Deconstructing America: The Rise of Subnational Identities*

Samuel Huntington

The Deconstructionist Movement

American national identity peaked politically with the rallying of Americans to their country and its cause in World War II. It peaked symbolically with President Kennedy's 1961 summons: "Ask not what your country can do for you—ask what you can do for your country." In the intervening decade and a half, the unifying impact of World War II, the confrontations of the early Cold War; the successful incorporation into American society of the pre-World War I immigrants and their children, the slow but steady progress toward ending racial discrimination, and unprecedented economic prosperity all combined to reinforce Americans' identification with their country. Americans were one nation of individuals with equal rights, who shared a primarily Anglo-Protestant core culture, and were dedicated to the liberal-democratic principles of the American Creed. This, at least, was the prevailing image Ameri-

* *In: The Challenges to America's National Identities*, New York, Simon & Schuster, 2004, p. 141-58.

cans had of what their country should be, and the goal toward which, in some measure, it seemed to be moving.

In the 1960s powerful movements began to challenge the salience, the substance, and the desirability of this concept of America. America for them was not a national community of individuals sharing a common culture, history, and creed but a conglomerate of different races, ethnicities, and subnational cultures, in which individuals were defined by their group membership, not common nationality. The proponents of this view castigated the melting pot and tomato soup concepts of America that had prevailed earlier in the century and argued that America was instead a mosaic or salad of diverse peoples. Acknowledging his previous defeat, Horace Kallen claimed victory on his ninetieth birthday in 1972: "It takes about 50 years for an idea to break through and become vogue. No one likes an intruder, particularly when he is upsetting the commonplace." President Clinton hailed the liberation of Americans from their dominant European culture. Vice President Gore interpreted the nation's motto, *E pluribus unum* (chosen by Franklin, Jefferson, and Adams), to mean "out of one, many," and political theorist Michael Walzer, citing Kallen's vision of a "nation of nationalities," argued it should mean "Within one, many."[1]

The deconstructionists promoted programs to enhance the status and influence of subnational racial, ethnic, and cultural groups. They encouraged immigrants to maintain their birth country cultures, granted them legal privileges denied to native-born Americans, and denounced the idea of Americanization as un-American. They pushed the rewrit-

ing of history syllabi and textbooks so as to refer to the "peoples" of the United States in place of the single people of the Constitution. They urged supplementing or substituting for national history the history of subnational groups. They downgraded the centrality of English in American life and pushed bilingual education and linguistic diversity. They advocated legal recognition of group rights and racial preferences over the individual rights central to the American Creed. They justified their actions by theories of multiculturalism and the idea that diversity rather than unity or community should be America's overriding value. The combined effect of these efforts was to promote the deconstruction of the American identity that had been gradually created over three centuries and the ascendance of subnational identities.

The resulting controversies over racial preferences, bilingualism, multiculturalism, immigration, assimilation, national history standards, English as the oficial language, "Eurocentrism," were in effect all battles in a single war over the nature of American national identity. On one side were substancial elements of America's political, intellectual, and institutional elites, plus the leaders or aspiring leaders of the subnational groups whose interests were being promoted. Of central importance in this deconstruction coalition were government officials, particularly bureaucrats, judges, and educators. In the past, imperial and colonial governments provided resources to minority groups and encouraged people to identify with them, so as to enhance the government's ability to divide and rule. The governments of nation-states, in contrast, attempted to promote the

unity of their people, the development of national consciousness, the suppression of subnational regional and ethnic loyalties, the universal use of the national language, and the allocation of benefits to those who conform to the national norm. Until the late twentieth century, American political and governmental leaders acted similarly. Then in the 1960s and 1970s they began to promote measures consciously designed to weaken America's cultural and creedal identity and to strengthen racial, ethnic, cultural, and other subnational identities. These efforts by a nation's leaders to deconstruct the nation they governed were, quite possibly, without precedent in human history.

Substantial elements of America's elites in academia, the media, business, and the professions joined governmental elites in these efforts. The deconstructionist coalition, however, did not include most Americans. In poll after poll and in several referenda, majorities of Americans rejected ideas and measures for weakening national identity and promoting subnational identities. They were often joined by substantial minorities, at times pluralities, and even majorities of the subnational groups these measures were designed to benefit. Overall, the American people remained deeply patriotic, nationalistic in their outlook, and committed to their national culture, creed, and identity. A major gap thus developed between portions of America's elite, on the one hand, and the bulk of the American people, on the other, over the fundamental issues of what America is and what America should be.

Several factors were responsible for the emergence of the deconstructionist movements. First, in some measure,

they were the American manifestation of the global rise of more limited subnational identities that were creating crises of national identity in countries throughout the world. These were, as we have seen, related to economic globalization and the expansion of transportation and communication, which generated in people the need to seek identity, support, and assurance in smaller groups. Second, the rise of subnational identities preceded the end of the Cold War but the easing of that conflict in the later decades of the century and its abrupt end in 1989 eliminated one powerful reason for giving preeminence to national identity and thus opened the way for people to find greater salience in other identities. Third, political calculations at times undoubtedly motivated elected officials and wouldbe elected officials to promote measures they assumed would appeal to significant political constituencies. President Nixon, for instance, endorsed Congressman Roman Pucinski's legislation on ethnic groups before the 1972 election and allegedly encouraged affirmative action in employment to promote conflict between blacks and working-class whites within the Democratic Party. Fourth, it clearly was in the interests of the leaders and aspiring leaders of minority groups to promote measures that would provide benefits for and enhance the status of their groups. Fifth, bureaucratic imperatives led government officials to interpret acts of Congress in ways that would make it easier for them to implement those acts, to expand the activities, power, and resources of their agencies, and to promote their own policy goals.

Sixth, liberal political beliefs fostered among academics, intellectuals, journalists, and others feelings of

sympathy and guilt concerning those whom they saw as the victims of exclusion, discrimination, and oppression. Racial groups and women became the focus of late-twentieth-century liberal activism much as the working class and the labor movement had been for early-twentieth-century liberals. The cults of multiculturalism and diversity took the place of left-wing, socialist, and working-class ideologies and sympathies.

Finally, and perhaps most importantly, the formal de-legitimation of race and ethnicity as components of national identity in the civil rights, voting rights, and immigration acts of 1964-1965 paradoxically legitimated their reappearance in subnational identities. So long as race and ethnicity were key components defining America, those who were not white and not northern European could challenge that definition only by seeming to be un-American. "Becoming white" and "Anglo-conformity" were the ways in which immigrants, blacks, and others made themselves Americans. With race and ethnicity formally exorcised, and culture downgraded, the way opened for minority groups to assert their own identities within a society now defined largely by its creed. No longer the means by which Americans differentiated themselves from other peoples, race, ethnicity, and, to some extent, culture became the grounds by which Americans differentiated themselves from each other.

The deconstructionist movement generated much controversy, political and intellectual. By the 1990s commentators were awarding victory to the deconstructionists. In 1992 Arthur Schlesinger, Jr., warned that the "ethnic upsurge," which had begun "as a gesture of protest against the

Anglocentric culture," had become "a cult, and today it threatens to become a counter-revolution against the original theory of America as 'one people', a common culture, a single nation." And in 1997 Harvard sociologist Nathan Glazer concluded "we are all multiculturists now."[2] Yet opposition to the counterrevolution quickly developed, and vigorous movements emerged committed to a more traditional concept of American identity. In the 1990s, bureaucrats and judges, including Supreme Court justices, who had earlier backed racial categorization and racial preferences, began to moderate and even reverse their views. Led by energetic entrepreneurs, movements developed forcing referenda votes on ending affirmative action and bilingual education. The efforts to rewrite American history and educational curricula were countered by new organizations of scholars and teachers.

September 11 gave a major boost to the supporters of America as one people with a common culture. Yet the deconstruction war did not end and it remained unresolved as to whether America was, would be, or should be a nation of individuals with equal rights and a common culture and creed or an association of racial, ethnic, and cultural subnational groups held together by the hopes for the material gains that can be provided by a healthy economy and a compliant government. Major battles in this war involved challenges to America's Creed, its language, and its core culture.

The Challenge to the Creed

The core of the American Creed, as Myrdal said, involves the "ideals of the essential dignity of the individual

human being, of the fundamental equality of all men, and of certain inalienable rights to freedom, justice, and a fair opportunity."[3] Throughout America's history, American political and social institutions and practices have fallen short of these goals. A gap has existed between ideal and reality. At times some Americans have found this gap intolerable and launched social and political movements promoting major reforms in institutions and practices so as to bring them more in accord with the values on which most Americans agree and which are, indeed, central to American national identity. "The history of reform" in America, as Ralph Waldo Emerson said, "is always identical; it is the comparison of the idea with the fact."[4]

Myrdal described and invoked the Creed in order to highlight "an American dilemma," the hap between its principles and the inequality, lack of civil rights, discrimination, and segregation to which black Americans were still subjected in the 1930s. Slavery and its legacies have historically been *the* American dilemma, the most blatant, profound, and evil violation of America's values. Following the compromise of 1877, Americans attempted to ignore, deny, and explain away this dilemma. In the mid-twentieth century, however, several developments made this no longer possible: urbanization of blacks and their massive migration north; the impact of World War II and then the Cold War, which made racial discrimination a foreign policy liability; the changing attitudes of white Americans about race as they attempted to resolve the cognitive dissonance between their beliefs and reality; the efforts by the federal judiciary in the 1940s and 1950s to bring laws and institu-

tions affecting blacks into accord with the Fourteenth Amendment; the emergence in the late 1950s and 1960s of the boomer generation as a source of reform activists; and new assertiveness by the leaders of black organizations trying to achieve the equality that had been denied African-Americans.

As had been the case with previous reform movements, the principles of the American Creed were the single greatest resource of those pushing for the end of racial segregation and discrimination. The dignity of the individual, the right of all individuals to equal treatment and opportunity, regardless of race, were the recurring themes of the campaign. Without the principles of the Creed embedded in American identity, the campaign for equal treatment of blacks would, arguably, have gone nowhere. The case for eliminating race as a consideration in the actions of governments and other institutions rested squarely on the Creed's concept of equal rights for all. "Classifications and distinctions based on race or color," the leading black attorney Thurgood Marshall argued in 1948, "have no moral or legal validity in our society." Supreme Court justices in the early 1960s described the Constitution as "color-blind." The U.S. Commission on Civil Rights in 1960, in a statement on higher education, concluded that "questions as to the applicant's race or color are clearly irrelevant and improper. They serve no legitimate purpose in helping the college to select its students."[5]

The Civil Rights Act of 1964 and the Voting Rights Act of 1965 were expressly designed to make American reality reflect American principles. Title VII of the former made it unlawful for an employer "(1) to fail or refuse to hire... any

individual... because of such individual's race, color, religion, sex or national origin; or (2) to... classify his employees... in any way which would deprive or tend to deprive any individual of employment opportunities... because of such individual's race, color, religion, sex, or national origin." Senator Hubert Humphrey, the floor manager of the bill, assured the Senate that nothing in the bill gave courts or executive agencies the power "to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance... Title VII prohibits discrimination... [and] is designed to encourage hiring on the basis of ability and qualifications, not race or religion."[6] The bill required a showing of intent to discriminate to make a practice unlawful, authorized employers to make appointments on the basis of seniority and merit, and gave employers the right to use ability tests, provided they were not designed to discriminate on the basis of race. Courts could provide relief only if they found that an employer intentionally engaged in an unlawful practice. The following year, the Voting Rights Act made it illegal to deny a citizen the right to vote because of race or color in the jurisdictions (mostly Southern states) covered by the act. The combined effect of these acts was to prohibit discrimination among races in employment, voting, public accommodations, public facilities, federal programs, and federally supported public education.[7] The language of the laws and the intentions of their framer's could not have been clearer. In America's historic pattern, reformers had produced changes in institutions and practices so as to bring them into greater accord with the principles of America's Creed.

Yet almost immediately this momentous development was reversed. As soon as the Civil Rights Act was passed, black leaders such as Bayard Rustin stopped demanding rights common to all American citizens and instead began demanding governmental programs to provide material benefits to blacks as a distinct racial group, toward the goal of "achieving the fact of [economic] equality" with whites. To reach this goal as quickly as possible, federal administrators, later joined by judges, interpreted the reform statutes to mean the opposite of what they said and through these interpretations launched a frontal assault on the Creed's principle of equal rights for all that had made the new laws possible. The common theme of these actions was to replace the prescription of nondiscrimination in those laws with "affirmative discrimination" (in Nathan Glazer's phrase) in favor of blacks.[8]

By 1967, as Hugh Davis Graham observes in his exhaustive study *The Civil Rights Era*, the chairman, a majority of the commissioners, and the staff of the Equal Employment Opportunity Commission created by the Civil Rights Act were "prepared to defy Title VII's restrictions and attempt to build a body of case law that would justify its [the commission's] focus on effects and its disregard of intent." The administrators, as Glazer put it, "took statistical disparities as evidence of discrimination, and tried to pressure employers, public and private, into overcoming them by hiring on the basis of race, color, and national origin—exactly what the original Civil Rights Act of 1964 had forbidden." Officials in the Department of Labor also acted to reverse the directives of president and Congress. In

March 1961 President Kennedy issued Executive Order 10,925 ordering government contractors to hire and treat employees "without regard to their race, creed, color, or national origin."* President Johnson reaffirmed this requirement. In 1968-1970, however, the Department of Labor issued orders requiring government contractors when hiring workers to take into account the proportion of races in their geographic area of their business. Business were told to establish "a set of specific and result-oriented procedures" keyed to the problems and needs of members of minority groups. As Andrew Kull point out in his analysis *The Color-Blind Constitution*: "An executive order whose language required nondiscrimination—its literal command was still that government contractors 'ensure that applicants be employed without regard to their race'... had been formally interpreted by the Labor Department to require the contrary." The Labor Department's actions also ran afoul of the nondiscrimination language of Title VII. "The policy of the U.S. Department of Labor by 1969 was thus to require what Congress had prohibited scarcely five years before."[9]

In *Griggs v. Duke Power Co*. (401 U.S. 424, 1971), the first Title VII case to come before it, the Supreme Court similarly disregarded the statue's language requiring proof of intent. It found that the employer in question had no "intention to discriminate against Negro employees," but then

* The executive order also called for "affirmative action" in its original meaning: "The employer will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take *affirmative action* to ensure that applicants are employed and that employees are treated during employment, *without regard* to their race, creed, color or national origin." Emphasis added.

it still outlawed the company's employment requirement of either a high school diploma or passing a standard general intelligence test. "As is clear both from the language of the statute and from some particularly unambiguous legislative history," Kull comments, "the Court derived from Title VII a legal requirement that the proponents of the law had expressly disclaimed." This decision was of farreaching importance. As Herman Belz argues in his book *Equality Transformed*, it "shifted civil rights policy to a group-rights, equality-of-result rationale that made the social consequences of employment practices, rather than their purposes, intent, or motivation, the decisive consideration in determining their lawfulness. The decision supplied a theoretical basis for preferential treatment as well as a practical incentive for extending race-conscious preference." Under the court's decision, "minority preference was practically required in order to protect against charges of disparate impact discrimination. The logical premise of disparate impact theory was group rights and equality of result... Contrary to the traditional concept of justice, under disparate impact theory employers were held accountable for societal discrimination, although they were not responsible for it." The court, Belz concludes, adopted "a theory of discrimination entirely contradictory to the requirements and intent of the Civil Rights Act."[10]

Something similar happened to the Voting Rights Act, which had been designed to prevent Southern states from denying or restricting the right of blacks to vote. In 1969, however, the Supreme Court interpreted that act not simply to protect the rights of individuals but to mandate systems of

representation that would insure the election of minority candidates. It thus gave judicial endorsement to what became the widespread practice of "racial gerrymandering" with district boundaries drawn to provide safe seats for blacks and Hispanics. "By the early 1970s," Kull notes, "the federal government was thus in the anomalous position, by the standards of a decade before, of requiring state and local governments to gerrymander their election districts on racial lines."[11]

The elites in most major American institutions—government, business, the media, education—are white. In the last decades of the twentieth century substantial elements of these elites rejected the color-blind values of the American Creed and endorsed discrimination among races. "For many years," Jack Citrin observed in 1996, "the white establishment embraced affirmative action and downplayed the moral costs of deviation from difference-blind principles." The leading sociologist Seymour Martin Lipset reported in 1992 that "the heaviest support for preferential treatment seems to come from the liberal intelligentsia, the well-educated, the five to six percent of the population who have gone to graduate school, plus those who have majored in liberal arts in college. Support is also strong among the political elite, particularly Democrats but including many Republicans (though not many prominent officeholders)."[12] In the 1970s and 1980s, the principal newspapers and journals of opinion enthusiastically endorsed affirmative action and related programs to give racial minorities preference over whites. The Ford Foundation and other foundations provided tens of millions of dollars to encourage racial pref-

erence. With the approval of their faculties, colleges and universities competed for minority students through lower admission standards, race-designated scholarships, and other benefits.

Of central importance in the establishment of race-based programs was American business, motivated by marketing concerns and the desire to head off lawsuits and avoid bad publicity from boycotts organized by black and other minority groups. The "dirty little secret of affirmative action politics," Richard Kahlenberg noted in 1996, "is that corporate America actually supports affirmative action." That, however, was a fast-dissolving secret as corporations publicized their commitment to affirmative action policies and the hiring and promotion of minorities and women. In the early 1980s, Du Pont announced that 50 percent of its new appointments to professional and managerial positions would be minorities or women. Other corporations took comparable actions. In the major controversies, business corporations lined up in support of racial preferences, opposed the 1996 California initiative, Proposition 209, banning state racial preferences and the comparable initiative, Proposition I-200, in the state of Washington in 1998, while supporting the University of Michigan's appeal of a district court's order banning racial preference in its law school admissions.[13]

The differences between elites and the public over racial preferences were dramatically evident in the two state referenda. California's Proposition 209, echoing the language of the Civil Rights Act, provided: "The state shall not discriminate against, or grant preferential treatment to, any

individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." When asked his view on it, Senator Joseph Lieberman said: "I can't see how I could be opposed to it, because it is basically a statement of American values... and says... we shouldn't discriminate in favor do somebody based on the group they represent." The bulk of the California establishment, however, rejected these "American values."[14] Most political leaders (except for Governor Pete Wilson), college and university presidents, Hollywood celebrities, newspapers, TV station, union leaders, and many business leaders opposed the ban on racial preferences. They were joined by the Clinton administration, the Ford Foundation, and many national organizations. The opponents of the proposition spent far more than its supporters. Yet the California public approved it by a vote 54 percent to 46 percent.

Two years later in the state of Washington, the effort to ban racial preferences was also almost unanimously opposed by the state establishment, including the governor and other top political figures, the state's major businesses, the principal media, including the *Seattle Times*, which provided free space for ads opposing the proposition, the heads of educational institutions, large numbers of intellectuals and commentators, and outside political figures such as Vice President Al Gore and the Reverend Jesse Jackson. Business was particularly prominent. The opposition campaign was led by Bill Gates, Sr., father of the Microsoft founder, and supported by Boeing, Starbucks, Weyerhaeuser, Costco, and Eddie Bauer. "The most significant obsta-

cle we faced in the Washington campaign," observed Ward Connerly, the leading supporter of the proposition, "was not the media, or even the political personalities who attacked us... but the corporate world."[15] The proposition's opponents spent three times as much as its supporters. Washington voters approved it by a margin of 58 percent to 42 percent.

Public opinion surveys show that the public generally approves of affirmative action in the original sense used in the directives of Presidents Kennedy and Johnson to mean actions to prevent discrimination and to help minorities to compete better for jobs and higher education by improving their family situations, schools, housing, and job training. The polls also have consistently shown a large majority of Americans opposing racial preferences in hiring, promotion, and college admissions, even if these are explicitly designed to correct the effects of past discrimination. Five times between 1977 and 1989, Seymour Martin Lipset reports, the Gallup Organization asked the question:

> Some people say that to make up for past discrimination, women and minorities should be given preferential treatment in getting jobs and places in college. Others say that ability, as determined by test scores, should be the main consideration. Which point of view comes close to how you feel on the subject?

In these surveys 81 percent to 84 percent chose test-based ability and 10 percent to 11 percent chose preferential treatment. In two other polls in 1987 and 1990, Gallup asked whether people supported or opposed the proposition: "We should make every effort to improve the position of blacks and other minorities even if it means giving them

preferential treatment." In these two polls, 71 percent and 72 percent of the public opposed this proposition, while 24 percent supported it, with blacks voting 66 percent against and 32 percent in favor.[16] Similarly, a 1995 poll asking whether "hiring, promotion, and college admissions should be based strictly on merit and qualifications other than race or ethnicity" produced agreement from 86 percent of whites, 78 percent of Hispanics, 74 percent of Asians, and 68 percent of blacks. In another series of five polls between 1986 and 1994, asking people whether they were for or against "preferential hiring and promotion of blacks," from 69 percent to 82 percent of the public said they were opposed. In a 1995 survey by *USA Weekend Magazine*, 90 percent of 248,000 American teenagers said they opposed "affirmative action in hiring and colege admissions to make up for past discrimination." Reviewing the evidence in 1996, Jack Citrin concludes that "In sum, with the issue framed as a choice between group equality or individual merit, affirmative action loses. A majority of Americans rejects explicit preferences, regardless of the particular group they are intended to assist."[17]

In these polls, black attitudes on racial preferences varied with the nature of the question asked. In the 1989 Gallup poll on whether preferential treatment was warranted for women and minorities in hiring and college admissions or whether these should be determined by ability as revealed in tests, 56 percent of blacks chose ability and 14 percent racial preferences. In the five American National Election Studies polls between 1986 and 1994, asking people whether they were for or against "preferential hiring and promotion of

blacks," from 23 percent to 46 percent of blacks expressed opposition.[18] Overall, blacks and other minorities appeared to be ambivalent about racial preferences. This ambivalence disappears, however, in situations of intense political controversy, such as referenda contests, when leaders of racial organizations vigorously try to mobilize their voters in favor of preferences. In March 1995, for instance, 71 percent of whites, 54 percent of Asians, 52 percent of Hispanics, and 45 percent of blacks said they approved the proposed California Civil Rights Initiative. The initiative was voted on in November 1996 after eighteen months of an extraordinarily vigorous, massive, and at times vitriolic campaign to mobilize minority voters against it. According to exit polls, only 27 percent of blacks and 30 percent of Hispanics voted in favor of it, decreases of 18 percent and 22 percent from the views expressed eighteen months earlier.[19] Working together, the leaders of the white establishment and of black organizations persuaded large majorities of black people to support racial preferences.

In the late 1980s broader opposition developed against preferences. Public disapproval, lawsuits by white job seekers and university applicants charging "reverse discrimination," and a decade of Republican presidents nominating federal judges produced a shift in judicial decisions. The courts began to narrow the room for preferential treatment of blacks and other minorities. "Nineteen eighty-nine," as Stephan and Abigail Thernstrom say, "was a year of second thoughts." That year in *Richmond v. J.A. Croson* (488 U.S. 469), the Supreme Court reviewed a minority contract set-aside plan of the sort that at least thirty-six states and

more than 190 local governments had adopted. Writing for a six-justice majority, Justice Sandra Day O'Connor ruled against the Richmond ordinance, affirming the principles of the American Creed. Classifications based on race, she said, created "a danger of stigmatic harm. Unless they are strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of racial hostility." The court rejected the argument that "past societal discrimination alone can serve as the basis for rigid racial preferences" and declared that "the dream of a Nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs."[20] The same year in another case, *Wards Cove Packing Co. v. Antonio* (490 U.S. 642), the Supreme Court revised the disparate-impact test in had set forth in the *Griggs* case, which prompted Congress, controlled by Democrats, to pass legislation limiting the decision's impact.

The tide, however, was moving in the opposite direction. In 1993, in *Shaw v. Reno* (509 U.S. 657), Justice O'Connor on behalf of a 5-to-4 majority remanded to the district court a case concerning a North Carolina congressional district, running across the state along an interstate highway, so as to produce a majority black district. "Racial classifications of any sort," she wrote, "pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin." Raceconscious districts "may balkanize us into competing racial factions...

and carry us further from the goal of a political system in which race no longer matters." Then, in 1995, in *Adarand Contractors v. Pena* (515 U.S. 200), the court held that government regulations prescribing favorable treatment for minority contractors were inherently suspect. Writing for a 5-to-4 majority, Justice Antonin Scalia declared, "In the eyes of government we are just one race here. It is American." Thirty years after Congress by huge majorities had written that principle into American law, the Supreme Court finally accepted it by a narrow majority. The Clinton administration, however, did not accept this affirmation of the American Creed. It devised various schemes to limit the court's holding in *Adarand*, and as a result by 1996, as the Thernstroms put it, "a remarkable state of affairs had emerged: the Supreme Court and the U.S. Department of Justice were at war."[21]

That "war" continued in the next administration, but the participants changed sides. In 2003 the Bush administration argued that race should be eliminated as a factor in admission to the University of Michigan undergraduate college and law school and that the goal of racial diversity should be pursued through other means. By a 6-to-3 vote the Supreme Court invalidated the automatic awarding of 20 points (out of a possible 150) to minority applicants to the college. In its most important decision on race and higher education since the Bakke case in 1978, however, the court approved the use of race in the law school admissions. Endorsing the reasoning of Justice Lewis F. Powell, Jr., in *Bakke*, the court by a 5-to-4 vote argued in an opinion by Justice O'Connor that the law school admission process "bears the hallmarks of a

narrowly tailored plan" and that "student body diversity is a compelling state interest that can justify the use of race in university admissions." It also said that "a university admissions program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant's race or ethnicity the defining feature of his or her application." The court added that "Race-conscious admissions policies must be limited in time" and it expected "that twenty-five years from now, the use of racial preferences will no longer be necessary to further the interest approved today."

Opponents of affirmative action had promoted the suits against the University of Michigan in the hope that, given the increasing judicial restraints on racial preferences in the 1990s, the court would outlaw any role for race in university admissions. The supporters of preferences feared that this could well be the case. The court's law school decision, however, marked a pause in if not a reversal of the recent trend. It did not affirm the goal of a race-blind society, and it did not ban racial preferences but defined how they must be applied. Overall, it was judged, as a *New York Times* editorial hailed it, "A Win for Affirmative Action." It was also a win for the American establishment. Hundreds of organizations filed briefs supporting Michigan, including major corporations such as General Motors, Microsoft, Boeing, American Express, and Shell, plus more than two dozen retired military officers and defense officials. Their views, of course, contrasted with those of the majorities of Americans consistently opposed to racial preferences, which were reiterated in the lead-up to the court's decision. In 2001, 92 per-

cent of the public, including 88 percent of Hispanics and 86 percent of blacks, said race should not be used as a factor in college admissions or job hirings so as to give minorities more opportunity. A few months before the Supreme Court's decision, 68 percent of the public, including 56 percent of minorities, opposed preferences for blacks, with larger majorities opposing them for other minorities.[22] Five justices thus sided with the establishment, four justices and the Bush administration with the public.

As the Michigan case demonstrated, Americans remain deeply divided over whether America should be race-blind or race-conscious and organized on the basis of equal rights for all or special rights for particular racial, ethnic, and cultural groups. It would be hard to overestimate the importance of this issue. For over two hundred years the creedal principle of equal rights for all without regard to race had been ignored and flouted in practice in American society, politics, and law. In the 1940s, the president, federal courts, and then Congress began to make federal and state law color-blind and used whatever powers they had to eliminate racial discrimination in America, culminating in the Civil Rights and Voting Rights acts. Yet nonelected officials immediately launched a counterreform, if not a counterrevolution (and, as President Clinton said, the civil rights effort was in some sense a revolution), to reintroduce racial discrimination into American practice. The justification for this momentous reversal, as Herman Belz says, "was the belief that group rights, racial proportionalism, and equality of result are correct principles of social organization that deserve to be established as the basis of civil rights policy."

This replacement of individual rights by group rights and of color-blind law by color-conscious law was never approved by the American people and received only intermittent, passive, and partial acceptance by American legislators. "What is extraordinary about this change," the distinguished sociologist Daniel Bell commented, "is that, without public debate, an entirely new principle of rights has been introduced into the polity." "Group rights and equality of condition," Belz agrees, "were introduced into public opinion as a new public philosophy that distinguishes among individuals on racial and ethnic grounds and that ultimately denies the existence of a common good." The implications of this view were cogently stated by the Thernstroms: "Racial classifications deliver the message that skin color matters—profoundly. They suggest that whites and blacks are not the same, that race and ethnicity are the qualities that really matter. They imply that individuals are defined by blood—not by character, social class, religious sentiments, age, or education. But categories appropriate to a caste system are a poor basis on which to build that community of equal citizens upon which democratic government depends."[23]

Notes

1. Horace Kallen, quoted in Arthur Mann, *The One and the Many: Reflections on the American Identity* (Chicago, University of Chicago Press, 1979), p. 143-4; Michael Walzer, *What It Means to Be an American* (New York, Marsilio, 1992), p. 62.
2. Arthur M. Schlesinger, Jr., *The Disuniting of America* (New York, Norton, rev. ed., 1992), p. 43; Nathan Glazer, *We Are All Multiculturalists Now* (Cambridge, Harvard University Press, 1997).

3. Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York, Harper, 1944), p. 4.
4. Ralph Waldo Emerson, "Lecture on the Times," in Emerson, *Prose Works* (Boston, Fields, Osgood, 1870), v. 1, p. 149.
5. Andrew Kull, *The Color-Blind Constitution* (Cambridge, Harvard University Press, 1992), p. 1-2, 146-8; *U.S. Commission on Civil Rights, Equal Protection of the Laws in Higher Education*, 1960 (Washington, D.C., U.S. Government Printing Office, 1960), p. 148.
6. Senator Hubert Humphrey, *110 Congressional Record*, 1964, p. 6.548-9, quoted in Edward J. Erler, "The Future of Civil Rights: Affirmative Action Redivivus," *Notre Dame Journal of Law, Ethics, and Public Policy*, n. 11 (1997), p. 26.
7. Kull, *The Color-Blind Constitution*, p. 202; Hugh Davis Graham, *The Civil Rights Era: Origins and Development of National Policy, 1960-1972* (New York, Oxford University Press, 1990), p. 150; Herman Belz, *Equality Transformed: A Quarter Century of Affirmative Action* (New Brunswick, NJ, Transaction, 1991), p. 25; Nathan Glazer, *Ethnic Dilemmas, 1964-1982* (Cambridge, Harvard University Press, 1983), p. 162.
8. Bayard Rustin, "From Protest to Politics: The Future of the Civil Rights Movement," *Commentary*, n. 39 (February 1965), p. 27; Glazer, *Ethnic Dilemmas,* p. 161-2.
9. Graham, *The Civil Rights Era*, p. 250; Glazer, *Ethnic Dilemmas*, p. 262; Kull, *The Color-Blind Constitution*, p. 200-3, quoting Labor Department Regulations.
10. Kull, *The Color-Blind Constitution*, p. 204-5; Belz, *Equality Transformed*, p. 51-5.
11. Kull, *The Color-Blind Constitution*, p. 214-6.
12. Jack Citrin, "Affirmative Action in the People's Court," *The Public Interest*, n. 122 (Winter 1996), p. 46; Seymour Martin Lipset, "Affirmative Action and the American Creed," *The Wilson Quartely*, n. 16 (Winter 1992), p. 59.
13. Richard Kahlenberg, "Bob Dole's Colorblind Injustice," *Washington Post National Weekly Edition*, 10-16 June 1996, p. 24; Stephan

Thernstrom and Abigail Thernstrom, *America in Black and White: One Nation Invisible* (New York, Simon & Schuster, 1997), p. 452; *New York Times*, 1 June 2001, p. A17.

14. Liberman quoted in *New York Times*, 10 March 1995, p. A16; John Fonte, "Why There Is a Culture War: Gramsci and Tocqueville in America," *Policy Review*, n. 104 (December 2000-January 2001), p. 21.
15. Connerly quoted in Fonte, "Why There Is a Culture War," p. 21; Ward Connerly, *Creating Equal: My Fight Against Race Preferences* (San Francisco, Encounter Books, 2000), p. 228.
16. Seymour Martin Lipset, "Equal Chances Versus Equal Results", *Annals of the American Academy of Political and Social Science*, 523 (September 1992), p. 66-7.
17. Lipset, "Affirmative Action and the American Creed," p. 58; *Washington Post*, 11 October 1995, p. A11; Citrin, "Affirmative Action in the People's Court," p. 43; William Raspberry, "What Actions Are Affirmative?" *Washington Post National Weekly Edition*, 28 August-3 September, 1995, p. 28; Citrin, "Affirmative Action in the People's Court," p. 41.
18. Citrin, "Affirmative Action in the People's Court," p. 43.
19. *Ibid.*, *Boston Globe*, 30 April 1997, p. A19.
20. Thernstrom and Thernstrom, *America in Black and White*, p. 437; *City of Richmond v. J. A. Croson Company*, 488 U.S. 469 (1989).
21. Thernstrom and Thernstrom, *America in Black and White*, p. 456-9.
22. *Washington Post*/Kaiser Family Foundation/Harvard University, "Race and the Ethnicity in 2001: Attitudes, Perceptions, and Experiences" (August 2001); Princeton Survey Research Associates Poll, January 2003; Jennifer Barrett, "*Newsweek* Poll: Bush Looses Ground," *Newsweek*, 14, February 2003, online; Jonathan Chait, "Pol Tested," *New Republique*, 3 February 2003, p. 14.
23. Belz, *Equality Transformed*, p. 66-7; Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting* (New York, Basic Books, 1973), p. 417; Thernstrom and Thernstrom, *America in Black and White*, p. 492.