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 -- Page 438 U. S. 325 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, 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 438 U. S. 271 n. Since we conclude that the affirmative admissions program at the Davis Page 438 U. S. 326 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. [Footnote 2/1]

I

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 ben, 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*, 274 U. S. 200, 274 U. S. 208(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" [Footnote 2/2] status before the law, a status Page 438 U. S. 327 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*, 347 U. S. 483 (*Brown I*), and its progeny, [Footnote 2/3] 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*, 349 U. S. 294, 349 U. S. 301 (1955). In 1968 [Footnote 2/4] and again in 1971, [Footnote 2/5] for example, we were forced to remind school boards of their obligation to eliminate racial discrimination root and branch. And a glance at our docket [Footnote 2/6] 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 "colorblind" 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. Page 438 U. S. 328

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. [Footnote 2/7] 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. [Footnote 2/8]

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 Page 438 U. S. 329 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. [Footnote 2/9] Page 438 U. S. 330 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 Page 438 U. S. 331 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 Page 438 U. S. 332 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. [Footnote 2/10] 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,* 323 F.2d 959 (C.A. 4, 1963), [*cert. denied,* 376 U.S. 938 (1964)]. In all cases, such discrimination is contrary to national policy, and to the moral sense of the Nation. Thus, title VI is simply Page 438 U. S. 333 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. [Footnote 2/11] Page 438 U. S. 334

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. " Page 438 U. S. 335

"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). [Footnote 2/12]

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 Page 438 U. S. 336

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 438 U. S. 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. [Footnote 2/13] *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); 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 Page 438 U. S. 337

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*, 402 U. S. 43(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 402 U. S. 46. 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 Page 438 U. S. 338 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). [Footnote 2/14] Indeed, there was a strong emphasis throughout Page 438 U. S. 339 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. [Footnote 2/15] 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 Page 438 U. S. 340 change that constitutional law in the area of racial discrimination was undergoing in 1964. [Footnote 2/16]

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, 426 U. S. 1, 426 U. S. 10 (1976), quoting *United States v. American Trucking Assns.*, 310 U. S. 534, 310 U. S. 544-544 (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. [Footnote 2/17] Page 438 U. S. 341

B

Section 602 of Title VI, 42 U.S.C. § 2000d-1, instructs federal agencies to promulgate regulations interpreting Title Page 438 U. S. 342 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., 414 U. S. Nichols,* Page 438 U. S. 343 414 U. S. 563 (1974); *Mourning v. Family Publications Service, Inc.*, 411 U. S. 356, 411 U. S. 369 (1973); *Red Lion Broadcasting Co. v. FCC,* 395 U. S. 367, 395 U. S. 381 (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 FR § 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 Page 438 U. S. 344 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. [Footnote 2/18] 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 I, 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 Page 438 U. S. 345 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. I n 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 agency [Footnote 2/19] responsible for achieving its objectives. [Footnote 2/20] Page 438 U. S. 346

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 395 U. S. 381; *Zemel v. Rusk,* 381 U. S. 1, 381 U. S. 11-12 (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 Cong.Rec. Page 438 U. S. 347 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. [Footnote 2/21] 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 Page 438 U. S. 348

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 legislation [Footnote 2/22] 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. [Footnote 2/23]

The legislative history of this race-conscious legislation reveals that it represents a deliberate attempt to deal with Page 438 U. S. 349 the excessive rate of unemployment among minority citizens and to encourage the development of viable minority controlled enterprises. [Footnote 2/24] 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 395 U. S. 380-381; Page 438 U. S. 350

Erlenbaugh v. United States, 409 U. S. 239, 409 U. S. 243-244 (1972). *See also United States v. Stewart,* 311 U. S. 60, 311 U. S. 64-65 (1940). [Footnote 2/25]

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,* 414 U. S. 563 (1974), the Court held that the failure of the San Page 438 U. S. 351 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 Page 438 U. S. 352 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. [Footnote 2/26] 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,* 46 U. S. 229 (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 view that Title VI's definition of racial discrimination is absolutely coextensive with the Constitution's, this would not assist the respondent Page 438 U. S. 353 in the least. First, for the reasons discussed *supra* at 438 U. S. 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 "colorblind" 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. [Footnote 2/27] 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. [Footnote 2/28] Finally, we have construed the Voting Page 438 U. S. 354

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 Page 438 U. S. 355 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. [Footnote 2/29]

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*, 314 U. S. 160, 314 U. S. 185 (1941) (Jackson, J., concurring), summed up by the shorthand phrase " [o]ur Constitution is color-blind," *Plessy v. Ferguson*, 163 U. S. 537, 163 U. S. 559 (1896) (Harlan, J., dissenting), has never been adopted by this Court as the proper meaning of the Equal Protection Clause. Indeed, Page 438 U. S. 356 we have expressly rejected this proposition on a number of occasions.

Our cases have always implied that an "overriding statutory purpose," *McLaughlin v. Florida*, 379 U. S. 184, 379 U. S. 192(1984), could be found that would justify racial classifications. *See, e.g., ibid.; Loving v. Virginia*, 388 U. S. 1, 388 U. S. 11(1967); *Korematsu v. United States*, 323 U. S. 214, 323 U. S. 216 (1944); *Hirabayashi v. United States*, 320 U. S. 81, 320 U. S. 100-101 (1943). More recently, in *McDaniel v. Barresi*, 402 U. S. 39 (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 colorblind. And in *North Carolina Board of Education v. Swann*, we held, again unanimously, that a statute mandating colorblind 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 402 U. S. 45-46.

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 this 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 Page 438 U. S. 357 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. [Footnote 2/30] *See, e.g., San Antonio Independent School District v. Rodriguez*, 411 U. S. 1, 411 U. S. 16-17 (1973); *Dunn v. Blumstein*, 405 U. S. 330 (1972). But no fundamental right is involved here. *See San Antonio, supra* at 422 U. S. 29-36. 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 422 U. S. 28; *see United States v. Carolene Products Co.*, 304 U. S. 144, 304 U. S. 152 n. 4 (1938). [Footnote 2/31]

Moreover, if the University's representations are credited, this is not a case where racial classifications are "irrelevant, and therefore prohibited." *Hirabayashi, supra* at 320 U. S. 100. 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 Page 438 U. S. 358 behind racial hatred and separatism -- are invalid without more. *See Yick Wo v. Hopkins*, 118 U. S. 356, 118 U. S. 374 (1886); [Footnote 2/32] *accord, Strauder v. West Virginia*, 100 U. S. 303, 100 U. S. 308 (1880); *Korematsu v. United States, supra* at 323 U. S. 223; *Oyama v. California*, 332 U. S. 633, 332 U. S. 663 (1948) (Murphy, J., concurring); *Brown I*, 347 U. S. 483 (1954); *McLaughlin v. Florida, supra*, at 379 U. S. 191-192; *Loving v. Virginia, supra*, at 388 U. S. 11-12; *Reitman v. Mulkey*, 387 U. S. 369,387 U. S. 375-376 (1967); *United Jewish Organizations v. Carey*, 430 U. S. 144, 430 U. S. 165 (1977) (*UJO*) (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); *id.* at 430 U. S. 169 (opinion concurring in part). [Footnote 2/33]

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. [Footnote 2/34]

"'[T]he mere recitation of a benign, compensatory purpose is not an automatic shield Page 438 U. S. 359 which protects.against any inquiry into the actual purpose underlying a statutory scheme.'"

Califano v. Webster, 430 U. S. 313, 430 U. S. 317 (1977), quoting *Weinberger v. Wiesenfeld*, 420 U. S. 636, 420 U. S. 648 (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 at 430 U. S. 317, quoting Craig v. Boren, 429 U. S. 190, 429 U. S. 197 (1976). [Footnote 2/35] Page 438 U. S. 360

First, race, like, "gender-based classifications, too often [has] been inexcusably utilized to stereotype and stigmatize politically powerless segments of society." *Kahn v. Shevin*, 416 U. S. 351, 416 U. S. 357 (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*, 419 U. S. 498 (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* at 419 U. S. 508; *UJO, supra* at 430 U. S. 174, and n. 3 (opinion concurring in part); *Califano v. Goldfarb*, 430 U. S. 199, 430 U. S. 223 (1977) (STEVENS, J., concurring in judgment). *See also Stanton v. Stanton*, 421 U. S. 7, 421 U. S. 14-15 (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* at 430 U. S. 172 (opinion concurring in part); *ante* at 438 U. S. 298 (opinion of POWELL, J.).

Second, race, like gender and illegitimacy, *see Weber v. Aetna Casualty & Surety Co.*, 406 U. S. 164 (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 438 U. S. 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 Page 438 U. S. 361 wrongdoing," *Weber, supra* at 406 U. S. 175; *Frontiero v. Richardson*, 411 U. S. 677, 411 U. S. 686 (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 430 U. S. 173 (opinion concurring in part); *Kotch v. Board of River Port Pilot Comm'rs*, 330 U. S. 552, 330 U. S. 566(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 processes [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 at 430 U. S. 174 (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*, 377 U. S. 713, 377 U. S. 736 (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 Page 438 U. S. 362 strict -- not "*strict' in theory and fatal in fact," [Footnote 2/36] 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.

A

At least since *Green v. County School Board*, 391 U. S. 430 (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*, 402 U. S. 1 (1971), and its companion cases, *Davis v. School Comm'rs of Mobile County*, 402 U. S. 33 (1971); *McDaniel v. Barresi*, 402 U. S. 39 (1971); and *North Carolina Board of Education v. Swann*, 402 U. S. 43 (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* at 402 U. S. 28. 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.*, 395 U. S. 225 (1969), and that local school boards could voluntarily adopt desegregation Page 438 U. S. 363 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* at 402 U. S. 16. In each instance, the creation of unitary school systems, in which the effects of past discrimination had been "eliminated root and branch," *Green, supra* at391 U. S. 438, 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.*, 424 U. S. 747(1976); *Teamsters v. United States*, 431 U. S. 324 (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 431 U. S. 357-362. 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 Page 438 U. S. 364 *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*, 422 U. S. 405, 422 U. S. 435 (1975). [Footnote 2/37]

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*, 430 U. S. 313 (1977); *Schlesinger v. Ballard*, 419 U. S. 498 (1975); *Kahn v. Shevin*, 416 U. S. 351 (1974). *See also Katzenbach v. Morgan*, 384 U. S. 641 (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. [Footnote 2/38] Page 438 U. S. 365

Nor 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 430 U. S. 157 (opinion of WHITE, J., joined by BRENNAN, BLACKMUN, and STEVENS, JJ.); [Footnote 2/39] *id.* at 430 U. S. 167 (opinion of WHITE, J., joined by REHNQUIST and STEVENS, JJ.); [Footnote 2/40] *cf. Califano v. Webster, supra*, at 430 U. S. 317; *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 424 U. S. 776, 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, than there is a reasonable likelihood that, but for pervasive racial discrimination,

Page 438 U. S. 366 respondent would have failed to qualify for admission even in the absence of Davis' special admissions program. [Footnote 2/41]

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. [Footnote 2/42] Page 438 U. S. 367

Title VII was enacted pursuant to Congress' power under the Commerce Clause and § 5 of the Fourteenth Amendment. To he 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. [Footnote 2/43] Therefore, to the extent that Title VII rests on the Commerce Clause power, our decisions such a *Franks* and Page 438 U. S. 368 *Teamsters v. United States*, 431 U. S. 324 (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 preemption 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 these 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*, 326 U. S. 88, 326 U. S. 98 (1945) (Frankfurter, J., concurring). [Footnote 2/44] We therefore Page 438 U. S. 369 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. [Footnote 2/45] In 1950, for example, while Negroes Page 438 U. S. 370 constituted 10% of the total population, Negro physicians constituted only 2.2% of the total number of physicians. [Footnote 2/46] The overwhelming majority of these, moreover, were educated in two predominantly Negro medical schools, Howard and Meharry. [Footnote 2/47] 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% [Footnote 2/48] while the Negro population had increased to 11.1%. [Footnote 2/49] 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. [Footnote 2/50]

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 Page 438 U. S. 371 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. [Footnote 2/51] 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*, 347 U. S. 483 (1954), that relegated minorities to inferior educational institutions, [Footnote 2/52] and that denied them intercourse in the mainstream of professional life necessary to advancement. *See Sweatt v. Painter*, 339 U. S. 629 (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*, 211 U. S. 45. *See also Plessy v. Ferguson*, 163 U. S. 537 (1896).

Green v. County School Board, 391 U. S. 430 (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 prevents, 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 Page 438 U. S. 372 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; [Footnote 2/53] many minority group members living in California, moreover, were born and reared in school districts in Southern States segregated by law. [Footnote 2/54] Since separation of schoolchildren 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 at 347 U. S. 494, 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,* 387 U. S. 369 (1967), and yet come to the starting line with an education equal to whites. [Footnote 2/55]

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 438 U. S. 341-343, has also reached the conclusion that race may be taken into account in situations Page 438 U. S. 373 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 438 U. S. 344-345, discussing 45 CFR §§ 80.3(b)(6)(ii) and 80.5(j) (1977). 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 438 U. S. 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,* 384 U. S. 641 (1966); *UJO,* 430 U.S. at 430 U. S. 175-178 (opinion concurring in part). [Footnote 2/56]

C

The second prong of our test -- whether the Davis program stigmatizes any discrete group or individual and whether race Page 438 U. S. 374 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 population [Footnote 2/57] -- of otherwise underrepresented qualified minority applicants. [Footnote 2/58] Page 438 U. S. 375

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 Page 438 U. S. 376 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. [Footnote 2/59] For example, of a class of recent medical school applicants from families with less than $10,000 income, at least 71% were white. [Footnote 2/60] Of all 1970 families headed by a Page 438 U. S. 377 person not a highschool graduate which included related children under 18, 80% were white and 20% were racial minorities. [Footnote 2/61] 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. [Footnote 2/62] 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 Page 438 U. S. 378 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*, 395 U. S. 285, 395 U. S. 25-296 (1969); *Katzenbach v. Morgan*, 384 U. S. 641 (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*, 431 U. S. 324 (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. [Footnote 2/63] Page 438 U. S. 379

The "Harvard" program, *see ante* at 438 U. S. 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.

[Footnote 2/1]

We also agree with MR. JUSTICE POWELL that a plan like the "Harvard" plan, *see ante* at 438 U. S. 316-318, is constitutional under our approach, at least so long as the use of race to achieve an integrated student body is necessitated by the lingering effects of past discrimination.

[Footnote 2/2]

See Plessy v. Ferguson, 163 U. S. 537 (1896).

[Footnote 2/3]

New Orleans City Park Improvement Assn. v. Detiege, 358 U. S. 54 (1958); *Muir v. Louisville Park Theatrical Assn.*, 347 U.S. 971 (1954); *Mayor of Baltimore v. Dawson*, 350 U.S. 877 (1955); *Holmes v. Atlanta*, 350 U.S. 879 (1955); *Gayle v. Browder*, 352 U.S. 903 (1956).

[Footnote 2/4]

See Green v. County School Board, 391 U. S. 430 (1968).

[Footnote 2/5]

See Swann v. Charlotte-Mecklenburg Board of Education, 402 U. S. 1 (1971); *Davis v. School Comm'rs of Mobile County*, 402 U. S. 33 (1971); *North Carolina Board of Education v. Swann*, 402 U. S. 43 (1971).

[Footnote 2/6]

See, e.g., cases collected in *Monell v. New York City Dept. of Social Services*, 436 U. S. 658, 436 U. S. 663 n. 5 (1978).

[Footnote 2/7]

Section 601 of Title VI provides:

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

42 U.S.C. § 2000d.

[Footnote 2/8]

MR. JUSTICE WHITE believes we should address the "private right of action" issue. Accordingly, he has filed a separate opinion stating his view that there is no private right of action under Title VI. *See post*, p. 438 U. S. 379.

[Footnote 2/9]

"Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination. Direct discrimination by Federal, State or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation. Congress and the Executive have their responsibilities to uphold the Constitution also. . . . "

"Many statutes providing Federal financial assistance, however, define with such precision both the Administrator's role and the conditions upon which specified amounts shall be given to

designated recipients that the amount of administrative discretion remaining -- which might be used to withhold funds if discrimination were not ended -- is, at best, questionable. No administrator has the unlimited authority to invoke the Constitution in opposition to the mandate of the Congress. Nor would it always be helpful to require unconditionally -- as is often proposed -- the withdrawal of all Federal funds from programs urgently needed by Negroes as well as whites, for this may only penalize those who least deserve it without ending discrimination."

"Instead of permitting this issue to become a political device often exploited by those opposed to social or economic progress, it would be better at this time to pass a single comprehensive provision making it clear that the Federal Government is not required, under any statute, to furnish any kind of financial assistance -- by way of grant, loan, contract, guaranty, insurance, or otherwise -- to any program or activity in which racial discrimination occurs. This would not permit the Federal Government to cut off all Federal aid of all kinds as a means of punishing an area for the discrimination occurring therein -- but it would clarify the authority of any administrator with respect to Federal funds or financial assistance and discriminatory practices."

109 Cong.Rec. 11161 (1963).

[Footnote 2/10]

See, e.g., 110 Cong.Rec. 2732 (1964) (Rep. Dawson); *id.* at 2481-2482 (Rep. Ryan); *id.* at 2766 (Rep. Matzunaga); *id.* at 2595 (Rep. Donahue) .

[Footnote 2/11]

There is also language in 42 U.S.C. § 2000d-5, enacted in 1966, which supports the conclusion that Title VI's standard is that of the Constitution. Section 2000d-5 provides that,

"for the purpose of determining whether a local educational agency is in compliance with [Title VI], compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with [Title VI], insofar as the matters covered in the order or judgment are concerned."

This provision was clearly intended to avoid subjecting local educational agencies simultaneously to the jurisdiction of the federal courts and the federal administrative agencies in connection with the imposition of remedial measures designed to end school segregation. Its inclusion reflects the congressional judgment that the requirements imposed by Title VI are identical to those imposed by the Constitution as interpreted by the federal courts.

[Footnote 2/12]

As has already been seen, the proponents of Title VI in the House were motivated by the identical concern. *See* remarks of Representative Celler (110 Cong.Rec. 2467 (1964)); Representative Ryan (*id.* at 1643, 2481-2482); H.R.Rep. No. 914, 88th Cong., 1st Sess., pt. 2, Additional Views of Seven Representatives 2425 (1963).

[Footnote 2/13]

See separate opinion of MR. JUSTICE WHITE, *post* at 438 U. S. 382-383, n. 2.

[Footnote 2/14]

These remarks also reflect the expectations of Title VI's proponents that the application of the Constitution to the conduct at the core of their concern -- the segregation of Negroes in federally funded programs and their exclusion from the full benefits of such programs -- was clear. *See supra* at 438 U. S. 333-336; *infra* at 438 U. S. 340-342, n. 17.

[Footnote 2/15]

Testimony of Attorney General Kennedy in Hearings before the Senate Committee on the Judiciary on S. 1731 and S. 1750, 88th Cong., 1st Sess., 398-399 (1963).

[Footnote 2/16]

See, e.g., 110 Cong.Rec. 6544, 13820 (1964) (Sen. Humphrey); *id.* at 6050 (Sen. Javits); *id.* at 12677 (Sen. Allott).

[Footnote 2/17]

Our Brother STEVENS finds support for a colorblind theory of Title VI in its legislative history, but his interpretation gives undue weight to a few isolated passages from among the thousands of pages of the legislative history of Title VI. *See id.* at 6547 (Sen. Humphrey); *id.* at 6047, 7055 (Sen. Pastore); *id.* at 12675 (Sen. Allott); *id.* at 6561 (Sen. Kuchel). These fragmentary comments fall far short of supporting a congressional intent to prohibit a racially conscious admissions program designed to assist those who are likely to have suffered injuries from the effects of past discrimination. In the first place, these statements must be read in the context in which they were made. The concern of the speakers was far removed from the incidental injuries which may be inflicted upon nonminorities by the use of racial preferences. It was rather with the evil of the segregation of Negroes in federally financed programs and, in some cases, their arbitrary exclusion on account of race from the benefits of such programs. Indeed, in this context, there can be no doubt that the Fourteenth Amendment does command color blindness, and forbids the use of racial criteria. No consideration was given by these legislators, however, to the permissibility of racial preference designed to redress the effects of injuries suffered as a result of one's color. Significantly, one of the legislators, Senator Pastore, and perhaps also Senator Kuchel, who described Title VI as proscribing decisionmaking based upon skin color, also made it clear that Title VI does not outlaw the use of racial criteria in all circumstances. *See supra* at 438 U. S. 339-340; 110 Cong.Rec. 6562 (1964). *See also id.* at 2494 (Rep. Celler). Moreover, there are many statements in the legislative history explicitly indicating that Congress intended neither to require nor to prohibit the remedial use of racial preferences where not otherwise required or prohibited by the Constitution. Representative MacGregor addressed directly the problem of preferential treatment:

"Your mail and mine, your contacts and mine with our constituents, indicates a great degree of misunderstanding about this bill. People complain about racial 'balancing' in the public schools, about open occupancy in housing, about preferential treatment or quotas in employment. There is a mistaken belief that Congress is legislating in these areas in this bill. When we drafted this bill, we excluded these issues largely because the problems raised by these controversial questions are more properly handled at a governmental level close to the American people and by communities and individuals themselves. The Senate has spelled out our intentions more specifically."

Id. at 15893. Other legislators explained that the achievement of racial balance in elementary and secondary schools where there had been no segregation by law was not compelled by Title VI, but was rather left to the judgment of state and local communities. *See, e.g., id.* at 10920 (Sen. Javits); *id.* at 5807, 5266 (Sen. Keating); *id.* at 13821 (Sens. Humphrey and Saltonstall). *See also id.* at 6562 (Sen. Kuchel); *id.* at 13695 (Sen. Pastore).

Much the same can be said of the scattered remarks to be found in the legislative history of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (1970 ed. and Supp. V), which prohibits employment discrimination on the basis of race in terms somewhat similar to those contained in Title VI, *see* 42 U.S.C. § 2000e-2(a)(1) (unlawful "to fail or refuse to hire" any applicant "because of such individual's race, color, religion, sex, or national origin. . . . "), to the effect that any deliberate attempt by an employer to maintain a racial balance is not required by the statute, and might in fact violate it.*See, e.g.*, 110 Cong.Rec. 7214 (1964) (Sens. Clark and Case); *id.* at 6549 (Sen. Humphrey); *id.* at 2560 (Rep. Goodell). Once again, there is no indication that Congress intended to bar the voluntary use of racial preferences to assist minorities to surmount the obstacles imposed by the remnants of past discrimination. Even assuming that Title VII prohibits employers from deliberately maintaining a particular racial composition in their workforce as an end in itself, this does not imply, in the absence of any consideration of the question, that Congress intended to bar the use of racial preferences as a tool for achieving the objective of remedying past discrimination or other compelling ends. The former may well be contrary to the requirements of the Fourteenth Amendment (where state action is involved), while the latter presents very different constitutional considerations. Indeed, as discussed *infra* at 438 U. S. 353, this Court has construed Title VII as requiring the use of racial preferences for the purpose of hiring and advancing those who have been adversely affected by past discriminatory employment practices, even at the expense of other employees innocent of discrimination. *Franks v. Bowman Transportation Co.*, 424 U. S. 747, 424 U. S. 767-768 (1976). Although Title VII clearly does not require employers to take action to remedy the disadvantages imposed upon racial minorities by hands other than their own, such an objective is perfectly consistent with the remedial goals of the statute. *See id.* at 424 U. S. 762-770; *Albemarle Paper Co. v. Moody*, 422 U. S. 405, 422 U. S. 418 (1975). There is no more indication in the legislative history of Title VII than in that of Title VI that Congress desired to prohibit such affirmative action to the extent that it is permitted by the Constitution, yet judicial decisions as well as subsequent executive and congressional action clearly establish that Title VII does not forbid race-conscious remedial action. *See infra* at 438 U. S. 353-355, and n. 28.

[Footnote 2/18]

HEW has stated that the purpose of these regulations is "to specify that affirmative steps to make services more equitably available are not prohibited and that such steps are required when necessary to overcome the consequences of prior discrimination." 36 Fed.Reg. 23494 (1971). Other federal agencies which provide financial assistance pursuant to Title VI have adopted similar regulations. *See* Supplemental Brief for United States as *Amicus Curiae* 16 n. 14.

[Footnote 2/19]

Moreover, the President has delegated to the Attorney General responsibility for coordinating the enforcement of Title VI by federal departments and agencies, and has directed him to "assist the departments and agencies in accomplishing effective implementation." Exec.Order No. 11764, 3 CFR 849 (1971-1975 Comp.). Accordingly, the views of the Solicitor General, as well as those of HEW, that the use of racial preferences for remedial purposes is consistent with Title VI are entitled to considerable respect.

[Footnote 2/20]

HEW administers at least two explicitly race-conscious programs. Details concerning them may be found in the Office of Management and Budget, 1977 Catalogue of Federal Domestic Assistance 205-206, 401-402. The first program, No. 13.375, "Minority Biomedical Support," has as its objectives:

"To increase the number of ethnic minority faculty, students, and investigators engaged in biomedical research. To broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators by providing support for biomedical research programs at eligible institutions."

Eligibility for grants under this program is limited to (1) four-year colleges, universities, and health professional schools with over 50% minority enrollments; (2) four-year institutions with significant but not necessarily over 50% minority enrollment provided they have a history of encouragement and assistance to minorities; (3) two-year colleges with 50% minority enrollment; and (4) American Indian Tribal Councils. Grants made pursuant to this program are estimated to total $9,711,000 for 1977.

The second program, No. 13.880, entitled "Minority Access To Research Careers," has as its objective to "assist minority institutions to train greater numbers of scientists and teachers in health related fields." Grants under this program are made directly to individuals and to institutions for the purpose of enabling them to make grants to individuals.

[Footnote 2/21]

H.R.Conf.Rep. No. 9538, p. 22 (1977); 123 Cong.Rec. 26188 (1977). *See* H.J.Res. 662, 95th Cong., 1st Sess. (1977); Pub.L. 95-205, 91 Stat. 1460.

[Footnote 2/22]

91 Stat. 117, 42 U.S.C. § 6705(f)(2) (1976 ed.).

[Footnote 2/23]

123 Cong.Rec.7156 (1977); *id.* at 5327-5330.

[Footnote 2/24]

See id. at 7156 (Sen. Brooke).

[Footnote 2/25]

In addition to the enactment of the 10% quota provision discussed *supra*, Congress has also passed other Acts mandating race-conscious measures to overcome disadvantages experienced by racial minorities. Although these statutes have less direct bearing upon the meaning of Title VI, they do demonstrate that Congress believes race-conscious remedial measures to be both permissible and desirable under at least some circumstances. This, in turn, undercuts the likelihood that Congress intended to limit voluntary efforts to implement similar measures. For example, § 7(a) of the National Science Foundation Authorization Act, 1977, provides:

"The Director of the National Science Foundation shall initiate an intensive search for qualified women, members of minority groups, and handicapped individuals to fill executive level positions in the National Science Foundation. In carrying out the requirement of this subsection, the Director shall work closely with organizations which have been active in seeking greater recognition and utilization of the scientific and technical capabilities of minorities, women, and handicapped individuals. The Director shall improve the representation of minorities, women, and handicapped individuals on advisory committees,, review panels, and all other mechanisms by which the scientific community provides assistance to the Foundation."

90 Stat. 2056, note following 42 U.S.C. 1873 (1976 ed.). Perhaps more importantly, the Act also authorizes the funding of Minority Centers for Graduate Education. Section 7(C)(2) of the Act, 90 Stat. 2056, requires that these Centers:

"(A) have substantial minority student enrollment;"

"(B) are geographically located near minority population centers;"

"(C) demonstrate a commitment to encouraging and assisting minority students, researchers, and faculty;"

"* * * *"

"(F) will serve as a regional resource in science and engineering for the minority community which the Center is designed to serve; and"

"(G) will develop joint educational programs with nearby undergraduate institutions of higher education which have a substantial minority student enrollment."

Once again, there is no indication in the legislative history of this Act or elsewhere that Congress saw any inconsistency between the race-conscious nature of such legislation and the meaning of Title VI. And, once again, it is unlikely in the extreme that a Congress which believed that it had commanded recipients of federal funds to be absolutely colorblind would itself expend federal funds in such a race-conscious manner. *See also* the Railroad Revitalization and Regulatory Reform Act of 1976, 45 U.S.C. § 801 *et seq.* (1976 ed.), 49 U.S.C. § 1657a *et seq.* (1976 ed.); the Emergency School Aid Act, 20 U.S.C. § 1601 *et seq.* (1976 ed.).

[Footnote 2/26]

Cf. Griggs v. Duke Power Co., 401 U. S. 424 (1971).

[Footnote 2/27]

Ibid.; Albemarle Paper Co. v. Moody, 422 U. S. 405 (1975).

[Footnote 2/28]

Franks v. Bowman Transportation Co., 424 U. S. 747 (1976); *Teamsters v. United States*, 431 U. S. 324 (1977). Executive, judicial, and congressional action subsequent to the passage of Title VII conclusively established that the Title did not bar the remedial use of race. Prior to the 1972 amendments to Title VII (Equal Employment Opportunity Act of 1972, 86 Stat. 103), a number of Courts of Appeals approved race-conscious action to remedy the effects of employment discrimination. *See, e.g., Heat & Frost Insulators & Asbestos Workers v. Voler,* 407 F.2d 1047 (CA5 1969); *United States v. Electrical Workers,* 428 F.2d 144, 149-150 (CA6), *cert. denied*, 400 U.S. 943 (1970); *United States v. Sheetmetal Workers,* 416 F.2d 123 (CA8 1969). In 1965, the President issued Exec.Order No. 11246, 3 CFR 339 (1964-1965 Comp.), which, as amended by Exec.Order No. 11375, 3 CFR 684 (1966-1970 Comp.), required federal contractors to take affirmative action to remedy the disproportionately low employment of racial minorities in the construction industry. The Attorney General issued an opinion concluding that the race consciousness required by Exec Order No 11246 did not conflict with Title VII:

"It is not correct to say that Title VII prohibits employers from making race or national origin a factor for consideration at any stage in the process of obtaining employees. The legal definition of discrimination is an evolving one, but it is now well recognized in judicial opinions that the obligation of nondiscrimination, whether imposed by statute or by the Constitution, does not require and, in some circumstances, may not permit, obliviousness or indifference to the racial consequences of alternative courses of action which involve the application of outwardly neutral criteria."

42 Op.Atty.Gen. 405, 411 (1969). The federal courts agreed. *See, e.g., Contractors Assn. of Eastern Pa. v. Secretary of Labor,*442 F.2d 159 (CA3), *cert. denied,* 404 U.S. 854 (1971) (which also held, 442 F.2d at 173, that race-conscious affirmative action was permissible under Title

VI); *Southern Illinois Builders Assn. v. Ogilvie*, 471 F.2d 680 (CA7 1972). Moreover, Congress, in enacting the 1972 amendments to Title VII, explicitly considered and rejected proposals to alter Exec.Order No. 11246 and the prevailing judicial interpretations of Title VII as permitting, and in some circumstances requiring, race-conscious action. *See* Comment, The Philadelphia Plan: A Study in the Dynamics of Executive Power, 39 U.Chi.L.Rev. 723, 747-757 (1972). The section-by-section analysis of the 1972 amendments to Title VII undertaken by the Conference Committee Report on H.R. 1746 reveals a resolve to accept the then (as now) prevailing judicial interpretations of the scope of Title VII:

"In any area where the new law does not address itself, or in any areas where a specific contrary intent is not indicated, it was assumed that the present case law as developed by the courts would continue to govern the applicability and construction of Title VII."

Legislative History of the Equal Employment Opportunity Act of 1972, p. 1844 (Comm.Print 1972).

[Footnote 2/29]

United Jewish Organizations v. Carey, 430 U. S. 144 (1977). *See also id.* at 430 U. S. 167-168 (opinion of WHITE, J.).

[Footnote 2/30]

We do not pause to debate whether our cases establish a "two-tier" analysis, a "sliding scale" analysis, or something else altogether. It is enough for present purposes that strict scrutiny is applied at least in some cases.

[Footnote 2/31]

Of course, the fact that whites constitute a political majority in our Nation does not necessarily mean that active judicial scrutiny of racial classifications that disadvantage whites is inappropriate. *Cf. Castaneda v. Partida*, 430 U. S. 482, 430 U. S. 499-500 (1977); *id.* at 430 U. S. 501 (MARSHALL, J., concurring) .

[Footnote 2/32]

"[T]he conclusion cannot be resisted, that no reason for [the refusal to issue permits to Chinese] exists except hostility to the race and nationality to which the petitioners belong. . . . The discrimination is, therefore, illegal. . . ."

[Footnote 2/33]

Indeed, even in *Plessy v. Ferguson*, the Court recognized that a classification by race that presumed one race to be inferior to another would have to be condemned. *See* 163 U.S. at 163 U. S. 544-551.

[Footnote 2/34]

Paradoxically, petitioner's argument is supported by the cases generally thought to establish the "strict scrutiny" standard in race cases, *Hirabayashi v. United States*, 320 U. S. 81 (1943), and *Korematsu v. United States*, 323 U. S. 214 (1944). In *Hirabayashi*, for example, the Court, responding to a claim that a racial classification was rational, sustained a racial classification solely on the basis of a conclusion in the double negative that it could not say that facts which might have been available "could afford no ground for differentiating citizens of Japanese ancestry from other groups in the United States." 320 U.S. at 320 U. S. 101. A similar mode of analysis was followed in *Korematsu*, *see* 323 U.S. at 323 U. S. 224, even though the Court stated there that racial classifications were "immediately suspect," and should be subject to "the most rigid scrutiny." *Id.* at 323 U. S. 216.

[Footnote 2/35]

We disagree with our Brother POWELL's suggestion, *ante* at 438 U. S. 303, that the presence of "rival groups which can claim that they, too, are entitled to preferential treatment" distinguishes the gender cases or is relevant to the question of scope of judicial review of race classifications. We are not asked to determine whether groups other than those favored by the Davis program should similarly be favored. All we are asked to do is to pronounce the constitutionality of what Davis has done.

But, were we asked to decide whether any given rival group -- German-Americans for example -- must constitutionally be accorded preferential treatment, we do have a "principled basis," *ante* at 438 U. S. 296, for deciding this question, one that is well established in our cases: the Davis program expressly sets out four classes which receive preferred status. *Ante* at438 U. S. 274. The program clearly distinguishes whites, but one cannot reason from this a conclusion that German-Americans, as a national group, are singled out for invidious treatment. And even if the Davis program had a differential impact on German-Americans, they would have no constitutional claim unless they could prove that Davis intended invidiously to discriminate against German-Americans. *See Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U. S. 252, 429 U. S. 264-265 (1977); *Washington v. Davis*, 426 U. S. 229, 426 U. S. 238-241 (1976). If this could not be shown, then "the principle that calls for the closest scrutiny of distinctions in laws denying fundamental rights . . . is inapplicable," *Katzenbach v. Morgan*, 384 U. S. 641, 384 U. S. 657 (1966), and the only question is whether it was rational for Davis to conclude that the groups it preferred had a greater claim to compensation than the groups it excluded. *See ibid.; San Antonio Independent School District v. Rodriguez*, 411 U. S. 1, 411 U. S. 38-39 (1973) (applying Katzenbach test to state action intended to remove discrimination in educational opportunity). Thus, claims of rival groups, although they may create thorny political problems, create relatively simple problems for the courts.

[Footnote 2/36]

Gunther, The Supreme Court, 1971 Term -- Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, 86 Harv.L.Rev. 1, 8 (1972).

[Footnote 2/37]

In *Albemarle,* we approved "differential validation" of employment tests. *See* 422 U.S. at 422 U. S. 435. That procedure requires that an employer must ensure that a test score of, for example, 50 for a minority job applicant means the same thing as a score of 50 for a nonminority applicant. By implication, were it determined that a test score of 50 for a minority corresponded in "potential for employment" to a 60 for whites, the test could not be used consistently with Title VII unless the employer hired minorities with scores of 50 even though he might not hire nonminority applicants with scores above 50 but below 60. Thus, it is clear that employers, to ensure equal opportunity, may have to adopt race-conscious hiring practices.

[Footnote 2/38]

Indeed, Titles VI and VII of the Civil Rights Act of 1964 put great emphasis on voluntarism in remedial action. *See supra* at438 U. S. 336-338. And, significantly, the Equal Employment Opportunity Commission has recently proposed guidelines authorizing employers to adopt racial preferences as a remedial measure where they have a reasonable basis for believing that they might otherwise be held in violation of Title VII. *See* 42 Fed.Reg. 64826 (1977).

[Footnote 2/39]

"[T]he [Voting Rights] Act's prohibition . . . is not dependent upon proving past unconstitutional apportionments. . . ."

[Footnote 2/40]

"[T]he State is [not] powerless to minimize the consequences of racial discrimination by voters when it is regularly practiced at the polls."

[Footnote 2/41]

Our cases cannot be distinguished by suggesting, as our Brother POWELL does, that in none of them was anyone deprived of "the relevant benefit." *Ante* at 438 U. S. 304. Our school cases have deprived whites of the neighborhood school of their choice; our Title VII cases have deprived nondiscriminating employees of their settled seniority expectations; and *UJO* deprived the Hassidim of bloc-voting strength. Each of these injuries was constitutionally cognizable as is respondent's here.

[Footnote 2/42]

We do not understand MR. JUSTICE POWELL to disagree that providing a remedy for past racial prejudice can constitute a compelling purpose sufficient to meet strict scrutiny. *See ante* at 438 U. S. 305. Yet, because petitioner is a corporation administering a university, he would not allow it to exercise such power in the absence of "judicial, legislative, or administrative findings of constitutional or statutory violations." *Ante* at 438 U. S. 307. While we agree that reversal in this case would follow *a fortiori* had Davis been guilty of invidious racial

discrimination or if a federal statute mandated that universities refrain from applying any admissions policy that had a disparate and unjustified racial impact, *see, e.g., McDaniel v. Barresi*, 402 U. S. 39 (1971); *Franks v. Bowman Transportation Co.*, 424 U. S. 747 (1976), we do not think it of constitutional significance that Davis has not been so adjudged.

Generally, the manner in which a State chooses to delegate governmental functions is for it to decide. *Cf. Sweezy v. New Hampshire*, 354 U. S. 234, 354 U. S. 256 (1957) (Frankfurter, J., concurring in result). California, by constitutional provision, has chosen to place authority over the operation of the University of California in the Board of Regents. *See* Cal.Const., Art. 9, § 9(a). Control over the University is to be found not in the legislature, but rather in the Regents who have been vested with full legislative (including policymaking), administrative, and adjudicative powers by the citizens of California. *See ibid.; Ishimatsu v. Regents*, 266 Cal.App.2d 854, 863-864, 72 Cal.Rptr. 756, 762-763 (1968); *Goldberg v. Regents*, 248 Cal.App.2d 867, 874, 57 Cal.Rptr. 463, 468 (1967); 30 Op.Cal.Atty. Gen. 162, 166 (1957) ("The Regents, not the legislature, have the general rulemaking or policymaking power in regard to the University"). This is certainly a permissible choice, *see Sweezy, supra*,and we, unlike our Brother POWELL, find nothing in the Equal Protection Clause that requires us to depart from established principle by limiting the scope of power the Regents may exercise more narrowly than the powers that may constitutionally be wielded by the Assembly.

Because the Regents can exercise plenary legislative and administrative power, it elevates form over substance to insist that Davis could not use race-conscious remedial programs until it had been adjudged in violation of the Constitution or an antidiscrimination statute. For, if the Equal Protection Clause required such a violation as a predicate, the Regents could simply have promulgated a regulation prohibiting disparate treatment not justified by the need to admit only qualified students, and could have declared Davis to have been in violation of such a regulation on the basis of the exclusionary effect of the admissions policy applied during the first two years of its operation. *See infra* at 438 U. S. 370.

[Footnote 2/43]

"Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley v. Valeo*, 424 U. S. 1, 424 U. S. 93 (1976) (per curiam), citing *Weinberger v. Wiesenfeld*, 420 U. S. 636, 420 U. S. 638 n. 2 (1975).

[Footnote 2/44]

Railway Mail Assn. held that a state statute forbidding racial discrimination by certain labor organizations did not abridge the Association's due process rights secured by the Fourteenth Amendment, because that result

"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."

326 U.S. at 326 U. S. 94. That case thus established the principle that a State voluntarily could go beyond what the Fourteenth Amendment required in eliminating private racial discrimination.

[Footnote 2/45]

According to 89 schools responding to a questionnaire sent to 112 medical schools (all of the then-accredited medical schools in the United States except Howard and Meharry), substantial efforts to admit minority students did not begin until 1968. That year was the earliest year of involvement for 34% of the schools; an additional 66% became involved during the years 1969 to 1973. *See* C. Odegaard, Minorities in Medicine: From Receptive Passivity to Positive Action, 1966-1976, p. 19 (1977) (hereinafter Odegaard). These efforts were reflected in a significant increase in the percentage of minority M.D. graduates. The number of American Negro graduates increased from 2.2% in 1970 to 3.3% in 1973 and 5.0% in 1975. Significant percentage increases in the number of Mexican-American, American Indian, and mainland Puerto Rican graduates were also recorded during those years. *Id.* at 40.

The statistical information cited in this and the following notes was compiled by Government officials or medical educators, and has been brought to our attention in many of the briefs. Neither the parties nor the *amici* challenge the validity of the statistics alluded to in our discussion.

[Footnote 2/46]

D. Reitzes, Negroes and Medicine, pp. xxvii, 3 (1958).

[Footnote 2/47]

Between 1955 and 1964, for example, the percentage of Negro physicians graduated in the United States who were trained at these schools ranged from 69.0% to 75.8%. *See* Odegaard 19.

[Footnote 2/48]

U.S. Dept. of Health, Education, and Welfare, Minorities and Women in the Health Fields 7 (Pub. No. (HRA) 75-22, May, 1974).

[Footnote 2/49]

U.S. Dept. of Commerce, Bureau of the Census, 1970 Census, vol. 1, pt. 1, Table 60 (1973).

[Footnote 2/50]

See ante at 438 U. S. 276 n. 6 (opinion of POWELL, J.).

[Footnote 2/51]

See, e.g., R. Wade, Slavery in the Cities: The South 1820-1860, pp. 991 (1964).

[Footnote 2/52]

For an example of unequal facilities in California schools, *see Sona v. Oxnard School Dist. Board,* 386 F.Supp. 539, 542 (CD Cal.1974). *See also* R. Kluger, Simple Justice (1976).

[Footnote 2/53]

See, e.g., Crawford v. Board of Education, 17 Cal.3d 280, 551 P.2d 28 (1976); *Soria v. Oxnard School Dist. Board, supra; Spangler v. Pasadena City Board of Education,* 311 F.Supp. 501 (CD Cal.1970); C. Wollenberg, All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975, pp. 136-177 (1976).

[Footnote 2/54]

For example, over 40% of American-born Negro males aged 20 to 24 residing in California in 1970 were born in the South, and the statistic for females was over 48%. These statistics were computed from data contained in Census, *supra,* n. 49, pt. 6, California, Tables 139, 140.

[Footnote 2/55]

See, e.g., O'Neil, Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education, 80 Yale L.J. 699, 729-731 (1971).

[Footnote 2/56]

Congress and the Executive have also adopted a series of race-conscious programs, each predicated on an understanding that equal opportunity cannot be achieved by neutrality, because of the effects of past and present discrimination. *See supra* at 438 U. S. 348-349.

[Footnote 2/57]

Negroes and Chicanos alone constitute approximately 22% of California's population. This percentage was computed from data contained in Census, *supra,* n. 49, pt. 6, California, sec. 1,6-4, and Table 139.

[Footnote 2/58]

The constitutionality of the special admissions program is buttressed by its restriction to only 16% of the positions in the Medical School, a percentage less than that of the minority population in California, *see ibid.,* and to those minority applicants deemed qualified for admission and deemed likely to contribute to the Medical School and the medical profession. Record 67. This is consistent with the goal of putting minority applicants in the position they would have ben in if not for the evil of racial discrimination. Accordingly, this case does not raise the question whether even a remedial use of race would be unconstitutional if it admitted unqualified minority applicants in preference to qualified applicants or admitted, as a result of preferential consideration, racial minorities in numbers significantly in excess of their proportional representation in the relevant population. Such programs might well be inadequately justified by the legitimate remedial objectives. Our allusion to the proportional percentage of

minorities in the population of the State administering the program is not intended to establish either that figure or that population universe as a constitutional benchmark. In this case, even respondent, as we understand him, does not argue that, if the special admissions program is otherwise constitutional, the allotment of 16 places in each entering class for special admittees is unconstitutionally high.

[Footnote 2/59]

See Census, *supra,* n. 49, Sources and Structure of Family Income, pp. 1-12.

[Footnote 2/60]

This percentage was computed from data presented in B. Waldman, Economic and Racial Disadvantage as Reflected in Traditional Medical School Selection Factors: A Study of 1976 Applicants to U.S. Medical Schools 34 (Table A-15), 42 (Table A-23) (Association of American Medical Colleges 1977).

[Footnote 2/61]

This figure was computed from data contained in Census, *supra,* n. 49, pt. 1, United States Summary, Table 209.

[Footnote 2/62]

See Waldman, *supra,* n. 60, at 10-14 (Figures 1-5).

[Footnote 2/63]

The excluded white applicant, despite MR. JUSTICE POWELL's contention to the contrary, *ante* at 438 U. S. 318 n. 52, receives no more or less "individualized consideration" under our approach than under his.