

FEP campaign. He argues that (1) FEP was a historically plausible counterfactual, and (2) had FEP happened, group-oriented color-conscious affirmative action might never have emerged. If Congress had “provid[ed] for administrative enforcement . . . [t]here would have been a bona-fide regulatory agency on the scene, and policymakers might have focused on a different set of issues instead of becoming mired in bitter quarrels over racial quotas and group rights. Politics and partisanship would have surely remained part of the equation, but the disputes would have centered on questions of regulatory design” (p. 17). In thwarting FEP, conservatives ironically paved the way for policies that would appall later political and legal conservatives.

Chen’s arguments about how and why national FEP legislation looked promising but ultimately failed are evidence-based, carefully crafted, and very persuasive. However, there are problems with assigning such causal prominence to this failure. For example, enacting FEP would not have forestalled controversy over how to establish legal liability for discrimination—a term left undefined in Title VII—or over appropriate remedies. Disparate impact—an aggressive, effects-oriented strategy for proving discrimination—occasioned substantial backlash, with conservative Republicans, the Reagan Administration Justice Department, and some courts claiming it forced employers to resort to quota hiring. Indeed, Chen shows that the quota-bill charge surfaced as early as the 1940s, long before the political controversies over either disparate impact or affirmative action. On the one hand, Chen presents disparate impact as part of the story of compensatory affirmative action, but the two are legally distinct. On the other hand, to the extent that both disparate impact and affirmative action were part of a broader politics of effective enforcement, and to the extent that affirmative action was attacked because—just like disparate impact—affirmative action *did* enhance the effectiveness of anti-discrimination enforcement, passage of FEP might *not* have forestalled controversy over “racial quotas and group rights.”

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*Affirmative Action for the Future*. By James P. Sterba. Ithaca, NY, and London: Cornell University Press, 2009. 131 pp. \$49.95 cloth; \$17.95 paper.

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Conservative and libertarian advocates have done an excellent job framing the affirmative action debate. Preferences for racial minorities, they claim, are unfair and discriminatory. This

argument has persuaded and tapped into the sentiments of many Americans. Opponents of racial preferences have invoked it to successfully pass numerous state referenda banning the consideration of race and gender in public education and employment. Despite the U.S. Supreme Court's support for race-conscious admissions policies in *Grutter v. Bollinger* (2003), many current justices agree with these advocates' reasoning.

In *Affirmative Action for the Future*, James P. Sterba outlines moral, philosophical, and legal arguments in defense of affirmative action in higher education and the workplace. This slim volume both summarizes and responds to arguments in *Affirmative Action and Racial Preference* (2003), a debate between Sterba and Carl Cohen, another philosopher and an outspoken critic of racial preferences. Accessibly written and in dialogue with critics, this book will provide useful fodder for those who want to defend affirmative action. The author's goal is not to devise a catchy political slogan, but he tries to provide an accessible moral argument—presumably one that could be the basis of such a slogan. For better and for worse, however, the book falls short of providing a cogent defense comparable to opponents' influential and pithy framing.

For the betterment of readers' understanding of affirmative action, Sterba relies on what he describes in earlier books as a "peace-making" approach to philosophy. He seeks to identify the conceptual common ground shared by both sides. This is a welcome modification to popular discussions of affirmative action, which too often play out as polarized debates. For example, Sterba argues that neither side opposes all racial and gender preferences—just those preferences that are "illegitimate." (He also asserts that the Civil Rights Act of 1964 states as much.) While the book lacks precise examples of the preferences that opponents would consider legitimate, his stance on the importance of shared understandings is a valuable contribution.

For the better, Sterba differentiates among three types of affirmative action: outreach, remedial, and diversity. Scholarly debates over affirmative action would improve if we relied on such analytical distinctions; the various sides who weigh in loudest on this issue rarely specify—much less agree upon—what is even being debated (is it affirmative action? preferential treatment?). However, when affirmative action is distinguished into its different forms, no simple frame can justify it. At least Sterba does not propose one. The bulk of the book consists of three chapters defending each type and three chapters outlining (and mostly rebuking) critics' objections to each. Supporters likely will find some of Sterba's specific arguments compelling and convincing. For instance, as long as universities rely on standardized test scores

and preferences for legacies and athletes—practices that clearly discriminate against poor people and people of color—then diversity-based affirmative action is necessary. Interestingly, he also suggests that race should not be subject to strict scrutiny under law; it should be treated with the same level of scrutiny as sex. Other arguments are unconvincing, for the sake of defense; he seems to say that remedial affirmative action must rely on proportionate outcomes for women and minorities as a goal (p. 57).

As a sociologist, I grappled with how I could use this book in my own research or teaching. I was disappointed by the absence of empirical research on how organizations implement affirmative action or the effectiveness of the different types. Sterba references empirical studies, but his use of citations is sloppy—sometimes he cites secondary sources, sometimes he includes no citations.

Moreover, Sterba could provide helpful philosophical guidance to his counterparts in the social sciences concerning the legal rationale for diversity affirmative action, but the book never takes this on. With *Grutter*, the diversity rationale now clearly governs university and college admissions. One of the most striking aspects of the diversity rationale—and of much popular rhetoric on diversity—is the reliance on instrumental justifications, rather than moral appeals to fairness. Race-conscious policies are rationalized as desirable because they produce better learning, a competitive advantage, more effective leadership. This reasoning raises some serious philosophical dilemmas for supporters. By building on Justice Lewis Powell's opinion in *University of California Regents v. Bakke* (1978) (no doubt a strategic decision by the University of Michigan in *Gratz v. Bollinger* [2003] and *Grutter v. Bollinger* [2003]), have affirmative action's advocates all but abandoned moral arguments for this practice in higher education? How does one square this limitation of law with moral concerns about the unfairness of discrimination? And how does one reconcile the many ways in which ethnoracial heterogeneity actually hurts outcomes such as interracial trust and workgroup cohesion, as shown in research by Robert Putnam and others?

Related moral issues arise when one designates the recipients of diversity affirmative action. Sterba usefully suggests that different forms of affirmative action should have different targets. Understandably, both outreach and remedial efforts should focus on “qualified minority, women, and economically disadvantaged candidates” (p. 33), as groups that have systematically suffered discrimination. But why are people of color particularly valuable contributors to diversity? What is the response to critics' claims that intellectual differences enhance diversity?

This book brings some clarity to the affirmative action debate and provides some compelling arguments in its favor. It takes

affirmative action supporters a few steps further in the quest for a persuasive moral defense that challenges the widespread patterns of inequality in the United States while also adequately addressing the limitations of contemporary law and the deep concern for meritocracy professed by so many Americans when it comes to policies that try to reverse discriminatory patterns.

### Reference

Cohen, Carl, & James P. Sterba (2003) *Affirmative Action and Racial Preference: A Debate*. Oxford and New York: Oxford Univ. Press.

### Cases Cited

*Gratz v. Bollinger*, 539 U.S. 244 (2003).

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