

SUPREME COURT OF UNITED STATES

Regents of the University OF California

Vs.

Allan Bakke.

No. 76-811.

Argued Oct. 12, 1977.

Decided June 28, 1978.

Mr. Justice POWELL concluded:

1. Title VI proscribes only those racial classifications that would violate the Equal Protection Clause if employed by a State or its agencies. Pp. 281-287.

2. Racial and ethnic classifications of any sort are inherently suspect and call for the most exacting judicial scrutiny. While the goal of achieving a diverse student body is sufficiently compelling to justify consideration of race in admissions decisions under some circumstances, petitioner's special admissions program, which forecloses consideration to persons like respondent, is unnecessary to the achievement of this compelling goal and therefore invalid under the Equal Protection Clause. Pp. 287-320.

3. Since petitioner could not satisfy its burden of proving that respondent would not have been admitted even if there had been no special admissions program, he must be admitted. P. 320.

Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN concluded:

1. Title VI proscribes only those racial classifications that would violate the Equal Protection Clause if employed by a State or its agencies. Pp. 328-355.

2.

3. Racial classifications call for strict judicial scrutiny. Nonetheless, the purpose of overcoming substantial, chronic minority underrepresentation in the medical profession is sufficiently important to justify petitioner's remedial use of race. Thus, the judgment below must be reversed in that it prohibits race from being used as a factor in university admissions. Pp. 355-379.
- 4.

Mr. Justice STEVENS, joined by THE CHIEF JUSTICE, Mr. Justice STEWART, and Mr. Justice REHNQUIST, being of the view that whether race can ever be a factor in an admissions policy is not an issue here; that Title VI applies; and that respondent was excluded from Davis in violation of Title VI, concurs in the Court's judgment insofar as it affirms the judgment of the court below ordering respondent admitted to Davis. Pp. 408-421.

Archibald Cox, Cambridge, Mass., for petitioner.

Sol. Gen. Wade H. McCree, Jr., Washington, D. C., for United States, as amicus curiae, by special leave of Court.

Reynold H. Colvin, San Francisco, Cal., for respondent.

[Amicus Curiae Information from pages 268-270 intentionally omitted]

Mr. Justice POWELL announced the judgment of the Court.

This case presents a challenge to the special admissions program of the petitioner, the Medical School of the University of California at Davis, which is designed to assure the admission of a specified number of students from certain minority groups. The Superior Court of California sustained respondent's challenge, holding that petitioner's program violated the California Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and the Equal Protection Clause of the Fourteenth Amendment. The court enjoined petitioner from considering respondent's race or the race of any other applicant in making admissions decisions. It refused, however, to order respondent's admission to the Medical School, holding that he had not carried his burden of proving that he would have been admitted but for the constitutional and statutory violations. The Supreme Court of California affirmed those portions of the trial court's judgment declaring the special admissions program unlawful and enjoining petitioner from considering the race of any applicant.** It modified that portion of the judgment denying respondent's requested injunction and directed the trial court to order his admission.

For the reasons stated in the following opinion, I believe that so much of the judgment of the California court as holds petitioner's special admissions program unlawful and directs that respondent be admitted to the Medical School must be affirmed. For the reasons expressed in a separate opinion, my Brothers THE CHIEF JUSTICE, Mr. Justice STEWART, Mr. Justice REHNQUIST and Mr. Justice STEVENS concur in this judgment.

**

Mr. Justice STEVENS views the judgment of the California court as limited to prohibiting the consideration of race only in passing upon Bakke's application. *Post*, at 408-411. It must be remembered, however, that petitioner here cross-complained in the trial court for a declaratory judgment that its special program was constitutional and it lost. The trial court's judgment that the special program was unlawful was affirmed by the California Supreme Court in an opinion which left no doubt that the reason for its holding was petitioner's use of race in consideration of *any candidate's* application. Moreover, in explaining the scope of its holding, the court quite clearly stated that petitioner was prohibited from taking race into account in any way in making admissions decisions:

"In addition, the University may properly as it in fact does, consider other factors in evaluating an applicant, such as the personal interview, recommendations, character, and matters relating to the needs of the profession and society, such as an applicant's professional goals. In short, the standards for admission employed by the University are not constitutionally infirm except to the extent that they are utilized in a racially discriminatory manner. Disadvantaged applicants of all races must be eligible for sympathetic consideration, and no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race. We reiterate, in view of the dissent's misinterpretation, that we do not compel the University to utilize only 'the highest objective academic credentials' as the criterion for admission." 18 Cal.3d 34, 54-55, 132 Cal.Rptr. 680, 693-694, 553 P.2d 1152, 1166 (1976) (footnote omitted).

This explicit statement makes it unreasonable to assume that the reach of the California court's judgment can be limited in the manner suggested by Mr. Justice STEVENS.

I also conclude for the reasons stated in the following opinion that the portion of the court's judgment enjoining petitioner from according any consideration to race in its admissions process must be reversed. For reasons expressed in separate opinions, my Brothers Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN concur in this judgment.

Affirmed in part and reversed in part.

I*

The Medical School of the University of California at Davis opened in 1968 with an entering class of 50 students. In 1971, the size of the entering class was increased to 100 students, a level at which it remains. No admissions program for disadvantaged or minority students existed when the school opened, and the first class contained three Asians but no blacks, no Mexican-Americans, and no American Indians. Over the next two years, the faculty devised a special admissions program to increase the representation of "disadvantaged" students in each Medical School class.¹ The special program consisted of a separate admissions system operating in coordination with the regular admissions process.

Under the regular admissions procedure, a candidate could submit his application to the Medical School beginning in July of the year preceding the academic year for which admission was sought. Record 149. Because of the large number of applications,² the admissions committee screened each one to select candidates for further consideration. Candidates whose overall undergraduate grade point averages fell below 2.5 on a scale of 4.0 were summarily rejected. *Id.*, at 63. About one out of six applicants was invited for a personal interview. *Ibid.* Following the interviews, each candidate was rated on a scale of 1 to 100 by his interviewers and four other members of the admissions committee. The rating embraced the interviewers' summaries, the candidate's overall grade point average, grade point average in science courses, scores on the Medical College Admissions Test (MCAT), letters of recommendation, extracurricular activities, and other biographical data. *Id.*, at 62. The ratings were added together to arrive at each candidate's "benchmark" score. Since five committee members rated each candidate in 1973, a perfect score was 500; in 1974, six members rated each candidate, so that a perfect score was 600. The full committee then reviewed the file and scores of each applicant and made offers of admission on a "rolling" basis.³ The chairman was responsible for placing names on the waiting list. They were not placed in strict numerical order; instead, the chairman had discretion to include persons with "special skills." *Id.*, at 63-64.

The special admissions program operated with a separate committee, a majority of whom were members of minority groups. *Id.*, at 163. On the 1973 application form, candidates were asked to indicate whether they wished to be considered as "economically and/or educationally disadvantaged" applicants; on the 1974 form the question was whether they wished to be considered as members of a "minority group," which the Medical School apparently viewed as "Blacks," "Chicanos," "Asians," and "American Indians." *Id.*, at 65-66, 146, 197, 203-205, 216-218. If these questions were answered affirmatively, the application was forwarded to the special admissions committee. No formal definition of "disadvantaged" was ever produced, *id.*, at 163-164, but the chairman of the special committee screened each application to see whether it reflected economic or educational deprivation.⁴ Having passed this initial hurdle, the applications then were rated by the special committee in a fashion similar to that used by the general admissions committee, except that special candidates did not have to meet the 2.5 grade point average cutoff applied to regular applicants. About one-fifth of the total number of special applicants were invited for interviews in 1973 and 1974.⁵ Following each interview, the special committee assigned each special applicant a benchmark score. The special committee then presented its top choices to the general admissions committee. The latter did not rate or compare the special candidates against the general applicants, *id.*, at 388, but could reject recommended special candidates for failure to meet course requirements or other specific deficiencies. *Id.*, at 171-172. The special committee continued to recommend

special applicants until a number prescribed by faculty vote were admitted. While the overall class size was still 50, the prescribed number was 8; in 1973 and 1974, when the class size had doubled to 100, the prescribed number of special admissions also doubled, to 16. *Id.*, at 164, 166.

From the year of the increase in class size—1971—through 1974, the special program resulted in the admission of 21 black students, 30 Mexican-Americans, and 12 Asians, for a total of 63 minority students. Over the same period, the regular admissions program produced 1 black, 6 Mexican-Americans, and 37 Asians, for a total of 44 minority students.⁶ Although disadvantaged whites applied to the special program in large numbers, see n. 5, *supra*, none received an offer of admission through that process. Indeed, in 1974, at least, the special committee explicitly considered only "disadvantaged" special applicants who were members of one of the designated minority groups. Record 171.

Allan Bakke is white male who applied to the Davis Medical School in both 1973 and 1974. In both years Bakke's application was considered under the general admissions program, and he received an interview. His 1973 interview was with Dr. Theodore C. West, who considered Bakke "a very desirable applicant to [the] medical school." *Id.*, at 225. Despite a strong benchmark score of 468 out of 500, Bakke was rejected. His application had come late in the year, and no applicants in the general admissions process with scores below 470 were accepted after Bakke's application was completed. *Id.*, at 69. There were four special admissions slots unfilled at that time however, for which Bakke was not considered. *Id.*, at 70. After his 1973 rejection, Bakke wrote to Dr. George H. Lowrey, Associate Dean and Chairman of the Admissions Committee, protesting that the special admissions program operated as a racial and ethnic quota. *id.*, AT 259.

Bakke's 1974 application was completed early in the year. *Id.*, at 70. His student interviewer gave him an overall rating of 94, finding him "friendly, well tempered, conscientious and delightful to speak with." *Id.*, at 229. His faculty interviewer was, by coincidence, the same Dr. Lowrey to whom he had written in protest of the special admissions program. Dr. Lowrey found Bakke "rather limited in his approach" to the problems of the medical profession and found disturbing Bakke's "very definite opinions which were based more on his personal viewpoints than upon a study of the total problem." *Id.*, at 226. Dr. Lowrey gave Bakke the lowest of his six ratings, an 86; his total was 549 out of 600. *Id.*, at 230. Again, Bakke's application was rejected. In neither year did the chairman of the admissions committee, Dr. Lowrey, exercise his discretion to place Bakke on the waiting list. *Id.*, at 64. In both years, applicants were admitted under the special program with grade point averages, MCAT scores, and benchmark scores significantly lower than Bakke's.

After the second rejection, Bakke filed the instant suit in the Superior Court of California.⁸ He sought mandatory, injunctive, and declaratory relief compelling his admission to the Medical School. He alleged that the Medical School's special admissions program operated to exclude him from the school on the basis of his race, in violation of his rights under the Equal Protection Clause of the Fourteenth Amendment,⁹ Art. I, § 21, of the California Constitution,¹⁰ and § 601 of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d.¹¹ The University cross-complained for a declaration that its special admissions program was lawful. The trial court found that the special program operated as a racial quota, because minority applicants in the special program were rated only against one another. Record 388 and 16 places in the class of 100 were reserved for them. *Id.*, at 295-296. Declaring that the University could not take race into account in

making admissions decisions, the trial court held the challenged program violative of the Federal Constitution, the State Constitution, and Title VI. The court refused to order Bakke's admission, however, holding that he had failed to carry his burden of proving that he would have been admitted but for the existence of the special program.

Bakke appealed from the portion of the trial court judgment denying him admission, and the University appealed from the decision that its special admissions program was unlawful and the order enjoining it from considering race in the processing of applications. The Supreme Court of California transferred the case directly from the trial court, "because of the importance of the issues involved." 18 Cal.3d 34, 39, 132 Cal.Rptr. 680, 684, 553 P.2d 1152, 1156 (1976). The California court accepted the findings of the trial court with respect to the University's program.¹² Because the special admissions program involved a racial classification, the Supreme Court held itself bound to apply strict scrutiny. *Id.*, at 49, 132 Cal.Rptr., at 690, 553 P.2d, at 1162-1163. It then turned to the goals the University presented as justifying the special program. Although the court agreed that the goals of integrating the medical profession and increasing the number of physicians willing to serve members of minority groups were compelling state interests, *id.*, at 53, 132 Cal.Rptr., at 693, 553 P.2d, at 1165, it concluded that the special admissions program was not the least intrusive means of achieving those goals. Without passing on the state constitutional or the federal statutory grounds cited in the trial court's judgment, the California court held that the Equal Protection Clause of the Fourteenth Amendment required that "no applicant may be rejected because of his race, in favor of another who is less qualified, as measured by standards applied without regard to race." *Id.*, at 55, 132 Cal.Rptr., at 694, 553 P.2d, at 1166.

Turning to Bakke's appeal, the court ruled that since Bakke had established that the University had discriminated against him on the basis of his race, the burden of proof shifted to the University to demonstrate that he would not have been admitted even in the absence of the special admissions program.¹³ *Id.*, at 63-64, 132 Cal.Rptr., at 699-700, 553 P.2d, at 1172. The court analogized Bakke's situation to that of a plaintiff under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-17 (1970 ed., Supp. V), see, e. g., *Franks v. Bowman Transportation Co.*, [1976] USSC 46; 424 U.S. 747, 772[1976] USSC 46; , 96 S.Ct. 1251, 1267, 47 L.Ed.2d 444 (1976). 18 Cal.3d, at 63-64, 132 Cal.Rptr., at 700, 553 P.2d, at 1172. On this basis, the court initially ordered a remand for the purpose of determining whether, under the newly allocated burden of proof, Bakke would have been admitted to either the 1973 or the 1974 entering class in the absence of the special admissions program. App. A to Application for Stay 48. In its petition for rehearing below, however, the University conceded its inability to carry that burden. App. B to Application for Stay A19-A20.¹⁴ The California court thereupon amended its opinion to direct that the trial court enter judgment ordering Bakke's admission to the Medical School. 18 Cal.3d, at 64, 132 Cal.Rptr., at 700, 553 P.2d, at 1172. That order was stayed pending review in this Court. 429 U.S. 953, 97 S.Ct. 573, 50 L.Ed.2d 321 (1976). We granted certiorari to consider the important constitutional issue. 429 U.S. 1090, 97 S.Ct. 1098, 51 L.Ed.2d 535 (1977).

II

In this Court the parties neither briefed nor argued the applicability of Title VI of the Civil Rights Act of 1964. Rather, as had the California court, they focused exclusively upon the validity of the special admissions program under the Equal Protection Clause. Because it was possible, however,

that a decision on Title VI might obviate resort to constitutional interpretation, see *Ashwander v. TVA*, 297 U.S. 288, 346-348[1936] USSC 36; , 56 S.Ct. 466, 80 L.Ed. 688 (1936) (concurring opinion), we requested supplementary briefing on the statutory issue. 434 U.S. 900, 98 S.Ct. 293, 54 L.Ed.2d 186 (1977).

A.

At the outset we face the question whether a right of action for private parties exists under Title VI. Respondent argues that there is a private right of action, invoking the test set forth in *Cort v. Ash*, [1975] USSC 119; 422 U.S. 66, 78[1975] USSC 119; , 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). He contends that the statute creates a federal right in his favor, that legislative history reveals an intent to permit private actions,¹⁵ that such actions would further the remedial purposes of the statute, and that enforcement of federal rights under the Civil Rights Act generally is not relegated to the States. In addition, he cites several lower court decisions which have recognized or assumed the existence of a private right of action.¹⁶ Petitioner denies the existence of a private right of action, arguing that the sole function of § 601, see n. 11, *supra*, was to establish a predicate for administrative action under § 602, 78 Stat. 252, 42 U.S.C. § 2000d-1.¹⁷ In its view, administrative curtailment of federal funds under that section was the only sanction to be imposed upon recipients that violated § 601. Petitioner also points out that Title VI contains no explicit grant of a private right of action, in contrast to Titles II, III, IV, and VII, of the same statute, 42 U.S.C. §§ 2000a-3(a), 2000b-2, 2000c-8, and 2000e-5(f) (1970 ed. and Supp. V).

We find it unnecessary to resolve this question in the instant case. The question of respondent's right to bring an action under Title VI was neither argued nor decided in either of the courts below, and this Court has been hesitant to review questions not addressed below. *McGoldrick v. Compagnie Generale Transatlantique*, [1940] USSC 53; 309 U.S. 430, 434-435[1940] USSC 53; , 60 S.Ct. 670, 672-673[1940] USSC 53; , 84 L.Ed. 849 (1940). See also *Massachusetts v. Westcott*, [1977] USSC 82; 431 U.S. 322, 97 S.Ct. 1755, 52 L.Ed.2d 349 (1977); *Cardinale v. Louisiana*, [1969] USSC 63; 394 U.S. 437, 439[1969] USSC 63; , 89 S.Ct. 1161, 1163[1969] USSC 63; , 22 L.Ed.2d 398 (1969). Cf. *Singleton v. Wulff*, [1976] USSC 161; 428 U.S. 106, 121[1976] USSC 161; , 96 S.Ct. 2868, 2877[1976] USSC 161; , 49 L.Ed.2d 826 (1976). We therefore do not address this difficult issue. Similarly, we need not pass upon petitioner's claim that private plaintiffs under Title VI must exhaust administrative remedies. We assume, only for the purposes of this case, that respondent has a right of action under Title VI. See *Lau v. Nichols*, [1974] USSC 14; 414 U.S. 563, 571 n. 2[1974] USSC 14; , 94 S.Ct. 786, 790[1974] USSC 14; , 39 L.Ed.2d 1 (1974) (STEWART, J., concurring in result).

B

The language of § 601, 78 Stat. 252, like that of the Equal Protection Clause, is majestic in its sweep:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The concept of "discrimination," like the phrase "equal protection of the laws," is susceptible of varying interpretations, for as Mr. Justice Holmes declared, "[a] word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according

to the circumstances and the time in which it is used." *Towne v. Eisner*, [1918] USSC 7; 245 U.S. 418, 425[1918] USSC 7; , 38 S.Ct. 158, 159[1918] USSC 7; , 62 L.Ed. 372 (1918). We must, therefore, seek whatever aid is available in determining the precise meaning of the statute before us. *Train v. Colorado Public Interest Research Group*, [1976] USSC 96; 426 U.S. 1, 10[1976] USSC 96; , 96 S.Ct. 1938, 1942, 48 L.Ed.2d 434 (1976), quoting *United States v. American Trucking Assns.*, [1940] USSC 100; 310 U.S. 534, 543-544[1940] USSC 100; , 60 S.Ct. 1059, 1063-1064[1940] USSC 100; , 84 L.Ed. 1345 (1940). Examination of the voluminous legislative history of Title VI reveals a congressional intent to halt federal funding of entities that violate a prohibition of racial discrimination similar to that of the Constitution. Although isolated statements of various legislators taken out of context, can be marshaled in support of the proposition that § 601 enacted a purely color-blind scheme,¹⁹ without regard to the reach of the Equal Protection Clause, these comments must be read against the background of both the problem that Congress was addressing and the broader view of the statute that emerges from a full examination of the legislative debates.

The problem confronting Congress was discrimination against Negro citizens at the hands of recipients of federal moneys. Indeed, the color blindness pronouncements cited in the margin at n. 19, generally occur in the midst of extended remarks dealing with the evils of segregation in federally funded programs. Over and over again, proponents of the bill detailed the plight of Negroes seeking equal treatment in such programs.²⁰ There simply was no reason for Congress to consider the validity of hypothetical preferences that might be accorded minority citizens; the legislators were dealing with the real and pressing problem of how to guarantee those citizens equal treatment.

In addressing that problem, supporters of Title VI repeatedly declared that the bill enacted constitutional principles. For example, Representative Celler, the Chairman of the House Judiciary Committee and floor manager of the legislation in the House, emphasized this in introducing the bill:

"The bill would offer assurance that hospitals financed by Federal money would not deny adequate care to Negroes. It would prevent abuse of food distribution programs whereby Negroes have been known to be denied food surplus supplies when white persons were given such food. It would assure Negroes the benefits now accorded only white students in programs of high[er] education financed by Federal funds. It would, in short, *assure the existing right to equal treatment* in the enjoyment of Federal funds. It would not destroy any rights of private property or freedom of association." 110 Cong.Rec. 1519 (1964) (emphasis added).

Other sponsors shared Representative Celler's view that Title VI embodied constitutional principles.

In the Senate, Senator Humphrey declared that the purpose of Title VI was "to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation." *Id.*, at 6544. Senator Ribicoff agreed that Title VI embraced the constitutional standard: "Basically, there is a constitutional restriction against discrimination in the use of federal funds; and title VI simply spells out the procedure to be used in enforcing that restriction." *Id.*, at 13333. Other Senators expressed similar views.

Further evidence of the incorporation of a constitutional standard into Title VI appears in the repeated refusals of the legislation's supporters precisely to define the term "discrimination." Opponents sharply criticized this failure, but proponents of the bill merely replied that the meaning of "discrimination" would be made clear by reference to the Constitution or other existing law. For example, Senator Humphrey noted the relevance of the Constitution:

"As I have said, the bill has a simple purpose. That purpose is to give fellow citizens—Negroes—the same rights and opportunities that white people take for granted. This is no more than what was preached by the prophets, and by Christ Himself. It is no more than what our Constitution guarantees." *Id.*, at 6553.

In view of the clear legislative intent, Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment.

III

A.

Petitioner does not deny that decisions based on race or ethnic origin by faculties and administrations of state universities are reviewable under the Fourteenth Amendment. See, e. g., *Missouri ex rel. Gaines v. Canada*, [1938] USSC 190; 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208 (1938); *Sipuel v. Board of Regents*, [1948] USSC 5; 332 U.S. 631, 68 S.Ct. 299, 92 L.Ed. 247 (1948); *Sweatt v. Painter*, [1950] USSC 78; 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950); *McLaurin v. Oklahoma State Regents*, [1950] USSC 62; 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149 (1950). For his part, respondent does not argue that all racial or ethnic classifications are *per se* invalid. See, e. g., *Hirabayashi v. United States*, [1943] USSC 134; 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943); *Korematsu v. United States*, [1945] USSC 43; 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944); *Lee v. Washington*, [1968] USSC 46; 390 U.S. 333, 334[1968] USSC 46; , 88 S.Ct. 994, 995[1968] USSC 46; , 19 L.Ed.2d 1212 (1968) (Black, Harlan, and Stewart, JJ., concurring); *United Jewish Organizations v. Carey*, [1977] USSC 34; 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977). The parties do disagree as to the level of judicial scrutiny to be applied to the special admissions program. Petitioner argues that the court below erred in applying strict scrutiny, as this inexact term has been applied in our cases. That level of review, petitioner asserts, should be reserved for classifications that disadvantage "discrete and insular minorities." See *United States v. Carolene Products Co.*, [1938] USSC 104; 304 U.S. 144, 152 n. 4[1938] USSC 104; , 58 S.Ct. 778, 783[1938] USSC 104; , 82 L.Ed. 1234 (1938). Respondent, on the other hand, contends that the California court correctly rejected the notion that the degree of judicial scrutiny accorded a particular racial or ethnic classification hinges upon membership in a discrete and insular minority and duly recognized that the "rights established [by the Fourteenth Amendment] are personal rights." *Shelley v. Kraemer*, [1948] USSC 63; 334 U.S. 1, 22[1948] USSC 63; , 68 S.Ct. 836, 846[1948] USSC 63; , 92 L.Ed. 1161 (1948).

En route to this crucial battle over the scope of judicial review, the parties fight a sharp preliminary action over the proper characterization of the special admissions program. Petitioner prefers to view it as establishing a "goal" of minority representation in the Medical School. Respondent, echoing the

courts below, labels it a racial quota.

This semantic distinction is beside the point: The special admissions program is undeniably a classification based on race and ethnic background. To the extent that there existed a pool of at least minimally qualified minority applicants to fill the 16 special admissions seats, white applicants could compete only for 84 seats in the entering class, rather than the 100 open to minority applicants. Whether this limitation is described as a quota or a goal, it is a line drawn on the basis of race and ethnic status.

The guarantees of the Fourteenth Amendment extend to all persons. Its language is explicit: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." It is settled beyond question that the "rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights." *Shelley v. Kraemer, supra*, at 22, 68 S.Ct., at 846. Accord, *Missouri ex rel. Gaines v. Canada, supra*, 305 U.S., at 351, 57 S.Ct., at 237; *McCabe v. Atchison, T. & S.F.R. Co.*, [1914] USSC 252; 235 U.S. 151, 161-162[1914] USSC 252; , 35 S.Ct. 69, 71[1914] USSC 252; , 59 L.Ed. 169 (1914). The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.

Nevertheless, petitioner argues that the court below erred in applying strict scrutiny to the special admissions program because white males, such as respondent, are not a "discrete and insular minority" requiring extraordinary protection from the majoritarian political process. *Carolene Products Co., supra*, 304 U.S., at 152-153 n. 4, 58 S.Ct., at 783-784. This rationale, however, has never been invoked in our decisions as a prerequisite to subjecting racial or ethnic distinctions to strict scrutiny. Nor has this Court held that discreteness and insularity constitute necessary preconditions to a holding that a particular classification is invidious.²⁸ See, e. g., *Skinner v. Oklahoma ex rel. Williamson*, [1942] USSC 129; 316 U.S. 535, 541[1942] USSC 129; , 62 S.Ct. 1110, 1113[1942] USSC 129; , 86 L.Ed. 1655 (1942); *Carrington v. Rash*, [1965] USSC 28; 380 U.S. 89, 94-97[1965] USSC 28; , 85 S.Ct. 775, 779-780[1965] USSC 28; , 13 L.Ed.2d 675 (1965). These characteristics may be relevant in deciding whether or not to add new types of classifications to the list of "suspect" categories or whether a particular classification survives close examination. See, e. g., *Massachusetts Board of Retirement v. Murgia*, [1976] USSC 141; 427 U.S. 307, 313[1976] USSC 141; , 96 S.Ct. 2562, 2566[1976] USSC 141; , 49 L.Ed.2d 520 (1976) (age); *San Antonio Independent School Dist. v. Rodriguez*, [1973] USSC 83; 411 U.S. 1, 28[1973] USSC 83; , 93 S.Ct. 1278, 1293, 36 L.Ed.2d 16 (1973) (wealth); *Graham v. Richardson*, [1971] USSC 127; 403 U.S. 365, 372[1971] USSC 127; , 91 S.Ct. 1848, 1852, 29 L.Ed.2d 534 (1971) (aliens). Racial and ethnic classifications, however, are subject to stringent examination without regard to these additional characteristics. We declared as much in the first cases explicitly to recognize racial distinctions as suspect:

"Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi*, 320 U.S., at 100, 63 S.Ct., at 1385.

"[A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny." *Korematsu*, 323 U.S., at 216, 65 S.Ct., at 194.

The Court has never questioned the validity of those pronouncements. Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.

B

This perception of racial and ethnic distinctions is rooted in our Nation's constitutional and demographic history. The Court's initial view of the Fourteenth Amendment was that its "one pervading purpose" was "the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised dominion over him." *Slaughter-House Cases*[1872] USSC 142; , 16 Wall. 36, 71[1872] USSC 142; , 21 L.Ed. 394 (1873). The Equal Protection Clause, however, was "[v]irtually strangled in infancy by post-civil-war judicial reactionism."²⁹ It was relegated to decades of relative desuetude while the Due Process Clause of the Fourteenth Amendment, after a short germinal period, flourished as a cornerstone in the Court's defense of property and liberty of contract. See, e. g., *Mugler v. Kansas*, [1887] USSC 277; 123 U.S. 623, 661[1887] USSC 277; , 8 S.Ct. 273, 297[1887] USSC 277; , 31 L.Ed. 205 (1887); *Allgeyer v. Louisiana*, [1897] USSC 54; 165 U.S. 578, 17 S.Ct. 427, 41 L.Ed. 832 (1897); *Lochner v. New York*, [1905] USSC 100; 198 U.S. 45, 25 S.Ct. 539, 49 L.Ed. 937 (1905). In that cause, the Fourteenth Amendment's "one pervading purpose" was displaced. See, e. g., *Plessy v. Ferguson*, [1896] USSC 151; 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896). It was only as the era of substantive due process came to a close, see, e. g., *Nebbia v. New York*, [1934] USSC 56; 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934); *West Coast Hotel Co. v. Parrish*, [1937] USSC 73; 300 U.S. 379, 57 S.Ct. 578, 81 L.Ed. 703 (1937), that the Equal Protection Clause began to attain a genuine measure of vitality, see, e. g., *United States v. Carolene Products*[1938] USSC 104; , 304 U.S. 144, 58 S.Ct. 778, 82 L.Ed. 1234 (1938); *Skinner v. Oklahoma ex rel. Williamson*, *supra*.

By that time it was no longer possible to peg the guarantees of the Fourteenth Amendment to the struggle for equality of one racial minority. During the dormancy of the Equal Protection Clause, the United States had become a Nation of minorities.³⁰ Each had to struggle³¹—and to some extent struggles still³²—to overcome the prejudices not of a monolithic majority, but of a "majority" composed of various minority groups of whom it was said perhaps unfairly in many cases—that a shared characteristic was a willingness to disadvantage other groups.³³ As the Nation filled with the stock of many lands, the reach of the Clause was gradually extended to all ethnic groups seeking protection from official discrimination. See *Strauder v. West Virginia*, [1879] USSC 165; 100 U.S.

303, 308[1879] USSC 165; , 25 L.Ed. 664 (1880) (Celtic Irishmen) (dictum); *Yick Wo v. Hopkins*, [1886] USSC 197; 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886) (Chinese); *Truax v. Raich*, [1915] USSC 229; 239 U.S. 33, 41[1915] USSC 229; , 36 S.Ct. 7, 10[1915] USSC 229; , 60 L.Ed. 131 (1915) (Austrian resident aliens); *Korematsu, supra* (Japanese); *Hernandez v. Texas*, [1954] USSC 39; 347 U.S. 475, 74 S.Ct. 667, 98 L.Ed. 866 (1954) (Mexican-Americans). The guarantees of equal protection, said the Court in *Yick Wo*, "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws." 118 U.S., at 369, 6 S.Ct., at 1070.

Although many of the Framers of the Fourteenth Amendment conceived of its primary function as bridging the vast distance between members of the Negro race and the white "majority," *Slaughter-House Cases, supra*, the Amendment itself was framed in universal terms, without reference to color, ethnic origin, or condition of prior servitude. As this Court recently remarked in interpreting the 1866 Civil Rights Act to extend to claims of racial discrimination against white persons, "the 39th Congress was intent upon establishing in the federal law a broader principle than would have been necessary simply to meet the particular and immediate plight of the newly freed Negro slaves." *McDonald v. Santa Fe Trail Transportation Co.*, [1976] USSC 142; 427 U.S. 273, 296[1976] USSC 142; , 96 S.Ct. 2574, 2586[1976] USSC 142; , 49 L.Ed.2d 493 (1976). And that legislation was specifically broadened in 1870 to ensure that "all persons," not merely "citizens," would enjoy equal rights under the law. See *Runyon v. McCrary*, [1976] USSC 146; 427 U.S. 160, 192-202[1976] USSC 146; , 96 S.Ct. 2586, 2605-2609[1976] USSC 146; , 49 L.Ed.2d 415 (1976) (WHITE, J., dissenting). Indeed, it is not unlikely that among the Framers were many who would have applauded a reading of the Equal Protection Clause that states a principle of universal application and is responsive to the racial, ethnic, and cultural diversity of the Nation. See, e. g., Cong.Globe, 39th Cong., 1st Sess., 1056 (1866) (remarks of Rep. Niblack); *id.*, at 2891-2892 (remarks of Sen. Conness); *id.*, 40th Cong., 2d Sess., 883 (1868) (remarks of Sen. Howe) (Fourteenth Amendment "protect[s] classes from class legislation"). See also Bickel, *The Original Understanding and the Segregation Decision*, 69 Harv.L.Rev. 1, 60-63 (1955).

Over the past 30 years, this Court has embarked upon the crucial mission of interpreting the Equal Protection Clause with the view of assuring to all persons "the protection of equal laws," *Yick Wo, supra*, 118 U.S., at 369, 6 S.Ct., at 1070, in a Nation confronting a legacy of slavery and racial discrimination. See, e. g., *Shelley v. Kraemer*, [1948] USSC 63; 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948); *Brown v. Board of Education*, [1954] USSC 42; 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); *Hills v. Gautreaux*, [1976] USSC 62; 425 U.S. 284, 96 S.Ct. 1538, 47 L.Ed.2d 792 (1976). Because the landmark decisions in this area arose in response to the continued exclusion of Negroes from the mainstream of American society, they could be characterized as involving discrimination by the "majority" white race against the Negro minority. But they need not be read as depending upon that characterization for their results. It suffices to say that "[o]ver the years, this Court has consistently repudiated '[d]istinctions between citizens solely because of their ancestry' as being 'odious to a free people whose institutions are founded upon the doctrine of equality.'" *Loving v. Virginia*, [1967] USSC 168; 388 U.S. 1, 11[1967] USSC 168; , 87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010 (1967), quoting *Hirabayashi*, 320 U.S., at 100, 63 S.Ct., at 1385.

Petitioner urges us to adopt for the first time a more restrictive view of the Equal Protection Clause and hold that discrimination against members of the white "majority" cannot be suspect if its purpose can be characterized as "benign."³⁴ The clock of our liberties, however, cannot be turned back to 1868. *Brown v. Board of Education, supra*, 347 U.S., at 492, 74 S.Ct., at 690; accord, *Loving v. Virginia, supra*, 388 U.S., at 9, 87 S.Ct., at 1822. It is far too late to argue that the guarantee of equal protection to *all* persons permits the recognition of special wards entitled to a degree of protection greater than that accorded others.³⁵ "The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory'—that is, based upon differences between 'white' and Negro." *Hernandez*, 347 U.S., at 478, 74 S.Ct., at 670.

Once the artificial line of a "two-class theory" of the Fourteenth Amendment is put aside, the difficulties entailed in varying the level of judicial review according to a perceived "preferred" status of a particular racial or ethnic minority are intractable. The concepts of "majority" and "minority" necessarily reflect temporary arrangements and political judgments. As observed above, the white "majority" itself is composed of various minority groups, most of which can lay claim to a history of prior discrimination at the hands of the State and private individuals. Not all of these groups can receive preferential treatment and corresponding judicial tolerance of distinctions drawn in terms of race and nationality, for then the only "majority" left would be a new minority of white Anglo-Saxon Protestants. There is no principled basis for deciding which groups would merit "heightened judicial solicitude" and which would not.³⁶ Courts would be asked to evaluate the extent of the prejudice and consequent harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications at the expense of individuals belonging to other groups. Those classifications would be free from exacting judicial scrutiny. As these preferences began to have their desired effect, and the consequences of past discrimination were undone, new judicial rankings would be necessary. The kind of variable sociological and political analysis necessary to produce such rankings simply does not lie within the judicial competence—even if they otherwise were politically feasible and socially desirable.

Moreover, there are serious problems of justice connected with the idea of preference itself. First, it may not always be clear that a so-called preference is in fact benign. Courts may be asked to validate burdens imposed upon individual members of a particular group in order to advance the group's general interest. See *United Jewish Organizations v. Carey*, 430 U.S., at 172-173, 97 S.Ct., at 1013. (BRENNAN, J., concurring in part). Nothing in the Constitution supports the notion that individuals may be asked to suffer otherwise impermissible burdens in order to enhance the societal standing of their ethnic groups. Second, preferential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relationship to individual worth. See *DeFunis v. Odegaard*, [1974] USSC 75; 416 U.S. 312, 343[1974] USSC 75; , 94 S.Ct. 1704, 1719, 40 L.Ed.2d 164 (1974) (Douglas, J., dissenting). Third, there is a measure of inequity in forcing innocent persons in respondent's position to bear the burdens of redressing grievances not of their making.

By hitching the meaning of the Equal Protection Clause to these transitory considerations, we would be holding, as a constitutional principle, that judicial scrutiny of classifications touching on racial and ethnic background may vary with the ebb and flow of political forces. Disparate constitutional tolerance of such classifications well may serve to exacerbate racial and ethnic antagonisms rather than alleviate them. *United Jewish Organizations, supra*, 430 U.S., at 173-174, 97 S.Ct., at 1013-1014 (BRENNAN, J., concurring in part). Also, the mutability of a constitutional principle, based upon shifting political and social judgments, undermines the chances for consistent application of the Constitution from one generation to the next, a critical feature of its coherent interpretation. *Pollock v. Farmers' Loan & Trust Co.*, [1895] USSC 122; 157 U.S. 429, 650-651 [1895] USSC 122; , 15 S.Ct. 673, 716 [1895] USSC 122; , 39 L.Ed. 759 (1895) (White, J., dissenting). In expounding the Constitution, the Court's role is to discern "principles sufficiently absolute to give them roots throughout the community and continuity over significant periods of time, and to lift them above the level of the pragmatic political judgments of a particular time and place." A. Cox, *The Role of the Supreme Court in American Government* 114 (1976).

If it is the individual who is entitled to judicial protection against classifications based upon his racial or ethnic background because such distinctions impinge upon personal rights, rather than the individual only because of his membership in a particular group, then constitutional standards may be applied consistently. Political judgments regarding the necessity for the particular classification may be weighed in the constitutional balance, *Korematsu v. United States*, [1945] USSC 43; 323 U.S. 214, 65 S.Ct. 193, 89 L.Ed. 194 (1944), but the standard of justification will remain constant. This is as it should be, since those political judgments are the product of rough compromise struck by contending groups within the democratic process.³⁸ When they touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest. The Constitution guarantees that right to every person regardless of his background. *Shelley v. Kraemer*, 334 U.S., at 22, 68 S.Ct., at 846; *Missouri ex rel. Gaines v. Canada*, 305 U.S., at 351, 59 S.Ct., at 237.

C

Petitioner contends that on several occasions this Court has approved preferential classifications without applying the most exacting scrutiny. Most of the cases upon which petitioner relies are drawn from three areas: school desegregation, employment discrimination, and sex discrimination. Each of the cases cited presented a situation materially different from the facts of this case.

The school desegregation cases are inapposite. Each involved remedies for clearly determined constitutional violations. *E. g.*, *Swann v. Charlotte-Mecklenburg Board of Education*, [1971] USSC 121; 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971); *McDaniel v. Barresi*, [1971] USSC 74; 402 U.S. 39, 91 S.Ct. 1287, 28 L.Ed.2d 582 (1971); *Green v. County School Board*, [1968] USSC 103; 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968). Racial classifications thus were designed as remedies for the vindication of constitutional entitlement.³⁹ Moreover, the scope of the remedies was not permitted to exceed the extent of the violations. *E. g.*, *Dayton Board of Education v. Brinkman*, [1977] USSC 142; 433 U.S. 406, 97 S.Ct. 2766, 53 L.Ed.2d 851 (1977); *Milliken v. Bradley*, [1974] USSC 162; 418 U.S. 717, 94 S.Ct. 3112, 41 L.Ed.2d 1069 (1974); see *Pasadena*

City Board of Education v. Spangler, [1976] USSC 152; 427 U.S. 424, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976). See also *Austin Independent School Dist. v. United States*, 429 U.S. 990, 991-995, 97 S.Ct. 517-519, 50 L.Ed.2d 603 (1976) (POWELL, J., concurring). Here, there was no judicial determination of constitutional violation as a predicate for the formulation of a remedial classification.

The employment discrimination cases also do not advance petitioner's cause. For example, in *Franks v. Bowman Transportation Co.*, [1976] USSC 46; 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976), we approved a retroactive award of seniority to a class of Negro truckdrivers who had been the victims of discrimination—not just by society at large, but by the respondent in that case. While this relief imposed some burdens on other employees, it was held necessary " 'to make [the victims] whole for injuries suffered on account of unlawful employment discrimination.' " *Id.*, at 763, 96 S.Ct., at 1264, quoting *Albemarle Paper Co. v. Moody*, [1975] USSC 134; 422 U.S. 405, 418[1975] USSC 134; , 95 S.Ct. 2362, 2372[1975] USSC 134; , 45 L.Ed.2d 280 (1975). The Courts of Appeals have fashioned various types of racial preferences as remedies for constitutional or statutory violations resulting in identified, race-based injuries to individuals held entitled to the preference. *E. g.*, *Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commission*, [1973] USCA2 462; 482 F.2d 1333 (CA2 1973); *Carter v. Gallagher*, [1972] USCA8 9; 452 F.2d 315 (CA8 1972), modified on rehearing en banc, *id.*, at 327. Such preferences also have been upheld where a legislative or administrative body charged with the responsibility made determinations of past discrimination by the industries affected, and fashioned remedies deemed appropriate to rectify the discrimination. *E. g.*, *Contractors Association of Eastern Pennsylvania v. Secretary of Labor*, [1971] USCA3 242; 442 F.2d 159 (C.A.3), cert. denied, 404 U.S. 854, 92 S.Ct. 98, 30 L.Ed.2d 95 (1971); *Associated General Contractors of Massachusetts, Inc. v. Altshuler*, [1974] USCA1 105; 490 F.2d 9 (C.A.1 1973), cert. denied, 416 U.S. 957, 94 S.Ct. 1971, 40 L.Ed.2d 307 (1974); cf. *Katzenbach v. Morgan*, [1966] USSC 120; 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966). But we have never approved preferential classifications in the absence of proved constitutional or statutory violations.

Nor is petitioner's view as to the applicable standard supported by the fact that gender-based classifications are not subjected to this level of scrutiny. *E.G.*, *Califano v. Webster*, [1977] USSC 41; 430 U.S. 313, 316-317[1977] USSC 41; , 97 S.Ct. 1192, 1194-1195[1977] USSC 41; , 51 L.Ed.2d 360 (1977); *Craig v. Boren*, [1976] USSC 213; 429 U.S. 190, 211[1976] USSC 213; , 97 S.Ct. 451, 464[1976] USSC 213; , 50 L.Ed.2d 397 (1976) (POWELL, J., concurring). Gender-based distinctions are less likely to create the analytical and practical problems present in preferential programs premised on racial or ethnic criteria. With respect to gender there are only two possible classifications. The incidence of the burdens imposed by preferential classifications is clear. There are no rival groups which can claim that they, too, are entitled to preferential treatment. Classwide questions as to the group suffering previous injury and groups which fairly can be burdened are relatively manageable for reviewing courts. See, *e. g.*, *Califano v. Goldfarb*, [1977] USSC 35; 430 U.S. 199, 212-217[1977] USSC 35; , 97 S.Ct. 1021, 1029-1032[1977] USSC 35; , 51 L.Ed.2d 270 (1977); *Weinberger v. Wiesenfeld*, [1975] USSC 58; 420 U.S. 636, 645[1975] USSC 58; , 95 S.Ct. 1225, 1231, 43 L.Ed.2d 514 (1975). The resolution of these same questions in the context of racial and ethnic preferences presents far more complex and intractable problems than gender-based classifications. More importantly, the perception of racial classifications as inherently odious stems

from a lengthy and tragic history that gender-based classifications do not share. In sum, the Court has never viewed such classification as inherently suspect or as comparable to racial or ethnic classifications for the purpose of equal protection analysis.

Petitioner also cites *Lau v. Nichols*, [1974] USSC 14; 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), in support of the proposition that discrimination favoring racial or ethnic minorities has received judicial approval without the exacting inquiry ordinarily accorded "suspect" classifications. In *Lau*, we held that the failure of the San Francisco school system to provide remedial English instruction for some 1,800 students of oriental ancestry who spoke no English amounted to a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the regulations promulgated thereunder. Those regulations required remedial instruction where inability to understand English excluded children of foreign ancestry from participation in educational programs. 414 U.S., at 568, 94 S.Ct., at 789. Because we found that the students in *Lau* were denied "a meaningful opportunity to participate in the educational program," *ibid.*, we remanded for the fashioning of a remedial order.

Lau provides little support for petitioner's argument. The decision rested solely on the statute, which had been construed by the responsible administrative agency to reach educational practices "which have the effect of subjecting individuals to discrimination," *ibid.* We stated: "Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education." *Id.*, at 566, 94 S.Ct., at 788. Moreover, the "preference" approved did not result in the denial of the relevant benefit—"meaningful opportunity to participate in the educational program"—to anyone else. No other student was deprived by that preference of the ability to participate in San Francisco's school system, and the applicable regulations required similar assistance for all students who suffered similar linguistic deficiencies. *Id.*, at 570-571, 94 S.Ct., at 790 (STEWART, J., concurring in result).

In a similar vein,⁴² petitioner contends that our recent decision in *United Jewish Organizations v. Carey*, [1977] USSC 34; 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977), indicates a willingness to approve racial classifications designed to benefit certain minorities, without denominating the classifications as "suspect." The State of New York had redrawn its reapportionment plan to meet objections of the Department of Justice under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (1970 ed., Supp. V). Specifically, voting districts were redrawn to enhance the electoral power of certain "nonwhite" voters found to have been the victims of unlawful "dilution" under the original reapportionment plan. *United Jewish Organizations*, like *Lau*, properly is viewed as a case in which the remedy for an administrative finding of discrimination encompassed measures to improve the previously disadvantaged group's ability to participate, without excluding individuals belonging to any other group from enjoyment of the relevant opportunity—meaningful participation in the electoral process.

In this case, unlike *Lau* and *United Jewish Organizations*, there has been no determination by the legislature or a responsible administrative agency that the University engaged in a discriminatory practice requiring remedial efforts. Moreover, the operation of petitioner's special admissions program is quite different from the remedial measures approved in those cases. It prefers the designated minority groups at the expense of other individuals who are totally foreclosed from competition for the 16 special admissions seats in every Medical School class. Because of that foreclosure, some individuals are excluded from enjoyment of a state-provided benefit—admission to the Medical School—they otherwise would receive. When a classification denies an individual opportunities or benefits enjoyed by others solely because of his race or ethnic background, it must be regarded as suspect. *E. g.*, *McLaurin v. Oklahoma State Regents*, 339 U.S., at 641-642, 70 S.Ct., at 853-854.

IV

We have held that in "order to justify the use of a suspect classification, a State must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest." *In re Griffiths*[1973] USSC 174; , 413 U.S. 717, 721-722[1973] USSC 174; , 93 S.Ct. 2851, 2855[1973] USSC 174; , 37 L.Ed.2d 910 (1973) (footnotes omitted); *Loving v. Virginia*, 388 U.S., at 11, 87 S.Ct., at 1823; *McLaughlin v. Florida*, [1964] USSC 223; 379 U.S. 184, 196[1964] USSC 223; , 85 S.Ct. 283, 290[1964] USSC 223; , 13 L.Ed.2d 222 (1964). The special admissions program purports to serve the purposes of: (i) "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession," Brief for Petitioner 32; (ii) countering the effects of societal discrimination;⁴³ (iii) increasing the number of physicians who will practice in communities currently underserved; and (iv) obtaining the educational benefits that flow from an ethnically diverse student body. It is necessary to decide which, if any, of these purposes is substantial enough to support the use of a suspect classification.

* If petitioner's purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids. *E. g.*, *Loving v. Virginia*, *supra*, 388 U.S., at 11, 87 S.Ct., at 1823; *McLaughlin v. Florida*, *supra*, 379 U.S., at 196, 85 S.Ct., at 290; *Brown v. Board of Education*, [1954] USSC 42; 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

B

The State certainly has a legitimate and substantial interest in ameliorating, or eliminating where feasible, the disabling effects of identified discrimination. The line of school desegregation cases, commencing with *Brown*, attests to the importance of this state goal and the commitment of the judiciary to affirm all lawful means toward its attainment. In the school cases, the States were required by court order to redress the wrongs worked by specific instances of racial discrimination. That goal was far more focused than the remedying of the effects of "societal discrimination," an amorphous concept of injury that may be ageless in its reach into the past.

We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations. See, e. g., *Teamsters v. United States*[1977] USSC 90; , 431 U.S. 324, 367-376[1977] USSC 90; , 97 S.Ct. 1843, 1870-1875, 52 L.Ed.2d 396 (1977); *United Jewish Organizations*, 430 U.S., at 155-156, 97 S.Ct., at 1004-1005; *South Carolina v. Katzenbach*, [1966] USSC 46; 383 U.S. 301, 308[1966] USSC 46; , 86 S.Ct. 803, 808[1966] USSC 46; , 15 L.Ed.2d 769 (1966). After such findings have been made, the governmental interest in preferring members of the injured groups at the expense of others is substantial, since the legal rights of the victims must be vindicated. In such a case, the extent of the injury and the consequent remedy will have been judicially, legislatively, or administratively defined. Also, the remedial action usually remains subject to continuing oversight to assure that it will work the least harm possible to other innocent persons competing for the benefit. Without such findings of constitutional or statutory violations,⁴⁴ it cannot be said that the government has any greater interest in helping one individual than in refraining from harming another. Thus, the government has no compelling justification for inflicting such harm.

Petitioner does not purport to have made, and is in no position to make, such findings. Its broad mission is education, not the formulation of any legislative policy or the adjudication of particular claims of illegality. For reasons similar to those stated in Part III of this opinion, isolated segments of our vast governmental structures are not competent to make those decisions, at least in the absence of legislative mandates and legislatively determined criteria.⁴⁵ Cf. *Hampton v. Mow Sun Wong*, [1976] USSC 93; 426 U.S. 88, 96 S.Ct. 1895, 48 L.Ed.2d 495 (1976); n. 41, *supra*. Before relying upon these sorts of findings in establishing a racial classification, a governmental body must have the authority and capability to establish, in the record, that the classification is responsive to identified discrimination. See, e. g., *Califano v. Webster*, 430 U.S., at 316-321, 97 S.Ct., at 1194-1197; *Califano v. Goldfarb*, 430 U.S., at 212-217, 97 S.Ct., at 1029-1032. Lacking this capability, petitioner has not carried its burden of justification on this issue.

Hence, the purpose of helping certain groups whom the faculty of the Davis Medical School perceived as victims of "societal discrimination" does not justify a classification that imposes disadvantages upon persons like respondent, who bear no responsibility or whatever harm the beneficiaries of the special admissions program are thought to have suffered. To hold otherwise would be to convert a remedy heretofore reserved for violations of legal rights into a privilege that all institutions throughout the Nation could grant at their pleasure to whatever groups are perceived as victims of societal discrimination. That is a step we have never approved. Cf. *Pasadena City Board of Education v. Spangler*, [1976] USSC 152; 427 U.S. 424, 96 S.Ct. 2697, 49 L.Ed.2d 599 (1976).

C

Petitioner identifies, as another purpose of its program, improving the delivery of health-care services to communities currently underserved. It may be assumed that in some situations a State's interest in facilitating the health care of its citizens is sufficiently compelling to support the use of a suspect classification. But there is virtually no evidence in the record indicating that petitioner's special admissions program is either needed or geared to promote that goal.⁴⁶ The court below

addressed this failure of proof:

"The University concedes it cannot assure that minority doctors who entered under the program, all of whom expressed an 'interest' in practicing in a disadvantaged community, will actually do so. It may be correct to assume that some of them will carry out this intention, and that it is more likely they will practice in minority communities than the average white doctor. (See Sandalow, *Racial Preferences in Higher Education: Political Responsibility and the Judicial Role* (1975) 42 U.Chi.L.Rev. 653, 688). Nevertheless, there are more precise and reliable ways to identify applicants who are genuinely interested in the medical problems of minorities than by race. An applicant of whatever race who has demonstrated his concern for disadvantaged minorities in the past and who declares that practice in such a community is his primary professional goal would be more likely to contribute to alleviation of the medical shortage than one who is chosen entirely on the basis of race and disadvantage. In short, there is no empirical data to demonstrate that any one race is more selflessly socially oriented or by contrast that another is more selfishly acquisitive." 18 Cal.3d, at 56, 132 Cal.Rptr., at 695, 553 P.2d, at 1167.

Petitioner simply has not carried its burden of demonstrating that it must prefer members of particular ethnic groups over all other individuals in order to promote better health-care delivery to deprived citizens. Indeed, petitioner has not shown that its preferential classification is likely to have any significant effect on the problem.

D

The fourth goal asserted by petitioner is the attainment of a diverse student body. This clearly is a constitutionally permissible goal for an institution of higher education. Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body. Mr. Justice Frankfurter summarized the "four essential freedoms" that constitute academic freedom:

" 'It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.' " *Sweezy v. New Hampshire*, [1957] USSC 84; 354 U.S. 234, 263[1957] USSC 84; , 77 S.Ct. 1203, 1218, 1 L.Ed.2d 1311 (1957) (concurring in result).

Our national commitment to the safeguarding of these freedoms within university communities was emphasized in *Keyishian v. Board of Regents*, [1967] USSC 25; 385 U.S. 589, 603[1967] USSC 25; , 87 S.Ct. 675, 683[1967] USSC 25; , 17 L.Ed.2d 629 (1967):

"Our Nation is deeply committed to safeguarding academic freedom which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues, [rather] than through any kind of authoritative selection.' *United States v. Associated Press*, D.C., 52 F.Supp. 362, 372."

The atmosphere of "speculation, experiment and creation"—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body.⁴⁸ As the Court noted in *Keyishian*, it is not too much to say that the "nation's future depends upon leaders trained through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.

Thus, in arguing that its universities must be accorded the right to select those students who will contribute the most to the "robust exchange of ideas," petitioner invokes a countervailing constitutional interest, that of the First Amendment. In this light, petitioner must be viewed as seeking to achieve a goal that is of paramount importance in the fulfillment of its mission.

It may be argued that there is greater force to these views at the undergraduate level than in a medical school where the training is centered primarily on professional competency. But even at the graduate level, our tradition and experience lend support to the view that the contribution of diversity is substantial. In *Sweatt v. Painter*, 339 U.S., at 634, 70 S.Ct., at 850, the Court made a similar point with specific reference to legal education:

"The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned."

Physicians serve a heterogeneous population. An otherwise qualified medical student with a particular background—whether it be ethnic, geographic, culturally advantaged or disadvantaged—may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity.

Ethnic diversity, however, is only one element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body. Although a university must have wide discretion in making the sensitive judgments as to who should be admitted, constitutional limitations protecting individual rights may not be disregarded. Respondent urges—and the courts below have held—that petitioner's dual admissions program is a racial classification that impermissibly infringes his rights under the Fourteenth Amendment. As the interest of diversity is compelling in the context of a university's admissions program, the question remains whether the program's racial classification is necessary to promote this interest. *In Re Griffiths*, 413 U.S., at 721-722, 93 S.Ct., at 2854-2855.

V
A.

It may be assumed that the reservation of a specified number of seats in each class for individuals from the preferred ethnic groups would contribute to the attainment of considerable ethnic diversity in the student body. But petitioner's argument that this is the only effective means of serving the interest of diversity is seriously flawed. In a most fundamental sense the argument misconceives the nature of the state interest that would justify consideration of race or ethnic background. It is not an interest in simple ethnic diversity, in which a specified percentage of the student body is in effect guaranteed to be members of selected ethnic groups, with the remaining percentage an undifferentiated aggregation of students. The diversity that furthers a compelling state interest

encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Petitioner's special admissions program, focused *solely* on ethnic diversity, would hinder rather than further attainment of genuine diversity.

Nor would the state interest in genuine diversity be served by expanding petitioner's two-track system into a multitrack program with a prescribed number of seats set aside for each identifiable category of applicants. Indeed, it is inconceivable that a university would thus pursue the logic of petitioner's two-track program to the illogical end of insulating each category of applicants with certain desired qualifications from competition with all other applicants.

The experience of other university admissions programs, which take race into account in achieving the educational diversity valued by the First Amendment, demonstrates that the assignment of a fixed number of places to a minority group is not a necessary means toward that end. An illuminating example is found in the Harvard College program:

"In recent years Harvard College has expanded th concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students. . . .

"In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are 'admissible' and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer. [See Appendix hereto.] . . .

"In Harvard College admissions the Committee has not set target-quotas for the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year. . . . But that awareness [of the necessity of including more than a token number of black students] does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi who are to be admitted. It means only that in choosing among thousands of applicants who are not only 'admissible' academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many types and categories of students." App. to Brief for Columbia University, Harvard University, Stanford University, and the University of Pennsylvania, as *Amici Curiae* 2-3.

In such an admissions program,⁵¹ race or ethnic background may be deemed a "plus" in a particular

applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important. In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight. Indeed, the weight attributed to a particular quality may vary from year to year depending upon the "mix" both of the student body and the applicants for the incoming class.

This kind of program treats each applicant as an individual in the admissions process. The applicant who loses out on the last available seat to another candidate receiving a "plus" on the basis of ethnic background will not have been foreclosed from all consideration for that seat simply because he was not the right color or had the wrong surname. It would mean only that his combined qualifications, which may have included similar nonobjective factors, did not outweigh those of the other applicant. His qualifications would have been weighed fairly and competitively, and he would have no basis to complain of unequal treatment under the Fourteenth Amendment.

It has been suggested that an admissions program which considers race only as one factor is simply a subtle and more sophisticated—but no less effective—means of according racial preference than the Davis program. A facial intent to discriminate, however, is evident in petitioner's preference program and not denied in this case. No such facial infirmity exists in an admissions program where race or ethnic background is simply one element—to be weighed fairly against other elements—in the selection process. "A boundary line," as Mr. Justice Frankfurter remarked in another connection, "is none the worse for being narrow." *McLeod v. Dilworth*, [1944] USSC 85; 322 U.S. 327, 329[1944] USSC 85; , 64 S.Ct. 1023, 1025[1944] USSC 85; , 88 L.Ed. 1304 (1944). And a court would not assume that a university, professing to employ a facially nondiscriminatory admissions policy, would operate it as a cover for the functional equivalent of a quota system. In short, good faith would be presumed in the absence of a showing to the contrary in the manner permitted by our cases. See *e. g.*, *Arlington Heights v. Metropolitan Housing Dev. Corp.*, [1977] USSC 2; 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977); *Washington v. Davis*, [1976] USSC 107; 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976); *Swain v. Alabama*, [1965] USSC 45; 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965).

B

In summary, it is evident that the Davis special admissions program involves the use of an explicit racial classification never before countenanced by this Court. It tells applicants who are not Negro, Asian, or Chicano that they are totally excluded from a specific percentage of the seats in an

entering class. No matter how strong their qualifications, quantitative and extracurricular, including their own potential for contribution to educational diversity, they are never afforded the chance to compete with applicants from the preferred groups for the special admissions seats. At the same time, the preferred applicants have the opportunity to compete for every seat in the class.

The fatal flaw in petitioner's preferential program is its disregard of individual rights as guaranteed by the Fourteenth Amendment. *Shelley v. Kraemer*, 334 U.S., at 22, 68 S.Ct., at 846. Such rights are not absolute. But when a State's distribution of benefits or imposition of burdens hinges on ancestry or the color of a person's skin, that individual is entitled to a demonstration that the challenged classification is necessary to promote a substantial state interest. Petitioner has failed to carry this burden. For this reason, that portion of the California court's judgment holding petitioner's special admissions program invalid under the Fourteenth Amendment must be affirmed.

C

In enjoining petitioner from ever considering the race of any applicant, however, the courts below failed to recognize that the State has a substantial interest that legitimately may be served by a properly devised admissions program involving the competitive consideration of race and ethnic origin. For this reason, so much of the California court's judgment as enjoins petitioner from any consideration of the race of any applicant must be reversed.

VI

With respect to respondent's entitlement to an injunction directing his admission to the Medical School, petitioner has conceded that it could not carry its burden of proving that, but for the existence of its unlawful special admissions program, respondent still would not have been admitted. Hence, respondent is entitled to the injunction, and that portion of the judgment must be affirmed.

APPENDIX TO OPINION OF POWELL, J.

Harvard College Admissions Program⁵⁵

For the past 30 years Harvard College has received each year applications for admission that greatly exceed the number of places in the freshman class. The number of applicants who are deemed to be not "qualified" is comparatively small. The vast majority of applicants demonstrate through test scores, high school records and teachers' recommendations that they have the academic ability to do adequate work at Harvard, and perhaps to do it with distinction. Faced with the dilemma of choosing among a large number of "qualified" candidates, the Committee on Admissions could use the single criterion of scholarly excellence and attempt to determine who among the candidates were

likely to perform best academically. But for the past 30 years the Committee on Admissions has never adopted this approach. The belief has been that if scholarly excellence were the sole or even predominant criterion, Harvard College would lose a great deal of its vitality and intellectual excellence and that the quality of the educational experience offered to all students would suffer. Final Report of W. J. Bender, Chairman of the Admission and Scholarship Committee and Dean of Admissions and Financial Aid, pp. 20 *et seq.* (Cambridge, 1960). Consequently, after selecting those students whose intellectual potential will seem extraordinary to the faculty—perhaps 150 or so out of an entering class of over 1,100 the Committee seeks—variety in making its choices. This has seemed important . . . in part because it adds a critical ingredient to the effectiveness of the educational experience [in Harvard College]. . . . *The effectiveness of our students' educational experience has seemed to the Committee to be affected as importantly by a wide variety of interests, talents, backgrounds and career goals as it is by a fine faculty and our libraries, laboratories and housing arrangements.* (Dean of Admissions Fred L. Glimp, Final Report to the Faculty of Arts and Sciences, 65 Official Register of Harvard University No. 25, 93, 104-105 (1968) (emphasis supplied).

The belief that diversity adds an essential ingredient to the educational process has long been a tenet of Harvard College admissions. Fifteen or twenty years ago, however, diversity meant students from California, New York, and Massachusetts; city dwellers and farm boys; violinists, painters and football players; biologists, historians and classicists; potential stockbrokers, academics and politicians. The result was that very few ethnic or racial minorities attended Harvard College. In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups. Harvard College now recruits not only Californians or Louisianans but also blacks and Chicanos and other minority students. Contemporary conditions in the United States mean that if Harvard College is to continue to offer a first-rate education to its students, minority representation in the undergraduate body cannot be ignored by the Committee on Admissions.

In practice, this new definition of diversity has meant that race has been a factor in some admission decisions. When the Committee on Admissions reviews the large middle group of applicants who are "admissible" and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer. The quality of the educational experience of all the students in Harvard College depends in part on these differences in the background and outlook that students bring with them.

In Harvard College admissions the Committee has not set target-quotas for the number of blacks, or of musicians, football players, physicists or Californians to be admitted in a given year. At the same time the Committee is aware that if Harvard College is to provide a truly heterogen[e]ous environment that reflects the rich diversity of the United States, it cannot be provided without some attention to numbers. It would not make sense, for example, to have 10 or 20 students out of 1,100 whose homes are west of the Mississippi. Comparably, 10 or 20 black students could not begin to

bring to their classmates and to each other the variety of points of view, backgrounds and experiences of blacks in the United States. Their small numbers might also create a sense of isolation among the black students themselves and thus make it more difficult for them to develop and achieve their potential. Consequently, when making its decisions, the Committee on Admissions is aware that there is some relationship between numbers and achieving the benefits to be derived from a diverse student body, and between numbers and providing a reasonable environment for those students admitted. But that awareness does not mean that the Committee sets a minimum number of blacks or of people from west of the Mississippi who are to be admitted. It means only that in choosing among thousands of applicants who are not only "admissible" academically but have other strong qualities, the Committee, with a number of criteria in mind, pays some attention to distribution among many types and categories of students.

The further refinements sometimes required help to illustrate the kind of significance attached to race. The Admissions Committee, with only a few places left to fill, might find itself forced to choose between A, the child of a successful black physician in an academic community with promise of superior academic performance, and B, a black who grew up in an inner-city ghetto of semi-literate parents whose academic achievement was lower but who had demonstrated energy and leadership as well as an apparently abiding interest in black power. If a good number of black students much like A but few like B had already been admitted, the Committee might prefer B; and vice versa. If C, a white student with extraordinary artistic talent, were also seeking one of the remaining places, his unique quality might give him an edge over both A and B. Thus, the critical criteria are often individual qualities or experience not dependent upon race but sometimes associated with it.

Opinion of Mr. Justice BRENNAN, Mr. Justice WHITE, Mr. Justice MARSHALL, and Mr. Justice BLACKMUN, concurring in the judgment in part and dissenting in part.

The Court today, in reversing in part the judgment of the Supreme Court of California, affirms the constitutional power of Federal and State Governments to act affirmatively to achieve equal opportunity for all. The difficulty of the issue presented whether government may use race-conscious programs to redress the continuing effects of past discrimination— and the mature consideration which each of our Brethren has brought to it have resulted in many opinions, no single one speaking for the Court. But this should not and must not mask the central meaning of today's opinions: Government may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area.

THE CHIEF JUSTICE and our Brothers STEWART, REHNQUIST, and STEVENS, have concluded that Title VI of the Civil Rights Act of 1964, 78 Stat. 252, as amended, 42 U.S.C. § 2000d *et seq.*, prohibits programs such as that at the Davis Medical School. On this statutory theory

alone, they would hold that respondent Allan Bakke's rights have been violated and that he must, therefore, be admitted to the Medical School. Our Brother POWELL, reaching the Constitution, concludes that, although race may be taken into account in university admissions, the particular special admissions program used by petitioner, which resulted in the exclusion of respondent Bakke, was not shown to be necessary to achieve petitioner's stated goals. Accordingly, these Members of the Court form a majority of five affirming the judgment of the Supreme Court of California insofar as it holds that respondent Bakke "is entitled to an order that he be admitted to the University." 18 Cal.3d 34, 64, 132 Cal.Rptr. 680, 700, 553 P.2d 1152, 1172 (1976).

We agree with Mr. Justice POWELL that, as applied to the case before us, Title VI goes no further in prohibiting the use of race than the Equal Protection Clause of the Fourteenth Amendment itself. We also agree that the effect of the California Supreme Court's affirmance of the judgment of the Superior Court of California would be to prohibit the University from establishing in the future affirmative-action programs that take race into account. See *ante*, at 271 n. Since we conclude that the affirmative admissions program at the Davis Medical School is constitutional, we would reverse the judgment below in all respects. Mr. Justice POWELL agrees that some uses of race in university admissions are permissible and, therefore, he joins with us to make five votes reversing the judgment below insofar as it prohibits the University from establishing race-conscious programs in the future.

* Our Nation was founded on the principle that "all Men are created equal." Yet candor requires acknowledgment that the Framers of our Constitution, to forge the 13 Colonies into one Nation, openly compromised this principle of equality with its antithesis: slavery. The consequences of this compromise are well known and have aptly been called our "American Dilemma." Still, it is well to recount how recent the time has been, if it has yet come, when the promise of our principles has flowered into the actuality of equal opportunity for all regardless of race or color.

The Fourteenth Amendment, the embodiment in the Constitution of our abiding belief in human equality, has been the law of our land for only slightly more than half its 200 years. And for half of that half, the Equal Protection Clause of the Amendment was largely moribund so that, as late as 1927, Mr. Justice Holmes could sum up the importance of that Clause by remarking that it was the "last resort of constitutional arguments." *Buck v. Bell*, [1927] USSC 105; 274 U.S. 200, 208[1927] USSC 105; , 47 S.Ct. 584, 585[1927] USSC 105; , 71 L.Ed. 1000 (1927). Worse than desuetude, the Clause was early turned against those whom it was intended to set free, condemning them to a "separate but equal"² status before the law, a status always separate but seldom equal. Not until 1954—only 24 years ago—was this odious doctrine interred by our decision in *Brown v. Board of Education*, [1954] USSC 42; 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (*Brown I*), and its progeny,³ which proclaimed that separate schools and public facilities of all sorts were inherently unequal and forbidden under our Constitution. Even then inequality was not eliminated with "all deliberate speed." *Brown v. Board of Education*, [1955] USSC 59; 349 U.S. 294, 301[1955] USSC 59; , 75 S.Ct. 753, 756[1955] USSC 59; , 99 L.Ed. 1083 (1955). In 1968⁴ and again in 1971,⁵ for example, we were forced to remind school boards of their obligation to eliminate racial discrimination root and branch. And a glance at our docket⁶ and at dockets of lower courts will show that even today officially sanctioned discrimination is not a thing of the past.

Against this background, claims that law must be "color-blind" or that the datum of race is no longer relevant to public policy must be seen as aspiration rather than as description of reality. This is not to denigrate aspiration; for reality rebukes us that race has too often been used by those who would stigmatize and oppress minorities. Yet we cannot—and, as we shall demonstrate, need not under our Constitution or Title VI, which merely extends the constraints of the Fourteenth Amendment to private parties who receive federal funds—let color blindness become myopia which masks the reality that many "created equal" have been treated within our lifetimes as inferior both by the law and by their fellow citizens.

II

The threshold question we must decide is whether Title VI of the Civil Rights Act of 1964 bars recipients of federal funds from giving preferential consideration to disadvantaged members of racial minorities as part of a program designed to enable such individuals to surmount the obstacles imposed by racial discrimination.⁷ We join Parts I and V-C of our Brother POWELL's opinion and three of us agree with his conclusion in Part II that this case does not require us to resolve the question whether there is a private right of action under Title VI.

In our view, Title VI prohibits only those uses of racial criteria that would violate the Fourteenth Amendment if employed by a State or its agencies; it does not bar the preferential treatment of racial minorities as a means of remedying past societal discrimination to the extent that such action is consistent with the Fourteenth Amendment. The legislative history of Title VI, administrative regulations interpreting the statute, subsequent congressional and executive action, and the prior decisions of this Court compel this conclusion. None of these sources lends support to the proposition that Congress intended to bar all race-conscious efforts to extend the benefits of federally financed programs to minorities who have been historically excluded from the full benefits of American life.

A.

The history of Title VI—from President Kennedy's request that Congress grant executive departments and agencies authority to cut off federal funds to programs that discriminate against Negroes through final enactment of legislation incorporating his proposals—reveals one fixed purpose: to give the Executive Branch of Government clear authority to terminate federal funding of private programs that use race as a means of disadvantaging minorities in a manner that would be prohibited by the Constitution if engaged in by government.

This purpose was first expressed in President Kennedy's June 19, 1963, message to Congress proposing the legislation that subsequently became the Civil Rights Act of 1964.⁹ Representative Celler, the Chairman of the House Judiciary Committee, and the floor manager of the legislation in the House, introduced Title VI in words unequivocally expressing the intent to provide the Federal Government with the means of assuring that its funds were not used to subsidize racial

discrimination inconsistent with the standards imposed by the Fourteenth and Fifth Amendments upon state and federal action.

"The bill would offer assurance that hospitals financed by Federal money would not deny adequate care to Negroes. It would prevent abuse of food distribution programs whereby Negroes have been known to be denied food surplus supplies when white persons were given such food. It would assure Negroes the benefits now accorded only white students in programs of high[er] education financed by Federal funds. It would, in short, assure the existing right to equal treatment in the enjoyment of Federal funds. It would not destroy any rights of private property or freedom of association." 110 Cong.Rec. 1519 (1964).

It was clear to Representative Celler that Title VI, apart from the fact that it reached all federally funded activities even in the absence of sufficient state or federal control to invoke the Fourteenth or Fifth Amendments, was not placing new substantive limitations upon the use of racial criteria, but rather was designed to extend to such activities "the existing right to equal treatment" enjoyed by Negroes under those Amendments, and he later specifically defined the purpose of Title VI in this way:

"In general, it seems rather anomalous that the Federal Government should aid and abet discrimination on the basis of race, color, or national origin by granting money and other kinds of financial aid. It seems rather shocking, moreover, that while we have on the one hand the 14th amendment, which is supposed to do away with discrimination since it provides for equal protection of the laws, on the other hand, we have the Federal Government aiding and abetting those who persist in practicing racial discrimination.

"It is for these reasons that we bring forth title VI. The enactment of title VI will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions." *Id.*, at 2467.

Representative Celler also filed a memorandum setting forth the legal basis for the enactment of Title VI which reiterated the theme of his oral remarks: "In exercising its authority to fix the terms on which Federal funds will be disbursed . . . , Congress clearly has power to legislate so as to insure that the Federal Government does not become involved in a violation of the Constitution." *Id.*, at 1528.

Other sponsors of the legislation agreed with Representative Celler that the function of Title VI was to end the Federal Government's complicity in conduct, particularly the segregation or exclusion of Negroes, inconsistent with the standards to be found in the antidiscrimination provisions of the Constitution. Representative Lindsay, also a member of the Judiciary Committee, candidly acknowledged, in the course of explaining why Title VI was necessary, that it did not create any new standard of equal treatment beyond that contained in the Constitution:

"Both the Federal Government and the States are under constitutional mandates not to discriminate. Many have raised the question as to whether legislation is required at all. Does not the Executive already have the power in the distribution of Federal funds to apply those conditions which will

enable the Federal Government itself to live up to the mandate of the Constitution and to require States and local government entities to live up to the Constitution, most especially the 5th and 14th amendments?" *Id.*, at 2467.

He then explained that legislation was needed to authorize the termination of funding by the Executive Branch because existing legislation seemed to contemplate the expenditure of funds to support racially segregated institutions. *Ibid.* The views of Representatives Celler and Lindsay concerning the purpose and function of Title VI were shared by other sponsors and proponents of the legislation in the House.¹⁰ Nowhere is there any suggestion that Title VI was intended to terminate federal funding for any reason other than consideration of race or national origin by the recipient institution in a manner inconsistent with the standards incorporated in the Constitution.

The Senate's consideration of Title VI reveals an identical understanding concerning the purpose and scope of the legislation. Senator Humphrey, the Senate floor manager, opened the Senate debate with a section-by-section analysis of the Civil Rights Act in which he succinctly stated the purpose of Title VI:

"The purpose of title VI is to make sure that funds of the United States are not used to support racial discrimination. In many instances the practices of segregation or discrimination, which title VI seeks to end, are unconstitutional. This is clearly so wherever Federal funds go to a State agency which engages in racial discrimination. It may also be so where Federal funds go to support private, segregated institutions, under the decision in *Simkins v. Moses H. Cone Memorial Hospital*, [1963] USCA4 389; 323 F.2d 959 (C.A.4, 1963), [cert. denied, 376 U.S. 938, 84 S.Ct. 793, 11 L.Ed.2d 659 (1964)]. In all cases, such discrimination is contrary to national policy, and to the moral sense of the Nation. Thus, title VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation." *Id.*, at 6544.

Senator Humphrey, in words echoing statements in the House, explained that legislation was needed to accomplish this objective because it was necessary to eliminate uncertainty concerning the power of federal agencies to terminate financial assistance to programs engaging in racial discrimination in the face of various federal statutes which appeared to authorize grants to racially segregated institutions. *Ibid.* Although Senator Humphrey realized that Title VI reached conduct which, because of insufficient governmental action, might be beyond the reach of the Constitution, it was clear to him that the substantive standard imposed by the statute was that of the Fifth and Fourteenth Amendments.

Senate supporters of Title VI repeatedly expressed agreement with Senator Humphrey's description of the legislation as providing the explicit authority and obligation to apply the standards of the Constitution to all recipients of federal funds. Senator Ribicoff described the limited function of Title VI:

"Basically, there is a constitutional restriction against discrimination in the use of Federal funds; and title VI simply spells out the procedure to be used in enforcing that restriction." *Id.*, at 13333.

Other strong proponents of the legislation in the Senate repeatedly expressed their intent to assure that federal funds would only be spent in accordance with constitutional standards. See remarks of Senator Pastore, *id.*, at 7057, 7062; Senator Clark, *id.*, at 5243; Senator Allott, *id.*, at 12675, 12677.

Respondent's contention that Congress intended Title VI to bar affirmative-action programs designed to enable minorities disadvantaged by the effects of discrimination to participate in federally financed programs is also refuted by an examination of the type of conduct which Congress thought it was prohibiting by means of Title VI. The debates reveal that the legislation was motivated primarily by a desire to eradicate a very specific evil: federal financial support of programs which disadvantaged Negroes by excluding them from participation or providing them with separate facilities. Again and again supporters of Title VI emphasized that the purpose of the statute was to end segregation in federally funded activities and to end other discriminatory uses of race disadvantaging Negroes. Senator Humphrey set the theme in his speech presenting Title VI to the Senate:

"Large sums of money are contributed by the United States each year for the construction, operation, and maintenance of segregated schools.

* * * * *

"Similarly, under the Hill-Burton Act, Federal grants are made to hospitals which admit whites only or Negroes only. . . .

"In higher education also, a substantial part of the Federal grants to colleges, medical schools and so forth, in the South is still going to segregated institutions.

"Nor is this all. In several States, agricultural extension services, supported by Federal funds, maintain racially segregated offices for Negroes and whites. . . .

". . . Vocational training courses, supported with Federal funds, are given in segregated schools and institutions and often limit Negroes to training in less skilled occupations. In particular localities it is reported that Negroes have been cut off from relief rolls, or denied surplus agricultural commodities, or otherwise deprived of the benefit of federally assisted programs, in retaliation for their participation in voter registration drives, sit-in demonstrations and the like." *Id.*, at 6543-6544.

See also the remarks of Senator Pastore (*id.*, at 7054-7055); Senator Ribicoff (*id.*, at 7064-7065); Senator Clark (*id.*, at 5243, 9086); Senator Javits (*id.*, at 6050, 7102).12

The conclusion to be drawn from the foregoing is clear. Congress recognized that Negroes, in some cases with congressional acquiescence, were being discriminated against in the administration of programs and denied the full benefits of activities receiving federal financial support. It was aware that there were many federally funded programs and institutions which discriminated against minorities in a manner inconsistent with the standards of the Fifth and Fourteenth Amendments but whose activities might not involve sufficient state or federal action so as to be in violation of these Amendments. Moreover, Congress believed that it was questionable whether the Executive Branch possessed legal authority to terminate the funding of activities on the ground that they discriminated racially against Negroes in a manner violative of the standards contained in the Fourteenth and Fifth Amendments. Congress' solution was to end the Government's complicity in constitutionally forbidden racial discrimination by providing the Executive Branch with the authority and the obligation to terminate its financial support of any activity which employed racial criteria in a manner condemned by the Constitution.

Of course, it might be argued that the Congress which enacted Title VI understood the Constitution to require strict racial neutrality or color blindness, and then enshrined that concept as a rule of statutory law. Later interpretation and clarification of the Constitution to permit remedial use of race would then not dislodge Title VI's prohibition of race-conscious action. But there are three compelling reasons to reject such a hypothesis.

First, no decision of this Court has ever adopted the proposition that the Constitution must be colorblind. See *infra*, at 355-356.

Second, even if it could be argued in 1964 that the Constitution might conceivably require color blindness, Congress surely would not have chosen to codify such a view unless the Constitution clearly required it. The legislative history of Title VI, as well as the statute itself, reveals a desire to induce voluntary compliance with the requirement of nondiscriminatory treatment.¹³ See § 602 of the Act, 42 U.S.C. § 2000d-1 (no funds shall be terminated unless and until it has been "determined that compliance cannot be secured by voluntary means"); H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 1, p. 25 (1963), U.S.Code Cong. & Admin.News 1964, p. 2355; 110 Cong.Rec. 13700 (1964) (Sen. Pastore); *id.*, at 6546 (Sen. Humphrey). It is inconceivable that Congress intended to encourage voluntary efforts to eliminate the evil of racial discrimination while at the same time forbidding the voluntary use of race-conscious remedies to cure acknowledged or obvious statutory violations. Yet a reading of Title VI as prohibiting all action predicated upon race which adversely affects any individual would require recipients guilty of discrimination to await the imposition of such remedies by the Executive Branch. Indeed, such an interpretation of Title VI would prevent recipients of federal funds from taking race into account even when necessary to bring their programs into compliance with federal constitutional requirements. This would be a remarkable reading of a statute designed to eliminate constitutional violations, especially in light of judicial decisions holding that under certain circumstances the remedial use of racial criteria is not only permissible but is constitutionally required to eradicate constitutional violations. For example, in *Board of Education v. Swann*, [1971] USSC 76; 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586 (1971), the Court held that a statute forbidding the assignment of students on the basis of race was unconstitutional because it would hinder the implementation of remedies necessary to accomplish the desegregation of a school system: "Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy." *Id.*, at 46, 91 S.Ct., at 1286. Surely Congress did not intend to prohibit the use of racial criteria when constitutionally required or to terminate the funding of any entity which implemented such a remedy. It clearly desired to encourage all remedies, including the use of race, necessary to eliminate racial discrimination in violation of the Constitution rather than requiring the recipient to await a judicial adjudication of unconstitutionality and the judicial imposition of a racially oriented remedy.

Third, the legislative history shows that Congress specifically eschewed any static definition of discrimination in favor of broad language that could be shaped by experience, administrative necessity, and evolving judicial doctrine. Although it is clear from the debates that the supporters of Title VI intended to ban uses of race prohibited by the Constitution and, more specifically, the maintenance of segregated facilities, they never precisely defined the term "discrimination," or what constituted an exclusion from participation or a denial of benefits on the ground of race. This failure was not lost upon its opponents. Senator Ervin complained:

"The word 'discrimination,' as used in this reference, has no contextual explanation whatever, other

than the provision that the discrimination 'is to be against' individuals participating in or benefiting from federally assisted programs and activities on the ground specified. With this context, the discrimination condemned by this reference occurs only when an individual is treated unequally or unfairly because of his race, color, religion, or national origin. What constitutes unequal or unfair treatment? Section 601 and section 602 of title VI do not say. They leave the determination of that question to the executive department or agencies administering each program, without any guideline whatever to point out what is the congressional intent." 110 Cong.Rec. 5612 (1964).

See also remarks of Representative Abernethy (*id.*, at 1619); Representative Dowdy (*id.*, at 1632); Senator Talmadge (*id.*, at 5251); Senator Sparkman (*id.*, at 6052). Despite these criticisms, the legislation's supporters refused to include in the statute or even provide in debate a more explicit definition of what Title VI prohibited.

The explanation for this failure is clear. Specific definitions were undesirable, in the views of the legislation's principal backers, because Title VI's standard was that of the Constitution and one that could and should be administratively and judicially applied. See remarks of Senator Humphrey (*id.*, at 5253, 6553); Senator Ribicoff (*id.*, at 7057, 13333); Senator Pastore (*id.*, at 7057); Senator Javits (*id.*, at 5606-5607, 6050).¹⁴ Indeed, there was a strong emphasis throughout Congress' consideration of Title VI on providing the Executive Branch with considerable flexibility in interpreting and applying the prohibition against racial discrimination. Attorney General Robert Kennedy testified that regulations had not been written into the legislation itself because the rules and regulations defining discrimination might differ from one program to another so that the term would assume different meanings in different contexts.¹⁵ This determination to preserve flexibility in the administration of Title VI was shared by the legislation's supporters. When Senator Johnston offered an amendment that would have expressly authorized federal grantees to take race into account in placing children in adoptive and foster homes, Senator Pastore opposed the amendment, which was ultimately defeated by a 56-29 vote, on the ground that federal administrators could be trusted to act reasonably and that there was no danger that they would prohibit the use of racial criteria under such circumstances. *Id.*, at 13695.

Congress' resolve not to incorporate a static definition of discrimination into Title VI is not surprising. In 1963 and 1964, when Title VI was drafted and debated, the courts had only recently applied the Equal Protection Clause to strike down public racial discrimination in America, and the scope of that Clause's nondiscrimination principle was in a state of flux and rapid evolution. Many questions, such as whether the Fourteenth Amendment barred only *de jure* discrimination or in at least some circumstances reached *de facto* discrimination, had not yet received an authoritative judicial resolution. The congressional debate reflects an awareness of the evolutionary change that constitutional law in the area of racial discrimination was undergoing in 1964.¹⁶

In sum, Congress' equating of Title VI's prohibition with the commands of the Fifth and Fourteenth Amendments, its refusal precisely to define that racial discrimination which it intended to prohibit, and its expectation that the statute would be administered in a flexible manner, compel the conclusion that Congress intended the meaning of the statute's prohibition to evolve with the interpretation of the commands of the Constitution. Thus, any claim that the use of racial criteria is barred by the plain language of the statute must fail in light of the remedial purpose of Title VI and its legislative history. The cryptic nature of the language employed in Title VI merely reflects Congress' concern with the then-prevalent use of racial standards as a means of excluding or

disadvantaging Negroes and its determination to prohibit absolutely such discrimination. We have recently held that "[w]hen aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" ' " *Train v. Colorado Public Interest Research Group*, [1976] USSC 96; 426 U.S. 1, 10[1976] USSC 96; , 96 S.Ct. 1938, 1942, 48 L.Ed.2d 434 (1976), quoting *United States v. American Trucking Assns.*, [1940] USSC 100; 310 U.S. 534, 543-544[1940] USSC 100; , 60 S.Ct. 1059, 1063-1064[1940] USSC 100; , 84 L.Ed. 1345 (1940). This is especially so when, as is the case here, the literal application of what is believed to be the plain language of the statute, assuming that it is so plain, would lead to results in direct conflict with Congress' unequivocally expressed legislative purpose.

B

Section 602 of Title VI, 42 U.S.C. § 2000d-1, instructs federal agencies to promulgate regulations interpreting Title VI. These regulations, which, under the terms of the statute, require Presidential approval, are entitled to considerable deference in construing Title VI. See, e. g., *Lau v. Nichols*[1974] USSC 14; , 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974); *Mourning v. Family Publications Service, Inc.*, [1973] USSC 85; 411 U.S. 356, 369[1973] USSC 85; , 93 S.Ct. 1652, 1660, 36 L.Ed.2d 318 (1973); *Red Lion Broadcasting Co. v. FCC*, [1969] USSC 141; 395 U.S. 367, 381[1969] USSC 141; , 89 S.Ct. 1794, 1801, 23 L.Ed.2d 371 (1969). Consequently, it is most significant that the Department of Health, Education, and Welfare (HEW), which provides much of the federal assistance to institutions of higher education, has adopted regulations *requiring* affirmative measures designed to enable racial minorities which have been previously discriminated against by a federally funded institution or program to overcome the effects of such actions and *authorizing* the voluntary undertaking of affirmative-action programs by federally funded institutions that have not been guilty of prior discrimination in order to overcome the effects of conditions which have adversely affected the degree of participation by persons of a particular race.

Title 45 CFR § 80.3(b)(6)(i) (1977) provides:

"In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination."

Title 45 CFR § 80.5(i) (1977) elaborates upon this requirement:

"In some situations, even though past discriminatory practices attributable to a recipient or applicant have been abandoned, the consequences of such practices continue to impede the full availability of a benefit. If the efforts required of the applicant or recipient under § 80.6(d), to provide information as to the availability of the program or activity and the rights of beneficiaries under this regulation, have failed to overcome these consequences, it will become necessary under the requirement stated in (i) of § 80.3(b)(6) for such applicant or recipient to take additional steps to make the benefits fully available to racial and nationality groups previously subject to discrimination. This action might take the form, for example, of special arrangements for obtaining referrals or making selections which will insure that groups previously subjected to discrimination are adequately served."

These regulations clearly establish that where there is a need to overcome the effects of past racially discriminatory or exclusionary practices engaged in by a federally funded institution, race-conscious

action is not only permitted but required to accomplish the remedial objectives of Title VI.¹⁸ Of course, there is no evidence that the Medical School has been guilty of past discrimination and consequently these regulations would not compel it to employ a program of preferential admissions in behalf of racial minorities. It would be difficult to explain from the language of Title VI, however, much less from its legislative history, why the statute *compels* race-conscious remedies where a recipient institution has engaged in past discrimination but *prohibits* such remedial action where racial minorities, as a result of the effects of past discrimination imposed by entities other than the recipient, are excluded from the benefits of federally funded programs. HEW was fully aware of the incongruous nature of such an interpretation of Title VI.

Title 45 CFR § 80.3(b)(6)(ii) (1977) provides:

"Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin."

An explanatory regulation explicitly states that the affirmative action which § 80.3(b)(6)(ii) contemplates includes the use of racial preferences:

"Even though an applicant or recipient has never used discriminatory policies, the services and benefits of the program or activity it administers may not in fact be equally available to some racial or nationality groups. In such circumstances, an applicant or recipient may properly give special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served. For example, where a university is not adequately serving members of a particular racial or nationality group, it may establish special recruitment policies to make its program better known and more readily available to such group, and take other steps to provide that group with more adequate service." 45 CFR § 80.5(j) (1977).

This interpretation of Title VI is fully consistent with the statute's emphasis upon voluntary remedial action and reflects the views of an agency¹⁹ responsible for achieving its objectives.²⁰

The Court has recognized that the construction of a statute by those charged with its execution is particularly deserving of respect where Congress has directed its attention to the administrative construction and left it unaltered. Cf. *Red Lion Broadcasting Co. v. FCC*, 395 U.S., at 381, 89 S.Ct., at 1801; *Zemel v. Rusk*, [1965] USSC 147; 381 U.S. 1, 11-12[1965] USSC 147; , 85 S.Ct. 1271, 1278-1279, 14 L.Ed.2d 179 (1965). Congress recently took just this kind of action when it considered an amendment to the Departments of Labor and Health, Education, and Welfare appropriation bill for 1978, which would have restricted significantly the remedial use of race in programs funded by the appropriation. The amendment, as originally submitted by Representative Ashbrook, provided that "[n]one of the funds appropriated in this Act may be used to initiate, carry out or enforce any program of affirmative action or any other system of quotas or goals in regard to admission policies or employment practices which encourage or require any discrimination on the basis of race, creed, religion, sex or age." 123 Rec. 19715 (1977). In support of the measure, Representative Ashbrook argued that the 1964 Civil Rights Act never authorized the imposition of affirmative action and that this was a creation of the bureaucracy. *Id.*, at 19722. He explicitly stated, however, that he favored permitting universities to adopt affirmative action programs giving consideration to racial identity but opposed the imposition of such programs by the Government. *Id.*, at 19715. His amendment was itself amended to reflect this position by only barring the

imposition of race-conscious remedies by HEW:

"None of the funds appropriated in this Act may be obligated or expended in connection with the issuance, implementation, or enforcement of any rule, regulation, standard, guideline, recommendation, or order issued by the Secretary of Health, Education, and Welfare which for purposes of compliance with any ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex requires any individual or entity to take any action with respect to (1) the hiring or promotion policies or practices of such individual or entity, or (2) the admissions policies or practices of such individual or entity." *Id.*, at 19722.

This amendment was adopted by the House. *Ibid.* The Senate bill, however, contained no such restriction upon HEW's authority to impose race-conscious remedies and the Conference Committee, upon the urging of the Secretary of HEW, deleted the House provision from the bill.²¹ More significant for present purposes, however, is the fact that even the proponents of imposing limitations upon HEW's implementation of Title VI did not challenge the right of federally funded educational institutions voluntarily to extend preferences to racial minorities.

Finally, congressional action subsequent to the passage of Title VI eliminates any possible doubt about Congress' views concerning the permissibility of racial preferences for the purpose of assisting disadvantaged racial minorities. It confirms that Congress did not intend to prohibit and does not now believe that Title VI prohibits the consideration of race as part of a remedy for societal discrimination even where there is no showing that the institution extending the preference has been guilty of past discrimination nor any judicial finding that the particular beneficiaries of the racial preference have been adversely affected by societal discrimination.

Just last year Congress enacted legislation²² explicitly requiring that no grants shall be made "for any local public works project unless the applicant gives satisfactory assurance to the Secretary [of Commerce] that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises." The statute defines the term "minority business enterprise" as "a business, at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of which is owned by minority group members." The term "minority group members" is defined in explicitly racial terms: "citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts." Although the statute contains an exemption from this requirement "to the extent that the Secretary determines otherwise," this escape clause was provided only to deal with the possibility that certain areas of the country might not contain sufficient qualified "minority business enterprises" to permit compliance with the quota provisions of the legislation.

The legislative history of this race-conscious legislation reveals that it represents a deliberate attempt to deal with the excessive rate of unemployment among minority citizens and to encourage the development of viable minority controlled enterprises.²⁴ It was believed that such a "set-aside" was required in order to enable minorities, still "new on the scene" and "relatively small," to compete with larger and more established companies which would always be successful in underbidding minority enterprises. 123 Cong.Rec. 5327 (1977) (Rep. Mitchell). What is most significant about the congressional consideration of the measure is that although the use of a racial quota or "set-aside" by a recipient of federal funds would constitute a direct violation of Title VI if that statute were read to prohibit race-conscious action, no mention was made during the debates in

either the House or the Senate of even the possibility that the quota provisions for minority contractors might in any way conflict with or modify Title VI. It is inconceivable that such a purported conflict would have escaped congressional attention through an inadvertent failure to recognize the relevance of Title VI. Indeed, the Act of which this affirmative-action provision is a part also contains a provision barring discrimination on the basis of sex which states that this prohibition "will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination under Title VI of the Civil Rights Act of 1964." 42 U.S.C. § 6709 (1976 ed.). Thus Congress was fully aware of the applicability of Title VI to the funding of public works projects. Under these circumstances, the enactment of the 10% "set-aside" for minority enterprises reflects a congressional judgment that the remedial use of race is permissible under Title VI. We have repeatedly recognized that subsequent legislation reflecting an interpretation of an earlier Act is entitled to great weight in determining the meaning of the earlier statute. *Red Lion Broadcasting Co. v. FCC*, 395 U.S., at 380381, 89 S.Ct., at 1801-1802; *Erlenbaugh v. United States*, [1972] USSC 240; 409 U.S. 239, 243-244[1972] USSC 240; , 93 S.Ct. 477, 480-481[1972] USSC 240; , 34 L.Ed.2d 446 (1972). See also *United States v. Stewart*, [1940] USSC 144; 311 U.S. 60, 64-65[1940] USSC 144; , 61 S.Ct. 102, 105-106 [1940] USSC 144; 85 L.Ed. 40 (1940).

C

Prior decisions of this Court also strongly suggest that Title VI does not prohibit the remedial use of race where such action is constitutionally permissible. In *Lau v. Nichols*, [1974] USSC 14; 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), the Court held that the failure of the San Francisco school system to provide English-language instruction to students of Chinese ancestry who do not speak English, or to provide them with instruction in Chinese, constituted a violation of Title VI. The Court relied upon an HEW regulation which stipulates that a recipient of federal funds "may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination" or have "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin." 45 CFR § 80.3(b)(2) (1977). It interpreted this regulation as requiring San Francisco to extend the same educational benefits to Chinese-speaking students as to English-speaking students, even though there was no finding or allegation that the city's failure to do so was a result of a purposeful design to discriminate on the basis of race.

Lau is significant in two related respects. First, it indicates that in at least some circumstances agencies responsible for the administration of Title VI may require recipients who have not been guilty of any constitutional violations to depart from a policy of color blindness and to be cognizant of the impact of their actions upon racial minorities. Secondly, *Lau* clearly requires that institutions receiving federal funds be accorded considerable latitude in voluntarily undertaking race-conscious action designed to remedy the exclusion of significant numbers of minorities from the benefits of federally funded programs. Although this Court has not yet considered the question, presumably, by analogy to our decisions construing Title VII, a medical school would not be in violation of Title VI under *Lau* because of the serious underrepresentation of racial minorities in its student body as long as it could demonstrate that its entrance requirements correlated sufficiently with the performance of minority students in medical school and the medical profession.²⁶ It would be inconsistent with *Lau* and the emphasis of Title VI and the HEW regulations on voluntary action, however, to require that an institution wait to be adjudicated to be in violation of the law before being permitted to voluntarily undertake corrective action based upon a good-faith and reasonable belief that the failure

of certain racial minorities to satisfy entrance requirements is not a measure of their ultimate performance as doctors but a result of the lingering effects of past societal discrimination.

We recognize that *Lau*, especially when read in light of our subsequent decision in *Washington v. Davis*, [1976] USSC 107; 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976), which rejected the general proposition that governmental action is unconstitutional solely because it has a racially disproportionate impact, may be read as being predicated upon the view that, at least under some circumstances, Title VI proscribes conduct which might not be prohibited by the Constitution. Since we are now of the opinion, for the reasons set forth above, that Title VI's standard, applicable alike to public and private recipients of federal funds, is no broader than the Constitution's, we have serious doubts concerning the correctness of what appears to be the premise of that decision. However, even accepting *Lau's* implication that impact alone is in some contexts sufficient to establish a prima facie violation of Title VI, contrary to our review that Title VI's definition of racial discrimination is absolutely coextensive with the Constitution's, this would not assist the respondent in the least. First, for the reasons discussed *supra*, at 336-350, regardless of whether Title VI's prohibitions extend beyond the Constitution's, the evidence fails to establish, and, indeed, compels the rejection of, the proposition that Congress intended to prohibit recipients of federal funds from voluntarily employing race-conscious measures to eliminate the effects of past societal discrimination against racial minorities such as Negroes. Secondly, *Lau* itself, for the reasons set forth in the immediately preceding paragraph, strongly supports the view that voluntary race-conscious remedial action is permissible under Title VI. If discriminatory racial impact alone is enough to demonstrate at least a prima facie Title VI violation, it is difficult to believe that the Title would forbid the Medical School from attempting to correct the racially exclusionary effects of its initial admissions policy during the first two years of the School's operation.

The Court has also declined to adopt a "color-blind" interpretation of other statutes containing nondiscrimination provisions similar to that contained in Title VI. We have held under Title VII that where employment requirements have a disproportionate impact upon racial minorities they constitute a statutory violation, even in the absence of discriminatory intent, unless the employer is able to demonstrate that the requirements are sufficiently related to the needs of the job.²⁷ More significantly, the Court has required that preferences be given by employers to members of racial minorities as a remedy for past violations of Title VII, even where there has been no finding that the employer has acted with a discriminatory intent.²⁸ Finally, we have construed the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.* (1970 ed. and Supp. V), which contains a provision barring any voting procedure or qualification that denies or abridges "the right of any citizen of the United States to vote on account of race or color," as permitting States to voluntarily take race into account in a way that fairly represents the voting strengths of different racial groups in order to comply with the commands of the statute, even where the result is a gain for one racial group at the expense of others.

These prior decisions are indicative of the Court's unwillingness to construe remedial statutes designed to eliminate discrimination against racial minorities in a manner which would impede efforts to attain this objective. There is no justification for departing from this course in the case of Title VI and frustrating the clear judgment of Congress that race-conscious remedial action is permissible.

We turn, therefore, to our analysis of the Equal Protection Clause of the Fourteenth Amendment.

III
A.

The assertion of human equality is closely associated with the proposition that differences in color or creed, birth or status, are neither significant nor relevant to the way in which persons should be treated. Nonetheless, the position that such factors must be "constitutionally an irrelevance," *Edwards v. California*, [1941] USSC 146; 314 U.S. 160, 185[1941] USSC 146; , 62 S.Ct. 164, 172[1941] USSC 146; , 86 L.Ed. 119 (1941) (Jackson, J., concurring), summed up by the shorthand phrase "[o]ur Constitution is color-blind," *Plessy v. Ferguson*, [1896] USSC 151; 163 U.S. 537, 559[1896] USSC 151; , 16 S.Ct. 1138, 1146[1896] USSC 151; , 41 L.Ed. 256 (1896) (Harlan, J., dissenting), has never been adopted by this Court as the proper meaning of the Equal Protection Clause. In deed, we have expressly rejected this proposition on a number of occasions.

Our cases have always implied that an "overriding statutory purpose," *McLaughlin v. Florida*, [1964] USSC 223; 379 U.S. 184, 192[1964] USSC 223; , 85 S.Ct. 283, 288[1964] USSC 223; , 13 L.Ed.2d 222 (1964), could be found that would justify racial classifications. See, e. g., *ibid.*; *Loving v. Virginia*[1967] USSC 168; , 388 U.S. 1, 11[1967] USSC 168; , 87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010 (1967); *Korematsu v. United States*, [1945] USSC 43; 323 U.S. 214, 216[1945] USSC 43; , 65 S.Ct. 193, 194[1945] USSC 43; , 89 L.Ed. 194 (1944); *Hirabayashi v. United States*, [1943] USSC 134; 320 U.S. 81, 100-101[1943] USSC 134; , 63 S.Ct. 1375, 1385-1386, 87 L.Ed. 1774 (1943). More recently, in *McDaniel v. Barresi*, [1971] USSC 74; 402 U.S. 39, 91 S.Ct. 1287, 28 L.Ed.2d 582 (1971), this Court unanimously reversed the Georgia Supreme Court which had held that a desegregation plan voluntarily adopted by a local school board, which assigned students on the basis of race, was *per se* invalid because it was not color-blind. And in *North Carolina Board of Education v. Swann* we held, again unanimously, that a statute mandating color-blind school-assignment plans could not stand "against the background of segregation," since such a limit on remedies would "render illusory the promise of *Brown [I]*." 402 U.S., at 45-46, 91 S.Ct., at 1286.

We conclude, therefore, that racial classifications are not *per se* invalid under the Fourteenth Amendment. Accordingly, we turn to the problem of articulating what our role should be in reviewing state action that expressly classifies by race.

B

Respondent argues that racial classifications are always suspect and, consequently, that this Court should weigh the importance of the objectives served by Davis' special admissions program to see if they are compelling. In addition, he asserts that t is Court must inquire whether, in its judgment, there are alternatives to racial classifications which would suit Davis' purposes. Petitioner, on the other hand, states that our proper role is simply to accept petitioner's determination that the racial classifications used by its program are reasonably related to what it tells us are its benign purposes. We reject petitioner's view, but, because our prior cases are in many respects inapposite to that before us now, we find it necessary to define with precision the meaning of that inexact term, "strict scrutiny."

Unquestionably we have held that a government practice or statute which restricts "fundamental rights" or which contains "suspect classifications" is to be subjected to "strict scrutiny" and can be justified only if it furthers a compelling government purpose and, even then, only if no less

restrictive alternative is available.³⁰ See, e. g., *San Antonio Independent School District v. Rodriguez*, [1973] USSC 83; 411 U.S. 1, 16-17[1973] USSC 83; , 93 S.Ct. 1278, 1287-1288, 36 L.Ed.2d 16 (1973); *Dunn v. Blumstein*, [1972] USSC 58; 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). But no fundamental right is involved here. See *San Antonio*, *supra*, 411 U.S., at 29-36, 93 S.Ct., at 1294-1298. Nor do whites as a class have any of the "traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Id.*, at 28, 93 S.Ct., at 1294; see *United States v. Carolene Products Co.*, [1938] USSC 104; 304 U.S. 144, 152 n. 4[1938] USSC 104; , 58 S.Ct. 778, 783[1938] USSC 104; , 82 L.Ed. 1234 (1938).

Moreover, if the University's representations are credited, this is not a case where racial classifications are "irrelevant and therefore prohibited." *Hirabayashi*, *supra*, 320 U.S., at 100, 63 S.Ct., at 1385. Nor has anyone suggested that the University's purposes contravene the cardinal principle that racial classifications that stigmatize—because they are drawn on the presumption that one race is inferior to another or because they put the weight of government behind racial hatred and separatism—are invalid without more. See *Yick Wo v. Hopkins*, [1886] USSC 197; 118 U.S. 356, 374, 6 S.Ct. 1064, 1073[1886] USSC 197; , 30 L.Ed. 220 (1886);³² accord, *Strauder v. West Virginia*, [1879] USSC 165; 100 U.S. 303, 308[1879] USSC 165; , 25 L.Ed. 664 (1880); *Korematsu v. United States*, *supra*, 323 U.S., at 223, 65 S.Ct., at 197; *Oyama v. California*, [1948] USSC 8; 332 U.S. 633, 663[1948] USSC 8; , 68 S.Ct. 269, 283[1948] USSC 8; , 92 L.Ed. 249 (1948) (Murphy, J., concurring); *Brown I*[1954] USSC 42; , 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954); *McLaughlin v. Florida*, *supra*, 379 U.S., at 191-192, 85 S.Ct., at 287-289; *Loving v. Virginia*, *supra*, 388 U.S., at 11-12, 87 S.Ct., at 1823-1824; *Reitman v. Mulkey*, [1967] USSC 139; 387 U.S. 369, 375-376[1967] USSC 139; , 87 S.Ct. 1627, 1631-1632, 18 L.Ed.2d 830 (1967); *United Jewish Organizations v. Carey*, [1977] USSC 34; 430 U.S. 144, 165[1977] USSC 34; , 97 S.Ct. 996, 1009[1977] USSC 34; , 51 L.Ed.2d 229 (1977) (*UJO*) (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); *id.*, at 169, 97 S.Ct., at 1011 (opinion concurring in part).

On the other hand, the fact that this case does not fit neatly into our prior analytic framework for race cases does not mean that it should be analyzed by applying the very loose rational-basis standard of review that is the very least that is always applied in equal protection cases.³⁴ "[T]he mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme." *Califano v. Webster*, [1977] USSC 41; 430 U.S. 313, 317[1977] USSC 41; , 97 S.Ct. 1192, 1194[1977] USSC 41; , 51 L.Ed.2d 360 (1977), quoting *Weinberger v. Wiesenfeld*, [1975] USSC 58; 420 U.S. 636, 648[1975] USSC 58; , 95 S.Ct. 1225, 1233, 43 L.Ed.2d 514 (1975). Instead, a number of considerations developed in gender-discrimination cases but which carry even more force when applied to racial classifications—lead us to conclude that racial classifications designed to further remedial purposes "must serve important governmental objectives and must be substantially related to achievement of those objectives." *Califano v. Webster*, *supra*, 430 U.S., at 317, 97 S.Ct., at 1194, quoting *Craig v. Boren*, [1976] USSC 213; 429 U.S. 190, 197[1976] USSC 213; , 97 S.Ct. 451, 457[1976] USSC 213; , 50 L.Ed.2d 397 (1976).

First, race, like, "gender-based classifications too often [has] been inexcusably utilized to stereotype and stigmatize politically powerless segments of society." *Kahn v. Shevin*, [1974] USSC 78; 416

U.S. 351, 357[1974] USSC 78; , 94 S.Ct. 1734, 1738, 40 L.Ed.2d 189 (1974) (dissenting opinion). While a carefully tailored statute designed to remedy past discrimination could avoid these vices, see *Califano v. Webster*, *supra*; *Schlesinger v. Ballard*, [1975] USSC 45; 419 U.S. 498, 95 S.Ct. 572, 42 L.Ed.2d 610 (1975); *Kahn v. Shevin*, *supra*, we nonetheless have recognized that the line between honest and thoughtful appraisal of the effects of past discrimination and paternalistic stereotyping is not so clear and that a statute based on the latter is patently capable of stigmatizing all women with a badge of inferiority. Cf. *Schlesinger v. Ballard*, *supra*, 419 U.S., at 508, 95 S.Ct., at 577; *UJO*, *supra*, 430 U.S., at 174, and n. 3, 97 S.Ct., at 1014 (opinion concurring in part); *Califano v. Goldfarb*, [1977] USSC 35; 430 U.S. 199, 223[1977] USSC 35; , 97 S.Ct. 1021, 1035[1977] USSC 35; , 51 L.Ed.2d 270 (1977) (STEVENS, J., concurring in judgment). See also *Stanton v. Stanton*, [1975] USSC 67; 421 U.S. 7, 14-15[1975] USSC 67; , 95 S.Ct. 1373, 1377-1378, 43 L.Ed.2d 688 (1975). State programs designed ostensibly to ameliorate the effects of past racial discrimination obviously create the same hazard of stigma, since they may promote racial separatism and reinforce the views of those who believe that members of racial minorities are inherently incapable of succeeding on their own. See *UJO*, *supra*, 430 U.S., at 172, 97 S.Ct., at 1013 (opinion concurring in part); *ante*, at 298 (opinion of POWELL, J.).

Second, race, like gender and illegitimacy, see *Weber v. Aetna Casualty & Surety Co.*, [1972] USSC 93; 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972), is an immutable characteristic which its possessors are powerless to escape or set aside. While a classification is not *per se* invalid because it divides classes on the basis of an immutable characteristic, see *supra*, at 355-356, it is nevertheless true that such divisions are contrary to our deep belief that "legal burdens should bear some relationship to individual responsibility or wrongdoing," *Weber*, *supra*, 406 U.S., at 175, 92 S.Ct., at 1407; *Frontiero v. Richardson*, [1973] USSC 100; 411 U.S. 677, 686[1973] USSC 100; , 93 S.Ct. 1764, 1770, 36 L.Ed.2d 583 (1973) (opinion of BRENNAN, WHITE, and MARSHALL, JJ.), and that advancement sanctioned, sponsored, or approved by the State should ideally be based on individual merit or achievement, or at the least on factors within the control of an individual. See *UJO*, 430 U.S., at 173, 97 S.Ct., at 1013 (opinion concurring in part); *Kotch v. Board of River Port Pilot Comm'rs*, [1947] USSC 72; 330 U.S. 552, 566[1947] USSC 72; , 67 S.Ct. 910, 917[1947] USSC 72; , 91 L.Ed. 1093 (1947) (Rutledge, J., dissenting).

Because this principle is so deeply rooted it might be supposed that it would be considered in the legislative process and weighed against the benefits of programs preferring individuals because of their race. But this is not necessarily so: The "natural consequence of our governing process [may well be] that the most 'discrete and insular' of whites . . . will be called upon to bear the immediate, direct costs of benign discrimination." *UJO*, *supra*, 430 U.S., at 174, 97 S.Ct., at 1014 (opinion concurring in part). Moreover, it is clear from our cases that there are limits beyond which majorities may not go when they classify on the basis of immutable characteristics. See, *e. g.*, *Weber*, *supra*. Thus, even if the concern for individualism is weighed by the political process, that weighing cannot waive the personal rights of individuals under the Fourteenth Amendment. See *Lucas v. Colorado General Assembly*, [1964] USSC 132; 377 U.S. 713, 736[1964] USSC 132; , 84 S.Ct. 1459, 1473, 12 L.Ed.2d 632 (1964).

In sum, because of the significant risk that racial classifications established for ostensibly benign purposes can be misused, causing effects not unlike those created by invidious classifications, it is inappropriate to inquire only whether there is any conceivable basis that might sustain such a classification. Instead, to justify such a classification an important and articulated purpose for its use

must be shown. In addition, any statute must be stricken that stigmatizes any group or that singles out those least well represented in the political process to bear the brunt of a benign program. Thus, our review under the Fourteenth Amendment should be strict—not " 'strict' in theory and fatal in fact,"³⁶ because it is stigma that causes fatality—but strict and searching nonetheless.

IV

Davis' articulated purpose of remedying the effects of past societal discrimination is, under our cases, sufficiently important to justify the use of race-conscious admissions programs where there is a sound basis for concluding that minority underrepresentation is substantial and chronic, and that the handicap of past discrimination is impeding access of minorities to the Medical School.

* At least since *Green v. County School Board*, [1968] USSC 103; 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), it has been clear that a public body which has itself been adjudged to have engaged in racial discrimination cannot bring itself into compliance with the Equal Protection Clause simply by ending its unlawful acts and adopting a neutral stance. Three years later, *Swann v. Charlotte-Mecklenburg Board of Education*, [1971] USSC 121; 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and its companion cases, *Davis v. School Comm'rs of Mobile County*, [1971] USSC 73; 402 U.S. 33, 91 S.Ct. 1289, 28 L.Ed.2d 577 (1971); *McDaniel v. Barresi*, [1971] USSC 74; 402 U.S. 39, 91 S.Ct. 1287, 28 L.Ed.2d 582 (1971), and *North Carolina Board of Education v. Swann*, [1971] USSC 76; 402 U.S. 43, 91 S.Ct. 1284, 28 L.Ed.2d 586 (1971), reiterated that racially neutral remedies for past discrimination were inadequate where consequences of past discriminatory acts influence or control present decisions. See, e. g., *Charlotte-Mecklenburg, supra*, 402 U.S., at 28, 91 S.Ct., at 1282. And the Court further held both that courts could enter desegregation orders which assigned students and faculty by reference to race, *Charlotte-Mecklenburg, supra*; *Davis, supra*; *United States v. Montgomery County Board of Ed.*, [1969] USSC 137; 395 U.S. 225, 89 S.Ct. 1670, 23 L.Ed.2d 263 (1969), and that local school boards could *voluntarily* adopt desegregation plans which made express reference to race if this was necessary to remedy the effects of past discrimination. *McDaniel v. Barresi, supra*. Moreover, we stated that school boards, even in the absence of a judicial finding of past discrimination, could voluntarily adopt plans which assigned students with the end of creating racial pluralism by establishing fixed ratios of black and white students in each school. *Charlotte-Mecklenburg, supra*, 402 U.S., at 16, 91 S.Ct., at 1276. In each instance, the creation of unitary school systems, in which the effects of past discrimination had been "eliminated root and branch," *Green, supra*, 391 U.S., at 438, 88 S.Ct., at 1694, was recognized as a compelling social goal justifying the overt use of race.

Finally, the conclusion that state educational institutions may constitutionally adopt admissions programs designed to avoid exclusion of historically disadvantaged minorities, even when such programs explicitly take race into account, finds direct support in our cases construing congressional legislation designed to overcome the present effects of past discrimination. Congress can and has outlawed actions which have a disproportionately adverse and unjustified impact upon members of racial minorities and has required or authorized race-conscious action to put individuals disadvantaged by such impact in the position they otherwise might have enjoyed. See *Franks v. Bowman Transportation Co.*, [1976] USSC 46; 424 U.S. 747, 96 S.Ct. 1251, 47 L.Ed.2d 444 (1976); *Teamsters v. United States*, [1977] USSC 90; 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977). Such relief does not require as a predicate proof that recipients of preferential advancement have been individually discriminated against; it is enough that each recipient is within a general class of persons likely to have been the victims of discrimination. See *id.*, at 357-362, 97 S.Ct., at

1865-1868. Nor is it an objection to such relief that preference for minorities will upset the settled expectations of nonminorities. See *Franks, supra*. In addition, we have held that Congress, to remove barriers to equal opportunity, can and has required employers to use test criteria that fairly reflect the qualifications of minority applicants vis-a-vis nonminority applicants, even if this means interpreting the qualifications of an applicant in light of his race. See *Albemarle Paper Co. v. Moody*, [1975] USSC 134; 422 U.S. 405, 435[1975] USSC 134; , 95 S.Ct. 2362, 2380[1975] USSC 134; , 45 L.Ed.2d 280 (1975).

These cases cannot be distinguished simply by the presence of judicial findings of discrimination, for race-conscious remedies have been approved where such findings have not been made. *McDaniel v. Barresi, supra*; *UJO*; see *Califano V. Webster*, [1977] USSC 41; 430 U.S. 313, 97 S.Ct. 1192, 51 L.Ed.2d 360 (1977); *Schlesinger v. Ballard*, [1975] USSC 45; 419 U.S. 498, 95 S.Ct. 572, 42 L.Ed.2d 610 (1975); *Kahn v. Shevin*, [1974] USSC 78; 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974). See also *Katzenbach v. Morgan*, [1966] USSC 120; 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966). Indeed, the requirement of a judicial determination of a constitutional or statutory violation as a predicate for race-conscious remedial actions would be self-defeating. Such a requirement would severely undermine efforts to achieve voluntary compliance with the requirements of law. And our society and jurisprudence have always stressed the value of voluntary efforts to further the objectives of the law. Judicial intervention is a last resort to achieve cessation of illegal conduct or the remedying of its effects rather than a prerequisite to action.

No can our cases be distinguished on the ground that the entity using explicit racial classifications itself had violated § 1 of the Fourteenth Amendment or an antidiscrimination regulation, for again race-conscious remedies have been approved where this is not the case. See *UJO*, 430 U.S., at 157, 97 S.Ct., at 1005 (opinion of WHITE, J., joined by BRENNAN, BLACKMUN, and STEVENS, JJ.); 39 *id.*, at 167, 97 S.Ct., at 1010 (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); 40 *cf. Califano v. Webster, supra*, 430 U.S., at 317, 97 S.Ct., at 1194; *Kahn v. Shevin, supra*. Moreover, the presence or absence of past discrimination by universities or employers is largely irrelevant to resolving respondent's constitutional claims. The claims of those burdened by the race-conscious actions of a university or employer who has never been adjudged in violation of an antidiscrimination law are not any more or less entitled to deference than the claims of the burdened nonminority workers in *Franks v. Bowman Transportation Co., supra*, in which the employer had violated Title VII, for in each case the employees are innocent of past discrimination. And, although it might be argued that, where an employer has violated an antidiscrimination law, the expectations of nonminority workers are themselves products of discrimination and hence "tainted," see *Franks, supra*, at 776, 96 S.Ct., at 1270, and therefore more easily upset, the same argument can be made with respect to respondent. If it was reasonable to conclude—as we hold that it was—that the failure of minorities to qualify for admission at Davis under regular procedures was due principally to the effects of past discrimination, then there is a reasonable likelihood that, but for pervasive racial discrimination, respondent would have failed to qualify for admission even in the absence of Davis' special admissions program.

Thus, our cases under Title VII of the Civil Rights Act have held that, in order to achieve minority participation in previously segregated areas of public life, Congress may require or authorize preferential treatment for those likely disadvantaged by societal racial discrimination. Such

legislation has been sustained even without a requirement of findings of intentional racial discrimination by those required or authorized to accord preferential treatment, or a case-by-case determination that those to be benefited suffered from racial discrimination. These decisions compel the conclusion that States also may adopt race-conscious programs designed to overcome substantial, chronic minority underrepresentation where there is reason to believe that the evil addressed is a product of past racial discrimination.

Title VII was enacted pursuant to Congress' power under the Commerce Clause and § 5 of the Fourteenth Amendment. To the extent that Congress acted under the Commerce Clause power, it was restricted in the use of race in governmental decisionmaking by the equal protection component of the Due Process Clause of the Fifth Amendment precisely to the same extent as are the States by § 1 of the Fourteenth Amendment.⁴³ Therefore, to the extent that Title VII rests on the Commerce Clause power, our decisions such as *Franks* and *Teamsters v. United States*, [1977] USSC 90; 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977), implicitly recognize that the affirmative use of race is consistent with the equal protection component of the Fifth Amendment and therefore with the Fourteenth Amendment. To the extent that Congress acted pursuant to § 5 of the Fourteenth Amendment, those cases impliedly recognize that Congress was empowered under that provision to accord preferential treatment to victims of past discrimination in order to overcome the effects of segregation, and we see no reason to conclude that the States cannot voluntarily accomplish under § 1 of the Fourteenth Amendment what Congress under § 5 of the Fourteenth Amendment validly may authorize or compel either the States or private persons to do. A contrary position would conflict with the traditional understanding recognizing the competence of the States to initiate measures consistent with federal policy in the absence of congressional pre-emption of the subject matter. Nothing whatever in the legislative history of either the Fourteenth Amendment or the Civil Rights Acts even remotely suggests that the States are foreclosed from furthering the fundamental purpose of equal opportunity to which the Amendment and those Acts are addressed. Indeed, voluntary initiatives by the States to achieve the national goal of equal opportunity have been recognized to be essential to its attainment. "To use the Fourteenth Amendment as a sword against such State power would stultify that Amendment." *Railway Mail Assn. v. Corsi*, [1945] USSC 124; 326 U.S. 88, 98[1945] USSC 124; , 65 S.Ct. 1483, 1489, 89 L.Ed. 2072 (1945) (Frankfurter, J., concurring).⁴⁴ We therefore conclude that Davis' goal of admitting minority students disadvantaged by the effects of past discrimination is sufficiently important to justify use of race-conscious admissions criteria.

B

Properly construed, therefore, our prior cases unequivocally show that a state government may adopt race-conscious programs if the purpose of such programs is to remove the disparate racial impact its actions might otherwise have and if there is reason to believe that the disparate impact is itself the product of past discrimination, whether its own or that of society at large. There is no question that Davis' program is valid under this test.

Certainly, on the basis of the undisputed factual submissions before this Court, Davis had a sound basis for believing that the problem of underrepresentation of minorities was substantial and chronic and that the problem was attributable to handicaps imposed on minority applicants by past and present racial discrimination. Until at least 1973, the practice of medicine in this country was, in fact, if not in law, largely the prerogative of whites.⁴⁵ In 1950, for example, while Negroes

constituted 10% of the total population, Negro physicians constituted only 2.2% of the total number of physicians.⁴⁶ The overwhelming majority of these, moreover, were educated in two predominantly Negro medical schools, Howard and Meharry.⁴⁷ By 1970, the gap between the proportion of Negroes in medicine and their proportion in the population had widened: The number of Negroes employed in medicine remained frozen at 2.2%⁴⁸ while the Negro population had increased to 11.1%.⁴⁹ The number of Negro admittees to predominantly white medical schools, moreover, had declined in absolute numbers during the years 1955 to 1964. Odegaard 19.

Moreover, Davis had very good reason to believe that the national pattern of underrepresentation of minorities in medicine would be perpetuated if it retained a single admissions standard. For example, the entering classes in 1968 and 1969, the years in which such a standard was used, included only 1 Chicano and 2 Negroes out of the 50 admittees for each year. Nor is there any relief from this pattern of underrepresentation in the statistics for the regular admissions program in later years.

Davis clearly could conclude that the serious and persistent underrepresentation of minorities in medicine depicted by these statistics is the result of handicaps under which minority applicants labor as a consequence of a background of deliberate, purposeful discrimination against minorities in education and in society generally, as well as in the medical profession. From the inception of our national life, Negroes have been subjected to unique legal disabilities impairing access to equal educational opportunity. Under slavery, penal sanctions were imposed upon anyone attempting to educate Negroes.⁵¹ After enactment of the Fourteenth Amendment the States continued to deny Negroes equal educational opportunity, enforcing a strict policy of segregation that itself stamped Negroes as inferior, *Brown I*[1954] USSC 42; , 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), that relegated minorities to inferior educational institutions,⁵² and that denied them intercourse in the mainstream of professional life necessary to advancement. See *Sweatt v. Painter*, [1950] USSC 78; 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950). Segregation was not limited to public facilities, moreover, but was enforced by criminal penalties against private action as well. Thus, as late as 1908, this Court enforced a state criminal conviction against a private college for teaching Negroes together with whites. *Berea College v. Kentucky*, [1908] USSC 143; 211 U.S. 45, 29 S.Ct. 33, 53 L.Ed. 81. See also *Plessy v. Ferguson*, [1896] USSC 151; 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

Green v. County School Board, [1968] USSC 103; 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), gave explicit recognition to the fact that the habit of discrimination and the cultural tradition of race prejudice cultivated by centuries of legal slavery and segregation were not immediately dissipated when *Brown I*, *supra*, announced the constitutional principle that equal educational opportunity and participation in all aspects of American life could not be denied on the basis of race. Rather, massive official and private resistance prevented, and to a lesser extent still prevent , attainment of equal opportunity in education at all levels and in the professions. The generation of minority students applying to Davis Medical School since it opened in 1968—most of whom were born before or about the time *Brown I* was decided—clearly have been victims of this discrimination. Judicial decrees recognizing discrimination in public education in California testify to the fact of widespread discrimination suffered by California-born minority applicants;⁵³ many minority group members living in California, moreover, were born and reared in school districts in

Southern States segregated by law.⁵⁴ Since separation of school-children by race "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone," *Brown I, supra*, 347 U.S., at 494, 74 S.Ct., at 691, the conclusion is inescapable that applicants to medical school must be few indeed who endured the effects of *de jure* segregation, the resistance to *Brown I*, or the equally debilitating pervasive private discrimination fostered by our long history of official discrimination, cf. *Reitman v. Mulkey*, [1967] USSC 139; 387 U.S. 369, 87 S.Ct. 1627, 18 L.Ed.2d 830 (1967), and yet come to the starting line with an education equal to whites.

Moreover, we need not rest solely on our own conclusion that Davis had sound reason to believe that the effects of past discrimination were handicapping minority applicants to the Medical School, because the Department of Health, Education, and Welfare, the expert agency charged by Congress with promulgating regulations enforcing Title VI of the Civil Rights Act of 1964, see *supra*, at 341-343, has also reached the conclusion that race may be taken into account in situations where a failure to do so would limit participation by minorities in federally funded programs, and regulations promulgated by the Department expressly contemplate that appropriate race-conscious programs may be adopted by universities to remedy unequal access to university programs caused by their own or by past societal discrimination. See *supra*, at 344-345, discussing 45 CFR §§ 80.3(b)(6)(ii) and 80.5(j) (1971). It cannot be questioned that, in the absence of the special admissions program, access of minority students to the Medical School would be severely limited and, accordingly, race-conscious admissions would be deemed an appropriate response under these federal regulations. Moreover, the Department's regulatory policy is not one that has gone unnoticed by Congress. See *supra*, at 346-347. Indeed, although an amendment to an appropriations bill was introduced just last year that would have prevented the Secretary of Health, Education, and Welfare from mandating race-conscious programs in university admissions, proponents of this measure, significantly, did not question the validity of voluntary implementation of race-conscious admissions criteria. See *ibid*. In these circumstances, the conclusion implicit in the regulations—that the lingering effects of past discrimination continue to make race-conscious remedial programs appropriate means for ensuring equal educational opportunity in universities—deserves considerable judicial deference. See, e. g., *Katzenbach v. Morgan*, [1966] USSC 120; 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966); *UJO*, 430 U.S., at 175-178, 97 S.Ct., at 1014-1016 (opinion concurring in part).

C

The second prong of our test—whether the Davis program stigmatizes any discrete group or individual and whether race is reasonably used in light of the program's objectives—is clearly satisfied by the Davis program.

It is not even claimed that Davis' program in any way operates to stigmatize or single out any discrete and insular, or even any identifiable, nonminority group. Nor will harm comparable to that imposed upon racial minorities by exclusion or separation on grounds of race be the likely result of the program. It does not, for example, establish an exclusive preserve for minority students apart from and exclusive of whites. Rather, its purpose is to overcome the effects of segregation by bringing the races together. True, whites are excluded from participation in the special admissions program, but this fact only operates to reduce the number of whites to be admitted in the regular admissions program in order to permit admission of a reasonable percentage—less than their

proportion of the California population⁵⁷—of otherwise underrepresented qualified minority applicants.

Nor was Bakke in any sense stamped as inferior by the Medical School's rejection of him. Indeed, it is conceded by all that he satisfied those criteria regarded by the school as generally relevant to academic performance better than most of the minority members who were admitted. Moreover, there is absolutely no basis for concluding that Bakke's rejection as a result of Davis' use of racial preference will affect him throughout his life in the same way as the segregation of the Negro schoolchildren in *Brown I* would have affected them. Unlike discrimination against racial minorities, the use of racial preferences for remedial purposes does not inflict a pervasive injury upon individual whites in the sense that wherever they go or whatever they do there is a significant likelihood that they will be treated as second-class citizens because of their color. This distinction does not mean that the exclusion of a white resulting from the preferential use of race is not sufficiently serious to require justification; but it does mean that the injury inflicted by such a policy is not distinguishable from disadvantages caused by a wide range of government actions, none of which has ever been thought impermissible for that reason alone.

In addition, there is simply no evidence that the Davis program discriminates intentionally or unintentionally against any minority group which it purports to benefit. The program does not establish a quota in the invidious sense of a ceiling on the number of minority applicants to be admitted. Nor can the program reasonably be regarded as stigmatizing the program's beneficiaries or their race as inferior. The Davis program does not simply advance less qualified applicants; rather, it compensates applicants, who it is uncontested are fully qualified to study medicine, for educational disadvantages which it was reasonable to conclude were a product of state-fostered discrimination. Once admitted, these students must satisfy the same degree requirements as regularly admitted students; they are taught by the same faculty in the same classes; and their performance is evaluated by the same standards by which regularly admitted students are judged. Under these circumstances, their performance and degrees must be regarded equally with the regularly admitted students with whom they compete for standing. Since minority graduates cannot justifiably be regarded as less well qualified than nonminority graduates by virtue of the special admissions program, there is no reasonable basis to conclude that minority graduates at schools using such programs would be stigmatized as inferior by the existence of such programs.

D

We disagree with the lower courts' conclusion that the Davis program's use of race was unreasonable in light of its objectives. First, as petitioner argues, there are no practical means by which it could achieve its ends in the foreseeable future without the use of race-conscious measures. With respect to any factor (such as poverty or family educational background) that may be used as a substitute for race as an indicator of past discrimination, whites greatly outnumber racial minorities simply because whites make up a far larger percentage of the total population and therefore far outnumber minorities in absolute terms at every socioeconomic level.⁵⁹ For example, of a class of recent medical school applicants from families with less than \$10,000 income, at least 71% were white.⁶⁰ Of all 1970 families headed by a person *not* a high school graduate which included related children under 18, 80% were white and 20% were racial minorities.⁶¹ Moreover, while race is positively correlated with differences in GPA and MCAT scores, economic disadvantage is not. Thus, it appears that economically disadvantaged whites do not score less well than economically advantaged whites, while economically advantaged blacks score less well than do disadvantaged

whites.⁶² These statistics graphically illustrate that the University's purpose to integrate its classes by compensating for past discrimination could not be achieved by a general preference for the economically disadvantaged or the children of parents of limited education unless such groups were to make up the entire class.

Second, the Davis admissions program does not simply equate minority status with disadvantage. Rather, Davis considers on an individual basis each applicant's personal history to determine whether he or she has likely been disadvantaged by racial discrimination. The record makes clear that only minority applicants likely to have been isolated from the mainstream of American life are considered in the special program; other minority applicants are eligible only through the regular admissions program. True, the procedure by which disadvantage is detected is informal, but we have never insisted that educators conduct their affairs through adjudicatory proceedings, and such insistence here is misplaced. A case-by-case inquiry into the extent to which each individual applicant has been affected, either directly or indirectly, by racial discrimination, would seem to be, as a practical matter, virtually impossible, despite the fact that there are excellent reasons for concluding that such effects generally exist. When individual measurement is impossible or extremely impractical, there is nothing to prevent a State from using categorical means to achieve its ends, at least where the category is closely related to the goal. Cf. *Gaston County v. United States*, [1969] USSC 130; 395 U.S. 285, 295-296[1969] USSC 130; , 89 S.Ct. 1720, 1725-1726, 23 L.Ed.2d 309 (1969); *Katzenbach v. Morgan*, [1966] USSC 120; 384 U.S. 641, 86 S.Ct. 1731, 16 L.Ed.2d 828(1966). And it is clear from our cases that specific proof that a person has been victimized by discrimination is not a necessary predicate to offering him relief where the probability of victimization is great. See *Teamsters v. United States*, [1977] USSC 90; 431 U.S. 324, 97 S.Ct. 1843, 52 L.Ed.2d 396 (1977).

E

Finally, Davis' special admissions program cannot be said to violate the Constitution simply because it has set aside a predetermined number of places for qualified minority applicants rather than using minority status as a positive factor to be considered in evaluating the applications of disadvantaged minority applicants. For purposes of constitutional adjudication, there is no difference between the two approaches. In any admissions program which accords special consideration to disadvantaged racial minorities, a determination of the degree of preference to be given is unavoidable, and any given preference that results in the exclusion of a white candidate is no more or less constitutionally acceptable than a program such as that at Davis. Furthermore, the extent of the preference inevitably depends on how many minority applicants the particular school is seeking to admit in any particular year so long as the number of qualified minority applicants exceeds that number. There is no sensible, and certainly no constitutional, distinction between, for example, adding a set number of points to the admissions rating of disadvantaged minority applicants as an expression of the preference with the expectation that this will result in the admission of an approximately determined number of qualified minority applicants and setting a fixed number of places for such applicants as was done here.

The "Harvard" program, see *ante*, at 316-318, as those employing it readily concede, openly and successfully employs a racial criterion for the purpose of ensuring that some of the scarce places in institutions of higher education are allocated to disadvantaged minority students. That the Harvard approach does not also make public the extent of the preference and the precise workings of the

system while the Davis program employs a specific, openly stated number, does not condemn the latter plan for purposes of Fourteenth Amendment adjudication. It may be that the Harvard plan is more acceptable to the public than is the Davis "quota." If it is, any State, including California, is free to adopt it in preference to a less acceptable alternative, just as it is generally free, as far as the Constitution is concerned, to abjure granting any racial preferences in its admissions program. But there is no basis for preferring a particular preference program simply because in achieving the same goals that the Davis Medical School is pursuing, it proceeds in a manner that is not immediately apparent to the public.

V

Accordingly, we would reverse the judgment of the Supreme Court of California holding the Medical School's special admissions program unconstitutional and directing respondent's admission, as well as that portion of the judgment enjoining the Medical School from according any consideration to race in the admissions process.

Mr. Justice WHITE.

I write separately concerning the question of whether Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, provides for a private cause of action. Four Justices are apparently of the view that such a private cause of action exists, and four Justices assume it for purposes of this case. I am unwilling merely to assume an affirmative answer. If in fact no private cause of action exists, this Court and the lower courts as well are without jurisdiction to consider respondent's Title VI claim. As I see it, if we are not obliged to do so, it is at least advisable to address this threshold jurisdictional issue. See *United States v. Griffin*, [1938] USSC 62; 303 U.S. 226, 229[1938] USSC 62; , 58 S.Ct. 601, 602[1938] USSC 62; , 82 L.Ed. 764 (1938).¹ Furthermore, just as it is inappropriate to address constitutional issues without determining whether statutory grounds urged before us are dispositive, it is at least questionable practice to adjudicate a novel and difficult statutory issue without first considering whether we have jurisdiction to decide it. Consequently, I address the question of whether respondent may bring suit under Title VI.

A private cause of action under Title VI, in terms both of the Civil Rights Act as a whole and that Title, would not be "consistent with the underlying purposes of the legislative scheme" and would be contrary to the legislative intent. *Cort v. Ash*, [1975] USSC 119; 422 U.S. 66, 78[1975] USSC 119; , 95 S.Ct. 2080, 2088[1975] USSC 119; , 45 L.Ed.2d 26 (1975). Title II, 42 U.S.C. § 2000a *et seq.*, dealing with public accommodations, and Title VII, 42 U.S.C. § 2000e *et seq.* (1970 ed. and Supp. V), dealing with employment, proscribe private discriminatory conduct that as of 1964 neither the Constitution nor other federal statutes had been construed to forbid. Both Titles carefully provided for private actions as well as for official participation in enforcement. Title III, 42 U.S.C. § 2000b *et seq.*, and Title IV, 42 U.S.C. § 2000c *et seq.* (1970 ed. and Supp. V), dealing with public facilities and public education, respectively, authorize suits by the Attorney General to eliminate racial discrimination in these areas. Because suits to end discrimination in public facilities and public education were already available under 42 U.S.C. § 1983, it was, of course, unnecessary to provide for private actions under Titles III and IV. But each Title carefully provided that its provisions for public actions would not adversely affect pre-existing private remedies. §§ 2000b-2 and 2000c-8.

The role of Title VI was to terminate federal financial support for public and private institutions or programs that discriminated on the basis of race. Section 601, 42 U.S.C. § 2000d, imposed the

proscription that no person, on the grounds of race, color, or national origin, was to be excluded from or discriminated against under any program or activity receiving federal financial assistance. But there is no express provision for private actions to enforce Title VI, and it would be quite incredible if Congress, after so carefully attending to the matter of private actions in other Titles of the Act, intended silently to create a private cause of action to enforce Title VI.

It is also evident from the face of § 602, 42 U.S.C. § 2000d-1, that Congress intended the departments and agencies to define and to refine, by rule or regulation, the general proscription of § 601, subject only to judicial review of agency action in accordance with established procedures. Section 602 provides for enforcement: Every federal department or agency furnishing financial support is to implement the proscription by appropriate rule or regulation, each of which requires approval by the President. Termination of funding as a sanction for noncompliance is authorized, but *only* after a hearing and after the failure of voluntary means to secure compliance. Moreover, termination may not take place until the department or agency involved files with the appropriate committees of the House and Senate a full written report of the circumstances and the grounds for such action and 30 days have elapsed thereafter. Judicial review was provided, at least for actions terminating financial assistance.

Termination of funding was regarded by Congress as a serious enforcement step, and the legislative history is replete with assurances that it would not occur until every possibility for conciliation had been exhausted.² To allow a private individual to sue to cut off funds under Title VI would compromise these assurances and short circuit the procedural preconditions provided in Title VI. If the Federal Government may not cut off funds except pursuant to an agency rule, approved by the President, and presented to the appropriate committee of Congress for a layover period, and after voluntary means to achieve compliance have failed, it is inconceivable that Congress intended to permit individuals to circumvent these administrative prerequisites themselves.

Furthermore, although Congress intended Title VI to end federal financial support for racially discriminatory policies of not only public but also private institutions and programs, it is extremely unlikely that Congress, without a word indicating that it intended to do so, contemplated creating an independent, private statutory cause of action against all private as well as public agencies that might be in violation of the section. There is no doubt that Congress regarded private litigation as an important tool to attack discriminatory practices. It does not at all follow, however, that Congress anticipated new private actions under Title VI itself. Wherever a discriminatory program was a public undertaking, such as a public school, private remedies were already available under other statutes, and a private remedy under Title VI was unnecessary. Congress was well aware of this fact. Significantly, there was frequent reference to *Simkins v. Moses H. Cone Memorial Hospital*, [1963] USCA4 389; 323 F.2d 959 (C.A.4 1963), cert. denied, 376 U.S. 938, 84 S.Ct. 793, 11 L.Ed.2d 659 (1964), throughout the congressional deliberations. See, e. g., 110 Cong.Rec. 6544 (1964) (Sen. Humphrey). *Simkins* held that under appropriate circumstances, the operation of a private hospital with "massive use of public funds and extensive state-federal sharing in the common plan" constituted "state action" for the purposes of the Fourteenth Amendment. 323 F.2d, at 967. It was unnecessary, of course, to create a Title VI private action against private discriminators where they were already within the reach of existing private remedies. But when they were not—and *Simkins* carefully disclaimed holding that "every subvention by the federal or state government automatically involves the beneficiary in 'state action,' " *ibid.*³—it is difficult to believe that Congress *silently* created a *private* remedy to terminate conduct that previously had been entirely

beyond the reach of federal law.

For those who believe, contrary to my views, that Title VI was intended to create a stricter standard of color blindness than the Constitution itself requires, the result of no private cause of action follows even more readily. In that case Congress must be seen to have banned degrees of discrimination, as well as types of discriminators, not previously reached by law. A Congress careful enough to provide that existing private causes of action would be preserved (in Titles III and IV) would not leave for inference a vast new extension of private enforcement power. And a Congress so exceptionally concerned with the satisfaction of procedural preliminaries before confronting fund recipients with the choice of a cutoff or of stopping discriminating would not permit private parties to pose precisely that same dilemma in a greatly widened category of cases with no procedural requirements whatsoever.

Significantly, in at least three instances legislators who played a major role in the passage of Title VI explicitly stated that a private right of action under Title VI does not exist.⁴ As an "indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one," *Cort v. Ash*, 422 U.S., at 78, 95 S.Ct., at 2088, clearer statements cannot be imagined, and under *Cort*, "an explicit purpose to *deny* such cause of action [is] controlling." *Id.*, at 82, 95 S.Ct., at 2090. Senator Keating, for example, proposed a private "right to sue" for the "person suffering from discrimination"; but the Department of Justice refused to include it, and the Senator acquiesced.⁵ These are not neutral, ambiguous statements. They indicate the absence of a legislative intent to create a private remedy. Nor do any of these statements make nice distinctions between a private cause of action to enjoin discrimination and one to cut off funds, as Mr. Justice STEVENS and the three Justices who join his opinion apparently would. See *post*, at 419-420, n. 26. Indeed, it would be odd if they did, since the practical effect of either type of private cause of action would be identical. If private suits to enjoin conduct allegedly violative of § 601 were permitted, recipients of federal funds would be presented with the choice of either ending what the court, rather than the agency, determined to be a discriminatory practice within the meaning of Title VI or refusing federal funds and thereby escaping from the statute's jurisdictional predicate.⁶ This is precisely the same choice as would confront recipients if suit were brought to cut off funds. Both types of actions would equally jeopardize the administrative processes so carefully structured into the law.

This Court has always required "that the inference of such a private cause of action not otherwise authorized by the statute must be consistent with the evident legislative intent and, of course, with the effectuation of the purposes intended to be served by the Act." *National Railroad Passenger Corp. v. National Association of Railroad Passengers*, [1974] USSC 34; 414 U.S. 453, 458 [1974] USSC 34; , 94 S.Ct. 690, 693 [1974] USSC 34; , 38 L.Ed.2d 646 (1974). See also *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 418-420, 95 S.Ct. 1733, 1737-1738, 44 L.Ed.2d 263 (1975). A private cause of action under Title VI is unable to satisfy either prong of this test.

Because each of my colleagues either has a different view or assumes a private cause of action, however, the merits of the Title VI issue must be addressed. My views in that regard, as well as my views with respect to the equal protection issue, are included in the joint opinion that my Brothers BRENNAN, MARSHALL, and BLACKMUN and I have filed.⁷

Mr. Justice MARSHALL.

I agree with the judgment of the Court only insofar as it permits a university to consider the race of

an applicant in making admissions decisions. I do not agree that petitioner's admissions program violates the Constitution. For it must be remembered that, during most of the past 200 years, the Constitution as interpreted by this Court did not prohibit the most ingenious and pervasive forms of discrimination against the Negro. Now, when a State acts to remedy the effects of that legacy of discrimination, I cannot believe that this same Constitution stands as a barrier.

* A.

Three hundred and fifty years ago, the Negro was dragged to this country in chains to be sold into slavery. Uprooted from his homeland and thrust into bondage for forced labor, the slave was deprived of all legal rights. It was unlawful to teach him to read; he could be sold away from his family and friends at the whim of his master; and killing or maiming him was not a crime. The system of slavery brutalized and dehumanized both master and slave.

The denial of human rights was etched into the American Colonies' first attempts at establishing self-government. When the colonists determined to seek their independence from England, they drafted a unique document cataloguing their grievances against the King and proclaiming as "self-evident" that "all men are created equal" and are endowed "with certain unalienable Rights," including those to "Life, Liberty and the pursuit of Happiness." The self-evident truths and the unalienable rights were intended, however, to apply only to white men. An earlier draft of the Declaration of Independence, submitted by Thomas Jefferson to the Continental Congress, had included among the charges against the King that

"[h]e has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither." Franklin 88.

The Southern delegation insisted that the charge be deleted; the colonists themselves were implicated in the slave trade, and inclusion of this claim might have made it more difficult to justify the continuation of slavery once the ties to England were severed. Thus, even as the colonists embarked on a course to secure their own freedom and equality, they ensured perpetuation of the system that deprived a whole race of those rights.

The implicit protection of slavery embodied in the Declaration of Independence was made explicit in the Constitution, which treated a slave as being equivalent to three-fifths of a person for purposes of apportioning representatives and taxes among the States. Art. I, § 2. The Constitution also contained a clause ensuring that the "Migration or Importation" of slaves into the existing States would be legal until at least 1808, Art. I, § 9, and a fugitive slave clause requiring that when a slave escaped to another State, he must be returned on the claim of the master, Art. IV, § 2. In their declaration of the principles that were to provide the cornerstone of the new Nation, therefore, the Framers made it plain that "we the people," for whose protection the Constitution was designed, did not include those whose skins were the wrong color. As Professor John Hope Franklin has observed Americans "proudly accepted the challenge and responsibility of their new political freedom by establishing the machinery and safeguards that insured the continued enslavement of blacks." Franklin 100.

The individual States likewise established the machinery to protect the system of slavery through

the promulgation of the Slave Codes, which were designed primarily to defend the property interest of the owner in his slave. The position of the Negro slave as mere property was confirmed by this Court in *Dred Scott v. Sandford*, [1856] USSC 9; 19 How. 393, 15 L.Ed. 691 (1857), Holding that the Missouri Compromise—which prohibited slavery in the portion of the Louisiana Purchase Territory north of Missouri—was unconstitutional because it deprived slave owners of their property without due process. The Court declared that under the Constitution a slave was property, and "[t]he right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States . . ." *Id.*, at 451. The Court further concluded that Negroes were not intended to be included as citizens under the Constitution but were "regarded as beings of an inferior order . . . altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect . . ." *Id.*, at 407.

B

The status of the Negro as property as officially erased by his emancipation at the end of the Civil War. But the long-awaited emancipation, while freeing the Negro from slavery, did not bring him citizenship or equality in any meaningful way. Slavery was replaced by a system of "laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty, and property to such an extent that their freedom was of little value." *Slaughter-House Cases*[1872] USSC 142; , 16 Wall. 36, 70[1872] USSC 142; , 21 L.Ed. 394 (1873). Despite the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, the Negro was systematically denied the rights those Amendments were supposed to secure. The combined actions and inactions of the State and Federal Governments maintained Negroes in a position of legal inferiority for another century after the Civil War.

The Southern States took the first steps to re-enslave the Negroes. Immediately following the end of the Civil War, many of the provisional legislatures passed Black Codes, similar to the Slave Codes, which, among other things, limited the rights of Negroes to own or rent property and permitted imprisonment for breach of employment contracts. Over the next several decades, the South managed to disenfranchise the Negroes in spite of the Fifteenth Amendment by various techniques, including poll taxes, deliberately complicated balloting processes, property and literacy qualifications, and finally the white primary.

Congress responded to the legal disabilities being imposed in the Southern States by passing the Reconstruction Acts and the Civil Rights Acts. Congress also responded to the needs of the Negroes at the end of the Civil War by establishing the Bureau of Refugees, Freedmen, and Abandoned Lands, better known as the Freedmen's Bureau, to supply food, hospitals, land, and education to the newly freed slaves. Thus, for a time it seemed as if the Negro might be protected from the continued denial of his civil rights and might be relieved of the disabilities that prevented him from taking his place as a free and equal citizen.

That time, however, was short-lived. Reconstruction came to a close, and, with the assistance of this Court, the Negro was rapidly stripped of his new civil rights. In the words of C. Vann Woodward: "By narrow and ingenious interpretation [the Supreme Court's] decisions over a period of years had whittled away a great part of the authority presumably given the government for protection of civil rights." Woodward 139.

The Court began by interpreting the Civil War Amendments in a manner that sharply curtailed their substantive protections. See, e. g., *Slaughter-House Cases*, *supra*; *United States v. Reese*, [1875] USSC 177; 92 U.S. 214, 23 L.Ed. 563 (1876); *United States v. Cruikshank*, [1875] USSC 172; 92 U.S. 542, 23 L.Ed. 588 (1876). Then in the notorious *Civil Rights Cases*[1883] USSC 182; , 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835 (1883), the Court strangled Congress' efforts to use its power to promote racial equality. In those cases the Court invalidated sections of the Civil Rights Act of 1875 that made it a crime to deny equal access to "inns, public conveyances, theatres and other places of public amusement." *Id.*, at 10, 3 S.Ct., at 20. According to the Court, the Fourteenth Amendment gave Congress the power to proscribe only discriminatory action by the State. The Court ruled that the Negroes who were excluded from public places suffered only an invasion of their social rights at the hands of private individuals, and Congress had no power to remedy that. *Id.*, at 24-25, 3 S.Ct., at 31. "When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state," the Court concluded, "there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws . . ." *Id.*, at 25, 3 S.Ct., at 31. As Mr. Justice Harlan noted in dissent, however, the Civil War Amendmen § and Civil Rights Acts did not make the Negroes the "special favorite" of the laws but instead "sought to accomplish in reference to that race . . . what had already been done in every State of the Union for the white race—to secure and protect rights belonging to them as freemen and citizens; nothing more." *Id.*, at 61, 3 S.Ct., at 57.

The Court's ultimate blow to the Civil War Amendments and to the equality of Negroes came in *Plessy v. Ferguson*, [1896] USSC 151; 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896). In upholding a Louisiana law that required railway companies to provide "equal but separate" accommodations for whites and Negroes, the Court held that the Fourteenth Amendment was not intended "to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either." *Id.*, at 544, 16 S.Ct., at 1140. Ignoring totally the realities of the positions of the two races, the Court remarked:

"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." *Id.*, at 551, 16 S.Ct., at 1143.

Mr. Justice Harlan's dissenting opinion recognized the bankruptcy of the Court's reasoning. He noted that the "real meaning" of the legislation was "that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens." *Id.*, at 560, 16 S.Ct., at 1147. He expressed his fear that if like laws were enacted in other States, "the effect would be in the highest degree mischievous." *Id.*, at 563, 16 S.Ct., at 1148. Although slavery would have disappeared, the States would retain the power "to interfere with the full enjoyment of the blessings of freedom; to regulate civil rights, common to all citizens, upon the basis of race; and to place in a condition of legal inferiority a large body of American citizens . . ." *Ibid.*

The fears of Mr. Justice Harlan were soon to be realized. In the wake of *Plessy*, many States expanded their Jim Crow laws, which had up until that time been limited primarily to passenger trains and schools. The segregation of the races was extended to residential areas, parks, hospitals, theaters, waiting rooms, and bathrooms. There were even statutes and ordinances which authorized separate phone booths for Negroes and whites, which required that textbooks used by children of

one race be kept separate from those used by the other, and which required that Negro and white prostitutes be kept in separate districts. In 1898, after *Plessy*, the Charlestown News and Courier printed a parody of Jim Crow laws:

" 'If there must be Jim Crow cars on the railroads, there should be Jim Crow cars on the street railways. Also on all passenger boats. . . . If there are to be Jim Crow cars, moreover, there should be Jim Crow waiting saloons at all stations, and Jim Crow eating houses. . . . There should be Jim Crow sections of the jury box, and a separate Jim Crow dock and witness stand in every court—and a Jim Crow Bible for colored witnesses to kiss.' " Woodward 68.

The irony is that before many years had passed, with the exception of the Jim Crow witness stand, "all the improbable applications of the principle suggested by the editor in derision had been put into practice—down to and including the Jim Crow Bible." *Id.*, at 69.

Nor were the laws restricting the rights of Negroes limited solely to the Southern States. In many of the Northern States, the Negro was denied the right to vote, prevented from serving on juries, and excluded from theaters, restaurants, hotels, and inns. Under President Wilson, the Federal Government began to require segregation in Government buildings; desks of Negro employees were curtained off; separate bathrooms and separate tables in the cafeterias were provided; and even the galleries of the Congress were segregated. When his segregationist policies were attacked, President Wilson responded that segregation was " 'not humiliating but a benefit' " and that he was " 'rendering [the Negroes] more safe in their possession of office and less likely to be discriminated against.' " Kluger 91.

The enforced segregation of the races continued into the middle of the 20th century. In both World Wars, Negroes were for the most part confined to separate military units; it was not until 1948 that an end to segregation in the military was ordered by President Truman. And the history of the exclusion of Negro children from white public schools is too well known and recent to require repeating here. That Negroes were deliberately excluded from public graduate and professional schools—and thereby denied the opportunity to become doctors, lawyers, engineers, and the like—is also well established. It is of course true that some of the Jim Crow laws (which the decisions of this Court had helped to foster) were struck down by this Court in a series of decisions leading up to *Brown v. Board of Education*, [1954] USSC 42; 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). See, e. g., *Morgan v. Virginia*[1946] USSC 100; , 328 U.S. 373, 66 S.Ct. 1050, 90 L.Ed. 1317 (1946); *Sweatt v. Painter*, [1950] USSC 78; 339 U.S. 629, 70 S.Ct. 848, 94 L.Ed. 1114 (1950); *McLaurin v. Oklahoma State Regents*, [1950] USSC 62; 339 U.S. 637, 70 S.Ct. 851, 94 L.Ed. 1149 (1950). Those decisions, however, did not automatically end segregation, nor did they move Negroes from a position of legal inferiority to one of equality. The legacy of years of slavery and of years of second-class citizenship in the wake of emancipation could not be so easily eliminated.

II

The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment. Measured by any benchmark of comfort or achievement, meaningful equality remains a distant dream for the Negro.

A Negro child today has a life expectancy which is shorter by more than five years than that of a white child.² The Negro child's mother is over three times more likely to die of complications in childbirth,³ and the infant mortality rate for Negroes is nearly twice that for whites.⁴ The median

income of the Negro family is only 60% that of the median of a white family,⁵ and the percentage of Negroes who live in families with incomes below the poverty line is nearly four times greater than that of whites.

When the Negro child reaches working age, he finds that America offers him significantly less than it offers his white counterpart. For Negro adults, the unemployment rate is twice that of whites,⁷ and the unemployment rate for Negro teenagers is nearly three times that of white teenagers.⁸ A Negro male who completes four years of college can expect a median annual income of merely \$110 more than a white male who has only a high school diploma.⁹ Although Negroes represent 11.5% of the population,¹⁰ they are only 1.2% of the lawyers, and judges, 2% of the physicians, 2.3% of the dentists, 1.1% of the engineers and 2.6% of the college and university professors.

The relationship between those figures and the history of unequal treatment afforded to the Negro cannot be denied. At every point from birth to death the impact of the past is reflected in the still disfavored position of the Negro.

In light of the sorry history of discrimination and its devastating impact on the lives of Negroes, bringing the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society.

III

I do not believe that the Fourteenth Amendment requires us to accept that fate. Neither its history nor our past cases lend any support to the conclusion that a university may not remedy the cumulative effects of society's discrimination by giving consideration to race in an effort to increase the number and percentage of Negro doctors.

A.

This Court long ago remarked that

"in any fair and just construction of any section or phrase of these [Civil War] amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy" *Slaughter-House Cases*, 16 Wall., at 72.

It is plain that the Fourteenth Amendment was not intended to prohibit measures designed to remedy the effects of the Nation's past treatment of Negroes. The Congress that passed the Fourteenth Amendment is the same Congress that passed the 1866 Freedmen's Bureau Act, an Act that provided many of its benefits only to Negroes. Act of July 16, 1866, ch. 200, 14 Stat. 173; see *supra*, at 391. Although the Freedmen's Bureau legislation provided aid for refugees, thereby including white persons within some of the relief measures, 14 Stat. 174; see also Act of Mar. 3, 1865, ch. 90, 13 Stat. 507, the bill was regarded, to the dismay of many Congressmen, as "solely and entirely for the freedmen, and to the exclusion of all other persons . . ." Cong. Globe, 39th Cong., 1st Sess., 544 (1866) (remarks of Rep. Taylor). See also *id.*, at 634-635 (remarks of Rep. Ritter); *id.*, at App. 78, 80-81 (remarks of Rep. Chanler). Indeed, the bill was bitterly opposed on

the ground that it "undertakes to make the negro in some respects . . . superior . . . and gives them favors that the poor white boy in the North cannot get." *Id.*, at 401 (remarks of Sen. McDougall). See also *id.*, at 319 (remarks of Sen. Hendricks); *id.*, at 362 (remarks of Sen. Saulsbury); *id.*, at 397 (remarks of Sen. Willey); *id.*, at 544 (remarks of Rep. Taylor). The bill's supporters defended it—not by rebutting the claim of special treatment—but by pointing to the need for such treatment:

"The very discrimination it makes between 'destitute and suffering' negroes, and destitute and suffering white paupers, proceeds upon the distinction that, in the omitted case, civil rights and immunities are already sufficiently protected by the possession of political power, the absence of which in the case provided for necessitates governmental protection." *Id.*, at App. 75 (remarks of Rep. Phelps).

Despite the objection to the special treatment the bill would provide for Negroes, it was passed by Congress. *Id.*, at 421, 688. President Johnson vetoed this bill and also a subsequent bill that contained some modifications; one of his principal objections to both bills was that they gave special benefits to Negroes. 8 Messages and Papers of the Presidents 3596, 3599, 3620, 3623 (1897). Rejecting the concerns of the President and the bill's opponents, Congress overrode the President's second veto. Cong.Globe, 39th Cong., 1st Sess., 3842, 3850 (1866).

Since the Congress that considered and rejected the objections to the 1866 Freedmen's Bureau Act concerning special relief to Negroes also proposed the Fourteenth Amendment, it is inconceivable that the Fourteenth Amendment was intended to prohibit all race-conscious relief measures. It "would be a distortion of the policy manifested in that amendment, which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color." *Railway Mail Assn. v. Corsi*, [1945] USSC 124; 326 U.S. 88, 94[1945] USSC 124; , 65 S.Ct. 1483, 1487, 89 L.Ed. 2072 (1945), to hold that it barred state action to remedy the effects of that discrimination. Such a result would pervert the intent of the Framers by substituting abstract equality for the genuine equality the Amendment was intended to achieve.

B

As has been demonstrated in our joint opinion, this Court's past cases establish the constitutionality of race-conscious remedial measures. Beginning with the school desegregation cases, we recognized that even absent a judicial or legislative finding of constitutional violation, a school board constitutionally could consider the race of students in making school-assignment decisions. See *Swann v. Charlotte-Mecklenburg Board of Education*, [1971] USSC 121; 402 U.S. 1, 16[1971] USSC 121; , 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554 (1971); *McDaniel v. Barresi*, [1971] USSC 74; 402 U.S. 39, 41[1971] USSC 74; , 91 S.Ct. 1287, 1288, 28 L.Ed.2d 582 (1971). We noted, moreover, that a

"flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. As we have held in *Swann*, the Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful as starting points in shaping a remedy. An absolute prohibition against use of such a

device—even as a starting point—contravenes the implicit command of *Green v. County School Board*, [1968] USSC 103; 391 U.S. 430 [88 S.Ct. 1689, 20 L.Ed.2d 716] (1968), that all reasonable methods be available to formulate an effective remedy." *Board of Education v. Swann*, [1971] USSC 76; 402 U.S. 43, 46[1971] USSC 76; , 91 S.Ct. 1284, 1286, 28 L.Ed.2d 586 (1971).

As we have observed, "[a]ny other approach would freeze the status quo that is the very target of all desegregation processes." *McDaniel v. Barresi*, *supra*, 402 U.S. at 41, 91 S.Ct. at 1289.

Only last Term, in *United Jewish Organizations v. Carey*, [1977] USSC 34; 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed. 229 (1977), we upheld a New York reapportionment plan that was deliberately drawn on the basis of race to enhance the electoral power of Negroes and Puerto Ricans; the plan had the effect of diluting the electoral strength of the Hasidic Jewish community. We were willing in *UJO* to sanction the remedial use of a racial classification even though it disadvantaged otherwise "innocent" individuals. In another case last Term, *Califano v. Webster*[1977] USSC 41; , 430 U.S. 313, 97 S.Ct. 1192, 51 L.Ed.2d 360 (1977), the Court upheld a provision in the Social Security laws that discriminated against men because its purpose was " 'the permissible one of redressing our society's longstanding disparate treatment of women.' " *Id.*, at 317, 97 S.Ct. at 1195, quoting *Califano v. Goldfarb*, [1977] USSC 35; 430 U.S. 199, 209 n. 8[1977] USSC 35; , 97 S.Ct. 1021, 1028[1977] USSC 35; , 51 L.Ed.2d 270 (1977) (plurality opinion). We thus recognized the permissibility of remedying past societal discrimination through the use of otherwise disfavored classifications.

Nothing in those cases suggests that a university cannot similarly act to remedy past discrimination.¹² It is true that in both *UJO* and *Webster* the use of the disfavored classification was predicated on legislative or administrative action, but in neither case had those bodies made findings that there had been constitutional violations or that the specific individuals to be benefited had actually been the victims of discrimination. Rather, the classification in each of those cases was based on a determination that the group was in need of the remedy because of some type of past discrimination. There is thus ample support for the conclusion that a university can employ race-conscious measures to remedy past societal discrimination, without the need for a finding that those benefited were actually victims of that discrimination.

IV

While I applaud the judgment of the Court that a university may consider race in its admissions process, it is more than a little ironic that, after several hundred years of class-based discrimination against Negroes, the Court is unwilling to hold that a class-based remedy for that discrimination is permissible. In declining to so hold, today's judgment ignores the fact that for several hundred years Negroes have been discriminated against, not as individuals, but rather solely because of the color of their skins. It is unnecessary in 20th-century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that none, regardless of wealth or position, has managed to escape its impact. The experience of Negroes in America has been different in kind, not just in degree, from that of other ethnic groups. It is not merely the history of slavery alone but also that a whole people were marked as inferior by the law. And that mark has endured. The dream of America as the great melting pot has not been realized for the Negro; because of his skin color he never even made it into the pot.

These differences in the experience of the Negro make it difficult for me to accept that Negroes cannot be afforded greater protection under the Fourteenth Amendment where it is necessary to remedy the effects of past discrimination. In the *Civil Rights Cases, supra*, the Court wrote that the Negro emerging from slavery must cease "to be the special favorite of the laws." 109 U.S., at 25, 3 S.Ct., at 31, see *supra*, at 392. We cannot in light of the history of the last century yield to that view. Had the Court in that decision and others been willing to "do for human liberty and the fundamental rights of American citizenship, what it did . . . for the protection of slavery and the rights of the masters of fugitive slaves," 109 U.S., at 53, 3 S.Ct., at 51 (Harlan, J., dissenting), we would not need now to permit the recognition of any "special wards."

Most importantly, had the Court been willing in 1896, in *Plessy v. Ferguson*, to hold that the Equal Protection Clause forbids differences in treatment based on race, we would not be faced with this dilemma in 1978. We must remember, however, that the principle that the "Constitution is color-blind" appeared only in the opinion of the lone dissenter. 163 U.S., at 559, 16 S.Ct., at 1146. The majority of the Court rejected the principle of color-blindness, and for the next 58 years, from *Plessy* to *Brown v. Board of Education*, ours was a Nation where, by law, an individual could be given "special" treatment based on the color of his skin.

It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence, and prestige in America. For far too long, the doors to those positions have been shut to Negroes. If we are ever to become a fully integrated society, one in which the color of a person's skin will not determine the opportunities available to him or her, we must be willing to take steps to open those doors. I do not believe that anyone can truly look into America's past and still find that a remedy for the effects of that past is impermissible.

It has been said that this case involves only the individual, Bakke, and this University. I doubt, however, that there is a computer capable of determining the number of persons and institutions that may be affected by the decision in this case. For example, we are told by the Attorney General of the United States that at least 27 federal agencies have adopted regulations requiring recipients of federal funds to take " 'affirmative action to overcome the effects of conditions which resulted in limiting participation . . . by persons of a particular race, color, or national origin.' " Supplemental Brief for United States as *Amicus Curiae* 16 (emphasis added). I cannot even guess the number of state and local governments that have set up affirmative-action programs, which may be affected by today's decision.

I fear that we have come full circle. After the Civil War our Government started several "affirmative action" programs. This Court in the *Civil Rights Cases* and *Plessy v. Ferguson* destroyed the movement toward complete equality. For almost a century no action was taken, and this nonaction was with the tacit approval of the courts. Then we had *Brown v. Board of Education* and the Civil Rights Acts of Congress, followed by numerous affirmative-action programs. Now, we have this Court again stepping in, this time to stop affirmative-action programs of the type used by the University of California.

Mr. Justice BLACKMUN.

I participate fully, of course, in the opinion, *ante*, p. 324, that bears the names of my Brothers BRENNAN, WHITE, MARSHALL, and myself. I add only some general observations that hold

particular significance for me, and then a few comments on equal protection.

* At least until the early 1970's, apparently only a very small number, less than 2%, of the physicians, attorneys, and medical and law students in the United States were members of what we now refer to as minority groups. In addition, approximately three-fourths of our Negro physicians were trained at only two medical schools. If ways are not found to remedy that situation, the country can never achieve its professed goal of a society that is not race conscious.

I yield to no one in my earnest hope that the time will come when an "affirmative action" program is unnecessary and is, in truth, only a relic of the past. I would hope that we could reach this stage within a decade at the most. But the story of *Brown v. Board of Education*, [1954] USSC 42; 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), decided almost a quarter of a century ago, suggests that that hope is a slim one. At some time, however, beyond any period of what some would claim is only transitional inequality, the United States must and will reach a stage of maturity where action along this line is no longer necessary. Then persons will be regarded as persons, and discrimination of the type we address today will be an ugly feature of history that is instructive but that is behind us.

The number of qualified, indeed highly qualified, applicants for admission to existing medical schools in the United States far exceeds the number of places available. Wholly apart from racial and ethnic considerations, therefore, the selection process inevitably results in the denial of admission to many *qualified* persons, indeed, to far more than the number of those who are granted admission. Obviously, it is a denial to the deserving. This inescapable fact is brought into sharp focus here because Allan Bakke is not himself charged with discrimination and yet is the one who is disadvantaged, and because the Medical School of the University of California at Davis itself is not charged with historical discrimination.

One theoretical solution to the need for more minority members in higher education would be to enlarge our graduate schools. Then all who desired and were qualified could enter, and talk of discrimination would vanish. Unfortunately, this is neither feasible nor realistic. The vast resources that apparently would be required simply are not available. And the need for more professional graduates, in the strict numerical sense, perhaps has not been demonstrated at all.

There is no particular or real significance in the 84-16 division at Davis. The same theoretical, philosophical, social, legal, and constitutional considerations would necessarily apply to the case if Davis' special admissions program had focused on any lesser number, that is, on 12 or 8 or 4 places or, indeed, on only 1.

It is somewhat ironic to have us so deeply disturbed over a program where race is an element of consciousness, and yet to be aware of the fact, as we are, that institutions of higher learning, albeit more on the undergraduate than the graduate level, have given conceded preferences up to a point to those possessed of athletic skills, to the children of alumni, to the affluent who may bestow their largess on the institutions, and to those having connections with celebrities, the famous, and the powerful.

Programs of admission to institutions of higher learning are basically a responsibility for academicians and for administrators and the specialists they employ. The judiciary, in contrast, is ill-equipped and poorly trained for this. The administration and management of educational institutions

are beyond the competence of judges and are within the special competence of educators, provided always that the educators perform within legal and constitutional bounds. For me, therefore, interference by the judiciary must be the rare exception and not the rule.

II

I, of course, accept the propositions that (a) Fourteenth Amendment rights are personal; (b) racial and ethnic distinctions where they are stereotypes are inherently suspect and call for exacting judicial scrutiny; (c) academic freedom is a special concern of the First Amendment; and (d) the Fourteenth Amendment has expanded beyond its original 1868 concept and now is recognized to have reached a point where, as Mr. Justice POWELL states, *ante*, at 293, quoting from the Court's opinion in *McDonald v. Santa Fe Trail Transp. Co.*, [1976] USSC 142; 427 U.S. 273, 296[1976] USSC 142; , 96 S.Ct. 2574, 2586[1976] USSC 142; , 49 L.Ed.2d 493 (1976), it embraces a "broader principle."

This enlargement does not mean for me, however, that the Fourteenth Amendment has broken away from its moorings and its original intended purposes. Those original aims persist. And that, in a distinct sense, is what "affirmative action," in the face of proper facts, is all about. If this conflicts with idealistic equality, that tension is original Fourteenth Amendment tension, constitutionally conceived and constitutionally imposed, and it is part of the Amendment's very nature until complete equality is achieved in the area. In this sense, constitutional equal protection is a shield.

I emphasize in particular that the decided cases are not easily to be brushed aside. Many, of course, are not precisely on point, but neither are they off point. Racial factors have been given consideration in the school desegregation cases, in the employment cases, in *Lau v. Nichols*, [1974] USSC 14; 414 U.S. 563, 94 S.Ct. 786, 39 L.Ed.2d 1 (1974), and in *United Jewish Organizations v. Carey*, [1977] USSC 34; 430 U.S. 144, 97 S.Ct. 996, 51 L.Ed.2d 229 (1977). To be sure, some of these may be "distinguished" on the ground that victimization was directly present. But who is to say that victimization is not present for some members of today's minority groups, although it is of a lesser and perhaps different degree. The petitioners in *United Jewish Organizations* certainly complained bitterly of their reapportionment treatment, and I rather doubt that they regard the "remedy" there imposed as one that was "to improve" the group's ability to participate, as Mr. Justice POWELL describes it, *ante*, at 305. And surely in *Lau v. Nichols* we looked to ethnicity.

I am not convinced, as Mr. Justice POWELL seems to be, that the difference between the Davis program and the one employed by Harvard is very profound or constitutionally significant. The line between the two is a thin and indistinct one. In each, subjective application is at work. Because of my conviction that admission programs are primarily for the educators, I am willing to accept the representation that the Harvard program is one where good faith in its administration is practiced as well as professed. I agree that such a program, where race or ethnic background is only one of many factors, is a program better formulated than Davis' two-track system. The cynical, of course, may say that under a program such as Harvard's one may accomplish covertly what Davis concedes it does openly. I need not go that far, for despite its two-track aspect, the Davis program, for me, is within constitutional bounds, though perhaps barely so. It is surely free of stigma, and, as in *United Jewish Organizations*, I am not willing to infer a constitutional violation.

It is worth noting, perhaps, that governmental preference has not been a stranger to our legal life. We see it in veterans' preferences. We see it in the aid-to-the-handicapped programs. We see it in the

progressive income tax. We see it in the Indian programs. We may excuse some of these on the ground that they have specific constitutional protection or, as with Indians, that those benefited are wards of the Government. Nevertheless, these preferences exist and may not be ignored. And in the admissions field, as I have indicated, educational institutions have always used geography, athletic ability, anticipated financial largess, alumni pressure, and other factors of that kind.

I add these only as additional components on the edges of the central question as to which I join my Brothers BRENNAN, WHITE, and MARSHALL in our more general approach. It is gratifying to know that the Court at least finds it constitutional for an academic institution to take race and ethnic background into consideration as one factor, among many, in the administration of its admissions program. I presume that that factor always has been there, though perhaps not conceded or even admitted. It is a fact of life, however, and a part of the real world of which we are all a part. The sooner we get down the road toward accepting and being a part of the real world, and not shutting it out and away from us, the sooner will these difficulties vanish from the scene.

I suspect that it would be impossible to arrange an affirmative-action program in a racially neutral way and have it successful. To ask that this be so is to demand the impossible. In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not let the Equal Protection Clause perpetuate racial supremacy.

So the ultimate question, as it was at the beginning of this litigation, is: Among the qualified, how does one choose?

A long time ago, as time is measured for this Nation, a Chief Justice, both wise and farsighted, said:

"In considering this question, then, we must never forget, that it is *a constitution* we are expounding." *McCulloch v. Maryland*, [1819] USSC 5; 4 Wheat. 316, 407[1819] USSC 5; , 4 L.Ed. 579 (1819) (emphasis in original).

In the same opinion, the Great Chief Justice further observed:

"Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id.*, at 421.

More recently, one destined to become a Justice of this Court observed:

"The great generalities of the constitution have a content and a significance that vary from age to age." B. Cardozo, *The Nature of the Judicial Process* 17 (1921).

And an educator who became a President of the United States said:

"But the Constitution of the United States is not a mere lawyers' document: it is a vehicle of life, and its spirit is always the spirit of the age." W. Wilson, *Constitutional Government in the United States* 69 (1911).

These precepts of breadth and flexibility and ever-present modernity are basic to our constitutional

law. Today, again, we are expounding a *Constitution*. The same principles that governed *McCulloch's* case in 1819 govern *Bakke's* case in 1978. There can be no other answer.

Mr. Justice STEVENS, with whom THE CHIEF JUSTICE, Mr. Justice STEWART, and Mr. Justice REHNQUIST join, concurring in the judgment in part and dissenting in part.

It is always important at the outset to focus precisely on the controversy before the Court.¹ It is particularly important to do so in this case because correct identification of the issues will determine whether it is necessary or appropriate to express any opinion about the legal status of any admissions program other than petitioner's.

* This is not a class action. The controversy is between two specific litigants. Allan Bakke challenged petitioner's special admissions program, claiming that it denied him a place in medical school because of his race in violation of the Federal and California Constitutions and of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* The California Supreme Court upheld his challenge and ordered him admitted. If the state court was correct in its view that the University's special program was illegal, and that Bakke was therefore unlawfully excluded from the Medical School because of his race, we should affirm its judgment, regardless of our views about the legality of admissions programs that are not now before the Court.

The judgment as originally entered by the trial court contained four separate paragraphs, two of which are of critical importance.² Paragraph 3 declared that the University's special admissions program violated the Fourteenth Amendment, the State Constitution, and Title VI. The trial court did not order the University to admit Bakke because it concluded that Bakke had not shown that he would have been admitted if there had been no special program. Instead, in paragraph 2 of its judgment it ordered the University to consider Bakke's application for admission without regard to his race or the race of any other applicant. The order did not include any broad prohibition against any use of race in the admissions process; its terms were clearly limited to the University's consideration of *Bakke's* application.³ Because the University has since been ordered to admit Bakke paragraph 2 of the trial court's order no longer has any significance.

The California Supreme Court, in a holding that is not challenged, ruled that the trial court incorrectly placed the burden on Bakke of showing that he would have been admitted in the absence of discrimination. The University then conceded "that it [could] not meet the burden of proving that the special admissions program did not result in Mr. Bakke's failure to be admitted."⁴ Accordingly, the California Supreme Court directed the trial court to enter judgment ordering Bakke's admission.⁵ Since that order superseded paragraph 2 of the trial court's judgment, there is no outstanding injunction forbidding any consideration of racial criteria in processing applications.

It is therefore perfectly clear that the question whether race can ever be used as a factor in an admissions decision is not an issue in this case, and that discussion of that issue is inappropriate.

II

Both petitioner and respondent have asked us to determine the legality of the University's special admissions program by reference to the Constitution. Our settled practice, however, is to avoid the decision of a constitutional issue if a case can be fairly decided on a statutory ground. "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Co. v. McLaughlin*, [1944] USSC 131; 323 U.S. 101, 105[1944] USSC 131; , 65 S.Ct. 152, 154[1944] USSC 131; , 89 L.Ed. 101.⁷ The more important the issue, the more force there is to this doctrine.⁸ In this case, we are presented with a constitutional question of undoubted and unusual importance. Since, however, a dispositive statutory claim was raised at the very inception of this case, and squarely decided in the portion of the trial court judgment affirmed by the California Supreme Court, it is our plain duty to confront it. Only if petitioner should prevail on the statutory issue would it be necessary to decide whether the University's admissions program violated the Equal Protection Clause of the Fourteenth Amendment.

III

Section 601 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. § 2000d, provides:

"No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The University, through its special admissions policy, excluded Bakke from participation in its program of medical education because of his race. The University also acknowledges that it was, and still is, receiving federal financial assistance.⁹ The plain language of the statute therefore requires affirmance of the judgment below. A different result cannot be justified unless that language misstates the actual intent of the Congress that enacted the statute or the statute is not enforceable in a private action. Neither conclusion is warranted.

Title VI is an integral part of the far-reaching Civil Rights Act of 1964. No doubt, when this legislation was being debated, Congress was not directly concerned with the legality of "reverse discrimination" or "affirmative action" programs. Its attention was focused on the problem at hand, the "glaring . . . discrimination against Negroes which exists throughout our Nation,"¹⁰ and, with respect to Title VI, the federal funding of segregated facilities.¹¹ The genesis of the legislation, however, did not limit the breadth of the solution adopted. Just as Congress responded to the problem of employment discrimination by enacting a provision that protects all races, see *McDonald v. Santa Fe Trail Transp. Co.*, [1976] USSC 142; 427 U.S. 273, 279[1976] USSC 142; , 96 S.Ct. 2574, 2578, 49 L.Ed. 493,¹² so, too, its answer to the pro lem of federal funding of segregated facilities stands as a broad prohibition against the exclusion of *any* individual from a federally funded program "on the ground of race." In the words of the House Report, Title VI stands for "the general principle that *no person* . . . be excluded from participation . . . on the ground of race, color, or national origin under any program or activity receiving Federal financial assistance."

H.R.Rep.No.914, 88th Cong., 1st Sess., pt. 1, p. 25 (1963), U.S.Code Cong. & Admin.News 1964, p. 2401 (emphasis added). This same broad view of Title VI and § 601 was echoed throughout the congressional debate and was stressed by every one of the major spokesmen for the Act.

Petitioner contends, however, that exclusion of applicants on the basis of race does not violate Title VI if the exclusion carries with it no racial stigma. No such qualification or limitation of § 601's categorical prohibition of "exclusion" is justified by the statute or its history. The language of the entire section is perfectly clear; the words that follow "excluded from" do not modify or qualify the explicit outlawing of any exclusion on the stated grounds.

The legislative history reinforces this reading. The only suggestion that § 601 would allow exclusion of nonminority applicants came from opponents of the legislation and then only by way of a discussion of the meaning of the word "discrimination."¹⁴ The opponents feared that the term "discrimination" would be read as mandating racial quotas and "racially balanced" colleges and universities, and they pressed for a specific definition of the term in order to avoid this possibility.¹⁵ In response, the proponents of the legislation gave repeated assurances that the Act would be "colorblind" in its application.¹⁶ Senator Humphrey, the Senate floor manager for the Act, expressed this position as follows:

"[T]he word 'discrimination' has been used in many a court case. What it really means in the bill is a distinction in treatment . . . given to different individuals because of their different race, religion or national origin. . . .

"The answer to this question [what was meant by 'discrimination'] is that if race is not a factor, we do not have to worry about discrimination because of race. . . . The Internal Revenue Code does not provide that colored people do not have to pay taxes, or that they can pay their taxes 6 months later than everyone else." 110 Cong.Rec. 5864 (1964).

"[I]f we started to treat Americans as Americans, not as fat ones, thin ones, short ones, tall ones, brown ones, green ones, yellow ones, or white ones, but as Americans. If we did that we would not need to worry about discrimination." *Id.*, at 5866.

In giving answers such as these, it seems clear that the proponents of Title VI assumed that the Constitution itself required a colorblind standard on the part of government,¹⁷ but that does not mean that the legislation only codifies an existing constitutional prohibition. The statutory prohibition against discrimination in federally funded projects contained in § 601 is more than a simple paraphrasing of what the Fifth or Fourteenth Amendment would require. The Act's proponents plainly considered Title VI consistent with their view of the Constitution and they sought to provide an effective weapon to implement that view.¹⁸ As a distillation of what the supporters of the Act believed the Constitution demanded of State and Federal Governments, § 601 has independent force, with language and emphasis in addition to that found in the Constitution.

As with other provisions of the Civil Rights Act, Congress' expression of its policy to end racial discrimination may independently proscribe conduct that the Constitution does not.²⁰ However, we need not decide the congruence—or lack of congruence of the controlling statute and the Constitution since the meaning of the Title VI ban on exclusion is crystal clear: Race cannot be the basis of excluding anyone from participation in a federally funded program.

In short, nothing in the legislative history justifies the conclusion that the broad language of § 601 should not be given its natural meaning. We are dealing with a distinct statutory prohibition, enacted at a particular time with particular concerns in mind; neither its language nor any prior interpretation suggests that its place in the Civil Rights Act, won after long debate, is simply that of a constitutional appendage.²¹ In unmistakable terms the Act prohibits the exclusion of individuals from federally funded programs because of their race.²² As succinctly phrased during the Senate debate, under Title VI it is not "permissible to say 'yes' to one person; but to say 'no' to another person, only because of the color of his skin."²³

Belatedly, however, petitioner argues that Title VI cannot be enforced by a private litigant. The claim is unpersuasive in the context of this case. Bakke requested injunctive and declaratory relief under Title VI; petitioner itself then joined issue on the question of the legality of its program under Title VI by asking for a declaratory judgment that it was in compliance with the statute.²⁴ Its view during state-court litigation was that a private cause of action does exist under Title VI. Because petitioner questions the availability of a private cause of action for the first time in this Court, the question is not properly before us. See *McGoldrick v. Compagnie Generale Transatlantique*, [1940] USSC 53; 309 U.S. 430, 434[1940] USSC 53; , 60 S.Ct. 670, 672[1940] USSC 53; , 84 L.Ed. 849. Even if it were, petitioner's original assumption is in accord with the federal courts' consistent interpretation of the Act. To date, the courts, including this Court, have unanimously concluded or assumed that a private action may be maintained under Title VI.²⁵ The United States has taken the same position; in its *amicus curiae* brief directed to this specific issue, it concluded that such a remedy is clearly available,²⁶ and Congress has repeatedly enacted legislation predicated on the assumption that Title VI may be enforced in a private action.²⁷ The conclusion that an individual may maintain a private cause of action is amply supported in the legislative history of Title VI itself.²⁸ In short, a fair consideration of petitioner's tardy attack on the propriety of Bakke's suit under Title VI requires that it be rejected.

The University's special admissions program violated Title VI of the Civil Rights Act of 1964 by excluding Bakke from the Medical School because of his race. It is therefore our duty to affirm the judgment ordering Bakke admitted to the University.

Accordingly, I concur in the Court's judgment insofar as it affirms the judgment of the Supreme Court of California. To the extent that it purports to do anything else, I respectfully dissent.