BRUISED BUT NOT BROKEN: EXPLORING LEVELS OF VIOLENCE AGAINST BLACK PEOPLE IN HIGHER EDUCATION

A Dissertation

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Dedication

For my family, whose collective sacrifices make my dreams a *reality*, *this dissertation is dedicated to Mia, Kerrington, and Shaun Alexander as I seek to make their higher education experience more equitable and positive.*

I also dedicate this dissertation to all the minoritized people who persist and succeed despite the many obstacles they face. May this dissertation help clear a path to success that leads to a more positive and equitable experience in higher education.

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To the Almighty Creator, 1 Chronicles 29:13.

I FOREVER BLEED BLUE AND GOLD

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Scholars in higher education often placate the idea of race and racism. Harper (2012) notes that when scholars in the field dealt with racial disparities in higher education in several contexts, they overwhelmingly attributed such difference to all other factors except racism. Put simply, scholars in the field often overlook how and when race and racism appear in higher education. Thus, a growing number of scholars in higher education (Chesler, Lewis, & Crawfoot, 2005; Harper, 2012; Patton, 2015) are advocating that scholars actively name race and racism as a way to move beyond the proverbial veil and expose "how racism is multifaceted and has violent, material consequences for Black lives" (Mustaffa, 2017, p.1). To which I assert, if you are not naming the disease, how could you possibly cure it? As a result, my dissertation seeks to call out race and racism, specifically with the term of education violence, which is an extension of racism explored in the next section. As such, my three-paper dissertation tackles the many ways education violence often appears in higher education. I am focused on addressing distinct levels of education violence minoritized students face on white college campuses and how education violence limits and restricts states' laws that seek to remedy higher education's harm to Black people.

In discussing violence, I converge the understandings of violence from Freire's *Pedagogy of the Oppressed* and Mustaffa's education violence philosophy. Friere suggests that violence is broad wherein "any situation in which some individuals [or institutions] prevent others from engaging in the process of inquiry" (Freire, 2009, p.66). He further claims that when individuals are intentionally alienated from learning their own decision-making, that alienation process changes humans into less than human–objects. In other words, when people are alienated or

blocked from engaging in the process of inquiry, Freire suggests that those acts are explicit forms of violence.

Mustaffa focuses on violence in higher education proffering the term education violence. Education violence is a term born out of anti-Blackness theory, whereby it exposes "how systems …*limit* and kill Black lives" (Mustaffa, 2017, p.1). More specifically, education violence explains how minoritized people's personhood, access, and inclusion within higher education is limited not only through interpersonal relations but also through structural, cultural, and direct mechanisms (Mustaffa, 2017). For example, structural education violence happens where institutions are constantly reorganizing to limit racial justice and accessibility. In that instance, higher education's violence first excluded Black people based on the need for slave labor, then granted access based on segregation, and expanded access based on tokenization (Mustaffa, 2017). These responses reflect how structural violence (racism) within higher education has functioned over time.

Assuredly education violence arguably influences all aspects of higher education, manifesting in, for example, on-campus racial tensions and anti-Black policy making (e.g., Cabrera, Nora, Terenzini, Pascarella, & Hagedorn, 1999; Museus, Nichols, & Lambert, 2008; Nora & Cabrera, 1996). As a result, this dissertation exposes how higher education limits communities of color across several–historical and contemporary contexts at both the graduate and undergraduate levels. It also exposes how states' laws governing higher education's redress also limit Black people. In the dissertation, I analyzed examples of education violence at both the structural and interpersonal levels. Paper one focused on structural violence because any structure responsible for producing and reproducing systemic racial advantages for some (the dominant racial group) and disadvantages for others is structurally violent (McGee, 2020).

Additionally, paper two examined interpersonal violence through undergraduate students' interpersonal interactions with faculty because such interactions are essential to students' success as they provide access to resources, graduate school, and careers (Cole & Griffin, 2013). Lastly, paper three posited that structural violence/racism has limited the laws surrounding the states' attempts in remedying interpersonal, cultural, and direct violence in higher education, creating a discriminatory boundary for Black people.

Unifying Theoretical Framework

The three manuscripts composing this dissertation examine various aspects of education violence. The framework of education violence born out of anti-Black philosophy grounds and links all three manuscripts in that it assumes colleges and universities are "deeply rooted in racism/white supremacy...linked to imperialistic and capitalistic efforts...and serve as venues through which formal knowledge production rooted in racism is generated" (Patton, 2015). This dissertation acknowledges that anti-Black violence and racism appear ordinarily everywhere within higher education. Indeed, scholars within higher education have used critical race theory to expose these many hidden and blatant inequities (e.g., Delgado Bernal, 2002; Donner, 2005; Gildersleeve, Croom, & Vasquez, 2011; Solórzano & Yosso, 2001; Yosso, Parker, Solórzano, & Lynn, 2004; Yosso, Smith, Ceja, & Solórzano, 2009). However, this dissertation will primarily focus on the anti-Black violence and racism pertaining to law school's accessibility, undergraduate faculty relationships, and states' attempts in rectifying Black people harmed.

The anti-Black philosophy identifies education violence in four categories: interpersonal, structural, cultural, and direct. Interpersonal violence in higher education is the use of power or force, whether threatened or actual, against a person or group that results in personal harm,

intimidation, psychological harm, maldevelopment, deprivation, and most final, a death at the hands of another person or persons (Mustaffa, 2017). Other scholars (Brown, 2008; Hyatt-Burkhart & Levers, 2012) describes interpersonal violence or trauma as a force that can take on "more insidious and pervasive forms, as is the case in circumstances such as historical trauma, microaggressions, and persistent abuse or neglect" (Shalka, 2019, p.37). Johan Galtung defines structural violence as a form of violence whereby social structures or social institutions harm people by preventing them from meeting their basic needs (Galtung, 1969). In other words, any system that privileges one group to have higher access and limit, ignore, and exploit the needs of others is thereby structurally violent. Cultural violence is the incentive structures and the dominant paradigms of our existence that can be used to legitimize to accept stratification, violence, and power dynamics as necessary or usual (Galtung, 1990). Lastly, direct violence comprises physical force that harms, controls, or kills people. It also encompasses verbal discourse that threatens and dehumanizes through othering.

Scholars that use this framework developed it to help policymakers, institutional leaders, and scholars. Particularly scholars hope that the framework can expose and disrupt the white terrain within higher education in terms of physical representation, dominant epistemological beliefs, curriculum, campus policies, and campus spaces (Harper, Patton, Wooden, 2009; Kendi, 2012; Patton, 2015; Williamson-Lott, 2008). Notably, the framework often peels back the forces at work to limit communities of color in the higher education arena.

Positionality

In keeping with Milner's (2007) assertion that unforeseen and unexpected dangers appear when researchers are not constantly interrogating their belief system and values (p.388), I

provide information about my positionality as the researcher to help ground how I come to see the world.

I am the first person in my family to receive a law degree. I often experienced, what I have come to understand, as education violence both throughout my law school and graduate school experience. I also am an interdisciplinary scholar whose research explores critical race theory, access and equity within higher education. More pointedly, I study the framework and incentive structures within higher education's environments to identify factors contributing to the violence in our nation's colleges and universities. I developed my beliefs on race and racism in higher education from my family history. As a case and point, there were many family cookouts and family reunions where my ancestors would share with me that they wanted to attend law school and graduate school, but could not because of the systematic education violence in the higher education arena. To be specific, my great-grandparents, could not enroll in law school and graduate education because the segregated laws disallowed Black people in South Carolina from those spaces.

As a Black American whose family has direct ties to the violence of higher education coupled with growing up on the land my family bought from their enslaver has taught me both the consequential factors of racism and the will of Black Americans to succeed. Together, my scholarly agenda and family experiences shape my worldview of education violence, past and present, regarding race and racism in higher education.

Manuscript 1: An Access and Equity Ranking of Public Law Schools

I developed my dissertation's first manuscript from a paper written for a course on Inequality in Education. In the class, we debated the potency and influence of the *U.S. News*

Ranking in our graduate school choice during one lesson. I posited that the *U.S. News Ranking* is central to the decision-making process for incoming first-year law students. At that moment, I began to wonder why the *U.S News Ranking* is so influential and why the ranking did not capture anything important to me in my decision to enroll in law school. I found the topic intriguing and began investigating whether higher education or legal scholars had addressed the incompleteness of the factors included in the ranking system. While I found that a few scholars in the legal education field lament about the ranking, especially regarding its silence on access, equity, and race, no one yet had proffered a substantive critique and developed an alternative ranking centering on the needs of communities of color. Because I saw the value in critiquing and creating the ranking, both for Black and Latinx students, I wanted to offer a different perspective to the conversation. This manuscript is forthcoming in the Rutgers Law Review.

The first manuscript uses both higher education and legal research to support the argument that the *U.S. News Ranking* and its current algorithm harm both Black and Latinx students' accessibility, preventing them from meeting their basic academic needs. Legal scholars claim that the *U.S. News Ranking* is an essential contributor to low racial diversity levels in the legal profession at public law schools (Johnson, 2013). Johnson also theorizes that many law schools are "voluntarily forgoing affirmative action policies in favor of seeking higher rankings" (e.g., Johnson, 2013, p.168). The ranking, I assert, privileges one group's needs and limits and ignores others' needs, thereby structurally violent. Consistent with the definition of structural violence, the manuscript is grounded in centering and ranking public law schools on factors that go to Black and Latinx success in law school. In short, I argue that most public law schools are failing in terms of access and equity. Research shows that law schools are particularly hostile and less welcoming to anyone who is not a white male (Cassman & Pruitt, 2005; Deo et al., 2010).

Having as much information as possible, like the Access and Equity Ranking, before deciding which law school to attend will allow Black and Latinx students the opportunity to make an accurate and well-informed decision based on their needs. As a result, the Access and Equity Ranking will lessen their isolation and feelings of disenfranchisement in law schools. The Access and Equity Ranking also demonstrates which law schools failed to create the necessary "critical mass" of Black and Latinx students (*Grutter v. Bollinger,* 2003).

The primary argument for *U.S. News Ranking* not including measures of diversity, equity, and access, is that these terms are too broad and complicated to capture (Brophy, 2013). Additionally, the *U.S. News* does not want their rankings to be part of the ongoing public policy debate on achieving diversity goals at law schools or other higher education disciplines (Brophy, 2013). I counter this argument by using higher education and legal education literature to elucidate these terms while simultaneously using data to undergird such factors. Additionally, I posit that while the *U.S. News Ranking* does not want to influence the debate on these terms, they have already affected the discussion in their silence.

Manuscript 2: A Campus with a History of Slavery and its Role in Predicting Black Students and White Faculty Relationships

The second manuscript of my dissertation developed from a desire to better understand how Black students and White Faculty interact on a campus that has a history of enslavement. As I became more involved with Dr. Juan Garibay's research team and efforts, I noticed Black students' tenuous relationships with White faculty members throughout the data. I began wondering if the institution's historical nexus to slavery contemporarily impacts student dynamics with White faculty. Accordingly, I studied at one undergraduate institution with a

nexus to slavery. Although the research project asks participants about a range of topics related to their experiences on a campus with a history of enslavement, my review of the literature revealed the need to explore how history affects interpersonal relationships on campus (Shalka, 2019). Thus, that became the focus of my paper two.

The manuscript used Hartman's afterlife of slavery framework to inform if Black students experience interpersonal violence from White faculty members on their campus. I specifically investigated whether Black students' responses (e.g., psychological, emotional, and behavioral) to their institution's slavery history predict the nature of their interactions with white faculty? Participants included 91 undergraduate students.

The findings suggest that students' responses to their institution's history affect interpersonal relationships with White faculty. More specifically, the multiple regression results predict white faculty support, positive interactions with white faculty, and negative interactions with white faculty. The full models accounted for 13.8% of the variance in positive interactions with white faculty, 50.1 % of the variance in negative interactions with white faculty, and 41.9% of the variance in white faculty support. This study reveals that several predictor variables predict the quality of Black student interactions with white faculty members.

Results demonstrate that in predicting negative interactions with white faculty, several variables were statistically significant like cis-man ($b = -0.198, p < .10$) and Black students' perceptions of the institution addressing racial inequity ($b = -0.168, p < .05$). Interestingly, the final model revealed that when Black students had more positive perceptions of the institution addressing its racial inequity, they reported less negative interactions with white faculty. Conversely, experiencing greater racial microaggressions ($b = 0.390, p < .01$) and experiencing

more emotional responses to their institution's history of slavery (*b=0.275, p<.05)* predicted more negative interactions with white faculty.

In analyzing white faculty support, students who identified as only African (*b=-0.559, p<.05)* reported experiencing lower support from white faculty members. Additionally, having a more positive perception of the institution addressing racial inequity (*b=0.202, p. <.10)* and greater behavioral responses to their institutions' history (*b=0.277, p<.10)* predicted greater support from white faculty members. Conversely, experiencing greater racial microaggressions (*b=-.274, p<.05)*, overall average grades received during college (*b=-0.274, p<.05)*, and greater emotional responses to their institutions' history *(b= -0.455, p<.01)* predicted less support from white faculty members.

Lastly, in predicting positive interaction with white faculty, only one predictor variable was found to be statistically significant. Interestingly, Black students with greater overall college GPAs (*b=-0.274, p<.05)* experienced less positive interactions with white faculty.

The research team published a version of this work in a special issue in the Education Sciences research journal.

Manuscript 3: Higher Education Redress Statutes: A Critical Analysis of States' Reparations in Higher Education

The third manuscript stemmed from the concern with how structural violence has limited state higher education laws surrounding redress and reparations in higher education for Black people. Put differently, in learning the interpersonal, cultural, and direct violence, Black people experience from higher education, I was interested in unearthing how the states were offering remedies and repair to Black people. In the article, I assert that the states and their legislators are

structurally violent because they, in more ways than one, create an arbitrary system that privileges one group to have higher access and limit, ignore, and exploit the needs of others.

To be clear, this Article shines a probing light on the escalation of higher education redress statutes in southeastern states that serve as a site for state regulation and monitoring. Higher education's redress statutes (as I coin them) categorically ignore groups of Black people who rightfully should also be members of the statutorily protected class. Given this nexus, I claim that legislators can expand their scope of these statutes and reveal how higher education redress statutes now serve as tools that help erode universities and colleges' culpability and complicity in slavery, degradation, and discrimination toward Black people. As such, this Article shows the growing hostility toward Black people's contribution to higher education and states' unwillingness to offer redress efforts broadly and robustly. This Article is forthcoming in the Washington and Lee Law Review.

Table 1: Journal Placement

Paper	**Status**	**Anticipated Submission Date**	**Journals**
An Access and Equity Ranking of Public Law Schools	Forthcoming	March 2021	*Rutgers Law Review*
A Campus with a History of Slavery and its Role in Predicting Black Students and White Faculty Relationships	A version in print	December 2021	*Education Sciences*
Higher Education Redress Statutes: A Critical Analysis of States' Reparations in Higher Education	Forthcoming	December 2021	*Washington and Lee Law Review*

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AN ACCESS AND EQUITY RANKING OF PUBLIC LAW SCHOOLS

Christopher L. Mathis[*]

ABSTRACT

Over the past few decades, several comprehensive ranking systems, including the influential U.S. News and World Report's Best Law Schools rankings, have emerged to provide useful information to prospective law students seeking to enroll in law school. These ranking systems have defined what is measured as "quality" and what outcomes law schools focus on to gain a better position in the ranking. These rankings fail to measure what many law schools claim to be one of their longstanding goals—diversity, access, and equity.

One of the problematic and shocking reasons U.S. News cites for not including diversity measures in the ranking is that law schools themselves have no consensus on diversity. I counter this argument, asserting that while there may not be widespread consensus—for certain people—on diversity, there is substantial academic scholarship and agreement on the tenets of diversity that ranking enthusiasts can use to design an effective diversity measure. I maintain that any ranking that does not include diversity, access, and equity measures often leave communities of color and their interests in the margins.

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Therefore, this Article seeks to center the needs of Black and Latinx prospective law students through a new ranking system.

Given that public law schools aim to increase racial/ethnic diversity—that is, the number of racial/ethnic minoritized students—because of their institutional missions, the Article provides the first ranking of public law schools on "Access and Equity" measures. It describes ranking law schools based on measurable outcomes related to diversity, access, and equity. This ranking uses twelve access and equity measures that are significant to Black and Latinx law school fit. This "Access and Equity Ranking" is the only ranking to date that will help Black and Latinx students identify which public law schools centers their needs.

I. INTRODUCTION

In the 1990s, the *U.S. News and World Report* ("*U.S. News*") unleashed its hierarchization system upon American law schools.[1] This system changed how the legal academy, prospective students, and administrators view legal education.[2] This limiting system, whereby it gives no weight to diversity in neither its primary institutional nor disciplinary rankings, has played a role in perpetuating and preserving the status quo of the lack of diversity in the legal profession.[3]

While there are a host of reasons why there exists low levels of racial

1. Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1510 (2004) (book review).

2. *See* Louis H. Pollak, *Why Trying to Rank Law Schools Numerically Is a Non-Productive Undertaking: An Article on the* U.S. News & World Report *2009 List of "the Top 100 Schools,"* 1 DREXEL L. REV. 52, 60–65 (2009) (advocating against the usage of *U.S. News* rankings while conceding to its influence); *see also* Christopher J. Ryan, Jr., *A Value-Added Ranking of Law Schools*, 29 U. FLA. J.L. & PUB. POL'Y 285 *passim* (2019) (discussing the *U.S. News* rankings of law schools, alternative ranking systems of law schools, and ranking law schools by the value they add to their students); Bernard S. Black & Paul L. Caron, *Ranking Law Schools: Using SSRN to Measure Scholarly Performance*, 81 IND. L.J. 83, 84–85 (2006); Caron & Gely, *supra* note 1, at 1510–17; Rachel F. Moran, Commentary, *Of Rankings and Regulation: Are the* U.S. News & World Report *Rankings Really a Subversive Force in Legal Education?*, 81 IND. L.J. 383, 383–91 (2006); Jeffrey Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 230 (2006).

3. Alex M. Johnson, Jr., *Including Diversity in* U.S. News*' Rankings: One Small Step in the Right Direction*, 27 J. C.R. & ECON. DEV. 167, 168–76 (2013) [hereinafter *One Small Step*] (discussing the impact, growth, and import of the rankings to legal education and how they have resulted in a decrease of diversity in law schools).

diversity in law schools,[4]—for example, public law schools "voluntarily forgo[ing] affirmative action policies in favor of seeking higher rankings,"[5]—the rankings, one influential contributor, has remained vigorously charged and contentious. More specifically, scholars strongly hypothesize that one of the most critical factors contributing to the legal profession's lack of diversity is the limiting scope of the rankings of law schools.[6]

Traditionally, the usefulness of a university ranking system depends primarily on whether it provides information about important factors to the user.[7] University rankings communicate a host of items to a user, however, it most commonly asserts that it can be used as a proxy to determine a university's quality and value.[8] Similarly, law school rankings attempt to communicate a measure of a law school's quality and

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4. *See* AM. BAR ASS'N, 2020 ABA PROFILE OF THE LEGAL PROFESSION i (2020) (statement of ABA President Judy Martinez) ("The report also measures how far we have to go as a profession when it comes to race. For example, just 5% of all lawyers in the U.S. are African American, even though African Americans are 13% of the U.S. population. And Native Americans are severely underrepresented on the federal bench. Only two federal judges are Native American among 1,386 nationwide (that's one-tenth of 1%), despite the fact that 1.3% of the U.S. population is Native American."). Unsurprisingly, white lawyers have dominated the legal profession at or around 85% since 2010. *See id.* at 109. While ABA President Judy Martinez did not speak to the Latinx population statistics, the report reveals that Latinx lawyers decreased to 4.6% in 2020 from 5.2% in 2018. *Id.*

5. *One Small Step*, *supra* note 3, at 169.

6. *E.g.*, *id.* (lamenting about the rankings and its "detrimental effect on the choices that law school applicants make in selecting which law schools to apply to and matriculate at"). Professor Johnson claims that the "result of this impact is the misapplication of law students to law schools with a resulting decline in the number of African-American students matriculating at our law schools." *Id.* He goes on to say that his review of the data demonstrates "the widening scope of misapplication and does allow [him] to present a reasonable hypothesis that the misapplication [of minoritized individuals] is due to the influence of the rankings." *Id.* at 170; *see also* Alex M. Johnson, Jr., *The Destruction of the Holistic Approach to Admissions: The Pernicious Effects of Rankings*, 81 IND. L.J. 309, 358 (2006) [hereinafter *The Pernicious Effects of Rankings*].

7. Christopher J. Ryan, Jr. & Brian L. Frye, *A Revealed-Preferences Ranking of Law Schools*, 69 ALA. L. REV. 495, 500 (2017) ("[U]sefulness of a law school ranking system depends not only on which factors it considers, but also on its intended audience. The intended audience of a rankings system is typically prospective law students.").

8. Marc Meredith, *Why Do Universities Compete in the Ratings Game? An Empirical Analysis of the Effects of the* U.S. News and World Report *College Rankings*, 45 RSCH. HIGHER EDUC. 443, 445–46, 459 (2004) (discussing the impact of the *U.S. News and World Report* rankings on college admissions and its disparate impact on public and private colleges); Don Hossler, *The Problem with College Rankings*, 5 ABOUT CAMPUS 20, 21 (2000) (claiming that the "general public and many public policymakers often see college rankings as just another way of assessing quality" and value).

value.[9] Although employers and other stakeholders use law school rankings to help gain insight into the "best law school," rankings are traditionally most used by prospective law students.[10] Specifically, future law students rely on law school rankings to evaluate whether the benefit of a legal education outweighs the cost of legal education.[11] Additionally, prospective law students likely rely on rankings to gauge if the law school is an appropriate match or fit because "information is difficult for outsiders [to legal education] to gather themselves."[12] Thus, what factors ranking systems prioritize is of particular concern because they define what is considered measures of "quality and value," and should, to some extent, communicate a law school's accessibility and attainability to prospective students.[13]

Among the critics of the ranking system are members of public law schools.[14] Public law schools, which are partly funded by the taxpaying public,[15] are affected by the rankings in their asserted efforts to remain accessible to their citizens. Put simply, these institutions belong in part

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9. *See* Robert L. Jones, *A Longitudinal Analysis of the* U.S. News *Law School Academic Reputation Scores Between 1998 and 2013*, 40 FLA. ST. U.L. REV. 721, 722–23 (2013); Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941, 944–45 (2014).

10. Ryan & Frye, *supra* note 7, at 499–500 (discussing the subjective approach to law school rankings based on law school students' preferences).

11. *Id.* at 499; *see also* Michael Sauder & Ryon Lancaster, *Do Rankings Matter? The Effects of* U.S. News & World Report *Rankings on the Admissions Process of Law Schools*, 40 L. & SOC'Y REV. 105, 106–07, 116 (2006).

12. *See* Sauder & Lancaster, *supra* note 11, at 106–07.

13. While some may argue that ranking systems are simply a starting point, and prospective students can quickly lookup factors that align with their interests, I maintain that marginalized populations are already overtaxed and overburdened during their law school admissions process. Professor Aaron Taylor's article undergirds this assertion as he chronicles and declares that Black Americans—and I argue other minoritized groups—experience marginalization throughout the admission and matriculation processes in law schools. Aaron N. Taylor, *The Marginalization of Black Aspiring Lawyers*, 13 FIU L. REV. 489 *passim* (2019) (arguing that Black Americans who aspire to be lawyers experience unique challenges and marginalized experiences in applying to and attending law schools).

14. Many professors at public law schools have published scholarship on this topic. *See, e.g.*, *The Pernicious Effects of Rankings*, *supra* note 6; *see also* Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the* U.S. News & World Report *Law School Rankings*, 83 IND. L.J. 791, 795–96 (2008); Nancy B. Rapoport, *Ratings, Not Rankings: Why* U.S. News & World Report *Shouldn't Want to be Compared to* Time *and* Newsweek—*or* The New Yorker, 60 OHIO ST. L.J. 1097, 1099–1100 (1999) (lamenting that "objective" input factors used by *U.S. News*' rankings, such as GPA and LSAT scores, are not "good indicator[s] of *quality*" because "[t]hese numbers don't reflect how well the law school teaches, how cutting-edge its research is, or whether the law school community is cutthroat or supportive").

15. *But see* Rachel F. Moran, *Clark Kerr and Me: The Future of the Public Law School*, 88 IND. L.J. 1021, 1031 (2013) (lamenting that "as state revenues for public law schools decline, there is a growing rhetoric of privatization and self-sufficiency").

to the public[16] and have an obligation "to seek students from the broadest cross-section of the state public."[17] One would hope that public law schools would prioritize their state's needs, but many law schools have found creative ways around this mandate.[18] As a result, many public law schools leave parts of their citizenry, particularly minoritized communities, with limited legal education access.[19] This Article focuses on public law schools because lawyers and the legal field per se hold themselves out to the public as a public profession whereby they are officers of the court, the public's call of consciousness, and the people's attorney.[20] This public call is often codified and expressed repeatedly in bar ethical codes across the country, where the code says that a lawyer is "a public citizen having special responsibility for the quality of justice."[21] Given that those with a legal education have a public responsibility embedded in their profession and substantially influence the public, the question of who has access to the state's public law school should forever be present.

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16. *See* SHAUN R. HARPER & ISAIAH SIMMONS, BLACK STUDENTS AT PUBLIC COLLEGES AND UNIVERSITIES: A 50-STATE REPORT CARD 6 (2019) (discussing why higher education in the United States "is a public good," as they argue that while higher education "confers enormous personal and material advantages to individuals, it more significantly profits our broader society").

17. Rex R. Perschbacher, *The Public Responsibilities of a Public Law School*, 31 U. TOL. L. REV. 693, 694 (2000) (discussing the four varied responsibilities public law schools have: "(1) [to have] genuinely equal access; (2) [to have] learning environments that prepare students to lead and participate in a democratic society; (3) [to have] engagement—a conscious effort to bring resources and expertise to bear on community, state, national and international problems; and (4) [to be] open and [have] public accountability").

18. *See* Moran, *supra* note 15, at 1031 ("The law schools at the University of Michigan and the University of Virginia already have moved decisively in th[e] direction [toward privatization], while those at Arizona State University and the University of Minnesota have announced plans to become self-sufficient."); Karen Dybis, *When Public Funding Is No Longer Available*, 20 NAT'L JURIST 12, 12 (2011); Jenna Ross, *Two U of M Schools Consider Switching to Private-Funding Only*, STAR TRIB. (July 4, 2011, 11:14 PM), https://www.startribune.com/two-u-of-m-schools-consider-switching-to-private-funding-only/124987709/.

19. *See* Moran, *supra* note 15, at 1033–35.

20. Deborah L. Rhode, *Law, Lawyers, and the Pursuit of Justice*, 70 FORDHAM L. REV. 1543, 1545 (2002) (discussing the responsibilities of lawyers and the law to the public and their interests in the twenty-first century); *see also* Christopher Edley, Jr., *Fiat Flux: Evolving Purposes and Ideals of the Great American Public Law School*, 100 CAL. L. REV. 313, 315, 321 (2012). The mission of great public schools is to support "economic and social development." *Id.* at 321. In doing so, great public law schools' plan to accomplish those aims must be both "obvious and palpable." *Id.* This logic is undergirded by "the purpose of land grant colleges and universities under the federal Morrill Act of 1862." *Id.*

21. Rhode, *supra* note 20, at 1545 (quoting MODEL RULES OF PRO. CONDUCT pmbl. (AM. BAR ASS'N 2002)).

Having no diversity measures within arguably the most popular law school ranking system often contributes to low rates of Black and Latinx students in law school classes,[22] and ultimately lack of Black and Latinx lawyers in their localized communities. Therefore, this Article assesses the access and equity rationale in both the *U.S. News* law school rankings and several other alternative ranking systems created and popularized by law academics.[23] Then, I propose a ranking scheme substantiated by literature in higher education that helps understand important institutional factors key to Black and Latinx student success. My ranking, the *Access and Equity Ranking of Public Law Schools*, reimagines public law school rankings by re-ranking all public law schools, as deemed by the American Bar Association, on factors not in the *U.S. News and World Ranking*[24] or in any other ranking while also proffering a ranking that centers Black and Latinx student populations.[25] With several factors adopted from Harper and Simmons scholarship,[26] the factors include several access and equity indicators—student representation in relationship to a state's demographics,[27] faculty racial composition,[28] gender equity among student populations;[29] gender equity among faculty,[30] completion ratio of Black and Latinx students,[31] financial equity,[32] faculty ratio to the minoritized student populations,[33] and minoritized student ratio to law school student population.[34] The re-ranking will score the law schools using a standardized index.

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22. *See* Vernellia R. Randall, *The Misuse of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHN'S L. REV. 107, 107–08 (2006).

23. *See infra* Part II.

24. The *U.S. News* ranking at last count uses twenty factors to make its annual evaluation of law schools. Robert Morse et al., *Methodology: 2022 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (Mar. 29, 2021, 9:00 PM), https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology. At least two of these are subjective: the ratings by academics and the ratings by lawyers and judges. *See id.* The other factors are based on objective actuarial data—undergraduate GPA, bar passage rate, student-faculty ratio, to name a few. *See id.* For a thorough critique see STEPHEN P. KLEIN & LAURA HAMILTON, THE VALIDITY OF THE U.S. NEWS AND WORLD REPORT RANKING OF ABA LAW SCHOOLS (1998).

25. *See infra* Part IV.

[26] *See* HARPER & SIMMONS, *supra* note 16, at 6

27. *See infra* notes 95–101 and accompanying text.

28. *See infra* notes 111–15 and accompanying text.

29. *See infra* notes 99–100 and accompanying text.

30. *See infra* notes 99–100 and accompanying text.

31. *See infra* notes 116–27 and accompanying text.

32. *See infra* notes 95–98 and accompanying text.

33. *See infra* notes 111–15 and accompanying text.

34. *See infra* notes 116–27 and accompanying text.

The *Access and Equity Ranking of Public Law Schools* will draw more attention to the public schools of legal education that are creating environments conducive to Black and Latinx students' success. Second, the *Access and Equity Ranking* will equip institutional leaders and educators with information on specific measures related to access, equity, and diversity to create change at their law schools. Lastly, I wish to reorient the deficit-framing that minoritized students often encounter at colleges and universities[35] while simultaneously shifting the questioning to invisible and dysfunctional institutional mechanisms[36] that make the experiences for Black and Latinx law students hostile. For example, like in Harper and Simmons work, rather than asking: Why are minoritized law students poorly adjusting to the law school culture? I implore readers to interrogate: Why do public law schools do so poorly at attracting minoritized students? Why do public law schools alienate and isolate students of color? Why do public law schools perennially straddle people of color with more student loan debt than other law school goers? Why do

35. *See generally* Krystal L. Williams et al., *(Re)Creating the Script: A Framework of Agency, Accountability, and Resisting Deficit Depictions of Black Students in P-20 Education*, 89 J. NEGRO EDUC. 249, 249 (2020) ("[E]ducation research and practice has failed to accentuate the factors that promote Black student success and, instead, produced deficit-centered narratives that focused on Black students' academic underachievement and challenges. . . . [Author's also provided] conceptual guidance . . . to identify, challenge, and disrupt the continuation of majoritarian narratives concerning Black students, which often restrict opportunity structures and Black students' overarching educational trajectories."); *see also* Gloria Ladson-Billings, *Pushing Past the Achievement Gap: An Essay on the Language of Deficit*, 76 J. NEGRO EDUC. 316, 316 (2007) (challenging educators and various stakeholders to look at the "inherent fallacies of the achievement gap discourse and place students' academic struggles in the larger context of social failure including health, wealth, and funding gaps that impede their school success"); *see generally* Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement in U.S. Schools*, 35 EDUC. RESEARCHER 3 (2006).

36. *See, e.g.*, Juan Carlos Garibay et al., "*It Affects Me in Ways That I Don't Even Realize": A Preliminary Study on Black Student Responses to a University's Enslavement History*, 61 J. COLL. STUDENT DEV. 697, 697–98 (2020) (discussing how the invisible history of a university's nexus to slavery affects contemporary Black emotional, behavioral, and psychological well-being); *see also* Juan Carlos Garibay & Christopher L. Mathis, *Does a University's Enslavement History Play a Role in Black-Student- White Faculty Interactions? A Structural Equation Model*, 11 EDUC. SCIS. 809 (2021) (examining whether Black college students' emotional responses to their institution's history of slavery plays a role in contemporary interactions with white faculty using structural equation modeling techniques; authors findings highlight the significance of background characteristics, students' emotional responses to their institution's slavery history, and experiences with racial microaggressions during college in predicting negative interactions with white faculty); *see generally* Sylvia Hurtado et al., *Enhancing Campus Climates for Racial/Ethnic Diversity: Educational Policy and Practice*, 21 REV. HIGHER EDUC. 279, 283 (1998) (discussing how the silent "historical vestiges of segregated schools and colleges continue to affect the climate for racial/ethnic diversity on college campuses").

public law schools not afford minoritized individuals more significant and more frequent access to same-race faculty members?[37]

Thus, with the *Access and Equity Ranking*, prospective Black and Latinx students will have access to more information salient to their needs when choosing a law school.

I address the access and equity gaps in both the *U.S. News* law school rankings and alternative ranking systems in the following sections. Next, I discuss evidence from the higher education literature surrounding each factor addressed in the *Access and Equity Ranking*. Lastly, I present the results of the *Access and Equity Ranking*.

II. THE RANKINGS

Who wins in any ranking system is determined by who is assigning value to the factors in its algorithm.[38] More proximally, the choice of factors included in an algorithm depends primarily on the perspective of the decision-maker and their controlling value set.[39] Which factors that are included are of great importance because often times ranking lists are the first source of information prospective students seek.[40] Although there are very few law school ranking lists, this Article will focus on those produced by the *U.S. News* and the few alternative rankings produced by legal scholars.[41] While the legal academy is displeased with diversity's

37. *See* HARPER & SIMMONS, *supra* note 16, at 6 (asking similar questions of public universities by interrogating their treatment of Black students across the nation).

38. *See* Ryan & Frye, *supra* note 7, at 506.

39. *See id.* at 496, 500.

40. *See* Nicholas A. Bowman & Michael N. Bastedo, *Anchoring Effects in World University Rankings: Exploring Biases in Reputation Scores*, 61 HIGHER EDUC. 431, 431–34 (2011) (discussing the anchoring effects when it comes to higher education and institutional reputation). Anchoring bias, borne out of the psychology field, is a cognitive bias that causes people to rely heavily on the first piece of information given about a topic. *See id.* at 433. In applying this concept to prospective law students, they often overwhelmingly depend on law school rankings in choosing their law school. *See supra* note 2 and accompanying text. Put differently, anchor theory suggests that when people make judgments or assumptions about a particular phenomenon, they subsequently view newer additional information through the prism and understanding of the anchored text or information instead of seeing it objectively. Bowman & Bastedo, *supra* note 39, at 433; *see also* Stake, *supra* note 2, at 245, 250–54 (showing that the *U.S. News* law school rankings predict and influence the academic reputation of law schools and produced an anchoring effect resulting in the reputation and actual ranking of the law school being more aligned with each other).

41. *See infra* Part II.

absence from the ranking systems,[42] apart from one exception,[43] to date the academy has not proffered any other ranking that addresses diversity. However, these varied ranking schemes are of interest for several reasons. First, they each have published an assessment of public law schools. Second, they also claim to provide a ranking of a law school based on some overall version of "quality." In fact, the *U.S. News* boldly describes which law school is the "best" from year to year. Third, these law school rankings vary in their prestige, publication frequency, and influence on prospective law students.

A. U.S. News and World Report

The most famous system for ranking U.S. law schools is the *U.S. News*. The *U.S. News* law school rankings are the "gold standard of the ranking business."[44] The 2021 rankings of its "Best Law Schools" began with the claim that "[a] career in law starts with finding the [law] school that fits you best."[45] In the ranking, the ranked law schools were scored—using the collected survey data and the unpublished estimates—by twenty measures of quality.[46] Those measures can be summarized as follows:

- Quality Assessment (weighted by 0.40)
    - Peer assessment score
    - Assessment score by lawyers and judges
- Selectivity (weighted by 0.21)
    - Median LSAT and GRE scores
    - Median undergraduate GPA

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42. *See, e.g.*, Kevin R. Johnson, *The Importance of Student and Faculty Diversity in Law Schools: One Dean's Perspective*, 96 IOWA L. REV. 1549, 1574–75 (2011); *see also* Kevin R. Johnson, *Measuring Law School Excellence: Diversity Among Law Students*, 101 IOWA L. REV. ONLINE 40, 40–42 (2015) (arguing that the *U.S. News* rankings should "expressly incorporate student and faculty diversity into its much-watched annual rankings of law schools"); J.T. Manhire, *Beyond the* U.S. News *Index: A Better Measure of Law School Diversity*, 101 IOWA L. REV. ONLINE 1, 2–5 (2015) (discussing "why law school diversity is . . . critical, and why measuring it is so important" in the *U.S. News* ranking, and going on to constructively offer measures of a variety of kinds of diversity among law students that might be worthy of *U.S. News*' consideration); Renwei Chung, *What Could Disrupt Diversity in Law? The Economy, Stupid.*, ABOVE THE LAW (Dec. 26, 2014, 2:39 PM), https://abovethelaw.com/2014/12/what-could-disrupt-diversity-in-law-the-economy-stupid/.

43. Manhire, *supra* note 41, at 1.

44. Ryan, *supra* note 2, at 287; *see also* Jones, *supra* note 9, at 722–23.

45. *2022 Best Law Schools*, U.S. NEWS & WORLD REP., https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings (last visited Feb. 8, 2022).

46. Morse et al., *supra* note 24.

    - Acceptance rate
- Placement Success (weighted by 0.2525)
    - Success is determined by calculating employment rates for graduates at
        - Graduation; and
        - Ten months after graduation
    - Bar passage rate
    - Average debt incurred
- Faculty Resources (weighted by 0.1375)
    - Expenditures per student
    - Student-faculty ratio
    - Library resources[47]

The *U.S. News*, albeit elaborate, is incomplete and imperfect. This ranking has not included any diversity measures in its annual ranking.[48] Leaders of the ranking system suggest that diversity is too complex to define and are concerned about designing a diversity measure not accepted by educators and students.[49] Chief Data Strategist Robert Morse of the *U.S. News* further noted that the "*U.S. News* does not want our rankings to be part of the ongoing public policy debate of how to achieve diversity goals at law schools or other parts of higher education."[50] Additionally, in 2011, Morse noted "another important issue is to what degree diversity is linked to academic quality versus being an important social goal."[51] Morse further asserts that there is a viable question of "whether diversity should even be included in the rankings, given that the main purpose of the rankings is to identify the best schools academically."[52]

However, numerous scholars strongly disagreed with Director Morse and called out both the importance of and need to have diversity

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47. *Id.* As of the 2022 rankings, *U.S. News* also includes average debt incurred of obtaining a J.D. at graduation (weighted by 0.03) and the percent of law school graduates incurring J.D. law school debt (weighted by 0.02). *Id.*

48. *See id.*

49. *See* Robert Morse, *U.S. News' Views on Including Diversity in Our Best Law Schools Ranking*, 27 J. C.R. & ECON. DEV. 217, 219–20 (2013) [hereinafter *U.S. News' Views*]; Alfred L. Brophy, *African American Student Enrollment and Law School Ranking*, 27 J. C.R. & ECON. DEV. 15, 15–16 (2013) (discussing "the relationship between African American student enrollment and *U.S. News* peer assessment scores of law schools").

50. Brophy, *supra* note 48, at 16–17; *Robert Morse*, U.S. NEWS & WORLD REP., https://www.usnews.com/topics/author/robert-morse (last visited Feb. 8, 2022).

51. Robert Morse, *Should Diversity Be Added to Best Law Schools Rankings?*, YAHOO! NEWS (Apr. 7, 2011), https://news.yahoo.com/news/diversity-added-best-law-schools-rankings-20110407-092638-969.html.

52. *Id.*

measures included in law schools' rankings.[53] Scholars, Justices, and lawyers have all also detailed evidence that corroborates the positive influences of diversity in education.[54] However, the *U.S. News* actively chooses not to incorporate it in its annual report, but rather, created an incomplete racial diversity index,[55] disassociated from the annual

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53. *See supra* note 41 and accompanying text.

54. *See, e.g.*, Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 803, 838–43 (2007) (Breyer, J., dissenting) (discussing the educational, democratic, and social elements of which a school's compelling interest in achieving a racially diverse student body is comprised); Estes v. Metro. Branches of Dallas NAACP, 444 U.S. 437, 438, 451 (1980) (Powell, J., dissenting); Washington v. Seattle Sch. Dist. No. 1, 458 U.S. 457, 473 (1982) ("Attending an ethnically diverse school may help . . . [in] preparing minority children 'for citizenship in our pluralistic society,' while, we may hope, teaching members of the racial majority 'to live in harmony and mutual respect' with children of minority heritage." (citation omitted) (first quoting *Estes*, 444 U.S. at 451 (Powell, J., dissenting); and then quoting Columbus Bd. of Educ. v. Penick, 443 U.S. 449, 485 n.5 (1979) (Powell, J., dissenting))); Eboni S. Nelson, *Examining the Costs of Diversity*, 63 U. MIAMI L. REV. 577, 586 (2009) (discussing how the benefits schools hope to produce from a diverse student population "can be divided into three distinct types: social, democratic, and educational"); Brief for Respondents at 14–33, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02–241) (discussing the Law School's compelling interest in securing educational benefits flowing from student-body diversity); Michael J. Kaufman, *(Still) Constitutional School De-Segregation Strategies: Teaching Racial Literacy to Secondary School Students and Preferencing Racially-Literate Applicants to Higher Education*, 13 MICH. J. RACE & L. 147, 166 (2007) (noting that school districts seeking to create racially diverse student bodies do so with the aim of producing the educational benefits resulting from diverse learning environments); Patricia Gurin et al., *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. SOC. ISSUES 17, 31–33 (2004).

55. The racial diversity index and its further iterations have been somewhat chaotic. First, the *U.S. News* decided that they would not participate in the public policy debate at all surrounding diversity, as they cited that they did not see the *U.S. News and World Report Rankings* as policymakers or policy influencers. *See U.S. News' Views*, *supra* note 48, at 220. However, given the cultural pressure in demanding that they address diversity, they created the diversity index. *See id.* at 219. In their first iteration, as described in the paper, majority-minority law schools were penalized as it currently only measures the law schools on whether students are most likely to encounter classmates from a different racial or ethnic group. *See id.* at 217–19. Recognizing the limiting nature of that index, the *U.S. News* in 2021 proffered another, more complete diversity ranking that made glaring and painstaking mistakes. *See* Caroline Spiezio, *U.S. News Delays Law School Diversity Rankings After Deans' Uproar*, THOMSON REUTERS WESTLAW TODAY (Mar. 25, 2021, 11:52 PM), https://today.westlaw.com/Document/I2ea6be208dc711ebb3b7b5bc2f979fe9/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default). As a result, the *U.S. News* decided to postpone the ranking to a later undetermined date after law school deans across the country pointed out the issues with the new diversity ranking. *Id.* The problems included not counting multiracial students as underrepresented minorities and not including Asian students in the ranking. *Id.*; Staci Zaretsky, *U.S. News Pulls Law School Diversity Ranking Less than a Week Before Publication*, ABOVE THE LAW (Mar. 26, 2021, 3:42 PM), https://abovethelaw.com/2021/03/u-s-news-pulls-law-school-diversity-ranking-less-than-a-week-before-publication/.

report.[56] Director Morse notes that among the many reasons it did not incorporate the diversity index into the overall ranking is because law schools themselves have not reached a conclusion or consensus on what diversity is.[57] Yet, somehow the *U.S. News* found creative ways to define and operationalize other amorphous concepts, like "quality," which I argue is both amorphous and has no singular meaning understood by law schools. [58] Moreover, the idea of "quality" which it attempts to assess, has not received as much scholarly guidance as diversity. While there may not be widespread and conclusive consensus surrounding diversity, there does exist a critical mass of scholars, as well as the Supreme Court, that share common tenets in describing what diversity is and its importance in higher education, generally, and legal education, specifically.[59] As a representative text, Professors Carbado and Gulati proffered well-thought-out conceptual definitions[60] and operationalizations[61] of what diversity is and why it is important in a university setting.

In not adopting any of the items that are of relative consensus in the field, the *U.S News* diversity index only "identifies law schools where law students are most and least likely to encounter classmates from a

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56. *U.S. News' Views*, *supra* note 48, at 219. Morse discusses the reasons for why the rankings do not include diversity. *Id.* He claims:

> First, law schools are not in agreement on a definition of diversity. Second, there is also not an agreement or consensus among law schools on how diversity should be measured. [Lastly], according to *U.S. News*, there is also not an agreement or consensus among the law schools that achieving diversity adds to the academic quality of law schools.

Id.

57. *Id.*

58. Morse et al., *supra* note 24.

59. *See generally* Grutter v. Bollinger, 539 U.S. 306 (2003) (affirming the constitutionality of diversity as a justification for affirmative action); Meera E. Deo, *The Promise of* Grutter*: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L. 63 (2011); Angela Onwuachi-Willig, *Using the Master's "Tool" to Dismantle His House: Why Justice Clarence Thomas Makes the Case for Affirmative Action*, 47 ARIZ. L. REV. 113, 129–30 (2005); Chris Chambers Goodman, *Retaining Diversity in the Classroom: Strategies for Maximizing the Benefits that Flow from a Diverse Student Body*, 35 PEPP. L. REV. 663 (2008).

60. Devon W. Carbado & Mitu Gulati, *What Exactly Is Racial Diversity?*, 91 CAL. L. REV. 1149, 1153–54 (2003). They discuss their conceptualization of the definition of diversity as the "relationship [that] exists between race and social experiences, on the one hand, and knowledge and practices, on the other." *Id.* They go on to claim that central to that conceptualization is the "notion that how we experience, think about, and conduct ourselves in society is shaped, though not determined, by our race." *Id.* at 1154.

61. *Id.* at 1154 (describing the importance of diversity and seven ways in which diversity can be operationalized in a college setting). They posit seven different ways of conceptualizing the utility of diversity: "(1) inclusion; (2) social meaning; (3) citizenship; (4) belonging; (5) colorblindness; (6) speech; and (7) institutional culture." *Id.*

different racial or ethnic group."[62] The index examines the representation of racial groups in the student population of the law school.[63] Each group's proportion in the student body is determined, and each school is assigned a score from zero to one based solely on the number of students in each racial category.[64] Among many problems, this methodology incompletely assesses diversity because it only recognizes diversity to mean miscellany across different races.[65] Put simply, even when a law school is a "majority-minority" law school, it may receive a low score. For example, Florida A&M University School of Law, a public historically Black university, founded with the express mission to educate African Americans,[66] would score low on the diversity index because other racial groups, while present, have a relatively scarce presence.

While scholars have pointed out the problems with the *U.S News* ranking and the index in terms of diversity, law schools still orient efforts to gain higher metrics for better positioning on the list.[67] Given that public law schools operate in a competitive market maintaining student enrollment and securing other financial support forms are consistently prominent concerns for educational administrators. More pointedly, "[i]f enrollment declines, there are few places [that law schools can turn] to

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62. Robert Morse, *U.S. News Debates Law Schools over Adding Diversity to Rankings*, YAHOO! NEWS (Nov. 23, 2011), https://news.yahoo.com/news/u-news-debates-law-schools-over-adding-diversity-180125846.html.

63. *See* Robert Morse, *Methodology: 2021 Law School Diversity Index*, U.S. NEWS & WORLD REP. (Mar. 16, 2020), https://www.usnews.com/education/best-graduate-schools/articles/law-school-diversity-index-methodology.

64. *See id.*

65. *See generally U.S. News' Views*, *supra* note 48.

66. *About FAMU*, FAMU, https://www.famu.edu/about-famu/index.php (last visited Feb. 8, 2022).

67. *See, e.g.*, Michael Sauder & Ryon Lancaster, *Do Rankings Matter? The Effects of* U.S. News & World Report *Rankings on the Admissions Process of Law Schools*, 40 L. & SOC'Y REV. 105, 130 (2006) (discussing how the *U.S. News* rankings "provide a signal of law school quality that influences the behavior" of law schools across the country); *see* Brian Leiter, *The Law School Observer*, 4 GREEN BAG 2D 311, 311–12 (2001) (discussing how law schools game their peer assessment score by inundating members of the legal academy with literature and promotional materials about the many new innovations at their law school); MICHAEL S. MCPHERSON & MORTON OWEN SCHAPIRO, THE STUDENT AID GAME: MEETING NEED AND REWARDING TALENT IN AMERICAN HIGHER EDUCATION 21 (1998) (explaining how highly selective schools set standard class sizes and have high research expenditures, two criteria that contribute to the rankings); William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: Federal Loans Inflate College Budgets, but How Long Will that Last if Law Grads Can't Pay Their Bills?*, 98 A.B.A. J. 30, 34 (2012) (discussing how schools offer cross-subsidies to "maximize prestige as measured by *U.S. News* rankings").

economize."[68] Studies show that "rankings play a role in institutions' abilities to achieve their [academic] goals, creating a complicated relationship between educational administrators and college ranking systems."[69]

Some scholars assert that some law schools' administrators "only respond to the factors that *U.S. News* measures and when [racial diversity is not measured], schools are unlikely to prioritize diversity among their student bodies."[70] While many stakeholders, including students, within public law schools value diversity,[71] the diminishing regard for diversity persists, in part, because of the *U.S. News*' influence and popularity among alumni and donors. Yearly, alumni and donors access *U.S. News* and measure the law school's prestige without being mindful of the missing essential factors. This relationship is of particular importance because public law schools' budgets continuously grow scarce across the country,[72] and the need for development continuously grows more critical.

B. Alternative Rankings

Law professor Vernellia Randall created a ranking system that listed the "most isolating" and "least isolating" law schools for matriculating Black law students in 2005.[73] She ranked law schools according to their percentage of white students and how isolating law schools are for Black

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68. Robert B. McKay, *What Law Schools Can and Should Do (and Sometimes Do)*, 30 N.Y.U. L. REV. 491, 504 (1985); *see also* Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.U. L. REV. 465, 467, 473–78 (2004) (discussing how the economics of law school are increasingly unsustainable); Paul Horwitz, *What Ails the Law Schools?*, 111 MICH. L. REV. 955, 969–72 (2013).

69. David A.R. Richards et al., *One Size Does Not Fit All: A Critical Race Theory Perspective on College Rankings*, 42 REV. HIGHER EDUC. 269, 271 (2018) (discussing college rankings' impacts on higher education institutions).

70. Brophy, *supra* note 48, at 17.

71. *See, e.g.*, Meera E. Deo et al., *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT'L BLACK L.J. 71, 74–76, 80 (2010) (discussing the need to have "a critical mass of students of color" as a way "to combat the often unwelcoming law school atmosphere" for minoritized students).

72. MCPHERSON & SCHAPIRO, *supra* note 66, at 21.

73. *See, e.g.*, VERNELLIA R. RANDALL, UNIV. DAYTON, THE WHITEST LAW SCHOOL REPORT AND OTHER LAW SCHOOL RANKINGS RELATED TO RACIAL/ETHNIC DIVERSITY IN LAW SCHOOL (2005), https://academic.udayton.edu/TheWhitestLawSchools/2005TWLS/Chapter7/IsolationAfrican.htm [hereinafter 2005 REPORT]; *see also* Vernellia R. Randall, *The Misuse of the LSAT: Discrimination Against Blacks and Other Minorities in Law School Admissions*, 80 ST. JOHN'S L. REV. 107, 107–08 (2006) (lamenting on the problems with the *U.S. News* surrounding race and how "[l]aw schools are engaging in disturbing practices in efforts to 'raise' their rank"). Randall boldly asserts that "[i]f a Black or Mexican applicant is denied admission to law school, there is an excellent possibility that he or she may have been discriminated against based on race." *Id.*

students. She also reported the results on the website "America's Whitest Law Schools."[74] While this ranking produced shocking and alarming results, it was limited in its factors examined.[75] The ranking system only focused on the total "whiteness" of a law school student population.[76] The percent of whiteness was calculated by adding the percent of "Caucasian" to the percent of "unknown."[77] The lower the rank number, such as 1, the higher the percentage of whiteness.[78] As such, the ranking scheme does not capture other important factors needed for students of color to decide which law school they should attend.

Additionally, Ryan and Frye recently provided an alternative ranking of law schools, known as the revealed-preferences ranking, which answers not where students should attend but where the "most desirable students" attend.[79] In doing so, Ryan and Frye reveal the "best law schools ranking" based solely on undergraduate GPAs and the LSAT scores of matriculating students.[80] Though Ryan and Frye's novel ranking system provides valuable information, their ranking system also only focused on, albeit salient, narrow factors that impact a law student's interest. And while their purpose was not to measure notions of diversity, access, and equity, ranking systems that do not account for nuanced preferences, and in this case different preferences of minoritized students, are incomplete.

Other legal scholars—starting with Leiter,[81] and later, Black and Caron,[82] as well as Yelnosky[83]—ranked law schools based on some notion of faculty productivity. For example, Black and Caron advocated that a law faculty's Social Science Research Network ("SSRN") be used to create or supplement a ranking scheme.[84] While useful, this model is also

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74. *See* Vernellia Randall, *America's Whitest Law Schools*, UNIV. DAYTON, https://academic.udayton.edu/TheWhitestLawSchools/index.htm (last updated Sept. 15, 2005).

75. 2005 REPORT, *supra* note 72, at ch. 1.

76. *Id.*

77. *Id.*

78. 2005 REPORT, *supra* note 72, at ch. 3.

79. Ryan & Frye, *supra* note 7, at 499 (discussing their approach to ranking law schools). Their ranking is based on the revealed preferences of matriculating law students. *Id.* Ryan and Frye argue that "[l]aw school admission depends almost entirely on an applicant's LSAT score and undergraduate GPA, and law schools compete to matriculate students with the highest possible combined scores." *Id.* at 498–99.

80. *Id.*

81. *See* Brian Leiter, *How to Rank Law Schools*, 81 IND. L.J. 47, 50–51 (2006).

82. *See* Black & Caron, *supra* note 2, at 84–85.

83. *See* Michael J. Yelnosky, Comment to *On "Faculty Productivity" Studies*, L. PROFESSOR BLOGS NETWORK: BRIAN LEITER'S L. SCH. REPS. (May 7, 2012, 4:48 PM), https://leiterlawschool.typepad.com/leiter/2012/05/on-faculty-productivity-studies.html.

84. Black & Caron, *supra* note 2, at 84–85.

focused on only one factor. However, this factor is unlikely to be useful for prospective students in examining a law school's compatibility and fit. And a growing number of legal academics have begun to rank law schools based on the schools' ideological values, for example, conservative or liberal.[85] For instance, Michael Conklin asserts that the *U.S. News* ranking of law schools penalizes conservative law schools and boosts liberal law school rankings.[86] He goes on to rank the ten most conservative and ten most liberal schools.[87]

While these alternative rankings are useful, the rankings proffered above do not account for students' of color diverse needs. Nor do any of these alternative rankings account for the importance of diversity among law school faculty, financial equity, or other factors that have been shown to impact Black and Latinx students' college choice. Except for Vernellia Randall's, these proposed rankings continue to remain silent to prospective and current law students, law school administrators, and societal calls to incorporate notions of diversity in ranking schemes. While law students are the most under researched demographic in higher education, Christopher Ryan recently surveyed law students on their choice of law school.[88] In his study, law students surveyed at four law schools in the 2017–2018 academic year indicated that among the most salient factors contributing to their decision to enroll was their law schools' tuition rates, location, and institutional fit.[89] Given the survey's novelty, the survey results did not account for all areas of graduate school choice theory present in other popular rankings. As such, a ranking system that considers these outcomes, among others discussed below, is necessary to describe a law school's match to minoritized students.

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85. *See* Michael Conklin, *Political Ideology and Law School Rankings: Measuring the Conservative Penalty and Liberal Bonus*, 2020 U. ILL. L. REV. ONLINE 178, 179 (2020) (discussing the findings of a "study designed to measure whether peer rankings are affected by a law school's ideological reputation").

86. *Id.* at 178–79, 182–83.

87. *Id.* at 182–83.

88. *See* Christopher J. Ryan, Jr., *Analyzing Law School Choice*, 2020 U. ILL. L. REV. 583, 583, 587–89, 615 (2020) (discussing the several "factors that bear on the choice to attend law school from the results of an original survey distributed to current law students at four law schools—a private elite law school, a public flagship law school, a public regional law school, and a private new law school—in the 2017–2018 academic year").

89. *See id.* at 585, 614–15.

III. THE FACTORS INCLUDED IN THE ACCESS AND EQUITY RANKING

Every year, thousands of students decide to pursue law school in the United States.[90] Research suggests that participants who successfully complete a law degree have an increased sense of well-being as compared to participants with a bachelor's degree.[91] "Well-being" is defined as "the interaction and interdependency between many aspects of life, such as finding fulfillment in daily work and interactions, having strong social relationships and access to the resources people need, [and] feeling financially secure."[92] Moreover, there are several other reasons why legal education is a desirable social objective. For example, legal education also provides a critical engine for innovation and the discovery of knowledge,[93] access to power and influence,[94] and marketable skills often applied to other disciplines.[95] Given that society deems legal education as a valuable and coveted asset for individuals, ensuring its equitable accessibility among all a state's citizenry, particularly in law schools where the public contributes funds, is of great importance. Ensuring that everyone has

90. *See* Swethaa S. Ballakrishnen & Carole Silver, *A New Minority? International JD Students in US Law Schools*, 44 L. & SOC. INQUIRY 647, 647, 653–54 (2019) (revealing "the significance of a new and growing minority group" within the U.S. law school ethos—"international students in the Juris Doctor program"—calling for the "importance of international students as actors within a more mainstream institutional context."); Miranda Li et al., *Who's Going to Law School? Trends in Law School Enrollment Since the Great Recession*, 54 UC DAVIS L. REV. 613, 622–27 (2020) (explaining the trends in law school enrollment over the past decade and establishing how enrollment has not been uniform across demographic groups).

91. GALLUP & ACCESSLEX INST., LIFE AFTER LAW SCHOOL: A PILOT STUDY EXAMINING LONG-TERM OUTCOMES ASSOCIATED WITH GRADUATING LAW SCHOOL AND THE VALUE OF LEGAL EDUCATION 3, 13–14 (2016) (discussing results of a "pilot study of law school graduates to better understand the overall value of a law degree and determine how law school experiences affect the lives and careers of law school alumni").

92. *Id.* at 4; *see also* Wood R. Foster, Jr., *A Profession on Edge Part 5: The Phenomenon of BigLaw*, 77 OR. STATE BAR BULL. 26, 29 (2017) (showing that attorneys entering large law firms in 2017 could expect to make upwards of $160,000 per year).

93. *See, e.g.*, John A. Robertson, *Law, Science, and Innovation: Introduction to the Symposium*, 38 J.L. MED. & ETHICS 175, 175 (2010) (explaining the significance that law has in scientific innovation, specifically emphasizing the role that legal dynamics had on the development of stem cell science); *see also* Alex Stein, *Law and the Epistemology of Disagreements*, 96 WASH. U.L. REV. 51, 58–70, 90–92 (2018).

94. *See, e.g.*, Martha Minow, *Why Do Law School Graduates Become Leaders?*, HARV. L. TODAY (Fall 2012), https://today.law.harvard.edu/letter-from-the-dean/why-do-law-school-graduates-become-leaders/ (noting that the Socratic method, the way law students are spontaneously questioned by their professors on the course material, contributes to the attainment of the type of reasoning required of a prospective political leader).

95. *See, e.g.*, Suzanne Craig Robertson, *Your Flexible Law Degree*, 50 TENN. BAR J. 12 (2014) (detailing the applicability of law degrees to such disparate fields as business, education, and philanthropy).

equitable access to legal education also lends itself to other benefits that Carbado and colleagues lay out in their seminal piece.[96] This ranking system in *some* senses borrows several sentiments and tenets from their work and operationalizes their concept of diversity.[97]

While obtaining a law degree presents several benefits to individuals and society, there remains inequality regarding law school attainment for historically under-represented populations. Racial minorities,[98] low-income people,[99] and until recent years, women,[100] are all disproportionately less likely than their counterparts to earn a law degree. While there has been significant improvement in gender parity in law school, women disproportionately leave the legal field at every stage.[101] Without intentional plans for improvements in law degree attainment rates for underrepresented populations, it is likely that law schools, particularly selective law schools, perpetuate minoritized

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96. *See* Carbado & Gulati, *supra* note 59, at 1153–64.

97. *See generally id.* (discussing factors such as minority representation in the diversity context, which is reflected in the ranking system).

98. *See, e.g.*, Taylor, *supra* note 13, at 494, 505–06 (analyzing the impact that the LSAT has on Black enrollment in law schools); Elizabeth Baylor, *Closed Doors: Black and Latino Students Are Excluded from Top Public Universities*, CTR. FOR AM. PROGRESS (Oct. 13, 2016), https://www.americanprogress.org/article/closed-doors-black-and-latino-students-are-excluded-from-top-public-universities (according to a report from the Center for American Progress analyzing federal data, if minorities were represented proportionally in higher education, there would be an additional 193,000 students enrolled); Erik Davin Malmberg, Factors Affecting Success of First-Year Hispanic Students Enrolled in a Public Law School (Aug. 2008) (Ph.D. dissertation, University of Texas at Austin) (on file with University of Texas Libraries: Electronic Theses and Dissertations), http://hdl.handle.net/2152/17937 (finding that first-generation Hispanic law school students are disadvantaged compared to their peers).

99. *See* Richard H. Sander, *Class in American Legal Education*, 88 DENV. U.L. REV. 631, 632 (2011) (noting that the vast majority of law students came from elite backgrounds, and that merely five percent of students at the most prestigious law schools come from families whose income falls in the bottom half of the national distribution).

100. *E.g.*, LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE (1997); Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209, 1213–14, 1220 (2005); Catherine Carroll & April Brayfield, *Lingering Nuances: Gendered Career Motivations and Aspirations of First-Year Law Students*, 27 SOCIO. SPECTRUM 225, 225 (2007); Meera E. Deo et al., , *Struggles and Support: Diversity in U.S. Law Schools*, 23 NAT'L. BLACK L.J. 71, 73 (2010) (discussing how America's racism perpetuates throughout the law school culture, attitudes, opinions, and actions); Ian Pisarcik, *Women Outnumber Men in Law School Classrooms for Third Year in a Row, but Statistics Don't Tell the Full Story*, JURIST (Mar. 5, 2019, 10:10 AM), https://www.jurist.org/commentary/2019/03/pisarcik-women-outnumber-men-in-law-school/ (explaining how despite the fact that women have achieved more representation in legal education over the years, they still face rampant discrimination in the legal field).

101. Veta T. Richardson & Robin Myers, *Cause and Effect: Why Women Leave the Legal Profession*, ASS'N CORP. COUNS. (Feb. 1, 2017), https://www.accdocket.com/cause-and-effect-why-women-leave-legal-profession.

communities' inaccessibility to legal services. Put simply, though "the United States has an oversupply of law graduates," significant proportions of racial/ethnic minoritized groups "go without legal assistance."[102] Therefore, it is essential to expand and examine the factors that influence an individual's decision to pursue a legal education.

While legal education grows in size and importance, theoretically- and empirically-based scholarly research surrounding prospective law student choice is mostly non-existent.[103] However, although limited, graduate/professional education choice literature helps make sense of the various factors that may influence a prospective law students' decision to enroll.[104] English and Umbach noted that "human capital investment decision resides at the core of the graduate school choice process."[105] Put simply, prospective graduate students' chief concern is whether their expected monetary benefits outweigh their graduate education costs.[106] Several scholars have argued a negative association between a student's indebtedness and the pursuit of graduate education.[107] Therefore, it is essential in this proposed ranking system to include public law schools' application fees and their tuition rates, as prospective graduate students may consider these important financial costs before applying and enrolling.

The limited literature on graduate education choice confirms and adopts most of its theoretical underpinnings from undergraduate college choice literature.[108] Within this body, scholars suggest that a prospective student's habitus, cultural capital, and social capital influence their educational decision making.[109] More specifically, Amaury Nora's college choice model presents a framework to consider students' perception of

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102. BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 170 (2012).

103. *See* Ryan, *supra* note 87, at 585.

104. *See, e.g.*, Elvia Ramirez, *Examining Latino/as' Graduate School Choice Process: An Intersectionality Perspective*, 12 J. HISP. HIGHER EDUC. 23 (2012) (examining the factors that influenced Latino/a students' decision to matriculate at a particular doctoral institution); Laura W. Perna, *Understanding the Decision to Enroll in Graduate School: Sex and Racial/Ethnic Group Differences*, 75 J. HIGHER EDUC. 487 (2004) [hereinafter *Understanding the Decision*] (examining how outside factors such as graduate school outreach and social networks influence minorities' and women's decision to enroll in graduate school).

105. David English & Paul D. Umbach, *Graduate School Choice: An Examination of Individual and Institutional Effects*, 39 REV. HIGHER EDUC. 173, 197 (2016).

106. *Id.*

107. *Id.* at 200.

108. *See, e.g.*, Laura Walter Perna, *Differences in the Decision to Attend College Among African Americans, Hispanics, and Whites*, 71 J. HIGHER EDUC. 117 (2000) [hereinafter *Differences in the Decision*]; *see also Understanding the Decision*, *supra* note 103.

109. *Differences in the Decision*, *supra* note 107, at 119.

institutional fit between psychosocial needs and institutional characteristics to meet those needs.[110] That is to say, when students' behaviors and interests align with institutional climate, positive student emotional, behavioral, and psychological responses should be optimal.[111] While students of color's behaviors and interests are heterogeneous, alignment is precarious at its most rudimentary level when law schools have primarily homogenous faculty.[112] Given that it is undisputed that student-faculty interaction substantially influences institutional climate,[113] minoritized students would probably depend on faculty of color as a factor to maximize their institutional fit. It is also important to note that several scholars have pointed out the nexus between a racially diverse faculty and an improved climate for students.[114] Partly, because faculty of color tend to, out of necessity, take on more effective "teaching, mentoring, service, and administrative/committee responsibilities than do White faculty."[115] In addition, scholars note that the race of a law school faculty member "affect both *what* is taught in the first year and *how* that material is taught."[116] Thus, it is essential for a ranking system that prioritizes people of color to consider faculty racial composition.

Another essential factor that incoming minoritized law students consider is their future peers' demographics given law schools' competitive environment. It has long been understood that law students of varying demographics see their campus environments as not only

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110. *See* Amaury Nora, *The Role of Habitus and Cultural Capital in Choosing a College, Transitioning from High School to Higher Education, and Persisting in College Among Minority and Nonminority Students*, 3 J. HISP. HIGHER EDUC. 180, 180–87 (2004).

111. *Id.* at 191–98.

112. *See* Erika Kubik, *How Diverse Are the Law School Faculty in the United States?*, 2CIVILITY (Aug. 29, 2016), https://www.2civility.org/diverse-law-school-faculty-united-states/ (claiming that "[w]hen looking at the race and ethnicity of all full-time male faculty members, 15.9% were minorities and 82.7% were white, while the remaining ethnic groups were not identified").

113. Sharon L. Fries-Britt et al., *Underrepresentation in the Academy and the Institutional Climate for Faculty Diversity*, 5 J. PROFESSORIATE 1, 4 (2011) (discussing how faculty in general impact campus racial climate).

114 *See* Uma M. Jayakumar et al., *Racial Privilege in the Professoriate: An Exploration of Campus Climate, Retention, and Satisfaction*, 80 J. HIGHER EDUC. 538, 539 (2009) ("Faculty of color are more likely to use active pedagogical techniques known to improve student learning. Faculty of color also more frequently encourage students to interact with peers from different backgrounds, engage in service-related activities and produce scholarship that addresses issues of race, ethnicity, and gender . . . [T]enured faculty of color [are] agents of social change in predominantly White universities . . . [F]aculty of color are more committed to orienting their work toward service ideals.").

115. *See id.*

116. Meera E. Deo, Maria Woodruff & Rican Vue, *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 2 (2010) (discussing how "there is a relatively standard first-year curriculum at all ABA-accredited law schools in the U.S., [however,] no two classrooms are identical").

challenging but also competitive and isolating.[117] Students regularly reported that law school could be both a traumatizing and isolating experience.[118] These adverse feelings are disproportionately heightened for minoritized students who frequently find themselves enrolled in law schools that remain geared toward white male norms.[119] According to several scholars, legal education instigates distinct and varying psychological distress and dysfunction,[120] partly because of the large classes and inflated student-faculty ratios.[121] These traditions and infrastructure in law schools often contribute to law students' isolation and disenfranchisement, specifically for women and minoritized people. However, successful law students not only rely on their faculty interactions, but they also rely on their law school classmates for emotional and academic support. Legal scholars Deo and Griffin found that law "students report receiving more support from [their] peers . . . than other friends, faculty, other mentors, and religion."[122] The authors

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117. *See* Carole J. Buckner, *Realizing* Grutter v. Bollinger*'s "Compelling Educational Benefits of Diversity"—Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877, 877–78, 892–93 (2004); Nancy E. Dowd et al., *Diversity Matters: Race, Gender and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 11, 26–27, 32 (2003) (discussing a study supporting the notion that minorities and women experience dissatisfaction and negative outcomes because of inequality in their legal educations).

118. Buckner, *supra* note 116, at 877–78.

119. *See* Walter R. Allen & Daniel Solórzano, *Affirmative Action, Educational Equity and Campus Racial Climate: A Case Study of the University of Michigan Law School*, 12 BERKELEY LA RAZA L.J. 237, 267 (2001).

120. *E.g.*, Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 524–26 (1998); Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do About It*, 1 J. ASS'N LEGAL WRITING DIRS. 258, 258–60, 262 (2002); Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 381 & n.180 (2004); Gregory S. Parks & Julia Doyle, *The Rage of a Privileged Class*, 89 FORDHAM L. REV. 2541, 2542 (2021) (examining how "bias, discrimination, racism, and stereotyping adversely impact the mental health of Black law students and attorneys," which, as a result, stifles and hinders their academic and work performance); Kathryne M. Young, *Understanding the Social and Cognitive Processes in Law School that Create Unhealthy Lawyers*, 89 FORDHAM L. REV. 2575, 2575–76 (2021) (discussing the role law schools have in law students' mental health challenges that follow them throughout their professional careers). In fact, Kathryne Young suggests, while students begin law school with a psychological makeup similar to their non-law school peers, three years later "they emerge less intrinsically motivated, less hopeful, and less happy" and also "carry new mental health problems." *Id.; see also* Symposium, *Mental Health and the Legal Profession Symposium*, 89 FORDHAM L. REV. 2415 (2021).

121. Iijima, *supra* note 119, at 528.

122. Meera E. Deo & Kimberly A. Griffin, *The Social Capital Benefits of Peer-Mentoring Relationships in Law School*, 38 OHIO N.U. L. REV. 305, 305, 318 (2011) (claiming that "from 203 first-year law students at eleven institutions reveal that" they mostly rely on "peer

noted that 95% of their participants receive psychosocial and academic support from their law school peers.[123] Law students primarily receive such support—e.g., psychosocial, academic, emotional, and professional—in the associations and organizations in which they join.[124] Students of color often receive this support through affinity groups. For example, Black law students often find support within the Black Law Students Association ("BLSA").[125] BLSA was chartered on the collective acknowledgment that Black law students require a different level of support and engagement than what law schools traditionally provide and what their counterparts needed.[126] These considerations make it critical that Black students collectively have the space to pool resources. However, such an organization's efficacy is directly linked to the number of students needed to fulfill its mission. Put simply, BLSA's effectiveness hinges on the number of Black law students enrolled at a given law school.[127] Indeed, a study by Garibay and Vincent found that greater student compositional diversity at a degree program level predicts reported increases in the enrollment of students of color.[128] Thus, including the number of minoritized students enrolled in a law school is essential.

IV. THE ACCESS AND EQUITY APPROACH TO RANKINGS

In a substantial number of public law schools, the stalling rates of people of color,[129] coupled with the psychological effect law school

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support, forming formal, informal, and 'organizational' peer-mentoring relationships" in law school).

123. *See id.* at 319 tbl.1 (showing that majority of law students received some or strong support, 35.1% and 60.5% respectively, from peers).

124. *See id.* at 320–27 (discussing information exchange, academic guidance, and psychosocial support from affinity groups).

125. *See id.* at 324–26.

126. *Our Purpose & Mission*, BLACK L. STUDENTS ASS'N, https://www.nblsa.org/purpose (last visited Feb. 8, 2022).

127. *See* Juan C. Garibay & Shirley Vincent, *Racially Inclusive Climates Within Degree Programs and Increasing Student of Color Enrollment: An Examination of Environmental/ Sustainability Programs*, 11 J. DIVERSITY HIGHER EDUC. 201, 211 (2018).

128. *Id.*

129. *See* AM. BAR ASSOC., *supra* note 4, at 58, 123; *see also* Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005, 1005, 1009 (1997) (commenting on the lack of diversity in the legal profession and value of reducing racism); Nancy E. Dowd, Kenneth B. Nunn & June E. Pendergast, *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 11, 20 (2003). For an article presenting an alternative rationale as to why the numbers are low in diverse communities, see Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271,

disproportionately has on people of color,[130] suggests a need for a new approach to ranking and grading law schools. As the results in this ranking make clear, far too many public law schools, even with constitutionally approved affirmative action plans in place, fail to offer people of color equitable access to legal education.[131] While several public law schools attempt to rectify this enrollment disparity through initiatives,[132] prospective law students of color must know about the many other institutional factors that will likely influence their decision to enroll. Given this connection, prospective minoritized law students need as much information as possible surrounding the law school's characteristics to make an informed decision surrounding their choice in law schools. Though law schools across the country stipulate the importance of access and equity,[133] oddly, few empirical studies examine people of color's needs in law school choice.

Therefore, people of color in the market for legal education need law school rankings systems to account for their needs, provide more information, and answer different questions than they have in the past. Prospective minoritized law students may ask: Which law schools are the most affordable for my family and me? Which law schools attract a diverse student population? Which law schools will allow me to graduate

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271 (2014) (noting that there is a racial gap within the legal profession, but finding that this gap is largely attributable to external forces).

130. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. BAR FOUND. RSCH. J. 225, 226 (1986) (describing the increased psychopathological symptoms law school goers and lawyers have in comparison to the normal population); ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" 27 (2007) (discussing how certain methods in law school affect student's interpersonal relations and sense of self-esteem).

131. *See, e.g.*, Jesse Rothstein & Albert H. Yoon, *Affirmative Action in Law School Admissions: What Do Racial Preferences Do?*, 75 U. CHI. L. REV. 649, 697 (2008) (claiming that "affirmative action is responsible for nearly all of the diversity currently seen in the law student population generally and at every law school of even moderate selectivity").

132. *See, e.g.*, Catherine E. Smith, *Seven Principles: Increasing Access to Law School Among Students of Color*, 96 IOWA L. REV. 1677, 1689–92 (2011) (discussing pipeline efforts at the University of Denver Strum College of Law); Osamudia R. James, *Dog Wags Tail: The Continuing Viability of Minority-Targeted Aid in Higher Education*, 85 IND. L.J. 851, 869 (2010); John Nussbaumer & Chris Johnson, *The Door to Law School*, 6 U. MASS. ROUNDTABLE SYMP. L.J. 1, 28–29 (2011); Stephen B. Thomas & Judy L. Hirschman, *Minority-Targeted Scholarships: More than a Black and White Issue*, 21 J. COLL. & U.L. 555, 562, 564 (1994).

133. *See* Eboni S. Nelson, Ronald Pitner & Carla D. Pratt, *Assessing the Viability of Race-Neutral Alternatives in Law School Admissions*, 102 IOWA L. REV. 2187, 2189 (2017) (discussing how over the past several years law schools are experiencing declines in student enrollment and how this is "particularly problematic for law schools in their attempts to enroll sufficient numbers of students . . . in racially diverse learning environments").

on time? Which law schools will I learn from a diverse set of faculty members? Which law schools will help me feel more integrated?

By identifying the law schools in which people of color enjoy heightened graduation rates, higher chances in interacting with diverse faculty and students, and financial parity, I can identify the "most accomplished" and "least accomplished" law schools from the perspective of minoritized students. The public law school with the highest number on the access and equity indicators is the most accomplished. Conversely, the public law school with the lowest number on the access and equity indicators is the least accomplished, with a range in between. I use the terms "most accomplished" and "least accomplished" because high rankings and grades in this Article are not necessarily indicators of exceptional performance.

Similarly, the grading system will mimic that of a great number of law schools across the country—honors, pass, low pass, or fail. Again, the high grades in this ranking system are not indicative of public law schools necessarily doing exceptional work in this area. Nor does the high grade suggest that no other work in this area is needed. Rather, it is a letter grade assessment of the markers on public law schools' performance in relation to one another.

Grade	**Distribution (~ 20 Law Schools per Quadrant)**
H: Honors	First Quadrant
P: Pass	Second Quadrant
LP: Low Pass	Third Quadrant
F: Fail	Fourth Quadrant

This access and equity method of ranking law schools measure aspects critical to minoritized law students' success, rather than ignoring their varied needs. The problem with only measuring the traditional factors in ranking systems is that its factors are often silent to what matters to prospective minoritized law students. In fact, Ryan and Frye claim that "[l]aw school rankings systems that measure . . . unhelpful information to prospective students by failing to measure salient factors . . . may create an incentive for law schools to compete on factors that are

not salient to students."[134] On the other hand, an access and equity ranking of law schools focus on what prospective racial/ethnic minoritized students actually need in law school to be successful.

A. Sample

"Starting with the Morrill Act of 1862, public universities were built to expand access and success for state residents underserved by private institutions."[135] Understanding public universities' historic mission to provide education to all parts of its citizenry, this study focuses attention on every public law school in the U.S. as the sample in this study.[136] The American Bar Association ("ABA") is a definitive authority that grants accreditation to all public law schools who are legally empowered to confer Juris Doctorate degrees.[137] While private law schools were not included in the list because of their different missions, histories, and aims regarding accessible education, private law schools too should be held accountable for their diversity and equity efforts. Forthcoming publications will address separately private law schools and their commitment to diversity and accessibility. After excluding private law schools, the total number of public law schools was 85.[138]

B. Data Collection and Analysis

Data was collected between January 2020 and October 2020. To rank law schools, this Article examines the ABA Rule 509 Required Disclosures[139] and the U.S. Census Data.[140] The 509 Required Disclosures are self-reported institutional characteristics of each

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134. Ryan & Frye, *supra* note 7, at 503.

135. HARPER & SIMMONS, *supra* note 16, at 5.

136. *See id.* at 5–6.

137. Theodora Belniak, *The History of the American Bar Association Accreditation Standards for Academic Law Libraries*, 106 L. LIBR. J. 151, 152 (2014).

138. *ABA Approved Public Law Schools*, AM BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/public_law_schools/ (last visited on Feb. 8, 2022). At the time of this writing the ABA only had 85 public law schools. Now the list as of 2022 reflects 87 public law schools. The University of Illinois Chicago School of Law now is a public law school and Michigan State University College of Law, which previously was private and independent, is now a part of the university. *Id.*

139. Managing Director's Guidance Memo: Standards 509 (Am Bar Ass'n 2016), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_standard_509_guidance_memo_final.pdf [hereinafter ABA Rule 509 Required Disclosures].

140. U.S. CENSUS BUREAU, https://data.census.gov/cedsci/ (last visited on Feb. 8, 2022).

accredited law school.[141] These reports are essential because they provide a measure of transparency to consumers and prospective law students.[142] The disclosure also includes several measures utilized within the *U.S. News*' ranking scheme. For example, the 509 Required Disclosures report the law school's average LSAT score, UGPA, tuition rates, etc.[143] The data used in this study was collected from academic years 2011 through 2018–19 by each accredited public law school as reported to the ABA. I accessed the ABA portal and merged important perennial factors for this study by each accredited public law school. Next, I merged the important data from the U.S. Census Bureau into one spreadsheet. Finally, the equity rankings and grading will be hand-coded and mapped onto the existing dataset.

This study employs a much smaller subset of variables from the full data set that are linked to 509 Required Disclosures. Because this Article focuses on access and equity indicators as proffered below in the table, this data set comprises twelve variables linked to prospective minoritized law students' success.

With four access indicators borrowed from *Black Students at Public Colleges and Universities: A 50 State Report Card*,[144] I examined in this study twelve access and equity indicators for Black and Latinx prospective law students. Quantitative data was analyzed and merged from two open access data sources: the ABA Rule 509 Required Disclosures and the U.S. Census Data. Each access and equity indicator are discussed here.

Table 1: Access and Equity Indicators

Access and Equity Indicator	Data Sources	Access and Equity Measure
Student Representation and Outcomes		
(1) Black Law Student Representation at the Institution	ABA Rule 509 Required Disclosures (Academic Year 2019-2020)	Ratio of full-time, Black law students to number of law students at the institution

141. ABA Rule 509 Required Disclosures, *supra* note 138.
142. *Id.*
143. *Id.*; *see also* Morse et al., *supra* note 24.
144. HARPER & SIMMONS, *supra* note 16, at 7.

(2) Latinx Law Student Representation at the Institution		Ratio of full-time, Latinx law students to number of law students at the institution
(3)Black Student Representation in Comparison to State Representation	ABA Rule 509 Required Disclosures (Academic Year 2019) and U.S. Census Data (2019 population estimates)	Percent of full-time Black law students at the institution divided by the percent of Black citizens in the state
(4) Latinx Student Representation in Comparison to State Representation		Percent of full-time Latinx law students at the institution divided by the percent of Latinx citizens in the state
(5) Proportion of Law School Graduates: Black	ABA Rule 509 Required Disclosures (Academic Year 2019-2020)	Total number of Black Law School graduates divided by total number of All law school graduates for institution
(6) Proportion of Law School Graduates: Latinx		Total number of Latinx Law School graduates divided by total number of All law school graduates for institution
(7) Proportion of Full Time Law Students: Women	ABA Rule 509 Required Disclosures (Academic Year 2019-2020)	Proportion of full-time law student population that are women

Faculty Representation

(8) Faculty of Color Representation	ABA Rule 509 Required Disclosures (Academic Year 2019-2020)	Proportion of full-time faculty that are Faculty of Color

(9) Proportion of Full Time Faculty: Women	ABA Rule 509 Required Disclosures (Academic Year 2019-2020)	Proportion of full-time faculty that are women
Faculty to Student Ratio		
(10) Faculty of Color to Black Students Ratio	ABA Rule 509 Required Disclosures (Academic Year 2019-2020)	Ratio of Faculty of Color to full-time, degree-seeking Black law students
(11) Faculty of Color to Latinx Students	ABA Rule 509 Required Disclosures (Academic Year 2019-2020)	Ratio of Faculty of Color to full-time, degree-seeking Latinx law students
Financial Costs		
(12) Financial Equity	ABA Rule 509 Required Disclosures (Academic Year 2019-2020) and U.S. Census Data	The cost to apply and attend the institution divided by the median income of people in the state

C. Limitations

There are several limitations to this study. First, the Student Representation and outcomes factors includes only Black and Latinx full-time law students. Some Black and Latinx students attend law school through part-time programs because of other competing interests in their lives. However, it is essential to note that at many public law schools the overwhelming majority of Black and Latinx law students, specifically, and all students, generally, enroll in traditional full-time day programs.

Second, both the Proportion of Full-Time Law Students: Women and Faculty Proportion of Full-Time Faculty: Women, Access and Equity Indicators treat gender as a binary—women and men—which is a limitation. I analyzed and reported the data this way because both the Rule 509 Required Disclosures and the U.S. Census Data has no other gender identity options.

Third, the Proportion of Law School Graduates: Black and Latinx Access and Equity Indicator does not account for the transfer student population. The 509 Required Disclosures reports do not disaggregate the numbers by race, gender, or any other measure. While it is important not to dismiss this group of students' experiences, I must note that most law students enroll and graduate from the same institution.

Fourth, I do concede that there are other racial minorities that attend law school, however because of the limiting data reported to the 509 Required Disclosures, this study was not able to include those constituents in the analysis. Future studies should address this gap in the data.

Fifth, this study does exclude the Native American population from the analysis. While I wanted to include this population, several law schools did not report or share Native American student or faculty representation statistics. Additionally, several 509 Required Disclosures similarly did not report or share Native American statistics. Moreover, there exists a dearth of literature detailing their law school choice needs. Academic literature certainly should begin to address this population as academic literature seeks to be more inclusive of all people attending law schools. Lastly, this study only examines data from public law schools. Given the historical mission of public education, I chose to exclude private law schools because of public law schools' varying commitments to the state's public in which their law school sits.

1. Date Accuracy

The law school data I present in this report is from Rule 509 Required Disclosures and the U.S. Census Data. Every law school accredited in the nation must annually submit these and other data to the American Bar Association.[145] This report's statistical inaccuracies are most likely attributable to erroneous institutional reporting to the ABA or technical processing errors in the ABA or U.S. Census Data.

I now offer an access and equity approach to ranking law schools on the basis of the twelve variables in Table 1.

D. An Access and Equity Ranking

Law schools in the ranking were standardized in relationship to each other to create a normative assessment on access and equity measures. Standardization is the process of putting different variables of interest on one singular measurable scale. This process allows one to compare the

145. ABA Rule 509 Required Disclosures, *supra* note 138.

results between different variables. After each school was standardized, the Access and Equity ("A & E") score was summed from twelve equal parts: (1) Student Representation: Black, (2) Student Representation: Latinx, (3) Black Law Student Representation at the Institution Compared to State Representation, (4) Latinx Law Student Representation at the Institution Compared to State Representation, (5) Proportion of Law School Graduates: Black, (6) Proportion of Law School Graduates: Latinx, (7) Proportion of Full-Time Law Students: Women, (8) Faculty of Color Representation, (9) Proportion of Full-Time Faculty: Women, (10) Faculty of Color to Black Students Ratio, (11) Faculty of Color to Latinx Students (12) Financial Equity—each given one one-twelfth weight to construct the ranking. The A & E ranking constructed from the composite scores proffered in the appendix below, surprised me because the line-up is inconsistent with the positioning of several law schools' standing in the *U.S. News Ranking*.[146] This reality is even more pronounced in the perirenal top law schools like the University of Virginia, Michigan, and California based law schools. However, there are several notable exceptions, a few of which are discussed below, and the full rankings for 2019–20 are included in Table 2.

1. Note About Rankings and Grades

Like Harper and Simmons' report, a high ranking in this *Access and Equity Ranking* ("*A & E Ranking*"), does not necessarily indicate stellar and exemplary performance.[147] Also, like Harper and Simmons, I proffer two examples to demonstrate that even when a law school is among the "most accomplished," it can still perform low in particular access and equity indicators.[148]

For example, Pennsylvania State University–Penn State Law is ranked 18 with a composite score of .28 and graded H in the 2020 *A & E Ranking*, but the minority full-time faculty at this law school is 19 percent, and the Black and Latinx student population is 7 and 4 percent, respectively as reported in the 2019 Standard 509 Information Report.[149] Moreover, Pennsylvania State's statistics across the board are relatively low, but on average, in comparison to other public law schools,

146. *Compare infra* tbl.2, *with 2022 Best Law Schools*, U.S. NEWS, https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings (last visited on Feb. 8, 2022).

147. *See generally* HARPER & SIMMONS, *supra* note 16, at 10.

148. *See id.*

149. PENNSYLVANIA STATE: PENN STATE LAW, ABA, STANDARD 509 INFORMATION REPORT (2019).

outperform them across the twelve indicators placing Penn State among the top in the *A & E Ranking*.

Similarly, at the University of Indiana at Indianapolis ranking 38 with a composite score of .11 in the 2020 *A&E Ranking*, only 16 percent of their faculty is minority and the completion rate of the Black and Latinx student population is 11 and 6 percent respectively.

As this ranking brings forward, it is clear that public law schools across the country have much work to do to increase these numbers. I think these two examples clearly indicate that there is much work needed in all public law schools in terms of access and equity. That in fact, it is not just a handful of institutions. Even the "most accomplished" law school in the *A&E Ranking* is not good, and the numbers per se are unacceptable. Simply, the number one institution in this ranking is the most accomplished among other public law schools that perform worse according to the factors examined. To this end, a law school that thrives in comparison to other law schools on the *A&E Ranking* is not by definition a "model of excellence."[150] Law schools that perform well in this ranking are not absolved from deep reflective analysis of the policies that limit equity-based solutions at their law school.

2. Rankings

The *A & E Ranking* rearranges the *U.S. News* top public law schools. For example, the "T-14s"—top-14 law schools—are disrupted, as the perennial public law schools that rank high in the *U.S. News* ranking fell significantly in the *A & E Ranking*. For instance, the University of Virginia ranked number 8 in *U.S. News 2021 Rankings* is ranked 63 by the factors that the *U.S. News* espouses.[151] Similarly, UC Berkeley ranked 9 in *U.S. News* is 27 on the *A & E Ranking,* and its peer institution, the University of Michigan, ranked 9 in *U.S. News* was 22 on *A & E Ranking*.[152] UCLA had a similar fate where it was ranked 15 and dropped to 47, Minnesota was ranked 21 in the *U.S. News Ranking* and dropped to 58.[153] Lastly, one other public law school fell out of the top 25, Arizona State at 24 in the *U.S. News* fell to 66.[154]

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150. HARPER & SIMMONS, *supra* note 16, at 10.

151. *Compare infra* tbl.2, *with* Staci Zaretsky, *The 2021 U.S. News Law School Rankings Are Here*, ABOVE THE LAW (Mar. 16, 2020, 11:46 PM), https://abovethelaw.com/2020/03/2021-u-s-news-law-school-rankings/.

152. Zaretsky, *supra* note 150.

153. *Id.*

154. *Id.*

Unsurprisingly, but yet still remarkable, all public Historically Black Colleges and Universities ("HBCU") law schools are clustered at the top of the list,[155] with the University of District of Columbia rounding out the fifth slot. While these law schools are not immune from investigating and participating in self-reflective measures in improving their status among the twelve metrics, it is important to note these institutions for several reasons.

First, what these rankings make painstakingly evident is that since these law schools' existence over sixty to seventy years ago, they are still primarily responsible for educating and providing access to the country's minoritized populations. For example, the five public HBCU law schools combined enrolled 1,303 Black students; it would take the next 40 public law schools on the *Access and Equity Ranking*—public law schools ranked 6 to 45—to equate 1,303 Black students.

Second, it is also important to note that these institutions have not only honored their original mission in educating Black people, but they have also broadened and extended their mission to other minority groups, as this ranking revealed. Yet, other public law schools, with more generous state funding, have continually struggled to fulfill their institutional mission of educating *all* of their citizens.

Third, this ranking's results contribute to the policy debate surrounding the relevancy and need for HBCU law schools.[156] I assert that the rankings further reveal and reiterate these schools' importance to minoritized groups access to justice. Lastly, this ranking reinforces extant literature in that HBCUs often "punch above their weight."[157] Whereby, these schools, given their history of being systematically under-resourced and demonized, the enrollment, degree, and economic impact are significantly greater than one would expect.[158]

On another note, broadly, public universities in the Midwest region of the United States tend to perform better in the *A & E Ranking* than their actual *U.S. News* ranking, such as Wayne State, Wisconsin, and Ohio State, all a part of the Top 20.[159] However, several Mid-Atlantic law schools like William & Mary, Virginia, and George Mason, all slid drastically placing them near the bottom of this ranking.[160]

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155. *Historically Black Colleges and Universities*, U.S. NEWS, https://www.usnews.com/best-colleges/rankings/hbcu (last visited on Feb. 8, 2022).

156. UNITED NEGRO COLL. FUND, HBCUS PUNCHING ABOVE THEIR WEIGHT: A STATE-LEVEL ANALYSIS OF HISTORICALLY BLACK COLLEGE AND UNIVERSITY ENROLLMENT GRADUATION 5–6 (2018).

157. *Id.* at 5–9.

158. *Id.*

159. *Infra* tbl.2.

160. *Infra* tbl.2.

There are some unforeseen contenders within the top quadrant of the *A & E Ranking*. The University of Hawai'i, New Hampshire, City University of New York, New Mexico, and Ohio State are among the highest on the *A&E Ranking*.

Apart from the unanticipated law schools found at the rankings' extremities, there were other surprising, noteworthy shifts within the middle of the ranking. UC Davis leads the California law schools moving to number 15 in this ranking. Similarly, the University of Nevada finds itself just outside the Top 15. Moreover, to some extent, it was surprising to find law schools with considerably fewer racial minorities in the state outperform other law schools in traditionally diverse locales. For instance, the University of Maine and New Hampshire, both find themselves among the top 25.[161]

For the most part, the *A & E Ranking* reveals that public law schools struggle with these measures of access and equity. Accordingly, it may be beneficial to add these measures to any ranking so that law schools begin to remedy this problem. This ranking further implies that the *U.S. News* and other rankings discussed above may not measure all the factors that are salient to prospective law students.

3. How to Use the Access and Equity Ranking

The *A & E Ranking* was created to help several constituents in the legal education sphere. First, it was designed to draw attention to the law schools that are committed to accessibility and equity. Second, the *A & E Ranking* was created to provide minoritized prospective law students with more information surrounding their needs in making a substantial professional, financial, mental, and long-term investment. Lastly, it was designed to help professionals and administrators of public law schools to make data-driven informed decisions surrounding their institutional practices, goals, and aims.

Understanding this purpose, this ranking should be used as a tool to help in the calculus of Black and Latinx students' law school choice on where they decide which law school to enroll. This ranking was not designed to be the sole and only source that a Black and Latinx prospective student uses in choosing a law school. The *A & E Ranking* does not purport to be the panacea for minoritized prospective law students, whereby it will eliminate marginalization, discomfort, and alienation in minoritized students experience in law school. But instead, the ranking should be utilized as a supplemental informational tool to

161. *Infra* tbl.2.

help prospective students understand a particular public law school's commitment to diversity and accessibility.

While Black and Latinx needs in this Article were grouped because of their shared marginalized experience in law schools;[162] this ranking recognizes and concedes that Black and Latinx prospective law students are not monolithic groups. Indeed, each group has their own storied histories, needs, and experiences. Thus, it would be unwise to assume that there do not exist other factors—e.g., employment opportunity post-graduation, bar passage rate, and proximity to family, etc.—that may be salient to individual members of these groups that this ranking does not capture. Future forthcoming work addresses those concerns, alongside the access and equity concerns, and create a more comprehensive ranking schema of both public and private law schools. Notwithstanding these considerations, I am confident that this ranking will help redress *some* law school choice issues. In sum, the *A&E Ranking* explores, exposes, and encourages all legal education public schools to improve their standing in all variables included in this ranking.

V. CONCLUSION

This Article contributes to the continued debate both within the rankings world and legal education by highlighting the ways in which both systems continually fail Black and Brown prospective law students. These indicators of access and equity are essential in informing prospective Black and Brown law students. Contrary to popular belief, Black and Brown students are interested in obtaining a law degree.[163]

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162. *See, e.g.*, Sharon Foley & Deborah L. Kidder, *Hispanic Law Students' Perceptions of Discrimination, Justice, and Career Prospects*, 24 HISP. J. BEHAV. SCI. 23, 35 (2002); Allen & Solórzano, *supra* note 118, at 299–300 (discussing the shared experience that Black and Latina/o students feel). For example, the authors note that both "Black and Latina/o students felt more alienated and isolated from general campus life compared to Asian and White students." *Id.* In addition, the authors note the similar financial background Black and Latinx students share comparted to White and Asian students. *Id.*; Randall, *supra* note 72, at 107–08, 141, 146; Erin Lain, *Experiences of Academically Dismissed Black and Latino Law Students: Stereotype Threat, Fight or Flight Coping Mechanisms, Isolation and Feelings of Systematic Betrayal*, 45 J.L. & EDUC. 279, 315–23 (2016) (while the sample in this study is students who were dismissed from law school it is important to note the parallels that students from each racial group share in their law school experiences). As such, given the shared experiences that Black and Latinx students face in law school, this Article chose not to include Asian American populations in this ranking as their experiences are not proximal to the Black and Latinx experiences.

163. *See,* Taylor, *supra* note 13, at 496 (discussing how the high application rates evidence Black and [Brown] people aspire to be attorneys). He further laments that as recent as 2017, "49 percent of Black law school applicants received no offers of admission." *Id.* Claiming that:

Yet, oftentimes they are victims to seemingly innocuous structures that are not designed with their interests in mind. This ranking is a tool to help law schools assess their widely published goals of increasing school diversity.

As far as the *U.S. News Rankings*' primary argument for not including these measures within their ranking—because diversity terms are too broad to define and wish not for their rankings to be part of the ongoing public policy debate on achieving diversity—I believe this ranking system addresses and operationalizes both areas of concern in a straightforward, yet accurate way. This ranking schema counters that argument by using higher education and legal education literature to operationalize these terms while simultaneously using data to undergird such factors. While the *U.S. News Ranking* does not want to influence the debate on these terms, I assert, they have already affected the discussion in their silence.

As the *A & E* ranking indicates, very few law schools' rankings were consistent with their tier in the *U.S. News* ranking. The *U.S. News* and any other law school rankings' methodology must find ways to capture and include these factors as increasing diversity within the legal profession continues to be a widespread goal among many stakeholders. The ranking proffered below forms the basis of an access and equity ranking and, therefore, a more improved ranking alternative for Black and Brown prospective students who want to see which law schools are moving in the right direction, and which law schools are simply paying lip service to the ideas surrounding access and equity. Whatever law schools choose to do to improve access and equity, whether they stop reporting to the *U.S News Report* or create their own measurement to assess access and equity, all law schools will benefit when they decide unabashedly to recognize, value, and incorporate communities of color.

> This was the highest shut-out rate among all racial and ethnic groups. . . . The shut-out rate increases as the LSAT score band decreases. This trend holds with almost complete consistency for each racial and ethnic group. This means that for groups whose score distribution trends lower, the admit rate for that group is lower.

Id. Aaron Taylor makes painstakingly clear that the problem does not solely belong to the erroneous idea often perpetuated that there is a leaky pipeline or a small applicant pool of minoritized individuals aspiring to be attorneys. *Id.*

Appendix

Grade	Distribution (~ 20 Law Schools per Quadrant)
H: Honors	First Quadrant
P: Pass	Second Quadrant
LP: Low Pass	Third Quadrant
F: Fail	Fourth Quadrant

Table 2: The 2019-2020 Access and Equity Ranking of Public Law Schools

2019–2020 *T=Tied	Law School	*A&E* Index	U.S. News Ranking *T=Tied	Grade
1.	**Texas Southern**	1.99	**T 148-194**	**H**
2.	**North Carolina-Central**	1.65	**T 148-194**	**H**
3.	**Southern University**	1.51	**T 148-194**	**H**
4.	**Florida A&M**	1.30	**T 148-194**	**H**
5.	**District of Columbia**	1.22	**T 148-194**	**H**
6.	**Florida International**	.90	**T90**	**H**

7.	**New Mexico**	.89	**T99**	**H**
8.	**Hawai'i**	.78	**T96**	**H**
9.	**City University of New York**	.67	**T107**	**H**
10.	**UNT Dallas**	.57	**Unranked**	**H**
T 11.- 12.	**New Hampshire**	.46	**T88**	**H**
T 11.- 12.	**Ohio State**	.46	**T38**	**H**
T 13.- 14.	**Mississippi**	.37	**T67**	**H**
T 13.- 14.	**Wayne State**	.37	**T83**	**H**
T 15.- 16.	**Puerto Rico**	.35	**Unranked**	**H**
T 15.- 16.	**California-Davis**	.35	**T38**	**H**
17.	**Nevada**	.29	**T62**	**H**
18.	**Pennsylvania State-Penn State**	.28	**T60**	**H**
19.	**Wisconsin**	.25	**T38**	**P**
20.	**West Virginia**	.24	**T111**	**P**

21.	**Oregon**	.23	**T88**	**P**
T 22. -23.	**Alabama**	.22	**T31**	**P**
T 22. -23.	**Michigan**	.22	**T9**	**P**
T 24. -25.	**Temple**	.20	**T56**	**P**
T 24. -25.	**Maine**	.20	**T122**	**P**
26.	**California-Irvine**	.19	**T27**	**P**
27.	**California-Berkeley**	.18	**T9**	**P**
28.	**California-Hastings**	.17	**59**	**P**
T 29. – 31.	**Baltimore**	.16	**T126**	**P**
T 29. -31.	**Texas A&M**	.16	**T60**	**P**
T 29. -31.	**Cincinnati**	.16	**T83**	**P**
T 32. -33.	**Georgia State**	.15	**T76**	**P**
T 32. -33.	**Washington**	.15	**T42**	**P**
34.	**Maryland**	.14	**T47**	**P**
T 35. -38.	**Florida**	.12	**T24**	**P**

T 35. -38.	**Montana**	.12	**T122**	**P**
T 35. -38.	**Penn State-Dickinson**	.12	**T62**	**P**
T 35. -38.	**Colorado**	.12	**46**	**P**
T 39. -40.	**Arizona**	.11	**T47**	**LP**
T 39. -40.	**Indiana-Indianapolis**	.11	**T122**	**LP**
41.	**Kansas**	.08	**T70**	**LP**
42.	**Indiana-Bloomington**	.06	**T38**	**LP**
T 43 -45.	**Memphis**	.05	**T141**	**LP**
T 43 -45.	**Rutgers**	.05	**T76**	**LP**
T 43 -45.	**Wyoming**	.05	**T133**	**LP**
T 46 -47.	**Idaho**	.04	**T136**	**LP**
T 46 -47.	**Pittsburgh**	.04	**T76**	**LP**
T 48. -52.	**California-Los Angeles**	.03	**15**	**LP**
T 48. -52.	**Kentucky**	.03	**T70**	**LP**

T 48. -52.	**Tennessee**	.03	**T70**	**LP**
T 48. -52.	**Florida State**	.03	**T50**	**LP**
T 48. -52.	**Missouri-Kansas City**	.03	**T133**	**LP**
53.	**Cleveland State**	.02	**T102**	**LP**
54.	**Northern Kentucky**	.01	**T 148-194**	**LP**
55.	**Arkansas-Little Rock**	.00	**T 148-194**	**LP**
56.	**Iowa**	-.01	**T27**	**F**
T 57. -58	**Northern Illinois**	-.02	**T 148-194**	**F**
T 57. -58.	**Louisville**	-.02	**T99**	**F**
59.	**Minnesota**	-.03	**21**	**F**
60.	**Louisiana State**	-.04	**T96**	**F**
61.	**Houston**	-.05	**T56**	**F**
62.	**Toledo**	-.06	**T136**	**F**
63.	**Illinois**	-.07	**T31**	**F**

T 64. -66.	**Virginia**	-.08	**8**	**F**
T 64. -66.	**South Carolina**	-.08	**T96**	**F**
T 64. -66.	**North Carolina**	-.08	**T27**	**F**
T 67. -70.	**Utah**	-.09	**45**	**F**
T 67. -70.	**Arizona State**	-.09	**T24**	**F**
T 67. -70.	**Massachusetts**	-.09	**T 148-194**	**F**
T 67. -70.	**North Dakota**	-.09	**T 148-194**	**F**
71.	**Akron**	-.11	**T141**	**F**
72.	**Connecticut**	-.15	**T50**	**F**
73.	**Texas (Austin)**	-.17	**16**	**F**
74.	**Arkansas-Fayetteville**	-.18	**T90**	**F**
75.	**SUNY (Buffalo)**	-.19	**T99**	**F**
76.	**Southern Illinois**	-.20	**T 148-194**	**F**
77.	**Missouri**	-.21	**T67**	**F**

78.	**Georgia**	-.23	**T31**	**F**
T 79. -80.	**Texas Tech**	-.28	**T111**	**F**
T 79. -80.	**Oklahoma**	-.28	**T76**	**F**
81.	**William & Mary**	-.34	**T31**	**F**
82.	**Washburn**	-.39	**T107**	**F**
83.	**George Mason**	-.44	**T42**	**F**
T 84. -85.	**South Dakota**	-.52	**T141**	**F**
T 84. -85.	**Nebraska**	-.52	**T76**	**F**

A Campus with a History of Slavery and Its Role in Predicting Black Students and White Faculty Interactions

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Abstract

Research on American universities' involvement in slavery has primarily been historical. I drew upon the afterlife of slavery literature to help understand Black college students' responses to their institution's history and contemporary interactions with and support from white faculty. The research team collected data from Black students at a Southern US research institution historically involved in slavery. I used multiple linear regression models to help explain the variance in Black students' positive and negative interactions with white faculty and support from white faculty. Statistical results show the relevance of background characteristics, students' responses to their campus slavery history, and contemporary racialized perceptions and experiences on campus in predicting interactions with white faculty. Based on this study's findings, I recommend that as leaders of institutions with histories of slavery seek to address their respective histories through university reparations that they consider how their institution's slavery history plays a role in Black students' contemporary experiences with faculty that are critical to their success. The implications of the findings for institutional leaders, faculty, and practitioners committed to improving Black students' interactions with faculty and overall college success, are provided.

Keywords: Black Undergraduates, Student-Faculty Interactions, Cross-Racial Experiences, Historical Legacies of Slavery

A Campus with a History of Slavery and Its Role in Predicting Black Students and White Faculty Relationships

Introduction

For decades student-faculty relationships in higher education have largely been framed as positive (Cole & Griffin, 2013; Kim & Sax, 2017). In fact, many scholars have extensively documented the long list of benefits associated when students interact with faculty (Cole & Griffin, 2013; Kim & Sax, 2017). However, this claim upon further analysis is not as definitive in studies that expose the conditional effects[1] of student-faculty relationships. As Cole and Griffin note in studying the conditional effects of student-faculty relationships, the outcomes are varied when discussing minoritized students and white faculty (Cole & Griffin, 2013). Furthermore, the success of student-faculty interactions may be conditioned not only by student background demographics (e.g., gender, race, SES, first-generation status, and class-standing) but also by their campus environment and institutional sub-environments (Colbeck et al., 2001; Kezar & Moriarty, 2000; Kim & Sax, 2009a). While scholars have noted that a campus' racial climate matters in student-faculty interactions (e.g., Kim & Sax, 2009b; Palmer & Griffin, 2009), higher education scholarship has largely ignored whether the history of an institution in relation to its racial climate plays a role on student-faculty interactions.

Prior studies illuminate various ways Black students experience interactions with white faculty (Banks, 1984; Freeman, 1999; Hurtado et al., 2009), however, much less is known about

[1] Student faculty interactions are not always positive. There often exists conditions (e.g., gender, race) that influence interactions. As Pascarella and Terenzini (2005) noted, conditional effects are unique to students with specific characteristics. Studies of conditional effects, "seek to determine whether a particular college characteristic or experience is general . . . or whether the impact varies according to one or more characteristics of the students" (Pascarella & Terenzini, 2005, p. 635).

how a university's history of exclusion, and, in particular, its history of enslavement of Black people, may predict student-faculty interactions. Universities and their faculty have primarily been viewed as cradles of liberalism, but throughout history, these institutions and their faculty have played a significant role in Black racism (Mustaffa, 2017; Squire et al., 2020). As an illustration, in the civil rights era, Black integrationists would face physical, psychological, and mental violence from white faculty as they would denigrate and refuse to teach Black students (Cole, 2020). Though there exist innumerable examples of white faculty's resistance to Black people (Dancy et al., 2018; King, 2014; Mustaffa, 2017; Wilder, 2013), I contend that the various levels of violence and negative experiences Black people faced with white faculty are inextricably linked to Black students' contemporary perceptions and interactions of white faculty today (Dumas, 2016; Hartman, 2008; Sharpe, 2016; Tillet, 2012). Put differently, Black students exist in a historical-temporal existential condition whereby they are reminded of how history can 'return' to 'haunt' their present-day circumstances (Ruin, 2019).

As such, it is likely that in current-day Black students' experiences, history itself manifests in what Hartman (2008) describes as the "afterlife of slavery," wherein our current period is affected by the past. Therefore, I assert that a more robust understanding of the relationship between an institution's history of slavery to Black students' interactions with and support from white faculty is warranted. Accordingly, this study's central purpose is to understand better the role of a university's history of slavery and the cross-racial relationship between Black students and white faculty. The following research question guided this study: Controlling for background characteristics and contemporary racialized experiences, do Black students' responses (e.g., psychological, emotional, and behavioral) to their institution's slavery history predict their interactions with and support from white faculty?

Literature Review

While literature concerning whether Black students' responses to their institution's history affects contemporary student-faculty dynamics, in particular, is limited, I relied on two broader areas of inquiry to serve as the foundation for the study. First, I relied on research that examines predictors of Black student-faculty interactions. Second, I relied on literature that evidenced higher education's ties to violence, racialization, and slavery.

Predictors of Student-Faculty Interactions

Higher education research on student-faculty interactions has historically focused on the *general* effects of faculty interaction (Cole & Griffin, 2013). However, recent studies have called attention to *conditional* effects of students' contact with faculty and student outcomes (e.g., Cole, 2010). More specifically, studies demonstrate how the nature and quality of faculty interaction vary across different student subgroups on campus (Cole & Griffin, 2013; Kim & Sax, 2017b).

Several background characteristics are strongly associated with successful interactions with faculty. For example, Pascarella and Terenzini (1976) use the mother's and father's highest formal education level to help predict student-faculty contact and student's persistence while in college and find that there is a relationship between student's parents education level and college persistence and contact with faculty. Understanding parents' role in their child's education has continually remained significant in theorizing modern student-faculty relationships (Cole & Griffin, 2013; Cole, 2007). Additionally, students who are more intellectually curious and invested in the topics discussed in their formal academic program often pursue additional opportunities to familiarize themselves with faculty members (Hurtado et al., 2011).

Another individual factor influencing student-faculty interactions is gender (Colbeck et al., 2001; Kezar & Moriarty, 2000; Kim & Sax, 2009b). Prior research by Sax, Bryant, and Harper (2005) noted the differences between the frequency with which male and female students engaged faculty members. In their study, women generally reported more frequent and more positive interactions with their faculty than did men, and that faculty provided them with intellectual challenge, stimulation, and respect. On the contrary, men reported higher rates of challenging a professor's ideas in class and feeling that faculty did not take their comments seriously. Some research has shown that student-faculty interactions positively influenced men in particular aspects such as leadership (Kezar & Moriarty, 2000) and women in completely different elements like graduate degree aspirations (Tsui, 1995). In their literature review of faculty interactions, Cole and Griffin noted that "these mixed findings reveal nuances in the student-faculty relationship that differentially influence male and female students" (Cole & Griffin, 2013, p. 26).

Lastly, race/ethnicity is also an individual factor that predicts student-faculty interactions. More specifically, a significant number of studies demonstrate that race and ethnicity are a strong conditional effect of student-faculty interactions. It has been well-established that for students of color, particularly Black students, racism, or feelings of racial tension can play a significant role in the type, nature, and quality of student-faculty interactions (Cole, 2011; Gasiewski et al., 2012; Hurtado et al., 2011). Since faculty play an influential role in students' campus integration and Black students' desire for homophilic relationships among faculty, it is crucial to consider race when examining the relationship of student-faculty interactions. "Although homophilous relationships may hold special benefits for students of color, this desire for sameness can be problematic. The relative lack of diversity in the professoriate

leaves students of color with fewer opportunities to form homophilous relationships" (Cole & Griffin, 203, p. 38). This assertion is highlighted as research reveals that for every full-time Black faculty member at a public college or university, there are 42 full-time, degree-seeking Black undergraduates (Harper & Simmons, 2019). On the other hand, the ratio for white students to faculty is considerably smaller, 20 to 1, as detailed in the *ACE Minorities in Higher Education 2008 Twenty-third Status Report* (Ryu, 2009). Thus, if white students solely wanted to create homophilic relationships with white faculty, they may have more opportunity and accessibility to do so with higher education's strong white faculty presence. Conversely, Black students and other students of color are more likely to contend for the time and attention of a relatively small, overworked, and underappreciated faculty of color (Bowman et al., 1999). While the benefits and desires to work and interact with faculty like oneself are clear, mentoring and interacting with students of color should be seen as a responsibility of all faculty members (Brown et al., 1999; Cole & Griffin, 2013). However, white faculty often engage racial/ethnic minoritized students from a distant and colorblind perspective (McCoy et al., 2015). In their study, McCoy and her team found that white faculty frequently described their students of color as "academically inferior and less prepared…" (McCoy et al., 2015, p. 23).

This reality has, for decades, created disenfranchisement, disconnect, and tenuous relationships among Black students and white faculty (Ancis et al., 2000; Cokley et al., 2006; Eimers & Pike, 1997; Fries-Britt & Turner, 2001; Garrod & Larimore, 1997). In fact, cross-racial interactions between Black students and white faculty, particularly in historically white institutions (HWIs), oftentimes are where Black students experience various levels of discrimination. For example, Johnson-Bailey, Valentine, Cervero, and Bowles' (2009) study found that Black alumni who attended a historically white institution (HWI) with a history of

segregation experienced adverse conditions on campus. More specifically, they found that the Black students, despite their university desegregating in the 1960s, experienced discrimination, forced representation, and stereotyping from white faculty members as routine parts of their graduate life across five decades (1962-2003). Other scholars also noted that Black students often perceived white faculty as culturally insensitive, uninformed, and inexperienced surrounding Black students at HWIs (Schwitzer et al., 1999). And recently, Haynes (2017) found that the pedagogical techniques of white faculty "safeguard white supremacy and fuel the reproduction of racial hierarchies (Haynes, 2017). These studies help better understand the racial dynamics and complexities around Black student- white faculty relationships; however, much less is known about whether an institution's history of enslavement may play a role in such student-faculty interactions.

The other factors that help predict student-faculty interactions are institutional factors. An important factor that may signify the quality of student-faculty interactions is students' perception of racial tension or racism on campus (Cole, 2010, 2010a; Cole, 2007). More specifically, where students who experience a racialized campus climate or environment are less likely to engage with faculty. Put simply, racial/ethnic minoritized students who perceive resistance and distance in and among faculty members due to discrimination are likely to initiate fewer student-faculty interactions (Cole & Griffin, 2013). For example, Black students reported that their academic ability was diminished and met with skepticism by white faculty (Fries-Britt & Turner, 2001). For Black students, these hostile campus conditions create a barrier when interacting with faculty, which as a result, affects the experience of their college experience (Allen, 1992; Davis, 1991). While prior research has rightfully focused on the institution's current racial climate and its influence on student-faculty interactions, literature has yet to

address how an institution's history of enslavement influences student-faculty interactions, especially as contemporary literature evidences the effect people experience studying in and standing on historical sites of a massive trauma (Garibay et al., 2020; Silverman et al., 1999). For example, in a study of 87 adolescents who participated in a memorial visit to concentration camps, participants demonstrated symptoms of post-traumatic stress disorders (Silverman et al., 1999). Similarly, studies indicate that when people visit former sites of enslavement like auctioning blocks, enslaved people's quarters, and museums, tour-goers have often recognized the emotional impact the experience has on their life when coming in contact with the historical site (Modlin et al., 2011). Since literature has already established that current racialized climates on campus affect student-faculty interactions and that people are psychologically impacted by visiting former sites of trauma, it is reasonable to interrogate how might learning on a formerly enslaved campus predict students' interactions with faculty.

Violence, Racialization, and Slavery in Higher Education

Many American universities were involved in slavery, violence, and racialization (Wilder, 2013). Profits from enslaving Black people helped fund many colleges and universities, including some of the most selective colleges in the country, such as Harvard, Columbia, Princeton, and Yale, and many other prominent universities — including the University of Georgia, Virginia, and South Carolina (Harris et al., 2019; Wilder, 2013). In other words, higher education, with white faculty as its bedrock, was not impervious to the greater political and economic context surrounding it. Like the country, higher education was so closely intertwined with slavery that the two institutions are often indistinguishable. Mustaffa (2017) points out in the colonial era (1780-1832), "Black people's exploited slave labor-built institutions' physical structures and their labor as cooks, maids, caretakers, and fieldworkers allowed these institutions

to function" (p. 21). Black labor was so integral to the essence of higher education, Lori Patton notes that even some universities' coveted endowments [worth more than some countries' gross domestic products] cannot be separated from its ties to enslavement (Patton, 2016). So, while slavery itself was abolished over a century ago, it affects contemporary higher education. Ruef and Fletcher (2003) called this an institutional legacy whereby conditions [within higher education] are reinforced despite the fact that the institution of slavery has long been abolished. According to Dancy et al. (2018), higher education and the "academic model is still essentially a colonial one" (p. 178), whereby Black students today face similar systemic configurations of antiblack violence and trauma as those in the enslavement and Jim Crow era (e.g., microaggressions, tokenism, impostorship, etc.). Therefore, it is predictable that the long-term effects of racial trauma are present in Black college students' beliefs and behaviors today (Womack, 2016).

Womack's (2016) scholarship discusses the connection between contemporary college students and slavery. He suggests that Black students come to HWIs with the legacy of trauma originating from slavery. In utilizing DeGruy's post-traumatic slave syndrome (Leary, 2009), Womack (2016) argues how the generational abuse, stemming from slavery, created and continues to create an internal struggle within Black college students today as they fight to exist in their full humanity on college campuses. Similarly, Hurtado, Milem, Clayton-Pedersen, and Allen (2011) discussed the link between an institution's historical legacy of exclusion and its current campus climate. Especially given that predominantly white colleges and universities have a much "longer history of exclusion than they do of inclusion and that this history continues to shape racial dynamics on campuses" (Milem et al., 2005, p. 9). Given this history, campuses across the country are experiencing campus-wide protests, calls for reparations, and demands for

more equity-based approaches to university issues, especially as higher education scholars begin to demonstrate the effects of an institutions' enslaved history onto current students (Morgan & Davis, 2019; Garibay et al., 2020). For example, Morgan and Davis (2019) chronicle the many ways higher education is experiencing unrest and student activism whereby students are exposing the broader sociopolitical conflicts given the university's historical oversights and missteps.

Altogether, these studies suggest that Black students' college experiences are affected by the institution's historical role in slavery and anti-black racism. However, much is unknown about the interplay between the institution's history in contemporary Black students' interactions with white faculty on campus. Understanding the influence of an institution's history on Black students' relationships with faculty will help develop stronger theory on what Terenzini and colleagues (1995) call the "underlying patterns" of student-faculty interactions.

Theoretical Framework

Informed by Black feminist scholarship, this study uses the concept of the "afterlife of slavery" (Hartman, 2008) to examine Black student support from and interactions with white faculty on a campus with historical ties to slavery. Hartman (2008) asserts that our current period is affected by the past, "knowing that its perils and dangers are still threatened and that even now lives to hang in the balance" (p.2). Hartman claims that Black bodies are structurally and perpetually subject to premature death and ongoing limited access to education and health. The afterlife of slavery connects directly to faculty interactions as white faculty members owned Black people and deemed them property, including on university campuses, in the enslavement era (Wilder, 2013). Also, white faculty members were among the chief architects in crafting and

legitimating the scholarship that supported slavery, the Black body's dehumanization, and many other antiblack policy-making measures (Mustaffa, 2017; Wilder, 2013).

The legacies of slavery continued within higher education across eras into present-day dynamics (Mustaffa, 2017). Kendi notes that higher education institutions reproduce white superiority and Black inferiority in masked ways, often appearing in personal relationships and interpersonal dynamics (Kendi, 2012, 2019). Crenshaw and associates note the "contradictory role of the university in constructing, naturalizing, and reproducing racial stratification and domination" (Crenshaw, 2019, p.66). They assert that faculty in every discipline have research methodologies and pedagogical practices that continually obscure relationships with minoritized students because racial hierarchy and colonialism structures are the foundation of most disciplines' research and teaching paradigms. Thus, higher education across many disciplines often silences and marginalizes Black students, and Black students often are subject to various forms of epistemological and paradigmatic violence and disdain from faculty.

"Through slavery and its afterlife, Black lives are constructed as both captive and confined (Hartman 1997) writes, " . . . the enslaved were required to demonstrate their submission, obsequiousness, and obedience" (p. 8). Black students are positioned as inferior on HWIs in the Black student to white faculty relationship through both the student-faculty power dynamic and racial power dynamic. Williamson has shown the overt forms of racism, psychological and emotional traumas that white faculty have historically waged against Black students (Williamson, 1999). Additionally, Grier-Reed found that Black students experience more stress regarding acceptance, the pressure to conform to stereotypes, and unequal treatment by faculty, staff, and white counterparts (Grier-Reed, 2010).

In using this research, I assert that higher education, particularly HWIs, can be a tool in the "afterlife of slavery" that denies Black students access to their agency and humanity, frequently forcing them to be subjects of control of white supremacy. This study uses this framework to interrogate how white supremacy's limiting and captive conditions appear in cross-racial faculty relationships on campuses today. By highlighting higher education's nexus to slavery, its consequences, and the afterlife effects on Black students, this study provides insight into the underlying logic that informs Black students' interactions with white faculty on campuses of formerly enslaved people. This theoretical framework helps make sense of how an institution's history affects Black students' perceptions and interactions with white faculty.

Methods

Design

This preliminary study of the cross-racial interactions between Black students and white faculty in the U.S. Southern Research I university (SRU) utilizes a cross-sectional design. The cross-sectional approach renders a "snapshot of college student experiences" at a particular time (Cole, 2010). While this approach cannot infer causal relationships, it is beneficial in assessing initial predictors between various factors on students' interactions with faculty (Cole, 2010a).

Study's Site

This study collected data from students of African descent at a U.S. Southern Research I university with a history of slavery. IRB approval was obtained in the spring of 2018 to collect survey data. SRU has approximately 22,000 students, both graduate and undergraduate. The undergraduate campus population is 17,000 students, where the student demographics are overwhelmingly white and Black students only make up 7% of the entire population. This

disproportionate makeup also persists in the faculty demographics at SRU. At SRU, Black faculty make up about 4%, while white faculty make up about 73% of the faculty.

Instrument and Sample

Data for this study were collected using the Survey of Black Student Experiences at Universities with Historical Relationships to Slavery. The survey was designed to capture how this enslavement history may relate to many aspects of campus life, including learning, engagement, sense of belonging, and many others. Items on the survey were grounded in the extensive literature based on Black students at historically white universities. In keeping with best practices of survey design (Burns et al., 2011; Groves et al., 2011), the items on the Qualtrics survey were vetted by one education professor and one higher education administrator from the university, both with expertise in Black students' experiences. One other professor with expertise in survey design evaluated the item sets on the instrument for scale construction. In addition, these content and survey experts assessed the face validity of the survey items and also provided substantial validity evidence for the survey instrument itself based on test content (Ellard-Gray et al., 2015).

In this study, the research team employed several sampling strategies. Ellard Gray and colleagues suggest that when dealing with minoritized individuals of any kind, "perhaps the best way to maximize recruitment efforts is to use a combination of sampling strategies" (Ellard-Gray et al., 2015, p. 18). The specific sampling strategies that the research team utilized were: (a) a Black student organization's listserv, (b) posts on a newsletter from an office dedicated to Black student affairs, (c) direct emails to students collected from a course known to have a large number of Black students enrolled, and (d) direct emails to a random sample of students in a Black student organization.

The survey was administered online through Qualtrics between October 2018 and January 2019. Overall, a sum of 118 undergraduates responded to the survey representing about 10.9% of the university's total Black undergraduate students, which is near the recommended sample size for exploratory studies (Groves et al., 2011). After deleting respondents with missing data on the specific outcome variables of interest (white faculty support, positive interactions with white faculty, and negative interactions with white faculty), the final analytic sample consisted of 91 undergraduates of African descent.

Variables

Outcome Variables. Three factors were used as outcome variables in this study: (1) white faculty support, (2) negative interactions with white faculty, and (3) positive interactions with white faculty. The white faculty support factor was comprised of seven items. Students were asked whether they (a) "felt comfortable asking white faculty for help in achieving their professional goals," (b) "felt comfortable seeking feedback on their academic work from white faculty," (c) "felt comfortable asking white faculty questions about course materials in class," (d) "felt comfortable asking white faculty about research opportunities," (e) "felt comfortable seeking emotional support from white faculty," (f) felt "white faculty empowered [them] to learn," and (g) felt "white faculty took a genuine interest in [their] success." Each item was measured on a 4-point Likert-type scale from 1 = *strongly disagree* to 4 = *strongly agree*.

The negative interactions with white faculty factor was comprised of four items. Students were asked the frequency with which they had (a) "felt insulted by white faculty," (b) "felt ignored by white faculty," (c) "had guarded, cautious interactions with white faculty," and (d) "had tense, somewhat hostile interactions with white faculty." Lastly, the positive interactions with white faculty factor were comprised of five items. Students were asked the frequency with

which they (a) “dined or shared a meal with a white faculty member,” (b) “asked a white faculty for a letter of recommendation,” (c) “had meaningful and honest discussions about race/ethnic relations outside of class with a white faculty member,” (d) “asked a white faculty member for an opportunity to conduct research with them,” and (e) “shared personal feelings and problems with white faculty.” Each of the items comprising the negative and positive interactions with white faculty factors was measured on a scale from 1= *not at all* to 3= *frequently*.

Factor analysis was used to test whether variables comprising the three factors were statistically held together. The three factors were scored using classical test theory, and factor loadings were calculated. To develop these conceptually supported factors and all other factors in this study, the research team used principal axis factoring with varimax rotation and calculated individual factor scores by weighting each component variable by its factor loading, calculating the weighted sum, and standardizing the resulting distribution. Additionally, we used reliability analyses using tests of internal consistency. Table 1 presents the factors, factor loadings, and reliability coefficients for all composite variables described in the Appendix, which shows the complete list of the variables to be used in the multivariate regression models and their coding schemes. The Cronbach’s alphas for the white faculty support factor, positive interactions with white faculty factor, and negative interactions with white faculty factor were 0.857, 0.769, and 0.725, respectively (see Table 1).

<<INSERT TABLE 1 HERE>>

Predictor Variables. All three of the statistical models used the same variables to examine similarities and differences across the models. The models examine several individual background characteristics in this study. Given the importance of examining the varying viewpoints within the Black student population (Mwangi & Fries–Britt, 2015; Stewart, 2008)

and the study's focus on American higher education institution's nexus to slavery, the models include a dummy variable for students who identified as African only (compared to all other Black students). Gender is also included as a predictor variable as some studies have found disparate results between male and female students in their interactions with faculty (Colbeck et al., 2001; Kezar & Moriarty, 2000; Kim & Sax, 2009b; Kuh & Hu, 2001). In this study, it is essential to note that one student identified as genderqueer/gender non-conforming, one student identified as "difference," 68 identified as cisgender women, and 21 identified as cisgender men. Given that only two trans* students were in this sample, I included a categorical variable to compare cisgender men (1=yes, 0=no) to cisgender women *and* the trans* students as I did not want to delete the trans* students' valued participation. Additionally, I included overall GPA in the model as some studies have demonstrated a strong relationship between student academic preparedness and more significant faculty interactions (Cole & Griffin, 2013; Hurtado et al., 2011). Given the importance of parents' education level within examining student-faculty interactions, the model whether or not the student is a first generation college student (Cole, 2007; Pascarella & Terenzini, 1979).

Given the role of racism and feelings of racial tension on campus, measures that capture the racialized experiences Black students encounter on campus have become empirically significant in predicting aspects of student-faculty relationships (Cole, 2007). Given that students' perception of racial tension or racism on campus connects to the quality and frequency of student-faculty interactions (Cole, 2010; Cole, 2007), I included two factors to capture their racialized experiences on campus: (1) experiences with microaggressions (α=0.841 and (2) perceptions of the institution addressing its racial inequity (α =0.714) (Allen, 1992; Cole & Griffin, 2013; Davis, 1991).

Lastly, to capture whether the institution's legacy of slavery may play a role in students' interactions with white faculty, I included three factors examining Black students' emotional (α = .906), behavioral (α = .733), and psychological (α = .743) responses to the university's history of slavery (Garibay et al., 2020). Survey items making up each of the three factors were coded on a four-point Likert scale (1 = *strongly disagree* to 4 = *strongly agree*). Higher values on the three factors suggest more significant emotional, psychological, and behavioral responses, respectively.

Analysis

Missing Data. In dealing with missing data, I first utilized listwise deletion to remove all cases for which no information is available on the outcome variables. Then analyzed the extent to which missing data occurs for the predictor variables. Multiple imputation was used for the variables with missing data as it is currently one of the best methods for handling missing data in studies using multivariate statistics (Allison, 2001).

Quantitative Analysis. First, descriptive analyses of the predictor variables provided insight into the sample of the study. Second, correlational analyses of the dependent variables provided insight into the relationships between the dependent variables. Third, multivariate ordinary least squares regression was used to decipher which student characteristics and college experiences significantly predict Black students' interactions and support from white faculty. The predictor variables were forced entered simultaneously into the models: 1) Demographics, 2) Racialized campus experiences, and 3) Black students' responses to an institution's role in slavery.

Limitations. This study is limited in several ways. First, this preliminary study used a cross-sectional design. Second, the sample used in this study is obtained from only one

university with a history of slavery. Third, the study utilized multiple sampling strategies, which may lead to sampling bias for the current study. Third, this study's data was based on students' self-reported perceptions and experiences with white faculty, which is regarded as a limitation (Cole, 2007). Fourth, given the relatively smaller sample size, I was constrained in the number of variables used to make up our models, which connects to our fifth limitation. Fifth, while I captured essential variables in the model based on the extant literature, the list is not exhaustive, and other confounding variables may need to be included to better examine cross-racial relationships between Black students and white faculty. For example, this study's data did not capture any pre-college educational experiences with white teachers, which may be important in understanding and predicting Black students' dynamics with their white college professors. Finally, future studies may have more potent findings if additional qualitative data were captured to contextualize the study's findings. While these limitations are noteworthy, this exploratory study contributes to our understanding of how a university's history of slavery may play a role in Black student-white faculty interactions.

Results

Descriptive of Sample and Measures

Table 2 presents the descriptive statistics of the predictor variables. The sample was significantly overrepresented by women, as about 23% of the sample identified as cisgender men and 75.3% identified as cisgender women. Additionally, 1 student identified as genderqueer / gender nonconforming, and 1 student identified as "difference." Lastly, about 13% identified as African only. Other descriptives of the sample and measures can be seen in Table 2.

<<INSERT TABLE 2>>

Correlations Analyses

Pearson product-moment correlations between the three outcome variables in the multiple regression models are presented in Table 3. Notably, the Pearson correlations reveal a moderate, positive, statistically significant correlation between white faculty support and positive interactions (r=.334, p <.001). Also, the Pearson test revealed that white faculty support has a moderate, negative, statistically significant correlation with negative interactions with white faculty (r=-.361, p<.001). The Pearson correlations also reveal a low, positive, statistically significant correlation between positive interactions with white faculty and negative interactions with white faculty (r=.226, p<.001). In sum, there seems to be sufficient evidence to support that while these three outcome variables have relationships with one another, that each outcome measures a unique type of interaction with white faculty indicating the importance of examining predictors of each of these outcomes separately.

<<INSERT TABLE 3>>

Regression Analyses

Table 4 shows the multiple regression results predicting white faculty support, positive interactions with white faculty, and negative interactions with white faculty. The full models accounted for 13.8% of the variance in positive interactions with white faculty, 50.1 % of the variance in negative interactions with white faculty, and 41.9% of the variance in white faculty support. This study reveals that several predictor variables predict the quality of Black student interactions with white faculty members.

Results demonstrate that in predicting negative interactions with white faculty, several variables were statistically significant. First, only one background characteristic predicted negative interactions with white faculty members—cis-man (*b =-0.198, p<.10).* Additionally, more positive perceptions of the institution addressing racial inequity (*b= -0.168, p <.05)*

predicted less negative interactions with white faculty. This predictor variable surveyed students on questions regarding student's confidence in the institution's leadership response to its involvement with slavery, the institution's commitment to developing an environment that is conducive to the success of students of color, and the institution's leadership's response to bias incidents. Thus, when Black students had more positive perceptions of the institution addressing its racial inequity, they reported less negative interactions with white faculty. Conversely, experiencing greater racial microaggressions (*b=0.390, p<.01)* and experiencing more emotional responses to their institution's history of slavery (*b=0.275, p<.05)* predicted more negative interactions with white faculty.

In analyzing white faculty support, students who identified as only African (*b=-0.559, p<.05)* reported experiencing lower support from white faculty members. Additionally, having a more positive perception of the institution addressing racial inequity (*b=0.202, p. <.10)* and greater behavioral responses to their institutions' history (*b=0.277, p<.10)* predicted greater support from white faculty members. Conversely, experiencing greater racial microaggressions (*b=-.274, p<.05)*, overall average grades received during college (*b=-0.274, p<.05)*, and greater emotional responses to their institutions' history *(b= -0.455, p<.01)* predicted less support from white faculty members. Lastly, in predicting positive interaction with white faculty, only one predictor variable was found to be statistically significant. Interestingly, Black students with greater overall college GPAs (*b=-0.274, p<.05)* experienced less positive interactions with white faculty.

<<INSERT TABLE 4>>

Discussion

Overall, the findings reveal evidence to support that students' college environment, background variables, and an institution's history of enslavement have predictive value in understanding Black students' relationships and interactions with white faculty. These findings connect to scholarship that highlights the connection between an institution's history and its continued antiblack policies and educational infrastructure (Dancy et al., 2018; Mustaffa, 2017). Institutions must be conscious of their history and the contemporary racial environment percolating on campus because the presence of particular college experiences predicted several outcome variables.

First, Black students who experienced greater racial microaggressions experienced greater negative interactions and lower white faculty support. This finding reinforces the extant literature on the effects of microaggression on student outcomes and experiences on campus (e.g., Solorzano et. al, 2000). Second, Black students who had more confidence in the institution's leadership to address racial inequity experienced less negative interactions and greater support from white faculty. That is to say that Black students' experiences are influenced by administrative leadership and since institutions use minimal empirical evidence to oversee their initiatives in resolving "diversity-related conflict," Black students' trust levels may remain obscure for the institution (LePeau et al., 2016).

The findings also reveal that the historical legacy of slavery of a university does play an essential role in current Black students' interactions with white faculty. In fact, having a greater emotional response to the institution's slavery history predicted both less support from and greater negative interactions with white faculty. These findings collectively connect to anti-Blackness, which, grounded on Dumas's (2012) work, describes the weight of the historical

memory and the ever-presence of slavery in Black life. Further explained by Hartman asserting that our current period is affected by the past, she writes, "knowing that its perils and dangers are still threatened and that even now lives to hang in the balance"(Hartman, 2008).

Furthermore, the study reveals that students who had greater behavioral responses to the university's history of slavery reported greater support from white faculty. The items that make up the behavioral response to the institution's history of slavery connect to disengagement or avoidance of the university's history. In other words, Black students who tended to avoid or disengage from their institution's history (e.g., avoiding areas on campus that remind them of the institution's involvement with slavery, not participating in activities that remind me of this institution's involvement with slavery, etc.) received greater support from white faculty. This may suggest, to some extent, the racial power embedded on campus- how greater interaction and engagement with their institution's slavery history may affect their ability to receive support from white faculty. This dynamic often reminds Black students that they cannot show up as their whole self, in their full humanity, and must appear with a level of obsequiousness when interacting with white faculty (Hartman, 2008).

Lastly, this study found that specific background factors are relevant in explaining the dynamics Black student student-white faculty interactions. First, while it may be counterintuitive at first glance that for the students who reported higher college grades were less likely to experience positive relationships with white faculty members, this experience is sadly not surprising in cross-racial faculty relationships. For example, Canning and colleagues point out that students often perceive faculty, specifically white faculty, as believing that academic ability is fixed by race regardless of one's intellectual ability (Canning et al., 2019). Given the pervasive cultural assumptions and stereotypes that exist in higher education, Black and Latinx students are

often deemed not as gifted as White and Asian students (Canning et al., 2019). Another study examining high achieving Black males revealed that despite their 4.0 GPAs, they were plagued by negative stereotypes and interactions from white faculty (Harper, 2015). As a result, the high achieving students worked diligently to resist and overcome the cultural assumptions associated with their blackness and masculinity (Harper, 2015). Thus, consistent with literature surrounding stereotype threat, cultural misconceptions, and perceived fixed faculty mindset beliefs, the students in this study also experience less positive interactions with white faculty regardless of their academic success in their undergraduate program (Harper, 2015).

Finally, African students reported experiencing lower support from white faculty members when compared to other members of the diaspora. This connects to Burt et al.'s (2017) research, which notes the additional barriers that international students of color often face related to their nationality and race. Additionally, in a study examining 24 Black undergraduate and graduate students in physics, George Mwangi et al. (2016) reported that foreign-born and native-born Black students described having different educational experiences, which were a function of the intersections of race and nationality. Similarly, Griffin et al.'s (2016) study of 43 Black immigrant and native Black undergraduate students found that Black immigrant and native-born Black students perceived campus racial climates differently. While both groups recognized their unique experiences on campus, they also consented that the Black American experience is different from the foreign-born African experience. This current study echoes researchers Mwangi and Fries Britt's call for researchers to grapple with the diversity within the diasporic communities (Mwangi & Fries–Britt, 2015), especially given that their status on campus is continually growing.

Implications

This study has implications for policy, practice, and research. First, many universities across the country are beginning to grapple with their role in slavery and have proposed several forms of reparative initiatives; however, prior forms of higher education reparation have largely ignored the continual impact of the institution's history on present-day Black students and their relationships with faculty. Institutional leaders now must contend with reconciling the tensions that Black students experience when interacting with faculty. In doing so, I encourage all faculty to contend with the institution's racist history and improve the campus climate to mitigate the microaggressions and other forms of racism Black students encounter. This is an important implication for all members of institutional leadership; however, this may be a chief concern for those members of the academy that serve as University Provosts or Academic Deans. Within this vein, I encourage chief academic officers to invest in continuing education advancements that promote awareness of the institution's history, role in racism, and Black degradation in faculty training.

Moreover, it is also crucial that development for faculty does not end at awareness. It is essential that chief academic officers and student affairs professionals co-create sustainable incentives and plans that help foster more positive and less negative interaction between Black students and white faculty. Gasman and team (2004) demonstrate the many ways cross-racial faculty members can improve relationships among Black students. They claim that for their participants, among many ways, a helpful way in improving cross-racial relationships is the adoption and implementation of self-reflective exercises and collaboration with Black students (Gasman et al., 2004). Thus, institutional leaders should find strategies that will enhance cross-racial faculty-student relationships, like the strategies in Gasman's work.

Next, institutional leaders should work to diversify their faculty. Campuses tend to enjoy more welcoming and inclusive atmospheres when the faculty diversity reflects the student diversity (Neville & Parker, 2017). While it is crucial to hire Black faculty, institutions must also retain them at their institutions. Therefore, it is also essential that institutions continue to grapple with history and contend with present-day structures that stifle Black faculty success. This includes tenure and promotion standards in rewarding faculty members. Neville and Parker suggest that Black faculty tend to "go above and beyond" to support students of color in their academic and personal success (Neville & Parker, 2017). This is not to suggest that Black faculty should be the only members who interact and mentor Black students. Creating an environment conducive for learning and success is not the sole responsibility for any race, rather it is the cooperative shared goal that must be centralized in all faculty initiatives and development.

Though this study illuminates the frustrations Black students experience on campus with white faculty, it also [re]emphasizes the need and yearning Black students have to foster quality relationships with faculty. Understanding this notion, institution leaders should also consider creating initiatives and efforts that increase both the quality and frequency of quality student-faculty interactions, particularly at large research one universities. This can be accomplished through programs like lunch with faculty, faculty live-in resident opportunities, and other faculty-student initiatives that increase the quality of interactions with students. In sum, adopting these suggestions at institutions with a history of slavery, racism, and Black degradation would go a long way toward a more inclusive campus climate and retaining a more diverse faculty that will ultimately improve Black student interactions with and among faculty.

Finally, this study offers important implications for future research. Future research should continue to examine whether an institution's history of slavery may play a role in student-

faculty interactions as well as other relationships on campus at additional universities with histories of slavery. Moreover, in expanding data collection future studies should also examine how different members of the African diaspora experience faculty relationships and other relationships on campus (e.g., staff, residential life, administration, alumni). Furthermore, while this study is focused on Black students and white faculty, it would be imprudent to assume that other ethnicities and races on campus do not experience social inequity informed by historical traumas. Indeed, "white supremacy, Nativism, colorism, colonialism, Apartheid, Anti-Semitism, and other historical traumas contribute to racial divides…and conflicts that permeate our institutions" (Haynes, 2017). Therefore, exploring how other historical events affect the communities most impacted by the storied versions of an institution's history should remain a research priority, as higher education institutions continue to serve those they once excluded in their formative years.

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Table 1.

Factor Loadings and Reliability Coefficients

Factor	Items	Alpha Coeff.	Loading
White Faculty Support		0.857	
	I feel comfortable asking white faculty for help in achieving my professional goals		0.881
	I feel comfortable seeking feedback on my academic work from white faculty		0.811
	I feel comfortable asking white faculty questions about course materials in class		0.737
	I feel comfortable asking white faculty about research opportunities		0.715
	I feel comfortable seeking emotional support from white faculty		0.703
	White faculty empower me to learn here		0.69
	Many white faculty have taken a genuine interest in my success		0.62
Positive Interactions with White Faculty		0.769	
	Interaction with white faculty: Dined or shared a meal with a white faculty member		0.784
	Interaction with white faculty: Asked white faculty for a letter of recommendation		0.784
	Interaction with white faculty: Had meaningful and honest discussions about race/ethnic relations outside of class with a white faculty member		0.781
	Interaction with white faculty: Asked a white faculty member for an opportunity to conduct research with them		0.671
	Interaction with white faculty: Shared personal feelings and problems with white faculty		0.573
Negative Interactions with White Faculty		0.725	
	Interaction with white faculty: Felt insulted by white faculty		0.768
	Interaction with white faculty: Felt ignored by white faculty		0.754
	Interaction with white faculty: Had guarded, cautious interactions with white faculty		0.75
	Interaction with white faculty: Had tense, somewhat hostile interactions with white faculty		0.698
Racial Microaggressions		0.841	
	Nonverbal slights related to your race/ethnicity		0.841
	Poorer service because of my race/ethnicity		0.812
	Perceived to be less intelligent because of my race/ethnicity		0.806
	Perceived to be dishonest because of my race/ethnicity		0.795
	Verbal insults related to your race/ethnicity		0.659
Slaving History Emotional Response		0.906	
	I often feel resentment towards UVA because of its involvement with slavery		0.903
	I often feel anger towards UVA because of its involvement with slavery		0.901
	I often feel frustrated because of UVA's involvement with slavery		0.849
	I often feel helpless because of UVA's involvement with slavery		0.821
	I often feel depressed because of UVA's involvement with slavery		0.799
Slaving History Behavioral Response		0.733	
	I avoid areas on campus that remind me of UVA's involvement with slavery		0.876
	I don't participate in certain activities that remind me of UVA's involvement with slavery		0.82
	UVA's involvement with slavery has had a major impact on my college experience		0.741

Slaving History Psychological Response	0.743	
I often cannot focus in class because I am thinking about UVA's involvement with slavery		0.942
I often cannot focus on studying because I am thinking about UVA's involvement with slavery		0.939
I often think about UVA's involvement with slavery		0.625
Perceptions of Institution Addressing Its Racial Inequity	0.714	
I feel confident in UVA leadership's response to its involvement with slavery		0.822
UVA is committed to developing an environment that is conducive to the success of students of color		0.809
UVA leadership's response to bias incidents has made me feel at ease		0.763

Table 2

Descriptive of Measures (N=91)

Variables	*M*	*SD*	Min	Max
African Only	.1290	0.3495	.00	1
Cisman	1.85	.072	.00	1
Overall Average Grade Received During College Career	2.95	0.101	1	6
First Generation	.2043	.04204	.00	1
Racial Microaggressions	-0.0147845	0.10374862	-1.391	2.703
Perception of Institution Addressing Its Racial Inequity	0.0325526	0.10475789	-2.026	2.207
Slaving History Emotional Response Factor	-0.0014373	.10424708	-1.361	2.226
Slaving History Behavioral Response	-0.003875	,10418358	-1.384	2.721
Slaving History Psychological Response	0.0058944	0.10408682	-1.139	3.004

Table 3

Pearson Product- Moment Coefficients Between Various Outcome Variables

Measure	WFSF	PIWF	NIWF
White Faculty Support Factor (WFSF)	-	.334**	-.361**
Positive Interactions with White Faculty Factor (PIWF)		-	.226**
Negative Interactions with White Faculty Factor (NIWF)			-

**p<.01

Table 4.

Multivariate Regression Models Predicting White Faculty Support, Negative Interactions, and Positive Interaction with White Faculty

	White Faculty Support		Negative Interactions with White Faculty		Positive Interactions with White Faculty	
Variables	*b*	*SE*	*b*	*SE*	*b*	*SE*
African Only	-.559	.270**(**)**	.133	.242	-.255	.319
Cisman	.074	.133	-.198	.120**(*)**	.037	.159
Overall Average Grade Received During College Career	-.274	.096**(**)**	-.032	.090	-.265	.118**(**)**
First Generation Status	.228	.222	.032	.201	-.112	.264
Racial Microaggressions	-.274	.118**(**)**	.390	.106**(***)**	.211	.140
Perception of Institution Addressing Its Racial Inequity	.202	.113**(*)**	-.168	.103**(*)**	-.084	.142
Slaving History Emotional Response Factor	-.455	.156 **(***)**	.275	.140(**)	-.291	.190
Slaving History Behavioral Response	.277	.145(*)	-.081	.131	-.051	.173
Slaving History Psychological Response	-.037	.132	.168	.119	.072	.158
Constant	.674	.386	.462	.356	.786	.470
adj R^2	41.9%		50.1%		13.8%	

Note *p<.10, **p<.05, ***p<.01

Appendix.

Variable and Coding Schemes

Variables	Coding
Outcome Variables	
White Faculty Support	Continuous
Positive Interactions with White Faculty	Continuous
Negative Interactions with White Faculty	Continuous
Predictor Variables	
African Only (Reference: all other Black)	0= No, 1= Yes
Gender: Cisgener man	1=Yes 0=No
Overall Grade Received in College	1=A or A+ to 7= C- or lower
First Generation	0= No, 1=Yes
Racial Microaggressions	Continuous
Perceptions of Institution Addressing Racial Inequity	Continuous
Slavery History Emotional Response	Continuous
Slavery History Behavioral Response	Continuous
Slavery History Psychological Response	Continuous

Abstract

This Article shines a probing light on the escalation of higher education redress statutes in southeastern states that serve as a site for state regulation and monitoring. Professor Mathis exposes how higher education's redress statutes categorically ignore groups of Black people who rightfully should also be members of the statutorily protected class. He queries whether legislators can expand their scope of such statutes and reveals the myriad ways in which higher education redress statutes now serve as tools that help aid in erasing the higher education's industry culpability and complicity in slavery, degradation, and discrimination toward Black people. As such, this Article shows the growing hostility toward Black people's contribution to the higher education industry and the states' unwillingness to offer redress efforts inclusively, broadly, and robustly. Thus, this Article serves as a platform for recognizing Black people's harm and hurt being undermined by the states' disparate treatment of their humanity. Lastly, this Article proffers recommendations to legislators and other relevant stakeholders to help promulgate more comprehensive and inclusive higher education redress statutes.

HIGHER EDUCATION REDRESS STATUTES: AN CRITICAL ANALYSIS OF STATES' REPARATIONS IN HIGHER EDUCATION

*Christopher L. Mathis**

Introduction

Beyond the health and epidemiological crisis of 2020,[1] America experienced civil unrest because of her current and historical mistreatment of Black people.[2] Largely fueled from anger around police killings of unarmed Black people,[3] protests erupted across the country that recentered the call for reparations.[4] Activists demanded reparations from America herself,[5] specific industries, and systems that have historically disenfranchised and exploited Black people. Protestors demanded reparations and reformations from traditional sectors like banking,[6] housing,[7] and healthcare,[8] but also from another sector that has

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[1] Hussein H Khachfe et al., *An Epidemiological Study on COVID-19: A Rapidly Spreading Disease*, 12 Cureus e7313; Maya Sabatello et al., *Structural racism in the COVID-19 pandemic: Moving forward*, 21 Am. J. Bioeth. 56–74 (2021).

[2] Michael Siegel, *Racial disparities in fatal police shootings: an empirical analysis informed by critical race theory*, 100 Boston Univ. Law Rev. 1069 (2020).

[3] Why The Killing of George Floyd Sparked an American Uprising, Time , https://time.com/5847967/george-floyd-protests-trump/ (last visited Apr 12, 2021); Photos: Breonna Taylor decision sparks protests, CNN,https://www.cnn.com/2020/09/23/us/gallery/breonna-taylor-protests/index.html (last visited Apr 12, 2021); A History of Protest of U.S. Police Brutality, Bloomberg.com, June 9, 2020, https://www.bloomberg.com/news/articles/2020-06-09/a-history-of-protests-against-police-brutality (last visited Apr 12, 2021).

[4] Lauren Gambino, *Calls for reparations are growing louder. How is the US responding?*, The Guardian, June 20, 2020, https://www.theguardian.com/world/2020/jun/20/joe-biden-reparations-slavery-george-floyd-protests (last visited Jan 27, 2022).

[5] H.R. 40—Commission to Study and Develop Reparation Proposals for African-Americans Act, CONGRESS.GOV (2019–2020), https://www.congress.gov/bill/116th-congress/house-bill/40 [https://perma.cc/23UY-9S78].

[6] *See* Linda Lutton, *Activists Want Reparations From Chase Bank For Chicago's Black Neighborhoods : NPR* (2020), https://www.npr.org/local/309/2020/06/16/878136763/activists-want-reparations-from-chase-bank-for-chicago-s-black-neighborhoods (last visited Feb 5, 2022); Allana Akhtar, *Companies like Bank of America are facing demands that they pay reparations for their role in perpetuating the racial wealth gap*, BUSINESS INSIDER (2020), https://www.businessinsider.in/international/news/companies-like-bank-of-america-are-facing-demands-that-they-pay-reparations-for-their-role-in-perpetuating-the-racial-wealth-gap/articleshow/76653460.cms (last visited Feb 5, 2022); Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 Harv. L. Rev. 1463.

[7] Black residents to get reparations in Evanston, Illinois, BBC NEWS, March 23, 2021, https://www.bbc.com/news/world-us-canada-56497294 (last visited Feb 5, 2022); Jonathan Kaplan & Andrew Valls, *Housing Discrimination as a Basis for Black Reparations,* 3 Pub. Aff. Q. 255 (2007).

[8] Derek Ross Soled et al., *The Case for Health Reparations*, 9 Front. Public Health 917 (2021); A. Mechele Dickerson, *Designing Slavery Reparations: Lessons from Complex Litigation*, 98 Tex. L. Rev. 1255 (2020)(suggesting the ways to structure individual reparations payments and group-based reparations that redress ongoing and persistent problems (like the racial wealth gap and racial health disparities) that can be traced back to slavery or the Jim Crow era); Kevin Outterson, *Tragedy and Remedy: Reparations for Disparities in Black Health*, 9 Depaul J. Health Care L. 735 (2005).

usually escaped and evaded public scrutiny and concern—the higher education industry. Activists claimed that Black people are due reparations because higher education needs to atone for their harmful acts toward Black people. The recent attention on the higher education industry [re]exposed the public to higher education's role in slavery,[9] Black people's disinvestment,[10] displacement,[11] degradation,[12] and intellectualization of Black inferiority.[13] The exposure of this history has affirmed activists' calls for reparations and forced the public to wrestle with the racially charged harm conducted and caused by the higher education industry. However, hiding in plain sight, under the call for reparations from the higher education industry is the unexamined legislation that has largely eluded activists and legal scholars' critique despite their increasing prominence in southeastern states: "higher education redress statutes."

This Article is a part of a multi-paper analysis that examines the limitations of the four existing higher education redress statutes (HERS), as currently constructed.[14] These four are Florida's HB 591 (1994), Maryland's HB 1 (2021), Virginia's HB 1980 (2021), and Georgia's City of Athens and the University of Georgia Resolution (2021). I have coined this term because it adequately captures the array of legislation that compels the industry of higher education to investigate and remedy either their own or the states' role in slavery, discrimination, or degradation of Black people. Such legislation includes, but is not limited to, ascendency laws,[15] displacement referendums,[16] restitution acts (e.g., laws that address historically Black universities' inadequate funding),[17] and statutes that require higher education to provide a tangible benefit to Black people for past harms.[18]

While HERS are essential tools toward equity, the four HERS that have been passed into law have important limitations that need to be addressed in order to fulfill the public's yearning for transformational and large-scale changes in America's institutions. As activists' calls for more transformative changes continue to accrue amidst American institutions and systems, systematic evaluation and attention to states', local governments', and institutions' responses to the activists' calls must also be present. It is within this vein that this Article lives. This scholarship initiates the much-needed evaluative dialogue as

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[9] Leslie Maria Harris, James T. Campbell & Alfred L. Brophy, *Slavery and the University: Histories and Legacies* (2019); Maurie McInnis & L.P. Nelson, *Educated in tyranny: Slavery at Thomas Jefferson's University* (2019); Univesity of Virginia, *Universities Studying Slavery*, President's Commission on Slavery and the University (2016), https://slavery.virginia.edu/universities-studying-slavery/ (last visited Mar 31, 2021); Davarian L. Baldwin, *In the Shadow of the Ivory Tower: How Universities Are Plundering Our Cities* (First ed. 2021).

[10] David A. Belden, *Urban Renewal and the Role of the University of Chicago in the Neighborhoods of Hyde Park and Kenwood* (2017); Jake Drunkman, *Athens Commission passes Linnentown Resolution*, The Red and Black (2021), https://www.redandblack.com/athensnews/athens-commission-passes-linnentown-resolution/article_5cf1ae56-70e0-11eb-9ddc-db80765f8c16.html (last visited Oct 4, 2021); Kelsey Massey, *Using Tax Law to Perpetuate Gentrification: Vinegar Hill Lives Again in Charlottesville* (2021); James Robert Saunders & Renae Nadine Shackelford, *Urban renewal and the end of black culture in Charlottesville, Virginia: An oral history of Vinegar Hill* (2005).

[11] *Id.*

[12] *Id.*

[13] Chana Kai Lee, *A Fraught Reckoning: Exploring the History of Slavery at the University of Georgia*, 42 Public Hist. 12–27 (2020).

[14] Separate from this analysis, two other papers also further examine the limiting framework of HERS. For example, the second paper will analyze and critique how the law narrowly includes public universities. However, archival evidence and reports indicate that private universities and colleges conducted equal, if not, more egregious harms. It is important to discuss those limitations and the tools to implicate higher education broadly and comprehensively. As such, while there is much to analyze within HERS, this paper is focused on introducing HERS and demonstrating that the laws are discriminatory and under-inclusive.

[15] *See, e.g.,* V.A. HB 1980 (2021).

[16] *See, e.g.,* Fla. HB 591 (1994) (The Florida legislature passed a law in 1994 allowing descendants of Rosewood to go to college in the state tuition-free. The law is regarded as the first instance of a legislative body in the United States giving reparations to African Americans).

[17] *See, e.g.,* M.D. HB 1 (2021).

[18] *See, e.g.,* Fla. HB 591 (1994).

HERS comes to display substantial equity and fairness issues worthy of study. Of specific focus to this first paper's analysis are the four HERS' under-inclusivity with respect to the states' arbitrary boundary drawing for redress and reparations. This Article argues that HERS have been structured in ways that ignore, dismiss, and discriminate against equally situated Black people that have also been harmed by the actors (including higher education institutions) in question. In its unjustifiable discrimination, HERS erroneously carves out a narrow, limiting, and arbitrary distinction between those who the statutes protect and other people who were equally harmed and, in some cases, experienced greater levels of harm.

Interestingly, as of this writing, four states,[19] with five other states[20] showing considerable legislative intent and interest, have already in some form, enacted reparation statutes that either compelled higher education institutions to investigate and remedy their states' or the state's universities' involvement in the degradation of Black life. Yet in still, HERS has not received substantive analysis, with perhaps one exception, by higher education or legal scholars.[21] Instead, higher education scholars are typically concerned with specific institutional reparation efforts rather than state laws that are increasingly becoming a conduit for redress as colleges and universities seek to remedy their involvement in slavery, degradation, and discrimination.[22] While these statues have received some public praise,[23] the lack of attention to this unjustifiable boundary persists despite the groans of those unprotected under the statute,[24] former reparation claims,[25] historical evidence,[26] references in academic literature,[27] and government reports,[28] that all articulate non-equitable and discriminatory practices for redress, reconciliation, and responsibility.

For this reason, this Article is concerned with two arguments. First, I assert that these statutes protect states' and universities' imperceptibility in their role of Black degradation rather than protecting all of the people harmed. This claim also foreshadows the Article's second claim. Second, I contend that HERS are an unexamined and distinct area of the law where substantial and widespread archival evidence proves that the laws' boundaries are both inappropriate and grossly under-inclusive.

The broad evidence demonstrating the states' and universities' role in Black degradation makes HERS a uniquely suitable place for easy reformation that scholars of both education and law should analyze. This Article begins that dialogue. It relies on the existing scholarly work in other disciplines while simultaneously weaving historical and archival evidence to offer a robust understanding of HERS. It also proffers descriptive and statutory accounts of HERS and is the first piece of scholarship to consider the political landscape that birthed HERS.

This paper does not call for HERS to be repealed, but rather, this Article provides guidance on how to set appropriate parameters within the statutes. The proposed

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[19] *See infra* notes _____ and accompanying text.
[20] *See infra* notes _____ and accompanying text.
[21] *See infra* notes _____ and accompanying text.
[22] Juan C. Garibay, Amalia Z. Dache, Christian P.L. West, & Christopher L. Mathis, *A Critical Analysis of Higher Education Reparations at Universities Founded Pre-Civil War* 13-23 (August 30, 2021) (unpublished manuscript) (on file with authors) (first empirical article that discusses the types of reparations U.S. higher education institutions have proposed/recommended to amend for their history of enslavement. It also discusses the number of U.S. higher education institutions who have proposed/recommended forms of reparations to amend their institution's history of enslavement).
[23] *See infra* notes _____ and accompanying text.
[24] *See infra* notes _____ and accompanying text.
[25] *See infra* notes _____ and accompanying text.
[26] *See infra* notes _____ and accompanying text.
[27] *See infra* notes _____ and accompanying text.
[28] *See infra* notes _____ and accompanying text.

recommendations in this Article provides the foundational pretext needed for more notable changes within higher education, broadly, and reparations specifically. For example, for higher education scholars, addressing HERS could be used as additional tools needed to decolonize higher education and move institutions into what Andreotti et al., describes as a radical reform.[29] For illustration, using Andreotti's framework, Garibay and colleagues analyzed higher education institutions founded prior to the Civil War that are still operating and called for institutions to "orient [their reparative] efforts toward future-facing spacial-racial organizational aims."[30] If higher education scholars and students want to achieve the goal of more radical reformation at the institutional level, addressing HERS will become even more critical. Especially as institutions engaged in reparative work have, in the past, looked to the state for guidance on issues in offering reparations, repair, and reconciliation.[31] In addition, resolving the problems in HERS could also provide reparationists with the requisite tools and framework in expanding the scope of other types of reparations offered or the type of reparations they wish to see.[32]

Therefore, this Article proceeds in three Parts. Part I offers a brief legislative history and the facts that animate the enactment of HERS. This Part also provides analysis of higher education redress statutes examining the statutes' themes, similarities, and differences.

Part II proffers archival and historical evidence to describe how states' HERS erroneously limit redress in rectifying higher education's role in slavery and other acts of Black degradation. More specifically, it lays out the argument and discusses how legislators' unjustifiable boundary around redress leads to discriminatory norms. I contend that allowing lawmakers to strip away Black people's deserved redress based on their subjective standards proves to be the most recent attempt of legislation that renders certain Black people's pain as invisible and unworthy of intervention.[33]

Part III discusses a normative pathway forward that considers the issues addressed throughout the Article. This Part offers recommendations on what all higher education

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[29] Garibay et al., *supra* note ____; Vanessa de Oliveira Andreotti et al., *Mapping interpretations of decolonization in the context of higher education*, 4 Decolonization Indig. Educ. Soc. (2015)(higher education scholars that examine institution specific reparations demonstrate that many of the reforms maintain the status quo. Andreotti and colleagues provide a cartography to help make sense of the reparations. As a part of their cartography, they claim that radical reform efforts demonstrate a "commitment to center and empower marginalized groups, address epistemological dominance, and redistribute and reappropriate material resources." Put plainly, responses in this space move beyond business as usual and implement substantive and recognizable changes to procedures and structure. Efforts in this space critique the conditions that lead to the violent realities for marginalized groups and implement safeguards to prevent future occurrences from reappearing.

[30] *Id*.

[31] *"It Affects Me in Ways That I Don't Even Realize": A Preliminary Study on Black Student Responses to a University's Enslavement History*, 61 J. Coll. Stud. Dev. 697–716 (2020)(discussing how an institution's history and involvement in slavery has impacted Black college students. The study reveals that Black students respond to their institution's history of slavery, and to explore factors that may relate to these responses. Given those findings, of the exploratory study, recommended that as leaders of institutions with histories of slavery "consider ways to address their respective histories through higher education reparations," and that they consider the impact of this violent history on contemporary Black students**;** Juan C. Garibay, Christopher L. Mathis & Christian P.L. West, *Black student views on higher education reparations at a university with an enslavement history*, 0 Race Ethn. Educ. 1–22 (2022); Juan C. Garibay & Christopher Mathis, *Does a University's Enslavement History Play a Role in Black Student–White Faculty Interactions? A Structural Equation Model*, 11 Educ. Sci. 809 (2021)(similarly discussing how Black college students' relationships with white faculty on campus with enslaved history can be predicted given their responses to the institution's history. As a result, the study shares what university leaders should consider in reparations and repair when addressing student-faculty relationships in their restorative agendas on campus); Kim Forde-Mazrui, *Taking Conservatives Seriously: A Moral Justification for Affirmative Action and Reparations,* 92 Calif. L. Rev. 683 (2004).

[32] *E.g.,* Garibay, Mathis, and West, *supra* note 30.

[33] *See, e.g.,* Michele Goodwin, *Fetal Protection Laws: Moral Panic and the New Constitutional Battlefront*, 102 Calif. Law Rev. 781–875 (2014); Monica C Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 Yale Law J. 97 (2017)*;* Nia Johnson, *Expanding Accountability: Using the Negligent Infliction of Emotional Distress Claim to Compensate Black American Families Who Remained Unheard in Medical Crisis,* 72 Hastings L.J. 1637 (2021); Shaun Ossei-Owusu, *Police Quotas*, 96 NYUL REV 529 (2021).

redress statutes should encompass and what legislators should be aware of when drafting these laws. The Conclusion offers thoughts on the urgency of this topic and reminds us of the need to set appropriate and accurate boundaries within these laws. Before proffering any analysis of HERS, I describe my personal politic within this area, which is an essential component of critical scholarship.[34]

Researcher's Positionality

In keeping with Milner's assertion[35] that unforeseen and unexpected dangers appear when researchers are not constantly interrogating their belief system and values, I provide information about my positionality as the researcher to help ground how I come to see the world and this higher education phenomena.

I am the first person in my family to receive a law degree. I often experienced, what I have come to understand, as education violence[36] both throughout my law school and graduate school experiences. I also am an interdisciplinary scholar whose research explores critical race theory and access and equity within higher education. More pointedly, I study the framework and incentive structures within higher education's environments to identify factors contributing to the violence in our nation's colleges and universities. I developed my beliefs on race and racism in higher education from my family's history. During many family cookouts and family reunions, my ancestors would share with me that they wanted to attend law school and graduate school but could not because of the systematic education violence in the higher education arena. Put simply, my great-grandparents, could not enroll in law school and graduate education because of segregation laws that disallowed Black people in South Carolina from those spaces.

As a Black American whose family has direct ties to the violence of higher education coupled with growing up on the land my family bought from their enslaver has taught me both the consequential factors of racism and the will of Black Americans to succeed. Together, my scholarly agenda and family experiences shape my worldview on the need for higher education to atone for their systemic violence both, past and present, regarding race and racism in higher education.

I. The Texture of Higher Education Redress Statues

This Part offers a background understanding of HERS. Given that scholars, activists, and the general public have not yet examined these statutes, this section will proceed in subsections. Subsection I.A. will detail HERS' statutory landscape and its political and

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[34] H. Richard Milner IV, *Race, culture, and researcher positionality: Working through dangers seen, unseen, and unforeseen*, 36 EDUC. RES. 388–400 (2007); Juan Carlos Garibay, Christian West & Christopher Mathis, *"It Affects Me in Ways That I Don't Even Realize": A Preliminary Study on Black Student Responses to a University's Enslavement History*, 61 J. COLL. STUD. DEV. 697–716 (2020).

[35] Milner IV, *supra* note 34.

[36] Jalil Bishop Mustaffa, *Mapping Violence, Naming Life: A History of Anti-Black Oppression in the Higher Education System*, 30 INT. J. QUAL. STUD. EDUC. 711–727 (2017)(Mustaffa focuses on violence in higher education proffering the term education violence. Education violence is a term born out of anti-Blackness theory, whereby it exposes "how systems …*limit* and kill Black lives." More specifically, education violence explains how minoritized people's personhood, access, and inclusion within higher education is limited not only through interpersonal relations but also through structural, cultural, and direct mechanisms. For example, structural education violence happens where institutions are constantly reorganizing to limit racial justice and accessibility. In that instance, higher education's violence first excluded Black people based on the need for slave labor, then granted access based on segregation, and expanded access based on tokenization. These responses reflect how structural violence (racism) within higher education has functioned over time).

legislative histories. Subsection I.B. describes and analyzes the visible variance within and across HERS.

A. Statutory Landscape

This subsection briefly describes the politics that animated some HERS and its unjustifiable boundaries. Only one of these statutes was promulgated in the late-twentieth-century while the remaining statutes were recently enacted. Whether late twentieth century or recently, these statutes were developed out of the backdrop and call for reparations for either the state's role in Black degradation or higher education's violence and mistreatment of Black people. These statues are primarily driven by activists' interests to ensure that Black Americans have equitable access to higher education and education benefits. This concern, alongside concerns for racial justice, reparations, equity, and fairness, has continued to spark and inspire even the most conservative states in the country to inquire and begin preliminary conversations surrounding HERS. Yet, I, and other scholars, argue that these laws are minimal and reductionist. Consider Singh claiming that these laws were only "deployed to buttress the progress[ive] narrative at the core of popular and academic common sense about higher education as an inherently democratic and democratizing endeavor."[37] To be abundantly clear, this Article critiques HERS while simultaneously asserting that HERS are a valuable tool in the struggle for equity. It does not call for HERS revocation or cancellation, but instead, advocates that the statutes would be more effective if they were not as discriminatory and under-inclusive but more comprehensive in their formulation.

1. Brief History

The history of higher education redress legislation is relatively robust because many states, for political reasons, ensured that the press, universities, and other stakeholders documented every step of the process. However, despite the political fanfare,[38] legal scholarship has examined neither their formation nor the laws themselves. Yet, a close reading of archival evidence reveals consistent themes legislators were concerned with when enacting HERS. Three significant themes persisted from my analysis. First, HERS suggest that their harm neatly confines to only one specific group when that is historically inaccurate. Second, these statutes dramatically erase the states' or the universities and colleges' culpability and complicity in slavery, degradation, and discrimination by ignoring and dismissing the experiences of those who legislators deem unworthy of redress. More specifically, when legislators erroneously limit the states' or universities' and colleges' redress to a small subset of people, those institutions can avoid blame or guilt for their role in the degradation of Black people. Lastly, HERS appeared to be responses to both the local states' and the nation's politics brought on by activists demanding a racial reckoning.

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[37] Vineeta Singh, *Inclusion or acquisition? Learning about justice, education, and property from the Morrill Land-Grant Acts*, 43 Rev. Educ. Pedagogy Cult. Stud. 419–439 (2021).

[38] Colleen Grablick, *VA Law Will Require Universities To Create Scholarships For Descendants Of Slaves : NPR* (2021), https://www.npr.org/local/305/2021/05/06/993878297/v-a-law-will-require-universities-to-create-scholarships-for-descendants-of-slaves (last visited Jan 28, 2022); Associatedib Press, *Maryland Gov. Larry Hogan to sign $577M HBCU settlement bill*, PBS NewsHour (2021), https://www.pbs.org/newshour/education/maryland-gov-larry-hogan-to-sign-577m-hbcu-settlement-bill (last visited Jan 29, 2022).

Arguably the first HERS'—whereby higher education was required to provide a tangible benefit to Black people for past racial harms and atrocities—activity appeared in the 1990s.[39] Legislative leaders in Florida, unhappy with the state's unwillingness to acknowledge the harm toward Black people in the Rosewood Massacre, introduced two other bills before House Bill 591 finally passed.[40] The Congressional Black Caucus in Florida stated that: "The time has... come for the State of Florida to recognize the courageous individuals, who, despite the tremendous personal danger, stood up for what was right to help the residents of Rosewood.[41] The state should commemorate these individuals and all the citizens of Rosewood who died with their town…."[42] However, the inhumane disinvestment, death, and pain the members of the Rosewood community experienced by racist mobs did not make the bid for reparations easy. [43] According to one newspaper account, members of the Black Caucus had to compel then-Governor Lawton Chiles to sign the bill using political ultimatums and strategy.[44] The newspaper revealed that "the caucus gave Governor Chiles an ultimatum: "Use the influence of his office to help swing enough votes to pass Rosewood or face the possibility of losing the caucus' support on the Governor's critical health-care package."[45]

Another account claimed that the Black caucus in political posturing had to concede other neighborhoods who too were devastated by racist acts to ensure Rosewood's legislative success.[46] While legislators emphasize that the factors surrounding Rosewood were unique, other people who too were victims to similar or even greater types of violence indicate otherwise.[47] Ignoring the assertions of other Black people who were equally injured, House Bill 591 passed, forcing Florida's public higher education institutions to offer scholarships only to the residents and the descendants of the Rosewood neighborhood.[48] While House Bill 591 is mainly about white racist mobs decimating a thriving Black city, this statute is deemed a HERS because the statute requires higher education to provide a tangible benefit to Black people for Florida's past harms.[49] Therefore, the next section focuses on higher education's response and actions.

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[39] Fla. HB 591 (1994)(The Rosewood Massacre was an attack on the vibrant and successful predominantly African American town of Rosewood, Florida, in 1923 by white racists agitators and aggressors. The town was entirely devastated by the end of the racially motivated violence. The 200 resident community was decimated because of the claim that a white woman, Fannie Taylor, was raped by a black man, Jesse Hunter. Fannie Taylor's husband taking the law in his own hands and conducting vigilante justice corralled 500 Ku Klux Klansmen for a rally to search for the Black man. Assuming that the Jesse Hunter lived in Rosewood, the 500 Ku Klux Klansman terrorized and murdered Aaron Carrier and Sam Carter. The mob also showed up at the home of Sarah Carrier. Sarah Carrier protecting the 25 people that took refuge in her house was shot and killed by the mob. Her son Sylvester was also killed. The gun battle between Sarah Carrier and the white mob lasted overnight and escalated tensions in the Rosewood community. The news of the gunfight between the Carriers and the white Klu Klux Klan mob spread rapidly, with the local newspapers purposefully inflating the number dead and falsely reporting bands of armed Black citizens going on a rampage. As a consequence, even more white aggressors and terrorists flooded into the area believing that a race war had broken out. The white mob frustrated by the Black folk's indignation returned to the city of Rosewood and burned down the community's churches, schools, and houses. When people ran to escape, they were gunned down and killed. Because of the grave and evil violence, Florida offered reparations in the form of free higher education to the residents of the town).

[40] C. Bassett, *House Bill 591: Florida Compensates Rosewood Victims and Their Families for a Seventy-One-Year-Old Injury*, 22 Fla. State Univ. Law Rev. 503–523 (1994).

[41] Fla. HB 813 (1993); *Id.*

[42] *Id.*

[43] Bassett, *supra* note 38.

[44] Bill Cotterell, *Lawson Vows to Keep Racial Attack Alive*, TALLAHASSEE DEMOCRAT, Apr. 5, 1993, at A1, A6.

[45] *Id.;* Bassett*, supra* note ____.

[46] Bassett*, supra* note ____.

[47] *Id.*

[48] Fla. HB 591 (1994).

[49] *Id.*

Upon understanding their legal mandate in House Bill 591, Florida's higher education public institutions used their political power to narrow their responsibility further. Rosewood survivors claimed that despite Florida's higher education institutions being legally compelled to offer redress, they felt that the universities were not living up to their promise and only set aside minimal monies for reparations.[50] Some survivors even claim that the state and the public universities "reneged on a promise to provide $100,000 in scholarships to their descendants."[51] Arnett Doctor, head of the Rosewood Family Advisory Committee, said…that only $60,000 was set aside for scholarships...[52] He further exclaimed, "I'm really dissatisfied and very upset about the educational scholarship fund...For them [the legislation and universities] to say we're going to allocate $60,000 is going directly against what was legally approved by the state legislature."[53]

The state's and Florida's public universities' wheeling of power against Black people, dismissal of similarly situated people harmed, compounded with its disregard and dismissal for the law, reinforces the theme that HERS protect the status quo and seek to exonerate– at least politically and socially– higher education.

It also highlights the fact that reparation efforts are often underinclusive and easily dishonored without much consequence. In other words, reducing universities' role as orchestrators and stakeholders in Black degradation serves to preserve the status quo and erase the fact that the higher education industry continues to, in more ways than one, ignore the totality of their damaging role in the plight of Black people's life.

Moreover, in analyzing the landscape of HERS it is evident that, most if not all of, the statutes arguably emerged out of racial controversy and reckoning happening within their state's higher education arena. Review Georgia's City of Athens and the University of Georgia Resolution.[54] This resolution was enacted in January 2021 after activists for decades called for reparations for past harms and the decimation of a Black neighborhood, Linnentown.[55] For years a group of former Linentown residents and activists lobbied and corralled through mail, protests, and social media, demanding repair for what they deemed as "white supremacist terror"[56] by UGA and Athens.[57] In fact, the group sent several emails[58] and even protested on the University of Georgia's campus.[59] Despite their activism and demands, for decades, the University of Georgia did not respond to their concerns until January 9, 2020, when they defended their past actions.[60] The university claimed that their actions were protected "under Georgia's law then and now…" and that the Board of Regents' project was driven [only] by a need for additional housing to

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[50] Cory Lancaster, *Survivors say Florida broke pledge*, Survivors say Florida broke pledge (2005), https://www.tampabay.com/archive/1994/06/26/survivors-say-florida-broke-pledge/ (last visited Jan 29, 2022).
[51] *Id.*; Robert Samuels, *Survivors of the Rosewood massacre won reparations. Their descendants aren't sure the victory was enough.*, Washington Post (2020), https://www.washingtonpost.com/graphics/2020/national/rosewood-reparations/ (last visited Jan 29, 2022).
[52] Lancaster, *supra* note 47.
[53] *Id.*
[54] Athens Clarke Commission Linnentown Res. (2021) (enacted).
[55] *Id.*
[56] Grant Blankenship, *Reparations for "Terroism," "White Supremacy" In Athens Mark A Georgia First | Georgia Public Broadcasting (2021),* https://www.gpb.org/news/2021/04/14/reparations-for-terrorism-white-supremacy-in-athens-mark-georgia-first?fbclid=IwAR0jPtvpGkL88CyKkMZ0vVyWGlT4wxmF-qcAXezRp819hJsB31W_trAhfHY (last visited Mar 9, 2022).
[57] *See, e.g.,* Email from Hattie Thomas Whitehead, Chairperson of the Linnentown Project, to Jere W. Morehead, President of the University of Georgia (July, 22, 2021); The Linnentown Project, Facebook, Mar. 9, 2022) https://www.facebook.com/thelinnentownproject/
[58] *Id.*
[59] *Id.*
[60] Email from Alison McCullick, Director of Community Relations at the University of Georgia, to Athens-Clarke County Commissioners (Jan. 9, 2020, 5:04 PM EST).

accommodate the rapidly expanding campus population...and was an approved component of President Lyndon B. Johnson's "Great Society" initiative."[61] Undeterred by UGA's denial in contributory harm to Linnentown, the activists successfully lobbied and won support with the city of Athens. As a result of decades of racial reckoning and activism, the city made a resolution compelling the city to memorialize the history of Linnentown through the installation of a 'Wall of Recognition,' provide equitable redress, and most importantly, supply future reinvestments to historically underfunded and impoverished neighborhoods within the city.[62]

Similarly, Maryland's bill actualized out of the HBCUs' direct activism and savvy lawyering in Maryland.[63] After almost a century of complaining, accusing, and demonstrating the disparate treatment the states' four HBCUs were receiving, a coalition of alumni, supporters, and relevant stakeholders filed the lawsuit, displeased with the consistent silence they received from the state.[64] The HBCUs argued that the state had underfunded its four historically Black institutions and allowed traditionally white universities to duplicate programs offered at HBCUs, actively sabotaging the Black institutions' ability to attract students.[65] In *Equity v. Maryland Higher Education Commission*, the court reasoned that "…neither party's remedy, as currently proposed, is practicable, educationally sound, and sufficient to address the segregative harms of program duplication at the HBIs."[66] The district court then compelled each side due to the parties' failure or inability to consult with the other side in crafting viable and articulable proposals to consult with each other.[67] After several years of negotiating and legal wrangling, both parties reached a settlement of $577 million to end the inequitable resources that the four HBCUs received.[68] The funding in the bill must be used to supplement and not replace the states' expenditures for the HBCUs.[69] The institutions will use it to invest in the states' HBCUs infrastructure expanding their educational footprint through academic programs, including online programs.[70] Finally, HBCUs will use the extra dollars to strengthen scholarship and financial aid support and professional development for the students enrolled today and in the future.[71]

Lastly, as another example of HERS emerging out of racial controversy and activism, contemplate Virginia's landmark Enslaved Ancestors College Access Scholarship and Memorial Program.[72] This law introduced originally by Democratic David Reid, requires Longwood University, the University of Virginia, Virginia Commonwealth University, the Virginia Military University, and the College of William & Mary — all institutions that benefitted from and exploited enslaved labor — to provide scholarships

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[61] *Id.*
[62] Athens Clarke Commission Linnentown Res. (2021) (enacted).
[63] M.D. HB 1 (2021).
[64] Elizabeth Shwe, *Maryland Settles HBCU Federal Lawsuit for $577 Million*, MARYLAND MATTERS (2021), https://www.marylandmatters.org/2021/04/28/maryland-settles-hbcu-federal-lawsuit-for-577-million/ (last visited Mar 9, 2022).
[65] *Equity v. Md. Higher Educ. Comm'n*, 295 F. Supp. 3d 540 (D. Md. 2017).
[66] *Id.*
[67] *Id.*
[68] Elizabeth Shwe, *Maryland Settles HBCU Federal Lawsuit for $577 Million*, MARYLAND MATTERS (2021), https://www.marylandmatters.org/2021/04/28/maryland-settles-hbcu-federal-lawsuit-for-577-million/ (last visited Mar 9, 2022).
[69] M.D. HB 1 (2021).
[70] *Id.*
[71] *Id.*
[72] V.A. HB 1980 (2021)(The legislation garnered much attention as universities across the Commonwealth of Virginia reckon with their histories of racism, and as higher education institutions generally are finding ways to atone for enabling and profiting off of slavery by offering financial reparations).

and economic development programs to descendants of enslaved people.[73] While America herself and many states have vigorously entertained the idea of proffering reparations for slavery to descendants of enslaved people, this law is the first reparations bill for slavery in the United States and for higher education's involvement in slavery. However, this legislation comes as students across the state demand that their universities reckon with their histories of racism.[74] Exasperated by the racist white-nationalist 'unite the right' rally[75] and the demands by Black student unions, affinity, and other activist groups on campuses, predominantly white public institutions in Virginia began to focus deeply on their nexus to slavery and discrimination.[76] For example, the University of Virginia (UVA), in 2013, created the President's Commission on Slavery and the University, an interdisciplinary research project focused on understanding slavery's role in the creation and success of the university.[77] The 2018 commissioned report revealed that "all of the men involved in the institutions' creation owned slaves, and that the 'vast majority' of early UVA students hailed from slave-owning families."[78]

Similarly, the College of William and Mary created its initiative attempting to rectify its past—the Lemon Project. The project was created as a result of more than a decade's worth of students and faculty calling for an investigation into the College's history.[79] The Lemon Project, named after a man who was once enslaved by William and Mary, reveals the long legacy and complicated history the College had with enslaved people, specifically, and Black people generally.[80] Given the project's success it revealed to the institution and the public William and Mary's original sin. As a result, the school publicly acknowledged that it had "owned and exploited slave labor from its founding to the Civil War; and that it had failed to take a stand against segregation during the Jim Crow Era."[81]

From those two representative examples, it is clear that the Virginia statute emerged as a result of the individual and collective inquiry happening at Virginia's universities and the series of bills addressing Virginia's racist legacies.[82] This claim is also buttressed by the several newspaper articles that reveal that this law directly responds to the racial reckoning happening on Virginia's campuses.[83]

Other calls for reparations emerged out of the racial reckoning that was happening across the country. On January 4, 2021, the U.S. Congress established H.R. 40, a bill

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[73] *Id*.
[74] *E.g.,* Jeremy Bauer-Wolf, *UVA Minority Groups Demand Changes*, INSIDE HIGHER ED (2017), https://www.insidehighered.com/quicktakes/2017/09/01/uva-minority-groups-demand-changes (last visited Feb 5, 2022).
[75] Hundreds of white nationalists openly and notoriously marched on the University of Virginia campus in Charlottesville, VA, carrying tiki torches and chanting racist epithets and demeaning racial slogans. This disgraceful march which turned severely violent was only a prelude to a larger planned "Unite the Right" rally the next day. The next day the violent racist mob protested the removal of confederate statues in the Charlottesville area. As a result of their anger and discontent, several people were killed in their violent streaks and uncontrolled rage. *See, e.g.,* Emily Blout & Patrick Burkart, *White Supremacist Terrorism in Charlottesville: Reconstructing 'Unite the Right,'* Studies in Conflict and Terrorism 1-22 (2020).
[76] *Id.* (For example, UVA minority students group demanded ten separate items in response to the racists culture on campus. Demands range from remove the Confederate plaques on the rotunda to demanding that all students, regardless of area of study, should have required education (either inside or outside the classroom) on white supremacy, colonization and slavery as they directly relate to Thomas Jefferson, the university and the city of Charlottesville. The students went on to say that "the current curriculum changes only affect the College of Arts and Sciences and allow students to focus in on aspects of difference of their choice").
[77] University of Virginia, *supra* note 9.
[78] Marcus Martin, Kirt von Daacke & Meghan Faulkner, *President's Commission on Slavery and the University* 96 (2018).
[79] Katherine A Rowe et al., *The Lemon Project: A journey of Reconciliation Report of the first eight years* 65 (2019).
[80] *Id*.
[81] William & Mary, *The Lemon Project A Journey of Reconciliation*, William & Mary , https://www.wm.edu/sites/lemonproject/ (last visited Jan 29, 2022).
[82] Grablick, *supra* note 33.
[83] *E.g., Id.*

sponsored by Representative Sheila Jackson to establish a "Commission to Study and Develop Reparation Proposals for African Americans."[84] H.R. 40 galvanized activists across the country to call for reparations from America herself, states, and specific institutions and industries that have traditionally harmed Black people.[85] As a result of activists' agendas, several states have announced plans to introduce legislation that would award reparations to African American people in their states. Acknowledging the decades-long thread of slavery and its repercussions on Black people, lawmakers in California,[86] New York,[87] Texas,[88] North Carolina,[89] and Vermont[90] have all introduced legislation exploring compensation to the descendants of enslaved people. In comparison, other states have addressed past specific racial atrocities and offered some tangible benefits.[91]

Activists have also looked beyond the federal and state government to specific industries and institutions, including higher education institutions. The activists' persuasion, advocacy, and persistence permeated southeastern state legislatures and local officials and yielded unprecedented success in forms of renewed attention and legislation. Yet, activists' success has been mitigated by lawmakers' curtailment of their proposal as legislators cite and question "whether they can win enough support to succeed on a wide

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[84] H.R. 40—Commission to Study and Develop Reparation Proposals for African-Americans Act, CONGRESS.GOV (2019–2020), https://www.congress.gov/bill/116th-congress/house-bill/40 [https://perma.cc/23UY-9S78].

[85] Nkechi Taifa, *Let's Talk About Reparations*, 10 Columbia J. Race Law (2020)(discussing how the June 19, 2019 House of Representatives session renewed interest and was a culmination of over a century long struggle by the reparations' movement in the United States. In the session prominent African American scholars, activists, writers, lawyers, amongst others shared their thoughts on the topic of reparations); Nkechi Taifa, *Reparations – Has the Time Finally Come?*, American Civil Liberties Union (2020), https://www.aclu.org/news/racial-justice/reparations-has-the-time-finally-come/ (last visited Jan 31, 2022); Kamaria Hightower, *Joining with Mayors Across the Country, Seattle Mayor Jenny Durkan Urges Support for H.R. 40*, Office of the Mayor (2020), https://durkan.seattle.gov/2020/12/joining-with-mayors-across-the-country-seattle-mayor-jenny-durkan-urges-support-for-h-r-40/ (last visited Jan 31, 2022).

[86] Tal Axelrod, *California lawmakers advance reparations bill*, TheHill (2020), https://thehill.com/homenews/state-watch/502582-california-lawmakers-advance-reparations-bill (last visited Sep 18, 2021); Charles R. Davis, *California becomes first state to officially consider reparations for slavery*, Business Insider (2020), https://www.businessinsider.com/california-becomes-first-state-to-consider-reparations-for-slavery-2020-9 (last visited Feb 2, 2022)(discussing how Governor Gavin Newsom signed into law a task force to study the issue of reparations for Black Americans. The legislation, Assembly Bill 3121, calls for a nine-member task force to document the historical and present effects of enslavement on African Americans and "recommend appropriate remedies." Those recommendations, including the possibility of "full reparations," will be presented in a report).

[87] N.Y. Assembly Bill A3080A ("relates to acknowledging the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the city of New York and the state of New York; establishes the New York state community commission on reparations remedies to examine the institution of slavery, subsequently de jure and de facto racial and economic discrimination against African-Americans, the impact of these forces on living African-Americans and to make recommendations on appropriate remedies; makes an appropriation therefor; and provides for the repeal of such provisions").

[88] Judson L. Jeffries, *Juneteenth, Black Texans, and the case for reparations*, 55 Negro Educ. Rev. 109–118 (2004); Daniel Van Oudenaren, *Reparations planning for Austin African Americans - The Austin Bulldog* (2021), https://theaustinbulldog.org/reparations-planning-for-austin-african-americans/ (last visited Feb 2, 2022)(The city council March 4th approved a resolution that advocates see as a step toward their goal of securing city funding for what they call restitution payments. Such payments are akin to financial reparations for slavery—and might be implemented in similar or identical ways—but they aim to redress 20th century wrongs, rather than 19th century slavery).

[89] Shawna Mizelle, *Asheville, North Carolina, approves reparations for Black residents - CNN* (2020), https://www.cnn.com/2020/07/15/us/north-carolina-asheville-reparations/index.html (last visited Feb 2, 2022); Neil Vigdor, *North Carolina City Approves Reparations for Black Residents*, THE NEW YORK TIMES, July 16, 2020, https://www.nytimes.com/2020/07/16/us/reparations-asheville-nc.html (last visited Oct 8, 2021).

[90] Nora Peachin, *Reparations: What Vermonters have learned from government, grassroots efforts*, Burlington Free Press (2021), https://www.burlingtonfreepress.com/story/news/2021/07/26/reparations-what-vermonters-have-learned-government-grassroots-efforts/7948867002/ (last visited Oct 4, 2021) (discussing the impact of protests over police killings of Black people swept the nation and the activists in Vermont have renewed their calls to compensate people of color for centuries of discrimination).

[91] *E.g.,* Fla. HB 591 (1994) (as this law only accounts for the white racial mob that terrorized Rosewood. It did not account for any other racial atrocity that had taken place in the state of Florida).

scale."[92] In some cases, their success is mitigated partly by legislators' and/or administrators' dismissal of the full role of slavery and degradation within higher education. As a result, eligible victims are left out of redress, also known as under-inclusion, because legislators limit the scope of redress to make the activists' proposals more digestible or watered down rather than crafting legislation as a matter of justice (e.g., Athens' legislator's comments).[93]

Section B analyzes the types of HERS and structural differences to help make sense of the inadequacies embedded within the laws. In addition, the subsequent sections illustrate what is shared and what is unique about these statutes while simultaneously revealing the trends that exist in these laws.

B. Types of HERS and Structural Similarities and Differences

[Insert Table 1 Here]

This subsection details the four different higher education redress statutes and structural similarities and differences. Vineeta Singh noted that [these types of laws] are "key arenas where calls for justice are corralled into limiting frameworks."[94] The different types of laws and their varying commitment to justice and equity makes analysis harder. However, the difficulty in articulating a consistent epistemological underpinning for HERS may help explain the inadequacies within HERS.

Table 1 describes each statute analyzed in this section. The four laws all offer repair and reparations for different aspects of higher education's degradation of Black life. For evaluative ease, I will briefly describe each statute and what each one offers. The Florida statute HB 591 is the first HERS because it compels Florida universities to provide reparations in the form of scholarships because of the racist white mob who killed and destroyed Rosewood. Maryland's HB 1 enacted in 2021 is a HERS as it offers recompense for the state's disparate funding and treatment to its four HBCUs. The Virginia statute HB 1980 is the first statute in the country to offer reparations for involvement in slavery. More specifically, the statute gives reparations in the form of memorialization and provides tangible benefits through college scholarships or community-based economic development programming. Lastly, Georgia's City of Athens and the University of Georgia Resolution is deemed a higher education redress statute because the city of Athens offers reparations for its involvement in the displacement, disinvestment, and deprivation to the Linnentown neighborhood.

It should be noted that these laws significantly vary, but they all, to some extent, are constructed narrowly, whereby they only cover a specific event or occurrence. For example, Maryland's higher education redress statute—MD HB 1—simply states: "the state failed to eliminate a traceable de jure era policy of unnecessary duplication of programs at

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[92] Piper Hudspeth Blackburn, *Despite racial reckoning, state efforts stall on reparations*, AP NEWS (2021), https://apnews.com/article/race-and-ethnicity-legislature-legislation-coronavirus-pandemic-california-dddb07baefbbc0a3f3484b7b7ee9cdf0 (last visited Sep 24, 2021).

[93] Neil Vigdor, *North Carolina City Approves Reparations for Black Residents*, The New York Times, July 16, 2020, https://www.nytimes.com/2020/07/16/us/reparations-asheville-nc.html (last visited Oct 8, 2021); Mizelle, *supra* note 90.

[94] Singh, *supra* note 86 (discussing how the Virginia statute is limited and prescriptive in its framing and its remedy offered. He notes that in both drafts of the laws the clear attention in "quantifying the number of people enslaved to directly benefit an institution, the number of years an institution was able to directly extract enslaved labor, and the number of college degrees or community grants that will recompense these harms, epitomize the drive to quantify and contain the harm of chattel slavery and its ongoing afterlives into specific numbers, specific debts that can be definitively repaid.").

HBCUs in the state that has exacerbated the racial identifiability of Maryland's HBCUs."[95] This statute does not account for other traceable de jure era policies that the state also practiced. For example, the statute ignores other traceable de jure policies like eminent domain seizures, systematic legislative underfunding,[96] lack of access to state's subsidies,[97] and a host of other unfair de jure actions that the state committed. Such limited framing and narrowing exclude other equally, if not greater, acts of harm to the four public HBCUs. Those other harms would have to be included in other subsequent legislation, assuming those harms survive the political backdrop of the state or simply be silenced and never addressed. Additionally, states vary in terms of which action is worthy of redress through HERS. What one state considers as an act worthy of redress, another state may find the act unworthy of legislation and interference. Higher education redress statutes vary on what factors predicate statutory redress. Some states, like Virginia and Maryland, offer more comprehensive and extensive redress, while others, like Florida and Georgia, provide a less diminutive remedy the harm inflicted or caused by the higher education industry.

Overall, there are also differences in the structural elements of each of the four HERS, such as in implementation/enforcement and funding source(s). For example, Florida's statute—FL HB 591—although the oldest is poorly drafted[98] and has no legal teeth in its implementation. The statute never mentions the consequences if and when the state or the universities fail to comply with the statute's terms. In fact, there is nothing in the statute that incentivizes actors to comply or anything that disincentivizes non-compliance. Simply put, the Florida statute, which has been in play since the late-twentieth century, has not defined what it means for these laws to be enforced or what consequences should be enforced when the law is broken. Such interpretative tasks are left to Florida courts, if the courts accept such complaint under the statute.

HERS also vary in how and who enforces the terms of the statute. Consider the Florida statute again, it is the only law that specifies which state agency, provided for in the state's constitution, will regulate and oversee the development and disbursement of the benefits according to the law.[99] The Florida statute has been adopted under the state's Department of Education, while the remaining HERS in other states are simply left to other administrative or legislative committees to govern.[100] Across all other statutes, the terms and fulfillment of the law is left up to a particular legislative committee within the legislative body. The decision in other states not to have regulatory oversight at the appropriate agency can lend itself to ambiguity in the law's implementation and regulation. State agency regulatory oversight can help set specific requirements and proffer

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[95] M.D. HB 1 (2021).

[96] *E.g.,* Khristopher Brooks, *Black colleges were denied state funding for decades. Now they're fighting back.* (2021), https://www.cbsnews.com/news/hbcu-coppin-state-tennessee-state-federal-funding-howard-kamala-harris/ (last visited Feb 3, 2022)(discussing how Historically Black colleges and universities in the U.S. have been underfunded for decades, with billions of dollars in state funding that should have gone to those schools diverted by lawmakers for other purposes, according to higher education experts); Krystal L. Williams & BreAnna L. Davis, *Public and private investments and divestments in historically Black colleges and universities* (2019); Damon Mitchell, *Historically Black colleges are chronically underfunded*, Marketplace (2021), https://www.marketplace.org/2021/11/18/historically-black-colleges-and-universities-are-chronically-underfunded/ (last visited Feb 3, 2022).

[97] *Equity v. Md. Higher Educ. Comm'n*, 295 F. Supp. 3d 540 (D. Md. 2017)(discussing how the state continues to maintain two separate education systems one for Black and White universities).

[98] Fla. HB 591 (1994) (The Florida legislature passed a law in 1994 allowing descendants of Rosewood to go to college in the state tuition-free. The law is regarded as the first instance of a legislative body in the United States giving reparations to African Americans).

[99] Bassett, *supra* note 108; Fla. HB 591 (1994).

[100] *Id.*

substantive recommendations surrounding a law.[101] For example, a regulation issued by a state's environmental protection agency to implement the Clean Air statute might explain what levels of a pollutant - such as sulfur dioxide - adequately protect human health and the environment. It would tell industries how much sulfur dioxide they can legally emit into the air and the penalty if they emit too much. Once the regulation is in effect, the state's EPA then works to help citizens and companies comply with the law and enforce it. Similarly, when laws are under the state's department of education guidance, they too can help those who want to bring claims under the law and help institutions comply with the requirements within the law.

Another important feature of HERS worthy of acknowledgment is funding source(s). Virginia's HB 1980 has a provision that limits the laws' funding sources.[102] To be specific, the statute disallows any funds "from any state fund[ing] or tuition or fee increases."[103] Lawmakers were concerned with this component as they wanted to ensure that the Virginian universities used their —half a billion, and in some cases, billion dollar endowments to supply the reparations—funds they were able to generate because of their involvement in slavery. Since this is a new law, only time will reveal if institutions offer robust funding for this program when they are on the hook to raise funds to comply with the law. Other HERS are either silent to the reparations funding source or leave such administrative duties to the universities. To this end, the inadequacies of within some HERS arguably disregard traditional tenets that appear in comprehensive legislation.[104] Still, most frustratingly, these laws are written so narrowly that they do not protect all of those individuals who are similar in status. The shortcomings of each of these types of HERS often interface with the constitutional law issue of under inclusion. That will be the topic of the next section.

II. Under Inclusivity in the Law

The legislators' political concessions within the higher education industry has made way for under inclusion in higher education redress statutes. "A statute is underinclusive if it fails to cover a class of people protected from unequal treatment by the equal protection provisions of the United States Constitution, a state constitutional provision, or a statute that mandates equality of treatment."[105] Traditionally there are two types of underinclusive statutes.[106] First, statutes that unequally impose unnecessary and undue penalties on a person are deemed underinclusive. For example, in *Moritiz v. Commissioner of Internal Revenue,* taxpayer Charles E. Moritiz, appealed a decision from a tax court holding that he was not entitled to a deduction because he was a single man who had never married.[107] The

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[101] Michael Asimow, *The Fourth Reform: Introduction to the Administrative Law Review Symposium on State Administrative Law*, 53 Admin Rev 395 (2001)(discussing the breadth of regulation that state agencies have. For example, "state and local agencies resolve a vast number of adjudicatory issues relating both to government benefits and government regulation. State agencies resolve literally millions of disputes involving benefit programs such as unemployment compensation, workers compensation, and various welfare programs").

[102] V.A. HB 1980 (2021).

[103] *Id.*

[104] Alan Rosenthal, *Beyond the intuition that says "I know one when I see one," how do you go about measuring the effectiveness of any given legislature?*, NCSL, https://www.ncsl.org/research/about-state-legislatures/the-good-legislature.aspx.

[105] Candace S. Kovacic, *Remedying Underinclusive Statutes*, 33 Wayne L. Rev. 39 (1986)(discussing how the equal protection is clearly mandated by the fourteenth amendment of the U.S. Constitution. Equal protection is read into the due process provisions of the Fifth Amendment of the U.S. Constitution).

[106] *E.g.,* compare *Shapiro v. Thompson*, 394 U.S. 618 (1969), with *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

[107] *Moritz v. Comm'r,* 469 F.2d 466 (10th Cir. 1972) (the Court of Appeals, Holloway, Circuit Judge, held, that the clause of the Internal Revenue Code barred financial deductions and benefits only against men who had never married. But, the deduction was available and its allowances to women and widowers, divorcés, and husbands under certain circumstances "is an

deduction Moritiz wanted to use was only available for a woman, a widower or divorcee, or a husband whose wife is incapacitated or institutionalized.[108] Therefore, the law was penalizing him for being a single man. The court agreed with Moritiz and found that he was in fact entitled to a deduction and that the law unfairly penalized single men.

Second, statutes that affirmatively order the government or a third party to confer a benefit to people unequally also are deemed underinclusive.[109] As an illustration, in *U.S. Department of Agriculture v. Moreno,* the plaintiffs sought to invalidate the government's restriction of limiting the food stamps benefit to only household members who were related.[110] Unrelated household members argued that they too should be allowed to enjoy the benefits of the food stamp program. The Court agreed with the unrelated household members and found the law unjustifiably discriminatory and the classification at issue imprecise.[111]

Similarly, the Supreme Court in *Graham v. Richardson* extended the benefit of social welfare to lawful non-citizens living in America.[112] The Justices cited that the lawful non-citizens, like American citizens, pay taxes, and, consequently, contribute to the pool of money from which welfare benefits are drawn and are no different, in that sense, than American citizens.[113] Accepting this rationale, the Justices extended the welfare benefit to lawful residents because the law was written so narrowly that it excluded people that it should protect.[114]

As Candace Kovaicic claimed, "one can generally distinguish between the two types of underinclusive statutes by determining whether the excluded or included class member is bringing suit."[115] When a statute grants benefits unfairly, the excluded person will bring suit to attain the benefits.[116] Conversely, when a law burdens unfairly, the person covered by the statute will bring suit to invalidate the law.[117] While it may be challenging to know when a statute confers a benefit or imposes a burden in some cases,[118] the benefit delineation is relatively clear in the situation of HERS. HERS' language undergirds this notion. For example, the Virginia statute proclaims to "give a tangible benefit" to individuals.[119] Therefore, this section will not discuss the imposition of burdens unequally on individuals given that no HERS fit this description. However, it is important to discuss that under inclusion often appears in reparation statutes or in cases where the benefit is

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invidious discrimination and invalid under due process principles; it is not one having a fair and substantial relation to the object of the legislation dealing with amelioration of burdens of the taxpayer").

[108] *Id.*

[109] Kovacic, *supra* note 106.

[110] *U. S. Dep't of Agric. v. Moreno,* 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973)(Supreme Court Justice Brennan held that the "challenged amendment was not rationally related to the stated purposes of the Act in maintaining adequate nutrition and stimulating the agricultural economy, or to the legitimate governmental interest in minimizing fraud; that purposeful discrimination against 'hippies' could not justify the amendment; and that, accordingly, the amendment created an irrational classification in violation of the equal protection component of the due process clause of the Fifth Amendment").

[111] *Id.*

[112] *Graham v. Richardson,* 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971) (This case consolidated two separate cases claiming that the state welfare laws discriminate against them unjustly. In one case of the cases an alien resident of Arizona argued against the validity of 15-year residency requirement, and United States District Court for the District of Arizona entered judgment for alien. In second case, Pennsylvania's denial of general assistance to aliens was contested, and the United States District Court for the Eastern District of Pennsylvanian entered judgment for plaintiffs. In both cases, the state appealed. The Supreme Court, Mr. Justice Blackmun, "held that provisions of state welfare laws conditioning benefits on citizenship and imposing durational residency requirement on alien were violative of equal protection clause").

[113] *Id.*

[114] *Id.*

[115] Kovacic, *supra* note 106.

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] V.A. HB 1980 (2021).

largely conferred to minoritized people.

Consider the North Carolina eugenics program that forced Black women over 10 years to be sterilized in counties across the state with explicit designs to "breed [Black people] out" of North Carolina, specifically, and humanity generally.[120] More specifically, Professor Price and team in their empirical study found that "over the 1958-1968 time period North Carolina's eugenic sterilization was apparently tailored to asymptotically breed-out the offspring of a presumably genetically unfit and undesirable surplus black population" so they could not show up in the future. [121] Given the inhumane torture and the irreparable state sanctioned harm and violence of the state's program, the General Assembly of North Carolina passed a bill extraordinarily narrow denying eligible victims from repair and redress. The New York Times reinforces this claim when Bob Bollinger, a North Carolina lawyer, represented Black eugenics victims deemed ineligible for reparations under North Carolina's reparations statute.[122] He lamented that "You've [legislators] got to draw your reparations law broadly enough that you don't leave out the people you're trying to help."[123] He recounted that when the General Assembly of North Carolina enacted this legislation, the eligibility requirements for reparations seemed reasonable.[124] But after reparations requests under the statute came about, courts and legislatures denied victims' claims because the law as written only protected victims sterilized by one actor. Due to lawmakers' incomplete analysis of the breadth of injury, lawmakers were unaware that other actors sanctioned by the State also sterilized Black women. Consequently, some Black women who were victims of the sterilization surgeries, with the same irreversible injury, were deemed ineligible for reparations under the narrowed construction of the law. Nevertheless, Bollinger's frustration highlights the crux of this Article, including that all Black harm is not equal even in pain and suffering and that reparations laws often leave out equally harmed survivors, never making them whole.

As elected officials in their capacities as legislators, architects of the law, lawmakers' success "is based on three principal legislative functions-balancing power, representing constituencies, and lawmaking."[125] The national conference of state legislators (NCSL), penned by Professor Alan Rosenthal, poses the question to good legislative bodies "Do the members of your legislature provide effective constituent service...particularly to those who previously lacked membership in the legislative process?"[126] I maintain that according to the NCSL standard that former reparation statues and HERS arguably fail or minimally pass NCSL's standards. Thus, many constituents remain frustrated.

There are several reasons why frustration arises when legislators do not broadly draw reparations laws to encompass those harmed. The forthcoming sections will lift two

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[120] Gregory N. Price, William Darity & Rhonda V. Sharpe, *Did North Carolina Economically Breed-Out Blacks During its Historical Sterilization Campaign?* 15 American Review of Political Economy 1-21 (2020).
[121] *Id.*
[122] Adeel Hassan & Jack Healy, *America Has Tried Reparations Before. Here Is How It Went.*, The New York Times, June 19, 2019, https://www.nytimes.com/2019/06/19/us/reparations-slavery.html (last visited Feb 2, 2022)(discussing how in 2013, North Carolina passed a law intended to compensate the surviving victims among the 7,600 people who were sterilized. The victims were largely poor, disabled or African-American. State lawmakers set up a $10 million fund to compensate them. Conflicts then arose over who was eligible. "A state commission and state courts denied claims from relatives of victims who had died. Others were deemed ineligible because they had been sterilized by county welfare offices and not the state eugenics program").
[123] *Id.*
[124] Eric Mennel, *Payments Start For N.C. Eugenics Victims, But Many Won't Qualify*, National Public Radio WBEZ Chicago (2014), https://www.npr.org/sections/health-shots/2014/10/31/360355784/payments-start-for-n-c-eugenics-victims-but-many-wont-qualify (last visited Oct 8, 2021).
[125] Alan Rosenthal, *Beyond the intuition that says "I know one when I see one," how do you go about measuring the effectiveness of any given legislature?*, NCSL, https://www.ncsl.org/research/about-state-legislatures/the-good-legislature.aspx.
[126] *Id.*

examples from HERS that highlight, using archival evidence, Black peoples' frustrations and how under-inclusive and narrow the southeastern laws are.

A. Under-inclusion in Higher Education Redress Statutes

HERS across the southeast demonstrate that higher education institutions were highly involved in every aspect of chattel enslavement, degradation, and discrimination against Black people. As a result, several states are finally reckoning with the impact of their injuries on Black lives. Yet, it appears that state's interventions seem more concerned with limiting and restricting reparations, mitigating the cost of redress, and preserving the imperceptibility of the states' or universities' actions in Black degradation. While HERS demonstrate an applaudable legislative intent, these laws routinely have unintended ramifications that work adversely against their intended goals.

Other states could replace the two cases described below, but these statutes were of interest for several reasons. First, they each have expressed a goal in remedying past wrongs. Second, the legislation specifically implicates and has an expressed nexus to higher education. Lastly, each statute represents legislators' varying degrees of engagement in redress and comprehensiveness often enacted in this arena.

1. The City of Athens and the University of Georgia Resolution

On January 19, 2021, Athens and the University of Georgia (UGA) system signed a resolution supporting redress for Linnentown (a neighborhood destroyed and displaced because of UGA's urban renewal plans) and the Black communities harmed from UGA's urban renewal plan.[127] This urban renewal partnership between Athens and UGA effectively terrorized fifty Black families, dispossessed twenty-two acres, displaced dozens of businesses, and economically devastated groups of Black people.[128] In this process, as outlined in the resolution, UGA conspired, namely with the city of Athens, and lobbied state and federal officials to allow them to "clear out the total slum area" where Linnentown existed.[129] Unfortunately, instead of elected officials complying with their sworn oaths to serve all citizens, they chose to protect the interest of a few.[130] As a result of this partnership, Linnentown was demolished in the name of 'slum clearance' so that UGA could erect three luxury dormitories—Brumby, Russell, and Creswell Halls.[131] Utilizing intimidation, fear, and eminent domain, Athens removed the residents of Linnentown and offered $216,935 to the residents, which roughly translates on average $4,338 per family.[132] However, in some cases, some families received dramatically less. For example, Hattie Thomas Whitefield recounts that her father saved for years to buy their home and received a much more diminutive settlement, claiming that her family would never become homeowners again.[133] Hattie Thomas Whitefield's story is a clear example of intergenerational devastation. Put plainly, that same land, that same neighborhood's current land value, is worth more than $76 million, with a return on investment of 35,000

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[127] Athens Clarke Commission Linnentown Res. (2021) (enacted).
[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] Cohen, *supra* note ____.

percent and an annualized return of approximately $8.8 million.[134] While it remains unclear if Linnentown's economic value would have appreciated at the same rate as UGA's stolen land, it is indisputable that the land today would be worth more than what the residents invested.

While the tangible effects are overwhelmingly clear, Geneva Johnson, a survivor of the city of Athens and UGA's actions, acknowledges and displays the intangible and psychological impacts often left out of the conversation.[135] Ms. Johnson, when recounting the terroristic behavior of UGA, and the city of Athens often teared up, and her "voice [today still] would shake when she would talk about this thing that's happened, you know, 50, 60 years ago."[136] In her article, Mindy Thompson Fullilove notes that urban renewal or "clearance of slums" can cause ill health to victims.[137] She further exclaims that "urban renewal caused a great deal of stress, which has been implicated, at least anecdotally, in deaths among the elderly and aggravation of some kinds of existing illness."[138] While the most obvious consequences, including loss of money, loss of land, loss of social organization, and psychological trauma, remain evident, other latent implications flow from the "social paralysis of dispossession and collapse of the [victims'] political action."[139]

Thus, as a result of direct harm to the people of Linnentown, legislative redress in partnership with UGA was rightfully offered. However, my critique centers on the narrow tailoring of the legislation creating the redress to absolve Athens and UGA from their plight of relentless degradation to Black people over the centuries. That is to say, this legislation as crafted confines redress narrowly to the residents and descendants of Linnentown and yet ignores other instances where the University of Georgia System conspired and conducted other acts of equivalent or more significant harm. This is undergirded by the frustration of District 1 Commissioner Patrick Davenport who called the resolution an "insult" to Black people.[140] He further lamented that he does not understand why Linnentown is "being put on a pedestal" when there are more incidents of similar actions against Black communities."[141] I think this resolution is an insult to all the [Black] people who have suffered grievances," said Davenport.[142]

When woven together, Davenport's comments support the claim that the City of Athens and the University System of Georgia have a long history within the Black community of unfairly acquiring property through eminent domain. Furthermore, it also illustrates other residents' anger and frustration because legislators did not include them in legislation. For example, archival evidence from the University of Georgia's Board of Trustee minutes discloses that Linnentown was not the only tract of land the University

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[134] *See* Athens Clarke Commission Linnentown Res. (2021) (enacted) ("WHEREAS, by 1966, the City of Athens had sold all Linnentown properties to the University System of Georgia for $216,935,[19] and by 2019, the University's current land value plus improvement value of this property totaled $76 million for a return on investment of 35,000 percent with an annualized return of approximately $8.8 million (11.6 percent per annum").

[135] Cohen, *supra* note ___.

[136] *Id*.

[137] Mindy Thompson Fullilove, *Root shock: The consequences of African American dispossession*, 78 J. Urban Health Bull. N. Y. Acad. Med. 72–80 (2001) (discussing urban renewal as one of the processes that contributed to deurbanization of American cities. She further discusses urban renewal's aim in "clearance" of "blight" and "slum" areas so that they could be rebuilt for new uses other than housing the poor. Most importantly, Fullilove draws attention to both the short-term and long-term consequences that flow from urban renewal plans).

[138] *Id*. at 74.

[139] *Id*. at 72.

[140] Jake Drunkman, *Athens Commission passes Linnentown Resolution*, The Red and Black (2021), https://www.redandblack.com/athensnews/athens-commission-passes-linnentown-resolution/article_5cf1ae56-70e0-11eb-9ddc-db80765f8c16.html (last visited Oct 4, 2021).

[141] *Id*.

[142] *Id*.

divested from Black people.[143] The 1920 minutes reveal that the University needed to buy the Negro property "abutting our grounds and contiguous to the new Woman's Building."[144] The University agreed to purchase the "Negro property," also within the city of Athens, as soon as possible for $25,000 as they claimed it "was essential to the protection of our property and the safeguarding of the young [white] women in our charge."[145] As a result, the University forced Black people out of their land to build a new women's building and a "safer environment."[146] Interestingly enough, in the same meeting, the Board also approved another $25,000 purchase to equip the University with necessary, proper fire equipment. By its very nature, the Board then decided that the families, businesses, neighborhoods, and communities presumably on "Negro property" was no more valuable than fire protective equipment.

While the statute of focus is governed and enforced within the city of Athens (and has no direct authority of the University of Georgia System), it would be imprudent not to recognize the racial disinvestment patterns within the University of Georgia System whereby they not only terrorized the families in Athens, they also displaced and disturbed Black families and business owners at their satellite campuses across the state. Take for example, the Medical College of Georgia in Augusta, Georgia, the flagship medical school of the University System of Georgia, and one of the top 10 largest medical schools in the United States.[147] The University of Georgia System controlled medical school bought 25 acres of land in downtown Augusta, Georgia.[148] The medical school's President Harry Barron O'Rear purchased land across "Gwinnett Street to support this vision and asked the city of Augusta for assistance."[149] To modernize and lead Georgia's medical education and innovation, in 1962, the Board of Regents approved President O'Rear's plan, and the school purchased the 25 acres of land off of Laney Walker Boulevard.[150] The purchase commandeered land from the Laney Walker neighborhood. The historic neighborhood came into existence during the early 20th century from the Jim Crow "zoning" laws requiring Blacks and whites to settle in blocks designated by race quickly transforming the Laney-Walker District into Augusta's principal Black neighborhood.[151] With this land, the school built a Student Center, student housing and the Carl T. Sanders Research and Education Building.[152] As a part of the purchase, university archives do not reveal the 123 families of color that were displaced and forced to leave their homes and property.[153] The

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[143] University of Georgia, *Minutes of the Board of Trustees Volume VII 1915-1931* (1915), https://www.libs.uga.edu/hargrett/archives/trustees/trustees%201915-1931.pdf (last visited Feb 4, 2022)(discussing all university transactions from hiring to firing, campus enhancement plans, accreditation etc. The Minutes are the official university record of the business for the institution).

[144] *Id.*("An appropriation of a sufficient amount of money to purchase the negro property abutting on our grounds and contiguous to the new Woman's Building. We consider this essential to the protection of our property and the safeguarding of the young women in our charge").

[145] *Id.*

[146] *Id.*

[147] *About Medical College of Georgia (MCG),* MCG, https://www.augusta.edu/mcg/# (last visited March 3, 2022).

[148] *History of the Medical College of Georgia (MCG),* History, *https://www.augusta.edu/library/greenblatt/history/1970-1983.php* (last visited March 3, 2022).

[149] *Id.*

[150] *Id.*

[151] *Laney-Walker North Historic District,* Home, https://www.nps.gov/nr/travel/augusta/laneywalkerhd.html (last visited March 3, 2022).

[152] MCG, *supra* note ____.

[153] Robert K. Nelson & Edward L. Ayers, *Renewing Inequality,* Digital Scholarship Lab, https://dsl.richmond.edu/panorama/renewal/#view=0/0/1&viz=cartogram&cityview=pr&city=augustaGA&loc=15/33.4700/-81.9840&text=citing (last visited March 3, 2022).

medical school used similar tactics, like in the case of Athens, in partnering with the city of Augusta to ensure that the purchase be free from any political pressure or hesitation.[154]

Given the resemblance of the harm to the Linnentown residents, seeing that the residents and the descendants of the "Negro property" are not accounted for in reparation bills arguably renders this statute underinclusive. As previously discussed, the rights and benefits of laws have been extended to other members who are similarly situated as a matter of justice and fairness when a statute affirmatively orders a third party to confer a benefit to people unequally (e.g., *Moreno*).[155] In keeping with that position, in looking at the residents of Linnentown, their harm is neither different nor more egregious; yet officials set out the repair for them. When the city officials make such determinations, one must interrogate whether the benefit should also be extended to those of or any other neighborhood like the "Negro property" neighborhood.

As a matter of justice and fairness, other atrocities between UGA and the City of Athens exist where benefits could arguably be extended.[156] Another prominent and glaring example deemed unworthy of redress in legislation is slavery. Archives and historical documents reveal UGA itself did not own enslaved people but instead rented or employed enslaved Black people from neighboring enslavers, including the city.[157] Throughout its first decades, the University of Georgia relied on uncompensated labor from enslaved Athenians in its daily operations.[158] The industry of slavery was such an accepted practice that part of the student's tuition and fees included "servant's hire," according to an 1839-1840 catalog published in the Southern Banner. Additionally, the university's Board of Trustees' minutes routinely from 1794 until 1865 had a recurring budget line for enslaved labor.[159] Surprisingly, in some instances, UGA elected to lean out its academic offerings and faculty rather than enslaved labor, even at economically uncertain times for the university.[160] It is abundantly clear the city of Athens provided, in part, monetary incentives, land, and the enslaved labor that was foundational to UGA. As demonstrated, Athens and UGA have a long and rich history of Black degradation that spanned far beyond the confines of Linnentown described in the City of Athens and University of Georgia Resolution.[161] While UGA's degradation is demonstrated in proximity to Athens, it is also likely that UGA's degradation expanded past Athens and affected statewide practices and understandings of slavery.

Nevertheless, this academic exercise is not to compare and contrast the hurt and suffering of UGA victims to create an 'Olympics of oppression.'[162] But, instead, this work

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[154] *Id.*

[155] *U. S. Dep't of Agric. v. Moreno,* 413 U.S. 528, 93 S. Ct. 2821, 37 L. Ed. 2d 782 (1973).

[156] Archival evidence demonstrating UGA and City of Athens displaced another Black neighborhood east of the university, conducted exploratory surgeries on enslaved people and Black people in the early 1900s, implemented adverse admission practices to keep Black people from enrolling and matriculating at UGA, and purposefully allowed environmental catastrophes and injustices inside the Black neighboring communities.

[157] Chana Kai Lee, *A Fraught Reckoning: Exploring the History of Slavery at the University of Georgia*, 42 Public Hist. 12–27 (2020)**;** Marc Parry, *Buried History*, Chron. High. Educ. (2017).

[158] Prudential Committee Meeting Minutes, 1834-1857: pages 15-16, December 17, 1842, https://digihum.libs.uga.edu/items/show/152.

[159] *E.g.* University of Georgia Board of Trustees Minutes, Vol 2: page 187, August 5, 1828, https://digihum.libs.uga.edu/items/show/131; University of Georgia Board of Trustees Minutes, Vol 4: page 94, July 4, 1862, https://digihum.libs.uga.edu/items/show/146.

[160] *Id.*

[161] Athens Clarke Commission Linnentown Res. (2021) (enacted).

[162] A. Hancock, *Solidarity politics for millennials: A guide to ending the oppression Olympics* (2011)(describing Oppression Olympics as the idea that minoritized people are in competition of determining the relative weight of overall oppression of individuals or groups, based on identity. In other words, it is a phenomenon that compares which minority group has it worse).

demonstrates how people are excluded from redress and how the laws should be extended to provide benefits to them too. It also demonstrates the importance of promulgating inclusive legislation for all Black people injured by the university and its policies. As depicted, the resolution for redress sets an incomplete and arbitrary boundary limiting the groups of people who are entitled to redress so that it dismisses other individuals UGA and Athens gravely harmed. As such, this leaves members of the excluded community with more questions than answers. Questions like does this then mean that UGA and Athens only act worthy of redress is in Linnentown? Are other Black people's pain inflicted by UGA and Athens rendered as a necessary evil? Do their hurt and pain not matter? What does this legislation communicate to other families and descendants who have survived despite UGA and Athens' adverse actions?

This reductive narrative embedded in the Resolution diminishes both the City of Athens and UGA's role in Black degradation to one singular act–Linnentown. An incomplete review of the pain inflicted on Black people serves to exonerate–at least politically and socially–UGA's duty to remedy other harms to Black people.

2. H.B. 1980 Enslaved Ancestors College Access Scholarship and Memorial Program

Higher education redress statutes like the H.B. 1980 in Virginia demonstrate that the greater Virginia community in some sense is ready to atone for its past abuse toward Black people.[163] The City of Athens and UGA case illustrates that the narrowing of legislation's language, arbitrary boundaries, and hedging of activists' agenda tend to disqualify equally hurt or injured people, especially when HERS fail to contextualize an institution's role in slavery, degradation and discrimination. The Athens and UGA case demonstrate a mercurial standard that renders people's stories invisible and evokes significant frustration. Akin to Athens, Virginia's lawmakers in its ratification of H.B. 1980 evades integrality.

Local activists in Virginia demanded more ambitious steps from Virginia's universities to atone for their role in degrading Black people.[164] Unlike Athens resolution, which is a city statute, Virginia's State General Assembly signed H.B. 1980 into law on March 31, 2021.[165] This law establishes the Enslaved Ancestors College Access Scholarship and Memorial Program.[166] This law forces Longwood University, the University of Virginia, Virginia Commonwealth University, the Virginia Military Institute, and The College of William and Mary in Virginia to atone, in obscurity and faultily, for their role in slavery and discrimination.[167] This statute requires five public universities in Virginia to fulfill two items.[168] First, it requires that the universities identify and memorialize all *enslaved*

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[163] V.A. HB 1980 (2021).
[164] Lisa O'Malley, *As Virginia Colleges Begin Restitution Plans for Slavery, Widespread Reparations Remain in Question*, INSIGHT INTO DIVERSITY (2021), https://www.insightintodiversity.com/as-virginia-colleges-begin-restitution-plans-for-slavery-widespread-reparations-remain-in-question/ (last visited Feb 4, 2022); Susan Adams, *Virginia House Votes To Force Colleges To Make Slavery Reparations*, FORBES (2021), https://www.forbes.com/sites/susanadams/2021/02/05/virginia-house-votes-to-force-colleges-to-make-slavery-reparations/ (last visited Feb 4, 2022); Singh, *supra* note 37; STUDENT ACTIVISM, POLITICS, AND CAMPUS CLIMATE IN HIGHER EDUCATION, (Demetri L. Morgan & Charles H. F. Davis eds., 2019); P. R. Lockhart, *A Virginia seminary is the first school to create a reparations fund*, VOX (2019), https://www.vox.com/identities/2019/9/10/20859407/virginia-theological-seminary-reparations-slavery-segregation (last visited Feb 4, 2022).
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.*

individuals who *labored* on former and current university-controlled property.[169] Second, it requires that the universities provide a tangible benefit such as a college scholarship or community-based economic development program for individuals or specific communities with a demonstrated historical connection to slavery that "will empower families to be lifted out of the cycle of poverty."[170] These two individual clauses also render similarly situated Black people invisible and diminish universities' actions toward Black people to one act– slavery.

In analyzing the first clause of the statute separately, the individual had to have "labored" on the university campus for one to be worthy of identification and memorialization.[171] Superficially, this language reads relatively straightforward. Yet, in its simplicity, stories will likely be forgotten, given the unforgiving rigidity of the law, if it remains unchanged. To illustrate, archives and historical documentation maintain that the College of William and Mary participated in every aspect of chattel slavery.[172] They purchased enslaved people for labor, forced them to work their tobacco plantation, and insidiously sold enslaved people away from their families, even young children, who unlikely labored for the University given their age.[173] In fact, in 1777, John Carter, the Bursar, attempted to meet the University's economic demands advertised in the Virginia Gazette that "thirty likely Negroes [including children are] to be sold for ready money."[174] Taking the statute's words soberly, the sold children or people who did not "labor" on the campus would fall outside the law's confines. As a result, their stories, narrative, and existence would not materialize in the state's mandated memorialization.

This phenomenon also existed at other universities in Virginia. Archival history at the University of Virginia denotes that "approximately 40 percent of the known burials in the University's enslaved cemetery were young children."[175] This evidences that there were young babies who died even before they were obligated to labor. As an illustration, former University of Virginia Law Professor Minor notes that Edward, one of his enslaved babies, died May 7, 1863.[176] Therefore in applying the statute to cases like Edward, he and his collateral descendants would not be able to take under statute given that his life prematurely ended, likely due to the inhumane effects of slavery, before he labored on campus.[177] Put simply, the adverse effects of slavery killed him even before he was obligated to labor on the campus. Because of his premature death as an enslaved baby at the University of Virginia, the Enslaved Memorial Program designed to memorialize the enslaved people public universities in Virginia dehumanized would not be available to him.

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[169] *Id.*
[170] *Id.*
[171] *Id.*
[172] Jennifer Oast, *Institutional Slavery: Slaveholding Churches, Schools, Colleges, and Businesses in Virginia, 1680–1860* (2016).Jennifer Oast, *Institutional Slavery: Slaveholding Churches, Schools, Colleges, and Businesses in Virginia, 1680–1860* (2016); Terry L. Meyers, *Thinking about Slavery at the College of William and Mary*, 21 Wm Mary Bill Rts J 1215 (2012); Terry L. Meyers, *A first look at the worst: slavery and race relations at the College of William and Mary*, 16 Wm Mary Bill Rts J 1141 (2007); Slavery at William & Mary,William & Mary , https://www.wm.edu/sites/enslavedmemorial/slavery-at-wm/index.php (last visited Oct 8, 2021).
[173] *Virginia Gazette*, Purdue & Dixon, November 28, 1777.
[174] *Id.*
[175] Jefferson's University ... the early life, https://juel.iath.virginia.edu/Pavilion-X-exhibition (last visited Feb 4, 2022)(discussing the grave violence faculty, hotelkeepers, and students coerced and routinely subjected arbitrary acts of violence against enslaved people. As a result of their inhuman acts, "enslaved people navigated a frightful landscape of tyranny").
[176] Bromley, *Pavilion X Exhibit Highlights Slavery History of Its Former Residents*, UVA Today (2022), https://news.virginia.edu/content/pavilion-x-exhibit-highlights-slavery-history-its-former-residents (last visited Feb 4, 2022)(discussing former law professor John B. Minor and his tax records. In his tax records he keeps record of all of his enslaved people for the year.).
[177] *Id.*

Moreover, it is also evident that enslaved children served a substantive role in on-campus labor,[178] it is also apparent through academic literature that some of the enslaved children on campus were too young to "labor," and consequently, would be ineligible to take under the law. Take, for instance, Isiah, an enslaved baby who was born on the University of Virginia campus in February 1863.[179] Given his birth date, he would have only been two years old when the United States formally abolished slavery in December 1865.[180] As a result, Isiah would have been too young to "labor." There also were other young, enslaved children at the University of Virginia.[181] Consider Sarah, Addaide, and John, three enslaved babies born in 1861.[182] Given their birth date, they would have either been three or four years old when the United States formally abolished slavery in December 1865.

Although conditions were inhumane, Isaiah being two, Sarah, Addaide, and John being approximately three to four-year-old children would have likely been excluded from enslavement labor. This informed assertion is also buttressed by academic literature. While scholars debate the tasks and at what age enslaved children entered into the "field" or hard labor, Professor Damian Alan Pargas shares no account that suggests enslaved labor began before age four in his seminal piece tracing child enslavement.[183] This claim is corroborated by a survey from the Slave Narrative Collection that disclosed that only 48% of interviewees in the Slave Narrative Collection describe doing any form of work before the age of 7.[184] Closer to the University of Virginia experience, Thomas Jefferson, the founder of the University of Virginia,[185] at his home estate, Monticello,[186] also enslaved children and forced them to labor.[187] In a similar fashion, he too adopted age requirements for hard labor.[188] At Monticello, work for enslaved boys and girls seemed to actualize at ten.[189] Specifically, historical evidence claims that the Monticello estate assigned ten and above children to tasks—in the fields, nailery, and textile workshops, or the house.[190]

Although archival history does not reveal the exact age when child labor began at the University of Virginia, it is reasonable to assume that the University implemented similar standards. So, when applying HB 1980, none of the enslaved children, alongside the countless other children unnamed, would have fulfilled the "labored" on the university

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[178] Jefferson's University ... the early life, *supra* note 178 (claiming that "enslaved children served a critical role in the University's labor force and proved particularly vulnerable to abuse." The University bolsters this claim by proffering a saddening illustration. As case and point, in "1856 student Noble B. Noland beat a ten-year-old enslaved girl until she passed out. In a chilling defense of his actions, Noland insisted to the faculty "that the correction of the servant for impertinence, when done on the spot and under the spur of the provocation, is not only tolerated by society, but,…maybe defended on the ground of the necessity of maintaining due subordination"").

[179] Bromley, *supra* note 177.

[180] Patrick Rael, *Eighty-eight years: The long death of slavery in the United States, 1777-1865* (2015); James Oakes, *Freedom national: the destruction of slavery in the United States, 1861-1865* (2012); Michael Vorenberg, *Final freedom: The Civil War, the abolition of slavery, and the Thirteenth Amendment* (2001).

[181] Bromley, *supra* note 177.

[182] *Id.*

[183] Damian Alan Pargas, *From the Cradle to the Fields: Slave Childcare and Childhood in the Antebellum South*, 32 Slavery Abolit. 477–493 (2011) (Analyzing the lives of enslaved people and their children from different regions of the nineteenth-century American South. He also chronicles vividly the nature of pregnancy and childcare, as well as childhood itself (from birth until working age), differed by degrees. His study uncovers many unknown and unheard stories and facts surrounding slave childcare and childhood during that time).

[184] *David Barry Gaspar & Darlene Clark Hine, More than chattel: Black women and slavery in the Americas* (1996).

[185] Herbert Baxter Adams, *Thomas Jefferson and the University of Virginia* (1888); Mark R. Wenger, *Thomas Jefferson, the College of William and Mary, and the University of Virginia*, 103 Va. Mag. Hist. Biogr. 339–374 (1995).

[186] Jack McLaughlin, *Jefferson and Monticello: The Biography of a Builder* (1990); James A. Bear & Hamilton Wilcox Pierson, *Jefferson at Monticello* (1967).

[187] Slavery at Monticello FAQs- Work, Monticello, https://www.monticello.org/slavery/slavery-faqs/work/ (last visited Feb 4, 2022).

[188] *Id.*

[189] *Id.*

[190] *Id.*

campus requirement. Thus, the statute's "labor" term will ultimately render these children and their descendants ineligible from benefiting from HB 1980 memorialization.

Also, within the first clause, the statute only extends to those who were "enslaved individuals" who labored on former and current institutionally controlled grounds and property.[191] However, archival evidence demonstrates that universities also employed servants who were in some cases free people but contractually bound to similar inhumane conditions as enslaved people. In particular, the University of Virginia hired servants alongside its enslaved population. The servants, too, were expected to labor and were physically, sexually, and emotionally abused by faculty or students.[192] For example, William Carr, a university student in 1831, sexually harassed and assaulted both female slaves and free servants during his time there.[193] The university corroborates this claim and pens that this was not an uncommon practice for women servants to be sexually assaulted and abused.[194] The dual system or distinction between slaves and servants is also codified in official contemporary University of Virginia literature.[195] In recognizing the similarity of the servants' work to enslaved people, the punishment received, and the shared subjugation and maltreatment received via students and faculty, I assert there is no substantive difference in their roles. But for their distinct titles, both servants and enslaved people were essentially the same. Yet, given the rigidity of the statute, servants and their descendants are unlikely to take under either provision of the statute.

Like the other statutes the second clause[196] of this legislation is myopically focusing on the act of slavery—as to suggest this was the only harm these universities committed—ignoring other tangential implications and consequences that were born out of Black degradation. That is to say, the legislation ignored the continued harm the public universities in Virginia did to Black people. For example, archival records reveal that the University of Virginia also displaces majority-minority neighborhoods to build facilities for students and faculty.[197] Like the city of Athens and UGA, Charlottesville and UVA cleared out the “unsightly houses and businesses” in the sightline of the university.[198] University of Virginia's urban renewal[199]plan and the university’s expansion displaced more than 600 Black families and closed more than 30 Black-owned businesses.[200] It is abundantly clear that Black neighborhoods and Black people are expendable and viewed as ‘something to get rid of’ in the long history of Charlottesville and the UVA’s physical footprint. Verily, there exist several other examples where the University played a direct role in the physical destruction, displacement, and devaluing of Black neighborhoods.[201] So, while legislation should rightfully focus on slavery, it should also be comprehensive enough not to set a boundary rendering the residents of Vinegar Hill and other atrocities based on race as not worthy of redress and reconciliation.

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[191] V.A. HB 1980 (2021).
[192] Slavery at the University of Virginia Visitor’s Guide ,https://dei.virginia.edu/sites/g/files/jsddwu511/files/inline-files/SlaveryatUVaBrochure_FINAL.pdf.
[193] *Id.*
[194] *Id.*
[195] *Id.*
[196] As of this writing, the second section of the statute is currently under legislative review. I am cautious in offering any critique to the second section of the law as legislators intend to introduce more elements. However, I encourage Virginia’s legislature to ensure that whatever amendment they add to the bill ensures that the addition is inclusive in that it includes and extends to those harmed.
[197] *See infra* notes _____ and accompanying text.
[198] *See infra* notes _____ and accompanying text.
[199] *See infra* notes _____ and accompanying text.
[200] *See infra* notes _____ and accompanying text.
[201] *See infra* notes _____ and accompanying text.

To this end, while H.B. 1980 trends in an applaudable direction, it too dismisses other Black people injured who also have grievances toward these five institutions. When Virginia and other states ratify legislation that ignores the communities of Black people harmed, a simplistic, homogenous, and incomplete narrative of Black people's interaction with and among universities emerges. Put differently, limiting the community of people worthy of redress exasperates the distrust[202] Black people have within and towards higher education.

To this end, while one certainly cannot capture and share all of the classes of people who have experienced similar harms, it is important to advocate for more comprehensive legislation that is broad enough to help all of those who are similarly situated.

III. A Normative Path Forward

Accepting the Article's arguments, a logical question one would ask is what should be the next step in reconciling the tension in these statutes? Historically such analysis and interrogation of statutes happen when an invested party brings suit under the law and to the courts.[203] So, while this Article is no legal opinion, there are still options outside of judicial intervention that can help strengthen the statutes. As such, this part proffers some recommendations on how to help strengthen and deepen the impact of higher education redress statutes. Like other legal scholars, I too assert that when addressing problems relating to Black people and the law, the solution cannot just be legal.[204] The assortment of practical concerns within law, politics, and higher education–antiblackness and racism,[205]

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[202] David R. Johnson & Jared L. Peifer, *How Public Confidence in Higher Education Varies by Social Context*, 88 J. High. Educ. 619–644 (2017)**;** David E. Leveille, *Accountability in higher education: A public agenda for trust and cultural change* (2006); Kevin Fosnacht & Shannon Calderone, *Who Do Students Trust? An Exploratory Analysis of Undergraduates' Social Trust* (2020)(The study captures survey responses from 8,351 college students enrolled across 29 U.S. colleges and universities. The survey looked at trust across five categories: 1) college trust, 2) out-group trust, 3) social institutional trust, 4) media trust, and 5) civil society trust. Results show higher levels of distrust among students of color, especially Black students and students with different abilities, across almost every category. Also the results demonstrate a linear relationship between college trust and a sense of belonging. Given this correlation, it remains critical for colleges to examine this dynamic since students of color disproportionately noted mistrust).

[203] Kovacic, *supra* note 106.

[204] *E.g.,* Ossei-Owusu, *supra* note 33.

[205] Dian Squire, Bianca C Williams & Frank Tuitt, *Plantation Politics and Neoliberal Racism in Higher Education: A Framework for Reconstructing Anti-Racist Institutions*, 120 Teach. Coll. Rec. 1–19 (2018)(explores the ways that racism and colonialism are foundational to the construction of institutions of higher education. It further explores the plantation politics revealing parallel organizational and cultural norms between contemporary higher education institutions and slave plantations); Garibay, West, and Mathis, *supra* note 86; Garibay and Mathis, *supra* note 86; Dancy, Edwards, and Earl Davis, *supra* note 86; Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 Theory Pract. 11–19 (2016)(arguing that discourse and policy processes in education must grapple with cultural disregard for and disgust with blackness. He also contends that deeply embedded within racialized policy discourses is not merely a concern about disproportionality or inequality, but also a concern with the bodies of Black people, the signification of (their) Blackness, and the threat posed by "the Black" to the educational well-being of other students); Walter R. Allen et al., *From Bakke to Fisher: African American students in US higher education over forty years*, 4 RSF Russell Sage Found. J. Soc. Sci. 41–72 (2018); Jalil Bishop Mustaffa, *Mapping Violence, Naming Life: A History of Anti-Black Oppression in the Higher Education System*, 30 Int. J. Qual. Stud. Educ. 711–727 (2017)(higher education theorist Jalil Mustaffa deems universities and colleges as sites of education violence, wherein "Black people's lives have been limited and ended" due to universities' actions); Shaun R. Harper & Sylvia Hurtado, *Nine themes in campus racial climates and implications for institutional transformation*, 2007 New Dir. Stud. Serv. 7–24 (2007); Gwendolyn Zoharah Simmons, *Racism in Higher Education*, 14 U. Fla. J.L. & Pub. Pol'y 29 (2002); Lori D. Patton, *Disrupting Postsecondary Prose: Toward a Critical Race Theory of Higher Education*, 51 Urban Educ. 315–342 (2016)(discussing three propositions about higher education and its relationship to white supremacy and racism: 1) that higher education itself is rooted in racism/White supremacy, the vestiges of which remain palatable; 2) that the functioning of U.S. higher education is intricately linked to imperialistic and capitalistic efforts that fuel the intersections of race, property, and oppression; and 3) that the U.S. higher education institutions serve as venues through which formal knowledge production rooted in racism/White supremacy is generated).

Black people's distrust of higher education,[206] political resistance to reparations,[207] general public's unwillingness in support for reparations,[208] and many others–are arguably too burdensome for one singular law to fix. Therefore, any attempt to strengthen HERS must be both full-proof and interdisciplinary.

Moreover, this section is not concerned with proposing and providing improved strategies for specific higher education institutions. I chose not to explore these suggestions as social scientists within higher education are already exploring those strategies.[209] Four southeastern states have already enacted some version of HERS,[210] with more looking to implement; consequently, the question of what specific schools are doing to help offer reparations is not a concern. However, I will focus my attention on how contemporary HERS can be improved and how states can introduce them. States with inadequate or no HERS replicate, encourage, and deepen inequality within the higher education systems.

A. States' Interdisciplinary Commission to Study and Develop Higher Education Reparations for Black People

I claim that the problem presented in this Article stems either from one, two or three things or a combination thereof. The first is that the legislature within these states are denying the totality of higher education's role in Black people's degradation. Second, that legislators are either too frightened to rock the proverbial boat or lack support from colleagues.[211] Or third, that the legislature is ignorant to the breadth of the injury that higher education committed toward Black people. While one cannot proffer a solution for the first two problems other than forcing the legislators out by-election, one can substantively address the latter articulation of the problem.

Higher education scholars, historians, legislators, and members of the Black community must study higher education redress statutes as they present a significant opportunity in achieving fairness within the higher education system. Legal scholars also must analyze the statutes as they seem to highlight legal issues and theory.

As discussed, higher education redress statutes matter because they determine who the government offers apologies, support, and acknowledgment to and, conversely, who will not receive the government's benefit. Because of the line-drawing exercises states engage in within HERS, this Article calls for establishing a commission to study higher education's scope, breadth, and impact on Black lives. As a result, it will be able to comprehensively address the fundamental injustice, cruelty, brutality, and inhumanity of higher education in their local jurisdiction.

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[206] Kevin Fosnacht & Shannon Calderone, *Who Do Students Trust? An Exploratory Analysis of Undergraduates' Social Trust* (2020)(discussing how in the results of their study they observed two critical differences in college trust across student groups. The first is that with the exception of Asians, students of color (Black, Latina/o, multiracial, another race or ethnicity) exhibit substantially less trust in their college than White students. The difference is particularly notable among Black students. Second, Fosnacht and Calderone also observed sizeable differences by disability status. Students with a disability express lower college trust levels than able-identified students).

[207] Jeffrey Prager, *Do black lives matter? A psychoanalytic exploration of racism and American resistance to reparations*, 38 Polit. Psychol. 637–651 (2017); Taunya Lovell Banks, *Exploring White Resistance to Racial Reconciliation in the United States*, 55 Rutgers Rev 903 (2002); Thomas Craemer, *Framing Reparations*, 37 Policy Stud. J. 275–298 (2009); James R. Hackney Jr, *Ideological conflict, African American reparations, tort causation and the case for social welfare transformation*, 84 BUL Rev 1193 (2004).

[208] *Id.*

[209] Juan C. Garibay, Christopher L. Mathis & Christian P.L. West, *Black student views on higher education reparations at a university with an enslavement history*, 0 Race Ethn. Educ. 1–22 (2022).

[210] *See infra* notes _____ and accompanying text.

[211] *See infra* notes _____ and accompanying text.

The demonstrated consequences of HERS erode core understandings of equity and justice and present important questions. When the state chooses to act and rewrite its wrongs for its institution's involvement in slavery and other subsequently discriminating actions, it raises many questions. First, what exactly was the role of higher education institutions in the degradation of Black people? Second, what are local and state solutions for their higher education institutions' role in slavery and discrimination? Third, where should the boundary be drawn, if any, regarding higher education's harm.

To truthfully understand and answer these questions, the state must study and investigate through a commission the role and not wait for activists to present their particular harm, but rather think statewide instead of responding to each incident as they arise.

Higher education redress statutes also demonstrate the need for interdisciplinary experts in government, reparation and tax law, and legislative experts. In states where HERS was implemented and where HERS are pending, scholars in government and political science can provide meaningful analysis. For example, those scholars would be able to investigate trends or predictors of success in their states legislature that could help provide significant insight to local leaders who seek to introduce the bill to their colleagues in the legislative session. Legal scholars investigating reparations at a local, national, and international level can also help create a roadmap from case law and legal theory in crafting statutes that buffer interrogation and call for repealing or amendments. Tax law scholars could also help bring nuance and intelligibility to the relationship between local tax law and policy and reparations. Tax law scholars can help ensure that the people harmed are not paying for their own reparation. Lastly, in recognizing the divisiveness of reparations politically, legislative experts can help legislators employ the best tactics to pass higher education redress statutes in their state.

B. Statutory Reform

The next concerns surround successfully enacting HERS in states without them and improving existing statutes. Akin to drafting inclusive and comprehensive HERS, passing new HERS is both simple and complex. It is simple in the sense that well-drafted and inclusive HERS can quickly be drafted, adopted, and enacted rather seamlessly and promptly. Particularly given that bipartisan support has already helped get reparations and other HERS passed in some states.[212] HERS and other reparation bills may decreasingly face opposition as Americans begin to learn and digest the effects of many historical harms against Black people. At the same time, getting well-crafted inclusive HERS passed is not easy, as demonstrated by the states where dialogue has ceased primarily because some people see redress as threatening, meritless, and divisive. Lawmakers claim that these statutes will lessen their electability and wonder whether there is enough bipartisan support to pass.[213] Revealing the storied and comprehensive past of higher education could likely improve public interest because historically, as the public learned about grotesque racial atrocities, support for reconciliation seemed to follow. For example, as the residents of Athens learned more about Linnentown and UGA's treatment toward Linnentown's residents, there was a public outcry for reconciliation and redress in Athens.

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[212] *See infra* notes _____ and accompanying text.
[213] *See infra* notes _____ and accompanying text.

The other task is to develop existing statutes further. Most HERS have significant and articulable inadequacies,[214] including ambiguity, discriminatory practices against similarly situated people, unclear consequences if institutions fail to comply with the statutes, and many others, as discussed above.

Given this nexus, advocates for a basic framework of a model higher education redress statute that acknowledges some of these inadequacies while simultaneously aggregating the finest qualities of current laws. The basic framework should also propose additional provisions that are not found in existing HERS and requires explanation. One of particular focus is that I assert that universities should be fined due to violating the law. This may sound like a harsh consequence given the status of most universities as nonprofit organizations. However, many states already have laws that either revoke or suspend nonprofits 501(c)(3) Internal Revenue status for those who do not comply with the law and all its requirements.[215] The IRS "has six without really trying" ways in which the IRS can revoke one's status and also impose penalties and back taxes on nonprofits that break the rules.[216]

The impact of HERS on the injured party is still a question available for future research, but it is evident from the discussion above that HERS continues to discriminate and set arbitrary boundaries. As Garibay and colleagues note, individual institutional redress avenues are limited;[217] thus, imposing fines can be a potential catalyst in ensuring compliance with the law. Adding the provision of a fine could add legal teeth to existing statutes and help unenthused institutions earnestly toward fulfillment of the statute.

C. Other Considerations for Current and Future HERS

Considering the pitfalls and features of enacted HERS, I set guidelines for legislators to consider when promulgating these laws.

First, careful consideration should be given to how the legislative benefits proffered to the victims will be paid for and implemented. That is to say, legislators, similar to Virginia's bill, should disallow universities from using state resources (as the people who were/are injured contributed to that pool of resources) or increase tuition rates, student fees, or any other student-facing charge to cover the costs of the redress proffered. To require the colleges and universities to contribute from their reserve or find resources would be fairer than allowing the injured parties to pay for their redress.

Second, what is missing from current HERS is the careful consideration to both assessment and enforcement of the law. As most HERS currently read, there is much built-in ambiguity as to when universities must fulfill the statutes. In not specifying or proffering assessment tools, legislative bodies will allow universities and colleges the opportunity to take advantage of the ambiguity by taking liberties and extended times with fulfilling the statute. Similar to the historic *Brown v. Board of Education II* debacle whereby the United

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[214] *See infra* notes _____ and accompanying text.

[215] Gina M. Lavarda, *Nonprofits: Are You at Risk of Losing Your Tax-Exempt Status*, 94 Iowa Rev 1473 (2008); Keith S. Blair, *Praying for a Tax Break: Churches, Political Speech, and the Loss of Section 501 (c)(3) Tax Exempt Status*, 86 Denv UL Rev 405 (2008); Nonprofit Risk Mangement Center, *How to Lose Your 501(c)(3) Tax Exempt Status (Without Really Trying)*, Nonprofit Risk Management Center , https://nonprofitrisk.org/resources/articles/how-to-lose-your-501c3-tax-exempt-status-without-really-trying/ (last visited Feb 5, 2022).

[216] *Id*.

[217] Juan C. Garibay, Amalia Z. Dache, Christian P.L. West, & Christopher L. Mathis, *A Critical Analysis of Higher Education Reparations at Universities Founded Pre-Civil War* 13-23 (August 30, 2021) (unpublished manuscript) (on file with authors) (first empirical article that discusses the types of reparations U.S. higher education institutions have proposed/recommended to amend for their history of enslavement. It also discusses the number of U.S. higher education institutions who have proposed/recommended forms of reparations to amend their institution's history of enslavement).

States Supreme Court introduced the phrase with deliberate speed to curb the South from taking advantage of the courts' first ambiguous order one year before. In the same vein, legislators should also consider consequences to universities out of compliance with the statute. As currently enacted, the legislation fails to consider the appropriate consequence when universities do not promptly comply with the law. Typically, at common law, organizations who violate the law face fines, injunctions, damages, and any number of other unpleasant consequences. As such, careful consideration should be given to the consequences for non-compliance in universities' actions.

Conclusion

Although higher education redress status has circumvented serious in-depth scrutiny for a host of reasons, a growing group within the public rejects their current use and believes that a comprehensive structure must replace current laws. This Article provides descriptive insights into how HERS work and why they are a pressing issue. Importantly, this Article has shown how higher education redress efforts, while intending to promote reconciliation and redress, impose discriminatory practices and arbitrary boundaries on equally situated and harmed people. These inadequacies emerge as a reminder that higher education harmed in some of the most egregious ways. Higher education also reinforced that sentiment by rendering certain people's pain and harm unworthy of attention, ignoring their contribution to the foundational and subsequent success of higher education, and enacting undeveloped and inadequate legislation.

Ultimately, these statutes do very little to achieve states' interests in true reconciliation and redress. HERS, as currently passed, simply have appreciable inadequacies. This Article takes steps toward unpacking the complexities underlying higher education redress statutes.

Table 1. Statutes

Higher Education Redress Statues	
Statute Title	Statute Overview
Florida: FL HB 591	Rosewood Family Scholarship Program.— (1) There is a Rosewood Family Scholarship Program for the direct descendants of the Rosewood families, not to exceed 50 scholarships per year. (2) The Rosewood Family Scholarship Program shall be administered by the Department of Education.
Georgia: The City of Athens and the University of Georgia Resolution	In support of recognition and redress for Linnentown, its descendants, and Athens-Clarke County Black communities harmed by urban renewal; acknowledging the City of Athens' collaboration with the University System of Georgia in the destruction of the Linnentown community and the displacement of Black property owners through urban renewal; supporting the establishment of memorials and historical places in honor of Linnentown; supporting the allocation of funds in the annual budget for the economic and community development of historically impoverished communities; calling on the Georgia General Assembly to establish a formal body to address the legacy of slavery and segregation in the State of Georgia and to determine the appropriate forms of material redress.
Maryland: MD HB 1	(1) The state of Maryland wishes to provide all of its citizens with equal access to higher education at excellent and affordable public colleges and universities; (2) The General Assembly has carefully reviewed the memorandum opinions and orders of the District Court of Maryland… (3) the District Court found that the state failed to eliminate a traceable de jure era policy of unnecessary duplication of programs at HBCUs in the state that has exacerbated the racial identifiability of Maryland's HBCUs; (4) Maryland's HBCUS should receive additional support to remedy the findings of the district court; (5) the additional support shall be provided in the form of additional funding in the amount of $577,000,000…

Virginia: VA HB 1980	Establishes the Enslaved Ancestors College Access Scholarship and Memorial Program, whereby, with any source of funds other than state funds or tuition or fee increases, are required to annually (i) identify and memorialize, to the extent possible, all enslaved individuals who labored on former and current institutionally controlled grounds and property and (ii) provide a tangible benefit such as a college scholarship or community-based economic development program for individuals or specific communities with a demonstrated historic connection to slavery that will empower families to be lifted out of the cycle of poverty.