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UNIVERSITY OF LOUISVILLE

The Issues in the Kentucky Constitutional Convention 1849-1850

A Dissertation

Submitted to the Faculty

Of the Graduate School of the University of Louisville

In Partial Fulfillment of the

Requirements for the Degree

of Master of Arts

Department of History

By

Gertrude Pettus

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Title of Thesis: The Issues in the Kentucky Consti-
tutional Convention 1849-1850

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Introduction

When the Constitution of the United States went into operation a property qualification or a religious test for voting was required by every state except Vermont. It has been estimated that out of the five million inhabitants only about one hundred and fifty thousand could vote. Had manhood suffrage prevailed there would have been seven hundred thousand or more voters.¹ But in the sixty years that followed, the current of liberal democracy set in motion by Thomas Jefferson and the growth of the West with its freehold farmers, led to the general acceptance of the principle of the rule of the people. By 1850 most of the states had done away with restrictions on white manhood suffrage.²

Kentucky had, from the beginning in 1792, given the suffrage to every white man over twenty-one, but not until 1850 did she make numerous offices elective. The widely divergent opinions in regard to the slavery question were probably chiefly responsible for the delay. In Kentucky's first constitution only one branch of the government, namely the House of Representatives, was elected by the direct vote of the people. The Senate and the Governor were selected by an Electoral College, chosen by the voters. This constitution also provided for a referendum in 1797, and on the

1. Thorpe, Francis Newton, A Constitutional History of the American People, (1898), Vol. 1, p. 97.

2. Ibid., Vol. II, p. 404.

calling of a new constitutional convention, for another in 1798. The vote in 1798 was 8, 804, out of 11, 853 votes cast³, in favor of calling the convention.

The Second Constitution of Kentucky made certain concessions to democratic ideals, chief among them being the direct election of the governor and senators. Further amendment was made very difficult by requiring a majority of the popular vote for two successive years before another constitutional convention could be called.

Between 1810 and 1830 the growth of democracy, especially in the West, culminated in the election of Andrew Jackson in 1828 and the establishment of the Democratic Party in 1832. No change was made in the Federal Constitution, but more and more states revised their fundamental laws to provide wider suffrage and more elective offices.

In Kentucky constitutional reform was delayed because of the controversy over the slavery question. A number of constitutional reforms, such as the popular election of judges and ministerial officers, a reduction of state debt, a redistribution of representation in the legislature, the establishment of a common school system, a ban on dueling, and others were desired by pro-slavery and anti-slavery forces alike. The pro-slavery men, however, were alarmed by the activities of the radical abolitionists, many of them outside the state, who worked to have an anti-slavery provision included in a

3. Collins, Richard H., History of Kentucky, (Revised 1924), Vol. I, p. 23.

new constitution whenever it should be written. Not until 1847 did the pro-slavery forces feel strong and well organized enough to agree to put the question of calling a constitutional convention to popular vote.

A bill for the convention was passed in the legislature on January 10, 1847, and twice received the requisite majority of the popular votes in the ensuing August elections. In August 1849, the delegates were elected and the Convention assembled at Frankfort, October 1, 1849. The public discussions, preceding the referenda, and the debates in the Constitutional Convention of 1849, centered chiefly about the extension of democracy, as then conceived, and about the question of slavery, which was agitating the whole nation at that time.

The following account in this discussion is intended to show the influence of these topics, as well as some others, upon the formation of the Kentucky Constitution of 1850. Such an account may serve to illustrate the history of American democracy, both as a concept in the minds of men, and as an actual form of government.

Chapter I

The Demand for a New Constitution

Chapter I

The Demand for a New Constitution.

When the first Constitution of Kentucky was formulated in 1792, the question of slavery was the most outstanding cause of dissention among the delegates. Two years had scarcely elapsed before a number of other questions were being discussed, and in five years dissatisfaction was so great, it was plainly evident that a revision would soon be necessary.¹

The Second constitutional convention in 1799 lasted only twenty-seven days including Sundays, from July 22, 1799 to August 18²; but many salutary changes were made. The delegates generally were chosen from among the most prominent and thoughtful men in the state. The writing of the document was largely the work of John Breckinridge, and all the proposed changes were thoroughly discussed.³

The chief changes adopted were:

1. Slave owners were permitted to emancipate their slaves, and the right of slaves to trial by jury under certain circumstances was permitted.
2. A more democratic election of governor and senators by direct vote of the people instead of by an electoral college was established.
3. The land laws were simplified.

1. Willis, George L., Kentucky Constitutions and Constitutional Conventions, p. 26. Young, Bennett H., The Constitutions of Kentucky, p. 32.

2. Collins, Richard H., History of Kentucky, (1924), Vol. 1, p. 25

3. Young, Bennett H., The Constitutions of Kentucky, (1890), p. 27

4. The civil and criminal codes were systematized.
5. The penitentiary system was established.
6. Capital punishment was limited for two crimes only, willful murder and treason, instead of for the twenty-seven infractions of law inherited from the old Virginia code originally adopted.
7. Very difficult provisions for the future revisions of the constitution were adopted in Article IX Section 1.⁴

A half century passed before the Third Constitution was adopted. After 1840 demands for a new constitution became more and more clamorous. The eternal question of slavery was constantly argued and discussed and a half dozen other burning questions were to be settled. The newspapers, of which there were a dozen or more in the state at this time,⁵ gave a greater proportion of space than is now given to political speeches and meetings. They had few facilities for obtaining national or world news, and local happenings, while they were noted, had often been related by word of mouth before they got into print. The regular press gave much space to current discussions, special journals were established to work for definite political objectives, and handbills and pamphlets were liberally distributed.

The chief constitutional questions discussed between 1840-1850 were:

1. Slavery. Aided and abetted by forces outside the state, the anti-
-

4. The popular vote for two successive years had to be obtained before the Constitution could be amended.

5. See Bibliography of Newspapers.

slavery movement had made assumed threatening importance. Abolitionists in 1847 had worked for a constitutional convention believing that a majority of the population of the state were emancipationists. Their activities aroused the slave owners in the state to put forth every effort to reaffirm in the Third Constitution their property right in their slaves.⁶

2. The power of the Governor to appoint the Secretary of State, Treasurer, Auditor, Attorney General and other civil officers was opposed by many.⁷

3. The inhibition of the use of the state credit for making internal improvements was necessary to cut down the ever-mounting state debt. An ambitious set of politicians had subsidized railroads and used the state funds to pay for a system of macadam roads thru central Kentucky, and they had planned to build extensively locks, dams, and bridges for the Barren, Green, Licking, and Kentucky Rivers.⁸

4. An entire reorganization of the courts of the state was demanded. There was bitter feeling against the appointment, for political reasons, of the hundreds of judges, justices of the peace, sheriffs, etc. The editor of the Kentucky Yeoman charged: "In very truth the whole system of official appointments and tenures in this state is but one vast mart for the sale and retention of official plunder."⁹ There was no appeal

6. Clark, Thomas D., History of Kentucky, p. 300.

7. The Convention, January 2, 1847.

8. Clark, op. cit., p. 253.

9. Kentucky Yeoman, October 8, 1846.

in criminal cases from the judgement of the circuit courts. Their rulings were sometimes arbitrary and unjust. Clerks of the courts were appointed by the judges.¹⁰

5. A redistribution of representation in the state legislature was demanded by cities and more densely populated counties. They wanted representation based on the population in a given district instead of a territorial apportionment.¹¹

6. A constitutional amendment was sought to put an end to dueling.¹² The legislature had more than once prohibited duels, but they were not backed by public opinion and so the prohibition was not enforced. So many citizens had been injured or killed by this half-civilized method of vindicating one's honor that more and more people were insisting upon its suppression.

7. No successful system of public schools had ever been established for lack of adequate financial support. The Literary Fund appropriated by the Legislature¹³ for public education had disappeared with the failure of the Commonwealth Bank of Kentucky. An unsuccessful attempt to establish a state-wide school system was made in 1830.¹⁴ The system established in 1838 when the legislature had appropriated \$850,000.00¹⁵ failed because the interest on the bonds was withheld,

10. Young, Bennett H., The Constitutions of Kentucky, p. 57

11. Willis, George L., Kentucky Constitutions and Constitutional Convention, p. 32

12. Thorpe, Francis Newton, A Constitutional History of the American People, 1776-1850, Vol. I, p. 131

13. Acts of General Assembly of Kentucky 1821-22, p. 351.

14. Ibid., 1829-30, p. 272.

15. Ibid., 1837-38, p. 274.

and diverted to other channels. A constitutional provision was necessary to insure the school fund against raids upon it, and extra taxes must be added to make adequate provision for the establishment and maintenance of free schools.

Reforms along all these lines were badly needed, but it was the question of slavery that in the end precipitated the call for a new constitution.

In the early thirties the public sentiment in favor of emancipation seemed to be gaining strength. The passage in 1833 of the non-importation act¹⁶ encouraged the anti-slavery forces to work for a constitutional convention that would provide some plan of emancipation. Some of the pro-slavery forces feared that slavery might be abolished if a convention was called at this time. They did not wish to see the power to emancipate put into the hands of the legislature. Others wished to put the strength of the anti-slavery party to the test since many moderate emancipationists had been alienated by the radical abolitionists.¹⁷ The other issues in question likewise influenced the General Assembly to pass a Convention bill in 1837¹⁸ subject to popular referendum in the fall of 1838. In the struggle that followed issues other than emancipation were temporarily lost sight of. Numerous pamphlets and anti-slavery papers were sent into the state by the American Anti-Slavery Society. The Emancipator of New York, their official organ, was very

16. Ibid., 1832-33, p. 238.

17. Martin, Asa, Anti-Slavery Movement in Kentucky, p. 103.

18. Acts of the General Assembly of Kentucky 1836-37, p. 20.

optimistic over the prospects in Kentucky. The Kentucky Commonwealth of Frankfort, one of the leading newspapers in the state, warned the people of the baleful influence of northern abolitionists.¹⁹

Many who favored emancipation began to think that this was not the time to handle the question in a constitutional convention because they feared that rebellion of the slaves and civil strife might result. Among them were James T. Morehead, John J. Helm and Henry Clay.²⁰ The calling of the convention in the fall of 1838 was defeated by a large majority.²¹

Undiscouraged, the anti-slavery forces kept up the agitation for a constitutional convention year after year. In 1846 a bill for calling a convention was passed by the House, but rejected by the Senate.²²

On January 6, 1847, a weekly sheet called The Convention began to be published at Frankfort by R. W. McKee. Articles for and against emancipation as well as the discussion of other reforms were printed. It was continued till February 2, 1848. By this time the pro-slavery forces were better organized and less afraid of a popular vote on the question of emancipation. On January 10, 1847, the bill for a constitutional convention was passed in both houses,²³ and was sustained by a majority of the qualified voters in the following August.²⁴

19. Commonwealth, April 18, 1838

20. Martin, Asa, Anti-Slavery Movement in Kentucky, p. 107.

21. Collins' History of Kentucky, p. 44

22. The Commonwealth, January 20, 1846

23. Acts of General Assembly of Kentucky 1846-47, p.

24. Willis, George L., Kentucky Constitutions and Constitutional Convention, p. 31.

According to the requirements of the 1799 Constitution²⁵ the popular vote was taken again in August, 1848 resulting in a majority of 69,036²⁶ for the Convention.

On January 13, 1849, the General Assembly approved an act for a Constitutional Convention commencing October 1, 1849, and continuing till the work was done. The delegates were to be elected at the regular August election in 1849.²⁷ The Louisville Courier and The Examiner²⁸ both advocated a direct vote by the people on the question of the abolition of slavery at the same election. They did not succeed in getting a bill to that effect through the Legislature. On February 3, 1849 the House of Representatives approved the following resolution:

"Resolved that we, the representatives of the people are opposed to abolition or emancipation in any form or shape whatever, except as now provided for by the laws of the state."²⁹

The spring of 1849 saw many emancipation meetings being held all over the state. The largest was held at Frankfort on April 25. One hundred and fifty delegates from twenty-four different counties were present.³⁰ Henry Clay was elected president. Both political parties were represented. Twenty-one ministers were present. A platform strongly opposed to the continuance of slavery in the state was adopted,

25. Article IX Section 1.

26. Young, Bennett H., The Constitutions of Kentucky, p. 49

27. Acts of General Assembly of Kentucky 1848-49, p. 3.

28. Louisville Courier, February 5, 1849; The Examiner, February 10, 1849.

29. Journal of the House 1848-49, p. 242.

30. The Examiner, April 28, 1849.

but no plan of emancipation was decided upon. All over the state the same differences of opinion as to ways and means, plus the bitter opposition of the voters to "meddling" abolitionists from outside the state, lost the emancipationists many votes in the August elections.³¹

The pro-slavery party rallied both Whigs and Democrats and formed a strong organization with a platform including many of the desired reforms which added strength to their campaign. Their selection of delegates was clever and efficacious.³²

When the convention assembled in Frankfort on October 1, 1849, not more than half a dozen members were definitely anti-slavery. The Democrats outnumbered the Whigs, who were generally more conservative and opposed to reforms.

James D. Guthrie, a prominent Democrat of Louisville was elected President of the Convention. He was a lawyer, financier and slave-owner.³³

Thomas J. Helm, a Whig, was elected Secretary. He was born at Elizabethtown. He had studied law at Glasgow, had served as clerk of the Barren County Court and later served for twenty-two years as Clerk of the House of Representatives. He was very efficient and popular.³⁴ T. D. Tilford was the assistant Secretary.

The Daily Commonwealth of Frankfort was selected as the official

31. Clark, Thomas D., History of Kentucky, p. 300.

32. The Louisville Journal, January 23, 1849.

33. Biographical Encyclopedia of Kentucky, p. 782.

34. Ibid., p. 2178.

newspaper to publish the proceedings of the Convention from day to day. R. Sutton was their reporter and was to be admitted regularly, to all the sessions of the convention. William Preston of Louisville made a motion to have T. M. McCarthy of the Louisville Courier appointed an official reporter also. The motion was lost and no other reporter was admitted to the sessions of the convention.³⁵ Nevertheless the Courier established an office at Frankfort and Mr. McCarthy was on duty to promptly relate the happenings as reported by the Commonwealth, or otherwise, from day to day.

William Tanner and John W. Finnell were appointed printers.³⁶

After spending several days getting organized the Convention got down to work on October 5. Dr. Stuart Robinson opened with prayer and the practice of beginning each session in that way was continued to the last day.

The personnel of the convention included men from various occupations, professions and political affiliations. There were forty-two lawyers, thirty-six farmers, nine physicians, four merchants, three clerks, two preachers, one hotel-keeper and one mechanic.³⁷ The following men spoke oftenest and were very influential in shaping the main thought of the constitution.

Charles A. Wickliffe spoke most frequently. He was a prominent lawyer and Whig politician, who had served in the state legislature,

35. Debates of the Convention, p. 26

36. Ibid., p. 27

37. Collins' History of Kentucky, Volume 1, p. 59.

was elected lieutenant-governor in 1836 and served as governor after the death of Governor Clark in 1839. He was post-master general of the United States under President Tyler from 1841-1845.³⁸

William Preston of Louisville had served during the Mexican War as Lieutenant Colonel of the Fourth Kentucky Regiment of Volunteer Infantry under the command of General Butler. He was an accomplished scholar, a brave and skillful soldier.³⁹

David Merriwether, son of W. A. Merriwether, a rich farmer of Jefferson County lived nine miles from Louisville. He served in the Mexican War. He returned and resumed farming, but was a student of both law and medicine.⁴⁰

Ben Hardin was a prominent whig and eloquent speaker, successful in his law practice throughout the state. He had been in the state legislature for years and had introduced the anti-dueling act of 1812. He was appointed Secretary of State under Governor William Owsley, but they did not agree and he resigned from that office.⁴¹

Beverley L. Clarke, also a whig, moved from Virginia to Kentucky in 1832. He studied law under James W. Davidson and Judge Robertson. He represented Simpson County in three sessions of the legislature. He represented the third Congressional district one term. He ran

38. Biographical Encyclopedica of Kentucky, p. 25.

39. Ibid., p. 354.

40. Ibid., p. 437.

41. Dictionary of American Biography, Vol. VII, p. 224.
Biographical Encyclopedica of Kentucky, p. 672.

against Morehead for governor in 1856. He was afterward appointed minister to Guatemala in Central America in 1858 and died there in 1861.⁴²

Archibald Dixon from Henderson, a brilliant lawyer, was a prominent Whig and warm friend of Henry Clay. He served repeatedly as a member of the state legislature, was lieutenant-governor with Governor Owsley, 1840-44, and afterward state senator. He missed being elected president of the Convention by a narrow margin.⁴³

Garrett Davis was a man of great learning and very strong convictions. He was the author of Section 3 Article XIII concerning the property right in slaves. His opposition to the elected judiciary caused him to resign from the convention before the session was ended and refuse to attach his name to the constitution.⁴⁴

John W. Stevenson, Whig, was a prominent lawyer from Covington, Kentucky. Later he served as Lieutenant Governor, Governor and United States Senator.⁴⁵

On Monday, October 8, the President, Mr. Guthrie, announced the following standing committees:

- No. 1. The committee on the Executive for the state at large - Chairman Mr. Archibald Dixon.
- No. 2. The committee on the Executive and Ministerial Offices for Counties and Districts - Chairman Squire Turner.

42. Biographical Encyclopedia of Kentucky, p. 120.

43. Debates of the Convention, p. 15.

44. Louisville Courier, December 29, 1849.

45. Biographical Encyclopedia of Kentucky, p. 778.

- No. 3. The committee on the Militia - Chairman, Lucius Desha.
- No. 4. The committee on the Legislative Department - Chairman - Beverly L. Clarke.
- No. 5. The committee on the Court of Appeals - Chairman, Charles A. Wickliffe.
- No. 6. The committee on the Circuit Courts - Chairman, Ben Hardin.
- No. 7. The committee on the County Courts - Chairman, Francis M. Bristow.
- No. 8., The committee on Miscellaneous Provisions - Chairman, John P. Stevenson.
- No. 9. The committee on the Revision of the Constitution and slavery.- Chairman, David Merriwether.
- No.10. The committee on Education, Chairman, John D. Taylor.

On Wednesday October 10, David Merriwether, Chairman of the Committee on Slavery, brought in his report.⁴⁶ Slavery was the first subject to be considered at length during the Convention. It has been estimated that about one fourth of the whole time was spent upon it. Education, dueling, and the popular election of the judiciary consumed much time. The work for which the Convention had been called progressed steadily from day to day. The long speeches were endured with courtesy and consideration, as a rule. One member did say,

"The slavery question in the Constitutional Convention had been discussed to death. The mind of the delegates is made up and can not be changed, and when a delegate gets the floor and proceeds to make a speech upon it, as he can not be stopped, all the others can do is to kill time as well as they can until he sits down."⁴⁷

46. Debates of the Convention, p. 35.

47. Ibid., p. 485.

On December 21, 1849, the work was practically finished. The Convention adjourned till June 3, 1850.⁴⁸ In the meanwhile the Legislature passed an act providing for a special election to approve the new Constitution on the first Monday and Tuesday in May, 1850. At that time the Constitution was ratified by a majority of 51,351 votes.⁴⁹

The Convention reassembled on June 3, 1850. The president announced that it was not their purpose "to make any change in principles of material provisions but only to correct verbal errors and ambiguities."⁵⁰

On June 6 Ben Hardin submitted the report of the Committee on Claims for salaries and traveling expenses. There was no objection to the report, but Hardin seemed to think it necessary to make one more final long speech on the subject. The report of the committee was then unanimously accepted.⁵¹

Some verbal amendments to the Constitution were added. On June 11, 1850, the document was formally ordained to be the Constitution of the Commonwealth of Kentucky. The names of the counties were called in alphabetical order and the delegates from each county signed their names in that order.

48. Debates of the Convention, p. 1109.

49. Collins, History of Kentucky, Vol. I, p. 60.

50. Debates of the Convention, p. 1109.

51. Ibid., p. 1119.

Chapter II

Slavery

Chapter II

Slavery

Kentucky as a part of Virginia had slavery from the beginning. In 1790, 16.1% of the population in Kentucky were negroes; in 1800, 18.2%; in 1830, 24%; in 1840, 23.3% and in 1850, 21.4%.¹

When the first Constitution of Kentucky was being written in 1792, the chief bone of contention was whether or not slavery should be permitted within the state. Most of the anti-slavery forces opposed it for religious and humanitarian reasons. They were led by Reverend David Rice, a Presbyterian minister. There were six other ministers among the sixteen who voted in the Convention to outlaw slavery,² while twenty-six voted for Article IX which established the institution of slavery in Kentucky.

The Constitution had hardly gone into effect when a great deal of dissatisfaction with it was manifest on all sides. Slavery was not the only cause of discontent. The established method of electing the governor and senators by a college of electors was not sufficiently democratic to suit the rugged pioneers. In June, 1793, a letter was published in the Kentucky Gazette, urging that efforts be made to have another Constitutional Convention called to amend the constitution as soon as possible. Political clubs and newspapers, The Argus at Frankfort and The Kentucky Gazette at Lexington printed many articles

1. McDougale, Ivan C., Slavery in Kentucky, (1918), p. 9

2. Brown, John Mason, Political Beginnings of Kentucky, The Filson Club Publications No. 6, (1889), p. 229.

3. Kentucky Gazette, Lexington, June 3, 1793.

and kept up interest and arguments for the next five or six years.

Henry Clay, then a young man of twenty-one, recently come from Virginia, wrote a series of articles signed "Scaevola" in the Kentucky Gazette.⁴ They were addressed to the "Electors of Fayette County." He advocated gradual emancipation and colonization, and the omission of the provision that prevented the Legislature from handling the subject.⁵

Fayette County was at that time the political center of the state and one of the largest slave-holding communities. The pro-slavery forces, fearing lest they lose their property formed a strong organization under the able leadership of John C. Breckinridge, assisted by George Nicholas.⁶

In the Second Constitution, therefore they again carried their point. They made little change in the Constitution so far as slavery was concerned. Article VII, Section 1 in the new constitution was almost a reproduction of Article IX in the old one; except that Section 2 was added. This section read, "In the prosecution of slaves for felony no inquest of a grand jury shall be necessary, but the proceedings in such prosecutions shall be regulated by law, except that the General Assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury."⁷

4. Kentucky Gazette, February 18, 1798.

5. Ibid., April 25, 1798

6. Ibid., January 27, 1799.

7. Kentucky Convention of 1799, Article VIII.

Slavery in Kentucky reached its peak about 1830.⁸ There were large numbers of immigrants after 1830, who were not slave-holders. They were small land-owners who did their own farming. The growing of cereals, hemp, and tobacco required personal supervision and there was a growing conviction that slavery in Kentucky was unprofitable.⁹ Because of the invention of the cotton gin, cotton planting, for which slave labor could be profitably used, was being more and more developed on a large scale in the South.¹⁰

From 1815 on, the selling of slaves to the cotton and sugar growing states was steadily increasing. In different parts of Kentucky, dealers at first very quietly, but with increasing boldness rounded up slaves and shipped them in gangs to the South, where their labor in the cotton fields and sugar cane was very profitable.¹¹

The ministers of Kentucky were very pronounced in their opposition to the slave trade.¹² A petition signed by a large number of citizens was presented to the legislature in 1828 asking for the passage of an efficient law to put an end to the importation of slaves into the state,¹³ except those brought in by immigrants expecting to live here. A bill to this effect was considered by the legislature, but did not pass.¹⁴

8. Clark, Thomas D., Op. Cit., p. 277.

9. McDougale, Ivan C., Op. Cit., p. 10.

10. Collings, W. H., Domestic Slave Trade, p. 40

11. McDougale, Ivan C., Op. Cit., p. 13.

12. Martin, Asa, The Anti Slavery Movement in Kentucky, The Filson Club Publications No. 29, (1918), p. 91.

13. Ibid., p. 91.

14. Collins, History of Kentucky, Vol. 1, p. 37.

Every year from 1828 on, some such bill was before the legislature. Finally the Non-Importation bill passed in both houses on February 2, 1833.¹⁵ It was hoped that this law would reduce the slave populations and keep the way open for emancipation in the future. In spite of the act slave traders managed to evade the law and ten years later they became so bold as to advertise their business in The Observer and Reporter of Lexington and in The Louisville Courier.¹⁶

Free negroes who entered from the neighboring states of Indiana and Ohio were considered very undesirable. In a speech before the American Colonization Society in 1829 Henry Clay expressed the belief of most southerners by saying:

"Of all the descriptions of our populations, and of either portion of the colored race, the free people of color are by far, as a class, the most corrupt, depraved, and abandoned. They are not slaves, and yet they are not free. The law, it is true, proclaims them free; but prejudices more powerful than any law, deny them the privileges of free men. They occupy a middle station between the free white population, and the slaves of the United States and their tendency is to corrupt both."¹⁷

The Kentucky Colonization Society was organized in 1829, with the avowed purpose of ridding the state of the serious inconvenience caused by increasing numbers of free negroes. Robert W. Wickliffe, one of the largest slaveholders in Kentucky, was one of the early members of the society. Later he withdrew from the society when it became

15. Acts of General Assembly of Kentucky., 1832-33, p. 258.

16. Clark, T.D., Op. Cit., p. 283.

17. Martin, Asa, The Anti Slavery Movement in Kentucky, The Filson Club Publications No. 29 (1918), p. 49.

plainly evident that their ultimate aim was the emancipation of the slaves. The Society did make a number of efforts to remove free negroes from the state and locate them in Africa. Due to lack of funds it had small success in colonizing the negroes but served to keep the aim of emancipation constantly before the public.¹⁸

Henry Clay continued as a member of the Society, and believed that slavery as an institution was detrimental to the state, and that eventually emancipation would come, but he hated the speeches and opposed the plans of the radical abolitionists.¹⁹ As before stated, he opposed the calling of constitutional conventions for several years, before 1849, believing that it was inexpedient to force the issue at that time.

Cassius M. Clay of Lexington, was the strongest and most outstanding native abolitionist. He acquired his anti-slavery convictions while at Yale College where he came in contact with anti-slavery workers and heard William Lloyd Garrison speak.²⁰ After his election to the state legislature he fought to prevent the repeal of the non-importation law, which was annually before the house.

On June 15, 1845 at Lexington he began to publish The True American, a weekly paper with the declared purpose of bringing about the abolition of slavery in Kentucky. It began with three hundred

18. Martin, Asa, Op. Cit., p. 62.

19. Colton, Calvin, Life and Times of Henry Clay, Vol. 1, p. 195.

20. Clark, T. D., Op. Cit., p. 295.

subscribers in the state, seventeen hundred outside Kentucky and the numbers increased rapidly.²¹

Fearing the growing influence, the pro-slavery forces sent a committee to wait on Mr. Clay and request him to cease publication, claiming that his radical pronouncements endangered the peace of the Commonwealth. Clay was ill at the time. He printed a number of handbills in which he repudiated some of the articles that had appeared in his paper during his illness, claiming that he was not responsible for them. This did not satisfy his opponents. A committee of sixty men accompanied by James B. Clay, son of Henry Clay, proceeded in a determined manner to take possession of the printing office August 14, 1847. The secretary containing his private papers was sent to him at his home. The press type, etc., were packed up and sent to Cincinnati in care of a reliable firm and Clay was so notified.²²

The committee of sixty bold citizens were tried September 18, 1847 for such "illegal action," but were acquitted.²³ All over the state mass meetings were held commending the action of the "Lexington mob" and resolutions were passed recommending the prevention of any such incendiary publications.²⁴ For a while The True American continued to be printed in Cincinnati, like The Philanthropist, a prohibition paper which James G. Birney had attempted to publish at Danville,

21. Martin, Asa, Op. Cit., p. 115.

22. Louisville Weekly Courier, August 27, 1847.

23. Collins, History of Kentucky, Vol. I, p. 51.

24. Maysville Eagle, October 5, 1845.

Kentucky, ten years previously. During the Mexican War the subscriptions to the True American fell off. Clay himself had gone to war, and the paper was discontinued in Cincinnati. His assistant, John C. Vaughn, who had been left in charge, took the materials and lists of subscribers to Louisville and with F. Crosley, on June 18, 1847, began the publication of The Examiner. The Louisville Journal congratulated the editors on their spirit of calmness and moderation, and expressed confidence that it would give no occasion of offense to any portion of the community.²⁵ The confidence was justified and The Examiner retained the respect and friendship of other editors in the state.

To counteract the influence of The Examiner and newspapers supporting emancipation the pro-slavery forces established The Chronicle in Louisville with the express purpose of opposing any form of emancipation whatever. In the main The Chronicle upheld free discussion, but they occasionally resorted to threats of violence against radical abolitionists.²⁶

The older newspapers in the state continued to give much space to the subject. Both pro-slavery and anti-slavery forces were agitating for a convention to be called to put the question to the test of public opinion. The General Assembly of Kentucky taking note of the demand passed a bill in January 1847, calling for a vote to be taken at the next regular election in August, 1847.²⁷ In the election the people

25. The Louisville Journal, June 22, 1847.

26. The Louisville Courier, August 14, 1848.

27. Acts of the General Assembly of Kentucky, 1846-47.

supported the call for the convention by a majority of over 30,000 votes.²⁸ The second election in August of the following year had even better results. The General Assembly on January 13, 1849, ordered the election of candidates for the convention to be held in August 1849.²⁹

During 1849 discussions, speeches and newspaper articles on Emancipation reached fever heat. The Examiner and the Louisville Courier both advocated a direct vote of the people on the question of emancipation.³⁰ A bill for this purpose was defeated in the legislature. The House of Representatives then adopted by a unanimous vote of 93 to 0 the resolution:

"Resolved that we, the representatives of the people of Kentucky, are opposed to the abolition or emancipation of slavery in any form or shape, whatever, except as now provided for by the constitution and laws of the state,"

on February 3, 1849.³¹ The legislature also repealed the most important provisions of the Non-Importation Law of 1833. Robert J. Breckinridge and Cassius M. Clay flooded the state with pamphlets. Speeches and debates were held constantly.

An Emancipation meeting was held in Louisville February 1, 1849. W. W. Woolsey presided. A committee of six men: James Speed, Bland Ballard, Robert Dawson, Thomas Shreve, W. E. Glover and William

28. Collins, Richard H., History of Kentucky, Vol. I, p. 55.

29. Acts of the General Assembly of Kentucky, 1848-49, p.

30. Louisville Courier, February 5, 1849. The Examiner, February 10, 1849.

31. Journal of the House, February 3, 1849. Louisville Journal, February 20, 1849.

Breckinridge was appointed to draft resolutions.³² Another meeting on February 12, 1849 endorsed the resolutions of the committee calling for (1) the absolute prohibition of any more slaves being brought into Kentucky; (2) the power under the new Constitution for the Legislature to perfect a plan for emancipation of all the slaves in the state. Friends were urged to attend other meetings especially the one to be held at Frankfort, Kentucky, April 25, 1849.³³

On February 17, 1849, Henry Clay wrote to his friend Richard Pindell a letter which was published in the Louisville Journal March 5, 1849. Clay stated his belief in emancipation, and that three principles should regulate the establishment of a gradual system of emancipation; first that it should be slow, cautious, and gradual in its operation; second, that it was indispensable that freed slaves should be removed from the state to some colony; third, that the expense of their transportation should be defrayed by a fund to be secured from the labor of the freed slaves. The letter was copied far and wide.

The Frankfort Emancipationist Convention of April 25, 1849, was the largest emancipation meeting ever held in the state. Twenty-four counties sent delegates totaling one hundred and fifty men. Henry Clay was elected president. The Frankfort Commonwealth, and opponent of emancipation, commented: "Truth compels us to say, that we have never seen, on any occasion here or elsewhere, a more intelligent and respectable body of men."³⁴ Twenty-one ministers were among the delegates.

32. Louisville Courier, Feb. 10, 1849.

33. Ibid., February 17, 1849.

34. The Daily Commonwealth, April 26, 1849.

Other emancipation meetings were held in many places, in the state: at Shelbyville May 12;³⁵ at Lexington May 14. A debate on the question of slavery was held at Carlisle June 2.³⁶ Alexander Campbell in The Milennial Harbinger at Bethany, Va., on May 1849, addressed "A Tract to the People of Kentucky on Emancipation."³⁷

As summer advanced the pro-slavery forces became more active. Speeches were made by Ben Hardin, Robert Wickliffe,³⁸ Archibald Dixon, James Guthrie and many others. The full text of a speech by James Guthrie was printed in the Louisville Journal.³⁹ Guthrie, David Merriwether, and William C. Bullitt were chosen the pro-slavery candidates from Louisville for the convention. Their opponents were Chapman Coleman, David L. Beatty, and James Speed.

When the two-day election closed on August 10, 1849, the pro-slavery forces in Louisville had won by an overwhelming majority. This was a great surprise and disappointment to the emancipationists, who regarded Louisville as one of their strongholds. Guthrie had received 229 votes more than Speed.⁴⁰ The pro-slavery forces were better organized and more uniform in belief. They had selected candidates very wisely from among their ablest men. The Louisville Courier published a long article

35. Louisville Weekly Courier, May 19, 1844.

36. Ibid., June 2, 1849.

37. Collins, History of Kentucky, Vol. I, p. 59.

38. Louisville Courier, August 4, 1849.

39. Ibid., August 3, 1849.

40. Ibid., August 11, 1849.

on the defeat of the Emancipationists. The Courier claimed that the determined hostility of both political parties, Whigs and Democrats, was the principal cause. Appeals had been made to the people of the city continually by the political organs of both parties, both of which had made opposition to emancipation the test of orthodoxy. The paper stated that it was believed that the pro-slavery men had expended thousands of dollars in buying votes.⁴¹

On September 22 the same paper reprinted an article from The Examiner, urging all Emancipationists to begin at once to work for an adverse vote on the constitution when it should be submitted for approval to the public.⁴²

The Convention began the consideration of the slavery question very soon after it was organized. Mr. David Merriwether, Chairman of the Committee on Slavery and General Provisions, submitted a report on October 10, 1849. The provisions of the ten sections may be briefly listed as follows:

Sec. 1. The General Assembly shall have no power to pass laws for emancipation of slaves without just remuneration for their owners.

Sec. 2. They shall have no power to prevent immigrants to this state from bringing their slaves with them into the state.

Sec. 3. They shall have no power to pass any law authorizing the emancipation of any slave without a provision for their removal from, and against their return to this state.

41. Louisville Courier, August 11, 1849.

42. Louisville Weekly Courier, September 22, 1849.

Sec. 4. They shall have full power to prevent slaves being brought into this state as merchandize.

Sec. 5. Slaves shall not be brought in from a foreign country.

Sec. 6. They shall have full power to pass laws to oblige owners of slaves to abstain from injuries to them.

Sec. 7. In case of execution of slaves for destruction of property the slave owner and the owner of the property shall both be recompensed.

Sec. 8. The General Assembly shall have power to pass laws requiring free negroes and mulattoes to be removed from the state.

Sec. 9. Free negroes or mulattoes who refused to leave or having left, returned to the state were to be imprisoned in the penitentiary.

Sec. 10. In the prosecution of slaves for felony no inquest of a grand jury should be necessary, etc. as in Section 3, Article IX of the Second Consti tution.⁴³

Squire Turner followed Mr. Merriwether's report with a proposed clause providing for gradual emancipation.⁴⁴ Archibald Dixon replied to Squire Turner in a speech in which he proposed a resolution stating: "This convention has not the power, or right by an principle it incorporates into the constitution of the state, to deprive the citizen of his property, unless it be for the public good, and then by a just compensation therefor."⁴⁵ During the next six weeks C. A. Wickliffe,

43. Debates of the Convention, p. 69.

44. Ibid., p. 71.

45. Ibid., p. 112.

William Preston, William Bullitt, Beverly Clark, Albert Talbott, Ben Hardin, as well as those already mentioned, and others discussed slavery in all its aspects.

The Louisville Courier in the editorial column printed the following "Item," "The Editor of the Kentucky Whig thinks that the members of the Convention were sent to Frankfort to work, not to consume the time in unprofitable speechifying.⁴⁶

At the evening session December 12, 1849 Article X Concerning Slaves was finally adopted; Sec. 1 included sections 1 to 6 as originally proposed by the committee; Sec. 2 included the provisions in sections 8 and 9 of the report and section 10 became Sec. 3 in the new Constitution.

The property right in slaves was further safe guarded by a provision in the Bill of Rights, Article XIII, Sec. 3, introduced by Garrett Davis:

"The right of property is before and higher than any constitutional sanction, and the right of an owner of a slave and its increase is the same, and as inviolable as the right of the owner of any property whatever."

The triumph of the pro-slavery forces was complete. The Constitution of 1850 retained most of the provisions of the former one regarding slaves. It added provisions making voluntary emancipation more difficult by requiring all emancipated slaves to be sent out of the state. It forbade any free negro to come into the state, and further safeguarded the property right of the slave owner by Section 3 in the Bill of Rights. With the ratification of the convention by a substantial majority all hope of emancipation in Kentucky vanished for many years.

46. Louisville Weekly Courier, October 24, 1849.

Chapter III

The Popular Election of Judges and Ministerial Officers.

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The Popular Election of Judges and Ministerial Officers.

Under the Constitution of 1799, the Governor had tremendous influence through his power of appointing large numbers of executive and ministerial officers; especially the judges who held office legally during good behavior, but actually for life. For the state at large, the Governor appointed the Secretary, Treasurer, Attorney-General, Auditor, Printer and Registrar of the Land Office as well as the Judges of the Supreme Court.¹ Other states had already changed from an appointive to an elective system in the judiciary. Georgia initiated the change in 1818,² and by 1840 most of the states had done the same. Demand for this change had been a constant excuse for new Constitutions.³ Opposition to the appointive system in Kentucky was evident in many newspaper articles, speeches, and published letters. The Kentucky Yeoman of Oct. 6, 1846, charged that "the whole system of official appointments and tenures in this state is one vast mart for the sale and retention of official plunder."

There were at this time one hundred counties in the state, each having a long list of officials directly or indirectly appointed by the Governor. The county court system was particularly obnoxious, because the county judges appointed by the Governor and holding office for life, in turn appointed a long list of minor officers, the clerks of the court,

1. Constitution of 1799, Art. II, Sec. 9, 23, 24.

2. Thorpe, Francis Newton, A Constitutional History of the American People, (1898), Vol. II, p. 458.

3. Ibid., p. 459.

sheriffs, inspectors, collectors and their deputies, surveyors of the highways, constables, jailers and other inferior officers.⁴ Every two years the county courts were accustomed to recommend two of the senior members of its body for sheriffs to be confirmed by the Governor. Often the men appointed did not desire the office for themselves, but sold it to some one who was willing to do the work for only a part of the pay, while the remainder was retained by the Governor's appointee.⁵

The Convention, a weekly periodical published at Frankfort during 1847 and 1848 in the interest of securing a convention to consider various constitutional reforms, printed many objections to the county court system then in force. The first issue had an article objecting to the life tenure of the judges.⁶ A plea for an elected judiciary came from the Kentucky mountains signed "Ben Franklin."⁷ From the same section came another letter complaining that two sheriffs, recently appointed, had sold their offices to strangers. A strong plea for an election of the sheriffs followed.⁸

The Convention reprinted many articles on the subject from other papers. A reprint from the Fleming Flag, signed "Philodemus" said, "The administration of justice is of far more importance to the people than who happens to be Governor."⁹ From the same papers, two weeks

4. Constitution of 1799, Art. II, Sec. 3, 6, 7, 9, 10, 12.

5. Connelley and Coulter, A History of Kentucky, Vol. II, p. 778.

6. The Convention, Jan. 2, 1847.

7. Ibid., Jan. 9, 1847.

8. Ibid., Jan. 18, 1847.

9. Ibid., Apr. 3, 1847.

later, another article was reprinted on the criminal incompetence of the courts, and against the life tenure of the judges.¹⁰ On another page of the same issue of The Convention a quotation from the Kentucky Tribune says, "The greatest evil of all to be rectified is the County Court System."¹¹ The Richmond Chronicle accuses the county courts of transcending their authority in making appropriations. In a sarcastic editorial it speaks of the pure Republican principles of the life tenure system.¹² An article from the Louisville Democrat reprinted in the Convention, says, "The offices of clerks and sheriffs are bought and sold. The judges appoint their particular friends and relatives. Offices go by inheritance from father to son. Officials never resign; or at least seldom, until they have pocketed a due portion of the spoils."¹³

An editorial from the Convention says that the Auditor's Report shows failure to comply with the law for the payment of jurors, and that other abuses are exposed by it.¹⁴

A series of speeches by John Helm, representative from a legislative committee who had prepared a list of desired reforms, were made at various points in the state. These were published in the Convention, notably one on the objectionable method of securing heriffs and the life tenure of judges and clerks.¹⁵

10. The Convention, Apr. 17, 1847.

11. Ibid., Apr. 7, 1847.

12. Ibid., Apr. 11, 1847.

13. Ibid., Mar. 13, 1848.

14. Ibid., Mar. 13, 1848.

15. Ibid., Feb. 2, 1848.

The Georgetown Herald, June 2, 1847, bewails the corruption of the courts and the consequent increase in crime. It says, "The County Court System is at war with the fundamental principles of a republican form of government and is intolerable in a free country."

The Louisville Journal boldly opposed "the electing of all officers and judges by the people" which it called "the present motto and watchword of the Democratic press in Kentucky."¹⁶ Subsequent articles stressed the evils of electing judges, and cited the improbability of rendering impartial decisions against friends who had helped to elect them. The same article commented on the independence of the British judiciary and the speedy carriage of justice in England.¹⁷

The Journal reprinted a sarcastic article from The Chronicle, an anti-abolitionist paper, published for a short time in Louisville. The Chronicle said, "The Aristocratic Whigs of Kentucky are successful in war, but they are unable to elect judge, constable or sheriff." The same copy of the Journal quoted the Louisville Democrat as saying that "a judge should have a feeling of sympathy for the people who had elected him."¹⁸

The opposition of the Whigs as expressed by the Journal to this very popular plank in the convention platform probably lost them many votes in the August election.

Another important cause of dissatisfaction with the courts was that there was no appeal from the decisions of the circuit courts in

16. The Louisville Journal, Apr. 3, 1849.

17. Ibid., Apr. 3, 1849.

18. Ibid., Apr. 7, 1849.

criminal cases. It was also considered unfair that the prosecuting attorneys had the right to challenge the jurors that were being chosen, while the attorneys for the accused had not.

The Convention was hardly organized on October 5, 1849, when Archibald Dixon introduced a resolution providing that judicial officers of the state be elected by the people. In a speech which followed he suggested that the judges in two adjoining districts preside alternately in each of the Courts in order to prevent undue influence over the judges by those who had elected them.¹⁹ On October 6, Garrett Davis offered the counter resolution providing that the Circuit Court judges and the Appellate judges be appointed as before upon the recommendation of the Legislature.²⁰ Three days later, W. A. Wickliffe, chairman of the committee on the Court of Appeals, brought in a report which was finally substantially accepted and incorporated in Article IV of the new Constitution. It was ordered to be printed and made a special order for discussion on the following Monday, October 16.²¹ Several weeks of very serious discussion followed.

On October 26 Garrett Davis expressed his very strong opposition to an elected judiciary. He began by saying, "I think that the judicial department is a matter of infinitely more interest than any other department of all the departments of government Now I conceive that an innovation in that department is about to be made which will

19. Debates of Convention, p. 36

20. Ibid., p. 41.

21. Ibid., p. 58.

in my judgement be fraught with consequences of the greatest mischief.

. . . . I believe that every duty which I owe to my state, requires that I should attempt to prevent the establishment of any such principle in the constitution of the state of Kentucky."²²

Other divisions of the judiciary were being discussed at this time. November 3, Ben Hardin, chairman of the Committee on Circuit Courts, spoke against the section which makes the judges eligible for re-election.²³ The length of the term of the Appellate Judges, whether eight or six years, took up much time in discussion, also whether three or four Appellate judges should be elected.

On Saturday November 10, Charles W. Wickliffe, who had been made chairman of a joint committee on the three divisions of the judiciary, brought in a final report.²⁴ Garrett Davis made one more last unsupported effort to prevent the Convention from voting for the election of the judges. He argued that: "If the judges are elected they will be partisan and political. The people would not select the judges. A few active and intriguing politicians, who manage the conventions and political caucuses, and get control of the political parties of the district, a half dozen men, would control the nominations, and thus decide who should be judges and who should not."²⁵

His speech covers eleven pages of fine print in the Debates of the Convention. He was willing to have executives and ministerial

22. Debates of the Convention, p. 220.

23. Louisville Courier, Nov. 10, 1849.

24. Debates of the Convention, p. 232.

25. Ibid., p. 252.

officers such as clerks, sheriffs, constables, coroners, etc., elected, and to do away with the county courts.²⁶ He felt so strongly about an elected judiciary that he finally resigned from the Convention.²⁷ He refused to sign the constitution or to vote for it when it was offered for confirmation by the public.

Each division in turn, the Appellate Courts,²⁸ the Circuit Courts, and the County Courts, after much discussion, were finally settled on Friday, November 30.²⁹

The following important changes and provisions in regard to the judicial system were adopted:

The four judges of the Appellate Court were to be elected for terms of eight years each, by districts, one judge every two years. Any three of them might constitute a court for the transaction of business. The governor was to appoint a judge only when the unexpired term was less than a year. Otherwise, a new judge was to be elected. The state was to be divided into twelve judicial circuits. A circuit judge was to be elected from each district for a term of six years.

A County Court was to be established in each county. The county judges were to serve terms of four years each. Each county was to be divided into two districts and a Justice of the Peace elected for each district. The right to appeal the decisions in criminal or penal cases, and the right by both prosecuting and defense lawyers to challenge the

26. Debates of the Convention, p. 260-261.

27. Louisville Courier, Dec. 29, 1849.

28. Debates of the Convention, p. 649.

29. Ibid., p. 718.

jurors was provided in Section 39, Article II.

Section 22 of the General Provisions provided that the General Assembly should appoint three persons to revise and rearrange the statute laws of the state. It further provided that other persons should prepare a Code of Practice for Civil and Criminal Courts abridging and simplifying the rules of practice and the laws in relation thereto. In the discussion of this question some one in the convention said that the "laws had become so many and complex that only a gentleman of leisure had time to read them."

Governor Crittenden promptly in 1850 appointed Ephraim M. Ewing, Squire Turner, and Chas. A. Wickliffe to revise and rearrange the statute laws.³⁰ The Legislature thereafter did not concern itself with special legislation for personal and private affairs, such as granting divorces, changing persons' names, etc.

The popular election of nearly all the administrative officials was also established. Attorneys, clerks, assessors, constables and jailers were each elected for the same term of office as the judge in whose court they served. Sheriffs were to be elected in every county every two years and were eligible for reelection once only. The State Treasurer's term was limited to two years. The Lieutenant-Governor, Attorney-General, Auditor of Public Accounts, Registrar of the Land Office, and Superintendent of Public Instruction and the Governor were elected for four years. The latter, however, in accordance with democratic principle was ineligible to succeed himself. After long

30. Collins, History of Kentucky, Vol. I, p. 60.

years of use and abuse his appointive powers were limited to the appointment of the Secretary of State and the Adjutant General of the State Militia. Another elective officer, namely the President of the Board of Internal Improvements was established by Section 23 of General Provisions. It provided, "The President of the Board of Internal Improvements should be elected every four years as was the Governor, as long as the Board of Internal Improvements should be continued. Also that nothing in this Constitution shall prevent the General Assembly from abolishing the Board of Internal Improvements or the office of president thereof."³¹

The value of all these elected officials has been a much disputed question and many people think that the state is behind the time in retaining so long a list.

31. The office of President of the Board of Internal Improvements was abolished by a legislative act Dec. 20, 1861 (Acts of General Assembly of Kentucky, 1861-62-63, p. 39). The board, of three persons elected by the Legislature, was to choose one of their own number to act as Secretary.

Another Legislative act of Feb. 20, 1864 repealed the Act of 1861, (Acts of General Assembly of Kentucky 1863-64, p. 96). The board was hereafter to include the Auditor of the State, Ex Officio, and two other persons, one of whom was to serve as Chairman of the Board.

Chapter IV

The State Funds

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The State Funds.

Thirty years before the question of the state debt was discussed in the Constitutional Convention of 1849, the Legislature had started a long series of appropriations for internal improvements. In 1818 the legislature appointed a committee to inspect the Green, Barren, Cumberland and other navigable rivers in the state and report what could be done for their improvement. During 1818 and 1819, \$38,133.00, out of \$40,000.00 which had been appropriated, was spent to improve navigation. This first venture was not much of a success, and the state finally sold the spades, shovels and other equipment to prevent the total loss of the money.¹

The Louisville and Portland Canal begun in 1825 was built by a private corporation and supported by the city and state.² During the year 1832, 179 flatboats passed through paying tolls amounting to \$25,756.00.³ This was decidedly more profitable.

In 1825 Governor Desha in his message to the Legislature urged that a turnpike road be built from Maysville to Louisville, through Paris, Lexington and Frankfort, with the school funds; and that the tolls from the roads "be sacredly devoted to the interest of education."⁴

1. Clark, Thomas D., History of Kentucky, (1937), p. 250.

2. Ibid., p. 251.

3. Ibid., p. 252.

4. Collins, History of Kentucky, Vol. 1, (revised 1924), p. 33.

Macadamized roads were first made in Kentucky in 1829.⁵ The Legislature made the first appropriation for madacamized roads on January 29, 1830, on condition that three times that amount be also expended by other stockholders.⁶

On January 15, 1831, \$15,000.00 was unconditionally appropriated to the Lexington and Maysville Turnpike Company.⁷ Other appropriations followed until the state invested between two and three million dollars in macadamized roads. They were far above the average of other roads of that day and were of great value to the state, but the credit of the state was badly strained in obtaining them.⁸

On January 27, 1830 a charter was granted to build a railroad from Lexington to whatever point along the Ohio River that the directors deemed most favorable.⁹ Louisville was chosen for the terminal. On October 22, 1830 the first tracks were laid down. The President Elisha J. Winters tried to keep control of the road by selling the stock to a selected few. But eventually the state bought heavily. One and one half miles were ready for operation by August 15, 1832, when the first steam car was run in Kentucky. Progress in continuing the road bed and track laying was slow so that it did not reach Frankfort till January 25, 1835.¹⁰ The Frankfort hill seemed an insurmountable obstacle

5. Collins, History of Kentucky, Vol. I, p. 538.

6. Ibid., p. 540.

7. Ibid., p. 538.

8. Young, Con. Con. and Con. of Ky., p. 58.

9. Clark, History of Kentucky, pgs. 264-265.

10. Collins, History of Kentucky, p. 40.

with the insufficient funds on hand, and there the railroad stopped for so long that its name was popularly changed from Lexington and Ohio to Lexington and Frankfort Railroad.¹¹

The building of the other end of the road from Louisville was even slower and less successful. By 1842 the work on both ends had come to a stand-still, and the Lexington and Ohio Railroad, was sold at auction at Frankfort January 12, 1842, to pay the state the sum of \$150,000.00 and the interest which she as surety had to assume. It was purchased by the state.¹² In 1843 the road was leased to Philip Swigert and Wm. R. McKee for repair and operation. In their hands it was successful for a time. In 1848 the state reclaimed the road, and granted a new charter.¹³ The road was not completed till 1850, when the two ends were finally joined. The state had spent \$322,553.00 on railroads since the first one was projected in 1830.¹⁴

On February 28, 1835, a board of Internal Improvement was created consisting of the governor and four others whom he should appoint.¹⁵ The legislature appropriated \$100,000.00 toward a grand project of coordinating rivers, highways and canals. In September, 1835, the \$100,000.00 worth of script was sold to Prime, Ward and Company of Kentucky and New York.¹⁶

11. Clark, History of Kentucky, p. 226

12. Collins, History of Kentucky, p. 47.

13. Clark, History of Kentucky, p. 267.

14. Young, Con. of Kentucky, p. 58.

15. Acts of General Assembly of Kentucky, 1834-35, p. 285.

16. Collins, History of Kentucky, Vol. I, p. 40.

Then there was the annual interest to be paid by the state every year thereafter. But appropriations for internal improvements did not cease. The improvement in navigation of the Kentucky, Green and Licking rivers with their system of locks and dams took the largest share of the moneys expended and probably gave the best return for the expenditure.¹⁷

Each year the Governors' messages called attention to the mounting state debt and some feeble attempts were made to reduce it. On February 15, 1841 the General Assembly of Kentucky approved an act to raise the rate of taxation to \$.15 on each \$100.00 of taxable property, 5% of which was to go to increase the sinking fund to pay off the public debt. The law was to be in force for two years.¹⁸

On January 14, 1842 the legislature unanimously passed anti-state repudiation resolutions declaring it to be the high and sacred duty of a sovereign state to observe obligations of good faith in all her engagements, not only with her own citizens, but equally and alike with those of other states and countries.¹⁹

In December 31, 1842, Governor Letcher in his message to the legislature admonished against further increase of the state debt for internal improvements.²⁰ For this or some other reason there was a decrease as the following data shows. But after two years the amount rose steadily until the Constitution was drafted.

17. Connolly and Coulter, Vol. 2, p. 725.

18. Acts of General Assembly of Kentucky, 1840-41, p. 59.

19. Collins, History of Kentucky, Vol. I, p. 47.

20. Journal of the House, 1843-44, p. 22.

The Convention published the following information attested by the state auditor, Thomas S. Page.²¹ Revenues collected

In 1833, \$64,750.00

In 1841, \$399,356.00

In 1842, \$355,695.00

In 1843, \$312,235.00

In 1844, \$343,617.00

In 1845, \$360,042.00

In 1846, \$383,283.00

Governor Owsley, in his message January 1, 1848, says the funded debt of the state had been steadily increasing until 1844 when it was \$4,671,503. There was a slight decrease during his administration, the debt being \$4,606,185.86 in 1847 and \$4,503,236.00 in 1848.²²

Governor Crittenden's message January 1, 1850 puts the state debt at \$4,497,652.00.²³

When the agitation for the Constitutional Convention was at its height, The Convention published numerous editorials, contributions from individuals and reprints from other newspapers in regard to the state debt.

An editorial of April 10, 1847 stated:

The state has incurred a debt of \$4,590,176.00, the annual interest being \$266,770.56. The interest on the state debt since 1837 has amounted to \$1,915,342.53, in other words, nearly two million dollars in ten years. It is bad policy to create a large amount of debt to be paid in the future, and must be so regarded by any reflecting man in the community.

21. The Convention, May 22, 1847.

22. Journal of the House 1847-48, page 20.

23. Collins, History of Kentucky, Vol. I, p. 69.

Another editorial in The Convention, April 17, 1847 declared:

We think the Legislature should not possess the power to involve the state in an indefinite amount of debt upon the credit of the state, but that such a policy, if persevered in, is well calculated to bring about repudiation, or enslave posterity.

It was certainly true that "any reflecting man" could see that some check must be placed on the power of the legislature in spending the public money. In the first week of the Convention, before any committees had been appointed, the subject was introduced by Ira P. Root, who offered a resolution outlining and summarizing the power of the Legislature in regard to state funds.²⁴

On October 8 Ben Hardin proposed that a special committee be appointed to inquire into the public debt of the state, and the best practical mode not only to prevent its future increase, but to liquidate the same by the time it should fall due.²⁵ On October 29 the names of the special committee were announced as follows: Ben Hardin, Chairman, David Merriwether, M. P. Marshall, John S. Barlow, John H. McHenry, Richard Shoulson, Jesse Coffey, Thomas Lisle and Andrew Hood.

Five or six weeks passed before the subject came up for discussions. On December 3, Ben Hardin said that some members of the Legislative Committee, beside the special committee of which he was chairman, had been working on the subject. The first real discussion was in regard to the proposal by Ira Root to limit the power of the legislation to contract debts, Ben Hardin was for placing the limit at \$50,000.00. He

24. Debates of the Convention, p. 36.

25. Ibid., p. 55.

said, "In traveling through the state no reform have I ever heard so loudly called for, as that a restriction be put upon the power of the legislature to contract debts."²⁶ He quoted a good many facts and figures regarding the annual revenue and debts for some years back and listed the costs of internal improvements up to that date as

To improve navigation	\$2,133,850.19
For railroads	322,553.00
For turnpike roads	<u>2,525,456.15</u>
Total	4,981,589.34 ²⁷

Some debate followed as to whether the limit should be \$50,000.00 or \$500,000.00, and as to the wording of this and other sections of the provisions. In the main the delegates seemed to be pretty well in accord as to the most important points. On the afternoon of December 4 five new sections in regard to state finances were approved. They may be briefly summarized as follows:²⁸

Section 33. The credit of the Commonwealth shall never be given or loaned in aid of any person, association, municipality or corporation.

Section 34. The legislature should have no power to reduce the Sinking Fund the whole of which was to be applied to the reduction of the state debt.

Section 35. A limit of \$500,000.00 was placed on the power of the legislature to contract debts, except in case of war, invasion, insurrection, or for public defense.

Section 36. Within certain limitations all debts contracted for, had to be provided with taxing arrangements to meet the annual interest payments, and the debt paid within 30 years.

26. Ibid., p. 279.

27. Debates of Convention, p. 753.

28. Ibid., p. 757.

Section 40. The General Assembly could not appropriate over \$100.00 at any one time without a majority of favorable votes of the members of each branch of the General Assembly.

Thus it was thought that the state funds had been safeguarded in every possible way. The new constitution seemed to satisfy most of those who had so bewailed the injudicious squandering of the public money. The Constitution of 1890 reenacted practically the same provisions, prohibiting the General Assembly from incurring a debt of over \$500,000. But according to the interpretation of the Court of Appeals, this prohibition refers only to the bonded debts, and does not include the floating debts, as evidenced by outstanding state warrants.²⁹ Therefore various administrations have gradually increased the floating debt. Even so, it is insignificant when compared with outstanding debts of other states. Kentucky's debt compared to her assessed wealth and the estimated ability of her people to pay the debt is not and never has been alarming. The treasury policy of issuing interest bearing warrants for the payment of current expenses has been partially responsible for the apparently high debt. Recently, considerable sums of money have been drawn from numerous banks which are state depositories and applied to the outstanding debt. Governor Chandler initiated a plan of debt reduction which Governor Johnson has followed and in a recent article in the Courier Journal he declares that the state debt will soon be eliminated. Governor Johnson says the state finances are in the best condition they have been in since 1834.³⁰

29. Manning, J.W., Present Day Government in Kentucky, p. 112.

30. Courier-Journal, Feb. 21, 1941.

The estimated revenue of the state for the year of 1941 in Kentucky will be much greater than last year. There are considerable surplus sums from funds appropriated last year; namely \$190,000. from a \$200,000. emergency fund and \$500,000. from \$4,000,000. appropriated for Social Service.³¹ The governor can retire all the outstanding state warrants if he chooses to use all the state resources. However, advocates of extended social service contend that it would be much better to spend more on heating plants, sewerage systems and electric wiring for hospitals; more attendants for asylums and prisons; more for old age pensions and dependent children; and for an equalization fund for so much per capita for the children of all schools.³² The Constitution of 1850 rescued Kentucky from heavy bonded debts, and the recent return to that principle will soon free the state from debt.

31. Courier-Journal, Feb. 15, 1941.

32. Ibid., Feb. 22, 1941.

Chapter V

A Redistribution of Representation in the Legislature.

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A Redistribution of Representation in the Legislature.

Another question that consumed a great deal of time for discussion in the Convention, was whether or not cities should have separate representation in both Senate and the House of Representatives. According to the provisions of the Constitution of 1799 each county had one Senator, and its quota of representatives in the House according to the ratio fixed by law. If a whole county did not have enough qualified voters to secure a representative it was combined with one or more other counties and thus a representative was secured. Also, any town, having the number of qualified voters equal to the ratio then fixed, was due to have the privilege of separate representation in the House of Representatives but not in the Senate.

Ever since 1831 Louisville had had representation in the house. Her population was much greater than any other town in the state. During the session of the Constitutional Convention, President James Guthrie said that since his thirty years residence in Louisville the population had grown from four thousand to fifty thousand.¹ From 1840 till 1850 a number of other cities in Kentucky had increased considerably and were demanding legislators.

The following excerpts from The Convention, which welcomed letters and expressions of opinion regarding the reforms needed, illustrate the feeling in regard to the question of representation.

1. Debates of the Convention, p. 464.

A letter from Mason County, dated June 12, 1847, and signed "Breathitt," reads in part as follows:²

"It is a fundamental principle of a republic that taxation and representation should go hand in hand. ... Jefferson County, according to her population should have 7 or 8 representatives and 3 Senators. She now has 1 Senator and 4 Representatives." The writer objected to the inequality of representation where smaller counties had to be combined, such as Campbell and Kenton counties having the same representation as Nicholas County and Mason; the latter combination having nearly four times the population of the former. He said, "Such governmental mockery is unequalled in the political history of the world."

John L. Helm made a series of speeches at various places in the state on the needed reforms, approved by a committee of the legislature. He endorsed the principle of representation based upon population instead of upon territorial extent.³

The editor of The Convention, January 11, 1848 says, "The first step in the establishment of a republican government is to give effect to the will of the majority . . . to secure representation on the basis of the number of free white male inhabitants of a certain district, instead of those within a geographical boundary."⁴

When the subject came up for consideration in the Constitutional Convention a great deal of discussion took place. Under the head of the Legislative Department, on November 10, 1849, the question of separate representation for cities was introduced in Section 5 which provided: "that, when it shall appear to the General Assembly that any city or town hath a number of qualified voters equal to the ratio,

2. The Convention, Frankfort, June 19, 1847.

3. Ibid., February 20, 1847.

4. Ibid., January 11, 1849.

then such a city or town shall be invested with the privilege of separate representation in either, or both Houses of the General Assembly; which shall be retained as long as such town or city shall contain a number of qualified voters equal to the ratio, which may from time to time be fixed by law."⁵

Thomas N. Lindsey moved to withhold from the cities the right of representation in the Senate.⁶ President Guthrie from Louisville arose to the defense of the provision as offered.

Squire Turner objected to it on the ground that Louisville, Covington, Newport, Paducah, and other growing cities, were located in a narrow strip of land in the northern part of the state along the Ohio River, while the large agricultural districts of the state had a much smaller population. That large cities were composed of a floating population with no community of interests with the state at large. Most of the inhabitants were not slave owners, they were emancipationists, foreigners, men without property.⁷

Archibald Dixon replied that slavery should not be intruded into this question. It was absurd to contend that giving city people equal representation would give them control of the state, or emancipate the slaves. He said, "Let the cities increase. Their commercial markets for the agricultural products of the state are a great benefit to it."⁸

5. Debates of the Convention, p. 444.

6. Ibid., p. 445.

7. Ibid., p. 449.

8. Ibid., p. 450.

William Preston declared that Kentucky was the first to assert that representation was not based upon territorial extent, or upon property, but upon the number of her brave citizens."⁹

Ben Hardin said that the subject of emancipation should not be confused with this question, that the majority of the people in Louisville though not slave holders, need not be feared as emancipationists.¹⁰

President Guthrie again spoke at length on the credit and prestige that Louisville gave to the State. She was a large manufacturing and commercial center. She had expended her share on internal improvements; she had sent her brave citizens to the Mexican War; she had opened the first free public school in the state; and she was a center of culture. She paid \$43,000.00 in revenue to the state. Therefore she should have her fair share in governmental affairs.¹¹ Archibald Dixon endorsed President Guthrie's remarks.¹²

Mitchell said he was surprised at the long list of subjects that seemed to play an important part in the discussion of the main question. Agriculture, slavery, the heroes of war, internal improvement, the establishment of a public school system, had all passed in a rapid panorama before him. Then he continued with a few more remarks of his own about city representation.¹³

James S. Chrisman then offered a motion that all discussion of

9. Debates of the Convention, p. 452.

10. Ibid., p. 469.

11. Ibid., pgs. 469-475.

12. Ibid., p. 481.

13. Ibid., p. 494.

the matter be brought to a close at noon, November 16.¹⁴ This question also brought out a spirited debate and an amendment that the discussion should be closed by November 19.¹⁵ It did close on November 21. Separate representation for cities was adopted by a vote of 56 to 34.¹⁶

Further discussion perfected the manner in which equal representation should be secured. Article II as finally adopted provided that: The state should be divided into ten Representative districts with ten representatives from each district. That it should be divided into 38 Senatorial districts with one Senator elected from each, thus making one hundred members in the House and thirty-eight members in the Senate. The sessions were to be biennial instead of annual. Members of the House of Representatives were to continue in office for two years, and no longer. The Senators were elected for four year terms, one half of the Senators being elected every two years. The pay of the members of the General Assembly was raised from \$1.50 to \$3.00 per day for a sixty day session. According to the first Constitution the members received only six shillings per day.

Each city should also be divided into representative and senatorial districts, provided they had a number of qualified voters equal to the ratio then fixed, and separate representatives elected from each district. In the year 1850, again in 1857, and every eighth year thereafter, a census of all the qualified voters in the state should be made. At the

14. Debates of the Convention, p. 522.

15. Ibid., p. 528.

16. Ibid., p. 598.

time of the first census Louisville was in one of six counties which composed the seventh district. She was the one city of sufficient size to be entitled to separate representation.¹⁷

Thus the principle of representation based upon population was definitely established in the Third Constitution. It was another application of democratic ideals. For the time being, it gave Louisville considerable influence in state questions. It provided, however, for the other cities to have the same privilege of separate representation, as time went on and their populations eventually reached the required ratio.

An interesting exception to the broader principles of democracy was the provision in Section 27, General Provisions, prohibiting any clergyman, priest, or teacher of any religious persuasion from being a member of the Legislature. The slavery forces that controlled the Convention of 1850, doubtless remembered the long fight for emancipation that ministers had waged ever since the question was debated in the first Constitutional Convention in 1792, and on down thru the years, and wanted no laws passed that tended that way.

17. Young, Kentucky Constitutions, p. 60.

Chapter VI

The Common School System

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The Common School System.

As material and cultural prosperity increased in Kentucky, the question of how to secure a common school system was more often discussed. The first school in Kentucky was taught by Mrs. William Combs in a little log cabin inside the stockade at Fort Harrod in 1775.¹ Other early schools within the stockade fort were at McAfee's Station in 1777, taught by John May, and a third at Boonesborough by Mr. Doniphan in 1779.² People then had a feeling that education was a personal rather than a public affair.

Early in the nineteenth century a number of small private schools were opened for the benefit of the children in a neighborhood. Kentucky at this time had a well established college and a few secondary schools (academies or seminaries) but elementary schools, without any state assistance, were few and poor.

The college known officially as Transylvania University since 1798 had an endowment derived from land grants, from Virginia and Kentucky,³ and from private subscription. It also received one sixth of the fees collected by official land surveyors throughout the state.⁴ Under the presidency of Dr. Horace Holley, Transylvania was for a time

1. Clark, T. D., History of Kentucky, p. 303.

2. Smith, Z. F., School History of Kentucky, p. 174.

3. Littell's Laws, Vol. III, p. 571.

4. Ibid., p. 577.

the most outstanding college in the west. Its Laws and Medical Departments were especially famous.⁵

A number of counties had seminaries under the act of 1798 granting six thousand acres of public land to each institution.⁶ They struggled along without adequate support to prepare a few students for admission to college.

The idea of public assistance for elementary schools developed slowly. Practically all the governors, beginning with Christopher Greenup in 1807 put a plea for education into their annual messages. In 1817 Governor Gabriel Slaughter recommended that taxes be assessed for the establishment and support of a public school system.⁷

Governor Adair in 1821 in his first message urged state aid for Transylvania as being of more importance to the state than elementary schools,⁸ but in his later messages he urged that the legislature do something for elementary education, since Transylvania had received help and was on a more thriving financial basis.

In 1825 Governor Desha denounced Transylvania as "a hot bed of aristocracy" and urged that no more public funds be given to it. His plan was to have as much as possible appropriated for turnpikes, and that the income from the tolls be used for public schools.⁹

Amos Kendall in his paper the Argus published at Lexington, Kentucky,

5. Collins, Lewis, History of Kentucky, Vol. II (1918), p. 502.

6. Littell's Laws, Vol. 1, p. 240.

7. Niles' Register, Vol. II, p. 392.

8. Argus, September 13, 1821.

9. Collins, History of Kentucky, Vol. I, p. 33.

began in 1819 a campaign to arouse popular interest in the project of public schools for Kentucky. In 1821¹⁰ and in 1829¹¹ committees were appointed to investigate educational conditions. Nothing definite came of the first investigation but the second one aroused wide spread interest. Alva Woods, President, and Ben. O. Peers, Professor of Transylvania University, made a survey of public education in Kentucky, its needs and problems. Some of the data was reported as follows:

Number of counties maintaining schools - 78 out of 83

Number of schools - 1,131

Number of children enrolled - 31,834

Number of school age in state - 140,000

Average school enrollment - 20 to 40 pupils

Average salary of teachers per year - \$100.00 to \$400.00

Annual expenditure for all - \$278,592.00

Morgan County had no children at all in school. Bourbon County had the best schools with more than half of all the children in the county enrolled.¹² This report did much to create public opinion favorable to improving the public school situation. It led directly to the calling of an enthusiastic educational convention in Lexington November 6, 1833.¹³

Louisville has the distinction of having the first free public school in the state. Louisville's first charter (1828) contained a

10. Acts of Kentucky, 1821, p. 353.

11. Ibid., 1828-29, p. 194.

12. Connelley & Coulter, History of Kentucky, Vol. II, p. 762.

13. Collins, History of Kentucky, Vol. I, p. 38.

provision that one or more free schools be established.¹⁴ On April 24, 1829, the city council adopted an ordinance establishing a free school for children between the ages of 6 and 14 years. While the trustees were seeking a suitable lot, the school was conducted in the second story of the Baptist Church on the corner of 5th and Green streets. It was really a free school and 250 children crowded it to capacity. Mann Butler was the principal and it was conducted under the Monitorial System. The following year the first school building was erected on the corner of 5th and Walnut streets. It opened the first Monday in September, 1830. It was built to accommodate 750 pupils, 250 on each of three floors. The city council fixed a charge of tuition at \$1.00 per quarter for the primary department and \$1.50 per quarter for the older children.¹⁵

The Jefferson Seminary had been opened in Louisville in 1816. An act of the General Assembly of Kentucky had donated 6,000 acres of land for its establishment February 10, 1798.¹⁶ A subsequent act December 7, 1798, authorized the trustees to raise \$5,000.00 by a lottery conducted for the establishment of the Seminary.¹⁷ Eighteen years later it really was started. An act of the General Assembly of Kentucky, January 29, 1830 gave one moiety of real estate belonging to the Jefferson Seminary and one moiety of the cash and funds on hand to the Mayor and Board of Councilman of the City of Louisville for the purchase of a lot for

14. Acts of Kentucky, 1827-28, p. 208.

15. Johnston, J. Stoddard, Memorial History of Louisville Vol. , p. 234.

16. Littell's Laws, Vol. I, p. 208.

17. Ibid., p. 244.

a High School to be supported jointly by city taxes and the tuition fees of the scholars. The other half was to go to the establishment of Male and Female Orphanages at Middletown.¹⁸

The first law to establish a general school system was adopted by the legislature January 29, 1830.¹⁹ The system in force in Massachusetts was selected to be used in Kentucky. By it the counties were to be divided into districts. Three commissioners for each district were to be elected and the people were to vote taxes to maintain the schools. A census had to be taken of voters and of children of school age. The machinery of organization was expensive and many of the poorer counties simply did nothing about it at all.

Kentucky representatives in Congress had always hoped for Federal aid for public education in their state. In 1836 President Jackson recommended and Congress passed an act, June 23, 1836, providing for the distribution of the surplus funds in the treasury from the sale of public lands. Kentucky received \$1,433,757.00 from this fund. It was to be used for educational purposes and internal improvements.

An act of the General Assembly of Kentucky set aside \$1,000,000.00 for educational purposes February 23, 1837.²⁰ A general law for common schools was adopted and Governor Clarke appointed Rev. Joseph Bullock as first superintendent of Public Instruction. The politicians who were already embarked on a large scheme of internal improvements succeeded

18. Acts of Kentucky, 1828-29-30-31, p. 262.

19. Ibid., 1836-37, p. 321.

20. Ibid., 1828-29-30-31. p. 272.

in getting several amendments. On February 16, 1838 another act of the legislature reduced the educational fund to \$850,000.00.²¹ Only the interest on the money was available and that was often withheld on account of the low state of the treasury. In 1843 only \$2,504.00 had ever been paid to the schools although \$116,376.00 in interest had accumulated.²²

The school funds had been raided so often that on February 10, 1845, the General Assembly of Kentucky approved an act that all the school bonds be delivered to the Governor to be burned in the presence of the Auditor and Treasurer and duplicate lists of the same to be made but not deliverable or transferable.²³ Such unjust treatment aroused all the friends of education to redouble their efforts to get public opinion to force the legislature to give it more consideration.

The cause acquired a valuable champion in Robert J. Breckinridge, whom Governor Owsley appointed state superintendent in 1847. He began a state-wide campaign of speech-making. On February 9, 1848 the House of Representatives passed a resolution that the use of the Hall be tendered to the Reverend Robt. J. Breckinridge to make an address on the subject of common schools and education in General. Also that the Senate be invited to attend.²⁴ Breckinridge delivered a powerful speech.

21. Acts of Kentucky, 1837-38, p. 274

22. Collins, History of Kentucky, Vol. I, p. 503. Hamlett, Barksdale, History of Education in Kentucky, Report of Superintendents, 1840, p. 8.

23. Acts of Kentucky, 1845-46, p. 69.

24. Journal of the House of Representatives, 1847-48, p. 248.

Later the Legislature ordered 5,000 copies of it to be printed and distributed, March 1, 1848.²⁵

The General Assembly approved an act directing the Governor to issue new bonds for the arrears of interest due the educational fund, and to submit to the people a law levying a two-cent tax on each \$100.00 of taxable property for the establishment and maintenance of public schools, February 16, 1848.²⁶ The voters by a large majority, approved.

Breckinridge was reappointed Superintendent by Governor Crittenden and elected to the same office under the 1850 Constitution. He was defeated as a candidate for Constitutional Convention, but he continued his efforts in behalf of public schools and more than any other one man was responsible for the adoption by the Convention of Article XI in the new Constitution which established on a firm basis the Common School System of Kentucky.

On November 6, 1849 John D. Taylor, Chairman of the Committee on Education brought in a report favoring a state school system.²⁷ It was referred to the committee of the whole. On December 10, 1848, the report was taken up for general discussion.²⁸ It is amusing, now that nearly a hundred years have passed, to read the discussions and objections that were offered to it. Ben Hardin said, "I have no opinion of free schools anyhow, none in the world. They are generally under the management of a miserable set of humbugs." He went on to condemn the bad

25. Acts of Kentucky, 1847-48, p. 485.

26. Journal of the House, 1847-48, p. 267.

27. Debates of the Convention, p. 377.

28. Ibid., p. 680.

habits of poor reading and incorrect speech which the children therein acquired.²⁹

C. A. Wickliffe offered an amendment that the school fund be left to the disposition of the legislature, and also the continuance of the two-cent tax or any other taxes for the benefit of education.³⁰

John D. Taylor, chairman of the committee made a long heart-felt speech pleading for education of the masses and people in the humbler walks of life, like unto himself. He frankly announced that he did not trust the legislature to handle the subject in view of the legislative records on the subject.³¹

Ira Root made clever satirical speech in favor of free schools and making fun of Ben Hardin's contentions. He quoted statements of Presidents Washington, John Adams, Madison, Monroe and of Chief Justice Marshall on the value and importance of education of the people as a means of preserving their liberty. The convention adjourned without taking a vote.

On the following day, December 11, 1848, at the evening session, Messrs. Machen and Wickliffe withdrew their amendments and the report as originally submitted was favorably voted. It was incorporated as Article XI in the new Constitution.

The main provisions were as follows:

A Common School Fund, consisting of bonds executed to the Board

29. Debates of the Convention, p. 377.

30. Ibid., p. 889.

31. Ibid., p. 892.

of Education, to the amount of \$1,225,768.52, plus \$73,500.00 stock in the Bank of Kentucky, plus \$51,223.29 balance of interest for the year 1848, unexpended, plus any sum that should be raised by taxation or otherwise, was to be held inviolate for the common schools forever, and for no other purpose.

The money was to be invested and provision was by law for the payment of the proportionate interest to each county.

A Superintendent of Public Instruction was to be elected by the people every four years. His duties and salary should be fixed by law.

Robert J. Breckinridge who had done so much to secure the provisions was, deservedly, the first man elected to the superintendency under the new Constitution.

Chapter VII

Dueling

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Dueling

During the early days of Kentucky many famous duels were fought. This barbarous code as the only method of vindicating one's honor was so firmly fixed in men's minds, that any small offense or insult, either real or imagined, often cost a man his life, or made him a cripple for the rest of his days. The more prominent a man was, professionally, socially or politically, the more binding the obligation seemed to be.

In 1801 the Rowan-Chambers duel was fought at Bardstown, Kentucky, February 3. It was the result of a quarrel over a game of cards. Blows had followed epithets hurled back and forth, and when the combatants were separated, Dr. Chambers, son-in-law of Judge James Sebastian, challenged John Rowan to a duel. The doctor was mortally wounded. John Rowan was unhurt.¹ He lived to become Judge of the State Court of Appeals and one of the most illustrious lawyers in Kentucky.

On Wednesday July 11, 1804, the famous Hamilton-Burr duel was fought at Weehawken Heights, New Jersey. Hamilton was killed, and Burr, the challenger while untouched by Hamilton's fire, had well ruined his chance of success for the rest of his life. A great wave of indignation swept over the country at the unnecessary loss of so valuable a citizen as Hamilton; and the public which had heretofore upheld and even encouraged

1. Johnson, L.F., Famous Kentucky Tragedies and Trials, p. 7.

dueling began to frown down upon it. Laws against it were effective only to the degree that public opinion in a community backed them up.

The duel between Andrew Jackson and Charles Dickinson, a prominent attorney of Nashville, Tennessee, was fought in Logan County, Kentucky, on the bank of the Red River near Russellville, Kentucky on May 30, 1806. Dickinson was mortally wounded and died the following day. Jackson was more seriously wounded than either he or any one else at the time supposed. The ball which entered his breast, raking the bone and breaking two of his ribs, made a wound which was slow in healing. For twenty years afterward it gave him trouble and was supposed to have ultimately been the cause of his death.²

Even Henry Clay, "the Great Pacifactor," felt in honor bound to be the challenger in two duels. His first duel was the result of a heated political discussion with Humphrey Marshall, a fellow member of the Legislature in 1808. They met near Evansville in Indiana and exchanged two shots each, and were each only slightly wounded.³ Eighteen years later, he met Senator John Randolph of Virginia on the bank of the Potomac River near Washington, D.C. Clay was at that time Secretary of State in the National Cabinet. Clay fired first without effect. Randolph then fired deliberately into the air as he had already told his second that he intended to do. Clay rushed up eagerly, and said "I trust God, my dear sir, that you are untouched. After what has occurred I would not have harmed you for a thousand worlds."⁴

2. Dictionary of American Biography, p. 528.

3. Smith, Z.F., Dueling and Some Noted Kentucky Duels, Filson Club Paper, May 10, 1910, p. 1.

4. Clark, T. D., The Rampaging Frontier, p. 192.

Another famous duel between a Kentuckian and a Virginian was the Holman-Waring duel near Frankfort on July 16, 1819.⁵ Francis G. Waring was young and wealthy and was an accomplished duelist. On July 4, 1819 his dog was killed by a saber thrust from Jacob H. Holman, an officer of a company of militia on parade. A fist fight between the two men followed. They were separated before either was much hurt; but Waring, not content, sent a challenge to Holman the following day. They met as planned July 16. They fired simultaneously. Holman's bullet went straight to the heart of Waring and he died instantly. Waring's bullet entered Holman's hip, causing him much pain and illness for months. He finally recovered, but was lamed for life. Holman and his second, William P. Greenup, were indicted and brought to trial for murder on October 12. They were both promptly acquitted and discharged. There was an indictment also against Dr. Joseph Roberts, Waring's second for "aiding and abetting Francis G. Waring for shooting Jacob H. Holman in the right hip." This indictment on motion of the Commonwealth's Attorney was dismissed.⁶

Niles' Register for August 7, 1819 carried the following comment:

"A pair of dunces agreed to shoot at each other a few days ago near Frankfort, Kentucky. One was a young Virginian, the other a printer. The first was instantly killed on the spot, and the other very badly wounded."

On February 4, 1812 the General Assembly of Kentucky approved

5. Johnston, L. F., Famous Kentucky Tragedies and Trials, p. 27.

6. Ibid., p. 1.

an act introduced by Ben Hardin which forbade dueling in Kentucky.⁷ Its provisions seemed to be stringent enough but it was generally ignored. Years afterward when the subject was being discussed in the Convention of 1850 Hardin said, "No man in Kentucky has ever been punished for giving, accepting, carrying a challenge, or even killing his antagonist."⁸

Along with the agitation for other reforms a plea for an anti-dueling clause in the new Constitution was needed. The various newspapers carried frequent accounts of duels, always deplored. The Louisville Journal, February 6, 1848 contained a notice of a duel between S. S. Prentiss and Henry Irwin, that was soon to be fought at Biloxi, Mississippi, and promised to report results. Later they reported that the seconds had called off the affair since the friends of the principals had agreed to avenge in a general melee the possible death of either of the duelists.⁹

Judge Henry Pirtle in an address before the graduating law class of the University of Louisville, denounced the practice of dueling in strong language, as "rude, coarse and full of horrid crime."¹⁰

General Taylor, newly elected President, declined to reinstate two midshipmen who had been dismissed by Polk for engaging in a duel. The Secretary of the Navy had refused to endorse their plea and Taylor said, "Even if the whole cabinet thought otherwise I would not have

7. Acts of the General Assembly of Kentucky 1811-12, p. 178.

8. Debates of the Convention, p. 825.

9. Louisville Journal, March 2, 1848.

10. Ibid., March 7, 1849.

consented to reappoint them. I hate duels, I hate fighting, I hate war. I will have no dueling men about me if I can help it."¹¹

The savagery of a duel, when revenge rather than the vindication of honor was the motive, was a strong reason for outlawing it by a statutory enactment. These instances suffice to show how very necessary it was to have a constitutional amendment that would put an end to these tragedies. Public sentiment in Kentucky was not strong enough at that time to properly enforce the laws that were already enacted.

On the fifth day after the Convention assembled, Ira Root offered the first resolution against dueling.¹² But the Convention was more concerned with weightier matters. On October 8, William R. Thompson offered a resolution that the Committee of the Whole on General Provisions be instructed to inquire into the expediency of an anti-dueling clause in the Constitution.¹³

Wednesday October 10, Thomas James proposed¹⁴ that: "It is expedient to direct the General Assembly to provide by law the mode and manner by which the survivor of a duel and his estate shall be rendered responsible, and be charged with a compensation for the wife and children of the deceased whom he has slain."¹⁵ It was lost. Nearly two months elapsed. On December 5 a resolution disqualifying duelists from holding office was postponed till December 6.

11. Louisville Journal, March 24, 1849, copied from the N.Y. Express.

12. Debates of the Convention, p. 36.

13. Ibid., p. 57.

14. Ibid., p. 67.

At the evening session of December 6, the Convention resumed consideration of the report of the committee on General Provisions to include an anti-dueling clause.¹⁵ Again a speech was made in favor of leaving the punishment of duelists in the hands of the legislature, by Mr. William Bullitt of Louisville.¹⁶ Mr. Elizah Nuttall replied in a learned lengthy and very convincing address insisting upon an anti-dueling clause being included in the Constitution. An editorial in the Weekly Courier (December 19, 1849) by Mr. Crockett commented very favorably on Mr. Nuttall's excellent speech.

Mr. A. K. Marshall moved to amend the resolution of the Committee so as to exclude all duelists as members of the bar.¹⁷ Another amendment offered by William Preston gave the General Assembly power to pass laws fixing the punishment of duelists.¹⁸ Both of these amendments were finally accepted.

Then Mr. Ben Hardin¹⁹ arose and recalled the fact that he had drawn up the act passed February 4, 1812, by the Legislature, against dueling and emphasized the utter futility of its operation. He said that "the false notion of honor, or the false public opinion of honor could only be combatted by a sense of certain, positive, speedy punishment of such wrongdoers." He mentioned instances of Great Britain having recently hung several men who had killed their antagonists in duels.

15. Debates of the Convention, p. 790.

16. Ibid., p. 815.

17. Ibid., p. 821.

18. Ibid., p. 823.

19. Ibid., p. 825.

He said that Frederick the Great of Prussia had declared that if a duel was fought he would hang all concerned in it, including the survivor, without a trial.

The result of these discussions was the incorporation of three very definite provisions against dueling in Article VIII, in Sections 1, 20 and 21. They may be briefly summarized as follows: 1. Any duelist, second, or one who had conveyed a challenge, or assisted in a duel in any way, was prohibited from becoming a member of the General Assembly, or a member of the Bar; or from holding any public office in the state. 2. Such persons should be punished in such manner as the General Assembly should provide. 3. The last provision was added two weeks after the others had been approved. It was proposed by John D. Taylor, and provided that a pardon could be granted by the Governor to any such offenders after five years had elapsed since the duel.²⁰

These provisions did not outlaw dueling in the state, but since the politicians and law makers had been the most frequent offenders, the general result was very efficacious and it aided in increasing public sentiment against the practice.

20. Debates of the Convention, p. 1087.

Chapter VIII

General Provisions and Summary

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Beside the seven major reforms for which the constitutional convention had been called there were a number of minor changes made. Sections 15 and 16 of General Provisions changed the way of voting from the ballot method to the viva voce. All votes thereafter were to be publicly and personally given viva voce. Elections were to be held between 6 A. M. and 7 P. M. on one day only. Previously the elections had been held for three consecutive days. The change was intended to eliminate chances of "stuffing the ballot box," and other forms of manipulation which had prevailed under the former method. The results, however, were far from being what they had hoped. In 1891 the viva voce method of voting was abandoned. Nearly all the other states had given it up long before. The Australian ballot which was then adopted was secret and definite. It offered a substantial barrier to bribe-givers and bribe-takers and afforded the best opportunity for an unbiased expression of opinion at the polls.¹

Article IX fixed the seat of government in the city of Frankfort, until two-thirds of each House the General Assembly should concur in the passage of an act for its removal.

Another note-worthy provision was that no convention to revise the constitution could be called without a two-thirds vote of the entire voting population of the state. Not until forty years later, was the Fourth Constitution adopted. It was an even stronger expression

1. Smith, Z. F., History of Kentucky (revised 1901), p. 795.

of Jeffersonian democracy than its predecessors.² It deprived the Governor of his power of appointing even the Secretary of State.

The most important provisions of the Constitution of 1850 were those relating to: slavery, elective judges and officials, representation, finance and education.

(a) Slavery remained unchanged except by the further safeguard contained in Section 3 of Article XIII concerning the property right in slaves.

(b) The convention had gone to the utmost extreme in putting the judges and practically all the ministerial offices under the elective control of the people. Largely for this reason the Whig leaders of the state and others, who were more conservative, used their influence to prevent the endorsement of the Constitution when it was offered for confirmation by the people. Their opposition was out of sympathy with the spirit of the times, however, we may question the wisdom of elective judges and officers today. The constitution was affirmed by 51,351 out of 91,955 votes cast³ in May, 1850.

(c) Redistribution of representation, as carried out in 1850, was in accord with democratic principles, but changes of conditions and population have made representation less equitable today.

(d) The state finances were stabilized and debt kept low for over half a century.

2. Manning, J.W., History of Kentucky, p. 11

3. Connelley and Coulter, History of Kentucky, Vol. II, p. 837.

(e) A public school system for the whole state was established with an endowment of over one million dollars in state bonds, with provisions to prevent the use of the fund for other purposes. Sufficient impetus to provide further funds by taxation was given by the election of a good superintendent, and the arousal of strong public interest in the cause.

During the last thirty years, as the state has assumed more and more responsibility for the social and economic welfare of the people, the large number of elective officials has become unwieldy and ineffective in administering the complicated affairs of government. By 1934 there were fifty or more statutory boards and commissions appointed by the Governor or by the legislature, or by an elected official. In that year the General Assembly approved an Act of Administrative Reorganization by which most of the boards and commissions were grouped into sixteen major departments, bringing all the scattered agencies under more or less central supervision. The heads of these departments composed an executive cabinet, meeting once a month with the Governor to discuss state affairs.

A second Act of Administrative Reorganization was approved by the Legislature in 1936. Twelve administrative departments, namely: Finance, revenue, highways, health, industrial relations, business relations, conservation, mines and minerals, library and archives, education, welfare, military affairs, were established. Each of the statutory departments is headed by a single commissioner appointed by the Governor, except the Department of Education, headed by an elected officer. The

Governor's cabinet now consists of the seven constitutional officers, elected according to the Constitution of 1891, and the statutory heads of the aforesaid departments.

These administrative reorganizations indicate a partial acceptance of new principles of government, namely: (1) executive responsibility for the whole administrative structure; (2) grouping of like functions in the same administrative department; (3) the use of single commissioners instead of boards; (4) an integrated financial program including sound budgeting, accounting, auditing and purchasing; (5) the use of qualified personnel in administrative departments.⁴ The elected officials have, to a certain extent, been shoved into the background. The work of modern state departments is so technical that capable persons are needed as administrators. Too many of these administrators are still chosen for political reasons. The Governor has the power to direct the administration and should be held responsible for the appointment of incapable persons. The fact that he can not be reelected makes him less concerned with state welfare, and more inclined to appoint men who will in turn advance his political fortunes. Only a radical change of the Constitution will remedy these conditions.

The Constitution of 1850 embodied the "democratic" movement of the day, which was complicated by the question of slavery. Recent economic and social development has caused a need for a new form of state government. But the achievements of the Convention in regard to education and debt are still worthy of remembrance.

4. Manning, J.W., Present Day Government in Kentucky, p. 72.

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