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A Solution to Multiple Problems: The Origins of Affirmative Action in Higher Education around the World

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Abstract

How and when does affirmative action emerge in different national contexts? This paper is the first to analyze the emergence of affirmative action in higher education across national contexts. We find that three distinct clusters of affirmative action policies developed historically: (1) early nation-building projects, (2) mechanisms to attenuate social inequality in response to identity-based social movements, and (3) 21st century “indirect” affirmative action policies. These clusters differ not only in the goals of their affirmative action policies, but also in how those policies are implemented, and the circumstances under which they emerge, as we show. The findings suggest that once provisions for underrepresented groups becomes part of the repertoire of actions universities or countries can take to solve a variety of national and university problems, affirmative action develops as a means to further a variety of organizational and national goals.

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Introduction

Policies in higher education admission that take into consideration race, ethnicity, religion, caste, or other forms of difference exist around the world in multiple forms and for multiple groups. To what extent do these policies share goals and motivation for their implementation? In this paper we analyze how and why countries around the world developed and implemented affirmative action programs in higher education, in order to make sense of the global expansion of policies of affirmative action.¹ We map nation-specific affirmative action policies in higher education and their development, historical circumstances surrounding those policies, and how they are implemented. As such, this is the first comprehensive cross-national analysis of the emergence of affirmative action in higher education.²

We find that three distinct clusters of affirmative action policies developed historically: (1) early nation-building projects, (2) mechanisms to attenuate social inequality in response to identity-based social movements, and (3) 21st century “indirect” affirmative action policies. These clusters differ not only in the goals of their affirmative action policies, but also in how those policies are implemented, and the circumstances under which they emerge, as we show. The findings suggest that once provisions for underrepresented groups becomes part of the repertoire of actions universities or countries can take to solve a variety of problems, including national and university problems, affirmative action develops as a means to further a variety of organizational and national goals. As a result, affirmative action policies have varying degrees of

¹ While the term “affirmative action” arose in the United States during the 1960s, we use it more expansively, beyond the US context, to mean any policies that take into consideration race, ethnicity, religion, caste, or other forms of difference.

² While recognizing that there is internal variation within countries, particularly in those without national affirmative action requirements, we highlight the general affirmative action policies that exist in each national context.

stability in different national contexts, as we discuss. The findings have implications for our understandings of the global transfer of ideas related to difference and equity.

Affirmative action is “any measure that allocates resources—such as admission to selective universities or professional schools, jobs, promotions, public contracts, business loans, or rights to buy, sell, or use land—through a process that takes into account individual membership in underrepresented groups,” (Sabbagh, 2011, p 109). Affirmative action in higher education admissions takes into consideration whether a student is part of an underrepresented group on campus and/or a group that is disenfranchised in the broader society. These considerations can be holistic, as in the case of higher education in the United States as required by the US Supreme Court, or mechanistic, as in the case of Indian higher education, where quotas for lower-caste Indians who meet a baseline requirement for entry exist at elite universities, as mandated by the Indian Constitution. We consider policies that account for identity-based groups: race, ethnicity, religion, and caste. In addition, we consider measures that do not overtly take into consideration ethnic/racial group membership, but which seem to identify group(s) through what Sabbagh (2011) calls “indirect affirmative action.”

In our consideration of affirmative action in higher education around the world we consider two key variables. First, the historical circumstances that led to the policy, which are tied to the goals of the policy. We find two major goals: (1) nation-building, most common in post-colonial states in order to foster national unity, and (2) reducing ethnic, racial, or caste inequality, in response to mobilization around group-rights and group-based inequality. In post-colonial states, a desire to forge national unity despite regional, ethnic, or caste differences in development and wealth often led to affirmative action, such as the provisions for affirmative action in India’s constitution. In contrast, in the United States during the 1960s universities

aimed to avoid racial strife and to signal inclusion in American democracy for African Americans, in addition to reducing racial inequality, when they instituted affirmative action (Stulberg & Chen, 2014). The Civil Rights Movement played an important role in US universities' implementation of affirmative action. Beyond the United States, global discourses around anti-racism and nondiscrimination facilitate the adoption of affirmative action in other national contexts, as well. In other countries in which affirmative action is used to attenuate inequality, individual universities implemented "indirect" affirmative action in admissions, considering a non-identity based measure such as neighborhood that in practice increases the presence of ethnic minorities on campus. French universities' use of neighborhood of residence as a mechanism to target underrepresented minority students is one such affirmative action policy. These goals frequently overlap and are mutually constitutive—that is, nation-building goals often address longstanding group-based inequalities, and movements around group-rights often lead to provisions to foster inclusion in national identity for disadvantaged groups.

Second, we consider whether it is the state or universities that implement affirmative action policies in higher education. In some countries, government policies on affirmative action require public colleges and universities, and in some cases, private institutions, to set aside a certain percentage of seats for particular groups. For example, long before western countries developed affirmative action, countries such as China and Sri Lanka developed state-level, mandatory affirmative action programs for higher education institutions. In others, affirmative action policies in higher education happens on the institutional level and is voluntary. In countries with these types of affirmative action programs, affirmative action may be encouraged by the national government, but it is not required. In some instances, such as in France and the

United States, the utilization of institutional affirmative action programs is restricted and permissible only in limited circumstances.

[Table 1 about here]

Our analysis contributes to the relatively small literature on comparative affirmative action. Indeed, previous comparative studies of affirmative action have analyzed a limited number of national contexts; ours is the first to include all countries with significant affirmative action policies. Teles (1998) develops hypotheses about why affirmative action did not develop in Britain as it did in the United States, citing the low number of minorities in Britain, the absence of a “leading” group to drive a sense of moral guilt among the dominant group like African Americans in the United States, and the centralized British political system. Sabbagh (2011), drawing on evidence from multiple national contexts, suggests that affirmative action develops out of the need to manage social conflict, tends to grow rather than narrow over time (see also Sowell, 2004), and is more extensive when the beneficiary group is a majority in society—for example, black Africans in post-Apartheid South Africa. We build on these analyses by expanding them to numerous other national contexts, and develop a theory of the conditions that lead to affirmative action across national contexts.

Methods

Our findings are based on an analysis of primary and secondary materials on affirmative action around the world. Our primary sources include governmental sources on affirmative action, such as white papers, court documents, legislation, regulations, policy reports, and official government statements, as well as individual college and university statements and reports. Our secondary sources include a wide array of historical and contemporary peer-reviewed articles and books on affirmative action and higher education. We developed a list of

countries with ethnic, racial, religious, and caste-based affirmative action primarily from three secondary sources on comparative affirmative action: Sowell's *Affirmative Action Around the World, An Empirical Study* (2004), Sabbagh's "Affirmative Action: The U.S. Experience in Comparative Perspective," (2011), and Dudley-Jenkins and Moses', edited volume, *Affirmative Action Matters: Creating Opportunities for Students Around the World* (2014). We then analyzed these 20 cases to understand their historical contexts, goals, site for policy making, and target group(s). After carefully analyzing the cases, we discovered patterns in how affirmative action developed around the world. We recognize that in some instances the justification for affirmative action has changed over time; we classify countries according to the initial implementation of affirmative action in that context.

Findings

Nation-Building Mandatory Affirmative Action Programs

There are three main characteristics of countries instituting mandatory affirmative action programs for nation-building. First, these countries generally adopt mandatory affirmative action policies for the purpose of unifying their fractured states and addressing social inequality related to group membership. Second, affirmative action is implemented on a national level, with little discretion given to provincial or state governments, or to universities. Lastly, these countries typically adopt reservation or quota systems as the mechanisms for enacting affirmative action. Countries adopting affirmative action as a project of building national unity often did so in the context of post-colonial independence, during the 1950s and 1960s; the exception to this pattern is China, as we describe below.

Fractured Societies & Inequality

In the middle of the twentieth century, a large number of Asian and African countries gained independence from colonial empires. Many of these countries were fractured and divided, with exceedingly unequal levels of growth and stability across regional, social, ethnic, and religious boundaries. Davis and Kalu-Nwivu (2001) explain that in Africa, in particular, the “colonial legacy of patently artificial borders drawn for the convenience of European conference tables bequeathed to many newly independent African nations a motley mix of people, each with their own separate ethnic loyalties and traditions (p. 1).” Nation-building is a process that seeks to “unite a people under a government and to create among them a stable cultural, economic, political, and social community (Davis and Kalu-Nwivu, 2001, p. 1).” To build a collective nation, leaders of post-colonial countries instituted a wide-range of development programs, one of which was affirmative action.

Higher education, the focus of this paper, is just one domain in which affirmative action was implemented as a nation-building project. For example, in India after independence, the Indian government sought to create a more integrated society for the historically discriminated castes, establishing a “reservation” system that mandated seats in universities (and government) for low-caste Indians. These policies increased low-caste support for political parties attempting to consolidate power. Like India, Pakistan instituted affirmative action policies in its post-colonial era for nation-building, specifically to integrate historically marginalized tribal and ethnic groups and to manage multi-ethnic and regional conflicts. The federal and provincial governments of Pakistan instituted affirmative action policies across multiple sectors from the time of Pakistan’s independence from Britain in 1947. By the 1970s the government extended affirmative action to higher education admissions (Kennedy, 1984).

Malaysia is another case of nation-building through affirmative action. Lee (2012) explains that in Malaysia, under colonization and decades after, the majority Bumiputera were, “largely excluded from socio-economic institutions that facilitated upward mobility, except for the few exceptionally talented or privileged members of aristocracies who enjoyed access to elite schools, scholarships and civil service appointments” (p. 235). Following the race riots of 1969, affirmative action policies were adopted for coalition building and national unity. The race riots stemmed from escalating friction over the tremendous income disparity and social stratification in Malaysia along racial lines. Brown (2007) further notes that the Malaysian government in its policy papers explicitly stated that national integration and unification would be “the over-riding objective” of the national education system (p. 321). It is important to note that India, Sri Lanka, Nigeria, and Malaysia instituted comprehensive, national affirmative action programs after gaining independence from Great Britain, a country with no affirmative action in higher education even today.

In South Africa, like Malaysia, civil unrest based on racial inequality prompted a national agenda to enhance racial equality. Apartheid leaders in South Africa had created a framework that sustained segregation and inequality over regional and racial divides, just as colonial rulers had done in other parts of Africa and Asia. The South African black majority was excluded from the body politic under the apartheid government for almost a half-century. After the collapse of apartheid in the 1990’s, South Africa began to rebuild the country, with concerns about inequality at the forefront of the agenda. Affirmative action in higher education as well as in other domains was one means by which the government addressed racial disparity.

In China, the rationale for affirmative action was also based on national cohesion, political stability, and unification. Although China is not a post-colonial nation, the

country was geographically fragmented along ethnic lines after national unification in 1949. China's natural resources were concentrated in minority areas, which made those areas indispensable to the newly formed state (Sautman 1998). Hence, Chinese leaders viewed affirmative action as vital to the country's political stability. Zhou and Hill (2009) explain that, "Education of the empire's diverse populations played a role in the security of the empire's frontiers and political integrity, just as it did later as China's nation-builders searched for models for political unification that necessarily had to acknowledge the power of ethnic groups beyond the Han majority (p. 2)." Since social and economic stratification can foster conflict, redressing historic inequality often became an essential centerpiece of nation-building.

Centralized Administration

Post-colonial countries adopting higher education affirmative action programs for nation-building have generally instituted state-level, mandatory systems. Some of these countries had a scattering of affirmative action policies prior to becoming unified countries, but these policies were not standardized. In China, for example, affirmative action policies in higher education date back to its imperial and Republican eras (Zhou, 2009). In India, affirmative action policies existed for the advancement of the Untouchables as early as 1892, although the formal "reservations" system was initiated after India's independence from Britain in 1947 (Sabbagh, 2011).

Some countries did not adopt affirmative action policies immediately after independence. For example, while Malaysia's original preferential policies and quotas were formally adopted for nation-building purposes as it gained its independence from Britain in 1957, the most comprehensive affirmative policy was developed in 1971 under the New Economic Policy (NEP). Like Malaysia, Nigeria did not develop its formal affirmative action program

immediately after its independence in 1960, but almost two decades later while it was still very much in the process of state and nation-building. As part of the continued process of unification, in 1978, Nigeria sought to nationalize its higher education system. Similarly, Sri Lanka, like Malaysia and Nigeria, developed affirmative action policies after gaining independence in the mid-twentieth century, but formed a more unified, comprehensive plan in the early 1970's. These countries instituted mandatory affirmative action policies at the national level as public education became consolidated through restructuring and national development plans. They centralized their higher education as a better way to manage regional inequality, which was often tied to unequal resource allocation from prior regimes. After the centralization of higher education, these countries' public higher education systems grew dramatically.

Generally, countries with national affirmative action policies have enshrined the mandate of affirmative action in their Constitutions. India's reservation policy started formally under Constitutional authority after its independence from the United Kingdom in 1947. The Constitution allows the national government and states to make special provisions for the "advancement of any socially and educationally backward classes of citizens."³ In Pakistan, affirmative action has been entrenched in law and the various iterations of Pakistan's Constitutions. The ideal of affirmative action for equitable redistribution and nation building is captured in Nigeria's second reiteration of its Constitution in 1979 under the "Federal Character Principle," (FCP), which emphasizes that it is:

the distinctive desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation, notwithstanding the diversities of ethnic origin, culture, language or religion which may exist and which it is their desire to nourish, [and] harness to the environment of the Federal Republic of Nigeria.

³ The Constitution of India (1950), Article III, Section 15.

In South Africa, Section 9 of the Constitution and The Higher Education of 1997 made affirmative action permissible to redress past discrimination and inequality. Section 37 of the Act requires universities in South Africa to develop and comply with “appropriate measures for the redress of past inequalities,” but they “may not unfairly discriminate in any way.” Lee (2014) notes that groups that need “redress [for] past inequalities” mostly applies to "black Africans" (black Africans, Coloureds, mixed-race people, and Indians) (p. 4).

Quotas & Reservations

A higher education reservation is an allocation of seats within a national college or university system or within a singular institution for a group that has collectively experienced some level of educational disadvantage. Among the post-colonial countries, quotas and reservations have generally been created in favor of a formerly disenfranchised majority or relatively large group, while in China affirmative policies have been created in favor of ethnic minorities. In India, the affirmative action policy is a quota system, reserving almost half of the seats in centrally-funded institutions for students of scheduled castes, scheduled tribes, and other backward classes. (Gupta, 2006). These groups collectively comprise roughly 70% of the Indian population (Gupta, 2006, p. 10).

In Malaysia, affirmative action under the NEP policy required higher education institutions to reserve seats for the majority Bumiputera, encompassing the Malays and indigenous populations of Malaysia. Like in India, the formerly disenfranchised majority of Malaysia under colonization are the intended beneficiaries of affirmative action. In 2003, the official NEP reservation program in higher education was discontinued, but government and institutional programs still generate affirmative action policies for the Bumiputera. These policies include ethnic quotas in public tertiary institutions, scholarships and higher education

institutions reserved exclusively for Bumiputera students, and parallel, easier routes to university admissions for Bumiputera applicants (Lee, 2012, p. 620).

In India and Malaysia, affirmative action policies were created in favor of the majority who were disenfranchised and socially disadvantaged under colonization. With China's adoption of a national admissions system, it adopted affirmative action policies, including bonus points on the National College Entrance Exam (NCEE) and lower cut-off scores for admissions for ethnic minorities, particularly those living in frontier areas, mountainous areas, and rural areas (Wang, 2009). Unlike the post-colonial countries instituting affirmative action, in China, ethnic minorities are the intended beneficiaries of affirmative action policies. There are 56 recognized ethnic groups in China, with the numerical majority, the Han, making up roughly 91% of the population (Zhou and Hill, 2009, p. 2-3).

Some countries adopted quotas for disadvantaged groups based on geography. For example, in 1971 the Sri Lankan government instituted a policy of "standardization" which is very similar to Malaysia's 1971 policy of reservation. Under the standardization policy the government sets an admissions quota in favor of students living in economically and educationally underdeveloped areas, particularly rural areas. The policy was originally designed to favor the ethnic majority—the Sinhalese—who were educationally disenfranchised under British colonial rule, like the population majorities in India and Malaysia (de Silva, 1997). Under British colonization, Tamil students, an ethnic minority comprising around 11% of the population, were favored in higher education admissions, particularly in the faculties of science, engineering, and medicine (de Silva, 1997). The "standardization" policy cuts across ethnic and religious identities and focuses on students in underdeveloped areas, which includes both Tamil and Sinhalese students. Similarly, in Nigeria the government adopted a mandatory

reservation scheme with a certain percentage of seats in higher education institutions reserved for the “educationally disadvantaged.” This category mostly encompasses students in the underdeveloped northern provinces, but similar to the modern day policy in Sri Lanka, isn’t tied to a specific ethnic or tribal group. Similar to Nigeria, Pakistan’s policies are shaped by a combination of geography, sector, language, ethnicity and the history of the development in any one given area (Waseem, 1997). Thus, in one province affirmative action can favor one ethnic group, while in another region, wholly different ethnic groups are the intended beneficiaries.

In South Africa, there is no formal, national reservation policy. However, some universities like the University of Cape Town (UCT) have explicit and well-developed affirmative action infrastructures that target socioeconomic disadvantage and consider race in admissions, while other institutions have no affirmative action plans. One likely explanation for South Africa’s development of institutionally-led affirmative versus state-level mandates during its democratic transition is that the view of the government’s role in redistribution and equity was one of limited intervention. For example, Lee (2015) explains that because mainstream thinking in Malaysia was more receptive to state-led intervention, Malaysia was able to take “an expansionary stance” and develop massive state-led affirmative action policies, while South Africa developed a more constricted affirmative action position (p. 619). While South Africa’s national laws permit and encourage affirmative action, affirmative action is not entrenched as a guaranteed right nor mandated by national or Constitutional directives as it is in many post-colonial countries. Lee (2015) explains that, “through the democratic transition, the autonomy of universities was preserved and universities were mandated to pursue broadly defined redress or transformation agendas” (p. 619).

Countries that developed national, mandatory quota systems for disadvantaged groups in the middle of the 20th century, such as Nigeria, Malaysia, India, China, and Sri Lanka, did so for the primary purpose of national unification. The element of redressing past discrimination was also a central component of the nation-building framework. After the end of apartheid, institutions in South Africa also developed affirmative action policies for nation-building and redressing the legacy of apartheid. One of the biggest differences between South Africa and the post-colonial countries whose higher education affirmative action policies were developed for nation-building, is that South Africa's affirmative action policies were not adopted at the state-level. In post-colonial countries, such as India, Malaysia, and Nigeria, the federal government directs affirmative action policies, with varying levels of discretion given to provincial governments and institutions. In South Africa, institutions direct affirmative action plans.

Group-Based Mobilization & Anti-Racism

In some countries the development of affirmative action has occurred when an identity group, most often a numerical minority, has endured a legacy of oppression such as slavery or extreme discrimination. In these cases, affirmative action is spurred by national and cross-border group rights mobilization, the development of a national group consciousness, and international discourse about nondiscrimination. Some of the most recent adopters of mandatory affirmative action policies, such as Romania and Brazil, have been spurred by cross-border discourses on inequality, racism, and nondiscrimination. When developing affirmative action programs under these conditions, voluntary affirmative action programs in universities typically develop rather than state-mandated systems.

Discrimination & Disenfranchisement

Countries adopting affirmative action in response to group mobilization or international pressure all have a legacy of discrimination against an indigenous, racial, ethnic, or religious group, such that the group has experienced some educational disadvantage. Non-native ethnic and religious groups with regional permanence and strong community infrastructures, such as Muslims from Thrace in Greece, have often been able to receive affirmative action benefits in higher education. Generally, these groups are a numerical minority in their countries. In New Zealand, indigenous populations—Māori and Pacific Islanders are the main, intended beneficiaries of affirmative action policies, making up 14% and 7%, respectively, of the population (New Zealand Census, 2013). In Romania, the Roma are the beneficiaries of affirmative action and are the second largest ethnic group in Romania, making up 3% to 12% of the population (Buțiu, 2014).

All of these groups, whether they are numerical minorities, as in the case of Romania and New Zealand or making up a larger percentage of the population, such as in Brazil, have faced rampant discrimination. Former slave populations in Romania (Roma), the United States (African Americans), and Brazil (black Brazilians⁴) continue to experience various forms of social exclusion, and racial inequality exists in each context. For example, Afro-Brazilians are two and a half times more likely to be illiterate than white Brazilians, considerably less likely to attend college, and earn half as much as their White counterparts (Long and Kavazanjian, 2012).

In contrast to countries with one major group that drove affirmative action policies, Canadian affirmative action was a response to the exclusion of multiple groups in society. In the late 1800's through the beginning of the 20th century, Canada adopted a series of exclusionary

⁴ We take as a starting point that racial categories in every society are socially constructed (Cornell & Hartmann, 1998). In Brazil racial categories are particularly contested (Telles, 2004). Still, affirmative action policies in Brazil take into consideration Afro-Brazilian (“black”) identity.

race-based policies and legislation that supported segregation and discrimination in the education sector, particularly against the indigenous population, black Canadians, and Asian immigrants. These policies have existed at the federal, provincial, and institutional levels, across primary and tertiary institutions, particularly in Nova Scotia and Ontario, where “separate schools were a normative practice instituted by law,” (Chan, 2007, p. 132, 133). Affirmative action in Canada sought to address the historical legacy of these policies.

Mobilization & Discourse

The development of Romania’s affirmative framework coincided with larger international discourse in the 1990’s about Roma inclusion coupled with activism in support of the Roma in Central and Eastern Europe. Sobotka (2011) explains that cross-border advocacy organizations, Roma leaders, and minority rights organizations formulated Roma issues in the EU context and pressured governments to generate Roma-specific policy responses. In post-Cold War Central and Eastern Europe, the “politicization of ethnic cleavages” and increasing human rights violations, alongside European Union accession and democratization, “empowered Romani activists to address discrimination and maltreatment and campaign for equality and the development of a concept of ‘Roma rights’.” (Sobotka, 2011, p. 236). Romania’s affirmative action policies continued to expand during the Decade of Roma Inclusion, a ten year period from 2005 to 2015, in which eight European countries agreed to develop action plans in education, healthcare, employment and housing to better include the marginalized Roma populations (Curic and Plaut, 2013, p. 71). In the Declaration of the Decade of Roma Inclusion, the collective group of countries pledged to, “work toward eliminating discrimination and closing the unacceptable gaps between Roma and the rest of society.”⁵ Institutions in other countries, such as Hungary,

⁵ See, the Declaration of the Decade of Roma Inclusion’s briefs, statements and reports, at <http://www.romadecade.org/about-the-decade-decade-in-brief>

where the Roma are the largest ethnic minority, also incorporated affirmative action into its tertiary education system during this period of attention to Roma rights.

In the early twentieth century, a black social collective mobilized in Brazil, similar to the black consciousness movement in the United States. This movement developed to respond to racial inequality and to demand government reform, with a resurgence in the late 1970's throughout the early 2000's. One of the most visible movement activities included the Zumbi dos Palmares March on November 20, 1995, in which thousands of activists and community leaders protested and eventually met with the President (Telles, 2004). The black social movement raised the visibility of the black consciousness ideal and conceptualized racism. By the early 2000's National and Pan-American black organizations were leading international meetings on racism and collaborating with pro-reform government leaders. Some were funded by international foundations, evidence of global movements against racism (Telles 2004). In 2001, a group of governmental leaders in Brazil attended the United Nations' World Conference Against Racism in Durban, South Africa. The conference was the impetus for immediate changes in Brazil's state and federal laws and the spreading of affirmative action policies in higher education (and the labor market).

Global movements also propelled affirmative action for indigenous groups. In New Zealand, affirmative action coincided with an indigenous consciousness movement, inspired by collective action movements around the world. The indigenous consciousness movement is described as the Māori Renaissance—the resurgence of Māori political and cultural power in the early 1970's, led by Māori leaders. Māori leaders and activists issued increasing demands for recognition and rights—inspired in part, by the black power and Marxist movements (Hill, 2010). As the Māori challenged the British Crown's validity and overall structure, the

government was forced to acknowledge the Māori's presence in New Zealand, and work with tribal leaders across social and political sectors.

Finally, in Canada, a broader government policy of multiculturalism emerged during the 1980s in response to the Quebec sovereignty movement, and that policy extended to aboriginal and immigrant Canadians. In the 1970's, the national government established a multiculturalism policy and several federal offices dedicated to multiculturalism and racial equity (Chan, 2007). In 1982, the Canadian Charter of Rights and Freedoms was adopted in Canada's new Constitution, permitting affirmative action in higher education admissions.

Institutional Affirmative Action

In countries where affirmative action developed after collective action or human rights conversations, institutions or the state develop affirmative action programs. Institutions have generally adopted these policies to increase the representation of underrepresented groups within higher education. Institutional policies that are voluntary generally seek to address the underrepresentation of immigrant-origin groups, indigenous groups, and racial and ethnic minority groups. In some cases, there is an explicit link to past discrimination and disenfranchisement, while in the US and Canada the promotion of diversity or multiculturalism provides the institutional rationale for affirmative action.

In the United States during the 1960's individual colleges and universities began to institute affirmative action programs to address the vestiges of slavery and Jim Crow, which had restricted the access of black students to historically white institutions in the United States. John F. Kennedy made the first known reference to "affirmative action," in 1961⁶ under executive

⁶ Some historians note that the term stems from an earlier period. Interior Secretary Harold L. Ickes and his aides used the concept in the 1930's when they tried to "insure that Public Works Administration contractors hired some percentage of black employees in areas that had an 'appreciable Negro population.'" (Garrow, 2010, p. 35) The term "affirmative action" appeared in a non-racial context in the National Labor Relations Act of 1935 (the Wagner Act)

order 10925, which dictated that government contractors were required 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.” Higher education institutions generally began adopting the practice in the 1960's after several executive orders around affirmative action in the labor market.

Sometimes affirmative action policies arose in response to specific movements then extend to multiple groups. For example, in Canada, the University of Manitoba's Faculty of Education announced in February 2016 that it would set a target for its 2017 incoming undergraduate student body to be represented by 45% of students in certain diversity categories, including indigenous and racial minority students. The aim of the program is to provide the “highest quality of education with a view to graduating a teaching force that represents the cultural, ethnic, regional and social diversity of Manitoba,” (University of Manitoba, 2014). In the United States, affirmative action targeting African American students later spread to include Latino and Native American applicants. In the cases where the state mandates affirmative action discussed in the previous section, there is more of an explicit link to redressing past discrimination and inequality.

In contrast to the state-mandated affirmative action policies described above in post-colonial societies, in the United States, like France, affirmative action policies have overarching governmental *restrictions* on their usage based on the Constitution and case law. University administrators have been at the forefront of designing affirmative action policies, while those policies continue to be challenged in court (Stulberg and Chen 2014). In the United States there are no explicit federal laws for higher education affirmative action, and in six states, affirmative

and was used in a racial context 10 years later, in New York state's 1945 Law Against Discrimination. (Garrow, 2009, pg. 35) These early references are generally associated with the labor market.

action on the basis of race has been outlawed. In the United States, the practice of affirmative action is institutionally generated, while state law and Supreme Court rulings have shaped the conditions under which race-conscious admissions can operate.

In New Zealand, like the United States, affirmative action policies are led by institutions. In 1972, the University of Auckland's School of Medicine became one of the first institutions to institute affirmative action in New Zealand. Law schools and medical schools have been on the forefront of New Zealand's affirmative action programs and have Special Entry Programs for Māori and Pacific Islanders, reserving a certain number of admissions slots for these students. However, unlike in the United States, in New Zealand institutions' rights to establish affirmative action were enshrined in national law, but only nearly two decades after institutions begin implementing affirmative action.

Romania, Greece and Brazil stand out in this category of countries, because affirmative action is federally mandated. In the 1990's cross-border human rights campaigns for numerical minority groups and the development of international human rights frameworks across Europe sparked reform in Greece and Romania. After years of authoritarian rule under which Muslims, faced social exclusion and discrimination and in a European climate of pro-minority rights, Greece transitioned to a more inclusive democracy. As part of this transition, Greece developed an equality framework with explicit programs designed to bolster the economic, political, and educational status of Muslims from Thrace. In 1996, the Greek Ministry of Education instituted a quota system, which reserves 0.5 percent of placements in Greek universities and technical and vocational institutes for Muslim high school students from Thrace.

Likewise, in Romania state-level policies require reserved seats in public institutions for the disenfranchised numerical minority group—the Roma or Romani. To address inequality

from oppression and marginalization, in 1992, the Romanian government began reserving seats in favor of the Roma at one state university, the University of Bucharest (Friedman and Garaz, 2013). In 1998, Romania's Ministry of Education began a comprehensive, mandatory reservation system at eight large state universities and by 2011, following the Declaration of the Decade of Roma Inclusion, the policy expanded to over forty-nine universities (Friedman and Garaz, 2013).

In Brazil, too, the government responded to a social movement by instituting affirmative action. In 2001, Rio De Janeiro's legislature announced that 40% of the seats in the state university would be reserved for non-white Brazilians (Telles, 2004, p. 72). In the same year, the Public Ministry in the state of Minas Gerais began to reserve 50% of public university seats for those attending public schools (Telles, 2004, p. 72). Most of these policies were created in favor of public school students, Afro-Brazilians, Brazilian Indians, and students from low-income backgrounds, although there is substantial overlap between racial, schooling and socioeconomic categories. Later, to address inequality on a national scale, in 2012, Brazil's Congress passed the Law of Social Quotas, requiring the federal and state universities to reserve half of their available spots for students from public (state) schools, at least half of whom had to be from low-income families and a number from disadvantaged racial groups proportionate to their percentage in the local population (Francis-Tan & Tannuri-Pianto, 2015). As noted, some state universities were already implementing affirmative action prior to the national law, but affirmative action had not previously been subject to a federal mandate. Once the law passed, all 59 federal universities and 38 national educational, science and technology institutions were given four years to fully comply (Kirakosyan, 2014).

The United States is not the only country in which affirmative action policies have been challenged in the courts. After Brazilian states began instituting affirmative action policies in the

early 2000's many lawsuits were filed challenging the programs. By 2012, however, Brazil's Supreme Court found the use of racial quotas to be Constitutional, and thus, all public universities and colleges have to follow the national law on social quotas. In New Zealand, the Tribunal in *Amaltal Fishing Company Ltd v Nelson Polytechnic* (1996) concluded that Section 73 of the Human Rights Act allows for affirmative action policies in favor of the Māori. Nevertheless, the Tribunal, like the US Supreme Court in *Bakke*, outlined the criteria that affirmative action policies must meet in order to be in compliance with national law. In the case of New Zealand, affirmative action policies must be sufficiently justified as necessary or needed by the target group.

Indirect Affirmative Action

In some countries differentiating citizens by race, ethnicity, or related social identities is restricted, even if that differentiation is positive in nature or meant to redress some disadvantage or discrimination. At the same time, the expansion of higher education and patterns of inequality together have spurred conversations around inclusion in higher education. In many instances these discussions emerge in response to critiques of elite universities for the lack of representation in the student body of lower class students, a threat to the legitimacy of those universities' admissions processes. Below we discuss cases in which affirmative action arose to promote greater equity with respect to race, ethnicity, or religion in higher education, often alongside the expansion of higher education in the 21st century. We include cases that utilize socio-economic measures through a mechanism of what Sabbagh (2011) calls "indirect affirmative action": "purposefully inclusionary' measures that appear neutral but are designed to benefit disadvantaged groups more than others," (p110).

We begin with France. In French society, distinctions based on the social identities of race, religion and sex are strictly prohibited under the Constitution of 1958. The legal framework for colorblindness in French society was further entrenched by a 1978 law that prohibits the collection of data on race or ethnicity (Sabbagh, 2011). Since 2001, some selective institutions in France have used affirmative action policies to recruit disenfranchised students, many of whom are ethnic minorities and immigrants. However, these policies are not framed around racial or ethnic identities, but rather Education Priority Zones (ZEP) with disadvantaged populations. Education Priority Zones (ZEP) are state-labeled geographic areas which serve the most economically and educationally disadvantaged students in the country. Despite the non-ethnic policy, given residential segregation these ZEP target ethnic minorities. In 2001, France's Institut d'Études Politiques de Paris (Sciences Po), one of the most selective universities in France, created France's first affirmative action program to recruit students from ZEP. Under the Sciences Po program, students from ZEP are offered a separate entry process, along with coaching and special training once they are admitted.

Similar to France's indirect affirmative action scheme, since 2001 four selective universities in Israel have implemented provisions for disadvantaged applicants, mostly by taking into account the socioeconomic status of applicants' neighborhoods and high schools (Alon, 2015). In practice, the schema have more than doubled the percentage of Israeli Arab and Mizrahi students accepted into the four universities (Alon, 2015).

Finland implemented a different workaround. As in France, Finnish law prohibits the collection of data related to race or ethnicity. Universities have implemented affirmative action in Finland by considering applicants' "mother tongue." This provides consideration for native Swedish speakers as well as Sami (indigenous) people (Woodrow & Crossier, 2000). Similarly,

Australian universities' predominantly class-based provisions in admissions instituted in the 21st century sometimes include other measures of disadvantage—especially refugee status, indigenous identity, or attending a rural or low-resourced school. The government has set targets for increasing the percentages of students from low SES households, with universities implementing a variety of strategies to move toward this class-based goal.

Countries practicing indirect affirmative action are similar in what they lack—none experienced a broad group-based social movement for rights for a specific group in society. It is perhaps the absence of a systematic rights-based movement that leads them to implement class-based measures that nonetheless seem to address ethno-racial inequality in society. Instead, these countries are addressing systematic inequality in who attends particular universities. That is, the specific universities recognize that the legitimacy of their ostensible meritocratic selection systems is called into question when the campuses are dominated by elites. The universities then respond with provisions for underrepresented groups, through class-based measures.⁷

Conclusion

Through the comparative analysis of affirmative action in higher education, we highlight two common situations in which explicit affirmative action in higher education arise, and one set of cases in which “indirect” affirmative action policies (Sabbagh, 2011) emerge. Early adopters of affirmative action were engaged in nation-building projects, especially in post-colonial states,

⁷ Universities in other countries, too, have implemented class-based provisions, but without an obvious ethno-racial impact or motivation. For example, since 2006 the British government requires universities charging maximum tuition to develop “Widening Participation” plans; most commonly, these plans include, among other things, considerations in admissions for whether the applicant has lived in foster care or comes from a school or neighborhood that has sent few or no students to the university in the past. See <https://www.offa.org.uk/access-agreements/> for examples. The Irish government, too, requires universities to expand access. Even more recently, when expanding higher education the Indonesian government required universities to hold 20% of seats for socioeconomically disadvantaged groups. We do not discuss these cases at length in this paper because they do not fit into the group-based consideration, whether implicit or explicit, of our working definition of affirmative action.

and affirmative action became required by the state. When affirmative action becomes part of the way in which a post-colonial state builds national identity, it frequently is institutionalized in the newly-formed nation's constitution or related legislation. This practice was common in the 1950s through the 1970s. In other countries, affirmative action develops when there is collective mobilization around group rights, alongside global discourse around anti-racism and nondiscrimination. In many of these cases, there is a history of oppression or discrimination against an indigenous, racial, ethnic, or religious group. Aside from the United States, these policies emerged during the 1980s and beyond. Lastly, a handful of countries with significant racial or ethnic disparities but lacking a post-colonial or group-rights based movement have adopted indirect affirmative action during the 21st century.

Overall, once affirmative action becomes part of the possible actions countries can take in higher education admissions, it becomes a solution to myriad organizational and national problems. In this sense, our analysis aligns with Cohen, March, and Olsen's (1972) classic discussion of organizational practices enduring through presenting solutions in search of organizational problems they can solve.

It is important to note that there is considerable variation among universities within specific national contexts that have adopted institutionally-driven affirmative action models. For example, higher education institutions such as community colleges in the United States are not selective in admissions and hence do not practice affirmative action. In addition, some states in the US have passed state-wide referenda that ban affirmative action in any university that receives state funding, which includes all state universities. Affirmative action shifts over time within national contexts as well. Regime changes, demographic shifts, and instability influence how affirmative action is maintained or restructured. For example, China has had some of the

most dramatic shifts in affirmative action policies. In some time periods, the entire higher education system has been destabilized with a change in governmental regime. During China's Cultural Revolution and the Down to the Countryside Movement, colleges were closed and the college entrance exam was abandoned altogether. Less dramatically, over the past forty years affirmative action has been challenged frequently in the US judicial system, with multiple cases reaching the US Supreme Court. The 1978 *Bakke* decision led universities to shift their justification of affirmative action from discourses on inequality and injustice to discourses on diversity (Berrey, 2015). The latest case, *Fisher v. Texas*, suggests a narrowing of legally permissible forms of affirmative action. In the past twenty years the number of public US colleges and private less-selective colleges claiming to practice affirmative action have declined (Hirschman & Berrey, 2017). Future research might use our typology to further analyze changes over time or internal variation within specific national contexts to make sense of when and why they emerge.

Overall, we find that countries with histories of social movements related to anti-colonialism or group-based rights are those that develop explicit policies of affirmative action. Those lacking both sometimes institute indirect affirmative action when the legitimacy of systems of selection is called into question because of glaring inequality in who attends particular universities. This finding resonates with Teles' (1998) analysis of why affirmative action developed in the United States but not in Britain. Teles cites the absence of a "leading" minority group, the low number of minorities, and the centralized political system as reasons that affirmative action did not arise in Britain. These three factors are likely to have prevented the group-based mobilization that seems, from our analysis, to be necessary for affirmative action to

arise in countries that did not have a specific period of nation-building.⁸ We extend Teles' hypothesis to numerous other national contexts. Future research should further extend this hypothesis to countries without affirmative action provisions in higher education. It may also explain the timing of the emergence of affirmative action across national contexts, as tied to when underrepresented groups begin to mobilize around group-rights and inclusion.

The findings also resonate with Sabbagh's (2011) hypothesis that affirmative action tends to arise as a mechanism for managing social conflict. We further specify Sabbagh's analysis by identifying three specific kinds of social conflict whose responses can be, at least in part, policies of affirmative action: (1) ethnic, religious, or caste conflict in post-colonial societies, (2) ethno-racial conflict highlighted by group-based mobilization, and (3) claims of exclusion from supposedly meritocratic systems. Further, we explain why some forms of social conflict lead to direct affirmative action, while others lead to indirect forms. Similar to Sabbagh's (2011) and Sowell's (2004) claims that affirmative action tends to grow rather than narrow over time, we found little evidence of the scaling back of affirmative action.⁹

The findings above also resonate with Banting and Kymlicka's (2006) discussion of the contexts in which multiculturalism develops. Banting and Kymlicka explain that,

The modern rhetoric of multiculturalism draws explicitly on the discourses (and strategies) developed during the anticolonial national liberation movements and the African-American civil rights movements, adapting them to the specific needs of different types of groups in different countries (pp9-10).

⁸ It is important to note, of course, that affirmative action is by no means a policy that resolves these issues. Affirmative action did not eradicate, for example, racial inequality in the United States, nor Roma exclusion in Europe.

⁹ The two exceptions to this pattern are the United States, where court cases have narrowed the forms of affirmative action permissible, and Sweden, where a 2006 court decision ended one university's quota and lower admissions requirements for students with foreign-born parents (Barradas, 2015).

If we see policies of affirmative action as an instantiation of multiculturalism, then the roots in the two direct forms in anticolonial movements and group rights movements (frequently inspired by the African American Civil Rights Movement in the United States) resonate with Banting and Kymlicka's analysis of the development of multiculturalism. We further show that the absence of both may sometimes lead to indirect, but not direct affirmative action, such as in the cases of France and Britain.

Further research should probe more deeply into the cases above to better understand the historical development of affirmative action. In particular, to what extent do countries mimic each others' policies of affirmative action? For example, Israel's first affirmative action scheme was introduced by a professor influenced by affirmative action in the United States (Alon, 2015). Did early adopters building post-colonial societies draw from other countries' constitutions in provisions for affirmative action? In addition, is there evidence in university or legislative documents of inspiration from or discussion with other national contexts in the implementation of affirmative action as a solution to specific problems of national unity, inequality, or social conflict? Were there particular countries that set the stage for others—perhaps India among Asian postcolonial societies, or the United States among rights-based movements? Further, once affirmative action becomes a legitimate solution to particular university or national problems, to what extent do countries or universities use it to solve myriad problems? In other words, is affirmative action a global world system or one that arises in specific historical moments to fulfill specific, national needs?

A corollary to questions of affirmative action's spread through international influence is whether any retreat from affirmative action will also spread globally. In the west today, white nationalism has arisen in multiple national contexts. This ideology is antithetical to multicultural

policies like affirmative action. Future research should investigate the extent to which these movements gain momentum through cross-national networks and adoption of rhetoric across national lines to critique multicultural policies like affirmative action, and the impact of those movements. If indeed further research finds evidence for strong international links related to affirmative action policies, any retreat from affirmative action, especially from influential countries like the United States, should be cause for concern for advocates of affirmative action around the world. Today, affirmative action is on shaky legal ground in the United States, with increasing demands on universities that they demonstrate that no other viable mechanism to increase diversity exists; even this rationale may see the end of legal justification as the make-up of the US Supreme Court changes. Some evidence suggests that non-elite universities and state universities in the US have already begun to retreat from affirmative action (Hirschman & Berrey, 2017). Much earlier, during the 1980s vociferous critiques of affirmative action in both the United States and India arose, despite fundamental differences in the policies and their implementation. Further research should investigate the extent to which these movements were in conversation and expressed similar discourses and critiques, despite the significant differences in the histories and forms of affirmative action in India and the United States.

Table 1

	Goals	Implementation (state vs. private)	Historical circumstances	Countries
Nation Building	National unity	State	Post-colonial independence 1950s-1970s	India Pakistan Sri Lanka Malaysia Nigeria South Africa China
Attenuating Inequality	Attenuate inequality, address group-based claims-making	State/Institutions	Mobilization around group rights, global discourse of anti-racism and nondiscrimination	US Romania Hungary Greece New Zealand Brazil Canada
Indirect affirmative action	Attenuate inequality, maintain meritocracy's legitimacy	Institutions		France Israel Finland Indonesia Nepal Australia

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