

**PLSC 234 / EP&E 389/ PLSC 827: The Politics, Law and Economics of Affirmative Action**  
**LAW 20538-01: Democracy and Distribution: The Politics, Law and Economics of Affirmative Action**

**Michael Graetz and Ian Shapiro**  
**Fall 2010**

Monday 3:30 to 5:20 pm, RKZ 102

Office Hours:

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This course is designed to address the question: under what conditions, if any, is affirmative action desirable? We will examine arguments for and against affirmative action that have been put forward in the courts, the philosophical literature, and in the political and economic arenas since the Jim Crow era in the United States (although there will be some comparative attention to affirmative action and Black Economic Empowerment policies in South Africa since 1994). Principal readings will be taken from such U.S. Supreme Court opinions as *Parents Involved in Community Schools v. Seattle School District No.1*, the Michigan affirmative action cases, and *Ricci v. DeStefano*; theoretical writings by John Rawls, Robert Nozick, Amartya Sen, and Douglas Rae; historical work by Michael J. Klarman; and political economic, and legal commentary by Boris Bittker, Lani Guinier, Mary and Thomas Edsall, and John David Skrentney. The main focus will be on affirmative action in education, employment, and political representation.

Law and graduate students will be expected to write a 20 to 25 page research paper over the course of the semester. A one to two page paper prospectus must be discussed with the instructors and submitted for approval by Monday, October 11<sup>th</sup>. The instructors will suggest additional readings once paper topics have been selected. Because this is a research-oriented seminar, it is not appropriate for Credit/D/Fail. Undergraduate students can either pursue this option, or write two literature reviews (of approximately 10 pages). The topics should be approved by the instructors.

Key:

L = On sale at Labyrinth Books, York Street. These books have also been put on reserve at Bass Library.

S= Posted on the server. (Classesv2 for Political Science and EP&E students, Inside for Law School students.)

### **Week 1 (September 6): Introduction**

Required:

- James Webb, "Diversity and the Myth of White Privilege," *The Wall Street Journal*, July 23, 2010. (S)
- Barack Obama, *The Audacity of Hope*, pp. 240-249. (S)
- National Organization For Women, "Talking about Affirmative Action." (<http://www.now.org/issues/affirm/talking.html>) (S)

### **Week 2 (September 13): The history of affirmative action**

Required:

- Michael J. Klarman, *Unfinished Businesses* (Oxford University Press, 2007). (L)

Recommended:

- Michael J. Klarman, *From Jim Crow to Civil Rights* (Oxford University Press, 2004). (L)
- Michael J. Klarman, "Brown and Lawrence (and Goodridge)," *Michigan Law Review*, Vol. 104, No. 3 (Dec., 2005), pp. 431-489. (S)
- Michael J. Klarman, "How Brown Changed Race Relations: The Backlash Thesis," *The Journal of American History*, Vol. 81, No. 1 (Jun., 1994), pp. 81-118. (S)
- Andrew Kull, *The Color-blind Constitution* (Harvard University Press, 1994). (L)
- Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (W.W. Norton & Company, 2006) (L)

### **Week 3 (September 20): The politics of affirmative action**

Required:

- John David Skrentny, *The Ironies of Affirmative Action: Politics, Culture and Justice in America* (The University of Chicago Press, 1996). (L)

Recommended:

- Jennifer L. Hochschild, "From Nominal to Ordinal: Reconceiving Racial and Ethnic Hierarchy in the United States" in *The Politics of Democratic Inclusion*, edited by Christina Wolbrecht and Rodney Hero (Temple University Press, 2005), 19-44.

### **Week 4 (September 27): Cases I**

Required:

- *Ricci v. DeStefano* (2009) (S)
- Mitchell Rice and Maurice Mongkuo, "Did Adarand Kill Minority Set-Asides?" *Public Administration Review* 58 (1998): 82-86. (S)

Recommended:

- Drew S. Days, "Fullilove" *The Yale Law Journal* 96 (1987): 453-485. (S)

- Jed Rubenfeld, "Affirmative Action" *The Yale Law Journal* 107 (1997-1998): 427-472. (S)
- Jed Rubenfeld, "The Anti-Antidiscrimination Agenda" *The Yale Law Journal* 111 (2001-2002): 1141-1178. (S)
- George R. Lanoue, "Split Visions: Minority Business Set-Asides", *Annals of the American Academy of Political and Social Science*, Affirmative Action Revisited 523 (1992): 104-116. (S)

#### **Week 5 (October 4): Cases II**

##### Required:

- Barbara Perry, *The Michigan Affirmative Action Cases* (University Press of Kansas, 2007), Chapters 2, 3, 5, 7 and 8. (L)
- *Parents Involved in Community Schools v. Seattle School District No.1* (2007) (S)

##### Recommended:

- Barbara Perry, *The Michigan Affirmative Action Cases* (University Press of Kansas, 2007), other chapters. (L)
- J. Harvie Wilkinson III, "The Seattle and Louisville School Cases: There is No Other Way" *Harvard Law Review* 121, issue 1 (Nov 2007): 158-183. (S)
- Gary Orfield et al., "Statement of American Social Scientists of Research on School Desegregation to the U.S. Supreme Court in *Parents v. Seattle School District and Meredith v. Jefferson County*" *Urban Review* 40, issue 1 (Mar 2008): 96-136. (S)
- Daniel I. Morales, "A Matter of Rhetoric: The Diversity Rationale in Political Context" *University of Wisconsin Law School, Legal Studies Research Paper Series*, Paper No. 1120. (S)
- Stephen L. Carter, *Reflections of an Affirmative Action Baby* (Basic Books, 1992). (S)

#### **Week 6 (October 11): Analytics I**

##### Required:

- Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), Chapter 4. (S)
- John Rawls, "Justice as Fairness: Political not Metaphysical" *Philosophy and Public Affairs*, 14 (Sum 1985): 223-251 (S)
- Amartya Sen, *Inequality Reexamined* (Harvard University Press, 1992), Chps. 1, 3 and 7. (S)

#### **Extra Session (October 11), 7:00-8:30pm, Room RKZ 5**

**Invited Guest:** Rogers Smith, Christopher H. Browne Distinguished Professor of Political Science, University of Pennsylvania

##### Required:

- Desmond S. King and Rogers M. Smith, *Still the House Divided: Race and Politics in Obama's America*, Chapters 4 and 9.