

Macalester College
Department of Sociology
SOCI230.01
Affirmative Action Policy

Spring 2011
MWF 2:20-3:20
Carnegie Hall, Room 208

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Synopsis

The course provides an introduction to US affirmative action policies in education and employment. The first section surveys the historical development of affirmative action in public schools and universities, evaluates alternative approaches to fostering diversity in higher education, and examines the most recent Supreme Court rulings on affirmative action in college admissions. The second major focus of the course is the origins and evolution of affirmative action in employment. This latter section provides an overview of the dynamics of racial and gender discrimination in workplaces and how affirmative action policies have endeavored to institutionalize equality of opportunity in labor markets.

Required Texts Available for Purchase

Reskin, Barbara F. 1998. *The Realities of Affirmative Action in Employment*. Washington, DC: American Sociological Association.

Wilkinson, J. Harvie. 1979. *From Brown to Bakke: The Supreme Court and School Integration, 1954 – 1978*. New York: Oxford University Press.

Assignments/Grading

Class attendance and participation count for 20% of your grade.

Six short assignments (5 pages) represent 60% of your grade. These essays require that you answer questions on the readings for weeks 2, 3, 4, 8, 9, and 10. Each short assignment equals 10% of your final grade. Asterisks in the syllabi remind you of the weeks for which assignments are due.

One term paper, due on the last day of class, accounts for the remaining 20% of your grade. This paper should not exceed 15 pages. Your choice of topic will be the subject of your class presentation in the final weeks of the course.

Readings and Assignments

I. Introduction

Week 1.

January 24, 26, 28

Wilkinson, J. Harvie. 1979. *From Brown to Bakke: The Supreme Court and School Integration, 1954 – 1978*. New York: Oxford University Press. Pp. 3 – 77.

II. Affirmative Action in Education

*Week 2. Elementary and Secondary Schooling

January 31, February 2, 4

Wilkinson, J. Harvie. 1979. *From Brown to Bakke: The Supreme Court and School Integration, 1954 – 1978*. New York: Oxford University Press. Pp. 78 – 249.

The Supreme Court's opinion in *Brown v Board of Education* held that “separate” was inherently “unequal” and demonstrated great faith in the social and academic benefits of racial integration in public schools. The Court anticipated that racially unified classrooms would diminish the educational handicaps of blacks associated with prior segregation, and further, work to dissolve racism in favor of a new era of interracial social solidarity in the US. To what extent did the chosen means for achieving school desegregation and the observed progress on integrating schools betray these hopes?

Southern school integration passed through five stages: absolute defiance, token compliance, modest integration, massive integration, and finally, resegregation. Why did lodging responsibility for integration with local school boards and lower federal courts produce only token compliance with *Brown II* in the late 1950s and early 1960s? Why were the 1964 Civil Rights Act and HEW guidelines so important in moving the South from token compliance to modest integration? How did the HEW guidelines prefigure the massive integration that the federal courts would later attempt in the *Jefferson*, *Green*, and *Montgomery* cases of the late 1960s?

The desegregation of residentially integrated, rural Southern school districts was largely effective. The challenge of integrating residentially segregated, urban school districts proved much more daunting. In *Swann v Charlotte-Mecklenberg Board of Education* the Supreme Court endorsed busing as the principal solution to the problem of racial segregation in urban schools. Nevertheless, the Court resorted to a “violation-remedy” framework in *Swann* for settling future litigation that paved the way for the resegregation of the Southern school districts and largely absolved Northern and

Western school districts of legal obligations to integrate, as evidenced in the *Keyes* and *Milliken* cases. Explain why *Swann* marked the end of vigorous enforcement of school integration. Begin with a brief overview of the violation-remedy framework and how the Supreme Court applied this standard.

***Week 3. Higher Education**

February 7, 9, 11

Wilkinson, *From Brown to Bakke*, pp. 253 – 306.

Justice Powell's opinion in *University of California v Bakke* endeavored to reconcile two compelling and competing principles -- merit and representativeness. Explain.

Justice Powell dispensed with compensatory justice for victims of societal discrimination as a rationale for affirmative action in college and university admissions. Powell chose the advancement of diversity as the legal justification for AA in higher education. Was this decision appropriate? In your answer discuss the relative strengths and weaknesses of the compensatory and diversity models of AA.

Although forbidding *de jure* racial quotas in university admissions, how did Powell's opinion likely permit *de facto* quotas where the "line between prior numerical reliance and the individualized, case by case, review urged by Justice Powell is so fine as to make future litigation a certainty" (Wilkinson 1979, 305)? Consider the issue of racial minority admissions thresholds in your answer. How does the goal of attaining a critical mass of minority representation in student bodies imply *de facto* quotas?

***Week 4. Alternatives to Affirmative Action in Higher Education**

February 14, 16, 18

Frankenberg, Erica and Chungmei Lee. 2002. *Race in American Public Schools: Rapidly Resegregating School Districts*. Cambridge, MA: The Civil Rights Project at Harvard University.

US Commission on Civil Rights. Office for Civil Rights Evaluation. 2002. *Beyond Percentage Plans: The Challenge of Equal Opportunity in Higher Education*. Washington, DC: US Commission on Civil Rights.

Carnevale, Anthony P. and Stephen J. Rose. 2003. *Socioeconomic Status, Race, Ethnicity, and Selective College Admissions*. New York, NY: The Century Foundation.

Three states have pioneered large-scale experiments in race-neutral alternatives to affirmative action in higher education: California, Florida, and Texas. The US

Commission of Civil Rights evaluates their progress in their report, *Beyond Percentage Plans*. Compare and contrast these states' experience with percentage plans in terms of minority access to undergraduate and professional schools in each state university system. Consider the representation of African-American, Hispanic, and Asian-American students in your summation. Are these race-neutral admissions policies viable replacements for affirmative action in your estimation?

Beyond Percentage Plans concludes with a discussion of two topics bearing on the nation's commitment to equality of opportunity in higher education: the enduring use of standardized testing in college admission policies and the rising cost of tuition in the midst of diminishing financial aid for low-income students.

Carnevale and Rose discuss the importance of these factors in seeking to estimate the effects of implementing class-based affirmative action in higher education. From the standpoint of a college admissions officer who would be familiar with their data, why are SAT scores useful indicators of future academic promise? (In your answer, consider very carefully the data presented in tables 3.2, 3.3, and 3.4 of their report). In terms of college graduation rates, pursuit of graduate study, and post-college incomes, what importance can we attribute to attending a very competitive college as opposed to pre-college factors such as SAT scores, high school class rank, etc.?

Carnevale and Rose simulate the results of adopting 5 different methods for admitting students to highly selective colleges: highest grades and test scores, lottery with minimum qualifications, class rank, class rank with minimum academic qualifications, academic qualifications with SES affirmative action. Which plans best maintain racial diversity in college admissions among these five alternatives? Which plans best improve socioeconomic diversity in college admissions? Is it possible in their estimation to use SES affirmative action as a race-neutral alternative to racial and ethnic affirmative action?

Week 5. Affirmative Action In Education, Redux

February 21, 23, 25

Diversity in Higher Education Survives Strict Scrutiny: The Michigan Cases

Civil Rights Project at Harvard University. 2002. *Overview of Constitutional Requirements in Race-Conscious Affirmative Action Policies in Education*. Cambridge, MA: The Civil Rights Project at Harvard University.

Joint Statement of Constitutional Law Scholars. 2003. *Reaffirming Diversity: A Legal Analysis of the University of Michigan Affirmative Action Cases*. Cambridge, MA: The Civil Rights Project at Harvard University.

Questions for discussion:

In *Gratz* and *Grutter*, the most recent Supreme Court cases concerning affirmative action in higher education, the Court employed a more refined, stringent standard of review -- strict scrutiny -- as articulated in the *Adarand* case (1995). In light of the Court's opinion in the University of Michigan cases, why is the diversity rationale for affirmative action in higher education on much more solid ground than when Justice Powell offered his pivotal opinion in *Bakke*? In what ways does the *Gratz* opinion also prolong legal ambiguities about the status of point systems in college admissions, admission goals to achieve critical masses of minority students, and race-conscious recruitment, financial aid, and academic support programs?

Suggestions for further reading:

The Outcomes of School Desegregation

Clotfelter, Charles. 2004. *After Brown: The Rise and Retreat of School Desegregation*. Princeton, NJ: Princeton University Press. Pp. 44-99, 126-147.

The Ongoing Controversy over Standardized Testing

Zwick, Rebecca. 2002. *Fair Game? The Use of Standardized Admissions Tests in Higher Education*. New York: Routledge. Pp. 79-142.

Affirmative Action at Elite Colleges and Universities

Stevens, Mitchell L. 2007. *Creating a Class: College Admissions and the Creation of Elites*. Cambridge, MA: Harvard University Press. Pp. 5-51, 140-183, 242-264.

Part III. Affirmative Action in Employment

Week 6. The Origins of Racial and Gender Discrimination in Labor Markets

February 28, March 2, 4

Parkin, Frank. 1978. *Marxism and Class Theory: A Bourgeois Critique*. New York: Columbia University Press. Pp. 44 – 116.

Questions for discussion:

Compare and contrast the two forms of exclusion identified by Parkin. What is the common political attribute of property and credentialism that unites these two forms of exclusionary closure? What distinguishes them from one and the other? Why do the social and economic boundaries between those who practice exclusion through property

and credentialism tend to blur in modern societies? How are these forms of exclusion legitimated and what implication does this have for these dominant groups in their attempt to pass on their privileged status to their descendants?

Parkin identifies usurpation with two distinctive groups: organized labor, on the one hand; and ethnic, racial and gender groups, on the other. Why does usurpation generally stand in an ‘uncomfortable relationship to the legal order?’ How do the ends and means of usurpation nonetheless differ between unions and disadvantaged ethnic, racial and gender groups?

Members of subordinate groups may simultaneously resort to the practice of usurpation *and* exclusion. This is frequently true of industrial unionism. Who are the targets of the exclusionary strategies of organized labor? In particular, what common political attributes do women and ethnic and racial minorities share that makes them objects of exclusion? Dual closure is not only evident among industrial workers. The semi-professions that make up the larger share of white-collar work also resort to usurpation and exclusion. What distinguishes the semi-professions (heteronomous) from the free professions (autonomous) that cause the former to resort to trade unionism?

Week 7. The Origins of Discrimination in Hiring and Promotion in Organizations

March 7, 9, 11

Weber, Max. [1922] 1998. “Bureaucracy.” Pp. 214-32 in *Social and Political Theory: Classical Readings*. Edited by Michael S. Kimmel and Charles Stephen. Boston: Allyn & Bacon.

Perrow, Charles. 1982. *Complex Organizations: A Critical Essay*. New York: Random House. pp. 1-23.

Questions for discussion:

Weber saw bureaucracy as extremely *efficient* relative to other types of administration and domination that preceded it in human history. One of the principal sources of bureaucratic efficiency that Weber identified was the recruitment of individuals into offices on the basis of universalistic criteria, namely, competence: the possession of technical skills relevant to organizational tasks. Why does recruitment and promotion in bureaucracies never fully achieve this ideal? Another key source of bureaucratic efficiency follows the separation of extra-organizational, or private, interests of officeholders from organizational purposes. Again, why is this ideal never fully achieved?

Midterm Break, March 12-20

***Week 8. The Beginnings of Affirmative Action in Employment**

March 21, 23, 25

Skrentny, John David. 1996. *The Ironies of Affirmative Action: Politics, Culture, and Justice in America*. Chicago: University of Chicago Press. Pp. 1- 8, 67 - 144.

Skrentny asserts that the race riots that swept across the US in the 1960s were a major impetus to conceptualizing and implementing affirmative action programs. Why was the other possible response to the rioting -- namely, repression – ruled out in favor affirmative action?

“ The history of the administration of equal employment opportunity is the history of the dominance of the color-blind model and its continual subversion by the logic of administrative pragmatism” (Skrentny1996, 113). Compare and contrast the basic principles and practices associated with color-blind and the race-conscious models of employment equity. From the standpoint of government administrative agencies responsible for equal employment opportunity, why is the race-conscious model eminently more preferable than the color-blind model for reasons of administrative pragmatism?

***Week 9. The Consolidation and Refinement of Affirmative Action Policies**

March 28, 30, April 1

Shaeffer, Ruth Gilbert. 1980. *Nondiscrimination in Employment and Beyond*. New York: The Conference Board Inc.

Spann, Girardeau A. 2000. *The Law of Affirmative Action: Twenty-Five Years of Supreme Court Decisions on Race and Remedies*. New York: New York University Press. Pp. 10 - 84, 161 – 179.

Shaeffer reviews the advances of equal employment opportunity enforcement in the 1970s (Chapter 3). In 1972, Congress expanded the scope of Title VII to apply to all public and private employers and vested the Equal Employment Opportunity Commission with powers to bring suit against private employers to enforce Title VII.

Describe the basic enforcement process of the EEOC, in particular, how the agency processes charges of discrimination from individual complainants and how the EEOC decides whether to bring suit against an employer. Under the *Uniform Guidelines on Employee Selection Procedures*, how does the EEOC determine if an employer’s hiring procedures have an *adverse effect* on protected groups, potentially triggering a review or lawsuit?

The no quota exception in Title VII (see below) initially confounded employers seeking clear guidance from the courts and government administrators on how to institutionalize race- and gender- conscious employment practices without having their employment records becoming an evidentiary basis for discrimination lawsuits from protected groups and reverse discrimination lawsuits from non-protected groups simultaneously. How did the Supreme Court opinion in *Steelworkers v Weber* allay employers' fears of risking lawsuits for giving temporary preferences to members of protected groups?

The No Quota Exception

Civil Rights Act of 1964, Title VII, Equal Employment Opportunity, Sec. 703 (j):

Nothing contained in this title shall be interpreted to require any employer . . . subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by an employer . . . in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.”

Spann surveys the history of Supreme Court opinions detailing the legalities of permissible affirmative action in the 1970s, 1980s, and 1990s, “an extended period of doctrinal instability and confusion” (Spann 2000, 11). In the 1970s and 1980s the Supreme Court gave broad latitude to federal and state governments and private employers subject to Title VII to institutionalize affirmative action plans. The Court variously authorized the use of temporary racial and gender preferences (*Bakke*, *Johnson*), goals/quotas (*Weber*, *Sheet Metal Workers*, *Firefighters*, *Paradise*, *Johnson*), and set-asides (*Fullivove*). The Court granted these allowances with the provision that affirmative action plans were calibrated to the representation of women and minorities in relevant labor pools (*Wygant*, *Paradise*) and did not override bona fide seniority systems (*Stotts*, *Wygant*).

These plurality opinions did not identify a common standard of review for affirmative action cases, but the Court did eventually move toward one in the *Croson* and *Adarand* majority opinions. Under the strict scrutiny standard, when are preferences, goals, quotas, and set-asides alternatively permissible? In your answer, describe the “compelling state interest” and “narrow tailoring” doctrines applied in each case. In your estimation, does the strict scrutiny standard represent a fundamental break with precedent, or, a rhetorical rather than substantive change in the high court’s approach to affirmative action?

***Week 10. The Scope and Effectiveness of Affirmative Action**

April 4, 6, 8

Reskin, Barbara F. 1998. *The Realities of Affirmative Action in Employment*. Washington, DC: American Sociological Association.

Kelly, Erin and Frank Dobbin. 2001. "How Affirmative Action Became Diversity Management." Pp. 87 – 117 in *Color Lines: Affirmative Action, Immigration, and Civil Rights Options for America*. Edited by John David Skrentny. Chicago: University of Chicago Press.

Reskin presents findings of enduring employment discrimination and of the effectiveness of affirmative action. What do you consider the most convincing evidence that gender and/or racial discrimination is still prevalent in US labor markets? Which do you find is the least convincing? Explain briefly your reasoning for each choice. Measuring the impact of affirmative action is a difficult task. One method is to compare the fate of minorities and women in firms that receive government contracts falling under the supervision of the OFFCP with those that do not. Do these comparisons suggest that affirmative action is significantly more effective than basic equal employment opportunity practices in improving the representation of minorities and women in the labor force? How may these comparisons simultaneously over- and under- estimate the impact of affirmative action?

Kelly and Dobbin survey the prevalence of voluntary, equal opportunity and affirmative action plans among large, private employers in the 1990s. Even as legislators and the courts vacillate, an influential constituency for EEO/AA programs has emerged among human resources professionals and departments in the corporate sector. Recall your readings of Max Weber's writing on bureaucracy and Charles Perrow's elaborations of Weber's discussion of complex organizations. To what extent do corporate EEO/AA policies, or, diversity management, represent the ineluctable rationalization of large-scale organizations as Weber imagined it, and as such, suggest that these policies will endure with or without government favor? In your estimation, under what circumstances would voluntary EEO/AA programs likely to suffer de-institutionalization?

Suggestion for further reading:

Dobbin, Frank. 2008. *Inventing Equal Opportunity*. Princeton, NJ: Princeton University Press. Pp. 75-132, 190-233.

Week 11. Racial and Gender Inequalities at Century's End

April 11, 13, 15

US Census Bureau. 2010. *Income and Poverty in the United States: 2009*. Washington, DC: Government Printing Office. Select tables.

US Census Bureau. 2003. *Poverty in the United States: 2002*. Washington, DC: Government Printing Office. Select tables.

Charles, Camille Zubrinsky. 2003. "Dynamics of Racial Residential Segregation." *Annual Review of Sociology* 29: 167 – 207.

Wilson, William Julius. 1996. *When Work Disappears: The World of the New Urban Poor*. New York: Vintage Books. Pp. 111 – 146, 183 – 206.

Week 12. Class Presentations

April 18, 20, 22

Week 13. Class Presentations

April 25, 27, 29

Week 14. Summations and Assessments

May 2

Spring Term Ends: Last day to submit course work Friday, May 5th