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The Perceived Elimination of Affirmative Action and the Strengthening of Historically Black Colleges and Universities

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Researchers have asserted that historically Black colleges and universities (HBCUs) have theoretically emerged from a social contract between emancipated Blacks and America. Although these institutions have facilitated access to higher education, they have been neglected and underfunded compared to their historically White counterparts. Notwithstanding their significance, fewer African Americans are accessing these institutions, prompted by governmental initiatives, such as financial aid, the *Civil Rights Act of 1964*, and affirmative action. As affirmative action seems to face demise, a mass of Black students may rely on HBCUs to access higher education. As such, HBCUs should advocate for funding equity to better serve the plausible influx of students and to reaffirm the social contract from which they originated.

Keywords: *African Americans; HBCUs; affirmative action*

Historically Black colleges and universities (HBCUs) have served as an important promoter of African Americans' social mobility. Though fraught with economic inequalities in comparison to historically White institutions (HWIs), they can be credited with nurturing the academic talents and potential for their students, many of whom have made great contributions to society. Research conducted by Brown and Davis (2001), Palmer and Gasman (2008), Palmer and Davis (2008), and Palmer and Young (in press) has indicated that the cultural and social capitals embedded within the fabric of these institutions are unique aspects of Black colleges, which help to foster an empowering educational climate.

Over the years, there has been a precipitous drop in the number of Blacks attending HBCUs, prompted by several governmental initiatives (e.g., *Adams v. Richardson*, 1972; The Civil Rights Act of 1964; *U.S. Supreme Court*

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Brown v. Board of Education, 1954; the implementation of the federal aid program; affirmative action programs). Although previously a critical mass of African Americans attended HBCUs, by 1973 three fourths of Blacks were attending HWIs (Allen & Jewell, 2002; Brown, Bertrand, & Donahoo, 2001; Green, 2001). Black scholars argue that HBCUs are necessary because of their ability to educate many Black students who otherwise would not be able to study at the college level (Berger & Milem, 2000; Brown & Davis, 2001; Brown et al., 2001; Drewry & Doermann, 2004; Freeman & Cohen, 2001; Roebuck & Murty, 1993).

In their article, "The Historically Black College as Social Contract, Social Capital, and Social Equalizer," Brown and Davis (2001) argued that Black colleges were born from a social contract between emancipated Blacks and America. A social contract, according to political philosophy, is a number of people working collectively for mutual benefit. The authors asserted that the social contract functions to resolve conflicts "by fulfilling the goods of society" (p. 34). Brown and Davis argued, "In response to the racial inequalities and conflicts of antebellum society, three things emerge—constitutional amendments (e.g., XIII, XIV, XV), other federal legislation (e.g., Emancipation Proclamation, Freedman's Bureau, and Morrill Acts), and historically Black colleges (e.g., Howard University)" (p. 34). They argued that these efforts focused on resolving "the tattered relation between America and the descendant of Africa. Without question, historically Black education is the tangible manifestation of America's social contract with free African Americans immediately following the Civil War" (p. 34). The purpose of this article is to discuss the perceived demise of affirmative action in higher education and the strengthening of Black colleges, reaffirming this social contract, as more African Americans may rely on HBCUs to access higher education.

HBCUs have served an important role in promoting access to higher education for Blacks when other venues excluded their participation. Black colleges have a rich legacy of producing charismatic leaders (e.g., W. E. B. Du Bois, Martin Luther King Jr., Thurgood Marshall, Ella Baker, Barbara Jordan, and Stokely Carmichael) who valiantly advocated for societal change for all and served as positive role models to many African Americans. Black colleges also provide a rich source of social networks to students, fostering an empowering educational climate (Brown & Davis, 2001; Palmer & Gasman, 2008).

However, as legislative and programmatic initiatives have made it possible for African Americans to gain access to HWIs, HBCUs have seen their enrollments drop drastically. At present, they enroll 16% of African

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Americans at the undergraduate level (Provasnik, Shafer, & Snyder, 2004). Notwithstanding the significance of these institutions, as governmental constituencies seek to eradicate de jure segregation by promoting student integration and eliminating program duplication (i.e., *Adams vs. Richardson*, 1972; *United States v. Fordice*, 1992), some scholars have expressed fear that HBCUs may disappear (Blake, 1991; Brown, 2001; Day, 1992; Stefkovich & Leas, 1994).

The significance of HBCUs cannot be understated. At present, HBCUs award nearly one fifth of all bachelor's degrees to Blacks. HBCUs also award 20% of all first professional degrees (Hoffman, Liagas, & Snyder, 2003). According to Allen (1992), these enrollment and degree statistics are significant, especially because HBCUs represent only 3% of the nation's institutions of higher learning. Furthermore, despite limited resources, HBCUs manage to create an environment in which African Americans are educated regardless of academic preparation, test scores, socioeconomic status, or environmental circumstances (Allen & Jewell, 2002; Kim, 2002; Kim & Conrad, 2006).

Researchers have consistently argued that Black colleges and universities foster a nurturing, family-like environment and that faculty members are supportive of Black students. Research has also shown that Black students on Black campuses exhibit positive psychosocial adjustments, cultural awareness, increased confidence, and higher academic performance (Allen, 1992; Fleming, 1984; Fries-Britt & Turner, 2002). HBCUs' mission-driven admissions policies provide access to academically underprepared students. Once admitted, students at HBCUs show disproportionate gains in academic performance and graduate with the skills necessary to successfully compete in society (Allen, 1992; Fleming, 1976; Kim & Conrad, 2006). Research has also indicated that the HBCU experience propels more African Americans into graduate and professional degree programs (Allen, 1991, 1992; Brown & Davis, 2001; Brown et al., 2001; Garibaldi, 1997; Perna, 2001; Roebuck & Murty, 1993; Wenglinsky, 1996).

According to the United Negro College Fund, of the top 10 colleges that graduate African Americans who go on to earn PhDs or MDs, 9 are HBCUs, as are 8 out of the ten 10 producers of African American graduates in mathematics and statistics. And the top 12 producers of African American graduates in the physical sciences are all Black colleges, including Xavier University of Louisiana, which is ranked first (Gasman et al., 2007). Brown and Davis (2001) reported that 75% of all Black army officers, 80% of Black federal judges, and 85% of Black doctors attended HBCUs as undergraduates.

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The experiences of Black students at Black colleges stand in sharp contrast to their experiences at HWIs. Researchers have found that Black students attending HWIs often experience alienation and are not engaged in the campus (Allen & Haniff, 1991; Feagin, Vera, & Imani, 1996; Pascarella & Terenzini, 2005; Rankin & Reason, 2005; Tinto, 1987). Person and Christensen (1996) indicated that Black students attending a private HWI complained of lack of access to student support services, expressed discontentment with their social experiences, and talked about experiencing racism. Researchers (D'Augelli & Herschberger, 1993; Hall & Rowan, 2001) have noted the racism and hostility that many African American students at HWIs experience. Solorzano, Ceja, and Yosso (2000) found that African American students attending three elite HWIs experienced more racial micro aggressions, which they defined as unconscious and subtle forms of racism. These experiences triggered participants in their study to seek a "positive collegiate racial climate" (p. 70).

Affirmative Action: Access to Higher Education Under Siege

Educational institutions have relied on affirmative action policies to provide access and increase the number of minorities in higher education (Kaplin & Lee, 1995). Since its implementation, the constitutionality of this program has been challenged vigorously in postsecondary education. Because of the controversy stemming from affirmative action in higher education, many educational institutions are moving away from race-sensitive policies in favor of race-neutral policies (Schmidt, 2006b). More importantly, many states, and eventually the federal government, may follow Michigan's example (see Schmidt, 2006a) in prohibiting the use of race-sensitive policies in various public entities, much like California and Florida followed Texas in precluding the use of affirmative action.

The establishment of affirmative action has aided in creating opportunities for minorities to access HWIs. As such, attempts to dismantle affirmative action in higher education may threaten access to higher education for underrepresented minorities (Asquith, 2007; Gasman et al., 2007). HBCUs may be able to capitalize in terms of students and the upgrading of fiscal and infrastructural resources from the attempts to dismantle affirmative action.

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The Emergence and Prominence of HBCUs: A Historical Overview

Before the Civil War, Cheyney State University of Pennsylvania, founded in 1837, was one of several colleges created to service the educational needs of Blacks (Brown, 2001; Fleming, 1976; Roebuck & Murty, 1993; Williams & Ashley, 2004). After the Civil War, many Black educational institutions were established with the assistance of the Freedman's Bureau, an organization the federal government established on March 3, 1865, and operated until 1870 to help improve the plight of the freedmen, refugees, and poor Whites (Fleming, 1976; Fleming, Gill, & Swinton, 1978; Roebuck & Murty, 1993). Other organizations that played a role in the development HBCUs were Black churches, such as the American Missionary Association, Northern missionaries, and private philanthropists, such as the Slater Foundation, Lilly Foundation, and Carnegie Foundation (Brown et al., 2001; Fleming et al., 1978; Williams & Ashley, 2004). More than 200 of these institutions were founded in the South between 1865 and 1890.

Although these educational institutions were called colleges and universities, many, with the exception of Howard University, Fisk University, and Meharry Medical College, functioned as multilevel schools, providing secondary education, college preparation, and college-level courses (Sowell, 1981; Wilson, 1994). These institutions focused on providing education to Black youth, training teachers, and missionary education (Allen & Jewell, 2002; Roebuck & Murty, 1993). By 1915, nearly five decades after the genesis of Black higher education, only 2,600 Black students, the majority of whom were men, engaged in college-level work (Allen & Jewell, 2002).

The curriculum of Black colleges was influenced by the teachings of either Booker T. Washington or W. E. B. Du Bois. Washington, a self-educated man, born in 1856, advocated that Blacks focus on industrial education and racial segregation to achieve in society, whereas W. E. B. Du Bois endorsed racial integration and broached the importance of a liberal arts education for Blacks (Allen & Jewel, 2002). Schools such as Hampton and Tuskegee focused on Washington's teachings, emphasizing basic academic competence, manual labor skill, and political accommodations mirroring the South's racial code (Allen & Jewel, 2002). Most Black colleges that adopted Du Bois's teachings focused on providing their students with a liberal arts education (Allen & Jewel, 2002).

Generally, the decision to adopt one concept for the curriculum over another was not in the hands of African Americans; rather, the White-controlled state

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governments, corporate philanthropists, and White-dominated agencies made such decisions (Allen & Jewel, 2002). Allen and Jewel (2002) argued that "White philanthropy and missionary control of HBCUs remained an issue for Blacks colleges until the 1920s" (p. 246).

Desegregation in Higher Education

HBCUs were created to provide access to higher education for African Americans when their participation in other educational institutions was limited. Though they emerged for a specific purpose, to promote access to education and facilitate community development and empowerment for African Americans, various legislation and legal steps have been enforced to desegregate higher education. Brown (1999) and Roebuck and Murty (1993) explained that Southern states were required to provide a public education for all citizens after 1865. The new stipulation to subsidize Black education in states south of the Mason-Dixon Line was not well received. Southern legislators utilized political tactics to delimit Black higher education (Brown, 1999). Brown indicated this inequality was strengthened by the ambiguous wording of the Morrill Act of 1890, which provided annual appropriations to land-grant institutions and non-degree-granting Black agricultural and mechanical colleges established by the Morrill Act of 1862 (Fleming, 1976). The Morrill Act of 1890 also prohibited the payment of federal funds to "states which segregated blacks without proving separate agricultural and mechanical colleges for them" (Fleming, 1976, p. 71). This legislation spurred the establishment of dual public land-grant institutions in 19 Southern and border states, such as Alabama, Arkansas, Mississippi, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and West Virginia (Brown, 1999, 2001; Fleming, 1976; Wilson, 1994), resulting in 19 Black colleges (Brown, 1999).

In 1896, the clause of *separate but equal*, stemming from *Plessy v. Ferguson* (1896), became the litmus test used to measure educational equality (Fleming, 1976). Beginning in the 1930s, the National Association for the Advancement of Colored People (NAACP) used tactics to attack social, political, and educational inequality. The organization's focus on education was initially limited to higher education. The NAACP defense team successfully litigated cases, such as *Missouri ex rel. Gaines v. Canada* (1938), *Sipuel v. Board of Regents* (1948), *Sweatt v. Painter* (1950), and *McLaurin v. Oklahoma State Regents* (1950) (Brown, 2001; Patterson, 2001; Roebuck

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& Murty, 1993; Stefkovich & Leas, 1994; Trent, 1991). Their legal emphasis, in these cases, was not to undermine the separate but equal clause resulting from *Plessy v. Ferguson* but to force states to live up to the separate but equal clause (Patterson, 2001). The NAACP defense team turned its attention to attacking separate but equal in primary and secondary education in the early 1950s, resulting in the Supreme Court's ruling in *Brown v. Board of Education* (1954), which struck down *separate but equal* in elementary and secondary schools.

Desegregation did not arrive to America's colleges and universities until President Lyndon B. Johnson signed the Civil Rights Act of 1964 (Brown, 1999, 2001; Brown, Ricard, & Donahoo, 2004; Stefkovich & Leas, 1994), which was intended to eliminate discrimination based on race, color, religion, sex, and national origin. The law granted the federal government the authority to advocate, through legislation, on the behalf of individuals who were discriminated against. Specifically, Title VI of Civil Rights Act of 1964 curtailed spending federal funds in segregated schools and colleges (Brown, 1999, 2001; Freeman & Thomas, 2002; Williamson, 1999).

One court case that affected desegregation in higher education was *Adams v. Richardson* (1972; Fleming, 1976). Brown et al. (2004) suggested that this case was brought because 10 states, which eventually included 19 Southern states, maintained segregated and discriminatory higher education systems. Fleming (1976) and Vera (1989) argued that the goal of the plaintiffs was to force the secretary of the Department of Health, Education, and Welfare (HEW) to enforce institutional compliance with Title VI of the Civil Rights Act of 1964.

In July 1977, the federal court mandated that HEW devise guidelines for states with segregated systems when preparing desegregation plans for compliance of Title VI. The court also stipulated that states must attain racial diversity for faculty and students, not just at HWIs but also at HBCUs (Roebuck & Murty, 1993). The *Adams* case aided the dismantling of the dual system of American higher education (De Sousa, 2001; Fleming, 1984; Nettles, 1988; Wilson, 1994). Despite the effectiveness of *Adams* (1972), it was eventually dismissed in 1990 (Brown, 1999, 2001) "with the Women's Equality Action League v. Cavazos (906 F.2d 742 [D.C. Cir. 1990]) ruling that plaintiffs lacked a private rights of action against a federal agency" (Brown, 1999, p. xvii).

The issue of collegiate desegregation reappeared in the *United States v. Fordice* (1992) case. *Fordice* stemmed from Mississippi's efforts to continue de jure segregation in its public university system by maintaining universities segregated along racial lines (Stefkovich & Leas, 1994). Thus, a

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group of citizens sued the governor of Mississippi for alleged racial discrimination in the state university system. The United States intervened on the basis that state officials failed to disassemble the dual system, which violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. In 1992, *Fordice* reached the U.S. Supreme Court (Brown, 1999). The Court identified four policies traceable to the vestiges of de jure segregation.

The Supreme Court returned the *Fordice* case to a federal district court in Mississippi and charged that court with developing a new desegregation plan (Hebel, 2004). The Court mandated Mississippi to pay for new academic programs, construction, and start an endowment for the state's HBCUs. This plan required Mississippi's three HBCUs to recruit and retain at least 10% of non–African American students for 3 consecutive years. Until such time, the universities would not be allowed to control their share of the principal of the new endowments (Hebel, 2004).

Opening Doors to Access

During the early 1960s, programs were initiated to provide federal financial aid for minority students during the administration of President John Fitzgerald Kennedy. For example, the federal government enforced programs such as the National Defense Education Act, the National Defense Student Loan program, and other work study programs that made it feasible for African American students to have necessary financial support to attend college for the first time (Green, 2001).

The governments instituted other programs in the mid- and late 1960s, such as the Basic Education Opportunity Program and the Equal Education Opportunity Program. These programs, originating from the Higher Education Act of 1965, triggered a massive influx of low-income and minority students attending HBCUs (Green, 2001, 2004).

A Brief Overview of Affirmative Action and Its Inevitable Demise

Affirmative action was established under President Lyndon B. Johnson (Fleming, 1976; Kaplin & Lee, 1995) to promote access and equity for minorities in programs utilizing federal funds (Brown, 1999). Many underrepresented minorities have enormously benefited from these policies in respect to higher education. Educational institutions have used affirmative

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action to provide access and increase the number of minorities in higher education (Kaplin & Lee, 1995). Since its implementation, the constitutionality of this policy has been vigorously challenged in postsecondary education.

Defunis v. Odegaard (1974) was the first case to challenge affirmative action in higher education. In 1971, Marco Defunis Jr., a Jewish student of Spanish Portuguese descent, bought suit against the University of Washington, claiming that the University of Washington Law School's admission policy violated the Equal Protection Clause (*Defunis v. Odegaard*, 1974). Nothing significant resulted from this case that affected affirmative action. The law school's admission policy was upheld, prompting other colleges to continue to engage in affirmative action to promote equal access to higher education.

University of California Regents v. Bakke (1978) was the first case to have a substantive impact on affirmative action in higher education. Allen Bakke, a White student, filed suit against the medical school of the University of California, Davis after the university denied him admission. During the time Bakke applied to medical school, the university operated a special admission program exclusively for minority students. The program's purpose was to find minority students who possessed the skills needed to be successful in medical school. These students who demonstrated potential, but who lacked sufficient GPA and standardized scores compared to their White counterparts, were invited to campus for an interview. Bakke filed suit in the Superior Court of California, claiming that its admission policies were discriminatory. The case was tried in the Supreme Court, where the Court ruled five to four that taking race in admission is permissible as long as the program is "precisely tailored and serves a compelling governmental interest" (p. 300). However, the Court prohibited the use of racial quotas.

Hopwood v. Texas (1996) has had an enormous impact on race-sensitive policies in higher education. Four White individuals were denied admissions to Texas Law School in 1996, causing them to sue the university for its affirmative action policies. This case was ultimately tried in the U.S. Court of Appeal, 5th Circuit, where the court prohibited the state from using race-sensitive policies. Similarly, California voters passed Proposition 209, a ballot initiative, spearheaded by Ward Connerly, which prohibited affirmative action in public entities (Pusser, 2001). Washington and Florida have also prohibited the use of race-conscious policies (Schmidt, 2004). Though California, Florida, and Texas have implemented percentage plans to supplant the efficacy of race-sensitive policies, these plans have not been nearly as effective in promoting access to higher education for minorities (Horn & Flores, 2003).

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Although states such as Texas, Washington, and California have abolished affirmative action, the Supreme Court reaffirmed educational institutions' ability to use race to attain a diverse student body as long as it is narrowly tailored and does not function as a quota system (*Grutter v. Bollinger*, 2003). The Court cautioned, however, that race sensitive policies would eventually face demise:

> We are mindful, however, that a core purpose of the Fourteenth Amendment was to do way with all government imposed discrimination based on race. . . . Accordingly, race conscious admission policies must be limited in time. This requirement reflects that racial classification, however, compelling their goals, are potentially so dangerous that they may be employed no more than the interests demands. . . . We see no reason to exempt race conscious admissions programs from the requirement that all government use of race must have a logical end point. (*Grutter v. Bollinger*, 2003, p. 342)

More recently, the citizens of Michigan overwhelmingly voted on a ballot initiative known as the Michigan Civil Rights Initiative, which prevents state entities from using race-sensitive policies to promote diversity (Schmidt, 2006a). Some believe that colleges' affirmative action plans throughout the country will be challenged at the polls (Schmidt, 2006a). Brown (1999) argued that attacks on affirmative action "attempt to kill the spirit of social progress in higher education" as well as serve as a detriment for African American students to gain access to the "ivy covered walls of academe" (p. 130). Furthermore, Schmidt (2006b) and Glater (2006) argued that attacks on race-based policies are prompting colleges and universities to moving away from race-exclusive programs, such as scholarships, academic enrichment programs, and fellowships, and opening them up to all races. Causing this is fear of legal attacks by the U.S. Department of Education for violating Title VI of the Civil Rights Act of 1964. Because of the plausible demise of affirmative action, Allen and Jewel (2002) argued that "HBCUs are called upon to complete the herculean task of contributing disproportionately to the higher education of African Americans" (p. 257). Gasman et al. (2007) supported this by asserting,

> In the current conservative climate, the federal government has abandoned race conscious policies efforts to rectify past injustices, focusing instead on the so called race-blinded society. This may cause a change in the role and nature of Black colleges. . . . This hypersensitivity will inevitably result in fewer opportunities for African American students . . . making Black colleges and the role that they play even more important. The strength and viability of these historical institutions thus become even more important to the future success of African American students. (p. 78)

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Recommendations for Institutional Policy

HBCUs have served as a linchpin for promoting access to higher education for African Americans. Despite their primary purpose, they have been largely "unequal" to their White counterparts. Though steps have been taken to upgrade HBCUs with their HWIs counterparts, a disparity remains between the two institutional types.

HBCUs may consider using the attempts to dismantle affirmative action as leverage to help mitigate the resource disparity between these institutions. With the plausible demise of affirmative action, possibly shifting more minority students to HBCUs (Allen & Jewel, 2002; Asquith, 2007; Gasman et al., 2007), it is imperative that state and federal entities invest in the infrastructural and operational budgets of these institutions to preserve the social contract from which they originated.

In addition, HBCUs may consider pressuring state or government entities to increase the number of HBCUs designated as flagship or research-intensive universities. This would incontrovertibly compel more states to allocate additional monies to HBCUs because the mission of a university is related to the fiscal resources it receives from the state. An increase in financial resources would enable HBCUs to aggressively recruit more students, upgrade key resources, and hire additional faculty, making it feasible for them to better serve the influx of students who may enroll in Black colleges.

Furthermore, stakeholders of HBCUs may consider pressuring state entities to invest more resources in these institutions to make them equivalent to their HWI counterparts. Stakeholders may also consider ensuring that the federal government holds states, particularly those states that have been noncompliant in ridding themselves of vestiges of de jure segregation, accountable for upgrading HBCUs.

Conclusion

HBCUs have served as important venues for promoting access to educational opportunities to African Americans. Despite resource disparities, HBCUs have provided African Americans with a quality education that parallels the education offered at HWIs. Though fewer Black students are attending HBCUs and some have questioned their continued existence, HBCUs are still important for promoting academic success and access to higher education for African Americans. These universities may become more important to facilitating access to higher education as the plausible demise of affirmative action may hamper the ability of Black students to gain access to HWIs.

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