

On the Road to Equal Rights

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It is a great pleasure to be here with all of you today. I see so many faces that I've worked with over the years. I don't think I've ever been with a group that had more friendly faces than those to which I am normally accustomed.

I was reminded, not that I needed any, that Monday was the day that we celebrate the life of Dr. King. I don't quote him very often, because I think that on certain principles we don't need anybody else to tell us what we should believe, and certainly on this one I don't need to reach back into the annals of history to get support from Dr. King. But occasionally I will refer to him, as I will to John F. Kennedy and his quote that "Race has no place in American life."

I want just to talk with you a little bit about where we are and where we are going. About thirteen years ago I was attending a meeting of the University of California board of regents, of which I was a member, during which I announced to my colleagues that I was soon going to bring before them a resolution to end the consideration of race, gender, and ethnicity at the University of California.

I was thinking of language that had been inspired by Tom Wood and Glynn Custred and now in the public domain. I wanted to begin that process of ending preferences at the university not because I was part of Tom and Glynn's campaign—in fact, I had resisted their entreaties to get involved—but as a regent my "knower" was telling me (I had a professor once who said

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we all have a “knower”) that we were committed to a policy that was very harmful to a lot of people, including the intended beneficiaries as well as to the University of California itself.

The blather about diversity equaling excellence I heard all the time. In fact, I had just heard it at the November meeting of the regents when Provost Walter Massey was telling us how much we should celebrate our diversity as he was headed out the door to take a job as the president of Moorehouse, which has about 95 percent black students. Anyway, I had said to my colleagues that I had intended to offer that resolution to end race, gender, and ethnic preferences.

The rest, as you know, is history. The state of California indeed voted to end the consideration of race preferences based on race, color, sex, ethnicity, and national origin in the three sectors of public employment, public education, and public contracting—by a decisive margin. The regents had already done that by a 15 to 11 vote, as I recall. We went on to Washington State in 1998 and the same thing happened there, by a 59 to 41 percent margin. Then the movement stalled, because, frankly, we were awaiting a Supreme Court decision that we hoped would once and for all end this terrible paradigm in which we live.

At that stage there still were many who felt that 209 and I-200 in Washington State were merely an aberration. That the use of racial preference was so deeply entrenched in American life that we were not likely to have any success ever in changing it. But I never doubted that the cause needed pursuing, and never doubted that if we persisted hard enough that we could in fact succeed.

Now I think we are poised to witness the end of an era. The era of explicit race preferences is, I think, deader than a doornail. It is up to us, however, to bury it. And that’s not going to be easy to do.

Let me tell you why I believe that we are on the winning side of history. First of all, when this battle began, we chose our words carefully. We did not say, for example, that we opposed affirmative action. Affirmative action was not intended to be a system of preferences for people based on their identity. It didn’t start out that way. It was not what John F. Kennedy had in mind in his executive order in 1961. But I think in the fullness of time most people began to believe that when you say affirmative action you really are talking about treating people differently by government agencies and those who do business with the federal government.

But, as the debate has gone on, we find we no longer have to run and hide from the use of the term “affirmative action.” You now read the stories in the papers, in which they’re not afraid to say “race preferences.” You look at today’s *Los Angeles Times* column—front page. Yes, the headline says “Affirmative Reaction,” but when you read the story itself—and we get a very good shake in that story—they use the language “race preferences.” They are no longer hiding behind that swaddling cloth of diversity and affirmative action. They say what it is: race preferences. That’s a remarkable change in our culture, and as you know politics is always fought on the ground of language. We have won that battle.

And we have won not because of anything we have done, but because the American people fundamentally believe in the principle of fairness. It’s part of their “knower” DNA. They just know that when you treat people differently on the basis of something over which they have no control—their skin color or how they spell their last name or whatever the characteristic is—most Americans realize that that’s unfair. That it’s wrong. When we were in the state of Michigan and that campaign there, Jen Gratz and I cut an ad in which what we hammered at was fairness. And as the polls were bounced around between one set of political dynamics and another, we brought the debate right back to the question that everyone had to vote on, fairness. Do you think it’s fair to treat someone differently—regardless of history—because of their race, their sex, their color, or their national origin? And the voters said, by a margin of 58 to 42, no.

And it isn’t because we misled people, as the group By Any Means Necessary claims. It wasn’t because we misappropriated language of the civil rights movement. It was because the American people have a deep-seated belief in that principle of fairness. And that principle would lead me to the answer to the question that Tom Wood asked, namely, do you think we will get to that point where the universities will give it up? No, the universities won’t. But I think the public will grab them by the ears and drag them over time to that point. It may not be in the lifetime of everyone in this room, but it’s going to happen.

And that is where we come in, because we have to convince the public that there is a better vision for our country than the argument for diversity. We have to convince them of that. We have to convince them that we are not just arguing against preferences because of some academic legal theory. We are against preferences because they despoil all that is good about our

country. Merit works. It's not perfect, but there is a reason why we are what we are as a people. It's because we've allowed talent to flourish. We've allowed people who came here from all around the globe to exercise their abilities to make America a better place for all of us.

When we squelch merit we harm not only the body politic, we harm the whole country. We affect the economy. We make goods and services more costly by awarding contracts to those who are not capable of doing the job, who bid more. We hurt fire departments and police departments when we force them to hire by quota. We hurt our academic institutions. And we make people resentful of their neighbors because of the perception of unfairness. Our duty, as we lead the effort to eliminate preferences, is to explain why.

Sometimes we don't do a very good job. We come across as ideologues who are simply trying to take things away from other people. We have to do a better job of explaining our better vision for America, and why it has worked through the years and why it will still work.

And thus we are involved in an effort called "Super Tuesday for Equal Rights." We have to get a critical mass of states that say, "We are not going to have distinctions made between our people on the basis of race"—something that my good friend Carl Cohen has worked for for a long, long time. And I know that he is as thrilled as I am to live to see it come to fruition. But we have to explain that vision better to the American people.

Now, after we pass these initiatives on November 4 of this year, 31 percent of the people in this country will live in states where preferences are outlawed. Think about that. A third of the nation will be living in states where preferences are outlawed. That doesn't mean that just because we have eliminated the explicit use of race every institution will abide by it. Not at all. In many cases we'll simply be driving them underground. The task then becomes to change the culture so that they don't surface again. And that's why the work of Rick Sander is so, so vitally important, because we have to convince the institutions, as well as society, that what they are doing is really not morally right, as they have thought, but is harming people.

There is something else that is in play here that we have no control over, but thanks to the Lord, has happened. And that's the story of Barack Obama. When I was a senior in college I was a reader for a very liberal professor, John Livingston. He belonged to the ACLU and to the NAACP. And Professor Livingston ended just about every lecture by saying, "We shall overcome." And I once asked, "Dr. Livingston, when will we know that we

have overcome?” And he had a three-way test. Number one: when a white girl can bring her black boyfriend home and say, “This is my fiancé, Dad. We’re getting married,” and not have him die on the spot. Number two: whenever a white person would be willing to change places with a black person—any black person. And number three: when the American people take a black candidate for president seriously. “Doesn’t have to win,” Dr. Livingston said, “doesn’t have to win, but if he’s taken seriously as a candidate for president and given essentially the same chance as any other candidate, Mr. Connerly”—he always called me Mr. Connerly—“we will have overcome.”

Now, think about that three-way test. I think we’re there. I think all conditions have been met. You know, when Barack Obama was born in 1961, in many parts of our country his parents could not marry. There were laws that forbade interracial marriages. It wasn’t until 1967 in the *Loving* case that those laws were overturned. But when he was born, they existed. And there are some who believe he will be our next president. Whether he will be or not is not the question, but clearly he is a serious contender. And I am certain as I stand here that Dr. Livingston would be a very, very happy man, because we have overcome.

And so I say to you that the task before us is exceptionally less difficult today than it was thirteen years ago, though frankly, I’m often surprised that we have gotten here as fast as we have. I remember when I brought up the issue of preferences at the University of California it was like a skunk had entered the picnic area. Many of my colleagues felt that I was tilting at windmills. But in thirteen years we are on the brink of changing the way that the American people deal with this issue of race preferences.

But our mission cannot end there. We will only have succeeded, in my view, once we end the business of the government classifying its citizens by race. The government has no business telling its citizens, “You fit into one of the five food groups. You are White, Black, Native American, Latino, or Asian.” I know, of course, that there are many here who believe that we cannot get rid of preferential treatment unless the government gathers race sensitive data as to its effects. Pragmatically, you’re right. Morally, you’re wrong. There is no moral justification for the government to subdivide its people into these five groups. That is where we have to end up.

That is where we have to take all of this far, far down the road, after I’m gone. But, as you look at the whole issue of race preferences, it’s really not

about preferences; it's about classifying people and saying that this human family has to be officially subdivided into these five distinct subdivisions. I understand the pragmatic feature of all of this and why there is resistance among the Left and among the Right to going down that path. But deep in my soul I say to you that if we want to complete the journey of making this a better place for the American people, it has to end with the elimination of race classifications. That's really the story of Barack Obama. That's the story of all of us as Americans.

And when we can come together and understand why the government should not be doing that, then we vindicate the ideal that in America it is the relationship between the citizen and government, not groups and government, that counts. As we eliminate preferences *that* is really the undercurrent of all that we are doing. All of the other stuff has to be cast aside.