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# Mixed Motivations, Mixed Results: A History of Law, Interest Convergence, and Historically Black Colleges and Universities

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## Mixed Motivations, Mixed Results: A History of Law, Legislation, Historically Black Colleges and Universities, and Interest Convergence

by Marybeth Gasman & Adriel Hilton – 2012

**Background/Context:** *The current debate about historically Black colleges and universities (HBCUs)—whether these colleges are needed in a society that “seeks” equality—is not new but is the product of a continuing controversy that dates back to the close of the Civil War. Since then, each landmark in the history of HBCUs has occasioned renewed discussions of the role of these colleges, with implications for the role of Blacks in society.*

**Purpose/Objective/Research Question/Focus of Study:** *This article will examine the legal and social forces that have had an impact on the development of HBCUs. In exploring this history, the authors will employ Derrick Bell’s notion that most Whites will only accommodate the interests of Blacks in achieving racial equality when it is in the best interest of middle- and upper-class Whites—interest convergence.*

**Research Design:** *This study is historical in nature, drawing on legal cases, archival documents, legislative decisions, and past research related to the funding, classification, and state of HBCUs.*

**Conclusions:** *The authors found that in all but a few cases, legal court decisions, laws, acts, and state and federal decisions as they pertain to HBCUs also had intentional or unintentional benefits for White students and historically White institutions.*

The legal difficulties confronting a Negro who wants to attend a non-Negro college have never been overwhelming so long as no other problems existed. There have been Northern white colleges open to Negroes since well before the Civil War—if the applicant had the proper preparation, enough money to pay tuition and subsistence, and a thick enough skin to endure social isolation and occasional slights. Today almost all white institutions, even in the South, will accept a Negro applicant, and most have done so. Those which have not are mostly small, academically undistinguished, sectarian colleges to which relatively few Negroes would want to go even if they expected to be welcome. (Jencks & Riesman, 1968, p. 33, commenting on why Black colleges have never truly been needed)

Historically Black colleges and universities (HBCUs) serve a unique role in the United States. They represent a haven of Black cultural heritage and a history of African American achievement, which is needed in the 21st century to advance and protect the diversity of United States (Brown, 2001; Brown-Scott, 1994; Fleming, 1976; Hale, 2006; Morris, Allen, Maurrasse, & Gilbert, 1995; J. Williams & Ashley, 2004). HBCUs offer an academic experience that includes, but is not limited to, an emphasis on community service; the promotion of citizenship, democracy, and leadership skills; concern for the physical health and well-being of the student body and the communities from which they come; and career preparation (Brown-Scott; Hale; J. Williams & Ashley). Despite their unmatched contributions to higher education, Black communities, and low-income students, HBCUs continue to be challenged both legally and philosophically (Allen & Jewel, 2002; Brown & Ricard, 2007). Opponents of HBCUs argue that these institutions are no longer useful in a society that claims to provide the same educational opportunity for all (Riley, 2010; Vedder, 2010). Supporters counter that HBCUs are essential in serving the needs of Black students—needs that, because of the legacy of slavery and segregation, are different from those of White students (Gasman, 2007a; Minor, 2008; Palmer, 2008). The current debate about HBCUs—whether these colleges are needed in a society that “seeks” equality—is not new but is the product of a continuing controversy that dates back to the close of the Civil War. Since then, each landmark in the history of HBCUs has occasioned renewed discussions of the role of these colleges, with implications for the role of Blacks in society. This article examines the legal, legislative, and social forces that have had an impact on the development of HBCUs (see Table 1).

In exploring this history, we employ Derrick Bell’s (1992a, 2005) notion that most Whites will only accommodate the interests of Blacks in achieving racial equality when it is in the best interest of middle- and upper-class Whites—interest convergence. Interest convergence is one of the tenets of critical race theory (CRT). CRT, which dates back to the late 1980s, is the product of Derrick Bell and his colleagues in the legal profession. They defined CRT as representing a racial analysis, intervention, and critique of traditional civil rights theory on the one hand, and critical legal studies on the other (Crenshaw, Gotanda, Peller, & Thomas, 1995). Harris (2002) has since promoted the idea that “the motivation behind CRT is not merely to understand this

vexed bond between law and white racial power but to change it” (p. 1218). The central tenets of CRT are: the centrality of race and racism in society, the challenge to dominant ideology, the centrality of experiential knowledge, the interdisciplinary perspective, and a commitment to social justice (Lee, 2008). Lee noted the following: CRT asserts that racism is a permanent component of American life. The central tenets of CRT also challenge the claims of neutrality, objectivity, color-blindness, and meritocracy in society. CRT asserts that the experiential knowledge of people of color is appropriate, legitimate, and an integral part of analyzing and understanding racial inequality. This framework is committed to social justice in an effort to eliminate all forms of subordination of people. Finally, CRT asserts that race and racism should be placed in both a contemporary and historical context using interdisciplinary methods.

CRT can be used to examine laws that support the status quo of White authority and Black subordination. The framework for CRT is predicated on historical court decisions and laws, such as the Dred Scott decision, the Naturalization Act (1790), *Ozawa v. United States* (1922), and *Scott v. Sandford* (1856) (Cooper, 2002). According to DeCuir and Dixson (2004), there are five helpful elements of CRT within educational research: permanence of racism, whiteness as property, interest convergence, critique of liberalism, and counter-storytelling. Permanence of racism suggests that there is a White hierarchal power structure within institutions, including education. Whiteness as property emerges from legal scholars of CRT; these scholars have noted that whiteness has many of the core attributes of property. For example, whiteness can be possessed, transferred, and used to the benefit of those who hold this status. Interest convergence refers to the notion that civil rights gains for Blacks (and other minorities) will only result if these gains converge with the interests of Whites (Bell, 1992a, 2005; Brophy, 2008; Milner, 2008). For the purpose of this research, interest convergence will be used to address the complex relationship between Whites and Blacks in the history of HBCUs.

Brophy (2008) purported that the best example of interest convergence is the landmark 1954 *Brown v. Board of Education of Topeka* decision. When examining this decision, he told us that the Supreme Court backed *Brown* because the ruling served the United States’ Cold War agenda of supporting human rights. To not support it would have cemented the country’s status as a hypocrite—fighting for freedom abroad but not allowing it at home. Moreover, Brophy argued that *Brown* was a decision that was, for the most part, imposed on the South by people in the North. Therefore, Brophy claimed, the interests of those who were devising the decision converged with the interests of the Black plaintiffs.<sup>1</sup>

**Table 1. Summary of Legislation, Laws, and Acts and Impact on Historically Black Colleges and Universities**

Legislation, Act, Law, or Case and year	Level of Education Decision Pertains	Summary	Effect (if any) on HBCUs
Freemen’s Bureau (1865)	Colleges and universities	Provided food, clothing, supplies, job placement, educational facilities, and land to those displaced by the Civil War.	Assisted with the creation of many HBCUs.
Hatch Act (1887)	Colleges and universities	Provided annual support for state agricultural experiment stations established in connection with land grant institutions. Required equal distribution of funds to Black and White institutions unless states directed otherwise.	
Morrill Act of 1890	Colleges and universities	Provided support for establishment of public institutions of higher education—Black and White.	Solidified the separate status of HBCUs.
<i>Plessy v. Ferguson</i> (1896)	Education at all levels	Solidified separate facilities for Blacks.	Solidified the separate status of HBCUs.
<i>Cumming v. Richmond County Board of Education</i> (1899)	K-12 public schools	Sanctioned de jure segregation of races in schools.	Solidified the separate status of HBCUs.
Smith-Hughes Act (1917)	Colleges and universities	Provided funding for vocational education and teacher training in vocational education.	Supported industrial education.
<i>Pearson v. Murray</i> (1936)	Colleges and universities	Declared that the state had to provide equal graduate education to its citizens.	Led to the creation of Morgan State University (to limit additional Black students on the University of Maryland, College Park campus); limited NAACP’s ability to push for full desegregation of higher education in Maryland.
Legislation, Act, Law, or Case and year	Level of Education Decision Pertains	Summary	Effect (if any) on HBCUs
<i>Missouri ex rel. Gaines v. Canada</i> (1938)	Colleges and universities	Declared that the state must provide equal graduate education to its citizens.	Led to the establishment of Lincoln University Law School and an increase in graduate opportunities for Blacks.
<i>Sipuel v. Board of Regents</i> (1948)	Colleges and universities	Declared that the state must provide equal graduate education to its citizens (no enforcement).	Brought more attention to the inadequate funding of HBCUs.
<i>Sweatt v. Painter</i> (1950)	Colleges and universities	Declared that the state must provide equal graduate education to its citizens.	Led to the creation of Texas Southern University’s law school.
<i>Hawkins v. Board of Control</i> (1950)	Colleges and universities	Declared that the state must provide graduate education to Black citizens.	Led to the expansion of graduate education at Florida A&M University.
<i>McLaurin v. Oklahoma State Regents</i> (1950)	Colleges and universities	Declared that the state must provide equal intellectual experiences for Black graduate students.	
<i>Brown v. Board of Education</i> (1954)	K-12 public schools	Declared separate but equal in schools to be unconstitutional.	Impetus for questioning of HBCUs’ existence through current day.
Higher Education Act of 1965	Colleges and universities	Earmarked funding for developing institutions that served low-income students.	Received funding through Title III of the Higher Education Act.
Voting Rights Act of 1965	United States	Guaranteed the right to vote to all citizens.	
<i>Alabama State Teachers</i>	Colleges and universities	Declined to clarify meaning of the state’s duty	Left future of HBCUs uncertain.

Legislation, Act, Law, or Case and year	Level of Education Decision Pertains	Summary	Effect (if any) on HBCUs
<i>Association v. Alabama Public School and College Authority</i> (1968)	universities	to dismantle a dual system.	
<i>Norris v. State Council of Higher Education</i> (1971)	College and universities	Declined to clarify meaning of the state’s duty to dismantle a dual system.	Left future of HBCUs uncertain.
<i>Adams v. Richardson</i> (1973)	Colleges and universities	Placed an emphasis enhancing programmatic offering at HBCUs.	HBCUs are seen as one part of a pluralistic system of higher education.
<i>Geier v. University of Tennessee</i> (1979)	Colleges and universities	Ordered that two public universities in Tennessee merge and for the desegregation of Tennessee’s public colleges and universities. The court reasoned that the state’s adoption of an open-door admissions policy had not effectively dismantled the state’s dual system of higher education.	Merged predominantly White school with a predominantly Black university—the result is Tennessee State University.
HBCU Acts	Colleges and universities	Provided funding to support HBCUs.	Provided an influx of federal funding to HBCUs.
<i>United States v. Fordice</i> (1992)	Colleges and universities	Declared that public higher education must be desegregated and states must eliminate all segregation that is traceable to the state’s prior de jure segregation.	HBCUs required to attract White students in order to receive settlement funding from court decision.

## EARLY HISTORY OF BLACK COLLEGES

During the time of slavery, it was a statutory crime in every state in the South but Tennessee to teach a Black person to read or write (Franklin, 1947; H. Williams, 2005). The rationale for this denial of education for Blacks resided in two contradictory tenets: first, that Blacks were intellectually inferior, and second, that educated Blacks would “get out of their place” and eventually compete with Whites in the economic, political, and social spheres (Roebuck & Murty, 1993; H. Williams).

The first HBCU was established in 1837 when Richard Humphreys, a Quaker from Philadelphia, started the Institute for Colored Youth. The Institute for Colored Youth is now known as Cheyney University. Wilberforce College in Ohio and Lincoln University in Pennsylvania were also established prior to the Civil War. By 1860, only 28 Blacks had received college degrees—a few from HBCUs and most from historically White institutions (HWIs) in the North that admitted Blacks for a brief period (Franklin, 1947). However, at the close of the Civil War in 1865, through the assistance of the government’s Freedmen’s Bureau and early missionaries, small HBCUs appeared rapidly (Anderson, 1988).

In a self-proclaimed effort to protect and aid the former slaves “released from the horrors of slavery,” Congress established the Freedmen’s Bureau (13 Stat. 507):<sup>2</sup>

Be it enacted . . . that there is hereby established in the War Department, to continue during the present war of rebellion, and for one year thereafter, a bureau of refugees, freedmen, and abandoned lands, to which shall be committed, as hereinafter provided, the supervision and management of all abandoned lands, and the control of all subjects relating to refugees and freedmen from rebel states. . . . (Freedmen’s Bureau Act, 1865)

The bureau was headed by General O. O. Howard,<sup>3</sup> and its activities included providing food, clothing, supplies, job placement, educational facilities, and land (Blaustein & Zangrando, 1991). It worked closely with Northern missionaries to coordinate educational activities. Although the bureau was initially mandated to last for the duration of the war and for one year after, Congress extended its services in 1866 (14 Stat. 173).<sup>4</sup> The bureau’s contributions to Blacks were an unprecedented expenditure of federal aid to individuals. Although it was applauded for its humanitarian efforts, the Freedmen’s Bureau was also denounced for interfering in local affairs and for being an agent of the Republican Party (Blaustein & Zangrando). In the words of Confederate James DeBow (1866),

I think if the whole regulation of the Negroes, or freedmen, were left to the people of the communities in which they live, it will be administered for the best interest of the Negroes as well as of the white men. I think that there is a kindly feeling on the part of the planters towards the freedmen. They are not held at all responsible for anything that has happened. They are looked upon as the innocent cause. . . . In talking with a number of planters, I remember some of them telling me they were succeeding very well with their freedmen, having got a preacher to preach to them and a teacher to teach them, believing it was for the interest of the planter to make the negro feel reconciled; for, to lose his services as a laborer for even a few months would be very disastrous. . . . Leave the people to themselves, and they will manage very well. The Freedmen’s Bureau, or any agency to interfere between the freedman and his former master, is only productive of mischief. (pp. 79-80; Dudley, 1997)

The educational program of the Freedmen’s Bureau came to an end in 1872. Historians continue to argue over the mixed motives that caused Congress to endorse the Freedmen’s Bureau’s continued existence (Anderson, 1988; Franklin, 1947). Although some have applauded the government’s apparent efforts to educate the freedmen, others see the Bureau as a partisan effort to establish Republican loyalty among the Black population.

During the postbellum period (1865-1875), many HBCUs were established by White Northern missionaries for the express purpose of uplifting the Black masses from slavery (Allen & Jewel, 2002; Anderson, 1980, 1988; Brown, Donahoo, & Bertrando, 2001; Browning & Williams, 1978; Butchart, 1980; Fleming, Gill, & Swinton, 1978; Freeman & Thomas, 2002; Gasman, 2007a; Gasman & McMickens, 2010; Grandison, 1999; Jencks & Riesman, 1968; Watkins, 1990; Woodson, 1933). These missionaries were instrumental in the establishment of institutions such as Talladega College in Alabama (1867), Morehouse College in Georgia (1867), Dillard University in Louisiana (1869), and Fisk University in Tennessee (1867). The White missionaries claimed (and feared) that Blacks would be a menace to White society unless they were educated and, in particular, instilled with Christian values. Although the White missionaries insisted that Blacks receive training in the classical liberal arts, including Greek and Latin, this was largely so that they would be able to study the bible and learn the tenets of Christianity. Although the missionaries hoped to raise Blacks to an equal political and social level with Whites, they did not advocate equal economic rights (Anderson, 1980, 1988).

During the period 1875-1885, another group of missionaries began to establish institutions of higher education for Blacks—the Black missionary philanthropists. They established institutions such as Langston College in Oklahoma (1897), Morris College in South Carolina (1891), and Stillman College in Alabama (1876). Like the Northern missionaries, they advocated a classical liberal arts curriculum, but not just as a means for learning about Christianity. They wanted to educate their people to become active citizens—socially, politically, and economically (Anderson, 1980, 1988; Bullock, 1967; Watkins, 1990). The Black missionaries wanted to tap into the former slave’s “natural thirst for knowledge,” attraction to the mystery of literate culture, yearning for the practical needs of business life, and desire for the stimulating effects of freedom (Anderson, 1988, p. 15; H. Williams, 2005).

With the Hatch Act of 1887, the federal government attempted to expand its involvement in Black higher education (Ch. 314, 24 Stat. 440). The act provided annual support for state agricultural experiment stations established in connection with land grant institutions. It called for the equal division of funds between separate White and Black colleges unless the state directed otherwise. Unfortunately, the states did direct otherwise. In the few states that maintained separate public HBCUs, White state universities were selected as sites for experiment stations. It was not until the passage of the 1977 Food and Agriculture Act that Congress rectified the inequitable distribution of funds that had supported broad research activities on White campuses, but nothing at Black land grant colleges (Preer, 1982). The misuse of funds denoted in the Hatch Act is an obvious example of Whites placing their own interests first when making efforts to achieve racial equality. Although the federal government “officially” set aside funding for both Black and White institutions with the Hatch Act, it did not take the necessary steps to ensure that the funds be distributed fairly. This “oversight” caused funding that would have furthered the development of HBCUs to be used instead to fund the expansion of institutions that served middle-class Whites.

In 1890, the second Morrill Act provided federal support for the establishment of public HBCUs and public HWIs. Although this support aided in furthering the education of Blacks, it also legitimized their separate status. The act stated that each state must either provide separate educational facilities for Blacks or admit them to existing colleges. In response, all Southern and border states chose to establish colleges specifically for Blacks. These new institutions emphasized agriculture, home economics, and the mechanical arts (Christy & Williamson, 1992). Moreover, they were colleges or normal schools in name only. According to the 1917 survey<sup>5</sup> of Black higher education conducted by Thomas Jesse Jones of the Phelps Stokes Fund, only 1 of the 16 Black federal land grant colleges in the former slave states taught students at the collegiate level. The Florida Agricultural and Mechanical College for Negroes (now Florida A&M University) enrolled 12 Black college students. Of the 7,513 students enrolled in the combined 23 Black land grant and state schools, 4,061 were classified as elementary-level students, and 3,400 were considered secondary-level students (Anderson, 1988). Southern legislatures and state departments of education were not overly friendly to these institutions. They insisted on keeping them purely as trade schools and opposed any liberal arts offerings. The original thinking behind the second Morrill Act was that industrial education might be provided for Whites. In the hands of racist Southern leaders, however, the act became a means for renewing a social order with Whites on top and Blacks on the bottom. Consequently, the private HBCUs and those public HBCUs that had been founded before 1890 were confronted with a new model of education and a system of competing institutions that were backed by federal money and White political support (Bullock, 1967).

The second Morrill Act was a double-edged sword for Blacks: It established public HBCUs but also created a system of de facto segregation. Black students were not legally barred from HWIs but were generally only accepted at the academically<sup>6</sup> inferior Black campuses. The establishment of public HBCUs evolved out of the Whites’ desire to secure federal funding and to avoid admitting Blacks to existing HWIs.

#### SEPARATE BUT EQUAL?

In 1896, the Supreme Court handed down an opinion in *Plessy v. Ferguson*, (1896) that solidified the position of HBCUs. Plessy, a passenger between two railroad stations in Louisiana, was assigned by railroad officers to a seat in coach “used for the race to which he belonged” (p. 537), but Plessy insisted on sitting in the coach used by the race to which he was not a member. Plessy was 7/8 White and 1/8 Black, and his race was not detectable to those with whom he interacted. Plessy felt that he was entitled to “every right, privilege and immunity secured to citizens of the United States of the white race” (p. 538). Upon taking a seat in the “White” coach area and refusing to leave, Plessy was forcibly ejected by a police officer and imprisoned in a local parish jail. The constitutionality of the ejection of Plessy was challenged on the grounds that it conflicted with both the Thirteenth Amendment of the Constitution, which abolished slavery, and the Fourteenth Amendment, which prohibited certain restrictive legislation on the part of the states. But the Supreme Court rejected this challenge:

Laws permitting, and even requiring, their [Black and White] separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. (p. 539)

Further, the court claimed that laws requiring segregation did not detract from Blacks' political power. In essence, it established that separate could in fact be equal.

Although some good came out of the establishment of the public land-grant HBCUs—particularly the advanced education of underprepared Black youth—these colleges were not established out of concern for Blacks. Instead, they were created as a concession to the Fourteenth Amendment as interpreted in *Plessy*. This ruling required that, if the state offered higher education to Whites, it make at least a superficial effort to give the same opportunities to Blacks. The policy of providing public higher education to Black students did not, however, produce equal educational opportunity.

During the years that *Plessy* was the law of the land, public higher education for Blacks consisted primarily of low-level vocational education and the training of teachers for segregated elementary and secondary schools. That the Supreme Court did not wholeheartedly uphold its rule of “separate but equal” is apparent in the *Cumming v. Richmond County Board of Education* (1899) case. Approximately 3 years after *Plessy*, in the *Cumming* case, Black plaintiffs sought to prevent the Richmond County, Georgia, school board from closing the local Black high school to open additional elementary classes for Blacks. The Georgia district court granted an order restraining the board of education from maintaining a public high school for Whites until equal facilities were provided for Black students. Claiming that the board of education had discretion in establishing high schools, the Georgia Supreme Court reversed the district court's decision. On the grounds that the State of Georgia was not providing equal public education for Blacks (a requirement of *Plessy*), the plaintiffs appealed to the United States Supreme Court. In the end, the Supreme Court ruled that educational matters are the primary role of the state and are not governed by the federal judiciary.<sup>7</sup>

The Supreme Court also cited the plaintiff's failure to make a direct request for the reopening of the Black high school as a reason for their decision. The Supreme Court's decision to uphold the state's rights over the Fourteenth Amendment and its own ruling in *Plessy* confirmed that equality was not an important part of the “separate but equality” formula. The *Cumming* decision ignored legislation that was written to ensure equality—or at least provided some benefits to Blacks—and instead favored the interests of middle- and upper-class Whites.

#### THE “GREAT” PHILANTHROPISTS

By 1899, just 3 years after *Plessy*, all Southern states and the border states of Delaware and West Virginia had, with federal support, created dual systems of higher education (Anderson, 1988). Although the need for HBCUs increased in the years after *Plessy*, the missionary philanthropy, which relied on grassroots support, dried up. Many HBCUs were forced to turn to the White Northern industrial philanthropists for assistance or face nonexistence. Northern philanthropists, who in the past had supported mainly primary and secondary schools, seized the opportunity to fund HBCUs and shifted their emphasis toward industrial education. They saw industrial education as a way to solidify the Southern economy and to create a semieducated Black workforce (Anderson, 1980, 1988; Berman, 1983; Brown, 2001; Brown et al., 2001; Bullock, 1967; Fleming, 1976; Peeps, 1981; Watkins, 1990; J. Williams & Ashley, 2004). According to William Baldwin (1899), a member of Rockefeller's General Education Board:

The potential economic value of the Negro population properly educated is infinite and incalculable. In the Negro is the opportunity of the South. Time has proven that he is best fitted to perform the heavy labor in the Southern states. “The Negro and the mule is the only combination so far to grow cotton.” The South needs him; but the South needs him educated to be a suitable citizen. Properly directed he is the best possible laborer to meet the climatic conditions of the South. He will willingly fill the more menial positions, and do the heavy work, at less wages, than the American white man or any foreign race which has yet come to our shores. This will permit the Southern white laborer to perform the more expert labor, and to leave the fields, the mines, and the simpler trades for the Negro. (p. 52)

Industrial philanthropists gave substantial amounts of money to colleges with industrial curricula. In addition, they gave money to colleges with liberal arts curricula for the establishment of departments of industrial and manual labor. The emphasis on industrial education was coupled with a campaign to spread and instill the belief in Black intellectual inferiority (Anderson, 1980, 1988; Bullock; Fleming, 1984; Gasman, 2007a; Peeps, 1981).

During the early 1900s, HBCUs provided the only dependable access to higher education for Black students. But the factors that made them accessible—low tuition, college preparatory programs, and more reasonable admission standards—also hampered the development of the college-level education that they were trying to provide. In 1917, Congress passed the Smith-Hughes Act, which provided funds to support cooperative efforts in vocational education for agriculture, trades, and industries and for teacher training in vocational subjects. The funds were to be distributed according to the percentage of a state's rural population compared with the rural population of the country as a whole. Although Southern states would count their large rural Black populations to augment their share of the funds, the act did not guarantee that Blacks would share the benefits.



This legislation served the interests of Whites in two ways: It used Black education as a means to garner new federal funding for HWIs, and, where funding was actually provided to HBCUs, it was provided for industrial education, which reinforced the economic hierarchy of the South. Nevertheless, the National Association for the Advancement of Colored People (NAACP), along with several other progressive educational groups, supported the Smith-Hughes Act in an effort to gain other rights for Blacks.

Near the beginning of the 1930s, the influence of the industrial philanthropists on HBCUs began to weaken. In addition to the Great Depression, several lawsuits that challenged the equality in “separate but equal”—specifically the lack of liberal arts curricula—came before the Supreme Court. These lawsuits forced many of the Southern states to reexamine their programs for Black land grant colleges. The autonomy, missions, and resources of HBCUs were revisited by individual state governments (Morris et al., 1995). Some states sought to improve their programs, but only North Carolina and Virginia established publicly supported nonvocational colleges for Blacks during this time (Brubacher & Rudy, 1976).

During the early 1930s, many states were faced with the “problem” of Blacks who wanted access to graduate education within their state of residency. That many states barred Blacks from their all-White campuses—the only campuses that offered advanced degrees—created dilemmas for the Southern states. Some Southern states proposed out-of-state scholarships for legal and graduate training. Although these scholarships offered education to Blacks that was previously unavailable, they also solidified the legal basis of segregation in higher education (Preer, 1982).

#### PEARSON V. MURRAY

Among the states the successfully passed legislation supporting out-of-state scholarships for African Americans was Maryland. Although not consistently, the State of Maryland appropriated \$10,000 for 50 scholarships covering tuition up to \$200 for Blacks to study courses out of state in 1935. One student challenged this policy, however. Denied admission to the University of Maryland Law School, Donald Murray, with the assistance of the NAACP, challenged the university’s exclusion of Blacks. The state claimed that Donald Murray’s educational needs were met by the out-of-state scholarship. According to the testimony in *Pearson v. Murray*, (1936), the United States Office of Education recommended out-of-state scholarships as a way for states to meet their legal obligations to Black students. Both the trial and appellate courts ruled that Murray must be admitted to the University of Maryland law school. The courts focused on the inequalities in Maryland’s dual system of higher education rather than the inequality of separate education. In their opinion, the main issue in the Murray case was the lack of in-state education provided to Murray—not whether he was offered a scholarship to be educated out of state.

The *Murray* case is significant to the development of HBCUs because Murray’s claim to admission as a right of citizenship was tied to the issue of financial and programmatic discrimination between White and Black colleges in Maryland. In arguing the *Murray* case, the NAACP claimed that the HBCU in the state, Princess Anne Academy (now known as the University of Maryland Eastern Shore), did not offer an equal education to that offered at the University of Maryland. Nearly one quarter of the Academy’s budget came from the federal government rather than the State of Maryland. In addition, Princess Anne did not receive any of the 1890 Morrill Act funds until 1933. Although it suffered from a lack of funding and a confused role in the state higher education system, the college was continually criticized for failing to offer the “proper” vocational training to Black students. The state attributed the small enrollment at the academy to its liberal arts course offerings—courses that, in the state’s opinion, Black students did not need.

To downplay the inequalities between Princess Anne Academy and the University of Maryland-College Park during the appeal, the president of Maryland-College Park claimed that both institutions offered comparable education to the citizens of Maryland. Despite the fact that only one of Princess Anne’s faculty members held a degree, the Maryland president claimed that the two institutions offered a similar education. Although the trial and appellate courts did not specifically make reference to the vast inequalities between White and Black institutions in Maryland and surrounding states, their decision to admit Murray to the University of Maryland implicitly confirms the inadequacies of HBCUs due to severe underfunding at the time. This confirmation was one factor in the 1939 purchase of Morgan College by the Maryland legislature, to be used as a state college for Blacks. According to the governor at that time, “Under the Federal Constitution, we are obligated to furnish all our citizens equal opportunity to self-improvement and education, which is only fair and right” (O’Conor, 1939). The conversion of Morgan from a private to a public institution provided immediate gain in educational opportunities for Black students. However, it also hindered the NAACP’s long-range goals of achieving full desegregation of the HWIs in Maryland.

#### MISSOURI EX REL. GAINES V. CANADA

The first higher education lawsuit to reach the United States Supreme Court was *Missouri ex rel. Gaines v. Canada* (1938). The plaintiff, Lloyd Gaines, was a 1935 graduate of Lincoln University in Missouri who wanted to attend law school in Missouri. After receiving a letter of rejection from University of Missouri, Gaines filed a civil action against the state. During the trial, the state confessed that Gaines was denied admission because of his race, but the state circuit court sided with the university in its judgment of the case. The case was later appealed to the Supreme Court of Missouri, which stated that the established policy of the State of Missouri was to segregate the White and Black races. Further, the court held that Gaines would not be deprived

of any constitutional rights as long as the educational opportunities afforded to him by the state were equal to those furnished to White citizens of the state. The court also found that because the state had created an out-of-state scholarship fund for Black students, the opportunity provided to Gaines for an education in law at the university of a nearby state is equal to that offered to White students by the University of Missouri.

Gaines appealed the State Supreme Court's decision to the United States Supreme Court. The State of Missouri argued that Gaines was not entitled to admission to the University of Missouri Law School because "if, on the date when [Gaines] applied for admission to the University of Missouri, he had instead applied to the curators [trustees] of Lincoln University it would have been their duty to establish a law school" (p. 346). The Supreme Court found no such mandatory duty because the statute on which the state relied left the establishment of an additional law school to the discretion of the board of curators. Moreover, the court noted that the State of Missouri was not affording instruction in law to its Black citizens, at Lincoln University or elsewhere. The court found the quality of legal education provided by other states to be irrelevant. Instead, the court pointed toward the question of "what opportunities Missouri itself furnishes to White students and denies to negroes solely upon the ground of color" (p. 349). Because the state had not established a separate law school for Black students, the Supreme Court held that Gaines was entitled to admission to the University of Missouri (Brubacher & Rudy, 1976; Preer, 1982; Ware, 1994). Rather than comply with the Supreme Court's mandate to allow Gaines's admission to the HWIs, the State of Missouri opted to create a new Black publicly funded law school. The Taylor Bill was the impetus for the creation of the Lincoln University law school. It set aside \$200,000 for the expansion of Lincoln, but also gave \$3 million to the already well-funded and well-endowed University of Missouri. Although the NAACP was prepared to argue that the new law school, with only four faculty members and 10,000 books in its library, was not equal to the University of Missouri's law school, and that true compliance with the Supreme Court's mandate meant admitting Gaines to the HWI, the suspicious disappearance of Gaines halted their plans.

*Gaines* was significant in the development of HBCUs because after *Gaines*, states could no longer ignore their constitutional obligation to provide in-state graduate higher educational opportunities for Black students. To meet this obligation, many states offered graduate education in an already existing HBCU or a newly established Black professional institution (Ware, 1994). The *Gaines* decision provided an immediate increase in graduate educational opportunities for Black students.

#### THE PRE-BROWN HIGHER EDUCATION CASES

The first of the post-*Gaines* graduate school cases was *Sipuel v. Board of Regents* (1948). Ada Louise Sipuel, an honors graduate from the State College for Negroes in Langston, Oklahoma, was denied admission to the University of Oklahoma law school based on her race. Upon receiving the letter of denial, Sipuel, with the help of the NAACP, filed suit against the university. The trial court dismissed her case. On appeal, the Oklahoma Supreme Court held that, because Sipuel had failed to demand that the state establish a separate law school for Black students, she had no right to admission to the school established for White students. The court reasoned that Oklahoma was not obligated to establish a law school for Black students until there was a sufficient demand to justify the expenditure of the state funds that would be necessary. Sipuel's case was then appealed to the United States Supreme Court, which reversed the judgment of the Oklahoma Supreme Court. The Supreme Court found that

The petitioner is entitled to secure legal education afforded by a state institution. To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the State. The State must provide it for her in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group. (pp. 632-633)

The Oklahoma Board of Regents would not withdraw its policy of segregation and responded to the Supreme Court's opinion by roping off an area in the state capitol building. The board designated this area as the "Negro law school" and hired three Black lawyers to serve as the faculty. NAACP attorney Thurgood Marshall returned to the Supreme Court to request that the court find that the Board of Regents of Oklahoma had not complied with the court's opinion. However, the Supreme Court ruled seven to two in favor of the State of Oklahoma. It would be interesting to investigate the Supreme Court's rationale in not upholding an opinion that it had stated so emphatically. The court's decision in *Sipuel* did little to aid HBCUs or to further integration of HWIs. However, the testimony by the NAACP brought more attention to the inadequate funding and resources available to HBCUs—a problem that continues today.

In *Sweatt v. Painter*, (1950) the University of Texas Law School rejected the application of Heman Sweatt on the basis of his race. At the time of Sweatt's application, there was not a law school in the State of Texas that admitted Blacks. Upon hearing of his rejection, Sweatt sued the University of Texas in state court. The trial court continued the case for 6 months, during which time Texas hastily created a "law school" for Blacks. The School of Law of the Texas State University—the Black law school— offered Black students substantially less than their White counterparts at the University of Texas. The interim Black law school had no independent faculty or library. Four members of the University of Texas faculty carried out the teaching. The law school was not accredited and had fewer than 10,000 library books available for student use. Strangely enough, the trial court held that the new law school offered Sweatt "privileges, advantages, and opportunities for the study of law substantially

equivalent to those offered by the State to White students at the University of Texas” (p. 849). The Texas Court of Appeals affirmed the trial court’s decision. Sweatt appealed to the United States Supreme Court, and the court reversed the decision. The court held that “the Equal Protection Clause of the Fourteenth Amendment requires that Sweatt be admitted to the University of Texas Law School” (p. 629). In *Sweatt*, the court reasoned that an institution’s character—which stems from its history and tradition—is an essential component of a student’s intellectual experience (Adams, 1996; Connell, 1993). The argument of history and tradition continues to be used today by those who support the continued existence of HBCUs. In the *Hawkins v. Board of Control* case, Virgil Hawkins filed for a peremptory writ of *mandamus*, which would compel the Board of Control to admit him to the all-White, state-funded law school in Florida. His petition was based on the board’s refusal to accept his application for admission, claiming that it amounted to an arbitrary and illegal denial of his constitutional right to equal protection under the law. In an effort to maintain a segregated University of Florida College of Law, on December 21, 1949, the Board of Control established graduate-level schools of law, mechanical engineering, agriculture, and pharmacy at Florida Agricultural and Mechanical College for Negroes (*Hawkins v. Board of Control*, 1950). The University of Florida Law School became integrated in 1958 (Klink, 2003). Although Blacks now had a law school, the substantive reason for its existence was to appease the desires of Whites who refused to be educated alongside Blacks.

In yet another state, and at roughly the same time, a case with much the same argument was heard. In the *McLaurin v. Oklahoma State Regents for Higher Education* case, the University of Oklahoma rejected George W. McLaurin’s application for admission to the graduate school of education because, like Texas and Florida, Oklahoma law forbade the operation of a public college enrolling both Blacks and Whites. In response, McLaurin filed a suit against the University of Oklahoma for denying his admission based on his race. The Oklahoma legislature responded by amending the law to allow Black students to attend HWIs on the condition that “in such cases the program of instruction shall be given at such colleges or institutions of higher education upon a segregated basis” (p. 639). The University of Oklahoma admitted McLaurin into the school of education but subjected him to several humiliating restrictions. McLaurin was made to sit apart from other students in an adjoining classroom; to sit at a designated desk in the library; and to sit at a designated table and eat at a different time than White students in the lunch room. Oddly, the district court ruled that this treatment did not violate McLaurin’s constitutional right to equal protection under the law (Connell, 1993). The Supreme Court reversed the district court’s decision. As in the *Sweatt* case, the court focused on the intellectual experience of the Black student. Moreover, the court focused on the opportunity for a college student to freely interact with academic peers on the same social level in and out of the classroom. Although *Sweatt*, *Hawkins*, and *McLaurin* favored desegregation, they also established the importance of providing all students with an adequate intellectual experience, be it at a predominantly White or a historically Black college.

#### SEPARATE IS NOT EQUAL?

The decisions in *Gaines*, *Sipuel*, *Sweatt*, *Hawkins*, and *McLaurin* set the stage for the Supreme Court to overturn the principle of “separate but equal.” In *Brown v. Board of Education* (1954), the Supreme Court held that racial segregation in public schools was inherently unequal and constituted a violation of the Equal Protection Clause of the Fourteenth Amendment. Although the court’s decision led to some progress for Blacks since 1954, American society has not achieved the full integration that the *Brown* court sought. In fact, today, many would claim that society is becoming increasingly segregated, with neighborhoods and schools as manifestations of this segregation. As Jerome Culp (1995) stated, “*Brown* has failed—failed to create the racial nirvana in our nation’s classrooms and failed to eliminate completely the vestiges of racial segregation and oppression in the nation” (p. 668).

In general, Blacks accepted the *Brown* decision, speculated on its implications for areas other than education, and interpreted it as the beginning of further acceptance of Blacks and their institutions (Browning & Williams, 1978). Some educators, however, were cautious. Even prior to *Brown*, in 1952, the president of Morgan State College pointed out that for most of the HBCUs, integration would mean participation in state systems reorganized to offer services to the majority. The danger, he warned, was that services designed specifically for Black students would disappear, and existing patterns of discrimination could be perpetuated under the guise of equality. This was a prescient observation. The *Brown* decision brought about some immediate benefits to HBCUs, such as funding for physical improvements. State funding for such improvements, however, may have been intended to prevent the speedy implementation of the new desegregation order.

The message of *Brown* would have been direct and unambiguous if the *Brown* court had said that state-imposed racial segregation in education is inherently unequal under the concept of equal protection. Because the *Brown* court ruled that “all-Black” educational facilities are inherently unequal, HBCUs have had to fight the invidious legacy and judicial stamp of being viewed as inherently inferior (Gasman, 2007a, 2007b; Weeden, 1992). In addition to putting a stamp of inferiority on HBCUs, *Brown* was the impetus for a huge drop in enrollment at most HBCUs in the decades following the decision. Many Black students left the South to attend HWIs in the North.<sup>8</sup> As of 1967, there were approximately 133,000 Black students in HWIs; nearly 95,000 of these students attended colleges outside the South (Bowles & DeCosta, 1971). In 1970, the Census Bureau reported that 378,000 Black students were attending HWIs. With so many Black students exercising their right to attend HWIs, the debate over the role of HBCUs surfaced once again. This time, legislators, educators, and the courts were asking whether HBCUs serve a worthwhile purpose in a society that strives for integration in educational settings (Fleming, 1984).

## POST-BROWN ACTIVITY

Black colleges struggled through the 1960s, sometimes receiving only a small percentage of federal higher education funds. Often, the only way that HBCUs could receive much-needed funding was through legislation written in such a way as to benefit Whites. For example, Title III of the Higher Education Act of 1965 earmarked funding for developing institutions that served low-income students. Although those in Congress who sponsored Title III envisioned all the funds going to HBCUs, the agreed-on language of the act did not specifically allude to HBCUs. The sponsors could not garner the support they needed to pass the legislation when it contained language that specifically mentioned race. They settled for language that described HBCUs as institutions that educate low-income students. As a result of this vague language, 23% of the Title III funds went to community colleges that served White students rather than the 100% originally envisioned for HBCUs (Preer, 1982).

As a result of the Voting Rights Act of 1965, HBCU presidents represented large numbers of middle-class citizens with growing political power and influence. Knowing this, the Nixon administration created a task force to coordinate the collection of data on federal funding of HBCUs (Preer, 1982). Although the Nixon administration, to gain the Black middle-class vote, publicly touted its financial support of HBCUs, HBCU presidents were not happy with this support. They complained that their colleges could not meet the 30% matching requirements for the funds released by the Nixon administration. In addition, the HBCUs could not use the funds for construction because they could not afford to operate the additions to their physical plant once they were added. The heating, cooling, and maintenance of new facilities would far exceed the college budgets. In retrospect, these Nixon administration efforts seem like superficial attempts to gain the Black vote.

In 1968 and 1971, significant decisions were made by the Supreme Court regarding the issue of institutional integrity. Each case made evident an increasing tension between extending legal rights to minimizing distinctions based on race, and preserving the educational opportunities and cultural uniqueness of HBCUs. The *Alabama State Teachers Association (ASTA) v. Alabama Public School and College Authority* (1968) case went beyond the pre-Brown issue of discriminatory admissions practices to the racial organization of the entire state higher education system. The plaintiffs sought to invalidate the state plan under which Auburn University would take over and expand the Montgomery extension center of the University of Alabama into a full undergraduate and graduate degree-granting institution. The plaintiffs objected to the plan because Alabama State College, a historically Black institution, was already located in Montgomery. Further, they claimed that the new Auburn campus was intended for White students and would operate as a "White" institution. This would contribute to further segregation in the state. The plaintiffs cited public secondary school precedents to argue that states had an affirmative duty to dismantle dual systems of higher education and that expansion or new construction should be used to dismantle rather than perpetuate educational duality. The district court denied an injunction against the construction plan, noting that Alabama only had the affirmative duty to extend good faith dealings with admissions, faculty, and staff. On appeal, in 1969, the United States Supreme Court affirmed the lower court's ruling and seemed to approve a limited duty for states in desegregating public higher education.

In the case of *Norris v. State Council of Higher Education* (1971), the Supreme Court again declined to clarify the meaning of a state's duty to dismantle a dual system, and once again the future of public HBCUs was left uncertain—torn between the law and education. Plaintiffs in *Norris* included Black faculty and students at Virginia State University, a historically Black institution. The plaintiffs challenged the expansion of a nearby two-year campus of the College of William and Mary into a four-year degree-granting institution. The difference between William and Mary and Virginia State University included more than race. The two institutions differed in age, prestige, academic exclusiveness, and governance. The plaintiffs recommended, as an alternative, the merger of the two-year college into Virginia State and the formulation of a statewide plan for desegregation in higher education in Virginia. In an effort to stop the expansion of the two-year college, the president of Virginia State University, Wendell Russell, testified that expanding the offerings at the two-year institution would "have a tremendously disastrous effect on Virginia State's ability to attract and to hold students from this particular area and would do nothing more than duplicate what is already being offered at Virginia State College" (p. 1371). The lower court agreed and granted the injunction of the plan. The case was appealed to the Supreme Court, but certiorari was refused. In both the *Alabama State Teacher's Association* and *Norris* cases, the courts failed to clarify a state's affirmative duty to dismantle dual systems of higher education. Further, in both of these cases, the plaintiffs fought to protect Black higher education from encroachments by HWIs, which were interested in serving majority interests only. Although they retained the integrationist goals of a unitary system of just schools, these cases offered a new concern for the future of HBCUs (Preer, 1982).

Black colleges faced a number of critical problems as they entered the 1970s. The continued movement northward and westward of Southern Blacks had diminished the population pool that constituted their principal source of students. The breaking down of the walls of segregation at HWIs and the efforts of some of these institutions to recruit Black students and scholars caused HBCUs to lose some of their brightest students and ablest professors. The financial burdens for HBCUs increased as they were compelled for the first time to compete on a national scale with better endowed institutions that had previously been all White.

In the early 1970s, a case was decided that was intended to accelerate the desegregation process but also directed the states

to preserve and enhance HBCUs. In *Adams v. Richardson* (1973), the United States Court of Appeals for the District of Columbia Circuit affirmed a district court order that required the United States Department of Health, Education, and Welfare (HEW) to enforce Title VI of the Civil Rights Act of 1964 by cutting off federal funding to states that had not taken adequate steps to desegregate their public K-12 and higher education systems. After finding that HEW had neglected its statutory duty to enforce Title VI, the D.C. Circuit affirmed a far-reaching order of the district court that required HEW to establish compliance procedures and begin enforcement proceedings against several school districts that had not taken adequate measures to desegregate their school systems. However, the court noted that the problem of integrating higher education must be dealt with on a statewide rather than a college-by-college basis. It went on to stress that the most serious problem was the lack of the type of statewide planning that might provide more and better trained Black doctors, lawyers, and engineers, to name a few. Specifically, the court said,

A predicate for minority access to quality post-graduate programs is a viable, coordinated state-wide higher education policy that takes into account the special problems of minority students and of black colleges. As amicus points out, these black institutions currently fulfill a crucial need and will continue to play an important role in black higher education. (pp. 1164-1165)

The *Adams* case was especially important because it evolved from a preoccupation with eliminating racially identifiable institutions to a balanced plan for establishing equality in education (Preer, 1982). This plan would presumably include increased access for Black students at both Black and White institutions, enhanced offerings at HBCUs, and a more vital decision-making role for Blacks.

After *Adams*, it appeared that HBCUs would not be sacrificed in the push for integration of public higher education. U.S. educational policy seemed to shift from the strict integration of colleges and universities toward the encouragement of racially identifiable HBCUs as a part of the pluralistic system of higher education. There was a brief push to preserve and strengthen HBCUs. However, this emphasis did not last long after the *Adams* opinion. Several federal court decisions placed the status of HBCUs in jeopardy. Many federal judges adjudicating desegregation cases have assumed that HBCUs are the main obstacles to desegregation in the higher education realm (Ware, 1994). This assumption was evident in the *Geier v. University of Tennessee*, (1979) case, in which Tennessee State University was ordered to merge with the Nashville branch of the University of Tennessee by the United States Court of Appeals for the Sixth Circuit. *Geier* began in 1968, when a group of plaintiffs attempted to stop the expansion of the Nashville branch of the University of Tennessee. Both Tennessee State University and the Nashville branch of the University of Tennessee were located in the Nashville area. Tennessee State University was established in 1912 to serve Black students, and the University of Tennessee-Nashville, an HWI, was erected in 1947 as a non-degree-granting institution. During the late 1960s, the state began to add curricula and programs to the UT-Nashville mission and announced its plans to develop degree-granting programs for the regional campus. Like their counterparts in *Alabama State Teacher's Association and Norris*, the plaintiffs claimed that expanding the University of Tennessee would interfere with Tennessee State University's ability to attract White students. The United States intervened after the suit was filed. Although the state argued that it had made efforts to desegregate the higher education system by adopting race-neutral admissions criteria, the district court rejected this argument and ordered the State of Tennessee to develop a desegregation plan. The district court considered several desegregation proposals during the years following the decision but eventually held that the state was not meeting its obligation to desegregate. After another period of proposal submission, the district court, still unsatisfied, ordered the state to merge Tennessee State University and the University of Tennessee-Nashville. The United States Court of Appeals for the Sixth Circuit affirmed the decision and held that the *Green* requirement of an affirmative duty to desegregate applies to public higher education as well as primary and secondary education.<sup>9</sup> Further, the Court of Appeals found that the merger was a justified remedy based on the "failure of the defendants to dismantle a statewide dual system, the heart of which was an all-black Tennessee State University" (p. 1065).

In effect, an institution that was forced by law to be segregated was now considered to be at the "heart" of the problem. Because of its racial make-up, Tennessee State University was seen as segregated. However, neither the historically White University of Tennessee-Nashville, nor the other HWIs in the state were seen as the "heart" of the problem. Historically Black institutions are being held responsible for an unfair share of the burden of desegregating. In his dissent in *Geier*, circuit court judge Engel offered an opinion that was more supportive of the role that HBCUs play in American higher education:

Tennessee State University continues to draw black students from the entire State of Tennessee. I do not doubt that its attractiveness to black students may very well affect the racial balance of the student bodies of the other colleges throughout the State of Tennessee, but is this a reason for finding fault with it? If a student elsewhere in the state has the right, as he now has in Tennessee, to enroll in a regional college of his choice without impediment because of race, is it wrong for him to elect to go to a college such as Tennessee State University if he prefers? I can hardly believe it. (p. 1075)

Further, Judge Engel noted the words of Manion J. Griffith, head of an organization that assisted HBCUs:

I feel very seriously that our black colleges are threatened by integration. . . and in so doing the leadership potential of the black race and in this country is diminished and will continue to be obliterated in the course as it is seemingly going. . . . If they should eliminate our college, they will have eliminated black people from any meaningful participation in our democracy. (p. 1075)

#### HISTORICALLY BLACK COLLEGE AND UNIVERSITY ACTS

By enactment of the *Historically Black College and University Acts (Strengthening Historically Black Colleges and Universities) (Higher Education Act of 1965)*, Congress and the President have rejected the strict interpretation of *Brown* that HBCUs are inferior and has found that HBCUs fulfill the American mission of equal educational opportunity for all. (20 U.S.C. •• 1060-1063c)

The Historically Black Colleges and Universities Act makes available grant funds<sup>10</sup> in increments of \$500,000 (not to exceed \$12,000,000 total in a fiscal year) to individual Black institutions.<sup>11</sup> Although the HBCU Act clearly benefits HBCUs, it can also be seen as an attempt by presidential administrations to secure support from Black voters. Passed in 1989 at the beginning of George H. W. Bush's presidency, the first HBCU Act may have been signed into law by Bush not as part of a consistent effort to support Blacks, but rather as an attempt to overcome the perception that the Republican party had shifted too far to the right. The 1993 HBCU Act, passed during Clinton's first term, may also have been an attempt to garner the Black vote, especially given that he coupled this support with a "war on racism," designed to benefit the entire country, but Blacks in particular.

#### THE IMPACT OF *FORDICE*

*Brown v. Board* served as the basis for many lawsuits that would follow—lawsuits aimed at doing away with the separate but equal and unwritten doctrine that governed many Southern states' higher education systems. One of the landmark cases in America's movement to desegregate its institutions of higher education was originally filed in 1975, *United States v. Fordice* (1992). Private petitioners filed suit against the State of Mississippi for failing to dismantle its dual system of education, as mandated by the U.S. Supreme Court's *Brown v. Board* decision. In 1975, the United States joined the private petitioners in the suit, claiming that the state had failed to live up to its legal mandate to give each citizen equal protection under the Constitution and the Civil Rights Act of 1964.

The parties in the *Fordice* case tried for 17 years but failed to reach a voluntary, amicable settlement to the changes in the suit. The Supreme Court handed down an opinion in *United States v. Fordice* (1992) that has the potential to have a disastrous effect on HBCUs depending on its interpretation by the states and lower courts. *Fordice* not only calls for the desegregation of public colleges and universities, but also mandates that the states, in addition to eliminating their discriminatory admissions policies, must eliminate all segregation that is traceable to the state's prior de jure segregation. In 1848, Mississippi established its first public university, the University of Mississippi, an institution dedicated to the education of Whites exclusively. Following the establishment of the flagship university, the state erected four additional HWIs: Mississippi State University (1880), Mississippi University for Women (1885), University of Southern Mississippi (1912), and Delta State University (1925). The state also established three historically Black institutions: Alcorn State University (1871), a regional institution; Jackson State University (1940), an institution that trained Black teachers for Black public schools; and Mississippi Valley State University (1950), an institution established to educate teachers principally for rural and elementary schools and to provide vocational instruction to Blacks.

Despite the Supreme Court's decision in *Brown*, Mississippi continued to harbor de jure segregation in its higher education system. By a court order in 1962, the first Black student was admitted to the University of Mississippi. However, segregation continued for the next 12 years in the segregated system of public higher education. In 1975, private petitioners in Mississippi sued the state for failing to satisfy their obligation under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 to dismantle the dual system of higher education. The United States government joined the private petitioners in their suit. In 1981, the state attempted to voluntarily dismantle segregation by issuing race-neutral mission statements for each of the state's eight public universities. These mission statements classified the three flagship HWIs during the de jure period as comprehensive universities having the most diverse programs and offering doctoral degrees, designated one of the HBCUs as an urban university with limited degree options and a narrow research focus, and characterized the rest of the Mississippi colleges as regional undergraduate institutions. When, by the mid-1980s, the HWIs remained White and the historically Black institutions remained Black, the parties brought the case to trial. After lengthy testimony, the district court found that the State of Mississippi's "current actions demonstrate conclusively that the State is fulfilling its affirmative duty to disestablish the former de jure segregated system" (*Fordice*, 1992, p. 2730). With little disagreement, the Court of Appeals affirmed the lower court's opinion.

Upon review of the case, the Supreme Court held that the mere adoption and implementation of race-neutral policies to govern the college and university system “did not necessarily fulfill the state’s affirmative obligation to disestablish a prior de jure segregated system” (*Fordice*, 1992, p. 2727). In a system of choice, student attendance at a specific college is determined not simply by the admissions policies, but by many additional factors. Even after a state eliminates its discriminatory admissions policies, there may still be state action that continues to foster segregation and is traceable to the state’s prior de jure segregation. As the Supreme Court stated, “The Equal Protection Clause is offended by ‘sophisticated as well as simple-minded modes of discrimination’” (p. 2736). In making this statement, the court is referring to the use of the American College Testing (ACT) Program to discriminate against Blacks in the predominantly White public institutions of Mississippi. The three flagship HWIs enacted policies in 1963 requiring all admitted students to achieve a minimum composite score of 15 on the ACT. At that time, the average ACT score for White students was 18, and the average score for Blacks was 7. To overcome the effects of this discrimination, the court asked the State of Mississippi to inquire as to whether “retention of all eight institutions itself affects student choice and perpetuates the segregated higher education system, whether maintenance of each of the universities is educationally justifiable, and whether one or more of them can be practicably closed or merged with other existing institutions” (p. 2743).

The *Fordice* decision contained both good and bad news for supporters of HBCUs. The good news is that the state must take responsibility for the historical policies that continue to foster segregation and exclude Blacks from an equal education. The difficulty is that the steps that the court requires to remedy racial segregation may involve elimination of HBCUs—colleges that have provided a doorway through which many Blacks have entered higher education (Weeden, 1992). It is important to note that *Fordice* did not mandate the elimination of HBCUs. In fact, the court’s reference to a “sound educational justification” as the compelling governmental interest that will hold up to the Equal Protection Clause left open the possibility that these college(s) may continue to exist:

If the State perpetuates policies and practices traceable to its prior de jure dual system that continue to have segregative effects—whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system—and such policies are without *sound educational justification* and can be practicably eliminated, the policies violate the Clause, even though the State has abolished the legal requirement that the races be educated separately and has established racially neutral policies not animated by a discriminatory purpose. (*Fordice*, 1992, p. 2730; also Ware, 1994)

As in previous litigation involving HBCUs, the courts have dealt with a variety of methods for addressing the educational needs of Blacks. Although some of these methods, such as providing enhancement money to HBCUs to attract White students and implementing aggressive recruitment strategies to recruit Whites,<sup>12</sup> would clearly preserve Black gains in higher education, others, such as offering scholarships to Whites based on socioeconomic status, merging of nearby Black and White institutions, and closing of HBCUs, seem calculated to use the principle of equality to bring further benefits to Whites.

#### RENEWED INTEREST FROM THE WHITE HOUSE

George W. Bush, 43rd president of these United States of America, signed Executive Order 13256, which shifted the White House Initiative on Historically Black Colleges and Universities to the Office of the Secretary of Education home to the U.S. Department of Education, February 12, 2002. The initiative was previously operated through the Office of Postsecondary Education within the U.S. Department of Education; therefore, the Office of the Secretary has direct control of strengthening today’s HBCUs. President Bush’s HBCU initiative allocated roughly \$85 million to Black colleges.

Most recently, in February 2010, President Barack Obama signed a new Executive Order furthering the White House Initiative on Historically Black Colleges and Universities. Arne Duncan, U.S. Secretary of Education, indicated in a recent interview that the signing of the Executive Order strengthens support from all federal government agencies to HBCUs and their missions. Moreover, the Executive Order beckons collaboration with private sector corporations to sustain and advance HBCUs. Secretary of Education Arne Duncan noted that through this initiative, the U.S. Department of Education will assist the White House Initiative on Historically Black Colleges and Universities in “research, community outreach, or empowering ill-prepared students to become competitive achievers.”

In February 2010, Congress invested roughly \$40 billion in Pell Grants through the Health Care and Education Reconciliation Act. Of this, Secretary Duncan stated that 60,000 additional Pell Grant awards would be disseminated to African Americans over the next decade. Of the 60,000 additional awards presented to African Americans, approximately 21,000 will go to students who attend HBCUs. HBCUs will receive an additional \$850 million over the next decade, President Obama noted, to make capital improvements and expand academic programming. These monies will also be used to strengthen the participation of HBCUs in federal government programs as well as public-private partnerships that benefit the role and mission of HBCUs. Although some HBCU leaders are unhappy with the amount of monetary support coming from the Obama administration, an increase in Pell

Grant awards has a direct impact on African Americans at HBCUs because these institutions have overwhelmingly large percentages of Pell Grant-eligible students.

#### LAWSUITS IN THE CURRENT DAY

Although the bulk of this article is historical in nature, legal action pertaining to HBCUs continues to persist because of the continued inequalities foisted on these institutions by state governments. Much like in the past, the success, or lack of it, may depend on the convergence of Black and White interests. Most recently (April 2010), the Georgia NAACP filed suit against Governor Sonny Perdue, Board of Regents chancellor Errol Davis, and the State of Georgia, noting that the three public HBCUs (Savannah State University, Albany State University, and Fort Valley State University) were methodically discriminated against and were underfunded. The Georgia State NAACP noted that this treatment jeopardizes the survival of these institutions. Attorney John Clark, attorney for the plaintiffs, indicated, "The time is now to address inequities that have persisted. It is never too late to have redress" (Haines, 2010). According to the Legal Defense Coalition for the Preservation of Public HBCUs, a nonprofit organization of alumni and supporters of the three HBCUs, the State of Georgia violated the Civil Rights Act of 1964 and the Fourteenth Amendment. The Legal Defense Coalition argued that these three public HBCUs lack state funding to develop graduate and professional programs as well as provide capital improvements to the three universities.

The State of Georgia violated the Civil Rights Act of 1964 and the Fourteenth Amendment because it took state action, systematically underfunding its three public Black colleges, in effect giving them second-class status and operating them under de facto segregation. None of the three are classified as research universities, nor do they offer professional degree programs. Moreover, there is a disparity in funding for capital improvement projects at these colleges.

Currently, a similar case is taking place in Maryland. The Coalition for Equity and Excellent in Maryland Higher Education filed a lawsuit that alleges discrimination by the State of Maryland. Within this particular case (Civil No. MJG-06-2773, refiled December 31, 2007), a group of alumni and friends of the public HBCUs in the state, as well as students of the public HBCUs (public HBCUs include Copping State University, Bowie State University, University of Maryland Eastern Shore, and Morgan State University), alleged that the state neglected to make certain that HBCUs achieved parity with the HWIs, which violates the Civil Rights Act of 1964 and the Fourteenth Amendment (Equal Protection Clause). The plaintiffs claim that the state failed to disallow HWIs from gratuitously duplicating academic programs from the four HBCUs, and to effectively improve the facilities at the HBCUs.

Bell's (1980) concept of interest convergence should be taken into account when considering the potential outcomes of the aforementioned cases. Interest convergence is centered on the notion that Whites have historically maintained their dominance over minorities through multiple forms of power (e.g., social, political, economic). As a result, their power has been codified in laws, policies, and processes that subjugate non-Whites (Bell, 1992b). Thus, interest convergence suggests that the White dominant majority will only aid Blacks in societal advancement if it is to their own benefit. When viewed through this lens, clarity is given to the Georgia and Maryland cases. HBCUs have historically been undervalued institutions by many White communities because they are seen to serve a population outside the dominant majority. As a result, funding inequities experienced by HBCUs continue to persist (Sav, 2010). These inequities favor HWIs, which are seen as vital in the interests of many Whites. As such, improving on the inequities evident in Georgia and Maryland will be difficult unless the interests of Whites can be met in this regard.

#### CONCLUDING THOUGHT

Created in an effort to segregate Blacks and prevent them from attaining equal status, HBCUs still managed to provide valuable opportunities for Black students. Despite the benefits that they provide and their role as a social equalizer in American society, HBCUs continue to be devalued by the larger White community. Must any institution that attempts to raise Blacks to an equal status be opposed by Whites? Or, is it possible that an institution that serves Blacks could be seen as serving Whites as well, by virtue of the fact that it removes the legacy of racial hatred that has marked American society from its beginning? Because historically, Black colleges have only received benefits when there have been corresponding benefits for Whites, the achievement of "true" equality may come only when Whites are made to see Black equality itself as the corresponding benefit. Much like the South through the 19th century, an America that is mired in an archaic social order may find its growth stifled. A war on racism with an underlying goal of increasing American competitiveness may finally awaken Whites to the idea that racial equality is valuable in and of itself.

#### Notes

1. We selected the work of Derrick Bell (1992, 2005), with regard to interest convergence, because of the originality and quality of his work in the field and because of his affection toward historical storytelling. Bell noted that Whites further racial advances for Blacks when Whites' self-interests are promoted. Bell (2005) noted in his work that most Whites do not encourage and/or defend civil rights, policies and/or institutions that endanger their societal prominence.



2. The Freedmen's Bureau also came to the assistance of displaced Southern Whites.
3. General Howard was the namesake of Howard University, a historically Black university in Washington, D.C.
4. Congress had to override a veto by President Andrew Johnson.
5. This is one of few accurate statements that Thomas Jesse Jones included in his report for the Phelps Stokes Fund. The underlying purpose of the report was to eliminate struggling public and private Black colleges. Jones was a member of several philanthropic boards interested in creating a Black underclass to employ in Northern factories.
6. These institutions were only inferior because of lack of funding, lack of a diverse academic mission (imposed by the federal and state government), and the lack of education possessed by most of its faculty (due to the poor training offered to Blacks during this time).
7. Ironically, the *Cumming* decision was penned by Justice Harlan, who vigorously dissented in *Plessy*.
8. Prior to the 1960s, very few Northern institutions would enroll Black students, partly because of the stereotypical belief in Black inability to benefit from higher education, and partly because of the social stigma attached to the Black presence in White society (Gurin & Epps, 1975).
9. In *Green v. County School Board* (1968), the Supreme Court held that a state must use all reasonable methods available to formulate an effective remedy to desegregation. It is not enough to merely establish race-neutral admissions policies.
10. Grant funds are available for the following (nonexclusive): laboratory equipment, construction, maintenance, renovation of instructional facilities, faculty development, academic instruction in disciplines in which Blacks are underrepresented, library materials, student services programs, fund management, funds for the improvement of the institutional endowment, community outreach, and teacher education programs.
11. Since the time of Reconstruction, the federal government has been providing funds to Howard University. The Howard University charter was enacted by Congress and subsequently approved by President Andrew Johnson on March 2, 1867 (20 U.S.C. 123). Although most of Howard's early financial support came from the Freedmen's Bureau and private philanthropists, in 1879, Congress authorized an annual subsidy to the university. The subsidy was formalized in 1928, when the charter was amended to include a regular annual federal appropriation for construction, development, improvement, and maintenance of the university.
12. *Knight v. Alabama* (1994).

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