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INTRODUCTION: CRITICAL RACE THEORY AND UNEQUAL FUNDING IN HIGHER EDUCATION

Race has become metaphorical--a way of referring to and disguising forces, events, classes, and expressions of social decay and economic division far more threatening to the body politic than biological "race" ever was. Expensively kept, economically unsound, a spurious and useful political asset in election campaigns, racism is as healthy today as it was during the Enlightenment. It seems that it has a utility far beyond economy, beyond the sequestering of classes from one another, and has assumed a metaphorical life so completely embedded in daily discourse that it is perhaps more necessary and more on display than ever before.(FN1)

The opening quote by Toni Morrison, illustrates the fact that we cannot ignore the dynamic of race as it remains a central facet of American society. Traditionally, the role of financial analysis, history and law has been used in identifying the effects of state-imposed racial segregation and inequality in public higher education.(FN2) Given the existence of profound financial inequities between public Historically Black Colleges and Universities (HBCUs) and Traditionally White Institutions (TWIs), the theoretical framework of critical race theory (CRT) will be explored as a lens with which to view some of these fiscal disparities.(FN3) The reality of spending differences between HBCUs and TWIs provides a necessary opportunity for using CRT in a preliminary analysis of revenue and expenditure differences with regard to equity issues in higher education desegregation since the U.S. Supreme Court decision in *U.S. v. Fordice*.(FN4)

The long and arduous history of legalized racial segregation in higher education reached its apparent resolution in 1992 with the Fordice holding. This decision called for Mississippi to take affirmative measures to desegregate its system of higher education. The Court ruled that policies and practices, which were an extension of the historical de jure system of racially segregated higher education, had to be examined and justified by state higher education officials. If racially identifiable policies did not have a sound rationale, the Fordice ruling designated that they were vestiges of racial segregation and should be eliminated throughout the postsecondary education system in Mississippi.

Our purpose for reviewing higher education racial desegregation equity in the post-Fordice era is twofold: 1) to discuss the future status of public HBCUs and African American student progress in light of higher education finance data; and 2) to illustrate how this data can be analyzed and interpreted through CRT. Critical race theory is a collection of stances in the tradition of critical

legal studies that posture against the existing legal order from a racial equity point of view. As a theoretical construct, CRT analyzes law and legal traditions through the historical and contemporary perspectives of racial minorities in this country.(FN5) CRT attempts to give credence to the stories and interpretations of people of color in the dominant social and legal paradigm. It also questions the effectiveness of laws, such as Title VI of the 1964 Civil Rights Act in truly achieving the goals of racial equality in higher education.(FN6) An implicit question surrounding the CRT perspective is: "What would the legal landscape look like today if people of color were the decision-makers?"(FN7)

Racial desegregation in higher education has assumed heightened importance with the Fordice decision because of its potential effect on structural arrangements within state higher education systems, and equal opportunity for all students. One of the most critical policy issues post-Fordice is the closure or merger of HBCUs with TWIs.(FN8) Recent lawsuits in Georgia, for example, have asserted that HBCUs are symbolic relics of a legally segregated higher education system that is no longer conducive to equal educational opportunity in an increasingly diverse society.(FN9) Others contend that public HBCUs are providing few opportunities for African American students. Many African American students, for example, typically enter these institutions with poor academic skills, which often results in low graduation rates and bleak economic prospects in the job market, due partly to the suspect quality of degrees granted at HBCUs.(FN10)

Maintaining the continued existence of these institutions has also been seen as counterproductive to the goal of creating a diverse but economically efficient model of higher education.(FN11) Arguments to counter the critics of HBCUs have relied on the illustrious cultural history of these institutions and the role they played in providing equal educational opportunity for African Americans, especially during the Jim Crow era.(FN12) Some HBCU supporters have pointed to U.S. Supreme Court Justice Clarence Thomas' statement in his concurring opinion on the instrumental role of HBCUs in creating a class of professionals (e.g., doctors, lawyers, and teachers) who have served the African American community.(FN13) Public HBCUs have had a strong impact preparing African American undergraduates for successful postgraduate study at TWIs.(FN14) HBCU supporters have also argued that states have not made good faith efforts to comply with *Brown v. Board of Education*, or *Adams v. Richardson*, both major desegregation rulings in public school and postsecondary education.(FN15) Consequently, it is argued that HBCUs should be maintained and strengthened through increased resources.(FN16)

HBCU advocates have also pointed to increasing enrollments of African Americans in these institutions as evidence of their rising popularity. For example, the number of African Americans enrolled in HBCUs was 185,780 in 1980, but increased to 213,904 by 1991, and by 1994, enrollment at four-year HBCUs increased to approximately 260,000.(FN17) Finally, HBCU supporters have pointed to the rise of overt acts of racism and hostility directed toward African Americans and other students of color who attend TWIs, as evidence for the continued need for HBCUs as supportive avenues for academic advancement and a community of cultural support

for student success.(FN18)

The aforementioned political and cultural arguments, both for and against the survival of HBCUs deserve considerable attention in the higher education community. However, in this article we argue that the policy arguments surrounding higher education desegregation should be examined and evaluated from a racial equity perspective as well. The U.S. Supreme Court has set the standard of evaluation by tracing the continuous effects of a state's racially segregated system. The Fordice decision calls for an evaluation of public higher education systems to determine if their policies regarding equity issues, such as state aid for students, institutional resources, and state support continue to have racially disparate effects. We will utilize the lens of critical race theory as an evaluative framework with which to explore financial and equity evidence related to plans and policies that could be interpreted as vestiges of both the Plessy v. Ferguson and Jim Crow era.(FN19)

The inextricable interactions among money, race, and public policy are central to an analysis of higher education disparities between HBCUs and TWIs. As common symbols and quotidian tools of society, money and race have an uncanny allegiance in that they tend to weigh heavily on societal policy outcomes. CRT treats race as a centralized construct upon which to develop theory.(FN20) Analogous to financial power, race has the ability to affect state action. Despite efforts to create fairness based on equal opportunity in higher education, the reality of fiscal inequity in higher education practice and policy remains consistent at the institutional and student level.(FN21) Indeed, as factors in American postsecondary educational policy, race has become almost as compelling as fiscal concerns.

The article is organized as follows: Part I will highlight features of CRT and its major applications to desegregation in higher education; Part II will briefly explain the key court cases that have effected higher education desegregation and their importance in shaping and impacting funding in the 19 former de jure states (Adams states); Part III will present data from various indicators as to what the state of higher education is in the post-Fordice era and report on its effects on African American student equity in higher education; Part IV will present a critical analysis in the aftermath of Fordice, and Part V will conclude with perspectives regarding what higher education policy goals are necessary to address the fiscal and educational needs of African American students and the future of HBCUs.

I. OVERVIEW OF CRITICAL RACE THEORY AND HIGHER EDUCATION: COLOR-BLINDNESS AND CRITICAL RACE THEORY

The recent discourse on critical race theory is partly a reaction to the resurgence of the color-blind interpretation in law and political discourse. The Reagan Administration ushered in a new wave of legal and judicial emphasis on viewing law through a color-blind lens. Generally, the supporters of this view have asserted that race-based remedial policies threaten U.S. democracy. Former U.S. Attorney General, William Bradford Reynolds, was among those who argued that during his tenure, it was the position of the Reagan Administration to return civil rights law to its

original intent, which was the equal treatment of all groups under the law, regardless of race.(FN22) Also, the color-blind position has steadfastly maintained that race should be viewed as an arbitrary factor because it tells us nothing about an individual's capabilities.

The legal position of the color-blind perspective gained increased momentum after the 1994 U.S. Congressional election. There was a renewed sense of conviction on the part of many conservative politicians to aggressively seek to limit the previous expansion of civil rights law and special treatment based on race. Michael Omi and Howard Winant have commented on how race has increased in political significance as elected leaders manipulate the concept of race neutrality in U.S. elections.(FN23) This can be seen most clearly in the current efforts to roll back affirmative action in the states of California and Washington.

Critical race theory seeks to expose these proposals for color-blind initiatives and the accompanying political discourse as a pretext for racial discrimination in the post-Civil Rights era. The critical race legal position argues that white European Americans, as a racial classification, have enjoyed a tremendous legal advantage over persons of color.(FN24) Critical race legal theorists argue power has been effectively wielded in U.S. society because it has been legitimized through law, as "whiteness" has been legally protected and equated with property rights over African and Native Americans.(FN25)

In higher education, Cheryl Harris posits that the U.S. Supreme Court legitimizes white property rights in 1978, through the Regents of University of California v. Bakke decision.(FN26) According to Harris' interpretation of Justice Powell's opinion, Bakke was an innocent victim with regard to how his property rights as a qualified medical school applicant was taken by a lesser qualified minority student under the UC-Davis medical school admissions plan. Harris argued that the Court was willing to validate Bakke's expectation of a right to admission because the UC-Davis plan was not in fact color-blind with decisions being based on merit. The Court assumed that the admissions process was fair based on the seemingly objective criteria used (e.g. standardized test scores) which may indeed be biased against minorities.(FN27)

The Bakke decision can be viewed as protecting the property rights of whites in higher education. Similarly, critical race theory can be used to examine how U.S. v. Fordice (1992) and Ayers v. Fordice (1995) are decisions that protect white institutions as "property," for white students who attend TWIs, but rule against HBCUs and the "property" interest of African Americans.(FN28) One can also argue that the property rights of white European Americans in higher education played a significant role in Hopwood v. Texas; a case that is widely considered a prime example of reverse discrimination among critics of affirmative action policy. The Federal Court of Appeals for the Fifth Circuit ruled in favor of white applicants for admission into the University of Texas-Austin law school even though there was evidence that other white students who ranked below the African American students were admitted to the institution.(FN29) In Hopwood, the Court ruled that race should never be a factor in admissions in order to create an equal society under the law. Wendy Brown interprets the fallacy of reverse

discrimination and the color-blind interpretation and highlights its attempt to ignore the contextual analysis of history and the political realities of race:

"Critical race scholars have critiqued the tendency of courts to disengage law from the political and cultural realities of our multicultural society and create the illusion either that racial discrimination against blacks and other racial minorities no longer exists, or that it is no longer influenced by state conduct."(FN30)

The role of critical race theory in *Fordice*, *Hopwood*, and other higher education legal cases is important because it serves as an invaluable part of the counter legal evidence (e.g. historical, descriptive statistical, narrative, sociological) gathering and findings of fact in the higher education desegregation cases. For example, in the *Ayers* (1995) decision, Federal District Court Judge Neil Biggers noted the high percentage of African American students graduating from TWIs since the 1960s.(FN31) Therefore, Judge Biggers surmised that these institutions must be successful. However, Judge Biggers failed to consider the converse; that is, how many African American students have to tolerate a hostile racial climate to survive the TWIs, as evidence from the personal testimonies of African American students who submitted briefs in the previous *Fordice* cases.

The personal testimonies of former African American students (amicus curiae brief) who attended the University of Mississippi illustrate the depth of racial prejudice they were subjected to as they tried to exercise their "freedom of choice" to attend the flagship TWI. Furthermore, despite the appearance to maintain fairness and equality, these students were held to higher standards complicated by negative campus interactions. In the amicus curiae brief filed by these students, they argued that "habits of speech, conduct, and attitudes should have been considered along with equal access to the race neutral system of higher education."(FN32) These students attempted to argue that despite assertions of race neutrality at public TWIs, the campus culture held African American students to a different set of discriminatory standards and actions. Yet, the Court did not view this as a legitimate vestige of segregation. A critical race theory perspective shows how much these students have had to negotiate to survive and graduate from the TWIs, which is usually not the case for their white counterparts.(FN33) Legal narratives of racism and racial discrimination play a role in challenging the prevailing notion of legal neutrality and race, however, we also contend that the narratives under CRT in higher education desegregation analysis are not enough to evaluate whether the states are comprehensively meeting the standards set in *Fordice*. Therefore, we believe that quantitative data needs to be included to develop a more comprehensive picture of the status of higher education desegregation and fiscal equity. It is the fiscal data and its historical significance in higher education desegregation litigation to which we will now turn.

II. OVERVIEW OF LEGAL HISTORY ON RACIAL DESEGREGATION IN HIGHER EDUCATION

Overall, public HBCUs have had to endure continual institutional discrimination and battles over control with white state higher education officials and faculty. Public HBCUs were established as separate and grant institutions for African American students. These colleges were supposed to receive funds equal to those secured by TWIs with respect to scientific and industrial

training.(FN34)

For example, the language of the 1877 Hatch Act and the 1890 Morrill Act (Morrill II) was intended for the equal development and funding of black land-grant institutions, for subjects, such as agriculture, mechanical arts, and English. But the southern state legislatures never provided the mandated equalization funding.(FN35) By 1914, only 8.5 percent of Morrill Act funds had been directed to black-land grant institutions.(FN36) Furthermore, curriculum offerings were restricted to maintain the agenda of white political and social control over African American higher education. The "Hampton-Tuskegee" model of education emphasized vocational, training, physical/manual labor, character building, and deference to white supremacy.(FN37) The "Hampton-Tuskegee" model was financed by white northern philanthropists and popularized by Booker T. Washington's emphasis on self-help at the expense of African American demands for civil rights during the Jim Crow era.(FN38)

African Americans tried to break this hegemony through an NAACP led attack on segregation in higher education which eventually led to *Brown v. Board of Education*.(FN39) Yet, the pre-Brown segregation cases outlined the development and evolution of the integrationist legal struggle. The NAACP engaged in a strategy to attack racial segregation and equity in public higher and secondary education through constitutional challenges. The following cases: *Missouri ex. rel. Gaines v. Canada*, *Sipuel V. Board of Regents*, *McLaurin v. Oklahoma State Regents*, and *Sweatt v. Painter*, each played a critical role in the development of the particular line of legal attack that Thurgood Marshall and the NAACP legal defense team put forth to legally dismantle segregation.(FN40)

Despite the fact that African Americans secured the legal right to attend TWIs after *Brown*, "Jim Crow" states actively resisted implementing or enforcing the *Brown* legal mandate. As the civil rights movement began to gain momentum in the 1960s, the southern higher education establishment continued to exercise hegemonic control over HBCUs, as was the case in Mississippi. For instance, Mississippi's four-year public HBCUs were all dominated by the white segregationist legislature and they effectively controlled the college administration on each of these campuses to squelch any civil rights protests under the threat of the college presidents losing their positions.(FN41)

In the post-Brown era, the Federal Courts also played a pivotal legal role in this type of resistance because the legal decisions reflected a premise of inferior education offered at HBCUs and desegregation required the elimination of these institutions.(FN42) For example, in *Hunnicut v Burge*, the Federal District Court held that the state of Georgia had not done enough to desegregate its higher education system because it permitted the continued existence of an HBCU (Fort Valley State College).(FN43) Fort Valley State College was determined by the court to have substandard academic offerings when compared to nearby TWIs. This bias against the status of public HBCUs as majority black institutions was also reflected in the litigation surrounding integration at Tennessee State University.(FN44) This was a ten-year legal battle

surrounding the issue of the failure of the state of Tennessee to "dismantle a statewide dual system, the heart of which was an all-Black TSU."(FN45)

However, not all of the litigation surrounding desegregation in higher education has been hostile to public HBCUs. Most notably, the prolonged *Adams v. Richardson* and *Adams v. Califano* litigation recognized the unique contributions of public HBCUs to address the needs of African American students, and how these institutions played a positive role in the higher education system of the former racially de jure states.(FN46)

The importance of *Adams* centered on requiring the federal government to enforce Title VI of the 1964 Civil Rights Act in states that had the vestiges of racial segregation in their higher education systems. It required the federal government to establish guidelines for states to desegregate their systems of higher education, and emphasized the importance of HBCUs in achieving equal educational opportunity for African Americans. In 1970, the NAACP Legal Defense Fund filed a class action suit charging ten states (Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Pennsylvania and Virginia) with the failure to eliminate segregated institutions of higher education and took steps to withhold federal funding. In 1972, the Federal District Court upheld the plaintiff's claims and called for the ten states to develop acceptable desegregation plans.

Many parties involved in this suit (e.g., NAACP Legal Defense Fund, National Association for Equal Opportunity in Higher Education) had complex and sometimes competing legal positions and strategies. However, the most critical point of contention in the *Adams* case has been the legal resistance of the southern states to comply with the desegregation/enhancement of HBCUs mandate.(FN47) Indeed, if *Adams* had been fully addressed at the outset, there would be little need for subsequent *Fordice* litigation. Unfortunately, many states, such as Mississippi, continued their virulent resistance to the desegregation of their TWIs and the enhancement of HBCUs.

The African American plaintiffs in *Fordice* made claims of discrimination under the 14th Amendment of the U.S. Constitution and the 1964 Civil Rights Act arguing that the racially segregative effects of the dual system of higher education severely hindered their right to equal educational opportunity. The state of Mississippi admitted this past historical discrimination, but then countered by asserting that the past no longer applied to the current situation since all students in the state have the freedom to apply and attend any higher education institution of their choice. Additionally, the plaintiffs in *Fordice* maintained that the use of standardized tests had a deleterious impact on African American student admissions to TWIs and decreased enrollments at public HBCUs. The historical timing of the use of these standardized tests coincided with TWIs efforts to limit African American access to higher education. The state's counterargument to this particular charge was that the use of standardized examinations were merely an attempt by the TWIs to upgrade academic quality throughout Mississippi's system of

higher education.

In the lower Federal Court rulings, the state's freedom of choice plan was upheld because of a previous decision on race, freedom of choice and 4-H clubs in *Bazemore v. Friday*.(FN48) The *Bazemore* decision was a critical point of contention for the U.S. Supreme Court as they questioned the state's comparison between racial choice and 4-H clubs, to the complexities of higher education with regard to possible discrimination. The state's reliance on the freedom of choice argument proved to be its undoing, because in an eight to one decision, the U.S. Supreme Court overturned the previous rulings and held that the vestiges of state sanctioned discrimination still remained.

At issue for the Court was whether the state of Mississippi had done all it could to eliminate the Jim Crow policies of separation and discrimination in higher education. The Court noted the historical state inaction to desegregation as exemplified by the racial patterns of student enrollment in same race institutions remained virtually unchanged from the late 1960s to the late 1980s. The Court ruled that this history had a definite deleterious impact on the effects of current discrimination in the state's higher education system, particularly through the selective use of standardized tests for admission and the historical missions of colleges and universities. The U.S. Supreme Court remanded the case to the lower federal courts with three inquiries: 1) whether it would be practicable and consistent with sound educational policies and practices to eliminate effects of the "race neutral" policies; 2) whether the state's operation of higher education was constitutionally sound; and 3) a complete re-examination of higher education in the state to eventually dismantle the former de jure system.(FN49)

The *Fordice* decision has national implications in terms of setting standards of evaluation for higher education systems to see if they are indeed making progress in terms of racial desegregation and the enhancement of public HBCUs as resource-strong institutions to pursue postsecondary education. *Fordice* has also served as a benchmark for the U.S. Office of Civil Rights in the Department of Education to see "if states are succeeding in actually desegregating and raising the quality of the HBCUs and African American student opportunity in higher education."(FN50) Some of the preliminary analysis of these efforts can be seen in the following equity comparisons. Table 1, depicts percentages of African American freshman that attended public colleges in selected states during the 1996 academic year. From the enrollment statistics, only 12.1 percent of African American freshman were enrolled in Mississippi's TWIs compared to 25.8 percent in the state's HBCUs.

III. FISCAL DISPARITIES BETWEEN HBCUS AND TWIS: ANALYSIS OF SELECTED DATA SOURCES

The primary source of data for this analysis of fiscal differences between HBCUs and TWIs came from the National Center for Education Statistics.(FN52) Specifically, data from the Integrated Postsecondary Education Data System (IPEDS) was used. A preliminary longitudinal analysis of data from 1976 through 1994 indicate that expenditures at most public HBCUs were

lower than those available at other higher education institutions, most notably public TWI's. While higher education expenditures per student at both public and private HBCUs have increased during the period of 1976 through 1994, this increase was not comparable to other public and private TWI institutions. In 1993-94, for example, educational and general expenditures per student at HBCUs were \$9,782, or about 88 percent of the average for all public colleges and universities.

Although a more detailed analysis of this data is required for a more substantive analysis, the general statement that disparities in expenditures per FTE (full-time equivalent) between HBCUs (public and private) and all other private colleges and universities is increasing over time. In 1976-77, for example, the difference in expenditures per FTE between HBCUs and all-private colleges and universities was only \$204 dollars (HBCUs: \$7,320 compared to \$7,116 for all private colleges and universities). During the 1993-94 academic year, however, differences in per-student expenditures had risen dramatically to \$3,037 (HBCUs: \$22,186 compared to \$25,223 for all private colleges and universities).

Professor of Economics, G. Thomas Sav, presents a fairly detailed and convincing analysis of revenue differences in state financing of HCBUs compared to TWIs.(FN53) Table 2 depicts significant intrastate and interstate revenue disparities between HBCUs and TWIs in the category of tuition funding, state grants and appropriations, federal grants and appropriations, and other revenue sources.

Although it is important to point out that different states have varying higher education funding models, some states are clearly less educationally supportive than others. Tables 3 and 4 highlight varying levels of state appropriations per student at both public HBCUs and TWIs. In 1993-94, Tennessee, Virginia, Ohio, Mississippi, Arkansas, Texas, and North Carolina appropriated more money per student to TWIs than to public HBCUs; while Pennsylvania, Delaware, South Carolina, Louisiana, Alabama, Florida, Georgia, and Maryland appropriated more money per student to public HBCUs than to TWIs.(FN54)

IV. POLICY OPTIONS AFTER FORDICE AND IMPLICATIONS FOR PUBLIC HBCUS AND AFRICAN AMERICAN STUDENTS

Following the Fordice decision, some higher education analysts have voiced reservations about the U.S. Supreme Court's ruling.(FN55) Some fear that since the Court in Fordice did not explicitly uphold the importance of HBCUs, some states would close HBCUs under the plan of reorganizing its higher education system. This "reorganization plan" was proposed when, at a closed door session in 1992, the Mississippi Board of Trustees for Higher Education developed a post-Fordice higher education reorganization plan, which called for the closure of Mississippi Valley State University, an HBCU with an eventual merger with Delta State University, a TWI.(FN56) Some HBCU advocates have argued that state officials have been disingenuous in the development of these and other plans.(FN57)

As the Federal District Court trial began in 1994, supporters of HBCUs asserted that Mississippi's history of legally sanctioned segregation directly impacted affected the discriminatory distribution of resources and programs and its effect on African American students at both TWIs and HBCUs.(FN58) The importance of historical missions may partially explain the most recent U.S. District court ruling in 1995, which turned down a state plan to close Mississippi Valley State University and merge Mississippi University for Women and Mississippi State University.(FN59) In addition, Federal District Judge Biggers noted the historical racial disparities in funding between TWIs and HBCUs that would be partially corrected by a court-ordered \$35.8 million to pay for improvements for the HBCUs over an extended period.(FN60)

However, historical evidence might not be enough to correct other parts of the Fordice decision, or politically convince state higher education officials and analysts to preserve HBCUs in the future. Judge Biggers accepted part of the state of Mississippi's plan to raise admission test score requirements for all eight public campuses to the same admission criterion used at the TWIs. This particular part of Judge Biggers' decision has been viewed as a means to decrease African American enrollment since it will have a deleterious impact on these students, as well as the HBCUs since they often admit students with lower test scores.(FN61)

There has also been support for "downsizing" higher education in Mississippi in order to achieve effective desegregation. For example, Robert Davis has proposed the merger, consolidation and closure of six of the eight public universities because the current approximate enrollment of 60,000 in all of these institutions is too small for Mississippi to support.(FN62) Davis also argued for the limitation of public funding for HBCUs because these racially identifiable colleges should not operate at the public's expense, especially since their academic and graduation records left students at an extreme disadvantage when compared to those at TWIs.

Wilson also partially questioned the survival of HBCUs because a national comparison of the public HBCU-TWI baccalaureate production at the undergraduate level revealed that HBCUs enrolled 33 percent of African American baccalaureate students and produced 34 percent of African American baccalaureate degrees, which was not a significant difference from the African American productivity of TWIs during this period.(FN63) Some critics, such as Thomas Sowell, have proposed even harsher measures by contending that the public HBCUs should close because the students admitted have low standardized test scores, taught by unqualified instructors and that African Americans students have to learn how to live in an integrated society.(FN64) Sims has posited that since diversity is taking place at TWIs, it must also be done at HBCUs, especially if they are going to survive the harsh uncertain economic realities of the 21st century when confronted with possible closure. This effort at diversity must take place at the HBCUs so that they aggressively pursue and hire highly qualified white faculty, students, staff and administrators, and the institutional culture of these public HBCUs should change to meet the needs of the new constituency and promote campus appreciation of difference.(FN65)

The importance of the HBCUs comes at a critical juncture in their fight for survival from attacks by a conservative "color-blind" Federal judiciary, and legislators demanding accountability, excellence and efficiency in higher education. Currently there are 40 public HBCUs and the total number HBCUs (105 combined public and private) enroll over seventeen percent of African American students in higher education; this despite the fact that they are only three percent of the 3,559 higher education institutions in the United States.(FN66) The total student population in the HBCUs has fluctuated, declining in the 1970s and steadily increasing since 1986. From 1986 to 1990 there has been a 15 percent increase in undergraduate enrollment for example, which also happened to exceed the African American student percentage at TWI four-year institutions.(FN67) According to the 1990 U.S. Department of Education report on HBCUs, most of this increase occurred at the public HBCUs.

Critics of HBCUs have also ignored comparative African American performance levels at the TWIs. Walter Allen's survey data of over 2,500 respondents to the National Study on Black College Students revealed that in general, African American students who attended predominantly white schools reported lower college grades and less favorable relations with white professors and students.(FN68) The factors most associated with African American College student success were the immediate surrounding social context and interpersonal relationships. More students reported these favorable conditions at the HBCUs than the TWIs, which led Allen to acknowledge the importance of racial and cultural community. HBCUs also created a sense of belonging and empowerment on the campus that was difficult for African American students to obtain at TWIs, as the level of racial incidents has risen in intensity at the TWIs.(FN69)

Detractors of public HBCUs also have to acknowledge the inequitable distribution of resources and the misuse of admissions requirements to maintain white control over the HBCUs. Stephen Halpren addressed the resource issue as he outlined how the state of Mississippi engaged in significant funding disparities between the TWIs and HBCUs. As recently as fiscal year 1988-89, the per capita expenditures at the state's HBCUs was approximately \$3,800 per student, compared to \$6,800 for the TWIs; and in 1990-91, the HBCUs had approximately \$3,330 in per capita expenditure per student, as compared to almost \$5,900 at the TWIs.(FN70) Elias Blake Jr.'s review of the evidence revealed a deep history of systemic discrimination at the K-12 and post-secondary levels. Blake found that historically, and currently, the state of Mississippi tolerated and encouraged gross inequities with regard to programs and other academic opportunities for African American students to obtain a high school education. Therefore, it was up to the HBCUs to compensate for the educational inequities that African Americans were deliberately denied throughout their high school experience. The resources were used not only to provide compensatory education, but offered undergraduate, graduate and professional programs for African American students to become successful future citizens.(FN71)

Blake's analysis of the continual effects of racial discrimination in K-12 through post-secondary education in Mississippi, highlights the national implications of Fordice. Racial desegregation issues in higher education are taking on national importance with increased conservative attacks

against affirmative action at colleges and universities. Fordice calls for the removal of vestiges of racial segregation in higher education. But the dilemma for all post-secondary institutions will be how this can be done without affirmative action steps taken by colleges and universities?

Racial desegregation in higher education should not be seen as simply a southern problem because throughout the nation there has been a declining enrollment for minority students at TWIs in comparison to enrollments in the late 1960's and early 1970's.(FN72) This is because as Dana Takagi comments, at a national level, U.S. higher education has consistently failed to squarely address issues of race.(FN73) The U.S. Justice Department is in the process of conducting more cordial negotiations with state officials to promote desegregation in the former de jure states such as Florida, Kentucky, Maryland, Pennsylvania, Texas, and Virginia.(FN74) But higher education institutions and state officials have should take a comprehensive and proactive stance in addressing racial equity which is long overdue.(FN75)

One way this could be done is by changing the implicit caste-like status of higher education institutions.(FN76) Typically, the TWI is considered the flagship campus and is at the pinnacle of higher education in the state. However (as partially indicated by our data), if state-financed discrepancies are reconsidered in light of historical and current defects of past funding discrimination then a different interpretation based on Ayers-Fordice may emerge and public HBCUs can be placed on equal resource levels with TWIs.(FN77) It would not be inconceivable under this new model of higher education to have a public HBCU as the flagship campus. Ayers-Fordice calls for a change in the missions and diversity of institutions based on new needs and interests of the state and its communities.(FN78)

A second proactive policy action that could be taken under Ayers-Fordice is to put greater emphasis on the public HBCUs and how they serve the needs of African American students. These institutions serve an important function for the African American community and they need to be preserved and enhanced. Public HBCUs are one of the few symbolic institutions left that provides a supportive and empowering environment for many African American students, especially those who have attended de facto segregated public schools. Recognizing the importance of community to African American students would acknowledge their educational achievements in the face of an increasingly hostile racial climate in the U.S.

Finally, Ayers-Fordice should prompt all parties involved to rethink race and education based on what can be learned from Brown. It held out the promise of equality through desegregation, but this was never fulfilled due to white resistance and continued institutional racism.(FN79) Given these realities, a re-thinking of Brown and Ayers-Fordice would call for a comprehensive equitable remedy. This would involve creating deeply structured educational links between K-12 and higher education, in order to enact the vision of improving African American public school success that will prepare them to succeed in college.(FN80) The emphasis in this approach would not focus on a false promise of forced desegregation through assimilation. Rather, this K-16 continuum would emphasize resource equity, racial equality with white European Americans,

but the choice of autonomy for African Americans with regard to their own efforts to improve education and struggle for social justice.

This preliminary analysis of funding differences between HBCUs and TWIs yields interesting results, especially in the area of relating these findings to a critical race theory paradigm. Our analysis reveals some significant inter-state differences in the funding of public HBCUs. Moreover, on a larger scale, there exists a continuing higher education finance trend of inferior levels of state-appropriated support to HBCUs compared to TWIs. The fact that HBCUs, on the whole, receive considerably more federal support than TWIs to compensate for the lack of state support can be viewed as encouraging. However, the importance of equalized state support in higher education funding is unavoidable, especially in the case of HBCUs.

In an attempt to stimulate intellectual innovations with ameliorative social implications regarding the American race problem, critical race theory was engendered through the works of Derrick Bell, Alan Freeman, Kimberle Crenshaw, and others. A growing number of legal and social science scholars have since that time contributed many constructs that contribute to the development of this theory, yet it should be considered still quite young. For this and other important reasons, CRT is not especially respected in mainstream dominant academic and legal discourse. For example, critics have argued that the use of and reliance on narrative (a practice of CRT thinkers that was only mentioned in this article) that is a special feature of CRT, renders it invalid because its effect is to privilege race in law and judicial practice.(FN81)

The following ideas: Racism is an ingrained feature of American society, Symmetrical and Asymmetrical equality, and White people only act on behalf of Blacks when it is in their own interest (Interest convergence) are the aspects of critical race theory that we have examined in these pages. We relate these ideas to the uncanny historical alliance that race and money have in higher education and have found the resulting disparity to manifest itself in terms of gross fiscal inequality. The disparities examined in this paper, we believe, were clear, consistent, and persistent.

In addition to economic costs, however, this paper argues that there are other important hidden costs that our society must pay for inequality in higher education. They include the declining moral attitudes that are represented through contemporary media, the dismissal of virtually all spiritual aspects of life and a commitment to social justice. CRT has all of the flaws that one would expect an emerging theoretical construct to have. Yet it has the potential to achieve that, which established theories and methods of thinking about social problems in a racial context have been unable to do: it presents a non-exclusionary, widely encompassing picture with which scholars and activists of all persuasions can pursue these seemingly indomitable issues.

Has critical race theory adequately explained fiscal disparities between HBCUs and TWIs? Probably not. However, contemporary and increasing funding differences between HBCUs and

TWIs necessitate a frank discussion of the importance of race and money in ensuring the historical, educational, and economic success of HBCUs in the future.

Legally, financial comparisons between predominately black and predominately white institutions of higher education play an important part in identifying both unequal educational opportunity and in determining what financial resources will be necessary to address these inequities. The benefit of analyzing critical race theory is related to how resource inequities may be linked to race. More important, critical race theory brings the discussion of race to the forefront of funding differences in higher education between predominately black and white colleges and universities.

The U.S. v. Fordice ruling has the potential to restructure higher education. Some critics have viewed public HBCUs as a major deterrent to racial equity and opportunity in higher education. Supporters, however, see HBCUs as one of the few institutions providing a community of interest for African American college students who have to face increasing academic and social barriers at TWIs. Federal courts will have a major role in continuing to define how Ayers-Fordice will be implemented in the future. Throughout the legal proceedings, African Americans and HBCUs have been the subject of discussion but have not been brought to center stage in this controversy. The pre-Brown and Adams cases were initial attempts by African Americans to legally tear down the walls of segregated education. But these efforts were met with resistance by whites who formed an argument of "freedom of choice" which continued discrimination against HBCUs and African American students at TWIs.

It is hoped that the Ayers-Fordice decision will spur the courts and higher education leaders nationally to restructure postsecondary education in the interest of students, particularly minority students. A major part of the impetus for this will come from African Americans, as they have always been in the historical forefront of pushing for access and equity at TWIs and the enhancement of HBCUs. However, overall response from the higher education community has been fairly quiet with regard to Ayers-Fordice. Now is the time for all postsecondary institutions to take more of an active role in dealing with race, equity, and funding and the interactive nature of these factors in the higher education context.

ADDED MATERIAL

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TABLE 1 WHERE AFRICAN AMERICAN FRESHMAN WHO ATTENDED PUBLIC COLLEES AND UNIVERSTITES (SELECTED STATES) ENROLLED IN 1996

State	Two-Year Institution	HBCUs	TWIs
Alabama	51.3%	24.1%	24.6%
Arkansas	23.3	24.6	52.2
Delaware	25.4	49.2	25.5
Florida	49.4	24.6	26.1
Georgia	44.3	16.3	39.4
Kentucky	21.1	17.0	61.9
Louisiana	15.2	42.2	42.6
Maryland	40.3	39.4	20.3
Mississippi	62.1	25.8	12.1
Missouri	35.4	13.2	51.4
North Carolina	35.1	39.7	25.2
Ohio	35.8	6.7	57.5
Oklahoma	37.7	28.4	33.9
Pennsylvania	33.4	4.8	61.8
South Carolina	49.6	16.7	33.7
Tennessee	39.6	24.4	36.0
Texas	39.4	30.2	30.3
Virginia	23.5	37.6	38.9

Source: Southern Education Foundation(FN51)

TABLE 2 SELECTED STATE DIFFERENCES IN THE FUNDING OF HBCUs AND TWIs: REVENUE SOURCES

State	Tuition		State Grants & Appropriations		Federal Grants & Appropriations	
	HBCUs	TWIs	HBCUs	TWIs	HBCUs	TWIs
Alabama	22	27	39	41	25	12
13 15						
Arkansas	18	22	43	47	26	14
10 15						
Delaware	23	38	44	21	17	10
15 22						
Florida	21	17	42	53	22	11
9 13						
Georgia	17	24	42	49	25	9
16 15						
Louisiana	24	31	34	38	24	12
16 16						
Maryland	23	30	43	40	18	6
15 21						
Mississippi	20	24	28	38	31	15
20 19						
North Carolina	12	13	51	47	18	9
17 26						
Ohio	27	40	33	37	20	10
19 10						
Pennsylvania	23	46	46	30	15	7
14 14						

South Carolina	19	32	36	36	24	9
21	18					
Tennessee	21	20	39	49	27	9
12	15					
Texas	18	21	41	51	24	10
14	13					
Virginia	27	27	29	32	20	8
24	27					

Source: G. Thomas Sav, "Separate and Unequal: State Financing of Historically Black Colleges and Universities," *Journal of Blacks in Higher Education* 15 (Spring 1997): 102.

TABLE 3 SELECTED STATES WHERE HIGHER EDUCATION APPROPRIATIONS PER STUDENT ARE HIGHER AT TWIS COMPARED TO HBCUS

State	HBCU	TWI	TWI as %	of
Tennessee	\$2,840	\$6,966		245
Virginia	1,964	3,094		158
Ohio	1,437	2,166		151
Mississippi	2,618	3,143		120
Arkansas	2,764	3,093		112
Texas	2,711	3,001		111

Source: G. Thomas Sav, "Separate and Unequal: State Financing of Historically Black Colleges and Universities," *Journal of Blacks in Higher Education* 15 (Spring 1997): 102.

TABLE 4 SELECTED STATES WHERE APPROPRIATIONS PER STUDENT ARE HIGHER AT HBCUS COMPARED TO TWIS

State	HBCU	TWI	TWI as %	of
Pennsylvania	\$6,661	\$2,285		34%
Delaware	4,368	2,735		63
South Carolina	3,533	2,662		75
Louisiana	2,268	1,761		78
Alabama	3,282	2,885		88
Florida	4,621	4,170		90
Georgia	3,466	3,188		92

Source: G. Thomas Sav, "Separate and Unequal: State Financing of Historically Black Colleges and Universities," *Journal of Blacks in Higher Education* 15 (Spring 1997): 102.

FOOTNOTES

1. Toni Morrison, *Playing in the Dark: Whiteness and the Literacy Imagination* (New York: Vintage): 63.
2. See the work of James D. Anderson, "African American Public Higher Education in the Twentieth Century South: Lessons from Mississippi" (paper presented at the Southern Historical Society, 1998); and "Philanthropy, the State and the Development of Historically Black Public Colleges: The Case of Mississippi," *Minerva* 35 (1997): 295-309.
3. For this paper Traditionally White Institutions (TWIs) are defined as institutions for higher education with more than 50 percent of its student population white and traditionally served the white population during the de jure segregation era. Public HBCUs are defined as the historic public institutions of higher education that were designed to serve African Americans.
4. 112 S. Ct. 2727 (1992).

5. See *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado, Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas (Philadelphia: Temple University Press, 1995) and *Critical Race Theory: The Key Writings that Formed the Movement*, ed. Kimberlé Crenshaw, et al. (New York: The New Press, 1995).
6. See Stephen Halpern, *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act* (Baltimore, MD: The Johns Hopkins University Press, 1995). Even though he is not commonly associated with CRT, he has posited that civil rights laws have had a limited impact on achieving racial equity in higher education.
7. Roy L. Brooks, "Critical Race Theory: A Proposed Structure and Application to Federal Pleading," *Harvard Black Letter Law Journal* 11 (Spring 1994): 86.
8. Joyce Mercer, "U.S. Steps in with Plan to Desegregate State's Colleges," *The Chronicle of Higher Education* 12 (January 1994): A25.
9. Patrick Healey, "A Lawsuit Against Georgia University System Attacks a Range of Race-Based Policies," *The Chronicle of Higher Education* (March 14, 1997): A25. See also, Robert N. Davis, "The quest for Equal Education in Mississippi: Implications of *United States v. Fordice*," *Mississippi Law Journal* 62 (Winter 1993): 406-501, and Reginald Wilson, "Can Black Colleges Solve the Problem of Access for Black Students," *American Journal of Education* 98 (August 1990): 443-457.
10. See Thomas Sowell, *Black Education: Myths and Tragedies* (New York: McKay Press, 1972).
11. Serbrenia J. Sims, *Diversifying Historically Black Colleges and Universities: A New Higher Education Paradigm* (Westport, CN: Greenwood Press, 1994), 9-12.
12. Derrick A. Bell, "Black Colleges and the Desegregation Dilemma," *Emory Law Journal* 28 (1979): 981-984.
13. See Justice Clarence Thomas' concurring opinion in *U.S. v. Fordice*, 112 S.Ct. 2727 (1992), at 2746.
14. Harold H. Wenglinsky, "The Educational Justification of Historically Black Colleges and Universities: A Policy Response to the U.S. Supreme Court," *Educational Evaluation and Policy Analysis* 18 (Spring 1996): 101.
15. *Brown v. Board of Education*, 347 U.S. 483 (1954); *Adams v. Richardson*, 356 F.Supp. 92 (D.D.C. Cir. 1973); and *Adams v. Califano*, 480 F.2nd 1159 (D.D.C. Cir. 1977).
16. Elias Blake Jr., "Is Higher Education Desegregation a Remedy for Segregation but not Educational Inequality?: A Study of the *Ayers v. Mabus* Desegregation Case," *The Journal of Negro Education* 60 (Fall 1991): 557.
17. Leland Ware, "The Most Visible Vestige: Black Colleges After *Fordice*," *Boston College Law Review* 35 (May 1994): 676; and Charlene M. Hoffman, Thomas D. Snyder, and Bill Sonnenberg, *Historically Black Colleges and Universities: 1976-1994* (Washington, DC: U.S. Department of Education; National Center for Educational Statistics, NCES 96-902, 1996), 4.
18. See for example, Antoine M. Garibaldi, "The Role of Historically Black Colleges in Facilitating Resilience Among African American Students," *Education and Urban Society* 24 (1991): 103-112; and Julian B. Roebuck and Komanduri S. Murty, *Historically Black Colleges and Universities: Their Place in American Higher Education* (Westport, CN: Praeger, 1992).
19. 163 U.S. 537 (1896).
20. The critics of CRT have argued that since race is a social construct, then logically it should be disregarded as a social category since it reifies racial hierarchies and division. However, the

CRT position is that race and racism still looms large as a social reality that has a powerful impact on shaping public policies in everyday life. For more on this debate see the chapters in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado, et al. (Philadelphia, PA: Temple University Press, 1995).

21. Gary Orfield, "Money, Equity, and College Access." *Harvard Educational Review* 62, no. 3 (Fall 1992): 356-359; and F. King Alexander, "Vouchers in American Education: Hard Legal and Policy Lessons from Higher Education," *Journal of Education Finance* 24 (1998): 172-178.

22. William Bradford Reynolds, "The Reagan Administration and Civil Rights: Winning the War Against Discrimination," *University of Illinois Law Review* 4 (1986): 1001-1025. Specific quote for reference on 1003 and 1023.

23. Michael Omi and Howard Winant, *Racial Formation in the United States*, 2nd Edition (New York: Routledge Press, 1994).

24. Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992), 8.

25. Cheryl I. Harris, "Whiteness as Property," in *Critical Race Theory: The Key Writings that Formed the Movement*, ed. Kimberl♦Crenshaw, et al. (New York: The New Press, 1995), 276-291.

26. *Ibid.*, 287-290, and see also *Regents of University of California v. Bakke*, 438 U.S. 265 (1978).

27. Cheryl I. Harris, "Whiteness as Property," 287-290.

28. *U.S. v. Fordice*, 112 S. Ct. 2727 (1992) and *Ayers v. Fordice*, 879 F. Supp. 1419 (1995).

Alex Johnson (1993) argued that the U.S. Supreme Court's decision in *Fordice* has once again placed the burden of desegregation in African Americans through a colorblind interpretation of U.S. Constitutional law. The Court failed to address de factor discrimination and racism that is still prevalent on predominantly white campuses and how racial integration really has not improved the basic living conditions of many African Americans in the U.S. in urban and rural areas.

29. 78 F.3d 932 (5th Cir. 1996).

30. Wendy R. Brown, "The Convergence of Neutrality and Choice: The Limits of the State's Affirmative Duty to Provide Equal Educational Opportunity," *Tennessee Law Review* 60 (Fall 1992): 80.

31. 111F.3rd1183 (5th Cir 1995).

32. Motion of former black students at the University of Mississippi. Amicus curiae brief filed in *U.S. v. Fordice*, 10.

33. Joe R. Feagin, "The Continuing Significance of Racism: Discrimination Against Black Students in White Colleges," *Journal of Black Studies* 22, no. 4 (1992): 546-578.

34. Gil Kujovich, "Equal Opportunity in Higher Education and the Black Public College: The Era of Separate But Equal," *Minnesota Law Review* 72 (October 1987): 35-43; and Jacqueline A. Stefkovich and Terrance Leas, "A Legal History of Desegregation in Higher Education," *The Journal of Negro Education* 63 (Summer 1994): 406-420.

35. Kujovich, *Equal Opportunity in Higher Education*, 45.

36. Jean L. Preer, *Lawyers v. Educators: Black Colleges and Desegregation In Public Higher Education* (Westport, CN, 1982), 10.

37. James D. Anderson, *The Education of Blacks in the South: 1860-1935* (Chapel Hill, NC: University of North Carolina Press, 1988), 35-78.

38. *Ibid.*, 118.

39. 347 U.S. (1954)
40. *Missouri ex. rel. Gaines v. Canada*, 305 U.S. 337 (1938); *Sipuel v. Board of Regents*, 332 U.S. 631 (1948); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950); and *Sweatt v. Painter*, 339 U.S. 629 (1950).
41. John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi* (Urbana, IL: University of Illinois Press, 1994), 225.
42. Leland Ware, "The Most Visible Vestige: Black Colleges After Fordice," *Boston College Law Review* 35 (May 1994): 676.
43. 356 F. Supp. 1230 (1973).
44. 597 F.2nd 1059 (1979).
45. *Ibid.*, 597 F.2nd 1067. The situation with Tennessee State University (TSU) within the University of Tennessee system presents an interesting contrast regarding racial desegregation in higher education. When the Federal Court order forced Tennessee State to merge operations with the University of Tennessee, TSU gained almost 3,000 students in 1979, about half of whom were white. Even though enrollment has dropped at TSU, the percentage of white students remains at around 50 percent. This has led some African American student and alumni groups to feel that TSU is no longer "their" university, partly due to active attempts by the university administration to court white students.
46. *Adams v. Richardson*, 356 F. Supp. 92 (D.D.C. 1973), modified 480 F.2d 1159 (D.C. Cir. 1973), and *Adams v. Califano*, 430 F. Supp. 118 (D.C.C. 1977).
47. John B. Williams, III, "Title VI Regulation of Higher Education," in *Desegregating America's Colleges and Universities: Title VI Regulation of Higher Education*, ed. J.B. Williams (New York: Teachers College Press, 1988), 11.
48. 478 U.S. 385 (1986).
49. 112 S. Ct. 2727, 2737 (1992).
50. Discussion of *U.S. v. Fordice*, 112 S.Ct.2727 (1992); and *Ayers v. Fordice*, 111 F.3rd 1183 (5th Cir. 1997) at a talk given at the University of Illinois Urbana-Champaign, September 8, 1998 by Norma Cantu, Assistant Secretary of the Office of Civil Rights in the U.S. Department of Education.
51. Douglas Lederman, "Report Sees Lack of Progress by Southern States in Educating Black Students." *The Chronicle of Higher Education* (On-line), <http://chronicle.com/weekly/v45/i02a05601.htm> (September 4, 1998).
52. Charlene M. Hoffman, Thomas D. Snyder, and Bill Sonnenberg, *Historically Black Colleges and Universities: 1976-1994* (Washington D.C.: U.S. Department of Education, Office of Educational Research and Improvement, National Center for Educational Statistics, NCES 96-902, 1996).
53. G. Thomas Sav, "Separate and Unequal: State Financing of Historically Black Colleges and Universities," *The Journal of Blacks in Higher Education* (Spring 1997): 42.
54. *Ibid.*, 42.
55. Scott Jaschik, "High-Court Ruling Transforms Battles Over Desegregation at Colleges in 19 States," *The Chronicle of Higher Education* 8 (July 1991):A16-18.
56. Joyce Mercer, "Praise and Fury Pursue Chief of State's Public University System," *The Chronicle of Higher Education* 17 (November 1993): A31-32.
57. *Ibid.*, A31.
58. Testimony of James D. Anderson, U.S. Remand Findings of Fact and Conclusions of Law, *Ayers-U.S. v. Fordice* (1994), 10.

59. Scott Jaschik, "Ruling in Mississippi," *The Chronicle of Higher Education* 17 (March 1995): A.23-A27; and *Ayers v. Fordice*, 879 F.Supp.1419 (1995), 1419, 1490.
60. *Ibid.*, 879 F.Supp. 1490
61. For example, see "Mississippi State University System Desegregation Case Continues: Increase in Test Score Requirements will Further Limit Black Access," *Fair Test Examiner* 9 (Spring 1995): 5. HBCUs will be hardest hit according to James E. Lyons, Sr. who was quoted in the article. He said that more than one-third of the 1994 freshman class would not have met the planned use of higher class rankings, grades in the core classes and test scores.
62. See Davis, "The Quest for Equal Education in Mississippi: Implications of *United States v. Fordice*," 406-501.
63. Regional Wilson, "Can Black Colleges Solve the Problem," 454-455.
64. Thomas Sowell (1972).
65. Serbrenia J. Sims, *Diversifying Historically Black Colleges*, 12-17.
66. Charlene M. Hoffamn, Thomas D. Sndyer, and Bill Sonnenberg. *Historically Black Colleges and Universities: 1976-1990* (Washington, DC: U.S. Government Printing Office, Department of Education, Office of Research and Improvement, National Center for Educational Statistics, NCES 92-640, 1992), 4-6.
67. It should be acknowledged that some public HBCUs are encountering decreasing enrollments and financial problems as entrance standards increase statewide and financial support at the state level continues to decline. See also Patrick Healy, "A Myriad of Problems for Black Public Colleges," *The Chronicle of Higher Education* 17 (May 1996): A30.
68. Walter R. Allen, "The Color of Success: African-American College Student Outcomes at Predominantly White and Historically Black Public Colleges and Universities," *Harvard Educational Review* 62 (Spring 1992): 35-37.
69. Joseph R. Feagin, "The Continuing Significance of Racism: Discrimination Against Black Students in White Colleges," *Journal of Black Studies* 22 (June 1992): 551-553; and Sylvia Hurtado, "The Campus Racial Climate: Contexts of Conflict," *Journal of Higher Education* 63 (September/October 1992): 539.
70. Stephen C. Halpern, "Deciding *Ayers v. Mabus*: Documenting the Disparities in State Funding," *Black Issues in Higher Education* 8 (February 27, 1992): 22.
71. Elias Blake Jr., "Is Higher Education Desegregation a Remedy for Segregation?" 556-558. In addition a recent statistical study has shown the educational value of the HBCUs in promoting more African American students to pursue graduate and professional education and degrees than the TWIs, see Harold H. Weglinsky, "The Educational Justification of Historically Black Colleges and Universities: A Policy Response to the U.S. Supreme Court," *Educational Evaluation and Policy Analysis* 18 (Spring 1996): 101.
72. Jamilah Evelyn, "The Long Winding and Neglected Road: Southern Education Foundation Report On Lack of Black Progress in Higher Education," *Black Issues in Higher Education* 15, no.15 (September 17, 1998): 16-19.
73. Dana Y. Takagi, *The Retreat from Race: Asian-American Admissions and Racial Politics*," (New Brunswick, NJ: Rutgers University Press, 1992), 201; and Feagin, "The Continuing Significance of Racism," 551-553.
74. Patrick Healy, "Education Department Pact with Florida could help Public Black Colleges," *The Chronicle of Higher Education* (September 25, 1988): A44; "U.S. Officials Try Less Confrontational Approach to Gaining College Desegregation," *The Chronicle of Higher Education* 22 (September 1995): A42.

75. In general, see John B. Williams, *Race Discrimination in Public Higher Education: Interpreting Federal Civil Rights Enforcement, 1964-1996* (Westport, CN: Prager, 1997); and Stephen C. Halpern, *On the Limits of the Law: The Ironic Legacy of Title VI of the 1964 Civil Rights Act* (Baltimore, MD: Johns Hopkins).
76. Stafford Hood, "Legislative Intent, Program Implementation and Higher Education Policy: The Case of Title III of the 1965 Higher Education Act," (Ph.D diss., University of Illinois, 1984).
77. Testimony of Dr. James D. Anderson (University of Illinois at Urbana-Champaign) for the plaintiffs-appellants in *U.S. Remand Findings of Fact and Conclusions of Law, Ayers-U.S. v. Fordice* (1994), 10. Anderson uncovered historical state documents that acknowledged similar missions for the public HBCUs and TWIs. Therefore, he also concluded that the entire model of higher education could be overturned as to place an HBCU such as Jackson State University as the flagship campus.
78. M. Christopher Brown II, *The Quest to Define Collegiate Desegregation: Black Colleges, Title VI, and Post Adams Litigation* (Westport, CT: Bergin and Garvey, 1999).
79. Johnson, "Bid Whist, Tonk, and *U.S. v. Fordice*," 1410-1414.
80. Brown and Fordice can be linked by focusing on educational improvement through the stronger nexus of K-12 and higher education. For example, there are certain overt as well as underlying expectations about going to four-year colleges that can be found in the elite predominantly white public high schools particularly in the suburbs. This also needs to be institutionalized throughout the K-12 schooling experience of African Americans, as well as provide more resources in these schools and financial aid to go on to college, see for example, Gary Orfield, "Money, Equity, and College Access," *Harvard Educational Review* 62 (Fall 1992): 343.
81. Daniel A. Farber and Suzanna Sherry, *Beyond All Reason: The Radical Assault on Truth in American Law* (London: Oxford University Press 1997), 116-117.