SUPREME COURT OF THE UNITED STATES

No. 93–1823

MISSOURI, ET AL., PETITIONERS *v.* KALIMA JENKINS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June 12, 1995]

JUSTICE THOMAS, concurring.

It never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior. Instead of focusing on remedying the harm done to those black schoolchildren injured by segregation, the District Court here sought to convert the Kansas City, Missouri, School District (KCMSD) into a "magnet district" that would reverse the "white flight" caused by *de*segregation. In this respect, I join the Court's decision concerning the two remedial issues presented for review. I write separately, however, to add a few thoughts with respect to the overall course of this litigation. In order to evaluate the scope of the remedy, we must understand the scope of the constitutional violation and the nature of the remedial powers of the federal courts.

Two threads in our jurisprudence have produced this unfortunate situation, in which a District Court has taken it upon itself to experiment with the education of the KCMSD's black youth. First, the court has read our cases to support the theory that black students suffer an unspecified psychological harm from segregation that retards their mental and educational development. This approach not only relies upon questionable social science research rather than constitutional principle, but it also rests on an assumption of black inferiority. Second, we have permitted the federal courts to exercise virtually unlimited equitable powers to remedy this alleged

constitutional violation. The exercise of this authority has trampled upon principles of federalism and the separation of powers and has freed courts to pursue other agendas unrelated to the narrow purpose of precisely remedying a constitutional harm.

The mere fact that a school is black does not mean that it is the product of a constitutional violation. A "racial imbalance does not itself establish a violation of the Constitution." *United States* v. *Fordice*, 505 U. S. ___, ___ (1992) (THOMAS, J., concurring) (slip op., at 2). Instead, in order to find unconstitutional segregation, we require that plaintiffs "prove all of the essential elements of *de jure* segregation—that is, stated simply, a current condition of segregation resulting from *intentional state action directed specifically* to the [allegedly segregated] schools." *Keyes* v. *School Dist. No. 1, Denver,* 413 U. S. 189, 205–206 (1973) (emphasis added). "[T]he differentiating factor between *de jure* segregation and so-called *de facto* segregation . . . is *purpose* or *intent* to segregate." *Id*., at 208 (emphasis in original).

In the present case, the District Court inferred a continuing constitutional violation from two primary facts: the existence of *de jure* segregation in the KCMSD prior to 1954, and the existence of *de facto* segregation today. The District Court found that in 1954, the KCMSD operated 16 segregated schools for black students, and that in 1974 39 schools in the district were more than 90% black. Desegregation efforts reduced this figure somewhat, but the District Court stressed that 24 schools remained "racially isolated," that is, more than 90% black, in 1983–1984. *Jenkins* v. *Missouri*, 593 F. Supp. 1485, 1492–1493 (WD Mo. 1984). For the District Court, it followed that the KCMSD had not dismantled the dual system entirely. *Id*., at 1493. The District Court also concluded that because of the KCMSD's failure to "become integrated on a system-wide basis," the dual system still exerted "lingering effects" upon KCMSD black students, whose "general attitude of

inferiority" produced "low achievement . . . which ultimately limits employment opportunities and causes poverty." *Id*., at 1492.

Without more, the District Court's findings could not have supported a finding of liability against the state. It should by now be clear that the existence of one-race schools is not by itself an indication that the State is practicing segregation. See, *e.g., Swann* v. *Charlotte-Mecklenburg Bd. of Ed.,* 402 U. S. 1, 26 (1971); *Pasadena City Bd. of Ed.* v. *Spangler*, 427 U. S. 424, 435–437 (1976); *Freeman* v. *Pitts*, 503 U. S. 467, 493–494 (1992). The continuing "racial isolation" of schools after *de jure* segregation has ended may well reflect voluntary housing choices or other private decisions. Here, for instance, the demography of the entire KCMSD has changed considerably since 1954. Though blacks accounted for only 18.9% of KCMSD's enrollment in 1954, by 1983–1984 the school district was 67.7% black. 593 F. Supp., at 1492, 1495. That certain schools are overwhelmingly black in a district that is now more than two-thirds black is hardly a sure sign of intentional state action.

In search of intentional state action, the District Court linked the State and the dual school system of 1984 in two ways. First, the Court found that "[i]n the past" the State had placed its "imprimatur on racial discrimination." As the Court explained, laws from the Jim Crow era created "an atmosphere in which . . . private white individuals could justify their bias and prejudice against blacks," with the possible result that private realtors, bankers, and insurers engaged in more discriminatory activities than would otherwise have occurred. 593 F. Supp., at 1503. But the District Court itself acknowledged that the State's alleged encouragement of private discrimination was a fairly tenuous basis for finding liability. *Ibid*. The District Court therefore rested the State's liability on the simple fact that the State had intentionally

created the dual school system before 1954, and had failed to fulfill "its affirmative duty of disestablishing a dual school system subsequent to 1954." *Id*., at 1504. According to the District Court, the schools whose student bodies were more than 90% black constituted "vestiges" of the prior *de jure* segregation, which the State and the KCMSD had an obligation to eliminate. *Id*., at 1504, 1506. Later, in the course of issuing its first "remedial" order, the District Court added that a "system wide reduction in student achievement in the schools of . . . KCMSD" was also a vestige of the prior *de jure* segregation. *Jenkins* v. *Missouri*, 639 F. Supp. 19, 24 (WD Mo. 1985) (emphasis deleted).[1] In a subsequent order, the District Court indicated that post-1954 "white flight" was another vestige of the pre-1954 segregated system. 1 App. 126.

In order for a "vestige" to supply the ground for an exercise of remedial authority, it must be clearly traceable to the dual school system. The "vestiges of segregation that are the concern of the law in a school case may be subtle and intangible but nonetheless they must be so real that they have a causal link to the *de jure* violation being remedied." *Freeman* v. *Pitts*, 503 U. S., at 406. District Courts must not confuse the consequences of *de jure* segregation with the results of larger social forces or of private decisions. "It is simply not always the case that demographic forces causing population change bear any real and substantial relation to a *de jure* violation." *Ibid.*; accord, *id*., at 501 (SCALIA, J., concurring); *Columbus Bd. of Ed.* v. *Penick*, 443 U. S. 449,

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[1]It appears that the low achievement levels were never properly attributed to any discriminatory actions on the part of the State or of KCMSD. The District Court simply found that the KCMSD's test scores were below national norms in reading and mathematics. 639 F. Supp., at 25. Without more, these statistics are meaningless.

512 (1979) (REHNQUIST, J., dissenting); *Pasadena City Bd. of Ed.* v. *Spangler, supra,* at 435–436. As state-enforced segregation recedes farther into the past, it is more likely that "these kinds of continuous and massive demographic shifts," *Freeman,* 503 U. S., at 495, will be the real source of racial imbalance or of poor educational performance in a school district. And as we have emphasized, "[i]t is beyond the authority and beyond the practical ability of the federal courts to try to counteract" these social changes. *Ibid.*

When a district court holds the State liable for discrimination almost 30 years after the last official state action, it must do more than show that there are schools with high black populations or low test scores. Here, the district judge did not make clear how the high black enrollments in certain schools were fairly traceable to the State of Missouri's actions. I do not doubt that Missouri maintained the despicable system of segregation until 1954. But I question the District Court's conclusion that because the State had enforced segregation until 1954, its actions, or lack thereof, proximately caused the "racial isolation" of the predominantly black schools in 1984. In fact, where, as here, the finding of liability comes so late in the day, I would think it incumbent upon the District Court to explain how more recent social or demographic phenomena did not cause the "vestiges." This the District Court did not do.

Without a basis in any real finding of intentional government action, the District Court's imposition of liability upon the State of Missouri improperly rests upon a theory that racial imbalances are unconstitutional. That is, the court has "indulged the presumption, often irrebuttable in practice, that a presently observed [racial] imbalance has been proximately caused by intentional state action during the prior *de*

jure era." *United States* v. *Fordice*, 505 U. S., at ___ (THOMAS, J., concurring) (slip op., at 2) (citing *Dayton Bd. of Ed.* v. *Brinkman*, 443 U. S. 526, 537 (1979), and *Keyes* v. *School Dist. No. 1*, 413 U. S., at 211). In effect, the court found that racial imbalances constituted an ongoing constitutional violation that continued to inflict harm on black students. This position appears to rest upon the idea that any school that is black is inferior, and that blacks cannot succeed without the benefit of the company of whites.

The District Court's willingness to adopt such stereotypes stemmed from a misreading of our earliest school desegregation case. In *Brown* v. *Board of Education*, 347 U. S. 483 (1954) *(Brown I),* the Court noted several psychological and sociological studies purporting to show that *de jure* segregation harmed black students by generating "a feeling of inferiority" in them. Seizing upon this passage in *Brown I*, the District Court asserted that "forced segregation ruins attitudes and is inherently unequal." 593 F. Supp., at 1492. The District Court suggested that this inequality continues in full force even after the end of *de jure* segregation:

> "The general attitude of inferiority among blacks produces low achievement which ultimately limits employment opportunities and causes poverty. While it may be true that poverty results in low achievement regardless of race, it is undeniable that most poverty-level families are black. The District stipulated that as of 1977 they had not eliminated all the vestiges of the prior dual system. The Court finds the inferior education indigenous of the state-compelled dual school system has lingering effects in the [KCMSD]." *Ibid*. (citations omitted).

Thus, the District Court seemed to believe that black students in the KCMSD would continue to receive an "inferior education" despite the end of *de jure*

segregation, as long as *de facto* segregation persisted. As the District Court later concluded, compensatory educational programs were necessary "as a means of remedying many of the educational problems which go hand in hand with racially isolated minority student populations." 639 F. Supp., at 25. Such assumptions and any social science research upon which they rely certainly cannot form the basis upon which we decide matters of constitutional principle.[2]

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[2]The studies cited in *Brown I* have received harsh criticism. See, *e.g.*, Yudof, School Desegregation: Legal Realism, Reasoned Elaboration, and Social Science Research in the Supreme Court, 42 L. & Contemp. Probs. 57, 70 (Autumn 1978); L. Graglia, Disaster by Decree: The Supreme Court Decisions on Race and the Schools 27–28 (1976). Moreover, there simply is no conclusive evidence that desegregation either has sparked a permanent jump in the achievement scores of black children, or has remedied any psychological feelings of inferiority black schoolchildren might have had. See, *e.g.*, Bradley & Bradley, The Academic Achievement of Black Students in Desegregated Schools, 47 Rev. Educational Research 399 (1977); N. St. John, School Desegregation: Outcomes for Children (1975); Epps, The Impact of School Desegregation on Aspirations, Self-Concepts and Other Aspects of Personality, 39 L. & Contemp. Probs. 300 (Spring 1975). Contra Crain & Mahard, Desegregation and Black Achievement: A Review of the Research, 42 L. & Contemp. Probs. 17 (Summer 1978); Crain & Mahard, The Effect of Research Methodology on Desegregation-Achievement Studies: A Meta-Analysis, 88 Am. J. of Sociology 839 (1983). Although the gap between black and white test scores has narrowed over the past two decades, it appears that this has resulted more from gains in the socioeconomic status of black families than from desegregation. See Armor, Why is Black Educational Achievement Rising?, 108 The Public Interest 65, 77–79

It is clear that the District Court misunderstood the meaning of *Brown I*. *Brown I* did not say that "racially isolated" schools were inherently inferior; the harm that it identified was tied purely to *de jure* segregation, not *de facto* segregation. Indeed, *Brown I* itself did not need to rely upon any psychological or social-science research in order to announce the simple, yet fundamental truth that the Government cannot discriminate among its citizens on the basis of race. See McConnell, *Originalism and the Desegregation Decisions*, 81 Va. L. Rev. 947 (1995). As the Court's unanimous opinion indicated: "[I]n the field of public education the doctrine of `separate but equal' has no place. Separate educational facilities are inherently unequal." *Brown I*, 347 U. S., at 495. At the heart of this interpretation of the Equal Protection Clause lies the principle that the Government must treat citizens as individuals, and not as members of racial, ethnic or religious groups. It is for this reason that we must subject all racial classifications to the strictest of scrutiny, which (aside from two decisions rendered in the midst of wartime, see *Hirabayashi* v. *United States*, 320 U. S. 81 (1943); *Korematsu* v. *United States*, 323 U. S. 214 (1944)) has proven automatically fatal.

Segregation was not unconstitutional because it might have caused psychological feelings of inferiority. Public school systems that separated blacks and provided them with superior educational resources—making blacks "feel" superior to whites sent to lesser schools—would violate the Fourteenth Amendment, whether or not the white students felt stigmatized, just as do school systems in which the positions of the races are reversed. Psychological injury or benefit is irrelevant to the question whether state actors have engaged in intentional discrimination—the critical inquiry for ascertaining violations of the

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(Summer 1992).

Equal Protection Clause. The judiciary is fully competent to make independent determinations concerning the existence of state action without the unnecessary and misleading assistance of the social sciences.

Regardless of the relative quality of the schools, segregation violated the Constitution because the State classified students based on their race. Of course, segregation additionally harmed black students by relegating them to schools with substandard facilities and resources. But neutral policies, such as local school assignments, do not offend the Constitution when individual private choices concerning work or residence produce schools with high black populations. See *Keyes* v. *School Dist. No. 1*, 413 U. S., at 211. The Constitution does not prevent individuals from choosing to live together, to work together, or to send their children to school together, so long as the State does not interfere with their choices on the basis of race.

Given that desegregation has not produced the predicted leaps forward in black educational achievement, there is no reason to think that black students cannot learn as well when surrounded by members of their own race as when they are in an integrated environment. Indeed, it may very well be that what has been true for historically black colleges is true for black middle and high schools. Despite their origins in "the shameful history of state-enforced segregation," these institutions can be "`both a source of pride to blacks who have attended them and a source of hope to black families who want the benefits of . . . learning for their children.'" *Fordice*, 505 U. S., at ___ (THOMAS, J., concurring) (slip op., at 4). Because of their "distinctive histories and traditions," *id.,* at ___ (slip op., at 5), black schools can function as the center and symbol of black communities, and provide examples of independent black leadership, success, and achievement.

Thus, even if the District Court had been on firmer

ground in identifying a link between the KCMSD's pre-1954 *de jure* segregation and the present "racial isolation" of some of the district's schools, mere *de facto* segregation (unaccompanied by discriminatory inequalities in educational resources) does not constitute a continuing harm after the end of *de jure* segregation. "Racial isolation" itself is not a harm; only state-enforced segregation is. After all, if separation itself is a harm, and if integration therefore is the only way that blacks can receive a proper education, then there must be something inferior about blacks. Under this theory, segregation injures blacks because blacks, when left on their own, cannot achieve. To my way of thinking, that conclusion is the result of a jurisprudence based upon a theory of black inferiority.

This misconception has drawn the courts away from the important goal in desegregation. The point of the Equal Protection Clause is not to enforce strict race-mixing, but to ensure that blacks and whites are treated equally by the State without regard to their skin color. The lower courts should not be swayed by the easy answers of social science, nor should they accept the findings, and the assumptions, of sociology and psychology at the price of constitutional principle.

We have authorized the district courts to remedy past *de jure* segregation by reassigning students in order to eliminate or decrease observed racial imbalances, even if present methods of pupil assignment are facially neutral. See *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1 (1971); *Green* v. *School Bd. of New Kent County,* 391 U. S. 430 (1968). The District Court here merely took this approach to its logical next step. If racial proportions are the goal, then schools must improve their facilities to attract white students until the district's racial balance is

restored to the "right" proportions. Thus, fault for the problem we correct today lies not only with a twisted theory of racial injuries, but also with our approach to the remedies necessary to correct racial imbalances.

The District Court's unwarranted focus on the psychological harm to blacks and on racial imbalances has been only half of the tale. Not only did the court subscribe to a theory of injury that was predicated on black inferiority, it also married this concept of liability to our expansive approach to remedial powers. We have given the federal courts the freedom to use any measure necessary to reverse problems—such as racial isolation or low educational achievement—that have proven stubbornly resistant to government policies. We have not permitted constitutional principles such as federalism or the separation of powers to stand in the way of our drive to reform the schools. Thus, the District Court here ordered massive expenditures by local and state authorities, without congressional or executive authorization and without any indication that such measures would attract whites back to KCMSD or raise KCMSD test scores. The time has come for us to put the genie back in the bottle.

The Constitution extends "[t]he judicial Power of the United States" to "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made . . . under their Authority." Art. III, §§1, 2. I assume for purposes of this case that the remedial authority of the federal courts is inherent in the "judicial Power," as there is no general equitable remedial power expressly granted by the Constitution or by statute. As with any inherent judicial power, however, we ought to be reluctant to approve its aggressive or extravagant use, and instead we should exercise it in a manner consistent with our history and traditions. See *Chambers* v.

NASCO, Inc., 501 U. S. 32, 63–76 (1991) (KENNEDY, J., dissenting); *Young* v. *United States ex rel. Vuitton et Fils S.A.*, 481 U. S. 787, 815–825 (1987) (SCALIA, J., concurring in judgment).

Motivated by our worthy desire to eradicate segregation, however, we have disregarded this principle and given the courts unprecedented authority to shape a remedy in equity. Although at times we have invalidated a decree as beyond the bounds of an equitable remedy, see *Milliken* v. *Bradley*, 418 U. S. 717 (1974) *(Milliken I),* these instances have been far outnumbered by the expansions in the equity power. In *United States* v. *Montgomery Cty. Bd. of Ed.,* 395 U. S. 225 (1969), for example, we allowed federal courts to desegregate faculty and staff according to specific mathematical ratios, with the ultimate goal that each school in the system would have roughly the same proportions of white and black faculty. In *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.,* 402 U. S. 1 (1971), we permitted federal courts to order busing, to set racial targets for school populations, and to alter attendance zones. And in *Milliken* v. *Bradley*, 433 U. S. 267 (1977) *(Milliken II),* we approved the use of remedial or compensatory education programs paid for by the State.

In upholding these court-ordered measures, we indicated that trial judges had virtually boundless discretion in crafting remedies once they had identified a constitutional violation. As *Swann* put it, "[o]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." 402 U. S., at 15. We did say that "the nature of the violation determines the scope of the remedy," *id*., at 16, but our very next sentence signaled how weak that limitation was: "[i]n default by the school authorities of their obligation to proffer acceptable remedies, a district court has

broad power to fashion a remedy that will assure a unitary school system." *Ibid*.

It is perhaps understandable that we permitted the lower courts to exercise such sweeping powers. Although we had authorized the federal courts to work toward "a system of determining admission to the public schools on a nonracial basis" in *Brown* v. *Board of Education*, 349 U. S. 294, 300–301 (1955) *(Brown II),* resistance to *Brown I* produced little desegregation by the time we decided *Green* v. *School Board of New Kent County, supra.* Our impatience with the pace of desegregation and with the lack of a good-faith effort on the part of school boards led us to approve such extraordinary remedial measures. But such powers should have been temporary and used only to overcome the widespread resistance to the dictates of the Constitution. The judicial overreaching we see before us today perhaps is the price we now pay for our approval of such extraordinary remedies in the past.

Our prior decision in this litigation suggested that we would approve the continued use of these expansive powers even when the need for their exercise had disappeared. In *Missouri* v. *Jenkins*, 495 U. S. 33 (1990) (*Jenkins I*), the District Court in this case had ordered an increase in local property taxes in order to fund its capital improvements plan. KCMSD, which had been ordered by the Court to finance 25% of the plan, could not pay its share due to state constitutional and statutory provisions placing a cap on property taxes. *Id*., at 38, 41. Although we held that principles of comity barred the District Court from imposing the tax increase itself (except as a last resort), we also concluded that the Court could order KCMSD to raise taxes, and could enjoin the state laws preventing KCMSD from doing so. With little analysis, we held that "a court order directing a local government body to levy its own taxes is plainly a judicial act within the power of a

federal court." *Id*., at 55.

Our willingness to unleash the federal equitable power has reached areas beyond school desegregation. Federal courts have used "structural injunctions," as they are known, not only to supervise our Nation's schools, but also to manage prisons, see *Hutto* v. *Finney*, 437 U. S. 678 (1978), mental hospitals, *Thomas S.* v. *Flaherty*, 902 F. 2d 250 (CA4), cert. denied, 498 U. S. 951 (1990), and public housing, *Hills* v. *Gautreaux*, 425 U. S. 284 (1976). See generally D. Horowitz, The Courts and Social Policy 4–9 (1977). Judges have directed or managed the reconstruction of entire institutions and bureaucracies, with little regard for the inherent limitations on their authority.

Such extravagant uses of judicial power are at odds with the history and tradition of the equity power and the Framers' design. The available historical records suggest that the Framers did not intend federal equitable remedies to reach as broadly as we have permitted. Anticipating the growth of our modern doctrine, the Anti-Federalists criticized the Constitution because it might be read to grant broad equitable powers to the federal courts. In response, the defenders of the Constitution "sold" the new framework of government to the public by espousing a narrower interpretation of the equity power. When an attack on the Constitution is followed by an open Federalist effort to narrow the provision, the appropriate conclusion is that the drafters and ratifiers of the Constitution approved the more limited construction offered in response. See *McIntyre* v. *Ohio Elections Commission*, 514 U. S. ___, ___ (1995) (THOMAS, J., concurring in judgment) (slip op., at 10).

The rise of the English equity courts as an alternative to the rigors of the common law, and the battle between the courts of equity and the courts of

common law, is by now a familiar tale. See T. Plucknett, A Concise History of the Common Law 191–198, 673–694 (5th ed. 1956). By the middle of the 18th century, equity had developed into a precise legal system encompassing certain recognized categories of cases, such as those involving special property forms (trusts) or those in which the common law did not provide relief (fraud, forgery, or mistake). See 5 W. Holdsworth, History of English Law 300–338 (1927); S. Milsom, Historical Foundations of the Common Law 85–87 (1969); J. Baker, An Introduction to English Legal History 93–95 (2d ed. 1979). In this fixed system, each of these specific actions then called for a specific equitable remedy.

Blackstone described the principal differences between courts of law and courts of equity as lying only in the "modes of administering justice,"—"in the mode of proof, the mode of trial, and the mode of relief." 3 W. Blackstone, Commentaries 436 (1768). As to the last, the English jurist noted that courts of equity held a concurrent jurisdiction when there is a "want of a more specific remedy, than can be obtained in the courts of law." *Id*., at 438. Throughout his discussion, Blackstone emphasized that courts of equity must be governed by rules and precedents no less than the courts of law. "[I]f a court of equity were still at sea, and floated upon the occasional opinion which the judge who happened to preside might entertain of conscience in every particular case, the inconvenience that would arise from this uncertainty, would be a worse evil than any hardship that could follow from rules too strict and inflexible." *Id*., at 440. If their remedial discretion had not been cabined, Blackstone warned, equity courts would have undermined the rule of law and produced arbitrary government. "[The judiciary's] powers would have become too arbitrary to have been endured in a country like this, which boasts of being governed in all respects by law and not by will." *Ibid*.

(footnote omitted); see also 1 *id*., at 61–62.[3]

So cautioned, the Framers approached equity with suspicion. As Thomas Jefferson put it, "Relieve the judges from the rigour of text law, and permit them, with pretorian discretion, to wander into it's equity, and the whole legal system becomes incertain." 9 Papers of Thomas Jefferson 71 (J. Boyd ed. 1954). Suspicion of judicial discretion led to criticism of Article III during the ratification of the Constitution. Anti-Federalists attacked the Constitution's extension of the federal judicial power to "Cases, in Law and Equity," arising under the Constitution and federal statutes. According to the Anti-Federalists, the reference to equity granted federal judges excessive discretion to deviate from the requirements of the law. Said the "Federal Farmer," "by thus joining the word equity with the word law, if we mean any thing, we seem to mean to give the judge a discretionary power." Federal Farmer No. 15, January 18, 1788, in 2 The Complete Anti-Federalist 322 (H. Storing ed. 1981) (hereinafter Storing). He hoped that the Constitution's mention of equity jurisdiction was not "intended to lodge an arbitrary power or discretion in the judges, to decide as their conscience, their opinions, their caprice, or their politics might dictate." *Id*., at 322–323.[4] Another Anti-Federalist, Brutus,

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[3]As Blackstone wrote: "[A] set of great and eminent lawyers . . . have by degrees erected the system of relief administered by a court of equity into a regular science, which cannot be attained without study and experience, any more than the science of law: but from which, when understood, it may be known what remedy a suitor is entitled to expect, and by what mode of suit, as readily and with as much precision, in a court of equity as in a court of law." 3 Blackstone, at 440–441.

[4]The Federal Farmer particularly feared the combination of equity and law in the same federal courts: "It is a very dangerous thing to vest in the same judge power to

argued that the equity power would allow federal courts to "explain the constitution according to the reasoning spirit of it, without being confined to the words or letter." Brutus No. 11, January 31, 1788, *id*., at 419. This, predicted Brutus, would result in the growth of federal power and the "entire subversion of the legislative, executive and judicial powers of the individual states." *Id.,* at 420. See G. McDowell, Equity and the Constitution 43–44 (1982).

These criticisms provoked a Federalist response that explained the meaning of Article III's words. Answering the Anti-Federalist challenge in The Federalist Papers, Alexander Hamilton described the narrow role that the federal judicial power would play. Initially, Hamilton conceded that the federal courts would have some freedom in interpreting the laws and that federal judges would have lifetime tenure. The Federalist No. 78, p. 528 (J. Cooke ed. 1961). Nonetheless, Hamilton argued (as Blackstone had in describing the English equity courts) that rules and established practices would limit and control the judicial power: "To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them." *Id.,* at 529. Cf. 1 J. Story, Commentaries on Equity Jurisprudence §§18–20, pp. 15–17 (I. Redfield 9th ed. 1866). Hamilton

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decide on the law, and also general powers in equity; for if the law restrain him, he is only to step into his shoes of equity, and give what judgment his reason or opinion may dictate; we have no precedents in this country, as yet, to regulate the divisions in equity as in Great Britain; equity, therefore, in the supreme court for many years will be mere discretion." Federal Farmer No. 3, October 10, 1787, in 2 Storing 244. In such a system, the Anti-Federalist writer concluded, there would not be "a spark of freedom" to be found. *Ibid*.

emphasized that "[t]he great and primary use of a court of equity is to give relief *in extraordinary cases*," and that "the principles by which that relief is governed are now reduced to a regular system." The Federalist No. 83, at 569, and n.

In response to Anti-Federalist concerns that equity would permit federal judges an unchecked discretion, Hamilton explicitly relied upon the precise nature of the equity system that prevailed in England and had been transplanted in America. Equity jurisdiction was necessary, Hamilton argued, because litigation "between individuals" often would contain claims of "*fraud, accident, trust* or *hardship*, which would render the matter an object of equitable, rather than of legal jurisdiction." *Id.,* No. 80, at 539. "In such cases," Hamilton concluded, "where foreigners were concerned on either side, it would be impossible for the federal judicatories to do justice without an equitable, as well as a legal jurisdiction." *Id*., at 540. Thus, Hamilton sought to narrow the expansive Anti-Federalist reading of inherent judicial equity power by demonstrating that the defined nature of the English and colonial equity system—with its specified claims and remedies—would continue to exist under the federal judiciary. In line with the prevailing understanding of equity at the time, Hamilton described Article III "equity" as a jurisdiction over certain types of cases rather than as a broad remedial power. Hamilton merely repeated the well-known principle that equity would be controlled no less by rules and practices than was the common law.

In light of this historical evidence, it should come as no surprise that there is no early record of the exercise of broad remedial powers. Certainly there were no "structural injunctions" issued by the federal courts, nor were there any examples of continuing judicial supervision and management of governmental institutions. Such exercises of judicial power would have appeared to violate principles of

state sovereignty and of the separation of powers as late in the day as the turn of the century. "Born out of the desegregation litigation in the 1950's and 1960's, suits for affirmative injunctions were virtually unknown when the Court decided *Ex parte Young*, [209 U. S. 123, 158 (1908).]" Dwyer, Pendent Jurisdiction and the Eleventh Amendment, 75 Cal. L. Rev. 129, 162 (1987) (footnotes omitted). Indeed, it appears that the framers continued to follow English equity practice well after the Ratification. See, *e.g., Robinson* v. *Campbell*, 3 Wheat. 212, 221–223 (1818). At the very least, given the Federalists' public explanation during the ratification of the federal equity power, we should exercise the power to impose equitable remedies only sparingly, subject to clear rules guiding its use.

Two clear restraints on the use of the equity power — federalism and the separation of powers—derive from the very form of our Government. Federal courts should pause before using their inherent equitable powers to intrude into the proper sphere of the States. We have long recognized that education is primarily a concern of local authorities. "[L]ocal autonomy of school districts is a vital national tradition." *Dayton Bd. of Ed.* v. *Brinkman*, 433 U. S. 406, 410 (1977); see also *United States* v. *Lopez*, 514 U. S. ___, ___ (1995) (slip op., at 14) (KENNEDY, J., concurring); *Milliken I*, 418 U. S., at 741–742; *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 50 (1973); *ante*, at 11 (O'CONNOR, J., concurring). A structural reform decree eviscerates a State's discretionary authority over its own program and budgets and forces state officials to reallocate state resources and funds to the desegregation plan at the expense of other citizens, other government programs, and other institutions not represented in court. See Dwyer, *supra,* at 163. When District

Courts seize complete control over the schools, they strip state and local governments of one of their most important governmental responsibilities, and thus deny their existence as independent governmental entities.

Federal courts do not possess the capabilities of state and local governments in addressing difficult educational problems. State and local school officials not only bear the responsibility for educational decisions, they also are better equipped than a single federal judge to make the day-to-day policy, curricular, and funding choices necessary to bring a school district into compliance with the Constitution. See *Wright* v. *Council of City of Emporia*, 407 U. S. 451, 477–478 (1972) (Burger, C. J., dissenting).[5] Federal courts simply cannot gather sufficient information to render an effective decree, have

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[5]Certain aspects of this desegregation plan—for example, compensatory educational programs and orders that the State pay for half of the costs—come perilously close to abrogating the State's Eleventh Amendment immunity from federal money damage awards. See *Edelman* v. *Jordan*, 415 U. S. 651, 677 (1974) ("a federal court's remedial power . . . may not include a retroactive award which requires the payment of funds from the state treasury"). Although we held in *Milliken II,* 433 U. S. 267 (1977), that such remedies did not run afoul of the Eleventh Amendment, *id.,* at 290, it is difficult to see how they constitute purely prospective relief rather than retrospective compensation. See P. Bator, D. Meltzer, P. Mishkin, & D. Shapiro, Hart and Wechsler's The Federal Courts and the Federal System 1191–1192 (3d ed. 1988). Of course, the state treasury inevitably must fund a State's compliance with injunctions commanding prospective relief, see *Edelman, supra,* at 668, but that does not require a State to supply money to comply with orders that have a backward-looking, compensatory purpose.

limited resources to induce compliance, and cannot seek political and public support for their remedies. See generally P. Schuck, Suing Government 150–181 (1983). When we presume to have the institutional ability to set effective educational, budgetary, or administrative policy, we transform the least dangerous branch into the most dangerous one.

The separation of powers imposes additional restraints on the judiciary's exercise of its remedial powers. To be sure, this is not a case of one branch of Government encroaching on the prerogatives of another, but rather of the power of the Federal Government over the States. Nonetheless, what the federal courts cannot do at the federal level they cannot do against the States; in either case, Article III courts are constrained by the inherent constitutional limitations on their powers. There simply are certain things that courts, in order to remain courts, cannot and should not do. There is no difference between courts running school systems or prisons and courts running executive branch agencies.

In this case, not only did the district court exercise the legislative power to tax, it also engaged in budgeting, staffing, and educational decisions, in judgments about the location and aesthetic quality of the schools, and in administrative oversight and monitoring. These functions involve a legislative or executive, rather than a judicial, power. See generally *Jenkins I*, 495 U. S., at 65–81 (KENNEDY, J., concurring in part and concurring in judgment); Nagel, Separation of Powers and the Scope of Federal Equitable Remedies, 30 Stan. L. Rev. 661 (1978). As Alexander Hamilton explained the limited authority of the federal courts: "The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body." The Federalist No. 78, at 526. Federal judges cannot make the fundamentally

political decisions as to which priorities are to receive funds and staff, which educational goals are to be sought, and which values are to be taught. When federal judges undertake such local, day-to-day tasks, they detract from the independence and dignity of the federal courts and intrude into areas in which they have little expertise. Cf. Mishkin, Federal Courts as State Reformers, 35 Wash. & Lee L. Rev. 949 (1978).

It is perhaps not surprising that broad equitable powers have crept into our jurisprudence, for they vest judges with the discretion to escape the constraints and dictates of the law and legal rules. But I believe that we must impose more precise standards and guidelines on the federal equitable power, not only to restore predictability to the law and reduce judicial discretion, but also to ensure that constitutional remedies are actually targeted toward those who have been injured.

The dissent's approval of the District Court's treatment of salary increases is typical of this Court's failure to place limits on the equitable remedial power. The dissent frames the inquiry thus: "[t]he only issue, then, is whether the salary increases ordered by the District Court have been reasonably related towards achieving" the goal of remedying a systemwide reduction in student achievement, "keeping in mind the broad discretion enjoyed by the District Court in exercising its equitable powers." *Post*, at 18. In response to its question, the dissent concludes that "it is difficult to see how the District Court abused its discretion" in either the 1992 or 1993 orders, *post,* at 19, and characterizes the lower court's orders as "beyond reproach," *post,* at 21. When the standard of review is as vague as whether "federal-court decrees . . . directly address and relate to the constitutional violation," *Milliken II*, 433 U. S., at 281–282, it is difficult to ever find a remedial order

"unreasonable." Such criteria provide District Courts with little guidance, and provide appellate courts few principles with which to review trial court decisions. If the standard reduces to what one believes is a "fair" remedy, or what vaguely appears to be a good "fit" between violation and remedy, then there is little hope of imposing the constraints on the equity power that the framers envisioned and that our constitutional system requires.

Contrary to the dissent's conclusion, the District Court's remedial orders are in tension with two common-sense principles. First, the District Court retained jurisdiction over the implementation and modification of the remedial decree, instead of terminating its involvement after issuing its remedy. Although briefly mentioned in *Brown II* as a temporary measure to overcome local resistance to desegregation, 349 U. S., at 301 ("[d]uring this period of transition, the courts will retain jurisdiction"), this concept of continuing judicial involvement has permitted the District Courts to revise their remedies constantly in order to reach some broad, abstract, and often elusive goal. Not only does this approach deprive the parties of finality and a clear understanding of their responsibilities, but it also tends to inject the judiciary into the day-to-day management of institutions and local policies—a function that lies outside of our Article III competence. Cf. Fuller, The Forms and Limits of Adjudication, 92 Harv. L. Rev. 353 (1978).

Much of the District Court's overreaching in this case occurred because it employed this hit-or-miss method to shape, and reshape, its remedial decree.[6]

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[6]First, the District Court set out to achieve some unspecified levels of racial balance in the KCMSD schools and to raise the test scores of the school districts as a whole. 639 F. Supp., at 24, 38. In order to achieve that goal, the court ordered quality education programs to

Using its authority of continuing jurisdiction, the Court pursued its goal of decreasing "racial isolation" regardless of the cost or of the difficulties of engineering demographic changes. Wherever possible, district courts should focus their remedial discretion on devising and implementing a unified remedy in a single decree. This method would still provide the lower courts with substantial flexibility to tailor a remedy to fit a violation, and courts could employ their contempt power to ensure compliance. To ensure that they do not overstep the boundaries of their Article III powers, however, district courts should refrain from exercising their authority in a manner that supplants the proper sphere reserved to the

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address the "system wide reduction in student achievement" caused by segregation, even though the court never specified how or to what extent the dual system had actually done so. *Id*., at 46–51. After the State had spent $220 million and KCMSD had achieved a AAA rating, see *ante*, at 3, the District Court decided that even further measures were needed. In 1986, it ordered a massive magnet school and capital improvement plan to attract whites into KCMSD. 1 App. 130–193. In 1987, the district court decided that KCMSD needed better instructional staff and ordered new hiring. *Ante*, at 6. In 1992, the District Court found that KCMSD was having trouble attracting faculty and staff, and ordered a round of salary increases for virtually all employees. *Ante,* at 8–9. Every year the District Court holds a proceeding to review budget proposals and educational policies for KCMSD, and it has formed a "desegregation monitoring committee" to assess the implementation of its decrees. One need only review the District Court's first remedial order in 1984 to comprehend the level of detail with which it has made decisions concerning construction, facilities, staffing, and educational policy. 639 F. Supp. 19; see also *Jenkins I*, 495 U. S., at 60–61 (KENNEDY, J., concurring in part and concurring in judgment).

political branches, who have a coordinate duty to enforce the Constitution's dictates, and to the States, whose authority over schools we have long sought to preserve. Only by remaining aware of the limited nature of its remedial powers, and by giving the respect due to other governmental authorities, can the Judiciary ensure that its desire to do good will not tempt it into abandoning its limited role in our constitutional Government.

Second, the District Court failed to target its equitable remedies in this case specifically to cure the harm suffered by the victims of segregation. Of course, the initial and most important aspect of any remedy will be to eliminate any invidious racial distinctions in matters such as student assignments, transportation, staff, resource allocation, and activities. This element of most desegregation decrees is fairly straightforward and has not produced many examples of overreaching by the district courts. It is the "compensatory" ingredient in many desegregation plans that has produced many of the difficulties in the case before us.

Having found that segregation "has caused a system wide reduction in student achievement in the schools of the KCMSD," 639 F. Supp., at 24, the District Court ordered the series of magnet school plans, educational programs, and capital improvements that the Court criticizes today because of their interdistrict nature. In ordering these programs, the District Court exceeded its authority by benefitting those who were not victims of discriminatory conduct. KCMSD as a whole may have experienced reduced achievement levels, but raising the test scores of the *entire* district is a goal that is not sufficiently tailored to restoring the *victims* of segregation to the position they would have occupied absent discrimination. A school district cannot be discriminated against on the basis of its race, because a school district has no race. It goes without

saying that only individuals can suffer from discrimination, and only individuals can receive the remedy.

Of course, a district court may see fit to order necessary remedies that have the side effect of benefitting those who were not victims of segregation. But the court cannot order broad remedies that indiscriminately benefit a school district as a whole, rather than the individual students who suffered from discrimination. Not only do such remedies tend to indicate "efforts to achieve broader purposes lying beyond" the scope of the violation, *Swann*, 402 U. S., at 22, but they also force state and local governments to work toward the benefit of those who have suffered no harm from their actions.

To ensure that district courts do not embark on such broad initiatives in the future, we should demand that remedial decrees be more precisely designed to benefit only those who have been victims of segregation. Race-conscious remedies for discrimination not only must serve a compelling governmental interest (which is met in desegregation cases), but also must be narrowly tailored to further that interest. See *Richmond* v. *J. A. Croson Co.*, 488 U. S. 469, 509–510 (1989) (plurality opinion). In the absence of special circumstances, the remedy for *de jure* segregation ordinarily should not include educational programs for students who were not in school (or were even alive) during the period of segregation. Although I do not doubt that all KCMSD students benefit from many of the initiatives ordered by the court below, it is for the democratically accountable state and local officials to decide whether they are to be made available even to those who were never harmed by segregation.

This Court should never approve a State's efforts to deny students, because of their race, an equal

opportunity for an education. But the federal courts also should avoid using racial equality as a pretext for solving social problems that do not violate the Constitution. It seems apparent to me that the District Court undertook the worthy task of providing a quality education to the children of KCMSD. As far as I can tell, however, the District Court sought to bring new funds and facilities into the KCMSD by finding a constitutional violation on the part of the State where there was none. Federal courts should not lightly assume that States have caused "racial isolation" in 1984 by maintaining a segregated school system in 1954. We must forever put aside the notion that simply because a school district today is black, it must be educationally inferior.

Even if segregation were present, we must remember that a deserving end does not justify all possible means. The desire to reform a school district, or any other institution, cannot so captivate the Judiciary that it forgets its constitutionally mandated role. Usurpation of the traditionally local control over education not only takes the judiciary beyond its proper sphere, it also deprives the States and their elected officials of their constitutional powers. At some point, we must recognize that the judiciary is not omniscient, and that all problems do not require a remedy of constitutional proportions.