

180. *Id.* at 154.

181. *Id.* at 149-50.



educational reforms by the 1901 constitution,<sup>182</sup> and failed leadership at the state level, resulting in “haphazard and piecemeal development . . . [by] local visionaries [who produced] . . . pockets of educational and economic excellence surrounded by a vast landscape of collapsing industries, terrible schools, and human deprivation.”<sup>183</sup>

Flynt untangles the complex web of post-civil-rights political developments explaining why Alabama’s government is widely viewed as among the least effective with, overall, “the lowest quality of politicians of any state in the union.”<sup>184</sup> In his discussion of the state’s negative political image, Flynt peppers the book with numerous individual examples, concluding that “Gov. Fob James, while regularly denying that the state had an image problem, did more than any governor after George Wallace to create one.”<sup>185</sup> Flynt explains that despite the positive changes from the voting rights acts, which added hundreds of thousands of black voters and diminished the power of courthouse gangs, the 1901 constitutional provisions centering most political power in Montgomery combined with weak ethics laws fostered “a rising tide of political scandal” in all administrations from George Wallace to Don Siegelman<sup>186</sup> and fueled new political action committees, special interest groups, and lobbyists functioning as “the ‘third house’ of the legislature or as the ‘secret government’ . . . highly unrepresentative of its population,”<sup>187</sup> leading “most citizens . . . [to] consider[] the species in general to rank slightly below graverobbers and loan sharks.”<sup>188</sup> Flynt also says “[t]he new Alabama Democratic Party strategy—turn out the black vote and win one-third of the white vote—[is] in deep trouble” and illustrates how “[r]acial and ideological polarization remain[] a primary political reality . . . [couched] in new code words and attitudes about racial profiling, affirmative action, social welfare, and tax reform.”<sup>189</sup> In covering the chain of events and racial underpinnings giving rise to Alabama’s Republican Party, Flynt identifies the tensions between “some Big Mules [who] reluctantly conceded the obvious: rapid economic growth was incompatible with low property taxes, poor schools, wretched social services, a poorly trained labor force, racial polarization, and widespread poverty”<sup>190</sup> and “[w]hite religious conservatives [who] mobilized around ‘culture wars’ issues such as support for school prayers . . . and opposition to abortion, . . . gay rights, . . . women’s rights, . . . and the general secularization of society.”<sup>191</sup>

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182. *Id.* at 24-26.

183. *Id.* at 155.

184. *Id.* at 24, 78, 112, 150.

185. *Id.* at 150.

186. *Id.* at 83.

187. *Id.* at 78-79.

188. *Id.* at 35.

189. *Id.* at 104.

190. *Id.* at 78.

191. *Id.* at 81.

Flynt presents the depressingly similar painful consequences of Alabama's paucity of political leadership and perceptively identifies tax policy as indisputably one of the worst features of Alabama's public policy, concluding "[v]irtually all Alabama's 20th-century problems were somehow related to the state's tax structure[,] . . . [and] [b]y century's end Alabama had the nation's most regressive and unfair tax system."<sup>192</sup> He identifies legislative actions tainted with racial baggage; the Boutwell Amendment of 1956 that eliminated the constitutional right of every child to a public education in response to the *Brown* decision; and the Wallace-supported Lid Bills of the 1970s that constitutionally guaranteed the largest landowners the lowest property taxes in the nation as great contributors to the state's dismal tax policy structure.<sup>193</sup> Alabama's lowest-in-the-nation property taxes force the state to rely overly on regressive sales and income taxes that are oppressively unfair to poor and middle-class Alabamians and greatly contribute to the inadequacy of revenues evinced by the low support of most public services and the high degree to which Alabama continues to rely on federal funds.<sup>194</sup> The devastating consequences of the grossly inadequate education funding include stunted economic development and the state's persistent high poverty rate, especially among children.<sup>195</sup> Due to inadequate support of public services in a wide variety of areas, Alabama continues to rank at or near the bottom in most indicators of minimum well-being.<sup>196</sup> For example, "[t]he Alabama Department of Environmental Management was so weak, underfunded, and dominated by the interests it was supposed to regulate that polluters were asked to help fund the agency, and the federal Environmental Protection Agency threatened to assume its duties."<sup>197</sup>

Within the seemingly never-ending wasteland of bad public policy, Flynt acknowledges that cultural factors are partially responsible for some of Alabama's poor social indicators and proudly displays the efforts of late-twentieth-century reformers "originat[ing] not in the halls of the legislature but in academic offices, Sunday schools, law offices, at meetings of social workers and pediatric associations."<sup>198</sup> Flynt attributes "historic resistance to taxation [and] lack of commitment to education"<sup>199</sup> as "the root of Alabama's education problems[,] . . . [resulting in] citizens routinely elect[ing] legislators who insisted education problems could be solved by less waste and more efficiency (though they never found a way to do either) . . . and chronically betrayed the children of Alabama."<sup>200</sup> Flynt also acknowledges

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192. *Id.* at 17.

193. *Id.* at 18, 144, 343.

194. *Id.* at 17, 84-85, 186.

195. *Id.* at 19, 164, 186-87, 226, 229-30.

196. *Id.* at 85-86, 201-02.

197. *Id.* at 86.

198. *Id.* at 217-18.

199. *Id.* at 20.

200. *Id.* at 228-29.

that in some cases, poverty has an individual responsibility component in addition to the social structure causes,<sup>201</sup> and he recognizes that Alabama's abysmal rankings in public health areas are caused at least partially by "Alabamians simply prefer[ring] to eat the wrong kinds of foods, to smoke, and to neglect exercise[,] . . . inclin[ing] them toward obesity, diabetes, heart disease, stroke, and cancer."<sup>202</sup> Flynt praises a string of business leaders for attempting to improve education by supporting tax reform and launching the A+ education reform movement. During the 1990s, their efforts, plus the tenacity of the state school board led by Superintendent Ed Richardson, pushed for higher standards and increased overall student performance.<sup>203</sup> Flynt also presents the work of the Alabama Citizens for Constitutional Reform, which launched as the twentieth century closed, as a "hopeful sign as a new century began"<sup>204</sup> and lists "[a] number of new activist agencies t[aking] up the cause of social reform."<sup>205</sup> He concludes that the leadership needed to transform the state is "not among politicians of either race, ideology, or party. Instead, [it is] found . . . in the progressive business community, among educators, journalists, civic leaders, and especially among women."<sup>206</sup>

Amid impressive examples of the accomplishments by women during the last quarter of the twentieth century, Flynt unequivocally states that women have "a long way to go before they achieve[] either balance or equality"<sup>207</sup> or "full inclusion in Alabama society,"<sup>208</sup> noting that Alabama is ranked among the worst states for women to live.<sup>209</sup> Deeming "[t]he evolution of women's political power . . . glacially slow,"<sup>210</sup> Flynt reveals that the state ranked last in the number of female officeholders, with a mere handful of women serving in the legislature from the 1970s through the end of the century despite the efforts of the Alabama Solution, a bipartisan political action committee spearheaded by Ann Bedsole, a twelve-year senate veteran and 1994 gubernatorial candidate.<sup>211</sup> Similarly, in the area of business, "in 2000 . . . Alabama ranked dead last among all states for women in management and professional occupations . . . [despite] some beachheads in upper management, especially in banking."<sup>212</sup> Flynt evaluates colleges as "not much more welcoming of females than corporations"<sup>213</sup> and tells the story of "Virginia Van der Veer Hamilton, . . . the state's [premier] historian

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201. *Id.* at 188.

202. *Id.* at 204.

203. *Id.* at 165, 232-33.

204. *Id.* at 27.

205. *Id.* at 217.

206. *Id.* at 106.

207. *Id.* at 171.

208. *Id.* at 292.

209. *Id.* at 171.

210. *Id.* at 287.

211. *Id.* at 288-89.

212. *Id.* at 280-81.

213. *Id.* at 282.

during the 1970s and '80s, [who] detailed her own nightmarish odyssey into academia . . . [and] a record of salary discrimination, preference for males in administrative jobs, and general lack of academic recognition" imposed on "other distinguished pioneer Alabama historians."<sup>214</sup> Though women "were only beginning to emerge" "at the highest level of community influence . . . when the century ended,"<sup>215</sup> Flynt discusses the contributions of Sheila Blair, Odessa Woolfolk, and Barbara Larson and identifies community leadership organizations as the "most promising venue" for women, even if a long way from being fulfilled.<sup>216</sup>

Flynt highlights a number of features—including racially insensitive incidents, the persistence of poverty's disproportionate effect on African Americans despite the emergence of a stronger black middle class, patterns of de facto segregation in residential areas, schools, churches, and clubs, and the difficulty of blacks achieving leadership positions in the legal and business community despite "occasional high-visibility successes"<sup>217</sup>—and concludes that African Americans still have a long way to go before enjoying inclusion in Alabama society.<sup>218</sup> Yet amid high-profile success stories, including the election of Dr. Regina Benjamin as the first black and woman to be president of the Medical Association of the State of Alabama, the transformation of Birmingham under five-term Mayor Richard Arrington, and the census data showing that more African Americans moved to Alabama than left during the 1990s,<sup>219</sup> Flynt also concludes that "on balance, more good news than bad emanated from race relations in Alabama."<sup>220</sup> Flynt details the different factions splintering black political unity as interests diverged once blatant white racism receded and notes that absentee ballots, patronage, and other corrupt practices mushroomed among some Black Belt black leaders who adopted "the practice of politics they had observed practiced by whites for more than a century."<sup>221</sup> Flynt also recognizes that while "many problems within the black family structure could be traced to poor education in underfunded schools, lack of early childhood programs, pervasive poverty, lack of decent jobs[,] . . . and other social injustices deeply rooted in Alabama history, other problems existed that could only be resolved by African Americans themselves," mainly a teenage out-of-wedlock birthrate that is too high.<sup>222</sup>

In his discussion of gifted black athletes becoming an important part of Alabama's post-civil rights sports arena, especially in "the state's two premier football factories,"<sup>223</sup> Flynt concludes that "[b]alancing the positive

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214. *Id.* at 280.

215. *Id.* at 290.

216. *Id.*

217. *Id.* at 326.

218. *Id.* at 171, 326, 358-64.

219. *Id.* at 367, 368, 372.

220. *Id.* at 366.

221. *Id.* at 365.

222. *Id.* at 366.

223. *Id.* at 449.

opportunities that integrated athletic competition afforded black Alabamians against the frank exploitation of them is no simple matter.”<sup>224</sup> In addition to providing detailed accounts of recruiting and other scandals involving players receiving money from boosters Flynt notes “[t]he prominence of poor, young black men . . . in such scandals suggests that race was a central issue in Alabama athletics.”<sup>225</sup> Flynt’s broad and sweeping indictments of the football scandals and his conclusion that “the seemingly limitless pool of money available to football seem[s] downright immoral” considering “the state’s endemic poverty, woefully underfunded schools, and pervasive social problems”<sup>226</sup> will most certainly spark controversy. However, he reserves the most stinging criticism for Christians “determined to post” “universal ethical principles . . . in public buildings and schools . . . [but who have] lots of trouble applying them to college football.”<sup>227</sup> Labeling football a flawed state religion, Flynt minces no words describing

Christian ministers . . . quite clear about the sharp moral distinctions involved in fornication, adultery, movies, dancing, gambling, homosexuality, and abortion . . . ha[ving] little relevant commentary about the ethical standards of sport, or parental rage at sporting events. Christian parents who would have smacked their teenagers’ rear ends had the youngsters excused moral lapses by whining that “everyone does it” made precisely the same excuses for football scandals at Auburn and Alabama.<sup>228</sup>

Flynt reveals other hypocrisies embedded in Alabama’s late twentieth-century religious culture, including vigorous efforts to defeat a lottery referendum while offering little toward the effort to reform Alabama’s dreadful tax structure<sup>229</sup> and lingering racism evidenced “[a]fter racial integration [by] many whites . . . [who] enrolled [their children] in private academies, usually operated out of evangelical Christian churches.”<sup>230</sup>

The post-civil rights disappointments, scandals, and troubling examples of moral hypocrisy do not dim Flynt’s enthusiasm for Alabama’s extraordinary literary, musical, and artistic contributions that continue as the twenty-first century opens. Prominent Alabama journalists of the late twentieth century include Pulitzer Prize winners Ron Casey, Harold Jackson, and Joey Kennedy of *The Birmingham News*; former *New York Times* executive editor Howell Raines; Monroeville native Cynthia Tucker, a nationally syndicated editorial page editor of the *Atlanta Journal-Constitution* and “one of the South’s most influential editorialists;” and “Brandt Ayers . . . of the An-

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224. *Id.* at 432.

225. *Id.* at 429.

226. *Id.* at 433.

227. *Id.* at 451.

228. *Id.* at 452.

229. *Id.* at 361, 385, 477, 480.

230. *Id.* at 361.

*niston Star*, whose global perspective and international coverage matche[s] that of many big-city dailies."<sup>231</sup> Flynt marvels over the impressive list of Alabama affiliated writers, historians, and scientists, including the well-known Pulitzer Prize winners Rick Bragg, who "eulogized the indomitable spirit of his poor white mother,"<sup>232</sup> Diane McWhorter, whose "chilling memoir-history of Birmingham's 1963 racial disorders . . . proved that literature could divide a city nearly as deeply as the original events, as she directed equal blame at the terrorists who committed murder and the economic establishment that permitted it,"<sup>233</sup> and Edward O. Wilson, "who would become arguably the most famous evolutionary biologist in the world" and "who could write superb prose."<sup>234</sup> Flynt also recognizes numerous less well-known figures, including Mary Ward Brown of Perry County, a widowed grandmother who received numerous honors for short stories and the nationally famous storyteller, Kathryn Tucker Windham.<sup>235</sup> Alabama musicians mentioned include Grammy- and Oscar-winning Lionel Richie and the band Alabama, which "[b]y the 1980s . . . had become a super nova in the firmament of country music."<sup>236</sup> Flynt also understandably expresses great pride over Sam Mockbee, graduate and professor of Auburn University's architecture program, who won numerous awards including the MacArthur Foundation's "genius award" and attracted more favorable press than any academic program of the late twentieth century with his rural studio designing "economical but beautiful structures out of salvage materials for the state's poorest black residents."<sup>237</sup>

CONCLUSIONS AND REFLECTIONS ON THE LESSONS THE PARADOX OF  
THE TWO ALABAMAS REVEALS FOR ALABAMA'S FUTURE DURING  
THE TWENTY-FIRST CENTURY

The paradox of the two Alabamas spanning the entire twentieth century continues, with early twenty-first-century signs revealing the state at a crossroads of either continuing to repeat the past or breaking free from it. A great deal of objective evidence indicates that Alabama's social and political landscape is declining to a twenty-first-century version of the some of the worst trends that persisted throughout the twentieth century. In the areas of health, Alabamians continue to have the highest or among the highest rates of obesity, diabetes, and many other health measures, including infant mortality and out-of-wedlock births to teenage mothers.<sup>238</sup> During the first

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231. *Id.* at 493.

232. *Id.* at 498.

233. *Id.* at 497.

234. *Id.* at 499.

235. *Id.* at 498, 505-06.

236. *Id.* at 516, 520.

237. *Id.* at 530.

238. Though Alabama's infant mortality rate has improved over the past ten years, it rose again in 2005, up to 9.3 deaths per 1,000 live births, and still remains among the nation's worst. Kim Chandler, *State's Infant Death Rate Up in 2005*, BIRMINGHAM NEWS, Sept. 21, 2006, at 1B. The State Health

few years of the twenty-first century, Alabama's overall poverty rate has climbed upward and, most tragically, has risen among children, with almost a quarter of Alabama's children living below the poverty line.<sup>239</sup> Moreover, the job prospects for Alabamians at lower levels of education and skill are declining.<sup>240</sup> Despite the recent efforts of education reformers, Alabama's K-12 funding and performance indicators have remained stagnated.<sup>241</sup>

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Officer "guarantee[s] we will be in the bottom five again" and is left to "just hope we're not last." *Id.* Low education levels of Alabama women are connected to the high infant mortality rate. *See* SAVE THE CHILDREN, STATE OF THE WORLD'S MOTHERS 2006: SAVING THE LIVES OF MOTHERS AND NEWBORNS 37 (2006), available at [http://www.savethechildren.org/publications/mothers/2006/SOWM\\_2006\\_final.pdf](http://www.savethechildren.org/publications/mothers/2006/SOWM_2006_final.pdf). The state is doing no better in the area of obesity and weight-related diseases. Between 2003-05, Alabama was the second most obese state in the union, just behind Mississippi, with an adult obesity rate of 28.7%. *See* TRUST FOR AMERICA'S HEALTH, F AS IN FAT: HOW OBESITY POLICIES ARE FAILING IN AMERICA 8 (2006), <http://healthyamericans.org/reports/obesity2006/Obesity2006Report.pdf>; *see also* Dave Parks, *Alabama Gets Fatter, No. 2 in Country, Report Says*, BIRMINGHAM NEWS, Aug. 30, 2006, at A1. The state ranked fifth in the nation for adult diabetes levels, at 8.9%, and third for high blood pressure, at 32.0%. TRUST FOR AMERICA'S HEALTH, *supra*, at 9. Another recent study ranked Alabama's overall health as forty-fifth in the country. UNITED HEALTH FOUND., AMERICA'S HEALTH RANKINGS 2006: ALABAMA (2006), <http://www.unitedhealthfoundation.org/ahr2006/pdf/Alabama.pdf>; *see also* Steve Doyle, *State Health Scorecard Has Gains, But Rates 45th*, HUNTSVILLE TIMES, Dec. 6, 2006, at 1B. Though noting a few bright spots in some areas (high immunization coverage and low incidence of infectious disease), the poor ranking was attributed mostly to factors such as high smoking levels (24.8% of the population for a rank of forty-fourth), premature deaths (ranked third with every 100,000 residents losing 10,012 years of life expectancy), and obesity (28.9% of the population for a rank of forty-sixth). *Id.* Though improved from 1990, the high numbers of Alabamians without health insurance also contributed—rising to 15.4% in 2006 (twenty-ninth) from 13.5% in 2005 (twentieth). *Id.* These poor health factors have taken a toll on Alabamians' life expectancy, ranking them forty-eighth nationally at 74.4 years. Press Release, Harvard Initiative for Global Health, New Harvard Study: Who, Where, and Why Americans Live Longer or Die Sooner (Sept. 11, 2006) (available at <http://www.hsph.harvard.edu/press/releases/press09112006.pdf>); *see also* Bob Lowry, *Lives Here Among Shortest in U.S.*, MONTGOMERY ADVERTISER, Sept. 12, 2006, at A1.

239. The latest poverty data from the U.S. Census Bureau indicates 17% of Alabamians lived in poverty in 2005, thereby earning the eighth highest rate of poverty in the country. Roy L. Williams & Hannah Wolfson, *State's 17% Poverty Rate is Nation's 8th Highest*, BIRMINGHAM NEWS, Aug. 30, 2006, at 1A. The state's median household income for the same period of time was the fifth lowest in the country at \$36,879. *Id.*

Poverty hits Alabama children even harder. The percentage of children living in poverty is estimated to be 23% to 25%. UNITED HEALTH FOUND., *supra* note 238 (24.7% of children living in poverty in 2006; national rank of forty-seventh); ANNIE E. CASEY FOUND., 2006 KIDS COUNT DATA BOOK 57 (2006), [http://www.aecf.org/kidscount/sld/db06\\_pdfs/entire\\_db.pdf](http://www.aecf.org/kidscount/sld/db06_pdfs/entire_db.pdf) (23% of children living in poverty in 2004 as compared to 21% in 2000; national rank of forty-second). Additionally, in 2004, 10% of Alabama's children lived in extreme poverty (income less than half of the poverty line threshold), and a whopping 46% were in low-income families (income below 200% of the poverty level). *Id.* at 56.

240. According to the Bureau of Labor Statistics at the U.S. Department of Labor, increases in workers' average weekly earnings developed concomitantly with drastic reductions in job opportunities. While average weekly earnings for manufacturing workers increased from \$523.16 in 2001 to \$636.00 by October 2006, the annual number of workers fell by more than 50,000, from an average of 351,400 in 2000 to 297,700 by December 2006. BUREAU OF LABOR STATISTICS, BUREAU OF LABOR STATISTICS DATA, <http://www.bls.gov> (last visited Mar. 4, 2007). The average weekly earnings in the durable goods industry increased from \$562.66 in 2001 to \$689.73 by October 2006, but the annual number of workers fell by almost 20,000, from 187,900 in 2000 to 168,600 by 2004. *Id.*

These statistics strongly suggest that at least some of the gains in average weekly earnings are explained by a decline in lower-paying jobs. Even more troubling, other Alabama industries exhibited similar trends. For example, employment at textile mills fell by more than 50%, from 20,600 in 2000 to 10,200 by October 2006; employment at textile product mills fell by almost 25%, from 12,200 in 2000 to 9,300 by October 2006; and employment in apparel manufacturing fell by more than 50%, from 28,100 in 2000 to 11,500 by October 2006. *Id.*

241. Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L.

The defeat of Governor Bob Riley's tax reform plan on September 9, 2003, represents a bad omen for the twenty-first century. Riley's plan would have started the process of raising adequate revenues and making government more accountable. It also would have significantly shifted the tax burden away from the poor and lower-middle classes, granting more than half of all Alabamians a tax cut, while requiring wealthier Alabamians and the largest landowners to bear greater taxes.<sup>242</sup> Despite the avalanche of empiri-

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REV. 1, 37 n.109 & app. D (2002) [hereinafter Hamill, *An Argument for Tax Reform*] (noting that for both the national and southeastern scales, Alabama received spending per-student letter grades of "D" for 1998-99); ALA. STATE BD. OF EDUC., 2005-2006 ANNUAL REPORT CARD: A STATE SUMMARY 18 (2006), <ftp://ftp.alsde.edu/documents/ReportCards/2005-2006/000.pdf> [hereinafter ANNUAL REPORT] (noting the same for 2004-05). Despite an increase in spending per student from \$5,303 in 1998-99, Hamill, *An Argument for Tax Reform*, *supra*, at 37 n.109, to \$6,581 in fiscal year 2004, Alabama spent less on education than four of the five Southeastern states "comparable in per capita income and cost-of-living." FLYNT, *supra* note 3, at 229; *see* U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STATISTICS, OVERVIEW OF PUBLIC ELEMENTARY AND SECONDARY STUDENTS, STAFF, SCHOOLS, SCHOOL DISTRICTS, REVENUES, AND EXPENDITURES: SCHOOL YEAR 2004-05 AND FISCAL YEAR 2004, at 25-26 tbl. 8 (2006), <http://nces.ed.gov/pubs2007/2007309.pdf> [hereinafter OVERVIEW] (reporting the 2004 per-student spending amounts in the five states Flynt identified were as follows: Louisiana at \$7,271, South Carolina, \$7,177, Kentucky, \$6,861, Arkansas, \$6,842, and Mississippi, the only one less than Alabama, at \$6,199).

Alabama's lower spending per student can be partly explained by the disparities of education funding that exist between urban and rural school systems within Alabama. ANNUAL REPORT, *supra*, at 44-45 (compare Homewood City at \$9,966, the highest per-student spending (with 28% from state and 63.2% from local sources) with Autauga County at \$5,814, the lowest (with 65% from state and 18.7% from local sources)). When compared with the five peer cost-of-living states, Alabama students' performance in reading stagnated or declined; their performance in math, while increasing modestly, was significantly lower than in the other states. *See* U.S. DEP'T OF EDUC. NAT'L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 2005, tbls. 112, 113, 121, 122 (July 2006), <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2006030> (follow links to Chapter 2, Parts 1 & 2) [hereinafter DIGEST] (compare Alabama's reading score for fourth-graders (at 208 in 1994 and 208 in 2005) with the scores in South Carolina (1994: 203, 2005: 213), Kentucky (1994: 212, 2005: 220), Louisiana (1994: 197, 2005: 209), Mississippi (1994: 202, 2005: 204) and Arkansas (1994: 209, 2005: 217); also compare Alabama's reading score for eighth-graders (at 255 in 1998 and 253 in 2003) with the scores in South Carolina (1998: 255, 2003: 258), Kentucky (1998: 262, 2003: 266), Louisiana (1998: 252, 2003: 253), Mississippi (1998: 251, 2003: 255), and Arkansas (1998: 256, 2003: 258)); compare Alabama's math score for fourth-graders (at 208 in 1992 and 225 in 2005, an increase of 17 points) with the scores in South Carolina (1992: 212, 2005: 238, an increase of 26 points), Kentucky (1992: 215, 2005: 232, an increase of 17 points), Louisiana (1992: 204, 2005: 230, an increase of 26 points), Mississippi (1992: 202, 2005: 227, an increase of 25 points) and Arkansas (1992: 210, 2005: 236, an increase of 26 points)); also compare Alabama's math score for eighth-graders (at 252 in 1992 and 262 in 2005, an increase of 10 points) with the scores in South Carolina (1992: 261, 2005: 281, increase of 20 points), Kentucky (1992: 262, 2005: 274, an increase of 12 points), Louisiana (1992: 250, 2005: 268, an increase of 18 points), Mississippi (1992: 246, 2005: 263, an increase of 17 points) and Arkansas (1992: 256, 2005: 272, an increase of 16 points)).

242. Riley's plan, packaged as a single amendment to the 1901 constitution, was widely referred to as Amendment One. In addition to making substantial changes to the constitutional provisions of the income and property tax structures, voter approval of Amendment One was required to activate eighteen other pieces of statutory legislation that otherwise only required approval by the Alabama Legislature. David White, *The Riley Plan—Dollars and Change: An Overview*, BIRMINGHAM NEWS, Sept. 7, 2003, at 8A; Ala. Sec'y of State, Special Constitutional Amendment Election (Sept. 9, 2003), <http://www.sos.state.al.us/election/2003/scae/index.aspx> (providing links to all the proposed legislation) [hereinafter Special Constitutional Amendment Election]; *see* H.R. 2, § 4, 2003 Leg., 1st Spec. Sess. (Ala. 2003), available at <http://alisd.b.legislature.state.al.us/acas/default.asp> ("This act shall become effective . . . upon its passage and approval by the Governor . . . and ratification by the voters of Alabama of the Constitutional Amendment . . . of the First Special Session of 2003 of the Alabama Legislature. In the event that the Constitutional Amendment . . . is not ratified by the voters, then the Act shall become null and void."). The legislation was presented as a package that voters could either fully accept



cal studies documenting the unconscionably heavy tax burden foisted on lower-income Alabamians directly resulting from wealthier Alabamians not paying their share, the paltry funding for education and other public services that in turn greatly retards economic development, and the iron-clad case that the tax system is immoral under the Judeo-Christian ethical principles most Alabamians claim to uphold,<sup>243</sup> Riley's plan failed at the polls by a two-to-one margin.<sup>244</sup>

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or fully reject: "They [could] not pick and choose." White, *supra*.

A detailed analysis of the entire plan is beyond the scope of this Review, but the main tax components would have increased revenues from the income, property, sales, and tobacco taxes while redistributing the burden of these taxes in various ways. *Id.* Personal and corporate income taxes would have risen by \$573 million in 2005 and then dropped to \$421 million by 2009 as some exemptions took effect. *Id.* However, this would have been accomplished by "rais[ing] state income taxes for most companies, wealthier families and single people" primarily through an increase in the top state income tax rate from 5% to 6% and the elimination of deductions for federal income, FICA, occupational, and property taxes. *Id.* Most Alabamians with dependent children actually would have seen a tax break, primarily through an increase in standard deductions, personal exemptions, and dependent exemptions. *Id.*; see also Thomas Spencer, *Tax Plan Shifts Burden: The Higher the Income, the Greater the Impact*, BIRMINGHAM NEWS, May 25, 2003, at 1A ("[M]ore than half of Alabama families . . . would see a decrease in their income taxes."). For example, the threshold at which the state began to tax a family of four who took the standard deductions would have increased from about \$4,600 to about \$19,000 by 2007. White, *supra*. Increases in property taxes would have totaled about \$467 million per year when fully phased in by 2008. *Id.* The plan would have lowered the state millage rate from 6.5 mills to 3.5 mills, but it would have recouped that and more by taxing all classes of property at 100% of their value, rather than the existing valuation rates of 10%, 15%, 20%, and 30% depending on the type of property. *Id.* Importantly, the plan also would have capped the current use tax break to the owner's first 2,000 acres, raised the homestead exemption by \$10,000, and protected small family farmers by allowing them to exclude the first 200 acres or first \$150,000 in improvements on the land from state property taxes. *Id.* Changes in the state sales tax, primarily a new state sales tax on labor costs for product installations and repairs and an increase in the sales tax on motor vehicle sales and leases, would have raised \$138.8 million for the state and \$64.6 million for local governments. *Id.* An increase in cigarette taxes from 16.5 cents to 31 cents per pack, plus other taxes on tobacco products, would have raised about \$52.4 million a year. *Id.*

Overall, the changes were expected to increase state tax revenue by a grand total of about \$651 million per year in 2004 and up to \$1.1 billion per year when fully phased in by 2008. *Id.* The increased revenues from the tax changes were to be unearmarked and placed in the Alabama Excellence Initiative Fund to be used for a variety of purposes, including plugging a projected budget shortfall without major cuts, funding college scholarships for eligible Alabama students, providing bonuses to science and math teachers in hard-to-recruit areas, hiring more than 1,500 reading and math specialists for schools, and creating a rainy day fund of \$72 million to help prevent proration. *Id.* The plan also included a slate of government accountability measures, including the criminalization of legislative pass-through pork, reform of teacher tenure, end of tenure for new school administrators, and increased measures for school financial management. *Id.*

243. In the early 1990s, Bo Torbert, a former Alabama Supreme Court chief justice, and Tom Caruthers, a senior partner at Bradley Arant Rose & White, each led serious but ultimately unsuccessful attempts to reform both the income and property tax structures. See REPORT OF THE ALA. COMM'N ON TAX AND FISCAL POLICY REFORM (Jan. 1991), reprinted in *Appendix: Report of the Alabama Commission on Tax and Fiscal Policy Reform*, 43 ALA. L. REV. 741 (1992). While the blue-ribbon panel met and prepared to release its report, *The Birmingham News* led the way in encouraging members with a series of stinging yet hopeful editorials decrying the state's tax system and pleading for reform. The series, titled "What They Won't Tell You About Your Taxes" and written by Ron Casey, Harold Jackson, and Joey Kennedy, ultimately won the 1991 Pulitzer Prize for editorial writing. *Winners of the 1991 Pulitzer Prizes in the Arts and Journalism*, N.Y. TIMES, Apr. 10, 1991, at A20; see Editorial, *The Bubbling Calderon*, BIRMINGHAM NEWS, Aug. 26, 1990, at 2C; Editorial, *The Cheap Date*, BIRMINGHAM NEWS, Aug. 27, 1990, at 6A; Editorial, *A Split Personality*, BIRMINGHAM NEWS, Aug. 28, 1990, at 6A; Editorial, *Nickels and Dimes*, BIRMINGHAM NEWS, Aug. 29, 1990, at 10A; Editorial, *Handcuffing Money*, BIRMINGHAM NEWS, Aug. 30, 1990, at 12A; Editorial, *Storm Warnings*, BIRMINGHAM NEWS, Aug. 31, 1990, at 10A; Editorial, *Harnessing the Tempest*, BIRMINGHAM NEWS, Sept. 1, 1990, at 9A; Editorial, *The Cricket's Song*, BIRMINGHAM NEWS, Sept. 2, 1990, at 2C; Editorial, *The Shape of Tax Reform*,

Riley's plan failed for a number of reasons, including the smoldering resentment and the complete lack of trust in state government widely felt by the average voter and the difficulties of reaching communities at the grass-roots level. The Southern Baptist Convention, Alabama's largest and arguably most powerful denomination, remained neutral throughout the campaign even though it vigorously opposed Siegelman's lottery referendum and supported the concept of tax reform before an actual proposal materialized.<sup>245</sup>

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BIRMINGHAM NEWS, Sept. 2, 1990, at 2C.

The Public Affairs Research Council of Alabama (PARCA) and its tireless executive director, James W. Williams Jr., have contributed mightily to the mountain of critiques of the state tax system, and in 2000, Alabama Arise commissioned a study of the tax system. *See, e.g., How Alabama's Taxes Compare*, PARCA QUARTERLY, Fall 2006, <http://parca.samford.edu/Fall2006.pdf>; PARCA, THE PARCA REPORT: HOW ALABAMA'S TAXES COMPARE I (Spring 2001), <http://parca.samford.edu/report42.pdf> (concluding that Alabama's tax system is inequitable for low-income taxpayers, that it does not provide efficient distribution of tax dollars, and that it does not produce adequate revenue to provide sufficient funding for important services); PARCA, THE PARCA REPORT, RESOLVING THE STATE'S FINANCING PROBLEMS I (Spring 1990), <http://parca.samford.edu/parcareport9.pdf>; INST. ON TAXATION AND ECON. POLICY, A PLAN FOR PROGRESSIVE TAX REFORM IN ALABAMA (January 2000), <http://www.itepnet.org/pdf/al0100an.pdf>. The state's law reviews also have been fertile ground for critics of the tax system. *See, e.g.,* Susan Pace Hamill, *Constitutional Reform in Alabama: A Necessary Step Toward Achieving a Fair and Efficient Tax Structure*, 33 CUMB. L. REV. 437 (2003) [hereinafter Hamill, *Constitutional Reform in Alabama*] (detailing how Alabama's 1901 constitution enshrines all the tax inequities); Hamill, *An Argument for Tax Reform*, *supra* note 241 (arguing that Judeo-Christian ethics condemns Alabama's tax structure and morally requires all Christians to support tax reform); Laura D. Chaney, Comment, *Alabama's Constitution—A Royal Pain in the Tax: The State's Constitutionally Defective Tax System*, 32 CUMB. L. REV. 233 (2001) (arguing extensively for tax reform).

The arguments have not always fallen upon deaf ears. For example, Representative John D. Knight, D-Montgomery, has made numerous efforts over the years to reform the income tax structure in a manner that reduces economic oppression suffered. *See* H.B. 583, 2002 Leg., Reg. Sess. (Ala. 2002); H.B. 586, 2002 Leg., Reg. Sess. (Ala. 2002); H.B. 11, 2001 Leg., 4th Spec. Sess. (Ala. 2001); H.B. 12, 2001 Leg., 4th Spec. Sess. (Ala. 2001); H.B. 40, 2001 Leg., 1st Spec. Sess. (Ala. 2001); H.B. 41, 2001 Leg., 1st Spec. Sess. (Ala. 2001); *see also* Editorial, *Upgrade State's Image and Help the Poorest*, MOBILE REGISTER, May 1, 2005, at 2D (discussing Knight's inability to get his 2005 income tax bill even considered by the legislature).

244. *See* David M. Halbfinger, *Alabama Voters Crush Tax Plan Sought by Governor*, N.Y. TIMES, Sept. 10, 2003, at A11. Riley's tax reform proposal failed by a vote of 866,860 to 417,721. *See* Special Constitutional Amendment Election, *supra* note 242. Of Alabama's sixty-seven counties, thirteen (Barbour, Bullock, Chambers, Dallas, Greene, Hale, Lee, Lowndes, Macon, Montgomery, Perry, Sumter, and Wilcox) approved Riley's plan by majority vote.

245. At the 2000 Alabama Baptist State Convention, members passed a resolution urging the governor to "bring relief and justice to the poor who are our neighbors." *See* Jennifer Davis Rash, *SBOM's Christian Ethics Educating State on Tax Proposal*, ALA. BAPTIST, July 24, 2003, available at [http://www.thealabamabaptist.org/ip\\_template.asp?upid=1206&ctid=2](http://www.thealabamabaptist.org/ip_template.asp?upid=1206&ctid=2). Despite this resolution, the Convention did not formally support Governor Riley's plan. *See* Bill Barrow & Kristen Campbell, *Some Churches Deaf to Riley's Moral Call*, MOBILE REGISTER, Aug. 3, 2003, at A4 ("We are not as involved in this as we were in the gambling, because it's not as cut-and-dried an issue . . . ." (quoting Joe Bob Mizzell, director of Christian ethics for the Alabama Baptists State Convention) (internal quotation marks omitted)). The Alabama Baptist State Convention presented information from both proponents and opponents of the plan in their presentations and materials but did not advise people how to vote. Rash, *supra* ("I don't want to tell them how to vote." (quoting Joe Bob Mizzell, director of Christian ethics for the Alabama Baptists State Convention) (internal quotation marks omitted)). One commentator speculated that churches' reluctance to take strong stands in favor of Amendment One could be attributed to fears that they "may not add any new members to their congregation" and "[t]heir budgets may not increase." James Evans, Op-Ed., *Why Riley's, Moore's Actions Greatly Different*, MONTGOMERY ADVERTISER, Aug. 17, 2003, at 9A. Despite the neutral position of the Baptist Convention, some individual conservative Christians supported Riley's plan primarily to avoid gambling. Bob Smietana, *Gospel Inspires Governor's Tax Plan*, CHRISTIAN CENTURY, Aug. 9, 2003, at 14 ("If we don't pass this plan . . . are we going to start listening to the gambling folks who say that gambling is the salvation for eco-

Moreover, even though the leadership of the Methodist, Presbyterian, Episcopal, and Catholic churches formally endorsed Riley's plan, their support failed to reach local pastors and church members deep in the communities across Alabama.<sup>246</sup> Taking advantage of this political environment suspicious and hostile toward change, special interest groups such as ALFA, representing many of the wealthiest Alabamians and largest landowners, and, disgracefully, the Christian Coalition of Alabama ran well-funded advertisement campaigns and circulated propaganda laced with lies and distortions that Riley's plan would hurt poor and lower-income Alabamians.<sup>247</sup> In

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conomic development?" (quoting Rev. Dan Ireland, Executive Director, Alabama Citizens Action Program) (internal quotation marks omitted)). Eight past presidents of the Alabama State Baptist Convention, including Rev. Ireland, publicly supported Riley's plan in their individual capacities. See Jennifer Davis Rash, *Students at State Baptist Schools to Feel Budget Cuts*, ALA. BAPTIST, Sept. 18, 2003, available at [http://www.thealabamabaptist.org/ip\\_template.asp?upid=1349&ctid=2](http://www.thealabamabaptist.org/ip_template.asp?upid=1349&ctid=2). The editor of the Southern Baptists' weekly periodical also strongly supported the plan and wrote that after helping to defeat the lottery and urging "a cure and not a Band-Aid to state problems . . . [i]t is time for Alabama Baptists, as responsible Christian citizens, to step up and demonstrate we really care about our state." Barrow & Campbell, *supra* (quoting Bob Terry, editor of *The Alabama Baptist*) (internal quotation marks omitted). This support from individual Baptist leaders failed to reach many pastors and members deep in the communities. See Jennifer Davis Rash, *Readers React to Proposed Tax Plan, State Paper Coverage*, ALA. BAPTIST, Aug. 28, 2003, available at [http://www.thealabamabaptist.org/ip\\_template.asp?upid=988&ctid=2](http://www.thealabamabaptist.org/ip_template.asp?upid=988&ctid=2) (noting that, while some approved, "scores of readers" opposed the plan).

246. Like the Alabama Southern Baptist Convention, both of the state's United Methodist conferences, as well as Presbyterians, Episcopalians, and a priest's council of the Roman Catholic Church, went on record supporting the broad idea of tax reform prior to the emergence of Riley's plan. Barrow & Campbell, *supra* note 245; Smetana, *supra* note 245, at 14. Both Methodist conferences in Alabama (Alabama-West Florida Conference of the United Methodist Church and the North Alabama Conference of the United Methodist Church) passed near-unanimous resolutions during the heat of the campaign supporting Riley's plan in all but name only. Kim Chandler, *Methodist Groups Endorsing Tax Reform: Vote Near Unanimous*, BIRMINGHAM NEWS, June 5, 2003, at A4. Similarly, the Catholic Priests' Council of the Diocese of Birmingham reissued a timely statement endorsing tax reform also. Barrow & Campbell, *supra* note 245. Joining these denominations in embracing Riley's plan were the Presbytery of Sheppards and Lapsley, the Presbytery of South Alabama, the African Methodist Episcopal Zion of Alabama, and the Episcopal Diocese of Alabama. Arney, *Plan About 'Growing Government': Clergy Group Backs Riley Plan*, MOBILE REGISTER, Sept. 5, 2003, at B5; see also Harvey H. Jackson, *Proud to be a Methodist*, ANNISTON STAR, June 11, 2003, at 9A. However, this support failed to inspire widespread support in the individual congregations. Barrow & Campbell, *supra* note 245 (noting that "many congregations seem little animated by the governor's effort" and contrasting that response to the energy displayed in defeating Siegelman's lottery).

247. The Tax Accountability Coalition (TAC) was the primary vehicle for those individuals and entities opposing Riley's plan and it ultimately raised and spent about \$8.4 million to help defeat the proposal. See Eddie Curran, *Riley Campaign Raised \$1.15 Million Last Year*, MOBILE REGISTER, Feb. 7, 2004, at B2. TAC received most of its contributions from ALFA, the Alabama Forestry Association, timber and paper companies, and surprisingly, SouthTrust Bank. *Id.*; see also Ala. Sec'y of State, FCPA Inquiry for Tax Accountability Coalition, <http://arc-sos.state.al.us/CGI/SOSEL12.mbr/output?P01=003548120040131D> (last visited Apr. 22, 2007) (listing all contributions made to the Tax Accountability Coalition). ALFA and its related entities contributed at least (and likely much more than) \$1.5 million to TAC alone. *Id.* Using this money, TAC ran many ads. For example, despite the fact that poor African Americans were some of "the very Alabamians who would receive the largest tax cuts," one ad that ran on black radio stations featured a man with poor diction warning, "[o]ur property taxes could go up as much as fo' hundred percent," and blaming 'Montgomery insiders who have been ignorin' us for years.'" Dale Russakoff, *Alabama Tied in Knots by Tax Vote*, WASH. POST, Aug. 17, 2003, at A1. Other opposition ads preyed upon voters' existing distrust of politicians and fears of higher taxes and even higher utility bills by

show[ing] men wearing business suits while a male voice says, "The insiders and politicians pushing Montgomery's \$1.2 billion tax increase are stopping at nothing to take more of your money." Next, viewers see scenes of repairmen working on a tire and changing a car's oil,

addition, these special interest groups stooped to sponsoring an economic study based on dubious and distorted assumptions designed to scare the average voter into believing Riley's plan would stifle Alabama's economy.<sup>248</sup> As a result, Riley's plan was defeated at the polls largely by the

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while the announcer says taxes on these transactions will go up. Then the picture shows an elderly couple at a mailbox. "And your home heating and air conditioning bills?" the announcer asks, as the picture returns to the men in business suits, who are slapping each other on the back before they light up cigars. "You'll pay more while the big utilities get a tax break." The closing statement is "Vote no on Amendment One. It doesn't make sense."

Sallie Owen & Mike Brantley, *Tax Fight Ads Pitch Populism*, MOBILE REGISTER, Aug. 10, 2003, at A1. Though the Christian Coalition of Alabama campaigned heavily against the plan, because it is not a political action committee, it did not have to disclose its contributions and expenditures; nevertheless, the group had close connections with TAC. See also Bill Barrow, *Ministers Around Alabama Make Final Sermons on Plan*, MOBILE REGISTER, Sept. 8, 2003 at P1 (describing the Christian Coalition of Alabama as "[c]hief among the opponents" of Riley's plan); Harvey H. Jackson, *Avoiding the Truth*, ANNISTON STAR, Aug. 6, 2003, at 9A (describing the Christian Coalition and representatives from the ALFA-funded TAC "sing[ing] from the same song sheet" in their use of misleading figures to attack Riley's plan); David White, *Giles to Resign as Christian Action Leader*, BIRMINGHAM NEWS, Nov. 22, 2006, at A1 (in the context of covering John Giles' resignation as executive director and the August 2006 split with the national Christian Coalition, noting that they do not have to disclose financial contributions because they are a nonprofit rather than a political action committee, and, their continued opposition to proposals that would require such disclosure). There has been strong speculation that ALFA has given financial support to the Christian Coalition of Alabama (now Christian Action Alabama). Editorial, *A Special (Interest) Vote*, BIRMINGHAM NEWS, Feb. 19, 2006 at 2B (in the context of the 2006 failed bill, proposing a statewide vote on whether to call a constitutional convention and noting that "[t]he Christian Coalition of Alabama, which has received money from ALFA for its lobbying efforts, also politicked against the bill"). Despite this extreme opposition from its state chapter, the Christian Coalition of America endorsed Riley's plan "because it is clearly and unquestionably designed to help the least among us and asks those who are most able to pay their fair share of the taxes." Kim Chandler, *National Christian Group for Tax Plan*, BIRMINGHAM NEWS, Aug. 7, 2003, at 1A (quoting Christian Coalition of America President Roberta Combs) (internal quotation marks omitted). The anomaly of SouthTrust Bank's opposition to Amendment One had much to do with its outspoken former Chairman and CEO, Wallace Malone. See Lee Davidson, *Bank Executives Divided on Tax Plan*, MOBILE REGISTER, Aug. 8, 2003, at A1 (noting Malone's opposition despite another SouthTrust executive's support and membership on the proponent group's board). Malone claimed to be a spokesman for Alabama's working poor during the campaign, arguing that "[w]hen you take over a billion dollars out of people's pockets, they start cutting back on their spending." Jim Tharpe, *Alabama Tax Plan Faces Uphill Battle*, ATLANTA JOURNAL-CONSTITUTION, Sept. 2, 2003, at A1 (internal quotation marks omitted). However, Malone's "concern" for ordinary people appears to have been influenced by concerns closer to home. Malone's wife is the granddaughter of legendary congressman and landowner Frank Boykin. See Jeff Amy & Bill Barrow, *Mobilians Wrestle for Seat on UA Trustee Board*, MOBILE REGISTER, Nov. 22, 2004, at 1A; see also *supra* notes 119-120 and accompanying text. At the time of Boykin's death in 1969, he left 120,000 acres to his heirs. See Sam Hodges, *This Land is My Land*, MOBILE REGISTER, Dec. 18, 2001, at 1A; see also Bill Barrow, *Bronner to Malone: Pony up*, MOBILE REGISTER, Mar. 13, 2006, at B1 (commenting on Malone's opposition to Riley's plan in 2003 in light of this golden parachute, "Some Montgomery politico wags have inferred that Mr. Malone's family has thousands of acres of timberland and paying more than a buck an acre in taxes would hurt . . . [b]ut considering Malone's Wachovia windfall . . . maybe now he can afford to pay more than a buck an acre." (quoting David Bronner, chairman of the Retirement Systems of Alabama) (internal quotation marks omitted)); Rick Rothacker, *Retiring Executive Getting Millions*, CHARLOTTE OBSERVER, Jan. 31, 2006, at 1A (reporting Malone retired in 2006 with a \$134 million golden parachute).

248. Shortly after Riley presented his 2003 tax reform proposal, the Alabama Policy Institute commissioned the Beacon Hill Institute at Suffolk University to examine its economic impact. The researchers applied a computable general equilibrium model known as the Alabama-STAMP (State Tax Analysis Modeling Program) in order to quantify the effects of Governor Riley's tax reform proposal, concluding that "some of the proposed tax changes result in minimal employment gains in Alabama, while others show large job losses and all lead to decreases in investment and disposable income." THE BEACON HILL INST. AT SUFFOLK UNIV., *TAX CHANGES IN ALABAMA: THE ECONOMIC CONSEQUENCES* 37 (May 2003) (commissioned by the Alabama Policy Institute). In particular, the model predicted the loss of 24,000

voters who would have enjoyed a tax cut and greater educational opportunities for their children.<sup>249</sup>

As the twenty-first century continues, the moral compass of too many within the religious establishment is still failing to address the state's most critical issues of justice despite the vigorous and prophetic voices of many leaders in faith-based organizations. The positions of Christian Action Alabama (formerly the Christian Coalition of Alabama) are especially disgraceful.<sup>250</sup> Rather than taking the lead and demanding that Alabama's leaders

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jobs and decreases of \$331 million and \$2.3 billion in investment and disposable income respectively. *Id.* These results were not without controversy, as a separate study performed by the Center for Business and Economic Research (CBER) at the University of Alabama reached completely different conclusions. CBER applied input-output multipliers obtained from the Regional Input-Output Modeling System (RIMS II) to estimate the impact of raising \$1.2 billion in new tax revenues via a \$1.0 billion reduction in personal consumption expenditure. Assuming the new tax revenues would be spent with the same distribution as previous tax revenues, this model predicted the creation of 10,554 jobs as well as increases in earnings by \$216 million and an increase of Alabama's gross state product (GSP) by \$533 million. SAMUEL ADDY & AHMAD IJAZ, CTR. FOR BUS. & ECON. RESEARCH, MACROECONOMIC IMPACT ESTIMATES OF GOVERNOR RILEY'S 2003 ACCOUNTABILITY AND TAX REFORM PACKAGE (2003). Even under a worst-case scenario, the CBER predicted the tax proposal to increase employment by 6,939 jobs, earnings by \$125 million, and GSP by \$219 million. *Id.* According to former CBER director Dr. Carl Ferguson, who commented publicly on the Beacon Hill Study during the campaign, Riley's plan, in generating substantial tax revenues to improve education and making state government more accountable, represented a clear effort to invest in the future growth and prosperity of the state, and the conclusions reached by the Beacon Hill Study were based on "false and specious assumptions" designed to create an illusion otherwise. Telephone Interview with Dr. Carl Ferguson (Jan. 17, 2006); *see also* Susan Pace Hamill, Op-Ed., *Voting Yes on Sept. 9 Is the Only Right Thing to Do*, ANNISTON STAR, Aug. 3, 2003, at 1E (in presenting the moral arguments for voting in favor of Riley's plan and describing special interest groups and wealthy individuals "distorting statistics in order to falsely convince others that reforms are not needed," portrays the Beacon Hill Study as "rely[ing] on a number of erroneous assumptions . . . [and] falsely threatening a massive loss of jobs, capital investment and disposable income . . . [because] Dr. Carl Ferguson, the director of the Center for Business and Economic Research at The University of Alabama and a well respected economist who has studied Alabama's economy for more than 20 years, has vigorously disputed this out-of-state study and strongly supports our governor's plan").

249. *See* Susan Pace Hamill, *The Book That Could Change Alabama*, 56 ALA. L. REV. 219, 237-38 (2004) (reviewing HARVEY H. JACKSON III, *INSIDE ALABAMA: A PERSONAL HISTORY OF MY STATE* (2004)) [hereinafter Jackson Book Review] (discussing the failure of Riley's 2003 tax reform plan as being largely caused by the lies and distortions of the special interest groups combined with the lack of grassroots connections between the voters, their community leaders and the political, academic and intellectual leaders at the highest levels working on behalf of Riley's plan). Though Riley's plan had a substantial level of complexity, *see supra* note 242, the failure at the polls cannot be fully blamed on that complexity. *See infra* note 260 (outlining the defeat of a proposed constitutional amendment to remove racist language, a relatively simple proposal that would have resulted in no substantive change in the law but would have cosmetically removed embarrassing provisions long held unconstitutional by *Brown v. Board of Education*, 347 U.S. 483 (1954)).

250. The Christian Coalition of Alabama divorced from its national parent organization in fall 2006 and adopted a new name, Christian Action Alabama (CAA). Kim Chandler, *Ex-Coalition Leaders Tell New Group's Name*, BIRMINGHAM NEWS, Sept. 15, 2006, at A1. The split is due either to the national organization's "unsavory new direction with its support for issues such as a higher minimum wage" or the state group's distribution of unapproved voter guides that were not in compliance with an IRS agreement—depending on which Christian you believe. *Id.* The new CAA continues to champion the same set of low-sacrifice issues as its predecessor, such as opposition to tax increases, same-sex marriage, gambling, and abortion. *Id.* Since the split, John Giles has resigned as president of CAA, *see White, supra* note 247, at A1, and the Christian Coalition of America has formed a new local chapter headed by Randy Brinson. *See Brinson Set to Lead State's Christian Coalition*, MOBILE REGISTER, Dec. 23, 2006, at B5. Despite the Christian Coalition's poor example, the state does have many significant faith-based or faith-affiliated groups fighting on behalf of social justice issues. Alabama Arise, "a

and citizens work toward addressing the state's dismal health, welfare, and education situation, the religious establishment tends either to remain silent or, worse, distract the population away from or directly oppose the efforts of others addressing these issues.<sup>251</sup> Alabama's most vocal Christian leaders too often limit moral questions to issues that, though they raise significant theological concerns where reasonable people of faith can and do passionately disagree, still require little or no personal sacrifice by the vast majority of people. Examples of low-sacrifice issues that are especially prominent in Alabama include gay marriage and display of the Ten Commandments in government buildings.<sup>252</sup> Even worse, Alabama's notoriously pro-life population has narrowed the abortion issue to the low-sacrifice issue of its legality while ignoring the greater levels of sacrifice required of a genuine pro-life community, which must take the form of minimum safety nets protecting the health and welfare of mothers and children and adequate education supported by adequate tax revenues.<sup>253</sup>

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[c]oalition of religious, community, and civic groups that promote state policies to improve the lives of low-income people," has made a name for itself in Montgomery. Alabama Arise, Who We Are, <http://www.alarise.org/whowere.html> (last visited Apr. 22, 2007); see also Editorial, A 'Taste of Fairness,' BIRMINGHAM NEWS, Apr. 9, 2006, at A2 (congratulating Arise for its long standing work toward tax reform). Greater Birmingham Ministries (GBM), an interfaith organization "carry[ing] out a faith-based response to poverty" and sponsored by twelve Christian denominations in addition to Jewish and Unitarian congregations, is another shining star in the faith-based fight for social justice. Greater Birmingham Ministries, <http://www.gbm.org> (last visited Apr. 22, 2007).

251. Flynt attributes the obsession with football as at least partially causing much of Alabama's religious community to succumb to misguided priorities. Flynt's late twentieth-century observation that "football became [religion's] complement," FLYNT, *supra* note 3, at 449, remains accurate as the twenty-first century continues. See Joseph Bryant & Greg Garrison, *Bucs Chaplain's MTV Image Lauded and Lambasted*, BIRMINGHAM NEWS, Sept. 16, 2006, at 1A (describing a high school team chaplain as "freely mix[ing] faith with football," counseling his players to let the opposing team know that "they have come to the state of Alabama where football is king and where you make sure that you can't walk off—that you've got to crawl off" (quoting Hoover High School football chaplain Terry Slay) (internal quotation marks omitted)); see also Virginia Heffernan, *Scrimmage Under the Sun, Brooding on the Sidelines*, N.Y. TIMES, Sept. 5, 2006, at E5 (describing football players in Alabama as "titans" and one coach as equating quitting the football team as being equivalent to "the guy who lets his friend die in 'Saving Private Ryan'" (quoting an unidentified former Hoover High School football player recalling his coach's take on quitting) (internal quotation marks omitted)).

252. Though the state already had a statute on the books that prohibits same-sex marriage, ALA. CODE § 30-1-19 (1998) ("Alabama Marriage Protection Act"), voters added another amendment to Alabama's voluptuous constitution last year by an overwhelming margin to enshrine the policy into state constitutional law. ALA. CONST. amend. 774 ("Sanctity of Marriage Amendment"); see Anna Velasco, *Voters Approve Amendment Banning Marriages of Gays*, BIRMINGHAM NEWS, June 7, 2006, at 1C (noting the strong support the amendment received from the Christian Coalition of Alabama). More than any other state, Alabama has been at the center of the low-sacrifice claim that Ten Commandments monuments in government buildings are necessary to acknowledge God. See *Glassroth v. Moore*, 335 F.3d 1282 (11th Cir. 2003) (holding the Alabama Ten Commandments monument to be an unconstitutional endorsement of religion); *Moore v. Judicial Inquiry Comm'n*, 891 So. 2d 848 (Ala. 2004) (affirming Moore's removal from office for failing to comply with the federal court order to remove the Ten Commandments monument); Jannell McGrew, *Conflict Brings National Spotlight*, MONTGOMERY ADVERTISER, Aug. 31, 2003, at A1 (reporting of Moore's determination to keep a Ten Commandments monument in the state judicial building and how it spun into a national debate over the separation of church and state).

253. See Susan Pace Hamill, *An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics*, 25 VA. TAX REV. 671, 756-57 & nn.196-200 (2006) (establishing a theological and empirical link between the moral issue of abortion and tax policy, concluding that communities refusing to embrace the sacrifice of Judeo-Christian guided tax policy are not genuinely pro-life); Susan Pace Hamill, *The High*

Alabama's recent political scandals are similarly discouraging. As the twenty-first century opened, we had the dubious honor of being the only state where a candidate for governor was being tried for ethics violations during the campaign.<sup>254</sup> Unfortunately, corruption continues to permeate the legislature, most recently and prominently in the two-year college system,<sup>255</sup> as well as throughout the channels of local government.<sup>256</sup>

The unexpected death of Bailey Thomson on November 26, 2003, was perhaps the most devastating blow to the late twentieth-century resurgence of efforts to gradually transform the state.<sup>257</sup> Thomson, along with several

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*Cost of a Pro-Life State*, MOBILE REGISTER, Apr. 23, 2006, at D1 (in the context of the 2006 introduction of Alabama bills that would ban almost all abortions, discussing the hypocrisy of Alabama claiming to be a pro-life state while continuing to tolerate the grossly unfair tax structure that provides inadequate support for life-affirming areas).

254. Rick Lyman, *In Race to Lead Alabama, It's Politics as Unusual*, N.Y. TIMES, Mar. 22, 2006, at A15 (reporting that former Governor Don Siegelman was running for governor despite federal indictment on racketeering and conspiracy charges). Of the thirty-two charges he faced during the nine-week trial, Siegelman eventually was convicted of seven: bribery, conspiracy, obstruction of justice, and four counts of honest services mail fraud. Kim Chandler, *Siegelman, Scrusby Guilty of Bribery*, BIRMINGHAM NEWS, June 30, 2006, at A1. The convictions related to \$500,000 that former HealthSouth CEO Richard Scrusby donated to Siegelman's 1999 lottery campaign in exchange for an appointment to the state Certificate of Need Board and the cover-up of \$9,200 Siegelman received from a lobbyist. *Id.*

255. Not to be outdone, the state's two-year college system has had more than its own share of corruption exposed this year. One state legislator already has pleaded guilty to theft and money-laundering charges resulting from his funneling of state funds to a foundation associated with the Alabama Fire College and then back to himself to pay his gambling debts. Brett Blackledge, *Melton Enters Guilty Plea in College Investigation*, BIRMINGHAM NEWS, Aug. 24, 2006, at 2A. The deputy director at the Alabama Fire College also pleaded guilty to diverting at least \$327,000 in state money and private donations to personal uses, such as two Harley-Davidson motorcycles, a home theater system, a large screen high definition television, and home improvements. Brett J. Blackledge, *Ex-Fire College Deputy Director Enters Guilty Plea*, BIRMINGHAM NEWS, Dec. 13, 2006, at 4A. The chancellor of the system, himself a former state legislator, subsequently was fired as a result of the Fire College scandal and revelations about numerous family members employed by the system. Kim Chandler & Brett J. Blackledge, *2-Year College Chancellor Fired*, BIRMINGHAM NEWS, July 12, 2006, at A1. Reports also indicate that contractors who have done work for the system also performed work on the chancellor's home without charging him. Brett J. Blackledge, *Contractor Footed Property Work*, BIRMINGHAM NEWS, Sept. 25, 2006, at 1A. Though yet to indict him for a crime, federal prosecutors have accused the ex-chancellor of "taking at least \$300,000 in payments from contractors after arranging state business for them," and they intend to seize his home. Brett J. Blackledge, *Prosecutors Want Johnson's House*, BIRMINGHAM NEWS, Dec. 13, 2006, at 1A. The president of a two-year college in Mobile, who also is a state legislator, is under fire for allegations that financial aid funds were misspent at her school, including financial aid payments to an employee's sixty-seven-year-old grandmother, who was registered in three sports at the college just months before she died. Charles J. Dean, *Pressure to Quit Rises for Head of Bishop State*, BIRMINGHAM NEWS, Sept. 29, 2006, at A1. While the two-year college scandal is still unfolding, it has already propelled its primary reporter, Brett Blackledge, to the loftiest of journalistic heights: winner of the 2007 Pulitzer Prize for investigative journalism. Katharine Q. Seelye & James Barron, *Wall Street Journal Wins 2 Pulitzer Prizes; History of Civil Rights Reporting Also Wins*, N.Y. TIMES, Apr. 17, 2007, at B8.

256. In the state's largest county, former county commissioners have been convicted right and left in the last year for misusing taxpayers' dollars. One commissioner was guilty of four counts of misapplying \$479,990 in funds and one count of conspiracy and received a federal prison sentence of three years and seven months. Val Walton, *Germany Gets Prison*, BIRMINGHAM NEWS, Oct. 17, 2006, at 1A. Another commissioner, whose daughter was killed in the 1963 Sixteenth Street Baptist Church bombing, was convicted of one count of conspiracy and ten counts of bribery arising from his oversight of the county's \$3 billion sewer project. Katherine Bouma & William C. Singleton III, *McNair Found Guilty of Conspiracy, Bribery*, BIRMINGHAM NEWS, Apr. 22, 2006, at 1A.

257. See ACCR, Bailey Thomson: 1949-2003, <http://www.constitutionalreform.org/thomsontribute.shtml> (last visited Apr. 22, 2007). According to editorialist Bob Blalock, "ACCR hasn't completely recovered from [Thomson's] death nearly two years ago" and that ACCR is "still . . . trying to regain the

others, organized Alabama Citizens for Constitutional Reform (ACCR) and in a very short time succeeded in garnering substantial support among citizens and numerous legislators.<sup>258</sup>

At the time of his death, Thomson, who recently had been tapped to chair ACCR, had new plans to take the message of constitution reform deeper into Alabama's communities.<sup>259</sup> After Thomson's death, ACCR struggled to regain its momentum, discouragingly losing a state referendum

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momentum it had in 2002." Bob Blalock, Editorial, *Not Willing to Stand for Constitution's Injustice*, BIRMINGHAM NEWS, Oct. 30, 2005, at 2C; *see also* Bob Blalock, Editorial, *Someone's Nervous About Reform, And That's Good*, BIRMINGHAM NEWS, July 31, 2005, at 2B (noting that the constitutional reform movement was "deflated by the death of Bailey Thomson, who had become the face of constitution reform"); Editorial, *Picking Up the Pieces: ACCR Must Continue What Thomson Started*, BIRMINGHAM NEWS, Dec. 26, 2003, at A10 (describing ACCR members as "shattered" by Thomson's death). The *Dothan Eagle* wrote that after Thomson's death, "sadly, it appeared the constitutional reform movement died with him" and noted that "ACCR closed its Montgomery office, interest waned and the Legislature went back to its usual bickering over trivial matters." *Other Views: Constitutional Reform*, MOBILE REGISTER, Apr. 24, 2004, at A10. Thomas E. Corts, a former ACCR chairman and former president of Samford University, wrote that constitutional reform "efforts were dealt a severe blow . . . with the loss of the Tom Paine of ACCR: its chairman, Bailey Thomson." Thomas E. Corts, Op-Ed., *What's Next for Alabama Constitution?*, MOBILE REGISTER, Dec. 7, 2003, at D1.

258. FLYNT, *supra* note 3, at 17. ACCR burst onto the political scene with an old-fashioned political rally set to bluegrass music and fiery speeches at the ruins of the old state capitol in Tuscaloosa on April 7, 2000. Sean Reilly, *'Cut the Umbilical Cord and Let's Grow Up'*, MOBILE REGISTER, Apr. 8, 2000, at A1 ("a movement begins"). The four-hour rally was organized under the auspices of the West Alabama Chamber of Commerce and drew a sizable crowd of about 300. *Id.* It also marked the announcement of thirteen members to the board of directors and plans for board expansion and fund raising. *Id.* ACCR went on to hire its first full-time employee in July 2001, when it named Kathy Bowden as executive director. ACCR, Press Releases, <http://www.constitutionalreform.org/pressrelease.shtml> (last visited Apr. 22, 2007). Later in the year, ACCR organized a march through the Bankhead Tunnel in Mobile featuring a turn-of-the-century mule-drawn cart carrying a copy of the equally antiquated constitution, a rally in Montgomery featuring Siegelman, and a conference in Birmingham that attracted 500 people. Richard Lake, *March Puts Focus on Constitutional Reform*, MOBILE REGISTER, Apr. 2, 2001, at A1; Stan Bailey & Patricia Dedrick, *Constitution Sparks Rival Rallies*, BIRMINGHAM NEWS, Apr. 4, 2001, at A1; Thomas Spencer, *New Constitution Advocates Told to Beware Bandwagon*, BIRMINGHAM NEWS, Oct. 24, 2001, at A3. During the last half of 2002, ACCR organized the Alabama Citizens' Commission on Constitutional Reform to develop and provide "specific recommendations for the provision of a new constitution" and "to serve as a resource to a convention or to the legislature." Gov. Albert P. Brewer, *A Broad Initiative: Alabama's Citizens' Commission on Constitutional Reform*, 33 CUMB. L. REV. 187, 192 (2003). The commission received thirteen working papers from scholars, debated the findings at four meetings held across the state, and issued a final report of their recommendations in January 2003. Steve Myers, *Commission: Change State's Constitution*, MOBILE REGISTER, Jan. 18, 2003, at A1; *see also* Alabama Citizens' Commission on Constitutional Reform, *Working Papers & Final Report*, 33 CUMB. L. REV. 187 (2003). ACCR's commission paved the way for Riley's more limited Citizens' Constitution Commission; both were chaired by former Alabama Secretary of State Jim Bennett and shared many other members. Bill Barrow, *Governor's Commission Issues Slate of Proposals*, MOBILE REGISTER, Mar. 28, 2003, at B1. ACCR's most tangible and long-lasting achievement prior to Thomson's death was, ironically, the passage of yet another amendment to the state constitution in fall 2002; however, this amendment guaranteed that any proposed constitution must be approved by the voters before it could be enacted. Mike Sherman, *Leaders Say Measure Crucial for Reform*, MONTGOMERY ADVERTISER, Nov. 5, 2002, at C3 (reporting on ACCR's rally on the Capitol steps the day before the election); *see also* ALA. CONST. amend. 714. The amendment passed by an overwhelming 80.8% of the vote (882,066 in favor and 210,122 opposed). Ala. Sec'y of State, Certification of Results: General Election, Nov. 5, 2002, <http://www.sos.state.al.us/election/2002/index.aspx> (click on "On-Line Certified Election Results").

259. *See supra* note 257 and accompanying text; *see also* Editorial, *Bailey Thomson: State Loses Passionate Voice for Constitutional Reform*, BIRMINGHAM NEWS, Nov. 30, 2003, at 2C (noting that Thomson's untimely death occurred only a month after he was elected chairman of ACCR).



to amend the constitution and remove the racist language regarding education<sup>260</sup> and failing to move a proposal past a legislative committee that would have allowed a statewide vote on whether to have a constitutional convention.<sup>261</sup>

Amid depressing statistics and setbacks, some counter trends paint unmistakable pictures of hope that an internally inspired, gradual, and steady, and therefore more permanent, improvement is truly possible. Though Alabama still spends far less per pupil on K-12 education than the national average, on November 7, 2006, voters approved a constitutional amendment requiring each school-taxing district in the state to provide at least ten mills of property tax support.<sup>262</sup> Moreover, though the percentage of Alabama's

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260. The constitutional amendment would have struck language from the Alabama constitution saying that "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," poll tax language, and a provision inserted soon after *Brown v. Board of Education*, 347 U.S. 483 (1954), that prohibited "recognizing any right to education or training at public expense." Ariel Hart, *Fight in Alabama on Segregationist Language*, N.Y. TIMES, Nov. 12, 2004, at A18 (quoting ALA. CONST. art. XIV, § 256) (internal quotation marks omitted). Opponents of the measure included former Chief Justice Roy Moore, Justice Tom Parker (former legal adviser to Moore), and the Alabama Policy Institute, *id.*, as well as John Giles, president of the Christian Coalition of Alabama, described as one of the "most vocal critics." Jannell McGrew, *Lawmakers Debate Constitution Changes*, MONTGOMERY ADVERTISER, Jan. 31, 2005, at A1. Despite their position that the removal of the language prohibiting the recognition of a right to education "would lead to court-imposed education taxes or thorny lawsuits demanding equal financing among schools," Hart, *supra*, an expert legal study conducted by the Public Affairs Research Council of Alabama concluded "clear precedents set by both the U.S. and Alabama supreme courts made 'court-ordered taxes very unlikely.'" McGrew, *supra*. After an automatic recount, the amendment was narrowly defeated, with the final tally at 688,530 in favor and 690,376 opposed—a margin of only 1,846 votes, or 0.13%. See Ala. Sec'y of State, Amended Certification of Results, Statewide Amendment 2, Dec. 17, 2004, <http://www.sos.state.al.us/election/2004/index.aspx>. Alabama's refusal to pass Amendment Two has embarrassed the state nationally and made economic development efforts more difficult. See Editorial, *Breaking Impasse on Amendment 2*, BIRMINGHAM NEWS, Dec. 16, 2004, at 14A ("Voters' refusal in November to approve the amendment—known as Amendment 2 on the ballot—has drawn unfavorable attention from USA Today, The Washington Post, CNN, the Charlotte Observer and other media. Without doubt, Alabama economic developers will face a tougher job selling the state as a place for businesses to move.").

261. ACCR and its army of volunteers pounded the pavement during 2005 and were rewarded with over 65,000 signatures on a non-binding petition calling for the Alabama Legislature to hold a statewide referendum on whether or not to hold a constitutional convention. Bill Barrow & David Ferrara, *Alabama's Constitution Argued at Rally*, MOBILE REGISTER, Jan. 26, 2006, at A5. Two companion bills calling for a convention referendum were introduced in the Legislature: H.R. 109 (sponsored by Speaker Pro Tempore Demetrius Newton, D-Birmingham, and Rep. Thomas E. Jackson, D-Thomasville) in the house and S. 52 (sponsored by Sen. T.D. ("Ted") Little, D-Auburn, and Sen. H.E. ("Hap") Myers Jr., R-Mobile) in the senate. See H.R. 109, 2006 Leg., Reg. Sess. (Ala. 2006); S. 52, 2006 Leg., Reg. Sess. (Ala. 2006). Early in the session, hundreds of ACCR supporters attended a three-hour public hearing before the House Constitution and Elections Committee and then rallied on the Capitol steps in support of the measure. Barrow & Ferrara, *supra*. Despite early victories, such as a unanimous vote of support from the senate committee on Constitution, Campaign Finance, Ethics, and Elections, the house version died in a deadlocked committee, and the senate version never actually made it to the floor after it cleared the committee. Bill Barrow, *Constitutional Reform Dead for This Session*, MOBILE REGISTER, Mar. 30, 2006, at B2. Those house members "who trusted the people enough to vote for the bill [were] Reps. George Bandy, D-Opelika; Paul DeMarco, R-Homewood; Randy Hinshaw, D-Meridianville; Jeff McLaughlin, D-Guntersville; Bryant Melton, D-Tuscaloosa; Mary Moore, D-Birmingham; and Sue Schmitz, D-Toney." Editorial, *Still Waiting for a People's Vote*, BIRMINGHAM NEWS, Oct. 4, 2006, at 10A. The "Spineless Seven" who voted against the bill were Reps. Greg Albritton, R-Excel; Randy Davis, R-Daphne; Joe Faust, R-Fairhope; Mickey Hammon, R-Decatur; Steve Hurst, D-Munford; Joseph Mitchell, D-Mobile; and Randy Wood, R-Anniston. *Id.*

262. See OVERVIEW, *supra* note 241, at 25 tbl. 8 (reporting that Alabama's \$6,581 average per pupil

population holding a high school diploma and college degree still trails the national average, the state has recently shown some improvement in both those areas.<sup>263</sup> Finally, though Alabama still ranks in the bottom half of states on overall quality of life indicators, between 2004 and 2005, the state rose eight spots from forty-seventh to thirty-ninth and has maintained that position in 2006.<sup>264</sup> After many decades of prison overcrowding and multiple lawsuits,<sup>265</sup> Alabama officials finally seem to be proactively working on

spending ranks forty-fourth with the national per pupil spending average at \$8,310); David Prather & John Ehinger, Editorial, *Tempering the Joy*, HUNTSVILLE TIMES, Nov. 9, 2006, at 10A (“Voters statewide approved a constitutional amendment to require every school district to pony up at least 10 mills of property tax for schools.”). Before the amendment, the 1901 Alabama Constitution limited local property tax millage rates to a maximum of 7.5 mills at the county level and five mills at the municipal level, unless a specifically listed municipality was allowed a higher (or lower) rate in Article XI, section 216 of the 1901 constitution or through Amendment 373. ALA CONST. art. XI, §§ 215, 216; ALA CONST. amend. 373 (1978); see also Hamill, *Constitutional Reform in Alabama*, *supra* note 243, at 441 & n.13. The proposed constitutional amendment was listed on the November 7, 2006 ballot as “Statewide Amendment Number Two” with the stated purpose “to require the levy of an additional local ad valorem property tax in those school districts of the State in which local ad valorem property taxes for general public school purposes totaling less than 10.0 mills are otherwise levied.” Ala. Sec’y of State, Proposed Constitutional Amendments: Statewide and Local for the November 7, 2006 Ballot, <http://www.sos.state.al.us/downloads/election/2006/general/statecert-constitutionalamendments-2006-08-31.pdf>. However, the property tax limitations anchored in the “Lid Bill” will significantly limit the level of revenues produced by the millage rate increases. See ALA CONST. amend. 373 (1978); Hamill, *Constitutional Reform in Alabama*, *supra* note 243, at 445-46 & nn.23-24 (describing the four classes of property and the respective lids on the property tax for each class); Hamill, *An Argument for Tax Reform*, *supra* note 241, at 23-33 & app. C (empirical research proves that the timber accounts for 71% of Alabama’s real property while contributing less than 2% of the property tax, averaging less than \$1 an acre); *id.* at 34-46 & app. D (empirical research proves most Alabama school districts are vastly underfunded, with timber property bearing “primary responsibility for the inadequately funded state of the local [rural] schools”).

263. See DIGEST, *supra* note 241, at 27-28 tbls.11 & 12 (follow link to Chapter 1). The national average for the percentage of the population with high school completion or higher in 1990 was 75.2%. *Id.* Alabama trailed the national average at 66.9%, a difference of 8.3%. *Id.* In 2004, Alabama still trailed the national average of 85.2%, but had closed the gap significantly by moving to 82.4%, only 2.8% off the national average, and more importantly had moved 15.5 percentage points higher from the 1990 number. *Id.* Though the percentage of those with college degrees increased in Alabama from 1990 to 2004 (15.7% to 22.3%), the gap between Alabama and the national average increased. *Id.* (national average in 1990 and 2004 stood at 20.3% and 27.7%, respectively, revealing Alabama’s gap of 4.6% in 1990 increasing to 5.4% in 2004). Alabama, however, gained ground by having less high school dropouts. Compare DIGEST, *supra* note 241, at 181-82 tbl.103 (follow link to Chapter 2, Part 2), with U.S. DEP’T OF EDUC. NAT’L CTR. FOR EDUC. STATISTICS, DIGEST OF EDUCATION STATISTICS 2003, at 136 tbl.104 (2004), <http://165.224.221.98/pubs2005/2005025.pdf> (showing dropout rate for high school students in Alabama decreased from 4.1% to 3.7% between 2000-01 and 2001-02).

264. See STATE RANKINGS 2006: A STATISTICAL VIEW OF THE 50 UNITED STATES, at v (Kathleen O’Leary Morgan & Scott Morgan eds., 17th ed. 2006) (publishing a table of each state’s “Livability Rating” and indicating Alabama’s 2005 and 2006 ranking as 39th); STATE RANKINGS 2005: A STATISTICAL VIEW OF THE 50 UNITED STATES, at v (Kathleen O’Leary Morgan & Scott Morgan eds., 16th ed. 2005) (noting Alabama’s rise in the livability rankings from forty-seventh in 2004 to thirty-ninth in 2005). The “Livability Rating” is determined by averaging each state’s rankings for forty-four categories of negative (e.g., crime rate, personal bankruptcy rate, infant mortality rate, poverty rate, unemployment rate, etc.) and positive (e.g., per capita gross state product, per capita personal income, median household income, percentage of high school graduates, home ownership rate, marriage rate, books in public libraries per capita, etc.) factors. *Id.* at iv-v.

265. FLYNT, *supra* note 3, at 201-04. At century’s end, Alabama prisons “housed more inmates per guard and spent less doing it than any other southern state.” *Id.* at 201. Prisons were short 400 guards, the prisoner-to-guard ratio was greater than twice the national average, and prisons designed to hold 12,000 inmates instead were stuffed with 27,000. *Id.* at 202.

solutions to the problem and have even been praised by national organizations for their innovation and cooperation.<sup>266</sup>

In the tax policy area, out of the wake of the 2003 tax reform defeat, slivers of progress—“a few halting steps toward” but “nearly a thousand miles to go”<sup>267</sup>—emerged in the form of income tax cuts benefiting the poorest Alabamians. When the cuts are fully phased in, a family of four will enjoy exemption from income on their first \$12,500 of income, resulting in tax savings averaging \$245 for a family of four earning \$20,000 a year.<sup>268</sup> In the political arena, Congressman Artur Davis first took office in the early twenty-first century and has continued to emerge as a significant New South political leader, both in addressing the problems in Alabama and in increasing his influence nationally.<sup>269</sup> Moreover, despite dire predictions that Gov-

266. The Pew Charitable Trusts' Public Safety Performance Project selected Alabama as the first state for a four-year, \$12 million project aimed at reforming sentencing practices and reducing prison crowding and recidivism “because of innovative efforts such as the Alabama Sentencing Commission and officials' eagerness to make changes.” Editorial, *Innovative Alabama?*, BIRMINGHAM NEWS, Dec. 18, 2006, at 4A. Prior to the adoption of new sentencing guidelines in October 2006, the state was forecast to increase its prison population by 2,400 over the next five years at a cost of \$150 million. Stan Diel, *State to Get Help on Sentencing*, BIRMINGHAM NEWS, Dec. 15, 2006, at 1C. The new guidelines, combined with the assistance from the Pew Foundation, are expected to “help soften that blow.” *Id.*

267. Editorial, *A Thousand Miles to Go*, BIRMINGHAM NEWS, Dec. 29, 2006, at 6A.

268. The 2006 Alabama Legislature increased the threshold at which a family of four begins paying income taxes to \$12,500 beginning in 2007. Before the bill passed, the level was \$4,600, the lowest in the nation, which effectively burdened the poor more heavily with income taxes more than any other state. Mary Ormdorff, *Alabama Remains Top Taxer of Poor*, BIRMINGHAM NEWS, Feb. 23, 2006, at 1B. For example, before the change, West Virginia was second to the lowest at a threshold of \$10,000. *Id.* With the change, “much of the savings [will go] to the 45 percent of tax filers who earn \$20,000 a year or less.” Editorial, *A 'Taste of Fairness,' supra* note 250. “Filers earning more than \$30,000 a year will get no tax relief unless they have children. No one earning more than \$100,000 will get a tax cut.” *Id.* Examples of the savings are as follows: “[a] single person with no child or other dependent who makes \$10,000 a year will save \$25 a year under the law. A married couple filing jointly with two dependents and earning \$20,000 a year will save \$245 a year. A similar family of four earning \$25,000 a year will save \$108.” David White, *Riley Signs Low-Income Tax Cut into Law*, BIRMINGHAM NEWS, Apr. 13, 2006, at 4B. Basically, the lower your income and the larger your family, the more significant the tax cut. “For a family making \$15,000 a year, [it] is a tax cut of \$260.” Tom Scarritt, Op-Ed., *Tax Cut Huge Step in Right Direction*, BIRMINGHAM NEWS, Apr. 9, 2006, at 1B. “That’s a meaningful amount,” according to Kimble Forrister, executive director of Alabama Arise. *Id.* (internal quotation marks omitted). In 2003, Riley had asked for a tax increase; then in 2006, he was asking for a tax cut for the poor. Why now? Gov. Riley explains it is “[t]he difference in the amount of money we had to work with.” White, *supra* note 268 (quoting Gov. Bob Riley) (internal quotation marks omitted). Riley noted “that state tax collections and other revenues have jumped in recent years, thanks in part to a healthy economy and a rise in interest rates on state deposits.” *Id.*

269. In 2002, Davis defeated a ten-year incumbent, Earl Hilliard Sr., in the Democratic primary for Alabama’s Seventh Congressional District. Hastings Wyman, *Primaries Show Dixie is Moving to the Middle*, ROLL CALL, Sept. 5, 2006 (“In 2002 in Alabama, black voters . . . helped turn out five-term Rep. Earl Hilliard (D), who had become a lightning rod for bad press, based on his ties to Libya and allegations of misuse of campaign funds, [and] elect[ed] instead Artur Davis (D), a bright young Harvard-educated lawyer who since has become one of the leaders of the more moderate, and sometimes pro-business, faction of the Congressional Black Caucus.”). As a congressman, Davis has been “active and visible in the district . . . has shown independence, not always voting the party line . . . [and] . . . [i]n an analysis of dozens of votes on economic, social and foreign issues, the National Journal ranked Davis the 33rd most conservative of 201 Democrats in the House.” Editorial, *U.S. House, 7th District*, BIRMINGHAM NEWS, May 28, 2006, at 2B; see also Katherine Lee & Jamon Smith, *Davis: Other Issues Trump Football*, TUSCALOOSA NEWS, Jan. 26, 2007, at 1B (noting that Davis’s independence allows him to speak plainly about issues that are important to both Alabamians and Americans with Davis “hop[ing] the state would get as enthusiastic about providing basic services and educating its residents as it does about football”).

ernor Riley would not be re-elected due to his 2003 tax reform proposal, he secured two-thirds of the vote in the Republican primary for the 2006 gubernatorial election and was re-elected for a second term by an overwhelming majority.<sup>270</sup> Even more important, the results of the Republican primary reflected a clear rejection of the Roy Moore style of political leadership.<sup>271</sup>

Despite the untimely loss of Bailey Thomson and the disappointing defeats, there are clear signs that ACCR is regrouping and will emerge a much more powerful and effective force. In October 2006, for this first time since Thomson's death, ACCR started operating with a professional staff rather than relying solely on volunteers. Moreover, ACCR is starting to adopt grassroots and coalition building strategies along the lines of Thomson's vision.<sup>272</sup>

In light of the paradox of the two Alabamas that permeated the entire twentieth century, and the conflicting signals offered by the trends emerging in the early twenty-first century, what will it take to achieve real progress

Additionally, Davis favors decreasing the number of troops in Iraq, supports increasing the minimum wage, and does not support a pending bill denying automatic citizenship to children of illegal immigrants born in the United States. *Id.* As recently as January, Davis publicly was contemplating a run at higher office in 2008, but after the Democrats gained the majority in Congress in November 2006 and Democratic leaders appointed him to the Ways and Means Committee, Davis abandoned those plans to devote all his energy to his new responsibilities in Congress. Sean Reilly, *Davis Opts Not to Pursue Senate Run*, MOBILE REGISTER, Jan. 9, 2007, at B1. Though Davis has placed his plans for 2008 on the backburner, 2010 is still a possible time for him to seek higher office. Kyle Whitmire, *Man of the House*, BIRMINGHAM WEEKLY, Nov. 16, 2006, at 8 ("Quietly, Davis has strategized in recent years a possible run for a statewide office in 2010 . . ."). Davis's plan in 2010 may be based more on necessity than ambition. *Id.* ("In proportion to the rest of the country by population, Alabama is losing ground. According to Davis, most of the experts . . . predict that Alabama won't have all of its seats after the 2010 census. Without seven districts, there is no 7th District.")

270. Riley received 306,665 votes, or 66.66%, for the Republican nomination for governor, compared to 153,354, or 33.34%, for Roy Moore. Ala. Sec'y of State, Statewide Primary Results, Letter to Nancy Worley, Sec'y of State, from Twinkle Address Cavanaugh, Chairman, Alabama Republican Party (June 16, 2006), <http://www.sos.state.al.us/election/2006>. Riley went on to defeat Lieutenant Governor Lucy Baxley in the general election with 718,327 votes (57.4%) compared to Baxley's 519,827 votes (41.6%). Ala. Sec'y of State, Canvass of Results: General Election (Nov. 7, 2006) (certified Nov. 29, 2006), <http://www.sos.state.al.us/election/2006>.

271. Not only did the voters of Alabama reject Moore himself, but his former staff attorney and three other allies running for Alabama Supreme Court places on a similar theme also were soundly defeated. See David White, *Nabers Leads Victorious Incumbents*, BIRMINGHAM NEWS, June 7, 2006, 1A (noting the defeat of a slate of four pro-Moore candidates); Eric Velasco, *Moore Men Defiant, Too*, BIRMINGHAM NEWS, May 21, 2006, at 8A (explaining how the slate of candidates "want to avenge Moore's ouster as chief justice").

272. After a long period of being sustained by volunteers only, ACCR is now able to employ Mark Berte as Grassroots Education Director and another part-time employee. ACCR, Board of Directors/Web, <http://www.constitutionalreform.org/staff.shtml> (last visited Apr. 22, 2007). In addition to re-establishing a regular newsletter in 2006, the group asked legislative candidates what their positions were on constitutional reform and publicized their responses, strengthened the diversity of their Board of Directors, increased fundraising efforts, and implemented a new database management system. Mark Berte, *Special Seasonal Thanks for Leaders Past and Present*, VOICE OF ALABAMA, Dec. 4, 2006, at 3, [http://www.constitutionalreform.org/pdf/nwsltr\\_voll\\_3\\_final.pdf](http://www.constitutionalreform.org/pdf/nwsltr_voll_3_final.pdf). ACCR and Greater Birmingham Ministries also have helped organize the Constitution Convention Coalition, a coalition of thirty non-profit organizations working together to achieve a new state constitution through a convention. ACCR, Constitution Convention Coalition Home Page, <http://www.constitutionalreform.org/coalition.html> (last visited Apr. 22, 2007). Perhaps most importantly for the future, ACCR now has grown its student chapters to nine colleges and high schools across the state. ACCR, Student Chapter Contact Information, <http://www.constitutionalreform.org/studentchapters.shtml> (last visited Apr. 22, 2007).

through gradual, permanent transformation instead of a costly revolution? Flynt's observations of Alabama's late twentieth and early twenty-first-century struggles with "haphazard and piecemeal"<sup>273</sup> economic development identifies one of the most important issues that will determine the course of the state's future for the remainder of the twenty-first century. Economists and business experts overwhelmingly agree that the key to any state's economic growth during the twenty-first century lies in its ability to fully adapt and prosper in the emerging global economy.<sup>274</sup> Becoming part of the global economy means the state is less dependent on domestic suppliers and buyers and more open and willing to sell their goods and services across national boundaries and similarly purchase goods and services in international markets.<sup>275</sup> Flynt captures Alabama's early successes in the merging global economy in its recruiting of new automobile industries at the tail end of the twentieth century and the first few years of the twenty-first century.<sup>276</sup>

As the twenty-first century continues, objective indicators suggest that Alabama's economy is continuing to move away from the industrial and agriculture and into the higher technology service areas characteristic of full players in the global economy.<sup>277</sup> On the other hand, there are also signs

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273. FLYNT, *supra* note 3, at 155.

274. Theodore Levitt, *The Globalization of Markets*, 92 HARV. BUS. REV. 92 (1983) (influential early article on globalization concludes that the forces of globalization will infiltrate even the most isolated locales because better and cheaper communication and transport allows distant competitors access to even small local market segments). Alabama should note that, according to Levitt, "[n]obody is safe from global reach and the irresistible economies of scale." *Id.* at 102. The following historical example illustrates that public policy seeking to protect local markets results in substantial long-term economic decline. In 1793, Chinese emperor Qianlong informed British Lord George Macartney, who was seeking to open trade relations with the Chinese, that "we have not the slightest need of your country's manufactures." *Playing Leapfrog*, THE ECONOMIST, Sep. 16, 2006, at 76. As a result, China's economic isolation, and declining rates of real income lasted for almost another 200 years. *Id.* "By 1950 China's GDP per person had shrunk by a quarter compared with Lord Macartney's day; Britain's had risen fivefold." *Id.*

275. In their introductory macroeconomic textbook, Nobel Laureate and former chief economist of the World Bank Joseph E. Stiglitz and his co-author Carl E. Walsh define globalization as the name given to "the closer integration of the countries of the world—especially the increased level of trade and movements of capital—brought on by lower costs of transportation and communication." JOSEPH E. STIGLITZ & CARL E. WALSH, PRINCIPLES OF MACROECONOMICS (3d ed. 2002). *The Economist*, a highly regarded magazine focused on economic issues, identifies two underlying forces, technology and trade liberalization, as driving globalization. Because "costs of communication and computing [are] falling rapidly, the natural barriers of time and space that separate national markets have been falling too. . . . [A]lmost all countries have lowered barriers to foreign trade. . . . [T]he ratio of trade to output has increased . . . sharply in most countries since 1950." *One World?*, THE ECONOMIST, Oct. 18, 1997, at 79.

276. FLYNT, *supra* note 3, at 153.

277. According to the Alabama Development Office, Alabama's total exports have more than doubled from approximately \$6.2 billion in 1999 to nearly \$14 billion in 2006. *Compare* ALA. DEV. OFFICE, 2003 ALABAMA EXPORTS: TOP 20 COMMODITIES, <http://www.ado.state.al.us/2003%20Export%20Statistics.doc> (last table in the document), *with* ALA. DEV. OFFICE, ALABAMA EXPORTS TO THE WORLD, <http://www.ado.state.al.us/06%20Alabama%20Exports.htm> (second table from bottom, "2006 Alabama Exports to the World By Commodities") [hereinafter 2006 Exports] (last visited Apr. 20, 2007). Automotive exports, now at \$4.9 billion after increasing over 83% in just four years, contributed most heavily, followed by industrial machinery at more than \$1 billion, and organic chemicals at just under \$900 million to total exports. 2006 Exports, *supra*. Alabama has more than 200 foreign-based manufacturers, representing twenty-three countries and \$14.5 billion in capital investment. Ala. Dev. Office, Alabama Answers, <http://www.ado.state.al.us/Alabama%20Profile.htm> (last visited Apr. 22, 2007). The state has

indicating that barriers within the state itself, especially the low level of education funding, are preventing us from fully and permanently benefiting from the global economy.<sup>278</sup> Moreover, these barriers continue to be especially steep across the rural areas and in certain parts of the inner cities.<sup>279</sup>

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six Foreign Trade Zones (in Anniston, Birmingham, Dothan, Huntsville, Mobile, and Montgomery) as well as numerous sub-zones. *Id.* Additionally, many banks headquartered in Alabama offer complete international banking services for companies located in Alabama and throughout the Southeast. *Id.*

278. Given the emphasis on the mobility of capital inherent in the concept of globalization, the importance of an educated population is clear. First, the entrepreneurial acumen necessary to “create new firms and jobs” may otherwise be lacking, “due to lack of education.” JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 59 (2002). Second, given more choice than ever in where to locate their capital investments, worldwide corporations can afford to be choosier than ever in assessing potential locales. Facing competition from neighboring countries instead of neighboring counties, the stakes are higher than ever for Alabama’s continued economic development. Nobel Laureate Joseph E. Stiglitz commented on the early results of this internationalized competition to attract economic development, noting “[c]ountless studies have shown that countries, like those in East Asia, which have invested in primary education, including education of girls, have done better.” *Id.* at 76. Summarizing the need for proactive efforts to attract industry, Stiglitz reminds us that “[i]n countries that have been most successful, in the United States and in East Asia, government has . . . provided a high-quality education to all and furnished much of the infrastructure . . . which is required for markets to work effectively.” *Id.* at 218. Given these stakes, Alabama’s continuing apathy toward well-funded public education is even more alarming: though the performance grade for Alabama’s economy in the nonprofit Corporation for Enterprise Development’s “Development Report Card for the States” improved—from an “F” in 2003 to a “C” in 2007—the state continued to be scrutinized for its questionable dedication to education. CORP. FOR ENTER. DEV., *2007 DEVELOPMENT REPORT CARD FOR THE STATES*, <http://www.cfed.org> (follow “2007 Development Report Cards for the States” at bottom right to “grades” at left) (last visited Apr. 22, 2007). While Alabama received an overall score of “A” for business vitality, this achievement was blemished by failing grades in the sub-categories of human resources and infrastructure resources, and a failing grade for Alabama’s development capacity. *Id.* The various shortcomings of Alabama’s educational infrastructure are no mystery: Alabama ranks “No. 48 among the states in basic math skills. No. 45 in basic reading skills. No. 47 in high school completion rate. No. 47 in college attainment. No. 43 in average teacher salary.” Jerry Underwood, *Grade for State Economy Inching Up*, BIRMINGHAM NEWS, Jan. 21, 2007, at 1C; see also LARRY LEE & JOE A. SUMNERS, *ECON. DEV. INST., BEYOND THE INTERSTATE: THE CRISIS IN RURAL ALABAMA* 3-5 (2003), <http://www.auburn.edu/outreach/edi/beyondtheinterstate.pdf> (“Enticing companies from afar to relocate with the bait of cheap land, low taxes and a surplus of hardworking but undereducated workers—that old recipe no longer works.” (quoting MDC Inc., *The State of the South 2002: Shadows in the Sunbelt Revisited*) (internal quotation marks omitted)); *supra* note 241 and accompanying text.

279. Lee & Sumners, *supra* note 278, at 3-4 (“Clearly, there are two Alabamas, one urban and one rural. The first is enjoying relative success, although there are *deeply distressed pockets* within our urban areas. The second, for the most part, is making *little or no progress* and continues to keep Alabama from being recognized as a successful competitor.” (quoting ALA. COMM. COMM’N REPORT (2000)) (emphasis added) (internal quotation marks omitted)). Within the city limits, Birmingham, with its poverty rate of 28.9% ranking in the top ten list of cities with the highest levels of inner city poverty, could be viewed as a “distressed pocket.” Stephen Ohlemacher, *More Poor Now Live in Suburbs Than City, Study Finds*, ST. LOUIS POST-DISPATCH, Dec. 7, 2006, at A2; Thomas Spencer, *Room in the Inn: City Rethinks Homelessness*, BIRMINGHAM NEWS, Jan. 14, 2007, at 1A. Interestingly, New Orleans, whose poverty was on display in the wake of Hurricane Katrina, did not make the top ten list. See Ohlemacher, *supra*. Rural Alabama is making very little progress. Though the rate of employment in Alabama grew by 4.4% between 2003 and 2006, twenty-eight of the sixty-seven counties failed to meet this mark, and of those, twenty-five are rural counties, twelve of which actually experienced a decrease in employment. Larry Lee, *Op-Ed., Prosperity Bypasses State’s Rural Areas*, HUNTSVILLE TIMES, Sept. 3, 2006, at 1C. The Alabama Commerce Commission suggested in 2000 that the increasing economic gap between the rural and distressed urban areas as compared to more affluent urban areas is being caused by the emerging global economy and limited investment in “physical and social infrastructure.” See JOE A. SUMNERS & LARRY LEE, *ECON. DEV. INST., CROSSROADS AND CONNECTIONS: STRATEGIES FOR RURAL ALABAMA* 8, <http://www.auburn.edu/edi/candcsm.pdf> (last visited Apr. 22, 2007) (quoting the 2001 report of the Governor’s Task Force on the Development of Economically Distressed Counties) (internal quotation marks omitted).

However, vigorous economic development alone will not transform the state. In quoting a frustrated member of the legislature who resigned, “[w]e haven’t had in my lifetime the dynamic and effective leadership that’s truly needed to transform the state, to give people a real sense of their lost opportunities and the vision necessary to make them ready to reclaim their lost opportunities,”<sup>280</sup> Flynt reveals another extremely important missing ingredient: Alabama badly needs bold visionary leaders with an agenda building toward long-term goals that extend far past the next election cycle. Flynt shows how throughout the twentieth century, piecemeal politics greatly held the state back, with the few attempting to steer the state in positive directions through bold visionary leadership being thwarted by the 1901 constitution and racism.<sup>281</sup> Although Alabama’s political leadership as the twenty-first century unfolds shows some promise with, in addition to Riley and Davis, examples like state representatives Mac Gipson and Jeff McLaughlin, unfortunately, Alabama continues to produce political leaders showing misplaced priorities.<sup>282</sup>

In addition to sound economic development and bold visionary political leadership, the people of Alabama are responsible for transforming the state. Wealthy and middle-class Alabamians must come to realize that their long-term future is tied to enhancement of the poor and lower-middle classes as well as the elimination of the race and gender discrimination that has always been part of the state’s fabric.<sup>283</sup> This greater awareness of their own self

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280. FLYNT, *supra* note 3, at 106 (quoting Rep. William Slaughter) (internal quotation marks omitted).

281. See *supra* notes 63-66, 116-118, 184-191, and accompanying text.

282. Gipson, R-Prattville, was one of the earliest and is one of the most consistent supporters of constitutional reform. See Michael Sznajderman, *A Needed Radical Idea Gets Shelved*, BIRMINGHAM NEWS, May 1, 2000, at 1A; Michael Sznajderman, *Call for New Constitution; Gipson Thinks 2001 is Time to Overhaul 1901 Document*, BIRMINGHAM NEWS, Nov. 30, 1999, at 5B (describing Gipson’s support for constitutional reform at a time before ACCR was even established). McLaughlin, D-Guntersville, has been called a “voice for [constitutional] reform,” Editorial, *Bloated Constitution*, BIRMINGHAM NEWS, Feb. 18, 2005, at A8, and has also been a “champion” of banning PAC-to-PAC campaign contribution transfers, see Editorial, *Stop Transfers, Get Accountability*, BIRMINGHAM NEWS, Mar. 24, 2006, at 8A. Representative Gerald Allen and Senator Hank Erwin are two examples from a different school. Allen, R-Cottondale, made national news in 2004 when he proposed legislation that would ban books featuring gay characters from state libraries. *Alabama Lawman Hits the Books*, FIN. TIMES, Dec. 2, 2004, at 12. When asked what he would do with the newly banned books, Allen said, “I guess we dig a big hole and dump them in and bury them,” thereby immediately reinforcing many of Alabama’s worst stereotypes for all the world to see. *Id.* (quoting Rep. Gerald Allen) (internal quotation marks omitted). Erwin, R-Montevallo, famously wrote that Hurricane Katrina was the “judgment of God” for the “gambling, sin and wickedness” in New Orleans and the Gulf Coast. Thomas Spencer, *Senator Says Storms are Punishment from God*, BIRMINGHAM NEWS, Sept. 28, 2005, at 1A (internal quotation marks omitted).

283. The persistence of poverty strongly inhibits economic growth and development. See Dani Rodrik, *Growth versus Poverty Reduction: A Hollow Debate*, FIN. & DEV., Dec. 2000, at 8 (“Policies that increase the incomes of the poor—such as investments in primary education, rural infrastructure, health, and nutrition—tend to enhance the productive capacity of the whole economy, boosting the incomes of all groups.” (quoting Dani Rodrik, professor of International Economy at Harvard University’s John F. Kennedy School of Government) (internal quotation marks omitted)); see also Erik Eckholm, *Childhood Poverty Is Found to Portend High Adult Costs*, N.Y. TIMES, Jan. 25, 2007, at A19 (discussing a January 2007 report that concludes that “[c]hildren who grow up poor cost the economy \$500 billion a year because they are less productive, earn less money, commit more crimes and have

interest must be merged with a strong moral renewal needed to keep short-sighted greedy impulses from limiting their support of concrete proposals, particularly those that require them to pay more taxes. Flynt shows that while the twentieth-century impulses displaying a strong moral compass or long-range self-interest regularly appeared, the degree of consistency and longevity necessary to permanently transform the state was absent.<sup>284</sup> Finally, Alabamians among the victimized groups, which includes the poor and lower-middle classes as well as African Americans and women at all income levels, must collectively transform by building bridges between them and their leaders and reformers through grassroots and goals focused

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more health-related expenses . . . [and t]he high cost of childhood poverty to the U.S. suggests that investing significant resources in poverty reduction might be more cost effective than we thought” (quoting Harry J. Holzer, an economist at Georgetown University and the Urban Institute)). Besides affecting children directly and individually, poverty affects business development generally. See Beck Taylor, Op-Ed., *Poverty Hobbles Business Work Force*, BIRMINGHAM NEWS, Jan. 28, 2007, at 3B (“There is growing evidence [that] the pervasiveness of poverty inhibits a region’s ability to supply the stock of workers companies need to succeed . . . [P]overty represents a deadly plague that potentially prevents society from generating a qualified and sustainable work force for economic development.”); see also STATE RANKINGS 2006, *supra* note 263, at 495 (reporting Alabama’s poverty rate rank as the 7th highest in the nation); CARMEN DENAVAS-WALT ET AL., INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2004, at 25 tbl.10 (2005), <http://www.census.gov/prod/2005pubs/p60-229.pdf> (reporting Alabama’s percentage of the population in poverty increased by 1.2% 2002-03 and 2003-04). Moreover, race and gender discrimination at the workplace can raise the cost of production, which makes industry less competitive. See GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION 41 (2d ed. 1971) (“[E]quilibrium factor combinations would be quite different in situations of discrimination from those obtained with classical assumptions: there would be a smaller demand for factors discriminated against, and the money cost of producing each output would be greater than the minimum money cost.”). Moreover, discrimination tends to reduce incomes for all. *Id.* at 21. In Alabama, there are mixed signs about the prevalence of discrimination. See Jeff Hansen & Sherrel Stewart, *City Making Journey from Hate to Healing*, BIRMINGHAM NEWS, Sept. 10, 2000, at 1A. For example, “major contacts across the racial gap come in the workplace . . . [y]et for many in Birmingham, the differences grate. You can hear the residues of racism, or the feeling of entitlement, or reactions against affirmative action when extended families gather for holidays or reunions. There’s also grumbling that goes on outside the workplace. You can hear it on the radio each morning or evening during the work commute . . . [where] race seems to be an underlying, and negative, topic for almost all the callers.” *Id.* Mobile, however, appears to have addressed discrimination more effectively. See Kelli Hewett Taylor, *Port City Cruises to Success*, BIRMINGHAM NEWS, Aug. 21, 2005, at 1A (“When Mobile was missing from the list of sites for a proposed Robert Trent Jones Golf Trail, [Mayor Mike] Dow and other leaders insisted on talking to project creator David Bronner, CEO of the Retirement Systems of Alabama. Dow drove to Montgomery and asked Bronner why. Bronner blamed the city’s divide, racially and politically. Dow got leaders together and the area now has two of Bronner’s championship golf courses. . . . ‘I think the key to Mobile’s success in the last 15 years has been a unified effort by both the white and black communities to work together to solve problems,’ Bronner said.”). As for gender gains, if Alabamians’ willingness to elect women is any indicator, the results are mixed. See CTR. FOR AM. WOMEN AND POLITICS, ALABAMA: WOMEN IN ELECTIVE OFFICE—HISTORICAL SUMMARY, <http://www.cawp.rutgers.edu/Facts/SibySU/AL.html> (last visited Apr. 22, 2007). Alabama has not been a leader in sending women to the state legislature. See *id.* In 2007, Alabama moved from forty-ninth to forty-seventh in the number of women in the state legislature. See *id.* Alabama has, however, had gains in the number of women that it has sent to serve in Alabama’s constitutional offices. See *id.* (In the last two terms, Alabama has elected a woman to three out of six of its constitutional offices; this is unprecedented in a state that between 1819 and 1995 elected women to constitutional offices twenty times. Since 1995, women have been elected eleven times.) Also, in 2006, Alabama elected its first woman to be chief justice of the Alabama Supreme Court. See Bob Johnson, *First Female Ala. Chief Justice Sworn In*, CHARLESTON GAZETTE, Jan. 17, 2007, at 7A (“Sue Bell Cobb took the oath of office Tuesday as Alabama’s first female chief justice and only the sixth woman to serve on the state’s highest court in its 188-year history.”).

284. See *supra* notes 36-42, 54-62, 131-143, 203-206, and accompanying text.



on gradual progress. They also must take greater personal responsibility for matters under their control, such as seeking a healthier diet and lifestyle, avoiding excessive credit card debt, and ensuring that their children attend school. Despite the impressive stories throughout the twentieth century of individuals overcoming the oppressive circumstances of their time, Flynt shows that a collective critical mass level of self-transformation never occurred.<sup>285</sup>

Flynt's examples throughout the twentieth century of the 1901 constitution materially blocking the efforts of several progressively minded governors reveals the most important step that Alabamians and their leaders must take for there to be any "real or permanent progress . . . possible in Alabama."<sup>286</sup> The evidence overwhelmingly indicates that Alabama cannot move forward as a substantial player in the twenty-first century global economy without constitution reform.<sup>287</sup> Alabama's constitution forbids the counties from making local decisions, including decisions to launch internal improvements necessary to promote important economic development projects.<sup>288</sup> Moreover, Alabama's constitution and statutory provisions greatly

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285. See *supra* notes 14-32, 75-78, 184-187, 222, and accompanying text.

286. See PROPOSED CONSTITUTION OF ALABAMA: REPORT OF THE CONSTITUTIONAL COMMISSION vii (1973); FLYNT, *supra* note 3, at 26-27, 64-65.

287. See generally A CENTURY OF CONTROVERSY: CONSTITUTIONAL REFORM IN ALABAMA (Bailey Thomson ed., 2002); J. Foster Clark, *Alabama's Existing Constitutional Provisions Impacting Economic Development: A Report by the Technical Advisors Committee for Economic Development*, 33 CUMB. L. REV. 513 (2003); Bailey Thomson, *Century of Shame: Alabama's 1901 Constitution, A Series of Editorials*, MOBILE REGISTER, Oct. 15-22, 2000.

288. See ALA. CONST. art. IV, § 44 (eliminating all discretionary power of local governments); *id.* §§ 96, 104, 105, 106, 110, 111 (limiting the power of the legislature to enact local legislation for a particular county). In 1907, the legislature granted home rule power to municipalities. ALA. CODE § 11-45-1 (1989). The legislature was unwilling to extend home rule to the counties, securing a series of constitutional amendments that effectively increased its power over most local county issues. See Jim Williams & Randolph Horn, *Local Self Government in Alabama*, 33 CUMB. L. REV. 245, 264-65 (2003). However, there is some indication that the legislature is backing off and allowing some counties limited home rule powers. See Alabama Limited Self-Governance Act, No. 2005-200, 2005 Ala. Laws 399. This Act gives counties the ability to "pass laws regulating nuisances such as weeds, animals, litter, junkyards, noise, sewage or pollution," but only after residents of the county adopt this in a referendum. Editorial, *Emphasis on 'Limited,'* BIRMINGHAM NEWS, May 22, 2005, at 2D. Though the legislature proposes to give more power to the county governments, the power conceded is very limited. *Id.* For example, though the county can pass laws "regulating nuisances," the legislature has "set limits on the fines and penalties for violators of the laws the Legislature is allowing [county governments] to pass." *Id.* The Alabama Limited Self-Governance Act "is a small step toward more counties in Alabama being able to govern themselves, rather than go begging to the Legislature." Editorial, *One Small Step for Counties . . .*, BIRMINGHAM NEWS, July 1, 2006, at 8A. Sonny Brasfield, the Association of County Commissioners of Alabama's assistant executive director, describes this prospect of limited "home rule" as better than nothing. Bob Blalock, Op-Ed., *Limited Home-Rule Law a Hit with Most Voters*, BIRMINGHAM NEWS, Nov. 19, 2006 at 2C. Actually, it's "pretty good when you consider it's taken us more than 100 years for us to get here," referring "to the time that has passed since the writing of the 1901 Constitution." *Id.* (quoting Sonny Brasfield, Assistant Executive Director of Association of County Commissioners of Alabama). This taste of home rule has been described not as home rule but "foyer and living room rule" due to its limited scope. Editorial, *One Small Step for Counties, supra*. "Fourteen counties now have limited home rule, joining a handful of mostly urban counties over the years that have won some form of self-government." Blalock, *supra*. Besides limited home rule, legislators and Alabama voters have given county governments some authority in the area of economic development, despite the fact that the 1901 constitution originally limited economic development activities at the local level. ALA. CONST. art. IV, § 94; see also Williams & Horn, *supra*, at 273 ("At least 54 local amendments create exceptions to Section

limit the ability of the legislature to craft a budget meeting current needs by requiring the earmarking of most of the state's tax revenues.<sup>289</sup>

Perhaps of greatest significance, Alabama cannot successfully reform the state and local tax structure at the level necessary to move forward in the twenty-first century until we first reform the 1901 constitution.<sup>290</sup> A well-designed state constitution appropriately allocates the power over the tax laws between the state legislature and the local governments. Ideally, the state legislature should be responsible for the income tax structure as well as for setting the state level property tax rate and defining the value of property subject to the property tax. The local governments should be responsible for establishing local property tax rates.<sup>291</sup> More than any other state, Alabama anchors in its constitution tax provisions that do not belong there and consequently strangles the ability of both the state and local governments to

94, allowing local governments in 44 counties to exercise a variety of powers for purposes of economic development and internal improvement.”).

289. Alabama earmarks 87.2% of its tax revenues, by far the highest percentage of any state. FISCAL PLANNING SERVS. INC., DEDICATED STATE TAX REVENUES: A FIFTY-STATE REPORT 15 tbl.2 (2000), <http://www.ncsl.org/programs/fiscal/pmtaxrev.pdf>. The national average for earmarking stands at 21.7% and the national median stands at 17.9%. *Id.* Of the fifty states, only fifteen earmark more than 25%, and only six earmark more than 50%. *Id.* Nebraska, with an earmarking percentage at 64.5%, has the second highest earmarking percentage in the nation but still significantly trails Alabama. *Id.* A complete list of every item in the budget affected by earmarking is beyond the scope of this Review. *See, e.g.*, ALA. CONST. amend. 61 (“The entire proceeds of the income tax in the treasury of the state of Alabama . . . including cash and investments and the interest thereon, shall be used for the following purposes . . . .”); ALA. CODE § 40-1-31 (2003) (“All revenues collected under the provisions of Sections 40-12-128, 40-12-310 through 40-12-319, 40-25-1 through 40-25-28 and 40-25-40 through 40-25-47 shall, after deduction of the cost of collection, be deposited in the State Treasury to the credit of the Alabama Education Trust Fund.”); *id.* § 40-17-31 (“The revenue, less the cost of collection and all refunds authorized by law, obtained from [the gas tax] . . . shall not be used for any purposes other than the following . . . .”). The high level of earmarked funds limits Alabama’s flexibility in dealing with pressing problems. *See* Kenneth R. Johnson, Op-Ed., *Earmarking Creates Need for New State Constitution*, DECATUR DAILY, May 1, 2005, available at <http://www.decaturdaily.com/decaturdaily/opinion/other/050501.shtml> (“Programs receiving earmarked money, such as education through the Educational Trust Fund, often have more money than is actually necessary, while other programs are horribly under-funded.”).

290. A consensus that constitution reform is a necessary prerequisite for tax reform has been recognized by experts on how Alabama’s 1901 constitution and tax structure work, *see* FLYNT, *supra* note 3, at 17, 20; Thomas E. Corts, Op-Ed., *Out of Fairness, Alabama Deserves a New Constitution*, BIRMINGHAM NEWS, Apr. 13, 2003, at 5C; Hamill, *Constitutional Reform in Alabama*, *supra* note 243, at 437, 452; Jackson Book Review, *supra* note 249, at 288, 298; William V. Muse, Op-Ed., *State Should Heed North Carolina’s Example*, MONTGOMERY ADVERTISER, July 8, 2001, at 9A; Jim Williams, Op-Ed., *Alabama is Broke; It’s Time to Fix It*, MONTGOMERY ADVERTISER, Jan. 21, 2003, at 6A, and by the editorial boards of the state’s major newspapers, *see* Editorial, *Constitutional Reform Remains a Vital Issue*, TUSCALOOSA NEWS, April 7, 2005, at 6A; Editorial, *Legislature Can’t Keep Thinking in Short-Term*, MOBILE REGISTER, Jan. 30, 2005, at 2D; Editorial, *Study Highlights Need for Reform*, MONTGOMERY ADVERTISER, May 15, 2004, at 6A; Editorial, *Time for State to Consider Raising Property Taxes*, TUSCALOOSA NEWS, March 18, 2004, at 6A; Editorial, *In 2004, Let’s Redouble Our Efforts to Reform*, MOBILE REGISTER, Jan. 1, 2004, at 14A; Editorial, *What are You Voting for Tuesday*, ANNISTON STAR, Sept. 8, 2003, at 4A; Editorial, *Unequal Education*, ANNISTON STAR, Sept. 6, 2003, at 4A; Editorial, *Malicious Intent: Writers of Constitution Gave Power to Only a Few*, BIRMINGHAM NEWS, Jan. 30, 2001, at 6A.

291. Hamill, *Constitutional Reform in Alabama*, *supra* note 243, at 447-52 (discussing the ideal allocation of power between state and local governments to craft tax policy using the example of the Sixteenth Amendment of the United States Constitution delegating the power to Congress to enact the details of the federal income tax laws).

raise adequate revenues in an equitable manner from both income and property taxes.<sup>292</sup>

Instead of delegating these details to the state legislature, the constitution greatly limits the income tax burden of the wealthiest Alabamians by capping the income tax rate at 5% and mandating a deduction for federal income taxes paid.<sup>293</sup> Similarly, the constitution guarantees a *de minimis* property tax burden for the largest landowners and lowest-in-the-nation property taxes generally by enshrining a myriad of complex provisions, known as the "Lid Bill."<sup>294</sup> The Lid Bill shields most of the value of property from being subject to the property tax rates and places a series of caps limiting both property tax rates and the dollar amount of property tax that can be collected with respect to each particular piece of property.<sup>295</sup> Finally, the constitution unduly stymies local governments by subjecting proposed local property tax rate increases to state legislative approval and sometimes even requiring a statewide vote, producing the ridiculous situation of Alabamians unaffected by proposed local property tax increases voting on the referendums.<sup>296</sup>

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292. See Bruce P. Ely & Howard P. Walthall, Sr., *State Constitutional Limitations on Taxing and Spending: A Comparison of the Alabama Constitution of 1901 to Its Counterparts*, 33 CUMB. L. REV. 463, 471 (2003) ("[W]e were unable to locate a state constitution anywhere in the United States that contains such a level of detail on taxes and taxing restrictions as Alabama's").

293. ALA. CONST. amend. 225 (requires individual taxpayers to be allowed a deduction for federal taxes paid); ALA. CONST. amend. 25 (capping the income tax rate at 5% and setting forth minimum exemptions for individual tax payers); see also Hamill, *Constitutional Reform in Alabama*, *supra* note 243, at 439-40 & nn.4-11 (discussing the provisions and detailing the cumbersome process for amending the Alabama constitution necessary to increase income tax rates or eliminate the deduction for federal taxes paid).

294. ALA. CONST. amend. 373.

295. *Id.*; see also Hamill, *Constitutional Reform in Alabama*, *supra* note 243, at 442-46 & nn.17-25 (discussing the detailed provisions of the Lid Bill and its 1971 predecessor (ALA. CONST. amend. 325) and the cumbersome process for amending the Alabama constitution necessary to change any of these provisions); Hamill, *An Argument for Tax Reform*, *supra* note 241, at 23-33, nn.68-101 & app. C (detailed documentation of Alabama's lowest-in-the-nation property tax structure, including the Lid Bill being responsible for timber contributing less than 2% of the property taxes averaging less than \$1 an acre despite accounting for 71% of Alabama's real property and a significant portion of the state's economy, as well as the devastating consequences of the property tax structure in limiting the ability of the state to fund essential services).

296. See Hamill, *Constitutional Reform in Alabama*, *supra* note 243, at 444-45 & nn.21-22 (spelling out elaborate constitutional amendment procedures that apply to most local bills, including all those raising local property tax rates, requiring a three-fifths super-majority approval in both the house and senate and majority approval by the Local Constitutional Amendment Commission (which consists of the Governor, the Presiding Officer of the Senate, the Attorney General, the Secretary of State, and the Speaker of the House of Representatives) with a dissenting vote in either the house or the senate (even if the three-fifths super-majority threshold is met) or failure to secure majority approval by the Commission forcing the local bill to be passed in a statewide election). An egregious and striking example of how the 1901 constitution shackles local government through the lack of home rule occurred in the fast-growing city of Trussville in 2004. An attempt to raise the city's property taxes to fund capital improvements to the school system was overwhelmingly approved by Trussville residents 69% to 31%. Anita Debro, *Officials Consider Next Steps*, BIRMINGHAM NEWS, Nov. 4, 2004, at 3B. Unfortunately for the students and citizens of Trussville who clearly desired the school improvements, the attempt failed because 55% of the state's voters said no. *Id.* Local decisions were similarly thwarted in Crenshaw and Macon counties on the very same day. Crenshaw County residents, who live in one of the state's lowest populated counties, wanted to save taxpayer money by lowering the pay for their probate judge, who earns one of the state's highest salaries for that position. Alvin Benn, *Probate Judge's Salary an Issue*,

Flynt describes a twentieth-century lawsuit, *Knight v. Alabama*, that could serve as a catalyst propelling the state toward tax and constitution reform. Starting as a college desegregation case, in 1981 “[b]lack[s] sued the state university system . . . [and f]inally . . . a federal judge . . . in 1995 . . . capped growth in predominantly white colleges that had been located in cities with historic black universities[,] . . . mandated that more state education money be appropriated to historically black Alabama State and Alabama A&M universities for endowment and in-state scholarships to attract white students[,] . . . [and] ordered merger of agricultural extension programs at Auburn and A&M.”<sup>297</sup> In 2003, this case, which had remained under the district court’s active oversight, morphed into challenging Alabama’s property tax provisions, especially the 1971 and 1978 Lid Bills, as an unconstitutional violation of the Equal Protection Clause due to race discrimination.<sup>298</sup> In October 2004, a federal district judge held that the desire to restrict education funding benefiting African Americans motivated all the property tax barriers anchored in the 1901 constitution, including the 1971 and 1978 Lid Bills enacted during Governor George Wallace’s resistance to desegregation.<sup>299</sup> Despite additional holdings that African Americans con-

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MONTGOMERY ADVERTISER, Oct. 28, 2004, at B1 (describing background of the Crenshaw County amendment). The Crenshaw County sheriff worried about the amendment’s passage because “[p]eople 200 miles from here have no idea what’s going on in this county.” *Id.* (quoting Sheriff Charles West) (internal quotation marks omitted). Working true to its design, the 1901 constitution struck again, and despite passing by a large margin in Crenshaw County, the amendment ultimately failed due to those statewide voters that West so rightly worried about. ALA. SEC’Y OF STATE, 2004 ELECTION INFORMATION: CERTIFICATION OF RESULTS (2004), <http://www.sos.state.al.us/downloads/election/2004/general/statecert-2004-general-election-11-24-2004.pdf> (reporting Statewide Amendment 6 receiving 3,446 yes votes (74.3%) and 1,190 no votes (25.7%) in Crenshaw County, but receiving only 490,548 yes votes (44.7%) and 606,714 no votes (55.3%) statewide). Macon County residents voted in favor of giving their county commission power to raise sales taxes on tobacco, liquor, and wine but were similarly prevented from doing so. *See* David White, *8 Amendments on Tuesday Ballot*, BIRMINGHAM NEWS, Oct. 31, 2004, at 5K (describing the amendment); ALA. SEC’Y OF STATE, 2004 ELECTION INFORMATION, *supra* (reporting Statewide Amendment 7 receiving 4,630 yes votes (65.8%) and 2,403 no votes (34.2%) in Macon County, but receiving only 526,052 yes votes (46.9%) and 595,521 no votes (53.1%) statewide). Similar results occurred in 2006 when the City of Prichard wanted to create a tariff-free trading zone as part of an economic development project. The trading zone required a constitutional amendment; Mobile County voters approved of the measure, but it narrowly lost in the statewide totals, thereby thwarting local will. Editorial, *Constitution Costs Prichard*, MOBILE REGISTER, Dec. 22, 2006, at A14; *see also* ALA. SEC’Y OF STATE, AMENDED CANVASS OF RESULTS (2006), <http://sos.state.al.us/downloads/election/2006/general/statecert-recount-12-22-2006.pdf> (reporting the final results of Statewide Amendment #1 in Mobile County to be 39,369 yes votes (58.9%) to 27,419 no votes (41.1%), but receiving only 405,374 yes votes (49.8%) and 408,524 no votes (50.19%) statewide).

297. FLYNT, *supra* note 3, at 363; *see also* *Knight v. Alabama*, 458 F. Supp. 2d 1273, 1277 (N.D. Ala. 2004) (summarizing the history and phases of this litigation beginning in 1981, with a six month trial in 1991 and a six-week trial in 1995, establishing voluminous remedies to eliminate Alabama’s vestiges of race discrimination in higher education and active court oversight), *aff’d*, 476 F.3d 1219 (11th Cir. 2007).

298. *Id.* at 1279 (describing plaintiff’s 2003 motion for additional relief claiming that Alabama’s property tax structure, particularly the Lid Bill, violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and the subsequent trial on May 4-5, 2004, hearing evidence supporting that motion); *see also* *Knight v. Alabama*, No. CV-83-M-1676, 2006 WL 3849912 (N.D. Ala. Dec. 12, 2006) (all aspects of the *Knight* litigation settled except for the constitutional challenge, which proceeds on appeal to Court of Appeals for the Eleventh Circuit).

299. *Knight*, 458 F. Supp. 2d at 1289-96.

tinue to be disproportionately harmed by Alabama's inadequate K-12 and higher education funding, which is crippled by the current tax structure, and that the 1901 constitution precludes the state from raising additional revenues from property taxes, the district court held as a matter of law and the Court of Appeals for the Eleventh Circuit affirmed that the Lid Bill passes constitutional muster.<sup>300</sup>

From a federal constitutional law perspective, this case is one of first impression because no tax law has ever been challenged on race-based equal protection grounds.<sup>301</sup> From an Alabama history perspective, *Knight* is

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300. The district court's factual findings held that Alabama's property tax system "is a vestige of discrimination." *Id.* at 1311. "Black Belt and urban industrial interests successfully used the argument that it is unfair for white property owners to pay for the education of blacks to produce all the state constitutional barriers to property taxes from 1875 to the present, including the 1971 and 1978 Lid Bill amendments," *id.* at 1297, and "[t]he historical fears of white property owners, particularly those residing in the Black Belt, that black majorities in their counties would eventually become fully enfranchised and raise their property taxes motivated the property tax provisions in the 1901 constitution and the amendments to it in 1971 and 1978," *id.* at 1296. Despite additional findings of fact recognizing that African Americans are disproportionately harmed by Alabama's woefully inadequate K-12 and higher education funding, *id.* at 1300, and that "the current tax structure in Alabama cripples the effectiveness of state and local governments in Alabama to raise funds adequate to support higher education," *id.* at 1311, "[t]he Lid Bill and the low assessment ratios impede and restrict the ability of the State and local governments from raising revenue from taxation of property," *id.* at 1311-12 and "[t]he effect of low property tax revenues has had a crippling effect on poor, majority black school districts," *id.* at 1299. The district court concluded as a matter of law that Alabama's property tax laws pass constitutional muster because "[they] do not continue to have a segregative effect," *id.* at 1313, "Alabama's property tax structure uniformly affects all citizens of Alabama, regardless of race, burdening all of the constituency by making it difficult to influence or change the property tax structure," *id.* at 1299, and the relief requested "is beyond the scope of this litigation . . . [because] this is not a taxpayer action," *Knight v. Alabama*, No. 2:83-CV-01676-HLM (N.D. Ala. Filed Feb. 10, 2005) (denying plaintiff's motion for additional relief with respect to state funding of higher education).

In affirming the district court, the Eleventh Circuit Court of Appeals stated that the plaintiffs failed to properly bring a claim under *United States v. Fordice*, 505 U.S. 717 (1992), because "the challenged tax policies have nothing to do with admissions, faculty and administration, availability of degree programs, student recruitment, education facilities . . ." *Knight v. Alabama*, 476 F.3d 1219, 1226 (11th Cir. 2007). Despite the arguments made on appeal that failure to recognize the link between the racially motivated property tax limitations and the shortfalls in both K-12 and higher education funding that disproportionately limit the ability of African Americans to attend college effectively impose a more stringent causation requirement than *Fordice*, thereby inappropriately limiting the scope of *Fordice*, see *infra* note 301, the court further elaborated that "even if Alabama's property tax policies were properly attacked under *Fordice*, we would agree with the district court that any segregative effect they may have on its system of higher education is far too attenuated to entitle plaintiffs to the relief they request." *Knight*, 476 F.3d at 1226. The Eleventh Circuit also refused to strike down the Lid Bill under *Hunter v. Erickson*, 393 U.S. 385 (1969), and *Hunter v. Underwood*, 471 U.S. 222 (1985), both of which deem racially motivated voting and all other public policies unconstitutional if the negative effects falling disproportionately along racial lines continues, because those "cases hav[e] absolutely nothing to do with higher education . . ." *Knight*, 476 F.3d at 1229 n.19.

301. Brief of Amici Curiae Law Professors and Historians with Specialized Knowledge of Alabama's State and Local Tax Structure and Alabama's 1901 Constitution Urging Reversal in Support of Appellants, *Knight v. Alabama*, No. 05-11527-BB (11th Cir. May 17, 2005), available at <http://www.law.ua.edu/susanhamill/Amicus%20Brf%20of%20Law%20Prof%20filed.pdf> (noting the unique aspects of this case and urging reversal on the grounds that the district court erroneously imposed a "super causation" requirement when evaluating the racially motivated property tax limitations and their continued disproportionate negative impact along racial lines with respect to the funding goals and consequences flowing out of those tax laws in both the K-12 and higher education public systems; the seven amici are Judge John L. Carroll, Wayne Flynt, Professor Charles W. Gamble, Professor Susan Pace Hamill (principal author), Harvey H. Jackson III, Professor Norman Stein, and Professor Howard P. Walthall, Sr.).

the latest of a long line of examples where the federal courts or Congress have been asked to step in and remedy the injustice anchored in the 1901 constitution. If the Supreme Court in *Knight*<sup>302</sup> or a federal court in a subsequent race-based equal protection challenge focusing solely on K-12 funding<sup>303</sup> declares the Lid Bill unconstitutional, this could be a catalyst much like the *Brown* decision was for the civil rights movement, propelling the state forward, albeit in a rocky and costly fashion. However, just as likely, this could provide a turning point opportunity—much like the federal cases declaring Alabama’s mental health coverage and legislative representation scheme unconstitutional—by eliminating the inertia of the status quo and allowing the citizens of the state gradually and permanently to transform the property tax structure and ultimately the 1901 constitution.<sup>304</sup>

If Alabama successfully achieves gradual and permanent progress and a place in the mainstream of participants in the global economy, the question becomes whether its cultural and regional distinctiveness, cherished by so many Alabamians, will be compromised. Flynt provides several isolated yet encouraging twentieth-century examples suggesting Alabamians can enjoy the prosperity from the global economy without sacrificing their unique culture. For example, Flynt describes the culture of Gee’s Bend, “a small, remote, black community located in a bend of the Alabama River south of Camden” in Wilcox County, nurturing the art of quilting and enjoying economic success from contracts with Bloomingdales of New York.<sup>305</sup> Though a number of problems prevented those contracts from materializing into long-term and permanent economic relationships, the women at Gee’s Bend, in addition to continuing to market their handmade quilts, are enjoying widespread and national recognition in the art world.<sup>306</sup>

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302. The plaintiffs in *Knight* have filed a petition for a writ of certiorari, urging the Supreme Court to hear the case, arguing that the Eleventh Circuit erroneously narrowed the scope of *Fordice* and violated the plain language of Rule 54(c) of the Federal Rules of Civil Procedure when it failed to strike down the Lid Bill under the broad standards of *Erickson* and *Underwood*. Petition for Writ of Certiorari, *Knight v. Alabama*, No. 06-1428 (U.S. Apr. 25, 2007).

303. The findings of fact by the district court as acknowledged by the Eleventh Circuit suggest that a solid case could be made challenging the Lid Bill on race-based equal protection grounds focusing on the K-12 public school funding. See *Knight*, 476 F.3d at 1226 (“Plaintiffs allege that Alabama’s tax policies seriously limit the ability of both the State and its counties to raise revenue from property taxes and, therefore, fund its K-12 schools. No one disputes that is so. Plaintiffs also allege that these constitutionally enshrined tax policies were adopted for segregative purposes and with discriminatory intent. The district court has so held.”); *id.* at 1229 (“Plaintiffs new claim, if successful, might obtain a remedy for the underfunding of Alabama’s public schools already established in the *Equity Funding Cases*. While we, like the district court, are not entirely unsympathetic to plaintiffs’ attempt to bring Alabama’s K-12 funding problems, identified but never remedied in the *Equity Funding Cases*, within reach of the mandatory injunction already in place in this case, we agree with the district court that such a remedy is not available in this lawsuit.”).

304. FLYNT, *supra* note 3, at 86-87 (discussing Alabama successfully reapportioning itself in 2001 in response to Supreme Court decisions imposing the principal of “one man, one vote”); *id.* at 216-17 (discussing Alabama successfully reforming mental health treatment by 2003 in response to *Wyatt v. Stickney*, presided over at trial by Judge Frank M. Johnson and upheld by the Supreme Court).

305. *Id.* at 524.

306. The quilts of Gee’s Bend are highly prized by collectors and museum curators, with one leading New York art critic praising them as “the most miraculous works of modern art America has produced.” Wes Smith, *The Ladies of Gee’s Bend*, ORLANDO SENTINEL, Jan. 29, 2007, at C3 (internal quotation

Though the state lags far behind in the general area of advancement for women, Flynt notes that Alabama experienced above average growth in women owned businesses and highlights the inspiring 1995 story of Deborah Faye Ford inventing the acronym GRITS, standing for “‘girls raised in the South,’” to be used for T-shirts and other clothing.<sup>307</sup> Ford’s company, which continues to market GRITS merchandise, “birth[ed] a multimillion dollar enterprise . . . [capitalizing on] . . . ‘[S]outhern women [being] more different than any other group in the world.’”<sup>308</sup> Flynt describes the 1966 creation of *Southern Living*, which is now the nineteenth most popular consumer magazine in the nation, as “largely the product of two ‘good old boys’ from small-town north Alabama . . . [providing t]he definition of how . . . newly affluent southerners should dress, eat, drink, garden, vacation, and travel[,] . . . ma[king] an annual profit of \$200 million . . . [b]y 2000 . . . [and] lur[ing] Time-Warner into a \$480 million buyout.”<sup>309</sup>

As the twenty-first century opened and continues on, other businesses “trad[ing] on regional distinctiveness”<sup>310</sup> continue to be born and thrive. Examples include distinctive and award-winning designer clothing made in Florence and sold across the country,<sup>311</sup> several high-end real estate auction

marks omitted). With their newfound demand, contemporary quilts sell for nearly \$30,000 and older quilts have sold for more than \$50,000. *Id.* Instead of running off to Greenwich Village with their new earnings, the quilters have chosen to remain in Alabama, and for the first time are able to purchase homes of their own in Gee’s Bend or install long needed appliances, such as air conditioners and furnaces, that had always been out of their reach. *Id.* As a business complement to their prized quilts, the quiltmakers also are benefiting from the sale of spin-offs, such as prints, postage stamps, art books, calendars, and notepads. *Id.*; see also *Welcome to the Quilts of Gee’s Bend*, <http://www.printedculture.com/geesbend/index.html> (last visited Apr. 22, 2007).

307. FLYNT, *supra* note 3, at 281-82.

308. *Id.* at 171, 281-82. According to the GRITS website, Ford has parlayed her multi-million-dollar idea of marketing the distinct culture of Southern women into four books, numerous speaking engagements, apparel, and gifts ranging from the ubiquitous keychain and coffee mug to chef aprons to auto tag frames. GRITS, Inc., <http://www.gritsinc.com> (last visited Apr. 22, 2007).

309. FLYNT, *supra* note 3, at 218-19. In 2005, *Southern Living*’s circulation exceeded 2.7 million. See Infoplease, *Top 100 Consumer Magazines 2005*, <http://www.infoplease.com/ipea/A0301522.html> (last visited Apr. 22, 2007). The magazine’s parent company has branched out into several satellite publications focusing on topics ranging from food to home and travel. See SOUTHERN LIVING, <http://www.southernliving.com> (last visited Apr. 22, 2007).

310. FLYNT, *supra* note 3, at 281.

311. Founded in Florence in 2000, Project Alabama used local seamstresses to design and create a line of clothes described as “handmade chic.” *Designers to Watch*, N.Y. MAGAZINE, <http://nymag.com/fashion/fashionshows/2006/spring/main/newyork/features/designerstowatch/gallery/10.htm> (last visited Apr. 22, 2007). Project Alabama was labeled a “Designer to Watch” by *New York* magazine in 2006 and has been a finalist for the Cooper Hewitt National Design Award for Fashion and one of ten designers contending for the CFDA/Vogue Fashion Fund. *Id.* Although Project Alabama ceased operations in late 2006, one of the co-founders has launched a new company, Alabama Chanin, “where she continues to create limited-edition, rendered-by-hand, jewelry, clothing, home furnishing and textiles using recycled materials and local talent.” Alabama Chanin, <http://www.alabamachanin.com> (follow link to “About Us”) (last visited Apr. 20, 2007). Florence is also home to Billy Reid, winner of the Council of Fashion Designers of America’s award for the best new men’s-wear designer in 2001. Steffie Nelson, *The Other Florence*, N.Y. TIMES, Mar. 19, 2006, at 50. After winning the award, he and his wife moved to Florence and opened up a store in one of the city’s oldest homes, where he sells, among other designer apparel, “made-in-Alabama jeans.” *Id.*; see also Kate Klepper, *Billy’s Back*, DECATUR DAILY, Nov. 7, 2006, available at <http://www.decaturdaily.com/decaturdaily/livingtoday/061107/reid.shtml>; Billy Reid, <http://www.billyreid.com> (last visited Apr. 22, 2007).

houses in Gadsden, including one ranked nationally in the top ten and another in the top twenty,<sup>312</sup> and several Alabama-based barbecue restaurants, including Dreamland, Full Moon, and Jim 'N Nick's, which have expanded into several other states.<sup>313</sup> Alabama can achieve gradual and permanent progress and fully emerge in the global economy in a manner that not only preserves and enhances its unique culture but also shares that culture in the national and international markets while enjoying the economic prosperity that comes from those markets.

However, amid this picture of the best of both worlds—the state's clear potential to merge gradual and permanent progress with its cultural and regional characteristics, resulting in more widespread economic prosperity for our people—the paradox of the two Alabamas ironically poses an unavoidable cost of such transformation. Despite his absolute and unabashed support of all efforts, past and present, to reform the state—he muses that “[c]leansed of its racism and fear of change . . . this could be as fine a place to live, even with all its flaws, as any imperfect place on earth”<sup>314</sup>—Flynt directly acknowledges that “[t]he very poverty that was so much a liability in building decent schools and colleges, educating a literate public, or establishing libraries and book publishers produced its own remarkable culture,”<sup>315</sup> and “Alabama's strong heritage of ruralism, poverty, poor education, the importance of unconventional religion, literalistic biblical revelation, acceptance of eccentric people and ideas, all made the state a particularly fertile womb for [folk] artists.”<sup>316</sup> Despite his characterization of the twentieth century as “no century to relive for blacks,”<sup>317</sup> Flynt opens his chapter *Counting Behind White Folks: African Americans* with the examples of “[t]hree strong-minded wives of towering figures in the civil rights movement . . . all natives of Perry County in the Alabama Black Belt,”<sup>318</sup> as indicating “Alabama produces ‘a great people,’ a race, a distinctive way of life that defied the odds and turned the world upside down”<sup>319</sup> and then

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312. Kent Faulk, *Auction Houses Thrive in Gadsden*, BIRMINGHAM NEWS, Oct. 12, 2006, at 1A. Because “most high-dollar auctions are far away from Alabama, the companies could operate anywhere,” yet they remain in Alabama to remain near their families and to draw on its many experienced auctioneers. *Id.* These successful companies are twenty-first-century descendants of the traditional practice of auctioning agricultural “farmland, machinery, cars, cattle or hogs.” *Id.*

313. The twenty branches of Jim 'N Nick's include eight Alabama locations, as well as restaurants in Florida, Georgia, South Carolina, Tennessee, and Colorado. Jim 'N Nicks, <http://www.jimnicks.com> (last visited Apr. 22, 2007). In addition to six locations in Alabama, Full Moon Bar-B-Que recently expanded into the Baltimore area when Baltimore Ravens perennial All-Pro linebacker Ray Lewis opened his own branch. See Ray Lewis' Full Moon Bar-B-Que, <http://www.raylewisfullmoon.com> (last visited Apr. 22, 2007). Dreamland's seven locations stretch north along Alabama's Interstate 65 from Mobile to reach Montgomery, Birmingham, and Huntsville. Dreamland reaches eastward from its original Tuscaloosa outpost all the way to Atlanta, Georgia. Dreamland BBQ, <http://www.dreamlandbbq.com> (last visited Apr. 22, 2007).

314. FLYNT, *supra* note 3, at xii.

315. *Id.* at 494.

316. *Id.* at 526.

317. *Id.* at xii.

318. *Id.* at 317.

319. *Id.* at 317.



quotes civil rights pioneer and Huntsville native Joseph Lowery who “had marched from Selma to the capitol, there to be blocked by a solid phalanx of state troopers . . . [as] nostalgic[ally] . . . t[elling] the legislature . . . ‘Alabama has been in the vanguard, and America is a better place because of the witness of Alabama.’”<sup>320</sup>

Finally, Flynt’s stunning observation in the last paragraph directly challenges the reader to confront a profound and very uncomfortable truth:

Alabama’s cultural triumphs balanced the sullied reputation of a state that trailed, languished, and failed in so many political, economic, and educational categories during the 20th Century. Well-educated, formally trained writers and artists produced a fair share of those triumphs. Even more emanated from folk artists. They seemed to tap into some subterranean aesthetic river, releasing a seemingly inexhaustible spring of the spirit. Like healing waters, their stories, music, and art repaired the wounds of poverty, deprivation, racial division, negative stereotypes, and a reputation for backwardness. And in a sense, what was worst about Alabama and what was best traced their origins to a common place: the ordinary people of an extraordinary state.<sup>321</sup>

That truth being, the parade of numerous and consistent examples throughout Alabama’s history of extraordinary accomplishment and courage, where individuals broke away from the negative and ugly aspects of the state and made Alabama a quasi-divine witness for the rest of the nation and the world, grew out of the tragic oppression, backwardness, and despair that squashed so many of our people. Stated more bluntly, Harper Lee’s internationally influential novel *To Kill a Mockingbird*, as well as many of the extraordinary contributions Flynt documents coming from Alabama, would not have occurred if Alabama had avoided enshrining the guaranteed oppression in the 1901 constitution and instead charted a course toward gradual progress. If during the twenty-first century, the state breaks away from its past and creates broad-based opportunity and progress, which will indisputably uplift the overwhelming majority of Alabamians, the state’s tendency to produce extraordinary, uncommon achievement out of the ashes will be significantly diminished.

Flynt shows that throughout the twentieth century those seeking to reform the injustice poisoning so much of Alabama’s public policy often did so for moral reasons, identifying the injustice as immorally violating the dignity and human rights of those being oppressed.<sup>322</sup> These moral principles still apply in full force, urging all Alabamians of the twenty-first cen-

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320. *Id.* at 370 (footnote omitted).

321. *Id.* at 531.

322. *Id.* at 255-61, 337, 340, 462, 463-67, 473-74, 480-81; *see also supra* notes 54-56, 138-142, 144-151, 198, 203-206, and accompanying text.

tury to work toward eliminating the oppression and injustice still foisted on too many of our people, even if we openly acknowledge that attaining these goals carries an undeniable cost of far less extraordinary accomplishments being generated.<sup>323</sup> However, despite these clear moral commands, the paradox of the two Alabamas developed in Flynt's book and his challenge to the reader to confront the fact that what is best about the state is absolutely intertwined with what is worst raises a difficult question for all Alabamians committed to reforming the state. The question is, can we put our hearts and souls into reforming the state while at the same time profoundly and unabashedly admiring and loving those extraordinary accomplishments and examples of courage springing out of the injustice and oppression that our reform efforts, if successful, will naturally curtail?

Flynt provides some hints answering this question. In addition to documenting how both of these juxtaposed themes permeated Alabama's history throughout the twentieth century, Flynt describes his own personal journey "[a]cross the years [as] alternat[ing] between despair and hope . . . [as] often [feeling] deeply ashamed to be an Alabamian . . . [and then] encounter[ing] [individuals] . . . who prevailed against incredible odds and made me proud to be from the same place."<sup>324</sup> These personal comments, as well as Flynt's witness as a social justice activist and historian, merge the seemingly opposite perspectives of the two Alabamas together—extreme irritation and profound affection—and affirm that not only is it possible, but in fact it is desirable, to fight the injustice holding the state back while, at the same time, glorifying the extraordinary accomplishments of human achievement and courage rising out of that same injustice and accepting that broad-based justice will inevitably lead to the demise of many of these accomplishments. However, despite Flynt's wisdom, harmonizing both the extreme irritation and profound affection perspectives and neutralizing the conflict between uncompromisingly seeking justice while awesomely appreciating the wondrous gifts arising out of the injustice is incongruous and therefore impossible to fully understand.

However it is not necessary to fully understand this incongruous situation in order to carry out both aspects of it. Examples in literature provide a solid intellectual foundation for Alabamians committed to reforming the state to charge forward knowing that these efforts will substantially dimin-

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323. The moral principles of Judeo-Christian ethics, which require all people of faith to strive for public policy that protects all people from oppression and provides all people a reasonable opportunity to reach their divinely created potential, clearly challenge twenty-first century Alabamians of faith to reform the numerous unjust laws still plaguing the state. See generally Hamill, *An Argument for Tax Reform*, *supra* note 241, at 51-66, 71-81; Hamill, *supra* note 253, at 680-93. Numerous secular moral theories also support this conclusion. See *id.* at 679 n.16 (discussing John Rawls' theory of justice and virtue ethics, first adopted by Plato and Aristotle, with the generally accepted modern view as encompassing "[e]ach person . . . hav[ing] an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all"); *id.* at 734 n.145 (discussing utilitarian ethics, which morally evaluates social structures based on whether they produce the greatest good for the greatest number of people).

324. FLYNT, *supra* note 3, at xi.

ish the state's tendency to inspire extraordinary accomplishments cherished with the same intensity as the desired reforms.<sup>325</sup> Alabamians committed to reforming the state on spiritual grounds can find comfort at an even more profound level. For Christians, embracing this seemingly contradictory course of action metaphorically resembles the struggle, dating back to the time of Christ and the apostles, experienced by many who believe in the Triune God, to accept the doctrines of predestination and free will, both of which are repeatedly affirmed in the Bible. The doctrine of predestination states that in eternity, God as sovereign over all creation established his own plan for the universe and all people.<sup>326</sup> The doctrine of free will or self-determinism holds us accountable for our own actions that we conduct freely in carrying out God's plan.<sup>327</sup> The coexistence of both predestination and free will poses the question of how it is possible to have individual freedom and responsibility if God is absolutely sovereign with a predestined plan. The answer to that conundrum, which analogically affirms God's call to go forth and defeat the forces of evil embedded in Alabama while celebrating the gifts God's grace produces from that same evil, lies in the "ultimate mystery of the being of God" that "cannot be comprehended by spacial-temporal beings . . . [for] God's wisdom and grace are beyond every creature's comprehension or understanding."<sup>328</sup>

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325. "The test of a first-rate intelligence is the ability to hold two opposed ideas in the mind at the same time, and still retain the ability to function." FAMILIAR QUOTATIONS 694 (John Bartlett & Justin Kaplan eds., 16th ed. 1992) (quoting F. SCOTT FITZGERALD, *THE CRACK-UP* (1936)).

326. W.S. Reid, *Predestination*, in EVANGELICAL DICTIONARY OF THEOLOGY 870, 870-72 (Walter A. Elwell ed., 1984) (defining predestination and establishing it as central to the biblical doctrine of God while acknowledging many Christians, including the founder of Methodism John Wesley, are unwilling to accept it).

327. N.L. Geisler, *Freedom, Free Will and Determinism*, in EVANGELICAL DICTIONARY OF THEOLOGY, *supra* note 326, at 428-30 (defining free will or self determinism, concluding that "some form of self-determinism is the most compatible with the biblical view of God's sovereignty and man's responsibility").

328. Reid, *supra* note 326, at 870, 872 (concluding that Christians can accept both doctrines without fully understanding how they co-exist and that the worship and praise of God will provide "within them a sense of comfort and strength which is not their own, but which is a gift of God to enable them to face the world with confidence and peace of mind").