UNIVERZITA KARLOVA V PRAZE
Fakulta sociálních věd
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PROTOKOL O HODNOCENÍ MAGISTERSKÉ PRÁCE
(Posudek vedoucího)

Práci předložil(a) student(ka): Tomáš Martinec
Název práce: The Issue of Race in the Jurisprudence of the Supreme Court of the United States: The Evolving Interpretation of the Equal Protection Clause

Vedoucí: Jana Sehnálková

1. OBSAH A CÍL PRÁCE (stručná informace o práci, formulace cíle):
In his thesis, Tomáš Martinec takes a close look at the Supreme Court´s approach to the question of race and equal protection with respect to policies of affirmative action in universities´ admissions. Through analysis of major landmark cases, such as Brown v. Topeka School Board of Education, Regents of University of California v. Bakke, Grutter v. Bollinger, Gratz v. Bollinger and others, his goal is to show the „conceptual change in the overal philosophical approach of the Supreme Court Justices to the questions of justice and equality" (p. 2). The author makes a distinction between two approaches of Supreme Court Justices: the positive-law approach and the natural-law approach. The author points out that with respect to race in decisions of the Supreme Court on affirmative action policies, the Court has implemented inconsistent approach. He also concludes on p. 45 that „the positive-law approach is regaining its position on the Court, and thus threaten (sic) the future of affirmative action".

2. VĚCNÉ ZPRACOVÁNÍ (náročnost, tvůrčí přístup, argumentace, logická struktura, teoretické a metodologické ukotvení, práce s prameny a literaturou, vhodnost příloh apod.):
The policy of affirmative action is a controversial and intensely discussed topic. This thesis represents mostly a historical description and analysis of the Supreme Court´s decisions and opinions in cases related to the issues of race and affirmative action. The thesis is written in chronological order.
The goal of the thesis could be more pronounced - the reader is left to wonder about the research question of the work. The section dedicated to the overview of used literature and sources could be longer, should offer critical assessment of the sources, and should be accompanies by bibliographic citations.
On p. 3, the author refers to "radical reconstruction" - he probably means radical Reconstruction, as a post-Civil War period. On p. 9, he refers to "doctrines" and "allowed doctrines", but it is not clear what the author means.
On p. 5, the author claims that the Supreme Court tends to follow the prevailing opinion in the politically significant part of the society. This claim seems rather vague as it is not clear what a "politically significant part of the society" is. On the same page, the author uses the example of American accounting standards and principle-based internationally accounting standards. This comparison does not really help in understanding the author's argument, since very few people know how these standards work.
By indicating that Brown was a "political decision… reached by political bargaining of the Justices", it is not clear who was doing the bargaining. The justices among themselves? Was any politician lobbying the SCOTUS? Why were the justices willing to abandon legal approach and decided to be guided by politics, as the author claims without providing more detail?

On p. 19, the author claims that Declaration of Independence is one of the fundamental laws of the land, which is not correct. The Declaration provides an ideological framework, it establishes an idea for independent United States, but it is the Constitution that is the supreme law of the land.
On p. 20, the author writes that segregation could not be contested on the grounds of simple construction of the wording of the Fourteenth Amendment or the original intend behind it. It is however not clear why it was so - to many, the Fourteenth Amendment is very straight-forward just like the original intent behind, which can be read from the debates in Congress during the drafting and ratification debates on the amendment.
On p. 32, the author concludes that in the Michigan cases, "the Court… once again proved that it tends to decide in accordance with the predominant view in the society at large", however, the "predominant view", in author's interpretation, is an opinion poll. The causality of this connection would merit some more evidence.
On p. 38, the author could spend more time explaining the logic behind the challenge to the constitutional amendment. His description that "the amendment singled out the use of racial preferences as the only question that was no longer at discretion of the university itself, but may be only altered by another amendment" is not very clear.
Throughout the text, the author occasionally refers to cases that are not explained (e.g. on p. 40, he refers to Carolene Products or Washington v. Seattle School District no. 1) and the reader is again left to wonder what what the reference means.

3. FORMÁLNÍ A JAZYKOVÉ ZPRACOVÁNÍ (jazykový projev, správnost citace a odkazů na literaturu, grafická úprava, formální náležitosti práce apod.):

The text is generally well-written, however, it contains a number of typos and grammar mistakes e.g. "willing to upheld segregation" on p. 18., "a few case-law" on p. 19, on p. 20, the author describes slavery as an "institute" while he probably means "institution", on p. 20, "it could not be contested neither… nor", on p. 21 "rely to it", "it did not expressly referred", on p. 25 "in a particular applicants file", on p. 26 "it produced exactly the same outcomes - author probably meant to say "exactly those outcomes", on p. 27 "theirs admissions programs", on p. 29 "that is understand", "top tem percent plan" on p. 33 etc. All of these could have been removed through a bit of redacting work.

4. STRUČNÝ KOMENTÁŘ HODNOTITELE (celkový dojem z bakalářské práce, silné a slabé stránky, originalita myšlenek, naplnění cíle apod.):

The author selected an interesting and at the same time controversial topic that has received a lot of attention from academia. The thesis offers a good overview of the Supreme Court´s approach towards affirmative action. However, for better understanding of his work, the author should do a better job in explaining the difference between the natural law approach and the positive law approach. His claims, such as "a natural-law defense of a measure (Grutter) (is) not entirely admissible under strict positive-law approach", would then be clearer. The second chapter provides a summary of the general trends in Supreme Court´s approach towards affirmative action policies in school admissions. It is however disproportionately short (2 pgs.) and in fact could be incorporated into the conclusion.

5. OTÁZKY A PŘIPOMÍNKY DOPORUČENÉ K BLIŽŠÍMU VYSVĚTLENÍ PŘI OBHAJOBĚ (jedna až tři):

1. Why did universities embrace affirmative action in first place? What made them implement the policy?
2. On what basis did Fisher claim that the use of race was not necessary based on the success of Texas´s Top Ten Percent Plan? Did the Plan achieve diversity of the student body on its own?

6. DOPORUČENÍ / NEDOPORUČENÍ K OBHAJOBĚ A NAVRHOVANÁ ZNÁMKA
(výborně, velmi dobře, dobře, nevyhověl):

The thesis fulfills requirements for Master´s theses and is recommended for defense. I propose grade very good.

Datum:January 19, 2015 Podpis: Jana Sehnalkova

Pozn.: Hodnocení pište k jednotlivým bodům, pokud nepíšete v textovém editoru, použijte při nedostatku místa zadní stranu nebo přiložený list. V hodnocení práce se pokuste oddělit ty její nedostatky, které jsou, podle vašeho mínění, obhajobou neodstranitelné (např. chybí kritické zhodnocení pramenů a literatury), od těch věcí, které student může dobrou obhajobou napravit; poměr těchto dvou položek berte prosím v úvahu při stanovení konečné známky.