THE POLITICS OF AFFIRMATIVE ACTION POLICY: HOW BRAZIL IS ADDRESSING PAST DISCRIMINATION IN HIGHER EDUCATION

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The Politics of Affirmative Action Policy: How Brazil is Addressing Past Discrimination in Higher Education

Synopsis:

The paper looks at slavery in Brazil and how past institutional discrimination against minorities has affected its educational system especially in universities. It discusses how federal policy is addressing the issue of discrimination in Brazil.

The History and Politics of Affirmative Action Policy: How Brazil is Addressing Past Discrimination in Higher Education.

Abstract

Governments, globally, have made several attempts to addressing issues involving past discrimination against minorities. Despite the significant successes in gradually curbing discrimination, governments continue to adopt policies and programs with the hope of ending discrimination. Affirmative action, one of the policies/programs to curb discrimination, has faced challenges. The enforcement of affirmative action programs such as quotas has not only generated endless debate in many countries but has also encountered resistance from those, usually conservatives, who question the fairness of such a program or policy. Brazil, like the United States, is one of the destinations for enslaved people of African descent who were, on their arrival to their new countries, treated as second-class citizens and had to endure institutional, political, and legalized structural racism and discrimination. This paper provides some of the definitions of affirmative action found in the literature and discusses how the Brazilian government is using affirmative action policy (quotas) to addressing past discrimination in tertiary institutions. The paper uses the disparate impact theory to evaluate the Brazilian federal government's affirmative actions policy while predicting the future of the policy and its possible effects in the public sector.

Keywords: *affirmative action, quotas, discrimination, public policy, higher education, and Brazil*

Introduction

Any attempt to write a truthful, factual, or synthetic history about a third world country for non-third world readers entails a set of challenges for scholars since they, the writers, have to reference from what the former occupiers- colonizers and slave masters- have documented. In their book, *Reframing contemporary Africa: Politics, culture, and society in the global era*, the authors-Soyinka-Airewele and Edozie (2010) and also Antwi-Boasiako (2014) noted that third world countries have collectively become a laboratory with pliable theory subjects. Antwi-Boasiako maintains "for centuries, Europeans whose narratives are based on their own concept of how the world ought to be, have written on the politics of *non-European countries*, insisting on how *others* ought to behave to be accepted in the international community" (38). According to Weatherby et

al. (2011: 19), Europeans or Westerners believe they are "destined by history to act as the trustee for a less fortunate colonial world," they terrorized for centuries. So, historically, Westerners do not see anything evil about terrorizing weaker societies forcing their religion on them and taking their lands from them. For example, the native America Indian lands, North America, would go to their European settlers as the United states, under President William McKinley, would justify "the annexation of the Philippines on the grounds that the United States would bring Christianity *and civilization* to the islands." In the same spirit, the Portuguese "had largely a free hand in Africa, Brazil, and parts of Asia" (19) while the Spanish spontaneously conquered the rest of the Americas and the Pacific.

There will always be different interpretations to significant historical events and narratives, which present historiographical controversies as historical knowledge is subject to constant interpretations, reappraisal, and refinement. Slave trade (Western governmental organized human trafficking) and colonization by Europeans have changed the course of history for the enslaved Africans and their descendants since the slaves were handled or mishandled differently depending on where there were shipped to; the colonies. In fact, to the Europeans, the enslaved were nothing but part of their property, or as their laws go, mere things and not regarded as human beings (Fausto, 1999). Therefore, these enslaved Africans were subjected to leave under the policies, rules, and regulations enacted by the slave owners: The Europeans.

However, there were attempts by some of these colonizers who terrorized their enslaved citizens to address the unfortunate barbaric issues of racism and discrimination against their defendless minorities. One of the policies used by governments to

addressing historically legalized discrimination against minorities, especially Blacks

where ever they may be on this planet is affirmative action, quotas, which has faced

resistance by conservative ideologues arguing that such a policy is not only unfair but it

is a reverse discrimination against dominant groups (Antwi-Boasiako 2008). This

conservative stance cements the notion that the slave masters knew that their policies

were discriminatory. This paper provides a very brief history of Brazil regarding slavery,

defines affirmative action policy as discussed in the literature, and how Brazil is using

affirmative action policy to addressing past discrimination in higher education through

admission quotas. The impact theory is utilized to predict the possible effects of the

affirmative action policy in Brazilian universities and in the public sector.

Brief History of Brazil and Affirmative Action

Brazil, one of the popular final destinations of enslaved Africans, was a

Portuguese colony, where its geographical location availed itself for European sailors.

Unlike other colonies in the Americas, Brazil was the only Portuguese colony on the

American continent (Bernardino-Costa and Rosa 2013: 183-184). Any discussion on the

political situation in Brazil today needs to understand "the central themes in the Brazilian

historical process: the nature of Brazilian slavery, Brazil's remaining united once it

became an independent country, and the characteristics of its recent transition from an

authoritarian government to a democratic one" (Fausto1999: IX). The history[1] of Brazil

is rather a complex one as it is often mentioned along with India as a "location of a new

route to India" (10). The Portuguese Crown would effectively colonized Brazil in 1532

after it had contested to claim ownership of the new land through negotiation with Spain,

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[1] There are several history books on Brazil in Portuguese but for English readers interested in the history of Brazil read *A Concise History of Brazil* by Boris Fausto (2010). While the book might not account for every single historical event, the author provides detail accounts of the areas he covered.

which led to the Treaty of Tordesillas in 1494. The genesis of the name *Brazil* dates back

to 1503 after King Dom Manuel had named this new found land *Vera Cruz* and later

Santa Cruz. According to Boris Fausto the word *BRAZIL* was "associated with

brazilwood from a tropical tree that was the main resource of the land during the early

days"(9), which was used for making dye.

Colonized Brazil, like in the ancient India Caste[2] System, had a social structure

that segregated its people based on the color of their skin. The Portuguese saw their race

(whiteness) as pure and superior therefore people of non-European decent were

considered inferior, unintelligent, uncouth, and second-class citizens including the natives

in the various slave destinations. This unfortunate perception about slaves and natives

was also true in the United States, Canada, Australia, and where ever enslaved Africans

were shipped to. As Bernardino-Costa and Rosa noted after the Sexagenarian Law of

1885, Brazil tried to get rid of Black slaves, just as the United States wanted to resettle

Black slaves back in Liberia,[3] Africa, and allow European migrant workers to whiten the

Brazilian population. This was an attempt to replace the so-called "inferior Blacks" from

Brazil. According to the authors, "this migration was not only a solution to the labor

problem but also an opportunity to whiten-and therefore" as they put it, "civilize- the

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[2] The India caste system was by and large based on occupation rather than skin color but the reference made here is to show how historically people were identified based on social segregation (See the History of India's Caste System: http://asianhistory.about.com/od/india/p/indiancastesystem.htm). See also Perez, Rosa Maria. *Kings and Untouchables: A Study of the Caste System in Western India*, Hyderabad: Orient Blackswan, 2004.

[3] There was an attempt to whiten the United States population therefore a movement, the American Colonization Society (ACS) in the 1800s wanted to resettle all the freed slaves back to Africa since the slave masters saw the growing number of the Black population as a threat and problem for the Whites. See the Founding of Liberia in 1847 (https://history.state.gov/milestones/1830-1860/liberia). The ACS also wanted to export the freed slaves to the Caribbean Islands including Haiti depriving the Blacks their birth rights (https://psmag.com/remember-that-time-abraham-lincoln-tried-to-get-the-slaves-to-leave-america-c73fd238eaff#.4712gvmxg).

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country, since science[4] claimed that Whites were superior to non-whites: that is

Blacks…" (185). After abolishing slavery in 1888 (Rohter 2001), the Portuguese wanted

to discourage any inter-racial marriage by maintaining the White blood "pure"; a practice

which was common in North America. The phrase "purity of blood" was used to

separate Brazilians until 1773. The Europeans, Whites, were considered pure while the

impure blood individuals comprised New Christians, free Blacks and "to an extent,

Indians and different types of racially mixed people" (25). The racial divide rules out

certain jobs, title of nobility, and membership to certain organizations. For example,

Blacks were not allowed to attend White schools in the United States (Humphries, 1995).

One's success was arguably dependent on which category one is classified by the slave

masters since the racial divide determines what type of jobs one is expected to do. For

example, the enslaved were mainly Blacks, Indians, or people with mixed-bloods who do

not fit the definition of "Whiteness" or "purity of blood." Descendants from a mixture of

Indian and White parents were called mulattos (*mamelucos), cafusos* were mixtures or

off springs of Indians and Blacks while near Whites were referred to as *caboclos.*

     In 1773 the distinction between the New and Old Christians was abolished but

racism in Brazil continued to exist till today. In fact, just like the United States, the

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[4] It is rather unfortunate but there are several white studies that claim Blacks are "less intelligent" and cannot sustain European civilization. This is a debate arguable many people would not want to discuss it openly but there are evidence in the literature to support this claim while others think its Biblical and creation of God: The so-called famed historian Arnold Toynbee wrote in his 1934 history book: "It will be seen that when we classify mankind by color, the only primary race that has not made a creative contribution to any civilization is the Black race." [15]. See *Christianity and Faith*: http://www.christianityandrace.org/p/black-and-iq-distribution-jesus-said.html and also see *Fur at DNA pioneer's theory: Africans are less intelligent than Westerners:* http://www.independent.co.uk/news/science/fury-at-dna-pioneers-theory-africans-are-less-intelligent-than-westerners-394898.html

enslaved were not considered human beings but properties owned by their European

White slave masters. As Fausto noted, in Brazil, "as far as the law was concerned, slaves

were things," (25-26) but Indian slaves (light skin) were treated better than their Black

counterparts (darker skin) from Africa, who were given the heaviest work to do. Today in

Brazil, the national census divides the population into three distinct categories: *branco*

(white), *pardo* (brown-skinned and /or mixed), and *preto* (black-skinned) (Cicalo 2012:1-

6: Guimaraes 2012:32-33). This distinction in skin color was another creation of the

slave masters to dehumanize the enslaved Africans. Brazil, like Ghana and other

colonized African countries, had to go through political deals-*negociata-* with its former

colonial master, Portugal, to attain political independence. Brazil will later pay Portugal

[5]nearly two million British pounds sterling for losing its old colony. The question is why

should the natives of Brazil have to pay the Portuguese to get their own land back? This

was an indication that the occupier had little or no respect for the natives who were the

original owners of the land. The attainment of political independence weakened the

power of Portugal on Brazil as seen in other European colonies. However, it did not

curtail the discriminatory practices of the past against "persons and non-person- that is

free people from slaves" (Fausto 1999:25). The difference in color determined the type of

treatment a slave receives as captured Indian slaves enjoyed better life than Black slaves.

The exploitation of the Indian slaves led to religious protection, which minimize

discrimination within the Indian settlements but the same could not be said about the

Black settlements. The Portuguese Crown, however, tried to emulate the religious order

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[5] Even though the native Brazilians did not invite the occupiers, the original owners of the land had to
negotiate for what already belonged to them. That was the typical characteristics of the occupiers –slave
maters and colonizers- including dominant societies. In North America where the American Indians failed
to fight the European intruders their land has permanently been taken away from them.

by "establishing a less discriminatory policy" (26) but all the slave masters did not accept this reform.

Globally, discrimination against minorities, especially people of African descent, is not a new phenomenon. In the United States of America, for example, punishing or lynching a slave or descendants of African slaves was not uncommon (Matthews, 2000) and the story was not different in Brazil. According to Krueger (2002), African slaves in Brazil were just tools for production, they worked "constantly to please the master's desires…And if a slave ever dared to run away, they'd come after him, and with a very sharp knife they'd puncture the soles of his feet…During slavery, the Brazilian slaves were prohibited from wearing footwear" (174). In his article, *Brazilian slaves represented in their own words, slavery & abolition,* Krueger qualitatively chronicles the deliberate atrocities committed on Black slaves and how they (slaves) were prevented from enjoying certain things as human being. For example, as Humphries (1995) noted, in the earlier days of the United States of America, it was a crime for Blacks (slaves) to have formal education. Recounting in their own words, Krueger noted the plight of a slave who echoed his life in a typical day, "I was soon placed at hard labour, such as none but slaves and horses are put to... I was compelled to carry them [stones] that were so heavy it took three men to raise them to my head ... I was then sent out to sell bread for my master ... the lash was my portion..." (179). Given this legitimated terrorist cruelty of the slave masters, which was constitutionally (legally) acceptable, governments however, attempted to address issues of discrimination against minorities especially after the abolishing of slavery. Even though no one authoritatively knows the exact number of enslaved Africans that were shipped to the Americas and other parts of the world,

Bernardino-Costa and Rosa posit that over 3.6 million- not counting those who died on high seas during crossing and were dumped into the Atlantic Ocean - Africans did arrive in Brazil alone from the mid sixteenth to nineteenth centuries to work in the sugar plantations, raise live stock, and worked in the coffee plantations to feed the European markets (Mazrui, 1986). The number of Blacks made Brazil the largest slaveholding country in the Americas and it is the second country in the world with the largest Black population after Nigeria in West Africa (Karasch 2000: Mattoso 1990). This supervised legalized human trafficking undoubtedly benefited the Europeans in various ways: The slaves were used as helping hands in the businesses of their masters and when necessary they, the slaves, could be sold in an open market as a property.

There have been historical trends to discourage discrimination through government policies and programs in many nations including the United States of America and Brazil. Affirmative action is one of such programs that has been introduced in many countries but discrimination still exist in many forms especially in the educational sector. Abel and Sementelli (2004) see discrimination from a rather historical perspective of subjectivity. That means "oppression and social injustice are often the result of social and historical constructs. All such constructs are addressed to historical and not contemporary conditions..." (91). So the demand for fairness and equality by minorities may be, according to the authors, buried in Brazilian history and not present conditions in the country. But I strongly reject the authors' premise and argue that the persistence of social inequalities and injustices in colonized countries such as United States of America and Brazil could be explained through historical social system and political structures that have not been fully deconstructed to reconstruct a system

where all Brazilians or American citizens have equal opportunities. Understandably, capitalism allocates resources unequally among groups but one may argue that slavery and colonization have caused persistent disadvantage for descendants of African slaves in Brazil. This has socially created "unequal two-class society exacerbating extreme racism that condemning Blacks into deep poverty" (Duncan 1999:188). Despite the *snailness* of identifying policies that would curb discrimination, governments, globally, have made several attempts in addressing institutional discrimination, which could be traced back to the slavery and colonial periods. Attempt is made here to look at this one policy, affirmative action, which has been used in the literature as one of the several policies/programs to confront discrimination, racism, social and educational inequalities.

Affirmative Action in Retrospect

AA as a policy has its roots in centuries of old English administrative practice to ensure justice for all citizens (Skrentny, 1996). As Skrentny noted the English administration was favoring just a section of the masses and others who were equally contributing to the up keep of the British Empire but were not enjoying equal benefits. Thus, it was only very few people, the nobles-in case of Brazil-it was the Portuguese, who had access to certain amenities in the kingdom. In fact, as it was maintained in all European colonies, those who did hard labor, the enslaved citizens and the natives, and in Brazil- the African and Ameri-Indian slaves, in building the kingdom had very little to live on. Ssekasozi (1999), who affirms these historical narratives, argues the people in the British Empire began to complain to their immediate supervisors and the core of the British administration got wind of the injustices and it led to the introduction of affirmative action. How the affirmative action policy made it across the oceans to the

Americas is a conundrum as the genesis of the policy in this part of the world might be debatable. Nevertheless, the literature pins the origin of AA in the United States, for example, to 1935 (Skrentny 1996: Tomasson, Crosby, and Herzberger 2001). Tracing the roots of AA policy in Brazil dates back to the slavery period (Fausto 1999) but did not have the same political momentum as in the 2000s. However, for the purpose of this paper, one is inclined to the discussion to the history of the policy regarding quotas in higher education in Brazil.

The Quota Game

There have been many interpretations to the definition of AA, such as *discrimination positive, quotas, reservations,* in the literature (Antwi-Boasiako and Asagba 2005: Moses and Jenkins 2014). Our understanding of AA relies on a revised version of the universal principle of equality where the state is to recognize the differences and redresses the vulnerabilities of social groups through corrective programs (Cicalo 2012:3-7). Theoretically, it brings to mind the works of John Rawls (2001) who argues for *justice of fairness*. This theory, which is supported largely by civil rights movements across nations, is equality through difference and also popular among liberals (Kymlicka and Norman 2000). This means conservative ideologues are more likely to reject or resist AA policy. Politically, issues concerning affirmative action, like immigration, religion, education, and abortion tend to divide Brazilians into ideological compartments: Conservatives/Liberals.

Such a divide is sometimes so deep that opponents and supporters of affirmative action fail to critically analyze each other's argument and line of reasoning. This

unfortunate impasse is not uncommon in other parts of the world and certainly Brazilian laws makers. Conservatives are by no less means ignorant of the historical atrocities against Blacks and other minorities in Brazil. The Portuguese (White) injustices meted out to the minority (African and Indian slaves in Brazil) are abundant in the literature, and it would be very myopic on the part of the resisters to argue otherwise. However, when it comes to education in Brazil, the conservative argument is that Brazil as a nation has come a long way to end discrimination and therefore the affirmative action policy may rather bring divisions among the population with such racial distinctions and quotas, which is likely to help just a section of young Brazilians as against the rest of the population.

To the conservative school of thought, Brazil is more or less a capitalist society where the individual must be competitive in his or her dealings to earn a living. Such individualistic attitudes of capitalism help build a nation for prosperity. What conservative narratives fail to factor into their analyses are the effects of slavery and colonization and institutional structures that hold back minorities. It is difficult to characterize Brazilian politics into solely conservative or liberal ideology. The desire to dichotomize and explain issues on the basis of *we versus them or the other* tend to eclipse the substance and outcomes of a genuinely constructive debate on issues like discrimination in education, the quota system, and race, which are of national interest to all Brazilians, especially the youth. It is unfortunate that the literature dichotomizes policy issues where such categorizations limits the voices of the other segments of the population, who may not want to identify themselves with either of the two major schools of thought but have valuable inputs to contribute on those issues.

The argument for affirmative action or the quota laws in Brazilian educational systemd needs a critical examination and an in-depth analysis rather than the current assumption that those who resist the policy of favoring minorities are racists or conservative ideologues. Conservatives understand integrations, but such a mix should be done on competitive basis, they argue. Brazil would do better if political and social issues were analytically explored thoroughly for the benefit of shaping the individual's values in influencing public policy, rather than conforming to the ideological complexities of the political theory dichotomy, which tends to set parameters for political and social debates.

How essential is AA policy in the civil service or the public sector in Brazil?

From a public policy perspective, there will always be a conflict over who gets what, how, and when. Scholars have presented different definitions and understanding regarding public policy (Theodoulou and Cahn 2013: Wilson, 2006: Heineman, Bluhm, Peterson, and Kearny 1990). However, these scholars affirm that public policy must distinguish between what government actions will accomplish and possible failures including the long-term impact of such a policy. In short, what government *will do* or *will not do* must be critically analyzed for the benefit of the greater good, without necessarily ignoring the minority segment of the population. The two schools of thought on affirmative action policy in Brazil have diverging and parallel arguments, which must have converging point if the government is serious about finding a lasting solution to "legalized historical discrimination," which seems to be the status quo.

To minorities, it is essential that the Brazilian Federal government state a clear objective of unifying the two schools of thought. There is an increasing justification from

both sides on the quota debate to make education accessible to all Brazilians; therefore for a pragmatic result, the government must act as a mediator by taking a decisive stance, hence the importance of the quota policy in Brazil. This policy must reflect the decisions, values, and goals to benefit the public at large (Wilson, 2006). For example, in the ethics literature, the frustration with the one-sidedness of deontology and utilitarian ideology led to a third school of thought called *casuistry*. This third school is equipped to mediate and combine the competing values of deontology and utilitarianism to affect tradeoffs between liberal and conservative schools of thought. If the Brazilian government adopts the casuistry approach, it will essentially eschew the abstract judgments of both schools and provide a practical, acceptable working environment for the entire country. As Theodoulou and Cahn maintained, any good policy must have an intentional course of action with an accomplished end as its objective. So what would be the accomplished end to the quota system? The historical injustices and racial inequality of Brazil put the political leadership at a crossroad as minorities' demand for equal justice translates to a reduction and destruction of the status quo. Hence, there is a critical need to understand both sides of the affirmative action argument in the Brazil tertiary educational system.

Affirmative Action Defined: The Dilemma in Definition

The affirmative action literature lacks precise and concrete definition either in the legal or political arena. There are several schools of thought when it comes to defining affirmative. This lack of consensus in the literature has encouraged each school to advance its agendum based on its myopic definition and interpretation. Proponents of

affirmative action mostly liberals, see beyond the legal definition and focus more into the matters of social justice and equal opportunity for all. Even within this school of thought, while there may be variations in the definitions of affirmative action, the common denominator of proponents' definition is the use of policies and programs to eliminate underrepresentation of qualified people from certain groups and positions where their participation is discouraged. Opponents of affirmative action, usually conservatives, on the contrary, see it as a system or situation of preference where some individuals, minorities especially Blacks, who are considered "less qualified," as the critics put it, get extra boost or points given their race. Simple put, critics and conservative ideologues see the 2012 Brazilian affirmative action – laws of quotas - policy as reverse discrimination against Whites who are presumed more qualified. They, the conservatives, insist "that easing access to higher education denies the principle of merit that brings excellence to universities."[6] According to Antonio Freitas, Provost of the Getulio Vargas Foundation, a private university in Brazil argues that the affirmative action quota policy " is bad for the future of Brazil, because the main objective of universities is research, is to achieve quality"[7] as a result of the implementation of the policy "eventually you may not have the most qualified people in engineering, in medical school, in the most challenging areas which Brazil needs to develop" (Carneiro, 2013). Here, Antonio Fresitas has already concluded that Blacks cannot enter these fields (engineering, medicine etc) because they are less intelligent.

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[6] See BBC News, August 31, 2013: Issue No, 285: *Brazil: Universities take affirmative action:* (http://www.bbc.com/news/business-23862676).

[7] Not only do some conservatives see affirmative action as reversed discrimination but they believe that the quota policy reverses the progress of Brazil: Antonio Freitas insist it is a backward trend, which sees Brazil on the wrong path while others argue that the affirmative action policy is in the right direction: http://reiffcenterblog.cnu.edu/2016/02/a-step-in-the-right-direction-affirmative-action-in-universities-in-brazil/

Affirmative action refers, objectively, to policies and efforts in government, employment, and education that favor those who suffer discrimination and provide equal opportunities. It examines whether equal opportunities exist, and if not, a plan is designed to try to eliminate barriers and establish equality. This definition falls into the liberal school of thought, which is resisted by conservatives.   In the U.S., Federal contractors, as required by Executive Order 11246 (EO11246) have to abide by the AA policy. "EO11246 applies (a) to the federal government and (b) all private organizations that do business with the federal government and that have 50 or more employees and a federal contract of at least $50,000" (Crosby, Iyer, Clayton, Downing, 2003:95). This requires organizations to be aware of its workforce statistics, especially their underrepresented gender and ethnic groups. If the numbers reveal that qualified women and people of color are underutilized, then the organisation must establish goals and plans to correct the problem. However, the U.S. Supreme Court decision has forbidden the use of strong preferential treatment or strict quotas, as opponents of the affirmative action policy view the quota laws as preferential treatment. The Court ordered affirmative action is justified by the Equal Opportunity Act of 1974, which empowers federal courts to require organisations guilty of discrimination to use affirmative action. Crosby et al. noted that voluntary affirmative action policy is often implemented by organisations, even though the federal government may not mandate such an action. This was the practice of some the universities in Brazil before the quota laws of 2012; well noted for among those universities was The Federal University of Rio de Janeiro (*Universidade Federal do Rio de Janeiro*, UFRJ). For the affirmative action policy to be seen as a good policy, according to Wilson (2006), it must reflect the actions of what the government plans to

achieve in the long run.

Liberals, usually supporters of affirmative action policy, believe that it helps with issues such as social justice, and equal opportunity. However, as Salinas (2003) noted, critics of affirmative action view it as a way for people who are less qualified to get preferential treatment. Affirmative action is supported by the idea of diversity, and educators focus on the increased diversity aspect rather than merit. Diversity in education has many benefits. Universities with diverse student population expose individuals to new perspectives, allowing them to engage in deeper and more complex learning situation. It also prepares students for future interactions in an increasingly diverse society and increases the likelihood that students will seek out more diversely integrated communities while helping to bring social stability in society (Crosby et al., 2003).

For educational admissions, students get accepted based on merit, which is usually based on standardized testing. However, this does not show how much students progressed through their education. To determine merit, it is important to know where an individual started, not just where that person ended up. Affirmative action policy tries to level the playing field and "attempts to take into account preexisting differences in access to resources, educational opportunities, socioeconomic status, and a lot of other social and cultural factors… Affirmative Action, therefore, can be defined in this vein merely as an attempt to correct the systematic error that exists in our subjective evaluation of merit" (12). If minorities had the same access to resources as dominate groups do, then their representation in top colleges and higher management should be similar to that of their percentages in the population (Salinas, 2003).

Affirmative Action and University Admission in Brazil

Affirmative action policies in Brazil would exist to benefit the majority of the population, as non-whites are now more than whites.[8] According to Davis (2014:74), "over half of Brazil's population was classified as non-white: either as Blacks (6.9%) or mixed, commonly known as *pardo* (44.2%)." He noted that while nearly two-thirds of white students go to college, less than one-third of non-white students are able to gain admission. The author posits that of the total college graduates in 2009, 4.7% were Blacks and 5.3% were mixed. In fact, descendants of Africans make up a significant proportion (46.5%) of the Brazilian population. "Yet they have a very low representation in H*igh* E*ducation*, where they comprise under 20% of the total student population" (McCowan, 2007: 591).

Higher socio-economic groups, usually whites, in Brazil have the best access to higher education opportunities. This is due to the limited spots within public universities, where entrance is determined by the *vestibulares*, which give those with high quality secondary education a better chance. Higher education enrollment in Brazil has been increasing, for example, "The total undergraduate population rose from just over 1.5 million in 1992 to over 3.8 million in 2003" (580) and this trend of increase has continued since then. This increase has led to a considerable growth in the private universities, but most Brazilian students cannot afford the tuition and fees of for-profit private universities. At public universities nearly 8.4 candidates do apply for each spot, while there are 1.5 applications per spot at private universities (584-585). In addition to

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[8] Minorities in Brazil are now becoming the majority and the white population is gradually dwindling (See data from 2010 Brazil census: http://www.bbc.com/news/world-latin-america-15766840).

this low number of applicants in the latter, many places go unfilled in the private

universities due to students' inability to pay tuition. It is therefore not surprising that

nearly 38 percent of private universities vacancies go unfilled (INEP, 2004) while the

public universities, where tuition is free, are not able to accommodate all their applicants.

Pre Affirmative Action Quota Admission for some selected Universities

In an attempt to increase diversity in tertiary institutions, some universities took

the initiative, experimental procedure for student admission. This experiment was carried

out in state universities in Campinas, UNICAMP. Such experiments were tried on other

campuses in the past in an attempt to address issues of equality. Even though President

Luis Inacio Lula da Silva's government (2003-2010) is credited for placing higher

priority on increasing access to Brazilians of non-European decent to gain admission to

higher education through quotas for free public universities based on race and those from

public schools, some universities had unique models of implementing affirmative action

in admitting students from low-income families. These attempts were plagued with

implementation problems despite the challenges, the Federal University of Rio de Janeiro

(UERJ) admitted nearly 20 percent of its students through quota programs while 40

percent was based on ENEM scores. UERJ is also credited for its bold initiative in using

race-conscious admission before the quota laws gained national attention.

Brazilian society is highly stratified by skin color, causing income inequality to be

one of the highest in the world, which is often caused by education, or lack thereof. "In

2002 only 9.8% of Brazilians ages 18-24 attended higher education" and 76% of these

students were White (*branco*). Test scores on the *vestibular* rely on previous schooling;

private primary and secondary schools tend to be better. Those who are able to afford better primary and secondary schooling score higher, which gets them a spot in the free public universities. In most private universities there is no shortage of spots. As McCowan noted having a high school diploma and the ability to pay tuition would usually guarantee a spot in private universities but Daflon et al (2013) posit that Brazilian access to higher education is extremely exclusive in terms of both socioeconomic background, pre-university education, and color.

At the University of Brasilia (UnB) in Brazil, 20 percent of available admission slots are reserved for students who self-identify as Black. These individuals must then attend an interview to confirm that they are "Black enough" to qualify for that slot (Francis and Tannuri-Pianto, 2012:755). These racial quotas were implemented in July 2004. "The principal objectives of the policy are to reduce racial inequality, address historical injustices, raise diversity on campus, and enhance awareness of Blacks in society" (760). In most departments, the quota admission scores on *vestibular* exams were lower than that of nonquota scores, which indicates that quota students may have lower standards for admission. The authors affirmed that based on UnB admissions and academic records, quota students had lower attrition rates than nonquota students but maintain comparable grades.

The Quota Dance

At the UERJ two modifications were made to the quota law. The original law required students to be classified as *negro* "Black" or *pardo* (brown). The new law eliminated the category *pardo*, because *negro* could include *pardo*, but federal

government did not want *brancos* to identify as *pardo* to be included in the quota. The second change restricted eligibility for the quota to students from low-income families, giving prominence to a class-based interpretation of the legitimate beneficiaries of racial quotas (Schwartzman, 2008). However, many students interviewed at UERJ did not consider the term *negro* to include *pardos*, as it is a term that applies to Afro-Brazilians with darker skin. "Many interviewees also do not believe that *pardos* are discriminated against or deserve quotas." Some supporters of affirmative action policies believed that forcing a choice between *branco* and *negro* would cause students to identify themselves as *negro*. Even though this choice has incentives related to affirmative action, it leads to an exclusion of *pardos*.

The Race Conundrum in Brazil

The State University of Campinas in São Paulo State, Unicamp, applied an *Affirmative Action and Social Inclusion Program* (PAAIS) to its national *Vestibular* (Davis, 2004). It, Unicamp, also expanded the definition of merit to include individual experiences and differences in addition to *vestibular* scores. Affirmative action policies are difficult to implement in Brazil due to the complexity of defining race. It's difficult to determine race in Brazil by ancestry, because almost everyone has some trace of African descent. While the US has 6 categories to classify race, such simple classification in Brazil is extremely difficulty (Loveman, Muniz and Bailey, 2011).

Schwartzman (2008) noted that affirmative action policies that rely exclusively on the *negro* label may be excluding many lighter-skinned Afro-Brazilians who may still suffer disadvantages based on skin color, but who tend to classify themselves as *pardo*.

Through the affirmative action policy, universities may be admitting students from a relatively well-off segment of the population, who are disproportionately likely to come from "multi-racial" families and therefore might have a wider *realm of possibility* in their choice of labels. Schwartzman insists the problem with access to higher education cannot be solved by just having quotas in the universities because many Brazilians do not even qualify to apply to go to universities. He further argues that the public pre-university institutions are weak and mostly attended by the poor. Whites and privileged send their kids to private secondary schools where they are more likely to obtain higher entrance scores to get into public universities for free. There is the need to improve primary and secondary education in Brazil for the public schools to be able to compete with private schools on entrance exams. How can this be done? The next section uses the impact theory to discuss how the quota law would improve not only the educational system in Brazil but also its effect on the public as a whole in the long run.

Reforming Higher Education from the Bottom up: The Disparate Impact Theory

There are several theories to justify or reverse historical discrimination but "The most common theory of discrimination, referred to as *disparate* treatment, occurs when there is evidence of discriminatory intent in the employment decision in question" (Pyburn et al., 2008: 145). The disparate impact theory states that employment, housing, and other areas such as education can be considered discriminatory and illegal if a policy has an unequal and negative impact on people of a protected class. This theory initially arose to deal with specific practices that maintained past and intentional discriminations. Even though the theory does not require evidence, it has been justified based on the

difficulty of being able to prove intentional discrimination as a result of past policies seen as the status quo.

Brazil will only be successful if the whole educational system is reformed especially at the elementary and secondary levels. It would be too "difficult for any university system to correct inequalities developed through the previous years of schooling" (McCowan, 2007: 581). Under prepared university candidates retards the steady progress of instructions at the university level. There were few proposals in Brazil for the Federal government to get involved in affirmative action for the universities. One of the proposal "would oblige all federal universities to set aside half of their places for students from public schools, some of which would be reserved for African Brazilians and indigenous peoples depending on the proportions of these groups in the state in which the university is located" (591). Another proposal suggests replacing the *vestibular* exam with results from the ENEM, which was an existing assessment. This was to remove the need for students to take pre-vestibular courses, which were not available to everyone as a result of affordability (finance). It was also suggested distant education might help accommodate the large number of applicants to universities in Brazil. This would help universities admit more students without increasing expenditures. McCowan noted that by encouraging distant education such an approach might increase enrolment at lower costs and provide access to higher education for students in more remote areas. While the Ping-Pong debate over the affirmative action or the quota system did draw attention at various states since 1999, the highest court of the land moved in decisively to end the racial ideological battle on university admissions.

In April 2012, the Brazilian Supreme Court recognized the constitutionality of racial quotas in universities, and unanimously approved the AA Law. In arriving at their decision, the Justices argued that the federal government has the ability to correct past discriminations to ensure diverse community in universities across the country to achieving a more equal opportunities for all Brazilians. Pouncing on the Supreme Court's decision, President Dilma Rousseff, the 36th President of Brazil, enacted an AA program, called the "Law of Social Quotas" on August 29, 2012. This law requires federal public universities to reserve half of their admissions to students from characteristically poor public high schools, and half of those positions for low-income families or for those who declare themselves as Black, mixed, indigenous or natives.

The Impact Theory

Even though using affirmative action as part of university admission is not new in Brazil, it became law of the land in 2012. This means its too early to access the full impact of the law as presented. However, a full impact of the law is predicted here using the impact theory. This theory was first set forth in the 1970s with the idea that there was a catastrophic collision between the earth and protoplanet some billions years ago. This, according to Matson (2012), resulted in the formation of the moon: While the celestial formation is not the focus, and beyond the scope of, this paper, the genesis and the understanding of the impact theory is borrowed here as used in the study of program and policy evaluation (Binghan and Felbinger, 2002). In program evaluation, the impact theory is used to evaluate an end result or impact a policy had in addressing an issue: Political, social, education or economic. As the authors noted, impact evaluation looks at

"enumerating outcomes and whether the program or policy's objectives" are met (p. 5). Rossi et al. (2004) describe impact theory as a cause-and-effect sequence in which certain program activities are instigating causes and certain social benefiting the effects they eventually produce.

Given such a broad understanding of the impact theory as presented above, it is used here as the conceptual framework to predict that the Brazilian affirmative action program as directed by the Brazilian Federal Government, after its implementation is more likely to raise the educational credentials of Blacks in Brazil. Additionally, not only will the universities experience more diverse campuses but also more Blacks are likely to enter the public sector as more qualified Blacks would be available to enter the public sector. The literature indicates that to assess the full impact of any policy that policy needs time to mature (Bavon, 2001). It is therefore recommended that the real impact of the Federal government's AA directives regarding admissions quotas for Brazilian universities could be fully assessed after 2022. The program would have been implemented for nearly 10 years, long enough to collect some data to assess the changes in the university admissions, academic performance of those who benefited from the quota law and their employment statuses. Researchers would also need to track the rate of graduation of students admitted into universities under this policy and their subsequent contribution to the public sector.

Conclusion

When Portugal colonized Brazil, there was a social structure of segregation based on skin color. Even after slavery was abolished, there was, and still is, a systemic discrimination against minorities despite the believe of racial democracy argument in

Brazilian politics (Htun, 2004). One of the main policies that governments use to address discrimination is AA, which seeks to provide equal opportunities to minorities in government, employment, and education. Issues, such as AA, divide conservative and liberal Brazilians on ideological lines, so it is important to understand both sides of the ideological argument in practical terms. Supporters of AA argue that the policy helps with social issues and encourages a diverse society while opponents insist that the policy will lower the educational standards to only benefit certain groups, which would not benefit Brazil as a society in the long run. However, by neglecting the impact of slavery and colonization, one is forced to accept the historical status quo as the socially putative norm. The discriminatory political and educational structures in countries that engaged in slavery and colonization are such that it is almost impossible to dismantle them. Those structures have become the established norm and conservatives are not comfortable for what liberals refer to as progressive change by dismantling the status quo.

Affirmative action is necessary in Brazil, because over half the population is classified as nonwhite; however, the majority of students who attend universities are White. Public universities are free and thus, highly competitive, where admittance is based on the *vestibular*. There is a great need to improve opportunities for students in the public primary and secondary schools too, so that everyone has a chance to do well on the *vestibular*. Affirmative action policies are difficult to control in Brazil, because it depends on self-identification of race, and most Brazilians have a trace of African descent. In 2012 an affirmative action program called the "Law of Social Quotas" was passed to reserve spots in universities for low income and self-declared Black and mixed students. With the efforts of affirmative action program, which attempts to prevent

intentional discriminations, the educational system in Brazil is providing more

opportunities for minorities. However, the real impact of this law of social quotas could

be known in the next decade.

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