

# REVIEWS

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**The Ups and Downs of Affirmative Action Preferences**, by M. Ali Raza, A. Janell Anderson, and Glynn Custred. Westport, Conn.: Praeger, 1999, 207 pp., \$59.95 hardbound.

**The Color Bind: California's Battle to End Affirmative Action**, by Lydia Chavez. Los Angeles and Berkeley: University of California Press, 1998, 305 pp., \$40.00 hardbound and \$18.00 paperback.

*George R. La Noue*

The proper role of race, ethnicity, and gender in the allocation of societal rewards is one of the great controversies of our time. No university, employer, or government is immune from this issue. How the legal and ethical consensus finally evolves will have enormous influence on the stability and character of the American experiment.

At the center of the debate is the chameleon-like term "affirmative action." It originally required behaviors without regard to race, ethnicity, and gender and then, under manipulation by bureaucracies, courts, and politicians, began to require exactly the opposite.

Eventually affirmative action meant that, unless proportional representation by race existed in any organization, discrimination could be assumed to be the cause. Race conscious remedies were therefore necessary to assure the proper proportions. Advocates were blind to the reality that in many fields, for example, as different as sports, science, surgery, and symphony orchestras, proportional representation could only be created by discrimination against persons who otherwise would be chosen by merit principles.

The two books reviewed here tell from different perspectives the pivotal story of

the passage of California's Proposition 209 which confronted the affirmative action status quo. *The Ups and Downs of Affirmative Action Preferences* was written in part by Harry Glynn Custred, Jr., professor of anthropology at California State University, Hayward, who was, with Tom Wood, the coauthor and principal organizer for Prop 209. M. Ali Raza and A. Janell Anderson, professors in the business school at Cal State, Sacramento, cowrote Custred's book and had opposed race conscious policies on their campus. *The Color Bind* was written by Lydia Chavez, a professor of journalism at the University of California, Berkeley, and self-acknowledged beneficiary of the affirmative action system.

*The Ups and Downs of Affirmative Action Preferences* can be almost evenly divided into two parts. The first is a comprehensive review of the development of judicial and administrative law that created and then challenged the affirmative action regime. This review is accurate and fair minded, but, except for the most recent events, much of the story has been told elsewhere, for example by Hugh Davis Graham in his *The Civil Rights Era* (Oxford) or Herman Belz in his *Equality Transformed* (Transaction). Most readers will be drawn to the second part of the book which focuses on California policies and the motivations to launch Prop. 209.

By the 1990s, the affirmative action movement was triumphant everywhere in higher education. It no longer argued that it was curing discrimination in the academy. Instead it had morphed into the ideologies of multiculturalism and diversity where no need to assert, let alone prove, discrimination existed. Nevertheless the same programs, administered by the same bureaucracies benefitting the same groups, prevailed on campuses, even as their semantic labels kept changing. Search committees organized around

identity politics existed to screen out prospective administrators with unorthodox views about affirmative action, had a candidate been so foolish as to voice them. On the other hand, presidents—responsible for campus preference programs in Maryland and Texas that, federal appellate courts found, had violated students' fourteenth-amendment rights (*Podberesky* and *Hopwood*)—continued to champion these policies and moved on to new presidencies at Ohio State and Berkeley. An interlocking directorate of the higher education associations, big foundations, accrediting agencies, and government bureaucracies rewarded race conscious adherents.

In California, the end-game logic of the affirmative action movement in academic life could be most clearly seen. As described in *The Ups and Downs of Affirmative Action Preferences*, it had several components. In 1988, the California legislature required that the state's vast community college system workforce reflect proportionately the state's adult population by the year 2005. For new faculty hires, consideration was to be given to "projected California demographics." The law also required that "individuals, preferably minorities and women who were knowledgeable and responsible to the community college affirmative action goals be included in all selection committees." The law also created a Faculty and Staff Diversity Fund to implement the intention that 30 percent of all new hires be ethnic minorities. Tom Hayden and Willie Brown introduced far more onerous bills including among other things graduation quotas, but, with the support of the California Association of Scholars, governors George Deukmejian and Pete Wilson vetoed them. Affirmative action adherents then turned to the collective bargaining arena. In its 1991 contract, the California State

University system agreed to an arrangement whereby minority or women faculty in a department where that category was underrepresented (defined by comparing tenure track faculty with the composition of the CSU student body) could receive salary supplements of \$2000 to \$5000 for up to six years. CSU also had a Forgivable Loan Program for minority and women faculty wishing to pursue doctorates in fields where their groups were underrepresented. Individual campuses proposed even more aggressive policies setting aside faculty positions for members of underrepresented groups and altering traditional recruitment standards.

None of these assaults on the faculty merit principles would have probably aroused the general populace. But universities' practice of dividing students into underrepresented (blacks, Hispanics, and native Americans) and overrepresented groups (whites and Asians) and then awarding admissions, scholarships, and course access on that basis was widely visible and obnoxious.

In the face of the affirmative action juggernaut, members of the fledgling California Association of Scholars began to discuss using the famous California initiative and referendum process to amend the state constitution. The first task was to obtain agreement on language which resulted in the critical decision to avoid the ambiguous affirmative action phrase and instead to forbid preferences on the basis of race, ethnicity, and gender. The next problem was to gain political support and funding, a Herculean task in a state as large and complex as California. The authors approached the Democratic Leadership Council (DLC) which had expressed opposition to preferences, but ultimately the DLC backed away. Nor at this stage were the Republicans helpful. Consequently, it was decided not to try to

put what became Prop 209 on the 1994 ballot. But in that election, the political landscape was changed nationally by the big mid-term Republican Congressional victory and by the passage of Proposition 187 in California cutting off state aid to illegal aliens. Suddenly the political focus was placed on the nascent Prop 209 effort. Ward Connorly, regent of the University of California, prominent Republican, and a black businessman, was recruited to chair the effort. His convictions and connections proved to be absolutely essential to the passage of Prop 209.

At this point in the story, the authors of *The Ups and Downs of Affirmative Action Preferences* in effect turn the rest of the narrative over to Lydia Chavez, whose book *The Color Bind* they describe as “hostile to Proposition 209, but honest and revealing in its day-to-day reporting of both sides of the campaign.” It is not clear why this editorial decision was made. The Chavez book was already in print. Moreover, sometimes the leaders of a political movement cannot write comprehensively about those politics without compromising confidential information or future alliances. Hopefully, at some future point, the full story of the Prop 209 campaign will be told by its supporters.

In an admirable feat of reporting based on access to most of the participants and many of the original documents, Chavez chronicles in great detail the political campaign for and against Prop 209. Brought to the ballot in the presidential election year 1996 in the state with the largest bloc in the electoral college, it was inevitable that the proposition would become a key part of that election. Both national parties simultaneously saw the proposition as dangerous to embrace fully, but useful in mobilizing core constituencies. California Republicans were particularly important in creating the necessary funding for the

Pro campaign, while not surprisingly Democrats were the source of Anti funds. In the end, the Pro campaign spent about \$3.6 million, while the Anti war chest was about \$3.4 million. Meanwhile, the core Prop 209 supporters fervently wanted a nonpartisan movement.

As passions increased and the Pro vote, though still a majority, began to slip, the Anti vote resorted to extreme rhetoric in its ads. David Duke was invited to the state by the Anti forces to make his predictable bigoted remarks, and those statements were featured in an Anti TV commercial funded with \$100,000 by the Democratic National Committee. Using Duke’s picture and a background of a burning cross, the ad’s announcer intoned, “Proposition 209 would close education and job opportunities to women and minorities, close magnet schools, lock women out of government jobs, end equal opportunity.” Actress Candace Bergen made an ad stating, “If 209 passes, we could lose maternity benefits” and “cut funding for rape crisis centers.” Singer Bruce Springsteen’s ad declared “Proposition 209 will legalize discrimination against women and girls in jobs, in education, and in sports.” The Feminist Majority’s and NOW’s so-called stripper Anti 209 ad showed a woman being successively stripped by a man of her diploma, stethoscope, and lab coat, a police officer’s cap, and a hard hat, and then ending up in black lingerie being grabbed by a man’s hand. One might have thought that as a journalism professor, Chavez would have thought those ads went too far, but she wrote, “The Duke ad and the stripper ads were desperate tactics, but given the polls and the opposition’s lack of money, desperation was understandable.”

Chavez seems mainly concerned that voters were misled in the referendum, because polls showed that the majority was opposed to preferences, but not to “affir-

mative action." But the confusion here was not caused by the 209 authors who could not create ballot language that addressed every programmatic implication of ending preferences, even if one could have completely catalogued them in 1996. The confusion was caused by affirmative action advocates who often denied preferences were involved at all in these programs or who made no distinction between race neutral and race conscious programs. That there is popular support for overcoming disadvantage using race neutral means is a testament to our continuing search for social justice. As events have shown, the implementation of race neutral programs has been accelerated since 209 was passed.

Political referendums are controversial among political scientists who believe that they oversimplify issues and thwart the legislative process. But stating some great principles is simple, even if implementation is more complex. Prop 209 represented that sort of simple great principle—government should not treat people preferentially on the basis of race, ethnicity, or gender. After thirty years of semantic confusion by the affirmative action regime, it was unclear whether the people would any longer affirm that principle. As it turned out they did in California and Washington (Proposition 200) and elsewhere in polls where the questions has been clearly framed. The effects of the Prop 209 vote are still being played out in legislatures and courts, but the non-preference principle everywhere has the moral and legal high ground. For that we can thank those who had the courage and judgement to ask the people to affirm the simple great principle in Proposition 209.

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*Maryland Baltimore County. His *Academics in Court: The Consequences of Faculty Discrimination Litigation* was published by University of Michigan Press in 1987; glanou@UMBC2.UMBC.edu.*

**The Betrayal of Liberalism: How the Disciples of Freedom and Equality Helped Foster the Illiberal Politics of Coercion and Control**, ed. Hilton Kramer and Roger Kimball. Chicago: Ivan R. Dee Publishers, 1999, 248 pp., \$14.95 paperback.

*Irving Louis Horowitz*

Hilton Kramer and Roger Kimball are the two figures largely responsible for publishing the *New Criterion*—perhaps the finest periodical in American cultural life since the initial numbers of *Partisan Review*. Indeed, the recent fruits of their collaboration resemble nothing more than the heady writings that flowed like good wine during that more venerable publication's first decade. Such contributors as Roger Scruton, Robert Conquest, Jean Bethke Elshtain, and Robert Kagan suffer only slightly by comparison to Hannah Arendt, George Orwell, Lionel Trilling, and other fast-stepping cultural critics in the early *Partisan Review*. Their reflections, culled by Kramer and Kimball into *The Betrayal of Liberalism*, support my contention that the best of the 1990s measures up to the old criterion established in the 1930s.

Many anthologies are such random affairs that only the binding seems to hold the essays together. Not so for Kramer and Kimball's volume. Each of the closely reasoned, well-integrated essays merits care-

ful reading. If there is a villain commonly denounced by all the contributors, it is Jean-Jacques Rousseau. Scruton puts matters most succinctly when he declares that Rousseau's cardinal sin "is the assumption that we can jettison all institutional traditions and conventions and decide how to make them anew" (30). Scruton and Kimball hold up the presumption that history begins with the French revolution—or the Russian revolution, for that matter—to the most withering of attacks.

Scruton reminds us that *Pietas* is observed "not in a rejection of customs, institutions, and laws, but, on the contrary, in an underlying acceptance—a humble recognition that we are not the producers but the products of our world" (39). He extends the assault on Rousseau—and, by extension, on Marx and Mill—quite beyond the more reasonable perspective (to me) that human beings are both producers in and products of this world. Kimball takes a similar, if more reserved, path in his assault on Millian liberalism. Segueing from Rousseau to Mill, he accuses the English utilitarian of "moral arrogance." "The libertarian streak in *On Liberty* is little more than a prophylactic against the coerciveness that its assumption of virtuous rationality presupposes" (51).

Many of the remaining pieces are well intentioned, but, though they strike resounding blows, they fail to puncture fatally the vital organs of liberalism as the dominant persuasion of the twentieth century. Keith Windschuttle properly reminds us that, while imperialism is part of the record of the West, still the West has "long nurtured an intellectual tradition that has been opposed to imperialism and the conquest of others." Quite true. But we need now some detailed analysis of why and how British imperialism distinguished itself positively whilst French, Dutch, and Bel-

gian imperialisms are marked by their brutality to, and impoverishment of, local custom and culture. Hadley Arkes likewise makes a strong case that the founding fathers' sense of natural rights is far superior to the pragmatic Supreme Court in its diminished, shallow, and even corrupt decision-making that recognizes no sense of lawfulness apart from power itself (118). But since the latter is the common product of conservative as well as liberal judges, it is hard to appreciate how Arkes's observation contributes to the case against liberalism.

Robert Conquest, Jean Bethke Elshtain, and Robert Kagan wax eloquent in this anthology. Conquest notes myopic liberal responses to Soviet totalitarianism. Jean Bethke Elshtain critiques the liberal betrayal of the tradition of toleration in religious affairs and its reduction to a monistic assault on strongly held religious beliefs and persuasions. Robert Kagan's analysis of the distinction between the argument from national interest, often used as smoke by liberal politicians, and national identity, offers a vision of "armed liberalism" (188). But one senses that the issue in these essays is less the status of liberalism as an American ideology than liberalism as a watered down, slightly weakened opposition to tyranny.

The articles by John Silber, and to a lesser degree John O'Sullivan, are self-referential and reflective in nature. Silber is hard pressed, or better, pressing hard, to justify every decision he has made as Boston University's head. But he does so in the name of liberalism and against extremism of the left and the right. One is puzzled by how liberalism betrays democracy, or as seems more pertinent on campuses throughout America, how extremism demolished liberalism. I am not certain that the call for patience, avoiding the sacking of Rome in a day,

finds any purchase in the shifting ideological terrain of contemporary politics. At the same time, one can accept O'Sullivan's moral strictures—and indeed I do—without viewing them as encapsulating the revolt against liberalism.

My own "take" on the betrayal of liberalism is rather different. It is not rooted in conservative promises dating back to either the thirteenth or the nineteenth century—but rather in a decay of far more recent origin. The impulse of liberalism throughout the first half of the twentieth century, and then some, was to move toward an egalitarian model of social interaction. In every area of institutional life, from the economic substructure that saw the rise of industrial unionism, to the legal superstructure from which emerged a "strict interpretation" of all post-Civil War amendments having to do with racial and gender rights, one could discern a deep emphasis on an egalitarian model over and against the individualist and libertarian one. The series of decisions governing the rights of black Americans—from the 1947 desegregation of the armed forces to the 1964 civil rights measures, that is, the period from the Truman to the Johnson presidency—strongly restated American national priorities in terms of equity concerns. Indeed, the entire array of social science was mobilized toward such an end—and with telling effect as demonstrated by the *Brown v. Board of Education* decision of 1954 that overthrew the Court's *Plessy v. Ferguson* decision of 1891, not on the basis of legal precedent but on empirical evidence of the consequences of discrimination. Classrooms are far from "equal" in offering educational opportunity, unlike railroad seats in providing transportation for black and white people. The earlier separate but equal rulings gave

way to togetherness as the singular true expression of equity.

The final half of the century—in part under pressures from the Vietnam War fiasco and the urban riots of the same 1965-1975 period—saw insistence on victim status for everyone from ethnic minorities to the physically disabled. And this translated on campuses into the gigantic doctrinaire vision of "affirmative action." The massification of demand for mobility through higher education did more to destroy liberalism as a dominant force than all the complaints and outcries of conservative politicians and ideologues put together. The entire liberal edifice of fairness was shaken to its roots. Liberals themselves divided over justifiable claims and aims in disputes that spelled the end of the liberal consensus in America. The idea of social life as a horse race, a competition in which everyone starts at the same place and runs according to his ability, was replaced by a new approach to fairness based on a handicap theory. Everyone starts differently, so weights are assigned on numerical, statistical, or normative bases. In this way all members of society, or horses if one prefers, end the race in a dead heat. Any disproportionate outcome in the results of the race becomes evidence of inequity and provides reasons for charges that neoliberalism is malfunctioning and must immediately be repaired. But it takes a mighty statist force to bring about such a dead heat—a force that is anathema to the liberal conscience.

Only at the turn of the millennium has there been a revolt against affirmative-action notions of liberalism, and a return to an older model predicated on a fair chance and an honest race to a well-defined economic goal. At this moment, liberalism of the older variety, of the Trillings, Hofstadters, and Schlesingers, instead of being pummeled, should be

seen as simply a part of the broad sweep of American history. With the new consensus taking shape, there is room for the Jeffersonian liberals as well as the Madisonian conservatives, with their rooted doctrines of natural law and natural rights. Liberalism and conservatism can go back to differing on the appropriate rates of speed for implementing change, and move beyond an ideological chasm inappropriate for a post-Soviet world.

Several papers in *The Betrayal of Liberalism* seem to appreciate this struggle within the liberal ethos, no less than the long-standing conflict between liberal and conservative standards of political conduct.

This well-edited and well-written collection contains some outstanding papers on a complex topic central to our politics and culture. But until the grimy work of sharpening the distinctions of time, place, and doctrine are made, such material will be read only as a collective *cri de coeur* rather than a definitive anthology on a subject at once painful and fascinating.

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**The Society for Academic Freedom and Scholarship, the NAS's sister organization in Canada, released the following statement on 7 March 2000:**

The Society for Academic Freedom and Scholarship is gravely concerned about the threat to academic freedom and the merit principle that is implied by some recent remarks by Dean Robert Birgeneau of MIT. Dr. Birgeneau is president-designate of the University of Toronto and is due to take up office on July 1 of this year. The two remarks occurred on two separate visits by president-designate Birgeneau to Toronto when he met with UofT administrators.

One remark, reported in the *Toronto Star*, 9 January, was that he told UofT administrators that "if they did not share his views on diversity, they may as well step down." The other remark, reported in the *Star*, 8 February, not only appeared to repeat the threat, but extended its scope to include "anyone in a leadership position" who, Birgeneau was reported to have said, "can find something else to do". President-designate Birgeneau was reported to have stated in a later interview (*National Post*, 26 February) that he had been "misrepresented," but has not specifically stated in what respects these misrepresentations occurred.

Especially as there is a wide range of legitimate views on "diversity" and "equity," without further clarification on his part, Dr. Birgeneau's remarks are deeply disturbing. They at least suggest an intention on his part to run one of Canada's leading universities with a degree of imposed conformity that is incompatible with a genuine institution of higher education, as well as being inconsistent with the Canadian Association of University Teachers (CAUT) principles on academic freedom. Those CAUT principles explicitly include "freedom to criticize the university" and "freedom from institutional censorship."

SAFS therefore protests the serious threat to academic freedom implied by his remarks, and urges him either to withdraw them or to clarify how they are compatible with freedom from institutional censorship, a cornerstone of Canadian academic life.