Affirmative Action & Democratic Structures: A
Comparative Analysis of the United States and Brazil

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Abstract

In this study I compare the development and implementation of affirmative action policies in Brazil and the United States. As equalizing policies become more common in developed and developing nations a critical analysis of the circumstances in which these policies are developed becomes increasingly important. In this comparative study of Brazil and the United States I examine national race-based affirmative action policies, specifically those pertaining to higher education to examine why a lesser developed country, such as Brazil, with no overwhelming catalyst for a progressive racial policy, would implement a far more extensive version of affirmative action than the United States. Using scholarly writings from various social scientists I evaluate the necessity of equalizing policies within the framework of democracies that share little more than superficial commonalities. By examining the development of race-based affirmative action policies contextualized by the relevant governmental and social institutions, as well as the racial dynamics in each society I was able to determine how Brazil was able to actualize such progressive policies. Ultimately, my analysis demonstrates that the democratic structure as well as the racial dynamic of Brazil allowed it to develop policies that surpass U.S. policy dynamism.
Before engaging in an examination of affirmative action policies I would like to clarify what this term specifically refers to, given varying connotations across societies. Very broadly, affirmative action refers to policies that encourage the consideration of race in order to promote equal opportunity and increased diversity. Policies can be implemented across public and private institutions and can range in scope from health programs to education and employment. The impetus behind affirmative action policies can be anything and everything from increasing diversity in a society to rectifying perceived disadvantages caused by overt institutional or involuntary discrimination.

Making a discussion of affirmative action policies in Brazil and the United States more intriguing are the many superficial parallels between the nations. With a shared history of federalism, slavery, colonialism, and discrimination, the contrasting strength of the two nations’ affirmative action policies raises many questions. Most pressing is the conundrum surrounding how with the inherent structural and social discrimination in both Brazil and the United States against citizens of African descent, the emergence of discourses surrounding inequality, racism, and corrective policies such as affirmative action is possible. Adding to the perplexing nature of this question is that Brazil has been able to far outpace the U.S. in the authority of its policies. The drastic reversal of popular opinion and government policy in support of race-specific affirmative action policies would seem to suggest a shift in thinking that allows for both societies to view the improvement of marginalized peoples’ condition as progress for to the nation as a whole. However, with an understanding of the political and social conditions present in each country in the period leading to the adoption of these policies the lingering question persists: why in Brazil, where there was very little effective pressure exerted
on the political system, where such progressive policies implemented? How did these policies compare to the process of policy adoption the United States?

In the following analysis of the development of affirmative action policies as they relate to higher education in Brazil and the U.S, I first lay out arguments about the institutional development of each country and the implications of the structure of both state and civil society. I contend that the organization of the state and its relationship to society determined the strength and scope of affirmative action policies. As this paper is intended to focus more on Brazil than the U.S., the comparative aspect is not developed to its full potential. To test my main claim, I compare the responses of various democratic political and social institutions in Brazil to those in the U.S. These include presidential powers, the strengths of opposition, the judiciary, and the history and patterns of racism in both societies. Finally, I will explore my argument through a case study of the passage of specific high profile affirmative action policies in both the U.S and Brazil. By examining the manner through which affirmative action policies were shaped and contextualized by the political and social institutions, in addition to the racial dynamics of each society, I seek to discern why Brazil implemented such dynamic policies. The expanding institutionalization of democracy and popularizing of democratic principles in Brazil and the U.S. historically has coincided with increased attention to the sufferings of minority groups, in this case Afro-Brazilians and African Americans. However, those very institutions and ideals were also instrumental in the subjugation of these people. The following section will outline the discussion on the impact of the development of institutionalism, democratization, as well as the radicalizing of democracy.

The structural nature of Brazilian democracy differs remarkably from that of the U.S. Brazil maintains one of the most fractionalized systems in the world. Two of the main factors
Avoiding Brazilian democracy are executive-legislative relations and robust federalism. Many analysts, such as Timothy Power, contend that the Brazilian system is structured in such a way that the presidential power overwhelms the legislature (Power, 2009: 19). More than eighty-five percent of all legislation adopted since 1985 originated in the executive branch, often via presidential decrees (Power, 2009: 20). Presidents also enjoy a markedly high level of discretion over public spending as congress can only authorize the budget leaving it to the executive branch to disperse funds. Severe limitations on congress have relegated it to a reactionary body thus causing positions within the Brazilian legislature to be unappealing to many eager politicians who instead opt for opportunities within the executive office. In an effort to counteract this the Brazilian constitution of 1988 returned more than half of central revenue to the states and municipalities, "making sub-national offices—the 5,500 mayoralities and especially the 27 governships—extremely attractive. State governors are important since they often dominate their state delegations in congress. Presidents must negotiate with state governors continually, especially with regard to expenditures and debt" (Power, 2009: 20).

Contributing to a predominance of power within the executive branch is party fragmentation, the internal weakness of parties, an electoral system inhibiting democratic accountability, and robust federalism exemplified in the "excess of veto players (Power 2009: 22).” The disconnect between citizens of Brazil and the state are such that Brazilianist Alfred Montero declared that “the Brazilian state cannot be said to act in the ‘public interest.’ It is instead, an arena and apparatus for protecting and strengthening the interest of the few over the many (Montero, 2005: 30). This was exemplified during President Lula’s first term in office, the Workers' Party controlled fifteen percent of the seats on the Chamber of Deputies, the lower house; but "given the daunting mathematics of congressional support, and given that the
government in office [did] not depend on the loyalty of nominal supports of the president, the combination of presentialism with extreme party fragmentation led to unpredictable outcomes" (Power, 2009: 23). In a typical four-year congress, more than one in three federal legislators will switch parties, some more than once. Elections are largely an individual candidate affair, and politicians often believe that their mandate belongs to themselves rather than to their parties. The personalization of elections extends to campaign finance making Brazilian elections staggeringly expensive.

While the formal implementation of affirmative action policies is a fairly recent phenomenon in Brazil the U.S. has had formal policies for the last thirty years. In the U.S. corrective policies have been controversial from their inception, being both spurred on and vehemently opposed by political and social institutions in the United States. The political control mechanisms within the United States differ greatly from those in Brazil as the U.S. is a much more developed democracy with longstanding institutions and bureaucratic organizations. The imbeddness of these institutions forces individuals, as well as, each branches of government into a more procedural and bureaucratic route of action while simultaneously empowering the citizenry all the more. It was within this context that affirmative action policies emerged in the U.S and were irrevocable tied to the desires of voting blocks. In the United States, the same electoral incentives that made affirmative action an appealing policy eventually undermined its effectiveness as the political coalitions, created by parties, transformed over time. As these coalitions dissolved so did the political will to continue expanding affirmative action policies, and to some extend defend them against opposing political coalitions. Affirmative action policies in the United States were subject to political polarization that similar policies did not face in Brazil, certainly not to the same degree.
In the United States, in order to comply with the most basic democratic principle of acquiring sufficient political and social support to get elected, individual politicians alternately advocated strongly for ascriptive policies or ferociously denounced them. Policy implementation came about slowly in the U.S., originating in the early years of the John F. Kennedy administration. In the 1960 presidential campaign, civil rights became important issue for Kennedy and Richard Nixon. Although Kennedy would win the election, his party, the Democratic Party, would lose seats in both houses of congress. This forced Kennedy to look to alternative means to institute new policies; rather than initiating a battle he would surely lose in congress. The executive branch strengthened existing committees and programs controlled by the executive branch. The Equal Employment Opportunity Committee the president was created to signal the civil-rights constituency that the administration was attentive to equality issues. "By the Johnson administration the black and liberal voters were an even more important constituency and the expansion of affirmative action reflect this importance" (Sunita, 1997: 6) During this period Johnson was able to avoid negative congressional backlash by relocating offices overseeing affirmative action policies’ implementation and effectiveness such as the Office of Federal Contract Compliance in the Department of Labor, overseen by the liberal House Education and Labor Committee. Government support for affirmative action reached its pinnacle in the 1970s and was buttressed by favorable Supreme Court decisions. This continued through the first Nixon administration as programs were not only defended against attacks but were intensified and expanded.

By the end of 1972, affirmative action policies incorporated all government employment at the federal, state, and local levels as well as educational institutions receiving government funds. Under Jimmy Carter's administration, policy expansion continued with African American
voters becoming increasingly important to Democrats as “southern voters proved themselves willing to desert the Democratic Party even when it ran a native son as its presidential candidate” (Sunita, 1997: 7). Throughout the 1970s, opponents challenged the expansion of affirmative action in the courts, but the Supreme Court consistently upheld most of the policy's provisions. However, in the 1980s the overall political landscape was transformed in ways that were detrimental for affirmative action policy. Increasingly "preference programs were seen as symptomatic of the excesses and misdirection of the post-1964 civil-rights agenda" (Sunita, 2007: 7). The conservative wing of the Republican party encouraged and capitalized on emerging attitudes by abandoning appeals to African American constituents in favor of directly appealing to northern working class and southern white voters, especially men. The promise that Republicans would curtail civil-rights enforcement and eliminate preferential policies was key to their program. To this end, upon winning the 1980 presidential election Ronald Reagan set out to roll back twenty years of policy progress. He was successful, "during his two terms the Justice Department curtailed its civil-rights enforcement, switched to the opposing side on affirmative-action court cases, and severely limited implementation of affirmative-action programs within the government and in the private sector" (Sunita, 1997: 8). Yet, the president was not able to abolish these policies completely, in part, due to the extremity of his goals. Congressional Republicans still needed a portion of the African American vote. Another factor was continued Democratic control over the House during Reagan’s first term and both House and Senate during his second. "But thanks to his efforts, as well as the continuation of much of this policy by Reagan's successor, George Bush Sr., by the end of three terms of Republican presidential administration, affirmative-action policy occupied a position that was considerably weaker than during its high-water mark of the 1970s" (Sunita, 1997: 8).
To fully communicate the influence of both Brazilian and U.S. democratic structures on the adoption of race-based affirmative action policies it is necessary to further investigate the development of racial dynamics and identity formation. In this case study racial dynamics are important because of the varied and drastic role they have played in the shaping of each of these countries. From its implementation, democracy in Brazil and the U.S. has been swayed by acute and omnipresent notions of racial hierarchies and prejudices. Significantly, democratic political institutions seek, as their reason for existence, to establish and replicate user friendly systems and processes of individual to state communication. In doing so, and creating bureaucratic infrastructures the state, unintentionally or otherwise, absorbs social inequalities and prejudices into state infrastructure. Political theorist Bernd Reiter contends that while democracy undoubtedly suffers from the shortcomings of its political system, “the gravest impediments to consolidating democracy are not of a political, but of a social, nature” (Mitchell, 2009: 20). Extreme societal inequalities that distort communicative process cannot be explained political flaws or more specifically a weak state structures. These inequalities and distortions color each interaction and exchange between state and society. The result is a state that is able to distance itself from the will of its preliterate, lower-class citizens, in this case denoted by race, as well as by the lack of wealth and power, gaining autonomy through the disrupted communicative process. “Due to the distorted quality of societal processes privileged groups have long captured the state and used it to advance their goals without feeling or effectively being accountable to the masses” (Mitchell, 2009: 20).

Confounding this situation further is what Brazilianist Reginald Daniel describes as the shift to a sensate socio-cultural mode in western political consciousness. Daniels argues that “everything, including human life, [became] subordinate to the quest to extract value, exchange
commodities, and accumulate wealth” (Daniel 2007: 13). The combination of liberal democratic principles and the capitalist mode of organizing the state’s economic systems results in property-based individualism and freedom in the marketplace being taken to extremes. In accordance with capitalist principles, investment in the production of commodities for the market is made while profits are maximized by extracting surplus labor through having laborers work longer hours than necessary for their own subsistence. Consequently, Daniel reasons, “capitalism more often than not undermines the egalitarian principles of democracy and becomes a mechanism for the exploitation of the weak by the powerful in both economic and political domains” (Daniel, 2007: 12).

While writing this paper I have maintained two goals, the first of which is to illustrate the importance of the context and environment created within U.S. and Brazilian democracy and analyze how this affected the process and eventual form that affirmative action policies took. The second goal I held was to merge my background as someone perpetually impressed and confounded by racial historical analysis: I wanted to bring to the forefront of my research the acute and omnipotent nature of the racial dynamics in both Brazil and the U.S. to more closely examine their influence over the development of these democracies. In order to do so, I employed a qualitative research strategy. Of course, this approach has a measure of bias given that the U.S. has had affirmative action for fifty years while Brazil can claim barely ten years of formal implementation. I chose people and events so that I might focus on the empirical context in which politicians initiated and expanded affirmative action policies. From that selection process I was able to concentrate on variables such as the variations in the two nations between presidential powers and the judiciary as institutional indicators while also examining oppositional weakness and the legacy of racial inequality as structural and societal indicators.
The purpose of this was to test whether the variables I have selected were indeed those that most adequately explained why Brazil, a democracy with less experience, has a more extensive affirmative action policy than the United States. The largest portion of my research is comprised of secondary source material that includes books, dissertations, a documentary, and articles all pertaining to U.S. and Brazilian affirmative action policies and the context in which they were created. With the previous paragraphs I described the conditions that the structure of democracy, in both Brazil and the U.S., create for the support and adoption of new policies. From their I briefly examined the susceptibleness of democracy to social prejudices and biases and the dangers of these discriminatory ideologies being absorbed into the nation state system. From here I outlined how this problem is exacerbated by a monetary system such as capitalism which often provides incentives for suppressing and exploiting individuals.

I operationalized the racial dynamics of each country by using in-group out-group dynamics as well as selective nationalism. The purpose of this method is to provide an empirical assessment of the extent to which racial dynamics affected the democracy as a whole and therefore the debate surrounding affirmative action policies. Presently there is a large body of literature in the social sciences that examines individuals’ policy preferences as a way of testing various accounts of inter-group conflict. This theoretical perspective aids in deciphering the resistance to affirmative action policies’ content. Accordingly, there are three motivations for inter-group conflict: (a) the group dominance approach, which argue that whites are motivated to maximize the in-group’s economic fortune relative to minorities; (b) principled-opposition approaches, which suggest that whites’ attitudes towards affirmative action are driven by principled objections to the policy, rather than by concern for policy outcomes; and (c) racism approaches, which argue that whites’ opposition to affirmative action is driven by anti-Black
animus. Of the three, Brazilian society is indicative of the group dominance approach, while the U.S. most noticeably simulates the racism approach.

I operationalized the power of presidential, judicial, and oppositional forces by examining specific policies in each country through each variable. The policies I chose are each among the most popular and widely know affirmative action policies in each country. This way, I can control for the variation in when the policies were enacted. Each of these three variables will not be equally focused since different moments in these democracies favored certain methods of policy change over others. For example, there are not many references to the judicial system in Brazil because this institution has not played a major role in the adoption or rejection of affirmative action policies. In the United States, in contrast, numerous influential court cases have resulted in both rulings for and against affirmative action policies. Following this section of the paper, I will begin the empirical section where I detail the passage of specific policies and contextualize this analysis within the racial legacies of each country as well as the actions of various democratic institutions.

Before delving into how racial inequality affects democracy in Brazil, it is essential to clarify the racial distinctions made in Brazil. Though the Brazilian census often uses two color categories for African descendants—preto (translation, black) for the dark-skinned and pardo (loosely, mulatto and mestizo) for others—these distinctions are little more than arbitrary. There are upwards of 40 racial categories for people of African descent, each category is subjectively applied based on skin tone. Brazilians often prefer the notion of color rather than race because it captures the fluidity of their racial classifications. “Nevertheless, the Brazilian notion of color is equivalent to race because it is associated with a racial ideology that ranks persons of different colors. According to the general Brazilian societal norm, bodily appearance—
somewhat by gender, status, and the social situation—determines who is black, mulatto or white” (Telles, 2004:218). Racial hierarchy and segregation are retractably etched into Brazilian society, contrasting positions of luxury and power with those of privation and stagnation. This dichotomous system originated with the introduction of slavery in Brazil, where the planter aristocracy controlled the nation.

Early European colonizers were few in number and mainly single adult males as the Portuguese crown found it difficult to get immigrants to settle in Brazil with its hostile native population and tropical environment. “The preponderance of African slaves...in conjunction with the shortage of European women, gave rise to permissive attitudes towards miscegenation between white men and women of African decent” (Daniel, 2007:30). The results of widespread miscegenation were twofold: on the one hand the Brazilian elite developed the idea that to salvage the image of their country they needed to import new Anglo immigrants. This led to the Brazilian state creating immigrant-friendly policies, particularly towards individuals of Germanic origin during the 1870’s while restricting the immigration of blacks. Moreover, a massive campaign was mounted to eradicate African culture: “the racial state (and the Brazilian elite) envisioned the legacy of informal in-equalitarian pluralism as the final solution that eventually would eliminate the ‘black peril’ through the laissez-faire genocide of sharply lower levels of education and higher rates of poverty, malnutrition, disease, and infant mortality” (Telles, 2004:28). While the public face of race relations in Brazil centered on the Brazilian national identity which was shaped by what Gilberto Freyre. Freyre’s calls “racial democracy”;

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whereby Brazil was described as achieving a unique and equal blend of European, Indian, and African peoples and cultures; was meant as a tool to discourage group formation along racial—phenotypic—lines. Racial democracy was said to be a realization that Brazilian society was free from racism based on prevalence interracial mixing during slavery.

While the process of racial identity formation in Brazil represents a multiethnic reality, the United States is reflective of a more binary dichotomous relationship. Beginning in colonial America, Northern states such as New York, New Jersey, Massachusetts and mid-Atlantic colonies such as North Carolina, were settled by large numbers of Europeans with families. “The white family formed by legal marriage remained the standard social unit in Anglo North America, impeding permissive attitudes toward miscegenation” (Daniel, 2007:85). As the British had a surplus of individuals wanting to settle in the new world there were no labor shortages when colonization began. The costs of emigrating to the New World were above the means of many, prompting Britain “to develop European indentured servitude to meet its growing agricultural labor needs” (Daniel, 2007: 85). The result of this was that colonies of the North and Upper South were overwhelmingly populated by white former indentured servants and wage earners.

The late seventeenth century brought with it a shift from indentured servitude to slavery, and an increased importation of African slaves to meet labor needs. While European indentured servants had worked on small yeoman farms, African slaves were primarily on larger plantations that cultivated cash crops. “Thus it became increasingly necessary to ensure white dominance over the growing number of African American (Daniel, 2007: 88). In the next several decades court decisions and the creation of colonial legislatures gradually institutionalized slavery in perpetuity for African Americans and relegated their legal status to that of property. As slavery
became entrenched over the course of the late seventeenth century and early eighteenth centuries, it became inextricably intertwined with African ancestry in the Anglo North American mind. The influx of African slaves also squeezed white servants out of the harsher and less skilled tasks, which provided them with upward mobility. “The enhanced social mobility of white laborers not only eroded the previously shared experience between European American indentured and formerly indentured servants and African Americans but also diverted the attention of the former away from the class oppression they continued to share with the latter” (Daniel, 2007: 89). The resulting labor and employment competition between African slaves and newly mobile whites provided the ruling elite with material for constructing racial solidarity without having to sacrifice their class interest.

Legal barriers to sexual relations between African Americans and European Americans, specifically former indentured servants became the norm. Southern colonies and some Northern colonies began criminalizing sexual relationship and intermarriage between whites and blacks. Interestingly, the first law on the books in Maryland and Virginia in the 1660s and 1680s were centered on regulating sexual relations and marriages between white women, specifically indentured servants, and black men. Although the legal and informal restrictions did not result in a marked decrease in miscegenation, there was a shift in public attitudes. Miscegenation was restricted largely to white males’ exploitation of black women. “Accordingly, this patriarchy established an economic and political system, as well as cultural ideology, grounded in racial, gender, and class oppression” (Daniel, 2007: 86). These social forces granted them the power to control the productive (and to some extent reproductive) labor of not only African American men but also African American and European American women.
To analyze the impact of racial inequality on democracy in Brazil and the U.S. we must understand the severity and centrality of discrimination in current life. As of 1998, in Brazil blacks earned less than half as much as whites, while white men earned almost four times as much as Afro-Brazilian women, who in turn earned less than half the value of white women's average income. "Within the education system this inequality plays out such that educated Afro-Brazilians earn less than whites with the same education, and in higher income brackets whites receive about 5.6 times more income than blacks" (Hamilton, 2007:113). This trend was foreshadowed in the racial data released in 1950 by the Brazilian Census Bureau reporting that the rate of high school completion was almost ten times higher for whites than for pardos, and the number of pardo and preto college graduates numbers were too small to generate even a one-decimal-point percentage rate.

Statistics for the percentages of the population that had completed high school or college illuminate a quality of life for African Americans that comparatively was not much better. In 1996, education attainment for those who had completed four years of college or more was “26.9 for males and 21.8 for females while it was 12.4 for black males and 14.6 for black females” (Mitchell, 2009:21). Additionally the unemployment rates by education for the same year report that 2.1 percent of white college graduates were out of work while 3.3 percent of black college graduate were out of work. In the U.S. and Brazil societal inequality acts as one of the main structuring forces as it works to maintain the power and position “of historically privileged sectors of society a group I call the included” (Mitchell, 2009:21). In measuring the

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ramifications of a society organized in such a way one needs to focus on the systemically advantaged and the methods they employ to preserve their position.

The above outline of the current debate surrounding affirmative action policies, as well as brief historical discussion of the formulation of the racial dynamics in Brazil and the U.S provides the necessary foundation to extrapolate from current events why Brazil and not the U.S sought more vigorous policies. In the next section I examine the effects of the various players being involved in each country on the implementation of new policies. I believe that the critical factor in comparing the U.S. and Brazilian cases of affirmative action is the structure of democracy in each polity and the racialized context of each society. I begin with an analysis of those events both within the democratic institutions and those that affected it then examine the passage of specific affirmative action policies such as those decreed by President Fernando Henrique Cardoso during the mid- to late 1990’s, followed by an analysis of the racial in-group out-group dynamics of each country.

Activists function as a variable in determining the implementation of affirmative action policies only so far as they are able to exert real and measurable pressure on the establishment to act. Their potency as authorities in the debate can be measured by the level to which they have a voice in the discourse and whether they are called upon by the government or governmental agencies to provide ideas of how to combat issues, in this case racial inequality. Another signal is whether activist groups are viewed by the people they mean to serve, Afro-Brazilians or African Americans, as a means of empowerment and agency. These variables are reliable predictors of the effectiveness of activist groups because they address the group’s legitimacy within the society. If a group is not able to create a voice for itself, is not viewed by those in power as credible, and cannot capture the trust and participation of those they serve. They are ineffective.
and cannot influence debate. Activist groups are causally related to affirmative action policies by
the link created between people in those groups who want their country to adopt specific policies
and the effort they exert to influence the political process and bring about the enactment of those
policies. However, my research showed that Brazilian activists were not as effectual as U.S.
activists, according to the above criterion and therefore could not pressure the government. They
did have limited success in earning credibility for themselves by participating and thereby
gaining a more pronounced voice in the discourse. Below, I will detail the systemic racism
present in both the U.S. and Brazil and how this originally social ideology came to be adopted
and perpetuated by state structures. Immediately following is a brief analysis of how United
States and Brazilian social and political institutions responded to the call for affirmative action
policies. Specifically, I examine the three branches of government within each country and
briefly consider the impact made by activists’ struggles for affirmative action policies.

Early on Afro-Brazilian activists and later the intellectual elite were able stir the debate
on affirmative action policies, operating exclusively outside the formal political structure. While
the confluence of several developments in the late 1900s –transition to democracy, innovative
black organizations and protest, and opposition electoral votes, among others—created an
unprecedented situation in which white political leaders, government officials, and influential
public figures began to acknowledge the legitimacy of black demands, it was the work of black
Brazilian leaders convincing key power brokers that “historic and contemporary should be
acknowledged and fought against: that really made the difference (Kingstone,2008:210).
Providing some insight into this matter is Brazilianist Ollie Johnson who argues that although
white supremacy continues to be the dominant reality facing Afro-Brazilians, blacks are
becoming increasingly successful in their struggle against it. Johnson contends that “black
attempts to obtain formal education, decent jobs, adequate health care, safe housing, and to live free of racial discrimination represents the community’s persistent commitment to the procedural and substantive dimensions of democracy” (Kingstone, 2008:211). Afro-Brazilians advocated for affirmative action policies quotas, and other public policies that confront the white monopoly on power that has for most of the twentieth century preempted and prevented a full national debate regarding race relations. The Brazilian intellectual elite worked towards a similar goal. Their efforts were largely centered on debunking the long-held belief in Brazilian racial democracy.

Thomas Skidmore, the foremost theorist on the racial politics of Brazilian society, argues in Racial Mixture and Affirmative Action: The Cases of Brazil and the United States that a central factor in the adoption of affirmative action policies was the consensus that grew among a small number of Brazilian academics and writers who felt that the conventional explanations for Brazil’s race relations, namely “racial democracy”, were no longer compelling. Skidmore argues, though intellectuals were originally unsuccessful in impacting Brazilian elite opinion, beginning in the 1990s there was a noticeable “shift in Brazilian universities, with debates about the lack of Brazilians of color among the student bodies, and about possible measures to compensate Afro-Brazilians for past discrimination” (Skidmore 2003: 1394). Skidmore notes that scholars were often perplexed about the reception of their works with some stating that “either we are totally alienated or we are living in a social paradise” (Skidmore 2003:1394). It was felt that the populace and leadership of Brazil did not, and could not, understand the nuanced ramifications scholars were attributing to the inequality and racial oppression inherent in Brazilian political and social structures.

In the United States, though efforts that more directly engaged democratic institutions such as cases before the Supreme Court were more effective, there was much social activism on
the part of African Americans. Wayne Santoro states that “Dramatic events such as massive waves of black protests generated the first wave of civil rights laws (post-Reconstruction), especially breakthrough laws” (Santoro, 2002:185). These laws would culminate in the eventual enfranchisement of southern black and the outlawing of discrimination nationally in employment, housing, and public accommodations. Black protests first emerged in a communitywide and sustained manner with the successful bus boycotts in Baton Rouge and Montgomery in 1955-56. The first massive wave of black protests across U.S. cities took place with the 1960 sit-in movement. At least ninety-three cities desegregated facilities as a direct result of the sit-ins, and Kennedy issued his comprehensive 1961 executive order the year after the sit-in movement. Similarly, “Congress passed the 1964 Civil Rights Act after the 1963 Birmingham and Birmingham-inspired demonstrations and enacted the 1965 Voting Rights Act shortly after the 1965 Selma demonstrations” (Santoro, 2002:188).

In fact a number of scholars see civil rights legislation as a response to the violence perpetrated by segregationists against civil rights advocates. Barkan, for example, concluded that federal intervention occurred after the Birmingham campaign because authorities used violent as opposed to legalistic means of repression. McAdam argued that “black protest between 1963 and 1965 affected federal actions because they generated white violence. Garrow claimed that the 1965 Voting Rights Act came about because the media conveyed counter movement violence in Selma to a sympathetic Congress and public” (Santoro, 2002:189). It would seem that even the Supreme Court was aware that black protests in the early 1960s had captured the nation's attention as Justice William Douglas reportedly wrote, "No question preoccupies the country more than this one" (Santoro, 2002:189). By capturing policy makers’ attention these activists
pushed civil rights legislation to the top of the political agenda, further incentivizing politicians to address the issue.

Democratic institutionalism, as a variable that affected the acceptance of affirmative action policies in Brazil and the U.S., was the most influential in Brazil where presidentialism and decentralization allow for swift change. There were two presidents who took advantage of this structure to enact policies. In the U.S. individuals and politicians had to work through executive and legislative processes, and were aided by favorable Supreme Court decisions. Institutionalism varies in these cases by the measure of its application or lack of application. In Brazil presidentialism does not allow for other strong democratic institutions while the U.S. has developed very effective political and social institutions, such as each branch of government, the courts, and governmental agencies, which all struggle for political power. The indicators of this variable can be measured by observing the stance taken on affirmative action by key presidents, the courts, and legislators, and the amount of freedom each had to enact new policies. This is an especially reliable measure because it takes into account those previous politicians who may have favored the creation of new policies but did not have sufficient political freedom to institute them.

Vera Lucia Benedito outlines the role of the Brazilian state in the adoption of affirmative action policies. She maintains that the passage of affirmative action policies was possible because of the institutional activism within the government. The attempts by congressional leaders to pass two separate bills, law 1.332/83 and law 14/95, signaled as early as 1983 the presence of political will to fight racial inequality, though these policies were to wait twenty more years to be formally adopted by presidential decree. This resolve was further strengthened between the years of 1984-1995 as “non-governmental organizations, advocacy groups and
networks mushroomed throughout the country” (Benedito 2005:199). The culmination of this new phase of institutional activism was reached in 1994 with the election of President Cardoso and continued under President Luiz Inácio Lula da Silva. Once Cardoso was elected “sectors of the black movement that had taken part in the 1984 Democratic administration of Sao Paulo were invited to be part of Cardoso’s administration” (Benedito 2005: 200). In the period that Benedito characterized as the activist government era, “acting in conjunction with advocacy groups or non-governmental organizations, these [political] leaders were able to devise new strategies to influence the state to incorporate the demands of the black communities” Benedito, 2005: 200).

Race relations in the U.S. created a very different picture from the racial democracy of Brazil. In the U.S “private terror combined with public law and enforcement to make this political system authentically totalitarian” (Katznelson, 2005:19). This statement is all the more ironic given the United States’ reputation as a staunch defender of democracy and freedom, but what is then revealed is the entirely “democratic” method used to impose a unique brand of authoritarianism. This form of democracy prevailed in the U.S. for so long that “the exclusion of so many Black Americans from the bounty of public policy, and the way in which [those] important, large scale national programs were managed launched new and potent sources of racial inequality. The federal government, though seemingly race neutral, functioned as a commanding instrument of white privilege” (Katznelson, 2005:19).

The U.S. government practiced de facto subjugation yet there were presidents who worked to implement affirmative action regulations. Hugh Graham contends that there were presidents who worked around Congress when it proved unwilling to advance legislation in favor of affirmative action. In order to ensure the success of executive order 10925, Kennedy signed the
order at a highly publicized White House ceremony at which he emphasized his and his administration’s executive initiatives on behalf of civil rights” (Colamery, 1998:53). Kennedy’s order directed federal contractors to “take affirmative action to ensure that applicants are employed, and that the employees are treated well during employment without regard to their race, creed, color, or national origin,” consequently, this is noted as the first use of affirmative action as a term (Colamery, 1998:54). Other presidents such as Roosevelt issued decrees to create specific agencies tasked with protecting the civil rights of minorities, one such organization is the fair employment committee (FEPC). Roosevelt justified the creation of this new organization by arguing that “the national defense and economy were strengthened by bring minorities into the skilled work force” (Colamery, 1998:55).

Meanwhile in the *Constitutional Logic of Affirmative Action* Ronald Fiscus presents an argument about references to the proportionality principle in Supreme Court decisions. The proportionality principle is an indicator of the issue of proportional quotas for ethnic groups. Fiscus states that while the Supreme Court has never explicitly made a ruling on this issue it came close. Many of the first issues surrounding affirmative action were settled by court decisions such as the *Bakke* case. In the *Bakke* case “four justices raised the possibility that proportionality might be a controlling principle, only to reject it summarily” (Fiscus 1992: 62). Nonetheless, according to the proportionality argument, there is one, and only one, best quota because “a disproportional quota violates the rights of nonminority individuals, and a less-than-proportional quota unfairly rewards nonminority individuals for the society’s racism” (Fiscus 1992:63). Since the *Bakke* case there have been many court cases heard before the Supreme Court, with many of the decisions narrowly coming down on the side of affirmative action,
though as the courts became more conservative so do the rulings about how policies can be implemented.

During the 1980’s in Brazil there was a rebuilding of democracy with the direct election of state governors and members of state and federal legislature. Nineteen eighty-five saw the election of the first civilian president after twenty years of authoritarian rule. Most striking was the gathering of black organizations at Serra de Barriga, site of Zumbi’s Republic of Palmares. Following the 3rd Congress of Black Culture, its president, Adbisan do Nasicmento took office in the House of Deputies. Nascimento introduced Bill of Law No. 1.332/83, which provided for “Compensatory Action to implement the rights of equal opportunity and equal protection… and secured by Article 153, Section 1 of the Constitution” (Martins, 2004:793). This bill was unprecedented as it proposed a set of compensatory measures in education, government, employment and civil services, including incentives for diversity programs in the private sector. It set percentage goals, or quotas, of 20 percent black women and 20 percent black men, a total of 40 percent, in all agencies of public administration, direct and indirect, on the federal, state, and municipal levels, including the armed forces, at all levels of service and management. It also established percentage goals of 40 percent of federal, state, and municipal grants and stipends to black students, as well as 40 percent of the incoming class at Rio Branco Institute. Also noteworthy, it required the federal, states, and local education authorities to study and implement changes in school and academic curricula “incorporating into the content of Brazilian history and general history sources the positive realization of Africans and their descendants” (Martin 2004:

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3 Zumbi was an Afro-Brazilian slave and one of the most famous leaders of Palmares. Zumbi became known for his physical prowess and cunning in battle and was a respected military strategist. Today, November 20 is celebrated, chiefly in Rio de Janeiro, as a day of national pride. The day has special meaning for Afro-Brazilians, who honor him as a hero, freedom fighter, and a symbol of freedom.
This would be the first of two bills the Congressman Nacimento would introduce that would be signed into law twenty years later. The success of Congressman Nacimento must in part be attributed to the Afro-Brazilian movement as it continued to pressure the elite for new policies.

The challenges and opposition to affirmative action policies, such as those proposed by the Congressman, must be mentioned as they were constant and vociferous. Governor Leonel Brizola of Rio de Janeiro State in 1991, who created SEAFRO the first and only top-level state government agency concerned with public policy for Afro-Brazilians. He was met with opposition in the state legislature by those who alleged affirmative action was reverse racism. Conversely, after years of very little progress by Brazilian leadership, the United Nations Human Rights Committee commissioned a report on the state of racial inequality in Brazil spearheaded by Dr. Maurice Glegle Ahanhanso. The results of Dr. Ahanhanso’s report hit right at the hearts of Brazils’ notion of a racial democracy. It concluded “on the official plane, racism does not exist in Brazil, yet defined legislation condemning racial discrimination as a crime failed to diminish persistent racial inequalities” (Martin 2004:797). As a result of this report the nation was forced to take notice of its society’s racial imbalances. This led to the creation of the National Executive Committee in November 1995, then president Fernando Henrique Cardoso hailed it as a “Program for Overcoming Racism and Racial Inequalities” that would synthesis the policy demands of the Black movements and finally adopt them into law. In response the President announced the creation of an Inter-ministerial Working Group for the Black Population (GTI) and made an unprecedented official statement recognizing the existence of racial discrimination and the need for policy measures. Thought President Cardoso likely needed little motivation as he was sympathetic to the cause.
In his memoir *The Accidental President of Brazil*, President Cardoso identified the “main root cause of Brazil’s inequality: [as] the institution of slavery” (Cardoso 2006: 13). From early on Cardoso felt that the underachievement in educational attainment in Brazil could be traced to the slave system as beyond the gilded courts and museums of imperial Rio, there laid a vast and untamed land ramshackle villages and abject rural poverty. Furthermore, it was Cardoso’s belief that until a “dramatic transformation took place in Brazil, the country was dammed to perpetual inequality, no matter to how many school and hospitals” opened in Rio (Cardoso 2006: 12). As a result of these long held beliefs Cardoso was the first President in Brazil’s history to officially recognize "the existence of racial discrimination in Brazil, which he followed up by appointing a national commission to propose remedies" (Skidmore 2003: 1343).

In choosing this course of action, Cardoso irrevocably altered the discourse surrounding issues of racial inequalities in Brazil as he signaled support for those advocacy groups and intellectual elites seeking policies that would counter racial inequality. In an interview with columnist Robert Pompeu Toledo Cardoso was quoted as having "recognized the country's racial hypocrisy and spoke of promoting Afro-Brazilians” (Htun 2004:79). Cardoso's power over this issue was unquestioned as senior Brazilian officials recalled looking back "all of this was the president... All of this was a personal presidential decision "He didn’t consult anyone, not even the party" (Htun 2004: 80).

Where President Cardoso began President Lula continued, although the prism through which he viewed the issues was very different. President Lula was a member of the *Partido dos Trabalhadores*, or PT (Worker’s Party), a democratic socialist group. As the major left-wing political organization in Brazil, the PT exercised great influence over social and political issues, though early on it attempted to focus solely on union politics. As his PT affiliation suggests, Lula
consistently saw the dilemma facing Brazilian society as one of racial inequality and poverty. From the very beginning of his time in office, he struggled “to provide land and better wages for rural workers, to promote better health and less profit from illness, to define access to education and culture as a right, not a class privilege, to promote equality, and to end discrimination” (Lula 1997: 57). In May 2002, Lula consolidated existing initiatives by creating a national affirmative action program in the federal public administration and public universities. Lula went even further to create a Special Secretariat for Policies for the Promotion of Racial Equality. The mission of this group was complex as it was involved in research, the controversial program to promote racial quotas for university entrance, and support and recognition for two thousand quilombos. Lula incorporated Afro-Brazilians at all levels of government: appointing Joaquim Barbosa, the first Afro-Brazilian to serve on the Supreme Court, creating the Ministry for the Promotion of Racial Equality and absorbing Afro-Brazilian activists into its staff.

Freyre’s notion of a Brazilian racial democracy would have lasting effects as Brazilians have often turned to racial and cultural assimilation as proof that there is little racism in their country and as a means to reinforce the Brazilian national identity. Until recently, the Brazilian state has been able to avoid interventions that redress racial inequality because it has used the nature of its racial system to diffuse black resistance. Racial democracy has been used to impede the ability of Brazil’s black movement to fight against racism within the state, specifically “elites have resisted black-movement demands with rationales based on miscegenation contending that: state action on behalf of racial groups are not possible because race mixtures had blurred racial distinctions” (Telles, 2004:232). Under Brazilian President Vargas during the late 1930’s until the mid-1940’s racial democracy was fully embraced and made the official national ideology. Vargas’ implementation of this ideology was twofold as he attempted to preserve Afro-Brazilian
culture as evidence of racial democracy while he simultaneously undermined Afro-Brazilian attempts to mobilize. By empowering groups such as the *Uniao Negra Brasileira* (African Brazilian Union) and Sao Paulo-based Black club for Social Culture without granting any broader political or social structural change, Vargas was able to force explicit political discourse about Afro Brazilians underground.

Despite the popularity of the racial democracy notion, Brazil’s history with affirmative action policy proposals extends back and is directly parallel to the ability of black organizations to press for policy change. Although black organizations did not have much political sway these groups provided clear policy objectives to those in power. In the 1960’s as antipoverty programs were being implemented in response to the U.S. civil rights movement, Brazil’s military dictatorship advanced policies exacerbating inequality as it unleashed brutal political regression. By 1968 discussions of racism were prohibited by decree as political leaders were exiled. Nonetheless, Afro-Brazilian movements were able to campaign for policy measures to combat racism. After the fall of the military regime two major periods of reorganizing occurred in Brazilian democracy. “As the New State Dictatorship gave way to Constitutional Assembly in 1945, black organizations proposed the inclusion of antidiscrimination measures in the new national character” (Martins, 2004:790). In the 1970’s Afro-Brazilian organizations flourished and were able to intervene in the writing of the Citizens’ Constitution of 1988.

Though it cannot be said of Brazilian democracy, that it was the decisive factor in the adoption of affirmative action policies, its moral doctrine was essential to activists within Brazil. Advocacy groups in Brazil were able to utilize democratic ethics and values to freely express their displeasure with the status of hierarchical Brazilian society. Additionally, because of the presence of democratic tools such as open communication, the freedom to organize and protest
activist were able to express their views as well as strengthen the connections and networks between them. Activist or advocacy organizations in Brazil enjoy a mixed resource of national and international networks. There was no more decisive a factor that presidentialism in Brazilian democracy and the passage of affirmative action policies. Presidents Cardoso and Lula were influenced by the racial stratification of Brazilian society so much so that they instituted these new policies. Meanwhile, the democratic systems in the United States were instrumental in the implementation of new policies. The institutionalism of U.S democracy ensures that no one individual or branch of government enjoyed too much power. Because of this, while Kennedy was able to use a back way to expand policies, it was still through the state bureaucracy, a committee, which was subject to the oversight of Congressional members. The strength of institutionalism forced a higher level of attention to constituents with influence by politicians. Both tied the adoption of affirmative action policies to voting blocks. Thus creating a pattern of events where few Americans knew what these policies were, in their inception, and still fewer opposed them. The policies that developed were progressive and largely unchallenged. As they gained momentum and more citizens were made aware of them and supported them the policies continued to expand. This pattern remained consistent until 1970 when citizens began negatively perceiving the policies resulting in a swing in the voting bloc. In looking at both cases it is remarkable to note that the loosely institutionalized presidentialist system in Brazil favored the passage of more progressive policies, as was the will of the presidents. While the more developed institutional system of the U.S hindered progressive policies as voting blocs grew tired of and threatened by affirmative action. This finding begs the question: as Brazil continues its democratization process and its institutions are strengthened will affirmative action policies befall the same fate as they have in the United States?
The U.S. and Brazil represent democracies coming to terms with racial inequalities and beginning to implement corrective policies. Specifically, Brazil represents the use of democratic principles being used by activist, intellectuals, and leaders to make the country more egalitarian. Adoption of corrective policies can be attributed to the work of presidents, congress, the court, and social activist. The importance of both the Brazilian and U.S. case studies is discovering the factors that were most effective in the push for corrective policies in order to discern their generalizibility. Finding that the strength of affirmative action policies in Brazil and the U.S was tied to the structural make up of their democracies was unexpected. This comparison provides many clues on how to manipulate policy adoption in these two countries and others that are similarly constructed.
Bibliography


Cardoso, Fernando H. The Accidental President of Brazil: A Memoir. New York, NY. Public Affairs


