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Equal Opportunity in Higher Education and the Black Public College: The Era of Separate But Equal*

Gil Kujovich**

TABLE OF CONTENTS

Introduction.....	30
I. Creation of a "Separate But Equal" System of Higher Education	36
II. Separate and Unequal	44
A. Inequality in Funding	45
1. Resident Instruction	46
2. Military Training	51
3. Cooperative Extension Services	54
4. Experiment Stations and Research	60
B. Inequality in Programs of Instruction	64
1. "Colleges" for Preparatory Training	69
2. Colleges for Teacher Training	71
3. A "Special Education" for Blacks	74
C. The Consequences of Separation	81
1. Administration of the Black College	82
2. Faculty of the Black College	90
D. After Seventy Years of Inequality	98
1. Funding and Facilities	100
2. A Separate and Unequal Curriculum	104
3. Faculty and Research	107
III. The Demise of the Separate But Equal Doctrine	113
A. Delay and Avoidance.....	115
1. Scholarships for Black Students.....	116
2. Enhancement of Black Public Colleges	120
3. Regional Education	128
B. Victory in the Courts.....	130

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1. Separate But Equal—Texas Style	131
2. Breaking the Racial Barrier	136
3. The Effect of the Challenge	138
IV. The Legacy of Separate But Equal	140
A. Black Occupational and Educational Status	143
B. The Ambiguous Legacy of the Black Public College.....	152
Conclusion	164

INTRODUCTION

Three decades after the United States Supreme Court declared segregation in public education to be unconstitutional, racial separation remains a prominent feature of the public systems of higher education in the southern and border states.¹ Of the thirty-three public colleges established as "separate but equal" institutions for blacks, twenty-eight continue to have undergraduate enrollments that are at least two-thirds black. Fourteen of those public colleges have a student body that is ninety percent or more black. For more than 80,000 black collegians, public higher education is characterized by racial separation.²

Continuing racial identifiability of black public colleges is a product of three distinct periods in the history of the nation's unsuccessful efforts to achieve racial equality in public education. The first period—defined by the constitutional doctrine of separate but equal—lasted for nearly a century after the Emancipation Proclamation. During that time public higher education for nearly all black Americans was always racially separate but never equal. This Article examines the inequality of the separate but equal era and its effects on black public colleges and the population they served. Those effects remained long

1. The southern and border states referred to throughout this Article are the 17 states that maintained a rigid system of segregation in public higher education during the separate but equal era: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

2. Enrollments are for undergraduate students at four-year, public institutions and include both full- and part-time students. Only three black public colleges enrolled more than 50% white students—Lincoln University in Missouri (57%), West Virginia State College (85%), and Bluefield State College in West Virginia (86%). Enrollment statistics were derived from fall 1984 data compiled and provided by the Department of Education. CENTER FOR EDUC. STATISTICS, U.S. DEPT OF EDUC., HIGHER EDUCATION GENERAL INFORMATION SURVEY XIX (1984).

after the rejection of the separate but equal doctrine and influenced the success of subsequent constitutional remedies in achieving either desegregation or equal opportunity in higher education.

The second period—that of racially neutral admissions—began with the Court's declaration in *Brown I* that “[s]eparate educational facilities are inherently unequal,”³ and the Court's remedial demand in *Brown II* that black students be admitted “to public schools on a racially nondiscriminatory basis with all deliberate speed.”⁴ Within a week of confirming that *Brown I* applied to colleges and universities,⁵ the Court further held that there was “no reason for delay” in the elimination of racial barriers at white public colleges.⁶ In announcing the requirement of nondiscriminatory admissions, the Court appeared to reject “deliberate speed” and to take a more demanding approach to the desegregation of public colleges.

*Green v. County School Board*⁷ in 1968 marked the beginning of the third and current period of the struggle to achieve equal opportunity in public education. In *Green* the Court held that the constitutionally required goal of a desegregation remedy is “a system without a ‘white’ school and a ‘Negro’ school, but just schools.”⁸ As later observed by Justice Powell, *Green* transformed *Brown*'s “concept of state neutrality . . . into the present constitutional doctrine requiring affirmative state action to desegregate school systems.”⁹ In more recent cases, the Court has strengthened the remedial obligation to disestablish racial duality in public education by holding that “[e]ach instance of a failure or refusal to fulfill this affirmative duty continues the violation of the Fourteenth Amendment.”¹⁰

The current racial identifiability of black public colleges suggests that the disestablishment remedy has not been carried out and that the constitutional violation therefore persists in

3. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

4. *Brown v. Board of Educ.*, 349 U.S. 294, 301 (1955).

5. *Board of Trustees v. Frasier*, 350 U.S. 979 (1956) (per curiam), *summarily aff'g* 134 F. Supp. 589 (M.D.N.C. 1955).

6. *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413, 414 (1956) (per curiam).

7. 391 U.S. 430 (1968).

8. *Id.* at 442.

9. *Keyes v. School Dist. No. 1*, 413 U.S. 189, 221 (1973) (Powell, J., concurring and dissenting).

10. *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 459 (1979); *see also Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526 (1979) (holding that the school board has a continuing duty to eliminate racial duality).

public higher education. The Court, however, has yet to determine whether *Green* and its other post-*Brown* remedial cases apply to higher education. Defining the course of desegregation in public colleges has been left to the lower federal courts guided only by occasional, and at times cryptic, summary affirmances or short, per curiam opinions.¹¹ Indeed, *Sweatt v. Painter*¹² in 1950 was the last time that the Court addressed, in more than summary fashion, the requirements of the fourteenth amendment for achieving racial equality in higher education—with one exception. The exception is *Regents of the University of California v. Bakke*.¹³ In *Bakke* Justice Powell, whose opinion was decisive in determining the judgment of the Court,¹⁴ found a violation of the equal protection clause in higher education affirmative action programs seeking to remedy the effects of “‘societal discrimination.’”¹⁵

11. The Court has summarily decided two post-*Green* cases concerning the disestablishment remedy in higher education. Both involved expansions of white college facilities in close proximity to black institutions, actions that were claimed to impede desegregation of the black institutions. Although the lower courts in the two cases reached seemingly conflicting conclusions about the application of *Green* to systems of public higher education, the Supreme Court affirmed both decisions. *Board of Visitors v. Norris*, 404 U.S. 907, *summarily aff'g* *Norris v. State Council of Higher Educ.*, 327 F. Supp. 1368 (E.D. Va. 1971); *Alabama State Teachers Ass'n v. Alabama Pub. School & College Auth.*, 393 U.S. 400 (1969), *aff'g per curiam* 289 F. Supp. 784 (M.D. Ala. 1968).

12. 339 U.S. 629 (1950). *Sweatt v. Painter* was the last of four pre-*Brown* decisions in which the Supreme Court questioned the means by which the separate but equal formula had been implemented in higher education. See *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950); *Sipuel v. Board of Regents*, 332 U.S. 631 (1948); *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938).

13. 438 U.S. 265 (1978).

14. *Id.* at 271-72 (Powell, J., announcing the judgment of the Court).

15. *Id.* at 307-10 (opinion of Powell, J.). The four members of the Court who joined Justice Powell's invalidation of the affirmative action program relied on title VI of the Civil Rights Act of 1964 and declined to reach either the constitutional issue or the question of whether title VI and the equal protection clause impose the same restrictions on the use of race in college admissions programs. *Id.* at 408-18 (Stevens, J., concurring and dissenting).

Bakke presented issues distinct from those applicable to systems of public higher education that were officially segregated prior to *Brown*. See *id.* at 300 (opinion of Powell, J.) (“The school desegregation cases are inapposite. Each involved remedies for clearly determined constitutional violations.”). Nevertheless, the *Bakke* reasoning of invalidation of race-conscious affirmative action has edged into the periphery of the higher education desegregation issue. See *Uzzell v. Friday*, 401 F. Supp. 775 (M.D.N.C. 1975), *aff'd in part and rev'd in part*, 547 F.2d 801 (4th Cir.), *modified*, 558 F.2d 727 (1977) (rehearing en banc), *vacated and remanded*, 438 U.S. 912 (1978) (calling for “further consideration in light of” *Bakke*), *rev'd with summary judgment*, 591 F.2d 997 (4th Cir. 1979) (en banc), *mandate recalled, judgment vacated and remanded*, 625

During the thirty-seven years in which *Bakke* has been the Court's only significant decision on the remedial law applicable to higher education, portions of the black educational and legal communities have expressed increasing ambivalence about the use of the disestablishment remedy. The concern has been that a constitutionally compelled, racially unitary system of public higher education would preclude the contributions that black colleges make to equal educational opportunity. Proponents of black colleges contend that those institutions provide opportunities for the preservation of black traditions and culture and for meaningful participation by blacks in all aspects of college life. Perhaps most importantly, the survival of colleges having the primary purpose of educating America's black minority ensures a continuing commitment to black higher education, particularly for those black students suffering from educational disadvantages that would bar their admission to formerly white public colleges or make their success unlikely.¹⁶

The combined threat presented by the disestablishment remedy and *Bakke's* restriction of affirmative action programs has led the National Association for Equal Opportunity in Higher Education (NAFEO), an organization composed of more than one hundred presidents of black colleges, actively to oppose application of the *Green* remedial principle to public higher education. While *Bakke* was pending before the Supreme Court, a representative of NAFEO urged a federal district judge to reject the disestablishment remedy so as to ensure

the preservation of black institutions . . . [for] the education of black people who have been the subject of this dual system.

The problem, Your Honor, very starkly, is that these people have been disadvantaged, [and] they are disadvantaged today We do not have as many black students qualified to be admitted as we would like. We do not have as many qualified people to take positions on university faculties.

. . . .

. . . [I]t appears to me that underscoring all of this . . . is the prob-

F.2d 1117, cert. denied, 446 U.S. 951 (1980), 592 F. Supp. 1502 (M.D.N.C. 1984) (finding constitutional violation under *Bakke*).

16. See, e.g., J. BLACKWELL, BLACK COLLEGES AS A NATIONAL RESOURCE: BEYOND 1975, at 26-28 (1976); J. EGERTON, THE BLACK PUBLIC COLLEGES: INTEGRATION AND DISINTEGRATION (1971); Bell, *Black Colleges and the Desegregation Dilemma*, 28 EMORY L.J. 949 (1979); Davis, *Concerns of Blacks About State Planning in Post-Secondary Education*, 50 J. NEGRO EDUC. 237 (1981); Long, *The Negro College: Role and Prospect*, 26 VAND. L. REV. 453 (1973); Tollett, *Black Institutions of Higher Learning: Inadvertent Victims or Necessary Sacrifices?*, 3 BLACK L.J. 162, 165-67 (1974).

lem of affirmative action that is presently in the Supreme Court now under attack, and that we have a great potential here of dismantling, disabling the traditional black institution, declaring affirmative action unconstitutional, and we will then be without educational opportunity to a . . . great degree.

. . . .

. . . I hope whatever relief this Court sees fit to grant will require some special attention to the education of black people . . . and that we not move mechanically to something that looks good on paper, sounds like equality, but in fact will close the door to education for black people.¹⁷

In the view of at least some black educators and lawyers, post-*Brown* developments in constitutional law are moving toward the ultimate irony: an interpretation of the fourteenth amendment that restricts higher educational opportunity of a racial minority that has been the target of massive discrimination in education and a group "for whose protection the amendment was primarily designed."¹⁸

Just how much protection—and what measure of equality—was provided by the fourteenth amendment during the ninety years of "separate but equal" public higher education is the subject of this Article. Part I briefly reviews the early development of black public colleges after the Civil War. Prior to that time, higher education for blacks—whether public or private, North or South—was virtually nonexistent. In the decades after the war, the segregationist states established the black public colleges that, with few exceptions, have survived to the present time as racially identifiable colleges and that are at the center of the current issue of disestablishment.

Part II explores in detail the nature and extent of discrimination against the black population in the name of separate but equal higher education. In most instances the division of public funds between black and white public colleges demonstrated a total disregard for the advancement of the black population. Deficiencies in funding were matched by deficiencies in educational programs. In addition, the black academic community suffered more subtle forms of discrimination produced by the racial isolation of black public colleges.

Part III examines the challenge to separate but equal higher education and the effects of the challenge on black public colleges. Given the condition of black colleges after seventy years of discrimination, it is not surprising that the challenge

17. Transcript of Hearing at 50-52, *Adams v. Califano*, 430 F. Supp. 118 (D.D.C. 1977) (No. 3095-70) (statements of Herbert O. Reid, Sr.).

18. *Strauder v. West Virginia*, 100 U.S. 303, 307 (1879).

succeeded. What is surprising is that the separate but equal doctrine survived for two decades after the challenge began. During that time fear of desegregation inspired the segregationist states to be more generous in their support of higher education for their black citizens. This perverse spirit of generosity did not produce racial equality or save the bankrupt doctrine of separate but equal. Decades of denial had created a gap between black and white public colleges that few states were able, and none was willing, to bridge.

During most of the 120 years since four million black Americans, ninety percent of the black population, were freed from slavery, the freedmen and their descendants were consistently denied equal educational opportunity. It is only within the last thirty years—and more realistically within the last fifteen—that racial exclusion and blatant discrimination have ceased to be barriers to educational equality. But this account of how the separate but equal doctrine was implemented in public higher education is intended to be more than a reminder of the magnitude and duration of the discrimination visited upon black Americans—although a reminder may be necessary. The importance of examining the separate but equal era is not found in regret over past injustice, but in understanding the effects of racially separate higher education. Part IV of this Article examines two legacies of the separate but equal era—the effect on the black population and the vestige of the black public college.

Publicly supported colleges and universities were the initial and primary means by which the social, intellectual, and economic benefits of higher education reached beyond the wealthy and privileged to a much broader segment of Americans. The extended and nearly universal failure to provide those benefits to the black population necessarily influenced the pace at which that population progressed from the status of slavery toward one of equality. The limited availability of higher education and the character of the higher learning that was provided significantly restrained the economic advancement, educational achievement, and social mobility of blacks. When the separate but equal era ended at midcentury, the cumulative effects of educational inequality determined the extent to which the post-*Brown* generations of college students could benefit from a desegregation remedy that entitled them only “to prompt admission [to white institutions] under the rules and regulations applicable to other qualified

candidates.”¹⁹

The cumulative effect of nearly a century of discrimination also determined the status and future of the black public college. Inequality in funding, restricted curricula, and racial isolation left those institutions with severe deficiencies. The legacy of the black public college was, however, an ambiguous one. The institutions had been virtually the only means by which publicly supported higher education was provided to the nation's black population. Generations of black students, suffering from educational deprivation in segregated elementary and secondary schools, found in the colleges an opportunity for higher learning that was not otherwise available. Generations of black faculty relied on the colleges as one of the primary employers of black academics. The efforts of the segregationist states to enhance their black colleges as a means of resisting the challenge to separate but equal education increased the importance of the institutions and helped to secure their future. When the separate but equal era ended in 1954, the black system of public higher education had acquired a momentum that could not easily be halted even if *Brown* had marked the actual as well as the theoretical beginning of nondiscriminatory admissions. When the failure of nondiscriminatory admissions led some lower courts to adopt the disestablishment remedy, the ambiguous legacy of the black public college complicated an already difficult task.

In his *Bakke* opinion, Justice Powell dismissed what he termed “‘societal discrimination’” as “an amorphous concept of injury that may be ageless in its reach into the past.”²⁰ This Article is an attempt to make that concept less amorphous. The era of separate but equal higher education is more than an unfortunate part of a vague past divorced from the more enlightened times that began with *Brown*. The historical periods defined by the constitutional doctrines of separate but equal, nondiscriminatory admissions, and disestablishment are inseparable parts of black Americans' continuing struggle to secure racial equality in higher education.

I. CREATION OF A “SEPARATE BUT EQUAL” SYSTEM OF HIGHER EDUCATION

The quest of black Americans for equal opportunity in

19. Florida *ex rel.* Hawkins v. Board of Control, 350 U.S. 413, 414 (1956) (per curiam).

20. Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 307 (1978).

higher education began in the 1820s when three blacks broke the race barrier in American higher education and were awarded degrees by Middlebury, Bowdoin, and Amherst.²¹ Following this modest beginning were the efforts of Oberlin College, which in 1835 undertook affirmative and successful action to encourage the enrollment of black students.²² Berea College in Kentucky followed Oberlin's model by educating black and white students from the college's founding in 1858 until the turn of the century, when Kentucky prohibited racial integration in all colleges, public or private.²³

Although these and other examples of racially integrated higher education were an important part of the early struggle for equality, until the middle of the twentieth century higher education for the overwhelming majority of black students meant segregated education. The first black colleges were Cheyney and Lincoln Colleges in Pennsylvania and Wilberforce College in Ohio.²⁴ Nearly 100 additional black public and private institutions were founded in the latter half of the nine-

21. W.E.B. DuBois reported in 1900 that John Brown Russwurm graduated from Bowdoin in 1826 and thus became the "first American Negro to graduate from an American college." *The College-Bred Negro*, 5 ATLANTA UNIV. PUBLICATIONS 32 (W. DuBois ed. 1900). Others have suggested that Edward Jones graduated from Amherst two weeks earlier. F. BOWLES & F. DE-COSTA, *BETWEEN TWO WORLDS: A PROFILE OF NEGRO HIGHER EDUCATION* 13 (1971). Middlebury College has recently claimed the distinction of having graduated the first black American with the awarding of a degree to Alexander Twilight in 1823. *Around the Hill*, 60 MIDDLEBURY C. MAG. 2, 8 (1986). Middlebury's claim finds some support in DuBois's 1910 survey of black college graduates, which showed Bowdoin and Middlebury, but not Amherst, as having one black graduate in the period from 1820-1829. *The College-Bred Negro American*, 15 ATLANTA UNIV. PUBLICATIONS 48 (W. DuBois & A. Dill eds. 1910).

22. Lawson & Merrill, *The Antebellum "Talented Tenth": Black College Students at Oberlin Before the Civil War*, 52 J. NEGRO EDUC. 142, 143 (1983); *The College-Bred Negro American*, *supra* note 21, at 41-42.

23. U.S. COMM'N ON CIVIL RIGHTS, *EQUAL PROTECTION OF THE LAWS IN PUBLIC HIGHER EDUCATION* 2-3 (1960) [hereinafter *EQUAL PROTECTION OF THE LAWS*]. Kentucky terminated racially integrated education at Berea in 1904 with enactment of the "Day Law," Act of Mar. 22, 1904, ch. 85, 1904 Ky. Acts 181, 181-82, which the Supreme Court upheld four years later in *Berea College v. Kentucky*, 211 U.S. 45 (1908).

24. Lincoln College was founded as Ashmun Institute in 1854 and was renamed in the 1860s. Branson, *Black Colleges of the North*, in *BLACK COLLEGES IN AMERICA* 149 (C. Willie & R. Edmonds eds. 1978). The founding date of Cheyney is less certain, although most writers place it sometime in the 1830s. *Id.*; A. PIFER, *THE HIGHER EDUCATION OF BLACKS IN THE UNITED STATES* 10 (1973). Wilberforce was founded by the white Methodist Episcopal Church in 1856 and was purchased by the African Methodist Episcopal Church in the 1860s. D. HOLMES, *THE EVOLUTION OF THE NEGRO COLLEGE* 141 (1969).

teenth century and the early years of the twentieth. Most of them were established in the seventeen southern and border states that contained nearly all of the freed slaves, who constituted the overwhelming majority of black Americans.²⁵ The creation of black colleges was prompted by the success of the earliest efforts to provide emancipated slaves with a basic education.

Teachers sponsored by northern missionary and church groups, both white and black, were the first to undertake the education of the millions of freedmen. Because some ninety percent of their potential students were illiterate, frequently under the mandate of state law, these pioneering teachers initiated a century-long quest for equality by establishing makeshift elementary schools in Union-held territories.²⁶ With the creation of the Freedmen's Bureau in 1865,²⁷ the federal government, working with religious organizations, assumed general supervision over the education of the freed slaves and brought some order to the process.²⁸

Freed from bondage and the compulsory illiteracy that accompanied it, the freedmen eagerly embraced newly created opportunities for education.²⁹ Their enthusiasm for learning

25. In 1860 fewer than 500,000 of the nearly 4.5 million blacks in the United States were free. Of the more than 4 million blacks living in the South, approximately 260,000 were free. BUREAU OF CENSUS, U.S. DEPT OF COMM., SPEC. STUDIES SERIES P-23, NO. 80, THE SOCIAL AND ECONOMIC STATUS OF THE BLACK POPULATION IN THE UNITED STATES: AN HISTORICAL VIEW, 1790-1978, at 11 (1979).

26. D. HOLMES, *supra* note 24, at 10, 19-30; R. MORRIS, READING, 'RITING, AND RECONSTRUCTION 1-32 (1976).

27. Act of Mar. 3, 1865, ch. 90, 13 Stat. 507. The original enactment gave the Bureau "control of all subjects relating to refugees and freedmen from rebel states" but did not include express authority to establish and fund schools for the education of the freed slaves. *Id.* § 1, 13 Stat. at 507. Nevertheless, Commissioner Oliver O. Howard appointed a General Superintendent of Education to assist the benevolent societies and religious organizations engaged in educational activities. D. HOLMES, *supra* note 24, at 39-40. In 1866 Congress provided the Bureau with funds for educational purposes. Act of July 13, 1866, ch. 176, § 3, 14 Stat. 90, 92.

28. R. MORRIS, *supra* note 26, at 49-50; Low, *The Education of Negroes Viewed Historically*, in NEGRO EDUCATION IN AMERICA 27, 39-40 (1962). In addition to providing organizational and financial support, the Bureau served the important function of protecting black schools and their teachers from violence and intimidation by a white population hostile to the education of blacks. D. HOLMES, *supra* note 24, at 41-43; *see also* Act of July 16, 1866, ch. 200, §§ 12-13, 14 Stat. 173, 176 (directing the Bureau to cooperate with and protect "private benevolent associations of citizens in aid of freedmen").

29. In Georgia the Freedmen's Bureau Superintendent of Education wrote that "[t]he desire of the colored people to learn appears to undergo no abate-

stimulated the creation of the first black institutions of higher education in the southern and border states. As increasing numbers of blacks poured into the elementary schools, the need for additional teachers became clear. As early as 1866, the Freedmen's Bureau General Superintendent for Education reported a need for 20,000 teachers and urged the establishment of normal schools to train black teachers.³⁰ Missionary groups and religious organizations were the first to respond by founding private black institutions.³¹ Colleges and universities, "bearing names which were usually the expression of distant hopes rather than actual descriptions,"³² grew up across the South. In them began the most ambitious educational undertaking in American history.

For many years private black institutions produced the majority of black college graduates, but the incessant demand of the black population for education and the need for teachers to satisfy that demand led some state legislatures to fund black normal schools shortly after the Civil War. In the context of a general hostility toward and fear of black education, state support for the training of black teachers was usually given, if at all, only as an unpleasant alternative to the intrusion of northern white teachers in black elementary schools. Fearful of the ideas of social equality promoted by missionary teachers and unwilling to "disgrace" themselves by instructing black students, many white southerners supported the move to train black teachers.³³ Many blacks also favored staffing their

ment.'" W. RANGE, *THE RISE AND PROGRESS OF NEGRO COLLEGES IN GEORGIA* 11 (1951) (quoting ALVORD, *FOURTH SEMI-ANNUAL REPORT ON SCHOOLS FOR FREEDMEN* 34 (1867)). On the South Carolina Sea Islands, a teacher for the Pennsylvania Freedmen's Relief Association observed:

"It is wonderful how a people who have been so long crushed to the earth, so imbruted as these have been . . . can have so great a desire for knowledge, and such a capability for attaining it. One cannot believe that the haughty Anglo-Saxon race, after centuries of such an experience as these people have had, would be very much superior to them."

R. MORRIS, *supra* note 26, at 10 (quoting Charlotte Forten).

30. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 4; R. MORRIS, *supra* note 26, at 91-92.

31. D. HOLMES, *supra* note 24, at 89-149.

32. *Id.* at 11.

33. W. RANGE, *supra* note 29, at 14-15; R. MORRIS, *supra* note 26, at 177-86. Some southern whites sought teaching positions in the early black schools, but many were motivated only by the prospect of regular employment. In 1868, for example, the Bureau's School Superintendent in Georgia reported: "My experience during the last year shows me that there are *very few* Southern teachers, who offer to teach in our schools, who are in any way fit to do so.

schools with black teachers, but for very different reasons. The black teacher was a source of racial pride and status and ensured that black youths would not be instructed by teachers hostile to their education.³⁴

From these contradictory motives emerged the first black public college. In the 1860s soldiers of the 62nd and 65th Colored Infantries contributed more than \$6000 for the creation of Lincoln Institute in Jefferson City, Missouri.³⁵ In 1870 the leading black citizens of Missouri successfully petitioned the state legislature to support Lincoln as a state normal school.³⁶ Missouri thus became the first of the southern and border states to establish a black public institution of higher education by creating the school that nearly seventy years later would provide Lloyd Gaines with an undergraduate degree, but not a professional education in the law.³⁷

By 1890 black teachers were being trained in segregated public institutions of at least eight states.³⁸ The relatively few normal schools that were established were both small in size and limited in mission. Because most states provided little support for black elementary schools and virtually no support for black high schools, the first task of the teacher training institutions was to provide preparatory and secondary education to their students. College level enrollments remained very small, and the output of college graduates was even smaller.³⁹

Had it not been for the efforts of Vermont's Justin Morrill

The only qualification most of them have is poverty and they seem to think that sufficient." *Id.* at 132 (quoting Edmund A. Ware) (emphasis in original).

34. D. HOLMES, *supra* note 24, at 46; R. MORRIS, *supra* note 26, at 114-21.

35. W. SAVAGE, *THE HISTORY OF LINCOLN UNIVERSITY* 1-5 (1939). Although Lincoln was established with a "special interest" in the education of blacks, it did not, when founded as a private school, exclude white students. *Id.* at 5.

36. *Id.* at 14-15. Missouri's support of the normal school at Lincoln was converted into full control of the institution in 1879. *Id.* at 35.

37. See Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938).

38. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 6.

39. In North Carolina, for example, there were three publicly supported institutions for the training of black teachers in 1926-1927, the largest number in any segregationist state. Of approximately 1000 students enrolled, two-thirds were elementary and secondary students. U.S. DEP'T OF INTERIOR, BUREAU OF EDUC., 1928 BULL. NO. 7, SURVEY OF NEGRO COLLEGES AND UNIVERSITIES 512-13, 515, 573-74, 583-84 (1929) [hereinafter SURVEY OF NEGRO COLLEGES]. As late as 1930, only four percent of the black high school teachers holding a bachelor's degree had received their degrees from a public teachers college. A. CALIVER, EDUCATION OF NEGRO TEACHERS 32 (Office of Educ., U.S. Dep't of Interior, Bull. No. 10, 1933) [hereinafter EDUCATION OF NEGRO TEACHERS].

and others determined to make higher education more than the private reserve of the wealthy, the development of public higher education for the freedmen might have ceased with the creation of normal schools. As a representative and senator, Morrill actively sponsored federal support for public higher education.⁴⁰ By 1862 his persistence produced the First Morrill Act, providing for a federal land grant to each state for the creation of a perpetual fund to endow

at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts . . . in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.⁴¹

Although the 1862 Act denied its benefits to states "in a condition of rebellion,"⁴² by 1870 the legislatures of all the southern states had accepted the terms of the Act.⁴³

The creation of land grant colleges marked the beginning of a revolution in higher education. Before the Civil War, higher education in America had been afforded primarily by private, sectarian institutions serving the wealthy and professional classes and offering a classical curriculum to train the children of the privileged for positions of leadership.⁴⁴ The land grant colleges represented both a rejection of purely classical education in favor of a scientific and practical curriculum and a democratization of American higher education. By the

40. Morrill's efforts began in 1857 with his first bill for the establishment of land grant colleges. The bill eventually passed the House and Senate but was vetoed by President Buchanan. Avins, *Black Studies, White Separation, and Reflected Light on College Segregation and the Fourteenth Amendment from Early Land Grant College Policies*, 10 WASHBURN L.J. 181, 183-86 (1971).

41. Ch. 130, § 4, 12 Stat. 503, 504 (1862).

42. *Id.* § 5.

43. The legislatures of some of the confederate states accepted the terms of the Act in the 1860s, 1 OFFICE OF EDUC., U.S. DEP'T OF INTERIOR, BULL. NO. 9, SURVEY OF LAND-GRANT COLLEGES AND UNIVERSITIES 10-11 (1930) [hereinafter LAND GRANT SURVEY]. In 1867 Congress passed a joint resolution prohibiting any further land grants to the states "lately in rebellion" until such states were "fully restored to their rights as States by Congress." J. Res. 23, 15 Stat. 25, 26 (1867). Thus, many of the confederate states did not receive their federal grants until their statehood status was formally recognized by Congress. See, e.g., Act of Feb. 23, 1870, ch. 19, 16 Stat. 67 (Mississippi); Act of Jan. 26, 1870, ch. 10, 16 Stat. 62 (Virginia). All of the southern and border states not in the Confederacy had accepted the terms of the First Morrill Act by 1870, except for the Territory of Oklahoma which apparently received its land grant in 1890. 1 LAND GRANT SURVEY, *supra*, at 10-12.

44. E. EDDY, COLLEGES FOR OUR LAND AND TIME 2-5 (1956); J. MORRILL, THE ONGOING STATE UNIVERSITY 4 (1960).

turn of the century, the colleges had assumed a major role in making higher education broadly available to the working classes and in training the leaders of agriculture, industry, and science. But most of the benefits of the early land grant movement reached only the white population of the seventeen segregationist states. After the First Morrill Act, only Mississippi,⁴⁵ Virginia,⁴⁶ and South Carolina⁴⁷ shared the 1862 federal land grant endowment with colleges educating black citizens.

Congressional debate over whether the institutions receiving federal land grant aid should be compelled to admit black students, or whether the states denying admission to blacks should be required to provide for their separate education, began immediately after the adoption of the thirteenth amendment and continued throughout the 1870s and 1880s.⁴⁸ With the enactment of the Second Morrill Act⁴⁹ in 1890, congressional supporters of black higher education succeeded in providing some assurance that blacks would not be denied the benefits of land grant colleges. Granting annual and equal payments to each state for instruction in land grant institutions,⁵⁰ the Act provided that "no money shall be paid . . . for the support . . . of a college where a distinction of race or color is made

45. In 1871 the black-controlled legislature of Mississippi created Alcorn University for the education of black students and provided that Alcorn would receive three-fifths of the annual income from the federal land grant, with the remainder for the University of Mississippi. Beginning in 1878 the annual income was divided equally between the two institutions. 2 LAND GRANT SURVEY, *supra* note 43, at 838; J. PREER, *LAWYERS V. EDUCATORS* 7 (1982).

46. Virginia provided for an equal division of the annual income, with half going to Hampton Normal and Agricultural Institute, a private black school. Hampton remained the black land grant beneficiary until 1920 when Virginia designated the state-supported Virginia Normal and Industrial Institute as its black land grant college. The school was subsequently renamed the Virginia State College for Negroes. 2 LAND GRANT SURVEY, *supra* note 43, at 838-39.

47. In 1872 the black-controlled South Carolina legislature designated Claflin University, a private black college, as the state's land grant institution. In 1889 after whites had regained control of the legislature, the income was divided equally between Claflin and the newly created Clemson Agricultural College for whites. In 1896 the legislature established the Colored Normal, Industrial and Agricultural College of South Carolina and provided for the equal division of the income between that institution and Clemson. The black school was subsequently renamed the State Agricultural and Mechanical College. *Id.* at 839; 1 LAND GRANT SURVEY, *supra* note 43, at 18.

48. See Avins, *supra* note 40, at 187-205.

49. Ch. 841, 26 Stat. 417 (1890).

50. *Id.* Section 1 of the Act provided for an initial annual grant of \$15,000 to each state with an increase of \$1000 each year thereafter until the annual appropriation reached \$25,000 per state. *Id.*

in the admission of students."⁵¹ To implement this requirement of nondiscriminatory admission, however, Congress firmly established, six years before the Supreme Court's decision in *Plessy v. Ferguson*,⁵² the federal government's support for the doctrine of separate but equal: "[T]he establishment and maintenance of such colleges separately for white and colored students shall be held to be a compliance with the provisions of this act if the funds . . . be equitably divided . . ."⁵³

The Second Morrill Act did not produce an immediate, significant increase in higher educational opportunity for blacks in most of the segregationist states. Only six states created new institutions to satisfy the separate but equal requirement of the Act.⁵⁴ Others simply designated existing normal schools as their "1890" institutions⁵⁵ or provided a share of federal land grant funds to private black colleges.⁵⁶ Nevertheless, the legislation eventually resulted in the establishment of at least one black public college in each of the segregationist states. All seventeen of the black land grants have survived to the present, and most retain as their primary function the education of black students. They were the most important and enduring feature of the system of public higher education for blacks.

51. *Id.*

52. 163 U.S. 537 (1896).

53. § 1, 26 Stat. 417, 418. The Act provided that state legislatures could "propose and report to the Secretary of the Interior a just and equitable division of the fund." *Id.* The secretary was empowered to withhold a state's share of the appropriation, but the affected state could appeal that decision to Congress. *Id.* § 4.

54. Of the six states, three were border states (Delaware, Oklahoma, and West Virginia) having relatively small black populations. Of the states with large percentages of black citizens, only Georgia, North Carolina, and, after 1896, South Carolina created new black state colleges. 2 LAND GRANT SURVEY, *supra* note 43, at 839, 842-43. The survey includes Texas among the states that created new black colleges, but the black land grant in Texas had previously existed as a state-supported normal school and agricultural college. G. WOOLFOLK, PRAIRIE VIEW: A STUDY IN PUBLIC CONSCIENCE 28, 42-47 (1962).

55. Black normal schools were converted to land grant colleges in Alabama, Arkansas, Florida, Kentucky, Louisiana, Missouri, and Texas. 2 LAND GRANT SURVEY, *supra* note 43, at 841-42; G. WOOLFOLK, *supra* note 54, at 28, 42-47.

56. In Maryland the state provided federal funds to Princess Anne Academy, a geographically separate branch of the private, black Morgan College in Baltimore. 2 LAND GRANT SURVEY, *supra* note 43, at 842. In Tennessee, the black share of the 1890 funds was allocated to Knoxville College, a private black institution, until 1912 when the state established the Tennessee Agricultural and Industrial Normal School for blacks. *Id.* In Virginia, Hampton Institute was designated as the black land grant institution until 1920. *See supra* note 46.

The Second Morrill Act determined more than the structure of public higher education for blacks. By embracing the separate but equal doctrine as the means for meeting black educational needs, Congress rejected the use of federal funds as an inducement for giving black students equal access to white state colleges and universities.⁵⁷ Such an inducement would have had a powerful effect given the massive increases in federal land grant funding during the first half of the twentieth century. Nevertheless, the legislative policy of 1890 endured, with only minor exceptions, for seventy-five years until the enactment of title VI of the Civil Rights Act of 1964.⁵⁸ Consequently, the struggle for equal opportunity in public higher education focused on the "equal" half of the separate but equal formula. It was a struggle that was decisively lost in both the federal and state arenas.

II. SEPARATE AND UNEQUAL

By the turn of the century, the structure of the public higher education system for blacks was well established in the segregationist states. With the exception of a few hasty and inadequate additions in response to the challenge to separate but equal education in the 1940s, the system remained substantially the same for more than half a century. During that time black public colleges were the only source of publicly supported higher education in the seventeen southern and border states. Throughout the separate but equal era, these states included in their populations the large majority of black Americans.⁵⁹ Consequently, the system of black public colleges also constituted the primary means by which public funds, both state and fed-

57. In the 1860s and early 1870s, Congress considered and rejected proposals that state land grant institutions receiving federal funds be open to all students without regard to race. Avins, *supra* note 40, at 187-202.

58. Title VI provides: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Civil Rights Act of 1964, § 601, 78 Stat. 241, 252 (1964).

59. In 1900 the seventeen segregationist states accounted for 90% of the nation's black population. In 1940 more than three-fourths of all black Americans continued to live in the segregationist states. As late as 1950, the seventeen states included approximately two-thirds of all blacks. Population statistics were derived from BUREAU OF CENSUS, U.S. DEP'T OF COMM., HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, at 14 (Series A 91-104, nation), 24-37 (Series A 195-209, states) (Bicentennial ed. 1975) [hereinafter HISTORICAL STATISTICS].

eral, were applied to the higher education of the nation's black population.⁶⁰ The history of the black public college is the history of the nation's inadequate efforts to elevate its black population from a condition of slavery and enforced illiteracy to one of equality.

Public higher education for black students was always racially separate but never equal. The massive outlays of federal and state funds that made publicly subsidized, quality higher education available to the white citizens of the South and of the nation were either denied to the subsystem of black public colleges or granted in such insufficient amounts as to make a mockery of the promise of equality in the separate but equal formula. The black public college curriculum took on a unique form tailored to the "special" educational needs of blacks and the special needs of a segregated society. Finally, the separate but equal system of public colleges was separate to the point of isolation. Cut off from the mainstream of higher education, the faculties, administrators, and students of black public colleges were left to themselves to build from the ground up, at times literally, a system of higher education.

Unequal resources, a restricted curriculum, and racial isolation dominated black public higher education from its beginnings in the 1870s to the Supreme Court's decision in *Brown v. Board of Education*.⁶¹ The effects of the denials inherent in such a system could not be and were not confined to the individuals who suffered directly the discrimination of the separate but equal era. Widespread and long-lasting denial of equal educational opportunity shaped the future of black Americans.

A. INEQUALITY IN FUNDING

Between the enactment of the Second Morrill Act in 1890 and the NAACP's successful challenge to separate but equal in the 1940s, black public colleges suffered substantial, consistent, and nearly universal discrimination in funding. The gross disparity in the allocation of public funds is most clearly evident in the land grant colleges, the mainstays of the black system. The spirit of educational egalitarianism that animated the land grant movement did not extend to black citizens of the segrega-

60. The major exception is Howard University, which, although a private institution, has received substantial federal support since its founding in 1867. See R. LOGAN, *HOWARD UNIVERSITY: THE FIRST HUNDRED YEARS 589-93* (1969).

61. 347 U.S. 483 (1954).

tionist states. Just as the black population was denied access to the benefits offered by white land grant universities, so it was denied the funds necessary for black institutions to perform the functions of their white counterparts.

The land grant system of education performed four major functions: resident instruction, military training, extension service, and research and experimentation. In resident instruction the classical curriculum that dominated nineteenth century private colleges was replaced by or supplemented with programs in science, engineering, technology, and training in the professions. Reserve officer training programs provided leadership training and produced thousands of military officers. Outside the campus the extension service brought new educational opportunities and practical assistance to rural America. Research and experimentation programs provided the foundation for scientific study, made the land grants centers of research and technical training, and helped forge an alliance between the institutions and industry and government.

Only in the funding for resident instruction was there even a pretense of equality for the black land grants, and then not a convincing one. With extraordinarily few exceptions, the black institutions were denied public funding for the other three land grant functions. Expenditures for the land grant movement in the seventeen segregationist states show a history of neglect of the black colleges and a discrimination of staggering magnitude.

1. Resident Instruction

In funding for resident instruction, the Second Morrill Act protected the black land grants by requiring a "just and equitable division" of federal appropriations under the Act.⁶² To implement this requirement, the Secretary of the Interior suggested, and most states followed, a distribution formula based on the percentages of black and white students in each state's public school population.⁶³ The 1890 distribution

62. Ch. 841, § 1, 26 Stat. 417, 418 (1890).

63. J. PREER, *supra* note 45, at 9; W. Trueheart, *The Consequences of Federal and State Resource Allocation and Development Policies for Traditionally Black Land-Grant Institutions: 1862-1954* at 47 (1979) (Ed.D. thesis, Harvard University, available from University Microfilms International, Ann Arbor, Michigan). The Interior secretary's power to deny federal funds to a state that did not comply with the requirement of a "just and equitable division," *see supra* note 53, was exercised only once, when Secretary John W. Noble denied the first distribution of federal funds to South Carolina. In 1892 Congress directed that South Carolina receive the federal appropriation "notwithstanding

formula was also applied to additional federal funds for resident instruction under the Nelson Amendment of 1907.⁶⁴

Despite the assurance of a share of Morrill-Nelson appropriations, funding of resident instruction in the black land grants fell far short of achieving either justice or equity. In most states a population-based distribution could not achieve equality or even comparability of institutions. The fact that blacks constituted only one-third of a state's public school population, for example, did not mean that a black land grant college with only one-third of the federal funds could be made equal to a white institution. The equipment, buildings, and faculty required for equal educational opportunity were not solely, or even primarily, a function of the number of students or potential students. Even in states with a large number of black students, Morrill-Nelson funds alone could not support the establishment of a significant institution of higher education. The federal grants were relatively small and could not, under the legislation, be used for the construction of buildings.⁶⁵

Moreover, state appropriations, by far the more significant source of funding for resident instruction,⁶⁶ seldom reflected

the adverse report of the Secretary of the Interior." Act of July 16, 1892, ch. 254, 27 Stat. 271.

64. The Nelson Amendment was actually part of an appropriations act for the Department of Agriculture. Act of Mar. 4, 1907, ch. 2907, 34 Stat. 1256, 1281-82. It increased the annual appropriation for each state by \$5000 for the first year with an additional increase of \$5000 for each year thereafter until the total reached \$50,000 (\$25,000 under the Second Morrill Act supplemented by \$25,000 under the Nelson Amendment). *Id.* at 1281. The Nelson Amendment further provided that the additional appropriation "shall be governed in all respects" by the provisions of the Second Morrill Act. *Id.* at 1282. The 1890 allocation formula was apparently used by most segregationist states for both Morrill and Nelson funds throughout the separate but equal era. See D. WILKERSON, SPECIAL PROBLEMS OF NEGRO EDUCATION 80 (1939).

65. Under the allocation used by the states for dividing the Second Morrill Act's annual grant of \$25,000, black institutions received annual sums ranging from \$1500 in Missouri to \$13,500 in Mississippi. Only four of the 17 black land grants received more than \$10,000. See W. Trueheart, *supra* note 63, at 47. Under the fully funded Nelson Amendment, each black school's allocation of federal funding was doubled. See *supra* note 64. Section 3 of the Second Morrill Act (and, by incorporation, the Nelson Amendment, see *supra* note 64) provided that the federal grant could not be "applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings." Ch. 841, § 3, 26 Stat. 417, 419 (1890).

66. In 1928, for example, the black and white land grants in the 17 segregationist states received \$12.9 million in public funding for resident instruction, of which only \$1.4 million or 11% came from federal grants. 2 LAND GRANT SURVEY, *supra* note 43, at 856; 1 LAND GRANT SURVEY, *supra* note 43,

even this limited, federal conception of justice and equity. In some states with large black populations, state appropriations were so low as to suggest a total disregard for the higher education of black citizens. Until 1927 the black land grant in Georgia received an annual appropriation of only \$2000.⁶⁷ In Florida the average state appropriation was approximately \$7600 per year until the early 1920s.⁶⁸ And in Louisiana the state constitution limited black land grant appropriations to an annual sum of \$10,000 until 1919.⁶⁹ The shortage of resources for equipment, buildings, and other capital improvements was particularly acute. In some schools, buildings were constructed with student labor, and in most black land grant colleges, students performed maintenance and janitorial duties.⁷⁰

As would be expected, the early and widespread neglect of the black land grant colleges produced institutions that could not provide any significant higher education to their resident students:

[T]he conditions in the [black land grant] colleges prior to the First World War were deplorable. The period following their designation or establishment was one of stagnation and inactivity. State support was meager, often less than the Federal contribution. No effort was made to encourage improvement or enlargement. . . . "[M]any of the buildings became dilapidated and ramshackled. There was practically no equipment for teaching such as laboratories and maps. Many of the colleges did not have even an adequate supply of blackboards in their classrooms. The living conditions of the students and teachers [were] unsanitary and breeders of dissatisfaction. The teachers were woefully underpaid."⁷¹

at 101-02, 106. Calculations of federal support include Morrill-Nelson and Smith-Hughes funding and interest from the land grant fund; calculations for state funds include Smith-Hughes matching and state funding for operations and maintenance, excluding funding for experiment stations.

67. SURVEY OF NEGRO COLLEGES, *supra* note 39, at 321.

68. L. NEYLAND & J. RILEY, THE HISTORY OF FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY 74 (1963).

69. SURVEY OF NEGRO COLLEGES, *supra* note 39, at 390.

70. See, e.g., *id.* at 325, 408, 668-69, 914-15; G. WOOLFOLK, *supra* note 54, at 270-71.

71. E. EDDY, *supra* note 44, at 260 (quoting Gandy, *The Land Grant Colleges for Negro Youth*, 39 CONV. A. LAND-GRANT CS. & UNIVS. 99, 99 (1925)). A 1923 survey of Georgia's black land grant college summarized the situation:

Here in a state with a larger Negro population than any other state in the union, there was scarcely any public facility for higher education of the black race. At Georgia State Industrial College there were only eight students of college grade in May, 1923. . . . The faculty was of low order, most of them graduates of the institution itself and largely devoid of higher training. . . . Buildings and equipment were decrepit and the entire value of the plant was only \$193,000. College instruction was haphazard, five instructors, some with inferior training,

The 1920s brought little change. Additional federal assistance for the purpose of teacher training under the Smith-Hughes Act⁷² and increases in state support did not reduce the funding disparity. In 1928 the black land grants received twenty-three percent of the \$1.5 million in Morrill-Nelson and Smith-Hughes funds allocated to the seventeen segregationist states.⁷³ Because blacks constituted twenty-three percent of the region's population in 1930, the federal allocation achieved "proportionality," if not equality. State funding, however, achieved neither. Only twelve percent of more than \$11 million in state appropriations went to the seventeen black land grants.⁷⁴ A more interesting perspective on the importance of black higher education to the segregationist states can be found in a comparison of two revenue sources. In fourteen states the revenue from athletic activities at the white land grant colleges was approximately equal to the amount of state funding for resident instruction in the black colleges.⁷⁵

teaching all subjects in all grades, higher and lower, and attempting to offer a four-year college course leading to a baccalaureate degree.

The library of 400 volumes was stored in a basement and never used.

W. RANGE, *supra* note 29, at 190.

72. The Smith-Hughes Act was the first of several federal enactments designed to encourage agricultural and vocational education. Most of the funding under these statutes went to secondary schools, but the Smith-Hughes Act and two later statutes included some funding for teacher training in institutions of higher education. Ch. 114, § 4, 39 Stat. 929, 931 (1917); George-Deen Act, ch. 541, §§ 2-3, 49 Stat. 1488, 1488-89 (1936); George-Barden Act, ch. 725, 60 Stat. 775 (1946). None of these statutes required an equitable division of funds, and the percentage of Smith-Hughes funds received by the black institutions was frequently less than the black percentage of the population. See Florence, *The Federally-Aided Program of Vocational Teacher-Training in Negro Schools*, 7 J. NEGRO EDUC. 292, 300 (1938).

73. The 17 black land grants received approximately \$261,000 in Morrill-Nelson funds and \$57,000 in Smith-Hughes allocations for a total federal subsidy of \$318,000 in 1928. 2 LAND GRANT SURVEY, *supra* note 43, at 856. The 17 white land grants received \$956,000 in Morrill-Nelson funds (including interest on the proceeds of the First Morrill Act land grant) and \$138,000 in Smith-Hughes funds for a total federal subsidy of \$1,094,000 for resident instruction. 1 LAND GRANT SURVEY, *supra* note 43, at 101-02.

74. State funding at the 17 black schools was \$1,380,000 in 1928. 2 LAND GRANT SURVEY, *supra* note 43, at 856. The white schools received \$10,146,000. 1 LAND GRANT SURVEY, *supra* note 43, at 106. In 1930 blacks accounted for approximately 9.5 million of the 44 million persons in the segregationist states. See HISTORICAL STATISTICS, *supra* note 59.

75. In 1928, 14 black land grants received a total of \$1,118,000 in state appropriations. 2 LAND GRANT SURVEY, *supra* note 43, at 856. The white land grants in the same 14 states had revenues of \$1,109,000 from athletic activities. 1 LAND GRANT SURVEY, *supra* note 43, at 230. This calculation excludes Arkansas, Delaware, and West Virginia because their white land grants did not report revenues from athletic activities.

The condition of the black land grant facilities reflected the persistent discrimination in funding. In 1928 the black land grants had only thirteen percent of the property and capital assets of all land grant institutions in the segregationist states. The average black institution was valued at less than \$700,000, while the white land grant average exceeded \$4.5 million.⁷⁶ The library holdings of at least six black land grants contained 4000 or fewer volumes, and only five of the black schools had holdings of 8000 volumes or more.⁷⁷ Nearly four decades after Congress and the Supreme Court had agreed on the separate but equal formula, only half of the formula was being fulfilled.

Inequality in the support of resident instruction at the segregated land grant colleges continued throughout the 1930s. Although additional federal funding under section 22 of the Bankhead-Jones Act⁷⁸ was allocated according to the Second Morrill Act's conception of equity, total expenditures for resident instruction were neither equitable nor proportional. At the middle of the decade, when the population of the segregationist states was nearly one-fourth black, the seventeen black land grants received only nine percent of all public funds expended for resident instruction.⁷⁹ Even under the inherently suspect measure of dollars per resident student, equity and justice could not be found. At the white institutions, the average per student expenditure for resident instruction was \$234; at the black land grants, the average was \$138.⁸⁰

76. The value of the 17 black land grants in 1928 was \$11.8 million, while that of the white schools was \$77.9 million. 2 LAND GRANT SURVEY, *supra* note 43, at 869; 1 LAND GRANT SURVEY, *supra* note 43, at 134-35.

77. Data for the number of volumes in the black land grant libraries were based on 2 LAND GRANT SURVEY, *supra* note 43, at 889 (1928 data) and SURVEY OF NEGRO COLLEGES, *supra* note 39, at 948-50 (1926-1927 data) (each giving library holdings of some of the black land grants). Where both sources provide a figure for the same school, the higher number was used.

78. Ch. 338, § 22, 49 Stat. 436, 439 (1935). Under § 22 of the Act, each state received an annual grant of \$20,000 for resident instruction (in addition to the \$50,000 under the Second Morrill Act and Nelson Amendment) and a share (determined on the basis of total population) of an additional appropriation that began at \$500,000 and increased over a four-year period to a peak of \$1.5 million. Appropriations under § 22 were subject to the restrictions of the Second Morrill Act. *Id.*

79. D. WILKERSON, *supra* note 64, at 84.

80. *Id.* at 84-85. The figures substantially understate the inequality in allocation of expenditures for resident instruction because of the disproportionately low percentage of black college-aged youths enrolled in black land grant institutions, a result of discrimination at the lower levels of education. In the 17 segregationist states, blacks accounted for 25% of the 18 to 21 year olds but only 15% of the land grant resident students. *Id.* at 64, 83.

Throughout the first four decades of the twentieth century, state legislatures favored their white land grants in both state appropriations and in the distribution of federal funds unrestricted by the requirement of an equitable division. For the land grant functions other than resident instruction—military training, extension services, and research—federal statutes did not provide for the protection of the black schools. Consequently, funding for black land grants was not disproportionate, it was virtually nonexistent.

2. Military Training

The First Morrill Act required the inclusion of military tactics in the land grant curriculum,⁸¹ and each of the white land grant colleges provided some form of military education from the time of their establishment.⁸² After 1916, and under the stimulus of additional federal legislation and funding,⁸³ the Reserve Officer Training Corps (ROTC) became a prominent feature in the education of young men at the white land grants. By the end of the 1920s, military officers on duty at the white schools were instructing more than 16,000 white students in the segregationist states.⁸⁴ In addition to the educational benefits of ROTC programs, the white institutions received federal ROTC funding of more than one million dollars annually.⁸⁵ Until the 1940s, however, federal support for military education was denied to the black land grant colleges.

For many years military instruction in the black colleges

81. Ch. 130, § 4, 12 Stat. 503, 504 (1862).

82. 2 LAND GRANT SURVEY, *supra* note 43, at 299.

83. The National Defense Act of 1916 authorized the president to establish a Reserve Officers Training Corps at four-year colleges, "including . . . those State institutions that are required to provide instruction in military tactics" under the First Morrill Act. National Defense Act of 1916, ch. 134, § 40, 39 Stat. 166, 191 (1916). The Act provided for officers and enlisted men, paid with federal funds, to teach military tactics and administer the ROTC programs. Institutions with ROTC units were eligible to receive equipment and supplies from the War Department. *Id.* §§ 45-47, 39 Stat. 166, 192-93. Advanced ROTC students were provided a federally funded subsistence allowance during the school year and while at the required summer camp. *Id.* §§ 48, 50, 39 Stat. 166, 193. In 1920 Congress further provided that ROTC students attending summer camp receive military pay. National Defense Act of 1920, ch. 227, § 34, 41 Stat. 759, 779 (1920).

84. 2 LAND GRANT SURVEY, *supra* note 43, at 308-09. ROTC training provided students with significant opportunities for leadership positions. More than 8000 commissioned officers who served during World War I received military training at the white land grants. *Id.* at 318-19.

85. *Id.* at 314-15.

took the form of marching units and drill teams funded by the institution and unaccredited by the War Department.⁸⁶ It was not until 1942 that West Virginia State College, "after 19 years of persistent application," became the first black land grant to receive authorization for a ROTC unit.⁸⁷ By the end of World War II, the black institutions in North Carolina and Texas were the only other black land grants given ROTC programs. Although three-fourths of the black men drafted into military duty for the war came from the segregationist states, the public colleges of only three states offered black youths the opportunity to train for leadership positions.⁸⁸

Following World War II persistent efforts by presidents of the black land grant colleges produced ROTC units at five additional institutions.⁸⁹ All the black schools, however, lacked both Navy and Air Force ROTC programs, and the Army units generally provided only limited training.⁹⁰ This discrimination against the black land grant colleges and the students they served continued into the 1950s.⁹¹

86. Evans & Parker, *ROTC Programs and Negro Youth*, 25 J. NEGRO EDUC. 130, 132 (1956); Statement of the Executive Committee of the Conference of Presidents of Land Grant Colleges for Negroes as Made Before the Committee on Civilian Components of the Armed Forces (Apr. 2, 1948), reprinted in 25 CONF. PRES. NEGRO LAND GRANT CS. 101, 105 (1947-1948) [hereinafter Executive Committee Statement].

87. Evans & Parker, *supra* note 86, at 132.

88. *Id.* at 131-32.

89. Black land grants in Florida, Louisiana, Missouri, South Carolina, and Virginia had organized ROTC units by 1950. ROTC units were also developed at Morgan State College in Maryland and Central State College in Ohio, neither of which was a land grant institution, but both of which were black public colleges. *Id.* at 133. The campaign of the black land grant presidents for additional ROTC units in the late 1940s included communications with the Defense Department and political officials, an appearance before the Defense Department Committee on Civilian Components of the Armed Forces, and organized efforts for each black land grant formally to request a ROTC unit. Executive Committee Statement, *supra* note 86, at 101, 106-07, 119-20.

90. See Executive Committee Statement, *supra* note 86, at 105, 108. Defense Department discrimination against the black public colleges and the students they served was not limited to ROTC programs. In the 1940s the Navy's Enlisted Reserve (V-1) Program permitted college students to enlist in the Navy, become members of the Naval Reserve, remain in college until graduation, and then continue in the V-1 Program to become commissioned officers. The Navy refused to permit black colleges to participate in the V-1 Program, apparently because the Navy had no use for black officers. Committee of Conference on Naval Enlisted Reserve Program, News Release (July 3, 1942), reprinted in 20 & 21 CONFS. PRES. NEGRO LAND GRANT CS. 24, 24-26 (1942-1943).

91. As late as 1956, in Arkansas, Georgia, and Mississippi, there were no black colleges, public or private, offering ROTC training. Evans & Parker, *supra* note 86, at 133.

The refusal of state and federal authorities to establish military training programs at the black land grant colleges was one more restriction on the ability of those institutions to develop as separate but equal partners in the land grant movement. Federal funding for ROTC programs, although a relatively insignificant portion of federal support for the white schools, was a major denial to the already severely underfunded black land grants.⁹² In addition, black colleges did not feel the stimulus that advanced ROTC training provided to the development of the scientific curriculum, particularly in engineering.⁹³ Even the pride of being "integral parts of the plans for national defense"⁹⁴ was restricted to institutions serving only white students.

Students at the black land grant colleges also suffered. Much in need of additional leaders, blacks were denied leadership training that could have benefited them both in the military and in civilian life.⁹⁵ Black college students, whose families were disproportionately represented in the ranks of the poor, were denied federal subsidies paid advanced ROTC students during the academic year and in summer camps.⁹⁶ In a society that severely restricted employment opportunities for black college graduates, even the upper ranks of the military were only partially open. There was also the obvious inequity of drafting black youths throughout World War II, while denying them one of the primary routes to positions of military leadership.

92. In 1928, for example, the more than one million federal dollars granted to the 17 white land grants in the segregationist states was three times the federal funding, from *all* sources, of the 17 black land grants. 2 LAND GRANT SURVEY, *supra* note 43, at 314-15, 856.

93. See 2 LAND GRANT SURVEY, *supra* note 43, at 305-06.

94. *Id.* at 301.

95. The need for additional black officers was clear. As late as 1947, officers constituted only one percent of all blacks in the military as compared to 13% for whites. The Marines had no black officers and the Coast Guard had one. PRESIDENT'S COMM'N ON CIVIL RIGHTS, TO SECURE THESE RIGHTS 42-44 (1947). Restrictions on opportunities for military leadership training extended beyond the discriminatory treatment of black colleges. By the late 1940s the three military academies (West Point, Naval Academy, and Coast Guard Academy) had admitted a cumulative total of 43 blacks. *Id.* at 43. Black public high school students in the segregationist states also suffered near total exclusion from high school ROTC programs. Evans & Parker, *supra* note 86, at 131-32; Executive Committee Statement, *supra* note 86, at 107-08.

96. See *supra* note 83.

3. Cooperative Extension Services

Continuing federal appropriations for cooperative extension services by the land grant colleges began with the enactment of the Smith-Lever Act in 1914.⁹⁷ The Act provided for an equal, annual grant to each state with a larger sum (to be matched by state and local funds) divided among the states on the basis of rural population.⁹⁸ Additional legislation in 1928 and 1935 increased both the annual federal appropriation and matching funds.⁹⁹ The financial benefits conferred on the land grant colleges as a result of the Smith-Lever Act and related legislation were substantial. By 1937 the seventeen southern and border states were receiving extension funding of more than \$13 million annually.¹⁰⁰ The funding, however, was confined to the white land grant colleges.

Despite the established system of segregation in land grant institutions, the southern sponsors and supporters of the Smith-Lever Act prevailed in the debate over whether extension funds should be subject to a requirement of equitable division. For states with two land grant colleges, the Act stipulated only that the appropriations "be administered by such college or colleges as the legislature of such State may direct."¹⁰¹ All seventeen segregationist states designated their white land grant colleges to administer Smith-Lever and other extension funds.¹⁰² The black schools were thus effectively precluded from significant participation in the program that became "the signal feature of the land-grant movement's contribution to the

97. Ch. 79, 38 Stat. 372 (1914).

98. Each state received an annual grant of \$10,000 and a share of an additional appropriation that began at \$600,000 but was increased annually to a peak of \$4.1 million by the early 1920s. *Id.* § 3.

99. Capper-Ketchum Act, ch. 687, 45 Stat. 711 (1928); Bankhead-Jones Act, ch. 338, § 21, 49 Stat. 436, 438 (1935). Under the Capper-Ketchum Act, an annual grant of \$20,000 was made to each state with \$500,000 more to be distributed according to the conditions (on basis of rural population and with state matching) of the Smith-Lever Act. 45 Stat. 711-12. Under § 21 of the Bankhead-Jones Act, each state received an additional annual grant of \$20,000 and a share (based on farm population) of a supplementary sum that began at \$7.02 million and increased by one million dollars each year for four years. 49 Stat. 438.

100. G. WORKS & B. MORGAN, *THE LAND-GRANT COLLEGES* 60 (1939).

101. Smith-Lever Act, ch. 79, § 1, 38 Stat. 372, 373 (1914).

102. Memorandum from M.L. Wilson, Director of Extension Work, & J.T. Jardine, Chief of Office of Experiment Stations, to the Secretary of Agriculture (Apr. 8, 1946), *reprinted in* 25 CONF. PRES. NEGRO LAND GRANT CS. 68, 70, 72 (1947-1948) [hereinafter Wilson Memorandum].

economic, social and industrial advancement of the nation."¹⁰³

Through the extension service, the "idea of democratization of higher education conceived in the original land-grant college movement" was realized.¹⁰⁴ Resident instruction at the colleges could reach only a small fraction of the population, but under the plan embodied in the Smith-Lever Act:

[T]he college could be sent to the people. Instruction could be given . . . through practical teaching conducted by representatives of the institutions who would actually live in the local communities The plan presented the opportunity of providing education to great multitudes of people, of developing better agriculture, of advancing farming methods and finally of improving home and community life.¹⁰⁵

The benefits of the extension service were broad and far-reaching: economic security resulting from increased farm earnings, enhanced educational opportunities, improvements in health and home life through better nutritional and child care practices, and an increased standard of rural living through the development of local leadership and improvement of social life.¹⁰⁶

The educational, economic, and social status of the rural black population in the segregationist states created a compelling need for the services and benefits of extension programs. Nevertheless, black farmers, homemakers, and other rural dwellers were consistently denied a fair share of either the funds or benefits of the extension program. The most needy group in the southern and border states suffered discrimination in the support of black extension workers, in the proportion of extension funds used to benefit the black population, and in the role assigned to the black land grants in the administration of the extension program.

103. W. Trueheart, *supra* note 63, at 80.

104. 1 LAND GRANT SURVEY, *supra* note 43, at 29.

105. *Id.* at 28-29. One historian of the land grant movement describes the educational role of extension work as follows:

Cooperative extension recognized itself as primarily an educational movement. Its definite relationship as a part of the Land-Grant Colleges gave it an educational emphasis which might otherwise have been lacking had it been merely a government program. Extension was clearly a part of the college framework with the sole purpose of carrying knowledge to the people

. . . In the words of . . . one of the pioneers in home economics and home demonstration work, "It is the purpose of extension to stir in men and women the desire to take the next step and then to give them help in taking it"

E. EDDY, *supra* note 44, at 175.

106. See E. EDDY, *supra* note 44, at 191; D. WILKERSON, *supra* note 64, at 112; 2 LAND GRANT SURVEY, *supra* note 43, at 440-42, 472, 504, 513.

The "point of contact between the college and the people"¹⁰⁷ in the extension service was the county extension office and its resident agents—the farm or county agent, the home demonstration agent, and the youth club agent—who had field responsibility for planning and administering the extension program. As late as 1941, there were only 549 black extension workers of the more than 4100 agents in the segregationist states. Using the black proportion of the region's rural population as the index of equity, the black extension force reached only fifty-five percent of an equitable share of extension workers.¹⁰⁸ The disparity is partially explained by the fact that many rural counties had an insufficient number of blacks to justify, under criteria of efficiency rather than equity, appointment of black agents. As a matter of general but unenforced policy, the Department of Agriculture favored the appointment of black agents only in counties with 450 or more black farm families.¹⁰⁹ Nevertheless, more than one-third of the counties with at least 500 black farm families lacked the service of any black agent.¹¹⁰ Moreover, fewer than half of the counties with 1000 or more black farm families employed both a black farm agent and a black home demonstration agent.¹¹¹

Black extension workers who were appointed faced impediments not confronted by whites. Black agents were paid substantially less than their white counterparts.¹¹² Discrimination against the black branch of the extension service also meant that black agents frequently lacked travel funds, office space and supplies, clerical help, teaching materials, and demonstra-

107. G. WORKS & B. MORGAN, *supra* note 100, at 70.

108. D. WILKERSON, *AGRICULTURAL EXTENSION SERVICES AMONG NEGROES IN THE SOUTH* 20, 22 (1942).

109. Wilson Memorandum, *supra* note 102, at 70.

110. C. Wickard, Statement on Extension Work with Negroes (Feb. 1941), reprinted in D. WILKERSON, *supra* note 108, at 52, 59 [hereinafter Wickard Statement].

111. D. WILKERSON, *supra* note 108, at 29. Even the counties with the largest concentrations of blacks frequently lacked a full extension program for blacks. Of 25 counties with 3000 or more black farm families, only 14 had both a black farm agent and a black home agent. *Id.* at 29.

112. In 1936 the average salary for black county agents was \$1504; for whites the average was \$2630. G. WORKS & B. MORGAN, *supra* note 100, at 74. In 1946 the average was \$1969 for blacks and \$3420 for whites. Wilson Memorandum, *supra* note 102, at 73. As late as 1950, the salaries of black county agents in most of the segregationist states were approximately two-thirds that of white county agents. Schor, *The Black Presence in the U.S. Cooperative Extension Service Since 1945: An American Quest for Service and Equity*, 60 *AGRIC. HIST.* 137, 152 (1986).

tion equipment. While better paid white agents received federal, state, and county funds for their extension activities, many black agents drew on their meager salaries to pay for basic support services.¹¹³ Training programs for black workers were rare, and technical assistance from specialists at the land grant colleges was virtually nonexistent.¹¹⁴ The bizarre customs of the Jim Crow regime created further obstacles. The black extension worker might suffer a beating at the hands of masked whites for "organizing Negroes" and supporting an antilynch law¹¹⁵ or be dismissed for offering to shake hands with a white county commissioner.¹¹⁶

Because the extension service was not officially segregated but administered as a unified service by the white land grant colleges,¹¹⁷ the funding of black agents may understate the extent to which blacks were served by extension programs. White extension agents and supervisory officials were nomi-

113. G. BAKER, *THE COUNTY AGENT* 197 (1939); B. COTTON, *THE LAMP-LIGHTERS: BLACK FARM AND HOME DEMONSTRATION AGENTS IN FLORIDA, 1915-1965*, at 95-98 (1982); D. WILKERSON, *supra* note 108, at 25-26, 37; E. Crosby, *BUILDING THE COUNTRY HOME: THE BLACK COUNTY AGENT SYSTEM, 1906-1940*, at 160-62 (1977) (Ph.D. thesis, Miami Univ., available from University Microfilms International, Ann Arbor, Michigan).

114. The combination of inadequate funding, a shortage of technically trained faculty, and a restricted educational program left most of the black land grants unable to provide advanced training to black extension workers or specialists. Before the 1940s the most important training program for black agents appears to have been a one-month course offered in 1930 and 1931 on a regional basis by a small group of the black colleges. Significantly, funding for the program came from a philanthropic foundation rather than state or federal extension appropriations. E. Crosby, *supra* note 113, at 172-75; *see infra* note 125 and accompanying text.

115. H. BROWN, *A HISTORY OF EDUCATION OF NEGROES IN NORTH CAROLINA* 125-28 (1961).

116. G. BAKER, *supra* note 113, at 202. A system of race relations that demanded black subservience also influenced the hiring of black extension agents:

Negroes reared in the North are generally excluded, since they are likely to be too aggressive to fit into the extension work of a county agent. Negroes educated in the North are not necessarily excluded, but they must be willing to adjust themselves to southern traditions. Because of the freer relationship between the races in the Piedmont section as contrasted with that in the Black Belt section, a Negro from the Piedmont section is seldom recommended for a position in the Black Belt.

Id. at 200. The tenure of black agents depended on their adhering to the "racial customs and traditions" of the region, and most agents "worked for the slow advancement of their race, avoiding open challenges to the prevailing order." E. Crosby, *supra* note 113, at 164-65.

117. Wickard Statement, *supra* note 110, at 52-53; Wilson Memorandum, *supra* note 102, at 70.

nally responsible for serving both races. Department of Agriculture estimates of expenditures for the benefit of the black population, however, show a general discrimination. From 1925 to 1942, when the rural population of the segregationist states was approximately one-fourth black, annual extension expenditures for the benefit of the black population did not exceed seven percent of total expenditures.¹¹⁸ In practice, the extension program in the black community was usually limited to the services provided by black agents.¹¹⁹

Racial discrimination in the administration of extension funds also affected the development of the black land grants and widened the gap between the white schools and their "separate but equal" black counterparts. In each state the extension service was organized as a division of the white land grant college and headed by a state director who might also be a dean at the institution. Although the bulk of extension funds was channeled through the colleges to the county offices, the institutions retained substantial sums from state and federal appropriations for extension work. In 1937 alone the seventeen white land grant colleges expended nearly four million extension dollars at the institutions.¹²⁰ In the prior year, the total state, federal, and local funding for *all* activities at the black land grant schools was less than \$2.5 million, only sixty percent of the white institutions' extension budgets.¹²¹

Through the administration of their states' extension services, the white land grants became comprehensive public service institutions as contemplated by the land grant model. The central administrative staff at the colleges worked with county governments in planning and supervising extension activities to

118. D. WILKERSON, *supra* note 108, at 32.

119. Wilkerson's survey of a sample of black extension agents found that direct contact between white agents and black families was rare and that the primary service provided by white agents was the distribution of publications. Black agents, however, would serve white families by vaccinating livestock, pruning trees, and performing other physical labor. *Id.* at 9-11; *see also* E. Crosby, *supra* note 113, at 167-68 ("Most white agents . . . found that their own responsibility to serve the white community and other considerations precluded much assistance to the black agent."); W. Truehart, *supra* note 63, at 178 (white agents' service to blacks was "less individualized, and consequently less effective, notwithstanding [blacks'] greater need for services in most cases'") (quoting ADVISORY COMM. ON EDUC., REPORT OF COMMITTEE 152 (1938)).

120. G. WORKS & B. MORGAN, *supra* note 100, at 60-61.

121. D. WILKERSON, *supra* note 64, at 77. Total state, federal, and local funds received by the 17 white land grants in 1936 amounted to more than \$34 million. *Id.*

serve the state's rural population. Specialists at the white land grants kept abreast of research developments through contact with faculty and other researchers and provided technical assistance to the county agents. Support for extension work from farm and community groups, businesses, and state educational agencies translated into political support for the colleges.¹²²

The black land grants were denied the opportunity to implement the land grant model of public service. Black extension supervisors were located at the black institutions, with the underfunded schools often providing free office space and clerical help.¹²³ The colleges, however, were only the nominal headquarters of the black extension service. The state director and other administrators at the white land grants controlled both the budget and staffing of the black extension program. Even black supervisory authority over the local agents was limited in that white county agents often exercised *de facto* control over black extension workers in their counties.¹²⁴ At all levels white officials, who were frequently ignorant of or indifferent to the needs of the black rural population, controlled the black extension program.

The failure of the Smith-Lever Act and subsequent legislation to require an equitable division of extension funds further restricted the ability of the black land grants to assume a major role in the extension service. Most of the institutions lacked the funding and the educational program necessary to train technical specialists. During the 1930s the black branch of the extension service included only three black specialists. Although some black faculty attempted to compensate for the lack of specialists, the institutions were unable to duplicate the model of the white colleges and develop as centers of technical assistance.¹²⁵

The role of the black land grants in the extension program was generally limited to that consistent with their insufficient funding and restricted educational programs. The black schools

122. 2 LAND GRANT SURVEY, *supra* note 43, at 439, 451, 504-12; G. WORKS & B. MORGAN, *supra* note 100, at 75.

123. E. Crosby, *supra* note 113, at 70.

124. *Id.* at 68, 165-66; B. COTTON, *supra* note 113, at 20.

125. G. BAKER, *supra* note 113, at 196; E. Crosby, *supra* note 113, at 79-80. As was the case with white extension agents, specialists at the white land grant colleges provided little, if any, assistance to the black extension workers. G. BAKER, *supra* note 113, at 196-97; D. WILKERSON, *supra* note 108, at 10-11; E. Crosby, *supra* note 113, at 77-79.

offered short courses for farmers, homemakers, and youth clubs; provided camp and conference sites for black 4-H clubs excluded from the regional and national activities of the white 4-H organization; and sponsored state and regional meetings of black extension workers.¹²⁶ But the growth of the extension service as one of the major and more heavily funded of the land grant functions served primarily to confirm the subordinate status of the black land grant colleges.

4. Experiment Stations and Research

The Hatch Act of 1887 initiated federal support for research at the land grants by providing an annual grant of \$15,000 to each state for the establishment of experiment stations.¹²⁷ Subsequent enactments increased the annual federal appropriation, provided substantial additional funding based on the distribution of rural population, and required state matching of the federal grants.¹²⁸ By 1940 the white land grant colleges in the seventeen segregationist states were receiving annually more than \$4 million in public funds for the operation of experiment stations.¹²⁹

126. B. COTTON, *supra* note 113, at 65-68, 79, 84-87, 107; A. TRUE, A HISTORY OF AGRICULTURAL EXTENSION WORK IN THE UNITED STATES, 1785-1923, at 190, 192 (1928).

127. Ch. 314, 24 Stat. 440 (1887).

128. In 1906 the Adams Act provided for an additional \$5000 to each state with an annual increase of \$2000 each year for five years. Ch. 951, 34 Stat. 63 (1906). The Purnell Act of 1925 increased the annual federal grant by \$20,000 and provided for additional increases of \$10,000 per year for four years. Ch. 308, 43 Stat. 970 (1925). By the 1930s each state was receiving an annual federal subsidy of \$15,000 from the Hatch Act, \$15,000 from the Adams Act, and \$60,000 from the Purnell Act, for a total of \$90,000 per year for the operation of experiment stations.

Title I of the Bankhead-Jones Act of 1935 provided for an additional \$1 million in the first year and an annual increase of \$1 million for the next four years. Of the \$5 million ultimately available, 60% was divided among the states according to their share of the nation's rural population with the remaining 40% to be used by the Department of Agriculture for regional experiment stations and other research activities. Bankhead-Jones Act, ch. 338, §§ 1-5, 49 Stat. 436, 436-38 (1935). Under the Act, states were required to match the amount of their federal grant. *Id.* § 5.

129. In the first year of the Bankhead-Jones Act, the 17 segregationist states received \$290,000 of the \$600,000 of Bankhead-Jones funds divided among the states. D. WILKERSON, *supra* note 64, at 79. Because each state's share of Bankhead-Jones funds was determined by the prior (1930) census, Bankhead-Jones Act, ch. 388, § 5, 49 Stat. 436, 437 (1935), the segregationist states' share of each of the four additional \$600,000 increments would also have been \$290,000, for a total of \$1.45 million matched by the same amount of state funds. In addition, each of the 17 states received \$90,000 annually under

The network of experiment stations became part of a national system of agricultural research and made the land grant institutions an important resource for the federal and state governments and the business community. The colleges undertook cooperative projects with the Department of Agriculture, other federal and state agencies, and commercial organizations. The Department trained land grant researchers and provided them with opportunities for professional development through federal employment. Cooperation with the extension service brought the results of research to farming communities and developed ties with farm and other local organizations. State governments delegated to the stations the regulatory functions of inspection, disease control, and animal registration.¹³⁰ The network became what one enthusiastic official called "the greatest national system of agricultural experiment stations in the history of the world."¹³¹ It was a system, however, that excluded black institutions, faculty, and students.

Consistent with the general pattern of federal land grant funding, the statutes establishing experiment stations afforded no protection to the black schools.¹³² Consequently, experiment stations at the black land grants were nonexistent for more than half a century after the enactment of the Hatch Act. As late as the mid-1930s, of the seventeen black land grant colleges, only West Virginia State College was receiving any of the millions of federal research dollars allocated to the segregationist states, and then only the paltry sum of \$1800.¹³³ Although there were isolated instances of white experiment stations using black land grant faculty in research projects and of state funding for research by black land grants, even such limited in-

the Hatch, Adams, and Purnell Acts, bringing the total to \$4.3 million each year. See *supra* note 128. The figure likely understates the amount since state funding usually exceeded the minimum matching required by the Bankhead-Jones Act. See G. WORKS & B. MORGAN, *supra* note 100, at 38-39.

130. 2 LAND GRANT SURVEY, *supra* note 43, at 589-606, 646-47, 655-58.

131. 1 LAND GRANT SURVEY, *supra* note 43, at 23.

132. Only the Hatch Act even mentioned a division of federal funds and then made it subject to the discretion of state legislatures. Ch. 314, § 1, 24 Stat. 440 (1887).

133. Atwood, *Report of Study on the Organization and Administration of Cooperative Extension Work Among Negroes with a Recommendation*, 15 CONF. PRES. NEGRO LAND GRANT CS. 67, 71 (1937). It appears that the first experiment substation was established at a black land grant in 1937 at Virginia State College with the use of state funds. Federal funds did not support a black land grant substation until 1947 when the Texas black land grant received some Hatch Act funding. DEVELOPMENT OF RESEARCH AT HISTORICALLY BLACK LAND-GRANT INSTITUTIONS 41 (B. Mayberry ed. 1976).

volvement of the black schools was unusual.¹³⁴

Exclusion of the black colleges from experiment station work and other publicly funded research had widespread effects on the institutions, their faculty and students, and the black population they served. Black farmers almost certainly received some benefit from the research at white experiment stations. Even that benefit, however, was limited by the underdevelopment of the black extension service which disseminated the results of research to the people.¹³⁵ More importantly, the failure to fund experiment stations and research at the black colleges frequently resulted in the failure of research to address the unique problems of the black population. A 1939 federal study of land grant colleges concluded: "Negroes face many economic adjustment problems which are markedly different, in kind or degree, from those which confront white persons. There is a need for a great deal of research with reference to them, and there is little evidence that such studies are in progress."¹³⁶ The potential of the black land grants to engage in research tailored to the needs of rural black Americans was particularly evident after the enactment in 1925 of the Purnell Act, which expressly authorized the use of federal funds for "such economic and sociological investigations as have for their purpose the development and improvement of the rural home and rural life."¹³⁷ The need for improvement of rural life in the black community was clear, but the research funding was not provided.

Apart from the black population's obvious need for assistance, the denial of research funds to black schools significantly retarded the development of those institutions. In the early years, and continuing through the 1920s, the experiment stations at the white land grants played an important role in developing scientific research methods in higher education. The experiment stations' staffs were frequently faculty members as

134. D. WILKERSON, *supra* note 64, at 126.

135. 2 LAND GRANT SURVEY, *supra* note 43, at 646-47, 655-56. Research projects pertaining to farming techniques could benefit farmers regardless of race. Studies of the characteristics of the rural population and research on improving the life of rural dwellers were less likely to be neutral with regard to the race of the population studied.

136. G. WORKS & B. MORGAN, *supra* note 100, at 44.

137. Ch. 308, § 1, 43 Stat. 970, 971 (1925). The Purnell Act was responsible for stimulating new research efforts in rural sociology, including studies directed to improvement of rural schools and libraries, health facilities, community recreation, and other aspects of rural home and community life. 2 LAND GRANT SURVEY, *supra* note 43, at 699; E. EDDY, *supra* note 44, at 167-68, 171-72.

well, and the stations became an important force in the growth of a scientific curriculum. The experiment stations were also the first form of graduate instruction at the white land grant colleges.¹³⁸

The black land grants clearly needed the research, curriculum development, and graduate work stimulated by the experiment stations. Throughout the first half of the twentieth century, the curriculum of the black land grant colleges lacked the scientific focus that developed very early at the white schools. Graduate instruction of any type did not begin at the black schools until the challenge to the separate but equal doctrine in the 1940s and even then seldom involved programs in the physical sciences. Faculty at the black land grant colleges were themselves victims of an inferior education and needed, even more than white academics, the opportunities for research and professional development that the experiment stations provided.¹³⁹

Discrimination in federal and state funding for research, extension work, military training, and resident instruction forced the black colleges to accept an inferior status in the land grant movement. The financial deprivation suffered by the land grants, the flagship institutions of black public higher education, severely restricted their efforts to improve the educational and economic status of the population they served. Lack of support for research affected the quality of the faculty and of the education offered to resident students. The failure to fund military training programs at the black schools restricted the already limited opportunities of their graduates. Insufficient funding for extension work left most of the nation's black rural population without the educational and social benefits of off-campus instruction and other services. Even in the basic func-

138. See 1 LAND GRANT SURVEY, *supra* note 43, at 23; 2 LAND GRANT SURVEY, *supra* note 43, at 602, 646, 654, 658, 660-64, 709-10; see also E. EDDY, *supra* note 44, at 100.

139. As suggested by one study of black education at the end of the 1930s, research funding for the black land grants would

do more than contribute to the development of needed research projects in a now neglected area of rural Negro life. It would also provide for able and well-prepared members of Negro land-grant college faculties an opportunity which they now lack to develop their abilities in the conduct of research. At the same time, it would afford for a few advanced students in Negro institutions some measure of such educative experiences as are now enjoyed by graduate students associated with the agricultural research projects in the white land-grant colleges and universities.

D. WILKERSON, *supra* note 64, at 127.

tion of resident instruction, equality was never achieved. The federal mandate for a "just and equitable division" reached only a small portion of public funding for resident instruction. Where the federal mandate did not reach, notions of justice and equity played no part in the division of funds between the black and white land grants.

B. INEQUALITY IN PROGRAMS OF INSTRUCTION

In the black public colleges, discrimination in funding found its curricular counterpart in restricted programs of instruction and narrowly defined institutional missions. Insufficient funds, of course, limited the curriculum of the institutions, particularly in costly scientific and technical programs. Inadequate funding, however, was only one of the constraints on curricular development. The institutions formed part of an all-inclusive system of segregation that defined their role in the education of black citizens.

An assumption of black inferiority lay at the heart of the system of segregation. Earlier used to justify slavery,¹⁴⁰ theories of black inferiority found acceptance in white academia, particularly in the South, in the late nineteenth and early twentieth centuries as support for a narrow conception of black education. From the medical faculty of the University of Virginia, for example, came "scientific proof" of immutable racial differences that determined the outcome of any effort to educate blacks:

The modifying forces acting upon the Negro's brain will have to start with an anatomical structure already formed and set by heredity, an anatomical structure different from that of the white race . . . and the final result in the Negro's brain will be determined and directed by this preexistent anatomical make-up.¹⁴¹

The perceived biological limits of black intellectual development led to the conclusion "that it is useless to try to elevate the negro by education or otherwise, except in the direction of his natural endowments."¹⁴²

140. See *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, 404-10 (1857); see generally G. FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND* 43-96 (1971) (discussing justifications for slavery).

141. Bardin, *The Psychological Factor in Southern Race Problems* (1913), reprinted in I. NEWBY, *THE DEVELOPMENT OF SEGREGATIONIST THOUGHT* 29, 36 (1968); see also C. WOODWARD, *THE STRANGE CAREER OF JIM CROW* 94-95 (3d rev. ed. 1974) (noting the early twentieth century belief that education would not benefit blacks).

142. Bean, *The Negro Brain*, 72 *CENTURY MAG.* 779 (1906), reprinted in I. NEWBY, *supra* note 141, at 46, 53; see G. FREDRICKSON, *supra* note 140, at 252-

Although not universally accepted, even within the South, notions of the inherent inferiority of blacks provided a convenient justification for the separate and special education of blacks. Perceived as incapable of benefiting from the educational opportunities available to whites, blacks were to receive an education that required "such an adjustment of school curricula as shall meet the evident needs of negro youth."¹⁴³ The "evident needs of negro youth" dictated an educational program that would prepare them for positions suitable for an inferior race. Black education was "designed to inculcate those values which would adequately adjust the Negro people to their caste conditions"¹⁴⁴ and was used as a mechanism for imprisoning blacks within, rather than providing opportunities for escape from, the system of racial caste.

In the segregated public school system, belief in the inherent inferiority of blacks and in an "appropriate" place for blacks in society found expression in a curriculum of manual and industrial training. The special education of blacks was designed to "make the Negro a better servant and laborer" and came to be an education "which bothers less with bookish learning and more with life in a humble status, daily duties, and the building up of character."¹⁴⁵ Nor were the constraints on the black educational program limited to what should be taught; they included what should *not* be taught as well. Preparation of blacks for their role in society demanded that education not foster unacceptable notions of equality that would lead to dissatisfaction with their predetermined status. Blacks were denied "the general education given to whites, since it [was] felt—with good reason—that an academic education would make Negroes ambitious and dissatisfied with a low occupation,

55; I. NEWBY, JIM CROW'S DEFENSE 175-76 (1965); Winston, *Through the Back Door: Academic Racism and the Negro Scholar in Historical Perspective*, 100 DAEDALUS 678, 684-87 (1971). In the 1930s and 1940s, "scientific proofs" of black inferiority were discredited by much of white academia, although the ideas persisted as a justification for segregated education even after 1954. See G. FREDRICKSON, *supra* note 140, at 329-31; I. NEWBY, JIM CROW'S DEFENSE 191-99 (1965); see generally I. NEWBY, CHALLENGE TO THE COURT: SOCIAL SCIENTISTS AND THE DEFENSE OF SEGREGATION, 1954-1966 (1967) (discussing attempts to show scientific basis for racism).

143. B. GALLAGHER, AMERICAN CASTE AND THE NEGRO COLLEGE 176 (1938) (quoting 1907 resolution of the Southern Educational Association).

144. H. BULLOCK, A HISTORY OF NEGRO EDUCATION IN THE SOUTH 157 (1967); see B. GALLAGHER, *supra* note 143, at 187-88.

145. G. MYRDAL, AN AMERICAN DILEMMA 889, 897 (1944).

would 'ruin a good field hand.'"¹⁴⁶ Consequently, the curriculum of black public schools avoided instruction that might make blacks unwilling to accept a social structure based on white supremacy:

There is a clear tendency to avoid civics and other social sciences in the Southern Negro public schools. . . . [A] special effort is made to prevent Negroes from thinking about the duties and privileges of citizenship. . . . Where white students are taught the Constitution and the structure of governments, Negroes are given courses in "character building," by which is meant courtesy, humility, self-control, satisfaction with the poorer things of life, and all the traits which mark a "good nigger" in the eyes of the Southern whites. The content of the courses for Negroes throughout the South . . . is molded by the caste system at every turn.¹⁴⁷

Those who used black education as a vehicle for social oppression were not alone in supporting the special education of blacks through manual and industrial training. Others saw in industrial training a means for the economic salvation of blacks within a segregated society—an approach to black education that was both consistent with the national movement toward vocational education and a necessary compromise with those who feared and opposed black education designed to achieve social and political equality.¹⁴⁸ Whatever the benign, albeit paternalistic, goals that might have been served by genuine vocational training, however, the special education of blacks seldom achieved them. While whites opposed academic training of blacks for fear of demands for social and political equality, they also opposed vocational training for fear of competition from black skilled labor. White educational leaders took up the defense of the white worker, asking "[w]hen [blacks] become plumbers, who are going to be the helpers, the men who carry the tools?"¹⁴⁹ and concluding:

[I]t would be folly for any state to enter upon the industrial training

146. *Id.* at 950; see also *id.* at 894-95 (education for blacks leads to consciousness of rights and dissatisfaction).

147. *Id.* at 949.

148. See H. BEALE, A HISTORY OF FREEDOM OF TEACHING IN AMERICAN SCHOOLS 187-88 (1941); Meier, *The Vogue of Industrial Education*, 7 MIDWEST J. 241, 248, 265-66 (1955).

149. This and related questions were posed and answered by the President of the Georgia Institute of Technology:

When the colored race all become skilled bricklayers, somebody will have to carry the mortar. When they all become plumbers, who are going to be the helpers, the men who carry the tools? When they become scientific farmers, who are going to be laborers? Are Southerners, we Southern whites? No. We have settled that question long ago

of its deficient race while the laboring class of its higher race is equal to any training and any effort. We can not equip both, and to equip the negro to the neglect of the poor white would be a grave political error and an economic absurdity . . . ¹⁵⁰

The unwillingness to equip both races led to the grossest forms of discrimination against black public schools, even within the confines of the special educational goals for blacks. As expressed by the Dean of the Education Department at the University of Mississippi, "in educational policy let the negro have the crumbs that fall from the white man's table."¹⁵¹ Because effective vocational education in an industrial economy was expensive, the training at black public schools often prepared blacks only for manual labor and left them at the bottom of the working class.¹⁵²

The characteristics of segregated society profoundly affected the educational program at the black public college. As in the elementary and secondary schools, the curriculum of the public college was defined by perceptions of white political officials and supervisory boards as to the acceptable purposes of black education and the role of blacks in society. At Georgia State Industrial College near the turn of the century, courses in plastering, painting, shoemaking, dressmaking, cooking, and laundering¹⁵³ reflected the views of the state's Governor: "I do not believe in the higher education of the darkey. He must be taught the trades. When he is taught the fine arts, he is edu-

B. FISHER, *INDUSTRIAL EDUCATION: AMERICAN IDEALS AND INSTITUTIONS* 163-64 (1967).

150. The comments are attributed to Paul Barringer of the University of Virginia speaking at a conference of the Southern Education Association in 1900. W. Trueheart, *supra* note 63, at 86.

151. G. FREDRICKSON, *supra* note 140, at 298 (quoting T. BAILEY, *RACE ORTHODOXY IN THE SOUTH, AND OTHER ASPECTS OF THE NEGRO QUESTION* 93 (1914)).

152. Gunnar Myrdal summarized the results of industrial training for blacks as follows:

By and large, *in spite of all the talk about it, no effective industrial training was ever given the Negroes in the Southern public schools*, except training for cooking and menial service. The expensive vocational training, which conflicted so harshly with the interests of the white workers, has never become much more than a slogan. . . .

. . . A few exceptional schools excluded, [the black public schools] offer at best some training in domestic service for girls—which, for understandable reasons, meets more encouragement and less fear of competition—or poor training in the technique of rapidly disappearing handicrafts, sometimes adjusted slightly to modern times by courses in "automobile repair work" or the like.

G. MYRDAL, *supra* note 145, at 899 (emphasis in original).

153. W. RANGE, *supra* note 29, at 73-74.

cated above his caste, and it makes him unhappy."¹⁵⁴ In the black land grants generally, the "liberal and practical education of the industrial classes" mandated by the Morrill Acts usually took the form of manual training suitable for a servant class, while the white institutions trained scientists, technicians, engineers, and other professionals.

Within the system of black public colleges, the only acceptable professional education was the training of teachers for black elementary and secondary schools. The pressing need for more black teachers, combined with the attractiveness of teaching in a society where other professions were virtually closed to blacks, converted most black public colleges into teacher training institutions. Even with that educational mission, the colleges were not only the product but also the perpetuators of a segregated society. Poorly prepared students were educated in underfunded colleges, by faculty who were victims of discrimination in education, to become the teachers of the next generation of college students.

For most of the separate but equal era, public higher education for blacks was limited primarily to low level vocational education and teacher training. Frequently the names of the institutions captured the state-imposed, restricted definition of black higher education: Agricultural, Mechanical, and Normal College of Arkansas; Prairie View State Normal and Industrial College; Tennessee Agricultural and Industrial State Teachers College; and the Colored Agricultural and Normal University of Oklahoma. To the limited extent that public higher education was available, it restricted black students to training for their predetermined place in a segregated society.

Development of the black college educational program was further constrained by what was perhaps the most evident need of black students—the need for elementary and secondary education. The inadequacy, in some areas the complete absence, of black schools at the lower levels required that the public col-

154. H. BULLOCK, *supra* note 144, at 94. Public officials in Georgia had earlier demonstrated a keen appreciation of the "unhappiness" that could result from the higher education of blacks. Prior to the creation of Georgia State Industrial College (the black land grant), privately controlled Atlanta University received a small subsidy from the state. With that subsidy came annual visits from state "Examiners" to ensure that "subversive ideas were not promoted among the students." W. RANGE, *supra* note 29, at 35-36. Similar concerns about the "happiness" of blacks receiving higher education at public expense were evident in the comments of Mississippi's Governor in closing a state normal school in 1904 because education was "ruining our Negroes. They're demanding equality." W. Trueheart, *supra* note 63, at 33.

leges offer a curriculum designed to serve students who had been deprived of any meaningful education. Even the designations of "college" or "university" were misnomers.

1. "Colleges" for Preparatory Training

For many years the black public college was little more than "a boarding school for primary and secondary students."¹⁵⁵ Persistent discrimination at the lower levels meant that as late as 1928, thirty-seven years after the Second Morrill Act, nearly two-thirds of the students at the seventeen black land grants were elementary and secondary students.¹⁵⁶ The pattern varied from state to state, but few black public colleges took on the primary function of affording higher education to black students until the 1930s.

The long continuation of preparatory education in black public colleges compounded the already substantial effects of discrimination in funding. Scarce resources supposedly dedicated to higher education were diverted to educational tasks inadequately assumed by the lower schools. A college curriculum was slow to develop and tended to follow the manual training pattern, especially in the land grant institutions.¹⁵⁷ Creation of a genuine college faculty was deferred for decades as teachers in black public colleges were called upon to instruct elementary and secondary as well as college students.¹⁵⁸ The institutions could not develop an educational environment appropriate to the college level because "work of sub-collegiate grade not only consumed the funds and dominated [their] activities . . . but also too often determined the intellectual tone of the whole institution."¹⁵⁹

When the number of college students increased, their lack of preparation continued to burden the black colleges with the effects of discrimination in secondary education. An increase in the number of black secondary schools in the 1930s¹⁶⁰ produced

155. F. BOWLES & F. DECOSTA, *supra* note 21, at 37.

156. The total enrollment of the 17 black land grants in 1928 was 9823, of which only 3691 were college students. 2 LAND GRANT SURVEY, *supra* note 43, at 896-97.

157. See *infra* notes 175-201 and accompanying text.

158. In the mid-1920s, for example, the black land grants in Arkansas, Delaware, Georgia, and Maryland each had only one faculty member teaching exclusively at the college level, while Mississippi's black land grant had only three. SURVEY OF NEGRO COLLEGES, *supra* note 39, at 142, 153, 174, 327, 413.

159. D. HOLMES, *supra* note 24, at 201.

160. By the mid-1930s, there were approximately 2300 black public schools in the segregationist states offering at least one year of high school education.

more students with some high school education but too few students prepared for college. A sampling of black college freshmen in the early 1940s found that they had average scores in the fourth percentile on a nationally standardized test.¹⁶¹ Although black students' performances on standardized tests were sometimes interpreted as a confirmation of the innate intellectual inferiority of blacks,¹⁶² the scores rather clearly reflected the effects of discriminatory and substandard education at the elementary and secondary levels. Students educated in the northern and border states had much higher scores than those educated in the South, and students who had attended the particularly inadequate southern rural schools had the lowest scores.¹⁶³

The continuing inadequacy of the lower level schools required that the black public colleges continue to provide both preparatory training and higher education. If the colleges were to serve their constituency, they could not adopt selective admissions policies and reject students who had been denied an opportunity for a meaningful secondary education.¹⁶⁴ The function of serving underprepared students characterized black public colleges throughout the separate but equal era and affected both their programs of instruction and their ability to achieve black social advancement through higher education. As

D. BLOSE & A. CALIVER, STATISTICS OF THE EDUCATION OF THE NEGRO 8 (Office of Educ., U.S. Dep't of Interior, 1938 Bull. No. 13, 1939).

161. 2 OFFICE OF EDUC., FED. SEC. AGENCY, NATIONAL SURVEY OF THE HIGHER EDUCATION OF NEGROES 42-43 (1942) [hereinafter NATIONAL SURVEY]. The test scores on the American Council on Education Psychological Examination included freshmen at both public and private black colleges. *Id.* at 41-43.

162. See H. BOND, THE EDUCATION OF THE NEGRO IN THE AMERICAN SOCIAL ORDER 475-76 (1966).

163. 2 NATIONAL SURVEY, *supra* note 161, at 59-61. A similar pattern, reflecting the location of black students' precollege education, was evident in a 1930 survey of scores on the same test. A. CALIVER, A BACKGROUND STUDY OF NEGRO COLLEGE STUDENTS 55, 111 (1933). The scores of white students showed a similar geographical pattern reflecting the inadequacy of southern public schools for whites as compared to northern public schools. In the 1932 administration of the American Council on Education Psychological Examination, 25 white southern colleges had a median institutional percentile of 27, and five state-supported white institutions had an institutional average below the twentieth percentile. H. BOND, BLACK AMERICAN SCHOLARS 89, 91 (1972); see also H. BOND, *supra* note 162, at 477 (white college students in the South generally scoring well below the national average). The test scores indicated national differences in the quality of elementary and secondary schools, showing that the South had the poorest quality schools and the black schools were the worst in the South. See 1 NATIONAL SURVEY, *supra* note 161, at 34-39.

164. See 3 NATIONAL SURVEY, *supra* note 161, at 67-70.

a national survey of black colleges concluded at the beginning of the 1940s:

Owing to the rather meager provision for elementary and secondary education made for a large part of the Negro population, the development of higher education for Negroes on a level comparable to that generally found in colleges and universities in the United States is impossible at present in the majority of the colleges and universities for Negroes. Some attempts are made in these institutions to remedy the deficiencies of lower education, but at best these attempts can be little more than makeshifts. The educational and general cultural limitations of Negroes due to their present status in American life are not overcome by any short-time programs.¹⁶⁵

Although in differing degrees, the preparatory function of the black colleges operated as a restraining force on the development of a college curriculum throughout the 1940s. Even as a college level curriculum developed, however, it was restricted to the primary function of black public colleges—the training of teachers for black elementary and secondary schools.

2. Colleges for Teacher Training

Consistent with the general pattern of curriculum development at black public colleges, the teacher training function was the product of white control and the demands of a segregated society. Initially, state support for the training of black teachers was largely perceived as the only acceptable alternative to the use of missionary teachers from the North. When strictly segregated education became firmly entrenched, the black public colleges were assigned the primary mission of producing teachers to staff the separate and unequal public school systems. A continuing demand for black teachers, generated as the systems expanded throughout the first half of the twentieth century, justified the use of public funds, however limited, for teacher training and gave the black colleges the “indispensable role as the source of manpower for the system.”¹⁶⁶

The demand for and acceptability of teacher training dictated the curriculum not only of the black normal schools, but also that of the black land grants. The scientific, technical, and professional curriculum that predominated in the white land grant institutions required costly equipment, a broadly diversified faculty, and funds for research. Confining the black land grant colleges to teacher training created a convenient justification for minimal funding levels and restricted the colleges to a

165. *Id.* at 54.

166. F. BOWLES & F. DECOSTA, *supra* note 21, at 36.

mission consistent with the status of blacks in a segregated society. Consequently, the curricular development of the black land grants lagged so far behind that of their white counterparts that equality of educational opportunity was impossible to achieve:

In marked contrast with the varied educational programs afforded by the white land-grant colleges are the much more restricted programs of the Negro institutions. By far the predominant emphasis in all of the Negro land-grant colleges is teacher education. Slightly more than three-fifths of the resident students in these institutions take their majors in the arts and sciences or in education. The remainder are concentrated chiefly in the fields of agriculture, mechanic arts, and home economics, even here the chief emphasis being the preparation of teachers in these fields.¹⁶⁷

Just as they were denied support for the land grant functions of extension work and research, the black land grant colleges could offer their students little opportunity for social mobility other than through the self-perpetuating system of segregated education.

Training of black teachers was, of course, an essential predicate to any increase in the number of black elementary and secondary schools. For most of the separate but equal era, however, the underfunded black public colleges, with their small enrollments of underprepared students, were unable to satisfy the need for more black teachers. In the 1930s nearly 16,000 additional black teachers were required to equalize the student loads of black and white teachers in the segregationist states.¹⁶⁸ Moreover, this shortfall in the number of black teachers significantly understated the needs of the black population. In lower education, and particularly in the high schools, the percentage of black youths attending school was far below that of whites.¹⁶⁹ The number of "potential students" for each high

167. D. WILKERSON, *supra* note 64, at 73.

168. *Id.* at 21.

169. Wilkerson's data show the following percentages of children aged 14-17 enrolled in high school during 1933-1934:

school teacher was sixty for white youths and 211 for blacks.¹⁷⁰ Consequently, there was little reduction in the educational deficit of separate but equal schooling, and by 1940 the percentage of black Americans who had completed high school was one-fourth that of whites.¹⁷¹

Although black colleges stood at the apex of the black system of public education—"defining the content, establishing methods, setting the standards" of the system¹⁷²—they often served to perpetuate as much as to ameliorate the effects of discrimination. Most black public college students destined to become teachers did not receive a four-year college education. More than two-thirds of the 1930 graduates of twenty-eight black public institutions (including the seventeen land grants) had completed only the program of the two-year normal school

	<u>White</u>	<u>Black</u>	<u>Black as % of White</u>
Region	55	18	33%
Mississippi	66	7	11%
Georgia	55	10	18%
South Carolina	60	12	20%
Arkansas	42	10	24%
Florida	67	16	24%
Alabama	40	10	25%
Louisiana	57	14	25%
Virginia	55	21	38%
North Carolina	61	26	43%
Delaware	66	33	50%
Maryland	51	28	55%
Texas	59	35	59%
Tennessee	43	27	63%
Oklahoma	58	37	64%
Missouri	62	45	73%
West Virginia	55	49	89%
Kentucky	43	42	98%

The nine states in which the percentage of blacks attending high school was less than half the percentage of whites included 78% of the region's total high school aged blacks. *Id.* at 36.

170. *Id.* at 39 & n.12 (Delaware excluded). The black rural population, which included more than two-thirds of all blacks in the segregationist states, suffered the worst discrimination in secondary schooling. Wilkerson reported that in 1930 there were no public high schools in 230 counties having nearly 160,000 black youths of high school age. An additional 195 counties (with nearly 200,000 high school aged blacks) did not provide four-year high schools for black students. *Id.* at 40-41.

171. Approximately seven percent of all black Americans had completed high school in 1940 compared to more than 28% of native whites. 2 PRESIDENT'S COMM'N ON HIGHER EDUC., HIGHER EDUCATION FOR AMERICAN DEMOCRACY 30 (1947) [hereinafter PRESIDENT'S COMMISSION].

172. F. BOWLES & F. DECOSTA, *supra* note 21, at 36.

division.¹⁷³ Students handicapped by discrimination in their elementary and secondary education received just two years of additional training before setting out to educate more black students. The already severe deficiencies in the black elementary and secondary schools, in which future college students were educated, were thus compounded by the inadequate preparation of the teachers who taught in them. Gunnar Myrdal's observation, at the beginning of the 1940s, suggests the dismal educational future of the black youths who would become the *Brown* generation of college students:

The content of the elementary education in the rural South is almost unbelievably poor in the eyes of the outsider; a poorly trained and poorly paid Negro woman must control and teach a group of children from a poor and uncultured home background, in an over-crowded, dilapidated, one-room school house, where she must perform at least some of the janitorial and administrative duties.¹⁷⁴

The closed system of public education, from elementary school to college, served the social, economic, and educational caste system that determined black status in American society. The perversion of public education to impede rather than to facilitate social mobility was even more evident in the small part of the black college educational program that was not designed solely for the training of teachers.

3. A "Special Education" for Blacks

An inquiry into the programs of study, other than teacher training, available to students at black public colleges must necessarily focus on the black land grants. With few exceptions black public institutions outside the land grant system were either normal schools or teachers colleges.¹⁷⁵ Consequently,

173. F. CLARK, *THE CONTROL OF STATE SUPPORTED TEACHER-TRAINING PROGRAMS FOR NEGROES* 27 (1934). For 28 black public colleges, Clark shows the following distributions of students graduating from the normal and college divisions:

	<u>Number</u>		<u>Percentage</u>	
	<u>Normal</u>	<u>College</u>	<u>Normal</u>	<u>College</u>
1900	198	11	95%	5%
1910	387	61	86%	14%
1920	522	62	89%	11%
1930	953	436	69%	31%

Id.

174. G. MYRDAL, *supra* note 145, at 947.

175. Of the states supporting black public colleges outside the land grant system in the late 1930s, only North Carolina and Maryland did not appear to

the black land grant curriculum defined virtually all the higher education alternatives available to black students at public institutions. Although white students in the segregationist states had a much broader choice of institutions outside the white land grant colleges, a look at the segregated land grant system sufficiently conveys, even as it understates, the nature and magnitude of discrimination in program offerings.

In the early years of the twentieth century, the white land grant colleges were well on their way to developing the scientific and technical curricula that distinguished them from the classical institutions they supplemented. Stimulated by the work of experiment stations and other publicly funded research, the agricultural curriculum turned away from the manual training of farmers and focused on instruction in agricultural science.¹⁷⁶ White students abandoned labor on the model farm for the study of chemistry, biology, agronomy, and horticulture.¹⁷⁷ In the other divisions of practical training, manual labor also gave way to the scientific curriculum that became the twentieth century manifestation of the mechanic arts. Classroom instruction in mathematics and physics replaced training in the shop, and the land grants assumed major responsibility for educating the nation's engineering students.¹⁷⁸ In home economics, the land grant movement's grudging concession to gender equality,¹⁷⁹ the white institutions developed four-year college programs as instruction in homemaking skills was replaced by scientifically based professional training.¹⁸⁰

By the end of the 1920s, the white institutions in the segregationist states had been transformed by the diversity of the land grant curriculum. In addition to their schools of agricul-

fit the dominant pattern. In 1926 North Carolina provided for state support of a liberal arts college known as the North Carolina College for Negroes. In the late 1920s, the college had a postsecondary enrollment of 196. SURVEY OF NEGRO COLLEGES, *supra* note 39, at 592-93. By 1940 its enrollment had increased to 674, and it awarded 74 degrees. Jenkins, *Enroll[ment] in Institutions of Higher Education of Negroes, 1940-1941*, 10 J. NEGRO EDUC. 718, 721 (1941). In the late 1930s, Maryland acquired Morgan College, also a liberal arts institution, which in 1940 had an enrollment of 624 and awarded 62 degrees. *Id.* at 720.

176. See E. EDDY, *supra* note 44, at 88, 94-100, 119-20, 156-58.

177. G. WORKS & B. MORGAN, *supra* note 100, at 17-18.

178. *Id.* at 18; E. EDDY, *supra* note 44, at 58-59, 62-64, 121-22, 158-60. By 1928 the 17 white land grants enrolled more than 10,000 engineering students. Marston, *The Status of Engineering Experiment Station Legislation*, 44 CONV. A. LAND-GRANT CS. & UNIVS., 339, 343 (1930).

179. See E. EDDY, *supra* note 44, at 60-62, 90-91.

180. *Id.* at 123, 161.

ture, the white land grant colleges offered their students broad opportunities in schools of engineering, the sciences and medicine, the professions and business, and the liberal arts.¹⁸¹ The breadth and depth of the educational offerings at the land grant universities helped to realize Justin Morrill's vision of democratization in higher education through the "liberal and practical education of the industrial classes in the several pursuits and professions in life."¹⁸² Generations of white students were given the opportunity to obtain the economic benefits and social mobility available through an education in the public university:

No longer were [the land grants] content to prepare the farmer's son for farming alone. In keeping with the freedom and possibilities of American life, the son should have the right to go his own way, and such a right "to adopt any vocation that his inclination and talent may lead to and his judgment approve, should not be abridged by an educational system designed to prejudge his future He may be farmer or physician, teacher or lawyer, merchant or mechanic, preacher or president."¹⁸³

The "freedom and possibilities of American life" were, however, denied to the generations of black students educated at black land grants during the separate but equal era. Black students were indeed victims of an educational system designed to prejudice their future.

In black higher education, racial prejudice and prejudice were embodied in a "special education" that took the form of manual and vocational training. Support for higher education designed to train laborers was widespread, and its justifications ranged from the blatantly prejudicial to the benignly paternalistic. Many perceived black higher education as a waste of money that "merely spoils a ploughhand or housemaid."¹⁸⁴ Through vocational education the black student could be given "training in the simpler crafts and trades that

181. The 1930 survey shows that of the 13 white land grants reporting, all had major divisions devoted to engineering and agriculture. Ten had colleges or divisions of arts and sciences, and eight operated graduate schools. Other major divisions included medicine, architecture, veterinary medicine, science, law, commerce and business, and education. The more restricted educational programs were in the land grants of Mississippi, North Carolina, Oklahoma, South Carolina, and Virginia, each of which supported a major state university separate from the white land grant. 1 LAND GRANT SURVEY, *supra* note 43, at 69-70.

182. First Morrill Act, ch. 130, § 4, 12 Stat. 503, 504 (1862).

183. E. EDDY, *supra* note 44, at 87 (quoting W.L. Broun, President of the Association of Land Grant Colleges and Universities).

184. I. NEWBY, JIM CROW'S DEFENSE 177 (1965).

would equip him for his place in society."¹⁸⁵ The Governor of Alabama conveyed that attitude toward black higher education in a particularly candid and crude manner when addressing a group of black college students near the turn of the century. Speaking at the graduation ceremonies of Tuskegee Institute, the paradigm of special education through manual training, Governor Oates cautioned the black graduates against embracing the praise of higher education that had been expressed earlier in the program:

I want to give you niggers a few words of plain talk and advice. No such address as you have just listened to is going to do you any good; it's going to spoil you. . . . You might just as well understand that this is a white man's country as far as the South is concerned, and we are going to make you keep your place. Understand that. I have nothing more to say.¹⁸⁶

Others advocated the special curriculum as necessary to discipline the "inferior" black character and to develop a respect for the dignity of manual labor.¹⁸⁷ For some black educators, a mix of paternalism and a realistic appreciation of both the sources of funding and the limited opportunities for employment led to support for the system of manual and industrial training. A restricted view of black higher education was a necessary accommodation with a society that would tolerate little more.¹⁸⁸

Whether the motive came from a paternalistic concern or racial prejudice and hostility, the result was unfortunately uniform. Public higher education for blacks seldom sought to develop the intellectual potential of the black community or to use the black colleges to achieve either cultural assimilation or social advancement. The system of special education perverted the goals of higher education generally, and the goals of the land grant movement particularly. It was

185. A. PIFER, *supra* note 24, at 16.

186. B. GALLAGHER, *supra* note 143, at 305; see Winston, *supra* note 142, at 683.

187. See, e.g., G. FREDRICKSON, *supra* note 140, at 269-70; I. NEWBY, *supra* note 184, at 177. The view that the black character was uniquely deficient seems somewhat ironic in light of the response of white students to the early practice of manual labor in the white land grants:

The students came to regard it as drudgery They had performed such functions all their lives and were not interested in the meager returns of financial assistance from such hard labor. The practice fell into disrepute and was dropped by most institutions, although Michigan State held its students to the requirement, frequently unsuccessfully, until the 1890's.

E. EDDY, *supra* note 44, at 63-64.

188. See H. BEALE, *supra* note 148, at 187-88; Meier, *supra* note 148, at 248, 265-66.

less a force for social and economic improvement for blacks and more an instrument designed to perpetuate the racial caste system. . . . It trained blacks to remain in the rural areas as farm laborers and semi-skilled workers; it aimed at keeping them in their traditional role; it kept them from achieving any sort of mobility in a modern economy. In short, industrial education for blacks in the South became simply the pedagogical expression of racial repression.¹⁸⁹

Prejudgment of the future and the perpetuation of the racial caste system was all too evident in the educational programs of the black land grant colleges. The 1930 federal land grant survey that found the white institutions well on their way to becoming major universities with broadly based scientific and technical curricula revealed that most black land grants had not yet developed into significant institutions of higher education. The seventeen institutions that were the major source of public higher education for blacks had a total college faculty of 381, and nine of the schools employed fewer than eight faculty members.¹⁹⁰ It seems clear that an adequate college education, whether for teacher training or otherwise, could not be provided.

In the core land grant functions—agriculture, home economics, and the mechanic arts—the educational program of the black schools differed so greatly from that of the white schools that any claim of equality or comparability was impossible. Six of the black schools did not even offer a degree in agriculture, and those that did lacked the faculty to provide scientifically based instruction in any subject. Only forty-three faculty members in all seventeen institutions held any degree in a natural science. At eight colleges there was no faculty member with an advanced degree in the sciences, and in five others only one faculty member held more than a bachelor's degree. In mathematics most schools employed only one person with a first degree and no faculty with an advanced degree.¹⁹¹ In home economics the college curriculum included such courses as

189. A. PIFER, *supra* note 24, at 17. Educator Kelly Miller expressed similar views at the beginning of the twentieth century:

Industrial education became a byword. . . . To the white man of the South it may have meant that the negro was to be made more serviceable to him and more easily amenable to his imperious will. To the white man of the North it may have meant that the black man was to be made a competent worker However variant may have been the interpretations of the meaning of industrial education, there was a general agreement to discredit the higher culture of the race.

K. MILLER, *OUT OF THE HOUSE OF BONDAGE* 151-52 (1914).

190. 2 *LAND GRANT SURVEY*, *supra* note 43, at 883.

191. *Id.* at 885.

clothing, tailoring, home management, laundering, and household physics. Given the nature of the courses, it is not surprising that nearly half of the home economics faculty had no college degree.¹⁹²

The goals and accomplishments of the special education for blacks were most evident in industrial training and the mechanic arts. In contrast to the engineering and other professional and scientific programs in the white land grants, the black land grant curriculum retained the characteristics of the trade school. To the extent that college degree programs were offered at all, they were in fields such as auto mechanics, building construction, and "power plant engineering."¹⁹³ In most of the schools, the mechanic arts curriculum was dominated by manual training below the college level. The 1930 land grant survey concluded that in "courses in manual training . . . the colleges are rendering the greatest service in preparing the members of the Negro race for trades and industries."¹⁹⁴ This "service" rather clearly reflected prejudice and prejudgment of black intellectual ability. Education in the black land grants took the form of tailoring, brick masonry and plastering, carpentry and woodworking, blacksmithing, plumbing, and shoemaking.¹⁹⁵

The black land grant curriculum at the end of the 1920s might be explained, although not justified, by the function the institutions served in the black system of public education. For the most part, black land grants were not institutions of higher education; they were elementary and secondary schools offering subcollegiate curricula to their subcollegiate student bodies. Yet even as enrollments came to be dominated by college stu-

192. *Id.* at 878, 885.

193. *Id.* at 877. The survey's explanation for the condition of technical education in the black land grants aptly describes the burdens that a segregated society imposed on black public colleges and their students:

[T]he negro land-grant colleges have been handicapped in offering highly technical courses in electrical, mechanical, civil, and chemical engineering because of the expensive equipment required and the difficulties in securing highly trained personnel to give instruction. Little opportunity has also existed for negro engineering graduates to secure employment except in isolated instances. As a result it became necessary to develop specific types of technical curricula of a collegiate grade within the fields of mechanic arts, trades, and industries

....

Id.

194. *Id.* at 881.

195. *Id.* at 882.

dents in the 1930s, the program of instruction at the black land grants retained many of the characteristics of the trade school.

By the mid-1930s most students at the black land grants were enrolled at the college level. For those who were not preparing to teach in segregated schools, however, the black land grant college of the 1930s had little to offer. Technical and professional training was virtually nonexistent. The curriculum of mechanic arts continued to be dominated by courses in auto mechanics, tailoring, carpentry, and printing. Incredibly, five institutions still offered courses on shoemaking and repairing, and a handful of others instructed their students in laundering, painting, and manual training and woodwork. Even broom and mattress making was available to students at one black land grant.¹⁹⁶ Some institutions appeared to offer industrial education more for the purpose of ensuring a labor force to maintain and repair the college buildings than to train students for a place in the industrial economy.¹⁹⁷

Apart from the fact that this mechanic arts curriculum did not belong in institutions of higher education and had been long abandoned by the white land grants,¹⁹⁸ the training that black schools provided did not prepare their students for employment in a modern economy. The practical education of the black land grants was "far removed from the realities of labor unionism, the factory system, mass production, and corporate enterprise"¹⁹⁹ and was "perverted into training blacks in pre-industrial skills . . . which were not of much worth in an industrial economy."²⁰⁰ The institutions that were the primary source of public higher education for blacks were, in Carter

196. Howe, *Study Compiled for the Annual Session of the Conference of Presidents of Negro Land Grant Colleges*, 13 CONF. PRES. NEGRO LAND GRANT CS. 39, 40 (1935).

197. See Turner, *Some Problems Affecting Industrial Education in Negro Colleges*, 12 J. NEGRO EDUC. 32, 32-33, 37 (1943).

198. See 1 LAND GRANT SURVEY, *supra* note 43, at 813-15.

199. Low, *supra* note 28, at 52-53.

200. A. PIFER, *supra* note 24, at 17. Carter Woodson described the problem as follows:

[A] study of our educational system shows that our schools are daily teaching Negroes what they can never apply in life or what is no longer profitable because of the revolution of industry by the multiplication of mechanical appliances. For example, some of our schools are still teaching individual garment making which offers no future today except in catering to the privileged and rich classes. Some of these institutions still offer instruction in shoemaking when the technique developed under their handicaps makes impossible competition with that of the modern factory. . . .

C. WOODSON, *THE MIS-EDUCATION OF THE NEGRO* 157-58 (1933).

Woodson's term, engaged in the "mis-education of the negro."²⁰¹

The educational program of the black public college did indeed prejudge the future of black students. Reflecting restricted views about black educability and restricted employment opportunities for black college graduates, public higher education ensured that blacks would rise slowly, if at all, from their assigned place in a rigidly segregated society. In the only significant form of professional training provided by the institutions—teacher training—the narrow curriculum often passed on the deficiencies of separate but equal education. The closed system of black public education was self-perpetuating.

C. THE CONSEQUENCES OF SEPARATION

The system was also closed and self-perpetuating in the staffing of its higher education institutions. The task of building a system of black public colleges was left primarily to the black population. That population's academic and managerial resources, however, were clearly inadequate for the task. Prior to the Civil War only a handful of free blacks had been given the opportunity for a college education, and the slave population had been kept in an enforced state of illiteracy. Thus, a limited group of educated blacks supplied the early black intellectual leadership responsible for developing and staffing institutions of higher education as well as a separate system of black elementary and secondary schools.

Isolation from the educational mainstream, as well as insufficient resources, impeded the efforts of black academics to develop adequate institutions of higher learning. White public colleges rarely cooperated with their black counterparts. Organizations dedicated to the improvement of higher education and the professional growth of administrators excluded or discouraged the membership of black institutions and their staffs. The black system of higher learning "was of American education but not in it Whatever educational relationships there were between the systems were conducted essentially as if the Negro system was that of a foreign country."²⁰² Consequently, institutional development was achieved primarily through a process of self-help. Interinstitutional interaction on educa-

201. C. WOODSON, *supra* note 200.

202. F. BOWLES & F. DECOSTA, *supra* note 21, at 43.

tional policy, curricula, and academic administration took place within the carefully drawn and rigidly enforced boundaries of the closed, black system—in separate organizations with names and functions similar to those of the white academic mainstream but always including the additional appellation, “for Negroes.”

Segregation also isolated the black scholar and researcher. Denied the superior research facilities of white academia, aspiring black academics were confined to institutions where funds, time, and encouragement for scholarly activity were inadequate or nonexistent. Scholarly interaction and intellectual growth occurred almost entirely within the closed system and in racially segregated professional organizations. Racial separation reinforced the constraints of inequality for both the administration and the faculty of the black public college.

1. Administration of the Black College

In most instances administrative control of the black public college was divided. A black president was the head of the institution, but an all-white board of trustees, appointed by the governor or legislature, exercised supervisory authority over the president.²⁰³ This racially based division of authority placed the black college president in a unique and delicate position. Beholden to a board of trustees frequently unsympathetic to black aspirations and educational needs, the president was in charge of an institution that the black community rightfully expected to be responsive to those needs and aspirations. The black educational leader, searching for some compromise between conflicting views of what constituted adequate progress in black education, “drew the criticism of more militant-minded Negroes who felt him too conservative and too accommodating, as well as the wrath of some whites who considered him too progressive.”²⁰⁴ In a system in which white boards and white political officials controlled both institutional funding and presidential tenure, the president of the black public college could ill afford not to accommodate. With forceful leadership came the threat of “personal destruction and institutional

203. See F. CLARK, *supra* note 173, at 4, 75-77; E. EDDY, *supra* note 44, at 264; 2 LAND GRANT SURVEY, *supra* note 43, at 851; Thompson, *The Control and Administration of the Negro College*, 19 J. EDUC. SOC. 484, 486-87 (1946).

204. L. NEYLAND & J. RILEY, *supra* note 68, at 110; see 1 NATIONAL SURVEY, *supra* note 161, at 104.

emasculatation."²⁰⁵

Nor was the president of the black public college granted any immunity from the prevailing views of black inferiority and the one-sided rules of racial etiquette. Many institutional leaders suffered demeaning treatment at the hands of those who exercised ultimate control over their personal future and the future of their institutions. In Georgia, for example, a board of commissioners, "unsympathetic to Negro education," treated the president of the state's black land grant college "like a schoolboy, without authority to buy a broom or even leave the campus without permission."²⁰⁶ In Florida the Governor resisted a small raise in the salary of an underpaid black land grant President because "no Negro was worth \$4,000 a year."²⁰⁷ The distribution of power, and views as to the appropriate behavior of blacks, reinforced actions conforming to the black stereotype. College presidents resorted to the expected technique of flattery, and demonstrated the value of black education—and the realization of black potential—through such events as a yearly Sacred Concert for the governor.²⁰⁸ That was a cause a segregationist governor could support—blacks developing their "natural" musical abilities. Black presidents, however, who sought to provide students with something more than manual training for maintenance work, something closer to higher education, might find themselves summarily dismissed.²⁰⁹

205. G. WOOLFOLK, *supra* note 54, at 296.

206. W. RANGE, *supra* note 29, at 191; *see also* W. SAVAGE, *supra* note 35, at 207; W. Trueheart, *supra* note 63, at 150; Myers, *The College for Negroes*, 86 THE SURVEY 233, 235 (1950).

207. L. NEYLAND & J. RILEY, *supra* note 68, at 172 (quoting the Tampa News). The view of state officials as to the relative worth of black administrators was frequently reflected in low salaries. In Louisiana the president of a black teacher training institution in the 1930s was paid one-third of the salary paid to the head of a comparable white school. M. GALLOT, A HISTORY OF GRAMBLING STATE UNIVERSITY 48 (1985). In the mid-1930s the president of Virginia's black land grant received between 25% and 50% less than the presidents of white state teachers colleges. Thompson, *Equalization of White and Negro Teachers' Salaries in Virginia*, 7 J. NEGRO EDUC. 113, 116 (1938).

208. Gandy, *Suggestive Methods of Securing Equitable and Just Distribution of School Funds Between the Races in States Having Separate School Systems*, 14 CONF. PRES. NEGRO LAND GRANT CS. 36, 37 (1935); *see also* L. NEYLAND & J. RILEY, *supra* note 68, at 90, 110 (negro spirituals performed for white officials); W. SAVAGE, *supra* note 35, at 44, 55, 122 (concerts held for state legislature).

209. *See* L. NEYLAND & J. RILEY, *supra* note 68, at 41-44, 47, 78; *see also* McMillan, *Negro Higher Education as I Have Known It*, 8 J. NEGRO EDUC. 9, 14 (1939) (a black college president "stands a surer chance of keeping his job

The delicate position of the black president in a racially segregated society affected the style of leadership inside as well as outside the institution. In an environment hostile to black education and advancement, controversy could not be tolerated. White boards expected that the presidents they controlled would, in turn, control the students and faculty. As a result, the black president compromising with the outside world usually ruled with a firm hand inside the institution. Highly centralized authority, at times dictatorial, became the dominant style of leadership in the black public college. The faculties of the institutions had little, if any, independent power.²¹⁰

Ultimate white control over the black public college had an even more direct and debilitating effect on the development of the institutions. As public colleges, the schools depended on the political process to supply funding and support. Yet black political power was virtually nonexistent in the segregationist states:

The consequences of these political realities for the . . . presidents were unrelenting: they could not undertake major institutional development projects without considerable risk; they could not attempt curricular reforms with confidence that legislative support would be forthcoming and continuous; they could not marshal political pressure through even subtle threats of the withdrawal of popular votes from recalcitrant legislators. . . .²¹¹

Because the presidents lacked political leverage, they could rely only on white boards of control to persuade skeptical legislatures to increase funding for black education. Politically appointed board members, however, were no more accountable to

to the extent that he is hostile to the best interests of his own people"). Administrators who conformed to the stereotype found unusual favor with the white holders of power. An early President of the North Carolina black land grant, for example, was known as "the most polite man in North Carolina" and a long time head of a state teachers' college in Louisiana was dubbed "one of the greatest racial relations experts in the South." W. GIBBS, *HISTORY OF NORTH CAROLINA AGRICULTURAL & TECHNICAL COLLEGE* 55 (1966); M. GALLOT, *supra* note 207, at 90.

210. See G. MYRDAL, *supra* note 145, at 732-33; 3 NATIONAL SURVEY, *supra* note 161, at 98; SURVEY OF NEGRO COLLEGES, *supra* note 39, at 40; Johnson, *The Black College as System*, 100 DAEDALUS 798, 800-03 (1971); Thompson, *supra* note 203, at 493-94; Thompson, *Rank, Tenure, and Retirement of Teachers In Negro Colleges*, 10 J. NEGRO EDUC. 139, 142-45 (1941). After a tour of black colleges in the late 1940s, one educator from the North observed that the black public college president must rule "with an iron hand, ruthlessly suppressing whatever ideas and actions on the part of faculty and students do not meet with the approval of the most bigoted elements in the community." Myers, *supra* note 206, at 236.

211. W. Trueheart, *supra* note 63, at 230.

the black community and no less skeptical than the legislatures. Few boards actively promoted equality of funding for black higher education, and many failed even to disclose the pressing need for additional support.²¹²

Although black public colleges were controlled by white authority, they were isolated from the white educational world. Most black administrators had little contact with their white counterparts. Professional development took place in organizations with names reflecting the rigid system of segregation: the National Association of Collegiate Deans and Registrars in Negro Schools, and the Association of Business Officers in Schools for Negroes.²¹³ The effects of racial isolation and exclusion were particularly severe in the case of two organizations that played an active role in the growth of colleges and universities during the separate but equal era: the Association of Land Grant Colleges and Universities, and the Southern Association of Colleges and Secondary Schools. The Land Grant Association was instrumental in the realization of the goals of the land grant movement. The Southern Association accredited colleges in eleven of the seventeen segregationist states and played an important role in the establishment of educational standards for institutions of higher education. Both organizations excluded black public colleges until the mid-1950s.

The Land Grant Association was organized in 1887 and from its inception it was "a power to be reckoned with."²¹⁴ The land grant institutions consolidated their political power in the Association as it became an influential force in support of federal funding for land grant activities. Association committees on experiment stations, extension work, and military training assisted member institutions in the planning and implementation of these programs and became powerful advocates in dealing with the Agriculture and War Departments. The

212. As described in a survey of black colleges at the beginning of the 1940s:

There appears to be a general disposition on the part of these boards to tell the public that the colleges and universities under their control are good institutions, even "standard," and not to point out very clearly to the public and to the appropriating authorities that none of these State institutions compare at all favorably with the institutions established for the education of white youth.

3 NATIONAL SURVEY, *supra* note 161, at 96.

213. *Id.* at 64, 120; Daniel, *Organizational and Institutional Programs in 1938*, 7 J. NEGRO EDUC. 582 (1938); Daniel & Miller, *National Activities and General Progress*, 9 J. NEGRO EDUC. 99, 100-02 (1940).

214. E. EDDY, *supra* note 44, at 111.

Association acted on behalf of its member colleges to facilitate cooperation between the schools and state departments of agriculture. Equally important, the Association provided the means for institutional self-examination, discussion, and study. It was an important force in developing graduate work at land grant colleges. It provided a national forum for the exchange of scholarly views in sections organized around the scientific fields of the land grant curriculum. In addition, it offered guidance for development of standards governing admissions, course offerings, and degrees.²¹⁵ Through the Association the least developed of the white land grant institutions benefited both from the political power of the organization and from the experience and guidance of the more developed member institutions.

Yet the group of institutions that had the clearest need for these benefits, the black land grant colleges, was denied membership in the organization. The seventeen institutions that received the least amount of funding, that regularly suffered exclusion from federal programs, and that served a population lacking any meaningful political power were denied the benefit of concerted political action by the Association. The land grant colleges most in need of developmental assistance were excluded from the Association's deliberations, studies, and cooperative activities. The faculty and administrators who lived and worked in racial isolation were denied the opportunity for interaction with other academics and educational leaders. The black land grant schools, their administrators, and their faculties were left to fend for themselves.

As a result a racially separate organization developed to serve the racially separate colleges. Beginning in 1913 the presidents of the black schools met on a regular basis and organized themselves into what later became the Conference of the Presidents of Negro Land Grant Colleges.²¹⁶ Throughout the first half of the twentieth century, the Conference sought first to promote cooperation between the black and white organizations and later to effect a merger of the two groups. It was not until 1954, however, that the black presidents and their institutions

215. See *id.* at 108-11, 130-31, 140-47, 166-67, 189-90, 197-99, 223-24, 254-55.

216. See Fisher, *Ten Years of the Conference of Presidents of Negro Land Grant Colleges, 1923-1933*, 14 CONF. PRES. NEGRO LAND GRANT CS. 93, 93-94 (1936); *Report of the Committee on the History of the Conference of Presidents of Negro Land Grant Colleges*, 20 & 21 CONF. PRES. NEGRO LAND GRANT CS. 68, 68-70 (1942-1943).

were invited to join the white Association.²¹⁷

During the four decades of its existence, the Conference benefited its members through activities similar to those of the white Association. It regularly petitioned the federal government for a meaningful implementation of the separate but equal formula in the division of land grant funds. It provided a forum for presentation of papers on the development of black colleges and undertook studies of black educational needs. The interchange of ideas at Conference meetings highlighted the shared deficiencies in the black land grant curriculum and provided a mechanism for encouraging improvement.²¹⁸ The Conference, however, like the institutions it represented, was handicapped by limited funds, a lack of real political power, and isolation from the educational mainstream.

217. The constitution of the white Association expressly provided for the membership of colleges either established under the First Morrill Act or receiving benefits under the Second Morrill Act. 37 CONV. A. LAND-GRANT CS. & UNIVS. 20 (1923). In the late nineteenth and early twentieth centuries, a small number of the black land grants were members of the Association and occasionally sent delegates to its meetings. 37 CONV. A. LAND-GRANT CS. & UNIVS. 482 (1923). By 1923, however, it appears that the black colleges were simply being ignored by the Association and its white college members. At the annual meeting of that year, J.W. Davis, President of West Virginia's black land grant, made a modest appeal for closer cooperation: "A word of encouragement or admonition, acknowledgement of the existence of the colored school, an occasional statement, though parenthetically used, coming from some of our white land-grant college executives will do much toward making more effective our state work." 37 CONV. A. LAND-GRANT CS. & UNIVS. 164 (1923). For the next three decades, the white Association's response was limited to the appointment of ineffective committees that seldom reported. See 45 CONV. A. LAND-GRANT CS. & UNIVS. 494-95 (1931); 43 CONV. A. LAND-GRANT CS. & UNIVS. 463 (1929); 38 CONV. A. LAND-GRANT CS. & UNIVS. 464 (1924).

When the Presidents of the black land grants expressly requested membership for their colleges in 1934 and appealed for an opportunity to address the white Association, the white organization voted to take no action other than referring the request to the Committee on Land-Grant Institutions for Negroes. 49 CONV. A. LAND-GRANT CS. & UNIVS. 329 (1935); 48 CONV. A. LAND-GRANT CS. & UNIVS. 244 (1934). From 1936 to 1949, the Committee did not report to the Association. In 1950 a new, joint committee (with representatives from the white Association and the black Conference of Presidents) was organized to "discuss matters of mutual interest." 64 CONV. A. LAND-GRANT CS. & UNIVS. 267, 297 (1950). Four more years passed before the white organization voted to extend membership to the black institutions. 68 CONV. A. LAND-GRANT CS. & UNIVS. 86 (1954).

218. See, e.g., Banks, *Some Persistent Problems in the Negro Land Grant College Complex of Significance to the Cooperative Extension Service*, 19 CONF. PRES. NEGRO LAND GRANT CS. 38 (1941); Whittaker, *A Study of Occupational Opportunities of Negroes by the Land Grant Colleges*, 13 CONF. PRES. NEGRO LAND GRANT CS. 14, 45 (1935); *Report of Committee on Engineering Education*, 27 CONF. PRES. NEGRO LAND GRANT CS. 29 (1949).

There were benefits to be derived from cooperation within the closed system, but they could not equal those available from full participation in the white Land Grant Association and the active support of that organization in promoting the development of the black schools. In appealing for black membership in the Association near the end of the separate but equal era, the black President of Kentucky State College, R.B. Atwood, revealed some of the consequences of racial isolation and discrimination. Atwood called for an equitable division of federal research funds to provide black faculty and graduate students with new learning opportunities and to permit research on the needs of the black rural population. He asked that the black institutions be given a role in the administration of extension programs, that the black schools receive an equitable share of extension funding, and that black extension agents be paid on the same salary scale as whites. He sought membership in the Association to give black faculty and administrators opportunities for professional growth and to promote the strengthening of black land grant programs.²¹⁹ Atwood sought, in short, freedom from racial isolation and inequality.

Isolation of the black schools was also evident in the system of institutional accreditation that prevailed in the eleven states within the jurisdiction of the Southern Association of Colleges and Secondary Schools.²²⁰ Regional accrediting organizations, through the enforcement of uniform standards and other activities, promoted the improvement of their member institutions and stimulated the political support necessary, particularly at public colleges, for institutional development. Equally important, accreditation under uniform and meaningful standards facilitated the employment and graduate school admission of students receiving the undergraduate degree at accredited colleges.²²¹

219. See Letter from R.B. Atwood, President, Kentucky State College to Lewis W. Jones, President, University of Arkansas (Nov. 8, 1949), *reprinted in* 27 CONF. PRES. NEGRO LAND GRANT CS. 86, 86-88 (1949); Remarks by R.B. Atwood to Association of Land Grant Colleges and Universities Senate, *reprinted in* 31 CONF. PRES. NEGRO LAND GRANT CS. 102, 102-03 (1953).

220. The Southern Association of Colleges and Secondary Schools was the regional accrediting agency for institutions in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. Agnew, *Accreditation in the Southern Region*, in OFFICE OF EDUC., U.S. DEP'T OF HEALTH, EDUC., & WELFARE, ACCREDITATION IN HIGHER EDUCATION 64, 64 (1959).

221. See *id.* at 64-66; Blauch, *The Meaning of Accreditation*, in ACCREDITATION IN HIGHER EDUCATION, *supra* note 220, at 3, 3-4, 7-8.

Initially, the Southern Association refused to play any role in the evaluation of black colleges. The racially isolated and underfunded black public colleges lacked both the guidance of a regional accrediting agency and the benefits that institutional standardization could confer on their graduates.²²² When the Southern Association granted the requests of black colleges to include them in its evaluation activities in the 1930s, it did so only through a special committee employing a separate, two-tiered system of approval that was less rigorous than that applied to white schools.²²³ Even then the Association refused to admit black institutions as members and excluded their representatives from Association meetings. It was not until 1957 that the Southern Association dismantled the barrier of racial exclusion.²²⁴

As with other organizations for professional and institutional development, black educators responded to exclusion by creating a separate organization. Beginning in 1932 the black institutions organized what later became the Association of Col-

222. The difficulties that lack of accreditation created for black undergraduates seeking to attend graduate schools outside the South was the primary concern that led the black institutions to petition the Southern Association to become involved in the evaluation of black colleges. Winston, *supra* note 142, at 694. Prior to the Association's agreement to develop a list of approved black colleges, northern graduate schools admitting black students relied on the past record of an institution's graduates or on individual inspection of particular black colleges. F. CLARK, *supra* note 173, at 28.

223. Under the separate system used by the Southern Association, an approved black college could be given an "A" rating to indicate that it met the same standards as a member white school or a "B" rating signifying that it met some but not all of the Association's standards. See F. MCCUISTION, *HIGHER EDUCATION OF NEGROES: A SUMMARY 25-26* (1933); Agnew, *supra* note 220, at 64, 67. In rating black colleges under this system, however, the Association "did not apply to them the same rigorous standards as it applied to institutions for white students." Agnew, *supra* note 220, at 67; see also Myers, *supra* note 206, at 236 ("The association has two sets of standards, one for white and one for Negro institutions."). In the late 1930s and early 1940s, black educators became concerned about "alleged irregularities in inspecting schools for Negroes as compared to the uniform application of evaluative criteria applied to schools for whites." At about the same time, the black Association of Colleges and Secondary Schools began a lengthy process of negotiations that ultimately led to the admission of the black schools into the Southern Association in the 1950s. L. COZART, *A HISTORY OF THE ASSOCIATION OF COLLEGES AND SECONDARY SCHOOLS, 1934-1965*, at 49, 58-59 (1967). When the segregated rating system was first abolished, fewer than half of the previously approved black colleges were given full accreditation and membership. Thompson, *The Southern Association and the Predominantly Negro High School and College*, 31 *J. NEGRO EDUC.* 105 (1962).

224. L. COZART, *supra* note 223, at 58-59.

leges and Secondary Schools for Negroes.²²⁵ In a segregated society that was always skeptical of black competence, the black Association could not undertake an independent accrediting function. It could, and did, seek admission of black schools into the agency that rated them and demand that the white organization apply uniform standards to black and white colleges. Like the Conference of Presidents of Negro Land Grant Colleges, the black Association attempted to stimulate institutional development through cooperative action within the closed system of black higher education. As in the case of the black land grant organization, however, black educational leaders were subjected to the insult of exclusion and denied the benefits of interaction with their white colleagues.

2. Faculty of the Black College

From the beginning, and with few exceptions throughout the separate but equal era, black faculties staffed the black public colleges.²²⁶ Consequently, the intellectual resources for the institutions, already deprived of financial resources, were drawn from a severely limited pool of qualified black academics. College education of a slave was unheard of, and very few free blacks received a college degree before the Civil War. By 1860 the nation's colleges and universities had graduated fewer than thirty black Americans.²²⁷ Although the rapid growth of private black colleges after the war produced an increasing number of college-educated blacks, the supply fell far short of what would be necessary to build a separate and equal system of higher education.²²⁸

225. *Id.* at 2-9.

226. SURVEY OF NEGRO COLLEGES, *supra* note 39, at 37; Ware, *Higher Education of Negroes in the United States*, 49 ANNALS 209, 215 (1913).

227. See *The College-Bred Negro*, *supra* note 21, at 37 (26 black graduates); *The College-Bred Negro American*, *supra* note 21, at 45 (28 black graduates).

228. Between 1870 and the enactment of the Second Morrill Act in 1890, all American colleges, black and white, graduated an average of just over 50 black students per year. See *The College-Bred Negro*, *supra* note 21, at 37. Increases in the number of black graduates in the late nineteenth and early twentieth centuries had only a limited effect on the staffing of the black public colleges because of a growing demand for black faculty in the private institutions. Initially staffed largely by whites, the private schools converted to black faculty in response to pressure from the black community which resented white control and believed that black faculty would foster the development of racial pride. See generally McPherson, *White Liberals and Black Power in Negro Education, 1865-1915*, 75 AM. HIST. REV. 1357 (1970) (evaluating the transition to black teachers). By 1915 the faculties of many private institutions were majority black. *Id.* at 1380-86. If, as observed by Howard University's Kelly

Black academics with advanced training were in even shorter supply and for a much longer period. By 1910, forty years after the establishment of the first black public college in Missouri and two decades after the Second Morrill Act, the pool of potential black academics with advanced training consisted of seventy-nine blacks with master's degrees and eleven with doctorates. After 1910 the number of blacks with advanced degrees increased, but at a very slow rate. Graduate education was nonexistent at black public colleges, and very few of the private institutions offered graduate training before the 1930s. The output of blacks with graduate degrees from white institutions outside the South was negligible for many decades. In 1920, for example, only twelve blacks received master's degrees and only three received doctorates.²²⁹

The 1930s brought some improvement, largely because a handful of private black colleges expanded their graduate programs leading to the master's degree. The shortage of black academics with doctorates, however, continued. As late as 1943, all of the nation's colleges and universities had awarded to blacks a cumulative total of fewer than 400 doctorates, and nearly one-third of those degrees were conferred after 1940.²³⁰ In scientific and technical fields, areas of importance to the black land grant colleges, the pool of black academics with advanced training was especially limited. Between 1930 and 1938, graduate schools outside the South enrolled approximately 220 black students in all scientific fields and only six black students in engineering programs. The private black colleges educated even fewer graduate students in scientific fields.²³¹ Unequal funding and a presumption of black inferiority were not the only constraints on the development of scientific and technical curricula at the black land grant schools.

Throughout the separate but equal era, the intellectual re-

Miller, the conversion from white to black faculty in the private colleges was "too sharp and sudden" and a "misfortune barely short of a calamity," then the nearly exclusive use of black faculty in the public institutions from the outset may well have crossed the line. Miller, *The Past, Present and Future of the Negro College*, 2 J. NEGRO EDUC. 411, 414 (1933).

229. F. MCCUISTON, GRADUATE INSTRUCTION FOR NEGROES IN THE UNITED STATES 38 (1939).

230. H. GREENE, HOLDERS OF DOCTORATES AMONG AMERICAN NEGROES 23 (1946). Of the 381 doctorates, 128 were awarded between 1940 and 1943. *Id.* at 26.

231. F. MCCUISTON, *supra* note 229, at 43-44, 57-58. The pressing need for black academics with training in the sciences is evident in surveys of black college chemistry and physics programs in 1939 and 1941:

sources necessary to staff a separate system of higher education were not developed. Inadequate and unequal education at every level of the black system—from elementary school to graduate school—ensured that the supply of black scholars and academics would always be insufficient. In a closed system that drew its teachers and faculty primarily from within, the deficiencies of the system were perpetuated from one generation to the next.

For the academic community that did emerge, exclusion and isolation further restricted intellectual growth and development. Because all but a few of the black institutions were located in the segregationist states, their faculties were often denied access to libraries and other research facilities, and excluded from local and regional chapters of professional societies and organizations.²³² When black academics were not completely excluded, they faced the insult and demeaning treatment of those who perceived them in terms of their racial rather than their professional status. John Hope Franklin, the distinguished scholar and educator, has written of the plight of the black historian attempting to use the research facilities of southern archives “operated by people who cannot conceive that a Negro has the capacity to use the materials there.”²³³ In North Carolina he was granted access to the state archives only after the staff hastily converted an exhibition room into a segregated reading room; and in Alabama the head of the archives expressed her surprise that a “‘Harvard nigger’ . . . had some-

	<u>Chemistry</u>	<u>Physics</u>
Institutions surveyed	36	45
Total faculty	66	56
Faculty w/Ph.D.	13	9
Insts. w/one faculty	17	36
Insts. w/two faculty	13	7

Woodson, *A Survey of Chemistry Curricula in Negro Colleges*, 8 J. NEGRO EDUC. 644, 646 (1939); Woodson, *The Present Status of Physics in Negro Colleges*, 9 AMER. J. PHYSICS 180, 182 (1941).

232. A. MEIER & E. RUDWICK, *BLACK HISTORY AND THE HISTORICAL PROGRESSION, 1915-1980*, at 133 (1986); 3 NATIONAL SURVEY, *supra* note 161, at 120 & n.3; Winston, *supra* note 142, at 702. As late as the mid-1930s, there were only 75 public libraries open to blacks in the southern states, and more than one-third of those were located in Texas and West Virginia. Blacks were also generally excluded from museums, art galleries, and other cultural facilities. G. MYRDAL, *supra* note 145, at 634 & n.47; 1 NATIONAL SURVEY, *supra* note 161, at 42-43.

233. Franklin, *The Dilemma of the American Negro Scholar*, in *SOON, ONE MORNING* 62, 72 (H. Hill ed. 1963).

how retained the capacity to be courteous to a Southern lady."²³⁴ Charles S. Johnson, when he was President of the Southern Sociological Society in 1941, was not permitted to dine or lodge at the hotel where the Society held its meetings, an indignity that was not uncommon in the experience of black academics who sought some interaction with the white educational mainstream.²³⁵

In other instances the forces of isolation and exclusion were less blatant but equally effective. Most national learned societies admitted blacks during the separate but equal era, many from their beginnings in the late nineteenth and early twentieth centuries.²³⁶ For most black faculty, however, these opportunities for professional development were illusory:

The typical Negro college teacher finds himself in a disadvantaged position in respect to his connection with national learned societies. He is located in a section of the country in which national societies seldom hold their meetings; and when meetings are held in this section he often finds difficult limitations upon his free participation. The low salary he receives leaves insufficient margin for expenditures for memberships and travel to meetings, and the college seldom provides funds for this purpose. . . . And he finds himself, insofar as attendance and participation are concerned, largely an "outsider" because of his racial identity.²³⁷

Treatment of the black academic as an outsider diminished the professional benefits to be derived from membership in academic organizations. In addition to social isolation, black schol-

234. *Id.*

235. Smith & Killian, *Black Sociologists and Social Protest*, in BLACK SOCIOLOGISTS 191, 203 (1974); see also A. MEIER & E. RUDWICK, *supra* note 232, at 154 (black academics excluded from dinner and required to enter through kitchen to hear 1946 presidential address of Southern Historical Association); Blackwell, *Role Behavior in a Corporate Structure: Black Sociologists in the ASA*, in BLACK SOCIOLOGISTS 341, 344 (1974) (Charles Johnson ordered to use rear entrance at hotel where American Sociological Association met); Winston, *supra* note 142, at 678 (Howard University faculty denied hotel accommodations and required to enter through back door for annual AAUP meeting in New Orleans).

236. See A. MOSS, THE AMERICAN NEGRO ACADEMY 15-17, 263 (1981); 3 NATIONAL SURVEY, *supra* note 161, at 20; Blackwell, *supra* note 235, at 341. A policy of not excluding blacks, however, was not always the equivalent of accepting black members. When the Southern Historical Association organized in 1935, it determined not to exclude blacks on the assumption that southern black historians "would know that they were not expected to attend" the Association's meetings. A. MEIER & E. RUDWICK, *supra* note 232, at 114 (quoting Beale, *The Professional Historian: His Theory and His Practice*, 22 PAC. HIST. REV. 227, 235 (1953)).

237. 3 NATIONAL SURVEY, *supra* note 161, at 21; see also Jones, *The Tradition of Sociology Teaching in Black Colleges: The Unheralded Professionals*, in BLACK SOCIOLOGISTS 121, 127-28 (1974) (limited funds for faculty travel).

ars frequently suffered exclusion from opportunities to present papers, hold office, or achieve recognition through publication in scholarly journals.²³⁸ Acceptance of blacks in the membership of the major learned historical societies, for example, produced little black participation in the organizations' activities. Only two black academics presented papers at meetings of the American Historical Association before 1940, and the Association's journal published only one article by a black during the entire separate but equal era. Until 1949 no black historian addressed the Southern Historical Association, and it was not until four years later that the *Journal of Southern History* published its first article by a black. The Mississippi Valley Historical Association first included a black participant in its convention program in 1951 and published no essays authored by blacks until 1945.²³⁹

The development of the black academic community was further influenced by the assumption of black intellectual inferiority widely accepted in the South and in the nation well into the twentieth century. In a society that was deeply skeptical of the ability of blacks to benefit from any higher learning, black scholars and academics were "regarded by hostile whites as either freaks or a menace, discomfiting because their very existence challenged the prevailing racial stereotypes and the system of racial accommodation in which whites were presumed superior, blacks inferior."²⁴⁰ The perception of blacks as inferior human beings created unique burdens for black academics. They were required to defend not only their own competence, but the competence and ability of their race. Moreover, white scholarship and popular literature frequently either distorted or ignored the history and achievements of blacks and were largely unconcerned with the social, economic, and political issues confronting black Americans. Black academics thus felt unique pressures to focus their attention on black issues.²⁴¹

238. See Blackwell, *supra* note 235, at 345-48; Jones, *supra* note 237, at 134-35. The 1942 survey found that black college faculty involvement in national learned societies was usually limited to membership, while attendance at meetings was less frequent and participation in the organizations' programs was rare. 3 NATIONAL SURVEY, *supra* note 161, at 20.

239. A. MEIER & E. RUDWICK, *supra* note 232, at 5, 29, 98, 121, 130.

240. Winston, *supra* note 142, at 678.

241. See *id.* at 692; Jones, *supra* note 237, at 141-43; Robbins, Charles S. Johnson, in BLACK SOCIOLOGISTS 56, 76-77 (1974); Rudwick, W.E.B. DuBois as Sociologist, in BLACK SOCIOLOGISTS 25, 47-48 (1974).

In an effort to combat prejudice, exclusion, and indifference, many educated blacks dedicated themselves to the problems of race. As early as 1897, a group of black intellectuals created the American Negro Academy to provide opportunities for the publication of black scholarly work, to develop archives for the collection of documents and works on and by blacks, and to "aid . . . the vindication of the Negro race from vicious assaults."²⁴² In 1915 Carter Woodson founded the Association for the Study of Negro Life and History. Shortly thereafter he commenced publication of the *Journal of Negro History* to collect and preserve information about the history and accomplishments of blacks, and thus to serve the "twin goals of building black pride and eroding white prejudice."²⁴³ In 1932 Howard University began publication of the *Journal of Negro Education*; Johnson C. Smith University started the *Quarterly Review of Higher Education Among Negroes* in 1933; and in 1940 Atlanta University founded *Phylon: A Review of Race and Culture*.²⁴⁴

Racial issues dominated the works of black scholars as they both defended their race and filled the gap in knowledge about black Americans.²⁴⁵ Although the scholarly focus on black issues was most evident among social scientists, black academics and professionals in other fields also felt obligated to write on racial issues and to refute assertions of black inferiority:

Imagine, if you can, what it meant to a competent Negro student of Greek literature, W.H. Croghan, to desert his chosen field and write a book entitled *The Progress of a Race*. Think of the frustration of the distinguished Negro physician C.V. Roman, who abandoned his medical research and practice, temporarily at least, to write *The Negro in American Civilization*. What must have been the feeling of the Negro student of English literature Benjamin Brawley, who forsook his field to write *The Negro Genius* and other works that underscored the intellectual powers of the Negro? How much poorer is the field of the

242. A. MOSS, *supra* note 236, at 1. The American Negro Academy's purpose of defending the abilities of blacks was pursued through the publication of papers such as Alexander Crummell's "The Attitude of the American Mind Toward the Negro Intellect" (a discussion of the origins of white hostility to black intellectual activity and its manifestation in the industrial education of blacks); and William Scarborough's "The Educated Negro and His Mission" (arguing for the higher education of blacks as a means of achieving social, economic, and political advancement). *Id.* at 96-97, 102-03.

243. A. MEIER & E. RUDWICK, *supra* note 232, at 2, 10.

244. See 1 J. NEGRO EDUC. (1932); 1 Q. REV. HIGHER EDUC. AMONG NEGROES (1933); 1 PHYLON (1940).

245. See, e.g., Franklin, *supra* note 233, at 67-70; Smith, *Sociological Research and Fisk University: A Case Study*, in BLACK SOCIOLOGISTS 164 (1974); Winston, *supra* note 142, at 687-93, 698-701.

biological sciences because an extremely able and well-trained scientist, Julian Lewis, felt compelled to spend years of his productive life writing a book entitled *The Biology of the Negro*?²⁴⁶

The isolation of segregation was difficult to escape. Although some black academics obtained advanced training in universities outside the South, employment opportunities in northern institutions were virtually nonexistent before mid-century. Upon completion of their graduate work, without regard to their accomplishments or interests, black academics were expected to return to black colleges to teach the next generation of black students.²⁴⁷ For most, the remainder of their professional lives was spent in racial isolation. To the extent that they were recognized at all by the educational mainstream, recognition came in the form of "a competent *Negro* sociologist, an able *Negro* economist, an outstanding *Negro* historian"—recognition that was "as much the product of the racist mentality as the Negro rest rooms in the Montgomery airport."²⁴⁸

At the black public colleges, the barriers to professional growth were particularly high. During the separate but equal era, most blacks holding doctorates, and the centers of scholarly and academic achievement, were found at Howard, Atlanta, Fisk, and a handful of other accomplished private institutions.²⁴⁹ In most black public colleges, conditions were much less favorable for professional development or intellectual achievement. Strong presidential control, often reinforced by the lack of any protection through tenure, usually extended to all aspects of academic and educational policy. Many black college presidents, always conscious of the attitudes of white boards of trustees and legislatures, discouraged controversy and creativity in their faculties and fostered a submissive attitude. The constraints of inadequate funding led some administrators

246. Franklin, *supra* note 233, at 66-67.

247. A. MEIER & E. RUDWICK, *supra* note 232, at 126-27; Jones, *supra* note 237, at 159-60. In his survey of black doctorate holders in the early 1940s, Greene found that 38 institutions of higher education employed more than one black with a doctorate degree, but only two were white colleges—the University of Chicago and the College of the City of New York. Each school employed two blacks who had earned doctorates. H. GREENE, *supra* note 230, at 216-17.

248. Franklin, *supra* note 233, at 71 (emphasis in original).

249. A. MEIER & E. RUDWICK, *supra* note 232, at 49; EDUCATION OF NEGRO TEACHERS, *supra* note 39, at 45; SURVEY OF NEGRO COLLEGES, *supra* note 39, at 39. In 1936, for example, 80% of all blacks with a doctorate were found at Atlanta, Fisk, and Howard. Winston, *supra* note 142, at 695. Seven years later Atlanta and Howard had as many doctorates as the faculties of all black land grant institutions combined. H. GREENE, *supra* note 230, at 216-17.

to favor the teacher over the "research man" whose need for travel funds, research facilities, and release from heavy teaching loads would be difficult to justify to a skeptical board, and who might represent a threat to the president's presumed status as intellectual leader of the institution.²⁵⁰

When institutional leadership and policies did not discourage faculty development, other characteristics of the black public college did. The small number of faculty, and even smaller number with advanced training, deprived black academics of a significant community of colleagues that might share their interests or encourage their efforts at professional growth.²⁵¹ Few of the libraries in the public institutions were adequate to support any significant research effort. The predominance of underprepared students diverted the faculty's attention from the more advanced study found in an institution with a fully developed college environment. In addition, the absence of graduate schools made impossible the intellectual growth that graduate students and colleagues stimulated.

Consider, for example, the plight of science teachers at the black land grant colleges. A narrowly defined curriculum that emphasized vocational education and mechanic arts instead of training in science and engineering provided few incentives or opportunities for professional advancement. Because of the small number of faculty and the restricted curricula of the colleges, specialization was unlikely. The lack of experiment stations, equipment, and other research facilities, in addition to the nearly complete denial of state or federal funding for research, ensured that faculty with advanced training could not continue to develop professionally or achieve recognition outside the closed system of black higher education. While some professional organizations or learned societies might be open to black science teachers, deficiencies in educational background and institutional environment impeded their participation in the academic mainstream of their field. In fact, black science teachers at the land grants and other black colleges created, in 1943, the racially separate National Association of Sci-

250. See A. MEIER & E. RUDWICK, *supra* note 232, at 82, 87; 3 NATIONAL SURVEY, *supra* note 161, at 23, 32-33; Jones, *supra* note 237, at 128-29 & n.10; 14 CONF. PRES. NEGRO LAND GRANT CS. 34-36 (1936); sources cited *supra* note 210.

251. For example, as late as the 1950s, a black historian worked in virtual intellectual isolation at Louisiana's black land grant college where he was "the only black historian with a doctorate in the state." A. MEIER & E. RUDWICK, *supra* note 232, at 134.

ence Teachers in Negro Colleges. Within the confines of the segregated organization, black science faculty offered opportunities for the presentation of papers, encouraged research, and sought improvement of facilities at their institutions.²⁵² Black academics established similar organizations in other fields, including the social sciences, foreign languages, and the dramatic arts.²⁵³

In the black system of public higher education, separation was faithfully enforced. After nearly three-quarters of a century of "separate but equal" public higher education, however, equality could not be found.

D. AFTER SEVENTY YEARS OF INEQUALITY

The condition of the black system of public higher education during the early 1940s is particularly important to an understanding of the separate but equal era for several reasons. The lack of equality—by any measure—between black and white institutions leaves no doubt that the fourteenth amendment's promise of racial equality remained unfulfilled. Seventy years after Missouri established the first black public college, separate but equal higher education was nothing more than a "thin disguise"²⁵⁴ for discrimination. Moreover, the 1940s encompassed most of the legal assault on segregation in public higher education.²⁵⁵ The status of black public colleges at the beginning of the decade demonstrates why the challenge to the separate but equal doctrine was successful. It also exposes the bad faith of the segregationist states that resisted that challenge with incredible claims that equality had been achieved or with superficial efforts to achieve it.

Perhaps most importantly, the injury inflicted on the black population through discrimination and racial separation in public education during the 1940s cannot easily be dismissed as

252. Crouch, *The National Institute of Science and Its Objectives*, 25 CONF. PRES. NEGRO LAND GRANT CS. 87, 87-89 (1947-1948). The Association subsequently changed its name to the National Institute of Science. *Id.* at 89.

253. See 3 NATIONAL SURVEY, *supra* note 161, at 120; Daniel & Miller, *National Activities and General Progress*, 9 J. NEGRO EDUC. 99, 104 (1940).

254. *Plessy v. Ferguson*, 163 U.S. 537, 562 (1896) (Harlan, J., dissenting).

255. In 1938 the Supreme Court decided the first of its higher education cases. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938). In 1950 the Court all but rejected the doctrine of separate but equal when it ordered the University of Texas to admit Heman Sweatt to its law school. *Sweatt v. Painter*, 339 U.S. 629 (1950).

“ageless in its reach into the past.”²⁵⁶ It is difficult, at least for this writer, to regard the decade of one’s birth as part of an ageless past. Although the era of separate but equal higher education may not be current in the memory of most Americans, few black Americans are far removed from it. At the beginning of the 1940s, the seventeen segregationist states accounted for more than three-fourths of all black Americans.²⁵⁷ Throughout the decade, the meager resources provided to the system of black public colleges still represented virtually the entire national commitment to the public higher education of black citizens.²⁵⁸ Through the racially separate system, the nation expressed its dominant public policy concerning the higher education of black Americans.

After seventy years of separate but equal higher education, the pattern of inequality was an unfortunately familiar one. The black system of public higher education continued to be dominated by black land grant colleges that were generally denied the protection, and therefore the benefits, of federal legislation. At all black public colleges, expenditures fell far short of any standard of fairness or equity. Educational programs continued to reflect discrimination and inequality. Technical and scientific training was available in only the most rudimentary form, if at all. Graduate and professional programs, with the exception of teacher training, did not exist. Few of the faculty, who had been victims of discrimination in their own education, had been able to attain doctorate degrees. Most were paid significantly less than their white counterparts and all suffered from a lack of opportunities for professional development.

Despite seventy years of discrimination and isolation, some

256. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978) (opinion of Powell, J.).

257. HISTORICAL STATISTICS, *supra* note 59. Approximately 10 million of the nation’s 12.9 million blacks lived in the 17 southern and border states in 1940. *Id.*

258. As late as 1947, the President’s Commission on Higher Education found that 85% of all black students were enrolled in black colleges (public and private), only a very few of which were located outside the southern and border regions. 2 PRESIDENT’S COMMISSION, *supra* note 171, at 31; see 2 NATIONAL SURVEY, *supra* note 161, at 77 n.2 (five black colleges located outside the segregationist states). Thus, black students’ primary alternative to the black public college was not the integrated public institution of the North but the black private college of the South. The 1942 survey concluded that, to the extent there was any interregional exchange of black college students, the net result of that exchange was the education of northern blacks in the segregated colleges of the southern and border states. *Id.* at 77-84.

progress was made within the black system of public higher education. No progress had been achieved, however, in narrowing the gap between the black and white systems. In funding, facilities, faculty, and curriculum, the separate systems remained unequal.

1. Funding and Facilities

The seventy-seven percent of the nation's black population residing in the seventeen southern and border states constituted approximately twenty-two percent of the region's population.²⁵⁹ Yet the ten million black citizens of the region received the benefits of the land grant movement through institutions that were provided less than four percent of the federal land grant dollars allocated to the segregationist states. At the end of the 1930s, seventeen black land grant institutions were receiving half a million dollars in federal funds annually while their white counterparts were being enriched at the annual rate of \$12.9 million.²⁶⁰

The magnitude of the discrimination in the land grant system was matched by discrimination in public higher education outside that system. White students in the segregationist states in 1940 could choose among eighty-six publicly supported, four-year colleges in addition to the seventeen white land grant colleges. Black students, however, were confined to fifteen four-year colleges outside the black land grant system.²⁶¹ In eight states the underfunded black land grant colleges were the *only* public, four-year institutions open to blacks. Six other states supported only one additional college. These fourteen states accounted for nearly eighty percent of the blacks in the segregationist states and well over half of the blacks in the nation.²⁶²

The black public colleges were very small institutions.

259. In 1940 the 17 segregationist states included approximately 10 million blacks in a population of 44.8 million. HISTORICAL STATISTICS, *supra* note 59.

260. W. Trueheart, *supra* note 63, at 272.

261. Statistics on the number of public institutions were derived from the data presented in 6 PRESIDENT'S COMMISSION, *supra* note 171, at 13 (all public institutions); 1 NATIONAL SURVEY, *supra* note 161, at 66-98 (black public colleges).

262. The states with only a black land grant were Arkansas, Delaware, Florida, Louisiana, Oklahoma, South Carolina, Tennessee, and Virginia. The states with one black public college in addition to the land grant were Alabama, Kentucky, Mississippi, Missouri, Texas, and West Virginia. See sources cited *supra* note 261. In 1940 these 14 states accounted for more than three-fourths of the blacks in the segregationist states and nearly 60% of all blacks in the United States. HISTORICAL STATISTICS, *supra* note 59.

Within the black land grant system, only three colleges enrolled more than 1000 students in 1940, and the average black land grant college enrolled only 700 students. The other black public colleges were even smaller, with an average enrollment of under 400 students. Not surprisingly, the rate at which the institutions increased the ranks of college-educated blacks was very low. In 1940 the public colleges, serving ten million blacks, more than three-fourths of all black Americans, graduated fewer than 3000 students. The land grant colleges, representing the black share of America's great effort at the democratization of higher education, had an average graduating class of 106 students.²⁶³ Small enrollments and graduating classes demonstrated the low rate at which America was investing in the development of the human resources of the black community. The small investment necessarily produced a small return.

Just how low a rate of investment is evident in the 1940 expenditures by public colleges. In the seventeen state region, black citizens were confined to colleges receiving just over five percent of the expenditures for public higher education, although blacks constituted more than twenty percent of the region's population. In some states the expenditure disparity seems incredible. In Mississippi, for example, \$161,000 of public funds were devoted to the higher educational institutions serving a black population of more than one million. Although blacks constituted forty-nine percent of the state's population, black higher educational institutions received only four percent of all public college expenditures. In each of five other states, the black share of expenditures for public colleges was less than one-sixth the black share of population.²⁶⁴ Even taking into account a low rate of enrollment, itself a product of discrimination, black college students were denied a proportionate share of public funds. The average expenditure per resident student throughout the region amounted to \$344 for white stu-

263. Enrollment and graduation data were derived from Jenkins, *supra* note 175, at 720-21. Low enrollments and small graduating classes reflected the much lower college enrollment rate for blacks than for whites. Although blacks made up 22% of the population in the 17 state region, the 1940 resident enrollment in black public colleges was 19,000, only 7.5% of the 255,000 students enrolled in all public institutions. See 6 PRESIDENT'S COMMISSION, *supra* note 171, at 24 (Table 26).

264. Statistics for expenditures were derived from the data presented in 6 PRESIDENT'S COMMISSION, *supra* note 171, at 51 (Table 49B). Population statistics were derived from HISTORICAL STATISTICS, *supra* note 59. The five states are Alabama, Georgia, Louisiana, South Carolina, and Virginia.

dents but only \$232 for black students. For most black students the disparity was even greater.²⁶⁵

A few states apparently adopted a proportionality standard and provided their black public colleges with a share of expenditures that was approximately the same as the black share of enrollment. But proportionality was far distant from equality. The seven percent of Arkansas's public college students attending black institutions could not possibly receive educational opportunity of equal depth and breadth with only six percent of the resources. And it is difficult to imagine how black students who constituted three percent of public college enrollments in Texas obtained equal educational opportunity when the institutions enrolling white students were consuming ninety-seven percent of the state's expenditures. Most segregationist states, however, did not adopt a proportionality standard. The black percentage of public college enrollment was usually less than the black percentage of the population, and the black share of expenditures was even smaller.²⁶⁶

Seventy years of discrimination in funding had produced black public colleges with inadequate facilities. In what can be characterized as an understatement, a 1942 federal survey of black colleges concluded that "the State-supported Negro institution rarely has a plant or other equipment approximating

265. Seven states—Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia—with more than half of the region's black public college enrollment, expended an average of \$394 on each white student and \$175 on each black student. Statistics on expenditures per resident student were derived from 6 PRESIDENT'S COMMISSION, *supra* note 171, at 24, 51 (Tables 26 and 49B).

266. The following summary statistics demonstrate the magnitude and consistency of the discrimination inherent in "separate but equal" public colleges:

that of white institutions in the same State."²⁶⁷ Fifteen black land grant colleges had an average library collection of just over 15,000 volumes, as compared with an average of 81,000 volumes in white land grant libraries.²⁶⁸ Apart from any comparison with the white schools, the black institutional libraries fell far short of the 35,000 volumes considered to be "a conservative estimate of the size of the lower minimum library for curricular reading, in a 4-year college."²⁶⁹ Insufficiency of the physical plant could be seen in residential facilities as well. Dormitories were essential at the black institutions because one or two public colleges usually served students from all areas of the state. In its review of dormitory facilities, however, the federal survey concluded:

Most of the institutions are attempting to accommodate in their dormitories more students, both men and women, than the facilities were designed to handle. It is not at all uncommon to find three or four students living in rooms designed for two occupants . . . Where this overcrowding exists there are commonly insufficient lighting, study

1940 Black Percentage of:

	Population ^a	Resident Enrollment in Public Insts. ^b	Expenditures at Public Insts. ^c
S.C.	42.8	9.2	5.0
La.	35.9	7.3	5.7
Ala.	34.7	10.6	5.5
Ga.	34.7	8.9	5.4
N.C.	27.5	20.6	7.9
Fla.	27.1	13.5	9.0
Ark.	24.8	7.2	6.2
Va.	24.7	8.0	4.1
Tenn.	17.5	12.4	5.0
Md.	16.6	11.8	8.0
Tex.	14.4	3.5	2.4
Del.	13.5	10.8	10.0
Ky.	7.5	6.3	3.1
Miss.	49.2	4.1	4.3
Okla.	7.2	3.1	3.2
Mo.	6.5	3.3	6.5
W. Va.	6.2	12.4	10.1
Region	22.2	7.5	5.2

^a Derived from HISTORICAL STATISTICS, *supra* note 59.

^b Derived from 6 PRESIDENT'S COMMISSION, *supra* note 171, at 24 (Table 26).

^c Derived from *id.* at 51 (Table 49B).

267. 1 NATIONAL SURVEY, *supra* note 161, at 42.

268. 2 NATIONAL SURVEY, *supra* note 161, at 95-96. This calculation excluded white land grants that were also state universities, apparently because their libraries were larger.

269. *Id.* at 96 (quoting B. MCCRUM, ESTIMATE OF STANDARDS FOR A COLLEGE LIBRARY 23 (1937)).

tables, closet space, and ventilation in the rooms, and the lavatory and bathing facilities are invariably inadequate.²⁷⁰

The cumulative effect of inequality was evident in the accreditation of public colleges. Each of the segregationist states included at least one white public college accredited by its regional association in 1940, and there was a total of seventy-five accredited white public institutions in the region.²⁷¹ Only eleven black public colleges were accredited by a regional association, and five of those were in border states with relatively small black populations. In eight states, accounting for forty percent of all blacks in the nation, there were no accredited public colleges available to black students.²⁷² Moreover, of the eleven accredited schools, all but three were in the jurisdiction of the Southern Association of Colleges and Secondary Schools, which applied a segregated system of evaluation that involved less rigorous standards for the accreditation of black institutions.²⁷³ Equally important, in view of their teacher training function, only two black public colleges (compared to fifty-one white) were accredited by the American Association of Teachers Colleges.²⁷⁴ In the judgment of accrediting agencies, public higher education for blacks was not only unequal but also substandard.

2. A Separate and Unequal Curriculum

The forces that created the special educational program of black public colleges prevented any significant change during the separate but equal era. State legislatures and the white boards of trustees showed little interest in offering black students educational programs that would develop black intellectual potential, and the curricula of the institutions remained very restricted. Just how restricted is evident in a detailed study of the 1940 curricula of all public colleges in the segrega-

270. 4 NATIONAL SURVEY, *supra* note 161, at 35.

271. 2 NATIONAL SURVEY, *supra* note 161, at 16.

272. *Id.* Maryland, Missouri, and West Virginia each had one of the accredited black institutions, and Kentucky had two. The eight states with no black public college accredited by a regional association were Alabama, Arkansas, Delaware, Georgia, Mississippi, Oklahoma, South Carolina, and Tennessee. *Id.* In 1940 these eight states accounted for more than 5.1 million of the nation's 12.9 million blacks. HISTORICAL STATISTICS, *supra* note 59. The discussion of accredited black colleges is limited to those that were rated "A" by the Southern Association and those that were fully accredited by other regional associations.

273. *See supra* note 223.

274. 2 NATIONAL SURVEY, *supra* note 161, at 16.

tionist states.²⁷⁵ Comparing the fields of specialization²⁷⁶ available at white and black institutions in the region, the study reveals two very different systems of public higher education. In agriculture, a major program of the land grant institutions, white students in most states could specialize in ten to twenty different fields of study. In only one state did a black public college offer as many as five agricultural fields. For the most part, black agricultural students were limited to a general course of study or to teacher training. An education in the agricultural sciences was simply not available. In home economics a similar pattern prevailed as black students were usually limited to general home economics or teacher training, while white students in most states could choose among six or more different specialties.

The constraints of the special education for blacks were evident in other undergraduate professional fields. Programs in architecture and journalism could not be found in black public colleges. A course of study in psychology was available to black students in only two states. The black student seeking training for the business world was limited to a general commercial or secretarial program. Business specialties available to white students included accounting, advertising, marketing, banking and finance, manufacturing, and management.

As in the past, the black college student aspiring to become an engineer found that path closed at public institutions of higher education. In fourteen states there were no programs of study in engineering, and the restricted offerings of the other three states were primarily trade or teacher training courses.²⁷⁷ Those institutions lacking an engineering program even in

275. The discussion of programs of study at black and white public institutions is based on the data presented in *id.* at 8-13, 126-27.

276. The survey defined a "field of specialization" to be "any organized pattern of courses leading to an occupational specialization or, in the arts and sciences, a departmental sequence of 24-semester hours or more." Thus, the absence of a field of specialization did not mean that no courses were offered at an institution, only that there was an insufficient number of courses to permit students to specialize or concentrate in the field. *Id.* at 8.

277. The survey's suggestion that the few black land grant engineering programs were primarily designed for teacher and trade training, *see id.* at 13 n.3, finds strong support in later evaluations of developing engineering programs in the black land grant colleges. In 1948 the Conference of Presidents of Negro Land Grant Colleges found that "very few of our colleges are making any attempt to teach any courses in engineering, and these are very meagre. There is no accredited engineering school in the south open to Negroes." Whittaker, *Recommendation Concerning Training in Engineering and Mechanic Arts*, 26 CONF. PRES. NEGRO LAND GRANT CS. 65 (1948).

name provided the customary fare of auto mechanics, carpentry, printing, electricity and radio, and tailoring. In a few states, the frustrated black engineering student could choose instead to study "shoe and leather," sign painting, laundry work, or even the still-available broom and mattress making. White public colleges in all seventeen states had well-developed engineering curricula with an average offering of ten different engineering specialties.

A restricted curriculum for the black institutions was also evident in the arts and sciences. No black public college offered programs of study in geology, geography, anthropology, or philosophy. In all but one state, a specialization in political science or government was not available, a gap that likely reflected the concern that higher education would instill dangerous notions of equality in black students.²⁷⁸ In the black public institutions of a majority of the segregationist states, economics and sociology were unavailable as specialties, and programs of study in general English were substituted for literature. The institutions of ten states offered no specialty in physics. In Alabama, Georgia, and Tennessee, no black public colleges offered a program of study in physics, chemistry, or biology. The would-be black scientist, or black science teacher, could "specialize" only in general science.

Public higher education for blacks was not designed to provide social and economic mobility or foster the educational development of the race. Perhaps the most significant indication of the limits of black public higher education is the contribution that black public colleges were able to make to the black intellectual elite—the small cadre of blacks who earned doctoral degrees in graduate schools of the North. After seven decades of separate but equal public higher education in seventeen states, involving more than thirty institutions, black public colleges had graduated a total of twenty students who later earned doctoral degrees—twenty students in seventy years.²⁷⁹

278. See *supra* text accompanying notes 145-147. The curriculum of black colleges continued to be affected by the restrictions of a segregated society:

Teachers in almost all of the colleges must guard against the introduction of materials which might cause their students to act contrary to the political, religious, and race-relation mores of the community.

There appears to be, as a result, remarkably little consideration of controversial issues in these areas in most of the institutions studied.

3 NATIONAL SURVEY, *supra* note 161, at 33.

279. See H. GREENE, *supra* note 230, at 36-39.

3. Faculty and Research

The low rate at which black public colleges graduated students who later earned doctoral degrees was part of a broader, national pattern. A comprehensive survey of blacks holding doctorates at the beginning of the 1940s found that the nation's total and cumulative output of doctorates to blacks was only 381.²⁸⁰ In the competition for the few blacks holding doctorates, the public colleges suffered many disadvantages. Inadequate libraries, a lack of research funding, low salaries, the absence of graduate programs, a restricted community of colleagues, and the disadvantages of state control made the black public colleges particularly unattractive. Consequently, most of the public colleges included only a small number of faculty with doctoral degrees. In 1943 only eight public colleges had more than four blacks holding doctorates on their faculties.²⁸¹

Apart from their level of training, the faculties of the black colleges were much smaller than those of the white colleges, restricting both the degree of specialization and the breadth of the curriculum. In most of the segregationist states, white public colleges had more faculty than the black public colleges had students. While that might not be surprising for states with small black populations, it is more difficult to understand for states with a substantial proportion of black citizens. In Mississippi the 1940 population was nearly half black; the white public colleges in the state employed 1100 faculty members while the black public colleges enrolled only 455 students. In South Carolina, with a population that was forty-three percent black, there were 875 faculty at the white schools and 809 students at the black public college. Even under the inherently discriminatory measure of faculty per student, the total black faculty of 1631 had eighty-seven fewer academics than proportionality required.²⁸²

The small number of faculty at black public colleges in the 1940s continued to bear the burdens of discrimination. At the black land grant colleges, the median salary for faculty was just

280. *Id.* at 23.

281. Louisiana, Maryland, Missouri, North Carolina, Oklahoma, Texas, Virginia, and West Virginia each operated one black college employing more than four black doctorates. *See id.* at 216-17.

282. The 1940 public college faculty in the 17 segregationist states was 22,904, of which 21,273 were in the white institutions. All data pertaining to size of faculty and student enrollment were derived from 6 PRESIDENT'S COMMISSION, *supra* note 171, at 24-25, 36 (Tables 26 and 33). Population statistics were derived from HISTORICAL STATISTICS, *supra* note 59.

over half that at the white land grants.²⁸³ Despite continuing increases in federal funding for research, the black land grant faculty were consistently denied access to federal research support. Moreover, denial begat denial. Because the black colleges were unable to develop any significant research capacity in either facilities or faculties, they were in a particularly weak position to compete for discretionary funding from the Department of Agriculture and other federal or state agencies. In 1946, for example, when the black land grant colleges formally requested that they be provided with research funds under the Agricultural Marketing Act,²⁸⁴ Department of Agriculture officials responded:

We will appreciate any suggestions the Negro Land Grant Colleges may make regarding research which should be done under the Act, for which they are particularly qualified. Such suggestions will be given equal consideration with others in the development of a program to carry out the purposes of the Act.²⁸⁵

After decades of discrimination, it is not surprising that "equal consideration" usually resulted in a denial of research funding.²⁸⁶

Faced with continual denial of public funds for experiment stations and other research activities, the black land grants in

283. The 1939-1940 median salaries for different faculty levels in the land grant institutions were as follows:

	White Land Grants	Black Land Grants	Black % of White
Deans	\$4844	\$2625	54%
Professors	3658	1821	50%
Assoc. Profs.	2926	1701	58%
Ass't Profs.	2352	1560	66%
Instructors	1840	1293	70%

3 NATIONAL SURVEY, *supra* note 161, at 29.

284. Ch. 966, 60 Stat. 1087 (1946).

285. Letter from W.A. Minor, Assistant to the Secretary of Agriculture, to F.D. Patterson, President of Tuskegee Institute (Nov. 8, 1946), *reprinted in* 25 CONF. PRES. NEGRO LAND GRANT CS. 74, 74-75 (1948).

286. By the early 1950s, only three black land grant colleges (located in Louisiana, North Carolina, and Tennessee) were engaged in research under the 1946 Act. Hutchinson, *Toward Greater Farm Progress*, 30 CONF. PRES. NEGRO LAND GRANT CS. 59, 64-66 (1952). The black land grant colleges' experience with the Agricultural Marketing Act was not unique. In response to a survey in the early 1950s, 14 of the colleges reported a total of 37 research studies undertaken in the decade between 1942 and 1952, with more than half of the projects conducted by two institutions. Clark, *What Are the Negro Land Grant Colleges Doing to Fabricate a Program to Meet Present Day Needs*, 30 CONF. PRES. NEGRO LAND GRANT CS. 67, 73-74 (1952).

the 1940s sought to develop their research capabilities with meager and grossly insufficient institutional funding. During the separate but equal era, the most significant research project appears to have been a cooperative endeavor, which came to be known as the "Social Studies Project," initiated by W.E.B. DuBois in 1941.²⁸⁷ The history of that project exposes the multiple impediments faced by the black land grants in their efforts to achieve the goals of federal land grant legislation without the financial and other benefits that legislation conferred on their white counterparts.

DuBois proposed to the Conference of Presidents of Negro Land Grant Colleges a "cooperative study of the Negro economic and social condition, with a view of setting the American Negro on a new path of progress under the guidance of the land-grant colleges."²⁸⁸ In its call for the black land grant colleges to study the skills, educational needs, and health of the black population, the proposal fell squarely within the economic, social, and educational goals of the land grant movement. The Conference resolution approving the cooperative study expressed a determination to obtain for the black community the long-deferred benefits of Justin Morrill's social and educational vision: "The ultimate object . . . shall be to accumulate a body of knowledge, intensively pursued according to the best scientific methods . . . [and] to be used as the basis of raising the standard of living and cultural pattern of American Negroes through education, work, law, and social action."²⁸⁹

If the proposed research project was symbolic of the land grant movement, the resources available to the black colleges were equally symbolic of the discrimination the colleges had suffered for seven decades. While the white land grant colleges

287. See DuBois, *A Program for the Land-Grant Colleges*, 19 CONF. PRES. NEGRO LAND GRANT CS. 42 (1941). When the Conference agreed to undertake the research project in 1942, DuBois, then Chairman of the Sociology Department at Atlanta University, was designated as coordinator of the project. 20 & 21 CONFS. PRES. NEGRO LAND GRANT CS. 29, 29-30 (1942-1943). When DuBois withdrew from the project in 1944, the Conference named E. Franklin Frazier of Howard University as coordinator. 22 CONF. PRES. NEGRO LAND GRANT CS. 11, 25-27 (1944). Frazier remained as coordinator until 1951 when he was replaced by Henry J. Walker of the Howard Sociology Department. Frazier, *Report on Social Studies Project*, 29 CONF. PRES. NEGRO LAND GRANT CS. 37, 39 (1951).

288. DuBois, *supra* note 287, at 56; see also DuBois, *Summary—The Next Steps in a Cooperative Study of the American Negro*, 20 & 21 CONFS. PRES. NEGRO LAND GRANT CS. 36, 36-37 (1942-1943) (proposing cooperative study as a basis for "social uplift and reform").

289. 20 & 21 CONFS. PRES. NEGRO LAND GRANT CS. 20 (1942-1943).

received millions of federal and state dollars for research, the black schools could commit only "to set aside in our annual budgets such sums as our institutions can properly afford,"²⁹⁰ sums measured in hundreds of dollars rather than millions.²⁹¹ While the white land grant colleges had available the facilities, equipment, libraries, and staff support necessary for significant research, the black colleges often lacked typewriters, adding machines, filing cabinets, and secretarial assistance, as well as basic source materials required for a social and economic study of the black population.²⁹² While the white institutions had trained and experienced faculties and administrators supportive of research, the black land grants struggled with faculty members who were victims of educational discrimination and senior administrators who frequently perceived research as detracting from more important demands for faculty teaching time.²⁹³

Despite the seemingly insurmountable obstacles impeding the undertaking, the Social Studies Project produced some benefits.²⁹⁴ Significantly, however, the Project was most produc-

290. *Id.*

291. Beginning in 1943 the Conference assessed each member \$100 to fund the Social Studies Project. 20 & 21 CONF. PRES. NEGRO LAND GRANT CS. 59, 59 (1942-1943). The Project's annual budget was generally less than \$2000 and seldom exceeded \$4000. *See, e.g.*, 27 CONF. PRES. NEGRO LAND GRANT CS. 38, 38 (1949); 24 CONF. PRES. NEGRO LAND GRANT CS. 21, 21-22 (1946).

292. *See, e.g.*, Frazier, *Report on the Social Studies Project*, 28 CONF. PRES. NEGRO LAND GRANT CS. 46, 48 (1950); Frazier, *Report on Social Studies Project*, 27 CONF. PRES. NEGRO LAND GRANT CS. 31, 33 (1949); Frazier, *Report to the Conference*, 25 CONF. PRES. NEGRO LAND GRANT CS. 20, 20-21 (1947); Frazier, *Report on the Cooperative Social Studies Project*, 24 CONF. PRES. NEGRO LAND GRANT CS. 19, 20-21 (1946); Walker, *Report on Social Studies Project*, 31 CONF. PRES. NEGRO LAND GRANT CS. 44, 46 (1953).

293. *See, e.g.*, Frazier, *Report on Social Studies Project*, 27 CONF. PRES. NEGRO LAND GRANT CS. 31, 33-35 (1949); Frazier, *Report to the Conference of Presidents of the Negro Land Grant Colleges*, 26 CONF. PRES. NEGRO LAND GRANT CS. 24, 31-32 (1948).

294. The Social Studies Project gave black faculty an opportunity for training and experience in organized research. Regional conferences on the project promoted scholarly contact and an exchange of ideas within the black academic community, and brought black faculty into contact with other academics and government officials. *See, e.g.*, Frazier, *Report to the Conference of Presidents of the Negro Land Grant Colleges*, 26 CONF. PRES. NEGRO LAND GRANT CS. 24, 27-28 (1948); Greene, *Report on the First Conference of the Border States Region*, 25 CONF. PRES. NEGRO LAND GRANT CS. 31, 32-33 (1947); *Report of the First Southeastern Conference*, 25 CONF. PRES. NEGRO LAND GRANT CS. 25, 26-28 (1947). Demographic studies and monographs were published and distributed to the libraries of the black colleges. *See, e.g.*, Frazier, *Report on the Social Studies Project*, 28 CONF. PRES. NEGRO LAND GRANT CS. 46, 46 (1950); Frazier, *Report on Social Studies Project*, 27 CONF. PRES. NEGRO LAND GRANT CS. 31, 31-32 (1949).

tive after an infusion of federal funds to support the research effort. In 1949 the Tennessee Valley Authority (TVA) agreed to provide up to \$17,000 for research concerning social and economic changes in the rural life of the TVA states and the effect of those changes on the black population.²⁹⁵ With the aid of federal funding, the seven black land grants in the TVA region produced reports on the economic and social conditions of the black rural populations in their states.²⁹⁶ With just a minor federal grant, a group of black institutions was able to make some progress toward realization of the land grant model.

The TVA grant itself emphasized the enormous gap in support of black and white institutions. The \$17,000 committed by the TVA in 1949 was the first instance of TVA support of research by the black land grants. In contrast to this trivial sum, white land grants in the seven TVA states had received more than \$8 million between 1935 and 1943. TVA funding was, of course, only a small part of support for research at white institutions. As late as the 1950s, only three black institutions reported expenditures for organized research, and then for a total of \$31,000. The seventeen white land grants reported research expenditures of more than \$37 million.²⁹⁷

The thousandfold difference in research expenditures exposes the bankruptcy of the separate but equal theory. The theory assumed that a population that entered the twentieth century still suffering from a state of enforced illiteracy could, with sufficient resources, develop an academic community able to provide equal educational opportunity in a system of public higher education completely isolated from the academic mainstream. Even that dubious assumption was never tested. Sufficient resources, let alone equal resources, did not appear. The already difficult task of self-help in segregated institutions was made nearly impossible by the pervasive discrimination that accompanied segregation.

For the professional development of black academics, self-

295. See 28 CONF. PRES. NEGRO LAND GRANT CS. 34, 39 (1950). Subsequent to the involvement of the TVA, the Social Studies Project continued in the land grant colleges not located in the TVA region, but it appears that the greatest progress was made by those institutions receiving TVA support. See Frazier, *Report on Social Studies Project*, 29 CONF. PRES. NEGRO LAND GRANT CS. 37 (1951); Walker, *Report on Social Studies Project*, 30 CONF. PRES. NEGRO LAND GRANT CS. 49 (1952).

296. See Neal, *A Progress Report on the Land Grant Colleges—TVA Cooperative Study*, 31 CONF. PRES. NEGRO LAND GRANT CS. 37 (1953).

297. W. Trueheart, *supra* note 63, at 174-77.

help in the closed and self-perpetuating system could produce only limited progress in the face of discrimination and isolation. How limited is sadly evident in the obstacles confronted by the black land grant Social Studies Project. In addition to insufficient funding, rudimentary equipment, inadequate libraries, and a lack of support from many of the land grant presidents, the cooperative research effort was impeded by the lack of training and experience of the black land grant social science faculties. As reported in 1948 by E. Franklin Frazier, then coordinator of the Project:

It is unnecessary for us to conceal under diplomatic language the actual situation which we have faced in regard to the competence of the teachers to engage in social research. It should certainly be known to all the presidents of the Land Grant colleges that the majority of social science teachers do not have the qualifications and experience to engage in social research. In some cases they do not even possess the most elementary training in the gathering of factual social knowledge not to mention their ability to analyze and interpret social data. . . .

. . . .

. . . For example, it would be extremely illuminating if you gentlemen could come to . . . Howard University where [we] have spent days and in fact months going over manuscripts which were not in literate English, tables that contained hundreds of statistical errors, and facts and figures that had no meaning.²⁹⁸

Given the half century of discrimination and neglect of the black land grants, it is not surprising that these institutions—the flagship institutions of the black system of public higher education—turned first to Atlanta University and then to Howard University for leadership of the Project.²⁹⁹ Nor is it surprising that the able and accomplished black academics who led the Project for a decade used it as a vehicle for faculty development in the black land grants, turning annual conferences into research clinics.³⁰⁰ It is extraordinary, however, that at the same time that Frazier and others were emphasizing the pressing need for the most fundamental improvements in the faculties

298. Frazier, *Report to the Conference of Presidents of the Negro Land Grant Colleges*, 26 CONF. PRES. NEGRO LAND GRANT CS. 24, 31-32 (1948). Frazier's candid evaluation also suggested reasons for optimism about improvement in the skills and qualifications of the land grant faculties: "On the other hand, there are found in some of these colleges competent young men who have had first rate training. Fortunately, the number of men of the latter type is increasing and this fact provides one of the most hopeful aspects of the Project." *Id.* at 31.

299. See *supra* note 287.

300. Frazier, *Report on the Social Studies Project*, 28 CONF. PRES. NEGRO LAND GRANT CS. 46, 47-48 (1950); Walker, *Report on Social Studies Project*, 30 CONF. PRES. NEGRO LAND GRANT CS. 49, 49 (1952).

of the black public colleges, the segregationist states were not only asserting that the black institutions were the equal of their white counterparts, but were also foisting on those underfunded and underdeveloped colleges ill-conceived graduate programs in the hope of preserving racial separation in higher education.

III. THE DEMISE OF THE SEPARATE BUT EQUAL DOCTRINE

The condition of black public colleges provided numerous grounds on which to challenge separate but equal higher education. In funding, number of institutions, facilities, faculty training, and breadth and depth of curriculum, the black system was indisputably inferior to the white one. Inequality was most evident in opportunities for graduate and professional education. By 1940 only three states—Virginia, Texas, and North Carolina—had instituted any graduate instruction in their black public colleges, and then had only limited offerings leading to a master's degree.³⁰¹ White public colleges in all seventeen states had extensive graduate programs, including doctoral programs in twelve states.³⁰² The white institutions also offered a variety of professional programs, including law, medicine, and pharmacy, as well as graduate training in engineering and business. Black students seeking professional training at a public college faced a virtually complete denial of educational opportunity.³⁰³ Would-be black doctors, lawyers, engineers, and other profes-

301. The Virginia State College for Negroes began to offer graduate courses in the summer of 1937. In 1939 the college created a division of graduate studies. M. PIERSON, *GRADUATE WORK IN THE SOUTH* 154 (1947). In the summer of 1938, graduate study began at Prairie View State College in Texas with state funding of \$18,000. *Id.* at 155; F. MCCUISTION, *supra* note 229, at 128-29. North Carolina instituted graduate instruction in 1939 at the North Carolina College for Negroes and the Agricultural and Technical College of North Carolina (the state's black land grant). M. PIERSON, *supra*, at 157-59, 163-67.

302. 2 NATIONAL SURVEY, *supra* note 161, at 14-15. In 15 states graduate study was available in 40 or more different fields of specialization. *Id.* at 14.

303. The number of states with white public colleges offering different professional curricula were as follows: graduate engineering—17, law—16, medicine—15 (five of which were two-year programs), graduate commerce and business—15, pharmacy—14, library science—11, social service—9, and dentistry—4. Of the approximately 30 black public colleges in the segregationist states, only two included a professional school in 1940—the recently created law and library science schools at North Carolina College for Negroes and the law school at Lincoln University in Missouri. *Id.* at 14-15.

sionals could not pursue their career aspirations in the segregated black public college.

This failure to provide graduate and professional education became the basis of the NAACP's attack on separate but equal education:

The black attack ought to begin in the area where the whites were most vulnerable and least likely to respond with anger. . . . A Negro in Georgia or South Carolina who wanted to become a lawyer or doctor or architect or engineer or biochemist would have to travel hundreds or thousands of miles from home and undergo heavy financial privation to obtain a training available to whites within their home state. . . . The South would either have to build and operate separate graduate schools for blacks or admit them to white ones. . . . At the very least, a legal drive at the graduate level promised to result in improved all-black facilities³⁰⁴

For nearly two decades, states answered the challenge to segregation in higher education with tactics of delay and avoidance. Most states created programs to fund out-of-state study by their black students. Many states made superficial improvements in their black public colleges by establishing makeshift graduate and professional programs, increasing funding levels, and expanding undergraduate programs. Their efforts, however, were designed more to forestall black success in the courts than to serve the educational needs of black students or to create a rational plan for the development of black public colleges.

Moreover, even if the segregationist states had pursued in good faith the goal of equality, few could afford the massive expenditures necessary to achieve it. The attempt in Texas to satisfy both sides of the separate but equal formula highlighted the obstacles created by seventy-five years of discrimination and deprivation. With a special legislative mandate and new appropriations, Texas sought unsuccessfully to create a black university with educational opportunities equivalent to those available at the University of Texas. If oil-rich Texas could not achieve equality in segregated public colleges, states with less wealth, a larger percentage of blacks in their population, and a smaller measure of good faith were even less likely to meet the demand that racially separate actually be equal.

During the period that the separate but equal doctrine was attacked and finally destroyed there was some progress in black opportunity for higher education, but equality remained an elusive goal. The challenge was successful in recasting con-

304. R. KLUGER, *SIMPLE JUSTICE* 136-37 (1975).

stitutional doctrine under the equal protection clause. It could not, however, easily eradicate the effects of nearly a century of separation and inequality or transform the structure of black higher education.

A. DELAY AND AVOIDANCE

The NAACP began its attack in 1933 by dispatching William Hastie to represent Thomas Hocutt in his effort to be admitted to the University of North Carolina School of Pharmacy. Under the low standards of the segregationist states, North Carolina had distinguished itself in its implementation of separate but equal higher education by offering its black citizens a choice of five public colleges. The North Carolinian version of equality, however, included neither professional nor graduate training for blacks. Hocutt's desire to study pharmacy could not be satisfied at any of the state's black institutions, and in 1933 no public funding was available for out-of-state study.³⁰⁵ Despite Hastie's able representation, Hocutt lost in the state trial court when the black President of Hocutt's undergraduate college refused to certify his academic transcript—reportedly for fear of retaliation against the institution.³⁰⁶

After this inauspicious beginning, the NAACP shifted to the border states to attack out-of-state scholarship programs—the only means by which any segregationist state provided its black citizens with opportunities to attend graduate and professional schools. NAACP successes in Maryland and Missouri led to renewed efforts to prevent enrollment of black students in white institutions. Some states expanded existing scholarship programs; others created new programs in the hope that black students would refrain from challenging segregation. Some states afforded new, but still extremely limited, opportunities for higher education in their black institutions. A few states simply ignored the growing demand for equal educational opportunity. With the indulgence of state and federal courts, the strategy to preserve the separate but equal doctrine substantially succeeded until 1950.

305. In an effort to encourage Hocutt's attorneys to terminate the litigation, state officials made vague promises of establishing an out-of-state scholarship program. North Carolina, however, did not enact a scholarship program until 1939. See M. PIERSON, *supra* note 301, at 163-67; J. PREER, *supra* note 45, at 41; Ware, *Hocutt: Genesis of Brown*, 52 J. NEGRO EDUC. 227, 231 (1983).

306. R. KLUGER, *supra* note 304, 157-58.

1. Scholarships for Black Students

In 1935, when Donald Murray and Lloyd Gaines applied to the law schools of white state universities, only three segregationist states made any provision for blacks to obtain graduate and professional training. In the 1920s Missouri and West Virginia had created the first out-of-state scholarship programs for black students.³⁰⁷ The Maryland legislature had established a similar program in 1933, but appropriated no funds until Murray brought what became the first successful challenge to the exclusion of blacks from white public colleges.³⁰⁸

At the time that Murray, an Amherst graduate and black citizen of Maryland, applied to the University of Maryland Law School, the state operated two black colleges—a land grant institution and a teachers college—both of which lacked any graduate or professional programs.³⁰⁹ After his application was rejected and Murray filed an action in state court, the Maryland legislature quickly appropriated \$10,000 to fund the dormant out-of-state scholarship program.³¹⁰ In *Pearson v. Murray*,³¹¹ the Maryland Court of Appeals held that the program's funding was insufficient to provide equal educational opportunity and ordered the university to admit Murray to its law school.³¹²

Pearson v. Murray marked the first time in the seventy years after the adoption of the fourteenth amendment that any court recognized the inequality of segregated higher education and ordered that a black student be permitted to attend a white public college. Nevertheless, the decision had only a limited effect on the elimination of racial barriers to the higher education of blacks. Although it opened up new educational opportunities for Donald Murray and the handful of black law students who followed him,³¹³ the Maryland court did not re-

307. F. MCCUISTION, *supra* note 229, at 65-66, 69-70.

308. J. PREER, *supra* note 45, at 41-42; EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 17.

309. See McGuinn, *The Courts and Equality of Educational Opportunity*, 8 J. NEGRO EDUC. 150, 153 (1939).

310. The Act funding scholarship grants for black students was effective as of June 1, 1935, approximately two weeks before Murray's case was tried in Baltimore City Court. *Pearson v. Murray*, 169 Md. 478, 485-86, 182 A. 590, 593 (1936).

311. 169 Md. 478, 182 A. 590 (1936).

312. *Id.* at 486-88, 182 A. at 593-94.

313. Murray enrolled in the law school and later graduated twelfth in his class of 37. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 18. His success did not lead to the general admission of black students into the programs of

ject either the separate but equal doctrine or the use of a sufficiently funded scholarship program as a means of achieving equality in a segregated system.³¹⁴

Murray, and the response of the segregationist states to it, established a pattern that was followed during the two decades of attack on the doctrine of separate but equal. By undermining but not invalidating the doctrine, state and federal courts implicitly, and often explicitly, offered the segregationist states opportunities to preserve racially separate higher education, albeit at an increasingly greater cost. When threatened with the enrollment of black students in their white institutions, nearly all of the states elected to pay the rising price of segregation, even if not the full cost of educational equality. Maryland responded to *Murray* by tripling the appropriation for the scholarship fund.³¹⁵ Virginia, Tennessee, Kentucky, and Oklahoma initiated scholarship programs so that by 1937 seven of the segregationist states were using out-of-state scholarships as the lowest cost alternative to the education of black students in white public colleges.³¹⁶ The following year the Supreme Court foreclosed that alternative.

When Missouri offered Lloyd Gaines a grant to study law in another state in lieu of enrolling in the University of Missouri Law School, he filed an action in state court. Finding that the educational opportunity offered by the scholarship program was substantially equal to the opportunity offered white students at the University of Missouri, the state courts rejected

the University of Maryland. Within a year the legislature increased funding for the scholarship program, *see infra* note 315, and the State Attorney General ruled that the amended program would justify turning away new black applicants. *See* McGuinn, *supra* note 309, at 163. Although the law school continued to admit blacks, by the mid-1940s 21 law students were the only blacks enrolled in the entire university. Bradley, *The Education of Negroes in Maryland*, 16 J. NEGRO EDUC. 370, 374 (1947); Thompson, *Negro Higher Education in Maryland*, 16 J. NEGRO EDUC. 481, 489-90 (1947); *see also* McCready v. Byrd, 195 Md. 131, 133, 73 A.2d 8, 9 (1950) (black applicant denied admission to University of Maryland Nursing School), *cert. denied*, 340 U.S. 827 (1950).

314. *Pearson v. Murray*, 169 Md. 478, 484-87, 182 A. 590, 592-94 (1936).

315. The amended program included an appropriation of \$30,000 and provided for grants to cover living and transportation expenses as well as tuition. Ransom, *Education and the Law*, 7 J. NEGRO EDUC. 232, 234 (1938).

316. The Virginia legislature enacted a scholarship program in 1936 after the University of Virginia denied a black applicant admission to its graduate school. In Tennessee a black applicant to the University of Tennessee School of Pharmacy lost an action in state court on procedural grounds in 1937; within a month the legislature established a scholarship program. The programs in Oklahoma and Kentucky were enacted in 1935 and 1936. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 15-19.

Gaines's challenge.³¹⁷ In *Missouri ex rel. Gaines v. Canada*,³¹⁸ the United States Supreme Court dismissed, as "beside the point," comparisons between the university's law school and those available to Gaines in other states,³¹⁹ and held that the "essence of statehood" demanded that equal educational opportunity be provided within the boundaries of the state.³²⁰ The Court's invalidation of out-of-state scholarship programs, if not its rationale, was clear.

Because the Court's rationale in *Gaines* was limited neither to Missouri nor to legal education, its impact was potentially far-reaching. Preserving separate but equal education while complying with *Gaines* would involve substantial expenditures of public funds. Moreover, because the Court rejected the argument that limited black demand justified discrimination,³²¹ substantial expenditures would be required no matter how inefficient they might be as compared with individual grants for out-of-state study. Although the *Gaines* Court raised the ante for segregation, it did not end the game. States seeking to preserve segregation could add graduate and professional programs to their black colleges—an approach that, the Court suggested, "has been sustained by our prior decision."³²²

Missouri quickly seized the opportunity to protect its white law school from the enrollment of a black student. Within a few months of the *Gaines* decision, the state passed legislation requiring that Lincoln University, Missouri's black land grant, provide training equivalent to that at the University of Missouri. Although the legislation was not limited to legal education, the \$200,000 appropriated to implement it was apparently dedicated to the creation of a law school.³²³ In September of 1939, a black law school with four faculty and approximately thirty students opened in a building that, ironically and appro-

317. *State ex rel. Gaines v. Canada*, 342 Mo. 121, 137, 113 S.W.2d 783, 790 (1937), *rev'd*, 305 U.S. 337 (1938).

318. 305 U.S. 337 (1938).

319. *Id.* at 348-49. The Missouri Supreme Court carefully demonstrated that legal education at the University of Missouri was not uniquely tailored to Missouri law—to the point of finding that of the "6,966 cases in the casebooks used in the three-year course in the Missouri Law School, only 97 or 1.2 per cent of all such cases are from Missouri." 342 Mo. at 135, 113 S.W.2d at 789.

320. 305 U.S. at 350.

321. *Id.* at 350-51.

322. *Id.* at 344.

323. *See State ex rel. Gaines v. Canada*, 344 Mo. 1238, 1242-43, 131 S.W.2d 217, 218-19 (1939).

priately, had once housed a cosmetic school.³²⁴ Missouri, which seventy years earlier had been the first state to support a black public college and fifty years after that had established the first out-of-state scholarship program, again led the way with the first of what would become seven "separate but equal" law schools.

Other segregationist states also recognized the threat that *Gaines* and *Murray* represented. Most of them realized that preserving segregation in higher education would require new graduate and professional opportunities for black students. The President of the University of Georgia, addressing a conference of southern educators, noted the urgency of the problem and suggested possible solutions:

We must do something quickly. Already the University of Georgia had received applications for admission from three Negroes The most practical solution would be the setting up of regional Negro universities to which all states in the region would contribute. This arrangement would save the States a tremendous—if not prohibitive—cost of setting up separate graduate schools.

. . . [T]wo other possible solutions suggest themselves:

1. Expansion of Negro State colleges to provide for adequate instruction in law, medicine, teaching, the ministry, social work, and other such subjects.
2. Financial aid to privately-owned Negro colleges and universities to accomplish the same purpose³²⁵

Ultimately all three solutions were tried in the unsuccessful effort to exclude black students from white public colleges.

While *Gaines* stimulated the segregationist states to attempt new and more expensive methods of preserving racial separation, it did not deter them from continuing to use the least expensive means of meeting the black demand for equality in higher education. Within a year of the *Gaines* decision, Texas and North Carolina established scholarship programs. Six additional states had joined them by 1946, and with Mississippi's initiation of a scholarship program in 1948, a decade after *Gaines*, all but one of the segregationist states were using some form of the device.³²⁶ State officials apparently believed that

324. J. PREER, *supra* note 45, at 53; Bluford, *The Lloyd Gaines Story*, 32 J. EDUC. SOC. 242, 245 (1959). The state supreme court remanded the case to consider whether the black law school was equal to that of the University of Missouri. 344 Mo. at 1244, 131 S.W.2d at 220. The opportunity to test the equality of the two schools was lost when Gaines mysteriously disappeared to a fate that is still unknown. Bluford, *supra*, at 245-46.

325. Ransom, *Education and the Law*, 9 J. NEGRO EDUC. 114, 116 (1940) (quoting remarks of Harmon W. Caldwell).

326. See EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 15 & n.21;

black students would choose the certainty of out-of-state study over the uncertainty of protracted litigation. Financial aid offers were "in the nature of bribes to aid the state[s] in the circumvention of the Gaines decision."³²⁷ Judging by the number of blacks who took advantage of the scholarship programs, the strategy partially succeeded.³²⁸

The strategy did not, however, succeed completely. Throughout the 1940s continuing litigation by black students made clear that the luxury of segregated higher education could be preserved, if at all, only if the segregationist states were willing to pay the cost of upgrading their black public colleges.

2. Enhancement of Black Public Colleges

Most segregationist states responded to the pressure created by *Murray, Gaines*, and additional litigation during the 1940s by enhancing black educational opportunity in some form. In 1939 Maryland took over Morgan College, a private black school, while Georgia and Mississippi converted private institutions into public colleges at about the same time. In 1947 the Texas legislature initiated an ambitious effort to create a black university that would supplement the offerings of its long-neglected black land grant.³²⁹ State support for black institutions in most states increased during the 1940s.³³⁰ Through-

Brown, *The Education of Negroes in Georgia*, 16 J. NEGRO EDUC. 347, 351-52 (1947); DeCosta, *The Education of Negroes in South Carolina*, 16 J. NEGRO EDUC. 405, 411 n.20 (1947).

327. L. COZART, *supra* note 223, at 114 (address of D.O.W. Holmes).

328. By 1941 the nine states with scholarship programs had awarded grants to more than 2000 students. 2 NATIONAL SURVEY, *supra* note 161, at 20. Data from selected states suggest that the programs became increasingly popular during the 1940s. In Oklahoma, for example, the state paid \$5000 for the education of 45 students in 1935; eleven years later 276 students received scholarships at a cost of \$45,000. Richards, *Negro Higher and Professional Education in Oklahoma*, 17 J. NEGRO EDUC. 341, 347 (1948). Virginia's program began in 1936 with \$10,000 in payments to 128 students; by 1949 the state was funding nearly 650 students at a cost of more than \$123,000. Capps, *The Virginia Out-of-State Graduate Aid Program, 1936-1950*, 25 J. NEGRO EDUC. 25, 29 (1956).

329. J. PREER, *supra* note 45, at 47 (Maryland); W. RANGE, *supra* note 29, at 202 (Georgia); Alexander, *The Education of Negroes in Mississippi*, 16 J. NEGRO EDUC. 375, 377, 380 (1947); see *infra* notes 373-386 and accompanying text (Texas).

330. For example, in 1946 Georgia increased funding to its black public colleges from \$208,000 to \$426,000. Brown, *Negro Higher and Professional Education in Georgia*, 17 J. NEGRO EDUC. 280, 285 (1948). North Carolina increased biennial appropriations for its five black institutions from \$621,000 in 1941 to nearly \$2 million in 1947. Harris, *Negro Higher and Professional Education in*

out the region, state funding for the seventeen black land grants increased by 550% between 1940 and 1953, while the increase at the white land grants was 350% for the same period.³³¹ Increased funding was often targeted on areas in which inequality was most obvious and easily proven. Some states attempted to equalize faculty salaries, while others appropriated increased amounts for the construction of new facilities.³³²

Compared to the earlier standards of separate but equal, the funding increases and other improvements represented a major step forward for many black public colleges. The number of institutions approved by a regional accrediting agency grew from eleven black public colleges in nine states at the beginning of the 1940s to twenty-four colleges in fourteen states by the end of the decade.³³³ Additional funds and new facilities also allowed black institutions to accommodate rapidly growing enrollments produced by the increasing number of high school graduates and the influx of World War II veterans.³³⁴

The segregationist states' response to litigation expanded black educational opportunity, but it did not approach the point of achieving equality. In Maryland, for example, the 1939 acquisition of Morgan College gave the state its only accredited

North Carolina, 17 J. NEGRO EDUC. 335, 339 (1948). In South Carolina state support for the black land grant increased fivefold to more than half a million dollars in 1948. DeCosta, *supra* note 326, at 410; DeCosta, *Negro Higher and Professional Education in South Carolina*, 17 J. NEGRO EDUC. 350, 356 (1948).

331. W. Trueheart, *supra* note 63, at 168.

332. For efforts to equalize salaries, see, for example, Brown, *supra* note 326, at 352 (Georgia); Cade & Hebert, *Negro Higher and Professional Education in Louisiana*, 17 J. NEGRO EDUC. 296, 298-300 (1948); Daniel, *Negro Higher and Professional Education in Virginia*, 17 J. NEGRO EDUC. 382, 385 (1948); Roberts, *Negro Higher and Professional Education in Tennessee*, 17 J. NEGRO EDUC. 361, 366 (1948). For increased capital expenditures, see, for example, L. NEYLAND & J. RILEY, *supra* note 68, at 178-79 (Florida); Greene, *Negro Higher and Professional Education in West Virginia*, 17 J. NEGRO EDUC. 393, 398 (1948); Harris, *supra* note 330, at 339 (North Carolina); Martin, *Negro Higher and Professional Education in Arkansas*, 17 J. NEGRO EDUC. 255, 260 (1948).

333. See Jenkins, *Enrollment in Institutions of Higher Education of Negroes, 1949-50*, 19 J. NEGRO EDUC. 197, 198-203 (1950); *supra* notes 271-273 and accompanying text.

334. In 1939 31 black public colleges, some of which were still two-year normal schools, enrolled 17,400 students and conferred 2400 bachelor's degrees. A decade later enrollments and degrees conferred had doubled to nearly 35,000 students and more than 5700 graduates in 33 institutions, all of which were four-year colleges. See Jenkins, *supra* note 333, at 198-203; Jenkins, *Enrollment in Negro Colleges and Universities, 1939-1940*, 9 J. NEGRO EDUC. 266, 268-70 (1940).

black public institution and brought into the system a strong liberal arts college. Eight years later the Maryland Commission on Higher Education reported that it was "shocked by the comparison . . . between the expenditure per student at Morgan . . . and at every other comparable institution in the state."³³⁵ Moreover, a survey by the American Council of Education concluded that Maryland's "shamefully neglected" black land grant was "[w]ithout question . . . the weakest land-grant college anywhere in the United States."³³⁶ In South Carolina, despite increased capital funding for the black land grant, the institution remained "totally inadequate to provide the necessary facilities for the higher education of the Negro youth of the State."³³⁷ Although the black land grants as a group benefited from an increased share of state land grant appropriations, by 1952 the black institutions were receiving only four percent of state land grant funding to serve twenty percent of the region's population.³³⁸

Throughout the 1940s, as previously, black intellectual resources were not being developed to the same extent as white resources.³³⁹ At mid-decade no faculty member at the black land grants in Mississippi and Maryland held a doctorate, while in South Carolina only one member of the black land grant faculty of seventy-three had a doctoral degree.³⁴⁰ Even in states where black colleges employed larger numbers of faculty

335. Thompson, *supra* note 313, at 484.

336. *Id.* at 482.

337. DeCosta, *supra* note 326, at 412 (quoting State Director of Public Higher Education).

338. W. Trueheart, *supra* note 63, at 168. The increase in state funds appears impressive, rising from \$2.3 million in 1940-1941 to \$14.5 million in 1952-1953. During the same period, however, state funds to the white land grants increased from \$79 million to \$362 million. Thus, the percentage allocated to the black schools grew from 2.8% to only 3.8%. *Id.*

339. Jenkins, *The Availability of Higher Education for Negroes in the Southern States*, 16 J. NEGRO EDUC. 459, 473 (1947).

340. In 1945 both black public colleges in Mississippi had a complete absence of doctoral holders on their faculties. At five white public colleges, the percentage of faculty with doctorates ranged from 17% to 57%. Alexander, *supra* note 329, at 377. In Maryland the black land grant college and the black state teachers college had no faculty with doctorates in 1946, while one-third of Morgan State College's faculty held doctorates. The white land grant college and two of three white state teachers colleges had faculties with 40% or more holding doctorates. Bradley, *Negro Higher and Professional Education in Maryland*, 17 J. NEGRO EDUC. 303, 307 (1948). In contrast to the one black holding a doctorate at South Carolina's black land grant, the state's white public colleges employed 156 faculty with doctorates. DeCosta, *Negro Higher and Professional Education in South Carolina*, 17 J. NEGRO EDUC. 350, 354 (1948).

with advanced degrees, the percentage of faculty holding doctorates was always much lower than that at comparable white institutions.³⁴¹

The black public college curriculum, like its funding, facilities, and faculty, followed what one commentator in the *Journal of Negro Education* called the "familiar and depressing pattern of inequality."³⁴² Most black public colleges continued to concentrate on their traditional functions of teacher training and vocational education. In Alabama at mid-decade, for example, the large majority of students at the black land grant studied education and mechanic arts, and the state's other black public college offered bachelor's degrees only in education. Two-thirds of the 1947 graduates of South Carolina's black land grant, the state's only black public college, had taken a teacher training curriculum.³⁴³

The pattern of inequality was even more evident, and more difficult to defend, in graduate and professional education, the primary target of the NAACP challenge. Whatever the possibility of claiming equality in undergraduate education by citing increased appropriations, new buildings, and higher faculty salaries, it would be difficult to argue that a school of mechanic arts or programs in vocational education were the substantial equivalent of the law, medical, and engineering schools at white institutions. A black public college offering only a bachelor's degree in education and a few other fields could hardly satisfy a black student's constitutional right of equal access to the varied master's and doctoral programs that the segregationist states maintained exclusively for their white citizens. Although many black students seeking a graduate or professional degree might accept out-of-state scholarships, *Gaines* required that blacks be

341. In North Carolina 22 (8.3%) of the 265 faculty members at five black public colleges had doctoral degrees by 1947. At six white public colleges, 465 (38%) of a total faculty of 1222 had doctoral degrees. Harris, *supra* note 330, at 339-40. At Florida's black land grant (and only black public college), six percent of the faculty had doctoral degrees. For the two white public colleges the percentages were 42 and 24. Bracey, *Negro Higher and Professional Education in Florida*, 17 J. NEGRO EDUC. 272, 275 (1948). In Missouri the percentages of faculty with doctoral degrees at black and white public colleges were respectively 26 and 44 in 1946. Reedy, *Negro Higher and Professional Education in Missouri*, 17 J. NEGRO EDUC. 321, 325-26 (1948). In West Virginia they were 11 and 26. Greene, *supra* note 332, at 395.

342. Jenkins, *supra* note 339, at 469.

343. Anderson, *Negro Higher and Professional Education in Alabama*, 17 J. NEGRO EDUC. 249, 251 (1948); DeCosta, *supra* note 340, at 351-52. Note also the comparisons of course offerings in Bracey, *supra* note 341, at 275 (Florida); and Richards, *supra* note 328, at 345 (Oklahoma).

provided the same educational opportunities available to whites if only one black student elected to study within the state. As one black educator observed: "The luxury of educational segregation at the post collegiate level . . . seems to be perfectly legal and at the same time promises to prove immensely expensive."³⁴⁴

Even if the segregationist states had been willing and able to pay the expense of duplicating the professional and graduate schools of their white public colleges, substantial equality was not a realistic goal. The black undergraduate schools provided an inadequate foundation for new programs of postgraduate education. The underdeveloped curricula, libraries, and other facilities of the institutions could not meet even minimal standards for the development of advanced programs. The limited national supply of faculty with doctoral degrees could not possibly satisfy the needs of seventeen or more black graduate schools.

Indeed, proposals for providing postgraduate instruction at black public colleges met with strong reservations on the part of those concerned about the quality of black higher education. Black educators argued that undergraduate programs should be further developed before attempting to expand beyond the four-year curriculum.³⁴⁵ The *National Survey of the Higher Education of Negroes* recommended against offering advanced programs, finding that "[i]n view of the facilities required for offering acceptable graduate and professional work—in terms of staff, libraries, laboratories, qualified students, finances, and scholarly atmosphere—it is obvious that the number of institutions and departments of instruction for Negroes qualified to offer such work is very limited."³⁴⁶ A study of black education published just after the *Gaines* decision concluded that because so few black public colleges had adequate undergraduate programs, it would be impractical to attempt to develop separate black graduate schools. The study correctly predicted: "For some years to come, it is almost certain that enterprises of this sort would consist primarily in affixing the graduate label to institutions which lack the resources, financial and otherwise, to

344. L. COZART, *supra* note 223, at 112 (address of D.O.W. Holmes).

345. See, e.g., *id.* at 115-16; F. MCCUISTION, *supra* note 229, at 106; Wesley, *The Outlook for the Graduate and Professional Education of Negroes*, 11 J. NEGRO EDUC. 423, 432-33 (1942); 16 CONF. PRES. NEGRO LAND GRANT CS. 68, 68-69 (1938).

346. 4 NATIONAL SURVEY, *supra* note 161, at 47, 48.

do standard graduate work."³⁴⁷

The stimulus of continuing litigation,³⁴⁸ however, required that the segregationist states make some effort to justify exclusion of black students from graduate and professional programs at white public colleges. In most instances the effort reflected a complete lack of good faith. Some states resorted to makeshift arrangements to preserve segregation without paying the full cost of equality. Kentucky and Arkansas attempted to meet the black demand for graduate programs by using the faculty of their white public colleges to teach courses on or near the campuses of their black institutions.³⁴⁹ Other states attempted to circumvent *Gaines* by funding educational opportunities at private black colleges within the state.³⁵⁰ Relying on ambiguous language in the *Gaines* opinion,³⁵¹ some states enacted new leg-

347. D. WILKERSON, *supra* note 64, at 69.

348. See, e.g., *Wrighten v. Board of Trustees*, 72 F. Supp. 948 (E.D.S.C. 1947) (black applying to white law school); *Bluford v. Canada*, 32 F. Supp. 707 (W.D. Mo. 1940) (black applying to white graduate school of journalism), *appeal dismissed*, 119 F.2d 779 (8th Cir. 1941); *State ex rel. Michael v. Witham*, 179 Tenn. 250, 165 S.W.2d 378 (1942) (blacks applying to white professional and graduate schools); *Givens v. Woodward*, 207 S.W.2d 234 (Tex. Civ. App. 1947) (attempt to compel University of Texas to establish black school of dentistry), *dismissed for want of juris.*, 146 Tex. 396, 208 S.W.2d 363 (1948).

349. Ten years after *Gaines*, the University of Arkansas opened a "Graduate Residence Center" in Pine Bluff, the location of the state's black land grant college. With classes held in the local high school, the Center was staffed with persons from both the black and white institutions, and from state agencies. Penrose, *Report from Pine Bluff: A Point of View in Higher Education for Negroes*, 18 HARV. EDUC. REV. 146, 146-47 (1948). In response to a lawsuit filed by a black student who was denied admission to a doctoral program at the white University of Kentucky, the university created a contractual arrangement whereby the faculty of the university would offer graduate instruction at the black Kentucky State College. Thompson, *Administrators of Negro Colleges and the Color Line in Higher Education in the South*, 17 J. NEGRO EDUC. 437, 438-40 (1948).

350. In Tennessee in 1943, the State Board of Education entered into an agreement with Meharry Medical College, a private black institution, to pay for the education of blacks in medicine, dentistry, and nursing. M. PIERSON, *supra* note 301, at 162. Alabama provided an annual appropriation of \$100,000 to Tuskegee Institute to support that private institution's graduate programs in vocational agriculture and vocational home economics. *Id.* at 162-63, 169. In Georgia the scholarship program for black students required that they attend Atlanta University, a private black college, if the relevant course offerings were available there. Nearly all blacks who received scholarships enrolled at Atlanta. See Brown, *supra* note 326, at 351; Brown, *supra* note 330, at 286.

351. Counsel for the University of Missouri in *Gaines* contended that, had *Gaines* so requested, state law required the Lincoln University curators to establish a black law school. The United States Supreme Court, however, read the relevant statute as giving the curators discretion to decide whether it was "necessary and practicable in their opinion" to expand Lincoln's educational

isolation requiring equal educational opportunity, but took little or no action toward implementing that requirement until black students had made a specific demand for a particular graduate or professional program. Such tactics found acceptance in excessively patient state and federal courts. Nearly a decade after *Gaines*, a federal district court in South Carolina rejected the argument that a proposed black law school was "a theory rather than a condition" and concluded that it was only "fair and just" to allow further delay of legal education for blacks while the state attempted to create a law school.³⁵² As delaying tactics gradually gave way to the pressure of litigation, a patchwork of new programs was developed in the black system of public colleges. By the late 1940s, black institutions in a majority of the segregationist states offered some limited form of graduate or professional instruction.³⁵³

The development of graduate and professional programs at black public colleges was not designed to and did not achieve either equality or even a substantial broadening of educational opportunity for black students. The growth of new programs proceeded in a hasty and irrational manner as higher educational planning for blacks was driven by the NAACP's litigation strategy rather than by a considered plan for institutional development. Because the attack on the separate but equal doctrine focused on legal education, between 1939 and 1951 seven law schools appeared at black public colleges.³⁵⁴ When a black

program or whether black educational needs should be satisfied by out-of-state scholarships. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 346-48 (1938) (quoting the state statute). From this discussion a number of the segregationist states apparently inferred that a statutory requirement to produce black graduate and professional schools on demand would satisfy the separate but equal formula, at least until a proper demand had been made and the state had been given time to respond to it. Missouri, for example, quickly amended its laws to remove the phrase "whenever necessary and practicable in their opinion." *See State ex rel. Gaines v. Canada*, 344 Mo. 1238, 1242-43, 131 S.W.2d 217, 218 (1939).

352. *Wrighten v. Board of Trustees*, 72 F. Supp. 948, 952-53 (E.D.S.C. 1947); *see Bluford v. Canada*, 32 F. Supp. 707 (W.D. Mo. 1940), *appeal dismissed*, 119 F.2d 779 (8th Cir. 1941); *State ex rel. Bluford v. Canada*, 348 Mo. 298, 153 S.W.2d 12 (1941); *Sipuel v. Board of Regents*, 199 Okla. 36, 180 P.2d 135 (1947), *rev'd*, 332 U.S. 631 (1948); *State ex rel. Michael v. Witham*, 179 Tenn. 250, 165 S.W.2d 378 (1942).

353. *See Cade & Hebert, supra* note 332, at 300; *Jenkins, Graduate Work in Negro Institutions of Higher Education*, 18 J. HIGHER EDUC. 300, 300-01 (1949); *Richards, supra* note 328, at 349.

354. The law school of Lincoln University in Missouri opened in 1939, nine months after *Gaines* invalidated the state's scholarship program. *See supra* text accompanying notes 317-324. North Carolina established a law school at

student sought admission to the graduate program in journalism at the University of Missouri, a journalism program was added to the state's black land grant.³⁵⁵ In Florida, actions brought by black students denied admission to the white university's programs in pharmacy, engineering, and graduate studies in agriculture produced hasty efforts to duplicate those programs at Florida Agricultural and Mechanical College, the only black public college in the state.³⁵⁶ Not surprisingly, institutional expansion based on an immediate need to maintain segregation produced small benefits for the black institutions and the students they served:

[T]he legislative mandates for graduate and professional programs were meaningless without provisions for careful planning, without funds for attracting or training qualified faculty, without facilities and equipment, and without sufficient support for undergraduate programs.

....

... At bottom, the court cases, in conjunction with mandated graduate programs and out-of-state scholarship programs, led to legis-

the North Carolina College for Negroes in 1940. M. PIERSON, *supra* note 301, at 157-58. In response to litigation, three black law schools were opened in 1947: one in South Carolina, *see* *Wrighten v. Board of Trustees*, 72 F. Supp. 948, 951-52 (E.D.S.C. 1947); DeCosta, *supra* note 340, at 351 n.2; one in Texas, *see infra* notes 374-384 and accompanying text; and one in Louisiana, *see* *Wilson v. Board of Supervisors*, 92 F. Supp. 986, 988 (E.D. La. 1950), *aff'd*, 340 U.S. 909 (1951); EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 22-23; Cade & Hebert, *supra* note 332, at 300. In Oklahoma the Langston School of Law was opened two weeks after the Supreme Court decided *Sipuel v. Board of Regents*, 332 U.S. 631 (1948) (holding that black applicant must be afforded legal education at same time as whites). G. CROSS, *BLACKS IN WHITE COLLEGES: OKLAHOMA'S LANDMARK CASES* 47-55 (1975). The seventh black law school was established at Florida's black land grant college in 1951 in response to Virgil Hawkins's indefatigable efforts to gain admission to the University of Florida Law School. *See* J. PREER, *supra* note 45, at 137-38; *infra* note 402.

Of the seven law schools, those in Louisiana, North Carolina, and Texas still exist. Oklahoma's black law school enrolled one student during its short life and was closed in 1949. G. CROSS, *supra*, at 114. The black law school in Missouri closed in 1955; South Carolina closed its black law school in 1966 and Florida did the same in 1968. W. Trueheart, *supra* note 63, at 191 n.42.

355. *See State ex rel. Bluford v. Canada*, 348 Mo. 298, 306, 153 S.W.2d 12, 16 (1941); Reedy, *The Education of Negroes in Missouri*, 16 J. NEGRO EDUC. 381, 384 (1947).

356. *See State ex rel. Maxey v. Board of Control*, 47 So. 2d 618, 618-19 (Fla. 1950); *State ex rel. Boyd v. Board of Control*, 47 So. 2d 619, 620 (Fla. 1950); *State ex rel. Finley v. Board of Control*, 47 So. 2d 620, 621 (Fla. 1950); W. Trueheart, *supra* note 63, at 159. Because of insufficient funds and a lack of faculty, the black land grant college did not successfully establish programs in engineering and agriculture, but it opened a division of pharmacy in 1951. L. NEYLAND & J. RILEY, *supra* note 68, at 251, 261-62; W. Trueheart, *supra* note 63, at 159.

lative juggling of the paltry sums considered sufficient for "colored" public higher education. From the point of view of the [black colleges], graduate programs turned out to be, for the most part, empty victories—graduate in name only, expedient add-ons In short, . . . the spate of court decisions . . . refocused official state attention away from the [black schools'] essential institutional needs and toward the defense of favored white centers of exclusivity.³⁵⁷

Ten years after *Gaines*, the efforts of the segregationist states to achieve equality were clearly failing. In graduate education only eleven black institutions in nine states offered master's degrees, and none included a doctoral program. In the fall of 1949, graduate enrollment in ten of the institutions was only 675. During the prior year, the ten schools had awarded only 346 graduate degrees, with more than half of those conferred by two colleges in Texas.³⁵⁸ For the most part, the master's programs at black public colleges were simply an extension of the institutions' traditional function of teacher training. Enrollments swelled during the summer session as public school teachers sought the salary increase that came with the master's degree.³⁵⁹ The continuing focus on the preparation of public school teachers, even at the graduate level, meant that black public higher education remained as much a vehicle for restricting as for expanding black opportunity.

3. Regional Education

The cost of the *Gaines* requirement of substantial equality, the failure of the segregationist states to achieve equality, and the continuing pressure of litigation led to a final effort to save the separate but equal doctrine: the pooling of state resources for the creation of regional black colleges. Regional institutions were an attractive solution to the problem for an obvious reason—lower cost. One regional black medical school, for example, could be more easily supported than seventeen medical schools at black public colleges in each state. Indeed, medical education presented the most pressing problem and the strong-

357. W. Trueheart, *supra* note 63, at 151, 157-58.

358. Jenkins, *supra* note 333, at 206. The enrollment and degrees conferred do not include unaccredited Fort Valley State College in Georgia.

359. Bond, *The Evolution and Present Status of Negro Higher and Professional Education in the United States*, 17 J. NEGRO EDUC. 224, 230-31 (1948); Daniel & Daniel, *The Curriculum of the Negro College*, 19 J. EDUC. SOC. 496, 500-01 (1946). Compared with the 675 graduate students in the fall of 1949, the 10 black public colleges with master's programs enrolled 2400 students during the summer of the same year. See Jenkins, *supra* note 333, at 206; Jenkins, *Enrollment in Institutions of Higher Education of Negroes, 1948-49*, 18 J. NEGRO EDUC. 568, 575 (1949).

est argument for regional schools. A state could create a three-professor law school on short notice and with limited funds, but the faculty, facilities, and equipment required for a medical school would be much more expensive and impossible to produce on demand.

Regional education as a means of preserving segregation found early support in the years shortly after *Gaines*,³⁶⁰ but judicial tolerance of delay during most of the 1940s reduced the need for action. In 1948, however, when the Supreme Court decided in *Sipuel v. Board of Regents*³⁶¹ that blacks must be provided with equal educational opportunities at the same time as whites, the segregationist states quickly responded. Within a month of the decision, the Governors of fourteen states had signed a Regional Education Compact.³⁶² Originally designed to circumvent *Gaines*, by 1949 the regional plan had been modified to become little more than a cooperative, out-of-state scholarship program.³⁶³ Nevertheless, the legislatures of the

360. In 1943 southern state educational officials favorably considered a proposal for using regional centers to provide graduate and professional instruction for blacks. M. PIERSON, *supra* note 301, at 171-73. Two years later the Conference of Deans of Southern Graduate Schools, recognizing that "graduate programs available for Negroes are far from adequate," resolved: "For the Negroes, regional centers seem to offer, from the academic standpoint, the most immediate and effective relief." *Id.* at 175. The Conference also expressed its approval of out-of-state scholarships as a "temporary expedient," despite the Supreme Court's ruling in *Gaines* seven years earlier. *Id.*

361. 332 U.S. 631 (1948).

362. *Sipuel* was decided on January 12, 1948. *Id.* The Governors signed the Compact at the Conference of Southern Governors on February 8, 1948. Thompson, *Extension of Segregation Through Regional Schools*, 17 J. NEGRO EDUC. 101, 101 (1948). Support for regional education—for both white and black students—was not limited to those who sought to preserve segregation. Some educators believed that interstate cooperation was essential to improving higher education generally in a region that had not been a national leader in the development of colleges and universities. See Ivey, *Regional Education: An Experiment in Democracy*, 10 PHYLON 381, 382-83 (1949); McGlothlin, *The South Advances*, 21 J. HIGHER EDUC. 113, 118-20 (1950); Smythe, *The Southern Regional Universities Plan*, 21 J. HIGHER EDUC. 121, 124-25 (1950). Nevertheless, it seems clear from the timing of the regional plan and the careful drafting of the original compact, see *infra* note 363, that governors, legislators, and many white educators supported the plan in the hope that regional education would "preserve racial segregation without imposing an intolerable financial burden upon the individual states." Comment, *Constitutionality of the Proposed Regional Plan for Professional Education of the Southern Negro*, 1 VAND. L. REV. 403, 404 (1948); see G. CROSS, *supra* note 354, at 78-79; J. FREER, *supra* note 45, at 83; Thompson, *supra*, at 104.

363. Under the Compact signed in 1948, regional education was to be provided in newly developed institutions, title to which would be vested in a Board of Control. Regional Education Compact § 6, *reprinted in* Comment,

participating states appropriated \$1.5 million to fund regional education in the fields of medicine, dentistry, and veterinary medicine, which were "selected initially because urgent demands existed in the states."³⁶⁴ In the 1949-1950 academic year, 181 blacks and 207 whites received state support under the program.³⁶⁵ By that time, however, the barrier of segregation in higher education was beginning to weaken.

B. VICTORY IN THE COURTS

Until 1948, twelve years after *Pearson v. Murray*,³⁶⁶ judicial tolerance of delay, makeshift arrangements, and ad hoc responses to individual lawsuits preserved *Murray* as the only case resulting in the admission of black students to a white public college. West Virginia had voluntarily begun to admit a small number of black students to graduate and professional programs at its white state university as early as 1938,³⁶⁷ but in every other state the wall of segregation remained. The situation began to change in 1948 with the Supreme Court's apparent rejection of delaying tactics in *Sipuel*.³⁶⁸

Within a few weeks of *Sipuel*, Delaware and Arkansas permitted limited enrollment of blacks in programs of study not available at the states' black public colleges.³⁶⁹ Soon thereafter

supra note 362, at 422. In addition, the states were to fund the regional institutions with contributions based on population rather than by scholarships for individual students. *Id.* § 9, at 423. These two provisions appear to be the key means by which the southern states could defend the Compact against challenge under *Gaines*. See Comment, *supra* note 362, at 415-19. As subsequently implemented, however, the Compact provided for the use of existing black institutions and reduced the function of the Board of Control from ownership of regional schools to an intermediary for administering contracts between institutions and participating states. State payments to the institutions were based on the number of students from the state attending a participating school. Ivey, *supra* note 362, at 385; McGlothlin, *supra* note 362, at 116.

364. Ivey, *supra* note 362, at 385-86. For black students, Meharry Medical College provided instruction in medicine and dentistry, while Tuskegee Institute offered veterinary medicine. *Id.* at 385. Both were private black colleges.

365. Bonds, *The Implication of Regional Education Patterns for Negro Land Grant Colleges*, 28 CONF. PRES. NEGRO LAND GRANT CS. 73, 76 (1950). In the 1950-1951 academic year, the regional program included 402 white and 182 black students. *Id.*

366. 169 Md. 478, 182 A. 590 (1936).

367. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 19. Ten years later the University of West Virginia was reported to have a black enrollment of only nine students. Greene, *supra* note 332, at 397.

368. 332 U.S. 631, 633 (1948) (per curiam).

369. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 28-29; Wright, *Negro Higher and Professional Education in Delaware*, 17 J. NEGRO EDUC. 265, 270-71 (1948).

a federal district court held that, in the absence of graduate programs at Oklahoma's black land grant, a black student was entitled to attend graduate school at the University of Oklahoma.³⁷⁰ In 1949 a federal court in Kentucky concluded that a makeshift graduate school at the state's black land grant "does not and cannot afford the equality of educational facilities and training required by the Fourteenth Amendment."³⁷¹ The following year the Maryland Court of Appeals held that the state's participation in the Regional Education Compact failed to satisfy the constitutional requirements established in *Gaines*.³⁷² Delay, makeshift arrangements, and regional education quickly became ineffective means for maintaining segregation. In 1950 the United States Supreme Court appeared to foreclose the only remaining method for preserving forced racial separation in higher education when it considered the educational opportunities at a black law school in Texas.

1. Separate But Equal—Texas Style

Texas initially responded to black pressure for equal educational opportunity by following the familiar and inadequate pattern of the other segregationist states. After *Gaines*, the legislature created an out-of-state scholarship program and superficially attempted to improve Prairie View State College, the Texas black land grant.³⁷³ When Heman Sweatt applied for admission to the University of Texas Law School in 1945, the

370. *McLaurin v. Oklahoma State Regents*, 87 F. Supp. 526, 528 (W.D. Okla. 1948), *rev'd*, 339 U.S. 637 (1950). *McLaurin* was admitted to the University of Oklahoma doctoral program in education, but was segregated from his fellow students in the classroom, library, and cafeteria. *Id.* at 530. When he challenged this arrangement, a three-judge federal court upheld the segregation. *Id.* at 531. The Supreme Court subsequently declared segregation within the institution to be unconstitutional. 339 U.S. at 642.

371. *Johnson v. Board of Trustees*, 83 F. Supp. 707, 710 (E.D. Ky. 1949). The "graduate school" at the black college simply represented a contractual arrangement by which University of Kentucky faculty offered graduate instruction on the campus of the black land grant college. *Id.* at 709; *see supra* note 349.

372. *McCready v. Byrd*, 195 Md. 131, 137-38, 73 A.2d 8, 11, *cert. denied*, 340 U.S. 827 (1950).

373. Texas began a scholarship program in 1939. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 15 n.21. Prairie View initiated a modest graduate program in 1938 with a two-year appropriation of \$18,000. Subsequently, the legislature slightly increased the institution's budget and changed the name of the school to Prairie View University. From 1938 to 1943, Prairie View granted only 51 master's degrees. M. PIERSON, *supra* note 301, at 155, 243; Jones, *The Sweatt Case and the Development of Legal Education for Negroes in Texas*, 47 TEX. L. REV. 677, 681 (1969).

state hastily organized a makeshift program for the legal education of blacks.³⁷⁴

In 1946, however, Texas inaugurated what was likely the most significant effort to preserve segregation through the development of black public colleges. A newly elected Governor appointed a Bi-Racial Commission on Negro Education and, following the Commission's report, recommended that the legislature create a first-class black university.³⁷⁵ The legislature responded in March of 1947 by establishing the Texas State University for Negroes to provide blacks with education, equivalent to that at the University of Texas, in the arts and sciences, literature, law, medicine, pharmacy, dentistry, journalism, education, and other professional courses. To fund the new college, the legislature appropriated the extraordinary amount of \$2 million for facilities and \$500,000 per year for operating costs.³⁷⁶ In short order the school acquired the facilities of the Houston College for Negroes, a floundering municipal institution with an emphasis on vocational education, and began construction on a new classroom and administration building.³⁷⁷

The amount of funding was not the only unusual feature of Texas's effort to meet black educational needs in a segregated institution. Breaking with the established pattern of full white control over black public colleges, the legislation provided for an integrated Board of Trustees, and the Governor quickly appointed a Board of five whites and four blacks.³⁷⁸ The Board selected a black President with a distinguished background and recruited faculty from black institutions across the South by

374. In the statute renaming Prairie View, the Texas legislature further required that the institution offer courses in law, medicine, engineering, pharmacy, journalism, and any other course taught at the University of Texas whenever there was a demand for such courses. See *Sweatt v. Painter*, 210 S.W.2d 442, 447 (Tex. Civ. App. 1948), *rev'd*, 339 U.S. 629 (1950). The state trial court in *Sweatt's* case gave the state six months to establish "a course for legal instruction substantially equivalent to that offered at the University of Texas." *Id.* at 446. Prairie View arranged for black attorneys in Houston to instruct *Sweatt* in their law offices. Satisfied with this action, the state trial court ruled against *Sweatt*. The Texas Court of Civil Appeals reversed and remanded for further proceedings. *Id.*; see O. JOHNSON, PRICE OF FREEDOM 2-3 (1954); Jones, *supra* note 373, at 682.

375. Jones, *supra* note 373, at 682-83.

376. *Sweatt v. Painter*, 210 S.W.2d at 447.

377. See I. BRYANT, TEXAS SOUTHERN UNIVERSITY: ITS ANTECEDENTS, POLITICAL ORIGIN, AND FUTURE 35, 53-55 (1975); O. JOHNSON, *supra* note 374, at 4-5.

378. See *Sweatt v. Painter*, 210 S.W.2d at 447; O. JOHNSON, *supra* note 374, at 6.

paying higher than usual salaries.³⁷⁹ By 1949 the Texas State University for Negroes had a liberal arts college approved by the Southern Association, a graduate school, schools or departments of journalism, law, and pharmacy, and a school of technical and vocational education. The faculty of 149 included twenty-one persons with doctorates.³⁸⁰ In 1949 the new university nearly tripled the output of undergraduate degrees conferred by the municipal college it had replaced and conferred nearly one-third of all graduate degrees granted by ten black public colleges in eight states.³⁸¹

The law school of the new university also developed rapidly. To meet the immediate demand of the *Sweatt* litigation, the 1947 legislation included a separate appropriation of \$100,000 to establish a temporary law school in Austin staffed by faculty and administrators of the University of Texas.³⁸² Meanwhile, substantial progress was being made in organizing the law school at the main facility in Houston. A black Dean, five full-time instructors, and a law librarian were appointed. Because of the litigation, the law school was favored over other elements of the university in the use of existing facilities, faculty salaries, and the acquisition of a library. Under the stimulus of funds dedicated to law scholarships, the law school's enrollment had reached twenty-three students by the time the school was relocated to Houston in the fall of 1949.³⁸³ By the beginning of 1950, as the Texas Attorney General prepared for oral argument in *Sweatt*, the black law school had secured the approval of both the State Board of Law Examiners

379. O. JOHNSON, *supra* note 374, at 14-15, 17-18. The first President of the new university was R. O'Hara Lanier, who previously had been a member of the faculty of Lincoln University in Pennsylvania and of Tuskegee Institute in Alabama, Dean at Florida's black land grant college and at Hampton Institute, and Minister to Liberia during the first Truman administration. *Id.* at 18; I. BRYANT, *supra* note 377, at 9, 57.

380. O. JOHNSON, *supra* note 374, at 49-51; J. PREER, *supra* note 45, at 102-03.

381. In 1949 the Texas State University for Negroes conferred 191 undergraduate degrees and 111 master's degrees. See Jenkins, *supra* note 333, at 203, 206; Jenkins, *Enrollment in Institutions of Higher Education for Negroes 1946-47*, 16 J. NEGRO EDUC. 224, 228 (1947).

382. *Sweatt v. Painter*, 210 S.W.2d at 447-48; Jones, *supra* note 373, at 683-84. The state trial court considered the interim Austin facility after remand from the court of civil appeals. Both the trial court and the appellate court found that the temporary school was substantially equal to the law school at the University of Texas. *Sweatt v. Painter*, 210 S.W.2d at 446-47.

383. O. JOHNSON, *supra* note 374, at 16, 34-35, 38, 42-44.

and the American Bar Association.³⁸⁴

The attempt to preserve separate but equal higher education in Texas exceeded that of the other segregationist states, few of which were either able or willing to make such a major commitment of resources to black education. It was impossible, however, to overcome nearly a century of neglect in a few years or with a few million dollars. The black university, as much as it may have expanded educational opportunities for black Texans, fell far short of the statutory goal of equivalency with the University of Texas, which was one of the leading universities of the South. The University of Texas's support of organized research exceeded that of any other university in the region; its faculty included nationally recognized scholars; its library was ranked thirteenth among the nation's college and university libraries. Moreover, the University of Texas had organized its graduate school in 1910, and by the mid-1940s the graduate school included a faculty of 150 and had granted more than 500 doctoral degrees, with nearly half of them in the fields of science, mathematics, and engineering.³⁸⁵ Clearly the Texas State University for Negroes could not afford educational opportunities equal to those of the University of Texas.³⁸⁶

The experience in Texas was instructive. The state had made a substantial and successful effort to provide its black citizens with higher educational opportunities far beyond those that existed during most of the separate but equal era. The significant commitment of resources, in comparison with the deprivation of past years, seemed almost generous. The state had produced an institution that may have appeared impressive to portions of the black community and that attracted both students and qualified faculty. Nevertheless, the gap between public higher education for blacks and whites in Texas, as in other

384. *Id.* at 44, 102-05. The black law school also met the requirements of the Association of American Law Schools (AALS), but action on its request for admission to the AALS was deferred because of the pending litigation. *Id.* at 136. For Dean Ozie Johnson's interesting and detailed account of the AALS proceedings, entitled "Comedy at Chicago," see *id.* at 124-37.

385. See M. PIERSON, *supra* note 301, at 115-16, 121, 134-38, 179-84, 218, 230, 242.

386. Even as state officials claimed that the black law school was equal to the University of Texas's law school, they were forced to concede implicitly that the two universities were unequal in other respects. When a black student attempted to enroll in a doctoral program at the white university, the state resorted to a contractual arrangement for off-campus instruction. The prohibitive cost of creating a black medical school also required that the University of Texas admit a black applicant to its medical school in 1949. O. JOHNSON, *supra* note 374, at 87; EQUAL PROTECTION OF THE LAWS, *supra* 23, at 30.

states, was so great and had existed for so long that the goal of equality was simply unrealistic—unless the *Gaines* standard of “substantially equivalent” higher education was a euphemism for education adequate for an inferior race.³⁸⁷

When the United States Supreme Court decided *Sweatt v. Painter*³⁸⁸ in 1950, it refused to accept a diluted standard of equality. In an opinion that all but destroyed what remained of the separate but equal barrier to desegregation of white public colleges, the Court found that the black law school was inferior in terms of the tangible measures of equality.³⁸⁹ More importantly, in its first decision ordering that a white public college admit a black student, the Court went on to find that there was essentially no means by which Texas could maintain a segregated law school in compliance with the equal protection clause:

[T]he University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige.³⁹⁰

The rationale of *Sweatt* sounded the death knell for the lawful exclusion of black students from white public colleges—at least at the level of graduate and professional study. The Court declined to “reach petitioner’s contention that *Plessy v. Ferguson* should be reexamined,”³⁹¹ but by relying on the intangible qualities of higher education, the Court effectively informed the segregationist states that further efforts to establish graduate and professional programs at black institutions would be constitutionally inadequate. In medicine, the liberal arts, and the sciences, no less than in law, the reputation of the faculty, the position and influence of the alumni, and traditions and prestige were also qualities “which make for greatness.”³⁹² Although it did not so state expressly, the Court implicitly held that separate was inherently unequal in graduate and professional education.

387. Cf. *Sweatt v. Painter*, 210 S.W.2d at 445 (accepting “substantially equivalent” standard and noting that nothing in nature is precisely equal).

388. 339 U.S. 629 (1950).

389. *Id.* at 633-34.

390. *Id.* at 634. The Court’s finding of inequality applied to both the interim law school in Austin and the new facility in Houston. *Id.* at 633.

391. *Id.* at 636.

392. *Id.* at 634.

2. Breaking the Racial Barrier

Sweatt gave new momentum to the challenge to separate but equal. Within a year federal courts in North Carolina and Louisiana found post-*Gaines*, black law schools to be constitutionally inadequate.³⁹³ In Tennessee and Virginia, federal actions also resulted in the opening of white law schools to black students.³⁹⁴ Nor was the breakdown of racial barriers confined to education in the law. In Louisiana, Missouri, and Maryland, state and federal courts ordered white public institutions to admit black graduate students.³⁹⁵ By the end of 1952 when the Supreme Court heard the first oral argument in *Brown*,³⁹⁶ twelve of the seventeen segregationist states had admitted a limited number of black students into at least some of the graduate and professional programs of their white public colleges.

At the undergraduate level, even token desegregation proceeded more slowly. A few white public colleges permitted the enrollment of black undergraduates in the early 1950s, but resistance to the desegregation of white undergraduate schools continued in most segregationist states even after blacks had been permitted to enroll in graduate and professional programs.³⁹⁷ State courts continued to compare the tangible characteristics of black and white schools to determine the constitutionality of segregating black students.³⁹⁸ The lower federal courts also appeared unwilling to extend the reasoning of *Sweatt*—that reputation of faculty, influence of alumni, and traditions and prestige “make for greatness”—to undergraduate schools. Nevertheless, in cases decided in Kentucky, Louisiana, and Texas, the tangible factor of geography, rather than intangible prestige, became the decisive point of comparison between

393. *McKissick v. Carmichael*, 187 F.2d 949 (4th Cir.), *cert. denied*, 341 U.S. 951 (1951), *rev'g Epps v. Carmichael*, 93 F. Supp. 327 (M.D.N.C. 1950); *Wilson v. Board of Supervisors*, 92 F. Supp. 986 (E.D. La. 1950), *aff'd mem.*, 340 U.S. 909 (1951).

394. *Gray v. University of Tenn.*, 97 F. Supp. 463 (E.D. Tenn. 1951), *vacated and dismissed*, 342 U.S. 517 (1952) (per curiam) (case mooted by announcement that blacks would be admitted to University of Tennessee); EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 34.

395. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 34-35 & n.37; J. PREER, *supra* note 45, at 110.

396. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

397. See EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 37-38.

398. Compare *State ex rel. Toliver v. Board of Educ.*, 360 Mo. 671, 680, 230 S.W.2d 724, 730 (1950) (black and white teachers colleges afford “substantially equal privileges”) with *Parker v. University of Del.*, 31 Del. Ch. 381, 399-400, 75 A.2d 225, 234 (1950) (black land grant college “woefully inferior”).

black and white colleges.³⁹⁹ Under this approach constitutional equality could not exist if black students had to travel a greater distance than white students to attend a public institution, even if the educational opportunities offered at black and white schools in different locations were otherwise equal. These cases clearly implied that racially separate higher education could be maintained only if a state duplicated, in the same location and for a substantially smaller black population, every institution that it maintained for its white citizens.

The development of new legal theories for finding constitutional inadequacies in separate but equal public colleges did not lead the segregationist states to abandon their policies of racial exclusion. Between *Sweatt* and *Brown*, most states continued to resist the spread of desegregation with tactics that were refined—or that became more crude—after *Brown*. Virginia's white public colleges, following the advice of the state's Attorney General, continued to reject black applicants for programs of study that were available at the black land grant.⁴⁰⁰ In Louisiana white public institutions followed a policy of remaining closed to black students until judicially compelled to open—to the point of cancelling the registration of Louisiana State's first black undergraduate when a federal injunction was set aside for failure to convene a three-judge court.⁴⁰¹ The Florida Supreme Court, in a highly questionable series of opinions, supported the University of Florida's extended and successful refusal to admit Virgil Hawkins to its law school.⁴⁰² In Alabama,

399. *Constantine v. Southwestern La. Inst.*, 120 F. Supp. 417 (W.D. La. 1954); *Battle v. Wichita Falls Junior College Dist.*, 101 F. Supp. 82 (N.D. Tex. 1951), *aff'd*, 204 F.2d 632 (5th Cir. 1953), *cert. denied*, 374 U.S. 974 (1954); see *Wilson v. City of Paducah*, 100 F. Supp. 116 (W.D. Ky. 1951).

400. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 57.

401. See *Tureaud v. Board of Supervisors*, 116 F. Supp. 248 (E.D. La.), *rev'd*, 207 F.2d 807 (5th Cir. 1953), *judgment vacated*, 347 U.S. 971 (1954); EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 70.

402. Hawkins filed an original mandamus action in the Florida Supreme Court after the University of Florida Law School denied him admission. The state court deferred entry of a final order pending the opening of a law school at the black land grant college. *State ex rel. Hawkins v. Board of Control*, 47 So. 2d 608 (Fla. 1950) (en banc). The court cited *Sweatt* but did not discuss the case, choosing instead to quote extensively from *Plessy*. See *id.* at 614-15. Hawkins returned to the state supreme court contending that his right to equal educational opportunity could be vindicated only by admission to the white school. The state court supported its conclusion that Hawkins's "contention is not sound" with the citation "[c]ompare *Sweatt v. Painter*," and entered a final order denying relief. 60 So. 2d 162, 165 (Fla. 1952). The United States Supreme Court vacated the state court's judgment and remanded for reconsideration in light of *Brown*. 347 U.S. 971 (1954) (per curiam). On remand, and

Georgia, Mississippi, and South Carolina, as well as in Florida, white public colleges excluded black students throughout the 1950s.⁴⁰³

3. The Effect of the Challenge

Despite continuing resistance by the segregationist states, the NAACP's challenge was clearly successful in refashioning the constitutional doctrine of equality in public higher education. After *Sweatt* most state and federal courts decided in favor of individual black plaintiffs seeking admission to white public colleges. Victories at the college level extended to the elementary and secondary schools when the Supreme Court relied on its higher education decisions to support its pronouncement in *Brown* that "[s]eparate educational facilities are inherently unequal."⁴⁰⁴

As important as the NAACP's campaign was in the development of constitutional law, its immediate effect on the educational status of black Americans was much less significant. Although litigation had succeeded in breaking the racial barrier at an estimated twenty-two white public colleges by the 1952-1953 academic year, few black students actually benefited. By one estimate desegregated white public colleges in the seventeen state region had a total black enrollment of only 453 students in the regular session and approximately 900 during the summer.⁴⁰⁵ The desegregation pioneers were symbols of success in the struggle for equal educational opportunity, but did not represent a significant change in the structure of higher education for blacks.

Nor did victory in the courts significantly alter the relative

after *Brown II*, the state court appointed a commissioner to determine the potential effect of the admission of blacks on the Florida system of higher education. 83 So. 2d 20 (Fla. 1955). The United States Supreme Court then vacated its prior remand order and substituted a per curiam opinion holding that Hawkins was "entitled to prompt admission under the rules and regulations applicable to other qualified candidates." 350 U.S. 413, 414 (1956). The state high court then denied Hawkins's petition for a writ of mandamus holding that under state law it had the discretion to do so to avoid a serious public mischief. 93 So. 2d 354, 355-56, 359-60 (Fla. 1957). The United States Supreme Court denied certiorari without prejudice to Hawkins's opportunity to seek relief in federal court. 355 U.S. 839 (1957). Eight years after he began his case, Hawkins filed an action in federal district court. This course also ended in personal defeat. See *Hawkins v. Board of Control*, 162 F. Supp. 851 (N.D. Fla. 1958).

403. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 36.

404. *Brown v. Board of Educ.*, 347 U.S. 483, 493-95 (1954).

405. F. BOWLES & F. DECOSTA, *supra* note 21, at 57.

status of black public colleges. With few exceptions the responses of the segregationist states did not deviate from the well-established pattern of black higher education. Newly created graduate programs took as their primary function that which had characterized undergraduate programs for nearly a century—the training of teachers for black elementary and secondary schools. Even the out-of-state scholarships were used primarily by blacks seeking to become teachers or to increase their teaching salaries by obtaining a master's degree.⁴⁰⁶ Professional programs at black public colleges continued to be scarce and, where they existed, operated on a very small scale. In the early 1950s, the five black public law schools then in operation had a total enrollment of ninety students and were graduating only eighteen black attorneys per year. The very small number of professional programs in fields other than the law were similarly limited in their impact on the size of the black professional class.⁴⁰⁷

Increased funding and other enhancement efforts, which continued after the Court's decision in *Sweatt*, improved the subsystem of black higher education. Larger appropriations, new facilities, and additional programs gave many of the black public colleges a credibility and financial stability they lacked when the challenge to the separate but equal doctrine began. As observed by one commentator at the 1951 Conference of Presidents of Negro Land Grant Colleges:

These legal pressures have had the effect of putting the average one of our colleges in better shape, *physically*, in numbers and quality of faculty and in curriculum than ever before. It is apparent that the larger appropriations which have made these long needed improvements possible have been caused principally by the fear on the part of the legislatures, state departments of education and our white friends generally, that you are going to blast open the doors of the white

406. As of 1941, 2187 black students received state subsidies for out-of-state study from the nine segregationist states with such programs. Of that number, 727 scholarship recipients studied in the field of education. The next largest group was 212 students in medicine. Only 17 students obtained scholarships to study engineering and 37 to study law. 2 NATIONAL SURVEY, *supra* note 161, at 20. The pattern continued through the 1940s. In Oklahoma 167 of the 276 scholarship students in 1946-1947 studied in some field of education. Richards, *supra* note 328, at 347. In Georgia, between 1944 and 1947, a total of 1291 blacks received aid, 1223 in the field of education. Brown, *supra* note 326, at 351-52. In Arkansas 122 of 260 black students given scholarships during a similar period used the grants to work toward their master's degree in education. Martin, *supra* note 332, at 259.

407. See Jenkins, *Enrollment In Institutions of Higher Education of Negroes, 1952-53*, 22 J. NEGRO EDUC. 188, 199-200 (1953).

schools.⁴⁰⁸

Improvements inspired by fear of desegregation failed to defeat the attack on the separate but equal doctrine. They did succeed, however, in minimizing desegregation after the doctrine's demise by helping to ensure the continued dominance of the black public college in the higher education of blacks. The newly enhanced institutions absorbed most of the 1940s and early 1950s growth in enrollment of black students in public institutions. In contrast to the 1350 regular and summer session black students enrolled in white public colleges in 1952-1953, the black institutions had an enrollment in excess of 37,000 in the regular session alone.⁴⁰⁹

Racial duality in public higher education was, and would continue to be, one of the vestiges of the separate but equal era. It was not the only vestige. Indeed, the dominant role of black colleges in the higher education of blacks was a symptom of more profound effects that segregation had visited on the black population. Generations of deprivation and discrimination had kept the black population disproportionately concentrated at the bottom of the socio-economic scale. Blacks were grossly underrepresented among all the professions except teaching. And even among black teachers, the supply of highly trained academics remained far behind the need. The effects of separate and unequal education were pervasive and promised to be long-lasting. The legacy of segregation and discrimination would survive the demise of the constitutional doctrine.

IV. THE LEGACY OF SEPARATE BUT EQUAL

In 1904 W.E.B. DuBois suggested that the condition of American blacks presented a unique opportunity "to enlighten science and inspire philanthropy" through sociological study: "By reason of color and color prejudice the group is isolated—by reason of incentive to change, the changes are rapid and kaleidoscopic; by reason of the peculiar environment, the action and reaction of social forces are seen and can be measured with more than usual ease."⁴¹⁰ DuBois's observation seems particularly appropriate regarding the plight and progress of American blacks during the separate but equal era. Nearly the entire

408. Barnett, *The Emerging Role of Land Grant Colleges for Negroes*, 29 CONF. PRES. NEGRO LAND GRANT CS. 47, 48 (1951) (emphasis in original).

409. Jenkins, *supra* note 407, at 191-200.

410. DuBois, *The Atlanta Conferences*, reprinted in W. DUBOIS, ON SOCIOLOGY AND THE BLACK COMMUNITY 53, 54-55 (1978) (first published in 1904).

black population was enslaved prior to the Civil War, and nearly all blacks throughout the era were the direct descendants of those enslaved people. Throughout the period the large majority of the nation's blacks lived in the seventeen states where segregation and discrimination were most pronounced. Particularly in education the system of separate and unequal was universally applied—all blacks in the region were its victims.

Measuring the full impact of the social forces of segregation and discrimination may not be, as DuBois suggested, an undertaking involving "more than usual ease." How does one measure the effect on the aspirations and self-concept of blacks produced by a widely held judgment of inherent inferiority? What means are available for determining the effects of social and intellectual isolation? What standard can reveal the impact on the black population, particularly the intellectual leaders of that population, of consistent rejection and denial despite individual competence, excellence, and achievement? It is true that precise measurement of the injury is not possible, but the danger would appear to be one of understatement rather than overstatement.

Measuring the effects of only one aspect of discrimination—that involving public higher education—adds to the imprecision. The discrimination inflicted on the black population for nearly a century cannot be neatly divided into discrete categories. Each form of isolation and unequal treatment reinforced the other; the effects were both reciprocal and cumulative. Moreover, determining the legacy, or vestiges, of separate but equal education by a standard of equality between the black and white population assumes, perhaps incorrectly, that mere equal treatment of a black population long enslaved would have produced equal results. Nevertheless, the intrusion of forms of discrimination other than that involving education and of what might be called, at the risk of understatement, "pre-Amendment discrimination" should not mitigate the judgment that a monumental injustice deserving of a remedy had been committed.

An approximation of some of the effects of discrimination in higher education can be made by examining two characteristics of the black population at midcentury—occupational status and educational achievement. The size of the black professional class and the distribution of black professionals within that class reflects the quantitative and qualitative inequality in-

herent in racially separate higher education. In addition, the status of the black work force other than professionals provides some insight into the effects of educational discrimination at all levels. The proportion of college graduates in the region's black population shows more directly the results of discrimination in higher education. Similarly, the extent to which the black population had completed high school both reveals the effect of separate but equal elementary and secondary schools and indicates the difficulty of achieving equality in higher education after the elimination of coerced segregation.

The vestiges of the separate but equal era included not only a black population upon which a badge of segregation had been superimposed over a badge of slavery, but also a system of public higher education in which racial duality would survive for many years. It is here that the legacy of the separate but equal era becomes somewhat ambiguous. At the time of *Brown*,⁴¹¹ black public colleges continued to bear the burden of more than half a century of inequality. Improvements in the institutions, made in a desperate attempt to "protect" white colleges from the enrollment of black students, did not remedy the effects of past discrimination. Although progress had been made, one legacy of inequality was a group of institutions that were, for the most part, inadequate in comparison to their white counterparts.

There was, however, another legacy of the separate but equal era—a legacy of achievement and a rightful source of pride. With grossly inadequate resources and in the face of overwhelming obstacles, the black population of the segregationist states had created a separate system of public higher education. Although the system clearly bore the marks of discrimination, it had become the primary vehicle for black educational advancement in the segregationist states. It was not only an evil vestige of segregation but also had been and continued to be what one commentator has recently called an "instrument of affirmative action."⁴¹² Distinguishing between the two legacies represented by the black public college, and determining the role of those institutions in devising a remedy for segregation in higher education, received little attention by the courts for more than a decade after *Brown*. As early as the 1950s, however, the complexity of the problem was evident.

411. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

412. K. TOLLETT, *BLACK COLLEGES AS INSTRUMENTS OF AFFIRMATIVE ACTION* (1982).

A. BLACK OCCUPATIONAL AND EDUCATIONAL STATUS

One effect of separate and unequal education can be seen in the occupational data of the 1950 census.⁴¹³ Although blacks made up twenty percent of the work force in the seventeen state region, they constituted less than ten percent of professional and technical workers.⁴¹⁴ Moreover, the distribution within the disproportionately small black professional class reflected the restricted view of black education that had characterized the separate but equal era. A system of higher education that was given the primary function of training teachers for black public schools had produced a professional class that was composed primarily of teachers—more than sixty percent of all black professionals compared to only twenty-six percent for the white professional class. If clergy, products of the private black colleges, are also considered, the two categories accounted for nearly three-fourths of all black professionals in 1950—more than double the proportion found among white professionals. Indeed, if teachers and clergy are excluded, the black share of remaining professionals drops to less than four percent, for a population that made up twenty percent of the work force.

The unconscionably small number of black professionals, other than teachers and clergy, conveys effectively the importance and urgency of black students' attempts to enroll in white professional schools. It also emphasizes the inadequacy of the segregationist states' feeble efforts to preserve racial exclusion through the enhancement of black public colleges in the 1940s and early 1950s. While Heman Sweatt, John Wrighten, and Ada Sipuel Fisher sought judicial assistance in fulfilling their aspirations to become attorneys,⁴¹⁵ the more than 48,000 lawyers and judges in the segregationist states included a mere 330

413. Statistics concerning occupational status have been derived from the state reports for the segregationist states found in the 1950 Census. 2 BUREAU OF CENSUS, U.S. DEP'T OF COMM., CENSUS OF THE POPULATION: 1950, pts. 2, 4, 8, 10, 11, 17-18, 20, 24-25, 33, 36, 40, 42-43, 46, 48 at Table 77 (1952) (parts represent Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia respectively) [hereinafter 1950 CENSUS REPORTS I]. All calculations for occupational statistics include only the black and white work force; the few persons classified as "other races" have been excluded from the calculations.

414. The census category is "[p]rofessional, technical, and kindred workers." Use of the term "work force" refers to employed persons aged 14 years and over. *Id.* at Table 77.

415. See *Sweatt v. Painter*, 339 U.S. 629 (1950); *Sipuel v. Board of Regents*,

blacks. Fifteen years after the University of North Carolina rebuffed Thomas Hocutt in his effort to study pharmacy, there were only 400 black pharmacists out of more than 22,000 in the region. As underfunded and long-neglected black land grants were made "equal" to their white counterparts by the addition of master's programs for teacher training—instead of programs in engineering, science and business—blacks accounted for fewer than 400 of the more than 115,000 engineers, just over 400 of the nearly 30,000 chemists and other natural scientists, and only 280 of the 80,000 accountants and auditors. While blacks sought equal opportunity for an education in medicine and dentistry,⁴¹⁶ and while no black public college included either a medical or dental school, the black share of doctors and dentists was a mere four percent. One need not embrace a system of racial "quotas" for the professions to find discrimination and injustice in a black work force of more than 3.5 million that included only 4600 lawyers and judges, engineers, chemists and other natural scientists, physicians and surgeons, dentists, pharmacists, architects, accountants and auditors, surveyors, designers, and draftsmen—just over one percent of the 401,000 professionals in these categories.⁴¹⁷

The data on the black nonprofessional work force also clearly reveal the vestiges of the "special education" provided to blacks at all levels of public education during the separate but equal era. Inadequacies in, or the absence of, commercial and management programs at black public colleges left their imprint in the form of a four percent black share of all managers, officials, and proprietors.⁴¹⁸ Vocational education shaped by an early concern that the "colored race" might become the skilled bricklayers and plumbers, leaving the supreme, white race "to carry the mortar . . . be the helpers . . . [and] be [the] laborers,"⁴¹⁹ had effectively defeated the imagined black threat to the white worker of the South. Within the census cat-

332 U.S. 631 (1948) (per curiam); *Wrighten v. Board of Trustees*, 72 F. Supp. 948 (E.D.S.C. 1947).

416. See *Givens v. Woodward*, 207 S.W.2d 234 (Tex. Civ. App. 1947), *appeal dismissed for want of juris.*, 146 Tex. 396, 208 S.W.2d 363 (1948).

417. Black underrepresentation, relative to the 20% black share of the work force, was also evident among low-level professionals. Blacks comprised only 4.2% of medical and dental technicians, 5.9% of professional nurses, and 9.4% of dietitians and nutritionists. 1950 CENSUS REPORT I, *supra* note 413, at Table 77.

418. The census category excludes farm managers, officials and proprietors. *Id.*

419. B. FISHER, *supra* note 149, at 163-64.

egory of craftsmen⁴²⁰—including carpenters, masons, plumbers, and other skilled workers—black representation was limited to a mere seven percent or approximately one-third of the black share of the region's work force.

The First Morrill Act's mandate for the "liberal and practical education of the industrial classes,"⁴²¹ as expressed through the black land grants, had indeed been "less a force for social and economic improvement for blacks and more an instrument designed to perpetuate the racial caste system."⁴²² A system of education that was designed to "make the Negro a better servant and laborer"⁴²³ and that frequently lacked the higher learning that "'merely spoils a ploughhand or housemaid'"⁴²⁴ had substantially achieved its goal. In 1950 a *majority* of the region's black workers were engaged in private household and other service work or were laborers.⁴²⁵ Among whites these categories accounted for only thirteen percent of the work force.

Discrimination in "separate but equal" public colleges, of course, did not alone determine black occupational status in the seventeen state region. Segregation in the lower public schools and in private institutions in the region, as well as nationwide discrimination against blacks in both private and public colleges, also contributed. Employment discrimination against blacks who had overcome educational deprivation to qualify for jobs from which they were nevertheless excluded was certainly an important influence. Characteristics of the black subculture, inculcated and fostered by discrimination and segregation at all levels of public education, likely played a role.

Acknowledging other causes for the racial caste system

420. The census category is "[c]raftsmen, foremen, and kindred workers." 1950 CENSUS REPORTS I, *supra* note 413, at Table 77.

421. Ch. 130, § 4, 12 Stat. 503, 504 (1862).

422. A. PIFER, *supra* note 24, at 17.

423. G. MYRDAL, *supra* note 145, at 889.

424. I. NEWBY, *supra* note 184, at 177.

425. The two census categories for service workers are "[p]rivate household workers" and "[s]ervice workers, except private household." 1950 CENSUS REPORTS I, *supra* note 413, at Table 77. Fire fighters and police officers have been excluded from the latter category. (Within the 17 segregationist states, blacks made up less than two percent of all fire fighters and police officers.) The two categories for laborers are "[l]aborers, except farm and mine" and "[f]arm laborers and foremen." From the latter only the subcategory of "[f]arm laborers, except unpaid, and farm foremen" has been included. With these adjustments black service workers and laborers accounted for 53% of the black work force, approximately four times the proportion of the white work force. *Id.*

that characterized the distribution of black workers in 1950 does not, however, deny the substantial influence of separate and unequal public higher education. In the professions, for example, conceding the prevailing view that white refusal to employ black professionals was somehow justified does not diminish the magnitude of the discrimination. Black public colleges were not permitted to achieve equality in separation even under the narrow conception of black higher education embraced by one white educator at the turn of the century: "[A]n education that makes leaders at the expense of the led is a failure. Every negro doctor, negro lawyer, negro teacher, or other 'leader' in excess of the immediate needs of his own people is an anti-social product, a social menace."⁴²⁶ Not only did separate and unequal public higher education fail to produce doctors, lawyers, and teachers "in excess of the immediate needs" of the black population, it fell far short of those needs. In the segregationist states in 1950, there were three black lawyers for every 100,000 blacks; for whites there were 120. For every 100,000 blacks, there were eighteen black physicians and surgeons; for whites there were 115. Of the three groups of professionals, only teachers approached equivalent representation with 730 black and 768 white teachers per 100,000 persons of each race.⁴²⁷

Public colleges that lacked schools of medicine, dentistry, pharmacy, and business could not meet the black community's needs for doctors, dentists, pharmacists, and business leaders. Public colleges that lacked any significant program of graduate studies could not satisfy the need for academics with advanced training. Even under a system in which the only acceptable place for the black professional was in service of the black community, the segregationist states, with the tolerance and participation of the national government, consistently failed to carry out their constitutional obligations under the separate but equal doctrine. The occupational status of the black population at midcentury was one result of that failure—one vestige of separate but equal higher education.

426. W. Trueheart, *supra* note 63, at 87 (quoting comments of Paul Barringer of the University of Virginia at a 1900 conference of the Southern Education Association).

427. Statistics concerning the number of professionals per 100,000 of population were derived from 1950 CENSUS REPORTS I, *supra* note 413, at Table 77 (number of professionals) and 2 BUREAU OF CENSUS, U.S. DEP'T OF COMM., CENSUS OF THE POPULATION: 1950, pt. 1, at Table 59 (1952) (United States Summary, population by race) [hereinafter 1950 CENSUS REPORTS II].

A vestige more directly, albeit not exclusively, attributable to segregation and discrimination in public colleges is evident in the educational status of the region's black population.⁴²⁸ In 1950 blacks in the segregationist states constituted nearly nineteen percent of persons aged twenty-five and older. Nevertheless, blacks constituted less than seven percent of the persons in that age group who had completed four or more years of college. The magnitude of the higher education deficit in the black population is reflected most clearly in the number of additional college-educated blacks that would have been necessary to achieve equality between the two population groups. For the percentage of blacks aged twenty-five and older who graduated from college to equal the percentage of whites of that age group who graduated from college, the number of black graduates must be increased from 91,000 to 298,000.

Although improvements in black higher education during the 1940s helped to correct the maldistribution of college graduates, they were insufficient to reduce significantly the disparity between the black and white populations. Among blacks aged twenty to twenty-nine, an age group more likely to have attended college during the 1940s, the number of college graduates was still only thirty-five percent of that necessary for equality with white young adults. The 31,000 black college graduates were at least 57,000 fewer than equality required. The degree of deprivation varied from state to state, but a broad disparity was evident throughout the region.⁴²⁹

428. Statistics concerning college completion were derived from Table 20 (persons aged 25 and over) and Tables 53, 64, and 65 (persons aged 20-29) 1950 CENSUS REPORTS I, *supra* note 413, at Tables 20, 53, 56, 65. Delaware is excluded from the 20-29 age group because the Delaware report does not give the data by race. The term "blacks" is used in the text although the state tables on level of education use the category of "nonwhite," which includes both blacks and "other races." Data in 1950 CENSUS REPORTS II, *supra* note 427, at Table 59, show the nonwhite population of the segregationist states was made up of only 1.2% "other races." Thus, the educational data for nonwhites appears to represent accurately the educational status of blacks. Among the seventeen states, only Oklahoma shows a substantial "other race" population, constituting nearly 28% of nonwhites.

429. In Mississippi the percentage of white young adults with a college degree was more than seven times that of blacks. In Louisiana the white percentage was nearly five times the black percentage. In Arkansas, Florida, Georgia, Maryland, and South Carolina, the percentage of white college graduates was at least three times the black percentage. In every other state, except West Virginia, black young adults had completed college at a rate that was half, or less than half, the rate for whites.

In West Virginia three percent of the nonwhite population had completed four or more years of college as compared to 3.5% of the white population.

The small percentage of college graduates fails to convey fully the effect that segregated public colleges had on the educational status of the black population. Discrimination in both the quality and the quantity of higher education had left much of the college-educated black population in the region inadequately prepared to take advantage of the limited opportunities for postgraduate study available at white public colleges. In the slowly desegregating graduate schools of the early 1950s, there was

universal agreement that the Negro students are handicapped by their generally inferior educational background. Very few faculty members intimate that this reflects any sort of racial trait; rather there is a frank facing of the fact that few Southern Negroes have the prior scholastic training which would enable them to compete on equal terms with white students⁴³⁰

Black land grant colleges were ill-equipped to provide adequate preparation in the sciences and other technical fields of undergraduate study.⁴³¹ Consequently, the output of graduates adequately educated and able to take advantage of new opportunities for study in professional schools was severely restricted. In medicine, for example, northern medical schools willing to admit blacks found that "their search for candidates who can meet their entrance requirements have yielded meager results."⁴³² In 1955 fewer than seventy black students were among the 7400 students entering the nation's white medical schools.⁴³³ Similarly, inadequacies in higher education precluded blacks from pursuing graduate education in veterinary medicine, although more than half a century had passed since

The disparity in Oklahoma (6.2% whites and 2.2% nonwhite) may not accurately represent the status of the black population. See *supra* note 428. These two potential deviations from the regional trend, however, are insignificant because the two states combined contained less than three percent of the region's black population. See 1950 CENSUS REPORTS II, *supra* note 427, at Table 59.

430. H. ASHMORE, *THE NEGRO AND THE SCHOOLS* 43 (1954).

431. One commentator, writing in 1956, concluded that under a "conservative estimate" some of the black land grants were "fifty years behind the times in terms of their utilization of the contributions of modern science" and noted that the institutions continued to lack research facilities, laboratories, equipment, and trained faculty. Weaver, *Development of Science Curricula in Negro Schools*, 25 *J. NEGRO EDUC.* 118, 122-24 (1956).

432. Alexander, *The Present Challenge to the Negro Land Grant Colleges*, 29 *CONF. PRES. NEGRO LAND GRANT CS.* 77, 79 (1951).

433. See Shea & Fullilove, *Entry of Black and Other Minority Students Into U.S. Medical Schools: Historical Perspective and Recent Trends*, 313 *NEW ENG. J. MED.* 933, 936 (1985). The number of blacks entering white medical schools remained below 100 and below the number of blacks entering the two private black medical schools until the end of the 1960s. *Id.*

the Second Morrill Act stimulated the creation of seventeen black land grant colleges supposedly required to provide equal training in the agricultural sciences. Tuskegee Institute was the private black college designated as the regional institution for the training of black veterinarians,⁴³⁴ yet its School of Veterinary Medicine was unable to find a full class of qualified students as late as the 1950s.⁴³⁵ In other black graduate schools, public and private, faculty surveyed in 1956 reported that the major problem facing their students was a lack of academic preparation for graduate work, including deficiencies in reading and English usage, and "a very limited knowledge" of both the basic literature in their fields of concentration and materials "that should have been ordinary required reading in high school and college."⁴³⁶

If it was clear that the vestiges of separate but equal would not easily be eliminated at the postgraduate level, it was also clear that the legacy of segregation included substantial impediments to the achievement of equality in undergraduate education. Black youths who had been deprived of equal educational opportunity from their entrance into the public school system to their graduation from high school were ill-prepared for college work. As was well-known to the administrators and faculty of black colleges, a substantial portion of the victims of discrimination in elementary and secondary schools required remedial education to succeed in college.⁴³⁷

Nor were the prospects for the future particularly promising. In 1950 the percentage of black youths who had completed high school was less than half the percentage of white youths.⁴³⁸ For black students who remained in school and graduated, the black elementary and secondary schools in most seg-

434. See *supra* note 364.

435. Williams, *The Offerings of the Tuskegee Institute School of Veterinary Medicine*, 31 CONF. PRES. NEGRO LAND GRANT CS. 60, 62 (1953); see also Buggs, *Problems in the Premedical Education of Negroes*, 19 J. NEGRO EDUC. 142 (1950) (discussing black students' inadequate preparation for medical school).

436. Lloyd, *Some Problems of Graduate Schools Operated Primarily for Negroes*, 25 J. NEGRO EDUC. 83, 84 (1956).

437. See, e.g., Bracey, *supra* note 341, at 279; Brown, *supra* note 330, at 280-81; Jenkins, *The Future of the Desegregated Negro College: A Critical Summary*, 27 J. NEGRO EDUC. 419, 420-21 (1958); Parrish, *Negro Higher and Professional Education in Kentucky*, 17 J. NEGRO EDUC. 289, 295 (1948).

438. In the age group 15-24, more than 31% of white youths in the region (excluding Delaware) had completed four years of high school or more; for black youths the percentage was 11.9. See 1950 CENSUS REPORTS I, *supra* note 413, at Tables 15, 64.

regationist states were far inferior to those available to whites. Harry Ashmore's comprehensive study, *The Negro and the Schools*, revealed that in 1952 the southern region of thirteen states continued to discriminate against black schools with lower per pupil allocations in both current expenditures and capital outlays. Expenditures for the black branch of the racially dual school systems were nearly half a billion dollars short of equality.⁴³⁹

Past and continuing inequality at every level of the separate system of black public education created a self-perpetuating cycle of deprivation. It restricted "the elementary and secondary training of many Negro students; it persist[ed] in the provision of higher educational opportunities; and its cumulative effect [was] felt in the economic, cultural, and educational level of the Negro population."⁴⁴⁰ That depressed economic, cultural, and educational level, in turn, perpetuated in the next generation the vestiges of discrimination. Children of black professionals traditionally contributed a disproportionate share of black college students.⁴⁴¹ The substantial underrepresentation of black adults among professionals and college graduates in 1950 helped perpetuate the underrepresentation of blacks among college students of the next generation. A black adult population with a median educational level below the sixth grade

mean[t] less sympathy on the part of Negro parents with the objectives of the school; it mean[t] that Negro children enter[ed] the first grade at seven or eight instead of six; and it explain[ed], in part at least, the fact that twice as many Negroes as whites pass the compulsory school age and quit before reaching the twelfth grade.⁴⁴²

Black youths who overcame an impoverished homelife and

439. By Ashmore's estimate approximately \$90 million was required to equalize current expenditures and \$350 million to equalize physical facilities. H. ASHMORE, *supra* note 430, at 62-65, 117-18.

440. 1 NATIONAL SURVEY, *supra* note 161, at 2.

441. See H. BOND, *supra* note 163, at 84; 2 NATIONAL SURVEY, *supra* note 161, at 45.

442. Parrish, *The Education of Negroes in Kentucky*, 16 J. NEGRO EDUC. 354, 360 (1947). The 1950 census shows that in eight states (Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina), accounting for two-thirds of the region's black population, black adults aged 25 and over had a median education level ranging from a low of 4.6 (Louisiana) to a high of 5.9 (North Carolina). In seven of those states, the median for white adults was at least three years above that of blacks. In North Carolina, the difference was 2.7 years. See 1950 CENSUS REPORTS I, *supra* note 413, at Table 20 (median years of schooling); 1950 CENSUS REPORTS II, *supra* note 427, at Table 59 (population by race).

remained in school were trained by teachers who were themselves victims of discrimination. The black graduate students of the 1950s, who lacked the background and training for advanced education, were for the most part the teachers of the public school systems. Many of the ill-prepared students concentrated in black public colleges would be the black teachers of the future. The Civil Rights Commission, in its 1960 report on inequality in public higher education, aptly described the self-perpetuating quality of the vestiges of segregation:

[T]he predominance of [teacher training] among educational opportunities open to Negroes is not only a measure of the educational deprivation of the present-day Negro in the South, but reveals a continuing pattern in which socially, culturally, and educationally deprived teachers of each generation are called upon to instruct the next generation of similarly handicapped teachers.

... [T]he effects of deprivations are cumulative. Economic and social handicaps affect scholastic performance adversely: ill prepared teachers and inadequate high schools inspire few young people, least of all those whose home backgrounds may not stimulate ambitions

...⁴⁴³

The pernicious effects of segregation and discrimination were widespread and their influence was felt in some manner throughout the black population. The effects, however, were not uniform. There was a growing group of professional and other college-educated blacks. Black parents in lower occupational groups sought for their children educational opportunities that had been denied to them and to the generations that preceded them. Many able black teachers inspired their students and prepared those students for the demands of higher education. A substantial number of black students, through ability, motivation, and encouragement, overcame the continuing vestiges of segregation and discrimination to succeed in higher education.

The existence of a significant pool of talented black students with the ability and motivation to succeed in the best white colleges was evident in an early study of the National Scholarship Service and Fund for Negro Students (NSSFNS). In *The Negro Student at Integrated Colleges*,⁴⁴⁴ the Service reported that among black high school seniors who had sought

443. EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 103-04.

444. K. CLARK & L. PLOTKIN, *THE NEGRO STUDENT AT INTEGRATED COLLEGES* (1963). For the period involved in this study (1952-1956), colleges integrated at the undergraduate level were rare in the segregationist states. Thus, most of the students included in the study were enrolled in public and private

NSSFNS assistance between 1952 and 1956, and who had attended interracial colleges, the rate of graduation was substantially higher than that of college students generally.⁴⁴⁵ Talented black students were available in increasing numbers to begin the process of desegregating white colleges when those institutions abandoned their policies of racial exclusion.

The population studied by the NSSFNS, however, was a select group; students at black colleges were "more deprived academically and financially"⁴⁴⁶ and constituted a far larger share of black collegians from the southern and border states. In the 1950s, as in later years, the black public college remained the primary source of higher education for blacks in the segregationist states and virtually the exclusive route to a college degree for the most deprived of black students. The demise of the separate but equal doctrine left behind the vestige of the black public college.

B. THE AMBIGUOUS LEGACY OF THE BLACK PUBLIC COLLEGE

Ambiguity in the legacy of the black public college directly resulted from the nature of segregation in higher education. Segregationist states created the institutions to ensure separation of the races and then subjected the colleges to discrimination in funding and isolation from the academic mainstream. In the 1950s black public colleges retained many of the deficiencies that had condemned them to be the inferior half of racially dual systems of public higher education. Nevertheless, because of segregation and the exclusion of blacks from white academia, the institutions became essential elements in the educational and intellectual life of the black community. Decades of segregation gave the black community a very real stake in the survival of the black public college.

The demise of the separate but equal doctrine highlighted the ambiguous position of black public colleges. The declaration that the colleges' founding purpose—racial separation—was unconstitutional suggested that the underdeveloped black institutions could and should be replaced by nondiscriminatory opportunities for higher education at the better-funded and bet-

institutions outside the South. *See id.* at 58-59. Approximately 41% of the students were born in the South. *Id.* at 23.

445. Of the 1278 students for whom information was available, at least two-thirds received their degrees. Prior studies indicated that among college students generally, the rate of graduation was usually below 50%. *Id.* at 16-17.

446. *Id.* at 20.

ter-equipped white public colleges. The mandate of desegregation, however, would not necessarily require or induce white colleges to assume the multiple functions that the black institutions had served in the black community.

Understanding the ambiguous legacy of the black public college requires a look beyond the tangible and quantifiable characteristics of the institutions to "those qualities which are incapable of objective measurement."⁴⁴⁷ To be sure, the tangible deficiencies produced by discrimination still existed in the 1950s and were an important factor in defining the colleges' role as the process of desegregation began. Equally important, however, were what one thoughtful commentator, writing in *Phylon* in 1949, called "the more vital and more intimate features of higher education for Negroes."⁴⁴⁸ The intangible characteristics of the institutions, including the functions they served in the black community, provide a more complete picture of the ambiguous legacy of discrimination and isolation.

In a very immediate sense, life in the black college was characterized by isolation from the surrounding community. Placed in a setting that was frequently hostile to them and their educational endeavors, black faculty and students were usually denied access to the resources of their southern localities, including libraries, museums, art galleries, and theaters.⁴⁴⁹ A much broader form of isolation denied to most faculty and administrators significant contact with colleagues and organizations in the white academic mainstream, and assigned to the institutions the status of "auxiliaries with inevitably limited support, power, and prestige."⁴⁵⁰

The isolation of the college, both in its immediate community and in the academic community at large, created "economic, intellectual, and morale problems that affect[ed] the quality of human relations in the college community and the effectiveness of the educational process"; it took its "heavy toll in personal pride and confidence, teaching effectiveness, and scholarly achievement."⁴⁵¹ Moreover, the isolation of the black academic community fostered an academic subculture with its own symbols of prestige and system of rewards. It offered many black academics opportunities for advancement and pro-

447. *Sweatt v. Painter*, 339 U.S. 629, 634 (1950).

448. Lewis, *Higher Education for Negroes: A "Tough" Situation*, 10 *PHYLON* 356, 357 (1949).

449. *Id.* at 358; 1 *NATIONAL SURVEY*, *supra* note 161, at 18, 105.

450. Lewis, *supra* note 448, at 358.

451. *Id.* at 359.

fessional mobility that they might not have enjoyed in the larger academic community, and thus created strong incentives to remain in and preserve the black subsystem even as the barriers of segregation were lowered.⁴⁵²

While the barriers remained, black academics were forced into an "uneasy self-sufficiency" in which recognition and fellowship could be found, if at all, only within the confines of the black college campus and the system of black higher education.⁴⁵³ In most of the public institutions, however, black academics could not easily find the satisfactions and rewards of intellectual activity. The institutional environment continued to be defined by the necessity of admitting and educating a student population that was largely unprepared for college-level work. Restricted funding and inadequate libraries, still prominent features of the black public college of the 1950s,⁴⁵⁴ meant that faculty with even the best training could undertake research and scholarship only with great difficulty. In addition, a continuing shortage of highly trained faculty left most black public colleges with a severely restricted community of scholars.⁴⁵⁵

The leadership style and delicate political position of many black administrators further influenced the institutional environment of the black public college at midcentury. In most instances the presidents of the institutions remained under the firm control of white supervisory boards and political officials. Black presidents insufficiently supportive of official policies of segregation faced threats of dismissal that were carried out during the period of challenge to the old constitutional doctrine and the period of resistance to the new one.⁴⁵⁶ At a time when controversy from within the campus could bring swift retribution from without, the authoritarian style of black administra-

452. See A. GREELEY, WHY CAN'T THEY BE LIKE US? 29-30 (1969); A. MEIER & E. RUDWICK, *supra* note 232, at 133-36; 1 NATIONAL SURVEY, *supra* note 161, at 108; Pettigrew, *The Role of Whites in the Black Colleges of the Future*, 100 DAEDALUS 813, 823 n.23 (1971).

453. Lewis, *supra* note 448, at 359.

454. See Daniel, *Liberal Arts and Teacher Education in the Negro Public College*, 31 J. NEGRO EDUC. 404, 406 (1962); DeCosta, *The Tax-Supported College for Negroes*, 32 J. EDUC. SOC. 260, 263-64 (1959); Henderson, *The Future of the Non-Land-Grant Negro Public College*, 27 J. NEGRO EDUC. 392, 395-96 (1958).

455. In 1955 only 18% of the faculty at black public colleges held doctoral degrees, less than half the percentage at the white institutions. See DeCosta, *supra* note 454, at 264-65.

456. See Clement, *The Present and Future Role of Private Colleges for Negroes*, 10 PHYLON 323, 326 (1949); Thompson, *supra* note 349, at 442.

tors contributed to "the acute clash in many institutions for Negroes between the interests, powers, and status of the managers and those of the teacher and scholar."⁴⁵⁷

The intangible vestiges of separate but equal education also included a tradition of black public colleges serving as a tool of the segregationist society that controlled them. At the black land grants, the "mechanic arts" curriculum made the institutions involuntary participants in "the pedagogical expression of racial repression."⁴⁵⁸ The teacher training function of all black public colleges ensured their cooperation in the perpetuation of the deficiencies of the past. Hastily created master's programs, foisted upon colleges with minimal funding and without the necessary staff, extended the inadequacy of black higher education to the next level. At midcentury the curriculum of the black public college continued to serve the two restricted goals deemed adequate for black higher education—vocational training and teacher preparation.⁴⁵⁹ Most of the institutions remained instruments of an educational system that restricted the social mobility of their students.

Nearly a century of isolation and discrimination left another, more subtle vestige in its effect on the self-respect and prestige of the black public college and those who administered, taught, and studied in it. As one candid commentator suggested:

[I]t is notoriously true that many Negro students, teachers, and administrators in off-the-record and not always serious comments type much of Negro education as second-rate: they speak facetiously or derisively about "Negro schools," "Negro college presidents," "Negro students," "Negro teachers," etc. Anyone on the inside knows what these epithets and bits of sardonic humor mean; and, any student of minority behavior recognizes them as symptoms of frustration and in-group aggression.⁴⁶⁰

In a society that assigned professional status and prestige to the white academic mainstream and seldom praised or even recog-

457. Lewis, *supra* note 448, at 360. As reported by Ozie Johnson, first Dean of the black law school in Texas, the President of the Texas State University for Negroes required that all faculty speeches, papers, and scholarly publications be cleared with the administration, and cautioned the law faculty "to refrain from discussing controversial matters in the classroom." O. JOHNSON, *supra* note 374, at 20-21, 46.

458. A. PIFER, *supra* note 24, at 17.

459. See Atwood, *The Future of the Negro Land-Grant College*, 27 J. NEGRO EDUC. 381, 387-88 (1958); Daniel, *supra* note 454, at 408; Martin, *The Land-Grant Functions of the Negro Public College*, 31 J. NEGRO EDUC. 396, 398-400 (1962).

460. Lewis, *supra* note 448, at 357-58.

nized black accomplishment without the implicit detraction of a racial qualifier,⁴⁶¹ the achievements of black educators were automatically discounted and seen as significant only under the lower standards universally attributed to black education. Moreover, many saw private and government-sponsored studies as well as successful litigation, with their inevitable conclusions that black higher education was inferior education, as implicitly supporting the segregationist notion that the black academic community was inherently incapable of achievements equal to those of the white academic mainstream. For the black academic seeking recognition and self-respect in this "peculiar society,"⁴⁶² and for the prejudiced or ill-informed white, the distinction between "inferior and black" and "inferior because black" was not always clear.

One legacy of the separate but equal era was a system of public higher education characterized by both tangible inequality and the intangible deficiencies of an academic subculture produced by discrimination and segregation. Black higher education was

a system within a system[,] neither a replica nor a parallel of other patterns [but] a unique and paradoxical version of higher education in the United States.

....

The significant difference between the Negro version of higher education and other versions lies in the different emphases—the specific orientations and values—that organize and color life in the segregated college community. The college for Negroes is different—and there is much in the differences and the consequences that flow from them that fosters shame and frustration and makes real education a "tougher" proposition.⁴⁶³

Yet the legacy of the black public college also included pride of accomplishment despite discrimination and deprivation. The achievements of the institutions, staffed almost exclusively by black faculty and administrators, resulted from the dedicated efforts of a population that had been dismissed as inferior and left to fend for itself in the isolation of segregation. In the peculiar society of segregation, the strengths and accomplishments of the colleges grew out of their weaknesses and the deprivation to which they were subjected.

The emphasis on teacher training in the curriculum of the black public college helped create the black teaching force that

461. See *supra* text accompanying note 248.

462. Lewis, *supra* note 448, at 360.

463. *Id.* at 356-57.

was an essential element in the development of a credible system of black elementary and secondary schools. The black system of lower education was, in turn, the necessary predicate for increasing the supply of potential college students. The thousands of teachers trained at the institutions also helped form the core of a black professional class and a growing population of college-educated blacks. From among those educated at the public institutions came many of the leaders of the black population during and after the challenge to segregation, including the pioneering plaintiffs who first demanded admission to white professional and graduate schools and who later combatted resistance to the constitutional principle that separate is inherently unequal in public higher education.⁴⁶⁴

In a segregated society, the black college was also an essential institution in the lives of one particular group of black professionals—the college administrators and faculty. The nearly complete refusal of white institutions in all regions of the country to employ black academics made the black public colleges, along with their private counterparts, virtually the only employers of black educators above the high school level, both during the separate but equal era and for many years thereafter.⁴⁶⁵ Although the conditions for professional and intellectual development within the closed system of black higher education were far from ideal, the employment opportunities available at black institutions were greatly superior to no opportunity at all.

The legacy of the black public college also included a commitment to racial pride and dignity in a society that frequently proclaimed only racial inferiority. The black college introduced students to the accomplishments of those who had preceded them with instruction that helped counteract “the withering ef-

464. Black plaintiffs who had been educated at black public colleges include Lloyd Gaines, *State ex rel. Gaines v. Canada*, 342 Mo. 121, 127-28, 113 S.W.2d 783, 784 (1937), *rev'd*, 305 U.S. 337 (1938); John Wrighten, *Wrighten v. Board of Trustees*, 72 F. Supp. 948, 948-49 (E.D.S.C. 1947); Ada Sipuel Fisher, *Sipuel v. Board of Regents*, 199 Okla. 36, 37, 180 P.2d 135, 137 (1947), *rev'd*, 332 U.S. 631 (1948); Marjorie Toliver, *State ex rel. Toliver v. Board of Educ.*, 360 Mo. 671, 673, 230 S.W.2d 724, 725 (1950); Iris Welch, *Hunt v. Arnold*, 172 F. Supp. 847, 849, 851 (N.D. Ga. 1959); James Meredith, *Meredith v. Fair*, 199 F. Supp. 754, 756 (S.D. Miss. 1961), *aff'd*, 298 F.2d 696 (5th Cir. 1962); and Harold Franklin, *Franklin v. Parker*, 223 F. Supp. 724, 725 (M.D. Ala. 1963), *modified*, 331 F.2d 841 (5th Cir. 1964).

465. See Rose, *An Appraisal of the Negro Educator's Situation in the Academic Marketplace*, 35 J. NEGRO EDUC. 18, 20 (1966).

fect of propaganda."⁴⁶⁶ While some black educators believed that the effort was insufficient,⁴⁶⁷ the black colleges included courses in their curricula that increased black students' understanding of the history of their race and its contributions to American society.⁴⁶⁸ The black college faculty offered further hope for self-respect, confidence, and success by serving as role models, demonstrating that educational accomplishment, rather than being the exclusive reserve of the white population, was obtainable even within the constraints of forced segregation and discrimination.

Although at times forced into the role by the default of the white academic mainstream, black academics accepted the challenge of countering racist propaganda. They studied and attempted to understand the ills of the black community—seeking remedies when many of those in white academia were “scientifically proving” that no remedy was possible. Black scholars developed, preserved, and passed on what was later called black history. They established scholarly journals, learned societies, and professional organizations for the exchange of views and the advancement of learning within the isolated system of black higher education.

The black public college also served the black community off the campus. In their immediate communities, the institutions provided college-educated leaders and a resource for cultural development. They provided black citizens with the simple opportunity, in many instances not otherwise available, for the use of a library. Despite the near total denial of funds for extension work, the black land grants dedicated some of their limited resources to projects such as improving the nutritional status of black school children and providing nonresident instruction to the many blacks unable to enroll in college.⁴⁶⁹

466. I. DERBIGNY, *GENERAL EDUCATION IN THE NEGRO COLLEGE* 194 (1947). See generally A. MEIER & E. RUDWICK, *supra* note 232 (discussing the evolution of the field of black history).

467. See C. WOODSON, *supra* note 200, at 136-40, 150-56 (1933); J. PREER, *supra* note 45, at 24-25; 15 CONF. PRES. NEGRO LAND GRANT CS. 78 (1937) (comments of E. Franklin Frazier).

468. I. DERBIGNY, *supra* note 466, at 193-94, 239. Derbigny's study involved 20 accredited black colleges, 11 of which were public institutions. See *id.* at 35. He found that “[a]ll of the colleges include the study of some phase of Negro life and history.” *Id.* at 193; see also McCulloch, *The Negro Studies Himself: A Thumbnail Sketch of Contrast*, 12 J. NEGRO EDUC. 154 (1943).

469. See W. RANGE, *supra* note 29, at 216-18; Hutchinson, *Toward Greater Farm Progress*, *supra* note 286, at 65; Martin, *Unique Contributions of Negro Educators*, in NEGRO EDUCATION IN AMERICA 60, 78-80 (1962).

Most importantly, black public colleges provided educational opportunities to students victimized by discrimination. In the early years, when lower schools for blacks were scarce, elementary and secondary training at the colleges influenced not only the students who received that training, but also the next generation of children who did not begin life "in an illiterate home."⁴⁷⁰ After the segregationist states established black elementary and high schools, with funding that never achieved equality, the colleges began to offer higher education to most of their students. With virtually no assistance from mainstream academia and with consistently inadequate resources, the black public colleges undertook the task of educating generations of students ill-prepared for college work. While the colleges passed on educational failure as well as success, the pride of success belonged to those blacks who affirmatively acted to uplift the freed slaves and their descendants, and the burden of failure belonged to the white officials and educators who were either hostile or indifferent to the effort.

At midcentury the black public college was both a vestige of unconstitutional discrimination and a vestige of self-help and affirmative action by the black population. It was the product of segregation, but it also represented the achievements of a black academic community forced to develop in isolation while undertaking the most difficult educational task in the history of the nation. With the demise of the separate but equal doctrine, the worst qualities of the colleges made them candidates for extinction while their best qualities made them essential institutions serving the needs of the black community—needs that white public colleges were not likely to serve.

Ambiguity in the legacy of the black public college found its counterpart in the ambivalence among black educators about the fate of the institutions in a desegregated system of public higher education. Some black educators, frequently those not affiliated with the public colleges, argued that the history of the institutions and their continuing deficiencies created substantial doubt about their future role in black higher education. A faculty member at Atlanta University suggested that the black system of higher education would remain inadequate "so long as the kingpin in the system—the publicly-supported college for Negroes only—continues."⁴⁷¹ The Executive Secretary of the NAACP contended:

470. H. BOND, *supra* note 163, at 23.

471. Lewis, *supra* note 448, at 361.

In the field of higher education, the colored people of the United States must be willing to give up the little kingdoms that have been carved out in Southern states for so-called land-grant colleges. These schools do not begin to match the quality of white institutions that come under the same heading. It is wasteful and a brake on progress to agitate for additional funds to run these schools unless their programs are radically revised.⁴⁷²

Charles Thompson, Dean of the Howard University Graduate School and Editor of the *Journal of Negro Education*, argued that "the burden of proof is upon the Negro publicly-supported college to justify its continued existence and future role."⁴⁷³

Writing in the *Journal of Negro Education* in the 1950s and early 1960s, other black educators responded to Dean Thompson's challenge and argued that black public colleges were essential to provide equal educational opportunity. The President of Langston University, Oklahoma's black land grant, asserted that "[f]or a great many years to come" there would be a "pressing need for retention of the one-time Negro college" to serve black youth coming from deprived backgrounds.⁴⁷⁴ At Texas Southern University, the institution created in response to *Sweatt v. Painter*,⁴⁷⁵ the President contended that a history

472. White, *Some Tactics Which Should Supplement Resort to the Courts in Achieving Racial Integration in Education*, 21 J. NEGRO EDUC. 340, 341 (1952). James Nabrit, Jr., expressed similar sentiments in a less threatening way when addressing the Conference of Presidents of Negro Land Grant Colleges at the beginning of the 1950s. After observing that whites, blacks, and even "one or two of the persons in this group" were resisting the changes resulting from the successful challenge to separate but equal education, Nabrit cautioned:

The Negro Land Grant Colleges must resist political efforts to saddle courses and curricula upon them which they are not organizationally [or] financially equipped to operate on a high level of efficiency. They should resist efforts to use them to nullify recent Supreme Court decisions. . . . [T]he Negro Land Grant College must adjust its program to an integrated system of education in the South, where segregation will no longer exist, where competition will be terrific, where inferior plants, poorly trained teachers, weak administrators, curricula inadequate for a democratic society, and unsound educational policies which are repugnant to our democratic ideals will no longer be tolerated.

Nabrit, *Adjusting the Negro Land Grant Colleges to Social Changes*, 28 CONF. PRES. NEGRO LAND GRANT CS. 79, 80-82 (1950).

473. Thompson, *The Negro College: In Retrospect and in Prospect*, 27 J. NEGRO EDUC. 127, 129 (1953).

474. Moon, *The Negro Public College in Kentucky and Oklahoma*, 31 J. NEGRO EDUC., 322, 325 (1962) (quoting William Hale, President of Langston University).

475. In 1951, after Texas lost the *Sweatt* case in the United States Supreme Court, 339 U.S. 629 (1950), the name of the Texas State University for Negroes was changed to Texas Southern University when black students and the black

of segregation and discrimination had left the average black college student unable to "compete on equal terms with the average white student in our society," and that the gap between white and black achievement "requires the continuation of Negro institutions of higher learning, and it certainly suggests one of their prime functions: remedial education and professional education for persons with the potential but lacking many of the educative experiences and skills essential for first class competition."⁴⁷⁶ In the view of many black educators, the elimination of racial barriers at white institutions would not be a sufficient remedy for black students who continued to be the victims of segregation and discrimination.

The black public college's claim for survival, and arguments that a desegregation remedy would necessarily be inadequate, found direct support in the characteristics of the students served by those institutions. While the National Scholarship Service and Fund for Negro Students studied the success of the more able black undergraduates enrolled in integrated institutions, the black public colleges reported that a substantial proportion of their students suffered from serious educational deficiencies. At Jackson State College in Mississippi and at the black land grant in Arkansas, many entering freshmen required remedial programs to address their lack of basic reading skills.⁴⁷⁷ Morgan State in Maryland administered a special remedial curriculum to approximately half of the freshmen in the 1950s because the students' performance on placement tests indicated that they were insufficiently prepared for college work.⁴⁷⁸ In North Carolina first-year students at the state's five black public colleges in the early 1960s had an average score below 300 on either the verbal or math portions of the College Board's Scholastic Aptitude Test.⁴⁷⁹ Students at

press objected to "the undisguised "for colored" sign in its official designation." I. BRYANT, *supra* note 377, at 86-87 (quoting *The Houston Informer*, Feb. 17, 1951, at 1).

476. Nabrit, *Desegregation and the Future of Graduate and Professional Education in Negro Institutions*, 27 J. NEGRO EDUC. 414, 415 (1958).

477. See Stephan, *The Negro Public College in Arkansas*, 31 J. NEGRO EDUC. 362, 366 (1962); Troup, *Some Significant Programs Initiated at Negro Colleges and Universities During the School Year 1948-1949*, 18 J. NEGRO EDUC. 576, 578 (1949).

478. Grant, *An Approach to Democratizing a Phase of College Education*, 27 J. NEGRO EDUC. 463, 465, 468-69 (1958).

479. Harris, *Publicly-Supported Negro Higher Institutions of Learning in North Carolina*, 31 J. NEGRO EDUC. 284, 291-92 (1962).

these and other black public colleges had a significant stake in the survival of the institutions.

The faculty and administrators of the black institutions also had a stake in their survival. If the demise of separate but equal meant the demise of black public colleges, one of the two major employers of black academics would be eliminated. The employment prospects for blacks displaced by closing of the institutions, or for blacks who in the future would choose the academic professions, were bleak. In a region that generally refused to recognize black competence or to accept the idea of blacks instructing white students, even the most qualified black academics could not be confident of employment. Many black faculty, victims of educational discrimination, could be disqualified by reason of training and experience even if racially neutral hiring policies were adopted. Moreover, in states with only one or two small black public colleges, even a full transfer of black enrollment to the white institutions would not create a significant need for new faculty or administrators. Desegregation represented an implicit and significant threat to the black academic community.

Some dismissed the concern about the future of black faculty and administrators as unduly pessimistic or as reflecting only shortsighted and selfish interests,⁴⁸⁰ but the early experience with desegregation in the border states suggested that the threat to black employment, and to continuing black involvement in public higher education, was real. In 1951 the University of Louisville, a publicly supported institution in Kentucky, undertook early and complete desegregation by admitting black students to all of its programs. As part of that action, the university closed the Louisville Municipal College, a branch of the university operated for black students.⁴⁸¹ The Municipal College faculty, consisting of eighteen persons, included four persons with doctorates and at least seven persons who had served the college for eight or more years.⁴⁸² Nevertheless, the University Board of Trustees summarily dismissed the entire col-

480. See J. PREER, *supra* note 45, at 70-71; Jenkins, *supra* note 437, at 423; Miller, *Anticipated Problems Incident to Racial Integration in Public Schools and Some Suggested Approaches*, 21 J. NEGRO EDUC. 285, 294 (1952).

481. Greenberg, *Racial Integration of Teachers—A Growing Problem*, 20 J. NEGRO EDUC. 584, 584-85 (1951).

482. See Atwood, *The Public Negro College in a Racially Integrated System of Higher Education*, 21 J. NEGRO EDUC. 352, 357 (1952); *The Appeal of the Louisville Municipal College Faculty to the Board of Trustees*, 20 J. NEGRO EDUC. 241, 243 (1951).

lege faculty with a token severance pay. Subsequent negotiations produced an agreement under which the university employed one member of the college faculty, selected by the entire group.⁴⁸³

Commentary in the *Journal of Negro Education* demonstrated black educators' concerns about the implications of the actions taken at Louisville.⁴⁸⁴ These concerns were not diminished by the observation of the university's Vice President that, with the closing of black colleges to achieve desegregation, "it seems inevitable that some qualified faculty will be forced from the teaching profession."⁴⁸⁵ Nor was any reassurance to be found in the report of the Presidents of other white Kentucky colleges that they had not employed any black faculty and did not "envision taking such a step in the foreseeable future."⁴⁸⁶ Although later mergers of black and white teachers colleges in Missouri and the District of Columbia were more equitable,⁴⁸⁷ reports of widespread dismissals of black elementary and secondary teachers in border states that closed their black schools shortly after *Brown* fed the fears of black educators.⁴⁸⁸

The complete desegregation of the University of Louisville

483. *The Appeal of the Louisville Municipal College Faculty to the Board of Trustees*, *supra* note 482, at 242; 21 J. NEGRO EDUC. 371, 372-73 (1952) (remarks of C.H. Parrish). The agreement also produced additional benefits for some of the other members of the college faculty, but none was offered a position with the university. See Atwood, *supra* note 482, at 357; 21 J. NEGRO EDUC. 402, 403 (1952) (remarks of Harry McAlpin).

484. See Cox, *Vested Interests Involved in the Integration of Schools for Negroes*, 20 J. NEGRO EDUC. 112 (1951); Greenberg, *supra* note 481; Thompson, *Negro Teachers and the Elimination of Segregated Schools*, 20 J. NEGRO EDUC. 135 (1951).

485. *Southern School News*, Apr. 7, 1959, at 8, col. 4.

486. Atwood, *supra* note 482, at 358.

487. In St. Louis, Missouri, Harris Teachers College absorbed Stowe Teachers College for Negroes in 1954. According to reports in *Southern School News*, Stowe's faculty, "except two or three who became elementary school supervisors," were employed in the merged institution. *Southern School News*, Oct. 1, 1954, at 10, col. 1. In 1955 Wilson (white) and Miner (black) Teachers Colleges merged to create the District of Columbia Teachers College. According to one report, "no instructor or professor, supervisor or administrator, clerk or custodian was dismissed." Cooke, *Desegregated Higher Education in the District of Columbia*, 27 J. NEGRO EDUC. 342, 347 (1958). The significance of these mergers, with regard to black faculty employment generally, is difficult to gauge since they involved, unlike the Louisville case, colleges for teacher training—one of the few functions that had been permitted to develop at black public colleges.

488. In 1956, for example, the *Southern School News* reported that nearly 500 black teachers had been dismissed as a result of desegregation. *Southern School News*, Nov. 1956, at 1, col. 1.

was an extraordinary event for the early 1950s and was almost certainly intended to work toward racial equality in higher education.⁴⁸⁹ The consequences of the action, however, emphasized the tenuous position of the black public college and provided a concrete example of the adverse effects that desegregation could have on the black communities served by those institutions. Those adverse effects were not limited to the unemployment of black faculty. For black high school graduates who were ill-prepared for college work because of past discrimination and present educational deprivation, the black public college represented the primary opportunity for higher education. If desegregation of white public colleges led to the closing of black institutions, desegregation would be a hollow victory for many blacks even if an essential element of justice for those able to satisfy the academic demands of white schools.

As the doctrine of separate but equal gave way to nondiscriminatory admissions and the constitutional demand for desegregation, a new threat emerged to racial equality. The end of the separate but equal era did not mark the end of the struggle for equality in higher education.

CONCLUSION

Pervasive and long-lasting discrimination under the guise

489. Although the summary and insensitive treatment of the Municipal College faculty seems inexcusable, the university's actions over a period of years strongly suggest that the decision to desegregate the institution was benign. In the late 1940s, the university successfully lobbied to have Kentucky's Day Law amended to permit admission of black students in white higher educational institutions. Strickler, *What Are the Implications of the Supreme Court Action on Desegregation for All Types of Colleges and for Professional Organizations?*, 1955 CURRENT ISSUES IN HIGHER EDUC. 57, 59-60. After blacks were admitted to the university, they were incorporated into all aspects of student life except for the use of the university's rented swimming pool and local parks, which were still subject to private and official segregation. *Id.* at 60-61; 21 J. NEGRO EDUC. 371, 373 (remarks of C.H. Parrish). With regard to faculty issues, the university's hiring of Dr. Parrish, the college faculty member selected by his colleagues, was an extraordinary step at the time and one not taken at most white public colleges for many years thereafter. In addition to Dr. Parrish, the university employed a black graduate student as a physics teacher in the early 1950s and appointed two other blacks to the teaching staff of the medical school by 1955. In 1959 the university appointed Dr. Parrish head of the Sociology Department, likely the first black to chair a department at a formerly segregated institution. Strickler, *supra*, at 61; 21 J. NEGRO EDUC. 371-72 (1952) (remarks C.H. Parrish); *Southern School News*, Apr., 1959, at 11, col. 1. Of course, the benign intent of the University of Louisville's actions underscored the greater threat that desegregation could represent when undertaken, in response to judicial coercion, by officials with different motivations.

of separate but equal public higher education deeply affected the black population and the black public college. The effects of that discrimination define the injury that black Americans suffered and help explain the inadequacy of post-*Brown* developments in the remedial law concerning equal opportunity in higher education. Nondiscriminatory admissions and the desegregation remedy share the deficiency of adopting a narrow view of the constitutional injury. Both approaches, therefore, offer an incomplete remedy. Similarly, *Bakke's*⁴⁹⁰ restriction of voluntary efforts to achieve racial equality in higher education gives insufficient weight to the injuries produced by a century of discrimination.

For more than a decade after *Brown*,⁴⁹¹ remedial law in higher education required only that white public colleges admit black students on a racially nondiscriminatory basis.⁴⁹² By concentrating on policies of racial exclusion—the “separate” half of the separate but equal formula—the early remedy afforded only prospective relief. The requirement of nondiscriminatory admissions failed to consider the nature and extent of the injuries resulting from unequal education and therefore failed to remedy the effects of past discrimination.⁴⁹³

The century-long movement toward democratization of higher education that began with the First Morrill Act of 1862 made higher learning broadly available to the American population. One hundred years of continually increasing federal and state funding for land grant and other public colleges and universities represented more than an investment in the physical resources of buildings, equipment, and libraries. It was an investment in human resources—doctors, lawyers, scientists, en-

490. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

491. *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

492. See *supra* notes 3-6 and accompanying text.

493. The limited scope of the nondiscriminatory admissions remedy can be traced to the Supreme Court's conception of the violation in *Brown I*. When the Court held that segregation was unconstitutional because “[s]eparate educational facilities are inherently unequal,” *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954) (*Brown I*), it broadened the reach of its holding, but implicitly narrowed its view of the constitutional injury. By relying on the inequality inherent in racial separation, the Court foreclosed the need for individual determinations of inequality between black and white schools in particular districts. At the same time, however, the Court diminished the importance of the more tangible injuries produced by the discrimination that had characterized implementation of the separate but equal doctrine. The Court's narrow conception of the injury was later expressed in *Brown II's* remedial mandate for “a system of determining admission to the public schools on a nonracial basis.” *Brown v. Board of Educ.*, 349 U.S. 294, 300-01 (1955) (*Brown II*).

gineers—and in the educational advancement of the population. Generations of students lacking the means or background to attend private colleges and universities found in the public institutions opportunities for social mobility, an entree to the professions, and other economic and cultural benefits. The values and economic security fostered in one generation of college graduates encouraged the aspirations of the next.

For the nation's black population, the need for investment in human resources was clear if separate but equal higher education were to be more than an instrument for perpetuating racial caste and inequality. The social and economic conditions of the black population and the nearly complete denial of education to blacks before emancipation called for aggressive affirmative action to make racially separate higher education even a marginally effective means for providing equality in education. Neither the South nor the nation, however, sought to achieve equality. For a century after freedom from enslavement and enforced illiteracy, the nation answered black Americans' desire and enthusiasm for learning with discrimination and deprivation. Insufficient funding and a "special" undergraduate curriculum severely restricted the benefits to be derived from education in black public colleges. The lack of either professional or graduate programs meant that inadequate undergraduate training marked the end of higher education for most of the relatively few black students able to obtain it at all. Separate and unequal education helped confine most of the black population to the lower educational and economic levels of society.

The condition of the black population at midcentury meant that remedying the effects of past discrimination would be a complex endeavor requiring far more than nondiscriminatory admissions. Thus, by the late 1960s the mandate for nondiscriminatory admissions had failed to achieve even its modest goal of purging racial separation from the public colleges of the segregationist states. Black institutions remained the primary source of public higher education for black students and remained overwhelmingly black in their student enrollments.⁴⁹⁴

494. By one estimate black public colleges accounted for nearly 80% of all black students enrolled in the four-year, public institutions in 16 states (excluding Louisiana). At least 25 of the 33 black public colleges in the 17 state region had enrollments that were 93% black or more. Enrollment data are derived from SOUTHERN EDUCATION REPORTING SERVICE, STATISTICAL SUMMARY OF SEGREGATION-DESEGREGATION IN THE SOUTHERN AND BORDER STATES, 1966-1967 (1967) [hereinafter SOUTHERN EDUCATION REPORTING SERVICE]. In

To be sure, resistance to the constitutional requirement of non-discriminatory admissions was an important factor in the continuing concentration of black students in black institutions,⁴⁹⁵ but it was not the only factor. Even if all the segregationist states had responded to *Brown* by immediately—or with “all deliberate speed”—ending racial exclusion in higher education, the adverse effects of separate but equal would have remained. In the border states that eliminated racially based admissions policies shortly after *Brown*, as well as in the resisting states of the South, black enrollment in white public colleges seldom exceeded a token level.⁴⁹⁶ As Horace Mann Bond observed at an earlier time, but in a related context, “it is absurd to expect the school to overcome the accumulated deficiencies of generations of inferior social and economic status within a school generation.”⁴⁹⁷ And with continuing segregation of black students in substandard elementary and secondary schools long after 1954,⁴⁹⁸ the deficiencies continued to accumulate.

Because racial exclusion was only part of the injustice of segregation, its elimination could be only part of an effective remedy. Discrimination during the separate but equal era involved more than denying individual black students an oppor-

some instances enrollments reported by the Southern Education Reporting Service represent estimates for colleges that did not keep, or would not reveal, their enrollments according to race. *See id.* at 3.

495. In some states protracted litigation delayed the enrollment of qualified black students in white institutions. *See* EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 250-52. In a few states resistance to the enrollment of black students took the form of violence. *See* United States v. Barnett, 330 F.2d 369, 374-75 (5th Cir. 1963) (per curiam) (Mississippi); Holmes v. Danner, 191 F. Supp. 394, 416-17 (M.D. Ga. 1961) (Georgia); EQUAL PROTECTION OF THE LAWS, *supra* note 23, at 84-89 (Alabama).

496. In Delaware, Kentucky, Maryland, Oklahoma, and West Virginia—all of which had adopted policies of nondiscriminatory admissions by 1955—nine black public colleges accounted for two-thirds of all black students enrolled in public institutions 10 years later. The remaining one-third were distributed among 30 white colleges. If Arkansas, North Carolina, and Tennessee—states that abandoned racially based admissions policies by 1957—are included, 16 black institutions enrolled 80% of the black students with the remainder scattered among 55 white schools. Only Missouri significantly deviated from the pattern. Its 11 white public colleges enrolled 85% of the black students and its only black public institution accounted for 15% of black students (but only three percent of all students). *See* SOUTHERN EDUCATION REPORTING SERVICE, *supra* note 494.

497. H. BOND, *supra* note 162, at 275.

498. Twelve years after *Brown*, approximately 83% of black children in the 17 state region attended schools that had black enrollments of 95% or greater. U.S. COMM. ON CIVIL RIGHTS, SOUTHERN SCHOOL DESEGREGATION, 1966-67, at 9 (1967).

tunity to attend college with their white peers; it included the unfulfilled promise of equality in the separate but equal formula. The nation's consistent failure to provide its black population with equality in public education inflicted an injury that could not be healed by the limited remedy of admitting black students "under the rules and regulations applicable to other qualified candidates."⁴⁹⁹ Although an essential remedy for some black students, racially neutral admission was an inherently inadequate remedy for most.

The failure of nondiscriminatory admissions to remedy the effects of a century of discrimination also suggests the inadequacy of *Bakke's* principle of equal treatment. The near total absence of black medical students produced by racially neutral admissions criteria at the University of California at Davis⁵⁰⁰ was not an inexplicable anomaly confined to one institution. At the beginning of the 1970s, the failure of equal treatment to remedy the effects of past discrimination was as evident in professional schools throughout the nation as it was in the undergraduate colleges of the southern and border states. In all medical schools, black enrollment was under three percent.⁵⁰¹ Blacks accounted for less than three percent of all students in the nation's dental schools, approximately four percent in schools of pharmacy, and less than two percent in schools of veterinary medicine. In the nation's law schools, black enrollment was approximately four percent. In undergraduate schools of engineering, blacks constituted a mere two percent of enrollments, while the black share of engineering graduate degrees was less than one percent. The output of black doctorates from all the nation's universities was under three percent.⁵⁰²

The failure of institutions of higher learning appreciably to increase the ranks of black professionals was not the product of "an amorphous concept" of "'societal discrimination,'"⁵⁰³ but the result of widespread and long-lasting discrimination in education. The effect of that discrimination was not "ageless in its

499. *Florida ex rel. Hawkins v. Board of Control*, 350 U.S. 413, 414 (1956) (per curiam).

500. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 276 n.6 (1978) (opinion of Powell, J.) (one black admitted under regular admissions program from 1970-1974).

501. Keith, Bell, Swanson & Williams, *Effects of Affirmative Action in Medical Schools*, 313 *NEW ENG. J. MED.* 1519, 1519 (1985).

502. See J. BLACKWELL, *MAINSTREAMING OUTSIDERS: THE PRODUCTION OF BLACK PROFESSIONALS* 115, 166, 199, 221, 233, 235, 259, 294 (1981).

503. *Bakke*, 438 U.S. at 307 (opinion of Powell, J.).

reach into the past,"⁵⁰⁴ but unrelenting in its reach into the present. The denial of equality in higher education affected more than a discrete group of black individuals; it affected most of the black population. At the beginning of the twentieth century, the segregationist states included ninety percent of all black Americans. Continuing migration out of the South produced a gradual redistribution of the black population, but as late as 1950 two-thirds of all black Americans lived in the segregationist states.⁵⁰⁵

Whatever the doctrinal intricacies associated with a race-conscious, affirmative action remedy, its importance to the achievement of educational equality seems indisputable. Affirmative action in higher education is an inseparable part of the complex problem of remedy for the century of discrimination during the separate but equal era. Moreover, the partially resolved question of affirmative action cannot be separated from the yet unanswered questions concerning the disestablishment remedy and the fate of black public colleges. While *Bakke* appears to foreclose one means of achieving equality in higher education, the disestablishment remedy may eliminate the primary alternative.

Under the remedial principle announced in *Green v. County School Board*,⁵⁰⁶ and subsequently applied to higher education by some lower courts,⁵⁰⁷ the focus of relief became the elimination of racial identifiability in institutions of higher education. Unlike the remedy of nondiscriminatory admissions, disestablishment addresses one effect or vestige of the separate but equal era—racial duality in public colleges. In its concern with the structural vestige of segregation, however, the remedy affords little relief for the far-reaching effects past discrimination had on the black population. Moreover, in its demand for conversion of "white colleges and black colleges to just colleges,"⁵⁰⁸ *Green's* remedial principle threatens to deny black colleges their continuing role in affording higher education to blacks while *Bakke* limits the ability of other institutions to as-

504. *Id.*

505. HISTORICAL STATISTICS, *supra* note 59.

506. 391 U.S. 430, 437-42 (1968); *see supra* text accompanying notes 7-10.

507. *See, e.g.*, *Geier v. University of Tenn.*, 597 F.2d 1056, 1065-66 (6th Cir. 1979); *Norris v. State Council of Higher Educ.*, 327 F. Supp. 1368, 1372-73 (E.D. Va.), *aff'd*, 404 U.S. 907 (1971).

508. *Norris*, 327 F. Supp. at 1373; *see also* *Hunnicut v. Burge*, 356 F. Supp. 1227, 1230 (M.D. Ga. 1973) (state obligated to eliminate racial identity of its black public college).

sume that function. By concentrating primarily on the racial identifiability of black institutions, the remedy fails to consider their ambiguous legacy.

The difficulty and importance of distinguishing between the positive and negative features of that legacy were evident early in the years after *Brown*. The institutions were clearly vestiges of segregation and discrimination. Weaknesses in their facilities, curricula, and faculty created the danger that the colleges would perpetuate a narrow and distorted conception of black higher education. Their survival as racially identifiable institutions would mean the survival of racial duality in higher education and, to a substantial degree, continuation of the isolation of black faculty and students. Nevertheless, to perceive the institutions solely as vestiges of segregation that would best promote educational equality by closing down or converting to majority white colleges is to misunderstand the history of separate but equal public higher education.

Although black public colleges were clearly inferior under many criteria of comparison, they were clearly superior in other important respects. In providing higher education to the black community, and in contributing to the growth of a black professional class, the black institutions were as far ahead of their white counterparts as they were behind in funding and physical facilities. The dearth of black professionals and other college-educated blacks in the 1950s, as well as the level of preparation of black high school graduates still suffering from discrimination, suggested a continuing need for colleges having the primary purpose of providing opportunities for educational, economic, and social advancement to a population whose interests had long been neglected. The black institutions represented both the possibility for affirmative, remedial action in eliminating the vestiges of separate but equal education and the possibility of exploitation in preserving racial separation.

The racial identifiability of black public colleges at the end of the 1960s represented the realization of both possibilities. Institutions that were ninety percent black were vestiges of racial duality. For many black undergraduates, however, the black public colleges provided opportunities that would not be available in a racially unitary system offering only "equal treatment." The essential role of black colleges—both public and private—in remedying the effects of discrimination was also evident in the still-limited number of black professional schools. While racially neutral admissions policies, and the early affirm-

ative action programs that *Bakke* later questioned, produced small black enrollments in white institutions, black colleges provided significant opportunities for the growth of a black professional class. Tuskegee Institute and Meharry Medical College—the private black schools designated as regional institutions in a last ditch effort to avoid desegregation in the late 1940s⁵⁰⁹—played a major role in offering professional training. In the early 1970s, Tuskegee enrolled nearly all black veterinary students. Meharry joined with Howard University to educate more black dental students than forty-nine white institutions combined.⁵¹⁰ And while racial neutrality at the Davis Medical School resulted in the admission of one black student during the first half of the 1970s, Howard and Meharry enrolled nearly 1000 black medical students.⁵¹¹ At the beginning of the decade, more than half of the nation's black pharmacy students were studying at four black colleges—including the two black land grants with pharmacy programs. The remaining aspiring black pharmacists were scattered among forty-nine white institutions. In engineering, six black colleges, including four black land grants, awarded nearly half of all undergraduate degrees conferred on black students. More than 250 white institutions combined to award the rest.⁵¹² Black law schools created to defeat the challenge to separate but equal continued to carry the primary responsibility for the education of black attorneys.⁵¹³

The history and future of black public colleges are inextricably bound up with the broader issue of racial equality in higher education. Their continuing racial identifiability—no less than the absence of black students in the Davis Medical School at the time of *Bakke*—is a manifestation of the failure of equal treatment to remedy the effects of separate and unequal higher education. Black public colleges are a symptom, not a cause of injustice. Concern over the fate of those institutions, expressed by black educators in the 1950s and stated more

509. See *supra* note 364.

510. J. BLACKWELL, *supra* note 502, at 115, 197.

511. See Shea & Fullilove, *supra* note 433, at 936.

512. See J. BLACKWELL, *supra* note 502, at 157, 166, 205.

513. In 1970 three of the seven black law schools created during the challenge to the separate but equal doctrine, see *supra* note 354, continued to provide legal education to black students. The law school at Southern University enrolled 45 of the 61 black law students in Louisiana. North Carolina Central University enrolled 92 of North Carolina's 99 black law students. Texas Southern University enrolled 150 of Texas's 177 black law students. J. BLACKWELL, *supra* note 502, at 260.

forcefully in recent times,⁵¹⁴ is a concern that the disestablishment remedy will eliminate the symptom but not the cause. The need remains for aggressive, affirmative action to reach the goal of equality in higher education. If it is not to be accomplished through institutions of higher learning throughout the nation, then courts and commentators should pause for a sober, second thought before endorsing a remedial principle that could prevent its accomplishment in the black public colleges of the South.

514. See sources cited *supra* notes 16, 474, 476.