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Building Pluralism Through Affirmative Action in Brazil: THE CASE OF EDUCATION

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I. INTRODUCTION

Who are we as individuals, as groups and as a nation? The answer to this question is relevant because approaches to pluralism will be more effective the better they adapt to the needs and aspirations of real individuals—not abstract individuals of a utopian liberal society, not simplified individuals defined by a single marker of race, gender, sexuality, disability or class, but complex and multifaceted individuals capable of constructing an idea of nation which is also complex and pluralistic.

In the case of Brazil, there were two predominant narratives about how to define the nation and its population in terms of race in the 20th century: the narrative of a racial democracy, and the narrative of a racialized and unequal society. Those who subscribe to the second narrative target the myth of a racial democracy and seek to overcome it. This paper presents these two narratives and then

analyzes the race-based affirmative action programs promoted by the supporters of the second narrative and describes how they have fostered a shift in the conversation about race in Brazil. The terms of this new conversation have partially shattered the myth of racial democracy, allowing for the formation of an idea of a nation that is more open to pluralism.

A First Narrative: Cordial Slavery, Mixed Races and Racial Democracy

According to the first narrative, popular for decades, Brazil had a milder form of slavery than other slavery-based economies, due to a particular type of Catholicism adopted in the country and due to the Portuguese contact with other cultures. The type of Christianity adopted in Brazil was “lyric” and “festive,” filled with “feasts, baptisms, marriages, with banners, saints, chrisms, and novenas,” and it created bonds between blacks, the “Brazilian family” and its culture.¹ This less harsh treatment of

This paper is part of a new publication series from the **Global Centre for Pluralism** called **Accounting for Change in Diverse Societies**. Focused on six world regions, each “change case” examines a specific moment in time when a country altered its approach to diversity, either expanding or eroding the foundations of inclusive citizenship. The aim of the series – which also features thematic overviews by leading global scholars – is to build global understanding of the sources of inclusion and exclusion in diverse societies and the pathways to pluralism.

slaves was also attributed to Moorish influence in Portuguese culture as well as to the fact that “slaves were [often] members of the household.”² As a result, Gilberto Freyre wrote, in 1936, in *Sobrados e Mucambos*: “... if one travelled through Brazil in the late eighteenth century where slavery seems to have been, since the sixteenth century, more benign to the slave than in English America—... [one would] consider the patriarchal system... [of] slavery a... cooperative system of society.”³

According to this first narrative, a milder form of slavery gave birth in the 20th century to a racial democracy, based on the ideas of a single mixed race and of national unity.⁴ In other words, Brazilian society had consolidated an idea of nation based on racial mixing (or miscegenation, to use the most common term in Brazilian Portuguese). Anthropologist Gilberto Freyre (1933, 1936), as well as Sérgio Buarque de Holanda (1936) and Caio Prado, Jr. (1937), framed this theory, which was later consolidated and widely accepted to the point that miscegenation lost its negative connotation.⁵

The myth of racial democracy rests on the belief in a harmonious, egalitarian relationship between racial groups. Some criticism of the narrative of racial democracy was raised in the 1950s and 1960s, but the military regime (1964–85) reinforced the narrative, at least in the political sphere. In the 1970 report to the United Nations Committee on the Elimination of All Forms of Racial Discrimination, the Minister of Foreign Affairs stated: “I hereby assert that, as there is no racial discrimination in Brazil, there is no need to take any legislative, judicial or administrative measures to ensure

racial equality in Brazil.” In the six-page report, the government described the friendly racial relations in Brazil as well as the growth of racial mixing. Moreover, those who conducted research on racism or who discredited the ideology of racial democracy in the political sphere were exiled, as was the case of Abdias do Nascimento, Florestan Fernandes, Guerreiro Ramos, Fernando Henrique Cardoso and Octavo Ianni.⁶ Indeed, the Black movement held a culturalist and assimilationist approach until the end of the 1970s.⁷ As no racially based differences were recognized among individuals and groups, there was no need to talk about race or racism.

The narrative of racial democracy was still prevalent in Brazil in the early 1990s.

An Alternative Narrative: Harsh Slavery Practices, Structural Racism and the Myth of Racial Democracy

The second and alternative narrative starts from an analysis of the foundation of racial inequalities in Brazil, that is “the initial inequality which set in motion the interactions leading to the persistence of horizontal inequalities” and more specifically, inequalities among racial groups.⁸ The foundational shock was slavery. The first shipment of slaves from Africa to Brazil was recorded in 1538 and a massive slave trade started in 1548, lasting for more than 300 years.⁹ In 1888, Brazil was the last independent nation in the Western world to abolish slavery.

Slaves assumed a vast array of occupations in the country, but the slave trade particularly targeted: sugar cane plantations in the Northeast with a peak in the 17th century; mines in the state of Minas

Geraiis with a peak in the 18th century; and cotton plantations in the state of Maranhao between the mid-18th and the mid-19th centuries. Half a million slaves were sold for mining alone, coming primarily from the Gulf of Guinea.¹⁰ Contrary to the notion underpinning the first narrative that slavery was more humane in Brazil than in other countries, slaves in Brazil were forced to work to the limit of their capabilities and would be replaced by new slaves, usually from Angola or the Gulf of Guinea, if injured or killed.¹¹ In mines, annual death rates reached 7,000. Although some slaves were able to buy their own freedom or were emancipated, they faced great difficulties in finding an occupation due to stigma: “whites did not recognize the colored person’s change of status.” Clerical, civil and administrative appointments depended on proving “cleanliness of blood.”¹² Twenty years before abolition, immigration from Europe was being discussed as a policy tool to assure the prevalence of the white race.¹³

In this second and alternative narrative, the myth of racial democracy is a myth of denial that has supported continued de facto discrimination in Brazil. There are at least three levels of denial: denial of race, denial of racism and denial of structural forms of racism.

First, denial of race is possible because of a conceptual confusion involving the meaning of race. This confusion is related to the belief that there are no sufficiently objective ways to define race in a country where so much racial mixing has occurred and where there have been no institutionalized official policies of segregation.¹⁴ Although often overestimated, racial mixing does exist in Brazil,

and this at a much higher level than in the United States, for instance. In the United States in 1960, the rate of endogamic marriages was 99.9% for marriages between whites, and 99.2% for marriages between black couples. In 1992, the rates were 99.8% among whites and 96.6% among blacks.¹⁵ By comparison, the rates for endogamic marriages in Brazil were lower in 1960 (92%) and decreased to 69% in 2010.¹⁶ In light of these social practices, Brazilians often deny the existence of race. Brazilians have not been legally segregated since the abolition of slavery, and because Brazilian society is racially mixed, it has been argued that one is not able to identify particular “races” in Brazil. This argument is, however, flawed, since it ignores all that we know about race as a social construction that varies from one society to another, and that carries complex definitions and complex processes of identification.

In Brazil, race is based on phenotype (or appearance) and not on ancestry, so both external identification and self-identification follow classifications based on colour. Reliable data on race started to be gathered in Brazil in 1872, although it was suspended between 1900 and 1930.¹⁷ In the 1872 census, four terms were used: white, black, brown (*pardo*) and mestizo Indian (*caboclo*). Today, the Brazilian census uses five categories: black, white, yellow, brown or *pardo*, and indigenous. Nor has racial fluidity impeded some considerable degree of shared racial classification. Illustratively, while in surveys conducted in 1976 and 1995, Brazilians mentioned 135 colors and races to identify themselves, “94 percent of the respondents from both studies classified themselves within six principal categories.”¹⁸ Racial identification as a social construction has a strong political element.

For example, the Brazilian Black movement has defined “browns” (pardos) as blacks because the former share the “realities of racial discrimination” with the latter, in terms of lack of access to economic and political resources.¹⁹ In 2014, 53.6% of the Brazilian population was either black or brown.²⁰

A second source of denial, which is closely connected to the first, is a conceptual confusion between racism and racialism, or the belief that racism will be automatically overcome by an anti-racialist ideology. The mere elimination of the terms race or racialism, however, is not enough to overcome racism.²¹ On the contrary, the complete elimination of the terms, in a context where discrimination exists, rules out the possibility of building policies to combat racial discrimination. A survey conducted in 2003 by the Perseu Abramo Foundation and the Rosa Luxemburg Stiftung Foundation (with more than 5,000 people interviewed in 266 municipalities), clarifies some of the consequences of this second form of denial. According to the survey, while 96% of the Brazilian population denied being racist themselves, 89% of all Brazilians recognized that racism existed in the country and 74% expressed some degree of racial discrimination as they commented on statements such as: “a good black is a black with a white soul,” “when a black does not make a mistake entering a building, he does so exiting the building” or “what would you do if you had a black boss?” Moreover, 81% of browns and 57% of blacks reported that they personally had never suffered any form of racial discrimination.²² In sum, although Brazilians have been prone to recognizing that there is racial discrimination in the country, they deny being either the perpetrator or the victim. They deny guilt;

they deny responsibility for racial discrimination; and they also try to flee from discrimination’s oppressive mantle by denying its existence.

A third source of denial is the focus on particular discriminatory treatment rather than on structural racism. Despite the evidence of deep racial inequalities, Brazilians’ overall perception of racism until the early 2000s was that racism was a non-structural phenomenon, concerning only isolated individual relationships. Brazilians’ perception of racism in the 20th century and, in great part today, has been mainly based on the idea of individual guilt and individual responsibility.²³ The survey by Perseu Abramo mentioned above found that 49% of Brazilians believed that combating racial discrimination should be the responsibility of individuals and not of governments; only 36% agreed it was a governmental responsibility.²⁴

However, structural exclusion reinforces a narrative of exclusion, including stigma and lack of recognition, which in turn justifies that structure. Exclusion is multi-layered and it is reflected in a number of hierarchical structures. Evidence of racism’s structural character is found in the widespread exclusion of blacks from accessing resources and recognition on equal terms with whites. In the 1990s, exclusion was deeply reflected in the distribution of income, health and education. In 1992, blacks had an income equivalent to only 44% of the income of whites. By 1999, income inequality had increased and that percentage had dropped to 42%.²⁵ Also in 1999, the poorest tenth of the population was 70% black and 30% white; while the richest tenth was approximately 85% white and 15% black.²⁶ According to the 2000 census, while Brazilian whites had a life expectancy at birth of 74

years, browns and blacks had a life expectancy of 68 years. Mortality from blood or skin infections was at least 50% higher for blacks (excluding browns) than for whites and was almost 50% higher for blacks with digestive or respiratory diseases than for whites with the same diseases. These racial discrepancies were accentuated in reproductive and sexual health. Mortality rates during pregnancy were two times higher for blacks (excluding browns) than for whites.²⁷ In 2000, 8.9% of black Brazilian women who gave birth in the Northern region of Brazil did not have access to prenatal consultations, while only 6.5% of white women in that region did not have such access. In 1999, for every 100,000 women, 11.39 black women and 4.92 white women died of AIDS in the state of São Paulo.²⁸

With regard to education, while 51.1% of the black population over 25 years old was illiterate in 1999, only 10.4% of the white population was illiterate in this age group.²⁹ According to data produced by the Institute of Applied Economic Research (IPEA) for the period between 1929 and 1974, an increase in years of schooling was achieved without any significant reduction of inequality between whites and blacks, and despite the implementation of policies of universal education. Schooling for young whites increased from 2.9 years in 1960 to 8.3 years in 1999, and 1.3 to 6.1 for young blacks in the same period. Therefore, inequality increased from 1.6 to 2.2 years of education between whites and blacks.³⁰ In 1991, there were 1.1 million white students aged 18 years old or over enrolled in universities, compared to only 277,000 blacks and browns, with the result that white students accounted for 78.3% of the university population, and blacks and browns for only 19.7%.

Economic exclusion has also carried over into political participation or participation in positions of power. In 1996, only one in 10 judges was black. Of the more than 2,000 members of the House of Representatives surveyed between the late 1980s and 1994, only 29 were black or brown. According to Edward Telles, there were one black general in a group of 100 (1996), and eight black prosecutors among 600 members of the Federal Prosecutor's Office. Based on 1980 census data, Telles found that the likelihood of holding professional or management occupations was eleven times higher for whites than for blacks.³¹

II. TWO NARRATIVES— DIFFERENT RIGHTS AND POLICY RESPONSES

Different responses will be adopted, in terms of rights and public policies, depending on the narratives embedded in a country's concept of national, group and individual identities. On the one hand, if one adopts the first narrative described above—narrative of cordial slavery, a single mixed race and racial democracy—the response would be one of neutral rights and neutral public policies, which would perpetuate denial in regard to race and racism. A neutral approach to rights and policies is a decontextualized approach that does not take the specific barriers faced by racial groups (or any other groups) in exercising their rights, such as lack of financial resources and historic discrimination. It is also an approach that aims at universal policies that are neutral in appearance, but that have unequal impact upon different social groups exactly

because they do not take into account those specific barriers. A neutral approach to rights and policies would not allow any space for affirmative action, focusing more on the wording of the norm and how egalitarian that wording looks (e.g., “everyone has the right to education”) than on the application of that norm through policies that effectively guarantee, for instance, everyone’s access to quality education. In the field of higher education in Brazil, neutrality would be achieved by establishing a common entrance exam to public universities (most of which are among the best universities in Brazil) without taking into account that those who attend public schools in Brazil receive usually lower quality education than those who attend private schools, and that the former are usually less prepared to take public university entrance exams than the latter. It would not take into account the significant lower numbers of black students attending public universities around the country either.

Neutrality in rights and policies would damage effective access to resources by differently situated groups also in other fields beyond education (and beyond social rights more broadly), encompassing all rights: civil, political, social, economic and cultural rights. An example of how a neutral approach would damage effective protection of civil rights can be found in the framing of the right to life. Traditionally, the right to life has been interpreted to generate only negative obligations for states, that is, the obligation not to kill. However, different groups have their right to life threatened in different ways. The Special Rapporteur on the right to housing, Leilani Fahra, recently released a report on the link between the right to life and the right to housing, stressing that states have the obligation to protect the right to life of those who

are homeless as well as those living in inadequate housing conditions.³² For those without adequate housing, including here a disproportionate number of racial minorities, the right to life might be most at risk due to exposure to the elements, requiring the state to implement positive obligations, such as the adoption of public housing policies. Not taking into account the latter is not only to deny the protection of the right to life to certain groups, but to do so under the excuse of neutrality in rights and policies.³³

On the other hand, if one adopts the second narrative—a narrative of harsh slavery practices, of structural racism and rejection of the myth of racial democracy—the response would have to involve contextualized rights and contextualized public policies. In other words, rights and policies would be analyzed in the latter narrative in regard to the needs of plural, differently situated real-life experiences, including a history and practices of racism. Here, context is relevant both for assessing the problem and testing results of different policies and ideas.

Affirmative action is one, among several, contextualized approaches to rights and public policies. The role of affirmative action programs in Brazil has been two-fold. Although not a definitive solution to inequality, affirmative action programs have catalyzed a conversation about inclusion in a context of race and racism, and they have offered a model for future policies that could go beyond affirmative action, a model based on context, dialogue and testing of results (see the section on affirmative action below).

In order to promote equality of rights and policies

in practice, the search for national unity should not be based on a single mixed race, but rather a search for substantive equality in rights and policies, that is, equality in actual access to social resources, from education, health and housing to political participation. The search for national unity based on substantive equality in this second narrative is a search based on pluralism.

In the last two decades, Brazilians have gradually moved from a search based on the first narrative to a more pluralist search, based on the second narrative, which defines subjects of rights not as completely abstract subjects, detached from any racial, gender-based or class-based context (a narrative of neutrality), but rather as individuals immersed in diverse contexts (a narrative of pluralism). Although this transition is far from finished, Brazilians are much more open now than two decades ago to perceiving national unity based on diversity rather than on a single mixed race.

Although the two narratives will influence the framing of all rights, this paper will focus on a social right: the right to education. This is the right around which there has been the strongest transition from the first narrative to the second in Brazil. Affirmative action programs, which arise from the second narrative, have had a major role in fostering pluralism and inclusion, by promoting a dialogue about race and racism both national and transnationally, questioning the myth of racial democracy, expanding the concept of national identity to include more pluralistic possibilities of existence, and strengthening the perception of rights as contextualized.

Four drivers of pluralism will be analyzed: spaces of

exchange, identity, law and transnational influences. Before delving into that analysis, I will briefly describe the affirmative action programs adopted in Brazil in the last 15 years.

III. AFFIRMATIVE ACTION PROGRAMS ADOPTED IN BRAZIL

This paper focuses on affirmative action programs adopted in universities in the last 15 years in Brazil because this was the field where most affirmative action policies were implemented, and such policies catalyzed the most dialogue in Brazilian society.³⁴ Affirmative action programs in this field also generated the most change in terms of national identity, from a narrative based on a single mixed race to what we have described as a second narrative, based on pluralism.

The Black movement in Brazil adopted multiple strategies to contest the first narrative in the last century, as it perceived denial of race and racism as the major barrier to equality and non-discrimination. One major event triggered a surge in dialogue about race in Brazil: the channelling of the discourse on affirmative action from the Black movement to political spheres during and after the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance organized by the United Nations in 2001 in Durban, South Africa. This discourse provoked significant institutional change, which in turn provoked further dialogue around race and racism.

In the months following Durban, Brazil adopted a national program for human rights which included the commitment to adopt compensatory measures, aimed at the “elimination of racial discrimination and the promotion of equality,” and different governmental agencies started to establish quotas for the hiring of blacks, women and persons with disabilities, while the Brazilian foreign ministry created a program to foster the admission of blacks to the diplomatic service.³⁵ More specifically, Raul Jungmann, the minister of agrarian development, launched a program establishing a 20% quota for blacks in jobs at his ministry and in firms seeking official contracts (the quota would be increased to 30% in 2003). In December 2001, the Supreme Court and the Ministry of Justice announced quotas of 20% percent for black employees. The decree issued by the Ministry of Justice on 20 December 2001, in a public ceremony presided by President Fernando Henrique Cardoso and the minister of Justice, created quotas for blacks (20%), women (20%) and persons with disabilities (5%) in management and senior advising positions, in firms offering services to the ministry as well as those involved in cooperative projects with international organizations.”³⁶ In 2003, a special secretary was created to foster racial equality and to assure that racially based policies would be present in the governmental agenda at the federal level. The Secretaria Especial de Políticas de Promoção da Igualdade Racial (Special Secretary on Policies for the Promotion of Racial Equality, SEPPIR) has been recently restructured, but it did have a major symbolic impact when it was created.³⁷ Although debating racial discrimination still remained a taboo under the three levels of denial mentioned above,

“the subject became an official part of the country’s political dialogue.”³⁸

This trigger was consolidated by the progressive adoption of affirmative action programs by federal and state universities all over the country during the following decade and culminated in the Brazilian Supreme Court decision on the ADPF 186-DF (Arguição de Descumprimento de Preceito Fundamental or Complaint of Breach of Fundamental Constitutional Provision) in 2012, and in the same year, the adoption of the Law on Affirmative Action, Law n. 12711.

Affirmative action policies varied considerably, testing public opinion not only in regard to how the right to education should be framed, but also in regard to the recognition of race in the definition of a more pluralist national identity. Between 2001 and 2012, 70 public universities adopted affirmative action programs, 44% of which were state universities and 56% federal universities. Affirmative actions were adopted in that period either through state laws (23%) or university regulations (77%). The main beneficiaries of such policies were public school students (in 60 out of the 70 public universities) and black students (in 41 out of 70 universities). Self-identification was the method used for racial identification by 80% of those public universities.³⁹

More specifically, the wave of affirmative action programs started in 2001 and 2002, when three state universities established quotas for blacks in Rio de Janeiro (20%), Bahia (40% in graduate and undergraduate programs) and Minas Gerais

(20%).⁴⁰ In the state of Rio de Janeiro, three state laws (Law 3.524/2000, Law 3.708/2001 and Law 4.061/2003) established a quota of 50% for students who had attended public schools and 40% for black students.⁴¹ Responding to accusations of unconstitutionality, the Rio de Janeiro state government enacted a fourth law (Law 4.151/2003), which revoked previous laws and established a quota of 45% to be distributed among students who had attended public schools (20%), black students (20%) and students with disabilities (5%).

The main challenge to affirmative action programs so far, and the one that fostered the most discussion, was the case of University of Brasilia (ADPF 186-DF), decided by the Brazilian Supreme Court in 2012. The ADPF n. 186 was brought to the Supreme Court by the political party Democratas (DEM), with the objective of having the University of Brasilia's statutes declared unconstitutional, which established 20% racial quotas for the admission of students. The University of Brasilia identified 3,980 students who had been admitted to the university through quotas since 2004. They highlighted that the percentage of those who had already graduated was similar for those who had been admitted through quotas (7.1%) and those who had been admitted through the general system (7.9%). Moreover, within a 0–5 scale, those admitted through both systems reached very similar grades (3.6 for those who had been admitted through quotas and 3.7 for those who had been admitted through the general system). In general, the number of blacks and browns at universities doubled in the last 10 years from 19% to 38%.⁴²

The Supreme Court decided the University of Brasilia's program was constitutional in 2012. The Supreme Court decision triggered the enactment of a new federal law (Law n. 12.711) in 2012, which established the use of affirmative action programs in the admission of students to federal public universities and federal technical schools. According to the law, universities should reserve 50% of available positions to students who have attended public high schools. Within this group 50% of the positions were to be reserved for those with a family income of up to 1.5 minimum wages per capita and positions were to be reserved at least at the same proportion as the representation of Blacks, Browns, Indigenous peoples and persons with disabilities in the state where the educational institution was located (revision established by Law 13409/2016). The same rule is also applied to admission to federal technical schools. Educational institutions were given four years to fully implement the law and the executive branch would revise the racial quotas 10 years after the publication of the law (Law n. 12.711). By the end of 2012, all public universities were using either class quotas (mainly focusing on students who had attended public schools) or a combination of class and race quotas, rather than purely race quotas.⁴³

In the next sections, the impact of affirmative action programs in Brazilian universities will be analysed, in light of the transition from the first narrative to the second, and it will focus on four drivers of pluralism: spaces of exchange, national identity, law, and transnational influences.

IV. THE EXPANSION OF SPACES OF EXCHANGE AND THE FRAMING OF A NEW, PLURALIST NATIONAL IDENTITY: AFFIRMATIVE ACTION AS THE STARTING POINT FOR A DIALOGUE ABOUT RACE AND RACISM, AND THE END OF THE MYTH OF RACIAL DEMOCRACY

The implementation of affirmative action programs provoked a domestic conversation in regard to race, not only within the Black movement, but across society at large, weakening the myth of racial democracy (and the existing taboo regarding any conversation about race in Brazil), and fostering a more inclusive discussion about the causes of racial exclusion and the possible responses to the problem.

Issues of racialism and racism were more clearly separated, thereby opening space for a form of racial salience that would lead not to further social fragmentation, but rather to social inclusion. The expansion of dialogue generated institutional and legal change, and the latter generated more dialogue, breaking partially with the existing taboo about race. In Durban in 2001, the Brazilian president not only recognized the existence of racial discrimination, but also the need for affirmative

action programs. If the 2001 World Conference catalyzed the dialogue, it was expanded to Brazilian groups beyond the Black movement, and was a benchmark in the process of overcoming the myth of racial democracy.

This expansion in dialogue was triggered first by the ability of the Black movement to channel the discourse around race and affirmative action towards an official commitment for affirmative action.⁴⁴ That channelling had its roots in the creation of the National Preparatory Committee for the Durban Conference in 2000, connecting the National Secretary on Human Rights (SNDH) with the Black movement. The Committee organized a number of regional preparatory conferences in different cities in Brazil, and it was able to bring a plurality of positions of the Black movement to a national preparatory conference held in July 2001 in Rio de Janeiro. The preparation for Durban led, in this vein, to a moment of unification respectful of pluralism within the Black movement in Brazil.⁴⁵

The dialogue catalyzed by Durban has continued for the last 15 years.⁴⁶ According to Mala Htun, the shift “from a discourse of racial democracy to the dialogue on race and racism,” or rather the beginning of the dialogue about race and racism, was provoked within the government more by political commitment to overcome racial inequalities than by material incentives or vote seeking. The shift in discourse was preceded by a shift in social mobilization, from a focus on identity to a focus on an “issue network,” involving academics, grassroots movements, journalists, state officials, interest groups or lobbyists, economists, human rights NGOs and politicians. This went well

beyond the militancy of the Black movement. The official dialogue generated at Durban, the initial affirmative action programs adopted right after Durban, and the inclusion of new actors in the debate legitimized the discussion on racism in a way not seen before.⁴⁷

The seeds for a new idea of national identity were planted and, with it, the possibility of more effective rights. As mentioned in the previous section, institutional change has occurred in education: approximately half of Brazilian public universities adopted affirmative action programs by 2010, and this number continued to grow, reaching 70 public universities in 2012. A Supreme Court decision affirmed the constitutionality of affirmative action programs in April 2012; and the new law (Law n. 12.711/2012), also in 2012, established quotas for federal universities and technical.⁴⁸ In turn, these institutional changes kept the conversation going with considerable involvement of the society at large.

The conversation included a growing production of data on racial inequality and a sometimes slow, but also growing awareness about racial inequalities. It also included, from 2001 on, the participation of the Brazilian media in the investigation of racial discrimination in the country.⁴⁹ Public opinion data over the years also attest to the lively debate. Between the early 2000s and 2008, public opinion became more supportive of affirmative action programs. In 2003, 49% of Brazilians still considered that dealing with racial discrimination was a responsibility of individuals, not the government, and only 59% approved of the use of quotas.⁵⁰ Only a few years later, in 2008, 62%

of Brazilians at least partially agreed with quotas for browns and blacks in the field of education, according to a poll conducted by Instituto Datafolha.⁵¹

The dialogue on race and racism, moreover, allowed for specific needs to be voiced more clearly and made space for the adoption of more complex affirmative action programs that could respond to those needs. Examples can be taken from the 2012 Supreme Court decision on affirmative action programs, which cited cases of universities that not only adopted quotas, but also provided material, pedagogical and psychological support for students admitted through quotas in order to create better conditions for students to stay at the university until graduation.⁵²

The discussion on race and racism has also included a discussion about the results of public policies, to the point that the 2012 law explicitly called on the executive branch to assess the results of the affirmative action programs in 2022. The same emphasis on evaluation was present in the 2012 Supreme Court decision about the University of Brasilia's affirmative action program; it also indicated that affirmative action programs should be "temporary and provide for periodic review of its results."⁵³

In sum, the debate provoked by the implementation of affirmative action programs in Brazil at least partially broke with the framework of denial and fostered the creation of new spaces of exchange, not only at universities, but in the society at large. This debate also created the possibility of a more contextualized view of rights, rights whose

implementation will have to be tested in regard to their ability to change the lives of real people. These issues will be discussed in the next section.

V. PLURALIST SPACES AND VISIBILITY: RECOGNITION OF NEW POSSIBILITIES OF EXISTENCE

This growing conversation on race and racism has led to the adoption of a more pluralist concept of national identity, by allowing for more varied possibilities of existence or expanded “boundaries” of existence, that accept a range of ways of being in the world, in regard to race, gender, sexuality and others.⁵⁴ While the Black movement in Brazil has rejected the narrative of “racial democracy” for decades, and pushed for recognition that racism, discrimination and exclusion exist, the expansion of an alternative narrative in the last 15 years by the society at large has built the basis for a new concept of national identity framed less by the notion of a single mixed race to one encompassing the idea of that different races all belong to the nation.

More concretely, the myth of racial democracy created a silence around race and racism that suppressed to a great extent the recognition of race as relevant, even as racial inequalities were present. Silence threw a veil of invisibility over racial identities, in the sense that it created an impossibility of a valued existence, at least in regard to the recognition of different races as equally valuable. In other words, the adoption

of the alternative narrative has lifted that veil of invisibility, revealing a higher plurality in terms of valued possibilities of existence at least in regard to race. It has created a national space for more pluralist notions of racial experiences of existence, and for a more pluralist national identity.

The invisibility of race as a component of national identity resulting from the first narrative can be compared to an invisibility in terms of sexuality. Judith Butler and Vasu Reddy describe the case of mourning, or the lack of mourning, during the AIDS crisis in the United States:

In the North American context, grieving became a political issue with the onset of the AIDS crisis in the ‘80s and early ‘90s, and indeed continuing into present time. One of the reasons that lives lost through AIDS were difficult to grieve in the U.S., and why there was such an important activism centring on public mourning, such as the Names Project, the Quilt, is that it seemed that homosexuality was in this culture, not a real love, and gay lives were not as visible and real as others, and so their deaths, especially their deaths from a stigmatised disease remained, at first, unspeakable, and unmournable. Members of the dominant culture looked over at gay people and silently and openly concluded, ‘well their lives are not real lives anyway’ and ‘their loves are not real loves anyway,’ and ‘their losses are not real losses anyway’... The dominant culture... performs that act of de-realising gay lives.⁵⁵

A similar framework of opposition to erasure can be perceived in the U.S. movement “Black Lives Matter,” a movement that is born not of direct

silence about race, not of the absence of possibilities of existence, but of the absence of equally valued possibilities of existence. In Brazil, in contrast, under a myth of racial democracy, the framework of effacement in regard to race was one of pure silence, pure absence of possibilities of existence.

In this sense, national identities are to a great extent a regulating moral norm or a set of shared values that define who leads valued lives and who does not; that define who exists and who does not; that define who contributes to the framing of the national identity and who does not. The norm makes certain forms of existence visible or invisible, real or false. Taking into account that race was always considered relevant in Brazil for the purpose of exclusion, such a veil of invisibility was detrimental to the construction of positive or valuable perception of different races. A more pluralistic national identity, however, recognizes and allows for such conceptualizations of value. The Fundação Nacional do Índio (National Foundation for the Indigenous Person, FUNAI), one of the organizations to intervene in the 2012 Supreme Court case on affirmative action programs, highlighted that: “The statement by the plaintiff that ‘there is no racism’ disqualifies the life experience of the persons who have been discriminated against, denying their reality (fl. 1.279).”⁵⁶ Another of the organizations to intervene in the 2012 Supreme Court case, the Coordenação Nacional de Entidades Negras (National Coordination of Black Organizations, CONEN) highlighted that “affirmative action programs have had an aggregating effect on nationality,” via the reconceptualization of national identity in a more pluralistic (and yet unifying) way.⁵⁷ Indeed, the 2012 Brazilian Supreme Court

opinion itself cited Zygmunt Bauman, emphasizing the construction of shared meanings from a diverse aggregation of voices placed in a “common space,” in this case the universities.⁵⁸ In this sense, the Brazil of segregated realities, protected by the myth of racial democracy, starts to rebuild itself in shared spaces that unify, by giving voice to a more plural array of race-based experiences.

And an indication of change in the concept of national identity in post-affirmative action Brazil is given by the census. The 2010 census showed a higher level of self-identification as black. For the first time in history, more than 50% of Brazilians recognized themselves as blacks.⁵⁹

VI. LEGAL REFORM AND THE RECOGNITION OF CONTEXTUALIZED RIGHTS

To expand possibilities of existence is, among other things, to unveil specific needs of racial groups and, therefore, support rights and policies that are contextualized, being rights and policies that effectively respond to those specific needs. There is a link, therefore, between a pluralist understanding of national identity and contextualized rights. Rights will be more effective when responding to real people’s needs and such needs will only be recognized when people’s different ways of existence, including their different struggles with stigma and discrimination, are fully recognized. For instance, let’s take the example of the right to health. The content of the right to health for

a white, rich, heterosexual, able-bodied man living in a dictatorship will be different from the content of such a right for a black, poor, pregnant woman living in a democratic, but economically unequal society. While the former might need assurances that his oppressive government will fulfil its negative obligations and will not bar him from getting to the best private hospital in town (obligation to respect), the latter might need assurances that the government will fulfil its positive obligations to put in place a reliable health system with adequate public support that provides for adequate obstetric services without racial discrimination (obligation to fulfil).

Indeed, the 1988 Brazilian Federal Constitution implicitly expressed the idea of autonomous, and yet contextualized, individuals as a starting point for the construction of its normative framework. The Brazilian Constitution includes the following elements: (a) human autonomy, as recognised in the constitutional protection of physical integrity and freedom of thought and religion (Article 5); and (b) the contextualized character of human beings as recognized in Articles 3, 7, 37, 215 and 216, which include affirmative action programs, the goal of eliminating poverty and the principle of diversity. This notion of a contextualized individual, recognized by the Brazilian Constitution, has very concrete implications in terms of rights and policies. In regard to education, a contextualized perception opens the possibility of interpreting a general right in response to specific realities. In this sense, a general right to education can be interpreted to include affirmative action programs, and affirmative action for blacks at universities can be seen not merely as a public policy but as an element of the

general right to education. This contextualization is required mainly because people need rights that change the realities of their lives in practice. This is exactly what affirmative action tries to do by: one, creating an expanded conversation with regard to race and racism and exposing as myth the idea of racial democracy; two, making the multiple voices and needs of individuals clearer and, therefore, enabling the drafting of more effective rights; and three, approaching rights from a results-oriented perspective, of both quantitative and qualitative change.⁶⁰

Although not yet fully consolidated in Brazilian law, this connection among rights, public policies and results is a model that transcends affirmative action itself, and it can be used to analyze the effectiveness of other policies to produce the expected results in terms of inclusion and plurality.

VII. TRANSNATIONAL INFLUENCES AND DIALOGUE

Is affirmative action really a policy connected to the Brazilian context and to the needs of those who have suffered racial discrimination in Brazil? Pierre Bourdieu and Loïc Wacquant famously argued that the rise of affirmative action in Brazil was an example of “the cunning of imperial reason.”⁶¹ By this they meant that Brazil was merely importing the idea of race and racism from the U.S. In other words, the U.S. had “imperial reason,” that is, the “power to universalize particularisms linked to a singular tradition” or, more specifically, the power to misconceptualize particularisms,

regarding how race and racism are framed in the U.S., in order to make them pass for a universal, neutral, decontextualized reason that will remain undiscussed because it is falsely believed to be shared by all.⁶²

In this case narrative I stress, in contrast, that a non-imperialist conversation has existed in Brazil and that the evidence of such dialogue can be found in the particular ways in which Brazilian affirmative action programs have been structured in order to reflect the country's specific racial context. As Bourdieu and Wacquant focus mainly on the imperial role of the U.S., I will use the comparison with the U.S. as a starting point, without disregarding the fact (not addressed in this short paper) that there is a growing dialogue between Brazil and other countries beyond the U.S. (a South–South dialogue rather than a North–South dialogue), which has been strengthened after Durban.⁶³

Brazilian actors did not merely absorb the American model. Rather, they contextualized affirmative action for the Brazilian reality, recognizing the fact that in Brazil the construction of race has encompassed a more structural approach to identity than the individualistic approach to racial identity adopted by the U.S.⁶⁴ In this sense, interpreting the adoption of affirmative action programs in Brazil as a mere import of American practices is to disregard, first, the struggle of the Brazilian Black movement for the recognition of race, racism and racial equality, and second, the characteristics of affirmative action programs, as adapted to the national context.

The adoption of affirmative action programs in Brazil was the result of the Black movement resisting the strong denial of race and racism amidst deep racial inequalities, and highlighting the difficulties in fighting for the recognition of individuals belonging to different races as equals. Interpreting the adoption of affirmative action programs in Brazil as a mere import of American practices is also to disregard the fact that such programs reflect the national context, including specific ideas of racial identity and class, the lack of availability of resources and the role of higher education vis-à-vis society at large, to cite some. The U.S. affirmative action programs focused on multifaceted, procedural concepts of individual identity. This approach can be perceived in *Regents of the University of California v. Bakke* (438 U.S. 265, 1978) as well as in the subsequent cases decided by the U.S. Supreme Court (*Gratz v. Bollinger*, 539 U.S. 244, 2003; *Grutter v. Bollinger*, 539 U.S. 306, 2003; and *Fisher v. Texas*, 579 U.S., 2016), in the sense that each individual should be compared to another in regard to all his or her characteristics. In *Bakke*, the U.S. Supreme Court referred to the affirmative program adopted by Harvard College as a model for future programs:

In recent years Harvard College has expanded the concept of diversity to include students from disadvantaged economic, racial and ethnic groups... When the Committee on Admissions reviews the large middle group of applicants who are 'admissible' and deemed capable of doing good work in their courses, the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases. A farm boy from Idaho

can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something that a white person cannot offer... In such an admissions program, race or ethnic background may be deemed a 'plus' in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats. The file of a particular black applicant may be examined for his potential contribution to diversity without the factor of race being decisive when compared, for example, with that of an applicant identified as an Italian-American if the latter is thought to exhibit qualities more likely to promote beneficial educational pluralism. Such qualities could include exceptional personal talents, unique work or service experience, leadership potential, maturity, demonstrated compassion, a history of overcoming disadvantage, ability to communicate with the poor, or other qualifications deemed important. In short, an admissions program operated in this way is flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight.⁶⁵

In contrast, Brazil adopted a more structural approach to affirmative action programs, focusing on quotas rather than on individual narratives. As blacks and browns are a numerical majority in Brazil and as affirmative action in higher education, for instance, has been highly focused on the redistribution of public resources in a context of scarcity, quotas appeared to be a feasible tool to promote broader inclusion. And indeed, quotas were further entrenched with the enactment of the 2012

law on affirmative action programs (Law n.12.711), which established that all federal universities and federal technical educational programs needed to implement affirmative action policies by using quotas. While most federal universities had already adopted some quota-based affirmative action program through internal regulations, the 2012 law established that all federal universities should adopt race and class-based quotas for admission of new students.

The focus on quotas, which is clearly a group-based structural policy, does have the downside of strengthening rigid identity boundaries, raising the possibility of objectification. While the use of quotas is based on the recognition that the position of an individual in society depends in great part on an overall structure of exclusion, it does not easily take into account that individual identities are multiple and change over time. Quota policies capture an identity status at a particular moment in time and in regard to a limited array of markers, such as race, gender, disability or class. However, it is hard to argue that this reliance on quotas would create more rigid boundaries for racial identities than the 300 years of slavery and the subsequent century of de facto exclusion from quality health and education, financial resources and networks.

This core difference in the approaches adopted by the U.S. and Brazil, also has clear implications for the goals to be achieved by affirmative action policies. While in the U.S. affirmative action programs in universities are based on the goal of producing more diversity in educational institutions, in Brazil programs using quotas are based on the principles of pluralism and substantive

equality, including an analysis of the impact of inclusion in education on social equality more broadly. One result is that if the U.S. Supreme Court has restricted the use of racially based affirmative action by specific institutions to cases where discrimination has been promoted by that specific institution or industry (*Richmond v. J. A. Croson Co.*, 1989), the Brazilian Supreme Court has explicitly made the connection between affirmative action in education and further substantive equality in society at large, recognizing the broader, structural character of discrimination.

In its 2012 ruling, the Supreme Court in Brazil considered the role of affirmative action programs in correcting social distortions before deciding that the program at University of Brasilia was constitutional.⁶⁷ In doing so, it drew on the arguments made by a wide range of organizations presenting amicus briefs, intervenors in the public hearings, and public institutions in favour of the use of university-based affirmative action programs for the promotion of the constitutional principle of substantive equality within society at large. To cite some examples, the Attorney's General Office justified the use of affirmative action programs at universities, by stressing that "racial discrimination is evident in Brazilian society... and it has compelled the [University of Brasilia] to establish quotas on behalf of black and indigenous students." Denise Fagundes Jardim, representing the University of Rio Grande do Sul, explained that the program "reached positive results... Besides the inclusion of diverse citizens in the different fields of knowledge," affirmative action programs "reverse racial prejudice that impacts the social structure" and "contribute to the promotion of citizenship." Paula Dallari

Bucci, representing the Ministry of Education, stressed that affirmative action programs "permit the multiracial composition of Brazilian society to be represented in all levels and spheres of power." Kabengele Munanga, representing the Center for African Studies at the University of São Paulo, insisted that racial quotas "were integration policies for those social sectors that have been discriminated against." Leonardo Avritzer, representing the Federal University of Minas Gerais, indicated the "relevance of diversity within academic institutions... for its contribution to diversity in the labor market." The defendant, the University of Brasilia, stressed the need for a society to have black and indigenous doctors, judges, prosecutors and diplomats, among others. In its reasoning, the Brazilian Supreme Court established that the "application of the principle of equality, from the perspective of distributive justice, should consider the relative position of social groups between each other" and promote the "social inclusion of excluded groups, especially those that have been historically compelled to live in the margins of society."

In this sense, then, Bourdieu and Wacquant err. The domestic and transnational dialogues on affirmative action in Brazil proposed a new model of justice, which connects rights (such as the right to education) to policies (such as affirmative action policies). Moreover, it presented the possibility of transcending affirmative action programs themselves to encompass other responses that balance more malleable and narrative-based concepts of individual, group and national identities without losing sight of the impact that structured social, economic and political hierarchies have on how we perceive and define ourselves. It also

encompassed responses that are results-oriented and, therefore, which should be continuously tested and modified in order to promote further inclusion in practice.

It is in this light that the criticism of affirmative action programs as both under and over-inclusive should be analyzed.⁶⁸ Affirmative action programs are under-inclusive in the sense that they do not cover all those who have been excluded, especially in a country such as Brazil where blacks and browns are a numerical majority. To reach all those who have been excluded by the heritage of slavery and lack of access to resources and services, it would be necessary to address further causes of exclusion for differently situated groups and to adopt policies with broader scopes, such as the improvement of quality in basic public education.

Affirmative action programs can also be over-inclusive, in the sense that they will not target the most disadvantaged within the disadvantaged group. Affirmative action programs are not intended to produce full social transformation. They are rather a catalyst of a process of change. They can do so by promoting symbolic levels of inclusion, in a process that usually follows a number of conflicting principles. In the case of affirmative action policies in higher education, for instance, admissions should follow not only a principle of racial and class equality, but also principles of merit, academic excellence, and academic diversity. The combination of such principles will lead to the selection of students who have had some access to resources and not the most disadvantaged within a particular racial group or class. Complementary policies that will further change social structure and promote

further distribution of resources should be adopted to reach the most disadvantaged.

VIII. CONCLUSION

Two narratives have shaped Brazil, reflecting in large strokes the bases for different national identities: a first narrative reflects the idea of a single mixed race and the myth of racial democracy, and the alternative second narrative recognizes the existence of a racially unequal society. This paper has described how the first narrative held, in the twentieth century, the seeds for social exclusion, while the alternative narrative two has held, mainly in the last two decades, the seeds for social inclusion. The latter was analyzed, therefore, in regard to four drivers of pluralism that promoted inclusion in Brazil in the last 15 years: the expansion of spaces of exchange, national identities, legal reform and transnational influences.

Affirmative action programs were analyzed as one, although not the sole, solution to racial exclusion. Affirmative action programs in Brazil have been part of the national conversation on race and promoted a new paradigm of rights that can now take into account context and results, thereby transcending the neutral approach to rights. However, they are just a first step towards more substantive inclusion. Hopefully, the conversation and the results-oriented model created through affirmative action programs can serve as framework for the development of effective rights and policies of inclusion that will generate real pluralism in Brazilian society.

NOTES

¹ The Brazilian family is patriarchal, extended to relatives and “agregados” as well as to slaves. It is particular to the tropics, and it is racially and culturally mixed, encompassing the union of the “flexible” and “cordial” Portuguese colonizer and the indigenous woman. Moreover, Gilberto Freyre perceived this family as the basis of Brazilian society. Gilberto Freyre (1963), *The Masters and the Slaves: A Study in the Development of Brazilian Civilization*, trans. Samuel Putnam (New York: Alfred A. Knopf), 81–184, 372; Nathalie Itaborai (2005), “A família colonial e a construção do Brasil: vida doméstica e identidade nacional: Gilberto Freyre, Sergio Buarque de Holanda e Nestor Duarte,” *Revista Antropologicas* ano 9, 16 (1): 171; and Jessé Souza (2000), “Gilberto Freyre e a singularidade cultural brasileira,” *Tempo Social; Rev. Sociol. USP*, São Paulo 12 (1): 70–73, 75–76.

² Gilberto Freyre (1986), *The Masters and the Slaves: A Study in the Development of Brazilian Civilization*, trans. Samuel Putnam (Berkeley: University of California Press), 222–23.

³ Free translation: “Não é de admirar que... —se passasse no Brasil dos fins do século XVIII—onde a escravidão parece ter sido desde o século XVI mais benigna para o escravo do que na América inglesa—... haveria quem considerasse o sistema patriarcal... sob o nome de escravidão... um sistema cooperativo de sociedade.” Gilberto Freyre (1936), *Sobrados e Mucambos: decadência do patriarcado rural e desenvolvimento urbano* (São Paulo: Le Livros, 2013), 679.

⁴ Samuel Putnam (1943), “Race and Nation in Brazil,” *Science and Society* 7 (4): 325, 335.

⁵ Antonio Sérgio Alfredo Guimarães (2002), *Classes, raças e democracia* (São Paulo: Editora 34), 117–18, 152–54; A. Zaid (2006–7), “Continually Creating Races: The Census in the United States and Brazil,” *National Black Law Journal* 20: 63.

⁶ Edward Telles (2003), *Racismo à Brasileira—Uma nova perspectiva sociológica* (Rio de Janeiro: Relume Dumará, Fundação Ford), 57–61; Guimarães (2002), 98, 155.

⁷ This was a group of social movements that sprung up in Brazil in the 20th century aimed at contesting race-based stereotypes and ending racial discrimination. For more on the Black movement, see Petrônio Domingues (2007), “Movimento Negro Brasileiro: alguns apontamentos históricos,” *Tempo* 12 (23): 100–22. Edward Telles (2002), “Racial Ambiguity among the Brazilian Population,” *Racial and Ethnic Studies* 25 (3): 69.

⁸ Frances Stewart and Arnim Langer (2007), “Horizontal Inequalities: Explaining Persistence and Change,” CRISE Working Paper no. 39, University of Oxford, August, 12.

⁹ Leslie Rout, Jr. (1976), “Race and Slavery in Brazil,” *The Wilson Quarterly* 1 (1): 73.

¹⁰ Rout, 76, 78–81.

¹¹ Carlos Henrique Siqueira (2007), *A alegoria patriarcal, escravidão, raça, e nação nos Estados Unidos e Brasil* (Tese, Instituto de Ciências Sociais,

Universidade de Brasília), 177–78.

¹² Rout, 79–82, 86–87.

¹³ Siqueira, 169–71.

¹⁴ Daniela Ikawa (2008), *Acoes Afirmativas em Universidades* (Rio de Janeiro: Lumen Juris), ch. 3.

¹⁵ Telles (2003), 138–52.

¹⁶ These rates consider non-endogamic marriages to be marriages between blacks and whites, whites and browns, and browns and blacks. Antonio Gois and Alessandra Duarte (2013), “125 anos de abolicao e a maioria dos negros ja e de classe media,” accessed 4 January 2017, <http://oglobo.globo.com/brasil/125-anos-de-abolicao-maioria-dos-negros-ja-de-classe-media-8347095>.

¹⁷ Zaid, 45–47, 52–58.

¹⁸ Sales Augusto dos Santos and C. Obianuju Anya (2006), “Who is Black in Brazil? A Timely or a False Question in Brazilian Race Relations in the Era of Affirmative Action?” *Latin American Perspectives, Race and Equality in Brazil: Cultural and Political Dimensions* 33 (4): 41.

¹⁹ Santos and Anya, 42.

²⁰ IBGE, Pesquisa Nacional por Amostra de Domicilios, 2004–2014, accessed 4 January 2017, <http://www.ibge.gov.br/home/presidencia/noticias/imprensa/ppts/00000024435512102015554204137967.pdf>.

²¹ Antonio Sérgio Alfredo Guimarães (1999), *Racismo e anti-racismo no Brasil* (São Paulo: Fundação de Apoio à Universidade de São Paulo, Editora 34), 66.

²² Gevanilda Santos and Maria Palmira da Silva, orgs. (2005), *Racismo no Brasil—Percepções da discriminação e do preconceito racial no século XXI* (São Paulo: Fundação Perseu abramo), 117, 130, 141, 145–48.

²³ Ikawa (2008), 106–119, 139–205.

²⁴ This perception may have changed recently, with growing support to affirmative action programs, as mentioned in the following sections. Edward Telles and Marcelo Paixao (2013), “Affirmative Action in Brazil,” *LASAForum* 44, iss. 2 (spring): 11; Santos and Silva (2005), 51, 158.

²⁵ Ricardo Henriques (2005), *Desigualdades raciais no Brasil*, estudo em desenvolvimento, pesquisado em 21 de julho, table 31, accessed 4 January 2017, <http://www.ipea.gov.br>.

²⁶ Ricardo Henriques (2001), *Desigualdade racial no Brasil: Evolução das condições de vida na década de 90, Texto para discussão N° 807* (Rio de Janeiro: IPEA—Instituto de Pesquisa Econômica Aplicada), July, 17–18.

²⁷ Fernanda Lopes (2004), “Experiências Desiguais ao Nascer, Viver, Adoecer e Morrer: Tópicos em Saúde da População Negra No Brasil,” in *Saúde da População Negra no Brasil: Contribuições para a Promoção da Equidade*, FUNASA 25: 25.

²⁸ Rubens de C.F. Adorno et al (2004), “Quesito cor no Sistema de Informação em Saúde,” *Estudos Avançados* 18: 119.

²⁹ Henriques (2005), table 22.

³⁰ Henriques (2001), 30.

³¹ Telles (2003), 189, 208, 209.

³² Leilani Fahra (2016), Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, A/71/310, August.

³³ Daniela Ikawa (2016), “Asking Whose Lives Matter in the Battle for Social, Cultural and Economic Rights,” *openDemocracy*, 19 November, accessed 4 January 2017, <https://www.opendemocracy.net/daniela-ikawa/whose-lives-matter>.

³⁴ Telles and Paixo (2013), 10.

³⁵ Petrônio Domingues (2005), “Ações afirmativas para negros no Brasil: o início de uma reparação histórica,” *Espaco Aberto* no. 29 (May–August): 167; Rosana Heringer (2002), “Acao afirmativa, estrategias pos-Durban,” *Observatorio da Cidadania*, 56–57; and Mala Htun (2004), “From Racial Democracy to Affirmative Action: Changing State Policy on Race in Brazil,” *Latin American Research Review* 39 (1): 61–62.

³⁶ Htun, 68–72.

³⁷ The SEPPIR was created by Lei No. 10.678, de 23 de maio de 2003, D.O.U. de 26.5.2003. (Brazil), accessed 4 January 2017, http://planalto.gov.br/ccivil_03/Leis/2003/L10.678.htm.

³⁸ Santos and Anya, 30.

³⁹ Veronica Daflon, Joao Feres, Jr., and Luiz Campos (2013), “Race-based Affirmative Action in Brazilian Public Higher Education: An Analytical Overview,” *Caderno de Pesquisa* 43 (148), January–April: 307–12.

⁴⁰ Htun, 68–72.

⁴¹ Wellington Fonesca (2002), Cota já é realidade [Congress organized by the University of Brasilia and the Ministry of Education on the number of slots to be made available to Black students], 12 December.

⁴² Gois and Duarte.

⁴³ Telles and Paixao, 10.

⁴⁴ Htun, 61–62.

⁴⁵ Such mobilization was only made possible, according to some, by the financial support of North American foundations, such as the Kellogg Foundation and Ford Foundation, which funded participation in those preparatory conferences. Mozart Silva and Rafael Trapp (2012), “Para além do Atlântico Negro: problematizações sobre o antirracismo e transnacionalismo no Brasil (1978–2010),” *Oficina do Historiador*, Porto Alegre, EDIPUCRS 5 (1), January–June, 41–43.

⁴⁶ Heringer, 59.

⁴⁷ Htun; Domingues (2005), 174; Telles and Paixao, 10–11.

⁴⁸ GLOBO (2010), “Ações afirmativas estão em 71,4% das universidades públicas, diz estudo: Pesquisa considera 98 universidades federais e estaduais. 87% dos programas são direcionados a estudantes de escolas públicas,” 30 August, G1, accessed 4 January 2017, <http://g1.globo.com/educacao/noticia/2010/08/acoes-afirmativas-estao-em-714-das-universidades-publicas-diz-estudo.html>; Daflon et al, 307–8.

⁴⁹ Marcia Mikulak (2011), “The Symbolic Power of Color: Constructions of Race, Skin-Color and Identity in Brazil,” *Humanity and Society* 35 (February–May): 68, 83, 91.

⁵⁰ Santos and Silva, 51, 158; Domingues (2005), 172

⁵¹ Telles and Paixao, 11.

⁵² STF [Supremo Tribunal Federal/Brazilian Supreme Court] (2012), ADPF 186-DF, 26 April 26.

⁵³ STF, ADPF 186/12.

⁵⁴ I adopt the term “boundaries” from Judith Butler, and the idea of visibility and accepted ways of living, and being in the world, in regard to race, gender and sexuality. Judith Butler (1986), “Sex and Gender in Simone de Beauvoir’s *Second Sex*,” *Yale French Studies*, Simone de Beauvoir: Witness to a Century, no. 72: 41, 48. See Vasu Reddy and Judith Butler (2004), “Troubling Genders, Subverting

Identities: Interview with Judith Butler,” *Agenda: Empowering Women for Gender Equity*, no. 62, African Feminisms 2 (1): 115–23; Ian F. Haney Lopez (1994), “The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice,” *Harvard Civil Rights-Civil Liberties Review* (winter): 1–53; Axel Honneth (1995), *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (UK: Polity Press); and Alice Miller and Carole Vance (2004), “Sexuality, Human Rights and Health,” *Health and Human Rights* 7 (2): 5–15.

⁵⁵ Reddy and Butler, 119–20.

⁵⁶ STF, ADPF 186/12.

⁵⁷ STF, ADPF 186/12.

⁵⁸ Zygmunt Bauman (2005), *Identidade*, interview with Benedetto Vecchi (Rio de Janeiro: Zahar), 44, cited in STF, ADPF 186/12.

⁵⁹ IBGE (2016), *Vamos conhecer o Brasil 2016*, accessed 4 January 2017, <http://7a12.ibge.gov.br/vamos-conhecer-o-brasil/nosso-povo/caracteristicas-da-populacao.html>; Telles and Paixao, 11; Reinaldo Azevedo (2011), *Censo 2010: população do Brasil deixa de ser predominantemente branca*, *Veja*, 30 April.

⁶⁰ Ikawa (2008).

⁶¹ Pierre Bourdieu and Loïc Wacquant (1999), “On the Cunning of Imperial Reason,” *Theory, Culture & Society* 16 (1): 41–58.

⁶² Bourdieu and Wacquant, 41.

⁶³ Silva and Trapp, 46–49.

⁶⁴ Although not to be explored in this paper, other specificities of the Brazilian model include its reliance on appearance (rather than on ancestry) and its regional disparities.

⁶⁵ *Regents of the University of California v. Bakke* (1978), 438 U.S. 265, accessed 4 January 2017, <https://www.law.cornell.edu/supremecourt/text/438/265>.

⁶⁶ Law n. 12.711 has tried to mitigate its reliance on rigid individual identities, by using two overlapping criteria for admissions: race and class. It has also considered the number of years a candidate has studied in a public school. There is, therefore, some consideration here of intersectionality and some recognition of the complex character of individual identities, which could be further explored in future affirmative action programs without giving up on the structural approach to discrimination more generally. See, for instance, Daniela Ikawa (2014), “The Construction of Identity and Rights: Race and Gender in Brazil,” *International Journal of Law in Context* 10, iss. 4 (December): 494–506.

⁶⁷ STF, ADPF 186/12.

⁶⁸ Carl Cohen and James P. Sterba (2003), *Affirmative Action and Racial Preference—A Debate* (New York: Oxford University Press), 110, 117.

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