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Outcomes of Affirmation Action: A Comparison of the United States and Brazil

Taylor Washington
University of Tennessee Knoxville, twashi15@vols.utk.edu

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Taylor Washington

Department of Political Science, University of Tennessee Knoxville

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Dr. Jana Morgan

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I.   Introduction

Today, affirmative action is a complicated, divisive, and popular topic. The goal of this paper is to add to the literature of affirmative action by examining the effectiveness of affirmative action policies through analyzing varying implementation approaches. For the purposes of this paper affirmative action will be defined as a set of "policies intended to promote the interests and welfare of individuals from racial and ethnic minorities, and women, in order to redress the lingering effects of past discrimination."[1] This paper focuses on affirmative action in higher education, comparing and contrasting the implementation of affirmative action in Brazil and the United States and evaluating the effects these policies have for Black people.[2] The paper focuses on affirmative action in higher education because education is thought to be the great equalizer. Education is often called the bridge to success, and this view suggests that having access to a quality education is important if people are to improve their social standing. I focus on the United States and Brazil because the two countries are vastly different in their approaches to affirmative action in higher education, which enables comparison of different policies and facilitates analysis of how different approach produce similar or different outcomes. Despite very different affirmative action policy frameworks between Brazil and the United States, we will uncover several parallels in the programs' impacts and limitations across the two countries. Additionally, the paper will analyze two outcomes or goals of affirmative action: increasing

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[1] E. Frankel Paul, "Affirmative Action," *Encyclopedia of Applied Ethics*, 2012, pp. 56-71, https://doi.org/10.1016/b978-0-12-373932-2.00252-0)

[2] The term Black people will be used instead of African American as in the United States all people with black skin are treated the same. This includes immigrants with black skin from various African and Caribbean countries. Additionally, the term makes it easier to speak about both Black Americans and Afro-Brazilians simultaneously

access to higher education for Black people and decreasing the income gap between white and Black people that exists in both countries. The overarching conclusion of this paper is that affirmative action policies will never be sufficient in producing the desired outcomes for Black people so long as they continue to not be tailored specifically to benefit Black people and as long as the larger fundamental structure of racism fails to be addressed.

The structure of the paper is as follows. Sections II and III explore the origin of affirmative action in each country and where they stand today. Sections IV and V focus on access to higher education and income inequality respectfully. Section VI concludes by outlining the main takeaways and recommendations.

## II.	Affirmative Action Background in the United Sates

The term 'affirmative action' was used in the context that is popular today for the first time in the United States in 1961 as part of President Kennedy's Executive Order 10925. The purpose of Executive Order 10925 was to pressure institutions into compliance with the nondiscrimination mandate of the Civil Rights Act of 1964 and other major civil rights legislation. Kennedy's order instructed institutions, more specifically federal contractors, to "take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, creed, color, or national origin."[4] In September 1965, President Johnson's Executive Order 11246 presented affirmative action as a way for minorities and other disenfranchised groups to have opportunities in the workplace and higher education that were previously not available due to past discrimination.

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[4] Hugh Davis Graham, "The Origins of Affirmative Action: Civil Rights and the Regulatory State," The ANNALS of the American Academy of Political and Social Science 523, no. 1 (1992): pp. 50-62, https://doi.org/10.1177/0002716292523001006)

Although affirmative action policies grew out of the Progressive and New Deal eras, affirmative action is vastly different from the policies of those earlier periods as they were exclusionary in practice, against both women and people of color, and they lacked anti-discrimination language or strategies. Affirmative action policies were made palatable to some segments of the American public because of the social movements of the time. The social struggles that gave affirmative action the room to take root were the civil rights and feminist movements ,which "transformed social convictions into government action."[5] In "End Game: The Rise and Fall of Affirmative Action in Higher Education," Anthony Platt expresses that, "affirmative action stood for the recognition that racism and sexism are systemic inequalities, requiring sustained, long-term, ongoing policy initiatives if they are to be alleviated."[6] Affirmative action policies were only able to gain a foothold because these movements were able to combine political and social pressure in order to hold citizens and the government accountable for advancing the betterment of women and people of color.

While the term affirmative action originated in the 1960s, in many ways it was an extension of regulatory commissions that existed during the New Deal and Progressive eras. As a part of President Kennedy's Executive Order 10925, the President's Committee on Equal Employment Opportunity Commission (PCEEO) was created. The commission's job was to monitor and regulate discrimination in trade and business. In 1962, Hobart Taylor Jr., an African American lawyer, was appointed as vice chairman of the PCEEO.[7] Taylor is largely responsible

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[5-6]Anthony M. Platt. "End game: The rise and fall of affirmative action in higher education." *Social Justice* 24, no. 2 (68 (1997): 103-118.

[7] Johnson, Matthew. "Managing Racial Inclusion: The Origins and Early Implementation of Affirmative Action Admissions at the University of Michigan." *Journal of Policy History* 29, no. 3 (2017): 462-489.

for highlighting the link between federal hiring initiatives and the importance of college

admissions processes. After becoming chairman, Taylor listened to the critiques from the

National Association for the Advancement of Colored People (NAACP) and other powerful

Black political voices about the weaknesses of PCEEO and how "focusing too narrowly on

hiring policies might limit the outcomes of the executive order."[8] He understood that hiring

policies were important but Taylor saw that if the Black community continually did not meet the

qualifications to be hired then the PECCO would be of little help. Taylor knew that in order to

expand access to higher education and shift this reality, he had to choose a university that he

knew well and held federal contracts monitored by PCEEO. From these criteria, he chose his

alma mater, the University of Michigan. With the help of some allied administrators and

President Kennedy, Taylor was able push the University of Michigan to create an affirmative

action program by convincing the institution that the link between better education and a better

workforce was real. Taylor's persistence was also supported by many companies, such as

General Electric and the Aluminum Company of America, who saw that increasing access to

education for African Americans helped provide a pool of Black workers who would allow

companies be in compliance with the federal laws of the time.[9]

Following the creation of the PCEEO and the passing of the Civil Rights, President

Johnson proposed Executive Order 11246. This executive order created the Equal Employment

Opportunity Commission (EEOC) as a committee under the PCEEO. During the 1964 debates

over the EEOC, Senate minority leader Everett Dirksen engaged in an assault on the idea of

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[8-9]. *Ibid.*

racial quotas. Dirksen strong-armed the Democrats into removing quotas from the Civil Rights

Act and was further able to gut the EEOC of its potential powers by getting the regulatory

commission's ability to serve cease and desist notices and its power to prosecute businesses

rescinded. This shell of a regulatory commission was attacked by both civil rights and feminist

leaders for being too timid and not advocating hard enough for minorities.[10] In the end, Dirksen

successfully stripped the EEOC of any substantial authority to regulate. The EEOC became a

regulatory commission with good intentions but no enforcement ability and therefore provided

no real motivation for employers to comply with federal regulations.

President Johnson's Executive Order 11246, signed in 1965, signaled the beginning of

the federal government's shift from equal treatment policies to proportionality, which required

minority preferences.[11] The shift meant that instead of being color-blind, which would mean

ignoring systematic disadvantages for Blacks and other people of the color, the federal

government would look to acknowledge race and take race into account when making decisions

about employment and education.[12] The ability to consider race in decisions led many white

Americans to disapprove of affirmative action as they believed this active consideration of race

failed to treat everyone equal or in extreme cases produced "reverse racism."

Affirmative action's policy evolution led to a minority voting base with unprecedented

economic and political power.[13] Minorities (Blacks, Hispanics, those with disabilities, etc.) saw

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[10] Hugh Davis Graham. "The Origins of Affirmative Action: Civil Rights and the Regulatory State." *The ANNALS of the American Academy of Political and Social Science* 523, no. 1 (1992): 50–62.

[11-13] Hugh Davis Graham. "The Origins of Affirmative Action: Civil Rights and the Regulatory State." *The ANNALS of the American Academy of Political and Social Science* 523, no. 1 (1992): 50–62.

the rise of powerful lobbying groups like the Leadership Conference on Civil Rights and the American Civil Liberties Union, who fought for the rights of African Americans and other historically marginalized groups and were often successful. When affirmative action was proposed, it was presented as a way for poor Blacks to gain upward mobility. However, the Black middle class gained most as opposed to the poor. In addition to the economic growth that some Black people experienced, political gains were also made. The newly formed civil rights coalition "was rarely denied its policy preferences by Congress" in this period.[14]

But affirmative action's popularity was weakened by its unintentional misalignment with the goals of the feminist movement. White women were advocating for a sex-blind constitution which was in direct conflict with race-preferences that the civil right coalition was advocating for. Graham writes, "the equal-results model of social regulation, when applied to civil rights policy, has clashed with a color-blind Constitution."[15] This conflict sparked a moral argument that continues today between supporters of equal individual opportunity and those who believe in equal group results.

There are many areas of society that affirmative action policies cover. The one recognized by many as "one of the most important routes for upward mobility"[16] is education. Prior to the 1960s, higher education was almost strictly white and male. While white women found some early success in being included in academia, their positions in academia were always

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[14-15] Hugh Davis Graham. "The Origins of Affirmative Action: Civil Rights and the Regulatory State." *The ANNALS of the American Academy of Political and Social Science* 523, no. 1 (1992): 50–62.

[16] Platt, Anthony M. "End game: The rise and fall of affirmative action in higher education." *Social Justice* 24, no. 2 (68 (1997): 103-118.

fragile, and eventually they were relegated back to what was considered their designated space at the time, households. Black Americans were forced to create separate learning institutions that were inherently unequal because of the lack of opportunity and access to high quality resources.[17] The exclusion of women and Black Americans from academia led to the founding of women only colleges and universities, as well as historically black colleges and universities.

With the high point of affirmative action firmly in the past, higher education institutions have become more diverse but not entirely. Most institutions are most diverse at the student level and lessen in diversity at higher positions in an institution. A lot of this lopsided diversity can be attributed to rising costs of tuition, stagnant incomes for most families, and grant programs failing to keep up with inflation rates.[18] While affirmative action has proven to produce a net positive in increasing student populations, only institutions truly dedicated to creating a diverse campus see the benefits in applying similar practices in hiring faculty. Today there are institutions that go above and beyond to create diverse learning atmospheres, but because of restrictive court rulings and the shift of responsibility onto the states and away from the federal government, many higher education institutions choose to comply with the bare minimum affirmative action guidelines.

Since the implementation and revisions of the affirmation action Executive Orders, there have been a wide variety of United States' court cases that have contributed to confusion surrounding and recently retrenchment of affirmative action. The first, and arguably most

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[17-18] Platt, Anthony M. "End game: The rise and fall of affirmative action in higher education." *Social Justice* 24, no. 2 (68 (1997): 103-118.

famous, affirmative action case to reach the Supreme Court level is *Regents of the University of California v. Bakke (1978).* The complainant was a white male named Allan Bakke. In 1973 and 1974, Bakke applied to the University of California's medical school and was rejected both times. He felt his strong record of academic achievement should have been enough to get him accepted into medical school. What upset Bakke was the operation of the University of California-Davis' medical school special admissions committee, which he argued created a racial and ethnic quota. The program reserved 16 spots for economically or educationally underprivileged students and minorities and regularly admitted students who were not academically as strong as Bakke. Bakke sued under the belief that the University of California-Davis' medical admissions process violated the Fourteenth Amendment's equal protection clause (which guarantees equality to all before the law), a comparable statute of the California Constitution, and Title VI of the Civil Rights Act of 1964 (in programs receiving federal funds there must be no discrimination). In the end, the Supreme Court ordered Bakke's admission into the medical school and prohibited the University of California medical school from taking race into consideration as an admissions criterion. Even though the court agreed that Bakke should be admitted into the medical school, there was not a sole majority opinion on the justification of Bakke's admission.[19] Four justices believed that any racial quota program that was funded by the government violates Title VI of the Civil Rights Act of 1964. Two other justices argued that racial quotas violated the Fourteenth Amendment's Equal Protection Clause. These justices found that the separate admissions program for minorities "was not the least intrusive means to achieve the legitimate end of increasing minority doctors."[20] Another four justices argued that

[19]*The University of California Regents v. Bakke*, 438 U.S. 265 (1978).
[20] E. Frankel Paul. "Affirmative Action." *Encyclopedia of Applied Ethics*, 2012, 56–71.

race can be used as one of numerous admissions factors but cannot be a deciding or the sole factor in an admissions decision.

The court's ruling on *Regents of the University of California v. Bakke* complicated the understanding, meaning, and purpose of Affirmative Action as it came in direct conflict with an earlier case, *Fullilove v. Klutznicki (1979).* In *Fullilove v. Kuznicki,* the Court ruled that in trying to address past discrimination, it is constitutional for federal contractors to have 'set-aside' programs (quotas) or preferences for minorities.[21]The inability to come to an agreement on how affirmative action can legally be influenced by race birthed confusion on what can and cannot be done to help further minorities' standing in society. After *Bakke*, the Supreme Court and federal government moved to place the burden of proof on institutions to show they are striving towards diversity and equality and away from affirmative action policies that assume that inequality is institutionalized.[22] While *Bakke* made it clear that quotas or set-aside policies were not permitted, there remained confusion on whether that type of policy was still constitutional for employers to utilize. In 1988, the court finally overturned the set-aside precedent for federal employers, in *Richmond v. J.A. Croson (1988).* The constant ruling and overruling of how affirmative action policies are allowed to be implemented not only make it hard for the general public to understand the limitations and justifications but the constant back-and-forth can also make the public believe that affirmative action is too much trouble for what good it might do.

The next major court case that influenced affirmative action, as it pertains to education, was *Grutter v. Bollinger (2003).* In 1996, a white woman named Barbara Gutter applied to the

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[21] *Fullilove v. Klutznick*, 448 U.S. 448 (1980).
[22]Platt, Anthony M. "End game: The rise and fall of affirmative action in higher education." *Social Justice* 24, no. 2 (68 (1997): 103-118.

University of Michigan Law School. She was denied admission even though she had a 3.8 grade point average (GPA) and a Law School Admissions Test (LSAT) score of 161, which was on par with the applicants Michigan was accepting at the time. Grutter then filed suit claiming that she was discriminated against on the basis of her race, which violates the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964. She argued that she was not admitted because the University of Michigan Law School used race as a major deciding factor. Grutter further contended that this process gave those in minority groups a better chance of gaining admission over students with similar applications that come from majority racial groups. The court set out to determine if the University of Michigan Law School's admissions process unfairly weighted race to give advantages to minority applicants. In a 5-4 conclusion, the Supreme Court decided that the Law School's narrow use of race as an admissions factor was legal because it was part of a broader goal of diversifying the student body. Because the University of Michigan Law School's process was individualized and did not make the race a deciding factor, it was classified as a race-conscious policy and not a set-aside policy. The justification of using race as one of many tools to gain educational benefits that are produced from having a diverse student body was also deemed appropriate by the Court. *Grutter* established that "classifications are constitutional only if they are narrowly tailored to further compelling governmental interests."[23]

Following *Grutter v. Bollinger* was *Fisher v. The University of Texas*. This case went before the Supreme Court twice, once in 2013 and again in 2016. In 2008, Abigail Fisher a white female applied to the University of Texas for undergraduate admission. Previously, in 1997, the state of Texas passed legislation that required the University of Texas to admit all high school seniors that ranked in the top ten percent of their class. Noting that there was a difference in the

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[23]*Grutter v. Bollinger*, 539 U.S. 306 (2003).

demographics of the university's undergraduate population and the state population, the University of Texas modified the legislative directive to implement a race-conscious admissions policy. The policy stated that after admitting all in-state students who were in the top ten percent of their high school class, the university would begin to consider race as a factor in admission for the other in-state freshmen seeking admission. Fisher was not in the top ten percent of her class and was ultimately denied admission to the University of Texas. She argued that using race as an admissions factor was a violation of the equal protection clause of the Fourteenth Amendment. The first time *Fisher v. The University of Texas* reached the Supreme Court, it was remanded back to the lower courts to accurately apply strict scrutiny standard to the University of Texas' admissions policy.[24] When the suit returned in 2015, the decision was split 4-3 in favor of the University of Texas. The majority determined that the university was accurately able to use race in a narrowly tailored way. The University of Texas was also able to adequately articulate how their recent use of race, as just one of many admissions factors, was because "its prior race-neutral system did not reach its goal of providing the educational benefits of diversity to its undergraduate students."[25]

The implementation of affirmative action in the United States is admittedly difficult to understand. Because of the continuous litigation and the surrounding controversy regarding admission processes, many universities have tailored programs that are unique to their history and calibrated to align with federal circuit court rulings. A study by Michelle D. Deardorff and Augustus Jones analyzed 38 public and private universities in the Fifth Appellate Circuit (Texas, Louisiana, and Mississippi) and the Sixth Appellate Circuit (Ohio, Michigan, Tennessee, and

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[24]*Fisher v. The University of Texas at Austin*, 570 U.S. 297 (2013).
[25]*Fisher v. The University of Texas at Austin*, 570 U.S. 297 (2015).

Kentucky). What Deardorff and Jones found was that "schools in the Fifth Circuit (southern) have refused to consider race in admissions decisions and those in the Sixth Circuit (midwestern) have utilized race to assemble a student body."[26] This difference can be traced back to the 1996 Fifth Circuit ruling of *Hopwood v. State of Texas.* In this case, the court ruled that the University of Texas School of Law was not allowed to use race as an admissions factor in with the intention of diversifying the student body, change an environment that is seemingly hostile to minorities, change the poor perception of the institution in the local community, or eliminate the effects of past discrimination that was not carried out by themselves.[27] Because this ruling happened within the Fifth Appellate Circuit and the appellate courts are closer and hand down more rulings to states, the states within the Fifth Circuit's jurisdiction – Texas, Louisiana, and Mississippi – are more inclined to follow those guidelines even though the Supreme Court has ruled it legal to consider race in the admissions process.

Since the late eighties, there have been calls from interest groups, political figures, and even the public for the federal government to reduce and even end affirmative action policies. Overall it has not worked, but in some states, the state's legislative body has voted to ban affirmative action policies. Currently eight states have banned affirmative action – California, Washington, Florida, New Hampshire, Michigan, Nebraska, Arizona, and Oklahoma.[28] Banning affirmative action does not mean that these states are not actively trying to recruit minority students; but as Jack Greenberg writes, "those states have struggled to keep a substantial Black

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[26] Deardorff, Michelle D., and Augustus Jones. "Implementing Affirmative Action in Higher Education: University Responses to Gratz and Grutter." *The Social Science Journal* 44, no. 3 (January 2007): 525–34.
[27] Deardorff, Michelle D., and Augustus Jones. "Implementing Affirmative Action in Higher Education: University Responses to Gratz and Grutter." *The Social Science Journal* 44, no. 3 (January 2007): 525–34.
[28] Halley Potter. "What can we learn from states that ban affirmative action?." *The Century Foundation* 26 (2014).

and Hispanic presence in their public universities."[29] Greenberg cites five alternatives to affirmative action. They are (1) top percentage plans, (2) do nothing, (3) introduce non-racial admissions criteria, (4) make test preparation courses more accessible to Black applicants, and (5) improving the quality of education that Black students receive pre-college.[30] While some alternatives are more tangible and defensible than others, in each state that has banned affirmative action institutions have implemented one or more of these alternatives to try and achieve the same levels of diversity and goals that were being met with affirmative action policies.

Recently, one court battle is stretching the limits of affirmative action and who the U.S. believes deserves to be beneficiaries of affirmative action policies. In 2018, the *Students for Fair Admissions v. Harvard* case went to trial. The plaintiff alleges that Harvard's admissions process holds discriminatory practices aimed towards Asian Americans. Practices such as systematically giving Asian Americans a lower "personal rating" which Meghan Liu, a Harvard Law School student, describes as "a critical category in admissions that assesses qualities such as kindness, humor, and courage."[31] Many followers of the case have issued warnings about the plaintiff, Students for Fair Admissions (SFFA). SFFA is suspected of using this case to attack affirmative action and erase race from being an admissions factor in any form.[32] *Students for Fair*

[29-30]Jack Greenberg. "Affirmative action in higher education: Confronting the condition and theory." *BCL Rev.* 43 (2001): 521.

[31] Meghan Liu. "Perspective | Harvard Affirmative Action Case Pits Asian Americans against Each Other - and Everyone Else." The Washington Post. WP Company, January 18, 2019. https://www.washingtonpost.com/nation/2019/01/18/harvard-affirmative-actioncase-pits-asian-americans-against-each-other-everyone-else/.

[32]Sarah Hinger. "Meet Edward Blum, the Man Who Wants to Kill Affirmative Action in Higher Education." American Civil Liberties Union. American Civil Liberties Union, October 19, 2018. https://www.aclu.org/blog/racial-justice/affirmative-action/meet-edward-blumman-who-wants-kill-affirmative-action-higher.

Admissions v. Harvard is on track to be appealed to the Supreme Court no matter the decision that the lower court hands out. This case is groundbreaking because as vague as the cases have been with the term race, affirmative action has largely been understood as a Black, white, and sometimes brown issue. Society's narrow understanding of affirmative action could prove to be dangerous as this case pushes against the status quo. If the Supreme Court sees that the current affirmative action policies and attitudes cannot provide equal opportunity, *Students for Fair Admissions v. Harvard* could spell the end of affirmative action policies in higher education as we know it today.

Much of the literature about affirmative action and higher education in the United States looks to discuss who these policies are meant to benefit and if they are even worth implementing. For example, in *Racism and Justice: The Case for Affirmative Action*, Gertrude Ezorsky argues that because racism against Blacks in America has historically been and remains ''so pervasive that none, regardless of wealth or position, has managed to escape its impact,''[33] affirmative actions must be taken in order to make sure that disenfranchised groups are being included when it is proven that they continue to be excluded. Other scholars argue that American affirmative action policies perpetuate "reverse racism." Reverse racism is a term that suggests that giving preference to a group of minorities results in discrimination against the majority group.[34] An example of this thinking can be found in one of Justice Scalia's written opinions. He writes, "To pursue the concept of racial entitlement - even for the most admirable and benign of purposes - is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege, and race hatred."[35] Other opponents of affirmative action argue that by having

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[33] Gertrude Ezorsky. *Racism and justice: The case for affirmative action*. Cornell University Press, 2018.
[34] E. Frankel Paul. "Affirmative Action." *Encyclopedia of Applied Ethics*, 2012, 56
[35] "Adarand Constructors, Inc. v. Pena." Legal Information Institute. Legal Information Institute. http://www.law.cornell.edu/supremecourt/text/515/200#writing USSC_CR_0515_0200_ZC.

different standards of acceptance for minority students, it sets them up to fail because they are not prepared. The implementation of affirmative action policies in American higher education institutions remains a complicated issue as it is not regulated by the national government.

III.   Affirmative Action Background in Brazil

The process of implementing affirmative action in Brazil has followed a path quite distinct from that in the United States. While affirmative action in the U.S. began with presidential action, its implementation has mostly been devolved to the states and individual institutions and its oversight has been delegated to the courts. In contrast, affirmative action in Brazil began at the subnational level and with individual institutions implementing admissions policies designed to counter racial inequalities in higher education but later made its way to the federal level and was enacted through nationwide legislation.

The idea for affirmative action in Brazil initially gained attention in 1995 under President Fernando Henrique Cardoso. The subsequent rise of affirmative action was made possible through a combination of President Cardoso's efforts, social movements, and international validation. In Brazil, affirmative action policies often draw a visceral reaction because "It is not just social policy that is at stake, but the country's understanding and portrayal of itself."[36] To further understand why affirmative action is perceived to be more radical in Brazil, one must first understand the country's perception of race.

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[36]Mala Htun. "From" racial democracy" to affirmative action: changing state policy on race in Brazil." *Latin American Research Review* (2004): 60-89.

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Every state has the ability to define race through the use of law and bureaucratic tools, like the census. In Brazil many of these tools have been directed toward maintaining a multi-tiered racial hierarchy. This can be seen in the Brazilian census which uses five official racial/color categories branco (white), pardo (brown), preto (black), amarelo (yellow), and indígena (indigenous).[37] Having a multi-tiered racial order is different from places the United States, which upholds a very bi-polar racial structure. The rigidity of of the U.S. racial structure can be seen in practices like the 'one-drop rule' that has typically resulted in the children born of black and white parents being considered Black, not mixed (or pardo, as they would be in Brazil).[38]

Another factor complicating understandings of race in Brazil comes from the permeating argument that Brazil is a racial democracy. The racial democracy notion advocates that Blacks are more impoverished and less represented than other races because of class discrimination and the lasting marks of slavery. Brazil's racial system has been able to persist because of the lack of institutionalized segregation, a historical mixing of races, and giving intermediate racial categories the ability to be socially recognized.[39] The different levels of race in Brazil produced a low level of racial consciousness and allowed Brazilians to identify more with their socioeconomic class than their self-identified or perceived race. Race became taboo to discuss and instead of explicitly talking about race, each race became synonymous with specific socioeconomic characteristics. Black/dark skin/preto became associated with poverty as well as

[37]Luisa Farah Schwartzman, and Angela Randolpho Paiva. "Not just racial quotas: Affirmative action in Brazilian higher education 10 years later." *British Journal of Sociology of Education* 37, no. 4 (2016): 548-566.

[38-41]Mala Htun. "From" racial democracy" to affirmative action: changing state policy on race in Brazil." *Latin American Research Review* (2004): 60-89.

poor educational, employment, and housing opportunities. On average people in the preto or

pardo classification have less education and lower income compared to brancos. These

differences are largely explained by the perpetual lower socioeconomic position that pretos and

pardos occupy. Even among educated Brazilians, those of darker skin are more likely to get paid

less, less likely to retain generational wealth, and less likely to seek higher education.[40] By

having darker skin associated with negative traits and outcomes, it is not surprising that Afro-

Brazilians would not want to willingly self-identify as preto or pardo. It becomes easier for

people to identify with their socioeconomic class because that is a status that can be hidden or

changed, instead of identifying with a race that will immediately be recognized by others.

Before affirmative action policies in Brazil, there were anti-discriminatory laws. The

legislation included phrases like "All equal under the law" and provisions allowing for the

punishment of racial prejudice were included in various Constitutions from the 1930s-60s. The

1980s saw the beginning of the rejection of the racial democracy myth, and the emergence of

politicians vying for Black votes, which meant initiatives and policies were created to promote

the social standing and address the lack of resource accessibility for Black people.[41] When

President Fernando Henrique Cardoso (FHC) took office in 1995, it was the first time that the

Brazilian government actively considered affirmative action and bridged a more involved

approach to correcting racial inequalities. FHC utilized his background in sociology and

constantly spoke out about racial hypocrisy and advancing the status of Afro-Brazilians. The

President established the Interministerial Working Group to Valorize the Black Population

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[40]Luisa Farah Schwartzman, and Angela Randolpho Paiva. "Not just racial quotas: Affirmative action in Brazilian higher education 10 years later." *British Journal of Sociology of Education* 37, no. 4 (2016): 548-566.

[41]Mala Htun. "From" racial democracy" to affirmative action: changing state policy on race in Brazil." *Latin American Research Review* (2004): 60-89.

(Grupo de Trabalho Interministerial, or GTI). GTI published a report stating that affirmative action was constitutional and that the state is committed to taking the appropriate actions to promote equality. The committee consisted of government officials and Afro-Brazilian activists.[42] FHC's admission that Brazil had a problem with racism was significant to the development of affirmative action policy because it was one of the first times that the Brazilian government openly spoke about race. Cardoso took this moment even further by deliberately dismissing the legitimacy of Brazil's racial democracy and outwardly discussing the racism and racial inequality that plagues the country.

In 1996 the Ministry of Justice launched the National Human Rights Program, which served a similar purpose to the GTI. This program proposed policies that the Brazilian government could implement that specifically focused on Black Brazilian needs.[43] Policies included affirmative action programs for universities and suggesting that there be a dichotomous definition of race in Brazil. The Human Rights Program was significant because it marked the first time that public policies officially listed racial groups as areas where improvements needed to be made.[44] But during this time, discussions of affirmative action were still very new, and many people did not trust affirmative action or race-based quotas.

The event that moved the needle on affirmative action in Brazil was the United Nation's Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in Duran, South Africa in September of 2001. Brazil's involvement in the Duran Conference was

[42]Stanley R. Bailey, Fabrício Fialho, and Michelle Peria. "Support for race-targeted affirmative   action in Brazil." *Ethnicities* 18, no. 6 (2018): 765-798.

[43]Mala Htun. "From" racial democracy" to affirmative action: changing state policy on race in Brazil." *Latin American Research Review* (2004): 60-89.
[44]Stanley R. Bailey, Fabrício Fialho, and Michelle Peria. "Support for race-targeted affirmative   action in Brazil." *Ethnicities* 18, no. 6 (2018): 765-798.

heavily followed by media, which meant the entire country was constantly being flooded with conversations about affirmative action and its main facets. Out of the Durban conference came an international endorsement of quotas and overall support of Afro-Brazilian demands for special rights. U.N. Ambassador Gelson Fonseca stressed the importance of the Durban conference when he stated, "it [the Duran conference] legitimized the debate on racism at the international level and recognized the need for remedial actions to benefit the victims of discrimination…it mobilized public opinion against racism, and strengthened the political will for policies to combat discrimination and led to the first experiences in affirmative action for Afro-descendants."[45]

After the Durban Conference, many subnational governments began to implement quota polices. The Rio de Janerio region became one of the first to approve a bill establishing quotas in higher education admission process. The bill created space for Blacks at two universities, the University of Rio de Janeiro (UERJ) and the University of the State of Rio de Janeiro (UENF). Initially, the response of citizens was extreme dissatisfaction. This was noted by the nearly 300 lawsuits that were filed against UERJ after the racial-quota admissions process was announced. The lawsuits cited 3 main violations: discrimination against citizens, the fact that education is supposed to end discrimination, and all are ensured equal opportunity to access education. In order to compromise, a new quota system was proposed. This proposal focused more on the needy and less on race. State universities in Rio de Janeiro had "to reserve 45% of its places for needy people."[46] This 45% was allocated as follows: 20% of seats reserved for self-declared

[45]Mala Htun. "From" racial democracy" to affirmative action: changing state policy on race in Brazil." *Latin American Research Review* (2004): 60-89.
[46]Lília GM Tavolaro. "Affirmative action in contemporary Brazil: Two institutional discourses on race." *International Journal of Politics, Culture, and Society* 19, no. 3-4 (2008): 145-160.

blacks (negros), 20% for public school graduates, and 5% for ethnic minorities and the

differently-abled. Regions like Rio de Janerio began to implement quota policies before national

legislation in order to have more control over the creation and implementation than would be

afforded to them if they waited for the direction of the federal government.

In contrast to UERJ, the quota policy implemented at the University of Brasilia (UnB)

was not initiated by law, but rather the first push for quotas was spearheaded by two

Anthropology professors. The visibility and impact of the Durban Conference are credited with

creating the space and social capital to make their quota proposal acceptable. While the policy

proposed by the professors was not the one implemented, they opened the door for serious

discussions about quota policies at UnB. The chosen quota policy that was executed within UnB

admissions was one based on phenotypes. Because Brazilians struggle to self-identify as certain

races and some fear others will falsely identify to gain benefits, applicants who applied for the

20% of spots reserved had to self-identify as Black or Brown and submit a picture to be reviewed

with their application. Supporters stated that "appearance - and not ascendance or cultural

background - was the main trigger of racism in Brazil."[47] At institutions where racial quotas were

implemented, students in the two quintiles (4/5) with the darkest skin color (from white to dark

black skin; 1-5) "were less likely to self-identify as branco, those in the fourth quintile were

more likely to self-identify are pardo, and those in the darkest quintile were most likely to self-

identify as preto."[48]

[47]Lília GM Tavolaro. "Affirmative action in contemporary Brazil: Two institutional discourses on
race." *International Journal of Politics, Culture, and Society* 19, no. 3-4 (2008): 145-160.
[48]Andrew M. Francis, and Maria Tannuri-Pianto. "Endogenous race in Brazil: affirmative action and the
construction of racial identity among young adults." *Economic Development andcultural change* 61, no. 4 (2013):
731-753.

In July 2009, after the implementation of affirmative action at many institutions of higher education, the Democratas (DEM) filed the Claims of Non-Compliance with a Fundamental Precept (ADPF nº. 186). The ADPF nº 186 called for the University of Brasilia's racially oriented affirmative action program to be classified as unconstitutional and consequently, asked that all other similar affirmative action programs be declared unconstitutional as well. In place of race-conscious policies, the DEM proposed that affirmative action policies be based on class. In April 2012, the Brazilian Supreme Court unanimously ruled to reject the ADPF nº 186. This ruling certified the constitutionality of racially focused affirmative action policies. The failure of ADPF nº 186 led the Brazilian National Congress to pass Law 12,711/2012 in August of 2012. Law 12,711/2012, better known as the Quota Law, was passed after the Supreme Court essentially declared that it was constitutional to have affirmative action for Black Brazilians. This Law mandated that all public universities must reserve at least 50% of admission positions for students from state sponsored secondary schools. It also instructed that of the 50% of positions reserved for public school students, at least 50% of those seats should be allocated to "students from families with incomes at or below 1.5 times the minimum wage."[49] Additionally, the Quota Law instructed public universities that the percent demographics of black, brown, and indigenous people of the 50% of spots set aside for public school students, must equal that of the state where the institution is located.[50]

The national government's endorsement of quotas as an affirmative action tool was met with mixed reactions. Some praised the efforts of the government for taking intentional and

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[49-50] Bernardino-Costa, Joaze, and Ana Elisa de Carli Blackman. "Affirmative action in Brazil and building an anti-racist university." *Race Ethnicity and Education* 20, no. 3 (2017): 372-384.

tangible steps to correct the racial disparities that exist in Brazil. While quotas have been shown

to help Brazilians become more racially conscious, they have not been accepted by all Brazilians.

Opponents argue that race-quotas will create racial divisions similar to those found in the US and

lead to racist, hate-filled movements against darker-skinned people. Others do not trust that

everyone will be truthful when self-reporting race, as some people will want to take advantage of

the reserved spots.[51] Others are concerned that racial quotas practice social exclusion instead of

inclusion.[52]

The doubt in racial quotas is directly linked to Brazil's complex racial structure. Because

the country wants to be seen as a racial safe haven, identifying races that need help creates

division and discomfort. Quotas for students who attended public schools are much more

common for this reason. In Brazil, public secondary schools are notorious for being poor

preforming institutions, unlike public universities which are free but more prestigious. Private

secondary schools require tuition but are better resourced, and while private universities also

charge tuition, they are not as respected as public institutions.[53] As stated earlier, being black has

become synonymous with poor education, so instead of targeting Afro-Brazilians, many schools

set a large goal for students who graduated from public schools and within that quota, a smaller

number of spots is set aside just for Afro-Brazilians. Quotas for public school students can be

explained by Schwartzman et. al., "the social inclusion framing of affirmative action … has

prevailed, over one that focused on the denunciation of racism in Brazilian society. …This

[social inclusion] view… understands black disadvantage as a subset of – and derived from – a

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[51]Stanley R. Bailey, Fabrício Fialho, and Michelle Peria. "Support for race-targeted affirmative action in Brazil." *Ethnicities* 18, no. 6 (2018): 765-798.
[52]Luisa Farah Schwartzman, and Angela Randolpho Paiva. "Not just racial quotas: Affirmative action in Brazilian higher education 10 years later." *British Journal of Sociology of Education* 37, no. 4 (2016): 548-566.
[53]Edward Telles, and Marcelo Paixao. "Affirmative action in Brazil." In *LASA forum*, vol. 44, no. 2, pp. 10-11. 2013.

broader, class-based disadvantage."[54] Richard Rochetti concludes after studying the implications of the University of Rio de Janeiro's quota policy that if affirmative action policies are based on class and not race, it would allow the government to begin bridging the wealth gap while avoiding speaking about race.[55] These authors are expressing that instead of using racial-quotas to point out and dismantle racism, quotas for public school students are being used to point out class-based inequalities and make racial inequalities less visible.

While quotas are not liked by everybody, they are effective for giving those with previously limited chances of getting into a university a significantly better chance. In a study evaluating UERJ's admissions policies, researchers found that without this system few quota applicants would have been admitted, and proposed alternatives like preparatory courses for the university's entry exams did not appear to be viable as strategy to increase access to higher education in place of the quota system.[56]

Today, quota systems exist in most public and some private institutions of higher learning in Brazil. The next steps include determining if racial-quotas and quotas for public school graduates can co-exist. Most universities employ quotas primarily for public school graduates and have secondary percentage goals for specific races and ethnicities. The direction of affirmative action policies in Brazil will be determined by which principles Brazilian citizens want to prevail -- bridging a class-based wage gap or dismantling the all-encompassing racism of society.

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[54] Luisa Farah Schwartzman, and Angela Randolpho Paiva. "Not just racial quotas: Affirmative action in Brazilian higher education 10 years later." *British Journal of Sociology of Education* 37, no. 4 (2016): 548-566.

[55] Ricardo Rochetti. "Not as Easy as Black and White: The Implications of the University of Rio de Janeiro's Quota-Based Admissions Policy on Affirmative Action Law in Brazil." *Vand. J. Transnat'l L.* 37 (2004): 1423.

[56] Alvaro Alberto Ferreira Mendes Junior, Alberto de Mello e. Souza, and Fabio Domingues Waltenberg. "Affirmative action and access to higher education in Brazil: The significance of race and other social factors." *Journal of Latin American Studies* 48, no. 2 (2016): 301-33

Brazil and the US have different histories with affirmative action. In the US affirmative action began as a way to enforce the Civil Rights Act of 1964 and today has continued to evolve through court battles. While the standard of affirmative action in the US varies depending on the state and institution, it has been ruled that quotas are illegal, race cannot be a deciding factor in admissions criteria but can be one of many deciding factors, and that institutions must be able to justify way they are implementing their version of affirmative action. Contrastly in Brazil, affirmative action began at the subnational level and was later endorsed and legalized at the national level. Currently affirmative action policies are executed through quota systems in Brazil.

IV.   Affirmative Action and Access to Higher Education

The current state of affirmative action and its relationship with access is a global phenomenon. This is highlighted by Clancy and Goastellec in their article "Exploring access and equity in higher education: Policy and performance in a comparative perspective." They found that globally between the years of 1970 and 2000, the average number of students enrolled in secondary education increased by 180% while simultaneously, enrolment in post-secondary programs almost quadrupled. Globally more people are continuing to pursue higher education. In a 2018 study based on information provided by the United Nations Educational, Scientific, and Cultural Organization, Rahul Choudaha and Edwin van Rest estimated that by 2030 over 300 million students will be enrolled in higher education. This staggering increase in the number of people seeking higher education warrants a discussion on which people are being granted access to higher education institutions. Here I explore how affirmative action has shaped this access in both the United States and Brazil.

United States

Affirmative action and its relationship to access for Black students in America is a complex subject. Part of this complexity comes from the issue of having various racially underrepresented groups that are vying for protection under affirmative action policies. This means that often the numbers of Black students who are gaining access to higher education institutions is lost in favor of overall "diversity" numbers rising. In addition to getting lost in the alphabet soup that is diversity, two main issues can be identified within the relationship between access to higher education and affirmative action. Those issues are the impact of removing affirmative action policies and the effects of institution selectivity. The current state of the relationship between affirmative action and access is best explained by Patricia Gándara, Catherine Horn, and Gary Orfield when they write, "Skyrocketing tuition, shrinking capacity, and the demise of affirmative action in some states have all taken a toll on the hopes and dreams of many youths who are low income and minority."[57] These authors have accurately captured the many issues that hinder increasing access to higher education for students of color.

The removal of affirmative action policies is just as significant as the implementation of affirmative action policies. The removal of affirmative action is not a recent phenomenon, and the impacts of removing affirmative action policies are beginning to be seen. In their article, "The Declining "Equity" of American Higher Education," Astin and Oseguera set out to find how access to the best institutions has changed since the implementation and removal of affirmative action policies. They conducted a study using data from the entering Freshman Survey, a survey conducted annually by the Cooperative Institutional Research Program. Every year, with participation from over 700 institutions, around 400,000 freshmen answer questions

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[57]Patricia Gándara, Catherine Horn, and Gary Orfield. "The access crisis in higher education." *Educational Policy* 19, no. 2 (2005): 255-261.

about demographics, biographical information, educational plans, and other comprehensive topics. The authors of this study looked at the data about students' socioeconomic status, including parental family income, mother's educational level, and father's educational level. They find that during the 1960s to 1970s, the accessibility of American higher education was largely enhanced by the Higher Education Act of 1965 and its implementation of Affirmative Action.[58] This finding is echoed in the 1971 Newman Report on Higher Education. The finding from the report was that from 1964 to 1968, Black college enrollment grew 85% from 234,000 students to 435,000. The Newman Report also detailed that while the increase in Black enrollment was up, Black students still only made up 9% of the growth in enrollment numbers during that time.[59]

After the increased growth in access, a new aspect of equity that many had not considered began to make itself known. Within the American higher education institution system, there exists a hierarchy, and the distribution of students across institutions in the hierarchy is an aspect of equity that needs to be examined. Astin and Oseguera offer two potential obstacles to the accessibility of nationally ranked institutions for underrepresented and poor students. The increased selectivity of admissions departments of high ranked institutions shows preference to students with high scores on standardized admissions tests and high-grade point averages (GPA). When an institution prioritizes standardized testing scores and GPAs over a holistic review of applicants, this inherently decreases the chances of admittance for minority and poor students, who statistically perform worse on standardized tests than their white and affluent counterparts.[60]

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[58]Alexander W. Astin and Leticia Oseguera. "The declining" equity" of American higher education." *The Review of Higher Education* 27, no. 3 (2004): 321-341.

[59]Frank Newman. *Report on higher education*. Vol. 50065. US Government Printing Office, 1971.

[60] Alexander W. Astin and Leticia Oseguera. "The declining" equity" of American higher education." *The Review of Higher Education* 27, no. 3 (2004): 321-341.

In 1997, African Americans had the lowest average score on both the ACT and SAT compared to other racial groups.[61] If schools were to base admissions criteria solely on standardize testing, Black students would rank at the bottom of the list.

Additionally, there has been an increased amount of fiscal pressure placed on institutions. With universities and colleges being asked to carry more of the financial load, it is in their best interest to admit students with families who can afford the tuition or a partition of tuition. On the same accord, it then becomes financially difficult for an institution to admit a large number of underrepresented and poor students, as much of the financial burden would fall on the institution itself.[62] In 2012, Dwyer, McCloud, and Hodson found that institutions began to place more of the onus of paying for school on the student as a result of the progressive defunding of higher education by states. This process resulted in increased tuition prices and created a debt disaster for students.[63] Astin et. al. found that in 2004 the likelihood "of a student from a highly educated family enrolling in a highly selective institution are nearly three times better than the chances of a student from the middle educational level and more than five times better than those of a first-generation student."[64] Their study revealed that in 2004, the American higher education system was more stratified socioeconomically then it had been at any time in the prior 30 years. These findings are reinforced by Clancy et. al. who note that the expansion of access to higher education has not shown to reduce the inequalities among social classes in their differing access

[61]Antoine M. Garibaldi. "Four decades of progress... and decline: An assessment of African American educational attainment." *Journal of Negro Education* (1997): 105-120.

[62]Alexander W. Astin and Leticia Oseguera. "The declining" equity" of American higher education." *The Review of Higher Education* 27, no. 3 (2004): 321-341.

[63] Rachel E. Dwyer, Laura McCloud, and Randy Hodson. "Debt and graduation from American universities." *Social Forces* 90, no. 4 (2012): 1133-1155.

[64] Alexander W. Astin and Leticia Oseguera. "The declining" equity" of American higher education." *The Review of Higher Education* 27, no. 3 (2004): 321-341.

to higher education.[65] While this stratification is partially attributed to the increased

competitiveness of prospective college students,[66] it is largely connected with the increased

overrepresentation of high-income students. In their words, Astin and Oseguera believe that "A

completely equitable higher education system…would be one where students from different

socioeconomic classes have equal access to the best educational opportunities."[67] From this

study, it is clear that while affirmative action policies in the past might have been effective,

increasing accessibility to higher education for historically excluded groups, today stratification

persists in the institutions to which a Black student or any student of color has equal access. As

explained by Gerald and Haycock, institutions have embarked on "the relentless pursuit not of

expanded opportunity, but of increased selectivity."[68] This is significant because the result seems

to be that what is now considered affirmative action is restricting the amount of equitable college

and university choices for Black and Brown students versus expanding their access to all types of

higher education institutions.

Lisa Dickson explains how the changes in admissions criteria, tuition, and ultimately the

end of affirmative action has impacted the accessibility, affordability, and quality of higher

education in the state of Texas specifically. Ending affirmative action and beginning the percent

plan that automatically admit students who are in the top ten percent of their graduating class to

any public college or university in Texas "affected the cultural accessibility of higher education

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[65-67] Alexander W. Astin and Leticia Oseguera. "The declining" equity" of American higher education." *The Review of Higher Education* 27, no. 3 (2004): 321-341.

[68]Danette Gerald, and Kati Haycock. "Engines of inequality: Diminishing equity in the nation's premier public universities." Education Trust (2006).

and the geographic accessibility of higher education."[69] Dickson defines cultural accessibility as encouraging all students to continue to higher education. She found that cultural accessibility under the percent plan increased for students who are in the top ten percent of their high school class but decreased for some Black and Hispanic students as a result of the ending of affirmative action. This finding is echoed by Tienda, Alon, and Niu who surmised that when affirmative action policies are removed and the top ten percent policies are implemented, the number of qualified minority students who apply to attend university declines as they might not feel they are as qualified or welcomed on campus.[70] Dickson defines geographical accessibility as students having the ability to obtain a high-quality education locally. She explains that with the ending of affirmative action policies the chances of admittance to a geographically accessible state university decreased for some Black and Hispanic students. And under the percent plan, it became harder for students not in the top ten percent of their class to gain admittance as well.[71] While the percent plan is meant to help institutions attain racial diversity without explicitly using race, it fails to do this in a way that is comparable to the diversity that is accomplished through affirmative action. On top of not increasing racial accessibility, the percentage plan decreases access to public higher education for all those who are not in the top ten percent of their high school class. What the percent plan induces is a lower acceptance and applicant rate of Black and Hispanic students in the state of Texas applying to public universities and colleges.

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[69]Lisa M. Dickson. "The changing accessibility, affordability, and quality of higher education in Texas." *What's happening to public higher education* (2006): 229-250.

[70]Marta Tienda, Sigal Alon, and Sunny Xinchun Niu. *Affirmative Action and the Texas Top 10% Percent Admission law: Balancing Equity and Access in Higher Education*. Princeton, NJ: Texas Higher Education Opportunity Project, 2008.

[71] Lisa M. Dickson. "The changing accessibility, affordability, and quality of higher education in Texas." *What's happening to public higher education* (2006): 229-250.

While this is just one example of what happens when affirmative action is removed, many scholars have conducted similarly pessimistic analyses. Harper, Patton, and Wooden also highlight the disadvantages that are associated with the removal of affirmative action policies. When such initiatives are removed, there are also fewer resources given to underrepresented students at the primary and secondary level. This makes it harder for underrepresented students to overcome the lack of support at the post-secondary level. While affirmative action policies increased access to higher education for African American students for a while, its inability to lead to sustainable progress is a major fault in the realm of educational policymaking. Harper, Patton, and Wooden's claims support this line of thinking. In their analysis of affirmative action policies, they found that for substantial and continuous progress to increase Black enrollment in higher education, policymakers must not be ignorant of the structural barriers that exist to create the racial gap in enrollment that is seen today.[72] "Consistent attacks on affirmative action; funding inequities for public institutions that annually offer college opportunity to more than a quarter-million African American students…and infrequent policy analyses will continually manufacture insufficient access and equity barriers for those who could ultimately benefit from college participation."[73] These authors outline the need for affirmative action and call for the continued support and protection of affirmative action policies. Without the preservation of affirmative action and the will to hold its policies in place, many Black students will continue to be overlooked and left out of the higher education system.

Brazil

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[72]Shaun R. Harper, Lori D. Patton, and Ontario S. Wooden. "Access and equity for African American students in higher education: A critical race historical analysis of policy efforts." *The Journal of Higher Education* 80, no. 4 (2009): 389-414.

[73] Lisa M. Dickson. "The changing accessibility, affordability, and quality of higher education in Texas." *What's happening to public higher education* (2006): 229-250.

Brazil's struggle with providing accessible higher education to Black (pretos and pardos) and low-income students is different from the issues that occur within the US, at least on the surface. In Brazil, affirmative action is a state-sponsored policy that was developed in order to counter inequities in accessibility. The country is best known for its use of quotas to help expand access to the country's prestigious public universities. The justification for using quotas is to help treat the historical discrimination faced by those of non-white races, mostly Afro-Brazilians. There is no denying that quotas and other affirmative action efforts in Brazil have proven to be fruitful in increasing the number of people participating in higher education. The total population enrollment in higher education grew from 14% in 1999 to 29% in 2013. [74] Moreover, affirmative action appears to be broadening access to institutions for Black people as well. This success is attributed to the implementation of affirmative action and requiring public institutions to use quotas. In reference to how many Black people currently in higher education have benefitted from affirmative action, a third of Blacks that were admitted into private schools say they were admitted via affirmative action programs while 13% of Black students in federal public schools say they were admitted via an affirmative action program. [75]

But while Black students are getting accepted and going to higher education institutions, it is important to realize that it is still incredibly difficult for Afro-Brazilians to continue their schooling into higher education. Pedrosa, Simões, Carneiro, Andrade, Sampaio, and Knobel report that while Black people make up 54% of the college-age cohort (ages 18-24), only 32% are enrolled in higher education. This means that only 7.9% of college-age Blacks are attending

[74] Muhr Thomas "State intervention, South-South cooperation and structural transformation: the (ignored) case of Brazil-Venezuela cooperation for equity of access to university education, 2003-2016." *Revista Eletrônica de Educação* 13, no. 3 (2019): 796-812

[75-76] Renato HL Pedrosa, Tania P. Simões, Ana M. Carneiro, Cibele Y. Andrade, Helena Sampaio, and Marcelo Knobel. "Access to higher education in Brazil." *Widening Participation and Lifelong Learning* 16, no. 1 (2014): 5-33.

college, unlike their white counterparts who experience a 20% attendance rate for college-age students.[76] Analyzing data from the Pesquisa Nacional por Amostragem de Domicilios (Brazilian Household Survey), which includes 22 years' worth of the survey data, and focusing on 1982 to 2006, Collares found that "For Blacks, chances of entering post-secondary education at younger ages are smaller than for the other groups."[77] These figures are key in showing that just because some Black students are benefitting from affirmative action, as a group Afro-Brazilians are still largely excluded from higher education as many cannot overcome the economic or societal barriers to safely decide to attend a higher education institution.

Another problem Brazil has regarding affirmative action and access is the plurality of private higher education institutions. The distinction between private and public universities in Brazil is stark. Public universities are the most prestigious and also the most affordable. The challenge is that those institutions are very selective with who is admitted. Private universities are known to have a lower quality of education than public schools and are more expensive. Between 1994 and 2003, there was a significant expansion of the Brazilian higher education system that was largely centered around expanding the for-profit sector and other non-university entities, which did not help improve the diversity or equity within the institutional system.[78] Akoojee and Nkomo reported private school enrollments to account for 70% of all enrollments in higher education. Of those students attending an affordable higher education institution, two-thirds of those students belong to the highest income quintiles while only 5% come from the

[77]Ana Cristina M. Collares. "The Expansion of Higher Education in Brazil between 1982 and 2006: Disentangling age, period and cohort effects." *Population Review* 52, no. 2 (2013).
[78]Julio Bertolin, and Denise Leite. "Quality evaluation of the Brazilian higher education system: Relevance, diversity, equity and effectiveness." *Quality in Higher Education* 14, no. 2 (2008): 121-133.

lowest two quintiles.[79] Akoojee, et.al.'s findings are significant because these numbers reveal the impact that private schools have had on low-income students generally and Black students specifically. Private secondary schools are mostly white and very wealthy. In a higher education system where Black students are not selected for public institutions and private institutions are mostly made up of white wealthy students, it is clear to see how affirmative action policies are allowing Black students to fall through the cracks. Just because public institutions are more diverse than their private counterparts does not mean that access has been sufficiently expanded if many Black students are not being accepted. Many Black and public-school students are not being admitted to public higher education institutions for various reasons. The biggest reason according to Cavalcanti, Guimares, and Sampaio is the public secondary schools they overwhelmingly attend often do not teach at the same standard as private schools and largely do not have offer access to the university entry test preparation classes that private schools provide. These shortcomings significantly limit public secondary students' ability to do well on entrance exams.[80]

The growth of the private sector of higher education means acknowledging that new affirmative action programs and ideas need to be applied to these institutions in order to be effective at the goal of expanding access to Black students. One way Brazil has tried to address this problem is through a program called Prodeama Universidade para Todos (PROUNI). Under this program, private universities are offered tax exemptions as incentives to fill vacant spots free of charge to low-income students. In addition to low-income students, PROUNI provides grants

[79]Akoojee, Salim, and Mokubung Nkomo. "Widening equity and retaining efficiency: Considerations from the IBSA southern coalface." *International Journal of Educational Development* 31, no. 2 (2011): 118-125.

[80]Tiago Cavalcanti, Juliana Guimaraes, and Breno Sampaio. "Barriers to skill acquisition in Brazil: Public and private school students performance in a public university entrance exam." *The Quarterly Review of Economics and Finance* 50, no. 4 (2010): 395-407.

for people who identify as Black or indigenous when they enroll in their respective universities.[81]

This program is a step in the right direction as it not only encourages private universities to take in low-income students at affordable prices but it also allows Black students to be further supported through this foundation. For most students, the financial burden is the number one reason they choose to not participate in higher education. Brazil created the Student Funding Program (FIES) to combat this very issue. FIES is a loan program that allows a student to repay the government when they are finished with their course of study. And just like PROUNI after it was established for a couple of years, the program began to be more intentional and, "started to include the color/race requirement in the composition of its index classification, increasing the chances of black claimants to receive funding."[82] FEIS is important because it seeks to tackle the biggest obstacle that students challenge when deciding to come to college and that is tuition. However, similarly to PROUNI, only after functioning for a while, were special considerations taken to race. For each of these policies, or any policy, to be effective in expanding the access of higher education, it must be intentional and explicitly state that it is meant to help advance Black students. Otherwise, programs will also add race considerations to the back end of their projects, like checking a box, which lessens the intentionality and likely the effectiveness of these programs to give equal access to higher education for all people.

Recommendations

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[81] Márcia Lima. "Access to higher education in Brazil: inequalities, educational system and affirmative action policies." Institute for Employment Research, University of Warwick, Coventry (2011).

[82] Márcia Lima. "Access to higher education in Brazil: inequalities, educational system and affirmative action policies." Institute for Employment Research, University of Warwick, Coventry (2011).

In accordance with the literature, there seems to be a common solution to resolve the issue of accessibility for students of color. Scholars recommend that to accurately address the systemic problems of access to higher education, both countries must begin with addressing the issues that exist within secondary and even primary education levels. Gerald, et. al. note that when flagship universities in the United States explain why they have a lack of Black or underrepresented students they often highlight the poor quality of high schools.[83] Gándara et. al. state, "higher education policy cannot be considered in a vacuum, separate from other factors."[84] If primary and secondary education institutions do not function properly, then expanding access to higher education will be fruitless no matter how well-designed or implemented the increased access policies are.

This way of thinking is echoed in Abrahao De Araujo's work that looks at how PROUNI works to increase access to higher education in Brazil. De Araujo recommends that to get to the root of the problem the national government should begin to implement programs in primary and secondary schools that are aimed to improve the quality of education that students are receiving. Additionally, he goes a step further and advocates for the targeting of social disparities that permeate society as those factors also largely affect a students' ability to perform and the fiscal decision to stay in school. Ultimately, De Araujo argues that the goal of any affirmative action programs and beyond should be "universal high-quality education."[85] Once this level of equal

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[83] Danette Gerald and Kati Haycock. "Engines of inequality: Diminishing equity in the nation's premier public universities." *Education Trust* (2006).

[84] Patricia Gándara, Catherine Horn, and Gary Orfield. "The access crisis in higher education." *Educational Policy* 19, no. 2 (2005): 255-261.

[85] Abrahao Andre De Araujo. "Access to Higher Education in Brazil with Reference to Prouni." *Higher Education Studies* 2, no. 1 (2012): 32-37.

education is achieved, both countries may be able to abandon race-conscious admission preferences and still effectively promote racial diversity.

V.   Affirmative Action and Income Inequality

It is clear that there are ongoing debates regarding whether affirmative action increases access to higher education for people of color; however, there are also other essentials that many think should be a result of implementing these policies. Two major areas of interest are affirmative action's impact on graduation rates and on income levels. These areas of interest are highlighted in the words of Professor Douglas Detterman when he wrote, "The goals of affirmative action— [are] to close the wage and education gaps between Whites and Blacks."[86] In the following section, I will discuss the relationship between these two areas for Black and other underrepresented minority populations within both Brazil and the US. It is important to note that while graduation rates and post-collegiate income measurements are not the same, both outcomes together help paint a picture of the larger impacts of affirmative action. Together they can paint a picture can help determine if affirmative action policies are truly instrumental in alleviating the social inequalities that these policies were created to address.

United States

Affirmative action and graduation rates in the United States have a complicated connection. Within the discussion of affirmative action policies and their impact on graduation rates, it is important to recognize the existence of various negative side effects that many use to argue against affirmative action. The most notable of these objections is the concept of minority

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[86]Douglas K. Detterman. "Tests, affirmative action in university admissions, and the American way." *Psychology, Public Policy, and Law* 6, no. 1 (2000): 44.

mismatch. Minority mismatch is a term used to describe the belief that the implementation of affirmative action policies have created a scenario where many of the underrepresented students now accepted to selective institutions are being set up to fail because they are not qualified to succeed at these institutions as their entrance tests scores (i.e. SAT, ACT, etc.) are on average lower than their white counterparts. This notion states that selective institutions are accepting students they know will have a harder time graduating simply because of affirmative action policies.[87] To evaluate these claims, Peter Hinrichs used data from the Integrated Postsecondary Enrollment Data System (IPEDS) which collected information from all higher education institutions that provide federal aid to students like the Federal Pell Grant through a Program Participant Agreement with the Department of Education. Hinrichs looked at the four- and six-year graduation rates from the IPEDS for the years 2002 through 2009. He found that when affirmative action is removed, overall graduation rates do not change much. However, he also reported that banning affirmative action would result in fewer Black graduates as "fewer underrepresented minorities are admitted to selective colleges when affirmative action is banned, [which results in] fewer underrepresented minorities [becoming] graduates of selective colleges.[88] Therefore, while removing affirmative action might not have a significant impact on graduation *rates*, it will have serious consequences on the *number* of Black students graduating from top-tier schools. In other words, affirmative action does not undermine the success of Black students who matriculate at selective institutions and enables more Black students to obtain degrees at these schools.

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[87]Sigal Alon, and Marta Tienda. "Assessing the "mismatch" hypothesis: Differences in college graduation rates by institutional selectivity." *Sociology of education* 78, no. 4 (2005):294-315.
[88]Peter Hinrichs. "Affirmative action bans and college graduation rates." Economics of Education Review 42 (2014): 43-52.

The study by Hinrichs along with similar research by Alon and Tienda[89] did not find

evidence to support the concept of minority mismatch is not reflected in graduation rates,

although there is some evidence for mismatch theory reflected "in grades or choice of major."[90]

The choice of major is a critical crossroad where graduation rates and income levels for

underrepresented communities seem to intersect. Graduation rates of all minorities but

specifically Black students in the US are largely stratified by which major a student chooses.

And major choice ties into post-collegiate income levels as different majors are directly linked to

different income levels. For example, those who choose science, technology, engineering, or

math (STEM) majors, like biology, computer science, or industrial engineering, typically make

more than those who choose humanities/social science majors, like political science, psychology,

or sociology.[91] The discussion now becomes, which majors are Black students graduating from

and how are those rates affecting the overall state of racial income inequality within the US.

In a study administered by Arcidiacono, Aucejo, Fang, and Spenner titled "Does

affirmative action lead to mismatch?" the authors analyzed this major element of mismatch

theory by looking at the racial breakdown of majors at Duke University. The data was collected

from Campus Life and Learning Project at Duke University that includes surveys taken by Duke

students. The survey provided Arcidiacono, et.al. with access to confidential academic records of

those who participate. When looking at the patterns of major choice by race, Arcidiacono, et.al,

found that for students who initially declared a major in the natural sciences, only 15.7% of

Black students ended in that major compared to 25.4% of their white counterparts who finished

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[89]Sigal Alon, and Marta Tienda. "Assessing the "mismatch" hypothesis: Differences in college graduation rates by institutional selectivity." *Sociology of education* 78, no. 4 (2005):294-315.
[90]Peter Hinrichs. "Affirmative action bans and college graduation rates." Economics of Education Review 42 (2014): 43-52.
[91] Peter Arcidiacono, Esteban M. Aucejo, and V. Joseph Hotz. "University differences in the graduation of minorities in STEM fields: Evidence from California." American Economic Review 106, no. 3 (2016): 525-62.

within this major category. The percentage of Black student who switch out of natural science majors and into humanities majors is 22.2% which is 10% higher than their white peers. Further while only 0.5% of Black students who begin in humanities switch into natural science majors, 41% of Black students who start Duke as a humanity major finish their degree in the same field.[92] What Arcidiacono, et.al. all show is that Black students are more likely to choose, switch into, and complete their degrees as a humanities major compared to their white peers who do well in finishing their collegiate careers as natural science majors.

The major choice question was also taken up by Arcidiacono, Aucej, and Hotz in their analysis of the University of California system. What they found is a minimal number of Black STEM graduates even though the preference of Black and Hispanic students for STEM fields is the same as their white peers when entering school.[93] The data used in the study was obtained from the University of California Office of the President (UCOP) under a California Public Records Act request, which contains information like a students' academic preparation, prospective major, and major upon graduation. Arcidiacono et.al. were able to identify trends regarding minority students in STEM who were enrolled at any campus in the University of California system. The study reported that of minority students who started in a STEM major at UC-Berkeley their chances of graduating in four years were only 11%.[94] However, UC-Berkeley is a selective school compared to other schools in the UC system like UC-Riverside or UC-Santa Cruz. Arcidiacono et. al. also reported that those minority students who started at Berkeley in a

[92]Peter Arcidiacono, Esteban M. Aucejo, Hanming Fang, and Kenneth I. Spenner. "Does affirmative action lead to mismatch? A new test and evidence." *Quantitative Economics* 2, no. 3 (2011): 303-333. Black, Sandra E., Jeffrey T. Denning, and Jesse
[93] Peter Arcidiacono, Esteban M. Aucejo, and V. Joseph Hotz. "University differences in the graduation of minorities in STEM fields: Evidence from California." American Economic Review 106, no. 3 (2016): 525-62.
[94-96] Peter Hinrichs. "Affirmative action bans and college graduation rates." Economics of Education Review 42 (2014): 43-52.

STEM major would be more likely to graduate with a science degree if they attended one of the less selective campuses like UC-Riverside.[95]

These results bring into question whether it is worth it for Black students to risk attending selective institutions if it is more difficult to graduate in competitive and highly remunerated fields from these schools. The evidence shows that for minority students the benefit of attending a selective university has a larger pay off than it does for their white counterparts. In his study, Hinrichs noted that "If earnings depend on college selectivity, attending a selective college may be a risk worth taking even if it results in a lower probability of graduating from any college."[96] In a recent study conducted to identify the effects of having access to selective public universities, Black, Denning, and Rothstein examined the impact of the State of Texas implementing the Top Ten Percent Rule (TTP). Black et.al. used data from the Texas Education Research Center (ERC), which contains data about major choice, graduation, and enrollment from students from all public higher education institutions in Texas. The ERC also contains information on those students who graduated from public high schools in Texas between 1996 and 2002. What they found was that college selectivity mattered more for students that came from disadvantaged schools than for those who came from more privileged schools. For those students who gained access to selective institutions through TTP, they were more likely to experience an increase in graduation rates and earnings.[97] This means that even if affirmative

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[97] Sandra E. Black, Jeffrey T. Denning, and Jesse Rothstein. Winners and Losers? The Effect of Gaining and Losing Access to Selective Colleges on Education and Labor Market Outcomes. No. w26821. National Bureau of Economic Research, 2020.

action was doing its job and increasing access to education if Black students are not selecting or graduating out of those high earning majors, then the overall impact of these policies on the racial income inequality will be limited.

Brazil

In researching the concepts of graduation rates and post-collegiate earnings in Brazil, we find similar patterns to those in the United States. Much of the Brazilian literature talks about the achievement of those admitted through affirmative action programs and not specifically their graduation rates. Those students who benefit from affirmative action policies often perform on par with or better than their non-affirmative action admitted counterparts. Childs and Stromquist make this point in a study that examined affirmative action policies at three different public universities in Brazil using data reported and collected from each school. They write, "while quota students may perform worse than non-quota students on the vestibular, once admitted, their average scores are similar to, and at times higher than, non-quota students."[98] And directly relating to graduation rates, a study conducted by Bonaldo and Pereira about the factors and demographics that determine which students will drop out of higher education institutions found that students who are beneficiaries of PROUNI or FIES scholarship programs have a lower probability of dropping out than their peers.[99]

Additionally, the same relationship between major choice and student type seen in the US is mirrored in Brazil. This is seen in "Universities and Intergenerational Social Mobility in Brazil: Examining Patterns by Race and Gender" where Duryea et al. "analyze social mobility as

[98] Porsha Childs, and Nelly P. Stromquist. "Academic and diversity consequences of affirmative action in Brazil." Compare: A Journal of Comparative and International Education 45, no. 5 (2015): 792-813.
[99] Luciane Bonaldo, and Luis Pereira. "Dropout: Demographic profile of Brazilian university students." Procedia Social and Behavioral Sciences 228 (2016): 138-143.

realized by students of a high-quality public flagship university in Brazil, the Federal University of Pernambuco (UFPE), and compares with mobility at US institutions."[100] What Duryea et al. find is that of all mobility factors considered (gender, race, major choice, etc.) major choice is the most important factor in determining the level of mobility for every demographic group.[101]

However, unlike the most universities in the United States, in Brazil when students apply to universities they also apply directly to departments/programs within each university which is similar to American students choosing a major. And man Afro-Brazilians are simply choosing not to apply to the harder programs in more highly remunerated fields. Evidence of this is found in Alice Dias Lopez's analysis of the difference in the likelihood of graduation from select undergraduate programs between students who benefit from affirmative action and those who do not. Dias Lopez relied on data from the database of the Higher Education National Exam (ENADE). The ENADE has been administered since 2004 by the Ministry of Education of Brazil as a tool of evaluation for the Brazilian higher education system. The ENADE evaluates different undergraduate programs and a sample of students at the end of their first and last year of the program are surveyed. Dias Lopez uses the data from 2009 and 2010 because this is the time frame that best captures the first group of students who benefitted from affirmative action in the projected graduating classes. In this article, Dias Lopez explains the socioeconomic status of undergraduate programs which is to say that some programs are highly correlated with social prestige.[102] She wanted to find out if affirmative action students are actively graduating from

[100-101]Suzanne Duryea, Luísa Baptista de Freitas, Luana Marques-Garcia Ozemela, Breno Sampaio, Gustavo R. Sampaio, and Giuseppe Trevisan. "Universities and Intergenerational Social Mobility in Brazil: Examining Patterns by Race and Gender." *Journal of Economics, Race, and Policy* 2, no. 4 (2019): 240-256.

[102-103] Alice Dias Lopes. "Affirmative action in Brazil: how students' field of study choice reproduces social inequalities." Studies in Higher Education 42, no. 12 (2017): 2343-2359.

these programs. "A significant negative association between the socioeconomic status of the undergraduate program and whether the student enters the university as an affirmative action candidate" was found. This means that those affirmative action students who do graduate are routinely graduating out of undergraduate programs with lower socioeconomic statuses than their non-affirmative action peers. Dias Lopez also found that high prestige programs like Psychology, Economics, and Occupational Studies have low graduation rates for affirmative action students compared to the high level of success that affirmative action students achieve in some of the lower-level programs like Nursing, Social Services, and Business.[103] This means that students in a similar fashion to those in the US are choosing programs that will likely result in them making less money than their majority counterparts who are dominating programs that are correlated with higher income levels. In the end, this cycle only perpetuates the racial income disparity that exists within the country.

Recommendation

The solution to these problems is similar to the recommendations listed in association with affirmative action policies' impact on access to higher education. Increased investment in primary and secondary systems of education would be able to address many of the gaps that are being formed by the current implementation of affirmative action policies. In the area of graduation rates, many students do not matriculate all the way through because of various factors, many of which can be traced to their secondary schooling. For example, if a school does not have access to the best quality of resources how can they aim to produce high caliber students to attend those super selective schools. Likewise, when approaching the subject of

representation in STEM majors and fields, there needs to be a greater effort to expose Black and

other underrepresented minorities to the field and a move to gather the resources needed to

cultivate those skills. In Tai, Liu, Maltese, and Fan's study on eighth-grade students who

expected to pursue a career in a science field, the authors explored "whether science-related

career expectations of early adolescent students predicted the concentrations of their

baccalaureate degrees earned years later."[104] They used data from the National Education

Longitudinal Study of 1988, which included surveys from eighth-graders over the years of 1990,

1992, 1994, and 2000, with an final sample size of 3,359 participants when zeroed in on those

students who expected to be in a science career by the age of 30 and completed their

baccalaureate degree from 4-year institutions by the year 2000. What Tai et.al. discovered is that

students who expected to be in a science career were 3.4 times more likely than those who did

not expect to be in a science career to earn a physical sciences/engineering degree.[105] What this

shows is that to increase the chance of a student completing a degree in a STEM major, it would

be in their best interest to be interested in STEM from an early age. The issue with creating entry

points for underrepresented primary and secondary students to the field of STEM is that access is

often obstructed by costs and the inability to obtain necessary materials. For example, competing

in hackathons, robotic leagues, and Lego leagues means that parents would have to provide

money and time that are hard to come by for many of these families. With this being the case, to

rectify the lack of STEM graduates and meet the demand for diverse labors in this field, the

government or specific institutions must invest time and money into these communities to bring

opportunities to young students. Moreover, when looking at the disparity of Black students

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[104] Robert H. Tai, Christine Qi Liu, Adam V. Maltese, and Xitao Fan. "Planning early for careers in science." *Science* 312, no. 5777 (2006): 1143-1144.

[105] Robert H. Tai, Christine Qi Liu, Adam V. Maltese, and Xitao Fan. "Planning early for careers in science." *Science* 312, no. 5777 (2006): 1143-1144.

graduating within STEM and other high-income averaging majors, the onus should be placed on the university to understand that not every student is the same. Meaning, now that there is an incorporation of more student who are not wealthy and non-white, teaching styles and support resources should change to reflect the growing number of different students entering colligate classrooms. To accurately address the issues of graduation rates and racial income disparity and increase the societal standing of Black people within both US and Brazil, both federal governments must concede that the issue of major/program choice and retention is an unforeseen side effect of affirmative action that can be accurately addressed through the investment and equipoise in public primary and secondary education systems.

VI.   Conclusion

This paper set out to find the truth behind the effectiveness of affirmative action policies on people of color, specifically Black people. The choice to specifically focus on the impact of affirmative action on Black people was made for several reasons. The most salient reason is that the birth of affirmative action policies in both the US and Brazil were born out of Black activism and the struggle for Black people to have adequate resources and education. Additionally, it is important to recognize that affirmative action was proposed is a solution to fix one section of a larger system of racism that permeates both Brazilian and American societies, which was a result of African enslavement. For these reasons, it is important to consider affirmative action in higher education through a critical race theory lens. Critical race theory (CRT) is a movement that is comprised of a conglomerate of activists and scholars who study the relationship between race, racism, and power. In the words of Richard Delgado and Jean Stefancic, "It [CRT] not only tries

to understand our social situation but to change it; it sets out not only to ascertain how society organizes itself along racial lines and hierarchies but to transform it for the better."[106]

While the United States and Brazil have different origins and implementations of affirmative action policies, both countries have similar persistent histories of racialized hierarchies. Affirmative action in the United States was born out of a lack of respect for the Civil Rights Act of 1964. While it began in relation to jobs, it eventually spilled over to encompass higher education. With the inclusion of higher education in affirmative action policies came a tumultuous record of legal battles that continue to be seen today. The ensuing legal battles have called into question the legality of allowing Black students to be treated differently in order to help elevate the social standing of Black people in American society. In Brazil, affirmative action was created for the purpose of increasing the numbers of Afro-Brazilians in higher education. However, this goal has received push back. Today the attitude is that while Black Brazilians should be given more opportunities, acknowledging race is still an uncomfortable topic for many Brazilians, therefore many citizens are pushing to move towards affirmative action policies that mainly focus on public secondary school graduates and socioeconomic status.

Upon first glance, it may be easy to assume that Brazil's state-sponsored, constitutionally backed-quota implantation of affirmative action may be more effective in achieving the goals associated with this type of policy than the often confusing and irregular implantation of affirmative action policies within the US. However, after closely analyzing the outcomes of the different implementations of affirmative action policies, it is clear that the racial inequalities that were meant to be addressed are continuing to persist. The persistence of racial inequality in

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[106]Richard Delgado, and Jean Stefancic. *Critical race theory: An introduction*. Vol. 20. NYU Press, 2017.

higher education is reflective of both countries seeing a growing interest in 'de-racing' affirmative action policies. Supporters of this movement are urging policymakers to craft affirmative action policies that are focused on economic status instead of racial identification. Much of this growing support for race-implicit policies is because many in both countries want to avoid confronting the fact that race and racism are embedded in the fabric of society and inherently exist within the countries' social, economic, and educational structures. And even though it may be more sustainable, viable, and more palatable for white people to have economically based affirmative action policies, 'de-racing' policies will never allow for either country to adequately address the inequality gap that exists between white and Black citizens. If racism is not identified as an issue that is ingrained in both societies, it will be impossible to address and will continue to be overlooked in favor of other structurally oppressive biases.

When looking at access to higher education and graduation rates/income inequality for Black students it is clear that barriers not only remain but continue to be resurrected. It is important to understand that just because affirmative action policies have increased access, graduation rates, and other intended outcomes, the increase does not mean that policies are effective. The inability to effectively make policies for the betterment of Black students is largely because these policies often are influenced by the racism that is present in society. This was expressed by Yosso, Parker, Solorzano, and Lynn when they wrote, "We must challenge the presence of racism in policies intended to remedy racism."[107] The best examples of racism in policies that are meant to erase racism are the move away from race-based affirmative action and to economically focused policies to promote greater diversity in higher education. When race-

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[107] Tara J. Yosso, Laurence Parker, Daniel G. Solorzano, and Marvin Lynn. "Chapter 1: From Jim Crow to affirmative action and back again: A critical race discussion of racialized rationales and access to higher education." *Review of Research in Education* 28, no. 1 (2004): 1-25.

conscious affirmative action policies were at their peak, majority racial groups cried reverse racism and demanded that all races be treated the same in higher education. However, this way of thinking can be seen as inherently racist as there is no faction of society where both Black and white people are treated the same. These decisions are "largely…geared toward promoting white interests as opposed to eliminating inequalities"[108] By not acknowledging or addressing the systematic racist tendencies that have influenced the evolution of affirmative action policies produced in both Brazil and the US, it is easy to forget that a continued sense of "racial subordination is among the critical factors responsible for the continued production of racialized disparities and opportunity gaps."[109] Therefore, to demand that all races be treated equally in the field of higher education is to further the racial inequalities that already exist.

In order to craft and implement affirmative action policies that are effective in benefiting Black students, policymakers must be aware of the structural barriers in place that induce racial disparities not only in the realm of access and attainment of higher education within each country.[110] Structural barriers that inhibit the inclusivity of Black people into the community of higher education can be found in both Brazil and the US. Those barriers include unequal access to food, housing inequalities, and most importantly the inequality of secondary and primary systems.[111] A study conducted by Dennis Condron called "Social Class, School and Non-School Environments, and Black/White Inequalities in Children's Learning" found that students who

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[108]Shaun R. Harper, Lori D. Patton, and Ontario S. Wooden. "Access and equity for African American students in higher education: A critical race historical analysis of policy efforts." *The Journal of Higher Education* 80, no. 4 (2009): 389-414.
[109-110] Shaun R. Harper, Lori D. Patton, and Ontario S. Wooden. "Access and equity for African American students in higher education: A critical race historical analysis of policy efforts." *The Journal of Higher Education* 80, no. 4 (2009): 389-414.

[111-112] Dennis J. Condron "Social class, school and non-school environments, and black/white inequalities in children's learning." *American Sociological Review* 74, no. 5 (2009): 685708.

attend a predominantly minority school often have lower reading and math scores than students who attend mostly white or integrated schools. Additionally, Black students are significantly more likely to attend schools that are minority-dominated than their white peers.[112] If students in primary and secondary schools are not being equally prepared for higher education, with Black students disproportionally getting inferior treatment, then it is apparent that creating affirmative action policies will not adequately create an environment where all students can be treated equally. Further, if primary and secondary education systems are producing unequally prepared students, then concerns that many people have about college readiness and college success of students admitted through affirmative action policies will continue to be relevant.

If policies are not adapted to clearly state who they are made for and why the validity of policies will continue to be challenged and cases like *Students for Fair Admissions v. Harvard (2018)* will become more common. This is because as the justification for affirmative action legally becomes more and more narrowed, many will push to expand the beneficiaries and eventually push to eradicate affirmative action in total. In Brazil, the pull away from race explicit policies will result in more emphasis on public secondary school graduates and socioeconomic statuses over racial backgrounds. It has been made evident in this paper that if affirmative action policies are not clearly and intentionally made for the inclusion of Black students, then Black students will never be the priority.

In order to move towards equality in higher education here are a few steps that should be taken. At a federal level, there must be public recognition of racism and its persistence. Today in the US there is an idea that because the Civil Rights Movement ended in the Civil Rights Act of

1964 being passed and there has been a Black President that racism can no longer exist, and race is a discrimination of the past and should therefore not be talked about. In Brazil, a similar ideal about no longer speaking about the evils of racism is acceptable as they have already publicly addressed race as an issue. However, now both countries need to realize that racism did not go away it just evolved. In terms of higher education, both Brazil and the US need to produce intentional and race-explicit affirmative action policies that are made for the sole purpose of providing reparations to Black citizens for the historic exclusion of and current limitations placed on Black people in academia. At the institutional level, universities must not only recognize the role they play in closing the systemic racial gaps but also acknowledge the ways they might have perpetuated those gaps and act to rectify these patterns. Institutions must recognize that they were able to gain success and prestige at the suppression of Black people and take on the responsibility of recruiting and sustaining Black students. Institutions of higher education must recognize that they played a key role in the oppression and dehumanization of Black people and vow to make a difference even if the federal government is slower to agree. On a personal and societal level, it is important to recognize that change in a country starts with the people. In order to make racial equality a real goal, both societies must be dedicated to educating the public. At the same time, the nations at large must understand that racial inequality is real and accept the fact that while there has been some progress, racism is a structural issue. Once racism has been agreed upon as a persisting issue, then people can come together to fight the structures that seek to maintain the racial hierarchy. While it will not be easy to wake white people from their daydream of equality, it is possible. Instead of people believing that equality is a pie with a limited number of slices, it should be understood more like a person using their candle to light

another's candle. In the end, both people have equal amounts of light and no one had to sacrifice their light for another's.

Ultimately, "racial progress cannot be made by politics or policy alone—because racism cannot be remedied without substantially recognizing and altering White privilege."[113] Brazil and the US both need to take a hard look at the systems of power that socially and economically built their societies. Affirmative action will never totally be a solution to the inequality faced by Black people in the realm of education because of the other intertwining systems of oppression that all work together to maintain white superiority and Black inferiority. Higher education is not the only area where structural inequality is prominent. Housing opportunities, interactions with the police and courts, access to healthcare, and other areas of society must also be examined to see how to best address the racial inequalities that persist. Only after all structural inequalities are examined for their implicit (and explicit) biases will either country be able to take a step in the right direction of equality. Only then maybe can we live in a world where people are judged by their merit and character instead of the color of their skin.

Works Cited

---

[113]Gerardo R. López "The (racially neutral) politics of education: A critical race theory perspective." *Educational Administration Quarterly* 39, no. 1 (2003): 68-94.

"Adarand Constructors, Inc. v. Pena." Legal Information Institute. Legal Information Institute.

    http://www.law.cornell.edu/supremecourt/text/515/200#writing

    USSC_CR_0515_0200_ZC.

Akoojee, Salim, and Mokubung Nkomo. "Widening equity and retaining efficiency:

    Considerations from the IBSA southern coalface." *International Journal of Educational*

    Development 31, no. 2 (2011): 118-125.

Alon, Sigal, and Marta Tienda. "Assessing the "mismatch" hypothesis: Differences in college

    graduation rates by institutional selectivity." *Sociology of education* 78, no. 4 (2005):

    294-315.

Arcidiacono, Peter, Esteban M. Aucejo, Hanming Fang, and Kenneth I. Spenner. "Does

    affirmative action lead to mismatch? A new test and evidence." *Quantitative*

    Economics 2, no. 3 (2011): 303-333. Black, Sandra E., Jeffrey T. Denning, and Jesse

Arcidiacono, Peter, Esteban M. Aucejo, and V. Joseph Hotz. "University differences in the

    graduation of minorities in STEM fields: Evidence from California." *American Economic*

    Review 106, no. 3 (2016): 525-62.

Astin, Alexander W., and Leticia Oseguera. "The declining" equity" of American higher

    education." *The Review of Higher Education* 27, no. 3 (2004): 321-341.

Bailey, Stanley R., Fabrício Fialho, and Michelle Peria. "Support for race-targeted affirmative

    action in Brazil." *Ethnicities* 18, no. 6 (2018): 765-798.

Bernardino-Costa, Joaze, and Ana Elisa de Carli Blackman. "Affirmative action in Brazil and building an anti-racist university." *Race Ethnicity and Education* 20, no. 3 (2017): 372 384.

Bertolin, Julio, and Denise Leite. "Quality evaluation of the Brazilian higher education system: Relevance, diversity, equity and effectiveness." *Quality in Higher Education* 14, no. 2 (2008): 121-133.

Black, Sandra E., Jeffrey T. Denning, and Jesse Rothstein. "Winners and Losers? The Effect of Gaining and Losing Access to Selective Colleges on Education and Labor Market Outcomes." No. w26821. *National Bureau of Economic Research*, 2020.

Bonaldo, Luciane, and Luis Pereira. "Dropout: Demographic profile of Brazilian university students." *Procedia Social and Behavioral Sciences* 228 (2016): 138-143.

Cavalcanti, Tiago, Juliana Guimaraes, and Breno Sampaio. "Barriers to skill acquisition in Brazil: Public and private school students performance in a public university entrance exam." *The Quarterly Review of Economics and Finance* 50, no. 4 (2010): 395-407.

Childs, Porsha, and Nelly P. Stromquist. "Academic and diversity consequences of affirmative action in Brazil." *Compare: A Journal of Comparative and International Education* 45, no. 5 (2015): 792-813.

Choudaha, Rahul, and Edwin van Rest. "Envisioning Pathways to 2030: Megatrends Shaping the Future of Global Higher Education and International Student Mobility." *Online Submission* (2018).

Clancy, Patrick, and Gaële Goastellec. "Exploring access and equity in higher education: Policy and performance in a comparative perspective." *Higher Education Quarterly* 61, no. 2 (2007): 136-154.

Collares, Ana Cristina M. "The Expansion of Higher Education in Brazil between 1982 and 2006: Disentangling age, period and cohort effects." *Population Review* 52, no. 2 (2013).

Condron, Dennis J. "Social class, school and non-school environments, and black/white inequalities in children's learning." *American Sociological Review* 74, no. 5 (2009): 685 708.

De Araujo, Abrahao Andre. "Access to Higher Education in Brazil with Reference to Prouni." *Higher Education Studies* 2, no. 1 (2012): 32-37.

Deardorff, Michelle D., and Augustus Jones. "Implementing Affirmative Action in Higher Education: University Responses to Gratz and Grutter." *The Social Science Journal* 44, no. 3 (January 2007): 525–34.

Delgado, Richard, and Jean Stefancic. *Critical race theory: An introduction*. Vol. 20. NYU Press, 2017.

Detterman, Douglas K. "Tests, affirmative action in university admissions, and the American way." *Psychology, Public Policy, and Law* 6, no. 1 (2000): 44.

Dias Lopes, Alice. "Affirmative action in Brazil: how students' field of study choice reproduces social inequalities." *Studies in Higher Education* 42, no. 12 (2017): 2343-2359.

Dickson, Lisa M. "The changing accessibility, affordability, and quality of higher education in Texas." *What's happening to public higher education* (2006): 229 250.

Duryea, Suzanne, Luísa Baptista de Freitas, Luana Marques-Garcia Ozemela, Breno Sampaio,

> Gustavo R. Sampaio, and Giuseppe Trevisan. "Universities and Intergenerational Social
>
> Mobility in Brazil: Examining Patterns by Race and Gender." *Journal of Economics,*
>
> *Race, and Policy* 2, no. 4 (2019): 240-256.

Dwyer, Rachel E., Laura McCloud, and Randy Hodson. "Debt and graduation from American

> universities." *Social Forces* 90, no. 4 (2012): 1133-1155.

Ezorsky, Gertrude. *Racism and justice: The case for affirmative action*. Cornell University Press,

> 2018.

Francis, Andrew M., and Maria Tannuri-Pianto. "Endogenous race in Brazil: affirmative action

> and the construction of racial identity among young adults." *Economic Development and*
>
> *cultural change* 61, no. 4 (2013): 731-753.

Francis-Tan, Andrew, and Maria Tannuri-Pianto. "Inside the black box: affirmative action and

> the social construction of race in Brazil." *Ethnic and Racial Studies* 38, no. 15 (2015):
>
> 2771-2790.

Fisher v. The University of Texas at Austin, 570 U.S. 297 (2013).

Fisher v. The University of Texas at Austin, 570 U.S. 297 (2015).

Fullilove v. Klutznick, 448 U.S. 448 (1980).

Gándara, Patricia, Catherine Horn, and Gary Orfield. "The access crisis in higher education."

> *Educational Policy* 19, no. 2 (2005): 255-261.

Garibaldi, Antoine M. "Four decades of progress... and decline: An assessment of African

> American educational attainment." *Journal of Negro Education* (1997): 105-120.

Gerald, Danette, and Kati Haycock. "Engines of inequality: Diminishing Equity in the

      nation's premier public universities." *Education Trust* (2006).

Graham, Hugh Davis. "The Origins of Affirmative Action: Civil Rights and the Regulatory

      State." *The ANNALS of the American Academy of Political and Social Science* 523, no. 1

      (1992): 50–62.

Greenberg, Jack. "Affirmative action in higher education: Confronting the condition and

      theory." *BCL Rev.* 43 (2001): 521.

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

Harper, Shaun R., Lori D. Patton, and Ontario S. Wooden. "Access and equity for African

      American students in higher education: A critical race historical analysis of policy

      efforts." *The Journal of Higher Education* 80, no. 4 (2009): 389-414.

Hickman, Brent R. "Pre-college human capital investment and affirmative action: a structural

      policy analysis of US college admissions." *University of Chicago. Unpublished* (2013).

Hinger, Sarah. "Meet Edward Blum, the Man Who Wants to Kill Affirmative Action in Higher

      Education." American Civil Liberties Union. American Civil Liberties Union, October

      19, 2018. https://www.aclu.org/blog/racial-justice/affirmative-action/meet-edward-blum

      man-who-wants-kill-affirmative-action-higher.

Hinrichs, Peter. "Affirmative action bans and college graduation rates." *Economics of Education*

      Review 42 (2014): 43-52.

Htun, Mala. "From" racial democracy" to affirmative action: changing state policy on race in

      Brazil." *Latin American Research Review* (2004): 60-89.

Johnson, Matthew. "Managing Racial Inclusion: The Origins and Early Implementation of

    Affirmative Action Admissions at the University of Michigan." *Journal of Policy*

    History 29, no. 3 (2017): 462-489.

Junior, Alvaro Alberto Ferreira Mendes, Alberto de Mello e. Souza, and Fabio Domingues

    Waltenberg. "Affirmative action and access to higher education in Brazil: The

    significance of race and other social factors." *Journal of Latin American Studies* 48, no. 2

    (2016): 301-334.

Lima, Márcia. "Access to higher education in Brazil: inequalities, educational system and

    affirmative action policies." *Institute for Employment Research, University of Warwick,*

    Coventry (2011).

Liu, Meghan. "Perspective | Harvard Affirmative Action Case Pits Asian Americans against

    Each Other - and Everyone Else." The Washington Post. WP Company, January 18,

    2019. https://www.washingtonpost.com/nation/2019/01/18/harvard-affirmative-action

    case-pits-asian-americans-against-each-other-everyone-else/.

López, Gerardo R. "The (racially neutral) politics of education: A critical race theory

    perspective." *Educational Administration Quarterly* 39, no. 1 (2003): 68-94.

Muhr, Thomas. "State intervention, South-South cooperation and structural transformation: the

    (ignored) case of Brazil-Venezuela cooperation for equity of access to university

    education, 2003-2016." *Revista Eletrônica de Educação* 13, no. 3 (2019): 796-812.

Newman, Frank. *Report on higher education*. Vol. 50065. US Government Printing Office,

    971.

Paul, E. Frankel. "Affirmative Action." *Encyclopedia of Applied Ethics*, 2012, 56–71.

Platt, Anthony M. "End game: The rise and fall of affirmative action in higher education." *Social Justice* 24, no. 2 (68 (1997): 103-118.

Pedrosa, Renato HL, Tania P. Simões, Ana M. Carneiro, Cibele Y. Andrade, Helena Sampaio, and Marcelo Knobel. "Access to higher education in Brazil." *Widening Participation and Lifelong Learning* 16, no. 1 (2014): 5-33.

Potter, Halley. "What can we learn from states that ban affirmative action?." *The Century Foundation* 26 (2014).

Richmond v. JA Croson Co., 488 U.S. 469 (1989).

Rochetti, Ricardo. "Not as Easy as Black and White: The Implications of the University of Rio de Janeiro's Quota-Based Admissions Policy on Affirmative Action Law in Brazil." *Vand. J. Transnat'l L.* 37 (2004): 1423.

Schwartzman, Luisa Farah, and Angela Randolpho Paiva. "Not just racial quotas: Affirmative action in Brazilian higher education 10 years later." *British Journal of Sociology of Education* 37, no. 4 (2016): 548-566.

Tavolaro, Lília GM. "Affirmative action in contemporary Brazil: Two institutional discourses on race." *International Journal of Politics, Culture, and Society* 19, no. 3-4 (2008): 145-160.

Telles, Edward, and Marcelo Paixao. "Affirmative action in Brazil." In *LASA forum*, vol. 44, no. 2, pp. 10-11. 2013.

The University of California Regents v. Bakke, 438 U.S. 265 (1978).

Tai, Robert H., Christine Qi Liu, Adam V. Maltese, and Xitao Fan. "Planning early for careers in science." *Science* 312, no. 5777 (2006): 1143-1144.

Tienda, Marta, Sigal Alon, and Sunny Xinchun Niu. *Affirmative Action and the Texas Top 10% Percent Admission law: Balancing Equity and Access in Higher Education*. Princeton, NJ: Texas Higher Education Opportunity Project, 2008.

Yosso, Tara J., Laurence Parker, Daniel G. Solorzano, and Marvin Lynn. "Chapter 1: From Jim Crow to affirmative action and back again: A critical race discussion of racialized rationales and access to higher education." *Review of Research in Education* 28, no. 1 (2004): 1-25.