



National Leadership and the Conversation on Race

Transcript of discussion held in Chicago on June 4, 1998

Moderated by **CASS SUNSTEIN**
University of Chicago

With

WARD CONNERLY
Regent, University of California

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CASS SUNSTEIN: Since we're in Chicago, I hope you won't mind if I tell you a University of Chicago story. As you may know, the University of Chicago has pathetic athletic teams, and we're especially pathetic in rowing. And for years, this has been a problem. And people have been puzzling over why our rowing team's always finished last. Just a month ago, one of the top members of the crew went to the University of Southern California, which has an outstanding rowing team—one of the best in the country—and tried to do some investigative work to figure out why they're so much better than we are. And the fellow came back and said, 'You know, it's the darndest thing. At the University of Southern California, they have eight people who row and one who screams.' It's a sad story, and it's relevant to our topic today.

We are very fortunate to have with us two of the leaders in the country on issues of race and discrimination and affirmative action. Let me say just a few words about two people who really, as they say, don't need an introduction. Ward Connerly is an extremely well-known person in business, one of the leading authorities on housing in the United States. That's really how he made his name first, and he became a civil rights leader relatively late. As a member of the University of California Board of Regents, Mr. Connerly helped lead the attack on the University of California's race-based system of preferences in its admissions policy. He served later as chair of the California Civil Rights Initiative, a successful civil rights initiative in California ending certain forms of racial preference in California. He remains the president and chief executive officer of Connerly and Associates, and he continues work on civil rights issues, in particular on behalf of the ideal of color blindness.

William Gray has been in public life for a very long time. He is now the president of the United Negro College Fund, where he has been amazingly successful in a relatively short time with that important institution. Before then, he served in the United States Congress, where he was chair of the Democratic Caucus, majority whip and chair of the House Budget Committee. Mr. Gray had a lot of impact on the country, especially because of his interest in education, and he did a great deal of work on behalf of strengthening our educational processes and systems. We're fortunate—very fortunate to have two disparate—people of disparate views who are really among the nation's most important and influential figures with respect to civil rights.

Now as most of the people in the room know but as our two guests may not have been focused on, our day has been spent discussing not so much issues of affirmative action as issues of how to discuss issues like affirmative action. What we've especially attended to is the distinction between an effort to persuade, or a performance, and an effort to learn, or conversation. And what we've been trying to attend to is how there's a place in public and private life for performance, which is often what television is about, but there's also a place in public life, as well as in private life, for a conversation in which people try to learn things from one another.

So our hope is that this will not be in any way a debate about whether affirmative action is a good idea or not, but instead a discussion of how people might exercise leadership in a nation that is divided on the issue of affirmative action as it is on other issues of race. So the topic is, in a way, affirmative action, but more generally, the topic is how to discuss issues of race in a polarized—sometimes dangerously polarized nation.

We're going to have very much a collective discussion, but for a while, I'll operate as moderator. And what I'd like to begin with is just a simple question, which is, both of you have been involved for a long time in very intense public debates about civil rights issues. Might you be able to recall times in which people with whom you disagree have convinced you of something or persuaded you of something or helped you learn something that you didn't believe before in a way that modified your own position or changed it or at least led it to be recharacterized in your own minds? Maybe we'll begin with Mr. Connerly.

WARD CONNERLY: The answer is yes. I take the position that treating any citizen differently because of some attribute, such as color, ethnicity, gender, whatever, sexual orientation, is morally wrong, because we are all endowed with certain rights, and that government doesn't have the ability—should not have the ability to deprive us of those rights. And so as a moral principle, I have tried to religiously hold the line on that position.

However, I was on a plane, as I am often on a plane, and someone shared with me a story involving a ferry that was closed down in—I believe it was Georgia. And it was closed down by the county commission there solely to deprive black people of the opportunity of going into the main city there, county seat, to vote. And although this issue—it was one in which most of the people who lived in the county seat were not responsible for the action that had been taken, I modified my position that there was a compelling circumstance in which the county would be justified in giving some special consideration to people who lived on the other side of that river but who were unable to come to the county seat to avail themselves of the services there because—solely because of color. They had been deprived of that. And

so I found my position being modified as a result of facts that were brought to my attention. And it hasn't changed me in the main focus that I have, but it has caused me to—to pause for just a moment and to recognize that there are circumstances which may not fit my perfect world as I craft it in my own mind.

SUNSTEIN: Mr. Gray.

WILLIAM H. GRAY III: I've been thinking, since you asked the question, have I ever had someone point out something to me that's changed my view on race and the whole issue here in the United States, and the answer would probably be yes. I'm a product of two Americas. I grew up in the South, Louisiana and Florida, in the '40s and the '50s, and then I spent my teen-age years in the City of Brotherly Love and Sisterly Effectiveness, we like to say. And so my life has been shaped to a great degree by the whole issue of race because of where I was born and where I lived and my family experiences.

And I suppose what became a defining moment for me was a debate that took place in the '50s and the early '60s on the issue of race. And that debate was a debate between two individuals about strategies, and they were Malcolm X and Martin Luther King Jr. And they had a very profound effect upon me. The bottom line is, I ended up on the strategy side of Martin Luther King as opposed to the strategy side of Malcolm X, even though Malcolm's analysis in many ways I totally agreed with, and the depth of that analysis in understanding how deeply embedded and insidious racism was. It was not a pretty picture he painted, and most Americans resented his language. And, of course, Martin was much more conciliatory, but if you listen very carefully and if you knew Martin Luther King as I knew him—he lived in our home; our families were friends for three generations—you also knew that Martin's interpretation was very deep and also recognized the insidious nature of racism.

But I think one of the things that Martin did for me was to help me to understand personally that the strategies for dealing with the problem had to be strategies that came from high moral ground and a sense of real justice, and also, they had to be inclusive and they had to be strategies that could

regenerate a new society without alienating the rest of the society and trying to—in a Baptist term, to sort of redeem those who held strongly racist views, and that if there was not that redemption that you would have a permanently torn society, no matter what you got in terms of achieving the goals. And so when I think of influence, I would say it was Martin Luther King Jr.

SUNSTEIN: Is there anything symmetrical to what Mr. Connerly said, where the recent attack on affirmative action has made you recharacterize what it is that you're for or made you think, in some circumstances, what's been done hasn't been a good idea, anything like that?

GRAY: No, not at all. I have a very strong view that most of the discussion about affirmative action is a political discussion. It's not based on fact. It's not based on reality. It appeals to emotions, and—as most of the race debate in America has been throughout our history. And that's why, you know, we have the question of leadership on race in America. You usually do not hold debate about race. It's something that takes place in America's political arena. If you go back to the Colonial days, there's been very little of it that's been led by moral leaders, and that includes the church. And I am a minister; remember that—or even from the academy. But the whole debate has primarily been a political debate from day one. The South vs. the North, free vs. slave, the American Colonization Society in the 1820s, slavery.

And so, from my point of view, in this debate, as I've heard the debate and looked at it, what has been surprising to me is how little people pay attention to facts and how little people pay attention to the other standards we apply to the rest of the society and how we want to have one standard for one group and another standard for the rest of the society.

Let me give you an example. The use of the word 'preference,' when all of us who are in higher education—and I was a professor at five universities before going to Congress—we all know that preferences in higher education have existed and continue to exist, whether it's alumni, whether it's athletic, whether it's special talent, whether it's in state, out of state. And why suddenly this one, quote, "preference," which is based upon a compensatory

action rooted in our history that is trying to correct an injustice that has been done in the past?

No, I haven't heard anything that's been surprisingly new in the debate on affirmative action that has changed any viewpoint of mine.

SUNSTEIN: OK. Mr. Connerly, this may give you a chance to answer that, if you choose to. And my thought is that there are two things that were just said that you might agree with, actually. One has to do with appeals to emotions and the other is not based on facts. You say there is some discussion of the possibility that California will discuss the civil rights initiative again, that it will be ballot on the ballot again and California will go through the process again. Now if that happens—let's just assume it's going to happen, even if that's a false assumption. If it were to happen again, how would you like the debate—putting the substance to one side, how would you like the debate to be conducted so there would be a better debate?

CONNERLY: Well, first of all, let me just say that while we really don't want to debate affirmative action or preferences, depending on which term you choose to use—and I believe that they are different. I believe that there are affirmative action programs that most people of goodwill will embrace. And when we apply different standards to people on the basis of traits such as color or whatever, that, to me, is a preference. And so I'm not using the term 'preference' as a pejorative term to try to influence the debate my way. To me, there are differences, and I think that we can demonstrate that very easily.

Now if that initiative that is being circulated were to find itself on the ballot, rather than the debate being framed as one of affirmative action or preference, I would prefer, as I did initially, to have that debate framed in the context of race, in the context of citizenship—what are the rights and responsibilities that flow from citizenship? In terms of community, how do we maintain a community with different people in that community being defined, classified, on the basis of some trait, such as color, ethnicity, sex, national origin? Those traits are not the same as other kinds of traits that may be just as bad, but they are traits over which someone may have some control. So there are differences in those traits.

I'd like to see it defined in terms of identity. Do we want a state, do we want a nation, in which people are defined in these arbitrary boxes in which we're using 19th-century biological concepts to adopt 21st-century social policy? I would frame it in terms of those broader issues rather than trying to frame it in terms of preferences or affirmative action, because I think that's very limiting.

SUNSTEIN: Mm-hmm. OK. Now as you phrase it that way, that way of phrasing it is kind of a guarantee that you'd win. So—which maybe good, maybe not. The question is, would that be good independent of the fact that it would make the moral badness of what you're against clear?

CONNERLY: I'm not sure that it's a guarantee that I would win. I think that one could make the case—although I would reject it, I think that one could make the case that in American society, citizenship is, in fact, defined by—or at least the benefits which flow from citizenship, to some extent, are defined by these characteristics that society does arbitrarily put us in these boxes and, therefore, since it puts us in these boxes, it has a duty to kind of self-correct the boxes into which it places us, and that identity is, in fact, who we are. Now that's the argument, frankly, that many people are using right now, that race matters. I grew up in a period in which we were told, as JFK said on June 11th of '63, race has no place in American life or law. Since then, however, I think that we've been practicing the notion that race matters. You have to use race to get beyond race.

SUNSTEIN: Hey, can I—we saw a TV clip in which you said you were in favor of affirmative action but against preferences. Would you explain what the content of the thing you're for when you say you're for affirmative action?

CONNERLY: For example, to have the University of California conduct outreach programs into areas where there are high concentrations of low- and moderate-income people who are going to ratty schools, who do not have access to the advanced placement courses, whose teachers are burned out, where they are faced with drugs all the time—to go into those kind of settings and to try to do what we can to help make those kids competitively

admissible—that is affirmative action. That is totally acceptable, even if we know that in going there, we're going to a school or a community which is predominantly blue, purple, green, whatever. That is affirmative action.

However, when those students apply and we say, as we do, as we did at the University of California at San Diego, 'If you are a historically underrepresented minority, you get 300 bonus points.' That isn't affirmative action; that is a preference. That's the distinction that I draw. Different standards to people on the basis of their race at the time that they're applying to the institution—which, by the way, the courts have said is unconstitutional, except for trying to achieve diversity, and race, then, can only be one of many factors.

SUNSTEIN: OK. As a follower of the Supreme Court, what you said is completely accurate. So it's a notation from a constitutional lawyer. Mr. Gray, I'd like to ask you to say something about what you would like the debate in California to look like if it were to be a good exercise in public discussion. And what I'm trying to get at is, is there a way to do it that distracts from, you know, a way of conducting the debate so it pushes one position rather than another?

GRAY: Well, let me just say, I agree with Ward Connerly in his eschatological view of what the end ought to be, and that is that the end society we would all love to have is a society where people are judged by the content of their character and not by the color of their skin, as often people quote Martin Luther King Jr. But it's funny that none of them have ever—who quote him and use that phrase to argue that the goal ought to be immediately to eliminate race and gender in American society and criteria—they've never really read all of his works. Because if you look at page 134 of "Why We Can't Wait," he has a very interesting statement, and I'll paraphrase it. He says in order to build the better society and the beloved community, you are going to have to have compensatory efforts and preferences. Yes, he uses the words "preferences." And he also goes on to say, he is—he was amazed in the 1960s about how many friends would get upset when he used the word 'compensatory efforts' or 'preferences' to make up for the past injustice.

Otherwise, he argued, you would have a divided society that would not be moral, that would be unjust.

I agree with Ward. I'd love to have an America where my skin color didn't matter or the skin color of my children or the gender of women did not matter, that there was equal pay, equal opportunity. But the fact of the matter is, we don't. And it's rather Pollyanna and Utopian for me at age 57 to sit around and act like in America, that's the America that we have; it's a level playing field. And my analysis, I think, would be quite different from Ward's on that point. And it is from that point that you develop the whole debate. If you think it's a color-blind society, where race doesn't matter, gender doesn't matter, then your strategies for producing the moral society, where race and color are not a factor, will be totally different. Except in the world I live in and when I look at the statistics, no matter what they are, whether it's the bank lending statistics with regard to mortgage declination rates, whether it's hate crimes in America and where they are directed at, whatever the indices you wanna look at, there is clearly a significant difference based upon race in this country. I could ignore that and say, 'Well, we're gonna produce the color-blind and the moral society and ignore these realities and let's say, "Race, gender should not count at all."'

The problem with that is this, in education, for instance: If, on the other hand, you don't deal with the preferences, or the legacies, as they are sometimes called, such as alumni, where, in some schools, the alumni acceptance rate is 40 percent compared to the 20 percent of the normal applicant base—then what you do is, if you look at that, you say, 'Well, how many blacks and Latinos graduated from Harvard, Yale, Stanford, UCLA 20 years ago or 30 years ago?' If you continue that preference, then you build into the structure and the system a mechanism that will not allow the diversity to occur, unless you take into consideration—and the courts, I believe, did rule, at least in Bakke—now I know Hopwood has a different decision, but they're not the Supreme Court, and the Supreme Court, I don't think, has yet reversed Bakke—that race can be a legitimate issue to be looked at among many.

From my position, as I understand affirmative action in higher education, all we are saying is, that ought to be one issue that ought to be considered—not the defining issue. And so from my point of view, what I see is a debate about race that is off kilter, does not look at the fundamental realities and the facts of life.

SUNSTEIN: OK, good. What you said about the Supreme Court is actually identical and also correct, so there's-considerable agreement...

GRAY: No, I think he said something different. No, no. I wish we had a tape; we could roll it. But I think he did say what I said, but he prefaced it by saying that the court had ruled against race. Hopwood, yes, OK? But the Supreme Court says that race can be.

My point—let's get that. My point is that if you allow the preference of alumni to exist, then what you end up doing is creating a society where blacks, Latinos and women will not get the equal opportunity to get into those institutions.

SUNSTEIN: OK, good. Good. OK, good. Now really, the positions have been stated very articulately for and against affirmative action, but this isn't meant as a debate—now we have the positions on the table—about affirmative action. It's a debate about how to talk about issues of race. And you were in the US Congress. Can you say something...

GRAY: And that's what I'm saying to you is, the discussion about race in America is usually not based on fact, and that was my point. I wasn't arguing affirmative action.

SUNSTEIN: I see.

GRAY: That's why I compared alumni preference to the issue of race.

SUNSTEIN: Where—the missing fact is the absence of—What?—data on the existence of preferences that aren't themselves racial? That's what you'd want to see much more in the debate?

GRAY: No, I think that we need to really have a factual debate and look at the facts of what happened and what's happening to people in 1998 who happen to be of color, whether it's in education or whether it's in any other area of our society and...

SUNSTEIN: Would you like...

GRAY: And what you would see if you had those facts? You would see huge discrepancies and gaps. And even though we would say that we're 30 years away from the civil rights era, you would ask the question, 'Why do these gaps persist? Why do we have these huge gaps?' Now I'm not talking about affirmative action; I'm just talking about everywhere, whether it's in lending from banks, whether it's in public service, jobs—the whole area. And we usually don't take a look. Some in academia do it, but their reports don't get debated, usually, in the halls of Congress or in public policy.

SUNSTEIN: And we academics are extremely sad about that.

CONNERLY: If I might comment again, I don't want to—I didn't think we wanted to debate the issue of...

SUNSTEIN: No.

CONNERLY: ...affirmative action or preferences or whatever or—to talk about process. And what we're seeing here, really, is the kind of exchange that makes it very difficult for us to close escrow on an issue like this, because we don't often—and I'm not accusing Bill of this—but we don't come to the table presuming the goodwill of the other person. We believe that one is out to protect his or her interest along racial lines and that the other is politically inspired, that's—th—that makes it difficult for parties to ever come together, number one, because I think that—that most of us who are involved in this are of goodwill and do have just different perspectives, but we want to achieve the same thing.

Secondly, even when there is a possibility of closing escrow that is staring us in the face, we're so locked in our respective positions that we're incapable of seizing upon where we agree and saying, 'OK, let's take our agreement and

back up from there.' For example, he made a very important statement. 'I agree with Ward on the outcome.' All right. If we agree on the outcome, then how do we get to that outcome? What are the obstacles in the way that prevent us, as a society, from getting to where you and I have agreed we want to go? And let's talk about—whatever the issue is, let's talk about where we want to be and what we have to do to allow us to get there. How long should it take us to get there? What are the obstacles we need to remove? And it seems to me that if we focused on that process rather than continuing to rehash where we disagree—because we would be here until the cows come home talking about his assessment of facts and my assessment of facts. And we could both probably make a pretty good case that our perception of facts is pretty solid.

SUNSTEIN: OK. What you just said relates to an issue that a lot of us are interested in, which is the overwhelming dominance of the issue of affirmative action over other race-related issues. And both of you—this is a common ground—both of you have pointed to issues other than affirmative action as extremely important. Can you say first, why it is that affirmative action dominates everything else? And second, what might be done to link the discussion of affirmative action to other racial issues on which seemingly disparate people might coalesce?

CONNERLY: First of all, I think that the issue of affirmative action preferences, not generically affirmative action, came up in the context of a specific abuse at the University of California. That is why I got involved in it, because as a fiduciary, as a regent, sentenced to a 12-year unpaid term, when I saw that we were doing things that clearly were unconstitutional and our general council was saying, 'Some of these things are questionable'—we had memos to that effect—I had no choice but to deal with affirmative action preferences as they existed.

Now from that, however, I think that we peel back the onion, we begin to see, why is it that the disparity between black kids and Asian kids, for example, is so great? What is causing that inequity? Is it race-based? In some cases, yes, it is. How do we deal with that in permissible ways? And I think that those on

both sides of the aisle would be able to deal with that. We also begin to see, for example, as a result of the exposure of that issue, that the number of students who declined to check the boxes at the University of California went from 2,200 to 6,400 in one year.

Now is this suggesting, for example, that there is a groundswell among students who don't like the practice of checking these silly little boxes? Is there something that's going on here about people being uncomfortable with this whole business of being classified by race? Is there—are there demographic changes in terms of the number of students who are coming from interracial, interethnic marriages; therefore, they don't like the whole classification of—of race? There are a lot of things that are emerging out of that that are race-related that if we begin to deal with those, it might help us get to the whole question of affirmative action and all of these other things that are related to it.

SUNSTEIN: This is—we have a couple of points I want to underline. One is Mr. Gray's suggestion that there has to be factual accuracy both with respect to employment and educational practices and with respect to the social consequences of color blindness, and that's an important point. And Mr. Connerly's suggestion, also important, that debates often break down when the goodwill of the adversary's drawn into question.

Can I...

GRAY: I really would like to respond, even though I know Ward was not talking about me in goodwill breaking down. The answer I thought I gave to the question—and maybe I went too long—Baptist ministers and former members of Congress are prone to do that—was to say I agreed with him in the ultimate that we'd like to have the color-blind society. Where the disagreement and the debate—what I was trying to say—emerges is the perception of where we are today, because that will influence what strategies you take to get to that society. That's what I was talking about. It was not an attack upon anybody's views. I simply said I agreed with him on we would like to have a color-blind society, a gender-neutral society. However, what strategies you support and don't support, whether you support affirmative

action or whether you don't support affirmative action is rooted in your perception of where we are and what's the best way to get to that end.

CONNERLY: Bill, I didn't see that as an attack. I was just—yeah...

GRAY: No, I just wanted to—but in case somebody later hears this, I want to make sure that people understood what I was saying. So it's a process. And I guess what I'm saying is that as one who's been involved in civil rights for 30-some years, I find that there're basically three groups of people in the race debate: what I call optimists, what I call the pessimist, or the cynic, and those who I'd probably put in the middle, are realists. The optimists believe that the problems are so diminished that we're almost there and almost—inevitably, just a few more years, we're gonna make it and you really don't need to do much. It's there. It's almost there. The cynic and the pessimist are those who think we're never gonna get there and that racism is so embedded in the society, in every institution, every structure, among both groups, blacks and whites, that the gulf cannot be spanned. And then I think there's a—probably a third general viewpoint of your analysis of race in America, which is probably somewhere in between. We've made some substantial progress, but we still have significant way to go to deal with all the residues that are left. And I welcome the debate, but I want to—I think what you've gotta look at is how do you view America. If you view it as color-blind, we're there, your strategies, what you will support and what you won't support, where you stand in that debate will be defined by that understanding. That's all I'm saying.

JUDITH RODIN: I'd like to try to answer your question. I think that affirmative action is a political debate—I agree with Bill Gray on that—and that it's more comfortable to have political debates in our society, whether we like the rhetoric around them or not, than it is to have debates about fundamental issues like race and that it is a surrogate, in a way, and that's why we're spending so much time and thinking so much about it, for these more fundamental issues that we're uncomfortable speaking about.

SUNSTEIN: Mr. Gray, I'd like to ask you, really, a question like the one that was just addressed by President Rodin. That is, why is it, in your view, that

affirmative action is so salient in public debate? And why—and how could it be that the racial issue might be broadened in public discussion so we'd focus on such things such as, for example, the earned income tax credit or nutrition for children?

GRAY: Well, I think one of the things that we really don't want to face in our society in that whole debate of race is what I—remember I said facts, the reality. We create myths. We preachers know more about that than anybody else, probably. And, of course, some of us, as we get older, we create myths. You know, if you listen to Bill Gray, I'm the one who taught Dr. J the tomahawk dunk, I used to have a 38-inch vertical leap when I was going to Simon Gratz.

SUNSTEIN: Me, too.

GRAY: Hope no one's here from Philadelphia. But that's my myth, and it gets bigger. One of the myths that we have is, we have a collective myth about who we are as Americans. And the fundamental fact is, if you go back through our history, the biggest, toughest political debates we've ever had in this country have been on race. The bloodiest war we ever fought in this country was on race. No, it was not economic determinism. It was not westward expansion. The fundamental problem of the Civil War was the issue of race. Two societies built different. And even the one that was fighting against the other had serious problems on the issue of race. If you go back to the Constitution, one of the biggest debates that the Founding Fathers had was on how do you count black folk? And that was one of the biggest problems of the constitutional convention in the United States of America.

So, therefore, it has always been a politically based—and I'm not saying that those who have a different view from me are motivated by politics, but it is to understand that that's where the debate is rooted. And so it's interesting that in order to get a debate on the race of—the issue of race, it had to come out in a public referendum, 209.

SUNSTEIN: Well, why is it affirmative action rather than...

GRAY: Well, I'm not castigating, you know...

SUNSTEIN: Yeah.

GRAY: ...it's—but that's logical.

SUNSTEIN: But why affirmative action rather than 6,000 other racial issues?

GRAY: Because, clearly, if you look at the discussion and debate about race in America, its subtleties in the last 15 years, it has been progressing rapidly toward just that. If you go back and look at the discussions that were being held in Congress when I was there, oh, it was coded, but it was about race, and everybody knew it was about race.

SUNSTEIN: But you could have a racial discussion. It would —it's odd, isn't it, that the country's so focused on affirmative action? I think both of you agree that the notion that—both of you think affirmative action's an important issue, but the notion that should dominate every other issue...

GRAY: Well, every now and then, you get an issue that becomes the focal point of the racial debate. It comes and goes. Sometimes it's a bus—a yellow bus. Sometimes it's welfare. Sometimes it's, quote, "urban, inner-city crime," drugs. And if you listen to the debate very carefully and then you—it just moves along. And these debates, especially in the last few years, have been very vigorous. And if you listen very carefully, the issue of race is there.

Now what has often happened in those debates—facts get shared, studies and reports get done and sometimes, they are lessened or they get resolved, a compromise. I mean, affirmative action was basically a compromise. It was a compromise basically on how you're gonna have some compensatory action to redress 350 years of slavery and segregation in America. And, you know, first Kennedy came along and said, 'I'm gonna end—an executive order—discrimination in the executive branch and start a committee.' Then Johnson came along and said, 'Well, I can't get Congress to pass anything, but I can stop discrimination in the entire federal government.' And then Richard Nixon came along, influenced by the black Muslims and black capitalism, with the idea that the way you get black folks in the mainstream is get 'em

there economically. And so he came along with Arthur Fletcher and started what is the model of today's affirmative action by expanding the executive order of Johnson to include outside contractors with goals and a timetable. And that's where that came from. But if you listen to the debate that's going on around the issue, you would almost see it as a liberal-conservative debate. Now the last time I looked, I don't think people called Richard Milhous Nixon a liberal. And that may not change your position on the issue and where you stand, but we ought to have a factual based debate and look at it and, therefore, we would have a possibility of coming together. So that's what I mean when I say it's political and I'm not surprised that eventually, another issue, affirmative action, hits the political screen and becomes the focal point for debate.

Sure, there are lots of other places—you could talk about criminal justice. Why do we have a criminal system where if you are a user of crack, you get a mandatory sentence of X number of years, but if you are a user of cocaine or heroin, it's a totally different sentence, especially when you know what crack is, a synthetic for poor people?

SUNSTEIN: Do you agree on this particular issue, by the way?

CONNERLY: No, I don't.

SUNSTEIN: On the crack cocaine?

CONNERLY: No. let me just focus on process again, because, again, we could be here a long time debating affirmative action or, as I see in many cases, affirmative action programs that are, indeed preferential. The reason that this issue came to the surface and is out there now, front and center, for the American people is because as we now admit, Dick Atkinson and all of the chancellors will admit, yes, we are giving preferences, because that is the only way that we could achieve the diversity that we thought was so compelling. Yes, we are treating students differently. And even the most die-hard supporters of affirmative action, the San Francisco Chronicle no longer tries to argue that we have ended affirmative action; they argue we have ended preferences.

Now when people realize that we are, indeed, treating their students differently, their sons and daughters differently, when they realize that there are certain people who are not being allowed to bid on contracts because of their gender or their race or ethnic background, when they find that certain jobs, like at the University of California, were being advertised, 'The affirmative action goal of this position is,' and you fill in the blank, those things give rise to people addressing the issue of affirmative action. So I would argue that it is the practices and the perception of the practices and whether they are right or wrong that left us with no choice in California but to deal with them.

Here is the problem that we have in discussing an issue like this. There are some who look at the past and who say, 'We have to address the past.' There are some of us who look at public policy as a matter of, 'What do we want? What values do we want our public policies to represent?' And public policy for us is not so much addressing the past, but how do we set a framework for guiding governmental and, in some cases, private conduct within those public policies? And the two sides never come together because one is looking at it through the rearview mirror; the other is looking at it through the windshield and saying, 'Public policy to me is supposed to articulate what we aspire to.' Bill is saying—and I respect that—'I'm looking at the past,' he is saying. 'We've got this discrimination we still have to address.' I'm saying, 'Yeah, I know we've got the discrimination, but I want public policies that take us to where we want to go,' and we never quite seem to come to terms on what public policy is supposed to be, prospective or retro...

SUNSTEIN: Can I ask you, are you in favor of laws banning discrimination in the private sector?

CONNERLY: Where the private sector is involved, in public accommodations, for example, yes, I am.

SUNSTEIN: Like restaurants and...

CONNERLY: Yes, absolutely.

SUNSTEIN: ...what about regular employers?

CONNERLY: Not—I won't say across the board regular employers. No, I would not.

SUNSTEIN: Why not?

CONNERLY: Well, if an employer is a Chinese restaurant, for example, and they have five employees and they want to maintain that Chinese restaurant authenticity and they're not getting any government money and their bottom line is on the line, I'm not in favor of government saying, 'You have to hire people of a certain background,' if it's private.

SUNSTEIN: OK. The floor is open.

GRAY: Could I—I just have got to respond to something, because this is what I mean by where we get off on the discussion of race. To suggest that I am looking at it through a rearview mirror is ludicrous and it's really pretty insulting. I am a history major. I think I'm the only one in this room who has served in public policy and made the laws of this land—chairman of the budget committee, chairman of the Democratic Caucus, majority whip. I made law for 12 years. Laws are made in this country to reflect several things. One, correct problems of the past. Shape where we want to go. This debate is not about the past. In fact, if you—I would argue that affirmative action, or redress of segregation and slavery in this country, is not about compensatory action. It really is about our national interest in the 21st century.

And let me explain that, and especially in education, more so than in the private sector. Why? Because if you look at the demographics of this country and what demographers are saying will happen to us, in 21 1/2 years, one-third of this country will be made up of African-Americans and Latinos. By 2029, the number-one minority group in America's gonna be Latinos. By 2050, which is not that long, one-half of this nation will be made up of the people we call minorities. You combine that with the increasing number of women in the labor force, you're talking about what's the best policy to make America strong in the 21st century so that we can compete in the global marketplace?

And it seems to me that you ought to learn from the past, and that's why you ought to look at the past.

But, really, what this debate is about, especially if you talk about higher education—it's about the future. Who's gonna be the doctors? Who's gonna be the research scientists? Who's gonna be the business managers? And if you restrict the doorway of empowerment, which is education, then you're gonna have an America, folks, who are not gonna be pre-eminent or competitive in the global marketplace of the 21st century.

So I'm not arguing from the past. I'm not even arguing from compensatory issues of the past. I'm just saying it makes good sense in my mind to figure a way to make sure that women and minorities are not excluded based upon a false criteria. And thus, when you debate the issue of criteria and merit, what determines that? Will it be an SAT and GPA alone? Will those be the only factors? I'll even drop the issue of other preferences, such as alumni preferences, athletic preferences, where if you got a 2.5 and an 850 on the SATs, you can go to UCLA, but if you got 1100 and a 3.6, you can't today. But the issue in my mind is not the past. The issue is, how do we get to the society that I agree with him on? I think the way you get to that society is empowering people with the most empowering tool that we know in American society. That's education. And I can only give you one example of when we did it before and we overcame ethnicity, and we had a lot of ethnicity barriers back then. It was called the GI Bill after World War II when we took eight million folks who fought in the war and gave 'em a preference. It said, 'If you go to Penn—if you go to Penn State, if you go to Stanford, we'll pay the bill. If you want to go to med school, we'll pay the bill.' That revolutionized this country and led to the great industrial wealth and our world dominance in the second half of the 20th century. It just seems to me that the way to get to where he wants to go and where I want to go, it seems, to empower more people. And anything that constricts that door in my opinion is not good public policy.

CONNERLY: You know, I really thought we were going to talk about process here and not debate preferences or affirmative action. I think that my

reticence here to betray what I thought were the rules is putting the whole issue at a disadvantage, but I just hope that we talk about process.

SUNSTEIN: Let's stipulate that the questions and the answers from now on will be about process.

Jean Elshtain is the first.

JEAN BETHKE ELSHTAIN: Yes. This is, I think, a question about process, and it's based on a comment that Mr. Gray made that concerns me just a bit, because it seems—which I thought was a bit ironic, coming from someone who served in Congress—seems to express a very low view of politics. That is, Mr. Gray, you said that this has turned into a political discussion that is based neither in fact nor in reality but rather in emotion, as if the realm of politics is a realm of completely out of control emotion, and then we have some other realm where we deal with facts and we deal with reality. But, surely, the issues that we're talking about are essentially political issues that concern us as citizens—concern who we are as people. And the issue is, how do we, in and through the political process—the political process, engage these questions? And it seems to me one can't even begin to address that issue if you put politics over in a realm of kind of irrationalism, and then there's this other realm where, somehow, we're going to get to facts and reality. So I wonder if you would comment on that, and I would like to get Mr. Connerly to...

GRAY: First of all, if I gave you the impression that 12 years of my life was spent irrationally, I'm wrong. I didn't mean to do that. I don't think my 12 years in Congress was an irrational exercise, and I did not, I think, say that. What I said...

ELSHTAIN: No, you said, 'Politics was based neither in fact nor in reality but in emotion.'

GRAY: Yeah. I—what I think I said to you is that the entire of issue of race in this country has its roots in American politics. Go back, I used the Constitution, I used the Civil War and that whole structure. Secondly,

therefore, the debate has been centered primarily in political action. [Proposition] 209, in answer to the question of how do we get to focus on affirmative action only, was a political debate in one state. It's been debated in a bunch of other states, 13, and it hasn't gone anywhere. It was debated two weeks ago in Congress, the Riggs amendment, and got defeated pretty soundly.

My point was that where does this debate posit itself in American politics? That's not an irrational process, unless you consider democracy as sometimes being irrational, and as one who served in the Congress, sometimes the making of sausage is not pleasant to look at. But it works. It's the best governing system that I know, and that debate usually brings to it a long-term process where you come out at the end. And is there irrationality in it? Yes. Is there fear in it? Is there playing to the fears of people in it? Yes. However, that doesn't mean that the process is totally irrational, and I don't mean to say that. I'm just simply saying that race is a political issue in America; always has been. Two, that's why we see it in an issue like affirmative action and a process issue. Thirdly, what I'm simply saying to you about the public-policy arena is that, ultimately, that's where we will resolve it. I don't think it's gonna be resolved anywhere else, and we're still struggling with it as a nation.

I mean, you—I'm not alarmed at that, because I'm pretty optimistic about the future because process means, to me, we're only 25 years—maybe 28 years—from the period when I couldn't vote in certain states. We've made tremendous progress. I mean—and we sit around here—I hate to—well, I won't use a name, but I can think of—let me just make this point. We have universities that today have 13 percent, 14 percent total minority enrollment of all minorities, which 15 years ago had less than 3 percent, OK? I think we've made progress, and that debate has moved us forward. And, you know, we've sometimes changed the consensus. So, please, I don't mean that politics is irrational.

SUNSTEIN: We have a long list of people here, so could we keep...

ELSHTAIN: Could Mr. Connerly just very briefly comment on the notion of politics as the process wherein we deal with these issues?

CONNERLY: Politics is the art of making public policy, and sometimes it's flawed and sometimes it's at its best, and I don't—when someone says this is political, that is, by definition, the art of setting public policy. I don't think it's irrational. I think it's sometimes corrupted by money and a lot of other things, but I don't view the fact that people debate and agonize and throw their emotions into the process as being bad, necessarily.

Some of us look at the whole issue of affirmative action as a policy; for other people, it's personal. And that, too, is part of the political process.

SUNSTEIN: OK. Larry Lessig.

LAWRENCE LESSIG: Mr. Connerly, one strategy used to debate this topic is to say that the harm caused by excluding somebody because he or she is black is the same as the harm caused by excluding somebody because he or she is white. Do you agree with that assessment of the harm, and do you think it's a useful way to talk about the cost of affirmative action?

CONNERLY: Absolutely, I agree with it. I think that the reason why we're into this bind right now is because we have not agreed with that premise. We have said that if you treat a black student, a Latino or Chicano—and they're different in our definition at the university—or Native American differently, if you take and give points to a white or an Asian student, that's discrimination. But if we treat a white or an Asian differently, we say that's just building diversity. And in my mind, they are the same. The harm is the same, whether the student is black or white or whatever. When we treat them differently, the harm, it seems to me, is the same. Regardless of the past, regardless of anything else, the harm is the same.

LESSIG: Do you think it's experienced the same?

CONNERLY: I think it's experienced the same. I think that if you are a low-income Asian student or a low-income white student who has applied to the University of California from a low-income background, coming from a

single-parent household, it doesn't matter how someone rationalizes it. You have been harmed. And in my view, it may not have the stigma of race that it would carry if the person were black, but you've been harmed.

LESSIG: So you agree there's a difference, then, is just the stigma of race.

CONNERLY: I think it's very subtle. I think it's very subtle.

SUNSTEIN: Derek Bok.

DEREK BOK: I have an issue of process I'd like to put to both of you that we haven't really touched on, and—which is remarkably—I think it's very difficult, but not really talked about very much in this debate, and that is, who ought to be making this kind of a decision? And the reason why I think it's difficult is because the elements that are profoundly educational, on which I'm not sure the public is particularly competent through a referendum to judge, but on the other hand the whole question of who gets into select institutions also has public consequences. But there are many people who could make this. The Supreme Court could make this judgment. Interestingly enough, the Supreme Court, in *Bakke* and also in the *Sweezy* case, was rather reluctant to interpose its judgment on an educational issue for educators. But obviously, there are contrary reasons. Or the public could make it, as you decided to do in California, by making it a referendum issue.

So I'm just interested; how would you ideally, since you see the interests of the University of California, you see the public interest; how would you reconcile that? Is this something, really, where ultimately we ought to have referenda? Is it something where universities ought to be given the decisive word? Or is there some third alternative by which we could somehow combine in some better way the respective interests of public and educational issues involved?

CONNERLY: Excellent question. When we—when I brought this up as a regent at the university, there were those who said, 'We should leave this to the faculty, because they're the ones who really know what the admissions criteria ought to be,' and that there was great value in diversity and therefore

the faculty should make this decision. I saw that as a matter of citizenship. When we're saying to one student, 'You're going to be treated differently on the basis of skin color or race or ethnicity,' that is a matter of citizenship. It's a matter of the rights of those students which we should not be able to abridge and leave the faculty to make that decision. And so I felt that it was totally appropriate, even though there were some who said we were violating shared governance.

It's totally appropriate for us to say, 'No, we're going to respect our interpretation of the Constitution and the rights that flow from the Constitution to the individual.' And ultimately, I guess, the Supreme Court has to reaffirm whether or not we're right. And when we found that students were, in fact, being treated differently and we had a whole range of programs that were treating people differently in California, and the Legislature would not respond because of identity politics and everything else, then the people of California grabbed their pitchforks and said, 'No, this is something that relates to citizenship—the rights of every citizen in the state of California.'

So ultimately, I see it as a matter of political values, a matter of citizenship. And therefore, the people or the Constitution should be where that decision is made.

SUNSTEIN: Joyce Appleby.

JOYCE APPLEBY: Well, I approach this question as a faculty member at UCLA, and so I'm very interested in the students. I'm interested in next year's students. And one very interesting fact, I think, about the change from '97 to '98 that hasn't been brought out, and that there were 219 African-American students who were admitted in '97, and enrolled, and there'll be 131 in 1998. Now, there's a similar change in all those categories. But that indicates that, I mean, those students who come in '98, those African-American students, will know that they got in on competitive criteria. I mean, there must be a great deal of pride that will—that they will feel in knowing that they earned their place, and I think the other students on campus will look at them differently. They'll say, 'They competed alongside us, and they made it.'

So that, to me—talk about just the political process—I see that as a gain. I also think that, when you look at that figure of 60 percent, it means that all previous incoming classes of African-American students or Hispanic students—60 percent of them made it competitively, we would assume. But they were covered in, you know—we didn't know that until we could make this comparison.

And so as I say, I think that's a real gain. However, when I then try to take that social fact that's now been revealed and apply it to the goal of achieving a color-blind society, which we've all agreed is our shared goal, I see one very important means to that end is to identify and bring in as many eligible—and they were always eligible—underrepresented minority students as possible, to bring them into college and to get them through college and to have them, by developing their potential, make the society—encourage the society to drop color discrimination and to achieve a color-blind society.

So I still would think that it would be important to go back to when we had more underrepresented minority students. So this takes me back to the admissions process. You want to talk about process. The admissions process is a very interesting and imprecise process, and I'm talking about it now as it exists, because I think this question about preferences—if you just focus upon race, is neglecting the fact that there are all kinds of preferences right now in the admissions process.

Something like 60 percent of the students who apply to the University of California are admitted on straight, objective criteria, you might call it—SATs and GPA. The other 40 percent—there are discriminatory factors that are introduced to achieve a variety of goals. One of the goals is to get students who have shown that they have incredible musical talent; you have athletic ability. There are, though we don't like to admit it, people who get in because—and are given preferences because they are donors' children or legislators' children.

So my question is, why, when we use a mix of criteria to get that other 40 percent, would we want to eliminate race when we live in a society in which race matters and class matters and family matters and talent matters? And

this admissions system is taking all of that into account to achieve a rather complex end in the intake of its students. And I say that particularly when we don't really have a lot of conclusive evidence about how to achieve this color-blind society. So why would we want to eliminate something that has been so productive, which is to find and encourage and admit into our institutions of higher learning underrepresented minorities when we are, you know, interested in finding special talent, when we're interested in working against the disadvantages of class or the disadvantages of location? And I guess that was a question I would put to you, Mr. Connerly, since we had this mix of preferences, why take this one out?

CONNERLY: Because race is special in America. As Bill said, we fought a civil war about it. It's something over which many of us—all of us—have no control. And to accord race the same status as the son of an athlete or as an athlete or the son of alumni or whatever, it seems to me, is missing the whole point of American history. Race is important. Race is something that the courts have said is inherently suspect, because when you start making decisions about people's lives on the basis of race, that can inevitably lead to stereotyping. It can lead to all kinds of things that we have decided we really don't want to do.

It is a political value. You may believe that it's OK to use it, but I think that the majority of us have concluded, certainly in my state, we don't want to use that. We don't want to make decisions about people on the basis of their race or whatever that is, by the way. We don't even know what it is. We have so much interracial marriages and people that are coming from different backgrounds. We're creating new species every day. We don't even know what race is.

And so we have made the political judgment that there are certain kind of preferences that we think are special, that are harmful, and judging somebody on the basis of their skin color or whatever we call race or ethnic background or national origin or where your father or mother happen to have been born is just as a political judgment, a value judgment, is something that we've decided is off limits.

SUNSTEIN: Richard Daynard.

RICHARD DAYNARD: Thanks. I want to talk about the possibility of having a conversation about this issue. I think what's happened is this has and I think we can learn from this. The question is, what is the learning from this? That an attempt to have a conversation about the issue, a conversation being—I would define, I think, as something where we're attempting to learn from each other and see if there is either common ground or some ground not yet discovered that both parties—people or both sides can reach for. That, in fact, has, in some sense, lost out in this discussion we've had thus far to a statement of positions—you know, all powerful positions, all with powerful responses, but all of which we're quite familiar with.

I thought I saw a possibility for hope in that both Mr. Connerly and Mr. Gray said that what they wanted in the end eschatologically is the same thing, which is society in which race doesn't matter, and that they're both pragmatists. They're both people who are trying to figure out how you get from here to there. They may disagree about how you describe the 'here' and what the best ways are from—getting from here to there, but that those are things that we ought to be talking about.

So that gave me hope that we could have a conversation, but then what has taken away the hope, or made me question whether there is such hope, is the question—are there just such different first principles about what's really, ultimately important that you two gentlemen represent and that, I think, questions from the floor also represent, that in the end it's simply going to be a question of who wins, if not this generation, then next generation, next generation, the one after that, but that it's really not something that, even though there did seem to be things you could discuss—that's not something that really can be much discussed, that can simply be stated: 'This is who I am, this is where I come from, this is what I consider most basic,' and that's it?

So, you know, I'd like to ask, you know, beginning with Mr. Connerly and then Mr. Gray: Is there a possibility, a realistic possibility, of conversation here? Or is it simply a question of, you know, who's going to be most persuasive with their existing point of view in the political process?

CONNERLY: I think that there's a possibility that we indeed can discuss it rationally, even emotionally—there's nothing wrong with passion—as long as we keep our eye on the fact that we're trying to arrive at some consensus on first values, on a national aspiration. We knew in the '60s that our goal was to rid the nation of prejudice and discrimination. We thought we wanted integration. I'm not so sure now that that is, indeed, the goal that we have. I believe in it with every fiber of my being, but there are those who don't seem to embrace that.

Now if we just put on the table the question of do we really want—not to force it, but do we really want an integrated society? Do we want this one nation without divisible parts? Do we want a society in which race has no place in American life or law, in which our government agencies do not take that into account? If that's what we want, then how do we devise a road map to get there? But that is a first value. That is a fundamental question that we have to ask ourselves. And if we can agree that that is, indeed a fundamental question, and then we can debate whether—how we come down on that question, then the question is, how long do we think it should take us to get there? What are the different things that we have to do in order to rid ourselves of it? Is it acceptable to use race, because it matters now, until we can get to the point where it no longer matters? And how do we install milestones to get us there?

But I'm hopeful. I think we can do that.

GRAY: The issue, as I said before, is the issue of what are the strategies to get you there, based on what your viewpoint is of where we are? And I'm not sure in America there's agreement on where we are. Maybe here; there's a very talented, educated group. But I spend my life, ladies and gentlemen, not so much with groups like this, but with a lot of poor people in inner-city neighborhoods—black, Latino—and I spend a lot of time with whites who are poor as well, and working class. And the fundamental question of is the playing field level—I'm not sure that there's agreement in America on that.

Then, secondly, the question then becomes—you've got to reach agreement on that; then you've got to decide what the strategies are to get you to that

color-blind society that Martin Luther King dreamed about. And the problem is, we like the dream, but are we willing to take the difficult steps to get there and implement the policies that will get us there quickly? Or are we prepared to wait generations and let evolution take its place, you know, and maybe work or not work, and pay the terrible price for that?

I believe that it is in our interest in the debate to ask those questions. Obviously, Ward and I have a difference on what is the strategy to get you there, a very fundamental difference, OK? And I don't want to argue the issue again and get whispered, you know, 'process,' all right? But the point is, going back to the lady over here to my left whose name I can't see—Ms. Appleby—and she and I both know, because I've been in higher education for 30 years—you may know me as a congressman, but no, that's what my field was—we all know that there's preferences.

If you go—the question we've got to ask is, what is gonna be the criteria to determine who gets those seats at UCLA, at Harvard, at Penn, Penn State or wherever? Those are the doorways to opportunity. And if you use certain criteria, you're going to lock out certain people who have been locked out because of historical circumstance, not necessarily because of ability. All I'm simply saying is that in the debate, if you're going to hold a position on one place of a preference, to me it seems terribly inconsistent not to hold it throughout.

In fact, in the state of Texas, they came up with a very interesting solution down in Texas. Ward, I don't know if you know about it. When they had the debate of 209 down there and they tried to pass it, some of the legislators got together and said, 'Let's attach an amendment and do away with all forms of preferences in admission—alumni, athletic, special talent.' Then a friend of mine who's a state senator called me and said, 'Bill, guess who was standing outside the door urging people which way to vote on it? It was the head of the state university system of Texas.' Why? Because they realized that if it passed, football would be gone.

And so what came was the compromise, which the governor supported, Brother Bush—not a liberal—that said, 'We'll take 10—the top 10 from every

high school, and that's the way we'll do it.' That's an interesting solution. I don't know whether it's gonna work or not, but it means that if you got a black high school, the top 10 are probably gonna be black; a Latino high school, they're gonna be, you know, white, because of our neighborhood segregation pattern. But that was an interesting solution, I thought. Maybe that's the way we ought to go. I don't know.

But, ladies and gentlemen, I think what I'm saying, Richard, is that—how do you view America at this point? Two, what is the strategy you think will get us to where Ward and I would both like? I don't think elimination of affirmative opportunity, as Julius called it, or affirmative action or preference to help push women and minorities through the doorway is going to help get us to that point.

DAYNARD: I think I hear the possibility of a conversation.

GRAY: And I'm sorry; I said—he just said 'process.' So, I mean, you know—so again, process is where do you see it? And that's the problem with the whole debate. That's the problem with the whole debate.

SUNSTEIN: We have a fairly long list. Martin Seligman.

MARTIN E. P. SELIGMAN: Well, Richard, I saw quite a bit of hope of conversation here, and it was because of the agreement of the dream, the end being a color-blind society, and if that's the shared end, then a very relevant question is, have we moved toward this or away from it in the last 28 years? So I want to ask, in some ways, in the last 28 years, is there more or less segregation, if you will, racial tension, harmony, racial hatred? How has this changed? And if it's gotten worse, does that tell us we're on the wrong track? If it's gotten better, does that tell us we're on the right track?

CONNERLY: I don't think there's any one answer to that. I think that the differences are regional, in some cases. I think that there are, in certain, quote, "groups"—I find the level of alienation among middle-class black people as high as it's ever been, from my perspective, and that is a group that—among others, that probably benefits substantially from preferences. I don't

understand that. I find in many cases, like at the University of California—we have separate graduation ceremonies based on race. Now that does not take us to the goal of a unified, color-blind society. We're going to have on the agenda at the June meeting whether that complies with Proposition 209. And the general counsel has said, 'No, it does not.' But we're still trying to find a way, through the back door, to do that. Call it—let's call it celebration, rather than ceremony, as some of us say, and maybe it'll get around it.

But I don't think there's an answer to it one way or another, but I find that in many cases we are headed the wrong way, and I think it's these kind of policies, personally, that take us down that path. You get to be what you practice, and if you want to be a color-blind society, it seems to me you put in place policies that allow you to strive toward that. If you embrace the notion that race matters and you're going to use race to get beyond race, guess what? You'll never get beyond it. That's my perspective.

SUNSTEIN: Jim Fishkin next.

JAMES FISHKIN: This conversation fills me with both hope and despair simultaneously; hope because it's a very rich dialogue and I see, to my surprise, agreement on eschatology, fundamental goals, values. And public-policy issues where there's no prospect of that kind of agreement—I think probably, in some cases, abortion would be a case where you wouldn't get that—here this is very different. There is, if the two of you distinguished gentlemen are representative of the sides of the debate, there is actually agreement on the most fundamental values, and it's a question of fact. There are a series of facts and strategies and trade-offs which, in an ideal public-policy discourse, those trade-offs would get fully aired; the arguments would get responded to with counterarguments; the differing constructions of the facts about where we are now and the differing constructions of fact about where we might go, what might count as appropriate criteria for merit now and in the future, and the effects of different policy proposals would get a full airing.

Now if those questions of fact, broadly construed, value-laden facts, in many cases, contested facts—if those were aired enough, I could see, actually, some

policy consensus—very useful—developing eventually. However, it really is quite remarkable, and I hadn't seen that before.

Now the despair comes from the fact that probably, in referendum politics, sound-bite-driven television advertising, you're not gonna get anything like even the kind of rich dialogue we had here aired to the broad public. You might get it among certain elites, but you're not gonna get it among the broad public. So part of the problem is—and, indeed, the agenda of this Commission—is how, on such important matters, do we get a serious, balanced public-policy dialogue, of which this conversation is a good initial start? It's a good specimen of—but the despair—I don't know what's gonna happen in your state, because you are left with the legacy of the dark legacy of the progressive idealism of referendum politics with television advertising thrown in. So...

CONNERLY: Well, don't despair about my state, because I think that we are very slowly coming to terms with this issue in a very positive way. We have never had as much attention focused on K through 12 as we have right now. There is a genuine belief that a gun is to our head to make sure that we turn out kids who are competitively admissible. So the process produces solutions, because people feel that they're left with no choice.

The next thing I think we're going to address is what's going on in the family? Why aren't more kids who happen to be black or Latino graduating from high school? We had in 1996 just 544 kids who graduated, who happened to be black, from high school in California who were UC-eligible—not in the county of Los Angeles, by the way—throughout the state of California, 544 out of 18,000. That is the problem. Now at some point, as we start addressing K through 12, we start asking something that it's been difficult for us to ask right now: What's happening in the community? What's happening in the families?

SUNSTEIN: Those are all good questions. Yeah.

GRAY: I don't want to get into a debate, and I'm gonna stay away from it. Jim, I'm not sure I agree with your statement, and maybe I haven't made myself—

I think you heard what I said. We don't have an honest look at facts. We develop myths about our positions and they get caught up in sound bites. I agree with you. And you are absolutely right. Why don't we have the facts on the table, such as the whole debate about blacks vs. Asians, which always gets held up and say—you know, it somehow implies that blacks and Latinos—something [is] wrong with them, but something's right with Asians.

Well, you know, if any of you will talk to Nancy Cole and look at the ETS profiles, you will find that the Asians who take the SAT tests are from a significantly higher income group of both the blacks and the Latino, and Nancy Cole will tell you that the greatest correlation between test-taking is income. And so thus, if they are a minority, but if those who take the SAT fit a profile similar to whites as opposed to blacks or Latinos, they will score significantly different. That's a fact. So therefore, we will stop this nonsense of comparing blacks, Latinos, to Asians, which implies something is genetically wrong with black folk. That's what I mean by facts.

I agree that—going back to Martin, since no one asked me my opinion of your question—I'm gonna give it to you anyway, whether you like it or not. I think we have made some progress. The fact that I can get elected chairman of the Budget Committee, a liberal from Philadelphia, in 1984 after Reagan wiped the Democrats off the map, and won against Southerner—a Southern candidate and got more Southern votes. Yeah. I mean, I think that is a sign of progress. When I see a Colin Powell, that's a sign of progress. And I could cite you all the signs of progress.

So I think we have made progress at many levels. However—and I cited the ones about faculty at universities, and I know the faculties at universities and what they were like in 1970 and what they are today. We've made progress. However, I would say that progress has not been deep enough, strong enough, and we still have a very, very long way to go, all right? And from my point of view, to look at a Bill Gray or Colin Powell or Ken Chenault at American Express and say, 'Oh, we're there,' or look at a few women in corporate America or Ginsburg and Sandra Day O'Connor on the Supreme Court and say, 'Oh, women don't have a problem'—I don't think anybody

would agree with that. I still think we have some very significant and deep problems.

I also don't think that some people in America would agree with what you said and what I said about the assessment of where we want to be. I do believe that there are some Americans who don't believe blacks and whites ought to sit at the table—and they're not all white, by the way, OK?—and don't think that that dream is possible. They don't. And I think they're in both communities. They're what I call the pessimists—don't see the progress, or think the progress is only individual or very small, and don't think America, in light of its history, has the capacity to face the race question and deal with it in a strong way so that you can create that possibility. And so we end up lurching, having these debates every 10 years or so about race, over an issue, and then we go back to sleep again and hope everything will lie down and be quiet.

And there is hostility. I would agree with Ward where he says there's hostility in the black community. We don't want to talk about that. We don't want to talk about what happens to the black stockbroker who makes \$2 million a year every day of his life in New York City—insults that he knows are occurring because he's black. We want to think that somehow, because he's a stockbroker making \$2 million, he's made it. He goes home as angry as the janitor, and we don't want to debate that and look at those facts.

So my viewpoint is that, yes, we've made it. I think you've put your finger on it. Bill, is there debate about fact? We don't debate fact. And in a sound-bite political arena, whew! You get a key word, a word, and that becomes the turning point. And you get the spin doctors theand the rest of them, and that just skewers the debate.

SUNSTEIN: We do have consensus, I've discerned, on a variety of principles. One is that we have to end now. One is that it's very important not to attack the good faith of one's opponents. One is that factual issues are important, but occasionally not decisive to resolution of policy issues. One is that affirmative action is only one of a range of racial issues, and it's unfortunate that it's received so much attention. One is that it's extremely difficult to argue from

first principles. One is that when first principles are shared, it is possible to mediate strategic questions for factual questions. That's a sign of hope. And the last, in a way the most interesting, I think, is the great difficulty of extracting the issues of substance from the issues of process. There's a real lesson in that. I'm not sure exactly what it is.

I'd like to thank Mr. Gray and Mr. Connerly for an excellent discussion, for great civility amidst disagreement.