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■ AQ FEATURE

Affirmative Action in the Americas

BY [Tanya K. Hernández](#)

The hemisphere-wide drive to make equality a human right.

[Read a sidebar on affirmative action and public opinion in the hemisphere.](#)

The Americas present many contrasting approaches to affirmative action. In the United States, the Supreme Court reaffirmed its constitutionality, while at the same time narrowing the ability to use race in the *Fisher v. Texas* case. In contrast, several Latin American countries are beginning to explore more dynamic affirmative action policies. While many of these policies are recent and still developing, the new Latin American interest in affirmative action programs indicates how useful such programs can be in pursuing racial justice.

In fact, Latin America has in some ways gone much further in broadly embracing affirmative action as a human right—a key, perhaps, to the growing support for the concept.

In some respects the racial justice movement in the U.S. is now under siege because of past success. While formal mechanisms for addressing racial inequality have long been in place, there is a growing societal belief that it is no longer necessary for the government to proactively engage in ensuring racial equality.

In fact, in the U.S., support for affirmative action is now based on the limited argument of furthering diversity, rather than ensuring a multiracial democracy of fully integrated citizens.¹ Yet a racial hierarchy continues to exist alongside an eroding social commitment to race-based programs.

One need only look at the long-standing institutional racial disparities in employment, educational attainment, access to health care and capital, residential segregation, and disparate incarceration and execution rates to see that the goal of racial equality is still unmet in the U.S.

In contrast, other countries in the Americas, such as Brazil, Colombia, Ecuador, Honduras, and Uruguay, are beginning to address the legacy of discrimination and the lack of economic opportunities that too often come with it. While countries in the Americas have taken a number of bold steps, the leader by far in terms of defining the constitutional right to affirmative action and expanding the right to public hiring has been Brazil. The legal and public argument for the programs and the growing popular support they have been able to achieve—based on democratic human rights more than fostering diversity—may point to a potential path for the United States.

The Beginning

The notion of racial justice, and forging public policy to address it, first gained traction in the region with the emergence of democratic governments during the 1980s and 1990s—and later with the participation of social movements in international fora. A watershed moment was the 2000 preparatory conference in Santiago, Chile, in anticipation of the 2001 United Nations World Conference Against Racism, in which more than 1,700 Afro-Latino activists participated. More recently, the United Nations General Assembly proclaimed 2011 as the International Year for People of African Descent, citing the need to strengthen national action and laws to ensure their full enjoyment of economic, cultural, social, civil, and political rights.

As a result of the international advocacy and subsequent networking, awareness of the issue increased, and the capacity of domestic groups to speak out and identify areas of reform was strengthened.

The first step toward affirmative action in the region was the creation of government agencies to promote the equality of Afro-descendants. Special government ombudspersons dealing with racism on the national level now operate in every Latin American country except El Salvador, Chile and Paraguay. In countries where affirmative action policies have been initiated, such as Brazil, Colombia, Ecuador, Honduras, and Uruguay, attention has focused on education as the best vehicle for upward mobility and integration into the labor market and politics.

Colombia

Colombia was one of the earliest countries in Spanish-speaking America to implement affirmative action policies. The legal foundation for doing so was set forth in the 1991 constitutional provision mandating that “the state will promote the conditions necessary in order that equality may be real and effective and will adopt measures in favor of groups which are discriminated against or marginalized.”



University of Texas senior Bradley Poole next to a statue of Martin Luther King, Jr. in Austin. Photo: AP Photo/Eric Gay.



As a result, in 1996, the *Programa de Créditos Educativos para Comunidades Afro-Colombianas* (Afro-Colombian Educational Credits Program)² awarded university credits to Afro-Colombians for community service, whether “social or academic.” To qualify for the program, students must be certified members of an Afro-Colombian community, must demonstrate academic excellence and limited socioeconomic resources, and must present a project aimed at solving

a local community need.³

Moreover, starting in the late 1990s, several Colombian public and private universities created special admissions programs for ethnic minorities.⁴ The affirmative action programs began admitting Indigenous students first and then expanded to include Afro-Colombians.⁵

To be eligible for many of the programs, applicants must submit a certification of their Afro-descendant identity. The Ministry of the Interior and recognized Afro-Colombian organizations certify applicants through applicants' self-identification, photographs of applicants and their ancestors, and records of their racial ancestry. The process was established to address concerns that applicants might falsely assert an Afro-descendant identity and diminish the impact of the policy.

But there is also concern that many otherwise eligible Afro-Colombians may have difficulty providing the necessary documentation, while non-Afro-descendants pay for fraudulent certificates.

For those who do get in, there is the additional problem of preparation. The small numbers of Afro-Colombians who are selected are often inserted into university settings without additional support, and as a result dropout rates tend to be higher.⁶ For example, after initiating its affirmative action policy for admission, *Universidad del Valle* discovered that many of the Afro-descendant and Indigenous students who enrolled in the university from public secondary schools lacked many of the math skills needed for university-level engineering and sciences programs—due in part to the lower quality of public schools that many attend. In response, the university provided the students with additional math instruction. As a result, the retention rate for the programs rose.

Ecuador

In Ecuador, the government is planning to establish a 10 percent quota for Afro-Ecuadorian and Indigenous students in public and private secondary education. The policy is a response to Article 11.2 of the 2008 Ecuadorian Constitution: “The state will adopt affirmative action measures that promote equality in favor of those who find themselves in a situation of inequality.”⁷ The government also plans to set quotas for faculty and research staff at institutions of higher education.⁸

In a more limited fashion, the government, in conjunction with *Universidad Andina Simón Bolívar*, created a program in which 15 Afro-Ecuadorian attorneys will be awarded scholarships to specialize in human rights specifically targeting Afro-descendant communities.⁹ Another government program awards 10 scholarships for Afro-Ecuadorian students who want to pursue master's degrees.¹⁰ In 2009, the Ecuadorian government instituted a policy that grants an additional 2.5 points on civil service employment examinations for applicants of Indigenous or African ancestry.¹¹ In 2010, the Ecuadorian government signed agreements with six local governments to build housing specifically for Afro-Ecuadorians.¹²

On the local level, the municipal government of Quito issued a declaration on March 15, 2012, establishing the “Decade of the Afro-Descendants of the Metropolitan District of Quito.” During this decade, the municipal government is committed to implementing affirmative action policies for Afro-Ecuadorians.

Honduras and Uruguay

The introduction of affirmative action policies for Afro-descendants in Honduras and Uruguay has been more limited. In 2007, the Honduran government mandated the creation of a scholarship program for Afro-Honduran students to continue their secondary education and attend university.¹³

In Uruguay, in 2006, the Ministry of Education and Culture instituted a fund for postgraduate scholarships, called the *Beca Carlos Quijano*, which targets Afro-Uruguayan students.¹⁴ In addition, a bill on affirmative

action for Afro-descendants that includes provisions for university scholarships, an 8 percent set-aside in public-sector employment, and tax exemptions for private-sector employers that hire Afro-descendants is currently under discussion in the Uruguayan Senate after having been approved by the Chamber of Deputies on October 17, 2012. The fate of the legislation is unclear.

Brazil: The Pioneer

Brazil's affirmative action policies began after the nation's return to democratic rule in 1985. The democratization process slowly yielded political space to social movements that were launching public education campaigns to raise awareness of racial discrimination and the socioeconomic exclusion of Afro-Brazilians.

The first public policy change took place in 1999 in Porto Alegre, Brazil's sixth-largest city. In that year, the municipal government passed a regulation that 5 percent of the work force of all publicly funded contracts with the city be *negro* (black). (Where Brazilian legislation refers to the population as *negro* when discussing the laws, I use the same language.) Similarly, the state of Bahia, where non-whites constitute 75 percent of the population, adopted a rule requiring one-third of all models and actors in state publicity to be black.

Meanwhile, Brazil's Black Movement was gaining greater international and domestic attention through its participation in venues such as the 2001 United Nations World Conference Against Racism and related gatherings.

Changes in federal policy soon followed. Brazil began instituting affirmative action policies on the federal level in 2001, when the Minister of Agrarian Development, Raul Jungmann, issued an executive order mandating that 20 percent of all administrative positions in the ministry be reserved for blacks, as well as 20 percent of the staff of firms contracting with the agency, and that another 20 percent of the firms' staff be women.¹⁵ Just as in the U.S., there is an understanding that the government should act as a model employer, leading the way for fuller racial integration of the labor market.

Thereafter, the Federal Supreme Court and all other cabinet agencies established affirmative action policies.¹⁶ The Court's affirmative action program set a quota of 20 percent for blacks for public-sector contractors.¹⁷

The Ministry of Justice's affirmative action program reserved 20 percent of supervisory and upper-level advisory positions for black and *pardo* (brown) Brazilians. In 2002, a presidential executive decree established the National Affirmative Action Program to encourage the implementation of percentage-based goals for Afro-descendants' participation in federal agencies and the firms under contract with them.

Like the Brazilian federal government, local governments have also launched affirmative action programs. For example, in June 2011, the state of Rio de Janeiro issued a decree establishing a 20 percent set-aside of vacancies for blacks and persons of Indigenous descent in the public examinations for civil service positions in the state government.¹⁸

What is particularly noteworthy about Brazil is that it has the most extensive set of university affirmative action programs in the region that target Afro-descendants.

By August 2010, at least 80 public universities in Brazil had adopted affirmative action policies. The

structures of the current programs vary.¹⁹ Some only target Afro-Brazilian students from public secondary schools as a way of reaching the neediest Afro-Brazilian students; other programs set aside seats for public secondary school graduates of any race and then establish proportional slots by race according to demographic percentages in that state.

Another variation establishes separate quotas for Afro-Brazilian students (from public or private secondary schools), in addition to a quota for public school students of any race. A few universities award extra points to the entrance examination scores of Afro-Brazilian applicants and public secondary school graduates. Both mechanisms ensure that middle-class Afro-Brazilians, who have also been underrepresented in public universities and affected by racial discrimination, will not be excluded by class or socioeconomic considerations.

So far, Brazilian courts have upheld the laws against a number of challenges. On April 26, 2012, in a case that challenged the University of Brasilia's affirmative action policy, the Federal Supreme Court ruled the policy constitutionally valid.²⁰ The landmark unanimous decision declared such policies essential for the state to fulfill its obligation of ensuring the equality of opportunity for every citizen. One of the 10 participating justices, Minister Luiz Fux, even stated that the constitutional provision establishing the government responsibility "to build a free, just and supportive society" requires the reparation for past damages suffered by Afro-Brazilians, and argued that affirmative action fulfills that constitutional obligation.

One week later, the Court also affirmed the constitutionality of the University for All Program (*ProUni*), which provides scholarships for Afro-descendant students from low-income families to attend private universities.²¹

After the rulings, in August 2012, the Brazilian state institutionalized affirmative action in all public federal universities with the Law of Social Quotas. The law requires federal public universities to reserve half of all new admission spots for public high school graduates. Half of those reserved spots are set aside for students whose household family income falls below 1.5 times the minimum wage (currently set at 678 *reais* or \$325 per month) per family member. The law also mandates that within that 50 percent set-aside, spots be reserved for Afro-descendants and persons of Indigenous ancestry, proportional to their relative populations within each state.

Empirical data indicate that the Brazilian affirmative action programs have been successful. For instance, a study of student outcomes at the State University of Campinas found that students from socioeconomically and educationally disadvantaged backgrounds performed relatively better than those from a higher socioeconomic and educational level.²²

The study concluded that the need for hard work when striving for greater opportunity (as in preparing for the university admission examination when coming from an under-resourced public secondary school) creates an "educational resilience" that improves performance once a student is admitted to university. The educational resilience of the less-privileged students resulted in higher grade point averages after only one year of university study in 31 of the 55 possible undergraduate courses.

Overall, the relative performance of the affirmative action students was higher in 48 of the 55 courses.

Studies of student outcomes at the University of Brasilia, the State University of North Fluminense, the Federal University of Bahia, the State University of Rio de Janeiro, and the Federal University of Espirito Santo found similar results: affirmative action students succeed once provided the opportunity of admission.

Furthermore, growing numbers of Brazilians and program beneficiaries have come to view affirmative action as positive. Indeed, in the 2010 survey of applicants to the State University of Rio de Janeiro, 85.4 percent of the black and Indigenous affirmative action candidates stated they were in agreement with the quota system.²³ In contrast, in 2005, only 66.8 percent of affirmative action candidates stated that the affirmative action policy was a positive matter.²⁴ In fact, the most common stereotype about the program beneficiaries among students is that they are *cones* (nerds) who prefer to work all the time rather than party.²⁵ The general student body's respect for the program participants is illustrated by the following law student's reflection: "I can tell you that I'm in the third year and I don't see any real difference between the grades of the quota and non-quota students. Many *cotistas* [quota students] do very well, and they definitely deserve to be here; this fact has made me change my [negative] opinion of quotas in the last few years."²⁶ Similarly, in a 2007 study of 557 university instructors, the vast majority appreciated that affirmative action had contributed to democratizing the academic space by having it more accurately reflect Brazilian society.²⁷ Furthermore, many university instructors report that the affirmative action programs do not create racial tension or hostility in the university.²⁸

The March Continues

So far, most of the recent affirmative action policies in Brazil and elsewhere in Latin America have focused on public education and public-sector employment—due partly to the fact that they were instigated by government officials responding to social movements pushing for social justice. Indeed, when 500 of the largest private employers in Brazil were surveyed in 2010, the vast majority indicated that they had no affirmative action policies in place.²⁹

Regardless of whether affirmative action expands to include private-sector employment in Latin America, state-supported affirmative action policies will continue to flourish. Much of this stems from the acceptance of a constitutional and legal justification that has emphasized broad-based democratic concern with social inclusion and established the basis for these policies in human rights law. As a result, today affirmative action in Latin America not only has a stronger legal foundation and broader support than in the U.S.; the policies have also led to clearer guideposts for implementation with specifically articulated numerical quotas.

These results may be worth considering by U.S. policymakers and educational authorities. At a time when affirmative action is under direct assault at a federal level in the U.S., Afro-descendants across the Americas share similar struggles for meaningful racial equality. Perhaps shifting the legal justification for affirmative action in the U.S. to fundamental human rights and democratic deepening will help renew the popular and political commitment to expand racial equality, much as it is starting to do across Latin America.

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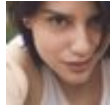
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