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### The Book that Could Change Alabama

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**ALABAMA**  

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**SCHOOL OF LAW**

The Book That Could Change Alabama

Susan Pace Hamill

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## BOOK REVIEW

## THE BOOK THAT COULD CHANGE ALABAMA

*Susan Pace Hamill\**

INSIDE ALABAMA: A PERSONAL HISTORY OF MY STATE. By *Harvey H. Jackson III*.\*\* Tuscaloosa, Alabama: The University of Alabama Press, 2004. Pp. 325. \$26.95.

*The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know.*<sup>1</sup>

## INTRODUCTION

Justice Holmes' wise words apply to much more than just the study of law. We have all heard the clichés stating in one way or another that those who do not know their history are condemned to repeat it. As we struggle to face the twenty-first century in a state with a backward and depressed economic environment, horrendously unfair taxes, and a large population of poor people with little hope of escaping poverty, William Faulkner's famous words—"The past is never dead. It's not even past"<sup>2</sup>—ring painfully true. Most Alabamians have never honestly confronted the state's history in

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\* Professor of Law, The University of Alabama School of Law, and member of the Alabama Bar. 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 of the Bounds Law Library at The University of Alabama, especially Creighton Miller, Paul Pruitt, and Penny Gibson.

\*\* Professor of History and Chair of the History and Foreign Languages Department at Jacksonville State University in Jacksonville, Alabama and editorial writer for the *Amistion Star*. A distinguished professor and scholar of Southern history and culture with over forty years of teaching experience at colleges in Alabama, Georgia and Florida, Jackson has written numerous articles and several books including *RIVERS OF HISTORY: LIFE ON THE COOSA, TALLAPOOSA, CAHABA AND ALABAMA* and *PUTTING "LOAFING STREAMS" TO WORK: THE BUILDING OF LAY, MITCHELL, MARTIN, AND JORDAN DAMS, 1910-1929*. A native of Grove Hill and a product of its public school, Jackson attended the Marion Military Institute, graduated from Birmingham-Southern College, and received his M.A. from The University of Alabama and his Ph.D. from the University of Georgia. He is married to Suzanne Brown Jackson, "this is as much her book as mine," HARVEY H. JACKSON III, *INSIDE ALABAMA: A PERSONAL HISTORY OF MY STATE* xvii (2004), the father of three (one adult daughter and two school-age children attending Jacksonville City's public school), and a lifelong member of the United Methodist Church.

1. Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).  
2. WILLIAM FAULKNER, *REQUIEM FOR A NUN* 80 (1950).

a way that allows us to free ourselves from the chains of our past while still keeping our cultural heritage created by that very same past.

Harvey H. Jackson III has written a stunning masterpiece, a book that can reach Alabamians in all walks of life and “give them a sense of why the past is so important today.”<sup>3</sup> Jackson confronts and criticizes the ugly chapters of Alabama’s history without “cloud[ing] the fact that I love Alabama, draw strength from its strengths, delight in its foibles, am entertained by its eccentricities, treasure its contradictions, enjoy its ironies and ambiguities, and take pride in the fact that I am one of its citizens.”<sup>4</sup> In addition to his substantial professional qualifications, Jackson’s ancestral family roots, which go back before statehood and include slaveholders and others responsible for Alabama’s past abuses, give him enormous credibility—in his words—“the right (as well as the privilege and the responsibility) to say some of the things I say.”<sup>5</sup>

Telling Alabama’s history as a series of easy-to-read stories punctuated with humor and painful ironies, Jackson peppers his book with blistering judgments of the state’s dark corners and urges each of us to stop clinging to our favorite reinterpretations of the state’s history covering up those dark corners. At the same time, Jackson adds rays of sunshine by including individual examples of enlightenment and dignity in the midst of an oppressive environment. By personally engaging with the uncomfortable aspects of Alabama’s history, Jackson invites all Alabamians to do the same and challenges each of us to ponder how this process helps us discover our obligations to improve the state. A rare “must read” for all Alabamians from high school students on, Jackson’s powerful book has the potential to inspire large numbers of us to abandon our complacent acceptance of the status quo.

In order to capture the most important lessons of Jackson’s book, I have organized my review of the fourteen chronological chapters around three broad themes. The most pervasive theme is that of bondage, with propertied white men being the principal oppressors within the complex hierarchy. The second theme—the failure of law and politics—allowed different forms of bondage to permeate Alabama’s history despite the sometimes vigorous challenges made by significant counter-forces seeking to change the oppressive status quo.

However, the full implications of the lessons offered by Alabama’s history cannot be understood without exploring the third theme, the failure of religion. Although his book contains no formal theological arguments, the failure of religion emerges as an important factor and explains why law and politics often became tools of bondage. Jackson shows how misguided religion helped enable the proliferation of reinterpretations glossing over the complexities of the state’s antebellum, Civil War, and Reconstruction his-

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3. HARVEY H. JACKSON III, *INSIDE ALABAMA: A PERSONAL HISTORY OF MY STATE* xiii (2004).  
4. *Id.* at xii.  
5. *Id.*

tory. This, in turn, supported excuses justifying the bondage inflicted on African-Americans and poor whites. In Alabama today, too many sincerely committed Christians are doing the same thing—clinging to historical reinterpretations to reinforce excuses justifying the twenty-first century style of bondage that continues to oppress the poor and lower-middle classes. By empowering large numbers of otherwise complacent and unengaged Alabamians to honestly “face the past, understand why things were done then, and have the courage to declare that things will be done differently from now on,”<sup>6</sup> Jackson’s book offers all of us an opportunity to reach a more enlightened understanding of our own history, which could be a material factor in helping us to see, understand, and correct the substantial levels of injustice still holding Alabama back today.<sup>7</sup>

#### I. THE THEME OF BONDAGE DOMINATES ALABAMA’S HISTORY

Probably due to the universal tendency of humans to succumb to greed, the presence of bondage imposed on the weak by the powerful defines Alabama’s history from the very beginning. Jackson notes in the first chapter—“*Back When It Belonged to the Indians*”—that despite signs of egalitarian values in the earliest Indian cultures, the tribes that lived across Alabama for hundreds of years (including those at the familiar Moundville site) had a system “characterized by chiefdoms, where political, religious and even economic authority was in the hands of an elite group, bound together by bloodlines and served by the general population. . . . [A system] that nineteenth- and twentieth-century Alabamians, white and black, would have recognized as similar to their own.”<sup>8</sup> From the early 1500s leading up to American Independence, Jackson identifies the Indians as the first victims of bondage, brought on by the arrivals of the Hernando De Soto and the Spanish, the French, and the English. During the waves of European invasions, the Indian tribes fell victim to “modern warfare—iron, steel, armor and gunpowder—against [their] stone arrows, clubs and spears.”<sup>9</sup> Jackson describes the devastating effects of the “biological disaster[s] of monumen-

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6. *Id.* at 308.

7. I write not as a professional historian attempting to evaluate Jackson’s academic contributions to the body of scholarship in the field of history, but as a sincerely committed advocate for reform of Alabama’s tax and constitutional structures. After my own work documenting the need for tax reform on Judeo-Christian grounds became public in August of 2002, Jackson, as well as others (including the late Bailey Thomson, Howard Walthall, Allen Tullos, and Sam Hodges), taught me how (and explained the need for me) to communicate my work in a manner accessible to people outside of the small world of academia. He and the others encouraged me to study Alabama history and constitutional law in depth so that I would understand the inseparable link between the current tax inequities, Alabama’s 1901 Constitution, and the historical background leading to both of those structures. In my opinion Jackson makes a substantial contribution to the historical literature because his book has the rare ability to reach large numbers of readers who are either intimidated by or have no interest in reading traditional scholarly styles.

8. JACKSON, *supra* note 3, at 2-3.

9. *Id.* at 9.

tal proportions”<sup>10</sup> from European diseases, and “an economic system that would be as destructive to their way of life as the epidemics had been.”<sup>11</sup>

Chronicling the Alabama frontier following America’s independence, Jackson captures the violence and the complicated undercurrents of a “cultural clash that would determine just who would live as free men on their own terms and who would live under terms set by others,”<sup>12</sup> as the white settlers deprived the Creek Indians of their land. After American leaders failed to persuade enough of the Creeks to voluntarily give up their land, a bloody conflict erupted between white settlers and the “Red Sticks,” the faction of Creeks determined to keep their land under their own terms. Although Jackson presents both sides as villains, he leaves no doubt that the whites, who conducted “a campaign of unparalleled brutality,”<sup>13</sup> were much worse. By 1836, despite the veneer of a federal mediator, the bondage of the Indians became permanent when white squatters and exploiters forced the last of the Creeks out of Alabama.

Undaunted by the current environment of squeamishness surrounding this issue and without flinching, Jackson identifies slavery as *the* central feature of all aspects of antebellum Alabama and *the* driving force behind the Civil War. Noting that black slaves were present in Alabama well before the American Revolution, and that their numbers rapidly increased throughout the antebellum period as cotton evolved from a minor cash crop to the most important cash crop, Jackson emphasizes the cruelty of slavery. In the midst of his buoyant recollection of “Alabama Fever” as “a contagious disease” during the period when settlers rapidly migrated to Alabama, he reminds us that “there were immigrants who did not come voluntarily.”<sup>14</sup> Recalling the poignant account of a former slave, Jackson writes: “[T]hem was awful days’ . . . she reflected years later and far from Alabama.”<sup>15</sup> The slave related how she was whipped unmercifully and deprived of her childhood when, at ten years of age, “‘Old Master’ decided she was big enough and [said] ‘Git this here nigger<sup>16</sup> to that cotton patch.’”<sup>17</sup>

In keeping with all credible historians, Jackson takes on the myth that slavery was not the reason most white Alabamians supported the Confederacy. Reminding us that Alabama’s first constitution provided universal suffrage for all white men and the tax system “required the wealthiest Alabam-

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10. *Id.* at 10.

11. *Id.* at 12-13.

12. *Id.* at 28.

13. *Id.* at 36.

14. *Id.* at 44.

15. *Id.* at 64.

16. This, what is now universally recognized as a highly offensive label, was commonly used in the past in a derogatory fashion to describe African-Americans. The quotations in this book review involving this label are not meant to cause offense or condone past treatment of African-Americans. Accurate quotations, rather than resorting to euphemisms (such as “the ‘n’ word”), are a critical part of the process of confronting history, even the most painful aspects of which we are the most ashamed at a deeply moral and spiritual level.

17. JACKSON, *supra* note 3, at 63.

ians to support the state that made them so,”<sup>18</sup> Jackson gently uncovers the irony of the “yeomen, plain folk, middling sort or crackers, . . . [viewing their own independence as] reinforced by the presence of slaves, whose very existence reminded free men what freedom was and made it all the more dear.”<sup>19</sup> Free to pursue their individual livelihoods in an economy subsidized by the backbreaking labor of slaves, most white Alabamians, even those owning no slaves at all, were easily convinced in the years leading up to secession that their “independence, the freedom of southerners depended on the preservation of black slavery.”<sup>20</sup> Jackson’s conclusion, worth quoting in full, directly speaks to those who have trouble coming to grips with this uncomfortable truth:

But lest someone should say, “See, it wasn’t slavery after all. Those folks didn’t own slaves and they were for secession,” understand this. These yeomen, slaveholders and non-slaveholders alike, wanted to preserve slavery, were willing to leave the Union to preserve slavery, and ultimately were willing to fight and die to preserve slavery, not because they owned slaves (though some did) or because they wanted to own slaves (though most did) but because they believed that limiting slavery’s expansion, then abolishing it altogether, would confirm both a northern victory and their own bondage.<sup>21</sup>

In order to “make some sense” out of the turbulent years of Reconstruction following the Civil War, Jackson focuses on tax policy because “[w]ho taxes whom reveals where power lies and who is in a position to use that power to their advantage.”<sup>22</sup> After the failure of the Reconstruction government, which imposed higher tax burdens on the wealthiest planters and for the first time taxed the yeomen, the redeemers ushered in a new form of bondage, “an underfunded state [that] could do little to educate its people and enhance their lives.”<sup>23</sup> Strict limitations on state and county property taxes were anchored in the 1875 Constitution, “set[ting] the example of how to compose a constitution to keep the lower classes where they were.”<sup>24</sup> In plain language, Jackson explains how the sharecropping system evolved in the years after Reconstruction and reduced numerous landless poor of both races to “another form of slavery,”<sup>25</sup> one lasting well into the twentieth century.

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18. *Id.* at 62.  
19. *Id.* at 45-46.  
20. *Id.* at 83.  
21. *Id.* at 87.  
22. *Id.* at 111.  
23. *Id.* at 116.  
24. *Id.* at 121.  
25. *Id.*

In “*A World Made by Bourbons for Bourbons*,” Jackson minces no words in his discussion of Alabama’s “Bourbons,” the planter and merchant classes named after an ancient ruling family of France. Jackson identifies the Bourbons, whose power “had rested on the shoulders of a downtrodden, docile peasant class,”<sup>26</sup> as *the* oppressors of both black and lower-class white Alabamians for decades after Reconstruction’s failure. In order to dominate the blacks and lower-class whites, “they had to take democracy out of the Democratic Party.”<sup>27</sup> They accomplished this by devising the 1901 Constitution to “get rid of the nigger [vote],”<sup>28</sup> rationalizing that “the best way to keep the white man from stealing the black man’s vote was to take the black man’s vote away from him.”<sup>29</sup> In addition to also disenfranchising numerous poor whites, the 1901 Constitution continued the 1875 Constitution’s precedent of limiting taxes so that essential services, especially education, would remain underfunded. In 1901, “Alabama greeted the new century with a government that could, and generally did, ignore the needs and desires of the people”<sup>30</sup> with the Bourbons “guarantee[ing] that men like themselves would live rich and secure while the rest of the population would stay poor.”<sup>31</sup>

As the twentieth century wore on through the Great Depression and the New Deal, despite some progress made by a few progressive governors and substantial federal subsidies, the state “seemed to be settling back into patterns that defined it and its people before the crash. . . . Sharecropping and tenant farming were common as were poverty, privilege, and the gap between. . . . [and] many (maybe a majority) of the state’s residents were poorly educated, poorly housed, poorly fed, and poorly doctored.”<sup>32</sup> The abuses of convict leasing persisted in Alabama, the last state to abolish it. For decades, “race relations in Alabama . . . drew clearly the line that marked separate but equal, with everyone knowing equality was a sham,”<sup>33</sup> and violence was always a threat to blacks who forgot their place or ended up at the wrong place at the wrong time. At the cusp of the Civil Rights Movement, which “freed black folks from pretending to like what they hated and told whites to quit pretending as well,”<sup>34</sup> Jackson gives this unflattering description: “Whites of all classes liked for blacks of all classes to be at the bottom. Whites liked blacks courteous, deferential, subservient, cheerful and available when there was work to be done. The rest of the time they liked them out of the way.”<sup>35</sup>

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26. *Id.* at 123.

27. *Id.* at 127.

28. *Id.* at 136. *See supra* note 16.

29. JACKSON, *supra* note 3, at 135.

30. *Id.* at 140.

31. *Id.* at 139.

32. *Id.* at 193.

33. *Id.* at 151.

34. *Id.* at 230.

35. *Id.* at 227.



Jackson softens the dark cloud of bondage and oppression with sprinkles of individual stories that inspire hope: the mysterious Sarah Chotard, “the woman who wanted to build a city of her own,”<sup>36</sup> and founded Centerville in 1821; the well-known Julia Tutwiler, a lady who represented numerous turn-of-the-century women by serving as the “visible, progressive conscience of the community”;<sup>37</sup> the obscure David Crutcher, a deeply religious black farmer, one of the few who owned his own land, who in 1919 built and became the pastor of his own church; and Sibyl Pool of Linden, a lesser known “one-woman political dynasty,”<sup>38</sup> who, by the time Lurleen Wallace became governor in 1966 so that “George would be the power behind the throne,”<sup>39</sup> had served two terms in the legislature, a term with the Public Service Commission, and as secretary of state and state treasurer.

Recognizing that disagreements exist as far as the details of the Rosa Parks bus boycott story, Jackson captures the essence of her unshakable courage:

Then they took Mrs. Parks home and put the challenge to her—  
“Are you willing to use your arrest to challenge segregation?” She understood what they were asking. So did her family. Her husband didn’t want her to: “The white folks will kill you Rosa.” And she feared they might. So she thought it out, then said “yes.”<sup>40</sup>

In his discussion of the battles to overcome the bondage dominating Alabama’s history, Jackson brings out painful ironies that are difficult to acknowledge. For example, when Frances Griffin, president of the Alabama Equal Suffrage Association, argued in favor of women’s suffrage at the 1901 Constitutional Convention, she made it clear that she was seeking the vote for good white women so that they “could help white men ‘purify politics’ in the state. In other words . . . maintain white, upperclass supremacy.”<sup>41</sup> In his characteristically bittersweet and humorous style, Jackson reveals the hypocrisy of Miss Griffin’s declaration to the convention delegates that she had already voted by instructing her black gardener how to cast his vote: “That she was disenfranchising him to enfranchise herself apparently caused her no concern.”<sup>42</sup> By including these painful ironies Jackson reminds us that the struggle against bondage throughout history contained dark and less than pure undercurrents. These examples urge those of us committed to remedying the injustice poisoning Alabama today to be careful to make sure our efforts do not create or continue oppression in the name of justice.

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36. *Id.* at 44.

37. *Id.* at 150.

38. *Id.* at 272.

39. *Id.*

40. *Id.* at 233.

41. *Id.* at 163.

42. *Id.*

Who remains in bondage and who are the oppressors in the years following the Civil Rights Movement as Alabama proceeds into the twenty-first century? Jackson identifies poor and lower-middle class Alabamians of all races as those in bondage and indicts the Alabama Farmers Federation (ALFA) as well as other special interest groups as the modern-day Bourbons. They take advantage of and defend the legitimacy of the 1901 Constitution which has “survived two world wars, a depression, decades of social upheaval, and economic readjustment [and has] reemerge[d] as the foundation on which Alabama’s Republican Party was built.”<sup>43</sup> And, “they hir[e] lobbyists, and with the help of the Alabama Forestry Commission, they [do] what their Bourbon ancestors [did]—[keep] property taxes low and social services starved.”<sup>44</sup> Alabama currently ranks at or near the bottom in every measurement of minimum well-being, has a grossly underfunded public school system and a horrendously unfair and inadequate tax system, which so far has proved to be impossible to change because of the 1901 Constitution. In a sobering tone, Jackson links Alabama’s bondage of today to the chains of bondage forged in our past:

Those mighty men of 1901 wanted a state where the poor and powerless stayed poor and powerless, where the propertied and privileged stayed propertied and privileged, and where the majority in the middle helped keep it that way. That is what they wanted, and that is what they got. And that is what Alabama has.<sup>45</sup>

## II. FAILURE OF POLITICS AND LAW DEFEATED CHALLENGES TO BONDAGE

Jackson presents the layers of bondage and oppression throughout Alabama’s history as resulting from politicians appealing to the darker side of human nature. Lawyers contributed by grossly abusing power, or by silently failing to insist that the law be invoked to provide justice for the most vulnerable people. Jackson traces Alabama’s political failures, which continue to this day, to the campaign strategy of Israel Pickens. Running for governor in the 1820s, Pickens “won largely on the force of personality”<sup>46</sup> by identifying an enemy and rallying the support of the people on a deeply emotional level and presenting himself “as one of them and as their champion . . . [as one who] . . . could bay the bear in its den, could slay the dragon.”<sup>47</sup> Unfortunately Pickens’ style became a tradition guiding Alabama’s future politicians toward “divining popular prejudices to discover what was feared or

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43. *Id.* at 288.

44. *Id.* at 277.

45. *Id.* at 303.

46. *Id.* at 55.

47. *Id.* at 56.

desired, then putting themselves forth as credible champions,”<sup>48</sup> rather than identifying and responding to the real needs of the people.

Jackson traces the destructive tendency of Alabama politicians to use emotion and fear in order to demonize the federal government. Dixon Hall Lewis originated this tactic by attacking federally funded improvements, contrasting with William Rufus King’s moderate position, which viewed the federal government as a tool to improve the state and the lives of the people. After Lewis and King died, the leadership in antebellum politics fell to William Lowndes Yancey, a politician of “lesser lights”<sup>49</sup> who blasted anyone opposing the expansion of slavery into the newly admitted states as being “part of a Yankee plot to reduce the white South to servitude.”<sup>50</sup> Described by Jackson as a convert to the state’s rights cause (as opposed to one merely using it as a ploy), Yancey’s dominance of the political scene ensured that Alabama had little chance of avoiding secession, and the Civil War and Alabama’s political tradition had little hope of shaking the obsession with state’s rights after Reconstruction.

In the 1880s and early 1890s a significant political counter-force, the Populist Challenge, could have altered the course of Alabama’s history. However, the gross abuse of power by the Bourbon elite (often lawyers), and the disgusting failure of lawyers in general to guard the integrity of the law stood in the way of positive progress. A significant economic downturn that hit ordinary farmers while planters and merchants continued to prosper led to the gubernatorial campaign of Reuben F. Kolb—once part of the Bourbon establishment—as the champion of the ordinary farmer. Viewed as their “worst nightmare . . . [o]ne of their own turned against them, an apostate, a traitor. . . . [who] had to be stopped,”<sup>51</sup> the Bourbon establishment defeated Kolb by stealing the election. On the heels of this Populist Challenge, the Bourbon Democrats made sure that blacks and poor whites would never again be able to challenge their political dominance. They successfully ratified the 1901 Constitution by once again stealing the election using “fraud, intimidation, ballot box stuffing and tombstone voting.” Jackson condemns these actions as a “blatant disregard for what was legal and what was right, the casual rejection of any suggestion that [their] treasured ‘honest and up-right dealings among men’ applied to them in this situation.”<sup>52</sup>

In the midst of a stinging report “chid[ing] the state for refusing to finance necessary reforms though it had the resources to do so,”<sup>53</sup> and a sea of status-quo-oriented politicians, Jackson evaluates three progressives, Governors Comer, Kilby and Graves. Jackson gives Comer lukewarm reviews and describes Kilby and Graves as “two of the most reform-minded gover-

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48. *Id.* at 72.

49. *Id.* at 85.

50. *Id.* at 83.

51. *Id.* at 129.

52. *Id.* at 139.

53. *Id.* at 164.

nors in the state's history."<sup>54</sup> Despite their efforts, Alabamians were hit much harder than the nation as a whole by the extreme hardships of the Great Depression. The collapse of Alabama's government brought on by the inadequate tax base and the Great Depression forced Governor Miller, a conservative with solid Bourbon values—who ran “to put the planter-industrialist coalition, the big mules, back in power”<sup>55</sup>—to act totally out of character. However, Miller's solution, a graduated income tax affecting only the wealthy, took three referendums to pass and came too late to prevent schools from shutting down in 1933.

Meanwhile, liberal politicians “became masters at bringing popular [New Deal] programs to the state while comforting conservative constituents with the knowledge that the money for these efforts did not come directly from their pockets.”<sup>56</sup> Jackson views Alabama's “recei[pt] [of] so much aid from Washington, and sending so few tax dollars in return”<sup>57</sup> as evidence of failed leadership at the state level; the federal money “relieved the pressure on them to do much for the common good.”<sup>58</sup> This hypocrisy became obvious when conservatives rejected Governor Graves' business receipts tax proposal and instead forced a state sales tax “set[ting] Alabama on a course that would in time give it one of the most regressive and unstable tax systems in the nation.”<sup>59</sup>

After the death of Governor Graves, Big Jim Folsom, identified “[t]he big mules and Black Belt planters, the courthouse rings and the big city newspapers,”<sup>60</sup> as the enemies. Despite promises that he would “better educate their children . . . remove the sales tax from the food . . . build farm-to-market roads . . . improve worker compensation . . . and have an old-age pension waiting for them as a reward at the end,”<sup>61</sup> Big Jim's “revolution ended, not with a bang, but with a whimper,”<sup>62</sup> largely because “[t]he Constitution of 1901, written to preserve the status quo, was still in place, doing what it was designed to do.”<sup>63</sup> However, personal blunders—which Jackson describes in colorful and amusing detail—substantially contributed to Big Jim's failure as well as an attitude shift among a growing number of Alabamians. “[T]urning conservative because for the first times in their lives they thought they had something to conserve,”<sup>64</sup> they became convinced that “[b]ig mules and planters weren't the problem—'gubment' was.”<sup>65</sup>

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54. *Id.* at 166.

55. *Id.* at 178.

56. *Id.* at 208.

57. *Id.*

58. *Id.* at 209-10.

59. *Id.* at 189.

60. *Id.* at 213-14.

61. *Id.* at 212.

62. *Id.* at 215.

63. *Id.* at 214.

64. *Id.* at 219.

65. *Id.* at 220.

In his discussion of Alabama's political failures at the dawn of the Civil Rights Movement, Jackson reveals the painful irony that it was Big Jim and other liberally minded men who failed to adhere to their own principles when they allowed a rioting mob to thwart a federal court's injunction ordering The University of Alabama to enroll a black student after the *Brown v. Board of Education* decision. Noting that the message of this incident—violent resistance could stop desegregation—inevitably led to the brutal struggle that followed, Jackson then indicts the liberal political and other leaders who claimed to guard the oppressed. Reflecting on the turbulence and pain of the civil rights years and the negative consequences Alabama bears to this day, Jackson speculates that “it was a direction that could have been altered if liberally minded public men in general, and Big Jim Folsom in particular, had not done what they did.”<sup>66</sup> Recognizing that a moderate path would have been, at best, a steep uphill climb because “[w]hite Alabama's cultural racism was, in all probability, too strong,”<sup>67</sup> Jackson refuses to excuse those who did nothing to foster a moderate, rational response: “But we will never know, because no one tried. Lacking allies among the ‘liberally minded public men’ that Alabama had supposedly produced, and among the good white folks who were out there, black Alabamians had to go it pretty much alone.”<sup>68</sup>

Predictably, Alabama's pattern of dismal failure in the political and legal arenas continued. Convinced the enemy to white supremacy was the federal government, white Alabamians looked for “someone to lead them the way Dr. King was leading black folks.”<sup>69</sup> Unfortunately the next two governors, John Patterson and George Wallace, catered to popular prejudice and heated emotions. George Wallace summed up the mood of many white people: “Then I began talking about niggers—and they stomped the floor.”<sup>70</sup> Jackson pronounces Wallace's infamous “segregation now . . . segregation tomorrow . . . segregation forever” speech as “a call to arms . . . [where] both sides understood that blood would be shed in the battle . . . [and where] Alabama's new governor gave lawlessness legitimacy.”<sup>71</sup> As most of Alabama's lawyers watched silently from the sidelines “public officials ignored and sometimes encouraged assault and murder.”<sup>72</sup> In attributing the success of the Civil Rights Movement to Dr. King's nonviolent methods, where “by absorbing the blows, those struggling to free black Alabamians from Jim Crow wore down the oppressors, exhausted them, forced a pause that led to reflection that led, in the end, to peace,”<sup>73</sup> and recognizing the pivotal role of federal law, Jackson identifies the real trag-

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66. *Id.* at 241.

67. *Id.* at 242.

68. *Id.*

69. *Id.* at 250.

70. *Id.* at 249. *See supra* note 16.

71. JACKSON, *supra* note 3, at 252.

72. *Id.* at 276.

73. *Id.*

edy: Alabamians as a people failed to achieve internally what is now recognized as indisputably right.

Jackson leaves no doubt where he stands in his historical evaluation of George Wallace. Recognizing that Wallace started out a “downright liberal”<sup>74</sup> in the spirit of Big Jim Folsom, Jackson presents Wallace as expediently selling out to further his own selfish political aims. Jackson notes that Wallace hamstrung himself from functioning as a real leader and left Birmingham to deal with the violence and turbulence alone, forcing President Johnson to send thousands of federal troops to protect the marchers in Selma. Jackson also observes—with a touch of sarcasm—that Wallace, through “his preening and posturing [did] as much to popularize the cause as did the eloquence of King or the bravery of those who absorbed the blows” because he gave them “an adversary, an enemy to personify all that is wrong with the system [that they] revolted against.”<sup>75</sup>

Jackson shows how the historical record offers little to support claims that Wallace later became a better leader. Jackson criticizes Wallace for neglecting Alabama after the Civil Rights Movement when, “consumed with campaigning rather than governing,”<sup>76</sup> Wallace left the state to muddle through the transition alone. Jackson also criticizes Wallace for using Alabama as “a state base to support his national aspirations”<sup>77</sup> when he conducted “one of the most vicious campaigns in this state’s history”<sup>78</sup> and defeated Albert Brewer, “one of Alabama’s most progressive governors.”<sup>79</sup> Recognizing the support of black voters in the 1982 gubernatorial election as one of the greatest ironies in Alabama political history, Jackson quips “[b]ut of course, George Wallace’s little man was always white,”<sup>80</sup> in response to Wallace’s later attempts to claim genuine populist values. Jackson presents Wallace’s final legacy as a script for the emerging Republican Party to use subtle racial overtones in courting lower and middle-class white voters.

The book’s last chapter presents the rise of Alabama’s Republican Party as a coalition of big mules, agribusiness and, to some degree, business—generally committed to the old Bourbon ideals of low taxes and scant social services—teamed up with a segment of lower and middle-class white voters, sometimes dubbed “Wal-Mart Republicans.” Although economically their best interests are not served by the Republican Party, Wal-Mart Republicans are nevertheless attracted by the rhetoric of limited government and support for issues such as the Ten Commandments in the public square and school prayer. Jackson describes these voters, many of whom are vul-

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74. *Id.* at 244.

75. *Id.* at 265.

76. *Id.* at 266.

77. *Id.* at 273.

78. *Id.*

79. *Id.*

80. *Id.* at 252.

nerable to being swayed by subtle racist overtones, as “heirs of Wallace.”<sup>81</sup> In 1986, Guy Hunt became the first Republican governor since Reconstruction, and was subsequently re-elected by a margin clearly indicating support from small-town white Alabamians. In this vicious campaign, the “Republicans played the race card . . . [by c]ombining the ultimate populist ploy with basic Bourbon strategy . . . [and] treat[ing] Alabama voters to a series of TV commercials showing a cigar-smoking [Paul] Hubbert sitting in the back seat of a car with Joe Reed, one of the most powerful black politicians in the state.”<sup>82</sup>

Jackson portrays the governors before Governor Riley’s term began in January of 2003, as offering little or nothing towards helping the state move beyond its past. After defeating “Little Jim” Folsom, by using a basic “brand of Bourbon-populism . . . [to unite] the big mules, Black Belt planters (who were raising more trees than cotton now, not that it mattered), and the Wal-Mart Republicans,”<sup>83</sup> Fob James failed to do anything productive. James hurt the state’s image with his chain-gang policy and theatrics—“telling federal judges that the Bill of Rights somehow did not apply to the state.”<sup>84</sup> Don Siegelman, elected in 2000 largely because of James’ blunders and an especially divisive Republican primary, provided no serious leadership on the pressing issues of tax and constitutional reform, insisting that a lottery could somehow rescue the state from its fiscal woes. The election of 2002 between Siegelman and Bob Riley, “a bitter contest, marred by personal attacks on both sides and marked by a near-universal avoidance of the issues voters said they wanted discussed,”<sup>85</sup> did not inspire hope that the quality of political leadership had improved.

Finally, Jackson traces the historical roots of the political failure that continues as a potent force thwarting Alabama’s progress today—most Alabamians do not trust their government leaders despite having the right to democratically elect them. During the Civil War, “Alabamians became disillusioned with leaders who conscripted, confiscated and circumvented,”<sup>86</sup> and “by the time Reconstruction ended, run-of-the-mill Alabamians had become convinced that trust put in government was trust misplaced.”<sup>87</sup> After the Democratic redeemers took over, this lack of trust continued among the common people, “for redeemer sympathies lay with the planter and the merchant, not with the yeoman, and certainly not with the tenant and ‘cropper.’”<sup>88</sup> Describing practices where powerful operatives “knew how to trade for votes, reward supporters, and punish obstructionists,”<sup>89</sup> Jackson pin-

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81. *Id.* at 286.

82. *Id.* at 290.

83. *Id.* at 291.

84. *Id.* at 293.

85. *Id.* at 301.

86. *Id.* at 121.

87. *Id.*

88. *Id.*

89. *Id.* at 239.

points legislative sessions during Big Jim Folsom's administration as "lay[ing] down a legacy . . . [of] politics in Alabama [being] a dirty business . . . that confirmed state representatives as a breed unto themselves."<sup>90</sup> By the last two decades of the twentieth century, Alabama's government had evolved to having "four branches . . . executive, legislative, judicial, and lobbyist . . . a shadow government, a bunch of behind-the-scenes string pullers who could, or at least claimed they could, get bills passed, appointments made, and people elected"<sup>91</sup>—a government absolutely despised by the average Alabamian.

### III. FAILURE OF RELIGION ENABLED REINTERPRETATIONS OF ALABAMA'S ANTEBELLUM, CIVIL WAR AND RECONSTRUCTION HISTORY TO SUPPORT EXCUSES JUSTIFYING BONDAGE

Although Jackson recognizes that religion was not a top priority for many settlers during the earliest frontier period, he notes that antebellum Alabama developed into "one of the buckles of the Bible Belt."<sup>92</sup> Jackson implies that the religious arguments defending slavery made it easier to create excuses justifying this indefensible bondage. Although a number of secular arguments defending slavery "[offer] us the opportunity to see how far the human mind will go to justify [and] rationalize the exploitation of others,"<sup>93</sup> the religiously based defenses, "enlist[ing] preachers to cite biblical chapter and verse to support the institution [and] . . . claim[ing] they were doing God's will by rescuing blacks from pagan Africa and bringing them into the Christian South,"<sup>94</sup> allowed many sincerely committed white Christians to accept the moral legitimacy of slavery unquestioningly. By way of example, Jackson introduces us to Sarah Haynsworth Gayle, Alabama's first lady in the 1830s, whose "Christianity stands equal in importance to her family . . . [and t]hrough she was quick to criticize masters who abused their servants, she never questioned the relationships on which slavery was based."<sup>95</sup>

The powerful endorsement of slavery by the antebellum religious establishment, along with other myths reinterpreting Civil War history (that slavery was a minor issue in the Civil War and that the South remained united until the end, both of which Jackson flatly states are wrong), provided a foundation leading to the recasting of the antebellum historical landscape to "a glorious old South of benevolent planters, happy slaves, and prosperous yeomen."<sup>96</sup> Jackson shows how this myth led to further myths surrounding Reconstruction history. According to the version perpetuated by the Bour-

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90. *Id.* at 240.

91. *Id.* at 290.

92. *Id.* at 27.

93. *Id.* at 79.

94. *Id.* at 79-80.

95. *Id.* at 70-71.

96. *Id.* at 143.



bon Democrats, the Yankees freed the slaves before the Southerners completed God's work, leaving the former slaves vulnerable to exploitation and unable to look after themselves and lead a productive life without the structure of slavery. In what Jackson calls "a bit of historical gymnastics,"<sup>97</sup> Lincoln is portrayed as "the South's best friend"<sup>98</sup> and the Radical Republicans in Congress, as well as the "[c]arpetbaggers, scalawags, and their black allies—Alabama's evil trinity,"<sup>99</sup> are tarnished as the enemy. Carpetbaggers from the north "descended on the prostrate South like a biblical plague of locusts"<sup>100</sup> and teamed up with scalawags (renegade native whites only interested in their own political gain). They stole or bought the votes of blacks and "got elected, raised taxes, forced the sale of farms and plantations, filled their pockets from the treasury, and drove the state near to bankruptcy."<sup>101</sup> To remedy this intolerable situation "'good and sensible men' (whites of course), 'noble' and 'self-sacrificing,' stood firm against these evil forces, fought them by whatever means possible (including, 'regrettably,' violence), and at last, after a decade of struggle, 'redeemed' Dixie from black Republican bayonet rule."<sup>102</sup>

Without claiming to resolve all the disputes debating the complexities of Reconstruction history, Jackson provides a solid and balanced summary of this controversial period and exposes the version created by the Bourbon Democrats as false. The conflicts during Reconstruction largely boiled down to a power struggle between the Democrats (made up of the planter and commercial classes), and the Republicans (made up of the newly enfranchised freedman, some of the northern post-war immigrants, and some of the white native yeoman farmers). Jackson has this response to the mythology of Alabama's evil trinity:

Well, not exactly. Northerners did come down, some to exploit, but most to invest . . . for those who did get into politics as Republicans, their white allies were hardly the degenerates the name "scalawag" implies. Most native whites who became Republicans did so as an alternative to the Democrats who in those postwar years came increasingly under control of the planter and commercial classes.<sup>103</sup>

After noting that riots, resistance and Klan violence aimed at the freedman provoked Congress to send troops and divide the South into military districts, Jackson avoids overly glorifying the Republican side of this struggle by reminding us that the Reconstruction's Republican government was

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97. *Id.* at 106.

98. *Id.*

99. *Id.* at 109.

100. *Id.*

101. *Id.*

102. *Id.* at 107.

103. *Id.* at 109.

greatly helped by “federal legislation that was at best partisan and at worst unconstitutional.”<sup>104</sup> Jackson also avoids oversimplifying the complex factors that led to the failure of Reconstruction. Although intense hostility towards black voters and legislators played a huge role, economic issues arguably played an even greater role. Higher taxes (necessary to fund a state with greater fiscal needs), and the panic of 1873 stirred deep resentment among many yeoman farmers, many of whom defected to the Democrats after having been Republicans a few years earlier. Although Klan activity intimidated black voters and forced federal troops to monitor elections—contributing greatly to the failure of Reconstruction—the internal struggle between white and black Republicans ultimately gave Democrats control of state government in 1874, thus sealing the redemption of Alabama and allowing the Democrats to push through the 1875 Constitution.

In his discussion of the mindset of the Bourbon Democrats, Jackson shows how their reinterpretation of Alabama’s antebellum, Civil War, and especially Reconstruction history propelled the bondage of the 1901 Constitution that disenfranchised blacks, and eventually poor whites. Their version reinforced the Bourbon Democrats’ self-created image as the “saviors of a South that would have descended into corruption and chaos had it not been for them.”<sup>105</sup> It provided reasons why “the uneducated, the unskilled, [and] the incapable had to be led by ‘white men of character’”<sup>106</sup> and finally “[made] disenfranchisement a historical necessity [and] put a noble face on what later generations would consider both unconstitutional and unconscionable.”<sup>107</sup> In his conclusion, worth quoting in full, Jackson describes a nasty conspiracy of history and religion—both abused to justify bondage:

So the Bourbons used history to justify what they did and would do, and because they rewrote history as they rewrote the Constitution, and taught both to the children who were fortunate enough to be taught at all, the status quo they created appeared an ancestral arrangement, hoary with age and confirmed with the wisdom of the ancients. It was a system so beautifully laid out and so logically explained that one could argue that it was accomplished through “the providence of God” which is what the Bourbons did argue.<sup>108</sup>

Jackson criticizes well-to-do, Bible-believing, church-going Alabamians for tolerating the harsh injustices of the 1901 Constitution. In tongue-and-cheek style, he responds to the excuse that only the Bourbons are qualified to govern the incapable, stating: “No one suggested that with education and training the excluded might just become capable.”<sup>109</sup> Jackson also im-

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104. *Id.* at 112.

105. *Id.* at 140.

106. *Id.*

107. *Id.* at 144.

108. *Id.* at 144-45.

109. *Id.* at 140.

plies that most “small town Bourbons [who] went to church together, nice churches”<sup>110</sup> where “evangelical Protestant preachers preferred to encourage individuals in their congregations to reject sins such as ‘gambling, low-neck dresses, hugging and kissing, [and] Sabbath desecration . . .’ rather than rely on the state to legislate social reform,”<sup>111</sup> were more selfish than religious. Reminding us that educational opportunities and other safety nets for blacks and poor whites remained dismal because of the tax limitations anchored in the 1901 Constitution, Jackson issues this heartbreaking indictment of the situation:

The fields, the mills, and the mines—these were what the future held for poor children in Bourbon Alabama. More to the point, that was how most Bourbons believed it should be. To do otherwise was to go against the laws of nature, and Alabama Bourbons weren’t about to do that, especially when it was not in their interest to do so. Call it selfish. Call it hypocrisy. Call it whatever you like. It made no difference.<sup>112</sup>

Although this passage contains no formal theological analysis, Jackson’s underlying message condemns the community values of Bourbon Alabama—which only guarded the well-being of those with money and power—as contrary to the Christian teachings they had supposedly adopted.

In his discussion of segregated Alabama, Jackson highlights the hypocrisy of Bible-believing, church-going whites convincing themselves that segregation was right. For example, whites sang at church “Jesus loves . . . [a]ll the children . . . [r]ed and yellow, black and white . . . [while] nobody seemed to think the song was about the ones down in the quarters, swinging on rusted swings in a tumbled-down park that showed ‘separate but equal’ for what it was.”<sup>113</sup> With a touch of sarcasm Jackson emphasizes the absurdity of the most common excuses. For example, whites convinced themselves that segregation was preferred by both races, “[t]hat the agreement was not negotiated but imposed mattered little to whites, who liked to believe that blacks were as comfortable with it as they were.”<sup>114</sup> Whites convinced themselves that they were superior intellectually, “[t]he fact that blacks were not given an equal chance to prove their ability was, to whites, besides the point.”<sup>115</sup> During the heat of the Civil Rights Movement, whites convinced themselves that outside agitators must be behind it all, “as if it took someone from somewhere else to reveal to unsuspecting Alabama African

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110. *Id.* at 154.

111. *Id.* at 169.

112. *Id.* at 134.

113. *Id.* at 225-26.

114. *Id.* at 229.

115. *Id.* at 267.

Americans that whites had better schools, better jobs, more opportunities, more respect and more advantages.”<sup>116</sup>

Jackson’s greatest contribution comes when he struggles to articulate “why segregation worked . . . [w]hy so many good white people, church-going decent people, moral middle-class people who would give to the poor, visit the sick and shut-ins, comfort the afflicted, and bring hope to the hopeless, would allow it.”<sup>117</sup> In other words, how did their religiously grounded moral compass stray so far off course? Jackson speaks not as one issuing judgments from afar but as one who was part of the system: “Acknowledging this is difficult, for I grew up in the mid-century white middle-class of small-town Alabama. These people were my people . . . I knew them well.”<sup>118</sup> After stating “deep down . . . we knew” that “the other side was right,”<sup>119</sup> Jackson shares his answer: “In part, I am convinced, because we came to believe our own excuses. Or, at the least, to prefer them to any alternative.”<sup>120</sup> Then he reminds us: “White southerners had done that before. We did it with slavery. And we also did it with poor whites, who were accepted as a breed apart.”<sup>121</sup> Jackson’s tone of this very personal section of the book expresses remorse and regret that so many of Alabama’s good moral citizens, including himself, his own family and friends, as well as others in his community, failed to recognize and address the injustice of segregation before the Civil Rights Movement.

Near the end of the book, discussing the landscape after the Civil Rights Movement, Jackson emphasizes how the patterns forged in the past continue to haunt the present. A strong moral compass has not yet been able to set the state straight as far as our treatment of poor and lower-middle class Alabamians because “modern Bourbons, still strong under the one-hundred-year old, much-amended constitution,”<sup>122</sup> keep property and other taxes affecting the wealthy extremely low and funding for education and other safety nets grossly inadequate. Casting Governor Siegelman’s lottery proposal as, at best, a band-aid, Jackson sarcastically states, “So what if gambling promised to place the burden on the backs of Alabama’s poorer citizens? That was the way things had always been done in Alabama.”<sup>123</sup> Although opposition from religious leaders—who believed that lotteries exploit the poor and weak—led to its defeat and a number of denominations passed resolutions favoring genuine tax reform, unfortunately, “[c]hurches discovered that folks in the pews just could not get as worked up over tax reform as they could over the lottery.”<sup>124</sup> After the economy slowed in late

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116. *Id.* at 245.

117. *Id.* at 224.

118. *Id.*

119. *Id.* at 224.

120. *Id.* at 225.

121. *Id.*

122. *Id.* at 297.

123. *Id.* at 295.

124. *Id.* at 298.

2000 and 2001, “there were more calls for tax reform, more calls for constitutional revision, and more explanations and excuses why changes could not, should not be made.”<sup>125</sup>

CONCLUSIONS AND REFLECTIONS ON USING THE LESSONS  
OF HISTORY TO BUILD A BETTER FUTURE

Jackson prophetically ends the last chapter of his book stating that Governor Riley and the legislature are “going to have to confront the real enemies—the constitution and the tax system it created.”<sup>126</sup> Within a few months of taking office, Governor Riley, a conservative Republican with values not unlike the Bourbon Democratic values of Governor Miller, pushed through the legislature and sent to the voters a tax reform plan that would have started the process of raising adequate revenues, making state government more accountable, and shifting the tax burden off the shoulders of the poor and lower-middle class and on to the wealthier classes and largest landowners.<sup>127</sup> Even though more than half of all Alabamians would have enjoyed an immediate tax cut, Riley’s plan failed at the polls by a two-to-one margin on September 9, 2003.<sup>128</sup>

Commentators have identified numerous reasons why Governor Riley’s tax reform plan failed, most of which were predictable given Alabama’s history. These reasons include the mountain of resentment and lack of trust in state government widely felt by the average voter, difficulties reaching communities at the grassroots level, and the fierce opposition of many Republicans because the plan violated their inflexible “no new taxes” platform. Partisan bickering and disagreements over unrelated issues resulting in only lukewarm rather than enthusiastic support from many Democrats did not help matters. However, a strong case can be made that the disgraceful conduct of special interest groups, representing many of the wealthiest Alabamians and the largest landowners, contributed the most towards defeating Riley’s plan. Showing remnants of the past campaigns that successfully defeated the first two income tax referendums in the 1930s—which called Governor Miller’s plan “un-American, ‘socialist,’ ‘communist’ . . . [and said it would take] money from hard-working Alabamians and [give] it to the idle, lazy, and ‘sorry as gully dirt’”<sup>129</sup>—these special interest groups, with ALFA and the Christian Coalition of Alabama leading the charge, ran well-funded advertisement campaigns laced with lies and distortions to convince poor and lower income Alabamians that Riley’s plan would hurt them. As a result, the very people who would have enjoyed a tax cut and

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125. *Id.* at 299.

126. *Id.* at 302.

127. I supported Riley’s plan and encouraged others to vote in favor of it. See Susan Pace Hamill, *Voting Yes on Riley’s Tax Plan is the Moral, Christian Way*, BIRMINGHAM NEWS, Aug. 3, 2003, at 1C.

128. See David M. Halbfinger, *Alabama Voters Crush Tax Plan Sought by Governor*, N.Y. TIMES, Sept. 10, 2003, at A11.

129. JACKSON, *supra* note 3, at 180.

been helped the most through greater educational opportunities for their children voted against the plan in droves.

In light of the failure of Riley's tax reform plan and of all the other efforts that so far have been unable to defeat our twenty-first century style of bondage through meaningful tax and constitutional reform, does Jackson's book offer a resource that could help us move the state towards reflecting our own moral ideals? I believe it does for at least three reasons. First, Jackson presents Alabama history in a highly accessible manner. Virtually all Alabamians can grasp the historical facts and themes throughout his book. Second, in an unabashed, subjective tone, Jackson pinpoints the moral failures throughout Alabama's history in a way that challenges all of us, especially those of us of power and privilege, to recognize the repeating patterns of the past. Finally, and perhaps of greatest importance, Jackson's book offers to those of us committed to reforming the state an emotional understanding of how many Alabamians feel today about their state and their leaders. This understanding could be instrumental towards building a bridge that closes the gap between well-meaning reformers and many Alabamians in communities across the state—the gap which so far has prevented the reform efforts from being successful.

The past repeating itself can easily be seen in our failure to accomplish genuine tax reform, which must also involve constitutional reform.<sup>130</sup> Despite the fact that our state and local tax laws are indisputably unfair to low income Alabamians and our revenues are woefully inadequate, we cannot seem to take even baby steps towards correcting this injustice.<sup>131</sup> An impor-

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130. It is well known that meaningful tax reform cannot be accomplished without constitutional reform. I discovered this (after my work documenting the need for tax reform on Judeo-Christian grounds became public) when Howard Walthall and the late Bailey Thomson asked me to detail the intricacies of how the tax inequities are anchored in the 1901 Constitution. See Susan Pace Hamill, *Constitutional Reform in Alabama: A Necessary Step Towards Achieving a Fair and Efficient Tax Structure*, 33 CUMB. L. REV. 437 (2003). It is also well known that the 1901 Constitution blocks progress in many other ways. For a series of articles written by prominent historians, political scientists, economists, and journalists exploring the issues of constitutional reform, see A CENTURY OF CONTROVERSY: CONSTITUTIONAL REFORM IN ALABAMA (Bailey Thomson, ed.) (2002). For a series of editorials exploring the need for constitutional reform from a grassroots perspective, see Bailey Thomson, *Century of Shame: Alabama's 1901 Constitution, A Series of Editorials*, MOBILE REGISTER, Oct. 15-22, 2000. The lies and distortions surrounding the rhetoric defending the 1901 Constitution resemble the tactics and excuses defending the current state and local tax laws. See *Oh Those Chicken Littles: Constitution Reform Won't Bring Down the Sky*, BIRMINGHAM NEWS, Mar. 12, 2003 (quoting anti-constitution reform activists as claiming the goals of those seeking reform is to "'steal property through zoning' and advance 'socialist, globalist indoctrination' in public schools"); *State Briefs: Bennett Criticized in Constitutional Rift*, BIRMINGHAM NEWS, Mar. 7, 2002 (quoting Sandra Lane Smith, president of the Alabama Association of Judeo-Christian Values as stating that constitutional reform "is about getting God out, getting gambling in, and taxes"); *In God's Name Counterrally to Keep Constitution Counterproductive*, BIRMINGHAM NEWS, Apr. 3, 2001 (discussing a group identifying itself as the Association for Judeo-Christian Values and touring the state arguing for "the preservation of our state constitution as it is written" because it was "ordained and established by the sovereignty of God").

131. Much has been written documenting the inequities of Alabama's state and local tax laws. For my work, see Susan Pace Hamill, *An Argument for Tax Reform Based on Judeo-Christian Ethics*, 54 ALA. L. REV. 1 (2002), re-printed in paperback book form under the title of: THE LEAST OF THESE: FAIR TAXES AND THE MORAL DUTY OF CHRISTIANS (2003) [hereinafter Paperback Book]. In its February 2003 issue, *Governing Magazine*, a respected publication dedicated to state and local issues, examined

tant reason for this inability is that real tax reform requires those of us fortunate enough to be in the upper income ranges—who own valuable property, and currently are not carrying our fair share of Alabama’s tax burden—to pay more taxes.<sup>132</sup> Like many Alabamians of the past described in Jackson’s book, too many of us (because of our own greed, whether we realize it or not), believe our own excuses justifying the current tax system. These excuses take many forms. For example: all taxes are evil so any attempt to require more taxes from us must be evil; we work harder so we are entitled to keep more of what we earn and if they (the poor and lower-middle class) would only work harder they would be as well off as us; additional revenues will be wasted by untrustworthy politicians; increased educational opportunities for the lower classes will be wasted because they will squander the opportunity; and somehow educational quality has nothing to do with adequate educational funding.<sup>133</sup> Or perhaps there is even a dark, hidden excuse—really a fear—not unlike the fears of Black Belt whites Jackson describes during the Civil Rights Movement, that if the lower classes are allowed to improve they may treat us as shabbily as we are treating them.<sup>134</sup>

Jackson’s book has the powerful potential to help us recognize these excuses as blind spots. By reminding us that today we recognize that the excuses supporting slavery and segregation were clearly wrong and tragic but “back then they were believed, accepted, and acted upon”<sup>135</sup> and “things were not so clear.”<sup>136</sup> Jackson helps us see that our excuses of today, while they may seem legitimate, are really not. Jackson also exposes these excuses as almost carbon copies of the excuses used by Alabama’s original Bourbons—those men who created the 1875 and 1901 Constitutions. In the portion of his book covering how the late nineteenth- and early twentieth-century Bourbons reinterpreted Alabama’s history to justify embedding the bondage of blacks and poor whites into the law, Jackson does much more than indict these long dead men. He issues a chilling warning, which applies in full force today. Jackson warns us that if we continue to cling to historical myths rather than honestly confront the uglier truths, we will continue to fool ourselves into thinking that the modern version of those ugly truths, our constitution and tax structures of today, are acceptable when in reality our own religious principles deem these structures unacceptable. In other words,

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and rated the state and local tax structures of each of the fifty states. Describing Alabama’s state and local tax laws as “ludicrous,” in the categories of “Fairness to Taxpayers” and “Adequacy of Revenues,” *Governing Magazine* gave Alabama the lowest ranking of one star, defined as: “The area under review needs some kind of dramatic reform; alterations at the margins will not be enough to fix the problems identified.” *GOVERNING MAG.*, 35, 38, Feb. 2003.

132. See Paperback Book, *supra* note 131, at 130-31, where I articulate some of these excuses.

133. *Id.*

134. JACKSON, *supra* note 3, at 257. Jackson describes segregation as “not only a way of life, it was the way whites protected themselves and what they had from blacks, who, whites seemed convinced, would, if in power, treat whites as poorly as whites had treated them.” *Id.*

135. *Id.* at 80.

136. *Id.* at 265.

we cannot defeat Alabama's bondage of today without confronting our history honestly at a deeply moral and spiritual level.

Jackson's numerous examples of failure in the political and legal arenas should inspire all Alabamians of privilege and power to pause and examine their special moral obligations. Each and every person serving in public office, from the highest ranking official in the state to those serving in the numerous offices at the local level—including county commissioners, state judges, and members of the legislature—should read Jackson's book and examine the substance of their service in light of the examples in the past. Ask yourself whether you are continuing the tradition of George Wallace and others who preyed on popular prejudices and fears rather than meeting the real needs of the people through strong leadership. Ask yourself in light of the lessons from the past what you can do to improve the quality of your service to the state.

Alabama's lawyers owe high fiduciary duties to all Alabamians, especially the most powerless and vulnerable, such as children, the elderly, and those trapped in poverty or struggling to make ends meet at low income levels.<sup>137</sup> These fiduciary duties encompass more than just the obligation to support pro bono legal services for low income individuals—Alabama's lawyers are also obligated to ensure that the state's laws themselves promote justice for all Alabamians, especially the poor and powerless. Each and every lawyer, law professor, and law student in the state should read Jackson's book and contemplate the numerous examples throughout history of lawyers who stood by and tolerated injustice embedded in the laws—or worse, actively participated in creating injustice. In light of the vast and disgraceful levels of injustice still poisoning many of Alabama's laws, all members of the Alabama Bar should ask themselves whether their area of the law treats the poor and powerless citizens of our state fairly. If the particular area of the law needs improving, then Alabama's lawyers with knowledge and expertise in that area have an especially strong moral obligation to work towards making the law fair.<sup>138</sup>

All members of the Alabama Bar also have a moral obligation to join in the fight against the two greatest sources of injustice anchored in the law, the constitutional and tax structures. Lawyers are among the most privileged in any community with special education and abilities that empower them to recognize and correct unjust laws and therefore “are expected to participate

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137. See ALA. RULES OF PROF'L CONDUCT pmbL (1990) (providing that a lawyer is “an officer of the legal system and a public citizen having special responsibility for the quality of justice” and providing in Rule 6.1 (addressing pro bono service) that a lawyer “should render public interest legal service” and that this may be accomplished “by service in activities for improving the law”).

138. Given that Alabama is at or near the bottom ranking in virtually all measures of minimum well-being there are bound to be more examples of injustice embedded in the laws than just the high profile example of the unfair state and local tax laws. See, e.g., *Legislature Should Have Done Better*, BIRMINGHAM NEWS, June 20, 2003 (discussing the inadequate response of the legislature in regulating payday loans that charge predatory high interest rates on low income wage earners); *Renters Evicted: Lawmakers Slam Door on Fair Landlord-Tenant Bills*, BIRMINGHAM NEWS, May 1, 2003 (discussing inadequate legal protection of tenants).



voluntarily in law reform and in improving the legal system.”<sup>139</sup> When contemplating our excuses keeping us from fulfilling our moral obligations, Alabama’s lawyers of today should remember that well over half of the delegates of both the 1875 and 1901 Constitutional Conventions were lawyers,<sup>140</sup> who presumably believed they were honoring the standards of justice.<sup>141</sup>

Thomas Goode Jones is a perfect example of a lawyer who actively contributed to the injustice of his time despite his own personal high professional standards. As “the drafter of Alabama’s 1887 Code of Ethics . . . [and] well aware of the importance of his work,”<sup>142</sup> Jones included language imposing on every lawyer a high duty “to the State and his fellow-man.”<sup>143</sup> A few years after completing this still well-regarded and groundbreaking work in legal ethics, Jones defeated Reuben Kolb for governor in a stolen election and resorted to racist tactics in his campaign, even though “his attitude toward African Americans was more benevolent paternalism than racist repression.”<sup>144</sup> In 1901, “continu[ing] to view himself as a friend and mentor of black people . . . [w]ith a clear conscience Jones served as a delegate to Alabama’s 1901 constitutional convention, and endorsed its work . . . evidently persuading himself that the state’s segregated school system offered blacks a reasonable chance to meet any literacy test imposed upon them.”<sup>145</sup> The example of Jones’ sincere commitment to justice in his work on the 1887 Code of Legal Ethics, juxtaposed with his conduct during the gubernatorial campaign and his support of the 1901 Constitution—both of

139. See Robert R. Kuehn, *A Normative Analysis of the Rights and Duties of Law Professors to Speak Out*, 55 S.C. L. REV. 253, 284-85 (2003).

140. MALCOLM COOK McMILLAN, CONSTITUTIONAL DEVELOPMENT IN ALABAMA, 1798-1901: A STUDY IN POLITICS, THE NEGRO, AND SECTIONALISM 190, 263 (1955). See also Glory McLaughlin, *The Memory of the Civil War in the Alabama Legal Mind*, 56 ALA. L. REV. (forthcoming 2004) (discussing how historical mythology affected court decisions from the Civil War until 1901).

141. When contemplating how future generations may evaluate our contributions towards promoting justice, the following lines from a poem written by Robert Burns capture how difficult it is for today’s lawyers to rise above the limitations of time and place:

O wad some Power the giftie gie us

To see ourself as ithers see us!

*Translation*

Oh would some Power the gift give us

To see ourselves as others see us!

See Robert Burns, *To a Louse*, in THE COMPLETE WORKS OF ROBERT BURNS 182 (James A. MacKay, ed., 1986). Because it is impossible to know how future generations will see us, the honest study and moral evaluation of lawyers in the past—especially those who believed they were promoting justice when future hindsight proves they were not—offers us the greatest opportunity to rise above the limitations imposed by our time and place.

142. Paul M. Pruitt, Jr., *Thomas Goode Jones: Personal Code of a Public Man*, in GILDED AGE LEGAL ETHICS: ESSAYS ON THOMAS GOODE JONES’ 1887 CODE 65 (2003).

143. *Id.* at 49 (reprinting the 1887 ALA. CODE OF ETHICS). Section 8 reads as follows:

An attorney should strive, at all times, to uphold the honor, maintain the dignity, and promote the usefulness of the profession; for it is so interwoven with the administration of justice, that whatever redounds to the good of one advances the other; and the attorney thus discharges, not merely an obligation to his brothers, but a high duty to the State and his fellow-man.

*Id.*

144. JACKSON, *supra* note 3, at 130.

145. Pruitt, *supra* note 142, at 84-85.

which we now recognize as indisputably wrong—illustrates how lawyers can easily become instruments fostering injustice despite their best intentions.<sup>146</sup>

A strong moral argument can be made that, for at least two reasons, law professors, especially those of us privileged to be on the faculty at either of Alabama's two accredited law schools—The University of Alabama School of Law and the Cumberland School of Law at Samford University—owe even greater fiduciary duties to the state than the average lawyer. Unlike the average lawyer, law professors who have been awarded tenure enjoy both economic and academic freedom. Our ability to speak out without having to deal with the pressures exerted by clients benefiting from unjust laws creates “an enhanced obligation to pursue individual and social justice.”<sup>147</sup> Moreover, as important role models, law professors can greatly affect the attitudes that students adopt regarding their own professional obligations once they become full-fledged lawyers.<sup>148</sup> When I joined the law faculty at The University of Alabama in the fall of 1994, I brought with me ten years of education and experience in the area of tax law. Borrowing Jackson's words, “acknowledging this is difficult,” it took me seven years (until the spring of 2001) to even notice the gross inequities of Alabama's state and local tax laws. My own example shows how easy it is for all of us to avert our eyes away from unjust laws right under our noses.<sup>149</sup>

All of Alabama's pastors and religious leaders should read Jackson's book and contemplate their responsibility for bringing justice to the state. Jackson's book shows that too often religion silently functioned as a shield

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146. Recently, in a striking essay pondering why the public holds such a low opinion of lawyers, the president of the Alabama State Bar urged each member to engage in critical self-examination, uphold high standards of conduct and character, and “have a zeal for truth and justice.” J. Douglas McElvy, *The Most Powerful Profession*, ALA. LAWYER, Sept. 2004, at 288, 291. Describing the law as “the most powerful profession,” *id.* at 288, and imposing on lawyers a “common responsibility to seek truth and justice and to protect individual freedom and liberty,” *id.*, he identifies Thomas Goode Jones as an example to follow. *Id.* at 291. The essay praises Jones' work on the 1887 Code of Ethics and describes him as “a man of character and integrity,” *id.*, without mentioning the underhanded tactics that Jones used in the gubernatorial race against Reuben Kolb or his support of the indisputable injustice of the 1901 Constitution. Although viewed through the limitations of his time and place, Jones is one of the better examples of lawyers in the late nineteenth and early twentieth centuries. I believe that our failure to honestly confront the negative side of Jones (as well as others like him) blinds us to the fact (which the future will reveal) that many of us are unintentionally fostering injustice in a similar manner. Only if we are willing to honestly deal with all aspects of the past, even the parts we would rather forget, do we have a chance of overcoming the limitations of our time and place.

147. Kuehn, *supra* note 139, at 296.

148. *Id.* at 296-98. Professors can “enhance or undermine professional ideals” based on the example they set through their out-of-classroom activities. *Id.* at n.257. Professors who do not value activities that meet community needs and promote justice for the common good send a message to their students that such activities have little value. “The academy cannot expect students to take public service seriously or emulate it later as practicing attorneys if law faculty do not.” *Id.* at 301.

149. A recent article in the *Atlantic Monthly* troubled me greatly, causing me to further question whether lawyers and law professors—even more painfully, those in the law school where I teach—are exemplary of the high professional ideals demanded by our profession. The article describes the hardball political techniques of Karl Rove, a controversial figure who (according to the article) “undermine[s] the other side's support by casting them as liars, cheaters, stealers, immoral—all of that.” Joshua Green, *Karl Rove in a Corner*, ATLANTIC MONTHLY, Nov. 2004, at 92, 94. The article highlights Rove's techni-

normalizing the injustice embedded in the law, or even worse actively promoted the injustice. Although the leadership of the Methodist, Presbyterian, Episcopal, and Catholic denominations endorsed Riley's tax reform plan, that endorsement failed to inspire widespread vocal support from pastors deep in the communities across Alabama. Moreover, the response to Riley's plan by the leadership of the Southern Baptists was very disappointing. Although the Southern Baptists were willing to publicly support the concept of tax reform before an actual proposal appeared for vote and had also vigorously opposed the lottery referendum, during the campaign for Riley's plan they fell silent and remained neutral. Even worse, the Christian Coalition of Alabama, obviously more concerned about the wealthiest landowners and individuals than Alabama's struggling poor and lower-middle class families, shamefully opposed Riley's plan and perpetuated some of the most blatant lies and distortions. History does indeed repeat itself.

Finally, given that the biggest challenge today is reaching people at the grassroots level, many of whom are the very people being hurt the most by the injustice embedded in the tax and constitution structures—low income people who voted against Riley's tax reform plan—the epilogue of Jackson's book provides an example that could evolve to be a model for meeting this challenge. It is a touching story about the citizens of a small town struggling to decide whether to keep the original memorial marker honoring their World War I dead in a segregated fashion or replace it with a new marker that makes no racial distinctions. In the midst of heated discussions where emotions ran high, a biracial committee asked “questions that Alabamians, white or black were [not] used to asking themselves, much less each other,”<sup>150</sup> as they explored their uncomfortable segregated past. They

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ques in judicial races for the Alabama Supreme Court, including two races involving a former University of Alabama law professor. In one race, Rove's staff allegedly created backlashes against the professor's opponent by falsely creating the impression that the opponent attacked the professor's family. *Id.* at 101. Even worse, Rove's staff allegedly slandered another opponent in an earlier race by “using the University of Alabama Law School to disseminate whisper-campaign information . . . [so that] the law students would take it back to their hometowns . . . [to] create the impression that the lie was in fact common knowledge across the state.” *Id.* at 102. (The article alleges that the whisper-campaign effort deliberately spread lies accusing the opponent of being a pedophile.) Because I have not independently verified Green's sources, a full discussion of the implications and challenges that these disturbing allegations pose to the Alabama Bar as an institution, Alabama's law schools, the Alabama court system, and each individual member of the Alabama Bar is beyond the scope of this book review. Nevertheless the magazine's positive reputation for producing well-researched and responsible journalism, combined with the outrageous nature of these allegations (both the substance of the alleged lie and the alleged site for the dissemination), should cause each and every one of us to wonder whether we are fostering a legal culture that meets even the standards embodied by Thomas Goode Jones. If these allegations are true, the individuals involved are broadly comparable—within the framework of our time and place—to another Bourbon Democrat governor described in Jackson's book: “William Dorsey Jelks, who praised lynching as ‘a cure and an effective one’ for black outrages [and] warned that any African American Alabamian who got out of line would have ‘his neck . . . broken without the benefit of judge, jury or clergy.’” Jackson, *supra* note 3, at 130.

150. JACKSON, *supra* note 3, at 307.

ultimately decided to order a new marker with the soldiers listed alphabetically on one side with an explanation on the other side that the original monument, housed in the county museum, is “a relic of segregation past and a reminder that all citizens are considered equal now.”<sup>151</sup>

If people in communities across Alabama, representing groups from all walks of life, read and discuss Jackson’s book with each other, in a manner similar to the example of the people in this small town discussing the historical origins of their segregated marker, Jackson’s book could serve as a catalyst launching a state-wide effort to explore the uncomfortable patterns of Alabama’s history. Potential discussion groups should not only include high school and college classes, small groups of people in book clubs, Sunday Schools, service clubs, and informal groups of friends and neighbors, but should also include Alabamians at the highest levels of government, business, and academia, as well as those already committed to reforming the state’s tax and constitutional structures. Jackson’s book has the potential to change Alabama by raising our collective consciousness on a mass scale as to how the patterns of Alabama’s past failures are continuing to repeat themselves. This could motivate many Alabamians to read other excellent, more detailed books that further explore the state’s history.<sup>152</sup>

Like the citizens of that small town trying to decide whether to keep the segregated marker, I envision discussion groups across the state using Jackson’s book as a mirror to reflect on the tax and constitutional structures of today by “discuss[ing] what was done, understand[ing] why it was done, judg[ing] whether it should have been done, and if it needs righting, [helping to] set it right.”<sup>153</sup> Jackson’s willingness to openly reflect on his own personal regrets regarding the segregation period should help many Alabamians face the uncomfortable process of honestly confronting the past with more courage. All of us are in the same boat—in one way or another—

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151. *Id.* at 308.

152. For a detailed overview of Alabama history see WILLIAM WARREN ROGERS ET AL., ALABAMA: THE HISTORY OF A DEEP SOUTH STATE (1994), and WAYNE FLYNT, ALABAMA IN THE 20TH CENTURY (2004). For in depth coverage of race relations and the Civil Rights Movement see J. MILLS THORNTON, DIVIDING LINES: MUNICIPAL POLITICS AND THE STRUGGLE FOR CIVIL RIGHTS IN MONTGOMERY, BIRMINGHAM AND SELMA (2002); DIANE MCWHORTER, CARRY ME HOME: BIRMINGHAM, ALABAMA THE CLIMATIC BATTLE OF THE CIVIL RIGHTS REVOLUTION (2001); and FRYE GAILLARD, CRADLE OF FREEDOM: ALABAMA AND THE MOVEMENT THAT CHANGED AMERICA (2004). For a detailed account of the history surrounding the poorest Alabamians, see WAYNE FLYNT, POOR BUT PROUD: ALABAMA’S POOR WHITES (1989). For a powerfully wrenching memoir describing the heartbreaking consequences of our cultural standards that fail to honor the dignity and embrace the potential of all of Alabama’s children, see RICK BRAGG, ALL OVER BUT THE SHOUTIN’ 104 (1997):

The principal and teachers, when they recognized who we were, where we ranked, told Sam that he could sweep the narrow halls, clean the bathrooms and shovel coal into the school’s furnace, to earn his free lunch. He took out the trash and burned it and unclogged the toilet. They never bothered to teach him to read very well; he learned that on his own. They never bothered to tell him about the world outside his narrow, limited one. They forgot to show him maps of the universe or share the secrets of history, biology. As other students behind the classroom doors read about empires, wars and kings, he waxed the gymnasium floor.

*Id.*

153. JACKSON, *supra* note 3, at 304.

in different ways and at different levels, we all bear some responsibility for the injustices today.

If groups of people across Alabama read Jackson's book and thoughtfully and honestly ponder and discuss it, much more can potentially happen than just helping many of us see the past repeating itself—and that change must occur. By providing clues of how to overcome the most insidious barrier to progress, which also is the most important reason why Riley's tax reform plan failed—the lack of trust in our state government—Jackson's book could also help us break this cycle of the past repeating itself. This is because Jackson not only explores the historical origins of that lack of trust, but he also, on a highly emotional and personal level, provides a window into the heart of how many Alabamians feel—why they do not trust the government, why in many cases they do not trust anyone outside their own tight-knit community.

A sincere and empathetic understanding of how many Alabamians feel about their state and their leaders is the key, which so far has been missing in the reform efforts, to defeating the bondage holding Alabama back. No grassroots connections link the people and their pastors in the communities across Alabama with the state's political and religious leaders or with other well-meaning and highly educated reformers. If significant numbers of well-meaning leaders can reach an emotional understanding of and develop a high level of respect for our people, they will see that the state's only hope lies in the hands of the local community leaders across sixty-seven counties. These are the only people who have the credibility to reach the large numbers of Alabamians who trust no one else. In the spirit of equal partnership and mutual service, the highly educated and knowledgeable leaders across the state working for reform must secure the support of Alabama's local community leaders. Otherwise the modern-day Bourbons will maintain the status quo just as the original Bourbons did in the past.<sup>154</sup> By offering us a

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154. I first started to figure out the critical importance of local community leader support on July 17, 2003, when I was a guest on an AM radio talk show during the campaign for Riley's tax reform plan. I believed I could convince my audience, largely low-income people across Tuscaloosa County, to vote for Riley's plan by using simple examples to prove that their personal tax burdens would be decreased. The callers showed me how wrong I was. None of them were in favor of Riley's plan, and I was unable to convince any of them because they did not trust me. As far as they were concerned, I was just as much of a liar as the sponsors of the advertisement campaigns spreading the real lies. They did not trust me because I drive the wrong kind of car (that was the first question that the first caller asked me), I have no experience with manual labor (other than waiting tables, which one caller flatly told me does not count), and I have never been laid off while trying to raise children on a seven dollar an hour wage. They told me quite bluntly that I am a "college type" who has no idea what real work is. It was at that point that I understood that only the trusted people within their community had a chance of convincing them to support any form of reform. I also realized on that day that, absent a miracle, Riley's plan was doomed for defeat at the polls—defeat by the very people that the plan was designed to help the most. Over a year later, after I completed my full study of Alabama history, I came to understand how those callers and many similar Alabamians feel and the reasons why they will never trust me or anyone like me. I am grateful for and will never forget those callers for showing me what it will take to successfully reform the state. Metaphorically, if you view the reform effort as a ball game (pick your favorite, I choose baseball when I speak, but football or any other team sport works just as well), we have the wrong people—the educated, well-meaning leaders and reformers—on the field. The community leaders across sixty-seven counties need to be on the field, and the educated, well-meaning leaders and reformers need

moral perspective of our history and a deep understanding of our people, Jackson's book is an important resource that could help us to bridge the gap between the local community leaders and those working for reform at the highest levels. Only the bridging of this gap will empower us to collectively insist that our political leaders mold the state according to our true values—in other words, insist that our political leaders be worthy of our trust.