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Each Child, Every Child: Chapter 2__ A Slow Start for Kentucky Children

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Chapter 2

A Slow Start for Kentucky's Children

The story of education throughout the South is roughly parallel to that of the rest of the nation but with at least three significant additional influences: 1) the widespread agrarian attitude that education was largely a family matter, and for many, a matter of little necessity; 2) racism, born of slavery and plantation economics; and 3) its offspring, traditionalism, which reinforces paternalism, skeptical attitudes toward government and maintenance of the status quo. So change in the South comes slowly, when it comes.

In the earliest days of the Union, a gradual and essentially peaceful abolition took place in the North. Typically, a state would pass a law declaring: all slaves born after a given date would be free when they reach the age of 21 for women, or 24 for men. A gradual emancipation did not happen in the South because the moral drive to do it did not exist. Furthermore, economics created pressure not to do it. Many more slaves lived in the South. About 40 percent of Virginia's population was African-American. South Carolina had a slave majority approaching 60 percent of the population. So many more complicated problems were associated with abolishing slavery in the South. Also, less anti-slavery agitation appeared in the South although the contradiction between slavery and the Declaration of Independence was evident and spoken about.

Attitudes about schooling differed regionally as well. In the North, almost everyone, including free blacks got three years of three-month schooling. The goal was to

teach reading, writing and ciphering. In the South, fewer total children were taught but there were lots of academies for planters' children.¹

The struggle to make adequate provisions for the education of all children in Kentucky has lasted almost from the time of its admission to the Union. The history of those repeated attempts on behalf of common schools, and of repeated failures, is one of the most interesting and suggestive subjects in the annals of state governance.² According to historian Thomas Clark, Kentuckians have stamped

upon their schools, churches, court days, county fairs - on every phase of their lives - the deep impress of the land. It is relatively simple to confirm this fact at any period in the commonwealth's history. Most revealing are educational statistics, which reflect the distinctly rural cast of mind. If the rural Kentuckian during the past two centuries had invested his material resources as recklessly as he supported his public schools he would have been more thoroughly bankrupted than the biblical prodigal son. For almost a century and a half the people elected representatives who set too low educational standards for their offspring, and the commonwealth still has not been able to overcome the effects of this cultural denial.³

Kentucky's political culture turned the effort to establish and adequately support an efficient system of common schools into a 200-year struggle. The traditionalistic culture is a product of plantation agrarianism in which social and family ties are paramount. Those who do not have a definite role in politics are expected to be minimally active as citizens. In many cases, they are not even expected to vote. In return, they are guaranteed that family rights (usually labeled 'individual rights') will not to be taken lightly or ignored. In return, those individuals who are active in politics are expected to benefit personally (if not

¹ Joyce Oldham Appleby, *Inheriting the Revolution: The First Generation of Americans* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2000).

² Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education 1914), 3.

³ Thomas D. Clark, *Agrarian Kentucky* (Lexington: University Press of Kentucky, 1977), vii.

financially) from their activity. *Good government* is seen as the maintenance and encouragement of traditional patterns, while adjusting to changing conditions, with the least possible upset. Accordingly, political leaders tend to play conservative and custodial roles and tend toward inaction unless pressed strongly from the outside.⁴

The traditionalistic political culture is instinctively anti-bureaucratic since by its nature bureaucracy interferes with the web of interpersonal relationships that lie at the root of the political system.⁵ The culture has historically produced *government by aristocrats* and *good ol' boys*.

This is significant as an explanation of *the disconnect* between our laws and our practices. Kentucky's history reveals numerous instances in which laws have preceded our actual practice - by as much as decades. This is seen in the passage of laws without the provision of funding. Perhaps the best example may be Kentucky's first. After statehood, it took the General Assembly 58 years to establish of a system of public schools and yet another 54 years to actually fund that system.

More insidious examples are found in Kentucky's handling of racial issues through which laws were passed without any real attempt at enforcement. In *Brown v. Board of Education* (Brown I) the U. S. Supreme Court ruled, in 1954, that separate schools for African-American children were unconstitutional. The following year the court in Brown II ordered schools to begin desegregating. But it was not until the Civil Rights Act of

⁴ For a complete exploration see: Daniel J. Elazar, *The American Mosaic: The Impact of Space, Time, and Culture on American Politics* (San Francisco, CA: Westview Press, 1994); Miller, Penny, *Kentucky Politics and Government: Do We Stand United?* Lincoln: University of Nebraska Press, 1994; and Clements, Stephen K., "The Changing Face of Common Schooling: The Politics of the 1990 Kentucky Education Reform Act." Ph.D. diss., University of Chicago, 1998.

⁵ Daniel J. Elazar, *The American Mosaic: The Impact of Space, Time, and Culture on American Politics* (San Francisco, CA: Westview Press, 1994), 235-237.

1964, and the decision in *Green v. County Board of Education* in 1968 that school districts made any real attempt to comply with the court's 1954 ruling.

The state's traditionalistic political culture provides a prism through which all of Kentucky's historical activities should be viewed. Failure to do so is likely to produce confusion in those wishing to understand why Kentucky has had such a history of legislative weakness in the face of overwhelming evidence of need. It is a history of failed attempts, of fits and starts, of seduction and abandonment.

The first attempt to establish a system of public schools began with the Seminaries of Learning Act of 1798, which "enabled the county courts of a number of counties to locate 6,000 acres of vacant land for the establishment and support of a County Academy." The law gave title to "the Trustees of each Academy respectively and exempted such lands from taxation so long as they should be held and used for school purposes."⁶

A later Kentucky Superintendent of Public Instruction, Moses Ligon, attributed the failure of that effort to seven causes. He reported that the system failed to provide education to the masses, that the Trustees were negligent, and that the donated lands were badly managed. He also noted a general lack of interest in education by the people who were distracted by the development of the new state. Private academies grew in popularity as the public academies failed, but agitation for a system of public schools that were free and open to everyone was the political agenda of the supporters of education, and this ultimately hurt the private academies.⁷

⁶ Thomas D. Clark, *Agrarian Kentucky* (Lexington: University Press of Kentucky, 1977), 3.

⁷ Moses Edward Ligon, *A History of Public Education in Kentucky* (Bulletin of the Bureau of School Services XIV no.4, 1942), 35.

Several legislative acts eroded the Seminary system as well. Seminary lands were sold and the proceeds were diverted into the construction of buildings and for other non-school purposes.⁸

In a few instances, from the scarcity of good lands, no profitable locations were ever made; but in most others, through the negligence of Trustees, and the arts of speculators, nearly the whole original endowment [of 114,000 acres] was sunk, and with it, for many years, the success of anything like a common school system in Kentucky.⁹

The first Kentucky Constitution of 1792 made no law establishing public education. During that time the legislature met annually and each Governor presented an annual report. Not until 1807 did a Governor even mention education. In that year Governor Christopher Greenup said:

Knowledge is in every country the surest basis of public happiness, and the present state of our population and wealth seems to be a proper period for the legislature to turn their attention to a more enlarged sphere of education in science and literature than is at present established.¹⁰

In 1811, Governor Charles Scott addressed the legislature saying,

It ought not be forgotten also, Gentlemen, that to preserve our rights, we must understand them. Few people have been free, that were ignorant, and if chance has thrown liberty in their way, it has sickened and disappeared when not cherished by the light of knowledge.¹¹

In December of 1821, Governor John Adair signed an act establishing the Literacy Fund. Under this legislation one-half of the clear profits of the Bank of the Commonwealth would go to the fund. Also a provision of this act was the appointment of a committee

⁸ Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 4.

⁹ Ibid.

¹⁰ Moses Edward Ligon, *A History of Public Education in Kentucky*. (Lexington, Kentucky: College of Education, University of Kentucky, 1942), 54. (from House Journal 1807-1808).

¹¹ Ibid., 54. (from Senate Journal 1811-1812)

under the leadership of Lt. Governor William T. Barry to study how other states had become better at educating their citizens than had Kentucky. The committee prepared a circular to gather information from within the state and from outside the state.¹² The report to the legislature was made in December of 1822 and told of the apathy that greeted their inquiries.

Your commissioners regret the necessity of stating that their efforts to collect information have not been attended with that success which was desired and anticipated. Their domestic circulars have generally been totally disregarded. Many of the foreign circulars have shared the same fate.¹³

The committee was most impressed with Massachusetts and Connecticut, both of which used an ad valorem tax for the support of schools. Throughout New England, “it is rare to meet a young man or woman who has not knowledge of reading, writing, and arithmetic, competent to all the common business of life.”¹⁴ The report criticized systems that pay for the education of the poor only and advocated a system of common schools.

...wherever it is practicable, common schools open and free to every description of children are most consonant to the principles of our institutions and produce the most beneficial effects on the minds of the rising generation. It is a system of practical equality, in which the children of the rich and poor meet upon a perfect level, and the only superiority is that of the mind.¹⁵

Philosophy aside, the report also argued that the state could spend less money and educate more students under a system that was more efficient. In a letter of support for the

¹² Ibid., 54. (from Senate Journal 1811-1812)

¹³ William T. Barry, David R. Murray, John R. Witherspoon and John Pope. “The Barry Report: A Progressive Plan.” December 18, 1821 in Edwina Ann Doyle, Ruby Layson and Anne Armstrong Thompson, eds. *From the Fort to the Future* (Lexington: Kentucky Images (1987), 26. Complete document is available in the Journal of the House of Representatives for the session that opened October 21, 1822.

¹⁴ Ibid., 26.

¹⁵ Ibid., 28.

committee report, Harvard educated lawyer and former United States President, John Adams stated,

The wisdom and generosity of your legislature in making liberal appropriations in money for the benefit of schools, academies, colleges, and the university, is an equal honor to them and their constituents, a proof of their veneration for literature and science, and a portent of great and lasting good to North and South America and to the world.¹⁶

Former U. S. President, James Madison, who had contributed to the writing of Virginia's Constitution added, "A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both."¹⁷

Unfortunately, the legislature was found lacking in both wisdom and generosity; thus the farce began. The best example may well be Transylvania University. As historian James Klotter wrote,

In 1820, Transylvania University was arguably one of the half dozen best colleges in the United States. It was certainly the best in the South. Its dynamic president, star-studded faculty, outstanding medical and law schools, and widespread reputation caused Thomas Jefferson to say that Virginia needed to establish a university or else 'send our children for education to Kentucky or Cambridge.' But — there's always a but — Transylvania's president, Rev. Horace Holley, angered Governor Joseph Desha, who accused the school of becoming elitist. Desha and the General Assembly cut off Transylvania's state funding. Religious leaders criticized Holley, a Unitarian from Boston, for attending the races and buying nude classical statues for his home. Holley finally resigned under pressure, the school lost momentum, and perhaps the state's best chance for a world-class university had passed.¹⁸

The General Assembly not only ignored President Madison's recommendations but also failed to underwrite the Literacy Fund already on the books. The Literacy Fund was suspended in 1824. Thomas Clark notes,

¹⁶ John Adams letter to William Barry, 22 July 1822 in Doyle, 39.

¹⁷ James Madison letter to William Barry, 4 August 1822 in Doyle, 41.

¹⁸ From James C. Klotter, "What if..." *Kentucky Humanities* #1 (2000)
<<http://www.kyhumanities.org/magazine/whatif.html>>

One looks back with profound nostalgia and wonders what might have been had the Kentucky General Assembly been alert to a sense of what was occurring across the nation... The eloquent Barry Report was consigned to oblivion under that great legislative dodge, 'filed away'. The failure of legislators to comprehend the implications of its recommendations must be viewed historically as a great Kentucky tragedy.¹⁹

The U. S. Congress had passed *Resolutions in Relation to a Portion of the Public Lands of the United States*. The resolutions permitted Kentucky to claim "her equitable proportion of the public domain held by the general government, to be used by the State ... for the purpose of education."²⁰ In these acts, Kentucky made a case to the federal government that lands had been granted to some other states and that the amount necessary to extend the same appropriation to Kentucky would be in excess of 1,000,000 acres, which Kentucky desperately needed for education.²¹ As another Kentucky Superintendent of Public Instruction, Barksdale Hamlett observed later,

To divert the funds which might be received from the general government to any other object than that of education, was something which the State could not do without dishonor; and yet the subsequent history of our school system shows that those funds were thus diverted.²²

Kentucky Act of 1830 gave the state a third opportunity to address the need for schooling in the Commonwealth. The act "had provided for schools and local taxation, but so great was the indifference of the people to education and their unwillingness to bear taxation that the law remained practically a dead letter."²³ "Incompetent trustees of academy endowments frittered away assets; visionary legislatures set up educational funds,

¹⁹ Thomas D. Clark, "Introduction" in Doyle, 6.

²⁰ Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 7.

²¹ *Ibid.*, 7.

²² *Ibid.*

²³ Ellwood P. Cubberly, *School Funds and their Apportionment* (New York: Teacher's College, Columbia University, 1905), 137.

only to raid them for any emergency that arose...²⁴ At this time the general educational level of Kentuckians was very modest. A report of 78 of the 83 counties revealed that of the “almost 140,000 children in the State between the ages of five and fifteen years, only 31,834 were attending school.”²⁵ “[A] full one third of the adult population could neither read nor write.”²⁶

Seven years later, however, Kentuckians had yet another opportunity to build their system of schools. In 1837, the State received \$1,433,754 as a virtual gift from the national government in the distribution of so-called Surplus Revenue, and \$1,000,000 was dedicated to the establishment of schools, the balance being diverted to an extensive and costly system of internal improvements. Almost immediately, when the state found itself in debt, the education fund was reduced to \$850,000.²⁷

Unfortunately, it did not stop there.

In 1840, a deficit appeared in the amount necessary for the payment of the interest on the internal improvement bonds; and, to supply it, the Commissioners of the Sinking Fund suspended payment of interest on the internal improvement bonds held by the Board of Education.²⁸

Finally, the bonds were actually burned. An act of the General Assembly required that all bonds held by the Board of Education be delivered to the Governor to be burned by him in the presence of the Auditor and Treasurer of the State. The state’s creditors were powerless to collect on their investments.²⁹

²⁴ *Kentucky: A Guide to the Bluegrass State* (Federal Writers Project of the Work Projects Administration. New York: Hastings House, 1954), 85.

²⁵ *Ibid.*

²⁶ Ellwood P. Cubberly, *School Funds and their Apportionment* (New York: Teacher's College, Columbia University, 1905), 137.

²⁷ Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 7.

²⁸ *Ibid.*, 8.

²⁹ *Ibid.*

Now began a battle to change conditions, led by the Reverend Robert J. Breckinridge, a descendant of a Scottish Covenantor who had come to Kentucky from Pennsylvania, and who became School Superintendent in 1847. He first obtained from the legislature of 1848 a new bond for the confiscated school funds for \$1,225,768, thus adding all unpaid interest to the principal of the bond. The next year he secured legislation permitting the people to vote at the fall elections for a two-mill state school tax, stumped the state for the measure, and carried the proposal by a majority of 36,882. In the constitutional convention of 1850 he not only secured the first constitutional mention of education and made provisions for a state system of public schools, but also had the debt to the state school fund recognized at \$1,326,770, and declared inviolable.³⁰

Despite the state constitution's declaration of the inviolability of the common school fund, no mandate yet existed on the legislature to establish a system of state-supported public schools. The General Assembly failed consistently to levy taxes to support the schools. Nevertheless, on four different occasions - in 1849, 1855, 1869 and 1882 - the people approved successive propositions totaling 22 cents on each \$100 of taxable property to the support of the common schools.³¹

Kentucky had still not accepted the idea of a universal public school system, however. The legislature never even hinted at the idea of free public education for all of Kentucky's school-age children. No power was given to the counties to set and collect a school tax. The General Assembly set no curriculum and adopted no books. Local school commissioners, many of whom were illiterate themselves, selected and certified teachers. Parents chose the books their children were to learn from - mostly the Bible. No provision was made for the education of the children of slaves. Finally, the law failed to prescribe the length of the school term; although, it was generally agreed to be at least three months but never more than five. The fourth grade was considered to be the terminal grade. At

³⁰ Ellwood P. Cubberly, *School Funds and their Apportionment* (New York: Teacher's College, Columbia University, 1905), 138.

³¹ Moses Edward Ligon, *A History of Public Education in Kentucky* (Bulletin of the Bureau of School Services XIV no.4, 1942)

this point a student was thought to be able to read a newspaper, the Bible, write a simple letter of correspondence, add and subtract.³²

Thomas Clark describes decisions made about public education in post-Civil War Kentucky as some of the most momentous and damaging in the state's history. Social and economic complexities "grew out of racial confusion, the opening of a new agricultural era...a crusade for building new railroads and industry...and by a general uprooting of the older social system itself."³³

No state was more torn by the Civil War than Kentucky, and no state was more torn during the years following. The states to the south were united in defeat, and the knowledge that they fought well; those to the north were united in victory and the promise of prosperity. Poor Kentucky had succeeded, at hideous cost, only in tearing itself apart and planting seeds of enduring hatreds, and now it turned and tore itself again. Having stuck to the Union throughout the war, once the fighting was over it embraced the Confederate cause with an addled passion (partly because of the short-sighted and punitive policies of Union military commanders), leading one historian to remark that it was the only government in history to join the loser after the loss.³⁴

Following the war the landscape was depressing for Kentucky. The ravages of war further tore what was already a poor fledgling school system.

An educated and objective southerner viewing his region in the dreary fall of 1866 might well have given up in despair. Every institution in the South had been injured seriously by the war. Most of all, the embryonic public school system was disrupted at the very moment when it was first gaining momentum. Now the South faced the unsettling blight of post-war confusion which delayed for a half century the maturing of the educational process that should have come to flower no later than 1870. On every hand white and Negro children grew up in gross ignorance, and illiteracy was accepted as a normal state of affairs."³⁵

³² Thomas D. Clark, in James C. Klotter, ed. *Our Kentucky: A Study of the Bluegrass State* (Lexington: University Press of Kentucky, 1992), 281.

³³ Thomas D. Clark, *Three Paths to the Modern South: Education, Agriculture, and Conservation* (Athens: University of Georgia Press, 1965), 2-3.

³⁴ John Ed Pearce, *Divide and Dissent: Kentucky Politics 1930–1963* (Lexington: The University Press of Kentucky, 1987), 13.

³⁵ Clark, *Three Paths*, 1.

John Ed Pearce describes Kentucky's political landscape during the post-Civil War years as strongly Bourbonic. Kentucky's leaders were "generally rich and reactionary gentry who clung to visions of the Old South, resisted industrialization, despised blacks, and distrusted government in general, preferring local arbitration of local matters by local gentlemen."³⁶ The prevalent attitude was that the better class of people would be educated in private schools and there was little need to educate the rest. By 1870, rather than a maturing system of schools, Kentucky's educational opportunities were sparse and in general disarray.

The history of Kentucky common schools from 1870 to 1908 can be succinctly summarized by citing stubborn public resistance to taxation, trustee control of the local schools, lack of trained teachers and teacher training institutions, a poor rural agrarian economy, and the woeful lack of expectation that education can improve social and economic conditions.

Running through all the reports of the state and county Superintendents were critical notes concerning the trustee system, the indifference of parents, the shabbiness of schoolhouses, lack of supplies and equipment, and the shamefully low enrollment in schools and the discouraging average daily attendance of those enrolled.³⁷

In 1866, Kentucky passed its first measure dealing with the education of African-American children.

[O]nly taxes collected from blacks could be used in the schools for black children; funds from whites would support the white education only. Then two years later the General Assembly further limited the 'colored school fund' by ordering that any money from taxes collected from black residents would go to paupers first, before being spent on education."³⁸

³⁶ John Ed Pearce, *Divide and Dissent: Kentucky Politics 1930–1963* (Lexington: The University Press of Kentucky, 1987), 14.

³⁷ Thomas D. Clark, in James C. Klotter, ed. *Our Kentucky: A Study of the Bluegrass State* (Lexington: University Press of Kentucky, 1992), 286.

³⁸ Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky* (Lexington: The University Press of Kentucky, 1997), 380.

Since most blacks came out of slavery without money or property, the yield was not even close to being equitable. The hope for the education of African-American children was to come, not from the General Assembly, but from The Bureau of Refugees, Freedmen and Abandoned Lands, better known as the Freedmen's Bureau. [Sic] In 1865, the War Department established the Freedmen's Bureau to supervise all relief and educational activities relating to refugees and freedmen. The Bureau assumed custody of confiscated lands in the former Confederate States, border states, District of Columbia, and Indian Territory. In all, 900 Bureau officials scattered from Washington to Texas, ruling, directly and indirectly, many millions of men.

In an article written for the *Atlantic Monthly*, W. E. B. DuBois called the Freedmen's Bureau "one of the most singular and interesting of the attempts made by a great nation to grapple with vast problems of race and social condition."³⁹

In truth, the organization became a vast labor bureau; not perfect, indeed, -- notably defective here and there, --but on the whole, considering the situation, successful beyond the dreams of thoughtful men. The two great obstacles which confronted the officers at every turn were the tyrant and the idler: the slaveholder, who believed slavery was right, and was determined to perpetuate it under another name; and the freedman, who regarded freedom as perpetual rest. These were the Devil and the Deep Sea.⁴⁰

The Bureau showed some success developing a system of free labor, establishing black peasant proprietorships, and securing the recognition of black freemen before courts of law. But the "greatest success of the Freedmen's Bureau lay in the planting of the free school among Negroes, and the idea of free elementary education among all classes in the South."⁴¹ By 1869, 267 of its schools provided education to 13,000 blacks. Yet like most

³⁹ W. E. Burghardt DuBois, "The Freedmen's Bureau." (*Atlantic Monthly*, 87, 1901), 354-365.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

Freedmen's Bureau activities, the schools attracted strong - and violent - opposition. School after school was burned and teacher after teacher was whipped or driven away.⁴² The Freedmen's Bureau failed to establish good will between ex-masters and freedmen or to refrain from paternalistic methods that discouraged self-reliance. The number of African-Americans who ultimately became landholders was few.

During this time, Superintendent H.A.M. Henderson campaigned to raise the understanding of Kentuckians to the educational needs of the Commonwealth. He fought the unconstitutional act of the General Assembly that sought to take away school funds (yet again) and he won. He also crusaded for better pay for teachers, better textbooks, local taxation, normal schools for teacher preparation and the implementation of the graded school concept.⁴³

White voters agreed to increase funding for their schools four-fold, but schools for black children still languished far behind those for whites. In 1874, the federal government offered Kentucky \$60,000 for the establishment of a uniform system of schools for black children. Henderson, who opposed "mixing" whites with "ignorant Africans," accepted the funding and change did occur. However, this only raised the funding level to approximately one-third of that for white students.⁴⁴

In the case of *Kentucky v. Jesse Ellis*, in April 1882, the U. S. federal court declared the state's funding plan unconstitutional. The General Assembly "responded with a plan to establish a combined funding system with the same per capita rate for black and white

⁴² Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky*. (Lexington: The University Press of Kentucky, 1997), 380.

⁴³ Clark, in Klotter, *Our Kentucky*, 285.

⁴⁴ Lowell Hayes Harrison and James C. Klotter. *A New History of Kentucky*. (Lexington: The University Press of Kentucky, 1997), 380.

schools, to raise the tax rate, and to abolish the poll tax, paid only by blacks.”⁴⁵ But that plan covered only state funds and still allowed for local school districts to discriminate. So, in August of 1883, in the case of *Claybrook v. Owensboro*, Judge John W. Barr ruled that such discrimination violated the 14th Amendment of the U. S. Constitution. “The two systems could remain separate, but in regard to calendar, curriculum, and funding, they must - on the surface at least - be equal.”⁴⁶

As late as 1890, two thirds of the teachers were men. They were typically working for pocket change to supplement a farm income or as a stepping-stone to something else. Teaching became a common avenue for boys, and even some girls, to escape the family farm. If a student was good at book learning they could become a teacher. Then, after a few years, they could move on to become a store clerk, newspaper editor or lawyer. Most teachers were hired without contract and their jobs depended solely on their ability to satisfy their patrons. Parents placed little value on regular attendance. Also the common school curriculum consisted of whatever books were available, and lessons generally took the form of memory work.⁴⁷

All in all, the common schools were well adapted to the lives of middling farmers, men and women who placed scant faith in acquisitiveness and social mobility but labored instead for a competence and a respectable start in life for their children.”⁴⁸

But a significant change was about to take place with the entry of women into Kentucky’s classroom. The increasing numbers of female teachers facilitated expansion of

⁴⁵ Lowell Hayes Harrison and James C. Klotter. *A New History of Kentucky*. (Lexington: The University Press of Kentucky, 1997), 380.

⁴⁶ *Ibid.*, 380-381.

⁴⁷ James L. Leloudis, *Schooling in the New South: Pedagogy, Self and Society in North Carolina, 1880 – 1920* (Chapel Hill: The University of North Carolina Press, 1996), 11-14; see also Joyce Appleby, *Inheriting the Revolution: The First Generation of Americans* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2000.)

⁴⁸ *Ibid.*, 17.

the teaching core and the lengthening of school terms. In 1886, men still outnumbered women in the classroom nearly 2-1. Male and female earnings were roughly comparable with women were receiving an average of 90% of their male counterparts.⁴⁹

As teaching was transformed from a seasonal to a full time occupation, men demanded higher wages, and in some cases the sex differential doubled in individual counties. That was an ominous development in a political environment where proposed increases in the school tax met with determined opposition from voters and lawmakers alike. Under such circumstances, the feminization of teaching was the key both to sustaining the graded schools and to spreading their influence beyond the borders of isolated towns and cities.⁵⁰

The idea of women working for less money than men was well accepted, even by most women. “Assumptions about women’s subordination to men and devaluation of their labor were so deeply imbedded in the culture that they required little comment.”⁵¹ These attitudes persisted well into the twentieth century, particularly in the elementary schools.

Women teachers also tended to demonstrate a greater interest in ‘educational progress.’ Most men who entered the classroom entered teaching as a stepping-stone to more lucrative employment. They relied on their superiors to get them into college or to open the doors of business, law, and medicine. Male teachers took care not to offend the local school committee by embracing unpopular innovations. Women, on the other hand, remained on the periphery of the political relationships that structured men’s lives. They had less to lose by casting off tradition, and because of their marginal status they received lighter punishments for their transgressions. As a result, argued advocates of the new education, female teachers were more ‘ready witted and quick to catch ideas.’ Their increased presence in the classroom seemed to distance schooling from the politics of neighborhood life. That disentanglement was essential if the new education was to make inroads into the countryside.⁵²

Just before the turn of the century Superintendent W. J. Davidson reported three paramount needs to the General Assembly: 1) a minimum term of seven months, to be

⁴⁹ James L. Leloudis, *Schooling in the New South: Pedagogy, Self and Society in North Carolina, 1880 – 1920* (Chapel Hill: The University of North Carolina Press, 1996), 77.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid., 78.

provided for by a system of county taxation; 2) an adequate number of Teacher's Normal Training Schools to accommodate young men and women who desire to prepare themselves for teaching; 3) a system of employing teachers in which merit, qualification and general fitness for the work, rather than the kinship or favoritism, will determine who shall teach our schools. Davidson also underscored his concerns with the trustee system.⁵³

Many men, without special fitness, moral or educational, or without personal interest in the conduct of the school, seek positions on these boards either for mercenary purposes or to reward some friend or to turn the school over to some relative.⁵⁴

The conditions in the schools themselves were demonstrative of the problems inherent in the system. Schoolteacher and author, John F. Day (no known relationship to this researcher) wrote about his experiences in one of Eastern Kentucky's one-room schoolhouses in his book *Bloody Ground*. He described an ugly gray frame structure on a grassless red-clay knoll with half the weatherboard missing. The one remaining window shutter dangled from its upper hinge. Two outhouses were on the property - one with no door, the other on its side like an uprooted tree. The front door was nailed shut. Glass, leaves, dust and nutshells covered the inside. Bullet holes riddled the blackboard and the pipe connecting the wood stove to the chimney. Field mice inhabited the broken teacher's desk and the nearest clean water was a quarter of a mile away.⁵⁵

In short, the school buildings themselves reflected that lack of care given the entire system. Absence of curriculum and resources were the norm particularly in rural Kentucky.

⁵³ Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 175.

⁵⁴ *Ibid.*, 174.

⁵⁵ John F. Day, *Bloody Ground* (Lexington: The University Press of Kentucky, 1981), 44 – 46.

It may be very well for the older generation to romanticize the 'little red schoolhouse,' but there's nothing romantic about the one-room schools of eastern Kentucky. They're not even red - or generally any other color for that matter. Indeed they are little houses on little ground where the little teachers at little salaries for a little while teach little children little things... In one county the health officer advised the Superintendent not to build toilets. His idea was that it was better to place a hoe in the corner and let the children take it with them into a nearby cornfield... If there's any place on earth hotter in the summer or colder in the winter than one of those squat [tin roofed] buildings I haven't found it... there isn't even a playground. The children play fox and dog until they tire of that, then they pick fights or throw rocks...If there are any teaching aids - maps, globes, books, magazines, photographs, modeling tables, and the like - the teacher buys them from a pitifully small salary of \$50 to \$75 a month...⁵⁶

The mandate requiring the General Assembly to provide for an efficient system of common schools throughout the state and to appropriate to the common schools the income from the common school fund and any sum which may be produced for the purposes of common school education by taxation or otherwise, first appeared in the constitution of 1891. Even so, the General Assembly showed no initiative and lacking a direct mandate from the people did not levy a dollar of public taxes in support of public schools until 1904 - thirteen years after being empowered to do so. Not until 1893 did the statute books contain a single line of legislation actually requiring the establishment of schools and the levying of local taxes in support thereof, and not until 1908 was this mandatory legislation made general for all local units.⁵⁷

Kentucky's fourth constitution is not so much a fundamental rule of government as a piece of omnibus legislation. Implied powers were eliminated wherever possible; nothing was left to interpretation or to changing conditions of the future.⁵⁸ Under the heading

⁵⁶ John F. Day, *Bloody Ground* (Lexington: The University Press of Kentucky, 1981), 48.

⁵⁷ Moses Edward Ligon, *A History of Public Education in Kentucky* (Bulletin of the Bureau of School Services XIV no.4, 1942), 8.

⁵⁸ Thomas D. Clark, *A History of Kentucky* (Lexington: The John Bradford Press, 1954), 432.

"Local and Special Legislation," the new constitution gives complete control over local government to the legislature. Sections relating to railroads, commerce, and corporations places these matters directly in legislative hands as well.⁵⁹ This desire for centralized control on the part of the constitution's framers is also seen in Section 183, which gives the General Assembly the authority and obligation to provide for a system of common schools. That section calls for an efficient system of common schools throughout the state to be provided through appropriate legislation.

Kentucky's constitution is a narrow, rambling document designed to curb government rather than to guide it, a collection of restrictive statutes rather than an outline of principles. [It] is seven times longer than the constitution of the United States and is marked by neither its wisdom nor its grace.⁶⁰

Incidentally, the people of Kentucky never ratified the constitution. As originally written by the convention, the people ratified the draft. But in the mean time the leaders of the convention came to realize that the original document was unworkable and began to substantially rewrite it. This revision was never ratified.⁶¹

It is important to note that Kentucky was entering the most unsettled and violent period in its political history at the turn of the century. Nightriders harassed African-Americans and their supporters. Returning soldiers from both sides would clash, which in turn spawned feuds in the eastern mountains. Political tricks led to the assassination of one Governor (Goebel) and the fleeing of another (Taylor) when the Court of Appeals declared

⁵⁹ Thomas D. Clark, *A History of Kentucky* (Lexington: The John Bradford Press, 1954).

⁶⁰ John Ed Pearce, *Divide and Dissent: Kentucky Politics 1930–1963* (Lexington: The University Press of Kentucky, 1987), 15.

⁶¹ *Ibid.*, 16.

the office vacant. Dueling was still somewhat commonplace. "In all, not the best possible way to begin a new century."⁶²

The first Superintendent of Public Instruction to serve under the new constitution was Ed Porter Thompson. Like several before him, he called for corrections to the "maladministration" which led some local educators to consider school money as a bonus to the district to be handed out to favored kin instead of educating Kentucky's children. "While this is not the rule, it is safe to say that in this way more of the public money is annually squandered than the state has lost in a century..."⁶³ During Thompson's administration legislation was passed to pay teachers according to grade certificate, require all schools to be graded, provide efforts to increase attendance and improve teacher's wages.⁶⁴

W. J. Davidson, who succeeded Thompson as Superintendent, followed up on the favored kin idea with the passage of a nepotism bill. "A system of employing teachers in which merit, qualification and general fitness for the work, rather than kinship or favoritism, will determine who shall teach our schools."⁶⁵

While southern states did not pass laws that supported a system of segregation until the 1890s, white hostility had been the hallmark of southern race relations for over two centuries. The traditions of racism, white hostility toward blacks, and the inability of the black minority to protect itself after reconstruction all combined to disadvantage the former slaves from the start. White southerners explored ways to retain their mastery over blacks.

⁶² Ibid., 23.

⁶³ Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 162.

⁶⁴ Ibid., 165.

⁶⁵ Ibid., 175.

Southern legislatures enacted criminal statutes that invariably prescribed harsher penalties for blacks than for whites and erected a formal system marginalizing African-Americans that remained in the early twentieth century.

In *Plessy v. Ferguson*, the U. S. Supreme Court interpreted the 14th Amendment in such a way that equality in the law could be met through segregated facilities. In the 1896 case, Justice Billings Brown asserted that distinctions based on race violated neither the Thirteenth nor Fourteenth Amendment, two of the Civil War amendments passed to abolish slavery and secure the legal rights of the former slaves.⁶⁶ Although the phrase "separate but equal" cannot be found in the court's ruling, it sanctioned legally enforced segregation provided the law did not make facilities for blacks inferior to those of whites. Jim Crow laws were passed throughout the South that established separate facilities for blacks and whites in everything from drinking fountains, through restrooms, and schools, to witness stands in courtrooms. In doing so the court acquiesced in the South's solution to race relations.⁶⁷ Accordingly attempts to improve the schools were focused on schools for white children.

State Superintendent Harry McChesney reported in 1903 a serious need for an increase in the length of the term of the rural schools. There was a provision of the law

⁶⁶ *Plessy v. Ferguson*, 163 U.S. 537 (1896) 163 U.S. 537

⁶⁷ In his stirring dissent, Supreme Court Justice John Marshall Harlan wrote: "The white race deems itself to be the dominant race in this country...But in the view of the Constitution, in the eye of the law, there is in this country no superior, dominant ruling class of citizens...Our Constitution is color-blind... In respect of civil rights, all citizens are equal before the law... It is, therefore, to be regretted that this high tribunal... has reached the conclusion that it is competent for a State to regulate the enjoyment by citizens of their civil rights solely upon the basis of race... We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow-citizens, our equals before the law. The thin disguise of 'equal' accommodations...will not mislead anyone, nor atone for the wrong this day done."

whereby the individual districts had the right to vote a tax to lengthen the term. But little good resulted from this law for several reasons. Many districts were so poor that with an ordinary rate of taxation only a very small amount of revenue could be generated.

Another reason was that the people had been inclined to doubt the authority of a local treasurer to collect taxes and so, where such a tax had been voted, a great deal of litigation resulted from the efforts to collect it. When stumping for a longer school term, McChesney enumerated inequities when describing inefficient state and county tax laws. He raised issues that would echo through the Kentucky Supreme Court some 86 years later. He said,

...what Kentucky's schools need more than anything else, more than all things else, is an increase in the length of the term of the rural schools. There is a provision of the law in existence whereby the individual district has the right to vote a tax to lengthen the term. But little good has resulted from this law, and for several reasons. A great many districts are so poor that with an ordinary rate of taxation only a very small amount can be realized...

About 80 per cent of the total state revenue for school purposes is derived from the tax of twenty-two cents on the one hundred dollars worth of taxable property. This being true, an additional county tax of twenty-two cents, in a county of an average wealth in the state, would increase from five months' term to nine months, and a county tax as low as ten cents would increase the term to about seven months. In the poorer counties it might require a twenty-five cent tax to extend the term to seven months.⁶⁸

When McChesney first raised the issue of equity in Kentucky's schools, his frame of reference was the comparison of white city schools to white rural schools. The issue of educating the African-American population had *troubled* Kentucky since the Civil War. By 1901, segregation was de facto public policy throughout the South. For example, in his opening address at the Negro State Fair in Raleigh, North Carolina Governor Aycock,

⁶⁸ Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 179.

urged his listeners to abandon their attachment to politics and abstract notions of equality. The social separation of the races was now a settled issue in the South, he explained, and its 'violation' would lead only to black 'destruction as well as the injury of whites'.⁶⁹

In what reads today like an open threat, Aycock advised African-Americans to stay within their own society. Separate development, Aycock cautioned, 'it is well for you; it is well for us; it is necessary for the peace of our section.'⁷⁰

In 1904, the General Assembly further complicated the racial imbalance in education in the state when it enacted the flagrantly discriminatory Day Law.⁷¹ This law was aimed principally at ending the segregation of Berea College. Berea had been founded in 1855 with the specific mission of educating black and white students together. The Berea College website states,

Berea College's spiritual foundation, 'God has made of one blood all peoples of the earth,' has shaped the institution's culture and programs. Founder John G. Fee, an ardent abolitionist, asserted that Berea was founded 'in the midst of many privations and persecutions to preach and apply a gospel of impartial love...'

Guided by this inclusive Christian message of impartial love, Berea's founders held fast to their radical vision of a college and a community committed to interracial education, to the Appalachian region, and to the equality of all women and men from all "nations and climes." This spiritual heritage compelled Berea College to serve all persons regardless of race, creed, color, gender, or class and led the College to draw its students from two immediate constituencies: African-Americans freed by the American Civil War and "loyal" white mountaineers.⁷²

⁶⁹ James L. Leloudis, *Schooling in the New South: Pedagogy, Self and Society in North Carolina, 1880 – 1920* (Chapel Hill: The University of North Carolina Press, 1996), 179.

⁷⁰ *Ibid.*, 181.

⁷¹ Carl Day, (no relation to the author) was a state legislator from Breathitt County. He accused Berea College of contaminating the white race and proposed a bill banning integrated education. The General Assembly passed the law with the support of the state's highest education official, Superintendent Harry McChesney. Governor Beckham signed it.

⁷² Berea College website, <<http://www.berea.edu/Publications/History-of-Berea.html>>

African-American students had comprised more than a third of the student population. But the Day Law derailed that mission.⁷³ In *Berea College v. Commonwealth of Kentucky*, the college and its supporters fought the law in the courts, presenting a wealth of documentation on how integrated classrooms had benefited students.⁷⁴ However the Supreme Court ruled that since Berea was a private college incorporated by the state of Kentucky, the Commonwealth had a right to regulate it according to state laws.⁷⁵ The ruling spoke to Berea College, but the Day Law, which stood unaltered by the decision, applied to the entire Kentucky educational system.⁷⁶ It remained in force until it was nullified in 1954 by the United States Supreme Court decision in the case of *Brown vs. the Board of Education of Topeka*. Historian Thomas Clark explained,

Berea College had from its founding in 1854 accepted Negroes, and in 1904 it was the only co-racial school in Kentucky. The college appealed the law...The Supreme Court, following the precedent of *Plessy v. Ferguson*, refused to decide the issue on the basis of co-racial education...the South now had two powerful precedents for ordering the maintenance of separate schools ...This particular case was in many ways an even more important precedent than the *Ferguson* case

⁷³ Section 1 of the Day Law reads: “That it shall be unlawful for any person, corporation, or association of persons to maintain or operate any college, school, or institution where persons of the white and negro races are both received as pupils for instruction; and any person or corporation who shall operate or maintain any such college, school, or institution shall be fined \$1,000, and any person or corporation who may be convicted of violating the provisions of this act shall be fined \$100 for each day they may operate said school, college, or institution after such conviction.”

⁷⁴ “We Shall Overcome.” National Register of Historic Places. A partnership project produced by the U.S. Department of Interior, National Park Service, U.S. Department of Transportation, The Federal Highway Administration, and the National Conference of State Historic Preservation Officers.
<<http://www.cr.nps.gov/nr/travel/civilrights/ky1.htm>>

⁷⁵ A dissent was written by Kentuckian, Associate Justice John Marshall Harlan, who condemned the Day Law as the unconstitutional product of racial prejudice. The opinion was a major setback to racial justice in Kentucky and throughout the nation.

⁷⁶ Thomas D. Clark, in James C. Klotter, ed. *Our Kentucky: A Study of the Bluegrass State* (Lexington: University Press of Kentucky, 1992), 292.

because the court did discuss briefly desegregating the races, an issue which had not risen specifically in the former case.⁷⁷

Comments made by Superintendents Henderson and Pickett summarized well the sentiment of the white establishment following the Civil War. According to Henderson,

The most perplexing question connected with our school interest is that which relates to the education of the children of the colored people. In every social aspect of the case they constitute a non-conformable element. Different in history and color, there seems to be no natural affinity between them and the white race. After a long subjection to servitude, the colored people have suddenly been elevated to the franchises of American citizenship. Whatever view we may entertain of the propriety of the amendment to the Federal Constitution conferring this dignity upon them, it confronts us as a fact, and necessitates that we should deal with it as a practical problem, pressing upon us for its proper solution. If education is to be the basis for civil order, then to elevate the ignorant Africans, who are invested with the tremendous power of suffrage, becomes at once a necessary duty. It has been truthfully said: "An uneducated ballot is the winding-sheet of liberty.

I presume that candid men of all parties will agree that the mixing of the races in the common schools would dismember the system; yet the colored people ask that something should be done for them to aid in the education of their children and we should not be so imbecile as to dismiss their entreaty without even thinking over the whole field to, at least, ascertain what might be done for them without injury to the whites.⁷⁸

For the information of those desiring to know what provision has been made for the education of the colored people, we make the following compend of the system: The fund consists of the present revenue tax of forty-five cents on each one hundred dollars' worth of property owned by colored persons (all State taxes paid by colored persons is devoted to their education); a capitation tax on each colored male over twenty-one years of age; all State taxes on deeds, suits, or any license collected from colored persons; all the fines penalties, and forfeitures imposed upon and collected from colored persons due the State; all moneys hereafter donated by Congress from the sale of public lands-the pro rata share to each pupil not to exceed that to the whites.⁷⁹

⁷⁷ Thomas D. Clark, *The South Since Reconstruction* (New York: The Bobbs-Merrill Company, 1973), 177.

⁷⁸ Superintendent Henderson, in Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 125.

⁷⁹ *Ibid.*, 133.

Superintendent Pickett's statement about the difficult task before the state underscores the lack of any serious desire to begin the process of conferring the rights and benefits of full citizenship to African-Americans. He lamented,

The State by judicious legislation must be relieved, as far as may be practicable, from the immense mass of ignorant citizenship which was imposed upon it. The question of the Colored Schools in this Commonwealth has assumed serious and prominent importance. The people must know their condition, for the problem must be practically and properly solved, and the Superintendent will spare neither time or toil in assisting in the solution, and he, now, emphatically repeats that the Colored Department, a system in itself, will continue to need for years to come, the friendly, fostering care and supervision of white officials.⁸⁰

Superintendent of Public Instruction Harry V. McChesney was critical of the common school trustee system. "To say that the present common school trustee system is an absolute failure would probably be too severe a criticism, but to say the least, it is very unsatisfactory."⁸¹ However derelict a trustees may have been, it was a rare case for any patron to attempt to enforce the law and punish him. Change was needed, but McChesney had little success in instituting change leading to fiscal equity, adequacy or efficiency.

The means of progress for most blacks was likely to be industrial education. It was Booker T. Washington who brought the concept of industrial education to the Deep South.⁸² His idea was that "blacks would be trained to work out their own salvation through an education adapted to 'their lives' and 'present needs'."⁸³ In his speech at the

⁸⁰ Superintendent Pickett, in Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 155.

⁸¹ Superintendent McChesney in Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 179.

⁸² Booker T. Washington (1856-1915), the early 20th century's leading advocate of industrial education for blacks, argued for gradual social adjustment rather than political and civil rights.

⁸³ James L. Leloudis, *Schooling in the New South: Pedagogy, Self and Society in North Carolina, 1880 – 1920* (Chapel Hill: The University of North Carolina Press, 1996), 183.

Cotton States International Exposition in Atlanta, Washington said that in all things “that are purely social we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress.”⁸⁴

Washington’s speech received enormous publicity. Clark Howell of the *Atlanta Constitution* Proclaimed it, ‘One of the most notable speeches, both as to character and as to warmth of reception, ever delivered to a white audience. The address was a revolution. The whole speech was a platform upon which blacks and whites can stand with full justice to each other.’⁸⁵

However, charismatic reformer Marcus Garvey (1887-1940) called for racial separatism and a "Back-to-Africa" colonization program. Nonetheless, it was the decision that African-Americans were in this country to stay and would fight for their freedom and political equality that led to the modern civil rights movement.⁸⁶

School buildings for black pupils were even worse than those described for white pupils. Materials for blacks were essentially leftovers from white classrooms. But, black schools were a vital part of the African-American community life. The state’s 714 black public high school students and 93 graduates in 1900 led the segregated South, for example, and in 1907 a higher percentage of black youths in Kentucky attended school daily than did whites. Since the teachers in the black schools had often found their choice of occupation limited by segregation, some of the best and brightest went into education, a

⁸⁴ Thomas D. Clark, *The Emerging South* (New York: Oxford University Press, 1968), 172.

⁸⁵ *Ibid.*, 172-173.

⁸⁶ “We Shall Overcome” National Register of Historic Places Web Site. A partnership project produced by the U.S. Department of Interior, National Park Service, U.S. Department of Transportation, The Federal Highway Administration, and the National Conference of State Historic Preservation Officers.
<<http://www.cr.nps.gov/nr/travel/civilrights/ky1.htm>>

highly honored profession among blacks. With fewer blacks and whites using teaching as a springboard to other jobs, more stability and a better-educated teaching core characterized many schools.⁸⁷

The General Assembly of 1908 abolished the local district as the unit of school administration and set up the county to serve that role. This act was a significant watershed in Kentucky school history. Known as the County Administration Law, it was one of the most far-reaching pieces of school legislation in the history of the state. One of the chief provisions of the act was that each county was required to levy a tax for school purposes not to exceed 20 cents on each \$100 dollars of taxable property. Local taxation for the support of schools was made compulsory. Each county board of education was required to establish one or more county high schools for the benefit of children of rural districts. Thus, after a struggle of 70 years since the establishment of the public school system, the state acknowledged its obligation to the rural children in the field of secondary education.

John Grant Crabbe was elected Superintendent of Public Instruction in 1907. He brought to office an active imagination and boundless energy. In that year well over half of the school aged children were not enrolled in school. Only 311,192 or approximately 42% of the students enrolled were said to have maintained a satisfactory average daily attendance. In the first decade of the twentieth century, illiteracy in Kentucky was the highest in the southern states. Crabbe declared that the Kentucky school system was still beset with the deficiencies of the previous century.⁸⁸

⁸⁷ Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky* (Lexington: The University Press of Kentucky, 1997), 381.

⁸⁸ Thomas D. Clark, in James C. Klotter, ed. *Our Kentucky: A Study of the Bluegrass State* (Lexington: University Press of Kentucky, 1992), 286.

To underscore his observations and generate grassroots support for better schools, Superintendent Crabbe stumped statewide in what he called The Whirlwind Campaign. He called upon the Kentucky Confederation of Women's Clubs, the Kentucky Commission for Improvement of Education and the teachers' associations to visit every community in the state. The Press was a willing supporter of the movement.⁸⁹ "The campaign was a continuous cyclone bombardment against illiteracy and ignorance, for a period of nine days... Twenty nine speakers...[delivered] nearly three hundred public set addresses...The entire state was covered and every county was visited..."⁹⁰

The campaign had the desired effect of publicizing and popularizing the need for improved schools. Crabbe called for an educational commission to make a thorough investigation of the school system. The commission was to make a report to the General Assembly including such suggestions, recommendations, revisions, corrections, and amendments, as its members deemed necessary.⁹¹

The General Assembly responded by passing the Sullivan Bill, more commonly known as the County School District law. The new law called for the establishment of a high school in every county, changed the name of Kentucky State College to Kentucky State University, increased collegiate appropriations, provided funds to normal schools to enhance teacher preparation, established a State Education Commission and charged it with

⁸⁹ Thomas D. Clark, *A History of Kentucky* (Ashland, Kentucky: The Jesse Stuart Foundation, 1988), 367.

⁹⁰ Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 200.

⁹¹ Sessions Act 1908, Chapter 65, 171.

the responsibility to make a report on the schools, instituted compulsory attendance for children in cities of the fourth class and larger, and passed a child labor law.⁹²

The educational commission began a thorough study of the education laws of Kentucky and those of other states. The school laws already in force were rewritten, rearranged, codified and became the new school code. After consultation and deliberation with educational leaders, a code was outlined that covered the whole common school system of the state. This code was submitted to the General Assembly of 1910 as the report of the commission.⁹³

The principal recommendations in the report were: (a) the ex-officio, three-member State Board of Education should be supplanted by a seven-member State Board of Education, consisting of the state Superintendent of Public Instruction and six experienced educators; (b) the powers and duties of the State Board of Education and the Superintendent of Public Instruction should be extended; (c) the examination of applicants for certificates and the grading of papers should be under the direction of the State Board of Education; (d) provisions should be made for the certification of high school teachers on the basis of training and for the issuance of certificates in special fields; (e) the powers and duties of the county Superintendent should be increased; and (f) institute instructors should be licensed.

Historian James Klotter, summarized Kentucky's efforts in the early 1900s.

“In 1900, Kentucky stood fourth in the South in per capita income devoted to education, and had the only compulsory education law in the South. The 1908 legislature required every county to establish a high school, strengthened attendance rules, and poured more money into the newly created teacher training colleges at

⁹² Barksdale Hamlett, *History of Education in Kentucky* (Frankfort: Kentucky Department of Education, 1914), 205.

⁹³ Moses Edward Ligon, *A History of Public Education in Kentucky* (Bulletin of the Bureau of School Services, XIV no. 4, 1942.)

Bowling Green (now Western Kentucky University) and Richmond (now Eastern Kentucky University). Legislators and education advocates launched a statewide campaign in support of education, and bright days seemed to lie ahead. But it was a false light that soon dimmed. Funding did not continue at an adequate level, and as Kentucky ambled toward education reform, other states ran ahead. By 1920, Kentucky's ranking had fallen from fourth to eleventh. The cost of this lack of progress was incalculable because it drove many of the best and brightest students and teachers out of the state.”⁹⁴

At the beginning of the 20th century, approximately 90 percent of African-Americans in the United States lived in the South. That number declined precipitously during the first half of the twentieth century during what was called the great migration. Throughout the South, severe labor shortages were reported, particularly in the heavily black, cotton and tobacco growing sections. The exodus of cheap labor was a clear signal that blacks were increasingly unwilling to live according to the racial mores that whites had defined. World War I depleted the supply of immigrant labor in the North, so many American Industrialists turned to African-American workers as the solution. Labor agents were sent to recruit workers frequently with inflated “promises of high wages and a new life free from the rule of Judge Lynch and mob violence.” Some recruits viewed the North as ‘Promised Land’; other understood the harsher realities. The great migration, as it came to be called, rekindled old fears of black mobility. But few failed to recognize in the exigencies of wartime a chance to seize control of their own fortunes and to secure new opportunities for their children.”⁹⁵

⁹⁴ James C. Klotter, “What if...” *Kentucky Humanities*. #1 (2000)
<<http://www.kyhumanities.org/magazine/whatif.html>>

⁹⁵ James L. Leloudis, *Schooling in the New South: Pedagogy, Self and Society in North Carolina, 1880 – 1920* (Chapel Hill: The University of North Carolina Press, 1996), 211; see also Nicholas Lemann, *The Promised Land: The Great Black Migration and How it Changed America* (New York: Vintage Books, 1992).

“Many reformed minded whites [believed] that the only hope of slowing the ‘exodus movement’ lay in putting ‘some check’ upon rampant Jim Crow legislation and restrictions. The reformers never called for an end for segregation, but they did insist that, for it’s own sake the white South had to afford African-Americans wider opportunities to ‘better themselves.’ That meant, among other things, providing more equitable school facilities for black children.”⁹⁶

In 1917, the Kentucky Education Association recommended to the legislature that a minimum taxation of twenty cents per \$100 of valuation should be set for every board of education and that the maximum should be fifty cents. At the same time, Superintendent Virgil O. Gilbert recommended a thirty-cent minimum and no maximum.⁹⁷

The General Assembly responded by providing that "any graded school district be permitted to levy in addition to the fifty cents on each one hundred dollars of taxable property and the \$1.50 poll tax, a tax not to exceed twenty-five cents on each one hundred dollars of taxable property in the district and a poll tax of \$1.00, for the purpose of maintaining a school and repairing buildings."⁹⁸ Additional taxes were levied on proceeds from the licensing of racetracks, bank deposits, and sales of oil and distilled spirits; a substantial portion of which was to go to the school fund.⁹⁹ In 1918, the maximum was raised to thirty cents on each \$100 of taxable property.¹⁰⁰

⁹⁶ James L. Leloudis, *Schooling in the New South: Pedagogy, Self and Society in North Carolina, 1880 – 1920* (Chapel Hill: The University of North Carolina Press, 1996), 213.

⁹⁷ H. W. Peters, *History of Education in Kentucky, 1915-1940* (Frankfort, Kentucky: Department of Education), 16 – 17.

⁹⁸ *Ibid.*, 20.

⁹⁹ *Ibid.*, 20-21.

¹⁰⁰ *Ibid.*, 21.

In 1920, the Sullivan Law was revised and amended.¹⁰¹ This act provided for a county board of education of five members elected from the county at large, with authority to appoint a county Superintendent for a term of not more than four years. Some opposition developed to the election of the five trustees from the county-at-large.

To meet this opposition, the legislature of 1922 made provision for dividing each county into five divisions, with one board member from each division.¹⁰² In 1924, the legislature assigned the time of the election of these officials to the regular November election.¹⁰³

By this time, the Kentucky Commission on Education that was called for by the 1920 General Assembly had made its report. The recommendations made in chapter four of the report dealt with financial support of the schools and called for greater adequacy and the "elimination of educational inequities which arise chiefly from the differences in the amount of taxable wealth in different sections of the state, as well as in different communities within the same section of the state."¹⁰⁴

The Commission found that one of the wealthy counties (Woodford) had \$7,615 of taxable property per school age child, while one of the poorer counties (Wolfe) had only \$545. In its report the Commission underscored the problems inherent with this method of funding distribution saying:

A method of distributing state school funds that thus ignores differences in financial resources, ignores differences in the grade and in the quality of the schools although there is equal willingness on the part of the people to make sacrifices for them, and ignores the State's responsibility to provide equal educational opportunities of a satisfactory standard for all the children of the Commonwealth, ought not to be

¹⁰¹ Sessions Act, 1920, Chapter 36, 148.

¹⁰² Sessions Act, 1922, Chapter 39, 149.

¹⁰³ Session Act, 1924, Chapter 52, 78.

¹⁰⁴ H. W. Peters, *History of Education in Kentucky, 1915-1940* (Frankfort, Kentucky: Department of Education), 37.

longer tolerated. Sound policy requires that these differences be taken into account in the distributing of State school funds.¹⁰⁵

In addition to its calls for equity, the report also made a strong plea for more adequate funding, which came in various recommendations throughout the document.

The state will perhaps be startled by the preceding suggestions, all involving greater expenditures. But let us pause to consider. The tide of prosperity does not rise in countries that pay little for education; it rises in those that pay much. A vigorous and industrious population does not seek a state which has poor schools; it seeks a state which has good schools. Having done far less than it should, and less than it could afford, let Kentucky by a by a supreme effort now do at least what it can afford. The returns will be prompt and large. Such action is recommended not only by statesmanship, but by enlightened selfishness, if one must have a lower justification.¹⁰⁶

Similarly, Superintendent George Colvin warned that the inequities between rural and city schools were becoming ever more apparent.

With the enactment of the first County District Law in 1908, the maximum levy rate was set at twenty cents. In 1918, it was advanced to thirty cents, and now it was further advanced to fifty cents. Superintendent Colvin considered this only temporary and recommended that it should later be raised more, ultimately to the end that rural children be provided for equally with city children.¹⁰⁷

In 1920 and again in 1922, graded common school districts, that is, independent districts in cities of the fifth class and smaller, were given "the privilege of a tax rate up to one dollar and twenty-five cents to the hundred, exclusive of any sinking fund levy that might be needed."¹⁰⁸ It is interesting to note that by this time Sullivan Law had spawned 388 independent districts in addition to 120 county districts ranging in size from forty students to fifty thousand students.¹⁰⁹

¹⁰⁵ *Public Education in Kentucky* (New York: General Education Board, 1922), 140-141.

¹⁰⁶ *Ibid.*, 202.

¹⁰⁷ H. W. Peters, *History of Education in Kentucky, 1915-1940* (Frankfort, Kentucky: Department of Education), 41.

¹⁰⁸ *Ibid.*, 43.

¹⁰⁹ *Ibid.*

Kentucky had not kept up with the degree of change going on in the rest of the region, however. "In 1900 Kentucky had stood fourth in the South in educational spending per student...and by 1920 the state ranked only 11th in the South." "The promise [of an educational awakening] had not been realized and generations of Kentuckians were doomed to an educational system that stood near the bottom in most national categories."¹¹⁰

In 1924, the revenue laws were revised and the school fund was excluded from the tax on certain classes of property. Under provisions of the 1924 revenue act, the school fund was to receive twenty and seven-tenths of the tax on real estate. Assessments of money in hand, notes, bonds, accounts, and other credits including shares of stock were excluded from the fund.

Again in 1926, on the advice of Superintendent McHenry Rhoads, the General Assembly raised the maximum allowable tax for a county board of education from fifty cents to seventy-five cents. At nearly the same time, Rhoads continued to warn the General Assembly of "glaring and significant inequities in time, revenue, tenure of service, salaries paid to teachers and property investments for school purposes" which needed to be investigated and remediated.¹¹¹ He asserted,

The distribution of the public school fund of the State should not be made entirely on the basis of school population as at present. A small part of the public school fund should be distributed on the basis of needs. This would require an amendment to the constitution. An alternative, however, would be an appropriation from the general expenditure fund of the State to be administered by the State Board of Education for the purpose of encouraging educational interests in backward sections of the State.¹¹²

¹¹⁰ Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky* (Lexington: The University Press of Kentucky, 1997), 384.

¹¹¹ H. W. Peters, *History of Education in Kentucky, 1915-1940* (Frankfort, Kentucky: Department of Education), 61.

¹¹² *Ibid.*

At length the concerns about equalization were heard by the General Assembly, and in 1930 The Teacher Equalization Act was passed. This act applied \$1,250,000 to the equalization of educational opportunities and enabled the State Board of Education to assist boards of education in poorer counties in raising teacher salaries to the legal minimum of \$75 per month. The passage of this equalization program also permitted the poorer counties to employ better-trained teachers and extend the school term.¹¹³

The State Auditor challenged the constitutionality of the act in 1932 on the grounds that the constitution permitted only per capita, or flat grant method of fund distribution of state school funds. The Kentucky Court of Appeals overturned the Teacher Equalization Act on June 24th of that year.¹¹⁴ The limitations of the constitution of 1891 left the State Board of Education ill-equipped to legally remedy the problems of inequity.

With the overturning of the Teacher Equalization Act, school officials believed that they were left with only the option of trying to provide an adequate minimum so that no children would suffer. In 1935, Superintendent James H. Richmond advised,

In order to guarantee equality of educational opportunity for all of the children of the Commonwealth, it is essential that the state provide a substantial share of the cost of public school support. A \$12 per capita is far from being a sufficient amount to make this equity possible. However, with a state per capita of \$12 or more the children in less favored sections of the state are assured of at least a minimum of educational service, and the public school system of Kentucky will be secure.¹¹⁵

¹¹³ H. W. Peters, *History of Education in Kentucky, 1915-1940* (Frankfort, Kentucky: Department of Education), 79.

¹¹⁴ *Talbott v. Board of Education*, 244 Kentucky Reports (1932), 826.

¹¹⁵ H. W. Peters, *History of Education in Kentucky, 1915-1940* (Frankfort, Kentucky: Department of Education), 87.

Enacted in 1934, the next school code provided for the Kentucky public school system to be placed under the control of a State Board of Education. The authority of the State Superintendent of Public Instruction was significantly increased as well.¹¹⁶

The problems inherent in operating two racially separate systems of education continued to be pointed out in a series of court cases. So strong was the desire to keep Kentucky's colleges and universities segregated that in 1936, the General Assembly passed the Anderson-Mayer State Aid Act. The act "underwrote the graduate education of African-American citizens of the Commonwealth outside the borders of Kentucky in the same fields that were available to white students in public institutions within the state."¹¹⁷ Spawned by a 1921 Missouri law and spread throughout the region, the idea behind the Anderson-Mayer Act was to keep the doors of southern graduate schools closed to African-American students through the first half of the twentieth century.

A 1938 Supreme Court case, *Hale v. Kentucky*, outlawed "a systematic and arbitrary exclusion of Negroes from the jury list"¹¹⁸ In 1942, the city of Louisville equalized the salaries of black and white teachers, and in the same year, the two racially separated teachers unions merged. A 1940's survey of state educational facilities showed that black school buildings had half the value of white ones [and] "the doctrine of 'separate but equal' seldom addressed the second part as well as the first. More than that, the spiritual

¹¹⁶ H. W. Peters, *History of Education in Kentucky, 1915-1940* (Frankfort, Kentucky: Department of Education), 96.

¹¹⁷ Vernell Denae Larkin, "Dreams Fulfilled and Dreams Denied: The Ironies and Paradoxes of Being a Student under the Anderson-Mayer State Aid Act 1936-1950," Ed. D. diss., University of Kentucky, 2001, 6.

¹¹⁸ Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky* (Lexington: The University Press of Kentucky, 1997), 385.

depravation arising from segregation continued to be worse than any building inequities.”¹¹⁹

But efforts to address inequities still focused on differences among schools for white children.

Historian James Klotter says of the 1940s,

Kentucky's education system stood in shambles. Some 95 percent of American children were enrolled in elementary school, but only 63 percent of Kentucky's were. Kentucky's per student expenditure was half the national average. The Commonwealth ranked dead last in the percentage of high school graduates. Segregation, with its separate (and unequal) schools, wasted money and squandered human potential. Kentucky is still struggling to climb out of that educational hole.¹²⁰

Superintendent John W. Booker succeeded in convincing the 1940 legislature to place a constitutional amendment to Section 186 on the ballot. Once ratified, the amendment authorized the General Assembly to allocate ten percent of the state education fund to be distributed on some basis other than the census method. The amendment carried and the 1942 Assembly enacted a law governing the distribution of the fund.¹²¹

Chapter 14 of the Acts of 1940 provided that if the available funds of any district failed to provide an income of \$30 per pupil per year, then the Equalization Fund would bring the total up to \$30 per pupil for the district. In case the fund was not sufficient for this, the available amount of the fund was to be distributed on a percentage basis determined by the ratio of the fund to \$30 per pupil per year.¹²²

¹¹⁹ Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky* (Lexington: The University Press of Kentucky, 1997), 385.

¹²⁰ James C. Klotter, “What if...” *Kentucky Humanities*. #1 (2000)
<<http://www.kyhumanities.org/magazine/whatif.html>>

¹²¹ *History of Education in Kentucky: 1939-1964* (Frankfort: Department of Kentucky, 1963), 27.

¹²² *History of Education in Kentucky: 1939-1964* (Frankfort: Department of Kentucky, 1963), 29.

The General Assembly enacted the law in January of 1942 directing that \$400,000 be sent to districts on other than a per capita basis. The fund was made available to any district with a state-approved budget, salary schedule and maximum permissible school tax. "This law permitted a sufficient amount to be sent to each district to enable the board of education to have available \$30 per child per year in average daily attendance."¹²³

The General Assembly appropriated \$1,500,000 in 1944 for equalization purposes to districts whose total net revenue did not yield as much as \$40 per pupil in average daily membership. Seventy-eight districts participated in 1943-44. In 1945-46, sixty-nine districts participated, as did ninety in 1946-47. By that time the fund had grown to \$1,800,000.¹²⁴

Despite these efforts, Kentucky's schools continued to lag behind in the support received through state funding.

The annual income of Kentucky is \$1,105 for each child. Its rank in ability to support schools is 43, which places it in the lowest eighth of the states as to this criterion. The state also faces the necessity of maintaining separate school systems. It places a relatively low value upon education, devoting but 3.54 per cent of its income to the support of its school system and ranking thirty-seventh with respect to this effort... Kentucky occupies thirty-eighth place with respect to all-around educational performance.¹²⁵

Again in 1949, Kentucky voters approved a constitutional amendment that permitted twenty-five per cent of the school fund to be allocated to tax-poor districts. An amendment to Section 186 of the Constitution was added in 1952 that nullified distribution of funds on a per capita basis and completely vested the General Assembly with the power

¹²³ *History of Education in Kentucky: 1939-1964* (Frankfort: Department of Kentucky, 1963), 39.

¹²⁴ *Ibid.*, 65.

¹²⁵ Raymond M. Hughes and William H. Lancelot, *Education: America's Magic* (Ames, IA: Iowa State College Press, 1946) in Frank L. McVey, *The Gates Open Slowly* (Lexington, Kentucky: University of Kentucky Press, 1949), 282.

and responsibility for creating an efficient system of common schools. The next year, the General Assembly enacted an equalization law that prepared the way for what is known as the Minimum Foundation Program.

In 1950, the Day Law was amended by the state legislature, allowing Berea College, once again, to admit black students. However, the amendment applied only to those students who could not find comparable courses at the Kentucky State College for Negroes.¹²⁶ This restriction was ultimately removed when

In a unanimous decision in 1954, the court ruled segregation illegal, in *Brown v. Board of Education of Topeka Kansas*. By declaring that ‘in the field of public education the doctrine of separate but equal has no place,’ for such a policy is ‘inherently unequal,’ the U. S. Supreme Court accelerated a slowly developing Civil Rights movement.”¹²⁷

But as we have seen, a court ruling seldom produces an immediately favorable response from the public. Kentucky’s most prominent newspaper at the time, the Louisville *Courier-Journal*, came out in favor of acceptance of the *Brown* decision and supported the actions of others who did as well. Governor Lawrence Wetherby declared, “Kentucky will meet the issue fairly and squarely for all” but, “across the South massive resistance to integration was the common response.”¹²⁸

In the 1950’s white citizens were still far from racial egalitarians but small steps toward social justice for African-Americans began to be taken. In 1955, a young black woman entered Lafayette High School in Lexington. “When the Mississippi Valley Historical Association held its national meeting in Lexington in 1953, one hotel in the city

¹²⁶ “We Shall Overcome,” National Register of Historic Places Web Site.
<<http://www.cr.nps.gov/nr/travel/civilrights/sitelist1.htm>>

¹²⁷ Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky* (Lexington: The University Press of Kentucky, 1997), 386.

¹²⁸ *Ibid.*, 387.

opened its doors to black guests for the first time. The next year the city directory there dropped the C [for colored] designation after people's names."¹²⁹

¹²⁹ Lowell Hayes Harrison and James C. Klotter, *A New History of Kentucky* (Lexington: The University Press of Kentucky, 1997), 389.

The Minimum Foundation Program 1954

Superintendent of Public Instruction Wendell P. Butler knew first hand of the unfortunate conditions and unforgivable attitudes faced by Kentucky's educators. He was a product of Kentucky schools and colleges and began his career as a teacher.

When I taught during the depression, the state did not furnish free textbooks, so many children had no books. In one class, I asked one of my students if he had a geography book.

He replied matter-of-factly, 'No, never had one.'

Then I decided to see if a thought-provoking question would remedy the situation. 'Did you know that three-fourths of the world is covered with water,' I inquired? 'We can read about it and prove it if you get your dad to buy you a book.' The next day I asked, 'John, what did your dad say?'

'Pap tole me to tell you that if three-fourths of the world was covered with water, then just teach me to swim.'¹³⁰

Events like this helped shape Butler's attitudes and desire for a reform of the school system. By the early 1950s, conditions had not improved for many Kentucky children. By all accounts, the school system was still deplorable during this era. Overcrowded classrooms, outmoded buildings, inadequate transportation facilities, and poorly trained teachers all combined to create a general acknowledgement that Kentucky's system of public schooling was certainly not up to the standard set by its constitution.¹³¹

A century earlier, then State School Superintendent Robert Breckinridge proposed an amendment to the Kentucky Constitution, which would permit the distribution of state education funds to be made on a basis other than a per capita allocation. The voters finally

¹³⁰ Wendell P. Butler, in Edwina Ann Doyle, Ruby Layson and Anne Armstrong Thompson, ed. *From the Fort to the Future*. (Lexington: Kentucky Images, 1987), 304.

¹³¹ *Ibid.*, 305.

approved this suggestion in November, 1953 and did so by a large margin.¹³² As a result the Minimum Foundation Program was established. The General Assembly of the Commonwealth of Kentucky adopted the program effective July 1, 1954. In so doing so it declared its intent

to assure substantially equal public school opportunities...for those in attendance in the public schools of the Commonwealth, but not to limit nor to prevent any school district from providing educational services and facilities beyond those issued by the Foundation Program; and to provide, [as funds are made available], ... for the further equalization of educational opportunities.¹³³

The Minimum Foundation Program in Kentucky was based upon a model known as the Strayer-Haig Foundation Program, which simply meant that the legislature would provide a financing system putting together state and local resources in a way in which the schools could in fact provide for the expenditures for the education of the children. The idea was to provide a working level for all schools, that is, a minimum level that the legislature believed was adequate for all schools to operate.¹³⁴

Four provisions constituted the core of the foundation program. A classroom unit was established using a formula based on average daily attendance and divided by a factor determined by the Department of Education. This factor differed for children with special needs so as to produce more funding, due to their greater need. As such, it was a weighted formula. For example, a regular classroom might be established with a student/teacher ratio of 27:1 while a particular type of special education unit may have been maintained at 15:1. This ratio directly affected the number of teachers a district could hire. Based on that

¹³² Wendell P. Butler, in Edwina Ann Doyle, Ruby Layson and Anne Armstrong Thompson, eds. *From the Fort to the Future* (Lexington: Kentucky Images, 1987), 118.

¹³³ Report of the Minimum Foundation Program Study to the Commission on Public Education (Meridian, Mississippi: Associated Consultants in Education, 1961), 1.

¹³⁴ Kern Alexander, *Council for Better Education v. Martha Layne Collins, Governor*, et. al., Civil Action no.85-CI-1759, deposition, 23 June 1987, 8.

measure of educational need, the state set aside an amount of money for salaries, current expenses, capital outlay and transportation.

The money derived from those four categories was calculated for each school district, and from that, the amount of money a district was required to raise in local effort was subtracted. The required effort was a specified tax rate, which equalized up to a given level.¹³⁵ In order to participate in the program, the law required each district to make a contribution based on the proceeds of

a tax of \$1.10 per \$100 of Equalized Value of Taxable Property... The [State Tax] Commission undertakes to find the 100 per cent value of each class of property. The finding is known as 'Equalized Assessed Value.' The total equalized assessed value is determined for each district and then totaled for the state.¹³⁶

The percentage of the state total equalized assessed value that was in each county was used to determine each district's contribution to the Foundation Program; that contribution being a proportional percentage of the state total.¹³⁷

For example, the total of \$1.10 on the state equalized value for 1960 was \$45,873,319.04. Adair County had 0.3387 percent of the state equalized value, and accordingly had that percentage of the total state contribution of all the districts. The amount was \$155,372.93. Similar calculations were made for each district.¹³⁸

In addition to the Minimum Foundation Program, the legislature added what was called the Power Equalization formula, which simply distributed state funds in a manner inversely proportional to the fiscal capacity of the school district. However, the General

¹³⁵ Kern Alexander, *Council for Better Education v. Martha Layne Collins, Governor*, et. al., Civil Action no.85-CI-1759, deposition, 23 June 1987, 10.

¹³⁶ *Report of the Minimum Foundation Program* (Study conducted for the Commission on Public Education. Meridian, Mississippi: Associated Consultants in Education, 1961), 47.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

Assembly never funded the program at a level adequate to achieve its goal and its potential impact was never fully realized.¹³⁹

The three factors affecting the Minimum Foundation Program were the decisions to tax property, and to establish school districts and the inadequate funding of the program itself. The property tax was the principal means for local school support, but property ownership was only one measure of the well being of individuals who pay taxes, and it is thought by many not to be the best measure. Because people pay nearly all taxes out of personal income, that measure is usually considered the best single indicator of personal well-being.

Communities, which may be affluent in terms of property valuation, may be less affluent in terms of personal income. This is particularly true in Kentucky where the correlation between personal income and property valuation for school districts is rather low. This data suggests that state school aid formulas might reasonably include factors other than property to measure district wealth.¹⁴⁰

The decision to establish school districts based virtually on geography alone resulted in a pattern of organization with some very poor school districts and some reasonably affluent districts. In fact, by the 1980's a differential of fiscal capacity as much as eight to one existed among Kentucky's 178 school districts. For example, in 1985-86 in McCreary County, the assessed valuation of property per child was \$33,945. In Anchorage this figure was \$268,345, approximately eight times greater. The result was that even after the state intervenes with the Minimum Foundation Program and the Power Equalization

¹³⁹ Kern Alexander, *Council for Better Education v. Martha Layne Collins, Governor*, et. al., Civil Action no.85-CI-1759, deposition, 23 June 1987, 10.

¹⁴⁰ Kern Alexander, "Wealth Tax as an Alternative Revenue Source." (*Journal of Education Finance*, 2, 1977), 22.

Formula, a difference in revenues still remained of two to three times as much in the most affluent districts as compared to the poorest.¹⁴¹ Finally, inadequate funding kept the program from realizing its full potential to help Kentucky's schools. In James Melton's view,

The big problem with the Foundation Program, like everything else we've done in education, is that we had recommendations that were made. For example, the capital outlay allotment was recommended to be set at \$600. Well, whenever the program was funded it was funded at \$400. The allotment for current expense was recommended to be funded at the rate of \$800. And when it was funded it was funded at the rate of \$400. It's the same story. You can develop the best formula that's possible to develop but if you don't properly fund it, well; it isn't going to perform the way it was conceived.¹⁴²

The inception of the Minimum Foundation Program brought significant changes to Kentucky's schools touching almost every facet of education including, teacher preparation, school facilities, local school governance, pupil teacher ratio, teacher salaries, pupil transportation, total expenditures per pupil, a reduction in high school dropouts and an increase in high school average daily attendance, the number and size of schools, and others.¹⁴³

Superintendent Butler began a second term under Governor Bert Combs, who made funding for education (and a bonus for veterans) his top priority. Upon taking office, Combs immediately set about the task of passing a three per cent sales tax. Coincidentally, Comb's Revenue Commissioner at the time was attorney William Scent, who would

¹⁴¹ Kern Alexander, *Council for Better Education v. Martha Layne Collins, Governor, et. al.*, Civil Action no.85-CI-1759, deposition, 23 June 1987, 18.

¹⁴² James Melton, Interview by William McCann Jr. Tape Recording. 25 June 1990. Oral History Collection, University of Kentucky, Lexington, Kentucky.

¹⁴³ *Report of the Minimum Foundation Program* (Study conducted for the Commission on Public Education. Meridian, Mississippi: Associated Consultants in Education, 1961)

represent the legislature in the *Rose* case years later.¹⁴⁴ Scent later recalled his experience working with Combs.

I first became acquainted with [Combs] when he was on the Court of Appeals and I was a young lawyer over in the Revenue Department. I used to fill out his tax returns for him. And, of course, I was for him in '55. And then in '59, myself, together with Tommy Carroll, we did all of the legal work for the campaign... After he became elected, I became Revenue Commissioner in December of '59.¹⁴⁵

We knew that we were going to have to have a sales tax law. The session had actually started and Combs hadn't given me any guidance at all about a tax bill. So we decided to go ahead on our own to start learning something about the sales and use tax. We had arranged for...some of us to go to Michigan to look over their operation. I think we were going to leave on a Wednesday. And it so happened that on Tuesday Combs called me and asked me to go out to the Stag Country Club to some kind of a Chamber of Commerce luncheon. I went out there with him, and rode with him in his car. And when we came back he let me out in front of the Revenue Department, which is in front of the Capital Annex Building and he just said, (impersonating Combs) 'Scent, I want you to have a 3% sales tax bill on my desk by Friday.' So I, of course, couldn't go to Michigan. I went and got out the...Prentice-Hall tax services that had the Michigan law in it and Colorado and California. And I started drafting a bill.¹⁴⁶

The passage of this tax permitted program growth in several areas not the least of which was education and related efforts such as the establishment of the Kentucky Educational Television Network. In November of 1963, Combs reported Kentucky's progress to the General Assembly saying:

Since 1960 public education has made the greatest gains in the history of Kentucky. More new classrooms have been built than ever before in a four-year period; the loss of teachers to other states has slowed to a trickle; standards for teacher qualifications have been raised; a comprehensive network of vocational schools is being established; 10 community colleges will make higher education available to local areas; and the spadework is complete on what will be the most comprehensive educational television network in the United States.

In the four years of this administration, education has received top priority because the needs in this area were greatest. State financial support for the overall

¹⁴⁴ William Scent, Interview by Bill McCann Jr. Tape Recording. 19 June 1990. Oral History Collection, University of Kentucky, Lexington, Kentucky.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

expansion and support of Kentucky's educational system has increased 84 per cent over the previous four years. All new elementary teachers qualifying for full certification now must hold a college degree, and teacher's salaries have been increased an average of \$1,185 annually.¹⁴⁷

Despite the fact that the Combs administration had added large sums of money to funding for education in Kentucky from 1960 to 1963, most districts were not producing maximum local revenues due to a low level of property assessment for general school purposes. It was as if progress made at the state level retarded the effort of many local districts. As Combs observed,

Even though Kentucky in the year 1960 had the greatest increase in teacher's salaries throughout the nation, it is still a fact that we ought to remember that schoolteachers in Kentucky are still 38th in the nation in amount of pay. And, although we had - I think - the second greatest increase per capita in the nation, it is still a fact that Kentucky is 41st from the top in the amount of money that you and I pay for training and education of our children.¹⁴⁸

During this period, of course, other states were also increasing support for their schools, which offset what would otherwise have been even greater gains for Kentucky in the national statistical rankings. At the same time, there was a problem in Kentucky regarding property assessments. The constitution required assessments to be set at the fair market value; that is, the price that would be paid by a buyer, who was not compelled to buy, to a seller who was not compelled to sell. Historically, property in Kentucky had been woefully under-assessed compared to its fair market value.¹⁴⁹ Council for Better Education school finance expert, Kern Alexander recalled the events that led to the General

¹⁴⁷ *History of Education in Kentucky 1939-1964* (Frankfort: Department of Kentucky, 1963), 193.

¹⁴⁸ Bert Combs, in *History of Education in Kentucky 1939-1964* (Frankfort: Department of Kentucky, 1963), 192.

¹⁴⁹ For a full exploration of unfair tax assessment practices and their crippling affect on Kentucky's schools, see "Cheating Our Children" a series of articles printed in the *Lexington Herald-Leader* from 12 November through 15 December 1989.

Assembly's affirmative action to oppose tax increases, even at the cost of quality education for Kentucky's children.

In 1965 there was the *Russman v. Luckett* case in which the Court of Appeals...held that all property in the state had to be assessed at full value... At that time school districts levied a rate of \$1.50 per \$100 in property valuation.¹⁵⁰

In its ruling, the Kentucky Court of Appeals said "the constitution and statutory law demand assessment of property at its fair cash value, and the people of this Commonwealth and this court will no longer tolerate any substantial retreat from this standard."¹⁵¹ The General Assembly had other ideas, however. Convinced that they would lose their seats if they raised taxes, state legislators decided to change the tax structure of the Commonwealth instead. Intending that *Russman v. Luckett* would not produce an additional penny of new taxes, the General Assembly passed House Bill 1, better known as The Rollback Law. This effort changed several statutes including K.R.S. 160.470, which read:

Notwithstanding any statutory provisions to the contrary, no district board of education shall submit a budget which would require more revenue from local ad valorem taxes than would be produced by application of the preceding year's rate to the levies and net assessment, exclusive of voted levies and net assessment growth as defined in Section 7 of this Act, except as provided in K.R.S. 157.380 (4) and as provided in subsection (4) of this section.¹⁵²

The practical effect was that school districts were frozen into the pattern of assessment that had existed in the prior year. From that point on the discretion of the local district to levy taxes was restricted by the state. As a district increased in assessed valuation, there had to be a corresponding reduction in the rate, so that revenues did not

¹⁵⁰ Kern Alexander, *Council for Better Education v. Martha Layne Collins, Governor*, et. al., Civil Action no.85-CI-1759, deposition, 23 June 1987, 31.

¹⁵¹ *Russman v. Luckett*, 391 S. W. 2d. 694 (1965).

¹⁵² KRS 160.470, circa 1965.

increase.¹⁵³ In an adequate, efficient and equitable system of schools this might not have been a problem. However, as it was in Kentucky, the passage of the Rollback Law froze the inequities that existed within the system at the time. As a by-product, 180 different permissible tax rates were created for the 180 school districts.

In 1966, the General Assembly recognized the taxation difficulties faced by the local school districts as a result of the Rollback Law and allowed the districts authority to levy one of three permissive taxes: the Occupational License Tax, the Utility Gross Receipts Tax and an Excise Tax on gross income. These permissive taxes were subject to recall by the voters, however. The other problem with these permissive taxes was that they were in and of themselves additionally disequalizing. In his deposition for Judge Corns, Alexander explained,

The major problem with the permissive taxes is that the disparity among school districts for non-property taxes in Kentucky is even greater than the disparity for property taxes...These are generally marketplace taxes. A [poor] school district that is not a marketplace would get very little revenue from these permissive taxes. In fact, it's not worth levying the tax because the revenues are so inadequate...the legislature simply provided no source of revenue for the poor school districts and increased the disparity between rich and poor because a few of the more affluent districts were able to levy it and raise more money. It didn't solve the revenue problem and exacerbated the disparity in revenues.¹⁵⁴

The General Assembly responded to concerns raised by educators permitting school districts to take a one-time, ten- percent increase in both 1967 and 1968. However, local politicians, like the General Assembly before them, proved to be too worried about being blamed for additional taxes and as a result, few districts took advantage of the opportunity.

¹⁵³ Kern Alexander, *Council for Better Education v. Martha Layne Collins, Governor*, et. al., Civil Action no.85-CI-1759, deposition, 23 June 1987, 32.

¹⁵⁴ *Ibid.*, 36.

The next major event in the saga of Kentucky public school funding came in 1979 with the passage of House Bill 44. In order to counter inflationary effects at work in the nation's economy, a special session of the General Assembly passed House Bill 44. This measure required districts to reduce their tax rates every year so that current receipts would not be more than four percent higher than those of the previous year. Thus, the bill put a cap on school revenue and retained the cap on the tax rate. Any increase that would bring in more than four percent needed voter approval. The combined effects of House Bills 1 and 44 served effectively to stifle any efforts on the part of local school districts to increase their expenditures for children. According to Alexander,

Kentucky...will not allow local school districts to exercise an option to increase property taxes, resulting in the inability and a lack of flexibility in funding the school districts. This limitation on local property tax continues to push Kentucky downward relative to other states in the utilization of the property tax or...the utilization of wealth or the stock of capital that a state possesses. So the limitation placed here in House Bill 44 will result in a continuous erosion of the utilization of the property tax. In addition to that, and possibly a result of this is even more objectionable to the efficiency or the equitable distribution of resources, the school districts are frozen now into a pattern of funding at the local level that they are unable to extricate themselves from.¹⁵⁵

The final steps in Kentucky's long and troubled road to an "efficient system of schools throughout the Commonwealth" were taken during the Carroll and Brown administrations. Although Carroll's efforts to raise funding for schools were offset by the passage of House Bill 44 (by Lt. Governor Thelma Stovall in Carroll's absence from the state) he was successful in passing House Bill 4. This act created the Power Equalization program, which was created to directly address the equity issue. Unfortunately, funding of the Power Equalization program was small enough to make little difference in the reduction of disparities between poor and wealthy districts.¹⁵⁶

When Governor John Y. Brown took office in 1981 he reduced the Power Equalization program by executive order from \$40,000,000 to \$31,000,000. Declining

¹⁵⁵ *Ibid.*, 34.

¹⁵⁶ Kern Alexander, *Council for Better Education v. Martha Layne Collins, Governor*, et. al., Civil Action no.85-CI-1759, deposition, 23 June 1987, 52.

general revenues in Kentucky kept at bay Kentucky's ability to achieve equality of educational opportunity.

Chapter Summary

The establishment of an efficient system of common schools, as required by the state constitution, has long been a problem in Kentucky. The commitment to a well-educated citizenry has historically been weak. Kentucky's agrarian economy, traditionalistic political culture made it typical of other states in the South, which languished among the least supported public schools in the nation. Kentucky has a long history of social inequity much of which has been reflected in its laws and in its schools.

By the 1950s a reasonably sound methodology for funding an efficient system of common schools was described in the Minimum Foundation Program. But the system was rendered inequitable and inadequate, due to most legislators' refusal to vote for adequate funding, the lack of a mandate to levy the necessary local taxes, and artificially low tax assessments.

In 1965, the Kentucky Court of Appeals ruled in *Russman v. Lockett* that all property in the state had to be assessed at full value. But rather than support the decision, the General Assembly passed the Rollback Law. Under this law as a school district increased in assessed valuation, there had to be a corresponding reduction in the rate so the funding inequities already present were frozen into place. Soon followed House Bill 44, which limited school districts to no more than a four percent increase in current revenues and effectively stifled any chance for local school districts to raise revenues.

Time and again the record shows that left to their own devices Kentucky's legislators would happily content themselves to under-fund a very modest system of schools for the benefit of some students.