

May 2012

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Recommended Citation

Leland Ware & Melva Ware, *Plessy's Legacy: Desegregating the Eurocentric Curriculum*, 12 GA. ST. U. L. REV. (2012).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol12/iss4/16>

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PLESSY'S LEGACY: DESEGREGATING THE EUROCENTRIC CURRICULUM

Leland Ware[†]
Melva Ware^{††}

INTRODUCTION

The spectre of *Plessy v. Ferguson*¹ continues to haunt race relations more than forty years after its official demise in the *Brown*² decision. Thirty years have elapsed since the Civil Rights legislation of the 1960s was enacted, yet vestiges of formal segregation abound. Segregated housing patterns persist in every major metropolitan area.³ African-Americans and other people of color are absent from the upper reaches of corporate America.⁴ During the past decade, racial polarization has intensified.

The persistence of discrimination is attributable to a combination of conscious beliefs and unconscious assumptions that are made about African-Americans. These views are reflected in images that predominate mass media. They are evident in the pronouncements of political leaders. They are implicit in what is deemed American culture. These beliefs are inculcated in educational settings through an "official" version of American culture. This Eurocentric perspective operates as an ideological censor that privileges Americans of European descent while systematically denying the legitimacy of all other views. The Eurocentric perspective has had a profound effect on efforts to desegregate educational institutions.

In the years following *Brown*, the success of desegregation has been measured almost exclusively in terms of the percentage of racial minorities in student populations. At the same time,

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1. 163 U.S. 537 (1896).

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

3. Douglas S. Massey & Nancy A. Denton, *Hypersegregation in U.S. Metropolitan Areas: Blacks & Hispanic Segregation Along Five Dimensions*, 26 *DEMOGRAPHY* 373, 388 (1989).

4. See GLASS CEILING COMMISSION, *GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION'S CAPITAL* (1995).

educators have resisted efforts to diversify the curriculum. Efforts to expand the curriculum and embrace other perspectives have been summarily dismissed as "political correctness." Yet, the predominant curricular values and traditions in American higher education were developed during the *Plessy* era when African-Americans and other people of color were excluded from the dominant intellectual community. The failure of school desegregation is directly related to the educational hierarchy's failure to acknowledge the legitimacy of perspectives that are different from its own.

In *Knight v. Alabama*,⁵ the plaintiffs attempted to address this problem by moving the curriculum debate from academic circles to the courts. The plaintiffs in *Knight* contended that the traditional, Eurocentric curriculum was a vestige of the era of *de jure* discrimination.⁶ They believed that Alabama's institutions of higher learning could not be integrated without fundamental curricular reform.⁷ The district court disagreed, however, based on its reluctance to appreciate the depth of the racial bias embedded in the traditional curriculum and the centrality of curricular content to the educational process.⁸

This Article will explore the implications of the issue that the court was unwilling to resolve in *Knight*. Parts I and II will examine the pre-*Brown* desegregation cases and the later efforts to implement *Brown's* mandate in colleges and universities. As the discussion in these sections indicates, the issues in these cases were limited to obtaining access to segregated institutions. Part III will consider the *Knight* litigation and the unsuccessful attempt to broaden the focus of desegregation litigation to include curricular issues. To place the curriculum issue in its proper context, Parts IV and V will examine the foundation and development of the modern American curriculum. The discussion in these sections will demonstrate that the present curriculum is

5. *United States v. Alabama*, 628 F. Supp. 1137 (N.D. Ala. 1985), *rev'd*, 828 F.2d 1532 (11th Cir. 1987), *cert. denied sub nom.* Board of Trustees State Univ. v. Auburn Univ., 487 U.S. 1210 (1988); *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991), *aff'd in part and rev'd in part*, 14 F.3d 1534 (11th Cir. 1994); *Knight v. Alabama*, 900 F. Supp. 272 (N.D. Ala. 1995). Because of the procedural posture of the case, *Knight v. Alabama* actually began with a different name: *United States v. Alabama*. To avoid confusion, the case is referred to as *Knight v. Alabama* throughout this Article.

6. *Knight*, 900 F. Supp. 272, 338 (N.D. Ala. 1995).

7. *Id.*

8. *Id.*

biased because it retains values and traditions that originated in the era of formal segregation. Part VI will review the current debate in academic circles, and Part VII will ponder the effect that curricular reform would have on equality in the educational environment.

As we shall see, the traditional curriculum perpetuates bias because it emphasizes European-Americans and devalues all other groups. This approach treats African-Americans and other minority students differently and less favorably than similarly situated white students and places them at a distinct disadvantage. Without fundamental changes in the curriculum, real integration will never be achieved.

I. CHALLENGES TO SEGREGATION IN HIGHER EDUCATION PRIOR TO *BROWN*

The 1896 decision in *Plessy v. Ferguson*⁹ legitimized an era of state-sponsored racial segregation that governed virtually every aspect of economic, social, and political relationships among the races. At the turn of the century, *Plessy* was received as the resolution of the ambiguous status of African-Americans. The preeminent black leader of that period, Booker T. Washington, recommended in his 1895 address to the Cotton States Exposition that black and white citizens cooperate in economic matters, but live and socialize in separate spheres.¹⁰ This proposal was welcomed by white America and the era of formal segregation ensued. For African-Americans, this meant relinquishing civil rights, occupying a subordinate status in the economy, and complete social ostracism. In the South, a regime of white supremacy had been imposed in the years leading up to *Plessy* through terrorism, lynchings, and other acts of physical intimidation.¹¹

The system remained virtually unchallenged until the mid-1930s, when the National Association for the Advancement of Colored People (NAACP) launched its long-range, carefully orchestrated challenge to formal segregation.¹² The strategy

9. 163 U.S. 537 (1896).

10. LOUIS HARLAN, BOOKER T. WASHINGTON: THE MAKING OF A BLACK LEADER 1856-1901 (1972).

11. See generally ERIC FONER, RECONSTRUCTION, AMERICA'S UNFINISHED REVOLUTION 1863-1877 (1988).

12. See generally JACK GREENBERG, CRUSADERS IN THE COURTS: HOW A DEDICATED

consisted of mounting legal challenges to segregation as practiced within the constraints of the separate-but-equal doctrine of *Plessy*. Led initially by Charles Hamilton Houston, and later, Thurgood Marshall, the lawyers at the NAACP targeted graduate educational institutions as the starting point for their campaign. Almost every Southern state had implemented the *Plessy* doctrine by establishing separate educational facilities for black and white students. During the late nineteenth century, a number of land-grant institutions were established with federal assistance authorized by the Morrill Act.¹³ To qualify for federal aid under the 1890 Morrill Act, most Southern states established publicly funded colleges for black students, but these were not comparable to the facilities for white students.¹⁴ Furthermore, none of the states had established any mechanism for making graduate and professional training opportunities available to African-Americans.¹⁵

The NAACP's first successful case was directed against the University of Maryland.¹⁶ In *Pearson v. Murray*¹⁷ the trial court held that the law school at the University of Maryland was obligated to admit a black applicant because it had failed to establish a separate school for black students.¹⁸ The court found that the Equal Protection Clause of the Fourteenth Amendment required the state to provide educational opportunities for blacks that were equal to those available to whites.¹⁹ This decision was upheld by the state supreme court, but its applicability was limited to Maryland.²⁰

BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION (1994); RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1976); GENNA R. McNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* (1983); MARK V. TUSHNET, *MAKING CIVIL RIGHTS LAW: THURGOOD MARSHALL AND THE SUPREME COURT, 1936-1961* (1994).

13. Gil Kujovich, *Equal Opportunity in Higher Education and the Black Public College: The Era of Separate But Equal*, 72 MINN. L. REV. 29, 41-42 (1987).

14. *Id.* at 47.

15. *Id.* at 113-14.

16. The NAACP's first legal effort was directed at getting a black student admitted to the University of North Carolina School of Pharmacy. *Id.* at 115. However, the NAACP was unsuccessful in its attempt. *Id.*

17. 182 A. 590 (Md. 1936).

18. *Id.* at 594.

19. *Id.* at 592.

20. *Id.* at 594.

Another opportunity to test the equalization strategy arose when the University of Missouri denied admission to a student on racial grounds. In 1938 the United States Supreme Court held in *Missouri ex rel. Gaines v. Canada*²¹ that Missouri was obligated to provide legal training opportunities for black students because it had established a publicly-funded law school for whites.²² In *Gaines* the Supreme Court found that the guarantee of equal protection was an individual right that could not be satisfied by providing out-of-state scholarships to black students.²³ Because Missouri had not established a separate school for black students, the Court held that it was obligated to admit Gaines to the University of Missouri.²⁴

During the early 1940s, the Second World War slowed the NAACP's activities relating to graduate schools. After the War's conclusion, however, the demand for higher education was escalated by thousands of returning veterans who were aided by government stipends that subsidized educational costs. During this period, the last of the "equalization" cases was adjudicated. The final phase of the pre-*Brown* litigation involved professional schools in Texas and Oklahoma. *Sweatt v. Painter*²⁵ and *McLaurin v. Oklahoma State Regents for Higher Education*²⁶ were decided on the same day in 1950. In *Sweatt*, the State of Texas attempted to forestall the NAACP's legal challenge by allocating funds for the construction of a black law school in Houston.²⁷ When the case reached the United States Supreme Court, it held that the creation of a separate school for black students could not satisfy the Equal Protection Clause even if the school was physically equal to the law school that was maintained for white students.²⁸ The Court recognized for the first time that education involved more than equivalent physical structures.²⁹ Other considerations included "the faculty, experience of the administration, position and influence of the

21. 305 U.S. 337 (1938).

22. *Id.* at 349-50.

23. *Id.* at 349.

24. *Id.* at 352.

25. 339 U.S. 629 (1950).

26. 339 U.S. 637 (1950).

27. *Sweatt*, 339 U.S. at 632-33.

28. *Id.* at 633.

29. *See id.* at 633-34.

alumni, standing in the community, traditions and prestige."³⁰ These qualities, the Court found, could not be replicated in a segregated facility.³¹

The Oklahoma case involved a different set of circumstances. McLaurin was actually allowed to attend classes at the University of Oklahoma, but he was required to sit in a separate area within the classroom that had been reserved for black students.³² The University also required him to sit at "blacks only" tables in the library and the cafeteria.³³ The Supreme Court found these arrangements far too stigmatizing to satisfy the equal protection requirements of the Fourteenth Amendment.³⁴ By the time *Brown* reached the Court in 1954, these graduate school cases had forced the Court to confront the fiction of the separate-but-equal doctrine and to acknowledge the stigmatic injury that state-sponsored segregation inflicted on black students. However, the *Brown* decision did not result in equal educational opportunities for black students.

II. THE IMPLEMENTATION OF *BROWN* IN COLLEGES AND UNIVERSITIES

After *Brown* was decided, the NAACP embarked on the decades-long and still unfinished effort to implement the equal educational opportunities that *Brown* promised. The "deliberate speed" language of the final decree allowed Southern states to engage in delaying tactics. For several years, these states ignored or actively resisted *Brown's* mandate. By the late 1960s, the Supreme Court grew weary of Southern resistance and ordered the states to desegregate immediately.³⁵ In subsequent cases, the Court went further and imposed an "affirmative duty" to take whatever steps necessary to eliminate all vestiges of segregation "root and branch."³⁶

Much of the post-*Brown* litigation focused on primary and secondary schools.³⁷ When the courts began to focus on higher education, a separate set of issues emerged. One issue was

30. *Id.* at 634.

31. *Id.*

32. *McLaurin*, 339 U.S. 637, 640 (1950).

33. *Id.*

34. *Id.* at 641-42.

35. *See Green v. County Sch. Bd.*, 391 U.S. 430, 438-39 (1968).

36. *Id.* at 437-38.

37. *See generally* TUSHNET, *supra* note 12.

whether the “affirmative duty” to desegregate applied to institutions of higher learning. A second question concerned what would happen to the black colleges established during the era of *de jure* segregation. The Supreme Court held that desegregation meant the removal of any vestiges that identified race in formerly segregated schools.³⁸ Lower courts have attempted to accomplish this result by ordering remedies that were aimed at achieving racial balance within student populations.³⁹ But these efforts have proven to be an ineffective means of achieving equality. If what is taught *within* the schools is premised on values that perpetuate a racial hierarchy, equality cannot be achieved.

In one of the earliest higher education cases, *Alabama State Teachers Association v. Alabama Public School and College Authority*,⁴⁰ the district court held that the affirmative duty to desegregate did not apply to colleges and universities because, unlike primary and secondary schools, the decision to attend a particular college was largely a matter of student choice.⁴¹ As a result, the court held that states could satisfy their desegregation obligations by adopting race-neutral admission policies.⁴² In subsequent cases, however, the courts applied a different standard. In *Norris v. State Council of Higher Education*⁴³ and a series of cases involving the University of Tennessee,⁴⁴ the courts concluded that the “affirmative duty” applied to colleges and universities.

The Supreme Court finally resolved the dispute concerning the appropriate standard to apply in *United States v. Fordice*.⁴⁵ *Fordice* began as an enforcement action in the mid-1970s.⁴⁶ The federal government sought to compel the State of Mississippi to

38. *United States v. Fordice*, 505 U.S. 717 (1992).

39. *See, e.g., United States v. Louisiana*, 811 F. Supp. 1151, 1163 (1993).

40. 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969).

41. *Id.* at 788.

42. *Id.* at 789-90.

43. 327 F. Supp. 1368 (E.D. Va.), *aff'd sub nom.* Board of Visitors of College of William and Mary v. *Norris*, 404 U.S. 907 (1971).

44. *Sanders v. Ellington*, 288 F. Supp. 937 (M.D. Tenn. 1968), *enforced sub nom.* *Geier v. Dunn*, 337 F. Supp. 573 (M.D. Tenn. 1972), *modified sub nom.* *Geier v. Blanton*, 427 F. Supp. 644 (M.D. Tenn. 1977), *aff'd sub nom.* *Geier v. University of Tenn.*, 597 F.2d 1056 (6th Cir. 1979), *cert. denied*, 444 U.S. 886 (1979).

45. 505 U.S. 717 (1992).

46. *Id.* at 723.

desegregate its colleges and universities.⁴⁷ A civil action was eventually filed, but the trial court and the court of appeals held that the affirmative duty did not apply to higher education.⁴⁸ When the Supreme Court reviewed the case, it held that a state's desegregation obligations could not be satisfied by the adoption of race-neutral admissions policies.⁴⁹ When policies traceable to the era of *de jure* segregation were still in effect, the state had an affirmative duty to eliminate them to the "extent practicable and consistent with sound educational practices."⁵⁰ The precise contours of the obligations imposed by this standard were explored in *Knight v. Alabama*,⁵¹ a case pending in the lower courts when *Fordice* was decided.

III. THE *KNIGHT* LITIGATION: DISMANTLING THE VESTIGES OF SEGREGATION

*Knight v. Alabama*⁵² represents a dramatic departure from the previous approaches because it presented novel theories of liability and because the plaintiffs sought unusual remedies. In contrast to traditional desegregation strategies, the plaintiffs in *Knight* took a comprehensive approach that sought remedies beyond racial balance in student populations.⁵³ The plaintiffs contested a broad array of conditions that subordinated the interests of the black students.⁵⁴ Some of these conditions included white control of higher education, policies that fostered segregation at white institutions, and the maintenance of the historically black colleges in an inferior status.⁵⁵

Knight was commenced in 1983 by the federal government following an unsuccessful administrative enforcement proceeding.⁵⁶ The civil action alleged that the State of Alabama

47. *Id.* at 724.

48. *Id.* at 723, 726-27.

49. *Id.* at 733-36.

50. *Id.* at 729.

51. *United States v. Alabama*, 628 F. Supp. 1137 (N.D. Ala. 1985), *rev'd*, 828 F.2d 1532 (11th Cir. 1987), *cert. denied sub nom.* Board of Trustees State Univ. v. Auburn Univ., 487 U.S. 1210 (1988); *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991), *aff'd in part and rev'd in part*, 14 F.3d 1534 (11th Cir. 1994); *Knight v. Alabama*, 900 F. Supp. 272 (N.D. Ala. 1995).

52. *See* cases cited *supra* note 51.

53. *Knight*, 787 F. Supp. at 1051-52.

54. *Id.*

55. *Id.* at 1051-53.

56. *Id.* at 1048.

had failed to satisfy its obligations to desegregate its institutions of higher education.⁵⁷ A group of private plaintiffs, including John Knight, intervened in 1985.⁵⁸ During the same year, the trial court found Alabama liable.⁵⁹ However, in 1987 the Court of Appeals for the Eleventh Circuit reversed the trial court's ruling on the ground that the trial judge should have recused himself.⁶⁰ A second trial began in 1990, and the district court entered a lengthy opinion and order in December 1991.⁶¹

The opinion reviewed, in great detail, the history of segregation in Alabama's colleges and universities from the Reconstruction period to the present.⁶² The court identified a number of discriminatory practices that were established during the era of state-sponsored discrimination and traced these to the conditions that existed at the time of the trial.⁶³ Among the conditions identified were practices relating to the employment of faculty and administrators, discriminatory funding allocations, inequities in the facilities located at the historically black institutions, discriminatory admissions policies, and program duplications.⁶⁴ Based on these findings, the court entered a remedial order that required reallocation of the state's funding for higher education, elimination of program duplications at the white and black colleges, implementation of a capital improvement program for the black colleges, and other remedies that were intended to eliminate the vestiges of continued segregation.⁶⁵

Both sides appealed various aspects of the trial court's ruling. In 1994 the Court of Appeals for the Eleventh Circuit issued a ruling that reversed certain parts of the district court's decision.⁶⁶ On appeal, the plaintiffs argued that the limited mission assignments of the historically black colleges were vestiges of *de jure* segregation.⁶⁷ They believed that the mission assignments should have been upgraded by transferring some of

57. *Id.* at 1052.

58. *Id.* at 1048-49.

59. *United States v. Alabama*, 628 F. Supp. 1137 (N.D. Ala. 1985).

60. *United States v. Alabama*, 828 F.2d 1532, 1546 (11th Cir. 1987), *cert. denied sub. nom.* *Board of Trustees v. Auburn Univ.*, 487 U.S. 1210 (1988).

61. *Knight v. Alabama*, 787 F. Supp. 1030 (N.D. Ala. 1991).

62. *Id.* at 1045-49.

63. *Id.* at 1046.

64. *Id.* at 1368.

65. *Id.* at 1377.

66. *Knight v. Alabama*, 14 F.3d 1534, 1556-57 (11th Cir. 1994).

67. *Id.* at 1542.

the high prestige academic programs from the historically white universities to the black colleges.⁶⁸ The plaintiffs also appealed rulings that related to land grant funding and the curricula at white colleges.⁶⁹ The Eleventh Circuit found that the trial court had failed to adequately address the mission assignment issue because it had not determined whether the assignments continued to have an adverse effect on enrollment choices.⁷⁰ The court also held that the ruling concerning the allocation of land grant funding was flawed.⁷¹ As a result, it directed the trial court to consider whether the land grant funding, which was disproportionately allocated to an historically white institution, had a segregative effect.⁷²

The plaintiffs also claimed that the trial court's refusal to adjudicate the curriculum issue was erroneous.⁷³ They believed that the historically white institutions had established Eurocentric curricula that marginalized or ignored the contributions of African-Americans and other racial minorities.⁷⁴ In the plaintiffs' view, the curricula at white institutions, in conjunction with racially hostile climates, deterred black students from attending these institutions and operated to the educational detriment of black students who enrolled.⁷⁵ These conditions, the plaintiffs argued, were vestiges of the *de jure* system that perpetuated unequal educational opportunities.⁷⁶ The district court held additional proceedings and issued an opinion in the third trial in August 1995.⁷⁷

One of the disputes in *Knight* was whether the affirmative duty to desegregate that applied to secondary and primary schools extended to institutions of higher learning.⁷⁸ While the appeal in *Knight* was pending, the Supreme Court held in *United States v. Fordice*⁷⁹ that the duty extended to these

68. *Id.*

69. *Id.* at 1539.

70. *Id.* at 1546.

71. *Id.* at 1550-51.

72. *Id.* at 1551.

73. *Id.* at 1552.

74. *Id.*

75. *Id.* at 1553.

76. *Id.*

77. *Knight v. Alabama*, 900 F. Supp. 272 (N.D. Ala. 1995).

78. *See id.* at 281.

79. 505 U.S. 717 (1992).

institutions.⁸⁰ Anticipating the decision in *Fordice*, the district court, in the second trial in *Knight*, analyzed Alabama's desegregation obligations based on an assumption that the state had an affirmative duty to desegregate.⁸¹ This resulted in a far-reaching opinion and order that required Alabama to undertake a dramatic overhaul of its educational system. Furthermore, in what was a major victory for the plaintiffs, the court did not order the merger of the black colleges into the white institutions.⁸² Instead, the court ordered Alabama to preserve and enhance the black colleges.⁸³ The changes that were directed included making capital improvements, providing additional operating funds, and taking other steps to improve the quality of educational services provided.⁸⁴ The court premised this remedy on its determination that the inability of the black schools to attract white students was based on a widely held perception that these institutions were educationally inferior.⁸⁵ The court believed that white students would not elect to attend black colleges in the absence of dramatic improvements.⁸⁶

Although much of the result in the second trial was welcomed, the rationale of the district court's decision was not entirely consistent with the plaintiffs' theory of liability. The plaintiffs contended that Alabama had maintained a network of institutional arrangements that influenced student choice and

80. *Id.* at 727-29.

81. *Knight v. Alabama*, 787 F. Supp. 1030, 1047 (N.D. Ala. 1991).

82. *Knight*, 900 F. Supp. at 321.

83. *Id.* at 370-75. One of the questions that arose in the higher education cases was the fate of the publicly funded black colleges that had been established during the pre-*Brown* era. In fact, the supporters of black colleges who sought to forestall the desegregation remedies that threatened the existence of black schools initiated much of the litigation. See, e.g., *Geier v. University of Tenn.*, 597 F.2d 1056 (6th Cir. 1979), *cert. denied*, 444 U.S. 886 (1979); *Norris v. State Council of Higher Educ.*, 327 F. Supp. 1368 (E.D. Va. 1971), *aff'd sub nom.* *Board of Visitors of College of William and Mary v. Norris*, 404 U.S. 907 (1971); *Alabama State Teacher's Ass'n v. Alabama Pub. Sch. and College Auth.*, 289 F. Supp. 784 (M.D. Ala. 1968), *aff'd per curiam*, 393 U.S. 400 (1969); see also JEAN L. PREER, *LAWYERS V. EDUCATORS: BLACK COLLEGES AND DESEGREGATION IN PUBLIC HIGHER EDUCATION* (1982). The importance of black colleges in the education of African-American students was first acknowledged in *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973). The court in *Knight* accepted the argument that black colleges should not be sacrificed in the desegregation process. *Knight*, 900 F. Supp. at 321.

84. *Knight*, 787 F. Supp. at 1282-83.

85. *Id.* at 1281.

86. *Id.*

perpetuated the stigma of black inferiority.⁸⁷ Furthermore, they argued that they were entitled to the preservation and improvement of the black colleges.⁸⁸ This remedy was granted, but as the following sections demonstrate, a critical element of the relief sought was denied.⁸⁹

A. *The Challenge to the Curriculum*

The plaintiffs in *Knight* argued that desegregation required more than the presence of African-Americans in the student populations.⁹⁰ They claimed that a truly integrated institution would reflect the state's racial diversity in all aspects of its operations, including faculty, staff, administration, and governance.⁹¹ The most innovative argument concerned the curriculum.⁹² The plaintiffs contended that integration necessitated the inclusion of an African-American perspective within the core curriculum.⁹³ Specifically, the plaintiffs believed that the curricula at the white schools reflected a Eurocentric bias that marginalized or ignored the contributions of African-Americans and other minorities to American culture and thought.⁹⁴ This bias, they argued, operated to the educational detriment of black students and perpetuated a widely held perception that these were still "white" institutions.⁹⁵

During the second trial, the plaintiffs offered an array of evidence to support their claim.⁹⁶ However, the court rejected their arguments and held that institutional academic freedom

87. *Id.* at 1272.

88. *Id.* at 1348-49.

89. *Id.* at 1349.

90. *Id.* at 1051-52.

91. *Id.*

92. No single statement can adequately express the meaning conveyed by the term "curriculum." However, a curriculum is the total experience of schooling, including the organization, distinguishing characteristics of the process, as well as the content of information taught. Curriculum content reflects the selection of elements of a culture as well as events and perspectives for viewing the particulars of history as socio-cultural artifacts. See PETER S. HLEBOWITSH, *RADICAL CURRICULUM THEORY RECONSIDERED: A HISTORICAL APPROACH* (1993); see also HERBERT M. KLIBARD, *FORGING THE AMERICAN CURRICULUM: ESSAYS IN CURRICULUM HISTORY AND THEORY* (1992).

93. *Knight*, 787 F. Supp. at 1333.

94. *Id.*

95. *Id.*

96. *Id.* at 1287-1333.

precluded judicial intervention on this issue.⁹⁷ This ruling was appealed, and the Eleventh Circuit reversed the trial court's finding.⁹⁸ After holding that the State's interest in academic freedom did not outweigh the black students' equality interests,⁹⁹ it directed the trial court to consider whether the curricula at the white institutions were "deficient in the degree to which they incorporate black thought, culture, and history."¹⁰⁰ If any such deficiencies were found, the trial court would have been obligated to decide whether the deficiencies were traceable to the era of *de jure* segregation.¹⁰¹ Furthermore, if the traceability requirement were met, the court would have been obligated to ascertain whether the continuation of the Eurocentric orientation would have been consistent with sound educational policy.¹⁰²

B. Curricular Deficiencies in Black History, Thought, and Culture

After the case was remanded for the third trial, the plaintiffs presented the testimony of a number of expert witnesses to support their theory that the curricula at the white institutions failed to adequately incorporate an African-American perspective.¹⁰³ After considering the evidence presented, the district court commenced its analysis by declaring that there was "no accepted measure" to determine whether such a deficiency existed.¹⁰⁴ One of the plaintiffs' experts suggested a "substantial inclusion" standard.¹⁰⁵ Another recommended a "significant portion" requirement.¹⁰⁶ Both proposals involved evaluating the curricular content at historically white institutions.¹⁰⁷ These suggestions were rejected on the grounds that they were too

97. *Id.* at 1333.

98. *Knight v. Alabama*, 14 F.3d 1534, 1553 (11th Cir. 1994).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* This standard was derived from *United States v. Fordice*, which held that when "policies traceable to the *de jure* system are still in force and have discriminatory effects, those policies too must be reformed to the extent practicable and consistent with sound educational practices." 505 U.S. 717, 729 (1992).

103. *Knight v. Alabama*, 900 F. Supp. 272, 336 (N.D. Ala. 1995).

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

arbitrary or subjective.¹⁰⁸ The lack of a standard for determining whether the curricula at white institutions were deficient did not prevent the court from concluding that “the infusion of black thought, history, and culture in the [white institutions] general and core curriculums is sufficient.”¹⁰⁹

C. *The Traceability Requirement*

After holding that there were no deficiencies in the content of the curricula, the court assumed for the sake of argument that some inadequacies had been shown and proceeded to consider whether they were traceable to the era of *de jure* discrimination.¹¹⁰ The plaintiffs argued that the lack of any degree-granting programs in Black Studies evidenced an underrepresentation of African-American perspectives in the curricula.¹¹¹ To support this contention, the plaintiffs relied on evidence that indicated that the only states whose institutions lacked degree-granting programs were Alabama, Louisiana, and Mississippi—the states that were involved in the most significant and hard-fought desegregation cases.¹¹² The court found that this assertion was “not entirely accurate” because the University of Alabama allowed students to develop an interdisciplinary degree in Black Studies at one of its colleges.¹¹³ The court also identified other states that did not offer degree-granting programs in Black Studies.¹¹⁴

The court found it “significant” that several of the historically black institutions did not offer degrees in Black Studies.¹¹⁵ Finally, the court held that because the first Black Studies programs were established in the late 1960s, the absence of such

108. *Id.*

109. *Id.* at 337. The court did not elaborate on this conclusion beyond citing, without comment, to portions of the trial court transcript. *Id.* It also relied on a panel of five experts, only one of whom was African-American. *Id.* at 286. That African-American was the former president of an historically black institution who had assumed that position upon his retirement from a career in the military. *Id.* The other experts were academic administrators, many of whom were not noted for their expertise in a particular academic discipline. *Id.* None was an expert on curriculum issues. *See id.*

110. *Id.* at 338.

111. *Id.* at 338-39.

112. *Id.* at 337.

113. *Id.*

114. *Id.*

115. *Id.* at 337-38.

programs could not have been traceable to the era of *de jure* segregation.¹¹⁶ Based on this evidence, the court found “the lack of a black studies department or program in Alabama is not a vestige of *de jure* segregation.”¹¹⁷

D. *The Segregative Effect of the Curriculum*

After holding that the hypothesized curricular deficiencies were not traceable to the era of *de jure* segregation, the court assumed, *arguendo*, that this element had been satisfied and considered whether the curricula had a segregative effect on student choice.¹¹⁸ The evidence showed that eighty-three percent of the black students who were in-state residents attended historically white colleges.¹¹⁹ This suggested that the curricula did not deter black students from attending these institutions.¹²⁰ During the trial, the plaintiffs presented the testimony of an African-American student who stated that the absence of a Black Studies department had limited her institutional choices.¹²¹ The court concluded that the presence of a majority of Alabama's black students in white institutions coupled with what it deemed the unpersuasive testimony of a single student compelled the conclusion that even if curricular deficiencies had been shown, they did not have a segregative effect.¹²²

The plaintiffs also argued that the absence of a degree-granting program in Black Studies constituted, by itself, evidence of a curricular deficiency.¹²³ The court disagreed and held the presence or absence of such programs was not a proper measure.¹²⁴ The infusion of black culture and thought across the disciplines, rather than the existence of a separate Black Studies department, was, in the court's view, the better approach to incorporating African-American perspectives in the curriculum.¹²⁵ The court also found that the evidence

116. *Id.* at 338.

117. *Id.*

118. *Id.* at 339.

119. *Id.*

120. *Id.*

121. *Id.* at 340.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

established that an African-American perspective was adequately represented in the existing curricula.¹²⁶

As an alternative to a court-imposed modification, the plaintiffs suggested that the curriculum issue should be referred to a statewide faculty committee that would investigate the extent to which the State's academic institutions incorporated African-American perspectives in the curricula.¹²⁷ If any deficiencies were found, the committee would make recommendations to implement any necessary changes.¹²⁸ The court concluded that this suggestion was not consistent with the plaintiffs' burden of proof.¹²⁹ In the court's view, *Fordice* required the plaintiffs to prove that the curriculum was deficient in its incorporation of non-white perspectives.¹³⁰ Referring the issue to a faculty committee prior to proving a violation would have circumvented this requirement.

E. Intentional Discrimination and the First Amendment Argument

The plaintiffs also contended that the lack of a racially balanced curriculum proved intentional discrimination.¹³¹ This argument was also rejected. The court found that the evidence established that African-American culture had been "sufficiently infused" into the existing core curricula at white institutions.¹³² This conclusion precluded a finding that the State had engaged in intentional discrimination.¹³³

In addition to making arguments based on the *Fordice* requirements, the plaintiffs made a separate argument that was premised on principles of academic freedom and the First Amendment.¹³⁴ They argued that black students in Alabama had a First Amendment right to pursue a program of study that was not limited by the constraints imposed by a Eurocentric curriculum.¹³⁵ Moreover, the plaintiffs asserted that the First

126. *Id.*

127. *Id.* at 342.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 343.

132. *Id.*

133. *Id.*

134. *Id.* at 347.

135. *Id.*

Amendment obligated the State to establish an educational program that reflected a broader array of perspectives than those embedded in the traditional curriculum. The district court disagreed.¹³⁶ It found that "none of the [white institutions] are suppressing the ability of black students or faculty to discuss, teach or research in the areas of black studies."¹³⁷ As a result, it held that no rights protected by the First Amendment were violated.¹³⁸

F. *The District Court's Evaluation of the Evidence*

Knight represents an effort to resolve a debate that has raged in academic circles for several years. The district court was unwilling to referee a dispute over what some might consider a purely academic matter. The court adjudicated the merits of the curriculum claim only after being forced to do so by the court of appeals. By finding that an African-American perspective was adequately represented in the existing curricula, the court disposed of this issue without a serious analysis of the arguments that were presented.

The district court was obligated to determine initially whether the curricula at white institutions failed to adequately incorporate African-American perspectives.¹³⁹ If any deficiencies were found, the trial court would have been obligated to determine whether the deficiencies were traceable to the era of state-enforced segregation. If the traceability requirement were satisfied, the court would have been required to consider whether maintaining Eurocentric curricula was consistent with sound educational policy.¹⁴⁰ The finding that there were no deficiencies in the existing curricula made the evaluation of the other *Fordice* elements unnecessary. This allowed the court to circumvent the analysis required by *Fordice* without seriously engaging the issues that were presented.

The court did not explain why an objective standard was needed to measure deficiencies in the inclusion of black perspectives, but no standard was required to determine the

136. *Id.* at 348.

137. *Id.*

138. *Id.*

139. *Id.* at 334-37.

140. *Id.* at 334.

sufficiency of cultural balance in the existing curriculum.¹⁴¹ The basis for the finding concerning the adequacy of an African-American perspective was not explained. Similarly, the court did not explain why the infusion of African-American perspectives across the disciplines was a more desirable approach than establishing separate Black Studies programs. Furthermore, the court failed to appreciate the nature of the arguments concerning the presence or absence of Black Studies departments. These arguments were intended to show that the absence of such departments constituted evidence of an exclusion of African-American perspectives. The court analyzed the arguments as if the plaintiffs were asserting that the presence of a Black Studies program was an absolute measure of compliance.

The flaws in the court's analysis undermine the credibility of its findings. The presence of black students at formerly segregated institutions does not mean that minority students will be exposed to equal educational opportunities if classroom teachings perpetuate a racial hierarchy. The court failed to appreciate the depth of the racial bias imbedded in the traditional curriculum and the centrality of the curriculum to the educational process. The following sections of this Article explore the foundation of this bias.

IV. THE HISTORICAL ANTECEDENTS TO THE MODERN CURRICULUM

America's longstanding and deeply rooted history of racial subordination is grounded in a vision of its cultural history that is perpetuated by the educational establishment. This "official" version of America's cultural history functions as an ideological censor that empowers Americans of European descent by denying the legitimacy of all other perspectives.¹⁴² The debate over the definition and expansion of the curriculum is not unique to the contemporary American experience. A similar debate originated at the beginning of what would become Western liberal education during the fifth and sixth centuries B.C. in the ancient Greek city-states.¹⁴³

141. *Id.* at 337.

142. See Philip Wexler, *Curriculum in the Closed Society*, in *CRITICAL PEDAGOGY, THE STATE, AND CULTURAL STRUGGLE* 92 (Henry A. Giroux & Peter L. McLaren eds., 1989).

143. Bruce A. Kimball, *The Historical and Cultural Dimensions of the Recent Reports on Undergraduate Education*, 96 *AM. J. EDUC.* 293, 293-317 (1988). See generally

The fundamental issue of how to transmit culture is, understandably, a matter of intense concern to those whose interests are served by the culture in its current state—individuals with vested interests in maintaining the status quo, as well as those who are subordinated in the existing order. In ancient Greece, the conflict ensued from a linguistic reality—the fact that *logos*, the term denoting culture, had two separate meanings—logic and rhetoric.¹⁴⁴

The debate in ancient Greece concerned which meaning of *logos* would define culture and learning in that society.¹⁴⁵ The parties to that debate were divided into competing camps. On one side were individuals who emphasized the grammar, writing, and rhetoric—the activities involved in the composition and communication of words.¹⁴⁶ On the other side were those who believed that speech in this sense was not reflective of the true meaning of *logos*.¹⁴⁷ They believed that logic and the ability to reason reflected the desired qualities for an educated citizen.¹⁴⁸

The early debate over the content of liberal arts education continued after the Romans inherited Greek civilization.¹⁴⁹ The Romans introduced the terms *ratio* and *oratio*, which separated the two meanings of *logos*.¹⁵⁰ However, the Romans took a more practical and less abstract view. They believed that public dialogue, political debate, and legal discussion were more important.¹⁵¹ By the first century A.D., Christian educators

W.H. COWLEY AND DON WILLIAMS, INTERNATIONAL AND HISTORICAL ROOTS OF AMERICAN HIGHER EDUCATION (1991). As Professor Bruce Kimball explained:

During this period, the rise of democratic institutions of governance, especially the assembly of free citizens, undermined the Homeric tradition of noble and valorous leadership that shaped the character of the ruling elite. This change to a democratic polity coincided with the flowering of Hellenic culture, and the Greeks, especially the Athenians, devoted a great deal of effort both to understanding their cultural development and to considering how that culture could be transmitted to new generations of free citizens who were to participate in governing the city-state.

In certain respects, the problems of understanding and transmitting the culture were two different ways of asking the same question

Kimball, *supra*, at 299.

144. Kimball, *supra* note 143, at 299-300.

145. *Id.* at 300.

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.* at 301.

150. *Id.*

151. *Id.*

advocated language-centered liberal arts based on their interest in understanding and defending the meaning of texts.¹⁵² This development reflected a re-emergence of the speech and rhetoric aspects of logos.¹⁵³ It was not until the early sixth century that a Christian philosopher, Boethius, was able to “recover” the other interpretation of logos with its emphasis on logic and mathematics.¹⁵⁴ In the fifth and sixth centuries, formal handbooks appeared introducing a program of seven liberal arts: grammar, logic, rhetoric, arithmetic, geometry, music, and astronomy.¹⁵⁵ These handbooks became the texts for Christian medieval scholars and eventually constituted the core curriculum during the Middle Ages.¹⁵⁶

The rhetorical model of liberal education was challenged in the twelfth and thirteenth centuries when the rediscovered texts of the Greek philosophers revitalized interest in critical thinking.¹⁵⁷ On the heels of this resurgence of judicious thought, Thomas Aquinas and other medieval scholars were able to change the content and meaning of the liberal arts.¹⁵⁸ As Professor Bruce Kimball explained, “[l]ogic emerged supreme as a refined analytic tool, and mathematics and music increasingly addressed abstract number rather than sonorous or practical matters.”¹⁵⁹ The importance of rhetoric declined and, bearing a striking similarity to current practices, liberal arts in the early middle ages became narrowly focused subjects designed to prepare students for advanced study in graduate institutions.¹⁶⁰

During the fourteenth and fifteenth centuries, the pendulum swung in the other direction.¹⁶¹ The Humanists of the Italian Renaissance advocated an emphasis on speech and rhetoric.¹⁶² The model of rhetorical and literary learning took center stage.¹⁶³ This time, the approach was intensified by Christian ethics and behavioral codes derived from the medieval

152. *Id.*

153. *Id.*

154. *Id.* at 302.

155. *Id.*

156. *Id.*; see also COWLEY & WILLIAMS, *supra* note 143.

157. Kimball, *supra* note 143, at 302.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 302-03.

163. *Id.* at 303.

knighthood tradition, producing the ideal of the "Christian gentleman."¹⁶⁴

The current discussion in the United States regarding the content of the curriculum demonstrates continuing conflict in the Western ideal of what knowledge constitutes a liberal education.¹⁶⁵ The current debate is bipolar. It pits those who favor an emphasis on fixed, culture-defining traditions representing Eurocentric culture against those who advocate inclusive, culture-broadening elective studies that can be identified by viewing the actual racial, ethnic, and cultural composition of American society.

V. THE FOUNDATIONS OF THE MODERN AMERICAN CURRICULUM

The seventeenth-century Scientific Revolution and the eighteenth-century Enlightenment revived the conflict by resurrecting the critical thinking tradition with its commitment to mathematical axioms and Socratic "criticism."¹⁶⁶ In the United States, this conflict was reflected in the debate between James McCosh, a Presbyterian minister and president of Princeton, who favored the literary and rhetorical approach, and Charles Eliot, a chemist and president of Harvard College, who endorsed the analytic and scientific definition of liberal education.¹⁶⁷ This confrontation, first rehearsed in the fourth and fifth centuries B.C.,¹⁶⁸ continued to rage: How does one define liberal education? To which pole of logos—reason or speech—should American education adhere? By the end of the nineteenth century, it was clear that reason had prevailed.¹⁶⁹

The contemporary dilemma concerning curricular expansion should be examined in the context of Charles Eliot's tenure at Harvard.¹⁷⁰ Eliot advocated a system of free electives, which he

164. *Id.*

165. See generally, BRUCE A. KIMBALL, *ORATORS AND PHILOSOPHERS: A HISTORY OF THE IDEA OF LIBERAL EDUCATION* (1986).

166. Kimball, *supra* note 143, at 303.

167. *Id.*

168. *Id.*

169. *Id.* at 303-04.

170. See generally CHRISTOPHER JENCKS & DAVID RIESMAN, *THE ACADEMIC REVOLUTION* (1968); FREDERICK RUDOLPH, *THE AMERICAN COLLEGE AND UNIVERSITY: A HISTORY* (1962) [hereinafter RUDOLPH, *HISTORY*]; FREDERICK RUDOLPH, *CURRICULUM: A HISTORY OF AMERICAN UNDERGRADUATE COURSE OF STUDY SINCE 1636* (1977) [hereinafter RUDOLPH, *CURRICULUM*].

called "Freedom of choice in studies."¹⁷¹ Like many nineteenth-century American academicians, Eliot attended a German university, and he considered the German system "a partial model for what he wanted to achieve."¹⁷² Additionally, Eliot's New England sense of social responsibility and tradition dictated his concern for extending the relevance of higher education to a broader range of citizens.

Throughout his forty years as Harvard's president, Eliot mounted an inspired struggle to overcome sole emphasis on the classical curriculum and to install the elective system.¹⁷³ This radical movement replaced the fixed program of study that had been followed and allowed students to choose their own programs of study. As one commentator explained:

Recognizing a national impulse to loosen the reins of dogmatic authority and admit a more entrepreneurial spirit, he translated this spirit of the times radically into educational action. Indeed he could be thought responsible, even at this distance of time, for the present "crisis" of the curriculum, insofar as "multiculturalism," with its plural values, depends on a curriculum in which subjects can be added incrementally to an existing body of knowledge.¹⁷⁴

The elective system encouraged academic specialization that rapidly gained support against the wishes of some nineteenth-century educators.¹⁷⁵ Eliot's critics, who believed that education in America had moved too far from its classical base, began to re-examine undergraduate education—to refocus and re-emphasize their view of liberal education.¹⁷⁶ Published reports "gave a sense of urgency to collegiate reexamination. They posed (or

171. W.B. CARNOCHAN, *THE BATTLEGROUND OF THE CURRICULUM: LIBERAL EDUCATION AND AMERICAN EXPERIENCE* 10-11 (1993).

172. *Id.* at 5. The German system developed from the necessity to rebuild German institutions and culture following Napoleon's siege in the early 1800s. German scholars led efforts to rebuild by establishing education as a national priority. During this period, German universities established practices that would later define the modern university. When the University of Berlin opened in 1809, scholarly research was emphasized in every field, and each faculty member was required to have a research agenda. See COWLEY & WILLIAMS, *supra* note 143, at 134.

173. RUDOLPH, *A HISTORY*, *supra* note 170, at 290-94. The classical curriculum in the late eighteenth and early nineteenth century consisted primarily of instruction of selected texts in Greek and Latin.

174. CARNOCHAN, *supra* note 171, at 3.

175. KIMBALL, *supra* note 165, at 162, 166.

176. CARNOCHAN, *supra* note 171, at 56-58.

alternatively refuted) a laundry list of weaknesses, shortcomings, and general failings on the part of colleges."¹⁷⁷

A major influence in the curricular debate at the opening of the twentieth century was the newly established concept of "great books." The great books idea was originally intended to expand the canon.¹⁷⁸ The concept encouraged an expansion beyond what was then the classical curriculum, but the works of women and racial minorities were not included.¹⁷⁹ Nevertheless, contrary to the beliefs of those critical to change, education has always been fraught with tension and conflict. No classical curriculum has ever been fixed at some point in the past. The curriculum has always been the product of continuing evolution.

VI. THE CURRENT DEBATE CONCERNING THE CONTENT OF THE CURRICULUM

During the 1960s, many progressive academicians became committed to transforming the Eurocentric tradition that dominated higher education. As increased numbers of African-Americans and other racial minorities gained admission to previously segregated institutions, issues relating to faculty, staff, and curriculum content arose.¹⁸⁰ In an environment marked by social change, Black Studies emerged as an academic discipline because of the demands of minority students and

177. Arthur Levine, *Dějā Vu: Reviewing Educational Reports from the Past*, CHANGE, Jan.-Feb. 1986, at 50. By 1910 a new, if less dramatic, effort had taken hold in higher education. The General Education Movement began at Columbia in 1919 as an antidote to allowing students to freely elect their own courses. Columbia established general education to revitalize practices holding sway before the introduction of the culture-broadening traditions of free election. After Eliot's retirement from Harvard's presidency, those favoring a more aristocratic approach gained control. In 1945 a Harvard report encouraged shifting the purposes of higher education to recapture a "sense of continuing intellectual and spiritual heritage." RUDOLPH, HISTORY, *supra* note 170, at 456. By the 1920s, different approaches were introduced to accommodate student choice among various established required courses of study. Devices introduced during this period survive as the concentration and distribution requirements that define contemporary practice. *See id.*

178. Columbia University Professor George Edward Woodberry, who introduced an honors course on great books in 1920, and his student John Erskine intended their invention to serve as an antidote to Victorian neo-humanism by embracing the Enlightenment-influenced nineteenth-century writers and thinkers such as Emerson and Shelley. Yet, the great books did not include any works authored by women or minorities. CARNOCHAN, *supra* note 171, at 79-83.

179. *Id.* at 79-87.

180. Lawrence Grossberg, *Introduction*, in BETWEEN BORDERS: PEDOGOGY AND THE POLITICS OF CULTURAL STUDY (Henry A. Giroux & Peter McLaren eds., 1994).

faculty. In response to these pressures, a number of American colleges and universities added courses on African-American thought, culture, and history to their curricula. The first of these programs were established in 1968 at San Francisco State and Cornell.¹⁸¹

Yale University also created a program in Black Studies in 1968.¹⁸² Based on its status as a private Ivy League institution, Yale's inauguration of a Black Studies program was viewed in educational circles as a significant milestone in the movement to diversify the curriculum.¹⁸³ A year later, the University of California at Berkeley established ethnic studies programs that consisted of Afro-American, Chicano, Asian-American, and Native-American studies.¹⁸⁴ Throughout the 1970s and 1980s, a number of colleges and universities established African-American studies programs.

Despite their increased presence in formerly all-white institutions, African-American and other minority students did not find themselves in the warm and nurturing environments that are conducive to academic study and growth. The receptions that they were given ranged from indifference to outright hostility.¹⁸⁵ Moreover, the teachings tended to marginalize and devalue the contributions of African-Americans and other minorities to American culture and thought. Institutional culpability in maintaining environments that promoted feelings of alienation soon became an issue of contention.

As Henry Louis Gates has observed: "Many thoughtful educators are dismayed, even bewildered, when minority students say—and the sentiment is widespread—they feel like visitors, like guests, like foreign or colonized citizens in relation to a traditional canon that fails to represent their cultural identities."¹⁸⁶ This means that minority students in white institutions find themselves in a different and less favorable

181. Chandra Mohanty, *On Race and Voice: Challenges for Liberal Education in the 1990s*, in *BETWEEN BORDERS: PEDAGOGY AND THE POLITICS OF CULTURAL STUDIES* 145, 149 (Henry A. Giroux & Peter McLaren eds., 1994).

182. *Id.*

183. *Id.*

184. *Id.*

185. Mel Elfin & Sarah Burke, *Race on Campus*, U.S. NEWS & WORLD REP., Apr. 19, 1993, at 52.

186. Henry Louis Gates, Jr., *The Transforming of the American Mind*, 56 SOC. EDUC. 328, 329 (1992).

position than similarly-situated white students.¹⁸⁷ This places them at an academic disadvantage. Researchers have identified cultural alienation as a major factor in the high attrition rates of minority students.¹⁸⁸ A number of comparative studies on behaviors of black and white students in higher education provide substantial evidence of the impact of academic culture and social environment.¹⁸⁹ Students can experience alienation or poor fit leading to "malintegration" in both the academic and social systems of an institution.¹⁹⁰ Based on study results, some researchers believe that minority students in predominantly white institutions may experience disabling difficulty in establishing personal belonging and academic membership in largely majority institutions.¹⁹¹ The research indicates that for whites there is a significant correlation between dropout behavior and academic failure. For blacks, feelings of estrangement have correlated more strongly with dropout behavior than have academic factors.¹⁹² The evidence shows that black students do better in black colleges where academic and social alienation are not factors.¹⁹³ In these studies, data indicate that black students enrolled in predominantly white institutions express dissatisfaction with academic life.¹⁹⁴ Without a change in what is taught and how knowledge is transmitted, non-white students will not experience educational opportunities equal to those accorded to white students.

During the past few years, a passionate debate about the content of the curriculum has emerged concerning what or whose knowledge is worthy of teaching. On one side of this debate are

187. William E. Sedlacek, *Black Students on White Campuses: 20 Years of Research*, 28 J.C. STUDENT PERSONNEL 484 (Nov. 1987).

188. Marvalene S. Hughes, *Black Students Participation in Higher Education*, 28 J.C. STUDENT PERSONNEL 532, 535 (Nov. 1987); see also STUDYING STUDENT ATTRITION (Ernest T. Pascarella ed., 1982).

189. Hughes, *supra* note 188, at 534-35.

190. *Id.* at 534.

191. Vincent Tinto, *Defining Dropout: A Matter of Perspective*, in STUDYING STUDENT ATTRITION 3, 6-7 (Ernest T. Pascarella ed., 1982); see Vincent Tinto, *Dropout from Higher Education: A Theoretical Synthesis of Recent Research*, 45 REV. EDUC. RES. 89 (1975).

192. Hoi K. Suen, *Alienation and Attrition of Black College Students on a Predominantly White Campus*, 24 J.C. STUDENT PERSONNEL 117, 117-21 (Mar. 1983).

193. JACQUELINE FLEMING, *BLACKS IN COLLEGE: A COMPARATIVE STUDY OF STUDENTS' SUCCESS IN BLACK AND WHITE INSTITUTIONS* (1984).

194. Chalsa M. Loo & Garry Rolison, *Alienation of Ethnic Minority Students at a Predominantly White University*, 57 J. HIGHER EDUC. 58, 72 (1986).

proponents of multiculturalism, which is based on inclusion and valuing different racial and cultural perspectives. On the other side are Eurocentrists who hold an equally passionate view “based on canonical notions of general education and a desire to impose what it cannot justify—the existence of an illusory common culture.”¹⁹⁵

The contemporary curriculum battle is typically viewed as a struggle between Eurocentricists and multiculturalists. However, at least two other factions influence the debate: 1) Afrocentrists who typically take a cultural nationalist approach, which embraces the contributions of Africans and African-Americans as primary in the curriculum,¹⁹⁶ and 2) core integrationists who advocate forming an “integrated core” curriculum in which the debates over the curriculum become central topics of general education.¹⁹⁷ The core integrationists advocate a compromise position that suggests the adoption of a curriculum that engages the discussion about diversity.¹⁹⁸ Professor Kimball rejects this compromise position based on his belief that fundamental tensions between opposed conceptions of undergraduate education have always existed.¹⁹⁹

The term multiculturalism has been invoked to denote a curriculum that values the contributions of non-white groups to

195. See Grossberg, *supra*, note 180, at 10.

196. See MOLEFI K. ASANTE, *THE AFROCENTRIC IDEA* (1987).

197. Kimball, *supra* note 143, at 312.

198. *Id.* at 293-317.

199. *Id.* at 313-16. Kimball seems to agree with the view expressed by Thorstein Veblen who wrote in the early twentieth century:

Ideally, and in the popular apprehension, [the university] is, as it has always been, a corporation for the cultivation and care of the community's highest aspirations and ideals. But these ideals and aspirations have changed somewhat with the changing scheme of the Western civilization; and so the university has also concomitantly so changed in character, aims and ideals as to leave it still the corporate organ of the community's dominant intellectual interest. At the same time, it is true, these changes in the purpose and spirit of the university have always been, and are always being, made only tardily, reluctantly, concessively, against the protests of those who are zealous for the commonplaces of the day before yesterday. Such is the character of institutional growth and change; and in its adaptation to the altered requirements of an altered scheme of culture An institution is, after all, a prevalent habit of thought, and as such it is subject to the conditions and limitations . . . in the habitual frame of mind prevalent in the community.

THORSTEIN VEBLÉN, *THE HIGHER LEARNING IN AMERICA: A MEMORANDUM ON THE CONDUCT OF UNIVERSITIES BY BUSINESSMEN* 24-25 (4th ed. 1967).

American history, culture, and thought. According to Patrick Hill, multiculturalism requires changing the core of the organization to reflect formerly excluded perspectives in "conversations of respect in democratic pluralism."²⁰⁰ As Hill explains, multiculturalism essentially means a transformation of the traditional curriculum:

Meaningful multi-culturalism, in other words, transforms the curriculum. While the presence of persons of other cultures and subcultures is a virtual prerequisite to that transformation, their "mere presence" is primarily a political achievement (which different groups will assess differently), not an intellectual or educational achievement. Real educational progress will be made when multi-culturalism becomes interculturalism.²⁰¹

Opposition to the inclusion of non-Eurocentric perspectives in the curriculum extends beyond academic circles. Since the early 1980s, supporters of inclusive curricula have been challenged by a kind of "cultural gestapo" that is intent on denying the legitimacy of multicultural perspectives. Buoyed by a stream of reports²⁰² on the decline in the quality of undergraduate education, the discussion has been shaped by several studies. Some of the most notable of these include *Integrity in the College Curriculum*²⁰³ by a select panel of the Association of American Colleges; *To Reclaim a Legacy*²⁰⁴ by former Secretary of Education, William Bennett; and *Involvement in Learning*²⁰⁵ by the National Institute of Education Study Group. These reports, along with the politically charged arguments contained in Allan Bloom's *The Closing of the American Mind*²⁰⁶ and E.D. Hirsch's *Cultural Literacy*,²⁰⁷ urge the higher education establishment to

200. Patrick J. Hill, *Multi-Culturalism: The Crucial Philosophical and Organizational Issues*, CHANGE, July-Aug. 1991, at 38, 44.

201. *Id.* at 45.

202. See Kimball, *supra* note 143, at 296.

203. ASSOCIATION OF AMERICAN COLLEGES, *INTEGRITY IN THE COLLEGE CURRICULUM: A REPORT TO THE ACADEMIC COMMUNITY* (1985).

204. WILLIAM BENNETT, NATIONAL ENDOWMENT FOR THE HUMANITIES, *TO RECLAIM A LEGACY: A REPORT ON THE HUMANITIES IN HIGHER EDUCATION* (1984).

205. NATIONAL INSTITUTE OF EDUCATION, DEPARTMENT OF EDUCATION, *INVOLVEMENT IN LEARNING: REALIZING THE POTENTIAL OF AMERICAN HIGHER EDUCATION, FINAL REPORT OF THE STUDY GROUP ON THE CONDITIONS OF EXCELLENCE IN AMERICAN HIGHER EDUCATION* (1984).

206. ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987).

207. E.D. HIRSCH, JR., *CULTURAL LITERACY: WHAT EVERY AMERICAN NEEDS TO*

regard the movement towards curricular diversity as a threat to the quality of the educational experience offered at American institutions. These conservatives long for a return to an emphasis on the great thinkers of the Western past who, in their view, represent the core of the classical curriculum in the liberal arts.²⁰⁸ They warn that a failure to return to the great books of the classical thinkers will result in a drastic decline in the quality of instruction provided at institutions of higher learning.²⁰⁹

Prominent political leaders have exploited this issue. Former President George Bush, for example, dubbed himself the "education president" and decried the move towards "political correctness" during a speech at the University of Michigan.²¹⁰ Like many who fear the inclusion of diverse perspectives, some political leaders complain that the present state of higher education is a natural consequence of unbridled use of elective choice.²¹¹ They demand the restoration of a "classical" core curriculum, including specifically the reassertion of a classical canon and the rejection of multiculturalism.²¹²

Critics like Bennett and Bloom long for a return to the curriculum that prevailed during the first half of the twentieth century. Yet they fail to consider that segregation prevailed in this era and the doctrine of white supremacy defined every aspect of economic, social, and political relationships among the races. The teachings in American universities reflected this perspective. The urge to re-establish the traditional curricular norms, to narrowly define the purpose of liberal arts, and to re-establish a great books requirement, merely represents a reaction to efforts to include non-Eurocentric views in the official cultural identity of the nation. William Bennett urges us "to reclaim a

KNOW (1987).

208. See Wexler, *supra* note 142, at 92.

209. BLOOM, *supra* note 206, at 64, 372-74.

210. *Bush Raps Growing Intolerance: President Joins Debate on Freedom of Speech*, ST. LOUIS POST-DISPATCH, May 5, 1991, at 1A.

211. WILLIAM J. BENNETT, *OUR CHILDREN AND OUR COUNTRY* 136-37 (1988).

212. As William Bennett argued: "The nation's colleges and universities must reshape their undergraduate curricula based on a clear vision of what constitutes an educated person . . . making plain what the institution stands for and what knowledge it regards as essential to a good education." BENNETT, *supra* note 204, at 2. Bennett further asserts that the country's educational leaders risk the nation's cultural viability by failing to support common learning—"thinkers, the most compelling ideas, and books all students should read." *Id.* at 10.

legacy," but the inheritance that he seeks was bequeathed by *Plessy v. Ferguson*.²¹³ Educators must recognize that this nostalgic longing for norms that prevailed in previous generations looks to a time when the dominant intellectual community completely excluded African-Americans.

Despite the opposition of conservatives, the prevailing norms in the broader community will, in the long term, determine how liberal education is defined. Just as pressures in the nineteenth century forced an expansion of the curriculum, it is likely, if not inevitable, that demographic changes will result in the outsiders assuming roles of authority in academics, as well as in other arenas.

It is important to note that the contemporary discussion arises as socio-political systems reconfigure themselves. Population demographics projections reflect increasing numbers of citizens who do not have Western European heritages. Data compiled by the Bureau of the Census indicate a steady increase in the minority population in the coming decades. Some observers believe that if current trends continue, non-Hispanic whites will comprise less than fifty percent of the United States population under age eighteen by the year 2030.²¹⁴ If these demographic projections hold true, the "other" voices will soon determine the content of the curriculum.

The present debate over the curriculum reflects a larger confrontation with the existing educational hierarchy. The parties to the debate represent competing values and traditions that are held by different interest groups. Those whose interests are dominant determine curricular content. These scholars resist academic specializations that seek to extend academic inquiry beyond a set of norms that were established in the late nineteenth and early twentieth centuries.²¹⁵ Yet the traditions they embrace are infused with racist norms. Furthermore, curriculum, culture, and positioning within the current hierarchy are inextricably bound. If changes are made, those who now are comfortable fear that they may be diminished in the new order.

213. 163 U.S. 537 (1896).

214. JENNIFER C. DAY, U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, POPULATION PROJECTIONS OF THE UNITED STATES, BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1993 TO 2050, at vii (1993); see also Russell Edgerton, *A New Case for Accelerating Minority Educational Advancement: An Interview with L. Scott Miller*, CHANGE, Mar.-Apr. 1995, at 63-69.

215. RUDOLPH, HISTORY, *supra* note 170, at 294-95, 456-57.

Ironically, academic specialization and curriculum diversity are not the creation of contemporary scholars of color. The actual antagonist of the return to classics crowd was Charles Eliot, who believed that the various cultures of American immigrants were equally important in defining the national character.²¹⁶ Eliot's successful advocacy of the elective system was foundational to the current move towards curricular expansion. Just as current advocates of broadening the curriculum face opposition from conservative forces, Eliot faced similar resistance in the nineteenth century. But the scientific revolution and the Enlightenment frustrated reformers of higher education during Eliot's tenure.²¹⁷

Unlike the present debate, the culture clashes of the last century were waged among the descendants of Western Europeans. Eliot's advocacy for the elective system challenged what was then the conservative, classical canon. The immigrant cultures that he could have envisioned including were primarily those of poor and working class Irish, Italian, and German immigrants. There were no racial or legal barriers that prevented the assimilation of these groups into the prevailing American culture. Moreover, Eliot's influence was embraced in the late nineteenth century, at the same time that America was erecting the system of state-sponsored racial segregation. Today's keepers of a fading order—the Eurocentric canon—do so in the face of groups whose histories and cultures are vastly different from their own. Their biases function at a level just below overt racism, but they have the same exclusionary result.

VII. THE SIGNIFICANCE OF CURRICULAR REFORM TO DESEGREGATION LITIGATION

In *Knight* the plaintiffs attempted to move the curricular debate from academic journals to the courts, but the trial judge sided with those who wanted to preserve the “classical” canon. After the second trial in *Knight*, the district court concluded that “[w]ithout doubt, the African American experience is not widely disseminated to students through the core curriculum at the

216. CARNOCHAN, *supra* note 171, at 17; *see also* RUDOLPH, HISTORY, *supra* note 170, at 293.

217. *See, e.g.*, Charles M. Stanton, *Religion in American Higher Education: A Disappearing Force*, 18 REV. HIGHER EDUC. 111 (1994) (book review).

predominantly white institutions.”²¹⁸ However, it declined to address the merits of the curriculum issue, instead holding that principles of academic freedom precluded judicial intervention into the curriculum at institutions of higher learning.²¹⁹ The court of appeals disagreed. It held that the doctrine of non-intervention into purely academic matters could not be invoked to shield discriminatory practices from judicial scrutiny.²²⁰ In the third trial, the same district court judge held that “the infusion of black thought, history, and culture in the [white colleges] general core curriculums is sufficient.”²²¹ These holdings, of course, are inconsistent.

Academicians may fear that a challenge to the content of the curriculum would lead to unwarranted judicial intervention into purely academic matters. Institutional academic freedom is a well-established principle in American jurisprudence, which the Supreme Court has repeatedly recognized. As Justice Frankfurter explained in *Sweezy v. New Hampshire*:²²²

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail the “four essential freedoms” of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.²²³

The curriculum obviously determines “what is taught,” but academic freedom cannot prevent judicial review of discriminatory practices. In *Grimes v. Cavazos*²²⁴ a class action was filed by a group of African-American public school students against the United States Department of Education and New York City and State educational officials.²²⁵ Like the plaintiffs

218. *Knight v. Alabama*, 787 F. Supp. 1030, 1333 (N.D. Ala. 1991).

219. *Id.*

220. *Knight v. Alabama*, 14 F.3d 1534, 1553 (11th Cir. 1994).

221. *Knight v. Alabama*, 900 F. Supp. 272, 337 (N.D. Ala. 1995).

222. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) (Frankfurter, J., concurring).

223. *Id.* at 263 (quoting the Open Universities in South Africa 10-12)); *see also* *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); MICHAEL A. OLIVAS, *THE LAW AND HIGHER EDUCATION: CASES AND MATERIALS ON COLLEGES IN COURT* (1989); MARK G. YUDOF ET. AL., *EDUCATION, POLICY AND THE LAW* (3d ed. 1992); *Academic Freedom and Tenure: A Statement of Principles*, 1940 BULL. AM. ASS'N U. PROFESSORS, Feb. 1942, at 84.

224. 786 F. Supp. 1184 (S.D.N.Y. 1992).

225. *Id.* at 1185.

in *Knight*, the plaintiffs in *Grimes* claimed that the curriculum in New York City schools had a Eurocentric bias that caused emotional injury to minority students.²²⁶ Finding that the plaintiffs had failed to allege the requisite intent to discriminate, the court dismissed the case without reaching the merits.²²⁷ However, the defendants made a separate argument that the claims were non-justiciable because judicial intervention would have involved the court in academic matters that were beyond its competence to resolve.²²⁸ The court disagreed. It found that:

[N]ot all remedies impacting on a school curriculum exceed a federal court's power. . . . *Brown* and its progeny leave no question that federal courts have at least some power to enforce the Equal Protection Clause of the Fourteenth Amendment in the setting of public schools, even if the exercise of that power may impinge on what is normally viewed as the sphere of state and local authorities.²²⁹

The court's reasoning on the justiciability issue of *Grimes* applies in equal measure to the issues that are the subject of this Article.

The court of appeals in *Knight* justifiably reversed the trial court's initial ruling on the curriculum issue. On remand, the trial court addressed the merits of the issue, but its reasoning was questionable. The court's finding of fact concerning the adequacy of African-American perspectives in the existing curricula short circuited the analysis required by *Fordice*. This evidentiary expedient allowed the court to arrive at the same result that it had reached in the previous proceeding without a thorough analysis of the question that was presented.

During the trial, the plaintiffs presented the testimony of historians and other expert witnesses who described, in great detail, the establishment of the segregated educational system during the twilight of the nineteenth century.²³⁰ The witnesses explained that the principal purpose of the system was to

226. *Id.*

227. *Id.* at 1192.

228. *Id.* at 1189 n.4.

229. *Id.* The plaintiffs in *Grimes* challenged the curriculum as a violation of Title VI of the Civil Rights Act and the Equal Protection Clause of the Fourteenth Amendment. To prevail the plaintiffs would have had to demonstrate that the curriculum was the product of intentional discrimination. *Id.* at 1192. Finding that the pleadings failed to allege the requisite intent, the court dismissed the case without an evaluation of the merits. *Id.*

230. *Knight v. Alabama*, 787 F. Supp. 1030, 1052 (N.D. Ala. 1991).

subordinate the black citizens of Alabama and to establish a regime of white supremacy.²³¹ This system was maintained in the decades that followed. Black colleges were not "equalized" after the 1938 decision in *Missouri ex rel Gaines v. Canada*.²³² The *Brown* decision did not integrate white colleges. The federal civil rights legislation of the 1960s failed to bring about any significant alterations. During the final decade of the twentieth century, the trial court in *Knight* found vestiges of segregation in Alabama's colleges and universities.²³³ The implementation of the remedial order that was issued will continue well into the next century. To hold, in the context of this comprehensive regime of educational inequality, that Alabama's educational system discriminated in virtually every area *except* the curriculum flies in the face of what the evidence established.

Beyond the inconsistencies in the trial court's reactions to the evidence are the more serious implications of its response to the curriculum issue. The court was unwilling to fully engage the questions that were presented. The plaintiffs established that integration required more than racially balanced student populations. The evidence established an unbroken chain of events that began in the Reconstruction era, when the race-based system of oppression was originally imposed, and continues to the present. The unmistakable vestiges of the segregated system can be observed by comparing the physical facilities at the black and white institutions. Despite the changes that were ordered in *Knight*, black students in Alabama will not receive educational experiences equal to those accorded to white students without fundamental changes to the curriculum.

Nearly fifty years ago, in one of the last of the pre-*Brown* "equalization" cases, *McLaurin v. Oklahoma State Regents for Higher Education*,²³⁴ the court dealt with segregation within an educational institution. The Supreme Court held that the conditions to which McLaurin was subjected were violative of the Fourteenth Amendment.²³⁵ Black students in white institutions

231. *Id.*

232. 305 U.S. 337 (1938).

233. *Knight*, 787 F. Supp. at 1368. All parties to this action agreed not to appeal any aspect of the district court's decision rendered in *Knight v. Alabama*, 900 F. Supp. 272 (N.D. Ala. 1995). *Alabama Governor Withdraws Appeal in College-Desegregation Lawsuit*, CHRON. HIGHER EDUC., Feb. 2, 1996, at A26.

234. 339 U.S. 637 (1950).

235. *Id.* at 641-42.

today are not physically roped off, but there are invisible barriers that prevent them from claiming equal attachment to the educational setting. Some enroll in white institutions where they are exposed to the same instruction that white students receive. Yet, African-American students are isolated by the hostile or indifferent climates and denigrated by a curriculum in which African-American perspectives are marginalized.

White students do not encounter the same obstacles. The traditional curriculum celebrates the accomplishments of European-Americans and perpetuates an unstated assumption that the culture of white Americans is superior to all others. Because white males wrote all the "great books," Bennett and his cohorts are urging "reforms" that will convey a clear message that whites are intellectually superior to blacks.

Despite their far-reaching victories in other aspects of the case, the plaintiffs in *Knight* did not prevail on the one issue that will have the most significance for students who attend integrated institutions in the future. By refusing to acknowledge the legitimacy of the curriculum issue, the *Knight* decision will allow Alabama's historically white institutions to continue along the same path they have travelled since the era of formal segregation. This decision means that African-American and other students of color will continue to be subjected to conditions that white students do not endure. The traditional curriculum treats minority students differently and less favorably than similarly situated whites. The curriculum, which is a vestige of academic traditions established during the post-*Plessy* era, directly contributes to this difference.

CONCLUSION

The curriculum debate has significance beyond the educational system in Alabama. The broader issue concerns the definition of American culture and the manner by which culture is transmitted. The success of desegregation cannot be measured by counting the number of black and white students at a particular institution and declaring victory when some desirable balance has been achieved. As a generation of students has discovered, access to white institutions, as they are currently oriented, does not mean that African-American and other students of color will receive equal educational opportunities. High attrition rates, incidents of racial hostility, and other signs of discrimination

within institutions are merely manifestations of a deeper problem.

The vestiges of segregation remain, but the Supreme Court has signaled a retreat from the support for desegregation that prevailed in the years following the *Brown* decision. The holding in *Missouri v. Jenkins*²³⁶ clearly affirms that the duty to eliminate all vestiges of segregation "root and branch" has been relaxed to a requirement to desegregate only to "the extent practicable."²³⁷ The Court emphasized in *Jenkins* that the persistence of single-race schools does not violate a locality's desegregation obligation if the continuing segregation in schools can be attributed to external factors such as segregated housing patterns.²³⁸ At the same time, the parents of black children have grown weary of busing to achieve racial balance. In addition to the inconvenience of travelling long distances, inner-city children who attend suburban schools are suffering from disproportionate levels of discipline, low grades, and high attrition rates. They are also exposed to a curriculum that marginalizes African-Americans. It is not surprising that the parents of these students are rebelling against this form of integration.

Similar concerns have been presented in cases involving colleges and universities. In *Fordice* and *Knight* several of the black intervenors argued for the preservation of the historically black colleges based on their frustration with "integration" in white schools. They believe that predominantly black institutions will provide environments that are more nurturing and welcoming for black students. At these institutions, African-American contributions to American culture are an integral component of the course of study. These concerns are not without foundation. The racial tension that exists on the campuses of colleges and universities is well documented. During the past decade, episodes of racial conflict have grown at an alarming rate. Universities have responded by enacting disciplinary codes that are intended to discourage harassment. In addition to raising censorship concerns, the disciplinary codes are aimed at symptoms rather than the underlying problem.

236. 115 S. Ct. 2038, 2050 (1995).

237. *Id.*

238. *Id.* at 2055-56.

The critical question is whether American colleges and universities will remain “white” institutions that allow African-Americans and other minorities to enroll, or whether they will be transformed into learning environments that respect this nation’s cultural diversity. If American culture continues to be defined in terms of values and traditions that originated in the late nineteenth and early twentieth centuries—one that teaches the legitimacy of one perspective and devalues all others—educational equality will never be achieved.