BOOK REVIEW

BLOWN CHANCES

THE CONTAINMENT: DETROIT, THE SUPREME COURT, AND THE BATTLE FOR RACIAL JUSTICE IN THE NORTH. By Michelle Adams. New York, N.Y.: Farrar, Straus and Giroux. 2025. Pp. xxviii, 494. $35.00.

*Reviewed by Jonathan D. Glater**

At some point, less than two decades after the United States Supreme Court found racial segregation in the public schools to be unconstitutional,[1] the doctrinal tide shifted. Instead of striking down explicitly discriminatory laws[2] and sometimes implicitly discriminatory laws[3] on the strength of *Brown v. Board of Education*,[4] the Justices increasingly gave reasons to constrain efforts to integrate various institutions, from police departments[5] to swimming pools[6] to, of course, schools.[7] Litigation over who goes to which public schools served as bellwether and bookend of what came to be known as the Civil Rights Era.[8]

One of those lawsuits, involving the battle to integrate public schools in Professor Michelle Adams's native Detroit, is the subject of her compelling, wonderfully accessible, and ultimately disheartening book, *The Containment: Detroit, the Supreme Court, and the Battle for Racial Justice in the North* (pp. xxi–xxviii). The Supreme Court's opinion in the case, *Milliken v. Bradley*,[9] will be familiar to many law students, who

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[1] Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954).

[2] *See, e.g.*, Loving v. Virginia, 388 U.S. 1, 9 (1967) (quoting *Brown*, 347 U.S. at 489) (noting division at the time of its drafting over what the addition of the Fourteenth Amendment to the Federal Constitution would require).

[3] *See, e.g.*, Harper v. Va. Bd. of Elections, 383 U.S. 663, 670 (1966) (quoting *Brown*, 347 U.S. at 492) (striking down a poll tax).

[4] 347 U.S. 483 (1954).

[5] *See* Washington v. Davis, 426 U.S. 229, 246–48 (1976) (holding that racially disparate effects of test taken by applicants for employment at police department did not per se violate constitutional prohibition on discrimination).

[6] *See* Palmer v. Thompson, 403 U.S. 217, 219, 224–26 (1971) (holding that the city council's closure of public swimming pools, rather than opening them on a desegregated basis, did not violate the Equal Protection Clause of the Fourteenth Amendment).

[7] *See* Milliken v. Bradley, 418 U.S. 717, 744–45 (1974) (holding that a cross-district public school integration remedy was not available absent a showing of a constitutional violation in all districts affected by the remedy).

[8] Dorothy E. Roberts, *Racism, Abolition, and Historical Resemblance*, 136 HARV. L. REV. F. 37, 47 (2022).

[9] 418 U.S. 717 (1974).

may be exposed to an excerpt from the opinion in their introductory class on constitutional law. Chief Justice Burger, writing for the majority in the case, defined the question presented as follows:

> [W]hether a federal court may impose a multidistrict, areawide remedy to a single-district *de jure* segregation problem absent any finding that the other included school districts have failed to operate unitary school systems within their districts, absent any claim or finding that the boundary lines of any affected school district were established with the purpose of fostering racial segregation in public schools, absent any finding that the included districts committed acts which effected segregation within the other districts, and absent a meaningful opportunity for the included neighboring school districts to present evidence or be heard on the propriety of a multidistrict remedy or on the question of constitutional violations by those neighboring districts.[10]

It is easy to predict the majority's answer to a question worded like this: No.[11]

In *The Containment*, Adams, who is the Henry M. Butzel Professor of Law at the University of Michigan,[12] sets out to tell the story of the case, which went up to the Supreme Court twice (p. 341). The book demonstrates that *Milliken*[13] matters for at least three reasons: First, the case marks the Court's doctrinal shift away from achieving desegregation to establishing limits on the pursuit of integration (p. xxii). Second, the majority opinion in *Milliken* almost entirely ignores the remarkable factual record produced in the proceedings below (p. 326), which "encompassed the containment, snakes in the basement, physical segregation barriers that resembled prison walls, redlining, racially restrictive covenants, white neighborhood associations with violent tendencies, segregated public housing, racially separate real estate salespersons associations, and school authorities that hoovered it all up when they insisted on neighborhood schools" (p. 318). That is, the residential housing pattern in Detroit and surrounding suburbs was no historical accident that the state could disclaim, and the resulting demographics of the schools in the city and outside were not the result of innocent happenstance (pp. 317–18). Third, and as a result of this failure to acknowledge the significance of the story painstakingly told at trial, *Milliken* marks the incorporation into doctrine of a racial fantasy in place of actual history (p. 326). In this imagined past, Black families come to live in — and be excluded from — particular places and their schools for reasons that do not offend the Constitution (p. 331), and consequently courts may not construct a remedy requiring the admission of those Black

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[10] *Id.* at 721–22.

[11] *Id.* at 752–53.

[12] *Michelle Adams*, UNIV. OF MICH. L. SCH., https://michigan.law.umich.edu/faculty-and-scholarship/our-faculty/michelle-adams [https://perma.cc/K35D-XKK4].

[13] This Review refers throughout to the first case to reach the Supreme Court as *Milliken*.

families into spaces from which they were previously excluded (pp. 327–28, 330–31). That formalist understanding has persisted in judicial opinions for decades.[14]

For Adams, this is clearly an epic failure on the part of the Court (p. 361). She tells the story with such verve and detail that it is difficult for a reader familiar with reality to disagree. The book delves into details, including key exchanges in the course of the trial (pp. 138–39, 152–56, 163–67), public statements by figures supporting and opposing the integration remedy sought by the plaintiffs in Detroit (pp. 216–24), and the prior writings and confirmation testimony of newly appointed Justices whose views would prove decisive (pp. 287–90, 292–93). Much has been written about the Supreme Court's opinion before, but Adams's contribution is the deft weaving together of so many historical strands into a single, compelling narrative. The book may be about law, but it is not only for lawyers.

The story Adams tells is urgent, notwithstanding the fifty years that have passed since the events that she describes (p. 360). The Supreme Court's reconceptualizing of the obligation imposed by *Brown* (p. 240) and rejection of the evidence of the pervasiveness of racial discrimination at every level of society (pp. 326, 331) provide eerie historical context for current events: On the first Valentine's Day of the second Trump Administration, the Department of Education issued a "Dear Colleague" letter asserting that a school, college, or university may not "treat[] a person of one race differently than it treats another person because of that person's race"[15] — a demand that extends well beyond what courts have determined the meaning of the Equal Protection Clause to be.[16] But the Administration's view, manifesting concern that consideration of race would harm innocent White applicants for admission or for jobs, would make perfect sense to the Justices in the Supreme Court majority in *Milliken*, who focused more on the burden that a race-conscious remedy for a constitutional wrong would impose on objecting White people, than on the need to right that wrong in the first place.[17]

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[14] *See, e.g.*, Freeman v. Pitts, 503 U.S. 467, 495 (1992) (describing racial segregation that did not amount to a violation of the Constitution because it was the "product not of state action but of private choices"); *see also* Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 720–21 (2007) (explaining that demographic patterns consistent with racial segregation but not "traceable to segregation," *id.* at 721 — that is, caused by other factors — did not necessarily offend the Constitution).

[15] Letter from Craig Trainor, Acting Assistant Sec'y for C.R., U.S. Dep't of Educ. 2 (Feb. 14, 2025) [hereinafter Dear Colleague Letter], https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf [https://perma.cc/QSZ4-REA2].

[16] *See, e.g.*, Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2175, 2176 (2023) (holding that the use of race in making admissions decisions at Harvard and the University of North Carolina did not comport with the requirements of the Equal Protection Clause but not outlawing the consideration of race absolutely and in all ways); *see also* Russell K. Robinson, *The Incoherence of the "Colorblind Constitution,"* 113 CALIF. L. REV. 993, 1001 (2025).

[17] *See* Milliken v. Bradley, 418 U.S. 717, 745–47 (1974).

To understand how doctrine that developed to address challenges to barriers that excluded on the basis of race could come to entrench the disparities those barriers created, the story of *Milliken* is essential. In *Milliken*, the interests of Black families seeking opportunity for their children foundered on the interests of White families who did not want to have to accommodate them.[18] Reaching this outcome required a series of doctrinal steps, elevating the importance of respecting school district lines and then limiting the remedy that a court could order to redress past racial discrimination to the particular school districts shown to have engaged in such discrimination.[19] This reasoning elided — ignored, really — the role of state government as a whole in limiting housing and education opportunities for Black families. It also treated integration as a punishment to be imposed only in response to specific and demonstrated instances of racism and not, as Justice Marshall recognized in his dissent, as a tool to promote cross-racial understanding and a healthier, pluralist democracy.[20] The result was capitulation to opposition to integration.

In attacks on diversity, equity, and inclusion in the current moment, we see the same setting of the interests of members of groups historically denied opportunity against those of people ostensibly burdened by the remediation effort.[21] To people opposed to measures intended to advance fairness, the pursuit of diversity is an imposition, a wanton penalty.[22] Further, in the eyes of those who believe themselves harmed by diversity, equity, and inclusion, this punishment is undeserved: The White candidate who believes that an opportunity was unfairly given to a candidate of color might not have engaged in racist actions or even harbored racist ideas.[23] *The Containment* could not encompass these recent developments, but the book makes them unsurprising: Opponents of integration, specifically, and race-consciousness, generally, criticize what to them looks like social engineering to achieve a particular "racial balance."[24] That perspective fails to take into account all the social engineering to create circumstances of extreme racial *imbalance* (p. 318).

Just as the majority in *Milliken* turned a blind eye to the longstanding and all-encompassing web of race discrimination that undermined

[18] *See id.*; *see also id.* at 767–69 (White, J., dissenting).

[19] *See id.* at 744–45 (majority opinion).

[20] *See id.* at 783 (Marshall, J., dissenting).

[21] *See, e.g.*, Complaint ¶¶ 73–76, Haltigan v. Drake, No. 23-cv-2437 (N.D. Cal. Nov. 15, 2024), Dkt. No. 1 (alleging that application requirement related to diversity, equity, and inclusion unconstitutionally "requir[ed] Dr. Haltigan to express ideas with which he disagrees in order to be eligible for employment," *id.* ¶ 73).

[22] *See, e.g.*, Exec. Order No. 14,151, 90 Fed. Reg. 8339, 8339 (Jan. 20, 2025).

[23] *See* Devon W. Carbado, Essay, *Footnote 43: Recovering Justice Powell's Anti-Preference Framing of Affirmative Action*, 53 U.C. DAVIS L. REV. 1117, 1126 (2019). Such a White applicant was, in the eyes of Justice Powell, an "innocent" victim of race-conscious policy. *Id.* (quoting Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 298 (1978) (opinion of Powell, J.)).

[24] *See infra* note 111 and accompanying text.

myriad opportunities for Black people for generations (p. 326), critics of diversity, equity, and inclusion in contemporary culture wars ignore the accumulated benefits that have favored White people and the biases that produce and reproduce racial disparities today.[25] From this perspective, efforts to include members of historically marginalized groups are themselves unfair and discriminatory.[26] Any bridging of these divergent perspectives, any effort to unify a fractured polity, will benefit from study of the strategy pursued by the lawyers who filed the *Milliken* lawsuit and will require grappling with the blinkered analysis of the *Milliken* majority.

Other legal scholars and sociologists have examined *Milliken* over the years, too, recognizing its significance, analyzing its reasoning, and identifying its effects.[27] While Adams does not slow down her crisp and smooth prose with side excursions into scholarly writing, her observations regularly reveal her deep engagement with this literature and the many and multifaceted questions that arise in any sophisticated engagement with the question of what racial justice entails. This Review cannot fully convey the nuance of Adams's project but will offer an example or two.

The discussion that follows has four Parts. Part I provides the doctrinal framework, situating *Milliken* in the context of desegregation litigation waged in the wake of *Brown*. Part I then examines the development of Supreme Court doctrine resolving litigation brought to desegregate schools across the country, as well as the reliance on *Brown* to dismantle statutorily maintained, or de jure, race segregation in settings well beyond public education.

Part II describes the singular ambition and implications of the claims made in *Milliken*, in which the NAACP Legal Defense Fund[28] implicated not just school districts but the practices of the real estate industry and the State of Michigan itself in the maintenance of segregation in K-12 education. It is hard to overstate the potential consequences of recognizing a wide distribution of responsibility for exclusion of Black

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[25] *See* Kimberly West-Faulcon, Essay, *Not Colorblind*, 120 NW. U. L. REV. 167, 175–76 (2025) (noting that opponents of consideration of race in selective college admissions "frame their doctrinal objective of making inclusion of nonwhites illegal as colorblind by describing lawsuits like *SFFA* as projects of 'restoration' of the 'founding principles' of the American Civil Rights Movement," *id.* at 175 (quoting Press Release, Students for Fair Admissions, Students for Fair Admissions Applauds Supreme Court's Decision to End Racial Preferences in College Admissions (June 29, 2023), https://studentsforfairadmissions.org/wp-content/uploads/2023/06/SFFA-Scotus-Opinion-Issued-Press-Release-June-2023.pdf [https://perma.cc/EE5B-45QS])).

[26] *See* Exec. Order No. 14,151, 90 Fed. Reg. at 8339.

[27] *See, e.g.*, Lisa M. Fairfax, *The Silent Resurrection of* Plessy*: The Supreme Court's Acquiescence in the Resegregation of America's Schools*, 9 TEMP. POL. & C.R.L. REV. 1, 15–16 (1999); Ian Haney-López, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779, 1803 (2012).

[28] The Legal Defense Fund is now independent of the NAACP. *See* NAACP v. NAACP Legal Def. & Educ. Fund, Inc., 559 F. Supp. 1337, 1339–41 (D.D.C. 1983) (describing history of the relationship between the entities).

Americans: The obligations to correct for decades of discriminatory conduct in any meaningful remedy would have to reach people — lots of people — where they lived. No doubt this is one reason a majority of the Justices not only disagreed with the trial court but also ignored almost completely the extensive evidence that the plaintiffs had presented. Adams does a service in describing this evidence in the book, showing lawyerly attention to the nuances of doctrine and, perhaps most importantly, respect for facts.

Part III considers the impact of the story that Adams tells for the present day. Part III examines the doctrinal and real-world effects of the Court's decision, as well as its broader, symbolic meaning as an instance of retrenchment in opposition to an integrative ideal.[29] This examination suggests that one deeply disturbing consequence of *Milliken* may be our divided national community, in which different groups fear and resent each other and in which intergroup relationships are characterized by an absence of empathy. Part III concludes with a brief and necessarily speculative consideration of the answer Adams suggests to the question of what the effect of a different outcome in *Milliken* might have been.

Part IV offers a brief conclusion.

I. MUCH DELIBERATION, LITTLE SPEED: THE EVOLVING DOCTRINE OF PUBLIC SCHOOL DESEGREGATION

In *Brown*, perhaps the most revered decision issued by the Supreme Court, the Justices unanimously declared that "[s]eparate educational facilities are inherently unequal" and that racial segregation "deprived [Black schoolchildren] of the equal protection of the laws guaranteed by the Fourteenth Amendment."[30] The year after deciding *Brown*, the Justices called for the admission of Black children "to public schools on a racially nondiscriminatory basis with all deliberate speed."[31] The

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[29] Some writers in this area have produced compelling works intended, like Professor Adams's book, for a wide audience: Richard Rothstein has helped spread the story of the role of government in maintaining, and sometimes creating, racial segregation in housing that underpinned the plaintiffs' arguments in *Milliken*. *See* RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 13–14 (2017). Rothstein singles out *Milliken* early in the book, calling the Supreme Court's decision in the case a "turning point" in the quest to remedy segregation, *id.* at xii, and criticizing the "willful blindness" of American racial history that enabled the outcome, *id*. at xiii. The writing of Professor Ibram X. Kendi on the steady nurturing of beliefs in Black intellectual inferiority and propensity toward violence helps explain why White families chose to move away, to places like the Detroit suburbs, rather than experience integration. *See* IBRAM X. KENDI, STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA 357–58 (2016). Professor Eve L. Ewing traces the role of public education in maintaining rather than undermining racial hierarchy in the United States. *See* EVE L. EWING, ORIGINAL SINS: THE (MIS)EDUCATION OF BLACK AND NATIVE CHILDREN AND THE CONSTRUCTION OF AMERICAN RACISM 10 (2025).

[30] Brown v. Bd. of Educ., 347 U.S. 483, 495 (1954).

[31] Brown v. Bd. of Educ. (*Brown II*), 349 U.S. 294, 301 (1955).

"deliberate speed" instruction followed the Court's identification of the many "varied local school problems" to be solved in order to desegregate schools.[32] There followed years of court-supervised efforts at implementation in the face of fierce resistance.

A. The Cases that Came Before

The history of the Supreme Court's efforts to enforce *Brown* would take up multiple volumes. The goal here is only to situate *Milliken* on a timeline that reflects the shift from what Adams in earlier work recognizes as the "radical" promise of the early desegregation cases of the 1950s,[33] to the painful pragmatism of the many cases filed in response to "massive resistance"[34] to integration, to retrenchment and the doctrinal abandonment of an integrative ideal. In this timeline, Adams wrote in 2004: "The impact of *Milliken I* cannot be overstated."[35]

Before 1973, the Court did not directly address school segregation in the northern and western regions of the United States where the law did not require nor, formally, even permit the practice (pp. 31–32).[36] The *Milliken* litigation thus would be a test case, drawing on principles underlying key decisions that predated and followed *Brown*[37] but could provide only some guidance on what *Brown* would mean in Michigan. In 1958, the Court stated bluntly that the school board in Little Rock, Arkansas, could not simply ignore the mandate of *Brown*.[38] And yet, over the next ten years, "very little progress had been made in many areas where dual school systems had historically been maintained by operation of state laws."[39] Tactics that delayed integration took many

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[32] *Id.* at 299.

[33] Michelle Adams, Essay, *Shifting Sands: The Jurisprudence of Integration Past, Present, and Future*, 47 HOW. L.J. 795, 798 (2004).

[34] Kimberly Jenkins Robinson, *Resurrecting the Promise of* Brown*: Understanding and Remedying How the Supreme Court Reconstitutionalized Segregated Schools*, 88 N.C. L. REV. 787, 800 (2010).

[35] Adams, *supra* note 33, at 811.

[36] Although, as Adams notes, at least one federal trial court concluded that a northern city — New Rochelle, New York — had violated *Brown* (pp. 36–38) (quoting Taylor v. Bd. of Educ., 191 F. Supp. 181, 191 (S.D.N.Y. 1961)). *Taylor v. Board of Education*, 191 F. Supp. 181 (S.D.N.Y 1961), asserted that segregation in the absence of law still violates the Federal Constitution: "[I]f a Board of Education selects a school site, or otherwise operates its schools, with a purposeful desire to segregate, or to maintain segregation, the Constitution has been violated." 191 F. Supp. at 194. The Supreme Court did not grant certiorari. Bd. of Educ v. Taylor, 368 U.S. 940 (1961).

[37] *Brown* did not come out of nowhere. Litigation challenging exclusion on the basis of race from a law school, *see* Sweatt v. Painter, 339 U.S. 629, 631 (1950), and restrictions imposed on a Black student by a graduate school of education, *see* McLaurin v. Okla. State Regents for Higher Educ., 339 U.S. 637, 638 (1950), preceded *Brown*. In a prior essay, Adams observes that "[t]here is no question that the Court's decision in *Brown I* rested firmly on the *Sweatt* and *McLaurin* minority access perspective," focusing on opening up educational opportunities to previously excluded Black students. Adams, *supra* note 33, at 800.

[38] Cooper v. Aaron, 358 U.S. 1, 4 (1958).

[39] Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 13 (1971).

forms; in *Green v. County School Board*,[40] the Court considered a "'freedom-of-choice' plan" that ostensibly allowed every student in a school district to "'freely' choose" a school.[41] The Court struck down this policy, stating forcefully that the obligation of the segregated school district was to "convert to a unitary system in which racial discrimination would be eliminated root and branch."[42] The year after the Court decided *Green*, confronted with continuing delay in desegregating schools in Mississippi, the exasperated Justices declared in a brutal and brief opinion that the "standard of . . . 'all deliberate speed' for desegregation is no longer constitutionally permissible" and "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools."[43] These cases involved recalcitrant school districts clinging to segregation previously required by state law[44] and did not present the challenge that the facts in Michigan would.[45]

The plaintiffs filed the complaint that launched *Milliken* in 1970.[46] While the litigation was underway, the Court issued another decision that would bear on the Detroit case. In *Swann v. Charlotte-Mecklenburg Board of Education*,[47] the Court evaluated a potential desegregation plan for Mecklenburg County, North Carolina, which includes the city of Charlotte.[48] The plan set target ratios of White and Black students at schools,[49] involved busing students to achieve desegregation,[50] and called for "gerrymandering of school districts and attendance zones"[51] to promote integration. All of these measures were appropriate, Chief Justice Burger wrote for the Court:

> The objective is to dismantle the dual school system. "Racially neutral" assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation.[52]

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[40] 391 U.S. 430 (1968).

[41] *Id.* at 437. The Court went on to observe that under the freedom-of-choice plan, the school system remained effectively segregated: Few Black children chose to attend a school that previously enrolled only White children, and no White children chose to attend a school that previously enrolled only Black children. *Id.* at 441.

[42] *Id.* at 438.

[43] Alexander v. Holmes Cnty. Bd. of Educ., 396 U.S. 19, 20 (1969) (per curiam).

[44] *See, e.g.*, *Green*, 391 U.S. at 432.

[45] *See* Milliken v. Bradley, 418 U.S. 717, 721–22 (1974).

[46] *Id.* at 722.

[47] 402 U.S. 1 (1971).

[48] *Id.* at 6–7.

[49] *See id.* at 23–25.

[50] *See id.* at 30.

[51] *Id.* at 27.

[52] *Id.* at 28.

In prior work, Adams calls this case the "high watermark of the Court's enforcement decisions."[53] It is easy to see how language like that in the Court's opinion might have encouraged the lawyers representing Black families in Detroit as they sought to realize the promise of *Brown* (p. 174).[54]

But the meaning of *Brown*, which has undergone continuous examination in subsequent cases involving varying sets of facts, has remained unsettled[55] and contested.[56] Adams sums up the competing interpretations:

> To the extent that one believed that segregation weaponized white supremacy, the [C]ourt's emphasis on the long-lasting and debilitating harms associated with state-enforced racial separation suggested that the case was anchored by an "anti-caste" foundation. From this perspective, equality meant that government acts that perpetuated white supremacy — all of them — were impermissible. On this view, *Brown* finally affirmed Justice Harlan's prophetic dissent [in *Plessy v. Ferguson*[57]], "There is no caste here."
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> On the other hand, perhaps equality meant something much narrower and more constrained. Justice Harlan's dissent in *Plessy* was also famous for its admonition that our "Constitution is color-blind, and neither knows nor tolerates classes among citizens." Maybe the singular problem with the state statutes at issue in *Brown* was that they weren't "color-blind." . . . Perhaps *Brown* stood for the proposition that only laws that expressly classified on the basis of race ran afoul of the [E]qual [P]rotection [C]lause. (pp. 73–74)[58]

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[53] Adams, *supra* note 33, at 805.

[54] However, as Adams notes (p. 173), the Chief Justice also carefully limited the Court's reasoning, writing that "[w]e do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree." *Swann*, 402 U.S. at 23; *see infra* Part II, pp. 1102–07.

[55] BRUCE ACKERMAN ET AL., WHAT *BROWN V. BOARD OF EDUCATION* SHOULD HAVE SAID 9, 12 (Jack M. Balkin ed., 2001).

[56] For example, shortly after *Brown* was decided, Professor Herbert Wechsler challenged the reasoning of the opinion, writing, "[f]or me, assuming equal facilities, the question posed by state-enforced segregation is not one of discrimination at all," but rather one of the "denial by the state of freedom to associate, a denial that impinges in the same way on any groups or races that may be involved." Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1, 34 (1959). Wechsler's view of the relative "impinge[ment]" of segregation on Black Americans was, to put it mildly, inaccurate, *see* ACKERMAN ET AL., *supra* note 55, at 13, but his interpretation of the issue reveals much about elite perceptions of racial realities in the United States at the time. In Wechsler's view, the benefit of desegregation to Black people had to be weighed against the right of White people to associate with only other White people, a balancing test that inherently recognized a constitutional right to exclude. *See* Weschler, *supra*, at 34. The idea that vindication of the rights of members of one group may not violate the rights of another, formally equivalent, group, has for decades served as a rationale for limiting or ending efforts to undo the effects of past de jure discrimination. *See, e.g.*, Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 320 (1978) (opinion of Powell, J.) (finding that setting aside a portion of the spots in a medical school's entering class for underrepresented minorities violated the rights of a White applicant).

[57] 163 U.S. 537 (1896).

[58] Footnotes have been omitted. The author quotes *id.* at 559 (Harlan, J., dissenting).

A majority of the Court, in striking down race-conscious policies in the context of education, has expressed support for the second understanding of *Brown*,[59] to the frustration of critical scholars and advocates who have sought to leverage equal protection law both to combat discrimination against members of historically excluded groups and to enable affirmative efforts to provide equal access to opportunities to members of those same groups.[60] The anticlassification interpretation of *Brown* enables attacks on efforts to promote integration if those efforts explicitly consider race.[61] Prohibition of use of a racial classification is decidedly different from the requirement of elimination of racial discrimination "root and branch."[62] *Milliken* marked the end of that period of aggressive integration efforts. The Supreme Court's opinion "was a hinge, the critical moment that separated two eras," Adams writes: the end of a period of reform and the beginning of one marked by "reaction and backlash" (p. 360).

This "hinge" could not have been completely unexpected. After the *Milliken* complaint was filed but before the case reached the Supreme Court, the Justices decided one more school desegregation case (pp. 311, 348), *Keyes v. School District No. 1*.[63] The multiple opinions in *Keyes* showed how the Court had changed.[64] Adams describes evidence that each of the new Justices was more skeptical of integration than the Justices they replaced (pp. 285, 287–88, 293). The facts of *Keyes* presented a doctrinal challenge because Denver's schools had not previously

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[59] *See* Justin Driver, *The Strange Career of Antisubordination*, 91 U. CHI. L. REV. 651, 702 (2024). However, Professor Justin Driver goes on to note that the recent decision striking down race-conscious policies in admissions at Harvard College and the University of North Carolina provides an example in which antisubordination surfaced, implicitly if not explicitly: The "majority . . . also repeatedly used language and concepts that are compatible with antisubordination." *Id.* at 703 (discussing Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141 (2023)).

[60] *See, e.g.*, Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1143–44 (1997).

[61] And that is the basis of Supreme Court decisions in cases striking down explicitly race-conscious policies aimed at promoting diversity in K-12 schools, as in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), and in colleges and universities, as in *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), and *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (*SFFA*), 143 S. Ct. 2141 (2023). *See Parents Involved*, 551 U.S. at 747–48 (opinion of Roberts, C.J.); *Bakke*, 438 U.S. at 319–20 (opinion of Powell, J.); *SFFA*, 143 S. Ct. at 2175.

[62] Green v. Cnty. Sch. Bd., 391 U.S. 430, 438 (1968).

[63] 413 U.S. 189 (1973).

[64] *Compare id.* at 250 (Powell, J., concurring in part and dissenting in part) ("[C]ourts in requiring so far-reaching a remedy as student transportation solely to maximize integration, risk setting in motion unpredictable and unmanageable social consequences."), *and id.* at 258 (Rehnquist, J., dissenting) ("I can see no constitutional justification for it . . . in Denver."), *with Green*, 391 U.S. at 437–38 (Brennan, J.) ("[T]ake whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.").

operated under a regime of de jure segregation.[65] In this, Denver did not resemble a Southern city (p. 311). The absence of segregation through law forced the Court to grapple with the distinction between de jure segregation, which the majority believed required a remedy, and de facto segregation, which the majority regarded as constitutionally innocent and therefore required no corrective action.[66] Instead of proving de jure segregation, the plaintiffs demonstrated that the school board had "intentionally created and maintained the segregated *character* of the core city schools," which made up a portion of the district.[67] The question was whether this was enough to constitute a constitutional violation.[68]

The Court's resolution of *Keyes* mattered because the facts in Denver resembled those in Detroit, in that both cities lacked laws requiring racial segregation (p. 311). According to the Court in *Keyes*, a "finding of intentionally segregative school board actions in a meaningful portion of a school system, as in this case, creates a presumption that other segregated schooling within the system is not adventitious,"[69] and therefore, should the "Board fail[] to rebut" prima facie evidence of "intentionally segregative actions" on remand, the District had an obligation to desegregate.[70] One of the new members of the Court, Justice Powell, dissented in part,[71] and the other, then-Justice Rehnquist, dissented entirely.[72] In his partial dissent, Justice Powell criticized the distinction between de jure and de facto segregation as unworkable,[73] but not because he asserted the need to promote integrated schools generally; rather, Justice Powell lamented the unfairness of the "distinction operat[ing] inequitably on communities in different sections of the country"[74]: Black families in jurisdictions affected by de jure segregation in southern states benefitted from a remedy that White people could not avoid, but Black families in equally segregated jurisdictions that lacked a law requiring the practice did not, and White people there could successfully evade integration.[75] Then-Justice Rehnquist, in turn, directly

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[65] *See Keyes*, 413 U.S. at 191, 198–200; *see also id.* at 217 (Powell, J., concurring in part and dissenting in part) ("This is the first school desegregation case to reach this Court which involves a major city outside the South.").

[66] *See id.* at 211 (majority opinion).

[67] *Id.* at 206 (emphasis added).

[68] *See id.* at 200.

[69] *Id.* at 208.

[70] *Id.* at 214.

[71] *Id.* at 217 (Powell, J., concurring in part and dissenting in part).

[72] *Id.* at 254 (Rehnquist, J., dissenting).

[73] *See id.* at 228–29 (Powell, J., concurring in part and dissenting in part).

[74] *Id.* at 229.

[75] *Id.* at 229–30. The argument is striking because if the Court recognized the need for a remedy in cases of de facto segregation, implementation of desegregation would be more widely required. Judge Roth, presiding over the *Milliken* trial, noted this himself, writing:

attacked the conclusion that segregation within a portion of a school district was sufficient to justify a district-wide integration mandate, writing dismissively that "unless the Equal Protection Clause of the Fourteenth Amendment now be held to embody a principle of 'taint,' found in some primitive legal systems but discarded centuries ago in ours, such a result can only be described as the product of judicial fiat."[76] These two Justices, as Adams shows, were ready to criticize the Court's recent desegregationist efforts (pp. 296, 307, 315, 321).

B. The Scholarship

Adams complements prior scholarship, including her own, in *The Containment*, but the book (perhaps to its credit) does not include an explicit literature review of all that has been written in law journals about battles to achieve or undermine desegregation, some of which I draw on briefly here. The book has the virtue of accessibility to a non-academic audience of nonlawyers: The prose is elegant and clear, delicately teasing apart complex ideas, like the doctrinal significance of the distinction between de jure and de facto discrimination (p. 32).

Adams is not alone in singling out *Milliken* as a significant Supreme Court opinion that effected a change in doctrine, and, even more significantly, a change in the course of school desegregation in the post-*Brown* era. Various scholars have recognized the importance of the decision: Then-Professor James Ryan wrote that it is "second only in importance to *Brown I* among the Court's school desegregation decisions,"[77] and Professor Lisa Fairfax called it a "[t]urning [p]oint"[78] that was "more consistent with *Plessy* than the principles articulated by *Brown*."[79] Then-Professor Goodwin Liu argued that the *Milliken* Court made "local control"[80] over education a judicially cognizable concern able "to shield suburban school districts" from imposition of an otherwise constitutionally mandated remedy.[81] And as then-Professor Tomiko Brown-Nagin put it: "Thus, *Milliken* effectively ended the possibility that integrative remedies can be achieved through litigation in cities that follow the pattern of interrelated school district and residential segregation described above — that is, most American cities."[82]

> It is, the Court believes, unfortunate that we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, then it should make no difference whether we classify it de jure or de facto. Our objective, logically, it seems to us, should be to remedy a condition which we believe needs correction.

Bradley v. Milliken, 338 F. Supp. 582, 592 (E.D. Mich. 1971).

[76] *Keyes*, 413 U.S. at 257 (Rehnquist, J., dissenting).

[77] James E. Ryan, *Schools, Race, and Money*, 109 YALE L.J. 249, 281 (1999).

[78] Fairfax, *supra* note 27, at 15.

[79] *Id.* at 16.

[80] Goodwin Liu, Brown*,* Bollinger*, and Beyond*, 47 HOW. L.J. 705, 725 (2004).

[81] *Id.* at 719.

[82] Tomiko Brown-Nagin, *Toward a Pragmatic Understanding of Status-Consciousness: The Case of Deregulated Education*, 50 DUKE L.J. 753, 790 (2000).

Historically — that is, prior to *Milliken* — school district lines were neither sacrosanct nor immune to state revision. Indeed, in the period between 1930 and 1970, the vast majority of school districts underwent "consolidation,"[83] meaning that states simply revised district lines and reduced the total number of districts.[84] School district lines were similarly malleable in Michigan in particular, as Professor Myron Orfield observed when he wrote that "Michigan had always both created local school districts and totally controlled the alteration of their boundaries. The state had wide-ranging powers to consolidate and merge school districts and to transfer property from one school district to another, without the consent of the districts themselves or of the local citizenry."[85] Local control had not meant and did not mean that local school boards could defy the decisions of the State.[86] That history undermined Chief Justice Burger's language extolling local control's supremacy.[87]

Deference to the authority of suburban districts to determine who attended their schools blocked a core strategy of the Civil Rights Movement, which sought to tie the educational experiences and resources available to Black students to those enjoyed by White students through integration.[88] It was a strategy that recognized the difficulty of achieving anything like equality while schools remained segregated.[89] However, because the Court in *Milliken* allowed school districts to treat their boundaries as impregnable walls[90] and, in *San Antonio Independent School District v. Rodriguez*,[91] refused to recognize disparities in financial resources between school districts as a constitutional violation,[92] the Court enabled both separation and inequality.[93] The realities of this unequal educational scheme would persist even as de jure segregation faded.[94]

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[83] Daniel Kiel, *The Enduring Power of* Milliken*'s Fences*, 45 URB. LAW. 137, 140 (2013).

[84] *See id.* n.19, 141 n.22.

[85] Myron Orfield, Milliken*,* Meredith*, and Metropolitan Segregation*, 62 UCLA L. REV. 364, 402–03 (2015).

[86] *See id.* at 403.

[87] *See* Milliken v. Bradley, 418 U.S. 717, 741–42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.").

[88] *See* Ryan, *supra* note 77, at 259.

[89] *See id.* at 259–60.

[90] *See Milliken*, 418 U.S. at 741–42.

[91] 411 U.S. 1 (1973).

[92] *Id.* at 54–55.

[93] *See* Liu, *supra* note 80, at 726–27 ("*Milliken* and *Rodriguez* are thus two sides of the same equality-depriving coin . . . ." *Id.* at 726.); *see also* Ryan, *supra* note 77, at 260 (noting that after *Milliken* and *Rodriguez*, "the ambitious aim of equalizing educational opportunities through integration and equalized spending has been largely abandoned").

[94] Mark C. Rahdert, *Obstacles and Wrong Turns on the Road from* Brown*:* Milliken v. Bradley *and the Quest for Racial Diversity in Education*, 13 TEMP. POL. & C.R.L. REV. 785, 786 (2004).

The continuing key factor was residential segregation, as Judge Roth, the trial court judge in *Milliken*, came to recognize over the course of the trial (pp. 210–11). Informal but still effective discrimination in housing markets meant that school districts did not need to rely on explicit, de jure policies to ensure the exclusion of Black students.[95] White flight could succeed (p. 333). If demographics of communities were mysterious and unrelated to state action,[96] then *Milliken* meant that Black families challenging their exclusion from educational opportunity had no constitutional basis to demand the appropriate remedy from the necessary parties.[97] Instead, the majority concluded their rights had not been violated by suburban districts because, in the Justices' view, there was a break in the causal chain between the source of the constitutional wrong and the needed remedy.[98] And, as a result, the wrong would have no effective remedy.

II. A FEW PAGES OF HISTORY, SEVERAL VOLUMES OF LOGIC[99]

The majority opinion of the Supreme Court presented an elliptical, almost stylized version of the facts of the case, one that did not track or even acknowledge in any meaningful way the findings of the trial court. A great service of *The Containment* is the presentation of the record produced at trial to show the role of the city and the State in effecting and maintaining racial segregation (pp. 317–18). This showing mattered because in Michigan, as in Colorado[100] but unlike in the segregated South of the pre-*Brown* period, segregation was not required by law.[101] That meant that lawyers for the plaintiffs had to establish that even though the defendants, including the governor and other state officials and entities (pp. 117–18),[102] were not enforcing a law, they acted intentionally; racial segregation had not just happened on its own (pp. 124–

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[95] *See* Robinson, *supra* note 34, at 815. Not surprisingly, Professor Kimberly Robinson notes, after *Milliken*, levels of intradistrict segregation declined while levels of interdistrict segregation increased. *Id.* at 814.

[96] In his concurrence in *Milliken*, Justice Stewart wrote that it was the:

> essential fact of a predominantly Negro school population in Detroit — caused by unknown and perhaps unknowable factors such as in-migration, birth rates, economic changes, or cumulative acts of private racial fears — that accounts for the "growing core of Negro schools," a "core" that has grown to include virtually the entire city.

Milliken v. Bradley, 418 U.S. 717, 756 n.2 (1974) (Stewart, J., concurring).

[97] *Id.* at 752 (majority opinion).

[98] *See id.*

[99] N.Y. Tr. Co. v. Eisner, 256 U.S. 345, 349 (1921) (offering this pithy observation in the course of resolving a dispute arising out of imposition of an estate tax).

[100] *See* Keyes v. Sch. Dist. No. 1, 413 U.S. 189, 191 (1973).

[101] *See* MICH. C.R. COMM'N, 1964–2004: FORTY YEARS AND BEYOND 1 (2003) https://www.michigan.gov/-/media/Project/Websites/mdcr/booklets-handouts/history-1964-2004.pdf [https://perma.cc/NR6P-ZMCS].

[102] William Milliken was the Governor (p. 117). The complaint also named Frank J. Kelley, the State Attorney General; John W. Porter, the State School Superintendent; and the State Board of Education (pp. 117–18).

25, 140–41). Demonstrating this, identifying the numerous ways that state action worked to keep Black people in Detroit and out of surrounding suburbs, took "more than two dozen days" at trial (p. 191) — but that is getting ahead of the story.

Lawyers for the plaintiffs, the local branch of the NAACP and several families with children enrolled in the public schools (p. 117), needed to show the role of state actors in perpetuating racial segregation in a school system that was, already, overwhelmingly Black (pp. 17, 234). Because the schools were not segregated by law, this meant tying state actors to residential segregation, which in turn had led to schools that overwhelmingly enrolled students of one race (pp. 139–40). Success on this would establish the liability of the defendants, but that would not achieve integration on its own. Another challenge would be fashioning a remedy: Meaningful integration would require overcoming the effects of White flight to the suburbs, which were not part of the Detroit public school system (p. 234).

The inaccessibility of the suburbs to Black Detroit residents resulted in the "containment" referenced in the book's title and the core argument of the plaintiffs' lawyers at trial: The Black population was contained in the city (p. 147). The theory of the case was that "white Detroiters were engaged in a constant rearguard action of containing, controlling, and stonewalling, of separating themselves from African Americans" (p. 147). The concentration of Black families in Detroit was not the result of "a series of random, unconnected acts," but "*policy*" (p. 148). To bring the point home to the judge — this was a bench trial (p. 126) — the lawyers offered a map of Detroit that depicted the extent of housing segregation in Detroit over the past thirty years (p. 149). The huge map, ten feet by twenty feet, "told the story" (p. 149).

Presiding over the case was Stephen Roth, a federal district court judge whom Adams describes as "a man of his time, with the kind of preexisting racial attitudes that sadly reflected it" (p. 129). She writes that "his mind wasn't closed," but he "began the litigation as a deep skeptic of the plaintiffs' claims" (p. 129). After forty-one days of trial (p. 332), though, he came to appreciate the ubiquity of racial subordination (p. 256).[103] This was the result of weeks of sustained and devastating trial advocacy.

There was no "smoking gun" in this case (p. 149), Adams tells us, but the cumulative weight of evidence of racial hostility that ensured that Black people could not move to or otherwise access the educational and

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[103] Adams quotes comments from the judge to a reporter, privately, after issuing his decision: "We took this country away from the Indians and put them on reservations. We imported the Chinese and made them build the railroads. We got the Irish, the Italians, and the rest and shoved them into the mills. Now I guess we are reserving the ghettos for the Blacks . . . . Black people will not take being locked up in the ghettos without a fight." (p. 256) (quoting William Grant, *Judge Roth Dead at 66*, DETROIT FREE PRESS, July 12, 1974, at 1A).

other opportunities of the White suburbs and that their children remained in segregated schools (pp. 149–52). The first and unusual effort by the plaintiffs' lawyers was to show discrimination that led to residential segregation, which in turn ensured racially identifiable schools (pp. 139–40). White realtors did not show homes in White neighborhoods to Black potential buyers, consistent with the policy of the Detroit Real Estate Board (p. 164). The State was implicated in real estate transactions in two ways: Real estate professionals were licensed by the State of Michigan, and the State required that they abide by the code of ethics of the National Association of Real Estate Boards, which required that "a realtor should never be instrumental in introducing into a neighborhood a character of property or occupancy members of *any race or nationality* or any individuals whose presence will clearly be detrimental to property values in that neighborhood" (p. 164).[104] The real estate transactions ensured segregation in schools, and arguing that this racial exclusion occurred independent of state action flew in the face of the facts. It would be difficult to argue that housing patterns constituted only de facto segregation. The school board's lawyer tried to have some of the most devastating testimony of standard, racist practices struck, but the judge refused (pp. 166–67).

As for evidence of intentional action to segregate by the State and city defendants, the judge heard from:

> [n]umerous principals, superintendents, board members, and other school officials . . . [who] told the court how black children were bused past nearby white schools to majority black schools, how school attendance zones and school feeder patterns were manipulated or "gerrymandered" to maintain segregation, and how schools were constructed at specific locations to perpetuate segregation. (p. 192)

Adams spends some time describing the testimony of one of the plaintiffs' experts, Dr. Robert Green, a professor "expert in educational psychology and school desegregation" (p. 178). As a witness, Green provided both facts and, crucially, perspective, emphasizing that "public schools were not neutral bystanders when it came to deconstructing white supremacy" and, as a practical matter, "either reinforced racist attitudes or helped to modify them" (p. 181). This critique made clear that segregated schools not only violated the rule of *Brown* but also "negatively affected" Black students' academic performance (p. 181).

The plaintiffs' lawyers presented overwhelming evidence of a web of discriminatory conduct in housing markets and argued that this web was the reason that Black students lived in racially segregated neighborhoods (pp. 149–52). Consequently, when attending so-called neighborhood schools, students enrolled with classmates who were overwhelmingly of the same race (pp. 185, 378). This was Northern

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[104] The author quotes Transcript of Record at 525, Bradley v. Milliken, 338 F. Supp. 582 (E.D. Mich. 1971) (on file with Univ. of Mich., Bentley Historical Library, *Bradley v. Milliken* Case Files).

segregation, achieved indirectly and informally, rather than through explicit legislation as in the South (p. 141).[105] The implications of calling out the phenomenon would be significant.

Suburban school districts, not surprisingly, wanted no part of any interdistrict, or "metropolitan," remedy; after all, they had not been parties to the litigation and there had been no showing that they engaged in discriminatory conduct (pp. 240–41). Adams describes White resistance to another desegregation order affecting Pontiac, Michigan, and the rise of "a telegenic thirty-six-year-old white mother of three named Irene McCabe" (p. 202) who spoke fiercely in opposition to busing, first in Pontiac but then generally in ensuing months (pp. 205–07). McCabe helped reframe a battle against remedying the effects of past anti-Black racism as opposition to "how the government was upending white expectations and destroying neighborhood schools" (p. 207). There is a fascinating dynamic here, pitting the rage of the suburban, White mother at the potential imposition of integration against the frustration of the urban, Black mother demanding better schools.[106] Adams does not delve into how this intersectional conflict injects gender into the conflict over racial integration, but the contrasting, doctrinal treatment of each parent's objectives is hard to miss.

Judge Roth ordered a metropolitan desegregation plan anyway (p. 250); the record that the NAACP's lawyers created was too compelling and the relationship between housing segregation and school segregation too blatant to ignore. And if Detroit's Black schoolchildren had been confined to Detroit while White parents had engaged in a mass movement to the suburbs that Black parents could not join as a result of discrimination in housing, then a remedy for the segregation *within* Detroit could and indeed had to encompass schools in districts *outside* Detroit (pp. 234–35). The decision was endorsed by the Court of Appeals for the Sixth Circuit.[107]

A majority of the Supreme Court overruled the lower courts.[108] The Justices concluded that because the case included no evidence of de jure discrimination by suburban school districts, the remedy of integration could not be imposed upon these districts, even if that result made meaningful desegregation in Detroit impossible.[109] The scope of any remedy

[105] In his excellent review of Adams's book, Professor Jade Craig observes that the *Milliken* litigation could properly be conceived of as a story of residential segregation first and educational segregation second. *See generally* Jade A. Craig, *Schools Without Borders: Ending the Drive for Containment*, 124 MICH. L. REV. (forthcoming Apr. 2026) (book review) (on file with the Harvard Law School Library). Viewing school segregation as a housing problem perhaps would make litigation over exclusive zoning rules that make it more costly to buy into desirable school districts an appealing tactic. *See, e.g.*, *id.* (manuscript at 16–17).

[106] Verda Bradley was a named plaintiff in *Milliken*; one of her two sons was a kindergarten student and the other a junior high school student in the Detroit public schools (pp. 117–18).

[107] Bradley v. Milliken, 484 F.2d 215, 258 (6th Cir. 1973).

[108] Milliken v. Bradley, 418 U.S. 717, 753 (1974).

[109] *See id.* at 751–52.

was constrained by the scope of the constitutional violation, and here, Chief Justice Burger wrote, the violation was within one district.[110] If the justification of the interdistrict remedy sought by Judge Roth was the achievement of "any particular racial balance in each 'school, grade or classroom,'" that would be grounds for reversal.[111]

The *Milliken* majority's focus on the impact of the trial court's potential remedy came at the expense of the plaintiffs, because a remedy for their constitutional injury could not impose on the suburbs.[112] The reasoning set the rights of the plaintiffs suffering a constitutional wrong against the burden that remedying that wrong would impose on affected suburban school districts, and found the burden on school districts excessive.[113] An interdistrict remedy "would impose on the outlying districts, not shown to have committed any constitutional violation, a wholly impermissible remedy."[114] That such a remedy would benefit Black schoolchildren in Detroit goes unsaid; the flaw of any interdistrict integration plan was the imposition on the suburban school districts (p. 327).[115] The imposition here was integration.

To reach this conclusion, the majority had to look past the findings of the trial court that the state itself bore some of the responsibility for the residential segregation that produced the demographic pattern in city and suburban schools (p. 326).[116] The right of the plaintiffs to an integrated school applied "in that district,"[117] and anything more would constitute an "expansion of the constitutional right itself . . . without any support in either constitutional principle or precedent," according to Chief Justice Burger.[118] The Chief Justice dismissed the trial court's findings, which were supported by evidence from ten days of the trial (pp. 325–26), and wrote that the record contained only "some specific incidental findings thought by the District Court to afford a basis for interdistrict relief."[119] The Chief Justice concluded that these findings were too "isolated" to justify an interdistrict remedy.[120]

The legal proceedings did not occur in a vacuum. The incumbent president, Richard Nixon, was running for reelection,[121] and George

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[110] *See id.* at 744–45.

[111] *Id.* at 740–41 (citing Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 24 (1971) (arguing that the "constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole")).

[112] *See id.* at 742–43, 745.

[113] *See id.* at 742–43.

[114] *Id.* at 745.

[115] *See id.*

[116] *See id.* at 748–49.

[117] *Id.* at 746.

[118] *Id.* at 747.

[119] *Id.* at 748.

[120] *Id.*

[121] *See* Max Frankel, *President Won 49 States and 521 Electoral Votes*, N.Y. TIMES, Nov. 9, 1972, at 1, https://www.nytimes.com/1972/11/09/archives/new-jersey-pages-president-won-49-states-and-521-electoral-votes.html [https://perma.cc/UL36-8F4V].

Wallace, the fiercely segregationist governor of Alabama, was fighting to be the Democratic Party's candidate.[122] Wallace won the Michigan primary, and Judge Roth's *Milliken* decision "was a big reason why" (p. 243). The prospect of an interdistrict remedy had galvanized opposition to busing, a policy tool that triggered intense White hostility and that "allowed whites to oppose integration without appearing to be openly racist" (p. 244): Opponents of busing could cite concern over students' commutes rather than racial animosity. Attacking busing, a tool to try to correct racial segregation, shifted the emphasis away from the constitutional violation of the right of Black children to the equal protection of the law (p. 244). Instead, the burden on White children who wanted only to attend their local school and who had done nothing wrong became the center of attention. This trope of innocence would play a key role in the Court's decision in this case and in others that followed.[123]

III. *MILLIKEN*'S LEGACY

The Supreme Court's reversal of Judge Roth's decision ensured White flight could be a viable tactic to avoid desegregation, which stalled over the next twenty years. According to the Civil Rights Project at the University of California, Los Angeles, the high point of racial integration occurred in the 1980s, and schools have increasingly resegregated since.[124] Some law scholars have likened the reasoning that enabled this trend to the notorious decision in *Plessy v. Ferguson*,[125] in which the Supreme Court upheld racial segregation[126] and approved the principle of "separate but equal."[127] All things were seldom equal in reality, but reality was not part of the Court's doctrine, as the *Plessy* and *Milliken* majority opinions made clear in their distinct ways, the former by arguing that segregation did not "stamp[] the colored race with a badge of inferiority"[128] and the latter by simply ignoring the record of state action (p. 326).

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[122] Walter Rugaber, *Michigan's Campaign Proceeds Quietly*, N.Y. TIMES, May 13, 1972, at 10, https://www.nytimes.com/1972/05/13/archives/michigans-campaign-proceeds-quietly.html [https://perma.cc/CW2W-TEXF].

[123] *See, e.g.*, Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 310 (1978) (opinion of Powell, J.) (lamenting the burden imposed on a White medical school applicant by consideration of race intended to promote minority enrollment).

[124] *See generally* GARY ORFIELD & RYAN PFLEGER, C.R. PROJECT, THE UNFINISHED BATTLE FOR INTEGRATION IN A MULTIRACIAL AMERICA — FROM *BROWN* TO NOW (2024), https://civilrightsproject.ucla.edu/reports/the-unfinished-battle-for-integration-in-a-multiracial-america-from-brown-to-now [https://perma.cc/C6B5-8NDF] (compiling statistics on school segregation over many decades).

[125] *See, e.g.*, Fairfax, *supra* note 27, at 2–4 (arguing that "the Burger and Rehnquist Courts have acquiesced in the continuance of *Plessy*-like racially separate educational facilities by restricting the desegregation remedies available to lower courts and school boards," *id.* at 2).

[126] *See* 163 U.S. 537, 550–51 (1896).

[127] *Id.* at 552 (Harlan, J., dissenting).

[128] *Id.* at 551 (majority opinion).

An increasingly conservative Supreme Court over time implemented the *Milliken* majority's reasoning to rein in efforts to promote opportunity for members of marginalized groups in both K-12 and higher education. In *Regents of the University of California v. Bakke*,[129] for example, the Court struck down a race-conscious admissions system at the medical school of the University of California, Davis, arguing that the design of the program was unfair to White applicants: Sixteen spots in the class were reserved for members of "minority groups."[130] Justice Powell wrote that "there is a measure of inequity in forcing innocent persons . . . to bear the burdens of redressing grievances not of their making."[131] The burden on affected White applicants, like the burden on suburban school districts that would have been part of Judge Roth's broad remedy for segregation, outweighed the interests of members of the groups that had historically been excluded.[132]

Similarly, in *Parents Involved in Community Schools v. Seattle School District No. 1*,[133] Chief Justice Roberts wrote that affirmative efforts to integrate students on the basis of race were as constitutionally infirm as the de jure segregation of the era ostensibly ended by the Court's decision in *Brown*.[134] In *Parents Involved*, as in *Milliken*, the lead opinion not only treated school district lines as sacrosanct manifestations of local control over education, but also regarded efforts to integrate as exceptional and punitive measures to be deployed only in the wake of an adjudicated, constitutional wrong; an effort at achieving a particular racial mix — "outright racial balancing" — the Chief Justice rejected as "patently unconstitutional."[135] The doctrinal equivalence of Jim Crow–style exclusion and any consideration of race in an effort to promote access for the victims of prior discrimination works to entrench racial inequality. It also provides the doctrinal rationale to undo the efforts of institutions of education, as well as providers of scholarships and other academic support and even private companies, to promote equity in access to educational and other opportunities.[136] Adams may not address all of these knock-on effects, but the foundation laid in the

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[129] 438 U.S. 265 (1978).

[130] *Id.* at 305 (opinion of Powell, J.).

[131] *Id.* at 298.

[132] *Contrast id.*, *with* Milliken v. Bradley, 418 U.S. 717, 745 (1974) (stating that an interdistrict desegregation order would "impose on the outlying districts, not shown to have committed any constitutional violation, a wholly impermissible remedy").

[133] 551 U.S. 701 (2007).

[134] *See id.* at 747–48 (opinion of Roberts, C.J.).

[135] *Id.* at 730. Chief Justice Roberts here quoted *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003), an opinion that permitted race-conscious admissions in pursuit of student body diversity generally, for this principle. *See Grutter*, 539 U.S. at 343.

[136] This is the reasoning of the Trump Administration in declaring illegal race-conscious efforts of any sort intended to promote access to opportunities for members of historically excluded groups. *See supra* note 15, and accompanying text.

book helps show connections between key rationales and conclusions in *Milliken* and later tactics to fight race consciousness.

The reification of school district lines as barriers that block outsiders from accessing a precious neighborhood resource has other effects. The connection between property ownership (or tenancy) and public education makes the option of attending a desirable school an independent thing of value to be policed. Professor LaToya Baldwin Clark has written about the inevitable next step, as parents in the community seek to exclude outsiders who would "steal" the education on offer.[137] Parents and school administrators surveil their neighborhoods and school districts, and prosecutors may threaten parents who have — or seem to have — falsified their residence in order to send their child to a desirable school.[138] Those hardened district lines thus serve as defensive walls, keeping out members of historically subordinated groups through practices like those described in the *Milliken* litigation.[139]

Adams does not slow the story too often to address scholarly work on segregation, integration, and backlash explicitly. She does engage the work of Derrick Bell, who in a widely recognized law review article[140] criticized civil rights lawyers who did not pursue client priorities but instead, in Adams's words, "persisted in a misbegotten effort to achieve 'racial balance measures'" (p. 355).[141] Sprinkled throughout the book are nuanced observations that draw on the insights of scholars of Critical Race Theory and inform the narrative. Consider, for example, this excerpt assessing the role of the judicial branch in desegregation:

> In a democracy, it was better for the more politically accountable branches of government to do that. But the federal courts retained a vital law announcement function. They could protect minority rights — as Judge Roth had done — forcing reluctant public officials to deal with a problem they would have preferred to avoid. And, in announcing the law, they could tell the public what the Constitution prohibited and what actions were required of public officials. They were a line in the sand, shifting the defaults against which public officials acted and making it that much easier or that much harder to address the effects of race discrimination. And, because of their institutional prestige, the federal courts had the power to change some minds along the way. (p. 306)

The mix of complex ideas Adams engages in this one fraction of a paragraph demonstrates the careful analysis of law, politics, history, and culture that undergirds *The Containment*. The book is not a rebuttal to

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137 LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. REV. 566, 573 (2021).

138 *See id.* at 573–74.

139 *See* Erika K. Wilson, Essay, *White Cities, White Schools*, 123 COLUM. L. REV. 1221, 1260 (2023).

140 Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 476 (1976) (describing civil rights lawyers as "not interested in settling the litigation in return for school board promises to provide better segregated schools").

141 The author quotes *id.* at 471.

Professor Gerald Rosenberg's argument that the judicial branch has a limited ability to effect social change,[142] but Adams recognizes and complicates the critique. *The Containment* provides an empirical, historical example of the phenomenon of doctrinal retrenchment, contributing to the body of scholarly work on the ways the Supreme Court has made it "that much harder to address the effects of race discrimination" (p. 306).[143]

Another particular contribution of the book is Adams's identification of a meaningful omission in the Court's analysis: The majority does not consider the affirmative argument that nation building, the establishment of a durable, pluralistic democracy, required the dismantling of racial apartheid in education. This is not an ex post argument but, as Adams shows, a concern expressed at the time. She describes the call to unity in support of the interdistrict remedy in Detroit made by religious leaders who argued that integration could "make the classrooms of the metropolitan area a living lesson in American pluralism" and that "this great lesson can go beyond the classroom and renew the spirit of our country" (p. 261).[144] This language, of course, echoed *Brown*, which noted "the importance of education to our democratic society."[145] Adams tells us of the contemporaneous report of the U.S. Senate Select Committee on Equal Educational Opportunity, which warned that "public education was failing millions of children 'who are from racial and language minority groups, or who are simply poor' — threaten[ing] not just those children but, the committee wrote, the vitality of the nation" (p. 303).[146] In addition to vindication of the rights of Black children to an equal education, then, integration of public schools helps build a national community, diverse yet coherent, not uniform but unified.

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[142] *See* GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 574 (3d ed. 2023) (arguing that courts generally lack the willingness and capacity to consistently produce progressive social change).

[143] *See, e.g.*, Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1335 (1988) (warning that "antidiscrimination law represents an ongoing ideological struggle in which the occasional winners harness the moral, coercive, consensual power of law," but potential victories are "ephemeral" and risks are "substantial"); Haney-López, *supra* note 27, at 1781 (2012) (describing a "period of rapid devolution for equal protection" in recent decades); Siegel, *supra* note 60, at 1113 (explaining that "[t]he ways in which the legal system enforces social stratification are various and evolve over time," such that "[e]fforts to reform a status regime bring about changes in its rule structure and justificatory rhetoric," meaning that "status-enforcing state action evolves in form as it is contested").

[144] The author quotes Billy Bowles, *Churches Back Busing Order*, DETROIT FREE PRESS, June 17, 1972, at 3A.

[145] Brown v. Bd. of Educ., 347 U.S. 483, 493 (1954).

[146] A footnote has been omitted. The author quotes S. REP. NO. 92-000, at 2 (1972).

It may be that some of the most disturbing aspects of our politics today, which increasingly feature overt racial stereotyping and worse,[147] constitute evidence of a failure to engage in the hard work of promoting cross-racial understanding and empathy. Perhaps as important as the history and analysis that Adams presents is her critique of the failure to recognize additional, affirmative arguments for integration, beyond the educational benefits. This was the point that Justice Marshall recognized in his oft-quoted *Milliken* dissent, in which he observed that "[o]ur Nation, I fear, will be ill served by the Court's refusal to remedy separate and unequal education, for unless our children begin to learn together, there is little hope that our people will ever learn to live together."[148]

In this light, the Supreme Court's ultimate decision in *Milliken v. Bradley* reflects at once a failure of the judiciary to imagine something that does not exist but could — a racially egalitarian, diverse, and democratic community — and a failure to recognize something that does exist but should not — a racially unequal polity shaped by past and present discrimination. The former, because the Justices in the majority did not conceive of integration as something other than an imposition on the otherwise innocent residents of White suburbs, and the latter, because those same Justices did not recognize the importance of fighting the toxic and pervasive effects of centuries of racial apartheid to the project of constructing a more unified, national polity. *Milliken* contributed to an epic failure to realize the promise of equal educational opportunity.

Could it have been otherwise? Four Justices would have affirmed the lower courts, so the view of just one of the remaining five — probably Justice Powell — would have made a difference. To be sure, Justice Powell, who did not advance integration when he served on the Richmond, Virginia, school board,[149] did not seem the sort to advance the view that the Federal Constitution requires a remedy for racial segregation, whatever its cause. But he had already criticized the distinction between de jure and de facto discrimination (p. 329),[150] creating an opening at least for acceptance of the trial court record showing the extent of state involvement in housing patterns as evidence that what

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[147] For example, both the President and Vice President have equated diversity initiatives with the promotion of dangerous incompetence. *See* Erica L. Green, *As Trump Attacks Diversity, a Racist Undercurrent Surfaces*, N.Y. TIMES (Feb. 3, 2025), https://www.nytimes.com/2025/02/03/us/politics/trump-diversity-racism.html [https://perma.cc/G22B-4M5R] (reporting on President Trump's attribution of blame for a fatal air crash to "hiring programs that promote diversity"); Minho Kim, *Vance and Duffy Echo Trump in Blaming D.E.I. for Crash near Washington*, N.Y. TIMES (Feb. 2, 2025), https://www.nytimes.com/2025/02/02/us/politics/vance-duffy-trump-dei-crash.html [https://perma.cc/Q2VP-KPYJ] (reporting on a statement by the Vice President that "D.E.I. policies have led our air traffic controllers to be short staffed — that is a scandal" (quoting Vice President Vance)).

[148] Milliken v. Bradley, 418 U.S. 717, 783 (1974) (Marshall, J., dissenting).

[149] *See* Asad Rahim, *Diversity to Deradicalize*, 108 CALIF. L. REV. 1423, 1434 (2020).

[150] *See supra* notes 73–75 and accompanying text.

appeared de facto might be traced to state action. Recognizing the weakness of this de jure/de facto distinction could have ensured that courts could and maybe even would have to take into account past state action that shaped subsequent opportunities. At least, it would have compelled a far greater degree of integration in the greater Detroit area.

Or maybe not. I confess to finding in this story reasons to be pessimistic even when constructing what-ifs. After all, what would have happened in response to a broader remedy is not that hard to imagine. White resistance in the North could have taken a page from the playbook deployed in southern states and shut down public school systems entirely to avoid integration, for example.[151] Would the same Michigan voters who supported the presidential candidacy of the segregationist former governor of Alabama also have opted to engage in such tactics? Would they have supported more indirect tactics, starving public schools of funds and giving parents vouchers to send their children to segregated private schools? Even if schools were forced to accept Black students, decades of data have shown that the tracking of less privileged students into particular programs of study and out of advanced classes has correlated with race,[152] meaning that integrated schools would not have necessarily ensured diverse classrooms.

There is no way to know what would have happened had the Court reached a different conclusion in *Milliken*. However, the adoption of various methods of undermining integration in other settings suggests that a victory in the Supreme Court might not have translated into a victory in the school district, schoolhouse, or classroom. With the benefit of a few decades since *Milliken* and of even the few months since the publication of Adams's book, the prospects of a realistic, more progressive alternative path look poor.

Adams has a more optimistic vision of what might have been. She draws on the thought exercise of Professor Robert Sedler, who asserted that if *Milliken* had come out the other way, "metropolitan desegregation would have become the *norm* in many of the Nation's metropolitan areas" (p. 355).[153] And that norm would have had powerful ramifications, Adams suggests, going on to describe the benefits to Black children of attending better-funded schools with their more privileged, White classmates (p. 358). It was not that Black children had to attend schools alongside White children in order to learn more or more effectively, Adams explains, drawing on the work of Professor Sean Reardon, an education sociologist: It was that concentrating poor students in poorly resourced schools compounded disadvantage, while mixing the

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[151] *See, e.g.*, Griffin v. Cnty. Sch. Bd., 377 U.S. 218, 222–23 (1964).

[152] *See* Noah Hirschl & Christian Michael Smith, *Advanced Placement Gatekeeping and Racialized Tracking*, 96 SOCIO. EDUC. 190, 194 (2023).

[153] The author quotes Robert A. Sedler, *The Profound Impact of* Milliken v. Bradley, 33 WAYNE L. REV. 1693, 1702 (1987).

same less privileged students with wealthier, more advantaged classmates meant that they benefitted from the ability of those wealthier families to get schools to do more (p. 359). "Poorer schools, tasked with educating children with greater needs, required *more* money than middle- and upper-middle-class schools," Adams notes, but "[u]sually they got less" (p. 359). In this story, the benefits of desegregation flow from the combination of greater funding and more diverse populations of students and families (p. 359). And the benefits last: "[S]tudents in racially and socioeconomically integrated schools and classrooms have stronger academic outcomes and higher test scores, are more likely to enroll in college, have higher earnings and health outcomes as adults, and are less likely to become incarcerated" (p. 375).

As more time passes and the memory of the era of de jure segregation fades — not least because of its absence from official stories like the Supreme Court's decision in *Milliken* — Adams's analysis of the challenge of litigation over segregation in the North becomes more salient. Today, doctrinally, the whole country is the North, characterized by de facto housing and schooling patterns "caused by unknown and perhaps unknowable factors"[154] and perceived as independent of state action (p. 361).[155] And, without state action, a remedy from the courts remains elusive; really, the outcome of *Milliken* suggests that even *with* such evidence, a remedy is elusive. The fantasy in the Court's majority opinion has become the doctrinal reality in which contemporary challenges to practices with discriminatory effects must be attempted.

Given the unavailability of interdistrict remedies, desegregation efforts in many cities meant moving around the less privileged White students who could not flee to the suburbs; these intradistrict remedies thus helped fan racial resentment, as students shifted from segregated, underresourced schools to less segregated, still underresourced schools.[156] School finance reform under state constitutions sought to provide greater financial resources to urban schools, following the example set by increased funds to Detroit schools in the wake of the Supreme Court's decision in *Milliken*.[157] But funding levels did not come close to meeting the needs of a student population that was becoming increasingly poor and isolated by both race and class.[158] The result of inadequate resources would be persistent poor academic achievement.[159] So poor, in fact, that subsequent litigation persuaded a panel of the Sixth Circuit

[154] Milliken v. Bradley, 418 U.S. 717, 756 n.2 (1974) (Stewart, J., concurring).

[155] *See also* GARY ORFIELD ET AL., C.R. PROJECT, *BROWN* AT 60: GREAT PROGRESS, A LONG RETREAT AND AN UNCERTAIN FUTURE 34 (2014), https://civilrightsproject.ucla.edu/reports/brown-at-60-great-progress-a-long-retreat-and-an-uncertain-future [https://perma.cc/43TL-TU4D].

[156] *See* Ryan, *supra* note 77, at 281.

[157] *See id.* at 261, 266.

[158] *See id.* at 260.

[159] *See* Kiel, *supra* note 83, at 143.

that conditions in Detroit schools deprived students of a "basic minimum education, and thus [that students] have been deprived of access to literacy," violating a fundamental right that the court found by "application of [the Supreme Court's] principles to our substantive due process framework, demonstrat[ing] that we should recognize a basic minimum education to be a fundamental right."[160] The precedent set in the case, *Gary B. v. Whitmer*,[161] was short-lived; a grant of en banc review vacated the decision.[162]

In the closing pages of the book, Adams again sounds more optimistic than this reader, at least, expected on the prospects of promoting integration. She describes recent scholarly work documenting the benefits of policies that enable poorer families to locate themselves in "high-opportunity neighborhoods" (pp. 371–72), the possibility of litigation challenging continuing segregation (p. 373),[163] and the degree of public support for integration (p. 375).[164] But any optimism must be tempered by the efforts of the second Trump Administration, which has committed to elimination of consideration of race as a factor in decisionmaking in education.[165] The Federal Department of Education followed up on its February 14 "Dear Colleague" letter by providing answers to "frequently asked questions"[166] in a memorandum that asserted that "policies that appear neutral on their face" might nonetheless constitute "covert discrimination."[167] Lest anyone think this an endorsement of discrimination claims by members of historically excluded groups confronting exclusion on the basis of a racial proxy, the FAQ document goes on to warn that a "school's history and stated policy of using racial classifications and race-based policies to further [diversity, equity, and inclusion] objectives, 'equity,' a racially-oriented vision of social justice, or similar goals will be probative in" the government's analysis.[168] The

[160] Gary B. v. Whitmer, 957 F.3d 616, 621 (6th Cir.), *vacated and reh'g en banc granted*, 958 F.3d 1216 (6th Cir. 2020).

[161] 957 F.3d 616 (6th Cir. 2020).

[162] *Gary B.*, 958 F.3d at 1216 (mem.).

[163] Adams describes litigation in New Jersey and Minnesota (pp. 373–74), and there have been other recent attempts too. *See, e.g.*, IntegrateNYC, Inc. v. State, No. 2024-00099, 2025 WL 2979535 (N.Y. Oct. 23, 2025).

[164] Adams also suggests that school districts may still voluntarily adopt policies that are facially race-neutral but that are intended to and do benefit members of racial minority groups (pp. 366–67). Certainly this is not the view of the Trump Administration. *See, e.g.*, Dear Colleague Letter, *supra* note 15.

[165] *See, e.g.*, Dear Colleague Letter, *supra* note 15, at 3 (asserting that "[r]elying on non-racial information as a proxy for race, and making decisions based on that information, violates the law" and offering as an example the abandonment of standardized testing — a facially neutral policy move — undertaken "to increase racial diversity").

[166] OFF. FOR C.R., U.S. DEP'T OF EDUC., FREQUENTLY ASKED QUESTIONS ABOUT RACIAL PREFERENCES AND STEREOTYPES UNDER TITLE VI OF THE CIVIL RIGHTS ACT 1 (2025) https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf [https://perma.cc/V8PP-V6DA].

[167] *Id.* at 9.

[168] *Id.*

"Dear Colleague" letter and the memo evince complete hostility to the project of integration.

Then again, federal district court judges subsequently prevented enforcement of each of those documents.[169] But it is not a safe bet that the conservative supermajority on the Supreme Court will abide by past pronouncements[170] that neutral policies motivated by concern for racial justice are constitutional. Nor is it clear how widespread support of integration is, whatever the evidence of benefits. Indeed, this is one nagging question the book does not answer: Given the vehemence of opposition to efforts to undo past racism enforced by law, is it now and was it ever realistic to believe that courts could effectively force schools to model diverse, tolerant communities? The vision is utopian to some of us, certainly, but it must be anathema to others. Perhaps inadvertently, in chronicling so carefully all the work that went into preventing the possible remedy of interdistrict student assignments, Adams has also shown just how modest our expectations of *Milliken* and subsequent litigation over school equity should be and bolstered both Bell's critique of prioritizing integration in school litigation[171] and his acceptance of anti-Black racism as a permanent feature of the United States.[172]

CONCLUSION

The *Milliken* litigation is worth remembering — and, for those of us who teach law, teaching. The trial court record stands as a sweeping indictment of anti-Black policies and practices that the Supreme Court majority rendered doctrinally invisible but that were unmistakable in lived reality, as the lawyers successfully argued in the lower court. The presiding judge concluded that residential segregation in Detroit was "in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people,"[173] and which led to segregation of the schools. The recognition and acceptance of such facts and the recollection of a dark history that shaped them should have helped to educate us, collectively, so that we do not contribute to them in the present and future. Our failure to learn and to remember historical facts

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169 *See* Am. Fed'n of Tchrs. v. Dep't of Educ., 779 F. Supp. 3d 584, 598 (D. Md. 2025); Nat'l Educ. Ass'n v. U.S. Dep't of Educ., 779 F. Supp. 3d 149, 166, 203 (D.N.H. 2025).

170 *See, e.g.*, Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring in part and concurring in the judgment) (observing that, notwithstanding the majority opinion, "[s]chool boards may pursue the goal of bringing together students of diverse backgrounds and races through other means, including strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments, performance, and other statistics by race").

171 *See* Bell, *supra* note 140, at 476.

172 DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM ix (1992).

173 Bradley v. Milliken, 338 F. Supp. 582, 587 (E.D. Mich. 1971).

helps to explain ongoing resistance to integration, as does the persistence of narratives divorced from the factual record but endorsed by a majority of the Supreme Court.

Adams's book has arrived as the backlash against policies intended to promote racial equity intensifies. The Trump Administration's war on efforts to promote equality of opportunity for members of groups that have historically faced exclusion and subordination is entirely consistent with the attitudes publicly associated with White flight: not explicit racism but commitment to values that just so happen to ensure dramatically worse opportunities for Black and brown students by entrenching the effects of prior, explicit discrimination enforced by law. By examining *Milliken*, Adams also hints at the scale of reforms in policy and doctrine necessary if we are to learn to live together. It is this big picture that the book conveys, but quietly, through a detailed explanation of the choices made and arguments deployed by supporters and opponents of integration. The tale is not a happy one, but it explains much — perhaps even more now than the author intended when she began her historical project — about who and where we are today.