

# Bewitched and Bewildered by a Debate That Won't End

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## Ending Affirmative Action: The Case for Colorblind Justice

Terry Eastland

Basic Books / 229 pages / \$23

## Backfire: A Reporter's Look at Affirmative Action

Bob Zelnick

Regnery / 415 pages / \$27.50

## In Defense of Affirmative Action

Barbara R. Bergmann

Basic Books / 213 pages / \$23

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REVIEWED BY  
**Jeremy Rabkin**

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**T**he debate over affirmative action and "reverse discrimination" first came into prominence during the election year of 1972, when President Nixon began earnestly affirming his opposition to racial quota policies that his own administration was elaborating. The country is still confused and exasperated by the subject. Moralistic appeals from both sides have rattled and distracted the electorate for a quarter of a century—more time than elapsed between the founding of the Anti-Saloon League and the adoption of the Prohibition Amendment, twice as much time as elapsed between the start of that earlier "noble experiment" and its ultimate repeal. And still, neither side is ready to abandon the debate, as these latest entries on the subject confirm.

Barbara Bergmann's *In Defense of Affirmative Action* does live up to its title. It offers a full bore defense, refusing to concede any fundamental problems either in the feasibility or the justice of affirmative action. It may not be unfair to note that it is also a very brief book (with widely spaced type to fill a meager 180 pages of text). The argument Bergmann presents is disarmingly simple. Blacks and women earn less on the average than white males, and some

of this disparity is probably caused by systematic bias or exclusion on the part of employers. So affirmative action is needed to redress this bias. Bergmann is quite candid in acknowledging that affirmative action often amounts to an explicit preference by which a member of the target group will gain advantage over someone more qualified by the usual criteria of selection. She defends this practice on the ground that the advantages of greater "integration"—both to schools and employers and to the country as a whole—would be frequently neglected if not for the countervailing pressures of affirmative action.

Though Bergmann is a professor of economics (at American University in Washington, D.C.), her book offers remarkably little hard data or serious economic analysis. In laying out her main argument, for example, she reports that "the true penalties for discrimination suffered by average full-time black and female workers" are "about \$3,000 a year for black men and \$5,000 for black and white women"—a figure she deduces from differences in the average yearly wage of white males as a group, compared with the average among these other groups. She draws this conclusion from extraordinarily broad aggregate figures from census data, from which she then somehow distinguishes the portion of residual differences attributable to differences in training, experience, or motivation, on the one hand, and to "discrimination," on the other. She does not explain how this feat of analysis was performed, but simply offers a footnote with this assurance: "Details of the calculations are available from the author."

Clearly this is a book for the trusting reader. The reader who does not demand too many "details" may also be ready to take on faith Bergmann's larger conclusion: "If we reduce discrimination and segregation in the labor market...[a]ll of us will benefit from revitalized central cities, lower crime rates and fewer panhandlers, fewer homeless." Why didn't anyone think of that before? This remains an economist's book in its relentless abstractions,

offering the kind of analysis by which intractable human dilemmas can be subsumed under an antiseptic term like "redistribution." Still, Bergmann has one powerful point: enduring gaps in achievement between blacks and whites remain a source of social strain and national uneasiness.

**B**ob Zelnick's book is a useful antidote to the pleasant dreams of academic analysts like Barbara Bergmann. Zelnick does not try to defend any systematic theory or doctrine. Instead, he offers a sobering "reporter's look" at affirmative action in practice. He offers a good deal of data, for example, on the enduring gap in educational attainments, even when one controls for the effects of family income. Average SAT scores, even for the lowest family income group among white students, remain higher than the average scores for blacks from families in the highest income brackets.

As Zelnick reports, admissions officers at universities use this data as justification for affirmative action—on the grounds that if there were not extensive preferences shown for minority candidates, top schools would have few minority candidates. Extrapolations from such data might suggest that if employers are less inclined to accept minority candidates with the same paper credentials as white candidates, their selections may not simply reflect irrational or unfair bias. But this pattern, if it is at all prevalent, might in turn be cited as a justification for affirmative action—as a means of counteracting market forces working against less capable minority applicants.

That is not Zelnick's point, though he does not seem concerned to refute that kind of argument as a matter of principle. Whatever its arguments in the abstract, Zelnick is more troubled by how affirmative action is taken to abusive extremes or bent to corrupt purposes. He reports, for example, that because of racial preferences in medical school admissions, the average college GPA of successful black applicants in 1994 was not only below the average of successful white applicants but even below the average of the white applicants who were rejected (comparing the average GPA for rejected white applicants as a separate group). Not

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surprisingly, with preferences on this scale, less than half of black medical school graduates pass their National Board exams for medical certification (at least on the first try), while the pass rate for whites is 88 percent. Zelnick cannot contain his astonishment over this fact: "The conclusion is inescapable...this society, which keeps potentially useful drugs off the market until they are tested for a near eternity, which bans carcinogens that must be eaten by the pound to produce harm—*this society consciously and deliberately graduates doctors who are less qualified to treat the sick than would be the case if admissions to medical school were based purely on ability and not on race.*" (Emphasis in the original.)

Zelnick highlights many such abuses. To cite another example, he reports the experience of New York's Nassau County (home to the populous Long Island suburbs of New York City), which was repeatedly sued by the Justice Department (even in the Reagan years) to revise and then re-revise its eligibility standards and selection examinations for police officers, because too few minority candidates satisfied the standards and passed the exams as they were. Nassau finally ended with an exam that, as a county official explained, is "more than satisfactory if you assume a cop will never have to write a coherent sentence or interpret what someone else has written." Shortly thereafter, it was reported that prosecutors in Washington, D.C. had to dismiss a quarter of murder charges prior to indictment due to "sloppy police work."

Sometimes the public is defrauded without even the pretense of good intentions. Zelnick tells about the Washington, D.C. contract set-aside program that wound up according 60 percent of new construction contracts to some very wealthy immigrants from Portugal (technically eligible for preference as "Hispanics") and the California contractor who qualified for preference on the ground that he is 1/64 Cherokee (and therefore eligible for preference as a Native American). He tells about the decision by state officials in Ohio to extend affirmative action preferences, in awarding state contracts, to Indians (from the Asian subcontinent) shortly after the newly

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### What are the facts?

**The Root of the Middle East Conflict.** Many observers of the Middle East scene seem to believe that the root of the Middle East conflict lies in the dispute between the Palestinians and the Israeli Jews; and that it could be resolved by Israel's yielding its heartland, Judea/Samaria (the "West Bank"), and the Gaza strip for the creation of a Palestinian state and by returning the Golan Heights to Syria. They overlook that the hatred of the Palestinian Arabs toward the Jews long predates Israel's control over the administered territories.

**The Menace of Islamic Fundamentalism.** The clamor for yielding these territories to the Arabs is the first step in the immutable Arab attempt to liquidate Israel altogether. Because certainly, Israel, with its fewer than 5 million inhabitants and less than 10,000 square miles of territory (smaller than Lake Michigan), cannot possibly be a threat to peace or a menace to the Arabs. And reducing the territory of Israel from 10,000 square miles to 7,000 square miles would not seem likely to bring peace one step closer. The main reason that real peace is so difficult to attain is the political and cultural context of the Middle East, which is dominated by the menace of Islamic fundamentalism. Israel's size is not of importance; it is *the very existence* of

Israel that is an intolerable offense to the fundamentalists, an unacceptable insult to Islam. The fundamentalist Moslems— Hamas, Hezbollah, Islamic Jihad, and all the others—do not aim at peace with Israel or the recovery of some territory. Their publicly declared aim is the destruction of the Jewish state. The PLO, Israel's "partner for peace", has not disavowed this; on the contrary, in his speeches to Palestinians and other Arab audiences, Arafat constantly repeats his calls for "jihad" (holy war) and "liberation."

**Real Peace Must be Global.** Another reason that

"Real peace...can only happen through complete change of mentality, policies and historical ambition in the Arab-Iranian block." real peace will be difficult to attain in the present cli-

mate is that any agreement that could be attained in this round of negotiations would be a non-global one. The most fervent enemies of Israel—Iran, Iraq, Libya and the Palestinian rejectionists—not only do not participate in the negotiations, but vehemently oppose them. Those Arab statesmen who have tried to come to terms with the Jewish state have invariably found a terrible end. King Abdullah of Transjordan was assassinated by the rejectionists, so was President Anwar Sadat of Egypt, and so was President Bashir Gemayel of Lebanon, all of whom envisioned peaceful cooperation and co-existence with Israel. One can only hope that President Mubarak of Egypt, King Hussein of Jordan, and Yassir Arafat himself will escape such fate.

In view of these realities, is real peace possible? Will Israel's yielding land and authority to the PLO bring it about? Islamic fundamentalism cannot tolerate a Jewish presence on *any part* of "Arab territory". One hopes that real peace—the Arabs' acceptance of a Jewish state and peaceful co-existence—will come eventually. But it cannot come about by Israel's yielding its strategic advantage to those who are still sworn to destroy it. It can only happen through a complete change of mentality, policies and historical ambition in the Arab-Iranian block, abandonment of fanatic fundamentalism, and change in governance from despotism to genuine democracy. And that may well take a very long time. In the meantime, Israel must keep up its guard and must not yield further strategic territory.

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elected governor had accepted almost \$300,000 in campaign contributions from an Asian-Indian organization.

**A**fter hearing enough of such stories—and there are many in Zelnick's wide-ranging and well-researched book—Americans may well conclude that politicians simply cannot be trusted to keep racial preferences within reasonable or responsible limits. Those who feel that way may take heart from Terry Eastland's uncompromising argument for "ending affirmative action." As long-time readers of this magazine know well, Eastland is a man who tells a straight story without pulling his punches. After reviewing the history of racial policy and some of the landmark court battles of the past, he focuses his attention on particular, individual victims, to emphasize the unfairness of it all. He tells us about Sharon Taxman, the white New Jersey school teacher fired to ensure, during a period of layoffs, that a black colleague could be retained for the sake of "diversity goals"; about Danny O'Connor, the white police officer repeatedly denied promotion while forty-three officers with lower scores on the departmental exam and with less seniority were bumped ahead of him in the name of affirmative action. Eastland offers a whole series of such stories (derived from actual court cases) to bolster his concluding appeal for "color-blind justice" to satisfy the most fundamental American principles. The Declaration of Independence itself, he insists, "implies the necessity of color-blind law because only that kind of law fully respects the equal rights of all persons, as individuals."

Eastland's principle may seem the inevitable and most straightforward response to the sort of hazy, utopian dreaming embraced by advocates like Barbara Bergmann—and the most logical response to the catalogue of chicanery and abuse reported by Bob Zelnick. Yet Eastland's favored approach has its own difficulties. Having elevated color-blind justice to a fundamental moral principle, he must reject the suggestion—advanced by Chicago Law Professor Richard Epstein and more recently by Dinesh D'Souza—that government should simply withdraw from

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trying to enforce any standard in private employment markets or private admissions. Eastland insists that it is wrong even for the small Korean grocery operator to favor fellow Koreans in his hiring practices. It may not be feasible for government to reach the smallest businesses, he acknowledges, but it remains wrong in principle even for small businessmen to discriminate in such ways in their hiring. So Eastland holds that government must not abandon any of the jurisdiction it now has under existing civil rights laws, but simply begin to enforce these laws in an even-handed way.

In practice, this would mean that disappointed white applicants would have as much claim to contest unfavorable hiring and admissions decisions as disappointed minority applicants. That, in turn, would mean that employers and educational institutions would face pressure to develop very precise and rigid decision standards (to show that all decisions were lacking in bias either way, based strictly on the numbers). If government continues to promise meaningful protection from bias or favoritism, it cannot let schools and employers fend off complaints with the breezy excuse that decision standards (for admission, hiring, promotion, etc.) are too complex and subjective for government to understand. As Eastland points out, schools and employers now deal with this problem by contriving to achieve the "correct" percentage (or at least, a politically acceptable level) of minority admits or minority hires, so the standards used

to judge non-minority candidates do not come under government scrutiny. One can use any system of selection (SAT scores combined with GPAs on a special formula, scores on aptitude tests combined with ratings on an interview, etc.) so long as it does not provoke the disapproval of anti-bias monitors by yielding the wrong numbers for minorities.

While the main emphasis of Eastland's book is on direct governmental preference schemes, the implication of his larger argument is that all of these varying, private selection systems should be brought under government scrutiny to ensure that they operate in a truly even-handed way. No wonder business and academe are not on Eastland's side. Reform in this area might well focus, at the outset, on establishing color-blind norms for government itself—a priority Eastland seems to favor and that now seems to be finding some favor in the courts. But by Eastland's own account, the principle involved cannot readily be confined to government, especially if government continues to enforce non-discrimination norms on the private sector on behalf of some groups.

**T**hus, as both Eastland and Zelnick report, business has been very reluctant to sign up for crusades against affirmative action. During the Reagan administration, conservative activists tried to rewrite the affirmative action hiring requirements imposed on federal contractors—only to have the White House shelve the idea under pressure from big business. It was a marginal group of outsiders who managed to gather the necessary backing to organize a popular referendum on the so-called California Civil Rights Initiative (a proposal to prohibit the state government from exercising racial, ethnic, or "gender" preference in its own hiring, in its contracting decisions, and in admissions to state institutions of higher education). Both Eastland and Zelnick report that business was quite reluctant to support this measure—and even more reluctant to be seen supporting it. Even Republican leaders have been equivocal on the issue.

The California initiative, which will go before state voters in November, seems



# Nipped in the Rosebud: The Price of Early Genius

**Orson Welles:**

**The Road to Xanadu**

Simon Callow

Viking / 640 pages / \$32.95

**Rosebud:**

**The Story of Orson Welles**

David Thomson

Alfred A. Knopf / 463 pages / \$30

REVIEWED BY

**Francis X. Rocca**

Orson Welles died alone, so nobody knows his dying words, but his last utterance in the public consciousness was: "We will sell no wine before its time." Of course Welles had done plenty of other things before their time. By age 10 he was quoting Voltaire and Oscar Wilde; by 26 he had made one of the greatest movies of all time on his first try. His decline, too, was premature. The year after *Citizen Kane* he made *The Magnificent Ambersons*, an arguably greater film—but in his remaining four decades he never did anything else in that league. By the 1970's he was best known for those wine commercials and the card tricks he performed on "The Merv Griffin Show."

Simon Callow, an accomplished actor and director in both theater and film, brings a colleague's sympathy and insight to his account of Welles's brilliant career. This first of two volumes carries Welles's story up to the premiere of *Kane*.

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Most of the action takes place not in Hollywood but on the legitimate stage, and at the other scenes of Welles's boyhood: Kenosha, Wisconsin, where he was born to a prosperous manufacturing family; Chicago, where his mother tried to groom him to fulfill her frustrated musical ambitions, then died when her son was nine; the capitals of Europe and Asia, where his alcoholic father took him on extravagant, desultory vacations; and Dublin, where as a trustfunded orphan of 16, Orson bluffed his way into the company of the Gate Theatre and made an instant hit playing a German Duke thirty-five years his senior.

Callow adjudges Welles the actor overly fond of "the big gesture" at the expense



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likely to pass and may provide some moral reinforcement to critics of affirmative action. By itself, however, it will not constrain any of the federal programs that continue to provide pressure toward racial or "gender" preference. Last year, President Clinton ordered a review of existing federal programs to make sure none were either abusive or unnecessary. After much delay, high level White House staffers produced a report assuring the president that no existing programs were either abusive or unjustified. There is no mechanism for forcing the federal government to organize a national voter referendum (and such a thing has never been attempted). It does not seem likely that conflicting appeals to the courts will yield a very clear resolution in the absence of legislative action. But a modest congressional proposal to reign in preference in federal contracting has already been shelved for this season by Republican leaders.

If President Clinton is right that "the era of big government is over," we are not likely to see any ground swell of new public demands for a systematic reallocation of opportunity and rewards in the American economy across racial lines of the sort urged by Barbara Bergmann. (Did I mention that Prof. Bergmann served on the Council of Economic Advisers in the heady 1960's, as the War on Poverty was being hatched?) Until someone figures out a way to square the circle, however, it does not seem likely that there will be an effective demand for extending government controls, in the way Eastland seems to contemplate, to add a whole vast and potentially quite litigious and assertive constituency—namely, white males—to the existing clients of the government's anti-discrimination machine.

But the debate is sure to continue. If nothing else, Zelnick's book remains quite persuasive on this point: government cannot be trusted to implement affirmative action policies without raising hackles. That such a book could be published by a top ABC news reporter—and endorsed by Ted Koppel on the back—also tells us something. Critics are no longer constrained by fear that it is "racist" to criticize affirmative action. It remains to be seen whether such criticism will prove more than a futile exercise. ❧