residence. The staff-to-student ratio today is 1.5 to one. The students no longer work in the fields, or do other chores, because as one administrator said, "we can't afford to pay them." Are these children better off than McKenzie and his fellow students?

It is impossible to separate the story of McKenzie's personal triumph over adversity from the story of The Home's role as a "refuge and a source of inspiration." This book demonstrates that positive alternatives to the current child-welfare system do exist. How sad that a place that did so much good for so many people was ruined by social theorists. However, it is a blessing that Richard McKenzie has reopened the dialogue about orphanages and children. Let us hope that his positive message will influence the crafting of today's child-welfare policy. □

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Ending Affirmative Action: The Case for Colorblind Justice

by Terry Eastland

Basic Books • 1996 • 219 pages • $23.00

Reviewed by Steven Yates

This book is a tour de force. Terry Eastland looks at the history of civil rights in America and sees two incompatible visions of what a civil rights movement should accomplish. One favors colorblindness and race-neutrality; the other, color-consciousness and group-based preferences. The first might eventually enable us to solve our racial problems. The second has kept them inflamed now for over a quarter century.

Yet colorblind policy can only remove barriers; it cannot guarantee specific, quantifiable results. So to those who wanted such results, colorblindness was not enough, and the struggle for a colorblind legal system was quickly reversed in favor of color-consciousness which soon spread to include other groups. This meant continuing the practice of differential treatment, i.e., discrimination. The entire focus of affirmative action changed from efforts to remedy discrimination to quite different ones aimed at managing "diversity," i.e., hiring and promoting by group-identity, and ultimately, engineering a new social order. Multiculturalism, radical feminism, and other identity-ideologies have kept attention focused on the differences between groups, contrary to the intent of the prime movers of the civil rights movement.

Eastland deftly guides us through these changes, focusing on misguided decisions by both the executive and judicial branches of government. The first major turning point was the shift in emphasis from disparate *treatment* to a disparate *impact*. The disparate impact doctrine broadened the definition of *discrimination* to include not merely intentional actions against individuals but any hiring and contracting practices that resulted in politically unacceptable ratios. Quotas had actually been adopted as part of Richard Nixon's Philadelphia Plan. Soon thereafter, whites—especially white men—began to experience reverse discrimination.

The second juncture occurred in the late 1970s when the Supreme Court missed the opportunity to repudiate reverse discrimination and informal quotas. Rather than questioning whether government should be classifying people by race, it sought to define the circumstances when such classifications were warranted and did so very ambiguously. The net result was that preferences soon got out of control, particularly in the universities and in government.

In the late 1980s, we reached another turning point. Set-asides had become the norm in construction, and "cultural diversity" was becoming the official ideology of increasingly thought-controlled colleges and universities. The *Johnson v. Transportation Agency* decision in 1987 had allowed preferences to overcome "underrepresentation" without any necessary tie to past or present discrimination.

New cases started making their way to a somewhat different Supreme Court with Reagan appointees who tended to oppose racial engineering. By letting a lower court's 1989 decision stand in *J. R. Croson Co. v. City of Richmond,* and in *Wards Cove v. Atonio* that same year, the Court made efforts to rein in set-asides. Yet their defenders proved too strong, as these decisions were overturned by the so-called 1991 Civil Rights Act, which held onto the disparate impact doctrine. *Hopwood v. University of Texas School of Law* was another case which let a lower court's decision stand, but threw the legal status of affirmative action programs in higher education into doubt without resolving the issue. *Adarand Construction v. Peña* called for an application of "strict scrutiny" to racial classifications. This was a step in the right direction, if not the outright repudiation that was really needed. These cases have brought us nearer

to what—dare we hope?—is the beginning of the repudiation of preferential treatment.

There are important lessons to be learned from the legal trajectory of affirmative action. First and most obviously, government classification by group identity for *any* purpose is inviting trouble, since it provides a basis for legally acceptable discrimination. Another is that "temporary measures" translate into permanent entitlements. A third is familiar: social engineering is not possible, since most people resent top-down manipulations and will thwart them if they can. Terry Eastland's wide-ranging account includes more than I have been able to consider here, such as the relationship between affirmative action and immigration and the question of whether recent immigrants who cannot have suffered discrimination in America ought to be eligible for affirmative action as members of "underrepresented" groups.

The themes of this book are not new; what is newest here are up-to-date accounts of cases such as *Hopwood* and *Adarand,* and of actions such as the California Civil Rights Initiative. It is a commentary on our times that the same message needs to be sent out again and again. □

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This Land Is Our Land: How to End the War on Private Property

by Congressman Richard Pombo and Joseph Farah

St. Martin's Press • 1996 • 224 pages • $22.95

Reviewed by Raphael G. Kazmann

This timely book deals with an important subject: property rights. After two short introductory chapters that review the history of property rights and the place of property rights as described in the Constitution, Richard Pombo and Joseph Farah get down to business: How are property rights faring at present?

The authors enumerate the legislation that is already in place and use case histories to describe the deleterious impact on individuals. As a hydrologic engineer with 50 years of experience in the development of water resources, I was particularly interested in the Corps of Engineers and its connection with "wetlands." Ever since the virtual demise of the dam-building program in the 1980s, the Corps has been looking for another mission. This turns out to be "protection" of wetlands—even though there is no authoritative definition of what a wetland is. According to the General Accounting Office, changes in wetland definition have significantly expanded the area of land under the jurisdiction of the Corps, possibly doubling it to perhaps as much as 200 million acres, 40 percent of which is privately owned.

The violation of property rights by the Corps (and the EPA) is epitomized by the story of John Pozsgai of Morrisville, Pennsylvania, who bought a dump next to a small streambed. He removed tons of garbage, thousands of old tires and car parts, and replaced this eyesore with clean dirt. He was convicted of filling a wetlands without a permit. His sentence? A prison term of 33 months. There are many more such stories, all taken from the records and involving people who opposed the bureaucracy in the courts and in congressional hearings.

The entire book is devoted to showing how the bureaucracies have increased their areas of operations under the guise of "protecting the environment" from the legitimate operations of the owners of private property. In essence, environmental regulators claim that man is not a part of nature, a fundamentally flawed concept. People have been on the face of the earth for a very long time and have altered the original environment, developing mines, building roads, lakes, houses, and all sorts of buildings. People also plant trees, lawns, and crops, and prevent wild animals from endangering the lives of children. All of these legitimate activities depend on property rights and all are the target of the regulators and their "green" activist helpers.

This Land Is Our Land does a great service in bringing into one focus myriad examples of the attack on property rights—read, "property holders." We need more books like this one to provide information to people who come under attack by environmentalists, animal-rights advocates (they can discover endangered species faster than biologists can classify them), and assorted government bureaucracies. But most of all we need to demand that before a property owner is condemned for violating a regulation, the regulation itself has been subjected to cost-benefit analysis and that the scientific basis is not the "junk science" that is polluting our courts and legislatures. □

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