reassert states' rights, it imposed a rather rigid state action standard, limiting the circumstances under which discrimination suits could be pursued. During the civil rights movement of the 1950s and 1960s, however when almost all state action contentions were raised in a racial context, the Court generally found the presence of state action. As it grew more sympathetic to federalism concerns in the late 1970s and 1980s, the Court began to reassert a strengthened state action doctrine, primarily but hardly exclusively in nonracial cases.[1278] "Careful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power. It also avoids imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed. A major consequence is to require the courts to respect the limits of their own power as directed against state governments and private interests. Whether this is good or bad policy, it is a fundamental fact of our political order." [1279]

Operation of the state action doctrine was critical in determining whether school systems were segregated unconstitutionally by race. The original *Brown* cases as well as many subsequent cases arose in the context of statutorily mandated separation of the races, and therefore the finding of state action occasioned no controversy.[1280] In the South, the aftermath of the case more often involved disputes over which remedies were needed to achieve a unitary system than it did the requirements of state action.[1281] But if racial segregation is not the result of state action in some aspect,

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[1278] The history of the state action doctrine makes clear that the Court has considerable discretion and that the weighing of the opposing values and interests will lead to substantially different applications of the tests. "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance." Burton v. Wilmington Parking Auth., 365 U.S. 715, 722 (1961).

[1279] Lugar v. Edmondson Oil Co., 457 U.S. 922, 936–37 (1982). "Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden in the name of equality, if the structures of the amendment were applied to governmental and private action without distinction. Also inherent in the concept of state action are values of federalism, a recognition that there are areas of private rights upon which federal power should not lay a heavy hand and which should properly be left to the more precise instruments of local authority." Peterson v. City of Greenville, 373 U.S. 244, 250 (1963) (Justice Harlan concurring).

[1280] Brown v. Board of Education, 347 U.S. 483 (1954).

[1281] *See* "Brown's Aftermath," *supra*.