Hastings Constitutional Law Quarterly

Volume 30
Number 4 *Summer 2003*

Article 1

1-1-2003

Foreword

Hastings Constitutional Law Quaterly

Special Issue:

Affirmative Action in the 21st Century: Reflections on *Grutter v. Bollinger* and *Gratz v. Bollinger*

The Hastings Constitutional Law Quarterly is pleased to present the first of two issues devoted to a most challenging issue: affirmative action. These companion issues, Volume 30, number four, and Volume 31, number one, attempt to reflect the breadth of opinions, implications, and consequences arising from the Supreme Court's recent pronouncements on affirmative action in higher education – *Grutter v. Bollinger*[1] and *Gratz v. Bollinger*.[2]

This is not the first time the Quarterly has touched upon affirmative action. In 1978, the Supreme Court decided *Regents of the University of California v. Bakke*,[3] a case that framed the next two and a half decades of social, legal, and political debates over the place of affirmative action in American society. The Quarterly was there twenty-five years ago to capture the variety of legal opinions concerning affirmative action in higher education. In 1976, Larry M. Lavinksy, then Chairman of the National Civil Rights Committee of the Anti-Defamation League of the B'Nai B'rith, bemoaned "special admissions programs like those involved in *Bakke* [because] they utilize racial quotas and preference, the traditional engines of discrimination, as the vehicle for social progress."[4] In 1978, Professor Bernard Schwartz noted that in *Bakke*, the Court "gained for the country and its Constitution a significant breathing space, in which political institutions and public opinion can try further to cope with

1. 539 U.S. 306 (2003).

2. 539 U.S. 244 (2003).

3. 438 U.S. 265 (1968).

4. Larry M. Lavinsky, *A Moment of Truth on Racially Based Admissions*, 3 HAST. CONST. L.Q. 879, 889 (1976).

the problem" of race-based admissions programs.[5] In 1979, Professor Julius Stone predicted that the risks of a multi-factorial admission approach, Justice Powell's now-famous "race as a plus factor" approach, would have "the redeeming virtues of inviting or even demanding a period of enlightened and imaginative experimentation" in race-conscious admission policies.[6]

Given the Quarterly's past involvement in the legal discourse on affirmative action, the Editors decided to continue to capture the various cascades, rivers, tributaries, and streams of legal opinion and predictions flowing from the Court's first pronouncement on affirmative action in the twenty-five years since *Bakke*. These two companion issues feature comments and articles from some of the most noted constitutional scholars of our time.

In this first issue, Sarah Zearfoss, Assistant Dean and Director of Admissions at the University of Michigan Law School, provides a unique firsthand account of the Law School's admissions decisions. Professor Ronald Turner of the University of Houston Law Center explores the arguments against affirmative action in the social and legal landscape. David Levine, Professor of Law at The University of California Hastings College of the Law, reflects on the lessons the San Francisco public school's attempts to use race-neutral assignment plans in its schools may teach other school districts in the wake of *Grutter* and *Gratz*. Finally, Vikram David Amar, Professor of Law at The University of California Hastings College of the Law, and Evan Caminker, Professor of Law and Dean of the University of Michigan Law School, comment on the meaning and jurisprudential implications of Justice O'Connor's "sunset provision" in *Grutter*.

As law students ourselves, the debate over affirmative action has figured prominently in our experiences in college and graduate school. We can take to heart Justice O'Connor's observation that, "given the important purpose of public education and the expansive freedoms of speech and thought associated with the university environment, universities occupy a special niche in our constitutional tradition."[7] It is our hope to capitalize on our position as students by collecting these comments in order to continue the Quarterly's tradition of producing an innovative and scholarly review of current

5. Bernard Schwartz, *Foreward – The Supreme Court, October 1977 Term*, 6 HAST. CONST. L.Q. 1, 6 (1978).

6. Julius Stone, *Equal Protection in Special Admissions Programs: Forward from* Bakke, 6 HAST. CONST. L.Q. 719, 750 (1979).

7. *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003).

constitutional issues.

****