Check for updates

Policy Futures in Education

Article

Policy Futures in Education
2021, Vol. 19(1) 63–83
© The Author(s) 2020
Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/1478210320940139
journals.sagepub.com/home/pfe
SAGE

Affirmative action policy: Inclusion, exclusion, and the global public good

Suchitra Gururaj
University of Texas at Austin, USA

Patricia Somers
University of Texas at Austin, USA

Jessica Fry
University of Texas at Austin, USA

Del Watson
University of Texas at Austin, USA

Francesca Cicero
University of Texas at Austin, USA

Marilia Morosini
Pontifical Catholic University of Rio Grande do Sul, Brazil

Jennifer Zamora
University of Texas at Austin, USA

Abstract

Social inclusion policy in higher education—also referenced as affirmative action, reservations, schedules, or antidiscrimination—has been used widely to promote equity and access for minority and historically discriminated subgroups who wish to participate in tertiary education. Inclusion is often protected de jure through a country's constitution. Even so, the effects of the legislation vary according to the context within which it was instituted. This article offers a comparative review of the historical and legal evolution of social inclusion in higher education in

Corresponding author:
Suchitra Gururaj, 100 West Dean Keeton Street, Austin, Texas 78712, USA.
Email: suchi.gururaj@austin.utexas.edu

Brazil, India, South Africa, and the United States and the educational outcomes created by systems of social inclusion around the world. The development and impacts of these policies are discussed within the frameworks of social inclusion and critical legal studies to suggest that social inclusion policy links higher education to its place.

Keywords
Social inclusion, higher education, affirmative action, diversity, comparative, critical legal studies

Introduction

In the realm of higher education, social inclusion policy addresses complicated national histories of social, economic, and political exclusion of ethnic groups, distinct classes, or other minorities. Social inclusion, or "the process of improving the terms for individuals and groups to take part in society" (World Bank, 2013), takes many forms, including federal affirmative action, quotas, reservations, or positive discrimination. In higher education, social inclusion is designed to create equity and access for students from minority or historically discriminated ethnic groups, socioeconomic classes, or other subgroups. The historical and cultural contexts of the place in which social inclusion functions justifies its use: social inclusion programs may be designed as a tool to promote economic parity (France), diversity (United States), or social justice (Brazil) (Moses, 2010). Often, social inclusion is a tool to address remediation, or the righting of past wrongs. In these cases, policy "seeks to remedy the significant underrepresentation of members of certain racial, ethnic, or other groups through measures that take group membership or identity into account" (Brest and Oshige, 1995), either directly or through proxies that are neutral on their face. Overall, the goal of social inclusion programs is to acknowledge differential treatment of historically discriminated groups so that they might "take part in society" (World Bank, 2013).

This article uses a critical legal studies (CLS) framework in a comparative view of diverse policies of social inclusion in South Africa, Brazil, India, and the United States to analyze the effects and impacts of codified social inclusion policy.

Conceptual framework: social inclusion and CLS

This article is rooted in the framework of social inclusion, which, according to the World Bank, contributes toward a community's "shared prosperity" (World Bank, 2013: 2) by ensuring full participation by all its members in public goods like "markets, services, and spaces" (World Bank, 2013: 3). While social inclusion seeks to mitigate disparate impacts of generalized policy on a subgroup—poverty or inequality, for instance—it is integrally tied to the multifaceted identities of those experiencing a societal inequity in a specific place (World Bank, 2013). As a theory, social inclusion demands an answer to the question of "why" these inequities exist; the narrative that answers the question is a construct that sheds light on the underlying reasons for inequity as well as justifications for social inclusion (World Bank, 2013).

The concept of social inclusion as effecting "shared prosperity" (World Bank, 2013: 2) aligns with Marginson's view of higher education, too, as a "public good" (Marginson, 2011: 411) in which each citizen has the ability to contribute to "a common society" (Marginson, 2011: 414) and, importantly, is an umbrella public sphere in which to discourse about and contribute to "public goods" likes markets, services, and spaces (Marginson, 2011: 419). At the same time, because "knowledge is the unique claim of higher education" (Marginson, 2011: 414), higher education must be actively made local by establishing itself within local contexts.

This study aligns social inclusion with higher education as systems that contribute to the commons. When social inclusion as a policy is implemented in higher education, it may localize higher education by helping higher education establish its benefits within local contexts. In these cases, participants with diverse identities—around gender, race, caste, sexuality, or religion, for instance—are socially managed in a common place through policies of inclusion. These policies are variously created and enforced, depending on their location. In some countries, the use of social inclusion is stated explicitly in the constitutions while, in others, social inclusion is a matter of interpretation of that country's constitution.

The CLS framework is useful in assessing the changes in constitutional or de jure policy around social inclusion over time. CLS emerged as a methodology in the late 1970s, distinctly rejecting the notion of legal positivism (Hunt, 1986), which upholds "the separation of law from other varieties of social control" (1986: 4). CLS instead posits that

> law is inextricably mixed in the totality of social relations and institutions. The articulation of constitutive theory is confronted with the major problem of finding the appropriate conceptual language to adequately explore the way in which law is imbricated in the social totality. (Hunt, 1986: 30)

As a rejection of legal liberalism, which contends that "persistent and systematic conflict between individual and social interests" can be solved through "the mechanism of objective rules within a framework of procedural justice" (Hunt, 1986: 5), CLS accounts for the fact that

> mediation between conflicting interests at best offers only a pragmatic response to social conflict which can achieve nothing other than a set of results which reflects the unequal distribution of power and resources whilst claiming to act in the name of a set of universal social values. (Hunt, 1986: 5)

As such, countries develop sui generis systems of inclusion, which are codified in nationally, or culturally, appropriate ways, based on the power dynamics in those localities. Affirmative action policies may take an accommodation, a replacement, or a denial approach and they may take the form of a preferential boost or quota system for targeted populations (Long and Kavazanjian, 2012). Whatever the approach, while the policy may appear objective on its face, CLS offers that it may be subject to interpretation.

This paper synthesizes the historical overview, literature, and publicly available data about social inclusion in South Africa, Brazil, India, and the United States to present a comparative view of the constitutional and historical bases for social inclusion in diverse world locations. This study seeks to revisit policies in these locations due to their similarity

at this particular historical moment during which leadership by conservative political parties is elevating the issues of race, identity, and inclusion.

Methodology

The countries here were chosen for case studies because they have all undertaken legal clarification of their social inclusion policies in higher education. As well, South Africa, India, Brazil, and the United States have re-defined their policies in the last 50 years, and their policies continue to be sites of renegotiation even in the current moment.

In all cases, data were collected through analysis of country constitutions. For data about educational outcomes in South Africa, data were collected through a report of the World Bank (2013); for Brazil, from researcher analysis of Ministry of Education data; and, for India, from researcher analysis of Government of India data and World Bank background papers.

Using a CLS framework, data from these various sources were analyzed to "undertake historical, socioeconomic and psychological analyses to identify how particular groups and institutions benefit from legal decisions despite the indeterminacy of legal doctrines" (The Bridge, n.d.), thereby determining the means by which social inclusion was clarified constitutionally, as well as the controversies and impacts of the policy. Data analysis included categorizing information to shed light on social inclusion within its context. The following synthesis highlights this analysis.

Social inclusion in South Africa

South Africa operated under de jure segregation until Nelson Mandela's African National Congress came to power in 1994. This segregation was enforced by labor, voting, residential separation, and other laws. The 1996 constitution has a strong equality clause. However, two decades after the 1994 election, Badat and Sayed (2014) found the higher education system in South Africa, while formally desegregated, operated under a class-based system with continued disparities and inequities. The higher education system resulted in poor academic achievement with opportunities for learning not accessible to the majority of South Africans (Badat and Sayed, 2014: 127).

Constitutional basis

South Africa is unique because of the explicit five-part equality clause included in the Constitution (Government of South Africa, 1996), which forbids discrimination (rather than upholding equal protection) based on race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth (chapter 2, section 9). The Constitution sought to "commit its people to non-racialism, non-sexism, while demanding that all people be afforded dignity, equality and fundamental freedoms" (Rapatsa, 2015: 209), and was considered transformative "because it promised civil and political rights and socio-economic rights to its citizens thereby bringing an end to disenfranchisement and discriminatory systems of laws" (2015: 212). A white paper (South Africa Department of Education, 1997) identified a challenge to South African higher education as the need to address the systemic inequalities that existed prior to apartheid.

In South Africa, social inclusion as a policy is implemented as a preferential boost to remediate past discrimination. The racial groups intended to benefit from affirmative action programs are socioeconomically disadvantaged as well. South Africa is among the group of countries in which very poor students tend to have poor secondary education leading to high drop-out rates at the tertiary level (Leibowitz and Bozalek, 2014). Leibowitz and Bozalek (2014) also found that funding in higher education in South Africa is lower than other countries with similar economic development, with expenditures of 2.7% versus 3.3% for all other countries. South Africa spends 0.75% of GDP on higher education, as compared to 0.84% for the rest of the world or 1.21% for OECD countries (Webbstock and Fischer, 2016).

Controversies

While the South African Constitution provided a very firm basis for addressing inequalities in education, several challenges have kept the promise of 1994 from fruition. Post-apartheid, South Africa faced many challenges in providing a range of post-secondary opportunities. The first challenge was converting a dual and highly unequal race-based educational system into a single system (Reschovsky, 2006) and massifying higher education. An impediment to a single system was the location of historically Black institutions, a carryover from apartheid, which were located in rural areas or on the fringes of major urban centers and were, therefore, less attractive to the students they had been established to serve (Reschovsky, 2006). A white paper (South Africa Department of Education, 1997) set the agenda for massification of the expanded system (Boughey, 2012). These issues result in the primary and secondary school system producing only a small elite group of students who can enroll immediately in college, diminishing the prospects for equity of access to higher education (Du Toit, 2013).

The second challenge was low college persistence and graduation rates. A priority of the post-apartheid era was to increase throughput (persistence) and graduation (persistence to graduation) rates. By the end of 2004, five years after entering higher education, only 30% of the cohort of students admitted to South African institutions of higher education had graduated, and the five-year graduation rate of the class entering three- and four-year degree programs in 2005 was 40% (Boughey, 2012). The 2005 figures show significant disparities by race, ranging from 42% for Africans and 66% for whites. An average of 17% of the students graduated in 2010; the completion rates were African (16%), Colored (18%), Indian (16%), and white (22%); 56% had left the institutions at which they had initially registered without graduating and 14% were still in the system (Boughey, 2012).

The third challenge was funding inadequacies. Historically Black institutions were denied the opportunity to manage their own affairs prior to 1994. Because of this oppressive oversight, "these universities were not able to build financial reserves and the controlled nature of the budgeting processes meant that the capacity to plan and handle financial resources was not always developed" (Bozalek and Boughey, 2012: 691). Post-apartheid, these institutions were poorly equipped, with crumbling infrastructures and no real administrative experience in managing or administering their minimal resources.

The development of a new financial framework for tertiary education was the fourth challenge to inclusion. The New Funding Framework (Ministry of Education, 2004) established support for students and various incentives for institutions to meet persistence and graduation goals through four programs. Government allocations per full-time equivalent

enrolled student rose in nominal terms by an annual average of 5% between 2000 and 2009 but fell at an average annual rate of 1% in real terms (Wangenge-Ouma, 2012). Badat and Sayed (2014) noted a need to increase the National Student Financial Aid Scheme budget so that all eligible students are funded fully and given real equality of access and opportunity.

The fifth challenge was the restructuring of the tertiary education sector. The National Plan for Higher Education mandated mergers and incorporations of existing federal institutions. According to Badat and Sayed (2014), after colleges of education were closed or incorporated into universities, a series of mergers took place, resulting in 11 traditional universities, six comprehensive universities, and six vocational universities (Higher Education South Africa, 2014).

However, the merged and incorporated institutions continued to have declining enrollments, possibly related to other issues such as poor primary and secondary education and the HIV epidemic. As Badat and Sayed (2014) noted, public funding of higher education in South Africa is inadequate in the face of the legacy of past inequities and new demands, and they suggested increasing block funding allocations and adequately financing, targeting, monitoring, and evaluating interventions.

André du Toit (2013: 87) argued, "As a matter of social justice . . . one must be . . . concerned with actual equity outcomes." Although the numbers of Colored, Black, women, and disabled students have increased, the educational system is still highly stratified into a dual structure. Sayed and Soudien (2005: 115) concluded, "the policy of education decentralisation in post-apartheid South Africa resulted in both forms of inclusion and new forms of exclusion." Badat and Sayed (2014: 141) pointed out that "without well-funded and effectively targeted equity measures, equality of opportunity for students (largely Black) from working-class and impoverished rural social backgrounds will continue to be severely compromised."

Effects

In South Africa, social inclusion has been met with criticism about its structural failings, including its inability to influence diversity in leadership and governance or secondary education. With a scope limited to the race-focused prescriptions of South Africa's constitution, social inclusion in that country has been criticized for its overemphasis on the singular aspect of race. So, despite the racial and socioeconomic diversity of South Africa, social inclusion programs are seen as benefitting only the Black middle class (Piron and Curran, 2005). This has led to lower-class and working-class Blacks feeling betrayed by middle-class Blacks with whom they had previously joined to end apartheid, and turning against them (Mwakikagile, 2008). With the recent election of Cyril Ramaphosa to replace Joseph Zuma, the country may be in wait for modes of mitigating this friction.

Social mobility is an important means of assessment of education policies (Cremer et al., 2010). In South Africa, there are many more opportunities for upward social mobility for the middle class, with graduates taking jobs in the state, private sector, and civil society; moving into former white neighborhoods, their children in the main attending former white schools; and participating in civil society structures formerly reserved for whites (Kok et al., 2017). Louw and colleagues (2007) examined intergenerational social mobility in South Africa, as influenced by parental educational status, because it indicates access to opportunity and therefore the ability of the current Black generation to overcome its historical disadvantage. Their study found that between 1970 and 2001, educational attainment of

Black children in the age group 16–20 improved by greater than four years and the gap between white and Black educational attainment for this age group declined from 6.42 years to 2.26 years. While equality in the acquisition of education has seen modest improvements, the translation of that education into jobs has not. Where in the past, race was a barrier to higher education for Blacks, race now plays a strong role in determining how educational attainment comes to be valued (Keswell, 2003). Unequal educational quality and occupational segmentation impedes social mobility for poor Blacks, despite the preferential boost of South African social inclusion policies. In contrast to South Africa's preferential boost system, Brazil's affirmative action program uses quotas to bring about social inclusion in higher education.

Social inclusion in Brazil

Despite Nascimento's (1968) proposal for affirmative action in higher education, Brazil did not adopt such a program until the 2000s. A series of dictatorships from 1930–1980, coupled with the dominant political narrative of Brazil as a racial democracy (Freyre, 1998), hindered recognition of the inequalities for Blacks and indigenous peoples. The policy of race was not discussed until the *abertura,* or "thawing" of totalitarian rule in Latin American countries, that spread through Latin America in the 1970s. With the *abertura* came a new constitution with a human rights clause (Federative Republic of Brazil, 1988). During the Emancipation Centennial (November 1985), a sustained attack on the myth of racial democracy began, spearheaded by the Movimento Negro Unificado. In particular, the media gave extensive coverage to the large disparities between Afro-Brazilians and whites in all aspects of life, including education, health care, housing, and income.

The United Nations Research Institute for Social Development (UNRISD, 2011) Conference on Racism and Public Policy (Durban I) helped promote the agenda of affirmative action in Brazil. While infighting and the tragedy of September 11, 2001 marred the conference, the participants censured Brazil. The final report denounced slavery as always having been wrong, and called for compensatory action for those groups that had suffered from discrimination.

Constitutional and legal basis

Brazil has a strong constitutional protection of equality. The Constitution presents four fundamental objectives:

> 1) to build a free, just and solidary society; 2) to guarantee national development; 3) to eradicate poverty and substandard living conditions and to reduce social and regional inequalities; 4) to promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination. (Federative Republic of Brazil, 1988: 11)

Article 6 says that "Education, health, food, work, housing, transportation, leisure, security, social welfare, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution" (1988: 14).

In the wake of Durban, the Cardoso administration acted quickly to implement affirmative action in cabinet-level federal agencies through executive order. The Federal Supreme Court (STF) President Marcio Aurelio ordered an affirmative action plan for the Court,

noting that affirmative action was a necessary remedy for inequality in Brazil. However, these executive orders raised questions about how to identify and verify the racial identity of individuals in a "racial democracy" that destroyed all slave birth records at emancipation in 1888 (Page, 1996).

Controversies

The State University of Rio de Janeiro (UERJ) was the first state institution and the University of Brasília (UnB) the first federal university to adopt and implement preferential programs for the admission of Black students. Both opted to implement a reservation system (*reserva de vagas*) for admitting students. UERJ established a quota (*cota*) of 40% Black and Brown (*preto* and *pardo*) applicants for the entering undergraduate class (Heringer, 2002). The following year, UERJ amended the *reserva* to 20% for Blacks, 20% for public high school students, and 5% for indigenous and disabled students. UnB both reserved *vagas* for underrepresented groups and added points to their test score. Other federal universities subsequently adopted this practice, adjusting the percentage of reserved spaces based on the population of the region. The implementation of quotas in Brazilian public universities according to socioeconomic, racial, and other criteria affirmed a new policy for providing access to public higher education. UnB used "race boards" to review photos of applicants to determine their race. This approach backfired when the applications of identical twins were sent to different boards—one was judged as white and the other was classified as Black. UnB was soon involved in a lawsuit challenging the constitutionality of affirmative action brought by conservative federal legislators. In later application cycles, the criteria were expanded to include social class.

Two laws expanded access to higher education: ReUni (Program of Support for Plans of Restructuring and Expansion of the Federal Universities) and ProUni (University for All Program). ReUni expanded the reach of federal universities, increasing the number of sites of existing universities, creating new universities, and expanding enrollment in existing universities (Federative Republic of Brazil, 2007). ProUni allowed charitable and for-profit private universities to divert 20% of their federal tax obligations to pay for scholarships for Black, indigenous, and poor applicants (Federative Republic of Brazil, 2005).

In 2012, the Brazilian Supreme Court voted unanimously to uphold the quota system as legal, citing the social welfare clause of the Constitution (Supremo Tribunal Federal, 2012). Likewise, the court also confirmed the constitutionality of ProUni in 2012. Shortly thereafter, the Brazilian government enacted "one of the Western Hemisphere's most sweeping affirmative action laws, requiring public universities to reserve half of their admission spots for the largely poor . . . and vastly increase the number of university students of African descent across the country" (Romero, 2012: A4). The Law of Social Quotas (Federative Republic of Brazil, 2012) obligates public universities to ensure that those *vagas* align with the racial makeup of each of the 26 Brazilian states to reflect the country's diverse population. Further, federal universities were given until 2016 to implement a system setting aside *vagas* for up to half of the entering undergraduate class in each major (including law, medicine, and dentistry) for students who qualified for social quotas. However, the law has a sunset date of 2022.

Effects

Bailey (2008: 11) labeled the law Brazil's "affirmative action boom." Daflon et al. (2013) estimated the impact of affirmative action in Brazil based on Ministry of Education data for 2008 from 55 universities. They found that affirmative action by social class was much more prevalent than by race. The range of reserved spaces for the 55 universities was 10–18% for social quotas (class) and 5–14% for race. Further, the index values calculated to represent the percent of quotas associated with the percentage of Blacks by geographical region ranged from .12 to .23 (Daflon et al., 2013: 322). Importantly, data were gathered two years before the Supreme Court decisions, four years prior to the passage of the Law of Social Quotas, and eight years prior to the full implementation of social quotas.

We find very little in the literature examining social mobility as a measure of the effectiveness of affirmative action programs in Brazil. Ribeiro and Villalobos's (2007) study found that, despite increased years of schooling for non-whites, whites have on average three times more chances than non-whites of experiencing upward mobility towards the more privileged classes. In a recent presentation at The University of Texas at Austin, Dr Rosana Heringer also mentioned the importance of student supports for students admitted by race (Heringer, 2020). As we write this paper, President Roussef has been impeached and Jair Bolsonaro, a right-wing politician, has assumed the presidency. While the Law of Social Quotas took full effect in the summer of 2016, the future of affirmative action is unclear.

Social inclusion in India

Like Brazil, affirmative action in India takes the form of a quota system. Affirmative action in Indian higher education is rooted in the belief that members of groups who have, for millennia, been impeded from accumulating social, cultural, or real capital through the rigidity of the Hindu caste system must be given remunerations in the form of access to employment, politics, and education.

Caste, as predetermined by birth (Deshpande, 2009), is based on hierarchies sanctioned by Hindu texts. Technically outside of the caste system are Dalits, or Untouchables, whose ostracism is associated with their work in occupations that are considered "polluting or profane" (Desai and Kulkarni, 2008). Besides Dalits, *adivasis*, or those indigenous tribespeople who generally reside in the forest or hill areas, are also considered outside of the caste system. The upper castes generally constitute around 17–18% of the overall population (Deshpande, 2006).

Constitutional basis

Although states in South India began an affirmative action program in the 19th century, in the early 20th century the British government took an interest in the Dalits, or the "depressed classes" (Waughray, 2010). At the time, the suspicion among the presiding Indian National Congress was that the British interest in a Dalit electorate would prove divisive. For this reason, Mohandas K Gandhi confronted Babasaheb Ambedkar, the prominent Dalit leader, and compelled him to ensure that Dalits would instead be represented by the Indian National Congress (Deshpande, 2009). Bowing under pressure, Ambedkar allowed for Dalits to be represented by the Indian National Congress, as long as they were provided special considerations.

While this Poona Pact occurred in 1932, it was not until 1950, after partition and India's independence in 1947, that an affirmative action program (or "positive discrimination") (Deshpande, 2009: 131) for Scheduled Classes (SC) and Scheduled Tribes (ST) was formally incorporated into the Fifth Schedule of the Constitution of India (Republic of India, n.d.), Section 244(1). Given disparities in geography, occupation, and income, the "scheduled," or listed, castes and *adivasi* tribes would be granted reservations, or quotas, in government jobs, educational institutions, and the political sphere (Desai and Kulkarni, 2008).

Quotas were formalized through the Mandal Commission, first convening in 1978 and charged to extend reservation policies to the Other Backward Classes (OBCs). Although the Mandal I Commission submitted its recommendations to the government in 1980, the administration of Indira Gandhi did not act upon it (Deshpande, 2009). In 1990, however, the Mandal II Commission was able to justify the extending of privileges to the OBCs, comprising some 3743 castes and subcastes (Bancroft, 2006; Deshpande, 2009) and possibly 52% of the general population (Boston and Nair-Reichert, 2003). SC thus comprise 15% of reservations, with ST holding 7.5%. The OBCs hold 27% of the reservations. Thus, the total percentage for reservations held in the governmental and educational sectors is 49.5% and is not to exceed 50%. As of 2009, 650 million Indians, or two-thirds of the country's population, benefitted from affirmative action.

Controversies

The primary controversy about affirmative action involves the large percentage of reservations set aside for the OBCs. The Mandal resolution of 1990 provoked rage and protest in the general population, including self-immolations (Boston and Nair-Reichert, 2003). Though in 1993, India's Supreme Court ruled in *Indra Sawhney Etc. Etc. v. Union of India and Others, Etc.* that the ceiling for reservations would be set at 50%, OBCs may comprise up to 52% of the general population alone (Boston and Nair-Reichert, 2003). Yet, given that this group comprises such a large percentage of the population and encompasses such a wide array of groups and individuals, it is thought that the affirmative action system unfairly advantages the members of this large group who naturally hold comparatively more capital than the original SC and ST. The problem involves the benefit to those in the OBCs whose socioeconomic status puts them on par with those in the upper castes (Deshpande, 2009). Due to discontent over the advantages for this "creamy layer" (Borooah et al., 2007; Deshpande, 2009; Waughray, 2010), students from all other groups have protested affirmative action and committed to hunger strikes, including at public medical colleges where the stakes for economic access are so high (Bancroft, 2006). This controversy was addressed in the courts when, in 2005, the Supreme Court of India ruled in *P.A. Inamdar & Ors v. State of Maharashtra & Ors* that the state cannot impose affirmative action reservation policies on unaided colleges, including professional institutions (Gupta, 2006).

Another major contention is that affirmative action was meant to address the millennia-long discrimination against lower-caste Hindus. As such, affirmative action is a Hindu caste-based program (Waughray, 2010). Muslims, Christians, Sikhs, Buddhists, and Zoroastrians (Parsis) may be identified as minority groups in India, but Muslims and Christians do not benefit from the reservations due to religious restrictions. Indeed, although the gap in college enrollment between the SCs/STs and upper castes is declining, the gap between Muslims and the upper castes remains (Desai and Kulkarni, 2008). In 1993, the National Commission for Backward Classes (NCBC) began its attempts to look more closely into the groups that

may make up the OBCs; in the meanwhile, the OBC category may offer a workaround for Muslims and Christians regarding holding reservations for them (Waughray, 2010). The 2007 Report by the Commission for Religious and Linguistic Minorities recommending that caste and minority or SC status be considered separate; a 2006 Government Report on the Social, Economic and Educational Status of the Muslim Community of India indicating a high level of socioeconomic and educational disadvantage among Muslims; and the 2008 National Committee for Minorities "Deshpande Report" indicating that Muslim and Christian untouchables are treated worse even among Dalits have all spurred the notion of caste as sui generis and, as such, needing to be addressed in a unique way in India (Waughray, 2010).

Finally, lack of access to data complicates accurate measurement of the impact of the affirmative action policy in India. While distinctions between the Dalits and upper castes are clear in society, this lack of data contributes to the controversy around inclusion of the "Other" classes, the delineations for which differ by region and state (Deshpande, 2006).

Effects

While the reservation system is not without controversy, it has proven to address a previous era's lack of access. First, Indian higher education is considered not a right but a privilege for the elite: in 2004, for instance, only 12.6% of those considered college enrollable (in the 18 to 23 age range) actually enrolled in college (Azam and Blom, 2008). Given that most tertiary education in India is state-funded, higher education poses an enviable access to diverse forms of capital for students who gain admission. However, entrance is often based on exam performance and, ironically, to perform well on exams, cultural, social, and real capital is often useful (Deshpande, 2009).

Indeed, according to Azam and Blom (2008: 3), "economic status, gender, and area of residence are key determinants of the transition to tertiary education after completion of higher secondary education." For instance, in 2004, while 79% of qualified individuals made the transition from secondary to tertiary education, only 51.9% of those in the lowest income quintile did (Azam and Blom, 2008). Even more jarring, of all college-aged individuals enrolled in higher education in 2004, 23% came from the highest economic quintile, while 1.5% hailed from the lowest economic quintile. Indeed, these economic disparities are such that researchers question the decision to legislate around anything but these differences. For instance, Sundaram (2006), using data from the NSS 55th-round surveys from 1999–2000, argues that the quota for SC/ST and OBCs, at 27%, is simply too high, given the performance of these groups does not vary when controlling for poverty. Sundaram instead argues for divisions along economic lines, rather than along caste lines.

Those with privilege continue to benefit in spite of affirmative action policies. Boston and Nair-Reichert (2003) report that a 1999–2000 sample student of the National Sample Survey Organization found that although Hindu upper castes are 37% of the population, they represent almost two-thirds of graduate and professional degrees. It is also perhaps unsurprising that inequities persist beyond attainment of graduate or professional degrees. For example, Chakravarthy and Somanathan (2008), using data from an incoming cohort of MBA students to the Indian Institute of Management in Ahmedabad, found significant wage disparities between SC/ST individuals versus higher caste students. Once GPA was controlled for, these disparities disappeared, indicating that lower academic performance is the reason for wage disparities. Their study underscores that issues of affirmative action in

Indian higher education involve the entire schooling pipeline and cannot be relegated only to higher or graduate education. Moreover, Deshpande and Newman (2007), drawing on a sample of 173 graduate degree recipients from three national universities, found that Dalit students admitted through the reservation system were less likely to have access to the social and cultural capital of their higher-caste peers and thus less likely to have access to their ideal jobs.

In like manner, as of 2003, the literacy rate of the general population was almost twice that of members of the SC or the ST (Boston and Nair-Reichert, 2003). While the disparities in educational readiness are diminishing in the middle school and high school years and affirmative action enables more individuals from the SC and ST to gain admission to college, Desai and Kulkarni (2008), using National Sample Survey data from 1983 to 2000 report that the completion and attainment rates of Dalits vis-a-vis their transition rate have nonetheless not increased over time.

In addition, access to higher education for Dalits is contingent on institution type. Public institutions reserve spots for Dalits but also, as indicated, admit students based on exam performance. These institutions are permitted to leave unfilled seats that are available if enough Dalit applicants do not perform at the standard cutoff scores (Brown and Sitapadi, 2008). As of 2003, the great majority of seats for engineering (86.4%), medicine (40.9%), and business (90%) could be found at private institutions, which, by legislation, are not, as of 2008, required to provide reservations for Dalits (Brown and Sitapadi, 2008), perhaps accounting for the relatively lower number of Dalits with those professional credentials.

Educational affirmative action in India has benefitted a small segment of the target groups, the "creamy layer" of the Dalit and Adivasi population. The type of educational institution attended affects social mobility in India. Evidence suggests that most SC and ST students enrolled in elite higher educational institutions in India do go on to successful careers, more so than they would have in the absence of reservation policies (Weisskopf, 2004a, 2004b). India's current political leadership, headed by Narendra Modi, who is associated with the Hindu nationalist majority party, may influence the reach of affirmative action.

Social inclusion in the United States

In the United States, social inclusion, or affirmative action, applies to higher education employment and admission of students. Affirmative action generally consists of three types: outreach, direct affirmative action, and race-neutral affirmative action plans (Sabbagh, 2011).

Constitutional basis

In contrast to South Africa, Brazil, and India, there is no explicit right to *nondiscrimination* stated in the US constitution. Rather, in 1868, the Fourteenth Amendment (Equal Protection Clause) was added to the Constitution, which holds that no State actor has the right to deny anyone *equal protection* of the law. However, one of the fundamental purposes of this Amendment was to "take away all possibility of oppression by law because of race or color" (*Ex Parte Virginia*, 1879: 345). The Equal Protection clause has been used to challenge and dismantle segregation and overtly discriminatory practices, as in the landmark case *Brown v. Board of Education of Topeka* (1954). However, more recent

jurisprudence from the Court has used the Equal Protection clause to challenge affirmative action programs in higher education in the US, by asserting that any consideration of race is considered highly suspect and violates the equal-rights guarantees of the Constitution.

Controversies

In 1961, President Kennedy (Kennedy, 1961) signed Executive Order 11246 requiring affirmative action to ensure government contractors, including colleges and universities, "promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin." Later, under President Reagan, these programs became perceived as preferential treatment, impermissible quotas, and reverse discrimination, which presented an assault on American values of fairness, equality, and democratic opportunity (Herring and Henderson, 2011).

While social inclusion as a policy in the US was initially enacted through this Executive Order and applied in the public sphere of employment, the primary discourse in the US around affirmation action policies takes place in the context of higher education. For instance, in *Regents of the University of California v. Bakke* (1978), the Supreme Court upheld affirmative action in a case regarding the University of California, Davis Medical School. While the Court allowed for race to be one of several "plus" factors in the medical school admissions policy, UC Davis's use of a set-aside quota for minority students was considered impermissible. Importantly, however, the *Bakke* court held that diversity was a compelling state interest to justify affirmative action programs in higher education.

In *Hopwood v. Texas* (1996), where four white plaintiffs rejected by The University of Texas School of Law challenged the admissions policy that used race as a factor, the Fifth Circuit held that race could not be considered to achieve diversity, combat perceived effects of a hostile environment, or eliminate current effects of past discrimination. The "Top Ten Percent law" (Texas, 1997), subsequently created to promote diversity through the selection of top students at any high school, simply perpetuated the existence of racially segregated schools in Texas and continued to ensure that the most elite of any group of students would be admitted to the state's flagship institution.

In 2003, the Supreme Court heard two landmark cases regarding affirmative action policies at the University of Michigan. In *Gratz v. Bollinger* (2003), the Court held that predetermined point allocations which awarded additional points to minority undergraduate students were unconstitutional. In *Grutter v. Bollinger* (2003) the Court upheld the law school's affirmative action policy; in that case, the race-conscious admissions policy considered race as one of many factors evaluated and was, therefore, constitutional.

In *Fisher v. University of Texas et al.* (2013, 2016), where a white applicant who was denied admission claimed that the university's race-conscious holistic review was unconstitutional, the Supreme Court affirmed the ability of public universities to use race in higher education admissions. However, the Court remanded the case and held that any policy that considers race should be reviewed under the strict scrutiny standard, signaling that the focus now is on whether the actions are narrowly tailored enough to survive strict scrutiny (Ngov, 2015).

New challenges continue to be initiated over violations of affirmative action in admissions policies, including suits against the University of North Carolina and against Harvard that allege that those institutions discriminated against Asian American students

(Hartocollis and Saul, 2017). Possible Trump administration Supreme Court appointees will have a profound influence on the decision rendered.

Effects

While the Equal Protection Clause was never originally intended to impose an outright ban on state race-based classifications, the Supreme Court's case law has increasingly trended towards "color-blindness" (Sabbaugh, 2011). Most of the laws in the United States are worded as prohibiting discrimination and providing "equal protection under the law," rather than providing social inclusion, equity, or parity among groups that have variable access to power, wealth, or opportunity. Affirmative action in higher education in the US takes an accommodation approach and admission policies take the form of a preferential boost. Ultimately, the US Supreme Court clearly articulated that "it would like nothing better than to find a race-neutral admissions formula and will terminate its use of racial preferences as soon as practicable" (*Grutter v. Bollinger*, 2003). Now it is irrelevant whether racial classifications are designed to help those disadvantaged or whether they are designed to oppress and exclude them—they are treated the same (Brodin, 2014).

One measure of the effectiveness of increased diversity in higher education would be an increase in the social mobility of the graduates from previously disadvantaged populations. However, Gregg and colleagues(2017), in their study of social mobility, found a low level of intergenerational mobility in the United States, casting doubt that access to higher education will mitigate inequity, because the gap between the rich and the poor is large and continues to grow larger (Ornstein, 2017).

Discussion: social inclusion and CLS

In summary, the models of social inclusion presented have developed to address the importance of participation in higher education for populations in clearly stratified social contexts. Themes identified through this synthesis rooted in the social inclusion framework and focusing on implementation, controversy, and impacts were similar across locations.

1. Each country's constitution addresses exclusion and systems of inclusion in a culturally appropriate manner that captures a moment of rupture in the development of the country itself.
2. The commitment to social inclusion reflects the country's decision to include previously excluded members of the population.
3. Social inclusion policy in all cases demonstrated unintended consequences as it related to who actually benefitted.

As a matter of CLS, social inclusion policy in all cases, even when proposed through constitutional language, serves to uncover the limits of that codified language.

For instance, although each country's constitution addresses inclusion and exclusion, it is clear that those de jure policies are challenged by those who believe that the policies, objective on their face, perpetuate different types of discrimination. In both South Africa and India, the policies put in place to benefit individuals by race and caste, respectively, ultimately benefitted the middle class. In South Africa, social inclusion is, from the constitution, a demonstration of the end of a period of disenfranchisement. In India, the concept of

benefits to class change over time contextually. In India, for instance, Dalit students may gain admissions to college, but OBCs might have increased access to graduate and professional programs; both have benefitted from a system of social inclusion that offers them the opportunity to gain the knowledge needed to participate in "a common society" (Marginson, 2011: 414).

In Brazil and the United States, affirmative action by race also undertakes the work of expanding access by socioeconomic strata. Constitutionally, Brazil allows social inclusion policy to tackle the issue of empirical inequalities by geography and perceptions of social class, given the intersection of race and class in that country. In the United States, social inclusion scaffolds an abstract sense of diversity as a "compelling interest," without regard, at least in terms of case law precedent, to the prior disenfranchisement of selected Americans. Social inclusion as a concept is so abstracted in the United States constitution, in fact, that some (Law and Versteeg, 2012) recommend the amendment of the US Bill of Rights to reflect contemporary issues and power struggles and to underscore the dismantling of the "traditional" American hegemony. This revisit of the US constitution, according to Law and Versteeg (2012), would challenge the view of American exceptionalism and include the US among the diverse countries that also wrestle with the ramifications of changing power structures. Drawing from CLS, the discourse around affirmative action in the US is around these shifting power structures. Moreover, the very controversy around affirmative action in the United States is rooted in the idea that race-neutral admissions—the preferred method in the decisions of both *Hopwood* and *Grutter*—put race at the center of that process. Race becomes the proxy for the inequalities seemingly addressed in these constitutions because defining class is difficult and a focus on class may benefit the hegemonic majority due to its larger numbers (Delgado and Stefancic, 2012). In these locations, race and class are inextricably tied.

The framework of CLS is useful in examining how de jure policy is interpreted not only as it relates to a single power structure or shift in power but in the "social totality" (Hunt, 1986: 30). For the countries in this article, the ways in which laws are interpreted dismantle the essentialism of a single characteristic like race or even a single concept like social class/socioeconomic stratum and recognize where accepted power structures may be multifaceted. In these cases, not only does the hegemonic culture in power legislate higher education for minority groups but these minority groups themselves negotiate internal differences. In South Africa, the current system of inclusion does not adequately address diverse communities of color, while in India, the existence of the "creamy layer" underscores the diversity among groups that benefit from social inclusion. Arguably, the current protests and anger fomenting in medical schools in India and federal universities in Brazil about the beneficiaries of social inclusion result from interpretations or rejections of what it means to come from an "essential" group. The ability to reinterpret these constitutions depends on a commitment to ongoing negotiations, then, of social inclusion as a social contract (Piron and Curran, 2005).

In like manner, in the face of these complicated views of the potential beneficiaries of social inclusion policy, each country created its program in a way that is reflected best in their constitutions. According to Gupta (2006) and de Zwart (2000), the essential difference in the way social inclusion was legislated in each of these countries has an impact on their perception. For instance, while affirmative action in the United States generally promotes diversity without prescribing quotas or specific beneficiaries, the same policy in India disaggregates very specifically by caste and class.

Outside of the countries presented in this article, other countries enact social inclusion in other social contexts, again emphasizing the fact that social inclusion policy is highly contextual. In Israel, for instance, affirmative action is based on neighborhood differences and inclusion, with diverse neighborhoods being worth more or fewer points in the admissions cycle (Alon, 2014). Implemented in the 2000s, Israel's policy of social inclusion was put in place at four flagship universities and sought to address the intersection of spatial separation and demographic cleavages (Alon, 2014). Even so, as Alon (2015) cites, this policy failed to achieve the racial diversity, especially in the promotion of higher education among Arab populations, for which policymakers hoped. Other such policies strive to include the Malay in Malaysia; the Maori in New Zealand; women in Uganda; and the rural poor in Nicaragua (Piron and Curran, 2005). All policies are limited in scope and success and demand continuous revision to undertake the work of simultaneous broad outcomes and narrow tailoring.

Conclusion: thinking globally, acting locally

At a recent meeting at the Association of American Colleges and Universities in Washington, DC, a panel discussion hosted by the American Council on Education focused on "Liberal Education Outside the United States." Attended by administrators from universities around the globe, the common theme at the table discussions included the importance of preparing graduates with the broadest liberal arts skills to ensure employment in their particular locales after graduation. In Heringer's recent talk (2020), too, she discussed the critical importance of affirmative action policy as it relates to promoting democratic thought (during a time of particular nationalism in Brazil) as well as responding to the demand for affirmative action by the private sector and labor market. In both cases, it was clear that policy is a matter of serving place.

Social inclusion policies in the countries included in this article function in two ways: first, they codify the ways in which these policies are to benefit particular groups in their locales. But establishing the stated beneficiaries through an act of power (codification) also allows for a critical view into whether the stated beneficiaries are the only beneficiaries. Indeed, in the cases in this article, social inclusion policy serves to posit another possibility, that these policies themselves shed light on the inequitable access to higher education in these locales. The view into the intersections of beneficiaries, moreover, empowers non-beneficiaries to push back on these policies.

This paper argues that it is this dialectic between the policies in place and the needs of society that defines social inclusion policy. For this reason, the policy recommendations from these analyses include pursuing the integration of the entire primary, secondary, and tertiary education pipeline to promote access to tertiary education for diverse students. Higher education, when provided broadly, creates social mobility for all classes and increased social and economic outcomes for individuals and for families (Pascarella and Terenzini, 1991). As importantly, higher education becomes not only the locus of accountability for secondary education and higher education, but it also becomes the catalyst for ongoing iterations of social inclusion models. Providing social support means providing not only access but support for the students (Heringer, 2020) once they are in the institution.

Piron and Curran (2005), in their study of models of social inclusion in Brazil, India, and South Africa, argue that the models failed due to structural issues that impeded policy changes, including the need for accurate data about failure and success; bureaucratic requirements for access to benefits; and institutional discrimination. That is, far-reaching

institution-wide perspectives must be taken. For example, support for students who are the beneficiaries of affirmative action may include access to faculty mentors who look like them or come from their same caste, class, or context. Yet social inclusion policies in the countries studied in this article do not yet include an affirmative plan to hire or develop faculty members who come from these same beneficiary groups. While the implication may be that the policy strives to create such a pipeline of minority faculty in these countries, the reality can only be realized through negotiation of the policy.

The concepts inherent in CLS, including the breakdown of essentialism and the acknowledgment of ever-morphing, ever-changing, and ever-growing identities in national contexts, are critical to the establishment of social inclusion as a policy. While constitutions may provide the legal framework for good social inclusion policy, other sectors of government and the slate of political checkers and balancers can re-interpret this policy. Piron and Curran (2005) note the difference between the positive impact of the judiciary in South Africa regarding social inclusion versus the negative role played by law enforcement around institutional discrimination in India. The CLS framework allows higher education administrators to recognize that "exclusion exists and is not acceptable as part of the 'social contract,'" (Piron and Curran, 2005: iv) even as political parties and regimes move and change. While different political contexts can breed diverse policies of social inclusion, recognizing how social contracts are negotiated is one way of affirming that policy is the root of actual practice.

Author's Note

Francesca Cicero is now affiliated with Amherst College, USA.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

ORCID iD

Suchitra Gururaj https://orcid.org/0000-0001-8555-2303

References

Alon S (2014) The diversity dividends of a need-blind and color-blind affirmative action policy. *Social Science Research* 40: 1494–1505.

Alon S (2015) What Israel tells us about affirmative action and race. *The New York Times*, 16 December. Available at: https://www.nytimes.com/2015/12/16/opinion/what-israel-tells-us-about-affirmative-action-and-race.html

Azam M and Blom A (2008) Progress in participation in tertiary education in India from 1983 to 2004. Policy Research Working Paper No. WPS4793, World Bank, Washington, DC, December.

Badat S and Sayed Y (2014) Post-1994 South African education: The challenge of social justice. *The ANNALS of the American Academy of Political and Social Science* 652(1): 127–148.

Bailey S (2008) Unmixing for race making in Brazil. *American Journal of Sociology* 114: 577–614.

Bancroft S (2006) Uproar over caste quotas for colleges. *New Statesman*, June. Available at: http://www.newstatesman.com/node https://www.newstatesman.com/node/164476 (accessed 29 June 2020).

Borooah VK, Dubey A and Iyer S (2007) The effectiveness of jobs reservation: Caste, religion, and economic status in India. *Development and Change* 31(4): 423–445. Available at: https://onlinelibrary-wiley-com.ezproxy.lib.utexas.edu/doi/pdfdirect/10.1111/j.1467-7660.2007.00418.x (accessed 29 June 2020).

Boston T and Nair-Reichert U (2003) Affirmative action: Perspectives from the United States, India and Brazil. *The Western Journal of Black Studies* 27(1): 3–14.

Boughey C (2012) Social inclusion and exclusion in a changing higher education environment. *REMIE Multidisciplinary Journal of Educational Research* 2(2): 133–151.

Bozalek V and Boughey C (2012) (Mis)framing higher education in South Africa. *Social Policy & Administration* 46(6): 688–703.

Brest P and Oshige M (1995) Affirmative action for whom? *Stanford Law Review* 47: 855–856.

Bridge (n.d.). Critical legal studies movement. Available at: https://cyber.harvard.edu/bridge/CriticalTheory/critical2.htm (accessed 1 February 2020).

Brodin MS (2014) The fraudulent case against affirmative action—the untold story behind *Fisher v. University of Texas*. *Buffalo Law Review* 62(2): 237–290.

Brown KD and Sitapadi V (2008) Lessons learned from comparing the application of constitutional law and federal anti-discrimination law and to African-Americans in the U.S. and Dalits in India in the context of higher education. *Harvard Black Letter Law Journal* 24: 3–59.

Brown v Board of Education of Topeka (1954) 347 US 483.

Chakravarty S and Somanathan E (2008) Discrimination in an elite labour market? Job placements at IIM-Ahmedabad. *Economic and Political Weekly* 43(44): 45–50.

Cremer H, De Donder P and Pestieau P (2010) Education and social mobility. *International Tax and Public Finance* 17(4): 357–377.

Daflon VT, Júnior JF and Campos LA (2013) Ações afirmativas raciais no ensino superior público brasileiro: um panorama analítico. *Cadernos de Pesquisa* 43(148): 302–327.

Delgado R and Stefancic J (2012) *Critical Race Theory: An Introduction*. New York: NYU Press.

Desai S and Kulkarni V (2008) Changing educational inequalities in India in the context of affirmative action. *Demography* 45(2): 245–270.

Deshpande A (2006) *Affirmative Action in India and the United States*. Washington, DC: World Bank.

Deshpande A and Newman K (2007) Where the path leads: The role of caste in post-university employment expectations. *Economic and Political Weekly* 42(41): 4133–4140.

Deshpande S (2009) Inclusion versus excellence: Caste and the framing of fair access in Indian higher education. *South African Review of Sociology* 40(1): 127–147.

De Zwart F (2000) The logic of affirmative action: Caste, class, and quotas in India. *Acta Sociologica* 43: 235–249.

Du Toit A (2013) Social justice and postapartheid higher education in South Africa. In: Featherman DL, Hall M and Krislov M (eds) *The Next Twenty-Five Years: Affirmative Action in Higher Education in the United States and South Africa*. Ann Arbor: The University of Michigan Press, 87–109.

Ex Parte Virginia (1879) 100 US 339, 344–345.

Federative Republic of Brazil (1988) Constitution of the Federative Republic of Brazil, 4th ed. Available at: https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en (accessed 29 June 220).

Federative Republic of Brazil (2005) Lei n° 11.096, de 13 de Janeiro. Law of Social Quotas [Institui o Programa Universidade para Todos - PROUNI, regula a atuação de entidades beneficentes de assistência social no ensino superior; altera a Lei no 10.891, de 9 de Julho de 2004, e dá outras providências]. Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2005/Lei/L11096.htm

Federative Republic of Brazil (2007) REUNI – Reestruturação e Expansão das Universidades Federais. Available at: http://reuni.mec.gov.br/index.php?option=com_content&view=article&id=25&Itemid=28

Federative Republic of Brazil (2012) Law of social quotas, Lei n° 12.711/2012. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12711.htm

Fisher v. University of Texas et al. (2013) 570 US.

Fisher v. University of Texas et al. (2016) 579 US.

Freyre G (1998) *Casa-Grande & Senzala* (34th ed.). Rio de Janeiro: Editora Record.

Government of South Africa (1996) Constitution. Available at: http://www.gov.za/documents/constitution/constitution-republic-South-Africa-1996-1 (accessed 29 June 2020).

Gratz v. Bollinger (2003) 539 US 244.

Gregg P, Jonsson JO, Macmillan L, et al. (2017) The role of education for intergenerational income mobility: A comparison of the United States, *Great Britain, and Sweden*. *Social Forces* 96(1): 121–152.

Grutter v. Bollinger (2003) 539 US 306.

Gupta A (2006) *Affirmative Action in Higher Education in India and the US: A Study in Contrasts*. Berkeley: Center for Studies in Higher Education.

Hartocollis A and Saul S (2017). Affirmative action battle has a new focus: Asian-Americans. *New York Times*, 2 August. Available at: https://www.nytimes.com/2017/08/02/us/affirmative-action-battle-has-a-new-focus-asian-americans.html (accessed 11 December 2017).

Heringer R (2002) Affirmative action and combating racial inequities in Brasil: The challenges in practice. Annals of the 13th meeting of the national study of students of ABEP [Ação afirmativa e combates as desigualdade raciais no Brasil: O desafio da prática. Anais do XIII econtro nacional de estudos populacionas da ABEP]. Available at: http://www.abep.org.br/publicacoes/index.php/anais/article/view/1248/1212

Heringer R (2020) Affirmative action and the democratization of higher education in Brazil. Fulbright Visiting Professor Lecture at The University of Texas at Austin, 11 February 2020.

Herring C and Henderson L (2011) From affirmative action to diversity: Toward a critical diversity perspective. *Critical Sociology* 38(5): 629–643.

Hopwood v. Texas (1996) 78 F.3d 932 5th Cir.

Higher Education South Africa (2014) *South African higher education in the 20th year of democracy: Context, achievements and key challenges*. Paper presented at the meeting of Higher Education South Africa, Cape Town.

Hunt A (1986) The theory of critical legal studies. *Oxford Journal of Legal Studies* 6(1): 1–45.

Indra Sawhney Etc. Etc. vs Union of India and Others, Etc. (1992) AIR 1993 SC 477 Supp 2 SCR 454.

Kennedy JF (1961) Executive Order 10925, Establishing the President's committee on equal employment opportunity. 6 March. Available at: https://www.presidency.ucsb.edu/documents/executive-order-10925-establishing-the-presidents-committee-equal-employment-opportunity (accessed 29 June 2020).

Keswell MM (2003) *Essays on categorical inequality, non-linear income dynamics and social mobility in South Africa*. Unpublished doctoral dissertation, University of Massachusetts, Amherst.

Kok M, Coetzee JK and Elliker F (2017) Overcoming the divide: An interpretive exploration of young black South Africans' lived experiences of upward mobility in central South Africa. *Qualitative Sociology Review* 13(1): 56–73.

Law DS and Versteeg M (2012) The declining influence of the United States Constitution. *NYU Journal of International Law and Politics* 87(762): 762–858. Available at: https://advance-lexis-com.ezproxy.lib.utexas.edu/api/document?collection=analytical-materials&id=urn:contentItem:561X-JSB0-02BN-1063-00000-00&context=1516831

Leibowitz B and Bozalek V (2014) Access to higher education in South Africa: A social realist account. *Widening Participation and Lifelong Learning* 16(1): 91–108.

Long BT and Kavazanjian L (2012) Affirmative action in tertiary education: A meta-analysis of global policies and practices. Report, World Bank, February.

Louw M, Van Der Berg S and Yu D (2007) Convergence of a kind: Educational attainment and intergenerational social mobility in South *Africa*. *South African Journal of Economics* 75(3): 548–571.

Mwakikagile G (2008) *African Immigrants in South Africa*. Pretoria: New Africa Press.

Marginson S (2011) Higher education and public good. *Higher Education Quarterly* 65(4): 411–433.

Ministry of Education (2003) A New Funding Framework: How government grants are allocated to public high education institutions.

Moses MS (2010) Moral and instrumental rationales for affirmative action in five national contexts. *Educational Researcher* 39(3): 211–218.

Nascimento A (1968) *O Negro revoltado*. São Paulo, Brazil: GRD.

Ngov EL (2015) Following Fisher: Narrowly tailoring affirmative action. *Catholic University Law Review* 64(1): 1–50.

Ornstein AC (2017) Social justice: History, purpose and meaning. *Society* 54(6): 541–548.

P.A. Inamdar & Ors vs State Of Maharashtra & Ors (2005) Appeal (civil) 5041.

Page JA (1996) *The Brazilians*. Jackson: DaCapo Press.

Pascarella E and Terenzini P (1991) *How college affects students: Findings and insights from twenty years of research on college students*. San Francisco: Jossey Bass.

Piron LH and Curran Z (2005) Public policy responses to exclusion: Evidence from Brazil, South Africa and India. Report, Overseas Development Institute, London, September.

Rapatsa M (2015) South Africa's transformative constitution: From civil and political rights doctrines to socio-economic rights promises. *Juridical Tribune Journal = Tribuna Juridica* 5(2): 208–219.

Regents of the University of California v. Bakke (1978) 438 US 265.

Republic of India (n.d.) *Constitution*, Schedules 1–12. Available at: https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf

Reschovsky A (2006) Financing schools in the new South Africa. *Comparative Education Review* 50(1): 21–45.

Ribeiro CAC and Villalobos A (2007) Class, race, and social mobility in Brazil. *Dados* 50(1): 833-873. Available at: http://socialsciences.scielo.org/scielo.php?script = sci_arttext&pid = S0011-525820070 00100008&lng = en&tlng = en (accessed 3 December 2017).

Romero S (2012) Brazil enacts affirmative action law for universities. *The New York Times*. Available at: https://www.nytimes.com/2012/08/31/world/americas/brazil-enacts-affirmative-action-law-for-universities.html (accessed 29 June 2020).

Sabbagh D (2011) The rise of indirect affirmative action: Converging strategies for promoting "diversity" in selective institutions of higher education in the United States and France. *World Politics* 63: 470–508.

Sayed Y and Soudien C (2005) Decentralisation and the construction of inclusion education policy in South Africa. *Compare: A Journal of Comparative and International Education* 35(2): 115–125.

South Africa Department of Education (1997) Education white paper 3: A programme for the transformation of higher education. Department of Education, Pretoria.

Sundaram K (2006) On backwardness and fair access to higher education: Results from NSS 5th round surveys, 1999–2000. *Economic and Political Weekly* 41(50): 5173–5182.

Supremo Tribunal Federal (2012) Supreme Court adjudicates the constitutionality of the Law of Quotas at the University of Brasilia. News of the Supreme Court. April 2, 12 [STF julga constitucional política de cotas na UnB. Noticias STF, Abril de 2012]. Available at: http://www.stf.jus.br/portal/cms/vernoticiadetalhe.asp?idconteudo = 206042.

Texas (1997) Top 10% Law. Available at: https://ballotpedia.org/Texas_House_Bill_588,_the_%22Top_10%25_Rule%22_(1997)

United Nations Research Institute for Social Development (2011) World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Available at: https://www.un.org/WCAR/durban.pdf (accessed 30 June 2020).

Wangenge-Ouma G (2012) Tuition fees and the challenge of making higher education a popular commodity in South Africa. *Higher Education* 64(6): 831–844.

Waughray A (2010) Caste discrimination and minority rights: The case of India's Dalits. *International Journal on Minority and Group Rights* 17(2): 327–353.
Webbstock D and Fisher G (2016) South African higher education reviewed: Two decades of democracy. Report, Council on Higher Education, Pretoria.
Weisskopf TE (2004a) Impact of reservation on admissions to higher education in India. *Economic and Political Weekly* 39(39): 4339–4349.
Weisskopf TE (2004b) *Affirmative Action in the United States and India: A Comparative Perspective*. London: Routledge.
World Bank (2013) *Inclusion Matters: The Foundation for Shared Prosperity*. Washington, DC: World Bank.

Suchitra Gururaj (PhD) is assistant vice president for community and economic engagement and a lecturer in the College of Liberal Arts at The University of Texas at Austin. Her research focuses on service-learning outcomes, university–community partnerships, and social inclusion policies in higher education.

Patricia Somers (PhD) is an associate professor in the Department of Educational Administration at The University of Texas at Austin. She is also affiliated with the Center for Women's & Gender Studies and the Long Lozano Institute for Latin American Studies at the University.

Jessica Fry is a doctoral student in the Department of Educational Administration at The University of Texas at Austin, with a research focus on college students who are transracial adoptees.

Del Watson is director of faculty affairs in the provost office of The University of Texas at Austin. She is also a doctoral student in the Department of Educational Administration at the University, with a research focus on diversity and leadership.

Francesca Cicero (JD) is director of career advising at Amherst College.

Marilia Morosini (PhD) currently works at the Programa de Pós-Graduação em Educação, Pontifícia Universidade Católica do Rio Grande do Sul. Marília is the coordinator of Higher Education Center Studies (CEES) and coordinator of the South Brazilian Higher Education Research Network. Her research focuses on higher education internationalization, higher education policies, teacher education, and teaching methods.

Jennifer Zamora is director of student programming in the university unions of The University of Texas at Austin. She is also a doctoral student in the Department of Educational Administration at the University.